**सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद**

**OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,**

**चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road**
**नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009**
**दूरभाष क्रमांक Tel. No. 079-26589281**

DIN-20250771MN000000DCC4

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| क | फ़ाइल संख्या FILE NO. | S/49-102/CUS/AHD/2024-25 |
| ख | अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) | AHD-CUSTM-000-APP-146-25-26 |
| ग | पारितकर्ता PASSED BY | Shri Amit Gupta<br>Commissioner of Customs (Appeals), Ahmedabad |
| घ | दिनांक DATE | 11.07.2025 |
| ङ | उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO. | Order-in-Original no. 01/AR/ADC/Tumb/2024-25 dated 26.04.2024 |
| च | अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON: | 11.07.2025 |
| छ | अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT: | M/s. Vinod Medical Systems P. Ltd., 119, Omkar, The Summit Business Bay, 3rd Floor, B.L. Bajaj Road, Prakashvadi, Nr. W.E.H Metro Station, Andheri-East, Mumbai-400093 |

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| 1 | **यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.** |
| | This copy is granted free of cost for the private use of the person to whom it is issued. |

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| 2. | **सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.** |
| | Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order. |
| | **निम्नलिखित सम्बन्धित आदेश/**Order relating to : |
| **(क)** | **बैगेज़ के रूप में आयातित कोई माल.** |
| (a) | any goods exported |
| **(ख)** | **भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.** |
| (b) | any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination. |
| **(ग)** | **सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.** |
| (c) | Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder. |
| **3.** | **पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :** |
| | The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by : |
| **(क)** | **कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.** |
| (a) | 4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870. |
| **(ख)** | **सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो** |
| (b) | 4 copies of the Order-in-Original, in addition to relevant documents, if any |
| **(ग)** | **पुनरीक्षण के लिए आवेदन की 4 प्रतियां** |
| (c) | 4 copies of the Application for Revision. |
| **(घ)** | **पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र) या रु.1000/-(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-** |

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| (d) | The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-. | |
| 4. | **मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं** | |
| | In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address : | |
| | **सीमाशुल्क,** केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ | **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench** |
| | दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016 | 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016 |
| 5. | **सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-** | |
| | Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of - | |
| **(क)** | **अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.** | |
| (a) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees; | |
| **(ख)** | **अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए** | |
| (b) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ; | |
| **(ग)** | **अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.** | |
| (c) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees | |
| (घ) | इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा । | |
| (d) | An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. | |
| 6. | **उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.** | |
| | Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-<br>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or<br>(b) for restoration of an appeal or an application shall be accompanied by a fee of five hundred rupees. | |

**ORDER-IN-APPEAL**

Appeal has been filed by M/s. Vinod Medical Systems Private Limited, 119, Omkar, The Summit Business Bay, 3rd Floor, B.L. Bajaj Road, Prakashvadi, Nr. W.E.H Metro Station, Andheri-East, Mumbai-400093 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. 01/AR/ADC/Tumb/2024-25 dated 26.04.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, ICD Tumb (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant had imported the goods namely "FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES PP2512UV-RICOH GEN 5 and FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES XTRA320K" (herein after referred as "the impugned goods") under Bill of Entry No. 8754342 dated 06.11.2018 & 9094076 dated 03.12.2018 (hereinafter referred as "the said BoE"), filed at ICD Tumb, by classifying the same under CTH 84433250 and claimed full exemption of BCD under Sr. No. 2E of Notification 24/2005 dated 01.03.2005 and accordingly, SWS and IGST were calculated.

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

TABLE-I

| Sr. No. | BE No. | BE Date | Item No. | CTH | Item Description | BCD Rate |
|---|---|---|---|---|---|---|
| [1] | [2] | [3] | [4] | [5] | [6] | [7] |
| 1 | 8754342 | 06.11.2018 | 1 | 84433250 | FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES PP2512UV-RICOH GEN 5 | Nil |
| 2 | 8754342 | 06.11.2018 | 5 | 84433250 | FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES XTRA320K | Nil |
| 3 | 909407 | 03.12.2008 | 1 | 84433250 | FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES XTRA320K | Nil |

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

2.3 The imported goods mentioned in the Table-I were declared under CTH 84433250 appeared to be covered under CTH 84433910 attracting BCD Rate @7.5%. On careful reading of the description of the items mentioned under CTH 84433250, it appeared that the goods having description "Ink jet printer" attract Nil rate of BCD, however, the goods under CTH 84433910 having description "Ink-jet printing machine" attracts BCD Rate @7.5%.

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2.4 It is pertinent to mention that in the Bill of Entry, the goods are described as "Printing System". Thereby, it appeared that these items are not simple printers, but "Printing System" as described by the importer. The Printing System may comprise of a printer driver, which includes command required by specific printer in itself. It cannot depend upon external ADP for processing or control commands. Accordingly, goods described as printing system appeared to merit classification under CTH 8443 3910 as "Printing Machine". As per General Rules of Interpretation (GRI), classification shall be determined according to the terms of the headings and any relative section or chapter notes. The goods appeared to have been mis-classified by the importer under CTH 84433250 and claiming full BCD exemption under Sr. No. 2E of Notification 24/2005 dated 01.03.2005. Therefore, it appeared that the aforesaid goods are classifiable under CTH 84433910 attracting BCD @7.5%, SWS @10% of BCD and IGST @18% accordingly. It appeared that the goods have been mis-classified with an intention to evade payment of BCD and SWS and to short pay IGST resulting in evasion of duties of Customs.

2.5 From para 2 & 3 above, it appeared that the description of the impugned goods declared by the importer/noticee are other than the description of the goods under Customs Tariff Heading 84433250. Therefore, it appeared that the impugned goods are not eligible for claiming the benefit of 'Nil' rate of BCD. Instead, the impugned goods appeared to be classifiable under CTH 84433910 as PRINTING MACHINE attracting BCD @ 7.5% and SWS @10% of BCD and accordingly, appropriate IGST @ 18%. On scrutiny of the Bill of Entry No. 8754342 dated 06.11.2018 & 9094076 dated 03.12.2018 including the import documents filed by the importer revealed that the same was filed through their Customs Broker i.e. M/s. Buffer Shipping Agency Private Limited (CHA No. AAHCB3777FCH002) wherein the above referred goods i.e. FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES PP2512UV-RICOH GEN 5 and FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES XTRA320K were imported on full exemption from BCD, and it appeared that the goods have been wrongly classified. The aforesaid imported goods viz. FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES PP2512UV-RICOH GEN 5 and FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES XTRA320K were imported from Shenzhen Runtianz Digital Equipment Co. Ltd., China on

the Assessable value of Rs. 22,74,469/-, Rs. 17,39,968/- and Rs. 33,40,585/- respectively, declaring classification under CTH 84433250 claiming the BCD exemption under Sr. No. 2E of Notification 24/2005 dated 01.03.2005 and, thus, it appeared that the importer has evaded the payment of BCD and, accordingly, SWS and IGST thereon.

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

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

2.8 The importer appeared to have willfully suppressed the facts that they were required to pay BCD at 7.5% on import of goods covered under

Customs Tariff Heading 84433910. Instead of paying BCD @7.5%, they claimed Nil rate under CTH 84433250 which appeared to be incorrect. With the introduction of self-assessment & RMS under the Customs Act, faith is bestowed on the importer, with the responsibility of self-assessing goods under Section 17 of the Customs Act, 1962. It was incumbent upon the importer to assess the duty leviable on imported goods correctly, however, it appeared that the importer failed to do so by selecting wrong CTH for payment of BCD, SWS & IGST by willful mis-statement with intent to evade payment of BCD, SWS & IGST and therefore, appeared that they have violated the provisions laid down under Section 17(1) of the Customs Act, 1962 inasmuch it appeared that they have failed to correctly self-assess the impugned goods and also willfully violated the provision of Sub Section (4) and 4(A) of Section 46 of the Custom Act, 1962. Amount of Customs duty attributable to such benefit availed in the form of non-payment of BCD, SWS & IGST at a "Nil" rate, is therefore, appeared to be demanded from the said importer under Section 28(4) of the Customs Act, 1962 along with appropriate interest under Section 28AA of the Customs Act, 1962. Accordingly, it appeared that the non-payment of customs duty amounting to Rs. 5,51,627/-, SWS of Rs. 55,163/- & IGST of Rs. 1,09,222/- appeared liable to be recoverable from the Importer under section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

2.9 It appeared that the Importer/Noticee has willfully claimed the undue benefit for the import of the impugned goods resulting into non levy of Basic Customs Duty, SWS and short levy of IGST, by doing so, it appeared that the said importer has rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. The goods imported vide the impugned Bills of Entry were self-assessed and cleared with declared assessable value of Rs. 73,55,022/-, the same appeared to be liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

2.10 It appeared that the importer has failed to correctly self-assess the payment of appropriate duty and will fully suppress the proper CTH of the imported goods with intent to evade the payment of duty resulting into short/non-payment of BCD amounting to Rs. 5,51,627/-, SWS of Rs. 55,163/- and IGST of Rs. 1,09,222/-. Therefore, such act of non-payment/short payment

of appropriate duty by will fully suppressing/mis-declaring the proper CTH of the imported goods appears to render the importer liable for penal action under Section 114A of the Customs Act, 1962. Further, such act of mis-declaration or use of false/incorrect particulars of the details viz. wrong particulars of the proper CTH of the imported goods appears to have rendered the importer liable for penal action under Section 114AA of the Customs Act, 1962.

2.11 Consultative letter dated 20.07.2023 has been issued, taking into account the Pre-Notice Consultation Regulations, 2018, to the importer with a request to pay the differential BCD, SWS and IGST. In their response, dated 10.08.2023, they had requested one month's time to submit the reply, but the same was not submitted till issuance of the notice. Therefore, M/s. Vinod Medical Systems Private Limited, were called upon to Show Cause in writing as to why: -

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

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

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

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

v. All the goods imported vide Bill of Entry No. 8754342 dated 06.11.2018 & 9094076 dated 03.12.2018, which were self-assessed and have already been cleared, having assessable value of Rs. 73,55,022/- (Rupees Seventy

Three Lakhs Fifty Five Thousand Twenty Two only) should not be held liable to confiscation under Section 111 (m) & Section 111(o) of the Customs Act, 1962. Since the said goods are already cleared and are not available for confiscation, why fine in lieu of confiscation should not be imposed on them under Section 125 of the Customs Act, 1962;

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

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

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

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

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

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

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

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

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

e) He held the subject goods having assessable value of Rs. 73,55,022/-

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

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

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

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

i) He refrained from imposition of penalty under Section 112 Custom Act on M/s. Vinod Medical Systems Private Limited.

3. Being aggrieved with the impugned order the appellant has filed the present appeal on 01.07.2024. The appellant has submitted a copy of the T.R.6 Challan dated 27.06.2024 towards pre-deposit of Rs.2,17,727.10 under the provisions of Section 129E of the Customs Act, 1962. In the Form C.A.-1, the date of communication of the impugned order dated 26.04.2024 has not been specifically shown. If the order was served on the same date, there is a delay of 6 days in filing of appeal beyond the normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. However, the appellant has

submitted an application dated 26.06.2024, received on 01.07.2024, regarding condonation of transitional delay in submitting appeal. In the said application, it has been mentioned that the appeal was sent to Mrudul Tower address, but the same was returned undelivered. On enquiry, they came to know about new location/address of the office of the Commissioner (Appeals), Ahmedabad, and thereby they have requested to condone the transition delay of 3-4 days. I find that Hon'ble Supreme Court in the case of *Collector, Land Acquisition Anantnag and Another vs. Mst. Katiji and Others reported in 1987 (28) ELT 185 (SC)* held that a justifiable liberal approach should be adopted in cases of condonation of delay. In view of the above position, I condone the delay of 06 days in filing the appeal as per the first proviso to Section 128(1) of the Customs Act, 1962, and admit the appeal.

**4. SUBMISSIONS OF THE APPELLANT:**

The Appellant has filed the present appeals wherein they have submitted grounds which are as under:

4.1 The appellant has submitted that the Adjudicating Authority has passed the impugned O-in-O assuming that the appellants had indulged into contravention of Section 28 (4) for invoking extended period of 5 years and that one of the following elements were present in the circumstances of the case:

a) Collusion or

b) Any wilful mis-statement or

c) Suppression of facts.

4.2 However the SCN dt. 07.11.23 issued to the appellants has been silent as to why it is considered that there was collusion or any wilful mis-statement or suppression of facts on the part of the appellant in this case. The importers have not doubt filed the BEs under RMS and declared the classification of the goods as per their best understanding as per the description of the goods mentioned in the import invoices. Attention is invited to para 22, page 36 & 37 of the impugned O- in-O dt. 26.04.2024 wherein the Adjudicating Authority has observed that *"The goods have been mis-classified by the importers under CTH 84433250 to claim full BCD exemption under Sr. No. 2E of Notfn. 24/2005 dt. 01.03.2005 ..... and thus, I find that the importers have willingly*

*availed 'NIL' rate of BCD by classifying the imported goods under CTH 84433250. I find this act on the part of importer as intentionally to evade the payment of BCD and SWS @ 10% of BCD and thereby, short payment of IGST @ 18% accordingly".* The act of classifying the goods under a particular CTH is a mandatory function entrusted to the importers under RMS and the importer does it on the basis of their best understanding of the goods as per the description of the goods mentioned in the import invoices, which the importers have done. The importers are not experts as Custom Officers are supposed to be and so alleged mis-classification cannot be termed as 'intentional' for the purpose of invoking Sec. 28 (4). The Audit has not found any disparity between the description of the goods in the invoice and what is declared in the Bs/E. As such, there is no mis-declaration.

4.3 Also, it is reiterated that the importers had submitted usual import documents like import invoices and packing list etc. and the particulars/specifications of the imported goods mentioned herein at the time of original self-assessment which remained the same even now at the Audit stage. As such, there is neither any wilful mis-statement nor any suppression of facts and so the extended period of 5 years is not at all invokable in this case. So, the SCN/demand could have been issued only within two years from the date of removal of goods but the impugned SCN/demand was issued much after statutory period of 2 years mentioned in Sec. 28 (1) (a) of the Act, rendering the SCN/demand as time-barred and illegal. Nevertheless, in case the declared classification was not acceptable to the system or to the Audit, it can only be termed as a dispute between the importer and the Audit and that it cannot be construed as 'wilfull or intentional act' on the part of the importers to evade duty. There is nothing placed on record which shows that this classification has been done willfully to evade duty. The tariff descriptions under various headings and sub- heading are available to the importers at the time of filing the Bs/E and Sec. 17 requires them to "self-assess" the goods under any CTH which appears to be most appropriate to the importers as per the description of the goods. This is exactly what the importers have done logically but not wilfully to evade duty. Therefore, extended period under Sec. 28(4) of the Act is not invokable to demand any duty.

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4.4 Also, in para 24, page 37 of the impugned O-in-O, the learned Addl. Comm. has observed that "*I also find that the importer have wilfully suppressed the fact they were required to pay the BCD at 7.5% on import of goods covered under Customs Tariff Heading 84433910. Instead of paying BDC @ 7.5%, they claimed Nil rate under CTH 84433250 which is held as incorrect*". He also inferred that *'I find that they have violated the provision laid down under Section 17(1) of the Customs Act, 1962 in as much they have failed to correctly self-assess the impugned goods and also wilfully violated the provision of sub-section (4) and 4(A) of Section 46 of the Custom Act, 1962'*. All this observation is nothing different from what is mentioned in para 22, page 36 & 37 of the impugned O-in-O and the same has been discussed by us in the above para. The ADC's observation that *"they have failed to correctly self-assess the impugned goods and also wilfully violated the provision of sub-section (4) and 4(A) of Section 46 of the Custom Act, 1962"* is a very subjective statement. What appears to be 'incorrect' CTH as declared by importers to the Audit was considered to be 'correct' and appropriate by the importers at the time of self-assessment. As such, it seems to be only a dispute of classification and not at all a wilful act to evade duty on the part of the importers. However, in this regard, attention is invited to Hon. Bombay High Court judgment in case of **Dimension Data India Pvt. Ltd. V/s. Comm. of Customs 2021 (376) ELT. 192 (Bom)**- wherein it has been held that 'Though duty cast upon importer to self-assess customs duty leviable on imported goods in terms of scheme of Section 17 of Customs Act, 1962, corresponding duty also cast upon proper officer to verify and examine such self-assessment'. Since the "proper officer" did discharge his duty of not finding fault with the declared classification, it would mean that the "proper officer" too agreed with the correctness of the assessment as done by the importer. As such, neither the declared classification is wrong nor the goods are liable to confiscation under Section 111 (m) of the Act.

4.5 The ratio of this judgment is squarely applicable to the facts and circumstances of this case. Though the importers had self assessed the goods under a particular classification i.e., CTH 84433250, the 'proper officer' did not find any fault with the declared classification under the corresponding duty also cast upon proper officer to verify and examine such self-assessment as per Section 17 of the Act. As such, neither the self- assessment done amounts to

mis-statement nor the could be considered liable to confiscation under Sec. 111 (m). So, the redemption fine of Rs.7,35,502/- imposed under Sec. 125 vide para (e), page 45 of the impugned O-in-O is not sustainable. Though the importers had submitted their reply dt. 11.01.24 the impugned SCN wherein it was mentioned that the B/E No. 8754342 dt. 06.11.2018 and 9094076 dt. 03.12.2018 were filed in 2018, the SCN has been issued under Section 28(4) and Section 124 of the Customs Act. 1962 (hereinafter referred to as the Act.) on 07.11.23. As regards first B/E dt. 06.11.2018, the SCN has been issued after the expiry of 5 years mentioned under Section 28(4) of the Act. The 5 years from 06.11.2018 expire on 05.11.2023. However, the dates of actual removal of goods indicated in para 27 of the impugned goods was not accessible to the importers. So, the actual date of removal being 12.11.2018, the issuance of SCN would be within 5 years but that extended period would not be invokable because of the reason and explanation tendered in the preceding paragraphs.

4.6 Para 28, page 39 of the impugned O-in-O dt. 26.04.2024 wherein the Adjudicating Authority has mentioned that the Bills of Entry were under RMS assessment where examination was not prescribed so, examination report was not required. This statement of the Adjudicating Authority does not seem to be correct. In this connection, it may also be submitted that, the goods covered by the said B/E No. 9094076 d. 03.12.18 were required to be examined by the then Customs Officers (para 07 of our reply dt. 11.01.24) as may be seen from the Examination Order page of the impugned B/E reproduced below verbatim wherein "Compulsory Compliance Requirement" (CCR) has been mentioned thereunder. Though examination was not prescribed for the said B/E, but a plain reading of the Examination Order page clearly shows that a mandatory CCR was to be complied with:-

Indian Customs EDI System - Imports V1.5R001

ICD TUMB, TALUK UMBERGAON, DIST VALSAD, GUJARAT

Examination Order Dated: 03/12/2018

BE No 9094076, BE dt 03/12/2018, CC N, Type H

Importer: VINOD MEDICAL SYSTEMS PRIVATE LIMITED

IEC [1101002522] CHA [AAHCB3777FCH002]

Appraising Group: 5

कार्यालय आयुक्त (अपील), सीमा शुल्क अहमदाबाद.

Officer: Mithlesh Singh

Examination order: Examination has not been prescribed for this BE. So Examination Order is not Required

IEC CCR Examination Instructions: Compulsary Compliance Requirements: 1 **Mandatory Compliance Requirements Examination Instructions** (CTH) - 84433250 "VFY EXTENDED PRODUCERS RESPONSIBILITY (EPR) AUTHORIZATION ISSUED UNDER E-WA STE (MANAGEMENT) RULES, 2016 FOR IMPORT OF CATEGORIES OF ELECTRICAL AND ELEC TRONIC EQUIPMENT INCLUDING THEIR COMPONENTS, CONSUMABLES, PARTS AND SPARES COVERED LISTED IN SCHEDULE-I TO THE SAID RULES. THE SAID RULES SHALL NOT BE A PPLICABLE TO 'MICRO ENTERPRISES' AS DEFINED IN MICRO, SMALL AND MEDIUM ENTE RPRISES DEVELOPMENT ACT, 2006 (27 OF 2006).' * FOR IMPORT OF PRINTER, PLOTT ER UNREGISTERED REPAIRED/REFURBISHED/SECOND HAND ITEMS SHOULD NOT BE ALLOWED TO BE IMPORTED WITHOUT PRIOR PERMISSION FROM MEITY. CHECK REGISTRATION OF IMPORTER & GOODS WITH BIS & SELF DECLARATION ON THE GOODS THAT THEY CONFIRM TO IS 13252:2003. SUBSTANDARD GOODS TO BE DEFORMED & DISPOSED OF AS SCRAP IN TERMS OF PARA 3 OF THE ORDER. SUBSTANDARD GOODS TO BE DEFORMED & DISPOSED OF AS SCRAP IN TERMS OF PARA 3 OF THE ORDER. REFER DRI ALERT CIR 1/2014-CI DT 7-1-14 *. *ELECTRONICS AND INFORMATION TECHNOLOGY GOODS ORDER, 2012 DT 7-11 -12, DRI ALERT CIR 1/2014-CI DT 7-1-14*NTF NO. 14/15-20 DTD 14.07.16." #Mandatory Compliance Requirements Examination Instructions (FOR NOTIFICATION) - 024/2005 2E VFY GOODS ARE OF TARIFF ITEMS 84433250. REFER TO CBEC NOTFN. NO. 58/2017 DATED 30.06.2017

AC Remarks Name: Gopa Krishna Pradhan

Inspector Report

[CHA] [EO/Inspector] [Shed AC /Supdt]

..... .....

4.7 The above instruction is abundantly clear on the Examination Page of the B/E. The Examination Order contained therein required the Customs Officer to verify that the goods were of Tariff Items 84433250, which was correctly declared by the importers in the said B/E. In other words, it may be emphasized

that at the time of clearance of goods, the then Customs Officer had satisfied himself that the goods were classifiable under CTH 84433250 before releasing them for home consumption. In this connection, the observation made by the learned ADC in para 28 of the impugned O-in-O referring to Image 2 & Image 1, has suppressed the important portion of the lower part of the Bill of Entry reproduced by us available in the System, which reveals the "Compulsory Compliance Requirements". As the words suggest, whatever is stated below this heading were to be compulsarily done by the proper officer. As such, it is safely assumed that goods were released after carrying out the following verification:- *"(FOR NOTIFICATION)- 024/2005 2E VFY GOODS ARE OF TARIFF ITEMS 84433250. REFER TO CBEC NOTFN. NO. 58/2017 DATED 30.06.2017"*

4.8 On the other hand, it is not understood how the Audit could raise the objection about the classification of the import goods only by reading the description mentioned in the import invoice? Whereas, why the original assessment done, not only with reference to import documents but by the then Customs Officers verifying the description of the goods and by physically examining the goods, should be preferred? The Audit objection, therefore deserves to be rejected. Similarly, the inference drawn by the adjudicating authority does not seem to be in tune with the "compulsory compliance requirements". Once the CCR is mentioned in the examination order page of the B/E in the EDI system as reproduced above (which was conveniently suppressed by the adjudicating authority), it is mandatory for the proper officer to comply with the same. As such, all the facts pertaining to the imported goods were very much in the knowledge of the Deptt., proving thereby that there was no scope for wilful mis-statement or suppression of facts and that the self-assessment was verified by the proper officer. Under such circumstances, the extended period enshrined under Section 28 (4) cannot be invoked, thereby reducing the impugned SCN dt. 07.11.23 as time barred. Consequently, the Order dt. 26.04.24 passed the learned ADC also deserves to be set aside.

4.9 Apart from following RMS procedure without any flaw, there is no action brought out on the part of the importers in the impugned SCN which can be construed as mis-statement. The act of claiming classification of the declared goods under CTH 84433250 cannot be termed as mis-statement. The importers

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

4.10 Notwithstanding our arguments regarding the fact that there has been no collusion, nor any wilful mis-statement nor suppression of facts in the above paragraphs, we maintain that the declared classification of goods under 84433250 is the most appropriate classification. In this regard our justification submitted in para 08 to 11 of our reply dt. 11.01.2024 may kindly be taken into consideration while deciding the classification of impugned goods. In all these paras of our reply dt. 11.01.2024, we have proved beyond doubt that the most appropriate classification is under CTH 84433250 as was originally done by the then Custom Officer. Even recently, the classification of the said goods has been confirmed under CTH 84433250 as mentioned in para 11 of our reply dt. 11.01.2024. On the other hand, the learned ADC's inference in para 26 of the impugned O-in-O that "I find that the importer has not contested regarding why the imported goods should not be classified under 84433910" is baseless and shows that he has not paid due attention to the written and oral submissions of the importers/appellants presented in their reply dated 11.01.24, written

deposition at the time of virtual PH and oral arguments. Para 06 of our Written Deposition is reproduced below:

Classification of Goods

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

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

4.13 The Adjudicating Authority does not seem to have gone through the above explanation in support of classification on merit as well apart from the fact that the SCN was time-barred. Also, the Adjudicating Authority has not accepted our reliance on an Order-in-Original No. 1062/2023-24/ADC/Gr. V/NS-V/CAC/JNCH dt. 28.11.23 passed by the Addl. Comm., JNCH, Nhava Sheva without giving any cogent rebuttal in para 26 of his O-in-O dt. 26.04.24. In that consignment, the importer as well as the description of the goods are same and the decision thereof needs to be accepted on merit. In view of the above, it is submitted that the original assessment of the goods covered by the said Bills of Entry No. 9094076 dt. 03.12.2018 and 8754342 dt. 06.11.2018 has been

correctly done under RMS by the then custom officers after thoroughly verifying the CTH at the time of examination w. r. t. the import documents before release of the goods for home consumption under Section 46. Moreover, as there has been no (a) collusion or (b) any wilful mis-statement; or (c) suppression of facts, the extended period wrongly invoked by the Deptt., would not be invokable for demanding the alleged duty difference. As such, we are not liable to pay any additional BCD amounting to Rs. 7,43,849/- as wrongly alleged in the impugned SCN dt. 07.11.2023. Also, on account of our explanation in the above paras neither the goods are liable to the confiscation under Section 111 (m) & (o) of the Act, nor importers are liable to any penalty under Section 112 (a), 114 A and 114AA of the Act. Therefore, Adjudicating Authority's O-in-O dated 26.04.24 illegally confiscating the goods, imposing redemption fine and imposing penalties may kindly be set aside in the interest of justice.

**PERSONAL HEARING:**

5.1 Personal hearing in this matter was granted to the Appellant on 04.06.2025, following the principles of natural justice wherein Shri Aditya Tripathi, Advocate, appeared on behalf of the appellant. He sought adjournment and requested to keep the next PH on either on 01.07.2025 or 02.07.2025.

5.2 Another Personal hearing was held on 02.07.2025, which was attended by Shri Priyamkar Mishra, Advocate and Shri Aditya Tripathi, Advocate. They re-iterated the submissions made at the time of filing the appeal.

**DISCUSSION AND FINDINGS:**

6. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, ICD Tumb, Customs Ahmedabad and the written as well as oral submissions made by or on behalf of the Appellant.

6.1 On going through the material on record, I find that the prime issue to be considered here is whether the Adjudicating Authority, in its original order, adequately considered all relevant circulars and instructions, specifically Circular No. 11/2008-Customs dated July 01, 2008. This issue is pivotal because it addresses a fundamental procedural requirement in customs adjudication: the mandatory application of relevant and binding departmental instructions. Upon review, it is noted that the impugned Order-in-Original does

not explicitly discuss or apply the guidance provided in Circular No. 11/2008-Customs dated July 01, 2008. This circular on the subject, *"Issues relating to classification of Large Format Printers - Regarding,"* provides crucial clarifications regarding the classification of devices under CTH 8443, particularly distinguishing between "printers capable of connecting to an Automatic Data Processing (ADP) machine or to a network" (CTH 844332) and "other printing machinery" (CTH 844339).

6.2 This circular, issued by the Central Board of Excise and Customs (CBEC, now CBIC), specifically deals with the classification of Multi-Function Devices (MFDs) and their parts/accessories under Customs Tariff Heading (CTH) 8443. The core dispute in the Appellant's case revolves around the classification of "FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES." The department re-classified them from CTH 84433 250 ("Ink Jet Printer") to CTH 84433910 ("Ink-jet printing machine"). Circular No. 11/2008-Customs directly addresses this very distinction.

6.3 The circular emphasizes the "principal function" of the device and provides guidance on how to classify devices that combine multiple functions (e.g., printing, copying, scanning, faxing). While the imported goods are described as a "Printing System," the principles laid down in this circular are highly relevant for determining whether such a "system" should be classified as an "Ink Jet Printer" (CTH 84433250) or an "Ink-jet printing machine" (CTH 84433910). Departmental circulars are binding on adjudicating authorities and officers. Failure to consider a relevant and binding circular can lead to an erroneous decision.

6.4 The classification of complex machinery like "printing systems" can be nuanced. Circular No. 11/2008-Customs directly addresses the very CTH and the distinctions that are central to this dispute. As a binding instruction, its application is mandatory for proper adjudication. The absence of any discussion or application of this circular in the impugned OIO indicates that a crucial piece of guidance was overlooked. This omission is a significant procedural flaw that warrants a remand. The final determination of classification, and consequently the applicability of extended period, penalties, and confiscation, rests on a

correct and comprehensive application of all relevant legal provisions and departmental instructions.

6.5 **Key Distinctions Clarified by the Circular:**

6.5.1 CTH 844332: This sub-heading covers "Other, capable of connecting to an automatic data processing machine or to a network." This typically includes devices that function primarily as printers but require an external computer (ADP machine) or network connection to perform their main printing function. Within this, CTH 84433250 specifically covers "Ink jet printer."

6.5.2 CTH 844339: This sub-heading covers "Other" printing machinery, copying machines, and facsimile machines. This often includes standalone devices or more complex "machines" that have their own integrated processing capabilities and do not solely rely on an external ADP machine for their primary functions. CTH 84433910 specifically covers "Ink-jet printing machine."

6.6 The circular provides principles for distinguishing between "printers" and "printing machines" based on their functional capabilities, degree of independence from an external ADP, and the presence of multiple integrated functions. It aims to provide uniformity and clarity in classifying such devices. It is a well-established principle of Indian tax jurisprudence that circulars issued by the Board (CBIC/CBEC) are binding on the departmental officers and adjudicating authorities. They represent the interpretation of the law by the highest administrative body and are meant to ensure uniform application across the country. The Hon'ble Supreme Court of India has consistently held that circulars are binding on revenue authorities. In CCE v. Dhiren Chemical Industries, 2002 (139) ELT 3 (SC), Hon'ble Supreme Court emphasized that if there are circulars in the field, the revenue cannot take a stand contrary to the instructions issued in the circulars. This is further strengthened in Ratan Melting & Wire Industries v. CCE, 2008 (12) STR 416 (SC), wherein the Hon'ble Court affirmed that circulars are binding on the revenue.

6.7 The classification of the "FLORA DIGITAL INKJET PRINTING SYSTEM AND ACCESSORIES" is the very foundation of the entire case. Circular No. 11/2008-Customs directly addresses the criteria for distinguishing between

"printers" and "printing machines" under CTH 8443. Ignoring this circular means the classification was determined without considering crucial departmental guidance specifically designed for such products. The classification directly impacts the Duty Liability i.e. Whether BCD is Nil or 7.5%.

6.8 The finding of "willful mis-statement" or "suppression of facts" hinges on whether the Appellant's initial classification was demonstrably incorrect in light of all available guidance, including Board circulars. If the circular provides a plausible interpretation supporting the Appellant's original classification, the element of "willfulness" becomes difficult to sustain. The liability for confiscation under Section 111(m) and the imposition of penalties under Sections 114A and 114AA are direct consequences of the classification being deemed incorrect and willful. If the classification itself is re-evaluated based on the circular, the entire edifice of penalties may crumble. For an adjudication order to be legally sound and fair, it must demonstrate that all relevant facts, legal provisions, and binding instructions have been considered. The omission of a directly applicable circular constitutes a procedural lapse that can vitiate the entire order.

7. The impugned Order-in-Original's silence on Circular No. 11/2008-Customs, despite its direct applicability to the classification dispute, represents a significant oversight. As a binding instruction, this circular should have been explicitly considered and applied by the Adjudicating Authority in arriving at its classification decision. The failure to do so means that the fundamental basis of the demand, penalties, and confiscation is flawed. To ensure that justice is served and the principles of fair adjudication are upheld, the matter must be remanded back to the Adjudicating Authority. This will provide an opportunity for a de novo consideration of the classification, taking into account the guidance provided in Circular No. 11/2008-Customs, and subsequently re-evaluating all other findings based on the revised classification.

7.1 Given the direct relevance and binding nature of Circular No. 11/2008-Customs dated July 01, 2008, to the core classification dispute in this case, and its apparent non-consideration in the impugned Order-in-Original, a de novo adjudication is necessary. This will ensure that all relevant instructions

are duly applied, leading to a just and legally sound decision. The other issues, including the justification for invoking the extended period and the imposition of penalties, are contingent upon the final classification.

8. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) The impugned Order-in-Original No. 01/AR/ADC/Tumb/2024-25 dated April 26, 2024, is set aside.

(ii) The matter is remanded back to the Additional Commissioner of Customs, ICD-Tumb (Adjudicating Authority), for a de novo adjudication with the specific direction to consider and apply the guidance provided in Circular No. 11/2008-Customs dated July 01, 2008, along with all other relevant legal provisions, notifications, and instructions.

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


(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-102/CUS/AHD/23-24 Date: 11.07.2025

By E-mail (As per Section 153(1)(c) of the Customs Act, 1962)

To,
M/s. Vinod Medical Systems Pvt. Ltd.
119, Omkar, The Summit Business Bay, 3rd Floor,
B.L. Bajaj Road, Prakashvadi,
Nr. W.E.H. Metro Station,
Andheri-East, Mumbai-400093
(email: georgethomas@vinodmedical.com vmspl@vinodmedical.com )

**Copy to:**

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in )

2. The Principal Commissioner of Customs, Ahmedabad. (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in )

3. The Additional Commissioner of Customs (In-charge of ICD-Tumb), Ahmedabad (email: cus-ahmd-adj@gov.in cusicd-tumb@gov.in ) **with direction to initiate de-novo adjudication proceedings.**

4. The Deputy/Assistant Commissioner of Customs, ICD-Tumb (cusicd-tumb@gov.in )

5. Shri. Priyamkar Mishra and Shri. Aditya Tripathi, Advocates (email: adv.aditya0804@gmail.com )

6. Guard File.

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