

OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-V)  
सीमाशुल्कआयुक्त (एनएस - V) काकार्यालय  
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,  
जवाहरलालनेहरुसीमाशुल्कभवन, न्हावाशेवा,  
TALUKA - URAN, DISTRICT - RAIGAD, MAHARASHTRA -400707  
तालुका - उरण, जिला - रायगढ़, महाराष्ट्र 400707

DIN - 20250778NX00000104E4

Date of Order: 31.07.2025

F. No. S/10-67/2024-25/COMMR/NS-V/CAC/JNCH

Date of Issue: 31.07.2025

SCN No.:553/2024-25/COMMR/(NS-V)/GR.V/JNCH

SCN Date: 18.06.2024

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 147/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s. Wifi Soft Services

ORDER-IN-ORIGINAL

मूल - आदेश

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D'Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सी.ई.एस.टी.ए.टी., पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीजनल बेंच), 34, पी. डी.मेलो रोड, मस्जिद (पूर्व), मुंबई - 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

3. Main points in relation to filing an appeal:-

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - सीए3, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए).

Time Limit - Within 3 months from the date of communication of this order.

समय सीमा - इस आदेश की सूचना की तारीख से 3 महीने के भीतर

**Fee -फीस-**

(a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.

(क) एक हजार रुपये जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये या उस से कम है।

- (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 Lakh.
- (ख) पाँच हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।
- (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
- (ग) दस हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 50 लाख रुपये से अधिक है।

**Mode of Payment** - A crossed Bank draft, in favor of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

**भुगतान की रीति** – क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायक रजिस्ट्रार, सी.ई.एस.टी.ए.टी., मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

**General** - For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

**सामान्य** - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, 1962, सीमाशुल्क (अपील) नियम, 1982, सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, 1982 का संदर्भ लिया जाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129E of the Customs Act 1962.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्गृहीत शास्ति का 7.5 % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 E के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।



**Subject: Adjudication of Show Cause Notice No. 553/2024-25/Commr/NS-V/Gr-V/JNCH dated 18.06.2024 in case of M/s. Wifi Soft Services (IEC No. 3112026853) - reg.**

**BRIEF FACTS OF THE CASE**

1.1 During the course of Post Clearance Audit, it was observed that M/s. Wifi Soft Services (IEC No. 3112026853) (hereinafter referred to as the importer/noticee) had imported following consignments of “Serial Board 910N” vide Bills of Entry as detailed in Table-I as below:

**Table-1**

Sr. No.	Bill of Entry No.	Date	Assessable value (in Rs.)	Goods cleared under CTH	Duty Paid (in Rs.)
1	3709675	18-06-2019	1818448	85340000	327590
2	3710421	18-06-2019	1211956	85340000	218152
3	4266591	29-07-2019	6825700	85340000	1228626
4	3708520	26-04-2021	5592277	85340000	1006610
5	6795910	22-12-2021	5673225	85340000	1021181
6	6888003	15-07-2023	15499683	84733030	2789943
7	9433475	27-12-2023	12099903	84733030	2177982
8	2270046	23-02-2024	12122971	84733030	2182135

1.2 The 4 consignments cleared vide B/Es mentioned at Sr. No. 1 to 4 of above Table-1, the importer had not uploaded any Product Catalogue in E-Sanchit. From the product pictorial information uploaded by the importer for the same goods cleared vide Bills of Entry as mentioned at Sr. No. 5 to 8 and information as retrieved from website i.e. <https://coexistence.en.alibaba.com/>, it appeared that the imported item is a Populated Printed Circuit Board. However, despite this, in initial 5 consignments mentioned at Sr. No. 1 to 5 of the above Table, the importer had classified the goods under tariff item 85340000 which pertained to unpopulated, unmounted and plain PCBs. Chapter Note 8 of Chapter 85 of the First Schedule of Customs Tariff mentions that:

*“8. 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.”*



From the above, it appeared that CTH 85340000 is applicable to plain, unmounted, unpopulated PCBs only.

**1.3** It was further observed that in three consignments mentioned at Sr. No. 6 to 8, the importer had classified the goods under tariff item 84733030 which pertains to “Other mounted printed circuit boards - Parts and accessories of the machines of heading 8471”.

**1.3.1** However, from the information available on trading platform <https://coexistence.en.alibaba.com/>, it appeared that the imported item is used in a 2.4G+5.8G Wifi Router Board with 4G R 485 & R232 Port. Further from manufacturer supplier's website <http://www.szcoexistence.com/product/dtu-pcb-board/>, it was found that the imported item is a DTU (Data Transfer Unit) PCB Board. As per the manufacture's website, DTU provides data communication network for industrial application. It was also observed that manufacturer supplier is engaged in manufacturer of network communication equipment only. Thus, the information of the product as available on trading website and information available on supplier's website, does not support the claim of the importer that the imported goods is a next generation computer board. Further, in the product information uploaded by the importer in E-Sanchit they themselves mentioned that it can be used as gateway device to connect various industrial equipment which itself indicates that the Serial Boards imported by the importer are used in Network Communication Equipment. It was also mentioned in the uploaded information that it is also used in digital signage display unit for advertisement. Digital signage display units are classifiable under heading 8531. As such it appeared that the imported Serial Boards have multiple uses and application and therefore, the imported item is not classifiable under heading 8473 which covers only “PARTS AND ACCESSORIES (OTHER THAN COVERS, CARRYING CASES AND THE LIKE) SUITABLE FOR USE SOLELY OR PRINCIPALLY WITH MACHINES OF HEADINGS 8470 TO 8472”.

**1.3.2** Further, Chapter Note 6(D)(ii) of Chapter 84 restricts to classify the 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) under heading 8471 when they are presented separately.

**1.3.3** The 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) are classifiable under heading 8517.

**1.3.4** The imported item is a populated PCB and appeared to be a part of Router. Router is data communication network equipment. Data communication network equipment falls under heading 8517 and as such the same appeared to be classifiable under CTH 85177010 (till 31.01.2022) and thereafter from 01.02.2022 onwards the same was classifiable under 85177910 of the First Schedule of the Customs Tariff as under:



Table-2(a) (Till 31.01.2022)

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
1	2	3	4	5
8517	Telephone sets, including telephones for cellular networks or for other wireless networks; 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), other than transmission or reception apparatus of heading 8443, 8525,8527 or 8528 – Telephone sets, including telephones for cellular networks or for other wireless networks:			
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	- - - - -			
	– Other apparatus for 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)			
	-Base Station	u		
851762	-- Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus			
	- - - - -			
851769	--Others			
	- - -			
851770	- Parts:			
85177010	-- Populated, loaded or stuffed printed circuit boards	u	20%	-

Table-2(b) (From 31.01.2022)

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
1	2	3	4	5
851770	- Parts:			
85177010	-- Populated, loaded or stuffed printed circuit boards	u	20%	-

1.3.5 The importer by misclassifying the goods under CTH 85340000 or 84733030 had cleared the goods without paying BCD under Notification No. 24/2005 (Sl. No. 22) or (Sl. No. 10). The said exemption is available to only those goods which are classifiable under CTH 8473 or 8534. However, since the imported goods appeared to be classifiable under CTH 85177010 (till 31.01.2022) and under CTH 85177910 from 01.02.2022 onwards, the said exemption was not available to the importer and the said goods were leviable to BCD @ 20% till 02.02.2020 and subsequent to 02.02.2020, the same was chargeable to BCD @ 10% under Sr. No. 22 of the Notification No. 57/2017-Cus dtd. 30.06.2017 as amended vide Notification No. 02/2020-Cus dtd. 02.02.2020.



2. In addition to above, it was observed that the importer was regularly importing Power Circuit Board by classifying the same under CTH 85049090 and paying applicable BCD @ 10%, SWS Cess 10% of BCD and IGST @ 18%. However, in respect of following Bills of Entry (as detailed in Table-3 below), they have cleared the goods by classifying the same under CTH 84733030 and claiming benefit of Notification No. 24/2005, Sr. No. 10 which is available to only Parts of Machines of Heading 8471 and thereby they had not paid any BCD.

Table-3

Sr. No.	Bill of Entry No.	Date	Assessable value (in Rs.)	Goods cleared under CTH	Duty Paid (in Rs.)
1	3710421	18.06.2019	378736	84733030	68173
2	4266591	29.07.2019	853213	84733030	153578
3	4169588	02.06.2021	1371773	84733030	246919

3. From the above, it appeared that Populated PCB Serial Boards-910N and Power Supply Board imported by the importer were cleared by misclassifying the same and thereby they had availed ineligible exemption notification. The conscious misclassification of the goods and availment of ineligible exemption in the case resulted in the short payment of customs duty to the tune of Rs. 96,83,531/- (Rupees Ninety Six Lakh Eighty Three Thousand Five Hundred and Thirty One only) as calculated under:

Table-4

SERIAL BOARDS						
Sr. No.	Bill of Entry No.	Date	Assessable Value (Rs.)	Duty Payable (BCD@20% + SWS @10% + IGST@18% till 02.02.2020) and thereafter (BCD @10% + SWS@ 10%+ IGST@18%) (In Rs.)	Duty Paid (BCD&SWS@ Nil%+IGST@ 18%) (In Rs.)	Differential duty (In Rs.)
1	3709675	18-06-2019	1818448	799390	327590	471800
2	3710421	18-06-2019	1211956	532776	218152	314624
3	4266591	29-07-2019	6825700	3000578	1228626	1771952
4	3708520	26-04-2021	5592277	1732487	1006610	725877
5	6795910	22-12-2021	5673225	1757565	1021181	736384
6	6888003	15-07-2023	15499683	4801802	2789943	2011859
7	9433475	27-12-2023	12099903	3748550	2177982	1570568
8	2270046	23-02-2024	12122971	3755696	2182135	1573561
POWER BOARDS						
Sr. No.	Bill of Entry No.	Date	Assessable Value (Rs.)	Duty Payable (BCD@15%+ SWS@10%+ IGST@18%) (In Rs.)	Duty Paid (BCD&SWS@ Nil%+IGST@ 18%) (In Rs.)	Differential duty (In Rs.)
1	3710421	18.06.2019	378736	141874	68173	73701
2	4266591	29-07-2019	853213	319699	153578	166121
3	4169588	02.06.2021	1371773	514003	246919	267084
					Total	9683531



4. A Consultative Letter No. 42/2024-25 dated 26.04.2024 was issued to the importer and advised to pay differential duty of Rs. 96,83,531/- (Rupees Ninety-Six Lakh Eighty-Three Thousand Five Hundred and Thirty-One only) as detailed in Table-4 to the said CL, along with interest and penalty.

4.1 In response to CL dated 26.04.2024, the importer vide their letter dated 21.05.2024 justified the claimed classification under CTH 84733030 by contending that a serial board PCB, also known as a serial card, is designed to provide additional serial ports to a computer or data processing unit whose key technical features includes:

- i. Microcontroller/Processor: Responsible for processing the data from the machines connected to the PCB
- ii. Serial Ports: Interfaces for serial communication, allowing connection of various devices like electrical appliances, DG set, SMPS, DC Energy meters.
- iii. Buffer Memory: Temporary storage for data during transmission and reception, ensuring smooth data flow.
- iv. Embedded Software: Embedded software that is responsible for processing of the data.
- v. Drivers and Software: Often comes with drivers and software necessary for integration with operating systems, enabling seamless data processing.

4.2 Regarding the power circuit PCB board, the importer contended that it is designed to regulate and smooth the power delivered to the main PCB on the processing unit as the main PCB is sensitive device and can be damaged by the voltage fluctuation or power surges in the electric supply. He also contended that the power circuit board helps in ensuring smooth and surge free power to the main PCB and reduces the power fluctuation in the electric current flowing to the main PCB.

4.3 The importer further contended that this product is custom designed for specific customer who deploys the product for monitoring their machines and electric equipment. The product is not sold in general market and all the requirements are customized for the given customer. The final product doesn't use any power adapter since it gets power from the electric machine that it monitors. The importer has contended that they are only importing the PCBs required to build the product and contended that the serial board and power circuit board are assembled inside the universal modem appliance. Both the PCBs are installed inside a plastic enclosure and connected to various machines via the cables and the unit is sealed inside to ensure that it is protected from the outside temperature, dust and other external elements.

4.4 It is further contended that the Universal Logger is connected to various electrical appliances like rectifiers, SMPS, power meters, DG sets via different cables and that this device is designed to talk to various appliances, collect the data from these appliances via the cables and process the data inside the CPU and memory that is on the PCB itself. All the computed data is



pushed back to the appliances or machines to enhance the working and ensure that the errors and faults are reduced.

**4.5** The importer has submitted the diagrams and photographs to show that the Serial Board and Power Circuit PCBs are used for processing data for various electrical appliances and as per the technical definition of HSN 84733030, which pertains to “Parts and accessories of the machines of heading 8471” which includes automatic data processing machines and their units. This heading covers:

- (i) Machines for processing data (e.g., computers).
- (ii) Units designed for integration into data processing machines.

**4.6** The importer has contended that the primary function of the PCB is to serve as an integral part of an automatic data processing unit as it meets the criteria:

- (i) **Data Processing:** The PCB is capable of receiving, processing, storing, and outputting data, which are core functions of any automatic data processing unit.
- (ii) **Automation:** The PCB performs tasks without human intervention once programmed, which is characteristic of automated data processing.
- (iii) **Integration:** Designed to be integrated into larger systems where it works as a central processing unit, contributing to the automated control and operation of the entire system.
- (iv) The imported PCB functions as an automatic data processing unit, containing all necessary components to process, store, and manage data.
- (v) Its application is not restricted to one application but spans various fields requiring data processing.

**4.7** In supporting argument, the importer has contended that:

- (i) **Functionality:** The primary purpose of the imported PCB is to process data automatically, aligning with the description under HSN 84733030.
- (ii) **Integration:** The PCB is designed to be integrated into larger systems that rely on data processing for operation, a key characteristic of parts covered under HSN 84733030.
- (iii) **Complexity:** The PCB includes a microprocessor and memory, distinguishing it from simple printed circuits (HSN 85340000) and generic telecommunication parts (HSN 85177010).

**4.8** In view of the above, the importer has concluded that the PCB should be classified under HSN 84733030 because it is an essential component of an automatic data processing machine and it performs key data processing functions, is designed to integrate into larger systems, and plays a critical role in the automation of electrical applications and proper classification under this heading is crucial to reflect its true nature and functionality.



5. Regarding the importer's contention that the imported PCBs are parts of the Automatic Data Processing Unit, attention is invited to Note 6(c) of Chapter 84 which provides that Subject to paragraphs (D) and (E), a unit is to be regarded as being part of an automatic data processing system if it meets all of the following conditions:

- (i) it is of a kind solely or principally used in an automatic data processing system;
- (ii) it is connectable to the central processing unit either directly or through one or more other units; and
- (iii) it is able to accept or deliver data in a form (codes or signals) which can be used by the system.

From the importer's contention itself, it appeared that the imported goods have multiple uses and it can be used as signage board. Further the details available on supplier's website shows that the PCB as DTU (Data Transfer Unit) PCB Board. Another website is selling the same product as Router Boards. Therefore, the imported PCBs being not of a kind to be used solely or principally in an ADP system are not classifiable as parts of ADP machine.

6. Further, the importer in his submission has claimed that PCBs are used in Universal Modem Appliance. The information available on importer's website confirms the claim of the importer. However, the function of Universal Modem explained by the importer are not matched exactly with the information available on importer's website <https://www.wifi-soft.com/products/smart-tower-solutions.php>. The details available on website is extracted and reproduced hereinunder:

*"Universal Modem is a device that can be used to communicate with legacy devices like power systems, factory machines, generators, telecom equipment, controllers and other instrumentation devices. It can be interfaced with multiple devices simultaneously to establish two-way communication between the device and the cloud.*

*The Universal Modem helps in automating and monitoring the functioning of remote devices by allowing administrators to collect all the critical parameters from the remote devices periodically and process them in the cloud. Similarly, it can also send commands and instructions to these devices from the cloud thus allowing administrators to control any device remotely. Universal Modem communicates with the cloud over a 3G or 4G connection so it can be deployed in wide range of applications and in much bigger area. Universal Modem contains various interfaces to communicate with multiple equipments at the same time. It contains two USB, two RS-232, two RS-485 and three Ethernet ports. It can use WiFi, 4G or Ethernet for connectivity with the Internet. It also provides a provision for enabling GPS on the board.*

*The Universal Modem is connected with various equipments with respective cables. It comes with tamperproof, IP-55 enclosure that can be easily installed at remote sites.*

*Application*



**Telecom Towers:** The Universal Modem can be used to control and monitor various equipments installed at the telecom towers. These include SPS, SMPS, DCEM and other power appliances. These equipments are manufactured by various vendors so the Universal Modem needs to implement vendor specific protocols to read and write to the equipments. It used cellular backhaul to upload the data to the cloud while receiving commands from the cloud to change any device settings.

**Generators:** Universal Modem can be installed for controlling the remotely installed generator systems. It can communicate with different models of generators over ModBus protocol and control them from the central location. It can also monitor the critical parameters on the generators and upload them to the cloud for reporting and analysis.

**Surveillance/Asset Tracking:** Universal Modem also finds application of asset tracking and surveillance. The modem can be connected to remote surveillance cameras to capture the data feeds and upload the feeds to the remote cloud. Additionally, it can interface with iBeacons to keep track of assets at the installed sites.

**Factory Instrumentation:** Universal Modem can be deployed in any factory to centrally monitor critical parameters from the machines and power systems. The modem communicates over various interfaces like RS232, RS485, Ethernet, WiFi, USB and Bluetooth to gather the technical data and upload it to the central cloud."

7. From the above, it appeared that the imported serial boards are the part of "Universal Modem" which is a device that can be used to communicate with legacy devices like power systems, factory machines, generators, telecom equipment, controllers and other instrumentation devices and it can be interfaced with multiple devices simultaneously to establish two-way communication between the device and the cloud. From the feature and name of the product it appeared that the imported goods are not a part of ADP Machine but the same is a part of Universal Modem which is a kind of Industrial Router used for communication with machines. As such the goods are rightly classifiable under CTH 85177010 and chargeable to BCD as mentioned in Table-4 above.

8. Subsequent to 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, however, in the instant case, it appears that the importer has consciously misclassified the Populated PCB under the heading of Plain PCB or Parts of Machines of heading 8471 and availed ineligible exemption notification by mis-declaring the goods as Plain PCB or parts of machines of heading 8471 and thereby they evaded entire BCD which otherwise was leviable @ 10% to 20% for the imported item. Further in 3 cases the importer has knowingly misclassified the Power Boards under the heading which pertains parts of machines of 8471. The act on the part of the importer made the impugned consignments a case of short payment of Customs duty of Rs.



96,83,531/- (Rupees Ninety-Six Lakh Eighty-Three Thousand Five Hundred and Thirty-One only). It appeared that the importer willfully and maliciously misclassified the imported goods with a view to intentionally pay less Customs duty and thereby evaded the Customs duty to the tune of Rs. 96,83,531/- (Rupees Ninety-Six Lakh Eighty-Three Thousand Five Hundred and Thirty-One only).

9. In view of the above, it appeared that the importer had engaged in wilful misstatement and suppression of material information from the Department with the intention to evade the due payment of customs duty. Therefore, the provision of Section 28(4) of the Customs Act, 1962, in the case where any duty has not been levied or not paid or has been short levied or short paid or erroneously refunded by the reason of wilful misstatement or suppression of facts, is squarely applicable in the case and appeared that the subject goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 for suppression of exact nature of goods from the Department. It further appeared that the Importer for the acts of omission and commissions mentioned above had rendered themselves liable for penal action under Section 112(a) of the Customs Act, 1962. As the short levy has occurred due to wilful mis-statement, suppression of fact to evade duty, the importer also appeared to be liable for penalty under Section 114A of the Customs Act, 1962.

10. In view of above, in exercise of the powers conferred by Section 124 read with Section 28(4) of the Customs Act, 1962, the Importer, M/s. Wifi Soft Services (IEC No. 3112026853) was called upon to Show Cause (SCN No. 553/2024-25/Commr/NS-V/Gr-V/JNCH dated 18.06.2024) to the Commissioner of Customs, NS-V, Jawaharlal Nehru Custom House, Nhava Sheva, Taluka- Uran, District – Raigad, Maharashtra - 400707 within 30 days of receipt of the SCN as to why:

- i. The subject goods imported vide Bills of Entry and assessed under CTH 85340000 or 84733000 be denied and should not be reassessed under CTH 85177010 (till 31.01.2022) and under CTH 85177910 from 01.01.2022 onwards, the said exemption was not available to the importer and the said goods were leviable to BCD @ 20% till 02.02.2020 and subsequent 02.02.2020, the same is chargeable to BCD @ 10% under Sr. No. 22 of the Notification No. 57/2017-Cus dated 30.06.2017 as amended vide Notification No.02/2020-Cus dated 02.02.2020.
- ii. The differential duty amounting to Rs. 96,83,531/- (Rupees Ninety-Six Lakh Eighty-Three Thousand Five Hundred Thirty-One Only), (as mentioned in Table 4 above) should not be recovered from importer under Section 28(4) of the Customs Act, 1962.
- iii. Interest under Section 28AA of the Customs Act, 1962 should not be recovered from the Importer M/s. Wifi Soft Services (IEC No. 3112026853)
- iv. The subject goods having total declared Assessable Value of Rs. 6,08,44,163/- (Rupees Six Crore Eight Lakh Forty-Four Thousand One Hundred and Sixty-Three Only) imported vide Bills of Entry (as per table-I) should not be held liable for confiscation under 111(m) of the Customs Act, 1962.
- v. Penalty under Section 112(a)/114A of the Customs Act 1962 should not be imposed on the Importer M/s. Wifi Soft Services (IEC No. 3112026853).



## **WRITTEN REPLY OF THE NOTICEE IN RESPONSE TO THE SHOW**

### **CAUSE NOTICE:**

11. Noticees submitted written submissions dated 16.07.2025 and 23.07.2025. In their written submission, it is submitted inter-alia that:

11.1 They received C.L. No. 42/2024-25 dated 26.04.2024 to pay differential duty with interest amount against the Bills of Entry and they had paid differential duty amounting to Rs. 96,83,531/- vide Challan No. HC 17 & interest amounting to Rs. 34,65,910/- against Challan No. HCM 167, however, they were unable to pay the penalty imposed under Section 28(5) and requested to waive or suitably reduce the penalty. Noticee submitted following points in the explanation of why they wanted waiver of penalty:

- i. Their entity is in MSME-Micro/small scale Enterprises and working on very low profit margins and in these shipments, they had bear heavy losses just to fulfil the order commitment of their client. After paying Rs 1.31 Crore (custom duty+ interest) they are in total loss.
- ii. They have calculated their total purchase cost with all the assembling items and subtracted it from sale cost where they can see the actual profit margins, after deducting the amount which was paid in customs against 'custom duty + interest' charges, they are having loss of Rs. 57,891/-, in support of the same they submitted working sheet of purchase and sales margin calculation, If net profit of their company from 2019 to 2024 is clubbed, then it comes to around 1.5 Crore, out of which they had paid 1.31 Crore as 'differential duty & Interest'. If still they have to pay the penalty on this then their company won't survive or may get declare bankrupt. They are ready to submit their Audited Profit and Loss statements from 2019 to 2024 to customs as evidence. In 2020-21 they have filed a loss of Rs. 27.7 Lacs and after that in F. Y. 2021-22 & 2022-23 profit is only 7 Lacs & 3 Lacs respectively.
- iii. Whatever misclassification happened is solely due to confusion and similarities in the CTH but it was surely unintentional and on receiving the custom notice for misclassification, after realizing the facts and actual differences between the CTH, they accepted the error and immediately got ready to pay the duty difference amount along with the Interest instead of going for the appeal.
- iv. They had filed the Bills of Entry as per the suggestions received by their Freight Forwarder agent. They were not well aware of the differences in CTH and which CTH is more suitable to their product; after getting this hit, they had changed our freight forwarder agent so that this won't be happen again in future.
- v. The issue primarily pertains to classification error, and there has been no deliberate intent, fraud, collusion or wilful misstatement on their part. The differential duty has arisen due to lack of knowledge or an inadvertent error.



## **11.2 End Use of the PCB**

**11.2.1** The PCB performs tasks without human intervention once programmed, which is characteristic of automated data processing and it is designed to be integrated into larger systems where it works as a central processing unit, contributing to the automated control and operation of the entire system. The imported PCB functions as an automatic data processing unit, containing all necessary components to process, store, and manage data. Its application is not restricted to one application but spans various fields requiring data processing.

**11.2.2** The primary purpose of the imported PCB is to process data automatically, aligning with the description under HSN 84733030. The PCB is designed to be integrated into larger systems that rely on data processing for operation, a key characteristic of parts covered under HSN 84733030. The PCB includes a microprocessor and memory, distinguishing it from simple printed circuits (HSN 85340000) and generic telecommunication parts (HSN 85177010).

**11.2.3** The PCB should be classified under HSN 84733030 because it is an essential component of an automatic data processing machine. It performs key data processing functions, is designed to integrate into larger systems, and plays a critical role in the automation of electrical applications. Proper classification under this heading is crucial to reflect its true nature and functionality.

**11.3 Universal Data Logger:** This product is custom designed for specific customer who deploy this product for monitoring their machines and electric equipment's. The product is not sold in general market. All the requirements are customized for the given customer. The final product doesn't use any power adaptor since it gets power from the electric machine that it monitors. They are only importing the PCBs required to build the product. The Serial Board & Power circuit Board are assembled inside the universal modem appliance and both the PCBs are installed inside a plastic enclosure & connected to various machines via the cables. The unit is sealed inside to ensure that it is protected from the outside temperature, dust and any other external elements. The universal logger is connected to various electrical appliances like rectifiers, SMPS, Power Meters, DG sets via different cables. This device is designed to talk to various appliances, collect data from these appliances via the cables and process the data inside CPU & memory that is on the PCB itself. All the computed data is pushed back to the appliances or machines to enhance the working and ensure that the errors and faults are reduced. As per technical definition of HSN 84733030, Which pertains to "parts and accessories of the machines of heading 8471" which includes automatic data processing machines and their units. This heading covers:

- Machines for processing data
- Units designed for integration into data processing machines

**11.4** Upon thorough review and analysis of the technical specifications and functionalities of the aforementioned products, it has come to their attention that there was an unintentional error in the classification process. Justification for the misclassification is as follows:



**11.4.1 Serial Board 910N:** While the Serial Board 910N shares similarities with products classified under tariff heading 85340000, it primarily functions as an interface device rather than a component solely for electrical circuits. The board facilitates serial communication between various devices, making it more akin to data processing equipment rather than electrical apparatus. Thus, it is more appropriately classified under a different tariff heading reflecting its function and purpose.

**11.4.2 Power Circuit Board:** Although the Power Circuit Board does involve electronic components and circuitry, its primary function is not limited to processing data or electrical signals. Instead, it serves as a crucial component in power supply systems, regulating voltage, current, and power distribution. As such, its classification under tariff heading 84733030, which pertains to parts of electrical machinery or apparatus, is not entirely accurate. A more suitable classification may fall under a broader category encompassing power distribution or control equipment.

**11.5 Similarities in wrong and correct CTH:** As per their understanding CTH 84733030 is mainly covers parts and accessories for automatic data processing machines (HSN 8471), specifically mentioning "other mounted printed circuit boards". And the PCB we have imported is used in data processing applications for Industrial IOT, it is used as data processing device to connect to industrial equipment, collect the data from them and process the data. The data is stored on the board and used for data processing. As per the custom notice it should be go under 85177910 as it covers the parts of Telecommunications equipment like populated, loaded, stuffed printed circuit Boards for telecommunication.

**11.6** The issue primarily pertains to classification error, and there has been no deliberate intent, fraud, collusion or wilful misstatement on our part. The differential duty has arisen due to misunderstanding or an inadvertent error. They are a Micro-scale/MSME entity and the imposition of penalty severely affects their operations and working capital. The burden is disproportionately harsh given the nature of the issue and our prompt compliance. Noticee further requested to waive or suitably reduce the penalty.

## **RECORD OF PERSONAL HEARINGS**

**12.** Following the principal of natural justice, the Noticee was granted opportunities for personal hearing (PH) in terms of Section 28(8) read with Section 122A of the Customs Act, 1962. Ms. Manjusha Jambhekar, Accounts Manager of M/s. Wifi Soft Services (IEC 3112026853) attended the personal hearing on 16.07.2025 and argued the case and reiterated the written submission dated 16.07.2025. She further stated that they had already paid the differential duty along with applicable interest vide Challan No. HC17 and HCM17, both dated 02.08.2024. In view of this voluntary payment, she requested waiver of the penalty proposed in the Show Cause Notice, submitting that the misclassification occurred inadvertently due to reliance on the advice of the



engaged Customs Broker and a lack of familiarity with the relevant tariff provisions. She also sought additional time of one week to furnish further detailed submissions to substantiate their position. Further, they submitted additional submission dated 23.07.2025.

## **DISCUSSION AND FINDINGS**

**13.** The fact of the matter is that a Show Cause Notice (SCN) No. 553/2024-25/Commr/NS-V/Gr-V/CAC/JNCH dated 18.06.2024 was issued to M/s. Wifi Soft Services (IEC No. 3112026853) alleging that the goods imported by them as detailed in above Table-1 and Table-III have been cleared under wrong CTI which has resulted in short payment of duty. The SCN was served for said non-payment of applicable differential Customs duty of Rs. 96,83,531/- (Rupees Ninety-Six Lakh Eighty-Three Thousand Five Hundred and Thirty-One only) as detailed in above Table-4, invoking extended period under Section 28 of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962 and consequential penalties under Section 112(a)/114A of the Customs Act, 1962. Show Cause Notice also proposed liability to confiscation of imported goods having assessable value of Rs. 6,08,44,163/- (Rupees Six Crore Eight Lakh Forty-Four Thousand One Hundred and Sixty-Three) under Section 111(m) of the Customs Act, 1962.

**13.1** Chief Commissioner of Customs, Mumbai Zone-II granted extension of time limit to adjudicate the case upto 17.08.2025 as provided under Section 28(9) of the Customs Act, 1962. Therefore, the case was taken up by me for adjudication proceedings within the time limit as per Section 28(9) *ibid*.

**13.2** I have gone through the subject Show Cause Notice, charges levelled against the importer, relied upon documents, the written and oral submissions of the Noticee and material on record and accordingly, I proceed to decide the case on merit.

**13.3** I now proceed to frame the issues to be decided in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

- (i) Whether the subject goods imported vide Bills of Entry as detailed in above Table-1 and Table-3 assessed under CTI 85340000 or 84733030 be denied and goods pertaining to Table-1 should be reassessed under CTI 85177010 (till 31.01.2022) and under CTH 85177910 from 01.02.2022 onwards & goods pertaining to Table- 3 should be re-assessed under CTI 85049090 or otherwise;
- (ii) Whether the differential duty of Rs. 96,83,531/- (Rupees Ninety-Six Lakh Eighty-Three Thousand Five Hundred Thirty-One Only) for the Bills of Entry as detailed in above Table-4 should be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 or otherwise;



- (iii) Whether the subject goods having total declared Assessable Value of Rs. 6,08,44,163/- (Rupees Six Crore Eight Lakh Forty-Four Thousand One Hundred and Sixty-Three Only) imported vide Bills of Entry (as per table-I) should be held liable for confiscation under 111(m) of the Customs Act, 1962 or otherwise;
- (iv) Whether penalty should be imposed on importer M/s. Wifi Soft Services (IEC No. 3112026853) under Section 112(a)/114A of Customs Act, 1962 or otherwise;

**13.4** After having identified and framed the main issues to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962, as well as oral and written submissions of the Noticee and documents / evidences available on record.

**14. Whether the subject goods imported vide Bills of Entry as detailed in above Table-1 and Table-3 assessed under CTI 85340000 or 84733030 be denied and goods pertaining to Table-1 should be reassessed under CTI 85177010 (till 31.01.2022) and under CTH 85177910 from 01.02.2022 onwards & goods pertaining to Table- 3 should be re-assessed under CTI 85049090 or otherwise.**

**14.1** I find that the importer M/s. Wifi Soft Services (IEC No. 3112026853) had imported “Serial Board 910N” classifying under CTI 85340000 or 84733030 (as detailed in above Table-1) and Power Circuit Board under CTI 84733030 (as detailed in above Table-3) and paying BCD @0% availing benefit under Sr. No. 22 or Sr. No. 10 of Notification No. 24/2005 against all the goods as detailed in above Table-1 and Table-3. However, SCN has alleged that the subject goods are classifiable under following CTI:

**Table-5**

Sr. No.	Item Name	Declared CTI in Bills of Entry	Proper CTI as per SCN
1	Serial Board 910N mentioned at Sr. No. 1 to 5 of above Table-1	85340000	85177010
2	Serial Board 910N mentioned at Sr. No. 6 to 8 of above Table-1	84733030	85177910
3	Power Circuit Board mentioned at Sr. No. 1 to 3 of above Table-3	84733030	85049090

**14.2** In view of the table, there are two types of goods i.e. (i) Serial Board 910N (ii) Power Circuit Board. The product descriptions suggest that these are fundamentally different goods, likely varying in design, function, and application. Hence, I proceed to decide the classification of these goods separately.

**14.3 Serial Board 910N**

**14.3.1** The Noticee had imported consignments of “Serial Board 910N” vide Bills of Entry as detailed in above Table-I. From the product pictorial information uploaded by the importer for the



same goods cleared vide Bills of Entry as mentioned at Sr. No. 5 to 8 and information as retrieved from website i.e. <https://coexistence.en.alibaba.com/>, it indicates that the imported item is a Populated Printed Circuit Board. However, despite this, in initial 5 consignments mentioned at Sr. No. 1 to 5 of the above Table-1, the importer has classified the goods under tariff item 85340000 which pertains to unpopulated, unmounted and plain PCBs.

**14.3.2** Chapter Note 8 of Chapter 85 of the First Schedule of Customs Tariff is as follows: -

*“8. 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.”*

From the above chapter notes, it is clear that CTI 85340000 includes plain, unmounted, unpopulated PCBs only. Hence, the imported goods being Populated Printed Circuit Board are not classifiable under CTI 85340000.

**14.3.3** From the information available on trading platform <https://coexistence.en.alibaba.com/>, the imported item is used in a 2.4G+5.8G Wifi Router Board with 4G R 485 & R232 Port. Further from manufacturer supplier’s website <http://www.szcoexistence.com/product/dtu-pcb-board/>, it is found that the imported item is a DTU (Data Transfer Unit) PCB Board. As per the manufacture’s website DTU provides data communication network for industrial application. Further, manufacturer supplier is engaged in manufacturer of network communication equipment only. Thus, the information of the product, as available on trading website and information available on supplier’s website, does not support the claim of the importer that the imported goods is a next generation computer board. Further, in the product information uploaded by the importer in E-Sanchit they themselves mentioned that it can be used as gateway device to connect various industrial equipment which itself indicates that imported goods are used in Network Communication Equipment. It is also mentioned in the uploaded information that it is also used in digital signage display unit for advertisement. Digital signage display units are classifiable under heading 8531. As such, I find that the imported Serial Boards has multiple uses and application and therefore, the imported item is not classifiable under heading 8473 which covers only *“PARTS AND ACCESSORIES (OTHER THAN COVERS, CARRYING CASES AND THE LIKE) SUITABLE FOR USE SOLELY OR PRINCIPALLY WITH MACHINES OF HEADINGS 8470 TO 8472”*.



**14.3.4** Further, Chapter Note 6(D)(ii) of Chapter 84 restricts to classify the 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) under heading 8471 when they are presented separately. However, the 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) are classifiable under heading 8517.

**14.3.5** In view of above, it is evident that CTI 8534000 pertains exclusively to plain, unmounted, and unpopulated printed circuit boards (PCBs), while CTI 84733030 applies solely to parts and accessories of machines falling under heading 8471. Consequently, the classification of the imported goods i.e. "Serial Board 910N" under CTI 8534000 (Sr. Nos. 1 to 5 of Table 1) and CTI 84733030 (Sr. Nos. 6 to 8 of Table 1) is inaccurate and all these items listed in Table-1 should instead be correctly classified under CTH 8517.

**14.3.6** Further, the importer in his submission has claimed that PCBs are used in Universal Modem Appliance. The information available on importer's website confirms the claim of the importer. However, the function of Universal Modem explained by the importer are not matched exactly with the information available on importer's website <https://www.wifi-soft.com/products/smart-tower-solutions.php>. The details available on website is extracted and reproduced hereinunder:

- i. *"Universal Modem is a device that can be used to communicate with legacy devices like power systems, factory machines, generators, telecom equipment, controllers and other instrumentation devices. It can be interfaced with multiple devices simultaneously to establish two-way communication between the device and the cloud.*
- ii. *The Universal Modem helps in automating and monitoring the functioning of remote devices by allowing administrators to collect all the critical parameters from the remote devices periodically and process them in the cloud. Similarly, it can also send commands and instructions to these devices from the cloud thus allowing administrators to control any device remotely. Universal Modem communicates with the cloud over a 3G or 4G connection so it can be deployed in wide range of applications and in much bigger area.*
- iii. *Universal Modem contains various interfaces to communicate with multiple equipments at the same time. It contains two USB, two RS-232, two RS-485 and three Ethernet ports. It can use WiFi, 4G or Ethernet for connectivity with the Internet. It also provides a provision for enabling GPS on the board.*
- iv. *The Universal Modem is connected with various equipments with respective cables. It comes with tamperproof, IP-55 enclosure that can be easily installed at remote sites.*
- v. *Application of the universal modem:*
  - a) **Telecom Towers:** *The Universal Modem can be used to control and monitor various equipments installed at the telecom towers. These include SPS, SMPS, DCEM and other power appliances. These equipments are manufactured by*



*various vendors so the Universal Modem needs to implement vendor specific protocols to read and write to the equipments. It used cellular backhaul to upload the data to the cloud while receiving commands from the cloud to change any device settings.*

- b) **Generators:** Universal Modem can be installed for controlling the remotely installed generator systems. It can communicate with different models of generators over ModBus protocol and control them from the central location. It can also monitor the critical parameters on the generators and upload them to the cloud for reporting and analysis.*
- c) **Surveillance/Asset Tracking:** Universal Modem also finds application of asset tracking and surveillance. The modem can be connected to remote surveillance cameras to capture the data feeds and upload the feeds to the remote cloud. Additionally, it can interface with iBeacons to keep track of assets at the installed sites.*
- d) **Factory Instrumentation:** Universal Modem can be deployed in any factory to centrally monitor critical parameters from the machines and power systems. The modem communicates over various interfaces like RS232, RS485, Ethernet, WiFi, USB and Bluetooth to gather the technical data and upload it to the central cloud.”*

**14.3.7** From the above, it can be inferred that the imported serial boards are the part of “Universal Modem” which is a device that can be used to communicate with legacy devices like power systems, factory machines, generators, telecom equipment, controllers and other instrumentation devices and it can be interfaced with multiple devices simultaneously to establish two-way communication between the device and the cloud. The feature and name of the product, suggests that the imported goods are not a part of ADP Machine but the same are a part of Universal Modem which is a kind of Industrial Router used for communication with machines. As such the goods are rightly classifiable under CTH 8517. Being part of goods classifiable under CTH 8517 the populated PCBs are classifiable under CTH 85177010 (till 31.01.2022) and thereafter from 01.02.2022 onwards the same is classifiable under 85177910. Additionally, I note that the Noticee has complied with the department’s assessment by paying the differential duty and corresponding interest.

**14.3.8** In view of the above discussions, the declared classification of the imported goods i.e. “Serial Board 910N” as detailed in above Table-1 is inaccurate and the goods mentioned at Sr. No. 1 to 5 of above Table-1 are classifiable under CTI 85177010 & the goods mentioned at Sr. No. 6 to 8 of above Table-1 are classifiable under CTI 85177910.



#### **14.4 Power Circuit Board:**

**14.4.1** I observe that the Noticee classified the “Power Circuit Board” as detailed in above Table-3, under CTI 84733030 and claimed the exemption at Sr. No. 10 of Notification No. 24/2005. That notification relief, however, is strictly confined to parts of machinery classified under heading 8471. A power circuit board does not perform as an accessory to machine classifiable under CTH 8471; rather, it operates independently as an electrical component responsible for power regulation and distribution.

**14.4.2** A review of the Noticee’s historical import records confirms that all previous consignments of the same Power Circuit Board were declared under CTI 85049090, with the appropriate basic customs duty paid thereon. This consistent practice reflects both the technical nature of the board being an electrical apparatus and the industry norm of classifying such circuit assemblies under 85049090, which covers “parts of electrical machines and apparatus.”

**14.4.3** Moreover, the Noticee has demonstrated its acceptance of the department’s findings by paying the differential duty along with the applicable interest. Taken together the misapplication of the 84733030 exemption, the importer’s own past declarations under 85049090, and its prompt settlement of duty shortfall, it is evident that the imported Power Circuit Board are correctly classifiable under CTI 85049090.

**14.5** In view of the above discussions, I concur with the department’s position regarding the classification of the imported goods as outlined in Table-5. Accordingly:

- Items listed at Serial Nos. 1 to 5 in Table-1 shall be classified under CTI 85177010;
- Items listed at Serial Nos. 6 to 8 in Table-1 shall be classified under CTI 85177910;
- and
- Items detailed in Table-3 are classifiable under CTI 85049090.

**15. Whether the differential duty of Rs. 96,83,531/- (Rupees Ninety-Six Lakh Eighty-Three Thousand Five Hundred Thirty-One Only) for the Bills of Entry as detailed in above Table-4 should be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 or otherwise**

**15.1** After having determined the proper classification of the impugned imported goods, it is imperative to determine whether the demand of differential Customs duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. The relevant legal provision is as under:

***SECTION 28(4) of the Customs Act, 1962.***

***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; 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 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.*

**15.2** In the instant case, impugned goods as detailed in above Table-1 and Table-3 has been mis-classified under CTI 85340000 or 84733030 and BCD exemption benefit has also been availed under Sr. No. 10 or Sr. No. 22 of Notification No. 24/2005 by the importer. However, the subject goods as detailed in above Table-1 and Table-3 are not eligible for the said exemption benefit as the subject goods are classifiable under other CTIs as detailed in above para 6.5. In view of this fact, I find that the importer has availed the benefit of the said notification benefit for which they were not eligible. By resorting to this deliberate suppression of facts and wilful availment of ineligible notification benefit, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. **Thus, this wilful and deliberate act was done with the fraudulent intention to claim ineligible lower rate of duty and notification benefit.**

**15.3** Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. **Under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry.** Thus, with the introduction of self-assessment by amendments to Section 17, it is the added and enhanced responsibility of the importer, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In the instant case, as explained in paras supra, the importer has willfully mis-classified the impugned goods and claimed ineligible notification benefit, thereby evading payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit to the importer. Since the importer has willfully mis-classified and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invocable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

**15.4** I find that in the instant case, as elaborated in the foregoing paras, the Noticee had wilfully availed the benefit of the said notification against the imported goods at the time of filing of the



Bills of Entry. Further, to evade payment of correctly leviable duty, they fraudulently claimed ineligible notification benefit. Therefore, I find that in the instant case there is an element of 'mens rea' involved. The instant case is not a simple case of bonafide wrong declaration of notification benefit and claiming lower rate of duty. Instead, in the instant case, the Noticee deliberately chose to avail improper notification benefit in respect of the imported goods to claim lower rate of duty and ineligible notification benefit, being fully aware of the applicability of proper classification of the imported goods. This wilful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted. I find that noticee has relied on various case laws, however, the same are not squarely applicable in this case.

**15.5** Under Section 28AA of the Customs Act, interest becomes payable on duty becoming payable in the set of cases as set out under the said Section, which duty has not been levied or paid or has been short levied or short paid or erroneously refunded by reasons of collusion or wilful misstatement or suppression of facts. In the case of M/s Kamat Printers Pvt. Ltd., Hon'ble Bombay High Court observed that once duty is ascertained then by operation of law, such person in addition shall be liable to pay interest at such rate as fixed by the Board. The proper officer, therefore, in ordinary course would be bound once the duty is held to be liable to call on the party to pay interest as fixed by the Board.

**15.6** I find that the Courts in various judgments pronounced that interest payable is compensatory for failure to pay the duty. It is not penal in character to that context. The Supreme Court under the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 in *Collector of C.Ex., Ahmedabad vs. Orient Fabrics Pvt. Ltd* 2003 (158) E.L.T. 545 (S.C.) was pleased to observe that when the breach of the provision of the Act is penal in nature or a penalty is imposed by way of additional tax, the constitutional mandate requires a clear authority of law for imposition for the same. The Court observed that, the law on the issue of charge of interest, stands concluded and is no longer res integra. We may only gainfully refer to the judgment in *India Carbon Ltd. v. State of Assam*, (1997) 6 S.C.C. 497. The Court there observed as under:

*"This proposition may be derived from the above: interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf".*

Therefore, once it is held that duty is due, interest on the unpaid amount of duty becomes payable by operation of law under Section 28AA. Secondly, when there is dispute as to whether there is breach of the notification, then Section 28 can be resorted to.

**15.7** In *Directorate of Revenue Intelligence, Mumbai vs Valecha Engineering Limited*, Hon'ble Bombay High Court observed that, in view of Section 28AA, interest is automatically payable on failure by the assessee to pay duty as assessed within the time as set out therein. Similarly, under



Section 28AA on duty being ascertained as under Section 28 interest is payable by operation of law.

**15.8** In view of the above, I am of the considered opinion that imposition of interest on the duty not paid, short paid is the natural consequence of the law and the importer is liable to pay the duty in respect of the said imported goods along with applicable interest.

**15.9** In view of above, the importer is liable to pay the differential duty amount of **Rs. 96,83,531/- (Rupees Ninety-Six Lakh Eighty-Three Thousand Five Hundred Thirty-One Only)**, under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period, along with the applicable interest under Section 28AA of the Customs Act, 1962. Further, I find that importer has already paid the differential duty amounting to Rs. 96,83,531/- vide challan No. HC17 dated 02.08.2024 along with interest amounting to Rs. 34,65,910/- vide Challan No. HCM167 dated 02.08.2024, hence, the said amount needs to be appropriated towards differential duty demanded under Section 28(4) and applicable interest u/s 28AA of Customs Act, 1962 respectively.

**16. Whether the subject goods having total declared Assessable Value of Rs. 6,08,44,163/- (Rupees Six Crore Eight Lakh Forty-Four Thousand One Hundred and Sixty-Three Only) imported vide Bills of Entry (as per table-I) should be held liable for confiscation under 111(m) of the Customs Act, 1962 or otherwise;**

**16.1** I find that the Show Cause Notice proposes confiscation of goods having assessable value of Rs. 6,08,44,163/- under the provisions of Section 111(m) of the Customs Act, 1962 for the goods as mentioned in Table-1 only, however, as held above, the goods mentioned in above Table-1 and Table-3 have been mis-classified and assessable value of all these goods is Rs. 6,34,47,884/- (Rupees Six Crore Thirty-Four Lakh Forty-Seven Thousand Eight Hundred and Eighty-Four only). Hence, I have to decide whether the goods as detailed in above Table-1 and Table-3 having assessable value amounting to Rs. 6,34,47,884/- are liable for confiscation under 111(m) of the Customs Act, 1962 or not. Provisions of Section 111(m) of the Customs Act, 1962 states as under:

*111(m) the goods brought from a place outside India shall be liable to confiscation, which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77, in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;*

**16.2** As the Section 111(m) of the Customs Act, 1962 deals with any and all types of mis-declaration regarding any particular of entry inward, the declaration of importer herein by mis-classifying and availing wrong notification benefit against the impugned goods, amounts to mis-declaration and shall make the goods liable to confiscation. I find that Section 111(m) provides for



confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry 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 case of mis-declaration in respect of CTI and notification benefit. As this act has resulted in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(m) is justified & sustainable.

**16.3** I find that the importer while filing the Bill of Entry for the clearance of the subject goods had subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Act and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a Bill of Entry, in the electronic form. Section 46 of the Act makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2011 (issued under Section 157 read with Section 46 of the Act), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8<sup>th</sup> April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

**16.4** From the discussions above, I find that that the importer had failed to assess and discharge the customs duty correctly on the imported goods under Bills of entry as shown in the above Table-1 and Table-3, under wrong notification benefit by suppressing the facts and thereby contravened the provisions of Section 46 the Customs Act, 1962. Thus, I hold that the subject goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**16.5** However, I find that the goods imported 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 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).”*

**16.5.1** 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.).

**16.5.2** I also find that the decision 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.) and the decision of Hon’ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

**16.6** In view of above, I find that any goods improperly imported as provided in sub-section (m) of the Section 111 of the Customs Act, 1962, the impugned goods become liable for confiscation. I opine that merely because the importer was not caught at the time of clearance of the imported goods, cannot be given different treatment. Accordingly, I observe that the present case also merits imposition of Redemption Fine having held that the impugned goods having assessable value amounting to **Rs. 6,34,47,884/- (Rupees Six Crore Thirty-Four Lakh Forty-Seven Thousand Eight Hundred and Eighty-Four only)** are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**17. Whether penalty should be imposed on importer M/s. Wifi Soft Services (IEC No. 3112026853) under Section 112(a)/114A of Customs Act, 1962 or otherwise;**



17.1 I find that the impugned SCN proposes imposition of penalty on the Noticee under Section 112(a)/114A of the Customs Act, 1962. Regarding the issue of imposition of penalty, it is appropriate to reproduce the provisions of Section 112 and 114A as under:

***Section 112 (Penalty for improper importation of goods etc.) reads as:***

*“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,*

*(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 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 percent of the duty sought to be evaded or five thousand rupees, whichever is higher.....”*

***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:*

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

17.2 I find that in the self -assessment regime, the importer is bound to correctly assess the duty on the imported goods. In the instant case, the importer has mis-declared the subject goods by classifying under wrong CTI and availing the wrong notification benefit. Consequently, the importer has paid less duty by non-payment of applicable duty on the subject goods, which tantamount to suppression of material facts and willful mis-statement. The ‘mens rea’ can be deciphered clearly from ‘actus Reus’ and in the instant case, I find that the importer is an entity of repute and thus providing wrong information/declaration in the various documents filed with the Customs and thereby, claiming undue benefit by not paying the applicable duty thereon, amply points towards their ‘mens rea’ to evade the payment of duty. Thus, I find that the demand of differential duty is rightly invoked in the present case by invoking Section 28(4) of the Customs Act, 1962. Taking all the issues relating to the subject imports into account and in view of my



findings that goods were mis-declared in the fashion discussed above, I find that the importer by his acts of omission have rendered the goods liable for confiscation and thus made themselves liable for penalty under Section 114A of the Customs Act, 1962. Further in terms of proviso to Section 114A, once penalty under Section 114A has been imposed, no penalty can be imposed under Section 112.

**17.3** Further, I find that the noticee, has mis-declared the subject goods by availing wrong notification benefit, as discussed supra, by deliberately and knowingly giving inappropriate declaration on importation of the goods. I find that the importer has furnished documents such as Bill of Entry and its invoices, packing lists containing false or incorrect material particular with respect to notification for the purpose of clearance of the imported goods. As the demand under Section 28(4) is found to be sustainable in terms of discussion made in Paras above in respect of impugned goods mentioned above Table-1 and Table-3, therefore penalty under Section 114A is imposable / sustainable in respect of said goods on the importer.

**18. In view of the facts of the case, the documentary evidences on record and findings as detailed above, I pass the following order:**

### **ORDER**

- (i) I reject the declare classification under CTI 85340000 or 84733030 of the goods imported vide Bills of Entry as detailed in above Table-1 and Table-3 and order to re-assess the goods pertaining to Table-1 under CTI 85177010 (till 31.01.2022) and under CTH 85177910 from 01.02.2022 onwards & goods pertaining to Table- 3 under CTI 85049090.
- (ii) I confirm the differential duty amounting to **Rs. 96,83,531/- (Rupees Ninety-Six Lakh Eighty-Three Thousand Five Hundred Thirty-One Only)** as detailed in above Table-4 under Section 28(4) along with applicable interest under Section 28AA of the Customs Act, 1962 and order to recover the same from the importer.
- (iii) I order to appropriate the amount deposited against differential duty amounting to Rs. 96,83,531/- vide Challan No. HC17 dated 02.08.2024 along with interest amounting to Rs. 34,65,910/- vide Challan No. HCM167 dated 02.08.2024, towards differential duty demanded under Section 28(4) and applicable interest u/s 28AA of Customs Act, 1962, respectively.
- (iv) I confiscate the imported goods having assessable value of **Rs. 6,34,47,884/- (Rupees Six Crore Thirty-Four Lakh Forty-Seven Thousand Eight Hundred and Eighty-Four only)** as mentioned in above Table-1 and Table-3 under Section 111(m) read with provisions of Section 46(4) of the Customs Act, 1962, even though the goods are not available for confiscation. However, I give an option to the importer to redeem these goods

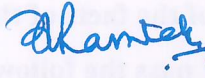


on payment of redemption fine of **Rs. 30,00,000/- (Rupees Thirty Lakh Only)** under Section 125 of the Customs Act, 1962.

(v) I impose penalty of differential duty of **Rs. 96,83,531/- (Rupees Ninety-Six Lakh Eighty-Three Thousand Five Hundred Thirty-One Only)** along with applicable interest under Section 28AA of the Customs Act, 1962, under Section 114A of the Customs Act, 1962, on the importer M/s. Wifi Soft Services (IEC No. 3112026853) for the reasons aforesaid.

(vi) I refrain from imposing any penalty under Section 112(a) of the Customs Act, 1962, on importer M/s. Wifi Soft Services (IEC No. 3112026853), as discussed above.

19. This adjudication order is issued without prejudice to any other action that may be taken in respect of goods in question and/or the persons/firms concerned, covered or not covered by it, under the provision of the Customs Act, 1962 and/or any other law for time being in force in the Republic of India.

  
(ANIL RAMTEKE)

Commissioner of Customs (NS-V),  
JNCH, Nhava Sheva

To,

**M/s. Wifi Soft Services (IEC No. 3112026853),  
C-410, Teerth Techno space IT Park,  
Pune Bangalore Highway, Baner, Pune  
Maharashtra – 411 045**

Copy to:

1. The Addl. Commissioner of Customs, Group V, JNCH, Nhava Sheva, Mumbai-II.
2. The AC/DC, Audit, JNCH.
3. The AC/DC (Review Cell), Chief Commissioner's Office, JNCH.
4. The AC/DC, Centralized Revenue Recovery Cell, JNCH.
5. The AC/DC, EDI, JNCH
6. Supdt.(P), CHS Section, JNCH – For display on JNCH Notice Board.
7. Office Copy.