DIN : 20240471MN0000071568

अपर आयुक्त का कार्यालय, सीमा शुल्क
OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS
आई. सी. डी. - तुम्ब
INLAND CONTAINER DEPOT (ICD) - TUMB
सर्वे. न.: ४४/१/पी.के.२, गाँव – तुम्ब, तालुका-उमरगाँव, जिला- वलसाड, गुजरात: - ३९६१५०
(S. No. 44/1/P.K. 2, Village-Tumb, Tal.: Umbergaon, Dist.: Valsad, Gujarat-396150)
e-mail: cusicd-tumb@gov.in

Dated: 26.04.2024

F. No.		CUS/SHED/56/2023-ICD-UMGN-CUS-COMMRTE-AHMEDABAD
Name & Address of the Importer	:	M/s. Vinod Medical Systems Private Limited, 323, Omkar, The Summit Business Bay, 3rd Floor, B.L. Bajaj Road, Prakashvadi, Nr. W.E.H Metro Station, Andhri-East, Mumbai-100093
Order – in – Original No.	:	01/AR/ADC/TUMB/2024-25
DIN	:	20240471MN0000071568
Passed by	:	Arun Richard **अपर आयुक्त**/ ADDITIONAL COMMISSIONER **सीमा शुल्क**/CUSTOMS
Date of Order	:	26.04.2024
Date of Issue	:	26.04.2024

(1) जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
(1) This copy is granted free of charge for the use of the person, to whom it is issued.

(2) इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), सीमाशुल्क, चौथा तल, हुडको भवन, स्टेडियम के पास, आश्रम रोड, नवरंगपुरा, अहमदाबाद, **380009** में दाखिल कर सकता है।

(2) Any person deeming himself aggrieved by this order may appeal against the order to the Commissioner of Customs (Appeal), 4th Floor, HUDCO Bhawan, Near Stadium, Navarangpura, Ahmedabad – 380 009 within sixty (60) days from the date of receipt of the order.

(3) इस अपील पर रू. 2.00 (दो रूपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।
उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

1. उक्त अपील की प्रति।
2. निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिस पर रू. 2.00 (दो रूपये) का न्यायालय शुल्क़ टिकट लगा होना चाहिए।

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(3) The appeal should bear a Court fee stamp of Rupees Two only (Rs. 2.00/), and it must be accompanied by:

i. A copy of the appeal and

ii This copy or any copy of this order will must bear a Court fee Stamp of Rupees Two only (Rs. 2.00/-).

(4) इस अपील आदेश के खिलाफ अपील करने का इच्छुक कोई व्यक्ति माँगीं गई शुल्क और जुर्माना जमा कर के, उसको भुगतान की सबूत इस अपील के साथ पेश कर सकते है। ऐसा न करने पर ये अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों के तहत अस्वीकार कर दिया जा सकता है।

(4). Any person desirous of appealing against this order shall, pending the appeal deposit the duty demanding or penalty levied therein and produce proof of such payment along with the appeal; failing which the appeal is liable to be rejected for non-compliance of the provisions of Section 129 of the Customs Act, 1962.

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FACTS OF THE CASE IN BRIEF

M/s. Vinod Medical Systems Private Limited, 323, Omkar, The Summit Business Bay, 3rd Floor, B.L. Bajaj Road, Prakashvadi, Nr. W.E.H Metro Station, Andhri-East, Mumbai-100093 (herein after referred as "the importer") having IEC No. 1101002522, has imported the goods namely "FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES PP2512UV-RICOH GEN 5 and FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES XTRA320K" (herein after referred as "the impugned goods") under Bill of Entry No. 8754342 dated 06.11.2018 & 9094076 dated 03.12.2018 (hereinafter referred as "the said BoE"), filed at ICD Tumb, by classifying the same under CTH 84433250 and claimed full exemption of BCD under Sr. No. 2E of Notification 24/2005 dated 01.03.2005 and, accordingly, SWS and IGST were calculated.

2. As per Analytics Report/12/2021-22 dated 10.05.2021 issued by DGARM, NCTC, Mumbai, detailed that Goods namely "Ink Jet Printer" and "Inkjet Printing Machine" both are classified under CTH 8443. More specific CTH 84433250 covers "Ink Jet Printer" attracts "NIL" BCD whereas CTH 84433910 covers "Inkjet Printing Machine" which attracts BCD @7.5%. Therefore, there is apparent risk of mis-classification of "Inkjet Printing Machine" as "Ink Jet Printer" for claiming "Nil" rate of BCD. Based on analytics report, a detail scrutiny of the Bills of Entry No. 8754342 dated 06.11.2018 & 9094076 dated 03.12.2018, including the import documents filed by the importer, has been carried out. During the scrutiny, it appeared that the said BoE was filed through their Customs Broker i.e. M/s. Buffer Shipping Agency Private Limited (CHA No. AAHCB3777FCH002), wherein the impugned goods were declared under Customs Tariff Heading 84433250 claiming the "Nil' rate of BCD. The details of the BoE i.e. "BoE No.", Date, CTH, "Goods Description" of the imported goods declared in the Bill of Entry are reproduced in Table-I below.

TABLE-I

Sr. No.	BE No.	BE Date	Item No.	CTH	Item Description	BCD Rate

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(1)	(2)	(3)	(5)	(4)	(6)	(7)
1	**8754342**	**06.11.2018**	**1**	**84433250**	**FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES PP2512UV-RICOH GEN 5**	**Nil**
2	**8754342**	**06.11.2018**	**5**	**84433250**	**FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES XTRA320K**	**Nil**
3	**9094076**	**03.12.2018**	**1**	**84433250**	**FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES XTRA320K**	**Nil**

On going through the Item Description declared by the importer in the said BOE as mentioned in the table above, it appeared that it is "Inkjet Printing System with its accessories" and not a simple "Ink Jet Printer". An "Inkjet Printing System with its accessories" includes a printer driver with capabilities of automatic data processing (ADP) and performing a specific function. It does not depend upon external ADP for processing or control commands. Therefore, it appeared that the imported goods i.e. "Inkjet Printing System with its accessories" not appeared to be classifiable under CTH 84433250 which is exclusive for "Ink Jet Printer". Further, as per description of imported goods i.e. "Inkjet Printing System with its accessories", it appeared that the aforesaid goods were classifiable under CTH 84433910 as PRINTING MACHINE attracting BCD @ 7.5% and SWS @10% of BCD & IGST @18%.

3. The imported goods mentioned in the Table-1 were declared under CTH 84433250 appeared to be covered under CTH 84433910 attracting BCD Rate @7.5%. The relevant entries given in the Customs Tariff is as follows:

Tariff Item	Description of goods	Unit	Rate of duty
8443 32	Other, capable of connecting to an automatic data processing machine or to a network		
8443 32 10	Line printer	u	Free
8443 32 20	Dot matrix printer	u	Free
8443 32 30	Letter quality daisy wheel printer	u	Free

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8443 32 40	Laser jet printer	u	Free
8443 32 50	Ink jet printer	u	Free
8443 32 60	Facsimile machine	u	Free
8443 32 90	Other	u	10%
8443 39 10	Ink-jet printing machine	u	7.5%
8443 39 20	Electrostatic photocopying apparatus operated by reproducing the original image directly onto the copy (direct process)	u	7.5%
8443 39 30	Electrostatic photocopying apparatus operated by reproducing the original image via and intermediate onto the copy (indirect process)	u	7.5%

On careful reading of the description of the items mentioned under CTH 84433250, it appeared that the goods having description "Ink jet printer" attract Nil rate of BCD, however, the goods under CTH 84433910 having description "Ink-jet printing machine" attracts BCD Rate @7.5%.

3.1 Further, portion of Notification No. 24/2005 - Customs dated 1st March, 2005, as amended, relevant to CTH 8443 32, is reproduced below: -

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the following goods of the description as specified in column (3) of the table below and falling under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below, when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, namely:-

Table

Sr. No.	Heading, sub-heading or tariff item	Description
1	2	3
2A	8443 32 10	All goods
2B	8443 32 20	All goods
2C	8443 32 30	All goods
2D	8443 32 40	All goods
2E	8443 32 50	All goods
2F	8443 32 60	All goods
3	8443 39	(a)Electrostatic photocopying apparatus, operating by reproducing the original image directly onto the copy

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		(direct process); and (b)Photocopying apparatus, other than electrostatic, incorporating an optical system
4	8443 99 (except 8443 99 51, 8443 99 52, 8443 99 53)	Parts and accessories of the following goods (except Ink cartridges, with print head assembly; Ink cartridges, without print head assembly; Ink spray nozzle) namely :- (a) All goods falling under tariff items 8443 31 00; 8443 32 10, 8443 32 20, 8443 32 30, 8443 32 40, 8443 32 50, 8443 32 60; (b) Electrostatic photocopying apparatus, operating by reproducing the original image directly onto the copy (direct process); and (c) Photocopying apparatus, other than electrostatic, incorporating an optical system

3.2 It is pertinent to mention that in the Bill of Entry, the goods are described as “Printing System”. Thereby, it appeared that these items are not simple printers, but “Printing System” as described by the importer. The Printing System may comprise of a printer driver, which includes command required by specific printer in itself. It cannot depend upon external ADP for processing or control commands. Accordingly, goods described as printing system appeared to merit classification under CTH 8443 39 10 as “Printing Machine”. As per General Rules of Interpretation (GRI's), classification shall be determined according to the terms of the headings and any relative section or chapter notes. The goods appeared to have been mis-classified by the importer under CTH 84433250 and claiming full BCD exemption under Sr. No. 2E of Notification 24/2005 dated 01.03.2005. Therefore, it appeared that the aforesaid goods are classifiable under CTH 84433910 attracting BCD @7.5%, SWS @10% of BCD and IGST @18% accordingly. It appeared that the goods have been mis-classified with an intention to evade payment of BCD and SWS and to short pay IGST resulting in evasion of duties of Customs. The details of BCD, SWS and IGST appeared to be evaded were given in Annexure “A” to the notice.

4. From para 2 & 3 above, it appeared that the description of the impugned goods declared by the importer/noticee are other than the

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description of the goods under Customs Tariff Heading 84433250. Therefore, it appeared that the impugned goods are not eligible for claiming the benefit of 'Nil' rate of BCD. Instead, the impugned goods appeared to be classifiable under CTH 84433910 as PRINTING MACHINE attracting BCD @ 7.5% and SWS @10% of BCD and accordingly, appropriate IGST @ 18%.

5. On scrutiny of the Bill of Entry No. 8754342 dated 06.11.2018 & 9094076 dated 03.12.2018 including the import documents filed by the importer revealed that the same was filed through their Customs Broker i.e. M/s. Buffer Shipping Agency Private Limited (CHA No. AAHCB3777FCH002) wherein the above referred goods i.e FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES PP2512UV-RICOH GEN 5 and FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES XTRA320K were imported on full exemption from BCD, and it appeared that the goods have been wrongly classified. The aforesaid imported goods viz. FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES PP2512UV-RICOH GEN 5 and FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES XTRA320K were imported from Shenzhen Runtianz Digital Equipment Co. Ltd., China on the Assessable value of Rs. 22,74,469/-, Rs. 17,39,968/- and Rs. 33,40,585/- respectively, declaring classification under CTH 84433250 claiming the BCD exemption under Sr. No. 2E of Notification 24/2005 dated 01.03.2005 and, thus, it appeared that the importer has evaded the payment of BCD and, accordingly, SWS and IGST thereon.

5.1 It appeared that the importer, in the present case, have willingly availed Nil rate of BCD citing Customs Tariff Heading 84433250 instead of appropriate and correct CTH 84433910, with an intention to evade the payment of BCD @7.5% appearing to result in evasion of Customs duty. By way of such non-payment of BCD, the Importer appeared to have defaulted in payment of BCD amounting to Rs. 5,51,627/-, SWS of Rs. 55,163/- and IGST of Rs. 1,09,222/- as per the details mentioned in Annexure-A attached to the Show Cause Notice dated 07.11.2023.

VIOLATION OF PROVISIONS UNDER CUSTOMS ACT, 1962

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6. In terms of Section 46 of the Customs Act, 1962, while presenting the Bills of Entry before the Customs authority for clearance of the imported goods, it was duty of the Importer to declare the accuracy and completeness of the information given therein. The law demands true facts to be declared by the importer. As the importer has been working under self-assessment, where they have been given liberty to declare every aspect of an imported consignment from classification to declaration of value of the goods or declaring of duty at applicable rate, it was responsibility of the importer to place correct facts and figures before the assessing authority. The self-assessment of Customs duty has been introduced in Customs w.e.f. 08.04.2011 under which Importer shall self-assess the duty leviable on import of the goods. In the material case, it appeared that the Importer has failed to comply with the requirement of law and wrongly declared the wrong CTH 84433250 claiming the benefit of Nil rate of BCD instead of its correct CTH 84433910 attracting BCD @ 7.5%. Therefore, it appeared that the importer failed in presenting Bills of Entry in terms of its accuracy and completeness of the information given therein in contravention of Section 46 of the Customs Act, 1962. Thereby, it appeared that this resulted in violation of Section 46 of the Customs Act, 1962.

> *Section 46 Entry of goods on importation. —*
> *(1) The importer of any goods, other than goods intended for transit or transhipment, 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] :*
> *4 [* ***Provided*** *that the 5 [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically 6 [on the customs automated system], allow an entry to be presented in any other manner:*
> ***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.*

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7 [(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:

9 [***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:*

11 [***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].*

[14] ***[(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.

7. The importer appeared to have willfully suppressed the facts that they were required to pay BCD at 7.5% on import of goods covered under Customs Tariff Heading 84433910. Instead of paying BCD @7.5%, they claimed Nil rate under CTH 84433250 which appeared to be incorrect. With the introduction of self-assessment & RMS under the Customs Act, faith is bestowed on the importer, with the responsibility of self-assessing goods under Section 17 of the Customs Act, 1962. It was incumbent upon the importer to assess the duty leviable on imported goods correctly, however, it appeared that the importer failed to do so by selecting wrong CTH for payment of BCD, SWS & IGST by willful mis-statement with intent to evade payment of BCD, SWS & IGST and therefore, appeared that they have violated the provisions laid down under Section 17(1) of the Customs Act,

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1962 inasmuch it appeared that they have failed to correctly self-assess the impugned goods and also willfully violated the provision of Sub Section (4) and 4(A) of Section 46 of the Custom Act, 1962. Amount of Customs duty attributable to such benefit availed in the form of non-payment of BCD, SWS & IGST at a "Nil" rate, is therefore, appeared to be demanded from the said importer under Section 28(4) of the Customs Act, 1962 along with appropriate interest under Section 28AA of the Customs Act, 1962. Accordingly, it appeared that the non-payment of customs duty amounting to Rs. 5,51,627/-, SWS of Rs. 55,163/- & IGST of Rs. 1,09,222/- appeared liable to be recoverable from the Importer under section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

Relevant Legal provisions, in so far as they relate to the facts of the case are as under:-

Section 17. Assessment of duty. -

(1) An importer entering any imported goods under section 46 or an exporter entering any export goods under section 50 shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the [the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

3 [Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]

4 [(3) For 5 [the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.]

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter 6 [***] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

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7 [***]

Explanation. *- For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.]*

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

(1) When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may,-

- - - -

(4) Where any duty has not been 3 [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 4 [so levied or not paid] or which has been so short-levied or short-paid or to whom the the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

Section 28AA. 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 thereunder, 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,—

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(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.]

8. It appeared that the Importer/Noticee has wilfully claimed the undue benefit for the import of the impugned goods resulting into non levy of Basic Customs Duty, SWS and short levy of IGST, by doing so, it appeared that the said importer has rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. The goods imported vide the Bills of Entry mentioned in the Annexure-A attached to the notice, were self-assessed and cleared with declared assessable value of Rs. 73,55,022/- (Rupees Seventy Three Lakhs Fifty Five Thousand Twenty Two Only), the same appeared to be liable for confiscation under the provisions of Section 111(m) of the Customs Act,1962. The relevant provisions are reproduced as under:

Section 111 of the Customs Act, 1962 *deals with the Confiscation of improperly imported goods, etc.The relevant provision is reproduced below:-*

The following goods brought from a place outside India shall be liable to confiscation: -
(a)-----
(m) Section 111(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;

PENAL PROVISIONS FOR VIOLATION OF PROVISIONS LAID DOWN UNDER CUSTOMS ACT, 1962

9. Whereas, it appears that the goods imported vide the subject Bills of Entry mentioned in the Annexure-A, were self-assessed and cleared with declared assessable value of Rs. 73,55,022/- (Rupees Seventy Three Lakhs Fifty Five Thousand Twenty Two Only) appears to be liable for confiscation under the provisions of Section 111(m) of the Customs Act,1962. Therefore,

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it appears that the importer has rendered themselves liable for penalty under Section 112(a) for mis-declaration by them and active involvement in wrong availment of the benefit of the "Nil" rate of BCD by mis-declaring the CTH of the imported goods, which rendered the goods liable to confiscation under Section 111(m) of the Customs Act, 1962. Relevant provisions are reproduced as under:

> *"**Section 112: Penalty for improper importation of goods, etc:-** Any person, -*
> *(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such act, or*
>
> *(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or had reason to believe are liable to confiscation under Section 111.*
>
> *shall be liable, -*
> *(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [1] [not exceeding the value of the goods or five thousand rupees], whichever is the greater;*
> *(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:*
>
> ***Provided** that where such duty 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 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 penalty so determined;]*
> *(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]*
> *(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;*
> *(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]*

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10. Whereas, from the above paras, it appears that the importer has failed to correctly self-assess the payment of appropriate duty and will fully suppress the proper CTH of the imported goods with intent to evade the payment of duty resulting into short/non-payment of BCD amounting to Rs. 5,51,627/-, SWS of Rs. 55,163/- and IGST of Rs. 1,09,222/-. Therefore, such act of non-payment/short payment of appropriate duty by will fully suppressing/mis-declaring the proper CTH of the imported goods appears to render the importer liable for penal action under Section 114A of the Customs Act, 1962. Further, such act of mis-declaration or use of false/incorrect particulars of the details viz. wrong particulars of the proper CTH of the imported goods appears to have rendered the importer liable for penal action under Section 114AA of the Customs Act, 1962. The relevant provisions are as under.

> ***"Section 114A. Penalty for short-levy or non-levy of duty in certain cases***. -
>
> *Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under 3 [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:*
>
> ***Section 114AA . Penalty for use of false and incorrect material.*** *- If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]*

VIOLATION ON THE PART OF CUSTOMS BROKER

11. Whereas, it appears that the importer/noticee has filed the said BoEs through the Customs Broker M/s. Buffer Shipping Agency Private Limited

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(CHA No. AAHCB3777FCH002), who is authorized to work on behalf of the Importer. Whereas, it appears that the CHA is required upon to file correct Bills of Entry on behalf of the Importer. Whereas, in the material case, in spite of the fact that goods are printing system imported by the Importer attracts BCD at 7.5%, the Customs Broker has filed the Bills of Entry declaring BCD at 'Nil' rate. It is the obligation of the Customs Broker to exercise due diligence to ascertain the correctness of any information which he imparts to his client with reference to any work related to clearance of cargo. Whereas, it is the obligation of the Customs Broker to advise his client to comply with the provisions of the Act and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Whereas, in the material case, it appears that the Customs Broker i.e. M/s. Buffer Shipping Agency Private Limited (CHA No. AAHCB3777FCH002) failed to comply with their obligations mentioned at 10 (d),10(e) and 10(m) of the Customs Broker Licensing Regulations, 2018. Whereas, by this act on the part of the CHA, it appears that the CHA failed to perform its duties/obligation as provided in terms of Customs Broker Licensing Regulations 2018, and therefore, appears to be rendered themselves liable for penalty in terms of provisions of Section 117 of Customs Act, 1962. Regulation 10 of the Customs Broker Licensing Regulations, 2018 and Section 117 of the Customs Act, 1962 reads as under:

> ***Regulation 10. Obligations of Customs Broker:-***
> *A Customs Broker shall-*
>
> *……*
> *(d) advise his client to comply with the provisions of the Act, other allied acts and the rules and regulations thereof, and in case on non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*
> *(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;*
> *…….*
>
> *(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay"*

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Section 117. Penalties for contravention, etc., not expressly mentioned. —Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees]

12. Consultative letter dated 20.07.2023 has been issued, taking into account the Pre-Notice Consultation Regulations, 2018, to the importer with a request to pay the differential BCD, SWS and IGST. In their response, dated 10.08.2023, they had requested one months' time to submit the reply, but the same is not submitted till issuance of the notice.

13. Therefore, M/s. Vinod Medical Systems Private Limited, 323, Omkar, The Summit Business Bay, 3rd Floor, B.L. Bajaj Road, Prakashvadi, Nr. W.E.H Metro Station, Andheri-East, Mumbai-100093, were called upon to Show Cause in writing to the Additional Commissioner of Customs, ICD Tumb, having his office at S. No. 44/1/P.K. 2, Village-Tumb, Tal.: Umbergaon, Dist.: Valsad, Gujarat-396150 as to why: -

(i) The declared classification of the goods viz. FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES PP2512UV-RICOH GEN 5 and FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES XTRA320K under CTH 84433250 in the Bill of Entry No. 8754342 dated 06.11.2018 & 9094076 dated 03.12.2018 should not be rejected and the said goods should not be re-classified and re-assessed under CTH 84433910 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);

(ii) the differential BCD amounting to Rs. 5,51,627/- (Rupees Five Lakh Fifty One Thousand Six hundred and Twenty Seven only) should not be demanded under Section 28(4) of the Customs Act, 1962;

(iii) the differential SWS amounting to Rs. 55,163/- (Rupees Fifty Five Thousand One Hundred Sixty Three only) should not be demanded under Section 28(4) of the Customs Act, 1962;

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(iv) the differential IGST amounting to Rs. 1,09,222/- (Rupees One Lac Nine Thousand Two Hundred Twenty Two only) should not be demanded under Section 28(4) of the Customs Act, 1962;

(v) All the goods imported vide Bill of Entry No. 8754342 dated 06.11.2018 & 9094076 dated 03.12.2018, which were self-assessed and have already been cleared, having assessable value of Rs. 73,55,022/- (Rupees Seventy Three Lakhs Fifty Five Thousand Twenty Two only) should not be held liable to confiscation under Section 111 (m) & Section 111(o) of the Customs Act, 1962. Since the said goods are already cleared and are not available for confiscation, why fine in lieu of confiscation should not be imposed on them under Section 125 of the Customs Act, 1962;

(vi) Appropriate Interest on above said amount should not be recovered under Section 28AA of the Customs Act, 1962;

(vii) Penalty should not be imposed under Section 112(a) of the Customs Act, 1962.

(viii) Penalty should not be imposed under Section 114A of the Customs Act, 1962.

(ix) Penalty should not be imposed under Section 114AA of the Customs Act, 1962.

14. M/s. Buffer Shipping Agency Private Limited (CHA No. AAHCB3777FCH002), Ideal Trade, Centre, Off. No. 601, 6th Floor, Plot No. 64, Sector-11, CBD Belapur, Navi Mumbai-400614 were called upon to Show Cause in writing to the Additional Commissioner of Customs, ICD Tumb, having his office at S. No. 44/1/P.K. 2, Village-Tumb, Tal.: Umbergaon, Dist.: Valsad, Gujarat-396150: -

(i) as to why penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

DEFENCE SUBMISSIONS:

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15. The importer vide letter dated 15.01.2024 submitted their defence reply to the notice dated 07.11.2023. In their defence submission they have vehemently deny and refute the allegations in the SCN. The written submission dated 11.01.2024 are reproduced as under:

"Please refer to your Show Cause Notice (SCN) F. No. CUS/SHED/56/2023- ICD-UMGN-CUS-COMMRTE-AHMEDABAD dt.07.11.2023 received by the importers through email on 08.11.2023 and the importers' reply dated 10.08 23 acknowledged by your good office on 21.08.23 to the consultative letter dt. 20.07.2023.

01. In the said Consultative Letter dt. 20.07.23, we have been informed that on re-examination of the goods covered by a and declared as Flora Digital Ink-Jet Printing System and Accessories, it is revealed that imported goods were not classifiable under heading 84433250 attracting nil rate of BCD but the goods described as printing system merit classification under 8443.3910 attracting 10% BCD. A plain reading of the said Consultative Letter suggests that it was only on the "re-examination", it was revealed that the goods covered by B / E No. 8754342 dt. 06.11.2018 were not classifiable under CTH 84433250. However, the word "re-examination" needs to be elaborated by the Audit as to what actually they re-examined, whether documents or the goods? Obviously, the goods were not available to the Audit and so it is wondered what made the Audit think otherwise and reject the declared CTH.

02. The import Invoice No. RTZ-18-VMS0929 DT. 29.09.2018 describes the first item as 'Flora Digital Ink-Jet Printing System and Accessories'. The invoice does not say this item as just the 'printing machine' whereas in para 3 of the impugned consultative letter (CL) it has been mentioned that "PRINTING SYSTEM" are not simple printers, but "Printing System", as described by you. The printing system is comprised of a printer driver, which includes commands required by the specific printer in itself; it cannot depend upon external ADP for processing or control commands. However, the basis on which this observation has been made by the Department is not mentioned in the body of the said CL. As such this observation

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emanates only from the presumption of the Audit and cannot be considered as an authority to suggest that the imported Flora Digital Ink-Jet Printing System would be classifiable under CTH 8443.3910. The Audit is not an expert or an authority on the subject to decide the classification only by reading the description in the import document without any reference to the Chapter or Explanatory Notes. Hence we maintain that the CTH 84433250 declared by the importers at the time of assessment is correct.

03. For the purpose of clarity and understanding, it is imperative to reproduce the text of the heading 8443 as below:

Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof.

04. A plain reading of the Audit Objection in question, gives an impression that they are talking about HSE and it is not known what gives them the idea that the imported goods are HSE or on what basis the imported goods could be understood as HSE being different from those goods imported by importers and specifically mentioned under CTH 8443.3210 to 8443.3260. For this, we need to look at Customs Tariff sub-section having single dash (-) just above heading 8443.3100 covering "Other printers, copying machined and facsimile machines, whether or not combined:". Under this main sub-section, Custom Tariff has two categories 84433100 and 844332 with double dash (--) which would mean that printers against single (-) sub-section capable of connecting to an automatic data processing machine or to a network would be classifiable under CTH844332. In other words, Line printers, Dot Matrix Printer, Letter quality daisy wheel printer, Laser jet printers and inkjet printers with four dashes (----) would be correctly classifiable under double dash (--) heading 844332.

05. Also, we need to look at the Explanatory Notes, page XVI-8443-3, Section II which covers i.e. This group covers:

(A) Printers. This group includes apparatus for the printing of text, characters or images on print media, other than those that are described in Part (I)

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above. The products of this heading may create the characters or images by means such as laser, ink-jet, dot matrix or thermal print processes. This sub-heading under this category of Explanatory Notes is akin to the description of single dash (-) category in Customs Tariff and goes upto 84433290(---- Other). However, since all the imported printers are specifically covered by CTH 84433210 to 84433260, why should one look to 844339 (Others). Even on page No. XVI-8443-1 of Explanatory Notes, the heading 8443.32 is identical to 844332 of Customs Tariff Book covering Ink Jet Printers and nothing spills over to heading 844339 as per the Explanatory Notes.

06. Thus, importers have imported Flora Digital Ink-Jet Printing System as per the description given in the commercial invoice dt. 29.09.2018 as referred above and the different items like Line Printer, Dot Matrix Printer, Letter Quality Daisy Wheel Printer, Laser Jet Printer, Ink Jet Printer and Facsimile Machine are very specifically covered by headings 8443.3210, 8443.3220, 8443.3230, 8443.3240, 8443.3250 and 8443.3260 respectively with Nil BCD. These sub-headings are the most appropriate classification of the imported goods covered by this consignment in view of the detailed explanation tendered in the above paragraphs vis-a vis the parallel headings of the Explanatory Notes. Moreover, an important principle/rule of interpretation is that the specific entry in the Tariff will supersede the generic classification entry/CTH.

07. Notwithstanding above, it may also be submitted that the goods covered by the said B/E No. 8754342 dt. 06.11.18 were subjected to examination by the then Customs Officers as may be seen from the attached Examination Order page of the impugned B / E Though examination was not prescribed for the said B / E , but a plain reading of the Examination Order page clearly shows that a mandatory compliance was complied with. In the lower part of the Examination Order the following instruction has been mentioned:

"(FOR NOTIFICATION)- 024/2005 2E VFY GOODS ARE OF TARIFF ITEMS 84433250. REFER TO CBEC NOTFN. NO. 58/2017 DATED 30.06.2017"

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The above instruction is abundantly clear that the Examination Order required the Customs Officer to verify that the goods were of Tariff Items 84433250, which was correctly declared by the importers in the said B / E In other words it may be emphasized that at the time of clearance of goods, the then Customs Officer had satisfied himself that the goods were classifiable under CTH 84433250 before releasing them for home consumption. On the other hand, it is not understood how the Audit could raise the objection about the classification of the import goods only by reading the description mentioned in the import invoice? As such, the original assessment done, not only with reference to import documents but by verifying the description of the goods by physically examining the goods, would be preferred. The Audit objection, therefore deserves to be rejected.

08. In Para 2 of the impugned SCN, it has been mentioned that "as per Analytics Report/12/2021-22 dt. 10.05.2021 issued by DGARM, NCTC, Mumbai detailed that goods namely 'Inkjet Printer' and 'Inkjet Printing Machine' both are classified under CTH 8443. More specific CTH 84433250 covers Inkjet Printer' attracts 'NIL' BCD whereas CTH 84433910 covers 'Inkjet Printing Machine' which attracts BCD @ 7.5%.". The said Analytics Report was not given to the importers along with the SCN and so for the same, repeated requests were made to the concerned authority via emails dt. 17.11.23, 09.12.23 & 11.12.23 etc. Finally, the scanned copy of Analytics Report (AR) was forwarded to the importer vide email dt. 18.12.23. A plain reading of the SCN makes it quite clear that the allegation of mis-classification was based on the said Analytics Report but it is not understood why the same did not form the integral part of SCN.

09. On going through the Analytics Report dt. 10.05.2021, it is seen that the same is not conclusive and that it has been left to the jurisdictional Commissionerates to examine the matter on the basis of available information at the time of assessment. As such, the Custom Officers have to examine each import of such Printers on the basis of available Cat./Lit. at the time of clearance and that the AR dt. 10.05.21 cannot be the sole basis for alleging mis-classification. Particularly, kind attention is invited to para 10 of Analytics Report (AR) which says that "it may be noted that the data

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shared is not exhaustive and the calculations shown are approximate estimates with a view to flag these issues." From this, it may be inferred that the AR dt. 10.05.2021 cannot be relied upon exclusively for arriving at the appropriate classification but the same has to be examined in the light of Tariff Notes as well as Explanatory Notes already referred to by us above in para 04 and 05 of the instant reply.

10. Furthermore, kind attention is invited to Chartered Engineer Certificate (CEC) (copy enclosed) dt. 23.08.2023 issued by M/s. A G Associates in a case of similar goods covered by Bill of Entry No. 8057955 dt. 29.03.2023, presented at the time of clearance of goods. In the said CEC, page 2, 3rd para 'Working', the following inference has been drawn after detailed examination of the equipment in the light of Technical Literature that for the purpose of arriving at classification "Printer also needs to be connected to an external PC, Laptop or Network through Ethernet data cable to get the desired commands for printing jobs". Such printers would fall in the category of Inkjet Printers' classifiable under CTH 84432510. For the same reason it would be relevant to refer to para 6.2 of the said AR dt. 10.05.2021 wherein it has been stated that " 'Inkjet Printers' are those printers that do not have an in-built ADP machines, cannot do any processing by themselves and do not have any independent function sans the use of a computer/ADP. It is important to ascertain, when deciding the classification, whether printers are solely dependent on an ADP machine or have an in-built control/processing mechanism". Applying this inference to the present case wherein the Inkjet Printers do not have an in-built ADP machine but are solely dependent on separate ADP machine for its functioning, the imported Inkjet Printers as described in the import invoice would be most appropriately classifiable under CTH 8443.3250 as originally done. As already mentioned in para 07 above of the instant reply, it was verified during the examination whether the goods were of Tariff items 84433250 and it was only after this confirmation by the then Customs Officer that the goods were released for home consumption.

11. It would also be relevant to draw kind attention of the Adjudicating Authority (AA) to a recent Order-in-Original (O-in-O) No. 1062/2023-24/ADC/Gr.V/NS-V/CAC/JNCH (copy enclosed) dt. 28.11.2023; F. No. S/

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26-Misc-206/2023-24/Gr. V/JNCH wherein similar/identical Inkjet Printers described as 'Grando GD2000UV Printers with standard accessories' has been dealt with in sufficient details.

Consequently, in para 8. (1), it has been concluded that "Hence, from the above discussion, unfind that the CTH declared by the Importers is proper and the subject goods i.e. Item Serial No. 1 Grando GD2000UV is rightly classifiable under RITC8443 3250". From this, it is abundantly clear that at Jawahar Custom House, Nhava Sheva the correct classification for the imported goods, arrived at after exhaustive study and examination, is 8443.3250 and the same should be accepted even in the instant case.

In view of the above, it may be submitted that the original assessment of the goods covered by B / E No. 8754342 dt. 06.11.2018 has been correctly done under RMS/by the then officers after thoroughly verifying the CTH at the time of examination w. r. t. the import documents. As such, we are not liable to pay any additional BCD amounting to Rs. 7,43,849/- as wrongly alleged in the impugned Audit Objection letter dt. 20.07.2021. Though we have explained the subject matter in detail, we may please be granted a personal hearing (Virtual Hearing) in case our explanation is not acceptable, before any final decision is taken in this regard."

Personal Hearing:

16. Dr. J Arthur Prem, Consultant of M/s. Vinod Medical Systems Private Limited appeared for hearing on 26.02.2024 through virtual moode. He re-iterated submission made vide letter dated 11.01.2024 & deposition submitted through email on 21.02.2024. The contents of which are reproduced as follows:

"DEPOSITION

M/s. Vinod Medical Systems Pvt. Ltd. (hereinafter referred to as the importers) would like to reiterate all the arguments put forth before the Addl. Commissioner of Customs, ICD- Tumb, in our reply letter dt.11.01.24. However, they would like to point out the salient arguments below for the favorable consideration of the Hon. Addl. Commissioner of Customs :

Demand is Time-barred

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01. At the outset, the importers would like to submit that the impugned SCN pertains to B/E No. 8754342 dt. 06.11.2018 and 9094076 dt. 03.12.2018 whereas the SCN has been issued under Section 28(4) and Section 124 of the Customs Act. 1962 (hereinafter referred to as the Act.) on 07.11.23. As regards first B / E dt. 06.11.2018, the SCN has been issued after the expiry of 5 years mentioned under Section 28(4) of the Act. The 5 years from 06.11.2018 expire on 05.11.2023. Hence, the SCN is clearly time- barred for all practical/legal purposes.

02. In case of second B/E dt.03.12.18, there does not seem to be any genuine reason for invoking extended period of 5 years available under Sec.28 (4) of the Act. The SCN does not specify how importer's regular action of filing online B / E under RMS could be considered as wilfull mis-statement or suppression of facts with the intent of avoiding payment of duty. The importers had submitted usual import documents like import invoices and packing list etc. and the particulars/specifications of the imported goods mentioned therein at the time of original assessment which remain the same even now. As such, there is no mis-statement of facts and so the extended period of 5 years is not invokable even in this case.

03. Moreover, it may also be submitted that, for instance, the goods covered by the said B / E No. 8754342 dt. 06.11.18 were subjected to examination by the then Customs Officers (para07 of our reply dt. 11.01.24) as may be seen from the attached Examination Order page of the impugned B / E Though examination was not prescribed for the said B / E but a plain reading of the Examination Order page clearly shows that a mandatory compliance was complied with. In the lower part of the Examination Order the following instruction has been mentioned:
"(FOR NOTIFICATION)- 024/2005 2E VFY GOODS ARE OF TARIFF ITEMS 84433250. REFER TO CBEC NOTFN. NO. 58/2017 DATED 30.06.2017"

The above instruction is abundantly clear on the B / E that the Examination Order required the Customs Officer to verify that the goods were of Tariff Items 84433250, which was correctly declared by the importers in the said B / E In other words it may be emphasized that at the time of clearance of goods, the then Customs Officer had satisfied himself that the goods were classifiable under CTH 84433250 before releasing them for home consumption. On the other hand, it is not understood how the Audit could raise the objection about the classification of the import goods only by reading the description mentioned in the import invoice ? As such, the original assessment done, not only with reference to import documents but even by verifying the description of the goods by physically examining the goods, would be preferred. The Audit objection, therefore deserves to be rejected.

04. Apart from following RMS procedure without any flaw, there is no action brought out on the part of the importers in the impugned SCN

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which can be construed as mis-statement. The act of claiming classification of the declared goods under CTH 84433250 cannot be termed as mis-statement. The importers are fee to declare/claim classification of the imported goods as per their best perception under any CTH on the basis of declared technical details/lierature which was verified by the then Custom Officers but might not be acceptable to Audit. However, at the time of original assessment of goods, the then Custom officers had the advantage of examining the goods with respect to the import documents/literature and had verified that the "goods are of tariff items 84433250". So, if the Audit has suggested that the goods in question will merit classification under 8443.3910 without the imported goods being present in front of them, their suggestion could only be taken as their opinion. Under these circumstances, the difference of opinion with regard to classification of goods would amount to mis-classification and the same cannot be said to be mis-statement and it would not at all attract extended period of 5 years mentioned under Section 28(4) of the Act. Also, as the demand has been issued after a period of two years and none of the elements covered under Sec.28(4) i.e., (a) collusion or (b) any wilful mis-statement; or (c) suppression of facts. In this connection ratio of Hon. CESTAT judgement in case of Dr. Rai Memorial Cancer Institute Chennai is squarely applicable and the same may kindly be taken in to cognizance. Accordingly, the demand of duty under SCN dt. 07.11.2024 is time-barred and cannot be enforced legally.

05. Also in this regard, kind attention is invited to Hon. Bombay High Court judgment in case of Dimension Data India Pvt. Ltd. V/s. Comm. of Customs 2021 (376) ELT. 192 (Bom) wherein it has been held that Though duty cast upon importer to self-assess customs duty leviable on imported goods in terms of scheme of Section 17 of Customs Act, 1962, corresponding duty also cast upon proper officer to verify and examine such self-assessment'. Since the "proper officer" did discharge his duty of not finding fault with the declared classification, it would mean that the "proper officer" too agreed with the correctness of the assessment as done by the importer. As such, neither the declared classification is wrong nor the goods are liable to confiscation under Section 111 (m) of the Act.

<u>Classification of Goods</u>

06. While maintaining our stand that the demand is time-barred and the same deserves to be dropped, even for the classification of the goods in question, your Honor is requested to please peruse our detailed explanation in para 02 to 06 of our reply dt. 11.01.2024 to the SCN. Also, para 08 to 11 of our reply dt. 11.01.2024 may be taken into consideration while deciding the classification of impugned goods. In all these paras of our reply dt. 11.01.2024, we have proved beyond doubt that the most appropriate classification is under CTH 84433250 as was originally done by the then Custom Officer. Even recently, the classification of the said goods has been confirmed under CTH 84433250 as mentioned in para 11 of our reply dt. 11.01.2024.

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In view of the above, it may be submitted that the original assessment of the goods covered by B/E No. 8754342 dt. 06.11.2018 has been correctly done under RMS by the then custom officers after thoroughly verifying the CTH at the time of examination w. r. t. the import documents. As such, we are not liable to pay any additional BCD amounting to Rs. 7,43,849/- as wrongly alleged in the impugned SCN dt. 07.11.2023. Also, on account of our explanation in the above paras neither the goods are liable to the confiscation under Section 111 (m) & (o) of the Act, nor importers are liable to any penalty under Section 112 (a), 114 A and 114AA of the Act. As such, the importers would be highly obliged to your Honor for justice in the matter."

16.1 Further, the noticee has submitted Post hearing Note vide email dated 27.02.2024. The same is reproduced as follows:

"While thanking your Honour for the courtesy extended to me during the Virtual hearing through Webex on 26.02.2024, we reiterate our arguments contained in the our reply dt. 11.01.2024 to SCN and written Deposition dated 22.02.2024. However, we would like to make the following salient submissions for your kind consideration:

01. In the instant case, the objection has been raised by the Post Audit against 02 Bills of Entry listed in Annexure to the SCN which were filed under RMS.

02. The Examination Order page of the Bill of Entry No. 8754342 dt. 06.11.2018 had already been attached with our reply to SCN. During the PH, Hon. Add. Comm. had asked for the Examination Order page of the second BE No. 9094076 dt. 03.12.2018, which has been obtained from the importers and the scanned copy of the same is attached herewith. In case of the second BE also, the Examination Order page may please be seen wherein, under 'Compulsory Compliance Requirements', Mandatory Requirements Examination Instructions, it has been ordered that 'VFY GOODS ARE OF TARIFF ITEMS 84433250. REFER TO CBEC NOTFN. NO. 58/2017 DATED 30.06.2017'

By explaining this, we wish to bring to your kind notice that the then custom officers had verified the correctness of declared classification before passing the B / E in the system. Secondly, since verifications were conducted by the then custom officers, the Deptt. was in the know of all the facts and so the importers had not mis-stated any facts. So the extended period beyond two years available under section 28(4) cannot be invoked legally. As such, the SCN/demand issued on 07.11.223 is clearly time-barred and the same cannot enforced legally.

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03. The then custom officers have correctly allowed clearance of the impugned imported goods at the most appropriate CTH 84433250.
In view of the above, it may be submitted that the original assessment of the goods was done after proper verification. As such, neither there is mis-statement/mis-declaration/mis-classification nor RF/Penalty is imposable on the appellants. The appellants would therefore request your Honor to drop the adjudicating proceedings and that they will always remain grateful for the justice."

16.2 Mr Khursheed Shaikh, MD of M/s. Buffer Shipping Agency Private Limited appeared for hearing on 06.02.2024. They have re-iterated submission made vide letter dated 31.01.2024 & 06.02.2024. The written submission dated 31.01.2024 & 06.02.2024 are reproduced as follows:

"2. The Noticee herein is not called upon to show cause regarding claimed classification and duty thereon, hence it is not being addressed and the submissions of the importer be adopted.

3. It is respectfully submitted that the goods imported are "FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES PP2512UV-RICOH GEN 5 and FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES XTRA320K" covered by Customs Tariff Heading 84.43.32.50 and claimed full exemption of BCD under Sr. No. 2E of Notification 24/2005 dated 01-03-2005.

4. To the Consultative letter dated 20-07-2023, the importer has replied by their letter dated 10-08-23 and it was acknowledged on 21-08-2023 by your good office.

5. In support of the allegations, the SCN at Para 11 (reproduced herein below - for ease of reference) records the basis for allegations against the Customs Broker firm - M/s BUFFER SHIPPING AGENCY PRIVATE LIMITED (CB No. - AAHCB3777FCH001) is alleging that

"11. Whereas, it appears that the importer/noticee has filed the said BoEs through the Customs Broker M/s. Buffer Shipping Agency Private Limited (CHA No. AAHCB3777FCH002), who is authorized to work on behalf of the Importer.

Whereas, it appears that the CHA is required upon to file correct Bills of Entry on behalf of the Importer.

Whereas, in the material case, in spite of the fact that goods are printing system imported by the Importer attracts BCD at 7.5%, the Customs Broker has filed the Bills of Entry declaring BCD at 'Nil' rate.

It is the obligation of the Customs Broker to exercise due diligence to ascertain the correctness of any information which he imparts to his client with reference to any work related to clearance of cargo.

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Whereas, it is the obligation of the Customs Broker to advise his client to comply with the provisions of the Act and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

Whereas, in the material case, it appears that the Customs Broker i.e. M/s. Buffer Shipping Agency Private Limited (CHA No. AAHCB3777FCH002) failed to comply with their obligations mentioned at 10 (d),10(e) and 10(m) of the Customs Broker Licensing Regulations, 2018.

Whereas, by this act on the part of the CHA, it appears that the CHA failed to perform its duties/obligation as provided in terms of Customs Broker Licensing Regulations 2018, and therefore, appears to be rendered themselves liable for penalty in terms of provisions of Section 117 of Customs Act, 1962.

Regulation 10 of the Customs Broker Licensing Regulations, 2018 and Section 117 of the Customs Act, 1962 reads as under:

Regulation 10.

Obligations of Customs Broker.-

A Customs Broker shall-

…….
3. advise his client to comply with the provisions of the Act, other allied acts and the rules and regulations thereof, and in case on non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

4. exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage,

……
(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay"

Section 117. Penalties for contravention, etc., not expressly mentioned. - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding (four lakh rupees]."

6. The classification being re-determined by the Department in the

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impugned SCN is being contested by the Importer in their reply to SCN.

7. The Consultative Letter dated 20-07-2023 was not received by the Noticee Customs Broker. In any case the issue of re-determination of classification and its consequences for additional duty burden is only on the importer.

Submissions on allegations

8. It is respectfully submitted that on behalf of the Importer, the Noticee Customs Broker / CHA filed the correct Bills of Entry and by reasonably interpreting and as per their understanding the classification was declared. No evidence in support of allegations that the Customs Broker failed to exercise due diligence is found in the SCN.

It has been the reasonable and just view of the Customs Broker that the import goods being Printing system as imported by the Importer attract the classification as declared and rate of duty / exemption notification were applicable and attracted NIL Duty. These were also as claimed by the Importer / Noticee.

The Customs Broker diligently observed their obligation as of the Customs Broker and also exercised due diligence to ascertain the correctness of any information which they imparted to their client importers and with reference to the allocated work relating to clearance of import cargo.

The goods were also subjected to Customs Examination and assessment. A just and reasonable view was taken by the proper Officer.

The Customs Broker diligently observed their obligation as of the Customs Broker and also exercised due diligence to advise their clients to comply with the provisions of the Act and no case of non-compliance was observed by the Noticee Customs Broker.

The import is in the year 2018 and SCN / Audit Letter is of 2023 and the SCN, in the matter of classification, is barred by time.

9. The SCN has not made out any case for presence of mens rea for incorrect declaration / claim of classification/exemption notification or for evasion of tax. Presence of mens rea is a sine qua non for imposition of penalty and mere technical error (claim of classification herein) would not lead to imposition of penalty under Section 117 of the Act.

The SCN has not made out any case for not fulfilling the obligations of Customs Broker in terms of Customs Broker Licensing Regulations, 2018 and the allegations are not sustainable under the law.

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Mere wrong classification in the Bill of Entry, which at the time of clearance is subject to Re-assessment at two stages by itself and is subject to Audit does not amount to professional misconduct.

A bonafide error or human oversight does not amount to Professional misconduct.

10. Any short payment in self-assessment or re-assessment neither renders the goods liable to confiscation nor renders the persons liable to penalty. Every breach cannot be treated, as breach for penalty or confiscation is the law settled by the judgments of the Courts.

11. Similar issue of penalty on Customs Broker, was recently decided in Dec, 2022 by the Hon'ble CESTAT and the ratio thereof is squarely applicable herein.

Submissions citing the CESTAT Judgment dated 01-12-2022

12. The SCN is based on Self-Assessment in the Bills of Entry filed under Section 46 of the Act and that were verified by Proper officer as provided under Section 17 (1) and 17(2)/ 17 (4) of the Act. Thereafter under Section 47 after due verifications the orders for out of charge were passed. The Self-assessment and clearances are subjected to Audit. Claim of classification is not a fact but a view for classification. The description stated in the Bill of Entry have been accepted in the SCN as correctly stated. There is not dispute thereon.

In the CESTAT Order No. 51168/2022 Dated 01-12-2022 in Appeal No. C/50980/2021 in the case of Challenger Cargo Carriers Pvt. Ltd. Vs Pr Commissioner of Customs, ICD, Tughlakabad (Downloaded from CESTAT Website - Copy attached) interalia held:-

Para 14:-

Mis-classification or incorrect assessment of duty does not amount to mis-declaration in the Bill of Entry nor does it attract any penalty.

Para 15:-

.... if Bills of Entry are cleared on the basis of self-assessment, they are subjected to post clearance audit. If so, it gives sufficient time to the officers to find if any duty has escaped assessment and issue a demand under section 28, there can be no penalty for wrong self-assessment by the importer.

Para 20:-

....Section 111(m) does not provide for confiscation of goods, if the importer or on his behalf, the Customs Broker claims any wrong classification in the Bill of Entry. It only provides for confiscation if there

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is mis-declaration of goods. Even if the goods are mis- classified or duty is otherwise wrongly self-assessed by the importer, the goods do not become liable for confiscation.

The remedy against wrong assessment is re-assessment by the officer under Section 17(4)...

Para 21:-

To sum up:

(a) Self-assessment of duty (including classification of goods) under section 17 (1) by the importer or on its behalf by the Customs Broker is subject to re- assessment by the proper officer under Section 17(4) and incorrect self- assessment is not mis-declaration.

(b) The fact that the Customs RMS cleared the goods without passing the Bill of Entry through the proper officer for re- assessment makes no difference to this legal position. As the name suggests, through RMS, Revenue takes a calculated risk of some duty escaping assessment while balancing between facilitation and ensuring compliance.

Even when the goods are cleared based on self-assessment, the Bills of Entry are subject to post-clearance audit and if self-assessment is found to be not correct, Revenue can appeal against the self- assessment before Commissioner (Appeals) or issue an SCN demanding duty under section 28.

c) …….

d) Penalty under section 112 (a) (ii) is imposable on any person for acts or omissions which render any goods liable to confiscation under section 111. The finding in the impugned order that the goods cleared through the ten Bills of Entry were liable to confiscation under section 111(d) and 111(m) is not correct. The goods were not confiscated even in the impugned order under section 111(d).

Section 111(m) applies if goods do not correspond to an entry made under section 46 and there is no allegation, let alone evidence in this case that the goods were not as per declaration. The allegation of mis-classification of goods, even if it is true, will not attract 111(m).

Therefore, the penalty under section 112 imposed on the appellant is not sustainable and needs to be set aside.

e) Penalty under section 114AA is imposable if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business under the Act.

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There is no allegation or evidence that the goods were wrongly declared and the allegation of mis-classification or incorrect assessment of duty, even if it is true, will not attract penalty under section 114AA....."

The judgment and law laid down as above is squarely applicable to the facts and circumstances and the allegations in the instant proceedings and is relevant, hence it is being brought on record.

Submissions citing the Court Judgment regarding imposition of Penalty under Section 117 of the Act

13. The Hon'ble High Court of Allahabad in their recent judgment in the case of Ashoka P.U. Foam (India) Pvt. Ltd. vs. State Of U.P. And 3 Others 2024 LiveLaw (AB) 50 [WRIT TAX No. 228 of 2020] Neutral Citation No. - 2024:AHC:11844 relying upon the catena of judgments as in case of M/s Modern Traders v. State of U.P. and others (Writ Tax No. 763 of 2018, decided on 9.5.2018), Mis Galaxy Enterprises v. State of U.P. and others (Writ Tax No.1412 of 2022, decided on 6.11.2023 and Hindustan Herbal Cosmetics v. State of U.P. and others (Writ Tax No.1400 of 2019, decided on 2.1.2024 held as under:-

".....
6. In a catena of judgments, this Court has held that presence of mens rea for evasion of tax is a sine qua non for imposition of penalty and mere technical error would not lead to imposition of penalty [see Mis Modern Traders v. State of U.P. and others (Writ Tax No.763 of 2018, decided on 9.5.2018), Mis Galaxy Enterprises v. State of U.P. and others (Writ Tax No.1412 of 2022, decided on 6.11.2023 and Hindustan Herbal Cosmetics v. State of U.P. and others (Writ Tax No.1400 of 2019, decided on 2.1.2024].

7. The imposition of penalties within the realm of tax laws should not be based solely on insignificant technical errors devoid of any financial consequences. The foundational principle guiding this approach is the commitment to maintain a tax system that is characterized by fairness and justice, where the severity of penalties corresponds to the gravity of the offense committed. While penalties serve a pivotal role in ensuring compliance with tax laws, legal frameworks stress the importance of establishing the actual intent to evade taxes as a prerequisite for their just imposition. This emphasis underscores the critical need to differentiate between inadvertent technical errors and purposeful attempts to circumvent tax obligations. Penalties, according to this principle, should be reserved exclusively for cases where concrete evidence points to a deliberate and fraudulent act against the tax system, rather than being applied to situations involving unintentional mistakes.

The legal rationale supporting this principle recognizes that the primary purpose of taxation statutes is not to penalize inadvertent errors but rather to address intentional acts of non-compliance. Consequently, the burden of proof falls squarely on tax authorities to demonstrate the

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genuine intent to evade tax before penalizing taxpayers.

This safeguard is indispensable to shield individuals and entities from punitive measures arising from honest mistakes, administrative errors, or technical discrepancies that lack any malicious intent.

The fundamental principle requiring an intent to evade tax for the imposition of penalties is crucial for preserving the fairness and integrity of taxation systems. In order to uphold a balanced and equitable approach to tax enforcement, it is imperative to recognize and acknowledge the distinction between technical errors and intentional evasion..."

Emphasis supplied

14. Further in the case of MILTON'S LTD. Versus UNION OF INDIA (WP No. 1873 of 1998, decided on 27-9-2019) - 2019 (368) E.L.T. 592 (Bom.) as at Para 20 relied upon Hindustan Steel Ltd. v. State of Orissa reported in 1978 (2) E.L.T. (J.159) (S.C.), and therein it is held as under:-

"20. The Apex Court in the case of Hindustan Steel Ltd. v. State of Orissa reported in 1978 (2) E.L.T. (J.159) (S.C.) held that the discretion to impose a penalty must be exercised judicially. A penalty will, ordinarily be imposed in cases where the party acts deliberately in defiance of law or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation but not, in the cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Further the Apex Court in the case of Akbar Badruddin Jiwani v. Collector of Customs reported in 1990 (47) E.L.T. 161 (S.C.) held that mens rea has to be established in imposing penalty."

15. In the case of Commissioner v. Hyundai Heavy Industries Co. Ltd. 2018 (361) E.L.T. 837 (Bom.) as at Para 30 & 31 it is held as under:-

"No case of "misrepresentation", "misstatement" and of "fraud":
30. .....Every technical breach cannot be treated, as breach for penalty or confiscation Hindustan Steel Ltd. v. State of Orissa -1978 (2) E.L.T. (J159) (S.C.).

31. It is settled that, mere non-payment of duties, even if any, cannot be treated and read for meaning "collusion" or "wilful misstatement" or "suppression of facts". M/s. Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur - (2013) 9 SCC 753 = 2013 (288) E.L.T. 161. The respondents have paid even the same, after due declaration. Therefore, in the present case, the Department/Revenue failed to discharge its burden, as required under the law.

There is no case made out of any "wilful" or intent to evade duty to bring in the case of "fraud" and "collusion". There is no case of stated "misstatement" or "suppression of fact". The impugned order, therefore,

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needs no interference, even on the ground of stated delayed decision. All the questions of law, therefore, are required to be answered accordingly..."

16. Considering the above, it is submitted that it be held that the penalty under Section 117 of the Act is not imposable.

17. The judgment and law laid down as above is squarely applicable to the facts and circumstances and the allegations in the instant proceedings and is relevant, hence it is being brought on record.

18. The Reply submissions may please be taken on record and the SCN proceedings be dropped."

16.3 Vide letter dated 06.02.2024 M/s Buffer Shipping Agency Pvt Ltd. submitted as follows:

"Submissions on behalf of Buffer Shipping Agency Pvt. Ltd.

The Noticee Customs Broker relies upon the submitted Reply to the Show Cause Notice dated 07-11-2023.

Reference to Para 8 & 9 of reply are reiterated to submit that no evidence in support of allegations that the Customs Broker failed to exercise due diligence is found in the SCN.

Case laws copies discussed in Para 12 - 15 of the Reply submissions are relied upon in support.

(i) Hindustan Steel Ltd. v. State of Orissa reported in 1978 (2) E.L.T. (J.159) (S.C.)

(ii) Ashoka P.U. Foam (India) Pvt. Ltd. vs. State Of U.P. And 3 Others 2024 LiveLaw (AB) 50 [WRIT TAX No. - 228 of 2020] Neutral Citation No. 2024:AHC:11844

(iii) MILTON'S LTD. Versus UNION OF INDIA (WP No. 1873 of 1998, decided on 27-9-2019) -2019 (368) E.L.T. 592 (Bom.) as at Para 20

(iv) CESTAT Order No. 51168/2022 Dated 01-12-2022 in Appeal No. C/50980 /2021 in the case of Challenger Cargo Carriers Pvt. Ltd. Vs Pr Commissioner of Customs, ICD, Tughlakabad (Downloaded from For CESTAT Website)"

Discussions and Findings:

17. I have carefully studied all the case records and considered the subject matter**.**

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18. I find that the issues for consideration before me in the present adjudication proceeding are as follows-

1) Whether the imported goods Classification viz. FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES PP2512UV-RICOH GEN 5 and FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES XTRA320K declared under CTH 84433250 in the Bill of Entry No. 8754342 dated 06.11.2018 & 9094076 dated 03.12.2018 should be rejected and the said goods re-classifiable under CTH 84433910 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
2) whether the subject goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 and
3) whether the importer is liable to penalty under Section 112(a), 114A & 114AA of the Customs Act, 1962 or otherwise.

19. I find that the importer had imported the goods namely "FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES PP2512UV-RICOH GEN 5 and FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES XTRA320K" (herein after referred as the subject goods) under Bill of Entry No. 8754342 dated 06.11.2018 & 9094076 dated 03.12.2018 by classifying the same under CTH 84433250 and claimed full exemption of BCD under Sr. No. 2E of Notification 24/2005 dated 01.03.2005.

20. I have studied the Analytics Report/12/2021-22 dated 10.05.2021 issued by DGARM, NCTC, Mumbai, wherein it has been discussed that Goods namely "Ink Jet Printer" and "Inkjet Printing Machine" both are classified under CTH 8443. Furthermore, CTH 84433250 covers "Ink Jet Printer" attracts "NIL" BCD whereas CTH 84433910 covers "Inkjet Printing Machine" which attracts BCD @7.5%. Due to this difference of BCD there might be chance of mis-declaration to evade payment of BCD. On careful reading of the description of the items mentioned in the said BoEs, I find that the importer has mentioned "FLORA DIGITAL INKJET **PRINTING SYSTEM** AND ACCESSORIES PP2512UV-RICOH GEN 5 and FLORA DIGITAL INKJET **PRINTING SYSTEM** AND ACCESSORIES XTRA320K" as the description of the imported goods.

21. Further, on going through the Item Description declared by the importer in the said BOEs, I find that the description is that of a Printing System with its accessories" and not a simple "Printer". An "Inkjet Printing

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System with its accessories" includes a printer driver with capabilities of automatic data processing (ADP) and performing a specific function. It does not depend upon external ADP for processing or control commands. Therefore, as per the description of the subject goods in the said Bills of entry, I find that the imported goods i.e. "Inkjet Printing System with its accessories" is a printing machine and, therefore, is classifiable under its specific CTH 84433910 as Ink-jet PRINTING MACHINE attracting BCD @ 7.5% and SWS @10% of BCD & IGST @18%. CTH 84433250 is exclusive for "Ink Jet Printer" only. The relevant entries given in the Customs Tariff is as follows:

Tariff Item	Description of goods	Unit	Rate of duty
8443 32	Other, capable of connecting to an automatic data processing machine or to a network		
8443 32 10	Line printer	u	Free
8443 32 20	Dot matrix printer	u	Free
8443 32 30	Letter quality daisy wheel printer	u	Free
8443 32 40	Laser jet printer	u	Free
8443 32 50	**Ink jet printer**	u	Free
8443 32 60	Facsimile machine	u	Free
8443 32 90	Other	u	10%
8443 39 10	**Ink-jet printing machine**	u	7.5%
8443 39 20	Electrostatic photocopying apparatus operated by reproducing the original image directly onto the copy (direct process)	u	7.5%
8443 39 30	Electrostatic photocopying apparatus operated by reproducing the original image via and intermediate onto the copy (indirect process)	u	7.5%

22. From the above table, I find that if "ink jet printer" and "Ink-jet printing machine" were supposed to be of same technical feature, then no separate CTH would have been required at all. Therefore, I find that the imported goods with declared description as "FLORA DIGITAL **INKJET PRINTING SYSTEM** AND ACCESSORIES PP2512UV-RICOH GEN 5 and FLORA DIGITAL **INKJET PRINTING SYSTEM** AND ACCESSORIES XTRA320K" is a printing machine system classifiable under its specific CTH 84433910. As per General Rules of Interpretation (GRI's), classification shall be determined according to the terms of the headings and any relative section or chapter notes. The goods have been mis-classified by the importer

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under CTH 84433250 to claim full BCD exemption under Sr. No. 2E of Notification 24/2005 dated 01.03.2005. The imported goods are not eligible for claiming the benefit of 'Nil' rate of BCD, and thus, I find that the importer has willingly availed 'NIL' rate of BCD by classifying the imported goods under CTH 84433250. I find this act on the part of importer as intentionally to evade the payment of BCD and SWS @10% of BCD & thereby, short payment of IGST @18% accordingly. The Importer have defaulted in payment of BCD amounting to Rs. 5,51,627/-, SWS of Rs. 55,163/- and IGST of Rs. 1,09,222/- as detailed in Annexure "A" to the SCN.

23. The self-assessment of Customs duty has been introduced in Customs w.e.f. 08.04.2011 under which Importer shall self-assess the duty leviable on import of the goods. In the material case, I find that the Importer has failed to comply with the requirement of law and wrongly declared the wrong CTH 84433250 claiming the benefit of Nil rate of BCD instead of its correct CTH 84433910 attracting BCD @ 7.5%.

24. I also find that the importer has willfully suppressed the facts that they were required to pay BCD at 7.5% on import of goods covered under Customs Tariff Heading 84433910. Instead of paying BCD @7.5%, they claimed Nil rate under CTH 84433250 which is held as incorrect. With the introduction of self-assessment & RMS under the Customs Act, faith is bestowed on the importer and the importers has been assigned with the responsibility of self-assessing goods under Section 17 of the Customs Act, 1962. It was incumbent upon the importer to assess the duty leviable on imported goods correctly, however, the importer failed to do so by selecting wrong CTH for payment of BCD, SWS & IGST by willful mis-statement with intent to evade payment of BCD, SWS & IGST and therefore, I find that they have violated the provisions laid down under Section 17(1) of the Customs Act, 1962 inasmuch they have failed to correctly self-assess the impugned goods and also willfully violated the provision of Sub Section (4) and 4(A) of Section 46 of the Custom Act, 1962. Amount of Customs duty attributable to such benefit availed in the form of non-payment of BCD, SWS & IGST at a "Nil" rate, is therefore, become liable to be demanded from the said importer

under Section 28(4) of the Customs Act, 1962 along with appropriate interest under Section 28AA of the Customs Act, 1962. Accordingly, I find that the non-payment of customs duty amounting to Rs. 5,51,627/-, SWS of Rs. 55,163/- & IGST of Rs. 1,09,222/- is held liable to be demanded from the Importer under section 28(4) of the Customs Act, 1962 along with applicable statutory interest under Section 28AA of the Customs Act, 1962.

25. I find that the Importer has wilfully claimed the undue benefit for the import of the impugned goods resulting into non levy of Basic Customs Duty, SWS and short levy of IGST and the importer has misclassified the CTH of the subject goods in the said Bills of entry and by doing so, the said importer has rendered the subject goods liable for confiscation under Section 111(m) of the Customs Act, 1962. The goods imported vide the Bills of Entry mentioned in the Annexure-A attached to the notice, were self-assessed and cleared with declared assessable value of Rs. 73,55,022/- (Rupees Seventy Three Lakhs Fifty Five Thousand Twenty Two Only); the subject goods are held liable for confiscation under the provisions of Section 111(m) of the Customs Act,1962. The relevant provisions are reproduced as under:

> ***Section 111 of the Customs Act, 1962*** *deals with the Confiscation of improperly imported goods, etc.The relevant provision is reproduced below:-*
>
> *The following goods brought from a place outside India shall be liable to confiscation: -*
> *(a)-----*
> *(m) Section 111(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;*

26. I have studied the defence reply submitted by the importer. Ongoing through the submission dated 11.01.2024 I find that the importer has not contested regarding why the imported goods should not be classified under 84433910, instead submitted that CTH 84433250 is appropriate for subject goods without related technical catalogue pertaining to the subject goods. Further I find that the importer has relied upon the Order-in-Original (O-in-O) No. 1062/2023- 24/ADC/Gr.V/NS-V/CAC/JNCH (copy enclosed) dt.

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28.11.2023; F. No. S/26-Misc-206/2023-24/Gr. V/JNCH wherein similar/identical Inkjet Printers described as 'Grando GD2000UV Printers with standard accessories' wherein it was held that the imported goods is rightly classifiable under RITC8443 3250. To this I find that the relied case pertains to the goods which was declared as Printers with standard accessories, however, in the present case the imported goods declared as 'Printing System". Therefore, I find that the referred case does not cover the subject matter.

27. The importer claimed that the demand is time barred in respect of B/ E No. 8754342 dt. 06.11.2018, as the SCN has been issued under Section 28(4) and Section 124 of the Customs Act. 1962 on 07.11.23. I find that the SCN has been issued mentioned under Section 28(4) of the Act. I find it of relevance to reproduce Explanation 1 to the Section 28(11) of the Customs Act, 1962:

> *Explanation 1. — For the purposes of this section, "relevant date" means,—*
>
> *(a)* ***in a case where duty is [not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods****;*
>
> *(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;*
> *(c) in a case where duty or interest has been erroneously refunded, the date of refund;*
> *(d) in any other case, the date of payment of duty or interest."*

In the present case, the order for clearance of the goods for the said Bill of entry dated 06.11.2018 i.e. out of charge, was given on **12.11.2018**. As per Explanation 1 to the Section 28(11) the relevant date will be the date of OOC given i.e. in the present case 12.11.2018 and therefore, I find that the last date for the issuance of SCN under Section 28(4) of the Customs Act, 1962, was 11.11.2023 i.e. five years from the date of OOC. The SCN issued on 07.11.2023 under Section 28(4) Custom Act, 1962, which is within the five years from the date of OOC, and thus, I find that the contention of the importer does not find any merit.

28. I find that the said BoEs were under RMS assessment where examination has not been prescribed (Image 1 for BoE 8754342 & image 2 for BoE 9094076) and so examination report was not required. Therefore, in

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absence of any examination order, I find that no examination of the imported goods has been carried out at the time of clearance. As the importer has been working under the regime of self-assessment, where they have been given liberty to declare every aspect of an imported consignment from classification to declaration of value of the goods or levying of duty at applicable rate, it was responsibility of the importer to place correct facts and figures before the assessing authority. By misclassifying the imported goods under different CTH I find that the importer has suppressed the material fact with intent evade payment of applicable BCD. Therefore, I find that the demand under Section 28(4) of the Customs Act, 1962 invoking the extended period is proper and legal.

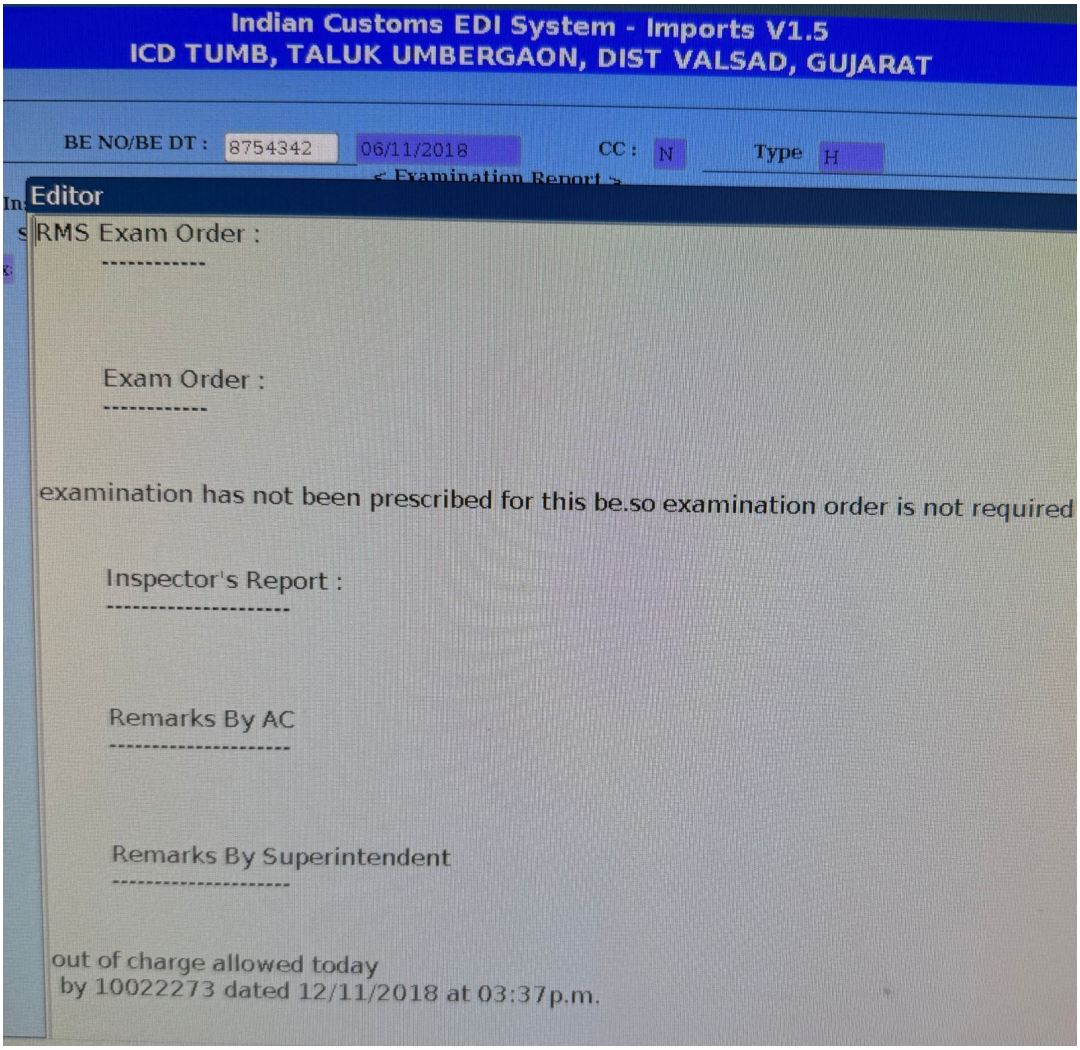

Image-1

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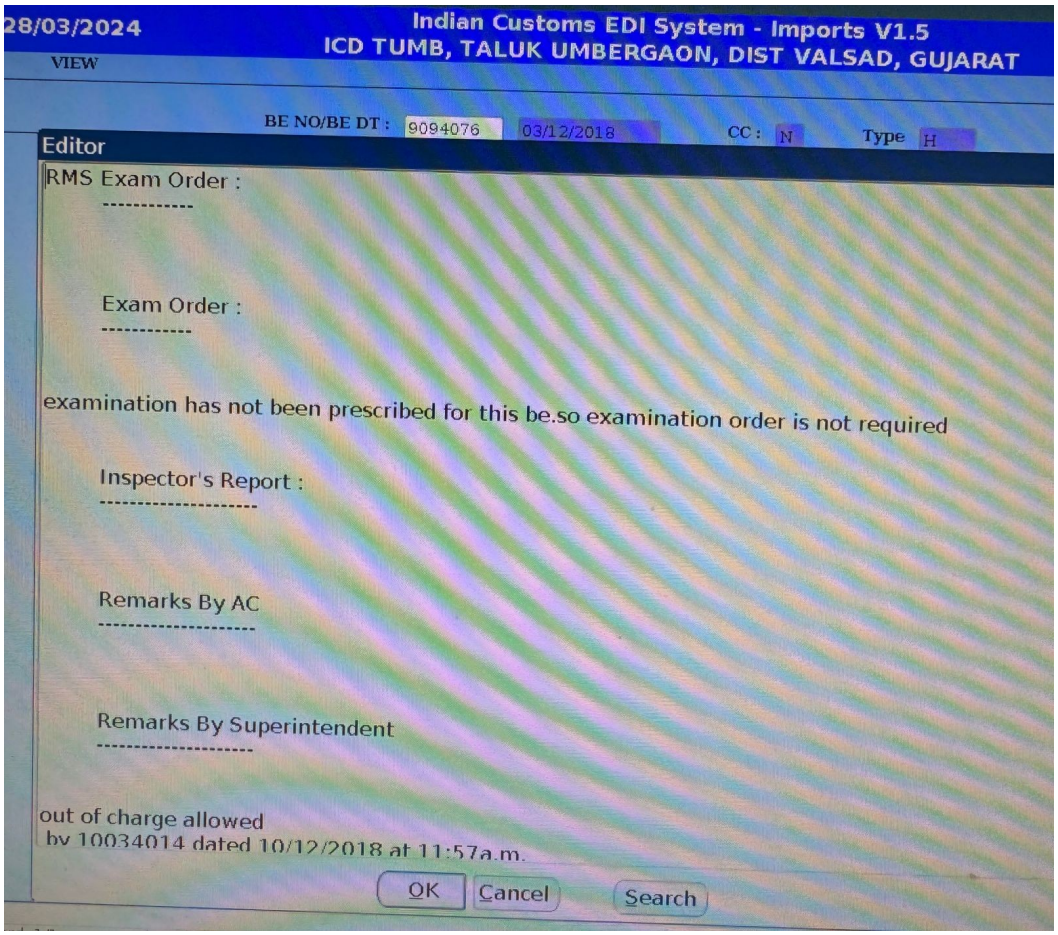

Image-2

29. In view of the above discussions, I find that the importer has filed Bills of Entry as detailed in Annexure A to the Show Cause Notice for clearance of goods by declaring the description as 'FLORA DIGITAL **INKJET PRINTING SYSTEM** AND ACCESSORIES PP2512UV-RICOH GEN 5 and FLORA DIGITAL **INKJET PRINTING SYSTEM** AND ACCESSORIES XTRA320K' and classifying it under Customs Tariff Heading 84433250. As discussed at paras supra, the goods imported are found as mis-classified under Customs Tariff Heading No.84433250 instead of correct classification of the product which is Customs Tariff Heading No. 84433910 which has resulted in evasion of Rs.7,16,012/- (BCD, SWS & IGST). M/s. Vinod Medical Systems Private Limited are therefore liable to pay the differential Duty amounting to Rs. 7,16,012/- (BCD, SWS & IGST). Thus, the demand proposed for the said amount of differential Customs Duty in the Show Cause Notice is liable to be demanded vide the provisions of Section 28(4) of the Customs Act, 1962.

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30. It has also been proposed by the Show Cause Notice to demand and recover interest on the aforesaid Customs Duty demand 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. Thus the said Section provides for payment of the mandatory statutory interest along with the Duty determined and confirmed under Section 28 ibid. I hold that the differential Duty amounting to Rs. 7,16,012/- (BCD, SWS & IGST) is liable to be demanded under Section 28(4) of the Customs Act, 1962. Therefore, I find that interest on the said Customs Duty determined under Section 28(4) ibid is liable to be demanded under Section 28AA of the Customs Act, 1962.

31. From the above discussions, I hold that the goods imported vide the subject Bills of Entry mentioned in the Annexure-A, were self-assessed and cleared with declared assessable value of Rs. 73,55,022/- (Rupees Seventy Three Lakhs Fifty Five Thousand Twenty Two Only) are liable for confiscation under the provisions of Section 111(m) of the Customs Act,1962.

32. I find that the importer has failed to correctly self-assess the payment of appropriate duty and will fully suppress the proper CTH of the imported goods with intent to evade the payment of duty resulting into short/non-payment of BCD amounting to Rs. 5,51,627/-, SWS of Rs. 55,163/- and IGST of Rs. 1,09,222/-. Therefore, such act of non-payment/short payment of appropriate duty by will fully suppressing and mis-declaring the proper CTH of the imported goods has rendered the importer liable for penal action under Section 114A of the Customs Act, 1962. In pursuance to Fifth proviso to Section 114A Custom Act, I take note that where penalty has been levied under Section 114A, no penalty shall be levied under Section 112. Further, subject act of mis-declaration and use of false/incorrect particulars of the details viz. wrong particulars of the proper CTH of the imported goods in the transaction of business for the purposes of custom act, thereby I find that the importer is liable for penal action under Section 114AA of the Customs

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Act, 1962. Further, the description of subject goods in the said Bills of Entry are '**printing system'** but said importer **declared CTH of printer**; with this outright incorrect particulars with respect to Classification CTH employed by the importer in the Bill of entry and non -submission of technical literature specific to the subject goods, I find the subject matter has peculiar facts on record and is different from the goods reflected in the referred case laws.

33. Whether the Customs Broker i. e. M/s. Buffer Shipping Agency Private Limited (CHA No. AAHCB3777FCH002) is liable to penalty under the provisions of Section 117 of the Customs Act, 1962?

I note that the subject SCN has invoked the provisions of penalty under Section117 of the Custom Act which is a general penalty for contravening any provision of Custom Act or for failing to comply with any provision of Custom Act which it was noticee's duty to comply, where no express penalty is elsewhere provided for such contravention or failure. I have carefully studied the defense submission of the Custom Broker made vide the said two letters dated 31.01.2024 and 06.02.2024. The Custom broker submitted that penalty should not be imposed on them in this case of mere filing of documents without any knowledge of offence or violation by CB for clearance of subject goods. I also note that the Custom Broker submitted that a bonafide error or human oversight does not amount to Professional misconduct and that in the cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute, no penalty shall be imposed. I have studied the case laws submitted by the Custom broker vide its defence submission. I note that there is no material evidence on record, either showing that the CB has manipulated the documents or that CB abetted the subject import so as to receive extra consideration with regard to subject shipments. Thereby, in subject matter, I refrain from imposition of penalty on the custom broker under Section 117 Custom Act. I find my views of non imposition of penalty on the custom broker in compliance to the judicial discipline, as follows:

i. 2021(378)ELT528(Tri-Bang):
Penalty on Customs House Agent (CHA) - No evidence to show that Agent had knowledge of wrong doing of importer and colluded with importer to defraud Revenue - Not appropriate to punish CHA for filing document in good faith and on basis of documents supplied by importer - Penalty imposed set aside - Section 112 of Customs Act, 1962. [2006 (200) E.L.T. 122 (Tribunal) relied on]. [paras 6, 7]

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ii. 2021 (377) E.L.T. 615 (Tri. - Chan.)

Penalty on Customs Broker - Misdeclaration in import consignment - Mens rea, non-establishment of - Allegation that appellant customs broker filed 4 bills of entry for clearance of consignment of cold rolled coil (non-alloy) and cold rolled sheets (non-alloy) of prime nature - Undisputedly on examination of import consignment, coil and sheets were found to be of defective nature instead of prime quality declared - Alleging that appellant being an experienced customs broker, expected to understand difference between prime material and secondary & defective material, penalty imposed misdeclaration - However, nothing on record indicates that said Broker had prior knowledge of actual goods - All documents given by importer to broker viz. invoices, high-seas agreements, test certificates etc. mentioned goods to be of prime nature - Whatever documents supplied to appellant by importer, appellant filed same for clearance - Merely being appellant an experienced person it could not be alleged that appellant was having mala fide intentions for clearance of said goods by misdeclaring same - Act of filing test certificate shows that appellant had no mens rea and filed documents being a bona fide facilitator - Penalty could not be imposed - Impugned order set aside - Sections 112 and 114AA of Customs Act, 1962. [paras 6, 7, 8, 9, 10].

iii. 2020 (374) ELT 775 (Tri- Bang).
iv. 2021 (377) ELT 456 (Tri- Chan).
v. 2020 (371) ELT 742 (Tri- Del).
vi. 2019(370) ELT 1138 (Tri- Mumbai).
vii. 2019(370) ELT 832 (Tri-Chennai).
viii. 2019(370) ELT 608(Tri-Mumbai).

In conspectus of aforementioned Discussion and findings, I pass the order:

ORDER

(a) I order to reject the declared classification of the subject goods under Customs Tariff Heading No.84433250 and order to re-classify the subject goods under Customs Tariff Heading No. 84433910 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and reassess the subject Bills of Entry accordingly;

(b) I order to confirm the demand of Basic Customs Duty of Rs. 5,51,627/- (Rupees Five Lakh fifty One thousand six hundred and Twenty seven only) as detailed in Annexure-A to the Show Cause Notice in terms of the provisions of Section 28(4) of the Customs Act, 1962;

(c) I order to confirm the demand of SWS amounting to Rs. 55,163/- (Rupees Fifty five thousand One hundred and sixty three only) as detailed in Annexure-A to the Show Cause Notice and in terms of the provisions of Section 28(4) of the Customs Act, 1962;

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(d) I order to confirm the demand of IGST amounting to Rs. 1,09,222/- (Rupees One Lakh Nine thousand Two hundred and Twenty Two only) as detailed in Annexure-A to the Show Cause Notice in terms of the provisions of Section 28(4) of the Customs Act, 1962;

(e) I hold the subject goods having assessable value of Rs. 73,55,022/- (Rupees Seventy Three Lakh Fifty Five Thousand Twenty Two Only) imported by M/s. Vinod Medical Systems Private Limited through I.C.D. Tumb, (as detailed in Annexure-A to the Show Cause Notice) by mis-classifying the subject goods, liable to confiscation under Section 111(m) of the Customs Act, 1962. However, I give them the option to redeem the goods on payment of Fine of Rs. 7,35,502 /- (Rupees Seven lakh thirty five thousand five hundred and two only) under Section 125 of the Customs Act, 1962;

(f) I order recovery of interest on the above confirmed demand of Customs Duty, SWS & IGST (as at (b), (c) & (d) above) in terms of the provisions of Section 28AA of the Customs Act, 1962;

(g) I impose a penalty of Rs. 7,16,012/- (Rupees Seven Lakh Sixteen Thousand and Twelve only) on M/s. Vinod Medical Systems Private Limited under Section 114A of the Customs Act, 1962. Further, where subject determined duty and interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty so determined, Provided further that the benefit of reduced penalty 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.

(h) I impose a penalty of Rs. 7,35,502 /- (Rupees Seven lakh thirty five thousand five hundred and two only) on M/s. Vinod Medical Systems Private Limited under Section 114AA of the Customs Act, 1962.

(i) I refrain from imposition of penalty under Section 112 Custom Act on M/s. Vinod Medical Systems Private Limited as discussed in para 32 above.

(j) I refrain from the imposition of penalty on M/s. Buffer Shipping Agency Private Limited under Section 117 of the Customs Act, 1962.

Signed by
Arun Richard
Date: 26-04-2024 18:57:06

Arun Richard
Additional Commissioner.

DIN : 20240471MN0000071568
F. No. CUS/SHED/56/2023-ICD-UMGN-CUS-COMMRTE-AHMEDABAD
Dt.26.04.2024

DIN- 20240471MN0000071568

To,

1. **M/s. Vinod Medical Systems Private Limited,**
   323, Omkar, The Summit Business Bay,
   3rd Floor, B.L. Bajaj Road, Prakashvadi,
   Nr. W.E.H Metro Station, Andhri-East,
   Mumbai-100093.

2. **M/s. Buffer Shipping Agency Private Limited (CHA No. AAHCB3777FCH002)**
   Ideal Trade, Centre, Off. No. 601,
   6th Floor, Plot No. 64, Sector-11,
   CBD Belapur, Navi Mumbai-400614.

Copy To:

1. The Principal Commissioner, Customs Commissionerate, Ahmedabad.
2. The Deputy Commissioner of Customs, ICD Tumb.
3. The Assistant Commissioner, Tax Recovery Cell, Ahmedabad Customs.
4. Guard File.