



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

Date: 26.12.2025

F.No.	:	CUS/SHED/56/2023-ICD-UMGN-CUS-COMMRTE-AHMEDABAD
Name and Address of the Importer & CHA	:	1. M/s. Vinod Medical Systems Private Limited, 323, Omkar, The Summit Business Bay, 3 rd 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, 6 th Floor, Plot No. 64, Sector-11, CBD Belapur, Navi Mumbai-400614.
Show cause Notice & Date		CUS/SHED/56/2023-ICD-UMGN-CUS-COMMRTE-AHMEDABAD Dt. 07.11.2023
Order – in – Original No.		09/LD/ADC/TUMB/2025-26
DIN		20251271MN0000999DFA
Passed by	:	Lokesh Damor Additional Commissioner, Customs.
Date of Order	:	26.12.2025
Date of Issue	:	26.12.2025

- (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।
i. उक्त अपील की प्रति।
ii. 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 शुल्क टिकट लगा होना चाहिए।
(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 आदेश के विरूद्ध आयुक्त (अपील), सीमाशुल्क,में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्ष जुरमाना के बारेमे विवाद है उसका भुक्तान करके अपील की जा सकती है। ऐसा न करने पर ये अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों के तहत अस्वीकार कर दिया जा सकता है।
(4) An appeal against this order shall lie before the Commissioner of Customs (Appeal) 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” and failing which the appeal is liable to be rejected for non-compliance of the provisions of Section 129 of the Customs Act, 1962.

Sub: Denovo Adjudication arise against OIA No. AHD-CUSTOM-OOO-APP- 1 46 -25-26 DATED 11.07.2025 issued by the Commissioner (Appeals), Customs Commissionerate, Ahmedabad to M/s. Vinod Medical Systems Private Limited, & Others.

BRIEF FACTS OF THE CASE

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. Whereas, 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 misclassification 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 appears 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
(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

2.1 On going through the Item Description declared by the importer in the said BOE as mentioned in the table above, it appears 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 appears that the imported goods i.e. “Inkjet Printing System with its accessories” does not appear 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 appears that the aforesaid goods are 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 appears to be covered under CTH 84433910 attracting BCD Rate @7.5%. On careful reading of the description of the items mentioned under CTH 84433250, it appears that the goods having description "Ink jet printer" attract Nil rate of BCD, whereas, the goods under CTH 84433910 having description "Ink-jet printing machine" attracts BCD Rate @7.5%.

3.1 It is pertinent to mention that in the Bill of Entry, the goods are described as "Printing System". Thereby, it appears 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 appears 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 good appear 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 appears that the aforesaid goods are classifiable under CTH 84433910 attracting BCD @7.5%, SWS @10% of BCD and IGST @18% accordingly. Whereas, it appears that the goods have been mis-classified with an intention to escape payment of BCD and SWS and to short pay IGST resulting in evasion of duties of Customs.

4. From para 2 & 3 above, it appears that the description of the impugned goods declared by the importer/noticee are other than the description of the goods under Customs Tariff Heading 84433250. Therefore, it appears that the impugned goods are not eligible for claiming the benefit of 'Nil' rate of BCD. Instead, the impugned goods appear to be classifiable under CTH 84433910 as PRINTING MACHINE attracting BCD @ 7.5% and SWS @10% of BCD and accordingly, appropriate IGST @ 18%. 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 appears 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 appears that the importer has evaded the payment of BCD and, accordingly, SWS and IGST thereon.

4.1 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% resulting in evasion of Customs duty. By way of such non-payment of BCD intentionally, the Importer appears 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/-.

5. 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 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 sole 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 appears 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 appears 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 appears that this resulted in violation of Section 46 of the Customs Act, 1962.

6. The importer appears 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 appears to be incorrect. Whereas, with the introduction of self- assessment & RMS under the Customs Act, faith is bestowed on the importer, as the practice of routine assessment, concurrent audit has been dispensed with and the importers have 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, it appears 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, appears that they have violated the provisions laid down under Section 17(1) of the Customs Act, 1962 inasmuch it appears 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, appears 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 appears that the non-payment of customs duty amounting to Rs. 5,51,627/-, SWS of Rs. 55,163/- & IGST of Rs. 1,09,222/- appears 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.

7. 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 appears that the said importer has rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Whereas, the goods imported vide the Bills of Entry 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 appears to be liable for confiscation under the provisions of Section 111(m) of the Customs Act,1962.

8. 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 willfully 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.

9. 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 month's time to submit the reply, but the same was not submitted till issuance of the notice. Consequently a SCN was issued to M/s. Vinod Medical Systems Private Limited 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 recovered 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 recovered under Section 28(4) of the Customs Act, 1962;
- (iv) The differential IGST amounting to Rs. 1,09,222/- (Rupees One Lac Nine Thousand Two Hundred Twenty Two only) should not be recovered 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.

10. Consequently, the Adjudicating Authority passed the following order, i.e. impugned order:

- a) He ordered to reject the declared classification of the ,subject goods under Customs Tariff Heading No.84433250 and ordered 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) He ordered 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) He ordered 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;
- d) He ordered 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) He held 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 misclassifying the subject goods, liable to confiscation under Section 111(m) of the Customs Act, 1962. However, he gave 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) He ordered 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) He imposed a penalty of Rs. 7,16,012/- (Rupees Seven Lakh Sixteen

Thousand and TVelve 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-live 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) He imposed 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) He refrained from imposition of penalty under Section 112 Custom Act on M/s. Vinod Medical Systems Private Limited.

11. Being aggrieved with the impugned order, the importer have filed appeals before the Commissioner of Customs (Appeals), Ahmedabad wherein vide Order In Appeal No. AHD-CUSTM-000-APP-146-2025-26 dated 11.07.2025, the matter was remanded back to the adjudicating authority for de novo adjudication with the specific direction to consider and apply the guidance provided in Circular No.11/2008-Customs dated July 01, 2008, along with all other relevant legal provisions, notifications and instructions.

DEFENCE SUBMISSIONS

12. The importer vide their letter dated 11.12.2025 submitted their written submission wherein they interalia stated as under:

- The Show Cause Notice has erred in rejecting the classification of the subject goods under tariff item 8443 3250 and proposing redetermining the same under tariff item 8843 3910. The subject goods are in the nature of Large Format Printers and are appropriately described in the subject Bills of Entry as 'Digital Inkjet Printer'. 'Large Format Printers' are capable of printing in large volumes on large-sized substrates (typically between 24-100 inches) while maintaining high resolution and clarity. It refers to any printing process that can't be handled by standard-size commercial printers, which can generally only handle materials up to 14 inches wide. There is no official measure to define what large format printing is, but any graphic that is at least 24 inches wide can be considered a large format printing product.

Chartered Engineer's Report:

13. The importer enlisted the aid of a Chartered Engineer to establish material particulars regarding the working, functions, available connectivity options and major applications of the goods in the nature of subject goods. The Chartered Engineer in his report dated 23.08.2023, inspected a new machine covered under one invoice no.:GDAVSC2202L002 dtd10.03.2022. It will be to note that the machine so inspected by the Chartered Engineer squarely corresponds to the description and function of the subject goods and is identical in respect of all material particular relevant to the purpose of classification. The relevant remarks from the said report are extracted hereunder –

" Chartered Engineer's Comment:

We have physically inspected the goods imported vide BE No. 8057955 dated 29.03.2023 and invoice no. GDAVSC22021002 dated 10.03.2022. We found the said Capital Goods i.e. C.G. manufactured in the year 2022 and found brand new condition. Model of the machine is GD2000UV with accessories like data cable. media presser. maintenance tank and ink cartridges. Grando GD2000UV is a wide or semi-large-format printer.

This is equipped with two 11600 print heads, 3.5p1 ultra-small ink droplets. 1.6m UV roll to roll printer dedicated for white+colour printing. Scientific head array, high-precision

bottom plate, craftsmanship of quality. It has feature of two layer printing technology for color conversion i.e. Piezoelectric Inkjet with printing width 1600mm (63 in). Interface used is Ethernet. Cooling unit used is water-cooling UV lamp.

Working: Similar to the other printer, the Grando GD2000UV 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. Once the printer is ready, paper is manually fed into the feed tray to start the printing."

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(emphasis added)

14. The issue of classification of Large Format Printers was closely examined vide. Circular No. 11/2008- Customs dated 01.07.2008 (for the brevity, "the Circular") issued by the C.B.E. & C. The rival headings examined in the said circular are 8443 31132 and 8443 39 which are also involved in the present dispute. As per the said Circular, the printers classifiable under heading 8443 32 must satisfy two conditions, firstly, such printers shall not carry out any other function other than printing and secondly, they must be capable of connecting to an ADP machine or network. Whereas printers covered by heading 8443 39 are printers other than those which are connectable to an ADP machine. The relevant paragraphs of the said Circular are extracted hereinbelow -

"3.4 Based on the above details, the classification of Large Format Printers has been examined by the Board. It is felt that Large, Format Printers are primarily Inkjet Printers but are capable of printing larger width, can print on roll of paper or other media and can also print on multiple media. These printers do not have an in-built ADP machine and cannot do any processing by themselves and do not have any independent function sans the use of a computer. They are solely dependent on the ADP machine or network for inputs to carry out the activity of printing. The Large Format Printers are connectable to an ADP machine or to a network by simply attaching a cable and thus satisfy the conditions of connectability enumerated in explanatory notes.

4. Based on the above discussions, it could be concluded that Large Format Printers which satisfy the conditions of connectability as stated above, are to be classified under tariff heading 8443 32 50 as 'Ink Jet printers' and under tariff heading 8443 31 00, if they have more than one function of printing, copying or facsimile transmission.

5. In view of the above, Board hereby clarifies that the appropriate classification of Large Format Printers would be under sub-heading 8443 32, in view of the discussion at para 4.

Accordingly, the Field formations are directed to take necessary action and the pending assessments of LFP imports may be finalized accordingly."

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15. On perusal of the Chartered Engineer's report dated 23.08.2023, it is manifest that the subject goods are not capable of carrying out any other function other than printing. Further, they are also capable of connecting to an Automatic Data processing Machine. As is evident from the Bills of Entries covering the subject goods, these goods are always accompanied by a medium for connecting them to an ADP and hence, imported along with their accessories such as, inter alia, data cable. Therefore, the subject goods satisfy the dual test laid down in para. 3.2 of the CBEC circular regarding connectability to an ADP. Thus, the subject goods are appropriately classifiable under 8443 32 and the said circular is squarely applicable to the present dispute, particularly when the rival headings examined therein are also involved in the present dispute. Accordingly, on combined perusal of the Chartered Engineer's Report dated 23.08.2023 and the CBEC Circular, the said Circular is squarely applicable to the present case and the subject goods are correctly classified under tariff item 8443 3250.

16. The Original Authority has erred in ordering the redetermination of classification of the subject goods under tariff item 8443 3910, i.e., 'Inkjet printing machine'. For this end, in paragraph 19.10 of the impugned order, the Original Authority has also quoted the criteria laid out in the CBEC circular. However, without giving any finding as regards the subject goods fulfilling or failing these criteria, he proceeded to reject the classification adopted by the Importer. Thus, the ordering of redetermination of classification is conspicuously inadequate in its reasons for appreciating the facts and material available on record, and, as such, it deserves to be set aside.

17. On combined perusal of the Chartered Engineer Report dated 23.08.2023 and the CBEC circular, it is evident that the subject goods do not have an in-built ADP machine, cannot do any processing by themselves, and do not have any independent functions without the use of a computer. For appreciating that the subject goods satisfy the conditions of connectability stated in the Circular and merit classification under tariff item 8443 32 50 as 'Ink Jet Printers', the relevant remarks from the Chartered Engineer Report dated 23.08.2023, regarding the working of the subject goods and the criteria set out in the CBEC circular are extracted hereunder.

On page 2 of the C.E. Report dated 24.08.2023

Working: Similar to the other printer, the Grando GD2000W 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. Once the printer is ready, paper is manually fed into the feed tray to start the printing."

Paragraphs 3.3 and 3.4 of the CBEC Circular –

"3.3 The term "connectable to on ADP machine or to a network" for the purpose of sub-headings 8443.31 and 8443.32 has been explained in the Explanatory Notes as follows :

The criterion "capable of connecting to an automatic data processing machine or to a network" denotes that the apparatus comprises all the components necessary for its connection to a network or an automatic data processing machine to be effected simply by attaching a cable. The capability to accept the addition of a component (e.g., a "card") that would then allow the connection of a cable is not sufficient to meet the terms of these sub-headings. Conversely, that the component to which a cable would-be connected is present but inaccessible or otherwise unable to effect a connection (e.g., switches must first be set) is not sufficient to exclude goods from these sub-headings. "

3.4 Based on the above details, the classification of Large Format Printers has been examined by the Board. It is felt that Large Format Printers are primarily Inkjet Printers but are capable of printing larger width, can print on roll of paper or other media and can also print on multiple media. These printers do not have an in-built ADP machine and cannot do any processing by themselves and do not have any independent function sans the use of a computer. They are solely dependent on the ADP machine or network for inputs to carryout the activity of printing. The Large Format Printers are connectable to an ADP machine or to a network by simply attaching a cable and thus satisfy the conditions of connectability enumerated in explanatory notes. "

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18. It is settled law that a Circular issued by the C.B.I.C (formerly known as C.B.E.C) under Section 151A (which is in pari material with Section 37B of the Central Excise Act, 1944) of the Customs Act, 1962, is binding on the Revenue and it cannot raise a contention contrary to a binding circular. The rationale for inserting the said section is to empower the Board to issue orders or instructions to ensure uniformity in the classification of goods or with respect to levy of duty. The need to issue such instructions arises when there is a doubt or ambiguity in relation to those matters. The possibility of varying views being taken by the Customs officials while administering the Act may bring about uncertainty and confusion. In order to avoid the situation, Section 151A was inserted by the Customs (Amendment) Act 80 of 1995. Consequently, the Department is barred from adopting a stand contrary to the instructions issued by the Board. These judicial principles are laid down by series of decisions as noted in the Hon'ble Supreme Court's judgement in the case of Commissioner of Customs, Calcutta v. Indian oil Corporation - 2004 (165) E.L.T. 257 (S.C.). The relevant portion of the judgement is extracted hereinbelow -

11. Despite the categorical language of the clarification by the constitution Bench, the issue was again sought to be raised before a Bench of three Judges in collector of Central Excise, Vadodara Vs. Dhiren chemicals Industries - 2002 (143) E.L.T. 19 where the view of

the constitution Bench regarding the binding nature of circulars issued under Section 378 of the Central Excise Act, 1944 was reiterated after it was drawn to the attention of the court by the Revenue that there were in fact circulars issued by the Central Board of Excise and customs which gave a different interpretation to the phrase as interpreted by the Constitution Bench. The same view has also been taken in *simplex castings Ltd. v. commissioner of customs, Vishakhapatham* [2003 (155) E.L.T. 5 (S.C.) = (2003) 5 SCC 528].

12. The principles laid down by all these decisions are :

- (1) Although a circular is not binding on a Court or an assessee, it is not open to the Revenue to raise the contention that is contrary to a binding circular by the Board. when a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.
- (2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board.
- (3) A show cause notice and demand contrary to existing circulars of the Board, are ab initio bad.
- (4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars."

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This view was reiterated in following judicial determinations –

- a) *Collector of C. Ex., Vadodara v. Dhiren Chemical Industries*, reported as, 2002 (139) E.L.T. 3 (S.C.),
- b) *Commissioner of Customs, Tuticorin v. L.T. Karle & Co.*, reported as, 2007 (207) E.L.T. 358 (Mad.).
- c) *Union of India v. Arviva Industries (I) Ltd.*, reported as, 2007 (20e) E.L.T. 5 (S.C.).
- d) *Magma Industries Ltd. v. Designated Committee Office of Commissioner, CGST* reported as, 2022 (58) G.S.T.L. 302 (Au.)
- e) *Godrej & Boyce Manufacturing Co. Ltd. v. Union of India*, reported as, 2017 (351) E.L.T. 27 (Bom.)

19 Accordingly, a Show cause Notice, issued in breach of an existing Departmental Circular is void ab initio, and an order confirming the action proposed therein is liable to be set aside. Thus, the redetermination of classification of the subject goods in breach of the CBEC Circular No. 11/2008-Customs dated 01.07.2008 is bad in law.

20. In the case of *Aztec Fluids and Machinery Pvt. Ltd.*, reported as, (2024) 14 Centox 174 (Tri.-Ahmd), the revenue sought to change the classification of the Ink Jet Printers from tariff item 84433250 to 84433910 as Ink Jet Printing Machinery. The Importer contended that the only test which required for the purpose of classification under CTH 84433250 is that the printer should be capable of being connected to any automatic data processing machine. Upon considering the HSN Notes and the CBEC Circular No. III/2018 dated 01.07.2008, the Hon'ble Tribunal held that the inkjet printers which are capable of connecting to an automatic data processing machine are correctly classifiable under tariff item 84433250. The impugned order re-classifying the same under 84433910 was found to be erroneous and was set aside. The relevant paragraph of the decision is extracted hereunder –

"6. The assessee have considered rival submissions and find that the custom chapter tariff heading 8443 of the Customs tariff Act, 1975

8443	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				
	<i>- Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442 :</i>				
8443 11 00	-- Off set printing machinery, reel fed	u	7.5%	-	
8443 12 00	-- Offset printing machinery, sheet- fed, office type (using sheets With one side not exceeding 22 cm and the other side not exceeding 36 cm in the unfolded state)	u	7.5%	-	
8443 13 00	-- Other offset printing machinery	u	7.5%	-	
8443 14 00	-- Letterpress printing machinery, reel fed, excluding flexography printing	u	7.5%	-	
8443 15 00	-- Letterpress printing machinery, other than reel fed, excluding flexographic printing	u	7.5%	-	
8443 16 00	-- Flexographic printing machinery	u	7.5%	-	
8443 17 00	-- Gravure printing machinery	u	7.5%	-	
8443 19	-- Other				
8443 19 10	--- Flat bed prianting presses	u	7.5%	-	
8443 19 20	--- Platen printing presses	u	7.5%	-	
8443 19 30	--- Proof presses	u	7.5%	-	
	--- Machinery for printing repetitive word or design or colour:				
8443 19 41	---- On cotton textile	u	7.5%	-	
8443 19 49	---- Other	u	7.5%	-	
8443 19 90	--- Other	u	7.5%	-	
	<i>-- Other printers, copying machines and facsimile machines, whether or not combined :</i>				
8443 31 00	-- Machines which perform two or more of the functions of printing, copying or facsimile transmission, capable of connecting to an automatic data processing machine or to a network	u	7.5%	-	
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%	-	
8443 39 40	--- Other photocopying apparatus incorporating an optical system	u	7.5%	-	
8443 39 50	--- Other photocopying apparatus of contact type				
8443 39 60	--- Thermo-copying apparatus	u	7.5%	-	
8443 39 70	--- Facsimile machine not capable of getting connected to automatic data processing machine	u	7.5%	-	
8443 39 90	--- Other	u	7.5%	-	
	<i>-- Parts and accessories :</i>				
8443 91 00	-- Parts and accessories of printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442	kg.	7.5%	-	
8443 99	-- Other	u	Free	-	
8443 99 10	--- Automatic documents feeders of copying machines	u	Free	-	
8443 99 20	--- Paper feeders of copying machines	u	Free	-	
8443 99 30	--- Sorters of copying machines	u	Free	-	
8443 99 40	--- Other parts of copying machines	u	Free	-	
	--- Parts and accessories of goods of sub-heading 8443 31, 8443 32	u	Free	-	
8443 99 51	--- Ink cartridges, with print head assembly	u	10%	-	
8443 99 52	---- Ink cartridges, without print head assembly	u	10%	-	
8443 99 53	--- Ink spray nozzle	u	10%	-	
8443 99 59	---- Other	u	Free	-	
8443 99 60	--- Parts and accessories of goods of sub-heading 8443 39	u	7.5%	-	
8443 99 90	--- Other	u	7.5%	-	

21. A perusal of the said heading clearly indicates that machines capable of being connected to automatic data processing machines or to a network would be classifiable under CTH 84433210 to 84433290 giving under the double dash entry. The machine not capable of being connected to automatic data processing machines or to network would fall under double dash entry 844339. In the instant case, the Importer have confirmed that the machines are capable of receiving data through USB Port. In these circumstances, they qualify to fall under the double dash entry 844332 and therefore, the classification under double dash entry 844339 has to be ruled out."

(emphasis supplied)

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22. This view was also expressed in the case of ***Monotech Systems Limited v. Commissioner of Customs (AIR), Chennai – 2020 (373) E.L.T. 718 (Tri. – Chennai)*** whereby ‘Large Format Printers’ were held to be correctly classifiable under CTH 8443 32 50 and the Order-in-Appeal upholding the reclassification under CTH 8443 39 10 was found to be erroneous and accordingly was set aside. The relevant portion of the Order is extracted hereinbelow –

“6. The main contention of the department that the goods cannot be described as Inkjet printer and cannot be classified under 8443 32 50 is that it cannot be connected to an automatic data processing machine or net work. The catalogue of the goods furnished by the Importer along with the appeal in page 34 states that the item can be connected to net work by LAN TCP/ IP Cat. 5E and that cable is to be supplied by the customer. The term “connectable to an ADP Machine or to a net work” for the purpose of sub-headings 8443.31 and 8443.32 has been explained in the Explanatory notes which is as under :

“The criterion “capable of connecting to an automatic data processing machine or to a network” denotes that the apparatus comprises all the components necessary for its connection to a network or an automatic data processing machine to be effected simply by attaching a cable The capability to accept the addition of a component (e.g., a “card”) that would then allow the connection of a cable is not sufficient to meet the terms of these sub-headings. Conversely, that the component to which a cable would be connected is present but inaccessible or otherwise unable to effect a connection (e.g., switches must first be set) is not sufficient to exclude goods from these sub-headings.”

7. The Board’s Circular No. 11/2008-Cus., dated 1-7-2008 has also clarified the same. It is stated in the circular that large format printers which satisfy the conditions of connectability as given in HSN Explanatory Notes (as above) are to be classified under Tariff Heading 8443 32 50 as “Inkjet Printers”. So the conclusion arrived by the authorities below that the goods are not Digital Inkjet Printers or that the goods are not capable of being connected to ADP or net work and therefore is not classifiable under 8443 32 50 is against the clarification given by the Board.

8. The Ld. Counsel has also produced the copy of Order-in-Appeal No. 180/2017, dated 14-3-2017 passed by the Commissioner of Customs (Appeals-II), Chennai in the case of P.M. Digital Products, Chennai the goods imported therein were also Digital Inkjet Printers Scodix 1200 vide Bill of Entry dated 7-6-2012. The Importer therein had classified the goods under 8443 32 90. The Department issued show cause notice for reclassification under 8443 32 90. On appeal, the Commissioner (Appeals) after considering the revised HSN Notes of 2012, wherein the criterion for capable of being connected to an automatic ADP machine or to a net work, has held that the goods are correctly classifiable under CTH 8443 32 90.

9. From the discussions made above, after examining the HSN Explanatory Notes and the Board’s circular, we hold that goods are correctly classifiable under CTH 8443 32 50. The order passed reclassifying 8443 39 10 is erroneous and requires to be set aside which we hereby do. The impugned order is set aside. Appeal is allowed with consequential relief, if any, as per law.”

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23. Further, the stance adopted by the importer in respect of classification of the subject goods is vindicated by the Order-in-Appeal No. 420 (Gr.V)/2025 (JNCH)/Appeals)

24. The Show Cause Notice has erred in proposing recovery of differential duty under Section 28(4) of the Act and interest thereon under Section 28AA of the Act. The invocation of Section 28(4) of the Act is fundamentally misconceived. The said provision authorises raising duty modum and where escapement of demand is attributable to wilful misstatement, collusion or suppression of facts on part of the assessee. However, in the first instance, the department is required to demonstrate that the escapement of duty has occurred by reason of collusion, any wilful misstatement, or suppression of facts.
25. It is trite law that the mere omission or merely classifying the goods/services under the incorrect head does not amount to fraud, collusion or wilful statement or suppression of facts, and therefore the extended period of limitation is not invocable. The Hon'ble Supreme Court in the case of in **Nizam Sugar Factory**, reported as, **1995 (78) ELT 401**, has categorically laid down that where facts are known to both the parties, the omission by one to do what he might have done, and not that he must have done, does not render it suppression. Thus, when all the facts are before the department as in the present case then there would be no wilful mis-declaration or wilful suppression of facts with a view to evade payment of duty. The relevant para from the judgement in *Nizam Sugar Factory (supra)* is quoted below: -
- "4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."*
26. The Show Cause Notice has erred in alleging misclassification with an intent to avail ineligible benefit to the notification. The show cause notice disregards the fact that the goods covered by the Bill of Entry No. 9094076 dt. 03.12.2018 were subjected to examination even when the Bill of Entry was filed under RMS (self-assessment). In light of the detailed examination order dated 03.12.2018, it cannot be disputed that the subject goods were not examined at the time of clearance. The proper officer granted the clearance of goods after satisfying himself of the ITC (HS) code i.e., 8443 3250 and eligibility of the goods to benefit under the said notification.
27. The Importer imported goods of the same description from two different Custom Stations, Custom House JNCH and Tumb ICD. It is evident that the said BoE were filed after the Bill of Entry dated 20.07.2018. Since, the benefit of exemption was extended to the goods at JNCH, the importer entertained

bona fide belief that the impugned goods, bearing the same description, were also entitled to benefit of the said exemption notification.

28. In the case of ***Dr. Rai Memorial Cancer Institute v. Commissioner of Customs (Chennai-VIII)***, reported as, **2022 (381) E.L.T. 540 (Tri.-Mad)**, the Importer made self-assessment and filed the Bill of Entry in EDI system and the subject goods were opened for examination and forwarded for assessment by the proper officer. It was held that in such cases, it could not be contended that there was self-assessment and deliberate misclassification. Accordingly, the Hon'ble Tribunal vacated the demand raised by the show cause notice by invoking the extended period of limitation alleging misclassification. The relevant paragraphs of the decision are extracted hereunder –

“10. We find that the show cause notice alleges that the assessments initially were made by the Importer-importer by wrongly claiming the exemption notification and mis-declaring the classification of the goods and therefore extended period is rightly invocable. However, it is a fact that they have filed Bill of Entry on line. However, ongoing through the records of the case, it is evident that the departmental officers have examined and assessed the goods and only after their satisfaction the goods were released and payment was allowed availing the exemption. Therefore, it cannot be said that the assessment initially was done by the importer himself. On going through Bill of Entry No. 4771227, dated 31-3-2016, we find that there is endorsement to the effect by the Inspector Shri Joseph Xavier Roberts to the effect as under :

“OPENED AND EXAMINED ALL THE PKGS.,

CONTENTS-VARIAN-MEDICAL LINEAR ACCELARATOR-1764;

VFD DESCRIPTION WRT IMPORT DOCS., MAKE IS VARIAN; YOM IS 2014-08; ALONG WITH SPARES AS PER THE PACKING LIST, PROCHURES & CLEAR PHOTOGRAPHS, FORWARDED TO GR. PL., F.C. BE.”

12. Ongoing through the above factual position in the case, we find that the argument of the department that this is a case of self-assessment is factually incorrect. We find that though the Importer-importer has filed the Bill of Entry in the EDI system goods were subjected to open examination and the proper officer has examined the goods and forwarded it to the concerned group for assessment. Under such circumstances, it cannot be said that the Bills of Entry were subjected to self-assessment. This being the case, it is not open for the department to issue show cause notice invoking longer period and that too alleging suppression, mis-declaration etc. with intent to evade payment of duty.”

24. This view was also expressed in the case of ***L.G. Balakrishnan & Bros. v. Commissioner of Customs (Import)***, reported as, **(2024) 17 Centax 97 (Tri.-Mad.)**. The Hon'ble Tribunal held that where department had classified goods based on documents submitted at time of import, and declaration in Bills of Entry was as per invoice, charge of misdeclaration and suppression of fact failed and department was directed to limit demand to normal period; mere claim of exemption or classification does not amount to mis-declaration or suppression of facts, especially as department had onus of assessment and importer had submitted necessary documents to facilitate same.

CONTENTIONS ON EXTENDED PERIOD OF LIMITATION UNDER SECTION 28(4)

25. Without prejudice to the above and alternatively, it is submitted that the duty demand is made for a period that is even beyond the extended period of limitation available under Section 28(4) of the Act. The Importer submitted in his additional submissions dated 04.06.2024, that the Bill of Entry No. 7293733 dt. 20.07.2018 against which the Show Cause Notice had been issued under Section 28(4) read of the Act, is dated 17.07.2023, whereas the SCN had been served on the Importer on 25.07.2023 as may be seen from the Speed Post Track Record (attached to their reply dt. 13.10.2023) for the letter No. EM188820734IN. Though the SCN is dated 17.07.2023, it was received by the Importer on 25.07.2023. Since the Bill of Entry is dt. 20.07.2018 the SCN has been served even beyond the extended time limit of five years provided under Section 28(4) of the Act. Thus, on this ground alone the Show Cause Notice raising the duty demand, *inter alia*, and the impugned order confirming the same is liable to be set aside.

Burden of Proof Not Discharged

26. The Show Cause notice dated 17.07.2023, did not discharge the burden to demonstrate that the disputed escapement of duty had been by reason of collusion, wilful mis-statement or any suppression of facts. It is a cardinal postulate of law that the burden of proving any form of *mala fide* lies on the shoulders of the one alleging it. This view was reiterated by the Hon'ble Supreme Court in the case of *Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur (S.C.)* reported in *2013 (288) E.L.T. 161 (S.C.)*.

Misclassification not tantamount to Misdeclaration

27. The Hon'ble Tribunal in the case of *M/s. Sirthai Superware India Ltd.*, reported as, *2020 (371) E.L.T. 324 (Tri. – Mumbai)*, observed that by giving correct description on documents relating to import clearance, the burden of making correct declaration on the Bill of Entry is discharged by the Importers. Any error in classification or exemption claimed on Bill of Entry cannot be misdeclaration with the intention to evade payment of duty. Moreover, the show cause notice overlooks the fact that even after 8.4.2011, the self-assessment done by the importer under Section 17(1) is not conclusive and final but is subject to verification by the proper officer under Section 1(2), and if the proper officer finds that the self-assessment is incorrect, the proper officer has to re-assess the goods under Section 17(4). The very fact that in the present case, the proper officer accepted the self-assessment and did not carry out the re-assessment under Section 17(4) itself establishes that even the proper officer held the view that the classification done by the Importer was correct.

28. The show cause notice has adverted to Public Notice no. 42/2010 dated 07.04.2010 issued by the Chief Commissioner's Office, Mumbai Zone-II, which deals with information to be furnished by importers/exporters for the purpose of assessment. The said public notice directs importers and their CHAs to ensure that accurate, specific and complete description is given for the correct classification, valuation and assessment of goods. It is not disputed that any substantive particular regarding the subject goods was not correctly described in the Bill of Entry, and the adopted classification and description were always available to the department to dispute. Further, Rule 11 of the Foreign Trade (Development and

Regulation) Rules, 1993 (for brevity, “**the FTDR**”), read with FTDR Amendment Rules, 2015, does not require mentioning of ITC (HS) Code of the goods to be imported. Rule 11 of the FTDR has been reproduced hereunder –

Rule - 11, Foreign Trade (Regulation) Rules, 1993

[Declaration as to value, quantity and quality of imported goods or services or technology.

“11. On the importation into, or exportation out of, any customs ports of any goods or goods connected with services or technology, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quantity, quality and description of such goods or goods connected with services or technology to the best of his knowledge and belief and in case of exportation of goods or services or technology, certify that the quality and specification of the goods or goods connected with services or technology as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods or goods connected with services or technology are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.]”

On perusal of Rule 11 of the FTDR, it is evident that it does not cast an obligation on the importer to specify the classification of goods on importation. The declaration envisaged under the said rule is restricted to the value, description, and quantity of the subject goods and, it is not disputed that these particulars were not stated correctly. Hence, suppression of facts cannot be alleged to raise demand by invoking extended period of limitation under Section 28(4) of the Act.

CONTENTIONS ON PENALTY UNDER SECTION 114A

29. The Show Cause Notice has erred in proposing redemption fine on the subject goods alleging misclassification. To buttress this contention, reliance was placed on the judicial decision in the case of ***Visteon Automotive Systems Limited***, reported as, **2018 (9) GSTL 142 (Mad.)**. This case is distinguishable on facts and is not applicable to the present case. In the case of Visteon Automotive Systems Ltd. (*ut supra*), the Importer Company voluntarily paid duty and interest on discovering that goods covered by certain invoices were cleared without filing Bill of Entry and without payment of duty. The Hon’ble Madras High Court in *Visteon Automotive (ut supra)* held that penalty under Section 114A is unwarranted since importer had no intention to evade duty. However, since the dutiable goods escaped payment of duty at the time of clearance, confiscation of the goods under Section 111 of the Act, was authorised. It was further held that the payment of redemption fine prevents the goods from being confiscated.

30. In the present case, the confiscation is ordered for misclassification of the subject goods. In the case of ***M/s. Sirthai Superware India Ltd.***, reported as, **2020 (371) E.L.T. 324 (Tri. – Mumbai)**, the Hon’ble Tribunal observed that by giving correct description on documents relating to import clearance, burden of making correct declaration on the Bill of Entry is discharged by the Importers. Any error in classification or exemption claimed on Bill of Entry cannot be misdeclaration with the intention to evade payment of duty. This view was observed in the case of ***Lewek Altair v. Commissioner of Customs***, reported as **2019 (366) E.L.T. 318 (Tri. - Hyd.)**, and was affirmed by the Hon’ble Supreme Court in

Commissioner of Customs v. Lewek Altair, reported as, **2019 (367) E.L.T. A328 (S.C.)**. It is settled law that even if assessee lays claim to a wrong tariff item or an ineligible exemption notification, such claims do not make his goods liable for confiscation for misdeclaration and him liable for penalty. This view was followed in following judicial determinations -

- a) *Aureole Inspects Pvt. Ltd. v. Principal Commissioner of Customs*, reported as, (2023) 11 Centax 211 (Tri.-Del)
- b) *Midas Fertchem Impex Ltd.* - (2023) 4 Centax 73 (Tri.-Del)
- c) *L.G. Electronics India Pvt. Ltd.* - (2024) 15 Centax 201 (Tri.-Del)

31. Alternatively, and without prejudice to the above, it is submitted that it is settled law that confiscation of goods cannot be ordered unless the department has the physical stock of goods, or the goods had been cleared provisionally or released under bond and bank guarantee. In the case of ***Commissioner of Customs (Import), ACC v. AIR India Ltd.*** reported in **2023 (386) E.L.T. 236 (Bom.)**, the Hon'ble Bombay High Court upheld this principle. The issue came up for discussion before the Larger Bench of the Hon'ble Tribunal in case of ***Shiv Kripa Ispat Pvt. Ltd. Vs. Commissioner***, reported as, **2009 (235) E.L.T. 623 (Tri.-LB)**. The Hon'ble Tribunal examined various orders/judgements of the Hon'ble Tribunal/High Court/ Supreme Court and came to the conclusion that the goods cannot be confiscated in the absence of the goods which have been already released by the customs authority to the importer. Similar view was held again by the Larger Bench of the Tribunal in case of ***M/s. Bhagyanagar Metals Ltd. and Others Vs. Commissioner of Central Excise***, reported as, **2016 – TIOL-454-CESTAT-HYD-LB**. Therefore, the subject goods cannot be held liable to confiscation.

32. The Show Cause Notice has erred in proposing penalty on the Importer under Section 114 A of the Act. In the case of ***Daxen Agritech India Pvt. Ltd. v. Commissioner of Customs***, reported as, **(2024) 20 Centax 467 (Tri.-Del.)**, the Hon'ble Tribunal held that the criterion for imposition of penalty under Section 114A of Customs Act, 1962 and invocation of extended period of limitation under Section 28(4), being same, imposition of penalty under Section said Section could not be justified if extended period of limitation was held not invocable in absence of any wilful suppression, misstatement of facts or misdeclaration.

33. It is cardinal principle of law that in disputes of classification penalty is not imposable. It is settled law that disputes arising out of classification are essentially questions of law and not merely statements of fact warranting penalty under Section 114A, *inter alia*. In the case of ***Northern Plastic Ltd. v. Collector of Customs and Central Excise*** reported in **1998 (101) E.L.T. 549 (S.C.)**, the Hon'ble Supreme Court upheld this principle. In the case of ***Commissioner of Customs, Bangalore v. A. Mahesh Raja*** reported in **2006 (19) E.L.T. 261 (Kar.)**, the Hon'ble Karnataka High Court held that there is a vast and considerable distinction between cases of misclassification of goods and misdeclaration of goods. A misclassification of goods will only result in duty liability being at a different rate in terms of entry under which it is classified, whereas misdeclaration can be a situation of suppression, distortion and misrepresentation. In a situation of misclassification, only goods are

disclosed or declared but goods are not properly classified for the purposes of determination of rate of duty, whereas in a case of misdeclaration, goods might not have been declared correctly at all, in the sense description is not of the actual goods also quantity may vary and mischief being deliberate and designed to avoid payment of customs duty. In case of misclassification, it may be *bona fide* case of wrong classification as the importer or the person clearing the goods may not be fully conversant with the Schedule to the Act. Thus, the penalty imposed on the Importer under Section 114A of the Act is liable to be set aside.

34. That, the averments made above are mutually exclusive in the alternative and without prejudice to one another.

35. That, the importer craves leave of the Hon'ble Adjudicating Authority to add, amend, alter, and improve the grounds at the time or before the personal hearing.

36. In light of the foregoing, They further requested to:-

- a. Hold that the subject goods are correctly classifiable under CTH 8443 32 50 as Inkjet Printers, in terms of CBEC Circular No. 11/2008-Cus dated 01.07.2008;
- b. Set aside the proposed reclassification under CTH 8443 39 10, demand of differential duty of Rs. 7,16,012/- under Section 28, interest under Section 28AA, confiscation under Section 111(m), redemption fine under Section 125, and penalty under Section 114A;
- c. Hold the Show Cause Notice dated 07.11.2023 as bad in law for contravening the binding CBEC Circular;
- d. Grant any other relief as deemed fit and proper in the facts and circumstances of the case.

PERSONAL HEARING

37. Personal Hearing was held on physical mode on 11.12.2025 as requested by the assessee which was attended by their Advocate Shri Priyamkar Mishra, Advocate and Shree Aditya Tipathi, Advocate on behalf of M/s. Vinod Medical Systems Pvt Ltd., wherein they reiterated their defence submission submitted during PH dated 11.12.2025 and also referred to Circular No. 11/2008-Cus dated 01.07.2008. Further they requested to decide the matter on merits.

DISCUSSION AND FINDINGS

38. The present denovo proceeding is initiated in pursuance to the Order In Appeal No. OIA No. AHD-CUSTOM-OOO-APP-146 -25-26 DATED 11.07.2025 issued by the Commissioner (Appeals), Customs Commissionerate arising out of Order In Original No. 01/AR/ADC/Tumb/2024-25 dated 26.04.2024, in case of M/s. Vinod Medical Systems Private Limited, & Others. The relevant Para of the aforesaid OIA is re-produced as follows :

- (i) The impugned Order-in-Original No. 01/AR/ADC/Tumb/2024-25 dated 26.04.2024, is set aside.
- (ii) The matter is remanded back to the Additional Commissioner of Customs, ICD-Tumb (Adjudicating Authority), for a de novo adjudication with the specific direction to consider and apply the guidance provided in Circular

No. 11/2008-Customs dated July 01, 2008, along with all other relevant legal provisions, notifications, and instructions.

The appeal filed by M/s. Vinod Medical Systems Pvt. Ltd. is hereby allowed by way of remand.

39. The main contention in the matter is whether the imported goods fall under CTH 84433250 or CTH 84433910. Therefore, the main issues to be decided in present case are whether the impugned order classifying impugned goods under CTH 84433910 confiscating the goods under Section 111(m) and 111(o), imposing redemption fine under Section 125, confirming duty along with interest under Section 28 and imposing penalty under Section 112(a), 114(A) and 114 AA of the Customs Act, 1962 on the importer and imposing penalty under Section 117 of the Customs Act, 1962 on the CHA, in the fact and circumstance of the case, is legal and proper or otherwise.

40. Accordingly, on the basis of combined perusal of the Chartered Engineer's Report dated 23.08.2023 and the CBEC Circular No. 11/2008-Customs dated July 01, 2008, along with all other relevant legal provisions, notifications, and instructions, I find that the said Circular is squarely applicable to the present case and the subject goods are correctly classified under tariff item 8443 3250. I also find that a similar issue has also been decided in a similar matter vide OIA No 420 (Gr.V)/2025 (JNCH)/Appeals dated 28.03.2025 on the similar dispute on the importer M/s. Vinod Medical Systems Private Limited registered at B 1 / 2; Sai Nagar Near Railway Crossing, Raipur, Chhattisgarh 492009 , in which Commissioner (A)' JNCH, Nhava Sheva' order in favor of the importer was accepted by the department on 30.06.2025 .

41. In view of my findings in the above mentioned paras, I pass the following order:-

ORDER

- (a) I hereby uphold the declared classification of the subject goods under (Customs Tariff Heading No. 8443 3250) imported by M/s. Vinod Medical Systems Pvt. Ltd in the Bills of Entries as detailed in the Show Cause Notice under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
- (b) I drop the demand of BCD, SWS & IGST, as proposed in Show Cause Notice under the provisions of Section 28(4) of the Customs Act, 1962;
- (c) I do not hold the subject goods liable for confiscation, imported by M/s. Vinod Medical Systems Pvt. Limited through I.C.D. Tumb, as proposed in Show Cause Notice under Section 111(m) of the Customs Act, 1962. Since the goods itself are held as not liable for confiscation hence no question of redemption fine.
- (d) Since the demand itself is dropped the question of interest does not arise.
- (e) Since the demand itself is dropped there is no question of penalty and accordingly I drop the demand of penalty as proposed in Show Cause Notice on M/s. Vinod Medical Systems Pvt. Ltd under Section 112A, 114A and 114AA of the Customs Act, 1962.

- (f) I drop the demand of penalty as proposed in Show Cause Notice on M/s. Buffer Shipping Agency Private Limited under Section 117 of the Customs Act, 1962.

42. 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.

43. The Show Cause Notice No CUS/SHED/56/2023-ICD-UMGN-CUS-COMMRTE-AHMEDABAD Dt. 07.11.2023 is disposed off in above terms.

(Lokesh Damor)
Additional Commissioner

DIN: **20251271MN0000999DFA**

F.No: CUS/SHED/56/2023-ICD-UMGN-CUS-COMMRTE-AHMEDABAD

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.(Kind attention RRA Section)
2. The Deputy Commissioner, ICD Tumb, Tumb.
3. The Deputy Commissioner, TAR, Custom Ahmedabad.
4. The Superintendent Systems, Customs Ahmedabad, with request to upload the subject OIO on official website.
5. Guard File.