प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद
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OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
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निबन्धितपावतीडाकद्वारा / **By SPEED POST A.D.**
फा. सं./F. No.:VIII/10-25/Pr.Commr/O&A/2024-25

DIN- 20251271MN000000EC13

आदेशकीतारीख/Date of Order :.04 .12.2025
जारीकरनेकीतारीख/Date of Issue :04.12.2025

द्वारापारित :- **शिव कुमार शर्मा, प्रधान आयुक्त**
Passed by :- Shiv Kumar Sharma, Principal Commissioner

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-36-2025-26 dated 04.12.2025 in the case of M/s. Zera India Pvt. Ltd., A-47, Sector-25, GIDC Electronic Estate, Gandhinagar, Gujarat-382024.

1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन , गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, *Ahmedabad* – 380004

3. उक्त अपील प्रारुप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ

संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियोँ में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क अधिनियम,1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act,1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरूद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमे विवाद है उसका भुकतान करके अपील की जा शकती है।

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

8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice F.No. VIII/10-25/Pr. Commr/O&A/2024-25dated 10.06.2025 issued by the Principal Commissioner, Customs, Ahmedabad to M/s. Zera India Pvt. Ltd., A-47, Sector-25, GIDC Electronic Estate, Gandhinagar, Gujarat-382024.

Brief facts of the case:

M/s. Zera India Pvt. Ltd., having IEC No. 0508052238, is situated at A-47, Sector-25, GIDC Electronic Estate, Gandhinagar, Gujarat-382024(hereinafter referred to as 'the importer'). The importer had imported *"Reference Meter CATIII Inclusive – accessories"* classifying under CTH No. 90318000 of the Customs Tariff Act paying duty @27.735% (BCD 7.5%+SWS 10%+IGST 18%) vide Bills of Entry (mentioned in Annexure-A to SCN) from Ahmedabad Air Cargo Complex (INAMD4).

2. Chapter 90318000 covers "Other instruments, appliances and machines-Measuring and checking instruments, appliances and machines not specified or included elsewhere in this chapter; profile projector" and attracts duty @ 27.735% (BCD 7.5%+SWS 10%+IGST 18%).

3. However, chapter 90283090 covers "Other – Electricity meters; Gas, liquid or electricity supply or production meters, **including calibrating meter** therefore" and attracts duty @37.470% (BCD 15%+SWS 10%+IGST 18%).

4. The CERA vide LAR No. 11/2020-21 dated 04.03.2021 for the period July-2020 to September-2020, raised an objection that on verification of bills of entry (mentioned in Annexure-A to SCN), it was noticed that as per purchase invoice the item imported merit classification under CTH 90283090 as imported goods is used to **calibrate the errors in energy meters** and attracts duty @37.470% (BCD 15%+SWS 10%+IGST 18%). This has resulted in Short levy of duty to the tune of **Rs. 13,41,215/- (Rs. Thirteen Lakh Forty One Thousand Two Hundred Fifteen only).**

5. Further, during the course of verification/ scrutiny of Bills of Entry on the basis of aforesaid CERA objection for the period from 01.10.2020 to 31.10.2024, it has been observed that the importer also filed Bills of Entry (mentioned in Annexure-B to SCN) under CTH 90318000 having items as reference meters and paid duty @ 27.735% (BCD 7.5%+SWS 10%+IGST 18%). As per the CERA objection, the goods are classifiable under CTH 90283090 and attract duty @37.470% (BCD 15%+SWS 10%+IGST 18%). This has further resulted in Short Levy of duty to the tune of Rs. 1,00,74,583/-.

6. A letter bearing F.No. VIII/48-94/Audit/HM08 to 16/2019-20 dated 21.06.2021 in respect of LAR-11/2020-21 dated 04.03.2021 was issued to the importer for payment of duty along with interest. In reply of the above letter the importer vide their letter received by this office on 08.07.2021 submitted that:-

> *the imported material / equipment under below mentioned Bes are machines/equipment which are being used for measuring & checking / testing electricity meters that's why they have mentioned / Classified under CTH 90318000 i.e. for Other optical instruments and appliance: Other instruments, appliance and machines whereas the department mentioned CTH 90283090 is for "Electricity meters: Other".*

Sl No.	***BE NO***	***BE Date***	***INV No***	***Item No***	***Item Name / Description***	***Purpose / Use of the equipment***
1	*8740180*	*08-09-20*	*1*	*1*	*100982101 MT310 Three Phase Reference Meter CATIII Inclusive accessories, S/N: 050069680 - 050069692*	*This equipment is used for measuring & Checking / Testing of*

						electricity meter in field
2	*844377 5*	*11-08-20*	*1*	*1*	*100982101 MT310 Three Phase Reference Meter CATIII Inclusiveaccessories,S/N:05 0069624/050069625/6962 8/69645/69653/69657*	*This equipment is used for measuring & Checking / Testing of electricity meter in field*
3	*834604 6*	*01-08-20*	*1*	*1*	*101373400 Reference Meter EPZ303-10 incl. factory calibration,instruction manual WinSAM V7.XX and dongle SN-Nu.050065071*	*This equipment is used for measuring & Checking / Testing of electricity meter in field*
4	*834604 6*	*01-08-20*	*2*	*1*	*101373400 Reference Meter EPZ303-10 incl. factory calibration, instruction manual WinSAM V7.XX and dongle SN-N.050069521*	*This equipment is used for measuring & Checking / Testing of electricity meter in field*

Further, the purpose of the goods imported vide above Bes as mentioned in letter Ref.No. F.NO. VIII/48-94/Audit/HM08 to 16/2019-20/3415 dated 21.06.2021 is to measure & check / test the electricity meter on various parameters set by the international Organization for Standardization (ISO) and also set by the Bureau of Indian Standards (BIS).

The subjected equipment use the "optical technology" to measure & check / test the electricity meter pulses. The instruments mentioned in Sr. No. 1 & 2 of the above table are portable type of "test benches" as same as stationery "test benches" which are being used for measuring & checking / testing of electricity meters in the field in other words, they can be used independently just like a "test bench". On the other hand the Instruments mentioned in Sr. No. 3 & 4 of the above table are very essential part of "test bench". It is noteworthy, that the test benches used only for measuring & checking / testing of electricity meters are being classified under the CTH 90312000.

The CTH 9031 includes the items of description "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projector". Further, CTH 90318000 includes the items "Other optical instruments and appliances: Other instruments, appliances and machines".

Therefore, in view of above, these equipment do not qualify to be classified under any other Customs Tariff heading/sub-heading/tariff item including CTH 90283090 except under 90318000.

7. The reply is not accepted by the department as it is clearly mentioned in purchase invoice of bills of entry that the imported item is to **calibrate the errors in energy meters** and chapter 90283090 covers "Other – Electricity meters; Gas,

liquid or electricity supply or production meters, **including calibrating meter** therefore".

8. The imported items (as mentioned in Annexure- A & B to SCN) falls under chapter 90283090 and attracts duty @37.470% (BCD 15%+SWS 10%+IGST 18%).

9. As per the CERA objection, the importer is liable to pay total differential duty to the tune of **Rs. 1,14,15,798/- (Rs. One Crore Fourteen Lakhs Fifteen Thousand Seven Hundred Ninety Eight only)**. The details of duty difference is mentioned in TABLE-1 below:

TABLE-1

Sl No.	Annexures	Assess Value(Item)	Duty paid (27.735%)	Duty Payble (37.470%)	Differential Duty
1	ANNEXURE-A	13777245	3821119	5162334	1341215
2	ANNEXURE-B	103488268	28702471	38777054	10074583
Total		**117265513**	**32523590**	**43939388**	**11415798**

10. Further, with the introduction of self-assessment and consequent amendments to Section 17, since April-2011, it is the responsibility of the importer to correctly classify, determine and pay the duty applicable in respect of the imported goods.

11. As per Section 17 of the Customs Act, 1962, an importer entering any imported goods under Section 46 of the Act shall self-assess the duty leviable on such goods. The government has placed huge reliance on the self –assessment made by the importer. It appeared that the said importer had failed to exercise their statutory obligation and paid duty at lower rate with an intent to evade duty, by claiming benefit of wrong heading, which did not appear to be available to them.It further appears that all these material facts have been concealed from the Department deliberately, consciously and purposely with an intent to evade payment of applicable Customs duty. Therefore, in this case, all essential ingredients exist to invoke Section 28(4) of the Customs Act, 1962, to demand the applicable differential duty which is short paid by them.

12. Consequently, the differential duty of Rs. 1,14,15,798/- (Rs. One Crore Fourteen Lakhs Fifteen Thousand Seven Hundred Ninety Eight only) as detailed in TABLE-1 shown above in preceding para is liable to be recovered from the importer under Section 28(4) of the Customs Act, 1962 along-with interest in terms of Section 28AA of the Customs Act, 1962. Also, the said goods totally valued at Rs. 11,72,65,513/- imported under Bills of Entry (as mentioned in ANNEXURE-A & ANNEXURE-B) appear to be liable for confiscation under the provision of Section 111(m) of the Customs Act, 1962 in as much as the same have been imported by mis-classifying under CTH 90318000 in place of CTH 90283090. Therefore, they are liable for penalty under Section 112(a) of the Customs Act, 1962.

13. The importer has wrongly taken the benefit by mis-classifying under CTH 90318000 in place of CTH 90283090 resulting in incorrect of duty discharged on the goods in question.

14. It therefore appeared that the importer has knowingly and intentionally with ulterior motive and by design, taken the benefit by mis-classifying under CTH 90318000 in place of CTH 90283090. It appears to be a case of willful mis-statement of classification based on end use of goods with intention to avail ineligible benefit of the exemption to evade duty. This constitutes an offense of the

nature covered in Section 111(m) and Section 111(o) of the said Act and the goods imported appears liable for confiscation under Section 111(m) of the said Act.

15. As per Section 111(m) of the Customs Act, 1962, any goods which do not correspond in respect of value or in any other particular with the entry made under the Customs Act, 1962 are liable for confiscation under the said Section.

16. For these acts of omission and commission, M/s. Zera India Pvt. Ltd. appears to be liable to penalty under Section 112(a)(ii) or 114A of the Customs Act, 1962 in as much as they have intentionally made and used false and incorrect declaration / statements / documents to evade payment of legitimate Customs duties as discussed in the foregoing paras.

17. Further, by these acts of the omission and commission of the importer, they appear to attract the provisions of Section 114AA of the said Act. The importers have mis-classified the goods in question with intent to avail undue benefit of lower rate of duty and thus the importer has rendered themselves liable to penalty under Section 114AA of the said Act.

In this connection, Section 114AA of the said Act, reads as under :-

"114AA. Penalty for use of false and incorrect material.—If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

18. In view of the above, Show Cause Notice No.VIII/10-25/Pr.Commr/O&A/ 2024-25 dated 10.06.2025 issued to M/s. Zera India Pvt. Ltd., having IEC no. 0508052238, situated at A-47, Sector-25, GIDC Electronic Estate, Gandhinagar, Gujarat-382024 calling upon to Show Cause to the Principal Commissioner of Customs, Custom House, Ahmedabad, as to why:

(i) Total short paid/short-levied duty in respect of goods imported vide bills of entry as detailed in Annexure-A &B to SCN, amounting to **1,14,15,798/- (Rs. One Crore Fourteen Lakh, Fifteen Thousand, Seven Hundred Ninety Eight only**), should not be demanded and recovered by invoking extended period of five years as per the provisions of Section 28 (4) of the Customs Act, 1962?;

(ii) The imported goods having declared assessable value of at Rs. **11,72,65,513/-(Rupees Eleven Crore, Seventy Two lakh, Sixty Five Thousand Five Hundred Thirteen only)** should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962 for the act of willful mis-statement and intentional suppression of facts with regard to classification of the said goods by way of submitting false declaration leading to unlawful, illegal and wrong availment of concessional duty by mis-classifying under CTH 90318000 in place of CTH 90283090.Since the goods are not available for confiscation, fine as contemplated under Section 125 should not be imposed on them in lieu of confiscation?;

(iii) Interest at an appropriate rate as applicable, on the short paid/short-levied duty, as mentioned in TABLE-1, should not be recovered from them under Section 28AA of the Customs Act, 1962?

(iv) Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962?

(v) Penalty should not be imposed on the importer for short payment of duty amounting to **Rs. 1,14,15,798/- (Rs. One Crore, Fourteen Lakh, Fifteen Thousand Seven Hundred Ninety Eight only)** under section 114A of the Customs Act, 1962?

(vi) Penalty should not be imposed upon them under Section 114AA of the Customs Act, 1962?

19. Defence Reply: The said importer vide letter dated submitted their written submission dated 01.09.2025 wherein they interalia stated as under:

19.1 The importer introduced the brief about their company and stated that ZERA is an internationally recognized, independent company specializing in the testing of energy measurement devices. Established in 1920 and headquartered in Germany, ZERA has grown into a leading manufacturer of high-precision systems for generating, quantifying, testing and verifying electrical quantities; that The company serves a wide range of clients, including electricity suppliers, meter and measuring transformer manufacturers, metrology institutes, test laboratories, certification authorities, and academic institutions. ZERA's solutions are utilized throughout the entire energy value chain—from power generation, where precision meters and transformers are installed in power plants, to transmission networks, and ultimately to end users requiring accurate energy monitoring and billing; that ZERA's products are designed to support consumer protection through precise energy billing, uphold quality standards by complying with international regulations, and help energy providers maximize revenue by minimizing measurement losses; that the company's meter testing portfolio is organized into several product categories, each tailored to specific industry needs; that each product category is engineered for maximum accuracy, reliability, and ease of use—whether applied in field inspections, laboratory environments, or factory testing; further they introduced the business of the importer wherein stated that they are engaged in the specialized design, manufacturing, and distribution of advanced testing equipment for electrical energy meters as well as Current and Voltage Transformers (CTs and PTs). These solutions are critical to ensuring the accuracy and reliability of energy measurement systems used by power utilities, metering service providers, and accredited testing laboratories; that by delivering high-performance testing and verification tools, the noticee supports its clients in achieving precise measurements, regulatory compliance, and enhanced system reliability; that all key testing instruments and trading items are sourced directly from ZERA GmbH, the parent company based in Germany, which is globally recognized for its high-precision metrology systems which includes portable reference standards, test meters, and a comprehensive range of accessories such as precision connectors, test leads, and communication cables; that each item undergoes stringent quality control and is selected based on its compliance with international testing standards (such as IEC and ISO); that the imported instruments are bundled with carefully curated auxiliary components to form complete, ready-to-deploy testing kits, ensuring ease of setup and immediate operational readiness for field or lab use; that in addition to distributing ZERA's standardized equipment, the noticee offers value-added customization services through its in-house panel fabrication unit. These custom-built test and metering panels are engineered to meet the unique requirements of diverse applications within power distribution networks, substations, and industrial metering installations. Each panel is meticulously designed to integrate multiple elements—

including energy meters, CT/PTs, auxiliary power supplies, control logic, and protective relays—into a unified, compact, and robust system.

19.2 that they at the very outset, categorically and unequivocally deny all allegations, assertions, and averments contained in the Show Cause Notice (SCN), which are unfounded, factually incorrect, and devoid of legal merit; that the Department's proposal to reclassify the imported goods is unsupported by any detailed technical study or objective evaluation of the equipment's inherent nature, design, principal function, and actual use. Instead, the reclassification premise appears to be based on a superficial and literal reading of the term "calibrating meters," without appreciating the complete technical context which has led to an untenable presumption that the goods fall under a different tariff heading, thereby triggering an erroneous demand for differential duty; that the said reasoning and the stand of the department disregards the fundamental classification principles incorporated under the Customs Tariff Act, 1975, and the Harmonized System (HS) explanatory framework, which mandate that classification must be determined by reference to the goods' primary function, technical specifications, actual usage, and relevant chapter notes/explanatory guidelines—and not on isolated words or incomplete interpretations; that the Department had a statutory and procedural duty to undertake a comprehensive product-specific examination, relying on detailed technical literature, operational manuals, industry usage patterns, and recognised metrology standards before forming any view on classification; that no such substantive technical evaluation has been carried out in the present case.

19.3 that the mentioned chronology of the events leading to issuance of SCN as under:

19.3.1 that the records of the noticee were audited by CRA, Audit Party No. III for the period July 2020 to September 2020, pursuant to which Half Margin Memo Nos. 8 to 16 were issued on 21.06.2021; that as per the said Memo, the following Bills of Entry (BoEs) were objected to on the ground that "Three Phase Reference Meter CAT III including accessories" had been classified under CTH 90318000 with duty paid @ 27.735% (BCD 7.5% + SWS 0.75% + IGST 18%), instead of classification under CTH 90283090 attracting duty @ 37.470% (BCD 15% + SWS 1.5% + IGST 18%); that according to the department, resulted in short-levy of duty amounting to Rs. 13,41,904/-.

BoE No.	Date	Assessable Value	Duty Paid (₹)	Duty Payable (₹)	Short Levy (₹)
8443775	08.11.2020	82,72,658.42	22,94,421.80	31,00,178.70	8,05,756.93
8740180	09.08.2020	36,32,921.17	10,07,590.80	13,61,437.38	3,53,846.58
8346046	08.01.2020	9,35,832.33	2,59,553.00	3,50,703.07	91,150.07
8346046	08.01.2020	9,35,832.33	2,59,553.00	3,50,703.07	91,150.07
Total					**13,41,903.65**

That the noticee furnished a detailed reply on 28.08.2021, along with product manuals, catalogues, photographs, and supporting BoE documents. It was clarified that:

a. The imported goods were intended for measuring, checking, and testing electricity meters on parameters prescribed by ISO and BIS.
b. The equipment employed optical technology for measuring/testing electricity meter pulses.
c. The portable test benches imported under Sr. Nos. 1 and 2 above were identical in functionality to stationary test benches already in use, capable of independently measuring and testing electricity meters.
d. As regards Sr. Nos. 3 and 4, these items were essential parts of the test bench, appropriately classifiable under CTH 90312000.

19.3.2 that a subsequent audit by CRA, Audit Party No. III, for the period January 2021 to March 2021 resulted in issuance of Half Margin Memo Nos. 4 to 14 on 21.06.2021, on identical grounds; that the audit covered two B/Es dated 19.02.2021 and 22.03.2021, alleging short levy of Rs. 4,69,111/-. This was forwarded by the Assistant Commissioner, Air Cargo, Ahmedabad, vide letter dated 06.07.2021; that thereafter, referring to LAR 11/20-21, the Deputy Commissioner, Air Cargo, vide letter dated 14.11.2021, once again requested payment of differential duty of Rs. 13,41,904/- with interest; that in response, the noticee sought a personal hearing vide letter dated 03.12.2021, to explain the technical nature and functionality of the imported goods; that Pre-consultation was accordingly granted vide letters dated 15.03.2022 and 20.03.2022; that a A virtual hearing was held on 26.03.2022, wherein the noticee explained the matter in detail and submitted product literature and guidelines issued by the Central Electricity Authority regarding installation and operation of meters; that said facts were further furnished via email dated 28.03.2022; that thereafter, no communication was received from the department for over a year, leading the noticee to reasonably believe that the classification issue had been closed;

19.3.3 that Despite the above, the noticee received further communications:

- **Letter dated 18.04.2023**: The Deputy Commissioner, Air Cargo, Ahmedabad, demanded Rs. 23,95,890/- (including interest) for seven BoEs filed during April 2021 to September 2021, again alleging misclassification under CTH 90318000 instead of CTH 90283090. A detailed reply was submitted on 24.04.2023, reiterating the technical purpose of the goods and enclosing relevant documentation.
- **Letter dated 06.09.2023**: Another demand was raised for Rs. 38,56,542/- in respect of four BoEs filed during October 2021 to December 2021. The noticee replied on 05.10.2023, once again providing detailed explanations and technical clarifications.

19.3.4 that following prolonged silence, the noticee was unexpectedly served with a Show Cause Notice dated 10.06.2025 (received on 21.06.2025), invoking the extended period under Section 28(4) of the Customs Act, 1962, demanding cumulative differential duty of Rs. 1,14,15,798/- along with interest, once again on the basis that the imported goods were "calibrating meters" classifiable under CTH 90283090; that provided details chronology of Audit observation and correspondence as under:

Sl. No.	Period / Date	Event / Document	Details	Remarks / Legal Significance
1	**July – Sept 2020**	**Half Margin Memo Nos. 8 to 16 issued on**	Covered 4 BoEs. Alleged misclassification of "Three Phase Reference Meter CAT III including accessories"	Audit initiated dispute. Basis: assumption that goods were

Sl. No.	Period / Date	Event / Document	Details	Remarks / Legal Significance
		21.06.2021	under CTH 90318000 instead of 90283090. Alleged short levy of **Rs. 13,41,904/-**.	"calibrating meters."
2	**28.08.2021**	**Reply of Noticee**	Submitted product manuals, catalogues, photographs, and BoE documents. Clarified that goods were **test benches using optical technology** for testing electricity meters as per ISO/BIS standards. Essential parts classifiable under 90312000.	Department placed on notice with full technical details of the goods. Burden shifted back to department to disprove.
3	**Jan – Mar 2021**	**Half Margin Memo Nos. 4 to 14 issued on 21.06.2021**	Covered 2 BoEs. Alleged short levy of **Rs. 4,69,111/-** on same grounds as earlier period.	Repetition of same objection despite prior clarifications.
4	**10.07.2021**	**Reply of Noticee**	Submitted product manuals, catalogues, photographs, and BoE documents. Clarified that goods were **test benches using optical technology** for testing electricity meters as per ISO/BIS standards. Essential parts classifiable under 90312000.	Department placed on notice with full technical details of the goods. Burden shifted back to department to disprove.
4	**03.12.2021**	**Request for Personal Hearing by Noticee (Via email)**	Noticee sought opportunity to explain technical nature and classification.	Demonstrates bonafide conduct of noticee.
5	**26.03.2022**	**Pre-consultation Hearing** (Virtual mode)	Officials explained in detail technical aspects of imported goods.	Department fully apprised of classification dispute.
6	**28.03.2022**	**Submission of Supporting Documents(via mail)**	Furnished product literature and **Central Electricity Authority (CEA) guidelines** on installation/operation of meters.	Clear evidence that imported goods were test benches for checking meters, not calibrating meters.
7	**Post March 2022 –**	**No Communication from**	Matter remained dormant for more than one year. Noticee reasonably	Long silence indicates acceptance /

Sl. No.	Period / Date	Event / Document	Details	Remarks / Legal Significance
	April 2023	**Department**	presumed issue had been closed.	waiver by department. Weakens ground for invoking extended period under Sec. 28(4).
8	**18.04.2023**	**Letter of Deputy Commissioner, Air Cargo, Ahmedabad**	Covered 7 BoEs (Apr – Sept 2021). Demand: **Rs. 23,95,890/-** alleging misclassification.	Same issue re-agitated for subsequent period.
9	**24.04.2023**	**Reply of Noticee**	Provided detailed explanation, reiterating technical function and correct classification under 90318000 / 90312000.	Continuous disclosure; no suppression.
10	06.09.2023	Letter of Deputy Commissioner, Air Cargo, Ahmedabad	Covered 4 BoEs (Oct – Dec 2021). Demand: Rs. 38,56,542/-.	Again, repetitive allegation.
11	05.10.2023	Reply of Noticee	Detailed technical clarifications submitted once more.	Consistent stand of noticee across all periods.
12	10.06.2025 (Received 21.06.2025)	Show Cause Notice invoking Section 28(4)	Cumulative demand of Rs. 1,14,15,798/-, alleging misclassification as calibrating meters under 90283090.	SCN time-barred and unsustainable as department had full knowledge since 2021; extended period invocation unjustified.

That from the foregoing chronology, it is abundantly clear that the department was fully aware of the classification issue right from the year 2021; that the noticee, at every stage, provided comprehensive technical clarifications, supported by product manuals, catalogues, photographs, and official guidelines of the Central Electricity Authority (CEA), thereby placing all relevant facts before the department; that these documents not only explained the nature and function of the imported goods but also substantiated their correct classification under CTH 90318000/90312000, as opposed to the department's contention under CTH 90283090, thus, the department was never kept in the dark and cannot now allege suppression of facts; that after the pre-consultation hearing held on 26.03.2022 and the subsequent submission of detailed documents on 28.03.2022, the department remained completely silent for over a year; that such such prolonged inaction, despite having been furnished with full technical details, indicated that the department had either accepted the classification declared by the noticee or at the very least did not consider the matter fit for further pursuit at that stage; that in

law, this prolonged silence amounts to acquiescence and negates any allegation of willful misstatement or suppression on the part of the noticee; that it is also pertinent to note that the noticee has consistently maintained transparency in all its dealings with the customs authorities; that at every stage – whether during audit, in reply to Half Margin Memos, in correspondence with the Deputy Commissioner, or in personal hearing – the noticee disclosed the complete nature, functionality, and purpose of the goods; that the conduct of the noticee is thus demonstrably bona fide and in complete good faith; that said track record of openness is wholly inconsistent with the allegation of deliberate suppression or mis-declaration, which is a precondition for invoking the extended period under Section 28(4) of the Customs Act, 1962; that in view of these facts, it becomes legally untenable for the department to invoke the extended period of limitation under Section 28(4); that the very foundation for such invocation, namely suppression of facts or wilful misstatement with intent to evade duty, is entirely absent in the present case; that the demand raised in the show cause notice is therefore barred by limitation and liable to be set aside on this ground alone, apart from the merits of classification itself;

19.4 that the SCN alleges that since the imported equipment is used *to calibrate errors in energy meters*, they should be classified under the higher-duty CTH 90283090 rather than the broader 90318000 category; that this reclassification results in a proposed differential duty liability of approximately ₹1.14 Crore, representing the shortfall between the originally declared duty under 90318000 and the duty payable under 90283090; that in this regard, in response to the classification dispute raised in LAR No. 11/2020-21, it is respectfully reaffirmed that the imported goods were correctly declared under Customs Tariff Heading (CTH) 90318000, which covers "Other instruments, appliances and machines, measuring or checking instruments not specified or included elsewhere in this chapter;"; that this heading covers precision measurement devices whose primary function is to measure or verify parameters but are not covered by a more specific subheading within Chapter 90;

19.5 that the Show Cause Notice proposes reclassification to CTH 90283090, applicable to "Other electric meters; gas, liquid or electricity supply or production meters, including calibrating meters," on the assumption that the imported items are used for testing and calibrating the energy meters, thereby attracting the higher duty rate of 37.47%; that this assumption is factually, technically, and legally incorrect; that the goods in question are high- precision reference standards designed for independent measurement, verification, and benchmarking in electrical systems; that their essential function is to provide traceable, stable reference readings for comparison in testing, performance monitoring, and quality- assurance scenarios; that they do not possess any mechanism—hardware or software—capable of executing the calibration of other meters, i.e., the adjustment or correction of another device's measurements to meet an accuracy specification; that Calibration, as defined in metrology, is an active process performed with dedicated calibration equipment or softwares in laboratories, not through reference meters in field or test use;

19.6 that they submitted following submission which further gives the distinction between the goods in-dispute (reference meters) and energy meters which is undeniable and technically established:

- Energy Meters measure cumulative electrical energy consumption (kWh) over time for billing and energy management. They are installed at consumer premises (residential, commercial, industrial) and used primarily by utilities (DISCOMs) for commercial billing. Their accuracy is adequate for billing

purposes (e.g., Class 0.5, Class 1) but not at the precision levels required for calibration operations.

- Reference Meters (also known as Reference Standard), by contrast, are precision standard instruments with ultra-high accuracy (Class 0.02 or better), traceable to national/international metrology standards. They are used in calibration labs, test benches, and utility quality control to verify and benchmark energy meters. They do not measure consumption for billing; instead, they act as metrological standards to confirm the correctness of energy meters under test. Further key technical differences are as follows:

Aspect	Energy Meter	Reference Meter
Purpose	Measures consumption for billing/monitoring	Serves as standard for calibration/verification
Accuracy class	Typically 0.5, 1.0	Very high (0.02 or better)
Usage environment	Consumer premises, utilities	Calibration labs, test benches
Functionality	Records cumulative kWh usage	Provides precise, traceable readings for comparison
Calibration role	Calibrated as per the error marked by the reference meters	Used to measure/verify energy meters

that thus, the Energy meters are commercial consumption-recording devices; reference Standard meters are gold-standard precision instruments ensuring the accuracy of energy meters; that said fundamental functional difference confirms that the imported reference meters belong under CTH 90318000 (general measuring/checking instruments not specified elsewhere) and not under CTH 90283090 (which covers electricity supply meters and calibrating meters); that the SCN's reclassification proposition is unsupported by technical evidence, contrary to established judicial precedent, inconsistent with industry usage, and should be rejected in toto, with the classification under CTH 90318000 upheld;

19.7 that, following reason may kindly be considered to hold that the chapter heading already followed by the noticee, CTH 90318000, is more appropriate than the chapter heading proposed by the department, CTH 90283090, based on well-established principles of customs tariff classification and legal interpretation, as explained below:

According to the Customs Tariff Act and the Harmonized System (HS) General Rules for Interpretation (GIR), classification of goods for customs purposes must fundamentally be based on their principal use and essential character at the time of import. This principle ensures that goods are classified objectively, reflecting their intrinsic nature and primary function, rather than on assumptions about their main or incidental uses.

In the present case, the imported goods are reference standard meters designed specifically for independent measurement, verification, benchmarking, and performance monitoring within electrical systems. Crucially, these meters do not perform calibration functions, meaning they do not actively adjust, correct, or

calibrate other meters. Their role is to provide stable and traceable reference measurements to compare or verify other instruments, without modifying the instruments under test.

Under the HS classification structure, the heading CTH 90318000, which pertains to "Measuring or checking instruments, appliances and machines not specified or included elsewhere in this chapter," provides a residual category for precision measurement instruments not specifically covered by other narrower headings. Since the imported reference meters neither qualify as electric meters used for billing or supply measurements nor as calibration meters designed to physically or functionally calibrate other instruments, their essential character clearly fits within this general residual heading. This approach is consistent with the General Rule 1 of Interpretation (GIR 1), which mandates classification according to the terms of the headings and relevant section or chapter notes, focusing on the goods' inherent nature rather than external factors like end-use. Additionally, Rule 3(b) of the GIR requires that, in cases of composite goods or ambiguous classification, goods be classified according to the component or characteristic that imparts their essential character—here, the function as reference measurement devices.

The distinction between factory calibration and calibration function also underlines this classification. The purchase invoices indicate the meters were "factory calibrated," meaning the manufacturer verifies the meter's own accuracy before shipment. This does not transform the meters into calibration devices that adjust or correct other meters, which would be necessary to qualify under CTH 90283090 (a heading applicable to electric meters and calibrating meters designed for supply measurement and correction).Therefore, the classification under CTH 90318000 aligns precisely with the imported goods' principal function and essential nature at importation, complying fully with legal precedents and tariff interpretative rules. This classification is both factually accurate and legally robust, whereas the alternative heading proposed by the department (CTH 90283090) incorrectly imposes a function (calibration of other devices) that the imported goods do not possess.

In summary, the principal use and essential character test of the Customs Tariff Act and HS Rules support classification of the reference meters under CTH 90318000 as general measuring/checking instruments, and not under the more specific CTH 90283090 reserved for calibrating meters and electric supply meters.

The department's proposed classification under CTH 90283090—which reads "Other electric meters; gas, liquid or electricity supply or production meters, including calibrating meters"—is factually and functionally inapplicable to the imported goods in question. This heading covers instruments and meters whose principal function is the measurement and direct recording of the supply or production of electricity, gas, or liquid for commercial, billing, or metrological purposes, as well as meters specifically designed and equipped to perform calibration of other energy meters. The phrase "including calibrating meters" within the heading refers strictly to devices whose active and intended use involves the adjustment, correction, or verification of other meters' accuracy, either by hardware or software means. In contrast, the imported goods are reference meters, which serve a fundamentally different technical purpose. As already discussed above, these are highly accurate instruments used to generate traceable reference measurements, intended to act as benchmarks during testing or validation of other equipment. They are not manufactured, marketed, nor equipped with the mechanisms required to actively calibrate or adjust other meters. They do not perform calibration functions—that is, they do not carry out adjustments, corrections, or accuracy alignments of other instruments. Their role is strictly limited to independent measurement and verification. All submitted technical documentation, product literature, and manufacturer catalogues confirm that these reference meters do not possess calibration software, interfaces, or adjustment

facilities. The only calibration performed is by the manufacturer to ensure the reference meter's own accuracy before it leaves the factory; This is fundamentally different from acting as an active calibrator for other devices. For these reasons, the express functional criterion for inclusion under CTH 90283090 is not met. The imported reference meters do not measure supply for commercial distribution, nor do they actively calibrate other meters. Thus, they should not be classified under the department's proposed heading. Therefore, classification under CTH 90318000—which covers measuring or checking instruments not elsewhere specified or included—is legally and technically appropriate for reference meters of the type imported, while CTH 90283090 does not apply; that the distinction between factory calibration and the calibration function performed by calibration meters (known as 'calibrator') is rooted in their different purposes and technical roles:

- Factory Calibration is a quality assurance and accuracy verification process performed by the manufacturer before the instrument is shipped. During factory calibration, the meter is tested and adjusted (if necessary) to ensure it meets its specified accuracy and performance standards. This process confirms that the meter itself is accurate and reliable when delivered. It is essentially a *pre-delivery validation* that the instrument operates within the manufacturer's tolerances. Importantly, factory calibration is typically done under controlled conditions at the factory, often without producing traceable certificates unless specified. It does not involve the meter adjusting or correcting other devices.
- In contrast, a Calibration Meter (under tariff classification like CTH 90283090) is a device specifically designed and equipped to actively calibrate other meters or instruments. This means it has hardware or software mechanisms that allow it to perform adjustments, corrections or *verifications* that bring other meters into compliance with accuracy standards. Calibration meters are used as a standard or reference during a calibration procedure to correct or align the performance of other devices in the field or lab.

Therefore, factory calibration confirms the accuracy of the meter itself before export—it is a manufacturer's internal verification step—whereas a calibration meter is a functional device whose principal purpose is to calibrate or adjust other meters. This distinction is crucial for classification under the Customs Tariff:

- The *factory calibrated* reference meters fit under CTH 90318000 ("measuring or checking instruments not specified elsewhere"), reflecting their nature as precise measuring instruments.
- They do not qualify under CTH 90283090, reserved for meters with the active function to calibrate other instruments.

In sum, the purchase invoices noting factory calibration underscore that these are *ready-to-use, accuracy-verified reference meters*, not active calibration devices, supporting proper classification under CTH 90318000 rather than CTH 90283090. In the above paras the scanned copies of calibration certificate has been incorporated under the respective item imported by the noticee as evidence which may kindly be taken on record. That the Chapter Notes to Chapter 90 of the Customs Tariff, read with the Harmonized System (HS) Explanatory Notes, require that tariff classification be based on the actual technical characteristics and the functional purpose of the goods. Chapter Note 5 in particular directs that the primary function of an instrument—such as measuring or checking—dictates its appropriate heading. In the present case, the imported reference meters declared under HSN 90318000 conform exactly to these principles. They are precision reference standards used for testing, verifying, and benchmarking the accuracy of electricity meters. Their users typically include calibration laboratories,

utilities (DISCOMs), and meter manufacturers. They are not designed to measure consumer electricity consumption for billing purposes and are not permanently installed in supply systems. By contrast, meters falling under HSN 90283090—classified as "other electric meters, including calibrating meters"—are intended for direct measurement of electricity supplied to end users, usually installed at residential, commercial, or industrial premises, and play a role in commercial billing and load monitoring. This distinction between supply or production meters and measuring/checking instruments is recognised in both the Customs Tariff and established trade practice:

i. Heading 9028 applies to devices that measure and record consumption (kWh, voltage, current) during normal operation of the supply network.
ii. Heading 9031 applies to devices whose primary role is to measure or check other instruments—such as test benches or stand-alone precision meters—rather than meters in service.

Reference Meters, including models such as MT 320 or MT3000, are portable, used in field or laboratory environments, and intended solely to verify the accuracy of installed meters (devices under test). They measure supply parameters for validation purposes, not for billing or supply system integration. Further, they lack the multi-socket, load-injection, and automation features typical of complete test benches under CTH 90312000. Chapter Note 2(b) supports this approach, as these portable instruments are "suitable for use solely or principally" with accuracy verification setups, not as parts of billing meters. Further, applying GIR 1 (General Rules for Interpretation), as affirmed by the Hon'ble Supreme Court in CCE v. Simplex Mills Co. Ltd. 2005 (181) E.L.T. 345 (S.C.), classification must first be determined by the terms of the headings and the relevant Section/Chapter Notes before considering any other factors.

That in view of the above reasoning, the scope of Heading 9028 does not extend to devices whose primary function is to test or check other meters; it only covers calibrating meters insofar as they are themselves supply meters. In contrast, Heading 9031 expressly covers "measuring or checking instruments... test benches", with subheading 90318000 being the residual category for those not specified elsewhere.

The functional distinction is also clear:

- **Supply/Production Meters (9028):** Permanently installed in the electricity supply chain; measure cumulative energy consumption for billing.
- **Reference standard Meters (90318000):** Portable precision standards used to check meter accuracy; not part of the billing process; cannot adjust or calibrate other meters.

The product catalogues, technical manuals, and usage guidelines submitted with each Bill of Entry confirm that:

- The imported meters are marketed solely as measuring/checking instruments.
- They cannot directly calibrate energy meters; calibration (adjustment/correction) is a separate process carried out with OEM tools, software, or full test benches.
- These goods have consistently been classified under CTH 90318000 in prior final assessments without objection.

Accordingly, the imported ZERA reference meters do not fall within CTH 90283090, which is restricted to electricity meters used for billing or those with active calibration capability; that they are correctly classifiable under CTH

90318000, covering "measuring or checking instruments, appliances and machines not specified or included elsewhere in this chapter"; that the SCN, as issued by the department, is therefore premised purely on assumptions without any corroborating evidence; that the classification declared by the noticee under CTH 90318000 is accurate, consistent with the product's intrinsic characteristics, and in line with long-standing trade and customs practice; that the proposal to alter it is unjustified both in fact and in law;

19.8 that attention is drawn to a critical piece of documentary evidence: the purchase invoices which states that the reference meters were 'factory calibrated' by the manufacturer prior to shipment; that this means that the instruments were supplied in a ready-for-use, accuracy-verified state for the measurement needs; that 'Factory calibration' is a *pre-delivery quality assurance process* carried out by the manufacturer to ensure the instrument's own accuracy; that this is entirely different from the process of *calibrating other instruments; that the* fact that the imported items were factory calibrated underscores their role as accurate reference devices — it does not make them "calibration meters" in the tariff sense, nor does it change their principal function into one of performing calibration on other meters;

19.9 that consistent with the General Rules for Interpretation of the Tariff and the Chapter 90 Notes, classification must follow the goods' essential character and design as imported, supported by objective documentary evidence; that the case law, including M/s Secure Meters Ltd. v. CC (CESTAT, New Delhi in Customs Appeal No. 51041 of 2020 dated 28.01.2025 and the decision of the Apex Court in the case of M/s O.K. PLAY (India) Ltd. Vs Commissioner (reported at 2005(180)E.L.T300(SC))and in the case of Commissioner of Central Excise, Salem Vs Madhan Agro Industries (India) P Ltd (reported at 2025 (391) E.L.T. 145 (S.C.))has repeatedly held that instruments must be classified based on their own functional purpose, not on incidental features or mere end-use assumptions; that the Indian Customs Tariff lists HS code 90318000 as "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter" which matches the Harmonized System Explanatory Notes approach of placing general-purpose measuring/checking instruments under residual headings if not specifically calibration devices; that therefore, it is clearly established that the imported items under reference fall under HS 90318000 of CTA, 1962.

19.10 that the Show Cause Notice does not provide any substantive evidence to support the reclassification of the imported goods under CTH 90283090; that there is no technical documentation, product specification, manufacturer's literature, or demonstration of functional capability presented to show that the imported reference standard sets are *designed* or *intended* to perform the function of calibrating energy meters in the sense contemplated under Heading 902830; that the department's contention appears to rest purely on inference, drawn from the application context in which these instruments are used—namely, the calibration process, however, mere use of an instrument *during* a calibration procedure does not render it a calibrating meter as defined under CTH 902830; that the technical capability and design purpose of the goods must be the primary criteria for classification; that under Section 28 of the Customs Act, 1962, the burden of proof for proposing a reclassification of goods lies with the department and this principle has been consistently upheld in multiple judicial pronouncements; they cited the decision of Hon'ble Tribunal (Mumbai) in the case of Bombay Fluid Systems Components Pvt. Ltd. Versus Commissioner of Customs (Import) in case of Customs Appeal No. 85287 of 2022; case laws of M/s Kisankraft Machine Tools Pvt. Ltd. Versus Commissioner Of Customs, Chennai as reported in 2025 (391) E.L.T. 406 (Tri. - Chennai);

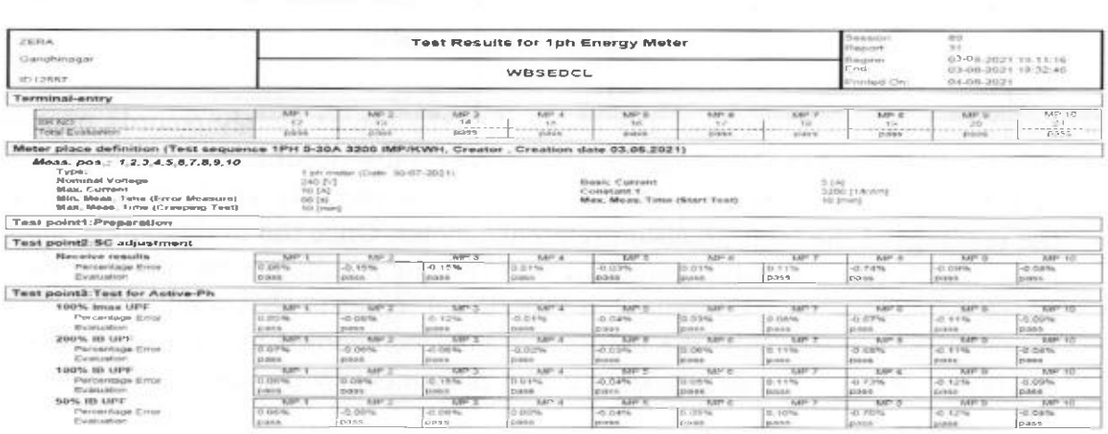
19.11 that in the present matter, when examined in the context of the well-settled principles laid down in a plethora of judicial pronouncements, some of which have already been discussed hereinabove, it becomes evident that the department has failed to satisfactorily discharge the burden cast upon it; that the onus was upon the department to conclusively establish, through cogent evidence, that the impugned goods indeed possess the essential characteristics and functional attributes of calibrating meters so as to merit classification under CTH 90283090, however, no substantive technical examination, expert opinion, or manufacturer's certification has been brought on record to substantiate such a claim; that in the absence of any authoritative technical analysis or confirmation from the manufacturer, the assertion that the goods fall within the scope of CTH 90283090 remains unsubstantiated and cannot be sustained; that in view of the above, the proposed reclassification under CTH 90283090 and the consequent differential duty demand of approximately ₹1.14 Crore is unsustainable; that the para raised by CERA vide LAR No. 11/2020 dated 04.03.2021 and the SCN's reclassification proposal be dropped, and that the classification and duty payment under CTH 90318000 be upheld as correct and compliant;

19.12 that the action of the Noticee in classifying the goods appropriately as per the notes of the relevant heading 9031 is further fortified by binding judicial precedents, and cited case laws viz. M/s Garware Nylons Ltd., 1996 (87) E.L.T. 12 (S.C.), Dunlop India Ltd. v. Union of India, 1983 (13) E.L.T. 1566 (S.C.) = AIR 1977SC 597, H.P.L. Chemicals Ltd Vs Commissioner of C. Ex , Chandigarh, 2006 (197) E.L.T.324 (S.C), Jai Kunkan Foods v. Commissioner of Customs, NCH, New Delhi [2023 (385) E.L.T. 738 (Tri.-Del.)]; that in the present case, the Department has completely failed to discharge the burden of proof cast upon it under the law; that no credible technical analysis, expert opinion, or manufacturer's documentation has been brought on record to substantiate the allegation that the imported goods fall under CTH 90283090. In the absence of such concrete evidence, the proposal for reclassification is legally untenable and cannot be sustained; that it is a settled principle, repeatedly affirmed in judicial precedents as well as in established customs practice, that classification for customs purposes must be determined on the basis of objective product characteristics, design and technical specifications, and the principal function of the goods, as presented at the time of importation; that reliance cannot be placed on conjecture, assumptions regarding possible downstream uses, or mere commercial labels adopted by suppliers or trade; that any attempt to reclassify goods without authoritative technical evidence would not only be contrary to the Harmonized System of Nomenclature (HSN) Explanatory Notes and binding judicial rulings but would also violate the fundamental rule that ambiguity in classification disputes must be resolved in favour of the assessee; that accordingly, in the absence of substantive evidence and keeping in mind the well-settled principles of classification jurisprudence, the Department's attempt to alter the classification is devoid of legal merit and deserves to be rejected in toto;

19.13 that the customs authorities had completed final assessments based on the declared classification, and the noticee had provided technical literature supporting the principal function of the goods, during various communications made with the department on this issue and therefore, it cannot be said that the department was not aware about the classification adopted by the notice; that later changes in departmental view cannot invalidate such documented and approved classifications without proper appeal or fresh substantial evidence; that placed reliance on the decision of Tri. Ahmedbad in case of Shreeji Shipping Vs Commissioner of Customs, Tribunal, Ahmedabad [reported at (2024) 16 Centax 393 (Tri.-Ahmd)] and stated that the ratio of the said judgement is applicable in the instant case too; that the customs authorities had completed final assessments of the subject Bills of Entry

on the basis of the classification declared by the noticee; that at the time of assessment, the noticee had provided comprehensive technical literature, including manuals and catalogues, clearly establishing the principal function of the imported goods; that these materials were duly placed before the assessing officers and formed the basis of clearance and accordingly, it cannot now be contended that the department was unaware of, or misled about, the classification adopted by the noticee; that a subsequent shift in departmental perception or interpretation cannot, in law, vitiate such documented and duly approved classifications, unless overturned through proper appellate proceedings or supported by fresh and credible technical evidence; that the attempt to reopen accepted assessments on the basis of a changed departmental view is unfair and unreasonable; that further, keeping the technical aspects in mind, and in continuation of the detailed description of the imported goods and their functionality provided in para 3.2 of their reply, it is abundantly clear that the goods in question are high-precision reference meters designed solely for the measurement, verification, and accuracy assessment of electricity meters; that these instruments serve as benchmark devices that provide traceable, reliable, and accurate readings against which an energy meter's performance is evaluated; that their role is confined to error detection and measurement—whether in laboratory test benches, utility quality assurance environments, national metrology institutes, or during field verification checks; that it is reiterated that the Show Cause Notice has erroneously treated these devices as "calibrating instruments"; that it is a fundamental misapplication of terminology; that the process of calibration ordinarily requires the use of proprietary Original Equipment Manufacture (OEM) software, access to protected calibration registers, or direct intervention by the manufacturer or its authorised service personnel; that the imported reference meters, including models such as ZERA EPZ103, MT3000RM, MT320, EPZ303 10, and MT320S2, do not and cannot perform such functions; that their function is limited to detecting, quantifying, and reporting deviations or measurement errors in the meter under test (MUT); that they do not alter, adjust, or reconfigure the MUT's internal calibration parameters; that any recalibration, where necessary, is a distinct procedure altogether, lying entirely outside the operational capability of these instruments and therefore, the classification of these goods as "reference meters" under CTH 90318000 is factually correct, technically substantiated, and aligned with internationally accepted industry nomenclature and trade practice; that the Department's presumption that these instruments are "calibrating meters" intended to adjust errors in energy meters is factually incorrect, technically unsustainable, and legally untenable;

19.14 that to further substantiated by the sample test report of an MT320S2 meter testing session, reproduced below.



ZERA
Ganghinagar

Test Results for 1ph Energy Meter

WBSEDCL

Terminal-entry

Meter place definition (Test sequence 1PH 5-30A 3200 IMP/KWH, Creator , Creation date 03.06.2021)

Meas. pos.: 1,2,3,4,5,6,7,8,9,10

Type:
Nominal Voltage
Max. Current
Min. Meas. Time (Error Measure)
Max. Meas. Time (Creeping Test)

Basic Current
Constant 1
Max. Meas. Time (Start Test)

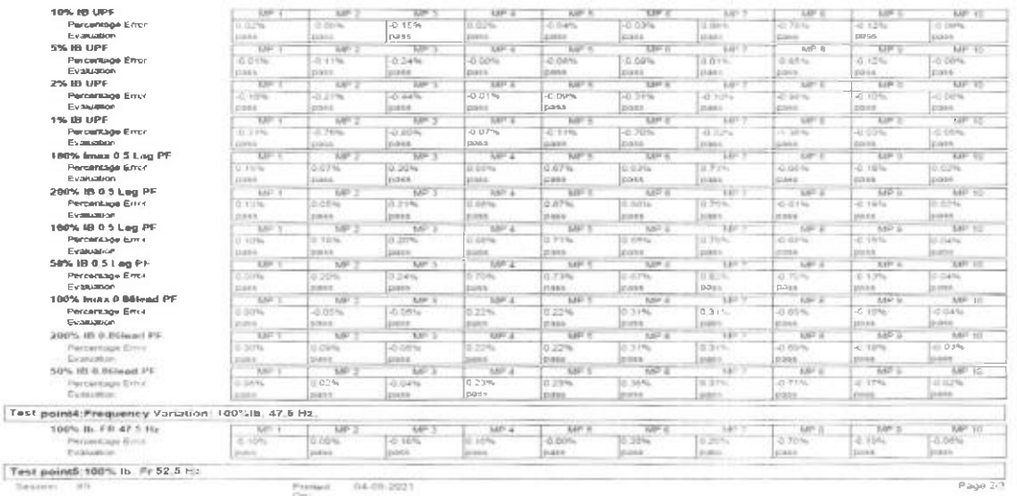
Test point1:Preparation

Test point2:SC adjustment

Receive results

Test point3:Test for Active-Ph

100% Imax UPF
200% IB UPF
100% IB UPF
50% IB UPF



100% IB UPF	MP 1	MP 2	MP 3	MP 4	MP 5	MP 6	MP 7	MP 8	MP 9	MP 10
Percentage Error	0.06%	0.00%	-0.12%	-0.12%	-0.01%	0.01%	0.01%	-0.73%	-0.20%	-0.07%
Evaluation	pass	pass	pass	pass	pass	pass	pass	pass	pass	pass

Test point6:100% Ib, Fr 50.0 Hz

100% Ib, Fr 50.0 Hz	MP 1	MP 2	MP 3	MP 4	MP 5	MP 6	MP 7	MP 8	MP 9	MP 10
Percentage Error	-0.00%	0.02%	-0.22%	-0.05%	-0.01%	0.08%	0.38%	-0.72%	-0.20%	-0.07%
Evaluation	pass	pass	pass	pass	pass	pass	pass	pass	pass	pass

Test point7:100% IB UPF

100% IB UPF	MP 1	MP 2	MP 3	MP 4	MP 5	MP 6	MP 7	MP 8	MP 9	MP 10
Percentage Error	-0.03%	0.01%	-0.23%	-0.02%	-0.01%	0.06%	0.11%	-0.73%	-0.20%	-0.07%
Evaluation	pass	pass	pass	pass	pass	pass	pass	pass	pass	pass

Test point8:Switch off test values

Test point9:End of test print report

Tester name(Identification) kcm ()

Remarks:

Sample Test Report – Failed Energy Meter

Parameter	**Value**
Reference Energy	1.0000 kWh
MUT Energy	0.9800 kWh
Error (%)	−2.00 %
Result	Fail (Out of Limit)

19.15 that it is evident from the above that the report simply records parameters such as Voltage, Current, Power Factor, Power, Pulse Count, and Percentage Error, and determines whether the MUT passes or fails the test when compared against the readings of the high-precision reference meter. Once the evaluation is complete, if the MUT's error is within permissible limits, the results are recorded — manually or via software — and, if required, a PDF/Excel report is generated for the client. In cases where a meter fails, the report may be accompanied by recommendations for corrective action, such as adjustment or replacement by the authorised party;

19.16 that the very foundation of the present proceedings is vitiated because the charging paragraph of the Show Cause Notice ("SCN") fails to contain any specific proposal for confirmation of demand of duty on the basis of the alleged change in classification of goods which omission is not a mere procedural lapse but goes to the root of the power and jurisdiction of the adjudicating authority for the following reasons:

SCN as the Charter of Proceedings: that the SCN is recognized under law as the *charter of proceedings*, defining the precise case the Department wishes to prosecute; that the adjudicating authority's jurisdiction is strictly confined to the allegations, reasons, and proposals explicitly contained in the SCN; that it cannot go beyond its express contents to introduce new grounds or demands not put forth before hand; that said legal principle safeguards the fundamental right of the noticee to be informed of the case against them, allowing a fair opportunity to prepare an effective defense; that it embodies the doctrines of natural justice and due process, which require that adjudication must be conducted only on the basis of known and definite allegations; that they placed reliance on the case laws for the judicial affirmation of the said principle which are as (a) In CCE v. Toyo Engineering India Ltd. [2006 (201) ELT 513 (SC)],(b) CCE v. Ballarpur Industries Ltd. [2007 (215) ELT 489 (SC)], (c) M/s. Ceat India Ltd. reported at 2016 (331) ELT 456 (d) M/s. United Arab Shipping Agency Co (I) P Ltd reported at 2014 (310) ELT 933; that it is a settled legal position that when the show cause notice is being issued, the provision for rejection of the classification has to be considered very clearly and if the show cause notice is vague to the extent that it does not point out the clause under which the classification is being rejected and thereby tax is being demanded, then such show cause notice is vague and demand under such notice is not sustainable; that the said The foregoing principle is supported by well-recognized legal maxims (a) *"What is not alleged cannot be proved." And (b) "What is not proposed cannot be confirmed"; that said* maxims emphasize that proof or confirmation of a demand must necessarily follow from clear, direct, and specific allegations made in the SCN; that if absent, any such confirmation amounts to arbitrary expansion of the case against the noticee and violates the principles of fairness; that in the present case, the SCN is silent on proposal to reject the classification adopted by the noticee; that the differential customs duty demand is proposed only as a hypothesis without any formal proposal to reject the classification of items imported by the noticee in the past; that the Bills of Entry of all these items were assessed finally by the department and out of charge by the customs authority; that the show cause notice is only proposing to demand the short paid/short levied duty in respect of the goods imported vide the bills of entry mentioned in Annexure A and B to the subject show cause notice by invoking the extended period of five years as per the provisions of Section 28(4) of the Customs Act, 1962 and therefore, the adjudicating authority is wholly devoid of jurisdiction to confirm or uphold a demand based on reclassification; that doing so would amount to impermissibly enlarging or substituting the case beyond the scope of the SCN, which would be ultra vires and render the proceedings null and void ab initio;

19.17 that in summary, the imported goods in question — high-precision reference meters — are specialized measuring instruments designed exclusively for verifying and checking the accuracy of energy meters, rather than for calibrating them; that those devices, whether used as portable units (such as MT310) or as components of multi-station test benches (such as EPZ303-10), function as traceable reference standards against which the performance of a meter under test (MUT) is evaluated; that they measure a wide range of electrical parameters — including voltage, current, power factor, phase angle, active, reactive, and apparent power, energy delivered, waveform quality, and harmonic distortion — under varying operational

conditions; that their purpose is limited to detection, comparison, and quantification of deviations; that they do not perform "calibration" in the strict theoretical sense, which necessarily requires adjustment or correction through proprietary manufacturer tools, software-based access to calibration registers, or authorized technical intervention; that the the associated test benches merely enhance efficiency by enabling simultaneous evaluation of multiple MUTs, but they too are designed for testing and checking purposes, not for calibration; that the The Department's assumption,as well as the CRA's opinion that the subject goods "calibrate errors in energy meters" is therefore factually and technically misplaced; that both in design and in trade parlance, ZERA reference meters are recognized as portable reference standards used to test and verify accuracy in accordance with international traceability norms; that those instruments fall squarely within CTH 90318000, which covers "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this Chapter," particularly those related to electrical quantities; that by contrast, Heading 90283090, relied upon by the Department, pertains to instruments whose principal function is calibration, which is not the case here; that said conclusion is reinforced by the treatment of complete stationary test benches imported by the noticee under CTH 90312000, a classification that has been consistently accepted by Customs without dispute; that the portable reference meters under question perform the same function as those integrated into test benches — namely, providing a standard of measurement for comparison with MUTs — and therefore merit classification under the same heading in line with Chapter Note 2(b) of Chapter 90; that in the initial clarification dated 28.08.2021 furnished to the Deputy Commissioner, Air Cargo, Ahmedabad, the noticee clearly explained that MT310 and EPZ303-10 use optical technology to measure and check pulses, and that the MT310 is a portable equivalent of a stationary test bench already classified under 90312000; that the jurisprudence on classification issues further supports the noticee's position and cited the decision of CCE v. Connaught Plaza Restaurants (P) Ltd. – 2012 (286) ELT 321 (SC) & Secure Meters Ltd. v. Commissioner of Customs – 2015 (319) E.L.T. 565 (S.C.), and stated that the Court clarified that under Chapter Note 5, measuring or checking optical appliances and instruments are specifically excluded from calibration headings and instead fall under Heading 9031; that said rulings make it clear that declared classification is not only factually correct but also consistent with judicial precedent and accordingly the Department's proposal to reclassify the goods under Heading 90283090 is both legally unsustainable and technically flawed; that the declared classification under CTH 90318000 is fully justified by the goods' principal function, technical design, trade parlance, and established customs practice, while the Department's contrary position rests on a fundamental mischaracterization of the product's role;

19.18 that allegation of suppression of facts is based on CRA's view that the goods should be classified under CTH 90283090 as "calibrating meters," thereby attracting a higher duty rate; that the SCN is factually, legally, and procedurally unsustainable, as explained below:

19.18.1 that all Bills of Entry were finally assessed with full disclosure: that at the time of each and every import, the goods in question were accurately declared under Customs Tariff Heading (CTH) 90318000; that the declaration in every Bill of Entry was complete in all material particulars, expressly describing the goods as "Reference Meters" and including their make, model, and technical specification; that alongside the declaration, the importer submitted comprehensive supporting documentation such as the original purchase invoices, OEM catalogues, detailed technical literature, and self declarations clearly outlining the nature, function, and usage scope of the products; that during the course of assessment, the proper officers examined these records and, wherever they deemed necessary —

particularly from 2021 onwards — issued queries seeking clarification on classification and product description; that on each such occasion, the importer furnished prompt, written, and detailed replies, accompanied by relevant evidence, including product datasheets, explanatory notes, and international classification references and copies of said exchanges with the assessing officers, including correspondence with the Deputy Commissioner, Air Cargo Complex, Ahmedabad (till 2023), are annexed to their submission as Exhibita- Red file, as proof of the importer's consistent transparency and cooperation; that significantly, after examining both the initial documentation and subsequent clarifications, the assessing officers finalised the assessments without reservation or objection to the declared classification; that said sequence of events demonstrates beyond doubt that the department was fully aware of the classification being claimed, had access to complete facts and technical details, and accepted the classification at the time of each import after due verification and therefore, the allegation of mis-declaration or suppression is entirely contrary to the documented assessment history and departmental conduct;

19.18.2 that in the instant case, all Bills of Entry in question were finally assessed by the proper officer under Section 17 of the Customs Act, 1962, without any objection to the classification declared under CTH 90318000; that at no stage either at the time of import or immediately after CRA's initial audit observation did the department resort to the provisional assessment mechanism under Section 18 of the Act. Section 18 exists precisely to address situations where classification, valuation, or applicable duty rates are in doubt; that it empowers the assessing officer to clear goods provisionally upon execution of a bond, pending the outcome of further verification, testing, or consultation (such as with CRA). By choosing not to invoke Section 18 — even after the CRA objection became known — the department demonstrated that it did not consider the matter under dispute at the relevant time, and was content to accept the noticee's declared classification as correct; that it is a settled principle, recognised in multiple judicial pronouncements, that once the department elects to finalise the assessment without reserving its right to revisit the issue provisionally, the assessment attains finality unless it is challenged through the appellate mechanism under Section 128; that raising a fresh demand without first modifying or setting aside such final assessment is procedurally impermissible (*Priya Blue Industries Ltd. v. CC*, 2004 (172) ELT 145 (SC); *Flock India Pvt. Ltd. v. CCE*, 2000 (120) ELT 285 (SC)); that the absence of any provisional assessment also means there were no pending disputes at the time of clearance; that in law, a dispute is "pending" only when a classification or valuation issue has been kept open for further determination through an express provisional order; that in present case, no such pendency existed — neither in departmental records nor in correspondence with the noticee; that in fact the response/clarification to every query of the department was promptly given by the noticee; that by finalising the assessments unconditionally and without invoking Section 18, the department effectively accepted the declared classification and closed the assessment process and therefore, the present attempt to reopen these concluded assessments — on the basis of a later re-interpretation prompted by CRA — is barred in law, contrary to procedural safeguards, and violative of the principles of natural justice;

19.18.3 that finalisation of Bills of Entry Precludes Raising Demand Without Appeal; that it is a firmly settled proposition of law that once a Bill of Entry is finally assessed under Section 17 of the Customs Act, 1962, any modification to such assessment — whether relating to classification, valuation, or rate of duty — can only be carried out by following the statutory appellate mechanism prescribed under Section 128 of the Act; that the department had no jurisdiction to directly issue a demand under Section 28 (4) of the Customs Act, 1962 for the differential

amount without first successfully challenging or modifying the original assessment order and the said principle has been followed in the leading judgments of the Hon'ble Supreme Court viz. (a) Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive) - 2004 (172) E.L.T. 145 (S.C.) (b) Collector of Central Excise v. Flock India Pvt. Ltd. - 2000 (120) E.L.T. 285 (S.C.); that applying said binding precedents to the present case as all imports under CTH 90318000 were finally assessed after scrutiny by the assessing officers, who were in possession of full and accurate technical documentation describing the goods as *Reference Meters and neither* provisional assessments were made nor appeals under Section 128 were filed against these final assessments and instead, the department has sought to reopen settled assessments indirectly through the present Show Cause Notice, alleging misclassification based on a later objection from CRA which action is contrary to the principles of natural justice laid down by various judicial pronouncements including that of Hon'ble Supreme Court, as discussed above; that any such reopening, without first setting aside the final assessment orders, renders the entire demand procedurally void and therefore, the SCN is barred on procedural grounds alone, as the necessary legal pre-condition— successful challenge to the final assessment — has not been fulfilled;

19.18.4 that change of view does not justify a fresh Demand; that it is a fundamental tenet of customs law and administrative fairness that when a department, after full scrutiny and consideration, has accepted a particular classification over an extended period and issued final assessments accordingly, a subsequent change in its internal interpretation or policy cannot retrospectively transform those accepted classifications into actionable mis-declarations or suppression of facts; that in the present case, the department was fully aware of the classification under CTH 90318000 at the time of each import which was consistently declared by the importer, prominently supported by detailed product descriptions, technical specifications, and relevant documentation accompanying every Bill of Entry; that the assessing officers, having access to all facts and records, finalized the assessments without objection or reservation; that the imports underwent routine scrutiny, and queries raised, if any, were addressed promptly and transparently; that later difference in departmental interpretation—prompted by an auditing authority or a fresh internal review—cannot automatically cast retrospective doubt on the bona fide actions of the noticee that to do so would undermine the certainty and finality that customs assessments are meant to provide, and would create undue hardship for importers who have relied on the department's established position in conducting their business; that the said principle is reinforced by settled case law and the courts have repeatedly held that mere change of opinion or re-appreciation of the same facts by the department at a later stage is not a valid ground for reopening settled assessments or for alleging suppression, mis-declaration, or intent to evade duty; that as such, any fresh demand raised solely on account of change in departmental interpretation—without contemporaneous evidence of mis-declaration, suppression, or intent to evade—is contrary to the principles of finality, natural justice, and settled jurisprudence; that the correct legal procedure is to appeal the original assessment, not to treat a newly adopted position as evidence of wrongdoing by the noticee and aaccordingly, the department's long-standing awareness and acceptance of the declared classification precludes its current attempt to reclassify imports and demand differential duty solely on the basis of a later change of view, which approach is not supported by law, and the demand raised under such circumstances needs to be withdrawn in its entirety;

19.18.5 that Section 28 of the Customs Act envisages that where any duty has not been levied or not paid, inter-*alia,* has been short- levied or short-paid by reasons of (a) collusion; (b) any willful mis- statement and, (c) or suppression of facts, by the

importer or the exporter, or the agent or employee, the proper officer shall, within five years from the relevant date, to serve notice on the person chargeable with duty or interest requiring him to show cause why he should not pay the amount specified in the notice; that in the present matter, it is evident that M/s Zera has consistently imported goods under CTH 90318000, and the department was fully cognizant of said classification during previous assessments, which were duly completed on that basis; that mere fact that the department has subsequently altered its stance cannot be construed as misdeclaration or suppression of facts on the part of the respondent in classifying its goods under CTH 90318000 at the time of import and in view of the above, the invocation of Section 28(4) is not sustainable; that it is settled law that when all material facts are disclosed at the time of assessment, the extended period under Section 28(4) cannot be invoked and they relied on the decision of Hon'ble CESTAT, Ahmedabad in the case of Karnavati Car Air Conditioners Pvt. Ltd Vs Commissioner of Customs, Ahmedabad - 2024(388)E.L.T 191 (Tri-Ahmd.) and stated that the impugned show cause notice is unsustainable in law, being not only barred by limitation but also fatally defective at its very foundation;

19.19 that the department has sought to raise a differential duty demand of ₹1,14,15,798/- by invoking classification under CTH 90283090, however, the notice neither alleges nor proposes a reclassification of the goods from the declared Customs Tariff Heading (CTH) 9031 to CTH 9028, which is the sole premise on which such a differential demand could lawfully rest; that it is a well-settled proposition that any demand under Section 28 of the Customs Act, 1962 must necessarily be preceded by a proper proposal for reassessment under Section 17(4) of the Act; that such reassessment arises only where the department specifically makes out a case of change in classification, valuation, or other essential elements of assessment; that in the the absence of a categorical proposal for reclassification, the very jurisdiction to raise a differential duty demand is lacking; that as per well-established legal principles and numerous judicial rulings, the onus of proving misclassification lies with the department; that in the in the instant case, the Noticee has in no way suppressed any material facts at the relevant time; that it is also a settled legal position that mere assumptions, re-examination, or retrospective objections cannot override a final assessment done at the time of clearance based on all the declarations and the relevant documents provided to the department; that had the department been of the view that there exists some confusion, the proper officer could have resorted to re-examination under Section 17 or provisional assessment under Section 18 of the Customs Act 1962 without accepting the Self Assessment / classification done by the importer and thus, it is proved that there was no suppression of facts, mis-classification, mis-declaration by the noticee with an intent to evade any payment of Customs Duty and therefore, the Show Cause Notice issued by invoking extended period of five years under Section 28(4) of Customs Act 1962 is time barred in any case; that, the Hon'ble Courts have consistently held that a show cause notice must contain clear and specific grounds for demand, failing which it is invalid and relied on the decision of CCE v. Brindavan Beverages Ltd. (2007) 213 ELT 487 (SC), CCE v. Champdany Industries Ltd. (2009) 241 ELT 481 (SC), *Daxen Agritech India Pvt ltd Vs Principal Commissioner, Customs dated 20.12.2023- Decision of CESTAT, Principal Bench, New Delhi in Customs Appeal No. 50961 of 2020 and Vishal G. Trivedi Vs C.C ,Ahmedabad – in the CESTAT,WEST ZONAL BENCH, Ahmedabad .-reported at 2019(367) E L T 660 (Tri.- Ahmd.); that in view of the said facts,* reiterated that as the show cause notice is defective and since there was no suppression of any facts at the material time as the goods were cleared by the Customs only after the proper officer's complete satisfaction, the extended period cannot be invoked under Section 28(4) of the Customs Act, 1962 to demand the differential duty of Rs. 1,14,15,798/-

and therefore, requested to drop the demand raised vide the subject show cause notice being vague and clearly time barred;

19.20 that with regards the proposal for imposing penalty under Section 112(a), 114A and 114AA of the Customs Act, 1962, the same is wholly unjustified and without legal basis; that very foundation of the Department's case -- that the noticee has misclassified the imported goods with intent to evade payment of duty — has already been demonstrated to be factually and legally untenable; that the goods were imported under a bona fide classification, supported by technical documentation, trade practice, and consistent customs assessment in the past; that the Department's attempt to retrospectively alter this classification, in the absence of any conclusive technical or documentary evidence, does not constitute valid grounds either for demand of differential duty or for the imposition of penalties; that it is a settled position in law that penalties under Section 112(a) or 114A of the Customs Act can only be invoked where there is cogent proof of deliberate mis-declaration, suppression, or fraudulent conduct with the specific intent to evade payment of duty; that mere difference of opinion on classification, or re-interpretation by the Department at a later stage, cannot by itself constitute a ground for alleging willful misdeclaration; that Hon'ble Supreme Court and various High Courts have consistently held that unless the element of mens rea is established by the Department through clear and unimpeachable evidence, penal provisions cannot be sustained; that in the the present case, the Department has failed to produce any evidence demonstrating deliberate suppression or misstatement on the part of the noticee; that Section 114AA is attracted only in cases where a person knowingly or intentionally makes a false or incorrect declaration in material particulars; that in the instant case, the noticee has made full and transparent disclosure of the description, technical literature, user manuals, and catalogues of the imported goods at the time of import; that the classification adopted was not only consistent with trade understanding and past practice but also accepted by Customs at the time of clearance and thus, the invocation of Section 114AA is completely misplaced, as there has been no misstatement; that it is also a settled legal principle that retrospective reclassification of goods, without evidence of fraudulent intent, cannot be a basis for levy of duty demand or penalties; that the Hon'ble Supreme Court in several decisions has clarified that classification disputes, being interpretational in nature, cannot automatically invite penal consequences and in the present case, the classification adopted by the noticee is not only plausible but is also technically correct, as demonstrated in the preceding submissions and therefore, the Department's proposal to impose penalties under Sections 112(a), 114A, and 114AA of the Customs Act is entirely unsustainable both in law and on facts; that in support of their defence against the proposed imposition of penalties under Sections 112(a), 114A and 114AA of the Customs Act, 1962, they placed reliance on the settled judicial precedents which have consistently held that penalties cannot be sustained in cases of bona fide classification disputes where there is no element of fraud, suppression, or deliberate mis-declaration (a) in Northern Plastic Ltd. vs. Collector of Customs & Central Excise, reported in 1998 (101) E.L.T. 549 (S.C), (b) Hindustan Steel Ltd. v. State of Orissa (1978) (2) E.L.T (J 159) (S.C), (c) M/s. Stonex India Pvt. Ltd. vs. Commissioner of Customs, Mundra (Final Order No. 12527-12528/2024 dated 25.10.2024), (d) Unitech Ltd. v. CC, Delhi [2016-TIOL-495-CESTAT-DEL], (e) CCE v. Chemphar Drugs [1989 (40) ELT 276 (S.C) and (f) Pahwa Chemicals v. CCE [2005 (189) ELT 257 (S.C)] ; that all the said rulings clearly establish that Customs authorities cannot demand additional or differential duty or impose penalties after clearance unless there is undeniable proof of deliberate mis-declaration or fraud; that as discussed earlier, in the instant case, the classification adopted was duly supported by technical documentation, catalogues, and assessment at the time of clearance; that the burden of proving

misclassification, which rests entirely with the department, has not been discharged, as no credible evidence has been brought on record; that importantly, judicial precedents categorically hold that retrospective reclassification is impermissible unless there is a clear intent to evade duty, which is absent in their case; that the classification and assessment of duty were finalized by the Department before granting 'out of charge' clearance, without raising any objections at the relevant time; that once the assessment was finalized, any subsequent allegation of misclassification—if at all sustainable—must be treated as a mere interpretational issue rather than an intentional attempt to evade duty; that in light of this, the allegations of misclassification and duty evasion are wholly unfounded and accordingly, the demand of duty raised in the show cause notice is not legally sustainable, and the proposed penalties under Sections 112(a), 114A, and 114AA of the Customs Act, 1962, are wholly unwarranted and liable to be set aside;

19.21 that the classification adopted at the time of import was a bona fide classification based on the documents available and the information furnished by the overseas supplier; that at the time of filing the Bill of Entry, there was no reason for the noticee to doubt the correctness of the classification; that the process of assessment was carried out transparently, and the classification adopted was accepted by the assessing officer without objection; that in such circumstances, the allegation that any act or omission on the part of the noticee has rendered the goods liable for confiscation is entirely misconceived and unsustainable in law; that it is a settled principle of customs jurisprudence that mere difference of opinion on classification cannot by itself attract penal provisions; that the Hon'ble Courts have consistently held that when the importer has disclosed full particulars of the goods and classification has been made on the basis of available evidence, such conduct cannot amount to mis-declaration, suppression, or fraud; that in the present case, there is no iota of evidence to establish deliberate mis-statement or intent to evade payment of duty and therefore, invoking Section 111(m) of the Customs Act, 1962 for confiscation is wholly unjustified; that it has been judicially settled that redemption fine under Section 111(m) of the Customs Act, 1962 can be imposed only when the goods are physically available for confiscation; that the Hon'ble Supreme Court in *Weston Components Ltd. v. Commissioner of Customs, New Delhi* [2000 (115) ELT 278 (SC)] clearly held that once the goods are not available for confiscation, redemption fine cannot be levied and the same principle was reiterated in *Commissioner of Customs v. Finesse Creation Inc.* [2009 (248) ELT 122 (SC)], where it was held that redemption fine cannot be imposed when the goods are no longer under the control of Customs; that the Hon'ble CESTAT in *Shiv Krupa Ispat Pvt. Ltd. v. C.C.E. & C., Nashik* [2009 (235) ELT 623 (Tri. Mumbai)] has further clarified that once the goods are duly cleared and are not available for confiscation, the proposal for confiscation and imposition of redemption fine becomes legally untenable; that the Tribunal categorically held that the redemption fine is linked to the availability of goods and cannot be imposed on goods that have already entered the stream of commerce; that said ratio directly applies to the present case, where the goods have long been cleared for home consumption after due assessment by the Customs authorities, and are not available for confiscation; that as there was no suppression, fraud, or willful misstatement on the part of the noticee—along with the reasons already submitted—the proposed confiscation of goods under Section 111(m) and imposition of fine under Section 125 along with penalty under Section 112(a) of the Customs Act, 1962 is wholly unsustainable in law; that similarly, the proposal to levy penalty under Section 114A is baseless, as there was no short levy of customs duty—neither under the noticee's self-assessment nor under the department's final assessment; that the penalty under Section 114AA is also unwarranted, as there is no material evidence on record to indicate that the noticee had furnished any false declaration or incorrect particulars at the time of filing of the Bill of Entry; that on

the contrary, clearance of the goods in question was granted only after proper assessment by the customs authorities, which further establishes that the noticee acted in a transparent and bona fide manner and in this regard, reliance is placed on the decision of the Hon'ble CESTAT, Principal Bench, New Delhi in Final Order No. 55653-55654/2024 dated 29.04.2024 in the case of M/s Raj Metal & *Alloys, Jaipur*; that the findings of the said decision are squarely applicable in the present case as well, where the impugned proceedings are based solely on difference of opinion in classification and valuation, and not on any deliberate mis-declaration or fraudulent conduct on the part of the noticee and hence, the proposed confiscation and penalties are unsustainable in law and merit being set aside;

19.22 that in view of the above detailed submission and explanations supported by statutory provisions and judicial pronouncements, it is humbly submitted that the present Show Cause Notice (SCN) is devoid of merit and deserves to be dropped in toto;

20 The said importer vide E mail dated 07.11.2025 submitted their additional reply to the SCN as mentioned during the personal hearing held on 30.10.2025 wherein they interalia stated as under:

20.1 that the present Show Cause Notice (SCN) suffers from fundamental legal and procedural infirmities and is liable to be dropped in toto; that the principal defects in the SCN were summarized as below:

20.1.1 that no charge in para 18 of the subject show cause notice to reject the Original classification done by the noticee and approved by the department; that also no charge to reassess the Bills Of Entry mentioned in Annexure A and B of the subject show cause notice and in absence of said charge, the demand of differential duty amounting to Rs. 114,15,798/-is unsustainable and illegal; that the assessment and classification originally accepted by the Proper Officer under Section 17(4) have not been proposed to be set aside, modified, or reviewed vide the subject show cause notice; that in the absence of such a proposal for rejection or modification, the assessment continues to hold the field and remains legally valid; that a differential duty demand based on a new or altered classification, without first setting aside the original assessment order, is wholly without jurisdiction and contrary to the law laid down by the Hon'ble Supreme Court in Priya Blue Industries Ltd. v. CCE (2004 (172) E.L.T. 145 (S.C.)] and CCE v. Flock (India) Pvt Ltd. [2000 (120) E.L.T. 285 (S.C.));

20.1.2 that once the assessment has been completed and the goods have been cleared "Out of Charge," the same attains finality in law and can be modified only through the statutory appellate mechanism; that the present SCN seeks to reopen a concluded assessment indirectly through confiscation proceedings, which is contrary to the provisions Of Sections 17(4), 17(5), and 28 of the Customs Act, 1962 as well as settled judicial principles of finality and certainty in taxation;

20.1.3that Purchase invoices not made as Relied Upon Documents; that vide para 7 Of the SCN, it is mentioned that " the reply is not accepted by the department as it is clearly mentioned in purchase invoice of Bills of entry that the imported item is to calibrate the errors in energy meter and chapter 90283090 covers "other electricity meters,gas ,liquid or electricity supply or production meters, including calibrating meters, therefore"; that the whole show Cause notice demanding the differential amount of duty is based only on this para which includes a purchase invoice purportedly stating that the imported item is meant for calibration Of errors in energy meters, however, copy of no such purchase invoice has been made as a 'relied upon document' to substantiate the allegation of misclassification despite

being explicitly referred in the Annexure A and B in SCN; that the invoice Number mentioned in column No. 4 of Annexure A and B are in the numerical numbers like 1,2.....whereas, in the Bills of Entry mentioned in Annexure A and B, no such invoice numbers can be seen; that in fact the Invoice numbers mentioned in respect of the 4 Bills Of Entry mentioned at Annexure A were as under :

sr.	BOE No/date	Item description	CTH mentioned in	Assessable Value in Rs.	Invoice No mentioned in
	8443775/1108.2020	MT310 Three Phase Reference Meter	90318000	8272658.42	ST-10436446
	8740180/0809.2020	MT310 Three Phase Reference Meter CAT'II	90318000	3632921.77	ST-10436620
3.	8346046/01.08.2020	Reference Meter EPZ30310 incl. Factory Calibration, instruction manual..	90318000	935832.33	ST-10436373
4,	8346046/01.08.2020	Reference Meter 10 incl. Factory Calibration, instruction	90318000	935832.33	ST-10436372

that the copies of all the four invoices against the Bills Of Entry mentioned in Annexure A are attached herein to prove that there is no mention like -"to calibrate the errors in energy meters' as mentioned in para 7 of the subject show cause notice and further, not giving the details of the invoices which actually forms the basis for issuance of this show cause notice violates the principles of natural justice and deprives the noticee of a fair opportunity to rebut the allegations; that it is settled law that a Show Cause Notice based on undisclosed or withheld documents is vitiated and cannot be sustained;

20.1.4 that contradiction with Department's Own Conduct; that the goods were assessed under Section 17(4) of the Customs Act, 1962 and cleared for home consumption after due verification and no objection, query, or requisition for additional information or documents was raised by the assessing officer at the time of import, however, after the objection raised by the audit, every query and clarification sought for by the department was replied by the noticee and necessary documents including manual and technical details were provided to

the department; that few of the communications made through mail with the then Deputy Commissioner, Air Cargo Complex is scanned and reproduced in their present submission; that having accepted the declarations and permitted clearance, the Department cannot allege suppression or mis-declaration at a later stage;

20.1.5 that the SCN alleges mis-declaration under Section 111(m) without adducing any evidence whatsoever to establish wilful intent, suppression, or falsification of facts. All particulars relating to description, classification, and valuation Were fully and truly disclosed in the Bills of Entry, which were duly verified by the Proper Officer. The allegations rest solely on a subsequent reinterpretation (almost three years after the first objection by the CERA while auditing the records for the period from July,2020 to September, 2020) by the Department, which cannot constitute suppression or mis-declaration in law. As already stated above, besides whereas written communications and clarifications submitted by the noticee to the department, as already mentioned supra, the personal hearing held with the then Deputy Commissioner of Air Cargo and all technicality and functionality were explained in detail and therefore, the allegation of mis declaration or suppression Of facts is absolutely baseless; that there is no evidence brought on record by the department to establish the malafide intent by the noticee to evade any tax and therefore, extended period cannot be invoked and hence the show cause notice is time barred;

20.1.6 that Section 111 (m) applies only where the goods found upon examination differ from the particulars declared in the Bills of Entry; that in the present case, the goods exactly matched the declared description as mentioned in the purchase invoice of the noticee, quantity, and value, and were accepted as such at the time of clearance; that subsequent difference of opinion on classification or valuation does not attract confiscation under Section 111(m) since it could be a matter of interpretation and not done intentionally with intent to evade any payment of duty; that the proposed penalties under Sections 112(a) and 114AA are untenable, as these provisions require proof of mens rea—fraud, collusion, or wilful misstatement—which is absent here; that the goods were correctly declared in description, quantity, and value as per the supplier's invoice, and were duly assessed and cleared by Customs; that the present issue arises only from a difference of opinion on classification, which is a matter of interpretation and cannot invite penal action; that all relevant documents and technical details were promptly submitted, and the noticee also explained the classification during the personal hearing before the Deputy Commissioner of Air Cargo, Ahmedabad; that the noticee's conduct has been bona fide and transparent; that it is well settled that penalty and confiscation cannot be imposed for mere interpretational disputes in the absence of deliberate mis declaration, as held in(a) Priyanka Enterprises v. Joint Commissioner Of Customs, Madras HC (2017) (b) Raj Metals & Alloys v. Commissioner of Customs, CESTAT Delhi (2024) (c) Shashi Dhawal Hydraulics Pvt. Ltd. v. Commissioner of Customs, CESTAT Mumbai (2020) and (d) CCE v. Champdany Industries Ltd„ 2009 (241) E.L.L481 (S.C.);

20.1.7 that no valid notice under Section 28(1) of the Customs Act was issued within the statutory period to recover any alleged short-levy or non-levy; that further, while invoking the provision of Section 28(4) of Customs Act, no evidence has been brought on record to establish the collusion, wilful misstatement or suppression of acts with intent to evade payment of duty by the noticee; that the show cause notice also does not state as to how the end use benefit has been mis-applied by the noticee to avail ineligible benefit of the exemption; that the present SCN seeks to achieve indirectly—through baseless

demand of differential duty, confiscation and penalty proceedings—what is time-barred under Section 28 of Customs Act, 1962; that it does not appear permissible in law and vitiates the proceedings *ab initio*; for all the foregoing reasons, the Show Cause Notice is vitiated by serious legal, procedural, and factual infirmities and therefore, prayed that the SCN be dropped in toto, and all proposed actions under Sections 28(4), 111(m), 112(a), and 114AA of the Customs Act, 1962 be set aside in the interest of justice.

21. Personal Hearing: Personal Hearing (in virtual mode) in this case was scheduled on 30.10.2025. Shri D.B. Zala, consultant of the importer attended the Personal Hearing (through virtual mode) on 30.10.2025. Consultant Shri D.B. Zala reiterated contents of their reply dated 01.09.2025 and further stated that they would be submitting additional submission within a weeks time.

22. Discussion and findings: I have carefully gone through the Show Cause Notice dated 10.06.2025 and written submission filed by importer vide letter dated 01.09.2025 and additional submission submitted vide letter dated 07.11.2025 . I have also gone through the records of the Personal Hearing in this case.

23. The issues for consideration before me in these proceedings are as under:-

(i) Whether short paid/short-levied duty in respect of goods imported vide bills of entry as detailed in Annexure-A &B to SCN, amounting to **1,14,15,798/- (Rupees One Crore, Fourteen Lakh, Fifteen Thousand, Seven Hundred and Ninety Eight only**), consequent to mis classification of the impugned goods under Customs Tariff Item No. 90318000 should be demanded and recovered as per the provisions of Section 28 (4) of the Customs Act, 1962 along with Interest under Section 28AA of the Customs Act, 1962 holding the merit classification of the impugned goods under Customs Tariff Item No. 90283090?;

(ii) Whether imported goods having declared assessable value of **Rs. 11,72,65,513/-(Rupees Eleven Crore, Seventy Two lakh, Sixty Five Thousand Five Hundred and Thirteen only)** should be held liable for confiscation under Section 111 (m) of the Customs Act, 1962 and whether Redemption Fine under Section 125 should be imposed in lieu of confiscation?;

(iii) Whether penalty should be imposed under the provisions of Section 112(a), 114 A and 114AA of the Customs Act,1962 on M/s. Zera India Pvt. Ltd., A-47, Sector-25, GIDC Electronic Estate, Gandhinagar?

24 The most vital question that comes up for consideration in the case on hand is whether the goods in question is classifiable under Customs Tariff Item No. 90318000, as claimed by the importer or classifiable under Customs Tariff Item No. 90283090 as alleged by the Department.

24.1 For the purpose of ascertaining the merit classification of impugned goods as mentioned in Annexure- A & B of the Show Cause Notice, it would be appropriate firstly to make a reference to the Customs Tariff Headings (CTH) 9028 alleged by the Department and Customs Tariff Heading (CTH) 9031 claimed by the importer, as appearing in the Customs Tariff Act, 1975 which are as under:

CTH: 9028:

HS Code		ITEM DESCRIPTION
9028		**Gas, liquid or electricity supply or production meters, including calibrating meters therefor**
90281000	-	Gas meters
90282000	-	Liquid meters
902830	-	N50 All goods other than Smart Meter
902830	-	Electricity meters:
90283010	--	For alternating current
90283090	---	**Other**
902890	-	Parts and accessories:
90289010	---	For electricity meters
90289090	---	Other

CTH 9031

HS Code		ITEM DESCRIPTION
9031		**Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this Chapter: Profile projectors**
90311000	-	Machine for balancing mechanical parts
90312000	-	Test benches
	-	Other optical instruments and appliances:
90314100	--	For inspecting semi-conductor wafers or devices or for inspecting photomasks or reticules used in manufacturing semiconductor devices
90314900	--	Others
90318000	-	**Other instruments, appliances and machines**

24.2 I find the importer has classified their product under CTI 90318000 which is for 'Other instruments, appliance and machine'. The importer has interalia claimed that the impugned goods is 'precision standard instruments with ultra-high accuracy (Class 0.02 or better), traceable to national/international metrology standards. They are used in calibration labs, test benches, and utility quality control to verify and benchmark energy meters. They do not measure consumption for billing instead, they act as metrological standards to confirm the correctness of energy meters under test; that the impugned goods is delivering high-performance testing and verification tools, in achieving precise measurements, regulatory compliance, and enhanced system reliability; that all key testing instruments and trading items are sourced directly from ZERA GmbH, the parent company based in Germany, which is globally recognized for its high-precision metrology systems which includes portable reference standards, test meters, and a comprehensive range of accessories such as precision connectors, test leads, and communication cables; that each item undergoes stringent quality control and is selected based on its compliance with international testing standards (such as IEC and ISO); that the imported instruments are bundled with carefully curated auxiliary components to form complete, ready-to-deploy testing kits, ensuring ease of setup and immediate operational readiness for field or lab use'.

I find that importer has mis-construed the Customs Tariff Heading 9031 which is related to "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this Chapter: Profile projectors" and have mis

classified under Customs Tariff Item No. 90318000 as 'Other instruments, appliances and machines'. Customs Tariff Heading 9028 is categorically for 'Gas, liquid or electricity supply or production meters, **including calibrating meters therefor**". The importer has merely contested that impugned goods do not perform calibration functions, meaning they do not actively adjust, correct, or calibrate other meters. I find that importer has ignored very crucial word 'therefor' mentioned in Customs Tariff Heading No.9028. Furhter, it is pertinent to decipher the meaning of 'calibrating' and its function.

"Calibrating" refers to the process of **comparing a measuring instrument's readings against a known, accurate reference standard** to identify and correct any errors or deviations, ensuring the instrument measures accurately and reliably" Calibrating process generally involves following functions:

- **Comparison**: A device under test (DUT) is measured against a more accurate reference standard (often called a calibrator) with known values and uncertainties.
- **Documentation**: The difference between the DUT's reading and the reference value (the error or deviation) is recorded.
- **Adjustment (optional)**: If the deviation is outside an acceptable tolerance range, the instrument is adjusted or "fine-tuned" to bring its readings back into specification.
- **Certification**: A calibration certificate is usually issued, documenting the results and confirming the device's accuracy.

Thus, from the aforesaid functions, it is revealed that primary object of the calibration is to ensure accuracy that measurements are consistent and reflect the true value as closely as possible and maintain quality and safety as it prevents errors that could lead to product defect, safety hazards or incorrect billing in commercial application and it complies national and international regulatory requirements and quality management standards. Thus, in essence, calibration is a quality control procedure that gives users confidence in the measurements produced by an instrument over time, as all instruments can "drift" and become less accurate with normal wear and tear.

I do not find hesitation in reiterating the submission of the importer wherein they have clearly stated that impugned goods is precision standard instruments with ultra-high accuracy (Class 0.02 or better), traceable to national/international metrology standards. They are used in calibration labs, test benches, and utility quality control to verify and benchmark energy meters. I find that the importer has failed to read out wording 'therefor' as mentioned in CTH 9028 and therefore any **calibrating meters for calibrating of 'energy meter' would squarely fall within the ambit of the Customs Tariff Heading No. 9028.**

24.3 I find that importer in their letter reference no. ZIPL/L/S. No./21-21/130 dated 28.08.2021 have interalia stated that " imported material/equipment are being used for measuring & checking/testing electricity meters that's why they have mentioned/classified under CTH 9031800 i.e for Other optical instruments; Other Instruments, appliances and further stated that " ..... purpose of the goods is to measure & check/ test the electricity meter on various parameters set by the International Organization for Standardization (ISO) and also set by the Bureau of Indian Standards (BIS).

I find that the above submission of the importer itself confirms the function and object of the impugned goods and after having been acknowledged the meaning of calibration and its object and the functions of the imported impugned

goods, I find that merit classification of the impugned goods as detailed in Annexure A & B to Show Cause Notice is 90283090 which confirms that impugned goods **squarely fall within the ambit of the Customs Tariff Item No. 90283090**

24.4 I find that the importer has contended that the Department has not adduced any concrete evidence to show that the classification adopted by them is wrong and when the Department is disputing the classification adopted by an importer, the burden to prove the correctness of the proposed classification is on the Department; that the Department must prove with evidence and reasoning, as to how the classification adopted by them is correct. They have also relied on few judgements to support their contention. In this regard, I find that the Department has sought to classify the impugned goods under Customs Tariff Item No.90283090. I find that there is no dispute that purchase invoice of bills of entry says that that the imported item is to **calibrate the errors in energy meters** and chapter 90283090 covers "Other - Electricity meters; Gas, liquid or electricity supply or production meters, **including calibrating meter** . Further , the report being generated from the impuged goods records parameters such as Voltage, Current, Power Factor, Power, Pulse Count, and Percentage Error, and determines whether the MUT passes or fails the test when compared against the readings of the high-precision reference meter. Thus, I find that merits classification of the impugned goods covered under Bills of Entry mentioned in Annexure-A & B to Show Cause Notice would be 90283090. . Hence, I find that the Department has given enough reasons and grounds for classifying the impugned imported goods under Customs Tariff Item No.90283090 of the Customs Tariff Act, 1975. Hence, I find that the said contention of the importer is not tenable and subsequently the ratio of various rulings/judgements relied upon by them are not squarely applicable in the present case.

24.5 Further, to support my above, findings, I rely on the decision of Hon'ble Delhi Tribunal rendered in case of M/s. SAN International Vs. Commissioner of Customs, New Delhi reported as 2016 (337) ELT 93 (Tri. Delhi) wherein it has been held as under:

"9. The appellant referred to the judgment in the case of *Adani Wilmer Ltd.* - 2008 (231) E.L.T. 545 (Tri.-Ahmd.) to assert that where more than one test report of government laboratory was available showing different results, it is not possible to accept only one of them which is in favour of Revenue. The judgment in the case of *Kanishk Steel Indus. Ltd.* v. *CCE* - 2005 (191) E.L.T. 231 (Tri.-Chennai) is also to the same effect. The judgment in the case of *Puma Ayurvedic Herbal Pvt. Ltd.* v. *CCE* - 2006 (196) E.L.T. 3 (S.C.) was cited to support the proposition that the burden of showing correct classification lies on Revenue and the expert's opinion has no relevance for determining classification of products as the role of chief chemist is only to supply analytical data. In the case of *HPL Chemicals Ltd.* v. *CCE, Chandigarh* - 2006 (197) E.L.T. 324 (S.C.), Supreme Court reiterated that if department needs to classify goods under a particular heading or sub-heading different from claimed by assessee, department needs to produce proper evidence and discharge burden of proof. In the present case the various expert's reports did not change the findings of facts, only the opinion about classification was changed and no reliance has been placed on that opinion in the foregoing analysis. Further the classification is not being determined in the present case on the basis of the opinion given by the experts regarding classification. As stated earlier, the classification has been determined on the basis of the length of the flock fibres being between 0.45 limited to 0.5 mm which was never contested and on the basis of the HSN Explanatory Notes on classification which are standard and internationally accepted for the purpose of determining the classification of goods. Thus, Revenue has discharged its burden of proof while determining the

classification."

Thus, I find that Revenue has discharged its burden by classifying the impugned product relying on functions/ application of the impugned goods which has been submitted by the importer themselves and further description as mentioned in their Purchase Invoice, and wordings of Customs Tariff Heading 9028.

24.6 I find that importer have vehemently argued that that no charge in para 18 of the subject show cause notice to reject the Original classification done by the noticee and approved by the department and further no charge to reassess the Bills Of Entry mentioned in Annexure A and B of the subject show cause notice and in absence of said charge, the demand of differential duty amounting to Rs. 114,15,798/-is unsustainable and illegal and the assessment and classification originally accepted by the Proper Officer under Section 17(4) have not been proposed to be set aside, modified, or reviewed vide the subject show cause notice and therefore in absence of such a proposal for rejection or modification, the assessment continues to hold the field and remains legally valid. I find that this argument does not sound good as the very basis of the Show Cause Notice is mis classification of impugned goods. The importer had classified under Customs Tariff Item No. 90318000 instated of merit classification under Customs Tariff Item No. 90283090 and consequent to holding the appropriate classification under CTI 90283090, differential duty has to be recovered. Mere non mention of merit classification does not absolve the importer from their liability. Further, in this regard, I rely on the ratio of the decision of Hon'ble Mumbai CESTAT rendered in case of Sidhharth Shankar Roy v. Commissioner 2013 (291) E.L.T. 244 (Tribunal). Relevant Para is re-produced as under:

"17.1*The show-cause notice issued by the Asst. Commissioner of Customs (AIU) proposed to confiscate the currency under the said provision of law and to impose penalties on the appellants u/s 112 of the Customs Act. The adjudicating authority ordered absolute confiscation of the currency u/s 111(d) of the Customs Act and imposed penalties on the appellants u/s 112 of the Act. The proposal in the show-cause notice for confiscation of the seized foreign currency was based on alleged violation of the restriction/prohibition imposed u/s 11 of the Customs Act read with Section 13(2) of the FERA. As we have already noted, Section 13(2) of the FERA imposed certain restrictions on export of foreign exchange other than foreign exchange obtained from an authorized dealer or a money-changer. Accordingly, no person could export such foreign exchange out of India without a general or special permission of the RBI or a written permission of a person authorized in this behalf by the RBI. By virtue of Section 67 of the FERA, such restriction imposed u/s 13 should also be deemed to have been imposed u/s 11 of the Customs Act and all the provisions of the Customs Act should have effect accordingly. It is not in dispute that such restriction on export of goods would amount to a 'prohibition' for the purposes of Section 113 of the Customs Act. Any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force, shall be liable to confiscation u/s 113(d) of the Customs Act. If it is found that the foreign currency in question was attempted to be exported contrary to the prohibition imposed by or under Section 11 of the Customs Act or Section 13(2) of the FERA, 1973 by any or both of the appellants, the currency would certainly attract Section 113(d) of the Customs Act and accordingly it would be liable to confiscation. That Section 111(d) of the Customs Act was invoked instead of Section 113(d) of the Act in the show- cause notice and in the impugned order will not, in our view, be fatal to the Revenue inasmuch as the cause of action for the Customs Department to confiscate the currency was clearly brought out in the show-cause notice as attempt to export the currency out of India in violation of the prohibition imposed u/s 13(2) of the FERA,*

which was, by virtue of Section 67 of the FERA, deemed to be prohibition imposed u/s 11 of the Customs Act. It was held by the Apex Court in the case of Roche Products Ltd. v. Collector of Customs [1989 (44) E.L.T. 194 (S.C.)] cited by the ld. JCDR that, when an authority had power to do a certain act and in exercise of such power he did the same but with reference to wrong provision of law, that would be a mere irregularity and would not vitiate such act or action. Again, it was held by the Apex Court in the case of J.K. Steel Ltd. v. UOI [1978 (2) E.L.T. J355 (S.C.)] cited by the ld. JCDR that, "if the exercise of a power can be traced to a legitimate source, the fact that the same was purported to have been exercised under a different power does not vitiate the exercise of the power in question". In that case, the demand notice was issued u/r 9(2) of the Central Excise Rules, 1944. Both the Asst. Collector and the Collector of Central Excise sustained the demand of duty under the said provision of law. When the Collector's order was challenged before the Government, the latter treated the demand as one under Rule 10. In further appeal, the assessee questioned this change of rule. It was in that context that the Hon'ble Supreme Court rendered the above ruling. In the case of Collector of Central Excise, Calcutta v. Pradyumna Steel Ltd. [1996 (82) E.L.T. 441 (S.C.)] relied on by the ld. JCDR, the Apex Court held that mention of wrong provision of law when the power exercised was available under a different provision was itself not sufficient to invalidate the exercise of that power. Thus there is a line of decisions in support of the view taken by us with regard to the provision of law invoked in the show-cause notice and the impugned order for confiscation of the foreign currency. Therefore, the non-mention of Section 113(d) of the Customs Act in the show-cause notice or in the impugned order would not per se invalidate the confiscation of the foreign currency ordered on the ground of violation of prohibition imposed u/s 13(2) of the FERA, 1973/Section 11 of the Customs Act, 1962. In any case, neither of the appellants has challenged the confiscation on the ground of wrong provision of law having been invoked, nor has their counsel argued to this effect."

Further, I rely on the ratio of decision of Hon'ble Delhi Tribunal in the case of Jagson International Ltd. v. Commissioner reported in — 2006 (199) E.L.T. 553 (Tribunal) upheld by the Supreme Court reported in 2015 (323) E.L.T. 243 (S.C.) Relevant Para of the said decision of Hon'ble Delhi Tribunal is re-produced as below:

" **10.3.** There was a specific allegation made in the show cause notice that the goods had been cleared without payment of duty and were liable for confiscation. It appears that the provisions of Section 111(d) were referred to in the show cause notice in the context of requirement of a valid licence, because, initially the appellant had not produced the licence as was required in respect of second hand capital goods which were more than seven years old under Para 28 of the EXIM Policy 1992-97. The show cause notice, however, clearly referred to the suit No. 481/93 and to the fact that the goods were removed without payment of duty. The removal of goods without payment of duty entailing confiscation was a sufficient averment in the show cause notice so as to bring in the provisions of Section 111(j) of the Act. Mere non-mention of the statutory provision, namely, 111(j) could not be fatal in the present case where the allegations were specifically made to the effect that the rig was cleared by the appellant without payment of duty which was required to be done in the context of the provisions of Section 47 of the said Act by paying duty, if any, as assessed by the proper officer. Mere non-mention of the provision of law would not invalidate the action where the requisite ingredients of the provision are set out in the show cause notice. In the present case, the appellant who obtained the order of the civil court had removed the goods by simply sending a letter dated 27-8-1993 to the Collector of Customs enclosing copy of the order of civil court and stating that in terms of the directions of the court, they were moving the rig for operation purposes to the work sight. It was stated that the

communication was sent for the information of the Collector. No offer to pay duty, if any, was made in the said letter as was required pursuant to the order of the civil court, and the appellant unilaterally removed the rig without complying with the provisions of Section 47 of the said Act. Having regard to the facts and circumstances of the case, it is clear that the appellant had sufficient opportunity to comply with the provisions of Section 47 and was indeed expected to comply with it even under the order of the civil court on the strength of which the rig was removed. The fact of the appellant having removed the rig without payment of duty and contravention of Section 47 were clearly alleged in the show cause notice, as a result of which it cannot be said that any prejudice was caused to the appellant in the matter of confiscation of the rig by mere non-mention of the provision of Section 111(j) in the show cause notice. The contentions raised on behalf of the appellant against the validity of the confiscation order cannot, therefore, be accepted."

I find that in present case, allegation of mis classification has been clearly carved out in the Show Cause Notice and consequent to finding the mis-classification, demand for recovery of differential duty Rs. 1,14,15,798/- and other consequential penal provision have been invoked and therefore, importer's said contention of non mentioning of 'rejection of the Original classification' in charging para void the demand is not tenable.

25.Whether the impugned goods as detained in Annexure-A & B to the SCN having assessable value of Rs. 11,72,65,513/-(Rupees Eleven Crore, Seventy Two lakh, Sixty Five Thousand, Five Hundred and Thirteen only) is liable for confiscation under Section 111 (m) of the Customs Act, 1962?

25.1 I find that in Show Cause Notices, it is alleged that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. From the perusal of Section 111(m) of the Customs Act, 1962 it is clear that any goods which are imported by way of the mis-declaration, will be liable to confiscation. As discussed in the foregoing paras, it is evident that importer has deliberately misclassified the impugned goods and have short paid the Customs duty with clear intent to evade payment of due customs duty.

25.2 I find that in terms of Section 46 (4) of the Customs Act, 1962, Importer was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs Duty but they have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have mis-classified the goods imported and thereby short paid the duty with clear intent to evade payment of Customs Duty. Accordingly, Importer has knowingly mis-declared the classification of the imported goods. I find that importer was well aware of the function/application of the impugned goods, however, with clear intent to evade the payment of appropriate customs duty resorted to mis classification of the impugned goods under Customs Tariff Item No. 90318000 and thereby, I find that importer has violated the provisions of Section 46 (4) of the Customs Act, 1962. All these acts on part of importer have rendered the imported goods liable to confiscation under Section 111 (m) of the Customs Act, 1962.

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

"125 Option to pay fine in lieu of confiscation –

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

25.4 I find that importer have contested that the Provisions of Section 111(m) of the Customs Act, 1962 are not invokable for the goods already cleared. I find that though, the goods are not physically available for confiscation but in such cases redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

"....
....
....

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

....
....
...."

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

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174. ***.....*** *In the aforesaid context, we may refer to and rely upon a decision*

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

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

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

I find that the importer has relied on the decision of Hon'ble Bombay High Court rendered in case of M/s. Finesse Creation Inc reported in 2009 (248) ELT 122 (Bom) wherein it was held that redemption fine cannot be imposed when the goods are no longer under the control of Customs. I find that the decision of Hon'ble Madras High Court in the case of M/s. Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L.142 (Mad) which has been passed after observing the said decision of Hon'ble High Court of Bombay in the case of M/s. Finesse Creation Inc, is squarely applicable in the present case. Further, the said decision of Madras High Court has been relied on by the Hon'ble Gujarat High Court in the case of Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.).Accordingly, I observe that present case also merits the imposition of Redemption Fine.

In view of the above, I find that subject goods having assessable value of Rs. 11,72,65,513/-(Rupees Eleven Crore, Seventy Two lakh, Sixty Five Thousand, Five Hundred and Thirteen only) as detailed in Annexure-A & B to the Show Cause Notice though not available are liable for confiscation under Section 111(m) of the Customs Act, 1962.

26. Whether the differential/Short paid Customs duty amounting to Rs. 1,14,15,798/- (Rupees One Crore, Fourteen Lakh, Fifteen Thousand, Seven Hundred and Ninety Eight only) as detailed in Annexure-A & B to the show cause notice should be demanded and recovered under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA ibid?

26.1 I find that Differential duty of **Rs. 1,14,15,798/- (Rupees One Crore, Fourteen Lakh, Fifteen Thousand, Seven Hundred and Ninety Eight only)** has been proposed to be recovered under Show Cause Notice under Section 28 (4) of the Customs Act, 1962. In the self-assessment era, the onus of assessing the goods by following correct classification under appropriate CTH lies absolutely on the importer. The importer shall ensure the accuracy and correctness of the information given therein, which among others include classification, applicable rate of duty, value, and benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting a Bill of Entry. CERA, Audit has observed that the importer has classified under the wrong CTI, solely with an intention to avail the benefits of lower duty structure applicable to the goods falling under Customs Tariff Item No. 90318000. Importer was well aware that merit classification of the impugned goods was Customs Tariff Item No. 90283090, however, with clear intent to evade the customs duty, the importer had misclassified the impugned goods under the Customs Tariff Item No 90318000 instead of merit Customs Tariff Item No. 90283090 and therefore, I hold that differential duty is rightly demanded under Section 28 (4) of the Custom Act, 1962 invoking the extended period. In view of the above, differential duty of Rs. 1,14,15,798/-is required to be recovered alongwith interest under Section 28AA of the Customs Act, 1962.

26.2 I find that importer has contested that in classification issue extended period cannot be invoked and cited various decision. To negate this argument I rely on the decision of Hon'ble Tribunal Banglore in case of Bosch Ltd Vs. Commissioner of Customs, Banglore reported in 2014 (18) Centax 272 (Tri. Bang) where in the extended period is upheld citing the decision of Hon'ble Supreme Court rendered in case of of *Commissioner of Central Excise Ahmedabad* v. *M/s. Urmin Products P. Ltd.* And Others: reported in 2024 (388) E.L.T. 418 (S.C.):

"4.9 The Hon'ble Supreme Court in the case of Commissioner of Central Excise Ahmedabad v. M/s. Urmin Products P. Ltd. And Others: 2023-TIOL-148-SC-CX = (2023) 11 Centax 270 (SC) = 2024 (388) E.L.T. 418 (S.C.) observed as follows: "Thus, in the event of mis-description, wrong description or erroneous description or intentional improper classification of the product manufactured, would not tie the hands of the Competent Authority from piercing the corporate veil to ascertain the true nature of the product and reclassify the same, necessarily after affording an opportunity of hearing which would be in compliance of the doctrine of natural justice". In view of the above, we find that the Commissioner was justified in invoking the extended period of limitation."

26.3 I find that the importer has contested that once a Bill of Entry is finally assessed under Section 17 of the Customs Act, 1962, any modification to such assessment — whether relating to classification, valuation, or rate of duty — can only be carried out by following the statutory appellate mechanism prescribed under Section 128 of the Act and further contested that the department had no jurisdiction to directly issue a demand under Section 28 (4) of the Customs Act, 1962 for the differential amount without first successfully challenging or modifying the original assessment order relying on the decision of the Hon'ble Supreme Court viz. (a) Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive) - 2004 (172) E.L.T. 145 (S.C.) (b) Collector of Central Excise v. Flock India Pvt. Ltd. - 2000 (120) E.L.T. 285 (S.C.). In this regard, I find that the provisions for order for assessment and permitting clearance of goods for home consumption are governed under Section 47 of the Customs Act, 1962. In the case of M/s Jain Shudh Vanaspati Ltd. reported at 1996 (86) ELT 460 (SC), the Hon'ble Apex Court has held that demand under Section 28 of the Customs Act, 1962 can be issued without

revising the order passed under Section 47 of the Customs Act, 1962 and the relevant text of the said judgment reads as under:

"It is patent that a show cause notice under the provisions of Section 28 for payment of Customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance under Section 47 of the concerned goods. Further, Section 28 provides time limits for the issuance of the show cause notice thereunder commencing from the "relevant date"; "relevant date" is defined by sub-section (3) of Section 28 for the purpose of Section 28 to be the date on which the order for clearance of the goods has been made in a case where duty has not been levied; which is to say that the date upon which the permissible period begins to run is the date of the order under Section 47. The High Court was, therefore, in error in coming to the conclusion that no show cause notice under Section 28 could have been issued until and unless the order under Section 47 had been first revised under Section 130."

The above order has been followed in a number of judicial pronouncements by the CESTAT, out of which the relevant text of the case of M/s Asia Motor Works reported at 2020 (371) ELT 729 (T) is reproduced under:

"It has been argued by the Ld. Counsel for AMW that since the assessment has not been challenged, demand under Section 28 cannot be raised. In this regard Ld. AR had relied on decision of Ld. Apex Court in case of Jain Shudh Vanaspati Ltd. (supra) wherein it has been held that the demand can be raised under Section 28 even if challenging assessment. Consequently this argument of Ld. Counsel for AMW is rejected."

In view of the express order of the Hon'ble Apex Court, I find that the contentions of Importer are not tenable.

27. Whether, Penalty under Section 112(a), (b), and Section 114A, and Section 114AA of the Customs Act, 1962 should be imposed on importer M/s. Zera India Pvt. Ltd.?

27.1 Penalty under Section 114A of the Customs Act, 1962: Now, I proceed to consider the proposal of penalty under Section 114A of the Customs Act, 1962 against the importer. I find that in order to sensitize the Importer and Exporter about its benefit and consequences of mis-use, Government of India has issued 'Customs Manual on Self-Assessment 2011'. Under para-1.3 of Chapter-1 of the above manual, Importers/Exporters who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the options as (a) Seek assistance from Help Desk located in each Custom Houses, or (b) Refer to information on CBEC/ICEGATE web portal (www.cbic.gov.in),or (c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or (d) An importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied. Para 3 (a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para-2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant importers. However, delinquent and habitually non-compliant importers/ exporters could face penal action on account of wrong Self-Assessment made with intent to evade Duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

I find that Importer was in complete knowledge of the correct nature/function/application of the goods, nevertheless the Importer mis classified the impugned goods under Customs Tariff Item No. 90318000 instead of merit Customs Tariff Item No. 90283090 of the First Schedule to the Customs Tariff Act, 1975 (51) of 1975 in order escape from the payment of appropriate Customs Duties. With the introduction of self-assessment under Section 17, more faith is bestowed on the importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As part of self-assessment by the Importer, the Importer has been entrusted with the responsibility to correctly self-assess the Duty. However, in the instant case, the Importer intentionally misused this faith placed upon him by the law of the land. Therefore, I find that the Importer has wilfully violated the provisions of Section 17(1) of the Act inasmuch as they have failed to correctly classify the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962. Hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty in terms of Section 114A of the Customs Act, 1962.

Further, I find that demand of differential Customs Duty amounting to Rs. 1,14,15,798/- has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in cases where the Duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the Duty or interest has been erroneously refunded by reason of collusion or any wilful mis statement or suppression of facts. In the instant case, the ingredient of suppression of facts and wilful mis-statement by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Differential Duty plus interest in terms of Section 114A ibid.

27.2 Penalty under Section 114 AA of the Customs Act, 1962:

27.2.1 I also find that the Show Cause Notice proposes to impose penalty on the importer under Section 114AA of the Customs Act, 1962. The text of the said statute is reproduced under for ease of reference:

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

27.2.2 I find that importer has mis classified the imported goods under Customs Tariff Item No. 90318000 instead of merit classification under Customs Tariff Item No. 90283090 intentionally short paid Customs Duty by declaring in Bill of Entry and contravened the provision of Section 46 (4) of the Custom Act, 1962 by making *false declarations in the Bill of Entry,*. Hence, I find that the importer has knowingly and intentionally mis declared (mis-classified) the Customs Tariff Item 90318000 instead of merit Customs Tariff Item No. 90283090 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). Hence, for the said act of contravention on their part, the Importer is liable for penalty under Section 114AA of the Customs Act, 1962.

27.2.3 Further, to fortify my stand on applicability of Penalty under Section 114AA of the Customs Act, 1962, I rely on the decision of Principal Bench, New

Delhi in case of Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi) wherein it has been held that *"Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority".*

27.3 Penalty under Section 112 of the Customs Act, 1962:

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

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

In the instant case, I have already found that Importer M/s. Zera India Pvt. Ltd, is liable to penalty under Section 114A of the Customs Act, 1962 and therefore, penalty under Section 112 is not imposable in terms of the 5th proviso to Section 114A of the Customs Act, 1962.

28 In view of my findings in the paras *supra*, I pass the following order:

:: Order::

28.1. I Confirm the demand of differential amount of Customs duty Rs. 1,14,15,798/- (Rupees One Crore, Fourteen Lakh, Fifteen Thousand, Seven Hundred and Ninety Eight only) as detailed in Annexure-A & B to the Show Cause Notice and order recovery of the same in terms of the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962 consequent to rejection of the classification of impugned goods under Customs Tariff Item No. 90318000 as its merit classification is Customs Tariff Item No. 90283090 and order to re assess the Bill of Entry accordingly.

28.2 I impose penalty of Rs. 1,14,15,798/- (Rupees One Crore, Fourteen Lakh, Fifteen Thousand, Seven Hundred and Ninety Eight only) plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Zera India Pvt. Ltd., A-47, Sector-25, GIDC Electronic Estate, Gandhinagar under Section 114A of the Customs Act, 1962 in respect of Bills of Entry detailed in Annexure-A to Show Cause Notice. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the importer, to pay 25% of the amount of total penalty imposed as above, subject to the payment of total duty amount and interest confirmed at Para 27.1 above and the amount of 25% of penalty imposed as above within 30 days of receipt of this order. Further, I refrain from imposing penalty under section 112 of the Customs Act,1962, since as per fifth proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

28.3 I hold subject goods as detailed in Annexure-A & B to the Show Cause Notice having assessable value of Rs. 11,72,65,513/-(Rupees Eleven Crore, Seventy Two lakh, Sixty Five Thousand, Five Hundred and Thirteen only) imported by M/s. Zera India Pvt. Ltd., A-47, Sector-25, GIDC Electronic Estate, Gandhinagar as detailed in Annexure-A to the Show Case Notice by mis-classifying the said goods, liable to confiscation under Section 111 (m) of the Customs Act, 1962.

However, I give them the option to redeem the goods on payment of Fine of Rs.1,10,00,000/- (Rupees One Crore and Ten Lakh only) under Section 125 of the Customs Act, 1962

28.4 I impose a penalty of Rs.10,00,000/- (Rupees Ten Lakh only) on M/s. Zera India Pvt. Ltd., A-47, Sector-25, GIDC Electronic Estate, Gandhinagar under Section 114AA of the Customs Act, 1962.

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

30 The Show Cause Notice No. VIII/10-25/Pr. Commr/O&A/2024-25 dated 10.06.2025 is disposed off in above terms.

4.12.2025

(SHIV KUMAR SHARMA)
Principal Commissioner,
Customs, Ahmedabad

F.No: VIII/10-25/Pr.Commr/O&A/2024-25 Date: - 04.12.2025

DIN:- 20251271MN000000EC13

By Speed Post/Hand delivery/Email
प्रेषित/To,

1. M/s. Zera India Pvt. Ltd., A-47, Sector-25, GIDC Electronic Estate, Gandhinagar, Gujarat-382024.

Copy to:

1. The Chief Commissioner, Customs, Gujarat Zone, Ahmedabad
2. The Additional Commissioner, Customs, TRC, Ahmedabad.
3. The Dy./Asstt. Commr., Customs, Air Cargo Complex, Ahmedabad
4. The System In charge, Customs HQ, Ahmedabad for uploading on official web-site.
5. Guard File.