

	सीमा शुल्क आयुक्त का कार्यालय OFFICE OF THE COMMISSIONER OF CUSTOMS केंद्रीय अधिनिर्णय प्रकोष्ठ, एन एस-V CENTRAL ADJUDICATION CELL, NS-V जवाहरलाल नेहरू कस्टम हाउस, न्हावा-शेवा, JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA-SHEVA, ताल-ऊरण, डिस्ट-राइगड, महाराष्ट्र-४०० ७०७. TAL. URAN, DIST. RAIGAD, MAHARASHTRA - 400 707.
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DIN : 20250778NX00008183E9

Date of Order: 02/07/2025

F.No. S/10-328/2023-24/ADC/Gr.VA/NS-V/CAC/JNCH

Date of issue: 02/07/2025

SCN No.: 708/2022-23/JC/Gr.VA/CAC/JNCH

SCN Date: 04/08/2022

Passed By: Shri Mazid Khan

Joint Commissioner of Customs, CAC, NS-V, JNCH

Order-In-Original No. : 406/2025-26/JC/GR. VA/NS-V/CAC/JNCH

Name of Party/Noticee :- M/s. TEJ LIGHTING SYSTEMS PVT. LTD. (IEC-0312052588)

मूल आदेश

1. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।
2. इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला - रायगढ़, महाराष्ट्र -400707 को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील) नियमावली, 1982 के अनुसार फॉर्म सी.ए. 1 संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 2.00 रुपये मात्र का स्टॉप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 2.00 रुपये का स्टॉप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1970 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
3. इस निर्णय या आदेश के विरुद्ध अपील करनेवाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्ति के संबंध में विवाद होने पर शास्ति का भुगतान करेगा।

ORDER-IN-ORIGINAL

1. This copy is granted free of charge for the use of the person to whom it is issued.
2. An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, Nhava Sheva, Tal : Uran, Dist : Raigad, Maharashtra – 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs.2.00 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 2.00 only as prescribed under Schedule 1, items 6 of the Court Fee Act, 1970.
3. Any person desirous of appealing against this decision or order shall, pending the appeal, make payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

1. Whereas, M/s.Tej Lighting Systems Pvt. Ltd. (IEC: 0312052588) having office address at 11 & 12, Bussa Udyog Industrial Estate, T.J. Road, Sewree Naka, Sewree (West), Mumbai – 400 015, Maharashtra (hereinafter referred to as 'the importer' or 'M/s. TLSPL'), imported the goods having description "MCPCB-Metal Core Printed Circuit Board" to be used in the manufacturing of LED lights, with different dimensions and product codes (hereinafter referred to as 'the goods') against two (02) Bills of Entry (Bs/E) viz. 7368931 dated 26.07.2018 and 5196688 dated 13.02.2018 and classified the same under Customs Tariff Heading (CTH) 85340000 by declaring the same as "Printed Circuits" and availed the Zero Basic Customs Duty (BCD) benefits under Notification No. 24/2005-Cus dated 01.03.2005 (Sr. No. 22). However, the goods MCPCB is a type of PCB with metallic base and do not conform to the Chapter Note 6 of Chapter 85 that read as "For the purposes of heading 8534, "printed circuits" are circuits obtained by forming on an insulating base" and appears to be classifiable under CTH 94059900 i.e. parts of LED light not elsewhere classified.

2. Summon No. RK/126/2020-21 dated 22.06.2020 (DIN No. 202006780000003E5E11) was issued under Section 108 of the Customs Act, 1962, to the Director, M/s.TLSPL directing them to appear before the Sr. Intelligence Officer on 08.07.2020. However, no one appeared before the Department for giving evidence.

2.1. Further, Summon Nos. JNCH/SIIB(I)/HCell/MKS-588/2020-21 dated 16.10.2020 (DIN No. 20201078NX00011A44A); Summon dated 07.01.2021 (DIN No. 20210178NX000000D82B); and Summon No. MKS-267/SIIB (I)/JNCH dated 16.06.2021 (DIN No. 20210678NX000000E06E) were issued to the Director of importing firm directing them to appear before the Department on 26.10.2020, 15.01.2021 and 19.07.2021 respectively. However, neither anyone appeared before the Department in compliance of these Summons nor any correspondence received from the importer in this regard.

3. Vide F. No. SG/INV-37/19-20/H-cell/SIIB(I)-JNCH in the similar matter of MCPCB, Summons were issued to Dr. Kishore Chatterjee, Professor, Department of Electrical Engineering, IIT Powai, Mumbai on 02.06.2020 & 30.06.2020 under Section 108 of the Customs Act, 1962. In response on 30.06.2020, he stated that he stood by his technical opinion dt. 28.12.2019 and also forwarded the technical opinion on MCPCB along with payment for the said technical opinion. Later, the statement of Dr. Kishore Chatterjee was recorded on 24.08.2020 under section 108 of the Customs Act, 1962 through video conferencing and subsequently, he sent the written statement duly signed on official e-mail ID of SIIB(I). In the said statement, he inter-alia stated that :

- (i) the layer of Aluminium (or its alloy) can be interpreted as the 'base' of the MCPCB;
- (ii) that the Catalogue/Data Sheets of manufacturers of MCPCB generally follow this particular interpretation.

4. Relevant sections of Customs Act, 1962 are re-produced below for ease of reference:-

4.1 **SECTION 28** (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded) reads as:

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

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

4.2 **SECTION 28AA – Interest of delayed payment of duty**

Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other Provision of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

4.3 **SECTION 28.** Recovery of duties not levied or not paid or short-levied or short-paid] or erroneously refunded.

...

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

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

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

4.4 **SECTION 28AA.** Interest on delayed payment of duty

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be

liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

4.5 SECTION 111. Confiscation of improperly imported goods, etc.—

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

4.6 SECTION 111(d)

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

4.7 SECTION 111(m)

(m) 2[any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 3[in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];

4.8 SECTION 112. Penalty for improper importation of goods, etc.- Any person-

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 5[not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

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

7[(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty 8[not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]

9[(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 10[not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;]

9[(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty 11[not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

4.9 SECTION 114A. *Penalty for short-levy or non-levy of duty in certain cases. - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under 23[sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:]*

4.10 SECTION 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.]*

5. The importer classified the goods viz MCPCB under CTH 8534 0000. However, CTH 8534 0000 is specific for Printed Circuits as produced below:

Chapter 85 *Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles*

8534 0000 *Printed Circuits:*

5.1. Further, Note 6 of Chapter 85 is produced below:-

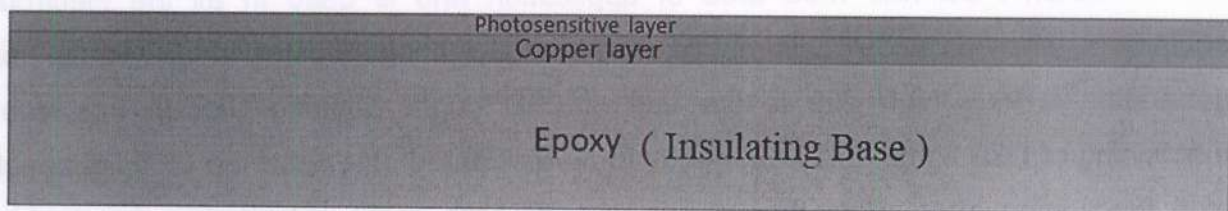
"For the purposes of heading 8534, "printed circuits" are circuits obtained by forming on an insulating base, by any printing process (for example, embossing, plating-up, etching) or by the "film circuit" technique, conductor elements, contacts or other printed components (for example, inductances, resistors, capacitors) alone or interconnected according to a pre-established pattern, other than elements which can produce, rectify, modulate or amplify an electrical signal (for example, semi-conductor elements).

The expression "printed circuits" does not cover circuits combined with elements other than those obtained during the printing process, nor does it cover individual, discreet resistors, capacitors or inductances. Printed circuits may, however, be fitted with non-printed connecting elements.

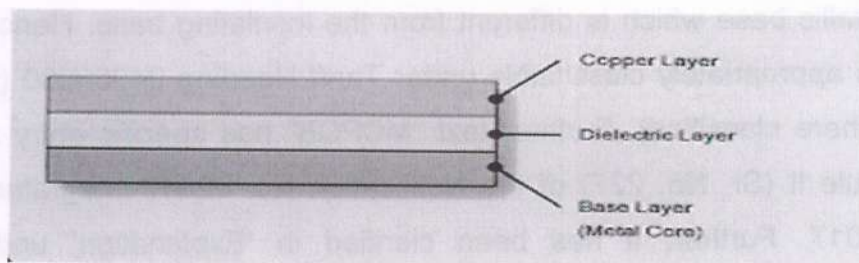
Thin- or thick-film circuits comprising passive and active elements obtained during the same technological process are to be classified in heading 8542".

6. As per the Chapter Note 6 of Chapter 85, it is evident that only those Printed Circuits that are formed on an insulating base should fall under CTI 8534 0000. For the purpose of base for printed circuits in PCB (printed circuit board), there are many insulating materials (e.g. Epoxy, ceramic, FR-4, Fiber Glass etc.) on which the circuits are formed by different printing processes (e.g. embossing, plating-up, etching). In PCB, the base act as a physical layer or platform to provide physical strength and structure/shape as well as to hold the components. The basic PCB consists of 2 layers

i.e. circuit layer and base layer (insulating material). The basic layout of simple PCB is as below:-



7. In MCPCB (Metal Core Printed Circuit Board), as evident from the websites of MCPCB manufacturers i.e. www.bestpcbs.com, www.raypcb.com, www.sfcircuits.com, www.optimizech.net, www.pcbway.com that the MCPCB is made up of metal base. Generally, aluminum/copper is used as metal in MCPCB and these metals are conductor and not insulating as required by Chapter Note 6 of Chapter 85 mentioned above. As the base used in MCPCB is made of conductor, it will not fulfill the criteria of Chapter Note 6 of Chapter 85. Hence, it appears that MCPCB cannot be classified under CTH 8534 0000. The basic layout of simple MCPCB is as below:-



7.1. Here, MCPCB consist of 3 layer i.e. a metal base on which circuit needs to be formed but to make the circuit electrically non-conducting in respect of metal base, a very thin di-electric material is used to separate two metallic layers to avoid electric failure of circuit. Further, the thickness of above mentioned 3 layers, as mentioned in the submission by Dr. Kishore Chatterjee. Professor, IIT Powai, are as follows:

- i. The copper circuit : 35 micrometer to 140 micrometer.
- ii. The di-electric : 38 micrometer to 150 micrometer.
- iii. The metallic layer of aluminium or its alloy : 1000 micrometer to 3200 micrometer

7.2. It is not practically possible to separate the circuit and di-electric layer from the metal layer but assuming that if metallic layer removed from the MCPCB without changing the thickness of other 2 layers then the circuit cannot be used in practical application, like in this case, it cannot be used as part of LED fixture or light.

8. Further, the naming of different types of PCB i.e. FR-4 PCB, Cem-PCB, MCPCB etc is done on the basis of the material used for making the base of PCB. In FR4-PCB, base is made-up of FR4 material. In Cem-PCB, base is made-up of ceramic material. In MCPCB, base is made-up of metal.

9. Further, PCB has wide area of application and is used in all the electronic equipment, whereas, MCPCB is mainly used in LED lighting industry. In LED lights, heat generation is very high due to the use of LED (Light Emitting Diode). For stable functioning of LED lights, this heat needs to be dissipated otherwise the LED light might stop functioning after some time or life of LED light might get shorten due to high temperature in the LED casing. Hence, metal is used as base for PCB designed for LED lights and this metal helps in dissipating (conducting) the generated heat through it and help in stable and long-time functioning of LED light without fail. Comparatively, LED light made up of simple PCB has short life-span as compared to LED light made up of MCPCB.

10. The goods Metal Core Printed Circuit Board (MCPCB) have been wrongly classified by the importer M/s.TLSPL under HSN 8534 0000 which is specific for the "Printed Circuit" formed on insulating base and the goods MCPCB has conducting/metallic base which is different from the insulating base. Hence, it appears that MCPCB is appropriately classifiable under Tariff Heading 94059900 (parts of LED light not elsewhere classified). Further, text "MCPCB" has specific entry against CTH 9405 in schedule II (Sr. No. 227) of the Notification No 1/2017-Integrated Tax (Rate) dated 28.06.2017. Further, it has been clarified in 'Explanation' under the said Notification No. 1/2017 ibid that the Harmonised System of Nomenclature (HSN) under the notification have been drawn with the HSN code incorporated under the Schedule-I of the Customs Tariff Act, 1975 and it reads as under –

Explanation. – For the purposes of this Schedule,-

- (i)
- (ii)
- (iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
- (iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

10.1. Therefore, CTH 9405 appearing in the said Notification No. 01/2017 ibid has same coverage and meaning as that of Chapter Heading 9405 of the Customs Tariff.

11. In view of above statements, technical submission of professor, IIT Powai and information available online on MCPCB manufacturer websites, it appears that:

- (i) MCPCB (Metal Core Printed Circuit Board) is a 3-layer PCB i.e. circuit layer, metal layer and di-electric layer to separate circuit and metal layer;
- (ii) MCPCB is a type of PCB having metal as a base; and

- (iii) In trade parlance or manufacturers of MCPCB generally follow this interpretation of metal as base of MCPCB as evident from the submission of Professor, IIT Powai, Mumbai.

12. Analysis of Statements, documents & Evidences show that :-

- (i) The importer has mis-classified the goods viz. MCPCB under CTH 85340000 with a *mala fide* intention to claim benefit of Notification No. 24/2005-Cus dated 01.03.2005 are MCPCB (Metal Core Printed Circuit Board).
- (ii) The description of the items declared as Printed Circuit Boards, LED MCPB imported by the importer in the year 2018-19 was as per Table-1 attached to the SCN. Those items have also been classified in CTH 85340000 which were rightly classifiable in 9405.
- (iii) Therefore, it is evident that the importer has mis-declared the goods as Printed Circuit Boards which are actually Metal Printed Circuit Boards. It is clearly evident, that the importer has willfully mis-declared the same as Printed Circuit Boards with a *mala fide* intention to classify them under CTH 85340000 to claim undue benefit of Notification No. 24/2005-Cus dated 01.03.2005 (Sr. no. 22).
- (iv) Further, it is evident that the importer has also mis-classified Metal Printed Circuit Boards under CTH 85340000 to claim undue benefit of Notification 24/2005-Cus dated 01.03.2005 (Sr. no. 22), whereas Metal Printed Circuit Boards are rightly classifiable under 94054090 as discussed above.
- (v) In terms of Section 46 (4) of Customs Act, 1962, the importer is required to make a right declaration in the Bills of Entry submitted for assessment of Customs duty. In the instant case, it appears that the goods cleared vide the Bills of Entry mentioned in Annexure-01 to the SCN were cleared by them by wilfully and deliberately indulging themselves in mis-classification of goods in CTH 8534, and mis-declared them as PCBs instead of MCPCBs and cleared the goods without payment of duty with the sole intention to evade duty by claiming undue benefit of Notification 24/2005-Cus dated 01.03.2005 (Sr. no. 22).
- (vi) Hence, it appears that the Importer by the aforesaid act of wilful mis-statement in respect of classification, mis-declaration of description of goods as Printed Circuit Boards have contravened the provisions of Section 46 (4) of the Customs Act, 1962 inasmuch as they have not made the correct declarations in the Bs/E filed and self-assessed by them. The onus of making true and correct declaration in all aspects relating to the imported goods after introduction of self-assessment lies with the importer but they have failed to do in respect of the impugned Bs/E with intent to evade customs duty.
- (vii) Further, their act of wilful mis-representation is also confirmed by the part/identification numbers in the description column of RUD-2 of the SCN wherein, the part number/identification numbers of PCBs and MCPCBs are same.
- (viii) As discussed above the importer has mentioned the description of the goods as 'PCBs' instead of 'MCPCBs' knowingly and wilfully and cleared goods without payment of duty with the sole intension to evade duty by claiming undue benefit of notification 24/2005-Cus dated 01.03.2005. The importer have imported the goods viz. MCPCBs, thereby rendered goods liable for confiscation under section 111(m) of the Customs Act, 1962.

- (ix) Since the investigation has elucidated that the importer have imported 'MCPCBs' by mis-declaring the goods as 'PCBs' and misclassified the same under CTH 8534 instead of 9405 in respect of the Bs/E mentioned at Annexure-01 to the SCN with an intention to avoid Customs Duty. Therefore, duty which had escaped at the time of import is recoverable under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962.
- (x) In view of the above, it is evident that with *mala fide* intention the importer has been evading Customs Duty over a long period of time causing loss to Government Revenue which the importer has been doing knowingly and wilfully so as to maximize monetary gains by evading Customs duty. The present investigation being carried out by the SIIB (Import) has brought such violations to the notice of the Customs authorities. Therefore, it appears that M/s. TLSPL, has been deliberately contravening the provisions of the Customs Act, 1962 as brought out in the foregoing paras which shows *mensrea* on the part of the importer. They had been mis-declaring and misclassifying the goods imported over a substantial period of time in a planned systematic manner. Thus, it appears that the extended period of limitation under Section 28(4) of the Customs Act, 1962 is invocable in the instant case.
- (xi) As the impugned goods are not corresponding with the declarations made in the impugned Bills of Entry mentioned in Annexure-01 to the SCN inasmuch as the true and correct description goods has not been declared in the said Bills of Entry and the classification and wrongly claiming the benefit of notification no. 24/2005-cus dated 01.03.2005. Therefore, on account of the aforesaid mis-declaration in the Bills of Entry, the impugned goods appear to be liable for confiscation under Section 111 (m) of the Customs Act, 1962.
- (xii) Since on the basis of the facts and circumstances mentioned herein above, it appears that the importer has knowingly and deliberately indulged themselves in wilful mis-statement and alleged suppression of facts with regard to description, classification and Notification Sr. No etc., with an intent to evade the applicable Customs Duty and the importer by their aforesaid acts of omission and commission appears to have rendered the impugned goods liable for confiscation under Section 111 (m) of the Customs Act, 1962 and therefore, they appear to be liable to pay penalty under Section 112 (a) of the said Customs Act *ibid*.
- (xiii) As discussed herein above, it appears that the evasion of duty amounting to Rs.2,54,755/- (Rupees Two Lakhs Fifty Four Thousand Seven Hundred Fifty Five Only) in respect of the past Bs/E as detailed in Annexure-01 to the SCN on account of the importer's aforesaid act of wilful mis-statement and suppression of facts, the Customs duty so evaded is required to be demanded in terms of Section 28 (4) of the Customs Act, 1962 by invoking extended period of demand. Further, the interest at the prescribed rate as applicable is also liable to be recovered from them in terms of Section 28AA of Customs Act, 1962.
- (xiv) Since, short payment of duty of Rs 2,54,755/- as per Annexure-01 to the SCN is on account of the aforesaid acts of wilful mis-declaration, the Importer is liable to pay penalty under Section 114A of the Customs Act, 1962 in addition to applicable duty and interest as discussed above.

(xv) As discussed in above, M/s.TLSPL, has been wilfully misclassifying and mis-declaring the goods with a *mala fide* intention to evade payment of proper duties of Customs and accordingly for their acts of evading duty due to wilful mis-statement and suppression of facts, it appears that M/s. TLSPL have rendered themselves liable to penal action under Section 114AA of the Customs Act, 1962.

13. The duty structure for the period from 13.02.2018 to 26.07.2018 payable is mentioned below:

Period	Duty payable		
	BCD*	SWS*	IGST*
01.02.2018 to 31.01.2020	20%	10%	12%

* BCD- Basic Customs Duty; SWS- Social Welfare Surcharge;
IGST- Integrated Goods & Services Tax.

14. Bills of Entry wise differential duty in case of M/s. TLSPL (IEC- 0312052588) was enclosed with the SCN as Annexure-01. The differential duty on the subject Bills of entry has been worked out to Rs.2,54,755/- along with applicable interest.

15. In spite of several Summons issued to the Director of the importing firm, neither he appeared for giving statement nor any communication received from the importer in response to the said Summons.

16. The duty demanded by this office vide Bs/E, as per the details below:

Sr.	B/E No.	B/E Date	Duty Demanded(Rs)
1	7368931	26.07.2018	40211.11
2	5196688	13.02.2018	214544.34
		Total	254755.46

16.1. The importer has not paid the differential duty, as demanded by this office in respect of Bs/E referred above.

17. This can be construed that total duty demanded by this office was Rs.2,54,755/-. However, the importer has not paid any amount towards differential duty, interest and penalty. Therefore, total differential duty to be paid by the importer to the tune of Rs. 2,54,755/- (Rupees Two Lakhs Fifty Four Thousand Seven Hundred Fifty Five Only) is required to be recovered under the provisions of Section 28 (4) of the Customs Act, 1962 along with applicable interest u/s. 28 AA ibid.

18. Therefore, M/s. Tej Lighting Systems Pvt. Ltd., Mumbai is called upon to show cause vide Show Cause Notice No. 708/2022-23/JC/Gr.VA/CAC/JNCH dated 04.08.2022 as to why:

- The declared CTH 8534 0000 of goods in r/o. Two (02) Bills of Entry as detailed in Annexure-01 to the SCN & in para 16 above, should not be rejected and should not be classified under CTH 9405 9900 with applicable rate of duty;

- (ii) The goods having assessable value of Rs. 13,66,714/- imported vide Bs/E referred above, should not be confiscated u/s 111 (m) of Customs Act, 1962,
- (iii) Differential duty of Rs. 2,54,755/- (Rupees Two Lakhs Fifty Four Thousand Seven Hundred Fifty Five only) along with applicable interest should not be demanded from them under section 28(4) and 28AA respectively of the Customs Act, 1962.
- (iv) Penalty should not be imposed on M/s.Tej Lighting Systems Pvt. Ltd.under Section 112 (a)/114A, and 114AA of the Customs Act, 1962.

18.1. Further, Shri Laxmichand Shivilal Borana, Shri Janakkumar Chandrakant Naik, Shri Champalal Kaluram Jain, Shri Arun Babulal Rathod, all Directors of M/s. Tej Lighting Systems Pvt. Ltd., Mumbai are also called upon to show cause vide above SCN dated 04.08.2022 as to why,

- (i) Penalty should not be imposed on them u/s. 112 (a)/114A and 114AA of the Customs Act, 1962.

19. During the course of Adjudication of the subject SCN, it was noticed that departmental appeal in a similar matter in the case of Commissioner of Customs vs Crompton Greaves Consumer Electrical Limited is pending before Hon'ble Supreme Court of India and accordingly, in terms of clause (a) of sub-section (9A) of Section 28 of the Customs Act, 1962, the competent authority directed to transfer the subject SCN to Call Book on 23.06.2023. The above decision of the competent authority was duly conveyed to the Noticee(s)/importer vide letter F.No. S/10-328/2023-24/ADC/NS-V/CAC/JNCH dated 24.04.2023.

20. Further, after dismissal of the department appeal in the case of Commissioner of Customs vs Crompton Greaves Consumer Electrical Limited by the Hon'ble Supreme Court of India, the Adjudicating Authority intimated the noticee(s)/importer regarding decision of the competent authority for transfer of the subject SCN out of the call book for further adjudication, vide letter of even no. dated 08.05.2025 and granted opportunity for personal hearing, in virtual mode on 29.05.2025.

RECORDS OF PERSONAL HEARING AND WRITTEN SUBMISSION

21. In order to comply the principal of natural justice, opportunities of personal hearing in the matter were provided to the Importer vide letter F. No. S/10-328/2023-24/ADC/NS-V/CAC/JNCH dated 08.05.2025, 29.05.2025 and 13.06.2025 to appear before the adjudicating authority on 29.05.2025, 13.06.2025 and 27.06.2025, on virtual mode, for their oral/written submission against the subject show cause notice. However,

no one has attended the personal hearing on any of the above dates. Despite the sufficient number of opportunities for personal hearing given to the notice(s)/importer, they have neither attended the personal hearing nor submitted any written reply in their defence. There is no counter reply/written submission against the SCN received from the Importer.

DISCUSSIONS AND FINDINGS

22. I have carefully gone through the records and facts of the case and the submissions made by the importer as well as assertions put forth during personal hearing. I find that following issues emerges for decision in this case:

- a. Whether the goods declared as "MCPCB" are classifiable in CTI 94054090 attracting BCD @ 20%, SWS@10% & IGST@12% in place of declared CTI 85340000 with claimed benefit of Notification no. 24/2005-Cus dated 01.03.2005.
- b. Whether the goods are liable for confiscation under Section 111(m) and
- c. Whether the noticee(s)/importer are liable for penalty under Section 112(a)/114A and 114AA of the Customs Act, 1962.

23. It is alleged in the Show Cause Notice that the noticee(s)/importer has wrongly classified the goods i.e. MCPCB under CTI 8534 00 00 and proposed to classify the same in CTI 9405 40 90.

24. Further, I find that ample opportunities of personal hearing have been granted to the importer to be heard in person and to submit their reply/defense submission against the Show Cause Notice. However, neither any additional submission to the SCN has been submitted by them nor any of their representatives turned up for personal hearing. I observe that principal of natural justice has been complied with. Therefore, I am left with no option other than to decide the case ex-parte. Hence, I proceed to decide this case on the basis of records available and the existing legal position.

25. I find that Chapter 85 deals in "**Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles**"

CTI 8534 0000 *Printed Circuits:*

26. Further, I find that Chapter 94 deals in "**Furniture; Bedding, Mattresses, Mattress Supports, Cushions and similar Stuffed Furnishings; Luminaires and Lighting Fittings, not elsewhere specified or included; illuminated Signs, Illuminated Name-Plates and the like; Prefabricated Buildings**"

CTI 9405 4090 --- *Other*

27. I find that the Hon'ble CESTAT, Mumbai Bench vide its order No. A/85876/2022 dated 09.09.2022 in a similar matter of M/s Crompton Greaves Consumer Electricals Ltd. Vs Commissioner of Customs, Nhava Sheva has opined that the impugned imported goods i.e. MCPCB is rightly classifiable under CTI 8534 0000. The relevant portion of the said CESTAT order dated 09.09.2022 is reproduced as under:-

7. The lower authorities have taken the two rival entries and applied rule 3(c) of The General Rules for the Interpretation of the Import Tariff which is relevant at the heading, and not to the descriptions at the tariff item level. The provisions for interpretation required identification of the heading at the four digit level for the purposes of comparison between two rival claims. That sought by the appellant herein is

'printed circuits

corresponding to heading 8534 of the First Schedule to Customs Tariff Act, 1975 while that adopted by the assessing authority is

'lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included'

corresponding to heading 9405 of First Scheduled to Customs Tariff Act, 1975. The specificity of description in the claimed classification is not anywhere matched by the description within which the assessing authorities have sought to place the impugned goods. Moreover, it is clear from the description that 'parts', if at all finding fitment within heading 9405 of First Schedule to Customs Tariff Act, 1975, should not be specified or included elsewhere. In the light of the specific description, notwithstanding the addition of a metallic layer which does not find elaboration in the rival heading too, rule 3 (a) of The General Rules for the Interpretation of Import Tariff offers the solution without having to proceed further.

8. In re Hindustan Ferodo Ltd, it has been held that

3. It is not in dispute before us, as it cannot be, that the onus of establishing that the said rings fell within Item 22F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, that the Tribunal was right in rejecting

the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.'

and in HPL Chemicals Ltd v. Commissioner of Central Excise, Chandigarh [2006 (197) ELT 324 (SC)], the Hon'ble Supreme Court has held that

'29. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue. On the one hand, from the trade and market enquiries made by the Department, from the report of the Chemical Examiner, CRCL and from HSN, it is quite clear that the goods are classifiable as "Denatured Salt" falling under Chapter Heading No. 25.01. The Department has not shown that the subject product is not bought or sold or is not brown or is dealt with in the market as Denatured Salt. Department's own Chemical Examiner after examining the chemical composition has not said that it is not denatured salt. On the other hand, after examining the chemical composition has opined that the subject matter is to be treated as Sodium Chloride.'

9. We take note from our analysis supra that the onus devolving on the assessing authorities has not been discharged in accordance with the law as held. The classification adopted by the assessing authorities fails in the face of the specific entry which the respondent herein has not been able to demonstrate as having been excluded from the claimed description. Consequently, we set aside the impugned order and allow the appeal.

28. Here, I find that against the above order of CESTAT dated 09.09.2022, an appeal was filed by the department before Hon'ble Supreme Court of India, wherein the Hon'ble Supreme Court of India vide its Order dated 29.11.2024 in Civil Appeal Diary No. 28888/2024 dismissed the departmental appeal on the ground of delay as well as on merits by stating that they saw no good ground to interfere with the impugned order passed by the CESTAT, Mumbai. I also find that the said order dated 29.11.2024, passed by Hon'ble Supreme Court of India has been accepted by the department.

29. I observe that the matter has attained finality vide said Hon'ble Supreme Court order dated 29.11.2024 in Civil Appeal Diary No. 28888/2024 and the impugned goods

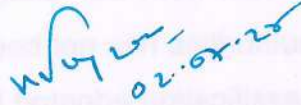
MCPCB are to be classified under CTI 8534 0000. Therefore, I am of considered view that the demand of differential duty of Rs. 2,54,755/- under Section 28(4) along with Interest under Section 28AA of the Customs Act, 1962 raised vide said SCN dated 04.08.2022 against the Noticee(s)/importer is not sustainable and hence, I drop the same. Since there is no liability of short payment of duty and interest thereon, on the part of Importer, the question of confiscation of goods under Section 111(m) and penalties on the noticee(s)/importer under Section 112(a)/114(A) and 114AA do not arise and hence I drop the same.

30. In view of the discussion and findings above, I pass the following order:

ORDER

I drop the charges levelled against the Noticee(s)/importer in the Show cause Notice No. 708/2022-23/JC/Gr.VA/CAC/JNCH dated 04.08.2022.

31. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act, 1962, and/or other law for the time being in force in the Republic of India.



(माजिद खान / MAZID KHAN)

संयुक्त आयुक्त सीमा शुल्क/ JT. COMMISSIONER OF CUSTOMS
सीएसी, एनएस-5, जेएनसीएच/ CAC, NS-V, JNCH

To,

1. **M/s.Tej Lighting Systems Pvt. Ltd.,**
11 & 12, BussaUdyog Industrial Estate,
T.J. Road, Sewree Naka,
Sewree (West), Mumbai – 400 015.
2. **Shri LaxmichandShivlalBorana**
Director, M/s.Tej Lighting Systems Pvt. Ltd.,
537, 5th Wing, Jaldarshan,
New Nepean Sea Road, Walkeshwar,
Mumbai – 400 036.
3. **Shri Janakkumar C Naik,**
Director, M/s.Tej Lighting Systems Pvt. Ltd.,
101, Siddhi Vinayak Tower A,
b/h Jalaram Temple, Devka Road, Nani Daman-396210.

4. **Shri Champalal Jain,**
Director, M/s.Tej Lighting Systems Pvt. Ltd.,
11, Hariniwas co-op Hsg. Sty.
LBS Marg, Kurla (W) , Mumbai – 400070.
5. **Shri Arun B. Rathod**
Director, M/s.Tej Lighting Systems Pvt. Ltd.,
74, Chitra Appt., 7th floor,
Gokuldas Pasta Road, Dadar (W)
Mumbai – 400014.

Copy to:-

1. The Dy./Asstt Commissioner of Customs, Review Cell, JNCH.
2. The Dy./Asstt Commissioner of Customs, Recovery Cell, JNCH.
3. The Dy./Asstt. Commissioner of Customs, Group VA, JNCH.
4. The Dy. Commissioner of Customs, SIIB (I) (Investigation Unit), JNCH
5. The Dy./Astt. Commissioner of Customs, EDI, JNCH..for uploading on website.
6. Notice Board(CHS Section), JNCH.
7. Office Copy.

