



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
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A	File No.	CUS/APR/MISC/5630/2024-Gr 5-6-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AK/91/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of Order	11.07.2024
E	Date of Issue	11.07.2024
F	Noticee/Party/ Importer/ Exporter	M/s Sunrays Image Technology Pvt. Ltd. (IEC: 1313018449) B-153 L, Jamnapuri Colony, Murlipura Scheme, Jaipur, Rajasthan-302013
G	DIN No.	DIN-20240771MO0000444BD2

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है।

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमा शुल्क आयुक्त (अपील),
 7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए।

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE:

M/s Sunrays Image Technology Pvt. Ltd. (IEC: 1313018449) having registered address at B-153 L, Jamnapuri Colony, Murlipura Scheme, Jaipur, Rajasthan-302013 has filed a Bill of Entry No. 9493313 dated 01.01.2024 for import of goods declared as Old and used Medical Equipments with Standard Accessories (90181300) (hereinafter referred as impugned goods for the sake of brevity). The importer has self-assessed the goods and classified the same under HSN Code 9018 1300 for the impugned goods supplied by M/s Avanti Health and Technology Co. Ltd., Thailand through Bill of lading No. CULVLKB2301024 dtd. 17.12.2023 having declared gross weight of 13979 Kgs. The goods were imported in India in containers no. CULU 6010091 & TRHU5553040 through invoice number PI2023/026 dtd. 11.12.2023. The goods were having declared assessable value of Rs. 71,23,000/-.

2. On the basis of Intelligence gathered by the officers of CIU, Mundra, the cargo covered under the said Bill of Entry No. 9493313 dated 01.01.2024 filed by the importer through their CHA M/s. SRV Shipping wherein they have declared the goods as Old and used Medical Equipments with Standard Accessories and classified under CTH 90181300 was put on hold for detailed examination. Examination of the goods covered under said BE was carried out by the officer of CIU, Custom House Mundra under Panchnama dated 09.01.2024 drawn at M/s. Transworld Terminals Pvt. Ltd., Unit-II. The examination was conducted by CIU officers in the presence of representative of empanelled Chartered Engineer i.e. M/s Varun Chandok & Associates.

2.1 In this regard, Empanelled Chartered Engineer M/s Varun Chandok and Associate has submitted their inspection cum valuation report in Form-B vide their letter dated 15.01.2024. The said report is in the format as prescribed under Circular No. 07/2020-Customs dated 05.02.2020. In the inspection report CE has reported that the year of manufacture of the goods and also worked out the valuation of the consignments considering the prevailing market rate as detailed below: -

Ref. No.: VC/CIFS/MUNDRA/SITPL/0/TKUH4518*/9493313/I/15/2023-24
ANNEXURE FOR VALUATION FOR BE No. 9493313 dated 01/01/2024

Dated: 15/01/2024

Sr. No.	Description of goods	Year of Manufacture As per Look/Spec. Plate/Appearance	Number of Consignment, If any	Expected Weight	Invoice Value (INR)	Reappraised Value of Goods & Tax thereon as per Look/Spec. Plate/Appearance	Rate of Duty	Rate of Harmonizationing in (INR) of any	Estimated Reappraised CTH Value in INR	Total of Customs Duty & Tax as per Look/Spec. Plate/Appearance
1	CT Scan (Medical Equipment) Make: SIEMENS Type: SOMA TOM DEFINITION AS 128 Model of Ganty: 08098027 Sr. no.: 96377 Made in Germany With standard accessories Country, Patient Table, Power Cabinet, ICS Tower, ICS Tower, Phantoms, Control Panel, Control Cabinet, Cover etc.	11/2016	No	More than 9 years (Subject to Proper Maintenance)	1 30000	300000	70%	N/A	90000	90000
2	CT Scan (Medical Equipment) Make: SIEMENS Type: SOMA TOM DEFINITION AS 128 Model of Ganty: 08098027 Sr. no.: 96377 Made in Germany With standard accessories Country, Patient Table, Power Cabinet, ICS Tower, ICS Tower, Phantoms, Control Panel, Control Cabinet, Cover etc.	12/2016	No	More than 9 years (Subject to Proper Maintenance)	1 25000	290000	70%	N/A	87000	87000
3	CT Scan (Medical Equipment) Make: SIEMENS Model/Type: MX 16 SLICE Sr. no. of Ganty: EP946140087 Made in Germany With standard accessories Country, Patient Table, Power Cabinet, ICS Tower, ICS Tower, Phantoms, Control Panel, Control Cabinet, Cover etc.	12/2016	No	More than 9 years (Subject to Proper Maintenance)	1 25000	150000	70%	N/A	45000	45000
4	Philips Standard Plate Make: PHILIPS DIGITAL MAMMOGRAPHY Model: MAMMOGRAPHY Model: 1.50046-10 Sr. no.: 140046-10	06/2016	No	More than 9 years (Subject to Proper Maintenance)	1 5000	40000	70%	N/A	12000	12000
5	RF Generator X-Ray Medical Equipment (Without Panel) Make: PHILIPS AND NEIOSOFT MEDICAL SYSTEMS CO. LTD. Model: 1.50046-10 Type: 9800 010 87281 Sr. no.: 08000019 Made in Germany	02/2008	No	More than 7 years (Subject to Proper Maintenance)	1 Not declared	15000	70%	N/A	4500	4500

The report given by CE is summarised below:

Table-I

Sr. No.	Description of goods	Year of Manufacture As per Look/Spec. Plate/Appearance	Invoice Value in USD (CIF)	Value Calculated by CE in USD (CIF)
1	CT scan (Medical Equipment) Make SIEMENS, Type: SOMA TOM DEFINITION AS 128 Model of Ganty: 08098027 Sr. no.: 96377, Made in Germany	11/2016	30000	90000

	With standard accessories Gantry, Patient Table, Power Cabinet, IRS Tower, ICS Tower, Phantom, Monitor/Keyboard, Cable Set, Cover etc.			
2	CT scan (Medical Equipment) Make SIEMENS, Type: SOMA TOM DEFINITION AS 128 Model of Gantry: 08098555 Sr. no.:5646, Made in Germany With standard accessories Gantry, Patient Table, Power Cabinet, IRS Tower, ICS Tower, Phantom, Console Table, Monitor/ Keyboard, Cable Set, Cover etc.	12/2014	25000	87000
3	CT scan (Medical Equipment), Make: Philips, Model/Type:MX 16 SLICE Sr. no. of Gantry: EPI6EI40087 Made in China, With standard accessories Gantry, Patient Table, Gantry Cover. etc.	12/2014	25000	45000
4	Philips Mammogram Standard Parts, Make: Philips Digital Mammography Microdose SI, Model: L50, Sr. no.: 160046-10, Made in China	06/2016	5000	12000
5	R/F Generator X-Ray Medical Equipment (Without Patient Table) Make: PHILLIPS AND NEUSOFT MEDICAL SYSTEMS CO. LTD. Model: OPTIMUS 65 Type: 98900I087381 Sr. no.: 08000019 Made in Germany	02/2008	Not declared	4500
Total			85000	238500

2.2 Ongoing through the inspection cum valuation report dated 15.01.2024 submitted by Chartered Engineer, it appears that the year of manufacture of imported items are 2008, 2014 & 2016, however at the time of filling Bill of Entry the importer has not declared the year of manufacture of goods. Further, the examination made by CIU officer has also revealed that the importer has also imported ICS Tower, IRS Tower, Patient Table, Gantry Cover, Monitors and Keyboard etc. which were not declared by the importer.

2.3 The importer has declared the said goods i.e. Old and used medical Equipment's with standard Accessories and classified all items under CTH: 90181300. However, as per Section XVIII, under Chapter 90 of Custom Tariff Act, 1975, Goods i.e. Computed Tomography apparatus and X-ray generators and apparatus are classifiable under the CTH 90221200 & 90221410 respectively and the goods imported CT scan is a Computed tomography apparatus which is classifiable under the CTH 90221200. Mammogram Standard Parts and X-Ray Medical Equipment are classifiable under CTH 90221410. Therefore, it appears that the importer has wrongly classified the Goods under CTH 90181300 instead of correct CTH: 90221200 & 90221410.

3. Considering the nature of irregularities made by the importer that were exposed during the examination made by CIU, Summon dtd. 11.03.2024 and Summons dtd. 20.03.2024 were issued to the importer under the provisions of Section 108 of the Customs Act, 1962 by the CIU

officer for tendering the statement in the matter and also to produce all relevant documents in respect of the impugned goods.

3.1 The statement of Shri Ram Singh, Custom Import Consultant of M/s Sunrays Image Technology Pvt. Ltd. was recorded on 09.04.204 wherein he inter-alia stated:

- that he is the custom import consultant of M/s Sunrays Image Technology Pvt. Ltd. and looks after all import related work of the company; their company is a pvt ltd. company established since 2013 and engaged in the supply of old and used MRI machines.; that the company mainly deals in import of old and used MRI machines for further sale to their customers; that they have imported three old and used CT scanner machines and One Mammogram Standard Parts through Bill of Entry No. 9493313 dated. 01.01.2024; that they have classified the items imported under CTH 9018 1300 considering the same as Magnetic resonance imaging apparatus, but after going through the Customs Tariff thoroughly, he understood that the same goods are classifiable under CTH 90221200;
- that he is in knowledge that for import of the goods like old and used PET CT Scanner Machine, an authorisation is required to be obtained from AERB and they have applied for the permission form Atomic Energy Regulatory Board for supply/servicing and maintenance/quality assurance of medical diagnostic x-ray equipment, before filling of the Bill of Entry. The same will be issued within 06 Month from the date of application; that they were regular importer of MRI machines and such type of authorisation is not required in case of import of MRI machines. They have not knowledge regarding prior permission/authorisation required prior permission/authorization required to be obtained from the AERB for permission/authorization required to be obtained from AERB for import of old and used PET CT Scanner. They have filed for the said permission from AERB for supply/servicing & maintenance/quality assurance of medical diagnostic X-ray equipment before filing of the Bill of Entry; that already know about the conditions for import of pre-owned medical diagnostic x-ray equipment, which is more than seven-year-old shall not be imported in the country; that they agree with the contents of the panchnama dtd. 09.01.2024 in respect of the goods covered under the bill of entry;
- that they agree with the content narrated in the CE report dtd. 15.01.2024 in respect of the goods but he states that the value taken for new machine to calculate the CIF value appears to be higher side; that after going through the panchnama and CE report he realized that the supplier has supplied the goods with wrong commitment/declaration and he has requested the department to consider the mistake due to lack of knowledge regarding customs

tariff and policy condition; that their company don't want any show cause notice and personal hearing in the matter and requested to decide the case on the basis of merits.

4. The goods were subsequently seized by CIU officer vide Seizure Memo dtd. 29.01.2024 issued under section 110(1) of the Customs Act, 1962 and case file was transferred by CIU to SIIB section for further investigation in the matter.

5. Rules of Interpretation

As specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), Classification of goods in this Schedule shall be governed by the following principles.

(i) The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

(ii) (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

(iii) When by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- a. the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- b. mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale,

which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

c. when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

6 . It is pertinent to mention that principles for the classification of goods are governed by the Harmonized Commodity Description and Coding System (Harmonized System or HSN) issued by the World Customs Organization, Brussels and the General Rules for Interpretation specified there under. The General Rules for the Interpretation (GIR) specified in the Import Tariff are in accordance with the GIR specified in the HSN.

6.1 In terms of GIR 1 of the HSN and the import Tariff -

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the provisions discussed in 2.3 above.

The importer has classified the goods under chapter 90 of the Custom Tariff Act, 1975. The Chapter 90 of Section – XVIII of the Custom Tariff Act, 1975 deals with Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof. The relevant heading extract of HS Code 9018 is as follows:

9018	INSTRUMENTS AND APPLIANCES USED IN MEDICAL, SURGICAL, DENTAL OR VETERINARY SCIENCES, INCLUDING SCIENTIGRAPHIC APPARATUS, OTHER ELECTROMEDICAL APPARATUS AND SIGHT-TESTING INSTRUMENTS			
-	<i>- Electro-diagnostic apparatus (including apparatus for functional exploratory examinations or for checking physiological parameters) :</i>			
9018 11 00	-- Electro-cardiographs	u	7.5%	-
9018 12	-- Ultrasonic scanning apparatus :			
9018 12 10	--- Linear ultrasound scanner	u	7.5%	-
9018 12 90	--- Other	u	7.5%	-
9018 13 00	-- Magnetic resonance imaging apparatus	u	7.5%	-
9018 14 00	-- Scientigraphic apparatus	u	7.5%	-

6.2 The tariff heading 9018 pertains to Electro-diagnostic apparatus (including apparatus for functional exploratory examinations or for checking physiological parameters) such as electro-cardiographs, linear ultrasound scanner, electro encephalographs, echo cardiograph, Magnetic Resonance Imaging Apparatus etc.

6.3 As per the examination done by CIU officers and the report provided by the chartered engineer, it has emerged that the goods are not Magnetic Resonance Imaging (MRI) apparatus as declared by the importer but the

goods are old and used X-ray generating equipment.

6.4 The x-ray generating equipment are correctly classifiable under heading 9022 of the Custom Tariff Act, 1975 which covers Apparatus based on the use of X-rays, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus. The relevant heading extract of HS Code 9022 is as follows:

9022	APPARATUS BASED ON THE USE OF X-RAYS OR OF ALPHA, BETA *GAMMA OR OTHER IONISING RADIATIONS, WHETHER OR NOT FOR MEDICAL, SURGICAL, DENTAL OR VETERINARY USES, INCLUDING RADIOPHOTOGRAPHY OR RADIOTHERAPY APPARATUS, X-RAY TUBES AND OTHER X-RAY GENERATORS, HIGH TENSION GENERATORS, CONTROL PANELS AND DESKS, SCREENS, EXAMINATION OR TREATMENT TABLES, CHAIRS AND THE LIKE				
	<i>- Apparatus based on the use of X-rays, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus :</i>				
9022 12 00	-- Computed tomography apparatus	u	10%	-	
9022 13 00	-- Other, for dental uses	u	10%	-	
9022 14	-- Other for medical, surgical or veterinary uses :				
9022 14 10	--- X-ray generators and apparatus (non-portable)	u	10%	-	
9022 14 20	--- Portable X-ray machine	u	10%	-	
9022 14 90	--- Other	u	10%	-	

6.5 As per above, the goods are correctly classifiable under 90221200 & 90221410. The effective duty implications on both the CTH is 7.5%(BCD) +5.75% (SWS)+12%(IGST).

7. Section 14 of the Customs Act, 1962 deals with the provisions of Valuation of the goods. The relevant extract is produced below:

Rule 12. Rejection of declared value-

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

8. The goods were examined by CIU officers in the presence of empanelled Chartered Engineers and upon finding mis-declaration the imported goods and undeclared goods were resorted to re-valuation. Hence, the total re-determined value as per the valuation made by CE is \$ 2,38,500/-. As per exchange rate (1USD = 83.8 INR) mentioned in respective Bill of Entry, total re-determined value is to be calculated as Rs.1,99,86,300/-

9. The Directorate General of Foreign Trade vide its Notification No. 3/2015-20 dtd. 16.04.2018 issued from F.No. 01/89/180/53/AM-01/PC-2(A)/Vol.II/E-2270 had amended the import policy conditions under Exim Code 9022 of Chapter 90 of ITC (HS), 2017, Schedule – I (Import Policy). The relevant extract of the same is as follows:

S.O. (E): In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central

Government hereby amends the import policy conditions of the following items under Exim Code 9022 of Chapter 90 of ITC (HS), 2017, Schedule - I (Import Policy) as under:

Exim Code	Item Description	Policy	Policy Conditions	Revised Policy Conditions
90221200	Computed tomography apparatus	Free		Imports are permitted subject to Atomic Energy Act, 1962 and Rules thereunder including prior regulatory clearance from AERB
90221420	Portable X - ray machine	Free	Diagnostic Medical X - Ray Equipment must conform to IS 7620 (Pt 1).	Diagnostic Medical X - Ray Equipment must conform to IS 7620 (Pt 1). Imports are permitted subject to Atomic Energy Act, 1962 and Rules thereunder including prior regulatory clearance from AERB.

9.1 As per the provisions contained in the Import Policy of the import of diagnostic medical X-ray equipments are permitted subject to Atomic Energy Act, 1962 and rules thereunder including prior regulatory clearance from AERB. Atomic Energy Research Board vide their letter Ref. No. AERB/RSD/MDX/Service Agencies-RR/2015 dated 18.09.2015 has provided for conditions of authorization for service agency. As per AERB, the agencies involved in providing Quality Assurance, Servicing, Decommissioning and supply of pre-owned medical diagnostic x-ray equipment including services are called '**Service Agency**'. The same is produced below:



भारत सरकार
परमाणु ऊर्जा नियामक परिषद्
विकिरण संरक्षा प्रभाग

Government of India
Atomic Energy Regulatory Board
Radiological Safety Division

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नियामक भवन/Niyamak Bhavan
अनुशक्तिनगर/Anushaktinagar
मुंबई / Mumbai-400094

Ref. No: AERB/RSD/MDX/Service Agencies -RR/2015/113

Date: September 18, 2015

AERB has formulated requirements for the agencies involved in providing Quality Assurance, Servicing, Decommissioning and supply of pre-owned medical diagnostic x-ray equipment (including above services to such equipment) hereinafter called "Service Agency", for ensuring radiation safety during life cycle of x-ray equipment. As per AERB Safety Code AERB/SC/MED-2, Section 6.12, these Service Agencies are required to obtain "Authorization" from the competent authority".

The Service Agency can undertake one or more of the following activities subject to obtaining appropriate Authorization from AERB:

- a) Supply of pre-owned medical diagnostic x-ray equipment and their installation, commissioning and acceptance testing
- b) Servicing and maintenance of x-ray equipment
- c) Periodic Quality Assurance of x-ray equipment ; and
- d) Decommissioning/dismantling of x-ray equipment.

9.2 AERB has imposed conditions that are to be fulfilled for authorisation for service agency. The relevant extract is produced below:

2. Conditions of Authorization for Service Agency:

- i) AERB type approved models of diagnostic x-ray equipment shall be supplied in the country.
- ii) In case the equipment is not having AERB type approval or the approval has expired before five years, the equipment shall undergo the applicable quality assurance protocol and procedure prescribed by AERB.
- iii) The pre-owned medical diagnostic x-ray equipment, which is more than seven years old, shall not be imported in the country. However, the used diagnostic x-ray equipment, which is not more than ten years old, may be permitted for import by original equipment manufacturer (OEM) or OEM authorized agency in the country for refurbishment prior to supply to the end-user(s).
- iv) The pre-owned x-ray equipment shall be supplied only to the user, who has obtained requisite permission for procurement of the x-ray equipment from AERB.
- v) Installation Report of diagnostic x-ray equipment shall be submitted to AERB.
- vi) Shall provide guidance and support to end user(s) for obtaining regulatory consents.
- vii) In case pre-owned x-ray equipment is stored with supplier, it shall be tested for performance evaluation before supply to the new end-user and records shall be maintained.

9.3 As per the above conditions, the pre-owned medical diagnostic x-ray equipment, which is more than seven years old, shall not be imported in the country. However, the used diagnostic x-ray equipment, which is not more than ten years old, may be permitted for import by original equipment manufacturer (OEM) or OEM authorized agency in the country for refurbishment prior to supply to the end-user(s). In the instant case, the CT scanner machines and Mammogram Standard Parts (which are more than seven-year-old as per the Chartered Engineer report) is not permitted to import as per policy condition of CTH: 90221410 and letter dated 18.09.2015 issued by the AERB.

In view of the above and the examination made by CIU, it was found that the importer has not produced any authorization for the aforesaid goods i.e. CT scanner machines and One Mammogram Standard Parts

found in the consignment.

10. Legal Provisions

Relevant provisions of law relating to import of goods in general and the impugned goods in particular, the policy and rules relating to the import of x-ray generating equipment and Monitor/CPU, the liability of the goods to confiscation and liability of the persons concerned to penalty for improper/illegal importation, under the provisions of the Customs Act, 1962 read with the provisions of Foreign Trade Policy 2023 (as amended).

10.1 Foreign Trade (Development and Regulation) Act, 1992:

(i) Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 provides inter-alia, for formulation of the export and import policy by the Central Government from time to time.

(ii) Section 7 of the Foreign Trade (Development and Regulation) Act, 1992 states that no import can take place without a valid IEC number unless otherwise exempted.

(iii) Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 states that no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

10.2 As per the provisions contained in the Para 2.04 of Foreign Trade Policy, 2023, DGFT may specify procedures to be followed by an exporter or importer for the provisions of Foreign Trade (Development and Regulation) Act, the rules and the orders made there under.

10.3 As per the provisions of Section 2(25) of the Customs Act, 1962, the 'importer goods' means any goods brought into India but does not include goods which have been cleared for home consumption.

10.4 The expression "**Prohibited Goods**" is defined in Section 2(33) of the Customs Act, 1962 meaning "any goods, the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force, but it does not include any such goods in respect of which, the conditions subject to which the goods are permitted to be imported or exported have been complied with." The relevant extract is produced as under:

Section 2. Definitions -

In this Act, unless the context otherwise requires,

(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

10.5 The Act does not define the expression "Restricted Goods". But the definition of the expression "Prohibited Goods" itself contains an indication as to how the expression "Restricted Goods" has to be understood. Upon perusal of the Section 2(33) of the Customs Act, 1962 depicts that even prohibited goods could be permitted to be imported or exported subject to

some terms and conditions. The moment those conditions are complied with; those goods would cease to be prohibited goods. This is why the exclusion clause contained in the second part of Section 2(33) uses the expression "any such goods". Therefore, it appears that the Customs Act recognizes only two types of goods namely: (1) those that are prohibited; and (2) those that are not prohibited. The Act also recognizes the fact that even prohibited goods could be imported or exported subject to certain conditions. If those conditions are fulfilled, prohibited goods would automatically become non-prohibited goods and if those conditions are not fulfilled, the goods take the shape of prohibited goods. In the instant matter, the impugned goods are not accompanied with a licence as stipulated by the Directorate General of Foreign Trade vide and hence becomes prohibited goods.

10.6 Section 46(4A) of Chapter VII of the Customs Act, 1962 provides that importer while presenting a Bill of Entry shall ensure the accuracy of the information. The relevant extract of the same is produced below:

SECTION 46. *Entry of goods on importation.* -

[(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.]*

10.7 **Section 111. *Confiscation of improperly imported goods, etc.*** The following goods brought from a place outside India shall be liable to confiscation:

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

- 1. any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*
- 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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];*

10.8 Section 112 of the Customs Act, 1962 deals with the provisions of penalty for improper importation of the goods. In the instant matter the importer, by contravening the provisions of Custom Act, 1962 has rendered themselves for penalty as per the provisions of the section 112(a) (i). The relevant extract of the same is produced below:

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 an act, or

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 not exceeding the value of the goods or five thousand rupees, whichever is the greater;

11. It appears that, the importer by resorting to mis-declaration of the goods has failed to comply with the provisions of the Section 46 (4A) of the Customs Act, 1962. The imported goods are old and used which are classifiable under the CTH 90221200 & 90221410 respectively. The importer mis-declared the goods and also imported un-declared goods such as Computer Monitors, R/F generator X-ray Medical Equipment, has imported the said goods by resorting to mis-declaration and in contravention of the existing DGFT Policy, thus, rendered the said goods liable for confiscation. The section 111 of the Customs Act, 1962 deals with the provisions regarding confiscation of the improperly imported goods. In the instant matter, it appears that the good are liable for confiscation under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962. In view of the above, it appears that for rendering the goods liable for confiscation the importer is also liable for penal action under section 112 (a) (i) of the Customs Act, 1962.

12. Furthermore, Shri Ram Singh, import consultant of the importer company M/s. Sunrays Image Technology Pvt. Ltd vide his statement dated 09.04.2024, have stated that going through the Chartered Engineer's report dated 15.01.2024, they realized that the supplier has supplied the goods with wrong Commitment/declaration. On misclassification of impugned goods, they realized their mistake and requested that their company don't want any show cause notice and personal hearing in the matter. It is pertinent to mention here that the importer initially vide their letter dtd. 09.05.2024 had expressed his dissatisfaction with the valuation provided by the CE. However, the importer on 30.05.2024 has again submitted a letter stating that they are withdrawing their earlier letter and requested for **re-export** of the goods and also submitted that they do not want SCN or personal hearing for same.

13. In view of the above it appears that:

(i) The declared classification of goods i.e. old and used Computed Tomography apparatus and X-ray generators and apparatus imported by M/s Sunrays Image Technology Private Limited vide bill of entry number 9493313 dated 01.01.2024 under HSN Code 9018 1300 is liable to be rejected as the same is appropriately classifiable under HSN Code 90221200 & 90221410.

(ii) The undeclared goods found during the examination i.e. R/F generator X-ray Medical Equipment is correctly classifiable under HSN Code 90221410.

(iii) The value of the imported goods along with the undeclared goods found during the examination is liable to be re-determined under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as Rs. 1,99,86,300/- read with Section 14 of the Customs Act, 1962 as per the report of the Chartered Engineer.

(iv) The afore-said goods imported by mis-declaration and in contravention of rules laid down under Foreign Trade Policy are liable for confiscation under section 111(d), 111(l) and 111(m) of the Customs Act, 1962.

(v) The importer M/s. Sunrays Image Technology Pvt. Ltd. (IEC: 1313018449) is liable for penal action under Section 112 (a) (i) of the Customs Act, 1962.

WAIVER OF PERSONAL HEARING AND SCN

14. The importer vide their letter dated 30.05.2024 received vide email dated 05.07.2024 has requested for waiver of SCN and PH. Importer vide above referred letter has agreed to pay the fine and penalty as imposed by the authorities and also requested to Re-export the said cargo to their supplier.

DISCUSSION AND FINDINGS

15. I have carefully gone through the facts of the case and records & evidences submitted before me and I note importer vide letter dated 30.05.2024 received vide email dated 05.07.2024 has waived off SCN and PH. Therefore, I find that the principle of natural justice as provided in section 122A of the Customs Act, 1962, has been completed. Hence, I proceed to decide the case on the basis of the documentary evidence available on records. I find that following main issue are involved in the subject matter, which are required to be decided-

- (i) Whether the declared classification of goods i.e. old and used Computed Tomography apparatus and X-ray generators and apparatus imported by M/s Sunrays Image Technology Private Limited vide bill of entry number 9493313 dated 01.01.2024 under HSN Code 9018 1300 is liable to be rejected as the same

is appropriately classifiable under HSN Code 90221200 & 90221410.

- (ii) Whether the undeclared goods found during the examination i.e. R/F generator X-ray Medical Equipment is correctly classifiable under HSN Code 90221410.
- (iii) Whether the value of the imported goods along with the undeclared goods found during the examination is liable to be re-determined under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as Rs. 1,99,86,300/- read with Section 14 of the Customs Act, 1962 as per the report of the Chartered Engineer.
- (iv) Whether the afore-said goods imported by mis-declaration and in contravention of rules laid down under Foreign Trade Policy are liable for confiscation under section 111(d), 111(l) and 111(m) of the Customs Act, 1962.
- (v) Whether the importer M/s. Sunrays Image Technology Pvt. Ltd. (IEC: 1313018449) is liable for penal action under Section 112 (a) (i) of the Customs Act, 1962.

16. I find that M/s Sunrays Image Technology Pvt. Ltd. (IEC: 1313018449) having registered address at B-153 L, Jamnapuri Colony, Murlipura Scheme, Jaipur, Rajasthan-302013 has filed a Bill of Entry No. 9493313 dated 01.01.2024 for import of goods declared as Old and used Medical Equipments with Standard Accessories (90181300) (hereinafter referred as impugned goods for the sake of brevity). The importer has self-assessed the goods and classified the same under HSN Code 9018 1300 having declared gross weight of 13979 Kgs. The goods were imported in India in containers no. CULU 6010091 & TRHU5553040. The goods were having declared assessable value of Rs. 71,23,000/-.

17. I find the CIU, Mundra, hold the cargo covered under the said Bill of Entry No. 9493313 dated 01.01.2024 filed by the importer through their CHA M/s. SRV Shipping wherein they have declared the goods as Old and used Medical Equipments with Standard Accessories and classified under CTH 90181300 for detailed examination. Examination of the goods covered under said BE was carried out by the officer of CIU, Custom House Mundra along with empanelled Chartered Engineer Shri Varun Chandok under Panchnama dated 09.01.2024. Empanelled Chartered Engineer Shri Varun Chandok has submitted their inspection cum valuation report dated 15.01.2024 wherein they have reported that the year of manufacture of imported items are 2008, 2014 & 2016, however at the time of filling Bill of Entry the importer has not declared the year of manufacture of goods. Further, the examination made by CIU officer has also revealed that the importer has also imported ICS Tower, IRS Tower, Patient Table, Gantry Cover, Monitors and Keyboard etc. which were not declared by the importer. The CE has also worked out the valuation of the consignments considering the prevailing market rate are Rs. 1,99,86,300/- whereas the importer has declared the value of the imported goods Rs. 71,23,000/-

18. I find that the importer has declared the said goods i.e. Old and

used medical Equipment's with standard Accessories and classified all items under CTH: 90181300. However, as per Section XVIII, under Chapter 90 of Custom Tariff Act, 1975, Goods i.e. Computed Tomography apparatus and X-ray generators and apparatus are classifiable under the CTH 90221200 & 90221410 respectively. I find that the imported goods CT scan is a Computed tomography apparatus which is classifiable under the CTH 90221200. Mammogram Standard Parts and X-Ray Medical Equipment are classifiable under CTH 90221410. Therefore, it appears that the importer has wrongly classified the Goods under CTH 90181300 instead of correct CTH: 90221200 & 90221410.

19. I find that the importer has classified the goods under chapter 90 of the Custom Tariff Act, 1975. The Chapter 90 of Section – XVIII of the Custom Tariff Act, 1975 deals with Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof. The tariff heading 9018 pertains to Electro-diagnostic apparatus (including apparatus for functional exploratory examinations or for checking physiological parameters) such as electro-cardiographs, linear ultrasound scanner, electro encephalographs, echo cardiograph, Magnetic Resonance Imaging Apparatus etc. As per the examination done by CIU officers and the report provided by the chartered engineer, it has emerged that the goods are not Magnetic Resonance Imaging (MRI) apparatus as declared by the importer but the goods are old and used X-ray generating equipment. I find that the x-ray generating equipment are correctly classifiable under heading 9022 of the Custom Tariff Act, 1975 which covers Apparatus based on the use of X-rays, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus. Accordingly, I find that the goods are correctly classifiable under 90221200 & 90221410. The duty implications on both the CTH is 7.5% (BCD) +5.75% (SWS)+12%(IGST).

20. I find that the goods were examined by CIU officers in the presence of empanelled Chartered Engineers and upon finding mis-declaration the imported goods and undeclared goods were resorted to re-valuation. Hence, the total re-determined value as per the valuation made by CE is \$ 2,38,500/- . As per exchange rate (1USD = 83.8 INR) mentioned in respective Bill of Entry, total re-determined value is to be calculated as Rs.1,99,86,300/-

21. Further I find that the policy condition for import of goods falling under CTH: 90221200 was revised vide Notification No. 03/2015-2020 dated 16.04.2018 issued by DGFT, wherein, the import of goods under subject CTH are permitted subject to Atomic Energy Act, 1962, and Rules thereunder. Furthermore, in this regard, Atomic Energy Research Board vide their letter Ref. No. AERB/RSD/MDX/Service Agencies-RR/2015 dated 18.09.2015 has clarified vide condition No. 2(iii) regarding import of pre-owned medical diagnostic x-ray equipment, which is reproduced below:

*"The pre-owned medical diagnostic x-ray equipment, which is more than **seven years old**, shall not be imported in the country. However, the used diagnostic x-ray equipment, which is not more than **ten years** old, may be permitted for import by original equipment manufacturer (OEM) or OEM*

authorized agency in the country for refurbishment prior to supply to the end-user(s)".

22. In the present case, I find that as per the above conditions, the pre-owned medical diagnostic x-ray equipment, which is more than seven years old, shall not be imported in the country. However, the used diagnostic x-ray equipment, which is not more than ten years old, may be permitted for import by original equipment manufacturer (OEM) or OEM authorized agency in the country for refurbishment prior to supply to the end-user(s). In the instant case, the CT scanner machines and Mammogram Standard Parts (which are more than seven-year-old as per the Chartered Engineer report) is not permitted to import as per policy condition of CTH: 90221410 and letter dated 18.09.2015 issued by the AERB. The importer has violated the policy condition prescribed for import of goods falling under CTH 90221200 vide Notification No. 03/2015-2020 dated 16.04.2018 issued by the DGFT. Therefore, the same is liable for confiscation under Section 111 (d) of the Customs Act, 1962. Further, the importer has mis-declared an also imported un-declared goods such as Computer Monitors, R/F generator X-ray Medical Equipment and also mis-classified the same under CTH 90189099 instead of CTH: 90221200. Accordingly, the same is liable for confiscation under Section 111 (l) and 111 (m) of the Customs Act, 1962.

23. I find that the consultant of the company M/s. Sunrays Image Technology Pvt. Ltd vide his statement dated 09.04.2024, have stated that going through the Chartered Engineer's report dated 15.01.2024, On misclassification of impugned goods, they realized their mistake and requested that their company don't want any show cause notice and personal hearing in the matter. It is pertinent to mention here that the importer initially vide its letter dtd. 09.05.2024 had expressed his dissatisfaction with the valuation provided by the CE. However, the importer on 30.05.2024 has again submitted a letter stating that they are withdrawing their earlier letter and requested for re-export of the goods and also submitted that they do not want SCN or personal hearing for same.

24. I find that the value of the impugned goods covered under Bill of Entry No. 9493313 dated 01.01.2024 is on a lower side and thus the declared value is required to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962. The value of the imported goods is liable for redetermination in accordance with the report submitted by the CE, as per Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 i.e. 'Residual Method'.

25. I find that the goods were found mis-declared in terms of description, valuation and classification, the assessable Value declared by the importer is liable to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Further, I find that the importer has mis-declared/mis-classified the goods to avoid payment of higher rate of customs duty. The importer has, by his acts of omission, rendered the goods having total value of Rs. 1,99,86,300/- provided by Empanelled Chartered Engineer is liable for confiscation under section 111(d), 111(l) &111(m) of the Customs Act, 1962 and is, therefore, also liable for penalty under section 112(a)(i) of the Customs Act, 1962.

26. I find that the importer while filing the impugned Bill of Entry has subscribed to a declaration regarding correctness of the contents of Bill of Entry under Section 46(4) of the Act, ibid. Further, Section 46(4A) of the Act, casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. In the instant case, the importer failed to discharge the statutory obligation cast upon him and made wrong declaration about the description & CTH of imported goods.

27. Section 125 of the Customs Act, 1962 are attracted for redeeming the confiscated goods on payment of redemption fine. The importer has requested for re-export of the goods. I find it appropriate to allow re-export of the subject goods subject to redemption under section 125 of the Customs Act, 1962. As per settled legal position, for ascertaining appropriate quantum of redemption fine, margin of profit is required to be considered. Having held that goods can be redeemed on payment of Redemption fin and considering the fact that importer has agreed to re-export the goods. I deem it fit not to subject the impugned case through the rigors of redemption fine. Since goods are being re-exported and not allowed to be cleared for home consumption, this prohibits the importer from deriving any benefit out of domestic sale. Further, the importer is bound to incur expenditure on arranging re-export of the goods. In such circumstances I am of the opinion that a lenient view may be taken while imposing redemption fine. Accordingly, considering facts and circumstances of the case the quantum of redemption fine is required to be ascertained.

28. In view of foregoing discussion and findings, I pass the following order.

ORDER

(i) I reject the declared classification 90181300 of goods i.e. old and used Computed Tomography apparatus and X-ray generators and apparatus imported by M/s Sunrays Image Technology Private Limited vide bill of entry number 9493313 dated 01.01.2024 and order to reclassify same under HSN Code 90221200 & 90221410 respectively.

(ii) I order to classify the undeclared goods i.e. R/F generator X-ray Medical Equipment under HSN Code 90221410.

(iii) I order to re-determine the value of the imported goods along with the un-declared goods found during the examination as Rs. 1,99,86,300/- under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

(iv) I confiscate the goods imported vide Bill of Entry No. 9493313 dated 01.01.2024 having assessable value of Rs. 1,99,86,300/- (Rupees One Crore Ninety-Nine Lakhs Eighty-Six Thousand and Three Hundred Only) under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of Rs.21,00,000/- (Rs. Twenty One Lakhs Only) in lieu of confiscation under section 125

of the Customs Act 1962 for re-export purpose.

(v) I impose a penalty of Rs. 6,00,000/- (Rs. Six lakhs only) upon the importer M/s. Sunrays Image Technology Pvt. Ltd. under section 112(a) (i) of the Customs Act, 1962.

29. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

Signed by

Arun Kumar

Date: 11-07-2024 16:12:00

ARUN KUMAR

**ADDITIONAL COMMISSIONER (IMPORT)
CUSTOMS HOUSE, MUNDRA**

F. No. CUS/APR/MISC/5630/2024-Gr 5-6

11-07-2024

To,

**M/s Sunrays Image Technology Pvt. Ltd. (IEC: 1313018449)
B-153 L, Jamnapuri Colony,
Murlipura Scheme, Jaipur,
Rajasthan-302013**

Copy to: - For information and necessary action, if any

- (1) The Deputy/Assistant Commissioner (RRA), Custom House, Mundra
- (2) The Deputy/Assistant Commissioner (TRC), Custom House, Mundra
- (3) The Deputy/Assistant Commissioner (EDI), Custom House, Mundra
- (4) Guard File.

