**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: 01 .12.2025** **Date of Issue:** **02.12.2025**
आदेश की तिथि **: 01.12.2025** जारी किए जाने की तिथि**:** **02.12.2025**

**DIN:** 20251278NW00006111E7

**F. No. S/10-176/2024-25/CC/Gr II AB/NS-I/CAC/JNCH**
**SCN No. 944/2024-25/Commr/Gr. 2AB/NS-I/CAC/JNCH dated 21.08.2024**

**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.: 280/2025-26 /Pr. Commr./NS-I /CAC /JNCH**
आदेशसं. :280**/2025-26/**प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

**Name of Party/Noticee: M/s Tide Industries**
पक्षकार (पार्टी)/ नोटिसीकानाम**:** मेसर्स टआइड इंडस्ट्रीज

## 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 &Page 2 of 57

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

(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।

## 1. BRIEF FACTS OF THE CASE

1.1 The importer, M/s. Tide Industries (IEC-0888022760) having office address at Block No.231, Pratappura, Tal. Halol, Panch Mahals, Gujarat - 389350 (hereinafter referred to as importer) had filed various Bills of Entry for the clearance of imported goods declared under CTH 29051700 through their Customs Broker. 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 misused the above notification in order to avail the benefit of lower duty rate.

1.2 The importer had imported the goods falling under CTH 29051700 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 | Country of origin | Country of export | Producer | Exporter | Amount | Unit | Currency |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 1 | 2905 | All types of | Indones | Singap | M/s PT | M/s Eco | NIL | MT | USD |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 17, 2905 19, 3823 70 | Saturated Fatty Alcohols excluding Capryl Alcohols (C8) and Decyl Alcohols (C10) and blends of C8 and C10 | ia | ore | Eco green Oleoche micals | green Oleoche micals (Singapo re) Pte Ltd. | | | |
| 2 | 2905 17, 2905 19, 3823 70 | -do- | Indones ia | Indones ia | M/s PT Musim Mas | M/s Inter-Continen tal Oils &Fats Pte Ltd, Singapor e | 7.1 | MT | USD |
| 3 | 2905 17, 2905 19, 3823 70 | -do- | Indones ia | Indones ia | M/s PT Wilmar Nabati | M/s Wilmar Trading Pte Ltd., Singapor e | 52. 23 | MT | USD |
| 4 | 2905 17, 2905 19, 3823 70 | -do- | Indones ia | Indones ia | Any combinat ion other than Sl. Nos. 1, 2 & 3 | Any combinat ion other than Sl. Nos. 1, 2 & 3 | 92. 23 | MT | USD |
| 5 | 2905 17, 2905 19, 3823 70 | -do- | Indones ia | Any | Any | Any | 92. 23 | MT | USD |
| 6 | 2905 17, 2905 19, 3823 70 | -do- | Any country other than those subject | Indones ia | Any | Any | 92. 23 | MT | USD |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | to antidumping duty | | | | | | |
| 7 | 290517, 290519, 382370 | -do- | Malaysia | Malaysia | M/s FPG Oleochemicals Sdh Bhd | M/s Procter & Gamble International Operations SA, Singapore | 17.64 | MT | USD |
| 8 | 290517, 290519, 382370 | -do- | Malaysia | Malaysia | M/s KL - Kepong Oleomas Sdn Bhd | M/s KL - Kepong Oleomas Sdn Bhd | NIL | MT | USD |
| 9 | 290517, 290519, 382370 | -do- | Malaysia | Malaysia | Any combination other than Sl. Nos. 7 & 8 | Any combination other than Sl. Nos. 7 & 8 | 37.64 | MT | USD |
| 10 | 290517, 290519, 382370 | -do- | Malaysia | Any Country | Any | Any | 37.64 | MT | USD |
| 11 | 290517, 290519, 382370 | -do- | Any country other than those subject to antidumping duty | Malaysia | 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 applicable ADD.

**1.2.1** 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.*

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

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

**1.2.2** 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** | **Country of origin** | **Country of export** | **Producer** | **Exporter** | **Amount** | **Unit** | **Curr-ency** |
|---|---|---|---|---|---|---|---|---|---|
| 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.*

**1.3.** 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. 1 of Notification 28/2018-Customs (Nil Anti-Dumping) as shown in Table-I for various consignments under the condition that the Producer is "PT Ecogreen Oleochemicals" & Exporter is "Ecogreen Oleochemicals (Singapore) Pte Ltd" along with other mentioned conditions in the said notification. On scrutiny of the relevant documents, it is seen that the goods have not been exported from Singapore, but the same have been transshipped at Singapore. The details mentioned on the Bill of Lading for these consignments clearly indicated that the goods were for "Transhipment at Singapore on Vessel - Shipped on Board on Pre-Carriage Vessel at Batam, Indonesia,". This also indicated that 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 appears that the importer inappropriately claimed the benefit of S.No. 1 of Notification 28/2018-Customs.

Copy of one such Bill of Lading uploaded in e-sanchit by the importer is as below:

新鑫海航运有限公司
NEW GOLDEN SEA SHIPPING PTE. LTD.

# ORIGINAL

FAX: +65 68128289

PORT TO PORT OR COMBINED TRANSPORT BILL OF LADING

1 Shipper Insert Name Address and Phone/Fax

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

Booking No. 7111143340
Bill of Lading No. COAU7111143340
Export References SIN07335006V2

2 Consignee Insert Name Address and Phone/Fax

TIDE INDUSTRIES
BLOCK 231,
PRATAPPURA PANCHMAHALS
HALOL 389350 GUJARAT
*

Forwarding Agent and References

Point and Country of Origin

3 Notify Party Insert Name Address and Phone/Fax (It is agreed that no responsibility shall attach to the Carrier or his agents for failure to notify)

TIDE INDUSTRIES
BLOCK 231,
PRATAPPURA PANCHMAHALS
HALOL 389350 GUJARAT
*

Also Notify Party-routing & Instructions

4 Combined Transport* Pre-Carriage by

5 Combined Transport* Place of Receipt
SINGAPORE

6 Ocean Vessel Voy. No.
XIN LOS ANGELES 132W

7 Port of Loading
SINGAPORE

Service Contract No. | Commodity Code

8 Port of Discharge
NHAVA SHEVA, INDIA

9 Combined Transport* Place of Delivery
NHAVA SHEVA, INDIA

Type of Movement
FCL / FCL CY-CY

| Marks & Nos. Container / Seal No. | No. of Containers or Packages | Description of Goods (If Dangerous Goods, See Clause 20) | Gross Weight | Measurement |
|---|---|---|---|---|
| SHIPPING MARK:<br>**<br>NHAVA SHEVA<br>ECOROL 12/99<br>(LAURYL<br>ALCOHOL)/MB<br>GROSS WT :<br>98.845 MT<br>NET WT :<br>98.360 MT<br>COUNTRY OF<br>ORIGIN :<br>INDONESIA<br>LOT NUMBER :<br>B2225-3120-19<br>DATE OF<br>MANUFACTURE : | 5<br>FLEXITANK | 5 X 20 FEET CONTAINER<br>PACKED IN FLEXITANK<br>ECOROL 12/99<br>(LAURYL ALCOHOL ) / MB<br>RSPO SCC CERTIFICATE CODE :<br>CU-RSPO SCC-825329<br>TOTAL NET WEIGHT: 98.360 MT<br>TOTAL GROSS WEIGHT: 98.845 MT<br>SHIPPER'S REF:<br>1010712029/2010712029<br>SHIPPED ON BOARD ON<br>PRE-CARRIAGE VESSEL<br>BUANA OCEAN 08 VOY. B90807<br>AS AT BATAM, INDONESIA<br>ON 06 AUG 2019<br><br>HS CODE: 290517<br><br>** TO BE CONTINUED ON ATTACHED LIST ** | 98845.000KGS | |

Declared Cargo Value US$

10 Total Number of Containers and/or Packages (in words) Subject to Clause 7 Limitation

Description of Contents for Shipper's Use Only (Not part of This B/L Contract)
SAY FIVE CONTAINERS TOTAL

| 11 Freight & Charges | Revenue Tons | Rate | Per | Amount | Prepaid | Collect |
|---|---|---|---|---|---|---|
| | | | | | | |

Freight & Charges Payable at / by

Received in external apparent good order and condition except as otherwise noted. The total number of the packages or units stuffed in the container, the description of the goods and the weights shown in this Bill of Lading are furnished by the merchants, and which the carrier has no reasonable means of checking and is not a part of this Bills of Lading contract. The carrier has issued 3 original Bills of Lading, all of this tenor and date, one of the original Bills of Lading must be surrendered and endorsed or signed against the delivery of the shipment and whereupon any other original Bills of Lading shall be void. The merchants agree to be bound by the terms and conditions of this Bill of Lading as if each had personally signed this Bill of Lading.
*Applicable Only When Document Used as a Combined Transport Bill of Lading.
Demurrage and Detention shall be charged according to the tariff published on the Home page of LINES.COSCOSHIPPING.COM If any ambiguity or query, please search by "Demurrage & Detention Tariff Enquiry".

Date Laden on Board 12 AUG 2019

Signed by

COSCO SHIPPING LINES (SINGAPORE) PTE LTD AS AGENT

1201 Date of Issue 12 AUG 2019 Place of Issue SINGAPORE

Signed for the Carrier, NEW GOLDEN SEA SHIPPING PTE. LTD.

**1.4.** Also, the importer had imported the goods from other Suppliers (Inter-Continental Oils & Fats PTE. LTD. and Sinarmas Cepsa PTE. LTD.) without paying the applicable Anti-Dumping Duty as per the ADD notification.

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

**1.6** 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. 1,60,00,979/- (Rupees One Crore Sixty Lakhs Nine Hundred and Seventy-Nine only) and IGST on not paid Anti-dumping Duty amounting to Rs.28,80,176/- (Rupees Twenty-Eight Lakhs Eighty Thousand One Hundred and Seventy-Six only) as explained in the preceding paras.

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

**1.8** From the above investigation, it appears that the said goods have been imported by the importer by not paying applicable Anti-dumping duty leviable under Notification 28/2018-Customs (ADD) dated 25.05.2018 which resulted into short payment of Anti-dumping duty of Rs. 1,60,00,979/- & IGST on not paid Anti-dumping Duty amounting to Rs. 28,80,176/- (total amounting to Rs.1,88,81,155/-). Accordingly, M/s Tide Industries 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.

**1.9** 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 of Rs. 1,60,00,979/- & IGST on not paid Anti-dumping Duty amounting to Rs.28,80,176/- (total amounting to Rs.1,88,81,155/-)., liable for confiscation in terms of provisions of Section 111 (m) of the Customs Act, 1962.

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

**1.11** 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.

**1.12** Therefore, in terms of Section 124 read with Section 28(4) of the Customs Act, 1962, M/s. Tide Industries (IEC 0888022760) was called upon to show cause to the Commissioner of Customs, Group (AB), NS-I, JNCH, Taluka – Uran, District – Raigad, Maharashtra – 400 707, as to why:

I. The goods imported vide Bills of Entry having a declared **assessable value of Rs.35,38,92,280/-** (Rupees Thirty-Five Crores Thirty-Eight Lacs Ninety-Two Thousand Two Hundred and Eighty only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

II. The total amount of duty of **Rs.1,88,81,155/- (Rupees One Crore Eighty Eight Lacs Eighty One Thousand One Hundred and Fifty Five only)** {ADD amounting to Rs.1,60,00,979/- + differential IGST amounting to Rs.28,80,176/-}, should not be recovered under the provisions of Section 28 (4) of the Customs Act, 1962 along with interest applicable in terms of Section 28AA of the Customs Act, 1962;

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

## 2. WRITTEN SUBMISSIONS

The notice M/s Tide Industries Through their legal representative Shri Jitendra Singh, ASL Legal, vide letter dated 26.02.2025 made following submissions: -

2.1 The Anti-dumping duty vide Notification 28/2018-Customs (ADD) dated 25.05.2018 was levied on the import of certain ‘Saturated Fatty Alcohols’ (hereinafter referred to as the

"Subject Goods"), falling under Chapters 29 and 38 of the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as the "Customs Tariff Act" or "Tariff Act" or "CTA"), originating in, or exported from Indonesia, Malaysia and Thailand (hereinafter referred to as the "Subject Countries") in terms of duty table attached therein and amended from time to time specifically Notification No. 23/2022-Customs (ADD) dated 12.07.2022 which granted individual duty rate to M/s. PT. Energi Sejahtera Mas (Producer) Indonesia and Exporter M/s. Sinarmas Cepsa Pte Ltd. in terms of a new shipper review proceedings concluded under Rule 22 of the Anti-dumping Duty Rules.

2.2 The Noticee has purchased and imported Subject Goods through various Bills of Entry listed in Annexure A to the SCN dated 21.08.2024 from Subject Countries from following exporters:

a) Exporter Ecogreen Oleochemicals (Singapore) Pte Ltd. located in Singapore who purchased the subject goods from producer PT Ecogreen Oleochemicals, Indonesia.
b) Exporter Intercontinental Oils & Fats Pte. Ltd. located in Singapore who purchased the subject goods from producer PT Musim Mas, Indonesia.
c) New shipper Exporter M/s. Sinarmas Cepsa Pte Ltd. located in Singapore who purchased subject goods from new shipper producer M/s. PT. Energi Sejahtera Mas, Indonesia.

All the three exporters named above are located in Singapore and admittedly each one of them transshipped goods purchased from three different Indonesian suppliers.

2.3 For the sake of clarity and convenience, the allegations made in the present SCN can be grouped in following heads for ease of making submissions for and on behalf of the Noticee and consequent adjudication by the adjudicating authority. The submissions are in view thereof being made in following heads:

I. Applicability of combination Nil duties on imports from Ecogreen Oleochemicals (Singapore) Pte Ltd. under Sl. No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018.
II. Short payment of duty for imports made by Noticee from exporter Intercontinental Oils & Fats Pte. Ltd., Singapore who purchased the subject goods from producer PT Musim Mas, Indonesia.

III. Short payment of duty for imports made by Noticee from new shipper exporter M/s. Sinarmas Cepsa Pte Ltd., Singapore who purchased subject goods from new shipper producer of M/s. PT. Energi Sejahtera Mas, Indonesia in terms of Notification No. 23/2022-Customs (ADD) dated 12.07.2022.

IV. Applicability of larger/extended period of limitation under Section 28 (4) of the Customs Act.

V. Onus of proof is on department which is not discharged.

VI Whether subject goods can be confiscated under Section 111(m) when the same are Not liable to confiscation or Available for Confiscation.

VII Applicability of Penalty under Section 114A and Section 114AA of the Customs Act.

VIII Applicability of Interest under Section 28AA of the Customs Act.

2.4 The submissions for and on behalf of Noticee in relation to first head (out of the heads I to VIII listed above) at Sl. l of para 2.3 above is as under:

**I Applicability of combination Nil duties on imports from Ecogreen Oleochemicals (Singapore) Pte Ltd. under Sl. No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018.**

2.4.1. The undisputed facts in connection with applicability of combination Nil duties under Sl. No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 follow hereinafter:

2.4.1.1. There is no dispute relating to description, classification or valuation of goods in respect of 23 Bills of Entry referred to in the show cause notice at Annexure A relating to exports by Ecogreen Oleochemicals (Singapore) Pte Ltd. There is also no dispute for these 23 Bills of Entry that the goods originated from Indonesia from the named manufacturers (PT Ecogreen Oleochemicals, Indonesia ) at Sl. No. 1, Column No. 6 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 and were invoiced to Noticee in India by the named exporter (Ecogreen Oleochemicals (Singapore) Pte Ltd.) in the duty table at Column 7 of Sl. No.1 to Notification No. 28/2018-Customs (ADD) dated 25.05.2018.

2.4.1.2. The extract of Bill of lading quoted in the SCN goes to show that there is no dispute that the subject goods were loaded in a vessel at Indonesian port and were discharged at Singapore. The position for rest of the 22 Bills of Entry is identical. The Subject Goods were thereafter loaded on another vessel at Singapore port to be discharged at a port in India referred to as “Transshipped from Singapore” in the SCN. It is the understanding of the Noticee that "Transhipment" refers to the transfer of goods from one conveyance to another during their journey to the final destination, typically occurring at an intermediate port or location. This fact that goods were “Transshipped at Singapore” is also undisputed (with a caveat that the country of export referred to in the Notification is the country where shipper is located i.e., country from where goods are transshipped). [see Appendix 3 containing the 23 BOE's and other relevant documents,

marked as Annex. 3A to Annex. 3W, relating to exports by Ecogreen Oleochemicals (Singapore) Pte Ltd.].

2.4.1.3. The only dispute that is raised against imports from Ecogreen Oleochemicals (Singapore) Pte Ltd. in the SCN is that the "Country of Export" in column 5 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 is Singapore while goods are only transshipped from Singapore port. It is alleged that when goods are only transshipped at Singapore port, the country of export cannot be Singapore. In other words, as per SCN, the goods originated and were exported from Indonesia and consequently, the combination NIL duties notified under Sl. No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 could not have been availed by the Noticee. On this account short levy is alleged on a premise that the import is not covered by Sl. No. 1 of but by Sl. No. 4 of Notification No. 28/2018- Customs (ADD) dated 25.05.2018 as amended by Notification No. 48/2018-Customs (ADD) dated 25.09.2018.

2.4.1.4. To recover this alleged short payment of duty, department has invoked extended period under Section 28 of the Customs Act, 1962 and proposed imposition of penalty and interest. Submissions in connection with non-applicability of extended period, penalty and interest are made separately hereunder.

2.4.1.5. To appreciate the submissions of the Noticee, it is pertinent to note that the methodology of exports from Ecogreen Oleochemicals (Singapore) Pte Ltd. remains same as was examined by DGTR in its Final Findings during period of investigation [1st April, 2016 to 31st March, 2017 (12 Months)] and which formed the basis of issue of Notification No. 28/2018- Customs (ADD) dated 25.05.2018 and proposing combination duties under Sl. 1 of said Notification.

2.4.1.6. It is evident that such facts, data, information, evidence and submissions before the DGTR were not taken into consideration at the investigation stage prior to issue of the present SCN. Despite request made vide letter dated 20.09.2024 and reminders thereafter. Such facts, data, information, evidence and submissions forming part of the investigation file of DGTR have not even been provided to the Noticee. Only Custom Notifications have been provided to the Noticee vide letter dated 08.01.2025 received by the authorised representative of the Noticee on 14.01.2025. Serious prejudice has been caused to the interest of the Noticee as Noticee has been denied an effective opportunity to defend itself in present proceedings as material information having a direct bearing on the outcome of the present proceedings has not been examined by the customs department prior to the issuance of SCN and was also not made available to the Noticee despite a specific request being made in this regard. The information filed before the DGTR being very crucial for determination to be reached in these proceedings, we once again pray that the adjudicating authority being a part of the Central Government is duty bound to examine relevant records (filed on confidential basis with a non-confidential summary) of another wing of the Central Government

before proceeding further. It is the duty of the adjudicating authority to cross check that even prior to issue of Notification No. 28/2018- Customs (ADD) dated 25.05.2018 where country of export was mentioned as "Singapore" all imports of subject goods that landed in India were only transshipped to India through Singapore. Noticee has specific information that all Bill of Lading filed before DGTR for the period of investigation in the investigation process clearly mentioned that goods were loaded in a vessel at Indonesia and shipped to India after transhipment at port of Singapore. The interpretation given in the SCN if is accepted, then Sl. No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 would become redundant as combination duty could not have been provided under Sl. No.1 as goods were always only transshipped from Singapore throughout the selected period of investigation of DGTR in the investigation process. Even the dumping margin/injury margin for this combination was calculated based on information of Ecogreen Oleochemicals (Singapore) Pte Ltd. who merely transshipped the goods from Singapore. In this backdrop, the word, "exporting country" was clearly to indicate, where the shipper was located and not for obligating exports from territory of Singapore. In other words, the "country of export" in column 5 of the Notification No. 28/2018-Customs (ADD) dated 25.05.2018 was not in the context of goods but in the context of the shipper's location.

2.4.1.7. The documentation filed before DGTR as per information of the Noticee also evidences that the ownership in goods passed on to Singapore entity viz. Ecogreen Oleochemicals (Singapore) Pte Ltd. (billing entity to India) at factory gate of producer viz. PT Ecogreen Oleochemicals in Indonesia and goods were shipped to buyer in India under an invoice of exporter situated at Singapore. Even the inland freight from factory to the port was paid by the exporter at Singapore. The relevant part of the Final Findings dated 23.04.2018.

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

*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"). During the POI, Ecogreen has exported **** MT of the subject goods to India only through Eco Singapore* ***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.*

*32.* ***Accordingly, the weighted average export price has been determined for Ecogreen exported through Eco Singapore as **** US$/MT.****"*

*F.4.5 Determination of Dumping Margin*

*53. On the basis of the normal value and export price determined as above, the dumping margin has been calculated as under:*

***Dumping Margin Table***

| ***S. No*** | ***Country*** | ***Producer*** | ***Exporter*** | ***Normal Value*** | ***Net Export Price*** | ***Dumping Margin*** | ***Dumping Margin %*** | ***Range*** |
|---|---|---|---|---|---|---|---|---|
| *1.* | *Indonesia* | *M/s PT Ecogreen Oleochemicals* | *M/s Ecogreen Oleochemicals (Singapore) Pte Ltd.* | **** | **** | **** | **** | *0-10* |

2.4.1.8. The calculations mentioned in the said Final Findings clearly goes to show that dumping margin has been calculated for producer exporter combination and data and information of M/s Ecogreen Oleochemicals (Singapore) Pte Ltd. as claimed has been allowed to be used in determinations reached under the Act and the Rules. M/s Ecogreen Oleochemicals (Singapore) Pte Ltd. has in fact been treated as an exporter though goods were merely transshipped from Singapore. Even the dumping margin in above extracted table from Final Findings has been worked out for producer M/s. PT Ecogreen Oleochemicals, Indonesia and exporter M/s Ecogreen Oleochemicals (Singapore) Pte Ltd. (by treating M/s Ecogreen Oleochemicals (Singapore) Pte Ltd. as an exporter from Singapore.

2.4.1.9. In the aforementioned backdrop, in pith and substance the Notification No. 28/2018-Customs (ADD) dated 25.05.2018 could not have envisaged, and did not envisage physical export from Singapore. The "Country of Export" is in the context of the "shipper/Biller in Singapore" and not in the context of goods. It would be absurd to interpret the Notification in any other manner as the interpretation that is sought to be adopted under the SCN would result in treating Singapore as a subject country for imposition of duty under Section 9A of the Customs Tariff Act, 1975 which would go against Legislative mandate of said Section.

2.4.1.10. It is also undisputed that Singapore is not the country against which investigation was initiated by DGTR vide initiation Notification No. 14/51/2016-DGAD dated 24th April, 2017 which culminated into issue of Final Findings dated 23.04.2018 and consequent Notification No. 28/2018-Customs (ADD) dated 25.05.2018 under which present demand is being made. If the goods purchased by Ecogreen Oleochemicals (Singapore) Pte Ltd. from PT Ecogreen Oleochemicals, Indonesia had entered domestic tariff area of Singapore, then Singapore would also have been notified as a subject

country in initiation notification as well as Final Findings as also under Notification No. 28/2018- Customs (ADD) dated 25.05.2018. The anti-dumping duty investigation revealed that the goods were only transshipped from Singapore, and keeping in view that the exporter was at Singapore, the duty was notified for goods originating from Indonesia and exported by the exporter located at Singapore. This practice of combination duties was followed by the DGTR for a long time. Based on complications raised by Customs in past few cases, (similar to the view taken in the SCN), the practice was changed thereafter. It was in this backdrop the Corrigendum dated 13.07.2018 was issued to get over the issues raised by the Customs in past cases.

2.4.1.11. Kind attention of the adjudicating authority is also drawn to the practice of DGTR in the above context. Any investigation from a subject country by India contemplates participation of related parties (or other exporting entities) in investigation process specifically when such related or unrelated party was involved in supply of goods to India. In all such circumstances, the duty table normally provides for combination duties to the chain of exports declared in the investigation process. The entity that ultimately sold the goods to India by raising an invoice is also named in the duty table though the goods may directly move from subject country without even touching the country where the invoicing entity is located. The terminology for use of expression, "exporting country" is in the context of location of such shipping/billing entity which only raised an invoice and not goods as aforesaid.

2.4.1.12. The attention of the adjudicating authority is also drawn to the Corrigendum dated 13.07.2018 to Final Findings 23.04.2018 issued by the Designated Authority. The Corrigendum dated 13.07.2018 clearly goes to show that a conscious decision was taken by the Government to replace "country of export" in Column No. 5 from "Singapore" to "Indonesia" keeping in view similar issues raised herein by Customs.

2.4.1.13. The relevant part (Sl. No.1 of duty table) in Corrigendum dated 13.07.2018 is extracted below with consequential effect (striking off Singapore) of the amendment:

| **S. No.** | **Heading/ Sub-heading** | **Description of Goods** | **Country of origin** | **Country of exports** | **Producer** | **Exporter** | **Amount** | **Unit** | **Currency** |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 1 | 2905.17<br>2905.19<br>3823.70 | "All types of Saturated Fatty alcohols Excluding Capryl Alcohols (C-8) and Decyl Alcohols (C-10) and blends of C8-C10. | Indonesia | ~~Singapore~~<br>-<br>Indonesia | M/s PT Ecogreen Oleochemicals | M/S Ecogreen Oleochemicals (Singapore) Pte Ltd. | NIL | MT | USD |

2.4.1.14. The said Corrigendum dated 13.07.2018 lead to issue of Notification No. 48/2018-Customs (ADD) 25.09.2018 which modified original Notification No. 28/2018-Customs (ADD) dated 25.05.2018 by replacing country of export from Singapore to Indonesia. When the entire amendment is read in Notification No. 48/2018-Customs (ADD) dated 25.05.2018, it would become clear that in Sl. No.1, Column 5 there is a typographical error as otherwise it would be discriminatory exercise of power if Corrigendum 13.07.2018 is read as if it has not been given effect to in case of M/s. Ecogreen Oleochemicals (Singapore) Pte. Ltd. while for others the same is implemented by Central Government.

2.4.1.15. It is settled law by Gujarat High Court that the recommendations of the Designated Authority are final and binding on the Central Government. Only in public interest, the Central Government can differ with Designated Authority and not accept recommendations for imposition of duty. It has been held that there is no power with the Central Government to change recommendation in the context of dumping, injury and causal link. The present case is not a case in which Central Government has decided to not impose duty keeping in view public interest. Reading the recommendation in any other way would result in disregarding the recommendations of the Designated Authority as also binding precedent of Gujarat High Court in Alembic Ltd. reported at 2013 (291) ELT 327 (Guj.). Clearly, the error has crept in Column No. 5 of Sl. No.1. of Notification No. 48/2018-Customs (ADD) 25.09.2018 which modified original Notification No. 28/2018-Customs (ADD) dated 25.05.2018. Central Government cannot take a discriminatory view as that would lead to violation of Article 14 and shall be an arbitrary exercise of power.

2.4.1.16. It is pertinent to note that the goods transshipped from Singapore fall within the scope of the term "exporting country" as defined under Notification No. 28/2018-Customs (ADD) dated 25.05.2018 as explained under para 7 hereinabove. Therefore, no duty is payable on these goods, as they are subject to NIL rate of duty under the said notification.

2.4.1.17. Further, even the rules relating to Transhipment in India clearly indicate that in such cases, the transshipping entity is regarded as the exporter and India is regarded as country of export. Clearly, customs is resorting to an interpretation in the context of Singapore contrary to its own understanding based on which Rules have been framed in India to deal with issue of transhipment. The Rules treat transhipment of goods from India as export from India. By the same logic, transhipment from Singapore ought to have been treated as export from Singapore.

2.4.1.18. Without prejudice to the above, it is pertinent to note that the sunset review Final Findings dated 02.02.2023 undertaken by the Designated Authority (DGTR), for the Period of investigation that was notified as October 2020 to September 2021, has been issued. In this period, the dumping margin was NIL for export of subject goods by Ecogreen Oleochemicals (Singapore) Pte Ltd. The duty chart of Final Findings inter-alia

clearly provides that the country of export and country of origin as Indonesia in the context of exports from Ecogreen Oleochemicals (Singapore) Pte Ltd. In other words, there is a determination for negative dumping margin for October 2020 to September 2021 and nil duty is notified for imports when goods are exported by Ecogreen Oleochemicals (Singapore) Pte Ltd from Indonesia. In view of such a determination, exports made after October 2020 are to be treated as non-dumped imports from Indonesia as Final Findings itself has been made appealable before CESTAT under Section 9C of the Customs Tariff Act, 1975. In other words, it's a final order irrespective of the fact whether the same is accepted or rejected in public interest. The Final Findings of the DGTR as per Gujarat High Court in Alembic is final determination. That being so then all imports made from Ecogreen Oleochemicals (Singapore) Pte Ltd after October 2020 cannot be subject to duty as it would go against Article 51 of the Constitution of India and would be in violation of treaty obligations under the WTO Agreement and decision of Supreme Court of India in Commissioner of Customs Vs. GM Exports [2016 (1) SCC 91].

2.4.1.19. In any case, if an interpretation that is propounded by department is accepted, then it would virtually amount to imposing duty against Singapore which was not a subject country. It would be against settled principles applicable in WTO context as also contrary to Section 9A and Section 9B of the Customs Tariff Act, 1975 read with the Rules. The possibility to interpret that goods should have entered Singapore for treating them being exported therefrom, would virtually amount to holding that duty is imposed against Singapore which is not a subject country for which any dumping margin was determined under the Scheme of the Act and the Rules.

2.4.1.20. Without prejudice to the above, it is pertinent to note that Rule 5 (5) of anti-dumping duty rules specifically provides as under:

"Rule 5(5): The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation."

2.4.1.21. A plain reading of the above Rule 5(5) makes it mandatory to notify the government of the exporting country before proceeding to initiate an investigation. Further, the Final Findings clearly record that the investigation has been conducted only in respect of imports of subject goods originating in or exported from Indonesia, Malaysia and Thailand referred to as "subject countries. In this context kind attention is drawn to below extract of para 3 of the said Final Findings: -

> *3……..[Accordingly], Saudi Arabia has been excluded from the subject countries as per rule 14(d) of the AD Rules and the investigation has been conducted only in respect of imports of subject goods originating in or exported from*

***Indonesia, Malaysia and Thailand (hereinafter referred to as the "subject countries"***).

*4. (c). The Authority* ***notified the embassies of the subject countries in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Sub- Rule (5) of Rule 5 s****upra.*

2.4.1.22. If customs department now decides to treat Singapore as exporting country, then it would result in going against WTO obligations to notify Government of Singapore in terms of Rule 5(5). The extracts from Final Findings quoted above clearly go to show that Singapore was never notified as subject country for the Notification to treat it as such. The approach adopted (treating Singapore as a subject exporting country) would lead to rendering the entire investigation process contrary to WTO Agreement, Customs Tariff Act, 1975, as well as Rules made thereunder. No notification can be interpreted in a manner that it violates the pith and substance of the Final Findings as also Indias' treaty obligations under WTO. The interpretation adopted by customs can lead to quashing the Notification itself against all the subject countries as a whole as it would be violative of Article 51 of the Constitution of India, decision of Supreme Court of India in the case of GM Exports and powers vested in Central Government under Section 9A read with Rule 5(5).

2.5. The submissions for and on behalf of Noticee in relation to second head (out of the eight heads listed above) at Sl. II of para 2.3 above is as under:

**II. Short payment of duty for imports made by Noticee from exporter Intercontinental Oils & Fats Pte. Ltd., Singapore who purchased the subject goods from producer PT Musim Mas, Indonesia.**

2.5.1. Notification No. 48/2018-Customs (ADD) 25.09.2018 which modified original Notification No. 28/2018-Customs (ADD) dated 25.05.2018 specifically changed Country of export from "Singapore" to "Indonesia" in terms of Corrigendum dated 13.07.2018. The amended Notification No. 28/2018- Customs (ADD) dated 25.05.2018 in view thereof, in the context of exporter Intercontinental Oils & Fats Pte. Ltd., Singapore and producer PT Musim Mas, Indonesia reads as under:

2.5.2. For the sake of clarity and convenience, the extract of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 as amended by Notification No. 48/2018-Customs (ADD) 25.09.2018 is as under:

| S. No. | Heading/ Sub- heading | Description of Goods | Country of origin | Country of exports | Producer | Exporter | Amount | Unit | Currency |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 2 | 2905 17<br>2905 19<br>3823 70 | -do- | Indonesia | Indonesia | PT Musimas | Inter-Continental oils & Fats Pte Ltd. | 7.10 | MT | USD |

2.5.3. The allegation in para 4 of the SCN in the context of exporter Intercontinental Oils & Fats Pte. Ltd., Singapore and producer PT Musim Mas, Indonesia is for short payment of duty of Rs. 38/- [Annexure to the SCN at Sl. No. 3 in relation to Bill of Entry No. 6578238 dated 08.12.2021 at second last column]. [see Appendix 4 containing the relevant BOEs and other relevant documents, relating to exports by Intercontinental Oils & Fats Pte. Ltd., Singapore.]. The relevant extract of SCN alleging short payment of duty is as under:

> *4. Also, the importer had imported the goods from other Suppliers (*Intercontinental Oils & Fats PTE. LTD…….*)*
>
> *without paying the applicable Anti-Dumping Duty as per the ADD notification. The amount of Anti-Dumping Duty payable is calculated and is mentioned in the attached Annexure-A. (*Relevant Extract only*)*

2.5.4. Please note that the difference of Rs, 38/- is attributable due to currency fluctuation of dollar and not on account of any intentional evasion for short payment of duty. Clearly, department mislead itself in concluding that there were ingredients of Section 28(4) present to invoke larger period for raising demand. The same is therefore required to be dropped.

2.5.5. It this context, it may kindly be noted that the importer paid duty amounting to Rs 22,48,100/, in respect of such imports. When such a large sum was paid by the importer earnestly, there could not have been any intentional short-payment of Rs. 38/- by the importer. Thus, the said short payment, if at all, is not intentional. Therefore, the invocation of longer period under Section 28 is not justified. In any case, the demand of this amount is time barred as the Bill of Entry date is 08.12.21 while the SCN has been issued on 21.08.2024 much beyond the prescribed 2-year period in Section 28 of the Customs Act, 1962.

2.6. The submissions for an on behalf of Noticee in relation to third head (out of the eight heads listed above) at Sl. III of para 2.3 above is as under:

**III Short payment of duty for imports made by Noticee from new shipper exporter M/s. Sinarmas Cepsa Pte Ltd., Singapore who purchased subject goods from new shipper producer of M/s. PT. Energi Sejahtera Mas, Indonesia under of Sl. No. 16 of Notification No. 23/2022-Customs (ADD) dated 12.07.2022 which amended Notification No. 28/2018-Customs (ADD) dated 25.05.2018.**

2.6.1. There is no dispute relating to description, classification or valuation of goods in respect of 11 bills of entry referred to in the show cause notice at Annexure A relating to imports from exporter M/s. Sinarmas Cepsa Pte Ltd., Singapore who had purchased subject goods from M/s. PT. Energi Sejahtera Mas, Indonesia. There is not a word in the SCN about what investigation was done in relation to these 11 Bills of Entry, or which document shows any willful mis- declaration. The SCN is silent as to what act of commission and omission, or mis-declaration of the goods *per se*, has rendered the subject goods liable to confiscation. The only allegation that can be attributed for import of subject goods from exporter M/s. Sinarmas Cepsa Pte Ltd., Singapore who had purchased them M/s. PT. Energi Sejahtera Mas, Indonesia is contained in para 4 of the SCN and relevant part of the same is extracted below:

> *4. Also, the importer had imported the goods from other Suppliers ……. Sinarmas Cepsa PTE. LTD.) without paying the applicable Anti-Dumping Duty as per the ADD notification. The amount of Anti-Dumping Duty payable is calculated and is mentioned in the attached Annexure-A. (*Relevant Extract only*).*

2.6.2. While making the above allegations in the SCN, the entries made on the face of the Bills of Entry have not even been examined which would have clearly evidenced that the imports made under these 11 Bills of Entry were against Advance Authorisation/Licences. The debit of value in the relevant advance authorisation is clearly shown in each of the bill of entry itself. Attached herein and marked as Appendix-5 is the list of 11 Bills of Entry relating to imports from M/s. Sinarmas Cepsa Pte Ltd., Singapore. In this context, Appendix-5 also records Advance Authorisation/Licences that were debited for the value. There is no allegation that the Noticee failed to fulfil its export obligation or any proceedings have been initiated by DGFT. In view thereof, the allegation made is without any basis or substantiation and without any examination of the relevant Bills of Entry referred to in the Annexure to the SCN.

2.6.3. It is pertinent to note that Section 9A(2A) specifically provides that Anti-dumping duty levied under Section 9A shall not apply to articles imported for export. There is no allegation, averment or data or information in the SCN that the goods imported were not used or utilized for export of final products or Noticee failed to meet its export obligation. In the absence of such evidence, averment, data or information the allegation

cannot be sustained specifically when the advance licence numbers are available on the face of the record that was very much before the department at the time of assessment or clearance or even at the stage of issue of SCN.

2.6.4. In the aforementioned premises, the allegation that the importer had imported the goods from Sinarmas Cepsa PTE. LTD. without paying the applicable Anti-Dumping Duty as per the ADD notification is baseless, without any examination of Bill of Entry itself, without any material evidence or allegation of failure to fulfil export obligation under Advance Authorisation and, therefore, is required to be dropped.

2.7. The submissions for an on behalf of Noticee in relation to fourth head (out of the eight heads listed above) at Sl. IV of para 2.3 above is as under:

**IV Applicability of larger/extended period of limitation under Section 28(4) of the Customs Act. Demand is Time Barred and Without Jurisdiction**

2.7.1. Without prejudice to the above, following submissions are made in support of the claim of the Noticee that the demands are time barred and without jurisdiction as SCN is dated 21.08.2024 as demands are beyond 2-year period from the relevant date.

2.7.2. It is pertinent to note that the demand is raised alleging short payment for following three circumstances as explained hereinabove:

a) Short payment of duty on imports from Ecogreen Oleochemicals (Singapore) Pte Ltd.) [in the duty table at Column 7 of Sl. No.1 to Notification No. 28/2018-Customs (ADD) dated 25.05.2018] as goods were only transshipped from Singapore and hence would be ineligible for NIL rate of duty as they were not exported from exporting country notified in the said Notification as was evident from Bill of Lading extracted in the SCN.

b) Short payment of duty of Rs. 38/- on imports made by Noticee from Intercontinental Oils & Fats Pte. Ltd., Singapore falling under Sl. No. 2 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018.

c) Short payment of duty on imports from new shipper exporter M/s. Sinarmas Cepsa Pte Ltd., Singapore under of Sl. No. 16 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 as amended by Notification No. 23/2022-Customs (ADD) dated 12.07.2022.

2.7.3. The present notice apparently relies upon following extracted averments to invoke extended period against the Noticee without specifically attributing the allegation for which of the above para, the same are attributable.

| **Extracts from SCN to invoke extended period** | **No ingredient of S. 28(4) is made out. Demand is time barred and without jurisdiction.** |
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| "(first unnumbered para) *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.* | This allegation of "**misuse**" presumably is made in the context of circumstances summarized in Para 11.1. (a) above for imports made from Ecogreen Oleochemicals (Singapore) Pte Ltd. This presumption is premised on the fact that the words chosen in SCN are, "misused the Notification" which could only be for Para 11.1. (a).<br><br>This presumption is also premised on the fact that the words chosen in SCN are, "***The details mentioned on the Bill of Lading for these consignments clearly indicated that the goods were for "Transhipment at Singapore***" which could only be for Para 11.1. (a) above.<br><br>These allegations could not have been made in the context of Para 11.1. (b) above as there could not be misuse or transhipment issue for goods imported from Intercontinental Oils & Fats Pte. Ltd., Singapore or for M/s. Sinarmas Cepsa Pte Ltd., Singapore. |
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| *3. The Anti-dumping duty …… Bills of Entry but applicable Antidumping duty was not paid for the said Bills of Entry by the importer.* | None of the documents filed with the customs had any discrepancy. Whether "exporting country" in the Notification No. 28/2018- Customs (ADD) dated 25.05.2018 is in the context of an "exporter in Singapore" or in the context of "goods" is an interpretation issue. The investigation and Final Findings of Designated Authority make it clear that it was in the context of "exporter in Singapore" and this issue was later clarified in favor of the Noticee by way of Corrigendum dated 13.07.2018 mentioned hereinabove. |
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| *Further, ..... said notification. **On scrutiny of the relevant documents,** it is seen that the goods have not been exported from Singapore, but the same have been transshipped at Singapore. **The details mentioned on the Bill of Lading for these consignments clearly indicated that the goods were for "Transhipment at Singapore** on Vessel - Shipped on Board on Pre-Carriage Vessel at Batam, Indonesia,". This also indicated that 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 appears that the importer **inappropriately** claimed the benefit of S.No. 1 of Notification 28/2018-* | This allegation for "misuse" cannot be attributed in the context of b) or c) above as at the time of clearance, all declarations made tallied with the documents and notification and issue of transhipment has not been raised for imports made from M/s. Sinarmas Cepsa Pte Ltd., Singapore or Intercontinental Oils & Fats Pte. Ltd., Singapore. There is nothing in the SCN which attributes suppression, misstatement, collusion or fraud in the context of imports from M/s. Sinarmas Cepsa Pte |

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| *Customs.* | Ltd., Singapore or Intercontinental Oils & Fats Pte. Ltd., Singapore.<br><br>Para 4 of the SCN is extracted below:<br>*3. Also, the importer had imported the goods from other Suppliers (Intercontinental Oils & Fats PTE. LTD. and Sinarmas Cepsa PTE. LTD.) without paying the applicable Anti-Dumping Duty as per the ADD notification. except an averment that anti- dumping duty was not paid for the said Bill of Entry (in first para under paragraph 3 of the SCN).*<br><br>The above extracted para starts with the words, "*Also the importer had imported……. without paying the applicable Anti-Dumping Duty….".* Here the words, "Also" in para 4 of SCN connotes that the paragraphs above para 4 were in the context of para-a) herein above for imports from Ecogreen and para 4 of SCN is for allegations of short payment only against imports made from M/s. Sinarmas Cepsa Pte Ltd., Singapore and Intercontinental Oils & Fats Pte. Ltd., Singapore. Except this allegation of short payment, there is nothing in para 4 of the SCN that trigger ingredients of Section 28(4) to justify invocation of larger period. Except for para 4 in the SCN, there is no averment in the entire SCN to invoke or justify extended period. For imports made from M/s. Sinarmas Cepsa Pte Ltd., Singapore or Intercontinental Oils & Fats Pte. Ltd., Singapore. |
| *8. 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* | This allegation for suppression or willful misstatement cannot be attributed in the context of Para13.2. (b) and Para 13.2. (c) above as at the time of clearance, all declarations made tallied with the documents and notification and issue of transhipment has not been raised for imports made from M/s. Sinarmas Cepsa Pte Ltd., Singapore or Intercontinental Oils & Fats Pte. Ltd., Singapore. |

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| *applicable Anti-dumping duty and IGST. Since such Antidumping duty and IGST appears to have arisen due* ***to suppression and willful misstatement by the importer****, the demand for differential duty is invokable under the extended period as per the provisions of Section 28 (4) of the Customs Act, 1962.* | |
| | |
| *9.* ***From the above investigation****, it appears that the said goods have been imported by the importer by not paying applicable Anti-dumping duty leviable under Notification 28/2018-Customs (ADD) dated 25.05.2018 which resulted into short payment of Anti-dumping duty of Rs. 1,60,00,979 /- & IGST on not paid Anti-dumping Duty amounting to Rs. 28,80,176/- (total amounting to Rs.1,88,81,155/-). Accordingly,* ***M/s Tide Industries 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, 19620 as well.* | The SCN does not declare or reveal findings of any investigation other than examination of the Bill of Lading which was very much available at the time of assessment and clearance in the context of imports made from Ecogreen Oleochemicals (Singapore) Pte. Ltd.<br><br>In any case the word "infirmities" in the SCN clearly in effect admits that there were only an interpretational issue and no intention to defraud the exchequer could have been alleged in the context of Ecogreen Oleochemicals (Singapore) Pte Ltd. The term "infirmity" may in the context of the present dispute may at best be said to "erroneous description" for exporting country as Singapore. But if the same is read with the Bill of Lading, it would go to show that said document clearly mentioned that the transportation ports being Indonesia and then Singapore where the goods were shipped in another vessel. In such a scenario, and the explanation given hereinabove, it is clear that the country of export is notified in the context of the location of the exporter which gets further clarified later by the Corrigendum dated 13.07.2018 issued by DGTR.<br><br>There is no allegation of evasion of duty in para 9 of the SCN in the context of Para 13.2. (b) and Para 13.2. (c) above as no factual averment or allegation is made in that connection.<br><br>As aforementioned, the short payment of duty in the context of imports from Intercontinental Oils & |
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| *10. This act of* ***willful mis- declaration by the importer*** *it appears that the said goods have been imported by the importer by not paying applicable Anti-dumping duty leviable under Notification 28/2018-Customs (ADD) dated 25.05.2018 which resulted into short payment of Anti-dumping duty of Rs. 1,60,00,979/- & IGST on not paid Anti-dumping Duty amounting to Rs.28,80,176 /- (total amounting to Rs.1,88,81,155/-), liable for confiscation* | |

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| *in terms of provisions of Section 111 (m) of the Customs Act, 1962.* | Fats Pte. Ltd., Singapore was for Rs. 38/- only and that too due to currency fluctuation as full duty as applicable in under Notification 28/2018- Customs was fully paid on Bill of Entry No. 6578238 dated 08.12.2021. Therefore, the allegation of malafide evasion of duty of Rs. 38/- cannot be said to be in the context of Bill of Entry No. 6578238 dated 08.12.2021. It would also be absurd to suggest that the Noticee tried to evade duty of Rs. 38 while actually paying Rs. 22,48,100 in connection with Bill of Entry No. 6578238 dated 08.12.2021. |
| *11. This act of commission and omission, of mis-declaration of the goods, has rendered the subject goods liable to confiscation in terms of provisions of Section 111(m) of the Customs Act, 1962, consequently, rendered the Importer liable for penal action in terms of provisions of Section 112(a)of the Customs Act, 1962.* | |
| | While making the allegations regarding imports made from M/s. Sinarmas Cepsa Pte Ltd., Singapore in the SCN there is no averment evidence or statement to justify invocation of larger period. Facts, relating to Ecogreen Oleochemicals (Singapore) Pte Ltd have been presumed to be applicable for invoking Section 28(4) for imports made from M/s. Sinarmas Cepsa Pte Ltd., Singapore. |
| *12. 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."* | It is perplexing that entries made on the face of the Bills of Entry for imports made from M/s. Sinarmas Cepsa Pte Ltd., Singapore have not been even examined which would have clearly evidenced that the imports made under these 11 Bills of Entry were against Advance Licences details of which are contained in Appendix referred to hereinabove. Section 9A(2A) specifically provides that Anti-dumping duty levied under Section 9A shall not apply to articles imported for export. There is no allegation, averment or data or information in the SCN that the goods imported were not used or utilized for export of final products or Noticee failed to fulfil its export obligation. In the absence of such evidence, averment, data or information the allegation of suppression, willful mis-declaration, malafide intention, declaration being false and incorrect cannot be sustained specifically when the advance licence numbers are available on the face of the record that was very much before the department at the time of assessment or clearance or even at the stage of issue of SCN. Noticee is also producing |

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| | along with the present reply Export Obligation Discharge Certificate for each of the imports which substantiates that imported subject goods were used to produce and export of final goods covered by Advance Authorisation.<br>see Appendix 6 containing the relevant BOE's and other relevant documents including Discharge Certificate for each of the imports, marked as Annex. 6A to Annex 6K, relating to exports by Sinarmas Cepsa Pte Ltd., Singapore.] |

2.7.4. In this backdrop, the Noticee is perplexed as to how it can be alleged by the department in the present SCN that goods were transshipped from Singapore was not within the knowledge of the department when this conclusion is being drawn from documents (Bill of Lading) which were very much before the department at the time of assessment of Bill of Entry. The SCN also fails to bring on record any document in support of the averment in the SCN that the, "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".

2.7.5. The SCN also fails to bring on record or specify, which declarations and documents filed by the Noticee were false and incorrect in support of its claim that there was an intention to evade payment of customs duty.

2.7.6. There are bare assertions in SCN without any evidence placed in support to the claim in the SCN that there was willful misstatement or suppression. In fact, use of expressions like "misused" "inappropriate" and "infirmities" also are an indication about absence of any suppression. When looked clinically, in-fact, the Noticee has not misused or inappropriately claimed benefit, or committed any infirmity while claiming benefit of Sl. No. 1 of Notification No. 28/2018-Customs. This is evidenced from investigation records of DGTR, Corrigendum dated 13.07.2018 of Designated Authority and submissions made hereinabove.

2.7.7. The SCN is dated 21.08.2024. Demands in relation to Sl. No.1 of Notification 28/2018-Customs is time barred. This is without prejudice to the argument that the demands in any case could not be made as Corrigendum dated 13.07.2018 clarified that the country of export can be Indonesia in respect of Sl. No.1 of Final Findings dated 23.04.2018. The averments hereinabove in the context of Sl. No.1 of Notification 28/2018-Customs for the sake of brevity are not reproduced herein and may be read to demonstrate that the demands even on merits cannot be raised.

2.8 The submissions for and on behalf of Noticee in relation to fifth (out of the eight heads

listed above) at Sl. V of para 2.3 above is as under:

**V Onus of proof not discharged by Department.**

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2.7.

2.8.1 It is respectfully submitted that in matters pertaining to taxation, the onus of proving any alleged non-compliance, evasion, or misstatement rests upon the department. The onus is onerous if extended period is invoked. The Supreme Court of India and various High Courts have consistently held that the revenue authorities bear the responsibility to substantiate their allegations with clear, cogent, and credible evidence. Mere assumptions, presumptions, or generalized allegations without supporting material cannot suffice to discharge this burden of proof. In the present case, it is evident that the department has failed to produce any substantive evidence to establish the allegations made in the notice. In the absence of such evidence, the allegations are unsustainable and liable to be dismissed.

2.8.2 The allegation that goods imported from Ecogreen Oleochemicals (Singapore) Pte Ltd. originated from Indonesia were transshipped from Singapore was very much evident from the face of the Bill of lading. The Onus of Proof was on the department to examine records of DGTR and Corrigendum dated 13.07.2018 which amended the Notification to clarify that the goods be granted benefit of Notification by treating them as imported from Indonesia. The goods imported from Sinarmas Cepsa Pte Ltd., Singapore or Intercontinental Oils & Fats Pte. Ltd., Singapore, or most of the other exporters mentioned in the notification, were similarly transshipped from another country and were granted benefit of duty rates prescribed in the Notification 28/2018-Customs. There is no reason for treating the imports of Ecogreen Oleochemicals (Singapore) Pte Ltd. differently when the Notification itself was issued after noticing questionnaire response of Ecogreen Oleochemicals (Singapore) Pte. where goods were shown to be transshipped from Singapore. The Onus to make the allegation in the SCN in this context is not discharged by the department.

2.8.3 Similarly, while demanding Rs. 38/- in relation to Intercontinental Oils & Fats Pte. Ltd., Singapore, department has not brought anything on record to allege contumacious conduct to invoke larger period specifically when Noticee actually paid Rs. 22,48,100/- in connection with Bill of Entry No. 6578238 dated 08.12.2021.

2.8.4 Even in the case of imports from Sinarmas Cepsa Pte Ltd., Singapore, there is nothing on record to bring home the charge made in the SCN specifically when all details of Advance Authorisation were very much reflected in the Bill of Entry itself. The Onus of Proof is stricter when larger period is invoked. It is therefore respectfully submitted that the Onus of Proof cannot be said to be discharged in the SCN to bring home the charges made against the Noticee.

2.9 The submissions for an on behalf of Noticee in relation to sixth head (out of the eight heads listed above) at Sl. VI of para 2.3 above is as under:

**VI Whether subject goods can be confiscated under Section 111(m) when the same are Not liable to confiscation or Available for Confiscation.**

2.9.1 On facts there is no dispute or averment in the SCN that goods did not correspond in respect of value or in any particular with the entry made under Section 46(4A) of the Customs Act.

2.9.2 The undisputed facts in connection with applicability of combination Nil duties under Sl. No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 are being repeated herein to challenge proposal to confiscate goods in question. There is no dispute relating to description, classification or valuation of goods in respect of 23 Bills of Entry referred to in the show cause notice at Annexure A relating to exports by Ecogreen Oleochemicals (Singapore) Pte Ltd. There is also no dispute for these 23 Bills of Entry that the goods originated from Indonesia from the named manufacturers (PT Ecogreen Oleochemicals, Indonesia ) at Sl. No. 1, Column No. 6 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 and were invoiced to Noticee in India by the named exporter (Ecogreen Oleochemicals (Singapore) Pte Ltd.) in the duty table at Column 7 of Sl. No.1 to Notification No. 28/2018-Customs (ADD) dated 25.05.2018.

2.9.3 The extract of Bill of lading quoted in the SCN goes to show that there is no dispute that the subject goods were loaded in a vessel at Indonesian port and were discharged at Singapore. The position for rest of the 22 Bills of Entry is identical. The Subject Goods were thereafter loaded on another vessel at Singapore port to be discharged at a port in India referred to as “Transshipped from Singapore” in the SCN.

2.9.4 Further, there is no dispute relating to description, classification or valuation or any other particular of goods or entry made under Section 46 (4A) of the Customs Act, 1962 in respect of imports made from Inter Continental Oils and Fats where extended period has been invoked to recover a sum of Rs. 38.

2.9.5 There is also no dispute relating to description, classification or valuation of goods in respect of 11 Bills of Entry referred to in the show cause notice at Annexure A relating to imports from exporter M/s. Sinarmas Cepsa Pte Ltd., Singapore who had purchased subject goods from M/s. PT. Energi Sejahtera Mas, Indonesia. There is not a word in the SCN about what investigation was done in relation to these 11 Bills of Entry, or which document shows any discrepancy to allege any discrepancy with the value, or any other particular of the entry made under Section 46(4A) of the Customs Act.

2.9.6 The SCN is also silent as to what act of commission and omission, or mis-declaration of

the goods per se, has rendered the subject goods liable to confiscation.

2.9.7 In the facts of the case as recorded even in the SCN, the importer presented the bill of entry and there is no averment that it lacked in accuracy and completeness of the information given therein. There is also no allegation regarding the authenticity and validity of any document supporting all the Bills of Entry. The SCN also does not make out a case for non-compliance with the restriction or prohibition, under any Act or Regulation for the time being in force.

2.9.8 Without prejudice to the above, it is respectfully submitted that the goods in question, cleared without any bond or bank guarantee, are not physically available for confiscation. It is a settled position of law that goods not available in physical form cannot be subject to confiscation under the provisions of the Customs Act, 1962. The Hon'ble Supreme Court in Weston Components Ltd. v. Commissioner of Customs [(2000) 115 ELT 278 (SC)] categorically held that confiscation cannot be ordered in the absence of goods. Similarly, the Hon'ble Tribunal in Aafloat Textiles (I) Pvt. Ltd. v. Union of India [(2009) 235 ELT 587 (Bom)] reiterated that goods not physically available for seizure or confiscation cannot be legally confiscated.

2.9.9 In the case of Sirthai Superware India Ltd. reported at 2020 (371) ELT 324, the Appellate Tribunal has held that when goods correspond to declaration in respect of the description and value, then Section 111(m) cannot be invoked and no penalty can be imposed under Section 114A of Customs Act, 1962. It is undisputed that the declaration made and value disclosed in the Bill of Entry was correct for all imports. The applicability of Notification 28/2018-Customs (ADD) dated 25.05.2018 based on an interpretation that is sought to be adopted in the SCN is contrary to Corrigendum dated 13.07.2018 and identical imports, is an interpretation issue and not a “declaration issue” for it to lead to confiscation under Section 111 (m).

2.9.10 In the present case, the goods are neither available nor under the control of the department, and therefore, the proposal for confiscation is not tenable in law. It is prayed that the allegations in the show-cause notice related to confiscation be dropped in light of the above judicial precedents.

2.10 The submissions for an on behalf of Noticee in relation to seventh head (out of the eight heads listed above) at Sl. VII of para 2.3 above is as under:

**VII Applicability of Penalty under Section 114A and Section 114AA of the Customs Act.**

2.10.1 The allegations made in the context of head I to head III have been dealt with hereinabove. It is submitted that in view of the averments and submissions made above

under head I to head III, it cannot be said that there is any non-levy, short levy of the duty or interest by reason of collusion or any willful misstatement or suppression of any fact. In view of the submissions and averments made above, the proposal to impose penalty under Section 114A and Section 114AA is required to be dropped.

2.10.2 It is respectfully submitted that all the facts regarding the transshipment were duly disclosed in the Bill of Lading filed with the department in the context of Ecogreen Oleochemicals (Singapore) Pte Ltd. The disclosure was complete, transparent, and available for verification by the authorities at the time of assessment. As such, there was no willful suppression, misstatement, or fraudulent intent on part of the Noticee, which are essential ingredients for invoking the provisions of Section 114A of the Customs Act, 1962, as also the larger period under Section 28. The Corrigendum dated 13.07.2018 also goes to show that DGTR clarified this position and interpretation of the Noticee, as propounded hereinabove was the original interpretation propounded by the DGTR, as also clarified by the corrigendum issued in this regard, which led to the imposition of duties.

2.10.3 There is not a word alleging willful suppression, misstatement, or fraudulent intent on the part of the Noticee in the context of Intercontinental Oils & Fats Pte. Ltd., Singapore for evasion of duty of Rs. 38/- specifically when Noticee actually paid a duty of Rs. 22,48,100/- in connection with Bill of Entry No. 6578238 dated 08.12.2021 and difference was, apparently, due to currency fluctuation. Clearly, bare allegation is made without even prima facing examining the cause of such minor and insignificant difference.

2.10.4 Similarly, there is not a word in the body of SCN alleging willful suppression, misstatement, or fraudulent intent on the part of the Noticee in the context of imports made from Sinarmas Cepsa Pte Ltd., Singapore. Department cannot dispute that all the imports made from Sinarmas Cepsa Pte Ltd., Singapore were made under an Advance Authorisation and details of which were very much available on the face of Bill of Entry itself. There is no allegation of misuse of Advance Authorisation or failure to fulfil export obligation thereunder.

2.10.5 In the absence of any averment in the body of SCN as mentioned hereinabove, department could not have invoked Section 114A and Section 114AA as there was no willful suppression, misstatement, or fraudulent intent on the part of the Noticee, which are essential ingredients for invoking the provisions of Section 114A. There is no allegation that the Noticee has made, signed or used any declaration, or statement or document which is false or incorrect in any material particular for the purpose of clearance of these 35 Bills of Entry. In view thereof, the ingredients to invoke Section 114AA of the Customs Act, 1962 are totally absent.

2.10.6 It is respectfully submitted that all relevant facts regarding the transshipment were clearly disclosed in the Bill of Lading filed with the department. The information

provided was accurate, complete, and transparent, ensuring that the department was fully aware of the material particulars related to the transaction. In the absence of any evidence of deliberate falsification, omission, or intent to provide incorrect information, the essential ingredients required to invoke Section 114AA of the Customs Act, 1962, are absent.

2.10.7 The Hon'ble Supreme Court in CCE v. Rajasthan Spinning & Weaving Mills [(2009) 238 ELT 3 (SC)] has held that penalties cannot be imposed in the absence of willful intent to provide false or misleading information. Similarly, the Hon'ble Tribunal in Samsung India Electronics Pvt. Ltd. v. Commissioner of Customs [(2018) 362 ELT 912 (Tri. -Del.)] reiterated that a penalty under Section 114AA requires clear evidence of intent to make a false declaration, which is absent in the present case.

2.10.8 In view of the above judicial precedents, the imposition of penalty under Section 114AA is unsustainable and unwarranted. It is prayed that the proposal for penalty in the show-cause notice be dropped accordingly.

2.10.9 The Hon'ble Supreme Court in Unicorn Industries v. Union of India [(2019) 10 SCC 575] held that penalties under Section 114A can only be imposed if there is a clear finding of willful suppression or fraudulent intent. Similarly, in CCE v. Chemphar Drugs and Liniments [(1989) 40 ELT 276 (SC)], it was held that a mere omission or mistake cannot be equated to suppression or intent to evade duty. In the present facts and circumstances in its entirety as explained herein above looked at, there is no mistake even pointed out in the SCN.

2.10.10 In light of the above, the imposition of penalty under Section 114A and Section 114AA of the Customs Act, 1962 is not sustainable in the present case, as all material facts were already disclosed. It is prayed that the proposed penalty be dropped.

2.10.11 Without prejudice to the above, it is also pertinent to note that the extended period under Section 28(4) cannot be invoked in absence of any willful suppression, misstatement of facts or misdeclaration. If that be so, then no penalty also can be imposed under Section 114A and Section 114AA of the Customs Act, 1962.

2.10.12 It was held in the case of Ajinomoto India Pvt. Ltd. reported at (2024) 21 Centax 465 (Tri. -Mad) that Penalty under Section 114A of Customs Act, 1962 could not be imposed for claim of Customs duty exemption in respect of imported goods if extended period of limitation was held not invocable.

2.10.13 As submitted hereinabove, Penalty under Section 114A of Customs Act, 1962 could not be imposed if extended period of limitation under Section 28(4) was held not invocable in absence of any willful suppression, misstatement of facts or misdeclaration. For the same reason discussed hereinabove, no penalty can be imposed under Section 114AA for contravention of Section 46(4) [ Daxen Agritech India Pvt. Ltd (2024) 20

Centax 467 (Tri. -Del)].

2.10.14 Without prejudice to the above, it is most respectfully submitted that Penalty under Customs Act, 1962 is not imposable on appellant because he is not liable to pay duty, as amply explained hereinabove.

2.11 The submissions for and on behalf of Noticee in relation to eighth head (out of the eight heads listed above) at Sl. VIII of para 2.3 above is as under:

**VIII Applicability of Interest under Section 28AA of the Customs Act.**

2.11.1 Without prejudice to the merits discussed hereinabove, it is respectfully submitted that the demand for duty raised in the present SCN is time-barred under the provisions of Section 28(4) of the Customs Act, 1962. Consequently, no interest under Section 28AA can be demanded for a duty liability that is not legally payable as explained hereinabove or recoverable. It is a settled position of law that interest is only a corollary to the principal demand, and when the principal demand fails on merits discussed above or on account of being time-barred, the claim for interest also fails. The Hon'ble Supreme Court in Commissioner of Customs v. T.V.S. Motors Ltd. [(2015) 320 ELT 481 (SC)] has upheld that interest cannot be levied where the duty demand itself is unsustainable.

2.11.2 The imposition of interest under Section 28AA in this case is unsustainable for the following additional reasons:

**Goods Covered Under Sl. No. 1 of Notification 28/2018- Customs (ADD):**

2.11.2.1 The goods transshipped from Singapore fall within the scope of the term "exporting country" as defined under Notification No. 28/2018-Customs (ADD) dated 25.05.2018 as explained hereinabove. Therefore, no duty is payable on these goods, as they are subject to NIL rate of duty under the said notification.

2.11.2.2 Further, it is pertinent to note that the sunset review Final Findings dated 10.02.2023 undertaken by the Designated Authority (DGTR) for the Period of investigation that was notified as Oct 2020 to September 2021, have already been issued. In this period, the dumping margin was found to be NIL for export of subject goods by Ecogreen Oleochemicals (Singapore) Pte Ltd. through its related entity in Indonesia. The duty chart of Final Findings clearly provides that the country of export and country of origin as Indonesia. In other words, there is a determination for negative dumping margin for Oct 2020 to September 2021 and nil duty is notified for imports when goods are exported by Ecogreen Oleochemicals (Singapore) Pte Ltd from Indonesia. In view of such a determination, exports made after Oct 2020 are to be

treated as non-dumped imports from Indonesia as Final Findings itself has been made appealable before CESTAT under Section 9C of the Customs Tariff Act, 1975. In other words, it's a final order irrespective of the fact whether the same is accepted or rejected in public interest. The Final Findings of the DGTR as per Gujarat High Court in Alembic case (supra) is final determination. That being so then all imports made from Ecogreen Oleochemicals (Singapore) Pte. Ltd. after October 2020 cannot be subject to duty as it would go against Article 51 of the Constitution of India and would be in violation of treaty obligations under the WTO Agreement.

2.11.2.3 Imports Under Advance Licence: The other goods imported were covered under a valid Advance Licence, which exempts them from the payment of customs duty as per the applicable notifications. Since the basic duty itself is not payable, the demand for interest under Section 28AA is not tenable.

2.11.2.4 It is respectfully submitted that interest under Section 28AA arises only when the duty is determined to be payable and recoverable in accordance with law. In the present case, as no duty liability arises, there is no question of interest being charged. This position has been upheld in CCE v. Rajasthan Spinning & Weaving Mills [(2009) 238 ELT 3 (SC)], wherein it was held that when the primary liability does not exist, consequential interest cannot be demanded.

## 3. PERSONAL HEARING

3.1. The authorized representatives of the Noticee, Shri Jitendra Singh and Jinendra Sighvi, appeared for Personal Hearing before the Principal Commissioner of Customs, NS-I, JNCH on the 05.08.2025 and the following submissions were made by Shri Jitendra Singh, Advocate, on behalf of the Noticee, during the course of the personal hearing:

3.2. The Noticee has been denied an effective opportunity as said letters have been ignored. The contents of the said letter and interim reply are reiterated and Noticee reserves the right to approach appropriate forum as advised to seek relief.

3.3. Notice has been called upon to attend hearing and make submissions. In the absence of documents and clarifications sought, the submissions are still based on interim reply and material disclosed in SCN.

3.4. Based on present submissions a case for dropping the proceedings has been made out. In the event, the proceedings are dropped, the request made for documents may be ignored.

3.5. Applicability **of combination Nil duties Sl. No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018**:

3.5.1 The undisputed facts in connection follow hereinafter. Additional submissions are also substantiated in Annexure 1 attached with present written submissions.

3.5.2 Nil duty under Sl. No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 is denied and Section 28(4) has been invoked as goods did not enter Singapore for treating Singapore as country of export.

3.5.3 The word "country of export" was clearly to indicate, where the shipper was located and not for obligating exports from territory of Singapore. In other words, the "country of export" in column 5 of the Notification No. 28/2018-Customs (ADD) dated 25.05.2018 was not in the context of goods but in the context of the exporter/shipper/billing entity.

3.5.4 The Final Findings dated 23.04.2018 (Annexure 2 para 31) also make it clear that dumping margin is determined for Indonesia and not for Singapore.

3.5.5 In the aforementioned backdrop, in pith and substance the Notification No. 28/2018-Customs (ADD) dated 25.05.2018 could not have envisaged, and did not envisage physical export from Singapore. The "Country of Export" is in the context of the "shipper/Biller in Singapore" and not in the context of goods. It would be absurd to interpret the Notification in any other manner as the interpretation that is sought to be adopted under the SCN would result in treating Singapore as a "exporting country" for imposition of duty under Section 9A of the Customs Tariff Act, 1975 which would go against Legislative procedural mandate of said Section.

3.5.6 Singapore is not the country against which investigation was initiated by DGTR vide initiation dated 24th April, 2017 (Annexure 3). If goods entered domestic tariff area of Singapore, then Singapore would also have been notified as a subject country in initiation notification as well as Final Findings as also under Notification No. 28/2018-Customs (ADD) dated 25.05.2018. DGTR also issued Corrigendum dated 13.07.2018 to get over the issues raised by the Customs in past cases. (Annexure 4).

3.5.7 The sunset review Final Findings dated 02.02.2023 (Annexure 5) undertaken by the Designated Authority (DGTR), determined NIL rate for export of subject goods by Ecogreen Oleochemicals (Singapore) Pte Ltd. In view of such a determination, exports made after October 2020 are to be treated as non-dumped imports from Indonesia. The Final Findings of the DGTR as per Gujarat High Court in Alembic is final determination. Exporters after October 2020 cannot be subject to duty as it would be in violation of treaty obligations under the WTO Agreement and decision of Supreme Court of India in Commissioner of Customs Vs. GM Exports [2016 (1) SCC 91] (Annexure 6). For the same combination of producer and exporter, CVD duty has been imposed for identical situation. Therefore, the proposal goes against the accepted position by the Central Government.

3.5.8 In any case, if an interpretation that is propounded by department is accepted,

then it would virtually amount to imposing duty against Singapore which was not a subject country. It would be against settled principles applicable in WTO context as also contrary to Section 9A and Section 9B of the Customs Tariff Act, 1975 read with the Rules. The possibility to interpret that goods should have entered Singapore for treating them being exported therefrom, would virtually amount to holding that duty is imposed against Singapore which is not a subject country for which any dumping margin was determined under the Scheme of the Act and the Rules.

**3.6. Short payment of duty of Rs. 38 for imports made from Intercontinental Oils & Fats Pte. Ltd., Singapore**

Please note that the difference of Rs, 38/- is attributable due to currency fluctuation of dollar and not on account of any intentional evasion for short payment of duty. Specifically, when duty of Rs 22,48,100/-, was paid by the Noticee in this context. In any case, the demand of this amount is time barred as the Bill of Entry date is 08.12.21 while the SCN has been issued on 21.08.2024 much beyond the prescribed 2-year period in Section 28 of the Customs Act, 1962.

**3.7. Short payment of duty for imports from exporter M/s. Sinarmas Cepsa Pte Ltd., Singapore**

3.7.1 There is no dispute relating to description, classification or valuation of goods in respect of 11 Bills of Entry referred to in the show cause notice at Annexure A relating to imports from exporter M/s. Sinarmas Cepsa Pte Ltd., Singapore. There is not a word in the SCN about what investigation was done in relation to these 11 Bills of Entry, or which document shows any willful mis-declaration. The SCN is silent as to what act of commission and omission, or mis-declaration of the goods per se, has rendered the subject goods liable to confiscation.

3.7.2 While making the above allegations in the SCN, the entries made on the face of the Bills of Entry have not even been examined which would have clearly evidenced that the imports made under these 11 Bills of Entry were against Advance Authorisation/Licences. The debit of value in the relevant advance authorisation is clearly shown in each of the bill of entry itself. (Refer to Appendix-5 and of preliminary reply dated 26.02.2025). There is no allegation that the Noticee failed to fulfil its export obligation or any proceedings have been initiated by DGFT. In view thereof, the allegation made is without any basis or substantiation and without any examination of the relevant Bills of Entry referred to in the Annexure to the SCN.

3.7.3 It is pertinent to note that Section 9A(2A) specifically provides that Anti-dumping duty levied under Section 9A shall not apply to articles imported for export.

3.7.4 In the aforementioned premises, the allegation that the importer had imported the goods from Sinarmas Cepsa PTE. LTD. without paying the applicable Anti-Dumping Duty as

per the ADD notification is baseless, without any examination of Bill of Entry itself, without any material evidence or allegation of failure to fulfil export obligation under Advance Authorisation and, therefore, is required to be dropped.

**3.8. Applicability of larger/extended period of limitation under Section 28(4) of the Customs Act. Demand is Time Barred and Without Jurisdiction**

Without prejudice to the above, following submissions are made in support of the claim of the Noticee that the demands are time barred and without jurisdiction as SCN is dated 21.08.2024 as demands are beyond 2-year period from the relevant date. Noticee reiterates para 12.3 to 12.7 of preliminary submissions filed earlier referred to hereinabove.

**3.9. Onus of proof not discharged by Department:** It is respectfully submitted that in matters pertaining to taxation, the onus of proving any alleged non-compliance, evasion, or misstatement rests upon the department. Para 13.1 to para 13.4 of preliminary reply are reiterated.

**3.10. Confiscated under Section 111(m):** Noticee reiterated para 14.1 to 14.10 in support of its submission that goods were not liable to confiscation.

**3.11. Penalty under Section 114A and Section 114AA of the Customs Act.:** Noticee reiterated para 15.1 to 15.14 in support of its submission that no penalty can be imposed in the facts of the present case.

**3.12. Interest under Section 28AA of the Customs Act.:** Noticee reiterated para 16.1 to 17 in support of its submission that no interest can be levied in the facts and circumstances of the present case.

## 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 05.08.2025 by the Adjudicating Authority which was attended by Shri Jitendra Singh, and Shri Jinendra Singhvi, Authorised representative of the noticee. 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. 944/2024-25/COMMR/Gr. 2AB/NS-I/CAC/JNCH dated 21.08.2024 to M/s. Tide Industries, alleging non-payment of applicable Anti-Dumping Duty (ADD) in terms of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 (NIL ADD). The SCN alleges that the importer has not paid applicable anti-dumping for the goods imported from foreign suppliers viz: M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd., M/s Sinarmas Cepsa Pte. Ltd. and M/s Intercontinental Oils & Fats Pte. Ltd. The SCN contends that this non-payment of applicable anti-dumping duty has resulted in short payment of **Rs.1,88,81,155/- (Rupees One Crore Eighty-Eight Lacs Eighty-One Thousand One Hundred and Fifty Five only)** {ADD amounting to Rs.1,60,00,979/- + differential IGST amounting to Rs.28,80,176/-} which 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. Tide Industries under Sections 114A and 114AA of the Customs Act, 1962.

**4.5** 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 imported by the importer from the 03 foreign suppliers viz: M/s Ecogreen Oleochemicals (Singapore) Pte., M/s Sinarmas Cepsa Pte. Ltd. and M/s Intercontinental Oils and Fats Pte. Ltd. under the Bills of Entry mentioned in Annexure-A of the SCN are liable for the payment of Anti-Dumping Duty in terms of Notification No. 28/2018-Customs (ADD) dated 25.05.2018.

B. Whether or not the differential Anti-Dumping Duty of ₹1,60,00,979/- and IGST thereon of ₹28,80,176/- (totaling ₹1,88,81,155/-) is recoverable from the importer M/s. Tide Industries 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. Tide Industries under Sections 114A and 114AA of the Customs Act, 1962.

**Whether or not the goods imported by the importer from the 03 foreign suppliers M/s Ecogreen Oleochemicals (Singapore) Pte., M/s Sinarmas Cepsa Pte. Ltd. and M/s Intercontinental Oils and Fats Pte. Ltd. under the Bills of Entry mentioned in Annexure-A of the SCN are liable for the payment of Anti-Dumping Duty in terms of Notification No. 28/2018-Customs (ADD) dated 25.05.2018.**

**4.6** 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. I find that in order to better address the issues framed above it would be better to discuss imports from three different suppliers separately one by one.

**4.7** I start with M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd. 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, Indonesia 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.

**4.8** 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.

**4.9** I further find merit in the importer's contentions made regarding sunset review final findings dated 02.02.2023. I 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 |

**4.10** 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 transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.*

*[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."*

**4.11** 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.

**4.12** 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.

**4.13** 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.

**4.14** 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;"*

**4.15** 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.

**4.16** 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.

**4.17** 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."*

**4.18** 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.

**4.19** 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:

**4.19.1** 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.

**4.19.2** 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.

**4.19.3** Had the exporter itself been based in Indonesia, the movement through Singapore could have been characterised as *mere transshipment*. However, since the exporter was Ecogreen Singapore, the shipment cannot be so treated; rather, it represents a valid export from Singapore by the entity expressly recognized in Serial No. 1 of the Notification.

**4.19.4** 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.

**4.19.5** The Certificates of Origin, Bills of Lading, and invoice 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.

**4.19.6** 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.

**4.20** Therefore, I find that the importer is correct in claiming that 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.

**4.21** 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 it by implication.

**4.21.1** 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 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.

**4.21.2** 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. 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. Accordingly, I hold the goods imported by the importer from foreign supplier M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd. vide Bills of Entries as per Annexure-A of the notice are not liable for levy of Anti-Dumping Duty.

**4.22** Now, after holding that the goods imported by the Noticee from foreign supplier M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd. are not liable for levy of Anti-Dumping Duty, I proceed to analyze the imports made by the noticee from foreign supplier M/s. Sinarmas Cepsa Pte Ltd., Singapore for the purpose to ascertain whether the imported goods are liable for imposition of anti-dumping duty in terms Notification No. 28/2018-Customs (ADD) dated 25.05.2018. In the SCN, it has been alleged that the noticee has imported the goods from M/s. Sinarmas Cepsa Pte Ltd. without paying applicable anti-dumping duty. The noticee on the other hand has submitted that the imports made under these 11 Bills of Entry were against Advance Authorisation/Licences and the debit of value in the relevant advance authorisation is clearly shown in each of the bill of entry itself. Furthermore, it has been submitted by the noticee that there is no allegation that the Noticee failed to fulfil its export obligation or any proceedings have been initiated by DGFT. It has also been mentioned by the noticee that Section 9A(2A) specifically provides that Anti-dumping duty levied under Section 9A shall not apply to articles

imported for export. In support of its contentions, the noticee has submitted copies of bills of entry and export obligation discharge certificates issued by DGFT.

**4.23** After examining the allegations made in the SCN, submissions and documentary evidence brought forth by the Noticee, I find that the Noticee had filed Bills of Entry under advance license while importing goods from foreign supplier M/s. Sinarmas Cepsa Pte Ltd. without paying anti-dumping duty. The Manufacturer of these consignments is PT. Energy Sejahtera Mas, Indonesia. Details of the same are as follows:-

| Sr. No. | Sr. No. in Annexure-A to SCN | Bill of Entry No. & date | Cleared under Advance Authorisation No(s) & Date(s) | Assessable Value (in Rs.) | ADD Payable (in Rs.) | Differential IGST (in Rs.) on ADD Payable | Payable (ADD+Diff. IGST) |
|---|---|---|---|---|---|---|---|
| 1 | 1 | 6002469 dt 26.10.2021 | 3411000860 dt 16.07.2021 & 3411001169 dt. 27.09.2021 | 88,91,340 | 4,19,462 | 75,503 | 4,94,965 |
| 2 | 2 | 5379876 dt 09.09.2021 | 3411000860 dt 16.07.2021 | 84,30,300 | 4,09,224 | 73,660 | 4,82,885 |
| 3 | 4 | 3075348 dt 09.03.2021 | 3410045544 dt 17.10.2019 & 3411000283 dt 03.03.2021 | 14,96,340 | 4,57,944 | 82,430 | 5,40,374 |
| 4 | 5 | 6526058 dt 18.01.2020 | 3410045544 dt 17.10.2019 | 48,14,880 | 2,24,537 | 40,417 | 2,64,953 |
| 5 | 7 | 5820910 dt 13.10.2021 | 3411000283 dt 03.03.2021 & 3411000860 dt 16.07.2021 | 86,29,800 | 4,18,909 | 75,404 | 4,94,312 |
| 6 | 10 | 7044304 dt 28.02.2020 | 3410045544 dt 17.10.2019 | 48,82,080 | 2,25,099 | 40,518 | 265617 |
| 7 | 11 | 4544800 dt 19.08.2019 | 3410043783 dt 05.01.2018 | 17,81,880 | 1,32,535 | 23,856 | 1,56,391 |
| 8 | 13 | 9720212 dt 26.11.2020 | 3410045544 dt 17.10.2019 | 58,06,944 | 2,29,770 | 41,359 | 2,71,129 |
| 9 | 15 | 7782557 dt 08.03.2022 | 3411001900 dt .7.03.2022 | 2,14,62,000 | 7,06,943 | 1,27,250 | 8,34,193 |
| 10 | 18 | 6063470 dt 13.12.2019 | 3410043783 dt 05.01.2018 | 48,65,280 | 2,24,324 | 40,378 | 2,64,702 |
| 11 | 29 | 5000561 dt 21.09.2019 | 3410043783 dt 05.01.2018 | 17,90,560 | 1,33,180 | 23,972 | 1,57,153 |

**4.24** On perusal of the Bills of Entry in the table above, it is seen that the Noticee has not debited the ADD in one bill of entry i.e. 3075348 dated 09.03.2021. The Noticee has cleared the goods under Advance Authorization but they have not debited ADD amount under Bond executed by them against the respective Advance Authorizations in the Bill of Entry No 3075348 dated 09.03.2021. The importer was supposed to declare the ADD amount under the relevant

Serial No. of ADD Notification No. 28/2018-Customs (ADD) dated 25.05.2018, further amended vide Notification No. 48/2018 dated 25.09.2018, in the respective Bills of Entry and they should have debited that ADD amounts from the Bonds with reference to aforementioned Bills of Entry. The Noticee had not debited the ADD amounts from the Bonds executed against the said authorizations for this Bill of Entry i.e. 3075348 dated 09.03.2021. It is therefore established that importer had not declared the correct information in the Bill of Entry 3075348 dated 09.03.2021 with respect to applicable ADD amounting to Rs. 4,57,943.52/-along with IGST to the tune of Rs. 82,429.83 /- totalling to Rs. 5,40,373.35/-.

**4.25** As far as realization of the anti-dumping duty is concerned, I find that the aforementioned 11 consignments were cleared by the Noticee under Advance Authorisation with foreign supplier namely M/s Sinarmas Cepsa Pte Ltd, without payment of applicable dumping duty. The Advance Authorization scheme has been started by the government to facilitate exporters, promote exports and enhance foreign earnings. I find that Foreign Trade Policy para 4.14 and the exemption Notification 53/2015-20 dated 10.01.2019 exempt Basic Customs Duty (BCD), Additional Customs duty, Education cess, Anti-dumping duty, countervailing duty, safeguard duty on goods imported under advance authorization. Thus, ADD leviable on merit, is still exempted, along with all other leviable duties on the imports effected the basis of Advance Authorization Scheme. Furthermore, Notification No. 18/2015-Customs dated 01.04.2015 provides for exemption of Customs duty, ADD and other additional duties for goods imported against a valid Advance Authorisation subject to debit of applicable duties at the time of clearance, in the bond undertaken and executed by/on behalf of the importer against the said authorization, before the goods are actually imported.

In light of these facts, I find that even though the Anti-dumping duty may be applicable on merit but still, the same cannot be demanded from the importer, as the goods imported from foreign supplier M/s. Sinarmas Cepsa Pte Ltd are cleared under Advance Authorization and export obligations against these imports have been fulfilled. The list of the Advance Authorization and respective EODC has been tabulated below:-

| Sr. No | Advance Authorization No. & Date | EODC Staus |
|---|---|---|
| 1 | 3411000860 dt 16.07.2021 | EODC dated 07.03.2023 issued |
| 2 | 3411001169 dt. 27.09.2021 | EODC dated 07.03.2023 issued |
| 3 | 3411000283 dt 03.03.2021 | EODC dated 18.07.2022 issued |
| 4 | 3410045544 dt 17.10.2019 | EODC dated 04.10.2021 issued |
| 5 | 3411001900 dt .7.03.2022 | EODC dated 15.09.2023 issued |
| 6 | 3410043783 dt 05.01.2018 | EODC dated 16.07.2020 issued |

Therefore, I find that the demand of differential ADD in respect of the 11 bills of entry vide which goods were imported from foreign supplier M/s. Sinarmas Cepsa Pte Ltd is not sustainable.

**4.26** Now, I proceed to the last foreign supplier M/s Intercontinental Oils and Fats PTE. Ltd. in order to decide applicability of anti-dumping duty on the imports made by the Noticee from it. I find that as per Annexure-A to the impugned Show Cause Noticee, there is only one Bill of Entry filed for import from foreign supplier Intercontinental Oils and Fats PTE. Ltd and the duty

demand is only of Rs. 38/- (Rs. 32.3/- differential ADD and Rs. 5.8/- IGST on differential ADD). I find that as per annexure A, anti-dumping duty paid is Rs. 41,279/- and anti-dumping duty payable is Rs. 41,311/-. The Show Cause Notice does not substantiate this demand any further. The importer, on the other side, has attributed this mismatch to currency fluctuation and stated that since they had paid Rs. 22,48,100/- in this consignment, there could not be intentional short payment of Rs 38.

**4.27** I find that there is no dispute that the applicable ADD for the subject import is @ 7.1 USD per MT which is at Sr. No. 2 of the Notification No. 28/2018-Customs (ADD) dated 25.05.2018. Same rate has been specified in the Annexure-A of the SCN and applicable ADD has also been calculated on its basis in the SCN.

| S.No. | Sub-headings | Description of goods | Country of origin | Country of export | Producer | Exporter | Amount | Unit | Currency |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 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 |

The importer has also declared anti-dumping duty at the same rate in the impugned Bill of Entry vide which goods were imported from M/s Inter-Continental Oils &Fats Pte Ltd, Singapore. The details of the Bill of Entry are tabulated below: -

| Bill of Entry Date | Supplier | Description of Goods | Quantity in MT | ADD Rate | USD rate | ADD Amount in Rs. |
|---|---|---|---|---|---|---|
| 6578238 08-12-2021 | M/s Intercontinental Oils & Fats Pte. Ltd. | C12 - Fatty Alcohol (Lauryl Alcohol) (Mascol 1299) (AIFTA cert no-0045361/MDN/2021 dt.16/11/2021)4 flexi bag container | 76.66 | 7.1 | 75.9 | 41,311 |

**4.28** The only dispute is regarding the calculation of the applicable anti-dumping duty amount. According to the contents of the impugned SCN, the amount would come out to be Rs. 41,311/- whereas the importer has paid only Rs. 41,279/-. This has resulted in a differential anti-dumping duty amount of Rs. 32/- which become Rs. 38/- when IGST amount is added to it. I find that as far as calculation is concerned, the correct anti-dumping amount is Rs. 41,311/-. The differential anti-dumping duty demand of Rs. 38/- is justified. The Noticee has also admitted the same albeit he has blamed currency fluctuation for the same. Therefore, I find that duty demand of Rs. 38 mathematically correct and justified, and therefore I order recovery of the same from the Noticee under Section 28 (4) of the Customs Act, 1962.

**Whether or not the differential Anti-Dumping Duty of ₹1,60,00,979/- and IGST thereon of ₹28,80,176/- (totaling ₹1,88,81,155/-) is recoverable from the importer M/s. Tide Industries**

**under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.**

**4.29** Now, I proceed to address the question Whether or not the differential Anti-Dumping Duty of ₹1,60,00,979/- and IGST thereon of ₹28,80,176/- (totaling ₹1,88,81,155/-) is recoverable from the importer M/s. Tide Industries under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA. In the paras above, imposition of anti-dumping duty has been discussed for the imports made by the noticee from all three different foreign suppliers M/s. Sinarmas Cepsa Pte Ltd., Singapore, M/s Intercontinental Oils and Fats PTE and M/s Ecogreen Oleochemicals (Singapore) Pte Ltd. separately. It has been found out that imposition of anti-dumping duty is not warranted for the imports made by the noticee from the foreign suppliers M/s. Sinarmas Cepsa Pte Ltd., Singapore, and M/s Ecogreen Oleochemicals (Singapore) Pte Ltd. And therefore, demand of differential duty and applicable interest also become null and void in case of the goods imported from foreign suppliers M/s. Sinarmas Cepsa Pte Ltd., Singapore and M/s Ecogreen Oleochemicals (Singapore) Pte Ltd. However, I find that a demand of Rs. 38/- is justified under Section 28 (4) of the Customs Act, 1962 for the goods imported from M/s Inter-Continental Oils &Fats Pte Ltd, Singapore which has been discussed in paras above.

**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.**

**4.30** I find that the importer had subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Act in all their import declarations. Section 17 of the Act, w.e.f 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a bill of entry, in the electronic form. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, there is an added and enhanced responsibility of the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

**4.31** I also find that, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17. Such onus have not been deliberately discharged by M/s Tide Industries in terms of the provisions of Section 46 (4) of the Customs Act, 1962, the importers while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and in support of such declaration, produce to the proper officer the invoice, of any, relating to the imported goods. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption.

**4.31** I find that the importer, M/s Tide Industries failed to provide correct statement in the 01 Bill of Entry i.e. 3075348 dated 09.03.2021 by way of not debiting ADD amount under Bond executed by them against the respective Advance Authorizations in the Bill of Entry No 3075348

dated 09.03.2021. The importer was supposed to declare the ADD amount under the relevant Serial No. of ADD Notification No. 28/2018-Customs (ADD) dated 25.05.2018, further amended vide Notification No. 48/2018 dated 25.09.2018, in the respective Bills of Entry and they should have debited that ADD amounts from the Bonds with reference to aforementioned Bills of Entry. The Noticee had not debited the ADD amounts from the Bonds executed against the said authorizations for this Bill of Entry i.e. 3075348 dated 09.03.2021. It is a settled law position that when an importer is claiming a duty benefit, it is the responsibility of the importer to exercise reasonable care to the accuracy and truthfulness of the information supplied. Therefore, the burden of proof naturally falls on the importer to prove that exemption benefit is rightly availed in respect of the imported goods. Furthermore, in one Bill of Entry for the goods imported from M/s Inter-Continental Oils &Fats Pte Ltd, Singapore, the importer has made a short payment of Rs. 38/-.

**4.32** However, I find that in respect of the Bill of Entry i.e. 3075348 dated 09.03.2021 which was filed under advance authorization, the noticee has fulfilled the Export obligation against the above said Advance Authorisations, therefore no actual loss of revenue was incurred by the Government of India. Furthermore, with regard to short payment of Rs. 38/- duty, I find that same could have been caused due to currency fluctuation as suggested by the Noticee because the importer had paid more than 22 lacs as IGST and ADD for that particular consignment. And for other imports from foreign supplier M/s Ecogreen Oleochemicals (Singapore) Pte Ltd., it has already been established that demand for ADD is not sustainable. Similarly for remaining 10 Bills of Entry for the imports made from foreign supplier M/s Sinarmas Cepsa Pte Ltd., the goods were imported under advance authorization and ADD amount was debited from the Bonds executed against the said authorizations. Furthermore, the export obligations have also been fulfilled for the imports made from the foreign supplier M/s Sinarmas Cepsa Pte Ltd. under advance authorization.

In view of above, I find that the proposal for confiscation of goods under Section 111(m) is not sustainable.

**Whether or not penalty is imposable on the importer M/s. Tide Industries under Sections 114A and 114AA of the Customs Act, 1962.**

**4.33** Now the last question, Whether or not penalty is imposable on the importer M/s. Tide Industries under Sections 114A and 114AA of the Customs Act, 1962. The provisions of Section 114A and Section 114AA of the Customs Act, 1962 are reproduced as under:

***Section 114A. Penalty for short-levy or non-levy of duty in certain cases. –***

*Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*

***Provided*** *that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within*

*thirty days from the date of the communication of the orders of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be* ***twenty-five per cent*** *of the duty or interest, as the case may be, so determined:*

***Provided*** *further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:*

***Provided also that where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114.***

***114AA. Penalty for use of false and incorrect material. –***

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

I find that the imported goods are not liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962, therefore I find that the Noticee is not liable for penalty under the provisions of Section 114A of the Customs Act, 1962.

**4.36** However, I find that in the instant case, the impugned imports against the 01 Bill of Entry i.e. 3075348 dated 09.03.2021, under the ambit of the subject SCN was effected in the name of M/s Tide Industries. The Noticee has cleared the goods under Advance Authorization but they have not debited ADD amount under Bond executed by them against the respective Advance Authorization in the Bill of Entry No 3075348 dated 09.03.2021. The importer was supposed to declare the ADD amount under the relevant Serial No. of ADD Notification No. 28/2018-Customs (ADD) dated 25.05.2018, further amended vide Notification No. 48/2018 dated 25.09.2018, in the respective Bills of Entry and they should have debited that ADD amounts from the Bonds with reference to aforementioned Bills of Entry. The Noticee had not debited the ADD amounts from the Bonds executed against the said authorizations for this Bill of Entry i.e. 3075348 dated 09.03.2021. In case if they had defaulted in fulfilling the export obligation the department may have issued the demand notice only for the amounts debited in the respective Bonds executed by the importer.

**4.37** Furthermore, I find that the ingredients for penal action under Section 114AA of the Customs Act, 1962 on **M/s Tide Industries** has been elaborately explained in the SCN. I note that, The Hon'ble CESTAT, New Delhi in the case of M/s S.D. Overseas vs The Joint Commissioner of Customs in Customs Appeal No. 50712 of 2019 had dismissed the appeal of the petitioner while upholding the imposition of penalty under Section 114AA of the Customs Act, wherein it was held as under:

*28. As far as the penalty under Section 114AA is concerned, it is imposable if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material*

*particular, in the transaction of any business for the purposes of this Act. We find that the appellant has misdeclared the value of the imported goods which were only a fraction of a price the goods as per the manufacturer's price lists and, therefore, we find no reason to interfere with the penalty imposed under Section 114AA.*

**4.38** There are several judicial decisions in which penalty on Companies under section 114AA of the Customs Act, 1962 has been upheld. Following decisions are relied upon on the issue -

i. M/s ABB Ltd. Vs Commissioner (2017-TIOL-3589-CESTAT-DEL)
ii. Sesa Sterlite Ltd. Vs Commissioner (2019-TIOL-1181-CESTAT-MUM)
iii. Indusind Media and Communications Ltd. Vs Commissioner (2019-TIOL-441-SC-CUS)

**4.39** As discussed in foregoing paras, the importer, M/s Tide Industries at the time of import, furnished documents such as the Bill of Entry 3075348 dated 09.03.2021, import invoices, packing lists without mentioning the ADD notification with an intention to evade the applicable anti-dumping duty. Therefore, M/s Tide Industries have rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962 for having knowingly made, signed and declared in the import documents with wrong and incorrect levy of import duties on the imported goods. M/s Tide Industries was aware of correct Customs duties on the goods and had knowingly not declared the ADD notification in the Bills of Entry nor paid the applicable ADD on the goods by way of debiting in the Bond executed against the respective Advance Authorisations. From the evidences brought on record, it is evident that M/s Tide Industries has suppressed the facts and wilfully not paid the ADD on the goods imported against Bills of Entry 3075348 dated 09.03.2021. Thus, I find that the importer had knowingly used and caused to be used such particulars as mentioned above that were false for the transactions under the Customs Act, 1962. Since the importer has caused wrong declarations to be made in respective bill of entry 3075348 dated 09.03.2021. I hold that M/s Tide Industries liable to penalty under Section 114AA of the Customs Act, 1962.

**4.40** In view of above said discussion and findings, I find that the proposal to confiscate the goods against the Bills of Entry mentioned at Annexure-A to the SCN, is not sustainable. However, I proceed to impose penalty against the Bill of Entry 3075348 dated 09.03.2021 under Section 114AA of the Customs Act 1962.

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

## ORDER

i. I order that the demand for differential Duty of Rs. 38.13/ (Rupees Thirty-eight and thirteen paisa only)- (Anti-dumping duty of Rs. 32.31 and IGST on not paid Anti-dumping Duty amounting to Rs. 5.82/-) under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

ii. 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.

iii. I impose a penalty of Rs. 38.13/ (Rupees Thirty-eight and thirteen paisa only)- on M/s Tide Industries under Sections 114A of the Customs Act, 1962.

iv. I impose a penalty of Rs. 10,000/- (Rs. Ten Thousand only) on M/s Tide Industries under Sections 114AA of the Customs Act, 1962.

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: 01-12-2025
15:39:02

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

To,

M/s Tide Industries (IEC-0888022760)
Block No. 231, Pratappura, Tal. Halol,
Panch Mahals, Gujarat-389350.

**Copy to:**

**1.** The Addl. Commissioner of Customs, Group II(AB), 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.