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 – 20250878NX00001212D **Date of Order: 25.08.2025**

F. No. S/10/73/2024-25/CC/NS-V/CAC/JNCH **Date of Issue: 25.08.2025**

SCN No.: 611/2024-25/Commr./Gr-V/NS-V/CAC/JNCH

SCN Date: 27.06.2024

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 175/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticee: M/s Daikin Airconditioning India Pvt. Ltd.

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 नि:शुल्क 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 रीज़नल 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 रुपय 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. 611/2024-25/Commr/ Gr-V/ NS-V/CAC/JNCH dated 27.06.2024 in case of M/s. Daikin Airconditioning India Pvt. Ltd. (IEC No. 0500010323) - reg.

BRIEF FACTS OF THE CASE

1.1 A specific intelligence gathered by the officers of the Directorate of Revenue Intelligence, Indore Zonal Unit (hereinafter referred to as "the DRI") indicated that M/s. Daikin Airconditioning India Pvt. Ltd. (herein referred to as –DAIPL/importer/noticee) having IEC-0500010323engaged in the import of Fan Coil Unit, Air Handling Units & parts thereof under item description "FAN COIL UNITS-(of various MODEL NO.) (PARTS FOR CHILLER) & AIR HANDLING UNIT)- (of various MODEL NO)" (hereinafter referred to as 'the said goods') classifiable under Customs Tariff Item (CTI) 84158390 of the first schedule of the Customs Tariff Act, 1975 (hereinafter referred to as 'the CTA') was evading Customs duty by way of mis-classification/ mis-declaration of the said goods under Customs Tariff Item (CTI) 84189900 of the CTA.

1.2 The intelligence further suggested that whereas the DAIPL was classifying the said goods under Sub-heading 84189900 by paying BCD at the rate of 7.5% and IGST at the rate of 18%. However, the said goods are components of Heating, Ventilation and Air Conditioning (HVAC) System.HVAC System is basically a Central Air Conditioning System, which is used for air-conditioning of enclosed space, therefore, the same are correctly classifiable under CTI 84158390 of the First Schedule of the Customs Tariff Act, 1975 which attracts BCD at the rate of 20% and IGST at the rate of 28%.

2. Acting on the said intelligence, Summonses were issued to DAIPL, 210, 1st Floor, Okhla Industrial Area, Phase 3, New Delhi, South Delhi, Delhi-110020 and their CHA regarding misclassification of imported goods i.e. Fan Coil Unit and Air Handling Unit under CTH- 8418.

2.1 In response to Summons dated 03.08.2023, Shri Shelendra Chauhan, Divisional Manager (Technical person) and Shri V. T. Sabu, Dy. General Manager-SCM of DAIPL appeared on office for tendering their voluntary statement on 14.08.2023.

2.1.1 Shri Shelendra Chauhan, Divisional Manager (Technical person) has tendered his voluntary statement under Section 108 of the Customs Act, 1962, wherein he, *inter alia,* stated that:

(i) He looks after the Product Management which includes Pricing, Product Development and Planning at DAIPL. He looks after the market requirement and competition in the market and based on that he suggest the pricing and product development (Chillers, AHU, FCU) strategy accordingly this way he have been involved in Sales Planning as well. He deal with the sales side of all the products of Heating, Ventilation and Air Conditioning (HVAC) System which falls under DAIPL purview related to Chilled water applications.

(ii) DAIPL are manufacturing Air conditioning equipments and supplying Air conditioning solutions to Indian market.

(iii) HVAC system is basically a system which comprises Heating, air-conditioning and Ventilation. It includes both split and non-split AC system. Heating, Ventilation and Air Conditioning is the use of various technologies to control the temperature, humidity, and purity of the air in an enclosed space.

(iv) HVAC is used to control the temperature, humidity, and purity of the air in an enclosed space. It is a system of air conditioning system comprise of machines such as Chiller, Pumps & Terminals - Fan Coil Unit or Air Handling Unit, which changes both the temperature and the humidity of the Air.

(v) FCU is a terminal unit which is connected with the chilled water pipes to Chiller. It is used to cool and control the temperature of a smaller area. Further, he state that Fan Coil Unit has 6 major parts which are :

a. Fan Motor and Fan Blower: Fan Motor is used for rotating impeller of the Fan Blower at certain RPM to provide desired air volume for specific capacity of unit.

b. Heat Exchanger: Heat Exchangers are a group of copper coils arranged in rows with aluminum fins, where copper tubes carry chilled water which absorbs heat from air passed over it by the fan motor.

c. PCB: PCB is the printed circuit board which controls the fan speed and water flow depending upon logic as per set mode, set temperature, room temperature etc.

d. Main Drain Pan: The Main Drain Pan is used for collecting condensed water generated at heat exchanger process of cooling.

e. Filters: Filters are at the rear end of the fan coil units through which air is sucked in by fan blowers.

f. Main Casing: Main Casing is the body containing and protecting all the above components in one box.

(vi) He stated that Air Handling unit is a bigger air-conditioning unit which is connected with the pipes to Chiller. It is used to cool and control the temperature of a bigger area. It is a bigger version of FCU and all its components are same except it is an enhanced version where we can use more filters etc. to enhance the overall experience. Further, Air Handling Unit is a tailor-made solution of smaller FCU and it is used where a large amount of air needs to be conditioned mostly greater than 5 tonnes in capacity.

(vii) On being asked whether Fan Coil Unit & Air Handling Unit are parts of Chillers, he replied that No. The FCU and AHU are not the parts of Chiller. They are the part of central air conditioning chilled water system. A Chilled water line is used to connect the FCU or AHU to Chillers. Chilled water line has valves which may control the flow of water as and when needed.

(viii) On being asked what are the major areas where Air Handling Units are used, he stated that wherever a centralized air conditioning is required for cooling a bigger space simultaneously, AHUs are used. Example: Shopping Malls, Hospital etc.

(ix) Further he stated that AHUs are not being used in Refrigerators and AHU is broadly a part of Air Conditioning System.

2.1.2 Shri V. T. Sabu, Dy. General Manager-SCM of DAIPL has tendered his voluntary statement under Section 108 of the Customs Act, 1962, wherein he, *inter alia,* stated that:

(i) He takes care of logistics management of Import and Export and customs clearance in DAIPL. He looks after all the work related to import and export activities. He has been working in DAIPL since FY 2000.

(ii) DAIPL first came to India in FY 2000. Since 2000 to 2009 DAIPL were importing everything from outside. After FY 2009 they established manufacturing Unit in Rajasthan, India itself and nowadays it imports very few whole units such as AHUs, FCUs, Chillers and Indoor Units of Split ACs. They import raw materials and parts of the air conditioning unit for the manufacturing as and when required.

(iii) He is the person in-charge for import clearance and most of the matters related to classification, claiming of Notification for duty benefits etc. in case of any disputes, they involve their legal team for assistance. They import Fan Coil Units, AHUs and Parts for manufacturing Chillers such as Heat exchanger tube etc under CTH-84189900.

(iv) On being asked regarding the merit classification of FCU & AHU under CTH 84158390 (BCD - 20% & IGST - 28%) after perusal of the statement of technical

person i.e. Mr. Shelendra Chauhan, Divisional Manager - Applied Business of Daikin Airconditioning India Pvt. Ltd, vide his statement dated 14.08.2023, wherein, it was stated that the item 'FAN COIL UNIT & AIR HANDLING UNIT' is a part of Central Air Conditioning System not the Chiller and explanatory notes of CTH 8415 of Customs tariff. He stated that they classified FCUs and AHUs under CTH 84189900 as per their legal opinion obtained by them in FY 2015.

2.2 In response to summons dated 17.08.2023, Shri Vinod Singh, Director Operations in PDS International Pvt. Ltd. (CHA), who filed BoEs of DAIPL at Nhava Sheva Port, Sahar Airport, Mumbai and IGI Airport, New Delhi (or any port near Mumbai and Delhi-NCR) has tendered his voluntary statement under Section 108 of the Customs Act, 1962 on 24.08.2023, wherein he, *interalia,* stated that:

(i) He takes care of the Customs Clearance Operations in PDS International Pvt. Ltd. all over India. He is also responsible for the team engaged in filing Bill of Entry, preparation of Check list, etc. He reports to Shri Manu Chopra, who is the Managing Director of PDS International Pvt. Ltd.

(ii) On being asked in detail how a Bill of Entry is filed by his firm in respect of imports done by DAIPL , (having IEC: 0500010323). He stated that he looks after the shipments of DAIPL for Mumbai and Delhi - NCR. First they receive the Pre - alert documents from DAIPL (Importer)/ Freight forwarder. They review the documents and start preparing the check list as per CTH advised by the Importer. For classification (CTH) or Notification of the item imported, they refer to the Importer's opinion. After confirmation by the importer, the Bill of Entry is filed by us. He has also submitted the legal opinion dated 13.01.2015 given to him by DAIPL.

(iii) On being asked whether is the correctness of the CTH of an item declared by the importer, is reviewed by his firm? If not reviewed, then why so? He stated that they are not so technical of the product and they follow the Importer's advice or the Instructions on the genuineness of the classification, notification, benefit etc. of the item imported. They completely rely on the classification as provided by the importer.

(iv) After being perused the statement dated 14/08/2023 of Shri Shelendra Chauhan, Divisional Manager - Applied Business of Daikin Airconditioning India Pvt. Ltd along with the Chapter Headings 8415 and 8418 of the Customs Tariff Act. He stated that the correct classification of the item viz. Fan Coil Unit, Air Handling Unit along with components & parts thereof may be appropriate under CTH 8415 than the declared CTH 8418. However, they rely on Importer for the classification.

(v) Further, on being asked that the correct CTH of the items viz. Fan Coil Unit, Air Handling Unit along with components & parts thereof is CTH 8415, however Daikin Airconditioning India Pvt. Ltd. has imported these items under CTH 8418. On being asked if their firm took cognizance of this issue while filing the Bill of Entry and clarified the same with the importer, he stated that No, they filed the BOEs as per the advice of the Importer i.e. Daikin Airconditioning India Pvt. Ltd.

2.3 In response to summons dated 24.08.2023, Shri Prathaban H., Operation Executive in Caravel Logistics Pvt. Ltd. (CHA) has tendered his voluntary statement under Section 108 of the Customs Act, 1962 on 31.08.2023, wherein he, *interalia,* stated that;

(i) He is currently working as Operation Executive in Caravel Logistics Pvt. Ltd. since 2005 and he is involved in assessment, examination of goods and take care of the Customs Clearance Operations in Caravel Logistics Pvt. Ltd. at Chennai Sea Port, Chennai Air Cargo and Kattupalli Port, Tamil Nadu. He is also responsible for the team engaged in filing Bill of Entry, preparation of Check list, etc. He reports to Shri Srinivasan, who is the Manager (Imports/Exports) of Caravel Logistics Pvt. Ltd.

(ii) On being asked in detail how a Bill of Entry is filed by your firm in respect of imports done by DAIPL, (having IEC: 0500010323). He stated that first, DAIPL sends an invoice, packing lists, Bill of Lading, Other allied items etc. Accordingly, they prepare

a checklist as per the CTH advised by the importer. The process is completed before arriving of vessels. They send the said checklist for approval through e-mail. After their approval of the aforesaid checklist, they file the Bill of Entry. Further he stated that for classification (CTH) or Notification of the item imported, they refer to the Importer's opinion. After only confirmation by the importer, the Bill of Entry is filed by them.

(iii) On being asked whether the correctness of the CTH of an item declared by the importer, is reviewed by his firm? If not reviewed, then why so? He stated that no, as they are not so technical of the product and they follow the Importer's advice or the Instructions on the genuineness of the classification, notification, benefit etc. of the item imported. They completely rely on the classification as provided by the importer.

(iv) After being perused the statement dated 14/08/2023 of Shri Shelendra Chauhan, Divisional Manager - Applied Business of Daikin Airconditioning India Pvt. Ltd along with the Chapter Headings 8415 and 8418 of the Customs Tariff Act. He stated that they completely rely on Importer for the classification. They believed 100% in their opinion and filed the Bill of Entry as per their say.

(v) Further, on being asked that the correct CTH of the items viz. Fan Coil Unit, Air Handling Unit along with components & parts thereof is CTH 8415, however Daikin Airconditioning India Pvt. Ltd. has imported these items under CTH 8418. Did his firm took cognizance of this issue while filing the Bill of Entry and clarified the same with the importer? He stated that no, they filed the BOEs only as per the advice of the Importer i.e. Daikin Airconditioning India Pvt. Ltd.

2.4 In response to summons dated 01.09.2023, Shri V. T. Sabu, Dy. General Manager-SCM of DAIPL has tendered his voluntary statement on 13.09.2023 under Section 108 of the Customs Act, 1962, wherein he, *inter alia,* stated that:

(i) He stated that he has submitted details of FCU & AHU. However, he will again ask his technical person regarding the imported parts of FCUs and AHUs for further submission.

(ii) After perusal of CTH 8415 along with its explanatory and chapter notes, he stated that the correct classification of AHUs, FCUs is CTH 84159000 (like the indoor and outdoor unit of split ACs) (BCD - 20% & IGST - 28%) and the correct classification of the parts of FCUs and AHUs is CTH 84159000 (BCD-10% & IGST – 28%). He will submit the legal opinion for this CTH. Further, he stated that he will approach for approval to the management about the payment of differential duty and they will try to pay the differential duty along with Interest and Penalty in 10 days.

2.5 In response to summons dated 03.11.2023, Shri V. T. Sabu, Dy. General Manager-SCM & Shri Shelendra Chauhan, Divisional Manager (Technical person) of DAIPL have appeared on 24.11.2023 for tending their statements under Section 108 of the Customs Act, 1962.

2.5.1 Shri Shelendra Chauhan, Divisional Manager (Technical person), *inter alia,* stated that:

(i) He stated that the details under Annexure for the differential duty calculated of last five years from Aug-2018 to Oct-2023 of FCU, AHU and parts thereof, submitted by the office are true to best of my knowledge. These details include all AHU, FCU and parts thereof imported under CTH 8418.

(ii) On being asked the function of the split Air Conditioning machine, he stated that it contains two units i.e. Indoor and Outdoor Unit, the principal function of both the unit is conditioning the air as per User requirement which can be humidity or temperature. Both units are necessary for the air conditioning. Indoor Unit and Outdoor Unit are complementary to each other; one cannot work without other and vice versa.

(iii) Further he described that HVAC system is basically a system which comprises Heating, air-conditioning and Ventilation. Heating, Ventilation and Air Conditioning is the use of various technologies to control the temperature, humidity, and purity of

the air in an enclosed space. It is an air conditioning system which comprises machines such as Chiller, Pumps & Terminals - Fan Coil Unit or Air Handling Unit and basic function of Chiller is to produce chilled water & basic function of FCU/AHU is maintaining required conditions of temperature and humidity in closed spaces. However, both the machines i.e. Chiller& FCU/AHU are interconnected by piping so that FCU/AHU could use the chilled water of Chiller for maintaining required conditions of temperature.

(iv) On being asked that whether AHU or FCU can work independently without Chiller, he stated that AHU or FCU are usually linked with Chiller. AHU can also use DX (direct expansion- gas), further any other chilled water source may also be used in AHU and FCU to function.

(v) Further, he added that Split AC machine is not a HVAC system, however if it has functions of both Heating and Cooling then it may be called as HVAC system however it will still be an air-conditioning machine.

(vi) He agreed that the FCU and AHU are not the parts of Chiller.

(vii) Further, he stated that a single FCU or AHU with Chiller or other chilled water source can be installed for air-conditioning and when a single FCU or AHU has been installed for air conditioning it will be an air conditioning machine, it will not be a HVAC system.

(viii) He also stated that FCUs and AHUs don't incorporate a refrigerating unit. Moreover, he agreed that FCUs and AHUs are machines that comprise together along with Chiller to form Central Air Conditioning system or HVAC system.

2.5.2 Further, Shri V. T. Sabu, Dy. General Manager-SCM of DAIPL has tendered his voluntary statement on 24.11.2023 under Section 108 of the Customs Act, 1962, wherein he, *inter alia,* stated that:

(i) He stated that he is the person in-charge for import clearance and most of the matters related to classification, claiming of Notification for duty benefits etc. in case of any disputes, we involve our legal team for assistance.

(ii) On being asked that in his statement dated 14.08.2023, wherein he had stated that he had classified the goods as per the legal opinion obtained by them in 2015, however from the legal opinion of Lakshmi Kumaran and Sridharan submitted by him, it is observed that they had given legal opinion only for Chiller, not for FCUs and AHUs. Then he stated that FCUs and AHUs were supplied with Chillers. They were of the opinion that FCUs and AHUs are part of the Chillers therefore they were classifying them under tariff CTH 8418 as part of Chillers. However, they have rectified that mistake and they are now classifying FCUs, AHUs and parts thereof under CTH 8415 as a part of HVAC system.

(iii) He stated that the details under Annexure for the differential duty calculated of last five years from Aug-2018 to Oct-2023 of FCU, AHU and parts thereof, submitted by their office are true to best of my knowledge. These details include all AHU, FCU and parts thereof imported under CTH 8418.

(iv) On being asked about the Heating, Ventilation and Air Conditioning (HVAC) System, he stated that their technical person Shri Shelendra Chauhan will tell you all the technicalities. he might not be the best person to answer this question.

(v) On perusal of the statement dated 24/11/2023 of Shri Shelendra Chauhan, he agreed with the statement of Shri Shelendra Chauhan and on being asked his comments that Shri Shelendra Chauhan in his statement dated 24/11/2023 has clearly explained that FCUs and AHUs are not always the part of HVAC system, he stated that Shri Shelendra Chauhan is the right person to answer any technical question related to this matter.

(vi) Further, he agreed that FCUs and AHUs do not incorporate a refrigerating unit and they are air conditioning machine.

(vii) After perusal of the tariff heading 8415 along with explanatory note for heading 8415 of WCO and para 3 & 4 notes of Section-XVI, it is asked that Fan Coil Unit & Air Handling Units are not appears the parts of Chiller, but, they are the components/machines that comprises together to make a central air conditioning system for maintaining required conditions of temperature. Further, as there is no specific customs tariff heading for FCU & AHU and moreover they are also not incorporating a refrigerating unit, therefore, the same should classifiable under CTH 84158390 (BCD-20% & IGST-28%) instead of CTH 84189900 (BCD-7.5% & IGST-18%) and parts/other accessories of FCU & AHU should be classifiable under CTH 84159000(BCD-10% & IGST-28%). He stated that as per his understanding it is correctly classified under CTH 84159000.

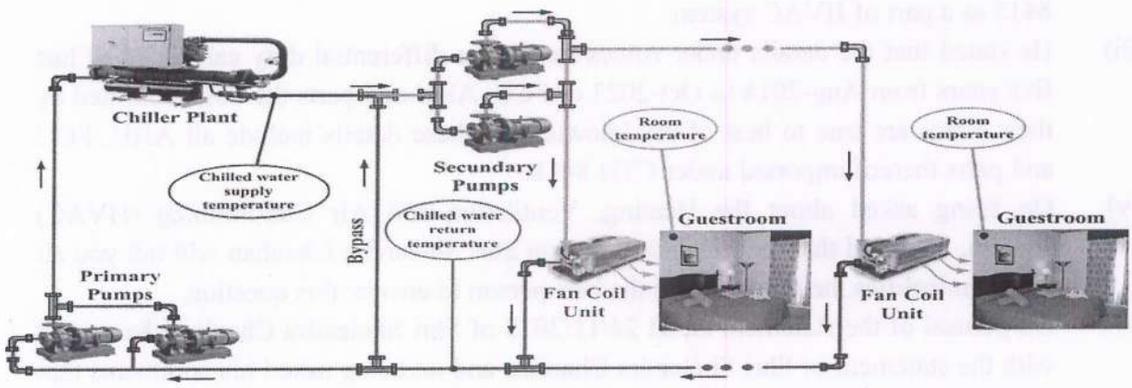
(viii) Further, on being asked that since AHUs, FCUs and Chillers all are part of HVAC system then why are they classifying Chillers under CTH 8418 and not under CTH 8415 when it is clearly used in air conditioning, he stated that Chiller alone can function on its own therefore they are classifying it under CTH 8418.

3. Analysis of Evidences: -From the documents submitted by DAIPL in respect of import and the statements tendered by various persons under Section 108 of the Customs Act, the following facts emerged:

3.1 DAIPL are manufacturing Air conditioning equipments and supplying Air conditioning solutions to Indian market. Since 2000 to 2009 they were importing almost all inventories from the outside. After FY 2009 DAIPL established their manufacturing Unit in Rajasthan, and they import whole units such as AHUs, FCUs, Chillers and Indoor Units of Split ACs.

3.2 It is noticed that importer is engaged in importing of Fan Coil Unit, Air Handling Units under CTI- 84189900as "parts of Chiller" and evading duty by paying BCD at the rate of 7.5% and IGST at the rate of 18%.However, the said goods are components of Heating, Ventilation and Air Conditioning (HVAC) System. Heating, Ventilation and Air Conditioning (HVAC) System is basically a Central Air Conditioning System, which is used for airconditioning of enclosed space, which comprises Heating, air-conditioning and Ventilation. Heating, Ventilation and Air Conditioning (HVAC) System is used various technologies to control the temperature, humidity, and purity of the air in an enclosed space. It is a system of air conditioning comprising of machines such as Chiller, Pumps & Terminals - Fan Coil Unit or Air Handling Unit, which changes both the temperature and the humidity of the Air. FCUs or AHUs are terminals which are connected through the chilled water pipes to Chiller.

Diagram of Heating, Ventilation and Air Conditioning (HVAC) System showing multiple Fan Coil Units connected to a Chiller along with their function: -



3.3 Details of the imported goods is as under-

(i) FAN COIL UNIT:-

Fan Coil Unit consists of 3 basic components namely fan motor, heat exchanger coils and PCB which is connected with a valve to control the flow of water as per the set temperature. FCU consists of-

(a) **Fan Motor and Fan Blower:-** Fan Motor is used for rotating impeller of the Fan Blower at certain RPM to provide desired air volume for specific capacity of unit.

(b) **Heat Exchanger:-** Heat Exchangers are a group of copper coils arranged in rows with aluminum fins, where copper tubes carry chilled water which absorbs heat from air passed over it by the fan motor.

(c) **PCB (Printed Circuit Board):-** PCB is the printed circuit board which controls the fan speed and water flow depending upon logic as per set mode, set temperature, room temperature etc.

(d) **Main Drain Pan:-**The Main Drain Pan is used for collecting condensed water generated at heat exchanger process of cooling.

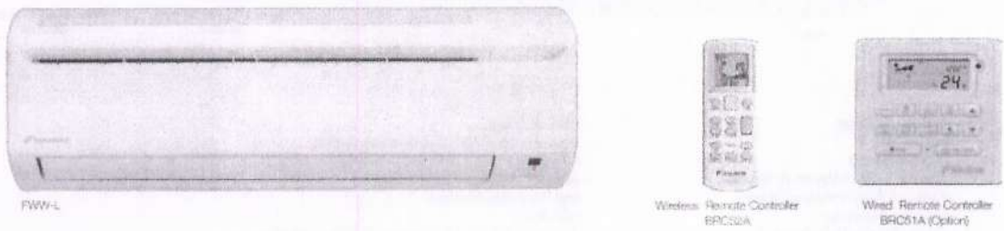
(e) **Filters:-** Filters are at the rear end of the fan coil units through which air is sucked in by fan blowers.

(f) **Main Casing:-** Main Casing is the body containing and protecting all the above components in one box.

Further, Heating, Ventilation and Air Conditioning (HVAC) System consists of Chiller, Pumps & Terminals and Fan Coil Unit is one of such type of terminals. The various type of Fan Coil Units are (1) Wall Mounted Type (2) Ceiling Cassette Compact Type (3) Ceiling Convertible Type (4) Ceiling Concealed Type (5) Ducted Blower Type etc.

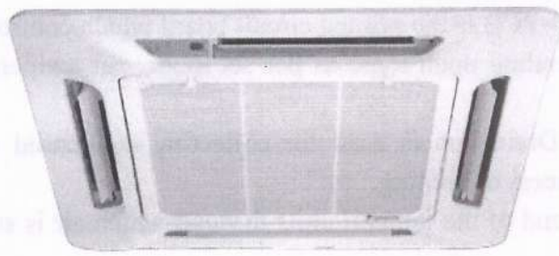
Diagrams of the Daikin's "Fan Coil Units Catalogue" are produced below:-

Wall Mounted Type



- Comfortable Air Flow & Lower Sound Level
- Stylish Flat-Panel
- Indoor Quiet Mode
- Turbo Mode
- Uniform Air Distribution
- Easy Maintenance
- NIM-Able
- Sleep Function For Cool And Heat Mode
- Auto Restart With Last-State-Memory
- Valve & Valveless Control Options
- Self Diagnosis Features
- Compact & Easy To Use Wireless Remote Controller

Ceiling Cassette Compact Type (600x600)



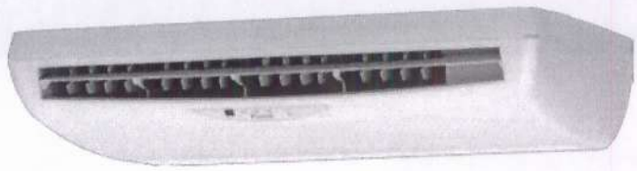
FWF-C

Wireless Remote Controller
BRC52A

Wired Remote Controller
BRC51A

- Compact Design
- Fresh Air Intake
- Stylish & Slim Panel
- Built In High Head Drain Oump & Water Flow Switch
- 4 Way Air Discharge & Air Swing
- Valve Or Valveless Control Options
- Branch Duct Connection
- Sleep Function For Cool & Heat Mode
- Auto Restart With Last-State-Memory
- NIM-Able
- Self Diagnosis Features
- Choices Of Wired Or Withless Remote Controller

Ceiling Convertible Type



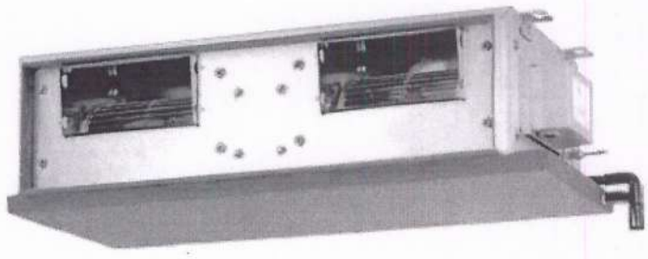
FWE-E

Wireless Remote Controller
BRC52A

Wired Remote Controller
BRC51A

- Compact Design
- Far Air Throw
- Auto Air Swing
- Service & Maintenance At Ease
- Ceiling & Floor Installing Option
- Versatile Installation
- Room Temperature Sensing
- Saranet Filter
- Sleep Function For Cool And Heat Mode
- Auto Restart With Last-State-Memory
- Valve Or Valveless Control Options
- Self Diagnosis Features
- NIM-Able
- Choices Of Wired Or Wireless Remote Controller

Ceiling Concealed Type

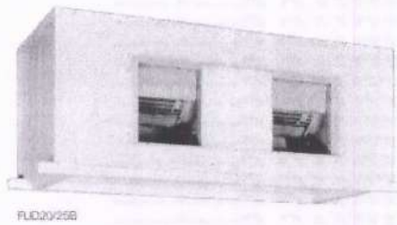


FWC-C

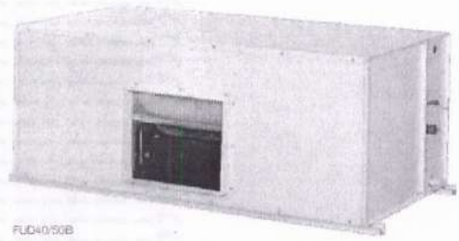
Wired Remote Controller
BRC51A

- Excellent Air Distribution
- Compact Design
- High Capacity Range
- High External Static Pressure Range
- Double Protection Drainage
- East To Service
- Left/Right Piping Option
- 4 Useable Fan Speed
- Valve Or Valveless Control Options
- Self Diagnosis Features
- NIM-Able
- Auto Restart With Last-State-Memory
- Choices Of Wired Or Without Wired Controller

Ducted Blower Type



FUD20/25B



FUD40/50B

- Excellent Air Distribution
- 4 Useable Fan Speed*
- Easy To Service
- Fire-Resistant Polysthylene Insulation
- Left/Right Piping Option
- Cabinet Construction
- High External Static Pressure Range
- ChangeableDrive Package*
- Convertible Air Throw Direction*
- High CFM Range

(ii) AIR HANDLING UNIT:- Medium and large sized industrial or commercial properties use an air handling unit (AHU) to condition and distribute fresh air throughout the building. The device takes air from the outdoors, cleans and conditions it, and heats or cools it as needed. Once properly conditioned, the air is forced through ductwork inside the rooms of the building. Most AHUs include an additional duct run that pulls dirty air out of the indoor spaces and discharges it back into the atmosphere. In some cases, a portion of the stale air is re-circulated into the AHU and again put through the conditioning/distribution process. In addition to managing the proper ventilation of indoor air, AHU is used for:

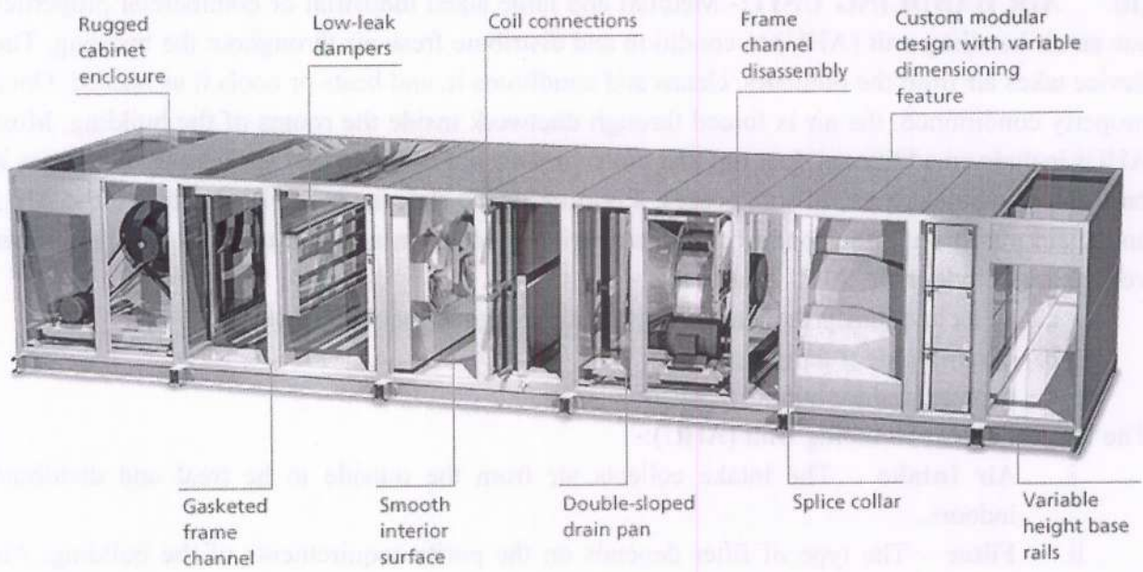
a. Filter and purify the interior air to maintain good indoor air quality
b. Control indoor temperatures
c. Monitor indoor humidity levels

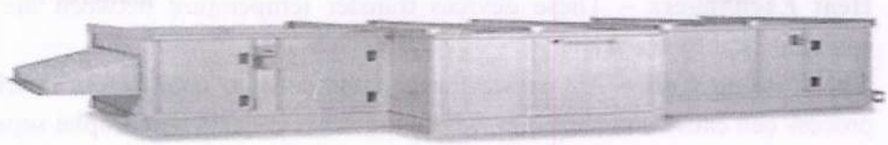
The Parts of an Air Handling Unit (AHU):-

i. **Air Intake** – The intake collects air from the outside to be treat and distribute indoors.
ii. **Filter** – The type of filter depends on the purity requirements of the building. Air intended for a hospital surgical room requires a higher level of "cleaning" than air for a hotel conference room.
iii. **Fan** – The fan expels the air from the AHU into the duct system that distributes the conditioned air.
iv. **Heat Exchangers** – These devices transfer temperature between the air and the coolants used by the AHU.
v. **The Cooling Coil** – Air passes through the coils to cool before distribution. This process can cause condensation, which the AHU collects in a droplet separator.
vi. **Silencer** – Special coatings are applied to the unit walls to help reduce the noise level while in operation.
vii. **Plenums** – Plenums are strategically placed empty spaces within the unit where airflow is allowed to homogenize.

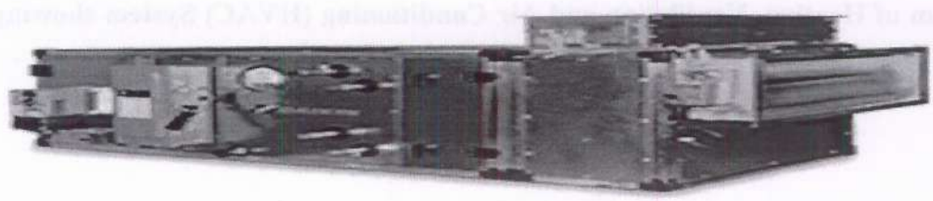
Diagram of Heating, Ventilation and Air Conditioning (HVAC) System showing an Air Handling Unit connected to a Chiller along with their function:-

Daigram of Daikin's Air Handling Units Lineup:-

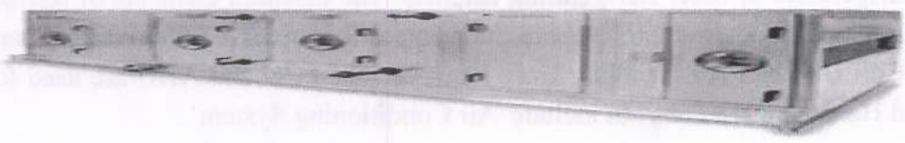




Outdoor Air Handling Product



Indoor Air Handling Product



Indoor Air Handling Product

3.5 It is observed from the above that Fan Coil Unit & Air Handling Unit are not the parts of Chiller, as they are not being used as "Refrigerating equipments" and Theyare broadly components of Heating, Ventilation and Air Conditioning (HVAC) System. They are the components/machines that comprises together to make a Heating, Ventilation and Air Conditioning (HVAC) System for maintaining required conditions of temperature. Further, it is to mention here that a Chilled water line is used to connect the FCU or AHU to Chillers. Chilled water line has valves which may control the flow of water as and when needed.

Analysis of Nature of the goods, their classification & Legal provisions: -

04. DAIPL was importing the said goods as parts of Chiller and classifying the same under Refrigerator CTI **84189900**, which is reproduced below:-

CTH 8418:- Refrigerators, freezers and other refrigerating or freezing equipment, electric or other, heat pumps other than air conditioning machines of heading 8415
8418 10 - Combined refrigerator-freezers, fitted with separate external doors or drawers, or combinations thereof:
8418 10 10 --- Commercial type
8418 10 90 --- Other
- Refrigerators, household type:
8418 21 00 -- Compression-type
8418 29 00 -- Other
8418 30 - Freezers of the chest type, not exceeding 800 l capacity :
8418 30 10 --- Commercial type electrical
8418 30 90 --- Other
8418 40 - Freezers of the upright type, not exceeding 900 l capacity :
8418 40 10 --- Electrical
8418 40 90 --- Other
8418 50 00 - Other furniture (chests, cabinets, display counters, show-cases and the like) for storage and display, incorporating or freezing equipment
- Other refrigerating or freezing equipment; heat pumps :
8418 61 00 -- Heat pumps other than air-conditioning machines of heading 8415
8418 69 -- Other :
8418 69 10 --- Ice making machinery
8418 69 20 --- Water cooler
8418 69 30 --- Vending machine, other than automatic vending machine
8418 69 40 --- Refrigeration equipment or devices specially used in leather industries for manufacturing of leather articles
8418 69 50 --- Refrigerated farm tanks, industrial ice cream freezer
8418 69 90 --- Other
- Parts:
8418 91 00 -- Furniture designed to receive refrigerating or freezing equipment
8418 99 00 -- Other

The tariff code 8418 covers refrigerators, freezers and heat pumps. The refrigerators, freezers and other refrigerating or freezing equipments comprise of a compressor (with or

without motor) and condenser mounted on a common base, whether or not complete with evaporator; or self-contained absorption units. These elements are commonly fitted into domestic-type refrigerators or other refrigerating cabinets. The essential elements of refrigerator are listed as compressor, condenser and evaporators whereas it is observed that no such parts are seen in the Fan Coil Unit and Air Handling Unit. However, the FCU and AHU are used for Air Conditioning and Heading 8418 does not include 'Air Conditioning System'.

4.1 Further, Classification of goods shall be governed by the following principles:

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF–

Rule 1 *of the General Rules for the Interpretation of the First Schedule of Import Tariff to the Customs Tariff Act, 1975 stipulates that for legal purposes, the classification of the import item shall be determined according to the terms of the headings and any relative Section or Chapter Notes.*

Rule 2 *of the General Rules for the Interpretation of the First Schedule of Import Tariff to the Customs Tariff Act, 1975 stipulates that any reference in a heading to an article shall be taken to include a reference to that article, be it may in the form of incomplete or unfinished and in respect of mixtures or combination of materials or substances, the classification shall be taken to include with reference to goods consisting of wholly or partly of such material or substance.*

Rule 3 *of the General Rules for the Interpretation of the First Schedule of Import Tariff to the Customs Tariff Act, 1975 states that, when by application of rule 2(b) or for any other reason, goods are prima facie, classifiable under two or more headings, classification shall be effected as follows:*

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description.

Thus, sequential reading of the General Rules for the Interpretation of the First Schedule of Import Tariff to the Customs Tariff Act, 1975 stipulates that the Heading which provides the most specific description shall be preferred to the Heading providing a more general description.

4.2 As the Fan Coil Unit and Air Handling Unit are used for Air Conditioning purpose. Therefore, it is clear that they Fan Coil Unit and Air Handling Unit are classifiable under CTH 8415, which is reproduced below:-

CTH 8415- Air Conditioning machines, comprising a motor driven fan and elements for changing the temperature and humidity, including these machines in which the humidity cannot be separately regulated

8415 10 - Of a kind designed to be fixed to a window, wall, ceiling or floor, self-contained or "split-system";
8415 10 10 --- Split system
8415 10 90 --- Other
8415 20 - Of a kind used for persons in motor vehicles :
8415 20 10 --- For buses
8415 20 90 --- Other
- Other :
8415 81 -- Incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle (reversible heat pumps):
8415 81 10 --- Split air-conditioner two tonnes and above
8415 81 90 --- Other
8415 82 -- Other, incorporating a refrigerating unit:
8415 82 10 --- Split air-conditioner two tonnes and above
8415 82 90 --- Other
8415 83 -- Not incorporating a refrigerating unit :

8415 83 10 --- Split air-conditioner two tonnes and above
84158390---Other
8415 90 00 - Parts

Further, the explanatory note for heading 8415 of WCO inter-alia stipulate as under:

"This heading covers certain apparatus for maintaining required conditions of temperature and humidity in closed spaces. The machines may also comprise elements for the purification of air.
They are used for air conditioning offices, homes, public halls, ships, motor vehicles, etc., and also in certain industrial installations requiring special atmospheric conditions (e.g., in the textile, paper, tobacco or food industries).
The heading applies only to machines:
(1) Equipped with a motor-driven fan or blower, and
(2) Designed to change both the temperature (a heating or cooling element or both) and the humidity (a humidifying or drying element or both) of air, and
(3) For which the elements mentioned in (1) and (2) are presented together.

In these machines the elements for humidifying or drying the air may be separate from those for heating or cooling it. However, certain types incorporate only a single unit which changes both the temperature and, by condensation, the humidity of the air. These air conditioning machines cool and dry (by condensation of water vapour on a cold coil) the air of the room in which they are installed or, if they have an outside air intake (damper), a mixture of fresh air and room air. They are generally provided with drip pans to catch the condensate.

The machines may be in the form of single units encompassing all the required elements, such as self-contained window or wall types (referred to as "through the-wall units). Alternatively, they may be in the form of "split-systems" which operate when connected together, i.e., a condenser unit for external installation plus an evaporator unit for internal installation. These "split-systems" are ductless and utilize a separate evaporator for each area to be air conditioned (e.g. each room)."

As per the above explanatory note, it appears that the heading 8415 covers all the apparatus for maintaining required conditions of temperature and humidity in closed spaces and used for air conditioning offices, homes, public halls, ships, motor vehicles, etc., and also in certain industrial installations requiring special atmospheric conditions. In view thereof, the impugned products are Air Conditioning Units under HVAC system and are therefore classifiable under customs tariff heading 8415.

4.3 During the investigation, the importer has also agreed that the Fan Coil Unit and Air Handling Unit are not covered under customs tariff heading 8418(refrigerating equipments) and they are rightly classifiable under customs tariff heading 8415 (air conditioning machine). However, vide letter dated 04.10.2023,the importer has contended that Fan Coil Unit and Air Handling Unit are parts of HVAC System and will be classifiable under CTI 8415 9000 as 'Parts', extract of the contention is as under:-

"FCU and AHU are parts of HVAC:

6. Split ACs and duct/ductless ACs are classifiable under CTH 8415. Undisputedly, FCU and AHU are parts of HVAC as HVAC cannot perform its function as air conditioners without FCU and AHU. Classification of parts of goods of chapter 84 is governed by Section Note 2(a) to Section XVI.

7. Section Note 2(a) to Section XVI provides that parts of goods should be classified in their specific relevant headings. As there is no specific heading of FCU or AHU, Section note 2(a) does not apply. Section Note 2(b) provides that 'other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading are to be classified with the machines of that kind or in heading'. In the present case, FCU and AHU are solely used with HVAC, hence, by virtue of Section Note 2(b), FCU and AHU will be classified under CTI 8415 9000 as 'Parts'.

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12. Section Note 3 and 4 of Section XVI are not relevant to the present issue. Section Note 3 applies to composite machines i.e. machines that perform more than one function (For example a multi-function printer performing the function of printing, scanning etc.). In the present case, the impugned goods perform only one function (i.e. controlling temperature by FCU; and maintain indoor air quality, temperature, and humidity by AHU) as mentioned in para 3 above. Thus, the impugned goods are not composite machines.

13. Further, Section Note 4 covers machines that consist of individual components intended to contribute together to perform a clearly defined function. In order to apply Section Note 4, all the components must be imported and cleared together and those components must perform a clearly defined function. In the present case, the Company has not imported FCU, AHU, Chiller and other components together, hence, Section Note 4 is not applicable.

On careful examination it appears that DAIPL's contention that Fan Coil Unit and Air Handling Unit are parts is incorrect as per the explanatory notes of parts of CTH 8415 of World Customs Organization, which is given below:

PARTS

In accordance with the provisions of Note 2 (b) to Section XVI, this heading includes separately presented indoor units and outdoor units for split-system air conditioning machines of this heading.
Other parts for air-conditioning machines, whether or not designed for building into a self-contained unit, are to be classified in accordance with the provisions of Note 2 (a) to Section XVI (headings 84.14, 84.18, 84.19, 84.21, 84.79, etc.) or, if Note 2 (a) is not applicable, in accordance with Note 2 (b) or 2 (c) to Section XVI, depending on whether or not they are identifiable as suitable for use solely or principally with the air-conditioning machines of which they are parts.

The heading excludes:
(a) Air heaters and hot air distributors of heading 73.22 which can also distribute fresh or conditioned air.
(b) Non- reversible heat pumps of heading 84.18 and Chillers for air conditioning machines (heading 84.18)
(c) Apparatus which, although incorporating a motor-driven fan, has the sole function of changing either the temperature or humidity of the air (headings 84.79, 85.16, etc.).

Subheading Explanatory Notes.

Subheading 8415.10

This subheading covers air conditioning machines of a kind designed to be fixed to a window, wall, ceiling or floor, self-contained o or "split-system".

The term "fixed" means placed or set into position in a more or less permanent manner, taking into account factors such as size, weight, physical construction (e.g. the presence or absence of castors or handles), interconnections, etc.

The self-contained type air conditioners are in the form of single units encompassing all the required elements and being self-contained.

The "split-system" type air conditioners are ductless and utilize a separate evaporator for each area to be air conditioned (e.g., each room). The indoor heat exchanger unit may be mounted in various locations, e, in a wall or window, dow, or on a ceiling or floor. for example,

However, this subheading excludes ducted central air conditioning systems which utilize ducts to carry refrigerated air from an evaporator to several areas to be cooled.

Subheading 8415.20

This subheading covers equipment which is intended mainly for passenger motor vehicles of all kinds, but which may also be fitted in other kinds of motor vehicles, for air conditioning the cabs or compartments in which persons are accommodated.

Subheading 8415.90

This subheading includes both indoor and outdoor units for split-system subheading 8413.10 when presented separately. The units are designed to air conditioning machines of be connected by electrical wiring and copper tubing through which refrigerant passes between the indoor and outdoor units.

Above explanatory notes excludes the ducted Central Air Conditioning System which utilize ducts to carry refrigerated air from an evaporator to several areas to be cooled and it is already stated in para supra that Heating, Ventilation and Air Conditioning (HVAC) System is basically a Central Air Conditioning System, which is used for air conditioning of enclosed space, which comprises of Heating, air-conditioning and Ventilation. Heating, Ventilation and Air Conditioning (HVAC) System uses various technologies to control the temperature, humidity, and purity of the air in an enclosed space. It is a system of air conditioning which comprises of machines such as Chiller, Pumps & Terminals - Fan Coil Unit or Air Handling Unit, which changes both the temperature and the humidity of the Air. FCUs or AHUs are terminals which are connected through the chilled water pipes to Chiller. Chiller produce chilled water through the pipes connected to Fan Coil Unit or Air Handling Unit, further, the chilled water is used by Fan Coil Units or Air Handling Unit for maintaining required conditions of temperature and humidity in closed spaces. The HVAC System is used for air conditioning of offices, homes, public halls, ships, motor vehicles, etc., and also in certain industrial installations requiring special atmospheric conditions. Accordingly, Heating, Ventilation and Air Conditioning (HVAC) System is a "Central Air Conditioning System", which is built by the combination of two major machines i.e. "Chiller" and "Fan Coil Unit" or "Air Handling Unit", interconnected through pipes.

4.4 In a Central Air Conditioning System, the Air Handling Unit (AHU) can bring-in outside air, heat or cool it (i.e. conditioning) and distributes air into the space through a duct. As explanatory notes of 'PARTS' under CTH 8415 issued by World Customs Organization excludes the ducted Central Air Conditioning System, which utilize ducts to carry refrigerated air from an evaporator to several areas to be cooled, from 'PARTS'. Moreover, Air Handling Unit (AHU) is an independent component/'PART' of Heating, Ventilation and Air Conditioning (HVAC) System and not 'PARTS' of HVAC System. Therefore, the contention of the DAIPL that Air Handling Unit (AHU) classifiable under CTI 8415 9000 as 'Parts' is incorrect.

4.5 Further, Fan Coil Units come in two types: those without ducts and those with ducts. Fan Coil Unit without duct is a singular (standalone) system that can operate on its own to circulate air in an area and it can only condition the air that's already present in the area by pulling it in and moving backout through its heating or cooling coil. Further, the ducted type of Fan Coil Unit also brings in fresh air from the outside. Therefore, it appears that Fan Coil Unit is a small version of Air Handling Unit.

Moreover, it is worthwhile to mention here that Fan Coil Unit based HVAC System is different from the Split Air Conditioner. To compare Fan Coil Units and Split Air Conditioner, these units can be evaluated and reviewed from different perspectives, the differences between Split AC Units and Fan Coil Units are fully described in terms of performance, cooling and heating capacity, Electricity Consumption, implementation cost, possibility of fresh air intake into the building, etc.

(i) Comparison of Fan Coil Unit and Split AC Unit performance:-

When comparing split air conditioners and fan coils, the first and most important point to consider is how they work. Split A/C units and splits are independent systems that cool or heat the environment without the need for a central plant room or special peripheral equipment. They consist of an indoor unit and an outdoor unit connected by two return lines. By circulating refrigerant in copper pipes and creating a compression cycle, they provide cooling or heating for a room, hall, housing unit, etc.

Fan-Coil Units, on the other hand, are units that cannot cool or heat the air on their own. They require additional equipment such as a mini-Chiller or central Chiller for cooling and a hot water boiler or heating package for heating. One of the main advantages of fan-coil units is that they can be used in any number, without limit. They can be installed in different spaces such as residential, office, commercial, service and social buildings. Each room can have its own temperature control.

On comparing split A/C units and splits with fan coils, it can be concluded that splits are independent units that, due to their limited capacity, are more suitable for small spaces such as bedrooms, living rooms and shops. If you need to cool or heat larger spaces, you would need to use two or more units together, which can be costly due to their high initial price.

On the other hand, fan-coil units can easily provide cooling and heating for all types of buildings, such as offices, residential areas, commercial premises, hospitals and social buildings. They can be used in large numbers (tens or hundreds) in a single building.

(ii) Cooling and heating capacity comparison between Fan Coil units and Split ACUnits:-

In general, Split AC units are mostly used as stand-alone cooling systems (in hot seasons) to cool small rooms. Split AC units can also work in heating mode (in cold seasons), but due to their high electricity consumption they are not cost-effective. Moreover, continuous use of Split AC units throughout the year reduces the life of the unit and increases the possibility of its failure. Therefore, additional equipment is needed to heat the environment in winter, such as a package system and a radiator.

To cool the environment, the fan-coil units use the cold water from the Chiller, which flows through their coils, and to heat the air in the environment, the necessary hot water is supplied from the central plant room or the heating package.

For this reason, the performance system of fan coil units in performing the process of cooling or heating the environment is done in the same way, and they have lower energy consumption than the system of split AC units.

The second major difference between Fan Coil units and Split AC units is their heating capacity and the need or lack of additional heating equipment.

(iii) Electricity consumption comparison between Fan Coil Units and Split ACUnits:-

Regarding the power consumption of Split AC and Fan Coil units, the following can be said:

As the operation of the indoor unit and outdoor unit of Split AC units (in cooling and heating mode) is entirely based on electricity, these appliances have a considerable electricity consumption.

However, the electricity consumption of Fan Coil units is much lower than that of Split AC units. Additional and auxiliary equipment of fan coil units (e.g. hot water boilers) also use other forms of energy, which significantly reduces the electricity consumption of these appliances.

For example, Chillers and mini condensation Chillers, which are responsible for cooling water and supplying it to the coils of the fan coil units, use electrical energy, and hot water boilers or heating packages, which provide the hot water required by the fan coil units, use municipal gas or even other fuels such as diesel.

The electricity consumption of fan coil units is therefore very low in the cold seasons, and in the summer the electricity consumption of a central Chiller is much lower than the electricity consumption of several Split AC units put together. It can therefore be concluded that in the general comparison between fan coil units and splits in terms of electricity consumption, fan coil units have lower energy consumption and higher efficiency.

(iv) Comparison between a Fan Coil unit and a split system in terms of implementation costs:-

Fan Coil Units and splits (two-piece Split Ac Units) are cooling and heating systems that consist of two outdoor and two indoor units. This means that one unit is installed inside the building and the other, usually larger unit, is installed outside the building and they are connected by water or refrigerant pipes. In Split Ac Units, the connection between the indoor and outdoor units is made by two copper pipes with suitable elastomeric insulation, and R22 or R410a refrigerant gas is used to cool and heat the interior of the building.

On the other hand, the connection between the Fan Coil Units and the central equipment, such as the Chiller or mini-Chiller (in summer) and the hot water boiler (in winter), is made by two normal water pipes (back and forth). Considering the type of pipes and also the higher sensitivity in the implementation of the piping between the external unit and the internal unit in gas coolers, their operation is usually more expensive than the implementation of water piping in Fan Coil Units.

(v) Comparison between air conditioning and Fan Coil Unit in terms of the possibility of fresh air intake into the building:-

The indoor split unit that is installed in a room or hall can only circulate the air inside and change its temperature, either making it cooler or warmer. On the other hand, Fan Coil Units come in two types: those without ducts and those with ducts. The ducted type of Fan Coil Unit also brings in fresh air from the outside.

When it comes to how and how much air is humidified, both split units and Fan Coil Units perform similarly. Essentially, these units work as dehumidifiers. During the summer, the cold surface of their internal coil causes the moisture in the air to evaporate, reducing the overall humidity.

In view of the above, it appears that Fan Coil Unit (FCU) of HVAC System is different from the indoor unit of the Split Air Conditioner. Moreover, Fan Coil Unit (FCU) is an independent component/'PART' of Heating, Ventilation and Air Conditioning (HVAC) System and not 'PARTS' of HVAC System. Therefore, the contention of the DAIPL that Fan Coil Unit (FCU) classifiable under CTI 8415 9000 as 'Parts' or 'same as indoor unit of Split Air Conditioner' is incorrect.

4.6 Further, the "Chiller" is also component of Central Air-Conditioning System same as "Fan Coil Unit or Air Handling Unit", therefore, a Central Air-Conditioning System comes into existence when Chiller is fitted with the Fan Coil Units or Air Handling Unit, ducting, piping, pumps etc. The primary function of the Chiller is to produce chilled water/liquid and the function of the Chiller comes to an end once the chilled water/liquid is produced. Therefore, this machine

is classifiable under CTH 8418 (Refrigerating equipments). Accordingly, DAIPL is also importing Chiller as a complete machine under CTI 84186990(Refrigerating equipments).

In view of the above, Fan Coil Unit or Air Handling Unit is also a component of the HVAC System same as the Chiller. However, before the initiation of the investigation, DAIPL was importing "Fan Coil Unit and Air Handling Unit" as 'Parts of Chiller' under CTI 84189900 (Parts of Refrigerator) for avoiding high rate of customs duty and now DAIPL has started classifying "Fan Coil Unit and Air Handling Unit" under CTI 84159000 as 'Parts of Air Conditioner'/'same as indoor unit of Split Air Conditioner' to avail undue benefit of Free Trade Agreement. As Heating, Ventilation and Air Conditioning (HVAC) System comes into existence when two major components/machines i.e. "Fan Coil Units" or "Air Handling Unit" is connected through pipe or ducting to the "Chiller". Therefore, both i.e. Chiller and Fan Coil Unit or Air Handling Unit is a component of HVAC System. However, DAIPL is classifying the one component of HVAC System i.e. Chiller as a complete machine under CTI 84186990(Refrigerating equipments) and another component of HVAC System i.e. "Fan Coil Units" or "Air Handling Unit" is being classified as a part under CTI 84159000 ('Parts of Air Conditioner'/ 'same as indoor unit of Split Air Conditioner') which is not justifiable and grossly wrong.

4.7 In Heating, Ventilation and Air Conditioning (HVAC) System, "Fan Coil Units" or "Air Handling Unit" use the chilled water, which is produced by Chiller, for air conditioning of enclosed space. Therefore, the principal function of "Fan Coil Unit and Air Handling Unit" are maintaining required conditions of temperature and humidity in enclosed spaces.

Further, attention is invited towards para 3 and 4 of Section-XVI notes of Indian Tariff Act, 1975 and Hon'ble Supreme Court of India Judgement dated 05.07.2006 of Carrier Aircon Ltd:

Para 3 and 4 of Section-XVI notes of Indian Tariff Act, 1975:

"3. Unless the context otherwise requires, composite machines consisting of or two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function."

Extract of Para 5 of Judgement of Civil Appeal 3914 of 2001 dated 05.07.2006 of Hon'ble Supreme Court of India in case of Carrier Aircon Ltd:

Tariff heading 84.15 covers air-conditioning machines which control and maintain temperature and humidity in closed places. The main function of air-conditioning system is to control temperature, which is not done by a Chiller. A reading of the tariff entry 84.15 would show that it is intended to cover only those machines which comprise of elements for changing temperature and humidity and Chillers would fall outside the purview of the said entry. The function of the Chiller is only to chill water or bring it to a very low temperature, and ***it is the air handling unit having an independent and distinct function*** *which produces the effect of air-conditioning, controlling the temperature and the humidity. The Chiller itself does not do any air-conditioning as it is designed only to refrigerate or produce chilled water/liquid.*

Therefore, as per tariff heading 8415 along with explanatory note for heading 8415 of WCO and para 3 & 4 notes of Section-XVI, Fan Coil Unit & Air Handling Units doesnot appear to be the parts of Chiller or parts of HVAC System, but they are the various components that are

interconnected together to make a Heating, Ventilation and Air Conditioning (HVAC) System for maintaining required conditions of temperature. Further, Fan Coil Units& Air Handling Units have their independent and distinct function i.e. conditioning of air of enclosed space. As there is no specific customs tariff heading for Fan Coil Unit and Air Handling Unit and moreover, they are also not incorporating a "refrigerating unit", therefore, they should be classifiable under CTH 84158390 (BCD-20% & IGST-28%) instead of CTI 84189900 or CTI 84159000 and parts/other accessories of FCU & AHU should be classifiable under CTH 84159000(BCD-10% & IGST-28%).

4.8 The above interpretation of goods i.e. Fan Coil Unit and Air Handling Unit is also corroborated with the opinion submitted by Shri Roopchand Taori, Chartered Engineer and Approved Valuer, vide letter dated 06.06.2024, in which, it is stated that FCU, AHU and CHILLER machines are components of a HVAC system. They work in unison to achieve desire / intended purpose of air conditioning.FCU and AHU each are having distinct function but they are not independent machines in context with HVAC system. FCUs are used in individual rooms or small spaces to provide localized heating or cooling. AHU is a part of centralized HVAC system and are responsible for conditioning i.e temperature, humidity and quality of air (filtration, ventilation) and distributing air to multiple zones or spaces within a building. Further, it is stated that FCU and AHU of HVAC system are machines not pertaining to split system air conditioning machines, hence not qualifying under heading of split air conditioner, relevant extract of the above letter is given below: -

Queries raised by the Department pertaining to different parts of the HVAC system.

1. Whether goods namely Fan coil Unit and Air Handling Unit can work independently without Chiller?

FCU and AHU as components of HVAC system cannot work independently without a chiller/ heater. All components of HVAC system work in UNISON to work as an air conditioning machine.

FCU whether pertaining to window air conditioner m/c, split air-conditioner m/c or part of HVAC system, all have the same distinct function to cool air, to control temperature of air to be circulated in a closed space.

But still there are differences in FCU used in window/ split air conditioner m/c and HVAC systems, as described below.

(i) Window air conditioner m/c used to control temperature of air for a particular room /closed space, and Fan Coiled Unit (FCU) is not a separate but an inbuilt part of the machine.

(ii) For split air conditioner m/c, FCU is a separate unit, known as an indoor unit, connected with copper tubes with an outdoor unit. Split air conditioner is also used to control the temperature of air for a particular room /closed space, as in case of window air conditioner m/c.

(iii) Whereas in a HVAC system multiple numbers of FCU are installed depending on the number of different areas / closed spaces that need air conditioning. For each area there are different machine/s.(FCU)

(iv) There are also differences in working of FCU used in HVAC systems and other air conditioner machines (Split and window machines), as well as cooling media are also different. In HVAC systems, chilled water is used whereas in other air conditioner machines, refrigerant of low boiling point is used as a medium of cooling.

(v) Quantity of FCU installed in HVAC system depends upon system design and size, chilled water supplied through a centralised chiller unit to different FCUs of a HVAC system, and temperature of air controlled by controlling

of volume of water in each FCU unit, and required different temperature control can be obtained in different area /spaces. HVAC systems, as the name indicates, can also be used to heat enclosed space /area by circulating hot water in FCUs instead of chilled water.

(vi) In FCU of split and window air conditioning machines, working is different, compressed liquid refrigerant, supplied by outdoor unit, connected through tubes with the indoor units (FCU), and liquid refrigerant expanded in coils of FCU units, coils also called as an evaporator, named based on its function, refrigerant change its state from liquid to gas, and refrigerant in gaseous form get chilled, and which is used to cool the air. Temperature controlled by controlling volume of refrigerant by valve.

2. Whether goods namely FCU (Fan Coil Unit) and AHU (Air Handling unit) are parts of Heating, Ventilation and Air Conditioning (HVAC) system or chiller or independent Machines with their independent and distinct function?

FCU and AHU are definitely components of HVAC system, but FCU and AHU are not parts / components of a chiller unit. A CHILLER is also one of the main component of HVAC system. Chiller has main function to control temperature of air in circulation in air conditioning space. Chiller is a heat pump, which work on principle of refrigeration cycle. Chilled water in circulation remove heat from enclosed space or object and heat removed by chilled water is absorb by refrigerant in chiller unit and transfer it to outer space. Chiller used either electrical or thermal energy for its functioning. Chiller using electrical energy have main components comprising of compressor, condenser, cooling tower or aircooled unit of a chiller, refrigerant is a media to absorb heat from chiller water.

*FCU, AHU and CHILLER machines are components of a HVAC system.They work in **unison** to achieve desire / intended purpose of air conditioning.FCU and AHU each are having **distinct function** but they are not **independent machine** in context with HVAC system.*

FCUs are used in individual rooms or small spaces to provide localized heating or cooling.

AHU is a part of centralized HVAC system and are responsible for conditioning i.e temperature, humidity and quality of air (filtration, ventilation) and distributing air to multiple zones or spaces within a building.

NOTES:

A. Refer to CTH 84.15 Explanatory Notes.

This heading covers certain apparatus for maintaining required conditions of temperature and humidity in closed spaces. The machines may also comprise elements for the purification of air.

They are used for air conditioning offices, homes, public halls, ships. motor vehicles. etc. and also in certain industrial installations requiring special atmospheric conditions (e.g. in the textile, paper, tobacco or food industries).

CTH 8415 "Air Conditioning machines, comprising a motor driven fan and elements for changing the temperature and humidity, including these machines in which the humidity cannot be separately regulated"

FCU and AHU are apparatus of air conditioning machine/ system, and therefore cover under CTH 84.15.

As FCU and AHU does not incorporate a "refrigerating unit", therefore, the same are classifiable under CTI 84158390."

B. CTI 8415.90 Parts

*Refer to **Subheading 8415.90** (Explanatory Notes):*

This subheading includes both indoor and outdoor units for split system air conditioning machines of subheading 8415.10, when presented separately. The units designed to be connected by electrical wiring and copper tubing through which refrigerant passes between the indoor and outdoor units. This also include window or wall type self-contained unit.

As FCU and AHU of HVAC system are machines not pertaining to split system air conditioning machines, hence not qualifying under this heading.

FCU and AHU are apparatus of air conditioning machine/ system, and therefore cover under CTH 84.15.

As FCU and AHU does not incorporate a "refrigerating unit", therefore, the same are classifiable under CTI 841583 90."

C. The importer contended that,

*I. Parts of Air conditioner covered in CTIs 8415010 to 84158390 are classified under **CTI 8415 90 00- Parts.***

*II. As there is no specific entry for classification units of air conditioner, therefore the indoor and outdoor units imported individually are also covered under **CTI 841590 00- Parts**, as mentioned in the explanatory notes.*

*FCU and AHU are not justified under **CTI 841590 00- Parts**, as FCU and AHU units are justifiable under CTI 841583 90, refer note B for details.*

5. Suppression of facts, willful mis-statement on part of DAIPL and Invocation of extended Period in the import of Fan Coil Unit and Air Handling Unit: -

5.1 During the recording of statement, Shri Shelendra Chauhan, Divisional Manager (Technical person) of the importer has admitted that FCUs are AHUs are not the part of the Chillers, however, chilled water line is used to connect the FCU or AHU to Chillers and any other chilled water source may also be used in AHU and FCU to function. Further, he also informed that FCUs and AHUs does not incorporate a refrigerating unit and they are part of Central Air Conditioning Chilled Water System.

5.2 Therefore, Shri V. T. Sabu, Dy. General Manager-SCM of DAIPL has been asked reasons for mis-classification of Fan Coil Unit and Air Handling Units under CTI84189900 (Parts of Chiller), he replied that they classified their goods as per their legal opinion obtained by them in FY 2015 under statement dated 14.08.2023. However, it is observed from the legal opinion of Lakshmi Kumaran and Sridharan obtained by the importer in 2015 that they had not given any legal opinion for classification of FCUs and AHUs, the legal opinion is only for Chiller.

5.3 Further, Shri Vinod Singh, Director Operations in PDS International Pvt. Ltd. (CHA) has stated that they look after the shipments of DAIPL for Mumbai and Delhi – NCR and for classification (CTH) or Notification of the item imported, they refer to the Importer's opinion. After confirmation by the importer, the Bill of Entry is filed by them. He has also submitted the same legal opinion of Lakshmi Kumaran and Sridharan dated 13.01.2015 given to them by DAIPL. However, as stated above, no such legal opinion has been given for classification of FCUs and AHUs under the document. Further, he informed that they had never reviewed the correctness of the CTH of an item declared by the importer and they completely rely on the classification as provided by the importer.

Further, Shri Prathaban H., Operation Executive in Caravel Logistics Pvt. Ltd. (CHA) has informed that for classification (CTH) or Notification of the item imported, they refer to the

Importer's opinion. After only confirmation by the importer, the Bill of Entry is filed by them. Further, he informed that they had never reviewed the correctness of the CTH of an item declared by the importer and they completely rely on the classification as provided by the importer. Even, after perusing the statement dated 14.08.2023 of Shri Shelendra Chauhan, Divisional Manager - Applied Business of Daikin Airconditioning India Pvt. Ltd along with the Chapter Headings 8415 and 8418 of the Customs Tariff Act, wherein, it was mentioned that FCUs and AHUs are not parts of Chiller during statement, he stated that they completely rely on Importer for the classification. They believed 100% in their opinion and filed the Bill of Entry as per their say.

From the above, it appears that both the CHAs of importer had never reviewed the correctness of the CTH of an item i.e. FCUs or AHUs declared by the importer and they completely relied on the classification as provided.

5.4 Further, it is also observed that the importer has also received the Post Clearance Audit Objection on the same issue vide Letter No. CADT/CIR/ADT/TBA/1678/2023-PBA-CIR-B1-0/0 COMMR-CUS-ADT-NHAVA SHEVA dated 14.07.2023 issued by the Assistant Commissioner of Customs-Audit (Circle-B1), JNCH, Nhava Sheva, wherein, it is mentioned that DAIPL has imported Fan Coil Units with description mentioned as "FAN COIL UNIT (P/N:FXEQ63AV36) (Parts of Airconditioner) (FOR CAPTIVE CONSUMPTION)" under CTH 84159000 vide under Bill of Entry no. 6606123 dated 09.12.2021 and after issuance of letter CL No. 313/2023-24/B-1 dated 17.05.2023, DAIPL has accepted merit classification of the impugned goods i.e. under CTI 84158390 and paid the differential duty, applicable interest and penalty and requested to close the same vide their letter dated 21.06.2023. Further, it is noticed that DAIPL has never declared the Fan Coil Unit as 'Parts of Airconditioner' in their other Bills of Entry. Instead of that they disguised Fan Coil Unit as 'Parts of Chiller'. The DAIPL has willfully mis-declared the imported FCU as part of Chiller with the intention to evade customs duty. Further, the Customs Audit vide letter dated 14.07.2023 had informed the DAIPL about their alleged mis-declaration of goods in heading of refrigeration goods (CTH-8418) instead of correct heading of Air Conditioning goods which is CTH-8415. However, despite the objection of Customs Audit and the investigation initiated by the DRI Indore Zonal Unit, the DAIPL continued to mis-declare the goods under CTH-8418 in subsequent Bills of Entry.

5.5 Investigation revealed that Shri V. T. Sabu, Dy. General Manager-SCM of DAIPL was very well aware of the fact that Fan Coil Unit and Air Handling Unit are component of Central Air Conditioning System and not a part of a Refrigeration system which he inter alia accepted in his statement dated 24.11.2023. Also, in order to justify their actions DAIPL relied upon a legal opinion of Lakshmi Kumaran and Sridharan obtained in 2015, however, the legal opinion is given for Chiller not for FCUs and AHUs. Even then DAIPL was importing FCUs and AHUs under CTI84189900 through describing the same as "Parts of Chillers" for evading customs duty by suppressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of the impugned goods. So that Customs Officer could not be able to identify the correct nature or function of the goods.

5.6 Further, Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011 cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self-assessment, is required to ensure that they declared 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. On the contrary, the facts of the case show that such an onus was not discharged by the importer, as they knowingly misclassified the goods to evade payment of duty by wilful mis-statement and suppression of facts.

5.7 Therefore, it appears that the differential customs duty along with applicable interest & penalty on imported goods i.e. FCUs, AHUs and parts thereof are required to be recoverable in

terms clause (b) of Section 28(4) of the Customs Act, 1962 due to wilful mis-statement of the classification of the goods by DAIPL. Details of port wise liability of last five year i.e. from 29th June, 2019 to 31st August, 2023 (Details in Annexure-A to E to the SCN), is as under:-

Port wise differential Customs Duty Payable against FCU-AHU & its Parts along with Chiller imported from 29th June'2019 to Aug-2023 by DAIPL)					Amount in Rs.
	Port of Import	**BCD**	**SWS**	**IGST**	**Total**
A	**Nhava Sheva Port**				
	- FCU	1,57,21,391	15,72,139	1,73,47,649	3,46,41,180
	- AHU	42,754	4,275	50,194	97,224
	- FCU Parts	1,94,642	19,464	6,09,767	8,23,873
	- AHU Parts	-	-	-	-
	Chiller (misclassified chiller under CTI 84189900 (Parts of Refrigerator) instead of CTI 84186990 (Refrigerating Equipment/Unit)	1,54,445	15,444	30,580	2,00,469
	Total Nhava Sheva Port	**1,61,13,233**	**16,11,323**	**1,80,38,190**	**3,57,62,746**
B	**Chennai Sea Port**				
	- FCU	1,07,249	10,725	1,25,910	2,43,884
	- AHU	49,68,275	4,96,828	58,32,755	1,12,97,858
	Total Chennai Sea Port	**50,75,524**	**5,07,552**	**59,58,665**	**1,15,41,742**
C	**Grand Total (A+B)**	**2,11,88,757**	**21,18,875**	**2,39,96,855**	**4,73,04,488**

5.8 During further course of the investigation, it was also noticed that DAIPL has imported Chiller (BE 6818204 dated 10-02-2020) under CTI 84189900 (Parts of Refrigerator), however, the Chiller is also a component of Heating, Ventilation and Air Conditioning (HVAC) System instead of parts of Refrigerator. Therefore, it is rightly classifiable under CTI 84186990(Refrigerating Equipment/Unit). Accordingly, DAIPL has agreed for the above classification of Chiller and paid the differential duty liability along with interest. Further, Shri V. T. Sabu, Dy. General Manager-SCM of DAIPL has agreed the major heading of CTH of Fan Coil Unit, Air Handling Unit& parts thereof is CTH-8415. However, he has not agreed to the subheading of the imported goods as CTI-84158390. He stated that the correct classification of Fan Coil Unit and Air Handling Unit is CTI-84159000(like the indoor and outdoor unit of split ACs) (BCD - 20% & IGST - 28%) and the correct classification of the parts of FCUs and AHUs is CTH 84159000 (BCD-10% & IGST – 28%) and started to import FCUs and AHUs under CTI-84159000 from Sep.-2023 onwards. Further, the importer has paid the partial differential duty liability for FCU, AHU & parts thereof along with Chiller under protest, the port wise details are as under:-

Port wise partial differential duty payment along with interest on FCU, AHU & parts thereof along with Chiller by DAIPL							**Amount in Rs.**
	Port of Import	**BCD**	**SWS**	**IGST**	**Total Duty (BCD+SWS+IGST)**	**Interest (upto 10/Nov/2023)**	**Total**
	Nhava Sheva Port						
	- FCU	1,29,79,382	12,97,938	1,42,53,386	**2,85,30,706**	**34,98,401**	3,20,29,107
	- AHU	42,754	4,275	50,194	**97,224**	**24,373**	1,21,596
	- FCU Parts	1,09,340	10,934	2,14,133	**3,34,406**	**32,376**	3,66,782
	- Chiller	1,54,445	15,444	30,580	**2,00,469**	**1,12,784**	3,13,254
A	**Total Nhava Sheva Port**	1,32,85,920	13,28,592	1,45,48,293	**2,91,62,805**	**36,67,934**	3,28,30,739
	Chennai Sea Port						
	- FCU	1,07,249	10,725	1,25,910	**2,43,884**	**11,426**	2,55,310
	- AHU	49,68,275	4,96,828	58,32,755	**1,12,97,858**	**9,69,099**	1,22,66,957
B	**Total Chennai Sea Port**	50,75,524	5,07,552	59,58,665	**1,15,41,742**	**9,80,525**	1,25,22,267

C	**Grand Total (A+B)**	1,83,61,445	18,36,144	2,05,06,958	**4,07,04,547**	**46,48,459**	**4,53,53,006**

*** The importer has paid partial differential duty liability for FCU from April-22 to Aug-23, Parts of FCU from Oct-22 to Aug-23, AHU from April-21 to Aug-23 amounting to Rs. 4,07,04,547/- along with interest amounting to Rs. 46,48,459/- out of total differential duty liability of Rs. 4,73,04,488/-.**

- However, the contention of the importer does not appear to be right as stated para supra.

Violations by Importer: -

6. DAIPL has subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Customs Act, 1962, in all their import declarations. Further, consequent upon the amendment to Section 17 of the Customs Act, 1962, via the Finance Act, 2011, "self-assessment" has been introduced in Customs. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a bill of entry in electronic form. Section 46 of the Customs Act, 1962, makes it mandatory for the importer to make 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, 2018 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic 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 center, 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 doubly ensure that he declares the correct description of the imported goods, their correct classification, applicable rate of duty, value, and benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, 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. Prior to substitution by Act 13 of 2018, section 58 (i), for clause (2) (w.e.f. 29.03.2018). *Clause (2) before substitution, stood as under:*

> *'(2) "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;'*
>
> *Earlier to substitution by Act 8 of 2011,* ***section 36, (w.e.f. 8-4-2011), clause (2) read****:*
>
> ***'(2)b****"assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil;'*

With effect from *29.03.2018, the term assessment means as follows: -*

(2) "assessment" means determination of ***the dutiability of any goods*** and ***the amount of duty, tax, cess or any other sum so payable***, if any, under this Act or under the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, ***with reference to-***

(a)the ***tariff classification*** *of such goods as determined in accordance with the provisions of the Customs Tariff Act;*

(b)the ***value of such goods*** *as determined in accordance with the provisions of this Act and the Customs Tariff Act;*

*(c)****exemption or concession*** *of duty, tax, cess or any other sum, consequent upon any notification issued therefore under this Act or under the Customs Tariff Act or under any other law for the time being in force;*

*(d)the **quantity, weight, volume, measurement or other specifics** where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;*

*(e)the **origin of such goods** determined in accordance with the provisions of the Customs Tariff Act or the rules made there under, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;*

*(f)**any other specific factor which affects** the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;*

6.1. From a reading of the above provision related to assessment, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Customs Act, 1962 and since 2018, the scope of assessment has been widened, and as per that definition, the importer has to ascertain not only the classification but also whether the goods imported by him are eligible for any duty exemptions or not and also with regards to the origin of the goods. Such an onus appears to have been deliberately not discharged by DAIPL.

6.2. Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011 cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self-assessment, is required to ensure that he declared 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. On the contrary, the facts of the case show that such an onus was not discharged by DAIPL, which knowingly misclassified the goods to evade payment of duty by wilful mis-statement and suppression of facts.

6.3. Hence, it appears that the differential Customs Duty of Rs.4,73,04,488/- (Customs+SWS+IGST) along with applicable interest & penalty is recoverable in terms clause (b) of Section 28(4) of the Customs Act, 1962 due to wilful mis-statement of the classification of the goods by DAIPL. Further, Customs duty of Rs.4,07,04,547/- (Customs+SWS+IGST) and Interest of Rs.46,48,459/-are liable to be appropriated against outstanding extended period liability in terms clause (b) of Section 28(4) of the Customs Act, 1962.

6.4. The importer has in depth knowledge of product imported. They have wrongly interpreted and extended legal advice by tax expert to declare wrong CTH wilfully. Further as the duty was short paid by collusion, wilful mis-statement and suppression of the facts by the importer as discussed above, the importer appears liable for penalty under provisions of Section 114A of the Customs Act, 1962 in respect of the past consignments (Aug-2018- Aug 2023).

6.5. It appears that the documents and declarations used made at the time of the import of the consignments were knowingly and intentionally false &incorrect.

7. The Show Cause Notice has relied upon various Sections i.e.2(2), 2(14), 2(16), 11A(a), 17, 28(4), 28AA, 46, 111(m) and114A of the Customs Act.

8. With the introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it was obligatory on the part of the importer to declare the actual description and correct classification of the goods imported by them and pay the duty applicable in respect of the said goods. Therefore, by not disclosing the true and correct facts to the proper officer, at the time of clearance of imported goods, the importer appears to have indulged in mis-declaration and mis-classification by way of suppression of facts and wilfully mis-declaring and mis-classifying the imported goods with intent to evade the payment of applicable Custom duties. Thus, the importer has contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962, inasmuch as they have mis-classified and mis-declared the

goods imported by them, by suppressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods.

9. Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011 cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self-assessment, is required to ensure that he declared 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. On the contrary, the fact of the case shows that such onus was not discharged by DAIPL as they knowingly and purposefully mis-classified the goods to evade payment of duty by making wilful mis-statement and suppressing of facts.

10. Summary of Investigation:-

From the investigation and analysis of the nature and function of the Fan Coil Unit and Air Handling Unit imported by DAIPL as described in the foregoing paras, it appears that:-

10.1 Daikin Airconditioning India Pvt. Ltd. having IEC- 500010323 engaged in the import of Fan Coil Unit, Air Handling Units & parts thereof under item description "FAN COIL UNITS-(of various MODEL NO) (PARTS FOR CHILLER) & AIR HANDLING UNIT)- (of various MODEL NO)" under CTI 84189900 and paying (BCD-7.5% & IGST-18%) as describing the same as "Parts of Chiller". However, the said goods are components of Heating, Ventilation and Air Conditioning (HVAC) System. HVAC System is basically a Central Air Conditioning System, which is used for airconditioning of enclosed space, therefore, the same are correctly classifiable under CTI 84158390of the First Schedule of the Customs Tariff Act, 1975 which attracts BCD at the rate of 20% and IGST at the rate of 28%.

10.2 Further, Heating, Ventilation and Air Conditioning (HVAC) System is basically a Central Air Conditioning System, which is used for air conditioning of enclosed space, which comprises Heating, air-conditioning and Ventilation. Heating, Ventilation and Air Conditioning (HVAC) System uses various technologies to control the temperature, humidity, and purity of the air in an enclosed space. It is a system of air conditioning comprise of machines such as Chiller, Pumps & Terminals - Fan Coil Unit or Air Handling Unit, which changes both the temperature and the humidity of the Air. FCUs or AHUs are terminals which are connected through the chilled water pipes to Chiller. Chiller produce chilled water through the pipes connected to Fan Coil Unit or Air Handling Unit, further, the chilled water is used by Fan Coil Units or Air Handling Unit for maintaining required conditions of temperature and humidity in closed spaces. The HVAC System is used for air conditioning of offices, homes, public halls, ships, motor vehicles, etc., and also in certain industrial installations requiring special atmospheric conditions. Accordingly, Heating, Ventilation and Air Conditioning (HVAC) System is a "Central Air Conditioning System", which is built by the combination of two major machines i.e. "Chiller" and "Fan Coil Unit" or "Air Handling Unit", interconnected through pipes.

10.3 In a Central Air Conditioning System, the Air Handling Unit (AHU) can bring-in outside air, heat or cool it (i.e. conditioning) and distributes air into the space through a duct. Further, Fan Coil Units come in two types: those without ducts and those with ducts. Fan Coil Unit without duct is a singular (standalone) system that can operate on its own to circulate air in an area and it can only condition the air that's already present in the area by pulling it in and moving backout through its heating or cooling coil. Further, the ducted type of Fan Coil Unit also brings in fresh air from the outside. Therefore, it appears that Fan Coil Unit is a small version of Air Handling Unit.

Moreover, it is worthwhile to mention here that Fan Coil Unit is different from the indoor unit of Split Air Conditioner. To compare Fan Coil Units and Split Air Conditioner, these units can be evaluated and reviewed from different perspectives, the differences between Split Ac

Units and Fan Coil Units are fully described in terms of performance, cooling and heating capacity, Electricity Consumption, implementation cost, possibility of fresh air intake into the building, etc. which has been discussed elaborately in para 4.5 above.

10.4 And, the tariff code 8418 covers refrigerators, freezers and heat pumps. The refrigerators, freezers and other refrigerating or freezing equipments comprise of a compressor (with or without motor) and condenser mounted on a common base, whether or not complete with evaporator; or self-contained absorption units. These elements are commonly fitted into domestic-type refrigerators or other refrigerating cabinets. The essential elements of refrigerator are listed as compressor, condenser and evaporators whereas it is observed that no such parts are seen in the Fan Coil Unit and Air Handling Unit. However, they FCU and AHU are used for Air Conditioning and Heading 8418 does not include 'Air Conditioning System'.

10.5 In Heating, Ventilation and Air Conditioning (HVAC) System, the principal function of "Fan Coil Unit and Air Handling Unit" are maintaining required conditions of temperature and humidity in enclosed spaces. Therefore, as per tariff heading 8415 along with explanatory note for heading 8415 of WCO and para 3 &4 notes of Section-XVI, Fan Coil Unit & Air Handling Units do not appear as the parts of Chiller or parts of Air Conditioner, but, they are the components/machines that combine together to make a Heating, Ventilation and Air Conditioning (HVAC) System for maintaining required conditions of temperature. Further, Fan Coil Units & Air Handling Units have their independent and distinct function i.e. conditioning of air of enclosed space. As there is no specific customs tariff heading for Fan Coil Unit and Air Handling Unit and moreover they are also not incorporating a "refrigerating unit", therefore, they should be classifiable under CTH 84158390 (BCD-20% & IGST-28%) instead of CTI 84189900 or CTI 84159000 and parts/other accessories of FCU & AHU should be classifiable under CTH 84159000(BCD-10% & IGST-28%).

10.6 However, the importer was importing FCU and AHU under 8418 (*Refrigerators, freezers and other refrigerating or freezing equipment, electric or other, heat pumps other than air conditioning machines of heading 8415)* and describing the same as part of Chiller. Therefore, the investigation was initiated through issuance of Summon on dated 27.07.2023.

10.7 During the recording of statement, Shri Shelendra Chauhan, Divisional Manager (Technical person) of the importer has admitted that FCUs & AHUs are not the part of the Chillers, however, chilled water line is used to connect the FCU or AHU to Chillers and any other chilled water source may also be used in AHU and FCU to function. Further, he also informed that FCUs and AHUs do not incorporate a refrigerating unit and they are air conditioning machines.

10.08 Shri V. T. Sabu, Dy. General Manager-SCM of DAIPL has stated during the statement that they classified their goods as per their legal opinion obtained by them in FY 2015. However, it is observed from the legal opinion of Lakshmi Kumaran and Sridharan obtained by the importer in 2015 that they had not given any legal opinion for classification of FCUs and AHUs, the legal opinion is only for Chiller.

10.09 Further, Shri Vinod Singh, Director Operations in PDS International Pvt. Ltd. (CHA) and Shri Prathaban H., Operation Executive in Caravel Logistics Pvt. Ltd. (CHA) have informed that they had never reviewed the correctness of the CTH of an item declared by the importer and they completely rely on the classification as provided by the importer.

10.11 Further, during the investigation, the importer has agreed that the Fan Coil Unit and Air Handling Unit are not covered under customs tariff heading 8418(refrigerating equipments) and they are rightly classifiable under customs tariff heading 8415 (air conditioning machine). However, vide letter dated 04.10.2023, the importer has contended that Fan Coil Unit and Air

Handling Unit are parts of HVAC System and will be classifiable under CTI 8415 9000 as 'Parts'.

10.12 However, the contention of the importer is not justifiable in Central Air Conditioning System. As, the Air Handling Unit (AHU) can bring-in outside air, heat or cool it (i.e. conditioning) and distributes air into the space through a duct and explanatory notes of 'PARTS' under CTH 8415 issued by World Customs Organization excludes the ducted Central Air Conditioning System, which utilize ducts to carry refrigerated air from an evaporator to several areas to be cooled, from 'PARTS' of CTH 8415. Moreover, Air Handling Unit (AHU) is an independent component/'PART' of Heating, Ventilation and Air Conditioning (HVAC) System and not 'PARTS' of HVAC System. Therefore, the contention of the DAIPL that Air Handling Unit (AHU) classifiable under CTI 8415 9000 as 'Parts' is incorrect.

10.13 Further, Fan Coil Units come in two types: those without ducts and those with ducts. Fan Coil Unit without duct is a singular (standalone) system that can operate on its own to circulate air in an area and it can only condition the air that's already present in the area by pulling it in and moving backout through its heating or cooling coil. Further, the ducted type of Fan Coil Unit also brings in fresh air from the outside. Therefore, it appears that Fan Coil Unit is small version of Air Handling Unit.

Moreover, it is worthwhile to mention here that Fan Coil Unit based HVAC System is different from the Split Air Conditioner. To compare Fan Coil Units and Split Air Conditioner, these units can be evaluated and reviewed from different perspectives, the differences between Split Ac Units and Fan Coil Units are fully described in terms of performance, cooling and heating capacity, Electricity Consumption, implementation cost, possibility of fresh air intake into the building, etc.

In view of the above, it appears that Fan Coil Unit (FCU) of HVAC System is different from the indoor unit of the Split Air Conditioner. Moreover, Fan Coil Unit (FCU) is an independent component/ 'PART' of Heating, Ventilation and Air Conditioning (HVAC) System not 'PARTS' of HVAC System. Therefore, the contention of the DAIPL that Fan Coil Unit (FCU) classifiable under CTI 8415 9000 as 'Parts' or 'same as indoor unit of Split Air Conditioner' is incorrect.

10.14 Moreover, the "Chiller" is also a component of Central Air-Conditioning System same as "Fan Coil Unit or Air Handling Unit", a Central Air-Conditioning System comes into existence and becomes functional when Chiller is fitted with the Fan Coil Units or Air Handling Unit, ducting, piping, pumps etc. The primary function of the Chiller is to produce chilled water/liquid and the function of the Chiller comes to an end once the chilled water/liquid is produced. Therefore, this machine (chiller) is classifiable under CTH 8418 (Refrigerating equipments). Accordingly, DAIPL is also importing Chiller as a complete machine under CTI 84186990(Refrigerating equipments).

In view of the above, Fan Coil Unit or Air Handling Unit is also a component of the HVAC System same as the Chiller. However, before the initiation of the investigation, DAIPL was importing "Fan Coil Unit and Air Handling Unit" as 'Parts of Chiller' under CTI 84189900 (Parts of Refrigerator) for avoiding high rate of customs duty and now DAIPL has started classifying "Fan Coil Unit and Air Handling Unit" under CTI 84159000 as 'Parts of Air Conditioner' or 'same as indoor unit of Split Air Conditioner' to avail undue benefit of Free Trade Agreement. As Heating, Ventilation and Air Conditioning (HVAC) System comes into existence and becomes functional when two major machines i.e. "Fan Coil Units" or "Air Handling Unit" is connected through pipe or ducting to the "Chiller". Therefore, both i.e. Chiller and Fan Coil Unit or Air Handling Unit is a major component of HVAC System. However, DAIPL is classifying the one major component of HVAC System i.e. Chiller as a complete machine under CTI 84186990(Refrigerating equipments) and another major component of HVAC System i.e. "Fan Coil Units" or "Air Handling Unit" is being classified as a parts under

CTI 84159000 ('Parts of Air Conditioner' or 'same as indoor unit of Split Air Conditioner') and therefore the same is completely antithesis and not justifiable.

10.15 Therefore, as per tariff heading 8415 along with explanatory note for heading 8415 of WCO and para 3 & 4 notes of Section-XVI, Fan Coil Unit & Air Handling Units do not appear to be the parts of Chiller or parts of HVAC System, but, they are the components/constituents/units that together comprise a Heating, Ventilation and Air Conditioning (HVAC) System for maintaining required conditions of temperature. Further, Fan Coil Units& Air Handling Units have their independent and distinct function i.e. conditioning of air of enclosed space. As there is no specific customs tariff heading for Fan Coil Unit and Air Handling Unit and moreover they are also not incorporating a "refrigerating unit", therefore, they should be classifiable under CTH 84158390 (BCD-20% & IGST-28%) instead of CTI 84189900 or CTI 84159000 and the miscellaneous parts/other accessories of FCU & AHU should be classifiable under CTH 84159000(BCD-10% & IGST-28%).

10.16 The above interpretation of goods i.e. Fan Coil Unit and Air Handling Unit is also corroborated with the opinion submitted by Shri Roopchand Taori, Chartered Engineer and Approved Valuer, vide letter dated 06.06.2024.

10.17 Further, it is also observed that the importer has also received the Post Clearance Audit Objection on the same issue vide Letter No. CADT/CIR/ADT/TBA/1678/2023-PBA-CIR-B1-0/0 COMMR-CUS-ADT-NHAVA SHEVA dated 14.07.2023 issued by the Assistant Commissioner of Customs-Audit (Circle-B1), JNCH, Nhava Sheva, wherein, it is mentioned that DAIPL has imported Fan Coil Units with description mentioned as "FAN COIL UNIT (P/N:FXEQ63AV36) (Parts of Airconditioner) (FOR CAPTIVE CONSUMPTION)" under CTH 84159000 vide under Bill of Entry no. 6606123 dated 09.12.2021 and after issuance of letter CL No. 313/2023-24/B-1 dated 17.05.2023, DAIPL has accepted merit classification of the impugned goods i.e. under CTI 84158390 and paid the differential duty, applicable interest and penalty and requested to close the same vide their letter dated 21.06.2023. Further, it is noticed that DAIPL has never declared the Fan Coil Unit as 'Parts of Airconditioner' in their other Bills of Entry. Instead they disguised Fan Coil Unit as 'Parts of Chiller'.

10.18 Investigation revealed that Shri V. T. Sabu, Dy. General Manager-SCM of DAIPL was very well aware of the fact that Fan Coil Unit and Air Handling Unit are component of Central Air Conditioning System and not a part of a Refrigeration system which he inter alia accepted in his statement dated 24.11.2023. Also, in order to justify their actions DAIPL relied upon a legal opinion of Lakshmi Kumaran and Sridharan obtained in 2015, however, the legal opinion is given for Chiller not for FCUs and AHUs. Even then DAIPL was importing FCUs and AHUs under CTI84189900bydescribing the same as "Parts of Chillers" for evading customs duty by suppressing the true and actual description of the goods, while filing the declaration, seeking clearance at the time of importation of the impugned goods, so that Customs Officer would not be able to identify the correct nature or function of the goods.

10.19 Further, it is pertinent to mention that with the introduction of self-assessment and consequent amendments to Section 17 of the Customs Act, 1962, w.e.f. 08.04.2011, it was obligatory on the part of the importer to declare the actual description and correct classification of the goods imported by them and pay the duty applicable in respect of the said goods. Therefore, by not disclosing the true and correct facts to the proper officer, at the time of clearance of imported goods, the importer appears to have indulged in mis-declaration and mis-classification by way of suppression of facts and wilfully mis-declared and mis-classified the imported goods with intent to evade the payment of applicable customs duties. Thus, the importer has contravened the provisions of Sections 46(4) and 46(4A) of the Customs Act, 1962, inasmuch as they have mis-classified and mis-declared the goods imported by them, by

suppressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of the impugned goods.

10.20 Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011 cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self-assessment, is required to ensure that they declared 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. On the contrary, the facts of the case show that such an onus was not discharged by DAIPL, as they knowingly misclassified the goods to evade payment of duty by wilful mis-statement and suppression of facts.

10.21 Further, it is evident from the para supra that DAIPL being a Multi National Company has the in-depth knowledge of all the products imported by them, however they intentionally chose to declare air-conditioning products as the part of Refrigeration products when there is a specific Chapter Heading available in Customs Tariff for the Air conditioning products. DAIPL not only intentionally mis-declared the air conditioning products as parts of Refrigeration products but also mis-classified them in wrong CTH to evade the Customs Duty and IGST thereof. Had the DRI, Indore Zonal Unit not initiated the investigation for their misclassification, they would have not corrected the classification and not paid the correct customs duty on the products imported. Such facts prove suppression of facts, wilful mis-statement on the part of DAIPL, as a result of which extended period of limitation under section 28(4) is invokable in the case. Therefore, the differential customs duty along with applicable interest & penalty on imported goods i.e. FCUs, AHUs and parts thereof are required to be recoverable in terms clause (b) of Section 28(4) of the Customs Act, 1962 due to wilful mis-statement of the classification of the goods by DAIPL. Details of liability of last five year i.e. from Aug-18 to Aug-23 (Detail in Annexure-A to F to the SCN), is as under:-

Annexure-A (FCU Duty Calculation)

		Customs Duty Paid / Rs. (As per BOE) under CTI-84189900					Customs Duty Payable as per DRI / Rs. Under CTI-84158390				Differential Duty / Rs.			
Sr. No.	Financial Year	Assess. Value	BCD (7.5%)	SWS (10%)	IGST (18%)	Total Duty	BCD (20%)	SWS (10%)	IGST (28%)	Total Duty	BCD	SWS	IGST	Total Duty
1	2019-20 (29thJune-19 to 31st Mar-20)	1,31,42,382	9,85,679	98,568	25,60,793	36,45,040	26,28,476	2,62,848	44,89,438	73,80,762	16,42,798	1,64,280	19,28,645	37,35,722
2	2020-21 (Apr-20-Mar-21)	24,59,454	1,84,459	18,446	4,79,225	6,82,130	4,91,891	49,189	8,40,150	13,81,229	3,07,432	30,743	3,60,925	6,99,100
3	2021-22 (April-21 to Mar-22)	53,10,828	2,70,385	27,039	10,09,485	13,06,909	10,62,166	1,06,217	18,14,179	29,82,561	7,91,780	79,178	8,04,694	16,75,652
4	2022-23 (April-22 to Mar-23)	6,06,66,022	35,41,337	3,54,134	1,16,21,069	1,55,16,540	1,21,33,204	12,13,320	2,07,23,513	3,40,70,038	85,91,867	8,59,187	91,02,444	1,85,53,498
5	2023-2024 (April-23 - Aug-23)	3,59,58,108	26,96,858	2,69,686	70,06,437	99,72,981	71,91,622	7,19,162	1,22,83,290	2,01,94,074	44,94,764	4,49,476	52,76,852	1,02,21,092
A	Total	11,75,36,795	76,78,719	7,67,872	2,26,77,009	3,11,23,600	2,35,07,359	23,50,736	4,01,50,569	6,60,08,664	1,58,28,640	15,82,864	1,74,73,560	3,48,85,064

Annexure-B (FCU Parts Duty Calculation)

		Customs Duty Paid / Rs. (As per BOE) under CTH-84189900	Customs Duty Payable as per DRI /Rs. Under CTH-84159000	Differential Duty / Rs.

Sr. No.	Financial Year	Assess. Value	BCD (7.5%)	SWS (10%)	IGST (18%)	Total Duty	BCD (10%)	SWS (10%)	IGST (28%)	Total Duty	BCD	SWS	IGST	Total Duty
1	2019-20 (29thJune-19 to 31st Mar-20)	12,54,707	94,103	9,410	2,44,480	3,47,993	1,25,471	12,547	3,89,963	5,27,981	31,368	3136.7669	1,45,483	1,79,988
2	2020-21 (Apr-20-Mar-21)	5,84,364	43,827	4,383	1,13,863	1,62,073	58,436	5,844	1,81,620	2,45,900	14,609	1,461	67,757	83,827
3	2021-22 (April-21 to Mar-22)	8,31,903	62,393	6,239	1,62,096	2,30,728	83,190	8,319	2,58,555	3,50,065	20,798	2,080	96,459	1,19,336
4	2022-23 (April-22 to Mar-23)	18,10,563	69,805	6,980	3,39,723	4,16,508	1,81,056	18,106	5,62,723	7,61,885	1,11,252	11,125	2,23,000	3,45,377
5	2023-2024 (April-23 - Aug-23)	6,64,657	49,849	4,985	1,29,508	1,84,343	66,466	6,647	2,06,575	2,79,688	16,616	1,662	77,067	95,345
B	**Total**	**51,46,194**	**3,19,977**	**31,998**	**9,89,670**	**13,41,645**	**5,14,619**	**51,462**	**15,99,437**	**21,65,518**	**1,94,642**	**19,464**	**6,09,767**	**8,23,873**

Annexure-C (AHU Duty Calculation)

		Customs Duty Paid / Rs. (As per BOE) under CTH-84189900					Customs Duty Payable as per DRI /Rs. Under CTH-84158390				Differential Duty / Rs.			
Sr. No.	Financial Year	Assess. Value	BCD (7.5%)	SWS (10%)	IGST (18%)	Total Duty	BCD (20%)	SWS (10%)	IGST (28%)	Total Duty	BCD	SWS	IGST	Total Duty
1	2019-20 (29thJune-19 to 31st Mar-20)	0	0	0	0	0	0		0	0	0	0	0	0
2	2020-21 (Apr-20-Mar-21)	0	0	0	0	0	0		0	0	0	0	0	0
3	2021-22 (April-21 to Mar-22)	342035.77	25652.68275	2565.268275	66645.66978	94863.62081	68407.154	6840.7154	116839.4199	192087.2884	42754.47125	4275.447133	50193.74925	97223.66762
4	2022-23 (April-22 to Mar-23)	1,30,24,885	9,76,866	97,687	25,37,899	36,12,452	26,04,977	2,60,498	44,49,301	73,14,775	16,28,111	1,62,811	19,11,402	37,02,324
5	2023-2024 (April-23 - Aug-23)	2,67,21,317	20,04,099	2,00,410	52,06,649	74,11,157	53,44,263	5,34,426	91,28,002	1,50,06,692	33,40,165	3,34,016	39,21,353	75,95,534
C	**Total**	**4,00,88,237**	**30,06,618**	**3,00,662**	**78,11,193**	**1,11,18,473**	**80,17,647**	**8,01,765**	**1,36,94,142**	**2,25,13,554**	**50,11,030**	**5,01,103**	**58,82,949**	**1,13,95,082**

Annexure-D (AHU Parts Duty Calculation)

		Customs Duty Paid / Rs. (As per BOE) under CTH-84189900					Customs Duty Payable as per DRI /Rs. Under CTH-84159000				Differential Duty / Rs.			
Sr. No.	Financial Year	Assess. Value	BCD (7.5%)	SWS (10%)	IGST (18%)	Total Duty	BCD (10%)	SWS (10%)	IGST (28%)	Total Duty	BCD	SWS	IGST	Total Duty
1	2019-20 (29thJune-19 to 31st Mar-20)	0	0	0	0	0	0		0	0	0	0	0	0
2	2020-21	0	0	0	0	0	0		0	0	0	0	0	0

	(Apr-20-Mar-21)													
3	2021-22 (April-21 to Mar-22)	0	0	0	0	0	0		0	0	0	0	0	0
4	2022-23 (April-22 to Mar-23)	0	0	0	0	0	0		0	0	0	0	0	0
5	2023-2024 (April-23 - Aug-23)	0	0	0	0	0	0		0	0	0	0	0	0
D	Total	0	0	0	0	0	0		0	0	0	0	0	0

Annexure-E (Chiller Duty Calculation)

		Customs Duty Paid / Rs. (As per BOE) under CTH-84189900					Customs Duty Payable as per DRI /Rs. Under CTH-84186990				Differential Duty / Rs.			
Sr. No.	Financial Year	Assess. Value	BCD (7.5%)	SWS (10%)	IGST (18%)	Total Duty	BCD (20%)	SWS (10%)	IGST (28%)	Total Duty	BCD	SWS	IGST	Total Duty
1	2019-20 (29thJune-19 to 31st Mar-20)	20,59,261	1,54,445	15,444	4,01,247	5,71,136	3,08,889	30,889	4,31,827	7,71,605	1,54,445	15,444	30,580	2,00,469
2	2020-21 (Apr-20-Mar-21)	0	0	0	0	0	0		0	0	0	0	0	0
3	2021-22 (April-21 to Mar-22)	0	0	0	0	0	0		0	0	0	0	0	0
4	2022-23 (April-22 to Mar-23)	0	0	0	0	0	0		0	0	0	0	0	0
5	2023-2024 (April-23 - Aug-23)	0	0	0	0	0	0		0	0	0	0	0	0
E	Total	20,59,261	1,54,445	15,444	4,01,247	5,71,136	3,08,889	30,889	4,31,827	7,71,605	1,54,445	15,444	30,580	2,00,469

***The importer has paid difference liability along with interest for the period of FY 2019-20 as the importer has misclassified Chiller under CTI 84189900 (Parts of Refrigerator) instead of CTI 84186990 (Refrigerating Equipment/Unit).**

Annexure-F (Financial Year wise total differential Duty Calculation)

		Customs Duty Paid / Rs. (As per BOE)					Customs Duty Payable as per DRI / Rs.				Differential Duty / Rs.			
Sr. No.	Financial Year	Assess. Value	BCD (7.5%)	SWS (10%)	IGST (18%)	Total Duty	BCD (20%)	SWS (10%)	IGST (28%)	Total Duty	BCD	SWS	IGST	Total Duty
1	2019-20 (29thJune-19 to 31st Mar-20)	1,64,56,350	12,34,227	1,23,422	32,06,520	45,64,169	30,62,836	3,06,284	53,11,228	86,80,347	18,28,610	1,82,861	21,04,708	41,16,179
2	2020-21 (Apr-20-Mar-21)	30,43,818	2,28,286	22,829	5,93,088	8,44,203	5,50,327	55,033	10,21,770	16,27,130	3,22,041	32,204	4,28,682	7,82,927
3	2021-22 (April-21 to Mar-22)	64,84,767	3,58,431	35,843	12,38,227	16,32,501	12,13,763	1,21,376	21,89,574	35,24,713	8,55,332	85,533	9,51,346	18,92,212
4	2022-23 (April-	7,55,01,470	45,88,008	4,58,801	1,44,98,690	1,95,45,500	1,49,19,238	14,91,924	2,57,35,537	4,21,46,698	1,03,31,229	10,33,123	1,12,36,847	2,26,01,199

	22 to Mar-23)													
5	2023-2024 (April-23 - Aug-23)	6,33,44,082	47,50,806	4,75,081	1,23,42,594	1,75,68,481	1,26,02,351	12,60,235	2,16,17,867	3,54,80,453	78,51,545	7,85,154	92,75,273	1,79,11,972
F=A+B+C+D+E	**Total**	**16,48,30,488**	**1,11,59,758**	**11,15,975**	**3,18,79,120**	**4,41,54,854**	**3,23,48,515**	**32,34,852**	**5,58,75,975**	**9,14,59,342**	**2,11,88,757**	**21,18,875**	**2,39,96,855**	**4,73,04,488**
***The importer has paid partial differential duty liability for FCU from April-22 to Aug-23, Parts of FCU from Oct-22 to Aug-23, AHU from April-21 to Aug-23 amounting to Rs. 4,07,04,547/- along with interest amounting to Rs. 46,48,459/- out of total differential duty liability of Rs. 4,73,04,488/-.**														

10.22 However, during the further course of the investigation, Shri V. T. Sabu, Dy. General Manager-SCM of DAIPL has agreed the major heading of CTH of Fan Coil Unit, Air Handling Unit& parts thereof is CTH-8415. However, he has not agreed to the subheading of the imported goods i.e. FCUs & AHUs as CTI-84158390. He stated that the correct classification of Fan Coil Unit and Air Handling Unit is CTI-84159000(like the indoor and outdoor unit of split ACs) (BCD - 20% & IGST - 28%) and the correct classification of the parts of FCUs and AHUs is CTH 84159000 (BCD-10% & IGST–28%) and started to import FCUs and AHUs under CTI-84159000 from September, 2023 onwards. Further, vide letter 23.11.2023,the importer has paid the partial differential duty liability for FCU, AHU & parts thereof along with Chiller as DAIPL has also misclassified Chiller under CTI 84186990(Refrigerating Equipment/Unit) instead of CTI 84189900 (Parts of Refrigerator) for B/E 6818204 dated 10-02-2020under protest, port wise details are as under:-

Port wise partial differential duty payment along with interest on FCU, AHU & parts thereof along with Chiller by DAIPL							**Amount in Rs.**
	Port of Import	**BCD**	**SWS**	**IGST**	**Total Duty (BCD+SWS+IGST)**	**Interest (upto 10/Nov/2023)**	**Total**
	Nhava Sheva Port						
	- FCU	1,29,79,382	12,97,938	1,42,53,386	**2,85,30,706**	**34,98,401**	3,20,29,107
	- AHU	42,754	4,275	50,194	**97,224**	**24,373**	1,21,596
	- FCU Parts	1,09,340	10,934	2,14,133	**3,34,406**	**32,376**	3,66,782
	- Chiller	1,54,445	15,444	30,580	**2,00,469**	**1,12,784**	3,13,254
A	**Total Nhava Sheva Port**	1,32,85,920	13,28,592	1,45,48,293	**2,91,62,805**	**36,67,934**	3,28,30,739
	Chennai Sea Port						
	- FCU	1,07,249	10,725	1,25,910	**2,43,884**	**11,426**	2,55,310
	- AHU	49,68,275	4,96,828	58,32,755	**1,12,97,858**	**9,69,099**	1,22,66,957
B	**Total Chennai Sea Port**	50,75,524	5,07,552	59,58,665	**1,15,41,742**	**9,80,525**	1,25,22,267
C	**Grand Total (A+B)**	1,83,61,445	18,36,144	2,05,06,958	**4,07,04,547**	**46,48,459**	**4,53,53,006**
*The importer has paid partial differential duty liability for FCU from April-22 to Aug-23, Parts of FCU from Oct-22 to Aug-23, AHU from April-21 to Aug-23 amounting to Rs. 4,07,04,547/- along with interest amounting to Rs. 46,48,459/- out of total differential duty liability of Rs. 4,73,04,488/-.							

However, the above classification of the importer still does not appear correct for Fan Coil Unit and Air Handling Unit. As per tariff heading 8415 along with explanatory note for heading 8415 of WCO and para 3 & 4 notes of Section-XVI, Fan Coil Unit & Air Handling Units do not appear to be the parts of Chiller or parts of HVAC System, but, they are the various components that are interconnected together to make a Heating, Ventilation and Air Conditioning (HVAC) System for maintaining required conditions of temperature. Further, Fan Coil Units& Air Handling Units have their independent and distinct function i.e. conditioning of air of enclosed space. As there is no specific customs tariff heading for Fan Coil Unit and Air Handling Unit and moreover they are also not incorporating a "refrigerating unit", therefore, they should be classifiable under CTI 84158390 (BCD-20% & IGST-28%) instead of CTI 84189900 or CTI 84159000 and parts/other accessories of FCU & AHU should be classifiable under CTH 84159000 (BCD-10% & IGST-28%).

11. Demand of Differential Duty liability for confiscation and penalty:-

11.1 The classification of the goods i.e. FCU, AHU & parts thereof imported vide Bills of Entry as detailed in Annexure-A to F to the SCN, is liable to be rejected and held rightly classifiable under CTH-84158390.

11.2 It also appears that the importer has contravened the provisions of Section 46(4) of Customs Act, 1962 by mis-classification of the goods, in respect of the imported goods cleared in the past Bills of Entry mentioned in Annexure – I to the SCN, having Total Assessable Value of **Rs.16,48,30,488/- (Rupees Sixteen Crore Forty-Eight Lakhs Thirty Thousand Four Hundred and Eighty-Eight only)**. Accordingly, it appears that the said goods were liable for confiscation under Section 111(m) of the Customs Act. 1962.

Goods	Assessable Value (in Rs.)
Fan Coil Units	11,75,36,795
Parts of FCU	51,46,194
Air Handling Units	4,00,88,237
Parts of AHU	0
Water Cooled Scroll (Part of Chiller)	20,59,261
Total	**16,48,30,488**

11.3 Further, in respect of consignments covered by Bills of Entry mentioned in Annexure-A to E to the SCN, differential customs duty amounting to **Rs.4,73,04,488/- (Rupees Four Crore Seventy-Three Lakhs Four Thousand Four Hundred and Eighty-Eight Only)** as worked out in the Annexure-A to E to the SCN, appears liable to be recovered from the importer under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid. As the duty was short paid by collusion, wilful mis-statement and suppression of the facts by the importer as discussed above, the importer appears liable for penalty under provisions of Section 114A of the Customs Act, 1962 in respect of the past consignments.

11.4 The details of the partial duty payment along with the interest paid by DAIPL under protestare as under:-

(Financial Year wise total differential Duty Calculation)													
		Differential Duty payable				Differential Duty paid during the investigation				Remaining differential Duty to be paid			
Sr. No.	Financial Year	BCD	SWS	IGST	Total Duty	BCD	SWS	IGST	Total Duty	BCD	SWS	IGST	Total Duty
1	2019-20 (29thJune-19 to 31st Mar-20)	18,28,610	1,82,861	21,04,708	41,16,179	1,54,445	15,444	30,580	2,00,469	16,74,165	1,67,417	20,74,128	39,15,710
2	2020-21 (Apr-20-Mar-21)	3,22,041	32,204	4,28,682	7,82,927	-	-	-	-	3,22,041	32,204	4,28,682	7,82,927
3	2021-22 (April-21 to Mar-22)	8,55,332	85,533	9,51,346	18,92,212	42,754	4,275	50,194	97,224	8,12,578	81,258	9,01,152	17,94,988
4	2022-23 (April-22 to Mar-23)	1,03,31,229	10,33,123	1,12,36,847	2,26,01,199	1,03,12,701	10,31,270	1,11,50,912	2,24,94,883	18,528	1,853	85,935	1,06,316
5	2023-2024 (April-23 - Aug-23)	78,51,545	7,85,154	92,75,273	1,79,11,972	78,51,545	7,85,154	92,75,273	1,79,11,972	-	-	-	-

Total	2,11,88,757	21,18,875	2,39,96,855	4,73,04,488	1,83,61,445	18,36,143	2,05,06,959	4,07,04,548	28,27,313	2,82,732	34,89,897	65,99,940
*The importer has paid partial differential duty liability amounting to Rs. 4,07,04,547/- along with interest amounting to Rs. 46,48,459/- out of total differential duty liability of Rs. 4,73,04,488/-.												

11.5 DAIPL has paid partial differential duty amounting to **Rs.4,07,04,547/-(Rupees Four Crore Seven Lakhs Four Thousand Five Hundred and Forty-Seven Only)** and interest amounting to **Rs.46,48,459/-(Rupees Forty-Six Lakhs Forty-Eight Thousand Four Hundred and Fifty-Nine Only) (both under protest)**, which is liable to be appropriated against outstanding extended period differential duty liability amounting to **Rs.4,73,04,488/- (Rupees Four Crore Seventy-Three Lakhs Four Thousand Four Hundred and Eighty-Eight Only)** in terms clause (b) of Section 28(4) of the Customs Act, 1962 and the remaining differential duty liability amounting to **Rs.65,99,940/-(Rupees Sixty-Five Lakhs Ninety-Nine Thousand Nine Hundred and Forty Only)** is yet to be recoverable from the DAIPL.

12. Therefore, the importer M/s Daikin Airconditioning India Pvt. Ltd. (IEC- 500010323), having its registered address at – 210, 1st Floor, Okhla Industrial Area, Phase 3, New Delhi – 110 020was called upon to show cause in writing to Commissioner of Customs, Nhava Sheva-V, JNCH, Taluka-Uran, District Raigad, Maharahthra-400707 within 30 days from date of receipt of this notice, as to why:

(i) The classification of the goods i.e. FCU, AHU & parts thereof imported vide Bills of Entry as detailed in Annexure-A to F to the SCN,should not be rejected and re-classified under CTH-8415 8390.

(ii) The goods totally valued at Rs.16,48,30,488/- (Rupees Sixteen Crore Forty-Eight Lakhs Thirty Thousand Four Hundred and Eighty-Eight only) imported vide Bills of Entry as detailed in Annexure-A to F to the SCN, should not be confiscated under Section 111(m) of the Customs Act, 1962.

(iii) The total differential duty amounting to Rs.4,73,04,488/- (Rupees Four Crore Seventy-Three Lakhs Four Thousand Four Hundred and Eighty-Eight Only) as calculated in Annexure-A to Fto the SCN, should not be demanded by them under the provisions of Section 28(4) of the Customs Act, 1962.

(iv) Applicable interest under Section 28AA of the Customs Act, 1962, should not be demanded from them.

(v) Penalty under Sections 112(a) and / or 114(A) of the Customs Act, 1962 should not be imposed on them for their acts of omissions and commissions.

(vi) The differential duty, along with interest already paid by M/s Daikin Airconditioning India Pvt. Ltd. (IEC- 0500010323) during the investigation, as per Para 11.5 of theSCN, should not be appropriated.

WRITTEN REPLY OF THE NOTICEE IN RESPONSE TO THE SHOW CAUSE NOTICE:

13. The importer submitted written submissions dated 24.07.2025 and 30.07.2025, wherein, it was inter-alia stated that:

13.1 The noticee is a private limited company offering a wide range of premium and energy-efficient air conditioners. It is *inter-alia*, engaged in the import, manufacture and sale of Heating, Ventilation and Air Conditioning Systems (hereinafter referred to as 'HVAC systems'), etc. During the period 29.06.2019 to 31.08.2023, they imported Fan Coil Units, Air Handling Units and parts thereof like panels. Controllers, etc., classifying the same under CTI 8418 9900 in terms of Customs Tariff Act, 1975. At the time of import, they paid BCD @ 7.5% and IGST @ 18% in terms of the classification adopted. In few cases, they claimed exemption from BCD under Sl. No. 1117(I) of Notification No. 46/2011-Cus dated 01.06.2011.

13.2 Technical overview of the impugned goods:

13.2.1 The disputed goods are used by the Noticee in the manufacture of HVAC systems. HVAC systems is a technologically designed system to control the indoor environment by regulating temperature, humidity, air quality, and air flow in enclosed spaces such as homes, offices, industrial buildings, and vehicles. The main components of an HVAC system include many parts, however, in the present SCN, classification of FCU, AHU and parts thereof is under dispute. HVAC is a system of air conditioning comprising of machines such as Chiller, Pumps & Terminals – FCU and AHU. HVAC systems change both the temperature and the humidity of the Air. FCUs or AHUs are terminals which are connected through the chilled water pipes to Chiller which is the source of supply of chilled water to these AHUs and FCUs through which these AHUs and FCUs are able to perform their function.

13.2.2 FAN COIL UNIT (FCU): FCU is used in HVAC systems to control airflow in individual spaces within a building. A fan coil unit works by using a fan to move air through a heating or cooling coil to condition the air in a space. The primary function of an FCU is to provide localized heating or cooling to the area it serves with the help of chillers. FCU consists of 3 main components namely fan motor, heat exchanger coils and PCB which is connected with a valve to control the flow of water as per the set temperature. It also comprises of other components, which are discussed below:

a. **Fan Motor and Fan Blower** - Fan Motor is used for rotating impeller of the Fan Blower at certain RPM to provide desired air volume for specific capacity of unit.

b. **Heat Exchanger** - Heat Exchangers are a group of copper coils arranged in rows with aluminum fins, where copper tubes carry chilled water which absorbs heat from air passed over it by the fan motor.

c. **PCB (Printed Circuit Board)** - PCB is the printed circuit board which controls the fan speed and water flow depending upon logic as per set mode, set temperature, room temperature etc.

d. **Main Drain Pan** - The Main Drain Pan is used for collecting condensed water generated at heat exchanger process of cooling

e. **Filters** - Filters are at the rear end of the fan coil units through which air is sucked in by fan blowers.

f. **Main Casing** - Main Casing is the body containing and protecting all the above components in one box.

FCUs can be of various types including Ceiling Concealed FCU, 4-Way Cassette FCU, Wall Mounted FCU, High Static FCU, Floor Standing FCU, Tower Floor Standing FCU, etc. Further, FCU comes in two types: those without ducts and those with ducts. FCU without duct is a singular (standalone) system that can operate on its own to circulate air in an area and it can only condition the air that's already present in the area by pulling it in and moving backout through its heating or cooling coil. Further, the ducted type of FCU also brings in fresh air from the outside. The FCUs under dispute in the present case are ducted FCUs.

13.2.3 AIR HANDLING UNIT (AHU): An AHU is a key component of large HVAC systems found in commercial, industrial, and institutional buildings. Its main purpose is to regulate and circulate air throughout the building, ensuring proper ventilation, comfortable temperature, and suitable humidity levels. Key Functions of an AHUs are (i) Air treatment and circulation (ii) Filtration (iii) Temperature and humidity control and (iv) Ventilation. The main parts of an AHU typically include:

a. **Housing/Casing:** The insulated enclosure or metal box that contains all AHU components and prevents heat loss and air leakage.

b. **Blower/Fan:** Moves air through the AHU and into the ductwork. Usually, a centrifugal or axial fan is used.

c. **Filters:** Clean the air by trapping dust, pollen, debris, and sometimes bacteria or allergens. Types of filters include coarse, fine, and HEPA, depending on cleanliness requirements.
d. **Mixing Chamber/Box:** Where fresh (outside) air and return (recirculated) air are combined to manage energy use and air quality.
e. **Dampers:** Adjustable plates that control airflow, mixing ratios, and isolation within the AHU. They manage intake, mixing, and exhaust air flows.
f. **Heating Coil:** Heats the air using hot water, steam, electric elements, or refrigerant. It can be positioned before or after the cooling coil for preheating/reheating.
g. **Cooling Coil:** Cools and dehumidifies air, usually using chilled water or direct expansion (DX) refrigerant.
h. **Humidifier/Dehumidifier:** Adjusts the moisture content of the air when required with the help of chiller.
i. **Condensate Drain/Tray:** Collects and removes condensation formed when air is cooled and moisture condenses out.
j. **Sensors:** Temperature, humidity, and pressure sensors monitor and control environmental conditions.
k. **Controls/Panel:** Electrical or digital controls to automate and monitor system operation

13.3 How FCUs and AHUs work: Both FCU and AHU are necessarily used in conjunction with a chiller. These goods are connected to a chiller on one end. Normally, one chiller located at the roof or underground to cater to each unit installed at each level in the building. The function of the chiller is to refrigerate i.e. to provide chilled water inside the pipes which flows through the cooling coil in the disputed goods. Chillers perform the function of chilling, without any assistance from the AHU or FCU. Unless FCUs/AHUs receive chilled water from the Chiller, they will not be able to give cold air to the desired area. Basis the temperature requirement in the room/place, as per the user, PCB sets the temperature of the water to be fed by the chiller to the FCU or AHU. The air passes into these goods through a filter. The filter removes the dust from the air passing through it. The clean air is then passed over the cooling coils during which the heat in the air is removed to obtain the air of desired temperature. During the process of removal of heat from the air passed over the cooling coil, the water vapour in the air condenses which results in removal of humidity from the air. The water condensate is then collected at the main drain pan and returned to the chiller. The air of desired temperature is then blown by the fan to the room or space in which the FCU or AHU are installed. Thus, for FCU/AHU to be able to provide cool air, it must receive cold water from the Chiller. If it does not receive cold water from the Chiller, it will function merely as a fan which will blow air received from outside, which is not the intended use of the products.

13.4 The SCN has proposed to re-classify the FCUs and AHUs under CTI 8415 8390 and parts thereof under CTI 8415 9000 on the ground that the AHUs and FCUs have their independent and distinct function i.e. conditioning of air of enclosed spaces and as there is no specific customs tariff heading for FCU and AHU and moreover they are also not incorporating a "refrigerating unit". They deny all the allegations and proposals made in the SCN as incorrect and not sustainable.

13.5 The disputed goods are correctly classifiable as parts of air conditioning machines under CTI 8415 90 00.

13.5.1 The issue involved in the present case is whether the disputed goods are correctly classifiable under CTI 8415 9000 (correct classification as per Noticee) or under CTI 8415 8390 (as per the department) of the Tariff Act. They inadvertently classified the disputed goods under CTI 8418 9900 in the impugned Bs/E, however, later based on internal deliberations and opinion received from legal consultants, the Noticee started claiming classification for the impugned goods under CTI 8415 9000 as parts of air conditioning machines.

13.5.2 As per the HSN Explanatory Notes to CTH 8415, the following goods are covered under Heading 84.15:

"This heading covers certain apparatus for maintaining required conditions of temperature and humidity in closed spaces. The machines may also comprise elements for the purification of air.

They are used for air conditioning offices, homes, public halls, ships, motor vehicles, etc., and also in certain industrial installations requiring special atmospheric conditions (e.g., in the textile, paper, tobacco or food industries).

The heading applies only to machines:

(1) Equipped with a motor-driven fan or blower, and

(2) Designed to change both the temperature (a heating or cooling element or both) and the humidity (a humidifying or drying element or both) of air, and

(3) For which the elements mentioned in (1) and (2) are presented together."

13.5.3 It is evident from the above extracts that CTH 8415 covers only those machines which have the following features:

(a) Machine must have a motor driven fan or blower;

(b) Machine must be capable of changing the temperature (only heating, only cooling, or both heating and cooling);

(c) Machine must be capable of changing the humidity (make air more humid, make air dry, or both);

(d) Units performing all the aforesaid functions must be presented together.

13.5.4 The AHUs and FCUs can work only in conjunction with chillers to provide cold air to the desired area/space. The limited function of the AHU/FCU is to blow air. If they receive cold water from the chiller which moves through the cooling coils, the air will get cooled and AHU/FCU will provide cold air. However, if it does not receive cooled water, then also it will continue to blow air, but it will be at the normal temperature. Therefore, for the entire HVAC system to be able to perform the function of changing or maintaining the temperature within enclosed spaces, both the chiller and the FCU/AHU must work together as a single unit. If either of these units are absent, the HVAC system will not perform its desired or intended function. In an FCU or AHU, chilled water or hot water flows through the coil to cool or heat the space. The water is cooled or heated in a separate system – such as a chiller or a boiler system. However, the chilled water present in the pipes cannot go inside the room and control the temperature of room. Therefore, the role of FCU and AHU come into picture. Chillers provide the source of the chilled water that feeds the cooling coil within the AHUs and FCUs. Supply Air will blow over the chilled water coil in the AHU or FCU to provide cool air to the spaces in the building. The chilled water coil absorbs the heat from the air that passes over them and takes the heat back to the chiller where it will be rejected to the outside. FCUs and AHUs provides the airflow that gets cooled because of cooling coils. FCU and AHU maintain the air quality and temperature within the building.

13.5.5 The disputed goods are not able to perform heating or cooling the air without being connected to a chiller system or a boiler system. Unless and until there is an external source of supply of chilled or hot water, these disputed FCUs and AHUs cannot function on their own. FCUs and AHUs do not have any functionality or capability to act as Air Conditioning machines.Therefore, the condition mentioned above that the machines must be capable of changing the temperature (either heating or cooling) is not being fulfilled in the present case and therefore, the disputed goods fall out of purview of 'air conditioning machines'.

13.5.6 The SCN has failed to consider whether these three conditions are being satisfied by the AHUs and FCUs being imported by Noticee on a standalone basis. Undisputedly, they are not imported with Chillers in the present case. Therefore, they must be assessed in the as-imported condition, and not by taking into account their end use in conjunctions with Chillers. The SCN merely proceeds on assumptions and presumptions that these AHUs and FCUs have an

independent function of conditioning the air and therefore classifiable as air conditioning machines, without having provided any technical data/material/advise in support of this contention. Noticee submitted that such an allegation is completely baseless and is liable to be discarded.

13.5.7 The disputed goods are classifiable as parts of air conditioning machines, from the Section Note XVI to the Tariff Act the same can be inferred that the parts which are included specifically under any heading of Chapter 84, 85, 90 or 91 should be classified in their respective heading in all cases as the specific good and not as a part of any good even though it is suitable to be used with a particular kind of machine. Therefore, the goods which can be identified and classified as individual goods should be classified under the respective heading of Chapter 84, 85, 90 or 91. Further, the parts other than the ones which have specific headings in Chapter 84 or 85, if suitable for use solely or principally with a particular kind of machine are to be classified with the machines of that kind or under CTH 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538, whichever is more appropriate.

13.5.8 Section Note 2(a) to Section XVI provides that parts of goods should be classified in their specific relevant headings. As there is no specific heading of FCU or AHU, Section Note 2(a) does not apply. Section Note 2(b) provides that 'other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading are to be classified with the machines of that kind or in heading'. In the present case, the disputed goods are solely used with air conditioning machines classifiable under CTH 8415, hence, by virtue of Section Note 2(b), the disputed goods are classifiable under CTI 8415 9000 as 'parts'.

13.5.9 To further support the contention of the Noticee that the disputed goods are not independent air conditioning machines but parts thereof, reliance is placed on the report of Chartered Engineer and Approved Valuer (RUD-14 to the SCN) which has been relied upon in the SCN to state that the disputed goods are classifiable under CTI 8415 8390. It is the finding of the Chartered Engineer himself that the FCUs and AHUs are not independent machines as they cannot function without a chiller / heater. Therefore, the evidence relied upon by the Department actually supports the case of the Noticee in the present case. From the above report it is clear that even though the FCUs and AHUs have distinct functions of their own, however, the same cannot function without being connected to chiller or heater. The disputed goods cannot be considered as independent machines (especially complete 'air conditioning machine') to be classified under any single '-' entry under CTH 8415 (except for PARTS). Therefore, the disputed goods merit classification as part of air conditioning machine classifiable under CTI 8415 9000.

13.5.10 Noticee relied on the ruling passed by Appellate Authority for Advance Ruling, Karnataka in the matter of In Re: M/s. Bhutoria Refrigeration Private Limited 2019 (7) TMI 1506 wherein classification of FCUs was being considered. While the Appellant therein was claiming classification of FCU under CTH 8418, the Department was classifying the same as parts of air conditioning system under CTH 8415. Also, in the judgment of Keyar Industries v. Collector of Central Excise, Madras - 1997 (91) E.L.T. 587 (Tri.), the Tribunal has held that air handling unit is a specific part of the air conditioning machine and falls for classification under Heading 84.15 of the Central Excise Tariff by virtue of Note 2(b) to the Section XVI of the Tariff. This was followed in the judgment of Pawan Brothers (P) Ltd. Versus Collector of C. EX., Meerut 1997 (95) E.L.T. 646 (Tribunal). Further, in a ruling passed by GST Authority for Advance Ruling, Karnataka in the matter of In Re: M/s. VTS TF Air Systems Pvt. Ltd., 2019 (30) G. S. T. L. 682 (A. A. R. - GST) it was again held that AHUs are classifiable as parts of air conditioning systems under CTI 8415 9000.

13.5.11 Reference can also be placed on US Cross Ruling No. N326143 dated 13.06.2022 wherein the issue related to classification of AHUs. Therein, the AHUs were paired with separately imported outdoor units and together, the units made-up a system that cools and heats spaces. The AHUs featured a drain pan and consisted of an insulated steel cabinet that houses an

evaporator coil, and a fan. In the said Ruling also, AHUs were held to be classifiable under sub-heading 8415.90.8065 of Harmonized Tariff Schedule of the United States (HTSUS). Noticee further relied on the following judgments:

i Muskan Engineering Industries, Parveen Bansal, Authorized Signatory vs. CCE, Panchkula, 2018 (10) TMI 959 - CESTAT Chandigarh

ii Holyland Marketing Pvt Ltd vs. Commissioner of Customs (Import) ICD, Tughlakabad, New Delhi, 2023 (12) TMI 17 – CESTAT New Delhi

13.5.12 On analysing the scope of various sub-headings falling under CTH 8415, it is evident that the sub heading 8415 10, 8415 20 and residuary entry of "other" covers different types of air conditioners and parts thereof are classifiable under CTI 8415 9000 i.e. incomplete air conditioning machines will fall under this CTI. It is settled principle that in order to classify any product under two dashes or three dashes, it must fulfill the description of single dash. As can be seen from the above, all the single dashes (Except the entry 'parts') cover complete air conditioners (ductless and ducted). Parts are specifically covered under CTI 8415 9000. In the present case, as discussed above, the disputed goods are parts of HVAC system and cannot function independently without being connected with other components like chillers, ducts, etc. The function of heating or cooling which is the primary function of air conditioning system, cannot be performed independently by the FCUs and AHUs. Therefore, the same are liable to be classified as parts of air conditioning machines. From the above understanding, it is evident that it is Department's own stand that FCUs and AHUs are not complete air conditioning machines but are parts thereof. This has also been specifically mentioned at various places in the SCN that the disputed goods are part of HVAC system and not a complete system in itself. In view thereof, the disputed goods are eligible to be classified as parts of air conditioning machines.

13.5.13 The SCN in Para 10.12has proceeded on a wrong premise to exclude the impugned goods from the purview of parts of air conditioning machines. Noticee submitted that the HSN explanatory notes being referred in said para are for subheading 8415.10 which excludes ducted air conditioning systems from this subheading, and the same is not for sub-heading 8415.90 which covers parts. This depicts complete vagueness and absurdity in the SCN which provides sufficient reason to drop the SCN on this ground alone.

13.5.14 It is pertinent to mention that the Department in the SCN has relied on Section Notes 3 and 4 of Section XVI. Noticee submitted that Section Note 3 applies to composite machines i.e. machines that perform more than one function (For example a multi-function printer performing the function of printing, scanning etc.). In the present case, the disputed goods perform one function (i.e. controlling temperature by FCU; and maintain indoor air quality, temperature, and humidity by AHU). Thus, FCUs and AHUs are not composite machines.

13.5.15 Further, Section Note 4 covers machines that consist of individual components intended to contribute together to perform a clearly defined function. In order to apply Section Note 4, all the components must be imported and cleared together and those components must perform clearly defined function. This is based on the settled law that nature of imported goods must be seen at the time of import for classification purposes. In the present case, the Noticee has not imported FCU, AHU, Chiller and other components together, hence, it is not correct to state that all the components are intended to perform a defined function i.e. Air Conditioning. Thus, section note 3 and 4 are not applicable.

13.5.16 For the reasons discussed above, the impugned goods merit classification under CTI 8415 9000 as parts of air conditioning machines. Consequentially, the disputed goods being classifiable under CTI 8415 9000 are eligible for benefit of S. No. 449A of Notification No. 50/2017 dated 30.06.2017 which provided exemption of duty to 10% to all goods falling under CTI 8415 9000 other than indoor or outdoor units of split-system air conditioner. The disputed goods not being indoor or outdoor units of split system air conditioner, are eligible for benefit of the said Notification.

13.6 They classified the disputed goods under CTI 8418 9900 of the Tariff Act and the same was accepted by the department at the time of import of these goods. However, after due consideration, they are of the bona-fide understanding that the disputed goods are more specifically and correctly classifiable under CTI 8415 9000 of the Tariff Act respectively. The change in classification is based on self-assessment and interpretation of respective tariff entries, Section Notes and the Explanatory Notes to HSN. It is permissible for them to seek the aforementioned change when the assessment is re-opened by the department for any reason. Reliance is placed on the case of Lili Foam Industries (P) Ltd. vs. Collector of Central Excise, 1990 (46) ELT 462 (Tribunal) wherein the Hon'ble Tribunal has held that once the assessments are re-opened by the department, the assessee is entitled to question the rate of duty originally applied. Noticee relied on the following cases:

(i) Commissioner of Central Excise, Guntur vs. Asian Peroxide Limited, 2003 (155) E.L.T. 431 (S.C.)
(ii) Bakeman's Home Products Pvt. Ltd. vs. Collector of Customs, Bombay, 1997 (95) ELT 278 (Tribunal)
(iii) Polydyne Corporation vs. Collector of Central Excise, Mumbai, 1999 (108) ELT 94 (Tri.-Del)
(iv) Decora Ceramics Pvt. Ltd. vs. Collector of Central Excise, Rajkot, 1998 (100) ELT 297 (Tribunal);
(v) Hindustan Lever Limited vs. Commissioner of Central Excise, Pune- II, 2010 (262) E.L.T. 1041 (Tribunal-Mumbai);
(vi) Indian Oil Corporation vs. Commissioner of Customs, Ahmedabad, 2005 (71) R.L.T. 686 (Tribunal);
(vii) Veena Organics (P) Limited vs. Collector of Central Excise, 1992 (59) E.L.T. 87 (Tribunal).

In view of the above judicial pronouncements, it is clear that once assessment for any import is reopened by the department, the assessee cannot be estopped from adopting the appropriate classification which was available at the time of import. Since in the present case the issue regarding classification of the impugned goods has been re-opened by the department vide the SCN, the Noticee seeks to amend the same as explained in above para.

13.8 The AHUs and FCUs are not classifiable under CTI 8415 8390 of Tariff Act as alleged in the SCN:

13.8.1 The very premise on which the department has proposed reclassification of AHUs and FCUs under CTI 8415 8390 is incorrect. These AHUs and FCUs are parts of air conditioners and are connected with chillers or boilers, with the help of ducts, etc. for the purpose of performing its functioning or heating or cooling the air in an enclosed space and thus, merit classification as parts of air conditioning machines under CTI 8415 9000.

13.8.2 On perusing CTH 8415 of the Customs Tariff, along with the HSN Explanatory Notes for the Heading, it is evident that each Tariff Item covers separate/distinct products. CTI 8415 8390 covers ducted air conditioning systems comprising only of heating elements, however, the AHUs and FCUs are not used solely for the purpose of heating but for cooling also. For the purpose of performing said function, these AHUs and FCUs are connected with chillers or boilers. Therefore, the AHUs and FCUs are not covered under CTI 8415 8390.

13.8.3 Apart from the above, sub-heading 8415.10 and 8415.20 covers complete air conditioning systems while the single '-' covering *'other air conditioning machines'* are those which are outside the purview of sub-heading 8415 10 and 8415 20 i.e. ducted air conditioning systems but which are complete machines in itself. Further, subject to the function these ducted air conditioning systems are used for, i.e. cooling, heating or both, the air conditioning machines are accordingly classified at eight-digit level. Parts of these machines fall under CTI 8415 9000. In the present case, the AHUs and FCUs are incomplete in itself and cannot perform the function

of either heating or cooling without being connected to external sources like chillers, boilers, etc. and therefore cannot be classified under CTI 8415 8390.

13.8.4 The department is correct in saying that the AHUs and FCUs have their own independent function of circulation of air in an enclosed space. However, merely by virtue of having the said function, these goods cannot be classified under CTI 8415 8390 as complete air conditioning machine. The Department has repeatedly failed to consider the fact that the AHUs and FCUs goods cannot perform their function of conditioning of air without being connected to an external source i.e. a chiller or boiler. These goods are incomplete in themselves and cannot perform any function unless connected to some other external source. These goods in its as imported state are not capable of conditioning the air in any enclosed space and will require the help of chiller or boiler to perform the said function. Therefore, it is incorrect to state that the disputed goods are independent products in an HVAC system and thus merit classification under CTI 8415 8390.

13.8.5 The CTI 8415 8390 covers only those air conditioning machines which can perform the function of heating, however, it is neither the case of the Noticee nor of the Department that the AHUs and FCUs only perform the functioning of heating. Therefore, by virtue of the same, these goods are not liable to be classified under CTI 8415 8390. The department has not adduced any cogent evidence, cases or technical literature which shows that the AHUs and FCUs should be classified under CTI 8415 8390. Hence, the proposal made in the SCN is liable to dropped on this ground alone.

13.8.6 It is a settled law that irrespective of whether the classification claimed by the Noticee is correct or not, if the classification proposed by the Department is incorrect, the entire case of Revenue shall not sustain. Noticee relied on following judgments to support this contention:

(i) Warner Hindustan Ltd. Vs. Collector of Central Excise, Hyderabad - 1999 (8) TMI 75 - Supreme Court
(ii) Sunrise Traders, vs. Commissioner of Customs-Mundra, 2022 (1) TMI 468 - CESTAT Ahmedabad
(iii) Pepsico Holdings Pvt Ltd. vs. Commissioner of Central Excise Pune – III - 2019 (4) TMI 320 - Cestat Mumbai
(iv) Larsen & Toubro Limited vs. Commissioner -Mundra, 2021 (6) TMI 4 – CESTAT Ahmedabad
(v) Dev Textiles and Ram Prakash vs. Commissioner -Mundra, 2022 (1) TMI 1080 - CESTAT Ahmedabad.

In light of the above discussion, the demand made in the SCN is liable to be set aside since the department has miserably failed in demonstrating that the disputed goods are classifiable under CTI 8415 8390.

13.9 SCN is vague and without any reasoning and thus demand is liable to be dropped: The SCN proposes to demand customs duty IGST and impose penalty on the basis of bald allegations and baseless assumptions & presumptions, without the backing of any law or supporting evidence. Noticee submitted that the SCN is vague, without reasons and many of the allegations are incomprehensible. The allegations in the SCN are far from being lucid, clear and compelling enough to even establish a *prima facie* case against the Noticee. The SCN ought to be set aside on this ground itself.Reliance is placed on following judgments wherein Courts have held that show cause notices/ orders issued/ passed on assumptions and presumptions are bad in law and demand is liable to be dropped:

(i) Unity Industries vs. Commissioner of Central Excise, Vadodara-II, 2006 (193) E.L.T. 314 (Tri. - Mumbai)
(ii) Indrol Lubricants and Specialities Ltd. vs. C.C.E., Calcutta-I, 1996 (83) E.L.T. 432 (Tribunal-LB)
(iii) Durga Trading Company vs. Commr. of C. Ex. & Service Tax, Lucknow, 2019 (366) E.L.T. 552 (Tri. - All.)

(iv) Honeywell Electrical Devices & Systems India Ltd. vs. Cestat, Chennai, 2019 (367) E.L.T. 916 (Mad.)

(v) Alps Container Pvt. Ltd. vs. Commissioner of Central Excise, Mumbai-V, 2018 (364) E.L.T. 103 (Tri. - Mumbai)

(vi) Mukesh Dye Works vs. Commissioner of Central Excise, Mumbai-Vi, 2006 (196) E.L.T. 237 (Tri. - Mumbai)

(vii) Chaudhary Steel Traders vs. Commissioner of C. Ex. & S. T., Ludhiana, 2015 (329) E.L.T. 934 (Tri. - Del.) (Single Member)

13.10 The noticee has neither mis-represented nor suppressed any fact, therefore, extended period of limitation in terms of the section 28(4) of the Customs Act cannot be invoked:

13.10.1 The SCN has demanded the differential duty invoking the extended period under Section 28(4) of the Customs Act by alleging misdeclaration and misclassification of the disputed goods.In the present case, the Noticee submits that the ingredients under Section 28(4) are not present and therefore, the differential duty demanded for the period beyond the normal period of two years is barred by limitation. The Noticee has classified the disputed goods as parts of chiller under CTI 8418 9900 under a bonafide belief that the same are classifiable along with chillers only as the disputed goods work only in conjunction with chillers. Moreover, it was an industry wide practice to classify the FCUs and AHUs as parts of chiller only.

13.10.2 In order to understand what constitutes mis-statement and suppression, reliance is placed on the judgment of Hon'ble Supreme Court in the case of Padmini Products vs. CCE, 1989 (43) E.L.T. 195 (S.C.), wherein the judgment of the Supreme Court in the case of CCE vs. Chemphar Drugs and Liniments, 1989 (40) E.L.T. 276 (S.C.) was followed and it was held that in order to constitute suppression or misstatement attracting extended period of limitation, something positive other than mere inaction or failure on the part of the assessee or conscious or deliberate withholding of information, when the assessee knew otherwise, is required to be established. Similar propositions have also been affirmed in the following cases:

(i) Aban Lloyd Chiles Offshore Ltd. vs. Commissioner of Customs, 2006 (200) ELT 370 (SC);

(ii) Pahwa Chemicals Private Limited vs. Commissioner of C. Ex., Delhi, 2005 (189) E.L.T. 257 (S.C.).

13.10.3 They had not suppressed or mis-declared the disputed goods and further, the Noticee did not have any intention to evade payment of duty. It was the bonafide belief of the Noticee that the disputed goods are parts of chiller as the same are used alongwith the chillers. It is pertinent to note that the Noticee has made payment of the differential duty along with interest upon being pointed out at the time of investigation with a view to cooperating with the Department and close the matter. This fact highlights the bona fide of the Noticee. While the Noticee accepts that the disputed goods are not parts of chiller to be classifiable under CTH 8418, however the same are parts of air conditioning machines classifiable under CTI 8415 9000 and not under CTI 8415 8390 as contended by the Department.

13.10.4 Being a multinational company does not mean that the Noticee will have knowledge of correct classification of all the goods. Moreover, it was the bonafide belief of the Noticee that the AHUs and FCUs are parts of chillers and therefore the same should be classifiable as parts thereof. The Department has failed to bring out instances which establish the malafide intention of the Noticee to mis-declare the disputed goods in the impugned Bs/E. There is no basis or any evidence to support the case of the Department that the alleged mis-classification is wilful and intentional. The Noticee relies on the case of Cosmic Dye Chemical vs. Collector of Central Excise, Bombay, (1995) 6 SCC 117, wherein the Hon'ble Supreme Court held that suppression and mis-representation of fact should be willful in order to constitute a permissible ground for invoking extended period of limitation. Noticee further relied on following cases:

(i) Commissioner of Central Excise, Aurangabad vs. Bajaj Auto Limited, 2010 (260) ELT 17 (SC),
(ii) BSN Medical Pvt. Ltd., Beierdorf India Pvt. Ltd. vs. Commissioner of Customs (Import), Mumbai, 2022 (5) TMI 745 - v Mumbai
(iii) SirthaiSuperware India Ltd. vs. Commr. of Customs, Nhava Sheva-III, 2019 (10) TMI 460 - CESTAT Mumbai

13.10.5 They submitted all the required documents (such as impugned Bs/E, corresponding invoices, packing list) to the Customs Authorities and has also provided appropriate description of the disputed goods in the import documents. It was the bonafide belief of the Noticee that the disputed goods are classifiable as parts of chiller. It is not the case of the department that the Noticee has not described the disputed goods properly. Infact, the Noticee has completely mentioned Fan Control Unit or Air Handling Unit in the impugned Bs/E with brackets as parts of chillers. The department could easily identify that the disputed goods are FCU or AHU at the time of import. Therefore, it cannot be alleged that Noticee has wilfully mis-declared or wilfully mis-classified the disputed goods and hence, extended period cannot be invoked.

13.10.6 In the impugned Bs/E filed at the time of importation, the Noticee had clearly mentioned the description of the disputed goods. Having been duly examined and assessed by Customs at the time of clearance for home consumption, the Customs Department cannot now allege that the Noticee has suppressed the facts with regard to the imports. The Department now after waiting for a period of 5 years, cannot take a stand that the Noticee has suppressed or wilfully mis-declared any facts so as to issue to the SCN by invoking the extended period of limitation. Noticee further relied on following cases:

(i) Benetton India Private Limited Versus Additional Commissioner, Customs (Preventive), New Delhi 2024 (7) TMI 1469 - CESTAT NEW DELHI
(ii) Pushpam Pharmaceuticals Company vs. CCE, Bombay 1995 (78) ELT 401 (SC)
(iii) Aglowmed Ltd. vs. Commissioner, Central Goods and Service Tax, 2025 SCC Online CESTAT 426

13.10.7 The extended period of limitation cannot be invoked in the present case as the issue is one of classification of the disputed goods. For this, reliance is placed on the case of Coastal Energy Pvt. Ltd. vs. CCE & ST, Guntur, 2014 (310) ELT 97 (Tri-Bang), wherein the Hon'ble Tribunal was tasked with determining the correct classification of coal imported by the assessees. In this regard, the Hon'ble Tribunal had dropped the demand made under the extended period of limitation on the ground that the issue involved classification of the imported coal. Reliance is also placed on the case of GV Exim Pvt. Ltd vs. Commissioner of Customs, 2003 (160) ELT 900, where it has been held that wrong claim of classification does not amount to mis-statement. The Noticee places reliance on the following in support of the contention that extended period cannot be invoked in cases of interpretation of the law:

(i) Singh Brothers vs. Commissioner of Customs & Central Excise, Indore, 2009 (14) STR 552 (Tri.-Del.);
(ii) Steelcast Ltd. vs. Commissioner of Central Excise, Bhavnagar, 2009 (14) STR 129 (Tri.-Del.);
(iii) P.T. Education & Training Services Ltd. vs. Commissioner of Central Excise, Jaipur, 2009 (14) STR 34 (Tri.-Del.); and
(iv) K.K. Appachan vs. Commissioner of Central Excise, Palakkad, 2007 (7) STR 230(Tri.-Bang.).

13.10.8 Classification is a matter of interpretation and the Noticee is entitled to adopt classification which is most appropriate as per the Noticee's understanding of the disputed goods. The Noticee cannot be held responsible for wilful misstatement of classification of disputed goods even if the clearance is under the self-assessment regime. In this regard, reliance is placed on Commr. of Cus. (Import), JNCH, Nhava Sheva vs. Amrit Corp. Ltd., 2016 (333) E.L.T. 340 (Tri. - Mumbai). In the instant case, the Revenue alleged that despite being aware of

their ineligibility to avail benefit under the concerned exemption notification, the importer claimed concessional rate of duty with a mala fide intention to evade duty. This was backed by the contention that under the self-assessment scheme, the importers are obligated to ensure that they declare the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry. On the other hand, it was argued by the Respondent that wrong classification by an importer based on his understanding of Customs Tariff Act per se would not amount to misdeclaration or suppression. On a careful consideration of the facts placed on record and the relevant legal provisions, the Hon'ble Tribunal did not find this to be a case of "mis-declaration or contumacious conduct on the part of the importer" and, accordingly, upheld the findings of the Commissioner (Appeals) setting aside redemption fine and penalty. Noticee further relied on following cases:

(i) Challenger Cargo Carriers Vs. Principal Commissioner of Customs – 2022 (12) TMI 621
(ii) SirthaiSuperware India Ltd. v. CC, 2019 (10) TMI 460 CESTAT, Mumbai
(iii) Northern Plastics Ltd [1998 (101) ELT 549 (SC)]
(iv) Lewek Altair Shipping Pvt. Ltd. Vs. CC, Vijayawada, 2019 (1) TMI 1290 - CESTAT Hyderabad
(v) M/s Samsung India Electronics Pvt. Ltd. Vs. Commissioner of Customs Air Cargo Complex (Import) reported in 2023 (12) TMI 1155 - CESTAT NEW DELHI
(vi) Aureole Inspecs India Pvt Ltd versus Principal Commissioner, Customs - New Delhi (Final Order No. 51024 /2023 dated 09.08.2023 in C/51191/2020)

13.10.9 The SCN does not disclose any evidence of any positive act of fraud, suppression, wilful misstatement, with intention to evade payment of duty on the part of the Noticee. Mere fact of detection by the Department, does not by itself prove that the Noticee suppressed the facts with intention to evade duty. In this regard, reliance is placed on the judgment of Hon'ble Tribunal in the case of Sands Hotel Pvt. Ltd. v. CST, 2009 (16) STR 329.

13.11 In a case where the duty itself is not liable to be paid due, then in those cases levy of interest by the department cannot be sustained in the eyes of law. Reliance in this regard has been placed in the case of Prathibha Processors v. Union of India, 1996 (88) ELT 12 (SC), wherein the Hon'ble Supreme Court has held that interest is a mere accessory of the principal amount and therefore, if the principal amount is not payable, so is the interest on it. Hence, if the demand itself is not sustainable (basis grounds enunciated above), the question of demand of interest does not arise and therefore, the demand of interest is liable to be dropped.

13.12 In terms of section 28(1)(b) read with section 28(2) of the Customs Act, if any person before service of any show cause notice pays the applicable duties along with interest and shall inform the proper officer in writing about such payments, the show cause notice shall not be served for demand, confiscation, penalty etc. The Noticee, after making the said payment of differential duty along with interest for a period of 2 years, had duly intimated the Department vide letter dated 03.11.2023. In view thereof, the proceedings ought to have been closed and SCN could not have been issued to the Noticee. Section 28(2) is a beneficial provision inserted under the Customs Act in order to minimize and avoid litigation.As the Noticee had paid the differential duty and interest in terms of Section 28(2), and as extended period is not invokable in the present case, the SCN could not have been issued to the Noticee. Hence, no penalty is liable to be imposed as the present case falls under Section 28(2) of the Customs Act.

13.13 In the case of Bussa Overseas & Properties v. C.L. Mahar, Assistant Commissioner of Customs, Bombay, 2004 (163) ELT 304 (Bom.), the Hon'ble Bombay High Court held that once the goods are cleared for home consumption, they cease to be imported goods as defined in Section 2(25) of the Customs Act and consequently are not liable to confiscation under Section 111 of the Customs Act. This case has been maintained by the Hon'ble Supreme Court of India reported at 2004 (163) ELT A160 (SC). Noticee relied on following cases:

(i) Southern Enterprises v. Commissioner of Customs, 2005 (186) ELT 324 (Tri. - Bang.)
(ii) Shiv KripaIspat Pvt. Ltd. v. Commissioner of Central Excise and Customs, Nasik, 2009 (235) ELT 623 (Tri. – LB)

In light of the aforesaid judgments, noticee submitted that in the present case since the disputed goods in question have been cleared for home consumption, they have lost the character of being imported goods under the Customs Act and therefore, cannot be held liable for confiscation under section 111 of the Customs Act.

13.13.1 The goods imported by the Noticee are indeed Fan Coil Units, Air Handling Units and other parts thereof and they have been correctly declared so in the impugned Bs/E as well. Further, all the information available with the Noticee was fully disclosed at the time of importation. The department has arbitrarily alleged mis-declaration and mis-classification by the Noticee without any cogent evidence. The department has not produced any conclusive proof that the goods declared by the Noticee was not correct. The only wrong declaration made in the impugned Bs/E is regarding the disputed goods being parts of chiller but this does not per se render the complete description in the impugned Bs/E as incorrect. The Noticee has correctly declared the disputed goods to be AHUs, FCUs or parts thereof. Moreover, as already submitted, it was the bonafide belief of the Noticee that the disputed goods are parts of chiller as the same are used in conjunction with chillers. Therefore, no default under Section 111(m) has been made by the Noticee and consequently goods cannot be confiscated under Section 111(m) as the department has proposed in the SCN.

13.13.2 Section 111(m) cannot be invoked as there has been no mis-declaration in terms of the value or material particulars in relation to the goods as discussed under the preceding grounds. Reliance in this regard is also placed on Lotus Beauty Care Products Pvt. Ltd. v. Commissioner of Customs (Import), JNCH, Nhava Sheva, 2020-TIOL-1664CESTAT-MUM, wherein the Hon'ble Tribunal held that declaration of tariff item, as well as description of the goods by the assessee, makes it apparent that there has been no misdeclaration within the meaning of section 111 of Customs Act.

13.13.3 In the case of Commissioner of Customs, Bangalore v. A. Mahesh Raj reported in 2006 (195) ELT 261 the Hon'ble Karnataka High Court also highlighted the distinction between 'misclassification' of goods and 'misdeclaration of goods', wherein an element of mischief was attributed to misdeclaration. In the present case, even if it is assumed that the Noticee did not adopt the correct classification, this would be a case of mere 'misclassification' of goods and no act of 'mis-declaration' can be attributed to the Noticee. In the case of Northern Plastic Ltd. v. Collector of Customs & Central Excise, 1998 (101) ELT 549 (SC), the Hon'ble Supreme court has held that merely claiming the benefit of exemption or adopting a classification under the bill of entry does not amount to mis-declaration under the Customs Act. The Noticee also relied on the case of Kirti Sales Corporation v. Commissioner of Customs, Faridabad reported at 2008 (232) ELT 151 (Tri.-Del.), wherein the Hon'ble Tribunal held that to attract the provisions of Section 111(m), the mis-declaration should be intentional. In the present case, there is no intentional or deliberate wrong declaration or mis-declaration on the part of the Noticee to attract mischief of Section 111(m) of the Customs Act. Therefore, the confiscation of the goods under Section 111 (m) of the Customs Act as proposed by the department in the SCN is not sustainable in law.

13.14 No penalty is imposable on the noticee in the instant case: Since the goods in itself are not liable for confiscation under Section 111 of the Customs Act, the question of imposing penalty under Section 112(a) does not arise. Further, the Noticee has neither done nor omitted to do any act which would render the disputed goods liable to confiscation. For these reasons, the penalty under Section 112(a) is not legally sustainable. The second limb of Section 112(a) of the Customs Act covers the abetment of commission/omission of any act which would render the goods liable to confiscation under Section 111 of the Customs Act. In the instant case, the

Noticee did not abet the commission or omission of any act which rendered the impugned goods liable for confiscation as alleged in the SCN.

13.14.1 The judicial precedents have also held the presence of *mens rea* as an essential prerequisite for establishing abetment and for imposition of penalty under Section 112(a). In this regard, noticee relied on the following cases:

(i) Harbhajan Kaur v. Collector of Customs, 1991 (56) ELT 273 Tri Del,
(ii) V. Lakshmipathy v. Commissioner of Customs, 2003 (153) ELT 640 Tri Bang
(iii) Owens Corning Enterprises (I) P. Ltd. v. Commissioner of Customs (Export), Nhava Sheva reported in 2011 (270) ELT 547 (Tri.- Mumbai)

13.14.2 In view of the aforesaid submissions, penalty under Section 112(a) of the Customs Act cannot be attracted to present case. Hence, the proposal to impose penalty under Section 112(a) of the Customs Act by the department is incorrect and erroneous and therefore, liable to be dropped on this ground alone.

13.14.3 The SCN also proposes imposition of penalty on the Noticee under section 114A of the Customs Act. For the sake of brevity and in order to avoid repetition, As mentioned in above submissions, there has been no *mala fide* on the part of the Noticee. In this regard, reliance is placed on the case of CC vs. Videomax Electronics, reported at 2011 (264) ELT 0466 (Tri.-Bom.), it was held that the legal requirements to invoke Section 114A for imposing penalty is the same as extended period of limitation under Section 28 of the Customs Act. In essence, if the extended period of limitation under Section 28 is not invokable, penalty under Section 114A of the Customs Act is also not liable to be imposed.

13.14.4 Penalties under Section 114A and Section 112 of the Customs Act cannot be imposed simultaneously. The proviso to Section 114A clearly prescribes that when penalty has been levied under Section 114A, no penalty can be imposed under Section 112. This position has also been affirmed vide a catena of judgments:

(i) Commissioner of Customs v. Shri Ashwini Kumar Alias Amanullah (Vice-Versa), 2020 (11) TMI 441 - CESTAT NEW DELHI;
(ii) Commissioner of Customs & Central Excise, Goa v. Bright Impex, 2017 (2) TMI 354 - CESTAT MUMBAI;
(iii) Commissioner of Customs & Central Excise, Goa v. Newtech Corporation, 2017 (2) TMI 292 - CESTAT MUMBAI.

13.14.5 As discussed above, no duty is payable by the Noticee as it has correctly described the disputed goods in the impugned Bs/E and also changed the classification to CTI 8415 9000 upon being pointed out by the Department. Therefore, any demand for penalty will not be sustainable.Reliance is placed on the case of Collector of Central Excise vs. H.M.M. Limited, 1995 (76) ELT 497 (SC), the Hon'ble Supreme Court held that the question of penalty would arise only if the department is able to sustain the duty demand.

13.14.6 There are a number of judgments wherein Hon'ble Tribunal has held that if there is difference of opinion about classification between the importer and department, penalty is not imposable. The Noticee placed reliance upon on the following cases:

(i) Bahar Agrochem& Feeds Pvt. Ltd vs. Commissioner of C.Ex., Pune, 2012 (277) E.L.T. 382 (Tri-Mum),
(ii) Digital Systems vs. Commissioner of Customs, 2003 (154) ELT 71,
(iii) Goodyear (India) vs. CCE, 2003 (157) ELT 560,
(iv) Anand Metal Industries vs. CCE, 2005 (187) ELT 119
(v) M/s Samsung India Electronics Pvt. Ltd. Vs. Commissioner of Customs Air Cargo Complex (Import)

13.14.7 In terms of various judgments of the Hon'ble Supreme Court, various High Courts and Tribunals, penalty cannot be imposed on the Noticee in the absence of *mens rea* on part of the

Noticee. It is a settled law that when the Noticee is under a *bona fide* belief that a particular article is classifiable under a particular entry, penalty cannot be imposed on the Noticee, if ultimately it is found that the particular article is classifiable under some other entry. As already submitted above, the issue with respect to classification of disputed goods was an industry wide issue which is evident from various judicial precedents discussed above. In such a scenario, even if the classification adopted by the Noticee is found to be incorrect, that does not make the Noticee liable for penalty. Noticee relied on case of Hindustan Steel Ltd. v. State of Orissa, 1978 (2) ELT (J159). In view of the above settled position of law and considering the fact that there is complete absence of *mens rea* in the present case, it is prayed that the SCN proposing imposition of penalties on the Noticee cannot be sustained and needs to be dropped.

13.14.8 The Noticee submitted that penalty is not imposable when the issue is one of interpretation of law. It has been held by the Hon'ble Tribunal in a large number of cases that no penalty is imposable in cases involving interpretation of the statutory provisions. Some of these cases are as under:

(i) Vadilal Industries Ltd. v. Commissioner of Central Excise, Ahmedabad 2007 (213) ELT 157 (Tri. - Ahmd.),
(ii) Auro Textile v. Commissioner of Central Excise, Chandigarh 2010 (253) ELT 35 (Tri.-Del.);
(iii) Hindustan Lever Ltd. v. Commissioner of Central Excise, Lucknow 2010 (250) ELT 251 (Tri.-Del.);
(iv) Prem Fabricators v. Commissioner of Central Excise, AhmedabadII 2010 (250) ELT 260 (Tri.-Ahmd.);
(v) Whiteline Chemicals v. Commissioner of Central Excise, Surat 2009 (229) ELT 95 (Tri.-Ahmd.);
(vi) Delphi Automotive Systems v. Commissioner of Central Excise, Noida 2004 (163) ELT 47 (Tri.-Del.).

13.15 IGST is levied under Section 5 of the IGST Act, 2017 in terms of Section 3(7) of the Tariff Act. However, the Tariff Act has limited provisions and it borrows various provisions from the Customs Act for implementation of its provisions. Section 3(12) of the Tariff Act which is the borrowing provision with regard to IGST, does not borrow provision for demand of IGST with interest or penalty from the Customs Act. Therefore, demand of IGST and interest for the extended period of limitation has been incorrectly made vide the SCN. Also, no penalties to the extent it relates to the IGST portion can be imposed on the Noticee. The Hon'ble Supreme Court in India Carbon Ltd. v. State of Assam, (1997) 6 SCC 479, relied upon the earlier five-judge bench decision in the case of J.K. Synthetics Ltd. Ltd. v. CTO, (1994) 4 SCC 276 and held that 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. This position of law was approved and reiterated by the constitution bench in the case of V.V.S. Sugars vs. Govt. of A.P. & Ors., (1999) 4 SCC 192.

13.15.1 Noticee relied on the case of Bajaj Health & Nutrition Pvt. Ltd. vs. CC, Chennai, 2004 (166) ELT 189, wherein the Hon'ble Tribunal, set aside the interest and penalty on evasion of anti-dumping duties on the reasoning that the provisions of Customs Act relating to non-levy, short-levy, and refunds were borrowed only for the purpose of chargeability to anti-dumping duty under Sec. 9A(8) of the Tariff Act and the provisions of the Customs Act relating to confiscation, interest and penalty were not borrowed. Noticee further relied on following cases:

(i) Tonira Pharma Ltd. vs. Commissioner, 2009 (237) E.L.T. 65 (Tribunal)
(ii) Siddeshwar Textile Mills Pvt. Ltd. vs. Commissioner, 2009 (248) E.L.T. 290 (Trib.)
(iii) Mahindra and Mahindra Ltd. vs. Union of India & Ors., 2022-VIL-690-BOMCU
(iv) Acer India Private Ltd vs. The Commissioner of Customs, Appeal Nos. E/410, 411/2012, Final Order No. 40846/2023 dated 14.11.2023
(v) ETA General Pvt. Ltd. vs. Commissioner of Customs, Chennai, Customs Appeal No. 40347 of 2014, Final Order No. 40316 / 2024 dated 20.03.2024

(vi) Chiripal Poly Films Ltd. vs. Commissioner of Customs, Ahmedabad, Customs Appeal No. 10229 - 10230 of 2024, Final Order No. 1162811630/2024 dated 23.07.2024

(vii) A.R Sulphonates Private Limited vs Union of India & Others, Writ Petition No. 19366 of 2024,

13.16 Vide the Finance (No. 2) Act, 2024 dated 16.08.2024, Section 3(12) of the Customs Tariff has been amended to make the provisions relating to interest, fine, penalty and confiscation applicable to the demand of IGST levied at the time of import for the imports made post 16.08.2024. The amendments do not apply retrospectively, since these amendments are not clarificatory in nature. The intention of the legislature was not to give retrospective effect to the amendments in relation to the levy of interest, fine and penalty. Thus, since the substantive provisions of levy of interest, fine and penalty did not exist during the relevant period, the same is not recoverable from the Appellant. Thus, there is no charge for recovery of interest, imposition of penalty and fine, the same is not recoverable from the Noticee in the absence of the substantive provisions.

13.17 The Section 3(7) of the Tariff Act merely provides for the manner of collection of the IGST. Reliance in this respect is placed on the decision of the coordinate bench of this Hon'ble Tribunal in the case of Interglobe Aviation Ltd. v. CC, New Delhi, 2020 (43) G. S. T. L. 410 (Tri. - Del.) and Spice Jet Ltd. v. CC (General), New Delhi, 2021 (1) TMI 663 – CESTAT, New Delhi wherein it was held that integrated tax is not "duty" under the Customs Act. Similarly, reliance is also being placed on Vedanta limited v. UOI, 2018 (19) GSTL 637 (Mad.). Therefore, on a combined reading of various submissions made hereinabove, IGST cannot be recovered under Section 28 of the Customs Act. Section 28, i.e., the demand provision has not been borrowed under the Customs Tariff Act for IGST levied under the proviso to Section 5 of the IGST Act read with Section 3(7) of the Customs Tariff Act. Therefore, IGST cannot be recovered from the Noticee in the absence of machinery provisions for collection of IGST and interest. Thus, the proposal for recovery of IGST under Section 28, interest under Section 28AA and penalty under Section 112 (a) /114A of the Customs Act to the extent it relates to IGST demand for the extended period is not sustainable in the present case.

13.18 The Noticee further requested for cross examination of the Chartered Engineer, if the finding of the Chartered Engineer is required to be relied upon by the Department to confirm classification of disputed goods under CTI 8415 8390.The SCN has relied upon statements of various individuals for allege wrongful classification of disputed goods and invoke extended period of limitation. Noticee submitted that procedure prescribed under Section 138B of the Customs Act has not been followed by the Department for relying upon these statements. As per the case ofITC Limited v. Commissioner of Central Excise, 2019 (368) ELT 216 (SC), the SCN is invalid in the absence of valid appeal against the out of charge / bills of entry.

13.19 Further, noticee submitted that the imported goods function as indoor components designed to distribute air and are engineered to receive chilled or heated fluid (usually water or refrigerant) from external sources, like chillers, etc. to perform their function. In their "as imported condition", imported goods are incapable of performing the function of air conditioning i.e. cooling/heating a space or regulating humidity. As submitted by them in the technical declaration, FCU and AHU alone do not meet the functional or technical definition of a complete 'air conditioning machine' but are parts of a larger air conditioning system. Considering that the imported goods are not air conditioning machines, they cannot be classified under CTI 8415 8390 as proposed in the SCN.

13.20 Since 2011, the imported goods, as declared in the impugned Bs/E, were subjected to examination and were consistently cleared under CTI 8418 9900. At no point during examination did the Department raise any objections, and the impugned Bs/E were cleared without dispute. The Department always had knowledge about the classification being adopted by the Noticee and also had opportunity to challenge the same at the time of examination of imported goods

however, no such objection was made. This position is corroborated by the ICEGATE screenshots for 3 such bills of entry vide which FCU were imported and the same were subjected to examination as well by the Department. In light of the above discussion, the allegation in the SCN that the Noticee willfully mis declared the classification of the imported goods in order to evade payment of customs duty is unsustainable. Therefore, invocation of the extended period of limitation under Section 28(4) of the Customs Act is not sustainable in the present case.

13.21 All the disputed goods i.e. FCU, AHU and parts thereof are classifiable under CTI 8415 9000, in any case, SCN itself proposes to classify parts of air conditioning machines under CTI 84159000 which is aligned with the classification being adopted by the Appellant. Consequentially, such parts being classifiable under CTI 8415 9000 are eligible for benefit of S. No. 449A of Notification No. 50/2017 dated 30.06.2017 which provides exemption of duty to 10% to all goods falling under CT' 8415 9000 other than indoor or outdoor units of split-system air conditioner. The said parts not being indoor or outdoor units of split-system air conditioner are eligible for benefit of the said Notification.

RECORD OF PERSONAL HEARINGS

14. 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.Mr Ashwani Bhatia, Advocate and Ms. Anjali Gupta, Advocate, on behalf of M/s. Daikin Airconditioning India Pvt Ltd (IEC 0500010323), attended the personal hearing on 24.07.2025.They argued the case and reiterated the written submission dated 24.07.2025. They further stated that section 28(4) cannot be invoked as there is no Collusion, wilful mis-statement or suppression of facts on their part as they have declared all the particulars of the imported goods in the bills of entry and relevant documents. They also sought additional time till 30.07.2025, to furnish further submissions to substantiate their position. Further, they submitted additional submissions dated 30.07.2025.

DISCUSSION AND FINDINGS

15. The fact of the matter is that a Show Cause Notice (SCN) No. 611/2024-25/Commr/ Gr-V/ NS-V/CAC/JNCH dated 27.06.2024 was issued to M/s. Daikin Airconditioning India Pvt. Ltd. (IEC No. 0500010323) alleging that the goods imported by them as detailed in Annexure-A to F to the SCN 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.4,73,04,488/- (Rupees Four Crore Seventy-Three Lakhs Four Thousand Four Hundred and Eighty-Eight Only), 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.16,48,30,488/- (Rupees Sixteen Crore Forty-Eight Lakhs Thirty Thousand Four Hundred and Eighty-Eight only) under Section 111(m) of the Customs Act, 1962.

15.1 Chief Commissioner of Customs, Mumbai Zone-II granted extension of time limit to adjudicate the case upto 26.09.2025 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.

15.2 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.

15.3 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 classification of the goods i.e. FCU, AHU & parts thereof imported vide Bills of Entry as detailed in Annexure-A to F to the SCN, should not be rejected and re-classified under CTI 8415 8390otherwise;

(ii) Whether the differential duty of Rs.4,73,04,488/- (Rupees Four Crore Seventy-Three Lakhs Four Thousand Four Hundred and Eighty-Eight Only) as calculated in Annexure-A to F to the SCN should be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 and differential duty& interest already paid by importer during the investigation as detailed in Para 11.5 above should be appropriated or otherwise;

(iii) Whether the subject goods having total declared Assessable Value of Rs.16,48,30,488/- (Rupees Sixteen Crore Forty-Eight Lakhs Thirty Thousand Four Hundred and Eighty-Eight only) imported vide Bills of Entry as detailed in Annexure-A to F to the SCN 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 Daikin Airconditioning India Pvt. Ltd. (IEC- 0500010323) under Section 112(a) and/or 114A of Customs Act, 1962 or otherwise;

15.4 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.

16. Whether classification of the goods i.e. FCU, AHU & parts thereof imported vide Bills of Entry as detailed in Annexure-A to F to the SCN, should not be rejected and re-classified under CTI 8415 8390 otherwise.

16.1 The noticee was importing Fan Coil Units (FCUs) of various Model No. declaring as parts for chiller & Air Handling Units (AHUs) of various Model No. under Sub-heading 84189900 by paying BCD at the rate of 7.5% and IGST at the rate of 18%. However, SCN alleges that the said goods are components of Heating, Ventilation and Air Conditioning (HVAC) System which is basically a Central Air Conditioning System and is used for air-conditioning of enclosed space, therefore, the same are correctly classifiable under CTI 84158390 of the First Schedule of the Customs Tariff Act, 1975 which attracts BCD at the rate of 20% and IGST at the rate of 28%. The details of the imported goods is as follows:

16.1.1 FAN COIL UNIT:- Fan Coil Unit consists of 3 basic components namely fan motor, heat exchanger coils and PCB which is connected with a valve to control the flow of water as per the set temperature. FCU consists of-

(a) Fan Motor and Fan Blower:- Fan Motor is used for rotating impeller of the Fan Blower at certain RPM to provide desired air volume for specific capacity of unit.

(b) Heat Exchanger:- Heat Exchangers are a group of copper coils arranged in rows with aluminum fins, where copper tubes carry chilled water which absorbs heat from air passed over it by the fan motor.

(c) PCB (Printed Circuit Board):- PCB is the printed circuit board which controls the fan speed and water flow depending upon logic as per set mode, set temperature, room temperature etc.

(d) **Main Drain Pan:-**The Main Drain Pan is used for collecting condensed water generated at heat exchanger process of cooling.

(e) **Filters:-** Filters are at the rear end of the fan coil units through which air is sucked in by fan blowers.

(f) **Main Casing:-** Main Casing is the body containing and protecting all the above components in one box.

Further, Heating, Ventilation and Air Conditioning (HVAC) System consists of Chiller, Pumps & Terminals and Fan Coil Unit is one of such type of terminals.

16.1.2 AIR HANDLING UNIT:- Medium and large sized industrial or commercial properties use an Air Handling Unit (AHU) to condition and distribute fresh air throughout the building. The device takes air from the outdoors, cleans and conditions it, and heats or cools it as needed. Once properly conditioned, the air is forced through ductwork inside the rooms of the building. Most AHUs include an additional duct run that pulls dirty air out of the indoor spaces and discharges it back into the atmosphere. In some cases, a portion of the stale air is re-circulated into the AHU and again put through the conditioning/distribution process. In addition to managing the proper ventilation of indoor air, AHU is used to:

a. Filter and purify the interior air to maintain good indoor air quality
b. Control indoor temperatures
c. Monitor indoor humidity levels

The Parts of an Air Handling Unit (AHU):-

(i) **Air Intake** – The intake collects air from the outside to be treated and distributed indoors.

(ii) **Filter** – The type of filter depends on the purity requirements of the building. Air intended for a hospital surgical room requires a higher level of "cleaning" than air for a hotel conference room.

(iii) **Fan** – The fan expels the air from the AHU into the duct system that distributes the conditioned air.

(iv) **Heat Exchangers** – These devices transfer temperature between the air and the coolants used by the AHU.

(v) **The Cooling Coil** – Air passes through the coils to cool before distribution. This process can cause condensation, which the AHU collects in a droplet separator.

(vi) **Silencer** – Special coatings are applied to the unit walls to help reduce the noise level while in operation.

(vii) **Plenums** – Plenums are strategically placed empty spaces within the unit where airflow is allowed to homogenize.

16.1.3 From the above it can be inferred that Fan Coil Unit & Air Handling Unit are not the parts of Chiller, as they are not being used as "Refrigerating equipments" and theyare broadly components of Heating, Ventilation and Air Conditioning (HVAC) System. They are the components/machines that comprises together to make a Heating, Ventilation and Air Conditioning (HVAC) System for maintaining required conditions of temperature. Further, it is to mention here that a Chilled water line is used to connect the FCU or AHU to Chillers.

16.2 During the statements of authorised persons of importerthey agreed that they had mis-classified the said goods under CTI 84189900. However, they claimed that the said goods are classifiable under CTI 84159000, not under CTI 84158390 as claimed by the department.

16.3 Noticee was importing the said goods as parts of Chiller and classifying the same under Refrigerator CTI 84189900, which is reproduced below:-

CTH 8418:- Refrigerators, freezers and other refrigerating or freezing equipment, electric or other, heat pumps other than air conditioning machines of heading 8415

8418 10 - Combined refrigerator-freezers, fitted with separate external doors or drawers, or combinations thereof:

8418 10 10 --- Commercial type

8418 10 90 --- Other

- Refrigerators, household type:

8418 21 00 -- Compression-type

8418 29 00 -- Other

8418 30 - Freezers of the chest type, not exceeding 800 l capacity :

8418 30 10 --- Commercial type electrical

8418 30 90 --- Other

8418 40 - Freezers of the upright type, not exceeding 900 l capacity :

8418 40 10 --- Electrical

8418 40 90 --- Other

8418 50 00 - Other furniture (chests, cabinets, display counters, show-cases and the like) for storage and display, incorporating or freezing equipment

- Other refrigerating or freezing equipment; heat pumps :

8418 61 00 -- Heat pumps other than air-conditioning machines of heading 8415

8418 69 -- Other :

8418 69 10 --- Ice making machinery

8418 69 20 --- Water cooler

8418 69 30 --- Vending machine, other than automatic vending machine

8418 69 40 --- Refrigeration equipment or devices specially used in leather industries formanufacturing of leather articles

8418 69 50 --- Refrigerated farm tanks, industrial ice cream freezer

8418 69 90 --- Other

- Parts:

8418 91 00 -- Furniture designed to receive refrigerating or freezing equipment

8418 99 00 -- Other

16.4 The above-mentioned tariff code 8418 covers refrigerators, freezers and heat pumps. The refrigerators, freezers and other refrigerating or freezing equipments comprise of a compressor (with or without motor) and condenser mounted on a common base, whether or not complete with evaporator; or self-contained absorption units. These elements are commonly fitted into domestic-type refrigerators or other refrigerating cabinets. The essential elements of refrigerator are listed as compressor, condenser and evaporators whereas it is observed that no such parts are seen in the Fan Coil Unit and Air Handling Unit. However, the FCU and AHU are used for Air Conditioning and Heading 8418 does not include 'Air Conditioning System'. The same has been affirmed in the statements of representatives of noticee.

16.5 The SCN has alleged that the Fan Coil Unit and Air Handling Unit are classifiable under CTH 8415, which is reproduced below:-

CTH 8415- Air Conditioning machines, comprising a motor driven fan and elements for changing the temperature and humidity, including these machines in which the humidity cannot be separately regulated

8415 10 - Of a kind designed to be fixed to a window, wall, ceiling or floor, self-contained or "split-system";

8415 10 10 --- Split system

8415 10 90 --- Other
8415 20 - Of a kind used for persons in motor vehicles :
8415 20 10 --- For buses
8415 20 90 --- Other
- Other :
8415 81 -- Incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle (reversible heat pumps):
8415 81 10 --- Split air-conditioner two tonnes and above
8415 81 90 --- Other
8415 82 -- Other, incorporating a refrigerating unit:
8415 82 10 --- Split air-conditioner two tonnes and above
8415 82 90 --- Other
8415 83 -- Not incorporating a refrigerating unit :
8415 83 10 --- Split air-conditioner two tonnes and above
84158390---Other
8415 90 00 - Parts

16.6 The Classification of goods is governed by the following principles:

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF–

Rule 1 *of the General Rules for the Interpretation of the First Schedule of Import Tariff to the Customs Tariff Act, 1975 stipulates that for legal purposes, the classification of the import item shall be determined according to the terms of the headings and any relative Section or Chapter Notes.*

Rule 2 *of the General Rules for the Interpretation of the First Schedule of Import Tariff to the Customs Tariff Act, 1975 stipulates that any reference in a heading to an article shall be taken to include a reference to that article, be it may in the form of incomplete or unfinished and in respect of mixtures or combination of materials or substances, the classification shall be taken to include with reference to goods consisting of wholly or partly of such material or substance.*

Rule 3 *of the General Rules for the Interpretation of the First Schedule of Import Tariff to the Customs Tariff Act, 1975 states that, when by application of rule 2(b) or for any other reason, goods are prima facie, classifiable under two or more headings, classification shall be effected as follows:*

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description.

Thus, sequential reading of the General Rules for the Interpretation of the First Schedule of Import Tariff to the Customs Tariff Act, 1975 stipulates that the Heading which provides the most specific description shall be preferred to the Heading providing a more general description.

16.7 Further, the explanatory note for heading 8415 of WCO inter-alia stipulate as under:

"This heading covers certain apparatus for maintaining required conditions of temperature and humidity in closed spaces. The machines may also comprise elements for the purification of air.

They are used for air conditioning offices, homes, public halls, ships, motor vehicles, etc., and also in certain industrial installations requiring special atmospheric conditions (e.g., in the textile, paper, tobacco or food industries).

The heading applies only to machines:

(1) Equipped with a motor-driven fan or blower, and

(2) Designed to change both the temperature (a heating or cooling element or both) and the humidity (a humidifying or drying element or both) of air, and

(3) For which the elements mentioned in (1) and (2) are presented together.

In these machines the elements for humidifying or drying the air may be separate from those for heating or cooling it. However, certain types incorporate only a single unit which changes both the temperature and, by condensation, the humidity of the air. These air conditioning machines cool and dry (by condensation of water vapour on a cold coil) the air of the room in which they are installed or, if they have an outside air intake (damper), a mixture of fresh air and room air. They are generally provided with drip pans to catch the condensate.

The machines may be in the form of single units encompassing all the required elements, such as self-contained window or wall types (referred to as "through the-wall units). Alternatively, they may be in the form of "split-systems" which operate when connected together, i.e., a condenser unit for external installation plus an evaporator unit for internal installation. These "split-systems" are ductless and utilize a separate evaporator for each area to be air conditioned (e.g. each room)."

As per the above explanatory note, it appears that the heading 8415 covers all the apparatus for maintaining required conditions of temperature and humidity in closed spaces and used for air conditioning offices, homes, public halls, ships, motor vehicles, etc., and also in certain industrial installations requiring special atmospheric conditions. In view thereof, the impugned products are Air Conditioning Units under HVAC system and are therefore classifiable under customs tariff heading 8415.

16.8 Heating, Ventilation and Air Conditioning (HVAC) System is basically a Central Air Conditioning System, which is used for air conditioning of enclosed space, which comprises of Heating, air-conditioning and Ventilation. HVAC System uses various technologies to control the temperature, humidity, and purity of the air in an enclosed space. It is a system of air conditioning which comprises of machines such as Chiller, Pumps & Terminals - Fan Coil Unit or Air Handling Unit, which changes both the temperature and the humidity of the Air. FCUs or AHUs are terminals which are connected through the chilled water pipes to Chiller. Chiller produce chilled water through the pipes connected to Fan Coil Unit or Air Handling Unit, further, the chilled water is used by Fan Coil Units or Air Handling Unit for maintaining required conditions of temperature and humidity in closed spaces. The HVAC System is used for air conditioning of offices, homes, public halls, ships, motor vehicles, etc., and also in certain industrial installations requiring special atmospheric conditions. Accordingly, HVAC System is a "Central Air Conditioning System", which is built by the combination of two major machines i.e. "Chiller" and "Fan Coil Unit" or "Air Handling Unit", interconnected through pipes. From the above discussion it can be inferred that "Fan Coil Units" or "Air Handling Units" are air conditioning machine without incorporating a refrigerating unit/chiller.

16.9 As discussed above, the imported goods are classifiable under heading 8415. To decide further classification, sub-heading explanatory notes of CTH 8415 are as follows:

Subheading 8415.10

This subheading covers air conditioning machines of a kind designed to be fixed to a window, wall, ceiling or floor, self-contained o or "split-system".

The term "fixed" means placed or set into position in a more or less permanent manner, taking into account factors such as size, weight, physical construction (e.g. the presence or absence of castors or handles), interconnections, etc.

The self-contained type air conditioners are in the form of single units encompassing all the required elements and being self-contained.

The "split-system" type air conditioners are ductless and utilize a separate evaporator for each area to be air conditioned (e.g., each room). The indoor heat exchanger unit may be mounted in various locations, e, in a wall or window, dow, or on a ceiling or floor. for example,

However, this subheading excludes ducted central air conditioning systems which utilize ducts to carry refrigerated air from an evaporator to several areas to be cooled.

Subheading 8415.20

This subheading covers equipment which is intended mainly for passenger motor vehicles of all kinds, but which may also be fitted in other kinds of motor vehicles, for air conditioning the cabs or compartments in which persons are accommodated.

Subheading 8415.90

This subheading includes both indoor and outdoor units for split-system subheading 8413.10 when presented separately. The units are designed to air conditioning machines of be connected by electrical wiring and copper tubing through which refrigerant passes between the indoor and outdoor units.

16.10 As per rule-I of General Rules for Interpretation of Import Tariff the classification of the import item shall be determined according to the terms of the headings and any relative Section or Chapter Notes. As per this rule, as discussed above, the CTH of the subject goods has already been decided under CTH 8415. Now, I proceed to decide the classification of the subject goods under CTH 8415 as per this rule:

(i) Exclusion from CTSH 841510 – As per the explanatory notes for this heading "*this subheading excludes ducted central air conditioning systems which utilize ducts to carry refrigerated air from an evaporator to several areas to be cooled*". Since the goods classifiable under this CTSH do not match the structural or functional characteristics of centralized ducted systems, hence, the impugned goods are not eligible for classification under CTSH 841510.

(ii) Exclusion from CTSH 841520 –Equipment for Passenger Motor Vehicles: CTSH 841520 is reserved for air conditioning equipment that is specifically designed for use in passenger motor vehicles. This includes compact units tailored to automotive specifications, such as size constraints, power compatibility, and integration with vehicle systems. The subject goods are not intended for vehicular use and do not possess the design features or application scope typical of automotive air conditioning units. Therefore, they cannot be classified under CTSH 841520.

(iii) Exclusion from CTSH 841581 and 841582 –Machines Incorporating Refrigerating Units: These sub-headings cover air conditioning machines that include a built-in refrigerating unit. Such machines are self-contained and capable of cooling air independently through internal refrigeration mechanisms. The subject goods, however, lack any integrated refrigerating unit. They rely on external systems or components for refrigeration, which disqualifies them from classification under CTSH 841581 and 841582.

(iv)Inclusion under CTSH 841583 – Air Conditioning Machines Without Refrigerating Units: CTSH 841583 is a sub-heading within the Customs Tariff Schedule that specifically covers air conditioning machines that do not incorporate a refrigerating unit. These machines are typically designed to circulate or condition air using external cooling sources, such as chilled water or remote refrigeration systems, rather than having an integrated compressor or evaporator.The subject goods in question:

a) Do not contain any built-in refrigeration mechanism (e.g., compressor, condenser, evaporator).

b) Rely on external systems to provide cooled air or chilled water.
c) Are not self-contained cooling units, but rather part of a broader HVAC infrastructure.

Given these characteristics, the subject goods clearly align with the scope of CTSH 841583, which is intended for such non-refrigerating air conditioning machines. Their design and functionality exclude them from headings that require integrated refrigeration capability, making CTSH 841583 the most appropriate and technically accurate classification.

(v) Further Classification: CTI 84158310 vs. CTI 84158390: Once classified under CTSH 841583, the next step is to determine the correct Customs Tariff Item (CTI) within that heading. The CTI 84158310 includes"Split Air-Conditioners of Two Tonnes and Above". This item is reserved for:

a) Split-type air conditioners, which consist of two separate units—typically an indoor unit and an outdoor unit.
b) These units are connected via refrigerant piping, allowing the outdoor unit to perform the refrigeration function while the indoor unit circulates cooled air.
c) The classification also specifies a cooling capacity of two tonnes or more.

However, the subject goodsare not split-type systems as they do not have separate indoor/outdoor units connected by refrigerant lines.Therefore, they do not meet the structural or functional criteria for CTI 84158310. Further, CTI 84158390 includes "Other" Air Conditioning Machines Without Refrigerating Units and this residual category is designed to include all other air conditioning machines under CTSH 841583 that do not fall under the specific definition of split-type systems. Hence, the subject goods lacking refrigerating units and the split configurationfit squarely within the scope of CTI 84158390, which covers "Other" air conditioning machines that do not incorporate a refrigerating unit and are not split-type systems.

(vi) Exclusion from CTI 84159000: According to the Harmonized System Explanatory Notes (HSEN) for Heading 84.15, this sub-heading is intended for components that are identifiable as being solely or principally used with air conditioning machines and do not constitute complete machines themselves. FCUs and AHUs, however, are not mere parts; they are independent and functional air conditioning machines designed to condition and circulate air within a space. Their design allows them to perform multiple functions including ventilation, filtration, and temperature regulation, making them complete systems rather than auxiliary components.Given their functionality and configuration, FCUs and AHUs do not meet the criteria for classification as "parts" under CTH 84159000. Instead, they fall within the scope of Heading 8415.83, which covers air conditioning machines not incorporating a refrigerating unit. The HSEN explicitly includes machines that operate by blowing air over a cooling element supplied with chilled water, which directly describes the operation of FCUs and AHUs. Within this heading, CTI 84158310 refers specifically to split-type air conditioners of two tonnes and above, which FCUs and AHUs are not. Therefore, the appropriate classification for these goods is under CTI 84158390, which covers "Other" air conditioning machines not incorporating a refrigerating unit and not falling under the split-type category. This classification accurately reflects the nature and function of FCUs and AHUs within HVAC systems.

16.11 Noticee has contended that the subject goods do not satisfy following three conditions as mentioned in HSN Explanatory Notes to CTH 8415:

The heading applies only to machines:

(1) Equipped with a motor-driven fan or blower, and

(2) Designed to change both the temperature (a heating or cooling element or both) and the humidity (a humidifying or drying element or both) of air, and

(3) For which the elements mentioned in (1) and (2) are presented together."

However, the imported goods i.e. AHUs and FCUs are equipped with fan or blower, hence, these goods satisfy the Sr. No. 1. Further, from the above HSN Explanatory Notes it can be inferred the any goods satisfying any of the three conditions can fall under this heading. Hence, the noticee's reasoning is not tenable and goods are classifiable under heading 8415.

16.12 The above interpretation of goods i.e. Fan Coil Unit and Air Handling Unit is also corroborated with the opinion submitted by Shri Roopchand Taori, Chartered Engineer and Approved Valuer, vide letter dated 06.06.2024, in which, it is stated that FCU, AHU and CHILLER machines are components of a HVAC system. They work in unison to achieve desire / intended purpose of air conditioning. FCU and AHU each are having distinct function but they are not independent machines in context with HVAC system. FCUs are used in individual rooms or small spaces to provide localized heating or cooling. AHU is a part of centralized HVAC system and are responsible for conditioning i.e temperature, humidity and quality of air (filtration, ventilation) and distributing air to multiple zones or spaces within a building. Further, it is stated that FCU and AHU of HVAC system are machines not pertaining to split system air conditioning machines, hence not qualifying under heading of split air conditioner, relevant extract of the above letter is given below:-

Queries raised by the Department pertaining to different parts of the HVAC system.

1. Whether goods namely Fan coil Unit and Air Handling Unit can work independently without Chiller?

FCU and AHU as components of HVAC system cannot work independently without a chiller/ heater. All components of HVAC system work in UNISON to work as an air conditioning machine.FCU whether pertaining to window air conditioner m/c, split air-conditioner m/c or part of HVAC system, all have the same distinct function to cool air, to control temperature of air to be circulated in a closed space.But still there are differences in FCU used in window/ split air conditioner m/c and HVAC systems, as described below.

(vii) Window air conditioner m/c used to control temperature of air for a particular room /closed space, and Fan Coiled Unit (FCU) is not a separate but an inbuilt part of the machine.

(viii) For split air conditioner m/c, FCU is a separate unit, known as an indoor unit, connected with copper tubes with an outdoor unit. Split air conditioner is also used to control the temperature of air for a particular room /closed space, as in case of window air conditioner m/c.

(ix) Whereas in a HVAC system multiple numbers of FCU are installed depending on the number of different areas / closed spaces that need air conditioning. For each area there are different machine/s.(FCU)

(x) There are also differences in working of FCU used in HVAC systems and other air conditioner machines (Split and window machines), as well as cooling media are also different. In HVAC systems, chilled water is used whereas in other air conditioner machines, refrigerant of low boiling point is used as a medium of cooling.

(xi) Quantity of FCU installed in HVAC system depends upon system design and size, chilled water supplied through a centralised chiller unit to different FCUs of a

HVAC system, and temperature of air controlled by controlling of volume of water in each FCU unit, and required different temperature control can be obtained in different area /spaces. HVAC systems, as the name indicates, can also be used to heat enclosed space /area by circulating hot water in FCUs instead of chilled water.

(xii) In FCU of split and window air conditioning machines, working is different, compressed liquid refrigerant, supplied by outdoor unit, connected through tubes with the indoor units (FCU), and liquid refrigerant expanded in coils of FCU units, coils also called as an evaporator, named based on its function, refrigerant change its state from liquid to gas, and refrigerant in gaseous form get chilled, and which is used to cool the air. Temperature controlled by controlling volume of refrigerant by valve.

2. Whether goods namely FCU (Fan Coil Unit) and AHU (Air Handling unit) are parts of Heating, Ventilation and Air Conditioning (HVAC) system or chiller or independent Machines with their independent and distinct function?

FCU and AHU are definitely components of HVAC system, but FCU and AHU are not parts / components of a chiller unit. A CHILLER is also one of the main component of HVAC system. Chiller has main function to control temperature of air in circulation in air conditioning space. Chiller is a heat pump, which work on principle of refrigeration cycle. Chilled water in circulation remove heat from enclosed space or object and heat removed by chilled water is absorb by refrigerant in chiller unit and transfer it to outer space. Chiller used either electrical or thermal energy for its functioning. Chiller using electrical energy have main components comprising of compressor, condenser, cooling tower or aircooled unit of a chiller, refrigerant is a media to absorb heat from chiller water.

*FCU, AHU and CHILLER machines are components of a HVAC system. They work in **unison** to achieve desire / intended purpose of air conditioning.FCU and AHU each are having **distinct function** but they are not **independent machine** in context with HVAC system.*

FCUs are used in individual rooms or small spaces to provide localized heating or cooling.

AHU is a part of centralized HVAC system and are responsible for conditioning i.e temperature, humidity and quality of air (filtration, ventilation) and distributing air to multiple zones or spaces within a building.

NOTES:

D. Refer to CTH 84.15 Explanatory Notes.

This heading covers certain apparatus for maintaining required conditions of temperature and humidity in closed spaces. The machines may also comprise elements for the purification of air.

They are used for air conditioning offices, homes, public halls, ships. motor vehicles. etc. and also in certain industrial installations requiring special atmospheric conditions (e.g. in the textile, paper, tobacco or food industries).

CTH 8415 "Air Conditioning machines, comprising a motor driven fan and elements for changing the temperature and humidity, including these machines in which the humidity cannot be separately regulated"

FCU and AHU are apparatus of air conditioning machine/ system, and therefore cover under CTH 84.15.

As FCU and AHU does not incorporate a "refrigerating unit", therefore, the same are classifiable under CTI 84158390."

E. CTI 8415.90 Parts

*Refer to **Subheading 8415.90** (Explanatory Notes):*

This subheading includes both indoor and outdoor units for split system air conditioning machines of subheading 8415.10, when presented separately. The units designed to be connected by electrical wiring and copper tubing through which refrigerant passes between the indoor and outdoor units. This also include window or wall type self-contained unit.

As FCU and AHU of HVAC system are machines not pertaining to split system air conditioning machines, hence not qualifying under this heading.

FCU and AHU are apparatus of air conditioning machine/ system, and therefore cover under CTH 84.15.

As FCU and AHU does not incorporate a "refrigerating unit", therefore, the same are classifiable under CTI 841583 90."

F. The importer contended that,

III. *Parts of Air conditioner covered in CTIs 8415010 to 84158390 are classified under **CTI 8415 90 00- Parts.***

*IV. As there is no specific entry for classification units of air conditioner, therefore the indoor and outdoor units imported individually are also covered under **CTI 841590 00- Parts**, as mentioned in the explanatory notes.*

*FCU and AHU are not justified under **CTI 841590 00- Parts**, as FCU and AHU units are justifiable under CTI 841583 90, refer note B for details.*

16.13 In view of my above findings and the opinion given by Chartered Engineer, I concur with the department's position regarding the classification of the imported goods i.e. Fan coil Unit and Air Handling Unitimported vide Bills of Entry as detailed in Annexure-A to F to the SCNare classifiable under CTI 84158390,

17. Whether the differential duty of Rs. 4,73,04,488/- (Rupees Four Crore Seventy-Three Lakhs Four Thousand Four Hundred and Eighty-Eight Only) as calculated in Annexure-A to F to the SCN should be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 and differential duty & interest already paid by importer during the investigation as detailed in Para 11.5 above should be appropriated or otherwise

17.1 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.

17.2 In the instant case, impugned goods as detailed Annexure-A to F to the SCN has been mis-classified under Sub-heading 84189900 and paid BCD at the rate of 7.5% and IGST at the rate of 18%. However, the subject goods as detailed in above Annexure-A to F to the SCN are classifiable under other CTI 84158390 and applicable BCD is 20% and IGST is 28%. In view of this fact, I find that the importer has paid lesser duty by classifying under wrong CTI for which they were not eligible. By resorting to this deliberate suppression of facts and wilfulmis-classification, 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.**

17.3 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, 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 invokable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

17.4 I find that in the instant case, as elaborated in the foregoing paras, the Noticee had wilfully mis-classified the imported goods at the time of filing of the Bills of Entry to evade payment of correctly leviable duty. 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 CTI and claiming lower rate of duty. Instead, in the instant case, the Noticee deliberately chose to avail wrong CTI in respect of the imported goods to claim lower rate of duty, 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.

17.5 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.

17.6 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.

17.7 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.

17.8 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 isliable to pay the duty in respect of the said imported goods along with applicable interest.

17.9 In view of above, the importer is liable to pay the differential duty amount of **Rs. 4,73,04,488/- (Rupees Four Crore Seventy-Three Lakhs Four Thousand Four Hundred and Eighty-Eight 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 toRs. 4,07,04,547/- (Rupees Four Crore Seven Lakhs Four Thousand Five Hundred and Forty-Seven Only) and interest amounting to Rs. 46,48,459/- (Rupees Forty-Six Lakhs Forty-Eight Thousand Four Hundred and Fifty-Nine Only), 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.

18. Whether the subject goods having total declared Assessable Value of Rs.16,48,30,488/- (Rupees Sixteen Crore Forty-Eight Lakhs Thirty Thousand Four Hundred and Eighty-Eight only) imported vide Bills of Entry as detailed in Annexure-A to F to the SCN should be held liable for confiscation under 111(m) of the Customs Act, 1962 or otherwise;

18.1 I find that the Show Cause Notice proposes confiscation of goods having assessable value of Rs. 16,48,30,488/- (Rupees Sixteen Crore Forty-Eight Lakhs Thirty Thousand Four Hundred and Eighty-Eight only) under the provisions of Section 111(m) of the Customs Act, 1962 for the goods as detailed in Annexure-A to F to the SCN. 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;

18.2 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 paying lesser duty, 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. 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.

18.3 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. 8th 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.

18.4 From the discussions above, I find that that the importer had failed to assess and discharge the customs duty correctly on the imported goods as detailed in Annexure-A to F to the SCN, under wrong CTI 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.

18.5 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)."

18.5.1 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.).

18.5.2 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.

18.6 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.16,48,30,488/- (Rupees Sixteen Crore Forty-Eight Lakhs Thirty Thousand Four Hundred and Eighty-Eight only)** imported vide Bills of Entry as detailed in Annexure-A to F to the SCN are liable for confiscation under Section 111(m) of the Customs Act, 1962.

19. Whether penalty should be imposed on importer M/s Daikin Airconditioning India Pvt. Ltd. (IEC- 0500010323) under Section 112(a) and/or 114A of Customs Act, 1962 or otherwise;

19.1 I find that the impugned SCN proposes imposition of penalty on the Noticee under Section 112(a) and/or 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.

19.2 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. 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.

19.3 Further, I find that the noticee, has mis-declared the subject goods by classifying under wrong CTI, 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 classificationfor 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 as detailed in Annexure-A to F to the SCN, therefore penalty under Section 114A is imposable / sustainable in respect of said goods on the importer.

20. 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 declared classification of the goods imported vide Bills of Entry as detailed in Annexure-A to F to the SCN and order to re-assess the goods under CTI 84158390.

(ii) I confirm the differential duty amounting to **Rs. 4,73,04,488/- (Rupees Four Crore Seventy-Three Lakhs Four Thousand Four Hundred and Eighty-Eight Only)**as detailed in Annexure-A to F to the SCNunder 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 toRs. 4,07,04,547/- (Rupees Four Crore Seven Lakhs Four Thousand Five Hundred and Forty-Seven Only) and interest amounting to Rs. 46,48,459/- (Rupees Forty-Six Lakhs Forty-Eight Thousand Four Hundred and Fifty-Nine Only), 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.16,48,30,488/- (Rupees Sixteen Crore Forty-Eight Lakhs Thirty Thousand Four Hundred and Eighty-Eight only)**as detailed in Annexure-A to F to the SCN 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. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only)** under Section 125 of the Customs Act, 1962.

(v) I impose penalty of differential duty of **Rs. 4,73,04,488/- (Rupees Four Crore Seventy-Three Lakhs Four Thousand Four Hundred and Eighty-Eight Only) along with applicable interest under Section 28AA of the Customs Act, 1962,** under Section 114A of the Customs Act, 1962, on the importerM/s Daikin Airconditioning India Pvt. Ltd. (IEC- 0500010323) for the reasons aforesaid.

(vi) I refrain from imposing any penalty under Section 112(a) of the Customs Act, 1962, on importer M/s Daikin Airconditioning India Pvt. Ltd. (IEC- 0500010323), as discussed above.

21. 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.

27/8/25

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

To,

M/s Daikin Airconditioning India Pvt. Ltd.
210, 1st Floor, Okhla Industrial Area,
Phase 3, New Delhi – 110 020

Copy to:

1. The Pr. Additional Director General, DRI, Indore Zonal Unit, 1st Floor, BSNL Telephone Exchange Building, Transport Nagar, Indore (M.P.) – 600 017.
2. The Addl. Commissioner of Customs, Group V, JNCH, Nhava Sheva, Mumbai-II.
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.