



प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद  
सीमाशुल्कभवन, आलइंडीयारेडीऑकेबाजुमे, नवरंगपुरा, अहमदाबाद 380009  
दुरभाष (079) 2754 46 30 फ़ैक्स (079) 2754 23 43

**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD**  
**CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009**  
**PHONE : (079) 2754 46 30 FAX (079) 2754 23 43**

निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फा. सं./F. No.: VIII/10-22/Pr. Commr/O&A/2025-26

**DIN- 20260271MN000051035D**

आदेशकीतारीख /Date of Order :.27.02.2026  
जारीकरनेकीतारीख /Date of Issue :27.02.2026

द्वारापारित :-  
Passed by :-

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

**Order-In-Original No: AHM-CUSTM-000-PR.COMMR-49-2025-26 dated 27.02.2026** in the case of M/S. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat & others..

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

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

---

Sub: Show Cause Notice No. DRI/AZU/INV-5/2010 dated 23.09.2010 issued by the ADG, DRI, Ahmedabad, Ahmedabad to M/S. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat.

**Brief facts of the case:**

Intelligence gathered by DRI, Ahmedabad indicated that M/S. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat (hereinafter referred to as the notice) holding IEC No.0888013043 are willfully evading CVD in respect of Milk Coolers imported by them, by classifying the same under CTI 84342000 as Dairy Machinery and claiming exemption from CVD under Notification No.6/2002-CE (Sr No.293) and Noti.No.6/2006-CE (Sr No. 11). The intelligence further indicated that the said goods viz. Milk Coolers are correctly classifiable under CTH 8418. The milk coolers have the property of cooling the milk or any liquid, at a required temperature and are installed at village milk collection centres to preserve the milk. The intelligence also indicated that prior to October, 2005 M/S, IDMC Ltd were classifying the milk coolers under CTI 84186950 and were paying CVD at the applicable rate.

2. As per the Custom Tariff Milking Machines and Dairy machinery are classifiable under CTH 8434. Notification No.6/2002-CE (Sr. No. 293) and Noti. No 6/2006-CE (Sr No.11) exempts the goods falling under CETH 8434 from the whole of the duty of excise. M/s. IDMC are classifying the milk coolers imported by them under CTH 8434 as dairy machinery and are claiming exemption from CVD under the aforesaid notifications.

3. Based on the aforesaid intelligence, a search was carried out by DRI officers on 15/03/2010 under panchnama at the premise of M/S IDMC Limited, 443-8, GIDC Estate, Vitthal Udyognagar, Anand, Gujarat, in presence of independent panchas and Shri Shankar Iyer, Deputy General Manager (BMC) of M/s. IDMC Ltd. During the course of search, various documents and records were withdrawn for further investigation under panchnama dated 15/03/2010.

4. Statement of Shri K. Shankar Iyer, Deputy General Manager (BMC) of M/s. IDMC Limited, 443-B, GIDC Estate, Vithal Udyog Nagar, District Anand was recorded on 15/03/2010 under Section 108 of the Customs Act, 1962, wherein he inter alia stated that:

(i) he was working as a Deputy General Manager (BMC) with M/s. IDMC Ltd, Vithal Udyognagar, District Anand since 1986; on being asked he stated that he is a M.A by qualification and graduated from Ravishankar University Raipur, Chhattisgarh and has also done his LLB from S.P. University, Anand; that he joined M/s. IDMC Ltd in the year 1986 as a Junior Executive and was looking after Personnel and Administration; that sometime during the year 1990-1991, he started handling the import and export related work; that from 2005, he was promoted as a Deputy General Manager and started heading the Import and Export Section of the company; that he reports directly to the Managing Director of the firm; that till December, 2009 the Managing Director of the company was Shri Mahesh Chandra and since January, 2010 Shri J.P. Gopal is the Managing Director of the company;

(ii) that M/S. IDMC Ltd is engaged in the trading and manufacturing of various Dairy Machineries, Pharmaceutical Machineries, Food processing machineries etc.; that among the dairy machineries they manufacture Tanks, Vessels, Pasteurisers, Homogenisers, milking machines, bulk milk cooling tanks-etc.; that they trade in Bulk Milk Cooling tanks, homogenisers, Brazed Plate Heat Exchangers and deep freezers etc.; that they import plate heat exchangers Bulk Milk Cooling tanks, S.S. Coils, S.S. Plates, Skimming Separators, agitator motor etc.; that their main overseas suppliers are M/s. Ro Ka Industries AS, Denmark, M/s. Westfalia AS Denmark, M/s. Westfalia AS, France, M/s. Sondex AS, Denmark, M/s. Stelzer, Germany etc.;

(iii) that prior to the year 2008 they were not manufacturing Bulk Milk Cooling tanks (BMC) (hereinafter called as BMC in this order) of capacity of more than 2000 Litre and were importing the same mainly from M/S. Westfalia and M/s. Ro Ka Industries that during the year 2006 M/s. Ro Ka Industries was taken over and renamed as M/S. Westfalia Surge Nordic AS; that they were importing bare tanks for Milk Cooling system without refrigeration equipments attached from M/s. Ro Ka Industries and the same were being described in the invoice, packing list as Dairy Machinery - 5000L RKC Bare Milk Cooling System;

(iv) that prior to October, 2005 they were classifying the said goods under Customs Tariff Heading 8418 and paying all duties of customs viz. basic custom duty, CVD, cess etc.; that from about October, 2005 they changed the classification of the said goods under CTI 84342000 describing the goods as Dairy Machinery — 5000L- RKC System for Milk, where the CVD applicable was NIL as per Notification No 06/2002 and paid basic customs duty and the applicable cess: that they claimed exemption from payment of CVD under Noti. No.6/2002-CE dtd.1/3/2002 (Sr. No.293); that for their imports of items as above mentioned till 2008, they continued to claim exemption from CVD under the said notification and later on under Noti. No.6/2006-CE dtd. 1/3/2006 (Sr No. 11); that in some instance they have also paid CVD duty in respect of their imports of BMC; on being asked the reason, he stated that the exemption the BE being assessed so by the Customs at the time of clearance; that since 2008 they stopped importing above said goods as they were manufacturing the same in their works situated in GIDC, Vithal Udyognagar, District Anand;

(v) that they have also imported Homogenisers and Separators claiming classification under CTI 8434200 and claiming exemption from CVD under Noti. No. 6/2006-CE (SR. No. 11);

(vi) On being asked the procedure adopted in respect of their imports, he stated that they get copies of the purchase orders placed with the overseas suppliers from their purchase department and based on this they open letters of credit in favour of the overseas suppliers; that the purchase orders are placed with the overseas suppliers by E-mail as well hard copies being sent by courier; that the purchase orders are sent by email from the account of the purchase department i.e. the email accounts of the Assistant Manager Shri Pankaj Jain and Shri Jignesh Joshi and Shri A.T. Gajjar, Assistant Managers of the purchase department; that he too corresponds directly with the overseas suppliers to work out the modalities for documentation, shipment and delivery; that his email id is [ksiyer@idmc.coop](mailto:ksiyer@idmc.coop) and he uses this email id for corresponding with the overseas suppliers as well as with other departments of their company;

(vii) that they were claiming classification under CTI 84342000 in respect of aforesaid items of bare tanks without condensing units, 'Homogenisers, Separators as the same were being used in milk dairies and therefore, the same were being classified as Dairy Machinery; that Separators are used for the purpose of separating the fat from the milk, that as per the Harmonised System of Nomenclature (HSN) and the chapter note of chapter 84 of the Central Excise Tariff, Separators are classifiable under heading 8421, having perused the HSN, he agrees that Separators are classifiable under heading 8421 and hence the exemption from CVD was wrongly claimed by them on the basis of the supplier invoice; that he accepted that there has been a mistake on their part in the classification of Separators and consequently wrongly claimed exemption from CVD;

(viii) that as per the HSN if the BMC are not fitted with condensers or agitators the same are classifiable as vessels/vats/tanks: that the BMCs are fitted with condensers/cooling devices, the same are classifiable under heading 8418 and if the BMCs are fitted with agitators the same are classifiable under CTI 84342000;

(ix) on being asked whether the BMC imported by them were fitted with cooling equipment, he stated that no cooling equipments were attached with the BMC nor were they accompanied with it and in case fitted, duty was paid or payable; on being asked whether the BMC imported by them were fitted with agitators/stirrers etc. he stated that on going through the records of imports of BMC, there is no mention of the BMC being accompanied with or fitted with the agitator, however, he would confirm once again after going through the individual files;

(x) On being shown an email dtd. 24/10/2005 contained in the file listed at Sr.No.3 of the annexure to panchnama dtd.15/3/2010 he stated that this is an email sent by him from his email id [ksiyer@idmc.coop](mailto:ksiyer@idmc.coop) to Mr. Hanne Nielsen at her email id [hn@so-ka.com](mailto:hn@so-ka.com); that by this email he had instructed her regarding the nomenclature to be used for the future tank Shipments to their company; that he had instructed her to use the nomenclature "DAIRY MACHINERY-SYSTEMS FOR MILK"; that the content of the said email is "If you see the last LC we have used this nomenclature. However, you have shipped the tank using the nomenclature "Milk Cooling Tanks". If

you use Milk Cooling Tank nomenclature, have to pay more customs duties"; that he had asked her if it was possible to change the invoice as well as the bill of lading; on being asked to explain the above said email, he stated that the items imported by them from M/s. Ro Ka Industries did not come with cooling equipment attached to the vessel and therefore, the nomenclature was incorrect and hence he instructed her to change the invoice and bill of lading as per their requirement; on being asked what exactly was the goods shipped, he stated that they were Dairy Machinery 5000L RKC for Milk; on being asked as to what this description of the goods refers to, he stated that this refers to milk tanks; on being specifically asked, whether the goods as described above in the invoice, packing list and bill of entry filed at the time of import contains any word or phrase which remotely refers to a tank or vessel, he answers in the negative and stated that it does no; that he agreed that the BMCs imported by them does not merit classification under CTI 84342000 and CVD is payable on the same;

(xi) In token of the agreement of the duty short paid by them, he presented two at par cheques of Rs 30 Lakhs & Rs 50 Lakhs towards the differential duty arising out of the said mis-declaration in the import of separators and bulk milk cooler tanks respectively:

**4.1** Further, statement of Shri K. Shankar Iyer, Deputy General Manager (BMC) of M/s. IDMC Limited, 443-3, GIDC Estate, Vithal Udhyog Nagar, District Anand was recorded on 18/03/2010 under Section 108 of the Customs Act, 1962, wherein he stated that:

i. he once again stated that they were importing bare tanks for Milk Cooling system without refrigeration equipments attached from M/S. Ro Ka Industries and the same were being described in the invoice, packing list as Dairy Machinery — 5000L RKC Bare Milk Cooling System;

ii. he once again stated that for their imports of items as above mentioned i.e. bare tanks for Milk Cooling till 2008, they continued to claim exemption from CVD under Noti.No,6/2002-CE (SrNo.293) and later on under Noti. 6/2006-CE (Sr. No. 11); that he further, stated that in some instance they have also paid CVD duty in respect of their imports of BMC; that since 2008 they stopped importing above said goods i.e. bare tanks for Milk Cooling as they were manufacturing the same at their works situated in GIDC, Vithal Udyognagar, District Anand;

iii. that they were claiming classification under CTI 84342000 in respect of aforesaid items of bare tanks without condensing units, Homogenisers, Separators as the same were being used in milk dairies and therefore, the same were being classified as Dairy Machinery; that as per the Harmonised System of Nomenclature (HSN) and the chapter note of chapter 84 of the Central Excise Tariff, Separators are classifiable under heading 8421, he stated that having perused the HSN, he agreed that Separators are classifiable under heading 8421 and hence the exemption from CVD was wrongly claimed by the on the basis of the supplier invoice;

iv. on being asked whether the BMC imported by them were fitted with cooling equipment he stated that no cooling equipments were attached with the BMC nor were they accompanied with it and in case fitted, duty was paid or payable; on being asked whether the bare tanks for Milk Cooling imported by them contained evaporators, he stated that they contained evaporator plates and not evaporators;

v. on being shown a Specification for Indent No. 05-06/BC/000106 dtd.28/7/05 contained in the Seized file listed at Sr. No.4 of the panchnama dtd. 15/03/2010 he stated that the indent is prepared by the manufacturing/marketing group and based on the indent Purchase Order is issued to the overseas supplier; that the manufacturing group was previously headed by Shri S. M. Vashisht, Manager and presently by Shri Kuldeep Sisodiya; that it is true that the specifications are in respect of Bulk Milk Cooling tank capacity 5000 litres and at 1(a) it is mentioned as "SS 304 / Insulated cooling tank with evaporator"; that it is true that at 1(g), it is mentioned that "SS Agitator motor housing with hole for agitator, Pl. do not supply motor and agitator";

vi. that against Indent No.05-06/BC/000106 dtd.28/7/05 purchase order No. I/05-06/BC/000260/7389 dtd-2/8/2005 and I/05-06/BC/000281/8112 dtd.16/8/2005 were placed with M/s. Ro Ka Industries AS, Denmark; that the goods of these purchase orders were imported by them under bills of entry no.618131 dated 26/10/2005 and 617629 dtd.6/10/2005;

vii. on being asked, he stated that the goods imported by them under the above two bills of entry were 16 nos. of 5000L RKC Bare Milk Cooling System; that they had classified the above goods under CTI 84342000 and claimed exemption from CVD under Noti. No.6/2002-CE(Sr.No.293): on being asked as to why the goods were being described as 5000L RKC Bare Milk Cooling System and not milk tanks, he stated that the goods are described as per the purchase order received by them from the purchase department; on being further asked as to how in the light of the specification for Indent No.05-06/BC/000106 dtd.28/7/05 wherein the goods are mentioned as Bulk Milk Cooling tank capacity 5000 litres, the goods were being described as 5000L RKC Bare Milk Cooling System, he stated that he is not aware of the same as the purchase orders are prepared by the Purchase department; that the import documents are filed on the basis of the invoice, packing list, bill of lading etc. received from the overseas supplier;

viii. on being further asked as to how the goods were described as bare milk cooling system and classified under CTI 84342000 when the same were without agitator motor or agitator, he stated that the same were fitted with spray ball and lockable manholes and therefore, they were described as bare milk cooling system; on being asked as to how a tank/vessel even with a spray ball and lockable manhole can be described as milk cooling system, he stated that the description used may be inappropriate but the goods imported were bare tanks with spray ball and lockable manhole;

ix. on being shown an email dtd. 15thApril, 2006 sent by him from his email id ksiyer@idmc.coop to Ole Sindberg. os@ro-ka.com contained in the seized file listed at Sr. No.12 of the annexure to panchnama dtd.15/3/2010 he stated that he had informed Mr. Sindberg that the nomenclature of the tanks used by them is "Dairy Machinery" that he had also instructed him to use the word "Dairy Machinery" for supply of tanks even here purchase was not under Letter of Credit (LC); that he had informed him (Mr. Sindberg) that use of the word "Tank" causes customs problems; on being asked to explain the said email stated that the usage of the word Tank caused problems with the same being treated as on dairy goods and therefore, he had asked him (Mr. Sindberg) to use the word Dairy Machine instead of Tank;

x. on being asked regarding his earlier deposition that they have not imported milk tanks with condensing unit, he stated that wherever the condensing units were there, the duty has been paid by them and if it is not paid the same are payable; on being asked whether they have declared milk tanks condensing units whenever they have been imported, he stated that he does not remember at present and he needs to see the bills of entry to state specifically; that two such instance was brought to his notice by the Customs, ICD Ahmedabad and they immediately paid the differential duty;

xi. on being shown invoice no.60652 dtd.16/12/2005 of M/s. Ro Ka Industries AS, Denmark contained in the file listed at Sr. No. 2 of the annexure to panchnama dtd.15/3/2010 he stated that the said invoice is for 01 unit of Dairy Machinery System for Milk 3000L and this was imported vide bill of entry no.620224 dtd.28/1/2006; that they had classified the said goods under CTI 84342000 and claimed exemption from CVD under Noti.No.6/2002-CE (Sr.No.293); that there is no mention of any condensing unit in either the packing list or the invoice on the basis of which the bill of entry was filed;

xii. on being shown a Proforma Invoice No.262 dtd.02/11/2005 of M/s. Ro Ka Industries AS, Denmark contained in the file listed at Sr.No.2 of the annexure to panchnama dtd. 15/3/2010 he stated that as per the said proforma invoice the goods imported by them is 3000L bare milk cooling tank with 2 x 8.5 HP HGZ condensing units for 134A; that this was the same goods which was imported under bill of entry no. 620224 dtd.28/1/2006; that they had wrongly declared the same as Dairy Machinery System for Milk Cap 3000L and wrongly classified it under CTI 84342000

and wrongly availed exemption from CVD under Noti. No.6/2002-CE (Sr.No.293); that they had paid the differential duty in respect of this bill of entry sometime around the 10<sup>th</sup> of March, 2010;

xiii. on being shown Invoice 61729 dtd.14/7/2006 contained in the file listed at Sr.No.7 of the annexure to panchnama dtd. 15/3/2010 he stated that the said invoice is issued by M/s. Westfalia Surge Nordic A/S, Denmark and is in respect of 01 Washing unit valued at Euro 1470; that as per the invoice the said washing unit was shipped in container No. FSCU 944204-4: that his attention has been drawn towards bill of entry no.625382 dtd.21/8/2006 and on being asked, he stated that the said bill of entry was filed in respect of 08 pcs of Dairy Machinery System for milk Cap 5000 ltr which was shipped in container no. FSCU 944204-4; that he agreed that the washing unit was not declared in the bill of entry filed by them: that this has happened because their exim department was not aware of the same and only when the invoice was sent to them by the purchase department for payment they came to know about it; he admitted that they had evaded duty in respect of the said washing unit and he undertakes to pay the applicable duty at the earliest.

**4.2** Statement of Shri Jeevan Akhouri, Assistant General Manager (Accounts) of M/s. IDMC Limited, 124-128, GIDC Estate. Vithal Udhog Nagar, District Anand was recorded on 09/04/2010 under Section 108 of the Customs Act, 1962, wherein he stated that:

i. he is working as an Assistant General Manager (Accounts) With M/s. IDMC Ltd, Vithal Udyognagar, District Anand since Jan' 1997; that he joined M/s. IDMC Ltd in the year 1997 as an Assistant Manager (Account) and was looking after works relating to Accounts from April' 2009; he was promoted as an Assistant General Manager (Accounts); that sometime during the month of October 2009, he started handling the total work of Accounts of the Company, which include Accounts, Finance and Banking work; that besides this he is also handling work relating to Sale Tax & Vat, Income Tax and Central Excise; that he reports directly, to the Managing Director of the firm;

ii. that the documents produced by him vide letter dated 08/04/2010 contains the invoices in respect of the bulk milk coolers which were purchased and sold by them as such; that these invoices pertain to the year 2005-2006 to 2008-2009 and are in respect of the traded bulk milk coolers as mentioned in the balance sheets for the said period;

iii. that their Marketing department procures the order from the prospective buyer; that the said order is then sent to the production department, who decide which equipments/parts of the machinery is to be imported or to be procured indigenously. Accordingly, the production department prepares indent of the items to be imported or procure indigenously and sends the same to the purchase department; that as per the indent the purchase department prepares the purchase order and issues the same to the supplier of the required material and gives a copy of same to the Account department;

iv. that on receipt of material the store department send the material to production department and a copy of bill/invoice is sent to the Accounts department for payment. Accordingly, they process their payment; that in the case of imported material, they open LC against the respective purchase order and after the shipment of material copy of the invoice of the overseas supplier and bill of lading are received by them; that on the basis of the said invoice they make the payment to overseas supplier through LC;

v. that their Accounts department also prepares the sales invoice in respect of orders procured by marketing department; that the said invoices which include Central Excise invoice and trading invoice, are prepared on the basis of the order that trading invoice is issued only for the imported as well indigenious equipments/parts sold by them as such and Central Excise invoice is issued for the equipments/parts manufactured and sold by them;

vi. that as per Schedule 16 of the balance sheet of their company for the financial year 2005-2006, the bulk milk cooling tanks sold by them (traded goods during the

year 2004-2005 was 39 nos. and during 2005-2006 it was 60 nos.; that as per Schedule 14 of the balance sheet for the financial year 2006-2007 the milk cooling tank sold by them (traded goods) during the year 2006-2007 was 83 nos.; that the said schedules to the said balance sheets for the period 2004-2005 to 2006-2007 does not indicate any condensing Units sold by them (Traded Goods); that the said schedules, indicate only sales (traded goods) of 03 Screw Compressor during 2004-2005 and 2005-2006 and 8 Screw Compressors during 2006-2007;

vii. that the production department is headed by Shri Kuldeep Sisodiya and at present no senior officer is posted in the purchase department; that Shri Jignesh Joshi and Shri A.T.Gajjar are Assistant Managers of the purchase department.

**5.** Statement of Shri Kuldeep Singh Sisodia, Senior Executive (Production) of M/s. IDMC Limited 124-128, GIDC Estate, Vithal Udhog Nagar, District Anand was recorded on 12/04/2010 under Section 108 of the Customs Act, 1962, wherein he stated that:

i. he is working as a Senior Executive (Production) with M/s. IDMC Ltd, Vithal Udyognagar, District Anand since July 2008 and holds a Diploma in Fabrication Technology from Sir B.P. Technical Institute, Bhavnagar; that he joined M/s.IDMC Ltd in the year Dec' 1994 as Senior Assistant Grade-II; that at that time their company was importing all type of Bulk Milk Cooling Machine and he was looking after works of installation and commissioning of the same; that in the year 2000-2001 their company started manufacturing of Bulk Milk Cooler having 500L,100L and 2000L and he was shifted to Production Department; that since than he was looking after the activities of manufacturing of Bulk Milk Coolers; that thereafter, he was promoted as Junior Executive and subsequently, on 01/07/2008 he was promoted as Senior Executive (Production);

ii. that the documents produced by him vide letter dated 12/04/2010 contain the invoices in respect of the bulk milk coolers which were purchased and sold by them as such, purchase orders issued by their buyers and purchase orders placed by them to overseas suppliers of Bulk Milk Coolers with the copies of Indent; that these documents pertain to the year 2005-2006 to 2008-2009 and are in respect of the traded bulk milk coolers, as mentioned in the balance sheets for the said period:

iii. that their Marketing department procures the order from the prospective buyers and after receiving order the purchase department prepares an Order Acknowledgment Form which contains all the details of order such as name & address of buyer, description of machine, quantity, rate etc; that the said Order Acknowledgment Form is then sent to the production department and after receiving the same the production department scrutinize the said order and if it for the supply of Bulk Milk Cooler having capacity 2000 L or less then they plan for manufacturing it in their company; that for this purpose they generate an Internet Work Order and get the Bulk Milk Cooler manufactured as per the ordered specification; that Internal Work Order is issued by him;

iv. that in case the order is for the supply of Bulk Milk Cooler having capacity 3000 L and above they check up with their store department they have stock of said capacity cooler and if the stock is available they dispatch it to the buyer; that in case the stock is not available then he prepares an Indent indicating detail description and specification of the Bulk Milk Cooler and gets approval of the Managing Director and after approval the Indent is sent to the purchase department for importing the same; that based on the indent the purchase department prepares the purchase order and issues the same to the overseas supplier; that on receipt of material the store department informs them and accordingly they receive the said Bulk Milk Cooler and dispatch it to their buyer as such;

v. that the purchase order placed with the overseas supplier also contains the relevant Indent Number issued by the production department; that from April 2008 they have started manufacturing of Bulk Milk Coolers having capacity 3000 L and 5000 L;

vi. that the Bulk Milk Cooling Tank consists of Insulate cooling tank with evaporator, Lockable Manhole, Inlet and Outlet for milk, Air vent, spray ball,

adjustable legs and suction & discharge connecting pipes for the refrigerant; that in almost all the cases they have placed the purchase order to overseas supplier for Bulk Milk Cooling Tank consisting of the above said components;

vii. that the evaporator is built inside the inner shell of the tank and is normally about 2/3<sup>rd</sup> of the circumference of the tank; that the evaporator is of a total thickness of 2.8mm wherein the base is of a 2mm plate over which a plate of 0.8mm is laid; that the 0.8 mm plate has spot welded channels for movement of the refrigerant gas through out the evaporator which helps the milk inside the tank to be cooled; that when the refrigerant gas cools the milk inside the tank the evaporator exchanges the heat and the refrigerant gas become hot and the same is again recycled and cooled by the condensing unit; that the milk inside the tank cannot be cooled without the evaporator;

viii. that the bulk milk cooling tanks also have an Agitator and the function of the Agitator is to mix the milk inside the tank in order to maintain uniform cooling; that the bulk milk cooling tanks imported by them did not contain Agitator and the motor for the Agitator; that the Agitator Were prepared at site and the motor for the Agitator was procured by them locally and installed in the Bulk Milk Cooling tanks at the site;

ix. that all most in all the cases the description of item shown in Indents issued by him is "Bulk Milk Cooler" however, in the relevant purchase orders issued by the purchase department the description of item is shown as "Dairy machinery System for milk"; that he is unable to explain the reasons for the same, since the purchase orders have been issued by the purchase department.

**6.** Statement of Shri Deepak Kumar Mohanbhai Bhadania, Assistant Manager (Marketing) of M/S. IDMC Limited, Unit-5, 443-B,GIDC Estate, Vithal Udhog Nagar, District- Anand was recorded on 16/04/2010 under Section 1108 of the Customs Act, 1962, wherein he stated that:

i. that he is working as an Assistant Manager (Marketing with M/s. IDMC Ltd, Vithal Udyognagar, District Anand since 31 March' 2007; that he joined M/s. IDMC Ltd, in the month of May' 2004 as Assistant Executive (Marketing); that since beginning he looking after the marketing activities of Bulk Milk Coolers; that as Assistant Manager (Marketing) he coordinates their company's Regional Office situated at Delhi, Mumbai, Hyderabad, Chennai, Bangalore and Kolkata; that beside, this work relating to enquiry generation, market research, market development, discussion with customers, finalization of orders, execution of orders and payment collection are also done by him; that he has three Senior Executives working under him, who help him in his above responsibilities; that he directly report to Shri S.S. Bhatnagar G.M. (Marketing) who is the head of the Marketing Department of their company;

ii. that the documents produced by him vide letter dated 15/04/2010 contains purchase orders issued by their buyers in respect of Bulk Milk Coolers pertaining to the year 2005-2006 to 2008-2009; that in their Marketing Department they are only having the copies of orders procured from their customers;

iii. that they procure the orders from the prospective buyers that generally the description of the goods in the order is mentioned as 'Order for supply of Bulk Milk Cooler (BMC) which includes installation and commissioning of same; that the said order also contain specification of Bulk Milk Cooler as desired by their customer;

iv. on the basis of said order they prepare an Order Acknowledgment Form, which contains all the necessary details of order such as name & address of buyer, description of machine, quantity, rate etc. alongwith the specification given by their customer; that the said Order Acknowledgment Form is then sent to the production department; that the work of Marketing Department gets over at this stage;

v. after this the production department undertakes the work of manufacturing of the ordered Bulk Milk Cooler as per their plan and when the BMC is ready the production department inform them and accordingly, they inform the stores department about the delivery schedule; that as per the delivery schedule the store department dispatches the goods to their buyer;

vi. that a **Bulk Milk Cooling Tank consists of Insulated tank with evaporator, Lockable Manhole, Inlet and Outlet for milk, Air spray ball, adjustable legs and suction & discharge connecting pipes for the refrigerant; that the Bulk Milk tank is made of inner shell with evaporator, insulation and outer shell and to this tank a refrigerant unit consisting of compressor, condenser, receiver etc., agitator, stabilizer and DG set (if required by the customer), S.S. Pipe & fittings, electric cables are attached at the site during the installation and commissioning of Bulk Milk Cooling Tank; that the refrigeration system consists of the components such as compressor, condenser, fan, receiver, sight glass and thermo static expansion valves connected with the copper pipes; that this unit is connected to the tank with copper pipes; that the refrigerant is charged in the refrigeration system and when switched on, the refrigerant gas is sprayed inside the evaporator pillow plate and **heat transfer takes place between the refrigerant gas and the hot milk present inside the tank through the evaporator plate;** that this heat exchange between the refrigerant and the milk takes the heat of the hot milk and cools the milk gradually: that the hot refrigerant comes out of the evaporator pillow plate and goes to the compressor and the cooling cycles repeat until the desired temperature of the milk is achieved;**

vii. **that the milk inside the tank cannot be cooled without the evaporator;** that the condensing unit is not a built in part of the bulk milk cooling tank but is attached externally at the site of installation, **however, the evaporator is built in to the bulk milk tanks;**

viii. that the bulk milk cooling tanks also have an Agitator and the function of the Agitator is mix the milk inside the tank in order to maintain uniform cooling; **that in respect of the bulk milk tanks sold by them the Agitators are manufactured and fitted to the bulk milk coolers at the site of installation.**

7. Statement of Shri Mahesh Chandra, residing at Flat No. 22, Saachi Residency-II, 6, Shriji Society, Near Manish Chowkdi, Padra Road, Vadodara was recorded on 25/05/2010 under Section 108 of the Customs Act, 1962, wherein he, inter alia stated that:

i. he was working as a Managing Director with M/s. IDMC Ltd, Vithal Udyognagar, District Anand and retired on 31/12/2009; he is Bachelor of Engineering (Chemicals) and Master of Engineering (Design) by qualification and he obtained his Bachelor as well as Masters degree from IIT (Roorkee); that he joined National Dairy Development Board (NDDB) in the year 1973 and during 1978 he was deputed to M/s. IDMC which was part of M/s. Indian Dairy Corporation and his designation was Project Manager, that in the year 1987 M/s. IDC was merged with NDDB and M/S. IDMC was merged with M/S. Hindustan Packaging Limited; that in the year 1992 M/S. IDMC became a 100% owned company of the NDDB:

ii. that he was re-designated as General Manager in the year 1986 and in the year 1992 he was designated as Director in-charge of M/S. IDMC; that in the year 1993 he was re-designated as Managing Director of M/s. IDMC; that as Managing Director of M/s. IDMC he was overall in-charge of the entire operation and was reporting to the Board of Directors of the company;

iii. that M/s. IDMC was initially manufacturing Dairy Machinery viz. milk storage tankers, process equipments — cream storage tanks, cleaning in place (CIP) systems; that subsequently the company started manufacturing other dairy machinery viz pasteurizers, Chillers for milk industry; that they also started project engineering and project execution i.e. manufacturing and installation of dairy equipment and plant for various dairies;

iv. regarding the bulk milk cooling tanks manufactured by M/s. IDMC, he stated that initially they manufactured tanks having capacity of about 1000 litres; that M/s. IDMC was having a technical collaboration with M/s. Ro-Ka Industries, Denmark for manufacture of bulk milk cooling tanks having capacity of up to 2000 litres; that around the year 2008 they started manufacturing bulk milk cooling tanks having capacity of more than 2000 litres; that they manufactured bulk milk cooling tanks having capacity of up to 5000 litres;

v. that the bulk milk cooling tanks mainly consists of a milk tank condensing unit, controls and agitator; that the condensing unit of a bulk milk cooling tanks is always an external part; that the milk tank is different from any other storage tanks to the extent that it consists of an evaporator plate at the bottom of the tank; **that the function of the evaporator is to cool the milk inside the storage tank**; that cool refrigerant gas is passed to the evaporator plate by the condensing unit where the heat of the milk is absorbed by the refrigerant gas through the evaporator plate and the hot refrigerant gas is then re-cycled to the condensing unit which again cools it by compression; **that the evaporator plate is basically a heat exchanger; that the evaporator plate can cool the milk in the storage tank even with the help of chilled water instead refrigerant gas**;

vi. that the function of the agitator is to stir-the milk inside the milk cooling tank so as to improve the heat transfer between the milk and the refrigerant gas or chilled water through the evaporator plate; **that the milk inside the tank cannot be cooled by the condensing unit without the evaporator plate**;

vii. that prior to 2008 the bulk milk cooling tanks of above 2000 litres were imported by them from M/s. Ro-Ka Industries, Denmark which was subsequently brought by M/s. West Falia Surge, Denmark; that they used to bidding the tenders floated by various dairies for supply of milk cooling tanks and on getting the order, they imported the bulk milk-cooling tanks; that some times they also used to import the bulk milk cooling tanks in anticipation of getting orders;

viii. that the Marketing department issued the Indent along with specifications for the required bulk milk cooling tanks to the Purchase department; that based on the Indent, the purchase department negotiated with the overseas suppliers and on finalization of the deal, the same is sent to the Purchase Committee consisting of the Indenting Department, the Head of the Purchase Department, Head of Accounts the Executive Director and the Managing Director; that on approval by the Purchase Committee, the Purchase Department issues a Purchase Order to the overseas supplier and a copy of the purchase order is also sent to the Accounts department, Internal Audit, the Indenting Department and the Import-Export department;

ix. that the Purchase Order is mostly signed by the head of the purchase department and in some cases, the same is signed by him as Managing Director; that he is not aware whether a separate purchase order or proforma invoice is issued by the import-export department to the overseas supplier;

x. on being shown Purchase Order No. I/05-06/BC/000444 dtd.09/11/2005 contained in a File bearing no.3. withdrawn from M/s. IDMC Ltd on 15/3/2010 under a panchnama; he stated that the said purchase order was issued to M/s. Ro Ka Industries, Denmark for supply of 04 Dairy Machinery — 5000 L RKC System for Milk; that RKC is the model name of the overseas supplier and it indicates that the tank is a closed type; that the said goods ordered under the above mentioned purchase order are milk cooling tanks; on being asked as to why the goods are not specifically described as cooling tanks, he stated that he is not aware of the reasons;

xi. on being shown Invoice No. 60334 dtd. 30.9.2005 of M/s. Ro Ka Industries Denmark contained in the said file bearing No.3 he stated that the said invoice is issued to M/s. IDMC Ltd for 04 Dairy Machinery — 5000 L RKC Bare Milk Cooling System on being shown a Packing list of M/s. Ro Ka Industries, Denmark contained in the same file for 04 Dairy Machinery — 5000 L RKC Bare Milk Cooling System Model 1, he stated that the word bare milk cooling and Model 1 have been struck off by hand and the words "FOR MILK" added by hand so that the description reads as Dairy Machinery — 5000 L RKC System for Milk; that he is not able to identify the handwriting or the person who has made the corrections;

xii. on being shown a email dtd.24/10/2005 of Shri K. S. Iyer addressed to one Hanne Nielsen of M/s. RO Ka Industries, Denmark, he stated that the email instructs Ms. Nielsen regarding the nomenclature to be used for the future tank shipments to their company; that Shri Shankar Iyer had instructed her to use the nomenclature "DAIRY MACHINERY SYSTEMS FOR MILK" and also stated in the email that "If you use Milk Cooling Tank nomenclature, they have to pay more customs duties"; that Shri K. Shankar Iyer is the Deputy General Manager heading the Import-Export

department of M/s. IDMC Ltd.; that he is not aware of the said Email; that he denies that the description of the goods was changed as per his instructions;

xiii. on being shown a proforma invoice bearing No. 262 dtd.02/11/2005, contained in a file bearing no. 2, issued by M/s. RO Ka Industries. Denmark for supply of 01 3000 L bare milk cooling tank with 2 X 8.5 HP HGZ 100 condensing units for 134A and separate installation he stated that the said proforma invoice bears his signature and that of Shri K. Shankar Iyer; that the said proforma invoice was for bulk milk cooling tank with condensing unit;

xiv. on being shown an Application & Guarantee for issue of documentary credit dtd.13/12/2005 made to the JTI Bank Ltd, Vallabh Vidyanagar he stated that the said application has been signed by him and Shri K. Shankar Iyer; that in the said application, the goods have been described as Dairy Machinery— System for Milk 3000L;

xv. that he has also been shown a Purchase Order No.5030155 QC dtd.17/10/2005 of M/s. Glaxo Smithkline Consumer Healthcare Ltd, issued to M/s. IDMC for supply of 01 Bulk Milk Cooler with refrigeration control panel, capacity 3000 litres end comprising of twin condensing units with twin compressors suitable for R134A refrigerant and in token of having seen the said document he put his dated signature on the same: that he has been shown bill of entry no.620224 dtd. 28/1/2006 filed for importing the said goods ordered; that the description of the goods in the application for documentary credit as well as in the bill of entry has been deliberately mis-declared;

xvi. that he was shown Schedule I6 of the balance sheet of M/s. IDMC Ltd for the financial year 2005-2006 and Schedule 14 of the balance Sheet for the financial year 2006-2007: that as per schedule 16, the bulk milk cooling tanks sold by them (Traded goods) during the year 2004-2005 was 39 nos.and during 2005-2006 it was 60 nos; that a per schedule 14 the bulk milkcooling tanks sold by them (traded goods) during the year 2006-2007 was 83 nos.; that the traded goods means the goods imported or purchased locally and sold by them without carrying out any manufacturing activity on the said goods;

**8.** Statement of Shri Kalpesh Darji, Full Time Auditor of M/s. Padmavati Agencies Pvt. Ltd., situated at Shaishya Kids Campus, Opp. Aryavrat IV, Lane Opp: YMCA Club, S.G. Highway, Ahmedabad recorded on 03/08/2010 under Section 108 of customs Act, 1962 wherein he stated that;

i. he is by qualification and profession a Chartered Accountant and practicing in the firm name of M/s. VKJD & Associates 808, Span Trade Centre Paldi. Ahmedabad; that after qualifying CA in the year 2005 he started working in M/S. Padmavati Agencies Pvt. Ltd., Ahmedabad; that M/s. Padmavati Agencies Pvt. Ltd., is engaged in trading of duty free transferable licences such as Duty Entitlement Pass Book (DEPB), Vishesh Krishi Gram Udyog Yojana (VKGUY), Focus Product Scheme (FPS), Focus Market Scheme (FMS) etc.; that beside, this M/s. Padmavati Agencies Pvt. Ltd., is also engaged into import consultation, that they had provided consulting services to some of their customers such as M/s. Gujarat Cooperative Milk Marketing Federation Ltd., (GCMMFL), Anand M/s. R.V. Denim & Exports, Ahmedabad, M/s. Kensvela Golf, Ahmedabad etc.; that for M/s. GCMMFL they are still providing them consulting services in respect of their imports; that M/s. GCMMFL is a company having seven dairies located in State of Gujarat; that he was shown the printout of some emails retrieved from his laptop which was seized by the officers of DRI from the office premises of M/s. Padmavati Agencies Pvt. Ltd., Shaishya Kids Campus, Opp. YMCA Club, S.G. Highway, Ahmedabad under panchnama dated 21.04.2010; that he has seen all the printouts of the emails shown to him and explains the said emails as under:

- ❖ Print out of e-mail dated 06.11.2007 from K S Iyer (Dy. General Manager, IDMC Ltd.) to Mukesh Dave; that in this mail K S Iyer referred to the Homogeniser system which was to be cleared under Target Plus and asked the details of their (M/s. GCMMF) CHA so that they could give the job to CHA, provided he (CHA) assured in writing that he would definitely gat it clear under 8434;

- ❖ Print out of e-mail dated 06.11.2007 from Mukesh Dave to K S Iyer (Dy. General Manager, IDMC Ltd.) with a copy to his e-mail id kalpesh@grouppathani.com; that this mail is regarding clearance of machine for butter wrapping as dairy machine; that vide this mail Mukesh Dave informed K S Iyer that M/s. Group Gathani, Navragpura, Ahmedabad is their CHA and name of Shri Dharmesh Gathani/himself as contact persons; that he (Mukesh Dave) also informed that they would definitely try their level best to clear the consignment under 8434;
- ❖ Print out of e-mail dated 06.11.2007 from Mukesh Dave to K S Iyer (Dy. General Manager, IDMC Ltd.) with a copy to his e-mail id kalpesh@grouppathani.com; that this mail is regarding clearance of machine for butter wrapping as dairy machine; that vide this mail Mukesh Dave informed K S Iyer that M/s. Group Gathani, Navragpura, Ahmedabad is their CHA and name of Shri Dharmesh Gathani/himself as contact persons; that he (Mukesh Dave) also informed that they would definitely try their level best to clear the consignment under 8434;
- ❖ Print out of e-mail dated 06.11.2007 from K S Iyer to Mukesh Dave with a copy to his e-mail id kalpesh@grouppathani.com; that vide this mail K S Iyer enquired from Mukesh Dave whether they would be able to clear the machine for butter wrapping as dairy machine under 84.34, that he (K S Iyer) further informed Mukesh Dave that they would send them a copy of invoice, get YES from them and then only he was going to award the job to them.
- ❖ Print out of e-mail 12.11.2007 from K. S. Iyer to Mukesh Dave with copy to his mail id kalpesh@grouppathani.com; and attaching his mail dtd. 07.11.2007 sent to Mukesh Dave id (mukeshdave@amul.coop); that in this mail Shri K. S. Iyer has made some observation in red, in his Kaplesh's) instruction/suggestion given vide his mail dated 07.11.2007.
- ❖ in his mail dtd.07.11.2007, they had informed Mukesh Dave that after studying the invoice it was possible to clear consignment under 84.34 subject to following changes in the documents. (i). Change the Tariff No. mentioned in invoice from 84.22 to 84.34, (ii) Mention on top of invoice "Dairy Machinery" that K. S. Iyer (in red) remarked that he would try and ask the supplier to redo the invoice and send it by courier and that we would have to wait and see their reaction;
- ❖ in his mail dtd. 07.11.2007, he informed Dave that they needed two declaration/technical write up from Mehsana and IDMC (foreign supplier) that the import item is to be used in dairy production as dairy machinery; that K. S. Iyer (in red) had remarked that this was not be a problem;
- ❖ in his mail dtd. 07.11.2007, he also inform that a catalogue showing use of the machinery as dairy machinery was required and in response K. S. Iyer (in red) had remarked that it was not possible, as the suppliers have standard catalogue and will not create a new one just for them;
- ❖ Print out of e-mail dated 12.11.2007 from Mukesh Dave to Dharmesh, dharmesh@grouppathani.com, and to him kalpesh@grouppathani.com requesting to inform whether a catalogue showing use to machine in diary-in addition to any other industry would help and asked their (Padmavati Agencies) opinion.
- ❖ Print out of e-mail dated 13.11.2007 from K. S. Iyer to Mukesh Dave with the copy to his mail id kalpesh@grouppathani.com; that the said mail was also sent to Mr. Satvik with a direction to refer the earlier mails and kindly get them the write up accordingly; in the said mail, Shri K. S. Iyer informed Mukesh Dave that the New/revised invoice with the Dairy Machinery inscription and the HS 84.34.20.00 had come over email and he was ready to send the shipping documents to their (GCMMFL) CHA; that he (K. S. Iyer) also informed that he intended to proceed in the matter in the following ways:

- ❖ Prepare the technical write up as requested and attach.
- ❖ To get the letter from Mehsana and have it sent to them.
- ❖ He would (K. S. Iyer) get the HSS agreement made out and send it to Mehsana for signature.
- ❖ When the original invoice arrives, he (K. S. Iyer) would have it bank attested, and then send the original BL and invoice to the CHA.
- ❖ Since the catalogue specific to 84.34 would not be available the CHA has to work only on the write up given by them and Mehsana.

(ii) On being asked to explain the contents of the above emails, he stated that M/s. IDMC Ltd wanted to clear their goods as Dairy Machinery, however, as per the invoice forwarded to them it was seen that the goods were shown under tariff heading 84.22 and therefore, the same could not be cleared as Dairy Machinery; that they had therefore, suggested that the supplier's invoice be revised to show the tariff heading as 84.34 which is the tariff heading for Dairy Machinery and accordingly Shri K. S. Iyer had informed them by email that he would get the classification changed in the supplier's invoice and subsequently, he got it changed from 84.22 to 84.34; that he is not aware about the Harmonised System of Nomenclature (HSN) and neither he is aware whether the goods i.e. Butter Wrapping Machine is covered by CTH 84.34; that he had only given suggestion to Shri K. S. Iyer that for getting the goods cleared as Dairy Machinery the tariff heading was required to be shown as 84.34.

**9.** Statement of Shri K. Shankar Iyer, Deputy General Manager (BMC) of M/s. IDMC Limited, 443-B, GIDC Estate, Vithal Udhog Nagar, District Anand Was recorded on 06/08/2010 under Section 108 of the Customs Act, 1962, wherein he inter alia, stated that;

(i) he has been shown printout of an email dtd. 06/11/2007 of Shri Mukesh Dave to him with copies to [kalpesh@groupgathani.com](mailto:kalpesh@groupgathani.com), [dharmesh@groupgathani.com](mailto:dharmesh@groupgathani.com) and one JAYEN and stated that by the said email Shri Mukesh Dave of M/s. GCMML had informed him the details of their Custom House Agents; that this email was in response to his email dtd.6/11/2007 by which he had enquired with Shri Mukesh Dave the details of their CHA so that they could give them the job of clearance, provided the CHA assured in writing the they would definitely get the goods cleared under 84.34; that Shri Mukesh Dave had in this context informed him that their CHA would try their level best to clear the consignment under CTH 8434;

(ii) he has been shown printout of his email dtd.6/11/2007 to Mukesh Dave at his email ID [mukeshdave@amul.coop](mailto:mukeshdave@amul.coop) with copies to [dharmesh@groupgathani.com](mailto:dharmesh@groupgathani.com) and stated that by the said email he had informed that he would first talk to their CHA i.e. M/s. Group Gathani to find out whether they would clear the goods i.e. Butter Wrapping Machine under CTH 8434; that he had further informed that if the CHA was tentative, they would not give the job to them;

(iii) he has been shown printout of his email dtd.12/11/2007 sent to Shri Mukesh Dave at his email [idmukeshdave@amul.coop](mailto:idmukeshdave@amul.coop) with copies to Shri S. S. Bhatnagar, Shri Kumar Satvik and Shri Kalpesh Darji at his email id [kelpesh@groupgathani.com](mailto:kelpesh@groupgathani.com) and stated that Shri Kalpesh Darji had informed certain issues to Shri Mukesh Dave vide email dtd.7/11/2007 and which was forwarded to him by Shri Mukesh Dave on 12/11/2007; that in his email Shri Kalpesh Darji had informed that the clearance of Butter Wrapping Machine under CTH 8434 was possible subject to some changes i.e. 1) In the invoice the Tariff No. should be changed from 84.22 to 84.34 and 2) It should be mentioned at the top of the invoice "dairy machinery";

(iv) he further stated that in response to this, he had informed that he would ask the supplier to redo the invoice and send it to him by courier, that he had also informed that it was not possible to get a catalogue showing use of the machine as dairy machinery as the supplier has a standard catalogue and would not create a new one just for them; that Shri Kalpesh had further asked them to get the place of delivery changed from ICD to JNPT to which he had informed that they would get a letter from the supplier for this change;

(v) he has been shown his email dtd.13/11/2007 sent to Shri Mukesh Dave at his email ID mukeshdave@amul.coop with copies to Shri S. S. Bhatnagar, Shri Kumar Satvik, Shri Kalpesh Darji at his email id kalpesh@qroupqathani.com and Shri N. Zaveri and stated that by the said email he had informed that the new/revised invoice with the Dairy Machinery inscription and the HS 84.34.20.00 had come over email and he was ready to send the documents to the CHA; that he had further informed that as a catalogue specific to CTH 8434 was not available; the CHA had to work with the write up given by them and Mehesana Dairy.

**10.** Further statement of Shri K. Shankar Iyer, Deputy General Manager (BMC) of M/S. IDMC Limited, 443-B, GIDC Estate, Vithal Udhog Nagar, District Anand was recorded on 20/08/2010 under Section 108 of the Customs Act, 1962, wherein he, inter alia stated that:

- (i) that he produces copies of sale invoice no. 07-08/P2/086449 dtd. 29.03.2008, 08-09/P2/912015 dtd. 10.05.2008, 08-09/P5/922293 dtd. 06.11.2008 and 08-09/P5/922396 dtd. 06.02.2009 in respect of goods imported vide bill of entry No. 931985 dated 28.07.2008, 750646 dated 16.01.2009 and 670563 dated 16.01.2008;
- (ii) that vide invoice no. 07-08/P2/086449 dtd. 29.03.2008, they have sold 2 No's of 'Tetra Centri' and vide invoice no. 08-09/P2/912015 dtd. 10.05.2008 they had sold 1 'Separator' which were imported vide Bill of Entry No. 670563 dated 16.01.2008; that the description of the said goods were shown in the said BE were Self Cleaning Separator 'Tetra Centri';
- (iii) that vide invoice no. 08-09/P5/922293 dtd. 06.11.2008, they have sold 2 no's of 'Tetra Centri', which were imported vide BE No. 931985 dated 28.07.2008; that the description of the said goods were shown in the said BE 'Tetra Centri Self Cleaning Separator';
- (iv) that vide invoice no. 08-09/P5/922396 dtd. 06.02.2009, they have sold 1 no of 'Centrifuges Tri Purpose Self Cleaning Type', which was imported vide BE No. 750646 dated 16.01.2009 under description 'Milk Skimming Separator';
- (v) that the imported and sold goods are the same but the description shown in the sale invoices is as per their customer's purchase order, therefore, there are difference in the description in their sale invoices and Bill of Entries;
- (vi) that vide Bill of entry No.633390 dated 05.05.2007 they have imported total 6 No's of Evaporator Plate 2 & 3 KL', which are components of Bulk Milk Cooling Machine and it is very difficult to identify in which Bulk Milk Cooling Machines they used, therefore, he is unable to produce their sale invoices or any other sale details;
- (vii) that he has been shown the printouts of some emails retrieved under panchnama dtd. 23.06.2010 from the laptop which was seized by the officers of DRI from the office premises of M/s. Padmavati Agencies Pvt. Ltd., Ahmedabad under panchnama dated 21.04.2010;
- (viii) that he has been shown printout of an email dtd 13.11.2007 of Shri R A Modi from his id [ramodi@mehsanaunion.coop](mailto:ramodi@mehsanaunion.coop) to Shri Mukesh Dave at his email ID [mukeshdave@amul.coop](mailto:mukeshdave@amul.coop) and he states that by the said email Shri R. A. Modi, Dy. GM (F&A), Mehsana union had forwarded a draft letter address to the Asstt. Commissioner of Customs alongwith the technical specifications and technical data of the Butter Wrapping Machine to Shri Mukesh Dave of M/s. GCMMFL; that in the said technical data of the Butter Wrapping Machine it is tried to show the use of the machine as dairy machinery so that it can be cleared under CTH 8434;
- (ix) that he has been shown printout of an email dtd. 14.11.2007 of Shri Kumar Satvik to him at his mail id [ksiyer@idmc.coop](mailto:ksiyer@idmc.coop) and he states that by the said email Shri Kumar Satvik, Assistant Manager, Dairy & Allied Group, M/s. IDMC Ltd. had sent technical write up for Butter packing Machine of Mehsana; that the said technical write up had been sent by him to Shri Mukesh Dave at his email ID [mukeshdave@amul.coop](mailto:mukeshdave@amul.coop) with a request to send the same to Mehsana Dairy and get an appropriate write up from them; that he also informed him that he was awaiting the

revised invoice; that subsequently, the said technical write up had been sent to Mukesh Dave at his email ID [mukeshdave@amul.coop](mailto:mukeshdave@amul.coop) to Shri R A Modi at his id [ramodi@mehsanaunion.coop](mailto:ramodi@mehsanaunion.coop) with copies to Shri Dharmesh and Shri Kalpesh Darji at their email id [dharmesh@groupgathani.com](mailto:dharmesh@groupgathani.com) and [kalpesh@groupgathani.com](mailto:kalpesh@groupgathani.com) respectively;

(x) that he has been shown printout of his email dtd.28.11.2007 to Shri Mukesh Dave at his email ID [mukeshdave@amul.coop](mailto:mukeshdave@amul.coop) with copies to [dharmesh@groupgathani.com](mailto:dharmesh@groupgathani.com) and [kalpesh@groupgathani.com](mailto:kalpesh@groupgathani.com) and he states that by the said email he had informed Shri Dharmeshbhai that he (dharmesh) is acting as their CHA for clearance of Butter Wrapping Machine as Dairy Machine for Mehsana Dairy and asked him about the status of clearance of the goods as the same had already been delayed on account to the documentation adjustments to be made for facilitating them clearance under 8434.

**10.1** Another statement of Shri K. Shankar Iyer, Deputy General Manager (BMC) M/s. IDMC Limited, 443-B, GIDC Estate, Vithal Udhyog Nagar, District Anand was recorded on 09/09/2010 under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated that;

- he was shown a proforma invoice bearing No. 262 dated 02/11/2005, contained in a file bearing no.2, issued by M/s. RO Ka Industries; Denmark for supply of 01 3000 L bare milk cooling tank with 2 X 8.5 HP HGZ 100 condensing units for 134A and separate installation, in this regard he stated that the said proforma invoice bears his signature and that of Shri Mahesh Chandra, who was Managing Director of M/S IDMC at that time; that the said proforma invoice was for bulk milk cooling tank with condensing unit;
- on being shown an Application & Guarantee for issue of documentary credit dtd.13/12/2005 made to the UTI Bank Ltd, Vallabh Vidyanagar, he stated that the said application has been signed by him and Shri Mahesh Chandra; that in the said application, the goods have been described as Dairy Machinery - System for Milk 3000L;
- on being shown a Purchase Order No. 5030155 QC dtd.17/10/2005 of M/s. Glaxo Smith Kline Consumer Healthcare Ltd, issued to M/s. IDMC for supply of 01 Bulk Milk Cooler with refrigeration control panel, capacity 3000 litres and comprising of twin condensing units with twin compressors suitable for R134A refrigerant and bill of entry no. 620224 dtd. 28/1/2006 filed for importing the said goods, he stated that the description of the goods in the application for documentary credit as well as in the bill of entry has been mis-declared; that the description of the goods in the bill of entry has been mis-declared to avail exemption from payment of CVD under Noti. No.6/2002-CE dtd. 1/3/2002 as amended;
- on being shown Bills of Entry No. 614454 dtd. 02/05/2005 and No. 617648 dtd. 07/10/2005 contained in the seized file listed at Sr. No. 27 and 24 respectively of the panchnama dtd.15/3/2010 he stated that vide BE No. 614454 dtd 02/05/2005 and No. 617648 dtd. 07/10/2005, they had imported "Dairy Machinery 5000 L RKC Milk Cooling Tank" and "RKC, 3000 L Milk Cooling Tank" respectively by classifying the said goods under Customs Tariff Heading 84186950 and paid all duties of customs viz. basic custom duty, CVD, cess etc.; on being specifically, asked why from about October, 2005 they have changed the classification of the said goods under CTH 84342000 describing the goods "Dairy Machinery System for Milk Cap.3000L/4000L/5000L", he stated that description and Customs Tariff Heading of the said goods were changed to avail exemption from payment of CVD under Noti. No-6/2002-CE dtd.1/3/2002 as amended;
- on being shown Invoice No. 60334 dtd.30.9.2005 of M/s. RO Ka Industries, Denmark, Bill of Lading No. BLSIND-OC dtd.16/10/2005 and a Packing list of M/s. Ro Ka Industries, Denmark contained in the file bearing No.3, he stated that the said invoice and packing list were issued to M/s. IDMC Ltd for "04 Dairy Machinery -- 5000 L RKC Bare Milk Cooling System" and said BL for "04 Milk Cooling Tank Parts", however, in the said invoice and packing list the "Bare

Milk Cooling and Model 1" have been struck off by hand and the words "FOR MILK" added by hand so that the description reads as "Dairy Machinery 5000 L RKC System for Milk"; that similarly, in the said BL words "Milk Cooling Tank Parts" have been struck off by hand and the words "Systems For Milk 5000 L RKC" added by hand; that he is not able to identify the handwriting or the person who has made the corrections;

- that he had instructed their overseas supplier through his email dtd. 24/10/2005 to use the nomenclature "DAIRY MACHINERY - SYSTEMS FOR MILK"; on being shown another Invoice No. 60334 dtd. 30.9.2005 of M/s. RO Ka Industries, Denmark and Bill of Lading No. BLSIND-0091 dtd.16/10/2005 contained in the same file, he stated that these are the same documents wherein the nomenclature was changed and mentioned as "DAIRY MACHINERY - SYSTEMS FOR MILK" by their overseas suppliers as per his instruction; that the description of the said goods were changed to avail exemption from payment of CVD under Noti. No.6/2002-CE dtd. 1/3/2002 as amended.

11. M/S. IDMC Ltd, Anand had in the course of the investigations admitted that the bulk milk cooling tanks and Milk/Cream Separators were wrongly classified and that the benefit of exemption from CVD was wrongly claimed by them. They had accordingly made voluntary payment of differential duty of Customs amounting to Rs.50,00,000/-(Cheque No. 264036 dtd.15/03/2010) vide TR6 Challan No. 832 dtd.16/03/2010 towards the bulk milk cooling tanks and Rs. 30,00,000/-(Cheque No.264035 dtd.15/3/2010) vide Challan dtd. 15/3/2010 towards Separators. Further, M/s. IDMC Ltd, Anand had also paid an amount of Rs.8,82,530/- along with interest amounting to Rs. 5,55,286/- to Customs, ICD, Ahmedabad vide TR6 challan no.792/2010 dtd.10/03/2010 in respect of the bulk milk cooling tanks imported vide bills of entry no.617629 dtd.06/10/2005 and 620224 dtd.28/01/2006.

12. The Bulk Milk Coolers (BMC) imported by M/s. IDMC Ltd, by resorting to mis-declaration and mis-classification were sold to various firms and installed at different village milk collection centers and as such it was not practically feasible to seize them. As regards the Separators imported by M/s. IDMC Ltd by resorting to mis-declaration and mis-classification, the same were sold to M/s. Mother Dairy Fruit And Vegetable Private Limited, Unit-Pilkhuwa Dairy, Pilkhuwa, Ghaziabad, M/s. Rohtak District Co-operative Milk Producers Union Ltd and M/s. Banas Dairy, Palanpur. These 06 Separators valued at Rs. 5,91,12,166/-(market value) were placed under seizure on 14/09/2010, 21/09/2010 and 15/09/2010 under proper panchnama, as detailed below, under the reasonable belief that the same are liable for confiscation under the provision of Section 111(m) of the Customs Act, 1962.

S.No.	Place of Seizure	Quantity	Market Value (Rs.)
1	M/s. Mother Dairy Fruit & Vegetable Pvt Ltd, Unit-Pilkhuwa Dairy, 36 KM Stone, Hapur Road, Pilkhuwa, Ghaziabad	04	3,29,32,794.00
2	M/S Banaskantha Dist. Co-op. Milk Producers Union Ltd., (Banas Dairy), Palanpur, Gujarat	01	1,25,46,085.00
3	M/s.Rohtak District Co-operative Milk Producers Union Ltd, A/c Rohtak Dairy Expansion Project, Rohtak	01	1,36,33,287.00
	TOTAL	06	5,91,12,166.00

### 13. LEGAL PROVISIONS:

#### A. The Foreign Trade (Development and Regulation) Act, 1992 :

(i) Section 11 (1). **Contravention of provisions of this Act, rules, orders and foreign trade policy.** No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

## **B. Foreign Trade (Regulation) Rules, 1993**

**(i) Rule 11. Declaration as to value and quality of imported goods.** - On the importation into, or exportation out of, any customs ports of any goods, 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, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods 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 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.

**(ii) Rule 14. Prohibition regarding making, signing of any declaration, statement or documents.**- (1) No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a licence or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.

(2) No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence or importing or exporting any goods.

### **(C) Customs Act, 1962**

**(i) Section 2(39) "smuggling",** in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;

**(ii) Section 28- Notice for payment of duties, interest etc.**- (1) when any duty has not been levied or has been short levied or erroneously refunded, or when any interest payable has not been paid, part-paid or erroneously refunded, the proper officer may within six month from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short levied or part 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:

Provided that where any duty has not been levied or has been short-levied or the interest has not been charged 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 by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years" were substituted.

**(iii) Section 28AB(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) of section 28, shall, in addition to the duty, be liable to pay interest at such rate, as is for the time being fixed by the Board, from the first day of the month, succeeding the month in which the duty ought to have been paid under this Act till the date of payment of such duty.

**(iv) Section 46: The importer of any goods, other than goods intended for transit or (1) transshipment, shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing [in such form and manner as may be prescribed] :**

**[Provided** that the [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically [on the customs automated system], allow an entry to be presented in any other manner :

**Provided further that]** if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without

warehousing the same.

(4) The importer while presenting a bill of entry shall at the foot thereof 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].

(v) **Section 111 - Confiscation of improperly imported goods, etc.-** The following goods brought from the place outside India shall be liable for confiscation-

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

(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];

(vi) **Section 112- Penalty for improper importation of goods, etc-Any person-**

who, in relation to any goods, does or omits to do any act (a) which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

who acquires possession of or is in any way concerned in (b) carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, .....

(vii) **Section 114A - Penalty for short levy or non levy of duty in certain cases:-**

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has [xxx] been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined.

**D. Notification No. 6/2002-Ce dated 01/03/2002, as amended:**

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (3) of the Table below or specified in column (3) of the said Table read with the concerned List appended hereto, as the case may be, and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), specified in the corresponding entry in column (2) of the said Table,

(a) from so much of the duty of excise specified thereon under the First Schedule (hereinafter referred to as the First Schedule) to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table; and

(b) from so much of the Special duty of excise leviable thereon under the Second Schedule (hereinafter referred to as the Second Schedule) to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table,

subject to the relevant conditions specified in the Annexure to this notification, and referred to in the corresponding entry in column (6) of the said Table :

Provided that nothing contained in this notification shall apply to goods falling under sub-heading No. 3605.10 against S. Nos. 65, 66, 67 and 68 of the said Table on or after the 1st day of April, 2002 :

Provided further that nothing contained in this notification shall apply to the goods specified against S. Nos. 193, 195, 199 and 200 of the said Table on or after the 1st day of March, 2005.

Explanation. - For the purposes of this notification, the rates specified in columns (4) and (5) of the said Table are ad valorem rates, unless otherwise specified :-

Explanation. - For the purposes of this notification, the rates specified in columns (4) and (5) of the said Table are ad valorem rates, unless otherwise specified :-

**Table**

S. No.	Chapter or heading No. or sub-heading No.	Description of goods	Rate under the First Schedule	Rate under the Second Schedule	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
293	94.34	All Goods	Nil	-	-

**Notification No. 6/2006-CE dated 01/03/2006, as amended:**

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table given below read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions specified in the Annexure to this notification, and condition number of which is referred to in the corresponding entry in column (5) of the Table aforesaid:

Provided that nothing contained in this notification shall apply to goods specified against S. No. 10 of the said Table on or after the 1st day of May, 2007.

Explanation. - For the purposes of this notification, the rates specified in columns (4) of the said Table are *ad valorem* rates, unless otherwise specified.

**TABLE**

S. No.	Chapter or heading No. or sub-heading No.	Description of goods	Rate under the First Schedule	Rate under the Second Schedule	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
11	94.34	All Goods	Nil	-	-

**DISCUSSION OF THE EVIDENCES**

**14.** From the investigations conducted and evidences on record and as discussed above, it is evident that M/s. IDMC Limited have imported Bulk Milk Coding Tanks (BMC), Evaporator Plates and Separators. These goods are dealt with separately.

**14.1** The BMC as is evident from the statements of the various person is used for cooling milk to the desired temperature and storing the same. The BMC are primarily used by the village milk collection centers for collecting and storing milk before the same is further transported to the Milk Dairies. M/s. IDMC Ltd have during the period from October, 2005 to January, 2008 imported BMC claiming classification under CTH 84.34 as Dairy Machinery. M/s. IDMC have imported the BMC by describing them as

'bare milk cooling system' and claimed the same to be classifiable as Dairy Machinery on the ground that the same are specifically designed for storage of milk and are fitted with spray ball and lockable manholes. It is relevant to refer to the statement dtd.25/5/2010 of Shri Mahesh Chandra, the former Managing Director of M/s. IDMC Ltd wherein he explained briefly the bulk milk cooling tanks, its components and the functioning of the BMC. Shri Mahesh Chandra had stated that the bulk milk cooling tanks mainly consist of a milk tank, condensing unit, controls and agitator and that the condensing unit is always as external part. Shri Mahesh Chandra further stated that the milk tank is different from any other storage tanks to the extent that it consists of an evaporator plate at the bottom of the tank and that the function of the evaporator is to cool the milk inside the storage tank.

**14.2.** At this stage it is relevant to refer to the Harmonized System of Nomenclature Explanatory Notes to Chapter 84.34 which covers Milking Machines and Dairy Machinery. The relevant part of the explanatory notes of chapter 84.34, as in force at the relevant time, is as under:-

"In the machines of larger capacity, the various components are usually separate. A variable number of milking pails may be connected to the vacuum pump unit by, piping. Certain types have no milk pails the milk passing directly from the teat-cups to the cooling apparatus or storage tanks along a pipe-line, generally fixed.

When presented together, the various component of such machines are classified in this heading as constituting a functional unit within the meaning of Note 4 to Section XVI(see the General Explanatory Note to that Section). However, apparatus and appliances which do not contribute directly to the milking function (filters, cooling devices, storage tanks, apparatus for cleaning the teat-cups and pipe-lines, etc.) are not classified in this heading but in their appropriate headings".

Further, as per the HSN, 8434

"The majority of machines for processing milk depend essentially on the principle of heat exchange and are therefore, excluded (heading 84.19) e.g. apparatus for pasteurization, stassanisation or sterilization, apparatus for condensing or drying milk, **milk coolers**".

"The heading further excludes:-

(a) Refrigerating appliances (whether or not specially designed for cooling or keeping milk) and milk cooling vats, incorporating an evaporator of a refrigerating unit (heading 84.18)".

**14.3** From the HSN Explanatory Notes in respect of chapter 84.34, as mentioned above it is clear that the cooling devices, storage tanks as well those machines which essentially depend on the principle of heat exchange are excluded from the purview of Chapter 84.34. In fact the HSN specifically classifies the machines functioning on the principle of heat exchange under chapter 84.19. More importantly the HSN specifically excludes refrigerating appliances and milk cooling vats, incorporating an evaporator of a refrigerating unit from the purview of chapter 84.34 and classifies them under chapter 84.18.

**14.4** 14.4 The bulk milk cooling tanks imported by M/s. IDMC Ltd are required to be examined in the light of the HSN explanatory notes. It is seen from the specification to the indent issued by M/s. IDMC and under which the BMC were imported by them that the BMC imported were all fitted with evaporator and is mentioned in the indents at 1(a) as "SS 304/Insulated cooling tank with evaporator". Further, Shri Mahesh Chandra, the former Managing Director of M/s. IDMC Ltd, Shri Kuldeep Singh Sisodia, Senior Executive (Production) of M/s. IDMC Limited and Shri Deepakkumar Mohanbhai Bhadania, Assistant Manager (Marketing) M/s. IDMC Limited have in their statements recorded under Section 108 of the Customs Act, 1962 stated that the bulk milk cooling tanks imported sold by them were fitted with evaporator. These persons have also admitted that the milk inside the tank cannot be cooled without the evaporator. Shri Mahesh Chandra has also stated that the condensing unit is always

an external part of the bulk milk cooling tanks. This is in consonance with phrase used in the HSN Explanatory notes incorporating an evaporator of a refrigerating unit'.

**14.5** In view of the above fact that the BMC imported by M/s. IDMC Ltd were all fitted with evaporator, the same are excluded from Chapter 84.34 and appears to be correctly classifiable under Chapter 84.18 in terms of the HSN explanatory notes.

**14.6** It also appeared that the Bulk milk cooling tanks imported by M/s. IDMC Ltd are neither fitted with any Agitator, Agitator Motor, Stirrer etc, Further Shri Mahesh Chandra, the former Managing Director of M/s. IDMC Ltd, Shri Kuldeep Singh Sisodia, Senior Executive (Production) of M/s. IDMC Limited and Shri Deepakkumar Mohanbhai Bhadania, Assistant Manager (Marketing) M/s. IDMC Limited have in their statements recorded under Section 108 of the Customs Act, 1962 stated that the bulk milk cooling tanks imported were not fitted with either Agitator or Agitator Motor. The Agitator was manufactured at site and fitted to the bulk milk cooling tanks along with the Agitator Motor. Therefore, even on this count they are excluded from the purview of chapter 84.34 and appeared to be classifiable under chapter 84.18 as the same are fitted with evaporator.

**14.7** The fact that M/s. IDMC Ltd had imported bulk milk cooling tanks and not bare tanks is also evidenced from the details contained in their balance sheets for the period 2005-2006 and 2006-2007. As per Schedule 16 of the balance sheet of M/s. IDMC Ltd for the financial year 2005-2006 they had during 2004-2005 sold 39 bulk milk cooling tanks and during 2005-2006 they had sold 60 bulk milk cooling tanks. Further, as per Schedule 14 of the balance sheet of M/s. IDMC Ltd for the financial year 2006-2007 they had sold 83 bulk milk cooling tanks during the year 2006-2007). Shri Mahesh Chandra, the former Managing Director had in his statement dtd.25/05/2010 stated that the traded goods means the goods imported or purchased locally and sold by them without carrying out any manufacturing activity on the said goods. What this implies is that the bulk milk cooling tanks shown as traded goods in the balance sheets of M/s. IDMC Ltd are those which have been purchased and sold by them as such. This is indicative of the fact that the goods imported by them by under the description of "DAIRY MACHINERY - SYSTEMS FOR MILK" are nothing but bulk milk cooling tanks.

**14.8** In view of the above facts and evidences it appeared that M/s. IDMC Ltd had imported bulk milk cooling tanks which are correctly classifiable under chapter 84.18. However, they had deliberately mis-declared them as Dairy Machinery —System for Milk at the time of import and thereby mis-classified them under chapter 84.34 in order to evade payment of CVD on it. The fact that the bulk milk cooling tanks were consciously and deliberately mis-declared with a view to evade payment of Customs duty/CVD is clearly evidenced by the email dtd.24/10/2005 of Shri K. Shankar Iyer, Deputy General Manager (BMC) of M/s. IDMC Limited sent from his email id [ksiyer@idmc.coop](mailto:ksiyer@idmc.coop) to Mr. Hanne Nielsen of M/s. Ro- Ka Industries Ltd, at her email id [hn@ro-ka.com](mailto:hn@ro-ka.com) Shri K. S. Iyer had by this email instructed her to use the nomenclature "DAIRY MACHINERY – SYSTEMS FOR MILK" and informed her that "if you see the last LC we have used this nomenclature. However, you have shipped the tanks using the nomenclature "Milk Cooling Tanks". If you use Milk Cooling Tank nomenclature, we have to pay more customs duties". Shri K. S. Iyer was asked regarding the goods shipped under this description and he stated that the goods were milk cooling tanks. Shri K. S. Iyer agreed that the bulk milk cooling tanks imported by them does not merit classification under Chapter head 8434200 and that CVD is payable on the same.

**14.9** The fact that M/s. IDMC Ltd were deliberately mis-declaring the bulk milk cooling tanks is also further evidenced by the fact that though the proforma invoice bearing No. 262 dtd.02/11/2005 issued by M/s. RO Ka Industries, Denmark was in respect of 01 3000 L bare milk cooling tank with 2 X 8.5 HP HGZ 100 condensing units for 134A and separate installation, they had in their Application & Guarantee for issue of documentary credit dtd.13/12/2005 made to the UTI Bank Ltd, Vallabh Vidyanagar described the goods as Dairy Machinery — System for Milk 3000L.

**14.10 That M/s. IDMC Ltd had consciously, knowingly and deliberately indulged in misdeclaration of the goods imported by them with a view to evade Customs**

**duty** is also strengthened by the fact that the goods as mentioned in proforma invoice no.262 dtd.02/11/2005 were meant for supply to M/s. Glaxo Shithkline Consumer Healthcare Ltd who had vide purchase order No.5030155 QC dtd.17/10/2005 place an order for supply of 01 Bulk Milk Cooler with refrigeration control panel capacity 3000 litres and comprising of twin condensing units with twin compressors suitable for R134A refrigerant. Despite the above facts, M/s. IDMC Ltd had imported the aforesaid goods under bill of entry no. 620224 dtd.28/01/2006 describing them as Dairy Machinery — System for Milk 3000L and classifying them under chapter 84.34, claiming exemption from payment of CVD under noti. No.6/2002-CE dtd.1/3/2002 as amended. When Shri Mahesh Chandra, the former Managing Director of M/s. IDMC Ltd was questioned in this regard on 25/05/2010, he stated that the description of the goods in the application for documentary credit as well as in the bill of entry has been deliberately mis-declared. Shri K. S. Iyer was questioned in this regard on 09/09/2010 and he admitted in his statement that the description of the goods was mis-declared by them with a view to avail exemption from CVD under Notification No. 6/2002-CE dtd. 1/3/2002.

**14.11** It appeared that M/S. IDMC Ltd were deliberately mis-declaring the bulk milk tanks imported by them and were getting the invoices and bills of lading issued from their suppliers to facilitate the mis-declaration of the description at the time of import is further evidenced by the following. M/s. Ro-Ka Industries had issued Invoice No.60334 dtd.30/09/2005 to M/s. IDMC Ltd for supply of 4 nos. of Dairy Machinery – 5000L- Bare Milk Cooling Systems which were shipped in Container No. TEXU 4342525 under bill of lading No.BLSIND-0091 dtd. 16/10/2005. The description of the goods in the said bill of lading was mentioned as Milk Cooling Tank Parts. The documents recovered from M/s. IDMC Ltd in the course of the searches contained the above said invoice and bill of lading. On scrutiny of these documents it is seen that the description of the goods in the invoice has been corrected by hand to read as “DAIRY MACHINERY — 5000 L RKC BARE MILK COOLING SYSTEM, MODEL 1 SYSTEM FOR MILK”, where the words System for Milk has been written by hand and the words Bare Milk Cooling System, Model-1 has been struck off by hand. Similarly, in the bill of lading the description of the goods has been corrected by hand to read as “MILK COOLING TANK PARTS. SYSTEMS FOR MILK 5000 L RKC”, where the words Milk Cooling Tank Pars has been struck off by hand and the words Systems for Milk 5000 L RKC has been added by hand.

**14.12** Further, the packing list issued by M/s. Ro-Ka Industries Ltd in respect of container No. TEXU 4342525 was also corrected by hand to read as: DAIRY MACHINERY-1 NOS. 5000 L RKC BARE MILK COOLING SYSTEM MODEL 1 FOR MILK. By striking out the words bare milk cooling system and adding the words for milk, the description has been corrected to read as Dairy Machinery- 5000 L RKC System for Milk, Shri Mahesh Chandra and Shri K. S. Iyer were questioned in this regard and asked as to who had made the corrections by hand, however, both denied knowing the identity of the person who had made the corrections. However, Shri K. S. Iyer admitted that he had instructed the supplier vide email dtd.24/10/2005 to change the description. M/s. Ro-Ka Industries, as per the instructions received from Shri K. S. Iyer changed the description in the invoice and packing list and sent a revised invoice to M/s. IDMC Ltd which was submitted by them to the Customs at the time of filing bill of entry No.618609 dtd.19/11/2005 for import of the said goods by classifying them under CTH 84.34 and claiming exemption from CVD Shri K. S. Iyer admitted that the description was changed with a view to avail the exemption from CVD under Noti. No.6/2002-CE 1/3/2002. It is therefore, clearly evident from the above that the description of the goods imported by M/S. IDMC Ltd. Anand were being mentioned by the suppliers in their documents as per the instructions of M/s. IDMC Ltd. It is also evident that the description of the goods was being deliberately mis-declared by M/s. IDMC Ltd, Anand so as to wrongly avail of the exemption from CVD under the relevant notification.

**14.13** That M/s. IDMC Ltd, Anand were deliberately mis-declaring and consequently mis-classifying the Bulk Milk Cooling Tanks so as to wrongly avail exemption from CVD is also strengthened by the fact that prior to October, 2005 they were classifying the said goods under CTH 84186950. This fact has also been confirmed by Shri K. Iyer, Deputy General Manager (BMC) in his statement dtd.15/03/2010;

15. M/s. IDMC Ltd. have also imported Separators by claiming classification under Chapter 84.34. They have, at the time of importing the said goods declared the same as Self Cleaning Separators. The Harmonized System of Nomenclature - Explanatory Notes to Chapter 84.34 which covers Milking Machines and Dairy Machinery specifically excludes Cream Separators. The relevant part of the explanatory notes of chapter 84.34, as in force at the relevant time, is as under:-

"The majority of machines for processing milk depend essentially on the principle of heat exchange and are therefore, exclude (heading 84.19) e.g. apparatus for pasteurization, stassanisation or sterilization; apparatus for condensing or drying milk; milk coolers".

"The heading further excludes:-

(a)...

(b) **Cream Separators**, filter-presses and other filtering or clarifying machinery of apparatus (heading 84.21)...

15.1 Even from a plain reading of the HSN Explanatory notes it is clear that the Cream Separators are excluded from the purview of chapter 84.34 and these goods are classified under chapter 84.21. However, despite that above, M/s. IDMC Ltd have at the time of import of the Cream Separators mis-classified them under chapter 84.34. They had declared them as '**Self Cleaning Separator 'Tetra Centri', 'Tetra Centri' Self Cleaning Separator' and 'Milk Skimming Separator'**'. Despite importing Milk/Cream Separator, M/s. IDMC Ltd it appears, have failed to give the correct and complete description of the goods imported by them and resorted to vague description of the said goods with a view to mis-lead the authorities about the actual nature of the goods imported and thereby mis-classify them under chapter 84.34. The reason for M/s. IDMC Ltd not declaring the goods imported by them as Cream Separators and deliberately making an incomplete and vague/general description of the goods imported and avoiding the use of the actual description of the goods is apparently in view of the fact that the CTH/CETH 84211100 specifically covers Cream Separators. The act of mis-classification of the Separators imported by M/s. IDMC Ltd has been admitted by Shri K. S. Iyer, Deputy General Manager (BMC) of M/s. IDMC Limited in the course of his statements recorded on 15/03/2010 and 18/03/2010. In his statements he admitted that Separators are classifiable under heading 8421 and that the exemption from CVD was wrongly claimed by them.

16. M/s. IDMC Ltd have also imported Evaporator Plates by mis-classifying them under CTH 84349020 as Component of Dairy Machinery. However, the evaporator plates are components of the Bulk Milk Cooling tanks which have also been admitted by Shri K. S. Iyer in his statement dtd.20/08/2010. As discussed in the foregoing paragraphs, bulk milk cooling tanks are classifiable under CTH 84186990. It has also been brought out in the foregoing paragraphs that the evaporator is a heat exchanger and this fact has also been confirmed by the personnel of M/s. IDMC Ltd in their statements. The Evaporator Plates are therefore appeared to be classifiable under CTH 84195020 which specifically covers Plate type heat exchange units. Accordingly, it appears that M/s. IDMC Ltd have mis-declared the goods as components of dairy machinery and have thereby mis-classified the evaporator plates under CTH 83439020 and wrongly claimed the benefit of exemption from CVD under Noti. No. 6/2006-CE dtd.1/3/2006 (Sr. NO. 11) with the intention to evade payment of CVD.

17. M/s. IDMC Ltd have also indulged in smuggling of goods in as much as they have purchased 01 Washing unit valued at Euro 1470 from M/s. Westfalia Surge Nordic A/S, Denmark under invoice No.61729 dtd.14/07/2006. The said washing Unit was shipped in Container No. FSCU 944204-4. M/s. IDMC Ltd had filed bill of entry no.625382 dtd.21/08/2006 in respect of 06 pcs of Dairy Machinery System for milk Cap.5000 ltr which was shipped in container no. FSCU 944204-4. They had however, failed to declare Washing Unit which was also shipped in the said container. When Shri K. S. Iyer, Deputy General Manager (BMC) of M/s. IDMC Limited was questioned in this regard on 18/03/2010, he admitted that Washing Unit was not declared in the bill of entry filed by, them and that they had evaded duty in respect of the said Washing Unit.

**18.** The fact that M/s. IDMC Ltd have mis-declared the goods imported and cleared by them as well as sold on high seas sale basis as well as producing invoices declaring the goods as per their requirement and convenience is further strengthened by the email dtd.06/11/2007 of Shri K. S. Iyer to Shri Mukesh Dave of M/s. GCMMFL. The series of email correspondence was in respect of import of Butter Wrapping Machine for one of the Milk Dairies under M/s. GCMMFL umbrella. In these email correspondence Shri K. S. Iyer clearly spells out that the import of the Butter Wrapping Machine is to be under chapter 84.34. It is also evident from these emails that Shri K. S. Iyer had got the suppliers invoice revised to show the goods as Dairy Machinery as well getting the CTH revised from 84.22 to 84.34. The rationale behind getting the supplier's invoice revised to show the goods as Dairy Machinery and changing the classification from 84.22 to 84.34 is clearly in view of the fact that the HSN Explanatory notes specifically excludes machines for wrapping and weighing butter from the purview of chapter 84.34 and classifies them under chapter 84.22 and 84.23. It is also apparent that the supplier had correctly classified the Butter Wrapping Machine under Chapter 84.22. However, M/s. IDMC Ltd had deliberately got the supplier. to change the classification to 84.34 so as to avail benefit of exemption from CVD available to goods classifiable under chapter 84.34. The above mentioned butter wrapping machine is not a part of the present notice and is referred to only to establish the fact the M/s. IDMC Ltd are consciously and deliberately mis-declaring the goods imported by them and are obtaining invoices showing classification and description to enable them to mis-declare the goods and thereby mis-classify them under chapter 84.34 and wrongly claim exemption from CVD under Noti. No.6/2002-CE dtd.1/3/2002 and Noti. No.6/2006-CE dtd.1/3/2006.

**19.** It is, therefore, appeared that M/s. IDMC Ltd. Anand, had imported the following goods by mis-declaring them as dairy machinery and mis-classifying them under CTH 84.34. They had also smuggled one Washing Unit in as much as they had not declared the same in the bill of entry filed by them in respect of the container No. FSCU944204-4.

S. No.	Description of the goods	Quantity (Nos.)	Value (Rs.)	Duty evaded (Rs.)
1.	Bulk Milk Cooling Tanks	161	6,12,69,457.27	1,17,84,132.92
2.	Milk/Cream Separator	06	4,22,51,067.97	71,40,882.37
3.	Evaporator Plates	16	8,13,078.18	1,54,300.76
4.	Washing Unit	01	87,759.00	32,239.40
	TOTAL		10,44,21,362.42	1,91,11,555.45

The goods as mentioned above totally valued at Rs. 10,44,21,362.42 have been imported by M/s. IDMC Ltd. Anand by mis-declaration and mis-classification. The differential Customs duty amounting to Rs. 1,91,11,555.45 was short levied and short paid by M/s. IDMC Ltd. Anand at the time of import.

**20.** It appeared from the above facts and evidences that M/s. IDMC Ltd. Anand had knowingly and deliberately mis-declared the description of the goods and also mis-classified them as Dairy Machinery with a view to wrongly avail the benefit of exemption from CVD under Noti. No.6/2002-CE dtd. 1/3/2002 and Noti- No.6/2006-CE dtd. 1/3/2006 with an intent to evade payment of Customs duty of Rs. 1,91,11,555.45 as shown in Annexures A & B to the SCN. Hence, proviso to Section 28(1) of the Customs Act, 1962, for invoking the extended period for demand of duty is applicable in the instant case. The differential Customs duty amounting to Rs. 1,91,11,555.45 as indicated in Annexure-A & B to the SCN therefore. appears liable to be recovered from M/S. IDMC Ltd, Anand under proviso to Section 28(1) of the Customs Act, 1962, along with applicable interest under Section 28 AB ibid.

**20.1** The Milk/Cream Separators as detailed in Annexure 'B' to the notice imported at JNCH totally valued at Rs. 5,91,12,166/- (market value) seized under panchnama dated 14/09/2010, 15/09/2010 and 21/09/2010 as detailed at para 12 above, have been imported by M/S. IDMC Ltd, Anand by mis-declaring the description and mis-classification. M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat had not discharged the full duty liability on the said seized goods in as much as they had by mis-declaring description and mis-classifying the said goods deliberately in order to avail exemption from payment of CVD.

**20.2** M/s. IDMC Ltd have also imported Bulk Milk Cooling Tanks, Evaporator Plates by deliberately mis-declaring the description and thereby mis-classifying them as Dairy Machinery. Further, M/s. IDMC Ltd, Anand have also imported one Washing Unit without declaring the same and without filing bill of entry. These goods totally valued Rs.6,21,70,294.45, as per Annexure 'A', which are not available for seizure have been imported in contravention of the provisions of Section 46 (4) of the Customs Act, 1962. For these contraventions and violations, the goods fall under the ambit of smuggled goods within the meaning of Section 2(39) of the Customs Act, 1962, and hence appear liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. The Washing Unit valued at Rs.87,759/- imported by M/s. IDMC Ltd, Anand without declaring the same in the bill of entry filed in respect of container no.FSCU 944204-4 is also liable for confiscation under the provisions of Section 111 (l) of the Customs Act, 1962.

**20.3** In view of the facts discussed in foregoing paras and material evidences, it appeared that M/s. IDMC Ltd, Anand have also contravened the provisions of Rules 11 & 14 of the Foreign Trade (Regulation) Rules, 1993, in as much as they failed to declare the true and correct description of the goods while submitting the declaration for filing the bills of entry mis-declaration of the goods in terms of description was done with a willful intent to evade the payment of appropriate customs duty leviable thereon. They have also failed to declare the Washing Unit imported by them. All these acts on the part of M/s. IDMC Ltd. Anand have also rendered the goods liable to confiscation also under the provisions of the Section 111 (d) of the Customs Act, 1962.

**21.** The aforesaid acts of willful mis-statement and suppression of facts by M/s. IDMC Ltd, Anand has led to short levy of duty of Rs. 1,91,11,555.45 thus rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the duty amounting to Rs. 1,91,11,555.45 was short levied by reason of willful mis-statement and suppression of facts with a view to evade Customs duty by way of mis-declaration of description and consequent mis-classification and thereby wrongly availing benefit of exemption from payment of CVD, have made the impugned goods liable for confiscation under Section 111(d) (l) & (m) of the Customs Act, 1962. For the above mentioned acts of omission and commission on the part of M/s. IDMC Ltd, Anand, they have rendered themselves liable for penal action under the provisions of Section 114A of the Customs Act. 1962 as well as penal action under Section 112 (a) of the Customs Act, 1962.

**21.1** Shri K. S. Iyer, Deputy General Manager (BMC) of M/s. IDMC Limited, Anand has consciously and knowingly indulged in deliberate mis-declaration of the goods imported by M/s. IDMC Ltd, Anand. His active and knowing involvement in the mis-declaration of the description of the goods is clearly forthcoming from the evidences on record. Shri K. S. Iyer has therefore, actively and knowingly involved himself in evading Customs duty by resorting to mis-declaration of the description of the goods imported, which renders the good liable for confiscation under Section 111(d) (l) & (m) of the Custom Act, 1962. For the above mentioned acts of omission and commission, Shri K. S. Iyer, Deputy General Manager (BMC) of M/s. IDMC Limited, Anand has rendered himself liable for penal action under the provisions of Section 112(a) of the Customs Act, 1962.

**22.** Accordingly, show cause notice No.DRI/AZU/INV-5/2010 dated 23.09.2010 was issued to M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat calling upon them to show cause to the Commissioner of Customs, Ahmedabad having his office at Custom House, Opp. Old High Court, Navrangpura, Ahmedabad- 380 009, as to why:-

- (i) The declared classification of the Bulk Milk Cooling Tank and Evaporator Plates under CTH 84342000 and 84349020 should not be rejected and the goods re-classified under CTH 84186990 and 84195020 respectively, as detailed in Annexure A to the SCN.
- (ii) The goods. i.e. Bulk Milk Cooling Tanks, Evaporator plates and Washing Unit, as detailed in Annexure 'A', totally valued at Rs. 6,21,70,294/- should not be held liable for confiscation under Section 111(d) (l) & (m) of the Customs Act, 1962. However, as the goods are not available for confiscation, why redemption fine should not be imposed in lieu of confiscation.

- (iii) Differential Customs duty amounting to Rs. 1,19,70,673/- (Rupees one crore nineteen lakhs seventy thousand six hundred and seventy three only), as detailed in the Annexure 'A' to the show cause notice, evaded by them on the said goods, should not be demanded, and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- (iv) interest should not be recovered from them on the said differential customs duty, as at para 22 (iii) above, under Section 28 AB of the Customs Act; 1962;
- (v) penalty should not be imposed on them under Section 114A of the Customs Act, 1962.
- (vi) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962.
- (vii) the amount of Rs. 64,37,816/- paid vide TR6 Challan No.792/2010 dtd.10/3/2010 for Rs.14,37,816/- and TR6 Challan No. 832 dated 16/3/2010 for Rs. 50,00,000/- should not be appropriated towards their duty/interest/fine/penalty liability.

**23.** Shri. K. S. Iyer, Deputy General Manager (BMC) of M/s. IDMC Limited, Anand was also called upon to show cause to the Commissioner of Customs, Ahmedabad having his office at Custom House, Opp. Old High Court, Navrangpura, Ahmedabad-380 009, as to why penalty should not be imposed upon him under the provisions of Section 112(a) of the Customs Act, 1962.

**24.** Further, Show cause notice was issued to M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat calling upon them to show cause to the Commissioner of Customs (Import), having her office at Jawaharlal Nehru Custom House, Nhava Sheva, Post Uran, Dist. Raigad, Maharashtra -400 707, as to why:-

- (i) The declared classification of the Cream Separators under CTH 84342000 should not be rejected and the goods re-classified under CTH 84211100, as detailed in Annexure B to the SCN.
- (ii) The goods i.e. Cream-Separators valued at Rs. 5,91,12,166/- (market value) seized on 14/09/2010, 15/09/2010 and 21/09/2010 should not be confiscated under the provisions of Section 111(d) (l) and (m) of the Customs Act, 1962.
- (iii) Differential Customs duty amounting to Rs. 71,40,882/- (Rupees seventy one lakh, forty thousand, eight hundred and eighty two only) as detailed in the Annexure 'B' to the show cause notice, evaded by them on the said goods, should not be demanded and recovered from them under proviso to section 28 (1) of the Customs Act, 1962;
- (iv) Interest should not be recovered from them on the said differential customs duty, as at para 24(iii) above, under Section 28 AB of the Customs Act, 1962;
- (v) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.
- (vi) Penalty should not be imposed on them under Section 112 (a) of the Customs Act, 1962.
- (vii) the amount of Rs. 30,00,000/- paid vide Challan dated 19/3/2010 should not be appropriated towards their duty/interest/fine/penalty liability.

**25.** Shri K. S. Iyer, Deputy General Manager (BMC) of M/s. IDMC Limited, Anand was also called upon to show cause to the Commissioner of Customs (Imports), having her office at Jawaharlal Nehru Custom House, Nhava Sheva, Post Uran, Dist. Raigad, Maharashtra 400 707, as to why penalty should not be imposed upon him under the provisions of Section 112(a) of the Customs Act, 1962.

**26.** Addendum dt.28.12.2010 to Show Cause Notice No. No.DRI/AZU/INV-5/2010 dated 23.09.2010 was issued to their consignees of Cream Separators as under.

**[1]** M/s. Mother Dairy Fruit & Vegetable Pvt. Ltd., Pilkhuwa Ghaziabad calling upon to show cause to Commissioner of Customs (Import), having her office at Jawaharlal Nehru Custom House, Nhava Sheva, Post Uran, Dist. Raigad, Maharashtra -400 707, as to why 04 Cream Separators valued at Rs. 3,29,32,794/-seized under panchnama dtd. 14/09/2010 should not be confiscated under the provisions of Section 111 (d) (l) and (m) of the Customs Act, 1962.

**[2]** Banaskantha Dist. Co-op Milk Prducers' Union Ltd., (Banas Dairy), Palanpur were called upon to show cause Commissioner of Customs (Import), having her office at Jawaharlal Nehru Custom House, Nhava Sheva, Post Uran, Dist. Raigad, Maharashtra-400 707, as to why Cream Separators valued at Rs. 1,25,46,085/- seized under panchnama dtd. 15/09/2010 should not be confiscated under the provisions Section 111 (d) (l) and (m) of the Customs Act, 1962.

**[3]** M/s. Rohtak district Co-operative Milk Producers Union Ltd., Rohtak, were called upon to show cause Commissioner of Customs (Import), having her office at Jawaharlal Nehru Custom House, Nhava Sheva, Post Uran, Dist. Raigad Maharashtra-400707, as to why Cream Separators valued at Rs. 1,36,33,287/- seized under pahchnama dtd: 21/09/2010 should not be confiscated under the provisions of Section 111 (d) (l) and (m) of the Customs Act, 1962.

**27.** By an order No F.No. 437/59/2010-Cus.IV dated 23.11.2010, the Central Board of Excise& Customs has assigned the Commissioner of Customs, Ahmedabad to adjudicate the said SCN F.No. DRI/AZU/INV-05/2010 DTD 23.09.2010 issued and further by an order No. F.No. 437/59/2010-Cus.IV dated 28.06.2012, the Central Board Excise& Customs has amended order dtd 23.11.2010 and incorporated the Addendum dt.28.12.2010.

**28. Written Submission:** Advocate of the importer and all co-noticees filed their common written submission dated 30.01.2026 wherein they interalia stated as under:

**28.1** that the entire demand is barred by limitation as extended period of limitation cannot be invoked in the present case; that the demand in the present case relates to the period from October 2005 to January 2008 and the SCN was issued to the Noticees on 23.09.2010; that in terms of the provisions of Section 28(1) of the Customs Act as it existed for the relevant period, a SCN demanding duty can be issued within six months from the relevant date; that the proviso to Section 28(1) however, provides for an extended period of five years in cases where the duty has not been levied or has been short levied etc., by reason of collusion or any wilful mis-statement or suppression of facts by the importer; that the Principal Noticee had never deliberately mis-declared the description of the goods and also misclassification, if any, was not done with mala fide intention to wrongly avail the benefit of exemption from CVD under Notification No. 6/2002-CE and Notification No. 6/2006-CE; that the the goods were classified as per bona fide understanding of the Principal Noticee and all the information about the goods was provided to the department at the time of clearance; that the goods were physically examined by the Customs at the time of importation and said fact has been ignored in the SCN; that the Hon'ble CESTAT in the order dated 22.04.2025 has specifically remanded the matter back with the direction that "The fact that the goods were cleared after the examination, was sufficient to indicate that the Commissioner should have weighted the limitation proposition while passing its order..."; that the goods were opened and examined in the presence of the CHA; that the principal noticee even moved an Application under Right to Information Act, 2005 requesting the examination orders against the Bills of Entry mentioned in Annexure-A to the SCN; that the reply from the Customs Department reveals that in all the Bills of Entry mentioned in the Annexure A, the goods were opened and physically examined in the presence of the CHA; that when each and every Bill of Entry has been examined and verified by the Customs and on none of these Bills of Entry, the classification and the consequential exemption was challenged, there cannot be a case of suppression or misstatement as alleged in the SCN; that the entire set of facts were well within the knowledge of the Customs Officers, and in such circumstances, extended period of limitation is not invocable and relied on the decision of (i) KMS Medisurgi Pvt. Ltd. v. Commissioner of Customs

(Import), Mumbai, 2022 (382) ELT 394 (Tri. - Mumbai) (ii) 3M India Ltd. v. Commissioner of Customs, Bangalore - I, 2020 (373) ELT 385 (Tri- - Bang.) (iii) Andrew Yule & Co. Ltd. Vs. CCE, 2007 (213) ELT 252 (Tri.) (iv) CCE, Vs. Punjab Laminates Pvt. Ltd., 2006 (202) ELT 578 (SC) (v) Espi Industries and Chemicals Pvt. Ltd. v. Collector of Central Excise, Hyderabad, 1996 (82) ELT 444 (SC) (vi) Tata Iron & Steel Co. Ltd. v. Union of India, 1988 (35) ELT 605.

**28.2** that with respect to "Cream Separators", as per the SCN, these goods are classifiable under chapter heading 8421 as opposed to the chapter heading 8434 under which they were cleared; that for said consignments, the classification was filed on the basis of the exporter's invoice, which mentioned chapter heading 8434; that the goods were properly described as tetra centri separators on the bills of entry, which is the nomenclature used in the catalogue of such separators and also used by the supplier; that detailed catalogue was submitted by the Principal Noticee to the customs and if any doubts had arisen it should have been noticed by the Customs at the earliest possible time; that in a situation where proper description is given in the Bill of Entry, then even if classification is held to be wrong, mala fide cannot be attributed and extended period cannot be invoked. In other words, such misclassification cannot be called as mis-declaration; that they cited the decision of (i) CC, Bangalore vs. A. Mahesh Raj, 2006 (195) ELT 261, ; that similarly, for "Evaporator Plates" also, as catalogue and write up was already submitted, detailed submitted to the Customs Department at the time of change in business model; that in the Bill of Entry, the goods were clearly described as "Component of Dairy the Machinery Evaporator Plate"; that the SCN also alleges that the Principal Noticee was indulged in smuggling of goods in as much as they have purchased 01 from M/s Westfalia Surge Nordic A/S, Denmark and in this regard, it is submitted that particular washing unit was knowledge of the Principal Noticee; that imported without the in other countries, using washing unit with such tanks is the system and these tanks are not manually cleansed in other countries, but the same is done with the help of these washing units; that the supplier is supplying the washing unit along with the tanks to all other buyers and this particular import is nothing but a in other countries and small mistake on the part of supplier; that said washing unit was supplied by the supplier by mistake without any order having been placed by the Principal Noticee and therefore, mala fide cannot be attributed to Shri KS Iyer and extended period cannot be invoked ; that in the light of the aforesaid, submitted that extended period of demand is not invocable in the present case and therefore, the entire SCN deserves to be set aside on said ground alone;

**28.3** that the imported goods are rightly classifiable under Customs Tariff Heading 8434; that the complete bulk cooling module consists of: (i) Insulated SS 304 milk vessel (vat/tank); (ii) Refrigeration system with accessories; (iii) Milk receiving equipment such as balance tank, pipes and fittings; (iv) Control panels and electrical; and (v) Earthing and accessories required for installation and grouting; that till the year 2005, the Principal Noticee was importing bulk milk coolers along with refrigeration equipment and was classifying the whole unit under chapter heading 8418, however, , thereafter, the Principal Noticee started importing bare tanks without any refrigeration equipment and the same did not incorporate any cooling or heating equipment inside; and in this regard, principal noticee made submission as under:

**28.3.1** Tanks without any refrigerating unit not excluded from Heading 8434; that the SCN at Para 14.02 places reliance on the HSN explanatory notes to Heading 8434 to state that the imported goods are excluded from the scope of this heading because the same are fitted with evaporator; that the impugned SCN relies on the Explanatory Notes to HSN to arrive at its conclusion; that the SCN at Paras 14.3 to 14.5 states that the imported tanks are excluded from the chapter heading 8434 because the same are not fitted with evaporator; that in this regard, submitted that the exclusion, which excludes refrigerating appliances and milk cooling vats incorporating an evaporator of a refrigerating unit, must be taken to imply that those refrigerating appliances and milk cooling vats which incorporates fully functional evaporator are excluded, and not those which incorporates parts of an evaporator; that in the present case, the so called 'evaporator plate' that is attached within the imported goods is nothing but a dimple plate, also known as pillow plate; that the plate by itself cannot heat or cool unless it is further integrated with a condensing unit only where after the dimple plate/pillow plate gets converted to an evaporator; that before this conversion (or in other words, before the integration with a condensing unit through necessary

pipings, etc), the dimple/pillow plate is not an evaporator and the Principal Noticee was importing bare tanks alone and not along with condensing unit; that the SCN also relies upon the statement given by Mr. Kuldeep Singh Sisodia, Senior Executive (Production) at the Principal Noticee Company wherein he had stated that evaporator is built inside the tanks; that as already submitted, 'evaporator' is a term very loosely used by people in the dairy industry; that in his statement, by the term 'evaporator plate', he actually meant a dimple/pillow plate; that an affidavit stating the same is enclosed with their submission; that the HSN Explanatory Notes to heading 8434 state that machines for processing milk which depend on the principle of heat exchange are excluded from chapter heading 8434; that the dimple plate cannot facilitate heating or cooling and the tank is not used in processing milk; that the tanks as imported do not depend on the principle of heat exchange; that the SCN at Para 14.7 states that the tanks are excluded from the purview of heading 8434 because the same are not fitted with agitators or agitator motor and in this regard, submitted that there is no specific condition that for a machine to get classified under chapter heading 8434, it should be fitted with either agitator or agitator motor; that these are nothing but mechanical equipment being part of the dairy machines; that the at the SCN relies upon the HSN in a limited manner and does not provide all the references to classification of the said goods. Specifically, the SCN does not cite the following reference in the HSN:

"It should be noted that the heading excludes many machines and apparatus used in the dairy industry. For example, storage, maturing, processing, etc. vats and tanks whose operation depends primarily on fitted heating or cooling equipment such as agitators. Vats, etc., not fitted with heating or cooling equipment, but incorporating mechanical features such a stirrers, agitators, tipping mechanisms etc. are classified in this heading provided they are identifiable as specialized for dairy use. If they are not identifiable as for any one particular use, they are classified in heading 84.79. Vats, etc., not fitted with either thermal or mechanical equipment are classified as articles of the constituent material (e.g. heading 7309, 7310, 7419, 7611 or 7612)".

**28.3.2** that agitators is one of the many mechanical features, which if present would render any machine to merit classification under chapter heading 8434 provided it is not fitted with heating or cooling equipment and therefore, it is submitted that the SCN is incorrect to the extent it provides that tanks are excluded from Chapter Heading 8434 because the same are not fitted with agitators or agitator motors; that the tanks imported by the Principal Noticee in fact fulfils the above criteria of being vats not fitted with cooling equipment incorporating mechanical features ;that it is not disputed that the goods do not contain any condensing unit and hence, the tanks/vats cannot be considered as fitted with cooling equipment; that the tank is fitted with many mechanical features like lockable manhole inlet and outlet of milk, air vent, spray ball, adjustable legs; that the general construction is also specialized for dairy with the type of stainless-steel body used, the size of the vat, design to ensure the size of storage of the milk, etc. and therefore, the goods satisfy the above condition specified in the HSN notes and are classifiable under heading 8434; that for the reasons mentioned above, it is submitted that classification as sought by the Principal Noticee is correct; that the tanks cannot be classified under heading 8418 as the same are not fitted with refrigerating equipment and the tanks as imported cannot perform the function of heating or cooling and thus, the SCN is wrong to the extent that it provides that tanks are excluded from Heading 8434 and denying the benefit of Notification 06/2002-Cus and Notification No. 6/2006-Cus. The SCN deserves to be set aside on this ground alone.

**28.4** that provision related to interest, penalty and confiscation cannot be invoked in the case of demand of cvd; that interest, penalty and confiscation provisions provided under the Customs Act cannot be invoked in cases of demand pertaining to CVD which is leviable under the Customs Tariff Act for the reason that these provisions have not been borrowed into Section 3(8) (Pari Materia) to the present Section 3(12)) of the Tariff Act; that CVD is not a duty chargeable under the Customs Act; that duties levied under the Customs Tariff Act, 1975 are not "Customs Duty" covered under the ambit of Section 12 of the Customs Act, 1962 and relied on the decision of Hon'ble Supreme Court in the case of Hyderabad Industries Ltd. vs. Union of India, 1999 (108) E.L.T. 321 (S.C.) wherein it has been held that CVD is levied under Section 3 of the Tariff Act and not under Section 12 of the Customs Act; that prior to 16.08.2024, Section 3(12) of the Customs Tariff Act 1975, did not borrow interest and penalty

provisions from the Customs Act, 1962 and thus interest and penalty cannot be imposed under the Custom Act, 1962, for non-payment of duties, including ADC, chargeable under Section 3 of the Custom Tariff Act, 1975 and referred Section 3(12) of the Custom Tariff Act, 1975 existed prior 16.08.2024 that on 16.08.2024, Section 3(12) of the Custom Tariff Act, 1975 was amended vide Section 106 of the Finance (No. 2) Act, 2024 dated 16.08.2024 in terms of which the provisions pertaining to interest were also borrowed from the Customs Act, 1962. The said amendment was made effective from 16.08.2024 and referred the amended Section 3(12) of the Custom Tariff Act, 1975; that prior to the above amendment, no recovery could have been made on the non-payment of CVD as there was no substantive provision under the Customs Tariff Act, 1975 for the same; that the above position is also supported by the Hon'ble Bombay High Court in the case of Mahindra and Mahindra Limited v. Union of India, 2022 (10) TMI 212, affirmed by the Hon'ble Supreme Court vide UOI v. Mahindra and Mahindra Ltd., 2023 (8) TMI 135 - SC Order; that also placed relied on the decision of (i) Chiripal Polyfilms Ltd. v. CC- Customs Ahmedabad, 2024 (9) TMI 940-CESTAT AHMEDABAD (ii) Sakar Industries Pvt. Ltd. v. CC Ahmedabad- Customs Ahmedabad, 2024 (10) TMI 1141-CESTAT AHMEDABAD and (iii) Acer India (Pvt.) Ltd. v. CC (Audit) , Chennai, 2024 (5) TMI 478- CESTAT CHENNAI and (iv) Bajaj Health & Nutritional Pvt. Ltd. v. CC, Chennai, 2004 (166) E.L.T. 189, (iv) Tonira Pharma Ltd. vs. Commissioner, 2009 (237) E.L.T. 65 (v) Siddeshwar Textile Mills Pvt. Ltd. vs. Commissioner, 2009 (248) E.L.T. 290 (Trib.) (vi) A.R. Sulphonates Private Limited v. UOI, 2025 (4) TMI 578- BOMBAY HIGH COURT and stated that provisions related to interest, penalty and confiscation cannot be invoked in the present case;

**28.5** that the imported goods are not liable for confiscation under Section 111 of the Customs Act, 1962; that the subject goods cannot be held liable for confiscation as the same have been cleared for home consumption and not physically available and referred the decision of Bussa Overseas & Properties v. C.L. Mahar, ACC - 2004 (163) ELT 304 (Bom.); that it is a settled law that misclassification cannot be tantamount to misdeclaration; that the description of impugned goods in BoE matches the actual description of the impugned goods and moreover, all the important information has been mentioned in all the import documents that were available and submitted at the time of import; that referred the decision of (i) Northern Plastic Ltd. vs. Collector, 1998 (101) ELT 549 (SC), (ii) Kirti Sales Corpn. vs. Commissioner reported at 2008 (232) ELT 151 (Tri.- Del.), (iii) P Ripakumar and Company vs. Union of India reported at 1991 (54) ELT 67; that Section 111 of the Customs Act cannot be invoked in the present case and confiscation of the impugned goods should be set aside.

**28.6** that penalty is not imposable in disputes relating to classification of goods; that are a number of judgments wherein Hon'ble Tribunal has held that if there is about classification difference of opinion between the importer and department, penalty should not be impose and its supported placed reliance on (i) Bahar Agrochem & Feeds Pvt. Ltd vs. Commissioner of C.Ex, Pune, 2012 (277) E.L.T. 382 (Tri-Mum) (ii) Anand Metal Industries v. CCE, 2005 (187) ELT 119 and (iii) Goodyear (India) v. CCE, 2003 (157) ELT 560 and stated that on this ground alone, penalty is liable to set aside; that on said ground penalty is liable to set aside;

**28.7** that no penalty is imposable on Shri K S. Iyer under Section 112 (a) of the Customs Act, 1962; that the SCN alleges that Shri KS Iyer consciously and knowingly indulged in deliberate mis-declaration of the goods imported by the Principal Noticee. It was further alleged that the Shri KS Iyer actively indulged himself in evading customs duty by resorting to mis-declaration of the description of the goods imported by Principal Noticee; that the allegation of deliberate misclassification and wilful misstatement with respect to the import of milk cooling tanks is based on an email communication between Shri K. S. Iyer and the foreign supplier; that the email communication has been quoted out of context to create the impression of malafide intention on behalf of the Principal Noticee; that the email was written at the time the Noticees believed bona fidely that the import of the said good without condensing-unit ejected the-goods from CTH 8418 to CTH 8434; that since the noticees had been importing bulk milk-cooling tanks under CTH 8418 from-the foreign supplier prior to October 2005, the email was sent as a communication to the foreign supplier for informational purposes and not to collude with them to pay lower duty; that the email pointed out that the goods were now classifiable under CTH 8434 and continued use of earlier nomenclature would result in incorrect classification under CTH 8418 attracting higher customs duty; that being merely informational, reading the email

out of context, would lead to incorrect inference that the Shri KS Iyer was deliberately mis-declaring the description of the goods; that in the event the Principal Noticee or Shri KS Iyer wished to deliberately mis-declare the description of the goods, they would not have provided all the information pertaining to the goods to the Customs at the time of import and therefore, reference to the email out of context is mis-leading and the same should be discarded; that without prejudice, that even in cases where the Shri KS Iyer mis declared the description or value of the goods, the extended period cannot be invoked if the mis-declaration did not affect the assessment of the goods by the Customs authorities; that in the present case, regardless of the communication between Shri KS Iyer and the foreign supplier, the information about the goods was provided to Customs authorities and the goods were physically examined by the Customs and thus, the communication had no bearing in the present case and therefore, there was suppression to invoke the penal provisions under Section 112(a) of the Customs Act, 1962.

**28.8** that Cream Separators purchased by M/s. Banaskantha, M/s. Mother Dairy and M/s. Rohtak from the principal noticee are not liable for confiscation and no redemption fine can be imposed under Section 125 of the Customs Act, 1962; that **all the said three** Noticees had purchased Cream Separators from the Principal Noticee which were seized during the course of investigation; that the said noticees are bona fide purchasers of the Cream Separator from the Principal Noticee; that the noticees were not involved in deciding the classification or the description to be filled in the Bill of Entry at the time of Import; that assuming but not accepting that there were any mis- declaration/misclassification, the Noticees were not involved in the same in any manner; that in such scenario, confiscation of the Cream Separators is not proper, and redemption fine cannot be imposed on the Noticees; that relied on judgement of the Hon'ble Ahmedabad Tribunal in the case of Laminate Sales Corporation vs. Commissioner of Central Excise and Customs, Surat-II, 2008 (223) E.LT. 467 (Tri-Ahmd) and stated that the goods purchased by the above Noticees cannot be held liable for confiscation and Redemption Fine cannot be imposed; that in view of the submissions made above, the Noticees humbly pray that the Show Cause Notice be set aside with consequential relief.

**29. Personal Hearing: Advocate on behalf of importer M/s. IDMC Ltd., M/s. Banaskantha Dist. Co. Op. Milk Products Union Ltd, K.S. Iyer, Mother Dairy Fruti & Vegetables Pvt. Ltd. and Rohtak District Co Operative Milk Products Union Ltd** appeared for personal hearing on 19.01.2026 on their request for physical appearance. She reiterated the contents of case laws compilation dated 16.01.2026 and further submitted that she would be submitting written submission by 27.01.2026.

**30. Discussion and findings:** I have carefully gone through the Show Cause Notice No. DRI/AZU/INV-5/2010 dated 23.09.2010 and its relied upon documents, case laws compilation dated 16.01.2026 common written submission dated 30.01.2026 filed by the advocate on behalf of all the noticees, Hon'ble CESTAT's Order No. 10305-10309/2025 dated 22.04.2025 and relevant provisions of law and various decisions relied on by the advocate in their submission on behalf of all the noticees and records of personal hearing held on 19.01.2026.

**30.1.** This denovo proceeding has been initiated consequent to the CESTAT's Final Order No 10305-10309/2025 dated 22.04.2025 in respect of Appeal No. C/246 to 248/2012 & C/250 & 251/2012 filed by M/s. IDMC Ltd., M/s. Banaskantha Dist.Co.Op. Milk Products Union Ltd, K.S. Iyer, Mother Dairy Fruti & Vegetables Pvt. Ltd. and Rohtak District Co Operative Milk Products Union Ltd respectively. Order of Hon'ble CESTAT's Final Order No 10305-10309/2025 dated 22.04.2025 is reproduced as under:-

"Matter was heard. The learned advocate seeks remand merely on the ground of limitation in this case being both a question of law and fact. The facts which were not considered while passing the impugned decision by the Commissioner included the factum of examination of the goods in clearance by the Examining Office of the department.

2. Learned AR points out that the goods are mechanical in nature and therefore, the attention of the Examining Officer might not have been engaged towards the

mechanical intricacies, because of the debatable nature of the products involved, including the reference of cooling units in the goods.

3. The fact that the goods were cleared after the examination, was sufficient to indicate that the Commissioner should have weighted the limitation proposition while passing its order. Similarly, on the point of classification of goods, the Commissioner should have appreciated whether there is any cooling unit or not available, and the relevant chapter notes, section notes as well as contemporaneous H.S.N explanatory notes etc. We find that the full discussion on these aspects is not available to us. Since the issue is of classification having all India ramifications, the points raised by the advocate cannot be set aside in a jiff. Matter is therefore remanded for fresh adjudication for consideration of all the aspects including classification as well as limitation. It will be open remand, therefore, both sides will be able to point out any fresh evidence, but only after providing the opportunity to the other side. The matter shall be decided within the scope of show cause notice.

4. The matter is remanded.

5. Appeal allowed by way of remand.”

**30.1.1** I find that in the present denovo proceeding, issue involved is import of 'Bulk Milk Cooling Tanks, Evaporator Plates and Cream Separators' by classifying the same under CTI 84342406, 84349020 and 84342000 respectively as Dairy Machinery and claiming exemption from CVD under Notification No.6/2002-CE(Sr No.'293) and Notification No.6/2006-CE(Sr No.11) and also imported washing unit without declaring it to the Customs Authority and filing Bill of Entry by M/s. IDMC Ltd and consequential demand of duty alongwith interest, confiscation of goods, various penalties for the contravention of the provisions of Customs Act, 1962 and limitation. Therefore, the foremost issue before me to decide in this case is as to whether 'Bulk Milk Cooling tanks', 'Evaporator Plates' and 'Cream Separators' imported by the importer vide the Bills of Entry as listed in Annexure-A of the SCN are correctly classifiable under CTI 84186990, CTI 84195020 and CTI 84211100 respectively and whether the importer is eligible for exemption from CVD under Notification No.6/2002-CE(Sr No.'293) and Notification No.6/2006-CE(Sr No.11).

### **30.2. BULK MILK COOLING TANKS:**

**30.2.1** I find that importer has classified 'Bulk Milk Cooling Tanks under CTI 84342406 and has declared the description as 'Dairy Machinery-5000 L RKC Bare Milk Cooling System', as 'Dairy Machinery- System for Milk Cap 3000 L. Shri Mahesh Chandra, former Managing Director of importer firm M/s. IDMC Ltd in his statement date 25.05.2010 has specifically explained briefly the Bulk Milk Cooling Tanks, its components and the functioning of the BMC and stated that the bulk milk cooling tanks mainly consist of a milk tank, condensing unit, controls and agitator and that the condensing unit is always an external part; that the milk tank is different from any other storage tanks to the extent that it consists of an evaporator plate at the bottom of the tank and that the function of the evaporator is to cool the milk inside the storage tank. Further Shri Kuldeep Singh Sisodia, Senior Executive, (Production) of M/s. IDMC Limited and Shri Deepak Kumar Mahabhai Bhadania, Assistant Manager (Marketing) M/s. IDMC Limited in their concerned statements have admitted that Bulk Milk Cooling Tank imported and sold by them were fitted with evaporator and milk inside the tank cannot be cooled without the evaporator. I find from the statements of aforesaid personnel of importer that Bulk Milk Cooling is used for cooling milk to the desired temperature and storing the same. The Bulk Milk Cooling tanks are primarily used by the village milk collection centre for collecting and storing milk before the same is further transported to Dairies.

**30.2.2** I find that since the importer has classified the Bulk Milk Cooling Tank under CTI 84342406, it is inevitable to go through the HSN and its Explanatory Note to decide the merit classification of the impugned goods viz. 'Bulk Milk Cooling Tank'. Chapter Heading 8434 is for 'MILKING MACHINES AND DAIRY MACHINERY'. The relevant part of the explanatory notes of chapter 84.34, as in force at the relevant time, reads as follows:-

## (I) MILKING MACHINES

A milking machine comprises a cluster of teat-cups (each with a rubber liner) which are connected, by means of flexible tubing, on one side to a vacuum pump unit via a pulsator and on the other to a milk pail (usually of stainless metal). The pulsator, which is fixed to the lid of the milk pail, acts on the teat-cups by alternating atmospheric pressure with a comparative vacuum between the cups and the liners. The assembly formed by the teat-cup cluster, the pulsator and the milk pail is described as a "milking pail".

In certain machines of smaller capacity, the milking pails and the vacuum pump unit may be on a common base (single or twin-pail machines).

In the machines of larger capacity, the various components are usually separate. A variable number of milking pails may be connected to the vacuum pump unit by piping. Certain types have no milk pails, the milk passing directly from the teat-cups to the cooling apparatus or storage tanks along a pipe-line, generally fixed. These types include milking robots, also known as voluntary milking systems. These systems, which incorporate all the equipment necessary for automatic milking, inter alia, a nimble robotic arm, electronic devices, a vacuum pump, a compressor, a washing machine, milk meters, etc., are designed for milking cows at their own initiative. Each cow wears a collar carrying a transponder that identifies it, so that the system can decide whether the animal is due to be milked. The milking is performed by a robotic arm fitted with a laser-assisted vision system that permits the milk extraction devices to be guided directly to the teats of the cow.

**When presented together, the various components of such machines are classified in this heading as constituting a functional unit within the meaning of Note 4 to Section XVI (see the General Explanatory Note to that Section). However, apparatus and appliances which do not contribute directly to the milking function (filters, cooling devices, storage tanks, apparatus for cleaning the teat-cups and pipe-lines, etc.) are not classified in this heading but in their appropriate headings.**

## (II) MACHINES FOR PROCESSING MILK

This group includes **homogenisers**. These break up the fat into fine particles which are more readily digestible, and which also remain longer in a state of emulsion without the formation of cream.

The majority of machines for processing milk depend essentially on the principle of heat exchange and are therefore **excluded heading 84.19**, e.g., apparatus for pasteurisation, stassanisation or sterilisation; apparatus for condensing or drying milk; **milk coolers**.

The heading further **excludes** :

**(a) Refrigerating appliances (whether or not specially designed for cooling or keeping milk) and milk-cooling vats, incorporating an evaporator of a refrigerating unit (heading 84.18).**

**(b) Cream separators, filter-presses and other filtering or clarifying machinery or apparatus (heading 84.21).** (Simple filter funnels and milk strainers are, however, classified according to the constituent material.)

**(c) Machines for washing milk containers, and milk bottling or canning machines (heading 84.22).**

**30.2.3** On plain reading of aforesaid HSN Explanatory Notes of chapter 84.34, it articulate that the cooling devices, storage tanks as well those machines which essentially depend on the principle of heat exchange are excluded from the purview of Chapter 84.34. The HSN specifically excludes **Refrigerating appliances (whether or not specially designed for cooling or keeping milk) and milk-cooling vats, incorporating an evaporator of a refrigerating unit and classify them under chapter heading 8418. Further, it has been mentioned in the HSN Explanatory**

Notes of chapter 84.34 **that apparatus and appliances which do not contribute directly to the milking function (filters, cooling devices, storage tanks, apparatus for cleaning the teat-cups and pipe-lines, etc.) are not classified in this heading but in their appropriate headings. I find it worth to reiterate that Shri Mahesh Chandra, former Managing Director of importer firm M/s. IDMC Ltd in his statement date 25.05.2010 has specifically explained** briefly about Bulk Milk Cooling Tanks, its components and the functioning and has stated that the milk tank is different from any other storage tanks to the extent that it consists of an evaporator plate at the bottom of the tank and that the function of the evaporator is to cool the milk inside the storage tank and this facts were also admitted by Shri Kuldeep Singh Sisodia, Senior Executive, (Production) of M/s. IDMC Limited and Shri Deepak Kumar Mahabhai Bhadania, Assistant Manager (Marketing) M/s. IDMC Limited in their concerned statements that Bulk Milk Cooling Tank imported and sold by them were fitted with evaporator and milk inside the tank cannot be cooled without the evaporator. Further on perusal of the specification for the Bulk Milk Cooler as mentioned in the Indent No. 06-07/UI/BC/000268 dtd. 12/11/2006 interalia it is revealed as under:

"The tank should consist of direct expansion system, double walled tank with CFC High density Polyurethane foam insulation.

*The cylindrical and horizontal tank should contain following accessories:-*

- 1) Material : Inner & outer tank of SS304. Out tank plates are smoothly grinded Suitable for HGM 080/440 Volt twin condensing unit system.  
Inner tank 2mm and outer shall 1.5mm.
- 2) Evaporator : Double dimple plate 0.8 thk, made of SS in the bottom of the tank.  
Inlet (2no) and outlet (2 no) pipes at the opposite of outlet."
- 7) Refrigerant : R22
- 8) Standard : The SS 304 Tank Should comply with ISO 5708 2AII Standards.

In view of the above, facts and discussion, I find that the ' Bulk Milk Cooling Tank' imported by the importer fitted with evaporator and meant for cooling of the milk. And Standards for SS 304 Tank ISO 5708 2AII, mentioned in the said Indent clearly specifies the design, construction, performance and testing requirement for refrigerated bulk milk tanks and the same are excluded from chapter 84.34 . Further, it has been categorically stated in Explanatory Note that **that apparatus and appliances which do not contribute directly to the milking function (filters, cooling devices, storage tanks, apparatus for cleaning the teat-cups and pipe-lines, etc.) are not classified in this heading but in their appropriate headings and from the admittance of the concerned personnel of the importer and its specification as mentioned in the Indent, it proves that** ' Bulk Milk Cooling Tank' are correctly classifiable under Chapter Heading 84.18 and not under Chapter Heading 8434 as claimed by the importer.

**30.2.4** I also find that the Bulk milk cooling tanks imported were neither fitted with any Agitator, Agitator Motor, Stirrer etc. which is further corroborated from the statement of Shri Mahesh Chandra, the former Managing Director of Importer M/s. IDMC Ltd, Shri Kuldeep Singh Sisodia, Senior Executive (Production) of M/s. IDMC Limited and Shri Deepak Kumar Mohanbhai Bhadania, Assistant Manager (Marketing) of importer wherein they have admitted that the Bulk Milk Cooling Tank imported were not fitted with either Agitator or Agitator Motor and Agitators were manufactured at site and fitted to the bulk milk cooling tanks along with the Agitator Motor. Therefore, even on this count they are excluded from the purview of chapter 84.34 and are correctly classifiable under chapter 84.18 as the same are fitted with evaporator and not with an agitator.

**30.2.5** The fact that importer had imported bulk milk cooling tanks and not bare tanks is also corroborated from the details contained in their balance sheets for the period 2005-2006 and 2006-2007. As per Schedule 16 of the balance sheet of importer for the financial year 2005-2006, during 2004-2005 they have sold 39 bulk

milk cooling tanks and during 2005-06 they have sold 60 bulk milk cooling tanks. Further, as per Schedule 14 of the balance sheet of M/s. IDMC Ltd for the financial year 2006-07, they have sold 83 bulk milk cooling tanks during the year 2006-07. Shri Mahesh Chandra, the former Managing Director had in his statement dtd. 25/05/2010 stated that the traded goods mean the goods imported or purchased locally and sold by them without carrying out any manufacturing activity on the said goods which corroborates that the bulk milk cooling tanks shown as traded goods in the balance sheets of importer were those which had been purchased and sold by them as such which establishes the fact that the goods imported by them under the description of "DAIRY MACHINERY-SYSTEMS FOR MILK" were nothing but Bulk Cooling Tanks.

**30.2.6** Further, on perusal of the records available, I find that importer had deliberately mis-classified them under chapter 84.34 with a view to evade payment of Customs duty which is confirmed by the evidence of the email dtd. 24/10/2005 of Shri K. Shankar Iyer, Deputy General Manager (BMC) of M/s. IDMC Limited sent from his email id [ksiyer@idmc.coop](mailto:ksiyer@idmc.coop) to Mr. Hanne Nielsen, of M/s. Ro-Ka Industries Ltd. at her email id [hn@ro-ka.com](mailto:hn@ro-ka.com). Shri K. S. Iyer had by this email instructed her to use the nomenclature "DAIRY MACHINERY-SYSTEMS FOR MILK" and informed her that "If you see the last LC we have used this nomenclature. However, you have shipped the tanks using the nomenclature "Milk Cooling Tanks". **If you use Milk Cooling Tank nomenclature we have to pay a more customs duties**". Shri K. S. Iyer on being specifically asked regarding the goods shipped under the said description, he admitted that the goods were milk cooling tanks. Shri K. S. Iyer agreed that the bulk milk cooling tanks imported by them does not merit classification under Chapter Heading 8434 and CVD is payable on the same.

**30.2.7** On perusal of the proforma invoice bearing No. 262 dtd.02/11/2005 issued by overseas supplier M/s. RO Ka Industries, Denmark it is observed that it was in respect of 01 3000 L bare milk cooling tank with 2 X 8.5 HP HGZ 100-condensing units for 134A and separate installation, whereas in their Application & Guarantee for issue of documentary credit dtd. 13/12/2005 made to the UTI Bank Ltd, Vallabh Vidyanagar the goods has been described as 'Dairy Machinery - System for Milk 3000L' which establishes that importer was deliberately mis-declaring the bulk milk cooling tanks to avail/claim exemption from CVD under Notification No. 6/2002-CE dtd 1-3-2002 and Notification No. 6/2006-CE dtd 1-3-2006. Further, I find that the goods as mentioned in proforma invoice no. 262 dtd.02/11/2005 were meant for supply to M/s. Glaxo Smithkline Consumer Healthcare Ltd who vide purchase order No.5030155 QC dtd.17/10/2005 had placed an order for supply of 01 Bulk Milk Cooler with refrigeration control panel, capacity 3000 liters and comprising of twin condensing units with twin compressors suitable for R134A refrigerant. Despite the above facts, Importer had imported the aforesaid goods under bill of entry no. 620224 dtd.28/01/2006 declaring the description of the goods as "Dairy Machinery - System for Milk 3000 L" and classifying them under Chapter Heading 84.34, claiming exemption from payment of CVD under Notification No.6/2002-CE dtd. 1/3/2002 as amended. Further, when Shri Mahesh Chandra the former Managing Director of M/s. IDMC Ltd was asked in this regard on 25/05/2010, he admitted that the description of the goods in the application for documentary credit as well as in the bill of entry has been deliberately mis-declared. Also Shri K. S. Iyer in his statement dated 09/09/2010 admitted that the description of the goods was mis-declared by them with a view to avail exemption from CVD Not. No. 06/2002-CE dtd. 1/3/2002.

**30.2.8** I find that overseas supplier M/s. Ro-Ka Industries had issued Invoice No.60334 dtd. 30/09/2005 to importer for supply of 4 nos. of Dairy Machinery - 5000L Bare Milk Cooling System which was shipped in Container No. TEXU 4342525 under Bill of Lading No. BLSIND-0091 dtd. 16/10/2005. The description of the goods in the said Bill of Lading was mentioned as 'Milk Cooling Tank Parts'. The said documents were recovered from importer in the course of the search. On scrutiny of these documents, it is seen that the description of the goods in the invoice has been corrected by hand to read as "DAIRY MACHINERY 5000L RKC BARE MILK COOLING SYSTEM MODEL 1 SYSTEM FOR MILK", where the words System for 'Milk has been written by hand and the words 'BARE MILK COOLING SYSTEM MODEL-1' has been struck off by hand. Similarly, in the Bill of Lading the description of the goods has

been corrected by hand to read as "MILK COOLING TANK PARTS SYSTEMS FOR MILK 5000 L RKC", where the words 'MILK COOLING TANK PARTS' has been struck down by hand and the words Systems for 'MILK 5000 L RKC' has been added by hand. The said evidences corroborates that the importer with clear motive to evade the Customs duty mis-declared and misclassified under CTI 84342406 to avail benefit of exemption of CVD vide Notification No. 06/2002-CE dated 01/03/2002.

**30.2.9** Further, from the packing list issued by overseas supplier M/s. Ro-Ka Industries Ltd in respect of container No. TEXU 4342525 that the same was also corrected by hand to read as: 'DAIRY MACHINERY - 1 NOS. 5000 L RKC BAREMILK COOLING SYSTEMMODEL-1 FOR MILK', By striking out the words 'BARE MILK COLLING SYSTEM' adding the words for milk, the description has been tampered/corrected to read as 'DAIRY MACHINERY - 5000 L RKC SYSTEM' for Milk. Further, Shri Mahesh Chandra and Shri K. S. Iyer on being asked with regard to such tampering/correcting, both denied knowing the identity of the person who had made the corrections. Shri K. S. Iyer has admitted that he had instructed the overseas supplier vide email dtd.24/10/2005 to change the description. Overseas supplier M/s. Ro-Ka Industries, as per the instructions received from Shri K. S. Iyer had changed the description in the invoice and packing list and sent a revised invoice to the importer which was submitted to the Customs at the time of filing of bill of entry No.618609 dtd.19/11/2005 for import of the said goods by classifying them under CTH 84.34 and claiming exemption from CVD. Further, Shri K. S. Iyer admitted that the description was changed with a view to avail the exemption from CVD under Notification No. 6/2002-CE dtd. 1/3/2002 which proves beyond doubt that the description of the goods imported were being mentioned by the overseas supplier in their documents as per the instructions of importer. Further the said importer prior to October 2005 were classifying the said goods under CTI 84186950 and were paying appropriate Customs duty and subsequently consciously with pre-conceived mind mis-declared the description of the imported goods and also mis classified to fraudulently avail the exemption from CVD under Notification No.6/2002-CE dtd. 1/3/2002.

**30.2.10** I find that importer has contended that in the present case, the so called 'evaporator plate' that is attached within the imported goods is nothing but a dimple plate, also known as pillow plate; that the plate by itself cannot heat or cool unless it is further integrated with a condensing unit only where after the dimple plate/pillow plate gets converted to an evaporator; that before this conversion (or in other words, before the integration with a condensing unit through necessary pipings, etc), the dimple/pillow plate is not an evaporator and the Principal Noticee was importing bare tanks alone and not along with condensing unit. I find that this contention is not tenable as said Explanatory Note to Chapter Head 8434 says that apparatus and appliances which do not contribute **directly to the milking function** (filters, **cooling devices, storage tanks**, apparatus for cleaning the teat-cups and pipe-lines, etc.) are not classified in this heading. The Bulk Milk Cooling Tank fitted with Evaporator plates which is heat exchanger and being cooling components, same is out of the ambit of CTH 8434 as per Explanatory Note to Chapter Head 8434.

**32.2.11** Further, to fortify findings on Explanatory Note to Chapter Heading 8434, I rely on the ratio of decision of Hon'ble Tribunal, Mumbai in case of HMT Ltd Vs. Commissioner of C.Ex. & Cus, Aurangabad reported in 2006 (194) ELT 121 (Tri. Mumbai) upheld by the Hon'ble Supreme Court as reported in 2007 (214) ELT 10 (S.C) wherein it has been interalia held as under:

"4. We also find that as per HSN explanatory note to Chapter Heading 84.34, that machines for processing milk depend on the principle of heat exchange and they are excluded from coverage under Chapter Heading 84.34 and the heading also excludes refrigerating appliance (whether or not specially designed for cooling or keeping milk and milk cooling vats incorporating evaporator of a refrigerating unit) from Chapter Heading 84.34. HSN Explanatory note also excludes machines for wrapping or weighing a product from Chapter Heading 84.34.

5. Further in the case of *Diary Development Corporation v. Collector of Customs, Bombay* - 2000 (119) E.L.T. 629, the Tribunal held that butter packing machine is

classifiable under Heading 84.22 of the Customs Tariff Act, 1975 and not under Heading 84.34.”

Though the aforesaid decision is rendered with regard to Central Excise Tariff, however ratio of the same is squarely applicable as the Central Excise Tariff is aligned based on the Customs Tariff.

In view of the above, discussion and finding, I find that importer had misclassified the 'Bulk Milk Cooling Tank' under CTI 84342406 instead of merit classification under CTI 84186990 of the Customs Tariff Act, 1975 and the importer has wrongly claimed the benefit of exemption from CVD under Notification No. 6/2006-CE dtd. 1/3/2006 (Sr. No. 11).

### **30.3 EVAPORATOR PLATES:**

**30.1 I find that importer has also imported 'Evaporator Plates under CTI 84349020 as component of Dairy Machinery. I do not find it worth to reiterate the Explanatory Note to HSN 8434 and its exclusions as it has already been mentioned at Para 30.2.2 herein above. I find that importer himself has declared the 'Evaporator Plate' as component of Dairy Machinery but actually the said Evaporator Plates are components of Bulk Milk Cooling Tanks and as discussed hereinabove, the same is excluded from the Customs Tariff Heading 8434 . Also Shri K. S. Iyer in his statement dtd. 20.08.2010 has admitted that the evaporator plates are components of the Bulk Milk Cooling tanks. Therefore, I find that the evaporator is a heat exchanger and this fact has also been confirmed by the personnel of M/s. IDMC Ltd. in their statements. The Evaporator Plates are therefore, classifiable under CTI 84195020 which specifically covers Plate type heat exchange units. Accordingly, I find that importer has mis-declared the goods as components of dairy machinery and thereby mis-classified the evaporator plates under CTI 83439020 and wrongly claimed the benefit of exemption from CVD under notification No. 6/2002-CE dtd 1-3-2002 and notification No. 6/2006-CE dtd 1-3-2006.**

### **30.3 CREAM SEPARATORS:**

**30.3.1 I find that the importer has imported Cream Separators under CTI 84342000 of the Customs Tariff as components of Dairy Machinery. I find that importer had declared 'Cream Separator' as 'Self Cleaning Separator Tetra Centri', 'Tetra Centri Self Cleaning Separator' and 'Milk Skimming Separator'. Despite of knowing that imported goods were Milk/Cream Separators, with clear intent to evade the payment of Customs Duty they have declared the vague description to hoodwink about the actual nature of the goods imported and thereby misclassified them under chapter heading 84.34. I find that there is specific Tariff Entry No 84211100 for 'Cream Separators'. Further, Shri K. S. Iyer, Deputy General Manager (BMC) in his statement dated 15/03/2010 and 18/03/2010 has admitted the mis- declaration and mis-classification of the 'Cream Separators' and also admitted that Cream Separators are classifiable under heading 8421 and had wrongly availed the benefit of exemption from CVD available under Notification No. 6/2002-CE dtd 1-3-2002 and Notification No. 6/2006-CE dtd 1-3-2006.**

**30.3.2 I find that there is no dispute that there is specific tariff entry for Cream Separator as 84211100. I rely on the ratio of the decision of Hon'ble Tribunal, Mumbai in case of HMT Ltd Vs. Commissioner of C.Ex. & Cus, Aurangabad reported in 2006 (194) ELT 121 (Tri. Mumbai) upheld by the Hon'ble Supreme Court as reported in 2007 (214) ELT 10 (S.C) wherein it has been interalia held as under:**

- “3. We have** *heard both sides. The items in dispute are : -*
- (1) Skid Mounting Type Milk/Cream Pasteurizer*
  - (2) Chilling Plant*
  - (3) Milk/Cream Chillers*
  - (4) Milk Cream Pasteuriser*
  - (5) Milk/Cream/ Ghee Pumps*
  - (6) Milk & Cream Separators**
  - (7) Butter Packing Machine - and*
  - (8) Parts of the above machines.**

**3.** *The assessee claimed classification of item Nos. 1 to 7 above under Chapter Heading 84.34 and for serial No. 8 classification under Chapter Heading 8434.90. The authorities below have applied Note No. 2 of Chapter Heading 84 and HSN explanatory note excluding such items, which are in the nature of pasteuriser/chiller etc. from the coverage under Chapter Heading 84.34. Note No. 2 to Chapter Heading 84 clearly sets out, that subject to the operation of Note 3 to Section XVI, a machine or appliance which answers to a description in one or more of the Heading Nos. 84.01 to 84.24 and at the same time to a description in one or other of the Heading Nos. 84.25 to 84.80 is to be classified under the appropriate heading of the former group and not the latter group. Certain items are extended from the above, but it is not the case of the appellants nor it can be the case that all the 8 items in dispute are excluded in Note No. 2 to Chapter 84. The adjudicating authority has found that the items at serial Nos. 1 to 4 above are heat exchangers and therefore classifiable under CETA sub-heading 8419.10, which covers machinery ..... whether or not electrically heated for the treatment of materials by a process involving a change in temperature such as heating ..... Pasteurizing ..... or cooling .....". He has held that parts of the above machinery will fall under CETA Chapter Heading 8419.90, which covers parts of machinery falling under Chapter Heading 84.19 and that they are chargeable to duty at the rate of 13%, which prevailed at the relevant time. As regards item at serial No. 5, he has classified it under Chapter Heading 8413.99 as pumps for liquid and parts thereof and therefore falling under Chapter sub-heading 8413.19 and attracting duty at the rate of 13%. As regards, item at serial No. 6 above, he has held that they are classifiable under Chapter sub-heading 8421.10, as centrifuges and parts classifiable under Chapter sub-heading 8421.90 attracting duty at the rate of 13% ad valorem. As regards item at serial No. 7 above, he has confirmed the classification under Chapter sub-heading 8422.80, as wrapping machinery, attracting duty at the rate of 13% ad valorem and also classified the parts under Chapter sub-heading 8424.90.*

**4.** *We also find that as per HSN explanatory note to Chapter Heading 84.34, that machines for processing milk depend on the principle of heat exchange and they are excluded from coverage under Chapter Heading 84.34 and the heading also excludes refrigerating appliance (whether or not specially designed for cooling or keeping milk and milk cooling vats incorporating evaporator of a refrigerating unit) from Chapter Heading 84.34. HSN Explanatory note also excludes machines for wrapping or weighing a product from Chapter Heading 84.34.*

**5.** *Further in the case of Dairy Development Corporation v. Collector of Customs, Bombay - 2000 (119) E.L.T. 629, the Tribunal held that butter packing machine is classifiable under Heading 84.22 of the Customs Tariff Act, 1975 and not under Heading 84.34.*

**6.** *In the light of the Note No. 2 to Chapter Heading 84.34 and HSN explanatory notes to Chapter 84.34 and the Tribunal's decision cited supra, we reject the contentions of the appellants that pasteurizing machines in question are dairy machines for classification under Chapter Heading 84.34 (although they are dairy machines) and uphold the findings of the authorities below, as regards classification under different headings of Chapter 84. In the result, we uphold the impugned order and reject the appeal."*

**30.3.2** Further, I find that the importer has classified the 'Cream Separator' under CTI 84342000 claiming as Dairy Machinery. As discussed above that there is specific entry 84211100 for 'Cream Separator' and it is settled position that specific entry overrides the general/residual entry. To uphold the said findings, I rely on the ratio of decision of Hon'ble Supreme Court rendered in the case of Commissioner of Commercial Tax, Up Vs. A.R. Thermosets (Pvt.) Ltd reported in 2016 (339) ELT 500 (S.C.) wherein interalia it has been held as under:

**"22.** *In this regard, another aspect needs to be noted. The Revenue does not rely upon another Entry under which bitumen emulsion can be taxed. The Revenue relies upon the residuary Entry which would only include goods, which cannot be covered under any other Entry in the schedule on application of the three-fold criteria. In the State of Maharashtra v. Bradma of India Limited - (2005) 2 SCC 669, the Court had observed that the general principle is that specific Entry would override a general Entry. Referring to the decisions in the case of Collector of Central Excise, Shillong v. Wood Craft Products Ltd. - (1995) 3 SCC 454 = 1995 (77) E.L.T. 23 (S.C.), it has been ruled that*

resort can be made to a residuary heading only when by liberal construction the specific Entry cannot cover the goods in question. Referring to Entry No. 90 in the said case, which covered tabulating, calculating, cash registering, indexing and data processing, etc., other than computer machines, it was held that the words did not contain words of limitation and would cover every species of cash registering machines, irrespective of their mode of operation. In the absence of any limitation or qualification as to the different kind of cash registering machines, there was no reason for such qualification and limit the Entry to a particular kind of cash registering machine. However, computers had been specifically excluded and were separately dealt with in Entry 97(a). The assessee, who was manufacturing electronic cash registers would, therefore, be covered by Entry 90 and not by the Entry relating to computers. A similar opinion has been expressed in *Hindustan Poles Corpn. v. Commissioner of Central Excise, Calcutta* - (2006) 4 SCC 85 = 2006 (196) E.L.T. 400 (S.C.) stating that residuary Entry is made to cover only those category of goods which clearly fall outside the ambit of the main Entry. The opinion proceeds further to state that unless the Revenue can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be made to the residuary Entry.

**23.** In this context, reference to the authority in *Commercial Taxes Officer v. Jalani Enterprises* - (2011) 4 SCC 386 = 2011 (266) E.L.T. 289 (S.C.) would be profitable. While dealing with the question of sales tax/VAT under the Rajasthan Sales Tax Act, it was held that if from records it was established that the product in question could be brought under a specific Entry, then there was no reason to take resort to the residuary Entry. Revenue cannot be permitted to travel to the residuary Entry when a product can be covered under a specific Entry.”

#### **30.4 Washing unit:**

**30.4.1** I find that Importer has purchased Washing unit valued at Euro 1470 from M/s. Westfalia Surge Nordic, A/S, Denmark under invoice No. No.61729 dtd.14/07/2006. The said Washing Unit was shipped in Container No. FSCU 944204-4. M/s. IDMC Ltd had filed bill of entry no.625382 dtd. 21/08/2006 in respect of 08 pcs of Dairy Machinery System for milk Cap 5000 ltr which was shipped in container no. FSCU 944204-4. They had however, failed to declare Washing Unit which was also shipped in the said container. When Shri K. S. Iyer, Deputy General Manager (BMC) of M/s. IDMC Limited was questioned in this regard on 18/03/2010, he admitted that Washing Unit was not declared in the bill of entry filed by them and that they had evaded duty in respect of the said Washing Unit which establishes that they have indulged themselves in smuggling of goods.

**30.4.2** I find that Advocate of the importer has contended that said washing unit was supplied by the overseas supplier by mistake without any order having been placed by the Principal Noticee i.e M/s. IDMC Ltd. This fact is totally false as the said Washing unit valued at Euro 1470 was purchased from overseas supplier M/s. Westfalia Surge Nordic, A/S, Denmark under invoice No. 61729 dtd.14/07/2006. The said Invoice No. 61729 dtd.14/07/2006 clearly show the 'Delivery Address' of the importer and Order No. 36800 placed by the importer for supply of 'Washing Unit' for 1470 EURO. Therefore, the submission of the importer that mistakenly overseas supplier sent the Washing Machine to the importer is utterly false. Further, Shri K. S. Iyer, Deputy General Manager (BMC) of importer in his statement dated 18/03/2010, has admitted that Washing Unit was not declared in the bill of entry filed by them and that they had evaded duty in respect of the said Washing Unit which establishes that they have indulged themselves in smuggling of goods.

**In view of the above, discussion, I find that importer with clear intent to evade the customs duty and to claim the benefit of Notification No. have resorted to mis-declaration and misclassification of the goods viz. 'Bulk Milk Cooling Tanks', 'Evaporator Plates' and 'Cream Separator' and hence it is required to be reclassified under CTI 84186990, CTI 84195020 and CTI 84211100 respectively and the said importer is not eligible for exemption from CVD under Notification No.6/2002-CE(Sr. No.293) and Notification No.6/2006-CE(Sr. No.11) and further they have smuggled the Washing Machine.**

**31. Whether differential/short paid Customs Duty amounting to Rs. 1,91,11,555.45 as detailed in Annexure-A & B to Show Cause Notice should be**

**demanded and recovered invoking the extended period under erstwhile Proviso to Section 28(1) of the Customs Act, along with applicable interest under Section 28AB ibid?**

**31.1** I find that before the Hon'ble CESTAT, Advocate of the importer had sought remand merely on the ground of limitation in this case and have argued that while passing the impugned decision the Commissioner did not include the factum of examination of the goods in clearance by the Examining Officer of the department. Accordingly, Hon'ble CESTAT vide Order No.10305-10309/2025 dated 22.04.2025 have interalia stated that " The fact that the goods were cleared after the examination, was sufficient to indicate that the Commissioner should have weighted the limitation proposition while passing its order. Therefore, whether the demand is barred by limitation or otherwise is required to be decided. Accordingly, I proceed to consider the same as under.

**31.2** I find that importer has imported the following goods by mis-declaring them as dairy machinery and mis-classifying them under CTH 84.34 and further smuggled one Washing Unit by act of non declaration of the same in Bill of Entry No. 625382 dtd. 21/08/2006 in respect of 08 pcs of 'Dairy Machinery System for milk Cap 5000 ltr' which was shipped in container no. FSCU 944204-4.

S. No.	Description of the goods	Quantity (Nos.)	Value (Rs.)	Duty evaded (Rs.)
1.	Bulk Milk Cooling Tanks	161	6,12,69,457.27	1,17,84,132.92
2.	Milk/Cream Separator	06	4,22,51,067.97	71,40,882.37
3.	Evaporator Plates	16	8,13,078.18	1,54,300.76
4.	Washing Unit	01	87,759.00	32,239.40
	<b>TOTAL</b>		<b>10,44,21,362.42</b>	<b>1,91,11,555.45</b>

**31.2.1** Amendment introduced vide the Finance Act, 2011, Section 17 of the Customs Act, 1962 mandates the concept of self-assessment, effective from 08.04.2011, whereby the importer is obligated to assess the duty on imported goods by filing a Bill of Entry electronically. In conjunction, Section 46 requires the importer to present such Bill of Entry electronically before the proper officer, and under Regulation 4 of the Bill of Entry (Electronic Declaration) Regulations, 2011, a Bill of Entry is deemed filed and self-assessment completed once the electronic declaration is entered in the Indian Customs Electronic Data Interchange System (ICES), either via ICEGATE or through the Service Centre, and a Bill of Entry number is generated for the said declaration. After the introduction of self-assessment, it is not the prerogative of the Customs Department to detect all errors, but rather the responsibility of the importer to be vigilant and accurate.

Accordingly, it is the importer's statutory responsibility to declare accurately the description, classification, rate of duty, value, quantity, and to correctly claim any applicable exemption notification at the time of import. In the present case, importer, by failing to correctly declare the description and classify the imported goods and by omitting to comply with applicable regulatory requirements, has clearly failed to carry out proper self-assessment in the Bill of Entry. Accordingly, the importer has contravened the provisions of Section 17(1) of the Customs Act, 1962.

**31.3** I also find that the importer, in accordance with the self-assessment regime introduced by the Finance Act, 2011, had self-assessed the Bill of Entry but deliberately mis declared and misclassified the imported goods, thereby wilfully evading the applicable customs duty. This mis declaration and misclassification resulted in substantial loss to the public exchequer, equivalent to the differential duty amount. The act of mis declaration and mis-classification was not a result of any bona fide error but a conscious and deliberate attempt to avail undue benefit of exemption notification resulting in undue monetary gain to the importer. Accordingly, I find that the demand for recovery of differential duty has been correctly raised under proviso to Section 28(1) of the Customs Act, 1962, by invoking the extended period of limitation.

**31.4** I find that there is no dispute that in present case, only 5% of the goods were examined and it tallies with packing list, the declared description of entire cargo is accepted of the goods. Thus, merely on examination of 5% of cargo, it was not possible

to ascertain the correct description of the goods imported under the Bill of Entry by the Customs Officers and therefore, merely 5 % examination of the goods does not absolve the importer from their responsibility of complete and true description and classification of the goods. Further, the goods is ordered to be examined with reference to invoice, packing list and other relevant details. Therefore, it is worth to discuss the documentary evidences which proves the connivance of the importer in mis-delcaration of description of the goods and mis-classification thereof.

### **31.5 Documentary Evidences:**

**31.5.1** Shri K.S Iyer, from his E mail ID <ksiyer@idmc.coop> informed vide Email Saturday, April 15, 2006 10:08 AM to the overseas supplier on E mail ID "Ole Sindberg (E-mail)" <as@ro-ka.com>; [jl@ro-ka.com](mailto:jl@ro-ka.com) informed as under:

*"Subject: Description of tanks*

*"Dear Mr Sindberg*

*The nomenclature of the tanks used by us is "Dairy Machinery". We are opening all our LCs with this nomenclature and your company is also making the invoices with the name "Dairy machinery".*

*But in case you put a non LC tank alongwith the LC goods, you are again using the word "Tank". This will cause problem to us.*

*In future whenever you supply tanks to us in the non LC repeat Non LC supplies also, kindly use the word "Dairy Machinery". There should be no mention of the word "tank". The "Tank" word causes customs problem here.*

*Kindly give this information to the person who is preparing the invoice and packing list and also interacting with the freight forwarder.*

*But in case you put a non LC tank along with the LC goods, you are again using the word "tank". This will 'cause problems to us.*

*IC Shankar Iyer  
IDMC Limited"*

**31.5.2** Shri K.S Iyer, from his E mail ID <ksiyer@idmc.coop> on 24.10.2005 5:53PM writes to overseas supplier Ms. Hanne Nielsen on E mail ID <hn@rc)-b.mm>; Prashant Acharya [acharya@idmc.mop](mailto:acharya@idmc.mop) as under:

*"Dear Ms. Nielsen  
Urgent and Important*

*In future for tank shipment to IDMC, use the following nomenclature only:*

*DAIRY MACHINERY*

*SYSTEM FOR MILK*

*If you see the last LC we have used this nomenclature. However, you have shipped the tanks using the Nomenclature "Milk Cooling Tanks". If you use Milk Cooling Tank nomenclature, **we have to pay more customs duties.***

*Is it possible to:*

*a. Change the invoice*

*b. change the BL (ask DFDS to do it).*

*Kindly ask DFDS to have this changed in the master BL as well.*

*Kindly get me a feed back on this please.*

*Kindly send the revised papers to me immediately.*

*Best wishes*

*Shankar Iyer."*

**31.5.3** Further in their Annual Report for the year 2004-2005, 2005-2006 and 2006-2007 the importer has clearly mentioned under the Head "Sales" and sub Head 'Goods Traded including High Sea Transaction' the description of goods as "Bulk Milk Cooling Tank" and there is no mention of "Dairy Machinery"

**31.5.4** Packing list issued by overseas supplier M/s. Ro-Ka Industries Ltd in respect of container No. TEXU 4342525 that the same was also corrected by hand to read as: 'DAIRY MACHINERY - 1 NOS. 5000 L RKC BAREMILK COOLING SYSTEMMODEL-1 FOR MILK', by striking out the words 'BARE MILK COLLING SYSTEM' adding the words for milk, the description has been tampered/corrected to read as 'DAIRY MACHINERY - 5000 L RKC SYSTEM' for Milk.

**31.5.5** Invoice No. 60334 DT. 30.09.2005 wherein the description written /MENTIONED as '**BARE MILK COOLING SYSTEM MODEL**' is struck out and corrected as '**SYSTEM FOR MILK**' by hand.

**31.5.6** Packing List for Container No. TEXU 434252-5 Seal No. BG68377 wherein also description mentioned as '**BARE MILK COOLING**' is struck out and corrected as '**FOR MILK**' by hand in all the four items mentioned therein in the Packing list.

**31.5.7** Bill of Lading No. for said Container No. TEXU 434252-5 Seal No. BG68377BLSIND-OC dated 16.10.2005 wherein also description of goods mentioned as '**MILK COOLING TANK PARTS**' are struck out and corrected as '**SYSTEMS FOR MIL 5000 L RKC**' by hand.

**31.5.8 Specification for Indent No : 05-06/BC/000106 dated 28.07.05.**

**"SPECIFICATION FOR BULK MILK COOLING TANK CAPACITY-500 LITRES (SUITABLE FOR TWIN CONDENSING UNIT)**

Material of construction -- SS 304

Inner Shell with evaporator-- SS304/ 2mm thk.

Outer shell -- SS 304/ 1mm OR 1.5mm thk  
(without washing unit)

a) SS 304 / Insulated cooling tank with evaporator.

b) SS 303/ Lockable Manhole.

c) AA 304 / Inlet supplier as per regular design.

d) SS 304/ Outlet pipe piece at least 250mm without Butterfly valve suitable for 51mm dia connection.

e) SS 304/ Air vent.

f) SS 304/ Spray ball/ dish with 25mm SMS Union for CIP.

(We receive DIN Union 25mm which is not acceptable, as out piping is SMS Type)

g) SS Agitator motor housing with hole for agitator. Pl. do not supply motor and agitator.

**h) The tank should be suitable for ISO5708 -A II.**

i) SS304/ Adjustable legs (0-50mm) height.

**2. PACKING & OTHERS:**

A) Bulk Cooling tank should be packed in sea-worthy packing.

b) Please submit set of instruction manual and operating manual.

d) Please supply SS 304 / Floor level plates one each for the bottom legs of tank (6 no)".

**The SS 304 Suction and Discharge pipes (at bottom of tank opposite end to outlet valve connected with insulated tank should be brazed with copper pipe end piece so that brazing becomes easy at site."**

**31.5.9** Invoice No. 61729 dtd.14/07/2006 issued by overseas supplier M/s. Westfalia Surge Nordic, A/S, Denmark. The said Invoice No. 61729 dtd.14/07/2006 clearly shows the 'Delivery Address' of the importer and Order No. 36800 placed by the importer for supply of 'Washing Unit' for 1470 EURO. The importer had not declared the said 'Washing Unit' in Bill of Entry and same was got cleared without payment of customs duties.

**31.6 Statements of personnel of importer:**

**31.6.1.1** Shri K. Shankar Iyer, Deputy General Manager BMC) of M/s. IDMC Limited, in his statement recorded on 15/03/2010 interalia admitted the facts that email dtd. 24/10/2005 contained in the file listed at Sr.No.3 of the annexure to panchnama

dtd.15/3/2010 was sent by him from his email id [kseyer@idmc.coop](mailto:kseyer@idmc.coop) to Mr. Hanne Nielsen at her email id [hn@so-ka.com](mailto:hn@so-ka.com); and further, in his statement recorded on 18/03/2010 admitted that they had wrongly declared the same as Dairy Machinery System for Milk Cap 3000L and wrongly classified bulk milk cooling tank under CTI 84342000 and wrongly availed exemption from CVD under Noti. No.6/2002-CE (Sr.No.293).

**31.6.1.2** Further in his statement dated 06/08/2010, on being shown the printout of an email dated 06/11/2007 of Shri Mukesh Dave to him with copies to [kalpesh@grouppgathani.com](mailto:kalpesh@grouppgathani.com), [dharmesh@grouppgathani.com](mailto:dharmesh@grouppgathani.com) and one JAYEN and stated that by the said email Shri Mukesh Dave of M/s. GCOMMFL had informed him the details of their Custom House Agents; that this email was in response to his email dtd.6/11/2007 by which he had enquired with Shri Mukesh Dave the details of their CHA so that they could give them the job of clearance, provided the CHA assured in writing that they would definitely get the goods cleared under 84.34; that Shri Mukesh Dave had in this context informed him that their CHA would try their level best to clear the consignment under CTH 8434; he was shown printout of e mail dated 06/11/2007 to Mukesh Dave at his email ID [mukeshdave@amul.coop](mailto:mukeshdave@amul.coop) with copies to [dharmesh@grouppgathani.com](mailto:dharmesh@grouppgathani.com) and he admitted that by the said email he had informed that he would first talk to their CHA i.e. M/s. Group Gathani to find out whether they would clear the goods i.e. Butter Wrapping Machine under CTH 8434; that he had further informed that if the CHA was tentative, they would not give the job to them; Further, on being shown printout of his email dtd.12/11/2007 sent to Shri Mukesh Dave at his email [idsmukeshdave@amul.coop](mailto:idsmukeshdave@amul.coop) with copies to Shri S. S. Bhatnagar, Shri Kumar Satvik and Shri Kalpesh Darji at his email id [kelpesh@grouppgathani.com](mailto:kelpesh@grouppgathani.com) stated that Shri Kalpesh Darji had informed certain issues to Shri Mukesh Dave vide email dtd.7/11/2007 which was forwarded to him by Shri Mukesh Dave on 12/11/2007; he admitted that in his said email Shri Kalpesh Darji had informed that the clearance of Butter Wrapping Machine under CTH 8434 was possible subject to some changes i.e. 1) In the invoice the Tariff No. should be changed from 84.22 to 84.34 and 2) It should be mentioned at the top of the invoice "dairy machinery"; Further stated that in response to this, he had informed that he would ask the supplier to redo the invoice and send it to him by courier; that he had also informed that it was not possible to get a catalogue showing use of the machine as dairy machinery, as the supplier has a standard catalogue and would not create a new one just for them; that Shri Kalpesh had further asked them to get the place of delivery changed from ICD to JNPT to which he had informed that they would get a letter from the supplier for this change; on being shown his email dtd.13/11/2007 sent to Shri Mukesh Dave at his email ID [mukeshdave@amul.coop](mailto:mukeshdave@amul.coop) with copies to Shri S. S. Bhatnagar, Shri Kumar Satvik, Shri Kalpesh Darji at his email id [kalpesh@grouppgathani.com](mailto:kalpesh@grouppgathani.com) and Shri N. Zaveri stated that by the said email he had informed that the new/revised invoice with the Dairy Machinery inscription and the HS 84.34.20.00 had come over email and he was ready to send the documents to the CHA; that he had further informed that as a catalogue specific to CTH 8434 was not available; the CHA had to work with the write up given by them and Mehsana Dairy.

**31.6.1.3** Further in the statement dated 20/08/2010, Shri K. Shankar Iyer inter alia stated that vide invoice no. 07-08/P2/086449 dtd. 29.03.2008, they have sold 2 No's of 'Tetra Centri' and vide invoice no. 08-09/P2/912015 dtd. 10.05.2008 they had sold one 'Separator' which were imported vide Bill of Entry No. 670563 dated 16.01.2008; that the description of the said goods declared in the said BE were 'Self Cleaning Separator 'Tetra Centri' and vide invoice no. 08-09/P5/922293 dtd. 06.11.2008, they have sold 2 no's of 'Tetra Centri', which were imported vide BE No. 931985 dated 28.07.2008 and the description of the said goods were declared in the said B/E as 'Tetra Centri Self Cleaning Separator' and vide invoice no. 08-09/P5/922396 dtd. 06.02.2009, they have sold 1 no of 'Centrifuges Tri Purpose Self Cleaning Type', which was imported vide BE No. 750646 dated 16.01.2009 under description 'Milk Skimming Separator' and admitted that the imported goods and sold goods were the same but the description shown in the sale invoices was as per their customer's purchase order, therefore, there are difference in the description in their sale invoices and Bill of Entries; on being shown printout of an email dtd 13.11.2007 of Shri R A Modi from his id [ramodi@mehsanaunion.coop](mailto:ramodi@mehsanaunion.coop) to Shri Mukesh Dave at his email ID [mukeshdave@amul.coop](mailto:mukeshdave@amul.coop) he stated that by the said email Shri R. A. Modi, Dy. GM (F&A), Mehsana union had forwarded a draft letter addressed to the Asstt. Commissioner of Customs alongwith the technical specifications and technical data of

the Butter Wrapping Machine to Shri Mukesh Dave of M/s. GCMMFL; that the said technical data of the Butter Wrapping Machine was meant to portray/claim that the use of the machine as dairy machinery so that it can be cleared under CTH 8434; On being shown printout of an email dtd. 14.11.2007 of Shri Kumar Satvik to him at his mail id [ksiyer@idmc.coop](mailto:ksiyer@idmc.coop) and he states that by the said email Shri Kumar Satvik, Assistant Manager, Dairy & Allied Group, M/s. IDMC Ltd. had sent technical write up for Butter packing Machine of Mehsana; that the said technical write up had been sent by him to Shri Mukesh Dave at his email ID [mukeshdave@amul.coop](mailto:mukeshdave@amul.coop) with a request to send the same to Mehsana Dairy and get an appropriate write up from them; that he also informed him that he was awaiting the revised invoice; that subsequently, the said technical write up had been sent to Mukesh Dave at his email ID [mukeshdave@amul.coop](mailto:mukeshdave@amul.coop) to Shri R A Modi at his id [ramodi@mehsanaunion.coop](mailto:ramodi@mehsanaunion.coop) with copies to Shri Dharmesh and Shri Kalpesh Darji at their email id [dharmesh@groupgathani.com](mailto:dharmesh@groupgathani.com) and [kalpesh@groupgathani.com](mailto:kalpesh@groupgathani.com) respectively; On being shown printout of his email dtd.28.11.2007 to Shri Mukesh Dave at his email ID [mukeshdave@amul.coop](mailto:mukeshdave@amul.coop) with copies to [dharmesh@groupgathani.com](mailto:dharmesh@groupgathani.com) and [kalpesh@groupgathani.com](mailto:kalpesh@groupgathani.com) he admitted that by the said email, he had informed Shri Dharmeshbhai that he (dharmesh) is acting as their CHA for clearance of Butter Wrapping Machine as Dairy Machine for Mehsana Dairy and asked him about the status of clearance of the goods as the same had already been delayed on account of the documentation adjustments to be made for facilitating clearance under 8434.

**31.6.1.4** Another statement of Shri K. Shankar Iyer was recorded on 09/09/2010 wherein, he inter alia on being shown an Application & Guarantee for issue of documentary credit dtd.13/12/2005 made to the UTI Bank Ltd, Vallabh Vidyanagar, stated that the said application has been signed by him and Shri Mahesh Chandra; that in the said application, the goods have been described as Dairy Machinery - System for Milk 3000L; that on being shown a Purchase Order No. 5030155 QC dtd.17/10/2005 of M/s. Glaxo Smithkline Consumer Healthcare Ltd, issued to M/s. IDMC for supply of 01 Bulk Milk Cooler with refrigeration control panel, capacity 3000 litres and comprising of twin condensing units with twin compressors suitable for R134A refrigerant and bill of entry no. 620224 dtd. 28/1/2006 filed for importing the said goods, he stated that the description of the goods in the application for documentary credit as well as in the bill of entry has been mis-declared; that the description of the goods in the bill of entry has been mis-declared to avail exemption from payment of CVD under Noti. No.6/2002-CE dtd. 1/3/2002 as amended; that on being shown Bills of Entry No. 614454 dtd. 02/05/2005 and No. 617648 dtd. 07/10/2005 contained in the seized file listed at Sr. No. 27 and 24 respectively of the panchnama dtd.15/3/2010, he stated that vide BE No. 614454 dtd 02/05/2005 and No. 617648 dtd. 07/10/2005, they had imported "Dairy Machinery 5000 L RKC Milk Cooling Tank" and "RKC, 3000 L Milk Cooling Tank" respectively by classifying the said goods under Customs Tariff Item 84186950 and paid all duties of customs viz. basic custom duty, CVD, Cess etc.; on being specifically, asked why from about October, 2005 they have changed the classification of the said goods under CTI 84342000 describing the goods "Dairy Machinery System for Milk Cap.3000L/4000L/5000L", **he admitted that that description and Customs Tariff Heading of the said goods were changed to avail exemption from payment of CVD under Noti. No-6/2002-CE dtd.1/3/2002 as amended;** On being shown Invoice No. 60334 dtd.30.9.2005 of M/s. RO Ka Industries, Denmark, Bill of Lading No. BLSIND-OC dtd.16/10/2005 and a Packing list of M/s. Ro Ka Industries, Denmark contained in the file bearing No.3, he stated that the said invoice and packing list were issued to M/s. IDMC Ltd for "04 Dairy Machinery — 5000 L RKC Bare Milk Cooling System" and said BL for "04 Milk Cooling Tank Parts", however, in the said invoice and packing list the "Bare Milk Cooling and Model 1" have been struck off by hand and the words "FOR MILK" added by hand so that the description reads as "Dairy Machinery 5000 L RKC System for Milk"; that similarly, in the said BL words "Milk Cooling Tank Parts" have been struck off by hand and the words "Systems For Milk 5000 L RKC" added by hand; that he is not able to identify the handwriting or the person who has made the corrections; Further, he admitted **that he had instructed their overseas supplier through his email dtd.24/10/2005 to use the nomenclature "DAIRY MACHINERY - SYSTEMS FOR MILK"; on being shown another Invoice No. 60334 dtd.30.9.2005 of M/s. RO Ka Industries, Denmark and Bill of Lading No.BLSIND-0091 dtd.16/10/2005 contained in the same file, he stated that these are the same documents wherein the nomenclature was changed and mentioned as "DAIRY MACHINERY - SYSTEMS FOR MILK" by their overseas suppliers as per his**

**instruction; that the description of the said goods were changed to avail exemption from payment of CVD under Noti. No.6/2002-CE dtd. 1/3/2002 as amended.**

**31.6.2** Statement of Shri Jeevan Akhouri, Assistant General Manager (Accounts) of M/s. IDMC Limited, was recorded on 09/04/2010 wherein he interalia stated that in the Balance Sheet for the year from 2004-2005 to 2007 they have shown selling (trading) of milk cooling tank and balance sheets for the period 2004-2005 to 2006-2007 does not indicate any condensing Units sold by them (Traded Goods).

**31.6.3** Statement of Shri Kuldeep Singh Sisodia, Senior Executive (Production) of M/s. IDMC Limited 124-128, GIDC Estate, Vithal Udhyog Nagar, District Anand was recorded on 12/04/2010 wherein he interalia stated that Bulk Milk Cooling Tank consists of Insulate cooling tank with evaporator, Lockable Manhole, Inlet and Outlet for milk, Air vent, spray ball, adjustable legs and suction & discharge connecting pipes for the refrigerant; that in almost all the cases they have placed the purchase order to overseas supplier for Bulk Milk Cooling Tank consisting of the above said components; that the evaporator is built inside the inner shell of the tank and is normally about 2/3<sup>rd</sup> of the circumference of the tank; that the evaporator is of a total thickness of 2.8mm wherein the base is of a 2mm plate over which a plate of 0.8mm is laid; that the 0.8 mm plate has spot welded channels for movement of the refrigerant gas through out the evaporator which helps the milk inside the tank to be cooled; **that almost in all the cases the description of item shown in Indents issued by him is "Bulk Milk Cooler" however, in the relevant purchase orders issued by the purchase department the description of item is shown as "Dairy machinery System for milk"; that he is unable to explain the reasons' for the same, since the purchase orders have been issued by the purchase department.**

**31.6.4** Statement of Shri Deepak Kumar Mohanbhai Bhadania, Assistant Manager (Marketing) of M/S. IDMC Limited, was recorded on 16/04/2010 wherein he stated that the milk inside the tank cannot be cooled without the evaporator; that the condensing unit is not a built in part of the bulk milk cooling tank but is attached externally at the site of installation, however, the evaporator is built in to the bulk milk tanks.

**31.6.5** Statement of Shri Mahesh Chandra, (Ex Managing Director ) of M/s. IDMC Ltd. was recorded on 25/05/2010 wherein he, inter alia on being shown Invoice No. 60334 dtd.30.9.2005 Of M/s. Ro Ka Industries Denmark contained in the said file bearing No.3he stated that the said invoice is issued to M/s. IDMC Ltd for 04 Dairy Machinery — 5000 L RKC Bare Milk Cooling System; on being shown a Packing list of M/s. Ro Ka Industries, Denmark contained in the same file for 04 Dairy Machinery — 5000 L RKC Bare Milk Cooling System Model 1, he stated that the word bare milk cooling and Model 1 have been struck off by hand and the words "FOR MILK" added by hand so that the description reads as Dairy Machinery — 5000 L RKC System for Milk; that he is not able to identify the handwriting or the person who has made the corrections.

**31.6.6** Statement of Shri Kalpesh Darji, Full Time Auditor of M/s. Padmavati Agencies Pvt. Ltd., Ahmedabad was recorded on 03/08/2010 wherein on being asked to explain the contents of the above emails, he stated that M/s. IDMC Ltd wanted to clear their goods as Dairy Machinery, however, as per the invoice forwarded to them it was seen that the goods were shown under tariff heading 84.22 and therefore, the same could not be cleared as Dairy Machinery; that they had therefore, suggested that the supplier's invoice be revised to show the tariff heading as 84.34 which is the tariff heading for Dairy Machinery and accordingly Shri K. S. Iyer had informed them by email that he would get the classification changed in the supplier's invoice and subsequently, he got it changed from 84.22 to 84.34; that he is not aware about the Harmonised System of Nomenclature (HSN) and neither he is aware whether the goods i.e. Butter Wrapping Machine is covered by CTH 84.34; that he had only given suggestion to Shri K. S. Iyer that for getting the goods cleared as Dairy Machinery, the tariff heading was required to be shown as 84.34.

**31.7** From the perusal of various documents and statement of the concerned personnel of the importer as discussed herein above, it is proved that with clear intent to evade the payment of customs duty, the importer have mis-declared the description

of the goods and mis-classified under CTH 8434 to avail the benefit of Notification No. 6/2002-CE dtd 1-3-2002 and Notification No. 6/2006-CE dtd 1-3-2006 and therefore, extended period invoked vide erstwhile Proviso to Section 28 (1) of the Customs Act, 1962 and mere on the plea that goods were examined by the customs officer cannot be exonerated as in the present case the evasion is detected by the DRI based on the thorough investigation. I also find that the importer, in accordance with the self-assessment regime introduced by the Finance Act, 2011, had self-assessed the Bill of Entry but deliberately mis declared and misclassified the imported goods, thereby wilfully evading the applicable customs duty. This mis declaration and misclassification resulted in a substantial loss to the public exchequer, equivalent to the differential duty amount. The act of mis declaration and mis-classification was not a result of any bona fide error but a conscious and deliberate attempt to avail undue benefit of exemption notification a lower rate of duty, resulting in undue monetary gain to the importer.

**31.8** To fortify my above stand, I rely on the ratio of following case laws.

**31.8.1** Hon'ble Tribunal, Mumbai in the case of Yakult Danone India P.Ltd. Vs. Commissioner of Customs, Mumbai-I reported in 2017 (357) ELT 691 (Tri.-Mumbai) wherein the fact of the case was that the main appellant M/s. Yakult Danone are engaged in manufacture of pro-biotic drink. The appellant, based upon investigation by the DRI, were issued show cause notice dated 25-4-2012 alleging that the appellant had imported machines for their plant by mis-declaring the same as 'Dairy Machine' and wrongly claiming exemption under serial No. 11 of Notification No. 6/2006-C.E., dated 1-3-2006. That the said machine worked on the principles of heat exchange and were used for the purpose of sterilization, pasteurization, incubation (maturing after pasteurization) and dilution, etc. and is thus excluded from goods under Heading No. 8434 of the Customs Tariff as 'Dairy Machine'. The appellant had argued that extended period of limitation is not invocable as the goods were correctly described and were examined by the department. Relevant para is re-produced as under:

*"7. We find that the appellant had imported various goods covered by 5 consignments which was shipped by M/s. Yakult Honsha Ltd., Japan. The investigation conducted by the department reveals that whereas out of the 5 consignments the first, fourth and fifth consignments were cleared by declaring the goods under the respective HS Codes and suppliers invoices. In case of 2nd and 3rd consignments cleared under Bill of Entry No. 763776, dated 3-5-2007 and BE No. 801219, dated 18-6-2007, the goods were shown as 'Dairy machines' and were cleared by availing exemption from CVD in terms of Notfn. No. 6/2006-C.E., dated 1-3-2006. It was during investigation that the officers found that the original 'Specification of Production equipment' Sheets (SPE Sheets) received from the supplier containing HS codes were altered by the importer so as to show the same as 'Dairy machines'. The original sheets issued by the supplier contained the HS codes showed the codes of machines of consignment as under 8428 90, 8479 82, 8421 39, 8477 30, 8422 30, 8428 39, 8443 59. The description of goods in original sheets i.e. goods of the second consignments were steel tanks for various purposes such as dissolving tank and parts. Culture tank, surge tanks, etc., hopper, air unit, humidity control unit and other parts. The goods in third consignment were Moulding machine and parts, filling and packing machine, filling machine conveyor and filling machine conveyor printer. However in the sheet submitted to the Custom officers the codes were altered to 8434 20 00 and the description of goods were shown as Dairy machine and parts, which enabled the importer to claim benefit of exemption Notification No. 6/2006-C.E. dated 1-3-2006. It is also an undisputed fact that the alterations were done by the appellant, its parent company who had shipped the goods, the director Shri Oike, employee Shri Suzuki and Anil Choudhary. The director Shri Oike in his statement has blamed the co-appellant Mr. Anil Choudhary the ex-employee who has orchestrated the manipulation in the SPE Sheets and thereby claiming exemption. The appellant on merits has contested the demand on the ground that the imported goods merit classification as Dairy Machine and the exemption has been correctly claimed. The appellant has quoted the HSN explanatory Note to Heading 84.34 which states that "this heading covers mechanical milking machine, and other machinery, whether for farm or industrial purposes, used in the treatment of milk or converting it into other dairy products." That since their product is dairy based drink hence are covered by the Heading 84.34 which is eligible for exemption. The appellant has also relied upon Section Note IV to Section XVI of the tariff to show that the plant is combination of*

various machines and all the machines are to be regarded as dairy machine. We find that as per Explanatory notes to HSN in Heading 84.34, Parts of the machine are to be classified in the same heading "subject to the general provisions regarding the classification of parts as per the General Explanatory Notes to Section XVI." Note 2(a) to Section XVI of the Central Excise Tariff Act clearly provides that Parts which are goods included in any of the headings of Chapters 84 and 85 are in all cases to be classified in their respective headings. Further as per Note to Chapter 84 "..... machine or appliance which answers to description in one or more of the Headings 8401 to 8424 or Heading 8486 and at the same time to a description in one or other Headings 8425 to 8480 is to be classified under the appropriate heading of the Headings 8401 to 8424 or under the Headings 8486, as the case may be, and not under Heading 8425 to 8480".

Also the Chapter Note 7 to Chapter 84 states that "a machine which is used for more than one purpose is, for the purposes of classification, to be treated as if its principal purpose were its sole purpose. Subject to Note 2 of this chapter and Note 3 to Section XVI, a machine, the principal purpose of which is not described in any heading or for which no purpose is, unless the context otherwise requires, to be classified in Heading 8479. Heading 8479 also covers machines. We find that in the present case the tanks were thus to be classified under 8479 and even the original SPE Sheets provided that HS Codes. Similarly the other goods are also classifiable as per their individual description as stated in show cause notice.

8. The contention of the appellant that Section Note IV to Section XVI of Tariff is applicable is not correct as initially the goods were classified under the respective HS code and at the time of filing of Bill of Entry the same were changed. The Section Note 2(a) to Section XVI in such circumstances would be the guiding principle to classify the goods. Our views are also guided by the judgment of Hon'ble Supreme Court in the case of HMT Ltd. v. Commissioner of C. Ex. & Cus., Aurangabad - 2007 (214) E.L.T. 10 (S.C.) wherein the Hon'ble Apex Court while upholding the judgment of the Tribunal observed that "CESTAT found that as per HSN Explanatory Note to Chapter Heading 84.34 the machines for processing milk depend on the principle of heat exchange and they are excluded from coverage under Chapter Heading 84.34 and the heading also excludes refrigerating appliance (whether or not specifically designed for cooling or keeping milk and milk cooling vats incorporating evaporator of the refrigerating unit from Chapter Heading 84.34). It was further noted that HSN Explanatory note also excluded the machines for wrapping or weighing the product from Chapter Heading 84.34." Further in case of Dairy Development Corp. v. Collector of Customs, Bombay - 2000 (119) E.L.T. 629 (Tribunal), the butter packing machine was classified under the respective heading and excluded from purview of 84.34. In case of Indo Berge Ltd. v. Commissioner of C. Ex., Delhi-I - 2001 (134) E.L.T. 749 (Tri.-Del.) the Tribunal held as under :

We have considered the submissions of both the sides. It is not disputed by the appellants that the product in question 'Powder Conveying System' conveys material that is milk powder in the present matter. Explanatory Notes of H.S.N. below Heading 84.28 provides that "This heading covers a wide range of machinery for the mechanical handling of materials, goods, etc. (lifting, conveying, loading, unloading, etc.). They remain here even if specialised for a particular industry, for agriculture, metallurgy, etc." The Explanatory Notes also mentions that "the provisions of Explanatory Note to Heading 84.26 apply, mutatis mutandis, to the equipment of this heading....." which reads as under :

"Lifting, loading, handling, etc., machines presented separately are, however, classified in this heading even if intended for incorporation in other machines or for mounting on transport vehicles or vessels of Section XVII."

5. It is, thus, apparent that the impugned product will be rightly classifiable under Heading 84.28 even though it is finally to be incorporated in dairy machines. According to Explanatory Notes of H.S.N. below Heading 84.34, Parts of the machine are to be classified in the same heading "subject to the general provisions regarding the classification of parts (see the General Explanatory Notes to Section XVI)." Note 2(a) to Section XVI of the Central Excise Tariff Act clearly provides that Parts which are goods included in any of the headings of Chapters 84 and 85 are in all cases to be classified in their respective headings. As the impugned product is included specifically under Heading 84.28 it has rightly been classified there. This was the view expressed by the Tribunal in the case of Bhilai

*Engineering Corpn. Ltd. supra. Even the decision in the case of Laxmi Boilers is against the appellants as the Tribunal observed therein that "All these parts would doubtlessly fall under a number of headings." The Tribunal in the said case was considering the availability of Notification No. 205/88 (Sl. No. 18) which according to the Tribunal was "generally worded so as to enable anything used in the construction of boilers to be covered thereunder." Accordingly, we find no infirmity in the impugned Order and reject the appeal.*

*In view of the fact that the goods were correctly classifiable in the SPE Sheets as per their respective description and individual function but were changed by the appellant's employee in consultation with the Management, we are of the view that the goods does not merit classification as parts of dairy machinery. For the reasons stated above and looking to the fact that the issue involves of intended misdeclaration, misclassification and suppression of facts we do not find any infirmity in the order passed by adjudicating authority and uphold the same in as much as the same is related to appellant M/s. Yakult Danone (India) Pvt. Ltd."*

**31.8.2** Hon'ble Tribunal, Mumbai in the case of Eminence Equipments Pvt. Ltd. Vs. Commissioner of C.Ex. Pune-I reported in 2015 (330) ELT 344 (Tri. Mumbai) has interalia held as under:

**9.** *Next issue is that the appellants have contended that the extended period of limitation is not invocable. We note in this particular case various customers of the appellants have also stated in their respective statements that in their initial enquiries they asked for supply of elevators and conveyors and it is on the request of the appellants that these were changed to grain discharger or grain feeders. We also note that Shri Narpinder Kumar Gupta, Managing Director of M/s. Dr. Ing. N.K. Gupta Technical Consultants Pvt. Ltd., New Delhi, who acts as a consulting firm to the appellants and helps them in procuring orders, has admitted that the appellants are manufacturing elevators and conveyors. We also note that one of their business associate, Shri Shripad M. Salunke, Director of M/s. Elina Solutions Pvt. Ltd., Pune has stated in the statement dated 7-5-2012 that the appellants have informed them that if they use the description 'bucket elevator' or 'conveyor', they would be required to pay the excise duty and, therefore, the goods should be purchased under the description given by them. This clearly indicates the appellants were aware that if they describe the goods as elevators or conveyors, the same are chargeable to excise duty under Heading 8428. It is for this reason that they described their machines as Grain Feeder, En-mass Feeder, Grain discharger, etc. and insisted for such description in the purchase orders from other customers. We have also gone through the declaration made by them. The said declaration is required to be furnished by the manufacturing units who are not paying duty either due to the fact that their turnover is within the small scale exemption limit or they are manufacturing the goods which are exempt from payment of duty. Purpose of this declaration is not to examine the classification or dutiability but to make the jurisdictional authorities about existence of their unit. Even in this declaration, a careful perusal would indicate that Serial No. 4 requires them to declare full description of the goods heading-wise manufactured by the factory. Under the circumstances, they should have separately listed out each item being manufactured by them and the description of the said goods including the fact that the said goods are commercially understood as conveyors and elevators. Meaning of BC, CC, SC should have been elaborated in the declaration and catalogue should have been submitted. Instead of indicating that these are conveyor and elevator, the appellants very cleverly described the goods as "Grain handling equipments for rice, flour, dal mills/storage silo system accessories/storage bins for rice/grain feed controller. Job work." They did not indicate the classification of the goods manufactured, in Serial No. 4. In Serial No. 5, value/quantity of goods cleared during the preceding financial year, they gave the value of clearance and thereafter indicated the duty as nil as covered under Heading 8437. By the said declaration, nobody can make out that the exact nature and description of the goods manufactured by them particularly that these are conveyors and elevators. In any case, the very fact that they were aware that if they describe the goods as conveyor and elevator, the same would be chargeable to excise duty, would nullify any declaration or intimation given by them until and unless they raise and very specifically ask the question relating to Heading 8428 versus 8437 with Revenue. We also note that the appellants have not taken registration or filed any returns. From the show cause notice, it is clear that the department started investigation only due to a receipt of information. Keeping in view these facts, we are of the considered view that this is a case of fraud*

and there was suppression of facts and extended period of limitation under proviso to Section 11A is invokable and, therefore, the demand raised for the five years is correct and the same is upheld.

**9.3** Another contention raised by the appellant is that in case of their competitors, the goods are being cleared without payment of duty and Revenue has not raised any objection in their case. In support of their contention, the learned counsel also submitted the Hon'ble Bombay High Court judgment in the case of *Galaxy Plastics (Bombay) Pvt. Ltd. v. UOI* in Writ Petition No. 298 of 2006. We have gone through various documents and leaflets submitted by the appellant. From the documents submitted by the appellant, it cannot be concluded that the goods are exactly similar and the classification and duty leviable/levied. It is to be noted that many a times, even when the goods are dutiable, a particular assessee may be getting the benefit of SSI exemption or some other notification and the goods may be cleared duty free due to such reason. Further, at present, the system of assessment is self-assessment where it is for the appellants to assess the duty themselves. Only in respect of the duty paying units, some arithmetical scrutiny is done by the Revenue. In respect of non-duty paying units, no action is taken until and unless any information is received about the evasion of duty. In the overall factual matrix of the case, we are not in a position to say that the competitors are being allowed clearance duty free by the Revenue.

**9.5** As mentioned earlier, we have already come to a definite conclusion that the goods are classifiable under Heading 8428 and 8479 and, therefore, the party's plea is rejected. We also note that the appellants were conscious of the fact that the goods are classifiable under 8428 and chargeable to excise duty and in order to avoid excise duty, they used different description of the goods and generally known commercial description was written in the abbreviated form viz. BC, CC, SC, etc. The appellants were insisting from the buyers to indicate the description as per their requirement. Even one of their main customers has stated in the statement that initially when they started the business with the appellant, they were informed that if they don't use the said description, excise duty will become payable.

**9.6** The appellants have also pleaded that they had a bona fide belief that their goods are not chargeable to duty. We fail to understand this plea. Evidences on record clearly indicate that they were aware that the goods are chargeable to duty and it is for this reason that they were insisting particular description. Statement recorded during the investigation indicates that they were fully aware about of their duty liability and it was a well planned tactic to have particular description of the goods in order to avoid duty.

**9.9** Further, in the case of *Essar Oil Ltd. (supra)*, the Hon'ble Supreme Court in paras 29 to 36 has elaborately discussed the concept of fraud. The Hon'ble Supreme Court has observed that fraud is an intention to deceive. In the present case there can be no doubt that the appellants were aware about the dutiability of the said goods and, therefore, they have intentionally not used the generally understood commercial terminology of the said goods and instead used the words green feeder, en-masse feeder, etc. to avoid payment of excise duty. In our view, the conduct of the appellants would support the invocation of the extended period of limitation as also imposition of penalty.

**10.** As far as penalty is concerned, again there can be no doubt as even after knowing that their goods are chargeable to excise duty, the appellants instead of paying the excise duty, chose to describe their goods with different nomenclature. We, therefore, uphold the imposition of penalty under Section 11AC."

**31.8.3 Principal bench of Hon'ble Delhi in the case of Samsung India Electronics Ltd. Vs. Commr. of Cus., New Delhi reported in 2014 (307) ELT 160 (Tri. Del.) has interalia held as under:**

**"9.** Next issue is that the appellants have contended that the extended period of limitation is not invokable. We note in this particular case various customers of the appellants have also stated in their respective statements that in their initial enquiries they asked for supply of elevators and conveyors and it is on the request of the appellants that these were changed to grain discharger or grain feeders. We also note that Shri Narpinder Kumar Gupta, Managing Director of M/s. Dr. Ing. N.K. Gupta

Technical Consultants Pvt. Ltd., New Delhi, who acts as a consulting firm to the appellants and helps them in procuring orders, has admitted that the appellants are manufacturing elevators and conveyors. We also note that one of their business associate, Shri Shripad M. Salunke, Director of M/s. Elina Solutions Pvt. Ltd., Pune has stated in the statement dated 7-5-2012 that the appellants have informed them that if they use the description 'bucket elevator' or 'conveyor', they would be required to pay the excise duty and, therefore, the goods should be purchased under the description given by them. This clearly indicates the appellants were aware that if they describe the goods as elevators or conveyors, the same are chargeable to excise duty under Heading 8428. It is for this reason that they described their machines as Grain Feeder, En-mass Feeder, Grain discharger, etc. and insisted for such description in the purchase orders from other customers. We have also gone through the declaration made by them. The said declaration is required to be furnished by the manufacturing units who are not paying duty either due to the fact that their turnover is within the small scale exemption limit or they are manufacturing the goods which are exempt from payment of duty. Purpose of this declaration is not to examine the classification or dutiability but to make the jurisdictional authorities about existence of their unit. Even in this declaration, a careful perusal would indicate that Serial No. 4 requires them to declare full description of the goods heading-wise manufactured by the factory. Under the circumstances, they should have separately listed out each item being manufactured by them and the description of the said goods including the fact that the said goods are commercially understood as conveyors and elevators. Meaning of BC, CC, SC should have been elaborated in the declaration and catalogue should have been submitted. Instead of indicating that these are conveyor and elevator, the appellants very cleverly described the goods as "Grain handling equipments for rice, flour, dal mills/storage silo system accessories/storage bins for rice/grain feed controller. Job work." They did not indicate the classification of the goods manufactured, in Serial No. 4. In Serial No. 5, value/quantity of goods cleared during the preceding financial year, they gave the value of clearance and thereafter indicated the duty as nil as covered under Heading 8437. By the said declaration, nobody can make out that the exact nature and description of the goods manufactured by them particularly that these are conveyors and elevators. In any case, the very fact that they were aware that if they describe the goods as conveyor and elevator, the same would be chargeable to excise duty, would nullify any declaration or intimation given by them until and unless they raise and very specifically ask the question relating to Heading 8428 versus 8437 with Revenue. We also note that the appellants have not taken registration or filed any returns. From the show cause notice, it is clear that the department started investigation only due to a receipt of information. Keeping in view these facts, we are of the considered view that this is a case of fraud and there was suppression of facts and extended period of limitation under proviso to Section 11A is invocable and, therefore, the demand raised for the five years is correct and the same is upheld.

**9.3** Another contention raised by the appellant is that in case of their competitors, the goods are being cleared without payment of duty and Revenue has not raised any objection in their case. In support of their contention, the learned counsel also submitted the Hon'ble Bombay High Court judgment in the case of Galaxy Plastics (Bombay) Pvt. Ltd. v. UOI in Writ Petition No. 298 of 2006. We have gone through various documents and leaflets submitted by the appellant. From the documents submitted by the appellant, it cannot be concluded that the goods are exactly similar and the classification and duty leviable/levied. It is to be noted that many a times, even when the goods are dutiable, a particular assessee may be getting the benefit of SSI exemption or some other notification and the goods may be cleared duty free due to such reason. Further, at present, the system of assessment is self-assessment where it is for the appellants to assess the duty themselves. Only in respect of the duty paying units, some arithmetical scrutiny is done by the Revenue. In respect of non-duty paying units, no action is taken until and unless any information is received about the evasion of duty. In the overall factual matrix of the case, we are not in a position to say that the competitors are being allowed clearance duty free by the Revenue.

**9.5** As mentioned earlier, we have already come to a definite conclusion that the goods are classifiable under Heading 8428 and 8479 and, therefore, the party's plea is rejected. We also note that the appellants were conscious of the fact that the goods are classifiable under 8428 and chargeable to excise duty and in order to avoid excise duty, they used different description of the goods and generally known commercial description was written in the abbreviated form viz. BC, CC, SC, etc. The appellants were insisting

from the buyers to indicate the description as per their requirement. Even one of their main customers has stated in the statement that initially when they started the business with the appellant, they were informed that if they don't use the said description, excise duty will become payable.

**9.6** The appellants have also pleaded that they had a bona fide belief that their goods are not chargeable to duty. We fail to understand this plea. Evidences on record clearly indicate that they were aware that the goods are chargeable to duty and it is for this reason that they were insisting particular description. Statement recorded during the investigation indicates that they were fully aware about of their duty liability and it was a well planned tactic to have particular description of the goods in order to avoid duty.

**9.9** Further, in the case of *Essar Oil Ltd. (supra)*, the Hon'ble Supreme Court in paras 29 to 36 has elaborately discussed the concept of fraud. The Hon'ble Supreme Court has observed that fraud is an intention to deceive. In the present case there can be no doubt that the appellants were aware about the dutiability of the said goods and, therefore, they have intentionally not used the generally understood commercial terminology of the said goods and instead used the words green feeder, en-masse feeder, etc. to avoid payment of excise duty. In our view, the conduct of the appellants would support the invocation of the extended period of limitation as also imposition of penalty.

**10.** As far as penalty is concerned, again there can be no doubt as even after knowing that their goods are chargeable to excise duty, the appellants instead of paying the excise duty, chose to describe their goods with different nomenclature. We, therefore, uphold the imposition of penalty under Section 11AC."

**31.8.4 Hon'ble Supreme Court in the case of Commissioner of Customs, Kandla Vs. Essar Oil Ltd reported in 2004 (172) ELT 433 (S.C.) has interalia held as under.**

**"42.** From the factual scenario described it is clear that respondent no. 1 was aware that there was no fund available. In fact, from 3-3-1999 it accepted the position that there was no fund available and was asking for time to arrange funds. This according to us clearly indicated a fraudulent motive and the declaration given was certainly mis-declaration. Therefore, the CEGAT was not right in its conclusions about inapplicability of Section 51(1)(c) to the facts of the case. The demand of duty and order of confiscation by the Commissioner is clearly sustainable."

The comprehensive discussion and findings set out above at Para 31.1 to 31.8.4, and the factual Matrix of the case clearly establishes culpability on the part of the importer. Thus, proved from the above facts and evidence that M/s. IDMC Ltd., Anand had knowingly and deliberately mis-declared the description of the goods and also mis-classified them as 'Dairy Machinery with a view to wrongly avail the benefit of exemption from CVD under Nott. No.6/2002-CE dtd. 01.03.2002 and Notification No.6/2006-CE dtd.01.03.2006 with an intent to evade payment of Customs duty amounting to Rs. 1,91,11,555/- as shown in Annexure A, & B to the SCN. Hence, proviso to Section 28(1) of the Customs Act, 1962, for invoking the extended period for demand of duty is applicable in the instant case. The differential Customs Duty amounting to Rs.1,91,11,555.45 as' indicated in Annexure-A & B to the SCN therefore is to be recovered from M/s. IDMC Ltd., Anand under the Proviso to Section 28(1) of the Customs Act. 1962 alongwith applicable interest under Section 28AB *ibid.* Further, amount of Rs.64,37,816/- paid vide TR6 Challan No.792/2010 dtd.10/3/2010 for Rs.14,37,816/- and TR6 Challan No.832 dated 16/3/2010 for Rs. 50,00,000/-towards the duty liability as shown in Annexure-A to the Show Cause Notice is required to be appropriated.

**31.8.5 I find that importer has contended that** interest, penalty and confiscation provisions provided under the Customs Act cannot be invoked in cases of demand pertaining to CVD which is leviable under the Customs Tariff Act for the reason that these provisions have not been borrowed into Section 3(8) (*Pari Materia*) to the present Section 3(12)) of the Tariff Act. They also placed reliance on the judgement of Hon'ble Bombay High Court in the case of *Mahindra and Mahindra Ltd. vs. The Union of India and Ors.* WP No. 1848 of 2009 decided on 15.9.2022 wherein penalty and interest

demand was set aside in the absence of provision under Section 3 for Additional Duty of Customs, Section 3A for Special Additional Duty under the Customs Tariff Act, 1975 or Section 90 of the Finance Act, 2000 that created a charge in nature of penalty or interest. They have further stated that this judgement has been affirmed by Hon. Supreme Court and the Special Leave Petition filed by the Union of India has been dismissed by order dated 28.7.2023. To negate the said argument I rely on the ratio of decision of Hon'ble Supreme Court which dismissed Civil Appeal filed by Atul Kaushik (Oracle India Ltd) on 11-3-2016 reported in *Oracle India Pvt. Ltd. v. Commissioner - 2016 (339) E.L.T. A136 (S.C.)*.

**31.8.6** Hon'ble Supreme Court on 11-3-2016 dismissed Civil Appeal filed by Atul Kaushik (Oracle India Ltd) reported in *Oracle India Pvt. Ltd. v. Commissioner - 2016 (339) E.L.T. A136 (S.C.)* against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015 as reported in 2015 (330) E.L.T. 417 (Tri.-Del.) (Atul Kaushik v. Commissioner) holding that " We see no reason to interfere with the impugned order passed by Customs, Excise & Service Tax Appellate Tribunal". Relevant Para of the decision of Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015 of CESTAT reported in 2015 (330) E.L.T. 417 (Tri.-Del.) (Atul Kaushik v. Commissioner) is re-produced as under:

*"16. The appellants have also contended that penalty, interest and confiscation cannot be invoked in respect of evasion of countervailing duty (levied under Section 3 of the Customs Tariff Act, 1975) on the ground that the provisions relating to these aspects have not been borrowed into Section 3 of the Customs Tariff Act, 1975. In support of the principle that the penalty cannot be levied in the absence of penalty provision having been borrowed in a particular enactment, the appellants cited the judgments in the case of Khemka & Co. (supra) and Pioneer Silk Mills Pvt. Ltd. (supra). We are in agreement with this proposition and therefore we refrain from discussing the said judgments. The appellants also cited the judgment in the case of Supreme Woollen Mills Ltd. (supra), Silkone International (supra) and several others to advance the proposition that penalty provisions of Customs Act were not applicable to the cases of non-payment of anti-dumping duty and that the same principle is applicable with regard to leviability of interest [India Carbon Ltd. (supra) and V.V.S. Sugar (supra)]. We have perused these judgments. Many of them dealt with Anti-dumping duty/Special Additional Duty (SAD) leviable under various sections (but not Section 3) of Customs Tariff Act, 1975 and in those sections of the Customs Tariff Act, 1975 or in the said Act itself, during the relevant period, there was no provision to apply to the Anti-dumping duty/SAD the provisions of Customs Act, 1962 and the rules and regulations made thereunder including those relating to interest, penalty, confiscation. In the case of Pioneer Silk Mills (supra), the duty involved was the one levied under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and its Section 3(3) only borrowed the provisions relating to levy and collection from the Central Excise Act, 1944 and in view of that it was held that the provisions relating to confiscation and penalty could not be applied with regard to the duties collected under the said Act of 1957. None of these judgments actually deal with the CVD levied under Section 3 of the Customs Tariff Act, 1975. The impugned countervailing duty was levied under Section 3 of Customs Tariff Act, 1975. Sub-section (8) of Section 3 of the said Act even during the relevant period stipulated as under :-*

*"S. 3(8) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act."*

*It is evident from Section 3(8) of the Customs Tariff Act, 1975 quoted above that all the provisions of Customs Act, 1962 and the rules and regulations made thereunder have been clearly borrowed into the said Section 3 to apply to the impugned CVD and so it is obvious that provisions relating to fine, penalty and interest contained in Customs Act, 1962 are expressly made applicable with regard to the impugned countervailing duty. We must, however, fairly mention that in case of Torrent Pharma Ltd. v. CCE, Surat, CESTAT set aside penalty for evasion of Anti-dumping duty, CVD and SAD (para 16 of the judgment) on the ground that penal provisions of Customs Act, 1962 had not been borrowed in the respective sections of Customs Tariff Act, 1975 under which these duties were levied, but this decision of CESTAT regarding CVD suffered from a fatal internal contraction inasmuch as CESTAT itself in para 14 of the said judgment had*

expressely taken note of the fact that vide Section 3(8) of the Customs Tariff Act, 1975, the provisions of Customs Act, 1962 and the rules and regulations made thereunder had been made applicable to CVD charged (under Section 3 of Customs Tariff Act, 1975). In the light of this analysis, we hold that this contention of the appellant is legally not sustainable.”

Thus, the said order of Tribunal has been affirmed by the Hon'ble Supreme Court whereas Special Leave Petition in case of Mahindra & Mahindra Ltd bearing Diary No. 18824/2023 has been dismissed by Hon'ble Supreme Court holding that “No merit found in the Special Leave Petition”. Whereas, the Hon'ble Supreme Court has dismissed the **Civil Appeal** filed by Oracle India Pvt. Ltd (Atul Kaushik) against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015.

In the case of **Workmen of Cochin Port Trust Vs. Board of Trustees of the Cochin Port Trust and Another 1978 AIR 1283**, the Hon'ble Three Judges Bench held as under:

*“The effect of non-speaking order of dismissal without anything more indicating the grounds or reasons of its dismissal must by necessary implication be taken to have decided that it was not a fit case where special leave should be granted. It may be due to several reasons. It may be one or more. It may also be that the merits of the award were taken into consideration and this Court felt that it did not require any interference. But since the order is not a speaking order it is difficult to accept the argument that it must be deemed to have necessarily decided implicitly all the questions in relation to the merits of the award.”*

*The dismissal of special leave petition by the Supreme Court by a non-speaking order of dismissal where no reasons were given does not constitute res judicata. All that can be said to have been decided by the Court is that it was not a fit case where special leave should be granted.”*

**31.8.7 Further, Hon'ble Gujarat High Court in the case of Commissioner v. Ashok Fashion Ltd. reported in 2002 (141) E.L.T. 606 (Guj.) has held as under:**

**9.1** Chapter VI of the Central Excise Act, relates to 'Adjudication of Confiscation and Penalties'. Under Section 33, it is provided that, where by the rules made under this Act, anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged by the authorities mentioned therein. Section 34A lays down that, no confiscation made or penalty imposed under the provisions of the Act or of any rule made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of the Act or under any other law. Section 37(2)(ib) of the Central Excise Act empowers the Central Government, inter alia, to make such rules as may, “provide for the assessment and collection of duties of excise, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable, and the recovery of duty not paid”.

**9.2** It excisable goods are deposited in or removed from any specified place in contravention of Rule 9(1) of the Central Excise Rules, the producer or manufacturer is made liable to pay penalty which may exceed up to Rs. 2,000.00 and the goods would be liable to confiscation over and above the liability to pay the duty. Then there are provisions imposing penalty for misdeclarations as laid down in Rules 92E(iv), 96M(iii) 96S(iv), 96ZL(iii). Rule 173Q provides for 'confiscation and penalty' in respect of the excisable goods notified under Rule 173A(1) of Chapter VII-A of the Rules, and Chapter XXII of the Excise Rules deals with penalties and confiscations. Accordingly, the acts and omissions covered by Rules 173Q and 209 entail confiscation of goods and imposition of a penalty to the extent prescribed thereunder. There are also provisions of penalty under Rule 209A and for general penalty, in Rule 210.

**9.3** It will thus be seen that penalty provisions are an integral part of assessment and collection of duties of which the necessary adjuncts are confiscation and penalty without which the imposition of taxes will lack teeth and become ineffective. If power to impose penalty for violation of the obligation to pay additional duty of excise is excluded in respect of the goods enumerated in the First Schedule of the Additional Duties Act, then these taxation provisions would be reduced to a donation drive in

respect of these very items for which duty of excise is also imposed under the Central Excise Act, 1944 and the Rules made thereunder and violation of which would entail both confiscation and penalty.

10. The provisions of penalties are devised to ensure that the excise regulations are enforced and the recovery of excise dues is secured. The process of collection of revenue involves enacting methods of collection. The procedure of assessment and collection are intertwined with confiscation and penalty, once violation of excise regulations is established, as contemplated by the Rules imposing penalties. The object of the provisions to impose heavy penalties is to ensure that the revenue is protected against procrastination, carelessness or deceit which if practised on a large scale, would make collection of the taxes a difficult task.

11. For the above reasons, it is clear to us that all the provisions of the Central Excise Act, 1944 and the Rules made thereunder, including the provisions relating to confiscation and imposition of penalty contained therein, are applicable to the levy and collection of the additional duty of excise under Section 3(1) of the Additional Duties of Excise Act, 1957 in the same manner as they already apply in relation to the levy and collection of such goods under the Central Excise Act, 1944 and Rules framed thereunder.

12. We accordingly hold that the provisions relating to confiscation and imposition of penalty contained in the Central Excise Act, 1944 and the Rules thereunder are applicable to man-made fabrics which are liable to additional duty of excise under the First Schedule of Section 3(1) of the Additional Duties of Excise Act and are 'excisable goods' mentioned in Schedule to the Central Excise Tariff Act, 1985, by virtue of incorporation by reference under Section 3(3) of the Additional Duties Act, of all the provisions contained in the Central Excise Act, 1944 Rules made thereunder."

31.8.8 Further, I find that decision of Mahindra and Mahindra Ltd relied on by the importer is distinguished by the Principal Bench of Hon'ble Delhi Tribunal in the case of Poddar Pigments Ltd. Vs. Commissioner of Central Excise & CGST, Jaipur reported in 2024 (25) CENTAX 194 (Tri. Delhi) and Mayur Uniquoters Ltd. v. Commissioner reported in 2024 (390) E.L.T. 207 (Tri. - Del.).

**32. Whether the imported goods having total value of Rs.12,12,82,460/- as mentioned in Annexure-A and B to the Show Cause Notice is liable for confiscation under Section 111(d), (l) and (m) of the Customs Act, 1962.**

32.1 Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(d), (l) and (m) of the Customs Act, 1962. If the goods have been described wrongly or the value of the goods has been incorrectly declared, such goods would come under the purview of Section 111(m) of Customs Act, 1962. It is to reiterate that in the present case, it is an admitted fact that the description and classification of the imported goods viz. 'Bulk Milk Tanks', 'Evaporator Plates' and 'Cream Separator' are mis-declared and mis classified under CTH 8434 with an intention to fraudulently avail the benefit of Notification No. No.6/2002-CE dtd. 01.03.2002 and Notification No.6/2006-CE dtd.01.03.2006. Further, the Washing Unit valued at Rs.87,759/- imported without declaring the same in the bill of entry filed in respect of container no. FSCU 944204-4 is also liable for confiscation under the provisions of Section 111 (d) and 111 (l) of the Customs Act, 1962. The importer has mis declared and mis-classified the said goods imported by them thereby contravening the provisions of Section 47 of the Customs Act, 1962 since the Bill of Entry has not been filed in compliance to Section 46 of the Customs Act, 1962. Thus, the said goods imported by them though not available are liable for confiscation under Section 111 (d) (l) and (m) of the Customs Act, 1962. Therefore, imported goods viz. 'Bulk Milk Tanks', 'Evaporator Plates' and 'Washing Unit' having total value of Rs. 6,21,70,294/- as detailed in Annexure-A to the Show Cause Notice is liable for confiscation under Section 111 of the Customs Act, 1962.

32.2 I find that the 'Bulk Milk Coolers tanks' imported by the importer by resorting to mis declaration and mis classification were sold to various firms and were installed at different villages for milk collection and as such it was not feasible to seize them. However, 'Separatpor' imported and by way of mis-delcaration and mis-classification were sold to M/s. Mother Dairy Fruit & Vegetable Private Limited, Unit-Pilkuwa

Dairy, Pilkhuwa, Ghaziabad, M/s. Rohtak District Co-operative Milk Producers Union Ltd and M/s. Banas Dairy, Palanpur. These 06 'Separators' valued at Rs. 5,91,12,166/- (market value) were placed under seizure on 14/09/2010, 21/09/2010 and 15/09/2010 under proper panchnama, as detailed below, under the provision of Section 111 (d) (l) and (m) of the Customs Act, 1962.

S.No.	Place of Seizure	Quantity	Market Value (Rs.)
1	M/s. Mother Dairy Fruit & Vegetable Pvt Ltd, Unit-Pilkhuwa Dairy, 36 KM Stone, Hapur Road, Pilkhuwa, Ghaziabad	04	3,29,32,794.00
2	M/s. Banaskantha Dist. Co-op. Milk Producers Union Ltd., (Banas Dairy), Palanpur, Gujarat	01	1,25,46,085.00
3	M/s. Rohtak District Co-operative Milk Producers Union Ltd, A/c Rohtak Dairy Expansion Project, Rohtak	01	1,36,33,287.00
	TOTAL	06	5,91,12,166.00

I find all the aforesaid 06 'Separators' valued at Rs. 5,91,12,166/- (market value) were sold to the firm mentioned in aforesaid table and the same were seized under 14/09/2010, 21/09/2010 and 15/09/2010 were imported by the importer by way of mis declaration of description of the goods and mis-classification, hence the same are liable for confiscation under Section 111 of the Customs Act, 1962.

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

**SECTION 125. — Option to pay fine in lieu of confiscation.** (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit :

**[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [no such fine shall be imposed] :**

**Provided further that], without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.**

**[(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]**

**[(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.**

**32.4** I find that importer have contested that the goods cannot be held liable for confiscation as goods have been cleared for home consumption and not physically available and relied on the decision of **Bussa Overseas & Properties v. C.L. Mahar, ACC - 2004 (163) ELT 304 (Bom.)**. I find that though, the goods are not physically available for confiscation but in such cases redemption fine is impossible in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

“  
.....  
.....  
.....

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

.....  
.....  
.....”

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

“  
.  
.  
.

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

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

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

**32.6** I find ratio of decision of jurisdictional Hon'ble Tribunal, Ahmedabad rendered in the case of M/s. Van Oord India Pvt. Ltd Vs. Commissioner of Customs, Ahmedabad vide Final Order No. 11039-11040/2025 dated 13.11.2025 is squarely applicable to the present case as the Hon'ble Tribunal after having considered the aforesaid decisions of Hon'ble Madras High Court in case of M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) and Hon'ble Gujarat High Court rendered in case of Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.), have upheld the confiscation and redemption fine even in absence of physical availability of the goods. Relevant Para of the said Final Order No. 11039-11040/2025 dated 13.11.2025 is re-produced as under:

*“5.7 Relying on the decision in the case of Shiv Kripa Ispat Pvt. Ltd. and Chinku Exports, the appellant have challenged confiscation of the imported tugs on the ground that these are not physically available as the same were re-exported. We find that this has elaborately been discussed by the Adjudicating Authority in para 20.1 and 20.2 of the impugned order. We find that Hon'ble Madras High Court in the case of Visteon Automotive Systems India Limited reported at 2018 (009) GSTL 0142 (Madras) and Hon'ble Gujarat High Court in the case of Synergy Fertichem Pvt. Ltd. reported at 2020 (33) G.S.T.L. 513 (Guj.), have held that availability of the goods is not necessary for confiscation of the seized goods. The opening words of Section 125 mention that, “Whenever confiscation of any goods is authorized by this Act.....” brings out the point clearly. Qua power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. Once power of authorization of confiscation of goods gets traced to that Section, physical availability of the goods is not so much relevant. The redemption is in fact, to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves goods from getting confiscated. Therefore, physical availability of goods does not have any significance for imposition of redemption fine under Section 125 of the Act. We therefore, agree with the learned Adjudicating Authority that non availability of goods physically does not impact their confiscation and imposition of redemption fine. We however find that the learned Adjudicating Authority has imposed very heavy redemption fine equal to 10% of the value of the tugs. What has been saved by the appellant in this case is an amount equal to 5% of the duty because if the appellant had paid full duty, they would have been entitled to 95% of the duty amount as draw back. Therefore, quantum of redemption fine to be imposed in lieu of confiscation in this case should be governed by the amount of benefit that would have been accrued to the appellant.”*

In view of the above, I find that 'Bulk Milk Cooling Tanks' 'Evaporators Plates' and 'Washing Unit' as mentioned in Annexure-A to the Show Cause Notice, though not available are liable for confiscation under Section 111 of the Customs Act, 1962 and redemption fine is required to be imposed on the importer M/s. IDMC Limited. Further, the imported goods viz. 'The Milk/Cream Separators' as detailed in Annexure 'B' to the show cause notice imported at JNCH totally valued at Rs. 5,91,12,166/- (market value) seized under panchnama dated 14/09/2010, 15/09/2010 and 21/09/2010 from the premises of M/s. Mother Dairy Fruit & Vegetable Private Limited, Unit-Pilkhuwa Dairy, Pilkhuwa, Ghaziabad, M/s. Rohtak District Co-operative Milk Producers Union Ltd and M/s. Banas Dairy, Palanpur are also liable for confiscation under Section 111 of the Customs Act, 1962. and consequently redemption fine is required to be imposed under Section 125 (1) of the Customs Act, 1962 on the owner of the goods namely M/s. Mother Dairy Fruit & Vegetable Private Limited, Unit-Pilkhuwa Dairy, Pilkhuwa, Ghaziabad, M/s. Rohtak District Co-operative Milk Producers Union Ltd and M/s. Banas Dairy, Palanpur.

**33. Whether, Penalty under Section 112(a), and Section 114A, and Section 114AA of the Customs Act, 1962 should be imposed on importer M/s. Classic Marble Company Pvt. Ltd.?**

### **33.1 Penalty under Section 114A of the Customs Act, 1962:**

**33.1.1** Now, I proceed to consider the proposal of penalty under Section 114A of the Customs Act, 1962 against the importer. I find that Show Cause Notice is issued under erstwhile Proviso to Section 28(1) of the Customs Act, 1962.

I find that in order to sensitize the Importer and Exporter about its benefit and consequences of mis-use, Government of India has issued 'Customs Manual on Self-Assessment 2011'. Under para-1.3 of Chapter-1 of the above manual, Importers/Exporters who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the options as (a) Seek assistance from Help Desk located in each Custom Houses, or (b) Refer to information on CBEC/ICEGATE web portal ([www.cbic.gov.in](http://www.cbic.gov.in)), or (c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or (d) An importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied. Para 3 (a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para-2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant importers. However, delinquent and habitually non-compliant importers/ exporters could face penal action on account of wrong Self-Assessment made with intent to evade Duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

I find that Importer was in complete knowledge of the correct nature of the goods, nevertheless the Importer claimed undue benefit of the aforesaid Notifications for the said goods in order to clear the goods by wrongly availing Customs Duty exemption from payment of CVD under Notification No.6/2002-CE dtd.1/3/2002 and Notification No.6/2006-CE dtd.1/3/2006 by resorting to misclassification of 'Bulk Milk Cooling Tanks', 'Evaporator Plates' 'Cream Separators' under CTI 84342406, 84349020 and 84342000 instead of merit Customs Tariff Item No. 84186990, 94195020 and 84211100 respectively. Further, they got clearance of 'Washing Unit' without declaring the same in Bill of Entry in Container No. FSCU 944204-4. Thus, with the introduction of self-assessment under Section 17, more faith is bestowed on the importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment by the Importer, the Importer has been entrusted with the responsibility to correctly self-assess the Duty. However, in the instant case, the Importer intentionally abused this faith placed upon him by the law of the land. There are ample corroborative evidences in form of E- mails, admitted statements of concerned personnel to establish the pre-conceived motive of evasion of Customs Duty of the importer which has already been discussed hereinabove. Therefore, the Importer has wilfully violated the provisions of Section 17(1) of the Act inasmuch as they have failed to correctly declare the description of goods and failed to classify the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962, hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty in terms of Section 114A of the Customs Act, 1962.

Further, I find that demand of differential Customs Duty amounting to Rs.1,91,11,555/- as detailed in Annexure-A and 'B' to the Show Cause Notice has been made under the erstwhile Provision to Section 28(1) of the Customs Act, 1962, (Now Section 28(4) of the Customs Act, 1962) which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in cases where the Duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the Duty or interest has been erroneously refunded by reason of collusion or any wilful mis statement or suppression of facts. In the instant case, the ingredient of suppression of facts and wilful mis-statement by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty plus interest in terms of Section 114A of the Customs Act, 1962.

### **33.2 Penalty under Section 112(a) of the Customs Act, 1962:**

**33.2.1** The Show Cause Notice also proposes imposition of penalty under Section 112(a) of the Customs Act, 1962 on the Importer. In this regard, it is to mention that the fifth proviso to section 114A of the Customs Act, 1962 provides that penalty under Section 112 shall not be levied if penalty under Section 114A of the Customs Act, 1962 has been imposed and the same reads as under:

*"Provided also that where any penalty has been levied under this Section, no penalty shall be levied under Section 112 or Section 114."*

In the instant case, I have already found that Importer is liable to penalty under Section 114A of the Customs Act, 1962 and therefore, penalty under Section 112 is not imposable in terms of the 5<sup>th</sup> proviso to Section 114A of the Customs Act, 1962.

### **34. Whether, Penalty under Section 112(a) of the Customs Act, 1962 should be imposed on Shri K.S. Iyer, Deputy General Manager (BMC) of M/s. IDMC Limited, Anand?**

**34.1.** I find that mis-declaration of description and mis-classification of goods in the import documents viz. Bills of Entry presented by Importer before the Customs authorities, was done on the directions and under the guidance of Shri K.S. Iyer, Deputy General Manager (BMC) of M/s. IDMC Limited to willfully suppress the correct description and classification of goods with an intent to evade payment of applicable Customs Duty. Further, E mails as mentioned in **Para 31.5.1 and 31.5.2** and the admitted statements by Shri K.S. dated 15.03.2010,06.08.2010,20.08.2010,and 09.09.2010 as discussed in **Para 31.6.1.1 to 31.6.1.4** clearly demonstrates as to how he manipulated the import documents and played vital role with clear intent to evade the payment of Customs duty. He has willfully mis declared the description of imported goods and mis-classified the same which act has rendered the goods liable for confiscation and consequently, said Shri K.S.Iyer is liable for penalty under Section 112 (a)(ii) of the Customs Act, 1962. To support my above stand of penalty imposable on Shri K.S Iyer under Section 112 (a)(ii) of the Customs Act, 1962, I rely on the ratio of the following case laws.

#### **34.2.1 Hon'ble Supreme Court in the case of Commissioner of Customs, Kandla Vs. Essar Oil Ltd reported in 2004 (172) ELT 433 (S.C.) has interalia held as under.**

*"44. In view of the aforesaid, it was concluded by the Commissioner that in respect of the imported goods the aforesaid three persons have done or omitted to do acts which acts or omissions have rendered such goods liable for confiscation and they had also abetted in acts which they knew or had reasons to believe that the goods are liable to confiscation under Section 112(i) of the Act and rendered themselves liable to action under Section 112(a) of the Act. Accordingly penalties as noted above were levied on respondents 2, 3 and 4."*

*"47. The manipulative roles of respondents 2 to 7 have been clearly established. They were clearly active participants in the well-planned deception and fraudulent acts leading to evasion of duty. They had played major roles in the whole game of fraud and deception. There was clearly wilful disregard and deliberate defiance of statutory provisions. Levy of penalty is clearly warranted. Impugned order of CEGAT is set aside and order of Commissioner is restored."*

#### **34.2.2 Hon'ble Tribunal, Mumbai in the case of Eminence Equipments Pvt. Ltd. Vs. Commissioner of C.Ex. Pune-I reported in 2015 (330) ELT 344 (Tri. Mumbai) has interalia held as under:**

*"12. Now coming to the penalty imposed on Shri Makarand S. Savagaonkar, Managing Director of the appellant-company, under Rule 26 of the Central Excise Rules, from the facts brought on records, it is clear that he was aware that the goods manufactured by them are elevator and conveyor as popularly understood in commercial parlance and with that description the goods would be chargeable to excise duty, but he instead of paying the excise duty changed the description of the goods and not only that*

while interacting with his customers, insisted that the description in the purchase order etc. should be as per his requirement. We have no hesitation in holding that the penalty should be imposed on the said appellant. However, keeping in view the fact that the duty liability after extending the benefit of Cenvat credit would be substantially reduced as also the fact that the appellant is an individual, we reduce the penalty imposed on him from Rs. 1,00,00,000/- to Rs. 10,00,000/- (Rupees ten lakhs only).”

**34.2.3 Principal bench of Hon'ble Delhi in the case of Samsung India Electronics Ltd. Vs. Commr. of Cus., New Delhi reported in 2014 (307) ELT 160 (Tri. Del.) has interalia held as under:**

“12. Now coming to the penalty imposed on Shri Makarand S. Savagaonkar, Managing Director of the appellant-company, under Rule 26 of the Central Excise Rules, from the facts brought on records, it is clear that he was aware that the goods manufactured by them are elevator and conveyor as popularly understood in commercial parlance and with that description the goods would be chargeable to excise duty, but he instead of paying the excise duty changed the description of the goods and not only that while interacting with his customers, insisted that the description in the purchase order etc. should be as per his requirement. We have no hesitation in holding that the penalty should be imposed on the said appellant. However, keeping in view the fact that the duty liability after extending the benefit of Cenvat credit would be substantially reduced as also the fact that the appellant is an individual, we reduce the penalty imposed on him from Rs. 1,00,00,000/- to Rs. 10,00,000/- (Rupees ten lakhs only).”

In view of the aforesaid discussion, I find that penalty under Section 112 (a) (ii) is required to be imposed on Shri K.S. Iyer, Deputy General Manager (BMC) of M/s. IDMC Limited, Anand.

**35.** In view of the above I pass the following order.

**::ORDER::**

**35.1 FOR THE IMPORTS MADE AT ICD, KHODIYAR FALLING UNDER CUSTOMS AHMEDABAD :**

**35.1.1** I reject the declared classification of the subject good viz. 'Bulk Milk Cooling Tanks' under CTI 84342000 and 'Evaporator Plates' under CTI 84349020 as detailed in Annexure A to Show Cause Notice and order to re-classify the 'Bulk Milk Cooling Tanks' under CTI 84186990 and 'Evaporator Plates' under CTI 84195020 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and to reassess the subject Bills of Entry accordingly;

**35.1.2** I hold the goods i.e. 'Bulk Milk Cooling Tanks', 'Evaporator Plates' and 'Washing Unit' as detailed in Annexure 'A' to the show cause notice, totally valued at Rs. 6,21,70,294/- liable for confiscation under Section 111 (d) (l) & (m) of the Customs Act, 1962. However, I give M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat, the option to redeem the goods on payment of Fine of Rs.62,00,000/- (Rupees Sixty Two Lakh only) under Section 125 of the Customs Act, 1962.

**35.1.3** I deny the benefit of Exemption Notification No. 6/2002-CE dtd 1-3-2002 and Notification No. 6/2006-CE dtd 1-3-2006 availed by M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat. I confirm the demand of Differential Customs Duty amounting to Rs. 1,19,70,673/- (Rupees One Crore, Nineteen Lakh, Seventy Thousand, Six Hundred and Seventy-Three only), as detailed in the Annexure 'A' to the show cause notice leviable on 'Bulk Milk Cooling Tanks', 'Evaporator Plates' and 'Washing Unit' imported by M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat under Proviso to Section 28(1) of the Customs Act, 1962 and order to recover the same. Further, I order appropriation of the amount of Rs.64,37,816/- paid vide TR6 Challan No.792/2010 dtd.10/3/2010 for Rs.14,37,816/- and TR6 Challan No.832 dated 16/3/2010 for Rs. 50,00,000/-towards the duty confirmed as above.

**35.1.4** Interest at the appropriate rate shall be charged and recovered from M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat under Section 28AB of the Customs Act,1962 on the duty confirmed at Para 35.1.3 above.

**35.1.5** I impose penalty of 1,19,70,673/- (Rupees One Crore, Nineteen Lakh, Seventy Thousand, Six Hundred and Seventy-Three only) plus penalty equal to the applicable interest under Section 28AB of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the Importer M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order. Further, I refrain from imposing penalty under section 112 of the Customs Act, 1962, since as per fifth proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

**35.1.6** I impose a penalty of Rs.10,00,000/- (Rupees Ten Lakh only) on Shri K. S. Iyer, Deputy General Manager (BMC) of M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat under Section 112(a)(ii) of the Customs Act, 1962.

**35.2 FOR THE IMPORTS MADE AT JAWAHAR NEHRU CUSTOM HOUSE FALLING UNDER COMMISSIONER OF CUSTOMS (IMPORTS), JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA, DISTT: RAIGAD)**

**35.2.1** I reject the declared classification of the subject good viz. 'Cream Separators' under CTI 84342000 as detailed in Annexure B to Show Cause Notice and order to re-classify the 'Cream Separators' under CTI 84211100 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and to reassess the subject Bills of Entry accordingly;

**35.2.2** I hold the goods i.e. 4Nos of 'Cream Separators' as detailed in Annexure 'B' to the show cause notice, totally valued at Rs. 3,29,32,794/- seized under panchnama dtd. 14/09/2010, from the premises of [1] M/s. Mother Dairy Fruit & Vegetable Pvt. Ltd, Pilkhuwa Ghaziabad liable for confiscation under Section 111 (d) (l) & (m) of the Customs Act, 1962. However, I give M/s. Mother Dairy Fruit & Vegetable Pvt. Ltd., Pilkhuwa Ghaziabad, the option to redeem the goods on payment of Fine of Rs.33,00,000/- (Rupees Thirty Three Lakh only) under Section 125 of the Customs Act, 1962.

**35.2.3** I hold the goods i.e. 'Cream Separators' as detailed in Annexure 'B' to the show cause notice, totally valued at Rs. 1,25,46,085/- seized under panchnama dtd. 15/09/2010 from the premises of M/s. Banaskantha Dist. Co-op Milk Producers' Union Ltd. (Banas Dairy) Palanpur liable for confiscation under Section 111 (d) (l) & (m) of the Customs Act, 1962. However, I give M/s. Banaskantha Dist. Co-op Milk Producers' Union Ltd. (Banas Dairy) Palanpur, the option to redeem the goods on payment of Fine of Rs.12,50,000/- (Rupees Twelve Lakh, Fifty Thousand only) under Section 125 of the Customs Act, 1962.

**35.2.4** I hold the goods i.e. 'Cream Separators' as detailed in Annexure 'B' to the show cause notice, totally valued at Rs. 1,36,33,287/- seized under panchnama dtd. 21/09/2010 the premises of M/s. Rohtak district Co-operative Milk Producers Union Ltd. Rohtak liable for confiscation under Section 111 (d) (l) & (m) of the Customs Act, 1962. However, I give M/s. Rohtak district Co-operative Milk Producers Union Ltd. Rohtak, the option to redeem the goods on payment of Fine of Rs.14,00,000/- (Rupees Fourteen Lakh only) under Section 125 of the Customs Act, 1962.

**35.2.5** I deny the benefit of Exemption Notification No. 6/2002-CE dtd 1-3-2002 and Notification No. 6/2006-CE dtd 1-3-2006 availed by M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat. I confirm the demand of Differential Customs Duty amounting to Rs. 71,40,882/- (Rupees Seventy One Lakh, Forty Thousand, Eight Hundred and Eighty-Two only), as detailed in the Annexure 'B' to the show cause notice leviable on 'Milk Separators' imported by M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat under Proviso to Section 28(1) of the Customs Act, 1962 and order to recover the same. Further, I order appropriation of the amount of Rs. 30,00,000/- paid vide Challan dated 19/3/2010 towards the duty confirmed as above.


**35.2.6** Interest at the appropriate rate shall be charged and recovered from M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat under Section 28AB of the Customs Act, 1962 on the duty confirmed at Para 35.2.5 above.

**35.2.7** I impose penalty of Rs. 71,40,882/- (Rupees Seventy One Lakh, Forty Thousand, Eight Hundred and Eighty-Two only), plus penalty equal to the applicable interest under Section 28AB of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the Importer M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order. Further, I refrain from imposing penalty under section 112 of the Customs Act, 1962, since as per fifth proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

**35.2.8** I impose a penalty of Rs. 7,00,000/- (Rupees Seven Lakh only) on Shri K. S. Iyer, Deputy General Manager (BMC) of M/s. IDMC Ltd, Vithal Udyog Nagar, Near Anand, Gujarat under Section 112(a)(ii) of the Customs Act, 1962.

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

**37.** The Show Cause Notice No. DRI/AZU/INV-5/2010 dated 23.09.2010 is disposed off in above terms.

  
27.02.2026

(Shiv Kumar Sharma)  
Principal Commissioner of Customs

F.No. VIII/10-22/Pr.Commr/O&A/20254-26

Date: 27.02.2026

**DIN- 20260271MN000051035D**

**By Speed Post/E-Mail/By Hand**

- 1) M/s. IDMC Ltd,  
Vithal Udyog Nagart  
Near Anandt Gujarat.
- 2) Shri K. S. Iyer, .  
Deputy General Manager (BMC) Vithal Udyog Nagar, Near Anand, Gujarat.
- 3) M/s. Mother Dairy Fruit & Vegelable, Unit-Pilkhuwa Dairy, 36 KM Stone, Hapur  
Road, Pilkhuwa, Ghaziabad
- 4) M/s. Banaskantha Dist. Co-op.Milk Producers' Union Ltd.,  
(Banask Dairy), Palanpur, Gujarat.
- 5) M/s.Rohtak District Co-operative Milk Producers Union Ltd, A/c Rohtak Dairy  
Expansion Project, Rohtak

Copy to: -

1. The Chief Commissioner of Customs, Ahmedabad
2. The ADG, DRI, Ahmedabad
3. The Commissioner of Customs (Imports), Jawaharlal Nehru Custom House  
Nhava Sheva, Post uran, Dist. Raigad, Maharashtra-400 707
4. The Assistant Commissioner, ICD Khodiyar, Customs, Ahmedabad
5. The Assistant Commissioner, Taskforce, Customs, Ahmedabad
6. Guard File.