



सीमा शुल्क आयुक्त का कार्यालय  
OFFICE OF THE COMMISSIONER OF CUSTOMS  
केंद्रीय अधिनिर्णय प्रकोष्ठ, एन एस-V  
CENTRAL ADJUDICATION CELL, NS-V  
जवाहरलाल नेहरू कस्टम हाउस, न्हावा-शेवा,  
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA-SHEVA,  
ताल-ऊरण, डिस्ट-राइगड, महाराष्ट्र-४०० ७०७.  
TAL. URAN, DIST. RAIGAD, MAHARASHTRA - 400 707.

DIN: Date of Order: 24 /04/2026

F.No. S/10-146/2025-26/JC/Gr.V/NS-V/CAC/JNCH Date of issue: 24 /04/2026

SCN No.: 574/2025-26/JC/ Gr.V/ NS-V /CAC/ JNCH

SCN Date: 30.07.2025

Passed By: **Shri Mazid Khan**  
Additional Commissioner of Customs, CAC, NS-V, JNCH

Order-In-Original No: 86/2026-27/ADC/GR.V/NS-V/CAC/JNCH

Name of Party/Noticee: - M/s Techno Trak Engineers (IEC:3109012863)

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**मूल आदेश**

1. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।
2. इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला - रायगड, महाराष्ट्र -400707 को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील) नियमावली, 1982 के अनुसार फॉर्म सी.ए. 1 संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 2.00 रुपये मात्र का स्टॉप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 2.00 रुपये का स्टॉप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1970 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
3. इस निर्णय या आदेश के विरुद्ध अपील करनेवाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्ति के संबंध में विवाद होने पर शास्ति का भुगतान करेगा।

**ORDER-IN-ORIGINAL**

1. This copy is granted free of charge for the use of the person to whom it is issued.
2. An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, Nhava Sheva, Tal : Uran, Dist : Raigad, Maharashtra – 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs.2.00 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 2.00 only as prescribed under Schedule 1, items 6 of the Court Fee Act, 1970.
3. Any person desirous of appealing against this decision or order shall, pending the appeal, make payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

**BRIEF FACTS OF THE CASE**

1. **M/s Techno Trak Engineers (IEC:3109012863)** having address at 'A-22, MIDC, Ahmedabad, Ahmed Nagar, Maharashtra-414111(hereinafter referred to as 'the importer) had cleared their imported items mentioned in Annexure-A (hereinafter referred to as 'the subject goods') at lower rate of BCD vide Bill of Entry as mentioned in Annexure-A by availing benefits of the Notification No. 20/2020-Cus., dated 09.04.2020. The details of the Notification No. 20/2020- Cus., dated 09.04.2020 is mentioned below:-

**'Table-A'**

Sr. No.	Chapter of Heading or sub-heading or tariff item	Description of goods
1	9018 or 9019	Artificial respiration or other therapeutic respiration apparatus (Ventilators)
2	63 or any chapter	Face masks and surgical Masks
3	62 or any chapter	Personal Protection Equipment (PPE)
4	30, 38 or any chapter	Covid-19 testing kit
5	Any chapter	Inputs for manufacturing of items at Sr. No. 1 to 4 above, subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

2. The Notification No. 20/2020-Cus., dated 09.04.2020 was issued in the in public interest for exempting the goods of the description specified in column (3) of the Table below falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act specified in column (2) of the above Table, from whole of the duty of customs leviable thereon under the First Schedule to the said Customs Tariff Act and the whole of health cess leviable thereon under section 141 the said of Finance Act, 2020.
3. However, it was noticed that some importers were engaged in imports of VTM (Viral Transport Media) kits and RNA extraction kits by availing benefit of S.No. 4 of the Notification No. 20/2020-Cus., dated 09.04.2020 and inputs for VTM kits such as nasopharyngeal swab and plastic tubes by claiming benefit of S.No. 5 of Notification No. 20/2020-Cus., dated 09.04.2020. The VTM kits and RNA extraction kits are not the Covid-19 testing kits. The VTM kits are merely tools for nasopharyngeal sampling in flu like diseases and RNA extraction kits are used for extraction RNA from the samples. It was further observed that there are multiple uses of RNA extraction kits in medical science like research and diagnose of cancer apart from RNA

extraction from swab sample collected for Covid-19 testing. For any Covid-19 RT-PCR testing, the extracted RNA is the starting material. Thus, the VTM kits and RNA extraction kits are not Covid-19 testing kits and the benefit under S.No. 04 of Notification No. 20/2020-Cus., dated 09.04.2020 is not available for the same. Therefore, only RT-PCR testing kits and Rapid Antigen/Antibody testing kits for Covid-19 would qualify for the benefit under Sr. No. 4 of Notification No. 20/2020-Cus., dated 09.04.2020.

4. Similarly, the raw material of inputs such as nasopharyngeal swab and plastic tubes required to prepare VTM kits and the raw material or inputs required to prepare RNA extraction kits are also not eligible for benefit under S.No. 5 of the Notification No. 20/2020-Cus., dated 09.04.2020. Therefore, the raw material or inputs of RT-PCR testing kits and Rapid Antigen/Antibody testing kits for Covid-19 would qualify for the benefit under S.No. 5 of the Notification No. 20/2020-Cus., dated 09.04.2020, only when the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty), Rules, 2017.
5. Accordingly, a Consultative Letter No. 1171/2021-22/PCA (C-3), dated 28.06.2021 (DIN No. 2021077800000000EC41) was issued to the importer for payment of short levied BCD as mentioned in Annexure-A along with applicable interest and penalty. Vide the aforementioned Consultative letter, the importer was advised to pay the differential duty under Section 28 of the Customs Act, 1962 along with applicable interest and penalty thereon under Section 28AA of the Customs Act 1962. The Consultative letter was issued considering the Pre- Notice Consultation Regulations, 2018.
6. However, the importer did neither paid the differential duty along with the applicable interest and penalty nor responded in reference of the Consultative letter issued.
7. In view of the above, it appears that the importer had willfully wrongfully availed the benefit of concessional BCD rates under Notification No. 20/2020- Cus., dated 09.04.2020 which has caused the loss of government revenue.
8. Relevant Legal Provisions: After the introduction of self-assessment vide Finance Act, 2011, the onus is on the Importer to make true and correct declaration in all aspects including Classification and calculation of duty, but in the instant case the subject goods have

been mis-classified and BCD amount has not been paid correctly.

9. Relevant legal provisions applicable in this instant case are reproduced below for ease of reference:

**9.1 Section 17(1) Assessment of duty, reads as:**

An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

**9.2 Section 28 (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded) reads as:**

(4) *Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part- paid or erroneously refunded, by reason of, -*

- (a) *collusion; or*
- (b) *any willful mis-statement; or*
- (c) *suppression of facts,*

*by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*

(5) *Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.*

(6) *Where the importer or the exporter or the agent or the employee of*

*the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-*

- (i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or*
- (ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5).*

### **9.3 Section 28AA- Interest on delayed payment of duty**

- (1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*
- (2) Interest, at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.*

### **9.4 SECTION 46. Entry of goods on importation, subsection 46(4) reads as:**

- (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.

**9.5 Section 111 (Confiscation of improperly imported goods etc.)** reads as: *The following goods brought from a place outside India shall be liable to confiscation ..... (m) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act .....*;

**9.6 Section 112 (Penalty for improper importation of goods etc.)** reads as:

“Any person-

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

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

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher”

**9.7 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 (8) 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 order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the 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 the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account: Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:*

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

*Explanation. - For the removal of doubts, it is hereby declared that -*

- (i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;*
- (ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.*

**9.8** *Section 117. Penalties for contravention, etc., not expressly mentioned. - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees.*

## **10 Acts of omission and commission by the Importer:**

**10.1** As per section 17(1) of the Act, "An Importer entering any imported

goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods." Thus, in this case the importer had self-assessed the Bills of Entry and appears to have Short-levy of BCD rate by wrongfully availing the benefit of concessional BCD rates under Notification No. 20/2020-Cus., dated 09.04.2020. As the importer got monetary benefit due to said act, it is apparent that the same was done deliberately by willful mis- classification of the said goods in the Bills of Entry during self-assessment. Therefore, it appears that the differential duty is recoverable from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the said Act.

**10.2** It appears that the importer has given a declaration under section 46(4) of the Act, for the truthfulness of the content submitted at the time of filing Bill of Entry. However, the applicable BCD rate on the subject goods was not paid by the Importer at the time of clearance of goods. It also appears that the Importer has submitted a false declaration under section 46(4) of the Act. By the act of presenting goods in contravention to the provisions of section 111(m), it appears that the importer has rendered the subject goods liable for confiscation under section 111(m) of the Act. For the above act of deliberate omission and commission that rendered the goods liable to confiscation. Accordingly, the Importer also appears liable to penal action under Section 112 (a) and /or 114 A and of the Customs Act, 1962.

**11** In view of the above, the importer, **M/s Techno Trak Engineers (IEC: 3109012863)** was called to show cause as to why:

- i. The benefit of concessional rate of BCD under Notification No. 20/2020- Cus., dated 09.04.2020 for the subject goods should not be rejected and BCD rates under CTH 84490090 should not be levied.
- ii. Differential Duty amount of **Rs.7,03,792/- (Rupees Seven Lakh Three Thousand Seven Hundred and Ninety-Two only)** with respect to the items covered under Bill of entry as mentioned in Annexure A to this notice should not be recovered under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.
- iii. The subject goods as detailed in Annexure-A to this notice having a total assessable value of **Rs.72,29,500/- (Rupees Seventy-Two Lakh Twenty- Nine Thousand Five Hundred only)** should not be held liable for confiscation under Section 111(m) of the Customs

Act, 1962.

- iv. Penalty should not be imposed under Section 112(a)/114(A) of the Customs Act, 1962.

### Annexure-A

Annexure-A Techno Trak Engineers													
BE_NO	BE_DT	IEC	DCI_CTM	ITEM	ASDD_VAL	BCD RATE	BCD AMOUNT	SWS	IGST RATE	IGST AMOUNT	TOTAL DUTY TO BE PAID	DUTY PAID	SHORT LEVIED DUTY
8330994	30.07.2020	3109012863	84490090	MELT BLDV	7229500.1	7.5	542212.506	54221.2506	18	1408668.091	2005101.847	1301510	703791.8472
					7229500.1								703791.8472

### RECORDS OF PERSONAL HEARING

**12** In order to comply the principle of natural justice, opportunity of personal hearing in the matter was provided to the noticee vide letter F.No. S/10-146/2025-26/JC/Gr.V/NS-V/CAC/JNCH dated 16.02.2026 to appear before the adjudicating authority on 10.03.2026 on virtual mode, for their oral/written submission against the subject show cause notice. The said personal hearing on 10.03.2026 was attended by Shri M.P.S. Sengar, Advocate authorized representatives of the importer. He reiterated the facts of written submission dated 09.09.2025. He has nothing more to add.

### WRITTEN SUBMISSIONS OF THE IMPORTER

**13** In response to the said SCN, the importer submitted the reply of Show Cause Notice dated 09.09.2025, in which they inter-alia stated that: -

1. We, M/s Techno Trak Engineers (IEC- 3109012863), acknowledge the receipt of Show Cause Notice No. 574/2025-26/JC/Gr.V/NS-V/CAC/JNCH dated 30.07.2025 (Received on 12.08.2025).

### Allegations under the impugned SCN

2. It is alleged in the impugned SCN that we have filed a Bill of Entry No. 8330994 dated 30.07.2020 declaring the goods '*MELT BLOWN NON-WOVEN FABRIC MAKING MACHINE MODEL: FLK600 (MANUFACTURING OF FACE MASKS) (1 SET)*' and wrongly claimed exemption under Notification 20/2020- Cus. Dated 09.04.2020, whereas the same appeared to be not applicable to impugned goods. Accordingly, a Consultative Letter No. 1171/2021-22/PCA (C-3) dated 28.06.2021, in terms of Pre-Notice Consultation Regulations, 2018, was issued asking us for payment of short levied duty alongwith interest. It is also claimed, in the impugned SCN, that we have wilfully and wrongfully availed the benefit of concessional BCD rates under the said Notification, which is a deliberate omissions and commission of

offence attracting provisions of sec. 111(m) of the CA, 1962 and accordingly the goods appeared to be liable to confiscation.

3. In view of the above, it is alleged that we have wrongly claimed exemption under Notification No. 20/2020-Cus. dated 09.04.2020. This is alleged to be a willful act of misdeclaration and accordingly the impugned SCN is issued demanding differential duty and also proposing confiscation of the subject goods and imposition of penalties. Details of the impugned SCN are not reproduced here for sake of brevity, as a copy of the same is available on record.

### Our Submissions

4. At the outset, we totally disagree with the reasoning adopted in the impugned SCN for issuing the demand. To put the facts in right perspective, we wish to place on record salient points of the case as below, so as to go to the root of the matter and to decide upon the questions that are germane and central to the issue at hand: -
- I. **Whether the provisions of section 28(4) of the CA, 1962 applicable to facts of this case?**
  - II. **Whether the impugned SCN is hit by limitation?**
  - III. **Whether the impugned imported goods are liable to confiscation?**
  - IV. **Whether there is any misdeclaration and Penalty is imposable, as proposed in the impugned SCN?**

### Issue-I- Whether the provisions of section 28(4) of the CA, 1962 applicable to facts of this case?

1. On the issue of applicability of provisions of sec. 28(4) *ibid*, we submit that the same are not applicable to facts of this case for following reasons: -
  - a. The issue was raised **4 Years ago** by way of **Consultative Letter No. 1171/2021-22/PCA (C-3) dated 28.06.2021**, based only on the particulars declared by us in the BoEs and other documents submitted. Thus, it is clear that all the facts about the goods were declared, the issue was in knowledge of the Dept. since then and there was no suppression of facts.
  - b. Assuming, though not admitting that the facts were suppressed, even then the Dept. came to know about it in June 2021, as is evident from the Cons. Letter, in such a case the Dept. had enough time to serve the Notice.
  - c. There is no evidence in the SCN to even remotely indicate the existence of suppression of facts or wilful misstatement. There is nothing to prove existence of *mens rea*.
  - d. The subject goods have been imported in the year 2020 and after issuance of Consultative Letter dated 28.06.2021, there was no communication for 4

years. Accordingly, **we were under bonafide belief about the correctness of our claim of exemption.**

- e. Issuance of **Consultative Letter** itself is evidence about absence of ingredients of sec. 28(4) i.e. suppression of facts etc. with intent to evade. It also indicates that Dept. considered it a case covered u/s 28(1) *ibid*, because the law does not provide for issuance of Cons. Letter for the case covered u/s 28(4) *ibid*. Needless to mention that both the said sub-sections are mutually exclusive. i.e. one operates only in the absence of the other. The text of sub-section (1) of sec. 28 *ibid* is reproduced below for ease of reference: -

**“28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—**

(1) *Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, —*

(a) *the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:*

***Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;***

.....

Therefore, Once the Dept. takes a stand that the case is covered under Sec. 28(1) **[by issuing Cons. Letter in terms of sec. 28(1) of the CA, 1962]**, then issuance of impugned SCN, in the same matter for the same BE, u/s 28 (4) *ibid*. is legally untenable.

- f. Above contention is fortified by the judgment of Hon'ble Delhi High Court in the case of *Ismartu I. P. Ltd. Vs. UOI [W.P.(C) 15199/2023]*, wherein it was held that the SCN u/s 28(4) cannot be issued where the earlier notice was issued u/s 28(1), as it would constitute a '**Change of Opinion**'. The change of opinion can only be permissible if some new facts have come to light.

**“11. Surely, two notices with (i) an almost identical factual matrix, (ii) relying upon the same reports by a Chartered Engineer and (iii) with almost identical conclusions cannot result in two different Notices under two different sub-sections, especially when one [Section 28(1)] can operate only in the absence of the conditions prescribed in the second [Section 28(4)].”**

Further on the issue of applicability of sec. 28(4) *ibid*, we submit that in the

instant case, the notice is issued by invoking section 28(4) *ibid*, however, no evidence is produced by the Dept. to substantiate the charges of collusion, wilful mis-statement etc.- except for a bald allegation that we have suppressed/mis-stated the facts. On this issue, we submit that it is a settled legal position that mere 'suppression of facts' (unless it is wilful and with intent to evade duty) cannot be a ground for invoking extended limitation. On this issue we place our reliance on the judgment of Hon'ble Supreme Court in the case of Pushpam Pharmaceuticals Co. and Tamilnadu Housing Board. The relevant parts of these judgments are reproduced below for ease of reference:

(a) *Pushpam Pharmaceuticals co. VS. CCE Bombay [1995 (78) ELT 401 (SC)]*:

*It is important in construing the meaning of the words 'suppression of facts' as used in the proviso to section 11A(1) of the Act. The gist of the judgment is as follows:-*

- *the expression 'suppression of facts' has been used in the company of strong words such as fraud, collusion or wilful default. In fact, it is the mildest expression used in the proviso. Yet in the surroundings in which it has been used, it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning and that is 'that the correct information was not disclosed deliberately to escape from payment of duty'.*
- *the assessee cannot be held guilty on the mere 'suppression of facts' when the law itself is not clear or there are conflicting judgments or when the position is not settled in law, unless it can be proved that the intention of the assessee was to evade payment of duty.*

(b) *Tamil Nadu Housing Board [1994 (74) ELT 9 (SC)]*

- *In terms of the provision, the extended period of five years can only be invoked where there is suppression of facts. It is submitted that it is a settled position that suppression occurs when facts which an assessee knew he had to disclose were consciously not disclosed to evade the payment of tax.*

We also refer to the judgment of the Hon'ble Supreme Court, in **Anand NishiKawa Co. Ltd. vs. Commissioner of Central Excise Appeal, Meerut [2005 (188) E.L.T. 149 (SC)]** wherein it was held that 'Suppression of facts' can have only one meaning that correct information was not deliberately disclosed to evade payment of duty, when facts were known to both the parties, omission by one to do what he might have done not that he must have done would not render it suppression. There must be some positive act from the side of the assessee to make it a case of wilful suppression. In our case there is no 'suppression of facts', leave aside it being a 'wilful act'. In Para 6 &

7 of the impugned SCN, the basis for invoking extended period of limitation i.e. justification for issuing Notice u/s 28(4) *ibid* is given and the same is reproduced below for ease of reference: -

- "6. However, the importer did neither paid the differential duty along with the applicable interest and penalty nor responded in reference of the Consultative letter issued.*
- 7. In view of the above, it appears that the importer had willfully wrongfully availed the benefit of concessional BCD rates under Notification No. 20/2020-Cus., dated 09.04.2020 which has caused the loss of government revenue."*

From the above, it can be seen that the only ground for alleging the wilful and wrongful short payment is that we neither paid the differential duty along with the applicable interest and penalty nor responded to the Consultative letter. We submit that this contention is legally untenable, as we non-payment of duty in response to Cons. Letter cannot be construed as wilful or wrongful availment of benefit of exemption Notification. Such a conclusion is apparently farfetched and a figment of imagination.

In view of the above, it is submitted that the provisions of sec. 28(4) *ibid* are not applicable to facts of this case and hence the impugned SCN is liable to be set aside on this count.

#### **Issue-II- Whether the impugned SCN is hit by limitation?**

On the issue of limitation and without prejudice to our submissions on the applicability of sec. 28(4) *ibid*, it is submitted that the impugned SCN is time-barred, as the same is hit by limitation specified under sec. 28(4) *ibid*. It is pertinent to mention that the in terms of the said sec. 28(4), a Notice is required to be issued within **Five Years**, the text of said section is reproduced below for ease of reference: -

***"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—***

*(4) Where any duty has not been 3[levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—*

*(a) collusion; or*

*(b) any wilful mis-statement; or*

*(c) suppression of facts,*

*by the importer or the exporter or the agent or employee of the importer or*

exporter, the proper officer shall, **within five years from the relevant date, serve notice** on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.”

Further, the relevant date has been defined through Explanation-1 as follows: -

“Explanation 1. —For the purposes of this section, “**relevant date**” means,  
(a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not

charged, **the date on which the proper officer makes an order for the clearance of goods;**

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty

after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.”

In this matter, it is to submit that the subject goods were imported vide Bill of Entry No. 8330994 dated 30.07.2020 and the order for clearance was made on 03.08.2020, therefore, in this case the last date for **servicing** Notice was 02.08.2022. Now, assuming though not admitting that the provisions of Sec. 28(4) *ibid* may be held applicable in the instant case, even then the last date for **servicing** the Notice was 02.08.2025. Whereas, in the instant case the Notice was **served on 12.08.2025**. Hereto annexed and collectively marked as **Exhibit-A**, a copy of the BE No. 8330994 dated 30.07.2020 and the Proof of Delivery of the Notice BY Speed Post. Thus, it is evident that the impugned SCN is hit by limitation and hence liable to be set aside merely on this count. In support of this contention, we place reliance on following case law: -

- i. C.J. Shah & Co. Vs. UOI- [2018 (359) E.L.T. 22 (Bom.)], wherein it is held as follows:-

**“14. We are inclined to consider the basic issue relating to adjustment of an amount of Rs. 16,99,981/- which is applicable to goods cleared through Bill dated 3-4-2007. The demand is stated to be time-barred. Admittedly the said amount was adjusted by making voluntary payment along with others by the petitioner though it was time-barred. The law is settled that the Revenue Department/Authorities are not required to issue a demand beyond 5 years period under Section 28 of the Customs Act.”**  
[Emphasis supplied]

In view of the above it is submitted that the impugned SCN is liable to be set aside merely on the grounds of limitation

**Issue-III- Whether the impugned imported goods are liable to confiscation?**

and

**Issue-IV- Whether there is any misdeclaration and Penalty is imposable, as proposed in the impugned SCN?**

As the impugned SCN is not sustainable on limitation therefore, we are not dealing with other issues like merits of claim of exemption, proposal confiscation and Penalty etc., however, we reserve our right to contest the case on all these issues also, in case the Dept. is not inclined to set it aside on limitation.

**Prayers**

11. In view of the foregoing, we respectfully pray that the Hon'ble Adjudicating Authority may be pleased to: -
- (a) Set aside the impugned Show Cause Notice No. 574/2025-26/JC/Gr.V/NS-V/CAC/JNCH dated 30.07.2025 – on Limitation, merits and other grounds, as explained in foregoing submissions.
  - (b) Drop all the demands, proposal for confiscation and consequential interest and penalty, as proposed in the impugned SCN.
  - (c) Pass such order/orders as deemed fit in the facts and circumstances of the case
  - (d) We desire to be heard in person before any decision is taken in the matter.
  - (e) We crave leave to add to, alter, amend or withdraw and/or delete all or any of the above grounds, on or before the date of hearing and to produce such other and further oral and/or documentary evidence as may be considered necessary.

**DISCUSSION AND FINDINGS**

14 I have carefully gone through the Show Cause Notice, written submissions of the noticee, records of personal hearing, and the documents available on record. The primary allegation in the Show Cause Notice is that the importer, M/s Techno Trak Engineers, wrongly availed exemption under Notification No. 20/2020-Cus., dated 09.04.2020 in respect of the imported goods described as "**Melt Blown Non-Woven Fabric Making Machine Model: FLK600**" imported vide Bill of Entry No. 8330994 dated 30.07.2020.

15 I find that the Show Cause Notice proposes a recovery of differential duty amounting to **₹ 7,03,792/- (Rupees Seven Lakh Three Thousand Seven Hundred and Ninety-Two only)** under Section 28(4) of Customs Act, 1962 along with

applicable interest under Section 28AA of the Customs Act, 1962. The Show Cause Notice also proposes imposition of penalty on the importer under Section 112(a)/114A of the Customs Act, 1962 and confiscation under Section 111(m) of the Customs Act, 1962 of subject imported goods valued at **₹ 72,29,500/- (Rupees Seventy-Two Lakh Twenty- Nine Thousand Five Hundred only)**.

**16** Accordingly, the following issues arise for determination:

- (i) Whether the impugned goods are eligible for exemption under Notification No. 20/2020-Cus.dated 09.04.2020;
- (ii) Whether extended period under Section 28(4) is invocable;
- (iii) Whether the demand is hit by limitation;
- (iv) Whether confiscation and penalty are sustainable.

#### **Issue No. (i): Eligibility of Exemption**

**17** The exemption under Sr. No. 5 of Notification No. 20/2020-Cus. is available only to **“inputs for manufacture”** of specified goods, subject to compliance with the **Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCR Rules)**.

**18** I find that the impugned goods are **capital goods (machinery)** and not “inputs”. The term “inputs” cannot be stretched to include capital goods unless explicitly provided. Further, even assuming argument for academic discussion that the impugned goods qualify as inputs in terms of said notification, but still the importer has **not followed the mandatory IGCR procedure**, which is a **condition precedent** for availing exemption. The importer has failed to submit any documentary proof in this regard.

**19** It is a settled principle that **conditional exemptions must be strictly complied with**. Failure to follow procedural conditions disentitles the benefit. Accordingly, I hold that the impugned goods are **not eligible for exemption**, and are correctly classifiable under CTH 84490090 attracting applicable duty i.e. BCD @7.5%, and IGST@18%.

#### **Issue No. (ii) & (iii): Invocation of Extended Period and Limitation**

**20** The importer has contended that all facts were disclosed in the Bill of Entry No. 8330994 dated 30.07.2020. The SCN was issued on **30.07.2025**, hence the extended period is not invocable and SCN is time-barred.

**21** In the present case, I observe that the importer declared the goods as machinery for manufacturing face masks; Simultaneously claimed exemption meant for

**inputs**, which is **prima facie inapplicable**; The claim was not a matter of interpretational ambiguity but a **clear misapplication of notification entry**.

- 22 The importer, being a commercial entity, is expected to understand the distinction between **inputs and capital goods**. Claiming exemption contrary to the plain language of the notification indicates **wilful mis-statement**.
- 23 As regards the argument that issuance of Consultative Letter implies Section 28(1), I find that pre-notice consultation is a **procedural requirement**, and its issuance does not conclusively determine whether the case falls under Section 28(1) or 28(4). From the facts of the case, it is quite evident that the importer has wrongly availed the in eligible notification benefit with the intent to evade legitimate duty. Therefore, I hold that the element of **wilful mis-statement with intent to avail ineligible exemption** is present, and invocation of extended period under Section 28(4) is **legally sustainable**.
- 24 On limitation, I find that the relevant date is **03.08.2020 (date of clearance)**; and SCN was issued on dated **30.07.2025** which is within **5 years**; Service on 12.08.2025 does not invalidate issuance within limitation, accordingly, I hold that the SCN is **not time-barred**.
- 25 In view of the above, I observe that in the era of self-assessment, the onus is on the importer to make true and correct declaration in all aspects including calculation of duty and/or description of goods. From facts above, it is clear that the said importer was aware of the correct nature and classification of impugned goods, but purportedly mis-classified the same with the intent to pay lower duty. The said act of the importer is nothing but wilful mis-statement with clear mens rea to pay lower duty at BCD @ NIL and IGST @18% instead of correct duty at BCD @7.5% and IGST @ 18%. By doing so, the importer evaded a total duty of ₹ **7,03,792/- (Rupees Seven Lakh Three Thousand Seven Hundred and Ninety-Two only)**. The said act of mis-declaration by the importer is a clear suppression of facts and wilful mis-statement and therefore, I hold that the demand of duty under Section 28(4) of the Customs Act, 1962 is sustainable.
- 26 Further, since the demand of duty is sustainable in the instant case, the interest being accessory to the principal, the same is liable to be paid in accordance with Section 28AA of the Customs Act, 1962.
- 27 As I have already hold that the demand of duty for extended period under Section 28(4) of Customs Act, 1962 is sustainable in the case, I observe that the

importer is liable for penal action under Section 114A of the Customs Act, 1962 and I hold the same.

**28** I find that, based on the facts and circumstances mentioned herein above, the importer has knowingly and deliberately indulged themselves in wilful mis-statement and alleged suppression of facts with regard to notification Sr. No., with an intent to evade the applicable duty. Thus, I am of considered view that by their aforesaid acts of omission and commission, the impugned goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and I hold the same. However, I find the goods imported vide bills of entry as detailed above are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

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

**29** I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same have not been challenged by any of the parties in operation. Hence, I find that any goods improperly imported as provided in any sub-section of Section 111 of the

Customs Act, 1962 are liable to confiscation and merely because the importer was not caught at the time of clearance of the imported goods, can't be given differential treatment. In view of the above, I find that the decision of the Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing the decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), is squarely applicable in the present case. Accordingly, I observe that the present case also merits the imposition of a Redemption Fine.

30 Now coming to the issue of penalties, I find that the impugned notice proposes a penalty under Section 114A of the Customs Act, 1962 on the notice firm. In this regard, I find that the importer has wrongly evaded legitimate customs duty. I find that, in the self-assessment regime, it is the bounden duty of the Importer to correctly assess the duty on the imported goods. In the instant case wrongly availed the benefits of IGST notification by the importer of such repute having access to all legal aid, tantamount to suppression of material facts and willful misclassification. The "mens rea" can be deciphered only from "actus-reus". Thus, providing the suppression of fact and claiming undue benefit by the said Importer taking a chance to clear the goods by misclassifying it, amply points towards their "mens rea" to evade the payment of duty. Thus, I find the Importer is liable for a penalty under Section 114A of the Customs Act, 1962.

31 In view of the above facts, I pass the following order:

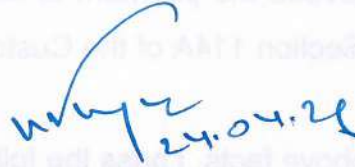
**ORDER**

- (i) I reject the benefit of exemption under Notification No. 20/2020-Cus., dated 09.04.2020 for the impugned goods.
- (ii) I order to confirm the demand of differential duty of **₹ 7,03,792/- (Rupees Seven Lakh Three Thousand Seven Hundred and Ninety-Two only)** on the goods imported vide above Bills of Entry mentioned in Annexure-A, under Section 28(4) of Customs Act, 1962.
- (iii) I order to recover applicable interest on the short-levied duty as confirmed above from **M/s Techno Trak Engineers (IEC: 3109012863)** under Section 28AA of the Customs Act, 1962.
- (iv) I order to confiscate the impugned goods having assessable value of **₹ 72,29,500/- (Rupees Seventy-Two Lakh Twenty- Nine Thousand Five Hundred only)**. under Section 111(m) of the Customs

Act, 1962, but since the same are not available as they have already been cleared, hence I impose a redemption fine of **₹3,50,000/- (Rupees Three lakh Fifty Thousand only)** under Section 125 of the Customs Act, 1962 upon **M/s Techno Trak Engineers**.

- (v) I order to impose penalty of **₹ 7,03,792/- (Rupees Seven Lakh Three Thousand Seven Hundred and Ninety-Two only) (equivalent to differential duty) plus interest leviable thereon**, on **M/s Techno Trak Engineers** under Section 114A of Customs Act, 1962. If such duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be 25% of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.
- (vi) I do not impose any penalty under Section 112 (a) of Customs Act, 1962 for reasons deliberated above.

**32** This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act, 1962, and/or other law for the time being in force in the Republic of India.



(माजिद खान / MAZID KHAN)

अपर आयुक्त सीमा शुल्क/ **ADDITIONAL COMMISSIONER OF CUSTOMS**  
सीएसी, एनएस-5, जेएनसीएच/ **CAC, NS-V, JNCH**

To,  
**M/s Techno Trak Engineers**  
A-22, MIDC, Ahmedabad,  
Ahmed Nagar, Maharashtra-414111

Copy to:-

1. The Dy./Asstt Commissioner of Customs, Review Cell, JNCH.
2. The Dy./Asstt Commissioner of Customs, Recovery Cell, JNCH.
3. The Dy./Asstt. Commissioner of Customs, Group VA, JNCH.
4. The Dy. /Asstt. Commissioner of Customs, AUDIT, JNCH.
5. The Dy./Astt. Commissioner of Customs, EDI, JNCH..for uploading on website.
6. Notice Board ..... through Superintendent (CHS Section), JNCH.
7. Office Copy.