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-राइगड़, महाराष्ट्र-४०० ७०७.
TAL. URAN, DIST. RAIGAD, MAHARASHTRA - 400 707.

DIN : 20250778NX0000116591 Date of Order: 18/07/2025

F.No. S/10-347/2024-25/ADC/Gr.VA/NS-V/CAC/JNCH Date of issue: 18/07/2025

SCN No.: 851/2024-25/ADC/Gr.VA/CAC/JNCH
SCN Date: 31/07/2024

Passed By: Shri Mazid Khan
Joint Commissioner of Customs, CAC, NS-V, JNCH

Order-In-Original No. : 519/2025-26/JC/GR.VA/NS-V/CAC/JNCH

Name of Party/Noticee :- M/s. MX-MDR TECHNOLOGIES LIMITED (IEC-313066221)

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मूल आदेश

1. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए नि:शुल्क 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 स्टांप 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 स्टांप 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. **M/s. MX-MDR TECHNOLOGIES LIMITED (IEC- 313066221)** hereinafter referred to as the importer) having their registered address at **UNIT NO 5, K LAXMI INDUSTRIAL ESTATE, NEW LINK ROAD,ANDHERI - WEST, MUMBAI - 400058** filed bills of entry as detailed in Annexure-A for clearance of goods declared as "Headsets, Hands free, Headphone and Earphone etc." (hereinafter referred to as "impugned goods") and classified the same under tariff head 8517 with BCD @ 10%.

Annexure-A										
Sr. No.	BE Number	BE Date	IEC Code	IEC Name	CTH Assessed	Item Description	Total Assessable Value - Assessed	Total Duty Assessed	Duty Payable	Duty Difference
1	4588110	Aug 21, 2019	0313066221	MX-MDR TECHNOLOGIES LIMITED	85176290	HEADPHONE - WIRELESS RF STEREO HEADPHONE - MX TX-50RF (WPCCERTIFICATE NO ETA-SD-20190703200 DT 30/07/2019)	2,272,838.[illegible]	454,113.2[illegible]	351,532.75	397,519.55

2. However, as per Customs Tariff Act, 1975, Headsets, Hands free, Headphone and Earphone etc. are correctly classifiable under the CTH 85183000 which attracts higher rate of BCD @15%. As per Board's Circular No. 36/2013 Customs dated 5th September, 2013 only "Single (Monaural) Bluetooth Wireless Headset for mobile phones/cell phones is correctly classified in heading 8517, sub heading 8517 62. However, the impugned goods appeared to be binaural. Therefore, the classification of these imported goods under CTH 8517 appeared to be incorrect and inappropriate. Hence, the impugned goods appeared to be classifiable under the CTH 85183000 and liable to be assessed at the rate of BCD @15% instead of BCD @ 10% which resulted in short payment of Customs duty. Accordingly, **SCN No. 851/2024-25/ADC/Gr.VA/CAC/JNCH dated 31.07.2024** was issued to the importer, which inter-alia stated:

2.1 After introduction of self-assessment vide Finance Act, 2011, it is the responsibility of the importer to make true and correct declaration in all aspects like classification, valuation, including calculation of duty & claim of benefit. However, in the instant case, the duty amount has not been paid due to mis-classification of goods, resulting in loss to the Government exchequer to the tune of **Rs. 397519.55/-** as detailed in Annexure-A to the notice. Therefore, it appears that importer has intentionally mis-classified the imported goods under CTH 8517 instead of 85183000 with sole purpose to evade legitimate Customs duty.

2.2 Hence Importer appears to be liable to pay differential duty of **Rs. 397519.55/-** under section 28(4) of Customs Act, 1962 along with applicable interest under section 28AA of the Customs Act, 1962 as detailed in Annexure-A to the notice.

2.3 Since, Importer had evaded the duty on the imported goods and wrongly mis-classified the imported goods under CTH 8517 instead of 85183000, a consultative letter no. 5356/2020-21/A2 dated 08.06.2021 was issued to the importer to pay the short-paid duty along with applicable interest and penalty.

2.4 However, the said Importer did not co-operate with the department by not responding to the Consultative Letter dated 08.06.2021.

2.5 This mis-classification has led to loss to the Government exchequer and accrued monetary benefits to the said Importer. Therefore, it appears that the said Importer has intentionally mis-classified the imported goods under chapter 8517 with BCD 10% with sole purpose to evade legitimate Customs duty whereas it should have been rightly classifiable under tariff head 85183000 attracting BCD @ 15% and thus the provisions of Section 28 (4) are invokable in this case.

2.6 Hence the said Importer is liable to pay differential duty of **Rs. 397519.55/-** along with applicable interest and penalty under Section 28(4) of Customs Act, 1962 as detailed in Annexure-A to the notice

2.7 Relevant sections of Customs Act, 1962, in the instant matter, are reproduced below, for ease of reference:-:

2.8 **SECTION 111. Confiscation of improperly imported goods, etc.-**

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

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

2.9 **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) shall be liable, -

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

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

2.10 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 sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

2.11 SECTION 28: - Recovery of duties not levied or short-levied or erroneously refunded. -

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

(a) Collusion; or
(b) Any wilful mis-statement, or
(c) Suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied 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.

2.12 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.

2.13 The Importer has cleared the said goods as detailed in Annexure-A of the SCN by mis-classified the same under CTH 85176290 with BCD @10% instead of classifying the goods under correct CTH 85183000 with BCD @15% resulting in short levy of legitimate Customs duty amounting to **Rs. 397519.55/-**. Therefore, the said goods having the total assessable value of **Rs. 2272838.95/-** appear to be liable for confiscation under section 111 (m) of the Customs Act 1962.

2.14 With the introduction of the Self-Assessment scheme, the onus is on the importer to comply with the various laws, determine his tax liability correctly and discharge the same. The importers are required to declare the correct description, value, classification, notification number, if any, on the imported goods. Self-assessment is supported by section 17, 18 and 46 of the Custom Act. 1962 and the bill of entry (Electronic Declaration) Regulation, 2011. The importer is squarely responsible for self-assessment of duty on imported goods and filing all declaration and related documents and confirming these are true, correct and complete Self-Assessment can result in assured facilitation for compliant importers. However, delinquent importers would 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 provisions under the Customs Act, 1962 or the Allied Acts.

2.15 Acts of omission and commission by the Importer:

As per section 17(1) of the Act, "An Importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods. Thus, in this case the importer had self-assessed the Bills of Entry and appears to have short levy of BCD and IGST due to mis-classification. As the importer got monetary benefit due to said act. In this case, it appears that importer has wilfully mis-classification of the imported goods under CTH 85176290, to evade the payment of legitimate custom duty on the imported goods. The importer is regularly importing the subject goods and has complete knowledge about the nature of the goods. Therefore, it appears that importer has intentionally mis-classified the imported goods under CTH 85176290 instead of 85183000 with sole purpose to evade legitimate Customs duty is required to be demanded by invoking the extended period clause under section 28 (4) of the Customs Act, 1962 along with applicable interest under section 28AA of Custom Act, 1962 and penalty as applicable.

2.16 It appears that the Importer has given a declaration under section 46(4) of the Act, for the truthfulness of the content submitted at the time of filing Bill of Entry. However, the applicable BCD and IGST rate on the subject goods was not paid by the Importer at the time of clearance of goods. It also appears that the Importer has submitted a false declaration under section 46(4) of the Act. By the act of presenting goods in contravention to the provisions of section 111(m), it appears that the Importer has rendered the subject goods liable for confiscation under section 111(m) of the Act. For the above act of deliberate omission and commission that rendered the goods liable to confiscation. Accordingly, the Importer also appears liable to penal action under Section 112 (a) and/or 114 A and/or 114AA of the Customs Act, 1962.

2.17 The Importer has cleared the said goods as detailed in Annexure-A by resorting to mis-classification resulting in short levy of legitimate Customs duty amounting **Rs. 397519.55/-**. Therefore, the said goods having the total assessable value of **Rs. 2272838.95/-** appears to be liable for confiscation under section 111(m) of the Customs Act 1962.

3. Therefore, in terms of Sections 28(4) of the Customs Act, 1962, the importer **M/s. MX-MDR TECHNOLOGIES LIMITED (IEC- 313066221)** was called upon to show cause, as to why,

(i) The classification of subject goods claimed under CTH 8517 of the bills of entry as detailed in Annexure A should not be rejected and the same should not be re-assessed under CTH 85183000;

(ii) The wrongly claimed exemption benefit under Notification No. 50/2017 dated 30.06.2017 for Bills of Entry as detailed in Annexure A to the notice, should not be denied and said goods should not be levied with BCD @15%, without exemption notification benefit and IGST @ 18% under CTH 85183000;

(iii) The imported goods having assessable value **Rs. 2272838.95**covered under Bills of Entry as detailed in Annexure-A should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

(iv) Differential Duty of **Rs. 397519.55/-** should not be demanded for the Bills of entry as detailed in Annexure-A under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;

(v) Penalty should not be imposed under Section 112(a) and/ or 114A of the Customs Act, 1962.

RECORDS OF PERSONAL HEARING

4. In order to comply with the principle of natural justice, opportunity for personal hearing on 18.06.2025 was provided to the importer vide F. No. S/10-347/2024-25/ADC/Gr.VA/NS-V/CAC/JNCH on 27.05.2025, which was attended by Shri Pramod Chayal, Advocate and authorized representative of the importer. He reiterated the written submission dated 17.06.2025 and had nothing more to add.

WRITTEN SUBMISSION OF THE IMPORTER

5. The importer vide their letter dated 17.06.2025 inter alia stated that:-

5.1 That the importer under Bill of Entry No: 4588110 dated: 21.08.2019 imported Headphone- Wireless RF Stereo Headphone Model No: MX TX 50 RF and submitted WP Certificate No: ETA –SD-20190703200 dated: 30.07.2019, as per said show cause notice under Notification No: 57/2017-Cus dated: 30.06.2017 and as amended Notification No: 69/2018-Cus dated: 26.09.2018.

5.2 That Bill of entry as per said show cause imported like; Headphone- Wireless RF Stereo Headphone Model No: MX TX 50RF Range Over 500 Meters (1500 Meters)

5.3 That Supplier/manufacturer of M/s. GO-ON Technologies limited catalogue, as professional Designing and manufacturing in Disc Jokey Headphone and not as a Headphone / Bluetooth for Mobile phones.

5.4 That as per Para No: 2 of CBEC Circular No; 36/2013-Customsdated: 5.09.2013:-

"The Radio transceiver utilizes an open wireless technology slandered (wireless protocol for exchanging data within a personal Area Network (PAN) using short length radio waves over short distances (up to 10 Meters) with Enhanced Data Rate (EDR) technology, which enables the handset to communicate wirelessly with fixed and mobile devices, such as mobile telephone for cellular networks.

5.5 That it can be seen from catalogue of supplier that these handsets can't be used with mobile phone under any circumstances due to their special technical specification and only use over 500 meters (1500 Feet's), not less than this and only used in factions where Disc Jockey used for play the music in parties.

5.6 That it can be seen from the Bill of Entry that the subject goods i.e. MX TX - 50RF Wireless RF Stereo Headphones are imported under Notification No:57/2017-Cus dated: 30.06.2017 as amended Notification No: 69/2018-Cus dated: 26.09.2018 and correctly paid IGST 18% and all other NIL as all these speakers and part thereof not for mobile phone as per amended Notification No: 69/2018-Cus dated: 26.09.2018.That on this issue they submitted following judgments with catalogs to see that Headphones Model No: MX TX 50RF is the most powerful transmitter for silent disco or party use The operation distance is over 500 meters. It can set up1 to 4 channels and work with silent disco headphone, this is more than distance of 10 meters which Range over 500 Meters (1500 Feets0, and use in disco party's and mostly used by disco Jokey and can't be use a Bluetooth for mobile.

5.7 That they submitted judgments copies to prove that the importis genuine and rightly paid IGST 18% and others NIL as per Notification No:57/2017 -Cus dated: 30.06.2017 and as amended Notification No: 69/2018-Cus dated: 26.09.2018. That as per show cause these goods should be classified under 851183000 and attracting IGST @18% however as per our submissions and documentary evidences it can be very much seen that the importer has correctly classified these good under Bill of Entry No: 4588110 dated: 21.08.2019 and that's why the subject show cause notice is not as per law and request to drop this show cause on the basis of documents and judgments submitted to the department.

5.8 Judgments relied upon:-

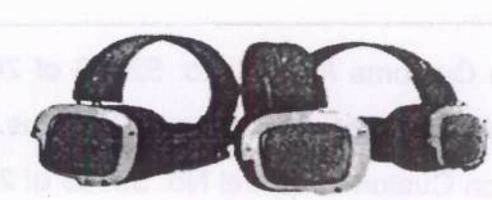
1) Hon'ble Tribunal New Delhi on Customs Appeal No: 52239 of 2019 filed by M/s. Minda D-Ten Private Limited V/s. Commissioner of Customs (Import)
2) Hon'ble Tribunal of New Delhi on Customs Appeal No: 50983 of 2020 filed by M/s. Sennheiser Electronics India Pvt. Ltd., V/s The Principal Commissioner of Customs (Import), ICD-Tughlakabad, New Delhi.

5.9 On the same issue submitting following judgments like benefit of Notification No: 57/2017-Cus dated: 30.06.2017 and as amended Notification No: 69/2018-Cus dated: 26.09.2018, issues are identical whether the importer is eligible for these notification are not? –

- The Hon'ble CESTAT Judgment dated: 09.02.2016 on M/s. Logic India Trading Co. V/s. Commissioner of Customs, Cochin
- he Hon'ble Kerala High Court Judgment dated: 29.08.2013on M/s. Logic India Trading Co. V/s. Commissioner of Customs, Cochin
- The Hon'ble Supreme court Judgment on Commissioner of Customs V/s. Logic India Trading co.dated:30.09.2016

- The Hon'ble CESTAT Judgment dated: 12.02.2018 on M/s. KCM Appliances Pvt. Ltd., V/s. Commissioner of Customs, Cochin.
- The Hon'ble CESTAT -Bangalore Judgment dated: 05.05.2022 on M/s. Logic India Trading Co. V/s. Commissioner of Central Excise, Customs and Service Tax, Bangalore.
- The Hon'ble CESTAT –Kolkata Judgment dated: 04.05.2018 on Commissioner of Customs (Port) Kolkata V/s. Santosh Radio Products.
- The Hon'ble CESTAT –Kolkata Judgment dated: 03.08.2023 on Commissioner of Customs (Port) Kolkata V/s. Clarion Computers Pvt. Ltd., Kolkata.
- The Hon'ble CESTAT –Kolkata Judgment dated: 10.07.2023 on M/s. Proline Inc. V/s. Commissioner of Customs (Port) Kolkata.
- The Hon'ble CESTAT –New Delhi Judgment dated: 01.10.2019 on M/s. V 3 International. V/s. Commissioner of Customs, New Delhi (ICD-TKD).
- The Hon'ble CESTAT –New Delhi judgment dated: 04.10.2022 on M/s. Vivo Mobile India Pvt. Ltd. V/s. Commissioner o, Customs, Air Cargo , Export, New Delhi

5.10 The importer has submitted the technical specification of the subject imported goods as under:-



MX TX-50RF Wireless RF Stereo Headphone

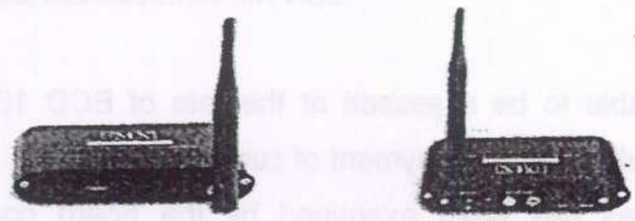
The MX TX-50RF is the newest silent disco headphone with LED lights.Folding design for easy storage. It has two or three channels option. Different color lights are on both sides of the headphones to indicate channel selection. Detailed analytical sound reproduction with strong bass response.

Features :

- Open wireless RF stereo headphone system
- Special design for party and event use
- Fantastic lights to indicate channel selection
- Foldable design for easy storage
- Silde switch for channels selection
- Personal volume control on each headphone
- Soft ear pad for super comfortable wearing
- Wireless freedom with reception through walls and ceilings
- Volume and tune controls conveniently located on the headphone

Technical Data :

System	: UHF/RF
Modulation	: FM
Mode	: stereo
Channel option	: 3 channels
LED lights	: Purple, Yellow, Cyan
Signal-to-noise ration	: >75dB
THD	: <1%
Speaker	: 40mm mylar
Frequency response	: 30~20000Hz
Channel separation	: >35dB
Operation time	: 10 hours



- **Model No. MX TX-50RF**

1. Overview

The MX TX-50RF is the most powerful transmitter designed for silent disco or party use The operation distance is over 500 meters. It can set up 1 to 4 channels and work with silent disco headphones.

Features
- **Wireless stereo transmitter(max 4 channels)**
- **Low and High transmission power option**
- **Display for current working channel**
- **Press button for different chanel selection**
- **Special design for party and event use**
- **Range over 500 meters (1500 feet)**
- **Transmitter with metal shell**
- **Outstanding antenna to reach a longer distance**

2. Technical Data

System	**UHF/RF**
Modulation	**FM**
Mode	**stereo**
Frequency	**863MHz/925MHz band**
Channel option	**Maximum 4 channels**
Effective range	**Up to 200 meters(600 feet) in Low power** **Over 500 meters(1500 feet) in High power**
Power supply	**DC 12V adapter**

6. The importer vide their letter dated 04.07.2025 submitted additional written submission wherein inter alia following is stated:-

6.1 That the SCN issued on Incorrect facts and self-contradictory:

6.2 That the bill of entry was filed with the correct CTH, and correctly paid the duty, whereas SCN Is issued is incorrect:

6.3 That they have used the Script license for clearing this shipment. Under the notification no. 24/2015 custom dtd 08/04/25.BCD 10%, while utilizing DEPB debiting, DEPB lic. No.0319244991 dtd 19/08/2019 and duty amount Rs.2,50,012.30/-on a/v RS.22,72,838.95.

6.4 That as per the para 2 of the SCN, "Headsets, hand free, headphone and earphone etc. are correctly classifiable under CTH 85183000 which attracts higher rate of duty of BCD15%. As per Board Circular no.36/1013 custom dtd. September 05, 2013, only "single (monaural) Bluetooth wireless headset for mobile phones/cell phones is correctly classified in heading 8517, sub heading 8517 62. However, the subject goods appear to be binaural. Therefore the clarification of these imported goods under CTH 8517 appears to be incorrect and inappropriate. The subject goods appear to be classifiable under the CTH

85183000 and liable to be assessed at the rate of BCD 15% instead of BCD @10% which resulted in short payment of customs duty.

Reply: This issues has been examined by the board consultation with the department of Electronics and Information Technology, Ministry of communication and information technology, the clarification of goods in the first schedule of the customs tariff act, 1975, is governed by the General Rules or the interpretation (GRI) of import tariff.

6.5 As per para 4. of board circular no. 36/2013-cus-dtd September 05, 2013, "Bluetooth Wireless headsets for mobile phones/cell phones" comprises microphone/transmitter, headphone/receiver, wireless communication system. The communication functions for mobile telephony characterizes its principal function for the purpose of note 3 to section XVI. This function is included in heading 85.17: "other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network". Thus, heading 85.17 would apply to "apparatus" used for communication in wireless networks, which is a simultaneously two-way audio and data steaming in the radio frequency band. Also the HS Explanatory note to subheading 8517.62 (Machines for the reception, conversion or transmission or regeneration of volce, Images or other data, including switching and routing apparatus) provides that, "this subheading includes cordless handsets or base units Headphones combined with a microphone of heading 8518 carry only audio signals and not an active parts of the network, whereas a Bluetooth headset with mobile telephony function Is an active part of a wireless network. Therefore goods are correctly classified in heading 85.17, subheading 8517.62. The impugned goods have been rightly classified under CTH 85176290 and are eligible for the benefit of exemption no. 057/2017, Sr. No.20.

Sr.No.	Chapter or Heading or Sub-heading of tariff item	Item Description	Std customs duty rate as applicable	Concessional customs duty rate / Exemption by the importer
1	8517 6290	HEADPHONE - WIRELESS RF STEREO HEADPHONE - MX RX-50RF (WPC CERTIFICATE NO ETA-SD-20190703200 DT 30/07/2019)	Total duty 37.48% (BCD-15%+SWS 10% + IGST 18%)	Total duty 30.98% (BCD-10% + SWS 10% + IGST 18%)
2	8518 3000	HEADPHONE - WIRELESS RF STEREO HEADPHONE - MX RX-50RF (WPC CERTIFICATE NO ETA-SD-20190703200 DT 30/07/2019)	Total duty 37.48% (BCD-15%+SWS 10% + IGST 18%)	Total duty 30.98% (BCD-10% + SWS 10% + IGST 18%)

- By claiming Notification Exemption 57/2017-customs dated 30/06/2017 S.No. 20 (CTH 8517 6290)
- By claiming Notification Exemption 57/2017-customs dated 30/06/2017 S.No. 18 (CTH 8518 3000)

- By claiming Notification no. 24/2015- By way of script licence duty Debit Rs. 250012/-
- By paid IGST Rs. 454113/-

6.6 At the outset, that the impugned goods are correctly classified under CTH 8517 6290, as per the functions with the transmitter only.

6.7 As per SCN para 3 says the CTH 85183000 is also covered under exemption notification No.57/2017 customs dtd. 30.06.2017, S.No. 18. The rate of basic duty was @10%.

6.8 Accordingly, the impugned goods is principal functions with the transmitter. It can't be used with any other apparatus.

6.9 Hence, the issue pertains to the classification of the impugned goods, and not to any mis-declaration or misclassification.

6.10 Based on the above, it is submitted that since there is no liability for payment of customs duty, the question of payment of interest does not arise. Consequently, interest under Section 28AA of the Customs Act, 1962, is not leviable.

6.11 That for Para 9 section 111(m), they would like to refer to judgment of Hon'ble Tribunal in case M/S. Pearl enterprises vs commissioner of custom (port) Kolkata [2006(2003)E.L.T.7 71(Tri-Kolkata) where it is held that: "Mere claim of classification, based on bonafide reason to believe same to be applicable, cannot be a reason to arrive at a mis-declaration envisaged under section 111(m) of customs act, 1962"

6.12 Considering the above mentioned judicial pronouncement, the impugned goods are not liable for confiscation and penalty should not imposed.

6.13 Reply to para 9 of SCN, the impugned matter pertains to goods clarification issue, penalty is not applicable in such scenario, in this regard, we wish to highlight the decision of Hon'ble Tribunal in case of Komal trading company vs. commissioner of Cus. (Import), Mumbai (2014(301)E.L.T. 506(Tri-Mumbai]wherein, it has been held that "As the matter relates to a clarification dispute, confiscation is not warranted and consequently, no fine or penalty is possible.

6.14 That issue pertains to SCN is regarding classification of impugned goods and not case of mis-declaration.

6.15 Prayer: In light of above submissions made that humbly request for the following relief:

A. Show cause notice be dropped with consequential relief:

B. Classification of the impugned item under CTH in the bill of entry should not be rejected.

C. Drop demand of total differential duty amount under section 28(4) of the custom act 1962.

D. Drop the demand interest, as applicable, on total differential duty under provision of section 28AA of customs Act, 1962,

E. Goods imported under Bill of entry, should not be liable for confiscation under provisions under sections 111(m) of the customs act, 1962.

F. Drop the penalty imposed on the importer under the provisions of section 114A of the customs Act 1962.

DISCUSSION AND FINDINGS

7. I find that the instant Show Cause Notice dated 31.07.2024 alleged that the importer M/s MX-MDR Technologies Limited (IEC-313066221) had filed Bill of Entry No. 4588110 dtd 21.08.2019 for clearance of goods declared as "Headsets, Hands free, Headphone and Earphone etc." and classified the same under tariff head 8517 with BCD @10%, whereas the subject imported goods are correctly classifiable under the CTH 85130000 with BCD @15%.

8. I further find that the said SCN proposes a recovery of differential duty amounting to **Rs. 3,97,519.55/- rounded off to Rs.3,97,520/- (Rupees Three Lakh Ninety-seven Thousand Five Hundred Twenty only)** under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. The said SCN also proposes that the imported goods totally valued at **Rs.22,72,838.95/- rounded off to Rs.22,72,839/-(Rupees Twenty-two Lakhs Seventy-two Thousand Eight Hundred Thirty-nine only)** should be held liable for confiscation under Section 111(m) of the Customs Act, 1962 and penalty should be imposed on the importer under Section112 (a) and/or 114 A of the Customs Act, 1962.

9. It is also alleged in the Show Cause Notice that as per Board's Circular No. 36/2013 Customs dated 5th September, 2013 only "Single (Monaural) Bluetooth Wireless Headset for mobile phones/cell phones is correctly classifiable in heading 8517, sub heading 8517 62. Since, the subject goods appear to be binaural, the classification of these imported goods under CTH 8517 appears to be incorrect and inappropriate. Hence, it is alleged that the subject imported goods are classifiable under the CTH 85183000 and liable to be assessed at the rate of BCD @15% instead of BCD @ 10%.

10. After going through the description of the BE items under deliberation, I observe that the imported goods have been declared as **"HEADPHONE-WIRELESS RF STEREO HEADPHONE – MX TX-50RF (WPC CERTIFICATE NO. ETA-SD-20190703200 DT.30/07/2019)"** under CTH 85176290.

11. 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:

(i) Whether the subject imported goods declared as **"HEADPHONE-WIRELESS RF STEREO HEADPHONE – MX TX-50RF"** is classifiable under CTH 85183000 with applicable BCD @ 15% instead of declared and assessed CTH 85176290 with BCD paid @10%.

(ii) Whether the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 and

(iii) Whether the importer is liable for penalty under Section 112(a) and /or 114A of the Customs Act, 1962.

12. Now, coming to the question whether the subject imported goods declared as **"HEADPHONE-WIRELESS RF STEREO HEADPHONE – MX TX-50RF"** is classifiable under CTI 85183000 as alleged in impugned SCN with applicable BCD @ 15% or under CTI 85176290 as declared and assessed with BCD @10% by the importer.

13.1 To determine the applicable CTH for the subject imported goods, I refer to the concerned Tariff Heading of the Customs Tariff Act, 1975. The relevant part is reproduced below for ease of reference:-

13.2 Chapter 8517 of Customs Tariff Act reads as:-

Telephone shets, *smart phones and other telephones for cellular networks or for other wireless networks: other apparatus for the transmission or reception of vice, images or other data , including apparatusf or communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528 - telephone sets, *including smart phones and other telephones for cellular networks or for other wireless networks:

***Sub heading 85176290**– Other*

13.2 **Chapter 8518 of Customs Tariff Act reads as**:-

Microphones and stands therefor: loudspeakers, whether or not mounted in their enclosures : head phones and earphones , whether or not combined with a microphones , and sets consisting of a microphone and one or more loudspeakers: audio-frequency electric amplifiers: electric sound amplifier sets.

Sub heading 8518 30 *- Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers: Headphones and earphones, whether or not combined with a microphone, and capable of connecting through wireless medium:*

14. The importer, in his written submissions dt. 17.06.2025 & 04.07.2025 and during personal hearing dt. 18.06.2025 submitted a copy of the technical specification of the subject imported goods, which is mentioned in Para 5.10 above. The above technical specification suggests that the subject goods was a disco headphone with LED lights consisting of two or three channel option. The different color lights on both sides of the headphones indicate channel selection. The features of the goods confirms that they are open wireless RF stereo headphone system specially designed for party and event use. The subject headphone is having UHF/RF system, with FM Modulation, >75dB Signal-to-noise ration, 30~20000Hz Frequency response, >35dB Channel separation and 10hrs of Operation time. Further the subject headphone works with a transmitter designed for silent disco or party use. The operation distance of the transmitter use to be over 500 meters.

15. I observe that Customs Tariff Heading 85183000 covers "Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers".

16. I refer to Rule 1 of General Rule of Interpretation of Harmonized System which provides that " the titles of Section, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes".

17. I observe that Customs Tariff Heading 8517 does not specify any particular properties/ any terms or end use for adopting the classification of "head phones". In absence of any such provision all types "headphones" whether they are based on a particular technology, wired or wireless appears to be squarely covered under the tariff heading 8518.

18. I also refer to Rule 3(a) of General Rule of Interpretation of Harmonized System, which provides that the heading which provides the most specific description shall be preferred to headings providing a more general description". In this context, I observe that Customs Tariff Item 85183000 covering "headphones and earphones, whether or not combined with a microphone" is more specific heading than the residual tariff heading 85176290 where no specific item name is mentioned.

19. Further, the importer in his written submission as well as in his oral submission, has submitted that in the Circular No. 36/2013-Customs dated 05.09.2013 referred in the impugned SCN the radio transceiver utilizes an open wireless technology standard (wireless protocol for exchanging data within a PAN using short length waves over short distances (up to 10 meters) with EDR technology, whereas their products only use over 500 meters (1500 feet's) and not less than this. However, I find that the subject circular no. 36/2013-Cus deals in the classification of "Bluetooth Wireless Headset for mobile phones/cell phones" and as per the description of the subject imported goods, the same is not Bluetooth/wireless headset for mobile phones/cell phones and hence I am of the opinion that the subject imported goods is out of the purview of circular no. 36/2013-Cus dated 05.09.2013.

20. In view of the above, I am of considered view that the classification of the subject imported goods under CTH 8517 as declared by the importer in subject Bill of Entry is incorrect and inappropriate. Hence, I hold that subject imported goods are classifiable under the CTH 85183000 and liable to be assessed at the rate of BCD @15% instead of BCD @ 10% which resulted in short payment of Customs duty.

21. In view of the discussions made in the preceding paras, I find that, the importer has misclassified the goods under CTH 85176290 instead of correct classification under CTH 85183000 for the reason stated supra and claimed undue benefit of lower Basic Customs Duty (BCD) @ 10% and wrongly claimed exemption benefit under Notification No. 57/2017 dated 30.06.2017 for Bills of Entry as detailed in Annexure – A, while filing above said Bill of Entry. Thus, it is amply clear that the importer has not complied with the provision of Section 17(1) and 46(4) of the Customs Act, 1962 and claimed benefit of lower Basic Customs Duty (BCD) by misclassifying the goods.

22. I find that, after the introduction of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including calculation of duty and/ or description of goods. The relevant sections of Customs Act are reproduced below for ease of reference:-

22.1 **Section 17(1) Assessment of duty**, reads as:

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

22.2 Further **Section 28 (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded)** reads as:

'(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; or

(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 beenso 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.

23. Thus, from material facts of the case, it is evident that the said importer, purportedly mis-classified the impugned goods with the intent to pay lower duty and thereby caused loss to the govt. exchequer. The said act of the importer is nothing but wilful mis-statement with clear mens rea to pay lower duty at material time. By doing so, the importer evaded a total duty of **₹3,97,520/- (Rupees Three Lakh Ninety-seven Thousand Five Hundred Twenty only).** Thus, I hold that the demand of duty under Section 28(4) of the Customs Act, 1962 is sustainable and I hold the same.

24. Further, since the demand of duty is sustainable in the instant case, the interest being accessory to the principal, the same is liable to be paid in accordance with Section 28AA of the Customs Act, 1962.

25. As I have already hold that the demand of duty for extended period under Section 28(4) of Customs Act, 1962 is sustainable in the case, I observe that the importer is liable for penal action under Section 114A of the Customs Act, 1962 and I hold the same.

26. Now coming to the question as to whether the impugned goods are liable for confiscation. I find that Section 111(m) provides for confiscation even in cases where goods do not correspond to any other particulars in respect of which the entry is made under this act. I have to restrict myself only to examine the words. "in respect, any other particular with the entry made under this act" would also cover the case of mis-declaration by the Importer. Hence, Section 111(m) can be invoked.

27. I find that, on the basis of the facts and circumstances mentioned herein above, it is amply clear that the importer have knowingly and deliberately indulged themselves in wilful mis-statement and misclassification, with an intent to evade the applicable duty and thus I hold that for the aforesaid acts of omission and commission the impugned goods liable for confiscation under Section 111 (m) of the Customs Act, 1962. However, I find the goods imported vide bills of entry as detailed above are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

> *"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 regularized, 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 authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III 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 the payment of the 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. (i)."

28. I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same have not been challenged by any of the parties in operation. Hence, I find that any goods improperly imported as provided in any sub-section of Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the importer was not caught at the time of clearance of the imported goods, can't be given differential treatment. In view of the above, I find that the decision of the 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 decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), is squarely applicable in the present case. Accordingly, I hold that the present case also merits the imposition of a Redemption Fine.

29. In view of the above facts, I pass the following order.

<u>ORDER</u>

I. I reject the declared classification under CTH 85176290, with duty rate BCD @10% and order to re-assess the goods under CTH 85183000, with BCD @15% for goods as mentioned in Annexure-A.

II. I order to confirm the demand of differential Customs duty of to **₹3,97,520/- (Rupees Three Lakh Ninety-seven Thousand Five Hundred Twenty only)** on the goods imported vide Bills of Entry mentioned in Annexure-A, under Section 28(4) of Customs Act, 1962.

III. I order to recover applicable interest on the short-levied Customs duty as confirmed above from **M/s MX-MDR TECHNOLOGIES LIMITED (IEC-313066221)** under Section 28AA of the Customs Act, 1962.

IV. I order to confiscate the impugned goods having assessable value of **₹22,72,839/- (Rupees Twenty-two Lakhs Seventy-two Thousand Eight Hundred Thirty-nine only)** under Section 111(m) of the Customs Act, 1962, but since the same are not available as they have already been cleared hence I impose a redemption fine of **₹ 2,25,000/- (Rupees Two Lakh Twenty-five thousand Only)** under Section 125 of the Customs Act, 1962 upon **M/s MX-MDR TECHNOLOGIES LIMITED (IEC- 313066221)**

V. I order to impose penalty of **₹3,97,520/- (Rupees Three Lakh Ninety-seven Thousand Five Hundred Twenty only) (equivalent to differential Customs Duty) plus interest** leviable thereon, on **M/s MX-MDR TECHNOLOGIES LIMITED (IEC- 313066221)**, under Section 114A of Customs Act, 1962. If such duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be 25% of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.

VI. I do not impose any penalty under Section 112 (a) of Customs Act, 1962 for reasons deliberated above.

32. 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.

18/03/25

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

To:

M/s. MX-MDR TECHNOLOGIES LIMITED (IEC- 313066221)
UNIT NO 5, K LAXMI INDUSTRIAL ESTATE,
NEW LINK ROAD, ANDHERI – WEST,
MUMBAI – 400 058

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 (Audit), Circle-E, JNCH
5. The Dy./Astt. Commissioner of Customs, EDI, JNCH..for uploading on website.
6. Notice Board(CHS Section), JNCH.
7. Office Copy.

Annexure- A

Annexure-A

Sr. No.	BE Number	BE Date	IEC Code	IEC Name	CTH Assessed	Item Description	Total Assessable Value - Assessed	Total Duty - Assessed	Duty Payable	Duty Difference
1	4588110	Aug 21, 2019	0313066221	MX-MDR TECHNOLOGIES LIMITED	85176290	HEADPHONE - WIRELESS RF STEREO HEADPHONE - MX TX-50RF (WPCCERTIFICATE NO ETA-SD-20190703200 DT. 30/07/2019)	2,272,838.95	454,113.2	851,632.75	397,519.55

28/06/24
(Pratik/Supdt)
Audit (E circle)