



सीमा शुल्क आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS
केंद्रीय अधिनिर्णय प्रकोष्ठ, एन एस-V
CENTRAL ADJUDICATION CELL, NS-V
जवाहरलाल नेहरू कस्टम हाउस, न्हावा-शेवा,
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA-SHEVA,
ताल-ऊरण, डिस्ट-राइगड, महाराष्ट्र-४०० ७०७.
TAL. URAN, DIST. RAIGAD, MAHARASHTRA - 400 707.

DIN : 20251078NX00008378B1

Date of Order: 17/10/2025

F.No. S/10-723/2024-25/ADC/Gr.V /NS-V/CAC/JNCH

Date of issue: 17/10/2025

SCN No.: 1370/2024-25/ADC/Gr.V/NS-V/CAC/JNCH

SCN Date: 23/10/2024

Passed By: Shri Mazid Khan

Joint Commissioner of Customs, CAC, NS-V, JNCH

Order-In-Original No. : 996/2025-26/JC/GR.V/NS-V/CAC/JNCH

Name of Party/Noticee :- M/s. V Tecs Corporation (IEC- 3116909661)

मूल आदेश

- यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।
- इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला - रायगढ़, महाराष्ट्र -400707 को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील) नियमावली, 1982 के अनुसार फॉर्म सी.ए. 1 संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 2.00 रुपये मात्र का स्टॉप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 2.00 रुपये का स्टॉप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1970 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
- इस निर्णय या आदेश के विरुद्ध अपील करनेवाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्ति के संबंध में विवाद होने पर शास्ति का भुगतान करेगा।

ORDER-IN-ORIGINAL

- This copy is granted free of charge for the use of the person to whom it is issued.
- An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, Nhava Sheva, Tal : Uran, Dist : Raigad, Maharashtra – 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs.2.00 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 2.00 only as prescribed under Schedule 1, items 6 of the Court Fee Act, 1970.
- Any person desirous of appealing against this decision or order shall, pending the appeal, make payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE: -

1. M/s. V Tecs Corporation (IEC No. 3116909661) having their office at Flat no. B602, Sr. No. 29, House No. 551, Atmosphere Ambegaon BK, Pune Maharashtra - 411046 (hereinafter referred to as Importer) had filed various Bills of Entry for import of goods declared as 'Evacuated Tubes with Three Layers of Solar Selective Coating for manufacturing Solar Water Heater & Solar Vacuum Tubes (hereinafter referred to as 'the impugned goods') under CTH 84199090 with declared country of origin as China.
- 2.1 On the basis of the letter F No. SG/INV-57/2019-20/H-Cell/SIIBI/JNCH dated 01.10.2020 and further analysis by Special Investigation & Intelligence Branch (Import), JNCH, Nhava Sheva (SIIB(I) JNCH in short), it was observed that some of the importers were classifying 'Parts of instantaneous or Storage Water Heater (domestic type)' under CTH 84199090 (BCD @7.5%) instead of 84199010 (BCD @10%) and thereby evading aggregate duty of 3.245%. Therefore, SCN No. 1370/2024-25/ADC/NS-V/GR V/JNCH dated 23.10.2024 was issued, which inter-alia stated:
- 2.2 CTH 84199010 covers parts of instantaneous or Storage Water Heater (domestic type) with aggregate duty of 30.98% whereas CTH 84199090 covers other parts of Machinery, Plant or laboratory equipment with aggregate duty of 27.735%, as mentioned below
- | | |
|------------------|--|
| 84.19 | <i>MACHINERY, PLANT OR LABORATORY EQUIPMENT, WHETHER OR NOT ELECTRICALLY HEATED (EXCLUDING FURNACES, OVENS AND OTHER EQUIPMENT OF HEADING 8514), FOR THE TREATMENT OF MATERIALS BY A PROCESS INVOLVING A CHANGE OF TEMPERATURE SUCH AS HEATING, COOKING, ROASTING, DISTILLING, RECTIFYING, STERILISING, PASTEURISING, STEAMING, DRYING, EVAPORATING, VAPORISING, CONDENSING OR COOLING, OTHER THAN MACHINERY OR PLANT OF A KIND USED FOR DOMESTIC PURPOSES; INSTANTANEOUS OR STORAGE WATER HEATERS, NON-ELECTRIC:</i> |
| 8419 9010 | <i>--- Parts of instantaneous or storage water heaters (domestic type)</i> |
| 8419 9090 | <i>--- Other</i> |
- 2.3 In a similar matter, OIO no. 726/2020-21/AC/NS-V/JNCH dated 06.11.2020 was issued by Group-V for the importer M/s V Tecs Corporation (BE 8873796 dated 19.09.2020). In the said case, it was observed that importer suppressed the fact at the time of filing of Bill of Entry in the description column that the item is part

for domestic type heater with a view to misclassify the item under CTH 84199090 at lower rate of basic customs duty of 7.5%. But it was found that the items are parts for domestic type water heater and therefore classifiable under CTH 84199010 with BCD @ 10%. On the basis of this observation, classification of evacuated tubes with solar selective coating under CTH 84199090 was rejected and same was ordered to be reclassified under CTH 84199010.

2.4 Thus, classification of parts of instantaneous/storage water heater (gas water heater, solar water heater etc) under CTI 84199090 instead of CTI 84199010 is leading to short payment of aggregate of duty of 3.245%.

2.5 The classification of goods under CTI 8419 is depicted graphically in Annexure. From the annexure tree diagram, it is clear that the goods should be classified under CTI 84199010, as per technical configuration and specific tariff heading under 8419. Investigation was initiated into the said mis- classification to safeguard the government revenue.

2.6 As per the Customs Tariff Heading – duty structure for chapter 8419 is as follows:-

Sr. No.	CTH	Item Description	Unit	Basic Rate of Duty	Effective rate of duty	IGST	SWS	Total	Remarks
1	84199010	Parts of Instantaneous or storage water heater (Domestic type)	Kg.	10	10	18	1	30.98	
2	84199090	--Other	Kg.	7.5	7.5	18	0.75	27.735	
3	84199090	Evacuated Tubes with three layers of solar selective coating for use in the manufacture of solar water heater and system		0	0				Notfn. No. 50/17-Cus, Sr. No. 451

2.7 In the course of investigation, the past imports made by the importer M/s. V Tecs Corporation were analyzed and it was observed that the subject goods were imported by the said importer through various Bills of Entry (mentioned in Annexure):

2.8 The duty is applicable on goods declared under CTH 84199090 as 7.5% BCD, 10% SWS and 18% IGST. In the subject BE's, the duty assessed as 7.5% BCD, 10% SWS and 5% IGST. The importer paid lower IGST @ 5% on account of Sr no. I234 of Ntfn 01/2017 which is reproduced below: -

Following renewable energy devices & parts for their manufacture

- (a) Bio-gas plant
- (b) Solar power-based devices
- (c) Solar power generating system
- (a) Wind mills, Wind Operated Electricity Generator (WEOG)
- (e) Waste to energy plants / devices
- (f) Solar lantern / solar-lamp
- (g) Ocean waves/tidal waves energy devices/plants

However, the importer has not produced any documents/information which claimed that the importer is manufacturer. Therefore, it appears that IGST is leviable @18% in the subject BE's (mentioned in Annexure).

- 2.9** In the subject case, it appears that the importer suppressed the fact at the time of filing Bills of Entry and mentioned in the description column that the item is part of industrial/commercial purpose type water heater with a view to misclassify the item under CTH 84199090 at a lower rate of duty i.e. 7.5%. Accordingly, three consecutive summons dated 02.06.2021, 04.01.2024 & 14.05.2024 were issued to the importer.
- 2.10** For the Summons issued on 14.05.2024, the importer replied by paying differential duty (BCD @10%, SWS @10%, IGST @5%) with applicable interest and penalty (@15%) on 10.07.2024 vide DD No. 002631 dated 06.07.2024 for the Bill of Entry nos. 7018449 dt. 26.02.2020, 7208514 dt. 12.03.2020, 8264346 dt. 24.07.2020 & 8806187 dt. 14.09.2020 which were filed by Customs Broker M/s Reetu Global Logistics.
- 2.11** During the course of investigation, statement of Shri Santosh Jadhav, G-card holder of Custom Broker M/s Pioneer was recorded on 21.06.2024 under Section 108 of Customs Act, 1962, wherein he inter-alia stated that
- 2.11.1** He was aware regarding the summon issued to him by SIIB(I), JNCH and accordingly appeared before Customs Authorities in connection with the imports made by M/s V Tecs Corporation.
- 2.11.2** He was aware of the procedures/rules to be followed by the Custom Broker. He looks after import related activities viz document filing, clearances etc.
- 2.11.3** For the instant BE's filed by their CB firm, Shri Vijay S Metri from Freight Forwarder M/s Shah Clearing & Forwarding Pvt Ltd approached them for filing the subject BE's. He forwarded them the documents viz BL, COO, Invoice & Packing List by mail which he received from the importer. His mail id was exim@scfpl.com.

- 2.11.4** Their office verified the KYC documents of the importer viz GSTIN copy, IEC on DGFT website online & physically met and verified the address of the importer as well.
- 2.11.5** Other than the subject BE's, their CB firm didn't file any other document on behalf of the importer.
- 2.11.6** They received payment of Rs 3,200/- per container from the importer on behalf of the subject BE's in the name of M/s Pioneer, IDBI Bank, Ghatkopar West branch.
- 2.11.7** They were never penalized under CA, 1962.
- 2.11.8** They filed the subject BE's under CTH 84199090 as the HSN code of the goods mentioned on the subject Bills of lading was 84199090.
- 2.11.9** Further, he assured that they were ready to cooperate with the investigation.
- 2.12** During the course of investigation, statement of Shri Yogesh Tabaji Chougule, G-card holder of Custom Broker M/s Reetu Global Logistics was recorded on 25.04.2024 under Section 108 of Customs Act, 1962, wherein he inter-alia stated that:
- 2.12.1** He was aware regarding the summon issued to him by SIIB(I), JNCH and accordingly appeared before Customs Authorities in connection with the imports made by M/s V Tecs Corporation.
- 2.12.2** He was aware of the procedures/rules to be followed by the Custom Broker. He looks after finance and management role of the firm & also looks after customs clearance work of imported goods only.
- 2.12.3** For the instant BE's filed by their CB firm, Shri Tukaram Korde from Freight Forwarder M/s Shree Ganesh approached them for filing the subject BE's. He forwarded them the documents viz BL, COO, Invoice & Packing List by mail & hard copies by courier which he received from the importer.
- 2.12.4** Their office verified the KYC documents of the importer viz GSTIN copy, IEC on DGFT website online and proceeded to file the BE's.
- 2.12.5** Other than the subject BE's, their CB firm didn't file any other document on behalf of the importer.
- 2.12.6** They received payment of Rs 3,500/- per container from the importer on behalf of the subject BE's in the name of M/s Reetu Global Logistics, IDBI Bank.
- 2.12.7** They filed the subject BE's under CTH 84199090 as the HSN code of the goods mentioned on the subject Bills of lading was 84199090.
- 2.12.8** Further, he assured that they were ready to cooperate with the investigation.
- 2.13** During the course of investigation, statement of Shri Tukaram Narayan Korade, Forwarding Agent of M/s Reetu Global Logistics was recorded on 02.05.2024 under Section 108 of Customs Act, 1962, wherein he inter-alia stated that:

- 2.13.1 He was aware regarding the summon issued to him by SIIB(I), JNCH and accordingly appeared before Customs Authorities in connection with the imports made by M/s V Tecs Corporation.
- 2.13.2 He was earlier a partner with Freight Forwarder M/s Shree Ganesh Enterprises. He did marketing for M/s Reetu Global Logistics which included procuring customers and business in Customs related work. He had given the job for clearance to M/s Reetu Global Logistics in respect of M/s V Tecs Corporation. Further, at present he was working independently as a free-lancer.
- 2.13.3 He verified the KYC documents of Importer including GSTIN certificate, IEC on DGFT website online and also verified the address of the importer physically. After that only, he provided the business of customs clearance to M/s Reetu Global Logistics.
- 2.13.4 The importer used to forward him the documents viz BL, COO, Invoice & Packing List, which he used to send them to M/s Reetu Global Logistics through mail and courier for filing BE.
- 2.13.5 The payments were made by the Importer in the current bank account of M/s Shree Ganesh Enterprises which he used to transfer to the current bank account of IDBI bank pertaining to M/s Reetu Global Logistics after deducting his commission. He used to charge the Importer Rs 4500 to Rs 5500 (per consignment) and paid M/s Reetu Global Logistics Rs 3500 to Rs 4500 (per consignment) as customs clearance charges after deducting his commission
- 2.13.6 His last business with M/s V Tecs Corporation was in the end of 2020, after which he didn't transact any business with the Importer. Recently, he advised the importer regarding the differential customs duty arising out of misclassification of CTH. Further, he assured that they were ready to cooperate with the investigation.

2.14 Hence, the duty needs to be re-assessed and the details of total assessable value and duty foregone are given under:

TABLE-B

TOTAL No of B/E (as per Annexure)	TOTAL ASSESSED VALUE	TOTAL DUTY PAID AS PER DECLARED CTH 84199090	TOTAL DUTY AS PER CTH 84199010	Total differential duty	Differential Duty paid vide DD no. 002631 dated 06.07.2024 for BE's 7018449 dated 26.02.2020, 7208514 dated 12.03.2020, 8264346 dated 24.07.2020 8806187 dated 14.09.2020	Differential duty to be payable and duty foregone for other BE's
7	Rs. 60,58,748.27	Rs. 8,22,776.4	Rs. 18,77,000.2	Rs. 10,49,223.8	Rs. 1,78,862	Rs. 8,70,361.8

2.15 RELEVANT PROVISIONS OF LAW APPLICABLE IN THE INSTANT CASE: -

The relevant provisions of law relating to import and valuation of goods in general, the Policy and Rules relating to imports, the liability of the goods to confiscation and the persons concerned are liable to penalty for illegal importation under the provisions of the Customs Act, 1962 and any other laws for the time being in force are summarized as under the Customs Act, 1962:

(A) Section 28 of the Customs Act, 1962: Recovery of [duties not levied or not paid or short-levied or short-paid or erroneously refunded

'(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

- (a) collusion; or*
- (b) any wilful mis-statement; or*
- (c) suppression of facts,*

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(B) Section 28AA of the Customs Act, 1962: Interest on delayed payment of duty

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, 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), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent and not exceeding thirty-six per cent. Per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,-

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.

(C) Section 111 of the Customs Act, 1962: Confiscation of improperly imported goods, etc.

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.

(D) Section 112 of the Customs Act, 1962: Penalty for improper importation of goods, etc.

'Any person, -

(a) *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act.*

(E) Section 114A of the Customs Act, 1962: Penalty for short-levy or non-levy of duty in certain cases

'Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.'

2.16 From the foregoing investigation, it appears that in the instant case, as per Table-B above, total Assessable value of 07 Bills of Entry arrived at Rs. 60,58,748.27/- and differential duty amount arrived at Rs. 10,49,223.8/- (Rupees Ten Lakh Forty-nine Thousand Two hundred Twenty-three point eight only). As the importer paid Differential Duty (differential BCD @ 2.5%, SWS @ 10%, IGST @ 5%) including applicable interest and penalty only for the Bills of Entry 7018449 dated 26.02.2020, 7208514 dated 12.03.2020, 8264346 dated 24.07.2020 & 8806187 dated 14.09.2020, the remaining total Differential Duty to

be payable including the remaining IGST for BE's paid vide DD ibid and duty foregone for other Bills of Entry No 5801603 dated 23.11.2019, 6316761 dated 01.01.2020 & 7484868 dated 20.04.2020 works out at Rs 8,70,362/- (Rupees Eight Lakh Seventy Thousand Three hundred and Sixty two only). Therefore, on account of the reason of suppression of facts at the time of filing of Bill of Entry in the description column that the item is part for domestic type heater with a view to misclassify the item under CTH 84199090 at lower rate of basic customs duty of 7.5% to evade appropriate customs duty. But it was found that the items are parts for domestic type water heater and therefore classifiable under CTH 84199010 with BCD @ 10%. Therefore, duty has been short paid and short paid by the importer to the tune of Rs. 8,70,362/ and same is liable to recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962. Thus, the importer M/s V Tecs Corporation rendered himself liable for penal action under Section 114A of the Customs Act, 1962.

2.17 The subject goods do not correspond to the true value of the goods in terms of classification and value as detailed in Annexure and same is liable for confiscation in terms of provisions of Section 111(m) of the Customs Act, 1962.

2.18 This act of commission and omission, of mis-declaration of valuation of impugned goods, has rendered the subject goods liable to confiscation in terms of provisions of Section 111(m) of the Customs Act, 1962, consequently, rendered the Importer M/s VTecs Corporation liable for penal action in terms of provisions of Section 112(a) of the Customs Act, 1962,

2.19 From the foregoing investigation, it appears that: -

- (i) On basis of above examination & findings, it is conclusive that industrial or commercial solar water is nothing but a sum up of a number of domestic solar water heater. This clarifies that any part of solar water heater will fall under CTH 84199010 instead of 84199090.
- (ii) The goods covered under Bills of Entry mentioned in Annexure appear to be liable for confiscation under Section 111 (m) of the Customs Act, 1962.
- (iii) The importer M/s V Tecs Corporation has classified Parts of instantaneous or storage water heater (domestic type)' under CTH 84199090 (BCD @7.5%) instead of 84199010 (BCD @10%) and evaded Customs duty. Separate CTH 84199010 is for parts of instantaneous or storage water heater and CTH 84199090 is for 'Parts of machinery' which comes under CTH 8419 other than

instantaneous or storage water heater (Domestic type) and not for the parts of instantaneous or storage water heater.

- (iv) The total differential duty of the goods imported vide Bills of Entry mentioned in Annexure worked out to Rs.10,49,223.8/- and is required to be paid after re-assessment.
 - (v) The importer vide challan made a payment of amount of Rs 1,78,862/- and the same may be appropriated towards the demand of applicable differential duty, interest, fine & penalty that may be levied consequent to the proceedings.
 - (vi) The non-payment duty of Rs. 8,70,361.8/- is liable to be demanded from Importer under Section 28 of Customs Act, 1962, along with applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962.
 - (vii) The act of omission on part of importer has rendered the goods liable for confiscation under section 111(m) of Customs Act, 1962. Consequently, the importer has rendered himself liable for penalty under Section 112(a) and 114A of the Customs Act, 1962.
 - (viii) The authorized representative of Customs Broker M/s Rectu Global Logistics (CB No. 11/2204) & M/s Pioneer had admitted in their statement that they have filed Bills of Entry on behalf of importer M/s V Tecs Corporation for clearance of evacuated tubes with three layers of solar selective coating for use in water heater under CTH 84199090.
 - (ix) By this act of omission and commission on the part of the Customs brokers, the Customs Broker has rendered itself liable for penal action under Section 112(a) and 114(A) of the Customs Act, 1962. The CB also violated the Regulation 10(d) & 10(e) of CBLR 2018.
3. Therefore, the above importer M/s. V Tees Corporation (IEC No. 3116909661) was called upon to show cause, as to why:
- (a) The declared CTH 84199090 (BCD 7.50%) should not be rejected and goods should not be re-classified under CTH 84199010 (BCD 10%).
 - (b) Total declared value of goods of Rs 60, 58,748.27 (Rupees Sixty Lakh Fifty-eight Thousand Seven Hundred Forty-eight only) should not be liable for confiscation under Section 111 (m) of the Customs Act, 1962.

- (c) The non-payment duty of Rs. 8,70,361.8/ (Eight Lakh Seventy Thousand Three Hundred Sixty-one) should not be demanded from Importer under Section 28 of Customs Act, 1962, along with applicable interest.
- (d) The authorized Customs Broker M/s Reetu Global Logistics (CB No. 11/2204) should not be liable for penal action under Section 112(a) and 114(A) of the Customs Act, 1962.

RECORDS OF PERSONAL HEARING
&
WRITTEN SUBMISSIONS OF THE NOTICEE

4. In order to comply with the principals of natural justice, opportunity of personal hearing, in virtual mode was provided to the noticee vide letter F.No. S/10-723/2024-25/ADC/Gr.V/NS-V/CAC/JNCH dated 07.08.2025, 19.08.2025 and 24.09.2025 to appear before the adjudicating authority on 14.08.2025, 29.08.2025 and 01.10.2025 respectively, for their oral/written submission against the subject show cause notice. However, no one attended the personal hearing on any of the above dates. Despite the sufficient number of opportunities for personal hearing given to the Importer, they have neither attended the personal hearing nor submitted any written reply in their defence. There is no counter reply/written submission against the Show Cause Notice received from the Importer.

DISCUSSIONS AND FINDINGS

5. I have gone through the facts of the case and material on records and oral and written submissions of the importer. I find that the subject Show Cause Notice proposes recovery of differential duty of Rs. 8,70,361.8/- rounded off to **Rs. 8,70,362/- (Rupees Eight Lakhs Seventy Thousand Three Hundred and Sixty-two only)** under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. The SCN also proposes confiscation of goods having **assessable value of Rs. 60,58,748.27/-** rounded off to **Rs. 60,58,748/-** along with the Penalty under Section 112(a) and 114A of the Customs Act, 1962 read with the Section 28 of the Customs Act, 1962.
6. It is alleged in the subject Show Cause Notice that the importer had imported the impugned goods declaring them as "Evacuated Tubes with Three Layers of Solar Selective Coating for manufacturing Solar Water Heater & Solar Vacuum

Tubes" under CTH 84199090 and paying BCD @7.5% and IGST @5%, whereas as per SIIB investigation, it was found that the impugned goods are rightly classifiable under CTH 84199010 having BCD @10% and IGST @18%.

7. I find that ample opportunities of personal hearing have been granted to the Importer to be heard in person and to submit their reply/defense submission against the Show Cause Notice. However, neither any written submission/reply to the Show Cause Notice has been submitted by the importer nor any of their representatives turned up for the said personal hearing. Therefore, I am left with no option other than to decide the case ex-parte on the basis of records available and the existing legal position at the relevant point of time.
8. I observe that the description of the impugned goods is mentioned as **'Evacuated Tubes with Three Layers of Solar Selective Coating for manufacturing Solar Water Heater & Solar Vacuum Tubes'** which were cleared by the importer under CTH 84199090 by paying BCD @7.5%. The importer, despite given various opportunities, has not submitted any written submission to contradict the declaration made in subject Bill of Entry. Hence, as far as the description of impugned goods is concerned, I find that there is no dispute.
9. To determine the correct classification of the impugned goods, I refer to the relevant heading of the Customs Tariff, 1975, which reads as under:

84.19 MACHINERY, PLANT OR LABORATORY EQUIPMENT, WHETHER OR NOT ELECTRICALLY HEATED (EXCLUDING FURNACES, OVENS AND OTHER EQUIPMENT OF HEADING 8514), FOR THE TREATMENT OF MATERIALS BY A PROCESS INVOLVING A CHANGE OF TEMPERATURE SUCH AS HEATING, COOKING, ROASTING, DISTILLING, RECTIFYING, STERILISING, PASTEURISING, STEAMING, DRYING, EVAPORATING, VAPORISING, CONDENSING OR COOLING, OTHER THAN MACHINERY OR PLANT OF A KIND USED FOR DOMESTIC PURPOSES; INSTANTANEOUS OR STORAGE WATER HEATERS, NON-ELECTRIC:

8419 90 -- Parts:

8419 9010 --- Parts of instantaneous or storage water heaters (domestic type)

8419 9090 --- Other

10. Further, I also refer to Rule 3(a) of General Rules for the Interpretation of the Harmonized System

Rule 3(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

11. I observe that as far as description of goods is concerned, there is no dispute. From plain reading of description of goods and relevant Tariff Heading & General Rule of Interpretation, as mentioned above, it is amply clear that the subject goods **‘Evacuated Tubes with Three Layers of Solar Selective Coating for manufacturing Solar Water Heater & Solar Vacuum Tubes’** are rightly classifiable under CTH 84199010, as alleged in said SCN & I hold the same.

12. Now coming to the applicable Basic Customs Duty on the impugned goods, I rely on the duty structure of the impugned goods during the material time of import and the same is as under:-

8419 90	- Parts:									Free
8419 90 10	--- Parts of instantaneous or storage water heaters (domestic type)	kg.	10.00	10.00	---	18.00	1.00	30.980		Free
8419 90 90	--- Other	kg.	7.50	7.50	---	18.00	0.75	27.735		Free
8419	N50 Coffee roasting, brewing or vending machines for use in the manufacture or processing of coffee			7.50	---	18.00	0.75	27.735		
8419 90 90	N50 Evacuated tubes with three layers of solar selective coating for use in the manufacture of solar water heater and system			0.00						

13. In view of the above duty structure, it is evident that applicable BCD during the material time of import was @10%. Hence, I am of the considered opinion that the impugned goods attracted BCD@10% and I hold the same.

14. Now, coming to the question of IGST leviable on the impugned goods, I observe that the Notification No. 01/2017-Central Tax (rate) dated 28.06.2017 (as referred in the SCN) as amended from time to time, wherein as per Sr. No. 234 of Schedule-I and Sr. No. 201A of Schedule-II (inserted vide 8/2021-Central Tax (Rate), dated 30-9-2021) which is reproduced as below:

Following renewable energy devices & parts for their manufacture

- (a) Bio-gas plant
- (b) Solar power-based devices
- (c) Solar power generating system
- (a) Wind mills, Wind Operated Electricity Generator (WOEG)
- (e) Waste to energy plants / devices
- (f) Solar lantern / solar-lamp
- (g) Ocean waves/tidal waves energy devices/plants

14.1 However, I observe that IGST @5% on the above goods is applicable only when these goods are procured for the manufacture or if the importer is a manufacturer. I find that during the investigation in the subject matter as well as during the course of adjudication of the SCN, the importer had neither submitted any documentary proof to establish that impugned goods were used only for manufacturing purpose and not for trading nor the importer submitted any document to establish that the importer is a manufacturer. Therefore, I am of the opinion that IGST benefit as per Sr. No. 234 of Schedule-I and Sr. No. 201A of Schedule-II (inserted vide 8/2021-Central Tax (Rate), dated 30-9-2021) was not available to said importer.

14.2 Further, I refer to the point. no. lxxx of Schedule-III of Notification No. 43/2017-Integrated Tax (Rate) dated 14.11.2017, which is reproduced below for ease of reference:

(lxxx) in S. No. 320, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-	
"8419	Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilising, pasteurising, steaming, drying, evaporating, vaporising, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric [other than Solar water heater and system]";

14.3 From the above, I find that the applicable IGST for goods under CTH 8419 during the material time of import was @18% and hence I am of the considered view that IGST@18% was applicable on the impugned goods during the material time of import and I hold the same.

15. I find that 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 calculation of duty. The relevant sections of the Customs Act, 1962 are reproduced below for ease of reference: -

15.1 Section 17(1) Assessment of duty, reads as:

An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

15.2 Further Section 28 (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded) reads as:

'(4) Where any duty has not been levied or not paid or has been short-levied or short- paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of-

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short- paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

16. In view of the above, I observe that in the era of self-assessment, the onus of correct classification of goods and payment of duty thereon is on the importer. From the facts above, I find that, the Importer has mis-classified the impugned goods resulting in differential duty of **Rs. 8,70,362/- (Rupees Eight Lakhs Seventy Thousand Three Hundred and Sixty-two only)**.

17. I observe that the total differential duty of the goods imported vide Bills of Entry mentioned in Annexure has been worked out to Rs.10,49,223.8/- and the importer paid an amount of Rs 1,78,862/- on 10.07.2024 vide DD No. 002631 dated 06.07.2024 towards differential duty (BCD @10%, SWS @10% & IGST @5%) with applicable interest and penalty @15% in respect of Bill of Entry nos. 7018449 dt. 26.02.2020, 7208514 dt. 12.03.2020, 8264346 dt. 24.07.2020 & 8806187 dt. 14.09.2020. Hence, the short-paid differential duty amounting to **Rs. 8,70,361.8** rounded off to **Rs. 8,70,362/- (Rupees Eight Lakhs Seventy Thousand Three Hundred and Sixty-two only)** is recoverable from the importer under Section 28(4) of the Customs Act, 1962 and I hold the same.

18. In the instant case, the misclassification of CTH by the importer having access to all legal aid, tantamount to suppression of material facts and wilful mis-statements. The "mens rea" can be deciphered only from "actus-reus". Thus, providing the wrong CTH and claiming undue benefit by the said Importer taking

a chance to clear the goods by mis-classifying it, amply points towards their "mens rea" to evade the payment of duty.

19. Thus, I find that the extended period of limitation under Section 28(4) of the Customs Act, 1962 for the demand of duty is rightly invoked in the present case. Hence, I am of the considered opinion that recovery of differential duty, as proposed in the said SCN from the importer, under Section 28(4) of the customs Act, 1962 is sustainable and I hold the same.
20. Further, since the demand of duty is sustainable in the instant case, the interest being accessory to the principal, the same is liable to be paid in accordance with Section 28AA of the Customs Act, 1962.
21. Now coming to the question as to whether the impugned goods are liable for confiscation. I find that Section 111(m) of the Customs Act, 1962 provides for confiscation even in cases where goods do not correspond to any other particulars in respect of which the entry is made under this act. I am of the considered view that the words "in respect, any other particular with the entry made under this act" would also cover the case of misclassification by the Noticee. Hence, I am of the considered view that Section 111(m) of the said Act can be invoked.
22. As the importer, intentionally by suppressing of facts and wilfully, had wrongly classified the CTH of the goods while filing Bill of entry evaded legitimate Customs Duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(m) is justified & sustainable. However, I find the goods imported vide bill of entry as mentioned in Table-A 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 regularized, 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 authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III 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 the payment of the 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. (i)."

23. 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.) and the same have not been challenged by any of the parties in operation. Hence, I find that any goods improperly imported as provided in any sub-section of Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the importer was not caught at the time of clearance of the imported goods, can't be given differential treatment. In view of the above, I find that the decision of the Hon'ble Madras High Court in the 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 the 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. Accordingly, I find that the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 and I hold the same.
24. Now coming to the issue of penalties, I find that the impugned notice proposes a penalty under Section 112(a) and/or 114A of the Customs Act, 1962. In this regard, I find that the importer failed to classify the goods correctly and properly and evaded legitimate customs duty. I find that in the self-assessment regime, it is the bounden duty of the Importer to correctly assess the duty on the imported goods. Since, the importer has deliberately mis-classified the impugned goods by suppressing the facts to evade legitimate customs duty, I am of the considered view that penalty under Section 114A is rightly proposed in the said SCN and I hold the same.

25. Further, I find that penalties under Section 112(a) and Section 114A are mutually exclusive, therefore, I refrain from imposing penalty under Section 112(a) on the importer, in terms of the fifth proviso to Section 114A *ibid*.
26. I further find that penalty has also been proposed on the authorized Customs Broker M/s Reetu Global Logistics (CB No. 11/2024) under Section 112(a) and 114A of the Customs Act, 1962
- 26.1 I find that the Customs Brokers should have scrutinized the documents properly before filing the same for clearance to check correct classification of the impugned goods and leviability of the duties. As far as imposition of penalty on the Customs Brokers is concerned, I find that numerous judicial pronouncements are in existence where it has been, held that when there is no evidence of abetment in illegal importation of goods or wrong intent or prior knowledge about violation, penalty cannot be imposed on the Customs broker. I, also, find that, as per para no. 4 of the Instruction No. 20/2024-Customs dated 03.09.2024, which is quoted as below:
- "Accordingly, implicating Customs Brokers as co-noticee in a routine manner, in matters involving interpretation of statute, must be avoided unless the element of abetment of the Customs Brokers in the investigation is established by the investigating authority. Further, the element of abetment should be clearly elaborated in the Show Cause Notice issued for the offence case under the provisions of Customs Act, 1962.*
- 26.2 I find that penal action is proposed against the Customs Brokers without giving any detailed reason or supporting evidences as to how CB or their employees have been instrumental in the evasion of Customs Duty. The Customs Brokers are made noticee without assigning any explicit reason or without citing any evidence to show their complicity by way of any act of omission or commission or abetment in customs duty. Based on the facts provided in SCN, I do not find the Customs Brokers to be liable for any penal action under section 112(a)/114AA of the Customs Act, 1962.
27. In view of the above facts, I pass the following order:

ORDER

- i. I reject the classification of the impugned goods claimed under CTH 8419 9090 and order to re-asses the Bill of Entries mentioned in Table-A by re-classifying the impugned goods under CTH 8419 9010.
- ii. I order to recover differential duty amount of **Rs. 8,70,362/- (Rupees Eight Lakhs Seventy Thousand Three Hundred and Sixty-two only)** under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;
- iii. I order to confiscate the imported goods, having assessable value of **Rs. 60,58,748.27/-** rounded off to **Rs. 60,58,748/- (Rupees Sixty Lakhs Fifty-eight Thousand Seven Hundred Forty-eight only)**, covered under Bill of Entry as detailed in Annexure, under Section 111(m) of the Customs Act, 1962, but since the same stood released, I impose redemption fine of **Rs. 6,00,000/- (Rupees Six Lakhs Only) under Section 125(1)** of the Customs Act, 1962 upon **M/s. V Tecs Corporation** (IEC No. 3116909661).
- iv. I order to impose penalty of **Rs. 8,70,362/- (Rupees Eight Lakhs Seventy Thousand Three Hundred and Sixty-two only)** (equal to differential duty, as confirmed in Para 26(ii) above) plus applicable interest, under Section 114A of Customs Act, 1962 on **M/s. V Tecs Corporation**. However, such penalty would be reduced to 25% of the total penalty imposed under Section 114A of the Customs Act, 1962 if the amount of duty as confirmed above, the interest and the reduced penalty is paid within 30 (thirty) days of communication of this Order, in terms of the first proviso to Section 114A of the Customs Act, 1962.
- v. I refrain from imposing any penalty under Section 112(a) of the Customs Act, 1962 on the Importer for the reason as discussed above.
- vi. I order to appropriate differential duty amounting to Rs 1,78,862/- paid by the importer on 10.07.2024 [towards differential duty (BCD @10%, SWS @10% & IGST @5%) with applicable interest and penalty @15%] vide DD No. 002631 dated 06.07.2024 in respect of Bill of Entry nos. 7018449 dt. 26.02.2020, 7208514 dt. 12.03.2020, 8264346 dt. 24.07.2020 & 8806187 dt. 14.09.2020.
- vii. I do not impose any penalty on Customs Brokers M/s Reetu Global Logistics for the reasons stated above.

28. This order is issued without prejudice to any other action which may be taken in respect of the goods in question and/or against the persons concerned or any other persons, if found involved under the provisions of the Customs Act, 1962 and/or other law for the time being in force in the Republic of India.



(माजिद खान / MAZID KHAN)

संयुक्त आयुक्त सीमा शुल्क/ JT. COMMISSIONER OF CUSTOMS
सीएसी, एनएस-5, जेएनसीएच/ CAC, NS-V, JNCH

To,

M/s. V Tecs Corporation (IEC No. 3116909661),
Flat no. B602, Sr. No. 29, House No. 551,
Atmosphere Ambegaon BK,
Pune Maharashtra - 411046.

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