

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421</p> <p><b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:</b></p> <p><b>CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421.</b></p> <p><b>PHONE : 02838-271426/271163 FAX :02838-271425</b> <b>E-mail id- adj-mundra@gov.in</b></p>	
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<b>A</b>	<b>FILE NO.</b>	GEN/ADJ/ADC/853/2023-Adjn-O/o Pr Commr-Cus-Mundra
<b>B</b>	<b>OIO NO.</b>	MCH/ADC/AK/12/2024-25
<b>C</b>	<b>PASSED BY</b>	ARUN KUMAR ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA.
<b>D</b>	<b>DATE OF ORDER</b>	16.04.2024
<b>E</b>	<b>DATE OF ISSUE</b>	17.04.2024
<b>F</b>	<b>SCN NUMBER &amp; DATE</b>	GEN/ADJ/ADC/853/2023-Adjn. Dated 26.04.2023
<b>G</b>	<b>NOTICEE/ PARTY/ IMPORTER</b>	M/s Medinnova Solutions Pvt. Ltd. & others (IEC: 3410002413), E-114, GIDC Savli, Manjusar Savli Road, Tal. Savli, Distt. Vadodara, Gujarat- 391775
<b>H</b>	<b>DIN NUMBER</b>	20240471MO000000E905

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-  
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“ सीमा शुल्क आयुक्त (अपील),  
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड,  
नवरंगपुरा, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA  
HAVING HIS OFFICE AT 4<sup>TH</sup> FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,  
NAVRANGPURA, AHMEDABAD-380 009.”

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

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

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

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

- i. उक्त अपील की एक प्रति और A copy of the appeal, and
- ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं°-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

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

- 5. अपील ज्ञापन के साथ ऊटी/ व्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।
- Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
- 6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।

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

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

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

### **Brief facts of the case**

A specific intelligence was gathered by the Directorate of Revenue Intelligence (hereinafter referred to as 'DRI') indicated that **M/s. Medinnova Solutions Pvt. Ltd.**, E-114, GIDC Savli, Manjusar Savli Road, Tal. Savli, Distt. Vadodara, Gujarat-391775 (IEC: 3410002413) (hereinafter also referred to as the "Importer") has filed **Bill of Entry No. 3102798 dated 31.10.2022** at Mundra Port for the goods of declared description 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099, imported vide container No. CSLU2901778. Intelligence further suggested that the goods covered under aforesaid BOE were mis-declared with respect to declaration of goods and other material particulars (as per intelligence). The particulars of the Import consignment are as under:

Bill of Entry No. and Date	3102798 dated 31.10.2022
Name of the Importer	M/s. Medinnova Solutions Pvt. Ltd, E- 114, GIDC Savli, Manjusar Savli Road, Tal. Savli, Distt. Vadodara, Gujarat-391775

IEC No. of the Importer	(IEC: 3410002413)
Name of the Customs broker, who filed Shipping Bill	M/s. Tulsidas Khimji Pvt. Ltd
Bill of Lading no. and date	NSA/IMP3244/1022/NHV dated 18.10.2022
Name of the Shipper	Vault Trading LLC, Dubai Investment Park, Phase1, Near AL Shafar Interior, Plot No. 595, Warehouse No. 5, Dubai-UAE
Port of Loading	Jebel Ali (AEJEA)
Port of Discharge	Mundra (INMUN1)
Gross Weight (Kgs)	1200 Kgs
Net Weight (Kgs)	-
Quantity of Goods Detained / Seized	15 in no's including 1 tray/trolley type Medical Equipments
Declared value (as per BOE)	Rs. 18,41,185/-
Invoice No. and Date	400360 dated 05.09.2022
Declared Description of Import Goods	'Used and Old Medical Equipments Anaesthesia Workstations'
Declared CTH No.	90189099
Container No.	CSLU2901778/1*20'

**2.** Acting upon the intelligence, goods of declared description 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099, imported vide container No. CSLU2901778 covered under Bill of Entry No. 3102798 dated 31.10.2022, were taken up for examination. The said goods were examined under **Panchnama dated 02.11.2022** drawn at M/s TG Terminals, CFS, Adani Ports & SEZ, Mundra (Kutch) in the presence of representative of customs broker appointed by the Importer. Upon examination, the said container was found stuffed with Machineries which appeared to be medical equipments and the same are found 15 in no's including 1 tray/trolley type equipment.

**2.1** During the examination, services of Chartered Engineer were obtained, Shri Kumal A. Kumar was present during the examination to determine the actual nature of the Goods imported. In the report dated 05.12.2022, the Chartered Engineer has remarked that the Medical equipments are deemed to be as second-hand and used. The CE has certified in its report that the Anesthetic workstations in the cargo consists of ventilators integrated in the machine itself. Thus, the Anesthetic workstations can also be used as ventilators if required by the operator.

**2.2** Import of ventilators for re-use is prohibited for import in terms of prohibition imposed under HWM Rules, 2016. As per Sub-rule 6 of Rule 12 of the Hazardous Waste (Management, Handling and Trans Boundary Movement) Rules, 2016 [HWM Rules], no import of the hazardous and other wastes specified in Schedule VI shall be permitted. Schedule VI at its sub-section B1- 'Metal and metal bearing wastes' enlists 'used critical care equipment for re-use' at Basel No. B1110. The Technical Review Committee of Ministry of Environment and Forest in its 62nd Meeting held on 25/05/2017 decided a list of equipment to be banned under Schedule VI of HWM Rules, 2016. In the said list 'Ventilators' appear at serial number 2. Therefore, it appears that used 'ventilators' for re-use is prohibited for import in terms of prohibition imposed under HWM Rules, 2016 and liable for confiscation under Section 111 (d) and Section 111(m) of the Customs Act, 1962.

Further, as per Rule 3, sub rule 9, the 'critical care equipment' is defined as following:

*"critical care medical equipment" means lifesaving equipment and includes such equipment as specified by the Ministry of Health and Family Welfare from time to time"*

**2.3** Therefore, the term critical care equipment includes all lifesaving equipments and considering the fact that Anesthesia Work stations integrated with Ventilator imported to this consignment are used in the operation theater while performing surgery they appear to be critical care equipment within the purview of above definition.

**2.4** The consignment consists of anesthesia workstations of various brands. In its report, the Chartered Engineer has remarked that 'The anesthetic workstations in the cargo consist of ventilators integrated in the machine itself'. Further, literature in respect of anesthesia workstation have been obtained from internet to study the working/functioning, It shows that an anesthesia machine is built with an integrated breathing circuit, which helps patients to breath during operation. These ventilation options offer the capabilities of an intensive care ventilator without having a separate machine in the ICU or operating room. Therefore, it appears that this machine works as a ventilator in operation room and as a critical care equipment. As already discussed in above paras that ventilators are not permitted to be imported for re-use.

**2.5** Since the goods were prohibited, the entire consignment was placed under Seizure under Section 110(1) of the Customs Act, 1962 vide Seizure Memo dated 13.01.2023 and the same were handed over to the representative of M/s TG Terminals, CFS, Mundra under Supratnama dated 13.01.2023 for safe custody and directed by DRI officer not to release/remove or deal or part with the goods without prior permission from the proper officer/competent authority.

**3.** In the course of investigation, statements of the following persons were recorded under Section 108 of the Customs Act, 1962: -

**3.1 Statement of Shri Vanpariya Trupesh Odhavjibhai, Chief operating Officer of M/s. Medinnova solutions Pvt. Ltd., recorded on 13.02.2023** wherein, he, inter-alia stated that:

**3.1.1.** M/s. Medinnova Solutions Pvt. Ltd. is engaged in Refurbishment of medical equipment and trading of the said medical equipment. In his company, there are two Directors viz. Shri Biharibhai Parikh and Shri Kaushal Parikh who are having relation of father and son. The company management is generally being looked after by Shri Biharibhai Parikh and Shri Kaushal Parikh. In his company, they are importing Old and used medical equipments and then do refurbishments process as per the ISO 13485 and ISO 9001 of the said Medical equipments which are generally

imported at Nhava Sheva Port and Mundra Port. He further submitted that M/s Medinnova Solutions Pvt Ltd. is not exporting anything.

**3.1.2** He stated that he was fully aware that their company has imported a consignment of **15 No's Medical Equipment** goods of declared description 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099, imported vide container No. **CSLU2901778** covered under Bill of Entry No. **3102798 dated 31.10.2022 at Mundra Port** through the Customs Broker M/s. Tulsidas Khimji Pvt. Ltd appointed by his company. He was aware that aforesaid consignment arrived at Mundra on 31.10.2022 and after examination of the said consignment under a Panchnama dated 02.11.2022 by the DRI in the presence of the representative of the Customs Broker, a Seizure Memorandum dated 13.01.2023 was issued. The said seizure memorandum was received by them.

**3.1.3** On being asked about the importation of above mentioned consignment, he explained that they had originally imported the same consignment in 40ft Container in the name of M/s Soma Tech Private Limited under BE No. 6240729 Dated: 13.11.2021 vide container no HJMU42787633. He further stated that M/s Soma Tech Pvt. Ltd (IEC: 5207011588) is now known as M/s. Medinova Systems Pvt. Ltd as its Name was changed in 2019 and approved by ROC and for IEC name change approval received in 2021 and hence M/s. Medinnova Systems Pvt. Ltd. is using same IEC as that of M/s Soma tech Pvt. Ltd. and M/s. Medinnova Systems Pvt. Ltd. both are having same directors i.e. Shri Biharibhai Parikh and Shri Kaushal Parikh. Further, said import shipment was having total 75 no's of Medical equipments and at that time in faceless assessment a query was raised. In reply of the said query, they had submitted their application related to clarification and after that except 18 Nos. of Medical equipment all equipment were released by the Customs upon receipt of clarification. Out of above 18 No's equipment further 3 No's i.e. Surgical Microscopes also were allowed final clearance subsequently upon giving further clarification and balance 15 No's of equipment (i.e. Anaesthesia Machines) were not allowed to be cleared as the same were considered as prohibited by the Customs.

**3.1.4** Further, they asked the supplier to take back prohibited medical equipments but supplier was not willing to take back and after sometime they suggested us to supply/re-export the said medical equipments to

Dubai based company. After receiving re-export permission from Nhava Sheva Customs, they re-exported remaining 15 No's of equipment (i.e. Anaesthesia Machines) to M/s Indigo Systems Inc, USA based company and the same was shipped to address of Dubai based company that is M/s Vault Trading LLC vide Shipping Bill No. 4048609 dated 08.09.2022. Furthermore, on being asked, he stated that as their company have incurred huge losses in the said consignment which were not allowed clearance by Nhava Sheva customs our company after having no option, consulting to some group member decided to re-import the said medical equipment at different port and in different company name to compensate some losses incurred in the above said consignment. Hence, on 31st Oct 2022 they have filed present BE No. 3102798 dated 31.10.2022 at Mundra port for the same said 15 No's of medical equipment and sought clearance from Mundra Custom. In the meantime, they have come to notice through their Customs Broker that the said consignment was put on hold by DRI.

**3.1.5** On being asked about present status for the case booked against M/s Soma Tech Pvt Ltd (IEC 5207011588) by Nhava Sheva Customs in respect of previous consignment imported vide BE No. 6240729 Dated 13.11.2021. In this regard he stated that they have received SCN No. 12/2022- 23/GR.VB/CAC/JNCH dated 04.04.2022 and after personal hearing, OIO No. 241/2022-23/ADC/GR.V/NS-V/CSC/JNCH M/s. Soma Tech Pvt. Ltd Dated 10.06.2022 was issued by the Addl. Commissioner of Customs, Nhava Sheva. They were penalized vide the said OIO; that they have not filed any appeal against the said OIO No. 241/2022-23/ADC/GR.V/NS-V/CSC/JNCH M/s Soma Tech Pvt. Ltd Dated 10.06.2022 was issued by the Addl. Commissioner of Customs, Nhava Sheva.

**3.1.6** On being asked to offer comments on the Chartered Engineer Certificate No. MSISPL/STPL/CE/C-17073/21-22 dated 3.12.2021 issued by Murlidahar Shenvi/ insurance surveyor and loss assessors Pvt. Ltd. for BE No. 6240729 Dated 13.11.2021 in which it is certified that "The Medical anesthetic machine should be an anesthetic ventilator only because in a sense because it is also a ventilator, it can also help patient complete function of inhaling and exhaling" which was issued for same 15 No's of equipment (i.e. Anesthesia Machines) previously imported, he stated that the equipment have been reported to be an anesthetic

ventilator. He further stated that during personal hearing of the case they have submitted their reply to the Nhava sheva Customs but they had not accepted their explanation and also they had requested to take opinion of some other chartered engineer but that same was also rejected by customs.

**3.1.7** On being asked to offer comments on the Government empanelled Chartered Engineer Certificate No/Valuation Report No. DRI/169/2022-23 dated 05.12.2022 in respect of BE No. 3102798 dated 31.10.2022 filed by M/s. Medinnova Solutions Pvt. Ltd issued by M/s Suvikaa Associates Gandhidham Kutch in which it is observed by chartered engineer that “*anesthetic work station have small provision for ventilator and ventilator in workstations were integrated in the machine itself*”. Further, the CE has made observation that “*The anesthetic workstations in the cargo consist of ventilators integrated in the machine itself. Thus, the anesthetic workstations can also be used as ventilators if required by the operator*”, which was issued for the same 15 No’s of equipment (i.e. Anesthesia Machine) re-imported vide BE No. 3102798 dated 31.10.2022, he stated that he agreed with the fact that small ventilator machine is integrated in the anesthesia workstation machine and further that this small ventilator and in his opinion it cannot be used as full ventilator that is generally use in ICU. ICU ventilator having different configuration and this anesthesia workstations having small ventilator having different configuration.

**3.1.8** On being asked to offer comments on Sub-rule 6 of Rule 12 of the Hazardous Waste (Management, Handling and Trans Boundary Movement) Rules, 2016 [HWM Rules], no import of the hazardous and other wastes specified in Schedule VI shall be permitted. Schedule VI at its sub-section B1- ‘Metal and metal bearing wastes’ enlists ‘used critical care equipment for re- use’ at Basel No. B1110. The Technical Review Committee of Ministry of Environment and Forest in its 62nd Meeting held on 25/05/2017 decided a list of equipment to be banned under Schedule VI of HWM Rules, 2016. In the said list ‘Ventilators’ appear at serial number 2. Therefore, it appears that used ‘ventilators’ for re-use is prohibited for import in terms of prohibition imposed under HWM Rules, 2016, he stated that he agreed with the fact that the used ‘ventilators’ for re-use is prohibited for import in terms of prohibition imposed under HWM Rules, 2016 read with the Minutes of the Technical Review Committee of Ministry of Environment and Forest in its 62nd Meeting held

on 25/05/2017. However, he had already explained that vide OIO No. 241/2022- 23/ADC/GR.VV/NS-V/CSC/JNCH M/s. Soma Tech Pvt. Ltd. dated 10.06.2022 was issued by the Addl. Commissioner of Customs, Nhava Sheva, Customs has penalized them and they have accepted the charges. They have also not filed any appeal against the said OIO. He further submitted that that they have not declared in the BE no. 3102798 dated 31.10.2022 filed at Mundra Port that the said imported goods were Re-imported goods which was earlier been imported vide BE No. 6240729 dated 13.11.2021 filed at Nhava Sheva Port.

**3.2 Statement of Shri A. Chandran Nair, Branch Manager of Customs Broker Company M/s. Tulsidas Khimji Pvt. Ltd, recorded on 04.04.2023** wherein, he, inter-alia stated that;

**3.2.1** They got the work of customs clearance of M/s. Medinnova solutions Pvt. Ltd., Vadodara (earlier known as M/s. Soma Tech Pvt. Ltd and also known as M/s. Soma Medical Solutions Pvt. Ltd.), through reference of one of our sales manager Shri Jatin Pandya working at our Vadodara office around 3 years back. Initially they (Importer) have requested us to clear the cargo at Ahmedabad Airport, ICD Khodiyar then Nhava Sheva Port and later on clearance from Mundra Port. They have filed many Bills of Entry on behalf of M/s. Medinnova solutions Pvt. Ltd., Vadodara or its related companies at Ahmedabad Airport, ICD Khodiyar then Nhava Sheva Port and later on clearance from Mundra Port for clearance of Old and used Medical equipments and other medical accessories mostly in refurbished condition. They have never dealt Export consignment of the said company or other related company except for only re-export consignment of declared description 'Old and used Anesthesia Workstations' at Nhava sheva port through SB No. 4048609 dated 08.09.2022 (imported vide BE No. 6240729 Dated: 13.11.2021 filed at Nhava Sheva Port).

**3.2.2** The check list were prepared by his office staff Ms. Gopika Patel on the basis of documents provided by the importer M/s. Medinnova Solutions Pvt. Ltd., Vadodara and the same was finalized after getting prior approval from the said importer through mail. He produced the printouts of email conversation held with Shri Vanpariya Trupesh Odhavjibhai, Chief operating Officer of M/s. Medinnova Solutions Pvt. Ltd. regarding confirmation of checklist sent by his company. On the basis of confirmation received from M/s. Medinnova, they have filed the bill of entry No. 3102798 dated 31.10.2022 before Mundra Customs.

**3.2.3** On being asked whether the consignment imported vide BE No. 3102798 dated 31.10.2022 filed at Mundra Port were the same as the goods which were earlier imported vide BE No. 6240729 Dated: 13.11.2021 filed at Nhava Sheva Port and re-exported vide SB No. 4048609 dated 08.09.2022, he stated that the BE No. 6240729 dated 13.11.2021 was filed by Mumbai branch of their company M/s. Tulsidas Khimji Pvt. Ltd. at Nhava Sheva Port. The said BOE was filed in the name of M/s Soma Tech Private Limited which was earlier name of company M/s Medinnova Solutions Pvt Limited. After faceless assessment query was raised by the customs and out of above 18 No's equipment only 3 No's i.e. Surgical Microscopes were allowed clearance and balance 15 No's of equipment having declared description Anesthesia Machine were not allowed to be cleared as the same were considered as prohibited by the customs and for which re-export was allowed by the Customs. As they have filed the import Bill of Entry, so their Mumbai Branch also have facilitated the re-export of the said goods and filed Shipping Bill no. 4048609 dated 08.09.2022. From above incidents, it is apparent that the goods covered under BE No. 6240729 Dated: 13.11.2021, SB No. 4048609 dated 08.09.2022 and BOE No. 3102798 dated 31.10.2022 are same.

**3.2.4** On being asked about the present status for the case booked against M/s Soma Tech Pvt. Ltd (IEC 5207011588) by Nhava sheva Customs in respect of previous consignment imported vide BE No. 6240729 Dated 13.11.2021, In this regard he stated that they have received copy of SCN no 12/2022- 23/GR.VB/CAC/JNCH dated 04.04.2022 and OIO No. 241/2022- 23/ADC/GR.VV/NS-V/CSC/JNCH Dated 10.06.2022 issued to M/s. Soma Tech Pvt. Ltd. through Importer. The said SCN has been adjudicated by the Addl. Commissioner of Customs, Nhava sheva vide OIO No. 241/2022- 23/ADC/GR.VV/NS-V/CSC/JNCH dated 10.06.2022 and as far as I know the importer have not filed any appeal against the said OIO.

**3.2.5** On being asked that why their company did not guide the Importer M/s. Medinnova Solutions not to import prohibited goods and make correct declaration in the BE no. 3102798 dated 31.10.2022 filed at Mundra Port regarding said Imported goods and other necessary compliance under the Customs Act, 1962, he stated that the importer provided the documents for filling BE no. 3102798 dated 31.10.2022 filed at Mundra Port whereas the BL was clearly showing the material was

‘used and Old Medical Equipments Anesthesia work stations under CTH:90189099’ accordingly checklist was prepared by them and sent to Importer for approval through email. After receipt of their approval, they have filed BOE for clearance at Mundra Port. In the whole conversation, Importer did not inform them regarding the correct description of the imported goods and neither have they further enquired in this matter. They have totally relied upon the documents provided by the customer. They have not doubted any foul play because previously they have imported the same goods in the name of M/s. Soma Tech Pvt. Ltd and this time they have imported the same goods in the name of M/s. Medinnova Solutions Pvt Ltd. On perusal of both the BOE’s it is found that the said Importer have also changed the name of supplier name, country of supplier, Port of shipment and port of destination and kept them in dark and not revealed all the facts regarding present consignment imported vide BE no. 3102798 dated 31.10.2022.

**3.2.6** On being asked that as a prudent Customs Broker, why did they not raise query on the basis of declared description of the goods i.e. ‘used and Old Medical Equipments Anesthesia work stations’ under CTH: 90189099 for which case was booked by the Customs in the past, he stated that they have not doubted as they were doing clearance work of this Importer on regular basis and normally they have not asked the details of any Importer from our Mumbai branch. Till the time the DRI has stopped this present consignment at Mundra port, the importer have never informed us about that previously they have imported the same goods in the name of M/s. Soma Tech Pvt. Ltd at Nhava Sheva Port and also got filed the BOE through their Mumbai Branch M/s. Tulsidas Khimji Pvt. Ltd.

**3.2.7** He has been apprised that as per Regulation 10(d) of CBLR, 2018, a Customs Broker shall advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. Whereas, in terms of Regulation 10(e) of CBLR, 2018, a Customs Broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage. On being asked why he (his company) has not complied with the above regulations as per above discussed facts, I state that I admit our mistake that we have not enquired in detail about the correct declaration and description of the goods imported by M/s. Medinnova Solutions Pvt. Ltd as they have previously worked with our company’s Mumbai based Branch and will

take care to check such mistakes in future.

**3.3 Statement of Shri Kaushal Biharilal Parikh, Director of /s. Medinnova solutions Pvt. Ltd., recorded on 12.04.2023** wherein, he, inter-alia stated that;

**3.3.1** His company M/s. Medinnova Solutions Pvt. Ltd. is engaged in Refurbishment of medical equipment and trading of the said medical equipment. In my company, there are two Directors viz. Shri Biharibhai Parikh and I. Mobile numbers of Shri Biharibhai Parikh is 9374718244. My company is having PAN Card No. AAKCS1042D, IEC No. 3410002413, issued on 03.08.2011 and GST Registration No. 24AAKCS1042D2ZT issued on 01.07.2017. The entire affairs of my company management are generally being looked after by me and Shri Biharibhai Parikh. Shri Biharibhai Parikh is his father. Shri Hiren Desai is the CEO of the company who looked after day to day work pertaining to M/s Medinnova Solutions Pvt. Ltd. There are staff of about 7-8 persons in the office of the company. His company has bank account No. 920020058041225 with Axis Bank, Manjusar, Branch (IFSC: UTIB0003806).

**3.3.2** In his company, they are importing Old and used medical equipments and then do refurbishments process as per the ISO 13485 and ISO 9001 of the said Medical equipments which they are generally importing at Nhava Sheva Port and Mundra Port. We are not exporting anything other than these goods.

**3.3.3** He stated that he was fully aware that their company has imported a consignment of 15 No's Medical Equipment goods of declared description 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099, imported vide container No. CSLU2901778 covered under Bill of Entry No. 3102798 dated 31.10.2022 at Mundra Port through the Customs Broker M/s. Tusidas Khimji Pvt. Ltd appointed by his company. He was aware that aforesaid consignment arrived at Mundra on 31.10.2022 and after examination of the said consignment under a Panchnama dated 02.11.2022 by the DRI in the presence of the representative of the Customs Broker, a Seizure Memorandum dated 13.01.2023 was issued. The said seizure memorandum was received by them.

**3.3.4** On being asked about the importation of above mentioned consignment, he has stated that they had originally imported the same

consignment in 40ft Container in the name of M/s Soma Tech Private Limited under BE No. 6240729 Dated: 13.11.2021 vide container no HJMU42787633. On being asked he stated that M/s Soma Tech Pvt. Ltd (IEC: 5207011588) is now known as M/s. Medinnova Systems Pvt. Ltd as its Name was changed in 2019 and approved by ROC and for IEC name change approval received in 2021 and hence M/s. Medinnova Solutions Pvt. Ltd. is using same IEC that of M/s Soma tech Pvt. Ltd. M/s. Medinnova Solutions Pvt. Ltd. and M/s. Medinnova Solutions Pvt. Ltd. both are having same directors i.e. Shri Biharibhai Parikh and him. Further, said import shipment having total 75 no's of Medical equipments and at that time in faceless assessment query was raised by Customs Authorities. In reply of the said query, we had submitted our application related to clarification and after that except 18 No's of Medical equipment all equipment were released by the customs. Out of above 18 No's equipment only 3 No's i.e. Surgical Microscopes were allowed to be cleared and balance 15 No's of equipment (declared as Anesthesia Machine) were not allowed clearance as the same were considered as prohibited by the customs and for which re-export was allowed by the Customs.

**3.3.5** He stated that, they had asked supplier to take back prohibited medical equipments but supplier was not willing to take back and after sometime they suggested us to supply/re-export the said medical equipments to Dubai based company. Thereafter on receiving re-export permission from Nhava sheva Customs, they re-exported remaining 15 No's of equipment (i.e. declared as Anesthesia Machine) to M/s Indigo Systems Inc USA based company and shipped to address is of Dubai based company that is M/s Vault Trading LLC. Furthermore, on being asked, he stated that as his company have incurred huge losses in the said consignment which were not allowed clearance by Nhavasheva customs his company after having no option consulting to some group member decided to re-import the said medical equipments at different port and in different company name to compensate some losses incurred in the above said consignment. Hence, on 31st Oct 2022, they have filed BE no 3102798 Dated 31.10.2022 at Mundra port for the same said 15 No's of medical equipments and sought clearance from Mundra customs. In the meantime they have come to notice through custom broker that the said consignment was put on hold by DRI.

**3.3.6** On being asked about present status for the case booked against

M/s Soma Tech Pvt Ltd (IEC 5207011588) by Nhavsheva Customs in respect of previous consignment imported vide BE No.6240729 Dated 13.11.2021, he stated that they have received SCN no 12/2022-23/GR.VB/CAC/JNCH dated 04.04.2022 and after personal hearing, OIO No.241/2022-23/ADC/GR.VV/NS-V/CSC/JNCH M/s. Soma Tech Pvt. Ltd Dated 10.06.2022 was issued by the Addnl. Commissioner of Customs, Nhavsheva. They were penalized vide the said OIO.

**3.3.7** On being asked to offer comments on the Chartered Engineer Certificate No. MSISPL/STPL/CE/C-17073/21-22 dated 3.12.2021 issued by Murlidahar Shenvi/ insurance surveyor and loss assessors Pvt Ltd for BE no 6240729 Dated 13.11.2021 in which it is certified that “The Medical anesthetic machine should be an anesthetic ventilator only because in a sense because it is also a ventilator, it can also help patient complete function of inhaling and exhaling” which was issued for same 15 No’s of equipment (i.e. Anesthesia Machines) previously imported, he stated that the equipment have been reported to be an anesthetic ventilator. He further stated that during personal hearing of the case they have submitted their reply to the Nhava sheva Customs but they had not accepted their explanation and also they had requested to take option of some other chartered engineer but that same was also rejected by customs.

**3.3.8** On being asked to offer comments on the Government empanelled Chartered Engineer Certificate No/Valuation Report No. DRI/169/2022-23 dated 05.12.2022 in respect of BE no 3102798 dated 31.10.2022 filed by M/s. Medinnova Solutions Pvt. Ltd issued by M/s Suvikaa Associates Gandhidham Kutch in which it is observed by chartered engineer that *“anesthetic work station have small provision for ventilator and ventilator in workstations were integrated in the machine itself.* Further, the CE has made observation that “The anesthetic workstations in the cargo consists of ventilators integrated in the machine itself. Thus, he anesthetic workstations can also be used as ventilators if required by the operator”, which was issued for the same 15 No’s of equipment (i.e. Anesthesia Machine) re-Imported vide BE No 3102798 dated 31.10.2022, he stated that that he agreed with the fact that small ventilator machine is integrated in the anesthesia workstation machine and further that this small ventilator and in his opinion it cannot be used as full ventilator that generally use in ICU. ICU ventilator having different configuration and this anesthesia workstations having small ventilator having different configuration.

**3.3.9** On being asked to offer comments on Sub-rule 6 of Rule 12 of the Hazardous Waste (Management, Handling and Trans Boundary Movement) Rules, 2016 [HWM Rules], no import of the hazardous and other wastes specified in Schedule VI shall be permitted. Schedule VI at its sub-section B1- 'Metal and metal bearing wastes' enlists 'used critical care equipment for re-use' at Basel No. B1110. The Technical Review Committee of Ministry of Environment and Forest in its 62nd Meeting held on 25/05/2017 decided a list of equipment to be banned under Schedule VI of HWM Rules, 2016. In the said list 'Ventilators' appear at serial number 2. Therefore, it appears that used 'ventilators' for re- use is prohibited for import in terms of prohibition imposed under HWM Rules, 2016, he stated that he agreed with the fact that the used 'ventilators' for re- use is prohibited for import in terms of prohibition imposed under HWM Rules, 2016 read with the Minutes of the Technical Review Committee of Ministry of Environment and Forest in its 62nd Meeting held on 25/05/2017. However, he has already explained that as per said OIO, Customs has penalized they and they have accepted the charges. They have not filed any appeal against the said OIO No. 241/2022-23/ADC/GR.VV/NS-V/CSC/JNCH M/s. Soma Tech Pvt. Ltd Dated 10.06.2022 was issued by the Addnl. Commissioner of Customs, Nhavasheva. As regards prohibition imposed vide Rule 12(6) of HMM, Rules, 2016 on import of subject goods, they have already regretted for their mistake vide letter dated 10.04.2023; that they have not filed any appeal against the order No. 241/2022-23/ADC/GR.V/NS-V/CSC/JNCH M/s. Soma Tech Pvt. Ltd Dated 10.06.2022 and totally agreed with the finding of the adjudicating authority that the Ventilators for re use is prohibited for import in terms of prohibition imposed under HWM Rules. that they have not made declaration in the BE no. 3102798 dated 31.10.2022 filed at Mundra Port regarding said imported goods were re-imported goods which was earlier been imported vide BE No. 6240729 dated 13.11.2021 filed at Nhava Sheva Port.

**3.3.10** That one case has been booked by the Nhava Sheva Customs against M/s Soma Tech for the import of prohibited 'Ventilators' vide Bill of Entry No. 6240729 Dated 13.11.2021 and the same goods were exported vide Shipping Bill No. 4048609 dated 08.09.2022 after paying the redemption fine of Rs. 100000/- as per the order No. OIO No.

241/2022-23/ADC/GR.VV/NS- V/CSC/JNCH M/s. Soma Tech Pvt. Ltd Dated 10.06.2022. No other case has been booked against his companies.

**3.3.11** On being asked to provide the details of the consignee to whom they have exported the subject goods vide Shipping Bill No. 4048609 dated 08.09.2022 by declaring the same as "Old and Used Medical Equipments- Anesthesia", he stated that they have re-exported the subject goods vide Shipping Bill No. 4048609 dated 08.09.2022 to our shipper M/s Indigo System Inc., 53 Latisquama Road, Southborough, MA 01772, USA. M/s Indigo System Inc. which is also owned by his CEO Shri Hiren Desai. He produced the copy of Bill of Lading bearing No. 403312001103 dated 05.10.2022 signed by him for the re-export made by his company vide Shipping Bill No. 4048609 dated 08.09.2022.

**3.3.12** He further submitted that they have adjusted the payment to be received for the export made by them vide Shipping Bill No. 4048609 dated 08.09.2022 against the goods imported from shipper M/s Indigo Systems Inc. he produced the copy of certificate dated 24.01.2023 issued by Chartered Accountant in support of remittance for the subject cargo.

**3.3.13** On being asked to offer comments on letter dated 10.04.2023 submitted by his company by courier vide which they have stated that they are importing since 2017 and have always abided by law and guidelines of import to best to your knowledge. This is the only incidence where, due to lack of understanding, they took a misstep in regards to imports, he stated that letter dated 10.04.2023 was issued under his approval. He totally agreed with the facts that the "We Took a misstep in regards to import" pertain to subject goods imported vide Bill of Entry No. 3102798 dated 31.10.2022.

**3.3.14** He stated that he runs the following firms/companies M/s Medinnova Solutions Pvt. Ltd. and M/s Medinnova Systems Pvt. Ltd. Further, he added that his ex-companies were M/s Soma Tech Pvt. Ltd. and M/s Soma Medical Solutions Pvt. Ltd and they have changed their name to above stated companies. M/s Medinnova Systems Pvt. Ltd is formerly known as M/s Soma Tech Pvt. Ltd and M/s Medinnova Solutions Pvt. Ltd is formerly known as M/s Soma Medical Solutions Pvt. Ltd.

**4.** It appears that after understanding the prescribed procedures, the above said importer in these statements dated 04.04.2023 and 12.04.2023 in which he inter alia accepted that they had originally imported the same consignment in 40'ft Container in the name of M/s Soma Tech Private Limited under BE No. 6240729 Dated: 13.11.2021 vide container no HJMU42787633. M/s Soma Tech Pvt. Ltd (IEC:

5207011588) is now known as M/s. Medinnova Systems Pvt. Ltd as its name was changed in 2019 and approved by ROC and for IEC name change approval received in 2021 and hence M/s. Medinnova Systems Pvt. Ltd. is using same IEC that of M/s Soma Tech Pvt. Ltd. M/s. Medinnova Solutions Pvt. Ltd. and M/s. Medinnova Systems Pvt. Ltd. both are having same directors i.e. Shri Biharibhai Parikh and Shri Kaushal Parikh. Further, In the said import shipment having total 75 no's of Medical equipments, 15 No's of equipment (i.e. Anesthesia Machine) were not allowed clearance as the same were considered as prohibited by the customs and for which re- export was allowed by the Customs. Thereafter receiving re-export permission from Nhavasheva Customs, they re-exported remaining 15 No's of equipment (i.e. Anesthesia Machine) to M/s Indigo Systems Inc USA based company and shipped to M/s Vault Trading LLC, Dubai.

The BE No. 6240729 Dated: 13.11.2021 was filed by M/s. Tulsidas Khimji Pvt. Ltd. at Nhava Sheva Port. The said BOE was filed in the name of M/s Soma Tech Private Limited which was earlier name of company M/s Medinnova Systems Pvt Limited. The fact in this matter corroborated by the ROC documents submitted by the said Importer and also accepted in their statements that M/s Soma Tech Pvt. Ltd (IEC: 5207011588) is now Known as M/s. Medinnova Systems Pvt. Ltd as it's Name was changed in 2019 and approved by ROC and for IEC name change approval received in 2021 and hence M/s. Medinnova Systems Pvt. Ltd. is using same IEC that of M/s Soma Tech Pvt. Ltd. M/s. Medinnova Solutions Pvt. Ltd. and M/s. Medinnova Systems Pvt. Ltd. both are having same directors i.e. Shri Biharibhai Parikh and Shri Kaushal Parikh. From above incidents, It is clear that seized 15 No's of equipment having declared description 'Anesthesia Machine' which were first imported vide BE No. 6240729 Dated: 13.11.2021 and the same were not allowed to be cleared as the same were considered as prohibited by the customs and for which re-export was allowed by the Customs. Hence, the same goods were re-exported vide SB No. 4048609 dated 08.09.2022, and later on the same goods were again brought back to India vide BOE No. 3102798 dated 31.10.2022 and placed under Seizure by the DRI under Seizure Memo dated 13.01.2023.

5. Further, it is pertinent to mention here that that the said importer was

penalized vide OIO No. 241/2022-23/ADC/GR.V/NS-V/CSC/JNCH M/s. Soma Tech Pvt. Ltd Dated 10.06.2022 passed by the Addl. Commissioner of Customs, Nhava Sheva against SCN No. 12/2022-23/GR.VB/CAC/JNCH dated 04.04.2022 issued to them. The importer M/s. Soma Tech Pvt. Ltd (IEC:5207011588) is now Known as M/s. Medinnova Systems Pvt. Ltd. did not file appeal against the OIO No. 241/2022-23/ADC/GR.V/NS- V/CSC/JNCH M/s. Soma Tech Pvt. Ltd Dated 10.06.2022. M/s. Medinnova Systems Pvt. Ltd. and M/s. Medinnova Solutions Pvt. Ltd are owned by the same directors i.e. Shri Biharibhai Parikh and Shri Kaushal Parikh. Thus, it appears that the importer was very well aware about nature and actual description of goods and they deliberately imported goods at Nhava Sheva Port and thereafter on intervention by the Customs, re-exported the same and again imported at Mundra Port.

## **6. Mis-declaration and Mis-Classification:-**

**6.1** In light of these facts, it appears that anesthesia workstations imported under Bill of Entry No. 3102798 dated 31.10.2022 filed at Mundra Port for the goods of declared description 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099, imported vide container No. CSLU2901778 are prohibited for import in terms of prohibition imposed under Rule 12 of the Hazardous Waste (Management, Handling and Trans Boundary Movement) Rules, 2016 [HWM Rules] and thus the goods are liable for confiscation under **Section 111 (d)** of the Customs Act, 1962.

**6.2** Further, the importer has declared the description of goods in the BOE as 'Used and Old Medical Equipments Anaesthesia Workstations' under **CTH: 90189099**, whereas being 'ventilators' the same are classified under **CTH No. 90192010** appropriately. Thus, it appears that the subject goods have been mis-declared w.r.t description and CTH also. Moreover, as per the valuation report, the value of contrabands has been reported to be **Rs. 83,62,511/-** whereas the importer has declared in the Bill of Entry as **Rs. 18,41,185/-** only. All these aspects indicate that the subject consignment has been mis-declared w.r.t description, value and other matter particulars and thereby liable to confiscation under **Section 111 (m)** of the Customs Act, 1962 too. Accordingly, the classification of the subject goods under CTH No. 90189099 is liable to be rejected and the

same is required to be classified under appropriate CTH No. 90192010.

### **7. Valuation:-**

**7.1** As narrated in the foregoing paras, the importer has mis-declared the description of goods and also did not provide documents/invoice containing actual description and value of the goods. Thus, the transaction value of the goods is not available.

It also appears that the subject consignment was re-exported by the importer in Sep, 2022 from Nhava Sheva and again imported at Mundra Port in Oct, 2022 from M/s. Indigo system INC, USA having common CEO with importer company. Thus, it appears to be a case of 'related party transactions'. Since the description of the product itself has been manipulated in Bill of Entry, the transaction value is liable to be rejected.

**7.2** In order to ascertain the value of import goods covered under Bill of Entry No. 3102798 dated 31.10.2022, as the actual transaction value is not available, the valuation of the goods was done through Chartered Engineer, M/s. Suvikaa Associates. As per CE, the value of the goods was reported as **Rs. 83,62,511/-** (\$102419). Thus, the declared value of goods declared in the Bill of Entry i.e. **Rs. 18,41,185/-** is liable for rejection in terms of the Rule 12 of the Customs Valuation Rules, 2007 (hereinafter referred as CVR, 2007), the value is required to be re-determined accordingly.

**7.3** In the instant case, ongoing through the details/documents gathered during investigation, it is revealed that the declared value of Rs. 18,41,185/- in the import documents appeared to be low in respect of the Bill of Entry No. 3102798 dated 31.10.2022 in order to suppress the actual liability of the Customs Duty. It is also evident from the documents/evidences recovered and statements recorded during investigation that the goods were mis-declared with respect to value and the related documents like invoices and packing list were also manipulated with the view to evade payment of appropriate duty. Therefore, there are reasons to believe that the documents related to import vide Bill of Entry No. 3102798 dated 31.10.2022 do not reflect true and correct transaction value. Therefore, the value declared by the importer in the aforementioned Bills of Entry did not appear to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (determination of

Value of Imported Goods) Rules, 2007 and thus the same appear liable to be rejected in terms of Rule 12 of CVR, 2007, the value is required to be re-determined by sequentially proceeding in terms of Rules 5 to 9 of CVR, 2007.

**7.4** The total re-determined assessable value as per Government empanelled Chartered Engineer Certificate No/Valuation Report No. DRI/169/2022-23 dated 05.12.2022 of these used critical care equipment namely 15 numbers of anesthesia work stations including 1 tray/trolley type equipment of different brands which have been imported this consignment is **Rs. 83,62,511/-** (\$102419).

#### **8. Mis-declaration, Mis-classification and Confiscation of subject goods:**

**8.1.** In light of above narrated facts, it appears that the importer has declared the description of goods in the BOE as 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099, whereas being whereas being 'ventilators' the same are classified under CTH No. 90192010 appropriately. Thus, it appears that the subject goods have been mis-declared w.r.t description and CTH also. Moreover, as per the valuation report, the value of contrabands has been reported to be Rs 83,62,511/- whereas the importer has declared in the Bill of Entry as Rs.18,41,185/- only. All these aspects indicate that the subject consignment has been mis-declared w.r.t description, value and other matter particulars and thereby liable to confiscation under Section 111 (m) of the Customs Act, 1962 too. Accordingly, the classification of the subject goods under **CTH No. 90189099** is liable to be rejected and the same is required to be classified under appropriate **CTH No. 90192010**.

**8.2** Thus, the Goods declared as 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099 having value of goods declared in the Bill of Entry i.e. **Rs. 18,41,185/-** and re-determined assessable value Market Value (as per CE report) of **Rs. 83,62,511/-** have been imported in violation of prohibition imposed under HWM Rules, 2016, there is reason to believe that the same are liable to confiscation under Section 111 (d) and 111(m) of Customs Act, 1962.

#### **9. Role and Culpability of persons/firms involved:**

**9.1 Role and Culpability of M/s. Medinnova Solutions Pvt. Ltd (IEC: 3410002413), E-114, GIDC Savli, Manjusar Savli Road, Tal. Savli,**

**Distt. Vadodara, Gujarat-391775:-**

**9.1.1.** M/s. Medinnova Solutions Pvt. Ltd, has filed Bill of Entry No. 3102798 dated 31.10.2022 at Mundra Port for the goods of declared description 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099, imported vide container No. CSLU2901778. From the facts narrated in foregoing paras and evidences gathered during investigation, it appears that M/s. Medinnova Solutions Pvt. Ltd has imported 'Old and used ventilators', and mis- declared the same as 'Used and Old Medical Equipments Anaesthesia Workstations' vide aforesaid Bill of Entry filed by them at Customs House, Mundra. It further appears that they had not declared the actual description of subject goods and also mis-classified the same under the CTH 90189099 i.e under the heading '9018: Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scientigraphic apparatus, other electro- medical apparatus and sight-testing instruments' under the subheading 'others.' It seems that M/s. Medinnova Solutions Pvt. Ltd, obtained and submitted invoice, Certificate of Origin, Bill of Lading and other related documents having incorrect material particulars in connivance with the declared shipper/suppliers, shipping line etc. with respect to nature /description of goods, country of origin, etc. It further appears that the entire conspiracy was hatched to suppress the actual description of goods as Old and used Ventilators being prohibited item for import, and thus they had illegally imported the same by means of fraud, collusion, willful mis-statement and suppression of facts in gross violation of import policy, provisions of Customs Act, 1962, Hazardous Waste (Management, Handling and Trans Boundary Movement) Rules, 2016 [HWM Rules] etc. Had the DRI not initiated the investigation, the gamut of illegal import of prohibited item would be continued.

As narrated in the foregoing paras, M/s. Medinnova Solutions Pvt. Ltd had deliberately imported the subject goods which were already seized by the Customs in the past and were released for re-export only, imposed fine, penalty on the importer. This only aspect made the malafide intention of the importer for importing prohibited goods thereby indicated the nature of importer as habitual offender.

**9.1.2** As per Section 112(a), 112(b) and 114AA of Customs Act, 1962 respectively, it is provided that any person,

- a. who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or;
- b. who acquires possession of or is in any way concerned in 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 to penalty.
- c. If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

**9.1.3** Thus, it appears that the omission and commission on the part of M/s. Medinnova Solutions Pvt. Ltd (IEC: 3410002413), E-114, GIDC Savli, Manjusar Savli Road, Tal. Savli, Distt. Vadodara, Gujarat-391775 i.e. misclassification and mis-declaration of subject goods by way of fraud, collusion, willful mis- statement and suppression of facts and illegal import of prohibited goods have rendered the subject imported goods declared as 'Used and Old Medical Equipments Anaesthesia Workstations' having Market Value (as per CE report) of **Rs. 83,62,511/-** (declared assessable value in the Bill of Entry i.e. **Rs. 18,41,185/-**) . By doing so, M/s. Medinnova Solutions Pvt Ltd. rendered themselves liable to penalty under **Section 112(a)** of the Customs Act, 1962. It also appears that since M/s. Medinnova Solutions Pvt. Ltd. was knowingly dealing with such goods, accordingly they have rendered themselves separately liable to penalty under **Section 112(b)** of the Customs Act, 1962. Seemingly, M/s. Medinnova Solutions Pvt. Ltd through their representative knowingly and intentionally made, signed or used Bills of Entry and other related documents and other related documents which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore they is also be separately liable to penalty under **Section 114AA** of the Customs Act, 1962. By importing offending goods as above and for various acts of misleading the authorities by changing port of import for import of prohibited goods, as discussed above, M/s. Medinnova Solutions Pvt. Ltd is

separately liable to penalty under **Section 117** ibid too.

**9.2 Role and culpability of Shri Kaushal Biharilal Parikh, Director of M/s. Medinnova solutions Pvt. Ltd:-**

**9.2.1.** From the facts of investigation, it appears that the said consignment of goods of declared description 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099, imported vide container No. CSLU2901778 after due consent, knowledge and approval of Shri Kaushal Biharilal Parikh who had directly supervised all the matters related to the import in dealings with the overseas suppliers and other associates. He accepted in his statement dated 12.04.2023 that they have originally imported the same consignment in the name of M/s Soma Tech Private Limited under BE No.6240729 Dated: 13.11.2021 vide container no HJMU42787633 at Nhava Sheva. He stated that he run the following firms/companies M/s Medinnova Solutions Pvt. Ltd. and M/s Medinnova Systems Pvt. Ltd. Further, he added that his ex-companies were M/s Soma Tech Pvt. Ltd. and M/s Soma Medical Solutions Pvt. Ltd and they have changed their name to above stated companies. M/s Medinnova Systems Pvt. Ltd is formerly known as M/s Soma Tech Pvt. Ltd and M/s Medinnova Solutions Pvt. Ltd is formerly known as M/s Soma Medical Solutions Pvt. Ltd. A case has been booked by the Nhava Sheva Customs against M/s Soma Tech for the import of prohibited 'Ventilators' vide Bill of Entry No. 6240729 Dated 13.11.2021 and the same goods were exported vide Shipping Bill No. 4048609 dated 08.09.2022 after paying the redemption fine of Rs. 100000/- as per the order No. OIO No. 241/2022- 23/ADC/GR.VV/NS-V/CSC/JNCH M/s. Soma Tech Pvt. Ltd dated 10.06.2022. The said 15 no's of equipment (declared as Anesthesia Machine) were not allowed clearance as the same were considered as prohibited by the customs and for which re-export was allowed by the Customs.

**9.2.2** As per Shri Kaushal Biharilal Parikh, they had asked supplier to take back prohibited medical equipments but supplier was not willing to take back and after sometime they suggested them to supply/re-export the said medical equipments to Dubai based company, that thereafter on receiving re-export permission from Nhavasheva Customs, they re-exported remaining 15 No's of equipment (i.e. declared as Anesthesia Machine) to M/s Indigo Systems Inc USA based company and shipped to address is of Dubai based company that is M/s Vault Trading LLC. M/s Indigo Systems Inc, USA is owned by Shri Hiren Desai, who is the CEO of his company M/s. Medinnova Solution Pvt. Ltd. He deposed that

as his company have incurred huge losses in the said consignment which were not allowed clearance by Nhavasheva customs his company after having no option consulting to some group member decided to re-import the said medical equipments at different port and in different company name to compensate some losses incurred in the above said consignment, that on 31st Oct 2022, they have filed BE no 3102798 Dated 31.10.2022 at Mundra port for the same said 15 No's of medical equipments and sought clearance from Mundra customs. He regretted for their mistake vide letter dated 10.04.2023 which was issued under his approval. He stated that they totally agreed with the facts that they took a misstep in regards to import pertain to subject goods imported vide Bill of Entry No. 3102798 dated 31.10.2022.

**9.2.3** Thus, from above facts, it appears that **Shri Kaushal Biharilal Parikh, Director of M/s. Medinnova solutions Pvt. Ltd.** was very well aware about the characteristics, specification and classification of subject goods vis-a-vis provisions relating to Customs Act, 1962 other allied Acts and Import Policy. Shri Kaushal Biharilal Parikh under knowledge and directly supervised all the matters related to the import in dealings with the overseas suppliers and other associates and making documentation/submissions with Customs Authorities. From the facts and evidences gathered during investigation, it appears that Shri Kaushal Biharilal Parikh had played a pivotal role in the deliberate mis-declaration of the subject imported goods and had indulged in a well-planned conspiracy with a malafide intention to import 'Ventilators' illegally by fraud, collusion, willful mis-statement, suppression of facts knowing very well that it would amount to violations as discussed above. It further appears that He has knowingly suppressed material facts regarding description and classification of the subject product and mis-declared & mis-classified the same as 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099.

**9.2.4.** Thus, it appears that the omission and commission on the part **Shri Kaushal Biharilal Parikh, Director of M/s. Medinnova Solutions Pvt. Ltd.** have rendered the subject imported goods declared as 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099 having Market Value (as per CE report) of Rs. 83,62,511/- (\$102419) liable to confiscation under Section 111 (d) and 111(m) of Customs Act, 1962. Shri Kasushal Biharilal parikh has knowingly purchased, imported, dealt with the prohibited goods which were liable to confiscation. Thus he has separately rendered himself liable to penalty

under **Section 112 (a) and Section 112(b)** of the Customs Act, 1962.

**9.2.5.** The Bill of Entry for clearance of import goods was filed with Customs by M/s. Medinnova solutions Pvt. Ltd and declared with incorrect description and classification of the subject goods under the supervision & active guidance of Shri Kaushal Biharilal Parikh, Director of M/s. Medinnova solutions Pvt. Ltd. It appears that Shri Kaushal Biharilal Parikh knowingly and intentionally made, signed or used or caused to be made signed, or used the Bills of Entry and other related import documents, which were false or incorrect, in material particulars, for the purposes of illegal importation of goods, it thus appears that Shri Kaushal Biharilal Parikh, has separately rendered him liable to penalty under **Section 114AA** of the Customs Act, 1962. All these facts indicates that Shri Kaushal Biharilal Parikh, has attempted to mislead the authorities by changing port of import for import of prohibited goods with intend to camouflage the omission and commission committed by them with respect to illegal import of 'Old and used ventilators' and accordingly has separately rendered him liable to penalty under **Section 117** of Customs Act, 1962 too.

**9.3 Role and Culpability of M/s. Tulsidas Khimji Pvt. Ltd, 313-314, Dev Nandan Mega Mall, Opp Sanyas Ashram, Near M.J Library, Ashram Road, Ahmedabad-380009:-**

**9.3.1.** The Customs Broker M/s. Tulsidas Khimji Pvt. Ltd had filed BE No. 6240729 dated 13.11.2021 which was filed by Mumbai branch of their company M/s. Tulsidas Khimji Pvt. Ltd. at Nhava Sheva Port. The said BOE was filed in the name of M/s Soma Tech Private Limited. They also have facilitated the re-export of the said goods and filed Shipping Bill no. 4048609 dated 08.09.2022. The same consignment was later imported by M/s. Medinnova Solutions Pvt. Ltd and M/s. Tulsidas Khimji Pvt. Ltd. Bill of Entry no. 3102798 dated 31.10.2022 filed at Mundra Port. From above incidents, it is apparent that the goods covered under BE No. 6240729 Dated: 13.11.2021, SB No. 4048609 dated 08.09.2022 and BOE No. 3102798 dated 31.10.2022 are same and M/s. Tulsidas Khimji Pvt. Ltd. acted as Customs broker in all the cases. M/s. Tulsidas Khimji Pvt. Ltd files Bills of Entry in which material facts regarding description and classification of the subject product were suppressed and mis-declared & mis-classified the same as 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099.

**9.3.2** The authorized representative of Customs Broker firm in his statement dated 04.04.2023 submitted that they had declared the description of goods as 'Used and Old Medical Equipments Anaesthesia Workstations', classification under Tariff Item No. 90189099, Country of Origin, Port of Loading, in the Bills of Entry on the basis of documents provided by the importer and after the approval of checklist provided by them to the Importer. However they did not make efforts in ascertaining the true character of the subject goods which was earlier imported under Bill of Entry No. 6240729 dated 13.11.2021 was filed by Mumbai branch of their company M/s. Tulsidas Khimji Pvt. Ltd and a case was booked by the Nhava Sheva Customs. On the contrary, it appears that the Customs Broker in connivance with the importer helped in filing of the Bills of Entry at both the ports i.e. Nhava sheva and later at Mundra Port by mis-declaring the description and CTH of the subject goods. It appears that the Customs Broker did not bother to take due care and precaution to enquire the detailed reason thereof specially being possible violation of import policy condition in import of such nature of subject goods; rather he abetted the violation in mis-declaration and mis-classification.

**9.3.3.** Thus, it appears that the said Customs Broker have assisted and abetted the mis-declaration and illegal import of subject goods in violation of the Policy provisions and by doing so, they have rendered the subject imported goods declared as 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099 liable to confiscation under **Section 111 (d), and 111(m)** of Customs Act, 1962. For their acts of omission and commission, M/s. Tulsidas Khimji Pvt. Ltd has rendered themselves liable to penalty under **Section 112(a)** of Customs Act, 1962. In spite of knowing the past history and actual nature of the subject goods, they have filed Bill of entry at Mundra Port and knowingly dealt with the subject goods by clearance of the same from Customs. Thus, M/s. Tulsidas Khimji Pvt. Ltd has rendered themselves to penalty under **Section 112 (b)** of the Customs Act, 1962. The casual approach of Customs Broker rendered themselves liable to penalty under **Section 117** of Customs Act, 1962.

**9.3.4.** It appears that M/s. Tulsidas Khimji Pvt. Ltd knowingly and intentionally made, signed or used or caused to be made signed, or used the Bills of Entry and other related import documents, which were false or incorrect, in material particulars, for the purposes of illegal

importation of goods, it thus appears that M/s. Tulsidas Khimji Pvt. Ltd, has separately rendered him liable to penalty under **Section 114AA** of the Customs Act, 1962.

**10.** In view of the above facts, Show Cause Notice F. No. GEN/ADJ/ADC/853/2023-Adjn—O/o Pr Commr-Mundra dated 26.04.2023 was issued by the Additional Commissioner of Customs, Custom House, Mundra wherein the importer were called upon to show cause as to why:

- a. The imported goods declared as 'Used and Old Medical Equipments Anaesthesia Workstations' having Market Value (as per CE report) of Rs. 83,62,511/- (\$102419) should not be confiscated under Section 111 (d), and 111(m) of Customs Act, 1962.
- b. The declared classification under CTH: 90189099 should not be rejected and re-classified under CTH: 90192010.
- c. The declared value of the goods i.e. **Rs. 18,41,185/-** imported vide **said Bill of entry No. 3102798 dated 31.10.2022** should not be rejected and value should not be re-determined as **Rs. 83,62,511/-** in terms of Customs Valuation Rules.
- d. Penalties under **Sections 112(a), Section 112(b), Section 114AA and Section 117** of the Customs Act, 1962 should not be imposed on M/s. Medinnova Solutions Pvt. Ltd.

**10.1** Directors of M/s Medinnova Solutions Pvt. Ltd. and M/s Tulsidas Khimji Pvt. Ltd. were called upon to show cause as to why penalty should not be imposed on them under Section 112(a), Sections 112(b), Section 114AA and Section 117 of the Customs Act.

## **11. Defence submissions**

**11.1** The importer and Shri Kaushal Biharilal Parikh, Director of the importer submitted their defence submissions during the course of personal hearing held on 17.08.2023 wherein it has been submitted as under:

### **I. Goods not liable to confiscation**

a. The imported goods viz. Anesthesia Workstations have been proposed to be liable for confiscation under Section 111(d) and 111(m) of the Customs Act. The Show Cause Notice alleges that the subject goods were prohibited for import in terms of Rule 12 of the Hazardous Waste (Management, Handling and Trans Boundary Movement) Rules, 2016 (HWM Rules) and as such the goods were liable to confiscation under Section 111(d) of the Customs Act. Further, the Show Cause alleges that the subject goods had been mis-declared with respect to description and CTH and as such the same were liable to confiscation under Section 111(m) of the Customs Act.

#### Discussion on prohibition

b. The subject goods have been alleged to be prohibited under Rule 12(6) of the HWM Rules and as such it is pertinent to go through the provisions of the said rule which reads as under:

*No import of the hazardous and other wastes specified in Schedule VI shall be permitted.*

The above rule stipulates that the wastes specified in Schedule VI shall not be permitted. The Show Cause alleges that the imported goods are covered under Basel Bo. B 1110 of Schedule VI which covers the following goods:

*Used critical care medical equipment for re-use*

In terms of the above it is apparent that used critical care medical equipment is prohibited under Rule 12(6) of the HWM Rules. Accordingly, it needs to be examined whether the Anesthesia Workstations are covered under the category of 'critical care medical equipment' or otherwise.

c. The department has alleged that 'ventilators' appear at Sr. No. 2 of the list in the Minutes of Meeting of the 62<sup>nd</sup> meeting held on 25.05.2017 by the Technical Review Committee of Ministry of Environment and Forest. Further, the show cause suggests that the consignment was inspected by the Chartered Engineer who has opined as under:

*The anesthetic workstations in the cargo consist of ventilators integrated in the machine itself. Thus, the anesthetic workstations can also be used as ventilators if required by the operator.*

Based on the above findings of the Chartered Engineer, the department has jumped to the conclusion that the imported goods were 'Ventilators' which are covered under critical care equipment. The entire show cause notice has been constructed on such ground that the imported goods were 'ventilators'. However, the department has completely mis-read the report of the Chartered Engineer. The report categorically states that the Anesthetic Workstations consist of ventilators integrated in the machine itself. The linguistic construction of the said remark made by the Chartered Engineer expressly indicates that the cargo has not been categorized as 'Ventilators' *per se*. The remark mentions that ventilator is integrated in the machine itself. This finding clearly points out to the fact that Anesthetic Workstations are distinct machines which consist of integrated ventilators. To put it in more simple terms, the Chartered Engineer has certified that ventilator is one of the integrated components of the Anesthetic Workstations. Such a statement in itself is sufficient proof to the effect that Anesthetic Workstations and Ventilators are two distinct commodities.

For ease of understanding, let us consider a home appliance known by the name of 'Mixer-Grinder'. If the same is inspected closely, it would be correct to say that the Mixer-Grinder consists of a motor integrated in the machine itself. The correct interpretation of such a remark is that 'Mixer-Grinder' is a machine dedicated towards its function, whereas, motor is an integral component of such machine. It is common knowledge that Mixer-Grinder and Motor are two distinctly separate commodities and the language used in the remark also points towards such inference. However, by no stretch of imagination can it be said that Motor is the same as Mixer-Grinder.

As opposed to the above simple linguistic rules, the department has committed the biggest folly of concluding that Ventilator is the same as Anesthetic Workstation which would be akin to saying Motor is the same as Mixer-Grinder in the above example. The department has completely mis-constructed the remarks of the Chartered Engineer and jumped to the conclusion that Ventilator is the same as Anesthetic Workstation which is fallacious. The construction of the Show Cause Notice on such fallacious grounds is not sustainable and deserves to be set aside on such basic ground only.

Ministry of Environment, Forest and Climate Change (HSM Division), Govt. of India has issued a *List of Critical Care Medical Equipment* vide Office Memorandum dated 19.05.2023 from F. No. 23/104/2022-HSMD. The copy of said O.M. is enclosed **Exhibit- A**. In the list at Sr. No. I "High End Ventilators" has been declared as Critical Care Equipment which are prohibited for import for re-use in terms of Hazardous and Other Waste (Management and Transboundary Movement) (HOWM) Rules, 2016. In the list at Sr. No. i to xiv to this Office Memorandum Anesthetic Workstation has not been considered under the category of Critical Care equipment. The Department of Health & Family Welfare have clarified, as mentioned in O.M. that only High End Ventilators i.e. which have exclusive functions of Ventilators and are mainly used in the ICU are fall under the category of Critical Care Equipment. We have already discussed in the paras that our imported goods is Anesthetic Workstation and it cannot be used as Ventilators. Thus Anesthetic Workstation do not cover under the category of Critical Care Equipment and is not prohibited for import under Hazardous and Other Waste (Management and Transboundary Movement) (HOWM) Rules, 2016.

Anesthesia Workstation and a Ventilator are two distinct devices

d. The Indian Journal of Anesthesia contains an article by Vijaya P Patil, Madhavi G Shetmahajan and Jigeeshu V Divatia which extensively describes the functions and characteristics of the Modern Integrated Anesthesia Workstation and the same is available online at the url: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3821261/>. A copy of the same is annexed hereto as **Exhibit A**. The Anesthesia Workstation has been described as under:

*The modern integrated anaesthesia workstation is designed to be a complete anaesthesia and respiratory gas delivery and monitoring system. It combines advanced ventilation features, gas delivery and agent vapourising with patient monitoring and information management to form an integrated anaesthesia carestation.*

*The components of the workstation are:*

1. *The gas delivery and scavenging system.*
2. *The vapourisers.*

3. *Electronic flow meters.*
4. *The ventilator.*
5. *The monitors.*

The Anesthesia workstation has been summarized by the competent medical persons as under:

*The modern anaesthesia machine combines advanced ventilation, gas delivery and agent vapourising features with patient monitoring and information management to form an integrated anaesthesia carestation. While features may vary between individual machines, some of the salient features include:*

1. *Sophisticated pressure transducers and electronically controlled flow control valves for accuracy of gas delivery.*
2. *Safer and more accurate vapourisers.*
3. *Integrated software to control gas flow and vapouriser output so as to achieve best economy of gases.*
4. *Methods to accurately deliver low tidal volumes including FGD or electronic compensation for fresh gas augmentation of tidal volume delivered.*
5. *Sophisticated electronic alarms.*
6. *Advanced ventilation modes.*
7. *New monitoring capability e.g., complex respiratory waveforms.*
8. *Self-test.*
9. *Compliance and leak testing of the breathing circuit allowing precise and accurate delivery of very low tidal volumes.*
10. *Low dead space.*
11. *Compact design with less external connections.*

The above indicates that an Anesthesia Workstation is a complete machine which mainly consists of the five components listed above. One of the components is the Ventilator. It is a well settled law of construction that a machine is not to be equated with a single component. This is so because the machine is capable of functionalities pertaining to all the respective components and not a solitary component. The authentic article by

competent medical persons makes it amply clear that Anesthesia Workstation and Ventilator are two distinct commodities. Ventilator is capable of a solitary function related to the respiratory system of a patient, whereas, Anesthesia Workstation is capable of multiple functions comprising of ventilation features, gas delivery, agent vapourising alongwith patient monitoring and information management. These characteristics make it absolutely clear that Anesthesia Workstation is a complete machine and comprises of more functionalities than a dedicated Ventilator. In geometrical terms, Anesthesia Workstation is a set whereas Ventilator is its sub-set. One can never say that the 'sub-set' is the 'set' itself since the set has more components than the sub-set. The department has committed the cardinal sin of concluding that the sub-set is the same as the set by concluding that the goods are in the nature of Ventilator.

e. To understand the difference between an Anesthesia Workstation and a Ventilator it would be prudent to go through the article by Robert Loeb, MD and Martin J London, MD, FASE which is available online at url: <https://www.uptodate.com/contents/covid-19-intensive-care-ventilation-with-anesthesia-machines#H2143696579>. During the times of Covid-19, there was an acute shortage of ventilators and all the available resources were put into gear to administer to the patient's needs. During such difficult times, the probability of using Anesthesia Workstation as a Ventilator was discussed in the said article penned down by scholarly medical persons. A copy of the said article is annexed hereto as **Exhibit B**. The 'Summary and Recommendations' part of the article specifically indicate that Anesthesia Machines are different than ICU Ventilators and in the event that the Anesthesia Machine is to be repurposed as ICU Ventilator, the following changes are required to be made in the machine:

#### *Modifying the default ventilator parameters and alarm settings*

- *Adjusting fresh gas flow (FGF) to prevent condensed water accumulation in the breathing circuit*
- *Adjusting the scavenger system to prevent backpressure in the breathing system (picture 2)*
- *Providing long-term humidification and warming of inspired gases*
- *Avoiding expiration of the carbon dioxide (CO<sub>2</sub>) absorbent*
- *Recognizing that the fraction of inspired oxygen (FiO<sub>2</sub>) concentration in the breathing circuit may be lower than the set oxygen gas concentration on the anesthesia machine (FgO<sub>2</sub>)*
- *Avoiding undesired (accidental) administration of inhalation anesthetic agents*

The above indicates that the integrated ventilator in the Anesthesia Workstation is required to be modified so as to make it capable of the functionalities of an ICU Ventilator. This fact makes it clear that the Ventilator component of the Anesthesia Workstation is different than the ICU Ventilator and modifications are required to make it usable as an ICU Ventilator. Further, the said ventilator is not capable of functioning as an ICU Ventilator is also seen from the narration under the head of 'Anesthesia machine ventilators versus ICU ventilators: Differences' in the said article which reads as under:

*Limited data address the ability of anesthesia machine ventilators developed by various manufacturers to mimic ICU ventilator parameters or to reliably provide continuous mechanical ventilation for a prolonged period. Although newer anesthesia ventilators incorporate multiple controlled and assisted modes of **ventilation that are nearly identical to intensive care ventilators**, several important technical issues are unique to anesthesia machines, and must be considered during use for long-term ventilation.*

The above narration also indicates that the anesthesia machine ventilators are not identical to intensive care ventilators.

Two inferences are drawn from the above article. One is that Anesthesia Workstation is entirely different from Ventilator. The second one is that the Ventilator built in the Anesthesia Workstation is not equivalent to Intensive Care Ventilator and therefore, the in-built ventilator would not be covered under the category of 'critical care medical equipment'.

f. An Anesthesia Workstation and a Ventilator are two distinct devices used in medical settings, particularly in operating rooms and intensive care units, but they serve purposes. Here's an overview of their functions and differences:

**Anesthesia Workstation:** An anesthesia workstation, also known as an anesthesia machine, is a complex apparatus used during surgical procedures to administer and monitor anesthesia to patients. It plays a crucial role in maintaining a patient's vital functions while they are under anesthesia. Some key features and functions of an anesthesia workstation include:

- 1 . Anesthetic Delivery: The workstation supplies a precise mixture of anesthetic gases, such as oxygen, nitrous oxide, and volatile anesthetic agents, to ensure the patient receives the desired level of anesthesia.
2. Ventilation: An anesthesia workstation includes a ventilator component to assist with patient respiration during surgery. It provides mechanical ventilation to maintain the patient's breathing or, in some cases, takes over complete control of the patient's respiration.
3. Monitoring: Anesthesia workstations have integrated monitors that display various vital signs of the patient, such as heart rate, blood pressure, oxygen saturation, and end-tidal carbon dioxide levels. These parameters help anesthesiologists assess the patient's condition throughout the procedure.
4. Safety features: Anesthesia workstations are equipped with safety mechanisms like pressure sensors, flow meters, alarms, and scavenging systems to ensure the delivery of anesthesia remains within safe limits.

**Ventilator:** A ventilator, also referred to as a mechanical ventilator or a respiratory ventilator, is a device used to assist or control a patient's breathing when they are unable to do so adequately on their own. It is commonly employed in critical care settings, such as intensive care units (ICUs), and helps provide respiratory support to patients with respiratory failure or those undergoing certain medical procedures. Here are some key features and functions of a ventilator:

1. Breathing Support - Ventilators deliver a controlled mixture of air, oxygen, and other gases into a patient's lungs to support respiration. They provide mechanical breaths that can be synchronized with the patient's own respiratory efforts or given in a fully controlled mode.
2. Volume/ Pressure Control - Ventilators allow precise control over the volume or pressure of the delivered breaths based on the patient's needs. Different modes, such as assist-control or pressure support, can be selected to suit the patient's condition.
3. Ventilatory Parameters - Ventilators enable the adjustment of various parameters, including tidal volume (amount of air delivered per breath), respiratory rate, inspiratory/expiratory ratio, and positive end-expiratory

pressure (PEEP). These parameters can be customized based on the patient's lung mechanics and oxygenation requirements.

4. Monitoring: Ventilators have built-in monitoring capabilities to measure and display parameters like airway pressure, respiratory rate, tidal volume, oxygen concentration, and sometimes end-tidal carbon dioxide levels. These readings help healthcare providers assess the effectiveness of ventilation and make adjustments as needed.

To sum up, it can be said that while both an anesthesia workstation and a ventilator contribute to patient care during medical procedures, the anesthesia workstation focuses on the delivery and monitoring of anesthesia during surgery, while a ventilator primarily provides respiratory support to patients with compromised breathing or respiratory failure.

g. To further understand the difference between an Anesthesia Workstation and Ventilator, although they may share some similarities in terms of their functions and components, an overview of the key differences between the two is as under:

Specified area	Anesthesia Workstation	Ventilator
Purpose	An anesthesia workstation is primarily used in operating rooms and other procedural areas to deliver and control anesthetic gases and medications during surgical procedures. It ensures the safe administration of anesthesia to patients, monitoring their vital signs, and providing a controlled environment.	A ventilator, also known as a mechanical ventilator or a respirator, is used in intensive care units (ICUs) and other clinical settings to assist or replace a patient's breathing. It delivers a controlled mixture of air and oxygen to a patient's lungs, providing mechanical support for respiration.
Primary Function	An anesthesia workstation combines multiple components to deliver a	A ventilator primarily supports a patient's respiratory system by

	<p>precise and controlled mix of anesthetic gases, oxygen, and other medications to maintain a patient's unconsciousness and analgesia during surgery. It also monitors and regulates a patient's respiratory parameters, such as oxygen concentration, carbon dioxide levels, and ventilation parameters.</p>	<p>delivering breathable gas, including oxygen, to the patient's lungs and removing carbon dioxide. It assists or completely controls the breathing process, helping patients who cannot breathe adequately on their own due to various medical conditions</p>
Components and Features	<p>Anesthesia workstations typically consist of a variety of components, including gas delivery systems, vaporizers for anesthetic agents, breathing circuits, monitors for vital signs, ventilator capabilities (in some advanced models), and interfaces for anesthesia providers to control and adjust the anesthesia delivery parameters.</p>	<p>Ventilators are specifically designed for respiratory support and generally include components such as a gas delivery system, mechanical ventilator modes (e.g., volume control, pressure control), adjustable parameters (e.g., tidal volume, respiratory rate), alarms, monitoring features (e.g., pressure, volume, oxygen levels), and interfaces for healthcare providers to interact with the device</p>
Clinical Settings	<p>Anesthesia workstations are primarily used in operating rooms and procedural areas where interventions, including general anesthesia, are performed.</p>	<p>Ventilators are primarily used in intensive care units (ICUs), emergency departments, and other clinical settings where patients require respiratory support due to critical illness, respiratory failure, or the inability to breathe adequately on their own</p>

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h. The above narrations amply demonstrates the fact that an Anesthesia Workstation is a complete machine comprising of its own functionalities whereas a Ventilator is a solitary machine comprising of only respiratory functionalities. We are also submitting certificates from various hospitals, collectively annexed as **Exhibit C**, which establish that Anesthesia Workstation is different from Ventilator. Having come to the conclusion that Anesthesia Workstation is entirely different from standalone Ventilator, it needs to be seen whether the Anesthesia Workstation is covered under the scope of Basel No. B1110 of Schedule VI of the HWM Rules, 2016 or otherwise.

i. The Show Cause Notice is constructed on the premises that the said goods are Ventilators and such Ventilators are covered under the list of critical care medical equipment as specified at Sr. No. 2 of the Minutes of 62<sup>nd</sup> Meeting of The Technical Review Committee of Ministry of Environment and Forest. Thus, it has been concluded that Ventilators are covered under Basel No. 1110 of Schedule VI to the HWM Rules. However, the above discussions establish that the imported goods viz. Anesthesia Workstation are different from Ventilators and as such the charges alleged in the Show Cause notice are not sustainable.

j. In view of the above, it is apparent that the Anesthesia Workstation are not covered under Basel No. 1110 of Schedule VI of the HWM Rules. Therefore, the same are not prohibited in nature and as such Section 111(d) of the Customs Act is not applicable to the facts of the case at hand.

k. Further, the Show Cause Notice also proposes confiscation of the goods under Section 111(m) of the Customs Act on the ground that the imported goods were Ventilators but had been mis-declared as Anesthesia Workstations. However, the Chartered Engineer's report nowhere states that the imported goods are Ventilators. On the contrary, the Chartered Engineer himself has certified that the goods are Anesthesia Workstations which is apparent from the following finding of his report:

*The **anesthetic workstations** in the cargo consist of ventilators integrated in the machine itself. Thus, the **anesthetic workstations** can also be used as ventilators if*

*required by the operator.*

The above opinion clearly indicates that the Chartered Engineer does not dispute the fact that the cargo comprises of Anesthesia Workstations. It has merely been stated that the said composite machines contain Ventilator which in itself is sufficient to prove that the goods are not standalone Ventilators as alleged in the Show Cause Notice. The Invoice of the supplier of goods, Packing List, Bill of Lading and all the other documents describe the imported goods as Anesthesia Workstations and accordingly we have described the goods as Anesthesia Workstations in the Bill of Entry. It is nobody's case that the imported goods are not Anesthesia Workstations, especially in light of the fact that the Chartered Engineer has also certified the goods to be Anesthesia Workstations. Thus, the charges of mis-declaration are not sustainable in as much as the goods in question are not Ventilators but are indeed Anesthesia Workstations. Since we have correctly described the goods in the Bill of Entry, the provisions of Section 111(m) of the Customs Act are not applicable to the facts of the case.

1. It is pertinent to note that goods of the very same nature, characteristics and description were under consideration before the adjudicating authority in respect of Bill of Entry No. 9658479 dated 21-11-2020. The adjudicating authority has allowed clearance of the said goods and such goods have not been considered as 'prohibited goods' under Order-in-Original No. 500/2020-21/ADC/NS-V/CAC/JNCH dated 21.12.2020. A copy of the said Order-in-Original is annexed hereto as **Exhibit D**.

m. In view of the above, it is clear that the goods are neither prohibited nor are mis-declared and as such the same are not liable to confiscation under Section 111(d) and 111(m) of the Customs Act.

### **Valuation**

II. The Show Cause Notice proposes to enhance the value of the imported goods to Rs. 83,62,511/- based on the certificate of the Chartered Engineer instead of the declared value of Rs. 18,41,185/-. Such value is sought to be enhanced on the basis of the estimated price given by the Chartered Engineer. In the first place, it is to mention that Section 14 of the Customs Act makes provisions for making Valuation Rules in certain cases. Accordingly, the Customs Valuation (Determination of Value of

Imported Goods) Rules, 2007 (Valuation Rules for short) have been enacted. Rule 3 of the Valuation Rules stipulates that the value of the imported goods shall be the transaction value i.e. the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation. Further, sub-rule 2 of Rule 3 stipulates that shall be accepted in the circumstances specified therein and the relevant text of the same is reproduced under:

*Value of imported goods under sub-rule (1) shall be accepted:*

**Provided** that -

- (a) *there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -*
  - (i) *are imposed or required by law or by the public authorities in India; or*
  - (ii) *limit the geographical area in which the goods may be resold; or*
  - (iii) *do not substantially affect the value of the goods;*
- (b) *the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;*
- (c) *no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and*
- (d) *the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.*

The word 'shall' has been used which indicates that the value is mandatorily required to be accepted if the conditions (a) to (d) are fulfilled. In the instant case, no restrictions as to the disposition or use of the goods by the buyer have been imposed by the seller and as such condition (a) is fulfilled. Secondly, the sale is at arm's length and is not subject to any condition or consideration for which a value cannot be determined and as such condition (b) is fulfilled. Thirdly, no part of proceeds of any subsequent resale, disposal or use of the goods has been accrued to the seller in the instant case and thereby, the condition (c) stands fulfilled. Lastly, the importer is not related to the supplier as each entity is a distinct juristic person registered under the laws of the respective

countries and thereby the condition (d) is also fulfilled. It is pertinent to note at this juncture that the Show Cause Notice fails to adduce any evidence whatsoever to the effect that either of the conditions at (a) to (d) above are not fulfilled. Further, there is not a whisper in the Show Cause Notice that either one of the above conditions is violated. Thus, by virtue of the mandate under Rule 3(2) of the Valuation Rules, the declared value is mandatorily required to be accepted.

a. Presuming but not admitting that the buyer and the seller are related, Rule 3(3)(a) of the Valuation Rules stipulate that even in cases where the buyer and seller are related, the transaction value **shall** be accepted if the relationship did not influence the price. In the instant case, the Show Cause Notice fails to bring on record any sort of evidence that the price has been influence due to the purported relationship. The judicial principles require that the onus to prove an allegation lies on the alleging party. In this regard we crave leave to place reliance on the following case laws:

M/s Sanjivani Non-Ferrous Trading P Ltd. reported at 2019 (365) ELT 3 (SC)

*The law, thus, is clear. As per Sections 14(1) and 14(1A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. **Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer.** This principle of arriving at transaction value to be the assessable value applies. That is also the effect of Rule 3(1) and Rule 4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. **In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration;***

**and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value.**

M/s Viraj Impex P Ltd reported at 2022 (382) ELT 375 (T)

*From the observations made by the Hon'ble Apex Court the transaction value as declared by the importer should form the basis for determination of the assessable value for levy of customs duty. **The transaction value as declared should normally be accepted and should be rejected only if the Revenue has evidence to show that the transaction value do not reflect the actual transaction price in the course of international trade.***

M/s Kisco Casting Ltd. reported at 2018 (364) ELT 1084 (T)

*Further, it has been held in number of decisions that enhancement of value cannot be done on the basis of DoV data, etc., without first rejecting the transaction value or without adducing any evidence of contemporaneous imports. There is no evidence in the present case to reflect upon the fact that the value agreed between importer and the exporter, does not reflect the correct value. Reference in this regard can be made to the Tribunal's decisions in the case of *Venture Impex (P) Limited v. CC (Import & General)* - 2016 (338) E.L.T. 759 (Tri.-Del.), *Marvel Agencies v. CC, New Delhi* - 2017 (348) E.L.T. 534 (Tri.-Del.), *S.K. Dhawan v. CC (Import), Mumbai* - 2016 (344) E.L.T. 436 (Tri. - Mum.), *Vyapar Industries Limited v. CC (Import), Mumbai* - 2016 (343) E.L.T. 825 (Tri.-Mum.) and *Kuber India v. CC, Jaipur* - 2016 (340) E.L.T. 404 (Trl.-Del.). In the case of *Kuber India*, it was observed that payment of duty and clearance of goods on enhanced value in order to avoid delay and demurrage, cannot act as a bar for importer to challenge assessment in appeal. It was further observed that rejecting transaction value by merely saying that it does not represent correct value and seems to be on the lower side without any findings on contemporaneous imports, is not legally sustainable. Further, in the case of *Peekay Steel Castings Pvt. Ltd. v. CC, Cochin* - 2016 (340) E.L.T. 389 (Tri.-Bang.) it was observed that enhancement of value by citing certain contemporaneous imports by other importers through different contract entered into, after a month from the date of the contract in the assessee's case, is neither proper nor justified and transaction value has to be adopted. In the present case, we note that there is no reference, no disclosure to any contemporaneous imports by the Revenue so as to enhance the value. The Hon'ble Supreme Court in the case*

of *Chaudhary Ship Breakers v. CC, Ahmedabad* - 2010 (259) E.L.T. 161 (S.C.) has observed that price actually paid or payable has to be accepted as transaction value except in cases of exception carved out under the Rules. It is not the Revenue's case that those exceptions are available in the present case. In the case of *CC, Chennai v. Pushpanjali Silks Pvt. Limited* - 2006 (202) E.L.T. 80 (Tri.), it was observed that in the absence of any contention by the Revenue that any amount over and above, agreed and paid by the importer to supplier or that importer was related to the supplier or the prices paid was influenced by any extra commercial consideration, there can be no valid reason to reject the transaction value under Rule 4(1) of the Customs Valuation Rules.

We actually find that the list is unending and **it is almost a settled law that transaction value cannot be ignored based upon the doubts entertained by the Revenue and mere suspicion on correctness of the invoice is not sufficient to reject the evidence of the value of the imported goods. The onus to prove that there was undervaluation, lies heavily upon the Revenue and is required to be discharged by production of tangible and positive evidence.**

M/s Peekay Steel Castings P Ltd. reported at 2016 (340) ELT 389 (T)

We find sufficient force in the arguments of the appellants that the Revenue is not able to prove any undervaluation or misdeclaration and thus able to convincingly reject the transaction value declared by the importer. There cannot be any case for enhancement of value just by citing importation of contemporary period by other importers through different contracts **unless Revenue is able to reject the transaction value strictly as per provisions of law including the provisions of Customs Valuation Rules as applicable.**

M/s Divine International reported at 2016 (338) ELT 142 (T)

In view of the fact that Revenue has not advanced any evidence to show that transaction value was not correct and has in fact have not rejected the transaction value and in view of clear legal position as emerging from the above declared decisions, we are of the view that transaction value was required to be adopted as correct assessable value. In the light of said conclusion arrived at by us, we find no reasons to go into the other pleas of the appellant as regards the correctness of the value adopted by the

*Chartered Engineer.*

b. In the instant case, the department has merely relied on the certificate issued by the Chartered Engineer firm and no independent investigations have been undertaken. No evidence has been placed on record to establish that price was not the sole consideration or the declared value does not reflect the correct transaction value and as such the ratio of the above case laws will be squarely applicable to the facts of the present case. Further, in the facts and circumstances of the case the declared value is mandatorily required to be accepted in terms of the provisions of Rule 3(2) and 3(3) of the Valuation Rules. Thus, the proposal for enhancing the value by the department is not sustainable in view of Rule 3(2) and 3(3) of the Valuation Rules and the above case laws.

c. Section 14 of the Customs Act stipulates that the value shall be the transaction value of the goods and in the instant case the sale is at arm's length and as such the transaction value is to be accepted. The Show Cause Notice has not brought any material evidence to establish that the value has not been declared truthfully and accurately and as such the transaction value will prevail in the instant case. Even otherwise, it is submitted that the Valuation Rules nowhere make any provision for assessing the value at the price estimated by a Chartered Engineer. If at all the department has doubts about the truth and accuracy of the declared value, the value has to be arrived at in terms of the Valuation Rules. Apart from Section 14 of the Customs Act and the Valuation Rules, there is no other legal method for arriving at the assessable value of the imported goods. Neither Section 14 of the Customs Act nor the Valuation Rules provide for assessment of value by a Chartered Engineer. **It is also pertinent to note that M/s Suvikaa Associates are not Government Approved Valuers.** Thus, the proposal of enhancement of value on the basis of the estimate of the Chartered Engineer is bad in law and deserves to be set aside.

M/s Champion Photostat Industrial Corporation reported at 2021 (376) ELT 394 (T)

21. Having considered the rival contentions, we find that the Ld. Commissioner (Appeals) has relied upon the C.B.E. & C. Circular No. 4/2008-Cus., dated 12-2-2008, which deals with valuation of second-hand

machinery/capital goods and has upheld the enhancement of the declared value based on the valuation done by the Chartered Engineer at the instance of the Department. In the same circular in Clause 2(iii), it has been provided that however the transaction value of Rule 3 cannot be rejected by ab initio application of Rule 9, inasmuch as, one cannot, before rejecting the transaction value of Rule 3 with sufficient evidences, straight away arrive at notional value under Rule 9. The said circular has relied upon the ruling of the Hon'ble Supreme Court in Gajra Bevel Gears (Supra), wherein it has been held that the value of the second-hand machine, when new, based on the certificate produced by the importer and scaling down that price by giving depreciation does not appear to be an arbitrary method of ascertaining its value. To this observation, the Hon'ble Supreme Court dismissed the appeal by the importer, who had declared the value of the second-hand car based on the auction price in England. We further find that Rule 3 read with Rule 12 requires that where the proper officer has reason to doubt the truth or accuracy of the declared value in relation to the imported goods, he may ask the importer to furnish further information including the documents or other evidences. If after receiving such further information, or in the absence of the response of the importer, the proper officer still have reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of Rule 3(1).

**22. We find that in the present case, no such exercise has been done by the proper officer. Thus, rejection of the transaction value is held to be arbitrary and thus, set aside the same and restore the declared value for the purpose of assessment.**

M/s Best Mega International reported at 2013 (293) ELT 243 (T)

As regards the value of the goods, the declared value is Rs. 31,83,127/-, while according to the Department, the correct value of the goods based on the Chartered Engineer's Certificate would be Rs. 34,92,576/-. Difference between declared value and the value of the goods according to the Department is very small and as such no evidence has been produced by the Department that the declared transaction value is incorrect and/or that the Respondent had made additional payment to the supplier over and above declared value. In view of these circumstances we are of the view that the allegation of misdeclaration of value is also without any basis and

as such there is no infirmity in the order of the Commissioner (Appeals) on this point.

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M/s Neeldhara Transfers reported at 2012 (284) ELT 673 (T)

*In any case, we find that the lower authorities while enhancing the value of the machine has solely relied upon Indian Chartered Engineer's certificate. For enhancement of value, Revenue is first expected to discard the transaction value or at least reflect upon some evidence to cast doubt in respect of the same. Revenue in their memo of appeal is silent about the supplier's certificate indicating that the word "C" refers to third generation model of machine and not to computerised machine. In any case, the expression "console" stands declared by the respondent in their bill of entry. They have adopted the same declaration as is available in the invoices of the foreign supplier and the other relevant documents like bill of lading etc. As such no mis-declaration charge can be pressed against the respondent. Otherwise also we find that there is no reference to any evidence on record to create a doubt about transaction value or to belie the certificate given by the foreign supplier. In this scenario, the Commissioner (Appeals) has rightly relied upon various decisions of the Hon'ble Supreme Court or the Tribunal referred in preceding paras. We find no infirmity in the view adopted by the appellate authority. Accordingly the appeal filed by the Revenue is rejected.*

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M/s Al Riyaz Implex reported at 2011 (267) ELT 543 (T)

*In our considered view, this kind of valuation of the imported goods is incorrect and improper appreciation of the valuation rules. In view this, **Chartered Engineer's certificate seeking valuation of some durable goods seems to be without any legal basis.** Since, the issue involved in these cases is valuation and requires contemporary import price to be considered, we set aside the impugned orders and remand the matter back to the Adjudicating Authority to reconsider the issue afresh after following the principles of natural justice.*

d. Even otherwise, transaction value cannot be rejected in absence of any contrary evidence. In this regard we crave leave to place reliance on

the case of M/s Pallav Enterprises reported at 2009 (237) ELT 298 (T) wherein it has been held as under:

*We have carefully considered the submissions and perused the judgments cited by the learned counsel. The Apex Court in the case of Motor Industries Co. Ltd. case in Civil Appeal No. 7179/2002 by their judgment dated 23-4-2008 relying on large number of judgments cited supra has held that revenue cannot proceed to assess the goods in terms of Rules 5 to 8 of the Customs Valuation Rules by rejecting the transaction value. **It has been held that so long as transaction value is correct and there is absence of evidence, then the same is required to be accepted. In view of this position and in absence of any corroborative evidence produced by the revenue to reject the transaction value, we have to uphold that the transaction value as declared in respect of Bill of Entries.** Therefore, the enhancement of the transaction value in the present cases is set aside.*

e. In the instant case, the Anesthesia Workstations are second-hand and the declared value is to be accepted in absence of any contemporaneous data. In this regard reliance is placed on the case of M/s New Copier Syndicate reported at 2015 (320) ELT 620 (T) wherein it has been held as under:

*We have carefully considered the submissions. We find that the issue is no longer res integra and this very aspect on this very ground as raised in the present cases, has been gone into in great detail by the Apex Court in the case of Tolin Rubbers and in MICO Ltd. **The Apex Court has noticed that the transaction value of second-hand machineries cannot be rejected in the absence of any contemporary import of identical goods at identical prices. The issue has been settled in assessee's favour by the Apex Court judgment.** This has been followed by the Tribunal in the above noted judgments. Therefore, the value adopted by the appellants in terms of the Transaction Value is required to be accepted.*

The above judgment has been affirmed by the Hon'ble Supreme Court as reported at 2015 (320) ELT A256 (SC).

f. The Show Cause Notice alleges that the description of the product

has been manipulated in the Bill of Entry and therefore, the declared value is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. However, the above discussions clearly indicate that no manipulation of the description of the product has been undertaken by us in the Bill of Entry. The goods have been described as Anesthesia Workstation in the Bill of Entry and the said goods have also been certified by the Chartered Engineer as Anesthesia Workstation. All the other documents such as the Invoice and Packing List also describe the goods as Anesthesia Workstation. Thus, the ground to reject the declared value under Rule 12 of the Valuation Rules is not sustainable on merits.

**Penalty under Section 112 not imposable when goods are not liable to confiscation**

III. Section 112 of the Customs Act comes into play only in cases where the goods have been rendered liable to confiscation under Section 111 of the Customs Act and the relevant text of the same is reproduced under:

*Any person, -*

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
- (b) who acquires possession of or is in any way concerned in 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,*

The above expressly indicates that liability of confiscation of goods is a pre-requisite for imposition of penalty under Section 112 of the Customs Act. In the instant case, the goods are not liable to confiscation as elaborately discussed above and as such the provisions of Section 112 are not applicable to the facts of the case. Resultantly, no penalty can be imposed on the company or their Directors under Section 112.

IV. The Show Cause Notice proposes imposition of penalty under

Section 114AA of the Customs Act on the company as well as the Director of the company. However, the same is applicable only to cases where a false or incorrect declaration, statement or document is signed or used. The text of the said statute is reproduced under:

*If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

In the instant case, there is no false or incorrect declaration, statement or document signed or used by any person and as such no penalty is imposable under Section 114AA of the Customs Act either on the company or the Director of the company.

a. Further, the rationale for introduction of Section 114AA of the Customs Act, 1962 has been specified at para 63 & 65 of the Twenty Seventh Report of the Standing Committee on Finance (2005-06) in relation to The Taxation Laws (Amendment) Bill, 2005 as under:

63. *The information furnished by the Ministry states as follows on the proposed provision:*

*“Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A.*

65. *The Ministry also informed as under:*

*"The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."*

The above clearly indicates that the intent of insertion of Section 114AA of the Customs Act, 1962 was to provide penalty for serious frauds where no goods were exported but only papers were created to avail the benefits of the export promotion schemes. The instant case deals with a situation where import of goods is concerned and as such the provisions of Section 114AA of the Customs Act, 1962 are not applicable to the facts of the case and as such penalty is not imposable on the company or the Director.

V. Penalty under Section 117 of the Customs Act is imposable in circumstances where there is a contravention of any of the provisions of Customs Act for which no separate penalty has been provided for. This is evident from the text of the statute which is reproduced under:

*Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.*

The Show Cause Notice does not mention as to what contraventions were committed by the company and the Director of the company for which no separate penalty has been provided for. In the instant case, there is no contravention of any of the provisions of law by the company and the Director of the company and as such penalty under Section 117 is not imposable in this case."

**11.2 M/s Tulsidas Khimji Pvt. Ltd.** filed their written submissions vide their letter dated 23.06.2023 which is as under;

I. The subject show cause notice has been issued to us in connection with the enquiry undertaken on M/s. Medinnova Solutions Pvt. Ltd. We have noted that the show cause notice issued to M/s. Medinnova Solutions Pvt. Ltd. is on the basis that M/s. Medinnova Solutions Pvt. Ltd. have imported Used and Old Medical Equipments (Anesthesia Workstations) by filing Bill of entry no. 3102798 dated 31.10.2022, that the Chartered Engineer has certified in his report that such Anesthetic Workstations consists of ventilators which are integrated in the machine itself. Also, it is the case of the department that import of ventilators for re-use is prohibited in terms of HWM Rules, 2016. Furthermore, it is the case of the department that M/s. Medinnova Solutions Pvt. Ltd. has mis-declared the description of goods in the BOE as 'Used and Old medical Equipments Anesthesia Workstations' under CTH no. 90189099, whereas the subject goods being 'ventilators' should be appropriately classified under CTH no. 90192010. It is alleged that M/s. Medinnova has mis-declared the value of the goods in the Bill of Entry as Rs.18,41,185/- whereas the value of said goods as per valuation report is Rs. 83,62,51 1/-. Therefore in essence, the case of the department against M/s. Medinnova Solutions Pvt. Ltd. is that M/s. Medinnova Solutions Pvt. Ltd. has obtained and submitted invoice, certificate of origin, bill of lading and other related documents having incorrect materia particulars in connivance with the supplier, shipping line, etc. with respect to description of goods, country of origin, etc. It is alleged that M/s. Medinnova solutions Pvt. Ltd. had deliberately imported the subject goods which were already seized by the Customs in the past and were released for re-export while imposing fine and penalty on the importer. It has been alleged that the entire conspiracy was hatched to suppress the actual description of goods as Old and Used Ventilators' as such goods are prohibited for import and hence were liable for confiscation.

II. In connection with this investigation, the show cause notice has been issued to us M/s. Tulsidas Khimji Pvt. Ltd. as Co-noticees on the grounds that we being the CHA have helped M/s. Medinnova Solutions Pvt. Ltd to clear the imported goods. Furthermore, we have also noted that the subject show cause notice also alleges that the imported goods consist of

ventilators integrated in the machine itself and that import of ventilators for re-Use is prohibited for import in terms of prohibition imposed under HWM Rules, 2016. That since we have filed the bills of entry for M/s. Medinnova Solutions Pvt. Lid., we have also indulged in abetting the import of prohibited goods which were liable for confiscation. Therefore, penalty has been proposed on us.

III. At the outset, it is submitted that the proposals levelled in the show cause notice as against us are completely baseless and based on assumptions and presumptions. The department has alleged that we have assisted and abetted the mis-declaration and illegal import of subject goods in violation of the Policy provisions and that we have assisted M/s. Medinnova Solutions Pvt. Ltd. to clear these prohibited goods based upon mis-declaration and hence we are liable to be penalized. The allegations levelled in the show cause notice are merely allegations and are not supported by any cogent evidence. The goods which were earlier imported were imported vide Bill of Entry No. 6240729 dated 13.11.2021, filed at Nhava Sheva Port by our Mumbai branch. The said BOE was filed in the name of M/s. Soma Tech Private Limited which was earlier the name of M/s. Medinnova Solutions Pvt. Ltd. We did not doubt the declared description of the goods as we were doing clearance work for this importer on regular basis and normally we have not asked the details of any importer from our Mumbai branch. Till the time the DRI has stopped the present consignment at Mundra port, the importer has never informed us that they have previously imported the same goods in the name of M/s. Soma Tech Pvt. Ltd. at Nhava Sheva Port and also got the BOE filed through our Mumbai branch. This fact is also clear from the statement of Shri Vanpriya Trupesh Odhavibhai who clearly stated that they never informed us about the goods coming to Mundra being the same as the ones which were imported at Nhava Sheva. This proves that we have not deliberately mis-declared the goods while filing the BOE and we have only acted in a bonafide manner as per the information provided by M/s Medinnova. There is no evidence on record which suggests that we knew that the subject goods are appropriately classifiable under CTH No. 90192010 and that the importer has classified under CTH No. 90189099 and yet we still engaged ourselves in the clearance of such imported goods. Without there being any cogent evidence to suggest that we had knowledge that the imported goods were being cleared by mis-declaring and mis-classifying, the department cannot implicate us so as to impose penalties

under Section 112(a) and 114AA of the customs Act, 1962. It is a settled legal position that penalty cannot be imposed based upon assumptions and presumptions and that for penalty to be imposed, cogent evidence of the fact that there was knowledge to the effect that the goods were liable for confiscation is to be demonstrated. For there to be penal action of any nature, the department has to positively show that there was mens-reas on the part of the person engaging in such transaction and that such person having knowledge that the imported goods were liable for confiscation, still participated. Merely by making allegations that we had indulged in mis-declaration and mis-classification of goods to facilitate clearance of the goods does not by any stretch of imagination prove that we have undertaken the clearance of such goods on behalf of M/s. Medinnova Solutions Pvt. Ltd. with knowledge that the declaration and classification of the goods were wrong and that the goods were correctly classifiable under CTH no. 90192010. We had received documents for Bill of Entry no. 3102798 dated 31.10.2022 filed at the Mundra Port from M/s. Medinnova Solutions Pvt. Ltd. whereas the bill of lading was clearly showing that the goods were 'Used and Old Medical Equipments Anesthesia work stations under CTH 90189099', accordingly a checklist was prepared by us and sent to M/s. Medinnova Solutions Pvt. Ltd. Thus, we could have never imagined that the goods were mis-declared in the documents provided by the importer M/s. Medinnova Solutions Pvt. Ltd. We as a CHA are responsible for the clearance of the goods based upon the documents provided by the importer and even with due indulgence we would never have known that goods were mis-declared and mis-classified in the documents provided to us for the purpose of customs clearance. Therefore, even if we have helped M/s. Medinnova Solutions Pvt. Ltd. as a CHA to clear the imported goods, we have not undertaken any transaction while having knowledge that the imported goods were liable for confiscation, as the goods were mis-declared and the goods were ventilators. Therefore, since we have not acted to facilitate the clearance with knowledge that such goods were liable for confiscation, we cannot be penalized merely for acting as a bona-fide customs house agent. Therefore, the proposals to impose penalty under Section 112(a) and 114AA of the Customs Act, 1962 are liable to be vacated in the interest of justice.

IV. The law about imposition of penalty on a CHA and under what circumstances penalty under Section 112 and 114AA can be imposed has come up for consideration before the Hon'ble Tribunal and various High

Courts on many occasions. The Hon'ble Tribunal, Mumbai in the case of M/s. Savithri Jewellers Pvt. Ltd. reported at **2020 (374) ELT 754** has held that when the department has not produced any evidence to establish that the CHA had any knowledge about mis-declaration, and when the CHA has prepared documents in a bona-fide manner based upon the declaration made by the exporter, the CHA cannot be penalized under Sections 114(ti) and 114AA of the Customs Act, 1962. In another case of M/s. Apson Enterprises reported at **2017 (358) ELT 817**, the Hon'ble Tribunal, Mumbai has again held that when the department has nothing to show that the CHA was concerned with or aware about the valuation of goods, the CHA cannot be penalized under Section 114(i) of the Customs, Act, 1962. In the case of Nirmal Kumar Agarwal reported at **2013 (298) ELT 133** the Hon'ble Tribunal has again held that until and unless it is proven that the CHA was aware of the mis-declaration and the ingredients of Section 114(i) are complete, no penalty can be imposed on the CHA. The Hon'ble Tribunal, Chennai in the case of M/s. Moriks Shipping and Trading Pvt. Ltd. reported at **2008 (227) ELT 577** has categorically held that the customs house agent is not required to go into the authenticity of the declaration made by the exporter in the export documents and in absence of any evidence to show that the CHA not only participated in mis-declaration, penalty under Section 114(iii) cannot be imposed. The department went in appeal against the decision of the Hon'ble CESTAT and the Madras High Court in its decision reported at **2015 (317) ELT 3** has vide a detailed order confirmed the findings given by the Hon'ble Tribunal and has held that in absence of any positive evidence that the CHA was actually involved in mis-declaration, penalty under Section 114 of the Customs Act, 1962 cannot be imposed. Thus the law about imposition of penalty on the CHA is very clear that only when the CHA was well aware and actually participated in facilitating the mis-declaration of goods or value, can the CHA be held accountable. Furthermore, it is also clear that the CHA is not supposed to go into and verify each and every detail provided by the exporter about description and value of goods, and therefore, the proposals in the Show Cause Notice are devoid of any merits and hence liable to be vacated in the interest of justice.

V. The penalty proposed under section 114AA is also unjustified and unwarranted in the facts of the present case. It is nowhere stated in the show cause notice about us having any knowledge that the goods are not

declared correctly or goods are not classified correctly. In absence of any evidence the proposal of penalty is unjustified. Section 114AA of the Act provides for penalty if a person knowingly or intentionally makes, signs or uses or causes to be made, signed or used any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Act. However, it is not established in this case that we had knowingly or intentionally made signed or used or caused to be made, signed or used any declaration, statement or document which was false or incorrect in any material particular. Thus, it is clear that the said provision comes into play only in cases where material particulars have been found to be incorrect and false. However, as has been substantiated earlier, there has been no deliberate mis-declaration, and therefore, the same could not be the basis for imposing any penalty under Section 114AA of the Customs Act. This being the case, Section 114AA is not at all applicable in the facts of the present case and hence such proposal is liable to be vacated in the interest of justice.

VI. The penalty proposed under section 112(b) is also unjustified and unwarranted in the facts of the present case. Any person who acquires possession or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knew or had reason to believe were liable to confiscation under section 111 is liable for penalty under section 112(b) of the Customs Act. For invoking this provision also, the knowledge or the reason to believe that the concerned goods were liable to confiscation is a sine qua non. But the evidence on record shows that we had no knowledge nor any reason to believe that the subject goods were liable to confiscation under section 111 of the Act, or otherwise. The record and evidence of the case shows that we were under a genuine and bona-fide impression that the goods being imported was not in the nature of offending or prohibited goods for import to India. The revenue has nowhere suggested, nor established, that we knew or had reason to believe that the cargo in question was liable to confiscation under section 111, and therefore no penalty under section 112(b) of the Act is permissible in the facts of the present case. Section 112(b) of the Customs Act is attracted only when a person acquired possession of, or was in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he

knew or had reason to believe were liable to confiscation. In this case, it is not shown by the Department as to how we were indulging in carrying, harboring, keeping, concealing, selling or purchasing any goods which we knew or had reason to believe were liable to confiscation; nor is an evidence adduced in support of such allegation. A person could not be engaged in all the activities as referred in this section. It is not pointed out in these proceedings as to which particular activity we were concerned with. It is not spelt out in the notice as to whether we were engaged in carrying or in removing or in depositing or in keeping or in selling the concerned cargo, which we knew or had reason to believe were liable to confiscation. In the instant case, no evidence is adduced for our involvement in any of the above referred prejudicial activities with any knowledge or reason to believe that the concerned goods were liable to confiscation and yet we dealt with the same. The facts of the present case also show that we had no knowledge or reason to believe that the impugned cargo was liable to confiscation. Therefore, the proposals to impose penalty under Section 112(b) of the Customs Act, 1962 are liable to be vacated in the interest of justice.

VII. Penalty under Section 117 of the Customs Act is permissible when any person contravenes any provision of the Customs Act, or abets any such contravention, or fails to comply with any provision of the Customs Act with which it was his duty to comply. Now, we have admittedly not contravened any provisions of the Customs Act, because we being a CHA have prepared checklist based on the documents provided by the importer. It is not shown by the department as to what provisions have been contravened by us. This being the case, Section 117 is not at all applicable in the facts of the present case and hence such proposal is liable to be vacated in the interest of justice.

VIII. Without prejudice to the abovementioned submissions, it is submitted that the case of the department that though imported goods are anesthesia equipments but are in the nature of ventilators and since used ventilators are prohibited for import, is completely baseless. In the show cause notice it is nowhere disputed that the imported goods have the primary function of being anesthesia workstations. The case of the department is that the good also have ventilators integrated in the anesthesia workstations and hence the goods are used ventilators. Therefore, there is no doubt that the imported goods do have the primary

function of being anesthesia workstations. It is submitted that an anesthesia workstation is used to administer anesthesia during surgical procedures, and since anesthesia has an effect on the nervous, the ventilator is integrated to prevent any problems during the procedure. Because of the effects of anesthesia, it is possible that a patient might suffer breathing difficulties or the brain may not be able to send proper signals to enable the patient to breathe and hence the anesthesia workstation also has a ventilator component to assist with breathing during surgery. This however does not mean that the imported equipment has a principal role of being used as a ventilator and that administering anesthesia is a secondary function. As per the show cause notice and the chartered engineer's certificate, it is very clear that the imported goods are anesthesia workstations and not ventilators. Thus, what is essential to examine is whether the principal function of the goods is being used as a ventilator or was the principal function administering anesthesia? It is submitted that anesthesia workstations have an integrated ventilator but such ventilator is not the same as the one used in ICU or by patients who require breathing support. The imported machines cannot be used in place of ventilators in an ICU or by a patient who requires mechanical breathing. The small integrated ventilator as mentioned above is for the purpose of regulating breathing when the person is under the influence of anesthesia. The department has proposed to reclassify the goods under CTH 90192010 which is for oxygen therapy apparatus; however, the equipment imported by M/s. Medinnova Systems Pvt. Ltd. is not classifiable under the category of oxygen therapy apparatus in as much as the principal function of the imported goods is to be used as anesthesia workstations. The department has also not adduced any specific evidence that how would the imported goods fall in the category of oxygen therapy apparatus when the principal function of the goods is to administer anesthesia. Therefore, it is submitted that the imported equipment is correctly classifiable under CTH 90189099 as anesthesia workstations and since the correct description has been used in the Bill of Entry and correct chapter tariff heading has been declared, there is no mis-declaration in the present case. Even if it is the department's case there is an integrated ventilator and hence the principal function of anesthesia workstation is to be ignored, such question is a question of interpretation. There is no mala-fide intention on our part or on part of M/s. Medinnova Systems Pvt. Ltd. to mis-declare the goods and since the issue is one of technicality and interpretation, the proposal to Impose penalty on us is not in accordance with law.

### **Record of Personal Hearing**

**12.1** Personal hearing in the matter was held on 17.08.2023 wherein Shri Ashish Kumar Jain and Shri John Christian appeared on behalf of M/s Medinnova Solutions Pvt. Ltd. and Shri Kaushal Biharilal Parikh wherein they filed their written submissions and reiterated the same. Further, it was stressed upon that the imported goods were not Ventilators as alleged in the Show Cause Notice but were Anesthesia Workstations.

**12.1.1** Because of a change in adjudicating authority, one more opportunity of personal hearing was granted to the noticees. Shri Ashish Kumar Jain and Shri John Christian, authorised representatives of the noticees i.e M/s Medinnova Solutions Pvt. Ltd. & Shri Kaushal Biharilal Parikh, appeared on 09.01.2024 for personal hearing through online mode. Shri Christian argued that proposals in SCN i.e. confiscation, penalty and valuation etc. are not sustainable as the goods are not ventilator but part of Anesthesia workstation. Further, he requested to drop the proposals of SCN.

**12.2** Shri Amal P Dave and Shri Parth Rachchh, Advocates & Authorised representative, Shri A Chandran Nair, Branch Manager and Shri Pinakin Pandya, Vice President of M/s Tulsidas Khimji Pvt. Ltd., appeared on 17.08.2023 for hearing and reiterated the submission made vide letter dated 23.06.2023 in their defense.

**12.2.1** Because of a change in adjudicating authority, one more opportunity of personal hearing was granted to the noticee. Shri Amal Dave, Advocate appeared on 09.01.2024 for PH on behalf of the noticee M/s Tulsidas Khimji Pvt. Ltd. through online mode. He reiterated the written submission made vide letter dated 23.06.2023 and submitted that they are not liable for any penal action as they have filed the document which has been given to them by the importer.

### **Discussion and findings**

**13.** I have carefully gone through the Show Cause Notice dated

26.04.2023, relevant case records and the noticees' submissions both, in written and in person.

**14.** The issues for consideration before me are as under:

- i. Whether the imported goods are liable for confiscation or otherwise
- ii. Whether the imported goods are mis-classified or otherwise
- iii. Whether the value of the imported goods is to be enhanced or otherwise
- iv. Whether penalty proposed in the show cause notice are sustainable or otherwise

I proceed to discuss and decide each of the issues individually.

**Whether the imported goods are liable for confiscation**

**15.1** A specific intelligence was gathered by the Directorate of Revenue Intelligence indicated that M/s. Medinnova Solutions Pvt. Ltd, E-114, GIDC Savli, Manjusar Savli Road, Tal. Savli, Distt. Vadodara, Gujarat-391775 (IEC: 3410002413) has filed Bill of Entry No. 3102798 dated 31.10.2022 at Mundra Port for the goods of declared description 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099, imported vide container No. CSLU2901778. Intelligence further suggested that the goods covered under aforesaid BOE were mis-declared with respect to declaration of goods and other material particulars (as per intelligence).

**15.1.1** Acting upon the intelligence, goods of declared description 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099, imported vide container No. CSLU2901778 covered under Bill of Entry No. 3102798 dated 31.10.2022, were taken up for examination. The said goods were examined under Panchnama dated 02.11.2022 drawn at M/s. TG Terminals, CFS, Adani Ports & SEZ, Mundra (Kutch) in the presence of representative of customs broker appointed by the Importer. Upon examination, the said container was found stuffed with Machineries which appeared to be medical equipments and the same are found 15 in no's including 1 tray/trolley type equipment.

**15.1.2** I find that during the course of examination, services of Chartered Engineer were obtained, Shri Kumal A. Kumar was present during the examination to determine the actual nature of the Goods imported. In the report dated 05.12.2022, the Chartered Engineer has remarked that the Medical equipments are deemed to be as second-hand and used, The CE has certified in its report that "*the Anesthetic workstations in the cargo consists of ventilators integrated in the machine itself. Thus, the Anesthetic workstations can also be used as ventilators if required by the operator*".

**15.1.3** I find that Import of ventilators' for re-use is prohibited for import in terms of prohibition imposed under HWM Rules, 2016. As per Sub-rule 6 of Rule 12 of the Hazardous Waste (Management, Handling and Trans Boundary Movement) Rules, 2016 [HWM Rules], no import of the hazardous and other wastes specified in Schedule VI shall be permitted. Schedule VI at its sub-section B1- 'Metal and metal bearing wastes' enlists 'used critical care equipment for re-use' at Basel No. B1110. The Technical Review Committee of Ministry of Environment and Forest in its 62nd Meeting held on 25/05/2017 decided a list of equipment to be banned under Schedule VI of HWM Rules, 2016. In the said list 'Ventilators' appear at serial number 2.

Further, as per Rule 3, sub rule 9, the 'critical care equipment' is defined as following:

*"critical care medical equipment" means lifesaving equipment and includes such equipment as specified by the Ministry of Health and Family Welfare from time to time"*

It is pertinent to mention that the term critical care equipment include all lifesaving equipment and considering the fact that Anesthesia Work stations integrated with Ventilator imported to this consignment are used in the operation theater while performing surgery they appear to be critical care equipment within the purview of above definition.

**15.1.4** I find that the consignment consists of anesthesia

workstations of various brands. In its report, the Chartered Engineer has remarked that '*The anesthetic workstations in the cargo consist of ventilators integrated in the machine itself*'. Further, literature in respect of anesthesia workstation have been obtained from internet to study the working/functioning, It shows that an anesthesia machine is built with an integrated breathing circuit, which helps patients to breath during operation. These ventilation options offer the capabilities of an intensive care ventilator without having a separate machine in the ICU or operating room. Therefore, it is evident that this machine works as a ventilator in operation room and as a critical care equipment. As already discussed in above paras that ventilators are not permitted to be imported for re-use.

**15.1.5** I also find that the consignment imported vide BE No. 3102798 dated 31.10.2022 filed at Mundra Port were the same as the goods which were earlier imported vide BE No. 6240729 Dated: 13.11.2021 filed at Nhava Sheva Port and re-exported vide SB No. 4048609 dated 08.09.2022. The Bill of Entry No. 6240729 Dated: 13.11.2021 was filed in the name of M/s Soma Tech Private Limited which was earlier name of company M/s Medinnova Solutions Pvt Limited. After faceless assessment query was raised by the customs and out of above 18 No's equipment only 3 No's i.e. Surgical Microscopes were allowed for clearance and balance 15 No's of equipment having declared description Anesthesia Machine were not allowed to be cleared as the same were considered as prohibited by the customs and for which re-export was allowed by the Customs.

In this regard, a SCN bearing No. 12/2022-23/GR.VB/CAC/JNCH dated 04.04.2022 was issued to M/s Soma Tech Private Limited. The said SCN was adjudicated by the Addl. Commissioner of Customs, Nhava sheva vide OIO No. 241/2022-23/ADC/GR.V/NS-V/CSC/JNCH dated 10.06.2022 wherein the importer was penalized vide the said OIO and they have not filed any appeal against the said OIO No. 241/2022-23/ADC/GR.V/NS-V/CSC/JNCH issued to M/s. Soma Tech Pvt. Ltd Dated 10.06.2022 by the Addl. Commissioner of Customs, Nhava sheva.

**15.1.6** As discussed in para supra, I find that "anesthesia workstations" imported under Bill of Entry No. 3102798 dated 31.10.2022 filed at Mundra Port by declaring as 'Used and Old Medical Equipments

Anaesthesia Workstations' are prohibited for import in terms of prohibition imposed under Rule 12 of the Hazardous Waste (Management, Handling and Trans Boundary Movement) Rules, 2016 [HWM Rules] and thus the goods are liable for confiscation under Section 111 (d) of the Customs Act, 1962.

**15.2** The importer has declared the description of goods in the Bill of Entry as 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099, whereas being 'ventilators' the same are classified under CTH No. 90192010 appropriately. Thus I find that the subject goods have been mis-declared w.r.t. description and CTH also. Moreover as per the valuation report, the value of contrabands has been reported to be Rs. 83,62,511/- whereas the importer has declared in the Bill of Entry as Rs.18,41,185/- only. Since the subject consignment has been mis-declared w.r.t description, value and other matter particulars and thereby liable to confiscation under Section 111 (m) of the Customs Act, 1962 too.

**15.3** As narrated in paras above, the goods are prohibited for import in terms of prohibition imposed under Rule 12 of the Hazardous Waste (Management, Handling and Trans Boundary Movement) Rules, 2016 [HWM Rules] and are liable for confiscation under Section 111 (d) and 111(m) of the Customs Act, 1962. Therefore, the contention of the importer that the Anesthesia Workstation are not covered under Basel No. 1110 of Schedule VI of the HWM Rules and the same are not prohibited in nature and as such Section 111(d) & 111(m) of the Customs Act, 1962 is not applicable to the facts of the case, is not tenable and just an afterthought to escape the liability.

**15.4** Further, importer's submitted that the goods of the very same nature, characteristics and description were under consideration before the adjudicating authority in respect of Bill of Entry No. 9658479 dated 21-11-2020. The adjudicating authority has allowed clearance of the said goods and such goods have not been considered as 'prohibited goods' under Order-in-Original No. 500/2020-21/ADC/NS-V/CAC/JNCH dated 21.12.2020. On perusal of said OIO issued by the Nhava Sheva, JNCH, it is found that the goods namely i.e *Intra Aortic Ballon Pump, Respiratory Unit (Phillips Resironics Californic INC) and Respiratory Unit (Esprit*

*Ventilator)* were considered as prohibited goods and confiscated under Section 111(d) and 111(m) of the Customs Act, 1962. The importer i.e. M/s Soma Tech Pvt. Ltd. was allowed to re-export the goods subject to redemption fine under Section 125 of the Customs Act, 1962 in lieu of confiscation and was penalized for penalty under Section 112(a) of the Customs Act, 1962.

15.5 I find that importer has contested that the subject goods have been alleged to be prohibited under Rule 12(6) of the HWM Rules and as such it is pertinent to go through the provisions of the said rule which reads as under:

*No import of the hazardous and other wastes specified in Schedule VI shall be permitted.*

The above rule stipulates that the wastes specified in Schedule VI shall not be permitted. The Show Cause alleges that the imported goods are covered under Basel Bo. B 1110 of Schedule VI which covers the following goods:

*Used critical care medical equipment for re-use*

In terms of the above it is apparent that used critical care medical equipment is prohibited under Rule 12(6) of the HWM Rules. Accordingly, it needs to be examined whether the Anesthesia Workstations are covered under the category of 'critical care medical equipment' or otherwise.

c. The department has alleged that 'ventilators' appear at Sr. No. 2 of the list in the Minutes of Meeting of the 62<sup>nd</sup> meeting held on 25.05.2017 by the Technical Review Committee of Ministry of Environment and Forest. Further, the show cause suggests that the consignment was inspected by the Chartered Engineer who has opined as under:

*The anesthetic workstations in the cargo consist of ventilators integrated in the machine itself. Thus, the anesthetic workstations can also be used as ventilators if required by the operator.*

Based on the above findings of the Chartered Engineer, the department has jumped to the conclusion that the imported goods were 'Ventilators' which are covered under critical care equipment. The entire show cause notice has been constructed on such ground that the imported goods were

'ventilators'. However, the department has completely mis-read the report of the Chartered Engineer. The report categorically states that the Anesthetic Workstations consist of ventilators integrated in the machine itself. The linguistic construction of the said remark made by the Chartered Engineer expressly indicates that the cargo has not been categorized as 'Ventilators' *per se*. The remark mentions that ventilator is integrated in the machine itself. This finding clearly points out to the fact that Anesthetic Workstations are distinct machines which consist of integrated ventilators. To put it in more simple terms, the Chartered Engineer has certified that ventilator is one of the integrated components of the Anesthetic Workstations. Such a statement in itself is sufficient proof to the effect that Anesthetic Workstations and Ventilators are two distinct commodities.

I find that Shri Vanpariya Turpesh Odhavjibhai, Chief operating officer of M/ Medinova solution Pvt. Ltd. In his statement recorded on 13.02.2023 has admitted that they had originally imported the same consignment in 40ft Container in the name of M/s Soma Tech Private Limited under BE No. 6240729 Dated: 13.11.2021 vide container no HJMU42787633. He further stated that M/s Soma Tech Pvt. Ltd (IEC: 5207011588) is now known as M/s. Medinova Systems Pvt. Ltd as its Name was changed in 2019 and approved by ROC and for IEC name change approval received in 2021 and hence M/s. Medinova Systems Pvt. Ltd. is using same IEC as that of M/s Soma tech Pvt. Ltd. and M/s. Medinova Systems Pvt. Ltd. both are having same directors i.e. Shri Biharibhai Parikh and Shri Kaushal Parikh. Further, said import shipment was having total 75 no's of Medical equipment and at that time in faceless assessment a query was raised. In reply of the said query, they had submitted their application related to clarification and after that except 18 Nos. of Medical equipment all equipment were released by the Customs upon receipt of clarification. Out of above 18 No's equipment further 3 No's i.e. Surgical Microscopes also were allowed final clearance subsequently upon giving further clarification and balance 15 No's of equipment (i.e. Anaesthesia Machines) were not allowed to be cleared as the same were considered as prohibited by the Customs. And further OIO No. 241/2022-23/ADC/Gr. V/NS-V/CSC/JNCH to M/s Soma Tech Pvt. Ltd. Dated 10.06.2022 was issued by the Addl. Commissioner and after issuance of OIO, they re exported these impugned 15 no. of medical equipment to M/s Indigo Systems Inc, USA based company and the same was shipped to

address of Dubai based company that is M/s Vault Trading LLC and further re imported the same at Mundra port.

I find that importer paid the redemption fine imposed vide OIO No. 241/2022-23/ADC/Gr. V/NS-V/CSC/JNCH and did not file any appeal against the impugned order. Hence, importer has agreed to department contention that goods are not allowed to import due to policy issues. Hence, I do not find any force in importer contention.

From the above, the contention of the importer as mentioned in para supra, is not tenable and just an afterthought to escape the liability.

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### **Whether the goods are mis-classified**

**16.** The importer have declared the goods under consideration under CTH 90189099 as against the proposal in the Show Cause Notice to classify the goods under CTH 90192010. At this juncture it would be useful to refer to the relevant Tariff Heading of 9018 and 9019 of Customs Tariff Act, 1975 which reads as under:-

#### **SECTION-XVIII**

#### **9018**

#### **TARIFF HEAING-**

(1)	(2)	(3)	(4)	(5)
9018	INSTRUMENTS AND APPLIANCES USED IN MEDICAL, SURGICAL, DENTAL OR VETERINARY SCIENCES, INCLUDING SCIENTIGRAPHIC APPARATUS, OTHER ELECTROMEDICAL APPARATUS AND SIGHT-TESTING INSTRUMENTS			
9018 90	- Other instruments and appliances : ---- Diagnostic instruments and apparatus : ---- Blood transfusion apparatus	u		
9018 90 32	---- Anesthetic apparatus and instruments, ENT precision instruments, acupuncture apparatus, and endoscopes	u	7.5%	
9018 90 99	---- Other	u	10%	

#### **SECTION-XVIII**

#### **9019**

#### **TARIFF HEAING-**

(1)	(2)	(3)	(4)	(5)
9019	MECHANO-THERAPY APPLIANCES; MASSAGE APPARATUS; PSYCHOLOGICAL APTITUDE- TESTING APPARATUS; OZONE THERAPY, OXYGEN THERAPY, AEROSOL THERAPY, ARTIFICIAL RESPIRATION OR OTHER THERAPEUTIC RESPIRATION APPARATUS			
9019 10	-Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus :			
9019 10 10	---Mechano-therapy appliances	U	7.5%	
9019 10 20	---Massage apparatus	U	10%	
9019 10 90	---Other	U	7.5%	
9019 20	-Ozone therapy, oxygen therapy, aerosol, therapy artificial respiration or other therapeutic respiration apparatus :			
9019 20 10	---Oxygen therapy apparatus	U	7.5%	
9019 20 90	---Other	U	7.5%	

**16.1** On perusal of Tariff Heading of 9018 and 9019 as mentioned above, I find that 'ventilators' help patient complete function of inhaling and exhaling and falls under the category of Oxygen therapy apparatus which are rightly classifiable under CTH 90192010.

**16.2** I find that the importer has declared the description of goods in the BOE as 'Used and Old Medical Equipment Anesthesia Workstations' and classified the goods under CTH: 90189099, whereas being 'ventilators' the same are classifiable under CTH No. 90192010 appropriately.

**16.3** I find that importer has contested that the Show Cause Notice is constructed on the premises that the said goods are Ventilators and such Ventilators are covered under the list of critical care medical equipment as specified at Sr. No. 2 of the Minutes of 62<sup>nd</sup> Meeting of The Technical Review Committee of Ministry of Environment and Forest. Thus, it has been concluded that Ventilators are covered under Basel No. 1110 of Schedule VI to the HWM Rules. However, the Anesthesia Workstation are not covered under Basel No. 1110 of Schedule VI of the HWM Rules. Therefore, the same are not prohibited in nature and as such Section

111(d) of the Customs Act is not applicable to the facts of the case at hand.

In this regard, I find that Chartered Engineer has remarked that 'The anesthetic workstations in the cargo consist of ventilators integrated in the machine itself'. Further, literature in respect of anaesthesia workstation have been obtained from internet to study the working/functioning, It shows that an anesthesia machine is built with an integrated breathing circuit, which helps patients to breath during operation. These ventilation options offer the capabilities of an intensive care ventilator without having a separate machine in the ICU or operating room. Therefore, I find that this machine works as a ventilator in operation room and as a critical care equipment. Further, importer has also not filed. Further, importer has not declared goods as reimported goods whereas the same goods were re exported vide S/B No. 4048609 dated 08.09.2022.

### **Whether the value of the goods is liable for rejection**

**17.1** As narrated in the foregoing paras, I find that the importer has mis-declared the description of goods and also did not provide documents/invoice containing actual description and value of the goods. Thus the transaction value of the goods is not available.

It is also found that the subject consignment was re-exported by the importer in Sep, 2022 from Nhava Sheva and again imported at Mundra Port in Oct, 2022 from M/s. Indigo system INC, USA having common CEO with importer company. Thus, it appears to be a case of 'related party transactions'. Since the description of the product itself has been manipulated in Bill of Entry, the transaction value is liable to be rejected.

**17.2** In order to ascertain the value of import goods covered under Bill of Entry No. 3102798 dated 31.10.2022, as the actual transaction value is not available, the valuation of the goods was done through Chartered Engineer, M/s. Suvikaa Associates. As per CE, the value of the goods was

reported as Rs. 83,62,511/- (\$102419). Thus, the declared value of goods declared in the Bill of Entry i.e. Rs.18,41,185/- is liable for rejection in terms of the Rule 12 of the Customs Valuation Rules, 2007 (hereinafter referred as CVR, 2007), the value is required to be re-determined accordingly.

**17.3** In the instant case, ongoing through the details/documents gathered during investigation, it is revealed that the declared value of Rs. 18,41,185/- in the import documents appeared to be low in respect of the Bill of Entry No. 3102798 dated 31.10.2022 in order to suppress the actual liability of the Customs Duty. It is also evident from the documents/evidences recovered and statements recorded during investigation that the goods were mis-declared with respect to value and the related documents like invoices and packing list were also manipulated with the view to evade payment of appropriate duty. Therefore, there are reasons to believe that the documents related to import vide Bill of Entry No. 3102798 dated 31.10.2022 do not reflect true and correct transaction value. Therefore, the value declared by the importer in the aforementioned Bill of Entry did not appear to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (determination of Value of Imported Goods) Rules, 2007 and thus the same appear liable to be rejected in terms of Rule 12 of CVR, 2007, the value is required to be re-determined by sequentially proceeding in terms of Rules 5 to 9 of CVR, 2007.

The relevant Rules of CVR, 2007 are reproduced hereunder:-

### **3. Determination of the method of valuation.-**

*(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

*(2) Value of imported goods under sub-rule (1) shall be accepted:*

*Provided that -*

*(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -*

- (i) are imposed or required by law or by the public authorities in India; or*
- (ii) limit the geographical area in which the goods may be resold; or*
- (iii) do not substantially affect the value of the goods;*

*(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;*

*(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be*

made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

#### **4. Transaction value of identical goods. –**

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

#### **Rule 5 Transaction value of similar goods-**

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Further, as per **Rule 6 of the CVR, 2007**, if the value cannot be determined under Rule 3, 4 & 5, then the value shall be determined under Rule 7 of CVR, 2007.

**Rule 7 of the CVR, 2007, stipulates that:-**

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : -

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

**Rule 8. Computed value.-**

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

**Rule 9. Residual method.-**

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is

the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of" this rule on the basis of –

- (i) the selling price in India of the goods produced in India;
- (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- (iii) the price of the goods on the domestic market of the country of exportation;
- (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- (v) the price of the goods for the export to a country other than India;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values.

**17.4** As dicussed above, I find that the declared value is liable to be re-determined under Rule 9 of CVR, 2007 and the re-determined assessable value as per Government empanelled Chartered Engineer Certificate No/Valuation Report No. DRI/169/2022-23 dated 05.12.2022 of these used critical care equipment namely 15 numbers of anesthesia work stations including 1 tray/trolley type equipment of different brands which have been imported this consignment is **Rs. 83,62,511/-** (\$102419),,details of which are as under :-

**17.5** I find that importer has contested that the Show Cause Notice alleges that the description of the product has been manipulated in the Bill of Entry and therefore, the declared value is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. However, the above discussions clearly indicate that no manipulation of the description of the product has been undertaken by us in the Bill of Entry. The goods have been described as Anesthesia Workstation in the Bill of Entry and the said goods have also been certified by the Chartered Engineer as Anesthesia Workstation. All the other documents such as the Invoice and Packing List also describe the goods as Anesthesia Workstation. Thus, the ground to reject the declared value under Rule 12 of the Valuation Rules is not sustainable on merits.

I find that the subject consignment was re-exported by the importer in Sep, 2022 from Nhava Sheva and again imported at Mundra Port in Oct, 2022 from M/s. Indigo system INC, USA having common CEO with importer company. Thus, it is a case of 'related party transactions'. Since the description of the product itself has been manipulated in Bill of Entry, the transaction value is liable to be rejected. Hence, In order to ascertain the value of import goods covered under Bill of Entry No. 3102798 dated 31.10.2022, as the actual transaction value is not available, the valuation of the goods was done through Chartered Engineer, M/s. Suvikaa Associates.

**Liability of Penalty on M/s Medinnova Solutions Pvt. Ltd. under Section Sections 112(a), Section 112(b), Section 114AA and Section 117.**

**18.1** I find that M/s. Medinnova Solutions Pvt. Ltd, had filed Bill of Entry No. 3102798 dated 31.10.2022 at Mundra Port for the goods of declared description 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099, imported vide container No. CSLU2901778. From the facts narrated in foregoing paras and evidences gathered during investigation, it is evident that M/s. Medinnova Solutions Pvt. Ltd has imported 'Old and used ventilators', and mis-declared the same as 'Used and Old Medical Equipments Anaesthesia Workstations' vide aforesaid Bill of Entry filed by them at Customs House, Mundra. It further appears that they had not declared the actual description of subject goods and also mis-classified the same under the CTH 90189099 i.e under the heading '9018:

Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scientigraphic apparatus, other electro-medical apparatus and sight-testing instruments' under the subheading 'others'. It is also found that M/s. Medinnova Solutions Pvt. Ltd. obtained and submitted invoice, Certificate of Origin, Bill of Lading and other related documents having incorrect material particulars in connivance with the declared shipper/suppliers, shipping line etc. with respect to nature /description of goods, country of origin, etc. It further appears that the entire conspiracy was hatched to suppress the actual description of goods as Old and used Ventilators being prohibited item for import , and thus they had illegally imported the same by means of fraud, collusion, willful mis-statement and suppression of facts in gross violation of import policy, provisions of Customs Act, 1962, Hazardous Waste (Management, Handling and Trans Boundary Movement) Rules, 2016 [HWM Rules] etc. Had the DRI not initiated the investigation, the gamut of illegal import of prohibited item would be continued.

As narrated in the foregoing paras, M/s. Medinnova Solutions Pvt. Ltd had deliberately imported the subject goods which were already seized by the Customs in the past and were released for re-export only, imposed fine, penalty on the importer. This only aspect made the malafide intention of the importer for importing prohibited goods thereby indicated the nature of importer as habitual offender.

**18.2** As narrated above, I find that the omission and commission on the part of M/s. Medinnova Solutions Pvt. Ltd (IEC: 3410002413), E-114, GIDC Savli, Manjusar Savli Road, Tal. Savli, Distt. Vadodara, Gujarat-391775 i.e. misclassification and mis-declaration of subject goods by way of fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject imported goods declared as 'Used and Old Medical Equipments Anaesthesia Workstations' having Market Value (as per CE report) of Rs. 83,62,511/- (declared assessable value in the Bill of Entry i.e. Rs.18,41,185/-) liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. Therefore, I find that for these acts and omissions, M/s. Medinnova Solutions Pvt Ltd. is liable to penalty under Section 112(a) of the Customs Act, 1962.

**18.3** Since I have held the importer liable to penalty under Section 112(a) of the Customs Act, 1962, I refrain from imposing any penalty on M/s. Medinnova Solutions Pvt Ltd., under section 112(b) of the customs act, 1962.

**18.4** I find that Penalty under Section 114AA is leviable in case of any “material particular” being declared false or incorrect. In the instant case, M/s. Medinnova Solutions Pvt. Ltd. through their representative knowingly and intentionally made, signed or used Bills of Entry and other related documents which were false or incorrect, in material particulars, for the purpose of illegal import of subject goods, therefore they are also be separately liable to penalty under Section 114AA of the Customs Act, 1962. For the reasons as discussed in para 18.1 and 18.2 above, I hold M/s. Medinnova Solutions Pvt. Ltd. liable to penalty under section 114AA of the Customs Act, 1962.

**18.5** Section 117 of the Customs Act, 1962 stipulates that *Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding 2[four lakh rupees].*

I find that penalty under Section 117 is imposable where no express penalty is elsewhere provided for such contravention or failure. Since the importer liable for penalty under Section 112(a) and 114AA of the Customs Act, 1962 in the instant case, I refrain from imposing any penalty under Section 117 of the Customs Act, 1962.

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**Liability of Penalty on Shri Kaushal Biharilal Parikh Director of M/s. Medinnova Solutions Pvt. Ltd., under Section 112(a), Section 112(b), Section 114AA and Section 117.**

**19.1** From the facts of investigation, I find that the said consignment of goods of declared description ‘Used and Old Medical Equipments Anaesthesia Workstations’ under CTH: 90189099, imported vide container

No. CSLU2901778 after due consent, knowledge and approval of **Shri Kaushal Biharilal Parikh** who had directly supervised all the matters related to the import in dealings with the overseas suppliers and other associates. He accepted in his statement dated 12.04.2023 recorded under Section 108 of the Customs Act, 1962 that they have originally imported the same consignment in the name of M/s Soma Tech Private Limited under BE No. 6240729 Dated: 13.11.2021 vide container no HJMU42787633 at Nhava Sheva. He stated that he run the following firms/companies M/s Medinnova Solutions Pvt. Ltd. and M/s Medinnova Systems Pvt. Ltd. Further, he added that his ex-companies were M/s Soma Tech Pvt. Ltd. and M/s Soma Medical Solutions Pvt. Ltd and they have changed their name to above stated companies. M/s Medinnova Systems Pvt. Ltd is formerly known as M/s Soma Tech Pvt. Ltd and M/s Medinnova Solutions Pvt. Ltd is formerly known as M/s Soma Medical Solutions Pvt. Ltd. A case has been booked by the Nhava Sheva Customs against M/s Soma Tech for the import of prohibited 'Ventilators' vide Bill of Entry No. 6240729 Dated 13.11.2021 and the same goods were exported vide Shipping Bill No. 4048609 dated 08.09.2022 after paying the redemption fine of Rs. 100000/- as per the order No. OIO No. 241/2022-23/ADC/GR.VV/NS-V/CSC/JNCH M/s. Soma Tech Pvt. Ltd Dated 10.06.2022. The said 15 No's of equipment (declared as Anesthesia Machine) were not allowed for clearance as the same were considered as prohibited by the customs and for which re-export was allowed by the Nhava Sheva Customs.

**19.2** Shri Kaushal Biharilal Parikh in his statement dated 12.04.2023 recorded under Section 108 of the Customs Act, 1962 accepted that they had asked supplier to take back prohibited medical equipments but supplier was not willing to take back and after sometime they suggested them to supply/re-export the said medical equipments to Dubai based company, that thereafter on receiving re-export permission from Nhava Sheva Customs, they re-exported remaining 15 No's of equipment (i.e. declared as Anesthesia Machine) to M/s Indigo Systems Inc USA based company and shipped to address is of Dubai based company that is M/s Vault Trading LLC. M/s Indigo Systems Inc, USA is owned by Shri Hiren Desai, who is the CEO of his company M/s. Medinnova Solution Pvt. Ltd. He deposed that as his company have incurred huge losses in the said consignment which were not allowed

clearance by Nhava Sheva Customs his company after having no option consulting to some group member decided to re-import the said medical equipments at different port and in different company name to compensate some losses incurred in the above said consignment, that on 31st Oct 2022, they have filed BE No. 3102798 Dated 31.10.2022 at Mundra port for the same said 15 No's of medical equipments and sought clearance from Mundra Customs. He regretted for their mistake vide letter dated 10.04.2023 which was issued under his approval. He stated that they totally agreed with the facts that they took a misstep in regards to import pertain to subject goods imported vide Bill of Entry No. 3102798 dated 31.10.2022.

**19.3** Thus, from above facts, I find that Shri Kaushal Biharilal Parikh, Director of M/s. Medinnova solutions Pvt. Ltd was very well aware about the characteristics, specification and classification of subject goods vis-a-vis provisions relating to Customs Act, 1962 other allied Acts and Import Policy. Shri Kaushal Biharilal Parikh under knowledge and directly supervised all the matters related to the import in dealings with the overseas suppliers and other associates and making documentation/submissions with Customs Authorities. From the facts and evidences gathered during investigation, I find that Shri Kaushal Biharilal Parikh had played a pivotal role in the deliberate mis-declaration of the subject imported goods and had indulged in a well-planned conspiracy with a malafide intention to import 'Old and Used Ventilators' illegally by fraud, collusion, willful mis-statement, suppression of facts knowing very well that it would amount to violations as discussed above. I further find that He has knowingly suppressed material facts regarding description and classification of the subject product and mis-declared & mis-classified the same as 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099.

**19.4** Thus, I find that the omission and commission on the part Shri Kaushal Biharilal Parikh, Director of M/s. Medinnova solutions Pvt. Ltd. have rendered the subject imported goods declared as 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099 having Market Value (as per CE report) of Rs. 83,62,511/- (\$102419) liable

to confiscation under Section 111 (d) and 111(m) of Customs Act, 1962. Shri Kasushal Biharilal parikh has knowingly purchased, imported, dealt with the prohibited goods which were liable to confiscation. Thus he has separately rendered himself liable to penalty under Section 112 (a) and Section 112(b) of the Customs Act, 1962.

**19.5** The Bill of Entry for clearance of import goods was filed with Customs by M/s. Medinnova solutions Pvt. Ltd and declared with incorrect description and classification of the subject goods under the supervision & active guidance of Shri Kaushal Biharilal Parikh, Director of M/s. Medinnova solutions Pvt. Ltd. I find that Shri Kaushal Biharilal Parikh knowingly and intentionally made, signed or used or caused to be made signed, or used the Bills of Entry and other related import documents, which were false or incorrect, in material particulars, for the purposes of illegal importation of goods, I thus find that Shri Kaushal Biharilal Parikh, has separately rendered himself liable to penalty under Section 114AA of the Customs Act, 1962. For the same reasons as discussed in para 19.1, 19.2 and 19.3 above, I hold Shri Kaushal Biharilal Parikh, Director of M/s. Medinnova solutions Pvt. Ltd. liable to penalty under section 114AA of the Customs Act, 1962.

**19.6** Section 117 of the Customs Act, 1962 stipulates that *Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding 2[four lakh rupees].*

I find that penalty under Section 117 is imposable where no express penalty is elsewhere provided for such contravention or failure. Since I have held Shri Kaushal Biharilal Parikh, Director of M/s. Medinnova Solutions Pvt. Ltd. liable to penalty under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 in the instant case, I refrain from imposing any penalty on Shri Kaushal Biharilal Parikh, Director of M/s. Medinnova solutions Pvt. Ltd. under Section 117 of the Customs Act, 1962.

**Liability of Penalty on Customs Broker Firm M/s. Tulsidas Khimji Pvt. Ltd. under Section Sections 112(a), Section 112(b), Section 114AA and Section 117**

**20.1** I find that The Customs Broker M/s. Tulsidas Khimji Pvt. Ltd had filed BE No. 6240729 dated 13.11.2021 which was filed by Mumbai branch of their company M/s. Tulsidas Khimji Pvt. Ltd. at Nhava Sheva Port. The said BOE was filed in the name of M/s Soma Tech Private Limited. They also have facilitated the re-export of the said goods and filed Shipping Bill no. 4048609 dated 08.09.2022. The same consignment was later imported by M/s. Medinnova Solutions Pvt. Ltd and M/s. Tulsidas Khimji Pvt. Ltd. under Bill of Entry no. 3102798 dated 31.10.2022 filed at Mundra Port. From above incidents, it is apparent that the goods covered under BE No. 6240729 Dated: 13.11.2021, SB No. 4048609 dated 08.09.2022 and BOE No. 3102798 dated 31.10.2022 are same and M/s. Tulsidas Khimji Pvt. Ltd. acted as Customs Broker in all the cases. M/s. Tulsidas Khimji Pvt. Ltd filed Bills of Entry in which material facts regarding description and classification of the subject product were suppressed and mis-declared & mis-classified the same as 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099.

**20.2** I further find that the authorized representative of Customs Broker firm in his statement dated 04.04.2023 submitted that they had declared the description of goods as 'Used and Old Medical Equipments Anaesthesia Workstations', classification under Tariff Item No. 90189099, Country of Origin, Port of Loading, in the Bills of Entry on the basis of documents provided by the importer and after the approval of checklist provided by them to the Importer. However they did not make efforts in ascertaining the true character of the subject goods which was earlier imported under Bill of Entry No. 6240729 dated 13.11.2021 was filed by Mumbai branch of their company M/s. Tulsidas Khimji Pvt. Ltd. and a case was booked by the Nhava Sheva Customs. On the contrary, I find that the Customs Broker in connivance with the importer helped in filing of the Bills of Entry at both the ports i.e. Nhava Sheva and later at Mundra Port by mis-declaring the description and CTH of the subject goods. It is evident that the Customs Broker did not bother to take due care and precaution to enquire the detailed reason thereof specially being possible violation of import policy condition in import of such nature of subject

goods; rather he abetted the violation in mis-declaration and mis-classification.

**20.3** From the facts narrated in para supra, I find that the said Customs Broker have assisted and abetted the mis-declaration and illegal import of subject goods in violation of the Policy provisions and by doing so, they have rendered the subject imported goods declared as 'Used and Old Medical Equipments Anaesthesia Workstations' under CTH: 90189099 liable to confiscation under Section 111 (d) and 111(m) of Customs Act, 1962. In spite of knowing the past history and actual nature of the subject goods, they have filed Bill of entry at Mundra Port and knowingly dealt with the subject goods by clearance of the same from Customs. Thus, M/s. Tulsidas Khimji Pvt. Ltd. has rendered themselves to penalty under **Section 112 (b)** of the Customs Act, 1962.

**20.4** Since the goods imported vide impugned Bill of Entry do not pertain to M/s. Tulsidas Khimji Pvt. Ltd. directly, I refrain from imposing any penalty under Section 112(a) of the Customs Act, 1962.

**20.5** I find that M/s. Tulsidas Khimji Pvt. Ltd. knowingly and intentionally made, signed or used or caused to be made signed, or used the Bills of Entry and other related import documents, which were false or incorrect, in material particulars, for the purposes of illegal importation of goods, I thus find that M/s. Tulsidas Khimji Pvt. Ltd, has separately rendered himself liable to penalty under **Section 114AA** of the Customs Act, 1962. For the reasons as discussed in para 20.1 and 20.2 above, I hold M/s. Tulsidas Khimji Pvt. Ltd. liable to penalty under section 114AA of the Customs Act, 1962.

**20.6** I find that penalty under Section 117 is imposable where no express penalty is elsewhere provided for such contravention or failure. Since I have held M/s. Tulsidas Khimji Pvt. Ltd. liable to penalty under Section 112(b) and 114AA of the Customs Act, 1962 in the instant case, I refrain from imposing any penalty on Customs Broker firm under Section

117 of the Customs Act, 1962.

**21.** In view of discussion and findings in the paras supra, I pass the following order:

**ORDER**

- i. I reject the declared classification ie 90189099 of imported goods i.e. 'Old and used ventilators' imported vide Bill of Entry No. 3102798 dated 31.10.2022 and order to re-classify the same under Custom Tariff Heading 90192010 of the first schedule of the Customs Tariff Act, 1975;
- ii. I reject the declared assessable value of Rs. 18,41,185/- (Rupees Eighteen Lakhs Forty One Thousand One Hundred Eighty Five only) of the goods imported vide Bill of Entry No. 3102798 dated 31.10.2022, under Rule 12 of CVR, 2007 and order to re-determine the same as Rs. 83,62,511/- (Rupees Eighty three lakhs sixty two thousand five hundred eleven Only) in terms of Rule 9 of the CVR, 2007 read with section 14 of Customs Act, 1962;
- iii. I order for absolute confiscation of the goods i.e. 'Old and used ventilators' imported vide Bill of Entry No. 3102798 dated 31.10.2022 having assessable value of Rs. 83,62,511/- (Rupees Eighty three lakhs sixty two thousand five hundred eleven Only) under Section 111(d) and 111(m) of the Customs Act 1962;
- iv. I impose a penalty of Rs. 5,00,000/- (Rs. Five lakh Only) on M/s. Medinnova Solutions Pvt. Ltd. (IEC: 3410002413), E-114, GIDC Savli, Manjusar Savli Road, Tal. Savli, Distt. Vadodara, Gujarat-391775, under Section 112(a)(i) of the Customs Act, 1962;
- v. I impose a penalty of Rs. 2,00,000/-(Rs. two Lakh Only) on M/s. Medinnova Solutions Pvt. Ltd., under Section 114AA of the Customs Act, 1962;
- vi. I impose a penalty of Rs. 3,00,000/-(Rs. Three Lakh Only) on Shri Kaushal Biharilal Parikh, Director of M/s. Medinnova Solutions Pvt. Ltd., 502, Gyan Yog Sutaria Town, GhodDod Road, Surat City, Gujarat-395007, under Section 112(a)(i) of the Customs Act, 1962;

vii. I impose a penalty of Rs. 50,000/- (Rs. Fifty Thousand Only) on Shri Kaushal Biharilal Parikh, Director of M/s. Medinnova Solutions Pvt. Ltd., under Section 112(b) of the Customs Act, 1962;

viii. I impose a penalty of Rs. 1,00,000/- (Rs. One Lakh Only) on Shri Kaushal Biharilal Parikh, Director of M/s. Medinnova Solutions Pvt. Ltd., under Section 114AA of the Customs Act, 1962;

ix. I impose a penalty of Rs. 50,000/- (Rs. Fifty Thousand Only) on customs broker M/s. Tulsidas Khimji Pvt. Ltd., 313-314, Dev Nandan Mega Mall, Opp Sanyas Ashram, Near M.J Library, Ashram Road, Ahmedabad-380009, under Section 112(b) of the Customs Act, 1962;

x. I impose a penalty of Rs. 1,00,000/- (Rs. One Lakh only) on customs broker M/s. Tulsidas Khimji Pvt. Ltd., under Section 114AA of the Customs Act, 1962.

**22.** This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

**23.** The Show Cause notice dt. 26.04.2023 issued vide F.No. GEN/ADJ/ADC/853/2023-Adjn is hereby disposed off in above terms.

Additional Commissioner  
CH Mundra.

F.No. GEN/ADJ/ADC/853/2023-Adjn      Date:

By Speed post/ By Hand/by E-mail

To,

1. M/s. Medinnova Solutions Pvt. Ltd.  
(IEC: 3410002413), E-114, GIDC Savli,  
Manjusar Savli Road, Tal. Savli,

Distt. Vadodara, Gujarat-391775.

2. Shri Kaushal Biharilal Parikh, S/o Shri Biharibhai Parikh,  
Director of M/s. Medinnova Solutions Pvt. Ltd.,  
502, Gyan Yog Sutaria Town, GhodDod Road,  
Surat City, Gujarat-395007.

3. M/s. Tulsidas Khimji Pvt. Ltd.,  
313-314, Dev Nandan Mega Mall, Opp Sanyas Ashram,  
Near M.J Library, Ashram Road, Ahmedabad-380009.

Copy to:-

1. The Deputy/Assistant Commissioner (RRA), CH, Mundra.
2. The Deputy/Assistant Commissioner (TRC), CH, Mundra.
3. The Deputy/Assistant Commissioner (EDI), CH, Mundra.
4. The Deputy/Assistant Commissioner (Group-5), CH, Mundra.
5. The Additional Director, DRI, Gandhidham Regional Unit, Plot No. 5 & 6, Ward- 5A, Near Vinayak Hospital, Adipur, Kutch, Gujarat- 370205.
6. Guard File.