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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ F. No.: VIII/10-115/ACC/O&A/2014

DIN- 20240971MN00007277D8

आदेश की तारीख/Date of Order : 10.09.2024
जारी करने की तारीख/Date of Issue : 10.09.2024

द्वारा पारित/Passed by:-

शिव कुमार शर्मा, प्रधान आयुक्त
Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

**Order-In-Original No: AHM-CUSTM-000-PR.COMMR- 43-2024-25 dated
10.09.2024 in the case of M/s Gujarat Telelink Pvt Ltd, 202, Sahajanand
Shopping Centre, Shahibaug, Ahmedabad**

1. जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंजिल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad - 380004.
3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से

कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियों संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रिय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्षक जुरमाना के बारेमें विवाद है उसका भुक्तान करके अपील की जा शकती है।
7. An appeal against this order shall lie before the Tribunal 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".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice Nos. VIII/10-115/ACC/O&A/2014 dated 29.09.2014 issued by the Principal Commissioner of Customs, Ahmedabad to M/s Gujarat Telelink Pvt. Ltd, 202, Sahajanand Shopping Centre, Shahibaug, Ahmedabad 380004

Brief facts of the case:

M/s Gujarat Telelink Pvt. Ltd, 202, Sahajanand Shopping Centre, Shahibaug, Ahmedabad (hereinafter referred to as the 'importer') imported Encoder model No: ULBA-Magic-8100A(hereinafter referred to as the 'imported goods') under two Bills of Entry Nos 9849597 dated 15.4.2013 and 9543581 dated 12.3.2013. The importer classified their products under CTH 85176290 of the Customs Tariff Act, 1975 and availed the benefit of exemption from payment of basic customs duty under Notfn No 24/2005-Cus (Sr No 13) dated 1.3.2005.

2 The audit observed that the goods imported by the importer were part of reception apparatus of television. Further, the classification under CTH 8517 categorically excludes parts of reception apparatus for television. It was stated that the Supreme Court ruling in the case of C-Net Communication (I) Pvt Ltd reported at 2007 (216) ELT 337(SC) had held the classification of decoder under CTH 8528 considering it as a reception apparatus for television. It was contended that decoder was a device which does a reverse function of an encoder and therefore, the correct classification would be under CTH 8528 and not CTH 8517.

3 It was alleged that the importer had self assessed their goods under Section 17 of the Customs Act, 1962(hereinafter referred to as the 'Act') and therefore, have misclassified their goods under CTH 8517.

4 The importer was called upon to show cause by the Joint Commissioner of Customs, Ahmedabad as to why:

- i. The importer goods, "Encoder Model No ULBA-Magic-8100A" classified by the importer under CTH 85176290 should not be re-assessed by classifying the same under CTH 85287390 of the Customs Tariff Act, 1975;
- ii. the goods as detailed in the show cause notice should not be confiscated under Section 111(m) of the Act;
- iii. differential duty amounting to Rs 11,40,797/- should not be demanded from the importer under Section 28(4) of the Act by invoking the extended period of five years;
- iv. interest should not be recovered from the importer, under Section 28AA of the Act;
- v. penalty should not be imposed upon the importer under Section 112(a) of the Act.

5 Written Submission: The advocate of the importer filed their written submission dated 29.08.2024 wherein they interalia stated as under:

5.1 Whether in the facts of the present case the extended period of limitation can be invoked: That the Hon'ble Tribunal vide order dated 13.09.2023 remanded the matter for de-novo adjudication essentially for considering the various alternative classifications and also to consider the decisions of the Hon'ble Supreme Court; that Hon'ble Tribunal while remanding the matter also held that because various alternative classifications are possible weightage to the fact that the disputed matter is of legal interpretation, and therefore, the extended period of limitation cannot be invoked as per the settled law should be kept in mind; that the Hon'ble Tribunal also held that if there is an alternative classification which is not proposed in the show cause notice then fresh proceedings with all legal effects may be undertaken; that it is submitted that in the facts of the present case, the Hon'ble Tribunal has already held

that the issue is of legal interpretation and hence the extended period of limitation cannot be invoked. In this context, it is to be noted that the appellant filed the bills of entry during the month of March and April, 2013; that the show cause notice was issued invoking the provisions of Section 28(4) while invoking the extended period of limitation on 29.09.2014 and therefore, the entire demand is barred by limitation; that the classification of the goods is an academic issue inasmuch as either way the demand cannot be confirmed under the extended period of limitation; furthermore, it is also to be noted that earlier the show cause notice was issued in-between rival Headings 85176290 and 85287390, which was confirmed by the Commissioner under CTH 85287390 as proposed in the show cause notice, however, the department filed appeal challenging such classification while proposing that actually the classification should be under CTH 85287100; that after the show cause notice was issued the Hon'ble Supreme Court in the case of M/s. Multi Screen Media Pvt. Ltd. reported in 2015 (322) ELT 421 and the CESTAT in the case of Brigadier R. Deshpande reported in 2018 (363) ELT 572 categorically held that "Head end equipment" is classifiable under CTH 8525, which is a classification which is neither claimed by the noticee or the department. Therefore, considering such facts, even otherwise the extended period of limitation cannot be invoked in the facts of the present case; that HS Committee (World Customs) has given an opinion that a digital encoder which converts digital video, audio or/and data of the source information to digital signals is classifiable under CTH 8517 and 8525; that therefore, the noticee was under a bona-fide belief that CTH 8517 was the correct classification; that the show cause notice being looked from any angle is beyond the normal period of limitation and no ingredients exist so as to enable the department to invoke the extended period of limitation;

5.2 About classification of the goods: That the issue of classification of "head end equipment" has been settled by the Hon'ble Supreme Court in the case of M/s. Multi Screen Media Pvt. Ltd. reported at 2015 (322) ELT 421 whereby the Hon'ble Supreme Court categorically held that when the equipment is capable of both receiving and transmitting functions, then such equipment cannot be classified under CTH 8528. The Hon'ble Supreme Court categorically observed that the apparatus under CTH 8528 is the apparatus which is only capable of receiving signals and is not capable of transmitting signals. Therefore, when the apparatus is both capable of transmitting signals and receiving signals, then such apparatus cannot be classified under CTH 8528. The issue of classification of head end equipment also came before the CESTAT, Delhi, whereby the dispute was about head end equipment similar to the one which is imported by the appellant. The CESTAT in the case of Brigadier R. Deshpande reported at 2018 (363) ELT 572 came to a conclusion that head end equipment, which is capable of transmission of TV channels over cable TV is classifiable under CTH 8525. The CESTAT came to such conclusion based upon the decision of the Hon'ble Supreme Court in the case of M/s. Multi Screen Media Pvt. Ltd. (supra). The decision of the CESTAT, Delhi was carried on in appeal before the Hon'ble Supreme Court on some limited issues and the Hon'ble Supreme Court in its decision reported at 2019 (368) ELT 235 observed that the finding of the CESTAT that head end equipment is classifiable under CTH 8525 has not been challenged by the department and so in so far as the issue of classification is concerned, the issue has been finalized. Therefore, it is submitted that the issue of classification of head end equipment is already settled.

5.3 Classification of the goods cannot be done under any other heading which was not proposed in the SCN; That the Hon'ble Supreme Court has in the case of M/s. Ballarpur Industries Ltd. reported at 2007 (215) ELT 489 categorically held that the show cause notice is the foundation of the matter of levy and recovery of duty and

it would not be open for the department to argue a case beyond the show cause notice; that the Hon'ble Supreme Court has in the case of M/s. Toyo Engineering India Ltd. reported at 2006 (201) ELT 513 has held that the grounds which did not find mention in the show cause notice cannot be argued by the department and the department cannot travel beyond the scope of the show cause notice; that the CESTAT Ahmedabad in the case of Ratnaveer Precision Engineering reported at 2023 (5) TMI 48 came to a conclusion that the claim of the Revenue that the adjudicating authority can classify the goods in a Customs Tariff Heading different from the one proposed in show cause notice, cannot be accepted; therefore, when in the present case when the classification proposed in the SCN is CTH 85287390 and the Hon'ble Apex court has decided the classification under CTH 8525. The case of the department in the SCN cannot go any further inasmuch as it is already decided by the Hon'ble apex court that the classification under CTH 8525 is correct and when such classification is not proposed in the SCN , the case of the revenue for reclassification under CTH 85287390 has to fail.

6 Personal Hearing: Personal Hearing in respect of Show Cause Notice dated 06.04.2018 was fixed on 30.08.2024. Advocate of M/s. Gujarat Telelink Pvt. Ltd. (Now M/s. GTPL Hathway Ltd.) appeared for Personal Hearing on 30.08.2024 wherein he submitted a copy of written submission dated 29.08.2024 and reiterated the submission made therein.

7 Discussion and Findings: This denovo proceeding has been initiated consequent to the CESTAT's Final Order No 12159-12160/2023 dated 13.09.2023 in respect of Appeal No. 12111/2018-DB filed by M/s. Gujarat Telelink Pvt. Ltd (Now known as M/s. GTPL Hathway Ltd) and Appeal No. 12323/2018 filed by the Department against the Order In Original No. AHM-CUSTM-000-COM-007-18-19 dated 25.04.2018. Hon'ble CESTAT, Ahmedabad vide Final Order No. 12159-12160/2023 dated 13.09.2023 decided aforesaid both the appeals by way of remand as stated in para 3 & 4 of the said Order which is re-produced below:-

"3. We have gone through the rival submissions and find that the impugned product which is used in transmission of signals through cable network is disputed for classification. However, we find that it is not coming out what is the product description and its usage and its akinness or otherwise to other products decided by Hon'ble Supreme Court and coordinate bench of Delhi concurring with Apex Court decision, in the order or from the grounds of appeal as raised by the department. Again, we find that vital decisions have been made after the above classification of the product as stated by the appellant which indicate the product may merit classification under a different tariff head depending upon akinness, as was done by a W.C.O. ruling made available. Further, the ruling in the subsequent decisions, HSN Notes, WCO etc. have also not been considered in so far as the impugned decision is concerned. WCO ruling to the extent HSN is aligned has a lot of persuasive value, though cannot be in conflict with Apex Court decision. Therefore, we are inclined to remit the matter back to the Commissioner to go through the exact nature of the product and rulings given by the Hon'ble Supreme Court as well as W.C.O. after ascertaining the detailed nature of the product. Matter is thus allowed by way remand with directions that while considering the law of the land and various alternate classifications the Commissioner will definitely give weightage to the fact that disputed matter is of legal interpretation and therefore the extended period cannot be invoked as per settled law. An alternate classification to give effect to law of land propounded by SC though is not barred by us but same if found to be beyond those proposed in show cause notice would amount to fresh proceeding with all legal effects.

4. Both the appeals are allowed byway or remand in above terms. Miscellaneous application filed for allowing the additional grounds pertains to legal material is also allowed and disposed of."

8. From the facts of the case and submissions of M/s. GTPL Hathway Ltd, following questions have arisen for consideration in the present case:-

- i Whether the imported goods "Encoder Model No. ULBA-MAGIC-8100A" self assessed by importer under CTI 85176290 is appropriate or the same should be classified under CTI 85287390 as proposed in Show Cause Notice or under CTI 85287100?
- ii Whether the consequential actions such as re-determination of Customs Duty alongwith interest on differential Customs Duty, liability of confiscation of the imported goods and the penalties on M/s. GTPL Hathway Ltd. arise or otherwise?

8.1 Points at Sr.No.8(ii) supra, viz. Duty liability with interest, Confiscation of goods and penal liabilities would be relevant only if the main point stated at Sr.No. 8 (i) supra is decided in line with the classification proposed in the Show Cause Notice. Thus, the main point is being taken up firstly for examination.

9. Whether the imported goods "Encoder Model No. ULBA-MAGIC-8100A" self assessed by importer under CTI 85176290 is appropriate or the same should be classified under CTI 85287100?

9.1 I find during course of Audit, it was observed that importer had imported goods viz. "Encoder Model No. ULBA-MAGIC-8100A" under CTI 85176290. Further, it was also observed that DRI had also initiated the investigation against the importer on the intelligence that certain importer of 'Digital Headend equipment for CATV' like Digital Encoders, Decoders, Modulators/demodulators ,Multiplexers, QAM Modulators etc. were evading Custom Duty by mis-classifying these goods under CTH 8517 claiming them to be telecom equipment and did not disclose the principal usage of the said goods that the same were used for reception and transmission of Cable Television namely 'Headend equipment'.

9.2 Classification under the Customs Tariff Act,1975 is made in accordance with the General Rules of Interpretation. Rule 1 of General Rules of Interpretation (GRI) provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of Rule 1 of GRI, and if the heading and legal notes do not otherwise require, the remaining GRIs may then be applied. I find it worth to re-produce the description of goods mentioned in CTH 8517 and those in CTH No.8528 to ascertain as to what would be merit classification of the impugned goods.

9.2.1 The relevant heading/description of CTH 8517 reads as under:

"8517 – Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area networks), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528.

- Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as local or wide area network)

8517.61 – Base stations

8517.62 – Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus

8517.69 – Other"

9.2.2 The relevant heading/description in the CTH 8525 reads as under:

2825 - Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders;

9.2.3 The relevant heading/description in the CTH 8528 reads as under:

8528 – Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus.

- Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus:

8528.71 – Not designed to incorporate a video display or screen

85287100- Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or vide recording or reproducing apparatus not designed to incorporate a video display or screen

8528.72 – Other, colour

8528.73 –Other, monochrome"

9.3 I find that Heading 8525 provides for 'transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders'. CTH 8517, 8525 and 8528 utilize the terms transmission and reception. The applicable distinction in terms of headings 8517,8525 and 8528 is whether the transmission or reception is " of voice, images or other data" or " for television". Thus, even if the transmission or reception is "of voice, images or other data," if that transmission or reception is "for television", the apparatus is excluded from heading 8517 by the terms of that heading.

10. I find it worth to discuss the application/ function of Encoders/Digital Headend for merit classification of the impugned goods. The relevant text browsed from the Wikipedia is reproduced as under:

10.1 Encoders: An encoder is a device, circuit, transducer, software program, algorithm or person that converts information from one format or code to another, for the purposes of standardization, speed or compression. A simple encoder or simply an encoder in digital electronics is a one-hot to binary converter. One may say it is the reverse of a Decoder in its functioning and that is true in terms of functioning.

10.2 A cable television headend is a master facility for receiving television signals for processing and distribution over a cable television system. The headend facility is normally unstaffed and surrounded by some type of security fencing and is typically a

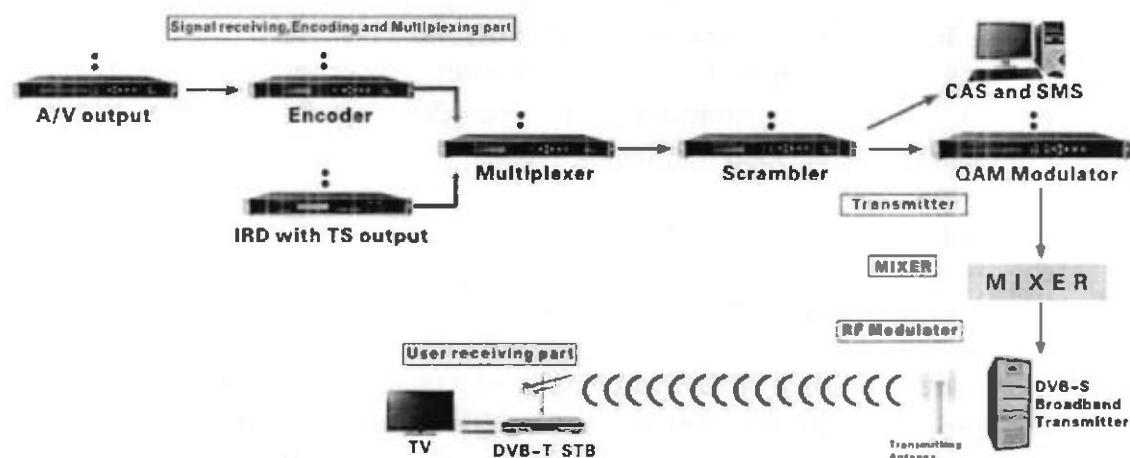
building or large shed housing electronic equipment used to receive and re-transmit video over the local cable infrastructure”

10.3 From the website, <https://partners.nxtdigital.in/productsandservices.php>, ‘The Cable Operators’ Premise Equipment is stated to be as under:

“The Cable Operators’ Premise Equipment or COPE is the basic device that you will need to receive and transmit digital signals through NXT DIGITAL, the Hinduja HITS network. It has been designed to make your transition from analogue to digital, simpler. The equipment can fit into any premise easily with its compact size. NXT DIGITAL has customized the COPE to suit your business model. It allows you to receive and transmit up to 500 channels depending on your choice of package. It allows you flexible package options with the amenity of inserting your own local channels. It has been designed keeping Indian conditions in mind and comes with a UPS installed, to provide temporary back-up in case of a power failure. You can choose from four different variants or tiers of COPE according to your requirements and subscriber demands”.

10.3.1 It would be appropriate to show a chart of a headend equipment.

DVB-T Flow Chart



10.3.2 As can be seen from the above chart, I find that the Encoders are digital headend equipment which helps in transmitting data. It is not in dispute that the importer has imported these digital headend equipment like encoders. Encoders are addressed as COPE/Digital Headend items for the purposes of trading/marketing them.

10.3.4 A headend is a cable television industry term for a combination of television signal transmission apparatus. Each system is individually configured as per the set specifications for every particular customer. Generally, the headend receives satellite television signals, modified the signal and then transmits the signal into a cable television. Thus, the headend serves an integral function in the cable TV transmission chain. Headends contain combinations converters, signal processors/generators, combiners, scramblers, amplifiers, modulators/demodulators and receivers. The receiver/descramblers are used in cable television applications for receiving, decoding and retransmitting a television signal. The receiver/descrambler

decodes a scrambled signal for further transmission, reception and subsequent display.

11 I find that impugned goods consist of digital encoder, multiplexers and modulators used in cable television.

The digital encoders convert analogue or digital video, audio and data signals of the source information such as CATV (Cable Television) programming into digital signals by means of compressing and encoding techniques in compliance with the MPEG-2 and the newer MPEG-4AVC/H.264, or MPEG-4, video compression standards.

The digital multiplexer combines several input MPEG-2 transport stream signals into a single MPEG-2 transport stream, using multiplexing technologies, in order to increase efficiency in transmission. The apparatus is capable of receiving multiple (upto 64) input MPEG-2 transport stream signals and integrating and reproducing those input transport stream signals into a MPEG-2 transport stream signal compliant with the DVB-ASI (Digital Video Broadcasting Asynchronous Serial Interface) standard. It can integrate multiple video, audio (including multi-channel audio) and data signals in the same multiplexed output signal.

A modulator (or RF modulator) takes a baseband input signal and then output a radio frequency (RF) modulated signal. This is often a preliminary step in signal transmission, to another device such as a television.

The encoder, multiplexers and modulators are to be used for transmission of Cable television (CATV) program providers to the Cable Operators.

12 I find that it is undisputed fact that importer is Multi System Operator (MSO) who provides Cable TV service to Local Cable Operator (LCOs) and other local subscribers. Therefore, I find that it would be worth to discuss how CATV transmission system functions:

A program-provider supplies analogue or digital video, audio & data signals to Encoders which compress and encode the video, audio & data signals into ASI (output) signals in compliance with MPEG-2 standard.

Output signals (streaming signal compressed & encoded by MPEG-2 standard) of several Encoders are entered into a Multiplexer which combines several signals (ASI) of Encoders into a ASI output Transport Stream signal by means of some multiplex techniques in order to carry several communication channels.

Output signals (ASI) of Multiplexer are entered into a Signal Converter which converts ASI signals into DS-3 or STM signals which will be transported further to the Optical Transmitter.

The Optical transmitter transmits the optical video, audio & data signals to the Optical Receiver through the optical network run by Network Operator.

Optical Signals or Optical Receiver are transported to Signal Converter which converts DS-3 or STM signals into ASI signals.

The ASI signals of the Signal Converter are connected to the Decoder which converts ASI signals into audio, video & data signals. The video &audio signals of the Decoder are transported to Modulator which converts or modulates video, audio & data signals into RF (Radio Frequency) signals.

The RF signals enter into HFC network to supply TV service subscribers.

Thus the encoder compresses and encodes signals received from the program provider in accordance with MPEG standards. The encoder then transmits or passes along the processed signals, to the multiplexer. The multiplexer receives the processed signals and combines them into a single MPEG transport stream for output. This multiplexed output is then passed on or transmitted to a modulator which combines the signals again into a DVB-ASI standard, process then further, and transmits them or passes them along for eventual transmission to be received and displayed by the CATV subscriber."

13. I find that Hon'ble Supreme Court has decided the classification of the impugned goods viz. 'decoder' in favour of the revenue in case of Commissioner of Cus., New Delhi Vs. C-Net Communication (I) Pvt. Ltd reported in 2007 (216) ELT 337 (S.C.) wherein interalia it has been held as under:

"[Judgment per : V.S. Sirpurkar, J.J. - Revenue has filed this appeal under Section 130E(B) of the Customs Act, 1962 challenging the decision of the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal"). By the impugned judgment the Tribunal allowed the appeal filed by the assessee M/s. C-Net Communication (I) Pvt. Ltd., challenging the orders passed by the Assessing Authority and the Confirming Order passed by the Commissioner of Appeals. The question which has fallen for consideration is "whether goods, namely, Signal Decoder which is normally used by a Cable Operator for distributing Satellite signals collected by Dish Antenna is covered under Entry 8528 or 8529".

2. Such collected signals, if weak, are strengthened by the Decoder and are fed further to the customers' television. Normally, the signals so collected by the feed-horn are weak and, therefore, a device called Low Noise Block down Converter is used for the amplification of those signals. The Decoder also converts the signals received from the Satellite by way of Dish Antenna into useable signals. In short, the signals are modulated into proper frequency and with the help of channel combiners, distribution amplifiers, channel converters and top off boxes, the signals are distributed to the subscribers for viewing the programmes. This apparatus is useful in case of some of the broadcasters transmitting the Pay Channels and for that purpose the Cable Operator connects the Decoder after the Satellite Receiver and the Decoders perform the de-coding function only after the reception of signals by Satellite Receiver and then feeds into the frequency level which the Decoder can withstand. The Revenue insists that these Decoders are covered by Entry 8528 which reads as under :

"8528 - Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors"

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13. The most important, however, is the case of Star Choice Television Network Inc., which decision was given on November 8, 2002. Here the question, as to whether the integrated receivers/decoders (IRDs) are properly classified under Tariff Item No. 8528.12.99, fell for consideration. While, according to the assessee, the correct Tariff Item was 8529.90.90, the Tribunal held that the said decoder is nothing but a part of Satellite Television Reception System (STRS). It was further held that IRDs was essential to the operation of the STRS and it is necessary and integral component of STRS and STRS cannot function without it. It was noted by the Tribunal that IRD is attached to the STRS by a coaxial cable and is sold along with the rest of the components and make up an STRS. Accordingly a finding was given by the Tribunal that the goods in issue are a part of STRSs. The Tribunal noted the amendment brought about in Entry 8528.12 and pointed out that the words "receiver for satellite television" were replaced by the words "reception apparatus for television". The argument before the Tribunal, at the instance of the assessee, was that the goods in issue should be classified in the Entry 8529 "as the other parts if suitable for use solely or principally with the apparatus of any numbers 8525 to 8528". It was also alternatively argued that if the goods are properly classified in heading No. 8528, they should be classified under Tariff Item no. 8528.12.10 as incomplete or unfinished television receivers. It was also argued before the Tribunal, at the instance of the assessee, that IRD is only one of the components of STRS and cannot perform satellite television reception function, described in heading 8528, on its own and, therefore, IRD cannot be classified in Heading No. 8528 and must consequently be classified under Heading 8529. The Tribunal then referred to Section 10 of the Customs Tariff which directed the classification in accordance with the General Rules for the interpretation of the Harmonized System and the Canadian Rules. It noted Rule which provided that for legal purposes, classification shall be determined according to the terms of the heading and any relative section or chapter notes. It also referred to Section 11 and then referred to the Jonic International Inc. and CL Blue's cases (*supra*) and came to the conclusion that IRD is the part of STRS and is essential to the operation of STRS. It is a necessary and integral component of STRS and STRS cannot function without it. It is attached to the STRS by a coaxial cable and is sold along with the rest of the components that make up STRS. The Tribunal ultimately held :

"The appellant submitted that the IRD is only one of the components of an STRS and cannot perform the satellite television reception function on its own. While it is true that the IRD cannot receive satellite television signals transmitted by a satellite without the dish antenna and the LNB, the IRD can receive television signals transmitted by the LNB. This suffices for the IRD to constitute a reception apparatus for television. There is no requirement that a machine be capable of receiving satellite television signals to be classified in heading No. 85.28 as a reception apparatus for television".

(emphasis supplied)

In short the Canadian Tribunal has held Entry 8528 to be the proper Entry to cover the IRD or, as the case may be, the decoder.

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15. While the appeal was being heard, this Court had directed the respondents to file technical/product literature for the proper adjudication of the matter. The respondents accordingly have filed such literature. A "decoder", as per the Dictionary of Computer, W.R. Spencer, is an electronic device that is capable of accepting decoded data at its

input and generating unencoded data at its output. The decoding process employed may conform to an agreed standard or be user-defined. The outputs of these devices are capable of directly driving external equipment such as LCD or LED-type displays. As per the information obtained from Wikipedia which is a free encyclopedia, the "decoder" is described as under :

"A decoder is a device which does the reverse of an encoder, undoing the encoding so that the original information can be retrieved. The same method used to encode is usually just reversed in order to decode.

In digital electronics this would mean that a decoder is a multiple-input, multiple-output logic circuit that converts coded inputs into coded outputs, where the input and output codes are different, e.g., n -to- 2^n , BCD decoders."

The User Manual which has been supplied to the court indicates that :

"This decoder enables normal viewing of satellite programmes broadcast using the STARCrypt system of encryption. When used in conjunction with the correct viewing card these broadcasts are descrambled. The decoder incorporates the following features :

- Phono connectors for connection to a satellite receiver.
- Option de-emphasis for baseband input signal;
- Power on LED indicator;
- De-emphasis on LED indicator;
- Pay preview programme capability;
- Cable and SMA TV compatibility;
- Compatibility with most existing satellite receivers."

From the User's Manual it is apparent that the decoder is an equipment which is required to be connected to the power supply by way of a cord. The said cord is terminated at one end with a connector to be inserted into the power input socket on the rear panel of the apparatus. This decoder is required to be connected with the help of cords to the satellite receiver. All this is connected to the Television set. In short it is only when the connections between the decoder satellite receiver and the Television have been made that the subscriber would be able to view the programme if he has the valid card for the same. The functioning of the decoder, therefore, clearly indicates that it is essential for receiving the decoded signals and the subscriber can view the programmes either of the pay channels or meant for the cable subscribers with the aid of the decoder. In case the decoder is not connected to the Television and to the satellite receiver, then it will not be possible for the subscriber to view any programme which is aired by the Cable TV or which is meant as a pay channel. In short, before making a full use of Television, the signals which are received by the dish-antenna are passed through the decoder which does the function of decoding the encoded signals so that the viewer can watch them. Under such circumstances it is clear that it becomes "reception apparatus for television". It may be that even without the decoder the television may work but in order to enjoy the television in a more meaningful manner, as also for its complete utilization the decoder is required. It may not be fitting into the description of "television receiver" but it certainly is an apparatus which works for receiving the signals for television. In

our view, therefore, when we compare unamended and the amended Entries, it is clear that the amended Entry has widened the scope of the earlier Entry and what was earlier "television receiver" has now become "reception apparatus for television". If this is so, in our opinion, the amended Entry under 8528 would aptly apply to the decoder which is one of the "apparatus for receiving the signals for television". In our opinion the true test is not as to whether the television could still work without the decoder, but the true test is as to the function that the decoder achieves in the user of the television. It is clear to our mind that decoder with which we are concerned passes the signals which have been received from satellite after decoding them into television so as to enable the viewer to have intelligible signals which, at times, would be available only by way of pay channels or which would be available if viewer is a subscriber to the Cable TV. Again that is not the only function of the decoder. At number of times the signals which are received from the satellite are weak and, therefore, would not reach the television intelligibly for the viewer, the decoder strengthens these signals. This leaves us with no doubt that decoder can be aptly described as a "reception apparatus for television". It is an apparatus which helps the television to receive intelligible signals for the viewer.

16. As per Stroud's Judicial Dictionary the term "apparatus" includes the distribution board of an electrical installation. It must be considered when current is passing through and not when it is in its inanimate state. This meaning has been assigned to it in *Waddell's Curator Bonis v. Alexander Lindsay Ltd.* [1960 SLT 189 (OH)]. This would indicate that the terms "apparatus" has been interpreted as something which is inclusive of some other appliance. This is clearly an indicator to the fact that the amendment was brought in with an idea to include a unit like the Decoder. This term was absent at the pre-amended stage and its inclusion in Entry 8528 clearly indicates the intent of the Legislature that the scope of the Entry was to be broadened and widened so as to include a signal unit like decoder. Unfortunately all this has escaped the attention of the Tribunal.

17. Learned counsel for the respondent strongly argued that the decoder in question is not a satellite receiver and is merely connected between the satellite receiver and the modulator. In case where the satellite signals are encoded or scrambled condition and the decoder is used only for the purpose of decoding the encoded/scrambled signals and that the signals decoder is nothing but one of the device connected after the satellite receiver and is used to convert the scrambled signals into unscrambled signals. Thus, the decoder is not a "satellite receiver". There can be no quarrel with this argument regarding the function of the decoder. However, what we are at pains to point out is the effect of amendment which has undoubtedly widened the scope of the Entry 8528. The argument put forward by the respondent would have been a sound argument had the Entry 8528 been restricted to "television receivers". However, now the Entry is not restricted to "television receivers" and has been widened into "reception apparatus for television". The thrust is on the word "reception apparatus", as against the thrust on the word "receiver" in the unamended Entry. In our opinion, the word "apparatus" would certainly mean the compound instrument or chain of series of instruments designed to carry out specific function or for a particular use."

14. I have also gone through the Final Order No. 12159-12160/2023 dated 13.09.2023 of Hon'ble Tribunal. I find that, Hon'ble Tribunal has remanded the present case for ascertaining the exact nature of the product taking into consideration ruling given by the Hon'ble Supreme Court as well as WCO after ascertaining the detailed nature of product. I find that the ratio of ruling of the Hon'ble Supreme Court in case of CC Vs. Multi Screen Media Pvt. Ltd reported in 2015 (322) ELT 572 (SC) relied on by the importer in said CESTAT Order is not applicable in the present case as in that case, dispute was whether classification of 'business satellite receivers' should be under CTH 852520 as claimed by importer or under CTH 852810

as claimed by the revenue whereas in the present case, the dispute is regarding classification of Digital Headend viz. 'Encoder' should be under CTI 85176290 as claimed by the importer or it should be under CTI 85287100 as claimed by the Revenue. The importer has not produced any evidence claiming that goods in question are 'Telecommunication Equipment' as claimed by them. Whereas, looking at the function of the imported impugned goods and activities of M/s. Gujarat Tradelink Pvt. Ltd., I find that impugned goods viz. 'Encoder' is meant for CATV and as per the Explanatory notes to the Harmonized System of Nomenclature for CTH 8528, the impugned goods merits classification under CTI 85287100. Further, I find that even the Hon'ble Tribunal in its very order has held that "WCO ruling to the extent HSN is aligned has a lot of persuasive value, though cannot be in conflict with Apex Court". I have already relied on the decision of Hon'ble Supreme Court rendered in case of Commissioner of Cus., New Delhi Vs. C-Net Communication (I) Pvt. Ltd reported in 2007 (216) ELT 337 (S.C.) herein above and therefore the WCO Ruling cannot be made applicable to the present case.

15. Further, I find that in the Show Cause Notice dated 29.04.2014 the impugned goods viz. Encoder Model No. ULBA-Magic-8100A' was proposed to be classified under Customs Tariff Item No. 85287390 instead of self assessed under Customs Tariff Item No. 85176290 by the importer. The said Show Cause Notice dated 29.04.2014 was adjudicated vide Order In Original No. AHM-CUSTM-00-COM-18-19 dated 25.04.2018 wherein it was confirmed that impugned goods would be classified under Customs Tariff Item No. 85287390. Further, DRI had investigated the issue and it was found that the merit classification of impugned goods would be '85287100' and accordingly Show Cause Notice No. DRI/MZU/CI/INT-38/2018 dated 06.04.2018 were issued to M/s. Gujarat Hathway (earlier known as M/s. Gujarat Teleink Pvt. Ltd.) and therefore, Department had also filed an appeal NO. C/12323/2018- against the aforesaid Order In Original No. AHM-CUSTM-00-COM-18-19 dated 25.04.2018 claiming merit classification under CTI 85287100. The Hon'ble Tribunal has stated in their said denovo order that "...Matter is thus allowed by way remand with directions that while considering the law of the land and various alternate classifications the Commissioner will definitely give weightage to the fact that disputed matter is of legal interpretation and therefore the extended period cannot be invoked as per settled law. An alternate classification to give effect to law of land propounded by SC though is not barred by us but same if found to be beyond those proposed in show cause notice would amount to fresh proceeding with all legal effects."

I find that in the present case, by way of mis classification under CTI 85176290, the importer wrongly availed the benefit of Notification No. 24/2005-Cus dated 01.03.2005 and availed the exemption from payment of Basic Customs Duty whereas the department alleged merit classification under CTI 85287390 and denied the benefit of Notification No. 24/2005-Cus dated 01.03.2005 in the Show Cause Notice dated 29.04.2024. However, consequent to the investigation carried out by the DRI, department filed an appeal before Hon'ble Tribunal to admit the merit classification under CTI 85287100 as claimed by the DRI. By changing the classification from CTI 85287390 as proposed in SCN to CTI 85287100 as per DRI investigation, would not make the importer eligible for benefit of exemption of Notification No. 24/2005- Cus dated 01.03.2005 as amended. It is pertinent to mention that by changing the classification from CTI 85287390 as proposed in SCN to CTI 85287100 as per DRI's investigation, importer does not absolve from paying Basic Customs Duty. Goods falling under Tariff item No. CTI 85287390 and CTI 85287100 are not eligible for the benefit of exemption under the Notification No. 24/2005-Cus dated 01.03.2005 as amended. Therefore, importer's claim that Classification of the goods cannot be done under any other heading which was not proposed in the SCN is

not acceptable as even by changing the classification importer is not absolved from payment BCD.

16 Thus, on harmonious reading of the provisions of CTH 8528 and functions/application of the impugned goods and decision of Hon'ble Supreme Court, I find that imported goods covered under the Show Cause Notice is meant for cable TV network which broadcast over the air, cable and direct broadcast satellite TV systems, are reception apparatus for television.

17 I find that CTH 8517 specifically excludes transmission or reception apparatus of heading CTH 8528. Explanatory notes to CTH 8517 covers networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks. On the other hand, I find that CTH 8528 refers to reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus. The Explanatory notes to the Harmonized System of Nomenclature for CTH 8528 says that the heading includes (1) Television reception apparatus, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus, for the display of signals (television sets) and (2) Apparatus for the reception of television signals, without display capabilities (e.g. receivers of satellite television broadcasts). These apparatus receive signals and convert them into a signal suitable for display.

I find that the data that will pass through the encoders, multiplexers, modulators etc., is television programming received through satellite for television viewing and finally it will be transmitted to subscriber's home and watched in majority of the cases, on their television. Therefore, applying Rule 1 of General Rules of Interpretation, the impugned goods covered under Show Cause Notice dated 29.09.2014 being "Reception apparatus for television" merits classification under Customs Tariff Item No. 85287100. Therefore, I find that goods classified under Customs Tariff Item No. 85176290 under Bill of Entry No. 9849597 dated 15.04.2013 and 9543581 dated 12.03.2013 by the importer is required to be rejected and same are required to be re-assessed under Customs Tariff Item No.85287100 .

18. Whether the consequential actions such as re-determination of Customs Duty alongwith interest on differential Customs Duty, on M/s. Gujarat Telelink Pvt. Ltd. arise or otherwise?

18.1 Keeping the aforesaid discussions in mind, I proceed to examine the matter further. I find that in order to sensitize the Trade about its benefit and consequences of mis-use, Government of India has issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self Assessment 2011 ' was required as prior to enactment of the provision of 'Self-Assessment', mis-classification or wrong availment of Duty exemption etc., in normal course of import, was not considered as mis-declaration or mis-statement. Under para 1.3 of Chapter-I of the above manual, Importers/Exporters, who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options: (a) Seek assistance from Help Desk located in each Custom Houses, or (b) Refer to information on CBIC/ICEGATE web portal www.cbic.gov.in, or (c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or (d) An importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied. Para 3(a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para

2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent and habitually noncompliant Importers/Exporters could face penal action on account of wrong Self-Assessment made with intent to evade Duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

18.2 I find that it is undisputed fact that importer provides Cable TV Services to Local Cable Operators (LCOs) as well as direct customers and they provide free to air channels to the subscribers including standard Definition and Hi-definition and for that they require Digital Headend Equipment which in turn includes decoders provided by broadcaster, encoders, IRD (Integrated Receiver Decoders), Multiplexers etc.. Thus inspite of being fully aware of the fact that the imported goods were meant for transmission and reception of broadcast signals for Television meant for Cable TV, Operator, still they chose to classify under different CTHs at the time of import in order to avail NIL rate of Basic Customs Duty. Thus, I find that importer with clear intent to evade the payment of customs duty have classified the impugned goods under other CTH declaring the same as Telecom equipment and therefore, in view of the said wilful suppression of actual description of goods, they mis-classified the same with intent to evade Customs Duty, therefore the extended period provisions under Section 28 (4) of the Customs Act, 1962 is rightly invoked in the Show Cause Notice and they have intentionally and knowingly adopted the modus operandi to mis-state the correct classification of imported goods and willfully mis-classified their imported goods. It is therefore very much apparent that importer has willfully violated the provisions of Section 17(1) of the Customs Act, 1962 in as much as they have failed to correctly self-assess the impugned goods and have also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962. Thus, M/s. Gujarat Telelink Pvt. Ltd have indulged in wilful mis-declaration of classification of the impugned goods and suppressed correct classification of the impugned goods from the Customs, Ahmedabad with a view to avail the benefit of lower Customs Duty rate and thereby to evade payment of Customs Duty at the appropriate rate. By way of adopting this modus in respect of impugned goods, M/s. Gujarat Telelink Pvt. Ltd have short paid the duty of 11,40,797/- in respect of the Bill of Entry No.9849597 dated 15.04.2013 and 9543581 dated 12.03.2013 and the short paid duty is required to be recovered by invocation of extended period for demand of the said Customs Duty under the provisions of Section 28(4) of the Customs Act, 1962.

18.3 I find that Hon'ble Tribunal in its denovo Order has stated that "...Matter is thus allowed by way remand with directions that while considering the law of the land and various alternate classifications the Commissioner will definitely give weightage to the fact that disputed matter is of legal interpretation and therefore the extended period cannot be invoked as per settled law..."

I find that CTH 8517 specifically excludes transmission or reception apparatus of heading CTH 8528. Explanatory notes to CTH 8517 covers networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks. On the other hand, CTH 8528 refers to reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus. The Explanatory notes to the Harmonized System of Nomenclature for CTH 8528 says that the heading includes (1) Television reception apparatus, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus, for the display of signals (television sets) and (2) Apparatus for the reception of television signals, without display capabilities (e.g. receivers of satellite television broadcasts). The aforesaid provisions are very clear and unambiguous and in the present case, the ingredient of

suppression of facts with intent to wrongly claim the benefit of Notification No. 24/2005-Cus dated 01.03.2005 as amended is clearly visible. It is undisputed fact that importer is Multi System Operator (MSO) who provides Cable TV service to Local Cable Operator (LCOs) and other local subscribers and with clear intent to evade the payment of Basic Customs Duty, they mis classified the impugned goods under Customs Tariff Item No. 85176290 as 'Telecommunication Equipment' and therefore, provisions of extended period is rightly invoked.

18.4 I find that in the present case, it is not in dispute that the duty is demanded by invoking the provisions of Section 28 (4) of the Customs Act, 1962 which is related to short payment duty by reason of wilful mis-statement and suppression of fact. Further, it is undisputed fact that importer is Multi System Operator (MSO) who provides Cable TV service to Local Cable Operator (LCOs) and other local subscribers and with clear intent to evade the payment of Basic Customs Duty, they mis classified the impugned goods under Customs Tariff Item No. 85176290 as 'Telecommunication Equipment' and therefore, provisions of extended period is rightly invoked. Total duty involved in the present case is Rs. 11,40,797/- which is covered under Bill of Entry No. 9849597 dated 15.04.2013 and 9543581 dated 12.03.2013 and demand Show Cause Notice is issued on 29.04.2014 which is well within the normal period of two years as stipulated under Section 28 (1) of the Customs Act, 1962. However, as the ingredients of suppression of facts with clear intent to evade payment of Basic Customs Duty by wrong claim of Notification No. 24/2005-Cus dated 01.03.2005 as amended, is there, I find that duty is rightly proposed under Section 28 (4) of the Customs Act, 1962 and therefore, the same is required to be recovered alongwith interest under Section 28AA of the Customs Act, 1962.

18.5 It has also been proposed in the Show Cause Notices to demand and recover interest on the differential Customs Duty of Rs. 11,40,797/- (Rupees Eleven Lakh, Forty Thousand, Seven Hundred and Ninety Seven only) in respect of the imports made under Bill of Entry No. 9849597 dated 15.04.2013 and 9543581 dated 12.03.2013 under Section 28AA of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 ibid, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus, the said Section provides for payment of interest automatically along with the Duty confirmed/determined under Section 28 ibid. I have already held that the differential Customs Duties of Rs. 11,40,797/- (Rupees Eleven Lakh, Forty Thousand, Seven Hundred and Ninety Seven only) is liable to be recovered under Section 28(4) of the Customs Act, 1962. I, therefore hold that the interest on the said Customs Duty determined/confirmed under Section 28(4) ibid is to be recovered under Section 28AA of the Customs Act, 1962.

19 Whether the imported goods covered under Bill of Entry No. 9849597 dated 15.04.2013 and 9543581 dated 12.03.2013 having total assessable value of Rs. 95,10,131/- as mentioned in the Show Cause Notice are liable for confiscation under Section 111(m) of the Customs Act, 1962?

19.1 M/s. Gujarat Telelink Pvt. Ltd. have mis-classified the goods under Customs Tariff Item No. 85176290 for the goods covered in the Bill of Entry 9849597 dated 15.04.2013 and 9543581 dated 12.03.2013 as a telecom equipment despite fully knowing the fact that the goods imported were basically used for MPEG-2 and MPEG-4 signal compression and transmission for CATV and were not telecommunication equipment and did not pay the Basic Customs Duty. By way of adopting this modus in respect of impugned goods covered under 9849597 dated 15.04.2013 and 9543581 dated 12.03.2013 having assessable value of Rs. 95,10,131/-, they cleared the goods without payment of Basic Customs Duty. Thus M/s. Gujarat Telelink Pvt. Ltd. has

deliberately and knowingly indulged in suppression of facts in respect of their imported product and has wilfully mis-classified the goods with an intent to evade payment of higher rate of Customs Duty and also contravened the provisions of Section 46(4) of the Customs Act, 1962. In terms of Section 46(4) of the Customs Act, 1962, the Importer is required to make and subscribe to a declaration as to the truth of the contents of the Bills of Entry submitted for assessment of Customs Duty. Section 111 (m) of the Customs Act, 1962 provides for confiscation of any imported goods which do not correspond in respect of value or in any other particular with the entry made under this Act. In this case, M/s. Gujarat Telelink Pvt. Ltd. has resorted to mis-classification of the goods by wrongly classifying it under different CTH instead of Customs Tariff Item No.85287100 in the Bills of Entry filed by them as detailed in Annexure-A and B to the Show Cause Notice with an intention to avoid payment of Basic Customs Duty that would have accrued to them if they had correctly classified the same. Thus, provisions of Section 111(m) of the Customs Act, 1962 would come into picture. I thus find that willful mis-declaration of classification of the impugned goods and suppression of correct classification of the impugned goods from the Air Cargo Complex, Ahmedabad on the part of M/s. Gujarat Telelink Pvt. Ltd.. has rendered the said goods cleared from Air Cargo Complex, Ahmedabad liable for confiscation under Section 111(m) of the Customs Act, 1962.

19.2 As the impugned goods are found liable to confiscation under Section 111 (m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. Section 125 (1) of the Customs Act, 1962 reads as under:-

“125 Option to pay fine in lieu of confiscation –

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging 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..."

19.3 I find that though, the goods are not physically available for confiscation and in such cases redemption fine is impossible in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act”, brings out the point clearly. The power to impose redemption fine

springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

19.4 I also find that Hon'ble High Court of Gujarat by relying on the above referred judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, has held *inter alia* as under: -

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.”

174. In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act....”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).”

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above.”

19.5 In view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation for imported goods covered under 9849597 dated 15.04.2013 and 9543581 dated 12.03.2013 having total assessable value of Rs. 95,10,131/-.

20. Whether M/s. Gujarat Telelink Ltd is liable for penalty under Section 114A of the Customs Act, 1962 ?

20.1 The Show Cause Notice proposes penalty under the provisions of Section 112(a), on M/s. Gujarat Telelink Pvt. Ltd. The Penalty under Section 114A can be imposed only if the Duty demanded under Section 28 ibid by alleging willful mis-statement or suppression of facts etc. is confirmed/determined under Section 28(4) of the Customs Act, 1962. As discussed in foregoing paras, M/s. Gujarat Telelink Pvt. Ltd had willingly mis-declared the classification of the impugned imported goods with an intention to avoid the payment of Basic Customs Duty that would have accrued to them if they had correctly classified the same. I have already held that the differential Customs Duty of Rs. 11,40,797/- is confirmed and liable to be recovered from M/s. Gujarat Telelink Pvt. Ltd under Section 28(4) of the Customs Act, 1962. As the provision of imposition of penalty under Section 114A ibid is directly linked to Section 28(4) ibid, I find that penalty under Section 114A of the Customs Act, 1962 is to be imposed upon Gujarat Telelink Pvt. Ltd. Further, I find that though in the Show Cause Notice, penalty is proposed under Section 112 (a) of the Customs Act, 1962 but as it is settled law that wrong mention of Section does not vitiate the proceeding. I rely on the ratio of decision of Hon'ble Madras High Court in the case of S. Jamal Vs Commissioner of Customs (Air), Chennai wherein it has been interalia held as under:

“14. In the present case, the show cause notice elaborately discussed the role played by the appellant. Therefore, merely because the show cause notice does not mention Section 112(b) but mentioned Section 112(a) of the Customs Act, would not vitiate the entire proceedings; more so when the ingredient found place in the show cause notice and non-mentioning of the specific clause of the Customs Act will not vitiate the details mentioned in the show cause notice in clear terms. Hence, considering the above factual position, we find no ground to entertain the Civil Miscellaneous Appeal. Accordingly, the appeal fails and same stands dismissed. No costs. Consequently, connected MP is closed.”

I have already discussed hereinabove that all the ingredient for invoking the provisions of extended period under Section 28 (4) of the Customs Act, 1962 are available and accordingly penalty is rightly imposable under Section 114A of the Customs Act, 1962 instead of wrongly proposed in the Show Cause Notice under Section 112 (a) of the Customs Act, 1962.

21. In view of my findings in paras supra, I pass the following order:

:: ORDER::

21.1 I reject the declared classification of the subject goods, viz. '8 in 1 Encoder Model No. UBLA-Magic-8100A' imported by M/s. Gujarat Telelink Pvt. Ltd. in the Bill of Entry No. 9849597 dated 15.04.2013 and 9543581 dated 12.03.2013 under Customs Tariff Item No.85176290 (as detailed in Annexure A to the Show Cause Notice) and order to re-classify the said goods under Customs Tariff Item No.85287100 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and reassess the subject Bills of Entry accordingly;

21.2 I confirm the demand of Differential Customs Duty amounting to **Rs. 11,40,797/- (Rupees Eleven Lakh, Forty Thousand, Seven Hundred and Ninety Seven only)** for imported goods covered under Bills of Entry No. 9849597 dated 15.04.2013 and 9543581 dated 12.03.2013 imported by M/s. Gujarat Telelink Pvt. Ltd. under Section 28(4) of the Customs Act, 1962 readwith the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same.

21.3 Interest at the appropriate rate shall be charged and recovered from M/s. Gujarat Telelink Pvt. Ltd., under Section 28AA of the Customs Act, 1962 on the duty confirmed hereinabove at Para 21.2 above.

21.4 I hold the imported goods totally valued at **Rs. 95,10,131/- (Rupees Ninety Five Lakh, Ten Thousand, One Hundred and Thirty One only)** imported vide Bill of Entry No. 9849597 dated 15.04.2013 and 9543581 dated 12.03.2013 liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. Gujarat Telelink Pvt. Ltd. the option to redeem the goods on payment of Fine of **Rs. 9,50,000/- (Rupees Nine Lakh and Fifty Thousand only)** under Section 125 of the Customs Act, 1962.

21.5 I impose penalty of **Rs. 11,40,797/- (Rupees Eleven Lakh, Forty Thousand, Seven Hundred and Ninety Seven only)** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Gujarat Telelink Pvt. Ltd., under Section 114A of the Customs Act, 1962 in respect of Bills of Entry No. 9849597 dated 15.04.2013 and 9543581 dated 12.03.2013 mentioned in the Show Cause Notice. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the importer, to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.

22 This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.

23 The Show Cause Notice No. VIII/10-115/ACC/O&A/2014 dated 29.09.2014 is disposed off in above terms.



10.09.2014

(Shiv Kumar Sharma)
Principal Commissioner

DIN-20240971MN00007277D8

F.No. VIII/10-115/ACC/O&A/2014

Date: 10.09.2024.

BY Speed Post A.D

To,

1. M/s. Gujarat Telelink Pvt. Ltd.,
202, Sahajanand Shopping Centre,
Shahibaug,
Ahmadabad -380004

Copy to:

- The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad.
- The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.
- The Deputy Commissioner, Air Cargo Complex, Ahmedabad
- The Deputy Commissioner(Prosecution), Customs, Ahmedabad

Guard File.



