

	<p>सीमाशुल्कआयुक्तकाकार्यालय, एनएस-II  OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-II  केंद्रीकृतनिर्यातमूल्यांकनप्रकोष्ठ, जवाहरलालनेहरूसीमाशुल्कभवन  CENTRALIZED EXPORT ASSESSMENT CELL,  JAWAHARLAL NEHRU CUSTOM HOUSE,  न्हावाशेवा, तालुका -उरण, जिला-रायगढ़-४००७०७, महाराष्ट्र.  NHAVA SHEVA, TALUKA-URAN, DIST.-RAIGAD - 400  707, MAHARASHTRA.</p>
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फा. सं./F. No.: Cus/1561/2026-Adjudication Section-O/o-Commr-NS-V Date of Order:24-02-2026

CUS/LIC/MEIS/21/2025-LIC

Date of Issue: 24-02-2026

जारीकर्ता/Passed By: **Shri. Dr. Chittaranjan Prakash Wagh,**

**Additional Commissioner of Customs, NS-II, JNCH**

मूलआदेश सं./Order-In-Original No.: **1672/2025-26/ ADC/LIC/NS-II/CAC/JNCH**

(Arising out of SCN No. 543/2025-26/ADC/LIC/NS-II/CAC/JNCH dated 28.07.2025)

निर्यातक का नाम/Exporter's Name: **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)**

### मूल आदेश

1. यह प्रति जिस व्यक्ति को जारी की जाती है , उसके उपयोग के लिए नि : शुल्क 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 सीमाशुल्कआयुक्त (अपील) , जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला - रायगढ़ - ४००७०७, महाराष्ट्र 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 इस की 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 1870 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
3. इस निर्णय या आदेश के विरुद्ध अपील करने वाला 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.1.50 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. 1.50 only as prescribed under Schedule 1, item 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.

### **ORDER-IN-ORIGINAL**

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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.

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**Sub: Adjudication of Show Cause Notice No. 543/2025-26/ADC/LIC/NS-II/CAC/JNCH dated 28.07.2025 issued to M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872).**

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### **BRIEF FACT OF THE CASE**

An Alert Circular No. 07/2021 dated 26.07.2021] was issued by NCTC on the above-mentioned subject wherein NCTC has observed that some of the Exporters have availed wrong MEIS benefit @3% of FOB value by mis-classifying the goods under CTH 29420090 instead of correct CTH 2901 to 2941 where MEIS benefit was @2% of FOB value. Accordingly, an Audit was conducted to verify correct CTH of respective goods and found that **M/s Mahrshee Laboratories Pvt. Ltd (IEC-3499003872), having address at Plot No. 3014/3015, GIDC, Phase-111, Panoli, Dist.- Bharuch, Gujarat-393002** (hereinafter referred to as the “Exporter<sup>TM</sup>)

was engaged in the export of goods declared as “Diphenhydramine HCL” (hereinafter referred to as ‘the said goods’), classifying the goods under CTH 29420090 of the first schedule of the Customs Tariff Act,1975 which covers “Other organic compounds; other;” and claimed MEIS benefit @ 3% of FOB value.

2. During the post clearance audit, export data of the exporter were scrutinized and it was noticed that the exporter had filed Shipping Bills as mentioned in Annexure-A to the SCN and exported the goods “Diphenhydramine HCL” classifying the goods under CTH 29420090, However, the said goods appear to be correctly classifiable under CTH 29221990.

For ease of reference the relevant headings are reproduced below:

Sr. No.	CTH	Description of the goods as per first Schedule to the Customs Tariff Act, 1975.
1	29420090	Other organic compound (Not Classified Elsewhere); Other; Other
2	29221990	Oxygen-function ~ amino-compounds. “Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof

3. **Classification of the exported goods:** For better understanding of the above tariff headings, explanatory notes to the relevant chapter heading are provided as under.

**A) Custom Tariff Heading 2942 is reproduced as under:  
2942 Other Organic Compound (Not classified elsewhere)**

This heading covers separate chemically defined organic compounds not classified elsewhere.

(1) Ketenes\*. Like ketones, these are characterized by a carbonyl group (>C=O) but it is linked to the neighboring carbon atom by a double bond (e.g., ketene, diphenyl ketene). This heading however excludes diketene which is a lactone of heading 29.32.

(2) Boron trifluoride complexes with acetic acid, diethyl ether or phenol\*.

(3) Di thymol di-iodide.

294200 - Other organic compound:

--- Cefadroxil & its salts, Ibuprofen, Diazepam, Nifedipine, Ranitidine, Danes salt of D (-) Phenyl Glycine, D(-) para hydroxyl Dane's Salts:

29420090--- Other

**B) Custom Tariff Heading 2922 is reproduced as under:**

**29.22-Oxygen-function amino-compounds. -Amino-acids, other containing more than one kind of oxygen function, and their esters; salts thereof:**

2922.11 -- Monoethanolamine and its salts

2922.12 -- Diethanolamine and its salts

2922.14 - Dextropropoxyphene (INN) and its salts

2922.15 -- Triethanolamine

2922.16 - Diethanolammoninm perfluorooctane sulphonate

2922.17 - Methyl-diethanolamine and ethyl-diethanolamine

2922.18 -- 2-(N,N-Diisopropylamino)ethanol  
2922.19 -- Other  
2922.41 -- Lysine and its esters; salts thereof  
2922.42 -- Glutamic acid and its salts  
2922.43 -- Anthranilic acid and its salts  
2922.44 - Tilidine (INN) and its salts  
2922.49 – Other

**Diphenhydramine HCL (29221990)** -Diphenhydramine hydrochloride is a type of organic compound known as an amino alcohol, and it is often referred to as "histamine H1 antagonist" or "antihistamine." While it contains an amino alcohol functional group (an amino group and an alcohol group). Diphenhydramine contains an amine (NH<sub>2</sub>) group and an alcohol (OH) group in its chemical structure, which classifies it as an amino alcohol Diphenhydramine hydrochloride is the hydrochloride salt of diphenhydramine. This means that it includes a chloride ion (Cl<sup>-</sup>) from hydrochloric acid (HCl) The addition of the hydrochloride salt is often done to improve solubility and stability for pharmaceutical use. It belongs to the class of compounds known as ethanolamine, Specifically, it is an ethanolamine derivative Chemical formula of this item is C<sub>17</sub>H<sub>22</sub>ClNO. This formula represents the composition of the compound, including the number and types of atoms in its structure it also contains an oxygen function as a part of its structure, specifically in the alcohol group. Accordingly, the same appears to be correctly classifiable under CTH 29221990.

Further, from above it is evident that only those organic compounds which are not specified elsewhere can be classified under heading 2942. In the present case, as per chapter notes as discussed supra, the exported items, i.e. "**Diphenhydramine HCL**" would be out of the scope of Tariff Heading 2942 as claimed by the exporter and appears to be correctly classifiable under CTH 29221990 which attracts MEIS @ 2% instead of 3% as claimed by the exporter.

#### **4. EXPORT INCENTIVES UNDER DUTY CREDIT SCRIPS-MERCHANDISE EXPORTS FROM INDIA SCHEME (MEIS): -**

**4.1** In terms of Chapter 3 of the Foreign Trade Policy (FTP) 2015-2020 exporters are issued duty credit scrips under two schemes for exports of Merchandise and Services namely (i) Merchandise Exports from India Scheme (MEIS) & (ii) Service Exports from India Scheme (SEIS) with an objective to provide rewards to the exporter to offset infrastructural inefficiencies and associated costs involved in export of goods/ products, which are produced/ manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.

**4.2** The Merchandise Exports from India Scheme (MEIS) provides benefits to exports of notified goods with the ITC (HS) code made to the notified markets, listed under Appendix 3B of the Hand book of Procedures (HBoP) in the form of Duty Credit Scrips. Appendix 3B also lists the rate(s) of rewards on various notified products [ITC (HS) code wise]. The basis of calculation of reward would be FOB value of exports realized in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in free foreign exchange, whichever is less, unless

otherwise specified.

**4.3** Directorate General of Foreign Trade (DGFT), Ministry of Commerce vide Public Notice No. 61/2015-20 dated 07.03.2017 re-notifies the MEIS Schedule Appendix 3B (Table-2) harmonizing MEIS Schedule with ITC(HS), 2017. The MEIS entitlement as per Public Notice No. 61/2015-20 dated 07.03.2017 as amended, on the products classifiable under relevant HS Codes as per table-2 is as under:

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**Table-2**

Sr. No.	ITC (HS) Code 2017 (Eight Digit)	Description of goods as per ITC(HS) 2017	MEIS Sr. No.	MEIS Reward rate in (%)
1	29420090	Other	1633	3%
2	29221990	Other	1399	2%

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**5.** On introduction of self-assessment vide Finance Act, 2011; it is the onus on the Exporter to make true and correct declaration in all aspects like classification, valuation, including calculation of duty & claim of Customs incentive/ benefit, etc. Further, as per provisions of section 50(2) of the Customs Act, 1962, the Exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents. As per substantive provisions of section 50(3) of the Customs Act, 1962, the Exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:

- (a) The accuracy and completeness of the information given therein;
- (b) The authenticity and validity of any document supporting it, and
- (c) Compliance with the restrictions or prohibition, if any, relating to,

The goods under this Act or under any other law for the time being in force.

**6.** However, it appeared in the instant case that the Exporter has not fulfilled the statutory obligation of correct and truthful declaration of the material facts of the exports document i.e. shipping bills, wherein the Exporter appeared to have mis-classified the goods with an intention to claim higher export benefits in form of the MEIS as explained above. Thus, by misclassifying the goods, undue MEIS benefits amounting to **Rs 27,135/- (Rupees Twenty-Seven Thousand One Hundred Thirty-Five Only)** appeared to have been wrongly claimed by the Exporter.

**7.** Therefore, in terms of the provisions of Section 28(4) the Exporter was advised to pay the undue MEIS benefit amounting to **Rs 27,135/- (Rupees Twenty-Seven Thousand One Hundred Thirty-Five Only)** along with interest and penalty as detailed in Annexure-A of C.L. No. 173/2023-24/JNCH (A1) dt.03.05.2023. However, the Exporter had not paid the differential duty along with interest and penalty till date.

**8. WILLFUL MIS-DECLARATION & SUPPRESSION OF FACT :** - It appeared that in the instant case the exporter has given a declaration under section 50(2) of the Customs Act-1962 for the truthfulness of the content submitted at the time of filing Shipping bills. However, the exporter has not correctly classified the exported goods and therefore wrong MEIS benefit @ 3%

instead of applicable MEIS @ 2% of FOB value on the subject goods was claimed by the exporter. Hence, it appeared that the Exporter has submitted a false declaration under section 50(2) of the Customs Act, 1962 which amounts to willful mis-declaration. Further, it appeared that the Exporter had suppressed the facts of applicability of Correct MEIS benefit @2% while claiming MEIS benefit from DGFT and intentionally claimed undue MEIS benefit on the goods exported vide Shipping bills as mentioned in Annexure-A. This act of exporter appeared to have accrued monetary benefit to them. Therefore, it appeared that the Exporter has willfully misstated, mis-represented and suppressed the facts with an intention to gain undue MEIS benefit. As the Exporter got the undue monetary benefit, due to the said act of misclassification of the subject exported goods, it appeared that the same was done deliberately by misclassification of the said goods in the above said Shipping bills during self-assessment which amounts to willful mis-declaration.

**VIOLATION OF VARIOUS LEGAL PROVISIONS OF CUSTOMS ACT, 1962 BY M/S. MAHSHEE LABORATORIES PVT. LTD. (IEC-3499003872)**

9. From the Chapter notes, chapter headings and reasons as elaborated in foregoing paras, it appeared that the Exporter has willfully mis-stated the classifications of the subject goods exported by them and suppressed the actual classification in their export documents filed before the Customs authorities as well as DGFT with an intent to avail undue benefit of MEIS scheme and therefore the MEIS scrips obtained by them on the basis of such manipulated documents becomes invalid and it can be termed that they were obtained fraudulently. It appeared that the Exporter by resorting to such acts have contravened various provisions of Customs Act, 1962.

10. Vide Finance Act, 2011 with effect from 08.04.2011 "Self-Assessment" has been introduced under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or the exporter by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, the Exporter have deliberately contravened the above said provisions with an intention to wrongfully avail excess MEIS benefit fraudulently, which were legitimately due to them.

11. From the facts discussed in the foregoing paras, it appeared that the Exporter had misclassified the subject goods "**Diphenhydramine HCL**" under CTH 29420090 instead of correct CTH 29221990. Accordingly, it appeared that the Exporter had deliberately claimed wrong classification with intent to fraudulently avail the benefit of MEIS at higher rate of 3% instead of 2% of FOB value. Further, the undue benefits of MEIS availed and utilized by misclassifying the said exported goods is required to be denied.

12. It further appeared that **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)**, presented a large number of shipping bills before DGFT to obtain MEIS License/Scripts. The duty credit/granted on such MEIS License/Scripts includes MEIS credit earned on correctly classifiable goods at appropriate eligible rates. However, it appeared that **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)** has deliberately mis-classified the export goods under CTH 29420090 in shipping bills having FOB value **Rs. 27,13,537/- (Rupees Twenty-Seven Lakhs Thirteen Thousand Five Hundred Thirty-Seven Only)** during the calendar year 2019 and 2020, as detailed in Annexure-B to the notice, to claim and avail undue MEIS benefits which were not due to them. **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)**, thus claimed undue export benefit in terms of MEIS through impugned Shipping Bills for **Rs 27,135/- (Rupees Twenty-Seven Thousand One Hundred Thirty-Five Only)** as enumerated in Annexure-B to the notice. **The amount of Rs 27,135/- (Rupees Twenty-Seven Thousand One Hundred Thirty-Five Only)** appeared to be recoverable as per section 28(4) and/or 28AAA of the Customs Act, 1962, as applicable.

13 **CULPABILITY AND LIABILITY OF NOTICEES:** Whereas the audit conducted, as discussed in the foregoing paras, revealed that the Exporter by way of willful mis-statement, misrepresentation and suppression of facts as regards the classification of goods, presented the subject goods for export before the designated authority of Customs with intent to fraudulently avail benefit of MEIS. The Exporter has violated the provisions of Section 17 and 50 of the Customs Act, 1962 which was their duty to comply with. In view of the above, it, therefore, appeared that the Exporter have indulged in fraudulent export of goods by mis-declaring the actual classification of goods so exported, which squarely falls within the ambit of 'illegal export' as defined in section 11H(a) of the Customs Act, 1962 in as much as the same was in contravention of various provisions of Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules 1993 and Foreign Trade Policy.

14. Whereas Rule 14(2) of Foreign Trade (Regulation) Rules, 1993 prohibits employing of any corrupt or fraudulent practice for the purpose of exporting any goods for obtaining any license. Further, the said goods are liable for confiscation in terms of Section 113 (i) of the Customs Act, 1962 as the same were exported by mis declaring the classification. The above-mentioned acts of commission and omission on the part of the Exporter have rendered the goods exported by resorting to mis declaration in terms of classification of goods, liable for confiscation under the provisions of Section 113 (i) of the Customs Act, 1962. The above-mentioned acts of commission and omission on the part of the Exporter have rendered various goods exported by resorting to mis-declaration in terms of classification of goods, with declared FOB value **Rs. 27,13,537/- (Rupees Twenty-Seven Lakhs Thirteen Thousand Five Hundred Thirty-Seven Only)** as detailed in Annexure-A to the notice, liable for confiscation under the provisions of Section 113 (i) of the Customs Act, 1962.

15. By misclassifying the goods with an intention to avail wrongful/ ineligible/ undue MEIS benefit, the Exporter has violated the provisions of Customs Act and have rendered the goods

liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. Further, all the above-mentioned acts of commission and omission on the part of the Exporter have rendered them liable for penal action under Section 114(iii), 114AA & 114AB of the Customs Act, 1962 with respect to the goods exported by mis-declaring the classification.

**16.** It is evident that MEIS benefit, covered by Customs Notification No.24/2015- Customs dated 08/4/2015, as amended, is a custom duty exemption by way of debit through MEIS Scrips. The power to exempt would include within its ambit the power to demand duty in the event such exemption is wrongly claimed/mis-used. Since the MEIS Scrips/Licenses, have been obtained by **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)** by mis- classification of the export goods as discussed in the foregoing paras, are therefore liable for suspension/ cancellation/ restriction. Hence the exemptions claimed by the importers are not admissible and duty at the appropriate rate is leviable on the imports to the extent of duty credit denied and same is required to be recovered from **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)**.

**17.** Now, therefore, in exercise of the powers conferred by Section 124 read with Section 28(4) and Section 28AAA of the Customs Act, 1962, that **M/s Mahrshee Laboratories Pvt. Ltd (IEC-3499003872), having address at Plot No. 3014/3015, GIDC, Phase-111, Panoli, Dist.-Bharuch, Gujarat-393002 is hereby called upon to show cause in writing to the Additional Commissioner of Customs, License Section, NS-II, Jawaharlal Nehru Customs House, Nhava-Sheva, Dist.-Raigad within 30 (Thirty) days of receipt of this notice, as to why:-**

(i) The declared classification of the subject goods “**Diphenhydramine HCL**” as mentioned in the shipping bills under CTH 29420090 should not be rejected and the subject goods should not be re-classified under CTH 29221990 of the first schedule to the Customs Tariff Act, 1975 and the said shipping bills should not be re-assessed.

(ii) The exported goods, having total declared **FOB value Rs. 27,13,537/- (Rupees Twenty-Seven Lakhs Thirteen Thousand Five Hundred Thirty-Seven Only)** should not be held liable to confiscation under Section 113 (i) of Customs Act, 1962 although the same are not available for confiscation;

(iii) Export benefit availed by the Exporter in terms of MEIS through shipping bills (as detailed in Annexure- B) for **Rs 27,135/- (Rupees Twenty-Seven Thousand One Hundred Thirty-Five Only)** should not be recovered as per Section 28(4) read with Section 28AAA, of the Customs Act,1962 along with interest as applicable thereon under Section 28AA, 28(5) of the Customs Act, 1962.

(iv) Penalty should not be imposed upon them under the provisions of Sections 114 (iii), 114AA & 114AB of the Customs Act, 1962.

#### **RECORD OF PERSONAL HEARING**

**18.** In accordance with the principles of natural justice, a letter was issued to the Exporter requesting their appearance before the Adjudicating Authority for a personal hearing scheduled on 19.02.2026. No one appeared on the scheduled date. However, exporter vide email dated 19.02.2026 submitted that *the Company is ready to discharge the differential duty liability as*

*may be determined by your good office. They also confirmed that they are willing to pay the applicable interest and penalty as per the relevant provisions of the Customs Act, 1962.*

### **DISCUSSION AND FINDINGS**

**19.** I have carefully examined the records of the case, the allegations contained in the Show Cause Notice dated 19.09.2025 issued under Section 124 read with Sections 28(4) and 28AAA of the Customs Act, 1962, and the written submissions made by the Noticee. The Noticee was granted an opportunity for personal hearing in compliance with Section 28(8) read with Section 122(b) of the Act and in adherence to the principles of natural justice. Although the Noticee did not appear for the scheduled personal hearing on 19.02.2026, they vide email dated 19.02.2026 conveyed their willingness to discharge the differential duty liability as may be determined and further confirmed their readiness to pay the applicable interest and penalty under the provisions of the Act. In view of the said submission, and considering that sufficient opportunity has been afforded to the Noticee to present their case, I find that the requirements of natural justice have been duly complied with. Since the Noticee has not contested the demand on merits and has voluntarily agreed to discharge the duty liability along with applicable interest and penalty, I proceed to decide the case on the basis of the records available and the written communication placed on record.

**20.** The main issues for consideration before me are as under:

- i. whether the impugned export goods, i.e. "Diphenhydramine HCL" was misclassified by the Noticee under CTH 29420090 instead of CTH **29221990** as per the show cause notice.
- ii. whether the alleged mis-classification, if any, was done wilfully and deliberately with an intent to avail inadmissible MEIS benefits.
- iii. whether the Noticee are liable for further consequential action under various sections of Customs Act, 1962 as detailed in the subject show cause notice.

**21.** I observed from relevant chapter notes that-

**21.1 Diphenhydramine HCL (29221990)** -Diphenhydramine hydrochloride is a type of organic compound known as an amino alcohol, and it is often referred to as "histamine H1 antagonist" or "antihistamine." While it contains an amino alcohol functional group (an amino group and an alcohol group). Diphenhydramine contains an amine (NH<sub>2</sub>) group and an alcohol (OH) group in its chemical structure, which classifies it as an amino alcohol Diphenhydramine hydrochloride is the hydrochloride salt of diphenhydramine. This means that it includes a chloride ion (Cl<sup>-</sup>) from hydrochloric acid (HCl) The addition of the hydrochloride salt is often done to improve solubility and stability for pharmaceutical use. It belongs to the class of compounds known as ethanolamine, Specifically, it is an ethanolamine derivative Chemical

formula of this item is C<sub>17</sub>H<sub>22</sub>CINO. This formula represents the composition of the compound, including the number and types of atoms in its structure it also contains an oxygen function as a part of its structure, specifically in the alcohol group. Accordingly. the same appears to be correctly classifiable under CTH 29221990.

**21.2** Further, from above it is evident that only those organic compounds which are not specified elsewhere can be classified under heading 2942. In the present case, as per chapter notes as discussed supra, the exported items, i.e. “**Diphenhydramine HCL**” would be out of the scope of Tariff Heading 2942 as claimed by the exporter and appears to correctly classifiable under CTH 29221990 which attracts MEIS @ 2% instead of 3% as claimed by the exporter.

**22.** I find that the exporter by way of wilful mis-statement, mis-representation and suppression of facts as regards the classification of goods, presented the subject goods for export before the designated authority of Customs with intent to fraudulently avail benefit of MEIS. Exporter had violated the provisions of Section 17 and 50 of the Customs Act, 1962 which was their duty to comply with.

**23.** In view of the above, I find that the Exporter has indulged in fraudulent export of goods by mis-declaring the actual classification of goods so exported, which squarely falls within the ambit of 'illegal export' as defined in section 11H(a) of the Customs Act, 1962 in as much as the same was in contravention of various provisions of Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules 1993 and Foreign Trade Policy.

**24.** In view of the above discussion, I find that MEIS benefit, covered by Customs Notification No.24/2015-Customs dated 08/04/2015, as amended, was a custom duty exemption by way of debit through MEIS Scrips. The power to exempt would include within its ambit the power to demand duty in the event such exemption is wrongly claimed/mis-used. Since the MEIS Scrips/Licenses had been obtained by **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)** by mis-classification of the export goods, as discussed in the preceding paras, they are therefore liable for suspension/cancellation /restriction. Hence, I find that the exemptions claimed by the importers are not admissible and duty at the appropriate rate is leviable on the imports to the extent of duty credit denied and the same is required to be recovered from **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)**. Therefore, I find that undue benefit of MEIS availed amounting to **Rs 27,135/- (Rupees Twenty-Seven Thousand One Hundred Thirty-Five Only)** is liable to be denied and recovered under the provisions of section 28(4) and /or 28AAA of the Customs Act, 1962 along with interest under section 28AA of the Customs Act, 1962.

**25.** Further I find that the Rule 14(2) of Foreign Trade (Regulation) Rules, 1993 prohibits employing of any corrupt or fraudulent practice for the purpose of exporting any goods for obtaining any license. Hence, the said goods are liable for confiscation in terms of Section 113(i)

of the Customs Act, 1962 as the same were exported by mis-declaring the classification. The above-mentioned acts of commission and omission on the part of **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)** had rendered the goods exported by resorting to mis-declaration in terms of classification of goods, liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. The above-mentioned acts of commission and omission on the part of **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)** had rendered the impugned goods exported by resorting to mis-declaration in terms of classification of goods, liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962.

26. I notice that by misclassifying the subject goods with an intention to avail wrongful/ineligible /undue MEIS benefit amounting to **Rs 27,135/- (Rupees Twenty-Seven Thousand One Hundred Thirty-Five Only)** **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)** had violated the provisions of Customs Act and other violations on the part of the exporter as discussed hereinabove and subsequently, have rendered the impugned goods liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. Further, I find that for all the above-mentioned acts of commission and omission on the part of M/s. Lasa Supergenerics (IEC No. 0310078458) had rendered themselves liable for penal action under Section 28AA, 114(iii), 114AA & 114AB of the Customs Act, 1962 with respect to the goods exported.

27. I find that since the above act of omission and commission on the part of the Exporter had rendered the goods liable for confiscation u/s 113(i) of the Customs Act, 1962, the Exporter had rendered themselves liable to penalty under Section 114(iii) of the Customs Act, 1962

28. I also find that the Exporter have knowingly and intentionally made the declaration in the subject shipping bills which is false or incorrect with respect to the classification of the subject goods for undue claim of export benefits under MEIS. Therefore, this act of **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)** had rendered themselves liable to penal action under Section 114AA of the Customs Act, 1962 for signing false declaration in the shipping bill.

29. I find that **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)** claimed the instrument viz. MEIS benefits @ 3% of the FOB value instead of 2% by intentional mis-declaration of classification of the exported goods. Therefore, **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)** is also liable for penalty u/s 114 AB of Customs Act, 1962 for this intentional mis-declaration of classification.

### ORDER

30. (i) I reject the declared classification under 29420090 of the subject goods in the

Shipping Bills (as detailed in Annexure-A to the SCN) and re-classify the said goods under respective CTH 29221990 Customs Tariff Heading of the First Schedule to the Customs Tariff Act, 1975.

(ii) I confiscate the impugned exported goods, having total declared FOB value of **Rs. 27,13,537/- (Rupees Twenty-Seven Lakhs Thirteen Thousand Five Hundred Thirty-Seven Only)** as detailed in Annexure-B under Section 113(i) of Customs Act, 1962. However, in lieu of confiscation, I impose redemption fine of Rs. 10,000/- (Rs. Ten Thousand only) under section 125 of the Customs Act, 1962;

(iii) I reject the export benefit availed in terms of MEIS through Shipping Bills as detailed in Annexure-B to the SCN amounting to **Rs 27,135/- (Rupees Twenty-Seven Thousand One Hundred Thirty-Five Only)** and I order to recover the same from **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)** under section 28(4) and/or 28AAA of the Customs Act, 1962 along with interest thereon under section 28AA of the Customs Act, 1962, as applicable.

(iv) I impose penalty of Rs. 5,000/- (Rs. Five Thousand only) under section 114(iii) of the Customs Act, 1962 upon **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)**.

(v) I impose penalty of Rs. 5,000/- (Rs. Five Thousand only) under section 114AA of the Customs Act, 1962 upon **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)**.

(vi) I impose penalty of Rs. 5,000/- (Rs. Five Thousand only) under Section 114AB of the Customs Act, 1962 upon **M/s. Mahrshee Laboratories Pvt. Ltd. (IEC-3499003872)**.

**30.** This order is issued without prejudice to any other action that may be taken against the noticee(s) or against any other person(s)/ Entities concerned, under the Customs Act, 1962, and/or under any other law for the time being in force in India.

**(Dr. Chittaranjan Prakash Wagh)**  
Addl. Commissioner of Customs  
NS-II, JNCH, Nhava Sheva.

To,

**M/s Mahrshee Laboratories Pvt. Ltd (IEC-3499003872),  
Plot No. 3014/3015, GIDC, Phase-111, Panoli,  
Dist.- Bharuch, Gujarat-393002**

Copy to :

1. The Commissioner of Customs, NS-II, JNCH, Zone-II.
2. The Addl. Director General of Foreign Trade, CGO Office, Churchgate, Mumbai- 400020.
3. The Asst./Deputy Commissioner of Customs, Audit circle-A1, JNCH.
4. The Asst./Deputy Commissioner of Customs, CRRC, JNCH.
5. The Asst./Deputy Commissioner of Customs, Review Cell, JNCH
6. The Asst./Deputy Commissioner of Customs, EDI Cell, JNCH for uploading on Website.
7. The Asst./Deputy Commissioner of Customs, CEAC
8. CHS Section for display on notice board.
9. Master File