

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 – 20250778NX000000A6F9

Date of Order: 31.07.2025

F. No. S/10-90/2024-25/COMMR/GR.V/NS-V/CAC/JNCH

Date of Issue: 31.07.2025

SCN No.:907/2024-25/COMMR/NS-V/CAC/JNCH

SCN Date: 06.08.2024

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 146/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s. HP India Sales Pvt. Ltd.

**ORDER-IN-ORIGINAL**

**मूल - आदेश**

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

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

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

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

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

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

**Time Limit -** Within 3 months from the date of communication of this order.

**समय सीमा -** इस आदेश की सूचना की तारीख से 3 महीने के भीतर

**Fee -फीस-**

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

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

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

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

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

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

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

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

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



**Subject: Adjudication of Show Cause Notice No. 907/2024-25/Commr/NS-V/CAC/JNCH dated 06.08.2024 in case of M/s. HP India Sales Pvt. Ltd. (IEC – 0798008300) - reg.**

### **BRIEF FACTS OF THE CASE**

**1.1** M/s. HP India Sales Pvt. Ltd. (IEC – 0798008300) having registered office at No.24, Kohthari Arena, Hosur Main Road, Adugodi, Bengaluru, Karnataka – 560030 (hereinafter referred to as “the Importer/Noticee”) had filed various Bills of Entry for clearance of goods through various ports and is engaged in the trading of IT products and printing solutions like Notebook, Printers and related parts and accessories etc. (hereinafter referred to as “subject goods”). “HP Latex Printers” appears to be classifiable under CTH 84433910. The imported parts and accessories like Latex cleaning roll of Latex Printers/subject goods appears to be rightly classifiable under CTH 84439960 being parts of “HP Latex Printers” which appears to be classifiable under CTH 84433910. However, the importer had imported parts and accessories of Latex Printers in CTH 84439959 as parts of Printers.”

**1.2** The team of Auditors of Customs (Audit), Chennai visited the unit of M/s. HP India Sales Pvt. Ltd., under section 99A of the Customs Act, 1962 for conducting Premises Based Audit (PBA). In this regard, the importer vide office letter No. F. No. CADT/CIR/ADT/PBA/ 124/2023-PBA-CIR-B1-O/o COMMR-CUS-ADT-CHENNAI dated 27.03.2024 was requested to produce relevant imports as well as export documents before the auditors for conducting of audit.

**1.3** Upon completion of the audit at registered office of M/s. HP India Sales Pvt. Ltd. situated at No. 24, Kohthari Arena, Hosur Main Road, Adugodi, Bengaluru, Karnataka – 560030. The exit conference was held with Sh. Ravishankar BS (Compliance Manager) and Sh. Anil Kumar BC (Logistics Manager) of M/s. HP India Sales Pvt. Ltd.

**1.4** Further, 42 paras enumerated in Draft Audit Report No. 150/B1/Chennai/2023-24 was issued to the importer on 22/05/2024 out of which 41 paras were accepted and the applicable differential duty along with interest and penalty was paid by the importer. However, the importer had submitted its reply dt 16/05/2024 for S. No. 39 of the DAR (or Point 41 of Exit Conference) as detailed in para 1.6. Subsequently, Final Audit Report dated 13.06.2024 was issued to the importer. The importer had accepted all audit objections and paid applicable differential duty along with interest and penalty (total to the tune of Rs. 6,78,86,974/-) and submitted its reply dated 13/06/2024 except for S. No. 39 of DAR/FAR.

**1.5** It is observed that as per the Order No. 244/2023-24/Commr/NS-V/CAC/JNCH dated 27.02.2024 in F. No. S/10-144/2022-23/Gr V/CAC/JNCH, “HP Latex Printers” appears to be classifiable under CTH 84433910. Therefore, imported parts and accessories like Latex cleaning roll of Latex Printers/subject goods appears to be rightly classifiable under CTH 84439960. However, the importer had imported parts and accessories of Latex Printers in CTH 84439959 as parts of Printers.”

**1.6** Vide their reply dated 16.05.2024, the importer has made the following submissions regarding Sr. No. 41 of Exit Conference (or “S. No. 39 of DAR”):

- a) That they are in appeal before Hon’ble CESTAT, Mumbai as they are aggrieved by the Order of Learned Commissioner of Customs, Nhava Sheva vide No. 244/2023-24/Commr/NS-V/CAC/JNCH dated 27.02.2024 in F. No. S/10-144/2022-23/Gr-V/CAC/JNCH, wherein, Learned Commissioner has held that “HP Latex Printers” appears to be classifiable under CTH 84433910.
- b) They have informed that parts and accessories of Latex Printers does exist. Latex Printheads are being classified as Parts of printers under CTH 84439959. Apart from Printheads-
  - i) Inks meant for Latex Printers are being classified as Inks under CTH 3215 with merit rate of duty.



- ii) Ink Cartridges w/printhead for Latex Printers are being classified as Ink Cartridges w/printhead under CTH 84439951 with merit rate of duty 10%.
  - iii) Printhead wiper kit for Latex Printers are being classified as Other under CTH 84439990 with merit rate of duty 7.5%.
- c) Further they have submitted that if Hon'ble CESTAT, Mumbai rules decision in favour of department of Revenue, they may have to reclassify its parts and accessories accordingly:
- i) Printheads for Latex Printers currently classified under CTH 84439959 as parts of printers may have to be reclassified under CTH 84439960 that attract merit rate of duty.
  - ii) Latex cleaning rolls for Latex Printers currently classified under CTH 84439959 as parts and accessories of printers may have to be reclassified under CTH 84439960.
  - iii) Other parts and accessories such as Dual Roll Assy, Media Saver Kit, Printhead Cleaning Assembly, Uptime kit, Edge Holder Kit, User Maintenance Kit, etc., currently classified under CTH 84439959 as parts and accessories of printers may have to be reclassified under CTH 84439960.

**1.7** Since "HP Latex Printers" appears to be classifiable under CTH 84433910 as per the Order No. 244/2023-24/Commr/NS-V/CAC/JNCH dated 27.02.2024 in F. No. S/10-144/2022-23/Gr-V/CAC/JNCH. Therefore, parts and accessories of Latex Printers or the subject goods appears to be rightly classifiable under CTH 84439960.

**1.8** Relevant Chapter Heading 84.43 is reproduced below:

*8443 PRINTING MACHINERY USED FOR PRINTING BY MEANS OF PLATES, CYLINDERS AND OTHER PRINTING COMPONENTS OF HEADING 8442; OTHER PRINTERS, COPYING MACHINES AND FACSIMILE MACHINES, WHETHER OR NOT COMBINED; PARTS AND ACCESSORIES THEREOF*

*8443 32 -- Other, capable of connecting to an automatic data processing machine or to a network*

*8443 32 50 --- Ink jet printer*

*8443 39 10 --- Ink-jet printing machine*

*--- Parts and accessories of goods of sub-heading 8443 31, 8443 32*

*8443 99 59 ---- Other*

*8443 99 60 --- Parts and accessories of goods of sub-heading 8443 39*

**1.9** All the parts and accessories of Latex Printers that were classified under CTH 8443.9959 have to be re-classified under CTH 8443.9960. The list of Bills of Entry containing the subject subjects is attached herewith in Annexure A to the SCN.

**1.10** Self-Assessment in Customs has been implemented with effect from 08.04.2011 vide Finance Act, 2011 by making suitable changes to Sections 17, 18, 46 and 50 of the Customs Act, 1962. The Central Board of Excise and Customs has issued Circular No.17/2011- Customs dated 08.04.2011 regarding implementation of Self-assessment in Customs. In order to sensitise the people of trade about its benefit and consequences of misuse; Government of India has also issued 'Customs Manual on Self-Assessment, 2011'. Self-Assessment inter alia requires importers/exporters to correctly declare value, classification, description of goods, exemption notifications, etc. and self-assess the duty thereon, if any. With the introduction of self-assessment, more faith is bestowed on the importers/exporters, as the practices of routine assessment, concurrent audit etc. have been dispensed with. Para 3(a) of Chapter 1 of the above Manual further stipulates that the importer/exporter is responsible for self-assessment of duty on imported/export goods and for filing all declarations and related documents and confirming these are true, correct and complete.



**1.11** Whereas, from the foregoing narration and legal provisions cited above it appears that the importer has adopted wrong classification wilfully in respect of the goods imported, short paid the leviable customs duty and cleared the goods in contravention of the provisions of the Customs Act, 1962. As per extant instructions, the onus of providing the correct declaration rests on the importer and all facilitation is conditional to the same. Further, being one of the leading importers of the country, the importer is well aware of their products and the Customs' rules and regulations including those relating to self-assessment, classification and claim of exemption notification. However, in the instance case, the importer intentionally abused this faith placed upon it by the law of the land. Therefore, it appears that the Importer has willfully violated the provisions of Section 17(1) of the Act inasmuch as they have failed to correctly self-assess the impugned goods and has also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. Therefore, it appears that in respect of Bills of Entry mentioned in Annexure A to the SCN, such mis-classification of impugned goods, has resulted into short levy of duty amounting Rs. 4,97,38,602/- which is recoverable from the Importer under the provisions of Section 28(4) of the Customs Act, 1962, along with interest as applicable under Section 28AA of the Act.

**1.12** The Board has issued Notification No.28/2022-Cus (N.T) dated 31.03.2022 for appointing proper officer under Section 28, 28AAA or Chapter X in cases of multiple jurisdictions. As per the said notification, in a case of multiple jurisdictions, the Deputy Commissioner of Customs or Assistant Commissioner of Customs who is assigned the function relating to assessment of duty in the jurisdiction having highest amount of duty, at the stage of transfer, or the Additional Commissioner/ Joint Commissioner or the Principal Commissioner/ Commissioner of Customs to whom the said AC/DC is subordinate in terms of sub-section(2) of Section 5, in accordance with the aggregate amount of duty as mentioned in column 2(B) of the table given in the said notification shall be the proper officer for purpose of exercising powers under section 28, 28AAA or Chapter X.

**1.13** The Show Cause Notice has relied upon various legal provisions viz. Section 110AA, 46(1), 46(4), 46(4A), 28(4), 28AA, 111(m), 112, 114A of the Customs Act.

**1.14** Therefore, the importer, M/s HP India Sales Pvt. Ltd. (IEC – 0798008300), having address at No. 24, Kohthari Arena, Hosur Main Road, Adugodi, Bengaluru, Karnataka – 560030 was called upon to show cause to the Commissioner of Customs, Nhava Sheva-V Commissionerate, Jawaharlal Nehru Custom House, Nhava Sheva, Taluk: Uran, District: Raigad, Maharashtra, within 30 days of receipt of the SCN as to why: -

- i. The classification of subject goods claimed under CTH 84439959 of the bills of entry as per the Annexure "A" to the SCN, should not be rejected and the same should not be re-assessed under CTH 84439960.
- ii. the subject goods should not be confiscated under Section 111(m) of the Customs Act, 1962;
- iii. Differential Duty of Rs. 4,97,38,602 /- (Rupees Four Crore Ninety-Seven Lakh Thirty-Eight Thousand Six hundred and Two only), should not be demanded for B/Es as detailed in Annexure-"A" under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962
- iv. the applicable interest on the amount specified above should not be recovered from them in terms of section 28AA of the Customs Act, 1962.
- v. penalty should not be imposed on him under Section 112(a)/ 114A of the Customs Act, 1962.

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



2. The importer submitted written submissions dated 23.01.2025 and 22.07.2025, wherein, it was inter-alia stated that:

2.1 They are one of the leading companies engaged in the manufacture, importation and trading of various products like computers, monitors, printers, scanners, etc. in India. Having had a strong presence in the Information Technology (IT) Industry for more than 25 years, the Noticee is well versed in Tariff classification of the various products it imports. The Noticee makes all the necessary declarations basis the documents forwarded by the supplier in connection with the imports made. One of the products imported by the Noticee into India, in the regular course of business, are various types of printers and one such type of printer is Latex Printers. The Noticee has been importing Latex Printers since October, 2016 and during the period from April 2018 to March 2024, the Noticee imported various parts of Latex Printers of various models.

## 2.2 Latex Printers and the imported goods

The Latex Printers are ink-jet printers which use ink jet technology for the purposes of printing i.e. the printers create a digital image by propelling droplets of ink onto paper and plastic substrates. The imported goods are various parts of these Latex Printers. Copies of the product catalogues of Latex Printers showing the specifications and functions of the same has been submitted with the written submission. The imported goods are also clearly mentioned in these catalogues. The relevant extract of the User Guide of one of the model series viz. HP Latex Printer 300 series covering HP Latex Printer 315, HP Latex Printer 335, HP Latex Printer 365 and Latex Printer 375 has been submitted with the written submission. The site preparation guide of HP Latex 300 Printer Series and the product catalogue of the imported goods "Parts and accessories of Latex Printers" has also been submitted with the written submission.

2.2.1 The key characteristics of the Latex printers are as follows:

- a. they are described in the user manuals as ink-jet colour printers;
- b. they do not perform any function other than printing;
- c. they are used for Banners, Displays, Exhibition, Event graphics, Exterior signage, Indoor posters, Interior decoration, Light boxes-film, Light boxes- paper, Murals, POP/POS, Posters, Vehicle graphics;
- d. they have touch screen panels for giving input commands;
- e. they are built with ethernet port interface to connect to an Automatic Data Processing Machine, (hereinafter referred to as "ADPM") or a network through cables;
- f. the functioning of the printer is dependent on it being connected to an ADPM or a network. The process of printing can be summarized as follows-
  - i a third-party RIP (Raster Image Processor) software needs to be loaded in an external computer;
  - ii the external computer needs to be connected to the printer through LAN cable/through a network;
  - iii command for print is to be given by the user from the external computer;
  - iv the software converts the users' data to a printable language the printer would understand after which the data will be printed;
- g. they have a Print OS software which can be connected to the HP Portal after registering the printer. The Print OS software monitors the health of the printer, level of consumables, jobs being printed and helps the user track the status of the printer.



**2.2.2** During the period from 07.04.2018 to 30.03.2024, vide the Bills of Entry set out in Annexure-A to the SCN, noticee imported the parts of aforementioned Latex Printers by classifying them under Tariff Item 8443 99 59 of the First Schedule to the Customs Tariff by discharging BCD at 'Nil' rate. The Heading 84.43 of the Customs Tariff, inter alia, covers '*printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof*'. Sub-heading 8443 99 covers '*Other: Parts and Accessories*'. Tariff Item 8443 99 59 covers '*Other: Parts and accessories of goods of sub heading 8443 31, 8443 32*'.

**2.3 Past Dispute:** Pursuant to a post-clearance audit in respect of Latex Printers imported by the Noticee, the Ld. Assistant Commissioner, Audit (A-2), JNCH issued a Consultative Letter No. 2090/202021/A-2 vide F. No. S/2-AUDIT-GEN-268/2021-2022/JNCWA2/2090 dated 20.07.2021, wherein it was alleged that BCD had been short-levied on the Latex Printers imported by the Noticee by mis-classifying the same and wrongly importing the goods by paying duty at 'Nil' rate of BCD. The Consultative Letter also stated that these Latex Printers were correctly classifiable under Tariff Item 8443 39 10 against which BCD was payable at 7.5% and IGST at 18% and therefore, the Noticee was liable to pay differential duty amounting to Rs. 14,91,36,350/- along with applicable interest and penalty. Thereafter, a Show Cause Notice dated 16.09.2021 was issued to the Noticee under Section 28(4) of the Customs Act, 1962. The allegations therein are, inter alia, as follows:

- a. that the imported Latex printers have an inbuilt Automatic Data Processing Machine and do not fulfil the criteria for classification under Tariff Item 8443 32 50 i.e. not have an inbuilt ADP machine and not be able to do any processing by itself;
- b. that the imported Latex Printers are correctly classifiable under Tariff Item 8443 3910;
- c. that the misclassification has led to loss to the Government exchequer and accrued monetary benefits to the Noticee. Therefore, it appears that the Noticee had intentionally mis-classified the goods with the sole purpose to evade Customs duty and the extended period of limitation is invokable.

**2.3.1** Despite having made detailed submissions, the Ld. Commissioner of Customs passed Order in Original No. 244/2023-24/Commr/NS-V/CAC/JNCH dated 27.02.2024, without taking into consideration the submissions of the Noticee and confirming the proposals made in the SCN dated 16.09.2021. The findings in the Order are, inter alia, as follows:

- a. That merely because the imported Latex Printers can be connected to an ADPM does not qualify the imported goods to be classified under Tariff Item 8443 32 50. These Latex Printers have many features which make it self-reliant and not dependent on any ADPM for their function and that the same has an in-built processing system whose functions suggest that it would be appropriately classifiable under Tariff Item 8443 39 10.
- b. That Note Chapter Note 6(E) of Chapter 84 provides that every machine or accessory capable of connecting to an ADPM need not necessarily be considered part of the ADPM or be read in that light. That just because the Latex Printers can be connected to an ADPM does not make it classifiable under Tariff Item 8443 32 50.
- c. That if the ability to connect to an ADPM is construed to be the only condition for classification of printers or printing machines, then one of the Tariff Entries out of 8443 32 50 (Inkjet printers) or 8443 3910 (Printing machines) would be rendered redundant.
- d. That from the official website of the Noticee, it is evident that the Latex printers are self-sufficient printing units with its own inbuilt data processing system having motherboard, memory and data storage and even backup of the data and all safety features in case of emergency maintenance or replacement of any of its essential parts. Thus, the same are



fully functional advanced printing machine and the same is rightly classifiable under Tariff Item 8443 39 10.

- e. That the Latex Printers are composite machines by relying on Section Note 3 to Section XVI and therefore, the classification of such composite machines ought to be under the Heading that defines the component which performs the principal function of such a device.
- f. That relying on Chapter Note 6(E) to Chapter 84, even if the Latex Printers are incorporating or working in conjunction with an external ADPM, they are performing a specific function and hence, they are qualified to be classified in the headings appropriate to their respective function. Hence, the Latex Printers are rightly classifiable under Tariff Item 8443 39 10.

**2.3.2** Aggrieved by the Order-in-Original dated 27.02.2024, the Noticee filed an appeal before the Hon'ble CESTAT, Mumbai challenging the same. Hearing in respect of the appeal has been concluded on 06.05.2025 and order in respect of the same has been reserved by the Hon'ble CESTAT, Mumbai

**2.3.3** In the aforesaid background and circumstances, the impugned SCN dated 06.08.2024 has been issued to the Noticee. The case of the Department in the Impugned SCN is, inter alia:

- a. That the imported goods are parts of Latex Printers. These Latex Printers are rightly classifiable under Tariff Item 8443 39 10 as per Order in Original dated 27.02.2024 and hence, parts of the same are to be classified under Tariff item 8443 99 60 (Para 8) ;
- b. That the Noticee has willfully adopted the wrong classification and cleared the goods in contravention of Section 17(1) and Section 46 of the Customs Act, 1962 (Para 12).

**2.4** The impugned SCN dated 06.08.2024 is incorrect, on facts as well as on law. The impugned SCN has been issued based on an incorrect understanding of the law and of the imported goods. Therefore, the impugned SCN is liable to be dropped on this ground itself. The department has proposed to re-classify the imported goods under Tariff Item 8443 99 60 on the basis of findings in Order-in-Original dated 27.02.2024, wherein Latex Printers have been held to be classifiable under Tariff Item 8443 39 10. This Order in Original has been challenged before the Hon'ble CESTAT Mumbai. The impugned SCN has not provided any reasoning as to why the Latex printers ought to be classified under Tariff Item 8517 39 10 and seems to have proceeded on the assumption that the Order-in-Original dated 27.02.2024 has attained finality, when in fact the same has been challenged before the Hon'ble CESTAT, Mumbai.

**2.5** The Department has conveniently chosen to ignore this aspect and has concluded that the Latex Printers are correctly classifiable under Tariff Item 8443 39 10 on the basis of the aforesaid Order-in-Original without setting out reasoning for such a conclusion in the impugned SCN. As per the Section 129E of the Customs Act, 1962 read with Circular No. 984/08/2014-CX dated 16.09.2014 issued by the Central board of Excise and Customs ("CBEC"), once an appeal has been filed against an Order before the Appellate forum, after due payment of pre-deposit under Section 129E, the Order is essentially stayed for all practical purposes and no recovery of duty demand can be made pursuant to the appeal being filed. In the present case, the impugned SCN has solely relied on an Order that essentially stands stayed after an appeal against the same has been filed before the Hon'ble CESTAT, Mumbai. Hence, the impugned SCN which does not set out any independent reasoning for re-classifying the imported goods under Tariff Item 8443 99 60 is incorrect and ought to be dropped on this ground itself.

**2.6** **The imported goods which are parts of Latex Printers are correctly classifiable under tariff item 84439959 as the Latex Printers are classifiable under tariff item 84433250:**



**2.6.1** The classification of the imported goods, being parts of Latex printers, will depend on the classification of Latex Printers themselves. From the Heading 8443, it becomes evident that classification of parts of printers depends on the classification of the printers itself. The below table sets out the classification of the printers and the corresponding classification of their parts:

|   | Classification of printers (CTI)    | Corresponding classification of parts of such printers (CTI) |
|---|-------------------------------------|--------------------------------------------------------------|
| 1 | 8443 32 50 (Inkjet Printers)        | 8443 99 59 (except cartridges/ toners/ ink spray nozzle)     |
| 2 | 8443 39 10 Inkjet printing machines | 8443 99 60                                                   |

The Latex Printers are classifiable under Tariff Item 8443 32 50 and therefore, the imported goods are correctly classifiable under Tariff Item 8443 99 59. The imported goods are print heads, cleaning rolls, Edge Holder kit, refresh kit etc. of latex printers. None of the imported goods are ink cartridges or ink spray nozzles, therefore, the same are not classifiable under Tariff Items 8443 99 51, 8443 99 52 nor 8443 99 53.

**2.6.2** The Latex printers fall under “*Other printers, copying machines and facsimile machines, whether or not combined*” (Tariff Item 84433100 - 84433990). This fact is not in dispute. This can be further split into following three categories, as per the Customs Tariff.

- a. Printers covered under Tariff Item 8443 31 00 - Printers that are capable of carrying out more than one function of printing, copying, facsimile transmission and must be capable of connecting to an ADP machine or to a network;
- b. Printers covered under sub-heading 8443 32 - Printers which do not carry out any function other than printing but must be capable of connecting to an ADP machine or to a network;
- c. Printers covered under sub-heading 8443 39 - Printers other than those which are not capable of connecting to an ADP machine or to a network.

**2.6.3** The Latex Printers do not perform any function other than printing. The same is very clear from a reading of the catalogues that the Latex Printers perform the function of printing only and do not perform the function of copying or facsimile machine. As per the HSN Explanatory Notes to sub-headings 8443.31 and 8443.32, the criterion of 'capable of connecting to an automatic data processing machine or to a network' denotes that the apparatus comprises all the components necessary for its connection to a network or an automatic data processing machine to be affected simply by attaching a cable. These Latex Printers are built with ethernet port interface to connect to an ADPM or a local network through cables. Hence, the Latex Printers fulfil the criterion of 'capable of connecting to an automatic data processing machine or to a network'.

**2.6.4** Further, the RIP software along with the printer specific drivers needs to be installed into an external computer which is then connected to the printer through LAN cable to give commands to the printer. The function of this software is to convert the users' data to a printable language that the printer would understand. This also shows that the functioning of the printer is dependent on its capability to connect to an ADPM. In other words, none of the Latex Printers are capable of printing without being connected to an ADPM or a network. In User Manual of HP Latex Printer 300 series, under the Heading "Welcome to your printer", it has been unambiguously stated that the said printer requires a separate computer to carry out its printing function. Similarly, under "Connectivity and software instructions" connection method is mentioned as Gigabit Ethernet. Further, it is also mentioned in User's guide of HP Latex Printer 300 series that the printer can automatically configure itself to most networks and to any computer in the same network. And the printer has a RJ-45 connector port for a network connection. Further, the User's guide also sets out reasons as to why the printer is not able to print files and one of reasons set out therein is due to a communication failure between a computer and a printer.



**2.6.5** Further, the Site preparation guide of the HP Latex 300 Printer Series provides that the RIP Software will need to be installed in the computer which will serve as the "RIP workstation". The Site preparation guide also provides that the user should connect the printer to the LAN and the RIP Workstation by a gigabit ethernet network and a LAN cable. Thus, these Latex printers can be connected to an ADPM or a network by simply attaching a LAN/Ethernet Cable i.e., one end of the cable is attached to the printer and the other end, to the LAN or to an ADPM.

**2.6.6** In view of the above submissions, the imported Latex Printers satisfy both the pre-requisites i.e., they do not carry out any function other than printing and are capable of connecting to an ADP machine or to a network. Accordingly, these printers are correctly classifiable under tariff sub-heading 8443 32 as 'Other, capable of connecting to an automatic data processing machine or to a network'. These Latex Printers are classifiable under Tariff Item 8443 32 50 as 'inkjet printer' as these printers use ink jet technology for printing and are described in the user manuals as ink-jet colour printers. Hence, the Latex Printers of which the imported goods are parts are correctly classifiable under Tariff Item 8443 32 50.

**2.6.7** The CBEC Circular No. 11/2008-Cus dated 01.07.2008 explains the scope of 'Other Printers' under Heading 84.43. It further clarifies that the Large Format Printers are appropriately classifiable under Tariff Item 8443 32 50 as 'Ink jet printer' if capable of connecting to an ADP machine and under Tariff Item 8443 3 1 00 if they have more than one function of printing, copying or facsimile transmission. It flows from the said Circular that as long as the printers are connectable to an ADPM or to a network by simply attaching a cable, they would satisfy the condition of connectability and are classifiable under Tariff Item 8443 32 50. Further, it is a well settled principle that Departmental Circulars are binding on the Department and the Department cannot be allowed to take a contrary stand. To assert this point, the Noticee relied upon the decisions of the Apex Court in Paper Products Ltd. v. CCE, 1999 (112) ELT 765 (SC) and CCE vs. Cadbury India Ltd., 2006 (200) ELT 353 (SC).

**2.6.8** Relying on decisions in the case of (i) Monotech Systems Ltd Vs. Commissioner of Customs (Air), Chennai - 2020 (373) E.L.T 718 (Tri. Chennai), (ii) Monotech System Vs. CC - 2022 (6) TMI 320, (iii) Aztec Fluids and Machinery Pvt. Ltd. v. cc-Ahmedabad- 2023 (11) 175 - CESTAT AHMEDABAD and (iv) Hewlett Packard India Sales (P) Ltd v. Commissioner of Customs (Imports), ACC, Mumbai - 2018 (4) TMI 1345, noticee stated that these case law are fully applicable to the instant case in as much as the Latex Printers are also capable of connecting to an ADPM or to a network and therefore, are correctly classifiable under Tariff Item 84433250.

**2.6.9** Further, relying on US Customs and Border Protection Cross-Rulings N092737 dated 04.02.2010, N044487 dated 02.12.2008 and N300064 dated 02.12.2008 noticee submitted that the Latex Printers are correctly classifiable under Tariff Item 8443 32 50 as 'ink jet printers'. Since the Latex Printers are classifiable under Tariff Item 8443 32 50 the parts of the same are rightly classifiable under Tariff Item 8443 99 59.

**2.7 Imported goods are not classifiable under tariff item 8443 99 60 as the Latex Printers are not classifiable under tariff item 8443 39 10**

**2.7.1** The tariff sub-heading 8443.39 covers 'printer other than those which are connectable to an ADP machine or to a network'. Further, Tariff Item 8443 39 10 specifically covers 'inkjet printing machines'. As discussed above, the Latex Printers are capable of being connected to an ADPM or a network and are specifically classifiable under Tariff Item 8443 32 50 as inkjet printers. Therefore, the allegation in the impugned SCN that the Latex Printers are classifiable under Tariff Item 8443 39 10 is incorrect and liable to be set aside.

**2.7.2** As per Rule 1 of the GRI, classification of the Latex Printers shall be determined according to the terms of the headings and any relative Section or Chapter Notes, unless otherwise required. Going by the terms of the heading or the language used therein, the Latex Printers are specifically covered under sub-heading 8443 32 i.e. printers capable of connecting to an ADP machine or to a



network, as discussed above. The imported goods are appropriately classifiable under Tariff Item 8443 3250 and the classification of these printers under Tariff Item 8443 3910 is plainly incorrect. Hence, the impugned SCN rejecting the classification of the imported goods under Tariff Item 8443 99 59 and re-classifying the same under Tariff Item 8443 99 60 on the basis of an erroneous conclusion that the Latex printers are classifiable under Tariff Item 8443 39 10 is incorrect and liable to be dropped.

**2.7.3** The Information Technology Agreement dated 13.12.1996 ("ITA") covers a list of Headings and the products covered therein for which no duty is imposable by the signatories. Sub-Heading 8471 60 which covers 'Input or output units, whether or not containing storage units in the same housing' has been included under Attachment A. Therefore, by virtue of India's commitment to the ITA, assuming without accepting that the imported goods fall under CTI 8443 99 60, the same is eligible for the benefit of 'Nil' rate of duty and therefore the re-classification of the same under CT1 8443 99 60 will not have any revenue implication. Therefore, even as per the above ground, impugned SCN ought to be dropped.

**2.8** It is settled law that onus is on the Revenue to establish that the goods are classifiable under a particular tariff entry. Regarding this contention noticee relied on following case law:

- i. H.P.L. Chemicals vs. Commissioner of C. Ex., Chandigarh, 2006 (197) E.L. T. 324 (S. C.),
- ii. CCE v. Hindustan Level -2015 (325) ELT209 (SC),
- iii. Hindustan Ferodo Ltd. Vs. CCE -1997 (89) ELT 16 (SC)

The impugned SCN has not discharged the obligation cast upon the Department to explain as to why the imported goods are sought to be re-classifiable under Tariff Item 8443 99 60. Therefore, the onus cast on the Department to prove that the classification of the imported goods as adopted by the Noticee is incorrect or that they are correctly classifiable under Tariff Item 8443 99 60 has not been discharged. For this reason, the impugned SCN reclassifying the imported goods ought to be dropped.

**2.9** The Bill of Entry being a quasi-judicial order, can only be set aside by a competent appellate authority in an appeal and quasi-judicial orders cannot be set aside by a mere show cause notice while declaring the duty to be short levied and liable to recovery. Relying on the case pf ITC Ltd vs. CC, Kolkata -W, 2019 (368) ELT216, Noticee submitted that if the Department is aggrieved by the assessment, they ought to have challenged the assessment resorted to in the bills of entry itself. In the absence of the same, taking recourse to Section 28 of the Customs Act without challenging the assessment is incorrect and not sustainable.

**2.10** In the present case, the impugned SCN dated 06.08.2024 has invoked the extended period of limitation under Section 28(4) of the Customs Act, 1962. The period of dispute is between 07.04.2018 to 30.03.2024 and thus, the duty demand of Rs. 2,48,14,074/-for the period from 07.04.2018 to 05.08.2022 is outside the normal period of limitation of two years. There was no suppression or mis-declaration by them with intention to evade payment of duty. Therefore, the demand of differential duty confirmed under Section 28(4) of the Act is not tenable in the facts of the present case for reasons explained infra. It has been frequently held by the Apex Court that Section 28(4) of the Act cannot be invoked for mere non-payment or short payment of duty and can only be invoked when the duty was not paid or short paid with intention to evade payment of duty. Noticee relied on following case law:

- i. Aban Lloyd Offshore Ltd. vs. Commissioner of Customs, 2006 (200) ELT 370 (SC)
- ii. Maruti Udyog Ltd. vs. Commissioner of C. Ex., Delhi, 2002 (147) ELT 881 (Tri. – Del.)

they have not mis-declared or mis-classified the imported goods as alleged in Para 12 of the impugned SCN and further, the Noticee did not have any intention to evade payment of duty. The impugned SCN has not produced any evidence to prove that the Noticee acted with intention to



evade payment of duty. Therefore, extended period of limitation is not invocable in the present case.

**2.11** The imported goods were correctly declared by them in the import documents and the description of the imported goods was in line with that mentioned in the supplier's invoices. It is also not the case in the impugned SCN that the imported goods were not the same as the declaration made in the import documents. Therefore, it is not a case wherein the goods imported by the Noticee are different from what is declared in the Bills of Entry. Resultantly, there is no misdeclaration by the Noticee as alleged in the impugned SCN. Consequently, the Noticee has duly complied with Section 17 of the Act. Further, they had declared all the relevant information relating to the imported goods truly and correctly in the import documents. Therefore, there was no violation of Section 46 of the Act as held therein. The said provision can be said to be violated only if the description of the goods does not apply to the goods imported. In the present case, no such misdeclaration has been done. Therefore, the aforesaid allegation is incorrect and not sustainable. Resultantly, Section 28(4) of the Act is not invocable in the present case.

**2.12** Relying on the cases of (i) Sirthai Superware India Ltd. v. CC, 2019 (10) TMI 460-CESTAT Mumbai, (ii) Midas Fertchem Impex Vs. Principal CC reported at 2023 (1) TMI 998 and (iii) Challenger Cargo Carriers Vs. Principal CC reported at 2022 (12) TMI 621 (CESTAT-New Delhi)] noticee submitted that to invoke Section 28(4) 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. Merely having imported in self-assessment regime is not enough. 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. No such proof had been adduced in the impugned SCN. Given the same, no misdeclaration/misclassification can be alleged on part of the Noticee. Therefore, extended period of limitation cannot be invoked merely because the Noticee has allegedly claimed benefit of incorrect classification.

**2.13** All the details regarding the imported goods were in the knowledge of the Customs officials and therefore, the Noticee cannot be accused of suppressing or misstating any details. In the Bills of Entry filed at the time of importation, the Noticee had unambiguously set out the classification of the imported goods under Tariff Item 8443 99 59 and all documents with respect to this were also presented to the Department at the time of import. Relying on the case of Commissioner of Customs v. Magus Metals P. Ltd., 2017 (355) ELT 323 (SC) noticee submitted that when the facts are known to both the parties, the allegation of suppression does not apply. They have always been of the bonafide belief that the imported goods are classifiable under Tariff Item 8443 99 59. The Audit Team's report dated 16.05.2024 contained 42 audit objections, of which 41 were accepted and settled by the Noticee through payment of differential duty, interest, and penalty. The remaining objection related to the classification of imported goods, which the Noticee had already challenged by filing an appeal before the Hon'ble CESTAT, Mumbai. If the appeal is decided in favour of the Noticee, then the imported goods being parts of Latex Printer would be rightly classifiable under Tariff item 8443 99 59. Therefore, they were always of the bonafide belief that the imported goods are classifiable under Tariff Item 8443 99 59 and they had not suppressed/wilfully mis-declared the facts to evade payment of duty. Hence the extended period of limitation is not invocable in the facts of the present case. Consequently, the proposal to demand duty in the impugned SCN for the period prior to 06.08.2022 is not sustainable.

**2.14 The imported goods are not liable for confiscation under section 111(m) of the customs act, 1962:** The provisions of Section 111(m) of the Act are not invocable in the present case as there is no mis-declaration by the Noticee as imported goods had been correctly declared in the Bills of Entry and thus, the description of the imported goods corresponds to the goods imported. The impugned SCN has alleged mis-classification on the ground that the imported goods are correctly classifiable under Tariff Item 8443 99 60 whereas, in the preceding grounds, they have already established that the imported goods are correctly described in the bills of entry.



Relying on the case of Northern Plastic Ltd. vs. Collector of Customs & Central Excise, 1998 (101) E.L.T. 549 (S.C.), noticee submitted that merely claiming a particular classification or availing an exemption under the Bill of Entry does not amount to mis-declaration under section 111(m) of the Act. Further, relying on the cases of Bussa Overseas & Properties P. Ltd. vs. CL. Mahar, Assistant Commissioner of Customs, Bombay [ 2004 (163) ELT 304 (Bom.)] and Southern Enterprises vs. Commissioner of Customs, 2005 (186) ELT 324 (T) noticee submitted that the imported goods have been cleared for home consumption and therefore, the question of confiscation under the provisions of Section 111 does not arise. Hence, the allegation in the impugned SCN that the imported goods are liable to confiscation under Section 111(m) is incorrect and unsustainable.

**2.15** Penalty under Section 112(a) is only imposable on a person who 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. As submitted above, the imported goods have been correctly described and correctly classified at the time of import. In light of the facts involved in the present case and detailed submissions made above, they have neither done any act or omission of any act nor abetted such an act or omission which renders the imported goods liable to confiscation under Section 111 of the Customs Act. Therefore, no penalty is imposable on the Noticee under Section 112(a) of the Customs Act. Further, as per proviso to Section 114A of the Act, penalty cannot be levied under Section. Hence, the proposal in the SCN for imposition of penalty on the Noticee under Section 112 is incorrect and liable to be dropped.

**2.16** Relying on the case of CC vs. Videomax Electronics, 2011 (264) ELT 0466 (Tri-mm), noticee submitted that if extended period of limitation under Section 28 is not invocable, penalty under Section 114A of the Customs Act, 1962 cannot be imposed. The Noticee has committed no offence or made no omissions or commissions in the entire matter. Moreover, penalty under Section 114A of the Customs Act, 1962 can be imposed only when the duty has not been paid by the importer due to suppression or misrepresentation of facts etc. It has been narrated in the foregoing paras that no suppression with intent to evade payment of duty can be alleged against the Noticee. In the case of Hindustan Steel Ltd. Vs. State of Orissa, 1978 (2) ELT (JIS9) (SC), Hon'ble Supreme Court held that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bona-fide belief. Thus, the impugned SCN proposing to impose penalty under Section 114A is incorrect and not sustainable in law.

**2.17** The question of levy of interest Section 28AA of the Customs Act arises only if the demand of duty is sustainable. As submitted in the foregoing paragraphs, the demand of duty is not sustainable, therefore, the question of levy of any interest under Section 28AA on such duty would not arise. Noticee further requested that in view of the above submissions, the proceedings initiated in the impugned SCN may be dropped.

### **3. RECORD OF PERSONAL HEARINGS**

**3.1** Following the principal of natural justice, the Noticee was granted opportunities for personal hearing (PH) in terms of Section 28(8) read with Section 122A of the Customs Act, 1962. Ms. Anjali Hirawat, Advocate and Mr. Bharath Menon, Advocate, on behalf of M/s. HP India Sales Pvt Ltd (IEC 0798008300) attended the personal hearing on 22.07.2025.

**3.2** They argued the case and reiterated the submission made vide reply dated 23.01.2025 to the SCN and synopsis of submissions dated 22.07.2025. They also submitted a compilation of case laws which they relied upon. They argued that the latex printers are classifiable under CTI 84433250 as they work on ink jet technology and they are connectable to an ADP Machine and to a network. Accordingly, they submitted that parts of these printers have been correctly classified by them under CTI 84439959.

**3.3** They relied on the HSN explanatory notes, US Rulings and BTI Ruling and argued that the Latex Printers are classifiable under CTI 84433250 and accordingly, parts of these printers are



classifiable under CTI 84439959. They further added that they are classifying the Latex Printers under CTSN 844332 globally. They further stated that Department vide order dated 27.02.2024 also admitted that the Latex Printers are capable of connecting to ADP machines, hence, they have correctly classified the impugned goods.

**3.4** They further added that department has already issued Order dated 27.02.2024 in respect of classification of Latex Printers and that they had filed an appeal before the Hon'ble CESTAT, Mumbai against the same. They submitted that hearing in respect of the said appeal has been concluded on 06.05.2025 and that order has been reserved by Hon'ble CESTAT. They submitted that since the instant SCN has been issued on the basis of the Order dated 27.02.2024 which has not attained finality, the allegation made vide instant SCN are incorrect. They also submitted that, since an Order has not been passed by the Hon'ble CESTAT, Mumbai in respect of the aforesaid appeal, the present SCN be kept in abeyance to await the Order of the Hon'ble CESTAT, Mumbai. Basis the above submissions, they prayed that the proceedings initiated vide the present SCN be dropped.

### **DISCUSSION AND FINDINGS**

**4.** The fact of the matter is that a Show Cause Notice (SCN) No. 907/2024-25/Commr/NS-V/CAC/JNCH dated 06.08.2024 was issued to M/s. HP India Sales Pvt. Ltd. (IEC – 0798008300) alleging that the goods imported by them have been cleared under CTI 8443 99 59 paying NIL BCD instead of correct CTI 8443 99 60 against which 7.5% BCD is leviable. The SCN was served for said non-payment of applicable differential duty of Rs. 4,97,38,602/- (Rupees Four Crore Ninety-Seven Lakh Thirty-Eight Thousand Six hundred and Two only) as detailed in Annexure-A to the SCN 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 under section 112(a) and/or 114A of the Customs Act, 1962. Show cause Notice also proposed liability to confiscation of imported goods under Section 111(m) of the Customs Act, 1962.

**5.1** I have gone through the subject Show Cause Notice, charges levelled against the importer, Relied upon documents, the written submission of the Noticee and material on record and accordingly, I proceed to decide the case on merit.

**5.2** I now proceed to frame the issues to be decided in the instant SCN before me. On a careful perusal of the subject show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

- (i) Whether Classification of the imported goods under CTI 84439959 should be rejected and further, re- assessed under CTI 84439960 or otherwise;
- (ii) Whether the differential duty of Rs. 4,97,38,602 /- (Rupees Four Crore Ninety-Seven Lakh Thirty-Eight Thousand Six hundred and Two only) for the Bills of Entry as detailed in Annexure- A to the SCN, should be demanded and recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 otherwise;
- (iii) Whether the said goods as detailed in Annexure-A to the SCN, should be confiscated under Section 111(m) of the Customs Act, 1962 or otherwise;
- (iv) Whether penalty should be imposed on importer M/s. HP India Sales Pvt. Ltd. under Section 112(a) and/or 114A of Customs Act, 1962 or otherwise.

**5.3** After having identified and framed the main issues to be decided, I now proceed to deal with each of the issues individually for analysis in light of facts, circumstances of the case, provision of the Customs Act, 1962 and nuances of various judicial pronouncements.



**6. Whether Classification of the imported goods under CTI 84439959 should be rejected and further, re- assessed under CTI 84439960 or otherwise.**

**6.1** I find that importer, M/s. HP India Sales Pvt. Ltd. has imported parts and accessories of Latex Printers classifying under heading CTI 84439959 against the bills of entry as detailed in Annexure-A to the SCN. However, SCN alleges that the subject goods are rightly classifiable under tariff item 84439960. Excerpt of the relevant headings of the Tariff Schedule are reproduced herein for ready reference:

|                   |      |                                                                               |
|-------------------|------|-------------------------------------------------------------------------------|
| 8443 99           | --   | <i>Other:</i>                                                                 |
| 8443 99 10        | ---  | <i>Automatic documents feeders of copying machines</i>                        |
| 8443 99 20        | ---  | <i>Paper feeders of copying machines</i>                                      |
| 8443 99 30        | ---  | <i>Sorters of copying machines</i>                                            |
| 8443 99 40        | ---  | <i>Other parts of copying machines</i>                                        |
|                   | ---  | <b><i>Parts and accessories of goods of sub-heading 8443 31, 8443 32:</i></b> |
| 8443 99 51        | ---  | <i>Ink cartridges, with print head assembly</i>                               |
| 8443 99 52        | ---- | <i>Ink cartridges, without print head assembly</i>                            |
| 8443 99 53        | ---  | <i>Ink spray nozzle</i>                                                       |
| <b>8443 99 59</b> | ---- | <b><i>Other</i></b>                                                           |
| <b>8443 99 60</b> | ---  | <b><i>Parts and accessories of goods of sub-heading 8443 39</i></b>           |
| 8443 99 90        | ---  | <i>Other</i>                                                                  |

**6.2** On going through the above tariff headings, I note that other parts & accessories of goods of sub-heading 8443 31, 8443 32 are classifiable under CTI 8443 99 59, conversely, parts and accessories of goods categorized under sub-heading 8443 39 are classifiable under CTI 8443 99 60. In view of these headings, it can be inferred that where Latex Printers are determined to be classifiable under sub-headings 8443 31 or 8443 32, their respective parts and accessories shall be classified under CTI 8443 99 59. Alternatively, where Latex Printers fall within the scope of sub-heading 8443 39, the associated parts and accessories shall be classified under CTI 8443 99 60. Hence, to decide the classification of the imported goods i.e. parts & accessories of Latex Printers, I have to decide the classification of Latex printers.

**6.3** The relevant tariff headings of sub-headings 8443 31, 8443 32 and 8443 39, for classification of latex printers is re-produced as follows:

|                   |     |                                                                                                                                                                                                 |
|-------------------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>8443 31 00</b> | --  | <b><i>Machines which perform two or more of the functions of printing, copying or facsimile transmission, capable of connecting to an automatic data processing machine or to a network</i></b> |
| <b>8443 32</b>    | --  | <b><i>Other, capable of connecting to an automatic data processing machine or to a network:</i></b>                                                                                             |
| 8443 32 10        | --- | <i>Line printer</i>                                                                                                                                                                             |
| 8443 32 20        | --- | <i>Dot matrix printer</i>                                                                                                                                                                       |
| 8443 32 30        | --- | <i>Letter quality daisy wheel printer</i>                                                                                                                                                       |
| 8443 32 40        | --- | <i>Laser jet printer</i>                                                                                                                                                                        |
| 8443 32 50        | --- | <i>Ink jet printer</i>                                                                                                                                                                          |
| 8443 32 60        | --- | <i>Facsimile machine</i>                                                                                                                                                                        |
| 8443 32 90        | --- | <i>Other</i>                                                                                                                                                                                    |
| <b>8443 39</b>    | --  | <b><i>Other:</i></b>                                                                                                                                                                            |
| 8443 39 10        | --- | <i>Ink-jet printing machine</i>                                                                                                                                                                 |
| 8443 39 20        | --- | <i>Electrostatic photocopying apparatus operated by reproducing the original image directly onto the copy (direct process)</i>                                                                  |
| 8443 39 30        | --- | <i>Electrostatic photocopying apparatus operated by reproducing the original image via and intermediate onto the copy (indirect process)</i>                                                    |
| 8443 39 40        | --- | <i>Other photocopying apparatus incorporating an optical system</i>                                                                                                                             |
| 8443 39 50        | --- | <i>Other photocopying apparatus of contact type</i>                                                                                                                                             |
| 8443 39 60        | --- | <i>Thermo-copying apparatus</i>                                                                                                                                                                 |
| 8443 39 70        | --- | <i>Facsimile machine not capable of getting connected to automatic data processing machine</i>                                                                                                  |



8443 39 90 --- Other

On going through the submissions of importer and on verifying from the past imports of the noticee, I note that they have been importing the Latex Printers under CTI 8443 32 50 and as per the SCN, the latex printers are classifiable under CTI 8443 39 10.

**6.4** One of the contentions of the importer with regard to classification of printer in question is on the basis that the printer has capability of being connected to the ADPM. To understand and to get clarity on the Automatic Data Processing Machines (ADPM) and units thereof, I refer to the Chapter notes to the Chapter 84 which relates to CTH 8471 under which ADPM is classified. Chapter Note to Chapter 84 states as follows:-

*6(A) For the purposes of heading 8471, the expression “automatic data processing machine” means machine capable of :*

- (i) storing the processing programme or programmes and at least the data immediately necessary for the execution of the programme;*
- (ii) being freely programmed in accordance with the requirements of the user;*
- (iii) performing arithmetical computations specified by the user; and*
- (iv) executing, without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run.*

*(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units.*

*(C) Subject to paragraphs (D) and (E), a unit is to be regarded as being part of an automatic data processing system if it meets all of the following conditions:*

- (i) it is of a kind solely or principally used in an automatic data processing system;*
- (ii) it is connectable to the central processing unit either directly or through one or more other units; and*
- (iii) it is able to accept or deliver data in a form (codes or signals) which can be used by the system. Separately presented units of an automatic data processing machine are to be classified in heading 8471.*

*However, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of (ii) and (iii) above, are in all cases to be classified as units of heading 8471.*

*(D) Heading 8471 does not cover the following when presented separately, even if they meet all of the conditions set forth in paragraph (C):*

- (i) printers, copying machines, facsimile machines, whether or not combined;*
- (ii) apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network);*
- (iii) loudspeakers and microphones;*
- (iv) television cameras, digital cameras and video camera recorders;*
- (v) monitors and projectors, not incorporating television reception apparatus.*

*(E) Machines incorporating or working in conjunction with an automatic data processing machine and performing a specific function other than data processing are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.*

**6.5** Under the Chapter 84 notes, the classification scheme clearly governs the treatment of all varieties of systems, units, input-output devices, equipment, and composite machines that incorporate automatic data-processing functionality. I find that the Chapter note 6(E) of Chapter 84 while dealing with the ADPM reads as follows:



*“6(E) Machines incorporating or working in conjunction with an automatic data processing machine and performing a specific function other than data processing are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.*

The above said chapter note gives a clarity that every machine or equipment or accessory or input-output device capable of getting connected to ADPM need not necessarily be considered part of ADPM or be read in that light. The Latex Printers on the basis of its features and technical advancement have many a feature making it self-reliant and not dependent on any ADPM for their function. It is LAN based machine with inbuilt computing mechanism for its functioning. Just because it can be connected to an ADPM does not qualify it in CTH 84433250. Note 6(E) of chapter 84 is very categorical and is of exclusion nature. On plain reading itself, it suggests that the machines incorporating or working in conjunction with an automatic data processing machine and are performing a specific function other than data processing are to be classified in the heading appropriate to their respective functions or failing that, in residual heading. Here, in this case it is evident that Latex Printers for performing a specific function of printing and is used for printing banners, displays, double-sided banners, exhibition and event graphics, exterior signage, indoor posters, interior decoration, light boxes- film, light boxes- paper, murals, posters, vehicle graphics, traffic signage etc. It needs fast gigabit Ethernet. The said printer connects directly to the internet through LAN cord. The printer software is installed directly onto the printer. The printer is registered on the HP website directly without the intervention an any external ADP. It has a touch display which acts as input device to the printer. Just like any other Automatic Data Processing Device, the said printer checks for firmware updates. Thus, it is clear that it has an inbuilt processing system and its function suggest, it would be appropriately classifiable under Tariff Head 8443 39 10.

**6.6** Under the Customs Tariff Act, the classification of printers is determined by their functional dependency:

- CTSH 8443 32 apply to printers that are connected to or dependent on external ADP machines.
- CTI 84433910 covers printers that are not connected to an external ADP machine and are capable of functioning independently.

The subject goods clearly fall under CTI 84433910, as they are not designed to be connected to external ADP systems for their core functions. This interpretation is supported by CBIC Circular No. 11/2008-Cus, which emphasizes functional independence as the key criterion.

**6.7** I find that the one important aspect which lead to confusion regarding classification for the different types of Printers is that if such articles are connectable or capable to connect with the ADPM with or without use of a Cable. I find that in today's modern times when data transfer / input- output of data for any functionality has seen so much advancement, almost all the new innovations and machineries and equipment come with connecting data cable or with features like Bluetooth connectivity, wi-fi connectivity or LAN connectivity. These features are only one extra feature for the facilitation or purpose of data transfer and usually bring no restriction to the main / essential function of the machine/equipment for which it was made. For the sake of illustration, theses days the composite machines having printers, scanners, photo copier etc., all come with Bluetooth connectivity feature and can allow remote connectivity or online data transfer between the ADPM and the Printer/ scanner/ photocopier. Nevertheless, in case data cable slot is removed from ADPM or from the Printer/ scanner/ photocopier, the absence of connectability of these machines are not forcing the same articles/ machines come out of the classification just because these are no more required to be connected using a data cable. Vice versa if Printing machine which are specifically or specially designed for the purpose of printing and although there is no requirement of them having ADPM for the purpose of data transfer connected, as they themselves can have alternative data processing unit (inbuilt Ebox/ or inbuilt software running processing unit/



or any comparable or specially customised software built for its functioning), it would lead to the scenario that the connectability to ADPM would become redundant. If the connectability of the Printer / Printing Machine would be allowed to force as the only condition for classification, one of the tariff heading of Inkjet Printers (84433250) or Inkjet Printing Machine (84433910) would become redundant.

**6.8** I find that the types of printers classified under CTH 84433250 where the printers are such which are capable of connecting to ADPM machine, are those which are not capable of functioning or giving efficient output without being connected with an ADPM as the software or input support is provided by these ADPM. These are distinguishable from the multifunctional printing machines with other features which are classifiable under CTH 84433910 and those self-sufficient Printing machines which are specially designed and which do not require connectability to a separate ADPM machines for their functioning and efficient output. These machines might be having their own inbuilt software for the purpose they were designed, might be having their inbuilt limited data processing capabilities, which function as software support or input output device for the machine and might have some advanced mechanical computing data analytical support like E-box that is found in the more advanced machines.

**6.9** I find that the importer in their submissions has stated that the machine needs one RIP software along-with the printer specific drivers which need to be installed into external computer which is then connected to the printer and that none of the Latex Printers are capable of printing without being connected to an automatic data processing machine or a network. In this regard, I find from the technical specifications as available on the official website of the HP giving all the technical details of HP Latex 300 Printers series, it is evident that the machine is self-sufficient printing unit with its own inbuilt data processing system having mother board, memory and data storage and even the backup of the data and all the safety features in case of emergency maintenance or replacement of any of its essential parts. Thus, it is evident that the HP Latex Printer is a fully functional advanced Printing Machine with inbuilt E-box or any other processing and control system which takes care of all the functional and operational output for the machine.

**6.10** Now to support the essential character of the goods in question here, I find force in the concept of composite machines consisting of multiple equipment or machines but are meant and designed to perform one principal function. Section XVI of Tariff Act defines it which is reproduced as under:

*"Section XVI*

*MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES*

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

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

**6.11** From the above it is evident beyond doubt that the HP Latex Printer is a fully functional advanced Printing Machine with inbuilt E-box or any other processing and control system which takes care of all the functional and operational output for the machine. The same is established by the technical details furnished by the importer in the form of schematics and design of the processing and control system of the machine. The predominant function of the Latex Printers is



printing large sized banner and similar articles, and these are not featured job works which are usually handled in routine domestic and office environments. In normal printers classifiable under CTH 84433250, the print command is given from the computer (ADPM) which is connected with the printer. This command is in the form of digital signal, transmitted through wires connecting the printer which converted in the form of readable language by the printer and then printed. The real data is actually stored/processed/analysed on the computer. Hence the computer here serves as input device and printer as output device for the print job. Printer is just peripheral to the computer. In present case, I find that the HP Latex Printer of various models are all comprised of their own processing and control mechanism and the machine is primary and not peripheral. As detailed in paragraph above, the E-box which is very much an alternative system to ADPM has all features like Motherboard processor, hard disk, electronics to keep the machine safe and cooled in function and other requirements. Any work station attached to this machine connected through wire/ wireless/ or through LAN is just one extra feature which otherwise has no bearing on the self-sufficient printing function of the said machine. From the said understanding it is evident that the HP Latex Printers/ Printing Machines on the basis of note 6(E) of Chapter 84 also, the said Machines, even if incorporating or working in conjunction with an external automatic data processing machine or work station computer, are performing a specific function (and the data processing to contribute to this function), and are qualified to be classified in the headings appropriate to their respective functions or, failing that, in residual headings. Hence, HP Latex Printers are liable to be classified under CTH 84433910 being inkjet printing machine.

**6.12** The HP latex printers are not actually “Ink jet printer” but are actually very specialised and advanced “Inkjet Printing machine” which are liable to be classified under the specific heading for such machines under CTH 84433910. The specifications in technical writeup suggests that the HP latex printers are very specialised printing machine. Hence, the goods are to be treated as “Inkjet Printing Machine”, and the appropriate classification for such specific machine with specific function should be appropriately classifiable under CTH 84433910 which is for Inkjet Printing Machines.

**6.13** In view of above, the HP latex printers are rightly classifiable under 84433910 and accordingly, parts & accessories of latex printers will be classifiable under 84439960 which includes “*parts and accessories of goods of sub-heading 8443 39*”. Hence, Classification of the impugned goods under CTI 84439959 is liable to be rejected and need to be re- assessed under correct CTI 84439960.

**7. Whether the differential duty of Rs. 4,97,38,602 /- (Rupees Four Crore Ninety-Seven Lakh Thirty-Eight Thousand Six hundred and Two only) for the Bills of Entry as detailed in Annexure- A to the SCN, should be demanded and recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 otherwise;**

**7.1** After having determined the correct classification of the subject goods, it is imperative to determine whether the demand of differential Customs duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. The relevant legal provision is as under:

***SECTION 28(4) of the Customs Act, 1962.***

***Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. –***

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

***(a) collusion; or***

***(b) any wilful mis-statement; or***



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

7.2. The Noticee has submitted that they had disclosed all the particulars in bills of entry, thus, there was no mis-match in the description. Therefore, there was no suppression and mis-declaration on their part. The Noticee has further argued that an error in classification cannot be treated as mis-declaration.

7.3. In my findings above, I held that the impugned goods are rightly classifiable under CTI 84439960 attracting BCD@7.5% and are not classifiable under CTI 84439959 attracting BCD @0% against the bills of entry as detailed in Annexure-A to the SCN.

7.4. In view of the above, I find that the Noticee had evaded correct Customs duty by intentionally suppressing the correct classification of the imported product by not declaring the same at the time of filing of the Bills of Entry. Further, despite knowing that imported goods were rightly classifiable under CTI 84439960, they willfully mis-classified the goods under wrong CTI 84439959 and paid lesser BCD @0%, and consequential SWS & IGST, against the bills of entry as detailed in Annexure-A to the SCN. By resorting to this deliberate suppression of facts and wilful mis-classification, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. **Thus, this wilful and deliberate act was done with the fraudulent intention to claim ineligible lower rate of duty and notification benefit.**

7.5. Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. **Under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry.** Thus, with the introduction of self-assessment by amendments to Section 17, it is the added and enhanced responsibility of the importer, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In the instant case, as explained in paras supra, the importer has willfully mis-classified the impugned goods and claimed ineligible notification benefit, thereby evading payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit to the importer. Since the importer has willfully mis-classified and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invocable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

7.6. Regarding the Noticee's argument that mis-classification cannot be treated as mis-declaration, I find that in the instant case, as elaborated in the foregoing paras, the Noticee had willfully suppressed the correct classification of the imported goods by not declaring the same at the time of filing of the Bills of Entry. Further, to evade payment of correctly leviable duty, they mis-classified and suppressed the correct CTI of the impugned goods, and also fraudulently claimed ineligible notification benefit. Therefore, I find that in the instant case there is an element of 'mens rea' involved. The instant case is not a simple case of bonafide wrong declaration of CTI and claiming lower rate of duty. Instead, in the instant case, the Noticee deliberately chose to mis-classify the imported goods to claim lower rate of duty and ineligible notification benefit, being fully aware of the correct classification of the imported goods. This wilful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted.



7.7. Accordingly, the differential duty resulting from re-classification of the imported goods under CTI 84439960, imposing of higher rate of duty as per the Customs Tariff and denial of notification benefit, as proposed in the subject Show Cause Notice, is recoverable from M/s. HP India Sales Pvt. Ltd. (IEC – 0798008300) under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

7.8. In view of the above, I find that the importer had imported the impugned goods as detailed in Annexure-A to the SCN which are specifically designed for the printers having ability of independent functioning, however, the importer wrongly claimed the classification of the said goods and paid less Customs duty. Therefore, the importer is liable to pay the differential duty amount of Rs. 4,97,38,602/- (Rupees Four Crore Ninety-Seven Lakh Thirty-Eight Thousand Six hundred and Two only), under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period.

7.9. It is apt to mention the scheme of assessment and collection of duty under the Customs act, 1962. It is settled law that duty is payable only at the point when the goods leave the Customs barrier. On importation the importer is required to file a bill of entry for home consumption under section 46(1) of the Act. The proper officer of customs then under Section 17 inspects and examines the goods and thereafter assess them. The importer then pays the assessed duty. The proper officer then passes an order for permitting clearance for home consumption in terms of Section 47(1) of the Customs Act. Further, Section 28 is a specific provision which confers power on the proper officer of customs to levy duty by issuance of show cause notice in those cases where duty has not been levied or has been short levied or erroneously refunded or when any interest payable has not been paid, part paid or erroneously refunded. Under section 28AA which was inserted by Finance Act, 2011, speaks of interest on delayed payment of duty in all cases covered by section 28 in addition to duty, interest is liable to repaid as set out under the section for the time being, in terms of the Notification affixed by the Central Government.

7.10. Under Section 28AB of the Customs Act, interest becomes payable on duty becoming payable in the set of cases as set out under the said section, which duty has not been levied or paid or has been short levied or short paid or erroneously refunded by reasons of collusion or wilful misstatement or suppression of facts. In case *M/s Kamat Printers Pvt. Ltd.* the Court observed that once duty is ascertained then by operation of law, such person in addition shall be liable to pay interest at such rate as fixed by the Board. The proper officer, therefore, in ordinary course would be bound once the duty is held to be liable to call on the party to pay interest as fixed by the Board.

7.11. I find that the Courts in various judgments pronounced that Interest payable is compensatory for failure to pay the duty. It is not penal in character in that context. The Supreme Court under the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 in *Collector of C.Ex., Ahmedabad vs. Orient Fabrics Pvt. Ltd* 2003 (158) E.L.T. 545 (S.C.) was pleased to observe that when the breach of the provision of the Act is penal in nature or a penalty is imposed by way of additional tax, the constitutional mandate requires a clear authority of law for imposition for the same. The Court observed that, the law on the issue of charge of interest, stands concluded and is no longer res integra. We may only gainfully refer to the judgment in *India Carbon Ltd. v. State of Assam*, (1997) 6 S.C.C. 497. The Court there observed as under:-

*“This proposition may be derived from the above: interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf”.*

Therefore, once it is held that duty is due, interest on the unpaid amount of duty becomes payable by operation of law under section 28AB. Secondly, when there is dispute as to whether there is breach of the notification, then section 28 can be resorted to.



7.12. In *Thakersey Marg vs Valecha Engineering Limited*, Hon'ble Bombay High Court observed that, in view of section 28AA, interest is automatically payable on failure by the assessee to pay duty as assessed within the time as set out therein. Similarly, under section 28AB on duty being ascertained as under section 28 interest is payable by operation of law.

7.13. I have already held in the above paras that the differential duty amount of Rs. 4,97,38,602/- (Rupees Four Crore Ninety-Seven Lakh Thirty-Eight Thousand Six hundred and Two only) should be demanded and recovered from the importer under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, 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 the importer.

7.14. In view of the above, I am of the considered opinion that imposition of interest on the duty not paid, short paid is the natural consequence of the law and the importer is liable to pay the duty in respect of the said imported goods along with applicable interest.

**8. Whether the said goods as detailed in Annexure-A to the SCN, should be confiscated under Section 111(m) of the Customs Act, 1962 or otherwise**

8.1. I find that the SCN proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962. However, a thorough review of the SCN reveals that the assessable value of the said goods has not been explicitly indicated therein. Accordingly, it becomes necessary to determine the assessable value based on the individual particulars provided in Annexure-A to the SCN. On calculating the same the assessable value of the imported goods as detailed in Annexure-A to the SCN, arises to Rs. 51,09,25,553/-. Provisions of Section 111(m) of the Customs Act, 1962 states that,

*111(m) the goods brought from a place outside India shall be liable to confiscation, which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77, in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;*

8.2. I find that the importer while filing the Bill of Entry for the clearance of the subject goods had subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Act and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a Bill of Entry, in the electronic form. Section 46 of the Act makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2011 (issued under Section 157 read with Section 46 of the Act), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8<sup>th</sup> 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.



8.3. I further find that Section 17(1) of the Customs Act, 1962 provides that “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”. Therefore, the responsibility to correctly assess duty has been cast on the importer. The government has thus placed huge reliance on the self-assessment made by the importer. Further, in terms of Section 46(4) of the said Act, the importers were required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs duty but they have contravened the provisions of Section 46(4) in as much as they have mis-declared and misclassified the goods imported under wrong CTI 84439959 knowingly and intentionally to evade payment of Customs duty. Thus, once the breach occurs, this attracts Section 111 of the Customs Act, 1962, so the goods covered under the impugned bills of entry imported by noticee, as detailed at Annexure-A to the SCN, are liable for confiscation under Section 111(m) of the Customs Act, 1962.

8.4. I find that the Noticee has contended that the goods have not been mis-declared, therefore, they are not liable to confiscation. I find that Section 111(m) provides for confiscation of goods in cases where any goods do not correspond in respect of value or any other particular with the entry made under the Customs Act, 1962. I have already held in foregoing paras that the impugned goods imported by noticee were correctly classifiable under the CTI 84439960. The Noticee was very well aware of this correct CTH of the imported goods. However, they deliberately suppressed this correct CTI, and instead mis-classified the impugned goods under CTI 84439959 in the Bills of Entry. As discussed in foregoing paras, it is evident that the Noticee deliberately suppressed the correct CTI and willfully mis-classified the imported goods and claimed ineligible notification benefit, resulting in short levy of duty. **This wilful mis-classification and claim of ineligible notification benefit resorted by the Noticee, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962.**

8.5. I find that once goods liable to confiscation under Section 111, their physical availability does not have significance on imposition of redemption fine under Section 125 of the Act. Therefore, redemption fine in lieu of confiscation needs to be imposed even if the imported goods are not available. In this regard, I rely on the judgment of M/s Visteon Automotive Systems India Limited reported as 2018 (9) G.S.T.L A2 (Mad.) wherein the Hon'ble High Court of Madras has held that:

*"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 operating 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 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....."*



8.6. 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.).

8.7. 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.

8.8. 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.

8.9. Accordingly, I find that the impugned goods covered under Bills of Entry detailed at Annexure-A to the SCN having assessable value amounting to Rs. 51,09,25,553/- (Rupees Fifty-One Crore Nine Lakh Twenty-Five Thousand Five hundred and Fifty-Three only), are liable for confiscation under Section 111(m) of the Customs Act, 1962. However, since the said goods are not prohibited goods and the same are not available, said seized goods are allowed for redemption by the importer on payment of fine in lieu of confiscation under section 125 (1) of the Customs act, 1962.

**9. Whether penalty should be imposed on importer M/s. HP India Sales Pvt. Ltd. under Section 112(a) and/or 114A of Customs Act, 1962 or otherwise.**

9.1. I find that the impugned SCN proposes imposition of penalty on the Noticee under Section 112(a) and/or 114A of the Customs Act, 1962. Regarding imposition of penalty under Section 112(a), the Noticee has contended that there is no mis-declaration, therefore, the goods are not liable to confiscation under Section 111; and since the goods are not liable to confiscation, penalty under Section 112(a) cannot be imposed on them. Further, regarding imposition of penalty under Section 114A, the Noticee has contended that the same cannot be imposed on them as there is no collusion, willful mis-statement or suppression of facts on their part.

9.2. Regarding the issue of imposition of penalty, it is appropriate to reproduce the provisions of Section 112 and 114A as under:

**Section 112 (Penalty for improper importation of goods etc.) reads as:**

*"Any person,-*

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

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*

*(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is greater;*

*(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher....."*

**Section 114A. Penalty for short-levy or non-levy of duty in certain cases.**



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

*Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.*

**9.3.** I find that in the self -assessment regime, the importer is bound to correctly assess the duty on the imported goods. In the instant case, the importer has mis-declared the subject goods by mis-classifying the goods under wrong CTI. Consequently, the importer has paid less duty by non-payment of applicable duty on the subject goods, which tantamount to suppression of material facts and willful mis-statement. The 'mens rea' can be deciphered clearly from 'actus Reus' and in the instant case, I find that the importer is an entity of repute and thus providing wrong information/declaration in the various documents filed with the Customs and thereby, claiming undue benefit by not paying the applicable duty thereon, amply points towards their 'mens rea' to evade the payment of duty. Thus, I find that the demand of differential duty is rightly invoked in the present case by invoking Section 28(4) of the Customs Act, 1962. Taking all the issues relating to the subject imports into account and in view of my findings that goods were mis-declared in the fashion discussed above, I find that the importer by his acts of omission have rendered the goods liable for confiscation and thus made themselves liable for penalty under Section 114A of the Customs Act, 1962. Further in terms of proviso to 114A, once penalty under section 114A has been imposed, no penalty can be imposed under section 112. Thus, the penalty under Section 112 has to be dropped.

**9.4.** Further, I find that the importer has mis-declared the subject goods by classifying it under wrong CTI, as discussed supra, by deliberately and knowingly giving inappropriate declaration on importation of the goods. I find that the importer has furnished documents containing false or incorrect material particular with respect to Customs Tariff Item for the purpose of clearance of the imported goods. As the demand under Section 28(4) is found to be sustainable in terms of discussion made in Paras above in respect of impugned goods mentioned in Annexure-A to the SCN, therefore penalty under Section 114A is imposable / sustainable in respect of said goods on the importer.

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

### **ORDER**

- i. I reject the declared classification under tariff item 84439959 for the subject goods as detailed in Annexure-A to the SCN and order to reassess the subject goods under CTI 84439960.
- ii. I confirm the demand of the differential duty amounting to **Rs. 4,97,38,602/- (Rupees Four Crore Ninety-Seven Lakh Thirty-Eight Thousand Six hundred and Two only)** under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 and order to recover the same from the importer M/s. HP India Sales Pvt. Ltd. (IEC – 0798008300).
- iii. I order to confiscate the impugned goods totally valued at **Rs. 51,09,25,553/- (Rupees Fifty-One Crore Nine Lakh Twenty-Five Thousand Five hundred and Fifty-Three only)** as detailed in annexure-A to SCN under Section 111(m) of the Customs Act, 1962, even though the goods are not available for confiscation. However, give an option to the

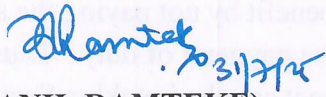


importer to redeem the goods on payment of Redemption Fine of **Rs. 5,00,00,000/- (Rupees Five Crore only)** under the provisions of Section 125(1) of the Customs Act, 1962.

iv. I impose penalty of differential duty of **Rs. 4,97,38,602 /- (Rupees Four Crore Ninety-Seven Lakh Thirty-Eight Thousand Six hundred and Two only)** along with applicable interest under Section 28AA of the Customs Act, 1962, on M/s. HP India Sales Pvt. Ltd., under section 114A of the Customs Act, 1962.

v. I refrain from imposing any penalty under Section 112(a) of the Customs Act, 1962 on M/s. HP India Sales Pvt. Ltd., as discussed above

11. This Order is issued without prejudice to any other action that may be taken in respect of the above goods and/or the persons/firms mentioned in the notice under the provisions of the Act and/or any other law for the time being in force, in the Republic of India.



(ANIL RAMTEKE)

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

To

M/S. HP India Sales Pvt. Ltd.  
No.24, Kohthari Arena, Hosur Main Road,  
Adugodi, Bengaluru, Karnataka – 560030

Copy to:

1. The Commissioner of Customs, Customs House Chennai, 60, Krishna Block Rajaji Salai, Opp, Dist, Collectorate, Chennai, Tamil Nadu, 600001
2. The Addl. Commissioner of Customs, Group V, JNCH, Nhava Sheva, Mumbai-II.
3. The AC/DC (Review Cell), Chief Commissioner's Office, JNCH.
4. The AC/DC, Centralized Revenue Recovery Cell, JNCH.
5. The AC/DC, EDI, JNCH
6. Supdt.(P), CHS Section, JNCH – For display on JNCH Notice Board.
7. Office Copy.