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 – 20250878NX0000000FA0	**Date of Order: 29.08.2025**
F. No. S/10-100/2024-25/COMMR/GR.V/NS-V/CAC/JNCH	**Date of Issue: 29.08.2025**
SCN No.: 1043/2024-25/COMMR/NS-V/GR.V/CAC/JNCH	
SCN Date: 05.09.2024	
Passed by: Sh. Anil Ramteke **Commissioner of Customs, NS-V, JNCH**	
Order No: 180/2025-26/COMMR/NS-V/CAC/JNCH	
Name of Noticee: M/s Haier Appliances (India) Private Limited (IEC: 0503046035)	

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. 1043/2024-25/COMMR/(NS-V)/GR.V/ JNCH dated 05.09.2024 issued to M/s Haier Appliances (India) Private Limited (IEC - 0503046035) – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) No. 1043/2024-25/COMMR/(NS-V)/GR.V/ JNCH dated 05.09.2024 that M/s Haier Appliances (India) Private Limited (IEC - 0503046035) (hereinafter referred to as the importer / noticee) having address at Building No. l, Okhla Estate Phase - Ill, South Delhi, Delhi, India - 110020, is engaged in import of various goods including Refrigeration Appliances, Home Laundry Appliances, Freezer, Water Heaters, their spare parts / parts etc. The importer is engaged in manufacturing and supplying these items in domestic market.

1.2 As per the SCN, vide letters dated 17.10.2023 and 07.03.2024 issued vide C. No. CADT/CIR/ADT/PBA/40/2023-PBA-Cir-B2-O/o Commr-Cus-Adt-Delhi, the importer was informed regarding conducting Customs On-Site Post Clearance Audit (OSPCA) under Section 99A of the Customs Act, 1962 and the Audit schedule, respectively. The team of auditors of Customs Audit Commissionerate, New Custom House, New Delhi conducted the audit through Conference at the office premises of the Customs Audit Commissionerate at Room No. 139-B, First Floor, New Custom House, Near IGI Airport, New Delhi-110037, under Section 99A of the Customs Act, 1962 for the period F.Y. 2019-20 to 2022-23. The audit was initiated on 20.02.2024 (Entry Conference). Sh. Rajat Sinha, Senior Manager - Imports (Logistics) and Sh. Gaurav Mehta, Manager - Imports [Authorised representatives of M/s Haier Appliances (India) Private Limited] were present during the audit and produced records / data / information as required during audit.

1.3 As per the SCN, during the course of audit and on examination of records, the following discrepancies had been observed:

1.3.1 Observation-1:

Compressor for Refrigerator: Mis-classification of Compressor for refrigerator under CTH 84189100 & 84189900 [BCD-7.5%, SWS-10% & IGST-18%] instead of correct CTH 84143000 [BCD-10%/12.5%/15% + SWS-10% + IGST-18%].

The relevant entries of the Custom Tariff Heading 8418 of the Customs Tariff Act, 1975 are as follows:

Subheading 8418:

8418		**REFRIGERATORS, FREEZERS AND OTHER REFRIGERATING OR FREEAING EQUIPMENT, ELECTRIC OR OTHER; HEAT PUMPS OTHER THAN AIR CONDITIONING MACHINES OF HEADING 8412.5**
8418 10	-	Combined refrigerator-freezers, fitted with separate external doors or drawers, or combinations thereof:
-	-	-
	-	Refrigerators, household type:
8418 21 00	--	Compression-type
8418 29 00	-	-
	-	Parts:
8418 91 00	--	Other Parts: Furniture designed to receive refrigerating or freezing equipment
8418 99 00	--	Other

Further, Subheading 84143000:

8414		**AIR OR VACUUM PUMPS, AIR OR OTHER GAS COMPRESSORS AND FANS; VENTILATING OR RECYCLING HOODS INCORPORATING A FANS, WHETHER OR NOT FITTED WITH FILTERS; GAS-TIGHT BIOLOGICAL SAFETY CABINETS, WHETHER OR NOT FITTED WITH FILTERS**
8414 10 00	-	Vacuum Pumps
-	-	-
8414 30 00	-	**Compressors of a kind used in refrigerating equipment**
-	-	-
8414 80	-	Other:
	---	Gas compressors:
8414 80 11	----	Of a kind used in air-conditioning equipment
-	-	-
8414 90	-	Parts:
	---	Of air or vacuum pumps and compressors:
8414 90 11	----	Of gas compressors of a kind used in refrigerating and air conditioning appliances and machinery
-	-	-
8414 90 30	---	Of electric fans
8414 90 40	---	Of Industrial fans, blowers
8414 90 90	---	Other

From the plain reading of the above listing against CTH 84189100 / 84189900, it transpired that the said heading is generally meant for parts of Refrigerator Freezers and Other Freezing Equipment, whereas CTH 84143000 specifically covers the Compressor for refrigerating equipment. Thus, the impugned goods i.e., "Compressor for refrigerator/freezers and other refrigerating or freezing equipment" merit classification under CTH 84143000. Hence, the importer had mis-classified the impugned goods under CTH 84189900 instead of correct CTH 84143000, resulting in short payment of duty amounting to Rs. 1,15,32,100/- which is recoverable along with interest and penalty under relevant provisions of the Customs Act.

1.3.2 Observation-2:

Indoor / Outdoor Unit PCB / Computer Boards: Mis-classification of Indoor / Outdoor Unit PCB / Computer Boards under CTH 85371000 [BCD-15%, SWS-10% & IGST-18%] & 84189900 [BCD-7.5%, SWS-10% & IGST-18%] instead of 84159000 [BCD-10%, SWS-10% & IGST 28%].

The relevant entries of the Custom Tariff Heading 8537 of the Customs Tariff Act, 1975 are as follows:

Subheading 8537:

8537		**BOARDS, PANELS, CONSOLES, DESKS, CABINETS AND OTHER BASES, EQUIPPED WITH TWO OR MORE APPARATUS OF HEADING 8535 OR 8536, FOR ELECTRIC CONTROL OR THE DISTRIBUTION OF ELECTRICITY, INCLUDING THOSE INCORPORATING INSTRUMENTS OR APPARATUS OF CHAPTER 90, AND NUMERICAL CONTROL APPARATUS, OTHER THAN SWITCHING APPARTUS OF HEADING 8517**
8537 10 00	-	For a voltage not exceeding 1,000 V
8537 20 00	-	For a voltage exceeding 1,000 V

In view of the above, it appeared that heading 8537 specifically covers "Boards, Panels, Consoles, Desks, Cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517".

Further, as discussed in above para, CTH 84189900 meant for parts of Refrigerators, Freezers and Other Freezing Equipment and not for parts of Air Conditioner.

Subheading 8415:

8415		**AIR CONDITIONING MACHINES, COMPRISING A MOTORDRIVEN FAN AND ELEMENTS FOR CHANGING THE TEMPERATURE AND HUMIDITY, INCLUDING THOSE 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 20	-	-
-	-	-
	-	*Other:*
8415 81	--	*Incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle (reversible heat pumps):*
-	---	-
8415 82	--	*Other, incorporating a refrigerating unit:*
-	---	-

8415 83	--	***Not incorporating a refrigerating unit:***
-	-	-
8415 90 00	-	**Parts**

Section Note 2(b) of Section XVI of the Customs Tariff Act, 1975 inter-alia 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 machine of that kind.

Indoor / Outdoor Unit (IDU / ODU) PCBs function is to communicate command and data to the different parts of the air conditioner. It controls the capacitors, transistors, and compressors, as well as other components, giving the command to function or operate. ODU PCB has specific use for electricity control and distribution as part in air conditioners. IDU / ODU PCB cannot perform its function on a stand-alone basis in the imported condition. Moreover, it appeared that functioning of these PCBs is dependent upon functions performed by other parts / components of the air-conditioner.

The true test for determining whether an item is classifiable as parts components is as follows: (i) Whether the item has a separate identifiable individual function of its own, when compared to the main machine; and (ii) Whether the item is capable of operating independently of the main-machine on its own. If the answer to both the aforesaid questions is in the negative, the item would be classifiable as parts and in that case, the item will not be classifiable as an apparatus falling under its own appropriate heading. IDU / ODU PCB cannot perform its function on a stand-alone basis in the imported condition. Moreover, it appeared that functioning of these PCBs is dependent upon functions performed by other parts/components of the air-conditioner. Thus, the goods in question would merit classification as parts and not as apparatus falling under its own appropriate heading.

In view of the aforesaid facts and discussions, the goods, namely, 'IDU / ODU PCB' would merit classification under Sub-heading 84159000. Hence, the importer had mis-classified the impugned goods under CTH 85371000 & CTH 84189900 instead of correct CTH 84159000 resulting in short payment of duty amounting to Rs. 51,13,647/- [Rs. 43,17,326/- (for year 2019-23) + Rs.7,96,321/- (for year 2023-24)] which is recoverable along with interest and penalty under relevant provisions of the Customs Act.

1.3.3 Observation-3:

Radiator / Heatsink (Parts of Air Conditioner): Mis-classification of Radiator / Heatsink (Parts of AC) under CTH 76169990 [BCD-10%, SWS-10%, IGST-18%] instead of CTH 84159000 [BCD-10%, SWS-10% & IGST 28%].

The relevant entries of the Custom Tariff Heading 7616 of the Customs Tariff Act. 1975 are as follows:

Subheading 7616:

7616		**OTHER ARTICLES OF ALUMINIUM**
7616 10 00	-	Nails, tacks, staples (other than those of heading 8305), screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers and similar articles
	-	Other:
7616 91 00	--	Cloth, grill, netting and fencing, of aluminium wire
7616 99	--	Other:
7616 99 10	---	Expanded metal of aluminium and aluminium alloys
7616 99 20	---	Chains
7616 99 30	---	Bobbins
7616 99 90	---	Other

Further, Subheading 8415:

8415		**AIR CONDITIONING MACHINES, COMPRISING A MOTORDRIVEN FAN AND ELEMENTS FOR CHANGING THE TEMPERATURE AND HUMIDITY, INCLUDING THOSE 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 20	-	-
-	-	-
	-	*Other:*
8415 81	--	*Incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle (reversible heat pumps):*
-	---	-
8415 82	--	*Other, incorporating a refrigerating unit:*
-	---	-
8415 83	--	***Not incorporating a refrigerating unit:***
8415 83 10	---	Split air-conditioner two tonnes and above
8415 83 90	---	Other
8415 90 00	-	**Parts**

During audit it was observed that the importer in some cases classified the impugned goods, i.e., Radiator / Heatsink (Parts of AC) under CTH 76169990 and assessed / levied to [BCD-10%, SWS-10%, IGST-18%]. However, the goods being parts of the AC are classifiable under CTH 84159000 [BCD-10%, SWS-10% & IGST 28%]. The importer, itself had classified the impugned goods under CTH 84159000. Hence, the importer misclassified the impugned good. This mis-classification resulted in short payment of differential duty amounting to Rs. 14,55,015/- which is recoverable along with interest and penalty under relevant provisions of the Customs Act.

1.3.4 Observation-4:

LED TV of Size 102 cm (more than 32 inches): Short payment of duty / taxes on "LED TV of Size 102 cm (more than 32 inches)" classified under CTH 8528 7215 due to levy of IGST @18%

(Sl. No. 384 of Sch. III of IGST Notfn. No. 001/2017 dated 28.06.2017) instead of correct IGST @28% (Sl. No. 154 of Sch. IV of IGST Notfn. ibid).

During audit it was observed that the importer imported the impugned goods, under CTH 85287215 and assessed / levied to IGST @18% (Sl. No. 384 of Sch. III of IGST Notfn. No. 001/2017 dated 28.06.2017). However, the goods attract IGST @28% (Sl. No. 154 of Sch. IV of IGST Notfn. ibid). As a result, incorrect levy of IGST resulted in short payment of duty (Differential IGST) amounting to Rs. 8,27,904/- and the same appeared recoverable under relevant provisions of the Customs Act.

1.3.5 Observation-5:

Spare parts of Washing Machine of Household type / use: Mis-classification of "Spare Parts of Washing Machine (for Household use)" under CTH 84509090 [BCD-7.5%, SWS-10% & IGST-18%] instead of Correct CTH 84509010 [BCD-10%, SWS-10% & IGST 18%].

The relevant entries of the Custom Tariff Heading 8450 of the Customs Tariff Act, 1975 are as follows:

Subheading 8450:

8450		**HOUSEHOLD OR LAUNDRY-TYPE WASHING MACHINES, INCLUDING MACHINES WHICH BOTH WASH AND DRY**
	-	*Machines, each of a dry linen capacity not exceeding 10 kg:*
8450 11 00	--	Fully-automatic machines
8450 12 00	--	Other machines, with built-in centrifugal drier
8450 19 00	--	Other
8450 20 00	-	Machines, each of a dry linen capacity exceeding 10 Kg.
8450 90	-	*Parts:*
8450 90 10	---	Parts of household type machines
8450 90 90	---	Other

From the above, it is clear that two CTHs i.e., 84509010 & 84509090 cover the parts of all kinds of washing machines. Further, CTH 84509010 specifically covers the part of the washing machines of household type.

In the instant case, during audit, it was observed that the importer is in the business of manufacturing of washing machines of household types, therefore, the parts of washing machine imported belong to these household type machines.

In view of the above discussions, it appeared that the impugned goods are classifiable under CTH 84509010 instead of 84509090. This mis-classification resulted in short payment of duty amounting to Rs. 17,23,906/- which is recoverable along with interest and penalty under relevant provisions of the Customs Act.

1.3.6 Observation-6:

Spare Parts of Air Conditioner wrongly classified as parts of Washing Machine: Mis-classification of spare parts of Air Conditioner as parts of Washing Machine under CTH - 84509010 [BCD-10%, SWS-10% & IGST-18%] instead of correct CTH - 84159000 [BCD-10%, SWS-10% & IGST-28%].

The relevant entries of the Custom Tariff Heading 8450 of the Customs Tariff Act, 1975 are as follows:

Subheading 8450:

8450		**HOUSEHOLD OR LAUNDRY-TYPE WASHING MACHINES, INCLUDING MACHINES WHICH BOTH WASH AND DRY**
	-	*Machines, each of a dry linen capacity not exceeding 10 kg:*
8450 11 00	--	Fully-automatic machines
8450 12 00	--	Other machines, with built-in centrifugal drier
8450 19 00	--	Other
8450 20 00	-	Machines, each of a dry linen capacity exceeding 10 Kg.
8450 90	-	*Parts:*
8450 90 10	---	Parts of household type machines
8450 90 90	---	Other

Further, Subheading 8415:

8415		**AIR CONDITIONING MACHINES, COMPRISING A MOTORDRIVEN FAN AND ELEMENTS FOR CHANGING THE TEMPERATURE AND HUMIDITY, INCLUDING THOSE 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 83 90	---	Other
8415 90 00	-	**Parts**

From the above, it is clear that the CTH 84509010 specifically covers the spare parts of washing machines of household type and the spare parts of Air Conditioners are specifically covered under CTH 84159000. Therefore, the items having description as "Parts of Air Conditioner" are specifically covered under CTH 84159000 instead of CTH 84509010 resulting in short payment of duty amounting to Rs. 5,27,808/- which is recoverable along with interest and penalty under relevant provisions of the Customs Act.

1.3.7 Observation-7:

Wrong availment of duty benefits under Notification No. 50/2017-Cus dated 30.06.2017 @ Sl. No. 516A & 516B: Short Payment of duty / taxes due to wrong availment of duty benefits

under Notification No. 50/2017-Cus dated 30.06.2017 @ Sl. No. 516A & 516B [BCD-10%] on "Parts of LED TV" which are not eligible for the said duty benefits and liable for BCD @15%.

During audit, it was observed that the importer has imported "LED TV spare parts" under CTH 85299090 and availed duty benefits under Sl. No. 516A & 516B of the Notification No. 50/2017-Customs dated 30.06.2017. Both the Serial Nos. have been reproduced below as:

I. Sl. No. 516A of Notification No. 050/2017 dated 30.06.2017: Parts suitable for use solely or principally with the apparatus of heading 8525, 8526 or 8527 are eligible for BCD @10% instead of 15%.

II. Sl. No. 516B of Notification No. 050/2017 dated 30.06.2017: Parts suitable for use solely or principally with the apparatus of heading 8528 namely:

i. Other cathode ray tube monitors (85284900);

ii. Other monitors (85285900);

iii. Other Projectors (85286900);

iv. Reception apparatus for television, whether or not incorporating radio broadcast receivers or sound or video recording or reproducing apparatus, -

(a) Not designed to incorporate a video display or screen (85287100); and

(b) Other Monochrome (852873) are eligible for BCD @ 10% instead of 15%.

In view of the above, it is clear that "LED TV" classifiable under CTH 8528 is not included under the Sl. No. 516A of the Notification ibid. Further, specific items eligible for duty benefits under Sl. No. 516B of the said Notification, also do not incorporate "LED TVs". Hence, the impugned goods i.e., spare parts of LED TVs are not eligible for duty benefits under Sl. No. 516A & 516B of the Notification No. 50/2017-Cus dated 30.06.2017. Therefore, this wrong availment of duty benefits has resulted in short payment of duty amounting to Rs. 4,03,115/- which is recoverable under relevant provisions of the Customs Act.

1.3.8 Observation-8:

Water Cups (Glassware): Mis-classification of the items having description "Water Cups for promotions" under CTH - 70200090 [BCD-10%, SWS-10% & IGST-18%] instead of correct CTH - 70133700 [BCD-20%, SWS-10% & IGST-28%].

The relevant entries of the Custom Tariff Heading 7020 of the Customs Tariff Act, 1975 are as follows:

Subheading 7020:

7020		**OTHER ARTICLES OF GLASS**
7020 00	-	*Other articles of glass:*
	---	*Glass shells, glass globes and glass founts:*
7020 00 11	----	Globes for lamps and lanterns
7020 00 12	----	Founts for kerosene wick lamps

7020 00 19	----	Other
	---	*Glass chimneys:*
7020 00 21	----	For lamps and lanterns
7020 00 29	----	Other
7020 00 90	---	Other

Further, Subheading 7013:

7013		**GLASSWARE OF A KIND USED FOR TABLE, KITCHEN, TOILET, OFFICE, INDOOR DECORATION OR SIMILAR PURPOSES (OTHER THAN THAT OF HEADING 7010 OR 7018)**
7013 10 00	-	Of glass-ceramics
	-	*Stemware drinking glasses, other than of glass-ceramics:*
7013 22 00	--	Of lead crystal
7013 28 00	--	Other
	-	*Other drinking glasses, other than of glass-ceramics:*
7013 33 00	--	Of lead crystal
7013 37 00	--	**Other**
	-	*Glassware of a kind used for table (other than drinking glasses) or kitchen purposes, other than of glass-ceramics:*
-	--	-
	-	*Other glassware:*
7013 91 00	--	Of lead crystal
7013 99 00	--	Other

From the above, it is clear that subheading 7013 specifically coves "glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)". Further, CTH 70133700 specifically covers the drinking water glasses (other than glass-ceramics). As per the description and the discussion during the audit, the impugned goods are drinking water glass/cups for promotional purposes.

Therefore, the impugned imported goods are classifiable under CTH 70133700 instead of 70200090 resulting in short payment of differential Duty amounting to Rs. 3,79,783/- which is recoverable along with interest and Penalty under relevant provisions of the Customs Act.

1.3.9 Observation-9:

Spare Parts of Solar Heater: Mis-classification of the items having description "Solar Water Heater" under CTH - 84191910 [BCD-10%, SWS-10% & IGST-5%] instead of correct CTH 84199090 [BCD-7.5%, SWS-10% & IGST-18%].

During audit it was observed that the importer imported the impugned goods and classified them under CTH 84191910 and assessed / levied to IGST @ 5% (Sl. No. 232 Sch. I of IGST Notfn. No. 01/2017 dated 28.06.2017). However, on scrutiny of import documents viz., B/L and Country of Origin Certificates etc., it was further observed that the impugned goods are

not complete solar water heater but are glass tubes to be used as parts of the same, which are classifiable under CTH 84199090 resulting in short payment of duty amounting to Rs. 4,70,825/- which is recoverable along with interest and penalty under relevant provisions of the Customs Act.

1.3.10 Observation-10:

Cooling Fan / Fan for Refrigerator: Mis-classification of "Fan for Refrigerator" under CTH 84189900 [BCD-7.5%, SWS-10%, IGST-18%] instead of correct CTH 84145910 [BCD-10%, SWS-10%, IGST-28%].

The relevant entries of the Custom Tariff Heading 8418 of the Customs Tariff Act, 1975 are as follows:

Subheading 8418:

8418		**REFRIGERATORS, FREEZERS AND OTHER REFRIGERATING OR FREEAING EQUIPMENT, ELECTRIC OR OTHER; HEAT PUMPS OTHER THAN AIR CONDITIONING MACHINES OF HEADING 8412.5**
8418 10	-	Combined refrigerator-freezers, fitted with separate external doors or drawers, or combinations thereof:
-	-	-
	-	Refrigerators, household type:
8418 21 00	--	Compression-type
8418 29 00	-	-
	-	Parts:
8418 91 00	--	Other Parts: Furniture designed to receive refrigerating or freezing equipment
8418 99 00	--	Other

Further, Subheading 8414:

8414		**AIR OR VACUUM PUMPS, AIR OR OTHER GAS COMPRESSORS AND FANS; VENTILATING OR RECYCLING HOODS INCORPORATING A FANS, WHETHER OR NOT FITTED WITH FILTERS; GAS-TIGHT BIOLOGICAL SAFETY CABINETS, WHETHER OR NOT FITTED WITH FILTERS**
8414 10 00	-	Vacuum Pumps
-	-	-
8414 30 00	-	Compressors of a kind used in refrigerating equipment
8414 40	-	*Air compressors mounted on a wheeled chasis for towing:*
-	-	-
	-	*Fans:*
8414 51	--	*Table, floor, wall, window, ceiling or roof fans, with a self-contained electric motor of an output not exceeding 125 W:*
8414 51 10	---	Table fans
8414 51 10	---	Ceiling fans
-	---	-

8414 51 90	---	Others
841459	--	*Other:*
8414 59 10	---	Air circulator
8414 59 20	---	Blowers, portable
8414 59 30	---	Industrial fans and blowers
8414 59 90	---	Other
-	---	-
	---	Gas compressors:
8414 80 11	----	Of a kind used in air-conditioning equipment
-	-	-
8414 90	-	*Parts:*
-	-	-

During audit, it was observed that the importer has classified the fans to be used in refrigerators / freezers under CTH 8418 i.e., as parts of refrigerators / freezers whereas Fans are specifically classified under CTH 8414 as above.

Further as per Explanatory Notes to Chapter heading 8414, "*Compressors, Air Pumps, fans, blowers, etc. specially constructed for use with other machines remains classified in this heading and not as parts of such other machine*".

In view of the above, no doubts that the fans are the integral parts of refrigerators / freezers but are classifiable under CTH 8414 i.e., 84145910 / 84145990 in the instant case resulting in short payment of differential duty amounting to Rs. 14,09,289/- is recoverable along with interest and penalty under relevant provisions of the Customs Act.

1.3.11 Observation-11:

LED Lamp / Light of Refrigerator / Fridge / Freezer: Mis-classification of "LED Lamp / Light of Refrigerator / Fridge / Freezer" under 84189900 [BCD-7.5%, SWS-10%, IGST-18%] instead of correct CTH 85395000 / 85395200 [BCD-20%, SWS-10%, IGST-12% / 18%].

The relevant entries of the Custom Tariff Heading 8418 of the Customs Tariff Act, 1975 are as follows:

Subheading 8418:

8418		**REFRIGERATORS, FREEZERS AND OTHER REFRIGERATING OR FREEAING EQUIPMENT, ELECTRIC OR OTHER; HEAT PUMPS OTHER THAN AIR CONDITIONING MACHINES OF HEADING 8412.5**
8418 10	-	Combined refrigerator-freezers, fitted with separate external doors or drawers, or combinations thereof:
-	-	-
	-	Refrigerators, household type:
8418 21 00	--	Compression-type

8418 29 00	--	Other
-	-	-
	-	Parts:
8418 91 00	--	Other Parts: Furniture designed to receive refrigerating or freezing equipment
8418 99 00	--	Other

From the plain reading of the said listing against CTH 84189900, it transpired that the said heading is meant for the parts of the refrigerators / freezers / other refrigerating equipment.

Further, Subheading 8539:

8539		**ELECTRIC FILAMENT OR DISCHARGE LAMPS INCUDING SEALED BEAM LAMP UNITS AND ULTRAVIOLET OR INFRA-RED LAMPS, ARC-LAMPS; LIGHT EMITTING DIODE (LED) LIGHT SOURCES**
8539 10 00	-	Sealed beam lamp units
	-	*Other filament lamps, excluding ultra-violet or infra-red lamps:*
8539 21	-	*Tungsten halogen:*
-	-	-
	-	*Light-emitting diode (LED) light sources:*
8539 51 00	--	Light-emitting diode (LED) modules
8539 50 00 /8539 52 00	--	Light-emitting diode (LED) lamps

As per WCO's Explanatory Notes to the subheading 8539, this subheading includes as follows:

"This heading covers all electric light lamps whether or not specially designed for particular uses (including flashlight discharge lamps).

This heading covers filament lamps, gas or vapour discharge lamps, arc lamps, light emitting diode (LED) modules and light emitting diode (LED) lamps."

From the conjoint reading of, tariff heading / subheading 8539 and Explanatory Notes to subheading 8539, it is clearly established that the LED lamps to be used in refrigerators / freezers etc. are covered under the subheading 8539.

Hence, the impugned goods being LED lamps which are specifically given in the nomenclature, are classifiable under CTH 85395000 / 85395200 instead of subheading 8418 resulting in short payment of duty amounting to Rs. 1,23,406/- which is recoverable along with interest and penalty under relevant provisions of the Customs Act.

1.3.12 Observation-12:

Rubber Gaskets: Short payment of duty / taxes on "Rubber Gaskets" classified under CTH 40169340 due to levy of IGST @5% (Sl. No. 191 of Sch. I of IGST Not. No. 001/2017 dated 28.06.2017) instead of correct IGST @18% (Sl. No. 123A of Sch. III of IGST Not. ibid).

During audit it was observed that the importer imported the impugned goods, under CTH 40169340 and assessed / levied to IGST @5% (Sl. No. 191 Sch. I of IGST Notfn. No. 001/2017 dated 28.06.2017). However, the goods attract IGST @18% (Sl. No. 123A of Sch. III of IGST Notfn. ibid). As a result, incorrect levy of IGST resulted in short payment of duty (Differential IGST) amounting to Rs. 61,522/- and the same appears recoverable under relevant provisions of the Customs Act.

1.3.13 Observation-13:

Compressor of Air Conditioner: Mis-classification of Compressor for Air Conditioner under CTH 84149011 & 85169000 [BCD-7.5% / 10%, SWS-10% & IGST-18%] instead of correct CTH 84148011 [BCD-15% + SWS-10% + IGST-18%].

The relevant entries of the Custom Tariff Heading 8516 of the Customs Tariff Act, 1975 are as follows:

8516		**ELECTRIC INSTANTANEOUS OR STORAGE WATER HEATERS AND IMMERSION HEATERS; ELECTRIC SPACE HEATING APPARATUS AND SOIL HEATING APPARTUS; ELECTRO-THERMIC HAIR-DRESSING APPARATUS (FOR EXAMPLE, HAIR DRYERS, HAIR CULERS, CURLING TONG HEATERS) AND HAND DRYERS; ELECTRIC SMOOTHING IRONS; OTHER ELECTRO-THERMIC APPLIANCES OF A KIND USED FOR DOMESTIC PURPOSES; ELECTRIC HEATING RESISTORS, OTHER THAN THOSE OF HEADING 8545**
8516 10 00	-	Electric instantaneous or storage water heaters and immersion heaters
	-	*Electric space heating apparatus and electric soil heating apparatus:*
8516 21 00	--	Storage heating radiators
-	-	-
85169000	-	**Parts**

Heading 8516 specifically covers "Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hair-dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545".

Further, **Subheading 8414**:

8414		**AIR OR VACUUM PUMPS, AIR OR OTHER GAS COMPRESSORS AND FANS; VENTILATING OR RECYCLING HOODS INCORPORATING A FANS, WHETHER OR NOT FITTED WITH FILTERS; GAS-TIGHT BIOLOGICAL SAFETY CABINETS, WHETHER OR NOT FITTED WITH FILTERS**
8414 10 00	-	Vacuum Pumps
-	-	-

8414 30 00	-	Compressors of a kind used in refrigerating equipment
8414 40	-	*Air compressors mounted on a wheeled chasis for towing:*
-	-	-
	-	*Fans:*
8414 51	--	*Table, floor, wall, window, ceiling or roof fans, with a self-contained electric motor of an output not exceeding 125 W:*
-	----	-
8414 51 90	---	Others
841459	--	*Other:*
-	---	-
8414 59 90	---	Other
-	--	-
	---	Gas compressors:
8414 80 11	**----**	**Of a kind used in air-conditioning equipment**
-	-	-
8414 90	-	**Parts:**
	---	Of air or vacuum pumps and compressors:
8414 90 11	**----**	**Of gas compressors of a kind used in refrigerating and air conditioning appliances and machinery**
-	-	-
8414 90 90	---	Other

From above, it appeared that heading 8414 9011 covers only the parts of gas compressors to be used in Air conditioners whereas the gas compressor is specifically covered under subheading 84148011. Hence, the impugned goods being 'Compressors for Air Conditioners' which are specifically given in the nomenclature, are classifiable under CTH 84148011 resulting in short payment of duty amounting to Rs. 43,766/- which is recoverable along with interest and penalty under relevant provisions of the Customs Act.

1.3.14 <u>Observation-14</u>:

<u>Wrong availment of FTA benefits under Notfn. No. 050/2018-Cus dated 30.06.2018</u>: Asia Pacific Trade Agreement (Formerly known as the Bangkok Agreement) Rules, 2006 [Notification No. 94/2006-Cus (N.T.) dated 31.08.2006 as amended] prescribes the rules of origin and format of Country of Origin (COO) certificate under the APTA Agreement. As per the format, Box 1 covers- "Goods Consigned from: (Exporter's business name, address, country)". As per the Notes for completing the Certificate of Origin, this entry should contain name, address and country of the exporter. The name must be the same as the exporter described in the Invoice.

Further, Audit Commissionerate, Chennai had sought clarification from the Director (DIC), Central Board of Indirect Taxes & Customs in this regard. The DIC provided the clarification which is as follows:

"……..it is to inform that as per the Notes of completing certificate of origin in "Box 1. Goods consigned from" the name must be the same as the exporter described in the

invoice. Moreover, the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement Rules, 2006 has no exclusive provision for accepting certificate of origin for which invoice is issued by a non-party."

Alert Circular No. 03/2021 dated 18.02.2021, issued by Audit Commissionerate, Chennai clarified that Asia Pacific Trade Agreement (Formerly known as the Bangkok Agreement) Rules, 2006 [Notification No. 94/2006-Cus (N.T.) dated 31.08.2006 as amended] has no exclusive provisions for accepting Certificate of Origin for which the invoice is issued by a non-party.

In the instant case, the Box 1 of COO Certificate contains the name "Haier Overseas Electric Appliances Corp. Ltd., P.R. China" whereas invoice has been raised by "Haier Singapore Investment Holding PTE. LTD., Singapore" which is contrary to the provisions laid under Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement Rules, 2006 as amended.

Further, the invoice No. mentioned in the COO Certificate is a third country invoice which does not contain any exporter details therein. Therefore, as per the clarification, such third country invoice is not allowed for availing the benefits of the said FTA Notification. Therefore, the importer is not eligible for the duty exemption benefits under Notfn. No. 50-2018-Cus dated 30.06.2018.

This wrong availment of FTA benefits under the impugned FTA Notification resulted in short payment of duty amounting to Rs. 78,52,167/- and the same appeared recoverable along with interest and penalty under relevant provisions of the Customs Act.

1.3.15 Observation-15:

Indoor Unit /Outdoor Unit in SKD Condition: Wrong availment of benefits under Sl. No. 449A of Notification No. 50/2017-Customs dated 30.06.2017.

During audit, it was observed that the importer imported Indoor/Outdoor Units of AC (as parts of AC) in SKD condition under CTH 84159000 availing benefits under Notfn. 50/2017-Customs dated 30.06.2017 at Sl. No. 449A.

As per Sl. No. 449A of the Notification ibid, parts of Air Conditioner other than indoor or outdoor units of split system Air Conditioner are eligible for duty exemption i.e., BCD @ 10% instead of BCD @ 20%.

In view of the above, it appeared that the said duty benefit is available for all the parts of AC except Indoor/Outdoor Units of split system AC.

Further scrutiny revealed that in some cases the importer imported IDU/ODU Kits for AC in SKD conditions (without motor and service valve) and availed benefits under Sl. No. 449A of the Notification ibid.

Rule 2(a) of the GRI is extracted below for ready reference:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

Rule 2(a) of the GRI can be applied in circumstances wherein the imported goods have the essential character of the finished goods.

Hon'ble Tribunal, Mumbai in the case of *Maharaja Whiteline Industries Ltd v. Commissioner of Customs, 2019-TIOL-1797-CESTAT-MUM*; in this case, the imported goods were examined, and it was found that the goods were essentially six sets of Injection Moulding Machine without clamping units; the goods had been imported in semi-knocked down condition; the Hon'ble Tribunal held that mere absence of clamping unit would not affect the classification of the goods, which were in semi-knocked down condition, by application of Rule 2(a) of GRI; for the purpose of assessment, the goods were to be treated to be complete machine classifiable under Sub-heading 8477 10 00 of the Customs Tariff;

HSN Explanatory Notes to Section XVI; the relevant portion of the HSN Explanatory Notes states, *"Throughout the Section any reference to a machine or apparatus covers not only the complete machine, but also an incomplete machine (i.e., an assembly of parts so far advanced that it already has the main essential features of the complete machine)."*; *thus a machine lacking only a flywheel, a bed plate, calendar rolls, tool holders, etc., is classified in the same heading as the machine, and not in any separate heading provided for parts; similarly a machine or apparatus normally incorporating an electric motor (e.g., electro-mechanical hand tools of heading 84.67) is classified in the same heading as the corresponding complete machine even if presented without that motor."*; from above HSN Explanatory notes, it can be seen that if a machine (which incorporates a motor) is imported without the motor, it can still be classified as complete machine, even though the machine is not able to function in absence of the motor;

Essential character relates to the identity of the good. A vehicle build that has reached the stage where it has sufficient features to define it as a vehicle, regardless of whether or not it is currently assembled, has the essential character of a vehicle.

Goods that have reached this stage will have become more than a part or sub-assembly to be added to a vehicle being assembled. Instead, they are an incomplete vehicle awaiting the addition of parts for completion.

HSN Explanatory Notes to Chapter 87 of the Customs Tariff also talks about classification of incomplete vehicles. Motor vehicles cannot function without engine, however, the HSN Explanatory Notes still says that such motor vehicles will be classified as complete motor vehicle by applying Rule 2(a) of GRI.

In the present case, the importer intends to import IDU / ODU Kits in SKD conditions without motor & service valve. The subject goods, in the condition in which they are proposed to be imported by the importer, have the essential character of complete IDU / ODU of AC. As such in terms of GIR 2(a) and the Explanatory Notes, the IDU / ODU imported in SKD conditions w/o motor & service valve, shall be considered as complete IDU / ODU for classification or any duty benefits. Therefore, the impugned goods were not eligible for the duty benefits under Sl. No. 449A in Notification No. 50/2017-Customs dated 30.06.2017.

This wrong availment of duty benefits under Sl. No. 449A of the notification ibid resulted in short payment of duty amounting to Rs. 1,82,72,774/- and the same appeared recoverable along with interest and penalty under relevant provisions of the Customs Act.

1.3.16 The details of the short paid duty:

TABLE-A

Sl. No.	Issue in Brief	Assessable Value	Amount short levied/short paid (in Rs.)			
			BCD	SWS	IGST	TOTAL
1	**Compressor for Refrigerator:** Mis-classification of Compressor for refrigerator under CTH 84189100 & 84189900 [BCD-7.5%, SWS-10% & IGST-18%] instead of correct CTH 84143000 [BCD- 10/12.5%/15% + SWS-10% + IGST-18%].	124084105	8884516	888451	1759133	11532100
2	**Indoor/Outdoor Unit PCB/Computer Boards:** Mis-classification of Indoor / Outdoor Unit PCB / Computer Boards under CTH 85371000 [BCD-15%, SWS-10% & IGST-18%] & 84189900 [BCD-7.5%, SWS-10% & IGST-18% instead of 84159000 [BCD-10%, SWS-10% & IGST 28%].	48254730	138780	13878	4960989	5113647
3	**Radiator / Heatsink (Parts of Air Conditioner):** Mis-classification of Radiator/ Heatsink (Parts of AC) under CTH 76169990 [BCD-10%, SWS-10%,	13108244	NIL	NIL	1455015	1455015

	IGST-18%] instead of CTH 84159000 [BCD-10%, SWS-10% & IGST-28%].					
4	**LED TV of Size 102 cm (more than 32 inches):** Short payment of duty/taxes on "LED TV of Size 102 cm (more than 32 inches)" classified under CTH 85287215 due to levy of IGST @18% (Sl. No. 384 of Sch. III of IGST Not. No. 001/2017 dated 28.06.2017) instead of correct IGST @28% (Sl. No. 154 of Sch. IV of IGST Not. ibid).	6786097	NIL	NIL	827904	827904
5	**Spare parts of Washing Machine of Household type / use:** Mis-classification of "Spare Parts of Washing Machine (for Household use)" under CTH 84509090 [BCD-7.5%, SWS-10% & IGST-18%] instead of correct CTH 84509010 [BCD-10%, SWS 10% & IGST-18%].	53125834	1328144	13281 1	262951	1723906
6	**Spare Parts of Air Conditioner wrongly classified as parts of Washing Machine:** Mis-classification of Spare Parts of Air Conditioner as parts of Washing Machine under CTH - 84509010 [BCD-10%, SWS-10% & IGST-18%] instead of correct CTH 84159000 [BCD-10%, SWS-10% & IGST-28%].	4941642	NIL	NIL	527808	527808
7	**Wrong availment of duty benefits under Notification 50/2017-Cus dated 30.06.2017 @ Sl No. 516A & 516B:** Short Payment of duty/taxes due to wrong availment of duty benefits under Notification 50/2017-Cus dated 30.06.2017 @ Sl. No. 516A & 516B [BCD-10%] on "Parts of LED TV" which are not eligible for the said duty benefits and liable for BCD @ 15%.	6211361	310568	31056	61491	403115
8	**Water Cups (Glassware):** Mis-classification of the items having description "Water Cups for promotions" under CTH 70200090 [BCD-10%, SWS-10% & IGST-18%] instead of correct CTH - 70133700 [BCD-20%, SWS-10% & IGST-28%].	1933723	193372	19337	167074	379783
9	**Spare Parts of Solar Heater:** Mis-classification of the items having description "Solar Water Heater" under CTH - 84191910	3378721	NIL	NIL	470825	470825

	[BCD-10%, SWS-10% & IGST-5%] instead of correct CTH 84199090 [BCD-7.5%, SWS-10% & IGST-18%].					
10	**Spare Parts of Solar Heater:** Mis-classification of the items having description "Solar Water Heater" under CTH - 84191910 [BCD-10%, SWS-10% IGST-5%] instead of correct CTH 84199090 [BCD-7.5%, SWS-10% & IGST-18%].	43429569	1085739	108574	214976	1409289
11	**LED Lamp / Light of Refrigerator / Fridge / Freezer:** Mis-classification of "LED Lamp / Light of Refrigerator / Fridge / Freezer" under 84189900 [BCD-7.5%, SWS-10%, IGST-18%] instead of correct CTH 85395000/ 85395200 [BCD-20%, SWS-10%, IGST-12%/18%]	891215	111419	11140	847	123406
12	**Rubber Gaskets:** Short payment of duty/taxes on "Rubber Gaskets" classified under CTH 40169340 due to levy of IGST (Sl. No. 191 of Sch. 1 of IGST Notfn. No. 001/2017 dated 28.06.2017) instead of correct IGST (Sl. No. 123A of Sch. 111 of IGST Notfn. ibid).	426350	NIL	NIL	61522	61522
13	**Compressor of Air Conditioner:** Mis-classification of Compressor for Air Conditioner under CTH 84149011 & 85169000 [BCD-7.5%10%, SWS-10% & IGST-18%] instead of correct CTH 84148011 [BCD-15% + SWS-10% + IGST-18%].	560259	33718	3372	6676	43766
14	**Wrong availment of FTA benefits under Not. No. 050/2018-Cus dated 30.06.2018:** The importer has availed duty benefits under impugned Notification which resulted in short payment of duty amounting to Rs. 78,52,167/-.	886202155	5576823	557682	1717662	7852167
15	**Indoor Unit /Outdoor Unit in SKD Condition:** Wrong availment of benefits under Sl. No. 449A of Notification No. 50/2017-Customs dated 30.06.2017.	123915407	12977822	1297782	3997170	18272774
	Total	**1,31,72,49,412**	**18588363**	**1858836**	**16492043**	**50197027**

1.4 Importer vide letter (through email) dated 30.05.2024 submitted their reply. Gist of their reply has been reproduced as below:

1.4.1 Observation 1:

(i) The Importer submitted that the company had imported the said goods by declaring their correct description i.e., "Compressor - Spare Parts for Refrigerator and Freezer" classifying them under CTH 8418 99 00 which covers "parts of refrigerators, freezers and other refrigerating or freezing equipment". The said imported goods are used as parts of Refrigerators / Freezers and thus, rightly classified under tariff entry 8418 99 00.

(ii) The company has declared the description and the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier. It was submitted that the company has not used any false or incorrect material for importing the product in question.

(iii) The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

(iv) However, without going into the merits of the case, the company agrees to pay the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June, 2022 till May, 2024 i.e., covered under the normal period of limitation.

1.4.2 Observation 2:

(i) The company had imported the said goods i.e., display panels, computer boards, etc. as declared in the bills of entry. The CTH 85371000 covers Boards, Panels, Consoles, Desks, Cabinets and Other Bases. The company has declared the description and the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier under the bona fide belief that the HSN Code declared by the foreign supplier is the correct one.

(ii) The company has not used any false or incorrect material for importing the product in question.

(iii) The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

(iv) However, without going into the merits of the case, the company agrees to pay the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June, 2022 till May, 2024 i.e., covered under the normal period of limitation.

1.4.3 Observation 3:

(i) The Importer submitted that the classification adopted by the company i.e., CTH 76169990 is the correct classification of the products declared as Radiators / Heatsink in terms of Note 1(d) of Chapter 84 of the First Schedule to the Customs Tariff Act, 1975.

(ii) CTH 7322 covers "radiators for central heating, not electrically heated, and parts thereof, of iron or steel". The said imported goods are made up of aluminium and are covered under Chapter 76. Thus, in terms of Note I(d) of the Chapter 84, radiators made up of aluminium cannot be classified under Chapter 84 rather should be classified under Chapter 76.

(iii) Further, it is pertinent to note that the company has declared the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier under the bona fide belief that the HSN Code declared by the foreign supplier is the correct one.

(iv) Thus, it was submitted that the company has rightly classified the said imported goods under CTH 76169990 and not mis-declared the HSN Code of the said imported goods. Therefore, there is no short payment of duty by the company and hence, no differential duty is payable.

1.4.4 Observation 4:

(i) The Importer submitted that the company has not used any false or incorrect material for importing the product in question. Declaration of classification, description and value of the product has been disclosed correctly at the time of import which was readily available to the Customs for examination.

(ii) However, without going into the merits, the company agrees to pay the differential duty in respect of goods imported vide Bills of Entry for the period starting from June, 2022 till May, 2024 i.e., covered under the normal period of limitation.

1.4.5 Observation 5:

(i) The Importer submitted that the company has declared the description and the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier under the bona fide belief that the HSN Code declared by the foreign supplier is the correct one.

(ii) The company has not used any false or incorrect material for importing the product in question.

(iii) The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

(iv) However, without going into the merits of the case, the company agrees to pay the differential duty along with interest in respect of goods imported vide Bills of Entry for

the period staffing from June, 2022 till May, 2024 i.e., covered under the normal period of limitation.

1.4.6 Observation 6:

(i) The Importer submitted that the company has declared the description and the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier under the bona fide belief that the HSN Code declared by the foreign supplier is the correct one.

(ii) The company has not used any false or incorrect material for importing the product in question.

(iii) The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

(iv) However, without going into the merits of the case, the company agrees to pay the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June, 2022 till May 20,24 i.e., covered under the normal period of limitation.

1.4.7 Observation 7:

(i) The Importer submitted that the company had claimed the exemption notification under the bona fide belief that the said exemption benefit was applicable on the imported goods. It is a trite law that mere claiming of exemption notification does not establish the intention to evade payment of duty.

(ii) However, without going into the merits of the case, the company agrees to pay the differential duty in respect of goods imported vide Bills of Entry for the period starting from June, 2022 till May, 2024 i.e., covered under the normal period of limitation.

1.4.8 Observation 8:

(i) The Importer submitted that the HS Code adopted by the company is the correct classification as the said imported goods are merely promotional glass cups. The said imported goods cannot be classified as glassware items for the purpose of kitchen / table office / toilet / indoor decoration, etc. under CTH 7013 as they are not intended for such uses.

(ii) The company has not used any false or incorrect material for importing the product in question.

(iii) The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for

examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

(iv) However, without going into the merits of the case, the company agrees to pay the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June, 2022 till May, 2024 i.e., covered under the normal period of limitation.

1.4.9 Observation 9:

(i) The Importer submitted that the goods imported by the company are "Solar Water Heaters" and not "spare parts of heater". It can be seen from the description of the imported goods i.e., "HAIER BRAND SOLAR WATER HEATER MODEL NO. HR-5818T" as declared in the bills of entry filed by the company; commercial invoices and packing lists shared by the foreign supplier.

(ii) The solar water heaters are classified under CTSH 8419 19 and attracts IGST @ 5% as per Sl. No. 232 of Schedule I of IGST Notification No. 01/2017 dated 28.06.2017 during the relevant time of import. Thus, there is no short payment of IGST by the company and hence, no differential duty is payable. During the relevant period Sr. No. 232 of the Schedule-I reads as under:

Sr. No.	Chapter / Heading /Sub-heading/ Tariff item	Description of goods
(1)	(2)	(3)
232	8419 19	Solar water heater and system

(iii) Sr. No. 232 was amended vide Notification No. 18/2021-Integrated Tax (Rate) dated 28.12.2021 through which the entry "8419 12" was substituted in column (2).

1.4.10 Observation 10:

(i) The Importer submitted that the company has declared the description and the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier under the bona fide belief that the HSN Code declared by the foreign supplier is the correct one.

(ii) The company has not used any false or incorrect material for importing the product in question.

(iii) The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

(iv) However, without going into the merits of the case, the company agrees to pay the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June, 2022 till May, 2024 i.e., covered under the normal period of limitation.

1.4.11 Observation 11:

(i) The Importer submitted that the company has declared the description and the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier under the bona fide belief that the HSN Code declared by the foreign supplier is the correct one.

(ii) The company has not used any false or incorrect material for importing the product in question.

(iii) The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

(iv) However, without going into the merits of the case, the company agrees to pay the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June, 2022 till May, 2024 i.e., covered under the normal period of limitation.

1.4.12 Observation 12:

(i) The Importer submitted that the company has not used any false or incorrect material for importing the product in question.

(ii) The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

(iii) However, without going into the merits of the case, the company agrees to pay the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June, 2022 till May, 2024 i.e., covered under the normal period of limitation.

1.4.13 Observation 13:

(i) The Importer submitted that they have declared the description and the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier. The company has not used any false or incorrect material for importing the product in question.

(ii) The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

(iii) However, without going into the merits of the case, the company agrees to pay the differential duty along with interest in respect of goods imported vide Bills of Entry for

the period starting from June, 2022 till May, 2024 i.e., covered under the normal period of limitation.

1.4.13.1 Additional submissions in respect of Observation Sl. No. 1 to 13:

(i) An importer files bill of entry and declares a particular heading to the best of his knowledge and wisdom. The classification is no prerogative of the importer. If an importer classifies goods under a specific heading, the customs department, at the time of assessment verifies the same and classifies the same under appropriate heading. The company had no reason to classify an item consciously or deliberately under wrong heading.

(ii) Extended period of limitation cannot be invoked as the issue involved is of classification of goods which purely an issue of interpretation. It is a well settled legal position that mere claiming classification or benefit of an exemption notification is not suppression and the extended period cannot be invoked.

(iii) They had adopted the classification / entries of the relevant notifications under a bona fide belief that their goods are covered under the said HSN Code / entry. The company had no intention to evade any duty.

(iv) Mere detection of the non-payment of duty during the course of investigation is not a sufficient ground for alleging intent to evade payment of duty. This proposition of law has been upheld in a number of judicial pronouncements. The company places reliance in the case of *Sands Hotel Pvt. Ltd. v. CST (2009) 16 STR 329 (Tri.-Mum.)* wherein it was observed that mere detection by the department does not mean that non-payment was with intention to evade tax unless the department brings out clear facts that the assessee knew its liability and chose not to pay the tax in order to evade the same.

1.4.14 <u>Observation 14</u>:

(i) The Importer submitted that they differ from the stand taken by the Audit Commissionerate in respect of the said objection. The allegation in the said observation is that as per the Asia Pacific Trade Agreement (APTA) the rules of origin and the format of Certificate of Origin (COO) are prescribed. As per the certificate format, Box I covers "Goods consigned from: (Exporter's business name, address, country)". As per the Notes for completing the COO, this entry should contain name, address and country of the exporter. The name must be the same as the exporter described in the invoice. As per the COO certificate issued to the company, Box I contains the name of "Haier Overseas Electric Appliances Corp. Ltd., P.R. China" whereas the invoice has been raised by "Haier Singapore Investment Holding PTE Ltd., Singapore" which is contrary to the provisions laid under Rules of Determination of Origin of Goods under the APTA Rules, 2006.

(ii) Further, Alert Circular No. 03/2021 dated 18.02.2021, issued by Audit Commissionerate, Chennai, clarified that no exclusive provisions under the APTA rules for accepting COO

for which the invoice is issued by a non-party. The invoice mentioned in the certificate is a third-country invoice and thus, third-country invoices are not allowed for availing the benefits under APTA Rules.

(iii) The COO issued to the company is in respect of the goods imported by the company which are "wholly produced or obtained goods" in China. The purchase order in relation to the said goods was raised on Haier Singapore Investment Holding PTE Ltd., Singapore (Haier, Singapore) whereas Haier, Singapore had raised the purchase order on Haier Overseas Electric Appliances Corp. Ltd., P.R. China (Haier, China) on the instruction that the goods were to be exported directly from China to the company in India.

(iv) The format of COO in the Rules of Determination of Origin of Goods under the Asia Pacific Trade Agreement, Rules, 2006 notified vide Notification No. 94/2006-Cus (N.T.) dated 31.8.2006, is a sample format. In the sample format, Box I contains "Goods consigned from: (Exporter's name, business name, address, country)" and in the present case, the goods are consigned from "China".

(v) Since the goods were manufactured in China and were exported from China, and thus, in box no. which is the entry for "goods consigned from", the name of the consignor was correctly mentioned as Haier, China.

(vi) It is pertinent to note that in Box 7 of the COO, the details of third-party operator are also given which corresponds to the invoice submitted by the company at the time of clearance. The reference of the said invoice is also given in Box 10 of the COO. Further, the quantity and weight of the imported goods are also corresponding in Box 7 and Box 9 of the COO. Also, it is clearly mentioned in the COO that the goods are being transported from Wuhu, China to Nhava Sheva, India. Thus, there is no violation of any conditions of the APTA Rules.

(vii) Coming to the allegation that third-country invoices are not allowed for availing the benefits under APTA Rules, the CBIC has clarified on "Third-party invoicing in case of Preferential Certificates of Origin issued in terms of DFTP for "wholly obtained goods" vide Circular No. 53/2020-Customs dated 08.12.2020. It was clarified that where value of goods does not have impact on the originating status, i.e., the originating criteria is "wholly obtained", the Certificate of Origin issued in terms of DFTP for LDC with third party commercial invoice may be accepted. Since, the goods imported by the company are "wholly obtained goods", third-party commercial invoice should be accepted in this case. Further, there is no prohibition of third-party invoicing under APTA rules.

(viii) Therefore, the company is eligible for the duty exemption benefits under Notification No. 50/2018-Customs dated 30.06.2018 and has correctly availed the duty exemption in terms of the COO issued under APTA Rules.

1.4.15 Observation 15:

(i) The Importer submitted that they had imported Indoor/Outdoor Units of AC without motors and service valves (as parts of AC) in SKD condition under CTH 84159000 availing benefits under Sr. No. 449A of the Notification 50/2017-Customs dated

30.06.2017. It has been alleged that the company was ineligible for duty exemption under the said notification as the exemption benefit was applicable only on parts of Air Conditioners other than indoor or outdoor units of split system Air Conditioners. It has been further alleged that the company had imported indoor/outdoor units of Air Conditioners in SKD conditions and thus, the company was ineligible to avail the duty exemption under Sr. No. 449A of 50/2017-Cus.

(ii) The company had imported parts of indoor/outdoor units of Air Conditioners but not indoor/outdoor units of ACs in SKD condition because the said goods were imported without the elements namely, motor-driven fans and service valves. It is pertinent to note that motor-driven fans and service valves are the essential constituents of the indoor / outdoor units and the ACs are incomplete and non-functional without the said elements.

(iii) In terms of HSN Explanatory Notes to tariff heading 8415, it covers machines / apparatus for maintaining required conditions of temperature and humidity in closed spaces. Further, this heading applies only to the following machines:

a) Machines equipped with motor-driven fan or blower; and,

b) Machines designed to change both the temperature and the humidity of air; and,

c) Machines for which both the elements above are presented together.

(iv) The goods imported by the company are without motor-driven fans and thus, in terms of HSN Explanatory Notes to CTH 8415, a machine without motor-driven fan is not a machine covered under tariff heading 8415. The said imported goods cannot function as the IDUs/ODUs of ACs and thus, the parts of indoor/outdoor units without motors and service valves cannot be said to be indoor/outdoor units of ACs in SKD form in term of Rule 2(a) of the GRI.

(v) An example of electro-mechanical hand tools imported without motor is given in the objection under Sr. No. 15. By application of Rule 2(a) of the GRI, electro-mechanical hand tools without motor are considered as a complete machine and thus, is to be classified under the tariff heading same as that of the machine.

(vi) The said example cannot be made applicable in the case of IDUs / ODUs imported without motors because electro-mechanical hand tools can also operate mechanically without the motors whereas IDUs / ODUs cannot function without motors. The IDUs / ODUs are incomplete without their motors and thus, the said imported goods without motors cannot be said to have the essential character of IDUs / ODUs.

(vii) Thus, the goods imported by the company were correctly eligible for duty exemption under Sr. No. 449A of Notification 50/2017-Cus.

1.4.16 In view of the above submissions, the Importer further requested:

A. to drop the proceedings in relation to Sl. No. 3, 9, 14 and 15; and,

B. to conclude the proceedings in relation to Sl. No. 1, 2, 4, 5, 6, 7, 8, 10, 11, 12 and 13 as the company shall be paying the applicable differential duties along with interest, without going into the merits for objections raised and shall be sending a separate intimation under Section 28(2) of the Act post payment of duty & interest.

1.5 **Department's findings**: The submissions of the importer were not acceptable and accordingly department's submission was as below:

1.5.1 In respect of **Observation/Para-1, 2, 4, 5, 6, 7, 8, 10, 11, 12 and 13**, the importer agreed to pay the differential duty under Section 28(1) of the Customs Act, 1962 and contested to pay the differential duty under Section 28(4) of the act ibid. In this regard, it was submitted that:

(i) Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now CBC) Circular No. 17/2011-Customs dated 08.04.2011], provides for self-assessment of duty on import of goods by the importer himself by filing a bill of entry, in the electronic form. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the importer more specifically the RMS facilitated Bill of Entry, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

(ii) 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.

(iii) As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (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 Centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, 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.

(iv) Further in the present case and in light of Section 46(4a) of the Customs Act, it is the responsibility of the importer to ensure the accuracy and completeness of the information declared in the Bills of Entry, however in the present case the importer has mis-declared/ mis-stated the goods in terms of classification, claiming wrong duty exemption benefits and IGST schedule etc. in the Bills of Entry.

(v) Further, as per Section 46(4a) of the Customs Act, 1962, the importer who presents the bill of entry shall ensure the following:

1. The accuracy and completeness of the information given therein;
2. The authenticity and validity of any document supporting it, and
3. Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for time being in force.

(vi) In the instant case, the importer appeared to have wrongly selected the classification and claimed undue benefits under the aforesaid notifications for the impugned goods for the payment of Customs duty at lower rate. In the regime of self-assessment & RMS, it was incumbent upon the importer to assess the duty leviable on imported goods correctly, however, the importer appeared to have failed to do so. With the introduction of self-assessment & RMS under the Customs Act, faith is bestowed on the importer and the importers have been assigned with the responsibility of self-assessing under Section 17 of the Customs Act, 1962. Therefore, it appeared that, in the instance case, declaring the goods imported, under wrong CTH and claiming undue benefits under the aforesaid notifications, the importer had an intent to evade duty in order to pay customs duty at lower rate and thereby to get financial benefits. The importer appeared to have suppressed the facts by misclassifying the impugned goods and claiming undue duty benefits under the aforesaid notifications leading to short payment of customs duties. As it appeared that there is suppression of facts, extended period of 5 years can be invoked in the present case for demand of duty under Section 28 of the Customs Act, 1962.

1.5.2 **For reply of the importer in respect of the Observation-3**, it was submitted that Radiator / Heatsink imported by the importer is basically a Heat Sink specifically designed for the AC Units. Basically, Radiators require a medium, such as water or oil, unlike heat sinks which usually use air as their medium.

As per Explanatory Notes, CTH 7322 covers *"Radiators for Central heating, i.e., space heating appliances consisting usually, of an assembly of "sections" of flanged or grilled tubes or of hollow panels through which the water or steam from the boiler is circulated. Such radiators may be enclosed in casings of wood or metal.*

This group also includes apparatus consisting of a combination of a radiator through which hot or cold water is circulated and of ejector nozzles through which conditioned air under pressure is passed. The two components are mounted in a common housing fitted with a grille. When the radiator unit is turned off, this apparatus serves as a distributor of conditioned air.

The heading does not cover air conditioning units (heading 84.15) or electric radiators. (85.16).

In view of the above, it appeared that the Heat sink used in AC units are different from the conventional radiators as defined above. Further, AC units are specifically excluded from the scope of that heading.

Therefore, Heat Sinks (having specific Part / Serial Nos.) which are specially designed to be used solely or principally with the AC units are classifiable under 84159000 instead of CTH 76169990.

1.5.3 **For reply of the importer in respect of the Observation - 9**, it was submitted that during audit the importer was asked about the product catalogue of the impugned goods having Model No. HR-5818T/Z. But no such product catalogue was made available and the importer during audit discussions, mentioned that the impugned goods are not Solar Water Heater but glass tubes for the Solar Water Heater. On further scrutiny of the Bill of Lading and the COO Certificates provided by the importer, it was noticed that the HS Code mentioned at them was 7020. Therefore, from supplier's end also the goods were declared to be made of glass as mentioned by the authorized representatives of the importer during audit. Moreover, the importer has not submitted any product catalogue/corroborative evidentiary documents in respect of the Model No. of the import goods that can deny the fact that the imported goods are not only glass tube but a complete solar water heater.

In their reply to each and every observation, the importer has mentioned that they declared and classified the goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier under the bona fide belief that the HSN Code declared by the foreign supplier is the correct one. So, in the present case how they classified the goods under HS Code other than the Code prescribed by the supplier in their COO and the B/L. In view of the above, it is clear that the importer has classified the goods as Solar Water Heater with a mala-fide intent to evade the duty which is recoverable under Section 28(4) of the Customs Act, 1962 along with the interest and penalty as applicable.

1.5.4 **For reply of the importer in respect of the Observation - 14**, it was submitted that the Circular No. 53/2020 dated 08.12.2020 was issued in context of Least Developed Countries under Notfn. No. 29/2015-Cus (N.T.) dated 10.03.2015 and not in respect of the China Origin goods under FTA Notfn. No. 50/2018-Cus dated 30.06.2018. Moreover, APTA Rules, 2006 specifically prescribes that BOX-I cover- "Goods Consigned from: (Exporter's business name, address, country)". As per the Notes for completing the Certificate of Origin, this entry should contain name, address and country of the exporter. The name must be the same as the exporter described in the Invoice.

Further, the Director (DIC), CBIC clarified that the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement Rules, 2006 has no exclusive provision for accepting certificate of origin for which invoice is issued by a non-party.

In the present case, the invoice No. mentioned in the COO Certificate is a third country invoice which does not contain any exporter details therein. Therefore, as per the clarification, such third country invoices are not allowed for availing the benefits of the said FTA Notification. Hence, the importer is liable to pay the short-paid duty along with interest and penalty, as applicable under Customs Act, 1962.

1.5.5 **For reply of the importer in respect of the Observation - 15**, it was submitted that Rule 2(a) of the GRI can be applied in circumstances wherein the imported goods have the

'essential character of the finished goods. Further HSN Explanatory Notes to Chapter XVI provides that if a machine (which incorporates a motor) is imported without the motor, it can still be classified as complete machine, even though the machine is not able to function in absence of the motor.

Therefore, in view of the above, for applying Rule 2(a) of GRI, it is not necessary that the goods shall be functional. Any unfinished or non-functional imported good having essential character of the finished good shall be treated as a finished good. In the instant case the importer imported IDU / ODU Kits for AC in SKD conditions without motor and service valve. In such condition, though the impugned goods are unfinished and non-functional but fulfil the essential character of the finished goods, if assembled. Thus, the IDU / ODU Kits (without motor/motor driven fan and valves) shall be treated finished Indoor/Outdoor units of Air Conditioner in SKD condition which are not eligible for the duty benefits under Sl. No. 449A of the Notification No. 50/2017-Customs dated 30.06.2017.

Further, the importer is importing the IDU / ODU kits in Semi Knock-Down condition which means that the parts of the Indoor/Outdoor units are clubbed together and assembled together (not completely). It may be the case that the importer has de-assembled motor & valves of the complete Indoor / Outdoor units to make it an unfinished and non-functional machine so that they can claim the duty benefits under Sl. No. 449A of the Notfn. ibid. Further, the importer is importing the motor, fan and valves separately for assembling. For a particular electronic appliance each and every part is designed and manufactured as per the fittings / size / shape and space in that appliance, therefore, at the time of assembling the machine or appliance each part shall be completely matched with the model No. of that appliance. In that case, it appeared that the importer had imported the IDUs / ODUs in kit form in semi knock down condition which make it easy and less costly to make this kit a functional unit as all the parts were already matched, packed as one kit and assembled (not completely). In view of the foregoing discussions, it appeared that the importer has used this modus operandi to cut their cost of manufacturing by importing the IDUs / ODUs Kits in SKD condition (without motor/motor driven fan and valve) and evading the duty by claiming the duty benefits wrongly.

1.5.6 The Importer had self-assessed the Bills of Entry under Section 17 of the Customs Act. Due to wilful mis-statement/ mis-declaration by the importer, there was loss to government exchequer to the tune of amount mentioned in the Annexures-I to XV. However, the importer has mis-declared the goods in terms of classification, availed wrong concessional rate of BCD, wrong IGST Schedules etc., in Bills of Entry, while filing Bill of Entry due to which there is short levy of duty resulting into short payment of duty by the importer. Moreover, they have accepted all the Audit Observations except Observation 3, 9, 14 & 15 and ready to pay the differential duty along with the interest, but they are denying to pay it for extended period which completely express their intention to evade the duty (then by misclassification and claiming wrong duty benefits and now by denying to pay for extended period). Thus, it appeared that the importer has wilfully mis-declared the goods as above.

1.6 Further, the extracts of the relevant provisions of law relating to import of goods in general, the liability of the goods to confiscation and person concerned to penalty for illegal importation under the Customs Act, 1962 and other laws for the time being in force, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

- Section 17(4) - Assessment of duty.
- Section 28 - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.
- Section 28AA - Interest on delayed payment of duty.
- Section 46 - Entry of goods on importation.
- Section 111(m) - Confiscation of improperly imported goods, etc.
- Section 111(o) - Confiscation of improperly imported goods, etc.
- Section 112 - Penalty for improper importation of goods etc.
- Section 114A - Penalty for short-levy or non-levy of duty in certain cases.
- Rule 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011.
- CBIC Circular No. 17/2011 dtd. 08.04.2011.

1.7 In order to sensitize People of Trade (read Importer / Exporter) about its benefit and consequences of mis-use; Government of India has also issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self-Assessment 2011' was required as because prior to enactment of the provision of 'Self-Assessment', mis-classification or wrong availment of duty exemption etc., in normal course of import, was not considered as mis-declaration or mis-statement. Under para - 1.3 of Chapter-I of the above manual, Importers / Exporters who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options: (a) Seek assistance from Help Desk located in each Custom Houses, or (b) Refer to information on CBEC / ICEGATE web portal (www.cbic.gov.in), or (c) Apply in writing to the Assistant / Deputy Commissioner in charge of Appraising Group to allow provisional assessment, or (d) An importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied. Para 3(a) of Chapter I of the above Manual further stipulates that the importer / exporter is responsible for Self-Assessment of duty on imported / export goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para-2.1 of Chapter-I of the above manual, Self-Assessment can result in assured facilitation for compliant importers. However, delinquent and habitually non-compliant importers could face penal action on account of wrong Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

1.7.1 In the instant case, it appeared that the importer intentionally and knowingly adopted the modus operandi to mis-state and suppress the facts. These acts of omissions on the part of the importer tantamount to wilful mis-statement and suppression of facts on the part of the importer.

This provides sufficient ground to invoke proviso of Section 28(4) for extended period upto five years for issuance of demand of duty-cum-Show Cause Notice, for wilful mis-declaration and suppression of facts with intent to evade Customs duty.

1.7.2 Therefore, from the above legal provisions, it appeared that the importer paid short duty therefore, the short levy duty is liable to be recovered from the importer under Section 28(4) of the Customs Act, 1962. The details of short paid / differential duty amounting to Rs. 5,01,97,027/- are appended in para-3.16 of the subject SCN.

1.8 Recovery of duties, confiscation of goods & imposition of penalties:

1.8.1 The importer, i.e., M/s Haier Appliance India Private Limited, had imported the subject goods against Bills of Entry (details mentioned in Annexures-I to XV to the SCN) without payment / short payment of applicable duty / cess by wilfully mis-stating the classification / facts & wrongly availed Customs duty exemption benefit under different Notifications. Therefore, the differential duty to the tune of Rs. 5,01,97,027/- (Rupees Five Crore One Lakh Ninety Seven Thousand Twenty Seven Only) was recoverable from importer under Section 28(4) of the Customs Act, 1962, as the importer by way of wilful mis-statement and suppression of facts resulted into short levy of duty and had also availed wrong Notifications benefit with an intent to evade customs duty. The interest on the same is also required to be recovered from them under Section 28AA of the Customs Act, 1962.

1.8.2 The importer had imported the goods valued Rs. 1,31,72,49,412/- (Rupees One Hundred Thirty One Crore Seventy Two Lakh Forty Nine Thousand Four Hundred Twelve Only) vide Bills of Entry mentioned at Annexures-I to XV to the subject SCN by wilfully mis-stating the facts, mis-classifying the imported goods and availing the wrong duty exemption benefits under different notifications. Therefore, the said goods valued at Rs. 1,31,72,49,412/- were liable for confiscation under Section 111(m) & 111(o) of the Customs Act, 1962 and consequently M/s Haier Appliances India Pvt. Ltd. were liable for penalty under Section 112(a) of the Customs Act, 1962.

1.8.3 M/s Haier Appliances India Pvt. Ltd. had short paid Customs duties to the tune of Rs. 5,01,97,027/- by wilful mis-statement and suppression of facts and by the said act of wilful mis-statement and suppression of facts made themselves liable for penal action under the provisions of Section 114A of the Customs Act, 1962.

1.9 In view of the above, vide Show Cause Notice No. 1043/2024-25/COMMR/(NS-V)/ GR.V/JNCH dated 05.09.2024, M/s Haier Appliances (India) Private Limited (IEC - 0503046035), was called upon to show cause to the Commissioner of Customs (NS-V), Jawaharlal Nehru Custom House, Nhava Sheva (the Adjudicating Authority), as to why:

(i) **For Observation Sr. No. 1, 2, 3, 5, 6, 8, 9, 10, 11 and 13** - The classification of goods claimed in Sr. No. 1, 2, 3, 5, 6, 8, 9, 10, 11 and 13 as per Table-A at para 3.16 of the subject SCN should not be rejected and the subject goods should not be correctly reclassified accordingly.

(ii) **For Observation Sr. No. 4** - IGST should not be assessed @ 28% (Sl. No. 154 of Sch. IV of IGST Notfn. No. 01/2017 dated 28.06.2017) instead of incorrect IGST @ 18% (Sl. No. 384 of Sch. III of IGST Notfn. ibid) as per Sr. No. 4 of Table-A at para 3.16 of the subject SCN.

(iii) **For Observation Sr. No. 7** - Availment of duty benefits under Notification No. 50/2017-Cus dated 30.06.2017 @ Sl. No. 516A & 516B should not be rejected as per Sr. No. 7 of Table-A at para 3.16 of the subject SCN.

(iv) **For Observation Sr. No. 12** - IGST should not be assessed @ 18% (Sl. No. 123A of Sch. III of IGST Notfn. No. 01/2017 dated 28.06.2017) instead of incorrect IGST @ 5% (Sl. No. 191 of Sch. I of IGST Notfn. ibid) as per Sr. No. 12 of Table-A at para 3.16 of the subject SCN.

(v) **For Observation Sr. No. 14** - Availment of FTA benefits under Notfn. No. 050/2018-Cus dated 30.06.2018 should not be rejected as per Sr. No. 14 of Table-A at para 3.16 of the subject SCN.

(vi) **For Observation Sr. No. 15** - Availment of benefits under Sl. No. 449A of Notification No. 50/2017-Customs dated 30.06.2017 should not be rejected as per Sr. No. 15 of Table-A at para 3.16 of the subject SCN.

(vii) Differential/short paid duty amounting to Rs. 5,01,97,027/- (Rupees Five Crore One Lakh Ninety Seven Thousand Twenty Seven Only) for the subject goods imported vide Bills of Entry as detailed in Table-A at para 3.16 of the subject SCN, should not be demanded under Section 28(4) of the Custom Act, 1962 as the importer by way of wilful mis-statement and suppression of facts resulted into short levy of duty and had also availed wrong Notifications benefit with an intent to evade customs duty.

(viii) In addition to the duty short paid, interest on delayed payment of Custom duty should not be recovered from the Importer under Section 28AA of the Customs Act, 1962.

(ix) The said subject goods imported vide Bills of Entry as detailed in Table-A at para 3.16 of the subject SCN having assessable value of Rs. 1,31,72,49,412/- (Rupees One Hundred Thirty One Crore Seventy Two Lakh Forty Nine Thousand Four Hundred & Twelve Only) should not be held liable for confiscation under Section 111(m) & 111(o) of the Customs Act, 1962.

(x) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.

(xi) Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty by wilful mis-statement and suppression of facts.

2. WRITTEN SUBMISSIONS OF THE NOTICEE

2.1 The Noticee, M/s Haier Appliances (India) Private Limited, submitted letter dated 04.10.2024 wherein they made submissions *interalia* as under:

2.1.1 The company was under a bona fide belief that the classification declared by them and the rates at which duties were paid on the imported goods were correct. Upon receipt of the aforementioned OSPCA letter, the company sought legal opinion from lawyers and as per the lawyer's opinion, the company submitted a letter dated 30.05.2024 in response to the OSPCA letter. The summary of their response is as under:

Sr. No.	Objection raised in letter dated 07.05.2024	Company's reply
1.	Mis-classification of "compressor for refrigerator" under CTH 84189100 & 84189900 instead of correct CTH 84143000.	Without going into the merits of the case, the company agreed to pay the differential duty along with interest for the imports between June 2022 till May 2024, i.e., the normal limitation period.
2.	Mis-classification of "Indoor/Outdoor Unit PCB/Computer Boards" under CTH 85371000 instead of correct CTH 84159000 & Mis-classification of "Outdoor PCB of Air-Conditioner" under CTH 84189900 instead of correct CTH 84159000.	
3.	Mis-classification of "Radiator/Heatsink (Parts of Air-Conditioner)" under CTH 76169990 instead of correct CTH 84159000.	The company has correctly classified the goods under CTH 76169990 and hence, no differential duty is payable.
4.	Short payment of duty/taxes on "LED TV of size 102 cm (more than 32 inches)" classified under CTH 85287215 due to levy of IGST @ 18% instead of correct IGST @ 28%.	Without going into the merits of the case, the company agreed to pay the differential duty along with interest for the imports between June 2022 till May 2024, i.e., the normal limitation period.
5.	Mis-classification of "Spare parts of Washing Machine of household type/use" under CTH 84509090 instead of correct CTH 84509010.	
6.	Mis-classification of "Spare parts of Air-Conditioner" as "parts of Washing Machine" under CTH 84509010 instead of correct CTH 84159000.	
7.	Short payment of duty/taxes due to wrong availment of duty benefits under Notification 50/2017-Cus dated 30.06.2017 @ Sl. No. 516A & 516B on "Parts of LED TV" which are not eligible for the said duty benefits.	
8.	Mis-classification of the items having description "Water cups for promotions" under CTH 70200090 instead of correct CTH 70133700.	
9.	Short payment of duty/taxes on "Spare parts of heater" classified under CTH 84191910 due to levy of IGST @ 5% instead of correct IGST @ 18%.	The company had paid IGST correctly and hence, no differential duty is payable.
10.	Mis-classification of "Fan for refrigerator"	Without going into the merits of the

	under CTH 84189900 instead of correct CTH 84145910.	case, the company agreed to pay the differential duty along with interest for the imports between June 2022 till May 2024, i.e., the normal limitation period.
11.	Mis-classification of "LED lamp/Light for refrigerator/Fridge/Freezer" under CTH 85395000/85395200 instead of correct CTH 84145910.	
12.	Short payment of duty/taxes on "Rubber Gaskets" classified under CTH 40169340 due to levy of IGST @ 5% instead of correct IGST @ 18%.	
13.	Mis-classification of compressor of Air-Conditioner under CTH 84149100 & 84169000 instead of correct CTH 84148100.	
14.	Wrong availment of FTA benefits under Notification No. 50/2018-Cus dated 30.06.2018.	The goods imported by the company are "wholly obtained goods" and there is no prohibition of third-party invoicing under APTA rules. Hence, the company has correctly availed the duty exemption in terms of the COO issued under APTA Rules.
15.	Indoor Unit/Outdoor Unit of Air Conditioner in SKD Conditions (w/o Motor).	The goods imported by the company were parts of IDUs/ODUs of Air Conditioners classifiable under CTH 84159000 and thus, the company had rightly availed the duty exemption under Sr. No. 449A of Notification 50/2017-Cus. Hence, no differential duty is payable.

2.1.2 Additionally, the company submitted that the present case of short levy is a case covered under Section 28(1) of the Customs Act, 1962 due to the following reasons:

a) Extended period of limitation cannot be invoked as the issue involved is of classification of goods which is purely an issue of interpretation. It is a well settled legal position that mere claiming classification or benefit of an exemption notification is not suppression and the extended period cannot be invoked.

b) An importer files bill of entry and declares a particular heading to the best of his knowledge and wisdom. The classification is no prerogative of the importer. If an importer classifies goods under a specific heading, the customs department, at the time of assessment verifies the same and classifies the same under appropriate heading. It is humbly submitted that the company had no reason to classify an item consciously or deliberately under wrong heading.

c) The company had adopted the classification / entries of the relevant notifications under a bona fide belief that their goods are covered under the said HSN Code / entry. The company had no intention to evade any duty.

d) Mere detection of the non-payment of duty during the course of investigation is not a sufficient ground for alleging intent to evade payment of duty. This proposition of law has been upheld in a number of judicial pronouncements. The company places reliance in

the case of *Sands Hotel Pvt. Ltd. v. CST (2009) 16 STR 329 (Tri.-Mum.)* wherein it was observed that mere detection by the department does not mean that non-payment was with intention to evade tax unless the department brings out clear facts that the assessee knew its liability and chose not to pay the tax in order to evade the same.

2.1.3 In view of above submissions the company has paid the differential duty on the imported goods along with interest for the period from June, 2022 to May, 2024 in relation to the objections which the company agreed with the stand of the department. The copy of TR-6 Challan No. 5452 dated 27.08.2024 vide which this differential duty and interest is paid was enclosed. It is pertinent to mention here that the duty along with interest was deposited prior to issuance of the present show cause notice.

2.1.4 The importer requested that the aforesaid payment made by the company be treated as payment of differential duty along with interest for the demands raised in Observation No. 1, 2, 4, 5, 6, 7, 8, 10, 11, 12 and 13 under proviso to Section 28(2) of the Customs Act and the proceedings be deemed to be concluded in that respect.

2.2 Further, the Noticee, M/s. Haier Appliances (India) Private Limited, vide letter dated 18.08.2025 submitted their reply to the subject SCN through their advocate, M/s Athena Law Associates. Vide the above reply, they denied all the allegations made in the SCN and made submissions *interalia* as under:

2.2.1 The Department in the present SCN dated 05.09.2024 has alleged following three different categories of cases against the Noticee:

A. Category-I: Mis-classification of the goods listed at Sl. No. 1, 2, 3, 5, 6, 8, 10, 11 & 13.
B. Category-II: Wrongful availment of the exemption Notification listed at Sl. No. 7, 14 & 15.
C. Category-III: Incorrect levy of the IGST under Notification No. 1/2017 listed at Sl. No. 4, 9 & 12.

2.2.2 However, under each category, the Noticee either contends the allegation proposed by the Department, while in some cases, the Noticee has accepted the stance of the Department and has paid the differential duty with respect to the same. All the three categories of cases involve a mere issue of interpretation wherein the Noticee has acted upon with bonafide understanding of the applicable law. Thus, any allegation that the Noticee had an intention to defraud the government exchequer through wilful mis-statement and suppression of facts thereby evading the payment of duty is not legally sustainable.

A. CATEGORY-I: Response to the departmental objection Sr. No. 1, 2, 3, 5, 6, 8, 10, 11 & 13 pertaining to alleged mis-classification of goods:

2.2.3 The Department in the present case with respect to Sr. No. 1, 2, 3, 5, 6, 8, 10, 11 & 13 has alleged a case of mis-classification of the products under Para 3 of the Notice dated 05.09.2024.

Thus, based on the said pretext, the Department has thereby alleged that the importer has with an intention of evade the payment of duty or to clear the goods at a lower rate of duty has erroneously selected the classification of goods. However, it is pertinent to mention that the Department's contention of mis-classification of goods stipulated under Sr. No. 1, 2, 3, 5, 6, 8, 10, 11 & 13 is merely a case pertaining to a dispute in interpretation of the applicable law. For the said difference in opinion, any allegation pertaining to fraud, wilful mis-declaration and suppression of fact is not legally sustainable and cannot fall within the ambit of Section of 28(4) of the Customs Act 1962. The point wise response to the objections raised in the Notice dated 05.09.2024 with respect to Sr. No. 1, 2, 3, 5, 6, 8, 10, 11 & 13 has been provided below:

2.2.4 Response to objections where the Noticee admits the liability and has already paid the differential duty along with interest:

The following submissions are pertaining to objections at Sl. No. 1, 2, 5, 6, 8, 10, 11 and 13 wherein the Noticee has admitted its liability and has paid the differential duty along with interest.

2.2.5 *Objection in Sr. No. 1 - Mis-classification of "compressor for refrigerator" under CTH 84189100 & 84189900 insta d of correct CTH 84143000:*

2.2.5.1 It is submitted that the Noticee had imported the said goods by declaring their correct description i.e., "*Compressor-Spare Parts for Refrigerator and Freezer*" classifying them under CTH 8418 9900 which covers "parts of refrigerators, freezers and other refrigerating or freezing equipment". The said imported goods are used as parts of Refrigerators / Freezers and thus, rightly classified under tariff entry 8418 99 00.

2.2.5.2 The Noticee has declared the description and the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier. It is submitted that the Noticee has not used any false or incorrect material for importing the product in question.

2.2.5.3 The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

2.2.5.4 However, without going into the merits of the case, the Noticee has already paid the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June 2022 till May 2024 i.e., covered under the normal period of limitation.

2.2.6 *Objection in Sr. No. 2 - Mis-classification of "Indoor/Outdoor Unit PCB/Computer Boards" under CTH 85371000 instead of correct CTH 84159000 & Mis-classification*

of "Outdoor PCB of Air-Conditioner" under CTH 84189900 instead of correct CTH 84159000

2.2.6.1 The Noticee had imported the said goods i.e., display panels, computer boards, etc. as declared in the bills of entry. The CTH 85371000 covers Boards, Panels, Consoles, Desks, Cabinets and Other Bases. The Noticee has declared the description and the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier under the bona fide belief that the HSN Code declared by the foreign supplier is the correct one.

2.2.6.2 The Noticee has not used any false or incorrect material for importing the product in question. The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

2.2.6.3 However, without going into the merits of the case, the Noticee has paid the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June 2022 till May 2024 i.e., covered under the normal period of limitation.

2.2.7 ***Objection in Sr. No. 5 - Mis-classification of "Spare parts of Washing Machine of household type/use" under CTH 84509090 instead of correct CTH 84509010***

2.2.7.1 The Noticee has declared the description and the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier under the bona fide belief that the HSN Code declared by the foreign supplier is the correct one.

2.2.7.2 The Noticee has not used any false or incorrect material for importing the product in question. The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

2.2.7.3 However, without going into the merits of the case, the Noticee has paid the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June 2022 till May 2024 i.e., covered under the normal period of limitation.

2.2.8 ***Objection in Sr. No. 6 - Mis-classification of "Spare parts of Air-Conditioner" as "parts of Washing Machine" under CTH 84509010 instead of correct CTH 84159000***

2.2.8.1 The Noticee has declared the description and the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier under the bona fide belief that the HSN Code declared by the foreign supplier is the correct one.

2.2.8.2 The Noticee has not used any false or incorrect material for importing the product in question. The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

2.2.8.3 However, without going into the merits of the case, the Noticee has paid the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June 2022 till May 2024 i.e., covered under the normal period of limitation.

2.2.9 ***Objection in Sr. No. 8 - Mis-classification of the items having description "Water cups for promotions" under CTH 70200090 instead of correct CTH 70133700***

2.2.9.1 The HS Code adopted by the Noticee is the correct classification as the said imported goods are merely promotional glass cups. The said imported goods cannot be classified as glassware items for the purpose of kitchen / table / office / toilet / indoor decoration, etc. under CTH 7013 as they are not intended for such uses.

2.2.9.2 The Noticee has not used any false or incorrect material for importing the product in question. The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

2.2.9.3 However, without going into the merits of the case, the Noticee has paid the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June, 2022 till May, 2024 i.e., covered under the normal period of limitation.

2.2.10 ***Objection in Sr. No. 10 - Mis-classification of "Fan for refrigerator" under CTH 84189900 instead of correct CTH 84145910***

2.2.10.1 The Noticee has declared the description and the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier under the bona fide belief that the HSN Code declared by the foreign supplier is the correct one.

2.2.10.2 The Noticee has not used any false or incorrect material for importing the product in question. The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

2.2.10.3 However, without going into the merits of the case, the Noticee has paid the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June 2022 till May 2024 i.e., covered under the normal period of limitation.

2.2.11 ***Objection in Sr. No. 11 - Mis-classification of "LED lamp/Light for Refrigerator/ Fridge/Freezer" under CTH 84189900 instead of correct under CTH 85395000 /85395200***

2.2.11.1 The Noticee has declared the description and the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier under the bona fide belief that the HSN Code declared by the foreign supplier is the correct one.

2.2.11.2 The Noticee has not used any false or incorrect material for importing the product in question. The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

2.2.11.3 However, without going into the merits of the case, the Noticee has paid the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June 2022 till May 2024 i.e., covered under the normal period of limitation.

2.2.12 ***Objection in Sr. No. 13 - Mis-classification of compressor of Air-Conditioner under CTH 84149011 & 84169000 instead of correct CTH 84148011***

2.2.12.1 The Noticee has declared the description and the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier. It is submitted that the Noticee has not used any false or incorrect material for importing the product in question.

2.2.12.2 The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

2.2.12.3 However, without going into the merits of the case, the Noticee has paid the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June 2022 till May 2024 i.e., covered under the normal period of limitation.

RESPONSE TO OBJECTIONS WHERE THE NOTICEE IS CHALLENGING THE OBJECTIONS RAISED BY THE DEPARTMENT:

The following submissions pertains to objections listed at Sl. No. 3 wherein the Noticee is challenging the objections raised by the Department wherein the differential duty demand is not sustainable in the eyes of law.

2.2.13 ***Objection in Sr. No. 3 - Mis-classification of "Radiator/Heatsink (Parts of Air-Conditioner)" under CTH 76169990 instead of correct CTH 84159000***

2.2.13.1 The classification adopted by the Noticee i.e., CTH 76169990 is the correct classification of the products declared as Radiators/Heatsink in terms of Note 1(d) of Chapter 84 of the First Schedule to the Customs Tariff Act, 1975.

2.2.13.2 CTH 7322 covers "*radiators for central heating, not electrically heated, and parts thereof, of iron or steel*". The said imported goods are made up of Aluminium and are covered under Chapter 76. Thus, in terms of Note 1(d) of the Chapter 84, radiators made up of Aluminium cannot be classified under Chapter 84 rather should be classified under Chapter 76.

2.2.13.3 Further, the Noticee has declared the HSN Code of the said imported goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier under the bona fide belief that the HSN Code declared by the foreign supplier is the correct one.

2.2.13.4 Thus, the Noticee has rightly classified the said imported goods under CTH 76169990 and not mis-declared the HSN Code of the said imported goods. Therefore, the allegation pertaining to the short payment of duty by the Noticee is not sustainable and is liable to be set aside.

2.2.14 ***Additional submissions in respect of Sl. No. 1, 2, 3, 5, 6, 8, 10, 11 & 13:***

2.2.14.1 An importer files bill of entry and declares a particular heading to the best of his knowledge and wisdom. The classification is no prerogative of the importer. If an importer classifies goods under a specific heading, the customs department, at the time of assessment verifies the same and classifies the same under appropriate heading. It is humbly submitted that the Noticee had no reason to classify an item consciously or deliberately under wrong heading.

2.2.14.2 The extended period of limitation cannot be invoked as the issue involved is of classification of goods which purely an issue of interpretation. It is a well settled legal position

that mere claiming classification or benefit of an exemption notification is not suppression and the extended period cannot be invoked.

2.2.14.3 They had adopted the classification / entries of the relevant notifications under a bona fide belief that their goods are covered under the said HSN Code / entry. The Noticee had no intention to evade any duty.

2.2.14.4 Mere detection of the non-payment of duty during the course of investigation is not a sufficient ground for alleging intent to evade payment of duty. This proposition of law has been upheld in a number of judicial pronouncements. The Noticee placed reliance in the case of *Sands Hotel Pvt. Ltd. v. CST [(2009) 16 STR 329 (Tri.-Mum.)]* wherein it was observed that mere detection by the department does not mean that non-payment was with intention to evade tax unless the department brings out clear facts that the assessee knew its liability and chose not to pay the tax in order to evade the same.

B. CATEGORY II: Response to the departmental objection in Sl. No. 7, 14 & 15 pertaining to wrongful availment of the exemption notification:

The point wise response to the objections raised in the Notice dated 05.09.2024 with respect to Sr. No. 7, 14 and 15 has been provided below:

Response to objections where the noticee admits the liability and has already paid the differential duty along with interest

The following submissions are pertaining to objections at Sl. No. 7 wherein the Noticee has admitted its liability and has paid the differential duty with respect to along with interest.

2.2.15 ***Objection in Sr. No. 7 - Short payment of duty/taxes due to wrong availment of duty benefits under Notification 50/2017-Cus dated 30.06.2017 @ Sl. No. 516A & 516B on "Parts of LED TV" which are not eligible for the said duty benefits:***

2.2.15.1 The Noticee had claimed the exemption notification under the bona fide belief that the said exemption benefit was applicable on the imported goods. It is a trite law that mere claiming of exemption notification does not establish the intention to evade payment of duty.

2.2.15.2 However, without going into the merits of the case, the Noticee agrees to pay the differential duty in respect of goods imported vide Bills of Entry for the period starting from June 2022 till May 2024 i.e., covered under the normal period of limitation.

Response to objections where the noticee is challenging the objections raised by the department.

The following submissions pertains to objections listed at Sl. No. 14 and 15 wherein the Noticee is challenging the objections raised by the Department wherein the differential duty demand is not sustainable in the eyes of law.

2.2.16 ***Objection in Sr. No. 14 - Wrong availment of FTA benefits under Notification No. 50/2018-Cus dated 30.06.2018.***

2.2.16.1 They differ from the stand taken by the Audit Commissionerate in respect of the said objection. The allegation in the said observation is that as per the Asia Pacific Trade Agreement (APTA) the rules of origin and the format of Certificate of Origin (COO) are prescribed. As per the certificate format, Box 1 covers "Goods consigned from: (Exporter's business name, address, country)". As per the Notes for completing the COO, this entry should contain name, address and country of the exporter. The name must be the same as the exporter described in the invoice. As per the COO certificate issued to the Noticee, Box 1 contains the name of "Haier Overseas Electric Appliances Coirp. Ltd., P.R. China" whereas the invoice has been raised by "Haier Singapore Investment Holding PTE Ltd., Singapore" which is contrary to the provisions laid under Rules of Determination of origin of Goods under the APTA Rules, 2006.

2.2.16.2 Further, Alert Circular No. 03/2021 dated 18.02.2021, issued by Audit Commissionerate, Chennai, clarified that no exclusive provisions under the APTA rules for accepting COO for which the invoice is issued by a non-party. The invoice mentioned in the certificate is a third-country invoice and thus, third-country invoices are not allowed for availing the benefits under APTA Rules.

2.2.16.3 The COO issued to the Noticee is in respect of the goods imported by the Noticee which are "wholly produced or obtained goods" in China. The purchase order in relation to the said goods was raised on Haier Singapore Investment Holding PTE Ltd., Singapore (**Haier, Singapore**) whereas Haier, Singapore had raised the purchase order on Haier Overseas Electric Appliances Corp. Ltd., P.R. China (**Haier, China**) on the instruction that the goods were to exported directly from China to the Noticee in India. Furthermore, it is evident from scanning the QR code present on the COO that the imported goods are originating from the Republic of China with a certificate of origin issued on October 25, 2021. For the sake of brevity, the relevant extract has been reproduced below:

Certificate Of Origin

Exporter:	HAIER OVERSEAS ELECTRIC APPLIANCES CORP.LTD SOUTH ROOM #401, BRAND CENTER BUILDING, HAIER HIGH-TECH INDUSTRIAL PARK, LAO SHAN DISTRICT, QINGDAO-266101,SHANDONG, P.R.CHINA
Invoice No.:	C0219DIN001
Country/Region of Destination:	THE REPUBLIC OF INDIA
H.S.Code:	841590,841590
Place of Issue:	Qingdao, China/青岛海关
Date of Issue:	OCT.25,2021

2.2.16.4 The format of COO in the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement, Rules, 2006 notified vide Notification No. 94/2006-Cus (N.T.) Dated 31.8.2006, is a sample format. In the sample format, Box 1 contains "Goods consigned from: (Exporter's name, business name, address, country)" and in the present case, the goods are consigned from "China".

2.2.16.5 Since the goods were manufactured in China and were exported from China, and thus, in box no. which is the entry for "goods consigned from" the name of the consignor was correctly mentioned as Haier, China.

2.2.16.6 It is pertinent to note that in Box 7 of the COO, the details of third-party operator are also given which corresponds to the invoice submitted by the Noticee at the time of clearance. The reference of the said invoice is also given in Box 10 of the COO. Further, the quantity and weight of the imported goods are also corresponding in Box 7 and Box 9 of the COO. Also, it is clearly mentioned in the COO that the goods are being transported from Wuhu, China to Nhava Sheva, India. Thus, there is no violation of any conditions of the APTA Rules.

2.2.16.7 Coming to the allegation that third-country invoices are not allowed for availing the benefits under APTA Rules, it is submitted that the CBIC has clarified on "Third-party invoicing in case of Preferential Certificates of Origin issued in terms of DFTP for "wholly obtained goods" vide Circular No. 53/2020-Customs dated 08.12.2020. It was clarified that where value of goods does not have impact on the originating status, i.e., the originating criteria is "wholly obtained", the Certificate of Origin issued in terms of DFTP for LDC with third-party commercial invoice may be accepted. Since, the goods imported by the Noticee are "wholly obtained goods", third-party commercial invoice should be accepted in this case. Further, there is no prohibition of third-party invoicing under APTA rules.

Third Country Invoicing is not prohibited in Notification No. 94/2006-Cus (NT)

2.2.16.8 In the present case, the COO benefit was sought to be denied to the Noticee on a specific ground that there is no specific clause in the Rules of origin notified in Notification No. 94/2006-Cus regarding third country Invoicing. There is no dispute as to the fact that the goods are directly imported by the Noticee from China.

2.2.16.9 As to the requirement of third country invoicing, there is no prohibition in the Notification No. 94/2006-Cus. So, something which is not prohibited and not even the requirement of claiming benefit of a exemption notification cannot be the basis of denying benefit of an exemption notification.

2.2.16.10 Further, submitted that as far as commercial Invoice is concerned the notification only states that "a copy of commercial invoice in respect of the product has to be produced". It does not say that the commercial invoice should be from the "exporting beneficiary country" only. So,

the commercial invoice can be from the exporting beneficiary country or even the third country also.

2.2.16.11 Therefore, denying the COO benefit on a criterion which is not there in the exemption Notification No. 50/2018-Customs dated 30.06.2018 nor in the Origin of goods rules prescribed under Notification No. 94/2006-Cus is not sustainable at all. The Noticee relied on the judgement of Hon'ble Tribunal in the case of *M/s Olam Enterprises India Pvt. Ltd. Vs Commissioner of Customs Tuticorin, 2018-TIOL-2060-CESTAT-MAD,* wherein Hon'ble Tribunal stated that invoice issued by party in third country will not disallow the benefit of AIFTA certificate of origin. Nevertheless, AIFTA provisions specifically provide for third-country invoicing.

2.2.16.12 In the present case even if the Notification No. 94/2006-Cus does not provide for third country invoicing, there is no prohibition for third country invoicing. Therefore, the Noticee is eligible for COO benefits and exemption from payment of duty.

2.2.16.13 Further the Noticee relied on the Guidelines on Certification of Origin issued by World Customs Organisation on third country invoice (intermediate trade). So, it is an international practise that certificate of origin should be accepted in case the invoice is issued in third country as long as goods satisfy the applicable rules of origin. In the present case the goods satisfy the applicable rules of origin and the certificate of origin issued by China should be accepted and the Noticee is eligible for benefit of exemption under Notification No. 50/2018-Customs dated 30.06.2018.

2.2.16.14 Therefore, the Noticee is eligible for the duty exemption benefits under Notification No. 50/2018-Customs dated 30.06.2018 and has correctly availed the duty exemption in terms of the COO issued under APTA Rules.

2.2.17 ***Objection in Sr. No. 15 - Indoor Unit/Outdoor Unit of Air Conditioner in SKD Conditions (w/o Motor)***

2.2.17.1 The Noticee had imported Indoor/Outdoor Units of AC without motors and service valves (as parts of AC) in SKD condition under CTH 84159000 availing benefits under Sr. No. 449A of the Notification 50/2017-Customs dated 30.06.2017. It has been alleged that the Noticee was ineligible for duty exemption under the said notification as the exemption benefit was applicable only on parts of Air Conditioners other than indoor or outdoor units of split system Air Conditioners. It has been further alleged that the Noticee had imported indoor/outdoor units of Air Conditioners in SKD conditions and thus, the Noticee was ineligible to avail the duty exemption under Sr. No. 449A of 50/2017-Cus.

2.2.17.2 The Noticee had imported parts of indoor/outdoor units of Air Conditioners but not indoor/outdoor units of ACs in SKD condition because the said goods were imported without the elements namely, motor-driven fans and service valves. It is pertinent to note that motor-driven

fans and service valves are the essential constituents of the indoor/outdoor units and the ACs are incomplete and non-functional without the said elements. In the exit conference dated 07.05.2024 for the OSPC Audit it has been noted that that the goods were imported in SKD conditions without motor & Service Valves.

2.2.17.3 In terms of HSN Explanatory Notes to tariff heading 8415, it covers machines / apparatus for maintaining required conditions of temperature and humidity in closed spaces. Further, this heading applies only to the following machines:

i. Machines equipped with motor-driven fan or blower; and,
ii. Machines designed to change both the temperature and the humidity of air; and,
iii. Machines for which both the elements above are presented together.

2.2.17.4 The goods imported by the Noticee are without motor-driven fans and thus, in terms of HSN explanatory notes to CTH 8415, a machine without motor-driven fan is not a machine covered under tariff heading 8415. The said imported goods cannot function as the IDUs/ODUs of ACs and thus, the parts of indoor/outdoor units without motors and service valves cannot be said to be indoor/outdoor units of ACs in SKD form in term of Rule 2(a) of the GRI.

2.2.17.5 An example of electro-mechanical hand tools imported without motor is given in the objection under Sr. No. 15. By application of Rule 2(a) of the GRI, electro-mechanical hand tools without motor are considered as a complete machine and thus, is to be classified under the tariff heading same as that of the machine.

2.2.17.6 The said example cannot be made applicable in the case of IDUs/ODUs imported without motors because electro-mechanical hand tools can also operate mechanically without the motors whereas IDUs/ODUs cannot function without motors. The IDUs/ODUs are incomplete without their motors and thus, the said imported goods without motors cannot be said to have the essential character of IDUs/ODUs.

2.2.17.7 Thus, the goods imported by the Noticee were correctly eligible for duty exemption under Sr. No. 449A of Notification 50/2017-Cus.

C. CATEGORY III: Response to the departmental objection in Sl. No. 4, 9 & 12 pertaining to alleged erroneous levy of IGST in terms of Notification No. 1/2017:

The point wise response to the objection raised in the Notice dated 05.09.2024 with respect to Sr. No. 4, 9 and12 has been provided below:

Response to objections where the noticee admits the liability and has already paid the differential duty along with interest

2.2.18 ***Objection in Sr. No. 4 - Short payment of duty/taxes on "LED TV of size 102 cm (more than 32 inches)" classified under CTH 85287215 due to levy of IGST @ 18% instead of correct IGST @ 28%***

2.2.18.1 The Noticee has not used any false or incorrect material for importing the product in question. Declaration of classification, description and value of the product has been disclosed correctly at the time of import which was readily available to the Customs for examination.

2.2.18.2 However, without going into the merits, the Noticee agrees to pay the differential duty in respect of goods imported vide Bills of Entry for the period starting from June 2022 till May 2024 i.e., covered under the normal period of limitation.

2.2.19 ***Objection in Sr. No. 12 - Short payment of duty/taxes on "Rubber Gaskets" classified under CTH 40169340 due to levy of IGST @ 5% instead of correct IGST @ 18%***

2.2.19.1 The Noticee has not used any false or incorrect material for importing the product in question. The description, value and all other material particulars of the imported goods were correctly described at the time of import which was readily available to the Customs for examination. The issue is only of classification which is an issue of interpretation and demand for extended period of limitation is not sustainable at all.

2.2.19.2 However, without going into the merits of the case, the Noticee agrees to pay the differential duty along with interest in respect of goods imported vide Bills of Entry for the period starting from June 2022 till May 2024 i.e., covered under the normal period of limitation.

Response to objections where the noticee is challenging the objections raised by the department:

2.2.20 ***Objection in Sr. No. 9 - Short payment of duty/taxes on "Spare parts of heater" classified under CTH 84191910 due to levy of IGST @ 5% instead of correct IGST @ 18%***

2.2.20.1 The goods imported by the Noticee are "Solar Water Heaters" and not "spare parts of heater". It can be seen from the description of the imported goods i.e., "HAIER BRAND SOLAR WATER HEATER MODEL NO.HR-5818T" as declared in the bills of entry filed by the Noticee; commercial invoices and packing lists shared by the foreign supplier. For the ease of reference, relevant extract of the Bill of Entry has been reproduced below:

Item Details

Exchange rate: 1.00 USD = 76.3500 INR

Slno	RITC	Description			RSP	Load	PROV
Qty		Unit Price	CTH	C.Notn C.NSNO	Cus Dty Rt	BCD amt(Rs)	
Unit		Ass Val	CETH	E.Notn E.NSNO	Exc Dty Rt	CVD amt(Rs)	
1	84191910	HAIER BRAND SOLAR WATER HEATER (HR-5818T)					39
374.00		13.270000	84191910		10.00 %	0.00	
Exim Notn	:	013/2020 1	BCD:0	CVD: 0			
	BCD Fg	42890.70	CVD Fg	0.00			
PCS		428906.72	NOEXCISE		0.00 %	0.00	
	Educational Cess on CVDs	:			0.00 %	0.00	
Sec & Higher Edu. Cess on CVD		:			0.00 %	0.00	
	Customs Educational Cess	:			0.00 %	0.00	
Customs Sec & Higher Edu. Cess		:			0.00 %	0.00	
Social Welfare Surcharge:					10.00 %	4289.10	
	IGST		001/2017 I232		5.00 %	23804.30	
	GST Cess		001/2017 56		0.00 %	0.00	

Declaration
1. I/We Certify that the above entries are correct.
2. I/We further declare that wherever the RSP is applicable same has been truthfully declared

CHA	Importer
LOTUS INTEGRATED LOGISTICS PVT LTD	HAIER APPLIANCES INDIA PRIVATE LIMITED
Signature	Signature

2.2.20.2 The solar water heaters are classified under CTSH 8419 19 and attracts IGST @ 5% as per Sl. No. 232 of Schedule I of IGST Notification No. 01/2017 dated 28.06.2017 during the relevant time of import. Thus, there is no short payment of IGST by the Noticee and hence, no differential duty is payable. During the relevant period sr. no. 232 of the Schedule I reads as under:

Sr. No.	Chapter / Heading Sub-heading/ Tariff item	Description of goods
(1)	(2)	(3)
232.	8419 19	Solar water heater and system

2.2.20.3 Sr. No. 232 was amended vide Notification No. 18/2021-Integrated Tax (Rate) dated 28.12.2021 through which the entry "8419 12" was substituted in column (2).

2.3 For the ease of reference, the entirety of the discrepancies has been tabulated below:

2.3.1 Category I: Issue of classification of goods

Sl. No.	Sl. No. as per Table-A of the SCN	Description of the product as per the Bills of Entry	CTH as per Noticee	CTH as per Department	Remarks
1.	1.	Compressor for refrigerator	84189100 & 84189900	84143000	The issue herein is with respect to classification of goods which is an issue of interpretation for which the Noticee has paid the duty for the normal period of limitation along with interest prior to issuance of SCN.
2.	2.	a) Indoor/Outdoor Unit PCB/Computer Boards b) Outdoor PCB of Air-Conditioner	85371000 84189900	84159000 84159000	-do-
3.	5.	Spare parts of Washing Machine of household	84509090	84509010	-do

		type/use			
4.	6.	Spare parts of Air-Conditioner	84509010	84159000	-do-
5.	8.	Water cups for promotions	7020009	70133700	-do-
6.	10.	Fan for refrigerator	8418990	84145910	-do-
7.	11.	LED lamp/Light for refrigerator/Fridge/Freezer	84189900	85395000 / 85395200	-do-
8.	13.	Compressor of Air-Conditioner	84149011 & 84169000	84148011	-do-
9.	3.	Radiator/Heatsink (Parts of Air-Conditioner)	76169990 as articles of Aluminium	84159000	The demand is not acceptable because: The Chapter Note 1(d) of Chapter 84 specifically excludes "*articles of heading 7321 or 7322 or similar articles of other base metals (Chapters 74 to 76 or 78 to 81*". Thus, in terms of Note 1(d) of the Chapter 84, radiators made up of Aluminium cannot be classified under Chapter 84 rather should be classified under Chapter 76. Thus, the demand of differential duty along with applicable interest and penalty is not sustainable.

2.3.2 Category II: Wrongful availment of the exemption notification

Sl. No.	Sl. No. as per Table-A of the SCN	Description of the product as per the Bills of Entry	Allegation of the Department	Defence of the Noticee
10.	7.	Parts of LED TV	Wrong availment of duty benefits under Notification 50/2017-Cus dated 30.06.2017 @ Sl. No. 516A & 516B on "Parts of LED TV"	The issue herein is with respect to claim of exemption notification which is an issue of interpretation for which the Noticee has paid the duty for the normal period of limitation along with interest prior to issuance of SCN.

11.	14.	Wrong availment of FTA benefits under Notification No. 50/2018-Cus dated 30.06.2018	The Department has stated that the COO certificate contains the name Haier, China while the invoice has been raised by Haier, Singapore which is contrary to the Rules of Origin notified under Notification 94/2006-Cus (N.T.). Thus, the benefit has been denied to the Noticee on the pretext that third country invoices are not allowed for availing benefits of the Notification No. 50/2018-Cus dated 30.06.2018.	The Noticee has received goods "wholly obtained' from China wherein the Box 7 of the COO correctly mentions the third-party operator which corresponds to the invoice submitted by the Noticee. In the absence of an express prohibition for third-party invoicing under APTA rules in Notification No. 94/2006-Cus, the Noticee has correctly availed the duty exemption in terms of the COO issued under APTA Rules. Thus, the demand of differential duty along with applicable interest and penalty is not sustainable.
12.	15.	Indoor Unit/Outdoor Unit of Air Conditioner in SKD Conditions (w/o Motor).	The Department has alleged that in terms of GIR 2(a) and the explanatory notes, the IDU/ODU imported in SKD condition i.e. w/o motor and service valve shall be considered to be complete IDU/ODU for classification or any duty benefit. Thus, it has been alleged that the Noticee is not eligible for duty benefits under Sl. No. 449A in Notification No. 50/2017-Cus dated 30.06.2017	The Noticee had imported parts of indoor/outdoor units of Air Conditioners but not indoor/outdoor units of ACs in SKD condition because the said goods were imported without the elements namely, motor-driven fans and service valves. Thus, the said goods cannot be said to have the essential character of IDUs/ODUs. Hence, Noticee is correctly eligible for duty exemption under Sr. No. 449A of Notification 50/2017-Cus. Thus, the demand of differential duty along with applicable interest and penalty is not sustainable.

2.3.3 Category III: Levy of IGST in terms of Notification No. 1/2017

Sl. No.	Sl. No. as per Table-A of the SCN	Description of the product as per the Bills of Entry	Allegation of the Department	Defence of the Noticee
13.	4.	LED TV of size 102 cm (more than 32 inches)	IGST @ 28% at sr. no. 154 of Schedule IV instead 18% at sr. no. 384 of Schedule III.	Without going into the merits of the case, the Noticee has paid the differential duty for the normal period of limitation along with interest prior to issuance of SCN.
14.	12.	Rubber Gaskets	IGST @ 18% at sr. no. 123A of Schedule III instead 5% at sr. no. 191 of Schedule I.	-do-
15.	9.	Solar Water Heaters	Alleged that noticee has imported "spare parts of heater" and demanded IGST @ 18% at sr. no. 320 of Schedule III instead 5% at sr. no. 232 of Schedule I.	The Noticee has imported solar water heaters and not spare parts of heater which is evident from the description mentioned in the Bill of Entry. Thus, the Noticee has rightly classified the goods under CTSH 8419 19 which attracts IGST @ 5% as per Sl. No. 232 of Schedule I of IGST Notification

				No. 01/2017 dated 28.06.2017 during the relevant time of import. Thus, the demand of differential duty along with applicable interest and penalty is not sustainable.

D. Extended period of limitation cannot be invoked under section 28(4) of the CGST Act 2017:

In the present case, the Department has raised a demand for differential duty amounting to Rs. 5,01,97,027/- (Rupees Five Crores One Lakh Ninety-Seven Thousand Twenty-Seven Only) in respect of the goods covered under Sl. Nos. 1 to 15 of the SCN dated 05.09.2024. The said demand has been invoked under the provisions of Section 28(4) of the Customs Act, 1962, alleging that the Noticee has engaged in wilful mis-statement and suppression of material facts with an intent to evade customs duty.

However, the instant case is purely one involving interpretational issues relating to the classification of the goods, eligibility of exemption under the relevant notifications, and the applicable rate of IGST under Notification No. 1/2017. All declarations made and benefits availed by the Noticee were based on a bona fide understanding of the applicable legal provisions and were duly supported by documentation at the time of import. Furthermore, the Noticee in the present case also paid the differential duty pertaining to June, 2022 till May, 2024 for most of the objections. At no stage was there any deliberate act of concealment, misstatement, or suppression of material facts with an intent to evade payment of duty.

Section 28(4) of the Customs Act, 1962 can be invoked only when there exists an element of collusion, wilful misstatement or suppression of facts. In the present case, none of the aforementioned elements are satisfied by the Noticee.

The demand for differential duty in the present case has been raised against the Noticee under Section 28(4) of the Customs Act, 1962, which empowers the proper officer to invoke the extended limitation period of five years only in cases involving collusion, wilful misstatement, or suppression of facts by the importer or their agents. It is submitted that none of these statutory preconditions are met in the present case, and therefore, the invocation of the extended period is both factually and legally untenable. The Noticee placed reliance on following case laws:

(i) *Payu Payments Pvt. Ltd. vs, Union of India [(2025) 26 Centax 67 (Bom.)]*

(ii) *Vadana Global limited vs. Commr. Of Cgst, C. Ex. & Cus., Raipur [2022 (56) G.S.T.L. 310 (Tri.-Del.)*

(iii) *Devraj Luxury Hotels Pvt. Ltd. vs. Commr. Of C. Ex. & CGST, Jaipur [2022 (67) G.S.T.L. 76 (Tri. - Del.)]*

It is a well-established principle of law that mere denial of benefit, in the absence of any deliberate wrongdoing, cannot be made the basis for invoking penal provisions like Section 28(4). Where the importer has acted in good faith, fully disclosed all material facts, and complied

with the procedural conditions laid down under the applicable notification and rules, the invocation of the extended limitation period is plainly unsustainable. The Noticee placed reliance on following case laws:

a) *Northern Plastic Ltd. v. Commissioner [1998 (101) E.L.T. 549 (S.C.)]*
b) *O.K. Play (India) Ltd. v. Commissioner [2005 (180) E.L.T. 300 (S.C.)],*
c) *National Radio & Electronics Co. v. Commissioner [2000 (119) E.L.T. 746],*

However, it is a settled legal position that for invoking the extended period of limitation under Section 28(4) of the Customs Act, 1962, the Department must establish the existence of a positive act of fraud, collusion, wilful misstatement, or suppression of facts with intent to evade duty. Thus, in light of the aforementioned judicial precedents, no cogent evidence has been brought on record to substantiate the presence of any such intent on the part of the Noticee.

Therefore, the invocation of Section 28(4) and the consequential demand for differential duty are wholly unjustified and unsustainable in law. The differential duty, if any, arising out of classification or interpretational differences cannot attract the provision of Section 28(4) of Customs Act 1962.

E. No interest liability under Section 28AA of the Customs Act, 1962

Since there is no implication of any differential duty liability therefore demand of interest under Section 28AA is not sustainable at all.

F. Goods are not liable for confiscation under Section 111(m) and/or Section 111(o) of the Customs Act, 1962

The noticee has cleared the goods after filing proper bill of entry and on the disclosure of all the relevant details pertaining to the imported goods. Further the noticee has declared the correct value of the imported goods. There is no allegation in the SCN that the goods do not corresponds to value declared by the Noticee. Therefore, the allegation that the goods are liable for Section 111(m) and Section 111(o) is also not sustainable at all. The Noticee placed reliance on following case laws:

a) *Satron Versus Commissioner of Customs (Imports) Jnch, Nhava Sheva 2020 (371) E.L.T. 565 (Tri. - Mumbai)*
b) *Sirthai Superware India Ltd. Versus Commr. Of Customs, Nhava Sheva-Iii 2020 (371) E.L.T. 324 (Tri. - Mumbai)*

Thus, goods are not liable for confiscation under Section 111(m)/(o) of the Customs Act 1962.

G. No penalty can be imposed under Section 112(a) of the Customs Act, 1962

For imposition of penalty under 112(a) of Customs Act following conditions must be fulfilled:

a) goods must be liable to confiscation under section 111.
b) the person on whom the penalty is sought to be imposed must have done or omitted to do something in performance of an act as a result of which goods became liable to confiscation under section 111.
c) the person on whom the penalty is sought to be imposed must have dealt with the goods liable to confiscation under section 111.

Here in this case, the Noticee has not committed any act which would render the goods liable for confiscation. Therefore, there arises no legitimate ground to invoke Section 112 and penalty cannot be imposed under Section 112 of the Act.

H. No penalty can be imposed under Section 114A of the Customs Act, 1962

Penalty under Section 114A of the Customs Act, 1962 is imposable only where the non-payment or short-payment of duty is a direct result of collusion, wilful misstatement, or suppression of facts by the importer. These elements are sine qua non for the imposition of penalty under the said provision and must be established by the Department through clear and cogent evidence.

In the present case, the demand has arisen solely on account of a classification of the imported goods, eligibility pertaining to exemption notification, as well as levy of IGST. The Noticee has acted with a bona fide understanding of the product description, trade parlance, and relevant interpretative rules, and there was no intent to misclassify or evade duty. The Noticee placed reliance on the case law: *Sirthai Superware India Pvt. Ltd. vs. Commissioner of Customs, Nhava Sheva-III 2020 (371) E.L.T. 324 (Tri. - Mumbai)*

The description of the goods corresponds to that of the consignment; the noticee claimed the classification, which they thought to be the correct classification. In the SCN, the Department failed to adduce any evidence to suggest collusion or wilful mis statement, and thus, in light of the provision as well as Judicial precedents, penalty under Section 114A cannot be imposed on the Noticee. The Noticee placed reliance on following case laws:

a) *C.C., C. Ex. & Service Tax, Hyderabad-Ii Versus Sandor Medicaids Pvt. Ltd. 2019 (367) E.L.T. 486 (Tri. - Hyd.).*
b) *Surbhit impex p. Ltd. Vs Commissioner of Customs (ep), Mumbai 2012 (283) E.L.T. 556 (Tri. - Mumbai)*
c) *International Trade Affairs vs. Commissioner of Customs, Hyderabad 2003 (162) E.L.T. 584 (Tri. - Bang.)*

It is a settled principle in law that penalty provisions must be strictly construed, and in the absence of the statutory conditions namely collusion, wilful misstatement, or suppression no

penalty under Section 114A can be sustained. In view of the above, the proposed penalty in the impugned SCN deserves to be dropped.

2.4 Further, the Noticee submitted a Synopsis dated 18.08.2025, wherein they gave a summary of their submissions made vide reply dated 18.08.2025. As the contents of their reply dated 18.08.2025 have already been mentioned above, the said Synopsis is not reproduced here for the sake of brevity.

3. RECORD OF PERSONAL HEARINGS

There is a single Noticee in the subject SCN viz. M/s. Haier Appliances (India) Private Limited. In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticee was granted opportunity of Personal Hearing (PH). A date-wise record of personal hearings is as under:

3.1 An opportunity for PH was granted to the Noticee on 08.07.2025. However, the Noticee did not attend the PH.

3.2 Therefore, another opportunity for PH was granted to the Noticee on 04.08.2025 However, the Noticee did not attend the PH and vide their letter dated 04.08.2025 requested for adjournment and grant of another date for PH.

3.3 In view of the above, another opportunity for PH was granted to the Noticee on 11.08.2025. Availing the said opportunity of PH, authorised representative of the Noticee, Mr. Jayant Kumar, Advocate, M/s Athena Law Associates appeared before the Adjudicating Authority on 11.08.2025 on behalf of the Noticee, M/s. Haier Appliances (India) Private Limited. During the PH, he made following submissions:

I. The background of the subject SCN is that during Post Clearance Audit (PCA), certain discrepancies were found on the following issues:

a) Classification of imported goods
b) Claim of IGST Schedule
c) Claim of exemption Notification / FTA benefit

II. In the SCN, 15 observations have been made, out of which in 11 cases, they have conceded the observation and have deposited the differential duty for normal period along with applicable interest.

III. In 4 cases, they have contested the observation and their comments in respect of the same are as under:

a) Mis-classification of Radiator / Heat Sink (Parts of AC) - The subject goods are made up of aluminium and in terms of Note 1(d) of Chapter 84, they cannot be classified under Chapter 84, therefore, the same are rightly classified under CTH 76169990.

b) Short payment of duty on 'Spare parts of heater' - The subject goods are solar water heater classifiable under CTSH 8419.19 and rightly attract IGST @5% as per Sl. No. 232 of Schedule-I and not @ 18% as proposed in the SCN.

c) Wrong availment of FTA benefit under Notification No. 50/2018 – The imported goods are 'wholly produced or obtained goods' in China and were exported directly from China. The third-country invoice was issued in this case and the details are mentioned in the COO certificate. Accordingly, the FTA benefit was claimed. Until and unless the third-country invoicing is prohibited, the benefit of FTA should be allowed.

d) Indoor /Outdoor of AC – They had imported indoor / outdoor units (IDU /ODU) of AC without motors in SKD condition availing benefit under Sr. No. 449A of the Notfn. No. 50/2017. As their goods are without motors, they are rightly eligible for the said Notfn. benefit.

IV. The SCN has been issued on the basis of Post Clearance Audit and all the documents and details were on record, therefore, there is no suppression on their part. Accordingly, extended period should not be invoked and consequential penalties should not be imposed.

4. DISCUSSION AND FINDINGS

4.1 I have carefully gone through the subject Show Cause Notice (SCN) and its enclosures, material on record and facts of the case, as well as oral and written submissions made by the Noticee. Accordingly, I proceed to decide the case on merit.

4.2 In compliance to provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) on 08.07.2025, 04.08.2025 & 11.08.2025 was granted to the Noticee. Availing the said opportunity, the Noticee attended the PH on 11.08.2025. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the submission / contention made by the Noticee.

4.3 The fact of the matter is that a Show Cause Notice No. 1043/2024-25/COMMR/(NS-V)/ GR.V/JNCH dated 05.09.2024 was issued to Noticee, M/s. Haier Appliances (India) Private Limited, on the basis of discrepancies noticed during Customs On-Site Post Clearance Audit (OSPCA) conducted for the period F.Y. 2019-20 to 2022-23 by team of auditors of Customs Audit Commissionerate, New Custom House, New Delhi. During the said audit, 15 discrepancies were observed regarding (i) mis-classification of the goods, (ii) wrongful availment of the exemption Notification / FTA benefit, and (iii) incorrect levy of the IGST, resulting in evasion of legitimately payable Customs duty. Thus, the SCN proposes rejection of the declared classification and re-classification of the goods, rejection of wrongfully availed exemption Notification / FTA benefit, and levy of correct IGST. Further, the SCN proposes demand of differential duty to the tune of Rs. 5,01,97,027/- in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA *ibid*; confiscation of the impugned

imported goods having assessable value of Rs. 1,31,72,49,412/- under Section 111(m) & 111(o), *ibid*, and imposition of penalty on the Noticee under Section 112(a)/114A, *ibid.*

4.4 On a careful perusal of the Show Cause Notice and case records, I find that following main issues are involved in this case which are required to be decided:

(i) **For Observation Sr. No. 1, 2, 3, 5, 6, 8, 9, 10, 11 and 13** – Whether the classification of goods claimed in Sr. No. 1, 2, 3, 5, 6, 8, 9, 10, 11 and 13 as per Table-A at para 3.16 of the subject SCN should be rejected and the subject goods should be correctly reclassified accordingly.

(ii) **For Observation Sr. No. 4** - Whether IGST should be assessed @ 28% (Sl. No. 154 of Sch. IV of IGST Notfn. No. 01/2017 dated 28.06.2017) instead of incorrect IGST @ 18% (Sl. No. 384 of Sch. III of IGST Notfn. ibid) as per Sr. No. 4 of Table-A at para 3.16 of the subject SCN.

(iii) **For Observation Sr. No. 7** - Whether availment of duty benefits under Sl. No. 516A & 516B of Notification No. 50/2017-Cus dated 30.06.2017 should be rejected as per Sr. No. 7 of Table-A at para 3.16 of the subject SCN.

(iv) **For Observation Sr. No. 12** - Whether IGST should be assessed @ 18% (Sl. No. 123A of Sch. III of IGST Notfn. No. 01/2017 dated 28.06.2017) instead of incorrect IGST @ 5% (Sl. No. 191 of Sch. I of IGST Notfn. ibid) as per Sr. No. 12 of Table-A at para 3.16 of the subject SCN.

(v) **For Observation Sr. No. 14** - Whether availment of FTA benefits under Notfn. No. 50/2018-Cus dated 30.06.2018 should be rejected as per Sr. No. 14 of Table-A at para 3.16 of the subject SCN.

(vi) **For Observation Sr. No. 15** - Whether availment of benefits under Sl. No. 449A of Notification No. 50/2017-Customs dated 30.06.2017 should be rejected as per Sr. No. 15 of Table-A at para 3.16 of the subject SCN.

(vii) Whether differential/short paid duty amounting to Rs. 5,01,97,027/- (Rupees Five Crore One Lakh Ninety Seven Thousand Twenty Seven Only) for the subject goods imported vide Bills of Entry as mentioned in Annexure I to XV and as detailed in Table-A at para 3.16 of the subject SCN, should be demanded from the importer under Section 28(4) of the Custom Act, 1962, as the importer by way of wilful mis-statement and suppression of facts resulted into short levy of duty and had also availed wrong notifications benefit with an intent to evade customs duty.

(viii) Whether in addition to the duty short paid, interest on delayed payment of Custom duty should be recovered from the Importer under Section 28AA of the Customs Act, 1962.

(ix) Whether the said subject goods imported vide Bills of Entry as mentioned in Annexure I to XV and as detailed in Table-A at para 3.16 of the subject SCN having assessable value of Rs. 1,31,72,49,412/- (Rupees One Hundred Thirty One Crore Seventy Two Lakh Forty Nine Thousand Four Hundred Twelve Only) should be held liable for confiscation under Section 111(m) & 111(o) of the Customs Act, 1962.

(x) Whether penalty should be imposed on the Importer under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.

(xi) Whether penalty should be imposed on the Importer under Section 114A of Customs Act, 1962 for short levy of duty by wilful mis-statement and suppression of facts.

4.5 After having identified and framed the main issues to be decided, I now proceed to examine each of the issues based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as Noticee's oral and written submissions and documents / evidences available on record. I will first discuss each of the 15 observations mentioned in the subject SCN and thereafter decide upon the issues of differential duty demand along with interest, confiscability of the goods and liability to penalty.

4.6 Observation-1:

Compressor for Refrigerator: Mis-classification of Compressor for refrigerator under CTH 84189100 & 84189900 [BCD-7.5%, SWS-10% & IGST-18%] instead of correct CTH 84143000 [BCD-10%/12.5%/15% + SWS-10% + IGST-18%].

4.6.1 I find that in the instant Observation, it is undisputed that the imported goods are 'Compressor for Refrigerator and Freezer'. On perusal of the CTH 8414 & CTH 8418 and their item entries, I find that there is a specific entry under CTI 84143000 for 'Compressors of a kind used in refrigerating equipment', whereas CTI 84189100 & 84189900 are general entries covering parts of refrigerators, freezers and other refrigerating or freezing equipment. I note that as per General Rules for Interpretation (GRI) Rule 3(a), the heading which provides the most specific description shall be preferred to headings providing a more general description. Therefore, I find that the impugned imported goods being 'Compressor for Refrigerator and Freezer' are correctly classifiable under CTI 84143000.

4.6.2 Further, from the submissions of the Noticee, I find that in respect of the instant Observation, they have agreed to pay the differential duty along with interest for the normal period of limitation. This shows that even the Noticee has acknowledged that the classification of the subject goods done by them under CTI 84189100 & 84189900 is not proper and the correct classification of the goods is under CTI 84143000.

4.6.3 In view of the above, I agree with the proposal made in the SCN and hold that in respect of the instant Observation No. 1, the classification of goods claimed under CTI 84189100 & 84189900 as per Sr. No. 1 of Table-A at para 3.16 of the subject SCN should be rejected and the subject goods should be correctly re-classified under CTI 84143000 accordingly.

4.7 Observation-2:

Indoor / Outdoor Unit PCB / Computer Boards: Mis-classification of Indoor / Outdoor Unit PCB / Computer Boards under CTH 85371000 [BCD-15%, SWS-10% & IGST-18%] & 84189900 [BCD-7.5%, SWS-10% & IGST-18%] instead of 84159000 [BCD-10%, SWS-10% & IGST 28%].

4.7.1 I find that in the instant Observation, it is undisputed that the imported goods are 'Indoor / Outdoor Unit PCB / Computer Board'. I find that the function of Indoor / Outdoor Unit (IDU / ODU) PCB is to communicate command and data to the different parts of the air conditioner. It controls the capacitors, transistors, and compressors, as well as other components, giving the command to function or operate. Outdoor Unit PCB has specific use for electricity control and distribution as part in air conditioner. Indoor / Outdoor Unit PCB cannot perform its function on a stand-alone basis in the imported condition and the functioning of these PCBs is dependent upon functions performed by other parts / components of the air-conditioner.

4.7.2 I find that Indoor / Outdoor Unit PCB does not have a separate identifiable individual function of its own, when compared to the main machine viz. air-conditioner. It is not capable of operating independently of the main-machine on its own. Thus, I find that the impugned imported goods viz. Indoor / Outdoor Unit PCB is solely usable with an air-conditioner. The Section Note 2(b) of Section XVI of the Customs Tariff Act, 1975 inter-alia 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 machine of that kind. Therefore, I find that Indoor / Outdoor Unit PCB would be classifiable as part of an air-conditioner under CTH 8415 and will not be classifiable under CTH 8537 as an apparatus falling under its own appropriate heading. Further, it will also not be classifiable under CTH 8418, as the same is meant for parts of refrigerators, freezers and other freezing equipment and does not include parts of air conditioner.

4.7.3 Further, from the submissions of the Noticee, I find that in respect of the instant Observation, they have agreed to pay the differential duty along with interest for the normal period of limitation. This shows that even the Noticee has acknowledged that the classification of the subject goods done by them under CTI 85371000 & 84189900 is not proper and the correct classification of the goods is under CTI 84159000.

4.7.4 In view of the above, I agree with the proposal made in the SCN and hold that in respect of the instant Observation No. 2, the classification of goods claimed under CTI 85371000 & 84189900 as per Sr. No. 2 of Table-A at para 3.16 of the subject SCN should be rejected and the subject goods should be correctly re-classified under CTI 84159000 accordingly.

4.8 Observation-3:

Radiator / Heatsink (Parts of Air Conditioner): Mis-classification of Radiator / Heatsink (Parts of AC) under CTH 76169990 [BCD-10%, SWS-10%, IGST-18%] instead of CTH 84159000 [BCD-10%, SWS-10% & IGST 28%].

4.8.1 I find that in the instant Observation, it is undisputed that the imported goods declared as 'Radiator / Heatsink' are parts of an air conditioner. The department has suggested that the goods being parts of air conditioner should be classifiable under CTH 84159000, whereas the Noticee has contended that as the goods are made of Aluminium, they should be classified under CTH 7616 as articles of Aluminium and further that in terms of Note 1(d) of Chapter 84, they cannot be classified under Chapter 84.

4.8.2 I find that the goods declared as 'Radiator / Heatsink' imported by the Noticee are basically Heat Sink specifically designed for the air conditioner units. A radiator relies on a circulating liquid coolant, such as water or antifreeze, to transport heat away from a source, while a heat sink uses direct contact and airflow to dissipate heat into the air. Basically, Radiators require a medium, such as water or oil, unlike Heat Sinks which usually use air as their medium. I find that as in the air conditioner units, heat is dissipated through airflow, the impugned imported goods are Heat Sink only.

4.8.3 I find that the Noticee has contended that in terms of Note 1(d) of Chapter 84, the impugned goods being articles of Aluminium cannot be classified under Chapter 84 as the said Note specifically excludes articles of heading 7321 or 7322 or similar articles of other base metals (**Chapters** 74 to **76** or 78 to 81). However, I find that Explanatory Notes to CTH 7322 mentions that this heading includes:

> *"Radiators for Central heating, i.e., space heating appliances consisting usually, of an assembly of "sections" of flanged or grilled tubes or of hollow panels through which the water or steam from the boiler is circulated. Such radiators may be enclosed in casings of wood or metal.*
>
> *This group also includes apparatus consisting of a combination of a radiator through which hot or cold water is circulated and of ejector nozzles through which conditioned air under pressure is passed. The two components are mounted in a common housing fitted with a grille. When the radiator unit is turned off, this apparatus serves as a distributor of conditioned air.*
>
> ***The heading does not cover air conditioning units (heading 84.15) or electric radiators. (85.16)."***

From the above, I find that the Heat Sink used in air conditioner units are different from the conventional radiators as defined above. Further, air conditioner units are specifically

excluded from the scope of Tariff Heading 7322. Therefore, I find that the impugned goods viz. Heat Sink, are not excluded from the purview of Chapter 84 vide Note 1(d) to the said Chapter.

4.8.4 I find that the Heat Sinks (having specific Part / Serial Nos.) are specially designed to be used solely or principally with the air conditioner units. The Section Note 2(b) of Section XVI of the Customs Tariff Act, 1975 inter-alia 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 machine of that kind. Therefore, I find that Heat Sinks would be correctly classifiable as part of an air-conditioner under CTI 84159000 and will not be classifiable under CTI 76169990 as articles of Aluminium. Moreover, I find that the Noticee itself had classified the impugned goods under CTH 84159000, and in some cases, they had wrongly classified them under CTI 76169990. Thus, I find that the Noticee was very well aware of the correct classification of the impugned goods, however, they intentionally mis-classified the goods to evade correctly payable duty.

4.8.5 In view of the above, I agree with the proposal made in the SCN and hold that in respect of the instant Observation No. 3, the classification of goods claimed under CTI 76169990 as per Sr. No. 3 of Table-A at para 3.16 of the subject SCN should be rejected and the subject goods should be correctly re-classified under CTI 84159000 accordingly.

4.9 Observation-4:

LED TV of Size 102 cm (more than 32 inches): Short payment of duty / taxes on "LED TV of Size 102 cm (more than 32 inches)" classified under CTI 85287215 due to levy of IGST @18% (Sl. No. 384 of Schedule-III of IGST Notfn. No. 01/2017 dated 28.06.2017) instead of correct IGST @28% (Sl. No. 154 of Schedule-IV of IGST Notfn. ibid).

4.9.1 I find that in the instant Observation, it is undisputed that the imported goods are 'LED TV of Size 102 cm (more than 32 inches)' classifiable under CTI 85287215. The Noticee has classified the goods under Sl. No. 384 of Schedule-III of IGST Notfn. No. 01/2017 dated 28.06.2017 attracting IGST @ 18% whereas department has proposed that the proper classification should be under Sl. No. 154 of Schedule-IV of IGST Notfn. ibid attracting IGST @ 28%. In view of the above, it is worthwhile to look at the said two competing entries:

IGST Schedule	*Sl. No.*	*Chapter / Heading / Subheading / Tariff item*	*Description of Goods*
III	*384*	*8528*	*Computer monitors not exceeding 32 inches, Set top Box for Television (TV)*
IV	*154*	*8528*	*Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receiver or sound or video recording or reproducing*

			apparatus other than computer monitors not exceeding 32 inches, set top box for television and Television set (including LCD and LED television) of screen size not exceeding 32 inches

4.9.2 From the above entries, it is quite evident that LED TV of size more than 32 inches are classifiable under Sl. No. 154 of Schedule-IV of IGST Notfn. No. 01/2017 dated 28.06.2017 attracting IGST @ 28%. Thus, I find that the Noticee has incorrectly claimed the IGST @ 18% by classifying the impugned goods under Sl. No. 384 of Schedule-III of IGST Notfn. ibid.

4.9.3 Further, from the submissions of the Noticee, I find that in respect of the instant Observation, they have agreed to pay the differential duty along with interest for the normal period of limitation. This shows that even the Noticee has acknowledged that the classification of the subject goods done by them under Sl. No. 384 of Schedule-III of IGST Notfn. No. 01/2017 dated 28.06.2017 attracting IGST @ 18% is not proper and the correct classification of the goods is under Sl. No. 154 of Schedule-IV of IGST Notfn. ibid, attracting IGST @ 28%.

4.9.4 In view of the above, I agree with the proposal made in the SCN and hold that in respect of the instant Observation No. 4, IGST should be assessed @ 28% (Sl. No. 154 of Schedule-IV of IGST Notfn. No. 01/2017 dated 28.06.2017) instead of incorrect IGST @ 18% (Sl. No. 384 of Schedule-III of IGST Notfn. ibid) as per Sr. No. 4 of Table-A at para 3.16 of the subject SCN.

4.10 Observation-5:

Spare parts of Washing Machine of Household type / use: Mis-classification of "Spare Parts of Washing Machine (for Household use)" under CTH 84509090 [BCD-7.5%, SWS-10% & IGST-18%] instead of Correct CTH 84509010 [BCD-10%, SWS-10% & IGST 18%].

4.10.1 I find that in the instant Observation, it is undisputed that the imported goods are 'Spare parts of Washing Machine (for Household use)'. The Noticee has classified the impugned imported goods under CTI 84509090 as parts of other than household type washing machines, whereas department has proposed that the said goods are correctly classifiable under CTI 84509010 as parts of household type washing machines.

4.10.2 I find that the Noticee is in the business of manufacturing of washing machines of household types, therefore, the parts of washing machine imported by them must be used in these household type machines manufactured by them. Therefore, I find that the impugned imported goods being spare parts of household type washing machine are correctly classifiable under CTI 84509010 and not under CTI 84509090.

4.10.3 Further, from the submissions of the Noticee, I find that in respect of the instant Observation, they have agreed to pay the differential duty along with interest for the normal

period of limitation. This shows that even the Noticee has acknowledged that the classification of the subject goods done by them under CTI 84509090 is not proper and the correct classification of the goods is under CTI 84509010.

4.10.4 In view of the above, I agree with the proposal made in the SCN and hold that in respect of the instant Observation No. 5, the classification of goods claimed under CTI 84509090 as per Sr. No. 5 of Table-A at para 3.16 of the subject SCN should be rejected and the subject goods should be correctly re-classified under CTI 84509010 accordingly.

4.11 Observation-6:

Spare Parts of Air Conditioner wrongly classified as parts of Washing Machine: Mis-classification of spare parts of Air Conditioner as parts of Washing Machine under CTH - 84509010 [BCD-10%, SWS-10% & IGST-18%] instead of correct CTH - 84159000 [BCD-10%, SWS-10% & IGST-28%].

4.11.1 I find that in the instant Observation, it is undisputed that the imported goods are 'Parts of Air Conditioner'. On perusal of the CTH 8415 & CTH 8450 and their item entries, I find that spare parts of air conditioners are specifically covered under CTI 84159000, whereas CTI 84509010 specifically covers the spare parts of washing machines of household type. As the impugned imported goods are parts of air conditioner, therefore, I find that they are correctly classifiable under CTI 84159000 and not under CTI 84509010.

4.11.2 Further, from the submissions of the Noticee, I find that in respect of the instant Observation, they have agreed to pay the differential duty along with interest for the normal period of limitation. This shows that even the Noticee has acknowledged that the classification of the subject goods done by them under CTI 84509010 is not proper and the correct classification of the goods is under CTI 84159000.

4.11.3 In view of the above, I agree with the proposal made in the SCN and hold that in respect of the instant Observation No. 6, the classification of goods claimed under CTI 84509010 as per Sr. No. 6 of Table-A at para 3.16 of the subject SCN should be rejected and the subject goods should be correctly re-classified under CTI 84159000 accordingly.

4.12 Observation-7:

Wrong availment of duty benefits under Notification No. 50/2017-Cus dated 30.06.2017 @ Sl. No. 516A & 516B: Short Payment of duty / taxes due to wrong availment of duty benefits under Notification No. 50/2017-Cus dated 30.06.2017 @ Sl. No. 516A & 516B [BCD-10%] on "Parts of LED TV" which are not eligible for the said duty benefits and liable for BCD @15%.

4.12.1 I find that in the instant Observation, it is undisputed that the imported goods are 'Parts of LED TV' classifiable under CTI 85299090. The Noticee has claimed concessional rate of BCD @ 10% under Sl. No. 516A & 516B of Notification No. 50/2017-Cus dated 30.06.2017, whereas department has proposed that the said goods are not eligible for the concessional rate of BCD under the said Sl. Nos. In view of the above, it is worthwhile to look at the said two Sl. Nos. of the Notification No. 50/2017-Cus dated 30.06.2017:

I. Sl. No. 516A: *Parts suitable for use solely or principally with the apparatus of heading 8525, 8526 or 8527*

II. Sl. No. 516B: *Parts suitable for use solely or principally with the apparatus of heading 8528 namely:*

(i) Other cathode ray tube monitors (85284900);

(ii) Other monitors (85285900);

(iii) Other Projectors (85286900);

(iv) Reception apparatus for television, whether or not incorporating radio broadcast receivers or sound or video recording or reproducing apparatus, -

(a) Not designed to incorporate a video display or screen (85287100); and

(b) Other Monochrome (852873)

4.12.2 From the above entries, it is quite evident that LED TV classifiable under CTH 8528 is not included under the Sl. No. 516A of the Notification ibid. Further, specific items eligible for duty benefits under Sl. No. 516B of the said Notification, also do not incorporate LED TV. In view of the above, I find that the impugned imported goods viz. Parts of LED TV are not eligible for concessional rate of BCD @ 10% under Sl. No. 516A & 516B of Notification No. 50/2017-Cus dated 30.06.2017.

4.12.3 Further, from the submissions of the Noticee, I find that in respect of the instant Observation, they have agreed to pay the differential duty along with interest for the normal period of limitation. This shows that even the Noticee has acknowledged that the impugned imported goods viz. Parts of LED TV are not eligible for concessional rate of BCD @ 10% under Sl. No. 516A & 516B of Notification No. 50/2017-Cus dated 30.06.2017, and that the Noticee has intentionally wrongly claimed the benefit of exemption Notification to evade correctly payable duty.

4.12.4 In view of the above, I agree with the proposal made in the SCN and hold that in respect of the instant Observation No. 12, availment of duty benefits under Sl. No. 516A & 516B of Notification No. 50/2017-Cus dated 30.06.2017 should be rejected as per Sr. No. 7 of Table-A at para 3.16 of the subject SCN.

4.13 <u>Observation-8</u>:

Water Cups (Glassware): Mis-classification of the items having description "Water Cups for promotions" under CTH - 70200090 [BCD-10%, SWS-10% & IGST-18%] instead of correct CTH - 70133700 [BCD-20%, SWS-10% & IGST-28%].

4.13.1 I find that in the instant Observation, it is undisputed that the imported goods are drinking water glass/cups. On perusal of the CTH 7013 & CTH 7020 and their item entries, I find that Sub-heading 7013 specifically coves "*Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)*". Further, CTI 70133700 specifically covers drinking glasses, other than of glass-ceramics. Whereas I find that CTH 7020 is a general entry covering "*Other articles of glass*" wherein CTI 70200090 is a residuary entry covering 'Other' i.e. other articles of glass not mentioned in CTH 7020. I note that as per General Rules for Interpretation (GRI) Rule 3(a), the heading which provides the most specific description shall be preferred to headings providing a more general description. Therefore, I find that the impugned imported goods being drinking water glass/cups, are correctly classifiable under CTI 70133700 and not under CTI 70200090.

4.13.2 Further, from the submissions of the Noticee, I find that in respect of the instant Observation, they have agreed to pay the differential duty along with interest for the normal period of limitation. This shows that even the Noticee has acknowledged that the classification of the subject goods done by them under CTI 70200090 is not proper and the correct classification of the goods is under CTI 70133700.

4.13.3 In view of the above, I agree with the proposal made in the SCN and hold that in respect of the instant Observation No. 8, the classification of goods claimed under CTI 70200090 as per Sr. No. 8 of Table-A at para 3.16 of the subject SCN should be rejected and the subject goods should be correctly re-classified under CTI 70133700 accordingly.

4.14 Observation-9:

Spare Parts of Solar Heater: Mis-classification of the items having description "Solar Water Heater" under CTH - 84191910 [BCD-10%, SWS-10% & IGST-5%] instead of correct CTH 84199090 [BCD-7.5%, SWS-10% & IGST-18%].

4.14.1 I find that in the instant Observation, the basic dispute is that whether the impugned imported goods are complete 'Solar Water Heaters' classifiable under CTI 84191910 or are 'Parts of Solar Water Heaters' classifiable under CTI 84199090. The department has proposed that the impugned imported goods are not complete solar water heater but are only glass tubes to be used as parts of the same, which are classifiable under CTH 84199090.

4.14.2 I find from the SCN that the genesis of this dispute is from the fact that during the On-Site Post Clearance Audit (OSPCA), the importer was asked about the product catalogue of the impugned goods having Model No. HR-5818T/Z. But no such product catalogue was made

available and the importer during audit discussions, itself mentioned that the impugned goods are not Solar Water Heater but glass tubes for the Solar Water Heater. On further scrutiny of the Bills of Lading provided by the importer, it was noticed that the HS Code mentioned in them was 7020. Therefore, from supplier's end also, the goods were declared to be made of glass as mentioned by the authorized representatives of the importer during audit. Moreover, the importer had not submitted any product catalogue/corroborative evidentiary documents in respect of the said Model No. of the impugned imported goods that could deny the fact that the imported goods are not just glass tube but are complete solar water heater.

4.14.3 I find that in their submission made during the adjudication proceedings, the importer has just reiterated their position that the goods imported by them are not "Spare Parts of Solar Water Heaters" but are "Solar Water Heaters", as declared in the bills of entry filed by them, commercial invoices and packing lists shared by the foreign supplier. However, as done by them during Audit, during the entire adjudication proceedings also, they did not produce any product catalogue of the impugned goods; not given any reason of why during audit discussions, they themself mentioned that the impugned goods are not Solar Water Heater but are glass tubes for the Solar Water Heater; and also not given any reason of why the foreign supplier has mentioned the HS Code as 7020 in the Bill of Lading.

4.14.4 I agree with the reasoning given in the SCN that in their reply to each and every observation, the Noticee has mentioned that they declared and classified the goods on the basis of the Commercial Invoice and the Certificate of Origin shared by the foreign supplier under the bona fide belief that the HSN Code declared by the foreign supplier is the correct one. But in the present case, they have not clarified why they classified the goods under HS Code other than the Code prescribed by the supplier in the Bill of Lading.

4.14.5 I find that the evasiveness shown by the Noticee in coming clean on the above issues amply point towards their complicity in this mis-classification done with a fraudulent intention to evade correctly payable duty. In view of the above, I find that the impugned imported goods are not complete Solar Water Heater but are only glass tubes to be used as parts of the Solar Water Heater, which are classifiable under CTH 84199090.

4.14.6 In view of the above, I agree with the proposal made in the SCN and hold that in respect of the instant Observation No. 9, the classification of goods claimed under CTI 84191910 as per Sr. No. 9 of Table-A at para 3.16 of the subject SCN should be rejected and the subject goods should be correctly re-classified under CTI 84199090 accordingly.

4.15 Observation-10:

Cooling Fan / Fan for Refrigerator: Mis-classification of "Fan for Refrigerator" under CTH 84189900 [BCD-7.5%, SWS-10%, IGST-18%] instead of correct CTH 84145910 [BCD-10%, SWS-10%, IGST-28%].

4.15.1 I find that in the instant Observation, it is undisputed that the imported goods are 'Fan for Refrigerator'. On perusal of the CTH 8414 & CTH 8418 and their item entries, I find that the importer has classified the impugned imported Fans which are to be used in refrigerators / freezers under CTI 84189900 i.e., as parts of refrigerators / freezers, whereas Fans are specifically classifiable under CTH 8414. I find that as per Explanatory Notes to Chapter Heading 8414, compressors, air pumps, **fans**, blowers, etc. specially constructed for use with other machines remains classified in this heading (8414) and not as parts of such other machine. Therefore, I find that the impugned imported goods being fan for refrigerator are an integral part of refrigerator / freezer and are correctly classifiable under CTI 84145910 and not under CTI 84189900.

4.15.2 Further, from the submissions of the Noticee, I find that in respect of the instant Observation, they have agreed to pay the differential duty along with interest for the normal period of limitation. This shows that even the Noticee has acknowledged that the classification of the subject goods done by them under CTI 84189900 is not proper and the correct classification of the goods is under CTI 84145910.

4.15.3 In view of the above, I agree with the proposal made in the SCN and hold that in respect of the instant Observation No. 10, the classification of goods claimed under CTI 84189900 as per Sr. No. 10 of Table-A at para 3.16 of the subject SCN should be rejected and the subject goods should be correctly re-classified under CTI 84145910 accordingly.

4.16 Observation-11:

LED Lamp / Light of Refrigerator / Fridge / Freezer: Mis-classification of "LED Lamp / Light of Refrigerator / Fridge / Freezer" under 84189900 [BCD-7.5%, SWS-10%, IGST-18%] instead of correct CTH 85395000 / 85395200 [BCD-20%, SWS-10%, IGST-12% / 18%].

4.16.1 I find that in the instant Observation, it is undisputed that the imported goods are 'LED Lamp / Light of Refrigerator / Fridge / Freezer'. On perusal of the CTH 8418 & CTH 8539 and their item entries, I find that the Tariff Heading 8418 is meant for the parts of the refrigerators / freezers / other refrigerating equipment. The Noticee has classified the impugned imported goods under CTH 8418 as parts of refrigerators / freezers / other refrigerating equipment. Further, I find that Tariff Heading 8539 specifically covers Light Emitting Diode (LED) modules and lamps.

4.16.2 I find that the Explanatory Notes to Tariff Heading 8539 mentions that:

> *"This heading covers all electric light lamps whether or not specially designed for particular uses (including flashlight discharge lamps).*
>
> *This heading covers filament lamps, gas or vapour discharge lamps, arc lamps, light emitting diode (LED) modules and light emitting diode (LED) lamps."*

From the conjoint reading of the Tariff Heading 8539 and its Explanatory Notes, I find that the LED lamps to be used in refrigerators / freezers, are covered under the CTH 8539. Therefore, I find that the impugned imported goods being LED lamps to be used in refrigerators / freezers are correctly classifiable under CTI 85395000 / 85395200 and not under CTI 84189900.

4.16.3 Further, from the submissions of the Noticee, I find that in respect of the instant Observation, they have agreed to pay the differential duty along with interest for the normal period of limitation. This shows that even the Noticee has acknowledged that the classification of the subject goods done by them under CTI 84189900 is not proper and the correct classification of the goods is under CTI 85395000 / 85395200.

4.16.4 In view of the above, I agree with the proposal made in the SCN and hold that in respect of the instant Observation No. 11, the classification of goods claimed under CTI 84189900 as per Sr. No. 11 of Table-A at para 3.16 of the subject SCN should be rejected and the subject goods should be correctly re-classified under CTI 85395000 / 85395200 accordingly.

4.17 Observation-12:

Rubber Gaskets: Short payment of duty / taxes on "Rubber Gaskets" classified under CTH 40169340 due to levy of IGST @5% (Sl. No. 191 of Sch. I of IGST Notfn. No. 01/2017 dated 28.06.2017) instead of correct IGST @18% (Sl. No. 123A of Sch. III of IGST Notfn. ibid).

4.17.1 I find that in the instant Observation, it is undisputed that the imported goods are 'Rubber Gaskets' classifiable under CTI 40169340. The Noticee has classified the goods under Sl. No. 191 of Schedule-I of IGST Notfn. No. 01/2017 dated 28.06.2017 attracting IGST @ 5% whereas department has proposed that the proper classification should be under Sl. No. 123A of Schedule-III of IGST Notfn. ibid attracting IGST @ 18%. In view of the above, it is worthwhile to look at the said two competing entries:

IGST Schedule	*Sl. No.*	*Chapter / Heading / Subheading / Tariff item*	*Description of Goods*
I	*191*	*4016*	*Erasers*
III	*123A*	*4016*	*Other articles of vulcanised rubber other than hard rubber other than erasers, rubber bands*

4.17.2 From the above entries, it is quite evident that impugned imported goods viz. Rubber Gaskets are classifiable under Sl. No. 123A of Schedule-III of IGST Notfn. No. 01/2017 dated 28.06.2017 attracting IGST @ 18%. The impugned goods are not 'Erasers' and are thus not classifiable under Sl. No. 191 of Schedule-I of IGST Notfn. No. 01/2017 dated 28.06.2017 attracting IGST @ 5%. Thus, I find that the Noticee has incorrectly claimed the IGST @ 5% by classifying the impugned goods under Sl. No. 191 of Schedule-I of the IGST Notfn. ibid.

4.17.3 Further, from the submissions of the Noticee, I find that in respect of the instant Observation, they have agreed to pay the differential duty along with interest for the normal period of limitation. This shows that even the Noticee has acknowledged that the classification of the subject goods done by them under Sl. No. 191 of Schedule-I of IGST Notfn. No. 01/2017 dated 28.06.2017 attracting IGST @ 5% is not proper and the correct classification of the goods is under Sl. No. 123A of Schedule-III of IGST Notfn. ibid, attracting IGST @ 18%.

4.17.4 In view of the above, I agree with the proposal made in the SCN and hold that in respect of the instant Observation No. 12, IGST should be assessed @ 18% (Sl. No. 123A of Schedule-III of IGST Notfn. No. 01/2017 dated 28.06.2017) instead of incorrect IGST @ 5% (Sl. No. 191 of Schedule-I of IGST Notfn. ibid) as per Sr. No. 12 of Table-A at para 3.16 of the subject SCN.

4.18 Observation-13:

Compressor of Air Conditioner: Mis-classification of Compressor for Air Conditioner under CTH 84149011 & 85169000 [BCD-7.5% / 10%, SWS-10% & IGST-18%] instead of correct CTH 84148011 [BCD-15% + SWS-10% + IGST-18%].

4.18.1 I find that in the instant Observation, it is undisputed that the imported goods are 'Compressor for Air Conditioner'. On perusal of the CTH 8414 & CTH 8516 and their item entries, I find that there is a specific entry under CTI 84148011 for 'Gas Compressors of a kind used in air-conditioning equipment', whereas CTI 84149011 covers 'parts of gas compressors'. Further, I find that CTH 8516 covers 'Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hair-dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545'.

4.18.2 I note that as per General Rules for Interpretation (GRI) Rule 3(a), the heading which provides the most specific description shall be preferred to headings providing a more general description. Therefore, I find that the impugned imported goods being 'Compressor for Air Conditioner' are correctly classifiable under CTI 84148011 and not under CTI 84149011 or under CTI 85169000.

4.18.3 Further, from the submissions of the Noticee, I find that in respect of the instant Observation, they have agreed to pay the differential duty along with interest for the normal period of limitation. This shows that even the Noticee has acknowledged that the classification of the subject goods done by them under CTI 84149011 / 85169000 is not proper and the correct classification of the goods is under CTI 84148011.

4.18.4 In view of the above, I agree with the proposal made in the SCN and hold that in respect of the instant Observation No. 13, the classification of goods claimed under CTI 84149011 /

85169000 as per Sr. No. 13 of Table-A at para 3.16 of the subject SCN should be rejected and the subject goods should be correctly re-classified under CTI 84148011 accordingly.

4.19 Observation-14:

Wrong availment of FTA benefits under Notfn. No. 050/2018-Cus dated 30.06.2018

4.19.1 I find that in the instant Observation, the department has proposed that the Noticee is not eligible for the FTA benefit under Notfn. No. 50/2018-Cus dated 30.06.2018, as the Country of Origin (COO) Certificate is not in terms of 'Determination of Origin of Goods under the Asia Pacific Trade Agreement (formerly known as the Bangkok Agreement) Rules, 2006 (APTA Rules, 2006) [Notfn. No. 94/2006-Cus(NT) dated 31.08.2006, as amended]. In the instant case, third party invoice has been raised and as per the SCN, the same is contrary to the provisions laid under APTA Rules, 2006, as amended. On the other hand, the Noticee has contended that they have received goods 'wholly obtained' from China wherein the Box 7 of the COO correctly mentions the third-party operator which corresponds to the invoice submitted by them; that in the absence of an express prohibition for third-party invoicing under APTA Rules, 2006, they have correctly availed the duty exemption in terms of the COO issued under APTA Rules.

4.19.2 I note that the Asia-Pacific Trade Agreement (APTA), previously known as the Bangkok Agreement, is the preferential trade agreement among the countries in the Asia-Pacific region. The importer has availed duty benefit under Notification No. 50/2018-Customs dated 30.06.2018. As per the said Notification, the duty benefit is available provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the country listed in the said APPENDIX I or APPENDIX II, as the case may be, in accordance with the Customs Tariff (Determination of Origin of Goods under the Bangkok Agreement) Rules, 1976, published in the notification of the Government of India in the Department of Revenue and Banking (Revenue Wing) No. 430-Customs, dated the 1st November, 1976.

In supersession of Notification No. 430/1976-Customs dated 1st November, 1976 (as amended) the Central Government notified the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement, (formerly known as the Bangkok Agreement) Rules, 2006 published vide Notification No. 94/2006-Customs (N.T) dated 31.08.2006, which came into force on 1st September, 2006. Vide Notification No. 79/2009-Customs (N.T.) dated 9th July, 2009, Rule 8 of the said Rules was substituted as under:

"RULE 8. Certificate of origin - Products eligible for preferential concession shall be supported by a Certificate of Origin in the form specified in Annexure A and issued by an authority designated by the Government of the exporting Participating State and notified to the other Participating States, in accordance with the provisions specified in Annexure B."

As per the Annexure-A of the aforesaid rule, the Country of Origin certificate shall be issued in accordance with the sample certificate of origin provided with the rules and notes of completion of certificate mentioned thereof. The Notes for completing Certificate of Origin states that:

"BOX 1 - Goods consigned from - Type the name, address and country of the exporter. The name must be the same as the exporter described in the invoice."

4.19.3 I find that APTA Rules, 2006 prescribes the rules of origin and format of Country of Origin (COO) certificate under the APTA Agreement. As per the prescribed format, Box 1 of the COO Certificate covers "Goods Consigned from: (Exporter's business name, address, country)". As per the 'Notes for Completing the Certificate of Origin' appended to the Notification No. 94/2006-Cus (NT) dated 31.08.2006, this entry should contain name, address and country of the exporter and the name must be the same as the exporter described in the invoice.

4.19.4 I find that Audit Commissionerate, Chennai had sought clarification from the Director, Directorate of International Customs (DIC), Central Board of Indirect Taxes & Customs in this regard. The DIC provided the clarification which is as follows:

> *".....it is to inform that as per the Notes of completing certificate of origin in "Box 1. Goods consigned from" the name must be the same as the exporter described in the invoice. Moreover, the Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement Rules, 2006 has no exclusive provision for accepting certificate of origin for which invoice is issued by a non-party."*

4.19.5 Further, I find that Alert Circular No. 03/2021 dated 18.02.2021, was issued by Audit Commissionerate, Chennai clarifying that APTA Rules, 2006 have no exclusive provisions for accepting Certificate of Origin for which the invoice is issued by a non-party. In the instant case, the Box 1 of COO Certificate contains the name "Haier Overseas Electric Appliances Corp. Ltd., P.R. China" whereas invoice has been raised by "Haier Singapore Investment Holding Pte. Ltd., Singapore" which is contrary to the provisions laid under APTA Rules, 2006, as amended. In view of the above, the exporter's name mentioned in the Box 1 of the COO Certificate do not correspond with the exporter details as described in the invoices submitted by the importer. Therefore, I find that the Certificate of Origin produced by the importer is not in accordance with the Determination of Origin of Goods under the Asia-Pacific Trade Agreement, (formerly known as the Bangkok Agreement) Rules, 2006 published vide Notification No. 94/2006-Customs (N.T) dated 31.08.2006.

4.19.6 I note that under a trade agreement, duty concessions are required to be extended only to such imported goods which are 'made in' the exporting country. Each Trade Agreement contains a set of Rules of Origin, which prescribe the criteria that must be fulfilled for goods to attain 'originating status' in the exporting country. Such criteria are generally based on factors such as domestic value addition and substantial transformation in the course of manufacturing/

processing. The goods imported under a trade agreement are required to be covered under a 'Certificate of Origin' (COO) issued by the designated authority of the exporting country. The COO contains details of goods covered and originating criterion fulfilled. Mis-use of trade agreements not only causes loss to the exchequer but also places the domestic industry at an unfair disadvantage. I note that the Notification No. 50/2018-Customs, dated 30.06.2018 extends concessional rate of duty only to imports from listed countries in Appendix-I viz. Bangladesh, People's Republic of China, Republic of Korea & Sri Lanka and Appendix-II viz. Bangladesh & Lao People's Democratic Republic. In the instant case, I find that the Noticee has wrongly availed the benefit under Notification No. 50/2018-Customs dated 30.06.2018 in contravention to the Country of Origin Rules since the invoice has been raised by "Haier Singapore Investment Holding Pte. Ltd., Singapore" which is non-party country to the Asia Pacific Trade Agreement, therefore, the benefit of concessional rate of duty is not available to the Noticee. In view of above, I hold that the Noticee has violated the basic requirement of a valid 'Certificate of Origin' in order to avail benefit of Notification No. 50/2018-Customs, dated 30.06.2018.

4.19.7 Further, I note that there are various trade agreements between India and other countries wherein third-party invoicing is permitted and is mentioned in the trade agreement itself. Trade agreements like ASEAN Preferential Trade Agreement (Notification No. 189/2009-Cus (N.T.) dated 31.12.2009), Preferential Trade Agreement between the Governments of the Republic of India and Malaysia (Notification No. 43/2011-Cus (N.T.) dated 01.07.2011), Comprehensive Economic Partnership Agreement between the Republic of India and Japan (Notification No. 55/2011-Cus (N.T.) dated 01.08.2011), Preferential Trade Agreement between the Governments of the Republic of India and the Republic of Korea (Notification No. 187/2009-Cus (N.T.) dated 31.12.2009) explicitly mentions that third party invoice can be accepted. However, in Asia-Pacific Trade Agreement (formerly known as Bangkok Agreement), 2006, no such explicit mention of allowing third-party invoicing is provided.

4.19.8 Thus, I find that the importer is not eligible for the FTA duty exemption benefit under Notfn. No. 50/2018-Cus dated 30.06.2018. In view of the above, I agree with the proposal made in the SCN and hold that in respect of the instant Observation No. 14, availment of FTA benefits under Notfn. No. 50/2018-Cus dated 30.06.2018 should be rejected as per Sr. No. 14 of Table-A at para 3.16 of the subject SCN.

4.20 Observation-15:

Indoor Unit /Outdoor Unit in SKD Condition: Wrong availment of benefits under Sl. No. 449A of Notification No. 50/2017-Customs dated 30.06.2017 on Indoor / Outdoor Unit of Air-Conditioner in SKD Condition.

4.20.1 I find that in the instant Observation, the basic dispute is that whether the Indoor / Outdoor Unit of Air-Conditioner imported by the Noticee in SKD condition without motor and service valve is eligible for duty benefit under Sl. No. 449A of Notification No. 50/2017-

Customs dated 30.06.2017. As per Sl. No. 449A of the Notification ibid, parts of Air Conditioner **other than** Indoor or Outdoor Units of split system Air Conditioner are eligible for duty exemption i.e., BCD @ 10% instead of BCD @ 20%.

4.20.2 The Noticee has contended that they have imported Parts of indoor/outdoor units (IDU/ODU) of Air Conditioners, but not indoor/outdoor units of ACs in SKD condition because the said goods were imported without the elements namely, motor-driven fans and service valves. Thus, the said goods cannot be said to have the essential character of IDUs/ODUs. Hence, they are correctly eligible for duty exemption under Sr. No. 449A of Notification 50/2017-Cus.

4.20.3 I find that it is undisputed that the imported goods are 'Indoor / Outdoor Unit of Air-Conditioner in SKD condition without motor and service valve'. To determine whether the said goods have attained the characteristics of Indoor / Outdoor units of ACs, due reference is to be taken from General Rules for Interpretation (GRI) and HSN Explanatory Notes. I find that Rule 2(a) of GRI provides that:

> *Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.*

I find that Rule 2(a) of the GRI can be applied in circumstances wherein the imported goods have the essential character of the finished goods.

4.20.4 Further, I find that relevant HSN Explanatory Notes to Section XVI of the Customs Tariff states that:

> *"Throughout the Section, any reference to a machine or apparatus covers not only the complete machine, but also an incomplete machine (i.e., an assembly of parts so far advanced that it already has the main essential features of the complete machine)."; thus a machine lacking only a flywheel, a bed plate, calendar rolls, tool holders, etc., is classified in the same heading as the machine, and not in any separate heading provided for parts; similarly a machine or apparatus normally incorporating an electric motor (e.g., electro-mechanical hand tools of heading 84.67) is classified in the same heading as the corresponding complete machine even if presented without that motor."*

From above HSN Explanatory Notes, I find that if a machine, which incorporates a motor, is imported without the motor, it can still be classified as complete machine, even though the machine is not able to function in absence of the motor.

4.20.5 From the perusal of above Rule 2(a) of GRI and relevant portion of HSN Explanatory Notes, I find that in the instant case the impugned imported goods have the essential character of complete Indoor / Outdoor Unit of Air-Conditioner. Therefore, in terms of GIR 2(a) and the Explanatory Notes, the Indoor / Outdoor Unit of Air-Conditioner imported in SKD condition without motor & service valve, shall still be considered as complete Indoor / Outdoor Unit of Air-Conditioner for the purpose of classification or any duty benefit. Therefore, due to exclusion clause in Sl. No. 449A of Notification No. 50/2017-Customs dated 30.06.2017, I find that the impugned goods are not eligible for the duty benefits under the said Sl. No. 449A of Notification ibid.

4.20.6 In view of the above, I agree with the proposal made in the SCN and hold that in respect of the instant Observation No. 15, availment of duty benefits under Sl. No. 449A of Notification No. 50/2017-Cus dated 30.06.2017 should be rejected as per Sr. No. 15 of Table-A at para 3.16 of the subject SCN.

4.21 After having discussed and given my findings on each of the 15 observations mentioned in the subject SCN, I now proceed to discuss and given my findings on the issues of differential duty demand along with interest, confiscability of the goods and liability to penalty of the Noticee.

4.22 Whether differential/short paid duty amounting to Rs. 5,01,97,027/- (Rupees Five Crore One Lakh Ninety Seven Thousand Twenty Seven Only) for the subject goods imported vide Bills of Entry as mentioned in Annexure I to XV and as detailed in Table-A at para 3.16 of the subject SCN, should be demanded from the importer under Section 28(4) of the Custom Act, 1962, as the importer by way of wilful mis-statement and suppression of facts resulted into short levy of duty and had also availed wrong Notifications benefit with an intent to evade customs duty.

4.22.1 I have already held in foregoing paras that the various goods imported by the Noticee as mentioned in Observation No.1 to 15 in the subject SCN, were either mis-classified or classified under wrong IGST Schedule and Sl. No. or had availed ineligible Notification / FTA benefit. Thus, after having determined the correct classification, IGST Schedule and Sl. No. of the imported goods and non-admissibility of the duty exemption notification / FTA benefit thereon, 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.

4.22.2 The Noticee has contended that they had adopted the classification / entries of the relevant notifications under a bona fide belief that their goods are covered under the said HSN Code / entry; that extended period of limitation cannot be invoked as the issue involved is of classification of goods / claim of notification entry, which is purely an issue of interpretation.

4.22.3 In terms of Section 46(4) of the Customs Act, 1962, the importer is required to make a true and correct declaration in the Bill of Entry submitted for assessment of Customs duty. However, in the instant case, I find that the Noticee has deliberately evaded payment of applicable duty on the impugned imported goods. By resorting to this deliberate and wilful evasion of duty, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, I find that this wilful and deliberate act was done with the clear intention to evade payment of due duty. As the Noticee has mis-classified the impugned goods under incorrect CTI / incorrect IGST Schedule and Sl. No. / availed ineligible Notification / FTA benefit and evaded the payment of the applicable duty thereon on the date of importation, the Noticee can only come clean of its liability by way of payment of duty not paid.

4.22.4 I find that the Noticee being in the field of import, manufacturing and sale of White Goods, such as Refrigeration Appliances, Home Laundry Appliances, Freezer, Water Heaters, their spare parts / parts etc. since long time must be well aware of the true nature, functioning, as well as correct classification of the imported goods. However, in the instant case, they did not declare the correct classification of the imported goods / claimed ineligible Notification benefit, in the Bills of Entry and other relevant documents. Had the department not raised the issue and initiated procedure under the Customs Act, 1962 in this case, the duty so evaded might have gone unnoticed & unpaid. The Noticee evaded duty by deliberate mis-classification of goods and availing ineligible Notification benefit. This shows wilful suppression, mis-statement and malafide intention of the Noticee to evade payment of appropriate Customs duty. As the Noticee got monetary benefit due to their wilful mis-classification / availing ineligible Notification benefit and evasion of applicable Customs Duty on the subject goods, hence, I find that duty was correctly demanded under Section 28(4) of the Customs Act, 1962 by invoking extended period.

4.22.5 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 Noticee/importer has wilfully evaded payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit. Since the Noticee/importer has wilfully mis-declared 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.

4.22.6 The scheme of RMS wherein the importers are given so many facilitations, also comes with responsibility of onus for truthful declaration. The Tariff classification and Description of the item, are the first parameters that decides the rate of duty for the goods, which is the basis on which Customs duty is payable by any importer. However, if the importer does not declare the complete details and evades payment of correctly payable duty, it definitely amounts to mis-leading the Customs authorities, with an intent to evade payment of legitimate Customs duty leviable on the said imported goods.

4.22.7 In the instance case, by declaring the goods imported under wrong CTI / incorrect IGST Schedule and Sl. No. and availing ineligible Notification / FTA benefit under the aforesaid notifications, the importer had an intent to evade duty in order to pay customs duty at lower rate and thereby to get financial benefits. The importer suppressed the facts by misclassifying the impugned goods and claiming undue duty benefits under the aforesaid notifications leading to short payment of customs duties. As there is wilful mis-statement and suppression of facts, extended period of 5 years can be invoked in the present case for demand of duty under Section 28(4) of the Customs Act, 1962.

4.22.8 From the above, it is evident that at the time of filing of the Bills of Entry, the Noticee had wilfully mis-classified the imported goods, suppressed their correct CTI / IGST Schedule and Sl. No. and fraudulently claimed the benefit of exemption / FTA Notification with a fraudulent intention to defraud government by paying lesser duty. As the Noticee has paid the duty at a lower rate than what was legitimately payable, the differential duty so not paid is liable to be recovered from them.

4.22.9 The instant case is not a simple case of bonafide wrong declaration of CTI or claiming exemption notification on bonafide belief. Instead, in the instant case, the Noticee deliberately chose to mis-classify / claim ineligible notification benefit on the imported goods to claim lower rate of duty, being fully aware of the correct classification / ineligibility to notification benefit, 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 Noticee, the extended period of limitation, automatically get attracted.

4.22.10 In view of the foregoing, I find that, due to deliberate suppression and wilful mis-classification, duty demand against the Noticee has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the court decision in *Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos.M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008] reported as 2013(294) E.L.T.222(Tri.-LB)*, which states that:

> *"In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified."*

4.22.11 Accordingly, the differential duty resulting from re-classification of the imported goods under correct CTI / IGST Schedule & Sl. No. and denial of wrongly claimed exemption notification / FTA benefit as per the subject Show Cause Notice, is recoverable from M/s Haier Appliances (India) Pvt. Ltd. under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

4.22.12 Therefore, I hold that differential/short paid duty amounting to Rs. 5,01,97,027/- (Rupees Five Crore One Lakh Ninety Seven Thousand Twenty Seven Only) for the subject goods imported vide Bills of Entry as mentioned in Annexure I to XV and as detailed in Table-A at para 3.16 of the subject SCN, should be demanded from the importer, M/s Haier Appliances (India) Pvt. Ltd. under Section 28(4) of the Custom Act, 1962, as the importer by way of wilful mis-statement and suppression of facts resulted into short levy of duty and had also availed wrong Notifications benefit with an intent to evade customs duty.

4.23 Whether in addition to the duty short paid, interest on delayed payment of Custom duty should be recovered from the Importer under Section 28AA of the Customs Act, 1962.

4.23.1 As per Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions, it is evident that regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises

automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of *Pratibha Processors Vs UOI [1996 (88) ELT 12 (SC)]*. 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.

4.23.2 I have already held in the above paras that the differential Customs duty amounting to Rs. 5,01,97,027/- (Rupees Five Crore One Lakh Ninety Seven Thousand Twenty Seven Only) should be demanded and recovered from the Noticee under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, I hold that in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential Customs duty should also be recovered from the Noticee.

4.23.3 In view of the above discussion, I hold that in addition to the duty short paid, interest on delayed payment of Custom duty should be recovered from the Importer, M/s Haier Appliances (India) Pvt. Ltd. under Section 28AA of the Customs Act, 1962.

4.24 Whether the said subject goods imported vide Bills of Entry as mentioned in Annexure I to XV and as detailed in Table-A at para 3.16 of the subject SCN having assessable value of Rs. 1,31,72,49,412/- (Rupees One Hundred Thirty One Crore Seventy Two Lakh Forty Nine Thousand Four Hundred & Twelve Only) should be held liable for confiscation under Section 111(m) & 111(o) of the Customs Act, 1962.

4.24.1 I note that the SCN proposes confiscation of goods imported vide Bills of Entry listed in Annexure-I to XV to the SCN, having total assessable value of Rs. 1,31,72,49,412/- (Rupees One Hundred Thirty One Crore Seventy Two Lakh Forty Nine Thousand Four Hundred & Twelve Only) under the provisions of Section 111(m) & 111(o) of the Customs Act, 1962.

4.24.2 Section 111(m) and 111(o) of the Customs Act, 1962 states that the following goods brought from a place outside India shall be liable to confiscation:

(m) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77, 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;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

4.24.3 I have already held in the foregoing paras that the various goods imported by the Noticee as mentioned in Observation No. 1 to 15 in the subject SCN, were either mis-classified or were classified under wrong IGST Schedule and Sl. No. or had availed ineligible Notification / FTA benefit. The Noticee was very well aware of the actual nature of the imported goods and the applicable correct CTI / IGST Schedule and Sl. No. and ineligibility of Notification / FTA benefit claimed. As discussed in the foregoing paras, it is evident that the Noticee deliberately suppressed the correct CTI / IGST Schedule and Sl. No. and wilfully mis-classified the imported goods and claimed ineligible Notification / FTA benefit, resulting in short levy of duty. This deliberate suppression of facts and wilful mis-classification resorted by the Noticee, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, I find that the acts of omission and commission on part of the Noticee have rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.24.4 Section 111(m) deals with any and all types of mis-declaration regarding any particular of Bill of Entry. Therefore, the declaration of the importer herein by mis-classification of the impugned goods and claiming ineligible Notification / FTA benefit, amounts to mis-declaration and shall make the goods liable to confiscation.

4.24.5 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 is made under the Customs Act, 1962. I have to restrict myself only to examine the words "*in respect of any other particular with the entry made under this act*" would also cover case of mis-classification and claim of ineligible Notification / FTA benefit. As this act of the importer 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 and sustainable.

4.24.6 As per Section 111(o), when goods are exempted from Customs duty subject to a condition and the same is not observed, the imported goods are liable to confiscation. In the instant case, I find that in respect of Observation Sl. No. 4, 7, 12, 14 & 15, the Noticee has either claimed lesser rate of IGST / claimed benefit of exemption Notification / FTA. However, as elucidated in the foregoing paras, I find that in breach of conditions of the Notification, the Noticee has wrongly claimed lesser rate of IGST / benefit of exemption Notification.

4.24.7 As per Section 46 of the Customs Act, 1962, the importer of any goods, while making entry on the Customs automated system to the Proper Officer, shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed. He shall ensure the accuracy and completeness of the information given therein and the authenticity and validity of any document supporting it.

4.24.8 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 Customs Act, 1962 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.

4.24.9 Prior to 08.04.2011, sub-section (2) of Section 2 of the Customs Act, 1962 read as under:

(2) "assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil;

Finance Act, 2011 introduced provision for self-assessment by the importer. Subsequent to substitution by the Finance Act, 2011 (Act 8 of 2011), (w.e.f. 08.04.2011) sub-section (2) of Section 2 ibid read as under:

Section 2 - Definitions, Sub-section (2) – assessment:

(2) "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

With effect from 29.03.2018, the term 'assessment' in sub-section (2) of Section 2 ibid 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 (51 of 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 therefor 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 thereunder, 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;

4.24.10 From a plain reading of the above provisions 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, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the importer to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from 29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that M/s Haier Appliances (India) Private Limited has deliberately failed to discharge this statutory responsibility cast upon them.

4.24.11 Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the subject case, the importer while filing the Bill of Entry has resorted to deliberate suppression of facts and wilful mis-declaration to claim lesser rate of duty and avail ineligible notification benefit. Thus, the Noticee has failed to correctly assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption.

4.24.12 Therefore, I find that by not self-assessing the true and correct rate of Customs duty applicable on the subject goods, the importer wilfully did not pay the applicable duty on the impugned goods. They suppressed and mis-declared certain facts in a planned manner at the time of clearance of the said goods so as to claim lesser rate of duty and wrongly avail the exemption from duty on the impugned goods, by violating its conditions and thereby evaded applicable duty.

4.24.13 From the discussion above, I find that that the importer had in a planned manner suppressed the relevant facts and intentionally evaded Customs duty by wrongfully mis-classifying the goods and claiming the Notification benefit on the impugned goods and hence, contravened the provisions of Section 46 of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 14 of the Foreign Trade (Regulation) Rules, 1993.

4.24.14 In view of the foregoing discussion, I hold that the said subject goods imported vide Bills of Entry as mentioned in Annexure I to XV and as detailed in Table-A at para 3.16 of the subject SCN having assessable value of Rs. 1,31,72,49,412/- (Rupees One Hundred Thirty One Crore Seventy Two Lakh Forty Nine Thousand Four Hundred & Twelve Only) should be held liable for confiscation under Section 111(m) & 111(o) of the Customs Act, 1962.

4.24.15 As the importer, through wilful mis-statement and suppression of facts, had mis-classified the goods and claimed ineligible notification benefit while filing Bills of Entry with intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) & 111(o) is justified & sustainable in law. 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)."

4.24.15.1 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.).

4.24.15.2 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.

4.24.15.3 I find that the declaration under Section 46(4) of the Customs Act, 1962 made by the importer at the time of filing Bill of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/ Bond are liable for confiscation under Section 111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962.

4.24.15.4 In view of above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the impugned goods become liable for confiscation. Hon'ble Bombay High Court in case of M/s Unimark reported in 2017(335) ELT (193) (Bom) held Redemption Fine (RF) imposable in case of liability of confiscation of goods under provisions of Section 111(o). Thus, I also find that the goods are liable for confiscation under other sub-sections of Section 111 too, as the goods committing equal offense are to be treated equally. I opine that merely because the importer was not caught at the time of clearance of the imported goods, can't be given different treatment.

4.24.15.5 In view of the above, I 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.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc. reported vide 2009 (248) ELT 122 (Bom)- upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case. I observe that the present case also merits imposition of Redemption Fine having held that the impugned goods are liable for confiscation under Section 111(m) & 111(o) of the Customs Act, 1962. Accordingly, since the impugned goods are not prohibited goods, the said goods are required to be allowed for

redemption by the owner on payment of fine in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

4.25 Whether penalty should be imposed on the Importer under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.

4.25.1 I find that in the era of self-assessment, the Noticee had wrongly self-assessed the Bills of Entry and evaded the payment of duty in respect of the impugned imported goods as mentioned in Annexure I to XV and as detailed in Table-A at para 3.16 of the subject SCN. As the Noticee got monetary benefit due to their willful mis-declaration and evasion of applicable duty on the aforesaid goods, I find that duty was correctly demanded under Section 28(4) of the Customs Act, 1962, by invoking extended period.

4.25.2 As discussed above, I find that the subject Bills of Entry as mentioned in Annexure I to XV and as detailed in Table-A at para 3.16 of the subject SCN, were self-assessed by the Noticee, M/s. Haier Appliances (India) Private Limited. They were aware of the true nature and characteristics of the imported goods and accordingly, were knowing about their correct classification and non-admissibility of benefit of exemption Notifications / FTA thereon. However, still they wilfully suppressed this fact and evaded payment of legitimately payable duty in the Bills of Entry filed before the Customs authorities. By resorting to the aforesaid suppression and mis-declaration, they evaded legitimately payable duty. Under the self-assessment scheme, it is obligatory on the part of importer to declare truthfully all the particulars relevant to the assessment of the goods, ensuring their accuracy and authenticity, which the importer clearly failed to do with malafide intention. They suppressed the fact before the Customs Department regarding correct classification and non-admissibility of notification / FTA benefit, to claim the undue duty benefit at the time of clearance of the said imported goods. This wilful and deliberate suppression of facts amply points towards the "mens rea" of the Noticee to evade the payment of legitimate duty. The wilful and deliberate acts of the Noticee to evade payment of legitimate duty, clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established, the extended period of limitation, as well as confiscation and penal provision will automatically get attracted. Thus, the Noticee, by their various acts of omission and commission discussed above, have rendered the impugned goods liable for confiscation under Section 111(m) & 111(o) of the Customs Act, 1962, thereby making themselves liable for penalty under Section 112(a) ibid.

4.25.3 In view of the above, Accordingly, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on the Importer, M/s. Haier Appliances (India) Private Limited under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.

4.26 Whether penalty should be imposed on the Importer under Section 114A of Customs Act, 1962 for short levy of duty by wilful mis-statement and suppression of facts.

4.26.1 I find that as per Section 114A, imposition of penalty is mandatory once the elements for invocation of extended period is established. Hon'ble Supreme Court in *Grasim Industries Ltd. V. Collector of Customs, Bombay [(2002) 4 SCC 297=2002 (141) E.L.T.593 (S.C.)]* has followed the same principle and observed:

> "*Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for Court to take upon itself the task of amending or altering the statutory provisions.*" (para 10).

Hon'ble Supreme Court has again in *Union of India Vs. Ind-Swift Laboratories* has held: "*A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency....*" [2011 (265) ELT 3 (SC)].

Thus, in view of the mandatory nature of penalty under Section 114A no other conclusion can be drawn in this regard. I also rely upon case reported in 2015 (328) E.L.T. 238 (Tri. - Mumbai) in the case of *SAMAY ELECTRONICS (P) LTD. Versus C.C. (IMPORT) (GENERAL), Mumbai*, in which it has been held:

> *Penalty - Imposition of - Once demand confirmed under Section 28 of Customs Act, 1962 read with Section 9A of Customs Tariff Act, 1975 on account of fraud, penalty under Section 114A ibid mandatory and cannot be waived - Therefore imposition of penalty cannot be faulted - Section 114A ibid.*

4.26.2 As I have held above, that the extended period of limitation under Section 28(4) of the Customs Act, 1962 for the demand of duty is rightly invoked in the present case. Therefore, penalty under Section 114A is rightly proposed on the Noticee, M/s Haier Appliances (India) Private Limited, in the impugned SCN. Accordingly, the Noticee is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-declaration and suppression of facts, with an intent to evade duty.

4.26.3 Further, I have already held above that by their acts of omission and commission, the importer has rendered the goods liable for confiscation under Section 111(m) & 111(o) of the Customs Act, 1962, making them liable for a penalty under Section 112(a), ibid. However, I find that the penalty under Section 114A and Section 112 of the Customs Act, 1962 are mutually exclusive and both cannot be imposed simultaneously. Therefore, in view of fifth proviso to Section 114A, I hold that no penalty is imposable on the Noticee under Section 112(a), ibid.

5. 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) **For Observation Sr. No. 1, 2, 3, 5, 6, 8, 9, 10, 11 and 13,** I order that the classification of goods claimed in Sr. No. 1, 2, 3, 5, 6, 8, 9, 10, 11 and 13 as per Table-A at para 3.16 of the subject SCN should be rejected and the subject goods should be correctly reclassified accordingly.

(ii) **For Observation Sr. No. 4,** I order that the IGST should be assessed @ 28% (Sl. No. 154 of Sch. IV of IGST Notfn. No. 01/2017 dated 28.06.2017) instead of incorrect IGST @ 18% (Sl. No. 384 of Sch. III of IGST Notfn. ibid) as per Sr. No. 4 of Table-A at para 3.16 of the subject SCN.

(iii) **For Observation Sr. No. 7,** I order that the availment of duty benefits under Sl. No. 516A & 516B of Notification No. 50/2017-Cus dated 30.06.2017 should be rejected as per Sr. No. 7 of Table-A at para 3.16 of the subject SCN.

(iv) **For Observation Sr. No. 12,** I order that the IGST should be assessed @ 18% (Sl. No. 123A of Sch. III of IGST Notfn. No. 01/2017 dated 28.06.2017) instead of incorrect IGST @ 5% (Sl. No. 191 of Sch. I of IGST Notfn. ibid) as per Sr. No. 12 of Table-A at para 3.16 of the subject SCN.

(v) **For Observation Sr. No. 14,** I order that the availment of FTA benefits under Notfn. No. 50/2018-Cus dated 30.06.2018 should be rejected as per Sr. No. 14 of Table-A at para 3.16 of the subject SCN.

(vi) **For Observation Sr. No. 15,** I order that the availment of benefits under Sl. No. 449A of Notification No. 50/2017-Customs dated 30.06.2017 should be rejected as per Sr. No. 15 of Table-A at para 3.16 of the subject SCN.

(vii) I order that the differential/short paid duty amounting to **Rs. 5,01,97,027/- (Rupees Five Crore One Lakh Ninety Seven Thousand Twenty Seven Only)** for the subject goods imported vide Bills of Entry as mentioned in Annexure I to XV and as detailed in Table-A at para 3.16 of the subject SCN, should be demanded from the importer under Section 28(4) of the Custom Act, 1962, as the importer by way of wilful mis-statement and suppression of facts resulted into short levy of duty and had also availed wrong notifications benefit with an intent to evade customs duty.

(viii) I order that in addition to the duty short paid, interest on delayed payment of Custom duty should be recovered from the Importer under Section 28AA of the Customs Act, 1962.

(ix) I order that the said subject goods imported vide Bills of Entry as mentioned in Annexure I to XV and as detailed in Table-A at para 3.16 of the subject SCN having assessable value of Rs. 1,31,72,49,412/- (Rupees One Hundred Thirty One Crore Seventy Two Lakh Forty Nine Thousand Four Hundred Twelve Only) should be held liable for confiscation under Section 111(m) & 111(o) of the Customs Act, 1962.

However, since the goods are not available, I impose a redemption fine of **Rs.10,00,00,000/- (Rupees Ten Crores Only)** on M/s. Haier Appliances (India) Private Limited in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

(x) I impose a penalty equivalent to differential duty of **Rs. 5,01,97,027/- (Rupees Five Crore One Lakh Ninety Seven Thousand Twenty Seven Only) along with applicable interest** under Section 28AA of the Customs Act, 1962, on M/s. Haier Appliances (India) Private Limited under Section 114A of the Customs Act, 1962.

In terms of the first and second proviso to Section 114A ibid, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be **twenty-five per cent of the duty and interest**, subject to the condition that the amount of penalty is also paid **within the period of thirty days** of communication of this order.

As penalty is imposed under Section 114A of the Customs Act, 1962, no penalty is imposed under Section 112 in terms of the fifth proviso to Section 114A ibid.

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

29/8/25

(अनिल रामटेके / **ANIL RAMTEKE**)
सीमा शुल्क आयुक्त / Commissioner of Customs,
एनएस-V, जेएनसीएच / NS-V, JNCH

To,

1. **M/s. Haier Appliances (India) Private Limited,**
   Building No.1, Okhla Estate Phase-III,
   South Delhi, Delhi – 110 020.

Copy to:

1. The Commissioner of Customs (Audit),
   New Custom House, Near IGI Airport,
   New Delhi – 110 037
2. The Addl. Commissioner of Customs, Group V, JNCH
3. AC/DC, Chief Commissioner's Office, JNCH
4. AC/DC, Centralized Revenue Recovery Cell, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section.
7. Office copy.