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 – 20250678NX000052045C **Date of Order: 13.06.2025**

F. No. S/10-63/2023-24/COMMR/CAC/NS-V/JNCH **Date of Issue: 13.06.2025**

SCN No.:637/2023-24/COMMR/GR.VA/CAC/JNCH

SCN Date: 16.06.2023

Passed by: Sh. Anil Ramteke
Commissioner of Customs, NS-V, JNCH

Order No: 89/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s. Sony India Private Limited

ORDER-IN-ORIGINAL
मूल - आदेश

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

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

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

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

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

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

Time Limit - Within 3 months from the date of communication of this order.
समय सीमा - इस आदेश की सूचना की तारीख से 3 महीने के भीतर

Fee -फीस-

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

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

(b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 Lakh.

(ख) पाँच हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।

(c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.

(ग) दस हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 50 लाख रुपये से अधिक है।

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

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

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

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

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

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

Subject: Adjudication of Show Cause Notice No. 637/2023-24/COMMR/GR.VA/CAC/ JNCH dated 16.06.2023 issued to M/s. Sony India Private Limited (IEC-594060991) – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) No. 637/2023-24/COMMR/GR.VA/CAC/ JNCH dated 16.06.2023 that on the basis of Alert Circular No. 01/2018 issued by the Audit Commissioner of Delhi, on the issue of "Short Levy of Customs Duty" by way of claiming ineligible benefits of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (as amended by Notfn. No. 22/2018-Cus. dated 02.02.18), data pertaining to imports under CTH 8518 made by various importers through JNCH (INNSA1) was analysed in detail. It was observed that M/s. Sony India Private Limited (IEC-594060991) having address as A-18, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi - 110044, had imported goods with description as "Headset or earphone or headphone" as detailed in Annexure- 'A' to the subject SCN. The imported goods attracted Basic Customs Duty (BCD) @ 15%.

1.2 As per the SCN, the following is relevant extract of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (as amended by Notfn. No. 22/2018-Cus. dated 02.02.2018).

S. No.	*Notfn.*	*Chapter or Heading or Subheading or tariff item*	*Description of goods*	*Standard Rate (Notfn.)*	*Condition No.*
18	*Notfn. 57/2017-Cus. dated 30.06.2017 (as amended by Notfn. 22/2018-Cus. dated 02.02.2018)*	*8518*	*All goods other than the following Parts of cellular Mobile phones* *i. Speakers &* *ii. Wired Headsets* *iii. Receiver*	*10%*	-

1.3 As per the SCN, consequent upon the above notifications, it was amply clear that Sr. No. 18 of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (as amended by Notfn. No. 22/2018-Cus. dated 02.02.2018) applied to all goods other than the following parts of cellular mobile phones:

i. Speakers &
ii. Wired Headsets
iii. Receiver

Therefore, the imported goods being Headset or Earphone or Headphone did not qualify for the exemption of BCD under Sr. No. 18 of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (as amended by Notfn. No. 22/2018-Cus. dated 02.02.2018).

1.3.1 The total assessable value of the Bill of Entry (B/E) items so imported was ₹29,51,96,952/- and it appeared that a short levy of BCD amounting to ₹1,91,58,282/- (as

detailed in Annexure-'A' to the subject SCN) was recoverable from the importer along with applicable interest and penalty.

1.4 In view of the above, Consultative letter was issued to importer to clarify the issue raised by the department and if agreed to the observation / finding of the department, the importer was advised to pay the differential duty along with applicable interest and penalty. However, no reply or submission was given by the importer in this regard.

1.5 As per the SCN, the relevant legal provisions for recovery of duty that appeared to have been evaded are reproduced here:

1.5.1 After the introduction of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including classification and calculation of duty, but in the instant case the subject goods have been mis-classified and duty amount has not been paid correctly.

1.5.2 Further, the extracts of the following relevant provisions of the Customs Act, 1962 for the time being in force relating to import of goods, recovery of duties, liability of the goods to confiscation and the persons concerned to penalty for improper importation, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

- 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 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.

1.6 As per the SCN, whereas, consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now CBIC) Circular No. 17/2011 dated 08.04.2011] provides for self-assessment of duty on imported goods by the Importer himself by filing a bill of entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the Importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or

by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the Importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the Importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

1.7 Therefore, in view of the above facts, it appeared that the importer had deliberately not paid the duty by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby had attempted to take undue benefit amounting to ₹1,91,58,282/- (as detailed in Annexure-'A' to the subject SCN). Therefore, the differential duty, so not paid, is liable for recovery from the importer under Section 28(4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at the applicable rate under Section 28AA of the Customs Act, 1962 for their acts of omission/commission.

1.8 Section 111(m) of Customs Act, 1962 provides for confiscation of the goods if any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.

1.9 It appeared that the importer had failed to comply with the conditions mentioned above, therefore, it also appeared that the imported goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

1.10 It further appeared that the importer for the acts of omission and commissions mentioned above had rendered themselves liable for penal action under Section 112(a) and 114A of the Customs Act, 1962.

1.11 In view of the above, vide Show Cause Notice No. 637/2023-24/COMMR/Gr.VA/CAC/JNCH dated 16.06.2023, M/s. Sony India Private Limited (IEC-594060991) having address as A-18, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi-110044, was called upon to show cause to the Commissioner of Customs (NS-V), Group 5A, Jawaharlal Nehru Custom House, Nhava Sheva (the Adjudicating Authority), as to why:

(i) Differential/short paid Duty amounting to ₹1,91,58,282/- for the subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN should not be demanded under Section 28(4) of the Custom Act, 1962.

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

(iii) The said subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN having assessable value of ₹29,51,96,952/- should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

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

(v) Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

2. WRITTEN SUBMISSIONS OF THE NOTICEE

The Noticee, M/s. Sony India Private Limited vide their letter dated 21.04.2025 gave written reply to the subject SCN through their consultant M/s Lakshmikumaran & Sridharan. Vide the above reply, they denied all the allegations made in the SCN and made *interalia* submissions as under:

2.1 About the Noticee

The Noticee is a private limited company incorporated in India, and is *inter alia*, engaged in import and trading of various types of headphones/earphones in India sold under the brand name of 'Sony'. During the relevant period, the Noticee imported various models of wired headsets (impugned/subject goods) and classified them under Customs Tariff Item (CTI) 85183000 of the First Schedule of the Customs Tariff Act, 1975, and cleared them by discharging the BCD @ 10% in terms of Sl. No. 18 of Notification No. 57/2017. Copy of sample impugned BoEs along with invoices pertaining to the impugned goods were submitted by the Noticee.

2.2 Description and features of the impugned goods

The Noticee imports different varieties of headsets/headphones (both wired and wireless). The disputed goods are wired headsets which are primarily used for listening to music. Apart from this, the disputed goods can also be used for communication purposes. The specifications of the disputed goods are as under:

- 3.5mm jack;
- Frequency: 5Hz-22,000Hz Hz
- Outstanding Bass- Driven stereo sound
- Sensitivity: 102dB/mW

The pictures of the impugned goods and relevant page of the brochure containing information about the impugned goods were submitted by the Noticee.

2.3 Amendment in Notification No. 57/2017

2.3.1 Wired headsets used to attract 10% BCD till 01.02.2018. Vide Notification No. 22/2018-Cus. dated 02.02.2018, the earlier Notification No. 57/2017-Cus. was amended. With this amendment to Notification No. 57/2017-Cus, the effective rate for all goods of CTH 8518 was kept at 10%, with exception of three specified parts of cellular mobile phones i.e. (i) Microphone, (ii) Wired Headset, & (iii) Receiver.

2.3.2 The Noticee, even after the above amendment, had been claiming the benefit of the concessional rate of BCD at 10% in view of Sl. No. 18 of Notification No. 57/2017, since the impugned goods were not parts of cellular mobile phones and thus were not excluded from the purview of benefit given under Sl. No. 18.

2.4 Issuance of Consultative Letter(s):

2.4.1 The Pre-Consultative Memo No. 121/2021-22/PCA/(C-3) dated 26.04.2021 ('PNC') was issued by the Assistant Commissioner of Customs, Audit Commissionerate, Circle C-3, JNCH, Nhava Seva, Mumbai, covering the Bills of Entry filed during the period 16.02.2018 to 01.11.2019. This period is inclusive of the relevant period covered in the SCN and therefore, all the impugned BoEs were part of the PNC.

2.4.2 The Noticee filed its response vide letter dated 05.07.2021 to the above Consultation Notice wherein the Noticee submitted that impugned goods would fall outside the exclusion clause to Notification No. 57/2017 and would be covered under the ambit of Sl. No. 18 of the said notification and are eligible for concessional BCD @10%. A copy of response to PNC dated 05.07.2021 was enclosed by the Noticee.

2.4.3 However, the Noticee, in the aforementioned reply dated 05.07.2021, divided the subject goods into 2 categories i.e. wired headsets with microphone and wired headsets without microphones. For wired headsets with microphone, while it is the contention of the Noticee that the said goods are eligible for benefit of Sl. No. 18 of Notification No. 57/2017 not being parts of cellular mobile phones, however, the Noticee took the commercial decision to pay the duty along with interest with respect to the corresponding Bills of Entry, to avoid further litigation. Differential duty along with the applicable interest upto date was deposited by the Noticee on 27.01.2020 for the imports of wired headsets with microphones imported from 16.02.2018 to 01.01.2020. Copy of Challan along with intimation letter dated 05.02.2020 submitted to the concerned Deputy Commissioner, JNCH, Nhava Sheva, was submitted by the Noticee.

2.4.4 Some of the impugned BoEs for which duty along with interest had already been deposited by the Noticee prior to issuance of PNC were enlisted. A comparative sheet enlisting all the BoEs covered under PNC, those covered under SCN and those BoEs for which differential duty has already been deposited by the Noticee was submitted.

2.4.5 For the remaining impugned BoEs covered in the PNC i.e. Bills of Entry covering wired headsets without microphone, the Noticee was of bona fide understanding that these goods do not fall under the ambit of exclusion clause of Notification No. 57/2017 as without the microphone, the calling function of the mobile phone will not be complete and therefore, the said goods could not be classified as parts of mobile phones in any manner. Therefore, vide reply dated 05.07.2021, it was submitted that the benefit of the Notification No. 57/2017 as amended shall be available for this category of goods.

2.5 Issuance of the SCN and allegations therein

2.5.1 The Noticee received SCN dated 26.06.2023 covering wired headsets with microphones as well as without microphones, denying the benefit of exemption in terms of Sl. No. 18 of Notification No. 57/2017. The SCN covered even those Bills of Entry for which differential duty along with interest had already been paid by the Noticee as intimated vide letter dated 05.02.2020. Despite the said deposit, the proceedings with respect to the said goods did not close and the SCN has been issued covering those Bills of Entry as well vide which wired headsets with microphones were imported.

2.5.2 At the outset, the Noticee denied all allegations in the SCN for both the categories of models of impugned goods namely wired headset with microphones and wired headset without microphones and submitted that the SCN is liable to be dropped on the following grounds, which are independent and without prejudice to one another.

2.6 The SCN ought to be dropped as it is vague, perverse and in violation of the principles of natural justice.

2.6.1 The impugned SCN is vague, without reasons and violative of the principles of natural justice as it doesn't provide any detailed or vocal explanation / reason for alleging that the impugned goods are not eligible for the benefit under Notification No. 57/2017 as amended. The SCN only discusses that the impugned goods are not eligible to claim exemption under Sl. No. 18 of the Notification No. 57/2017 because the impugned goods being 'Wired Headset' are part of cellular mobile phones. However, the SCN fails to address the specific language of Sl. No. 18, omitting an explanation as to how the impugned goods fit within the exclusion portion of Serial No. 18 or how they can be considered as parts of cellular mobile phones. Thus, the SCN is vague, without reasons and contains several findings that are incomprehensible.

2.6.2 The SCN is contrary to the well-established principles of natural justice, and does not suffice for discharging the Department's onus to prove that Noticee is not eligible to claim the exemption under the Notification No. 57/2017 as amended. In light of the above, the proceedings initiated by the SCN are liable to be discharged in entirety and the demand is liable to be dropped as the SCN is devoid of any reasons for disallowing the benefit of Notification 57/2017 as amended. Reliance in this regard placed on the decision in the case of *Commissioner C. Ex.*

Bangalore Vs Brindavan Beverages (P) Ltd., {2007(6)TMI4-Supreme Court}; Commissioner C. Ex. Vs. M/s. Indian Oil Corporation, (2017 (6) TMI 573- Madras High Court}; RR Financial Consultants Ltd. Vs. UOI & Ors. {2014 (33) STR 12 (Del.)} & Amrit Foods Vs CCE {2005 (190) ELT 433 (SC)} etc.

2.7 The impugned goods are not "parts" of cellular mobile phones and thus, are not excluded from the scope of Serial No. 18 of Notification No. 57/2017, as amended.

2.7.1 The impugned goods imported by the Noticee were classifiable under CTI 85183000 (as it stood at the time of import) and there is no dispute on this point. The goods falling under CTH 8518 are given concessional rate of BCD vide Sl. No. 18 of Notification No. 57/2017, as amended by Notification No. 22/2018. Under Serial No. 18, only specified parts of cellular mobile phones are excluded from the benefit of concessional rate of BCD and such specified parts attract BCD at the tariff rate of 15%. The benefit of concessional rate of BCD under Sl. No. 18 is available to all the goods which are:

a. classifiable under CTH 8518; and
b. do not fall under the exclusion portion of Sl. No. 18.

2.7.2 In order to fall under the exclusion portion of Sl. No. 18, the following conditions are to be satisfied cumulatively by the disputed goods:

Condition No. 1: the imported items are parts of cellular mobile phones; and
Condition No. 2: the imported items must either be wired headsets or microphone or receiver.

2.7.3 If any imported goods fulfil both the conditions then only the said goods will fall under the exclusion clause and accordingly will not be entitled to the concessional rate of BCD under Sl. No. 18 of Notification No. 57/2017. However, in case, any of the above-referred condition is not satisfied by the imported goods, such goods would fall outside the purview of the exclusion portion and would be covered under the ambit of Sl. No. 18 of Notification No. 57/2017 as amended. Such goods falling outside the purview of the exclusion portion of Sl. No. 18 would be eligible for benefit of reduced BCD @ 10%.

2.7.4 The impugned goods do not fall within the scope of exclusion portion and thus are eligible for concessional rate of BCD @ 10% for the following reasons:

2.7.4.1 The first condition provides that the imported items must be parts of cellular mobile phone. Thus, in order to satisfy the first condition, it is to be seen as to whether or not the impugned goods qualify as parts of cellular mobile phone. It is to be noted that the term 'parts' used in Sl. No. 18 of the Notification No. 57/2017, as amended by Notification No. 22/2018, is not defined therein. It is a settled principle of law that to understand meaning of any word used in a statute, but not defined therein, reference can be made to the meaning given in a dictionary.

Reliance in this regard placed on the decision in the case of *Star Paper Mills Ltd. v. Commissioner of Central Excise, 1989 (43) ELT 178 (SC).*

2.7.4.2 The dictionary meaning of the word "part" is "a piece or segment of something which combined with others makes up the whole (vide The Concise Oxford English Dictionary). Part is also defined to mean as 'constituent' in many dictionaries. In the New Oxford American Dictionary, one of the meanings given is: "an element or constituent that belongs to something and is essential to its nature". Therefore, as per dictionary meanings of the term 'part', goods which are an essential component of something would qualify to be part of such later goods. Reliance in this regard placed on the decision in the case of *Jindal Strips Ltd. v. CCE., 1997 (94) E.L.T. 234 (Tribunal).*

2.7.4.3 This view has been upheld and endorsed in a number of cases by various judicial forums wherein it has been consistently held that 'parts' are those components which are essential or necessary for the functioning of a particular machine to which such components are part of. Conversely, all other components which are not necessary or essential but are required to enhance the quality or efficiency of the parent/main machine, would qualify as 'accessories' of that particular machine. Reliance in this regard placed on the decision in the case of *Commissioner of C. Ex., Delhi vs. Insulation Electrical (P) Ltd., 2008 (224) E.L.T. 512 (S.C.); Eureka Forbes Ltd. vs. Commissioner of Central Excise, Meerut., 2001 (130) E.L.T. 146; Mehra Bros. vs. Joint Commercial Officer - 1990 (11) TMI 144 - Supreme Court; State of Punjab vs. Nokia India Pvt. Ltd., 2015 (315) ELT 162 (SC); CTO, Anti Evasion Circle III, Jaipur vs. Prasoon Enterprises, 2019 (23) GSTL 411 (SC) & Pragati Silicon Pvt. Ltd. vs. Commissioner of C. Ex., Delhi., 2007 (211) ELT 534 (SC)*

2.7.4.4 In the present case also, the impugned goods only provide convenience to the user to communicate through their mobile phones while taking some calls but in any case, it does not form an integral part without which the mobile phone cannot work. It is an undisputed fact that mobile phones can function fully even without the impugned goods. Thus, mobile phones cannot be considered as incomplete without the impugned goods.

2.7.4.5 Further, without admitting, even if it is considered that the subject goods are parts of cellular mobile phones, then also wired headsets without microphones can never be considered as part of cellular mobile phones as the basic function of calling or mobile telephony cannot be fulfilled by usage of these wired headsets without microphones. The user will not be able to exercise the basic function of a mobile phone i.e. calling, by usage of wired headsets without microphones. Therefore, even though it is submission of the Noticee that all the impugned goods are not parts of cellular mobile phone to be ineligible for benefit of Notification No. 57/2017 as amended, wired headsets without microphones can by no stretch of imagination be considered as parts of cellular mobile phones.

2.7.4.6 In view of the above, the impugned goods do not qualify as parts of cellular mobile phones and therefore, the first condition provided in the exclusion portion is not satisfied.

2.7.5 Once the first condition is not satisfied, there is no need to proceed towards the second condition as both conditions are required to be satisfied cumulatively so as to deny the exemption to the impugned goods under Sl. No. 18 of Notification No. 57/2017. Hence, the Noticee does not fall under the exclusion category and the benefit of Notification No. 57/2017 as amended, is liable to be extended to the impugned goods.

2.8 The impugned goods are general purpose headsets and are not solely used with or designed for cellular mobile phones.

2.8.1 The impugned goods are general purpose headsets which can be used with any compatible device and are not designed specifically for use with cellular mobile phones. When the goods are not specifically designed for the main machine, the same cannot be classified as parts. Reliance placed on the decision in the case of *Chemplast Sanmar Ltd. vs Commissioner of Customs (Import), Chennai., 2018 (364) ELT 345, CESTAT & Seahorse Industries Ltd. vs. Commissioner of* Central *Excise, Trichy., 2005 (191) E.L.T. 161 (Tri. - Chennai)*. From the afore-said judicial precedents, the following position emerges:

(i) That a part must be specifically designed for the main product to which the same is a 'part'.

(ii) A general-purpose component cannot be treated as part as such component can be used with other products also.

2.8.2 None of the above criteria is met by the impugned goods in relation to the cellular mobile phones due to the following reasons:

(i) That the impugned goods are not specifically designed for any specific cellular mobile phone or any cellular mobile phone company.

(ii) Even though, the impugned goods are compatible with smart phones, compatibility with the same cannot be interpreted to mean that the headsets are exclusively meant for cellular mobile phones.

(iii) The impugned goods can be used for any audio / visual electronic gadgets and has a broad - spectrum usage, wherein it can be used with tablets, laptops, MP3 players, i-pods, desktop computer, gaming equipment, i-pad, in addition to cellular mobile phones.

(iv) The impugned goods are for retail and corporate sales. None of the impugned goods are sold directly to cellular mobile phones manufacturing companies.

(v) The impugned goods cannot be used with all types of cellular mobile phones. The impugned goods can be used only with specific models of smartphones which support 3.5 mm audio jack. Many smart phones such as Apple iPhones, OnePlus, Samsung etc. do not support 3.5 mm audio jack technology and the impugned goods are not compatible with such products.

(vi) The impugned goods are not specifically imported or used for cellular mobile phones. The said goods have been imported independently and not packaged along with cellular mobile phones.

(vii) Further, the functionality of the impugned goods is not dependent exclusively on cellular mobile phones.

(viii) The quality of audio of the impugned goods is so high that it cannot be merely used for communication over cellular mobile phones. The features such as bass-driven stereo sound, passive attenuation of ambient noise is not required for communication purposes.

2.8.3 The Noticee even advertised the usage of the product with multiple products such as mobile and laptop. Therefore, the impugned goods cannot be considered a part of mobile phone. In view of the above, the impugned goods are not parts of cellular mobile phones and are not excluded from the Sl. No. 18 of Notification No. 57/2017. Thus, the impugned goods are eligible for concessional rate of BCD @ 10% under Notification No. 57/2017.

2.9 The fact that the impugned goods have 3.5mm jack makes it a general product and not specific to cellular mobile phones

2.9.1 Headphones with 3.5 mm jack has been prevailing in the market since 19th Century and has been universally used with most of the electronic audio products. In the present case also, the impugned goods have 3.5mm jack which makes it universal so as to use with any or every electronic product which has 3.5mm slot. Hence, it is safe to conclude that the impugned goods are not solely used with the cellular mobile phones and therefore, it is not a part of cellular mobile phones.

2.9.2 Furthermore, after taking into consideration the technological advancements being undertaken in the mobile phone industry, almost none of these latest mobile phones have a 3.5 mm jack in them, making the subject goods incompatible with these phones. Therefore, the subject goods can never be considered as parts of these latest mobile phones while the subject goods continue to be imported during the relevant period covering the year 2019 as well.

2.9.3 Furthermore, any product which is already in existence cannot be a part of a product which has been launched at a later stage/date. In simple terms, when the headphones were existing (since 1979) even prior to the introduction of cellular mobile phones (around 1995), the same cannot be called as parts of cellular mobile phones.

2.10 Notification No. 57/2017 as amended, must be strictly construed. In any case, exclusionary clause of notification must be strictly and narrowly construed.

2.10.1 The Sl. No. 18 of Notification No. 57/2017 is very specific, clear, and unambiguous. In the absence of any ambiguity, the Notification No. 57/2017, as amended, is to be strictly and literally construed. It has been held in plethora of cases that tax exemption notifications are to be

strictly construed. Reliance in this regard placed on the decision in the case of *Saraswati Sugar Mills vs. Commissioner of C. Ex., Delhi-III* reported at *2011 (270) E.L.T. 465 (S.C.),*; *Commissioner of Cus. (Import), Mumbai vs. Dilip Kumar & Company., 2018 (361) ELT 577 (S.C.)*.

2.11 Exclusions in any notification are to be strictly construed

2.11.1 Further, it is a settled law that an 'exclusionary clause' in the exemption notification must be strictly construed and must be given a narrow meaning so as not to defeat the objective of the exemption notification. Reliance in this regard placed on the decision in the case of *Pappu Sweets and Biscuits v. Commissioner of Trade Tax, U.P., Lucknow., 2004 (178) E.L.T 48 (S.C.)*; *Synthetics & Chemicals Ltd. vs State of U.P. And Ors.,1990 AIR 1927 (SC)*.

2.11.2 Thus, it is settled law that an exclusion clause must be strictly and narrowly construed. The way the Notification No. 57/2017 as amended, is interpreted by the Customs authorities would result in denial of benefit to almost all the headphones, earphones and headsets as most of such products due to the use of '3.5 mm jack' are compatible with smartphones. In such a scenario, the said exemption notification will be rendered as otiose and infructuous. Thus, keeping with the intent of the Notification No. 57/2017 as amended, the impugned goods must be allowed the benefit of the said exemption under Notification No. 57/2017.

2.11.3 In view of the above, Serial No. 18 of Notification No. 57/2017 must be strictly construed so as to exclude from its purview only parts of cellular mobile phones and not all types of wired headsets.

2.12 No words can be added to the present wording of the notification.

2.12.1 Excluding accessories of cellular mobile phones like the impugned goods from the scope of Sl. No. 18 of Notification No. 57/2017 shall amount to adding words in the Notification No. 57/2017, which is impermissible as per law. Reliance in this regard placed on the decision in the case of *Commissioner of C. Ex., Trichy vs. Rukmani Pakkwell Traders., 2004 (165) ELT 481 (S.C.); Commissioner of Central Excise, Surat-I vs. Favorite Industries reported at 2012 (278) E.L.T. 145 (S.C.)*.

2.12.2 Therefore, on the basis of the aforementioned decision of the Supreme Court when the wordings of the Notification No.57/2017 as amended, is clear and natural meaning is to be given to its terms. While reading or construing a notification or condition of any notification, words cannot be added or altered. It must be read in the same manner as it is legislated or drafted. Reliance in this regard placed on the decision in the case of *Bombay Chemicals (P) Ltd. vs. CCE., 1995 (17) E.L.T. 3 (S.C.); Collector vs. Himalayan Co-op Milk Product* reported at *2000 (122) E.L.T. 327 (S.C.)*; *Commissioner of Central Excise Vs Gujarat Ambuja Exports Ltd., 2016*

(338) ELT 481 (SC); *Orient Traders vs. Commercial Tax Officer, Tirupati* reported at *2009 (237) E.L.T. 447 (S.C.)*.

2.12.3 In the present case, the terms of Notification No. 57/2017 state 'parts of cellular mobile phones namely wired headset'. In view of the aforesaid settled position of law, the department cannot add the words to the Notification No. 57/2017 as amended, and cannot read the exclusionary clause of Serial No. 18 for 'parts or accessories' of cellular mobile phones namely wired headset. Further, as the impugned goods are not parts of cellular mobile phones and can best be called as accessory to cellular mobile phones, therefore, benefit of Notification No. 57/2017 is liable to be extended in the present case.

2.12.4 Without prejudice to above, the legislature has taken a conscious decision to exclude only 'parts' and not 'parts and accessories' from Serial No. 18 of Notification No. 57/2017. This can be substantiated from the fact that other serial numbers (such as Serial No. 9 and 10) of the Notification No. 57/2017 during the relevant period exclude 'parts or accessories'. There must be plain interpretation of the notification. Reliance in this regard placed on the decision in the case of *M/s. Parle Exports (P) Ltd. reported in 1988 (38) ELT 741 (SC).*

2.12.5 In view of this, benefit of Serial No. 18 of Notification No. 57/2017 is liable to be extended to impugned wired headsets.

2.13 Without prejudice, the SCN could not have been issued for impugned BoEs covering wired headsets with microphone for which differential duty has already been paid

As already submitted above, the Noticee has already deposited the differential duty demand along with interest with respect to those impugned BoEs covering wired headsets with microphones. Without prejudice to the aforementioned submissions that the impugned goods are not parts of cellular mobile phones and hence excluded from the purview of exclusion clause of Sl. No. 18 of Notification No. 57/2017 as amended, once differential duty has already been deposited by the Noticee even prior to issuance of PNC, no SCN could have been issued with respect to these impugned BoEs. Therefore, the SCN is liable to be dropped with respect to those impugned BoEs covering wired headsets with microphones, on this ground alone.

2.14 The present show cause notice is invalid in the absence of valid appeal against the out-of-charge Bills of Entry.

The present demand raised vide the SCN is invalid in the absence of appeal against the out of charge Bills of Entry. The impugned goods imported by the Noticee were cleared for home consumption on the strength of duly assessed bills of entry and the out-of-charge orders issued by the proper officer under Section 17 read with Section 47 of the Customs Act. There is no dispute on this factual position. These orders were passed on the satisfaction of the proper

officer that the impugned goods have been properly assessed before clearance for home consumption. Therefore, on this ground alone the SCN is liable to be dropped.

2.15 Absence of appeal against the out of charge order/ bill of entry renders the demand invalid.

2.15.1 Assessment orders being quasi-judicial orders can only be set aside by an order of the competent appellate authority in appellate proceedings. Quasi-judicial orders cannot be sought to be set aside by mere issuance of a show cause notice, which has proposed to modify the assessment orders in the instant case. Reliance in this regard placed on the decision in the case of *ITC Limited Vs Commissioner of Central Excise {2019 (368) ELT 216 (SC)}; Jairath International Vs UOI {2019 (10) TMI 642}; Vittesse Export Import Vs Commissioner of Customs (EP), Mumbai {2008 (224) ELT 241 (Tri.-Mumbai)}* & *Ashok Khetrapal Vs Commissioner of Customs, Jamnagar {2014 (304) ELT 408 (Tri.-Ahmd.)}.*

2.15.2 The ratio of the aforesaid judgments is equally applicable to the present case. In the present case also, the department has sought to confirm duty demand without challenging the impugned BoEs and the resultant out of charge orders. In the absence of any appeal against the said out of charge orders/ bills of entry which have been assessed by proper officers, it must be understood that the assessment has gained finality, which cannot be challenged or negated by issuance of the impugned SCN. Hence, on this ground also, the impugned SCN is liable to be dropped.

2.16 Refund provisions under Section 27 and recovery provisions under Section 28 of the Customs Act are separate remedies available to the assessee and to the Department, respectively.

2.16.1 Section 27 of the Customs Act is a remedy available to the assessee for the refund of excess duty paid by him. On the other hand, Section 28 of the Customs Act is a remedy available to the department for the recovery of duty not levied, short-levied or erroneously refunded. Thus, both the provisions provide separate remedies to the assessee as well as to the department. To that extent, both are mirror image of each other.

2.16.2 Section 28(1) of the Customs Act prescribes a period of 2 years for recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. In such cases of normal period of limitation, there is no requirement on part of the department to prove any collusion or wilful misstatement or suppression of facts with the intention to evade payment of duty. Such recovery proceedings can be initiated by issuance of a notice for demand in the form of a show cause notice.

2.16.3 The extended period of limitation of 5 years under Section 28(4) of the Customs Act is invokable where any duty of customs has not been levied or paid or has been short levied or short paid by reason of collusion or any wilful mis-statement or suppression of facts. It is a

settled law that in order to invoke extended period of limitation, an assessee should have engaged in collusion or wilful mis-statement or suppression of facts.

2.16.4 Right to appeal is available to any person, that is, the department as well as to the assessee against an order of assessment. It is pertinent to note that even though the Apex Court in the case of *ITC Ltd. (supra)* has extracted the provision of Section 28 of the Customs Act, but the Hon'ble Court has not given any findings on this provision.

2.16.5 The Apex Court has held that an order of self-assessment is nonetheless an assessment order passed under the Customs Act, so it would be appealable by any person aggrieved thereby. The Department, as well as the assessee can prefer an appeal aggrieved by such order of assessment.

2.16.6 In view of the above, it can be said that as much as the judgment in the case of *ITC Ltd. (supra)* applies to the assessee as regards refunds under Section 27 of the Customs Act, the same would be applicable to the department while exercising their remedy under Section 28 of the Customs Act. Therefore, even the department has to first challenge an assessment order by filing an appeal under Section 128 within 60 days, before issuing a SCN under Section 28 of the Customs Act. Reliance in this regard placed on the decision in the case of *Axiom Cordages Ltd. v. Commissioner of Customs, Nhava Sheva-II, 2020 (9) TMI 478 - CESTAT MUMBAI.* Therefore, in the present case also, in the absence of any appeal by the department, the proceedings initiated vide the SCN is liable to be dropped.

2.17 Extended period of limitation is not invokable in the present case under Section 28(4) of the Customs Act.

In the present case, the SCN was issued on 16.06.2023 in respect of the imports made by the Noticee during the relevant period, i.e. 21.06.2018 to 01.11.2019. In the instant case, the SCN is issued by invoking the extended period of five years under Section 28(4), alleging that the Noticee had wilfully mis-classified the impugned goods with an intent to evade the payment of duty. The Noticee has not suppressed any information from the Department and all the relevant information was provided by the Noticee at the time of import, therefore, extended period could not have been invoked in the instant case, and substantial demand is time-barred.

2.18 Extended period cannot be invoked as there was no mis-declaration/suppression of facts.

2.18.1 The extended period is not invokable since no suppression of facts/mis-declaration can be attributed to it. The Noticee had duly followed the law, and had claimed the exemption under Sl. No. 18 of the Notification No. 57/2017 under the genuine *bona fide* understanding that the impugned goods are eligible for exemption under the notification. Thus, no *mala fides* can be imputed against the Noticee, and extended period of limitation could not have been invoked.

2.18.2 Further, it is not the case of the Department that the Noticee had made improper/wrong/fraudulent declarations. In this regard, perusal of bills of entry along with the respective invoices etc. show that the Noticee had made correct declarations, by disclosure of all such relevant facts as the law mandates it to do. Therefore, this is not a case of suppression either, and extended period of limitation could not have been invoked. Reliance in this regard placed on the decision in the case of *Cosmic Dye Chemical vs. Collector of Central Excise, Bombay, (1995) 6 SCC 117; Collector of Central Excise vs. Chemphar Drugs & Liniments, (1989) 2 SCC 127*; *Anand Nishikawa Co. Ltd. vs. Commissioner of Central Excise, Meerut, (2005) 7 SCC 749*; *Commissioner of Central Excise, Aurangabad vs. Bajaj Auto Limited, 2010 (260) ELT 17 (SC) & Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur 2013 (288) E.L.T. 161 (S.C.).*

2.18.3 Based upon the above-referred judgments it can be said that to invoke an extended period under Section 28 of the Customs Act, it has to be proved that there was a conscious or intentional act of collusion, wilful mis-statement or suppression of fact, on the part of the importer. The intention or deliberate attempt, on the part of importer, to evade duty has to be proved beyond reasonable doubt to justify invocation of extended period. In this regard, in the present case the SCN has not demonstrated any conscious or intentional act of collusion, wilful mis-statement or suppression of fact on the part of the Noticee. All the relevant information was provided by the Noticee at the time of import of the impugned goods. The relevant Bills of Entry and invoices submitted with the customs authorities at the time of import contained the correct description and information pertaining to the impugned goods.

2.18.4 Thus, even if impugned goods are not eligible for exemption under Sl. No. 18 of Notification No. 57/2017 then also it cannot be said that the Noticee has mis-stated or suppressed facts pertaining to the impugned goods. Reliance in this regard placed on the decision in the case of *Continental Foundation Jt. Venture v. Commissioner of Central Excise, Chandigarh 2007 (216) ELT 177 (SC); Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay, 1995 (78) ELT 401 (SC) & India Limited v. Collector Central Excise, Coimbatore 92 E.L.T 84 (Tri.-Mad.).*

2.18.5 The Noticee has availed the benefit of exemption under the *bona fide* belief and the same does not amount to mis-declaration to attract the provisions of Section 28(4) of the Customs Act. Reliance in this regard placed on the decision in the case of *Northern Plastic Ltd. v. Commissioner of Central Excise, 1998 (101) ELT 549 (SC) & Swathy Chemicals Ltd. v. Commissioner of Central Excise, 1999 (114) ELT 531 (Tribunal).*

2.18.6 In the present case, the SCN has not proved any conscious or intentional act of collusion, wilful mis-statement or suppression of fact on the part of the Noticee except making a bald statement that Noticee had wilfully mis-stated and availed benefit of exemption for the impugned goods. The Noticee has not made any declaration with the intent to evade payment of any duty.

2.18.7 Moreover, it is pertinent to mention herein that PNC was issued by the Department on the same issue as covered in the SCN on 26.04.2021 which depicts that all the information and knowledge was in the knowledge of Department atleast since then. However, the SCN was issued on 16.06.2023 which is more than two years after the date of issuance of PNC. In view of the said fact, invocation of extended period of limitation in the SCN is entirely incorrect and the demand, if any, could have been raised only for the normal period of limitation.

2.18.8 Therefore, in absence of any intentional act of collusion, wilful mis-statement or suppression of fact on the part of the Noticee, the duty demand would become time-barred as the SCN has been issued after two years from the relevant date of imports made into India. The demand raised for the period 21.06.2018 to 01.11.2019 is time-barred.

2.19 Extended period not invokable as the issue involves an interpretation of the law.

2.19.1 Further, the extended period cannot be invoked as the present issue involves the issue of interpretation of law. The issues raised in the SCN is one of the exemptions of the notification, i.e., interpretation of the entries of the First Schedule to the Tariff Act and Explanatory Notes to the HSN. In support of the contention that extended period cannot be invoked in cases of interpretation of the law, reliance placed on the decision in the case of *Singh Brothers vs. Commissioner of Customs & Central Excise, Indore, 2009 (14) STR 552 (Tri.-Del.);Steelcast Ltd. vs. Commissioner of Central Excise, Bhavnagar, 2009 (14) STR 129 (Tri.-Del.) & P.T. Education & Training Services Ltd. vs. Commissioner of Central Excise, Jaipur, 2009 (14) STR 34 (Tri.-Del.).*

2.19.2 Therefore, in the light of above submissions, the Noticee has not wilfully mis-declared or suppressed any facts with respect to the impugned goods in order to evade payment of appropriate duty of customs and hence, the extended period of limitation has wrongly been invoked. Therefore, in view of the above submissions, the SCN is liable to be set aside.

2.20 The impugned goods imported by the Noticee are not liable for confiscation under Section 111(m) of the Customs Act.

2.20.1 Confiscation under Section 111(m) of the Customs Act is not sustainable as there is no wilful mis-declaration on the part of the Noticee. There was no mis-declaration either in respect of value, description made under the Customs Act. The Noticee had correctly described the impugned goods, classified the impugned goods under CTI 8518 and has rightly availed the benefit of exemption in terms of Sl. No. 18 of Notification No. 57/2017. Therefore, the impugned goods are not liable for confiscation under Section 111(m) of the Customs Act. Reliance in this regard placed on the decision in the case of *Lewek Altair Shipping Private Limited v. Commissioner of Customs, 2019 (366) ELT 318 (Tri. - Hyd.)*; *Commissioner v. Lewek Altair Shipping Pvt. Ltd., 2019 (367) ELT A328 (SC)*; *Midas Fertchem Impex Vs. Principal CC reported at 2023 (1) TMI 998*; *Sutures India Pvt. Ltd. vs. CC, Bangalore, 2009 (245) ELT 596*

(Tri.-Bang.) & Lotus Beauty Care Products Pvt. Ltd. v. CC (Imports), JNCH, Nhava Sheva, 2020-TIOL-1664-CESTAT-MUM.

2.20.2 Without prejudice, for the sake of argument, if it is assumed that the exemption adopted by the Noticee is not correct, Section 111(m) of the Customs Act cannot be invoked. Reliance placed on the case of *M/s Samsung India Electronics Pvt. Ltd. vs. Commissioner of Customs Air Cargo Complex (Import), 2023 (12) TMI 1155 - CESTAT NEW DELHI & Aureole Inspecs India Pvt. Ltd. vs. Principal Commissioner, New Delhi, 2023 (8) TMI 565 – CESTAT Delhi.*

2.20.3 In light of the case laws cited above, the Noticee has rightly claimed the benefit of exemption notification under a *bona fide* belief that the impugned goods are eligible for the same as they are not parts of cellular mobile phones. Hence, without prejudice, even if it is found that the Noticee has incorrectly claimed benefit under Notification No. 57/2017 as amended, the same cannot be said to be 'mis-declaration' and therefore, the impugned goods cannot be held liable to confiscation under Section 111(m) of the Customs Act.

2.21 Provisions of section 111 are not invokable where goods have already been cleared.

2.21.1 Further, Section 111 of the Customs Act provides for confiscation of the improperly imported goods. Therefore, only imported goods can be confiscated under Section 111 of the Customs Act. Reliance in this regard placed on the decision in the case of *Bussa Overseas & Properties P. Ltd. vs. C.L. Mahar, Assistant Commissioner of Customs, Bombay, 2004 (163) ELT 304 (Bom.) & Southern Enterprises vs. Commissioner of Customs, Bangalore, 2005 (186) E.L.T. 324 (Tri. - Bang.).* In light of the aforesaid judgments, in the present case, since the impugned goods in question have been cleared for home consumption, they have lost the character of being imported goods under the Customs Act and therefore, cannot be held liable for confiscation under section 111 of the Customs Act.

2.21.2 Further, in the present case, there is no intentional or deliberate wrong declaration or mis-declaration on the part of the Noticee to attract mischief of Section 111(m) of the Customs Act. It is, therefore, respectfully submitted that the confiscation of the goods under Section 111 (m) of the Customs Act is not sustainable in law.

2.22 Mis-declaration has to be deliberate or intentional.

Mis-declaration as contemplated by Section 111(m) of Customs Act has to be 'wilful', 'deliberate' or 'intentional' act/omission on the part of the assessee, and the same has to be shown beyond a reasonable doubt which is definitely not satisfied in this present case. The courts have very clearly and consistently, in a catena of judgements, held that the term 'mis-declaration' in the context of fiscal statute means 'intentional', 'wilful' or 'deliberate' act / omission on the part of an assessee to evade the payment of duty. Reliance in this regard placed on the decision in the case of *Shahnaz Ayurveda's vs. Commissioner of Central Excise, Noida 2004 (173) E.L.T.*

337 (All.); *Commissioner of Central Excise, Noida vs. Shahnaz Ayurvedics, 2004 (174) E.L.T. A34 (S.C.) & Kirti Sales Corporation vs. Commissioner of Customs,* Faridabad *reported at 2008 (232) ELT 151 (Tri.-Del.),*

2.23 No interest can be demanded when duty demand is not sustainable.

As per Section 28AA, interest is demandable only if the assessee is liable to pay the principal amount. It is a cardinal principle of law that when the principal demand is not sustainable, there is no liability to pay ancillary demands. From the submissions made above, it is evident that since the demand of duty is not sustainable, the question of recovering interest does not arise. Therefore, the Noticee is not liable to pay interest under Section 28AA. Reliance in this regard placed on the decision in the case of *Pratibha Processors vs. Union of India, 1996 (88) ELT 12 (SC)*; *Commissioner of Customs vs. Jayathi Krishna, 2000 (119) ELT 4 (SC)*

2.24 Penalty is not imposable on the Noticee under Section 112(a)/Section 114A of the Customs Act.

2.24.1 Penalty cannot be imposed where duty demand is not sustainable. In the foregoing paragraphs, it has been submitted in detail that no duty is payable as the Noticee had correctly availed the benefit under the Notification No. 57/2017 as amended. For the same reasons, no penalty is sustainable. Since no demand is sustainable, for the same reason no penalty is imposable on the Noticee. Reliance in this regard placed on the decision in the case of *Collector of Central Excise v. H.M.M. Limited, 1995 (76) ELT 497 (SC) & Commissioner of Central Excise, Aurangabad vs. Balakrishna Industries, 2006 (201) ELT 325 (SC).*

2.25 No penalty can be imposed under Section 112 of the Customs Act

Imposition of penalty under Section 112(a) of the Customs Act is incorrect and bad in law on account of the following reasons:

2.26 Penalty under Section 112 cannot be imposed unless goods are liable for confiscation under Section 111 of the Customs Act

Since the impugned goods are itself not liable to confiscation under Section 111 of the Customs Act, the question of imposing penalty under Section 112(a) does not arise. Further, the Noticee has neither done nor omitted to do any act which would render the impugned goods liable to confiscation. For these reasons, the proposal for penalty under Section 112(a) is not legally sustainable. Reliance in this regard placed on the decision in the case of *P & B Pharmaceuticals (P) Ltd. vs. Collector of Central Excise 2003 (153) E.L.T. 14 (SC).*

2.27 No penalty can be imposed under Section 112 of the Customs Act in the absence of mens rea.

2.27.1 In the present case, the Noticee had *bona fide* belief that the impugned goods were eligible for benefit under Notification No. 50/2017. Thus, it cannot be said that the Noticee had reason to believe that the impugned goods were liable for confiscation. For this reason, no penalty can be imposed under Section 112(a) of the Customs Act.

2.27.2 In addition to the above, on the basis of the submissions made in the foregoing paragraphs, no penalty, even under Section 112 of the Customs Act, can be imposed when there has been no element of *mens rea* is involved. Reliance in this regard placed on the decision in the case of *Hindustan Steel Ltd. v. State of Orissa, 1978 (2) E.L.T. (J159); Akbar Badruddin Jiwani v. Collector of Customs, 1990 (47) ELT161 & V. Lakshmipathy v. Commissioner of Customs, Cochin 2003 (153) E.L.T. 640 (Tri. -Bang.).*

2.27.3 In light of the above-mentioned judgments, it is safe to establish that the Noticee was not having any mens rea to evade the customs duty by claiming incorrect exemption. Thus, the proposal to impose penalty under Section 112(a) of the Customs Act on the Noticee is not sustainable.

2.28 Penalty is not imposable in cases involving interpretation of law.

Penalty is not imposable when the issue is one of interpretation of law. Reliance in this regard placed on the decision in the case of *Vadilal Industries Ltd. v. Commissioner of Commissioner of Central Excise, Ahmedabad, 2007 (213) ELT 157 (Tri.-Ahmd.); Auro Textiles v. Commissioner of Central Excise, Chandigarh, 2010 (253) ELT 35 (Tri.-Del.); Hindustan Lever Ltd. v. Commissioner of Central Excise, Lucknow, 2010 (250) ELT 251 (Tri.-Del.); Prem Fabricators v. Commissioner of Central Excise, Ahmedabad-II, 2010 (250) ELT 260 (Tri.-Ahmd.); Whiteline Chemicals v. Commissioner of Central Excise, Surat, 2009 (229) ELT 95 (Tri.-Ahmd.) & Delphi Automotive Systems v. Commissioner of Central Excise, Noida, 2004 (163) ELT 47 (Tri.-Del.).*

2.29 No penalty can be imposed under Section 114A of the Customs Act

There has been no *mala fide* on the part of the Noticee. For this reason alone, penalty under Section 114A is not sustainable. Reliance in this regard placed on the decision in the case of *CC vs. Videomax Electronics, 2011 (264) ELT 0466 (Tri.-Bom.).* In essence, if the extended period of limitation under Section 28 is not invokable, penalty under Section 114A of the Customs Act is also not liable to be imposed. Reliance in this regard placed on the decision in the case of *Union of India Vs. Rajasthan Spinning & Weaving Mills 2009 (238) E.L.T. 3 (S.C.); Hyundai Motors India Ltd v. Commissioner of Customs, Chennai II Commissionerate, 2025-*

TIOL-276-CESTAT-MAD & Secure Meters Ltd. versus Principal Commissioner of Customs (Imports), New Delhi 2025 (1) TMI 1383 - CESTAT New Delhi.

2.30 Penalty under Section 112(a) and Section 114A cannot be imposed simultaneously.

By virtue of the fifth proviso of Section 114A of the Customs Act, penalty under Section 112(a) and Section 114A cannot be invoked simultaneously. Reliance in this regard placed on the decision in the case of *Commissioner of Customs vs. Shri Ashwini Kumar Alias Amanullah (Vice-Versa)., 2020 (11) TMI 441 - CESTAT NEW DELHI.*

2.31 Additional written submission.

The Noticee, M/s. Sony India Private Limited vide their letter submitted on 13.05.2025 made additional written submissions to the subject SCN through their consultant M/s Lakshmikumaran & Sridharan. Vide the above letter, they submitted that the full differential duty demand is not sustainable in the present case due to a calculation error present in the SCN while proposing demand for duty. There are 5 impugned Bills of Entry that are included twice in computation of differential duty. The reason for the same is that both the ex-bond and into-bond warehousing impugned Bills of Entry have been covered under the SCN, thereby resulting in double entry for the purpose of calculation of duty demand. Therefore, the proposal of demand is liable to be reduced to the extent of this duplication of these 5 impugned Bills of Entry. The Noticee submitted a list of such impugned Bills of Entry along with copies of such Bills of Entry. The impugned 5 Bills of Entry are as under:

Sl. No.	Warehouse B/E & date	Corresponding Ex-bond B/E & date
1	3267517 / 17-May-19	3492478 / 03-Jun-19
2	4443169 / 10-Aug-19	4542549 / 19-Aug-19
3	5042182 / 25-Sep-19	5107210 / 30-Sep-19
4	5123873 / 01-Oct-19	5275098 / 14-Oct-19
5	5308870 / 16-Oct-19	5513418 / 01-Nov-19

The Noticee submitted that post rectification of the aforementioned calculation error, the summary table for duty demand is as follows:

Particulars	Differential Duty (in ₹)
Demand with respect to headsets with Microphone (A)	1,16,61,989/-
Demand with respect to headsets without Microphone (B)	59,30,105/-
Extra demand due to double duty demand calculation due to warehousing Bills of Entry (C)	15,66,186/-
Total duty demand in the SCN (A+B+C)	1,91,58,279/-

Therefore, the partial demand of ₹15,66,186/- as mentioned above is liable to be set aside on the ground of calculation error alone.

3. RECORD OF PERSONAL HEARINGS

3.1 There is single Noticee in the subject SCN viz. M/s. Sony India Private Limited.

3.2 In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticee was granted opportunity of Personal Hearing (PH) on 07.06.2024, 04.04.2025, 14.04.2025, 21.04.2025 and 07.05.2025 and PH intimation letter was issued by speedpost / email. On 07.05.2025, Sh. Ashwani Bhatia, Advocate and Ms. Anjali Gupta, Advocate, appeared virtually before the Adjudicating Authority on behalf of the Noticee, M/s. Sony India Private Limited. During the PH, they reiterated the submissions made vide their letter dated 21.04.2025 as under:

(a) The impugned goods are not "parts" of cellular mobile phones and thus, are not excluded from the scope of Serial No. 18 of Notification No. 57/2017, as amended. The impugned goods are general purpose headsets and are not solely used with or designed for cellular mobile phones. The fact that the impugned goods have 3.5mm jack makes it a general product and not specific to cellular mobile phones.

(b) In order to fall under the exclusion portion of Sl. No. 18, the two conditions are to be satisfied cumulatively by the disputed goods, viz. (i) the imported items are parts of cellular mobile phones; and (ii) the imported items must either be wired headsets or microphone or receiver. The impugned goods imported by the Noticee are not parts of cellular mobile phone, therefore, they are eligible for benefit of Notification No. 57/2017.

(c) The instant case is squarely covered by the judgment of M/s Sennheiser Electronic India Private Ltd. Vs. Principal Commissioner of Customs 2023(7) TMI 839 (CESTAT Delhi), wherein Hon'ble CESTAT Delhi, held that earphones are neither a part of nor are they essential to use a mobile phone and therefore, they are entitled for the exemption under the Notification No. 57/2017.

(d) Extended period cannot be invoked as there was no mis-declaration / suppression of facts by the Noticee.

(e) The Noticee has already deposited an amount of Rs.1,20,64,459/- under protest against the differential duty demand along with interest in respect of Bills of Entry covering wired headsets with microphones. They requested that the said amount may be refunded.

(f) The SCN has included Warehouse Bills of Entry as well as their ex-Bond Bills of Entry leading to double duty demand. They will file their additional submission on the issue with calculation by the 13.05.2025.

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 dtd. 21.04.2025 and additional written submissions dtd. 12.05.2025 made by the Noticee. Accordingly, I proceed to decide the case on merit.

4.2 The Chief Commissioner of Customs, Mumbai Zone-II has granted extension of time limit to adjudicate the case up to 15.06.2025 as provided under Section 28(9) of the Customs Act, 1962, therefore, the case has been taken up for adjudication proceedings within the time limit as per Section 28(9) of the Customs Act, 1962.

4.3 In compliance to provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) on 07.06.2024, 04.04.2025, 14.04.2025, 21.04.2025 and 07.05.2025 was granted to the Noticee. Availing the said opportunity, the Noticee attended the PH on 07.05.2025. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the submission / contention made by the Noticee.

4.4 The fact of the matter is that a Show Cause Notice No. 637/2023-24/COMMR/GR.VA/ CAC/JNCH dated 16.06.2023 was issued to the Noticee, M/s. Sony India Private Limited (IEC-594060991), on the basis of the Alert Circular No.01/2018 issued by the Audit Commissioner of Delhi, on the issue of short levy of Customs duty by way of claiming ineligible benefits of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (as amended by Notfn. No. 22/2018-Cus. dated 02.02.2018). It is alleged in the SCN that the Noticee had imported goods having description as "Headset or earphone or headphone" wrongly availing BCD exemption benefit under Sr. No. 18 of the aforesaid Notification. Thus, the SCN demands duty to the tune of ₹1,91,58,282/- (Rupees One Crore Ninety One Lakh Fifty Eight Thousand Two Hundred Eighty Two Only) invoking extended period under Section 28(4) of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962 and consequential penalties. The Show Cause Notice also proposes confiscation of imported goods having assessable value of ₹29,51,96,952/- (Rupees Twenty Nine Crore Fifty One Lakh Ninety Six Thousand Nine Hundred Fifty Two Only) under Section 111(m) of the Customs Act, 1962.

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

(i) Whether differential / short paid duty amounting to ₹1,91,58,282/- for the subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN, should be demanded under Section 28(4) of the Custom Act, 1962.

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

(iii) Whether the said subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN having assessable value of ₹29,51,96,952/- should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

(iv) Whether Penalty should be imposed on M/s. Sony India Private Limited under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.

(v) Whether Penalty should be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

4.6 After having identified and framed the main issues to be decided, I now proceed to examine each of the issues individually based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as Noticee's oral and written submissions and documents / evidences available on record.

4.7 Whether differential / short paid duty amounting to ₹1,91,58,282/- for the subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN, should be demanded under Section 28(4) of the Custom Act, 1962.

4.7.1 I note that the Noticee i.e. M/s. Sony India Private Limited vide the impugned 56 Bills of Entry (covered under 163 item entries as detailed in Annexure-'A' to the subject SCN) filed during the period from 21.06.2018 to 01.11.2019 had imported the goods declaring the description in the Bills of Entry as 'STEREO HEADPHONES' classifying the same under Customs Tariff Item (CTI) 85183000. The details of the 56 Bills of Entry vide which the said goods were imported are as per Annexure-A to SCN. Further, the Noticee had mentioned in the description Model No. of the imported goods. I note that the impugned imported goods with declared description as 'Stereo Headphones' are of following 10 model numbers:

(i) MDRZX110/BCIN
(ii) MDRZX110/WCIN
(iii) MDRZX110A/WCIN
(iv) MDRZX110APBCIN
(v) MDRZX110APWCIN
(vi) MDRZX310APBCE
(vii) MDRZX310APLCE
(viii) MDRZX310APRCE
(ix) MDRXB550APBCIN
(x) MDRXB550APLCIN

4.7.2 I note that the Noticee in his written submission has accepted that all the impugned goods are of 'wired' type. Thus, I find that it is not disputed that all the impugned goods are wired. Further, from the documents submitted by the Noticee and information available in open source, I find that the aforementioned 10 model numbers of 'Stereo Headphones' can be broadly divided into two categories i.e. **without** Microphone and **with** Microphone. I find that out of aforementioned 10 model numbers, the 3 model numbers figuring at Sl. No. (i) to (iii) above, do not have Microphone, whereas remaining 7 model numbers figuring at Sl. No. (iv) to (x) above, have built in Microphone.

4.7.3 I note that the SCN has raised demand of differential / short paid duty amounting to ₹1,91,58,282/-. I find that out of the said demand, an amount of Rs.63,35,581/- pertains to goods of 3 model numbers which do not have Microphone, figuring at Sl. No. (i) to (iii) in Para 4.7.1

above, and the remaining amount of Rs.1,28,22,701/- pertains to goods of 7 model numbers which have built in Microphone, figuring at Sl. No. (iv) to (x) in Para 4.7.1 above.

4.7.4 Before discussing the admissibility of differential / short paid duty demand of Rs.1,28,22,701/- against the Noticee, I will take up the issue of duplicity of demand raised by the Noticee. I note that during the PH held on 07.05.2025 and in their additional written submission dtd. 12.05.2025, the Noticee has raised a point that in respect of following 5 Bills of Entry, the SCN has included Warehouse Bills of Entry as well as their corresponding ex-Bond Bills of Entry leading to double duty demand of Rs.15,66,186/-:

Sl. No.	Warehouse B/E & date	Corresponding Ex-bond B/E & date
1	3267517 / 17-May-19	3492478 / 03-Jun-19
2	4443169 / 10-Aug-19	4542549 / 19-Aug-19
3	5042182 / 25-Sep-19	5107210 / 30-Sep-19
4	5123873 / 01-Oct-19	5275098 / 14-Oct-19
5	5308870 / 16-Oct-19	5513418 / 01-Nov-19

On examining the documents available on record and data available in EDI 1.5 System, I find merit in the Noticees' claim. I find that in Annexure-A to the SCN while calculating demand of differential duty, the aforesaid 5 warehouse Bs/E as well as their corresponding 5 ex-bond Bs/E have been taken. I find that in case of warehouse Bs/E, the event of duty payment arises at the time of ex-bonding of the goods, therefore, only ex-bond Bs/E should be considered for calculating differential duty. In the instant case, taking warehouse Bs/E together with corresponding ex-bond Bs/E has resulted in duplicity of duty demand to the tune of ₹15,66,186/-, therefore, the said amount needs to be reduced from the total duty demand. Accordingly, the demand of differential / short paid duty of ₹1,91,58,282/- gets reduced to ₹1,75,92,096/-.

4.7.5 I find that out of the aforesaid duplicate duty demand of ₹15,66,186/-, an amount of Rs.11,60,710/- pertains to goods of 7 model numbers which have built in Microphone figuring at Sl. No. (iv) to (x) in Para 4.7.1 above, and the remaining amount of Rs.4,05,476/- pertains to goods of 3 model numbers which do not have Microphone figuring at Sl. No. (i) to (iii) in Para 4.7.1 above. Thus, the demand of Rs.1,28,22,701/- (as mentioned in para 4.7.3 above) in respect of goods of 7 model numbers figuring at Sl. No. (iv) to (x) in Para 4.7.2 above, gets reduced to Rs.1,16,61,991/- (1,28,22,701-11,60,710) and the demand of Rs.63,35,581/- (as mentioned in para 4.7.3 above) in respect of goods of 3 model numbers figuring at Sl. No. (i) to (iii) in Para 4.7.2 above, gets reduced to Rs.59,30,105/- (63,35,581-4,05,476).

4.7.6 I find that the Noticee had classified the impugned goods with declared description as 'Stereo Headphones' under Customs Tariff Item (CTI) 85183000. Therefore, it would be worthwhile to look at the Customs Tariff Heading 8518, which covers the goods of broad description as under:

"8518	*Microphones and stands therefor: Loudspeakers, whether or not mounted in their enclosures: **Headphones and earphones, whether or not combined with a microphone,** and sets consisting of a microphone and one or more loudspeakers; Audio-frequency electric amplifiers: electric sound amplifier sets*
.....	
85183000	***Headphones and earphones, whether or not combined with a microphone**, and sets consisting of a microphone and one or more loudspeakers*
.....	
85189000	*Parts"*

I find that in the instant case, the SCN does not dispute the classification of the impugned imported goods by the Noticee under CTI 85183000 as "*Headphones and earphones, whether or not combined with a micro-phone, and sets consisting of a microphone and one or more loudspeakers*". Thus, I conclude that there is no dispute regarding the classification of the impugned goods under CTI 85183000.

4.7.7 I note that during the relevant time period the goods classified under CTI 85183000 attracted Basic Customs Duty (BCD) @15% as per the first schedule of the Customs Tariff Act, 1975. However, vide Notification No. 22/2018-Cus. dated 02.02.2018, some entries were inserted in Notification No. 57/2017-Cus. dtd. 30.06.2017 and consequently the goods falling under CTI 85183000 were partially exempted from duty and were liable to BCD @ 10% if the same do not fall in the category of specifically excluded goods. Therefore, it would be worthwhile to go through the relevant entry of the aforesaid Notification No. 57/2017-Cus. dtd. 30.06.2017 (as amended), which reads as under:

S. No.	***Chapter or Heading or Sub-heading or tariff item***	***Description of goods***	***Standard Rate***	***Condition No.***
18.	*8518*	*All goods other than the following parts of cellular mobile phones, namely:-* *(i) Microphone* *(ii) Wired Headset* *(iii) Receiver*	*10%*	*-*

The aforesaid Notification was further amended vide Notification No. 69/2018-Cus. dated 26.09.2018 and the same, after amendment, reads as follows:

S. No.	***Chapter or Heading or Sub-heading or tariff item***	***Description of goods***	***Standard Rate***	***Condition No.***

18	*8518*	*All goods other than:-* *(i) Speakers, and;* *(ii) the following parts of cellular mobile phones, namely:-* *(1) Microphone;* *(2) Wired Headset; and* *(3) Receiver*	*10%*	-

4.7.8 The aforesaid entry under Sl. No. 18 in the exemption Notification No. 57/2017-Cus. dated 30.06.2017 (as amended by Notification No. 22/2018-Cus. dated 02.02.2018) mentions and excludes 'Wired Headset' falling under CTH 8518. As, the said tariff entry does not contain or define the word 'headset', it will be proper to go through the common understanding of the term 'headphone' and 'headset'. Therefore, I take up the common dictionary meaning of the said terms and find that the said terms are defined as under:

(i) As per Cambridge dictionary:

Headset *- is a set of headphones, especially one with a microphone attached to it.*

Headphone *- is a device with a part to cover each ear through which you can listen to music, radio broadcasts etc. without other people hearing.*

(ii) As per Lexico.com

Headset *- is a set of headphones, typically with a microphone attached, used especially in telephony and radio communication.*

Headphones *- are a pair of earphones joined by a band placed over the head, for listening to audio signals such as music or speech.*

On the basis of the above definitions, I find that a pair of earphones joined by a band placed over the head is defined as 'Headphone', and a headphone having an attached microphone is defined as a 'Headset'. In view of the above definitions, the Noticee's submission and the details available in the product catalogue, I find that the 3 model numbers which do not have microphone, figuring at Sl. No. (i) to (iii) as mentioned in para 4.7.1 above, are Headphones, whereas the 7 model numbers which have microphone, figuring at Sl. No. (iv) to (x) as mentioned in para 4.7.1 above, are Headsets.

4.7.9 I find that the instant SCN is based on the department's stand that the benefit of concessional rate of BCD @ 10% under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017 (as amended by Notification No. 22/2018-Cus dated 02.02.2018) is not available to the impugned imported goods declared as 'Stereo Headphones' as the said headphones are 'wired headsets'. As the impugned goods are compatible with cellular mobile phones, therefore,

these 'wired headsets' were construed to be parts of cellular mobile phones, which are explicitly excluded from the purview of the goods covered under the said Sl. No. 18 of the Notification.

4.7.10 I find that the Noticee has countered the Department's stand *interalia* contending that the SCN does not provide any detailed explanation / reason for alleging that the impugned goods are not eligible for the benefit under Sl. No. 18 of the Notification No. 57/2017-Cus dated 30.06.2017; that in order to fall under the exclusion portion of Sl. No. 18, two conditions are to be satisfied cumulatively by the disputed goods, viz. (i) the imported items are parts of cellular mobile phones; and (ii) the imported items must either be wired headsets or microphone or receiver; that the impugned goods are not necessary or essential for the functioning of the cellular mobile phones and do not form an integral part without which the mobile phone cannot work, therefore, they are not "parts" of cellular mobile phones and thus, are not excluded from the scope of Serial No. 18 of Notification No. 57/2017; that the imported goods can at best qualify as 'accessory' and not parts of the cellular mobile phones; that even if it is considered that the subject goods are parts of cellular mobile phones, then also wired headsets without microphones can never be considered as part of cellular mobile phones as the basic function of calling or mobile telephony cannot be fulfilled by usage of these wired headsets without microphones; that once the first condition is not satisfied, there is no need to proceed towards the second condition as both conditions are required to be satisfied cumulatively so as to deny the exemption to the impugned goods under Sl. No. 18 of Notification No. 57/2017; that the impugned goods are general purpose headsets which can be used with tablets, laptops, MP3 players, i-pods, desktop computer, gaming equipment, i-pad, in addition to cellular mobile phones and are not solely used with or designed for cellular mobile phones; that the exclusionary clause must be very strictly construed so that it does not defeat the intent of exemption notification; that without prejudice, the SCN could not have been issued for impugned BoEs covering wired headsets with microphone for which differential duty has already been paid; that there was no mis-declaration/suppression of facts from the Department and all the relevant information was provided at the time of import, therefore, extended period could not have been invoked in the instant case, and substantial demand is time-barred; that no interest can be demanded when duty demand is not sustainable; that the full differential duty demand is not sustainable in the present case due to the reason that in respect of 5 Bills of Entry both the into-bond warehousing Bill of Entry and its corresponding ex-bond Bill of Entry have been included in the SCN, thereby resulting in double entry for the purpose of calculation of duty demand; that confiscation under Section 111(m) of the Customs Act is not sustainable as there is no wilful mis-declaration on the part of the Noticee; that in view of above, they are not liable for imposition of penalty under Section 112(a) and/or 114A of the Customs Act, 1962.

4.7.11 From the above I find that in the present case, the issue of availability / non-availability of concessional rate of duty (BCD) under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017 (as amended by Notification No. 22/2018-Cus dated 02.02.2018) to the impugned goods is of pivotal importance around which the entire case revolves. Once this issue is decided,

it will have a bearing on the other issues raised in the SCN like demand of differential duty & interest thereon, confiscation of the imported goods and imposition of penalties on the Noticee.

4.7.12 I find that to decide the aforesaid issue of availability / non-availability of concessional rate of duty (BCD) under entry at Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017, I have to examine and analyse the details of the impugned imported goods viz-a-viz the provisions of said entry at Sl. No. 18 of the above Notification. However, before proceeding to examine and analyse the provisions of said entry, it is pertinent to mention that exemption notification has to be strictly and narrowly construed. It is settled law that, in an exemption notification, there is no room for any change in the intendment which envisages the clear meaning of the words used therein. Therefore, the sense in which the law understands or interprets the true intention of the notification should remain intact. In other words, the admissibility of exemption, under a notification, from payment of duty / or availability of payment of duty at reduced rate on specified goods is governed wholly by the language of the notification.

4.7.12.1 It is well established that any exemption notification has to be strictly interpreted and in the case of doubt the benefit should go to the department. Hon'ble Apex Court in the case of *Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)]* has held that exemption notification should be interpreted strictly and ambiguity in exemption notification must be interpreted in favour of the Revenue. The relevant paras, para 41 and 52 of the said order are reproduced below:

> *"41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee,* ***but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State."***

> *"52. To sum up, we answer the reference holding as under -*
>
> *(1)* ***Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee*** *to show that his case comes within the parameters of the exemption clause or exemption notification."*
>
> *(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the* ***benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue."***

4.7.12.2 In the case of *Saraswati Sugar Mills Vs. Commissioner of C. Ex., Delhi-III* reported at [*2011 (270) E.L.T. 465 (S.C.)*], it was held that an exemption notification has to be strictly construed and that when the wordings of notification are clear, then the plain language of the notification must be given effect to. Relevant portion of the judgment is extracted below:

"7. The Tariff Act prescribes the rate of duty for each chapter head and sub-head. The Tariff Act has authorized the Central Govt. to modify the rates/duty by issuing notifications. Since exemption notifications are issued under delegated legislative power, they have full statutory force. The Notification No. 67/95-C.E., dated 16-3-1995 specifically exempts capital goods as defined in Rule 57Q of the Rules. The other condition that is envisaged in the Notification is that the "capital goods' should be manufactured in a factory and used within the factory of production. If these twin conditions are satisfied, the capital goods are exempt from payment of excise duty. A party claiming exemption has to prove that he/it is eligible for exemption contained in the notification. ***An exemption notification has to be strictly construed. The conditions for taking benefit under the notification are also to be strictly interpreted. When the wordings of notification is clear, then the plain language of the notification must be given effect to. By way of an interpretation or construction, the Court cannot add or substitute any word while construing the notification either to grant or deny exemption. The Courts are also not expected to stretch the words of notification or add or subtract words in order to grant or deny the benefit of exemption notification.*** *In Bombay Chemicals (P) Ltd. v. CCE - (1995) Supp (2) SCC 64 = 1995 (17) E.L.T. 3 (S.C.), a three Judge Bench of this Court held that an exemption notification should be construed strictly, but once an article is found to satisfy the test by which it falls in the notification, then it cannot be excluded from it by construing such notification narrowly"*

4.7.12.3 I also find that it is a settled law that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession and the exemption has to be construed based upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. In this regard, I place reliance on the judgement of the Hon'ble Supreme Court in the case of *CCE, New Delhi Vs Hari Chand Shri Gopal and Others [2010 (260) ELT 3 (SC)]*, wherein, the issue of grant and claim of exemption has been clarified by holding as under:

"a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. ***A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved.*** *If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption."*

4.7.12.4 Similarly, the Hon'ble Supreme Court of India in the case of *M/s Novopan India Ltd*

Vs. Collector of C. Ex and Customs, Hyderabad 1994 (73) E.L.T.769 (SC), has held that:

> *"a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State."*

4.7.12.5 In view of the above legal position and after having gone through the provisions of the subject Notification No. 57/2017-Cus dated 30.06.2017 (as amended by notification No. 22/2018-Cus dated 02.02.2018), I find that when the words used in the exemption notification are plain and clear in meaning and do not admit of any doubt or ambiguity, such words, represent the legislative intent, leaving no room for any construction of the words to gather any other intention therefrom.

4.7.13 Against the above background, now I take up the issue of examining and analysing the provisions of entry at Sl. No.18 of Notification No. 57/2017-Cus dated 30.06.2017 (as amended) which provides concessional rate of duty to all goods of CTH 8518 other than the following parts of cellular mobile phones, namely, (i) Microphone, (ii) Wired Headset, and (iii) Receiver.

4.7.14 As regards correctness of the classification of the impugned imported goods under CTH 8518, I have already held in para 4.7.6 above that in the instant case there is no dispute regarding the classification of the impugned goods under CTI 85183000.

4.7.15 As regards the impugned goods being 'wired headset' or otherwise, I have already held in para 4.7.2 above that all the impugned imported goods are of 'wired' type. Further, I have already held in para 4.7.8 above that in the instant case the 3 model numbers which do not have microphone figuring at Sl. No. (i) to (iii) as mentioned in para 4.7.1 above, are headphone and not a headset. In the absence of a microphone, they cannot be used for basic function of calling or mobile telephony. Therefore, I find that these 3 model numbers do not get covered under the excluded item i.e. 'wired headset' under Sl. No. 18 of Notification No. 57/2017-Cus. dated 30.06.2017 and thus, I find that these 3 model numbers are eligible for concessional rate of duty (BCD) @ 10% under the aforesaid Notification. As the Noticee has paid the duty (BCD) @ 10% at the time of import in respect of these goods, I find that the differential duty demand of Rs.59,30,105/- (as mentioned in para 4.7.5 above) does not survive against the Noticee in respect of the impugned goods of these 3 model numbers which do not have microphone figuring at Sl. No. (i) to (iii) as mentioned in para 4.7.1 above.

4.7.16 Further, I have already held in para 4.7.8 above that the 7 model numbers which have microphone, figuring at Sl. No. (iv) to (x) as mentioned in para 4.7.1 above, are Headsets. Now the core issue that remains to be decided is whether these goods covered under the aforesaid 7 model numbers are 'parts of cellular mobile phones' or not. I note that Sl. No. 18 of the subject Notification has the description of the goods as "*All goods other than the following parts of cellular mobile phones*". From the said description, I find that the Notification entry itself clearly

describes the impugned goods viz. wired headsets, as parts of cellular mobile phones. Thus, I find that the wordings of the Notification entry itself leaves no scope for any ambiguity. Further, from the product catalogue and admission of the Noticee itself, I find that the subject 7 model numbers of wired headsets are compatible with cellular mobile phones. Thus, I find that there is no doubt that the impugned imported goods are meant for use with mobile phones, therefore, the same should be considered as part of mobile phone for the intended purpose of the said notification.

4.7.17 I find that to prove their claim that the impugned imported goods do not fall under the category of "parts", the Noticee has taken recourse to dictionary meaning of the term 'part' and its definition as enumerated in various case laws. On the basis of above, the Noticee has contended that parts are those components which are essential for the functioning of a particular machine, whereas the impugned goods are neither essential nor necessary for the functioning of a cellular mobile phone, therefore, they cannot be considered as parts of cellular mobile phone. In this regard, I find that Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017 neither says that wired headset, which is excluded from the exemption, should be a constituent part of mobile phone nor it says that it should be essential or integral part of mobile phone. It generally describes the listed excluded items as parts of mobile phones, which means that unless these items are part of goods other than mobile phones, they remain excluded from the purview of the said Sl. No. of the Notification. Therefore, the term "parts of cellular mobile phones" used in the said notification cannot be interpreted in such a technical or literal sense which would render the notification redundant. The meaning of the word "parts" in the said entry has to be interpreted in consonance with the specific items listed therein and also looking into the intention of the notification. Any view, which results in granting of exemption to all wired headsets, even if they are for use with mobile phones, just because they strictly cannot be said to be part of mobile phones, will negate the intention of the Notification.

4.7.18 It is well settled that the meaning of a word is to be judged by the company it keeps. Keeping the above principle in mind, I find that the term "parts of cellular mobile phones" used in the said notification has to be seen in light of the fact that 'wired headset' is specifically mentioned in the notification as parts of cellular mobile phones, and therefore it's meaning has to be understood accordingly. Any further meaning to the word 'parts' cannot be assumed and it cannot be interpreted as a constituent part of mobile phone or an essential or integral part of mobile phone. I, therefore, find that the wired headsets which are compatible with smartphones, should be considered as covered under the meaning of the words "parts of cellular mobile phones" used in the said notification. Therefore, as discussed above, any view, which results in granting of exemption to all wired headsets, even if they are for use with mobile phones, just because they strictly are not part of mobile phones, will negate the intention of the Notification. It is also evident that the Notification does not mention that only the parts exclusively used with mobile phones are excluded nor does it say that the parts should be imported for / by manufacturers of mobile phones. In the Notification the word 'parts' has been used in very general sense and the specific parts have been thereafter listed in the Notification. Therefore, any

further literal or technical interpretation of the term 'parts' and its differentiation with accessories is neither required nor relevant.

4.7.18.1 I find that the Noticee himself submits that the wired headset can by no stretch of imagination be considered as a part of cellular mobile phones. This would mean that no wired headsets are excluded from Sl. No. 18 of the Notification, which would not be the correct interpretation and the intention of the said exemption. I find that the Noticee admittdly being in the field of import and trading of various types of headphones/earphones since many years has remained conspicuously silent on the aspect that if the impugned wired headsets are not excluded from the purview of Sl. No. 18 of the Notification, then which type of headsets are parts of cellular mobile phone and are thus excluded from the purview of said Sl. No. Therefore, I find that in this case, even if it is agreed that the headsets are not a component necessary to complete the product, and is not so integral to the product that it cannot function without it, it does not mean that it gets the benefit of the exemption, when it is specifically excluded under the Notification, without any such conditionality attached to the excluded parts.

4.7.19 Further, the Noticee has cited Sl. No. 9 & 10 in the subject Notification to contend that the legislature has taken a conscious decision to exclude only 'parts' and not 'parts and accessories' from Sl. No. 18. In the above two Sl. No., excluded goods are described as parts or sub-parts or accessories of cellular mobile phones, which are in the nature of components of mobile phones. In this regard, I find that any comparison of one entry to another entry in the Notification is not relevant and exemption has to be strictly interpreted in terms of the provisions of the relevant entry in the Notification.

4.7.20 The Noticee has also argued that these devices are intended for retail and corporate sales and they have a broad-spectrum usage wherein they can be used with tablets, laptops, MP-3 players, i-pods, desktop computers, gaming equipment, i-pad in addition to cellular mobile phones. In support of their argument, the Noticee has relied upon the ratio of Hon'ble Supreme Court's judgment in the case of *State of Punjab vs Nokia India Pvt. Ltd 2015 (315) ELT 162 (SC)* wherein Apex Court has held that battery charger is not a part of the mobile / cell phone. I find that the present case is differentiable on facts from the said case as there the question was whether battery charger is a part or accessory of cell phone wherein in present case, Notification itself mention wired headset as part of cellular mobile phone, leaving no scope for any further interpretation. The exemption notification and the description under the relevant Sl. No. leave no ambiguity that wired headsets for cellular mobile phone have to be considered as parts of cellular mobile phones for the purpose of the said notification. I find that once attached to the mobile phone, the normal function of the mobile phone of receiving or making a call automatically shifts through these wired headsets. Therefore, once attached to the mobile phones these become integral part of the mobile phone and their function in mobile phones cannot be equated to the function of a charger to mobile phone which was held to be accessory in the cited Supreme Court decision in the case of *State of Punjab vs. Nokia India Pvt. Ltd.* Therefore, this judgement when seen in the light of the facts of the case, it can easily be construed that in this judgement the issue

of appropriate classification vis-à-vis the definition of "parts" on the basis of the declaration of the goods has been decided, whereas in the present case the Notification itself considers the wired headsets as parts of cellular mobile phone to exclude them from notification benefit. Hence, this judgement cannot be made applicable in the present case.

4.7.21 I also find that it is well understood that with the wired headsets the users find it more comfortable to communicate thereby reducing the associated risk of any information slip due to lack of sound delivery. Moreover, with the headset, one can experience quality calls even in noisy environment, talk comfortably without necessity of involvement of hands and also control the calls distantly. The Noticee has not denied that the goods imported by them are not serving the same purpose specially when the functions and properties of the impugned item as explained by them clearly indicate that the subject goods are compatible with the mobile phones. In view of the above, I hold that the goods in question i.e. the said 7 model numbers having microphone, are wired headset meant for the mobile phone users as a part of cellular mobile phone and therefore, excluded from the exemption under Sl. No. 18 of Notification No.57/2017-Cus (as amended) and are not eligible for concessional rate of duty (BCD) @ 10% under the aforesaid Notification.

4.7.22 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 aforesaid 7 model numbers of wired headset having microphone were cleared by the Noticee by wilfully and deliberately claiming ineligible benefit of lower rate of BCD @ 10% as provided under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017.

4.7.23 I find that in the present case, imported goods covered under aforesaid 7 model numbers of wired headset having microphone were found ineligible for getting benefit of lower rate of BCD @ 10% as provided under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017, as the same were explicitly excluded from the purview of the said Sl. No. Hence, the same should appropriately attract higher BCD duty @ 15%. As the importer has wrongfully assessed the impugned goods under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017 on the date of importation and there is no scope for the goods fulfilling the eligibility of the said Sl. No. of the Notification, the Noticee can only come clean of its liability by way of payment of duty not paid/ short paid due to availment of ineligible notification benefit.

4.7.24 In view of the above, I find that the Noticee had evaded correctly payable BCD on the subject imported goods, by intentionally claiming ineligible notification benefit at the time of filing of the Bills of Entry. By resorting to this deliberate and wilful claim of ineligible notification benefit, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, I find that this wilful and deliberate act was done with the clear intention to claim ineligible lower rate of duty.

4.7.25 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 willfully claimed ineligible notification benefit, thereby evading payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit. Since the Noticee/importer has willfully mis-classified and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invokable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

4.7.26 Regarding the Noticee's argument that they had correctly claimed exemption notification benefit and there was no wilful default on their part, I find that in the instant case, as elaborated in the foregoing paras, the Noticee was fully aware of the nature of the impugned goods being wired headsets for use with cellular mobile phone. The said goods were explicitly excluded from the purview of Sl. No. 18 of the subject Notification. Still they had wilfully claimed ineligible notification benefit on the imported goods at the time of filing of the Bills of Entry with an intention to pay lower rate of duty. Therefore, I find that in the instant case there is an element of 'mens rea' involved. The instant case is not a simple case of bonafide wrong claim of Notification benefit. Instead, in the instant case, the Noticee deliberately chose to claim lower rate of duty under ineligible exemption notification benefit, being fully aware of the ineligibility to claim the said notification benefit. This wilful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted.

4.7.27 The scheme of RMS wherein the importers are given so many facilitations, also comes with responsibility of onus for truthful declaration. The Tariff classification of the items, are the first parameter 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 complete item description and picks the notification benefit against the goods covered in the Bill of Entry in a false manner, it definitely amounts to mis-leading the Customs authorities, with an intent to evade payment of legitimate Customs duty leviable, on the said imported goods.

4.7.28 In view of the above discussions, I hold that the Noticee is not eligible for benefit of lower rate of BCD @ 10% as provided in Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017 (as amended vide Notification No. 22/2018-Cus dated 02.02.2018) in respect of import of aforesaid 7 model numbers of wired headset having microphone. The Noticee, M/s. Sony India Private Limited, has paid less duty by non-payment of applicable BCD @ 15% on the

subject goods, by claiming ineligible notification benefit which tantamount to suppression of material facts and wilful mis-statement. Thus, I hold that differential/short paid duty amounting to Rs.1,16,61,991/- (as mentioned in para 4.7.5 above) in respect of aforesaid 7 model numbers of wired headset having microphone should be demanded from M/s. Sony India Private Limited under Section 28(4) of the Custom Act, 1962.

4.7.29 From the documents submitted and submissions made by the Noticee, I find that in respect of the aforesaid 7 model numbers of wired headsets having microphone, the Noticee had deposited the differential duty of Rs.1,20,64,459/- alongwith applicable interest of Rs.14,60,512/- vide JNCH Challan Nos. HCM-1537 for Rs.1,02,24,118/- (BCD + SWS), HCM-1538 for Rs.18,40,341/- (IGST) and HCM-1539 for Rs.14,60,512/- (Interest), all dated 27/01/2020. The genuineness of the aforesaid three challans stands verified by the Cash Section, JNCH vide their letter F. No. S/10-Gen-03/2017-18/CASH/JNCH Pt.III dated 10.06.2025. However, I find that the Noticee has not paid any penalty equal to 15% of the aforementioned differential duty. The amount of differential duty deposited vide above challans is more than the demand raised in the instant SCN because in addition to Bs/E covered under the instant SCN, the Noticee has deposited differential duty in respect of even those Bs/E which are not part of the present SCN. I find that the Noticee has deposited differential duty of Rs.1,16,61,991/- and interest of Rs.13,85,608/- in respect of the Bs/E covered under the instant SCN, and differential duty amount of Rs.4,02,468/- and interest of Rs.74,904/- in respect of Bs/E which are not part of the present SCN. I find that the aforesaid differential duty of Rs.1,16,61,991/- and interest of Rs.13,85,608/- deposited by the Noticee can be appropriated as the same are in respect of the Bs/E covered under the instant SCN, whereas the differential duty amount of Rs.4,02,468/- and interest of Rs.74,904/- cannot be appropriated under the instant order as the same are in respect of Bs/E which are not part of the present SCN and hence, outside the purview of the instant SCN. In view of my upholding the demand of differential / short paid duty alongwith interest from the Noticee, I hold that the said differential / short paid duty amounting to Rs.1,16,61,991/- alongwith applicable interest thereon recoverable from the Noticee, should be appropriated from the aforesaid differential duty of Rs.1,16,61,991/- and interest of Rs.13,85,608/- paid by the Noticee in respect of Bills of Entry covered under the present SCN.

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

4.8.1 As regards levy of interest, I find that 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.

4.8.2 I have already held in the foregoing paras that differential / short paid duty amounting to Rs.1,16,61,991/- in respect of the aforesaid 7 model numbers of wired headsets having microphone, should be demanded and recovered from the Noticee under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, I am of the considered opinion that in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential duty is also liable to be recovered from M/s. Sony India Private Limited.

4.9 Whether the said subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN having assessable value of ₹29,51,96,952/- should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.9.1 I note that the SCN proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962.

4.9.2 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;*

4.9.3 I find that Section 111(m) deals with any and all types of mis-declaration regarding any particular of Bill of Entry. Therefore, the claim of ineligible notification benefit amounts to mis-declaration and shall make the said goods liable to confiscation.

4.9.4 I have already held in foregoing paras that the aforesaid 7 model numbers having microphone, are wired headset meant for mobile phone users as a part of cellular mobile phone and are therefore, excluded from the exemption under Sl. No. 18 of Notification No.57/2017-Cus (as amended). The Noticee was very well aware of the actual nature of the imported goods and their ineligibility to exemption notification benefit. However, they deliberately suppressed this

correct nature of the imported goods, and claimed lower rate of BCD @ 10% as provided under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017 (as amended vide Notification No. 22/2018-Cus dated 02.02.2018) in respect of import of aforesaid 7 model numbers of wired headset having microphone. As discussed in the foregoing paras, it is evident that the Noticee deliberately suppressed the correct nature of the goods and willfully mis-classified the imported goods, resulting in short levy of duty. This deliberate suppression of facts and willful mis-classification resorted by the Noticee, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the Noticee has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.9.5 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 suppression of facts. In the instant case, the Noticee suppressed the fact of their ineligibility to the claimed notification benefit. As this act of the Noticee 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.

4.9.6 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.

4.9.7 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.

4.9.8 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;

4.9.9 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. Sony India Private Limited has deliberately failed to discharge this statutory responsibility cast upon them.

4.9.10 From the discussion above, I find that the importer had in a planned manner suppressed the relevant facts and intentionally evaded Customs duty by wrongfully claiming the benefit of Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017 on the impugned goods and hence, contravened the provisions of Section 46 of the Customs Act, 1962.

4.9.11 Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the subject case, the importer/Noticee while filing the Bill of Entry has resorted to deliberate suppression of facts to evade payment of applicable 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. Therefore, I find that by not self-assessing the true and correct rate of BCD applicable on the subject goods, the Noticee willfully did not pay the applicable duty on the impugned goods.

4.9.12 Therefore, I find that by not self-assessing the true and correct rate of Customs duty applicable on the subject goods, the importer willfully 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 wrongly avail the exemption from duty on the impugned goods under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017, by violating its conditions and thereby evaded applicable duty.

4.9.13 In view of the foregoing discussion, I hold that the aforesaid 7 model numbers of wired headset having microphone covered under the respective Bills of Entry filed by M/s. Sony India Private Limited having total assessable value of ₹18,22,72,136/- should be held liable for

confiscation under Section 111(m) of the Customs Act, 1962, on the grounds of willful mis-declaration and suppression of facts.

4.9.14 As the importer, through wilful suppression of facts, had evaded 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)."*

4.9.14.1 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.).

4.9.14.2 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.

4.9.14.3 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.

4.9.14.4 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.

4.9.14.5 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 covered under aforesaid 7 model numbers of wired headset having microphone, 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.

4.10 Whether Penalty should be imposed on M/s. Sony India Private Limited under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.

4.10.1 I find that in the era of self-assessment, the Noticee had self-assessed the Bills of Entry and wrongly claimed the ineligible duty benefit under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017 in respect of the impugned imported goods covered under aforesaid 7 model numbers of wired headset having microphone. As the Noticee got monetary benefit due to their wilful mis-declaration and evasion of applicable BCD on the aforesaid goods, I find that duty was correctly demanded under Section 28(4) of the Act by invoking extended period.

4.10.2 As discussed above, I find that the subject Bills of Entry covering the aforesaid 7 model numbers of wired headset having microphone, were self-assessed by the Noticee, M/s. Sony India Private Limited. They were aware of the true nature and characteristics of the imported goods and accordingly, were knowing about the applicability of correct BCD thereon. However, still they willfully suppressed this fact and claimed lower rate of duty under ineligible Sl. No. of

exemption notification in the Bills of Entry filed before the Customs authorities. By resorting to the aforesaid suppression and mis-declaration, they paid lower rate of duty and thereby evaded legitimately payable duty. Under the self-assessment scheme, it is obligatory on the part of importer to declare truthfully all the particulars relevant to the assessment of the goods, ensuring their accuracy and authenticity, which the importer clearly failed to do with malafide intention. They suppressed the fact before the Customs Department regarding correctly leviable BCD, to claim the undue duty benefit at the time of clearance of the said imported goods. This willful and deliberate suppression of facts amply points towards the "mens rea" of the Noticee to evade the payment of legitimate duty. The willful and deliberate acts of the Noticee to evade payment of legitimate duty, clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established, the extended period of limitation, as well as confiscation and penal provision will automatically get attracted. Thus, the Noticee, by their various acts of omission and commission discussed above, have rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and thereby making themselves liable for penalty under Section 112(a) ibid.

4.10.3 Accordingly, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on the Noticee, M/s. Sony India Private Limited under Section 112(a) of the Customs Act, 1962.

4.11 Whether Penalty should be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

4.11.1 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.

4.11.2 As I have held above, 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. Sony India Private Limited in the impugned SCN. Accordingly, the Noticee is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-declaration and suppression of facts, with an intent to evade duty.

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

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

ORDER

a) I order that the differential / short paid duty amounting to **Rs.1,16,61,991/- (Rupees One Crore Sixteen Lakh Sixty One Thousand Nine Hundred Ninety One Only)** in respect of the aforesaid 7 model numbers of wired headsets having microphone imported vide Bills of Entry as detailed in Annexure-A of the subject SCN, should be demanded from M/s. Sony India Private Limited under Section 28(4) of the Custom Act, 1962.

I order that the differential / short paid duty amounting to Rs.1,16,61,991/- alongwith applicable interest thereon recoverable from M/s. Sony India Private Limited, should be appropriated from the differential duty of Rs.1,16,61,991/- and interest of Rs.13,85,608/- paid by them in respect of Bills of Entry covered under the present SCN.

b) I order that in addition to the duty short paid, interest on delayed payment of Custom duty should be recovered from M/s. Sony India Private Limited under Section 28AA of the Customs Act, 1962.

c) I order that the goods covered under the aforesaid 7 model numbers of wired headsets having microphone and imported vide Bills of Entry as detailed in Annexure-A of the SCN having assessable value of **₹18,22,72,136/- (Rupees Eighteen Crore Twenty Two**

Lakh Seventy Two Thousand One Hundred Thirty Six Only) should be held liable to confiscation under Section 111(m) of the Custom Act, 1962.

However, since the goods are not available, I impose a redemption fine of **Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh Only)** on M/s. Sony India Private Limited in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

d) I impose a penalty equivalent to differential duty of **Rs.1,16,61,991/- (Rupees One Crore Sixteen Lakh Sixty One Thousand Nine Hundred Ninety One Only) along with applicable interest** under Section 28AA of the Customs Act, 1962, on M/s. Sony India Private Limited under Section 114A of the Customs Act, 1962 for short levy of duty.

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

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

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

13/6/25

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

To,

1. M/s. Sony India Private Limited,
   A-18, Mohan Cooperative Industrial Estate,
   Mathura Road, New Delhi, Delhi-110044

Copy to:

1. The Addl. Commissioner of Customs, Group VA, JNCH
2. AC/DC, Chief Commissioner's Office, JNCH
3. AC/DC, Centralized Revenue Recovery Cell, JNCH
4. AC/DC, Circle-D1, Audit Commissionerate, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section.
7. Office copy.