

	<p style="text-align: center;">प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, मुन्द्रा OFFICE OF THE PRINCIPAL COMMISSIONER, CUSTOM HOUSE, MUNDRA Port User Building (PUB), Mundra (Gujarat – 370421) ई-मेल/ E-Mail: group5-mundra@gov.in</p>	
A	फा. सं./ FILE NO.	CUS/ APR/MISC/8566/2023-Gr 5-6 -O/o Pr Commr-Cus-Mundra
B	मूल आदेश सं. ORDER-IN-ORIGINAL NO.	MCH/ADC/ZDC/252/2025-26
C	द्वारा पारित किया गया PASSED BY	Dipak Zala Additional Commissioner of Customs, Custom House, Mundra
D	आदेश की तिथि DATE OF ORDER	20-09-2025
E	जारी करने की तिथि DATE OF ISSUE	20-09-2025
F	कारण बताओ नोटिस सं. एवं तिथि SCN NUMBER & DATE	CUS/ APR/MISC/8566/2023-Gr 5-6 dated 23.09.2024
G	नोटिसी/पार्टी / आयातक NOTICEE/ PARTY/ IMPORTER	M/s L.G. Electronics India Private Limited Plot No. 51, Udyog Vihar, Surajpur Kasna Road, Greater Noida, U.P. – 201 306
H	डिन/ DIN	20250971MO000072247A

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 अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-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(, चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद 380009”

“The Commissioner of Customs (Appeals), Mundra, 4TH Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009.”

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

Appeal shall be filed within three months 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 -

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न

आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं०-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के सभी मामलों में पालन किया जाना चाहिए।

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

8. 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 (Appeals) 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. L.G. Electronics India Private Limited, Plot No. 51, Udyog Vihar, Surajpur Kasna Road, Greater Noida (U.P.)-201306, having IEC No. 0596063211, (hereinafter referred as 'the importer'), filed Bills of Entry enclosed as Annexure-I for home clearance of goods declared as "Guide:MEA62410801 & PCB Guide:EAX65380001" and classified the goods under CTH-85340000.

2. An analysis of data (ANALYTICS REPORT – 22/2022-23) in respect of Import of goods classified under CTH 85340000 by various importers across all customs stations revealed that certain importers had imported printed circuit board assembly, its parts etc. but classifying/declaring them to be PCBs (Printed circuit board) and paying 0% BCD under notification benefit of 24/2005.

3. The said Importer in the instant case had filed the Bills of Entry as per Annexure-I for home clearance of the goods viz. i.e. "Guide: MEA62410801 & PCB Guide: EAX65380001" under CTH 85340000 of the first schedule of the Customs Tariff Act, 1975. The said Importer discharged the duty by paying 0% BCD under notification benefit of 24/2005.

4. The importer had submitted a letter dated 26.02.2024 (TOC 145-157) in reply to this office's letter of even no. dated 17.08.2023. Vide the said letter the importer has informed that M/s LG Electronics India Pvt. Ltd. is manufacturing PCB Assemblies at their plant in Noida for LG Products. For this they are importing PCB (Bare Board) and other components for manufacturing PCBA through extensive machinery work and technology. The various parts imported in Bill of Entries covered in AR have been explained as below by the importer:

TABLE

Sl. No	Item No	Description	Write-up
1	MEA62410801	Guide	Guide is to provide support to IPM on PCB which is made of PBT (Plastic material). Said item is used on PCB
2	EAX65380001	PCB, Guide	PCB, Guide is a small board which is used over PCB to provide support to Bridge It is made of CEM-1(Glass wool, Cellulose paper bonded with Resin)

5. In case of the two items i.e Guide (MEA62410801) and PCB Guide (EAX65380001), your reply appears to be lacking in details to determine the correct CTH. However, as per the information submitted by your letter, following emerges:

5.1 It appears that the item no. 01 i.e. Guide (MEA62410801) i.e. the guide made of PBT plastic material used to support the IPM on a PCB may be classified under HSN code 39269099, which covers other articles of plastics.

5.2 It appears that the item no. 02 i.e. PCB, Guide (EAX65380001) i.e. small board which is used over PCB to provide support to Bridge, made of CEM-1(Glass wool, Cellulose paper bonded with Resin) also appears to be incorrectly classified and may be classified under CTH 39269099.

PCB vs PCBA: *The main differences between PCB and PCBA are explained below:*

a) The difference between PCB and PCBA is that the PCB is a bare circuit board without any electronic components mounted on it, while in PCBA, the complete board is ready for deployment with all the passive and IC components mounted on the PCB.

b) Relevant section notes and chapter headings: *HSN explanatory notes to CTH 8534 states "In accordance with Note 6 to this Chapter, this heading covers the circuits which are made by forming on an insulating base, by any printing process (conventional printing or embossing, plating-up, etching, etc.), conductor elements (wiring), contacts or other printed components such as inductances, resistors and capacitors ("passive" elements), other than components which can produce, rectify, modulate or amplify electric signals, such as diodes, triodes or other "active" elements. Some basic "blank" circuits may comprise only printed conductor elements generally consisting of thin pattern lines or wafers with, it applicable, connectors or contact devices. Others combine several of the above elements according to a pre-established pattern."*

c) Thus, goods falling under PCBs cannot have any active elements, whereas a PCBA contains active elements. The HSN explanatory notes further states that, individual passive components such as inductances, capacitors and resistors obtained by any printing process are not regarded as printed circuits within the

meaning but are classifiable in their own appropriate headings (e.g. heading 85.04, 85.16, 85.32 or 85.33).

d) Also, circuits on which mechanical elements or electrical components have been mounted connected are not regarded as printed circuits within the meaning of this heading. They generally fall to be classified in accordance with Note 2 to Section XVI, XVII or Note 2 to Chapter 90 as the case may be.

2.1 Illustration for the purpose of clarity in classification: For classify PCBAs or PCB with active/electric/mechanical component, Notes of Section XVI, XVII, XVIII or Notes of the chapter under which final product is to be classified should be referred to. For instance:

"Note 2 to section XVI states that "parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings."

PCBA is the good, which is a part of a final good such as Air conditioner. Thus, PCBA of an air conditioner is to be classified where air conditioner or its parts are classified, as the case may be.

It may be further noted that PCBs fitted with active/electrical/mechanical components but not complete PCBA but solely or principally to be used with air conditioner is to be classified where air conditioner or its parts are classified, as the case may be by virtue of 2(b) of section XVI notes that state "**other parts, if suitable for use solely or principally with a particular kind of machine,** or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate."

2.2 The above analysis is summarized in the below table:

S.No.	Description of goods	CTH	BCD rate
1	Bare/ Blank/ unpopulated PCBs	85340000	0%
2	PCBs only with individual passive components such as inductances, resistors etc.	85.04, 85.16, 85.32 or 85.33	As per BCD rate of respective CTI
3	PCBs only with mixture of passive components such as inductances, resistors etc.	85340000	0%
4	Thick & thin film circuits comprising passive and active elements	8542	As per BCD rate of respective CTI

5	PCBs with active components/mechanical/electrical components and mountings	As per relevant section and chapter notes.	As per BCD rate of respective CTI
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3. *There is a potential risk that an importer may wrongly classify PCBA/similar goods under CTH 85340000 at BCD of 0%, instead of paying BCD at the applicable merit rate as the case may be.*

6. In view of the above, it appears that the subject goods have been mis-classified under heading 85340000, and they should have been classified as under: (a) The item no. 01 in the table no 01, i.e. Guide (MEA62410801) i.e the guide made of PBT plastic material used to support the IPM on a PCB appears to be classified under HSN code 3926.9099, which covers other articles of plastics. (b) The item no. 02 in the table no 01, i.e. PCB,Guide (EAX65380001) i.e small board which is used over PCB to provide support to Bridge, made of CEM-1(Glass wool, Cellulose paper bonded with Resin) also appears to be incorrectly classified and appears to be classified under CTH 3926.9099.

7. In view of the above, it appears that the importer has wrongly claimed a lower BCD rate @ 0% on the import of PCBA or (PCBs with active/electric/mechanical component) by misclassifying them under CTH 85340000.

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

A. Section 46 of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the importer to declare truthfully, all contents in the Bill of Entry. Relevant portion of Section 46 (4) is reproduced below:- "(i) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed".

B. Section 28 (4) of the Customs Act, 1962 provides that "Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of:

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts,

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

C. Section 28 (AA) of Customs Act, 1962 provides interest on delayed payment of duty-

(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below five per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by notification in the Official Gazette from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such refund, as the case may be, so determined: Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

D. Section 114A of the Customs Act, 1962 deals with the penalty by reason of collusion or any willful mis-statement or suppression of facts. The relevant provision is reproduced below:

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 willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-Section (8) of Section 28, shall also be liable to pay a penalty equal to the duty or interest so determined under sub-Section (8) of Section 28, and the interest payable thereon under section 28AA, or the case may be; as determined under sub-Section (8) of Section 28, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty five per cent of the duty or interest, as the case may be, so determined: Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

9. It appears that the importer has willfully mis-stated the facts by wrongly classified the subject goods under the CTH 85340000 and claimed the benefit under notification no 24/2005 and paid 0% BCD.

10. Accordingly, a Show Cause Notice vide F.No. CUS/ APR/MISC/8566/2023-Gr 5-6 dated 23.09.2024 and its corrigendum dated 19.09.2025 were issued to the importer, calling upon them to show cause as to why:

(i) The goods having assessable value of Rs. 23,23,716/- covered in the Bills of Entry as per Annexure-I, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

(ii) The item no. 01 in the table no 01, i.e. Guide (MEA62410801) should not be classified under HSN code 39269099, which covers other articles of plastics.

(iii) The item no. 02 in the table no 01, i.e. PCB,Guide (EAX65380001) should not be classified under CTH 39269099.

(iv) The differential duty worked out to Rs 4,52,126/- after re-assessment in respect of Bills of Entry as per Annexure-I, should not be recovered under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.

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

PERSONAL HEARING AND SUBMISSIONS

11. Notice for Personal Hearing in the matter was issued on 20.05.2025. In response to the notice, the importer vide their reply dated 02.06.2025 stated that the differential duty along with applicable interest has been paid vide Challan No. 1562 dated 18.11.2024 (DD No. 508009 dated 14.11.2024) of an amount of Rs. 7,98,235/- and requested for closure of the SCN. They have also enclosed their earlier submission dated 18.11.2024, wherein they have submitted the following:

" 1. We have examined the subject demand and found that the observation from your good office is correct, so we have no objection to pay the differential duty along with applicable interest rates as per demand notice

2. Demand Draft No 508009 Dated 14.11.2024 with amount INR 7,98,235/- 14.11.2024 has been arranged in the name of A/C COMMISSIONER OF CUSTOMS, MUNDRA with calculation basis as Annexure-A

3. So please check and acknowledge the receipt and close the case."

DISCUSSION AND FINDINGS

12. I have carefully gone through the records of the case and the submissions made by the noticee through their written submissions dated 26.02.2024 and 02.06.2025. They have accepted the Department observation and also requested for closure of the SCN. Thus, I find that the principles of natural justice as provided in Section 122A of the Customs Act 1962 has been complied with, and therefore, I proceed to decide the case on the basis of the documentary evidence available on records. The issues to be decided by me are:

i) Whether the item no. 01 in the table no 01, i.e. Guide (MEA62410801) should be classified under HSN code 39269099, which covers other articles of plastics;

ii) Whether the item no. 02 in the table no 01, i.e. PCB, Guide (EAX65380001) should be classified under CTH 39269099;

iii) Whether the goods covered under the Bills of Entry as per Annexure-I having

assessable value of Rs. 23,23,716/- should be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

iv) Whether the differential duty worked out to Rs 4,52,126/- after re-assessment in respect of Bills of Entry as per Annexure-I, should be recovered under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962;

v) Whether penalty should be imposed upon them under Section 114A of the Customs Act, 1962.

13.1 Regarding the first issue of classification of item MEA62410801 (Guide), I need to examine the nature and composition of this item as described by the importer and determine its correct classification under the Customs Tariff.

13.2 As per the importer's submission dated 26.02.2024, the item MEA62410801 described as "Guide" is made of PBT (Poly Butylene Terephthalate) plastic material and is used to provide support to IPM (Intelligent Power Module) on PCB. Subsequently, in their letter dated 14.11.2024 (received on 18.11.2024), the importer acknowledged that the department's observations are correct and stated they have no objection to paying the differential duty. As per the Customs Tariff classification principles and the General Rules for Interpretation, articles made of plastic materials are classifiable under Chapter 39. Since this item is a guide made entirely of plastic material and serves as a support component rather than having any electronic function, it is correctly classifiable under CTH 39269099 for other articles of plastics, and not under CTH 85340000 which covers printed circuits.

13.3 The importer had classified this item under CTH 85340000, which covers "Printed circuits". However, for classification under CTH 85340000, the goods must be actual printed circuits containing conductive patterns, tracks, or pathways that connect electronic components. The Explanatory Notes to the Harmonized System clarify that printed circuits are characterized by their conductive patterns formed on an insulating base.

13.4 In the present case, the item MEA62410801 is described as a "Guide" made of PBT plastic material used for providing support. It does not contain any conductive patterns, electronic circuits, or pathways. It is purely a mechanical support component made entirely of plastic material without any electronic functionality.

13.5 As per the General Rules for Interpretation of the Harmonized System, goods are to be classified according to their essential character and composition. The essential character of item MEA62410801 is that of a plastic article used for mechanical support purposes. Such articles made of plastic materials fall under Chapter 39 of the Customs Tariff.

13.6 Specifically, CTH 39269099 covers "Other articles of plastics and articles of other materials of headings 39.01 to 39.14 - Other". Since the Guide (MEA62410801)

is made of PBT plastic material and serves as a support component without any electronic function, it is correctly classifiable under CTH 39269099 and not under CTH 85340000.

14.1 Regarding the second issue of classification of item EAX65380001 (PCB Guide), I examine its composition and function as described by the importer.

14.2 As per the importer's submission dated 26.02.2024, the item EAX65380001 described as "PCB Guide" is stated to be a small board made of CEM-1 (Composite Epoxy Material-1) which consists of glass wool and cellulose paper bonded with resin. This item is used over PCB to provide support to Bridge components. Subsequently, in their letter dated 14.11.2024 (received on 18.11.2024), the importer acknowledged that the department's observations are correct and stated they have no objection to paying the differential duty. Despite the nomenclature "PCB Guide", this item is not a printed circuit board in the technical sense as it does not contain printed conductive patterns, tracks, or electronic circuits. The composition of CEM-1 (glass wool and cellulose paper bonded with resin) makes it a composite material primarily consisting of non-metallic materials bonded together, and its function is purely mechanical - to provide support to bridge components - rather than any electronic function.

14.3 The importer had classified this item under CTH 85340000 along with the first item. However, despite the nomenclature "PCB Guide", this item is not a printed circuit board in the technical sense. It does not contain printed conductive patterns, tracks, or electronic circuits.

14.4 The composition of CEM-1 (glass wool and cellulose paper bonded with resin) makes it a composite material primarily consisting of non-metallic materials bonded together. The function described is purely mechanical - to provide support to bridge components - rather than any electronic function.

14.5 While the item contains the word "PCB" in its description, the actual function and composition indicate that it is a support structure made of composite materials. The classification should be based on the actual nature and composition of the goods rather than merely the nomenclature used by the manufacturer.

14.6 Given that this item is composed of composite materials (glass wool, cellulose paper, and resin) and serves a mechanical support function without any electronic circuitry, it does not qualify for classification under CTH 85340000. The appropriate classification for such composite support structures used in electronic assemblies would be under CTH 39269099 as other articles of plastic and composite materials.

14.7 Therefore, I find that both items MEA62410801 (Guide) and EAX65380001 (PCB Guide) should be re-classified from CTH 85340000 to CTH 39269099 based on their actual composition, function and characteristics.

15.1 Regarding the third issue of whether the goods covered under the Bills of

Entry having assessable value of Rs. 23,23,716/- should be held liable for confiscation under Section 111(m) of the Customs Act, 1962, I need to examine the provisions of Section 111(m) and the circumstances of this case.

15.2 Section 111(m) of the Customs Act, 1962 provides for confiscation of "any goods which do not correspond in respect of value, quantity, description 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, or in the case of goods cleared for home consumption, with the bill of entry or the shipping bill, as the case may be".

15.3 In the present case, the importer had declared both items under CTH 85340000 in the Bills of Entry as per Annexure-I and availed the benefit of notification 24/2005 paying 0% BCD. However, as established in above paras, these goods should have been correctly classified under CTH 39269099 as articles of plastics/composite materials, which would attract applicable BCD rates. This mis-classification constitutes goods not corresponding in respect of description and classification with the entry made, thereby falling under the purview of Section 111(m).

15.4 The legal position regarding confiscation under Section 111(m) is that when goods are misdeclared or incorrectly classified in the Bill of Entry, resulting in short levy of duty, such goods become liable for confiscation under this provision. The mis-classification in the present case has resulted in availing of an incorrect exemption notification and consequent short payment of duty. Therefore, I find that the goods are liable to confiscation under Section 111(m) of the Customs Act, 1962.

15.5 Once the goods are held liable for confiscation, the next question before me is whether to allow the release of the impugned goods on Redemption Fine. I find sub-section (1) of Section 125 of the Customs Act, 1962 prescribes that:

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

15.6 Further, I find that the Hon'ble courts in various judicial pronouncements have held that the physical availability of the goods does not have any significance for imposition of redemption fine under Section 125 of the Act. In this regard, I place my reliance on the following judgments:

(i) In case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) regarding imposition of Redemption Fine in absence of goods liable for confiscation, after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc. reported vide 2009 (248) ELT 122

(Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), the Hon'ble Madras High Court held in para 23 of the judgment that "The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

(ii) In the case of Synergy Fertichem Pvt. Ltd. Vs State of Gujarat as reported in 2019(12) TMI 1213, the Hon'ble High Court of Gujarat, relying on the judgement of the Apex Court in the case of Weston Components Ltd. vs. Commissioner of Customs, New Delhi, has observed that "The per-requisite for making an offer of fine under Section 130 of the Act is pursuant to the finding that the goods are liable to be confiscated. In other words, if there is no authorisation for confiscation of such goods, the question of making an offer by the proper officer to pay the "redemption fine", would not arise. Therefore, the basic premise upon which the citadel of Section 130 of the Act rests is that the goods in question are liable to be confiscated under the Act. It, therefore, follows that what is sought to be offered to be redeemed, are the goods, but not the improper conduct of the owner to transport the goods in contravention of the provisions of the Act or the Rules."

It is amply clear from the said section that, where the confiscated goods are not prohibited for import, discretion has been vested in the adjudicating authority to decide the issue on the basis of the facts and circumstances involved. Accordingly, even though the goods are not physically available for confiscation as they have already been cleared for home consumption, I am empowered to impose redemption fine in lieu of confiscation.

16. Regarding the fourth issue, I confirm the differential duty demand pertains to the Bills of Entry as per Annexure-I of Rs. 4,52,126/- along with applicable interest under Section 28AA of the Customs Act, 1962. However, I find that the importer has paid the duty of Rs. 4,52,428/- (comprising BCD+SWS Rs. 3,83,413/- and IGST

Rs. 69,015/-) along with applicable interest of Rs. 2,77,943/- against the Bills of Entry as per Annexure-I vide Challan No. 1562 dated 18.11.2024. I appropriate the same against the duty demand and interest thereon. Since the differential duty and applicable interest have been paid in full, no further recovery under Section 28(4) of the Customs Act, 1962 is required.

17. Regarding the fifth issue, I find that while the importer paid Rs. 7,98,235/- including 15% penalty (Rs. 67,864/-) vide Challan No. 1562 dated 18.11.2024, this payment was made after the 30 days period from SCN dated 23.09.2024. Since the payment was made beyond the statutory 30 days period under Section 28(5), the benefit of concluding proceedings with 15% penalty is not available. The importer is therefore liable for penalty under Section 114A equal to the duty determined. The 15% penalty already paid shall be adjusted against the Section 114A penalty, with the balance amount becoming payable.

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

ORDER

(i) I order to reject the classification of Item No. 01 in the table no 01, i.e. Guide (MEA62410801) under CTH 85340000 and confirm that it is correctly classifiable under CTH 39269099;

(ii) I order to reject the classification of Item No. 02 in the table no 01, i.e. PCB, Guide (EAX65380001) under CTH 85340000 and confirm that it is correctly classifiable under CTH 39269099;

(iii) I order confiscation of the goods covered under the Bills of Entry as per Annexure-I having assessable value of Rs. 23,23,716/- under Section 111(m) of the Customs Act, 1962, However, as the goods have already been cleared for home consumption, I impose a Redemption Fine of **Rs. 2,00,000/-** (Rupees Two Lakhs only) under Section 125 of the Customs Act, 1962, in lieu of confiscation;

(iv) I confirm the duty demand of **Rs. 4,52,126/-** along with applicable interest under Section 28AA of the Customs Act, 1962. However, the importer has paid the duty of Rs. 4,52,428/- (comprising BCD+SWS Rs. 3,83,413/- and IGST Rs. 69,015/-) along with applicable interest of Rs. 2,77,943/- vide Challan No. 1562 dated 18.11.2024. I appropriate the same against the duty demand and interest thereon **in respect of Bills of Entry as per Annexure-I;**

(v) I impose a penalty of **Rs. 4,52,126/-** (Rupees Four Lakh Fifty Two Thousand One Hundred Twenty Six only) under Section 114A of the Customs Act, 1962. The 15% penalty of Rs. 67,864/- already paid by the importer vide Challan No. 1562 dated 18.11.2024 shall be adjusted against this penalty. The importer is eligible for the benefit of reduced penalty of 25% under the first proviso to Section 114A if the balance penalty amount is paid within 30 days of this order.

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

21. The Show Cause Notice No. F.No. CUS/APR/MISC/8566/2023-Gr 5-6 dated 23.09.2024 stands disposed in above terms.

(Dipak Zala)
Additional Commissioner of Customs
Custom House, Mundra

Encl.: Annexure-I

To,

M/s L.G. Electronics India Private Limited
Plot No. 51, Udyog Vihar, Surajpur Kasna Road,
Greater Noida, U.P. – 201 306

Copy to:

1. The Deputy Commissioner, Review Section, Custom House, Mundra
2. The Deputy Commissioner, TRC, Custom House, Mundra
3. The Deputy Commissioner, EDI, Custom House, Mundra
4. Guard File.