

 सत्यमेव जयते	<p align="center"><b>भारतसरकार/ Government of India</b>  <b>वित्तमंत्रालय / Ministry of Finance</b>  <b>आयुक्त सीमाशुल्क एन.एस.-II कार्यालय</b>  <b>Office of Commissioner of Customs NS-II</b>  <b>Jawaharlal Nehru Custom House, Nhava Sheva,</b>  <b>Dist- Raigad, Maharashtra – 400 707</b></p>	
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F. No. CUS/LIC/MISC/424/2025 NS-II

Date of Order: 18-08-2025

SCN NO. 206/2025-26/AC/LIC/NS-II/CAC/JNCH

Date of Issue: 18.08.2025

Order Passed by : अश्विनी प्रदीप राणे

Ashwini Pradeep Rane

सहायक आयुक्त

Asst. Commissioner of Customs

License Section (NS-II), JNCH, NHAVA SHEVA

O-IN-O No: 734/2025-26/AC/LIC/NS-II/JNCH

M/s. Dy\_Mach Pharma (IEC-388086777).

DIN : 20250878NT000000C7B6

**मूलआदेश**

१. यह प्रति उस व्यक्ति के प्रयोग में लाये जाने के लिए निःशुल्क दी जाती है जिसे यह जारी किया गया है।

२. इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128(1) के तहत आदेश की संसूचना की तारीख से साठ दिन के भीतर ऐसे मामले जहां शुल्क या शुल्क और जुर्माना विवादित हैं या जुर्माना जहां सिर्फ जुर्माना ही विवादित है, की 7.5% राशि अदा करने पर सीमाशुल्क आयुक्त अपील (जवाहर लाल नेहरू सीमाशुल्क भवन, न्हावाशेवा, उरण, रायगढ़ के समक्ष की जा सकती है।

३. अपील सीमाशुल्क (अपील) नियम 1982 में प्रदर्शित फॉर्म सी.ए.-I में दो प्रति में की जानी चाहिए। अपील रुपये 1.50 /- के न्यायालय फीस स्टॉपत था इस आदेश या आदेश की प्रति के साथ संलग्न होनी चाहिए। यदि आदेश की प्रति संलग्न की जाती है तो इसमें भी न्यायालय फीस अधिनियम 1970 की अनुसूची 1 में प्रदर्शित रुपये 1.50/- की न्यायालय फीस स्टॉप भी होना चाहिए।

४. जो व्यक्ति इस निर्णय या आदेश के विरुद्ध अपील कर रहा है वह अपील लंबित रहते, अपील सीमाशुल्क अधिनियम 1962 की धारा 129E के उपबंधों के अंतर्गत पैरा 2 के अनुसार धनराशि जमा कराएगा तथा अपील के समय उन भुगतान का प्रमाण प्रस्तुत करेगा, जिसके अनुपालन न किए जाने पर सीमाशुल्क अधिनियम 1962 की धारा 128(1) के उपबंधों के अधीन अपील अस्वीकार कर दी जाएगी।

**ORDER-IN-ORIGINAL**

1. This copy is granted free of charge for the use of the person to whom it is issued.
2. An appeal against this order shall lie before the Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Nhava Sheva, Uran, Raigad under Section 128(1) of the Customs Act, 1962 within Sixty days from the date of communication of this order and on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty where penalty alone is in dispute.
3. The appeal should be in duplicate and should be filed in Form CA – 1 appeared in Custom (Appeals) Rule, 1982. The appeal should bear a court fee stamp of Rs. 1.50 paise paid only

and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a court fee stamp of Rs. 1.50 paise only as prescribed under Schedule 1, item 6 of the Court Fees Act, 1970.

4. Any person appealing against this decision or order shall, pending the appeal, deposit the amount as per Para 2 above under Section 129E of the Customs Act, 1962 and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for noncompliance with the provisions of Section 128(1) of the Customs Act, 1962.

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**Sub: Adjudication of Show Cause Notice No. SCN NO. 206/2025-26/AC/LIC/NS-II/CAC/JNCH dtd. 03.06.2025 issued to M/s. Dy\_Mach Pharma (IEC-388086777) - reg.**

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

Alert Circular No. 07/2021 dated 26.07.2021 was issued by NCTC wherein it was observed that some exporters had availed wrong MEIS benefit @ 3% of FOB value by mis-classifying the goods under CTH 29420090 instead of correct CTH 2901 to 2941 where MEIS benefit was @ 2% of FOB value. Accordingly, an audit of **M/s. Dy\_Mach Pharma (IEC-388086777) having address at C1/2344, GIDC, Vapi, Gujarat-396195** was conducted.

2. During the post-clearance audit, export data of **M/s. Dy\_Mach Pharma (IEC-388086777)** was scrutinized and it was noticed that they had filed Shipping bills as mentioned in Annexure-B to show cause notice for export of goods viz. “**CLOMIPHENE CITRATE**” classifying them under CTH 29420090 of the first schedule of the Customs Tariff Act, 1975 which covers “OTHER ORGANIC COMPOUNDS; other organic compounds; other,” claiming MEIS benefit @ 3% of FOB value. However, the said goods appeared to be correctly classifiable under CTH 29221990. For ease of reference, the relevant headings are reproduced below:

<b>Sr. No.</b>	<b>CTH</b>	<b>Description of the goods as per first Schedule to the Customs Tariff Act 1975.</b>
1.	29420090	Other Organic Compounds; other organic compounds; other
2.	29221990	<b>OXYGEN-FUNCTION AMINO-COMPOUNDS</b> - Amino-alcohol-phenols, amino-acid-phenols and other amino-compounds with oxygen function; other; other

### **3.1 Classification of goods:-**

For better understanding of the above relevant tariff headings, relevant chapter notes are reproduced as below :-

#### **A. Custom Tariff Heading 2942 is reproduced as under:**

#### **2942 Other Organic Compound (Not classified elsewhere) :**

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

1. Ketenes\*. Like ketones, these are characterised by a carbonyl group ( $>C=O$ ) but it is linked to the neighbouring carbon atom by a double bond (e.g., ketene, diphenylketene). This heading however excludes diketene which is a lactone of heading 29.32.
2. Boron trifluoride complexes with acetic acid, diethyl ether or phenol\*.
3. Dithymol di-iodide.

#### **294200 - Other organic compound:**

--- Cefadroxil & its salts, Ibuprofen, Diazepam, Nifedipine, Ranitidine, Danes salt of D(-)

Phenyl Glycine, D(-) para hydroxyl Dane's Salts:

**29420090**--- Other

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

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

- 2922.11 -- Monoethanolamine and its salts
- 2922.12 -- Diethanolamine and its salts
- 2922.14 -- Dextropropoxyphene (INN) and its salts
- 2922.15 -- Triethanolamine
- 2922.16 -- Diethanolammoniumperfluorooctane sulphonate
- 2922.17 -- Methyl-diethanolamine and ethyl-diethanolamine
- 2922.18 -- 2-(N,N-Diisopropylamino)ethanol
- 2922.19 -- Other
- 2922.41 -- Lysine and its esters; salts thereof
- 2922.42 -- Glutamic acid and its salts
- 2922.43 -- Anthranilic acid and its salts
- 2922.44 -- Tilidine (INN) and its salts
- 2922.49 -- Other

- I. **CLOMIPHENE CITRATE (29221990) :-** Clomiphene Citrate is a muscarinic antagonist and is structurally related to diphenhydramine. It is used as a muscle relaxant and to help with motor control in Parkinson's disease. The "Oxygen function" in its classification refers to the presence of an oxygen atom within the compound's molecular structure, which is typical for ethers and esters. The 'Amino Alcohol' part of the classification indicates the presence of amino group (NH<sub>2</sub>) and hydroxyl group (OH) within the molecule. Its chemical formula is C<sub>18</sub>H<sub>23</sub>NO.C<sub>6</sub>H<sub>8</sub>O<sub>7</sub>. its IUPAC name is "2-dimethylaminomethyl-2-phenylbicyclo [2.2.2] octan-1-ol; 2- hydroxypropane-1,2,3-tricarboxylic acid. Orphenadrine citrate is classified as oxygen-functional amino group. in this chemical structure, an amino group (NH<sub>2</sub>) attached to one of the carbon atoms. The amino group is characterized by a nitrogen atom (N) bonded to two hydrogen atoms (H). Accordingly, the same appears to be correctly classifiable under CTH 29221990

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

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

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

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

exports as given in the Shipping Bills in free foreign exchange, whichever is less, unless otherwise specified.

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

**Table-1**

Sr No.	ITC(HS) Code 2017	Description of goods as per ITC(HS) Code 2017	MEIS Sr No.	MEIS Reward Rate (In %)
1.	29420090	Other organic compound	1633	3%
2.	29221990	Other	1399	2%

**5.** It appeared that the said exporter had not made correct and truthful declaration of the material facts in their shipping bills by misclassifying their goods and thereby claimed undue MEIS benefits @ 3%, instead of applicable 2%, amounting to **Rs. 6,526/- (Rupees Six Thousand Five Hundred and Twenty-Six Only)** which were utilized for payment of customs duty towards the imports by them vide advised C. L. No. 128/2023-24/JNCH(A1) dtd. 03.05.2023.

**6.** From the Chapter notes, chapter headings and reasons as elaborated in foregoing paras, it appears that **M/s. Dy\_Mach Pharma (IEC-388086777)** have wilfully mis-stated the classifications of the subject goods exported by them and suppressed the actual classification in their export documents filed before the Customs authorities as well as DGFT with an intent to avail undue benefit of MEIS scheme and therefore the MEIS scrips obtained by them on the basis of such manipulated documents becomes invalid and it can be termed that they were obtained fraudulently. It appears that **M/s. Dy\_Mach Pharma (IEC-388086777)** by resorting to such acts, have contravened various provisions of Customs Act, 1962.

**7.** Vide Finance Act, 2011 with effect from 08.04.2011 "Self-Assessment" has been introduced under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or the exporter by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, **M/s. Dy\_Mach Pharma(IEC-388086777)** have deliberately contravened the above said provisions with an intention to wrongfully avail excess MEIS benefit fraudulently, which were legitimately due to them.

**8. From the facts discussed in the foregoing paras, it appears that:-**

**8.1** The exporter **M/s. Dy\_Mach Pharma (IEC-388086777)** had misclassified the goods declared as "**CLOMIPHENE CITRATE**" under CTH 29420090 instead of correct CTH 29221990. Accordingly, it appears that **M/s. Dy\_Mach Pharma (IEC-388086777)** had deliberately claimed wrong classification with intent to fraudulently avail the benefit of MEIS at higher rate of 3% instead of 2% of FOB value. Further, the undue benefits of MEIS availed and utilized by mis-classifying the said exported goods is required to be denied.

**8.2** **M/s. Dy\_Mach Pharma (IEC-388086777)** presented a large number of shipping bills before DGFT to obtain MEIS License/Scrips. The duty credit/granted on such MEIS License/Scrips

includes MEIS credit earned on correctly classifiable goods at appropriate eligible rates. However, it appears that **M/s. Dy\_Mach Pharma (IEC-388086777)** has deliberately misclassified the export goods under CTH 29420090 in shipping bills having **FOB value of Rs. 6,52,554/- (Rupees Six Lakh Fifty-Two Thousand Five Hundred and Fifty-Four Only)** during the calendar year 2019 and 2020, as detailed in Annexure-B to the SCN appears to be recoverable as per section 28(4) and/or 28AAA of the Customs Act, 1962, as applicable.

## **9. CULPABILITY AND LIABILITY OF NOTICEES:-**

Whereas the audit conducted, as discussed in the foregoing paras, revealed that the **M/s. Dy\_Mach Pharma (IEC-388086777)** by way of wilful mis-statement, mis-representation and suppression of facts as regards the classification of goods, presented the subject goods for export before the designated authority of Customs with intent to fraudulently avail benefit of MEIS. **M/s. Dy\_Mach Pharma (IEC-388086777)** have violated the provisions of Section 17 and 50 of the Customs Act, 1962 which was their duty to comply with. In view of the above, it, therefore, appears that the Exporter have indulged in fraudulent export of goods by mis-declaring the actual classification of goods so exported, which squarely falls within the ambit of 'illegal export' as defined in section 11H(a) of the Customs Act, 1962 in as much as the same was in contravention of various provisions of Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules 1993 and Foreign Trade Policy.

**9.1.** Whereas Rule 14(2) of Foreign Trade (Regulation) Rules, 1993 prohibits employing of any corrupt or fraudulent practice for the purpose of exporting any goods for obtaining any license. Further, the said goods are liable for confiscation in terms of Section 113 (i) of the Customs Act, 1962 as the same were exported by mis-declaring the classification. The above-mentioned acts of commission and omission on the part of **M/s. Dy\_Mach Pharma (IEC-388086777)** have rendered the goods exported by resorting to mis-declaration in terms of classification of goods, liable for confiscation under the provisions of Section 113 (i) of the Customs Act, 1962. The above-mentioned acts of commission and omission on the part of **M/s. Dy\_Mach Pharma (IEC-388086777)** have rendered various goods exported by resorting to mis-declaration in terms of classification of goods, with declared **FOB value of Rs. 6,52,554/- (Rupees Six Lakh Fifty-Two Thousand Five Hundred and Fifty-Four Rupees Only)** as detailed in Annexure-B to this notice, liable for confiscation under the provisions of Section 113 (i) of the Customs Act, 1962.

**9.2.** By misclassifying the goods with an intention to avail wrongful/ ineligible/ undue MEIS benefit, **M/s. Dy\_Mach Pharma (IEC-388086777)** has violated the provisions of Customs Act and has rendered the goods liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. Further, all the above-mentioned acts of commission and omission on the part of **M/s. Dy\_Mach Pharma (IEC-388086777)** have rendered them liable for penal action under Section 114(iii), 114AA & 114AB of the Customs Act, 1962 with respect to the goods exported by mis-classifying the classification.

**10.** It is evident that MEIS benefit, covered by Customs Notification No.24/2015-Customs dated 08/ 4/2015, as amended, is a custom duty exemption by way of debit through MEIS Scrips. The power to exempt would include within its ambit the power to demand duty in the event such exemption is wrongly claimed/mis-used. Since the MEIS Scrips/Licenses, have been obtained by **M/s. Dy\_Mach Pharma (IEC-388086777)** by mis-classification of the export goods as discussed in the foregoing paras, are therefore liable for suspension/ cancellation/ restriction. Hence the exemptions claimed by the importers are not admissible and duty at the appropriate rate is leviable on the imports to the extent of duty credit denied and same is required to be recovered from **M/s. Dy\_Mach Pharma (IEC-388086777)**.

**11.** **M/s. Dy\_Mach Pharma (IEC-388086777)** had contravened the provisions of Section 50(2) of the Customs Act, 1962 by willfully mis-declaring/misclassifying their export goods and intentionally claimed undue MEIS benefit which resulted in loss of government revenue of **Rs. 6,526/- (Rupees Six Thousand Five Hundred and Twenty-Six Only)**. On culmination of the

investigation, the subject show cause notice was issued to **M/s. Dy\_Mach Pharma(IEC–388086777)**, calling upon them to show cause as to why:

(i) The declared classification of the subject goods i.e. **“CLOMIPHENE CITRATE”** in the shipping bills as detailed in Annexure-B under CTH 29420090 should not be rejected and the subject goods should not be re-classified under CTH 29221990, and the said shipping bills should not be re-assessed.

(ii) The impugned exported goods should not be confiscated under section 113(i) of Customs Act, 1962.

(iii) MEIS benefits amounting **Rs. 6,526/- (Rupees Six Thousand Five Hundred and Twenty-Six Only)** should not be recovered as per section 28(4) read with section 28AAA of the Customs Act, 1962 along with applicable interest under section 28AA of the Customs Act, 1962.

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

### **WRITTEN SUBMISSION OF THE NOTICEE**

**12.** The Noticee in their written submission dated 26.06.2025 deny all the allegations, averments and contentions in the SCN, as if they are specifically and individually dealt with and traverse, save and except what has been expressly admitted herein below. The Noticee deny that they have contravened any of the provisions of Customs Act, 1962 and any of the Rules made there under. The Noticee also deny that any amount of MEIS is recoverable from them or they are liable to any penalty or interest. The Noticee say and submit that SCN is not legally tenable hence the same should be dropped in the interest of justice. The noticee wishes to place on record the following points for due consideration –

#### **Statement of Facts:**

**A. Exporter Profile:** **M/s. Dy\_Mach Pharma(IEC–388086777)**, a licensed drug manufacturer, has exported Clomiphene Citrate a bulk drug, under CTH 29420090 during the notice period, as per manufacturer invoices and shipping bills cleared by Customs and DGFT.

**B. Regulatory Compliance:** Each export required a No Objection Certificate (NOC) from the Assistant Drugs Controller (ADC) under the Drugs and Cosmetics Act, 1940, confirming pharmacopeial specifications (e.g., BP/USP), distinguishing Clomiphene Citrate as a bulk drug, not a chemical entity.

**C. MEIS Availment:** They claimed MEIS benefits at 3% of FOB value under CTH 29420090, as per Appendix 3B, which was accepted during Let Export Order (LEO) issuance and drawback disbursement. The shipping bills are finally assessed & therefore reached finality & cannot be reopened as complete information as per the shipping bills requirements was made available on record. Therefore discrepancy, if any, should have been pointed out at the time of assessment & examination itself.

#### **D. SCN Allegations:**

- SCN dated 03.05.2023: Alleges misclassification under CTH 29420090 instead of CTH 2901-2941, demanding recovery of Rs. 6,525.54 with interest and penalties under Section 28(4).
- SCN dated 03.06.2025: Specifically alleges Clomiphene Citrate's classification under CTH 29221990 (2% MEIS), invokes suppression for a longer recovery period, demands Rs. 6,526, proposes confiscation under Section 113(i), and penalties under Sections 114(iii), 114AA, and 114AB.

**E. Additional Context:** Clomiphene Citrate is produced under a drug manufacturing license, adhering to pharmacopeial standards, and its export as a bulk drug under CTH 29420090 aligns

with trade practice and regulatory norms.

**F. Objection:** The SCNs lack evidence of fraud or suppression, mischaracterize MEIS as duty, and overstep Customs' jurisdiction, necessitating this reply. MEIS is a reward scheme & cannot be termed as duty under any circumstances. MEIS can be used to discharge Customs duty liability but that does not mean that MEIS is duty & can be recovered as such. The exporter paid duty by way of MEIS & the Customs has not pointed any error in that payment of duty for recovery therefore the proposition of the recovery of duty falls flat.

### **G. Grounds of Defence :**

#### **Ground 1: Customs' Failure to Exercise Due Diligence**

\* Contention: All shipping bills, with detailed descriptions and ADC NOCs, were assessed by Customs under Section 17(2), with no objections during LEO or drawback disbursement, indicating acceptance of CTH 29420090.

\* CTH 29420090 is in use since 2013: Please note that CTH 29420090 has been in use in Excise as well as Customs since 2013. According to the copies of the C. Ex. Invoices, it is established & accepted practise for long & cannot be overturned without the exporter-being put to notice even if Customs wants to change the CTH for the product.

\* SCNs' Deficiency: The SCNs attribute sole responsibility to the exporter under seif-assessment (Section 17), ignoring Customs' verification duty and failing to justify reopening finalized assessments.

\* Legal Basis: MRF Ltd. v. Assistant Commissioner, (2006) 8 SCC 702 - *The Supreme Court held that Customs' acceptance of an assessment estops later challenges absent fraud or misrepresentation, as the assessee relies on such approval.*

\* Argument: Customs' clearance and drawback disbursement under CTH 29420090 constitute tacit approval, precluding reclassification without evidence of fraud, which the SCNs do not substantiate. Reopening finalized assessments violates fairness and statutory duty. The same Shipping Bill cannot be subjected to different assessments in terms of the CTH codes for the purpose of the disbursement of the drawback & MEIS. There is no notice from the Excise, Drawback therefore reopening the assessment for the purpose of MEIS cannot be permitted in terms of the law.

#### **Ground 2: Finality of Classification Post-LEO and Drawback**

\* Contention: Dual assessments (LEO and drawback) finalized CTH 29420090, yet the SCNs propose reclassification (e.g., to 2901-2941/29221990) years later without new evidence or fraud

\* SCNs' Deficiency: The SCNs provide no basis for altering settled classifications post-drawback, ignoring their finality under Section 17.

\* Legal Basis: Union of India vs. Jain Sudh Vanaspati Ltd., (1996) 86 ELT 193 (SC)- *The Supreme Court ruled that Customs' clearance estops later challenges absent concealment, upholding assessment finality.*

\* Argument: Drawback settlement under CTH 29420090 is a final cetermination, barring revision without legal grounding. The SCNs' reclassification attempt is ultra vires and unsustainable.

#### **Ground 3: Clomiphene Citrate's Status as a Bulk Drug**

\* Contention: Clomiphene Citrate, produced under a drug manufacturing license and cleared with ADC NOCs under pharmacopeial specifications (BP/USP), is a bulk drug under CTH 29420090, not a chemical entity under CTH 29221990.

SCNs' Deficiency: The SCNs rely on chemical structure (oxygen functional amino compounds) for reclassification, ignoring regulatory distinctions under the Drugs and Cosmetics Act, 1940,

and trade practice.

\* Legal Basis: Cipla Ltd. vs. Commissioner of Customs, (2001) 132 ELT 3 (SC) – *The Supreme Court held that bulk drugs are classified by commercial identity and use, not merely chemical composition.*

Argument: ADC NOCs and pharmacopeial compliance confirm Clomiphene Citrate's pharmaceutical identity under CTH 29420090. The SCNs' chemical-based approach misapplies tariff headings, overlooking statutory and commercial evidence.

#### **Ground 4: Reliance on Manufacturer's Classification**

\* Contention: As a manufacturer, we adopted CTH 29420090 a practice accepted by Excise, Customs and DGFT, acting in good faith. As per evidence, this has been in use since 2013 & therefore cannot be abruptly overturned contrary to the legal precedents.

\* SCN Deficiency: The SCN holds exporter solely liable, ignoring prior approvals.

\* Legal Basis: Tata Iron & Steel Co. Ltd. vs. Commissioner (2000) 118 ELT 3 (SC) - *The Supreme Court ruled that good faith reliance on supplier documentation protects the assessee unless mala fide intent is proven.*

\* Argument: Exported reliance on manufacturer's HS Code, consistent with trade norms and unchallenged earlier was reasonable. The SCN liability shift is unjust, absent evidence of collusion.

#### **Ground 5: SCNs Beyond Limitation Period**

Contention: The SCNs (03.05.2023 and 03.06 2025) for 2019-2020 exports exceed the one year limitation under Section 28(1) from audit completion (Post-Alert Circular 26.07.2021), unless fraud is proven, which is unsupported

\* SCN Deficiency: The SCNs invoke Section 28(4)'s five-year period alleging Suppression, without specifying audit timelines or evidencing intent beyond misclassification.

\* Legal Basis: Cosmic Dye Chemical vs. Collector of Customs, (1995) 75 ELT 721 (SC) - *The Supreme Court held that fraud requires positive evidence to extend limitation: misclassification alone is insufficient.*

\* Argument: Without audit date proof or fraud substantiation, the SCNs are time-barred under Section 28(1). The suppression angle, newly introduced in the 2025 SCN, lacks factual basis, rendering the demands void. The 2023 SCN does not allege suppression & that in itself establishes that there was no suppression on the part of the exporter therefore any afterthought does not serve any purpose.

#### **Ground 6: No suppression or Willful Misdeclaration**

\* Contention Full disclosures (descriptions, CTH 29420090, ADC NOCs) in shipping bills, assessed by Customs and DGFT, negate suppression or fraud allegation.

\* SCN Deficiency: The SCN assert suppression without identifying concealed facts, relying solely on post-audit reclassification disputes

\* Legal Basis: Pushpam Pharmaceuticals vs Collector of Customs (1995) 78 ELT 401 (SC) - *The Supreme Court ruled that suppression requires active concealment, not interpretive classification disputes.*

\* Argument: Transparent declarations, accepted over years, preclude intent.

The SCNs' suppression claim (2025 notice), introduced to extend limitation, is baseless, invalidating penalties and recovery.



### **Ground 7: Jurisdictional Overreach and MEIS Mischaracterization**

\* Contention: As explained MEIS, an FTP 2015-2020 incentive under DGFT's purview, is not a duty under the Customs Act. Customs' recovery under Sections 28(4) and 28AAA exceeds its authority.

\* SCNs' Deficiency: The SCNs mislabel MEIS as duty, ignoring its FTP status and ADC's bulk drug certification, without DGFT's sanction.

\* Legal Basis:

Union of India vs. Sampat Raj Dugar (1992) 58 ELT 163 (SC)- *The Supreme Court held that actions beyond statutory jurisdictions are void.*

Commissioner of Customs v. Sayed Ali (2011) 3 SCC 537 - *Ultra vires orders lack enforceability.*

\* Argument: MEIS, defined as a reward under FTP Para 3.04, falls outside Customs' recovery power. DGFT holds jurisdiction, rendering the SCNs void ab initio.

### **Ground 8: Invalidity of Confiscation and Penalties**

\* Contention: Confiscation under Section 113(i) and penalties under Sections 114(iii), 114AA, and 114AB are inapplicable, as goods were exported legally with full disclosure, and MEIS is not a duty.

\* SCNs' Deficiency: The SCNs propose confiscation despite goods being unavailable and impose penalties without proving fraud or illegal export

\* Legal Basis. Commissioner of Customs v. Indian Oil Corporation, (2004) 165 ELT 257 (SC) - *The Supreme Court held that penalties require clear evidence of contravention, not mere interpretive disputes.*

\* Argument Legal exports under CTH 29420090, cleared with NOCs, negate Confiscation grounds. Penalties tied to a non-duty (MEIS) and unproven fraud are illegal, warranting dismissal.

### **Other settled cases**

- The CESTAT Delhi in Faiveley Transport Rail Technologies India Pvt. Ltd. vs Principal Commissioner of Customs (2025) held that classification disputes are matters of interpretation and do not imply wilful evasion unless there is clear evidence of intent to mislead.
- The Supreme Court in Gopal Zarda Udhyog vs. Commissioner of Central Excise (2005) ruled that mere incorrect classification does not amount to fraud unless deliberate intent to evade duty is proven.
- Long-standing practice of a particular classification suggests bona fide belief leaving no scope for suppression of facts unless the department can prove active concealment or misleading declarations. All details appear on record & CTH in use since 2013 without any objection from Excise, Customs, DGFT & Drawback paid on the basis of CTH 29420090 in this case also.
- On the basis of above submission exporter had requested to withdraw CL No. 128/2023-24 & SCN No. 206/2025-26 and set aside demands of Rs. 6,526 with interest. Exporter had also requested to waive confiscation under Section 113(i) and penalties under Sections 114(iii), 114AA, 114AB.

### **RECORD OF PERSONAL HEARING**

**13.** Noticee was given an opportunity for Personal Hearing on 30.07.2025. Shri Rajiv Gupta (Consultant of M/s. Dy\_Mach Pharma) attended personal hearing in virtual mode on 30.07.2025. He stressed on the point of classification in respect of goods mentioned in SCN under heading No. 29420090 is correct and hence they have correctly got the reward under MEIS. In this regard

they submitted their reply dated 26.06.2025 signed by Mahesh H. Doshi (Director) of M/s. Dy\_Mach Pharma.

### **DISCUSSION AND FINDINGS**

**14.** I have carefully gone through the entire records of the case and the case has been examined in the light of the evidences produced by the department, applicable laws/rules in the matter and also the oral and detailed written submissions made by the noticee. I find that the subject Show Cause Notice was issued on 03.06.2025 under Section 124 read with Section 28(4) read with Section 28AAA of the Customs Act 1962 for alleged misclassification of goods. Further, in compliance to the provisions of Section 28(8) and Section 122(b) of the Customs Act, 1962 and in terms of the principles of natural justice, opportunities for Personal Hearing (PH) were granted to the Noticee. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegations made in the SCN as well as the submissions / contentions made by the Noticee.

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

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

**16.** Further, I find that noticee has placed reliance on various judgments of Tribunals, High Courts and Apex Court, however, I find that the Hon’ble Supreme Court of India in case of *Ambica Quarry Works vs. State of Gujarat & Others* [1987(1) S.C. C. 213] observed that “the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it.”

- i. Further in the case of *Bhavnagar University vs. Palitana Sugar Mills (P) Ltd.* 2003 (2) SCC 111, the Hon’ble Apex Court observed “It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.”
- ii. One other reference on the situation I have found in the decision of the Hon’ble Supreme Court in *Ispat Industries vs. Commissioner of Customs, Mumbai* [2004 (202) ELT 56C (SC)], wherein, the Hon’ble Court has quoted Lord Denning and ordered as under:

*Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly reliance on a decision is not proper.*

*The following words of Lord Denning in the matter of applying precedents have become locus classicus:*

*“Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”*

**17.** I find that tariff headings, explanatory notes to the relevant chapter heading issued by the World Customs Organization very specifically states that tariff heading 2942 covers other organic compound (Not classified elsewhere). This heading covers separate chemically defined organic

compounds not classified elsewhere ex- Ketenes; Boron trifluoride complexes with acetic acid, diethyl ether or phenol; Dithymol di-iodide.

**17.1 CLOMIPHENE CITRATE (29221990) :-** Clomiphene Citrate is a muscarinic antagonist and is structurally related to diphenhydramine. It is used as a muscle relaxant and to help with motor control in Parkinson's disease. The "Oxygen function" in its classification refers to the presence of an oxygen atom within the compound's molecular structure, which is typical for ethers and esters. The 'Amino Alcohol' part of the classification indicates the presence of amino group (NH<sub>2</sub>) and hydroxyl group (OH) within the molecule. Its chemical formula is C<sub>18</sub>H<sub>23</sub>NO.C<sub>6</sub>H<sub>8</sub>O<sub>7</sub>. its IUPAC name is "2-dimethylaminomethyl-2-phenylbicyclo [2.2.2] octan-1-ol; 2- hydroxypropane-1,2,3-tricarboxylic acid. Orphenadrine citrate is classified as oxygen-functional amino group. in this chemical structure, an amino group (NH<sub>2</sub>) attached to one of the carbon atoms. The amino group is characterized by a nitrogen atom (N) bonded to two hydrogen atoms (H). Accordingly, the same appears to be correctly classifiable under CTH 29221990

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

**18.** Now, the issue before me is whether the Noticee had mis-classified the impugned goods wilfully and deliberately with the intention to avail MEIS benefits on higher side. In this regard, I find that the Merchandise Exports from India Scheme (MEIS) provides benefits to exports of notified goods with the ITC (HS) code made to the notified markets, listed under Appendix 3B of the Handbook of Procedures (HBoP) in the form of Duty Credit Scrips. Besides, Appendix 3B also lists the rate(s) of rewards on various notified products [ITC (HS) code wise] which are based on the FOB value of exports realized in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in free foreign exchange, whichever is less, unless otherwise specified.

**19.** I find that Directorate General of Foreign Trade (DGFT), Ministry of Commerce vide Public Notice No. 61/2015-20 dated 07.03.2017 had re-notified the MEIS Schedule Appendix 3B (Table-2) harmonising MEIS Schedule with ITC(HS), 2017. The MEIS entitlement as per Public Notice No. 61/2015-20 dated 07.03.2017 as amended, on the products classifiable under CTH 29359090 and 29224990 is as under :

**Table-1**

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

**19.1.** Further, I find from Table above that goods classifiable under Customs Tariff Heading 29221990 is entitled to benefit under MEIS Schemes at the rate of 2% instead of 3% of FOB value. I find that goods classifiable under CTH 29221990 is covered under Appendix-3B (MEIS Schedule).

**19.2** I find that the exporter had mis-declared the classification of the goods in their Shipping Bills and other documents to avail excess MEIS benefit. By no stretch of imagination, such mis-declaration and mis-statement can be regarded as without the exporter's will and intention, especially when such mis-declaration leads to availment of inadmissible benefit of MEIS by them. As already observed M/s. **Dy\_Mach Pharma(IEC-388086777)** had classified the

impugned goods under CTH 29420090 to claim inadmissible MEIS benefits. This shows that the decision to classify the export product under wrong CTH was taken to avail higher MEIS benefit, which clearly indicate that it is not due to lack of knowledge or unintentional mistake, but it is a wilful "decision" to misclassify the goods with the intention to wrongfully avail undue MEIS benefit and as such it constitutes wilful mis-statement fit for invoking provisions of Section 28AAA of the Customs Act, 1962.

**20.** With regard to the Noticee' submission that the DGFT is the final authority in respect of matters pertaining to interpretation of the FTP, I find that the issue involved in the instant SCN is not concerned with the interpretation of the FTP. In the instant matter, the core issue is that of the correct classification of the impugned export goods under Customs Tariff Act. The secondary issue is availment of MEIS under that CTH i.e. 29221990 wherein the rate of MEIS was 2% but the Noticee had, by classifying the impugned goods under CTH 29420090, availed the MEIS benefits at 3%. Therefore, I find that illegitimately availed MEIS benefits amounting to **Rs. 6,526/- (Rupees Six Thousand Five Hundred and Twenty-Six Only)** which was not available in respect of to the subject goods under merit classification of CTH 29221990 is recoverable under the provisions of the Customs Act, 1962. With regard to the context of the case laws relied upon by the Noticee, I find that the ratios of the decisions therein are distinguishable to subject case as there is no interpretation of FTP involved in this case and the MEIS is different to other Schemes like Advance Authorization, DEPB, FMS, EPCG etc., of the DGFT in many ways.

**20.1** I find that the MEIS scrips issued to the Noticee were valid at the time of debit but it is established that the said MEIS scrips were obtained against the export of those goods which are correctly classifiable under CTH 29221990 wherein MEIS was 2% instead of 3%. In this way, the Noticee had obtained the MEIS scrips against the export of the impugned goods wherein MEIS was 2% instead of 3% and utilised the same to avail the undue MEIS benefits and I find that the MEIS benefits availed by the Noticee were not admissible and duty at the appropriate rate is leviable on the imports to the extent of duty credit denied and same is required to be recovered from **M/s. Dy\_Mach Pharma(IEC-388086777)**. Therefore, I find that the undue benefit of MEIS availed amounting to **Rs. 6,526/- (Rupees Six Thousand Five Hundred and Twenty-Six Rupees Only)** as detailed (in Annexure-B of the said show cause notice) are liable to be denied and recovered under the provisions of the Customs Act, 1962. **The cancellation of MEIS scrips is procedural in nature and pleadings of the Noticee in this context cannot be the reason to make them eligible for 3% MEIS benefits for export of those goods which are classifiable under CTH 29221990 wherein MEIS benefit was 2%.**

**21.** I find that the Noticee have contended that All shipping bills, with detailed descriptions were assessed by Customs under Section 17(2), with no objections during LEO or drawback disbursement, indicating acceptance of CTH 29420090 and in absence of any challenge to the shipping bills in dispute by the customs department, the present demand is ex-facie erroneous and bad in law. The Noticee has relied upon the several case laws including judgement of Hon'ble Supreme Court in **MRF Ltd. v. Assistant Commissioner, (2006) 8 SCC 702** and **Union of India vs. Jain Sudh Vanaspati Ltd., (1996) 86 ELT 193 (SC)**.

**21.1** In this regard, I find that in the instant matter the investigations proved that the Noticees had mis-classified the impugned goods with the wilful misstatement and suppression of facts to avail inadmissible MEIS benefits which has been discussed at length in the preceding paras. Hence, the recovery of the MEIS benefits are liable to be recovered as per the provisions of Section 28(4) and Section 28AAA of the Customs Act, 1962. I find that Hon'ble Supreme Court of India in the case of **Union of India & Ors. Vs Jain Shudh Vanaspati Ltd. &Anr** held that-

"A clearance order under Section 47 obtained by fraudulent means such as this (if it, in fact, be so) cannot debar the issuance of a show-cause notice for confiscation of goods under Section 124. Fraud, if established, unravels all. An order under Section 47 obtained by the employment of fraudulent methods does not have to be set aside by the exercise of revisional powers under Section 130 before the ill-effects of the fraud can be set right by initiation of the process of confiscation of the fraudulently cleared goods under Section 124.

It is relevant to bear in mind that the issuance of the show-cause notice under Section 124 contemplates that the respondents' response shall be considered and only thereafter will the matter be decided. The respondents shall, therefore, have full opportunity to satisfy the authorities that there was no importation of banned goods which makes them liable to confiscation."

## **21.2 Further in the case of M/s S. V. Technologies Hon'ble CESTAT has held that :**

"The short point to be decided is whether the First Appellate Authority was correct in holding that the lower authority cannot raise a demand under Section 28 of the Customs Act without first challenging the assessment done in the bill of entry relying on the Judgment of Priya Blue (supra) and Flock India (supra). We find that the judgment of Priya Blue and Flock India of the Hon'ble Apex Court are on the point of refund claim by the assessee without challenging the assessment order in the bill of entry. The present case is different. It is a case where after assessment and clearance of the goods is completed by issue of order under Section 47 of the Customs Act, 1962, within the normal period of limitation, the Deputy Commissioner has raised a demand under Section 28. While raising the demand he issued a show cause notice proposing re-classification of the imported goods and gave an opportunity to the respondent to present their case and considered their submissions. Thereafter, he confirmed the demand. The First Appellate Authority also agrees with the re-classification done by the Deputy Commissioner on merits. He, however, held that the Deputy Commissioner again raised the demand without first challenging or asking the Commissioner to review his own assessment of the bill of entry. This is not the ratio laid down by the Hon'ble Apex Court in the case of Priya Blue (supra) or Flock India (supra). **Cases pertaining to issue of demand under Section 28 after clearance of the case under Section 47 are covered by the judgment of the Hon'ble Apex Court in the case of Jain Shudh Vanaspati Ltd., (supra) which clearly held that a demand can be raised under Section 28 even after clearance of the case under Section 47.**"

**21.3** The above-mentioned judgement has been followed in a series of judgments by the Tribunal and Courts and it is well settled matter that a demand can be raised for not levied, not paid, short levied or short paid duty under Section 28 after clearance of goods under Section 47 of the Customs Act, 1962.

**22.** I observe from the Chapter notes, chapter headings and reasons as elaborated in foregoing paras as well as confirmatory statements on record, that **M/s. Dy\_Mach Pharma(IEC-388086777)** had wilfully mis-stated the classifications of the subject goods exported by them and suppressed the actual classification in their export documents filed before the Customs authorities with an intent to avail undue benefit of MEIS scheme and therefore the MEIS scrips obtained by them on the basis of such manipulated documents become invalid and hence, it can be said that the same were obtained fraudulently. I find that by resorting to such acts, **M/s. Dy\_Mach Pharma (IEC-388086777)**, had contravened the various provisions of Customs Act, 1962.

**23.** I notice that vide Finance Act, 2011 with effect from 08.04.2011 "Self-Assessment" had been introduced under the Customs Act, 1962. With the introduction of self-assessment under the Customs Act, more faith is bestowed on the exporter, as the practice of routine assessment, concurrent audit and examination has been dispensed with and the exporters have been assigned with the responsibility of assessing their own goods under Section 17(1) of the Customs Act, 1962. Section 17(1) of the said Act provided for self-assessment of duty on import and export goods by the importer or the exporter by filing a bill of entry or shipping bill, as the case may be, in the electronic form, as per Section 46 or 50 respectively. As a part of self-assessment by the said exporter, it is their duty to present correct facts and declare to the Customs authority about their inability to classify the subject goods rather to mis-classify the goods. The onus is on the exporter to ensure that accurate and complete information is given in the shipping bill, as mandated under section 50(2) & 50(3) of the Customs Act, 1962. As per substantive provisions of section 50(3) of the Customs Act, 1962, the Exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:

- (a) The accuracy and completeness of the information given therein;

(b) The authenticity and validity of any document supporting it, and

(c) Compliance with the restrictions or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

Thus, under self-assessment, it is the importer or exporter who would ensure that they declare the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, I find that **M/s. Dy\_Mach Pharma(IEC-388086777)** had deliberately contravened the above said provisions with an intention to avail MEIS benefits fraudulently which are not legitimately due to them.

**23.1** However, I observe that the exporter had not fulfilled the statutory obligation of correct and truthful declaration of the material facts of the exports document i.e. shipping bills, wherein the Exporter had mis-classified the goods with an intention to claim higher export benefits in form of the MEIS as explained above. Thus, by misclassifying the goods, undue MEIS benefits amounting to **Rs. 6,526/- (Rupees Six Thousand Five Hundred and Twenty-Six Only)** appears to have been wrongly claimed by the Exporter which were utilized for payment of customs duty by the Exporter.

**24.** I find that in the instant case the exporter had given a declaration under section 50(2) of the Customs Act, 1962 for the truthfulness of the content submitted at the time of filing Shipping bills. However, the exporter had not correctly classified the exported goods and therefore wrong MEIS benefit @ 3% instead of applicable MEIS @ 2% of FOB value on the subject goods was claimed by the exporter. Hence the Exporter had submitted a false declaration under section 50(2) of the Customs Act, 1962 which amounts to wilful mis-declaration. Further, it appears that the Exporter had suppressed the facts of applicability of Correct MEIS benefit @2% while claiming MEIS benefit from DGFT and intentionally claimed undue MEIS benefit on the goods exported vide Shipping bills as mentioned in Annexure-B. This act of exporter had resulted into loss of government revenue of **Rs. 6,526/- (Rupees Six Thousand Five Hundred and Twenty-Six Only)** and had accrued monetary benefit to the Exporter. Therefore, Exporter had wilfully mis-stated, mis-represented and suppressed the facts with an intention to gain undue MEIS benefit. As the Exporter got the undue monetary benefit, due to the said act of mis-classification of the subject exported goods, the same was done deliberately by mis-classification of the said goods in the above said Shipping bills during self-assessment which amounts to wilful mis-declaration.

**25.** I further observe that the exporter presented a large number of shipping bills before DGFT to obtain MEIS License/Scripts under dispute. The duty credit granted on such MEIS License/Scripts included MEIS credit earned on correctly classifiable goods at appropriate eligible rates as well as on mis-classified products. I further find that **M/s. Dy\_Mach Pharma (IEC-388086777)** had deliberately mis-classified the export goods under CTH 29420090 in all the shipping bills having **FOB value of Rs. 6,52,554/- (Rupees Six Lakh Fifty-Two Thousand Five Hundred and Fifty-Four Only)** as detailed in Annexure-B to the subject SCN, to claim and avail undue higher rate of MEIS benefits which are not due to them. **M/s. Dy\_Mach Pharma(IEC-388086777)**, thus claimed undue export benefit in terms of MEIS through Shipping Bills for **Rs. 6,526/- (Rupees Six Thousand Five Hundred and Twenty-Six Rupees Only)** as indicated in Annexure-B to the subject notice. The amount of **Rs. 6,526/- (Rupees Six Thousand Five Hundred and Twenty-Six Only)** is therefore liable to be recovered under per section 28(4) and/or 28AAA of the Customs Act, 1962, as applicable along with the applicable interest.

**26.** I find that the investigations in the instant matter revealed that the Noticee by way of wilful mis-statement, mis-representation and suppression of facts as regards the classification of goods, presented the subject goods for export before the designated authority of Customs with intent to fraudulently avail benefit of MEIS on higher side. **M/s. Dy\_Mach Pharma (IEC-388086777)** had violated the provisions of Section 17 and 50 of the Customs Act, 1962 which is their duty to comply with. In view of the above, I therefore, find that **M/s. Dy\_Mach Pharma(IEC-388086777)** had indulged in fraudulent export of the goods by mis-declaring the actual

classification of goods so exported, which squarely fell within the ambit of illegal export as defined in Section 11H(a) of the Customs Act, 1962 in as much as the same was in contravention of various provisions of Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules 1993 and Foreign Trade Policy.

Moreover, as the Noticee had been working under the regime of self assessment, where they have been given liberty to determine every aspect of an consignment from the classification to declaration of value of the goods, it was the sole responsibility of the Noticee to place correct facts and figures before the Assessing Authority. In the instant case, the Noticee had the full knowledge of the fact that they did not follow the correct MEIS Reward Rate in respect of the declared export goods but they preferred suppressing the fact from the Customs Authority for claiming the MEIS Reward Rate on higher side.

**27.** With regard to the argument that the subject goods had already been cleared and are therefore not physically available for confiscation and hence cannot be confiscated I find that the physical availability of the goods is irrelevant for ordering confiscation and imposition of redemption fine in lieu of confiscation. In this regard I place reliance on the order of Hon'ble Madras High Court in the case of **Visteon Automotive Systems India Limited Vs CESTAT, Chennai,[2018(9) GSTL 142(Mad.)]**, wherein it has been held that the availability of goods is not necessary for imposing redemption fine. Vide the said order it was inter alia held by the Hon'ble Court as under:

*" 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 significance for imposition of redemption fine under Section 125 of the Act."*

The said judgment of Honourable Madras High Court was also relied upon by the Hon'ble Gujarat High Court in the case of Synergy Fertilchem Pvt. Ltd. Vs. State of Gujarat [2020(33) GSTL 513(Guj.)]

**28.** I also rely upon the landmark judgment by Hon'ble Supreme Court in the case of WESTON COMPONENTS LTD. Versus COMMISSIONER OF CUSTOMS, NEW DELHI as reported in 2000 (115) E.L.T. 278 (S.C.) [Civil Appeal No. 7144 of 1999, decided on 4-1-2000], wherein it has been held that:

*Redemption fine imposable even after release of goods on execution of bond - Mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine 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. [para 1]*

**29.** I find that Rule 14(2) of Foreign Trade (Regulation) Rules, 1993 prohibits employing of any corrupt or fraudulent practice for the purpose of exporting any goods for obtaining any license. Further, I find that the said goods are liable for confiscation in terms of Section 113(i) of the Customs Act, 1962 as the same were exported by mis-declaring the classification. The above-mentioned acts of commission and omission on the part of **M/s. Dy\_Mach Pharma(IEC-388086777)** had rendered the goods exported by resorting to mis-declaration in terms of classification of goods, liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. The above mentioned acts of commission and omission on the part of **M/s. Dy\_Mach Pharma (IEC-388086777)** had rendered the goods exported having declared **FOB value of Rs. 6,52,554/- (Rupees Six Lakh Fifty-Two Thousand Five Hundred and Fifty-Four**

**Only)** (as detailed in Annexure-B to the subject SCN), liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962.

**29.1.** I find that the Noticee had argued that the section 28(4) of the Customs Act, 1962 is not invocable in the present case and relied upon the several case laws including the decision of Hon'ble Court in the case of **Uniworth Textiles Ltd. Vs. CCE-2013 (288) ELT 161 (SC)**. In this context, I find that the investigation has conclusively proved the fact that there are omissions and commission on the part of the Noticee as clearly brought out in the forgoing paras. Thus, extended period in terms of section 28(4) of the Customs Act, 1962 is rightly invocable.

**29.2.** Further, I notice that the Noticee submitted that section 28AAA is not invocable in the present case. In this regard, I find that the subject show cause notice was issued to recover the duty equivalent to the MEIS scrip value in terms of section 28(4) and/or 28AAA of the Customs Act, 1962 alongwith applicable interest thereon, which is as per the existing provisions. The ratio of the case laws relied upon by the exporter in this regard is not covered with the facts of this case.

**29.3** I notice that the Noticee had argued in their submissions that the subject goods are not liable for confiscation under section 113(i) of the Customs Act, 1962. Further, the exporter had submitted that no penalty can be imposed under section 114(iii) or 114AA or 114AB of the Customs Act and penalty cannot be imposed. They had also relied upon several case laws in this regard. In this context, I find that the department has conclusively proved the fact that there are established omission and commission on the part of the Noticee as clearly brought out in the forgoing paras.

**30.** Further, at the outset, I find that in the case of a statutory offence, regardless of mens-rea, penalty can be invoked on the offender i.e. the exporter. The mens-rea is not an essential ingredient for contravention of the provisions of a civil act. The customs law is different from criminal law, as the customs law is basically a civil law barring some provisions. The evasion of duty/availment of undue export incentive beyond certain threshold limit prescribed by the act and commissioned with knowledge is criminally fit for trial in the court of law. In such offence knowledge is necessary to prove the charges. In other statutory offence in absence of requirement of mens-rea, a wrong is penalized through quasi-judicial proceedings.

**30.1** In this regard, I place reliance on the judgment of the Hon'ble Supreme Court of India in the case of **Chairman SEBI Vs. Shriram Mutual Fund (2006) 5.SCC** wherein it was held that mens-rea is not an essential ingredient for contravention of the provision of a Civil Act, unless the language of the statute indicates the need to establish the element of mens-rea, it is generally sufficient to prove that a default in complying with the statute has occurred and it is wholly unnecessary to ascertain whether the such violation was intentional or not. The breach would attract penalty regardless of the fact whether the contravention was intentional or not. The relevant portion of order is as under: "In our opinion, mens-rea is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not",

**30.2** Same view was earlier taken by the Supreme Court in the case of **Pine Chemical Suppliers V/s. Collector of Customs reported at 1993 (67) ELT 25 (SC)** wherein it has been held that question of mens-rea not relevant for liability to confiscation and penalty. The same was followed by the Hon'ble High Court of Madras in the case of **Commissioner of Customs (Export), Chennai -I Vs. Bansal Industries reported at 2007 (207) ELT 346 (Mad)** wherein it has been held that element of mens-rea is not required for imposition of punishment under Customs Act, 1962 as there was a breach of a civil obligation attracting levy of penalty. Hence, I am convince that Sections 113(i), 114(iii), 114A and 114AB of Customs Act, 1962 are invocable



in the instant matter.

**31.** In view of the above discussion, I find that MEIS benefits, covered by Customs Notification No.24/2015-Customs dated 08/04/2015, as amended, was a custom duty exemption by way of debit through MEIS Scrips. The power to exempt would include within its ambit the power to demand duty in the event such exemption is wrongly claimed/mis-used. Since the MEIS Scrips/Licenses, had been obtained by **M/s. Dy\_Mach Pharma(IEC-388086777)** by misclassification of the export goods as discussed in the foregoing paras, they are therefore liable for suspension / cancellation / restriction, Hence, I find that the MEIS benefits availed by the Noticee were not admissible, the same are required to be recovered from **M/s. Dy\_Mach Pharma(IEC-388086777)** Therefore, I find that the undue benefit of MEIS availed amounting to **Rs. 6526/- (Rupees Six Thousand Five Hundred and Twenty-Six Only)** as detailed (in Annexure-B of the said show cause notice) is liable to be denied and recovered under the provisions of section 28(4) and/or 28AAA of the Customs Act, 1962 alongwith interest under section 28AA of the Customs Act, 1962.

**32.** I find that **M/s. Dy\_Mach Pharma(IEC-388086777)** are having sizeable turnover and are regularly exporting various Active Pharmaceutical Ingredients (APIs), Pharma Intermediates, Specialty Chemicals items. Therefore, they are expected to have requisite knowledge and expertise of the Customs procedures, classification and other aspects related to export in their self-assessment. Despite their vast experience, the misclassification of export goods had been unearthed. Hence, such misclassification/mis-statement could not be regarded as without their will and intention, especially when such mis-declaration leads to flow of ineligible rate of benefit of MEIS to them. Therefore, from the above facts and as discussed in the foregoing paras, I find that the said mis-classification by **M/s. Dy\_Mach Pharma(IEC-388086777)** was wilful and intentional, to avail undue MEIS benefit and therefore I hold the subject goods liable for confiscation under section 113(i) of the Customs Act, 1962.

**33.** I notice that by misclassifying the subject goods with an intention to avail wrongful/ineligible /undue MEIS benefit amounting to **Rs. 6,526/- (Rupees Six Thousand Five Hundred and Twenty-Six Only)**, **M/s. Dy\_Mach Pharma (IEC-388086777)** had violated the provisions of Customs Act and other violations on the part of the exporter as discussed and had rendered the goods liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. Further, I find that owing to the above-mentioned acts of commission and omission, **M/s. Dy\_Mach Pharma(IEC-388086777)** had rendered themselves liable for penal action under Section 114(iii), 114AA & 114AB of the Customs Act, 1962 with regard to the goods exported.

**34.** I find that the Noticee had violated the provisions of Rule 11 of the Foreign Trade (Regulations), 1993 as well as the provision of section 50(2) of the Customs Act, 1962 by misclassifying the subject exported goods and claimed undue MEIS which was not admissible to them, thereby rendered the exported goods covered by Shipping Bills as detailed in the Annexure-B of the subject show cause notice, liable to confiscation under Section 113(i) of the Customs Act, 1962. I find that the exported goods are not physically available for confiscation. In this regard, I rely upon the judgement 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:

'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 the 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 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 significance for imposition of redemption fine under section 125 of the Act.'

**34.1** The above judgement is squarely applicable in this case also where the goods are already exported and physically not available.

**34.2** I find that since the above acts of omission and commission on the part of the exporter had rendered the goods liable for confiscation u/s 113(i) of the Customs Act, 1962, **M/s. Dy\_Mach Pharma(IEC-388086777)** had rendered himself liable to penalty under Section 114(iii) of the Customs Act, 1962

**34.3** I also find that the Noticee had knowingly and intentionally made the declaration in the subject shipping bills which is false or incorrect with respect to the classification of the subject goods for undue claim of export benefits i.e. MEIS. Therefore, this act of **M/s. Dy\_Mach Pharma(IEC-388086777)** had made them liable to penal action under Section 114AA of the Customs Act, 1962 for signing false declaration in the shipping bill.

**34.4** I notice that **M/s. Dy\_Mach Pharma(IEC-388086777)** had claimed the instrument viz. MEIS @ 3% of the FOB value by intentional mis-declaration of classification of the exported goods in respect of subject shipping bills as mentioned in Annexure B of the Notice. Therefore, the exporter **M/s. Dy\_Mach Pharma(IEC-388086777)** are also liable for penalty u/s 114 AB of Customs Act, 1962 for this intentional mis-declaration of classification.

### **ORDER**

**35.** I reject the declared classification under 29420090 of the subject goods in the Shipping Bills (as detailed in Annexure-A to the SCN) and re-classify the said goods under Customs Tariff Heading 29221990 of the First Schedule to the Customs Tariff Act, 1975.

**(ii)** I confiscate the impugned exported goods, having total declared **FOB value of Rs. 6,52,554/- (Rupees Six Lakh Fifty-Two Thousand Five Hundred and Fifty-Four Only)** under Section 113(i) of Customs Act, 1962. However, in lieu of confiscation, I impose redemption fine of Rs. 2000/- (Rs. Two Thousand only) under section 125 of the Customs Act, 1962.

**(iii)** I reject the export benefit availed in terms of MEIS through Shipping Bills as detailed in Annexure-B to the SCN amounting to **Rs. 6,526/- (Rupees Six Thousand Five Hundred and Twenty-Six Only)** and I order to recover the same from **M/s. Dy\_Mach Pharma(IEC-388086777)** under section 28(4) and/or 28AAA of the Customs Act, 1962 along with interest thereon under section 28AA of the Customs Act, 1962, as applicable.

**(iv)** I impose penalty of Rs.1500/- (Rupees. One Thousand Five Hundred only ) under section 114(iii) of the Customs Act, 1962 upon **M/s. Dy\_Mach Pharma(IEC-388086777)** .

**(v)** I impose penalty of Rs.1500/- (Rupees. One Thousand Five Hundred only ) under section 114AA of the Customs Act, 1962 upon **M/s. Dy\_Mach Pharma(IEC-388086777)**.

**(vi)** I impose penalty of Rs.1500/- (Rupees. One Thousand Five Hundred only ) under Section 114AB of the Customs Act, 1962 upon **M/s. Dy\_Mach Pharma(IEC-388086777)**.

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

ASHWINI PRADEEP RANE

Asst. Commissioner of Customs  
NS-II, JNCH, Nhava Sheva.

To,

**M/s. Dy\_Mach Pharma (IEC-388086777)**

**C1/2344, GIDC, Vapi,**

**Gujarat-396195**

Copy to :

1. The Addittional Commissioner of Customs, NS-II, JNCH, Zone-II.
2. The Addl. Director General of Foreign Trade, CGO Office, Churchgate, Mumbai- 400020.
3. The Asst./Deputy Commissioner of Customs, Audit, JNCH.
4. The Asst./Deputy Commissioner of Customs, CRRC, JNCH.
5. The Asst./Deputy Commissioner of Customs, Review Cell
6. The Dy./Asstt. Commissioner of Customs, EDI, JNCH
7. IRMC-Investigation Report Monitoring Cell, NS-II
8. CHS Section for display on notice board.
9. Office Copy