

	<p><b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, NS-I</b>  सीमाशुल्क प्रधानआयुक्त का कार्यालय, एनएस-1  <b>CENTRALIZED ADJUDICATION CELL (NS-V), JAWAHARLAL  NEHRU CUSTOM HOUSE,</b>  केंद्रीकृतअधिनिर्णयनप्रकोष्ठ (एनएस-व), जवाहरलालनेहरूसीमाशुल्कभवन,  <b>NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA</b>  <b>400707</b>  न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -<b>400707</b></p>
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**Date of Order:** 27.01.2026

आदेश की तिथि: 27.01.2026

**Date of Issue:** 27.01.2026

जारी किए जाने की तिथि: 27.01.2026

**DIN:** 20260178NW0000924389

**F.No. S/10-182/2024-25/CC/GR II(A-B)/NS-I/CAC/JNCH**

**SCN No. 1694/2024-25/COMMR/GR II(A-B)/NS-I/CAC/JNCH dated 04.02.2025**

**Passed by: Shri Yashodhan Wanage**

पारितकर्ता: श्री यशोधन वानागे

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

प्रधानआयुक्त, सीमाशुल्क (एनएस-1), जेएनसीएच, न्हावाशेवा

**Order No.: 366 /2025-26 /Pr. Commr./NS-I/CAC /JNCH**

आदेशसं. : 366 /2025-26/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

**Name of Party/Noticee: M/s Abil Chempharma Private Limited (IEC-0304045314)**

पक्षकार (पार्टी)/ नोटिसीकानाम: मेसर्स एबिल केमफार्मा प्राइवेट लिमिटेड (आईईसी-0304045314)

**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 मूलप्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क 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 सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सीईएसटीएटी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्टरीजनलबेंच), 34, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई-400009 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. सीए३, चारप्रतियों 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.

समयसीमा- इसआदेशकीसूचनाकीतारीखसे३महीनेकेभीतर

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

फीस- (क) (एक हजार रुपये-जहाँ 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 33 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) (दसहजाररुपये-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 बैंक ड्राफ्ट, जो राष्ट्रीय कृत 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 संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवाकर अपील अधिकरण (प्रक्रिया) नियम, १९८२का 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, ऐसान किये जाने पर अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

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**BRIEF FACTS OF THE CASE**

**1.1** On the basis of information received from the informer, it came to knowledge of this office that some importers are mis-classifying “Ethambutol Hydrochloride” in CTH 29419090 (availing Notification benefit of Notification Number 046/2011 Sr No. 341(I)) and paying BCD @ 0% and IGST @ 18%. Whereas, as per the Customs Tariff, “Ethambutol Hydrochloride” should be rightly classifiable in CTH 29051410 having BCD @ 5% and IGST @ 18% (availing Notification benefit of Notification Number 046/2011 Sr No. 255). The duty structure of the both the CTH are given below:

<b>Ethambutol Hydrochloride</b>	CTH	Notification No. with Sr. No	BC D (%)	IGST (%)	Total Duty (%)
Importers Declaration	29419090	046/2011 Sr No. 341(I)	0	18	18
Departments observation	29051410	046/2011 Sr No. 255 (I) (applicable)	5	18	24.49
Differential duty					6.49

**1.2** On the basis of the above information received, the information was verified in the EDI System, it was observed that M/s Abil Chempharma Private Limited (IEC-0304045314) having its address at B-1701, Lotus Corporate Park, Off W E Highway, Goregaon E, Mumbai- 400063, has been importing “Ethambutol Hydrochloride” under CTH 29419090 (availing benefit of Notification Number 046/2011 Sr No. 341(I)) thereby paying BCD @ 0% and IGST @ 18% from the supplier M/s Linaria Chemicals (Thailand) Ltd., Thailand. Whereas, as per the Customs Tariff “Ethambutol Hydrochloride” should be rightly classifiable in CTH 29051410 having BCD @ 5% and IGST @ 18% (availing Notification benefit of Notification Number 046/2011 Sr No. 255(I)).

**1.3** On perusal of the CTH 29419090 it is seen that the importer has classified impugned product under the Tariff Heading Antibiotics.

**2941**

**ANTIBIOTICS**

**294110**

**- Penicillins and their derivative with a penicillanic acid structure; salts thereof :**

29411010

-- Penicillins and its salts (e.g. kg. 7.5% 10%  
- procaine penicillin, penicillin G-potassium)

29411020

-- Ampicilline and its salts kg. 7.5% 10%

-

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29411030	--	Amoxicilline and its salts	kg.	7.5%	10%
	-				
29411040	--	Cioxacilline and its salts	kg.	7.5%	10%
	-				
29411050	--	6-APA	kg.	7.5%	10%
	-				
29411090	--	Other	kg.	7.5%	10%
	-				
<b>294120</b>	-	<b>Streptomycins and their derivatives; salts thereof :</b>			
29412010	--	Streptomycin	kg.	7.5%	10%
	-				
29412090	--	Other	kg.	7.5%	10%
	-				
<b>294130</b>	-	<b>Tetracyclines and their derivatives, salts thereof :</b>			
29413010	--	Doxycycline and its salts	kg.	7.5%	10%
	-				
29413020	--	Tetracycline/oxytetra-cycline and their salts	kg.	7.5%	10%
	-				
29413090	--	Other	kg.	7.5%	10%
	-				
29414000	-	Chloramphenicol and its derivatives; salts thereof	kg.	7.5%	10%
29415000	-	Erythromycin and its derivatives; salts thereof	kg.	7.5%	10%
<b>294190</b>	-	<b>Other :</b>			
	---	<b>Rifampicin and its salts :</b>			
29419011	----	Rifampicin	kg.	7.5%	10%
29419012	----	3 FormylRifa S V(Rifaint)	kg.	7.5%	10%
29419013	----	Rifa S or Rifa S Sodium (Rifaint)	kg.	7.5%	10%
29419014	----	1-Amino-4-Methyl piperazine (Rifaint)	kg.	7.5%	10%
29419019	----	Other	kg.	7.5%	10%
29419020	---	Cephalexin and its salts	kg.	7.5%	10%
29419030	---	Ciprofloxacin and its salts	kg.	7.5%	10%
29419040	---	Gentamycin and its salts	kg.	7.5%	10%

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29419050	---	Neomycin	kg.	7.5%	10%
29419060	---	Norfloxacin and its salts	kg.	7.5%	10%
<b>29419090</b>	---	<b>Other</b>	<b>kg.</b>	<b>7.5%</b>	<b>10%</b>

**1.4** However, as per the information available on the internet, Ethambutol Hydrochloride is an antibacterial prescription medicine approved by the U.S. Food and Drug Administration (FDA) for the treatment of active tuberculosis (TB) of the lungs.

**1.5** In Explanatory notes of Chapter 29.41, it is mentioned that **this heading does not cover:**

(a) Antibiotic preparations of a kind used in animal feeding (e.g. dried and standardised complete mycelium) (heading 23.09).

(b) Chemically defined organic compounds with a very low antibiotic activity, used as intermediates in the manufacture of antibiotics (earlier headings of this Chapter according to structure).

**(c) Quinolinecarboxylic acid derivatives, nitrofurans, sulphonamides and other chemically defined organic compounds of earlier headings of this Chapter having antibacterial action.**

(d) Deliberate intermixtures of antibiotics (e.g., a mixture of penicillin and streptomycin) for therapeutic or prophylactic uses (heading 30.03 or 30.04).

(e) Intermediate products obtained during the manufacture of antibiotics by filtering and first stage extraction, with an antibiotic (heading 38.24).

**1.6** On perusal of the Section note (c) it is mentioned that **this Chapter does not cover other chemically defined organic compound having antibacterial action.** In view of this, Ethambutol Hydrochloride will not be classified in this Chapter Heading.

For the better understanding of the CTH 2905, Tariff Heading of 2905 has been given below:

**II. — ALCOHOLS AND THEIR HALOGENATED, SULPHONATED, NITRATED OR NITROSATED DERIVATIVES**

**2905 ACYCLIC ALCOHOLS AND THEIR HALOGENATED, SULPHONATED, NITRATED OR NITROSATED DERIVATIVES**

**- Saturated monohydric alcohols :**

29051100 -- Methanol (methyl alcohol) kg. 2.5% -

**290512 -- Propan-1-ol (propyl alcohol) and propan-2-ol (isopropyl alcohol) :**

29051210 --- Propyl alcohol kg. 7.5% -

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29051220	---	Isopropyl alcohol	kg.	7.5%	-
29051300	--	Butan-1-ol (n-butyl alcohol)	kg.	7.5%	-
<b>290514</b>	--	<b>Other butanols :</b>			
<b>29051410</b>	---	<b>Ethambutol, ethambutol Hcl</b>	kg.	7.5%	-
29051420	---	Salbutamol sulphate	kg.	7.5%	-
29051430	---	Amino butanol	kg.	7.5%	-
29051490	---	Other	kg.	7.5%	-

**1.7** In CTH 29051410, **Ethambutol HCL** is already mentioned. As per the General rules for the interpretation of this Schedule, Classification of goods in this Schedule shall be governed by the following principles:

*1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.*

**1.8** The Hon'ble Apex Court in the case of C.C. Amritsar vs D.L. Steels 2022 (381) ELT 289 (SC) has observed as follows:

*1.9 Classification under the Harmonised System is done by placing the good under the most apt and fitting sub-heading. This is done by choosing the appropriate Chapter, Heading, and subheading respectively. To facilitate interpretation and classification, each of the 97 Chapters in the HSN contain corresponding Chapter Notes, General Notes, and Explanatory Notes applicable to the Headings and sub-headings within that Chapter. In addition, there are six General Rules of Interpretation applicable to the Harmonised System as a whole. 11. GRI-1 states that the titles of Sections, Chapters, and sub-chapters are provided for ease of reference only. Therefore, they have no legal bearing on classification. Classification is to be effected : (a) according to the terms of the Headings and any relative Section or Chapter Notes; and, (b) provided the Headings or Chapter Notes do not otherwise require according to the provisions thereafter contained, viz., GRIs 2 to 6. Thus, it is clear from the above that:*

(i) the Headings, and,  
(ii) the relative Section or Chapter Notes must be considered before classification is done. Only after this exercise is done, if a conflict in classification still persists, the subsequent GRIs is to be resorted to.

**1.10** Since **specific heading has been given in the Customs Tariff**, therefore **Ethambutol Hydrochloride** will be classified under CTH 29051410 and not in CTH 29419090 as claimed by the importer. Due to misclassification in CTH 29419090 and taking undue benefit of notification no 046/2011 Sr No. 341(I), importer has evaded Customs duty.

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**1.11** In furtherance to the investigation, letter dated 10.06.2024 was issued to the importer M/s Abil Chempharma Private Limited (IEC-0304045314) requesting to provide all the import related documents pertaining to above mentioned Chapter Heading 29419090.

**1.12** In furtherance to the investigation, Summons dated 28.06.2024 under Section 108 of the Customs Act, 1962 has been issued to the importer M/s Abil Chempharma Private Limited (IEC-0304045314) for recording of the statement in the case of improper import of Ethambutol Hydrochloride.

**1.13** Statement of the importer M/s Abil Chempharma Private Limited (IEC-0304045314) has been recorded under Section 108 of the Customs Act, 1962 on 04.04.2024 wherein in his voluntarily statement he stated that he had imported Ethambutol Hydrochloride in CTH 29419090. He agreed with the department's observation that it should be rightly classifiable in CTH 29051410. Further, he has paid the differential duty along with the interest applicable in this case due to improper import of Ethambutol Hydrochloride. He requested that since he has paid the applicable differential duty along with the interest, it is requested to close the proceedings in this regard.

**1.14** Importer M/s Abil Chempharma Private Limited (IEC-0304045314) vide Challan dated 27.06.2024 and Challan dated 01.07.2024 has paid the differential duty along with interest. The details of the calculation of differential duty along with interest has been given below duly calculated by the computist, JNCH.

**TABLE:1**

<b>S.No.</b>	<b>BE No &amp; Date</b>	<b>Differential duty</b>	<b>Interest</b>	<b>Total</b>	<b>Challan date</b>
1.	As per the calculation sheet	Rs 77,13,469/-	Rs 11,29,674/-	Rs 88,43,143/-	27.06.2024
2.		Rs 60,190/-	Rs 22,188/-	Rs 82,380/-	01.07.2024

**1.15** Relevant legal provisions for recovery of duty that appears to be evaded are as listed under:

**Section 17 (Assessment of duty)**, subsection (1)

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

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

**Section 46 (Entry of goods on importation)**, subsection (4)

**Section 111 (Confiscation of improperly imported goods etc.)**

**Section 112 (Penalty for improper importation of goods etc.)**

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

**Section 114AA (Penalty for use of false and incorrect material)**

**1.16** The importer, M/s Abil Chempharma Private Limited (IEC-0304045314), submitted a letter dated 08.07.2024, requesting the closure of proceedings initiated against them under

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Section 28(2) of the Customs Act, 1962. The request was made on the grounds that they have paid the differential duty and interest applicable in this case.

**1.17** The importer declared the imported goods as "Ethambutol Hydrochloride" under CTH 29419090. However, as per the Customs Tariff, "Ethambutol Hydrochloride" is correctly classified under CTH 29051410. Since a specific heading is provided in the Customs Tariff for this item, the correct classification is CTH 29051410, and not CTH 29419090 as declared by the importer. The misclassification under CTH 29419090, combined with the undue benefit availed under Notification No. 046/2011 (Sr. No. 341(I)), resulted in the evasion of Customs duty.

**1.18** During the course of the investigation, the statement of the importer, M/s Abil Chempharma Private Limited (IEC-0304045314), was recorded under Section 108 of the Customs Act, 1962, on 04.04.2024. In their voluntary statement, the importer admitted to classifying Ethambutol Hydrochloride under CTH 29419090. Furthermore, they agreed with the department's observation that the correct classification should be under CTH 29051410.

**1.19** Based on the above, it appears that the importer has willfully mis-declared the Classification Tariff Heading (CTH) to avail of notification benefits and evade Customs duty. Ethambutol Hydrochloride has a specific classification under CTH 29051410, and its exclusive use as an anti-tubercular drug is well-known in the trade. This drug is not a general antibiotic, and any importer dealing with such items would be fully aware of its specific classification. The misclassification appears to be deliberate and willful mis-statement with the intent to evade duty.

**1.20** In view of the willful misstatement and suppression of facts, this case appears to be fit for invoking Section 28(4) of the Customs Act, 1962. The deliberate nature of the misclassification warrants the application of provisions under this section to address the evasion of duty.

**1.21** Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011; 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make entry for the imported goods by presenting a 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 shall 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 thorough the Service Centre. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, transaction value, applicable rate of duty, value, benefit of exemption

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notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. However, the facts as stated above occurrence appear to reveal wilful mis-declaration of the goods with an ulterior motive to evade the applicable Customs duties. Therefore, in the instant case, the differential Customs Duty short levied is liable to be recovered from the importer.

**1.22** M/s Abil Chempharma Private Limited (IEC-0304045314) has imported “Ethambutol Hydrochloride” in CTH 29419090 (availing Notification benefit of Notification Number 046/2011 Sr No. 341(I)) therefore paying BCD @ 0% and IGST @ 18% from the supplier M/s Linaria Chemicals (Thailand) Ltd., Thailand. Whereas, as per the Customs Tariff “Ethambutol Hydrochloride” should be rightly classifiable in CTH 29051410 having BCD @ 5% and IGST @ 18% while availing Notification benefit of Notification Number 046/2011 Sr No. 255 (I).

**1.23** Therefore, in view of the above facts, it appears that the importer has deliberately not paid the duty at the time of import by wilful mis-statement as it was his duty to declare correct classification in the entry made under Section 46 of the Customs Act, 1962, and thereby has attempted to take undue benefit amounting to Rs.77,13,469/- (as detailed in Annexure-‘A’) and Rs. 60,190/- for BE No. 7105066 dated 17.01.2022. Therefore, the differential duty, so not paid, is liable for recovery from the Importer under Section 28 (4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at the applicable rate under section 28AA of the Customs Act, 1962 and for their acts of omission/commission.

**1.24** However, M/s Abil Chempharma Private Limited (IEC-0304045314) voluntarily deposited differential duty amounting Rs.77,13,469/- along-with interest amounting Rs 11,29,674/-. The total duty paid by the importer is Rs. 88,43,143/- which was duly calculated by computist, JNCH. Further, importer has also paid the differential duty Rs. 60,190/- and interest Rs. 22.188/- against the BE No. 7105066 dated 17.01.2022 vide Challan number dated 01.07.2024.

**1.25** The importer has mis-declared the classification of the impugned goods covered under the aforementioned Bills of Entry through willful misstatement or suppression of facts. As per Section 111 (m) of the Customs Act, 1962 *any goods which do not correspond in respect of value or in any other particular with entry made in this Act* would become liable to confiscation. Therefore, it appears that the goods the goods having assessable value of Rs. 11,88,51,605/- covered under Bills of Entry as mentioned in Annexure-A and of Rs. 9,27,420/- Bill of Entry No. 7105066 dated 17.01.2022 are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**1.26** The act of the omission and commission on the part of the importer has rendered himself liable to penal action under Section 112(a) and/or 114A of the Customs Act, 1962.

**1.27** As per the statement of the importer recorded under Section 108 of the Customs Act, 1962, it appears that the importer is intentionally submitting documents, including the invoice, packing list, and Bill of Lading, to Customs authorities on a regular basis, with

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incorrect classification under the Customs Tariff Heading (CTH), in order to avail notification benefits and evade duty. It is noted that Ethambutol has a specific classification under CTH 2905, and its exclusive use as an anti-tubercular drug is well-recognized in the trade. This drug is not classified as a general antibiotic, and any importer dealing in this product would reasonably be expected to have knowledge of its precise classification.

**1.28** In view of the above, the act of the omission and commission on the part of the importer has rendered himself liable to penal action under Section 114AA of the Customs Act, 1962.

**1.29 Now, therefore, in view of the above,**

**1.29.1** Accordingly, Show Cause Notice bearing No. 1694/2024-25/Commr/Gr. II(A-B)/NS-I/CAC/JNCH dated 04.02.2025 was issued to M/s Abil Chempharma Pvt Ltd seeking as to why:

- (a) the classification of the goods with the description "Ethambutol Hydrochloride" covered under aforementioned Bill of Entry classified under CTH 29419090 should not be rejected and the same should not be rightly re-classified under CTH 29051410.
- (b) the goods described as "Ethambutol Hydrochloride" having Assessable value of Rs. 11,88,51,605/- for the Bills of Entry as mentioned in Annexure-A and Rs. 9,27,420/- for the Bill of Entry No. 7105066 dated 17.01.2022 should not be confiscated **under Section 111(m) of the Customs Act, 1962** in pursuant to the mis-declaration of classification of the impugned goods covered under the aforementioned Bills of Entry through wilful misstatement or suppression of facts.
- (c) the differential/short paid Duty amounting to Rs.77,13,469/- (as detailed in Table:01 of this notice) and Rs. 60,190/- for the subject goods imported vide Bills of Entry as detailed in Annexure-A and for BE No. 7105066 dated 17.01.2022 respectively should not be demanded under Section 28(4) of the Custom Act, 1962 along-with the applicable interest under Section 28AA of the Customs Act, 1962.
- (d) Penalty should not be imposed on the importer, M/s Abil Chempharma Private Limited under Section 112(a) and/or 114A of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.
- (e) Penalty should not be imposed on the importer, M/s Abil Chempharma Private Limited under Section 114AA of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.

**2. WRITTEN SUBMISSIONS OF THE NOTICEE**

**2.1** With reference to the Show Cause Notice (SCN), the importer, M/s Abil Chempharma Pvt Ltd made following written submissions vide their letter dated 05.01.2026. They had submitted their reply as follows:

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## **2.2 Voluntary payment of differential duty and interest**

During the investigation, they had voluntarily accepted the department's observation that "Ethambutol Hydrochloride" should be classified under CTH 29051410 instead of CTH 29419090. They wish to highlight that they had already deposited the entire differential duty and applicable interest well before the issuance of the SCN.

## **2.3 The payments were made via the following challans:**

- (i) Challan dated 27.06.2024: Paid Rs. 88,43,143/- (Differential Duty: Rs. 77,13,469/- and Interest: Rs. 11,29,674/-).
- (ii) Challan dated 01.07.2024: Paid Rs. 82,380/- (Differential Duty: Rs. 60,190/- and Interest: Rs. 22,188/-).

## **2.4 Lack of intent to evade (No Mens Rea)**

They clarified that the classification under CTH 29419090 was based on the technical details and invoices provided by their supplier, M/s Linaria Chemicals (Thailand) Ltd. They relied on their documentation in good faith and did not have any intention to misclassify the goods or evade duty. As a law-abiding importer, they had immediately complied with the department's findings and settled the dues once the issue was brought to their attention.

## **2.5 Non-applicability of penalty**

The SCN proposes penalties under Sections 112(a), 114A and 114AA of the Customs Act, 1962. They humbly submitted that they are not liable for penalty since the differential duty and interest were paid voluntarily and prior to the issuance of the SCN. They stated that this act of voluntary payment and cooperation during the investigation demonstrates their commitment to compliance, and they requested that the proceedings be closed without further penal action.

## **2.6 In view of the above, they had requested the following:**

- (i) Accept the re-classification of the goods under CTH 29051410.
- (ii) Formally appropriate the duty and interest already paid towards the final demand.
- (iii) Drop the proposal for penalties under Sections 112, 114A, and 114AA, and close the file.

They requested to kindly grant them the benefit of early settlement and oblige.

## **3. RECORDS OF PERSONAL HEARING**

Shri Sanket Jatin Gandhi, Director of M/s Abil Chempharma Pvt Ltd as well as the authorized representative on behalf of the Noticee i.e. M/s Abil Chempharma Pvt Ltd, appeared for Personal Hearing in person before the Adjudicating Authority and Principal Commissioner of Customs, NS-I, JNCH on 05.01.2026 and made the following oral submissions during the course of the personal hearing:

### **3.1 Reply - Submission already filed:**

They have already submitted reply of SCN vide their letter dated 05.01.2026 and they requested to take the same on record as part of official response.

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**3.2** Duty and Interest already paid.

They have already paid the difference of duty with applicable interest and submitted challan copy, before the issue of SCN.

**3.3** Request to close the file

As the applicable duty and interest were already paid in full well before the issuance of notice, they requested not to take any penal action and close the file.

**3.4** Cargo nature

As the cargo is a pharmaceutical and used in government tender as life-saving drug, the manufacturer has mistakenly mention a wrong HSN code thus there was a dispute in classification.

Importer has agreed to the department's classification and has paid duty and interest on the same subsequently.

#### **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** I find that in terms of the principle of natural justice, opportunity for PH was granted to the Noticee i.e. M/s Abil Chempharma Pvt Ltd on 05.01.2026. The said personal hearing was attended by Shri Sanket Jatin Gandhi, Director of M/s Abil Chempharma Pvt Ltd on behalf of the Noticee, M/s Abil Chempharma Pvt Ltd. I note that the adjudicating authority has to take the views/objections of the noticee(s) on board and consider before passing the order. In the instant case, as per Section 28(9) of the Customs Act, 1962 the last date to adjudicate the matter is 03.02.2026. Accordingly, I am bound to decide the matter on the basis of the submissions made by the noticee and the documents on record. Therefore, the case was taken up by me for adjudication proceedings within the time limit.

**4.3** I find that in compliance to the provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) was 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.

**4.4** It is alleged in the SCN that the importer, M/s Abil Chempharma Pvt Ltd (IEC – 0304045314) imported the subject goods vide 12 Bills of Entry at Nhava Sheva Sea Port (INNSA1) during the period between 17.01.2022 to 08.03.2024 (for BE No. 7105066 dt 17.01.2022 and other 11 Bs/E as mentioned in Annexure-A to the SCN) by misclassifying them under CTH 29419090. On scrutiny of the bills of entry it was found that the goods were **“Ethambutol Hydrochloride”** and the importer had **misdeclared classification of the respective goods under CTH 29419090 and paid NIL BCD under the benefit of Sr. No. 341(I) of Notification No. 46/2011 dated 01.06.2011 (as amended)** whereas **the subject goods are appropriately classifiable under CTH 29051410 (for BsE as detailed at Annexure-A to SCN and for B/E No. 7105066 dt 17.01.2022) which attract BCD@5%,**

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**SWS@0.05% and IGST@18% (availing exemption under Sr. No. 255(I) of Notification No. 46/2011 dt 01.06.2011(as amended)) and wherein the benefit of NIL BCD under Sr. No. 341(I) of Notification No. 46/2011 dated 01.06.2011 (as amended) is not available for the CTH 29051410.** Further, the SCN proposed that duty so short paid, is liable to be demanded from the importer along with applicable interest. Further, the SCN also proposed confiscation of impugned goods and imposition of penalties on the noticee of the SCN.

**4.5** Further, the statement of the noticee was recorded under Section 108 of the Customs Act, 1962, wherein the noticee admitted having classified Ethambutol Hydrochloride under CTH 29419090 and agreed with the department's observation that the correct classification of the imported goods falls under CTH 29051410 and the same was reiterated by the noticee in their oral submissions during the course of Personal Hearing as well as in their written submissions. The Noticee had voluntarily paid the differential duty along with applicable interest during investigation and prior to the issuance of the Show Cause Notice. The payments made by the importer have been duly verified and are reflected in the challans placed on record. However, voluntary payment of duty and interest prior to the issuance of SCN, though relevant for consideration, does not efface the act of mis-classification, if committed at the time of filing the Bills of Entry and subsequently brought out in the light of investigation. Also, the onus to declare correct classification squarely rests upon the importer after the introduction of self-assessment under Section 17 of the Customs Act. These factors, however, are considered at the stage of determination of penalty.

**4.6** On careful perusal of the Show Cause Notice and case records, I find that following main issues are involved in this case which are required to be decided:

**(A) Whether or not the goods "Ethambutol Hydrochloride" imported by M/s Abil Chempharma Pvt Ltd, which were classified by the importer under CTH 29419090 should be reclassified under CTH 29051410 denying the duty exemption benefit under Sr. No. 341(I) of Notification No. 46/2011 dt 01.06.2011(as amended).**

**(B) Whether or not the differential duty amounting to Rs. 77,13,469/- (as detailed in Annexure-A to the SCN) and Rs. 60,190/- (for B/E No. 7105066 dt 17.01.2022) should be demanded from M/s Abil Chempharma Pvt Ltd under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.**

**(C) Whether or not the imported goods having total declared assessable value of Rs. 11,88,51,605/- in respect of 11 Bs/E as mentioned in Annexure-A to the SCN and Rs. 9,27,420/- in respect of B/E No. 7105066 dated 17.01.2022 are liable for confiscation under Section 111(m) of the Customs Act, 1962, even though the goods are no longer available for confiscation.**

**(D) Whether or not penalties under Section 112, 114A and 114AA of the Customs Act, 1962 should be imposed on the importer, M/s Abil Chempharma Pvt Ltd.**

**4.7** 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, provisions of the Customs Act, 1962,

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nuances of various judicial pronouncements as well as Noticee's oral and written submissions and documents/evidences available on record.

**(A) Whether or not the goods "Ethambutol Hydrochloride" imported by M/s Abil Chempharma Pvt Ltd, which were classified by the importer under CTH 29419090 should be reclassified under CTH 29051410 denying the duty exemption benefit under Sr. No. 341(I) of Notification No. 46/2011 dt 01.06.2011(as amended).**

**4.8** I find that the importer had classified the goods "**Ethambutol Hydrochloride**" under CTH 29419090 in the various Bills of Entry as detailed in Annexure-A to the notice and in B/E No. **7105066 dt 17.01.2022**. However, the Show Cause Notice proposes reclassification of the said "**Ethambutol Hydrochloride**" under CTH 29051410. Therefore, the foremost issue before me to decide in this case is as to whether the goods "**Ethambutol Hydrochloride**" imported by the noticee vide the Bills of Entry listed at Annexure-A to the SCN and vide B/E No. **7105066 dt 17.01.2022** are correctly classifiable under CTH 29419090 as claimed by the importer, or under CTH 29051410 as proposed in the Show Cause Notice.

**4.9** I note that the goods should be classified under respective chapter headings duly following the General Rules of Interpretation keeping in mind the material condition and basic details of the goods. Relevant extract of General Rules of Interpretation (GRI) provides as follows:

*"General Rules for the interpretation of this schedule*

*Classification of goods in this Schedule shall be governed by the following principles:*

*1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*

*2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

*(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.*

*3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

*(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite*

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*goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*

*(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.*

*(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”*

**4.9.1** I find that the classification of goods under Customs Tariff is governed by the principles as set out in the General Rules for the Interpretation of Import Tariff. As per General Rules for the Interpretation of the Harmonised System, classification of the goods in the nomenclature shall be governed **by Rule 1 to Rule 6** of General Rules for Interpretation of Harmonised System. Rule 1 of General Rules for Interpretation is very important Rule of interpretation for classification of goods under the Customs Tariff which provides that classification shall be determined according to the terms of headings and any relative Section or Chapter Notes. It stresses that relevant Section/Chapter Notes have to be considered along with the terms of headings while deciding classification. **It is not possible to classify an item only in terms of heading itself without considering relevant Section or Chapter Notes.**

**4.9.2** In this connection, I rely upon the judgment passed by the Hon'ble Supreme Court in case of OK Play (India) Ltd. Vs. CCE, Delhi-III, Gurgaon [2005 (180) ELT-300 (SC)] wherein it was held that for determination of classification of goods, three main parameters are to be taken into account; first HSN along with Explanatory notes, second equal importance to be given to Rules of Interpretation of the tariff and third Functional utility, design, shape and predominant usage. These aids and assistance are more important than names used in trade or in common parlance.

**4.9.3** I also put reliance upon the judgement of the Hon'ble Tribunal in case of Pandi Devi Oil Industry Vs. Commissioner of Customs, Trichy [2016 (334) ELT-566 (Tri-Chennai)] wherein it was held that it is settled law that for classification of any imported goods, the principles and guidelines laid out in General Interpretative Rules for classification should be followed and the description given in chapter sub-heading and chapter notes, section notes should be the criteria.

**4.9.4** In view of the above, I proceed to decide the classification of the impugned goods by referring to the Custom Tariff and chapter and Heading notes etc.

**4.9.5** The relevant excerpts of the Custom Tariff Act, 1975 for CTH 2941 are reproduced below for ready reference:

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<b>2941</b>		<b>ANTIBIOTICS</b>			
2941 10	-	<i>Penicillins and their derivative with a penicillanic acid structure; salts thereof :</i>			
2941 10 10	---	Penicillins and its salts ( e.g. procaine penicillin, penicillin G-potassium)	kg.	**7.5%	10%
2941 10 20	---	Ampicilline and its salts	kg.	**7.5%	10%
2941 10 30	---	Amoxycilline and its salts	kg.	**7.5%	10%
2941 10 40	---	Cioxacilline and its salts	kg.	**7.5%	10%
2941 10 50	---	6-APA	kg.	**7.5%	10%
2941 10 90	---	Other	kg.	**7.5%	10%
2941 20	---	<i>Streptomycins and their derivatives; salts thereof :</i>			
2941 20 10	---	Streptomycin	kg.	**7.5%	10%
2941 20 90	---	Other	kg.	**7.5%	10%
2941 30	-	<i>Tetracyclines and their derivatives, salts thereof :</i>			
2941 30 10	---	Doxycycline and its salts	kg.	**7.5%	10%
2941 30 20	---	Tetracycline/oxytetra-cycline and their salts	kg.	**7.5%	10%
2941 30 90	---	Other	kg.	**7.5%	10%
2941 40 00	-	Chloramphenicol and its derivatives; salts thereof			
2941 50 00	-	Erythromycin and its derivatives; salts thereof			
2941 90	-	<i>Other :</i>			
	---	<i>Rifampicin and its salts :</i>			
2941 90 11	----	Rifampicin	kg.	**7.5%	10%
2941 90 12	----	3 Formyl Rifa S V(Rifa int)	kg.	**7.5%	10%
2941 90 13	----	Rifa S or Rifa S Sodium (Rifaint)	kg.	**7.5%	10%
2941 90 14	----	1-Amino-4-Methyl piperazine (Rifaint)	kg.	**7.5%	10%
2941 90 19	----	Other	kg.	**7.5%	10%
2941 90 20	---	Cephalexin and its salts	kg.	**7.5%	10%
2941 90 30	---	Ciprofloxacin and its salts	kg.	**7.5%	10%
2941 90 40	---	Gentamycin and its salts	kg.	**7.5%	10%
2941 90 50	---	Neomycin	kg.	**7.5%	10%
2941 90 60	---	Norfloxacin and its salts	kg.	**7.5%	10%
2941 90 90	---	Other	kg.	**7.5%	10%

**4.9.6** Relevant portion of HSN Explanatory notes of CTH 2941 is reproduced hereunder:

*“This heading does not cover :*

*(a) Antibiotic preparations of a kind used in animal feeding (e.g. dried and standardised complete*

*mycelium) (heading 23.09).*

*(b) Chemically defined organic compounds with a very low antibiotic activity used as intermediates in the manufacture of antibiotics (earlier headings of this Chapter according to structure).*

*(c) Quinolinecarboxylic acid derivatives, nitrofurans, sulphonamides and other chemically defined organic compounds of earlier headings of this Chapter having antibacterial action.*

*(d) Deliberate intermixtures of antibiotics (e.g., a mixture of penicillin and streptomycin) for therapeutic*

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or prophylactic uses (beading 30.03 or 30.04).

(e) Intermediate products obtained during the manufacture of antibiotics by filtering and first-stage

extraction, with an antibiotic content generally not exceeding 70 % (beading 38.24).”

**4.9.7** The relevant excerpts of the Custom Tariff Act, 1975 for CTH 2905 are reproduced below for ready reference:

<b>II. — ALCOHOLS AND THEIR HALOGENATED, SULPHONATED, NITRATED OR NITROSATED DERIVATIVES</b>				
<b>2905</b>	<b>ACYCLIC ALCOHOLS AND THEIR HALOGENATED, SULPHONATED, NITRATED OR NITROSATED DERIVATIVES</b>			
	- Saturated monohydric alcohols :			
2905 11 00	-- Methanol (methyl alcohol)	kg.	**2.5%	-
2905 12	-- Propan-1-ol (propyl alcohol) and propan-2-ol (isopropyl alcohol) :			
2905 12 10	--- Propyl alcohol	kg.	**7.5%	-
2905 12 20	--- Isopropyl alcohol	kg.	**7.5%	-
2905 13 00	-- Butan-1-ol (n-butyl alcohol)	kg.	**7.5%	-
2905 14	-- Other butanols :			
2905 14 10	--- Ethambutol, ethambutol Hcl	kg.	**7.5%	-
2905 14 20	--- Salbutamol sulphate	kg.	**7.5%	-
2905 14 30	--- Amino butanol	kg.	**7.5%	-
2905 14 90	--- Other	kg.	**7.5%	-

**4.10** It is a well-established principle of tariff classification that the Section Notes, Chapter Notes and the HSN Explanatory Notes constitute the statutory framework within which classification must be determined. These Notes are not mere interpretative aids but have binding relevance, and any competing claim of classification must be examined strictly in light of these statutory provisions.

**4.11** I have carefully examined the records of the case, including the Bills of Entry filed by the noticee, the product description declared at the time of import, the tariff classification claimed, and the proposal made in the Show Cause Notice. The dispute in the present proceedings is confined to the correct classification of the imported goods described as “Ethambutol Hydrochloride”. While the noticee has declared the goods under CTH 29419090, the department has proposed classification under CTH 29051410. Since classification determines the applicable rate of duty and exemption, the issue requires detailed examination in the light of the Customs Tariff and the Harmonised System.

**4.12** The noticee has classified the impugned goods under Heading 2941 of the Customs Tariff, which covers antibiotics. In order to assess the correctness of this declaration, it is necessary to examine the scope of Heading 2941 as laid down in the tariff itself and as clarified by the Harmonised System of Nomenclature. The classification under Heading 2941 cannot be assumed merely on the basis of medicinal or antibacterial use; rather, it must be tested against the specific coverage of that heading. Now, I proceed to analyze the merits of

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classification of the imported goods i.e. Ethambutol Hydrochloride to decide on the issue of classification:

### **ETHAMBUTOL HYDROCHLORIDE**

**4.13** Ethambutol Hydrochloride, as evident from the technical literature, product specifications and material placed on record, is a chemically defined organic compound with a specific molecular structure. It is a synthetic compound and it does not fall within any of the antibiotic groups specifically enumerated under Heading 2941.

**4.14** Heading 2941 is a specialised heading which covers certain well-defined categories of antibiotics, such as penicillins, streptomycins, tetracyclines, rifamycins and similar products. These substances are recognised antibiotic classes, generally characterised by their chemical nature and method of production. The heading is not intended to cover every pharmaceutical substance or every compound having antibacterial properties.

**4.15** The HSN Explanatory Notes to Heading 2941 further clarify the intended scope of this heading. **Section Note(c) of Explanatory Notes of CTH 2941 clearly states that Heading 2941 does not include “other chemically defined organic compounds having antibacterial action”**. This exclusion is crucial, as it makes it clear that antibacterial activity or therapeutic relevance alone is not sufficient to bring a product within Heading 2941 if it is otherwise a chemically defined organic compound classifiable elsewhere.

**4.16** It is not in dispute that Ethambutol Hydrochloride is used in the treatment of tuberculosis and forms part of anti-tubercular drug regimens. However, under the Customs Tariff, classification is not determined solely by end-use or therapeutic application. The tariff, particularly Chapter 29, primarily classifies goods based on their chemical identity, structure and composition, unless the heading itself provides otherwise.

**4.17** I find that Heading 2905 of the Customs Tariff covers acyclic alcohols and their derivatives. More importantly, sub-heading **29051410 specifically and expressly mentions “Ethambutol, Ethambutol Hydrochloride”**. The inclusion of the product by name in the tariff leaves no ambiguity regarding its classification and reflects a clear legislative intent.

**4.18** When the tariff itself provides a specific entry for a product, classification under any other heading is not permissible. The residual sub-heading 29419090 under Heading 2941 is meant to cover antibiotics not elsewhere specified. Such a residual entry can be resorted to only when the product is not covered by a specific entry in any other chapter or heading.

**4.19** It is a well-established principle of tariff interpretation that a specific entry must prevail over a general or residual entry. Applying this settled principle, Ethambutol Hydrochloride, which is specifically covered under CTH 29051410, cannot be classified under Heading 2941 merely because it has antibacterial or pharmaceutical use.

**4.20** I find that the importer appears to have placed reliance on the antibacterial properties of Ethambutol Hydrochloride at the time of filing the bills of entry to justify classification under Heading 2941, which I consider to be misplaced. Although Ethambutol Hydrochloride is used

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in the treatment of tuberculosis and possesses antibacterial properties, its therapeutic use does not override its chemical identity for the purposes of tariff classification. As per Rule 1 of the General Rules for Interpretation, classification must be determined according to the terms of the headings and the relevant Chapter Notes. Functional or therapeutic use becomes relevant only when the tariff expressly so provides.

**4.21** Chapter 29 of the Customs Tariff covers chemically defined organic compounds, irrespective of whether or not they possess medicinal or pharmaceutical properties. Such compounds remain classifiable under Chapter 29 unless they are expressly excluded or are put up in a form that attracts classification under another chapter, which is not the case here.

**4.22** Once it is established that Ethambutol Hydrochloride is a chemically defined organic compound and that it is specifically provided for under Heading 2905, its classification under Heading 2941 stands excluded by operation of the tariff structure itself, read with the HSN Explanatory Notes.

**4.23** The classification adopted by the noticee under CTH 29419090, which is a residual entry for "Other Antibiotics", is therefore not supported by the tariff, the structure of Chapter 29 or the HSN Explanatory Notes. Resorting to a residual entry in the presence of a specific entry is contrary to the principles governing tariff classification.

**4.24** The Customs Tariff does not permit classification of goods under a residual heading when the goods are clearly and specifically covered elsewhere. Accepting such a classification would defeat the scheme of the tariff and render specific entries redundant, which is not permissible.

**4.25** In view of the foregoing analysis of the tariff headings, the HSN Explanatory Notes and the chemical nature of the product, I find that Ethambutol Hydrochloride does not satisfy the requirements for classification under Heading 2941.

**4.26** On the contrary, the product is clearly and unambiguously covered under Heading 2905 and more specifically under **CTH 29051410**, as proposed in the Show Cause Notice, which expressly provides for the product "Ethambutol and Ethambutol Hydrochloride".

**4.27** Accordingly, the classification declared by the noticee under CTH 29419090 is held to be incorrect and not in accordance with the Customs Tariff Act, 1975 and the rules framed thereunder. I therefore hold that the imported product "*Ethambutol Hydrochloride*" is correctly classifiable under **CTH 29051410** and not under **CTH 29419090**, as declared by the noticee at the time of import.

**(B) Whether or not the differential duty amounting to Rs. 77,13,469/- (as detailed in Annexure-A to the SCN) and Rs. 60,190/- (for B/E No. 7105066 dt 17.01.2022), should be demanded from M/s Abil Chempharma Pvt Ltd under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.**

**4.28** After having determined the correct classification of the subject goods, it is imperative to determine whether the demand of differential Customs duty as per the

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provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. The relevant legal provision is as under:

***SECTION 28(4) of the Customs Act, 1962.***

***Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. –***

*(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 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.*

**4.29** I find that the importer had evaded correct Customs duty by intentionally suppressing the correct classification of the imported product by not declaring the same at the time of filing of the Bills of Entry. Further, despite knowing that the imported goods were rightly classifiable under CTH 29051410 they wilfully misclassified the goods under wrong CTH 29419090 and claimed ineligible benefit under Sr. No. 341(I) of Notification No. 46/2011 dt 01.06.2011(as amended). By resorting to this deliberate suppression of facts and wilful mis-statement, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. *Thus, this wilful and deliberate act was done with the fraudulent intention to claim ineligible lower rate of duty and notification benefit.*

**4.30** Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. *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 notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry.* Thus, with the introduction of self-assessment by amendments to Section 17, it is the 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. In the instant case, as explained in paras supra, the importer has wilfully mis-classified the impugned goods and claimed ineligible notification benefit, thereby evading payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit to the importer. Since the importer has wilfully mis-classified and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invocable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

**4.31** In view of the foregoing, I find that, due to deliberate/wilful misclassification of goods, duty demand against the Noticee has been correctly proposed under Section 28(4) of

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the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

- (a) 2013(294) E.L.T.222(Tri.-LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos. M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/3412-3415/2004 and E/635- 636/2008]

*In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified.*

- (b) 2013(290) E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I; Tax Appeal No. 132 of 2011, decided on 27.01.2012.

*Demand - Limitation - Fraud, collusion, wilful misstatement, etc. - Extended period can be invoked up to five years anterior to date of service of notice - Assessee's plea that in such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, wilful misstatement, etc., rejected as it would lead to strange and anomalous results;*

- (c) 2005 (191) E.L.T. 1051 (Tri. - Mumbai): Winner Systems Versus Commissioner of Central Excise & Customs, Pune: Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19-7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum.

*Demand - Limitation - Blind belief cannot be a substitute for bona fide belief - Section 11A of Central Excise Act, 1944. [para 5]*

- (d) 2006 (198) E.L.T. 275 - Interscape v. CCE, Mumbai-I.

*It has been held by the Tribunal that a bona fide belief is not blind belief. A belief can be said to be bona fide only when it is formed after all the reasonable considerations are taken into account;*

**4.32** Accordingly, the differential duty resulting from reclassification of the said imported goods under CTH 29051410, imposing of higher rate of duty as per the Customs Tariff and denial of Notification benefit, as proposed in the subject Show Cause Notice, is recoverable from M/s Abil Chempharma Pvt Ltd under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

**4.33** As per Section 28AA of the Customs Act, 1962, 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) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions it is evident that regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest

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liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of Pratibha Processors Vs UOI [1996 (88) ELT 12 (SC)].

**4.34** I have already held in the above paras that the differential duty amount of Rs. 77,13,469/- and Rs. 60,190/- (Rupees Seventy Seven Lakhs Thirteen Thousand Four Hundred and Sixty Nine Only and Rupees Sixty Thousand One Hundred and Ninety Only) should be demanded and recovered from M/s Abil Chempharma Pvt Ltd under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential duty is also liable to be recovered from M/s Abil Chempharma Pvt Ltd.

**4.35** In view of the above, I find that the importer had imported the impugned goods vide 11 Bills of Entry (as detailed in Annexure-A to the SCN) and vide 01 Bill of Entry No. 7105066 dated 17.01.2022 as mentioned above, by misclassification under CTH 29419090 while these goods were appropriately classifiable under CTH 29051410 and the importer has availed duty exemption by claiming benefit under Sr. No. 341(I) of Notification No. 46/2011 dt 01.06.2011(as amended). Therefore, the importer, M/s Abil Chempharma Pvt Ltd is liable to pay the differential duty amount of Rs. 77,13,469/- and Rs. 60,190/- (Rupees Seventy Seven Lakhs Thirteen Thousand Four Hundred and Sixty Nine Only and Rupees Sixty Thousand One Hundred and Ninety Only), under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period along with the applicable interest under Section 28AA of the Customs Act, 1962. However, as stated in Para 4.5 of this Order, the importer has voluntarily paid the entire differential duty of Rs. 77,73,659/- [77,13,469/-+60,190/-] along with applicable interest during the course of investigation, much before issuance of the Show Cause Notice. Therefore, I hold that the said amount of Rs. 77,73,659/- along with the applicable interest already paid by the importer is required to be appropriated against the demand of differential duty along with applicable interest thereon.

**(C) Whether or not the imported goods having total declared assessable value of Rs. 11,88,51,605/- in respect of 11 Bs/E as mentioned in Annexure-A to the SCN and Rs. 9,27,420/- in respect of B/E No. 7105066 dated 17.01.2022 are liable for confiscation under Section 111(m) of the Customs Act, 1962, even though the goods are no longer available for confiscation.**

**4.36** I find that the importer, M/s Abil Chempharma Pvt Ltd 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 Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 in all their import declarations. Thus, under the scheme of self-assessment, it is the importer who has to doubly 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 when presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8<sup>th</sup> 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.

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**4.37** 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 read with Section 2(2) of the Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the Noticee to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from 29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that the importer, M/s Abil Chempharma Pvt Ltd has deliberately failed to discharge this statutory responsibility cast upon them.

**4.38** Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer 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. 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. *However, in the subject case, the importer while filing the bills of entry has resorted to deliberate suppression of facts and wilful misclassification of goods under CTH 29051410 whereas the imported goods were correctly classifiable under CTH 29419090.* Further, the above said misclassification was done with the sole intention to fraudulently avail/claim the Country Of Origin benefit through ineligible duty exemption notifications. Thus, the importer has failed to correctly classify, assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption.

**4.39** I find that the importer had misclassified the imported goods under CTH 29051410 and claimed ineligible exemption notification. As already elucidated in the foregoing paragraphs, the impugned imported goods were not correctly classifiable under the CTH 29419090. Therefore, it is apparent that the importer has not made the true and correct disclosure with regard to the actual classification of goods in respective Bills of Entry leading to suppression of facts. From the above discussions and findings, I find that the importer has done deliberate suppression of facts and wilful misclassification of the goods and has submitted misleading declaration under Section 46(4) of the Customs Act, 1962 with an intent to misclassify them knowing fairly well that the goods imported by them were classifiable under CTH 29051410. Due to this deliberate suppression of facts and wilful misclassification, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer.

**4.40** I find that the SCN proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962. Provisions of these Sections of the Act, are re-produced herein below:

*“SECTION 111. Confiscation of improperly imported goods, etc. — 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 or in the case of baggage with the declaration made under section 77 3 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];*

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*[(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.]*

**4.40.1** I find that Section 111(m) provides for confiscation of goods in cases where any goods do not correspond in respect of value or any other particular with the entry made under the Customs Act, 1962. I have already held in foregoing paras that the impugned goods imported by M/s Abil Chempharma Pvt Ltd were correctly classifiable under the CTH 29051410. The importer was very well aware of this correct CTH of the imported goods. However, they deliberately suppressed this correct CTH and instead misclassified the impugned goods under CTH 29419090 in the Bills of Entry. Further, the importer wrongly availed benefit under Sr. No. 341(I) of Notification No. 46/2011 dt 01.06.2011(as amended). As discussed in foregoing paras, it is evident that the importer deliberately suppressed the correct CTH and wilfully misclassified the imported goods and claimed ineligible notification benefit, resulting in short levy of duty. *This wilful misclassification and claim of ineligible notification benefit resorted by the importer, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962.*

**4.41** As the importer, through wilful misclassification and suppression of facts, had wrongly classified the goods under CTH 29419090 and claimed ineligible notification benefit while filing Bill of Entry with an intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) is justified & sustainable in law. *However, I find that the goods imported vide Bills of Entry as detailed in Annexure-A to the SCN and vide Bill of Entry No. 7105066 dt 17.01.2022 are not available for confiscation.* In this regard, I find that the confiscability of goods and imposition of redemption fine are governed by the provisions of law i.e. Section 111 and 125 of the Customs Act, 1962, respectively, regardless of the availability of goods at the time of the detection of the offence. 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 regularised, 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 authorised by this Act ....”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 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 from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any*

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*significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."*

**4.41.1** 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.).

**4.41.2** I also find that the decision 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.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

**4.41.3** I find that the decision 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.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

**4.41.4** I find that the declaration under Section 46(4) of the Customs Act, 1962 made by the importer at the time of filing Bills of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/Bond are liable for confiscation under Section 111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962. A few such cases are detailed below:

- a. M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);
- b. M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);
- c. M/s SacchaSaudhaPedhi Vs. Commissioner of Customs (Import), Mumbai reported in 2015 (328) ELT 609 (Tri-Mumbai);
- d. M/s Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai reported in 2017(335) ELT (193) (Bom)
- e. M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

“if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962, then the mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine.”

- f. Commissioner of Customs, Chennai Vs. M/s Madras Petrochem Ltd. as reported in 2020 (372) E.L.T. 652 (Mad.) wherein it has been held as under:

“We find from the aforesaid observation of the Learned Tribunal as quoted above that the Learned Tribunal has erred in holding that the cited case of the Hon'ble Supreme Court in the case of Weston Components, referred to above is distinguishable. This observation written by hand by the Learned Members of the

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*Tribunal, bearing their initials, appears to be made without giving any reasons and details. The said observation of the Learned Tribunal, with great respect, is in conflict with the observation of the Hon'ble Supreme Court in the case of Weston Components."*

**4.41.5** In view of above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the goods become liable for confiscation.

**4.42** Once the imported goods are held liable for confiscation under Section 111(m) of the Customs Act, 1962, they cannot have differential treatment in regard to imposition of redemption fine, merely because they are not available, as the fraud could not be detected at the time of clearance. *In view of the above, I hold that the present case also merits the imposition of a Redemption Fine, having held that the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962*

**4.42.1** However, it is noted that the importer has voluntarily paid the entire differential duty of Rs. 77,73,659/- along with applicable interest during the course of investigation, much before issuance of the Show Cause Notice. This conduct reflects cooperation on the part of the importer and mitigates the gravity of the contravention. Taking into account the nature of the lapse involved, the voluntary compliance demonstrated by the importer and the absence of any aggravating circumstances, I consider it appropriate to take a lenient view in the matter. Accordingly, while holding the goods liable for confiscation, I allow redemption of the same on payment of a nominal redemption fine, which I consider reasonable and commensurate with the facts and circumstances of the case.

**(D) Whether or not penalties under Section 112(a) and/or 114A and 114AA of the Customs Act, 1962 should be imposed on the importer, M/s Abil Chempharma Pvt Ltd.**

**4.43** The Show Cause Notice has proposed imposition of penalties on the importer, M/s Abil Chempharma India Pvt Ltd under the provisions of Section 112(a) and/or 114A and 114AA of the Customs Act, 1962.

The said sections are reproduced as under: -

***SECTION 112. Penalty for improper importation of goods, etc.* — Any person, -**

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

***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:*

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*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.**

**SECTION 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.*

**4.44** In the instant case, having carefully considered all the submissions filed by the Noticee, M/s Abil Chempharma Private Limited, along with the documents placed on record, it is evident that the noticee has not disputed the classification proposed in the Show Cause Notice and has accepted that *Ethambutol Hydrochloride* is correctly classifiable under CTH 29051410 and the noticee submitted that they had voluntarily paid the entire differential duty along with applicable interest during investigation and prior to issuance of the Show Cause Notice and therefore requested for closure of proceedings under Section 28(2) of Customs Act, 1962 without imposition of penalty. The factual position regarding payment of applicable duty and interest before issuance of the SCN is not in dispute. However, voluntary payment of duty and interest, though a relevant mitigating factor, does not by itself extinguish liability arising from past acts of mis-declaration, especially when proceedings have been initiated under Section 28(4) of the Customs Act, 1962 based on allegations of wilful mis-statement. The noticee has further contended that the misclassification occurred due to reliance on technical documents and invoices provided by the overseas supplier and that there was no intention to evade duty. This argument is not acceptable in view of the statutory scheme of self-assessment under Section 17 of the Customs Act, wherein the onus to correctly declare classification rests squarely on the importer. The product *Ethambutol Hydrochloride* is a specialised pharmaceutical bulk drug having a specific and unambiguous tariff entry under CTH 29051410. An importer engaged in the pharmaceutical trade is expected to possess adequate knowledge of tariff classification of such goods, particularly when the tariff itself expressly names the product. The plea of bona fide belief based on supplier documentation cannot absolve the importer of responsibility, as classification under the Customs Tariff is a legal determination and not dependent upon commercial invoices or supplier descriptions. The fact that the noticee declared the goods under CTH 29419090, a residual entry under “Other Antibiotics”, despite the existence of a specific entry elsewhere in the tariff, indicates a clear departure from due diligence expected under self-assessment. The noticee has further argued that since duty and interest were paid prior to issuance of the SCN, penalties under Sections 112(a), 114A and 114AA should not be imposed. This submission

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overlooks the statutory provisions governing such penalties. Section 114A specifically provides for penalty in cases where duty has been short-levied by reason of wilful mis-statement or suppression of facts. The payment of duty prior to issuance of the SCN does not automatically nullify applicability of this provision, though it may be relevant for determination of quantum. Similarly, liability under Section 112(a) arises from acts or omissions rendering the goods liable to confiscation under Section 111(m). In the present case, mis-declaration of classification has rendered the goods liable to confiscation, thereby attracting penal consequences. As regards Section 114AA, the noticee has consistently used incorrect classification in Bills of Entry, which constitutes use of incorrect declarations in the transaction of customs business. The applicability of this section flows from the factual matrix and is not negated merely by subsequent payment of duty along with applicable interest. That said, I also take note of the noticee's cooperation during investigation, their admission of correct classification during statement recorded under Section 108, and their prompt payment of duty and interest without contesting the demand. These factors are relevant for considering the request for leniency and are taken into account while determining the penal consequences, but they do not warrant complete dropping of proceedings initiated under law. The request for outright closure of proceedings is therefore not acceptable, as the contravention had already occurred and the Show Cause Notice was validly issued invoking extended period. Accordingly, while the re-classification under CTH 29051410 is accepted and the duty and interest already paid are liable to be appropriated, the noticee's plea for total waiver of penal provisions cannot be accepted in toto. The written submissions, to the extent they seek acceptance of classification and appropriation of duty and interest, are found to be acceptable; however, the submissions seeking complete immunity from penal action are not sustainable in law.

**4.45** In view of the para discussed above, I now find that the importer had misclassified the imported goods with malafide intent, despite being fully aware of its correct classification. I have already elaborated in the foregoing paras that the importer has wilfully suppressed the facts with regard to correct classification of the goods and deliberately misclassified the goods with an intent to evade the applicable BCD. 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, the wilful misclassification and suppression of correct CTH of the imported goods by the importer tantamount to suppression of material facts and wilful mis-statement. Thus, wilfully misclassifying the goods amply points towards the "mens rea" of the Noticee to evade the payment of legitimate duty. The wilful and deliberate acts of the Noticee to evade payment of legitimate duty, clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established, the extended period of limitation, as well as confiscation and penal provision will automatically get attracted.

**4.46** It is a settled law that fraud and justice never dwell together (Frauset Jus nunquam cohabitant). Lord Denning had observed that "no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything". There are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon'ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at paras 31 and 32 held as follows:

*"31. 'Fraud' as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other*

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*person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors. [2003 (8) SCC 319].*

32. *“Fraud” and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in Samsung Electronics India Ltd. Vs Commissioner of Customs, New Delhi reported in 2014(307) ELT 160(Tri. Del). In Samsung case, Hon’ble Tribunal held as under.*

*“If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.) it has been held that by “fraud” is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. “Fraud” involves two elements, deceit and injury to the deceived.*

*Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly, a “fraud” is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another’s loss. It is a cheating intended to get an advantage. (Ref: S.P. Changalvaraya Naidu v. Jagannath [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :RoshanDeenv. PreetiLal [(2002) 1 SCC 100], Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311], Ram Chandra Singh’s case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another [(2004) 3 SCC 1].*

*Suppression of a material fact would also amount to a fraud on the court [(Ref: Gowrishankarv. Joshi Amha Shankar Family Trust, (1996) 3 SCC 310 and S.P. Chengalvaraya Naidu’s case (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud*

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*vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: UOI v. Jain Shudh Vanaspati Ltd. - 1996 (86) [E.L.T.](#) 460 (S.C.) and in Delhi Development Authority v. Skipper Construction Company (P) Ltd. - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non est. So also, no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of Chengalvaraya Naidu reported in (1994) 1 SCC I: AIR 1994 SC 853. Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education (2003) 8 SCC 311.*

*A person whose case is based on falsehood has no right to seek relief in equity [Ref: S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: Commissioner of Customs v. Essar Oil Ltd., (2004) 11 SCC 364 = 2004 (172) [E.L.T.](#) 433 (S.C.)].*

*When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of K.I. Pavunnyv.AC, Cochin - 1997 (90) [E.L.T.](#) 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.*

*It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) [E.L.T.](#) 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred.”*

**4.47** I find that the instant case is not a simple case of wrong classification on bonafide belief, as claimed by the importer. From the facts of the case, it is very much evident that the importer was well aware of the correct CTH of the goods. Despite the above factual position, they deliberately suppressed the correct classification and wilfully chose to misclassify the impugned imported goods to pay lower rate of duty. This wilful and deliberate suppression of facts and misclassification clearly establishes their ‘mens rea’ in this case. Due to establishment of ‘mens rea’ on the part of importer, the case merits demand of short levied duty invoking extended period of limitation as well as confiscation of offending goods.

**4.48** Thus, I find that the extended period of limitation under Section 28(4) of the Customs Act, 1962 for the demand of duty is rightly invoked in the present case. Therefore, penalty under Section 112(a) and/or 114A is rightly proposed on the importer, M/s Abil Chempharma Pvt Ltd in the impugned SCN. However, in view of fifth proviso of Section 114 of Customs Act, 1962 penalty cannot be imposed simultaneously on the importer under Section 112 and Section 114 of Customs Act, 1962, *ibid.* Accordingly, the importer is liable for a penalty

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under Section 114A of the Customs Act, 1962 for resorting to wilful mis-statement and suppression of facts, with an intent to evade duty.

**4.49** Furthermore, I find that ingredients for penal action under Section 114AA of the Customs Act on M/s Abil Chempharma Pvt Ltd has been explained in the SCN. It is clearly stated in the SCN that the importer has been intentionally submitting documents, including the invoice, packing list and Bill of Lading to Customs authorities on a regular basis, with incorrect classification under the Customs Tariff Heading (CTH) in order to avail notification benefits and evade duty. 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 114 AA of the Customs Act, wherein it had 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.*

**4.49.1** 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)

**4.49.2** As discussed in foregoing paras, the importer, M/s Abil Chempharma Pvt Ltd as brought out in the investigation, at the time of import, furnished documents such as the Bills of Entry, import invoices, packing lists and COO Certificates with incorrect declaration of CTH with an intention to evade the applicable duty. The present issue involved relates to misclassification of the imported goods, which has been decided on the basis of interpretation of the tariff entries. It is observed that the noticee correctly declared the description of the goods as "*Ethambutol Hydrochloride*" and there is no dispute regarding the quantity or identity of the goods imported. While the incorrect classification adopted by the noticee resulted in short-payment of duty and cannot be ignored, there is no material evidence on record to establish that the noticee had knowingly or intentionally made a false declaration or used any document which was false in any material particular. The explanation furnished by the noticee is that the classification was adopted by them based on the technical details and invoices provided by their supplier, M/s Linaria Chemicals (Thailand) Ltd and they had relied on their documentation in good faith and did not have any intention to misclassify the goods or evade duty. Taking into account the nature of the contravention, the circumstances of the case and the absence of evidence of wilful or deliberate misdeclaration, I consider it appropriate to take a lenient view in respect of the quantum of penalty based on the documentation provided and submissions made by the Noticee. Accordingly, while holding

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the noticee liable for penalty under Section 114AA of the Customs Act, 1962, I impose a nominal penalty, which I consider reasonable and commensurate with the facts and circumstances of the case.

**4.49.3** In view of the above stated misclassification, the importer, M/s Abil Chempharma Pvt Ltd has evaded payment of Customs duty amounting to Rs. 77,13,469/- (for Bs/E as detailed in Annexure-A to the SCN) and Rs. 60,190/- (for B/E No. 7105066 dt 17.01.2022) and the same is to be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA *ibid*. As the importer had voluntarily deposited the said amounts in full along with applicable interest during the course of investigation and prior to the issuance of SCN, the same are liable to be appropriated against the said demand.

**4.50** As I have already held above that by their acts of omission and commission, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, making them liable for penalties under Sections 112(a) and/or 114A and 114AA of Customs Act, 1962. However, in view of fifth proviso to Section 114 of Customs Act, 1962, penalty cannot be imposed simultaneously on the importer under Section 112 and 114 of Customs Act, 1962, *ibid*. Accordingly, the importer is liable for a penalty under Section 114A of the Customs Act, 1962 for resorting to wilful mis-statement and suppression of facts, with an intent to evade duty. Further, for the reasons mentioned at para 4.49.2 above, I impose a nominal penalty on the importer under Section 114AA of Customs Act, 1962, which I consider reasonable and commensurate with the facts and circumstances of the case.

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

**ORDER**

**5.1** I reject the classification of the goods “**Ethambutol Hydrochloride**” imported vide 11 Bills of Entry (mentioned at Annexure-A to the SCN) and imported vide B/E No. 7105066 dated 17.01.2022 under CTH **29419090** and I order to reclassify and reassess these imported goods under CTH **29051410** denying the benefit of duty exemption claimed under Sr. No. 341(I) of Notification. No. 46/2011 dt 01.06.2011(as amended).

**5.2** I confirm the demand of differential Customs duty amounting to **Rs. 77,13,469/- (Rupees Seventy Seven Lakhs Thirteen Thousand Four Hundred and Sixty Nine Only)** in respect of Bills of Entry as detailed in Annexure-A to the notice, and **Rs. 60,190/- (Rupees Sixty Thousand One Hundred and Ninety Only)** in respect of B/E No. 7105066 dated 17.01.2022 under Section 28(4) of the Customs Act, 1962 along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

**5.3** I order to appropriate and adjust the amount aggregating to **Rs. 89,25,521/- (Rupees Eighty Nine Lakhs Twenty Five Thousand Five Hundred and Twenty One Only)** paid by the importer at the time of investigation vide Challan Nos. HC-250, HCM-1992 both dated 27.06.2024 and HC-01, HC-02 both dated 01.07.2024, towards the demand of differential duty along with the applicable interest thereon, as confirmed at sub-para 5.2 of this order.

**5.3** I hold the impugned goods imported vide Bills of Entry as mentioned at Annexure-A to SCN and vide B/E No. 7105066 dated 17.01.2022 having total declared assessable value of

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**Rs. 11,97,79,025/- [11,88,51,605/-+9,27,420/-] (Rupees Eleven Crores Ninety Seven Lakhs Seventy Nine Thousand and Twenty Five only)** liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I impose a redemption fine of **Rs. 24,00,000/- (Rupees Twenty Four lakhs only)** on the importer, M/s Abil Chempharma Pvt Ltd in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

**5.4** I impose a penalty of **Rs. 77,73,659/- [77,13,469/- + 60,190/-] (Rupees Seventy Seven Lakhs Seventy Three Thousand Six Hundred and Fifty Nine Only)** equal to differential duty along with the applicable interest thereon, on the importer, M/s Abil Chempharma Pvt Ltd under Section 114A of the Customs Act, 1962.

If 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 twenty-five per cent 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.

**5.5** I impose a penalty of **Rs. 24,00,000/- (Rupees Twenty Four Lakhs only)** on the importer, M/s Abil Chempharma Pvt Ltd under Section 114AA of the Customs Act, 1962.

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

(यशोधन वनगे / Yashodhan Wanage)

प्रधान आयुक्त, सीमा शुल्क/ Pr. Commissioner of Customs  
एनएस-1, जेएनसीएच / NS-I, JNCH

To,  
M/s Abil Chempharma India Pvt Ltd (IEC No. 0388164689),  
B-1701, Lotus Corporate Park,  
Off W E Highway, Goregaon (E),  
Mumbai – 400063.

**Copy to:**

1. The Asstt./Dy. Commissioner of Customs, NSPU/R & I Preventive Commissionerate, NCH
2. The AC/DC, Chief Commissioner's Office, JNCH
3. The AC/DC, Centralized Revenue Recovery Cell, JNCH
4. Superintendent(P), CHS Section, JNCH – For display on JNCH Notice Board.
5. EDI, JNCH through email for uploading the same in JNCH website
6. Office Copy