

	OFFICE OF THE Pr. COMMISSIONER OF CUSTOMS, NS-I सीमाशुल्कआयुक्तकाकार्यालय, एनएस-I CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE, केंद्रीकृतअधिनिर्णयनप्रकोष्ठ, जवाहरलालनेहरूसीमाशुल्कभवन, NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707 न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707
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DIN: 20251078NW000000A0D0

Date of Order: .10.2025

Date of Issue: .10.2025

F.No. S/10-103/2024-25/Commr./Gr.II(C-F)/NS-I/CAC/JNCH**SCN No. 1067/2024-25/Commr./Gr.II(C-F)/NS-I/CAC/JNCH**

आदेशकीतिथि: .10.2025

जारीकिएजानेकीतिथि: .10.2025

Passed by: Shri Yashodhan Wanage

पारितकर्ता: श्री. यशोधन वनगे

Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva

प्रधान आयुक्त, सीमाशुल्क (एनएस-1), जेएनसीएच, न्हावाशेवा

Order No.: 220/2025-26 /Pr. Commr/NS-I /CAC /JNCH

आदेशसं. : 220/2025-26/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

Name of Party/Noticee: M/s Omitech Chemical Industries Pvt. Ltd. & others

पक्षकार (पार्टी)/ नोटिसीकानाम: मेसर्स ओमीटेक केमिकल इंडस्ट्रीज प्राइवेट लिमिटेड और अन्य

ORDER-IN-ORIGINALमूलआदेश

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

1. इसआदेशकीमूलप्रतिकीप्रतिलिपिजिसव्यक्तिकोजारीकीजातीहै, 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. इसआदेशसेव्यथितकोईभीव्यक्तिसीमाशुल्कअधिनियम१९६२कीधारा१२९(ए) केतहतइसआदेशकेविरुद्धसीईएसटीएटी, पश्चिमीप्रादेशिकन्यायपीठ (वेस्टरीजनलबेंच), ३४, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई- ४००००९कोअपीलकरसकताहै, जोउक्तअधिकरणकेसहायकरजिस्ट्रारकोसंबोधितहोगी।

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. सीए३, चारप्रतियोंमेंतथाउसआदेशकीचारप्रतियाँ, जिसकेखिलाफअपीलकीगयीहै (इनचारप्रतियोंमेंसेकमसेकमएकप्रतिप्रमाणितहोनीचाहिए).

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

समयसीमा- इसआदेशकीसूचनाकीतारीखसे३महीनेकेभीतर

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

फीस- (क) एक हजार रुपये—जहाँ माँग गये शुल्क एवं ब्याज की तथालगायी गयी शास्ति की रकम ५ लाख रुपये या उससे कम है।

(b) Rs. Five Thousand - Where amount of duty & Page 2 of 26

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

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

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

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

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

भुगतान की रीति— क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायकरजिस्ट्रार, 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 - विधिके उपबंधों के लिए तथा ऊपर यथासंदर्भित एवं अन्य संबंधित मामलों के लिए, सीमा शुल्क अधिनियम, १९९२, सीमा शुल्क (अपील) नियम, १९८२ सीमा शुल्क, उत्पादन शुल्क एवं सेवाकर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाएगा।

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

5. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिवार्य रूप से तब तक उसमें माँग गये शुल्क अथवा उद्गृहीत शास्तिका 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।

1. Brief facts of the case:

1.1 M/s Omitech Chemical Industries Private Limited (IEC-0396045448) filed various Bills of Entry, as detailed in Annexure-A to the notice for the clearance of imported goods declared under CTH 29051700 and 38237090 through their Customs Brokers viz. Impex Clearing Services Pvt. Ltd. and HPK logistics LLP. The goods under subject Bills of Entry were imported by the importer under lower/Nil rate of ADD, subject to certain conditions as mentioned in the Notification No. 28/2018-Customs (ADD) dated 25.05.2018 including producer, exporter, country of origin, country of export etc. The analysis of the import data revealed that the importer had mis used the above notification in order to avail the benefit of lower duty rate.

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

Table-I

S. No .	Sub-headings	Description of goods	County of origin	County of export	Producer	Exporter	Amount	Unit	Currency
1	2	3	4	5	6	7	8	9	10
1	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	Singapore	M/s PT Eco green Oleochemicals	M/s Eco green Oleochemicals (Singapore) Pte Ltd.	NIL	M T	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	M T	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	M T	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	M T	USD
5	2905 17, 2905 19, 3823 70	-do-	Indonesia	Any	Any	Any	92.23	M T	USD
6	2905 17, 2905 19, 3823 70	-do-	Any country other than those subject to antidumping duty	Indonesia	Any	Any	92.23	M T	USD
7	2905 17, 2905 19, 3823 70	-do-	Malaysia	Malaysia	M/s FPG Oleochemicals Sdh Bhd	M/s Procter & Gamble International Operations SA, Singapor	17.64	M T	USD
8	2905 17, 2905	-do-	Malaysia	Malaysia	M/s KL - Kepong Oleomas	M/s KL - Kepong Oleomas Sdn Bhd	NIL	M T	USD

	19, 3823 70				Sdn Bhd				
9	2905 17, 2905 19, 3823 70	-do-	Malaysia	Malaysia	Any combinati on other than Sl. Nos. 7 & 8	Any combination other than Sl. Nos. 7 & 8	37.64	M T	USD
10	2905 17, 2905 19, 3823 70	-do-	Malaysia	Any Country	Any	Any	37.64	M T	USD
11	2905 17, 2905 19, 3823 70	-do-	Any country other than those subject to antidumpin g duty	Malaysia	Any	Any	37.64	M T	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	M T	USD
13	2905 17, 2905 19, 3823 70	-do-	Thailand	Thailand	Any combinati on other than Sl. No. 12	Any combination other than Sl. No. 12	22.5	M T	USD
14	2905 17, 2905 19, 3823 70	-do-	Any country other than country of origin	Thailand	Any	Any	22.5	M T	USD
15	2905 17, 2905 19, 3823 70	-do-	Thailand	Any country	Any	Any	22.5	M T	USD

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

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

Thus, it appears that the importer is required to pay ADD as per the said notification. However, the noticee 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, videnew shipper review notification No.7/38/2018-DGTR, datedthe15thJanuary2019, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 15thJanuary 2019, has recommended provisional assessment of all exports of the subject goods made by the above stated party till the completion of the review by it;

Now Therefore, in exercise of the powers conferred by sub-rule (2) of rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on

Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid recommendation of the designated authority, hereby orders that pending the outcome of the said review by the designated authority, the subject goods, when originating in or exported from the subject country by M/s. PT. Energi Sejahtera Mas (Producer) Indonesia and through M/s. Sinarmas Cepssa Pte Ltd (Exporter/trader), Singapore and imported into India, shall be subjected to provisional assessment till the review is completed.

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

3. In case of recommendation of anti-dumping duty after completion of the said review by the designated authority, the importer shall be liable to pay the amount of such anti-dumping duty recommended on review and imposed on all imports of subject goods when originating in or exported from the subject country by M/s. PT. Energi Sejahtera Mas (Producer) Indonesia and through M/s. Sinarmas Cepssa 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 made the following amendment in the notification 28/2018-Customs (ADD) dated 25.05.2018 and below entry was added:

Table-II

S.No .	Sub-heading s	Descriptio n of goods	County of origin	County of export	Producer	Exporte r	Amoun t	Uni t	Currenc y
1	2	3	4	5	6	7	8	9	10
16	2905 17, 2905 19, 3823 70	-do-	Indones ia	Any country including Indonesia	PT. ENERGI SEJAHTER A MAS	Sinarmas CEPSSA 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 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 noticee. During the investigation, it was seen that the noticee had opted the benefit of S. No. 1 of Notification 28/2018-Customs (Nil Anti-Dumping) as shown in Table-I for various consignments under the condition that the Producer is “PT Ecogreen Oleochemicals” & Exporter is “Ecogreen Oleochemicals (Singapore) Pte Ltd” along with other mentioned conditions in the said notification. On scrutiny of the relevant documents, it was seen that the goods had not been exported from Singapore, but the same was transhipped 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 was not fulfilled by the Exporter. Consequently, it appeared that the importer inappropriately claimed the benefit of S. No. 1 of Notification 28/2018-Customs. Copy of one such Bill of Lading uploaded in e-sanchit by the noticee is as below:

FOR COMBINED TRANSPORT OR OCEAN TRANSPORT OR MULTIMODAL TRANSPORT

SHIPPER

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

CONSIGNEE (IF 'TO ORDER' SO INDICATE)

HDFC BANK LTD,
AHURA CENTRE GROUND FLOOR,
MAHAKALI CAVES ROAD,
ANDHERI (EAST), MUMBAI 400093, INDIA.

NOTIFY PARTY (NO CLAIM SHALL BE ATTACHED FOR FAILURE TO NOTIFY)

1. OMTECH CHEMICAL INDUSTRIES PVT LTD
BLOCK NO 402 MAROL BHAVAN MAROL CO-OPERATIVE
INDL ESTATE LTD MV ROAD ANDHERI EAST
MUMBAI 400059, MAHARASHTRA INDIA*

BILL OF LADING NO.: LTKC/SINNSA/23/27128



LEGEND|tank

Exceeding expectations, Beyond boundaries

LEGEND TANK LOGISTICS PTE. LTD.

BILL OF LADING

1st ORIGINAL

SHIPPING AGENT REFERENCES (COMPLETE NAME AND ADDRESS)

LEGEND LOGISTICS (INDIA) PVT LTD - KANDLA BRANCH
OFFICE NO.205, SECOND FLOOR, PLOT NO. 63
SECTOR 8, RISHABH ARCADE, GANDIDHIDHAM-376201
REGISTRATION NUMBER: 24AADCL0941P1ZD # PAN NO : AADCL0941P
TEL: 0551805363 / 0737493317
EMAIL: VIVEK.WADKAR@LEGENDLOGISTICS.LTD.COM, RAVI.N@LEGENDLOGISTICS.LTD.COM,
OPS.MUNDRA@LEGENDLOGISTICS.LTD.COM

VESSEL / VOYAGE NO.
HYUNDAI OAKLAND VOY. 1221W

PRE-CARRIAGE BY

PORT OF LOADING
SINGAPORE

PLACE OF RECEIPT
BATAM, INDONESIA

PORT OF DISCHARGE
NHAVA SHEVA INDIA

PLACE OF DELIVERY
NHAVA SHEVA INDIA

PARTICULARS FURNISHED BY SHIPPER - NOT CHECKED BY CARRIER- CARRIER NOT RESPONSIBLE

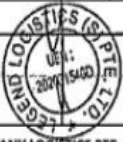
TANK NO., SEAL NO, MARKS AND NUMBERS	Description of Packages & Goods (Continued on attached Bill of Lading Rider Page(s),if applicable)	GROSS WEIGHT KGS NET WEIGHT KGS	
LEGU1235595 / TOP: B0155183, TOP: B0155184, BOTTOM: B0155185	1 X 20' ISO TANK PLEASE REFER ATTACHED LIST IN ANNEXURE FOR TANK NOS, DESCRIPTION, PACKAGES, WEIGHT AND MEASUREMENTS. FREE 21 DAYS AT DESTINATION PORT THEREAFTER AT USD 25 / DAY / TANK	TOTAL GROSS WEIGHT 23,090.000 KGS TOTAL NET WEIGHT 19,510.000 KGS	

FREIGHT PAYABLE SINGAPORE	NO. OF ORIGINAL B/L ISSUED THREE	LADEN ON BOARD 14-04-2023	PLACE & DATE OF ISSUE SINGAPORE, SINGAPORE 14-04-2023
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** APPLICABLE ONLY WHEN THE DOCUMENTS IS USED AS A COMBINED TRANSPORT BILL OF LADING

RECEIVED by the Carrier the Goods as specified above in apparent good order and condition unless otherwise stated, to be transported to such place as agreed, authorized or permitted herein and subject to all the terms and conditions appearing on the front and reverse pages of this Bill of Lading to which the Merchant agrees by accepting this Bill of Lading, any total preflight and customs notwithstanding the particulars given above as stated by the shipper and the weight, measure, quantity, condition, contents and volume of the Goods are unknown to the Carrier. One (1) original Bill of Lading must be surrendered duly endorsed in exchange for the Goods or delivery order. INWITNESS whereof one (1) original Bill of Lading has been signed if not otherwise stated above, the same being accomplished, the within(s), if any, to be void.

LEGEND LOGISTICS (S) PTE LTD



AS AGENT FOR THE CARRIER : LEGEND TANK LOGISTICS PTE. LTD.

ALL BUSINESS IS TRANSACTED ONLY IN ACCORDANCE WITH SINGAPORE LOGISTICS ASSOCIATION'S STANDARD TRADING CONDITIONS.

SERIAL No : 45748216019053877801

FMC NO. 029906

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LEGEND LOGISTICS (S) PTE LTD			
B/L ATTACHMENT			
BL NO.	: LTKC/SINNSA/23/27128	DATE OF ISSUE	: 14-04-2023
VESSEL NAME / VOYAGE NO	: HYUNDAI OAKLAND VOY. 122W		
Cargo Description			
ECOROL 18/99 HG (STEARYL ALCOHOL) QTY: 19.510 MT AS PER SALE CONTRACT NO. 2010720308 DT.01.03.2023 PURCHASE ORDER NO. 4260000031 DATE 02.03.2023 L/C NUMBER 240LC01230620011 DATED 230310 PO NO. 4260000031 DTD. 02.03.2023 IMPORTERS CODE NO. 0396045448			
DRAWN UNDER L/C ISSUED BY HDFC BANK LTD, TRADE FINANCE DEPT, AHURA CENTRE, GROUND FLOOR, MAHAKALI CAVES ROAD, ANDHERI EAST, MUMBAI 400093, INDIA			
IEC NO: 0396045448 GST NO: 27AAACO3143M1ZD OFFICIAL EMAIL ID IMPORTER:- IMPORT@ARTEKCHEMICALS.COM / ABBAS@ARTEKCHEMICALS.COM PAN NO. AAACU3143M HS CODE: 2905.17			
TRANSHIPMENT AT SINGAPORE ON VESSEL HYUNDAI OAKLAND VOY. 122W SHIPPED ON BOARD ON PRE-CARRIAGE VESSEL BUANA OCEAN 09 VOY. B30411 AS AT BATAM, INDONESIA ON 10 APRIL 2023			
FREIGHT PREPAID 14 DAYS FREE DETENTION AT DESTINATION			
*2. HDFC BANK LTD., AHURA CENTRE GROUND FLOOR, MAHAKALI CAVES ROAD, ANDHERI (EAST), MUMBAI 400093, INDIA			
Marks and No			
SHIPPING MARK : OCIFL NHAVA SHEVA ECOROL 18/99 HG (STEARYL ALCOHOL) GROSS WT. : 23.090 MT NET WT. : 19.510 MT COUNTRY OF ORIGIN : INDONESIA BATCH NUMBER: 1-0607-23 DATE OF MANUFACTURE: 09.04.2023 NAME OF MANUFACTURER : PT. ECOGREEN OLEOCHEMICALS			



1.6 Also, the noticee had imported the goods from other Suppliers (Inter-Continental Oils & PT Musimmas.) without paying the applicable Anti-Dumping Duty as per the ADD notification. The amount of Anti-Dumping Duty payable is calculated and mentioned in the Annexure-A to the notice. The details of the Bills of Entry is as tabulated below:

Sr. No.	BE Number	BE Date	QUANTITY	UQ C	Assessable Value Amount	Manufacturer Name	ADD Rate(In USD per Mtr Ton)	Differential ADD (Rs.)	IGST on Differential ADD (In Rs) @18%
1	5612557	21-04-2023 00:00	19510	KG S	2514498	PT ECOGREEN OLEOCHEMICALS	92.23	149620.7	26931.73
2	8224993	11-04-2022 00:00	19700	KG S	4186360	PT ECOGREEN OLEOCHEMICALS	92.23	139540.3	25117.25

3	7368091	04-02-2022 00:00	19640	KG S	4065966	PT ECOGREEN OLEOCHEMI CALS	92.23	137213. 3	24698.4
4	5614672	21-04-2023 00:00	19530	KG S	2517075	PT ECOGREEN OLEOCHEMI CALS	92.23	149774. 1	26959.34
5	9762390	28-07-2022 00:00	19670	KG S	4356496	PT. ECOGREEN OLEOCHEMI CALS	92.23	146856. 6	26434.19
6	8571440	24-08-2020 00:00	19090	KG S	1716983	PT MUSIM MAS	7.1	0.0101	0.001818
7	9276649	25-06-2022 00:00	45000	KG S	14477456	PT MUSIM MAS	7.1	0.025	0.0045
8	2952611	19-10-2022 00:00	19690	KG S	2792318	PT ECOGREEN OLEOCHEMI CALS	92.23	149729. 9	26951.39
9	5226245	28-08-2021 00:00	19470	KG S	2313348	PT ECOGREEN OLEOCHEMI CALS	92.23	135038	24306.84
10	7124427	05-03-2020 00:00	19660	KG S	2328127	PT Ecogreen	92.23	131732	23711.76
11	2378592	10-09-2022 00:00	19670	KG S	3062044	PT ECOGREEN OLEOCHEMI CALS	92.23	145949. 5	26270.91
12	8864468	27-05-2022 00:00	19690	KG S	4813142	PT ECOGREEN OLEOCHEMI CALS	92.23	142738. 3	25692.89
13	8576201	07-05-2022 00:00	39320	KG S	8307180	PT ECOGREEN OLEOCHEMI CALS	92.23	279420. 6	50295.7
14	7004849	08-01-2022 00:00	19640	KG S	3170513	PT ECOGREEN OLEOCHEMI CALS	92.23	136579. 3	24584.28
15	3048825	27-10-2022 00:00	19680	KG S	2839981	PT ECOGREEN OLEOCHEMI CALS	92.23	152285. 7	27411.43
16	6763044	20-12-2021 00:00	19630	KG S	3242447	PT. ECOGREEN OLEOCHEMI CALS	92.23	139678. 1	25142.06
17	3395150	01-04-2021 00:00	19.16	MT S	2726449	PT.MUSIM MAS	7.1	0.0406	0.007308
18	5373863	09-09-2021 00:00	19650	KG S	2295926	PT ECOGREEN OLEOCHEMI CALS	92.23	134021	24123.78
19	2254552	01-09-2022 00:00	19700	KG S	3068620	PT ECOGREEN OLEOCHEMI CALS	92.23	146262. 9	26327.33
20	6499750	02-12-2021 00:00	19.65	MT S	3335116	PT. ECOGREEN OLEOCHEMI CALS	92.23	136105. 2	24498.94

21	6469570	30-11-2021 00:00	19690	KG S	2846534	PT. ECOGREEN OLEOCHEMI CALS	92.23	136382. 3	24548.81
22	5377880	09-09-2021 00:00	19390	KG S	2265547	PT ECOGREEN OLEOCHEMI CALS	92.23	132247. 7	23804.59
23	9059740	10-06-2022 00:00	19670	KG S	4786695	PT. ECOGREEN OLEOCHEMI CALS	92.23	142411. 9	25634.14
24	6739206	18-12-2021 00:00	19.64	MT S	3297132	PT ECOGREEN OLEOCHEMI CALS	92.23	139749. 3	25154.87
25	6068137	30-10-2021 00:00	39.41	MT S	5750510	PT ECOGREEN OLEOCHEMI CALS	92.23	275516. 6	49593
26	7661863	26-02-2022 00:00	19710	KG S	4078631	PT ECOGREEN OLEOCHEMI CALS	92.23	138247. 7	24884.59
27	4338180	24-01-2023 00:00	39150	KG S	6186326	PT ECOGREEN OLEOCHEMI CALS	92.23	297169. 2	53490.46
28	6191697	23-12-2019 00:00	19.74	MT S	1632202	M/S. ECOGREEN OLEOCHEMI CALS(SINGA PO	92.23	130902. 6	23562.47
29	3854809	22-12-2022 00:00	19650	KG S	2298461	PT ECOGREEN OLEOCHEMI CALS	92.23	151419. 3	27255.47
30	3613498	06-12-2022 00:00	39140	KG S	8248364	PT ECOGREEN OLEOCHEMI CALS	92.23	296010. 3	53281.86
31	5087753	17-03-2023 00:00	39000	KG S	5484024	PT ECOGREEN OLEOCHEMI CALS	92.23	301066. 4	54191.95
32	9582206	16-07-2022 00:00	15000	KG S	4660967	PT ECOGREEN OLEOCHEMI CALS	92.23	110537. 7	19896.78
33	3701082	12-12-2022 00:00	19420	KG S	4092571	PT ECOGREEN OLEOCHEMI CALS	92.23	146870. 7	26436.73
34	8946498	03-06-2022 00:00	19720	KG S	4809698	PT. ECOGREEN OLEOCHEMI CALS	92.23	142773. 9	25699.3
35	2795399	08-10-2022 00:00	19630	KG S	2354908	PT ECOGREEN OLEOCHEMI CALS	92.23	149273. 7	26869.26
36	6964805	21-02-2020 00:00	19.65	MT S	2326943	M/S. ECOGREEN OLEOCHEMI CALS(SINGA PO	92.23	131665	23699.7
37	3451047	05-04-	18.97	MT	2756986	PT MUSIM	7.1	0.04105	0.007389

		2021 00:00		S		MAS			
38	2691827	01-10-2022 00:00	19710	KG S	3066364	PT ECOGREEN OLEOCHEMI CALS	92.23	146155. 4	26307.97
39	3935541	13-05-2021 00:00	19700	KG S	1899622	PT ECOGREEN OLEOCHEMI CALS	92.23	135815. 6	24446.81
40	3637426	20-04-2021 00:00	19.11	MT S	2881348	PT. MUSIM MAS	7.1	0.00815	0.001467
41	9484215	09-07-2022 00:00	19740	KG S	4315290	PT. ECOGREEN OLEOCHEMI CALS	92.23	145467. 6	26184.16
42	5709460	27-04-2023 00:00	20180	KG S	2600849	PT ECOGREEN OLEOCHEMI CALS	92.23	154758. 9	27856.6
43	3816874	04-05-2021 00:00	19690	KG S	1934218	PT.ECOGREE N OLEOCHEMI CALS	92.23	138289. 1	24892.03
44	9897018	06-08-2022 00:00	15000	KG S	4688606	PT ECOGREEN OLEOCHEMI CALS	92.23	111021. 9	19983.94
45	6482232	15-01-2020 00:00	19.67	MT S	1632069	M/S. ECOGREEN OLEOCHEMI CALS(SINGA PO	92.23	130891. 9	23560.55
46	5714051	28-04-2023 00:00	20240	KG S	2608582	PT ECOGREEN OLEOCHEMI CALS	92.23	155219	27939.43
47	5504159	13-04-2023 00:00	20190	KG S	2592749	PT ECOGREEN OLEOCHEMI CALS	92.23	154276. 9	27769.85
48	4255500	09-06-2021 00:00	38990	KG S	3863636	PT ECOGREEN OLEOCHEMI CALS	92.23	265927. 7	47866.99
49	5581937	07-11-2019 00:00	19.69	MT S	1637125	M/S. ECOGREEN OLEOCHEMI CALS(SINGA PO	92.23	131297. 4	23633.54
50	5504158	13-04-2023 00:00	20190	KG S	2592749	PT ECOGREEN OLEOCHEMI CALS	92.23	154276. 9	27769.85
51	3798466	03-05-2021 00:00	19.13	MT S	2884364	PT.MUSIM MAS	7.1	0.02145	0.003861
52	9759200	30-11-2020 00:00	20000	KG S	1955200	PT ENERGI SEJAHTERA MAS	92.23	0.02	0.0036
53	2171162	26-08-2022 00:00	42	MT S	14031150	NATURAL OLEOCHEMI CALS SDN BHD	37.64	0.04	0.0072

54	3766914	16-12-2022 00:00	19690	KG S	2303139	PT ECOGREEN OLEOCHEMI CALS	92.23	151727. 5	27310.95
								8370983	1506777

1.7 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, Malaysia & Thailand and imported into India with effect from 25.05.2018. Hence, the importer had not paid the differential Anti-dumping duty amounting to Rs. 83,70,983/- and IGST on not paid Anti-dumping Duty amounting to Rs 15,06,777/- as explained in the preceding paras.

1.8 Further, two Customs Brokers namely M/s. Impex Clearing Services Pvt. Ltd and M/s. HPK logistics LLP filed the bills of Entry as mentioned in Annexure-A to the notice on behalf of the importer M/s Omitech Chemical Industries 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 noticee. 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 appears that both these Customs Brokers namely M/s. Impex Clearing Services Pvt. Ltd and M/s. HPK Logistics LLP 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.

1.9 Accordingly, M/s Omitech Chemical Industries Private Limited was issued Show Cause Notice bearing no. 1067/2024-25/Commr./NS-1/Gr.IIC-F/CAC/JNCH dated 10.09.2024 seeking as to why:

1.9.1 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 Annexure-A of the Show Cause Notice;

1.9.2 The differential Anti-dumping duty amounting to Rs. 83,70,983/- & IGST on not paid Anti-dumping Duty amounting to Rs 15,06,777/- (total amounting to Rs 98,77,760/-) 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;

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

1.9.4 Penalty should not be imposed on M/s Omitech Chemical Industries Private Limited under the provisions of Sections 112(a) and/or 114A, and/or 114AA of the Customs Act, 1962;

1.9.5 Penalty should not be imposed on the Customs brokers M/s. Impex Clearing Services Pvt. Ltd and M/s. HPK Logistics LLP under the provisions of Section 112(a) and /or 114A and Section 114AA of the Customs Act, 1962.

WRITTEN SUBMISSIONS

2. M/s. Omitech Chemical Industries Pvt. Ltd. gave their written submissions vide letter dated 07.10.2024, wherein they *inter-alia* stated as below:

2.1 They imported Saturated Fatty alcohol from EOS- Ecogreen Oleochemicals (Singapore) Pte. Ltd. an affiliate of PTEO- P.T. Ecogreen Oleochemicals, (the manufacturer), located in Batam, Indonesia. Ecogreen qualifies for ZERO Anti-Dumping Duty as per the Investigations of the Designated Authority and accordingly under the relevant Notifications their imports had been appropriately cleared under the said Notification No. 28/2018 without payment of any ADD.

2.2 Their imports of Saturated Fatty Alcohols originating from EOS – Ecogreen Oleochemicals (Singapore) Pte. Ltd., represented their orders issued in name of EOS. Invoices have been issued by EOC and LC has been opened and they remitted payments against these imports to EOS. 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.

2.3 In respect of the above point, they referred to the 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, they relied Page 24 and 25, Paras 29 to 31 describing the transaction process of PTEO and EOS. Under Para 31 it was mentioned as below:

*"During POI, Ecogreen has exported **** MT of the subject goods to India through Eco Singapore. Ecogreen has sold the subject goods to Eco Singapore on ex-factory terms."*

Based on the investigations by the Designated Authority and the scrutiny during POI, Duty Table was drafted by the authority as appearing on Page 58 and 59 of the said File No. 14/51/2016-DGAD and Notification No. 28/2018-Customs dt. 25.05.2018 and subsequent Notifications were accordingly issued by the Authorities.

2.4 Accordingly, all their imports were from an exempted Indonesian Producer, P.T. Ecogreen Oleochemicals (PTEO), Indonesia and Exported by Ecogreen Oleochemicals Singapore Pte. Ltd. (EOS), Singapore. 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 Gol, MOF, Department of Revenue.

2.5 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. As per Recommendations appearing in para L (Page 50 - Sr. Nos. 145 and 146) based on the Conclusion appearing in Para K (Refer Page 47 to 49) and the relevant Duty Table, Country of Export has been mentioned in Column No. (5) as "Any including the Country of Origin", thereby declaring a clear intention of the authorities towards the levy of Definitive Duties on the Producers based on the investigations.

2.6 In view of the above, it is clear that the imports of Saturated Fatty Alcohol ex. Ecogreen Oleochemicals, by their 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 their part towards payment of any duties, as claimed in the reference SCN.

2.7 In annexure attached with SCN there are total 54 Bill of entries wherein differential ADD amounting to Rs. 83,70,983/- and IGST on the same has been calculated of Rs. 15,06,777/-. Out of total 54 bill of Entries 46 BE is pertained to goods imported from M/s Eco green Oleo chemicals Singapore PTE and same falls under the serial No. 1 of the said notification with NIL

antidumping duty, whereas, the rest 8 Bill of entries they had already paid the ADD of Rs. 3,42,127/- at the time of clearance of the said imported goods as per the Sr. No. 2, 5, 6 and 9 to 11 of the notification. They submitted the copies of the Bills of Entry along with other relevant documents for all the Bills of Entry mentioned in Annexure-A to the notice.

PERSONAL HEARING

3. Personal hearing in the matter was conducted on 13.08.2025 through virtual mode and Shri Dipesh Pachori, represented M/s. Omtech Chemicals Industries Pvt. Ltd., Shri Piyush Jain appeared on behalf of M/s. Impex Clearing Services Pvt. Ltd. and Shri Mayur Kataria appeared on behalf of M/s, HPK Logistics LLP. During the hearing, Shri Dipesh Pachori stated that they have paid the Anti-Dumping Duty in case of eight Bills of Entry imported from Malaysia and in respect of the Bills of Entry wherein the goods were originated from Singapore, they have requested their supplier to provide additional supporting documents. Accordingly, they requested to give two weeks' time to supply the said documents. Shri Piyush Jain and Shri Mayur Kataria appearing on behalf of the Customs Brokers submitted that they are in touch with the importer and have requested them to forward the Bill of Export in respect of the goods imported from Singapore. In reference to the above, Shri Dipesh Pachori sought additional time of 15 days vide their e-mail dated 05.09.2025 to submit the supporting documents from their suppliers.

DISCUSSIONS AND FINDINGS

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

4.2 The adjudicating authority has to take the views/objections of the noticee on board and consider before passing the order. In the instant case, the personal hearing was granted to the noticees on 13.08.2025 by the Adjudicating Authority which was attended by the respective Authorised representatives of all the three noticees. During the hearing, M/s. Omitech Chemicals Industries Private Limited requested for two weeks' time to submit certain documents which was further extended by them for another 15 days vide their e-mail dated 05.09.2025, however, I find that till date the noticee has not submitted any additional documents. In the instant case, as per Section 28(9) of the Customs Act, 1962 the last date to adjudicate the matter was 09.09.2025 which was extended by the Chief Commissioner of Customs in terms of first proviso to Section 28(9) of the Act *ibid* up to 09.10.2025. Accordingly, I am bound to decide the matter on the basis of the submissions made by the noticees and the documents on record. Therefore, the case was taken up by me for adjudication proceedings within the time limit.

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 Noticees. Thus, the principles of natural justice have been duly 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. 1067/2024-25/COMMR/NS-I/Gr. II(C-F)/CAC/JNCH dated 10.09.2024 to M/s. Omitech Chemical Industries Pvt. Ltd., alleging wrongful availment of exemption from Anti-Dumping Duty (ADD) on imports of 'Saturated Fatty Alcohols' under various Bills of Entry by mis-declaring the country of export as Singapore. The SCN alleges that the importer inappropriately claimed benefit of Sr. No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 (NIL ADD) though the goods were actually shipped from Batam, Indonesia and merely transhipped 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. The SCN further contends that the noticee has imported goods from other suppliers also viz. Inter-Continental Oils & PT Musimmas, without payment of applicable Anti-Dumping duty as per the impugned ADD notification and accordingly, differential ADD amounting to ₹83,70,983/- along with IGST of ₹15,06,777/- (totalling ₹98,77,760/-) 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. Omitech Chemical Industries 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. Impex Clearing Services Pvt. Ltd. and M/s. HPK Logistics LLP, 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. Omitech Chemical Industries 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 further submitted that out of the 54 Bills of Entry reflecting in Annexure-A to the notice, in respect of eight Bills of Entry, wherein the goods were imported from suppliers other than Ecogreen Oleochemicals, they had already paid the ADD at the time of filing the Bills of Entry only. Accordingly, the importer has prayed for dropping of the complete 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. Omitech Chemical Industries 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 SCN has alleged that since no export declaration was filed at Singapore and the consignments were merely transhipped 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 from Ecogreen Oleochemicals (Singapore) 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 ₹83,70,983/- and IGST thereon of ₹15,06,777/- (totalling ₹98,77,760/-) is recoverable from the importer M/s. Omitech Chemical Industries 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. Omitech Chemical Industries 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. Impex Clearing Services Pvt. Ltd. and M/s. HPK Logistics LLP, 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 from Ecogreen Oleochemicals (Singapore) 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 imported through Singapore, 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 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 transhipped 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 transhipped 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/Sub-Heading	Description of Goods	Country of Origin	Country of Export	Producer	Amount (USD/MT)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	2905.17, 2905.19, 3823.70	Saturated Fatty Alcohol of Carbon Chain length C12 to C18 and their blends	Indonesia	Any including Indonesia	M/s. PT Ecogreen Oleochemicals	Nil

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Explanation. - For the purposes of this section,-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 9B. No levy under section 9 or section 9A in certain cases. -

(1) Notwithstanding anything contained in section 9 or section 9A, -

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

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

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

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

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

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

(c) the Central Government may not levy –

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

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

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

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

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

1. A **preliminary finding** of dumping or subsidy and the consequent injury to the domestic industry; and
2. A **further determination** that imposition of such duty is necessary to prevent injury during the pendency of investigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.22.2 The definition of transshipment as provided in S.B Sarkar’s ‘Words and Phrases of Central Excise and Customs’ is reproduced below:

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

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

““transshipment” 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 transhipped through another port, such as Singapore. The Department’s focus on the port of loading Singapore as evidence of non-export from Singapore ignores this clarification.

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

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

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

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

4.23 Therefore, I find that the importer is correct in claiming the Serial No. 1 of Notification No. 28/2018-Customs (ADD) as it specifically covers the transaction involving goods produced by M/s PT Ecogreen Oleochemicals (Indonesia) and exported by M/s Ecogreen Oleochemicals (Singapore) Pte Ltd. The Department’s denial of the NIL ADD rate on the grounds that the goods were transhipped 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 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 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 proposal 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 transhipped through Singapore. However, the SCN does not cite any provision of law or condition in the Notification which prescribes filing of a shipping bill at Singapore as a prerequisite for claiming the exemption. It is a settled principle that conditions not expressly provided in the Notification cannot be read into by implication.

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

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

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

4.27 I find that the noticee M/s. Omitech Chemical Industries Pvt. Ltd. in its aforementioned submissions stated that out of the 54 Bills of Entry mentioned in Annexure – A to the notice, in 46 Bills of Entry they had imported goods from M/s. Ecogreen Oleochemicals Singapore and in rest of the Bills of Entry they had paid the ADD at the time of clearance of the imported goods. In this regard, I find that in eight Bills of Entry mentioned at Serial no. 6, 7, 17, 37, 40, 51, 52 & 53, the noticee had imported the impugned goods from other suppliers viz. Inter Continental Oils and Fats Pte. Ltd., Sinarmas Cepsa Pte. Ltd. Co. & Wilmar Trading Pte Ltd. I find that in the Notice against these eight bills of entry mentioned at aforementioned serial numbers of Annexure-A, the differential ADD and differential IGST is calculated as zero only and while calculating the total differential duty demanded from the noticee no differential duty amount has been considered. Also, in Para 4 of the SCN (Para 1.6 above) differential ADD and differential IGST is calculated and the said eight bills of entry are reflecting at serial no. 6, 7, 17, 37, 40, 51, 52 & 53. I find that against these eight Bills of Entry, the differential duty amount is calculated as zero. Also, I find that the noticee has paid appropriate amount of ADD and consequential IGST in the said eight Bills of entry as per Notification no. 28/2018-Customs (ADD) dated 25.05.2018 at the time of clearance itself. The same has been verified from the EDI system. Accordingly, I find that no differential duty has been demanded against the said eight Bills of Entry and the noticee has paid the requisite duty.

B. Whether or not the differential Anti-Dumping Duty of ₹83,70,983/- and IGST thereon of ₹15,06,777/- (totalling ₹98,77,760/-) is recoverable from the importer M/s. Omitech Chemicals Pvt. Ltd. under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.

4.28 Since the goods were rightly covered under Serial No. 1 and no ADD was leviable, the consequential IGST on ADD also does not arise. Also, against the eight Bills of Entry mentioned at Serial no. 6, 7, 17, 37, 40, 51, 52 & 53 of Annexure-A to the notice, the importer has paid appropriate ADD at the time of clearance of the goods. 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.

4.29 In view of the detailed analysis undertaken in the foregoing paragraphs, I hold that the goods imported vide 46 Bills of Entry by the noticee were 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. I also find that in eight Bills of Entry the importer has filled all the details correctly and also paid the ADD at the time of clearance of the goods. Also, the SCN has considered that payment of ADD by the noticee and no differential duty was mentioned in the notice. 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. Omitech Chemicals Pvt. Ltd. under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

4.30 I find that the proposals for penalty in the SCN flow from the allegation that the importer deliberately mis-declared 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.

4.30.1 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.

4.30.2 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. Impex clearing Services Pvt. Ltd. and M/s. HPK Logistics LLP, under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

4.31 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.

4.31.1 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.

4.31.2 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

5.1 I order that the demand for differential Anti-Dumping Duty of Rs. 83,70,983/- and IGST on not paid Anti-dumping Duty amounting to Rs. 15,06,777/- (total amounting to Rs 98,77,760/-) under Section 28(4) of the Customs Act, 1962, is not sustainable and is hereby dropped.

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

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

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

5.5 I order that the proposal to impose penalties on Customs brokers M/s. Impex Clearing Services Pvt. Ltd. and M/s. HPK Logistics LLP under Sections 112(a), 114A, and/or 114AA of the Customs Act, 1962, is not warranted and is hereby dropped.

5.6 I order that the Show Cause Notice No. 1067/2024-25/Commr/NS-I/Gr.II(CF)/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.

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

To

1. M/s Omitech Chemicals Industries Pvt. Ltd.,
Plot No. T-12, MIDC, Tarapur Industrial Estate,
Tarapur, Boisar- 401 501.
2. CB M/s. Impex Clearing Services Pvt. Ltd.,
33/7/, B- Kiranchandra, Manishnagar, 4 Bunglows,
Andheri West, Mumbai- 400 053.
3. CB M/s. HPK Logistics LLP,
24/25, School View Road, 2nd Cross st.,
R.A. Puram, Mandaveli, Tamil Nadu- 600 028.

Copy to:

1. Asst./Dy. Commissioner of Customs, SIIB (Import), JNCH.
2. The Additional Commissioner of Customs, Group II(C-F), JNCH.
3. AC/DC, Chief Commissioner's Office, JNCH

4. AC/DC, Centralized Revenue Recovery Cell, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section for displaying on website
7. Office Copy