



प्रधान आयुक्त, सीमा शुल्क (आयात) का कार्यालय
OFFICE OF THE PR. COMMISSIONER OF CUSTOMS (IMPORT)
हवाई माल परिसर, सहार, अंधेरी (पूर्व), मुंबई - 400099
AIR CARGO COMPLEX, SAHAR, ANDHERI (E), MUMBAI - 400099
फोन: 022-26816610, फैक्स: 022-26828187
ईमेल: adjudication-acc@gov.in

F.No. : GEN/ADJ/ADC/1893/2025-Adjn
DIN- 202605790E0000888CED

आदेश की तारीख Date of Order: 05.05.2026
जारी करने की तारीख Date of Issue: 06.05.2026

सी.ए.ओ. सं-- CAO/ADC/TM/21/2026-27/ACC
SCN NO.: - 289/2025-26 dated 01.09.2025

Party Name: - M/s. Ognibene India Private Limited (IEC-3106013621)

Passed by: - Tagadi Manjunath

Additional Commissioner of Customs (Import)

मूल आदेश ORDER-IN-ORIGINAL

1. यह प्रति उस व्यक्ति / एयरलाइन्स के प्रयोग में लाये जाने के लिए निःशुल्क दी जाएगी, जिसके लिए इसे जारी किया गया है।
This copy is granted free of charge for the use of the person to whomsoever it is issued.
2. इस आदेश के विरुद्ध अपील सीमा शुल्क अधिनियम 1962 की धारा (1) 128 के तहत आदेश की संसूचना की तारीख से साठ दिन के भीतर सीमा शुल्क आयुक्त (अपील), मुम्बई जोन-3, आवस कॉर्पोरेट पॉइंट, मकवानालेन, अंधेरी-कुर्ला रोड, एस.एम. सेंटर के पीछे, अंधेरी (पूर्व) 400 059 को की जा सकती है।
An appeal against this Order lies with the Commissioner of Customs, Appeals, Avas Corporate Point, Makwana Lane, Andheri Kurla Road, Behind SM Centre, Andheri (E), Mumbai 400059 under Section 128(1) of the Customs Act, 1962, within sixty days from the date of communication of this Order.
3. अपील सीमा शुल्क अपील नियमावली 1982 के साथ संलग्न प्रफ़ॉर्म सीए-1 में दो प्रतियों में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 5 रुपये मात्र का टिकट लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1970 की अनुसूची 1 मद के अंतर्गत निर्धारित किया गया है और अपील के साथ यह आदेश अथवा इसकी एक प्रति संलग्न होगी। अगर इस आदेश की प्रति संलग्न होती, उस पर न्यायालय फीस के रूप में 5 रुपये मात्र का टिकट भी होना चाहिए जैसा कि न्यायालय फीस अधिनियम 1970 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
The appeal should be in duplicate and should be filed in Form CA-1 appended to the Customs (Appeal) Rules, 1982. The appeal should bear a Court Fee Stamp of Rs. 5/- only as prescribed under Schedule I item of the Court Fees Act, 1970 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. 5/- prescribed under Schedule I, Item 6 of the Court Fee Act, 1970.
4. जो व्यक्ति इस निर्णय या आदेश के विरुद्ध अपील करने के इच्छुक है, वह अपील के अनिर्णित रहने तक उससे मांगा गया शुल्क जमा करेंगे या लगाया गया जुर्माना देंगे और सीमा शुल्क अधिनियम 1962 की धारा 129 के अधीन ऐसे भुगतान का प्रमाण प्रस्तुत करेंगे।
Any person desirous of appealing against this decision or Order shall pending the appeal, deposit the duty demanded or the penalty levied therein and produce proof of such payment with the provisions of Section 129 of the Customs Act, 1962.
5. बशर्ते कि जहां के शुल्क या ब्याज, जैसा भी मामला हो, धारा 28 की उपधारा (8) के अनुसार निर्धारित और धारा 28AA के तहत देय ब्याज, ऐसा शुल्क निर्धारित करने वाले उचित अधिकारी के आदेश के सम्प्रेषण की तिथि से तीस दिन के भीतर भुगतान किया जाता है, इस धारा के अधीन ऐसे व्यक्ति द्वारा देय जुर्माने की रकम, शुल्क अथवा ब्याज का पच्चीस प्रतिशत होगी।
Provided that where such duty or interest, as the case may be, as determined under Sub-section (8) of Section 28 and the interest payable thereon under Section 28AA, is paid within thirty (30) days from the date of the communication of the Order of the proper Officer determining such duty, the amount of penalty liable to be paid by such person under this Section shall be Twenty-Five per cent of the duty or interest, as the case may be, so determined.
6. बशर्ते पहले नियम के अधीन कम किये गये जुर्माने कालाभ ऐसी स्थिति में उपलब्ध होगा जबकि निर्धारित शुल्क की राशिका भुगतान भी उस नियम में उल्लिखित 30 दिनों की अवधि के भीतर किया जाए।
Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso.

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

Sub: **Show Cause Notice under Section 28 (4) read with Section 124 of the Customs Act, 1962 for evasion of Customs duty by M/s. Ognibene India Private Limited (IEC- 3106013621) – reg.**

M/s. Ognibene India Private Limited (IEC No. 3106013621) having address at Plot No. A-13 Talegaon Indl. Area, Navlakh Umbre, Tal. Maval, Pune-410 507, Maharashtra (hereinafter referred to as the '**the importer/ Noticee**' or '**M/s. OIPL**') through their authorized Customs Broker firm, M/s. Atlas Logistics Pvt. Ltd. (CB PAN No. AAACD9963ACH003) (hereinafter referred to as '**the CB**'), had filed four (04) Bill(s) of Entry Nos. 2164718 dated 12.03.2020, 9067887 & 9067934 both dated 05.10.2020 and 4977172 dated 09.08.2021 by classifying the same under CTI 4016 9320 / 4016 9390 for clearance of imported goods, i.e 'Road Wiper, Road Seal, O-ring etc.' (hereinafter referred to as '**the goods**'), as detailed in the Annexure-I, attached to the Show Cause Notice dated 01.09.2025.

2. During Transaction Based Audit ('**TBA**' in short) of subject 04 Bs/E, the following observations were noticed upon analysis of Bs/E and its supported documents uploaded in e-Sanchit:

- (i) The items covered under said 04 Bs/E (as mentioned in the Annexure-I attached to the SCN) were cleared by the Importer claiming a lower IGST rate @ 5% under Sr. No. 191 of Schedule-I instead of the applicable IGST rate @ 18% under Sr. No. 123A of Schedule-III of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017. It is amply clear that Sr. No. 123A of Schedule-III levying IGST rate of @ 18%, covers "Other Articles of Vulcanized Rubber other than Hard Rubber (Other than erasers, Rubber Bands)" and specifically excludes Erasers and Rubber Bands. In this regard, attention is invited to IGST rates of two Schedules of Notification No. 01/2017-ITR dated 28.06.2017, prescribed for different goods under CTH 4016, which are re-produced as under:

Schedule – I			
Sr. No.	Chapter/Heading/ Sub-Heading/Tariff Item	Description of goods	IGST Rate
191	4016	Erasers	5%
Schedule – III			
123A	4016	Other article of vulcanized rubber other than hard rubber (other than erasers, rubber bands)	18%

- (ii) From the above table, it appears that Sr. No. 191 of Schedule-I cover "*Erasers*" only. However, goods/articles of Vulcanized Rubber other

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

than Hard Rubber (other than Erasers, Rubber Bands), specifically excluding Erasers and Rubber Bands correctly attracts IGST @ 18% under Sr. No. 123A of Schedule-III of Notification No. 01/2017-ITR dated 28.06.2017

3. Therefore, in view of the above discussions, it appears that the Importer has short-paid Customs duty, as calculated in Annexure-I to the SCN to the tune of **Rs. 1,66,200/-** (Rupees One Lakh Sixty Six Thousand Two Hundred only) and the same is liable to be recovered under Section. 28 of the Customs Act, 1962 along with applicable interest and penalty under the relevant Sections of the Customs Act, 1962.

4. From the above, it appears that:

- (i) The imported goods are classified under CTH 4016;
- (ii) The Importer intentionally claimed the wrong IGST vide Sr. No. 191 of Schedule-I of IGST Notification No. 01/2017-ITR dated 28.06.2017 to evade the applicable Customs duty; and
- (iii) The impugned goods are properly covered under Sr. No. 123A of Schedule-III of IGST Notification No. 01/2017-ITR dated 28.06.2017 and attract IGST @ 18%.

5. Accordingly, a Consultative Letter dated 09.05.2023 was issued to the Importer apprising them to pay the differential Customs duties with applicable interest, but no reply is received so far.

6. Relevant Legal Provisions of Law applicable in the subject case are as under:

A. **Section 46 of Customs Act, 1962: Entry of goods on importation.-**

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting 1 [electronically] 2 [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing 3 [in such form and manner as may be prescribed]:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under [section 57](#) without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) 8 [before the end of the day (including holidays) preceding the day] on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:

Provided further that] a bill of entry may be presented 10 [at any time not exceeding thirty days prior to] the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided also that] where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) The importer while presenting a bill of entry shall 12 [* * *] make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, 13 [and such other documents relating to the imported goods as may be prescribed].

(4A) The importer who presents a bill of entry 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 restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(5) *If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.*

B. Section 111 of Customs Act, 1962: Confiscation of improperly imported goods, etc. –*The following goods brought from a place outside India shall be liable to confiscation: -*

(m) *any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;*

C. Section 28 of Customs Act, 1962: Recovery of duties not levied or short levied or erroneously refunded –

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

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

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

D. Section 28AA of Customs Act, 1962: Interest on delayed payment of duty-

(1) *Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*

(2) *Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the*

date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where-

- (a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and*
- (b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.*

E. Section 114A of Customs Act, 1962: Penalty for short-levy or non-levy of duty in certain cases— *Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.*

Provided *that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:*

Provided *further that the benefit of reduced penalty under the Second proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :*

Provided *also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:*

Provided *also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the Second proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA and*

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

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

7. With the introduction of the Self-Assessment, the onus is on the importer to comply with the various laws, determine their tax liability correctly and discharge the same. The importer is required to declare the correct description, value, classification, notification number, if any, on the imported goods. Self-assessment is as per section 17, 18 and 46 of the Customs Act, 1962 and the Bill of Entry (Electronic Declaration) Regulation, 2011. The importers are squarely responsible for self-assessment of duty on imported goods and for filing of all declarations and related documents, confirming these to be true, correct and complete. Self-Assessment can result in assured facilitation for compliant importers. However, delinquent importers would face penal action on account of wrong self-assessment made with intent to evade duty or avoiding compliance of conditions to exemption notifications, Foreign Trade Policy or any other provisions under the Customs Act, 1962 or Allied Acts.

8. Further, it appears that the Importer wrongfully claimed Sr. No. 191 of Schedule-I instead of Sr. No. 123A of Schedule-III of IGST Notification No. 01/2017-ITR dated 28.06.2017, which resulted into short payment of Customs Duty. All the aforesaid facts, discussed above, about the manner in which the Importer has mis-classified the goods, have come to light only after TBA of the import documents of the Importer. Had the audit not raised the objection, the issue of wrong claim of IGST would have gone unnoticed and would have resulted in revenue loss to exchequer. In view of the same, it appears that in-spite of having knowledge, the Importer willfully mis-stated and suppressed these facts from the Department and paid lower rate of IGST which was not admissible to them. Therefore, extended period of 5 years as provided under Section, 28 of the Customs Act, 1962, is applicable for recovery of the short paid Customs duty under Section. 28 of the Customs Act, 1962 along with applicable interest thereon, under Section,

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

28AA *ibid*. Therefore, for same reasons stated herein above, the Importer warrants action for recovery of duty under Section. 28 *ibid* and has also rendered themselves liable for penalty under Section. 114A *ibid*.

9. From the foregoing para, it appears that the Importer has not paid appropriate duty. Consequently, differential duty amounting to **Rs. 1,66,200/-**-(Rupees One Lakh Sixty Six Thousand Two Hundred only) appears to be payable by the Importer in respect of the impugned goods as detailed in the **Annexure-I**, attached to the SCN.

10. It therefore appears from the above that-

- (i) The impugned goods as mentioned in Annexure-I attached to the SCN, were cleared under lower IGST @ 5% as against the payable IGST @ 18%. Consequently, differential duty amounting to **Rs. 1,66,200/-**-(Rupees One Lakh Sixty Six Thousand Two Hundred only) along with applicable interest thereon appears to be recoverable from the Importer under Section. 28 of the Customs Act, 1962 (details in Annexure-I enclosed to SCN).
- (ii) The intention of the Importer to evade duty thereon appears to have contravened the provisions of Sections 46 (4) and 46 (4A) of the Customs Act, 1962, and which in turn appears to have rendered the subject goods liable for confiscation in terms of the provisions of Section 111 (m) of the Customs Act, 1962 and also appears to have made the Importer liable for penal action in terms of the provisions of Section 114A of the Customs Act, 1962.

11. **ISSUANCE OF THE SCN**: As the Importer failed to respond to the Consultative Letter dated 09.05.2023, the Audit Commissionerate, New Custom House, Mumbai prepared an Audit Report and forwarded to Appraising Group 5, ACC, Mumbai for issuance of SCN and subsequent adjudication thereof.

11.1. On the basis of said Audit Report and in exercise of powers conferred upon in Section 28(4) and Section 124 of the Customs Act, 1962 the Addl. Commissioner of Customs (Import), Gr. 5, ACC, Mumbai issued a SCN No. 289/2025-26 dated 01.09.2025 to the Importer, M/s. Ognibene India Private Limited whereby they were called upon to show

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

cause within 30 days from the receipt of the SCN, to the Additional/Joint Commissioner of Customs (Import), Gr-5, Air Cargo Complex, Mumbai, as to why:

- (a) The availment of Sr. No. 191 of Schedule-I of IGST under Notification No. 01/2017-ITR dated 28.06.2017, wherein, the IGST rate is @ 5% in respect of goods covered under 04 Bs/E mentioned in Annexure-I attached to the SCN, should not be denied for the reasons stated above against the appropriate IGST under Serial No. 123A of Schedule-III of Notification No. 01/2017-ITR dated 28.06.2017, wherein, the IGST rate is @ 18%.
- (b) Differential duty arising out on account of wrong availment of Sr. No. 191 of Schedule-I of Notification No. 01/2017-ITR dated 28.06.2017, wherein, the IGST is paid @ 5% as against the appropriate IGST under Serial No. 123A of Schedule-III of Notification No. 01/2017-ITR dated 28.06.2017, wherein, IGST rate is @ 18%, amounting to **Rs. 1,66,200/-** (Rupees One Lakh Sixty Six Thousand Two Hundred only) as calculated in Annexure-I enclosed to the SCN, should not be demanded and recovered under Section. 28 (4) of the Customs Act, 1962, along with applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962.
- (c) The impugned goods imported under subject 04 Bs/E as mentioned in Annexure-I attached to the SCN, valued at **Rs. 11,51,768/-** (Rupees Eleven Lakhs Fifty One Thousand Seven Hundred Sixty Eight only) should not be held liable for confiscation in terms of provisions of Section 111 (m) of the Customs Act, 1962 read with provisions of Section 46 (4) and Section 46 (4A) *ibid*.
- (d) Penalty should not be imposed on M/s. Ognibene India Private Limited (IEC-3106013621) under Section. 114A of the Customs Act, 1962.

WRITTEN SUBMISSION BY THE IMPORTER / NOTICEE

12. In response to the subject SCN dated 01.09.2025, the Importing firm, M/s. OIPL vide letter dated 09.09.2025, submitted reply as below:

- A. In response to the SCN issued regarding the payment of differential duty and interest in respect of Bs/E Nos. 9067887 dated 05.10.2020, 9067934 dated 05.10.2020, 2164718 dated 30.12.2020, 4977172 dated 09.08.2021, and also kind attention that the differential duty amount, along with the applicable

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

interest, has already been paid in full within the stipulated time frame. The payment details are as follows:

- Challan No. & date : 238 & 2339 dtd. 29.05.2023
- Amount Paid: Rs, 2,28,529/-
- Mode of Payment: Demand Draft No. 011817 dtd. 24.05.2023.

B. They are enclosing the proof of payment (Challan copy, Demand Draft copy & covering letter) for reference and necessary action. They are also requesting to kindly drop the SCN and update their records accordingly and also requested to confirm the closure of the matter from your end.

12.1. Further, Importer during the course of PH held on 14.11.2025 before the Adjudicating Authority. Vide said letter it is contended as below:

- A. Details of payment of differential duty and interest:
- ◆ Challan No & date :- 238 & 2339 dtd. 29.05.2023
 - ◆ Amount Paid : Rs. 2,28,529/-
 - ◆ Mode of Payment: Demand Draft No. 011817 dtd. 24.05.2023
- B. The Importer informed that first consultative letter No. 235 dated 04.05.2023 for short payment of Customs duty was received by them on 15.05.2023 and differential payment of Customs duty was paid and submitted to your office on 29.05.2023 vide above referred challan details.
- C. Later on again SCN bearing No. 289/2025-26 dtd. 01.09.2025 was issued and the same was received by them on 09.09.2025 and subsequently they replied SCN and submitted the reply letter to office on 15.09.2025.
- D. Importer enclosing the proof of payment (Challan copy, Demand Draft copy & covering letter) and acknowledgment copy for reference and necessary action.
- E. In past, the shipment was cleared by CB, M/s. Atlas Logistics Pvt. Ltd., and currently they are not working with them for clearance of shipment.
- F. They have authorized M/s. Sai Kiran Clearing Pvt. Ltd., to attend the Personal Hearing and submit the required documents on our behalf. They also request to kindly drop the SCN and update records accordingly and also request to confirm the closure of the matter from their end.

RECORD OF PERSONAL HEARING

13. In adherence of the Principles of Natural Justice, Personal Hearing (PH) in the matter was granted to the Importer scheduled on 14.11.2025, by the Adjudicating Authority. In response, an authorized representative, Shri Prajesh Kule, Custom

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

Broker at M/s. Sai Kiran Clearance Pvt. Ltd., appeared for PH on the scheduled date and time on behalf of Importing firm, M/s. OIPL, who informed that they have deposited the duty / interest even before the issuance of SCN therefore the proceedings are requested to be dropped.

DISCUSSION AND FINDINGS

14. I have carefully gone through the subject SCN No. 289/2025-26 dated 01.09.2025 and its enclosures material on record and facts of the case, as well as oral and written submissions dated 01.09.2025 & 14.11.2025 made by the Importer. Accordingly, I proceed to decide the case on merit.

15. In compliance to provisions of Section 28 (8) and Section 122A of the Customs Act, 1962 and in terms of the Principles of Natural Justice, opportunity for PH on 14.11.2025 was granted to the Importer. Availing the said opportunity, the authorized representatives of the Importer attended the PH on 14.11.2025. Having complied with the requirement of the Principle of Natural Justice, I proceed to decide the case on merits, bearing in mind the submission/contention made by the Importer.

16. The fact of the matter is that a SCN No. 289/2025-26 dated 01.09.2025 was issued to the Importer, M/s. OIPL, on the basis of an Audit Report received from Audit Commissionerate, NCH, Mumbai. The TBA conducted by the Officers of Audit Commissionerate, NCH, Mumbai revealed that there is short levy of Customs duty (IGST) by way of claiming wrong IGST Schedule and Rate. It is alleged in the SCN that the Importer had filed four Bs/E Nos. 2164718 dated 12.03.2020, 9067887 & 9067934 both dated 05.10.2020 and 4977172 dated 09.08.2021 for import of goods declared as 'Road Wiper, Road Seal, O-ring etc.' imported vide four Bs/E Nos. by classifying the goods under CTH 4016 9320 / 4016 9390. However, the Importer has claimed wrong IGST Schedule & Sr. No. for the impugned goods under Sr. No. 191 of Schedule-I of the Notification No. 01/2017-ITR dated 28.06.2017 attracting lower IGST @ 5% as against correct Sr. No. 123A of Schedule-III attracting IGST @ 18% for the imported goods. It is a matter of fact that the Sr. No. 191 of Schedule-I of the subject Notification is applicable for the goods, viz. Rubber, whereas, goods in question being made of Vulcanized Rubber other than Hard Rubber (**other than Erasers, Rubber**

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

Bands), the same correctly attracted IGST @ 18% under Sr. No. 123A of Schedule-III of said Notification (as detailed in Table at Para 2 *supra*). This mis-declaration on the part of the Importer resulted in short levy of Customs Duty (IGST) at the time of clearance of the goods during the period March, 2020 to August, 2021. Thus, the SCN demands differential duty (IGST) to the tune of **Rs. 1,66,200/-** (Rupees One Lakh Sixty Six Thousand Two Hundred only) (as detailed in Annexure "A" enclosed to the SCN) under Section. 28 (4) of the Customs Act, 1962 along with interest in terms of Section 28AA *ibid* and consequential penalties. The SCN also proposes confiscation of imported goods having Assessable Value of **Rs. 11,51,768/-** (Rupees Eleven Lakhs Fifty One Thousand Seven Hundred Sixty Eight only) under Section. 111 (m) of the Customs Act, 1962.

17. On a careful perusal of the SCN and case records, I find that following main issues are involved in the case which are required to be decided:

- (i) Whether the declared IGST Schedule and Sr. No. of the Notification No. 01/2017- ITR dated 28.06.2017 (Sr. No. 191 of Schedule-I) on the impugned goods under subject 04 Bs/E (as detailed in Annexure-A to the SCN) should be rejected and the goods should be re-assessed on correct IGST rate under Sr. No. 123A of Schedule-III of said Notification?
- (ii) Whether differential duty arising out on account revised IGST Schedule & Sr. No. (Sr. No. 123A of Schedule-III attracting IGST @ 18%), amounting to **Rs. 1,66,200/-** (as calculated in Annexure-"A" enclosed to the SCN), should be recovered under Section. 28 (4) of the Customs Act, 1962 along with applicable interest thereon, in terms of provisions of Section 28AA of the Customs Act, 1962 And whether an amount of Rs. 2,28,529/- deposited by the Importer before issuance of SCN should be appropriated against the differential duty, interest, fine n penalty imposable on the Importer?
- (iii) Whether the impugned goods imported under subject 04 Bs/E (as per Annexure "A" enclosed to the SCN), having total Assessable Value of **Rs. 11,51,768/-** should be held liable for confiscation in terms of provisions of Section 111 (m) read with provisions of the Sections 46 and 46 (4A) of the Customs Act, 1962? and
- (iv) Whether Penalty should be imposed on M/s. OIPL (IEC-3106013621) under Section. 114A of the Customs Act, 1962?

18. Before going into the merits of the case, I will first examine the request of the Importer for concluding the case as they have already paid the differential duty along

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

with interest. I find that Section on 28 (6)(i) of the said act specifies that *Where the importer has paid duty with interest and penalty under sub-sec on (5), the proper officer shall determine the amount of duty or interest and on determine on, if the proper officer is of the opinion that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person to whom the notice is served under Sub-Section (4), shall be deemed to be conclusive as to the matters stated therein.*

18.1. Therefore, I will now resort to Section 28 (5) of the Customs Act, 1962 to check whether the importer has paid the duty with interest and penalty in terms of provisions stipulated under Sub-Section (5) of Section 28 *ibid*. Section 28 (5) *ibid* specifies that *where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer, to whom a notice has been served under sub-section (4) by the Proper Officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and **the penalty equal to fifteen per cent of the duty** specified in the notice or the duty so accepted by that person, **within thirty days** of the receipt of the notice and inform the Proper Officer of such payment in writing.* From the plain reading of the text of Section 28 (5) along with Section 28 (6)(i), it is clear that the Importer should have paid the said differential duty along with applicable interest and penalty @ 15% within 30 days of the receipt of the said SCN/Demand Notice for the deemed conclusion of the case proceedings under said provisions.

18.2. I have examined the letter dated 14.11.2025 submitted by the Importer during the course of PH informing that they have made payment of the said differential duty and interest on 29.05.2023 in response to the Consultative Letter dated 04.05.2023. I find that the Importer, M/s. OIPL had made a payment of - **Rs. 1,66,200/-** vide Challan No. 238 dated 29.05.2023 towards differential duty demanded and **Rs. 62,329/-** was deposited under Challan No. 2339 dated 29.05.2023 towards interest on the goods imported vide subject 04 Bs/E (as detailed in Annexure 'A' enclosed to the SCN). The genuineness of Challans submitted by the notice has been verified from the Cash Section, ACC, Mumbai. This payment includes the differential Customs Duty of **Rs. 1,66,200/-** towards imported goods (as detailed in the Annexure-A of the subject SCN)

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

and interest of **Rs. 62,329/-**. The said payment details are tabulated below:

Bs/E Nos. & Date	Diff. Duty Paid (in Rs.)	Interest paid (in Rs.)	Total Amount paid (in Rs.)	Paid through Online Challan No. & Date
As per Annexure-A to the SCN	1,66,200/-	-	1,66,200/-	238 / 29.05.2023.
	-	66,329/-	66,329/-	2339 / 29.05.2023

18.3. Further, I find that the Importer had deposited the differential duty along with interest on 29.05.2023, which is well within stipulated period of thirty days of issuance of Consultative Letter dated 04.05.2023. However, the penalty has not been paid by the Importer as mandated under the provision of Section 28 (5), hence, the proceedings cannot be concluded under Section. 28 (6) of the Customs Act, 1962. Therefore, now I am confined to proceed to adjudicate the said case on merits.

19. Now Coming to the merits of the case, Now, I am taking up first issue for discussion, i.e. as to whether the declared IGST Schedule and Sr. No. of the Notification No. 01/2017- ITR dated 28.06.2017 (Sr. No. 191 of Schedule-I) on the impugned goods under subject 04 Bs/E (as detailed in Annexure-A to the SCN) should be rejected and the goods should be re-assessed on correct IGST rate under Sr. No. 123A of Schedule-III of said Notification.

19.1. I find that the importer had classified the imported goods under CTIs 4016 9320 / 4016 9390 and were self-assessed to IGST @ 5% under Sr. No. 191 of Schedule-I of Notification No. 01/2017-ITR Dated 30.06.2017, which is applicable for goods covered under CTH 4019 viz. Eraser. The contents of subject Notification have already been re-produced in a Table at Para 2 *supra*. There is no dispute about declared CTIs of the goods. However, on perusal of contents of the said Notification it appeared that the goods being made of Vulcanized Rubber other than Hard Rubber (**other than Erasers, Rubber Bands**) is correctly leviable IGST @ 18% under Sr. No. 123A of Schedule-III of said Notification. The issue pertains to mis-declaration of IGST Rate under Sr. No. 191 of Schedule-I of the above said Notification *ibid*.

19.2. On perusal of the description of the goods, it is apparent that a goods in question are made of Vulcanized Rubber other than Hard Rubber (**other than Erasers, Rubber Bands**), therefore, not covered under of Sr. No. 191 of Schedule-I of the Notification No. 01/2017-ITR dated 28.06.2017.

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

19.3. The Importer has paid the differential Duty along with the Interest of **Rs. 1,66,200/-** vide Challan No. 238 dated 29.05.2023 and an amount of **Rs. 66,329/-** vide Challan No. 2339 dated 29.05.2023. However, it is apparent that though the Importer has paid differential duty, interest on 29.05.2023, however, they have not made payment of mandated penalty @ 15% as stipulated under Section. 28 (5) of the Customs Act, 1962. Also, it is seen from the submissions of the Noticee that they have not paid the Penalty amount. Consequently, the conditions prescribed under Section 28 (5) of the Act are not satisfied. In view of this non-compliance, the proceedings against the importer has been initiated in accordance with law by issuance of SCN dated 01.09.2025.

19.4. Before I examine the contentions and arguments of the Noticee, I find it appropriate at this juncture to discuss the entire framework of the Transaction Based Audit (TBA). Central Board of Indirect Taxes and Customs has conceptualized PCA (Post Clearance Audit) with greater reliance on the declarations made by the importer while filing B/E. Based on a well-developed and robust Risk Management System (RMS) almost 90% of the Bs/E are RMS facilitated. Here facilitated implies no assessment or examination by the Customs Authorities. Hence, the Department trusts the importers and believes in the declaration given by the importers while clearing the goods. This increases speed of clearance of cargo and removes any logistical bottlenecks in the process of EXIM Trade. However, to safeguard revenue and to ensure that Government Exchequer receives its due share of tax revenues, the Department undertakes Post Clearance Audit. This audit only examines the documents filed at the time of importation and the declarations made by the importers at the time of filing B/E. Further, it is pertinent to mention that the entire exercise of audit is based on the documents/declarations filed by the importer. There are no goods available for authorities to examine and ascertain their identity as this exercise of audit is post clearance. It is for this precise reason importer is expected to provide proper and accurate details at the time of filing Bs/E.

19.5. I find that in the instant case the incorrect claim of apprising pointing out that IGST @ 5% paid under Sr. No. 191 of Schedule-I of Notification No. 01/2017-ITR dated 28.06.2017 by the importer as against correct IGST @ 18% under Sr. No. 123A of

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

Schedule-III of said Notification, has led to a short levy of Custom duty amounting to **Rs. 1,66,200/-**. The subject entry at Sr. No. 191 of Schedule-I the said Notification specifically covers "Erasers" only, whereas, Sr. No. 123A of Schedule-III covers goods viz. "Other article of Vulcanized Rubber other than Hard Rubber (**other than erasers, rubber bands**)" and the imported goods in question are correctly covered under Other Articles of Vulcanized Rubber, hence, attract IGSG @ 18% under Sr. No. 124A of Schedule-III of Notification No. 01/2017-ITR dated 28.06.2017. On issuance of Consultative Letter in the month of May, 2023, the Importer voluntarily deposited the demanded amount of differential Duty (IGST) along with applicable interest on 29.05.2023 and inform the same to the Department on 09.09.2025, i.e. after issuance of SCN.

19.6. In view of the above content of the subject Notification, it is apparent that the imported goods covered under CTH 4016, being made of Vulcanized Rubber are correctly covered under Sr. No. 123A of Schedule-III of Notification No. 01/2017-ITR dated 28.06.2017.

19.7. In view of the above, the importer's claim of IGST @ 5% under Sr. No. 191 of Schedule-I of Notification No. 01/2017-ITR on the impugned goods is not legally sustainable. The said goods are required to be assessed under correct Sr. No. 123A of Schedule-III of the said Notification @ 18%. Accordingly, the short-levied duty (IGST) stands computed, as per Annexure "A", at **Rs. 1,66,200/-** on the total Assessable Value of **Rs. 11,51,768/-**.

19.8. In view of the above discussions, I find and hold that the Importer has mis-declared IGST Rate of 5% under Sr. No. 191 of Schedule-I of Notification No. 01/2017-ITR dated 28.06.2017 as against correct IGST Rate of 18% under Sl. No. 123A of Schedule-III of the said Notification in respect of import of the impugned goods. Accordingly, I am inclined to order for re-assessment of those 04 Bs/E (as detailed in Annexure "A" enclosed to the SCN) under Sl. No. 123A of Schedule-III of the said Notification.

20. Now, I am taking up second issue for discussion, i.e. as to whether differential duty arising out on account revised IGST Schedule & Sr. No. (Sr. No. 123A of Schedule-III attracting IGST @ 18%), amounting to **Rs. 1,66,200/-** (as calculated

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

in Annexure-“A” enclosed to the SCN), should be recovered under Section. 28 (4) of the Customs Act, 1962 along with applicable interest thereon, in terms of provisions of Section 28AA *ibid* and as to whether an amount of **Rs. 2,28,529/-** deposited by the Importer before issuance of SCN should be appropriated against the differential duty, interest, fine n penalty imposable on the Importer

20.1. I find that in the instant case, it is a proven fact that the Importer has mis-declared the IGST Rate and declared lower rate of IGST @ 5% under Sr. No. 191 of Schedule-I of Notification No. 01/2017-ITR and made payment of IGST at lower rate @ 5%. However, as discussed in foregoing Paras, it is a matter of fact that the imported goods have been explicitly covered under Sr. No. 123A of Schedule-III of the said Notification and attracts IGST @ 18%. This fact has been accepted by the Importer and voluntarily made payment of differential duty and interest after issuance of Consultative Letter. It is settled law that what is accepted need not to be proved. Therefore, I am of the firm view that the duty short levied/paid at the time of clearance of the goods is required to be recovered from the Importer under the provisions of Section 28 (4) of the Customs Act, 1962.

20.2. Total differential duty (IGST) worked out to be **Rs. 1,33,310/-** for the goods covered under four Bs/E cleared during the period March, 2020 to August, 2021 on payment of IGST at lower rate. The demand of this amount is therefore attracted under Section. 28 (4) of the Customs Act, 1962, being duty short-paid by reason of mis-declaration of IGST Rate at the time of clearance of the goods. Interest on such duty is statutorily payable under Section. 28AA of the Customs Act, 1962 from the date on which the duty became due till the date of actual payment.

20.3. In response to the Consultative Letter dated 04.05.2023, whereby, differential duty along with interest and penalty at lower rate has been demanded from the Importer. In response, they have deposited amount of differential duty demand and interest thereof, however, no concessional penalty has been paid. Furthermore, the Importer has intimated about the payment of the differential duty in the month of September, 2025, i.e. after issuance of SCN dated 01.09.2025. It is apparent that though the Importer has made payment of differential Duty and interest within 30 days of issuance of Consultative Letter and before issuance of SCN and no payment of

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

concessional penalty @ 15% (as envisaged under the provisions of Section 28 (5) of the Customs Act, 1962) has been made by the Importer. I find that even though the importer had paid the differential duty along with interest, the provision of Section 28 (5) *ibid* has not been satisfied as not paid the concessional penalty @ 15% as per the proviso of Section 28 (5) *ibid*. Furthermore, the Importer failed to inform the Proper Officer within 30 days of receipt of Consultative Letter that they accepted the duty so claimed by the Department and of such payment in writing as stipulated under Section. 28 (5) *ibid*.

20.4. I find that in the instant case, the Importer intentionally abused the faith placed upon it by the law of the land and has willfully violated the provisions of Section 17 (1) of the Act in as much as they have failed to correctly self-assess the impugned goods and has also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. Therefore, it appears that in respect of impugned goods as detailed in Annexure "A" enclosed to the SCN, such evasion of payment of applicable duty of impugned goods, on the part of the importer has resulted in short levy of duty amounting to **Rs. 1,66,200/-** (Rupees One Lakh Sixty Six Thousand Two Hundred only) which is recoverable from the Importer by invoking the provisions of Section 28 (4) of the Customs Act, 1962, along with interest as applicable under Section 28AA of the Act.

20.5. Thus, there is a strong case that duty demand under 28 (4) of the Customs Act, is invocable. In support of my stand of invoking extended period, I keep reliance upon the following court decisions:

- (i) 2013 (294) E.L.T. 222 (Tri. - LB): UNION QUALITY PLASTIC LTD. Versus COMMISSIONER OF C.E. & S.T., VAPI [Misc. Order Nos. M/12671-12676/2013-WZB/AHD, dated 18-6-2013 in Appeal Nos. E/1762-1765/2004 and E/635-636/2008], wherein, it is held that:

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

- (ii) 2013 (290) E.L.T. 322 (Guj.): SALASAR DYEING & PRINTING MILLS (P) LTD. Versus C.C.E. & C., SURAT-I; Tax Appeal No. 132 of 2011, decided on 27-1-2012, wherein, it is held that:

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

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

- (iii) M/s. Tata Motors V/s. CC (Import), Mumbai, 2019-TIOL-1201-CESTAT-MUM.
- (iv) In the case of Commissioner of Customs (Import), Mumbai V/s. M/s Dilip Kumar and Company & Ors, 2018-TIOL-302-SC-CUS-CB, the invoking of extended period was upheld by Tribunal.

20.5. Accordingly, the Customs Duty (IGST) short-levied amounting to **Rs. 1,66,200/-** (Rupees One Lakh Sixty Six Thousand Two Hundred only) (as detailed in Annexure "A" to the SCN dated 01.09.2025), resulting from mis-declaration of IGST Rate under Sr. No. 191 of Schedule-I of Notification No. 01/2017-ITR dated 28.06.2017 attracting lower IGST of 5% as well as does not cover the imported goods, as proposed in the subject SCN, is recoverable from M/s. OIPL under extended period in terms of the provisions of Section 28 (4) of the Customs Act, 1962.

20.6. Now, I am taking up issue w.r.t. demand and recovery of interest on delayed payment of Custom Duty (BCD) from the Importer under Section. 28AA of the Customs Act, 1962. With regard to the levy of interest, I find that Section 28AA of the Customs Act, 1962 clearly provides that *any person who is liable to pay duty in accordance with the provisions of Section 28 shall, in addition to such duty, be liable to pay interest at the rate prescribed under sub-section (2) of Section 28AA*. Such liability to pay interest arises irrespective of whether the duty is paid voluntarily or after determination under the said Section.

20.7. A plain reading of Section 28AA leaves no ambiguity that where there is short-payment or non-payment of duty, recovery of interest is mandatory and follows as a statutory consequence. Once the demand of duty is confirmed, the liability to pay interest arises automatically by operation of law. A plain reading of Section 28AA leaves no ambiguity that where there is short-payment or non-payment of duty, recovery of interest is mandatory and follows as a statutory consequence. Once the

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

demand of duty is confirmed, the liability to pay interest arises automatically by operation of law.

20.8. It is a well-settled legal position, affirmed in numerous judicial pronouncements, that interest is a civil liability and is not dependent upon the presence or absence of *mens rea*. Interest is always accessory to the principal demand of duty, as held by the Hon'ble Supreme Court in **M/s. Pratibha Processors V/s. Union of India [1996 (88) ELT 12 (SC)]**.

20.9. Further, the Hon'ble Bombay High Court in the case of **Directorate of Revenue Intelligence, Mumbai V/s. M/s. Valecha Engineering Ltd.** has categorically held that, in view of the provisions of Section 28AA, interest becomes automatically payable when the assesses fails to pay the duty assessed within the prescribed time.

20.10. I find that in the instant case, the Importer has voluntarily made payment of **Rs. 2,28,529/-** (Rupees Two Lakhs Twenty-Eight Thousand Five Hundred Twenty-Nine only) on 29.05.2023 towards demanded differential duty (IGST) and interest, therefore, I am inclined to order for appropriation of the said amount towards the confirmed demand of duty short levied and applicable interest thereon under the provisions of Sections 28 (4) and 28AA of the Customs Act, 1962 respectively.

21. Now I am taking up third issue for discussion, i.e. as to whether the impugned goods imported under subject 04 Bs/E (as per Annexure "A" enclosed to the SCN), having total Assessable Value of **Rs. 11,51,768/-** should be held liable for confiscation in terms of provisions of Section 111 (m) read with provisions of the Sections 46 and 46 (4A) of the Customs Act, 1962.

21.1. I note that the SCN proposed confiscation of goods under the provisions of Section 111 (m) of the Customs Act, 1962. The provisions of Section 111 (m) of the Customs Act, 1962 already re-produced at Para 6 (B) *supra*.

21.2. I find that Section 111 (m) deals with any and all types of mis-declaration regarding any particular of B/E. Therefore, the claim of ineligible IGST Rate amounts to mis-declaration and shall make the said goods liable to confiscation.

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

21.3. I have already held in foregoing paras that the impugned goods, are made of Vulcanized Rubber other than Hard Rubber and are therefore not covered under the IGST Sl. No. 191 of Schedule-I of Notification No. 01/2017-ITR. The Importer was very well aware of their ineligibility to declared IGST rate. However, they deliberately and consciously claimed the undue IGST 5% rate as provided under Sl. No. 191 of Schedule-I of Notification No. 01/2017-Cus dated 28.06.2017 in respect of import of the impugned goods, however, the subject Sr. No. is specifically available for Erasers. As discussed in the foregoing paras, it is evident that the Importer deliberately suppressed the correct nature of the goods and willfully declared the IGST Schedule/Sr. No. having lower rate of IGST for the imported goods, resulting in short levy of duty. This deliberate willful mis-declaration resorted by the Importer, therefore, renders the impugned goods liable for confiscation under Section. 111 (m) of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the Importer has rendered the goods liable for confiscation under Section. 111 (m) *ibid*.

21.4. I find that Section 111 (m) provides for confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry is made under the Customs Act, 1962. I have to restrict myself only to examine the words "*in respect of any other particular with the entry made under this act*" would also cover case of suppression of facts. In the instant case, the Importer suppressed the fact of their ineligibility to the claimed wrong IGST Rate resulted in short levy of Customs Duty (IGST). As this act of the Importer has resulted in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111 (m) is justified and sustainable.

21.5. As per Section 46 of the Customs Act. 1962, the importer of any goods, while making entry on the Customs automated system to the Proper Officer, shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the Proper Officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed. The Importer shall ensure the accuracy and completeness of the information given therein and the authenticity and validity of any document supporting it.

21.6. I find that the Importer while filing the B/E for the clearance of the subject goods had subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

in terms of Section 46 (4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a Bill of Entry, in the electronic form. Section 46 of the Act makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the Proper Officer. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g. the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

21.7. However, in the instant case, it is apparent that the Importer has consciously claimed the lower IGST Rate for the goods, which were explicitly not covered under the declared IGST Sr. No./Schedule. These acts of omission and commission resulted in short levy of Customs Duty and accordingly resulted in invocation of provisions of Section 111 (m) for confiscation of the impugned goods.

21.8. In view of the above discussions, I find that the importer by their act of mis-declaration/mis-statement, have rendered the subject goods valued at **Rs. 11,51,768/-** liable for confiscation in terms of the provisions of Section 111 (m) of the Customs Act, 1962. However, I find that the impugned goods are already cleared for Home Consumption before issuance of SCN and are not physically available for confiscation. Further, I find that there is a fine line of difference between actual confiscation and liable to confiscation. Violation under the provisions of Section 111 of the Customs Act, 1962 renders the goods liable to confiscation. This does not mean that the said goods must be confiscated physically.

21.9. With regard to Redemption Fine, it would be relevant to reproduce Section 125 of the Customs Act, 1962 which deals with Redemption Fine Section

125. Option to pay fine in lieu of confiscation.

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation of it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that, where the proceedings are deemed to be concluded under the proviso to sub-section (2) of Section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:

21.10. I find that the first proviso of section 125 was introduced vide Finance Act, 2018 which says that where the proceedings are deemed to be concluded under the proviso to Sub-Section (2) of Section 28 or under clause (i) of Sub-Section (6) of that Section in respect of the goods which are not prohibited or restricted, the provisions of this Section shall not apply. I note that, behind this proviso there is an assumption that goods become liable for confiscation even when there is a demand under Section 28. The Section 28 covers the past clearances and demands the duty on the very goods which are, now, not available for confiscation. Thus, the liability to confiscation is assumed to arise even in cases that do not involve an extended period of limitation or not being cases of collusion or wilful misstatement or suppression of facts.

21.11. Further, I also note that there cannot be a demand of duty, where the goods are seized and are in the possession of the Government. It is a basic principle that goods and duty travel together. Thus, when the goods are in the possession of the Government having been seized, there cannot be a demand for Duty. Duty payment, even differential duty payment arises when the goods are confiscated and ordered for release to the importer. I note that the Section 125 (2) provides that where any fine in lieu of confiscation of goods is imposed under Sub-Section (1), the owner of such goods or the person referred to in Sub-Section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods, makes this above position clear. Thus, the proviso which is inserted in Section 125 referring to cases under Section 28 which are essentially in respect of demand of duty where the goods are not

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

seized/detained by the Department, gives room for interpretation that Redemption Fine is imposable even if the goods are not seized and are not available for confiscation.

21.12. In this regard, I rely upon the judgement dated 11th August, 2017 of Hon'ble Madras High Court in the case of **M/s. Visteon Automotive Systems India Limited vs CESTAT, Chennai reported in [2018 (9) G.S.T.L. 142 (Mad.)]**, wherein, it has been held as under:

"We must also bear in mind that for improper importation of the dutiable goods or the prohibited goods, the importer is liable to be proceeded against under Sec on 112 of the Act by subjecting him to a penalty. Therefore, the fine proposed to be imposed under Sec on 125 of the Act is directed against the goods, in addition to the one that was already provided for under Sec on 112 of the Act. The fine contemplated is for redeeming the goods, whereas, the importer is sought to be penalised under Sec on 112 for doing or omitting to do any act which rendered such goods imported by him, liable to be confiscated under Sec on 111 of the Act and for that act or omission, the appellant is liable to be penalised.

21.13. The power to impose Redemption Fine springs from the authorization of confiscation of goods provided for under Section. 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section 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.

21.14. Thus, taking support from the aforesaid guiding judgement, I find that the fact that the impugned goods are not available for confiscation, does not prevent me to grant an option to the Importer to redeem the impugned goods on payment of Redemption Fine and considering the acts on the part of the Importer, it becomes necessary to impose Redemption Fine which would save the impugned goods from getting confiscated. Hence, relying on the aforesaid judgment, I proceed to grant the importer an option to redeem the impugned goods on payment of Redemption Fine under the provisions of Section 125 of the Customs Act, 1962.

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

22. Now, I am taking up fourth and last issue for discussion, i.e. as to whether penalty should be imposed on M/s. OIPL (IEC-3106013621) under Section. 114A of the Customs Act, 1962.

22.1. I find that the SCN proposes imposition of penalty on the Importer under Section. 114A of the Customs Act, 1962, on the ground that the Importer, by their acts of omission and commission, rendered the impugned goods liable to confiscation under Section. 111 (m) of the Act.

22.2. I have already elaborated in the foregoing paras that the Importer has wilfully suppressed the facts by mis-declaring the IGST Rate under Sr. No. 191 of Schedule-I of Notification No. 01/2017-ITR dated 28.06.2017 for the imported goods which resulted in short levy of the legitimate Customs Duty. Further, I find that the Importer has given a declaration under Section. 46 of the Act, for the truthfulness of the content submitted at the time of filing Bs/E. Further, as per Section 17 (1) of the Customs Act, 1962 "*An Importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods*".

22.3. I find in the instant case that the Importer had self-assessed the subject 04 Bs/E and deposited lower IGST @ 5% as against correct IGST @ 18%, which has resulted in loss of legitimate duty to the Exchequer amounting to **Rs. 1,66,200/-**, as detailed in Annexure "A" enclosed to the SCN. As the Importer got monetary benefit due to said act, it is apparent that the same was done deliberately by willful mis-statement of Notification benefit for the said imported goods. The availment of undue duty exemption for the impugned goods, by the Importer of such repute having access to all legal aid, tantamount to suppression of material facts and for this act of omission and commission, the importer has rendered himself liable to penal action under Section. 114A of the Customs Act, 1962.

22.4. Further, I find that in the self-assessment regime, it is the bounden duty of the importer to correctly assess the duty on the imported goods. The "*mens rea*" can be deciphered only from "*actus-reus*". Thus, providing the wrong declaration w.r.t. notification benefit for the imported goods by the said Importer, taking a chance to clear the goods by availment of Basic Customs Duty (BCD) exemption on it, amply points towards their "*mens rea*" to evade the payment of legitimate Customs duty. The

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

importer has cleared the goods by paying the legitimate Customs duty at lower rate and thus makes the goods liable for confiscation, as discussed in foregone paras and the act of omission and commission on the part of the Importer make them liable to penal action under Section. 114A of the Customs Act, 1962.

22.5. As elaborated in the foregoing paragraphs, it has been conclusively established that the Importer wilfully suppressed material facts that they mis-declared the IGT Rate under Sr. No. 191 of Schedule-I of Notification No. 01/2017-ITR dated 28.06.2017 attracting lower rate of IGST, i.e. 5%, with a clear intent to evade legitimate Customs duty.

22.6. I also find that the Importer, at the time of filing the Bs/E, subscribed to a declaration under Section. 46 of the Customs Act, 1962, affirming the truthfulness and correctness of the particulars furnished therein. Further, in terms of Section 17 (1) Customs Act, 1962, an importer entering any imported goods under Section 46 is required to self-assess the duty leviable on such goods. In the present case, the Importer self-assessed the Bs/E and wrongfully claimed IGST Rate under wrong Sr. No./Schedule, which resulted in loss of legitimate Customs duty to the Government exchequer amounting to **Rs. 1,66,200/-**, as detailed in Annexure "A" enclosed to the SCN.

22.7. The Importer derived direct monetary benefit from such wrongful availment of exemption. The conduct of the Importer clearly establishes that the mis-statement were wilful and deliberate, and not accidental or *bona fide*. The wrongful availment of exemption by an Importer of such standing, having access to professional and legal advice, clearly amounts to suppression of material facts.

22.8. Further, I find that in the self-assessment regime, it is the bounden duty of the importer to correctly assess the duty on the imported goods. The "*mens rea*" can be deciphered only from "*actus-reus*". Thus, providing the wrong declaration w.r.t. duty exemption notification for the goods by the said importer, taking a chance to clear the goods by availing undue duty exemption, amply points towards their "*mens rea*" to evade the payment of legitimate Customs duty. The Importer has cleared the goods without paying the legitimate Customs duty and thus makes the goods liable for confiscation, as discussed in foregone paras and the act of omission and commission

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

on the part of the Importer make them liable to penal action under Section. 114A of the Customs Act, 1962.

22.9. Since, the demand of duty under section 28 (4) of the Customs Act, 1962 is sustainable in the instant case and section 114A is *pari materia* to the section 28 (4) of the said act, therefore, I find the Importer Company, M/s. OIPL is liable for a penalty under Section. 114A of the Customs Act, 1962.

22.10. Accordingly, I find that the Importer has, by deliberate acts of omission and commission, rendered the impugned goods liable to confiscation and has thereby made itself liable to penalty under Section 114A of the Customs Act, 1962. I therefore agree with the proposal in the SCN and hold so.

23. In view of the above discussion and findings, I pass the following order:

ORDER

24. (i) I reject and deny the IGST rate of 5% claimed by the Importer M/s. Ognibene India Pvt. Ltd. (IEC-3106013621) under Serial No. 191 of Schedule-I of the Notification No. 01/2017-ITR dated 28.06.2017 on the impugned goods covered under 04 Bs/E Nos. 2164718 dated 12.03.2020, 9067887 & 9067934 both dated 05.10.2020 and 4977172 dated 09.08.2021 (as detailed in Annexure "A" enclosed to the SCN dated 01.09.2025).

(ii) I order re-assessment of the above mentioned 04 Bs/E, as detailed in Annexure "A" to the SCN, by levying applicable IGST @ 18% under Sr. No. 123A of Schedule-III of the Notification No. 01/2017-ITR dated 28.06.2017, in accordance with law.

(iii) I confirm the demand of total differential duty (BCD) due to short-levy of IGST calculated at **Rs. 1,66,200/-** (Rupees One Lakh Sixty Six Thousand Two Hundred only) (As detailed in Annexure "A" enclosed to SCN) under Section. 28 (4) of the Customs Act, 1962, along with applicable interest thereon in terms of provision of Section 28AA of Customs Act, 1962, and order to recover the same from the Importer, M/s. Ognibene India Pvt. Ltd. (IEC-3106013621).

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

- (iv) I order appropriation of an amount of **Rs. 2,28,529/-** (Rupees Two Lakhs Twenty Eight Thousand Five Hundred Twenty Nine only) deposited by the Importer after issuance of SCN towards differential duty (IGST) and interest leviable thereon as mentioned in Para (iii) above.
- (v) I order for confiscation of the imported goods covered under above mentioned 04 Bs/E (as detailed in Annexure "A" enclosed to the SCN) valued at **Rs. 11,51,768/- (Rupees Eleven Lakhs Fifty-One Thousand Seven Hundred Sixty-Eight only)** under the provisions of Section 111 (m) of the Customs Act, 1962 read with provisions of Section 46 (4) and Section 46 (4A) of Customs Act, 1962. However, I impose a Redemption Fine of **Rs.1,15,177/- (Rupees One Lakh Fifteen Thousand One Hundred and Seventy-Seven Only)** in lieu of confiscation of imported goods on the Importer, M/s. Ognibene India Pvt. Ltd. (IEC-3106013621) under Section. 125 (1) of the Customs Act, 1962.
- (vi) I impose a penalty equal to differential duty of **Rs. 1,66,200/- (Rupees One Lakh Sixty Six Thousand Two Hundred only)** (As detailed in Annexure "A" enclosed to SCN) and amount equal to interest leviable thereon, on the Importer M/s. Ognibene India Private Limited (IEC-3106013621) under Section. 114A of the Customs Act, 1962. However, if such duty and the interest is paid within thirty-days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent (25%) of the duty or interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.
- 25.** यह निर्णयन आदेश उस किसी भी अन्य कार्रवाई के अधिकार को प्रभावित किए बिना जारी किया गया है, जो संबंधित वस्तुओं और/या संबंधित व्यक्ति/फर्मों के संबंध में, चाहे वे इस आदेश में शामिल हों या न हों, सीमा शुल्क अधिनियम, 1962 या भारत गणराज्य में लागू किसी अन्य कानून के प्रावधानों के अंतर्गत समय-समय पर की जा सकती है।

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

SCN No. 289/2025-26 dated 01.09.2025
M/s. Ognibene India Private Limited

**Digitally signed by
Tagadi Manjunath
Date: 05-05-2026
15:36:46**

(तगाडी मंजुनाथ)

(Tagadi Manjunath)

अतिरिक्त सीमा शुल्क आयुक्त,
Addl. Commissioner of Customs,
अधिनिर्णयन (आयात), एसीसी, सहार,
Adjudication (Import), ACC, Sahar,
मुंबई सीमा शुल्क क्षेत्र-III.
Mumbai Customs Zone-III.

To,

M/s. Ognibene India Private Limited,
Plot No. A-13 Talegaon Indl. Area,
Navlakh Umbre, Tal. Maval,
Pune – 410 507, Maharashtra.

Copy To:

1. The Pr. Commissioner of Customs (Import), ACC, Mumbai.
2. The Dy. Commissioner of Customs, Audit (Circle C3), NCH, Mumbai.
3. The Dy. Commissioner of Customs, Adjudication (Import), ACC, Mumbai.
4. The Customs Broker, M/s. Sai Kiran Clearing Pvt. Ltd., Mumbai.
5. The Supdt., CHS, ACC, Mumbai – For display on Notice Board.
6. Office Copy.