

	सीमा शुल्क के प्रधान आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone No.02838-271165/66/67/68 FAX.No.02838- 271169/62, Email-adj-mundra@gov.in	 आजादी का अमृत महोत्सव
A. File No.	: GEN/ADJ/COMM/388/2023-Adjn-O/o Pr. Commr-Cus-Mundra	
B. Order-in-Original No.	: MUN-CUSTM-000-COM- 026 -24-25	
C. Passed by	: K. Engineer, Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order and Date of issue:	: 29.10.2024. 29.10.2024	
E. SCN No. & Date	: SCN F. No. GEN/ADJ/COMM/388/2023-Adjn-O/o Pr. Commr- Cus-Mundra, dated 02.11.2023.	
F. Noticee(s) / Party / Importer	: M/s. Johnson Controls-Hitachi Air Conditioning India Limited (IEC-0888020503), Hitachi Complex, Karan Nagar, Kadi, Dist. Mehsana, Gujarat-382727	
G. DIN	: 20241071M0000061136C	

1. यह अपील 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 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-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 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

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

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ - / 1000रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किन्तु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंच आहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मद्दसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ छूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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

BRIEF FACTS OF THE CASE:

M/s. Johnson Controls-Hitachi Air Conditioning India Limited (IEC-0888020503), Hitachi Complex, Karan Nagar, Kadi, Dist. Mehsana, Gujarat-382727 (hereinafter referred as 'the Importer' for the sake of brevity) are engaged in manufacturing of Air Conditioners including other electronics equipment and importing PCB Assembly, one of the raw material for manufacturing of Air Conditioners. M/s Johnson Controls-Hitachi Air Conditioning India Limited has imported goods declaring as "PCB Assembly (Part of Air Conditioner)" under CTH-85371000 vide Bill of Entry No.6311083 dated 18.11.2021 through their CHA M/s. Babaji Shivram Clearing & Carriers Pvt. Ltd. The goods were consigned from M/s Johnson Controls- Hitachi Components, Thailand.

2.1. The officers from Docks Examination, Custom House, Mundra had observed that the importer has sought clearance of "PCB Assembly (Part of Air Conditioner)" under CTH-85371000 through Bill of Entry No.6311083 dated 18.11.2021. It was further observed that the goods were originated from Thailand and the Importer had claimed benefit of Custom Notification No.46/2011 dated 01.06.2011 (Preferential Trade Agreement between ASEAN and Republic of India) by claiming 100% exemption on BCD. The details of goods as per declaration in the Bill of Entry No.6311083 dated 18.11.2021 is as under:

Table-I

(Amount in INR)

BE No. & date	Description of goods & CTH Declared	Qty. Of Goods	Ass. Value of goods	Duty Rates	Duty Paid
6311083 dated 18.11.2021	PCB Assembly (Part of Air Conditioner)" CTH -85371000	5140.69 Kgs	9911054	BCD- 0% SWS:10% IGST:18%	25,59,655/-

2.2. On examination of the documents submitted by the importer at the time of clearance of the said imported goods, it was noticed that the imported goods were "Parts of Air Conditioner" and the importer had also mentioned the same in the description of goods in the import Documents.

2.3. To further ascertain the classification of the subject goods, the data available on NIDB portal was searched. It was noticed that the same goods had been assessed under CTH-84159000 and had been cleared from various ports into India by different importers.

2.4. Chapter Heading 8537 covers:

BOARDS, PANELS, CONSOLES, DESKS, CABINETS AND OTHER BASES, EQUIPPED WITH TWO OR MORE APPARATUS OF HEADING 85.35 OR 85.36, FOR ELECTRIC CONTROL OR THE DISTRIBUTION OF ELECTRICITY, INCLUDING THOSE INCORPORATING INSTRUMENTS OR APPARATUS OF CHAPTER 90, AND NUMERICAL CONTROL APPARATUS, OTHER THAN SWITCHING APPARATUS OF HEADING 85.17.

Thus, heading 8537 does not cover parts of Air Conditioner:

2.5. Further, Chapter Heading 8415 covers:

AIR CONDITIONING MACHINES, COMPRISING A MOTOR-DRIVEN FAN AND ELEMENTS FOR CHANGING THE TEMPERATURE AND HUMIDITY, INCLUDING THOSE MACHINES IN WHICH THE HUMIDITY CAN NOT BE SEPARATELY REGULATED.

It appeared from the above that there is specific entry under CTH-84159000 for the Parts of Air Conditioner in Customs Tariff Act, 1975.

2.6. The importer has cleared the same goods in past as well and it was observed that the same goods were classified under CTH-84159000 by the same importer and they had paid appropriate duty in that case under correct CTH-84159000 as evident from Bill of Entry No. 2467620 dated 22.01.2021, 2472806 dated 23.01.2021 etc. Further, import documents pertaining to previous Bill of Entry No. 2467620 dated 22.01.2021 uploaded in e-sanchit were checked and it was noticed that the CTH for the same goods were mentioned as 84159000 in COO Certificate bearing Reference No.AI2020-0046497 dated 18.12.2020 issued by Department of Foreign Trade Government of Thailand. Hence, it was evident that it was in the knowledge of the importer that the subjected goods is rightly classifiable under CTH-84159000 wherein duty attracting @ (BCD10% + SWS 10% + IGST 28%).

2.7. In spite of above fact, the importer changed the CTH and started to classifying the goods under CTH-85371000 wherein duty attracting @ (BCD-7.5% +SWS-10%+ IGST-18%) and paid lesser duty. The Customs duty structure in respect of CTH-84159000 of the Customs Tariff prevailing at the material time is as under:

CTH	Duty Paid
84159000	i. Basic Customs Duty:10%; ii. SWS: 10%; iii. IGST: 28%

In view of the above, it appeared that subject goods namely "PCB Assembly (Parts of Air Conditioning Machine)" covered under Bill of Entry No.6311083 dated 18.11.2021 was rightly classifiable under CTH-84159000 instead of under CTH-85371000. In view of the above facts, the present matter was forwarded to SIIB Section for further detailed investigation.

3. During, the course of investigation summons dated 11.01.2022 was issued to the CHA M/s. Babaji Shivram Clearing & Carriers Pvt. Ltd. and in response to the said summons, Shri Ravi Bhatt, G-Card Holder of CHA M/s. Babaji Shivram Clearing & Carriers Pvt. Ltd., Gandhidham appeared on 18.01.2022 to tender his statement and a statement was recorded on the same day wherein he *inter alia* stated that:

"They started the work of M/s Johnsons controls from July-2021 and as per contract dated 19.07.2021, the main condition was to act as an independent third party agent for company in the provisions of customs brokerage services in furtherance to company's importation/ exportation of merchandise into/from India. He had provided copies of KYC documents viz. PAN card, GSTIN and IEC copies of the importer. The Bill of Entry No. 6311083 dated 18.11.2021 for M/s Johnson Controls- Hitachi Air Conditioning India Ltd., was filed by M/s Babaji Shivram Clearing and Carriers Pvt., branch office Gandhidham. He had also provided details of BE's filed by their company in Excel sheet. The importer, M/s Johnson Controls- Hitachi Air Conditioning India Ltd. finalized the Classification of imported goods. On the basis of documents and approval of check list given by the importer they file BE's, there was no such role of their firm in deciding product description/ classification and valuation of the goods. As per the contract the importer was manufacturing Air Conditioner and other allied products. He was not a technical person and the importer has final authority to decide the classification of the parts/ machine imported by them as per end use of said parts. As per my knowledge the importer was manufacturing final products as

"Air Conditioner". He knew that mis-classification of CTH of the goods is an offence under Customs Act, 1962."

3.1. Summons dated 11.01.2022 was also issued to the importer M/s Johnson Controls- Hitachi Air Conditioning India Ltd. and in response to the said summons, Shri Kansara Hiren, Manager (EXIM) of the importer appeared on 24.01.2022 to tender his statement and a statement was recorded on the same day wherein he *inter alia* stated that:

They have well-structured teams who are taking care of Import & Export documentations separately. Both the teams are headed by him under logistics function and he reports to Vice President Logistics whose name is Sh. Kapil Malhotra. The team under him in import logistics checks and confirms the Bill of Entry contents via checklist and then the same has been confirmed to Customs Broker which is M/s Babaji Shivram Clearing and Carriers Pvt. Ltd., branch office Gandhidham. The CB M/s Babaji Shivram Clearing and Carriers Pvt. Ltd. has started the work of M/s Johnsons Controls from August-2021 and as per contract dated 19.07.2021, the main terms are "appointment of CHA for JCH-IN for Custom brokerage services of importation/ exportation of merchandise into /from India. Earlier CB was M/s Fly Jack Logistics Pvt. Ltd. and the appointment of CB are done by Procurement Division through RFQ/Tender processing and he was not aware of any reason for changing of CB. The decisions of classification of imported goods/ parts have been finalized by their taxation team and details given by them to his import team and on that basis they check and finalize Classification of imported goods. M/s Johnson Controls-Hitachi Air Conditioning India Limited is basically an Air Conditioner manufacturing company. They have complete facility for manufacturing of Air-Conditioners. They have various divisions starting from Inward Store where raw material is stored and further feeding to production line according to production advices. Then they have Production process which includes mainly Coil Shop, Sheet Metal Shop, Injection Moulding Shop and Assembly Line. Then the finished goods goes through various quality checks and then the final products goes to outward logistics for distribution to the market. The main products and classification which they import are as under:

Sr. No.	Item	CTH classified by company	BCD on imports
1	Rotary Compressors	84148011	15%
2	Scroll Compressors	84148011	15
3	Copper Tubes	74111000	0% under FTA
4	Aluminium Foils/ Aluminium Fin-stock	76071190	0% under FTA for Malaysia + ADD (449 \$ per ton)
5	AC Fan Motors	85013119	10%
6	Valves	84818090	0% under FTA
7	PCB A	85371000	0% under FTA
8	Electrical Part Reactors	85045090	7.5%
9	IDU/ODU	84159000	20%

Their final products are various types of Air Conditioners, Package type of Air Conditioners and Chillers. The classification is basically decided by his import team under his supervision. The items mainly PCB-A and Reactors are basically introduced in 2015 at the time of implementation of new invertor technology in Air Conditioners. Both these products were earlier classified under CTH-

84159000 by them but during the month of February-2021, there was a HS Code Re-Validation Drive for import parts to appropriate the CTH. During the Drive, they could able to identify that "PCB-A" and "electrical part Reactor" can be re-classified into individual CTH of 85371000 and 85045090 respectively. There was a discussion session held between their EXIM Legal Expert and their Design and Development team during February-2021 for PCB-A and July-2021 for electrical part Reactor for technical evaluation and understanding in terms of HS Code interpretation and definitions. He was part of that discussion where they discussed technical aspects and end use analysis and other parameters were discussed before re-classification of both the products. Though, he was present in that meeting but he was not part of technical discussion as it is not related to his portfolio. There is no change in End Use before or after the re-classification of PCB-A and electrical part Reactor. Both products are being used exclusively in Invertor Type Air Conditioners. With reference to the correct CTH i.e. 8415 for the parts of Air Conditioner and not the CTH 8537 or 8504; he submitted that as per the technical advisory, he had received from his EXIM Legal experts they have correctly classified the PCB-A and electrical part Reactor to 85371000 and 85045090 respectively. He knew that misclassification of CTH of the goods is an offence under Customs Act, 1962. There were many suppliers of main parts of Air Conditioners, however main suppliers are as under:

Sr. No.	Item	Name of supplier	Country
1	Rotary Compressors	Highly International (Hongkong) Ltd.	China
2	Scroll Compressors	Emerson Electric (Thailand) Ltd.	Thailand
3	Copper Tubes	Hong Kong Hailiang Metal Trading Ltd.	Vietnam
4	Aluminium Foils/ Aluminium Fin stock	Alcom Nikkei Specialty Coatings Sdn Bhd	Malaysia
5	AC Fan Motors	Welling International Hongkong Limited	China
6	Valves	Dunan Metals (Thailand) Co. Ltd.	Thailand
7	PCB A	Johnson Controls-Hitachi Components (Thailand)	Thailand
8	Electrical Part Reactors	Hefei Augewei Electronic Technology Co Ltd	China
9	IDU/ODU	Qingdao Hisense Hitachi Air-Conditioning	China

3.2. The importer vide letter dated 19.01.2023 submitted documents related to import of "Parts of Air conditioner" made from Mundra Customs Port during the period 01.05.2021 to 10.01.2022 alongwith details of payment made against the imports.

3.3 The importer further vide letter dated 31.01.2022 submitted (i) details of previous Bills of Entry along with payment of duty thereon, (ii) Confirmation issued by legal consultant with regards to the correct classification for 'PCB-A' and 'Electric Part-Reactor' and (iii) List of related parties.

3.4 The relevant part of Legal Opinion given by M/s. Ram Corp, Tax Consultants & Advocates dated 27.01.2022 is produced hereunder:

Opinion on classification of Controller Assembly in the form of PCB

Introduction:

Johnson-Hitachi India wishes to understand the correct HSN classification for Controller Assembly in the form PCB (Printed Circuit Board) based on the discussions held on 8th Feb, 2021.

Background

Controller Assembly in the form of PCB

The IDU controller PC consists of the following function:

1. Fan Motor controller
- a. For AC fan - based on relay
- b. For DC fan - based on IGBT based controller
2. Stepper motor driver for swing motor
3. Power Relay to switch-on Outdoor unit
4. Temperature sensors (Room sensor & Evaporator coil sensor)
5. Microcontroller
6. Other low voltage power supplies

Regulatory Framework

The PCBs for outdoor unit is populated with various active and passive components such as fuse, surge absorber, over voltage protection, sensors etc. The main function of the said PCB is to control the functioning of the compressor to maintain the temperature at the desired level. These PCBs receive signal for indoor unit PCB with regard to desired room temperature and prevailing room temperature. Thereafter, these PCBs sense the temperature prevailing outside the room and accordingly control the compressor.

Heading 8537 states that boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of Heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of Chapter 90, and numerical control apparatus, other than switching apparatus of Heading 8517.

Explanatory Notes of Heading 8537 of HSN includes programmed switchboards within the ambit of Heading 8537. Relevant extract of HSN is produced below:-

AUTOMATIC REGULATORS OF ELECTRICAL QUANTITIES, AND INSTRUMENTS OR APPARATUS FOR AUTOMATICALLY CONTROLLING NON-ELECTRICAL QUANTITIES THE OPERATION OF WHICH DEPENDS ON AN ELECTRICAL PHENOMENON VARYING ACCORDING TO THE FACTOR TO BE CONTROLLED.

The automatic regulators of this heading are intended for use in complete automatic control Systems which are designed to bring a quantity electrical or non-electrical, to, and maintain it at, a desired value, stabilized against any disturbances, by constantly or periodically measuring its actual value. They consist essentially of the following devices:

- (A) A measuring device (sensing device, converter, resistance probe, thermocouple, etc.) which determines the actual value of the variable to be controlled and converts it into a proportional electrical signal.
- (B) An electrical control device which compares the measured value with the desired value and gives a signal (generally in the form of a modulated current).
- (C) A starting, stopping or operating device (generally contacts, switches or circuit breakers, reversing switches or, sometimes, relay switches)

which supplies current to an actuator accordance with the in signal received from the control device.

An automatic regulator within the meaning of Note 7 (b) to this Chapter consists of the devices described in (4), (B) and (C) above, whether assembled together as a single entity or in accordance with Note 3 to this Chapter, a functional unit.

If they do not conform to the definitions outlined above, these devices are to be classified as follows:

- (1) Electrical measuring devices generally fall in heading 90.25, 90.26 or 90.30.
- (2) Electrical control devices are to be classified in this heading as incomplete automatically controlling instruments or apparatus.
- (3) Starting, stopping or operating devices are generally to be classified in heading 85.36 (switches, relays, etc.).

Automatic regulators are connected to an electrical, pneumatic or hydraulic actuator; which brings the controlled variable back to the desired value. This actuator may be the clamps which adjust the gap between the electrodes of an arc furnace, the motorized valve which controls the intake of water or steam a boiler, a furnace, a pulping machine, etc.

The actuators are to be classified in their own appropriate headings (adjustable clamp: heading 84.25; motorised or solenoid valve: heading 84.81; electro-magnetic positioner: heading 85.05; etc.). If the automatic regulator is combined with the actuator; the classification of the whole is to be determined under either Interpretative Rule 1 or Interpretative Rule 3 (b) (see Part (H) of the General Explanatory Note to Section XVI and the Explanatory Note to heading 84.81).

Electronic regulators function on a strictly electrical principle, and not electro-mechanically. Their characteristic features are semiconductors (transistors) or integrated circuits. These regulators are used not only for electrical quantities, such as voltage, amperage, frequency and power; but also for other quantities such as revolutions per minute, torque, traction force, level, pressure, flow or temperature.

This heading also excludes:

- (a) Cut-outs combined, in a single housing, with a voltage regulator or a current regulator, for use in conjunction with internal combustion piston engines (heading 85.11)
- (b) "Programmable controllers" of heading 85.37.

General Rules for Interpretation for Classification of Goods

It is stated that referring to Rule 1 & 3(a) of General Rules for Interpretation of the Customs Tariff Act, 1975 which has been reproduced below:

"1. 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:

.....

3. When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be affected as follows:

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

It is stated that Under Rule 3(b), you should classify a composite item or set as if they consisted of the material or component that gives them their essential character. In other words, the person classifying the product must determine what the essential character of the product is and then determine the classification as if it consisted solely of that product giving it its essential character.

The factors that determine essential character will vary depending on the type of good. Some of these factors can be:

The nature of the material or component.

The primary function of the product and which component contributes the most to this function.

In terms with Rule 3(a) of Rules of the interpretation, the heading which provides the most specific description shall be preferred to headings providing a more general description.

Conclusion

As per the Explanatory Notes & the Rule 1 & 3(a) General Rules of Interpretation the items can be appropriately classified under the Tariff Heading 8537 1000.

Since the Tariff Heading '8537 1000' is more specific than the heading 84159000 therefore the company can classify the goods in question under the heading 8537 1000.

Opinion on classification of Reactors

Introduction

Johnson-Hitachi India wishes to understand the correct HSN classification for Reactors based on the discussions held on 20th July 2021.

Background

JCH India is engaged in the business of manufacturing inverter split air conditioners for which they import various items including the item in question reactors.

Reactors are electro-magnetic devices which consist of a steel core wrapped with copper coils that are used to protect motors and Variable Frequency Drives (VFDs). Installation of reactors limits exposure to power system surges and fluctuations. They also boost up the input voltage during any dip in voltage supply. Reactors can prevent overvoltage trips, increase the reliability and life span of the VFD, improve total power factor, and reduce nuisance tripping.

Regulatory Framework

Since the item reactors' are mainly used to protect the motor from voltage spikes and also to maintain the frequency of current in case there is any dip in current supply. The Heading 8504 provides for electrical transformers, static converters (for example, rectifiers) and inductors. Sub-heading 850450 specifically provides for inductors which are nothing but an insulated wire wound into a coil.

Referring to Heading 8504 which provides for electrical transformers, static converters (for example, rectifiers) and inductors. Sub-heading 850450 specifically provides for inductors which are nothing but an insulated wire wound into a coil.

Explanatory Notes of Chapter 8504 of HSN define the term "inductor" as:

*These consist **essentially of a single coil of wire which**, inserted in an AC circuit, **limits or prevents by its self-induction the flow of the AC**. They vary from small chokes used in wireless circuits, instruments, etc., to large coils often mounted in concrete, used in power circuits (e.g., for limiting the flow of current in the event of a short circuit). Inductors or inductances obtained in the form of individual components by a printing process remain classifiable in this heading.*

In the present case also, imported reactors are also just coils of copper wire whose main purpose is to protect from harmful power surges. Thus, these reactors are noting but inductors that are specifically provided in Heading 8504. Thus, the correct classification of these inductors would be Tariff Item No. 8504 5090 of Custom Tariff.

General Rules for Interpretation for Classification of Goods

It is stated that referring to Rule 1 & 3(a) of General Rules for Interpretation of the Customs Tariff Act, 1975 which has been reproduced below:

"1. 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:

.....
*3. When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:*

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

It is stated that Under Rule 3(b), you should classify a composite item or set as if they consisted of the material or component that gives them their essential character. In other words, the person classifying the product must determine what the essential character of the product is and then determine the classification as if it consisted solely of that product giving it its essential character.

The factors that determine essential character will vary depending on the type of good. Some of these factors can be:

The nature of the material or component.

The primary function of the product and which component contributes the most to this function.

In terms with Rule 3(a) of Rules of the interpretation, the heading which provides the most specific description shall be preferred to headings providing a more general description.

Classification & Analysis

As per the Explanatory Notes & the Rule 1 & 3(a) General Rules of Interpretation the items can be appropriately classified under the Tariff Heading 85045090 and it will be subject to nil BCD under Notification No.46/2011-Cus dated 01.06.2011.

Since the Tariff Heading 85045090 is more specific than the heading 84159000 therefore the company can classify the goods in question under the heading 85045090.

3.5. In continuation of the above submission, the importer further made another submission vide letter dated 17.05.2022 wherein they submitted that:

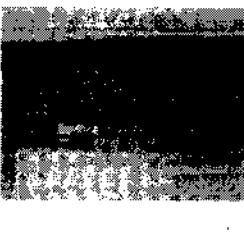
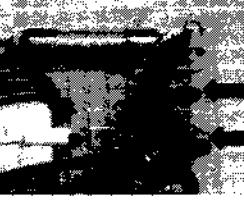
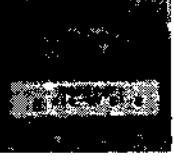
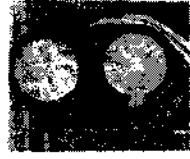
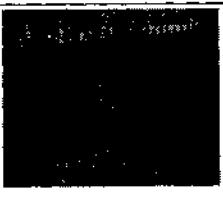
1.1 *Johnson Controls-Hitachi Air Conditioning India Ltd (hereinafter referred as the "company") having IEC no. 088820503 and office at 'Hitachi Complex', Karannagar Village, Kadi, Gujarat. The company is engaged in the business of manufacturing of Air Conditioners. Thus, to carry on the manufacturing process, the company regularly imports PCB for Outdoor unit of the Air Conditioners and classifies them under Tariff Item No.85371000 of First Schedule of the Customs Tariff Act, 1975 by claiming concessional rate of duty under Sr. No.1429 of Notification No. 46/2011-Cus. dated 01.06.2011.*

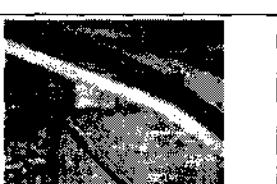
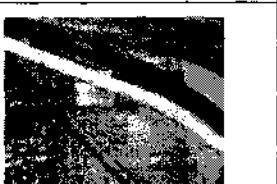
1.2 *In furtherance of Summons (reference no. CBIC-DIN-20220171MO0000818318) dated 11.01.2022, the Company is hereby submitting submissions inter alia incorporating Individual functioning of parts of PCB, Technical write up of functioning PCB in the inverter split Air Conditioner as well as the rationale behind classification of PCB under Tariff Item No. 85371000 of First Schedule of the Customs Tariff Act, 1975.*

2.1 *The PCBs that are installed in the inverted AC comes in a set, consisting of two PCBs. These are populated and mounted circuit boards, populated with various active and passive components. One is installed in the indoor unit and the other one is installed in the outdoor unit. The indoor unit PCB receives signal of the desired room temperature and senses the existing room temperature and accordingly sends the signal to the PCB that is installed in the outdoor unit. The outdoor unit PCB sense the outside room temperature and then after analysing all the variables i.e. signals from indoor unit PCB and outside room temperature, controls the functioning of the DC compressor or DC motor that is fitted in outdoor unit. Both these PCBs functions together to maintain the desired room temperature continuously by smoothly changing the RPM of the compressor. A write up of functioning PCB in the inverter split Air Conditioner is marked and enclosed as Annexure-1.*

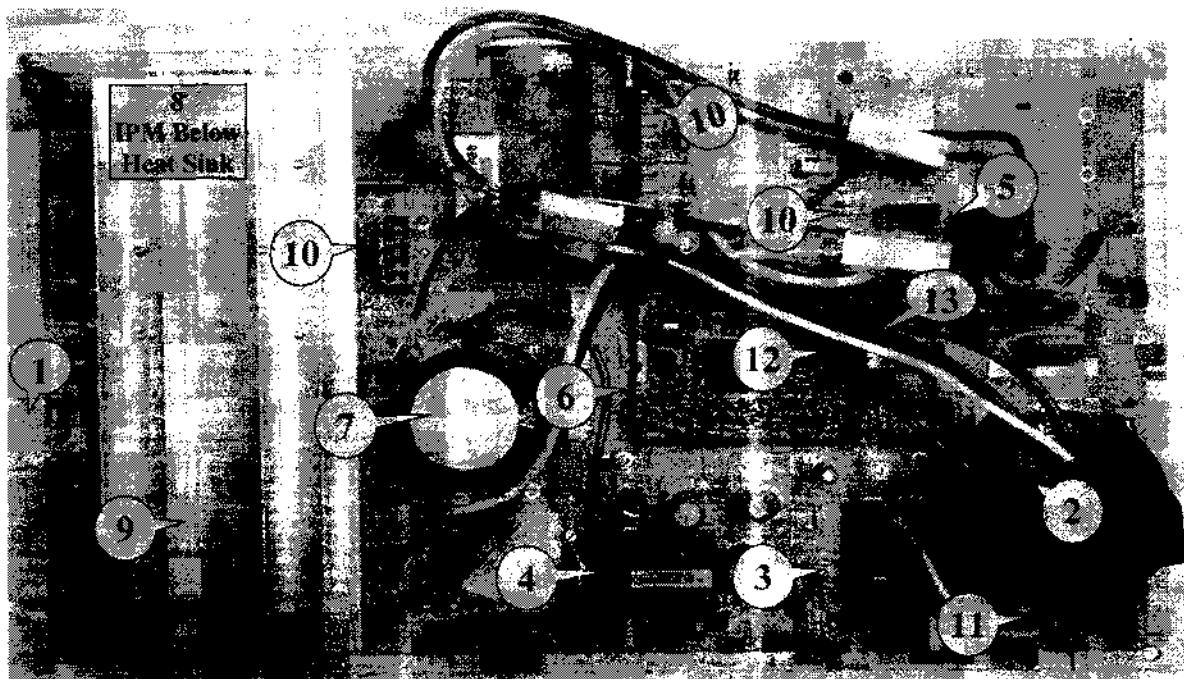
2.2 Both these PCBs cannot function without the other PCB. In the present situation the queries is only importing the outdoor unit PCB. In as import condition the outdoor unit PCB is populated with and consist of following components:

Individual Functioning of parts:

Sr. No.	Part Name	Individual Part Image	Functioning of individual part
1.	Fuse		25-Amps fuse available for Over current protection. In case of Short-circuited in the PCBA, there will be enormous amount of current flowing through the PCBA. So to protect the other Electronics components from damage, Fuse is connected in power supply section which blows up & protects the other Electronic components.
2.	MOV (Metal Oxide Varistor)		MOV is available for the Over voltage protection / Surge protection. This Protection circuit active & will give command to stop machine. It will protect the other electronic components in case of the Overvoltage condition more than 265 VAC.
3.	SWT (Switching Transformer)		Switching Transformer is used to convert the High DC input voltage to Low DC voltage to provide supply to other circuit like relays, sensors etc.
4	Noise Filter Coil		Noise Filter is used to reduce or avoid the electrical noise coming from the AC input line, so that it may not damage other electrical components
5.	Ferrite Core		Ferrite Core is used to reduce Electrical line noise. So that machine could not affect other home appliances operations.
6.	Hitachi Interfacing Circuit Board (HICB)		HICB is called as "Heart of PCB". Continuous Communication done between IDU ~ ODU & control machine operation as per requirement of precise Cooling
7.	DC VOLTAGE - Burst Filter Capacitor		DC VOLTAGE - Burst Filter Capacitor is used to remove Burst (ripple) Noise from DC Voltage rectified by Diode
8.	IPM - Intelligent Power Module		IPM is used to control the speed of the compressor motor to continuously maintain the required set temperature.

9.	Heat Sink for 'IPM'		Heat sink for 'IPM' is used to maintain electronic component temperature up to safe limit & protect them from damage/malfunction.
10.	Connector		Mainly the other devices like Compressor, ODU Fan motor, Expansion Valve, Ambient Sensor, OH Thermistor sensor, Reactor is connected to the Outdoor Inverter board through this port connectors via cable harness.
11	Surge Absorber		The Function of the Surge Absorber is to avoid the High voltage spikes received from the Input Supply Line phase so that the other components on the PCBA are not damaged.
12	Overheat Sensor (OH Sensor - White Connector)		The Function of the OH Sensor is to sense the actual temperature of the Compressor at the time of its functioning & send the temperature data to the Micro controller.
13	Ambient Sensor (Red Connector)		The Function of the Ambient Sensor is to sense the actual outdoor ambient temperature at the time of its functioning & send the temperature data to the Micro controller.

The picture of PCB in as imported condition is produced below –



The PCB is installed in the outdoor unit of the air conditioner. The illustrative diagram of outdoor unit showing the position of PCB is extracted below –



2.2 The PCBs for outdoor unit is populated with various active and passive components such as fuse, surge absorber, over voltage protection, sensors etc. The main function of the said PCB is to control the functioning of the compressor to maintain the temperature at the desired level. These PCBs receive signal for indoor unit PCB with regard to desired room temperature and prevailing room temperature. Thereafter these PCBs sense the temperature prevailing outside the room and accordingly controls the compressor.

2.3 As per General Rules for Interpretation ('GI Rules') Rule 1, the goods are to be classified in accordance with the applicable chapter notes and section notes.

General Rules for the Interpretation of the Harmonized System, Rule 1

1. 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:

2.4 Note 2 (a) to Section XVI which covers Chapter 84 and 85 within its ambit provides that the parts which are goods included in headings of Chapter 84 or 85 are to be classified in their respective headings. Thus, as per the Note 2 (a) when parts are specifically provided as a good in any of the Heading of Chapter 84 or 85 then the same has to be classified under the heading and not as part of the machinery.

Relevant Notes to Section XVI:

"NOTES :

1. This Section does not cover :

...

(m) articles of Chapter 90;

...

2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules :

(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517, and parts which are suitable for use solely or principally with the goods of heading 8524 are to be classified in heading 8529;

(c) all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8485 or 8548.

2.5 The Chapter Notes to Chapter 85 states that,

“2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules :

(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. [However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517, and parts which are suitable for use solely or principally with the goods of heading 8524 are to be classified in heading 8529];

(c) all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8485 or 8548.”

Heading 8537 provides for:

8537		<u>BOARDS, PANELS, CONSOLES, DESKS, CABINETS AND OTHER BASES, EQUIPPED WITH TWO OR MORE APPARATUS OF HEADING 8535 OR 8536, FOR ELECTRIC CONTROL OR THE DISTRIBUTION OF ELECTRICITY, INCLUDING THOSE INCORPORATING INSTRUMENTS OR APPARATUS OF CHAPTER 90, AND NUMERICAL CONTROL APPARATUS, OTHER THAN SWITCHING APPARATUS OF HEADING 8517</u>
85371000	-	<i>For a voltage not exceeding 1,000 V</i>
85372000	-	<i>For a voltage exceeding 1,000 V</i>

2.6 *Explanatory Notes of Heading 8537 of HSN includes programmed switchboards within the ambit of Heading 8537. Relevant extract of HSN is produced below –*

"Programmed switchboards to control apparatus; these permit variations in the choice of operations to be followed. They are normally used in domestic electrical appliances, such as washing machines and dish washers."

2.7 *In the present case and as described above, imported PCB consist of **fuse** and **surge absorbers**. Fuse and surge absorbers when imported individually are classifiable under Heading 8535 and Heading 8536 depending upon their voltage. Thus, imported PCBs consist of at least two components of Heading 8535 and Heading 8536. Further, imported goods consist of a sensor which senses outside room temperature. Thus, the imported PCB is also mounted with components of Chapter 90.*

2.8 *Further, the PCBs regulate the supply of electricity that is being supplied to the compressor. The PCBs control the speed of the compressor by regulating the supply of electricity to maintain the desired temperature. Thus, the PCBs control the functioning of compressor, by switching on and switching off, as and when required.*

2.9 *HSN to Heading 8537 brings programmed switchboards within its preview. These programmed switch boards are controlling apparatus that permits variations in operation and are used in domestic electrical appliances. Even the imported PCBs are controlling apparatus that maintains the desired temperature and are used in domestic electrical appliances like air conditioners. Thus, even as per the HSN these items are classifiable under Heading 8537.*

"Relevant extract of HSN to Heading 8537

85.37 - Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 85.35 or 85.36, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of Chapter 90, and numerical control apparatus, other than switching apparatus of heading 85.17.

8537.10 -For a voltage not exceeding 1,000 V

8537.20 -For a voltage exceeding 1,000 V

These consist of an assembly of apparatus of the kind referred to in the two preceding headings (e.g., switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc. They usually also incorporate meters, and sometimes also subsidiary apparatus such as transformers, valves, voltage regulators, rheostats or luminous circuit diagrams.

The goods of this heading vary from small switchboards with only a few switches, fuses, etc. (e.g., for lighting installations) to complex control panels for machine-tools, rolling mills, power stations, radio stations, etc., including assemblies of several of the articles cited in the text of this heading.

The heading also covers :

(1) Numerical control panels with built-in automatic data processing machine, which are generally used to control machine-tools.

(2) Programmed switchboards to control apparatus; these permit variations in the choice of operations to be followed. They are normally used in domestic electrical appliances, such as washing machines and dish washers.

(3) "Programmable controllers" which are digital apparatus using a programmable memory for the storage of instructions for implementing specific functions such as logic, sequencing, timing, counting and arithmetic, to control, through digital or analog input/output modules, various types of machines.

The heading does not cover automatic controlling apparatus of heading 90.32."

2.10 Section Note 2 (b) provides that parts which are suitable for use solely or principally with a particular kind of machine needs to be classified along with that type of machine as parts of that machine. However, the said note starts with the words, "other parts". Thus, the said Note 2 (b) will only apply to parts which are not classifiable under any specific heading of Chapter 84 or 85 in accordance with Note 2 (a). Thus, as Heading 8537 specifically covers imported PCBs these will not be classified under Tariff Item No. 84159000 as "part of air conditioners".

2.11 Reliance is placed upon the judgment of ***Hal v. CC [1998 (104) E.L.T. 355]*** where CESTAT, New Delhi observed that PCBs will be classified under Heading 8534 in accordance with Section Note 2 (a) as they are specifically provided under the said heading and not under Heading 8473 as parts. The relevant portion of the judgment is as follows:

"1. The issue involved in this appeal is whether the Printed Circuit Board imported by the appellants are classifiable under Chapter Heading 85.34 of the Customs Tariff Act as claimed by the appellants or under Chapter Heading 84.73 as decided by the Department.

2. *Arguing on behalf of the Appellants the ld. Representative submits that they have imported only Printed Circuit Board and they did not have any computer in which P.C.Bs have been utilised by them. According to him the entire machines were imported under project and subsequently P.C.Bs were imported for the use in their drilling machines. The P.C.Bs are clearly classifiable under separate heading i.e. 85.34 and accordingly it should be classified thereunder and not under 84.73.*

3. *Arguing on behalf of the Revenue the ld. DR. submits that the milling machine is a numerical control machines which in other words means that computer is used for controlling the function of the machine. The P.C.Bs imported by the Appellants are used in the computer and accordingly, the Department has correctly classified these P.C.Bs under Chapter Heading 84.73. He, however, agrees that there is no computer separately in use.*

4. *We have heard both sides, the appellants have emphasised that the P.C.Bs have been specifically mentioned in Heading 85.34. According to Note 2 Section XVI, parts which are goods included in any of the headings of Chapter 84 or 85 (other than Heading Nos. 84.09, 84.31, 84.48, 84.66, 84.73, 84.85, 85.03, 85.22, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings. According to Rule 1 of the Rules for the Interpretation of the Schedule, classification shall be determine according to the terms of the headings and any relative Section of Chapter Notes. It is observed that Heading 85.34 specifically provides for the classification of printed circuits and in the light of Note 2 to Section XVI they have to be classified under the specific heading provided in Chapter 85. The Appellants have also claimed the benefit under Notification No. 91/89-Cus. Availment of the Notification to the appellants have not been considered by the lower authority. The matter has to be examined by the lower authority whether the benefit under notification will be available to the appellants or not. In view of this fact while holding that the Printed Circuit Boards cleared by the appellants will fall under the Heading 85.34, the matter is remanded to the Assistant Commissioner to examine the availability of Notification to the appellants and to provide consequential relief, if any, under the law. The appeal is disposed of accordingly."*

(Emphasis Supplied)

2.12 Thus, PCBs are classifiable under Tariff Item No.85371000 of the First Schedule of the Customs Tariff Act, 1975 along with concessional rate of duty (Nil Basic Customs Duty) under Sr. No.1429 of Notification No.46/2011-Cus. dated 01.06.2011.

3.6 During the course of investigation, a live consignment of the similar goods in question i.e. "PCB for Air Conditioning Machine" imported vide Bill of Entry No.7678158 dated 28.02.2022 was examined and samples were withdrawn. Further, to know the functionality and technical specification of the PCB Assembly for Air Conditioner, the representative samples taken over were inspected and examined by the empanelled Chartered Engineer. The Chartered Engineer submitted Certificate dated 10.06.2022 wherein he submitted the details of the inspection/examination of the above PCB Assembly for Air Conditioner similar to the details provided by the

importer as detailed above wherein they have provided the name and functioning of the each components installed on the above PCB Assembly.

3.7 During the course of investigation, as per the submissions made the importer vide above letter dated 17.05.2022 and Chartered Engineer opinion Certificate dated 10.06.2022 given by Govt. Approved Charter Engineer regarding technical write up of PCBA (parts for Air Conditioner), a letter on 29.06.2022 was written to the importer that as informed by the importer that the PCB Assembly contains Surge Absorber and technical details of individual parts of PCBA along with their images were also given in submission made by them and Chartered Engineer Opinion Certificate. Further, they mentioned that the imported PCB consisted of Fuse and Surge Absorbers which are individually classifiable under heading 8535 or 8536 depending upon their voltage and thus, imported PCB consist of at least two components of Heading 8535 or 8536. Therefore, the part name "**Surge Absorber**" is not defined in chapter heading 8535 or 8536. Accordingly, the imported PCB did not consist at least two apparatus of heading 8535 or 8536. Therefore, the importer was requested to re-examine the submission made by them and requested to provide the clarification regarding classification of the imported PCB Assembly (Parts for Air Conditioner) under CTH 8537100 as claimed by them.

3.8 In response to the above letter, the importer vide their letter dated 07.07.2022 submitted that the term "Surge Absorber"/"Surge Suppressor" are inter-changeable protective devices used to "absorb or suppress" High voltage spikes received from the Input Supply Line phase so that the other components on the PCBA were not damaged. In other words, a surge absorber/suppressor is a protective device that absorbs the high voltage surges and reduces the steepness of the surge wave fronts. The traveling waves set up by the surges on the transmission lines caused due to lightning and electrostatic induction possess an amplitude which has the ability to damage the equipment connected to that line. The damage caused depends not only on the amplitude of the traveling wave but also on the steepness of the wave. More the steepness in the traveling wave, damage caused to the equipment will be more. Thus, in order to reduce the steepness of the surge wavefronts a surge absorber/suppressor is used, thereby minimizing the danger caused due to over voltage's. Further, attention was also drawn at HSN Explanatory Notes to Chapter Heading 8535 wherein "Surge Suppressors" has been defined as:

*"(F) Surge or spike suppressors: These are assemblies of coils, capacitors etc., inserted in series or in parallel with a line or electrical apparatus **to absorb high frequency surges**. Simple coils or capacitors used on their own for this purpose remain classified in their respective headings."*

*Even as per the HSN Explanatory Notes to Chapter Heading 8535, the "Surge Suppressor" is used to absorb high frequency surges and essentially performs the function of suppressing high voltage spikes by absorbing it. Hence, mere difference in terminology does not impact the classification of PCB as it consists of **fuse** and **surge absorbers** which individually are classifiable under Heading 8535 and Heading 8536 respectively. Thus, imported PCBs consist of at least two components of Heading 8535 and Heading 8536 and are rightly classifiable under Tariff Item No.85371000 of First Schedule of the Customs Tariff Act, 1975.*

4. Analysis and Scrutiny of Records/ Documents:

The matter in this case pertains to classification of "**PCB Assembly for Air Conditioners**" in particular to be used in Outdoor Unit of the Air Conditioners. Therefore, it is important to discuss the goods in question in detail i.e. "**PCB Assembly for Air Conditioners**" which is for Outdoor Unit (ODU) of the Air Conditioning Machine as informed by the importer. The importer also informed that similar to the above PCB Assembly, there is one more PCB Assembly which is installed in Indoor Unit (IDU) of the Air Conditioning Machine. The PCBs that are installed in the inverted AC comes in a set, consisting of two PCBs.

4.1 As submitted by the importer and the empanelled Chartered Engineer in his report, as detailed in preceding paras that goods in question i.e. "PCB Assembly" is actually a populated and mounted circuit board, populated with various active and passive components. One is installed in the indoor unit and the other one is installed in the outdoor unit. The indoor unit PCB receives signal of the desired room temperature and senses the existing room temperature and accordingly sends the signal to the PCB that is installed in the outdoor unit. The outdoor unit PCB senses the outside room temperature and then after analysing all the variables i.e. signals from indoor unit PCB and outside room temperature, controls the functioning of the DC compressor or DC motor that is fitted in outdoor unit. Both these PCBs functions together to maintain the desired room temperature continuously by smoothly changing the RPM of the compressor.

4.2 Both these PCBs cannot function without the other PCB. In the present situation the queries is only about import of the outdoor unit PCB. The outdoor unit PCB is populated with and consist of following components:-

Individual Functioning of parts:

Sr. No.	Part Name	Functioning of individual part
1.	<i>Fuse</i>	<i>25-Amps fuse available for Over current protection. In case of Short-circuited in the PCBA, there will be enormous amount of current flowing through the PCBA. So to protect the other Electronics components from damage, Fuse is connected in power supply section which blows up & protects the other Electronic components.</i>
2.	<i>MOV (Metal Oxide Varistor)</i>	<i>MOV is available for the Over voltage protection / Surge protection. This, Protection circuit active & will give command to stop machine. It will protect the other electronic components in case of the Overvoltage condition more than 265 VAC.</i>
3.	<i>SWT (Switching Transformer)</i>	<i>Switching Transformer is used to convert the High DC input voltage to Low DC voltage to provide supply to other circuit like relays, sensors etc.</i>
4	<i>Noise Filter Coil</i>	<i>Noise Filter is used to reduce or avoid the electrical noise coming from the AC input line, so that it may not damage other electrical components</i>
5.	<i>Ferrite Core</i>	<i>Ferrite Core is used to reduce Electrical line noise. So that machine could not affect other home appliances operations.</i>
6.	<i>Hitachi Interfacing</i>	<i>HICB is called as "Heart of PCB".</i>

	Circuit Board (HICB)	Continuous Communication done between IDU ~ ODU & control machine operation as per requirement of precise Cooling
7.	DC VOLTAGE – Burst Filter Capacitor	DC VOLTAGE – Burst Filter Capacitor is used to remove Burst (ripple) Noise from DC Voltage rectified by Diode
8.	IPM – Intelligent Power Module	IPM is used to control the speed of the compressor motor to continuously maintain the required set temperature.
9.	Heat Sink for IPM	Heat sink for 'IPM' is used to maintain electronic component temperature up to safe limit & protect them damage/malfunction.
10.	Connector	Mainly the other devices like Compressor, ODU Fan motor, Expansion Valve, Ambient Sensor, OH Thermistor sensor, Reactor is connected to the Outdoor Inverter board through this port connectors via cable harness.
11	Surge Absorber	The Function of the Surge Absorber is to avoid the High voltage spikes received from the Input Supply Line phase so that the other components on the PCBA are not damaged.
12	Overheat Sensor (OH Sensor - White Connector)	The Function of the OH Sensor is to sense the actual temperature of the Compressor at the time of its functioning & send the temperature data to the Micro controller.
13	Ambient Sensor (Red Connector)	The Function of the Ambient Sensor is to sense the actual outdoor ambient temperature at the time of its functioning & send the temperature data to the Micro controller.

4.2.1. It is evident from above that each of the above components are independent from each other and their operation also different from each other. Further, some of the parts like Ambient Sensor which is actually Temperature Sensor are not directly attached as active components but attached to the board through connector. Therefore, the impugned PCB Assembly is not just printed circuit board but combination of above different type of independent components embedded together to perform specific function of Air Conditioning.

4.2.2. Further, "Hitachi Interfacing Circuit Board" is nothing but an automatic data processing machine which continuously operates and communicate between IDU ~ ODU & control machine operation as per requirement of precise Cooling. Further, as per the working of the components installed on the above board, is also evident that the above so called PSB Assembly is not just Printed Circuit Board but actually the Heart and Soul of the Air Conditioning Machine which is controlling overall activities of all the independent components/parts of the Air Conditioning Machine that makes it most essential and most vital part of the Air Conditioning Machine. Further, the above machine performing a specific function other than data processing and Incorporating or working in conjunction with an automatic data processing machine i.e. overall working of the Air Conditioning Machine.

4.3 The importer was initially importing the "**PCB Assembly for Air Conditioners**" as "**Parts of Air Conditioners**" under CTH-84159000. CTH-

84159000 covers the "**Parts of CTH-8415 which covers Air Conditioning Machines**". CTH-8415 is reproduced as below for ease of reference:

8415	AIR CONDITIONING MACHINES, COMPRISING A MOTOR-DRIVEN FAN AND ELEMENTS FOR CHANGING THE TEMPERATURE AND HUMIDITY, INCLUDING THOSE MACHINES IN WHICH THE HUMIDITY CANNOT BE SEPARATELY REGULATED
8415 10	<i>Of a kind designed to be fixed to a window, wall, ceiling or floor, self-contained or "split-system";</i>
8415 10 10	<i>Split system</i>
8415 10 90	<i>Other</i>
8415 20	<i>Of a kind used for persons in motor vehicles</i>
8415 20 10	<i>For buses</i>
8415 20 90	<i>Other</i>
	<i>Other:</i>
8415 81	<i>Incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle (reversible heat pumps):</i>
8415 81 10	<i>Split air-conditioner two tonnes and above</i>
8415 81 90	<i>Other</i>
8415 82	<i>Other, incorporating a refrigerating unit:</i>
8415 82 10	<i>Split air-conditioner two tonnes and above</i>
8415 82 90	<i>Other</i>
8415 83	<i>Not incorporating a refrigerating unit :</i>
8415 83 10	<i>Split air-conditioner two tonnes and above</i>
8415 83 90	<i>Other</i>
8415 90 00	<i>Parts</i>

4.4 The importer in the month of June-2021, themselves changed the CTH of the above same goods i.e. "**PCB Assembly for Air Conditioners**" under CTH-85371000. CTH-85371000 covers "*Boards, Panels, Consoles, Desks, Cabinets and Other Bases, Equipped With Two Or More Apparatus Of Heading 8535 Or 8536, For Electric Control Or the Distribution Of 85371000 Electricity, Including those incorporating Instruments Or Apparatus Of Chapter 90, and Numerical Control Apparatus*" "**For a voltage not exceeding 1000 V**". CTH-8537 is reproduced as below for better appreciation:

8537	BOARDS, PANELS, CONSOLES, DESKS, CABINETS AND OTHER BASES, EQUIPPED WITH TWO OR MORE APPARATUS OF HEADING 8535 OR 8536, FOR ELECTRIC CONTROL OR THE DISTRIBUTION OF 85371000 ELECTRICITY, INCLUDING THOSE INCORPORATING INSTRUMENTS OR APPARATUS OF CHAPTER 90, AND NUMERICAL CONTROL APPARATUS, OTHER THAN SWITCHING APPARATUS OF HEADING 8517
8537 10 00	For a voltage not exceeding 1,000 V
8537 20 10	For a voltage not exceeding 1,000 V

4.4.1 Further, as per HSN Explanatory Notes to Chapter 85.37, these consist of an assembly of apparatus of the kind referred to in the two preceding headings (e.g. switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk,

etc. They usually also incorporate meters, and sometimes also subsidiary apparatus such as transformers, valves, voltage regulators, rheostats or luminous circuit diagrams. The goods of this heading vary from small switchboards with only a few switches, fuses, etc. (e.g., for lighting installations) to complex control panels for machine tools, rolling mills, power stations, radio stations, etc., including assemblies of several of the articles cited in the text of this heading. The heading also covers:

- (1) Numerical control panels with built in automatic data processing machine, which are generally used to control machine tools.
- (2) Programmed switchboards to control apparatus; these permit variations in the choice of operations to be followed. They are normally used in domestic electrical appliances, such as washing machines and dish washers.
- (3) "Programmable controllers" which are digital apparatus using a programmable memory for the storage of instructions for implementing specific functions such as logic, sequencing, timing, counting and arithmetic, to control, through digital or analog input/output modules, various types of machines.

4.5 As Chapter 8537 covers Boards, Panels, Consoles, Desks, Cabinets And Other Bases, Equipped With Two Or More Apparatus Of Heading 8535 Or 8536 For Electric Control Or The Distribution Of Electricity, Including Those Incorporating Instruments Or Apparatus Of Chapter 90, and Numerical Control Apparatus, Other Than Switching Apparatus Of Heading 8517. It is pertinent to discuss the goods covered by Chapter 8535, 8536 and Chapter 90.

4.5.1 Chapter 8535 mainly covers the following goods:

8535	ELECTRICAL APPARATUS FOR SWITCHING OR PROTECTING ELECTRICAL CIRCUITS, OR FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS (FOR EXAMPLE, SWITCHES, FUSES, LIGHTNING ARRESTERS, VOLTAGE LIMITERS, SURGE SUPPRESSORS, PLUGS, JUNCTION BOXES), FOR A VOLTAGE EXCEEDING 1,000 VOLTS
8535.10	<i>Fuses</i>
	<i>Automatic circuit breakers :</i>
8535.21	<i>For a voltage of less than 72.5 kV</i>
8535.29	<i>Other</i>
8535.30	<i>Isolating switches and make and break switches</i>
8535.40	<i>Lightning arresters, voltage limiters and surge suppressors</i>
8535.90	<i>Other</i>
8535.90.10	<i>Motor starters for AC motors</i>
8535.90.20	<i>Control gear and starters for DC motors</i>
8535.90.30	<i>Other control and switchgears</i>
8535.90.40	<i>Junction boxes</i>

4.5.2 Further, as per HSN Explanatory Notes to Chapter 8535, this heading covers electrical apparatus generally used in power distribution systems. The provisions of Explanatory Note to heading 8536 apply, *mutatis mutandis*, as regards the technical characteristics and the functioning of apparatus for switching or protecting electrical

circuits, or for making connections to or in electrical circuits. The heading covers apparatus of the kinds described in Explanatory Note to heading 8536, when for a voltage exceeding 1,000 volts. These include:

- (A) Fuses and automatic circuit breakers
- (B) Make and break switches
- (C) Lightning arresters.
- (D) Voltage limiters.
- (E) Isolating switches
- (F) Surge or spike suppressors

4.5.3 Chapter 8536 mainly covers the following goods:

8536	ELECTRICAL APPARATUS FOR SWITCHING OR PROTECTING ELECTRICAL CIRCUITS, OR FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS (FOR EXAMPLE, SWITCHES, FUSES, LIGHTNING ARRESTERS, VOLTAGE LIMITERS, SURGE SUPPRESSORS, PLUGS, JUNCTION BOXES), FOR A VOLTAGE NOT EXCEEDING 1,000 VOLTS
8536 10	<i>Fuses</i>
8536 20	<i>Automatic circuit breakers</i>
8535 30	Other apparatus for protecting electrical circuits
	Relays :
8536 41	For a voltage not exceeding 60 V
8536 49	<i>Other</i>
8536 50	Other switches
	Lamp holders, plugs and sockets :
8536 61	Lamp holders
8536 69	Other
8536 90	Other apparatus

4.5.4 Further, as per HSN Explanatory Notes to Chapter 8536, this heading covers electrical apparatus for a voltage not exceeding 1,000 volts generally used for dwellings or industrial equipment. However, **heading 8535** covers the apparatus described below for a voltage exceeding 1,000 volts. The heading includes:

(I) APPARATUS FOR SWITCHING ELECTRICAL CIRCUITS

These apparatus consist essentially of devices for making or breaking one or more circuits in which they are connected, or for switching from one circuit to another; they may be known as single pole, double pole, triple pole, etc., according to the number of switch circuits incorporated. This group also includes change over switches and relays:

- (A) The switches
- (B) Change over switches
- (C) Relays: The various types can be distinguished by, for example:
 - (1) The electrical means of control used
 - (2) The predetermined conditions on which they operate

(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS

The heading includes fuses. These normally consist of a device in which a length of fuse wire is incorporated (or can be incorporated) so that, when they are inserted in the circuit, the fuse wire will melt and so break the circuit if the current increases dangerously. They vary considerably in design according to the type of circuit and current for which they are intended.

(III) APPARATUS FOR MAKING CONNECTIONS

This apparatus is used to connect together the various parts of an electrical circuit. It includes:

(A) Plugs, sockets and other contacts for connecting a movable lead or apparatus to an installation which is usually fixed. This category includes:

- (1) Plugs and sockets
- (2) Sliding contacts
- (3) Lamp or valve sockets and lamp holders.

(B) Other connectors, terminals, terminal strips, etc.

(C) Junction boxes.

4.6 The classification of goods in the nomenclature shall be governed by the **General Rules for the Interpretation of the Harmonized System**. Rule 1 of the above General Rules for the Interpretation of the Harmonized System stipulates that the classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. The Rule 1 of the General Rules for the Interpretation of the Harmonized System is re-produced as under:

1. 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:

4.7 Chapter 84 and 85 are covered by Section XVI of the Customs Tariff Act, 1975. Section Note 1 of the Section XVI listed the goods which are not covered in the Section; Section Note 2 of the Section XVI, subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter, covers classification of "Parts of Machines"; Section Note 3 of the Section XVI covers Composite Machines and Section Note 4 of the Section XVI covers a **machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then whole falls to be classified in the heading appropriate to that function.**

4.8 Further, General Note VII of HSN Explanatory Notes of Section XVI describes the Functional Units in lieu of Section Note 4 of Section XVI which is re-produced as under:

(VII) FUNCTIONAL UNITS

(Section Note 4)

This Note applies when a machine (including a combination of machines) consists of separate components which are intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or, more frequently, Chapter 85. The whole then falls to be classified in the heading appropriate to that function, whether the various components (for convenience or other reasons) remain separate or are interconnected by piping (carrying air, compressed gas, oil, etc.), by devices used to transmit power, by electric cables or by other devices.

For the purposes of this Note, the expression "**intended to contribute together to a clearly defined function**" covers only machines and combinations of machines essential to the performance of the function specific to the functional unit as a whole, and thus excludes machines or appliances fulfilling auxiliary functions and which do not contribute to the function of the whole.

The following are examples of functional units of this type within the meaning of Note 4 to this Section:

- (1) Hydraulic systems consisting of a hydraulic power unit (comprising essentially a hydraulic pump, an electric motor, control valves and an oil tank), hydraulic cylinders and the pipes or hoses needed to connect the cylinders to the hydraulic power unit (heading 84.12).
- (2) Refrigerating equipment consisting of components which are not fitted together to form a whole and are interconnected by means of piping through which the coolant circulates (heading 84.18).
- (3) Irrigation systems consisting of a control station comprising filters, injectors, metering valves, etc., underground distribution and branch lines, and a surface network (heading 84.24).
- (4) Milking machines with separate component parts (vacuum pump, pulsator, teat cups and pails) interconnected by hoses or piping (heading 84.34).
- (5) Brewhouse machinery comprising, inter alia, sprouting or germination machines, malt crushing machines, mashing vats, straining vats (heading 84.38). Auxiliary appliances (e.g., bottling machines, label printing machines), are however not included and should be classified in their own appropriate heading.
- (6) Letter sorting systems consisting essentially of coding desks, pre-sorting channel systems, intermediate sorters and final sorters, the whole being controlled by an automatic data processing machine (heading 84.72).
- (7) Asphalt plant consisting of separate components, such as feed hoppers, conveyors, dryers, vibrating screens, mixers, storage bins and control units, placed side by side (heading 84.74).
- (8) Machinery for assembling electric filament lamps, of which the component parts are interconnected by conveyors, and which include equipment for the heat treatment of glass, pumps and lamp testing units (heading 84.75).
- (9) Welding equipment consisting of the welding head or tongs, with a transformer, generator or rectifier to supply the current (heading 85.15).
- (10) Radio transmitters and associated power packs, amplifiers, etc. (heading 85.25).

- (11) Portable radiotelephone transmitters and their associated hand microphone (heading 85.25).
- (12) Radar apparatus with the associated power packs, amplifiers, etc. (heading 85.26).
- (13) Satellite television reception systems consisting of a receiver, a parabolic aerial reflector dish, a control rotator for the reflector dish, a feed horn (wave guide), a polarizer, a low-noise-block (LNB) down converter and an infra-red remote control (heading 85.28).
- (14) Burglar alarms, comprising, e.g., an infrared lamp, a photoelectric cell and a bell (heading 85.31).

4.9 Section Note 2 of HSN explanatory Note to Section XVI of Customs Tariff covers the parts of this Section which is re-produced as under:

2. *Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:*

- (a) *parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;*
- (b) *other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;*
- (c) *all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.*

4.10 In view of above, Note 2(a) covers the parts which are goods included in any of the headings of Chapter 84 or 85 are to be classified in their respective headings. Therefore, condition to classify any part in its respective heading is that it should be goods which is included in any heading of Chapter 84 or 85 which means it should be clearly listed in Chapter 84 or 85. For example, Gas Compressor is a part of Air Conditioning Machine, however, as per Note 2(a), as it is included in the headings of Chapter 84 or 85, it is rightly classifiable under chapter heading 8414 which covers "Air or Gas Compressors". However, as discussed above the impugned goods i.e. "**Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)**" are not included in any of the headings of Chapter 84 or 85 and hence could not be classified as per above Note 2(a).

4.11 Further, Note 2(b) covers **other parts, if suitable for use solely or principally with a particular kind of machine**, or with a number of machines of the same heading (are to be classified with the machines of that kind which means the parts which are not covered by Note 2(a) are classifiable as per Note 2(b) with a particular kind of machine if suitable for use solely or principally with a particular kind of machine and remaining parts as per Note 2(c). The impugned goods i.e. "**Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing**

Machine and components)" are not included in any of the headings of Chapter 84 or 85 and hence could not be classified as per above Note 2(a) and as discussed above the impugned goods i.e. "**Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)**" are suitable for use solely and principally with Air Conditioning Machine. Hence, they are classifiable as per above Note 2(b).

4.12 Chapter Note 5(E) to the Chapter 84, in respect of "automatic data processing machines" stipulates that

(E) Machines performing a specific function other than data processing and Incorporating or working in conjunction with an automatic data processing machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.

4.13 Sr. No.2 of General Note (B) which stipulates **(B) General Arrangement of the Chapter** to the Chapter Note to Chapter 84 that :

(2) Headings 84.02 to 84.24 cover the other machines and apparatus which are classified mainly by reference to their function, and regardless of the field of industry in which they are used.

4.14 It is evident that Chapter 8537 covers assembly of apparatus of the kind referred to Chapter 8535 and 8536 (e.g. switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc. for **Electric Control or The Distribution Of Electricity**. Further, as discussed above, it is evident that this heading deals with goods vary from small **switchboards** with only a few switches, fuses, etc. to **complex control panels** for machine tools, rolling mills, power stations, radio stations, etc. Therefore, in conjunction reading of the above, it is evident that the goods covered in Chapter 8537 and the impugned goods i.e. "**Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)**" which is used to overall control of each component of Air Conditioning Machine with the help of Automatic Data Machine incorporated in it are quite different from just Printed Circuit Boards. Further, there is no specific entry in chapter 84 or 85 for the impugned imported goods i.e. "**Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)**" which is actually a functioning machine embedded with various different and independent components on a single circuit board alongwith Automatic Data Machine. Hence, the impugned goods i.e. PCB Assembly does not appear classifiable under Chapter 8537.

4.15 In view of above, as per Section Notes and HSN Explanatory Notes as discussed above, it is evident that Air Conditioning Machines are Functional Machines as it is combination of machines such as COMPRESSOR, REFRIGERANT OR COOLANT, CONDENSER COIL, EVAPORATOR COILS, FAN, REACTOR as they "**intended to contribute together to a clearly defined function**" which in this matter is "**Air Conditioning**". Further, as discussed above, the impugned "**Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)**" is also nothing but a type of Functioning Machine and can be used solely or principally with Air Conditioning Machine and are rightly classifiable under CTH-84159000 as parts of Air Conditioning Machine as described above.

4.16. The details available on NIDB website clearly shows that the said goods i.e. PCB for Air Conditioner are being imported to India under CTH 84159000 from various ports in India.

4.17. The past imports of the importer was downloaded and during verification of the same it was observed that the importer had imported the same goods in past also vide Bill of Entry No. 2467620 dated 22.01.2021 and Bill of Entry No. 2472806 dated 23.01.2021; wherein, the said goods were classified by the importer under CTH 84159000 and appropriate duty had been paid by them. The importer had e-sanchit COO reference No. AI2020-0046497 dated 18.12.2020 issued by the Department of Foreign Trade, Government of Thailand in respect of Bill of Entry No. 2467620 dated 22.01.2021; wherein also the CTH of the same goods was mentioned as 84159000. Whereas, later on to avail the benefit under Custom Notification No.46/2011 dated 01.06.2011 (Preferential Trade Agreement between ASEAN and Republic of India), the importer has revised their CTH in the COOs also.

4.18. Shri Ravi Bhatt, G-Card Holder of CHA M/s. Babaji Shivram Clearing & Carriers Pvt. Ltd., Gandhidham in his statement dated 18.01.2022 failed to explain the reasoning for classifying the said importer goods under CTH 85371000. However, he confirmed that as per contract the importer is manufacturing Air Conditioner and other allied products; that he is not a technical person and the importer has final authority to decide the classification of the parts/ machine imported by them as per end use of said parts. As per my knowledge they are manufacturing final products as "Air Conditioner"

4.19. Shri Kansara Hiren, Manager (EXIM) of the importer in his statement dated 24.01.2022 also failed to explain why they have changed the classification of the said goods i.e. PCB Assembly (Part of Air Conditioner). However, he also confirmed that their final products are various types of Air Conditioners, Package type of Air Conditioners and Chillers. He further submitted that classification is basically decided by their import team under his supervision. The items mainly PCB A and Reactors are basically introduced in 2015 at the time of implementation of new inverter technology in Air Conditioners. Both these products were earlier classified under CTH 84159000 by them but during the month of Feb, 2021, there was a HS Code Re-validation Drive for import parts to appropriate the CTH. During the Drive, they could able to identify that "PCB A" and "electrical part Reactor" can be re-classified into individual CTH of 85371000 and 85045090 respectively.

4.20. M/s. Ram Corp, Tax Consultants & Advocates in their legal opinion dated 27.01.2022 gave their conclusion that the item appropriately classified under the Tariff Heading 85371000 quoting the Explanatory Notes & the Rule 1, 2(b) & 3(a) General Rules of Interpretation. They have discussed the technical specification of the goods, however, failed to discuss principal use of the PCB being imported by the importer in the instant case. Further, the advocate firm discussed Rule 1 & 3(a) of General Rules of Interpretation only but failed to take reference of the Rule 2(a) of General Rules of Interpretation and the section note provided under Parts (Section Note 2) of HSN explanatory Note to Section XVI of Customs Tariff.

4.21. From the above, discussion and scrutiny of submission made by the importer, it appeared that the importer was well aware of the facts that the goods imported by them viz. "**Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)**" are classifiable under CTH 84159000 only,

however, with intent to evade payment of Customs Duty the importer had changed the classification of their goods from 84159000 to 85371000.

4.22. In view of above, it appeared that the importer has mis-declared/ mis-classified the imported goods, the above imported goods i.e. "**Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)**" are liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, the importer opted for Provisional Assessment.

4.23. As far as the classification of Reactors is concerned. It is noticed that imported reactors are just coils of copper wire whose main purpose is to protect from harmful power surges. Thus, these reactors are noting but inductors that are specifically provided in Heading 8504. Thus, it appears that the correct classification of these inductors would be Tariff Item No.8504 5090 of Custom Tariff and not 85371000.

5. Quantification:

5.1 The importer from 11.06.2021 filed total 90 Bills of Entry for import of PCB Assembly having total assessable value of **Rs. 97,56,95,695/-**. Out of total 90 Bills of Entry, final assessment in respect of 16 Bills of Entry was already done and in respect remaining 74 Bills of Entry, the assessment has been done "Provisionally" as detailed in Annexure-A to this Show Cause Notice. Further, as the impugned goods i.e. PCB Assembly (Air Conditioning Machine Part) is rightly classifiable under Chapter 84159000, the same required to be re-assessed under the above Chapter. Further, the importer has availed the benefit of Notification No.46/2011-Customs dated 01.06.2011 on the basis of Country of Origin issued in respect of the CTH-85371000. However, as the right classification of the impugned goods appears as CTH-84159000 (Air Conditioning Machine-Parts,), the benefit Notification No.46/2011-Customs dated 01.06.2011 is not available to the importer as the benefit of the above Notification is product and quantity specific. The duty involved in Chapter 8415000 is as under:

CTH	Duty Paid
84159000	i. Basic Customs Duty:10% ii. SWS: 10% iii. IGST: 28%

5.2 In view of above duty structure, the differential duty is calculated as detailed in Annexure-B to this Show Cause Notice. The brief details is as under:

Duty Declared by the importer

Ass Value of all the Bills of Entry INR	Declared by the importer							
	BC D Rate	B C D	SWS Rate	SW S	IGST Rate	IGST	Total Duty	Remarks
97,56,95,695	0	0	10%	0	18%	175625225	175625225	Exemption of BCD availed as per Noti. No.46/2011

Duty as per CTH-84159000

Ass Value of all the Bills of Entry INR	Duty as per CTH-84159000						
	BCD Rate	BCD	SWS Rate	SWS	IGS T Rat e	IGST	Total Duty
975695695	10% 9	9756956 9	10%	9756957	28% /-	30,32,46,222 /-	41,05,72,748/-

Differential duty to be demanded

Duty Declared by the importer	Duty as per CTH- 84159000	Differential Duty
17,56,25,225/-	41,05,72,748/-	23,49,47,523/-

6. Relevant Provisions of Law:

6.1. The relevant provisions of law pertaining to import of goods in general, the policy & rules relating to imports, the liability of the goods to confiscation and the persons concerned to penalty for illegal importation under provisions of Customs Act, 1962 and the other laws for the time being in force are summarized as under:

6.2 SECTION 17: Assessment of duty —

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods. (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the ²[the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For [the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self- assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

6.3 Section 46. Entry of goods on importation:

(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, relating to the imported goods.

(4A) the importer who presents a bill of entry shall ensure the following, namely:

- (a) The accuracy and completeness of the information given therein;
- (b) The authenticity and validity of any document supporting it; and
- (c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

6.4. Section 111. Confiscation of improperly imported goods, etc. -

The following goods brought from a place outside India shall be liable to confiscation: -

(a) ----

--

(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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;

(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.

6.5 SECTION 112. 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
- (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,-
 - (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;
 - (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;

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

- (iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 in either case hereafter in this section referred to as the

declared value is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

- (iv) *in the case of goods falling both under clauses (i) and (iii), to a penalty 10 not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;*
- (v) *in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.*

6.6 Section 117. Penalties for contravention, etc., not expressly mentioned.

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.

6.7 Regulation 11 of the Customs Brokers Licensing Regulations, 2013 states the relevant obligations of Customs Broker as follows:

A Customs Broker shall:

(a)

(d) 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;

(e) 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.

7. Contravention of Provisions:

7.1 From the ongoing paras, it appears that M/s Johnson Controls-Hitachi Air Conditioning India Limited mis-declared the imported goods i.e. "Air Conditioning Machine Parts" in CTH-85371000 as "PCB Assembly". However, "Air Conditioning Machine Parts" is rightly classifiable under correct CTH-84159000 as "Air Conditioning Machine Parts". The importer has cleared the same goods in past by classifying the same goods under CTH-84159000 and they had paid appropriate duty in that case under correct CTH-84159000 in respect of previous imports. Further, import documents pertaining to previous imports it has come to light that the CTH for the same goods were mentioned as 84159000 in COO certificate issued by Department of Foreign Trade Government of Thailand. It is also pertinent to mention here that they also voluntarily changed their Customs House Agent. Hence, it is evident that it was in the knowledge of the importer that the subjected goods is rightly classifiable under CTH-84159000 wherein duty attracting @ (BCD10% + SWS 10% + IGST 28%). In spite of above fact, the importer knowingly and voluntarily changed the CTH and started to classifying the goods under CTH-8537100 wherein duty attracting @ (BCD-7.5% +SWS-10%+ IGST-18%) [BCD & SWS Nil as per Notification No.46/2011 dated 01.06.2011 availed by the importer] and paid

lesser duty. Therefore, they are liable to pay differential Duty amounting to **Rs.23,49,47,523/-** (Basic Customs Duty:10% + SWS: 10% + IGST:28%) under Section 28(4) of the Customs Act, 1962 as detailed in Annexure-A to this show cause notice alongwith applicable Interest on the above short paid duty under Section 28AA of the Customs Act, 1962 and rendered themselves penalty under Section 114A of the Customs Act, 1962.

7.2 The Bills of Entry filed by the importer for "**PCB Assembly (Part for Air Conditioner)**" under **CTH-85371000** are to be reassessed by re-classifying the imported goods as i.e. "**Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)**" under **CTH-84159000** under Section 17(5) of the Customs Act, 1962.

7.3 Further, it is evident that the importer contravened the provisions of Section 17 and Section 46 of the Customs Act, 1962 as they failed to rightly classify their imported goods under Self-Assessment as per Section 17 and Section 46 of the Customs Act, 1962 and therefore, made all the goods imported which are misclassified by them under CTH-87371000 as detailed in Annexure-A to this show cause notice, liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, the impugned goods were not put under seizure as the importer opted for provisional assessment under Bond backed by Bank Guarantee. Therefore, the importer also rendered themselves liable for penalty under Section 112(a)(ii) of the Customs Act, 1962 for the acts or omission at their parts as discussed *supra*.

7.4. In the instant case, CHA- Babaji Shivram Clearing & Carriers Pvt. Ltd., Plot No.2 CTS No. 5/7, 6 Saki Vihar Road, Sakinaka, Andheri East, Mumbai-400072. (AAACB046ACH015) have not followed due diligence in respect of importation of goods filed and the impugned Bills of Entry even after having the knowledge that the same goods were being imported by the same importer in CTH-84159000 instead of CTH-87371000; hence failed to comply with the provisions of the Custom Broker Licensing Regulations, 2018 (CBLR, 2018), thus, appears to be liable for penal action under Section 117 of the Customs Act, 1962 for contravention of CBLR, 2018.

8. In view of above, a notice was issued to M/s Johnson Controls-Hitachi Air Conditioning India Limited (IEC-0888020503), Hitachi Complex, Karan Nagar, Kadi, Dist. Mehsana, Gujarat-382727, to show cause to **the Commissioner of Customs, Custom House, Mundra**, as to why:

- a) The classification of the imported goods i.e. "**Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)**" under **CTH-85371000** should not be rejected and re-classified under **CTH-84159000**.
- b) Bills of Entry filed by the importer for "**PCB Assembly (Part for Air Conditioner)**" under **CTH-85371000** should not be re-assessed by re-classifying the imported goods i.e. "**Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)**" under **CTH-84159000** under Section 17(5) of the Customs Act, 1962.
- c) The benefit of Custom Notification No.46/2011-Customs dated 01.06.2011 should not be disallowed as the Country of Original Certificate submitted by the importer which is product and quantity

specific, has not been issued by the issuing authority in respect of CTH-84159000.

- d) Differential Duty Amounting to **Rs.23,49,47,523/- (Rupees Twenty Three Crores Forty Nine Lakhs Forty Seven Thousand Five Hundred and Twenty Three only)** [Basic Customs Duty:10% + SWS: 10% + IGST:28%] as detailed Annexure-A to this show cause notice should not be demanded and recovered under Section 28(4) of the Customs Act, 1962.
- e) Interest at an applicable rate should not be demanded and recovered from them, on the amount in Para (d) hereinabove, under Section 28AA of the Customs Act, 1962.
- f) The mis-classified imported goods i.e. *PCB Assembly (Part for Air Conditioner)* declared under CTH-85371000 which are actually Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components) and rightly classifiable under CTH-84159000 should not be confiscated under 111(m) of the Customs Act, 1962.
- g) Penalty should not be imposed on them under Section 112(a)(ii) of the Customs Act, 1962.
- h) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.

10. DEFENSE SUBMISSION:

10.1 , M/s Johnson Controls-Hitachi Air Conditioning India Limited (IEC-0888020503), Hitachi Complex, Karan Nagar, Kadi, Dist. Mehsana, Gujarat-382727 submitted reply dated nil received on 18.06.2024 and against impugned SCN, wherein they interalia submitted as under that:

1. The Noticee has correctly classified the subject goods under CTH 8537 1000 of the Customs Tariff Act, 1975 as 'Boards. Panels, Consoles, Desks, Cabinets, and other bases... for a voltage not exceeding 1,000 V' The subject goods are not classifiable under CTH 8415 90 00 of the Customs Tariff Act, 1975 as 'Parts of Air Conditioning Machines'. The Noticee has rightly availed the benefit of Notification No. 46/2011-Cus. dated 01.06.2011 for subject goods originating and supplied from Thailand. Demand under Show Cause Notice under Section 28(4) of the Customs Act, 1962 is liable to be set aside along with imposition of interest under Section 28AA of the Customs Act, 1962. Impugned goods are not liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. Penalty not imposable under Section 112(a) and/or 114A of the Customs Act, 1962

8537	BOARDS, PANELS, CONSOLES, DESKS, CABINETS AND OTHER BASES, EQUIPPED WITH TWO OR MORE APPARATUS OF HEADING 8535 OR 8536, FOR ELECTRIC CONTROL OR THE DISTRIBUTION OF ELECTRICITY, INCLUDING THOSE INCORPORATING INSTRUMENTS OR APPARATUS OF CHAPTER 90, AND NUMERICAL CONTROL APPARATUS, OTHER THAN SWITCHING APPARATUS OF HEADING 8517			
85371000	- For a voltage not exceeding 1,000 V	kg.	15%	-
85372000	- For a voltage exceeding 1,000 V	kg.	15%	-
8535	ELECTRICAL APPARATUS FOR SWITCHING OR PROTECTING ELECTRICAL CIRCUITS, OR FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS (FOR EXAMPLE, SWITCHES, FUSES, LIGHTNING ARRESTERS, VOLTAGE LIMITERS, SURGE SUPPRESSORS, PLUGS AND OTHER CONNECTORS, JUNCTION BOXES), FOR A VOLTAGE EXCEEDING 1,000 VOLTS			
853510	- Fuses:			
853540	- Lightning arresters, voltage limiters and surge suppressors:			
85354030	-- Surge suppressors	u	7.5 %	-
8536	ELECTRICAL APPARATUS FOR SWITCHING OR PROTECTING ELECTRICAL CIRCUITS, OR FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS (FOR EXAMPLE, SWITCHES, RELAYS, FUSES, SURGE SUPPRESSORS, PLUGS, SOCKETS, LAMP-HOLDERS AND OTHER CONNECTORS, JUNCTION BOXES), FOR A VOLTAGE NOT EXCEEDING 1,000 VOLTS: CONNECTORS FOR OPTICAL FIBRES, OPTICAL FIBER BUNDLES OR CABLES.			

SUBMISSIONS IN DETAIL

A. The Noticee has correctly classified the subject goods under CTH 8537 10 00 of the Customs Tariff Act, 1975 as 'Boards. Panels, Consoles, Desks,

Cabinets, and other bases... for a voltage not exceeding 1,000 V'

A.1. It is submitted that the Noticees have rightly classified the subject goods under CTH 8537 10 00 of the Customs Tariff Act, 1975 as 'Boards, Panels, Consoles, Desks, Cabinets, and other bases... for a voltage not exceeding 1,000 V'. For ease of reference, the relevant headings, and entries of Chapter 85 of the Customs Tariff Act, 1975 are extracted below-

853610	-	Fuses:			
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Relevant extract of HSN Explanatory Notes to Heading 8537

85.37 - Boards, panels, consoles, desks, cabinets, and other bases, equipped with two or more apparatus of heading 85.35 or 85.36, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of Chapter 90, and numerical control apparatus, other than switching apparatus of heading 85.17.

8537.10 -For a voltage not exceeding 1,000

V

8537.20 -For a voltage exceeding 1,000 V

These consist of an assembly of apparatus of the kind referred to in the two preceding headings (e.g., switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc. They usually also incorporate meters, and sometimes also subsidiary apparatus such as transformers, valves, voltage regulators, rheostats, or luminous circuit diagrams.

The goods of this heading vary from small switchboards with only a few switches, fuses, etc. (e.g., for lighting installations) to complex control panels for machine-tools, rolling mills, power stations, radio stations, etc., including assemblies of several of the articles cited in the text of this heading.

The heading also covers:

- (1) *Numerical control panels with built-in automatic data processing machine, which are generally used to control machine-tools.*
- (2) *Programmed switchboards to control apparatus; these permit variations in the choice of operations to be followed. They are normally used in domestic electrical appliances, such as washing machines and dishwashers.*
- (3) *"Programmable controllers" which are digital apparatus using a programmable memory for the storage of instructions for implementing specific functions such as logic, sequencing, timing, counting and arithmetic, to control, through digital or analog input/output modules, various types of machines.*

The heading **does not cover** automatic controlling apparatus of heading 90.32.

A.2. It is submitted that PCBs for outdoor unit is populated with various active and passive components such as fuse, surge absorber, over voltage protection, sensors etc. The main function of the said PCB is to control the functioning of the compressor to maintain the temperature

at the desired level. These PCBs receive signal for indoor unit PCB with regard to desired room temperature and prevailing room temperature. Thereafter these PCBs sense the temperature prevailing outside the room and accordingly control the compressor.

A.3. As per **General Rules for Interpretation ('GI Rules'; for short) Rule 1**, the goods are to be classified in accordance with the applicable chapter notes and section notes.

A.4. Heading 8537 provides for **boards, panels, consoles, desks, cabinets, and other bases, equipped with two or more apparatus of Heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of Chapter 90, and numerical control apparatus, other than switching apparatus of Heading 8517.**

A.5. Explanatory Notes of Heading 8537 of HSN includes programmed switchboards within the ambit of Heading 8537. Relevant extract of HSN is produced below –

Programmed switchboards to control apparatus; these permit variations in the choice of operations to be followed. They are normally used in domestic electrical appliances, such as washing machines and dishwashers.

A.6. In the present case also, imported PCB consists of fuse and surge absorbers. Fuse and surge absorbers when imported individually are classifiable under Heading 8535 and Heading 8536 depending upon their voltage. Thus, imported PCBs consist of at least two components of Heading 8535 and Heading 8536. Further, imported goods consist of a sensor which senses outside room temperature. These sensors when imported individually are classifiable under Heading 9027. Thus, the imported PCB is also mounted with components of Chapter 90.

A.7. Further, the PCBs regulate the supply of electricity that is being supplied to the compressor. The PCBs control the speed of the compressor by regulating the supply of electricity to maintain the desired temperature. Thus, the PCBs control the functioning of compressor, by switching on and switching off, as and when required.

A.8. Further, HSN to Heading 8537 brings programmed switchboards within its preview. These programmed switch boards are controlling apparatus that permit variations in operation and are used in domestic electrical appliances. Even the imported PCBs are controlling apparatus that maintain the desired temperature and are used in domestic electrical appliances like air conditioners. Thus, even as per the HSN explanatory notes, these items are classifiable under Heading 8537.

A.9. Section Note 2 (b) provides that parts which are suitable for use solely or principally with a particular kind of machine need to be classified along with that type of machine as parts of that machine. However, the said note starts with the words, *other parts*. Thus, the said Note 2 (b) will only apply to parts which are not classifiable under any specific heading of Chapter 84 or 85 in accordance with Note 2 (a). Thus, as Heading 8537 specifically covers imported PCBs are not classifiable under Tariff Item No. 8415 90 00 as "part of air conditioners".

A.10. Reliance is placed upon the decision of **Hal v. CC [1998(104)E.L.T. 355]** where CESTAT, New Delhi observed that PCBs will be classified under Heading 8534 in accordance with Section Note 2 (a) as they are specifically

provided under the said heading and not under Heading 8473 as parts.

A.11. Reliance in this regard is also placed on the decision of **Commissioner of Customs (Appeals), Bangalore v. Larsen & Turbo Ltd.-2023(12)TMI 16-CESTAT Bangalore**, wherein Hon'ble CESTAT, Bangalore held that programmable processor mounted on a printed circuit board are classifiable under CTH 8537 1000 of the Customs Tariff, 1975.

A.12. In the light of the above submissions, it is submitted that the Noticees have rightly classified the subject goods under CTH 8537 of the Customs Tariff Act, 1975.

B. The subject goods are not classifiable under CTH 8415 90 00 of the Customs Tariff Act, 1975 1975 as 'Parts of Air Conditioning Machines'

B.1. It is submitted that the subject goods are not classifiable under CTH 8415 90 00 of the Customs Tariff Act, 1975. For ease of reference, the relevant headings, and entries of Chapter 84 of the Customs Tariff Act, 1975 are extracted below -

8415	AIR CONDITIONING MACHINES, COMPRISING A MOTOR-DRIVEN FAN AND ELEMENTS FOR CHANGING THE TEMPERATURE AND HUMIDITY, INCLUDING THOSE MACHINES IN WHICH THE HUMIDITY CANNOT BE SEPARATELY REGULATED			
84159000	- Parts	kg.	20%	-

B.2. It is submitted that goods falling under Chapter 84 are covered by Section XVI of the Customs Tariff Act, 1975 which covers Machinery and Mechanical Appliances; Electrical Equipment; Parts thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of such Articles.

B.3. Further, Note 2 (a) to Section XVI which covers Chapter 84 and 85 within its ambit provides that the parts which are goods included in headings of Chapter 84 or 85 are to be classified in their respective headings. Thus, as per Note 2 (a) when parts are specifically provided as good in any of the Heading of Chapter 84 or 85 then the same has to be classified under the heading and not as part of the machinery.

B.4. In this regard, it is submitted that the subject goods are specifically covered under CTH 8537, therefore in terms of Note 2 (a) to Section XVI, the subject goods get excluded from Chapter 84 since the subject goods are specifically covered under eight digit entry under Chapter 85.

B.5. Further, Hon'ble Supreme Court in the case of **C.C.E. v. Uniproducts Limited- 2020 (372) E.L.T. 465 (S.C.)**, while dealing with the issue of classification of car mats, relied upon interpretative notes for Rule 3(a) of Rules of Interpretation in HSN, which provides that the heading which provides the most specific description shall be preferred to headings providing a more general description. The relevant portion of Rule 3(a) is extracted below for ease of reference-

"The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail

sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods."

B.6. In light of the above rules of interpretation and HSN Explanatory Notes to the concerned chapter, the Hon'ble Supreme Court held that *car mats* are rightly classified under specific entry of CTH 5703, even if they are specifically and principally used for cars and are not to be classified as parts of motor vehicle.

B.7. On the same interpretation, the subject goods are more specifically provided under CTH 8537, therefore the same cannot be classified in a residuary entry as parts even though to be used with air conditioners.

B.8. Reliance in this regard is also placed on the decision of *Commissioner v. Wockhardt Life Sciences Ltd.- 2012 (277) E.L.T. 299 (S.C.)* and *Dunlop India Ltd. v. Madras Rubber Factory Ltd. v. Union of India (UOI) and Ors. – 1983*

(13) E.L.T. 1566 (S.C.). The relevant portion of the decision is extracted below-

"37... When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause. The question of competition between two rival classifications will, however, stand on a different footing."

(Emphasis Supplied)

B.9. Further, CBIC vide Instruction No. 01/2022-Cus. dated 05.01.2022 has instructed that classification of parts in the context of motor vehicles has to be in terms of HSN Note and all the following three conditions must be satisfied. The three conditions are extracted below for ease of reference –

- *They must not be excluded by the terms of Note 2 to section XVII; and*
- *They must be suitable for use solely or principally with the articles of chapter 86 to 88; and*
- *They must not be more specifically included elsewhere in the Nomenclature*

B.10. Again, CBIC has issued fresh Instruction No. 25/2022-Cus. dated 03.10.2022 and confirmed the validity of Instruction No. 01/2022-Cus. dated 05.01.2022.

B.11. Reliance in this regard is also placed on the decision of **Suzuki Motors Gujarat Private Limited v. C.C., Ahmedabad- 2002 (6) TMI 1089- CESTAT Ahmedabad**, wherein the Hon'ble Tribunal relying on the HSN Explanatory Notes to Section XVII held that in order to be classified as parts and accessories of Motor Vehicles under CTH 8708, all the three conditions are required to be satisfied.

B.12. Therefore, by virtue of Note 2 (a) to Section XVI and above circular instruction, the proposal to classify the subject goods under CTH 8415 is liable to be set aside.

No Estoppel in Taxation against Classification adopted by the Importers (Noticees)

B.13. Further, Para 2.6 and 4.17 of the SCN states that the Noticee

themselves used to classify the goods under CTH 8415 90 00 and subsequently changed the classification to CTH 8537 10 00. It is submitted that there is no estoppel in taxation against classification adopted by the importers, by the Noticees herewith.

B.14. It is settled law that just because the Noticee had classified the impugned goods under incorrect headings earlier, that *per se* does not mean that the classification of the subject goods under CTH 8537 shall be incorrect. The change in classification to CTH 8537 is based on opinion provided by the consultants and interpretation of respective tariff entries and the HSN Notes.

B.15. The classification claimed by the Noticee earlier would not operate as estoppel in case of the BoEs, as it is a settled principle of law that estoppel is not applicable to matters relating to classification. Reliance in this regard is placed on the following cases:

- **Sva Udyog Vinyog Ltd. v. Union of India- 1991 (52) E.L.T. 212 (Bom.);**
- **General Mills India Ltd. v. Commissioner of Customs (Import), JNCH, Nhava Sheva- 2019 (368) E.L.T. 705 (Tri. - Mumbai);**
- **BSNL v. Union of India- 2006 (2) STR 161 (SC);**
- **Maldhari Sales Corporation v. Union of India- 2016 (334) E.L.T. 418 (Del.) affirmed by the Apex Court in Madala Jankiram v. Union of India- 2017 (349) E.L.T. A102 (S.C.);**
- **Grasim Industries Ltd. v. Commissioner of Central Excise, Trichy- 2006 (201) E.L.T. 565 (Tri.-Chennai)**

B.16. Therefore, the view of the department that the Noticees had themselves changed the classification for the purposes of evasion of payment of customs duty is baseless is liable to be set aside.

Functional Machines/Units

B.17. The General Note VII to Section XVI provides what will be considered as functional units in lieu of Section Note 4 of Section XVI and the appropriate classification of items that shall be considered as functional units. Further, Para 4.2.2. of the SCN alleges that Hitachi Interfacing Circuit Board (HICB) is attached to the subject goods and at Para 4.15 of the SCN it is alleged that the subject goods are both functional machines as they are a combination of various items and therefore can be solely and principally used with Air Conditioning Machines classifiable under CTH 8415 90 00.

B.18. In this regard, it is submitted that HICB even though considered as an essential component to be used solely and principally with the Air Conditioning Machines, it cannot be considered as a part of the Air Conditioning Machine when there is a specific entry covering the said item.

B.19. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of **Secure Meters Ltd. v. Commissioner of Customs, New Delhi- 2015(319)E.L.T.565(S.C.)**, wherein the court while concerned with the classification of LCD bars held that merely because they were as parts in electricity supply meters, they could not be classified under CTH 9028 when the goods are distinctly

covered by another tariff item CTH 9013 relying on Note 2(a) to Chapter 90. Note 2(a) stipulates that parts and accessories which are goods included in the heading of the said Chapter, i.e., 90, are to be classified in their respective heading. Therefore, goods which are used as parts in the final products mentioned in Chapter 90, are to be classified in its respective heading. Respective heading, which is specifically provided, is 9013.

B.20. In the case of **Videocon Indus. Ltd. v. Commr. of C.Ex. & Cus., Aurangabad- 2014 (314) E.L.T. 708 (Tri.-Mumbai)**, the above decision of the Apex Court was followed for imports made prior to 01.01.2007, which is prior to introduction of amendment of entries under CTH 8528.

B.21. Drawing the same ratio in the instant case, the imported goods are specifically covered by another tariff entry in CTH 8537 and hence would not fall under CTH 8419 as parts of Air Conditioning Machines which is a residuary entry.

C. The Noticee has rightly availed the benefit of Notification No. 46/2011-Cus. Dated 01.06.2011 for subject goods originating and supplied from Thailand.

C.1. It is submitted that Notification No.46/2011-Cus dated 01.06.2011 (hereinafter referred to as the '**Exemption Notification**'), grants preferential treatment to the specified goods imported from the ASEAN Countries (of which Thailand is also a member). As per the said Notifications, Parts of Air Conditioners are eligible for preferential duty treatment. In other words, the Noticees importing the subject goods into India could rightly avail the benefit of the said Notification.

C.2. The aforesaid exemption notification is issued to give effect to the **ASEAN Free Trade Agreement ('FTA'; for short)**.

C.3. For availing the said benefit under the exemption notifications, it needs to be proved by the Importer that the goods imported and in respect of which the benefit is claimed, are of origin of the ASEAN Countries in accordance with provisions of **the Customs Tariff /Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India/ Rules, 2009 ('Country of Origin Rules'; for short)**.

C.4. In terms of Rule 13 of the Country of Origin Rules, the aforesaid claim for preferential tariff treatment has to be supported by a **Certificate of Origin ('COO'; for short)** which will be issued by the designated authority in the Country of Export.

The Annexure III to the Country of Origin Rules sets out the framework to be followed while issuing the COO.

C.5. On the subject goods, the Noticees availed the benefit of concessional rate of 'Nil' from basic customs duty in terms of S1. No. 1429 of the concerned exemption notification. The relevant entry is extracted below-

1429	853710	All Goods	0.0	0.0
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C.6. It is submitted that in order to avail the benefit under the concerned exemption notification, the importer ought to fulfill the conditions as specified therein.

C.7. Without prejudice to above, it is submitted that the COO for the said goods has been issued by the Department of Foreign Trade Government of Thailand. The classification adopted in the COO cannot be dismissed by the department as it has been consistently held by the tribunal that a valid COO can be relied upon for the purposes of classification.

C.8. Reliance in this regard is placed on the following decisions-

- **Ranjita Agencies v. Commissioner of Customs- 2001 (133) E.LT. 388 (Tri. -Kol)**
- **R.S. Industries (Rolling Mills) Ltd. v. C.C.E.- 2017-VIL-858-CESTAT-DEL-CU**
- **Doves International v. CC- 2018 (5) TMI 1372- CESTAT, New Delhi**

C.9. In the light of the above decisions, in the presence of valid COO issued by the competent authority, the assessing authority in India have no right to deny the benefit of Exemption Notification as the conditions of the notification are fulfilled.

C.10. Without prejudice to above, it is submitted that the Noticees cannot deny the benefit under the Exemption Notification as the classification contended by the department is also covered under S1. No. 1103. The relevant entry is extracted below-

1103	841590	All Goods	0.0	0.0
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C.11. Henceforth, the Noticees have rightly availed the benefit of the exemption notification on the subject goods imported from Thailand.

D. Demand under Show Cause Notice under Section 28(4) of the Customs Act, 1962 is liable to be set aside along with imposition of interest under Section 28AA of the Customs Act, 1962

D.1 It is submitted that the partial demand for Bills of Entry prior to November 2021, is barred by the normal period of limitation. Section 28(1) of the Customs Act, 1962 is extracted below-

28. Recovery of [duties not levied or not paid or short-levied or short-paid] or erroneously refunded.

(1) Where any [duty has not been levied or not paid or has been short-levied or short- paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,

(a) the proper officer shall, within [two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [or paid] or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

D.2 It is clear from the provision that the proper officer shall within two

years from the relevant date, i.e., the date of Bill of Entry. It is submitted that the impugned SCN was issued on 02.11.2023. Therefore, demand amounting to _____ for Bills of Entry filed prior to 02.11.2021, is barred by limitation.

D.3 The impugned SCN invokes extended period of limitation in terms of Section 28(4) of the Customs Act, 1962 on the ground that the Noticees have knowingly and voluntarily changed the classification of subject goods.

D.4 For ease of reference, relevant portion of Section 28(4) of the Customs, 1962, is extracted below-

28. Recovery of [duties not levied or not paid or short-levied or short-paid] or erroneously refunded.

(4) *Where any duty has not been ¹²levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -*

- (a) *collusion; or*
- (b) *any wilful mis-statement; or*
- (c) *suppression of facts,*

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been ¹³[so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

D.5 For ease of reference, 28AA of the Customs Act, 1962 reads as follows-

28AA. Interest on delayed payment of duty.

(1) *Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*

(2) *Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.*

(3) *Notwithstanding anything contained in sub-section (1), no interest shall be payable were, -*

(a) *the duty becomes payable consequent to the issue of an order, instruction, or direction by the Board under section 151A; and*

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction, or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]

D.6 It has been demonstrated in the above that the demand of Customs Duty is not maintainable. Since there is no liability to pay duty, no interest could be charged from the Noticees.

D.7 The Hon'ble Supreme Court of India in **Prathibha Processors v. Union of India, 1996 (88) E.L.T. 12 (S.C.)**, has held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest

either. Relevant portions from the judgment are extracted below for a ready reference-

"The goods are not exigible to duty at that time. Calculation of interest is always on the principal amount. The "interest" payable under Section 61(2) of the Act is a mere "accessory" of the principal and if the principal is not recoverable/payable, so is the interest on it. This is a basic principle based on common sense and also flowing from the language of Section 61(2) of the Act. The principal amount herein is the amount of duty payable on clearance of goods. When such principal amount is nil because of the exemption, a fortiori, interest payable is also nil. In other words, we are clear in our mind that the interest is necessarily linked to the duty payable. The interest provided under Section 61(2) has no

independent or separate existence. When the goods are wholly exempted from the payment of duty on removal from the warehouse, one cannot be saddled with the liability to pay interest on a non-existing duty. Payment of interest under Section 61(2) is solely dependent upon the exigibility or factual liability to pay the principal amount, that is, the duty on the warehoused goods at the time of delivery. At that time, the principal amount (duty) is not payable due to exemption. So, there is no occasion or basis to levy any interest, either. We hold accordingly."

(Emphasis Supplied)

D.8 Thus, from the above referred to principle that interest is necessarily linked to the duty payable. The Noticees humbly submit that once the duty itself cannot be demanded, the corresponding interest is also held to be not payable. The above referred to case is followed by the Hon'ble Supreme Court in the case of **Commissioner of Customs, Chennai v. Jayathi Krishna, and Co., 2000 119 ELT 4 SC**. That interest cannot be demanded when duty demand is not sustainable has also been upheld in several High Court and Tribunal decisions.

D.9 Therefore, the proposal to levy interest under Section 28AA of the Customs Act, 1962 is liable to be dropped and set aside.

E. Impugned goods are not liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962

E.1. Section 111(m) of the Customs Act, 1962 read as follows-

SECTION 111 - Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation:

(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;

E.2. The Noticee submits that the provisions of Section 111(m) of the Act are not invokable in the present case for the reason that in the Bill of Entry, the Noticees have not mis-declared any material particulars. Consequently, the proposal to confiscate the consignment in question is wholly untenable.

E.3. In any case, Section 111(m) of the Customs Act, 1962 would apply only in a case where there is a misdeclaration of 'value' in the entry filed at the time of import.

E.4. The term 'Value' is defined in Section 2(41) of the Customs Act, 1962 as "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of Section 14.

E.5. The Noticees submit that the expression 'value' as incorporated in Section 111(m) of the Customs Act, 1962 would mean value as determined under Section 14 of the Customs Act, 1962 as per Section 2(41) of the Customs Act, 1962. The Noticee further submits that as there is no mis-declaration of the value of the imported goods as determined under Section 14 of the Customs Act, 1962. The only issue in the present case is classification of imported goods. Therefore, proposal to confiscate the imported goods is not sustainable and is liable to be dropped on this ground alone.

E.6. The impugned order proposes to hold the imported goods liable to confiscation under Section 111(m) of the Customs Act, 1962. The said provision provides for confiscation of any goods which do not correspond in respect of value or in any other particular with the entry made under the Act. In terms of the provisions of Section 2(16) of the Customs Act, 1962, "entry" in relation to goods means an entry made in a Bill of Entry. It is submitted that for the reasons given in the foregoing paragraphs, there was no mis-declaration either in respect of value or in any other particular with the entry made under the Customs Act. The description provided in the Bill of entry was correct and in accordance with the supplier's invoice. It is therefore respectfully submitted that the proposal for confiscation of the goods under Section 111(m) of the Customs Act, 1962 is not sustainable in law.

E.7. In the case of **Nitish Tools v. CC – 2009 (237) ELT 482 (T)**, it was held by the Hon'ble Tribunal that mere enhancement of value is no ground for confiscation of the goods under Section 111(m) of the Customs Act, 1962 in this case, the Hon'ble Tribunal held as under:

"2. As regards contravention of Section 111(m), it is required to be set aside in the light of the Tribunal's decision in CC, Visakhapatnam v. Sree Nakoda Impex, 2004 (177) E.L.T. 349 (Tri. - Bang.) holding that mere enhancement of value is no ground for confiscation of goods and Handtex v. CC, Raigad, 2008 (226) E.L.T. 665 (Tri. - Del.) holding that fixation of value or enhancement of value for the purpose of assessment cannot in every case

lead to an inference of misdeclaration of value in the absence of any evidence to that effect (in the present case, there is no evidence of misdeclaration of value and the enhancement is only on the basis of higher contemporaneous import price) ”

E.8. To similar effect are the judgments of Hon'ble Tribunal in the cases of **Handtex Vs. CC – 2008 (226) ELT 665 (T) and CC v. Sree Nakoda Impex – 2004 (177)ELT 349 (T)**.

E.9. In the case of **Kirti Sales v. CC – 2008 (232) ELT 151 (T)**, it was held by the Hon'ble Tribunal that to attract the provisions of Section 111(m) the mis-declaration should be intentional. The Hon'ble Tribunal in this case held as under:

“6. We are inclined to accept the case of the Revenue that the goods imported were texturized fabric. However, whether the declaration in the Bill of Entry amounts to 'misdeclaration' so as to attract the provisions of Section 111(m) of the Customs Act in a given case depend upon the facts of the case. To constitute 'misdeclaration', the declaration must be intentional. Misdeclaration cannot be understood as same as wrong declaration, of course, made bona fide, the possibility of which cannot be ruled out altogether. The question, therefore, is whether the Noticee had intentionally and deliberately mis-declared the goods as non-texturized fabric rather than texturized fabric. On this point, we are inclined to accept the case of the Noticee that the declaration had been made on the basis of documents supplied by the foreign supplier and there was no Intentional or deliberate wrong declaration or misdeclaration on its part so as to attract the mischief of Section 111(m) of the Customs Act. The facts of the case in the instantcase ”

E.10. It is submitted that the values in the Bill of Entry were declared by the Noticees on the basis of invoices of the foreign supplier; and accordingly, there was no mis- declaration or suppression of facts or intention to evade payment of customs duty.

E.11. It is therefore, respectfully submitted that the proposal for confiscation of the goods under Section 111(m) of the Customs Act, 1962 is not sustainable in law

F. Penalty not imposable under Section 112(a) and/or 114A of the Customs Act, 1962

F.1 Section 112(a) of the Customs Act, 1962 reads as follows-

SECTION 112. 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...*

¶(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:

F.2 It is respectfully submitted that as per the provisions of Section 112(a) of Customs Act, 1962 penalty is imposable on any person, who in relation to any goods, does or omits do any act which act or omission would render such goods liable for confiscation under Section 111 of the Act, or abets

the doing or omission of an act. Therefore, the penalty under this sub-section is linked to the liability of the goods to confiscation.

F.3 Further, it is also now a settled position that no penalty under section 112 of the Customs Act is imposable in cases where the issue involved is one of classification/exemption and the importer has acted bona fide.

F.4 Therefore, it is submitted that the subject goods are not liable for confiscation under the Customs Act, 1962, henceforth no penalty is imposable on the Appellants.

F.5 Reliance is placed on the case of **P. Ripakumar and Company v. Union of India, 1991 (54) ELT 67**, wherein demand of confiscation and redemption fine was set aside on the ground that the importer had acted in good faith i.e., *bona fide*.

Thus, in it submitted that goods are not liable for confiscation.

F.6 In the light of above provisions, the demand for imposition of penalty on the Noticee under Section 112(a) is legally not correct and liable to be set aside.

F.7 Further, in Whiteline Chemicals v. Commissioner of C. Ex., Surat [2008 (229) E.L.T. 95 (Tri. - Ahmd.)], the Hon'ble Tribunal set aside the penalties on the Assessee as the issue involved was one of interpretation of terms of an exemption notification. It was held as under:

"5. However, we find that the issue involved is bona fide interpretation of notification and does not call for imposition of any penalty upon the appellants. The same is, accordingly, set aside."

F.8 In Vadilal Industries Ltd. v. Commissioner of C. Ex., Ahmedabad 2007 (213) E.L.T. 157 (Tri. - Ahmd.), the Tribunal has again held as under:

"10. However, the learned Advocate submits the following alternative pleas that the price realised by them, should have been treated as cum-duty price and no penalty should have been imposed as this is a case of difference in interpretation. There is no issue of limitation involved as the show cause notices were issued within the normal period of limitation."

(Emphasis Supplied)

F.9 Further in the case of **Digital Systems v. Commissioner of Customs, [2003 (154) ELT 71]**, the Hon'ble Tribunal has held that:

"8. As regards imposition of penalty is concerned, no mens rea has been established in this case and the appellants were under the bona fide belief that the goods fall under CTH 901090 and are importable without a license. They have also relied upon the decision of the Tribunal in the case of CC, New Delhi v. Time Tech Enterprises Pvt. Ltd. where it was held that confiscation of goods as a result of difference about classification between importer and the department - penalty was not imposable.

We are of the considered opinion that this decision is applicable to the facts of the present case and in that view of the matter, we set aside the penalty on the appellants. In the result, except for the reduction in the quantum of redemption fine and setting aside the penalty, the appeal is otherwise rejected."

(Emphasis Supplied)

F.10 Also, in the case of **Goodyear (India) v. CCE, [2003 (157) ELT 560]**, it was held by the Hon'ble Tribunal that:

"As the issue involved is one of interpreting the Tariff Heading under which the impugned product will be classifiable, this is not a fit case for warranting imposition of any penalty on the Appellants. We, therefore, set aside the penalty imposed on them. The Appeal is disposed of in the above terms."

(Emphasis Supplied)

F.11 The above view is also resonated in the case of **Anand Metal Industries v. CCE, [2005 (187) ELT 119]**, it was held by the Hon'ble Tribunal that:

"5. In respect of the penalties imposed on the firm as well as on the partner, as the dispute in question in respect of classification, which is purely a legal issue, therefore, the penalties imposed on the firm as well as on the partner are set aside. The appeal filed by M/s. Anand Metal Industries is disposed of as indicated above."

SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been partly paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under ¹[sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined :.....

F.12 Without prejudice to the above, it is submitted that for the reasons given in the foregoing paragraphs, the demand of duty is not sustainable in law. Once the demand of duty is found to be non-sustainable, the question of levy of Penalty does not arise as per the settled law.

F.13 In the case of Collector of Central Excise v. H.M.M. Limited reported in 1995(76) ELT 497 (SC), Hon'ble Supreme Court held that, the question of Penalty would arise only if the Department were able to sustain the demand.

F.14 Similarly, in the case of Commissioner of Central Excise, Aurangabad v. Balakrishna Industries reported in 2006 (201) ELT 325 (SC), Hon'ble Supreme Court held that, Penalty is not imposable when differential duty is not payable.

F.15 The above judgment of the Hon'ble Supreme Court has been followed in several cases by the Hon'ble High Courts and the Tribunal, including in the judgment of the Hon'ble Bombay High Court in the case of Commissioner of Central Excise & Customs v. Nakoda Textile Industries Ltd reported in 2009 (240) ELT 199 (Bom.). Therefore, the impugned Notice proposing Penalty under Section 114AA of the Customs Act, 1962, is not sustainable in Law.

F.16 Without prejudice to the above, it is submitted that the conduct of the Noticee was totally bonafide. The Noticee neither had any intention to evade payment of duty, nor had any knowledge of the liability of the goods to confiscation. In the absence of any malafide on the part of the Noticee, no penalty is imposable. In the case of **Hindustan Steel Ltd. v. State of Orissa [1978 (2) ELT (J159) (SC)]**, Hon'ble Supreme Court held that no penalty should be imposed for technical or venial breach of legal provisions

or where the breach flows from the bonafide belief. It is submitted that the conduct of the Noticee in the present case was totally bonafide and therefore no penalty is imposable.

F.17 As already submitted in the above submissions; the conduct of the Noticee was bonafide. Therefore, it cannot be said that the Noticee in any manner, abetted the doing or omission of an act, which act, or omission rendered the goods liable to confiscation. In the case of **Trade Wings Ltd v. Commissioner of Customs, Mumbai reported in 2009 (243) ELT 439 (Tri. -Mumbai)**, Hon'ble Tribunal held that, mere lack of care and diligence by the Noticee is not sufficient to pin them with the charge of abetment. Similarly, in the case of **Commissioner of Customs (EP) v. P.D. Manjrekar reported in 2009 (244) ELT 51 (Bom.)**, the Hon'ble Bombay High Court held that, in case of abetment, Revenue has to prove knowledge on the part of the Assessee. No such proof has been furnished by the Department in the present case. Therefore, the imposition of Penalty on the Noticee is not sustainable in law.

F.18 Therefore, no penalty under Section 114A or interest under section 28AA can be imposed on the Noticees under the Customs Act, 1962.

F.19 Further, the Noticee submits that the conditions for imposing penalty under Section 114A are the same as that for invoking longer period of limitation namely, suppression of facts with intent to evade payment of duty.

F.20 Without prejudice to above, proviso to Section 114A of the Customs Act, 1962 provides that where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114 of the Act. In view of this, penalty can either be imposed under Section 112(a) or Section 114A.

F.21 Therefore, the proposal to levy penalty under Section 114A of the Customs Act is liable to be dropped and set aside.

11. Further, they have prayed that SCN no. F.No. GEN/ADJ/COMM/388/2023-Adjn dated 02.11.2023 is not sustainable and liable to be dropped and benefit of Notification No. 46/2011-Cus. Dated 01.06.2011 should be allowed for subject goods imported from Thailand. The proposal to demand of Rs. 23,49,47,523/- under Section 28(4) of the Customs Act along with interest under Section 28AA of the Customs Act 1962 is not sustainable and liable to be dropped. the proposal to confiscate goods under Section 111(m) of the Customs Act, 1962 is not sustainable and liable to be dropped. The proposal to confiscate goods under Section 111(m) of the Customs Act, 1962 is not sustainable and liable to be dropped.

12. Further, at the time of personal hearing held on 12.09.2024, the authorised person of M/s. Johnson Controls - Hitachi Air Conditioning India Limited submitted additional submission which is reproduced herein under:-

<u>Sr. No.</u>	<u>Submissions</u>	<u>Cases Laws relied upon</u>
1.	Demand is made in the SCN under Section 28(4) in respect of 74 Bills of Entry which were assessed provisionally. Before finalisation of the assessments under Section 18, there cannot be a demand under Section 28, as there is no short payment which can arise before finalisation.	<u>Commissioner of Customs, Mumbai v. Exotic Fashions- 2010 (262) E.L.T. 651 (Tri.-Mumbai) at Para 5.</u> <u>Finolex Industries Ltd. v. Commissioner of Customs, Mumbai- 2003 (159) E.L.T. 949 (Tri.-Mumbai) at Para 6.</u>

<p>The quantum of duty demand on this score is Rs. 20,56,36,629/-.</p> <p><u>The SCN at Para 5.1, according to us, incorrectly states 74 Bills of Entry were provisionally assessed. According to us, imports from 18.11.2021 were assessed provisional.</u></p>	
<p>2. The reason for invocation of extended period in respect of 12 Bills of Entry, is misclassification of imported goods at Para 7.1-7.3 of SCN.</p> <p>The SCN does not allege mis-description.</p> <p>The goods have been described as "PCB Assembly (Part for Air Conditioner)", on which heavy reliance is placed in the show cause notice to reject the classification declared by us.</p> <p>According to us, misclassification does not attract the provisions of Section 28(4) relating to extended period. Therefore, demand pertaining to 12 Bills of Entry prior to 01.11.2021 are time barred and liable to be dropped.</p> <p>The demand on 12 Bills of Entry is Rs.2,93,10,894.</p>	<p><u>M/s. Raj Metals & Alloys and Ors. v. Commissioner of Customs, Jaipur (Rajasthan)- 2024 (5) TMI 19- CESTAT NEW DELHI at Para 32, 33 and 35.</u></p> <p><u>Midas Fertchem Impex Pvt. Ltd. v. Principal Commr. of Cus., ACC (Import), New Delhi- 2023 (384) E.L.T. 397 at Para 59.</u></p> <p><u>Sirthai Superware India Ltd. v. Commr. of Customs, Nhava Sheva-III- 2020 (371) E.L.T. 324 (Tri.-Mumbai) at Para 5.1,5.5.</u></p>
<p>3. On importation, FTA benefit under Sr. No. 1429 of Notification No. 46/2011-Cus. dated 01.06.2011 was claimed and extended as mentioned in Para 5.1 of the SCN.</p> <p>The Department now proposes classification under CTH 8415.</p> <p>The goods falling under this Heading also falls within the same FTA Notification, under Sr. No. 1103.</p> <p>The origin criteria, value addition norms are same for goods falling under both the classification.</p> <p>Hence, even if it is held that CTH 8415 is the correct classification for the subject goods, still the FTA exemption shall be available under the Notification.</p> <p>If the department had raised the objection and duty demand within a reasonable period of import and within the time mentioned in Rule 7(c) of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Government of Member States of the Association of Southeast</p>	<p><u>Sheel Chand Agrolls P. Ltd. v Commr. of Cus. (Preventive), New Delhi- 2016 (331) E.L.T. 251 (Tri.-Del.) at Para 5.</u></p>

	Asian Nations (ASEAN) and the Republic of India] Rules, 2009- Notification No. 189/2009-Cus. (N.T.) dated 31.12.2009, the Noticee could have corrected the classification indicated on the certificate of origin from the issuing authority, from the exporting country.	
4.	Subject goods are correctly classified under CTH 8537 as they are specifically covered under the said heading in terms of GRI 1 and also by virtue of Note 2(a) to Section XVI.	<u>Adcon Technologies Pvt. Ltd. v. Commissioner at Para 4.</u> <u>US Cross Ruling NY N004024 at Para 4.</u> <u>US Cross Ruling NY N004023 at Para 4.</u>
5.	Subject goods cannot be classified under CTH 8415 as Parts which is a residuary entry	<u>Secure Meters Ltd. v. Commissioner of Customs, New Delhi- 2015 (319) E.L.T. 565 (S.C.) at Para 19.</u> <u>Commr. of C.Ex. & Cus., Aurangabad v. Videocon Industries Ltd.- 2023 (384) E.L.T. 628 (S.C.) at Para 25.</u>
6.	Subject goods not liable to confiscation under Section 111(m) of the Customs Act, 1962 as there is no mis-declaration of description.	<u>Nitish Tools v. CC - 2009 (237) ELT 482 (T) at Para 2.</u> <u>Kirti Sales v. CC - 2008 (232) ELT 151 (T) at Para 6.</u>
7.	No penalty is imposable under Section 114A in respect of provisionally assessed bills of entry as demand is premature. Further Section 28(4) does not apply in such cases. Confirmation of duty demand under Section 28 invoking extended period is a pre-requisite for imposition of penalty under Section 114A. As far as penalty under Section 112 is concerned, confiscability of goods under Section 111(m) is a pre-requisition. Here, 111(m) just not apply and hence no penalty at all under Section 112.	<u>Goodyear (India) v. CCE- 2003 (157) E.L.T. 560 at Para 11.</u> <u>Vadilal Industries Ltd. v. Commissioner of C. Ex., Ahmedabad- 2007 (213) E.L.T. 157 (Tri.-Ahmd.) at Para 10.</u>

13. PERSONAL HEARING:-

I observe that '*Audi alteram partem*', is an important principle of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to all the noticees on 09.09.2024 and 12.09.2024. Details of the PH are as under:

Shri Thiagarajan Vishwanathan, Advocate and Ms. Shruti Khanna, Advocate appeared in the personal hearing, on behalf of **M/s Johnson Control-Hitachi Air Conditioning India Limit** held on 12.09.2024 through virtual mode. They have reiterated their written submission and added the following points in their submission.

1. Demand under Section 28(4) is premature for 74 BoEs assessed provisionally and are pending finalisation.
2. Misclassification does not amount to mis-declaration, therefore demand pertaining to 12 BoEs prior to 01.11.2021 are time barred and liable to be set aside as extended period is not invocable
3. FTA benefit is rightly available to the Appellant's irrespective of the reclassification of subject goods under CTH 8415 as proposed by the department.
4. Subject goods are correctly classifiable under CTH 8537 in terms of GRI 1.
5. Subject goods cannot be classified under CTH 8415 as Parts which is a residuary entry
6. Demand of differential duty along with interest is liable to be set aside on the basis above grounds.
7. Subject goods not liable to confiscation under Section 111(m) and imposition of Penalty under Section 112(a) and 114A of the Customs Act, 1962

14. DISCUSSION AND FINDINGS

14.1 I have carefully gone through the Show Cause Notice bearing F.No. GEN/ADJ/COMM/388/2023-Adjn dated 02.11.2023 issued by the Commissioner of Customs, Custom House, Mundra, imposition of penalty/fine etc; facts of the case, the relied upon documents; submissions made by the Noticees, relevant legal provisions and the records available before me. The issues before me to decide are as under:

- a) Whether the classification of the imported goods i.e. "Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)" under CTH-85371000 is liable to be rejected and re-classified under CTH-84159000.
- a) Whether, Bills of Entry filed by the importer for "PCB Assembly (Part for Air Conditioner)" under CTH-85371000 is liable to be re-assessed by re-classifying the imported goods i.e. "Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)" under CTH-84159000 under Section 17(5) of the Customs Act, 1962.
- b) Whether, the benefit of Custom Notification No.46/2011-Customs dated 01.06.2011 is liable to be disallowed as the Certificate of Origin submitted by the importer has been issued by the Issuing Authority for the CTH 85371000 and not for CTH-84159000.
- c) Whether, Differential Duty Amounting to **Rs. 23,49,47,523/- (Rupees Twenty-Three Crores Forty-Nine Lakhs Forty-Seven Thousand Five Hundred and Twenty-Three only)** [Basic Customs Duty:10% + SWS: 10% + IGST:28%] as detailed in Annexure-A to the show cause notice is liable to be demanded and recovered under Section 28(4) of the Customs Act, 1962.
- d) Whether, Interest at an applicable rate is liable to be demanded and recovered from them, on the amount in Para (d) hereinabove, under Section 28AA of the Customs Act, 1962.
- e) Whether, the mis-classified imported goods i.e. *PCB Assembly (Part for Air Conditioner)* declared under CTH-85371000 which are actually Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components) and rightly classifiable under CTH-84159000 is liable to be confiscated under Section 111(m) of the Customs Act, 1962.
- f) Whether, Penalty is liable to be imposable upon them under Section 112(a)(ii) of the Customs Act, 1962.
- g) Whether, Penalty is liable to be imposable upon them under Section 114A of the Customs Act, 1962.

14.2 I find that instant case arises out of mis-classification of imported goods by the importer whereby they have allegedly evaded the duties of Customs in respect of

74 BOEs assessed provisionally and pending or final assessment, whereby, they have allegedly evaded the duties of Customs.

14.3 I find that, M/s. Johnson Controls-Hitachi Air Conditioning India Limited (IEC-0888020503), Hitachi Complex, Karan Nagar, Kadi, Dist. Mehsana, Gujarat-382727 are engaged in manufacturing of Air Conditioners including other electronics equipment and importing PCB Assembly - one of the raw material for manufacturing of Air Conditioners. M/s Johnson Controls-Hitachi Air Conditioning India Limited has imported goods declaring as "PCB Assembly (Part of Air Conditioner)" under CTH-85371000 vide Bill of Entry No.6311083 dated 18.11.2021 through their CHA -M/s. Babaji Shivram Clearing & Carriers Pvt. Ltd. The goods were consigned from M/s Johnson Controls- Hitachi Components, Thailand. The officers from Docks Examination, Custom House, Mundra had observed that the importer has sought clearance of "PCB Assembly (Part of Air Conditioner)" under CTH-85371000 through Bill of Entry No. 6311083 dated 18.11.2021. It was further observed that the goods were originated from Thailand and the Importer had claimed benefit of Custom Notification No. 46/2011 dated 01.06.2011 (Preferential Trade Agreement between ASEAN and Republic of India) by claiming 100% exemption on BCD.

14.4 I find that from the data available on NIDB portal, it was noticed that the same goods had been assessed under CTH-84159000 and had been cleared from various ports into India by different importers.

14.5 I find that the importer has cleared the same goods in past as well and it was observed that the same goods were classified under CTH-84159000 by the same importer and they had paid appropriate duty in that case under correct CTH-84159000 as evident from Bill of Entry No.2467620 dated 22.01.2021, 2472806 dated 23.01.2021 etc. Further, import documents pertaining to previous Bill of Entry No.2467620 dated 22.01.2021 uploaded in e-sanchit were checked and it was noticed that the CTH for the same goods were mentioned as 84159000 in COO Certificate bearing Reference No. AI2020-0046497 dated 18.12.2020 issued by Department of Foreign Trade Government of Thailand.

14.6 I find that it is important to discuss CTH-8537 and 8415 for deciding the issues in this matter.

(a) Chapter Heading 8537 covers:

BOARDS, PANELS, CONSOLES, DESKS, CABINETS AND OTHER BASES, EQUIPPED WITH TWO OR MORE APPARATUS OF HEADING 85.35 OR 85.36, FOR ELECTRIC CONTROL OR THE DISTRIBUTION OF ELECTRICITY, INCLUDING THOSE INCORPORATING INSTRUMENTS OR APPARATUS OF CHAPTER 90, AND NUMERICAL CONTROL APPARATUS, OTHER THAN SWITCHING APPARATUS OF HEADING 85.17.

Thus, it is clear that the heading 8537 does not cover parts of Air Conditioner.

(b) Further, looking at Chapter Heading 8415, which covers:

AIR CONDITIONING MACHINES, COMPRISING A MOTOR-DRIVEN FAN AND ELEMENTS FOR CHANGING THE TEMPERATURE AND HUMIDITY, INCLUDING THOSE MACHINES IN WHICH THE HUMIDITY CANNOT BESEPARATELY REGULATED.

8415.90 – Parts

Hence, Tariff heading 8415 consists of Air Conditioning machines and its elements for changing the temperature and humidity, and 8415.9000 specifically covers all parts of Air Conditioner as per the Customs Tariff Act, 1975. Hence, on

plain reading, the PCB (parts of Air conditioner) as per description mentioned in Bills of Entry, seems to be covered under CTH 8415 9000

14.6.1 I find that the importer has previously imported the parts under 8415 9000, and also provided COO certificate issued by Govt. of Thailand for the same CTH, i.e. 8415 9000. Now the Importer has changed the CTH to 8537 1000, whereas, the NIDB data available on NIDB website clearly shows that the said goods i.e. PCB for Air Conditioner, are being imported to India under CTH 84159000 from various ports in India.

14.6.2 Further, as per HSN Explanatory Notes to Chapter 8535, this heading covers electrical apparatus generally used in power distribution systems. The provisions of Explanatory Note to heading 8536 apply, mutatis mutandis, as regards the technical characteristics and the functioning of apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits. The heading covers apparatus of the kind described in Explanatory Note to heading 8536, when for a voltage exceeding 1,000 volts. These include:

- (A) Fuses and automatic circuit breakers
- (B) Make and break switches
- (C) Lightning arresters.
- (D) Voltage limiters.
- (E) Isolating switches
- (F) Surge or spike suppressors

14.6.3 I find that Chapter 8537 covers assembly of apparatus of the kind referred to Chapter 8535 and 8536 (e.g. switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc. for Electric Control Or The Distribution Of Electricity. Further, as discussed above, it is evident that that this heading deals with goods varying from small switchboards with only a few switches, fuses, etc. to complex control panels for machine tools, rolling mills, power stations, radio stations, etc. Therefore, in conjunction reading of the above, I find that the goods covered in Chapter 8537 and the impugned goods i.e. "Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)" which is used to overall control each component of Air Conditioning Machine with the help of Automatic Data Machine incorporated in it are quite different from just Printed Circuit Boards. Further, there is no specific entry in chapter 84 or 85 for the impugned imported goods i.e. "Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)" which is actually a functioning machine embedded with various different and independent components on a single circuit board alongwith Automatic Data Machine. Hence, I find that the impugned goods i.e. PCB Assembly does not merit classification under Chapter 8537.

14.7 Further, I find that the details available on NIDB website clearly shows that the said goods i.e. PCB for Air Conditioner are being imported to India under CTH 84159000 from various ports in India. The same has not been denied by the noticee, in their written submission.

14.8 Further, I find that the past imports of the importer were verified and during verification of the same it was observed that the importer had imported the same goods in the past also, vide Bill of Entry No. 2467620 dated 22.01.2021 and Bill of Entry No. 2472806 dated 23.01.2021; wherein, the said goods were classified by the importer under CTH 84159000 and appropriate duty had been paid by them. The importer had e-sanchit COO reference No. AI2020-0046497 dated 18.12.2020

issued by the Department of Foreign Trade, Government of Thailand in respect of Bill of Entry No. 2467620 dated 22.01.2021; wherein also the CTH of the same goods was mentioned as 84159000. Whereas, later on to avail the benefit under Custom Notification No.46/2011 dated 01.06.2011 (Preferential Trade Agreement between ASEAN and Republic of India), the importer has revised their CTH in the COOs also.

14.9 I further find that each of the above components of “PCB assembly (parts of Air Conditioner)” as declared imported by the Noticee under CTH 8537 1000, are independent from each other and their operation is also different from each other. Further, some of the parts like Ambient Sensor which is actually Temperature Sensor are not directly attached as active components but attached to the board through connector. Therefore, the impugned PCB Assembly is not just printed circuit board but combination of above different type of independent components embedded together to perform specific functions related to the Air Conditioning machine.

14.10 Further, I find that “Hitachi Interfacing Circuit Board” is nothing but an automatic data processing machine which continuously operates and communicate between IDU ~ ODU & control machine operation as per requirement of precise Cooling. Further, as per the working of the components installed on the above board, I find that the above so called PSB Assembly is not just Printed Circuit Board but actually the Heart and Soul of the Air Conditioning Machine which is controlling overall activities of all the independent components/parts of the Air Conditioning Machine that makes it most essential and most vital part of the Air Conditioning Machine. Further, the above machine is performing a specific function other than data processing and Incorporating or working in conjunction with an automatic data processing machine i.e. overall working of the Air Conditioning Machine.

14.11.1 I find that the importer has, in their written submission stated that they have rightly classified the subject goods under CTH 8537 10 00 of the Customs Tariff Act, 1975 as 'Boards, Panels, Consoles, Desks, Cabinets, and other bases... for a voltage not exceeding 1,000 V', described as under -

8537	BOARDS, PANELS, CONSOLES, DESKS, CABINETS AND OTHER BASES, EQUIPPED WITH TWO OR MORE APPARATUS OF HEADING 8535 OR 8536, FOR ELECTRIC CONTROL OR THE DISTRIBUTION OF ELECTRICITY, INCLUDING THOSE INCORPORATING INSTRUMENTS OR APPARATUS OF CHAPTER 90, AND NUMERICAL CONTROL APPARATUS, OTHER THAN SWITCHING APPARATUS OF HEADING 8517			
85371000	- For a voltage not exceeding 1,000 V	kg.	15%	-
85372000	- For a voltage exceeding 1,000 V	kg.	15%	-

These consist of an assembly of apparatus of the kind referred to in the two preceding headings (e.g., switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc. They usually also incorporate meters, and sometimes also subsidiary apparatus such as transformers, valves, voltage regulators, rheostats, or luminous circuit diagrams.

The goods of this heading vary from small switchboards with only a few switches, fuses, etc. (e.g., for lighting installations) to complex control panels for machine-tools, rolling mills, power stations, radio stations, etc., including assemblies of several of the articles cited in the text of this heading. The heading does not cover automatic controlling apparatus of heading 90.32.

They have further submitted that the subject goods are not classifiable under CTH 8415 90 00 of the Customs Tariff Act, 1975 as 'Parts of Air

Conditioning Machines'

8415		AIR CONDITIONING MACHINES, COMPRISING A MOTOR-DRIVEN FAN AND ELEMENTS FOR CHANGING THE TEMPERATURE AND HUMIDITY, INCLUDING THOSE MACHINES IN WHICH THE HUMIDITY CANNOT BE SEPARATELY REGULATED.			
84159000	-	Parts	kg.	20%	-

I have read the written submission of the Noticee, wherein they have tried to establish that their imported PCB parts used in air conditioner are covered in 85372000 instead of 84159000, however they have not provided any reason as to why parts of Air Conditioner (e.g. PCB), is not to be classified under the 84159000 heading, which specifically covers air conditioner parts (including elements for changing the temperature and humidity). They have not disputed the fact that the PCB is part of air conditioner and are specifically and only to be used in Air conditioner outdoor/indoor unit.

In their written submission, they have described the main function of PCB as "to control the functioning of the compressor to maintain the temperature at the desired level. These PCBs receive signal for indoor unit PCB with regard to desired room temperature and prevailing room temperature. Thereafter these PCBs sense the temperature prevailing outside the room and accordingly control the compressor". I fail to understand as to why a heading which covers specifically air conditioners and its parts i.e. 8415 9000, should not cover its electrical parts which are used in controlling temperature and electricity supply to the AC unit.

The Noticee have also referred to explanatory notes to CTH 8537, as under –

F.1. Explanatory Notes of Heading 8537 of HSN includes programmed switchboards within the ambit of Heading 8537. Relevant extract of HSN is produced below –

Programmed switchboards to control apparatus; these permit variations in the choice of operations to be followed. They are normally used in domestic electrical appliances, such as washing machines and dishwashers.

Therefore, based on its functionality also, I find, that the PCB (parts of Air conditioner) cannot be classified in CTH 8537.

The Note 2 (b) referred, also provides "that parts which are suitable for use solely or principally with a particular kind of machine need to be classified along with that type of machine as parts of that machine".

This also gives strength to the argument that parts of Air conditioner should be covered under CTH 8415 9000.

Further, to support their claim, the noticee has referred to a number of judgments including **Hal v. CC [1998 (104) E.L.T. 355], Commissioner of Customs (Appeals), Bangalore v. Larsen & Turbo Ltd.- 2023 (12) TMI 16- CESTAT Bangalore**, among others. I find that the goods referred in the above judgments are completely different as compared to the PCB assembly (part of air conditioner), imported by the Noticee. Here, the main function of PCB is temperature control for air conditioning unit. Hence, the said judgment cannot be applied squarely to the present case, as the goods in question are different and so are the facts of that case.

14.11.2 To support their claim that the subject goods are not classifiable under CTH 8415 90 00 of the Customs Tariff Act, 1975, the noticee has referred to Supreme

Court judgment in C.C.E. v. Uniproducts Limited- 2020 (372) E.L.T. 465 (S.C.), wherein the goods in Question were 'Car Mats'. Now Car mats are not an essential part of a motor car, but only an auxiliary or additional part. Here, the PCB assembly can only be used solely and exclusively in a split air conditioner. The goods in question are specifically designed to be used as parts of Air Conditioner, therefore I find that goods covered specifically in a given tariff should be classified in that heading, i.e. in the present case under CTH 84159000. The noticee has further referred to other judgments in which the goods in question in the said cases are in the nature of standalone products and appears to be not used solely or principally as parts of a machine / equipment or apparatus, as is the case in the present issue. Hence, I refrain from going into each of the case laws referred to by the noticee. Similarly, CBIC instruction No. 01/2022-Cus. dated 05.01.2022 and 25/2022-Cus. dated 03.10.2022, issued for Parts of Vehicle, referred to by the Noticee are also for completely different goods and the same conditions cannot be applied in this case.

Further, the noticee has been classifying their goods rightly under CTH 8415 9000 and subsequently changed the classification to CTH 8537 1000. The question of estoppel in this matter does not arise, as the revenue has not alleged that the importer cannot change the classification, instead the case of revenue is that the noticee, in order to take benefit of exemption notification, has changed the classification subsequently to evade payment of customs duty, whereas they knew from the start that the correct classification of the subject goods are 84159000, as they have been doing from the start. Hence, I am not venturing into the issue of estoppel raised by the noticee in their written submission and the cases laws mentioned by them on this point.

In case of Hitachi Interfacing Circuit Board (HICB), the noticee has acknowledged that it is an essential component to be used solely and principally with the Air Conditioning Machines. As in case of PCB assembly, the same findings hold true for HITC, which are solely to be used in Air Conditioners and are parts of the Air Conditioner correctly classifiable under 84159000. The ratio of the case law **Secure Meters Ltd. v. Commissioner of Customs, New Delhi- 2015 (319) E.L.T. 565 (S.C.)** and **Videocon Indus. Ltd. v. Commr. of C.Ex. & Cus., Aurangabad- 2014 (314) E.L.T. 708 (Tri.-Mumbai)** referred to by the noticee cannot be applied squarely in this case as different goods were in issue in that matter and facts of the case are also not the same. Here, the HICB are specifically covered under CTH 84159000, whereas, 8537 1000 does not specifically cover the parts of Air conditioner and their functions as described in the Show Cause Notice or by the noticee in their written submission.

14.11.3 The noticee has also pointed out the exemption notification no. 46/2011 dated 01.06.2011 and its conditions. In terms of Rule 13 of the Country of Origin Rules, the aforesaid claim for preferential tariff treatment has to be supported by a **Certificate of Origin ('COO'; for short)** which will be issued by the designated authority in the Country of Export. Now, to avail the benefit of Exemption notification, one of the essential condition is the COO certificate. I find that the COO certificate presented by the importer / noticee in e-sanchit has been issued for CTH 8537 1000, whereas, from the above discussion it is clear that the goods in question fall under CTH 8415 9000. Further, I find that in previous occasions, the COO certificate was issued by the Designated authority in Thailand for same goods for CTH 8415 9000. I fail to understand, as to how for the same goods the COO certificate has been changed to as issued for CTH 8537 1000. Hence, the case laws relied upon by the Noticee in their written submission, namely **Ranjita Agencies v.**

Commissioner of Customs- 2001 (133) E.L.T. 388 (Tri. -Kol) and Other case laws holding “that a valid COO can be relied upon for the purposes of classification” cannot be applied squarely in the present case. Further, considering the above facts, as the proper/valid COO certificate for CTH 84159000 has not been presented by the importer, therefore, I find that the said certificate issued for incorrect CTH, i.e. 8537 1000, cannot be relied upon for extending benefit of subject exemption notification 46/2011-customs dtd. 01.06.2011, to the importer/noticee and the same is liable to be disallowed.

14.11.4 On the issue of limitation, I find that the notice has contended in their written submission that the ‘partial demand for Bills of Entry prior to November 2021, is barred by the normal period of limitation’. In support of the same they have quoted provisions of Section 28(1) and 28(4) of the Customs Act, 1962. Here, I find it relevant to read the provisions of Section 28 BB of the Customs Act, 1962, vide which the date of inquiry or investigation was reduced to two years. Section 28BB reads as under –

‘28BB. Time limit for completion of certain actions. - (1) Any inquiry or investigation under this Act, culminating in the issuance of a notice under sub-section (1) or sub-section (4) of section 28 shall be completed by issuing such notice, within a period of two years from the date of initiation of audit, search, seizure or summons, as the case may be’

On plain reading of the section, it is clear that in any Inquiry or investigation leading to issuance of Show Cause Notice, the relevant date is the date of issuance of summons / initiation of inquiry/investigation. In the current scenario, the first summons was issued to noticee on 11.01.2022, hence the same is the relevant date for computing period of limitation. Hence, I find that the Notice was issued well within time and is not barred by limitation.

Further, as the differential duty is required to be paid by the Noticee, naturally interest on such delayed payment is required to be paid also, under 28AA of the Act, ibid. Thus, decisions of SC in matter of **Prathibha Processors v. Union of India, 1996 (88) E.L.T. 12 (S.C.)** as also **Commissioner of Customs, Chennai v. Jayathi Krishna, and Co., 2000 119 ELT 4 SC**, referred to by the noticee, are respectfully not applicable in the present case.

14.11.5 The next contention of the noticee is that Impugned goods are not liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962, as according to them in the Bills of Entry the Noticees have not mis-declared any material particulars or Value. It is the contention of the department that Noticee/importer used to import goods under CTH 8415 9000 and declare the goods as parts of Air Conditioner earlier also. The noticee has agreed in their statement that ‘There is no change in End Use before or after the re-classification of PCB-A and electrical part Reactor. Both products are being used exclusively in Invertor type Air Conditioners’. Further, the COO certificate provided by the Importer / noticee in earlier Bills of Entries was issued for CTH 8415 9000, however, later on, when the CTH was changed by the importer to 85371000 and 85045090, in the COO submitted by the Noticee, the CTH was also changed to 8537 1000 and 85045090. Hence, there is clear misdeclaration of other material particulars as envisaged under Section 111 (m) of the Customs Act, 1962 and hence, I find that the impugned goods are liable for confiscation under Section 111(m) of the Act, ibid. The case law referred to by the noticee in their written statement i.e. Nitish Tools v. CC – 2009 (237) ELT 482 (T), cannot be applied to the present case as there is no enhancement of value but there is misdeclaration as to material particulars, namely misdeclaration of CTH, i.e. misclassification and submission of incorrect supporting documents to claim benefit of exemption notification. As the Importer / Noticee has knowingly changed

the CTH of their goods, the intention of misdeclaration is eminent. Hence, case laws referred to the by noticee is not applicable in the present matter [**Kirti Sales v. CC – 2008 (232) ELT 151 (T); Handtex Vs. CC – 2008 (226) ELT 665 (T)** and **CC v. Sree Nakoda Impex – 2004 (177) ELT 349 (T)**].

Further, I find that the goods in respect of 16 bills of Entry, as mentioned in Sr. no. 1 to 16 of the Annexure-A attached to the Notice, the same have been finally assessed, no seizure has been effected and 'Out of Charge' has already been given to the said goods which are finally assessed. These goods are not available for confiscation at this stage. In case of **Manjula Showa Ltd. 2008 (227) ELT 330**, the Appellate Tribunal has held that in case of such goods any condition of redemption fine cannot be imposed when there was no seizure of any goods. The Larger Bench of the Tribunal in case of **Shiv Kripalspat Pvt. Ltd. 2009(235) ELT 623** has also upheld this principle. When no goods imported by them have been actually seized nor are they available for confiscation, the proposal to redemption of such non-existent goods does not have any legs to stand.

However, the Madras High Court in the case of C.M.A. No. 2857 of 2011, in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)], has laid down as under -

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Further, **order of the Hon'ble Supreme Court in the case of Weston Components Ltd.**, is quoted below for ready reference:

"It is contended by the Learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed would not take away the power of the customs authorities to levy redemption fine."

Reading the two orders harmoniously, it can be inferred that redemption fine can be imposed in all such cases where goods are not physically available for confiscation provided, any Bond has been provided by the Importer. In the present case, I find that no bond has been executed by the Importer / Noticee and hence the option to redeem their goods on payment of redemption fine cannot be provided in the present matter.

14.11.6 Further, as per the above facts of the case, I find that the noticee has imported goods improperly under incorrect CTH and submitted invalid documents, i.e. incorrect COO certificate to avail benefit of exemption notification no. 46/2011-Customs. Considering that earlier they used to import the same goods under different CTH and also COO was issued for same CTH but later on not only the CTH was misdeclared by the noticee but also incorrect COO was submitted for wrong CTH, it is imperative that the noticee had mala fide intention to avail tax exemption not due to them. I find that the noticee has failed to establish bona fide intention in

this matter. The importer/noticee has wilfully misdeclared the CTH under which goods are imported and also submitted incorrect COO certificate as a supporting document. However, I find that in a number of judgments, it has been laid down that penalty under section 114(A) and 112 are mutually exclusive and cannot be invoked simultaneously. *Therefore, I find that penalty under 114A is imposable on M/s Johnson Controls-Hitachi Air Conditioning India Limited, being the importer. Further, penalty under Section 112(a) cannot be invoked under the Act, being mutually exclusive from Section 114A.* Further, as the noticee has failed to prove bonafide intention for changing their CTH and also for submitting incorrect support document, i.e. COO certificate submitted for wrong CTH. i.e. 8537 1000, I find that the ratio of case laws referred to by the noticee are not applicable in the present case.

14.11.7 The noticee in their additional written submission during P.H. dated 12.09.2024, has contended that in respect of provisionally assessed Bills of Entry demand under Section 28 cannot be raised as there can be no short payment which can arise before finalisation. The noticee has also referred a number of judgments on this point, i.e. **Commissioner of Customs, Mumbai v. Exotic Fashions- 2010 (262) E.L.T. 651 (Tri.-Mumbai); & Finolex Industries Ltd. v. Commissioner of Customs, Mumbai- 2003 (159) E.L.T. 949 (Tri.-Mumbai).** I find merit in the contention of the Noticee. As per explanation 1. To Section 28, "relevant date" means – (a); (b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

This provision makes it clear that demand cannot be raised under section 28, before the bill of entry is finally assessed. Further, the noticee has contended that according to them, the SCN incorrectly states that 74 Bills of Entry were provisionally assessed. That according to them, imports from 18.11.2021 were assessed provisionally. I find that before 18.11.2021, there are 16 bill of entries, as per Annexure-A to the Notice, which have been finally assessed as per the show cause notice. The same are showing as finally assessed as per EDI system also. I observe that noticee is also stating the same thing. Therefore, I find that demand is sustainable in respect of 16 Bill of Entries prior to dated 18.11.2021 and for the remaining Bill of Entries at Sr. no. 17 and thereafter as per Annexure-A to Notice, the same needs to be finally assessed before raising demand under Section 28.

14.11.8 The issue of Time limitation of demand has already been discussed in Para no. **14.11.4.** I don't find any reason to discuss it again here. Rest of the contentions of the Noticee in their additional written submission are repetitive in nature and have already been discussed in detail in the foregoing paras.

15. Further, **CUSTOMS AUTHORITY FOR ADVANCE RULINGS, in their ruling Nos. CAAR/Del/Blue star/33/ 2023, Dated 5th December, 2023** has cleared the matter by stating that the goods, namely, 'ODU controller PCB' would merit classification under Sub-heading 84159000 of the First Schedule to the Customs Tariff Act. 1975.

The applicant had proposed to import "ODU Controller PCB and they have sought ruling on the classification under the Customs Tariff Act. 1975, of the goods which are proposed to be imported by them. Now, in this advance ruling, the ODU Controller PCB, proposed to be imported by the importer - M/s Blue Star Limited, E-44/12, Okhla Industrial Area, New Delhi-110020 having IEC number 0388021454, are having same characteristics as the PCB (Part of Air Conditioner) imported by the Noticee and hence, the Advance ruling is squarely applicable to the

present case. The relevant excerpts from the referred advance ruling are reproduced below –

"The applicant has stated that.....they are currently importing "ODU Controller PCB" after classifying the same under Subheading 84159000 treating the said goods as part of an air conditioner, they are approaching this Authority, seeking advance ruling qua the good as mentioned above, since they are regularly importing the same and hence would like to have a proper understanding and classification of the said goods. The applicant has further stated that the air conditioning unit primarily consists of an Indoor and an Outdoor Unit; these units are an assembly of various parts and components which function individually and collectively; one such part is "ODU Controller PCB" which further consists of several components, which inter alia includes:

<u>Components/Input of ODU Controller PCB</u>	<u>CTH</u>
<u>SMD capacitor</u>	<u>8532</u>
<u>Ceramic capacitors</u>	<u>8532</u>
<u>Transformer</u>	<u>8504</u>
<u>Inductor</u>	<u>850450</u>
<u>Resistor</u>	<u>8533</u>
<u>SMD Resistor</u>	<u>8533</u>
<u>Microcontroller</u>	<u>8542</u>
<u>Integrated Circuit (IC)</u>	<u>8542</u>
<u>IPM (Intelligent power module) PIM</u>	<u>8504</u>
<u>PCB (Printed Circuit Board)</u>	<u>8542</u>
<u>Heat Sink</u>	<u>8516</u>
<u>Bridge Rectifier</u>	<u>85044021</u>
<u>Fuse</u>	<u>8536</u>
<u>Diode</u>	<u>85411000</u>
<u>SMD Diode</u>	<u>8541</u>
<u>MOV</u>	<u>8533</u>
<u>Voltage Regulator</u>	<u>85044040</u>
<u>Transistor</u>	<u>8541</u>
<u>Relay</u>	<u>8536</u>

I note that the goods in question are not stand-alone items/apparatus rather these are goods to be used only as parts of the main apparatus/equipment i.e. air conditioners. Thus, reference to Note 2(b) of Section XVI is relevant and accordingly, it is required that classification be decided on the basis of provisions contained therein.

10.2 As the goods in question are parts which are suitable for use solely or principally with particular machines or apparatus i.e air conditioners, thus classifying these goods with reference to provisions under Note 2(b) of Section XVI is the appropriate way.

10.4 Further, I note that in the FINAL ORDER NO 50874/2022 dated 20.09.2022 issued by Principal Bench of CESTAT, in the ease of M/s Vodafone Idea Ltd. v Principal Commissioner of Customs (Import), ICD Tughlakabad, New Delhi, it is inter-alia observed and laid down that, In the case of a carburetor for an internal combustion engine, it is explained that the Junction performed by carburetor is distinct from that of the engine. However, the said Junction is not an individual Junction as the operation of the carburetor is inseparable from that of the engine. Hence, the carburetor is considered as a part of the engine as opposed to an independent machine. It therefore, transpires that the true test for determining whether an item is classifiable as parts components is as follows: (i) Whether the item has a separate identifiable individual function of its own, when compared to the main machine: and (ii) Whether the item is capable of operating independently of the main-machine on its own. If the answer to both the aforesaid questions is in the negative, the item would be classifiable as parts and in that case the item will not be classifiable as an apparatus falling under its own appropriate heading. The goods in question in the instant application for advance ruling i.e "ODU Controller PCB" cannot perform its function on a stand-alone basis in the imported condition. Moreover, it appears that functioning of "ODU controller PCB" is dependent upon functions performed by other parts/components of the air-conditioner. Thus, the goods in question would merit classification as parts and not as apparatus falling under its own appropriate heading.

11 In view of the aforesaid facts and discussion, the goods, namely, 'ODU controller PCB' would merit classification under Sub-heading 84159000 of the First Schedule to the Customs Tariff Act, 1975.

12. I rule accordingly."

15.1 I find that the above advance ruling, which is for the same goods as the goods in question, and the discussion made therein, makes it amply clear that the subject goods are covered under CTH 8415 9000 and cannot be covered under 8537 1000.

15.2 In view of the above, I hold that the " PCB assembly (Parts of Air Conditioner)" is basically a populated PCB which is fitted with several apparatus/components viz. capacitors, transformer, inductor, resistor, microcontroller, ICs, IPM, PCB, heatsink, fuse, diode, voltage regulator etc. and together its function is to control and distribute electricity to the indoor and outdoor unit of the split air conditioner i.e. it is specially designed-populated assembled in order to perform the specific role of control and distribution of electricity to the outdoor unit of the split air conditioner only. Hence, it is evident that the proper classification of PCB should fall under Sub-heading 84159000.

Further, I hold that from the reference to Section Note 2 (b) of Section XVI of the Customs Tariff Act, 1975 which inter-alia provides that, other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading, are to be classified with the machine of that kind, it is further commented that upon reading the description of heading 8537, it is noted that this heading includes boards, panel, console, desks, cabinets and other bases for electric control or the distribution of electricity. It appeared that these boards,

panel, console are used in industries to operate machine-tools, rolling mills, power stations etc. This heading also includes the general switch boards used for domestic purpose on the other hand. PCB has a specific use for electricity control and distribution as a part in air conditioners, it cannot be used anywhere except air-conditioner Hence, the "PCB" is not classifiable under the heading 8537 and it merits classification under Sub-heading 84159000.

15.3. Further, I find that the applicant has described the goods in question as, "PCB Assembly (Part of Air Conditioner)" under CTH-85371000 which are in live nature of a board/panel where several individual apparatus/components are affixed together and as a whole PCB facilitates in controlling and distribution of electricity to the Indoor and Outdoor unit of the split air conditioner. I note that the goods in question are not stand-alone items/apparatus rather these are goods to be used only as parts of the main apparatus/equipment i.e. air conditioners. Thus, reference to Note 2(b) of Section XVI is relevant and accordingly, it is required that classification be decided on the basis of provisions contained therein, as the goods in question are parts which are suitable for use solely or principally with particular machines or apparatus i.e air conditioners.

15.4 From the forgoing discussions, I find that the goods, namely, "PCB Assembly (Part of Air Conditioner)" and "HITC" would merit classification under Sub-heading 84159000 of the First Schedule to the Customs Tariff Act. 1975.

16. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:

:ORDER:

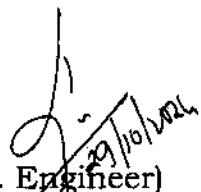
- (i) I reject the classification of the goods "Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)" under CTH-85371000 and order the same to be re-classified under CTH-84159000.
- (ii) I order to re-assess the Bills of Entry filed by the importer for "PCB Assembly (Part for Air Conditioner)" under CTH-85371000 by re-classifying the imported goods i.e. "Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)" under CTH-84159000 under Section 17(5) of the Customs Act, 1962.
- (iii) As the imported goods are rightly classifiable under CTH-84159000, I order to disallow the benefit of Custom Notification No.46/2011-Customs dated 01.06.2011, as the Certificate of Origin submitted by the importer has been issued by the Issuing Authority for the CTH 85371000 and not for CTH-84159000.
- (iv) I order to demand and recover the differential Duty Amounting to **Rs.4,13,27,826/- (Rupees Four Crores Thirteen Lakhs Twenty Seven Thousand Eight Hundred and Twenty Six only)** [Basic Customs Duty:10% + SWS: 10% + IGST:28%] under Section 28(4) of the Customs Act, 1962, for the Bills of Entry mentioned at Sr. no. 1 to 16 of Annexure-A to Show Cause Notice. For the rest of the Bills of Entry from Sr. no. 17 to 90, i.e. 74 Bills of Entry, I order the same to be finally assessed as per applicable provisions and as per observations made in this order.
- (v) I order to demand and recover the interest from M/s. Johnson Controls-Hitachi Air Conditioning India Limited (IEC-0888020503), at

appropriate rate under Section 28AA of the Customs Act, 1962 on the above confirmed demands of duty;

(vi) I order to confiscate the mis-classified imported goods i.e. "PCB Assembly (Part for Air Conditioner)" declared under CTH-85371000 which are actually Air Conditioning Machine Parts (PCB Assembly with Automatic Data Processing Machine and components)" and rightly classifiable under CTH-84159000, in respect of finally assessed 16 Bills of Entry as mentioned in sr. no. 1 to 16 of the Annexure-A attached to the Show Cause Notice, under Section 111(m) of the Customs Act, 1962, however, since the goods are not physically available not any bond executed by the noticee / importer, I refrain from imposing redemption fine on lieu of confiscation.

(vii) I impose penalty of **Rs.4,13,27,826/- (Rupees Four Crores Thirteen Lakhs Twenty Seven Thousand Eight Hundred and Twenty Six only)** on M/s. Johnson Controls-Hitachi Air Conditioning India Limited (IEC-0888020503) under Section 114A of the Customs Act, 1962. However, I refrain from imposing penalty upon them under Section 112(a)(ii) of the Customs Act, 1962, since as per 5th proviso of Section 114A, penalties under Section 112 and 114A are mutually exclusive.

17. This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.



(K. Engineer)
Commissioner of Custom,
Custom House, Mundra.

Date: 29.10.2024.

F.No. GEN/ADJ/COMM/388/2023-Adjn-O/o Pr Commr-Cus-Mundra

To,

M/s Johnson Controls-Hitachi Air Conditioning India Limited,
Hitachi Complex, Karan Nagar, Kadi,
Dist. Mehsana, Gujarat-382727

Copy to:

- (i) The Additional Commissioner (Import), Customs House, Mundra
- (ii) The Deputy Commissioner (SIIB), Customs House, Mundra.
- (iii) Notice Board.
- (iv) Guard file/Office Copy.