



**BHARAT
SARKAR**

भारतसरकार/ Government of India
वित्त मंत्रालय / Ministry of Finance
कार्यालय/ Office of

धानआयन सीमाश क -(एन एस-1)
Pr. Commissioner of Customs-(NS-I)
Jawaharlal Nehru Custom House (JNCH)
NhavaSheva, Tal: Uran, Dist: Raigad,
Maharashtra-400 707



INDIAN CUSTOMS

File No. CUS/APR/SCN/1564/2025-Gr (1And1A)

Date:22.10.2025

SCN No. 1190 /2025-26/Dy. Commr./GR. I&IA/NS-I/CAC/JNCH

Adj. F. No. S/10-583/2025-26/Adj/Dy Commr./ GR. I&IA/NS-I/CAC/JNCH

DIN: 20251078NW000041420E

Sub: Show Cause Notice on the basis of investigation Report in the case of determination of assessable value of goods imported by M/s Nutricia International Pvt. Ltd., Mumbai having IEC No. 0511096381 and PAN no. AAECG2698H from M/s Nutricia Australia, Pty Ltd, M/s. Danone Trading Medical BV Netherland, and M/s. Danone Trading ELN BV, Netherland, under section 14 (1) of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules 2007-reg.

Brief facts of the case

The case of imports by M/s Nutricia International Pvt. Ltd. (hereinafter referred to as "the importer") having registered office at 3rd floor, The Centrium LBS Marg, Kurla (W), Mumbai 400070 from its related supplier's M/s Nutricia Australia, Pty Ltd, M/s. Danone Trading Medical BV Netherland, and M/s. Danone Trading ELN BV, Netherland (hereinafter referred to as "the supplier") was referred to the Special Valuation Branch, Mumbai by the Asstt. Commissioner of Customs (I), Gr I, Air Cargo Complex, Andheri, Mumbai vide F.No. S/3-SVB-02/2017-18 Gr-I, AC dated 14.08.2017.

2. Accordingly, a case was registered with the Special Valuation Branch. Mumbai vide F.No. S/9-141 SVB/2017 NCH MUM under DOV REG No. 0010918 dated 23.11.2017 and subsequently letter of even no. dated 30.11.2017 was issued to the importer, requesting to submit a declaration in the prescribed format in 'Annexure B' as per CBIC Circular no. 05/2016-Cus dated 09.02.2016 and letter dated 01.01.2018 and 10.03.2021 requesting for further documents. Importer vide letter dated 08.11.2019 and 16.04.2021 has submitted the requisite documents.
 - a. Annexure A & B duly filled,
 - b. Justification for Acceptance of value,
 - c. List of provisionally assessed Bills of Entry accompanied by invoices and bill of lading,
 - d. Copies of audited annual report for financial years 2017-2018 to 2019-20,
 - e. copy of transfer pricing study,
 - f. Intercompany agreement,

- g. Certificate of incorporation, PAN, IEC,
 - h. Article of association,
 - i. Memorandum of Association,
 - j. Shareholding Pattern,
 - k. License Agreement.
3. In reply to the questionnaire in Annexure 'A' the importer has replied that importer is a private limited company: that the importer is manufacturer cum trader however the imported goods for which the matter was transferred to SVB is for trading purpose only: that no raw materials are imported from related supplier for manufacturing purpose: that importer is manufacturer of Infant food product and Principal inputs are Raw milk and Milk solids: that the list of goods imported and traded are food for special medical purposes namely Metabolic, Neocate falling under chapter 19 & 21: that they have entered into an Intercompany Distribution Agreement with the seller: that no identical goods have been imported earlier: that the importer is in the process of importing second hand capital goods from M/s Danone Specialized Nutrition (M) SDN BHD: that the seller doesn't supply the identical goods to unrelated buyers in India: that the prices are settled on the basis of resale price method as if the transaction is settled between unrelated parties: that the prices are not determined on the basis of price list: that the prices are based on the average margin at which the goods are sold in India: that the goods are sold using a trademark belonging to supplier or its affiliates, however no separate payment towards the use of trademark is made by the importer: that no amount is paid or payable indirectly to the supplier in connection of the goods imported: that no service are rendered by or on behalf of the importer relatable to goods: that the price payable to the importer is adjusted by way of credit/debit note periodically (half yearly) to maintain the profitability, and the same is clarified in the intercompany agreement.
4. In reply to questionnaire in Annexure 'B' the importer has replied that they have attached all the documents i.e set of Bills of Entry accompanied by corresponding invoices, bill of lading, Annual audited reports, balance sheet and copy of form 3CEB: copy of TP report:: that no goods are imported in CKD or SKD condition: that they have not imported any capital goods from the related supplier however they are in a process of importing second hand capital goods from one of the associates: that no comparable goods are found within the meaning of CVR 2007 available in data bases: that the goods imported are for resale in India: that they have no price list for sales of such goods in India: that the goods are exclusively supplied by the seller to the importer: that the importer is not incurring any expenses on behalf of the seller or their associates: that the goods are sold using the Trademark belonging to supplier or its affiliates :that importer is not paying any amount in the form of agency commission, overriding commission or any other remuneration to the seller of the imported goods or their related associates: that the price payable by the importer is settled by means of debit note/credit note: that the business of seller and importer are handled separately and there is no legal liabilities created by contracts or agreements: that the importer being 100% share holder of the supplier is in principle in a position to exercise restraint over the supplier.

5. Profile of the company

As per the submissions and audit reports it is seen that company was incorporated in the State of Haryana on 11.05.2011 as "G & K Baby Care Private Limited" thereafter Danone Group entities acquired the stake from the erstwhile shareholders and changed the name to Nutricia International Private Limited. Company was formed in the year 2011 with CIN No. U15400HR2011PTC042913 dated 07.12.2011 and was allotted IEC No 0511096381 dated 12.03.2012. M/s. Nutricia International Private Limited is a group company of Danone Group where 99.99% of shares are held by Danone Asia Pacific Holding Pte Ltd, Singapore, which is immediate Holding company and 0.01% of shares are held by Danone Asia Pte Ltd. Singapore Importer is manufacturer cum trader and main function of the company is to carry business as manufacturers of and dealers in wholesale in foods for infants and invalids, dietic foods,

nutrition foods, protein supplements, infants formula, infant milk substitute, wearing and other cereals. APIs, and food stuffs of all description, tonics, health beverages and other restoratives of foods suitable for infants, invalids and baby care. They are also manufacturers, processors, traders, dealers, exporters, importers of pharmaceutical products, healthcare products for baby care including establishment of research and developments laboratories, research centers in connection with these activities. However, present imports from the related suppliers are for trading purpose only.

6. Submissions:

- i. Importer has submitted INTERCOMPANY DISTRIBUTION AGREEMENT ente between 1. Danone Trading Medical B.V, Netherland, (hereinafter referred to as "supplier") and Nutricia International Private limited, having registered office at Mumbai (hereinafter referred to As "Distributor") both separately or jointly referred to as "Party" or "Parties" and salient points of the same are as follows:

Whereas:

- a. Parties both belong to Medical Nutrition division of the Danone S.A. group of companies ("Danone" or the "Group")
- b. Supplier has had the following names in the referred time periods: (i) Numico Trading B.V. between 4 November 2003 and 14 April 2008, (ii) Danone Trading

B.V. between 14 April 2008 and 1 January 2015 and (iii) Danone Trading Medical

B.V as from 1 January 2015.

- c. Supplier itself and through its various affiliates is the manufacturer, intellectual property owner, and supplier of the "Products(s)" as defined below in Schedule A
- Distributor wishes to be appointed as an exclusive distributor of the Products in the territory-----
- By entering into this agreement, parties wish to record their mutual understanding with respect to the terms and conditions that parties have been applying and respecting since the 1st day of March 2017.

Article 2. Obligation of Distributor

2.1 Distributor shall purchase the Products as set in Schedule A to this agreement from supplier or from parties designated by supplier which also could include, Products manufactured by third party suppliers ("TPS") which are not part of the Group.

2.2 Distributor shall not engage, either directly or indirectly, in the manufacture or sale of any competing products in or outside the Territory nor shall Distributor buy or sell products listed in Schedule A from other sources, without prior written consent of Supplier.

Article 3. Obligations of Supplier

3.1 Supplier shall provide Distributor with commercial and marketing policies, support in the promotion and sale of the products. These commercial and marketing policies will include development, marketing, branding, structural packaging and graphic design of the Products and the performance of marketing programs, as supplier may deem appropriate.

Article 5. Prices and Charges

5.1 Distributor will purchase the Products from Supplier or parties designated by Supplier at an agreed price per article (the "Price(s)") as well as in accordance with the terms and conditions as set forth in this agreement. Parties agree that instead of, or in addition to a price list, supplier may post the Prices on an intranet or other secure electronically accessible location.

5.2 Parties agree that for the products as purchased from Supplier and the subsequent sale one

Products in the Territory, distributor is to achieve arm's length profit level as set out in Schedule B.

5.3 The price for the product(s) includes all costs of procurement, manufacturing, as well as all other services of Supplier under this Agreement.

5.4 Supplier shall reimburse Distributor for the cost of hedging under this agreement as long as the costs are made in accordance with Danone's hedging policy.

Article 11. Trademarks:

11.1 Supplier hereby grants to Distributor a license to imports, distribute, promote and sell the Products under the Trademarks in the Territory during the term of this Agreement. "Trademarks" means any existing or future trademarks, trademark application, trade dresses, design and models relating to the Products, in the Territory, owned by and/or sub-licensed to Supplier.

Schedule B of the Agreement. ROP/Net Sales Ratio:

The Price for the products will be determined in accordance with a ROP/NET Sales target ratio. The ROP/NET Sales target ratio will be within the range of margins as per arm's length principle.

In the event that the actual ROP/NET Sales ration of Distributor deviates from the targeted ROP/NET Sales ratio, supplier may, at its discretion, send an additional debit or credit note.

ii) Importer has submitted LICENSED AGREEMENT entered between Danone Asia Pacific Holdings Pte. Ltd., Singapore (Licensor) and Nutricia International Private limited, Harayana (Licensee) on 17.12.2012 and the salient points of the agreement are as follows:

Whereas:

A. Licensor has acquired certain Trademarks (as defined below) and has developed and intends to continue to develop Licensor's IP (as defined below),

B. Licensee recognizes the economic and commercial value of the Trademarks and/Or Licensor's IP and desires to avail itself of the Trademarks and/or the Licensor's IP,

C. Licensor is prepared to grant to Licensee the right to use the Trademarks and the Licensor's IP upon the terms and conditions set forth in this Agreement,

Definitions:

For the purpose of this agreement, the terms listed below shall have the following meaning: "Licensor's IP" shall mean technical know-how, product, formulations, product documentation, quality control procedures, marketing material, trade dress, device and packaging designs that the Licensor owns in relation to nutrition products including protein supplements, weaving cereals, milk powders and milk based nutrition products:

"Net Sales" shall mean sales invoiced to purchasers of the products, less delivery cost, goods returned from the trade, commercial discounts or rebates, and value added tax or any other applicable sales Tax:

"Parties" shall mean Licensor and Licensee collectively, each referred to as a "party"

"Products" shall mean, in relation to the Protinex Trademark, nutrition supplement products, and in relation to the Farex Trademark, infant nutrition products, and any other nutrition product that may be added to Appendix 1 from time to time.

"Trademarks: means to trademarks listed in Appendix 1 and any other trademarks which the licensor and the Licensee agree to add to Appendix 1 from time to time.

4. Remuneration:

4.1 In consideration of the rights and licenses granted hereunder, the licensee agrees during the terms of this agreement to pay or cause to be paid to Licensor and amount equal to 3% of the amount of Net sales calculated on a quarterly basis.

FINDINGS

7. i) RELATIONSHIP

It is seen from Audit reports form 3CEB and submissions that M/s. Nutricia International Private Limited is a group company of Danone Group where 99.99% of shares are held by Danone Asia Pacific Holding Pte Ltd, Singapore, which is immediate Holding company and 0.01% of shares are held by Danone Asia Pte Ltd. Singapore and the suppliers i.e M/s Nutricia Australia, Pty Ltd, M/s. Danone Trading Medical BV Netherland, and M/s. Danone Trading ELN BV, Netherland all are subsidiary company of Danone Group thus the supplier's share holders of importer and importer itself are under the directly under control of third party Danone Group, ultimate holding company thus importer and supplier are related in terms of Rule 2(2)(vi) of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007.

8. PRICING

- i. After establishing the fact that the importer and supplier are related in terms of Rule 2(2) of CVR, 2007 it becomes imperative to investigate as to whether the relationship is influencing the transaction value of the imports or not.
- ii. For the purpose mentioned above, NIDB import data of contemporaneous imports was called vide letter dated 11.03.2021 from DG Valuation to determine whether the transaction value closely approximates to the "test" values set forth under Rule 3(3)(b) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and on scrutiny of the said data it is seen that the supplier is exclusively supplying goods to the importer, No other importer is seen importing the identical or similar goods or goods of same description from the suppliers.
- iii. Further for price justification importer has provided Transfer pricing reports as well as deductive chart of items imported and sold directly in India Duly certified from its Chartered account and accompanied by invoices and bills of entry which is as follows:

	Particulars	FY 2017-18	FY 2018-2019	FY 2019-20
		Imported FG	Imported FG	Imported FG
1.	Total Sales Value	2,33,90,136/-	5,59,69,597/-	6,36,99,704/-
(A)	Purchases, Freight, Customs Duty, Agency Charges, Inventory write Off etc	(93,14,590)	(1,99,78,978)	(2,09,66,741)
(B)	Selling, Marketing and Administrative O/H etc. Selling, Marketing and Administrative O/H etc.	(1,77,65,831)	(3,66,68,405)	(4,13,58,790)
	NET Profit/Loss	(36,90,284)	(6,77,786)	(13,74,173)

Net profit as % of sale	-15.78%	-1.21%	2.16%
Actual Credit notes-breakup provided	48,66,070/-	30,21,394/-	21,38,575/-
Notes	For individual imported FG, it is not possible to determine selling, administrative and marketing O/H and hence attribution is made basis prevailing tax guidance and generally accepted accounting principles.		

The deductive chart submitted is not for individual items imported but for the whole of imports year-wise.

- iv. From the above chart submitted it can be seen that importer is incurring losses ranging from 16% to 1.5% it can also be read from the Transfer price report submitted that Nutricia, India would retain profitability Margin at 4%, However actually margin earned by Nutricia as per audit reports is in negative and for the difference, appropriate credit notes were issued and remittances were made by the foreign suppliers as discussed above at Schedule B of Intercompany Distribution Agreement, to Nutricia India in order to maintain the profit margin of 4% as determined on the TP study report. Importer in relation of the same has submitted copies of credit notes issued from the supplier from time to time and sample invoices of some of the goods sold in India. Once the importer start making profit above the mentioned margin supplier will start raising debit notes to the importer, above and over the prescribed profits.
- v. From the deductive chart, transfer pricing and other submissions oral and written it can be seen that importer is maintaining an arm's length margin in the pricing of goods Imported. However importer is incurring losses on their sales in India and the loss to the importer is compensated by the supplier by the way of issuance of credit notes, thus from the above submissions and findings it can be said that though the importer and suppliers are related in terms of Rule 2(2) of CVR, 2007 the relation has not influenced the price of the goods imported thus the declared value of goods imported by M/s. Nutrica International Pvt. Ltd., Mumbai from its related supplier's M/s Nutricia Australia, Pty Ltd, M/s. Danone Trading Medical BV Netherland, and M/s. Danone Trading ELN BV, Netherland may be accepted as transaction value under Rule 3(3)(a) of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007.

9. Addition under Rule 10 of CVR 2007:

- i. Importer inter-alia in their submissions dated 08.11.2019 submitted that no payment of lump sum/technical know how/royalty has been made, nor the same is payable to the supplier. However while going through the audit reports and form 3CEB it can be seen that importer is paying royalty to the immediate holding company i.e Danone Asia Pacific Holding Pte Ltd, Singapore at the rate of 3% of net sales. Also as per the definition of net sales mentioned in the License Agreement "landing cost is not excluded in net sales". Also from the agreement it is seen that Royalty payment is for license and Technical Know How for use by the importer. At para 2.1 of the intercompany agreement it can be seen written "Distributor shall purchase the products as set forth in Schedule A to this agreement from supplier or from parties designated by Supplier".

- ii. As per rule 10 (1)(c) of CVR, 2007 In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, "royalties and license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods valued, to the extent that such royalties and fees are not included in the price actually paid or payable".
- iii. From the above two agreements when read together it can be seen that importer is paying a Royalty amount @ 3% to their immediate holding company i.e Danone Asia Pacific Holding Pte Ltd, Singapore and a clear condition of sale is prescribed in the Intercompany distribution agreement. Though superficially it appear that Danone Asia Pacific Holding Pte. Ltd. is not supplying goods to the supplier but on detailed reading of the Licence Agreement it is seen that M/s. Nutricia, India has to pay to the immediate holding company a Royalty @ 3% of total net sale calculated on entire business of importer. It is important to mention here that Net Sales is inclusive of all the sale effected by the importer either through its imports or domestic manufactures. Thus Royalty amount @ of 3% becomes addible to the declared value and same shall be added to declared value for goods imported by M/s. Nutricia International Pvt. Ltd., Mumbai from M/s Nutricia Australia, Pty Ltd, M/s. Danone Trading Medical BV Netherland, and M/s. Danone Trading ELN BV, Netherland for the assessment purpose under Rule 10(1)(c) of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007.
- iv. There are other payments seen from 3CEB which the importer is making to other fellow subsidiaries of Danone Group however as these payments are made for different services which include IT services, professional fees and other services which are not directly related with the goods imported thus the same cannot be added for the purpose of assessment.
- v. From the NIDB data it is also seen that there are 03 nos. of Bills Of Entry which are assessed finally wherein goods are imported from M/s. Danone Trading medical B.V, which are as follows. 01) BE no. 6743401 dtd. 11.06.2018, 02) 2234541 dtd. 28.02.2019 and 03) 2234588 dtd. 28.02.2019. Same should be considered as suppression of facts/mis-declaration and shall be recalled and re-assessed after loading an amount @ 3% as Royalty payment before finalizing all the Bills of Entry of the importer.

10. Conclusions:

- a. M/s. Nutricia International Private Limited is a group company of Danone Group where 99.99% of shares are held by Danone Asia Pacific Holding Pte Ltd, Singapore, which is immediate Holding company and 0.01% of shares are held by Danone Asia Pte Ltd. Singapore and the suppliers i.e M/s Nutricia Australia, Pty Ltd, M/s. Danone Trading Medical BV Netherland, and M/s. Danone Trading ELN BV, Netherland all are subsidiary company of Danone Group thus the supplier's share holders of importer and importer itself are under the directly under control of third party Danone Group, ultimate holding company thus importer and supplier are related in terms of Rule 2(2)(vi) of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007. Same is also not disputed by the importer.
- b. M/s. Nutrica International Pvt. Ltd., Mumbai from its related supplier's M/s Nutricia Australia, Pty Ltd, M/s. Danone Trading Medical BV Netherland, and M/s. Danone Trading ELN BV, Netherland may be accepted as transaction value under Rule 3(3)(a) of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007.
- c. Royalty amount @ of 3% shall be added to the declared value of goods imported by M/s. Nutricia International Pvt. Ltd., Mumbai from M/s Nutricia Australia, Pty

Ltd, M/s. Danone Trading Medical BV Netherland, and M/s. Danone Trading ELN BV, Netherland for the assessment purpose under Rule 10(1) (c) of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007.

- d. 03 nos. of Bills Of Entry which are assessed finally wherein goods are imported from M/s. Danone Trading medical B.V, i.e 01) BE no. 6743401 dtd. 11.06.2018, 02) 2234541 dtd. 28.02.2019 and 03) 2234588 dtd. 28.02.2019 should be considered as suppression of facts/mis-declaration and shall be recalled and re-assessed after loading an amount @ 3% as Royalty payment before finalizing all the Bills of Entry of the importer.
- e. It may also be noted that whenever supplier raises debit notes to the importer same shall also be included to the declared value for the assessment purpose under Rule 10(1)(d) of CVR, 2007.
- f. However, if contemporaneous imports at higher prices are noticed or there exist reasons to doubt about the value, assessing group may evaluate the value of the imported goods under the appropriate provision of the Customs Act, 1962. As regards, post-import price adjustments, in case of upward revision of prices, the importer has to pay differential duty as applicable including interest thereof.

11. Now, therefore, in view of above findings of SVB, New Customs House, Ballard Estate, Mumbai, M/s Nutricia International Pvt. Ltd., Mumbai are hereby called upon to show cause to the to Assistant/ Deputy Commissioner of Customs, Appraising Group-1/1A, JNCH, Nhava Sheva as to why:

(a) The declared invoice values should not be rejected under Rule 12 of CVR, 2007 in respect of Bills of Entry provisionally assessed at Nhava Sheva Port pending SVB Investigation.

(b) The declared transaction value should not be loaded by 3% towards royalty in terms of Rule 10(1)(c) of the Customs Valuation Rules, 2007;

(c) The assessable value of goods imported from the related suppliers should not be re-determined accordingly;

(d) Differential duty consequential to loading of value as above, in the said provisionally assessed bills of Entry should not be recovered under Section 18(2) of Customs Act, 1962;

(e) Interest should not be recovered on differential duty so determined after loading of the value as above, under Section 18(3) of the Customs Act 1962;

(f) whenever supplier raises debit notes to the importer, the same shall also not be included to the declared value for the assessment purpose under Rule 10(1)(d) of CVR, 2007;

(g) 03 nos. of Bills Of Entry which are assessed finally wherein goods are imported from M/s. Danone Trading medical B.V, i.e 01) BE no. 6743401 dtd. 11.06.2018, 02) 2234541 dtd. 28.02.2019 and 03) 2234588 dtd. 28.02.2019 should not be considered as suppression of facts/mis-declaration and shall not be recalled and re-assessed after loading an amount @ 3% as Royalty payment before finalizing all the Bills of Entry of the importer.

12. The above noticee is required to state specifically in their written reply, whether they wish to be heard in person by the Adjudicating Authority, before the case is adjudicated. If no specific mention is made about the same in their written submission, it shall be presumed that they do not wish to be heard in person and the case would be adjudicated on the basis of evidences on record. They should produce at the time of showing cause all the evidences upon which they intend to rely in support of their defense.

13. If no reply is received within 30 (thirty) days from the date of receipt of this notice or if the above noticee fails to appear before the Adjudicating Authority whenever the case is posted for hearing, the case will be adjudicated on the basis of the evidence on record, without any further notice to them.

14. The Department reserves its rights to add, modify, supplement or amend this show cause

notice at any time before its adjudication, in case new facts emerge at a later stage.

15. This show cause notice is issued without prejudice to any other action that may be taken in respect of the impugned goods and/or the person/firms mentioned in the notice, under the provisions of the Customs Act, 1962 and/or any other law for the time being in force, in the Republic of India.

Digitally signed by

Atul Choudhary

Date: 22-10-2025

(Atul Choudhary),

Deputy Commissioner of Customs,
Gr-I and 1A, NS-I, JNCH.

To,
M/s Nutricia International Pvt. Ltd.
3rd floor, The Centrium LBS Marg, Kurla (W),
Mumbai 400070.

Copy to;

1. Office of the Commissioner of Customs (Import-II),
Special Valuation Branch, 8th Floor, Annex Bldg.,
New Customs House, Ballard Estate,
Mumbai- 400001.
2. The Asst/Dy. Commissioner of Customs, Special Valuation Cell, JNCH, Mumbai
Customs, Zone-II, Nhava-Sheva,
3. The Asst/Dy. Commissioner of Customs, Centralized Adjudication Cell, JNCH,
Nhava-Sheva.
4. The Asst/Dy. Commissioner of Customs, EDI, JNCH, Nhava-Sheva.
5. The Asst/Dy. Commissioner of Customs, CHS, JNCH, Nhava-Sheva.