		<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS</b> <b>CUSTOM HOUSE: MUNDRA, KUTCH</b> MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No. 02838-271029/423 FAX No. 02838-271425 Email : importsectionmundra@gmail.com
A	File No.	CUS/APR/MISC/5213/2024-Gr 5-6-O/o Pr Commr-Cus-Mun
B	Order-in-Original No.	<b>MCH/ADC/AK/68/2024-25</b>
C	Passed by	<b>ARUN KUMAR</b> Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of Order	12.06.2024
E	Noticee/Party/ Importer/ Exporter	M/s. S.B.M. Healthcare (India) Private Limited, 12-H, Gopala Tower, Rajindra Place, New Delhi-110008 (IEC: 0508004926)
F	DIN No.	<b>DIN- 20240671MO0000222B58</b>

1. यह अपील आदेश संबन्धित 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:

**“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/- रुपये 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 जापान के साथ इयूटि/ ब्याज/ 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 FACT OF THE CASE: -**

**M/s. S. B. M. Healthcare (India) Private Limited**, 12-H, Gopala Tower, Rajindra Place, New Delhi-110008 (IEC: 0508004926) (hereinafter referred to as "*the importer*" for sake of brevity) having its registered office at 12-H, Gopala Tower, Rajindra Place, New Delhi-110008, filed the Bill of Entry No. 9280568 dated 18.12.2023 for import of **Philips Gemini GXL 16 Slice Pet CT (Old and Used) and IABP CS100 and Accessories (Old and Used)**, having declared assessable value of Rs. 39,05,766.53/- from Canada at APSEZ, Mundra:

2. On the basis of Intelligence gathered by the officers of CIU, Mundra, the cargo covered under the said Bill of Entry No. 9280568 dated 18.12.2023 filed by the importer through their CHA M/s. New Link Overseas wherein they have declared the goods as '1. Philips Gemini GXL 16 Slice Pet CT (Old and Used) 2. IABP CS100 and Accessories (Old and Used) and classifying both under CTH 90189099 was put on hold for detailed examination. Examination of the goods covered under said BE was carried out by the officer of CIU, Custom House Mundra along with empanelled Chartered Engineer Shri Varun Chandok under Panchnama dated 28.12.2023 drawn at M/s Transworld Terminals Pvt Limited -2 (earlier known as 'TG Terminals'), CFS, Mundra.

3. Empanelled Chartered Engineer Shri Varun Chandok has submitted their inspection cum valuation report vide their letter F. No. VC/CFS/MUNDRA/SBMHIPL/@SKuift75\*/ 9280568/I/01/2023-24 dated 01.01.2024 in which they have reported that the year of manufacture of the CT scanner and IABP CS100 and Accessories are 2006 & 2005 respectively. The CE has also worked out the valuation of the consignments considering the prevailing market rate as detailed below: -

Sr No	DESCRIPTION old & used and make/model/ Sr.No./COO as declared in invoice look appearance (medicine Equipment's)	Approx year of manufacture as per look/spec. plate	Extent of Reconditioning if any	Expected residual life	Qty (set/No./Unit.)	Invoice Value (USD FOB)	Suggestive Estimate FOB value in year of manufacture (including all accessories) (USD)	Rate of Dep. %	Cost of Reconditioning (USD) if any	Estimated Depreciated FOB Value in USD	Total of column, ns (10+11) FOB value in USD
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
1	PET/CET scanner Medical Equipment. Make:-PHILIPS Model/Ty: Gemini GXL 16 Slice r. No. 4116 Made in USA with standard accessories like Gantry (2), Patient Table, Mech Rack Assy, Pet CT rack Assy Computer Monitor (3), U	2006 (almost all the parts manufactured year 2006)	Yes Cleared, etc	More than 8 years (subject to Proper maintenance)	1	3050	250000	70%	1000	75000	76000

	PS, Key Boards, Power Supply, Unit Cable etc.											
2	IABP (Intra-aortic balloon pump) (Medical Equipment) Make: DATASCOPE Model/Type:CS100 S r. No. SAO 4730-L5 Made in USA	2005	Yes Cleared, etc	More than 8 years (subject to Proper maintenance)	1	4000	13000	70%	300	3900	4200	
TOTAL (FOB VALUE)												80200/-

**3.1** On going through the said report(s) submitted by the empanelled Chartered Engineer Shri Varun Chandok, it appears that the importer has mis-declared the description as well as value of the goods and also mis-classified the same under CTH 90189099 instead of CTH: 90221200.

**4 .** Statement of Shri Pranjal Sharma, Vice president of the importer company M/s. S B M Healthcare (India) Pvt Ltd was recorded on 25.01.2024, wherein, they have stated that their company has purchased the goods on High Sea Sale Basis and they have not inspected the goods before purchasing the same. After going through the Panchnama dated 28.12.2023, wherein, the examination of the goods was done and the Chartered Engineer's report dated 01.01.2024, they realized that the supplier has supplied the goods with wrong Commitment/declaration. They have also stated that as per their knowledge being a medical device the same goods are classifiable under CTH 90189099 but after getting detailed verification of the Customs Tariff, they realized their mistake and accepted that the goods covered under Bill of Entry declared as CT Scan Machine and is rightly classifiable under CTH 90221200. They have also stated that their company don't want any show cause notice and personal hearing in the matter.

**5.** It appears that, the importer has imported the goods covered under Bill of Entry No.9280568 dated 18.12.2023 valued at Rs. 39,05,766.53/- (Declared Assessable Value) by way of mis-declaration of description, misclassification, DGFT violation and under valuation of the goods. Therefore, the goods covered under Bill of Entry No. 9280568 dated 18.12.2023 are liable for confiscation under section 111(d) and 111(m) of the Customs Act, 1962. Accordingly, as per the provisions of the Section 110 of the Customs Act, 1962, the same goods were seized vide seizure memo dated 15.01.2024.

**6.** Whereas, thereafter the case file was transferred to the SIIB Section, CH Mundra vide letter dated 13.03.2024 for further necessary action. In view of the investigation carried out by the CIU, CH Mundra, it appears that the impugned goods were imported by the importer by way of false declaration in the bill of entry, misclassification and under valuation of

goods. Accordingly, it appears that, the importer has mis-declared the description, quantity and value of the impugned goods therefore, the same appears to be liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

7. The Chartered engineer vide its report dated 01.01.2024 has reported that year of manufacture of CT scanner & IABP CS100 and accessories are 2006 & 2005 respectively. However, the importer has declared the year of manufacture of the CT Scanner covered under the aforementioned Bill of Entry as 2017. Further, declared value of the goods is lesser than the value calculated by the Chartered Engineer.

8. Further, this office vide e-mail dated 09.05.2024 sought clarification regarding correct calculation of assessable value to SIIB, Mundra. In this regard the SIIB, Mundra informed vide e-mail dated 10.05.2024 that they have identified and corrected a mistake in the calculations. The error occurred as the valuation done by CE mentions the value of the Goods in FOB. Upon revisiting the data and recalculating, they have rectified the discrepancy. The updated figure are now reflected accurately in the calculation as per rule 10 of CVR, 2007 are as under: -

CIF value = FOB value + Freight Charges (20% of FOB) + Insurance (1.125% of FOB)

USD = 80200 USD + 16040 USD + 902.25 USD = 97142.25

CIF value (in Rs.) = 97142.25 x 84.3 (exchange rate) = 81,89,091.68/-

#### **9. Classification of Goods Imported:**

9.1 **The classification of the CT (Computed Tomography) Machine** as per examination report and import documents.

**9018** INSTRUMENTS AND APPLIANCES USED IN MEDICAL, SURGICAL, DENTAL OR VETERINARY SCIENCES, INCLUDING SCIENTIGRAPHIC APPARATUS, OTHER ELECTROMEDICAL APPARATUS AND SIGHT-TESTING INSTRUMENTS

Electro-diagnostic apparatus (including apparatus for functional exploratory examinations or for checking physiological parameters):

**9022** APPARATUS BASED ON THE USE OF X-RAYS OR OF ALPHA, BETA \*GAMMA OR OTHER IONISING RADIATIONS, WHETHER OR NOT FOR MEDICAL, SURGICAL, DENTAL OR VETERINARY USES, INCLUDING RADIOGRAPHY OR RADIOTHERAPY APPARATUS, X-RAY TUBES AND OTHER X-RAY GENERATORS, HIGH TENSION GENERATORS, CONTROL PANELS AND DESKS, SCREENS, EXAMINATION OR TREATMENT TABLES, CHAIRS AND THE LIKE-

Apparatus based on the use of X-rays, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus:

9022 12 00 -- Computed tomography apparatus u 10% -

**9.2** Ongoing through above CTH, it appears Goods i.e. CT scanner is rightly classifiable under the CTH 90221200. Therefore, it appears that the importer has wrongly classified the Goods i.e. Philips Gemini GXL 16 Slice Pet CT (1 Set) (Old and used) under CTH 90189099 instead of CTH: 90221200. The importer has mis-declared the description as well as value of the goods and also mis-classified the same under CTH 90189099 instead of CTH: 90221200. Accordingly, the same is liable for confiscation under Section 111 (m) of the Customs Act, 1962.

**9.3** It is pertinent to mention that principles for the classification of goods are governed by the Harmonized Commodity Description and Coding System (Harmonized System or HSN) issued by the World Customs Organization, Brussels and the General Rules for Interpretation specified there under. The General Rules for the Interpretation (GIR) specified in the Import Tariff are in accordance with the GIR specified in the HSN. In terms of GIR 1 of the HSN and the import Tariff-

*The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions [that is, GIRs 2 to 6]:*

Therefore, it appears that the importer has wrongly classified the Goods i.e. Philips Gemini GXL 16 Slice Pet CT (1 Set) (Old and used) under CTH 90189099 and Goods i.e. CT scanner is rightly classifiable under the CTH 90221200

**10.** In view of above it is appeared that the importer has mis-declared the description, quantity and value of the goods imported by them has been presented before the department, thus making the impugned goods liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. As the goods liable for confiscation under Section 111(d) and 111(m) of Customs Act, 1962, the importer appears to be liable for penal action under Section 112 of the Customs Act, 1962. Further, the value of the imported goods is liable for redetermination in accordance with the report submitted by the CE, as per Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 i.e. 'Residual Method'. Also, the Bill of Entry is liable to be re-assessed, accordingly, under section 17(4) of the Customs Act, 1962.

**11. LEGAL PROVISIONS APPLICABLE IN THE CASE:** Following provisions of law are applicable in the present case:

**SECTION 46(4) OF THE CUSTOMS ACT, 1962:**

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

**SECTION 111 OF THE CUSTOMS ACT, 1962: CONFISCATION OF IMPROPERLY IMPORTED GOODS ETC.**

*The following goods brought from the place outside India shall be liable to confiscation:*

....

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

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

**SECTION 112 OF THE CUSTOMS ACT, 1962: Penalty for improper importation of goods, etc. - 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

i. in the case of goods in respect of which any prohibition is in force

.....

ii. in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher;

**12. In view of the above it appears that:**

(i) The classification of the impugned goods under CTH 90189099 imported vide Bill of Entry No. 9280568 dated 18.12.2023 is liable to be rejected and the same is liable to be reclassified under CTH 90221200 of Customs Tariff Act, 1975.

(ii) The value of the imported goods covered under Bill of Entry No. 9280568 dated 18.12.2023 is on lower side and thus the declared value of Rs. 39,05,766.53/- is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read

with Section 14 of the Customs Act, 1962 and same is liable to be re-determined under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as **Rs. 81,89,092/-** read with Section 14 of the Customs Act, 1962.

(iii) The goods imported vide Bill of Entry No.9280568 dated 18.12.2023 having assessable value of Rs. 81,89,092/- (Rupees Eighty-One Lakhs Eighty-Nine Thousand and Ninety-Two Only) are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

(iv) The Bill of Entry is liable to be re-assessed accordingly under Section 17(4) of the Customs Act, 1962.

(v) the importer M/s. S. B. M. Healthcare (India) Private Limited (IEC: 0508004926) is liable for penal action under Section 112 of the Customs Act, 1962.

#### **WAIVER OF PERSONAL HEARING AND SCN**

13. The importer vide their letter dated 02.05.2024 has requested for waiver of SCN and PH. Importer vide above referred letter has agreed to pay the fine and penalty as imposed by the authorities and also requested to Re-export the said cargo to their supplier.

#### **DISCUSSION AND FINDINGS**

14. I have carefully gone through the facts of the case and records & evidences submitted before me and I note importer vide letter dated 02.05.2024 has waived off SCN and PH. Therefore, I find that the principle of natural justice as provided in section 122A of the Customs Act, 1962, has been completed. Hence, I proceed to decide the case on the basis of the documentary evidence available on records. I find that following main issue are involved in the subject matter, which are required to be decided-

(i) Whether the classification of the impugned goods under CTH 90189099 imported vide Bill of Entry No. 9280568 dated 18.12.2023 is liable to be rejected and the same is liable to be reclassified under CTH 90221200 of Customs Tariff Act, 1975.

(ii) Whether the value of the imported goods covered under Bill of Entry No. 9280568 dated 18.12.2023 is on lower side and thus the declared value of Rs. 39,05,766.53/- is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and same is liable to be re-determined under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as **Rs. 81,89,092/-** read with Section 14 of the Customs Act, 1962.

(iii) Whether the goods imported vide Bill of Entry No.9280568 dated 18.12.2023 having assessable value of Rs.

81,89,092/- (Rupees Eighty-One Lakhs Eighty-Nine Thousand and Ninety-Two Only) are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

(iv) Whether the Bill of Entry is liable to be re-assessed accordingly under Section 17(4) of the Customs Act, 1962.

(v) Whether the importer M/s. S. B. M. Healthcare (India) Private Limited (IEC: 0508004926) is liable for penal action under Section 112 of the Customs Act, 1962.

**14.1** I find that M/s. S. B. M. Healthcare (India) Private Limited, 12-H, Gopala Tower, Rajindra Place, New Delhi-110008 (IEC: 0508004926) (hereinafter referred to as "*the importer*" for sake of brevity) having its registered office at 12-H, Gopala Tower, Rajindra Place, New Delhi-110008, filed the Bill of Entry No. 9280568 dated 18.12.2023 for import of **Philips Gemini GXL 16 Slice Pet CT (Old and Used) and IABP CS100 and Accessories (Old and Used)**, having declared assessable value of Rs. 39,05,766.53/- from Canada at APSEZ, Mundra.

**14.2** I find that CIU, Mundra, hold the cargo covered under the said Bill of Entry No. 9280568 dated 18.12.2023 for detailed examination. Examination of the goods covered under said BE was carried out by the officer of CIU, Custom House Mundra along with empanelled Chartered Engineer Shri Varun Chandok under Panchnama dated 28.12.2023. Empanelled Chartered Engineer Shri Varun Chandok has submitted their inspection cum valuation report in which they have reported that the year of manufacture of the CT scanner and IABP CS100 and Accessories are 2006 & 2005 respectively. The CE has also worked out the valuation of the consignments considering the prevailing market rate are Rs. 81,89,092/- whereas the importer has declared the value of the imported goods Rs. 39,05,766.53/-

**14.3** I find from the report(s) submitted by the empanelled Chartered Engineer Shri Varun Chandok, that the importer has mis-declared the description as well as value of the goods and also mis-classified the same under CTH 90189099 instead of CTH: 90221200. I find that Shri Pranjal Sharma, Vice president of the importer company M/s. S B M Healthcare (India) Pvt Ltd also admitted in their statement that the goods covered under Bill of Entry declared as CT Scan Machine and is rightly classifiable under CTH 90221200.

**14.4** I find that the importer has declared and classified the said goods i.e. (i) Philips Gemini GXL 16 Slice Pet CT (1 Set) (Old and Used) and (ii) IABP CS100 and Accessories (1 Set) (Old and Used) under CTH: 90189099. However, as per Section XVIII, under Chapter 90 of Custom Tariff Act, 1975, Goods i.e. CT scanner is rightly classified under the CTH 90221200. Therefore, it appeared that the importer has wrongly classified the Goods i.e. Philips Gemini GXL 16 Slice Pet CT (1 Set) (Old and used) under CTH 90189099 instead of CTH: 90221200.

**14.5** Further I find that the policy condition for import of goods falling



under CTH: 90221200 was revised vide Notification No. 03/2015-2020 dated 16.04.2018 issued by DGFT, wherein, the import of goods under subject CTH are permitted subject to Atomic Energy Act, 1962, and Rules thereunder. Furthermore, in this regard, Atomic Energy Research Board vide their letter Ref. No. AERB/RSD/MDX/Service Agencies-RR/2015 dated 18.09.2015 has clarified vide condition No. 2(iii) regarding import of pre-owned medical diagnostic x-ray equipment, which is reproduced below:

*"The pre-owned medical diagnostic x-ray equipment, which is more than **seven years old**, shall not be imported in the country. However, the used diagnostic xray equipment, which is not more than **ten years old**, may be permitted for import by original equipment manufacturer (OEM) or OEM authorized agency in the country for refurbishment prior to supply to the end-user(s)".*

15. In the present case, I find that the said CT Scanner Machine (which is more than seven-year-old as per the Chartered Engineer's report) is not permitted for import as per policy condition of CTH: 90221200 and AERB letter dated 18.09.2015. The importer has violated the policy condition prescribed for import of goods falling under CTH 90221200 vide Notification No. 03/2015-2020 dated 16.04.2018 issued by the DGFT. Therefore, the same is liable for confiscation under Section 111 (d) of the Customs Act, 1962. Further, the importer has mis-declared the description as well as value of the goods and also mis-classified the same under CTH 90189099 instead of CTH: 90221200. Accordingly, the same is liable for confiscation under Section 111 (m) of the Customs Act, 1962.

16. I find that the value of the impugned goods covered under Bill of Entry No. 9280568 dated 18.12.2023 is on a lower side and thus the declared value is required to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962. The value of the imported goods is liable for redetermination in accordance with the report submitted by the CE, as per Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 i.e. 'Residual Method'. Also, the Bill of Entry is liable to be re-assessed, accordingly, under section 17(4) of the Customs Act, 1962.

17. I find that the goods were found mis-declared in terms of description, valuation and classification, the assessable Value declared by the importer is liable to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Further, I find that the importer has mis-declared/mis-classified the goods to avoid payment of higher rate of customs duty. The importer has, by his acts of omission, rendered the goods having total value of **Rs. 81,89,092/-** provided by Empanelled Chartered Engineer is liable for confiscation under section 111(d) & 111(m) of the Customs Act, 1962 and is, therefore, also liable for penalty under section 112(a)(i) of the Customs Act, 1962.

18. I find that the importer while filing the impugned Bill of Entry has subscribed to a declaration regarding correctness of the contents of Bill of

Entry under Section 46(4) of the Act, *ibid.* Further, Section 46(4A) of the Act, casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. In the instant case, the importer failed to discharge the statutory obligation cast upon him and made wrong declaration about the description & CTH of imported goods.

19. Section 125 of the Customs Act, 1962 are attracted for redeeming the confiscated goods on payment of redemption fine. The importer has requested for re-export of the goods. I find it appropriate to allow re-export of the subject goods subject to redemption under section 125 of the Customs Act, 1962. As per settled legal position, for ascertaining appropriate quantum of redemption fine, margin of profit is required to be considered. Having held that goods can be redeemed on payment of Redemption fine and considering the fact that importer has agreed to re-export the goods, I deem it fit not to subject the impugned case through the rigors of redemption fine. Since goods are being re-exported and not allowed to be cleared for home consumption, this prohibits the importer from deriving any benefit out of domestic sale and thereby doing away with margin of profit. Further, the importer is bound to incur expenditure on arranging re-export of the goods. In such circumstances I am of the opinion that a lenient view may be taken while imposing redemption fine. Accordingly, considering facts and circumstances of the case the quantum of redemption fine is required to be ascertained.


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

#### ORDER

- i. I reject the classification 90189099 of the impugned goods under imported vide Bill of Entry No. 9280568 dated 18.12.2023 and order to reclassify same under CTH 90221200 of Customs Tariff Act, 1975.
- ii. I reject the declared value Rs. 39,05,766.53/- of the imported goods covered under Bill of Entry No. 9280568 dated 18.12.2023 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- iii. I order to re-determine the value of the imported goods as Rs. 81,89,092/- under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and also order to re-assess the subject bill of entry accordingly under Section 17(4) of the Customs Act, 1962.
- iv. I order to confiscate the goods imported vide Bill of Entry No. 9280568 dated 18.12.2023 having assessable value of Rs. 81,89,092/- (Rupees Eighty-One Lakhs Eighty-Nine Thousand and Ninety-Two Only) under Section 111(d) and 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of Redemption Fine Rs.7,00,000/- (Rs. Seven Lakh Only) in lieu of confiscation under section 125 of the Customs Act 1962 for re-export purpose.

v. I impose a penalty of Rs.1,50,000/-(Rs. One lakh Fifty Thousand Only) upon the importer M/s. S. B. M. Healthcare (India) Private Limited under section 112(a) (i) of the Customs Act, 1962.

**21.** This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

  
(ARUN KUMAR)  
ADDITIONAL COMMISSIONER (IMPORT)  
CUSTOMS HOUSE, MUNDRA

F. No. CUS/APR/MISC/5213/2024-Gr 5-6

12-06-2024

To,

M/s. S. B. M. Healthcare (India) Private Limited,  
12-H, Gopala Tower, Rajindra Place,  
New Delhi-110008

**Copy to: - For information and necessary action, if any**

- (1) The Deputy/Assistant Commissioner (RRA), Custom House, Mundra
- (2) The Deputy/Assistant Commissioner (TRC), Custom House, Mundra
- (3) The Deputy/Assistant Commissioner (EDI), Custom House, Mundra
- (4) Guard File.