

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 – 20251078NX0000777C11	Date of Order:17.10.2025
F. No. S/10-127/2024-25/COMMR/GR.V/NS-V/CAC/JNCH	Date of Issue: 17.10.2025
SCN No.: 1300/2024-25/COMMR/GR.V/NS-V/ CAC/JNCH	
SCN Date: 21.10.2024	
Passed by: Sh. Anil Ramteke	
Commissioner of Customs, NS-V, JNCH	
Order No: 236/2025-26/COMMR/NS-V/CAC/JNCH	
Name of Noticee: M/s IFB Industries Ltd (IEC: 0288000927)	

ORDER-IN-ORIGINAL
मूल - आदेश

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

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

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

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सी.ई.एस.टी.ए.टी., पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट 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 रुपये जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये

या उस से कम है।

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

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

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

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

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

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

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

Subject: Adjudication of Show Cause Notice No. 1300/2024-25/COMMR/GR.V/NS-V/CAC/JNCH dated 21.10.2024 issued to M/s IFB Industries Ltd. (IEC: 0288000927), Sh. Rajshankar Ray, Sh. Vilas Kamath, Sh. Ashish Singh and Sh. Collegal Srinivasan Govindaraj – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) No. 1300/2024-25/COMMR/GR.V/NS-V/CAC/JNCH dated 21.10.2024 that M/s IFB Industries Ltd., Goa (IEC 0288000927) (hereinafter referred to as 'IFB' or 'the importer' or 'the company' or 'the Noticee'), an AEO status holder, is interalia manufacturer of Washing Machine, Driers, Air Conditioner (AC) and importers of other goods for marketing. IFB has been manufacturing these machines for the past 33 years in their plant at Goa. They have paid Custom duty and IGST aggregating to Rs. 220 Crores, in the previous financial year (F.Y. 2023-24).

As per the SCN, intelligence developed by the officers of Directorate of Revenue Intelligence (DRI), Goa Regional Unit (GRU) indicated that IFB Industries Limited, with registered address at 14, Taratolla Road, Kolkata, West Bengal - 700088, was importing following items from China:

- i) 'Heating Element' used for manufacturing washing machine by classifying the same under CTI 84509010 (CTI 84509010 being actually applicable to generic parts of washing machine), through Nhava Sheva Sea Port (INNSA1), Mumbai Air Cargo (INBOM4) and ACC Bangalore (INBLR4) by paying Basic Customs Duty (BCD) @10% of Assessable Value (AV), Social Welfare Surcharge (SWS) @10% of BCD and IGST @18% thereof {(AV+BCD+SWS)} (total effective duty @30.98% of AV).
- ii) 'Cross Flow Fan Blade' used for manufacturing split air conditioners (AC) by classifying the same under CTI 84149090 (CTI 84149090 being actually applicable to parts of a fan), through Nhava Sheva Sea Port (INNSA1) by paying BCD @7.5% of AV, SWS @10% of BCD and IGST @18% thereof (total effective duty @27.735% of AV).

1.2 As per the SCN, intelligence suggested that by virtue of Section Note 2(a) of Section XVI of Customs Tariff, the Heating Element or Heating Resistor, even when used as a part of a washing machine, is rightly classifiable under CTI 85168000 i.e., as 'Electric Heating Resistor'. Also, by virtue of Section Note 2(b) of Section XVI of Customs Tariff, the Cross Flow Fan Blade for use as a part of AC, is rightly classifiable under CTI 84159000 i.e., as 'Parts of Air Conditioning machine'. Section Note 2 {2(a) and 2(b)} of Section XVI of Customs Tariff, are reproduced below:

"Subject to Note 1 to this Section, note 1 to Chapter 84 and note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules:

- a) *Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.2, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings;"*
- b) *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 (including a machine of heading 84.79 or 85.43) are to be classified with the machines of that kind or in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate. However, parts which are equally suitable for use principally with the goods of heading 85.17 and 85.25 to 85.28 are to be classified in heading 85.17*

In the light of Section Note 2(a) of Section XVI of Customs Tariff, it appeared that ‘Heating Elements’ being imported by IFB, although, being imported for use as a part of washing machine, are rightly classifiable under CTI 85168000 as the subject ‘Heating Elements’, also called ‘Electric heating resistors’ are included or more precisely, specifically covered under CTI 85168000. It also appeared that in light of the Section Note 2(b) of Section XVI of Customs Tariff, ‘Cross Flow Fan Blades’ being imported by IFB for use as part of ACs, are rightly classifiable under CTI 84159000 as the subject ‘Cross Flow Fan Blades’ are not ‘included’ in any of the headings of Chapter 84 and 85.

Further, the applicable BCD for CTI 85168000 was increased from 10% of AV to 20% of AV (total effective duty increased from 30.98% of AV to 43.96% of AV) with effect from 1st February, 2020. Thus, it appeared that IFB was liable to pay applicable differential BCD (@10% of the assessable value), differential SWS (@10% of differential BCD) and differential IGST @18% thereon i.e., 18% of (differential BCD + differential SWS) making total effective differential duty @12.98% of AV, for ‘heating elements’ imported and cleared under CTI 84509010, on and after 1st February, 2020. Further, since 2019, applicable import duty for CTI 84159000, was BCD @20% of AV, SWS @10% of BCD and IGST @28% thereon (total effective duty @56.16% of AV). Thus, it also appeared that IFB was liable to pay applicable differential BCD (@12.5% of the assessable value), differential SWS (@10% of differential BCD) and differential IGST @28% thereon i.e., 28% of (differential BCD + differential SWS). In addition to this, the importer also appeared liable to pay differential IGST @10% of AV of the subject import of ‘cross flow fan blade’ as by changing the classification from CTI 84149090 to CTI 84159000, the IGST rate also changes from 18% to 28% making total effective differential duty @38.425% of AV, for ‘cross flow fan blades’ being imported and cleared under CTI 84149090.

Sample pictures of the subject items i.e., Heating Element / Heating Element Assembly and Cross Flow Fan Blade, respectively, are as under:

TABLE-1

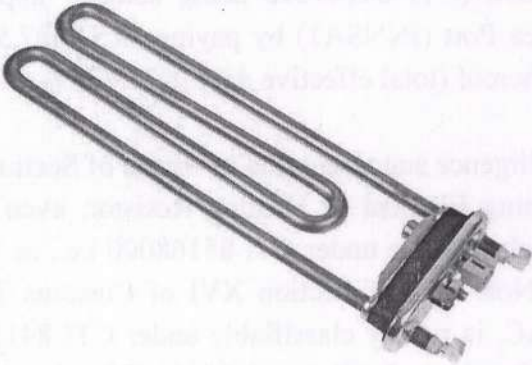
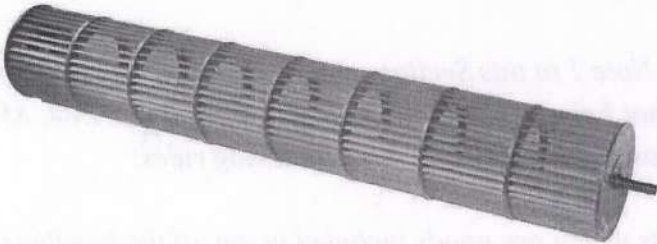
Sample Heating Element / Resistor Assembly	
Sample Cross Flow Fan Blade	

TABLE-2

Differential duty implications in import of subject items			
Item	Total duty being paid (% of AV)	Applicable total duty (% of AV)	Differential duty liability (% of AV)
Heating Element	30.98	43.96	12.98
Cross flow fan blade	27.735	56.16	28.425+10* = 38.425

*Additional 10% of AV is differential IGST on AV as IGST rate also changes from 18% to 28%.

1.3 To gather further evidences relevant to the wrong classification of imported 'heating element' and 'cross flow fan blade' by IFB, the corporate office premises of IFB located at Plot No. IND-5, Sector I, East Kolkata Township, Kolkata – 700107 and two office premises located at Plot No. N/7, Phase IV, Verna Industrial Estate, Verna, Goa and L-1, Verna Industrial Estate, Verna, Goa, were searched under the provisions of Section 105 of the Customs Act, 1962 on 25.07.2023 and respective Panchnamas of the search proceedings were drawn.

1.4 During the course of the investigation, statements of the officials of IFB were recorded under the provisions of Section 108 of the Customs Act, 1962.

1.4.1 In his statement dated 26.07.2023, Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa, inter alia, stated that:

- (i) His role as Head (Supply Chain Management) is to ensure supply of quality raw material for Washing Machine and Air Conditioners manufacturing units of IFB at Goa.
- (ii) Raw materials include domestic procurements and imports.
- (iii) Major components imported for manufacturing of washing machine are heating element, magnetic valve, door lock, pump, motor, clutch, dryer heater, belt, door glass etc.
- (iv) Heating element is an engineering element used to heat the water in the washing machine. This component is made of stainless-steel tube, the heating element nichrome is placed in the stainless-steel tube and insulated by compact MgO (Magnesium Oxide) throughout the tube. The nichrome heat element is filled with two fuses and terminal. When electric current is passed through the terminal due to resistance, elements get heated and eventually heat the water.
- (v) In washing machine, heating element heats the detergent mixed water for effective washing.
- (vi) Heating element imported by them are not put to any further manufacturing and are used directly for captive consumption for manufacturing of washing machine.
- (vii) At Goa plant, they only manufacture domestic automatic washing machine of variant Front load and Top load. Their manufacturing unit at Bengaluru manufactures Industrial washing machine.
- (viii) Normal immersion rods used in household and 'heating element' used in washing machines, both work on the same principle of heating caused due to resistance, both have the same characteristics of heating water but as per his understanding, the immersion rods do not have any control over the heating whereas 'heating elements' imported by them contain controllers.
- (ix) Heating elements imported by them have two fuses, NTC (Negative temperature coefficient), rubber gasket to fit on the washing machine and locking terminal. Fuses are for safety purpose; it is an internal element in tube which does not allow current to pass through the body of machine in case of electric short. The NTC is a system that shuts off the supply of electric current when water reaches a certain temperature. The rubber gasket fits into the washing machine tub to stop any leakage of water through 'heating element'. The locking terminal is for electric connection.
- (x) Malfunctioned or defective units of 'heating elements' are never repaired; they are directly replaced with new unit.
- (xi) 'Heating elements' are also sold separately as spare parts to end customers.
- (xii) Imported 'heating elements' which are used in manufacturing are also imported for spares for supply to the end consumers in case of need.

1.4.2 In his statement dated 26.07.2023, Shri Milind Bhoyar, Deputy General Manager (DGM), AC Plant, IFB, Verna, Goa, inter alia, stated that:

- (i) The major import items for AC are Compressor, Motor, Copper tubes, Aluminium Foil and Cross Flow Fan Blade.
- (ii) Cross flow fan is a part of indoor unit of split air-conditioners.
- (iii) The motor installed in indoor unit of AC rotates the cross-flow fan, when switched on.

- (iv) Cross flow fan is made up of 20% acrylonitrile butadiene styrene. The term used by the supplier as Cross Flow Fan is misnomer, though in common parlance it is called cross flow fan, it is actually not a fan.
- (v) Cross flow fan blade cannot work on its own, it has to be assembled along with a motor on moulded base panel. Moulded base panel is the starting of the assembly on which the entire indoor unit is built. Apart from the cross-flow fan blade and motor, the other vital elements attached on moulded base panel are bearing and heat-exchanger.
- (vi) Cross flow fan blade imported by IFB, Goa are exclusively used in manufacturing of air-conditioners and they are not used anywhere else.
- (vii) Malfunctioning or defective Cross flow fan blade cannot be repaired and they are replaced with new units.
- (viii) Cross flow fan blade is also sold separately as spare parts.

1.4.3 In his statement dated 21.08.2023, Shri Anthony Francis D'Souza, General Manager, Product Sourcing & Management, IFB, Home Appliances Division, Verna, Goa, inter alia, stated that:

- (i) As General Manager, Product Sourcing & Management, he is responsible for sourcing right product and related functioning in relation to Microwave Oven, Dish Washer and Kitchen Appliances.
- (ii) Cooker hood/Chimney, Built-in Hub, Built-in washer, Built-in oven are covered under kitchen appliances.
- (iii) He reports to Shri Rajshankar Ray, CEO and MD, IFB, Home Appliances Division.
- (iv) Supply Chain Department of IFB looks into the import in relation to Washing Machines and Air Conditioners.

1.4.4 In his statement dated 22.08.2023, Shri Rajshankar Ray, Managing Director and Chief Executive Officer (MD & CEO), Home Appliances Division, IFB stated inter alia that:

- (i) Head of Supply Chain Department and Head of Finance collectively take the final decision in classification matters.
- (ii) He was shown the statement dated 26.07.2023 of Shri Vilas Kamath, Head (Supply Chain Management), IFB Industries Limited, Goa wherein Shri Vilas Kamath had stated that *"heating element is an engineering element used to heat the water in the washing machine. This component is made of stainless-steel Tube, the heating element nichrome is placed in the stainless-steel tube and insulated by compact MgO (Magnesium Oxide) throughout the tube. The nichrome heat element is filled with two fuses and terminal. When electric current is passed through the terminal due to resistance, elements get heated and eventually heat the water"* and that *"imported 'heating elements' which are used in manufacturing are also imported for spares for supply to the end consumers in case of need."*
- (iii) The facts stated by Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa in his statement dated 26.07.2023 are true.
- (iv) He was shown a copy of Bill of Entry No. 7224305 dated 25.01.2022 filed by IFB Industries Limited, Verna at Air Cargo Complex, Mumbai wherein at S. No. 7, CTH '85168000' is mentioned for item description *"Heating Element 2x2 KW (Item No. 540146) (For Industrial Washing Machines)"*. He was further shown a copy of Bill of Entry No. 8005886 dated 25.03.2022 filed by IFB Industries Limited, Bangalore at ACC Bangalore and wherein from S. No. 19 to S. No. 23, Heater/Heating Elements are classified under CTH 85168000 and was asked about the right classification of Heating Elements being imported by IFB Industries Limited for use in Washing Machines. He stated that he had gone through the documents and had understood the matter and he understood the contention of the department. However, this involves legal and financial implications and he did not have the proper expertise, so he undertook that he would go back, brief their internal team as well as their consultants and would revert back.

- (v) He was shown statement dated 26.07.2023 of Shri Milind Bhoyar, DGM, IFB Industries Limited, Air Conditioner unit, recorded under Section 108 of Customs Act, 1962 wherein Shri Milind Bhoyar had stated that *“cross flow fan is made up of 20% acrylonitrile butadiene styrene. The term used by the supplier as Cross Flow Fan, is misnomer. In other words, it means though in common parlance it is called cross flow fan, it is actually not a fan.”* and that *“Cross Flow Fan blade imported by IFB Industries, Goa, are used exclusively in the manufacturing of air-conditioners by IFB Industries and they are not for any other use.”*
- (vi) The facts stated in the statement dated 26.07.2023 of Shri Milind Bhoyar, DGM, IFB Industries Limited, Air Conditioner unit, are true.
- (vii) He was asked about the right classification of ‘Cross Flow Fan blade imported by IFB Industries, Goa for use as part of Air-Conditioners’, and he stated that he understood the matter and he understood the contention of the department. However, this involves legal and financial implications and he did not have the proper expertise so, he undertook that he would go back, brief their internal team as well their consultants and would revert back.
- (viii) He was shown the Section Note 2(a) and 2(b) of Section XVI of Explanatory Notes to the of Harmonized Commodity Description and Coding System.
- (ix) After going through the Section Note 2(a) and on being asked about the right classification of ‘Water Heating Element’ being imported by IFB as parts of Washing Machines, he stated that he had understood the section note and related notes and he understood the contention of the department. However, this involves legal and financial implications and he did not have the proper expertise so, he undertook that he would go back, brief their internal team as well as their consultants and would revert back.
- (x) After going through the Section Note 2(b) and on being asked about the right classification of ‘Cross Flow Fan Blade’ being imported by IFB Industries Limited for use in Air Conditioners being manufactured by IFB Industries Limited, he stated that he had understood the section note and related notes and he understood the contention of the department. However, this involves legal and financial implications and did not have proper expertise so he would go back, brief their internal team as well as their consultants and would revert back.

1.4.5 In his statement dated 05.10.2023, Shri Ashish Singh, Finance Head, Washer and AC Factory of IFB Industries Limited, Verna, Goa, inter alia, stated that:

- (i) As Finance Head of Goa washer and AC Unit of IFB, he is responsible for true and fair view of Accounts which include day to day accounting, to make MIS, prepare Balance Sheet and P&L on monthly basis accurately, for proper accounting of trade payable and trade receivable, working capital management, banking facility and management, financial compliances (Direct & Indirect Taxes) and returns.
- (ii) In case any reference in respect of classification received from Customs, they refer the matter to their consultants for further advice.
- (iii) Head of Supply Chain Department and Head of Finance collectively take the final decision in the classification matter and release purchase orders.
- (iv) They were classifying heating element used in Washing Machine under CTH 84195090 since inception of manufacturing of washing machine with heating elements and changed the classification of heating element from CTH 84195090 to CTH 84509010 from 2017 onwards.
- (v) Till 04.09.2023, they were under impression that they had changed CTH 84195090 to CTH 84509010 on the direction received from Customs vide letter dated 09.07.2013.
- (vi) Vide their reply dated 23.07.2013 to the said Customs letter dated 09.07.2013, IFB had submitted that the item (Heating Element) was rightly classified under CTH 84195090 and thereafter they continued the classification of the heating element under 84195090.
- (vii) They did not change the classification of heating element on the direction of Customs and their submission vide letter dated 04.09.2023, that IFB had been importing the impugned

goods (Heating Element) under CTH 8450 as directed by the customs was factually wrong.

- (viii) They changed the classification of heating element from CTH 84195090 to CTH 84509010 in the year 2017. However, he did not have any documents/correspondence indicating reasons for change in the classification in the year 2017.
- (ix) He was shown a copy of Bill of Entry No. 8005886 dated 25.03.2022 filed by IFB Industries Limited, Bangalore at ACC Bangalore wherein from S. No. 19 to S. No. 23, Heater/Heating Elements were classified under CTH 85168000. He stated that the heating elements imported vide the said bill of entry are the spare parts of imported Industrial washing machines.
- (x) He did not have technical knowledge to explain the difference between heating element used in industrial washing machines and domestic washing machines. However, he would submit the details of the same.
- (xi) He was shown the statement dated 22.08.2023 of Shri Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, wherein he was asked about the right classification of the 'Cross Flow Fan Blade' imported by the IFB, Goa, for use as part of 'Air-Conditioners' and Shri Rajshankar Ray had undertaken to provide the details to the department, which however were yet to be submitted.
- (xii) Shri Rajshankar Ray had some medical emergency and therefore, no discussion between them could take place in that regard. However, he undertook to submit the details shortly.
- (xiii) As per their reading of Chapter and section notes for chapter 84 and 85 combined with the explanatory notes for CTH 8516, heating element is part of washing machine and they classified accordingly.

1.4.6 In his statement dated 25.10.2023, Shri Collegal Srinivasan Govindaraj, Chief Executive Officer (CEO), Industrial Business & Projects, IFB Industries Limited, Bangalore (Bommasandra), inter alia, stated that:

- (i) In Bommasandra factory, they manufacture Industrial Laundry Equipment like washer extractors, tumble dryers, flat work ironers, dry cleaning machines and finishing equipment.
- (ii) Basic function of both 'Industrial/Commercial' and 'household' laundry equipment are same however, they differ in terms of their capacity and load. Industrial Laundry Equipment are designed to operate 8 to 10 cycles a day whereas 'Household' laundry equipment is designed for 1 to 2 cycles a day.
- (iii) They import 'Heating Element' as a spare part for Industrial Laundry Equipment.
- (iv) 'Heating Element' converts electric energy into heat energy. It is basically made up of nichrome wire which may or may not be shielded.
- (v) Other component used in 'Heating Element' are rubber gasket, terminals, sheet metal part, fasteners etc.
- (vi) Heating Element's main or principal component is heating wire which may be 70% of the overall cost of 'Heating Element'.
- (vii) They cannot use 'Heating Wires' directly on machines so to make it more adaptable to the machine and to ensure proper sealing and proper electrical connections those 'other components' are used in 'Heating Element'.
- (viii) 'Other components' basically make these 'Heating Element' 'plug and play' type which can directly be fitted to machines without any further processing.
- (ix) Main job of heating element is to heat and after assembling it with 'other components' it still does its basic job of heating.
- (x) 'Electric Heating Resistors' are specifically mentioned under CTI 85168000 therefore, they are importing 'Heating Element' under CTI 85168000 for various Industrial Laundry Equipment.
- (xi) Their overseas supplier viz. Alliance Laundry and Eurotech Group also raises Invoices of 'Heating Element' by mentioning CTI 85168080.

- (xii) In Industrial washing machines, 'Heating Element' are normally of higher wattage and bigger dimensions. Sensing device are not a part of 'Heating Element' in Industrial washing machines and usually they are placed outside the heating element.
- (xiii) If temperature sensors come as a part of 'Heating Element', it will still act as an 'Heating Element' but within a certain defined temperature range.

1.4.7 In his statement dated 26.10.2023, Shri Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, inter alia, stated that:

- (i) They were under the impression that they had changed the CTI of "heating element" from 84195090 to CTI 84509010 on directions of the Customs vide their letter dated 09.07.2013. However, subsequently they found their reply dated 23.07.2013 to the said Customs letter wherein IFB had submitted that the item (Heating element) is rightly classified under CTI 84195090 and thereafter they continued classifying the same under 84195090.
- (ii) They changed the classification somewhere in 2017 to 84509010.
- (iii) They did not change the classification of heating element in 2013 on the direction of Customs.
- (iv) Heating element is basically a resistance heating by passing electric current through wire. It converts electrical energy into heat energy. It is basically made up of nichrome wire which may or may not be shielded.
- (v) In household washing machines, 'Heating Element' are basically used to heat water so that washing of clothes is done more efficiently.
- (vi) Rubber gasket, terminals, sheet metal part, fasteners, NTC (Negative Temperature Coefficient), fuses, cold pin, insulating material and earthing terminal are the other components in overall 'Heating Element' and main or principal component is heating wire.
- (vii) It is used as such after being imported and is just assembled on the final washing machine post import.
- (viii) Main job of the heating element is to heat water and after assembling it with 'other components', it does its job of heating in a controlled way.
- (ix) Initially they were importing 'Heating Element' under CTI 84195090 and somewhere in 2017 they changed their classification to CTI 84509010.
- (x) They are trying to ascertain the reason for change of CTI from 84195090 to 84509010 in 2017.
- (xi) Heater or 'heating element' used in Industrial washing machines are different than those used in household washing machine.
- (xii) Household washing machine 'Heater' have an additional component NTC.
- (xiii) Function in both heaters is basically the same however in household washing machine heater, water heating is done in controlled way.

1.4.8 In his statement dated 28.02.2024, Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa, inter alia, stated that:

- (i) The heating elements imported by them are heating element assembly so, are not being classified under CTH 8516 and since it pertains to the part of washing machine, they are classifiable under CTI 84509010.
- (ii) 'Heating element assembly' consists of various parts required for its use as Heating Element. Heating element assembly for use in domestic washing machine consist of 'Fuse, resistance wire, insulting material, cabinet flange, cold pin, NTC, Sheath, gasket, earth terminal, M6 bolt, Ceramic insulator and phase terminal'.
- (iii) On being specifically asked why the assembly is called 'Heating Element assembly' and not fuse assembly or cabinet flange assembly or NTC assembly etc., he stated that major part of the assembly is Heating Element that is why it is called as Heating Element Assembly.

- (iv) He submitted "TECHNICAL SPECIFICATION FOR HEATING ELEMENT – WASHING MACHINE" giving details of parts of which the Heating Element Assembly used in Washing Machine comprises. On being asked why at page No. 2 (under Purpose), page No. 3 (under Working) and at the Drawing attached to the said technical specification submitted by him, the item is referred to as Heating Element and not as Heating Element Assembly, he stated that it is because the Heating Element and Heating Element Assembly is the same.
- (v) On being asked if the term Heating Element and Heating Element Assembly is same then why the company is not classifying it under CTI 85168000 which is correct classification for Heating Element or Heating Resistor, he stated that it is a heating element assembly and part of the washing machine so they are not classifying it under CTI 85168000.
- (vi) On being shown and asked about Bill of Entry No. 3719594 dated 19.06.2019 filed at INBOM4 i.e., Mumbai Air Cargo, wherein item S. NO. 14 - BOILER HEATING ELEMENT (PART NO. 230116) (SPARE PART FOR INDUSTRIAL DISH WASHER) and item S. NO. 16 - KIT HEATING ELEMENT REB230020 (8KW) (PART NO. REB230020C) (SPARE PART FOR INDUSTRIAL DISH WASHER) were cleared under CTI 85168000 by paying BCD @10% of Assessable Value, he stated that this was done as instructed by the Customs officer. On being asked about any written direction from Customs in this regard, he stated that he did not have any written direction from the Customs in this regard.
- (vii) On being asked as to why the Company is not following the instruction of Customs for import of similar items afterwards if the company had not contested the view of the Customs, he stated that they classified and cleared Heating Element under CTI 85168000 as all other spares to be cleared vide the said Bill of Entry No. 3719594 dated 19.06.2019 were required urgently so they mentioned the CTI as instructed by the Customs Authorities.
- (viii) On being shown and asked about Bill of Entry No. 4022964 dated 11.07.2019 filed at INBOM4 i.e., Mumbai Air Cargo, wherein item (HEATING ELEMENT) HEATER 2000W WITH NTC (UP) UF211ELHEC040 (3160194) (SPARE PART FOR WASHING MACHINE) was cleared under CTI 85168000, he stated that this was done as this was a small lot and CTI 85168000 was mentioned in the Invoice.
- (ix) On being shown and asked about Bill of Entry No. 7884667 dated 11.06.2020 filed at INBOM4 i.e., Mumbai Air Cargo, wherein item S. NO. 14 - HEATING ELEMENT - 70562 (INDUSTRIAL DISHWASHER SPARE PARTS), item S. NO. 15 - BOILER HEATING ELEMENT - 230116 (INDUSTRIAL DISHWASHER SPARE PARTS) and item S. NO. 18 - KIT HEATING ELEMENTS REB230020 (8KW) - REB230020C (INDUSTRIAL DISHWASHER SPARE PARTS) were cleared under CTI 84229020, he stated that he did not have any comment to offer in this regard.
- (x) On being shown Bill of Entry No. 8414221 dated 08.08.2020 filed at INBOM4 i.e., Mumbai Air Cargo, wherein item S. NO. 3 HEATING ELEMENT (FOR WASHING MACHINE) (FOR TESTING & R&D PURPOSE) was cleared under CTI 84509010 along with S. NO. 1 MICROSWITCH (FOR WASHING MACHINE) (FOR TESTING & R&D PURPOSE) cleared under CTI 85365090 and item S. NO. 2 NTC (SENSOR) (FOR WASHING MACHINE) (FOR TESTING & R&D PURPOSE) cleared under CTI 90318000 and asked why 'Microswitch and NTC' were classified and cleared under their respective heading and only 'Heating Element' was classified and cleared as part of washing machine and not under the actual applicable CTI of Heating Element i.e., 85168000, he stated that the items other than Heating Element were cleared under their respective HSN Code and Heating Element, they continued to clear as part of Washing Machine.
- (xi) On being shown and asked about Bill of Entry No. 2910996 dated 25.02.2021 filed at INNSA1 i.e., Nhava Sheva Sea Port, wherein item (HEATING ELEMENT) HEATER 230V 1900W (1R1X121001) (FL211ELHEL090) (SPARE PART FOR WASHING MACHINE) was cleared under CTI 84509010 and wherein related Bill of Lading

mentioned HS Code 85168000, he stated that they ignored the CTI mentioned by the supplier in the Bill of Lading and cleared the item under 84509010 i.e., as spare part for washing machine.

- (xii) On being asked about Bill of Entry No. 5027285 dated 12.08.2021 filed at INMAA1 i.e., Chennai Sea Port, wherein item *HEATING ELEMENT FOR WASHING MACHINE* was cleared under CTI 84509090 by paying BCD @7.5% of Assessable Value, he stated that he did not have any comment to offer in this regard.
- (xiii) On being shown and asked about Bill of Entry No. 7224305 dated 25.01.2022 filed at INBOM4 i.e., Mumbai Air Cargo, wherein item *S. NO. 7 - HEATING ELEMENT 2X2 KW (ITEM NO. 540146) (FOR INDUSTRIAL WASHING MACHINES)*, item *S. NO. 21 - HEATING RESISTOR 4,5KW 400/230V (ITEM NO. 510985) (FOR INDUSTRIAL WASHING MACHINES)*, item *S. NO. 22 - HEATING ELEMENT 4000W LENGTH (ITEM NO. 540127) (FOR INDUSTRIAL WASHING MACHINES)*, item *S. NO. 37 - HEATING ELEMENT 3 KW (ITEM NO.540144) (FOR INDUSTRIAL WASHING MACHINES)*, item *S. NO. 38 - HEATER 3000W 3F TD-70 (ITEM NO.GOR350361) (FOR INDUSTRIAL WASHING MACHINES)* and item *S. NO. 39 - HEATING ELEMENT 2X2 KW (ITEM NO. 540146) (FOR INDUSTRIAL WASHING MACHINES)* were cleared under CTI 85168000, he stated that he did not have any comment to offer.
- (xiv) He was told that the company had cleared item *BOILER HEATING ELEMENT - 230116 (INDUSTRIAL DISHWASHER SPARE PARTS)* under 4 different CTIs viz. 84229010 (part of machinery for cleaning or drying bottles or other containers), 84229020 (part of dish washing machines of household type), 84229090 (part of other machinery classified under Sub-heading 842290) and 85169000 (parts of items classified under CTH 8516) and on being asked about the reason for the same, he stated that he did not have any comment to offer.
- (xv) He was also told that the company has cleared item *KIT HEATING ELEMENTS REB230020 (8KW) (SPARE PARTS FOR MFG OF WASHING MACHINE)-230020C* under 5 different CTIs viz. 84229010 (part of machinery for cleaning or drying bottles or other containers), 84229020 (part of dish washing machines of household type), 84229090 (part of other machinery classified under Sub-heading 842290), 85168000 (Electric heating resistors) and 85169000 (parts of items classified under CTH 8516) and on being asked about the reason for the same he stated that he did not have any comment to offer.
- (xvi) He could not comment on the multiple variations and discrepancies in the classification of Heating Element being imported by IFB Industries Limited, right then and stated that he would come back with further comments.
- (xvii) He was shown letter dated 4th September 2023 signed by him as Authorized Representative for M/s IFB Industries Limited Goa, wherein in para 3 it is quoted that “*it was submitted that IFB had been importing the impugned goods under CTH 84.50 as directed by the Customs under their letter F. No S/2-PCA-C/L-15/2013-14 PCA/JNCH dated 09.07.2013*”. Further in para 7 of the said letter it is quoted that “*We are of immutable belief that the impugned goods have been correctly classified under CTH 84.50, as directed by the Department. It is also felt that we will be clearly violating the Department’s existing order, in case we resort to classification under CTH 85.16 of our own volition.*” On being asked about the Department’s existing order as mentioned in the subject letter dated 4th September 2023, he stated that by order they meant letter dated 09.07.2013 received from Assistant Commissioner, Post Clearance Audit, JNCH, Nhava Sheva. On being asked about the letter dated 09.07.2013 received from Customs he stated that vide letter dated 09.07.2013 Customs authority had mentioned that “*Party has claimed classification of the goods i.e., Heating Element declared as component of Washing Machine under CTH 84195090 @7.5% BCD whereas the goods are correctly classifiable under CTH 84509010 attracting BCD @10%*” and had advised to reply/pay the short levy of duty with interest”. On being asked about the action of company in

response to the said letter dated 09.07.2013 received from Customs, he stated that they had replied vide their letter dated 23rd July, 2013, mentioning that *"the item is rightly classified under 84195090"* and continued to import Heating Element under CTH 8419. On being specifically asked about the change in classification and payment of differential duty as sought by Customs vide letter dated 09.07.2013, he stated that they did not change the classification and did not pay any differential duty in that matter. On being asked if the company had not changed the classification and had not paid the differential duty then how the company can state that they had followed the direction of the department, he stated that when they started clearing the Heating Element under CTH 8450 in around 2017, then they followed the direction of Customs. On being asked about any order from Customs for change in classification from CTH 8419 to CTH 8450 in 2017 and proof of payment of differential duty for import of Heating Element under CTH 8419 for the period from 2013 to 2017, he stated that they were not able to find any document related to this change in classification and that they had not paid any differential duty in that matter.

- (xviii) After going through para 7 of their letter dated 4th September 2023, wherein after mentioning Hon'ble Supreme Court judgement it is quoted that *"we may not be able to alter the classification of our own, without getting it revised under section 128 or through amendment under section 149 of the Customs Act, 1962"* and on being asked that in absence of any written order how the above point is relevant in the present case, he admitted that the above point is not relevant in present case and that the same was incorporated in their letter dated 4th September 2023 based on the input of their advisor in Customs matters.
- (xix) In relation to classification of Cross Flow Fan Blade being imported by IFB Industries Limited, he stated that the description of the subject item as mentioned in the Bill of Entry is *CROSS FLOW FAN BLADE-900X (IU211MNCFF010) (PART FOR FAN FOR AIR CONDITINER)* and the imported item is a part of fan. On being asked about use of the item he stated that use of the subject item is as part of cross flow fan which is used in the indoor unit of air conditioner for circulation of the air. On being asked whether it is fitted inside a fan or Air Conditioner, he stated that this part is fitted as a part of fan inside the Air Conditioner. On being asked why the part is not being classified as part of Air Conditioner under CTH 8415 and being classified as part of a fan under CTH 8414, he stated that the item is part of a fan consisting of blade, motor and bearing, this fan is used in Air Conditioner and so is being classified under CTH 8414. On being asked about the import of other parts of the cross-flow fan i.e., motor and bearing and their classification, he stated that they import motors under CTI 85014090.
- (xx) He was also shown the Section Note 2(a) and 2(b) of Section XVI of Import Tariff and after going through the same and on being asked he stated that the Cross flow fan blade being imported by them are rightly classifiable under CTI 84149090 (other parts of fan). On being asked why the right classification of the subject item is under CTI 84149090 as 'other parts of fan', he stated that according to Note 2(a), the goods when included in any of the headings of Chapter 84 or 85 other than excepted sub-headings, are in all cases to be classified in their respective headings so the item is classifiable under CTI 84149090. On being specifically asked that CTI 84149090 is for 'other parts of fan' i.e., it is a residual classification and the item 'Cross flow fan blade' is not included in any of the heading of Chapter 84 or 85 then how Section Note 2(a) of Section XVI of Customs Import Tariff is applicable in the subject case, he stated that although the item is not specifically included in any of the heading of Chapter 84 or 85, it is part of fan so it will be classified under CTI 84149090 i.e., other parts of fan. On being asked about the applicability of Section Note 2(b) of Section XVI of Customs Import Tariff which covers other parts i.e., parts covered in residual headings, he stated that in this case only Section Note 2(a) is applicable and hence Section Note 2(b) is not applicable.

1.4.9 In his statement dated 29.02.2024, Shri Collegal Srinivasan Govindaraj, Chief Executive Officer (CEO), Industrial Business & Projects, IFB Industries Limited, Bangalore (Bommasandra), inter alia, stated that:

- (i) On being shown and asked about Bill of Entry No. 3719594 dated 19.06.2019 filed at INBOM4 i.e., Mumbai Air Cargo, wherein item *S. NO. 14 - BOILER HEATING ELEMENT (PART NO. 230116) (SPARE PART FOR INDUSTRIAL DISH WASHER)* and item *S. NO. 16 - KIT HEATING ELEMENT REB230020 (8KW) (PART NO. REB230020C) (SPARE PART FOR INDUSTRIAL DISH WASHER)* were cleared under CTI 85168000, he stated that there is an error and this item should be classified under CTI 84229010.
- (ii) On being shown and asked about Bill of Entry No. 7884667 dated 11.06.2020 filed at INBOM4 i.e., Mumbai Air Cargo, wherein item *S. NO. 14 - HEATING ELEMENT - 70562 (INDUSTRIAL DISHWASHER SPARE PARTS)*, item *S. NO. 15 - BOILER HEATING ELEMENT - 230116 (INDUSTRIAL DISHWASHER SPARE PARTS)* and item *S. NO. 18 - KIT HEATING ELEMENTS REB230020 (8KW) - REB230020C (INDUSTRIAL DISHWASHER SPARE PARTS)*, were cleared under CTI 84229020, he stated that this is wrong classification and as per his understanding the correct classification of the subject items should be under CTI 84229010 i.e., parts of machinery for cleaning or drying bottles or other containers.
- (iii) On being shown and asked about Bill of Entry No. 7438270 dated 10.02.2022 filed at INBOM4 i.e., Mumbai Air Cargo, wherein item *S. NO. 17 - GOR350361 HEATER 3000W 3F TD-70 (Spares for Industrial washing machines)*, item *S. NO. 18 - 510985 - HEATING RESISTOR 4,5KW 400/230V N.110570 (Spares for Industrial washing machines)*, item *S.NO. 19 - 540127 - HEATING ELEMENT 4000W LENGTH (Spares for Industrial washing machines)* and item *S. NO. 20 - 510984 - HEATING RESISTOR 6KW 400/230V (Spares for Industrial washing machines)*, wherein related Commercial Invoice and Packing List mentioned CTH 8516 for these items but the items were cleared under CTI 84519000, he stated that there is an error and this item should be classified under CTI 85168000.
- (iv) On being shown and asked about Bill of Entry No. 8993857 dated 06.06.2022 filed at INBLR4 i.e., ACC Bangalore, wherein item *S. NO. 23 - HEATING ELEMENT (SPARE PARTS FOR MFG OF WASHING MACHINE) 230086*, item *S. NO. 24 - TANK HEATING ELEMENT (SPARE PARTS FOR MFG OF WASHING MACHINE) -230118*, item *S. NO. 25 - BOILER HEATING ELEMENT (SPARE PARTS FOR MFG OF WASHING MACHINE) -230116*, item *S. NO. 27 - KIT HEATING ELEMENTS REB230020 (8KW) (SPARE PARTS FOR MFG OF WASHING MACHINE) - 230020C*, item *S. NO. 57 - HEATING ELEMENT (SPARE PARTS FOR MFG OF WASHING MACHINE) -927132* and item *S. NO. 69 - HEATING ELEMENT 10500W 230/400V(SPARE PARTS FOR MFG OF WASHING MACHINE) - 80397* were cleared under CTI 84229010, he stated that the description of the items is wrong but the classification is correct. On being asked about the correct description of the subject items, he stated that the description should be spare parts for industrial dish washers instead of spare parts for manufacturing of washing machine.
- (v) He was informed that they had cleared "*HEATING ELEMENT (PART NO. REB230086) (SPARE PART FOR INDUSTRIAL DISH WASHER)*" under CTI 85168000 vide Bill of Entry No. 3504499 dated 03.06.2019 and in this regard, he stated that there might be an error in proper interpretation for classification.
- (vi) On being shown and asked about Bill of Entry No. 9716296 dated 25.07.2022 filed at INBLR4 i.e., ACC Bangalore, wherein item *S. Nos. 17 and 57 - 510984, HEATING RESISTOR 6KW 400/230V NR.110569* were cleared under CTI 84162000 wherein related Commercial Invoice and Packing List mentioned HS Code 85168080, he stated that there is an error and as per his understanding this item should be classified under CTI 85168000.

- (vii) On being shown and asked about Bill of Entry No. 4240523 dated 19.01.2023 filed at INBLR4 i.e., ACC Bangalore, wherein item *S. NO. 9 - 510985 - HEATING RESISTOR 4,5KW 400/230V* and item *S. NO. 10 - 510984 - HEATING RESISTOR 6KW 400/230V* were cleared under CTI 85333990 by paying Nil BCD and wherein related Commercial Invoice and Packing List mentioned HS Code 85168080 and 85168020, he stated that there might be an error and he needed to find out. On being asked about the right classification of the subject items he stated that as per his understanding it should be classified under CTI 85168000.
- (viii) On being shown and asked about Bill of Entry No. 5676089 dated 25.04.2023 filed at INBLR4 i.e., ACC Bangalore, wherein item *S. NO. 6 - HEATING ELEMENT, 230112*, item *S. NO. 7 - BOILER HEATING ELEMENT, 230116* and item *S. NO. 8 - KIT HEATING ELEMENTS REB230020 (8KW), 230020C* were cleared under CTI 85168000, he stated that, that was wrong classification and as per his understanding the correct classification of the subject items should be under CTI 84229010 i.e., parts of machinery for cleaning or drying bottles or other containers.
- (ix) On being shown and asked about Bill of Entry No. 6988086 dated 21.07.2023 filed at INBLR4 i.e., ACC Bangalore, wherein item *S. NO. 24 - 230110-HEATING ELEMENT (INDUSTRIAL DISHWASHERS SPARE PARTS)*, item *S. NO. 25 - 70562-HEATING ELEMENT (INDUSTRIAL DISHWASHERS SPARE PARTS)* and item *S. NO. 28 - 230020C-KIT HEATING ELEMENT SREB230020 (INDUSTRIAL DISHWASHERS SPARE PARTS)*, were cleared under CTI 84229090, he stated that that was wrong classification and as per his understanding the correct classification of the subject items should be under CTI 84229010 i.e., parts of machinery for cleaning or drying bottles or other containers.
- (x) He was told that the company had cleared item *BOILER HEATING ELEMENT - 230116 (INDUSTRIAL DISHWASHER SPARE PARTS)* under different CTIs viz. 84229010 (part of machinery for cleaning or drying bottles or other containers), 84229020 (part of dish washing machines of household type), 84229090 (part of other machinery classified under Sub-heading 842290) and 85169000 (parts of items classified under CTH 8516) and on being asked about the reason for the same, he admitted that there are discrepancies in the classification that should not be there. He stated that he would look into this and as per his understanding the right classification for the subject item will be 84229010.
- (xi) He was also told that the company had cleared item *KIT HEATING ELEMENTS REB230020 (8KW) (SPARE PARTS FOR MFG OF WASHING MACHINE)-230020C* under different CTIs viz. 84229010 (part of machinery for cleaning or drying bottles or other containers), 84229020 (part of dish washing machines of household type), 84229090 (part of other machinery classified under Sub-heading 842290), 85168000 (Electric heating resistors) and 85169000 (parts of items classified under CTH 8516) and on being asked about the reason for the same, he admitted that there are discrepancies in the classification that should not be there and stated that he would look into that.
- (xii) On being asked about the multiple discrepancies and variations in the classification of Heating Element being imported by IFB Industries Limited, he stated that as far as industrial business is concerned there are errors observed which need to be rectified and consistency in the classification has to be maintained.
- (xiii) He was also shown the Section Note 2(a) of Section XVI of Customs Import Tariff and he stated that as per his understanding of the same, all parts for which there is specific CTI in Chapter 84 or 85, that part will be classified in that respective heading. On being asked that considering this note what will be the correct classification for Heating Element or Heating Resistor, he stated that if it is a heating element it will be classified under CTI 85168000 and if it is a heating element assembly, it will be classified as part of the product. For example, heating element assembly used as a part in industrial dish washer will be classified under CTI 84229010.
- (xiv) 'Heating element assembly' consists of various parts required for its use as Heating Element. Heating element assembly is an assembly of Heating Element along with

controls, fuse, connectors, wiring harness and mounting plates/brackets. On being specifically asked why the assembly is called 'Heating Element assembly' and not fuse assembly or connectors assembly or wiring harness assembly etc., he stated that as the purpose of the assembly is to provide the heating to the application that is why it is called Heating Element Assembly. Heating Element gives it its essential characteristics and it cannot achieve its purpose without heating element.

- (xv) On being asked about the rule or backing of the view that a heating element assembly will be classified as part of the product and not as heating element, he stated that as per his understanding the heating element assembly will be classified as part of the specific product just because it is an assembly.
- (xvi) He was shown the '*General Rules for the interpretation of the first schedule of the Customs Import Tariff*' and after going through these rules and on being asked about the applicability of these rules in the present case he stated that since he is a technical person, he did not have the competency to decide on the import tariff/classification. However, these are decided by his supply chain/finance heads after consultation with experts outside the system as well as discussion with the suppliers. On being specifically asked about the applicability of the above-mentioned rule 3(b) in the present case, he stated that as per his understanding this rule is not applicable in the present case.

1.4.10 In his statement dated 01.03.2024, Shri Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, inter alia, stated that:

- (i) He had gone through his statements dated 22.08.2023 and 26.10.2023 and that those had been recorded correctly as per his say.
- (ii) He was again shown the Section Notes 2(a) and 2(b) of Section XVI of Customs Import Tariff and as per his understanding, those notes give guidelines for classification for import of parts.
- (iii) Section Note 2(a) of Section XVI of Customs Import Tariff talks about all parts for which there is specific CTI in Chapter 84 or 85, that part will be classified in that respective heading.
- (iv) Section Note 2(b), talks about how parts are to be classified if they are suitable for use solely or principally with a particular kind of machine.
- (v) As per his understanding, the meaning of word 'Other' mentioned at the starting of Section Note 2(b), is, part, which does not fall under Section Note 2(a) specifically, but is part of machine as per Section Note 2(b).
- (vi) Considering these notes, according to Section Note 2(a) of Section XVI of Customs Import Tariff, the correct classification for heating element imported for industrial laundry is under CTI 85168000 as there is specific CTI i.e., 85168000 for 'Electric Heating Resistors' and according to Section Note 2(b), the correct classification for heating element assembly imported for domestic washing machines is under CTI 84509010.
- (vii) On being specifically asked why subject Section Note 2(a) is not applicable on heating element assembly, he stated that as the item is an assembly and is suitable for use solely or principally with a domestic washing machine, Section Note 2(a) is not applicable for heating element assembly.
- (viii) An assembly is a combination of various individual components for example the heater assembly for the washing machine is an assembly of heating element which is insulated, a holder and a gasket, fuses, NTC etc.
- (ix) He was also shown the '*General Rules for the interpretation of the first schedule of the Customs Import Tariff*' and after going through those General Rules for the interpretation and on being asked about the applicability of these rules for classification of 'heating element assembly', he stated that Rule 3(b) talks about goods made up of different components but mentions goods put up for retail sale, his understanding is that Section Note 2(b) of Section XVI of Customs Import Tariff, gives more clarity on the classification matter of the heater assembly which is part of the washing machine. On

being again specifically asked about the applicability of Rule 3(b) of General Rules for the interpretation of the first schedule of the of Customs Import Tariff for classification of 'heating element assembly', he stated that as per his understanding that was not applicable in that case.

- (x) On being shown Bill of Entry No. 8414221 dated 08.08.2020 filed at INBOM4 i.e., Mumbai Air Cargo, wherein item S. NO. 3 HEATING ELEMENT (FOR WASHING MACHINE) (FOR TESTING & R&D PURPOSE) was cleared under CTI 84509010 along with S. NO. 1 MICROSWITCH (FOR WASHING MACHINE) (FOR TESTING & R&D PURPOSE) cleared under CTI 85365090 and item S. NO. 2 NTC (SENSOR) (FOR WASHING MACHINE) (FOR TESTING & R&D PURPOSE) cleared under CTI 90318000 and asked why 'Microswitch and NTC' were classified and cleared under their respective heading and only 'Heating Element' was classified and cleared as part of washing machine and not under CTI of Heating Element i.e., 85168000, he stated that these parts were imported in 2020 and their understanding is that what is written as heating element was a heating element assembly which was brought for R&D purpose. So, the classification of Heating Element Assembly under 84509010 as part of washing machine, would have been correctly done. On being specifically asked why other items were classified under their respective heading and not as part of washing machine, he stated that he did not have immediate clarity on this because he came to know this just two days before and the import was done in 2020. He stated that he would see how they are classifying the items being imported for R&D purpose, he would go through the whole thing and will revert.
- (xi) On being shown and asked about Bill of Entry No. 5027285 dated 12.08.2021 filed at INMAA1 i.e., Chennai Sea Port, wherein item HEATING ELEMENT FOR WASHING MACHINE was cleared under CTI 84509090 by paying BCD @7.5% of Assessable Value, he stated that it is wrong classification. On being asked about the right classification of the subject items, he stated that as per his understanding, it should be classified under CTI 84509010.
- (xii) On being shown and asked about Bill of Entry No. 4240523 dated 19.01.2023 filed at INBLR4 i.e., ACC Bangalore, wherein item S. NO. 9 - 510985 - HEATING RESISTOR 4,5KW 400/230V and item S. NO. 10 - 510984 - HEATING RESISTOR 6KW 400/230V were cleared under CTI 85333990 by paying 'Nil' BCD and wherein related Commercial Invoice and Packing List mentioned HS Code 85168080 and 85168020, he stated that this is wrong classification and as per his understanding it should be classified under CTI 85168000.
- (xiii) He submitted product literature of item having Part Description – HEATER C2120SC2 NEW and IFB PART CODE: MW911ELHTR021. On being asked about the product, he stated that this is 'heating element' for Microwave Oven model '20 Liter Convection'. On being asked about the right classification of this item, in light of Section Note 2(a) of Section XVI of Customs Import Tariff, he stated that the nature of this part is that it is a heating element for their microwave oven, Section Note 2(a) of Section XVI of Customs Import Tariff would apply as it is of similar nature as the industrial laundry washing machine heating element so, 85168000 should apply. He further stated that there is CTI 85169000 which is for parts, however there is 'kg' written in front of CTI 85169000, so, 85169000 cannot apply. On being specifically asked as to how application of Section Note 2(a) of Section XVI of Customs Import Tariff can make this item classifiable under CTI 85169000 as he was ruling out the application of CTI 85169000, he stated that he had understood the question and he could not give clear answer as he was not prepared on this subject.
- (xiv) He submitted product literature of item having Part Description – HEATER C2130SRC1 NEW and IFB PART CODE: MW911ELHTR061. On being asked about the product he stated that this is 'heating element' for Microwave Oven model '30 Liter Convection'. On being asked about the right classification of the subject item, he stated that his

response is same as the response to the 'heating element' for Microwave Oven model '20 Liter Convection'.

- (xv) He was told that the 'Heating Element' for Microwave Oven are being imported and cleared under CTI 85169000 instead of correct CTI 85168000 and was asked the reason for the subject mis-classification, in response he stated that he had understood the question but he wish to submit that he had not prepared on that subject.
- (xvi) He submitted product literature of item having PART DESCRIPTION – HEATING ELEMENT 2700W 220/240V/FOR FT NEW and IFB PART CODE: ID911ELHTR020. On being asked about the product he stated that this is 'heating element' for Industrial Dishwasher. On being asked about the right classification of the subject 'heating element', he stated that they had gone through the documents of the imports of the industrial dishwasher and they had taken out the related documents such as Bill of Lading, Invoices etc., there are significant inconsistencies as they have cleared the spare parts which have come through air cargo in two codes 8422 and 8516. He also stated that they have errors in spare parts related classification which are coming by air cargo for traded products. He submitted that he would make sure that they would revalidate the classifications.
- (xvii) On being shown and asked about Bill of Entry No. 7231551 dated 13.03.2020 filed at INNSA1 i.e., Nhava Sheva, Sea Port, wherein item (HEATING ELEMENT) HEATER 230V 1900W (FL211ELHEL010) (1R2X121001) (SPARE PART FOR WASHING MACHINE) was cleared under CTI 84509010 and wherein related Bill of Lading mentioned HS Code 85168000, he stated that 8450 is the right classification and the HS Code mentioned in Bill of Lading is wrong. On being asked about any discussion with the supplier/shipper about mentioning HS Code in the Bill of Lading, he stated that he was not aware whether any discussion took place. On being specifically asked whether the heating element imported vide subject Bill of Entry No. 7231551 dated 13.03.2020 was for manufacturing, he confirmed that the said heating element was imported for manufacturing of washing machine.
- (xviii) On being shown and asked about Bill of Entry No. 9716296 dated 25.07.2022 filed at INBLR4 i.e., ACC Bangalore, wherein item S. Nos. 17 and 57 - 510984, HEATING RESISTOR 6KW 400/230V NR.110569 were cleared under CTI 84162000 wherein related Commercial Invoice and Packing List mentioned HS Code 85168080, he stated that clearance under 84162000 is wrong and this item is correctly classifiable under CTI 85168000.
- (xix) In relation to classification of Cross Flow Fan Blade being imported by IFB Industries Limited, on being asked about the description of the item mentioned in Bill of Entry for import of Cross Flow Fan Blade, he stated that the description of the subject item as mentioned in the Bill of Entry is CROSS FLOW FAN BLADE-900X (IU211MNCFF010) (PART FOR FAN FOR AIR CONDITINER).
- (xx) The imported item is part for fan for Air Conditioner.
- (xxi) This part is assembled into a fan with ball bearing, motor, shaft, wiring etc. then this assembly is used in the Air Conditioner to through air into the room.
- (xxii) It cannot be used as a standalone fan; it is assembled into a fan assembly that goes into Air Conditioner.
- (xxiii) On being asked why the subject item is not being classified as part of Air Conditioner under CTI 84159000 and being classified as part of fan under CTI 84149090 i.e., other parts of fan, he stated that the item is part of fan which is part of Air Conditioner, and so being classified under CTH 84149090.
- (xxiv) On being asked about the legal basis of the classification of this cross-flow fan blade under CTI 84149090, he stated that as per Section Note 2(a) of Section XVI of Customs Import Tariff this item is being classified under CTI 84149090.
- (xxv) On being specifically mentioned that CTI 84149090 is for 'other parts of fan' i.e., it is a residual classification and the item 'Cross flow fan blade' is not included in any of the heading of Chapter 84 or 85 then how Section Note 2(a) of Section XVI of Customs

Import Tariff is applicable in the subject case, he stated that although the item is not specifically included in any of the heading of Chapter 84 or 85, it is part of fan so it would be classified under CTI 84149090.

- (xxvi) On being asked about the applicability of Section Note 2(b) of Section XVI of Customs Import Tariff which covers other parts i.e., parts covered in residual headings, he stated that for classification of subject item, i.e., Cross flow fan blade, Section Note 2(a) is applicable and hence Section Note 2(b) is not applicable.

1.5 Summary of the facts ascertained from the documents/information collected during the search of the office premises of IFB, statements recorded, documents submitted during the course of recording of statements and other relevant official documents/information:

1.5.1 In relation to Heating Element:

- i) IFB was importing Heating Element (Part of washing machine) under CTI 84195090. CTI 84195090, according to the Customs tariff, covers '*Other Heat exchange units*'. Assistant Commissioner of Customs, Post Clearance Audit, JNCH, Import Commissionerate, vide consultative letter dated 09.07.2013 issued in relation to "Post Clearance Audit of B/E No. 2255051 dtd. 28.05.2013", inter alia, mentioned that "*Party has claimed classification of goods i.e., Heating Element declared as components of Washing Machine under 84195090 @7.5 % BCD whereas the goods are correctly classifiable under CTH 84509010 attracting BCD @10%*" and advised IFB either to reply or to pay differential duty (with interest) within 30 days. As per the Customs tariff, the item description for CTI 84509010 is "*parts of household type machines*". In response to the letter dated 09.07.2013, IFB vide letter dated 23.07.2013 submitted their reply mentioning that 'the item was rightly classified under CTI 84195090' and continued to import the subject Heating element declared as components of Washing Machine under CTI 84195090.
- ii) After initiation of the present investigation, IFB, vide their letter dated 04.09.2023 inter alia, made some factually wrong submissions as under:
 - a) they wrongly claimed that they are importing the impugned goods under CTH 84.50 under the directions of Customs issued vide letter dated 09.07.2013, when in fact they had continued to import under CTI 84195090 till 2017.
 - b) they claimed that they are constrained to revise/ modify the classification on their own at this juncture as they are following the direction of the Customs since 2013;
 - c) they would be clearly violating the Department's order; in case they resort to classification under CTH 85.16 on their own volition;
 - d) they may not be able to alter the classification of their own, without getting it revised under Section 128 or through amendment under Section 149 of Customs Act, 1962.
- iii) Later, in their respective statements, Shri Rajshankar Ray, MD & CEO, Home Appliances Division; Shri Ashish Singh, Finance Head, Washer and AC Factory of IFB, and Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa, all confirmed that they had changed the classification of subject heating element from CTH 8419 to CTH 8450 in 2017 which clearly indicates that they did not change the CTH on the advice of Customs in terms of letter dated 09.07.2013 mentioned at para 1.5.1(i) supra. Although it was advised by Customs to classify the subject heating element under CTI 84509010, IFB had ignored that advice and continued to import the said item under CTI 84195090 till 2017.
- iv) IFB officials could not produce any documents/correspondence indicating the reasons to change the classification in the year 2017. Specifically speaking, they are unable to produce any direction/order from Customs on the basis of which they would have

changed the subject classification from CTH 8419 to CTH 8450 in 2017. Moreover, when they changed the classification from CTH 8419 to CTH 8450, they did not pay any differential duty for their past import of the subject item under CTI 84195090, as there was difference of Basic Customs Duty (BCD) @2.5% of Assessable Value on change of classification from CTH 8419 to 8450. For classification under CTI 84195090, the applicable BCD was @7.5% of Assessable Value and for classification under CTI 84509010, the applicable BCD was @10% of Assessable Value in the relevant period.

- v) Import data analysis revealed that:
- a) The importer is importing heating elements for manufacturing and/or as spare part for various appliances e.g., washing machine, microwave oven, dishwasher. A few examples of declaration of description of subject Heating elements made by importer at the time of import are Heating Element, Heating element (spare part for washing machine), Heater (laundry machine parts), Heating element (Spares for Industrial washing machines), Heating element (Industrial dish washer spare part), Heating element (dishwasher spare parts), Heating Assembly (spare part for microwave oven), Top heating element (parts for built in oven), Bottom heating element (parts for built in oven) etc. Also, the importer is classifying and clearing these heating elements under various CTIs. *Following table enlists various CTIs being used by the importer for import and customs clearance of various heating elements having various declared descriptions as mentioned in this para above. The description of items covered by the particular CTI, as per Customs tariff, is also mentioned:*

Table-3

CTH	Description of Items covered (as per Customs tariff)	Subheading, if any	CTI (being used by IFB for clearance of heating elements) with description as per Customs tariff
8416	FURNACE BURNERS FOR LIQUID FUEL, FOR PULVERISED SOLID FUEL OR FOR GAS; MECHANICAL STOKERS, INCLUDING THEIR MECHANICAL GRATES, MECHANICAL ASH DISCHARGERS AND SIMILAR APPLIANCES		8416 20 00 - Other furnace burners, including combination burners
8419	Machinery, Plant or Laboratory Equipment, whether or not Electrically Heated (Excluding Furnaces, Ovens and Other Equipment of Heading 8514), for the Treatment of Materials by a process involving a change of temperature such as Heating, Cooking, Roasting, distilling, Rectifying, Sterilising, Pasteurising, Steaming, Drying, Evaporating, Vaporising, Condensing or Cooling, Other than Machinery or Plant of a kind used for domestic purposes; Instantaneous or Storage Water Heaters, Non-electric	8419 50 - Heat exchange units:	8419 50 90 --- Other
8422	DISH WASHING MACHINES; MACHINERY FOR CLEANING OR DRYING BOTTLES OR OTHER CONTAINERS; MACHINERY FOR FILLING, CLOSING, SEALING OR LABELLING BOTTLES, CANS, BOXES, BAGS OR OTHER CONTAINERS; MACHINERY FOR CAPSULING BOTTLES, JARS, TUBES AND SIMILAR CONTAINERS; OTHER PACKING OR	8422 90 - Parts:	8422 90 10 --- Of machinery for cleaning or drying bottles or other containers
			8422 90 20 --- Of dish washing machines of household type
	WRAPPING MACHINERY (INCLUDING HEAT-SHRINK WRAPPING MACHINERY); MACHINERY FOR AERATING BEVERAGES		8422 90 90 --- Of other machinery
8450	Household or Laundry-type Washing Machines, including machines which both wash and dry	8450 90 - Parts:	8450 90 10 --- Parts of household type machines
			8450 90 90 --- Other

8451	MACHINERY (OTHER THAN MACHINES OF HEADING 8450) FOR WASHING, CLEANING, WRINGING, DRYING, IRONING, PRESSING (INCLUDING FUSING PRESSES), BLEACHING, DYEING, DRESSING, FINISHING, COATING OR IMPREGNATING TEXTILE YARNS, FABRICS OR MADE-UP TEXTILE ARTICLES AND MACHINES FOR APPLYING THE PASTE TO THE BASE FABRIC OR OTHER SUPPORT USED IN THE MANUFACTURE OF FLOOR COVERINGS SUCH AS LINOLEUM; MACHINES FOR REELING, UNREELING, FOLDING, CUTTING OR PINKING TEXTILE FABRICS		8451 90 00 - Parts
8516	Electric Instantaneous or Storage Water Heaters and Immersion Heaters; Electric Space Heating apparatus and Soil Heating Apparatus; Electro-Thermic 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		8516 10 00 - Electric instantaneous or storage water heaters and immersion heaters
		- Electric space heating apparatus and electric and soil heating apparatus	8516 29 00 -- Other
			8516 80 00 - Electric heating resistors
			8516 90 00 - Parts
8533	ELECTRICAL RESISTORS (INCLUDING RHEOSTATS AND POTENTIOMETERS), OTHER THAN HEATING RESISTORS - Wire wound variable resistors, including rheostats and potentiometers	8533 39 -- Other:	8533 39 90 --- Other

b) From 2013 to 2016, IFB majorly imported and cleared **heating element (for washing machine)** under CTI **84195090** by paying BCD @7.5% of AV. Occasionally, for small quantity import, the heating element (for washing machine) was also imported under CTI 84509010 by paying BCD @10% of AV {*example bills of entry No. 6018934 dated 04.07.2014 (item S. No. 23 and quantity-10 PCS), 9523457 dated 10.06.2015 (item S. No. 39 and quantity-5 PCS), 5063142 dated 27.04.2016 (item S. No. 74 and quantity-5 PCS), all filed at INNSA1*}. Further, **heating element (for industrial washing machine)** was regularly being cleared under CTI **84509090** wherein applicable BCD was @7.5% of AV. Moreover, during the subject period (2013-2016), IFB imported **heating element (part for industrial dish washer)** under CTI **84229090** wherein applicable BCD was @5% of AV {*example bills of entry No. 2946363 dated 16.10.2015 (item S. No. 23), 4202978 dated 09.02.2016 (item S. Nos. 20, 21 and 23), 6821637 dated 22.09.2016 (item S. Nos. 14,15,17 and 60), all filed at INBOM4*}.

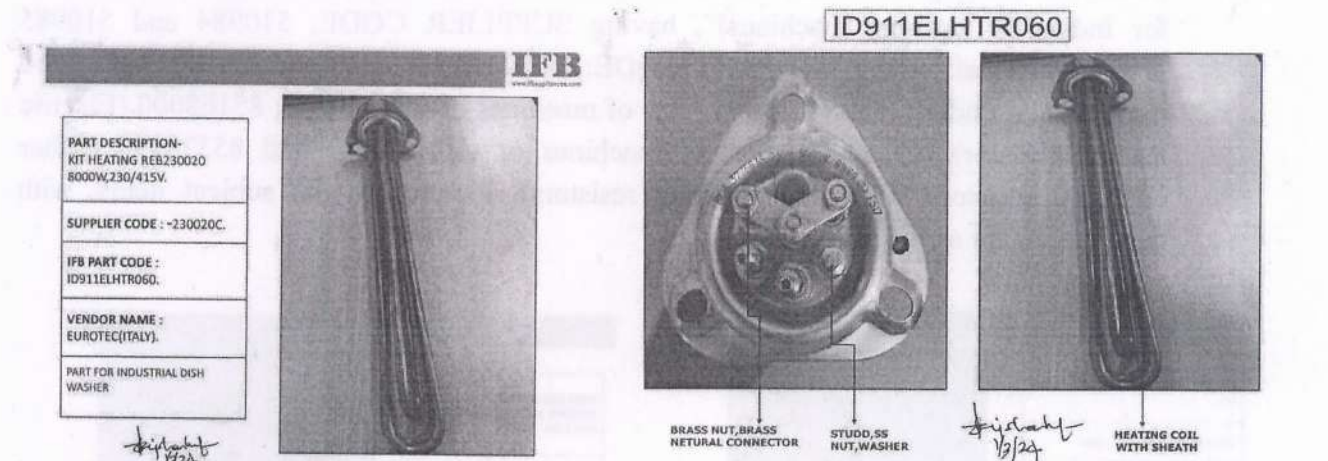
c) In 2017, IFB imported heating elements (for washing machine) under CTI 84195090 till April 2017 (*till bill of entry No. 9270084 dated 11.04.2017 filed at INNSA1*) by paying BCD @7.5% of AV. After that no import of heating element under CTI 84195090 is noticed and importer switched the classification of heating elements (for washing machine) to CTI to 84509010 and started paying BCD @10% of AV for the subject import of heating element (for washing machine). It is noticed that even before 11.04.2017, the importer was regularly importing heating elements (for industrial washing machine) under CTI 84509090 wherein applicable BCD rate was 7.5% of AV

(example bill of entry No. 8125838 dated 09.01.2017 filed at INNSAI). In 2017, there was a single bill of entry No. 3845571 dated 02.11.2017 filed at INBOM4, wherein heating element (for industrial washing machine) (item S. Nos. 34, 35, 36, 37, 38, 39 and 41) was classified under CTI 85168000 and applicable BCD @10% of AV was paid. All other import of heating elements (for industrial washing machine) till December, 2017, were under CTI 84509090 wherein applicable BCD rate was 7.5% of AV. Also, heating element (part for industrial dish washer) were being cleared under CTI 84229090 wherein applicable BCD was @5% of AV.

- vi) Thus, evidently IFB has imported and cleared the subject heating element by paying Basic Customs Duty (BCD) ranging from 'Nil' (under CTI 85333990) to 20% of Assessable Value (under CTI 85168000).
- vii) The importer has imported and cleared item 'HEATING ELEMENT 3000W LENGTH 265MM (PART NO. 540128) (SPARE PART FOR INDUSTRIAL WASHING MACHINE)' having SUPPLIER CODE: 540128 and IFB PART CODE: IW911ELHTR020, under CTI 85168000 i.e., as Electric Heating Resistor. Following is the picture of the subject item:

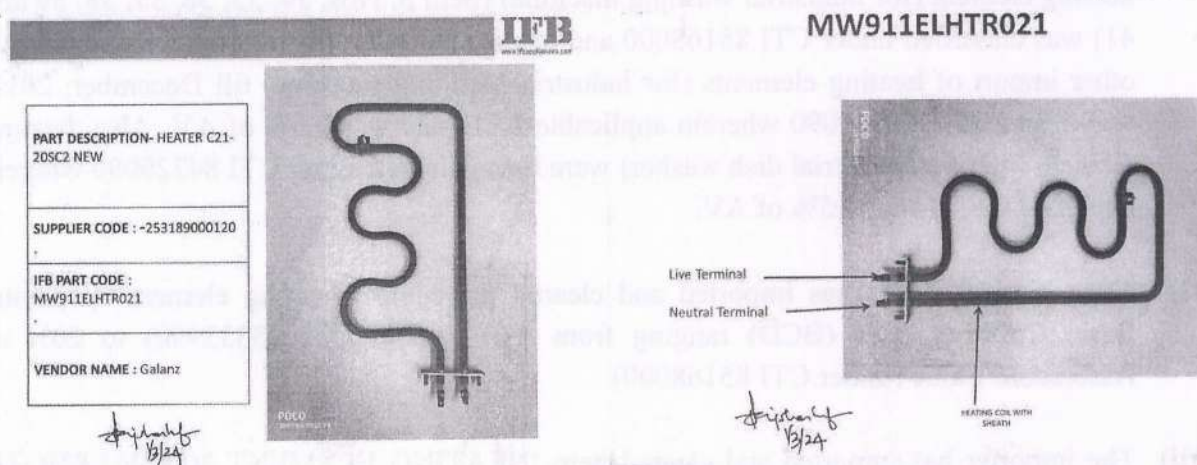


- viii) The importer has cleared item *KIT HEATING REB230020 (8KW)* (having SUPPLIER CODE: 230020C and IFB PART CODE: ID911ELHTR060), under 5 different CTIs viz. 84229010 (part of machinery for cleaning or drying bottles or other containers), 84229020 (part of dish washing machines of household type), 84229090 (part of other machinery classified under Sub-heading 842290), 85168000 (Electric heating resistors) and 85169000 (parts of items classified under CTH 8516). Pictures of the subject item, with description, are as follows:

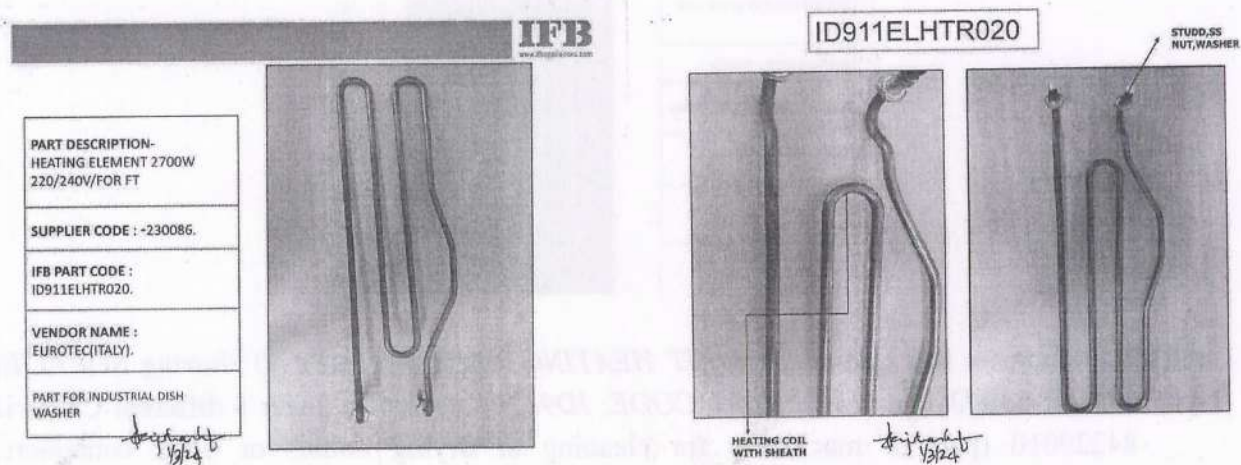


- ix) The importer has cleared item *BOILER HEATING ELEMENT - 230116 (INDUSTRIAL DISHWASHER SPARE PARTS)* under 4 different CTIs viz. 84229010 (part of machinery for cleaning or drying bottles or other containers), 84229020 (part of dish washing machines of household type), 84229090 (part of other machinery classified under Sub-heading 842290) and 85169000 (parts of items classified under CTH 8516).

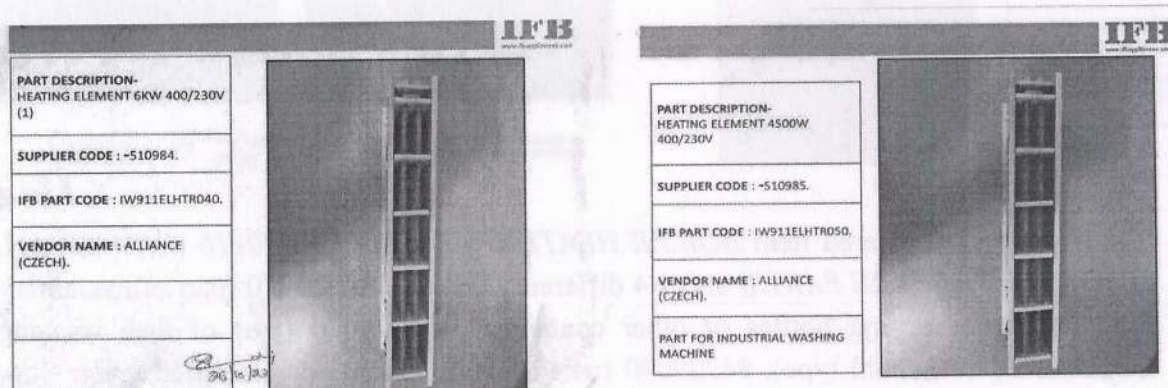
- x) The importer has cleared item HEATER C21-20SC2 NEW having IFB PART CODE: MW911ELHTR021, under CTI 85169000, as spare part for Microwave oven. Picture of the subject item, with description, is as follows:



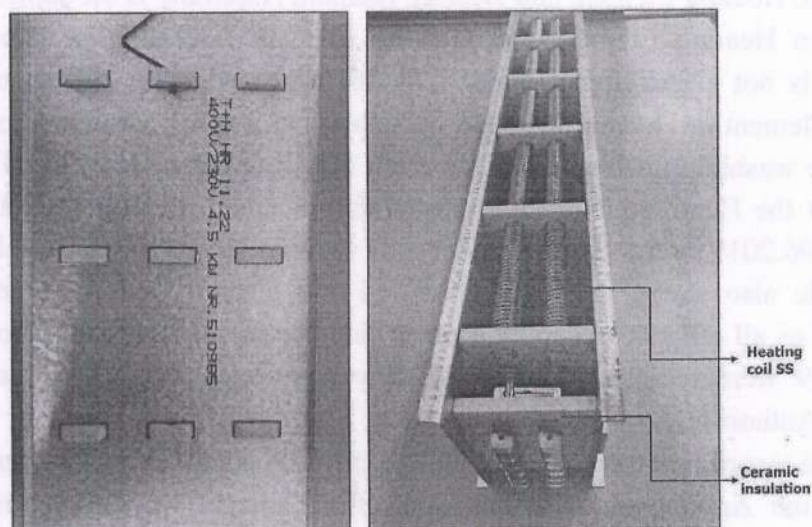
- xi) The importer has cleared item HEATING ELEMENT 2700W 220/240V/FOR FT having IFB PART CODE: ID911ELHTR020, under CTI 84229010 i.e., by classifying it as part of machinery for cleaning or drying bottles or other containers. Pictures of the subject item, with description, are as follows:



- xii) The importer has cleared items “HEATING RESISTOR 6KW 400/230V (Spares for Industrial washing machines)” and “HEATING RESISTOR 4,5KW 400/230V (Spares for Industrial washing machines)”, having SUPPLIER CODE: 510984 and 510985 respectively and having IFB PART CODE: IW911ELHTR040 and IW911ELHTR050 respectively, under CTIs 84519000 (part of machines of CTH 8451), 85168000 (Electric heating resistor), 85169000 (part of machines of CTH 8516) and 85333990 (Other electrical resistors, other than heating resistors). Pictures of the subject items, with description, are as follows:



IW911ELHTR050



xiii) The importer vide Bill of Entry No. 8414221 dated 08.08.2020 imported following items for R&D purpose:

- S. No. 1 Microswitch (For Washing Machine) cleared under CTI 85365090;
- S. No. 2 NTC (Sensor) (For Washing Machine) cleared under CTI 90318000 and
- S. No. 3 Heating Element (For Washing Machine) cleared under CTI 84509010

Description of CTI 85365090 and 90318000, as per Customs Tariff, is as follows:

85.36 - Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 volts; connectors for optical fibres, optical fibre bundles or cables.

- | | |
|------------|-------------------------------|
| 8536 50 | - Other switches : |
| 8536 50 10 | --- Control and switch gears |
| 8536 50 20 | --- Other switches of plastic |
| 8536 50 90 | --- Other |

90.31 - Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this Chapter; profile projectors (+).

9031.80 - Other instruments, appliances and machines

In the said shipment all the items were imported for washing machine. The items namely Microswitch and NTC (sensor) were classified under CTIs having residual classification i.e., 'Other' in the Chapters related to Switches and measuring/checking instruments respectively and only Heating Element (having dedicated CTI 85168000) was cleared under CTI 84509010 i.e., as part of washing machine.

- xiv) Shri Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, in his statement dated 26.10.2023 stated that Heater or 'heating element' used in Industrial washing machines are different than household washing machine and that household washing machine 'Heater' have an additional component NTC.
- xv) The importer cleared Heating element with NTC under CTI 85168000 vide Bill of Entry No. 4022964 dated 11.07.2019 filed at INBOM4 i.e., Mumbai Air Cargo and on being asked about it, Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa in his statement dated 28.02.2024 stated that they did so as that was a small lot and CTI 85168000 was mentioned in the Invoice. In the same statement Shri Vilas Kamath also stated that the heating elements imported by them are heating element assembly so, are

not being classified under CTH 8516. On being asked about why in the “TECHNICAL SPECIFICATION FOR HEATING ELEMENT – WASHING MACHINE”, the item was referred to as Heating Element and not as Heating Element Assembly, he stated that it is because the Heating Element and Heating Element Assembly is the same. On being asked if the term Heating Element and Heating Element Assembly is same then why the company is not classifying it under CTI 85168000 which is correct classification for Heating Element or Heating Resistor, he stated that it is a heating element assembly and part of the washing machine so they are not classifying it under CTI 85168000. He also stated that the Heating elements imported and cleared vide Bill of Entry No. 3719594 dated 19.06.2019 were cleared under CTI 85168000, as instructed by the Customs officer. He also stated that they classified and cleared Heating Element under CTI 85168000 as all other spares to be cleared vide the said Bill of Entry No. 3719594 dated 19.06.2019 were required urgently so they mentioned the CTI as instructed by the Customs Authorities.

- xvi) During the recording of statements, the IFB officials namely Shri Rajshankar Ray, MD & CEO, Home Appliances Division, Goa; Shri Collegal Srinivasan Govindaraj, Chief Executive Officer (CEO), Industrial Business & Projects, IFB, Bangalore and Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa, accepted that there are numerous discrepancies/variations in their import of heating elements.
- xvii) The importer did not pay any voluntary differential duty in respect of the items where there is an accepted mis-classification (accepted in respective statements of IFB officials, mentioned in previous para) i.e., where the importer accepted that the heating elements were imported under wrong CTIs.

1.5.2 In relation to Cross Flow Fan Blade:

- i) IFB is importing cross flow fan blade, a part of indoor unit of split air-conditioners (AC) for manufacturing of AC through Nhava Sheva sea port. For Customs clearance, the description of the said item is being declared by IFB as “Cross Flow Fan Blade (Part of fan for Air Conditioner)” and the same is being cleared under CTI 84149090.
- ii) Import data analysis revealed that:
 - a) IFB started import of subject ‘cross flow fan blade’ in December, 2019, vide *bill of entry No. 6175795 dated 21.12.2019*, wherein the item description as mentioned by the importer was ‘*CROSS FLOW FAN-900X (IU211MNCFF010) (FOR AIR CONDITIONER)*’ and as ‘*CROSS FLOW FAN1010X (IU211MNCFF020) (FOR AIR CONDITIONER)*’ and the same were cleared under CTI 84145990 by paying BCD @7.5% of AV. As per Customs tariff the CTI 84145990 is for other fans. Related portion of the Customs Tariff is as follows:

84144090	--- Other
	- Fans :
841451	-- Table, floor, wall, window, ceiling or roof fans, with a self-contained electric motor of an output not exceeding 125 W:
84145110	--- Table fans
84145120	--- Ceiling fans
84145130	--- Pedestal fans
84145140	--- Railway carriage fans
84145150	--- Wall fans
84145190	--- Other
841459	-- Other :
84145910	--- Air circulator
84145920	--- Blowers, portable
84145930	--- Industrial fans and blowers
84145990	--- Other

- b) The applicable BCD for CTI 84145990 was increased from 7.5% to 10% of AV vide Finance Act, 2020 and till June, 2020, IFB imported subject '*cross flow fan blade*' by declaring the same as '*cross flow fan*' and cleared it under CTI 84145990 by paying updated BCD @10% of AV. In their next import of the subject item vide *bill of entry No. 9759261 dated 30.11.2020*, they described the item as '*CROSS FLOW FAN BLADE-1010X (IU211MNCFF020) (PART FOR FAN FORAIR CONDITINER)*', as '*CROSS FLOW FAN-900X (IU211MNCFF010) (PART FOR FAN FOR AIR CONDITINER)*' and as '*CROSS FLOW FAN BLADE-770X (IU211MNCFF030) (PART FOR FAN FOR AIR CONDITINER)*', changed the classification of the subject cross flow fan blade and cleared the same by paying BCD @7.5% of AV by clearing the same under CTI 84149090. CTI 84149090 covers items with description "Other parts of Fans", in addition to the 'other parts' of 'other items' covered under CTH 8414.
- c) Since November, 2020, the importer is importing the subject cross flow fan blade under CTI 84149090 by describing it as *cross flow fan blade (part for fan for ac)* and is paying BCD @7.5% of AV for the subject import.
- iii) The major import items being imported by IFB, for AC, are Compressor, Motor, Copper tubes, Aluminium Foil and Cross Flow Fan Blade.
- iv) The reason given by the importer for not classifying the cross-flow fan blade (which is a part of indoor unit of split AC) under CTI 84159000 which covers "parts of Air Conditioning machines" is that the subject item is a part of fan which is a part of AC.
- v) There is no independent existence of the said fan (except for use in AC) of which the subject item is being declared and classified to be a part of.
- vi) IFB, vide letter dated 10.10.2023, inter alia submitted "Technical write-up with Annexures" related to Cross Flow Fan wherein they, inter alia, mentioned that:
- a) It is a type of Fan used in Air conditioner's indoor unit, for forced circulation of indoor air convection. The goods under import are only a part of Cross Flow Fan.
- b) The term used by the supplier as Cross flow fan, is misnomer.
- c) The fan, when integrated into the respective element of the Split air conditioner, circulate air in the respective element.
- d) The bare perusal of Section Note 2(a) of Section XVI of Customs Tariff would reveal that when included in any of the headings of Chapter 84 or 85 other than excepted sub-headings, they are in all cases to be classified in their respective headings. CTH 8414 covers, inter alia FANS and Parts thereof by name.
- e) In view of the above, the impugned goods being part of the Fan shall remain classified under CTH 84149090, even when eventually integrated with the other parts in Indoor or Outdoor unit of the Split Air Conditioners.
- f) The above view is supported by the case of ARVIND MECHANICAL & ELECTRICAL ENGRS. P. LTD. Verses C.C.E. Mumbai, as reported in 1997(96) ELT 42 (Tribunal), wherein the classification of impeller and Fan Blades had been accepted by the Department under 841499, as part of compressor used in ACs.
- g) The above view also musters support from HSN Explanatory Notes to CTH 84.15. The relevant part as mentioned by IFB, is as follows:

3.2 The above view also musters support from the HSN Explanatory Notes to CTH 84.15 which inter alia states,

" Section XVI

84.153/16, PAGE 1426

"

PARTS

If presented as separate elements, the components of air conditioning machines are classified in accordance with the provisions of Note (2) (a) to Section XVI (headings 84.14, 84.18, 84.19, 84.21, 84.79, etc.) whether or not they are designed for building into a self-contained unit.

Other parts for air conditioning machines fall to be classified in their own appropriate headings in accordance with the provisions of Note 2 (b) or 2 (c) to Section XVI depending on whether or not they are identifiable as suitable for use solely or principally with those machines."

- h) Relying upon the HSN Explanatory Notes, the Hon'ble Tribunal in the case of Carrier Aircon Ltd. v/s Commissioner of Central Excise, Delhi, In para 8 of their order, while holding classification of Chiller Units under 84.18 and not under 84.15 as part of Air Conditioning Machine, had inter alia recorded: "..... *In view of this, the impugned goods cannot be classified under Heading 84.15 on the ground that 90% of the Chillers manufactured and cleared by the Appellants are used in the commissioning of central air-conditioning plants. The subsequent use of the Chiller by fitting it with air handling unit will not change the classification of the chiller*, we allow the appeal filed by the appellants and set aside the impugned order."
- vii) From analysis of the subject submissions by IFB vide letter dated 10.10.2023 (mentioned in previous para) and analysis of related provisions, following facts emerged:
- a) The subject cross flow fan when integrated into the respective element of the Split air conditioner, circulate air in the respective element i.e., ***it functions when fitted with respective element of Split AC.***
- b) Section Note 2(a) of Section XVI of Customs Tariff states "*Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.2, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings;*" Thus, this section covers only those 'Parts which are goods ***included*** in any of the headings of Chapter 84 or 85'. Although the subject item i.e., Cross flow fan blade, can be considered as part of a fan in general parlance but in view of the relevant Explanatory note to CTH 8414 as it functions only after being fitted with elements additional to their motors or housing which give them the characteristics of more complex machine i.e., air conditioning machine, the same is excluded from the said CTH and thus the same goes out of preview of Section Note 2(a) of Section XVI of Customs Tariff.
- c) The Explanatory notes to CTH 84.14 of Customs Tariff, excludes fans fitted with elements additional to their motors or housing, if such elements give them the characteristics of more complex machines of other headings, e.g., air conditioning machines (heading 84.15). The subject exclusion as mentioned in the Explanatory notes to CTH 84.14 is as follows:

84.14

This heading **excludes** fans fitted with elements additional to their motors or housing (such as large dust separating cones, filters, cooling or heating elements and heat exchangers) if such elements give them the characteristics of more complex machines of other headings, e.g., air heaters, not electrically heated (heading 73.22), air conditioning machines (heading 84.15), dust extractors (heading 84.21), air coolers for the industrial treatment of materials (heading 84.19) or for premises (heading 84.79), electric space heating apparatus with built-in fans (heading 85.16).

- d) The subject Cross flow fan is eventually integrated with the other parts in Indoor unit of the Split Air Conditioners and then only it functions as cross flow fan i.e., forced circulation of indoor air convection. This is the sole use of the subject Cross flow fan.
- e) The case of ARVIND MECHANICAL & ELECTRICAL ENGRS. P. LTD. was decided in October, 1997 and was related to Impellers and fan blades classified under sub-heading 8414.99 of the **Central Excise Tariff**. The matter was related to Central Excise and the department had not contested classification of the subject goods but contested the eligibility to exemption under Notification 175/86. *The order nowhere mentioned that all kind of 'Impellers or Fan blades' are classifiable under sub-heading 8414.99.* The facts of this case being different, this case law is not applicable in the present case.
- f) The HSN Explanatory Notes to CTH 84.15 as submitted by IFB {mentioned at para 1.5.2(vi)(g) supra} is at least older than the 2012 edition of Explanatory Notes to Customs Tariff and the same has been revised. The present Explanatory Notes to CTH 84.15 (which is same at least since 2012 edition), is as follows:

84.15

PARTS

In accordance with the provisions of Note 2 (b) to Section XVI, this heading includes separately presented indoor units and outdoor units for split-system air conditioning machines of this heading.

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

*
* *

The present version clearly states that classification of parts of Air conditioners has to be determined in accordance with the provisions of Note 2(a) to Section XVI or in accordance with Note 2(b) or 2(c) to Section XVI, if Note 2(a) is not applicable.

- g) The case of Carrier Aircon Ltd. v/s Commissioner of Central Excise, Delhi, mentioned by IFB, was about classification of "Chillers having primary function to produce chilled water by using a refrigeration circuit, classifiable under Heading 84.18 of Central Excise Tariff Act, 1985". Mention of the fact that "...90% of the Chillers manufactured and cleared by the Appellants are used in the commissioning of central air-conditioning plants..." itself explains that Chillers are also used in other applications and with/in other apparatus/systems. It is clear that in the subject case, 10% of the Chillers manufactured by the Appellant were not used in the AC plants and had other uses. Thus, the subject case is not relevant to the case where the item under consideration has a sole use in the indoor unit of split AC's.
- viii) In his statement dated 28.02.2024, Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa, stated that the item is part of a fan consisting of blade, motor and bearing which is used in Air Conditioner and is therefore, being classified under CTH 8414. He also stated that they import motors under CTI 85014090. CTI 85014090 covers item with the description 'Other AC motors, single-phase'. Evidently, the importer is not classifying motors (other part of the said fan which is a part of AC) as part of the Fan, instead classifying the same as 'Other AC motors, single-phase', but is only classifying the cross-flow fan blade as a part of a fan.
- ix) Shri Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, in his statement dated 01.03.2024, has stated that "Section Note 2(a) of Section XVI of Customs Import Tariff is the legal basis for classification of the subject item under CTI 84149090". Section Note 2(a) of Section XVI of Customs Import Tariff states that "*Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 84.09,*

84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.2, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings;". In the same statement, Shri Rajshankar Ray also stated that although the item is not specifically included in any of the heading of Chapter 84 or 85, it is a part of a fan and so it would be classified under CTI 84149090. He also stated that this cannot be used as a standalone fan; it is assembled into a fan assembly that goes into Air Conditioner. These statements of Shri Rajshankar Ray are contrary to the text of the Section Note 2(a) mentioned supra.

- x) The subject item i.e., cross flow fan blade being imported by IFB, is being imported either for manufacturing of AC or for use as spare part for the same i.e., the item is being imported exclusively and solely for ultimate use as part/spare part of indoor unit of split AC but the same is being classified under CTI 84149090 i.e., as 'Other parts of Fans'.

1.6 Discussion in respect of 'electric heating resistor/heating element' and 'cross flow fan blade' and their classification under Indian Trade Classification based on Harmonized System (ITC-HS):

The subject items namely 'heating element' and 'cross flow fan blade' are being imported by IFB as parts for manufacturing (also as spare parts) of washing machines (domestic as well as industrial washing machines) (and other appliances viz. industrial dishwasher, microwave oven etc.) and Air Conditioner respectively. All the subject appliances are covered under section XVI (Chapter 84 and Chapter 85) of the Customs Tariff. Note 2 of the subject Section XVI of the Customs tariff, which deals with the classification of 'parts', states as follows:

XVI

2.- Subject to Note 1 to this Section, Note 1 to Chapter 84 and Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules :

- (a) Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.22, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings;
- (b) 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 (including a machine of heading 84.79 or 85.43) are to be classified with the machines of that kind or in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 85.17 and 85.25 to 85.28 are to be classified in heading 85.17, and parts which are suitable for use solely or principally with the goods of heading 85.24 are to be classified in heading 85.29;
- (c) All other parts are to be classified in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate or, failing that, in heading 84.87 or 85.48.

Also, the General Explanatory Notes of Section XVI of the Customs tariff, related to subject 'parts' are as follows:

XVI

(II) PARTS (Section Note 2)

In general, parts which are suitable for use solely or principally with particular machines or apparatus (including those of heading 84.79 or heading 85.43), or with a group of machines or apparatus falling in the same heading, are classified in the same heading as those machines or apparatus subject, of course, to the exclusions mentioned in Part (I) above. Separate headings are, however, provided for :

- (A) Parts of the engines of heading 84.07 or 84.08 (heading 84.09).
- (B) Parts of the machinery of headings 84.25 to 84.30 (heading 84.31).
- (C) Parts of the textile machines of headings 84.44 to 84.47 (heading 84.48).
- (D) Parts of the machines of headings 84.56 to 84.65 (heading 84.66).
- (E) Parts of the office machines of headings 84.70 to 84.72 (heading 84.73).
- (F) Parts of the machines of heading 85.01 or 85.02 (heading 85.03).
- (G) Parts of apparatus of headings 85.19 or 85.21 (heading 85.22).
- (H) Parts of apparatus of headings 85.25 to 85.28 (heading 85.29).
- (I) Parts of apparatus of heading 85.35, 85.36 or 85.37 (heading 85.38).

The above rules do **not** apply to parts which in themselves constitute an article covered by a heading of this Section (**other than** headings 84.87 and 85.48); these are in all cases classified in their own appropriate heading even if specially designed to work as part of a specific machine. This applies in particular to :

- (1) Pumps and compressors (headings 84.13 and 84.14).
- (2) Filtering machinery and apparatus of heading 84.21.
- (3) Lifting and handling machinery (heading 84.25, 84.26, 84.28 or 84.86).
- (4) Taps, cocks, valves, etc. (heading 84.81).
- (5) Ball or roller bearings, and polished steel balls of a tolerance not exceeding 1 % or 0.05 mm, whichever is less (heading 84.82).
- (6) Transmission shafts, cranks, bearing housings, plain shaft bearings, gears and gearing (including friction gears and gear-boxes and other speed changers), flywheels, pulleys and pulley blocks, clutches and shaft couplings (heading 84.83).
- (7) Gaskets and similar joints of heading 84.84.
- (8) Electric motors of heading 85.01.
- (9) Electrical transformers and other machines and apparatus of heading 85.04.
- (10) Electric accumulators assembled into battery packs (heading 85.07).
- (11) Electric heating resistors (heading 85.16).

Now, on the basis of Section Note 2 of the Section XVI of the Customs tariff and related explanatory notes (detailed supra) and using other relevant explanatory notes of particular chapter, the discussion related to classification of individual item is as follows:

1.6.1 **Heating Element:**

- i) A heating element is a material or device that directly converts electrical energy into heat or thermal energy through the principle known as "*Joule heating / resistive heating / resistance heating*". Joule heating/resistive heating is the phenomenon where a conductor generates heat due to the flow of electric current. Whenever an electric current flows through a material that has some "Resistance" (i.e., anything but a superconductor), it creates heat. Electric current through the element encounters resistance, resulting in heating of the element. The amount of heat generated depends upon the current and the voltage or the conductor resistance. In the design of heating elements, the resistance is the more important factor, hence the name "resistors".

ii) Classification of Electric heating resistors/elements in light of Explanatory Notes to Section XVI and to CTH 8516 of Customs Tariff:

a) Electric Heating resistors are specifically covered by CTI 85168000 of the Customs Tariff. The relevant portion of CTH 8516 detailing the CTI and related description of goods covered, is as follows:

85.16 - Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic 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 85.45.

8516 79 90 --- Other
8516 80 00 - Electric heating resistors
8516 90 00 - Parts

b) Section note 2(a) of Section XVI of Customs Tariff clearly states that “*Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.2, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings*” so, as CTI 85168000 specifically covers Electric heating resistors or Heating elements, these should be classified under CTI 85168000. Moreover, the related explanatory notes to section note 2(a) detailed at para 1.6 supra, also specifically mention that “*parts which in themselves constitute an article covered by a heading of this Section (other than headings of 84.87 and 85.48); those in all cases classified in their own appropriate heading even if specifically designed to work as part of a specific machine. This applies in particular to:*

(1) *Pumps and compressors (heading 84.13 and 84.14)*
(2) ...
...

(11) Electric heating resistors (heading 85.16).

c) In addition to the Section Note 2(a) and related explanatory notes of section XVI of Customs Tariff mentioned in previous para, the relevant portions of ‘Explanatory Notes for CTH 8516’ in respect of “Electric heating resistors”, which have been assigned a specific tariff item 85168000, are as follows:

85.16

(F) ELECTRIC HEATING RESISTORS

With the exception of those of carbon (heading 85.45), all electrical heating resistors are classified here, irrespective of the classification of the apparatus or equipment in which they are to be used.

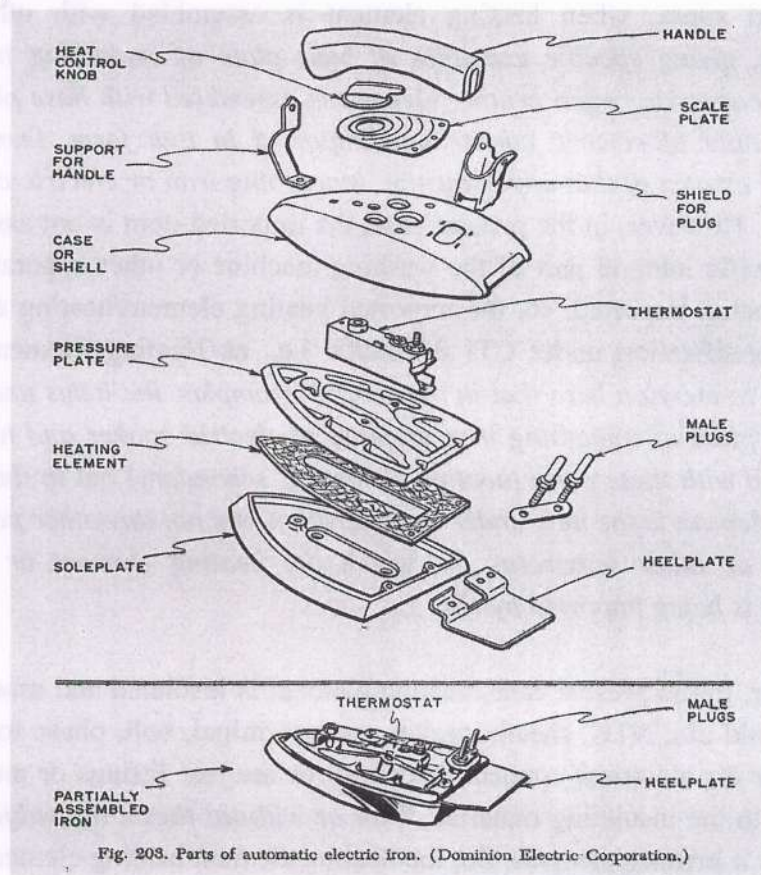
They consist of bars, rods, plates, etc., or lengths of wire (usually coiled), of special material which becomes very hot when current is passed through it. The material used varies (special alloys, compositions based on silicon carbide, etc.). They may be obtained in the form of individual components by a printing process.

Wire resistors are usually mounted on insulating formers (e.g., of ceramics, steatite, mica or plastics) or on soft insulating core (e.g., of glass fibres or asbestos). If not mounted, wire of this kind is classified here **only** if cut to length and coiled or otherwise formed to a shape identifying it as a heating resistor element. The same applies to bars, rods and plates which, to be classified here, **must** be cut to length or size ready for use.

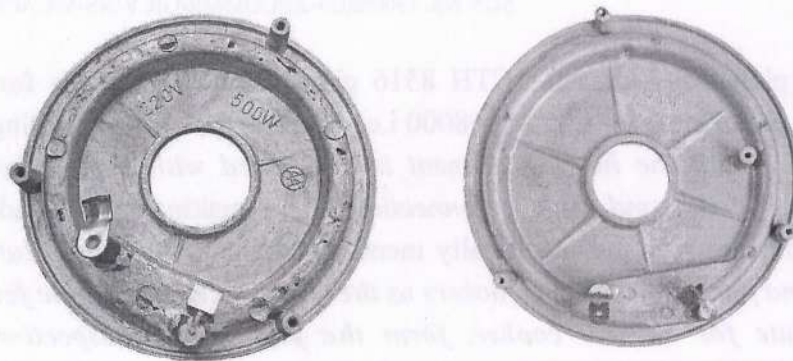
Resistors remain classified here even if specialised for a particular machine or apparatus, but if assembled with parts other than a simple insulated former and electrical connections they are classified as parts of the machines or apparatus in question (e.g., base plates for smoothing irons and plates for electric cookers).

The heading also **excludes** defrosters and demisters. These consist of a resistance wire mounted in a frame for fitting to the windscreen (heading 85.12).

- d) The Explanatory Notes for CTH 8516 gives only two reasons **for not classifying** heating element under CTI 85168000 i.e., if either the electric heating resistors are “of carbon” or “if the heating element is assembled with parts other than a simple insulated former and electric connections”. For making the second exception clear, the Explanatory Notes specifically mention the items like *base plates for smoothing irons and plates for electric cookers as these items i.e., base plate for smoothing iron and plate for electric cooker, form the part of the respective apparatus i.e., smoothing iron and electric cooker, both structurally and functionally, and when heating element is assembled with these parts, it becomes an integral sub-part of the subject parts and therefore liable for classifiable as part of the subject example apparatus*. In such cases, when heating element is assembled (or more precisely integrated) with another part (base plates/plates for example) of the apparatus (smoothing iron/electric cooker) then it is considered as parts of the apparatus and will be classified as part of the apparatus. For better understanding and detailed examination, the parts of automatic electric iron are illustrated in the following picture:



- e) When the heating resistor is **assembled with** base plate (also called sole plate), an integral part of iron, then it becomes sub-part of the base plate and becomes classifiable as part of iron. It is pertinent to clarify that the condition for classifying as part of smoothing iron is that the heating element is to be assembled with base plate and by doing so, item will be described as ‘*base plate with heating element*’ and ‘*not as heating element with base plate*’ i.e., base plate is main part and the heating element is sub-part of the base plate assembly.
- f) Also, following are sample pictures of ‘*Plate for electric cooker having embedded Heating element*’:



Form the pictures, it can be seen that heating element is moulded in the plate i.e., it is an integral part of the plate. As explained earlier in case of base plate of electric iron, similarly, in this case, heating element is assembled with plate of electric cooker i.e., the item is 'electric cooker plate with heating element' and not 'heating element with plate of electric cooker' and thereby the item stands classifiable as part of electric cooker.

g) It is reiterated that as per the Explanatory Notes for 'electric heating resistors' mentioned supra, when heating element is assembled with other parts of the apparatus, giving specific examples of base plate of smoothing iron and plate of electric cooker i.e., when heating element is assembled with base plate of smoothing iron or plate of electric cooker and imported in that form, then only it can be classified as part of that apparatus i.e., smoothing iron or electric cooker as in these examples. However, in the present case, the imported item is not assembled with any other specific integral part of the washing machine or other apparatus for which the same is being imported, so, the imported heating element/heating element assembly merits classification under CTI 85168000 i.e., as Heating Element Resistors. *It is pertinent to mention here that in the subject examples, the items under consideration are base plate of smoothing iron or plate of electric cooker and heating element is assembled with these parts (heating element is secondary) but in the present case the heating element is the item under consideration and not any other part of the washing machine or other apparatus for which the heating element or heating element assembly is being imported by IFB.*

h) Moreover, in the present case, heating element is insulated and assembled with fuse, flange, cold pin, NTC, sheath, gasket, earth terminal, bolt, phase terminal etc. which are either for electrical connection/control or are just fittings or means for fitting in addition to the insulating material. ***With or without these, the subject imported item is merely a heating element.*** So, the heating element/heating element assembly being imported by IFB appeared to be heating element/electric heating resistor only and merits classification under CTI 85168000, irrespective of the classification of the apparatus or equipment in which they are to be used.

iii) Tariff Classification as per General Rule of Interpretation:

- In terms of Rule 1 of the General Rule of Interpretation, "for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes." This is the 'First Rule' to be considered in classifying any product. Heating Element, which is more clearly described as "Electric Heating Resistors", is provided under CTI 85168000. By virtue of Section Note 2(a) of Section XVI of Customs Tariff and related explanatory notes (as detailed in paras supra), heating element remains classified under CTI 85168000, even if imported as part of a particular machine or apparatus.
- The subject heading, related section and chapter notes are sufficient to clarify how subject heating element or heating element assembly being imported by IFB are rightly classifiable under CTI 85168000. However, the reason given by the importer

for not classifying the subject item under the said CTI is that the subject item is an assembly i.e., heating element assembly. So, taking the item as an assembly consisting of more than one material (which are either insulating material or for electrical connection/control or just fittings or means for fitting), we move to Rule 2(b) of General Rule of Interpretation which states that '*The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3*'. The related Rule 3 states that '*when, by application of Rule 2(b) or for any other reason, goods are prima facie, classifiable under two or more headings, classification shall be affected as follows:*

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

3(b) *Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.*

This is applicable at sub-heading level with Rule 6 of General Rule of Interpretation. Since the impugned goods i.e., electric heating assembly are more aptly "electric heating resistors", unequivocally, it can be stated that the essential character (functionally) of the impugned goods is completely impacted and dependent on electric heating resistors {Rule 3(a) mentioned supra}. Even if it is felt that this is not sufficient, moving to Rule 3(b), as the item is available for sale as spare part i.e., it is available for retail sale, the assembly is essentially a heating element assembly and it is to be classified under CTI 85168000 which covers heating resistors also called heating elements specifically.

1.6.2 **Cross flow fan blade:**

- i) Cross flow fan blade is a part of indoor unit of split air-conditioners (AC). Cross flow fan blade cannot work on its own, the motor installed in indoor unit of AC rotates the cross-flow fan blade. It has to be assembled along with motor on a moulded base panel. Moulded base panel is the starting of the assembly on which the entire indoor unit is built. Apart from the cross-flow fan blade and motor, the other vital elements attached on moulded base panel are 'bearing' and 'heat-exchanger'. Cross flow fan blade imported by IFB are exclusively used in manufacturing of air-conditioners and they are not used anywhere else. Also, malfunctioning or defective cross flow fan blade cannot be repaired and they are replaced with new unit. Cross flow fan blade is also sold separately as spare parts of AC. The subject cross flow fan blade is used solely in the indoor unit of split AC.
- ii) Classification of cross flow fan blade in light of explanatory notes to Section XVI and to CTH 8414 and CTH 8415 of Customs Tariff:
 - a) IFB is importing the subject Cross flow fan blade under CTI 84149090. The relevant portion of CTH 8414 with description of goods, is as follows:

84.14

84.14 - Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; gas-tight biological safety cabinets, whether or not fitted with filters.

8414.10 - Vacuum pumps

8414.20 - Hand- or foot-operated air pumps

8414.30 - Compressors of a kind used in refrigerating equipment

8414.40 - Air compressors mounted on a wheeled chassis 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

8414.59 -- Other

8414.60 - Hoods having a maximum horizontal side not exceeding 120 cm

8414.70 - Gas-tight biological safety cabinets

8414.80 - Other

8414.90 - Parts

8414 90 - Parts :

--- Cf 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 12 ---- Of bicycle pumps

8414 90 19 ---- Other

8414 90 20 --- Of free piston generators

8414 90 30 --- Of electric fans

8414 90 40 --- Of Industrial fans, blowers

8414 90 90 --- Other

The subject item i.e., 'cross flow fan blade' is not mentioned under CTI 84149090. Item description of CTI 84149090 is "Other" i.e., it is a residual CTI.

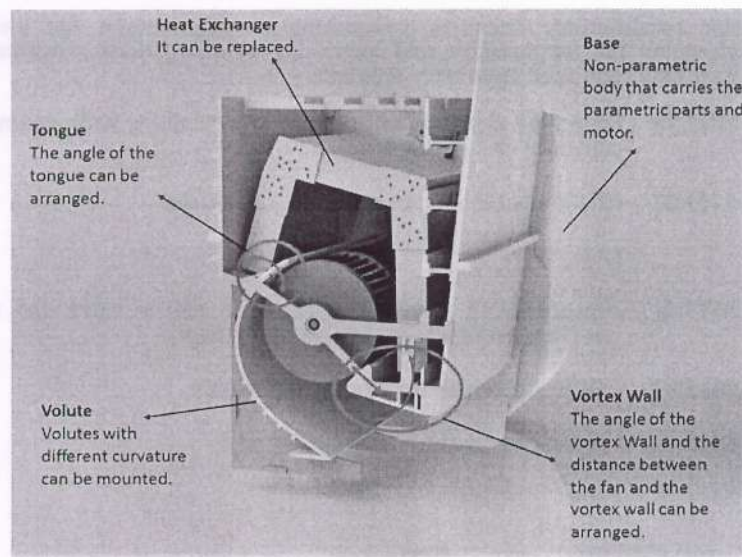
- b) Discussion regarding exclusion mentioned in the explanatory notes related to CTH 84.14 of Customs Tariff: The Explanatory notes to CTH 84.14 of Customs Tariff, exclude fans fitted with elements additional to their motors or housing, if such elements give them the characteristics of more complex machines of other headings, e.g., air conditioning machines (heading 84.15). The subject exclusion as mentioned in the Explanatory notes to CTH 84.14 is as follows:

84.14

This heading excludes fans fitted with elements additional to their motors or housing (such as large dust separating cones, filters, cooling or heating elements and heat exchangers) if such elements give them the characteristics of more complex machines of other headings, e.g., air heaters, not electrically heated (heading 73.22), air conditioning machines (heading 84.15), dust extractors (heading 84.21), air coolers for the industrial treatment of materials (heading 84.19) or for premises (heading 84.79), electric space heating apparatus with built-in fans (heading 85.16).

For its functioning, the so-called Cross flow fan is eventually integrated with the other parts in Indoor unit of the Split Air Conditioners. After such integration only, it functions as cross flow fan which perform function of forced circulation of indoor air convection. This is the sole use of the subject Cross flow fan which comes into action after fitting with element additional to its motor which inter alia includes **heat-exchanger**. The fact that "Cross flow fan blade cannot work on its own, it has to be assembled along with motor on moulded base panel. Moulded base panel is the starting of the assembly on which the entire indoor unit is built. Apart from the cross-flow fan blade and motor, the other vital elements attached on moulded base panel are bearing and heat-exchanger"

was stated by Shri Milind Bhoyar, Deputy General Manager (DGM), AC Plant, IFB, Verna, Goa in his statement dated 26.07.2023. Thus, considering these facts, the fan under consideration i.e., ***Cross flow fan appeared to be excluded from classification under heading 84.14*** and appeared to be classifiable under heading 84.15 i.e., the heading covering air conditioning machines and their parts. Following is a sample picture showing Heat Exchanger fitted above the subject cross flow fan in the indoor unit of split AC:



- c) Discussion about applicability of Section note 2(a) of section XVI of Customs Tariff:
The explanatory note related to Parts of items covered under CTH 84.14 of Customs Tariff is as follows:

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the goods of this heading are also classified here (e.g., pump or compressor bodies, blades, rotors or impellers, vanes and pistons).

*
* *

This explanatory note clearly states that parts of goods of heading 84.14 are classified here **subject to general provisions regarding the classification of parts** i.e., subject to General Explanatory Note to Section XVI. Also, Section note 2(a) of section XVI of Customs Tariff specifically states that “*Parts which are goods included in any of the headings of Chapter 84 or 85 are in all cases to be classified in their respective headings*”. The subject item i.e., cross flow fan blade is being classified by IFB under CTI 84149090 which covers ‘Other parts of fan’. Item description of CTI 84149090 is “Other” i.e., it is a residual CTI. Also, the item cross flow fan blade is not included under any other headings of Chapter 84 or 85 and **only by considering it as a part of a fan covered under CTH 8414**, it is being wrongly considered as “included” under CTH 8414. Thus, it appeared that **classification of cross flow fan blade does not come under the preview of section note 2(a) of section XVI of Customs Tariff as the item is not included under any of the headings of Chapter 84 or 85.**

- d) Discussion about applicability of Section note 2(b) of section XVI of Customs Tariff:
Section note 2(b) of section XVI of Customs Tariff mentions that “**Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading ... are to be classified with the machines of that kind or in heading 84.09, 64.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate**”. As the subject item cross flow fan blade is not included in headings of Chapter 84 or 85 (as discussed in previous para) and **is indeed, suitable for use solely with indoor unit of split AC, is appeared to be correctly classifiable with AC under heading 84.15** i.e., the heading covering air conditioning machines,

in light of said section note 2(b) of section XVI of Customs Tariff, in addition to the discussion at para 1.6.2(ii)(b) supra.

- e) Correct Classification: The relevant portion of CTH 8415 with description of goods and relevant portions of 'Explanatory Notes for CTH 8415' in respect of "Parts", are as follows:

84.15

84.15 - Air conditioning machines, comprising a motor-driven 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 - Of a kind used for persons, in motor vehicles

- Other :

8415.81 -- Incorporating a refrigerating unit and a valve for reversal of the cooling/heat cycle (reversible heat pumps)

8415.82 -- Other, incorporating a refrigerating unit

8415.83 -- Not incorporating a refrigerating unit

8415.90 - Parts

8415 90 00 - Parts

84.15

PARTS

In accordance with the provisions of Note 2 (b) to Section XVI, this heading includes separately presented indoor units and outdoor units for split-system air conditioning machines of this heading.

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

*
* *

- f) The explanatory notes specifically mention that parts for AC machines, other than separately presented indoor units and outdoor units for split-system AC of heading 85.15, whether or not designed for building into a self-contained unit, are to be classified in accordance with the provisions of Note 2(a) to Section XVI or *if Note 2(a) is not applicable, in accordance with Note 2(b) or 2(c) to Section XVI, depending on whether or not they are identifiable as suitable for use solely or principally with the AC machines of which they are parts*. As explained in the para 1.6.2(ii)(c) supra, Note 2(a) to Section XVI does not appear applicable in this case. So, in light of the Note 2(b) to Section XVI, it appeared that the subject 'cross flow fan blade' merits classification under CTI 84159000 as parts of AC as it is being imported for sole use in manufacturing of indoor unit of split AC as well as for sale as spare parts of AC.

1.7 Calculation of differential duty liability:

1.7.1 In relation to Heating Element: Differential duty liability in relation to import of Heating Elements by IFB through different Customs locations (*for period from 1st February, 2020 to 05th June, 2024*) is as per following table:

TABLE-4

Customs Location Code	Customs Location	No. of Bills of Entry*	Items Assessable Value (AV)	Differential BCD amount (@20%, 15%, 12.5%, or @10% of AV, as applicable)	Differential SWS (@10% of differential BCD)	Differential IGST {@18% of diff. (BCD + SWS)}	Total differential liability {Differential (BCD+SWS+IGST)}
INNSA1	Nhava Sheva Sea port	172	₹37,07,67,483.10	₹3,71,37,695.37	₹ 37,13,769.54	₹ 73,53,263.68	₹ 4,82,04,728.59
INBLR4	Bengaluru Air Cargo	46	₹ 42,94,266.87	₹ 5,43,440.78	₹ 54,344.08	₹ 1,07,601.27	₹ 7,05,386.13
INBOM4	Mumbai Air Cargo	30	₹1,52,29,473.66	₹ 15,02,527.67	₹ 1,50,252.77	₹ 2,97,500.48	₹ 19,50,280.91
INKAT1	Kattupalli Sea port	1	₹ 6,054.86	₹ 605.49	₹ 60.55	₹ 119.89	₹ 785.92
INMAA1	Chennai Sea port	2	₹ 44,11,619.23	₹ 5,51,205.89	₹ 55,120.59	₹ 1,09,138.77	₹ 7,15,465.25
Total		251	₹ 39,47,08,897.72	₹ 3,97,35,475.20	₹ 39,73,547.52	₹ 78,67,624.09	₹ 5,15,76,646.81

1.7.2 In relation to Cross Flow Fan Blade: All imports of cross flow fan blade by IFB are through INNSA1 i.e., Nhava Sheva Sea Port. Differential duty liability in relation to import of Cross Flow Fan Blade (*for period from 21st December, 2019 to 05th June, 2024*) is as per the following table:

TABLE-5

No. of Bills of Entry	Items Assessable Value (AV)	Differential BCD amount (@12.5% or @10% of AV, as applicable)	Differential SWS (@10% of differential BCD)	Differential IGST on differential (BCD + SWS) {@28% of diff. (BCD + SWS)}	Differential IGST on AV (@10% of AV)	Total differential liability {Differential (BCD+SWS+IGST)}
96	₹ 22,04,15,811.92	₹ 2,73,74,082.12	₹ 27,37,408.21	₹ 84,31,217.29	₹2,20,41,581.19	₹ 6,05,84,288.81

1.8 Payment made by IFB during the course of investigation:

During the course of investigation, the importer deposited Rs. 1,90,00,000/- (Rupees One Crore Ninety Lakhs only) under protest. Details of the related T.R. 6 Challan is as follows:

TABLE-6

Customs Location	Challan No.	Challan date	Amount deposited
JNCH, Nhava Sheva	HC-67	06-09-2023	₹ 1,90,00,000

1.9 Further, the extracts of the relevant provisions of law relating to self-assessment, 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:

- CBIC Circular No. 17/2011 dated 08.04.2011 regarding ‘Implementation of Self-Assessment in Customs’.
- Section 2(39) – Definitions – Smuggling.
- Section 17 - 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 112 - Penalty for improper importation of goods etc.
- Section 114A - Penalty for short-levy or non-levy of duty in certain cases.
- Section 114AA - Penalty for use of false and incorrect material.
- Section 140 - Offences by companies.

1.10 Grounds for invoking provisions of Section 28(4) of the Customs Act, 1962:

1.10.1 In relation to mis-classification of Heating Element:

- i) IFB was importing heating element under CTI 84195090. In 2013, Customs issued a consultative letter dated 09.07.2013 to IFB, in relation to “*Post Clearance Audit of B/E No. 2255051 dtd. 28.05.2013*”. It was mentioned in the letter that “*Party has claimed classification of goods i.e., Heating Element declared as components of Washing Machine under 84195090 @7.5 % BCD whereas the goods are correctly classifiable under CTH 84509010 attracting BCD @10%*” and IFB was advised either to reply or to pay differential duty (with interest) within 30 days. In response to the said letter dated 09.07.2013, IFB vide letter dated 23.07.2013 submitted their reply mentioning that “*the item was rightly classified under CTI 84195090*” and continued to import the subject Heating element under CTI 84195090. As per Customs Tariff, CTI 84195090 is for **Other Heat exchange units**. The description of Heating Element as submitted by IFB vide said reply letter dated 23.07.2013 is as follows:

HEATING ELEMENT : The Heating Element is an engineering element used to heat the water in the washing machine. This component is made of stainless steel Tube, the heating element nichrome is placed in the stainless tube and insulated by compact MgO throughout the tube, The nichrome heat element is filled with two fuses and terminal. When the eclectic current is passed, through the terminal, due to resistance, element gets heated and eventually heating the water.

When the water level increases to the desired level, there is a component called NTC which sense the temperature and regulate the current flow in the element and shunts off the heating. Thus this component is used in the washing machine to control the heating of water. Hot water is important in washing machine because the detergent acts positively in the hot water.

The item is rightly classified under 84195090. Drawing of the same attached for read reference.

It is clear that, vide letter dated 23.07.2013, IFB had submitted that *even if the Heating Element with NTC, fuses, terminal etc. i.e., the so-called Heating Element Assembly* was used in washing machine to control the heating of water, *it was not classifiable under CTI 84509010 i.e., it was not classifiable as part of washing machine.*

- ii) IFB changed the classification of subject heating element from CTI 84195090 to CTI 84509010 in around 2017 and did not pay any differential duty for their past import of the subject item under CTI 84195090. The reason for the change is not known. Whatsoever may had been the reason for the change, the fact is that they did not pay any differential duty in 2017 for their past import of heating element under CTI 84195090, when they changed CTI of heating element from CTI 84195090 to CTI 84509010. This is itself an indicator that even if they felt that CTI 84509010 is the correct classification, they evaded BCD @2.5 (at least) of Assessable Value for period from 2013 to 2017 i.e., the period when they were advised by Customs to classify the subject item under 84509010 till the time, they switched to CTI 84509010. More specifically, if they genuinely felt that CTI 84509010 was the correct classification for the subject item then they would have paid the differential duty as applicable for their past wrong classification under CTI 84195090. It appeared that *they deliberately chose not to pay any differential duty.*
- iii) As evident from the various statements of officials of IFB and facts mentioned at para 5.1 supra, the heating element is being imported by IFB under various CTIs and even the same type of heating element is being imported under several CTIs. From this inconsistency, it clearly appeared that the importer is, at least intermittently mis-classifying the subject heating element and evading the Customs duty, as applicable.

- iv) It appeared that the submission of the importer that their reasoning for classifying the heating element as part of the related apparatus is that it is heating element assembly, is baseless, as they are classifying the items as part of the related apparatus, as described at paras 1.5.1(viii), 1.5.1(x) and 1.5.1(xi) supra. This also shows that the items which are just sheathed heating elements, are also being mis-declared, mis-classified and are being wrongly cleared as part of the related apparatus and not as heating element under correct CTI 85168000.
- v) In the shipment imported and cleared vide Bill of Entry no. 8414221 dated 08.08.2020 through Mumbai Air Cargo, all the items were imported for washing machine. The items namely Microswitch and NTC (sensor), both, were classified under CTIs having residual classification i.e., 'Other' in the Chapters related to Switches and measuring/checking instruments respectively and only Heating Element (having dedicated CTI 85168000) was cleared under CTI 84509010 i.e., as part of washing machine. The reason given by the importer that heating element with NTC is classifiable as part of washing machine fails here and it appeared that the importer is wilfully mis-classifying the subject heating element. It also appeared that NTC and heating element assembly are just words being used by the importer for giving an excuse for their wilful misdeclaration and thereby mis-classification leading to evasion to Customs duty, as applicable.
- vi) As detailed in para 1.5.1(xv) supra, the importer cleared Heating element with NTC under CTI 851680000 vide Bill of Entry no. 4022964 dated 11.07.2019 and the reason given for the same is that it was a small lot and CTI 85168000 was mentioned in the Invoice. From this reasoning of the importer, it appeared that the classification used by the importer depends upon the size of the lot and that they can use CTI 8516800 for small lot of heating element with NTC. Also, as detailed in same para 1.5.1(xv) supra, the Heating elements imported and cleared vide Bill of Entry no. 3719594 dated 19.06.2019 were cleared under CTI 85168000, *as instructed by the Customs officer*. These facts show that even the supplier mentioned CTI 85168000 for subject heating elements and Customs instructed the importer to classify the subject heating element under CTI 85168000 and occasionally they did so. But overall, they did not follow the instruction of Customs and it appeared that they wilfully mis-declared the subject heating element by mis-classifying the same under CTIs other than 85168000 and evaded the Customs duty, as applicable.
- vii) From these facts, it appeared that by way of wilful mis-declaration leading to misclassification, the importer has evaded Customs duty to the tune of ₹ 5,15,76,646/, as detailed in para 1.7.1 supra, and the same appeared recoverable by invoking the provisions of section 28(4) of the Customs Act, 1962.

1.10.2 In relation to mis-classification of Cross Flow Fan Blade:

- i) IFB started import of the 'cross flow fan blade' under CTI 84145990 by describing it as 'cross flow fan' and as detailed in para 1.5.2(ii) supra, after change in BCD rate for CTI 84145990 (from 7.5% to 10% of AV), the importer started describing the item as 'cross flow fan blade' and switched the classification to CTI 84149090 wherein applicable BCD was 7.5% of AV. From this change in description and classification with change in tariff, it appeared that the change in description as well as classification was done to import the subject item by paying less Customs duty i.e., to evade the Customs duty.
- ii) Thereafter, the importer is mentioning description of the subject item as "Cross Flow Fan Blade (Part for fan for Air Conditioner) and *declaring it as 'part of fan' by classifying the same under 84149090*. This declaration by the importer, in itself, appeared

contradictory to the description of the subject item which mentions ultimate use of the item as part for AC.

- iii) The subject cross flow fan is being imported by the importer for use in manufacturing of indoor unit of split Air Conditioner (AC) as well as for sale as spare parts of AC i.e., ***the item is being imported for sole use in AC***. Although, the importer is declaring the item as 'part for fan' but there is no independent existence of the said fan (except for use in AC) of which the subject item is being declared and classified to be part of. In relation to cross flow fan, the importer mentioned that '*it is a type of Fan used in Air conditioner's indoor unit, for forced circulation of indoor air convection*' '*This fan, when integrated into the respective element of the Split air Conditioner, circulate air in the respective element*'. It appeared that this confirms the fact that the importer is very well aware of the fact that the item is for sole use in AC and there is no independent existence of the so-called 'cross flow fan'. From these facts it also appeared that the importer intentionally chose to mis-declare the subject item as part of fan and not as part of AC even if the so-called cross flow fan exists only inside AC and by this wilful misdeclaration by mis-classification has evaded Customs duty, as applicable.
- iv) As discussed in para 1.5.2(vii)(c) as well as 1.6.2(ii)(b) supra, it appeared that the Explanatory notes to CTH 84.14 of Customs Tariff, excludes cross flow fans from classification as a fan under CTH 84.14. So, if the cross-flow fan is not classifiable under CTH 84.14 no item can be classified under CTH 84.14 by merely declaring it as a part of a cross flow fan. Also, Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa, in his statement dated 28.02.2024 as well as Shri Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, in his statement dated 01.03.2024 stated that although the item (cross flow fan blade) is not specifically included in any of the heading of Chapter 84 or 85, it is part of fan so it will be classified under CTI 84149090 i.e., as other part of a fan. These statements are inadequate to justify the classification claimed by the importer.
- v) As stated by Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa, in his statement dated 28.02.2024, the subject cross flow fan blade is a part of a fan consisting of blade, motor and bearing, this fan is used in Air Conditioner and so is being classified under CTH 8414. This statement clearly indicates that even when the importer is describing the subject item as a part of AC, they are wilfully mis-declaring the same as a part of a fan.
- vi) Shri Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, in his statement dated 01.03.2024, specifically stated that "*Section Note 2(a) of Section XVI of Customs Import Tariff is the legal basis for classification of the subject item under CTI 84149090*". Section Note 2(a) of Section XVI of Customs Import Tariff states that "*Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.2, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings;*". In the same statement he also stated that although the item i.e., 'cross flow fan blade' is not specifically included in any of the heading of Chapter 84 or 85, it is a part of a fan and so it would be classified under CTI 84149090. This is contrary to the text of section note 2(a) of Section XVI of Customs Tariff which appeared to exclude the 'cross flow fan blade' from the preview of section note 2(a) of Section XVI of Customs Tariff. In the same statement, Shri Rajshankar Ray also stated that this cannot be used as a standalone fan and has assembled into a fan assembly that goes into Air Conditioner. From such statements, it appeared that the importer is intentionally ignoring aspects other than the word 'fan' and is adamant to classify the subject item as part of fan only and thereby, wilfully evading the total effective Customs duty @38.425% of AV (as detailed in para 1.2 supra) of the subject 'cross flow fan blade'.

- vii) From these facts, it appeared that by way of wilful mis-declaration leading to misclassification, the importer has evaded Customs duty to the tune of ₹ 6,05,84,288/-, as detailed in para 7.2 supra, and the same appeared recoverable by invoking the provisions of section 28(4) of the Customs Act, 1962.

1.11 Liability of goods for confiscation and liability of importer for penalty:

- i) Most of the Bills of Entry of the importer are being RMS (Risk Management System) facilitated and are being cleared on the basis of self-assessment by the importer. In such a scenario and given the scheme of self-assessment whereby the onus of the correct assessment and right declarations in respect of the imported goods lies on the importer, it appeared that the importer has misused the self-assessment scheme and RMS facilitation to resort to mis-declaration and thereby mis-classification of imported goods, as discussed in the foregoing paras. These wilful acts of the importer have rendered the subject imported goods liable to confiscation under section 111(m) of the Customs Act, 1962 and the importer liable to penalty under section 112 (a) of the Customs Act, 1962.
- ii) Further, since the importer has wilfully evaded Customs duty to the tune of ₹11,21,60,934/- (₹5,15,76,646/- and ₹6,05,84,288/- in relation to import of heating element and cross flow fan blade respectively) as detailed in para 1.7.1 and para 1.7.2 supra, they have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

1.12 Officials of IFB, responsible for the subject mis-declaration: It appeared that the following officials were responsible for the subject mis-classification in import of heating element and cross flow fan and therefore, liable for imposition of penalty:

- i) Shri Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, Goa, being the overall in-charge of IFB, Home Appliances Division during the subject period, is responsible for mis-classification and thereby evasion of Customs duty in import of heating elements and cross flow fan imported in relation to Home Appliances being manufactured by IFB at Verna, Goa. In his statement dated 01.03.2024, he admittedly stated that there are significant inconsistencies and errors in spare parts related classification which are coming by air cargo for traded products and submitted that he would make sure that they would revalidate the classifications. In the same statement, at instances {para 1.4.10 (xiii)/(xiv)/(xv) supra} he stated that he could not give clear answer as he was not prepared on that subject. The investigation was started in July, 2023 and till 01.03.2024 he was not prepared on the subject of proper classification of 'heating element'. Moreover, in the same statement, he had stated that '*Section Note 2(a) of Section XVI of Customs Import Tariff is the legal basis for classification of 'Cross flow fan blade' under CTI 84149090*' (para 1.4.10 (xxiv) supra) and he had also stated that '*although the item i.e., 'cross flow fan blade' is not specifically included in any of the heading of Chapter 84 or 85, it is part of fan so it would be classified under CTI 84149090*' (para 1.4.10 (xxv) supra). It appeared that such contradictory statements show his intention to stick to their deliberate and wilful mis-declaration and thereby mis-classification resulting in evasion of applicable Customs duty. It appeared that his acts of omission and commission have rendered the subject goods liable for confiscation under section 111(m) of the Customs Act, 1962 and has rendered himself liable for penalty under section 112(b) of the Customs Act, 1962. Also, from the contradictory statements it appeared that he has intentionally caused the subject mis-declaration by the importer and therefore he appeared liable to penalty under section 114AA of the Customs Act, 1962.
- ii) Shri Ashish Singh, Finance Head, Washer and AC Factory of IFB, Goa, being jointly responsible {with Shri Vilas Kamath, Head (Supply Chain Management)} for taking final decision in classification matters during the subject period, is responsible for mis-

classification and thereby evasion of Customs duty in import of heating element as well as cross flow fan being imported by IFB. In his statement dated 05.10.2023, he had stated that Head of Supply Chain Department and Head of Finance collectively take final decision in the classification matter and release purchase orders. It appeared that his acts of omission and commission have rendered the subject goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and has rendered himself liable for penalty under Sections 112(a) of the Customs Act, 1962.

iii) Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa, being jointly responsible (with Shri Ashish Singh, Finance Head, Washer and AC Factory) for taking final decision in classification matters during the subject period, is responsible for mis-classification and thereby evasion of Customs duty in import of heating element as well as cross flow fan being imported by IFB. He had signed the letter dated 04.09.2023 wherein wrong and mis-leading facts were submitted to DRI. In his statement dated 28.02.2024, he had stated that he could not comment on the many discrepancies and variation in the classification of heating element being imported by IFB and that he would come back with the comments. Neither any comments have been submitted by him after the statement dated 28.02.2024 nor the applicable differential duty has been paid by them in relation to the accepted discrepancies. It appeared that his acts of omission and commission have rendered the subject goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and he has rendered himself liable for penalty under section 112(b) of the Customs Act, 1962. Also, from the fact that he submitted above mentioned factual wrong and mis-leading letter dated 04.09.2023 to DRI, it also appeared that he has intentionally caused the subject mis-declaration by the importer and, therefore, he appeared liable to penalty under section 114AA of the Customs Act, 1962.

iv) Shri Collegal Srinivasan Govindaraj, Chief Executive Officer (CEO), Industrial Business & Projects, IFB, Bangalore, being the overall in-charge of IFB, Bangalore, is responsible for mis-classification and thereby evasion of Customs duty in import of heating elements imported in relation to Industrial Appliances for IFB, Bangalore during the subject period. In his statement dated 29.02.2024, [Annexure 22 to the subject SCN as well as paras 1.4.9(vi)/(vii)/(xi)/(xii)] accepted the discrepancies in their import and stated that he would look into the matter but did not revert. It appeared that his acts of omission and commission have rendered the subject goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and thereby he is liable for penalty under Sections 112(a) of the Customs Act, 1962.

1.13 In view of the above, vide Show Cause Notice No. 1300/2024-25/COMMR/GR.V/NS-V/CAC/JNCH dated 21.10.2024, M/s IFB Industries Ltd. (IEC 0288000927), 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) As per extant instructions in relation to self-assessment, the onus of providing the correct declaration rests on the importer. It appeared that in view of the wilful mis-classification during self-assessment as detailed in para 1.10 supra, the importer and the officials mentioned in para 1.12 supra (up to the extent of individual responsibility) have caused short payment of customs duty to the tune of **₹11,21,60,934/- (₹5,15,76,646/- and ₹6,05,84,288/- in relation to import of heating element and cross flow fan blade respectively)**. Why the evaded duty should not be demanded and recovered from the importer in terms of Section 28(4) of the Customs Act, 1962, invoking the provision of extended period for duty demand, along with applicable interest in terms of Section 28AA of the Act, *ibid*.
- (ii) For willful mis-statement and thereby leading short payment of duty, why the importer is not liable for penalty under Section 114A of the Customs Act, 1962 and the subject

officials (i) Shri Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, Goa (ii) Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa (up to the extent of individual responsibility) are not liable for penalty under Section 114AA of the Customs Act, 1962, as applicable.

- (iii) In view of the act of willful mis-classification as detailed in para 1.10 supra, it appeared IFB and the officials mentioned in para 1.12 supra (up to the extent of individual responsibility), have rendered the subject goods valued at Rs. 61,51,24,708/- (Rs. 39,47,08,897/- and Rs. 22,04,15,811/- in relation to import of heating element and cross flow fan blade respectively) imported vide bills of entry detailed in Annexure-36A and Annexure-36B to the subject show cause notice, liable to confiscation. Therefore, why the subject goods valued at Rs. 61,51,24,708/- (Rs. 39,47,08,897/- and Rs. 22,04,15,811/- in relation to import of heating element and cross flow fan blade respectively) are not liable to confiscation under Section 111(m) of the Customs Act 1962.
- (iv) By rendering the impugned goods valued at Rs. 61,51,24,708/- liable to confiscation under Section 111(m), the subject officials (i) Shri Ashish Singh, Finance Head, Washer and AC Factory of IFB, Goa (ii) Shri Collegal Srinivasan Govindaraj, Chief Executive Officer (CEO), Industrial Business & Projects, IFB, Bangalore (up to the extent of individual responsibility) should not be held liable to penal action under Sections 112(a) or 112(b) of the Customs Act, 1962, as applicable.
- (v) It is pertinent to mention that the differential duty calculation is up to 05th June, 2024. It appeared that the further import of subject items with applicable differential duty, if any, till the time payment to government, why dues will not be liable to be recovered in terms of Section 112(a) or 112(b) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Act, *ibid*.

2. WRITTEN SUBMISSION OF THE NOTICEES

During the PH held on 30.09.2025, all the five Noticees viz. (i) M/s IFB Industries Limited (IEC 0288000927); (ii) Sh. Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, Goa; (iii) Sh. Vilas Kamath, Head (Supply Chain Management), IFB, Goa; (iv) Sh. Ashish Singh, Finance Head, Washer and AC Factory, IFB, Goa; and (v) Sh. Collegal Srinivasan Govindaraj, Chief Executive Officer (CEO), Industrial Business & Projects, IFB, submitted their respective replies to the SCN through their authorised representative, Sh. O. P. Khanduja. The submissions made by the Noticees are as under:

2.1 Submissions of M/s IFB Industries Limited (IEC 0288000927)

Vide their reply submitted on 30.09.2025, M/s IFB Industries Limited, denied all the allegations made in the subject SCN. The brief of submissions made by the Noticee, in their words, is as under:

A. Submissions on Legal Ground

2.1.1 SCN issued beyond jurisdiction

The Noticee submitted that Section 28BB of the Act provides that any inquiry or investigation under the Customs Act culminating in the issuance of a notice under section (1) or sub-section (4) of the Section 28 shall be completed by issuing such notice within a period of two years from the date of initiation of audit, search, seizure or summons as the case may be. In the impugned matter, their factory premises were searched on 25th July, 2023 and an incomplete Show Cause Notice (without enclosing RUDs and Annexures) dated 21st October, 2024 was received by them on 26th November, 2024. A SCN without enclosing RUDs and details of computation of duty demanded cannot be construed to be a SCN. While intimating date of PH,

through e-mail dated 20th August, 2025, a google link for downloading the RUDs and Annexure was sent. As such, the Department has failed to issue the impugned SCN within the statutory period of two years commanded under Section 28BB of the Act. Therefore, the impugned SCN is bad in law and issued beyond jurisdiction and needs to be dropped on this ground alone.

2.1.2 Doctrine of Comity of Courts Violated

The Noticee submitted that despite the matter decided by the Additional Commissioner, Gr-V, NCH, Nhava Sheva, vide his Order-in-Original No. 49/2024-25/ADC/GR.V/NS-V/CAC/JNCH, dated 12.04.2024, the Commissioner of Customs, Nhava Sheva on the basis of DRI's re-investigation of the matter on the same grounds, issued the impugned SCN after six months of the date of issue of O-in-O passed by the Additional Commissioner, alleging again wilful mis-declaration and demanded differential duty by invoking provisions of Section 28(4) of the Act. The theory of "comity of courts" postulates that when there are two or more courts having parallel jurisdiction over the same matter, then in such cases the jurisdiction of the second and any other authority are deemed to be ousted, when any one of the authorities having a concurrent parallel jurisdiction has taken cognizance of a particular issue. In the present case, the Additional Commissioner of Nhava Sheva-V, had taken cognizance of the imports of Heating Element Assembly and had passed an Order-in-Original dated 12th April, 24, against which the Importer had preferred an Appeal before the Commissioner of Customs (Appeals), Mumbai, which is still pending. In the impugned SCN also, the classification of Heating Element Assembly is disputed and required to be adjudicated by the Commissioner of Customs NS-V. By application of Comity of Courts theory, the Commissioner of Customs NS-V has no jurisdiction to issue SCN and adjudicate the matter as the Additional Commissioner of Customs had first taken cognizance of the matter and even adjudicated the same. Reliance was placed on the following case laws:

- (i) *Kenapo Textiles Pvt. Ltd. & Another Vs. State of Haryana & Others* [1992 (84) STC 88]
- (ii) *Orient Arts and Craft Vs. Commissioner of Customs, Mumbai*, [2003(03) LCX 0127]
- (iii) *Ramnarain Biswanath Vs. Collector of Customs, Calcutta* [1988(034)ELT 202(Tri.-Cal)]

2.1.3 O-in-O passed by Addl. Commissioner not reviewed.

The Noticee submitted that the Commissioner of Customs NS-V, under Section 129D(2) of the Customs Act, 1962, may call of his own motion and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order, under the Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order, and may by order direct such authority for determination to apply to the Commissioner of Customs (Appeals) for the determination of such points arising out of the decision or order, as the case may be specified by the Commissioner in his order. In the instant case the Commissioner NS-V, had not issued any order under Section 129D(2) of the Act to appeal against the Order passed by the Additional Commissioner, wherein he had removed the charge of wilful mis-declaration from the SCN by issue of a corrigendum. As such, the demand of duty under section 28(4) of the Act in the impugned SCN is not sustainable and needs to be withdrawn. Factually speaking, the Department, in the first instance agreed that there was no wilful mis-statement or suppression of the facts or wilful mis-declaration by the Importer to evade duty. The issue of corrigendum to the SCN and not imposing penalty under section 114A of the Act, established their bonafide that they have not wilfully mis-declared any fact to evade duty.

2.1.4 Section 28(4) of the Act not applicable.

The plain reading of para 10(i) of the impugned SCN is that the classification of the impugned goods was disputed by Audit Officers under their letter dated 09.07.2013 while post-auditing assessment of Bill of Entry No. 2255051 dated 28.05.2013. The Importer replied to the Audit query and continued to pay the duty under heading 8419. It is noted that from 2017 the

classification was changed to heading 8450. During the period from 2017 to 2023, Custom Officers validated the assessment under heading 8450 as no re-assessment under Section 17(4) of the Act was proposed or any demand under Section 28 of the Act was raised for any short levy. The issue of the classification of the impugned goods was reignited after 10 years, when query was raised by the Docks officer on the Bill of Entry No. 7092638 dated 28.07.2023. The disputed matter was adjudicated by the Additional Commissioner under his Order-in-Original dated 12.04.2024. Yet again DRI searched their factories and Offices on 26th July, 2024 for misclassification of the impugned goods. The enquiries culminated in issuance of the impugned SCN dated 21.10.2024 under Section 28(4) of the Customs Act.

The above chronology establish that the Department was fully aware of the classification of the impugned goods under heading 8450 since 2013 and never altered/objected the same till 12.04.2024. Therefore, slapping of allegation of wilful mis-declaration leading to misclassification for evasion of duty is abuse of power, to justify invocation of section 28(4) of the Act. Reliance was placed on the case of *Collector of Central Excise, Hyderabad v. M/s. Chemphar Drugs and Liniments, Hyderabad* [1989(02)LCX0024 = 1989(2)SCC127] and *Padmini Products Versus Collector of C. Ex.* [1989(08)LCX0031].

Assuming while denying that Heating Element Assembly merited classification under CTH 8516, the Department could have issued SCN under section 28(1) for the clearance subsequent to 12.04.2024. Therefore, the charge of deliberate misclassification and demand of differential duty under section 28(4) of the Act are not sustainable in law and need to be culled.

2.1.5 Application of Section 28(10B) of the Act

In view of the above factual matrix, the provisions of Section 28(10B) of the Act would be applicable and the impugned SCN would be deemed to have been issued under section 28(1) of the Act. Section 28(9) of the Act mandates time constraints for adjudication of the SCNs issued under section 28 of the Act.

As stated supra the impugned SCN is not sustainable under section 28(4) of the Act and thus deemed to have been issued under section 28(1) of the Act, and therefore, was mandated to be adjudicated within six months from the date of issue unless the said time of six months was extended by the Commissioner of Customs. There is no whisper that the extension of time has been sought much less granted. The statutory time limit of six months had since expired on 20.04.2025 and no extension of time has been sought or allowed. As such, it would be beyond the jurisdiction of the Commissioner to adjudicate the impugned SCN.

As stated above, the impugned SCN deemed to have been issued under section 28(1) of the Act, therefore, the penalty proposed under section 114A of the Act, cannot be attracted in the matter. As such, no penalty can be imposed under section 114A of the Act on the Importer.

2.1.6 Penalty proposed both under Section 112(a) and 114A not sustainable.

In the SCN, penalty has been proposed both under Section 112(a) and 114A of the Customs Act, 1962. The 5th proviso of Section 114A states, "that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114 of the Act." As such proposal for penalty under section 112(a) and 114A is bad in law and needs to be quashed ab-initio.

It is also pertinent to highlight that the impugned SCN is entirely based on the Statements of the Executives of IFB, who all are not expert on Customs Tariff. No other corroborative evidence is adduced to substantiate the charges framed against IFB. It is trite law that the charges cannot be sustained only on the basis of statements.

The text of the impugned SCN reveals that the issue of classification and other allegations are carved out with pre-determined mind. Every explanation submitted in response to any query of DRI officers or tendered during recording of statements of the Executives of IFB, is countered and rejected in the impugned SCN itself. The impugned SCN appears to be issued in haste, on the basis of Investigation Report of DRI without considering or verifying the facts of the case. It appears from the impugned Notice that matter stands pre-decided and only formality is to be accomplished to confirm alleged classification and demand the differential duty. Thus, the impugned SCN violates the principles of natural justice and is bad in law and not sustainable on this ground alone.

B. Submissions on Merit

2.1.7 Classification of “Heating Element Assembly”

2.1.7.1 The Noticee had imported ‘Heating Element Assembly’ for manufacture of Washing Machine, Industrial Washing Machines, Industrial Dish Washer, Standalone Dryers and Microwave Oven, and classified the same as part of respective machines, under heading covering ‘Parts’ e.g. ‘Heating Element Assembly’ meant for Washing Machine was classified under heading 84509010 covering “Washing Machine” as its part. It has been proposed in the impugned SCN that these goods are “Heating Resistors” and by application of Rule 2(a) to Section XVI (covers Chapter 84 and 85) of Customs Tariff, are ‘correctly classifiable under CTH 8516 more specifically under CTH 8516 80 00, as ‘Heating Resister’, since ‘Heating Resister’ is specifically mentioned under CTH 8516 (Tariff Item 8516 80 00) of the Customs Tariff. It is submitted that though the impugned goods are described as Heating Element, in the import invoices and ‘Bills of Entry’, these are in fact Heating Element Assembly / sub-assembly, containing ‘Heating Resister’ being one component and other parts as explained below:

(a) Technical Specification for Heating Element Assembly – Washing Machine

The Heating Element Assembly used in Washing Machine comprises of the following parts:

- (i) Fuse (Thermofuse) – 2 Nos,
- (ii) Resistance wire (OCr25AL5),
- (iii) Insulating material (MGO),
- (iv) Cabinet flange,
- (v) Cold pin,
- (vi) NTC (Negative Temperature Coefficient),
- (vii) Sheath,
- (viii) Gasket,
- (ix) Earth terminal (connector 8),
- (x) M6 Bolt and press board assembly,
- (xi) Ceramic insulator and
- (xii) Phase terminal

(b) Technical Specification for Heating Element Assembly- Industrial Dishwasher

The Heating Element Assembly used in Industrial Dishwasher Machine comprises of the following parts.

- (i) Resistance wire,
- (ii) Insulation material (MGO),
- (iii) Cold pin,
- (iv) Sheath,
- (v) Gasket,
- (vi) Earth terminal,
- (vii) M6 Bolt and press board assembly,

- (viii) Ceramic insulator and
- (ix) Phase terminals.

(c) Technical Specification for Heating Element Assembly – Microwave oven and for dish washer and a technical writeup on the functioning of individual components describing above assembly, was enclosed.

The CTH 85.16 covers, “(A) *Electric instantaneous or storage water heaters and immersion heaters*; (B) *electric space heating apparatus and soil heating apparatus*; (C) *electro thermic hair dressing apparatus (for example hair dryers, hair curlers, curling tong heaters) and hand dryers*; (D) *electric smoothing irons*; (E) *other electrothermic appliances of a kind used for domestic purposes*; (F) *electric heating resistors other than those of heading 85.45*”

2.1.7.2 The bare perusal of the ambit of CTH 85.16, would reveal that goods grouped under (A) to (E) are for use “as such” and perform their designed function without any further assembly or manufacture. On the same analogy and under principle of *ejusdem generis*, the goods grouped under (F) namely electric heating resistors other than those of heading 85.45, would also refer to only those goods, which will not require any further assembly or manufacture before use. The impugned goods are not only resistors but are assembly of resistors, two fuses, NTC, gasket and fastening device. Resistors are only a part of the heating element assembly. As such, it cannot be used as such and needs further integration with other components for ultimate use.

2.1.7.3 As explained above, the impugned goods are not a bare resistor. It is assembly of various distinct parts, having individual function, namely resistors, NTC, two fuses gasket and fastening device. These components are assembled, integrated electrically, and mounted on a base with gasket to be then fitted into the Washing Machine. The other Heating Elements are also connected to many other components before fitting into the respective machine. The impugned goods are not directly connected to the electrical supply but are connected through micro controller and governing element such as NTC. As such, the impugned goods are beyond the purview of CTH 85.16 and would correctly merit classification as part of the respective machine. The above view musters further support from the HSN EXPLANATORY NOTES, for CTH 85.16, under caption, (F) ELECTRIC HEATING RESISTORS, at page XVI-85.16-1. Therefore, the sub-assembly incorporating ‘Heating Resistors’ as one of the components is correctly classifiable as part of equipment. (e.g. Washing Machine, Industrial Washing Machine, Microwave Oven, Standalone Cloth Dryer or Industrial Dish Washer). As such, there is no short levy of duty and the demand of differential duty of Rs. 5,15,76,646/- related to import of “Heating Element Assembly” needs to be dropped on this ground alone.

2.1.8 Classification of ‘Cross flow fan blade’.

2.1.8.1 The Noticee has classified “Cross flow fan blade” under Tariff Item 84149090 of the Customs Tariff as part of “Cross flow fan” of the indoor unit of split Air Conditioner. The impugned SCN proposes classification of these goods under 84159090 of the Customs Tariff as part of the “Split Air Conditioner” on following grounds:

- (i) Cross flow fan is being imported for use in manufacturing of indoor unit of split Air Conditioner (AC) as well as for sale as spare parts of AC i.e., the item is being imported for sole use in ACs.
- (ii) There is no independent existence of the said ‘Cross flow fan (except for use as internal part of indoor unit in AC).
- (iii) Explanatory notes to CTH 84.14, excludes Cross flow fans from classification as a fan under CTH 84.14. If Cross-flow fan is not classifiable under CTH 84.14, no item can be classified under CTH 84.14 by merely declaring it as a part of a Cross-flow fan.
- (iv) Explanatory note to CTH 8515, specifically mentions that parts for AC machines, other than separately presented Indoor and Outdoor units for split ACs, whether or not

designed for building into a self-contained unit are to be classified in accordance with the provisions of Note 2(a) to Section XVI or if note 2(a) is not applicable in accordance with note 2(b) or 2(c) to Section XVI, depending on whether or not they are identifiable as suitable for use solely or principally with the AC machine of which they are part. Note 2(a) to section XVI does not appear to be applicable in this case, therefore, in light of note 2(b) to Section XVI, these goods viz 'Cross flow fan blade' would merit classification under CTI 8415 90 00 as parts of ACs.

2.1.8.2 With regard to allegation at (i) and (ii) above, it is a fact that the impugned goods are mounted on a shaft of a Motor fitted inside the Indoor unit of the AC. It is also a fact that the said fan circulates the cold air into the room. Be that as it may, the undeniable fact is that every AC has an inbuilt option of using FAN only. It is not necessary that the fan will only circulates cold air when AC is working. The Fan can function as FAN ONLY also and circulate air at the ambient temperature. The fact that the Fan is not visible to the naked eye cannot eliminate its existence, and the Cross Fan Blade will remain as Part of the Fan and not part of AC. Reliance was placed on the Advance Ruling sought by Blue Star Ltd., [as reported in (2024) 15 Centax 433 (A.A.R. - Cus. - Del.)] wherein in para 10.4 of their Ruling it is interalia recorded, *".....It, therefore, transpires that 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. The goods in question in the instant application for advance ruling i.e., "ODU Controller PCB", cannot perform its function on a standalone basis in the imported condition. Moreover, it appears that functioning of "ODU controller PCB" 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."*

2.1.8.3 In the instant case, the FAN in the AC has a specific function of circulating air in the space and it is capable of working of its own, even when AC is not working, as such, the Cross-flow fan blade would be appropriately classifiable under 84149090 and not under CTH 8415.

2.1.8.4 As may be observed from (iii) above that classification of "Cross flow fan blade' under CTH 84159000, has been proposed on the ground that "Cross flow fan" itself is classifiable as part of Air Conditioner under CTH 8415, therefore, "Cross flow fan blade" being part of 'Cross flow fan" is also classifiable under CTH 8415 9000. The "Cross Flow fan" is classifiable under CTH 8414, which encompass *"Air or vacuum pump, air or other gas compressor and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; gas-tight biological safety cabinets, whether or not fitted with filters"* and not under CTH 8515 as stated in the impugned SCN. "Cross flow fan" is used to deliver cooled air into its surrounding and its function is squarely covered under the function of 'fan' described in the HS Explanatory Note, therefore, even if these fans are specially manufactured/assembled for use with air conditioners, these will remain classified under Tariff CTH 84.14 of the Customs Tariff only in view of the HS explanatory note.

2.1.8.5 As regards the ground that HS Explanatory Note to CTH 84.14 excludes 'cross flow fan', it is submitted that there is no such specific exclusion of 'cross flow fan' in HS explanatory Note to CTH 8414. Further, as per HS Explanatory Note to CTH 84.14, 'Fans' are excluded from CTH 8414 only when they are fitted with elements in addition to their motor or housing. Therefore, 'cross flow fan" not fitted with element other than motor will merit classification under CTH 8414 of the Customs Tariff only.

2.1.8.6 As regards reference to Explanatory Notes to CTH 8515, relating to classification of parts of goods falling under CTH 8415, the bare perusal of the said Explanatory Notes at Page XVI-8415-3, Volume 4 Seventh Edition of the HSN Explanatory Notes, reveals, that parts of articles of heading 8415, which in itself are articles of heading 8414 (compressor, fan) are to be classified under heading 8414 only. As submitted above “Cross Flow Fan” are classifiable under 84.14 and therefore, even if imported as part of Air Conditioner, they will remain excluded from heading 8415 and by application of Section Note 2(a) to Section XVI of the Customs Tariff will be classifiable under heading 84.14 of the Customs Tariff.

2.1.8.7 Noticee submitted that Hon’ble Apex Court in the matter of Commissioner of Central Excise Delhi Vs Carrier Aircon Ltd 2006 (199) ELT 577 (SC) and in the matter of classification of chiller used in the manufacture of Air conditioner had interalia held that chiller is classifiable under CTH 84.18 and not as part of Air Conditioner in CTH 84.15. Hon’ble Apex Court has further held that end-use to which the product is put to, cannot determine classification of product when product manufactured falls under a specific heading. Noticee submitted that ratio of above judgment is squarely applicable in present case and “Cross Flow Fan” meant for ‘Air Conditioner’ will be classifiable under heading 84.14 of the Customs Tariff and not under CTH 84.15 as stated in SCN.

2.1.8.8 In the impugned SCN, the classification of “cross flow fan blade” under heading 8415 of the Customs Tariff has been proposed on ground that “Cross flow fan” itself is classifiable under CTH 8415. However, as submitted above “cross flow fan” is correctly classifiable under 8414 only, therefore “cross flow fan blade” being identifiable part of “Cross flow Fan” is correctly classifiable under Tariff item 84149090 only.

2.1.8.9 The Noticee, submitted that in view of the above, they have correctly classified the “Cross flow fan blade” under Tariff item 84149090 and there is no short levy of duty and requested to drop the demand of Rs. 6,05,84,288/- related to import of “cross flow fan blades”.

2.1.8.10 The Noticee, without prejudice to submission made above submitted that “Heating Element Assembly” and ‘Cross flow fan blade’ have been correctly classified and there is no short levy of duty of duty, say that, otherwise also demand of duty amounting to Rs 3,25,55,242.00, in the matter of import of Heating Element Assembly and duty amounting to Rs. 3,55,84,098/- in the matter of import of “Cross flow fan blade’ is barred by time limitation of two years. The SCN has been issued beyond normal period of limitation of two years, invoking extended period of limitation of 5 years under Section 28(4) of the Customs Act, 1962. The extended period of limitation has been issued on the ground that after introduction of self-assessment, it is duty of the importer to classify the goods correctly, and incorrect classification amounts to wilful misdeclaration and extended period of the limitation can be invoked. The impugned SCN further alleged that there is inconsistency in classification and inconsistency in classification amounts to wilful misdeclaration. The Noticee submitted that demand of duty invoking extended period of limitation of 5 years under Section 28(4) of the Customs Act, 1962 can be made only in cases where duty has been not levied or short levied by reason of collusion or any wilful mis-statement or suppression of fact. That incorrect claim of classification or exemption notification made at time of self-assessment, does not amount to wilful misstatement or suppression of fact. The Noticee relied on the order of Hon’ble CESTAT in the matter of *Midas Fetcham, Impex Pvt. Ltd. Vs Principal Commissioner of Customs, ACC (Imp) New Delhi, as reported in 2023 (384) ELT 397(Tri-Del)*.

2.1.8.11 Further, many of the Bills of Entry were assessed by the Custom Officers also from time to time. It clearly demonstrated that the assessing officers were also of the view that ‘Heating Element Assembly’ is classifiable as part of appliance under heading meant for parts of the appliance to which these are integrated and ‘Cross flow fan blade’ under Tariff Item 84149090 of the Customs Tariff. A subsequent change in opinion regarding classification of the

goods does not mean there was wilful misstatement on the part of Noticee. The Noticee therefore, submitted that ingredient of sub-section 28(4) is not satisfied and therefore, the demand of duty under section 28(4) of the Customs Act, 1962 is not maintainable and required to be dropped.

2.1.8.12 It has been alleged in the impugned SCN that the Noticee was classifying Cross Flow Fan Blade under the CTH for “Fans” and changed the classification under CTH for “Parts of Fan” to evade payment of appropriate duty. In this connection, the doctrine of Promissory Stopple does not apply to taxation matters and a correction to classification can be made at any time.

2.1.9 Confiscation under Section 111(m) of the Act.

A mere glance of the provisions of Section 111(m) would undoubtedly reveal that these provisions can only be invoked, in case when the goods do not correspond in respect of value or in any other particulars with the entry made under the Customs Act, 1962. There is no allegation in the impugned SCN that the goods were not found as per declaration in terms of description and quantity. There is also no whisper in the impugned SCN, doubting truth or accuracy of the declared value. The only area of purported disagreement is regarding classification of the impugned goods. The classification was declared as per Noticee’s understanding of the Customs Tariff. The same classification has been validated by the Department in many Bills of Entry. As such, it is obvious that the impugned goods corresponded to declared value and all other particulars. In view of the above clear factual matrix, the provisions of section 111(m) are not attracted and impugned goods cannot be held liable for confiscation under section 111(m) of the Act. Reliance was placed on the following case laws:

- (i) *Lewek Altair Shipping Pvt Ltd Vs Commissioner of Customs Vijaywada*, [2019 (366) E.L.T. 318 (Tri. - Hyd.)].
- (ii) *Sirthai Superware India Ltd Vs Commissioner of Customs Nhava Sheva-III* [2020(371) E.L.T 324 TRI-(MUM)]
- (iii) *Commissioner of Customs (Import) ACC, Mumbai Vs R.K. Impex*, [2010(06) LCX0180]
- (iv) *Renaissance Global Limited, Gold Star Jewellery Designs Pvt. Ltd, Jewel Art, Jewelex India Pvt. Limited, M.K* [2022(11) LCX0038]
- (v) *Lietronics Vijay India Pvt. Ltd. Versus Commissioner of Customs, Chennai* [2008(08) LCX0242]
- (vi) *Shiv Kripa Ispat Pvt. Ltd. Versus Commissioner of C. Ex. & Cus., Nasik*, [2009 (235) E.L.T. 623 (Tri.-LB)]
- (vii) *Commissioner of Customs (Import) Vs. Rishi Ship Breakers* [2009 (235) E.L.T. 623 (Tribunal-LB).]

2.1.10 Penalty under Section 114A of the Act.

2.1.10.1 Penalty under section 114A is warranted only when duty is purportedly evaded by reason collusion or any wilful mis-statement of or suppression of facts. However, there is no allegation in the impugned SCN that the importer had colluded or made any mis-statement or suppressed any facts as brought in the following paragraphs.

2.1.10.12 The words ‘collusion’, ‘mis-statement’, ‘suppression’ and ‘misdeclarations’ are having distinct meaning and different connotations. These are mutually exclusive. It may be noted that impugned SCN nowhere alleges collusion or wilful mis-statement or suppression of facts. In fact, there is no mis-statement as the goods have been correctly stated and found as stated in terms of description, quantity and value and nothing has been factually suppressed. The impugned SCN repeatedly alleges that the goods have been misclassified while self-assessing the goods. The declaration of classification not in conformity with the contention of the Customs, would not make it mis-declaration. That is why the word ‘Misdeclaration’ is conspicuously

absent in the provisions of section 114A of the Act. In this circumstance, the charge of mis-statement obviously fails and consequent proposal to impose penalty under section 114A, is ex-facie bad in law and thus not sustainable.

2.1.10.3 Without prejudice to the above submissions, it may be reiterated that section 114A can only be invoked when the purported short levy was caused because the importer colluded or wilfully misstated or suppressed any facts. As demonstrated supra, the department was aware of the classification of the impugned goods and validated the classification from time to time, no allegation of suppression, misstatement, or collusion on the part of the importer will survive. When the short levy is not arising because of these three Ingredients of section 28(4) of the Act, the question of proposing or imposing penalty will be an unsuccessful exercise, and, therefore, the proposal for imposing penalty under section 114A of the Act needs to be quashed.

2.1.10.4 Without pre-judice to the above, it is also essential to point out that in words collusion or any wilful mis-statement or suppression of facts, mens rea is inbuilt. Therefore, penalty under section 114A of the Act, cannot be imposed unless mens rea is established. It appears that in quest to create the allegation of mens rea, the Department had invoked section 28(4) of the Act. The narration in para 10.1 (i) to (vii) of the impugned SCN clearly reveals that the Department was very well seized of the matter and even suggested to classify the impugned goods under heading 8450 but failed to reply to the Importer's letter dated 23.07.2013 or issue any demand for the differential duty. The fact that few consignments of Industrial Heating Elements in Chennai Custom House or Air Cargo Complex, Mumbai were imported under heading 8516, is no ground to slap charge of mis-declaration on the part of the Importer. It is trite law that the penalty even if mandatory cannot be imposed unless the mens rea is established, as maintained by Hon'ble Apex Court, High Court and CESTAT in the following cases:

- (i) *Hindustan Steel Ltd. Vs State of Orissa* [1969(08) LCX0002]
- (ii) *Akbar Badruddin Jiwani Vs Collector of Customs* [1990(02) LCX0057]
- (iii) *Novel Digital Electronics Vs Commr. of Cus. (Imports), Chennai*, [2015(03) LCX0103]

2.1.11 Payment of interest under Section 28AA of the Act.

In the present case, no duty demand is sustainable as there is no collusion or wilful misstatement or suppression of facts. As such, the demand of interest under section 28AA of the Act, is not sustainable and need to be quashed ipso facto.

2.2 Submissions of Sh. Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, Goa.

Sh. Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, Goa, submitted his reply to the SCN on 30.09.2025. Vide the above reply, he denied all the allegations made in the subject SCN and specifically denied that he is liable to penalty under Section 112(b) or 114AA of the Customs Act, 1962. The brief of the submissions made by the Noticee, in his words, is as under:

2.2.1 M/s IFB Industries Limited, main noticee, has submitted a detailed reply stating that goods had been correctly classified by them; that they are not liable to pay differential duty and interest demanded; that the goods are not liable to confiscation; that they are not liable to penalty under Section 114A of the Customs Act, 1962. The aforesaid Noticee submitted that he is not liable to penalty on this ground alone.

2.2.2 During the period of import he was working as MD & CEO, Home Appliances Division, IFB Industries Limited He was looking after the overall functioning of the unit. The decision relating to classification of imported goods was being taken collectively by Head of Supply Chain Department and Head of Finance collectively and not by him.

2.2.3 The impugned SCN had proposed penalty under Section 114AA of the Customs Act, 1962. The Noticee submitted that he has not made, signed or used any declaration, statement or document relating to clearance of 'Heating element assembly' or 'Cross flow fan blade'. Further, no documentary or oral evidence has been adduced in the impugned SCN to substantiate the charge that he has any role in respect of the alleged incorrect classifications. As the Noticee had no personal knowledge of alleged misclassification of these goods, the requirement of section 114AA is not met and therefore, penalty is not imposable on him under section 114AA of the Customs Act, 1962.

2.2.4 The Noticee further submitted that alleged short payment of duty has occurred due to change in interpretation, as at one point of time Audit officers in their letter dated 09.07.2013 were themselves of the view that 'Heating Element' is classifiable under CTH 84509010, as part of the Washing Machine. Further in respect of many bills of entry which were marked for assessment by the officers of Appraising Group, heating element was under Tariff Item 84509010 of the Customs Tariff. Therefore, proposed change in classification is case of interpretation of the scope of entry relating to classification of 'parts' in Customs Tariff and not a case of misdeclaration as alleged in the impugned SCN. Reliance was placed on following case laws:

- (i) *Anand Metal Industries Vs Commissioner of C. Ex. Ghaziabad*, [2005(187) ELT 119 (Tri-Del)]
- (ii) *Lewek Altair Shipping Pvt Ltd Vs Commissioner of Customs, Vijayawada* [2019 (366) E.L.T. 318 (Tri. - Hyd.)]

2.2.5 No penalty under Section 112(b) of the Act can be imposed on the Noticee because in para 13(iv) of the impugned SCN, no penalty under the said section has been proposed for imposition on the main Importer namely M/s IFB Industries Ltd., Kolkata. It is a settled law that if the main accused is absolved of the penal action than the co-accused cannot be saddled with any penalty. Reliance was placed on the case of *Shitla Prasad Sharma Vs. Commissioner of Central Excise Mumbai -1* [2005(183) ELT 21].

2.2.6 There are twin requirements to be satisfied warranting penalty under section 112(b) of the Act. First requirement is that the persons should have dealt with the specified activities which are all physical activities, and the second is that the person should be aware that the goods are liable for confiscation. No evidence has been adduced showing that he was concerned with any activity like carrying, removing, depositing etc. or he was aware that the goods were liable for confiscation. Therefore, twin requirements mandated in section 112(b) are not met, and penalty is not imposable under section 112(b) of the Customs Act, 1962 on this ground also.

2.2.7 The Apex Court in series of their judgments had clearly held that penalty can only be imposed when mens rea or ill-motive is established. Reliance was placed on the following case laws:

- (i) *Hindustan Steel Ltd. Versus State of Orissa* [1978 (2) E.L.T. (J 159) (S.C.)]
- (ii) *Akbar Badruddin Jiwani Versus Collector of Customs* [1990(02) LCX0057]
- (iii) *Novel Digital Electronics Versus Commr. of Cus. (Imports), Chennai*, [2015(03) LCX0103]

2.3 Submissions of Sh. Vilas Kamath, Head (Supply Chain Management), IFB, Goa.

Sh. Vilas Kamath, Head (Supply Chain Management), IFB, Goa, submitted his reply to the SCN on 30.09.2025. Vide the above reply, he denied all the allegations made in the subject SCN and specifically denied that he is liable to penalty under Section 112(b) or 114AA of the Customs Act, 1962. The brief of the submissions made by the Noticee, in his words, is as under:

2.3.1 M/s IFB Industries Limited, main noticee, has submitted a detailed reply stating that goods had been correctly classified by them; that they are not liable to pay differential duty and interest demanded; that the goods are not liable to confiscation; that they are not liable to penalty under Section 114A of the Customs Act, 1962. The aforesaid Noticee submitted that he is not liable to penalty on this ground alone.

2.3.2 During the period of import he was working as Head (Supply Chain Management), IFB, Goa. The decision relating to classification of imported goods was being taken collectively by him and Head of Finance. He had reasonable belief that "heating element" and 'Cross flow fan blade' are correctly classifiable under heading 8450 (tariff item 84509010) and 8414 (tariff item 84149090) of Customs Tariff, respectively; that at one point of time Customs was also of the view that heating element were classifiable as part of the washing machine; that many Bills of Entry have been assessed by the Appraising officers, who had also classified the 'Heating Element' as part of 'washing machine' only.

2.3.3 The impugned SCN had proposed penalty under Section 114AA of the Customs Act, 1962. The Noticee submitted that penalty under Section 114AA of the Act, *ibid* is imposable on a person who knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Customs Act, 1962. There is nothing in the show cause notice to show that Noticee was aware that 'heating element' and 'cross flow fan blade' were classifiable under Tariff item 85168000 and 8415 of the Customs Tariff. As Noticee has no reason to belief that "heating element" and "cross flow fan blade" are not classifiable as part of Washing Machine and Fan, the requirement of section 114AA are not met and therefore, penalty is not imposable on him under section 114AA of the Act, *ibid*.

2.3.4 The Noticee further submitted that alleged short payment of duty has occurred due to change in interpretation, as at one point of time Audit officers of the Department were themselves of the view that 'Heating Element' is classifiable under CTH 84509010, as part of the Washing Machine. Further in respect of many bills of entry which were marked for assessment by the officers of Appraising Group, heating element was under Tariff Item 84509010 of the Customs Tariff. Therefore, proposed change in classification is case of interpretation of the scope of entry relating to classification of 'parts' in Customs Tariff and not a case of misdeclaration as alleged in the impugned SCN. Reliance was placed on following case laws:

- (iii) *Anand Metal Industries Vs Commissioner of C. Ex. Ghaziabad*, [2005(187) ELT 119 (Tri-Del)]
- (iv) *Lewek Altair Shipping Pvt Ltd Vs Commissioner of Customs, Vijayawada* [2019 (366) E.L.T. 318 (Tri. - Hyd.)]

2.3.5 No penalty under Section 112(b) of the Act can be imposed on the Noticees because in para 13(iv) of the impugned SCN, no penalty under the said section has been proposed for imposition on the main Importer namely M/s IFB Industries Ltd., Kolkata. It is a settled law that if the main accused is absolved of the penal action than the co-accused cannot be saddled with any penalty. Reliance was placed on the case of *Shitla Prasad Sharma Vs. Commissioner of Central Excise Mumbai -1* [2005(183) ELT 21].

2.3.6 There are twin requirements to be satisfied warranting penalty under section 112(b) of the Act. First requirement is that the persons should have dealt with the specified activities which are all physical activities, and the second is that the person should be aware that the goods are liable for confiscation. No evidence has been adduced showing that he was concerned with any activity like carrying, removing, depositing etc. or they were aware that the goods were liable for confiscation. Therefore, twin requirements mandated in section 112(b) are not met, and penalty is not imposable under section 112(b) of the Customs Act, 1962 on this ground also.

2.3.7 The Apex Court in series of their judgments had clearly held that penalty can only be imposed when mens rea or ill-motive is established. Reliance was placed on the following case laws:

- (iv) *Hindustan Steel Ltd. Versus State of Orissa* [1978 (2) E.L.T. (J 159) (S.C.)]
- (v) *Akbar Badruddin Jiwani Versus Collector of Customs* [1990(02) LCX0057]
- (vi) *Novel Digital Electronics Versus Commr. of Cus. (Imports), Chennai*, [2015(03) LCX0103]

2.4 Submissions of Sh. Ashish Singh, Finance Head, Washer and AC Factory, IFB, Goa.

Sh. Ashish Singh, Finance Head, Washer and AC Factory, IFB, Goa, vide his reply submitted on 30.09.2025 denied that he had contravened any provisions of the Customs Act, 1962 or rules made there under, warranting proposed penalty under section 112(a) or 112(b) of the Act. The brief of the submissions made by the Noticee, in his words, is as under:

2.4.1 IFB, the main noticee, had also been interalia asked to show cause, as to why, the impugned goods should be held liable to confiscation under section 111(m) of the Act. IFB had since submitted a detailed reply urging that goods were correctly classified by them; that they are not liable to pay differential duty and interest demanded; that the goods are not liable to confiscation; and that they are not liable to penalty under section 114A of the Customs Act, 1962. The Noticee submitted that he is not liable to penalty on this ground alone.

2.4.2 The Noticee, submitted that during the period of import he was working as Finance Head, IFB Industries Limited, Verna, Goa. The Noticee submitted that his statement dated 05.10.2023 has been selectively reiterated to frame the purported charge. The bare perusal of the statement unambiguously demonstrates that every decision of classification was taken that too collectively, based on the advice /recommendation of the consultants. Neither the consultant nor any one of them, perceived any agenda to mis-classify the goods for avoiding, much less evading the appropriate levy of duty. The act of taking final call to adopt the advice/recommendation of a consultant cannot be construed to be an omission or commission to mis-classify the goods. There cannot be any intent/purpose much less ulterior motto to mis-classify the goods and evade duty, by accepting an advice given by the consultant. It is normal and logical practice to adopt advice of the consultant/expert who possesses the requisite knowledge of the subject. There is no allegation that they had taken any decision to mis-classify the goods by defying the advice of the Consultant. They had taken collective decision with their Bonafide belief that they were correctly advised by their consultant and supplier of the goods.

2.4.3 Noticee further submitted that IFB had declared correct description and value of the goods; that alleged mention of incorrect classification was not in the ambit of words “any other particular” mentioned in section 111(m); that the words “any other particular” enveloped physical character of the goods, namely description, weight, value and end use etc. The Noticee relied upon following case laws:

- (i) *J. K. Industries Ltd. Vs Commissioner of Customs, New Delhi*, [1996 (88) E.L.T. 41 (Tribunal)]
- (ii) *Lewek Altair Shipping Pvt Ltd Vs Commissioner of Customs Vijayawada*, [2019 (366) E.L.T. 318 (Tri. - Hyd.)]
- (iii) *Sirthai Superware India Ltd Vs Commissioner of Customs Nhava Sheva-III*, [2020(371) E.L.T 324 TRI-(MUM)]

2.4.4 In view of the above contention, the goods are not liable to confiscation under Section 111(m) of the Customs Act, 1962 and when the goods are not liable to confiscation, Noticee is not liable to penalty under Section 112(a) or 112(b) of the Customs Act, 1962.

2.4.5 In para 13(iv) of the impugned SCN, no penalty has been proposed for imposition on the main Importer namely M/s IFB Industries Ltd. Kolkata. It is a settled law that if the main accused is absolved of the penal action than the co-accused cannot be saddled with any penalty. Reliance placed on the decision in the case of *Shitla Prasad Sharma Vs Commissioner of Central Excise Mumbai -1*, [2005(183) ELT 21].

2.4.6 The Department proposed penalty both under sections 112(a) or 112(b). The Penalty under section 112(a) is for the persons responsible for improper import while penalty under section 112(b) is for persons who physically deal with the goods and are aware of their confiscation. The two sub-sections are legislated to cater two different contraventions and are mutually exclusive. Therefore, the charge itself is vague and is not sustainable and needs to be dropped.

2.4.7 In para 12(ii) of the impugned SCN, no commission or omission has been cited attracting liability to penalty under Section 112(b) of the Customs Act, 1962. The role of Noticee narrated in para 12(ii) only states that his acts and omission made him liable to penalty under Section 112(a) of the Customs Act, 1962. The mention of penalty under section 112(b) of the Customs Act, 1962 is conspicuously absent in para 12(ii) cited above. Therefore, proposing imposition of penalty under section 112(b) in para 13(iv) of the impugned SCN is bad in law, and needs to be quashed on this ground alone.

2.4.8 There are twin requirements to be satisfied warranting penalty under section 112(b) of the Act. First requirement is that the persons should have dealt with the goods physically and the second is that the person should be aware that the goods are liable for confiscation. No evidence has been adduced showing that he was concerned with any activity like carrying, removing, depositing etc. or he was aware that the goods were liable for confiscation. Therefore, twin requirements mandated in section 112(b) are not met and penalty is not imposable under section 112(b) of the Customs Act, 1962 on this ground also. Reliance was placed on the judgement in the case of *Anand Metal Industries vs Commissioner of C. Ex. Ghaziabad*, [2005(187) ELT 119 (Tri-Del)].

2.4.9 The Apex Court in series of their judgments had clearly held that penalty can only be imposed when mens rea or ill-motive is established. Reliance was placed on the following case laws:

- (i) *Hindustan Steel Ltd. Versus State of Orissa* [1978 (2) E.L.T. (J 159) (S.C.)]
- (ii) *Akbar Badruddin Jiwani Versus Collector of Customs* [1990(02) LCX0057]
- (iii) *Novel Digital Electronics Versus Commr. of Cus. (Imports), Chennai*, [2015(03) LCX0103]

2.5 Submissions of Sh. Collegal Srinivasan Govindaraj, Chief Executive Officer (CEO), Industrial Business & Projects, IFB.

Sh. Collegal Srinivasan Govindaraj, Chief Executive Officer (CEO), Industrial Business & Projects, IFB, vide his reply submitted on 30.09.2025 denied that he had contravened any provisions of the Customs Act, 1962 or rules made there under, warranting proposed penalty under section 112(a) or 112(b) of the Act. The brief of the submissions made by the Noticee, in his words, is as under:

2.5.1 IFB, the main noticee, had also been interalia asked to show cause, as to why, the impugned goods should be held liable to confiscation under section 111(m) of the Act. IFB had since submitted a detailed reply urging that goods were correctly classified by them; that they are not liable to pay differential duty and interest demanded; that the goods are not liable to

confiscation; and that they are not liable to penalty under section 114A of the Customs Act, 1962. The Noticee submitted that he is not liable to penalty on this ground alone.

2.5.2 The Noticee, submitted that in June 2018, he joined IFB Industries as CEO Industrial Business and Projects, Bommasandra factory; that facility was an acquisition from Ramsons and at present he was responsible for the entire Industrial Business comprising of laundry and dishwashing segment; that he was responsible for P&L and preparing the organization for the future of this vertical; that in Bommasandra factory they manufacture Industrial Laundry Equipment like Washer Extractors, Tumble Dryers, Flat work ironers, Dry cleaning machines and Finishing equipment.

2.5.3 The impugned SCN proposes penalty under section 112(a) or 112(b) of the Customs Act, 1962 on the ground that the Noticee *accepted* the discrepancies in their import and stated that he would look into the matter, but did not revert. It appeared that his acts of omission and Commission rendered the subject goods liable to confiscation under section 111(m) of the Customs Act, 1962; and that he was liable to penalty under Section 112(a) and 112(b) of the Act *ibid*.

2.5.4 The Noticee submitted that excerpts of his statement have been deceptively reiterated. The plain perusal of the excerpts does not support any omission or commission within the ambit of section 111(m) of the Act, rendering the goods liable for confiscation. The Noticee had only narrated the factual position and brought out the procedure for arriving at the classification. There cannot be any intent/purpose much less ulterior motto to mis-classify the goods and evade duty, by accepting an advice given by the expert or the supplier. It is normal and logical practice to adopt advice of the consultant/expert who possesses the requisite knowledge of the subject. There is no allegation that they had taken any decision to mis-classify the goods by defying the advice of the Consultant. They had taken collective decision with their Bonafide belief that they were correctly advised by their consultant and supplier of the goods.

2.5.5 The Noticee was of Bonafide belief that that "Heating elements" imported for different industrial applications were correctly classifiable under heading related to that application.

2.5.6 Noticee further submitted that IFB had declared correct description and value of the goods; that alleged mention of incorrect classification was not in the ambit of words "any other particular" mentioned in section 111(m); that the words "any other particular" enveloped physical character of the goods, namely description, weight, value and end use etc. The Noticee relied upon following case laws:

- (iv) *J. K. Industries Ltd. Vs Commissioner of Customs, New Delhi*, [1996 (88) E.L.T. 41 (Tribunal)]
- (v) *Lewek Altair Shipping Pvt Ltd Vs Commissioner of Customs Vijayawada*, [2019 (366) E.L.T. 318 (Tri. - Hyd.)]
- (vi) *Sirthai Superware India Ltd Vs Commissioner of Customs Nhava Sheva-III*, [2020(371) E.L.T 324 TRI-(MUM)]

2.5.7 In view of the above contention, the goods are not liable to confiscation under Section 111(m) of the Customs Act, 1962 and when the goods are not liable to confiscation, Noticee is not liable to penalty under Section 112(a) or 112(b) of the Customs Act, 1962.

2.5.8 In para 13(iv) of the impugned SCN, no penalty has been proposed for imposition on the main Importer namely M/s IFB Industries Ltd. Kolkata. It is a settled law that if the main accused is absolved of the penal action than the co-accused cannot be saddled with any penalty. Reliance placed on the decision in the case of *Shitla Prasad Sharma Vs Commissioner of Central Excise Mumbai -1*, [2005(183) ELT 21].

2.5.9 The Department proposed penalty both under sections 112(a) or 112(b). The Penalty under section 112(a) is for the persons responsible for improper import while penalty under section 112(b) is for persons who physically deal with the goods and are aware of their confiscation. The two sub-sections are legislated to cater two different contraventions and are mutually exclusive. Therefore, the charge itself is vague and is not sustainable and needs to be dropped.

2.5.10 In para 12(ii) of the impugned SCN, no commission or omission has been cited attracting liability to penalty under Section 112(b) of the Customs Act, 1962. The role of Noticee narrated in para 12(ii) only states that his acts and omission made him liable to penalty under Section 112(a) of the Customs Act, 1962. The mention of penalty under section 112(b) of the Customs Act, 1962 is conspicuously absent in para 12(ii) cited above. Therefore, proposing imposition of penalty under section 112(b) in para 13(iv) of the impugned SCN is bad in law, and needs to be quashed on this ground alone.

2.5.11 There are twin requirements to be satisfied warranting penalty under section 112(b) of the Act. First requirement is that the persons should have dealt with the goods physically and the second is that the person should be aware that the goods are liable for confiscation. No evidence has been adduced showing that he was concerned with any activity like carrying, removing, depositing etc. or he was aware that the goods were liable for confiscation. Therefore, twin requirements mandated in section 112(b) are not met and penalty is not imposable under section 112(b) of the Customs Act, 1962 on this ground also. Reliance was placed on the judgement in the case of *Anand Metal Industries vs Commissioner of C. Ex. Ghaziabad*, [2005(187) ELT 119 (Tri-Del)].

2.5.12 The Apex Court in series of their judgments had clearly held that penalty can only be imposed when mens rea or ill-motive is established. Reliance was placed on the following case laws:

- (i) *Hindustan Steel Ltd. Versus State of Orissa* [1978 (2) E.L.T. (J 159) (S.C.)]
- (ii) *Akbar Badruddin Jiwani Versus Collector of Customs* [1990(02) LCX0057]
- (iii) *Novel Digital Electronics Versus Commr. of Cus. (Imports), Chennai*, [2015(03) LCX0103]

3. RECORD OF PERSONAL HEARINGS

There are total 5 Noticees in the subject SCN viz. (i) M/s IFB Industries Limited (IEC 0288000927); (ii) Sh. Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, Goa; (iii) Sh. Vilas Kamath, Head (Supply Chain Management), IFB, Goa; (iv) Sh. Ashish Singh, Finance Head, Washer and AC Factory of IFB, Goa; and (v) Sh. Collegal Srinivasan Govindaraj, Chief Executive Officer (CEO), Industrial Business & Projects, IFB. 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 Noticees were granted opportunity of Personal Hearing (PH). A date-wise record of personal hearings is as under:

3.1 Opportunity for PH was granted to all the Noticees on 21.08.2025, 10.09.2025 and 18.09.2025. However, the Noticee did not attend the PH and requested for adjournment and grant of another date for PH.

3.2 In view of the above, another opportunity for PH was granted to all the Noticees on 30.09.2025. Availing the said opportunity of PH, Sh. Ashish Singh, Head-Finance, M/s IFB Industries, Goa and Sh. O. P. Khanduja, Consultant, the authorised representative of all the Noticees, appeared before the Adjudicating Authority on 30.09.2025 on behalf of all the aforesaid 5 Noticees. During the PH, he submitted replies to the SCN of the Noticees and made following submissions:

Legal Grounds:

1. The SCN is not maintainable as the same is not issued within the time prescribed under Section 28(BB) of the Customs Act, 1962.
2. Doctrine of 'Comity of Courts' violated as case already decided by Addl. Commr., JNCH vide O-i-O dtd. 12.04.2024 and an appeal against the same is pending before Commissioner (Appeals), JNCH.
3. The above O-i-O has not been reviewed by the Commissioner, JNCH, therefore, the impugned SCN on the same issue, is bad in law and not sustainable.
4. Section 28(4) is not applicable as the issue is already decided by the department.
5. Application of Section 28(10B) - As the SCN cannot be sustained u/s 28(4), it will be deemed to be issued u/s 28(1), therefore, was required to be adjudicated within 6 months, extendable by another 6 months. The said time period is already over, therefore, the Order, if issued, will be bad in law.
6. Penalty proposed u/s 112(a) (though not mentioned in charging para of the SCN) and u/s 114A, cannot be imposed simultaneously.
7. No penalty can be imposed unless the 'mens rea' is established. Even the mandatory penalty cannot be imposed in case where 'mens rea' is not established.
8. In the SCN, nowhere any ingredient of Section 28(4) is alleged and the case has been built up stating mis-declaration and mis-classification.
9. He stated that the SCN is based only on the statements and no other evidence has been adduced to sustain the charges. Moreover, the text of the SCN shows that it has been issued in haste with predetermined mind.

Grounds on Merit:

1. Heating Elements - The Heating Elements cannot be classified under heading 8516 based on the principle of *Ejusdemus Genesis*. He referred to Para 4 of the HSN Notes of CTH 8516 under the caption (F) 'Electric Heating Resistors', which excludes apparatus assembled with heating elements.
2. Cross Flow Fan Blades - He relied on the HSN Explanatory Notes of CTH 8414 under the caption (C) 'Ventilating or Recycling Hoods incorporating a Fan, whether or not fitted with filters', stating interalia that compressors, air-pumps, fans, blowers etc. specially constructed for use with other machines remain classified under this heading and as parts of such other machines. He also relied on Explanatory Notes of Chapter 8415 under the heading Parts, which clearly state that goods of Heading 8414 remain classified here.
3. He relied upon the Advance Ruling in the matter of M/s Blue Star Ltd. & M/s Carrier Aircons.
4. Regarding confiscation, he stated that impugned goods are not liable for confiscation as there is no mis-declaration of any particulars as required under Section 111(m) and since the goods are not physically available for confiscation, the case laws quoted will prevail and the Bombay High Court judgement will be binding.
5. For the co-noticees, he submitted that they are professional executives and are not experts to determine classification, they have declared the classification as advised by their consultant and they had no pecuniary gain to derive from any mis-classification of goods. Further, as no penalty has been proposed to imposed under Section 112 on the main Noticee viz. M/s IFB Industries, then, no penalty can be imposed on the co-noticees viz. Sh. Ashish Singh, & Sh. Collegal Srinivasan Govindaraj, under the said Section 112.
6. Further, no penalty can be imposed on Sh. Rajshankar Ray & Sh. Vilas Kamath, u/s 114AA as they have not mis-stated any fact which was not factually correct. They have declared the classification as per their understanding of the tariff and not because of any other reason.

In view of the above, he requested for dropping of the charges levelled in the SCN.

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 all the Noticees. 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) were granted to all the Noticees. Availing the said opportunity, Sh. Ashish Singh and Sh. O. P. Khanduja, Consultant, the authorised representatives of all the Noticees, attended the PH on 30.09.2025. 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 Noticees.

4.3 The fact of the matter is that a Show Cause Notice No. 1300/2024-25/COMMR/GR.V/NS-V/CAC/JNCH dated 21.10.2024 was issued to 5 Noticees viz. (i) M/s IFB Industries Limited (IEC 0288000927); (ii) Sh. Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, Goa; (iii) Sh. Vilas Kamath, Head (Supply Chain Management), IFB, Goa; (iv) Sh. Ashish Singh, Finance Head, Washer and AC Factory, IFB, Goa; and (v) Sh. Collegal Srinivasan Govindaraj, Chief Executive Officer (CEO), Industrial Business & Projects, IFB, on the basis of investigation conducted by the Directorate of Revenue Intelligence (DRI), which indicated that 'Heating Element' used for manufacturing Washing Machine and 'Cross Flow Fan Blade' used for manufacturing split Air Conditioners were being mis-classified by M/s IFB Industries Limited to claim lower rate of Customs duty. During the said investigation, it appeared that 'Heating Element' were mis-classified under CTI 84509010 instead of correct CTI 85168000 and 'Cross Flow Fan Blade' were mis-classified under CTI 84149090 instead of correct CTI 84159000, resulting in evasion of legitimately payable Customs duty. Thus, the SCN proposes demand of differential duty to the tune of ₹11,21,60,934/- (Rupees Eleven Crore Twenty One Lakh Sixty Thousand Nine Hundred Thirty Four Only) (₹5,15,76,646/- and ₹6,05,84,288/- in relation to import of heating element and cross flow fan blade, respectively) 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. 61,51,24,708/- (Rupees Sixty One Crore Fifty One Lakh Twenty Four Thousand Seven Hundred Eight Only) (Rs. 39,47,08,897/- and Rs. 22,04,15,811/- in relation to import of heating element and cross flow fan blade, respectively) under Section 111(m) *ibid*; and imposition of penalty on M/s IFB Industries Ltd. and the co-noticees under the penal sections of the Customs Act, 1962.

4.4 Before proceeding further, it is pertinent to mention here that in Para 12 of the subject SCN, acts of omissions and commissions committed by the co-Noticees which have rendered them liable to imposition of penalty, have been discussed. Accordingly, it is proposed therein *inter alia* in respect Sh. Rajshankar Ray and Sh. Vilas Kamath, that they are liable for penalty under Section 112(b) and 114AA of the Customs Act, 1962. However, in charging para i.e. para 13 of the subject SCN, penalty has not been proposed on Sh. Rajshankar Ray and Sh. Vilas Kamath, under Section 112(b), *ibid*.

4.4.1 In this regard, I find that in Para 12 of the subject SCN, acts of omissions and commissions committed by Sh. Rajshankar Ray and Sh. Vilas Kamath, which have rendered the impugned goods liable to confiscation under Section 111(m) of the Customs, 1962, have been elaborately discussed. It is clearly mentioned therein that Sh. Rajshankar Ray and Sh. Vilas Kamath, are liable for penalty *inter alia* under Section 112(b), *ibid*. In view of the above, even though not explicitly mentioned in charging para i.e. para 13 of the subject SCN, I hold that the SCN proposes penalty on Sh. Rajshankar Ray and Sh. Vilas Kamath, under Section 112(b), *ibid*. My above findings are bolstered by the Order dated 12.12.2023 of the Hon'ble CESTAT, Principal Bench, New Delhi in the case of Asfaque Abubaker Naviwala Vs. Commissioner of

Customs, (Export) (ICD, TKD), New Delhi [reported as 2024-TIOL-317-CESTAT-DEL] wherein Hon'ble Tribunal observed that:

"8.4 The Ld Counsel has submitted that the order is null and void, there is no proposal for penalty in the show cause notice and there has been a delay in the adjudication of the case. As regards the first contention, it is a settled position of law that wrong mention or non-mention of a rule in the show cause notice does not vitiate the proceedings. The Supreme Court in the case Fortune Impex vs Commissioner [2004(167) ELT A 134(SC)] has held that non mentioning a particular section of Customs Act, 1962 would not vitiate the proceedings when the allegations and charges against all the appellants were mentioned in clear terms in the show cause notice. In the instant case, it is seen that the role of the appellant has been elaborated in para 23.5 of the notice. As regards the delay in adjudication, we note that there were several noticees in the show cause notice, which by itself would lend to the delay in adjudication. We are not inclined to accept this contention of the learned counsel."

4.5 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) Whether the short payment of customs duty to the tune of Rs. 11,21,60,934/- (Rupees Eleven Crore Twenty One Lakh Sixty Thousand Nine Hundred Thirty Four Only) (Rs. 5,15,76,646/- and Rs. 6,05,84,288/- in relation to import of 'heating element' and 'cross flow fan blade', respectively) should be demanded and recovered from the importer, M/s IFB Industries Limited, in terms of Section 28(4) of the Customs Act, 1962, invoking the provision of extended period for duty demand, along with applicable interest in terms of Section 28AA, *ibid*.
- (ii) Whether the subject goods imported vide bills of entry detailed in Annexure-36A and Annexure-36B to the subject show cause notice, valued at Rs. 61,51,24,708/- (Rupees Sixty One Crore Fifty One Lakh Twenty Four Thousand Seven Hundred Eight Only) (Rs. 39,47,08,897/- and Rs. 22,04,15,811/- in relation to import of 'heating element' and 'cross flow fan blade', respectively) are liable to confiscation under Section 111(m) of the Customs Act, 1962.
- (iii) Whether the importer, M/s IFB Industries Limited, is liable for penalty under Section 114A of the Customs Act, 1962.
- (iv) Whether Shri Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, Goa, is liable for penalty under Section 112(b) and 114AA of the Customs Act, 1962.
- (v) Whether Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa, is liable for penalty under Section 112(b) and 114AA of the Customs Act, 1962.
- (vi) Whether Shri Ashish Singh, Finance Head, Washer and AC Factory, IFB, Goa, is liable for penalty under Section 112(a) or 112(b) of the Customs Act, 1962.
- (vii) Whether Shri Collegal Srinivasan Govindaraj, Chief Executive Officer (CEO), Industrial Business & Projects, IFB, Bangalore, is liable for penalty under Section 112(a) or 112(b) of the Customs Act, 1962.
- (viii) Whether the applicable differential duty, if any, in respect of further import after 05th June, 2024 of subject items viz. heating element and cross flow fan blade, should be demanded and recovered from the importer, M/s IFB Industries Limited, in terms of Section 28(4) of the Customs Act, 1962, along with applicable interest in terms of Section 28AA, *ibid*.

4.6 Before delving into the substantive allegations made in the SCN, I will discuss and give my findings on the following legal issues raised by the Noticee in their submission:

4.6.1 SCN issued beyond jurisdiction.

The Noticee has contended that in the instant matter, their factory premises was searched on 25th July, 2023 and an incomplete Show Cause Notice (without enclosing RUDs and Annexures) dated 21st October, 2024 was received by them on 26th November, 2024. The Department has failed to issue the impugned SCN within the statutory period of two years commanded under section 28BB of the Act. Therefore, the impugned show cause notice is bad in law and issued beyond jurisdiction and needs to be dropped on this ground alone.

I find that in the instant matter SCN detailing the complete findings of the investigation and charges against the importer, M/s IFB Industries Limited and other 4 co-Noticees was issued on 21.10.2024. Thus, I find that the subject SCN was issued well within the time limit prescribed under Section 28BB of the Customs Act, 1962. Therefore, I do not agree with the contention of the Noticee.

4.6.2 Doctrine of Comity of Courts violated.

The Noticee has contended that they were issued SCN by the Addl. Commissioner, Group-V, NS-V, JNCH alleging mis-classification of Heating Element, therefore, by application of Comity of Courts theory, the Commissioner of Customs (NS-V), JNCH has no jurisdiction to issue the SCN and adjudicate the matter, as the Addl. Commissioner, JNCH had first taken cognizance of the matter and even adjudicated the same.

I find that a SCN dtd. 11.10.2023 was issued to the Noticee in respect of a live Bill of Entry No. 7092638 dated 28.07.2023 on the basis of an objection raised by the docks officer regarding classification of the goods declared as heating element (spare parts for washing machine). The said SCN was only in respect of a single Bill of Entry and was accordingly, adjudicated by the Addl. Commissioner, Group-V, JNCH vide O-i-O No. 49/2024-25/ADC/GR.V/NS-V/CAC/JNCH dated 12.04.2024. However, as mentioned in foregoing para, the instant SCN dated 21.10.2024 was issued on the basis of investigation conducted by the Directorate of Revenue Intelligence (DRI), regarding alleged mis-classification of 'Heating Element' and 'Cross Flow Fan Blade' imported by M/s IFB Industries Limited. The instant SCN is in respect of aforesaid two items imported over a period of many years under multiple Bills of Entry and was issued on the basis of extensive investigation involving search of multiple locations of the Noticee and recording of statements of several officials of the IFB. Further, the instant SCN is answerable to Commissioner of Customs (NS-V), JNCH who is senior in hierarchy to the Addl. Commissioner, JNCH. Thus, I find that there is no violation of the Doctrine of Comity of Courts as the instant SCN is much broader in scope in terms of items involved, value of goods involved and number of Bills of Entry involved, besides being answerable to an officer senior in hierarchy to Addl. Commissioner, JNCH. Therefore, I do not agree with the contention of the Noticee.

4.7 After having discussed and given my findings on the legal issues raised by the Noticee, and 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 Noticees' oral and written submissions and documents / evidences available on record. I find that the subject SCN involves following two matters:

- A. Classification of 'Heating Element'**
- B. Classification of 'Cross Flow Fan Blade'**

I will first sequentially discuss each of the above two matters involved in the subject SCN and give my findings thereon. Thereafter, I will take up the issues of differential duty demand along with interest, confiscability of the impugned goods and liability to penalty of the Noticees.

4.8 Classification of ‘Heating Element’

4.8.1 I observe that the Noticee had imported goods ‘Heating Element’ used in manufacturing of Washing Machines, classifying the same under CTI 84509010 which is applicable for parts of household type washing machines. However, the SCN proposes that ‘Heating Element’ is specifically covered under CTI 85168000, therefore, by virtue of Section Note 2(a) of Section XVI of the Customs Tariff, it is rightly classifiable under CTI 85168000. From the above, I find that the primary issue for determination in the present matter is that whether the goods ‘Heating Element’ imported by the Noticee, merit classification under CTI 84509010 as claimed by the Noticee, or under CTI 85168000 as proposed in the Show Cause Notice.

4.8.2 From the information available in the open source, I find that the Heating Element is defined as a material or device that directly converts electrical energy into heat or thermal energy through the principle known as “Joule heating / resistive heating / resistance heating”. Joule heating / resistive heating is a phenomenon where a conductor generates heat due to the flow of electric current. Whenever an electric current flows through a material that has some “Resistance”, it creates heat. Electric current through an element encounters resistance, resulting in heating of the element. The amount of heat generated depends upon the current and the voltage or the conductor resistance. In the design of heating elements, the resistance is the more important factor, hence the name “resistors”.

4.8.3 I find that the imported goods are heating element designed for use in Washing Machines. A heating element is nothing but an electric heating resistor housed within a protective assembly (tube, insulation, flange, etc.) for functional and safety reasons. The essential function of the imported goods is resistance-based heat generation. Electric heating resistors are specifically covered by CTI 85168000 of the Customs Tariff. The relevant portion of CTH 8516 detailing the CTI and related description of goods covered, is as follows:

85.16 - Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic 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 85.45.

- 8516 79 90 --- Other
- 8516 80 00 - Electric heating resistors
- 8516 90 00 - Parts

Thus, I find that the impunged imported Heating Element squarely falls within the scope of “Electric Heating Resistors” classifiable under Tariff Item 8516 8000.

4.8.4 The Section Note 2(a) to Section XVI (which covers Chapter 84 & 85) of the First Schedule to the Customs Tariff Act, 1975, lays down as under:

“Subject to Note 1 to this Section, Note 1 to Chapter 84 and Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules:
(a) Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.22, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings;”

The above statutory note makes it obligatory that where a good is specifically described in a heading of Chapter 84 or 85, it must be classified in that heading itself, irrespective of whether it is a part of another machine or apparatus. In the instant case, the imported goods are heating elements, which essentially consist of:

- (i) A heating resistor that converts electrical energy into heat through Joule heating.

- (ii) Ancillary components such as insulation, leads, terminals etc. that allow safe functioning and electrical connection.

4.8.5 As per Section Note 2(a) to Section XVI, a machine part that is covered under a specific heading must be classified in its specific heading, even if it is designed for use in a particular machine. This implies that those parts of a machine which have their own heading in chapter 84 or 85 are in all cases to be classified in their respective heading. In the instant case, the goods declared as Heating Element have specific heading under CTI 85168000 itself. Thus, the impugned Heating Element fall within CTI 85168000, as CTI 85168000 specifically covers electric heating resistors. The above position is further supported by the related Explanatory Notes to Section Note 2(a) of Section XVI of the Customs Tariff which specifically mention that:

“..... parts which in themselves constitute an article covered by a heading of this Section (other than headings of 84.87 and 85.48); these are in all cases classified in their own appropriate heading even if specifically designed to work as part of a specific machine. This applies in particular to:

(1) Pumps and compressors (heading 84.13 and 84.14)

(2) ...

...

(11) Electric heating resistors (heading 85.16). ”

Since, heating element are specifically covered under Heading 85168000, classification under CTI 84509010 as part of washing machine, is not applicable. As per settled law, specific entries prevail over general ones. Tariff Item 85168000 specifically covers electric heating resistors, whereas, Tariff Item 84509010 covers residual “parts” not elsewhere specified. Therefore, classification under CTI 85168000 must prevail. Hence, the impugned goods cannot be treated as a generic “part” of a washing machine under CTI 84509010.

4.8.6 I find that the Noticee has contended that though the impugned goods are described as heating element in the import invoices and bills of entry, these are in fact heating element assembly containing heating resistor as one of the parts. The Noticee has contended that the impugned goods are assembly of various distinct parts including heating resistors, therefore, they are beyond the purview of the CTH 8516 and would correctly merit classification as part of the respective machine. Thus, the Noticee has tried to create a distinction between “heating element” and “heating element assembly”.

4.8.7 First of all, I find that the above contention points towards admission of mis-declaration by the Noticee that the goods are other than what has been declared in the import invoices and the bills of entry. Further, I find that the contention of the Noticee that since additional parts like insulating material, gasket, flange, fuse etc. are present, the goods cannot be just resistors, is misplaced. I find that such additional fittings are merely ancillary supports and do not alter the essential nature of the article. The primary function remains resistance-based heat generation.

4.8.8 Further, from the Explanatory Notes for CTH 8516 under the heading ‘(F) ELECTRIC HEATING RESISTORS’, I find that CTH 8516 gives only two reasons for excluding heating element / electric heating resistor from classifying CTI 85168000. These are either the electric heating resistor is of ‘carbon’ or ‘if the heating element is assembled with parts other than a simple insulated former and electric connections’. Elucidating the second exception, the Explanatory Notes specifically mention the items like base plates for smoothing irons and plates for electric cookers, as these items form the part of the respective apparatus i.e., smoothing iron and electric cooker, both structurally and functionally. When the heating element is assembled with these parts, it becomes an integral sub-part of the subject parts and therefore, liable for classification as part of the subject example apparatus. In such cases, when heating element is assembled (or more precisely integrated) with another part (base plates/plates for example) of the

apparatus (smoothing iron/electric cooker) then it is considered as parts of the apparatus and will be classified as part of the apparatus. However, in the present case, the imported item is not assembled with any other specific integral part of the washing machine for which the same is being imported, so, the imported heating element/heating element assembly merits classification under CTI 85168000 i.e., as Heating Element Resistors.

4.8.9 The Explanatory Notes for CTH 8516 under the heading ‘(F) ELECTRIC HEATING RESISTORS’ clarify that electric heating resistors remain classified under CTI 85168000, even if presented with insulating formers and electrical connectors. The additional components such as flange, MgO insulation, gasket, fuse etc., are standard constructional requirements of heating resistors to enable safe and efficient operation. These do not change the essential character of the goods as heating resistors.

4.8.10 Moreover, in the present case, heating element is insulated and assembled with fuse, flange, cold pin, NTC, sheath, gasket, earth terminal, bolt, phase terminal etc. which are either for electrical connection/control or are just fittings or means for fitting in addition to the insulating material. With or without these, the subject imported item is still a heating element. So, the heating element/heating element assembly being imported by IFB is a heating element/electric heating resistor only and merits classification under CTI 85168000, irrespective of the classification of the apparatus or equipment in which they are to be used.

4.8.11 The HSN Explanatory Notes to Heading 85.16 provide authoritative interpretative guidance. The relevant extracts are reproduced below:

- (i) Electric heating resistors remain classified here even if they are specialized for a particular machine or apparatus (for example, resistor elements for water heaters, hair dryers, etc.).
- (ii) They remain classified here when consisting of the resistor itself together with a simple insulated former and electrical connections.
- (iii) However, when they are assembled with other parts of the machine or apparatus (e.g., soleplates of smoothing irons, plates for electric cookers), they are classified as parts of those machines or apparatus.

The above guidance clarifies beyond doubt that electric heating resistors retain their independent classification under Heading 8516, even when designed specifically for a washing machine, unless they are structurally and functionally integrated with other parts of that apparatus. I find that the goods declared as heating elements are actually heating resistors and further to qualify it, as parts of a particular machine or apparatus, the said heating resistor must be assembled with other parts of that particular machine or apparatus, which is not the case here. In the present case, the goods imported by the noticee are standalone heating resistors with insulation and connecting terminals. They are not integrated with the tank or body of the washing machine. Hence, they cannot be considered as “parts” of the washing machine under 84509090; instead, they fall squarely under 85168000.

4.8.12 The above interpretation is supported by following judicial pronouncements:

- (i) In *Commissioner of Customs Vs. Vikram Solar Ltd.* [2019 (366) ELT 253 (Tri.-Del.)], the Tribunal held that where a product has an independent tariff heading, it must be classified under that heading and not as a “part” of another machine.
- (ii) In *Commissioner of Customs Vs. Tata Power Solar Systems Ltd.* [2022 (380) ELT 321 (Tri.-Bang.)], the Tribunal reiterated that a specific tariff entry prevails over a general entry for “parts,” even if the product is meant exclusively for a particular apparatus.
- (iii) The principle was also affirmed by the Hon’ble Supreme Court in *CCE Vs. Insulation Electrical (P) Ltd.* [2008 (229) ELT 389 (SC)], wherein it was held that functional

integration with another apparatus does not alter classification when a specific heading exists.

4.8.13 I find that in the shipment imported and cleared vide Bill of Entry No. 8414221 dated 08.08.2020 through Mumbai Air Cargo, all the items were imported for use in washing machine. The items namely Microswitch and NTC (sensor), both, were classified under their respective CTIs having residual classification i.e., 'Other' in the Chapters related to Switches (under CTI 85365090) and measuring/checking instruments (under CTI 90318000), respectively, and only Heating Element, though having dedicated CTI 85168000, was cleared under CTI 84509010 i.e., as part of washing machine. Thus, the reason given by the importer that heating element with NTC (sensor) is classifiable as part of washing machine fails here.

4.8.14 Further, I find that heating element imported vide (i) Bill of Entry No. 4022964 dated 11.07.2019 and (ii) Bill of Entry No. 3719594 dated 19.06.2019, were cleared by the importer under CTI 85168000. The reason given by them for declaring CTI 85168000 in aforesaid two Bills of Entry was that (i) it was a small lot and CTI 85168000 was mentioned in the Invoice, and (ii) as instructed by the Customs officer, respectively. These facts show that even their supplier mentioned CTI 85168000 in invoice for subject heating elements; and also, Customs instructed them to classify the subject heating element under CTI 85168000. However, in spite of declaring correct CTI in aforesaid two cases, they did not follow the same CTI in respect of other consignments of heating element imported by them.

4.8.15 In view of the clear mandate of Section Note 2(a) to Section XVI, the interpretative guidance of the HSN Explanatory Notes, and the judicial precedents cited above, I hold that the goods in question in the subject SCN i.e. Heating Element, is correctly classifiable under CTI 85168000 as Electric heating resistors, and not under CTI 84509090, as claimed by the Noticee.

4.9 Classification of 'Cross Flow Fan Blade'

4.9.1 I observe that the Noticee had imported goods 'Cross Flow Fan Blade', a part of indoor unit of split air-conditioners. The description of the said item is declared by the Noticee as "Cross Flow Fan Blade (Part for fan for Air Conditioner)" and the same is being cleared under CTI 84149090 which is applicable for parts of fan. However, the SCN proposes that since 'Cross Flow Fan Blade' is not specifically included in any heading of Chapter 84 & 85 and the same is solely and principally used as part of air conditioner, therefore, by virtue of Section Note 2(b) of Section XVI of the Customs Tariff, it is rightly classifiable under CTI 84159000, as parts of Air Conditioner. From the above, I find that the primary issue for determination in the present matter is whether the goods 'Cross Flow Fan Blade' imported by the Noticee, merit classification under CTI 84149090 as claimed by the Noticee, or under CTI 84159000 as proposed in the Show Cause Notice.

4.9.2 The Noticee has classified the goods under CTH 8414 which covers, inter alia Fans and Parts thereof by name. The Noticee has contended that in any air conditioner there is a fan for circulation of air, therefore, cross flow fan blade, being a part of cross flow fan, is classifiable under CTH 84149090 as part of that fan in the indoor unit of air conditioner and not as a part of an air conditioner, even when it is eventually integrated with the other parts in indoor unit of the split air conditioner.

4.9.3 I find that Cross flow fan blade is a part of indoor unit of split air-conditioner (AC). Although, the importer is declaring the item as 'part for cross flow fan' but there is no independent existence of the said fan (except for use in AC) of which the subject item is being declared and classified to be part of. Cross flow fan blade cannot perform its function on a stand-alone basis in the imported condition and its functioning is dependent upon functions performed by other parts / components of the air-conditioner. Cross flow fan blade cannot work on its own,

the motor installed in indoor unit of AC rotates the cross-flow fan blade. It has to be assembled along with motor on a moulded base panel. Apart from the cross-flow fan blade and motor, the other vital elements attached on moulded base panel are 'bearing' and 'heat-exchanger'.

4.9.4 Further, I find that the subject item i.e., 'cross flow fan blade' is not included under any heading of Chapter 84 or 85. Item description of CTI 84149090 is "Other" i.e., it is a residual CTI. However, I find that there is no specific heading for cross flow fan blade in Chapter 84 or 85, therefore, Section Note 2(a) to Section XVI, is not applicable for its classification.

4.9.5 I find that only by considering cross flow fan blade as a part of a cross flow fan in the indoor unit of air conditioner, it is being wrongly considered as included under CTH 8414 by the Noticee. I find that the Explanatory Notes to CTH 8414 of Customs Tariff, exclude fans fitted with elements additional to their motors or housing, if such elements give them the characteristics of more complex machines of other headings, e.g., air conditioning machines (heading 84.15). For its functioning, the cross flow fan is eventually integrated with the other parts in indoor unit of the split air conditioners. After such integration only, it functions as cross flow fan which perform function of forced circulation of indoor air. This is the sole use of the subject Cross flow fan which comes into action after fitting with element additional to its motor which inter alia includes heat-exchanger. Thus, cross flow fan is excluded from classification under heading 84.14 and is rightly classifiable under heading 84.15 i.e., the heading covering air conditioning machines and their parts. Thus, cross flow fan blade being a part of cross flow fan classifiable under CTH 8415, is also classifiable under CTH 8415.

4.9.6 I find that Cross flow fan blade imported by the Noticee are exclusively used in manufacturing of air-conditioners and they are not used anywhere else. Cross flow fan blade is also sold separately as spare parts of AC. Thus, the subject cross flow fan blade is used solely in the indoor unit of split AC. It 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. It is specially designed to be used solely or principally with the air conditioner unit. Thus, I find that the impugned imported goods viz. cross-flow fan blade 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 cross-flow fan blade is rightly classifiable as part of an air-conditioner under CTH 8415 and not as a part of fan under CTH 8414, as claimed by the Noticee.

4.9.7 I find that the explanatory notes for CTH 8415 in respect of 'Parts' specifically mention that parts for AC machines, other than separately presented indoor units and outdoor units for split-system AC of heading 85.15, whether or not designed for building into a self-contained unit, are to be classified in accordance with the provisions of Note 2(a) to Section XVI or if Note 2(a) is not applicable, in accordance with Note 2(b) or 2(c) to Section XVI, depending on whether or not they are identifiable as suitable for use solely or principally with the AC machines of which they are parts. As explained in foregoing para, Note 2(a) to Section XVI is not applicable in this case. So, in light of the Note 2(b) to Section XVI, the subject 'cross flow fan blade' merits classification under CTI 84159000 as parts of AC, as it is being imported for sole use in manufacturing of indoor unit of split AC as well as for sale as spare parts of AC.

4.9.8 In view of the above, I hold that the goods in question in the subject SCN i.e. Cross Flow Fan Blade is correctly classifiable under CTI 84159000, and not under CTI 84149290 as claimed by the Noticee.

4.10 After having discussed and given my findings on each of the two matters involved 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.

4.10 Whether the short payment of customs duty to the tune of Rs. 11,21,60,934/- (Rupees Eleven Crore Twenty One Lakh Sixty Thousand Nine Hundred Thirty Four Only) (Rs. 5,15,76,646/- and Rs. 6,05,84,288/- in relation to import of 'heating element' and 'cross flow fan blade', respectively) should be demanded and recovered from the importer, M/s IFB Industries Limited, in terms of Section 28(4) of the Customs Act, 1962, invoking the provision of extended period for duty demand, along with applicable interest in terms of Section 28AA, *ibid*.

4.10.1 I have already held in foregoing paras that the goods viz. heating element and cross flow fan blade, imported by the Noticee as mentioned in the subject SCN, were mis-classified. Thus, after having determined the correct classification of the imported goods, it is imperative to determine whether the demand of differential Customs duty of Rs. 11,21,60,934/- (Rs. 5,15,76,646/- and Rs. 6,05,84,288/- in relation to import of 'heating element' and 'cross flow fan blade', respectively) 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.

4.10.2 I find that the Noticee has contended that they had adopted the classification under a bona fide belief that their goods are covered under the said HSN Code; that extended period of limitation cannot be invoked as the issue involved is of classification of goods, which is purely an issue of interpretation.

4.10.3 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 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.

4.10.4 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 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. 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 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.

4.10.5 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.

4.10.6 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 misleading the Customs authorities, with an intent to evade payment of legitimate Customs duty leviable on the said imported goods.

4.10.7 In the instance case, by declaring the goods imported under wrong CTI, 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.

4.10.8 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, 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.

4.10.9 The instant case is not a simple case of bonafide wrong declaration of CTI. Instead, in the instant case, the Noticee deliberately chose to mis-classify on the imported goods to claim lower rate of duty, being fully aware of the correct classification of the imported goods. This wilful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of Noticee, the extended period of limitation, automatically get attracted.

4.10.10 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.”

4.10.11 Accordingly, the differential duty resulting from re-classification of the imported goods under correct CTI as per the subject Show Cause Notice, is recoverable from M/s IFB Industries Ltd. under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

4.10.12 Therefore, I hold that the short payment of customs duty to the tune of Rs. 11,21,60,934/- (Rupees Eleven Crore Twenty One Lakh Sixty Thousand Nine Hundred Thirty Four Only) (Rs. 5,15,76,646/- and Rs. 6,05,84,288/- in relation to import of ‘heating element’ and ‘cross flow fan blade’, respectively) should be demanded and recovered from the importer, M/s IFB Industries Limited, in terms of Section 28(4) of the Customs Act, 1962, invoking the provision of extended period for duty demand.

4.10.13 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.

4.10.14 I have already held in the above paras that the differential Customs duty amounting to Rs. 11,21,60,934/- (Rupees Eleven Crore Twenty One Lakh Sixty Thousand Nine Hundred Thirty Four Only) should be demanded and recovered from M/s IFB Industries Limited 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 M/s IFB Industries Limited.

4.10.15 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 IFB Industries Limited under Section 28AA of the Customs Act, 1962.

4.10.16 Appropriation of paid amount - From the documents available on record, I find that the amount of Rs. 1,90,00,000/- (Rupees One Crore Ninety Lakh Only) was deposited by the importer, M/s IFB Industries Limited during the course of investigation vide Challan No. HC-67 dtd. 06.09.2023. In view of my upholding the demand of short paid duty along with interest from the importer, I hold that the aforesaid amount of Rs. 1,90,00,000/- should be appropriated

towards recovery of short paid duty along with interest from the importer, after due verification of the Challan.

4.11 Whether the subject goods imported vide bills of entry detailed in Annexure-36A and Annexure-36B to the subject show cause notice, valued at Rs. 61,51,24,708/- (Rupees Sixty One Crore Fifty One Lakh Twenty Four Thousand Seven Hundred Eight Only) (Rs. 39,47,08,897/- and Rs. 22,04,15,811/- in relation to import of 'heating element' and 'cross flow fan blade', respectively) are liable to confiscation under Section 111(m) of the Customs Act, 1962.

4.11.1 I note that the SCN proposes confiscation of goods imported vide Bills of Entry listed in Annexure-36A and Annexure-36B to the subject show cause notice, having total assessable value of Rs. 61,51,24,708/- (Rupees Sixty One Crore Fifty One Lakh Twenty Four Thousand Seven Hundred Eight Only) (Rs. 39,47,08,897/- and Rs. 22,04,15,811/- in relation to import of 'heating element' and 'cross flow fan blade', respectively) under the provisions of Section 111(m) of the Customs Act, 1962.

4.11.2 Section 111(m) 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;

4.11.3 I have already held in the foregoing paras that the goods viz. heating element and cross flow fan blade, imported by the Noticee as mentioned in the subject SCN, were mis-classified. The Noticee was very well aware of the actual nature of the imported goods and the applicable correct CTI. As discussed in the foregoing paras, it is evident that the Noticee deliberately suppressed the correct CTI and wilfully mis-classified the imported goods, 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.

4.11.4 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, amounts to mis-declaration and shall make the goods liable to confiscation.

4.11.5 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. 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.

4.11.6 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.

4.11.7 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.

4.11.8 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;*

4.11.9 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 IFB Industries Limited has deliberately failed to discharge this statutory responsibility cast upon them.

4.11.10 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-classification to claim lesser rate of duty. 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.

4.11.11 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 on the impugned goods, thereby evaded applicable duty.

4.11.12 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 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.

4.11.13 In view of the foregoing discussion, I hold that the said subject goods imported vide Bills of Entry as detailed in Annexure 36A and 36B to the subject SCN valued at Rs. 61,51,24,708/- (Rupees Sixty One Crore Fifty One Lakh Twenty Four Thousand Seven Hundred Eight Only) (Rs. 39,47,08,897/- and Rs. 22,04,15,811/- in relation to import of 'heating element' and 'cross flow fan blade', respectively) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.11.14 As the importer, through wilful mis-statement and suppression of facts, had mis-classified the goods 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) 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)."

4.11.14.1 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.).

4.11.14.2 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.

4.11.14.3 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.

4.11.14.4 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.

4.11.14.5 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) 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.

4.12 Whether the importer, M/s IFB Industries Limited, is liable for penalty under Section 114A of the Customs Act, 1962.

4.12.1 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.

4.12.2 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 IFB Industries 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.

4.13 Whether Shri Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, Goa, is liable for penalty under Section 112(b) and 114AA of the Customs Act, 1962.

4.13.1 I find that Shri Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, Goa, was the overall in-charge of IFB, Home Appliances Division, Goa. In his statement dated 01.03.2024 recorded under Section 108 of the Customs Act, 1962, he admittedly stated that there are significant inconsistencies and errors in spare parts related classification which are coming by air cargo for traded products and submitted that he would make sure that they would revalidate the classifications. In the same statement, at instances {para 1.4.10 (xiii)/(xiv)/(xv) of the subject SCN} he stated that he could not give clear answer as he was not prepared on that subject. The investigation was started in July, 2023 and till 01.03.2024 he was not prepared on the subject of proper classification of 'heating element'. Moreover, in the same statement, he had stated that 'Section Note 2(a) of Section XVI of Customs Import Tariff is the legal basis for classification of 'Cross flow fan blade' under CTI 84149090' (para 1.4.10 (xxiv) of the subject SCN) and he had

also stated that 'although the item i.e., 'cross flow fan blade' is not specifically included in any of the heading of Chapter 84 or 85, it is part of fan so it would be classified under CTI 84149090' (para 1.4.10 (xxv) of the subject SCN). I find that such contradictory statements show his intention to stick to their deliberate and wilful mis-declaration and thereby mis-classification resulting in evasion of applicable Customs duty.

4.13.2 From the above, I find that while dealing with Customs clearance of the impugned goods, Shri Rajshankar Ray was instrumental in determining the classification of the goods being imported. He was very well aware of the correct classification of the impugned goods, but still, he knowingly mis-classified the same before Customs authorities. I find that Shri Rajshankar Ray, was one of the conspirators of this whole fraud involving mis-classification of goods to evade payment of correct duty.

4.13.3 Thus, I find that Shri Rajshankar Ray was fully aware of correct classification of the imported goods and was also aware that their mis-classification would lead to evasion of the Customs duty. Therefore, I find that Shri Rajshankar Ray is responsible for mis-classification of the heating elements and cross flow fan blade before the Custom authorities. I find that Shri Rajshankar Ray dealt with the impugned goods which he knew or had reason to believe are liable to confiscation under section 111. Thus, I find that his acts of omission and commission have rendered the subject goods liable for confiscation under section 111(m) of the Customs Act, 1962 and has rendered him liable for penalty under section 112(b) of the Customs Act, 1962.

4.13.4 Further, I find that in the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. From the contradictory statements of Shri Rajshankar Ray, I find that he has intentionally caused the subject mis-declaration of the impugned imported goods to evade legitimately payable duty. Shri Rajshankar Ray, being MD & CEO of the importer firm was well aware of its operation and was having control over its affairs. I find that he was actively and knowingly involved in evading Customs duty by resorting to mis-classification of imported goods before Customs authorities which rendered the goods liable for confiscation under Section 111(m) of Customs Act, 1962. He cleared the mis-classified impugned imported goods by knowingly and intentionally resorting to use of false and incorrect declaration and documents. The aforesaid acts of omission and commission of Shri Rajshankar Ray resulted in use of false and incorrect declaration and documents in the clearance of the impugned goods, hence, I find that he is also liable for penal action under Section 114AA, *ibid*.

4.14 Whether Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa, is liable for penalty under Section 112(b) and 114AA of the Customs Act, 1962.

4.14.1 I find that Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa, was jointly responsible with Shri Ashish Singh, Finance Head, Washer and AC Factory, for taking final decision in classification matters during the subject period. He had signed the letter dated 04.09.2023 wherein wrong and mis-leading facts were submitted to DRI. In his statement dated 28.02.2024, he had stated that he could not comment on the many discrepancies and variation in the classification of heating element being imported by IFB and that he would come back with the comments. Neither any comments were submitted by him after the statement dated 28.02.2024 nor the applicable differential duty was paid by them in relation to the accepted discrepancies. Thus, he is responsible for mis-classification and thereby evasion of Customs duty in import of heating element as well as cross flow fan being imported by IFB.

4.14.2 From the above, I find that while dealing with Customs clearance of the impugned goods, Shri Vilas Kamath was instrumental in determining the classification of the goods being imported. He was very well aware of the correct classification of the impugned goods, but still, he knowingly mis-classified the same before Customs authorities. I find that Shri Vilas Kamath,

was one of the conspirators of this whole fraud involving mis-classification of goods to evade payment of correct duty.

4.14.3 Thus, I find that Shri Vilas Kamath was fully aware of correct classification of the imported goods and was also aware that their mis-classification would lead to evasion of the Customs duty. Therefore, I find that Shri Vilas Kamath is responsible for mis-classification of the heating elements and cross flow fan blade before the Custom authorities. I find that Shri Vilas Kamath dealt with the impugned goods which he knew or had reason to believe are liable to confiscation under section 111. Thus, I find that his acts of omission and commission have rendered the subject goods liable for confiscation under section 111(m) of the Customs Act, 1962 and has rendered him liable for penalty under section 112(b) of the Customs Act, 1962.

4.14.4 Further, as mentioned above, I find that in the instant case, Shri Vilas Kamath submitted factually wrong and mis-leading letter dated 04.09.2023 to DRI. In the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. From the evasive statements of Shri Vilas Kamath, I find that he has intentionally caused the subject mis-declaration of the impugned imported goods to evade legitimately payable duty. Shri Vilas Kamath being Head (Supply Chain Management) of the importer firm was well aware of its operation and was having control over its affairs. I find that he was actively and knowingly involved in evading Customs duty by resorting to mis-classification of imported goods before Customs authorities which rendered the goods liable for confiscation under Section 111(m) of Customs Act, 1962. He cleared the mis-classified impugned imported goods by knowingly and intentionally resorting to use of false and incorrect declaration and documents. The aforesaid acts of omission and commission of Shri Vilas Kamath resulted in use of false and incorrect declaration and documents in the clearance of the impugned goods, hence, I find that he is also liable for penal action under Section 114AA, *ibid*.

4.15 Whether Shri Ashish Singh, Finance Head, Washer and AC Factory, IFB, Goa, is liable for penalty under Section 112(a) or 112(b) of the Customs Act, 1962.

4.15.1 I find that Shri Ashish Singh, Finance Head, Washer and AC Factory of IFB, Goa, was jointly responsible with Shri Vilas Kamath, Head (Supply Chain Management) for taking final decision in classification matters. In his statement dated 05.10.2023, he had stated that Head of Supply Chain Department and Head of Finance collectively take final decision in the classification matter and release purchase orders. Thus, during the subject period, he was responsible for mis-classification and thereby evasion of Customs duty in import of heating element as well as cross flow fan being imported by the IFB.

4.15.2 From the above, I find that while dealing with Customs clearance of the impugned goods, Shri Ashish Singh was instrumental in determining the classification of the goods being imported. He was very well aware of the correct classification of the impugned goods, but still, he knowingly mis-classified the same before Customs authorities. I find that Shri Ashish Singh, was one of the conspirators of this whole fraud involving mis-classification of goods to evade payment of correct duty.

4.15.3 Thus, I find that Shri Ashish Singh was fully aware of correct classification of the imported goods and was also aware that their mis-classification would lead to evasion of the Customs duty. Therefore, I find that Shri Ashish Singh is responsible for mis-classification of the heating elements and cross flow fan blade before the Custom authorities. Thus, I find that his acts of omission and commission have rendered the subject goods liable for confiscation under section 111(m) of the Customs Act, 1962 and has rendered him liable for penalty under section 112(a) of the Customs Act, 1962.

4.16 Whether Shri Collegal Srinivasan Govindaraj, Chief Executive Officer (CEO), Industrial Business & Projects, IFB, Bangalore, is liable for penalty under Section 112(a) or 112(b) of the Customs Act, 1962.

4.16.1 I find that Shri Collegal Srinivasan Govindaraj, Chief Executive Officer (CEO), Industrial Business & Projects, IFB, Bangalore, was the overall in-charge of IFB, Bangalore. In his statement dated 29.02.2024, [Annexure 22 as well as paras 1.4.9(vi)/(vii)/(xi)/(xii) of the subject SCN] he accepted the discrepancies in their import and stated that he would look into the matter but did not revert. Thus, he is responsible for mis-classification and thereby evasion of Customs duty in import of heating elements imported in relation to Industrial Appliances for IFB, Bangalore during the subject period.

4.16.2 From the above, I find that while dealing with Customs clearance of the impugned goods viz. heating elements, Shri Collegal Srinivasan Govindaraj was instrumental in determining the classification of the goods being imported. He was very well aware of the correct classification of the impugned goods, but still, he knowingly mis-classified the same before Customs authorities. I find that Shri Collegal Srinivasan Govindaraj, was one of the conspirators of this whole fraud involving mis-classification of goods to evade payment of correct duty.

4.16.3 Thus, I find that Shri Collegal Srinivasan Govindaraj was fully aware of correct classification of the imported goods and was also aware that their mis-classification would lead to evasion of the Customs duty. Therefore, I find that Shri Collegal Srinivasan Govindaraj is responsible for mis-classification of the heating elements before the Custom authorities. Thus, I find that his acts of omission and commission have rendered the subject goods liable for confiscation under section 111(m) of the Customs Act, 1962 and has rendered him liable for penalty under section 112(a) of the Customs Act, 1962.

4.17 Whether the applicable differential duty, if any, in respect of further import after 05th June, 2024 of subject items viz. heating element and cross flow fan blade, should be demanded and recovered from the importer, M/s IFB Industries Limited, in terms of Section 28(4) of the Customs Act, 1962, along with applicable interest in terms of Section 28AA, ibid.

4.17.1 I have already held in foregoing paras that the goods viz. heating element and cross flow fan blade, imported by the Noticee as mentioned in the subject SCN, were mis-classified. Further, I have held that the short payment of customs duty to the tune of Rs. 11,21,60,934/- (Rupees Eleven Crore Twenty One Lakh Sixty Thousand Nine Hundred Thirty Four Only) (Rs. 5,15,76,646/- and Rs. 6,05,84,288/- in relation to import of 'heating element' and 'cross flow fan blade', respectively) should be demanded and recovered from the importer, M/s IFB Industries Limited, in terms of Section 28(4) of the Customs Act, 1962, invoking the provision of extended period for duty demand, along with applicable interest in terms of Section 28AA of the Act, ibid.

4.17.2 In view of the above, I hold that the applicable differential duty, if any, in respect of further import after 05th June, 2024 of subject items viz. heating element and cross flow fan blade, should be demanded and recovered from the importer, M/s IFB Industries Limited, in terms of Section 28(4) of the Customs Act, 1962, along with applicable interest in terms of Section 28AA, 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) I confirm the demand of **Rs. 11,21,60,934/- (Rupees Eleven Crore Twenty One Lakh Sixty Thousand Nine Hundred Thirty Four Only)** (Rs. 5,15,76,646/- and Rs. 6,05,84,288/- in relation to import of 'heating element' and 'cross flow fan blade', respectively) and order to recover the same from M/s IFB Industries Limited, in terms of Section 28(4) of the Customs Act, 1962, along with applicable interest in terms of Section 28AA of the Act, *ibid*.

(ii) I order to confiscate the subject goods, imported vide bills of entry detailed in Annexure-36A and Annexure-36B to the subject show cause notice having assessable value of **Rs. 61,51,24,708/- (Rupees Sixty One Crore Fifty One Lakh Twenty Four Thousand Seven Hundred Eight Only)** (Rs. 39,47,08,897/- and Rs. 22,04,15,811/- in relation to import of 'heating element' and 'cross flow fan blade', respectively) under Section 111(m) of the Customs Act 1962.

I also impose a redemption fine of **Rs. 30,00,000/- (Rupees Thirty Lakh Only)** on M/s IFB Industries Limited, in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

(iii) I impose a penalty equivalent to differential duty of **Rs. 11,21,60,934/- (Rupees Eleven Crore Twenty One Lakh Sixty Thousand Nine Hundred Thirty Four Only)** along with **applicable interest** under Section 28AA of the Customs Act, 1962, on M/s IFB Industries 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*.

(iv) I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on Shri Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, Goa, under Section 114AA of the Customs Act, 1962.

(v) I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on Shri Rajshankar Ray, MD & CEO, Home Appliances Division, IFB, Goa, under Section 112(b) of the Customs Act, 1962.

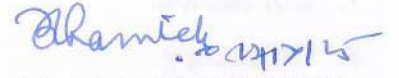
(vi) I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa, under Section 114AA of the Customs Act, 1962.

(vii) I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on Shri Vilas Kamath, Head (Supply Chain Management), IFB, Goa, under Section 112(b) of the Customs Act, 1962.

(viii) I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on Shri Ashish Singh, Finance Head, Washer and AC Factory, IFB, Goa, under Section 112(a) of the Customs Act, 1962.

- (ix) I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** on Shri Collegal Srinivasan Govindaraj, Chief Executive Officer (CEO), Industrial Business & Projects, IFB, Goa under Section 112(a) of the Customs Act, 1962.
- (x) I confirm the demand of the applicable differential duty, if any, in respect of further import after 05th June, 2024 of subject items and order to recover the same from M/s IFB Industries Limited in terms of Section 28(4) of the Customs Act, 1962, along with applicable interest in terms of Section 28AA of the act ibid.
- (xi) I order that the amount of **Rs. 1,90,00,000/- (Rupees One Crore Ninety Lakh Only)** deposited by M/s IFB Industries Limited during the course of investigation should be appropriated towards recovery of aforesaid differential duty recoverable from them, after due verification of the Challans.

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.



(अनिल रामटेके / ANIL RAMTEKE)

सीमा शुल्क आयुक्त / Commissioner of Customs,
एनएस-V, जेएनसीएच / NS-V, JNCH

To,

1. **M/s IFB Industries Limited,**
14, Taratolla Road, Kolkata, West Bengal - 700088.
2. **Shri Rajshankar Ray, MD & CEO,**
Home Appliances Division, M/s IFB Industries Limited,
527, Kamat Royale, Building No. 12,
Caranzalem, North Goa - 403002.
3. **Shri Vilas Kamath,**
Head (Supply Chain Management), M/s IFB Industries Limited,
S1, 32, Kamath Villa,
Caranzalem, North Goa - 403002.
4. **Shri Ashish Singh, Finance Head,**
Washer and AC Factory, M/s IFB Industries Limited,
Flat No. 804, Kamat Marao Kenny Complex,
Carazelem, Tiswadi, North Goa - 403002.
5. **Shri Collegal Srinivasan Govindaraj,**
Chief Executive Officer (CEO), Industrial Business & Projects,
M/s IFB Industries Limited,
No. 1010, 59th C Cross, 4th M Block,
Rajaji Nagar, Bangalore - 560010

Copy to:

1. The Pr. Addl. Director General,
Directorate Of Revenue Intelligence,
Mumbai Zonal Unit,
13, Sir Vithaldas Thackersay Marg,
New Marine lines, Mumbai - 400020
2. The Joint Director,
Directorate of Revenue Intelligence,
Goa Regional Unit, Monte Carlo, House No. 21/207 & 208,
Plot No. E-4, La Citadel Colony, Dona Paula,
Tiswadi, North Goa, Goa - 403004
3. The Addl. Commissioner of Customs, Group V, JNCH
4. AC/DC, Chief Commissioner's Office, JNCH
5. AC/DC, Centralized Revenue Recovery Cell, JNCH
6. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
7. EDI Section.
8. Office copy.