

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 –20251078NX0000020202

Date of Order: 31.10.2025

F. No. S/10-144/2021-22/NS-V/CAC/JNCH

Date of Issue: 31.10.2025

SCN No.: DRI/CZU/VIII/26/17/2000

SCN Date: 24.02.2021

Passed by: Sh. Anil Ramteke,

Commissioner of Customs, NS-V, JNCH

Order No:256/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s.AZTEC FLUIDS & MACHINERY PVT. LTD(IEC-0813008310)

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 प्रतियाँ 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 F. No. DRI/CZU/VIII/26/17/2020 dated 24.02.2021 issued to (i) Aztec Fluids & Machinery Pvt. Ltd., Ahmedabad (IEC: 0813008310); (ii) Sh. Pulin Vaidhya, Managing Director, Aztec Fluids & Machinery Pvt. Ltd.; and (iii) CNG Clearing and Forwarding Agents Pvt. Ltd., Ahmedabad – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) F. No. DRI/CZU/VIII/26/17/2020 dated 24.02.2021 that specific intelligence was developed by the Chennai Zonal Unit of Directorate of Revenue Intelligence (CZU-DRI, in short) that Aztec Fluids & Machinery Pvt. Ltd. (IEC: 0813008310) (hereafter referred as the 'Aztec', 'Importer' or 'Noticee') had been importing Continuous Ink Jet (CIJ) Printers, Laser Marking Machine, Parts & Accessories of CIJ Printer used for product marking and coding, and had been mis-declaring them as inkjet printers, laser printers, and parts & accessories of printing machinery and had been mis-classifying them under CTI 84433250, 84433240 and 84433290 / 84439951 / 84439959 / 84718000 instead of 84433910, 84433990 and 84439960, respectively, thereby evading corresponding Basic Custom Duty (BCD) and applicable Countervailing Duty (CVD), Special Additional Duty (SAD) and Integrated GST (IGST).

1.2 As per the SCN, while working out the intelligence, it was gathered from the website of Aztec that they are a leading manufacturer, exporter, trader and distributor of CIJ Ink Filters, CIJ Printer, Printer Fluids. Further, it was observed from the import data that the importer was importing CIJ printers and its parts mostly from Lead Tech (Zhuhai) Electronic Co. Ltd., China. As per the website of the supplier, they are the 'manufacturer of coding printers'. Various products mentioned on the website are categorized into two categories i.e. CIJ Printers and Laser Printing Machines. Further, it was mentioned on the website that these printers are used in various industries such as food, beverage, pharmaceutical, cosmetics, auto, cable and electronics. These machines are specifically designed to meet basic coding and production applications across a wide range of industries for high-quality and reliable printing, with an extremely user-friendly interface and are known for improving production efficiency and offering cost savings.

1.3 As per the SCN, on perusal of the import data, it was observed that the importer had imported items such as:

- a) *CIJ Printers declared as "Inkjet Printers" such as LT1000S+ Ink Jet Printer with cumulative functions or not, for marking, coding, dating products and packages, INK JET PRINTER LT710, 60 MICRO CIJ PRINTER ROUND HEAD, INKJET PRINTER LT1000S+ etc. These products were referred as "CIJ Printers" in the subject notice for ease of reference.*
- b) *Parts for CIJ printers declared as "Parts of CIJ Printer/Parts and Accessories of Printing Machinery/ Spare Parts of CIJ Printer" - 710 Ink interface card, Cabinet & Fluids System S2126, Sensor, LCD Panel etc. These products were referred as "Parts of CIJ Printers" in the subject notice for ease of reference.*
- c) *Laser marking machines declared as "Laser Printers" - LT8030C and LT8030F model - These products were referred as "Laser Marking Machines" in the subject notice for ease of reference.*

1.4 It was noticed that the importer had been self-assessing abovementioned imported goods as follows:

1.4.1 CIJ Printers

Sr. No.	Applicable Period	CTH Declared	Notification No. / Sl. No. (declared and self-assessed) BCD	Notification No./ Sl. No. (declared and self- assessed) CVD	Notification No./ Sl. No. (declared and self-assessed) SAD	Notification No./ Sl. No. (declared and self-assessed) IGST
1	2		3	4	5	6
1	From 16/09/2016 Upto 15/06/2017	84433250	Tariff rate @NIL	12.5%	19/2006 @4%	NA
2.	From 22/07/2017 Upto 15/02/2020	84433250	24/2005 Sl. No. @2E @ NIL	NA	NA	Notification No. 01/2017, Schedule III. S. No. 335 @18%

1.4.2 Parts of CIJ Printers

Importer had declared these products with prefix "Parts of CIJ Printer / Parts and Accessories of Printing Machinery" in description. It was observed that for some bills of entry importer had classified these parts under CTI 84439990 and paid BCD @ 7.5%. However, for remaining bills of entry, the importer had self-assessed them as follows:

Sr. No.	Applicable Period	CTH Declared	Notification No./ Sl. No. (declared and self-assessed) BCD	Notification No./ Sl. No. (declared and self-assessed) CVD	Notification No./ Sl. No. (declared and self-assessed) SAD	Notification No. / Sl. No. (declared and self-assessed) IGST
1	2		3	4	5	6
1	From 02/05/2015 to 26/4/2017	84433290, 84439951 & 84439959	Tariff rate @ NIL	12.50%	19/2006 @ 4%	NA
2	From 23/02/2016 to 23/03/2017	84718000	24/2005, S. No. 8 @ NIL	12.50%	19/2006 @4%	NA
3	From 12/07/2017 to 21/09/2017	84439959	50/2017, Sl. No. 459 @ NIL	NA	NA 01/2017,	Notification No. 01/2017, Schedule III, S. No. 335 @ 18%
4	From 04/09/2018 to 09/11/2020	84439959	Tariff rate @ NIL	NA	NA	Notification No. 01/2017, Schedule III, S. No. 335 @18%

1.4.3 Laser Marking Machine

Importer had imported few consignments of these goods and had declared these products with prefix "Laser Printer" in description and self-assessed as follows:

Sr. No.	Applicable Period	CTH Declared	Notification No. / Sl. No. (declared and self-assessed) BCD	Notification No. / Sl. No. (declared and self-assessed) CVD	Notification No. / Sl. No. (declared and self-assessed) SAD	Notification No. / Sl. No. (declared and self-assessed) IGST
1	2		3	4	5	6
1	From 03/04/18 Upto 07/09/2020	84433240	24/2005 Sl. No. @ 2D @ NIL	NA	NA	Notification No. 01/2017, Schedule III. S. No. 335 @18%

1.5 However, it appeared that the importer had misclassified the CIJ Printers under 84433250, parts of CIJ Printers under 84433290 / 84439951 / 84439959 / 84718000 and Laser Marking Machines under 84433240 in order to avail NIL rate / or lower rate of duty. Further, it was noticed that there was no consistency in classification of Parts of CIJ printers as adopted by the importer. Also, it appeared that the following exemption notifications were not applicable to the imported products:

a) Continuous Inkjet (CIJ) Printers

- BCD exemption notification at S. No. 2E, Notification No. 24/2005

b) Parts of CIJ Printers

- BCD exemption notification at S. No. 459, Notification No. 50/2017
- BCD exemption notification at S. No. 8, Notification No. 24/2005

c) Laser Marking Machine

- BCD exemption notification at S. No. 2D, Notification No. 24/2005

1.6 During the analysis of import data it was observed that for BE No. 4833260 dtd. 09/09/2019 and BE No. 4877048 dtd. 12/09/2019 filed at ICD Khodiyar, goods declared as "inkjet printers" were taken up for examination. For the said BEs, the Group DC had issued a Speaking Order dtd. 08/11/2019 and reclassified the CTI to 84433910 for the said BEs. The importer had filed an appeal with Commissioner (Appeals) against the Speaking Order dtd. 08/11/2019. However, it was observed that subsequently importer had continued to mis-declare these goods as "Inkjet Printers" under CTI 84433250 and had paid BCD @NIL on import through bills of entry filed at Mumbai Air Cargo and Ahmedabad Air Cargo.

1.7 Based on the above intelligence, in order to elucidate further information on the goods imported by the importer and to obtain product literature on the impugned goods, summons dtd. 12/02/2020 were issued to Shri Pulin Vaidhya, Managing Director of Aztec Machinery & Fluids Pvt. Ltd., to appear before CZU-DRI under Section 108 of the Customs Act, 1962. Voluntary Statement was recorded from Shri Pulin Vaidhya under Section 108 of the Customs Act, 1962.

1.7.1 In his voluntary statement dated 20/02/2020, Shri Pulin Vaidhya deposed that he is the Managing Director of Aztec Machinery & Fluids Pvt. Ltd.; that the company was registered in 2010; that his company deals with printers and its consumables which are used in Variable Data Coding and marking system such as MRP, Batch No., Expiry Date, 2D bar code and 3D Bar code on products; that he is the founder of the company and his responsibility includes Technical and Marketing departments; that these printers are used for marking on industrial products viz. aluminium profiles, mineral water bottles, cool drinks, wires, cables etc.; that they are used in bulk manufacturing products for identification of the product; that marking is done by spraying ink using the nozzle; that he has also submitted a brochure.

1.7.2 When asked to explain in detail about the business model and the location of factory, he stated that they are importing the products from Leadtech Zhuhai Electronics Co. Ltd., China and are into distribution and after sales service of their products; that they import the cartridges and that they are also importing and manufacturing fluids for the cartridges; that his company is located at two adjacent addresses; one of them is used for storing imported products and the other is for making fluids for the cartridges.

1.7.3 When enquired about the hierarchy and the customers, he has stated that he is the overall in-charge being founder of the company and is generally looking after technical and marketing aspect of the company; that their customers include M/s. Astral Pipes, Ashirwad Pipes, Gopal Namkeen, Makson Pharmaceuticals, Water Vendors, Suprajit Industries (bulbs for vehicles, diesel tubes for automobile industries); that in a nutshell Food, Pharma and Extrusion are the major industrial segments to whom they supply their products.

1.7.4 When enquired about the functioning of the product and major components of one of their products LT1000S+, Shri Pulin Vaidhya stated that the input is given from the screen in the machine or directly from the PLC (Programmable Logic Controller) which is directed to the print head (nozzle) which prints the required output on the product through non-contact printing; that LT1000S+ is a stand-alone machine comprising of a Print head, Mixer tank (to

mix paint and thinner), Filters, Pump (Diaphragm or gear), Main motherboard (behind the display), SMPS, Key Pad and LCD screen; that the input for printing can be given using the keypad and the display in the machine; that the machine consists of an in-built processor which can process the inputs for printing the required output; that the machine consists of an internal memory, SD card for storage of data and an USB which can also be used for storing the data; that viscosity and modulation of the ink fluid, which might vary due to temperature difference is automatically adjusted internally through the motherboard and processor which is a stability feature of one of the printers LT710; that there is no contact between the machine and the product on which the printing is done but the product must be movable.

1.7.5 When enquired as to whether their company is importing any computer printers, he stated that they are not importing any computer printers and are only importing the printers used for coding and marking products; that they are importing these printers only from Lead Tech Zhuhai Electronics Co. Pvt. Ltd., China; that the machine which is being imported by them is "Continuous Inkjet Printer".

1.7.6 When enquired about the description mentioned in the Bill of Entry and the invoice and why the same was incomplete, Shri Pulin Vaidhya stated that the description of the product is "Inkjet Printer" in the Bill of Entry as well as invoices; that in trade parlance, the machine imported by them is also called Inkjet Printer and hence, the same is being quoted in the Bill of Entry; that they do not know the reason as to why the supplier is describing the same as Inkjet Printer and not as Continuous Inkjet Printer.

1.7.7 When asked to explain the CTH under which their product is being imported and to justify the classification and as to why the product cannot be declared/classified as Inkjet Printing Machine, he stated that they have been classifying these printers under 84433250; that as per his opinion, it is the fittest definition and is a more specific heading; that Inkjet Printing machine is a bigger machine which is normally used for printing newspapers and books etc. using motorized rollers; that the machines which are being imported by them do not contain any motorized mechanism and hence, they cannot be called as Inkjet Printing Machine; that the machines used for printing newspapers and books etc. are rightly classifiable under 844431100; that document printing Inkjet printers are classifiable under 84433910. When queried further about the classification, he stated that he is not able to understand the HSN classification and hence, cannot comment.

1.7.8 When asked to explain the difference between 84433100, 844332 and 844339 and also his comments on CBIC Customs Circular No. 11/2008 dated 01.07.2008 especially with respect to para 3.4, he stated that 84433100 are multi-function devices which cannot function without a computer; 844332 are single function devices which cannot function without a computer; 844339 are other devices not classifiable under 84433100 or 844332; that he has read and understood the circular and that the printer described in the para cannot function without the use of ADP machine; that the machine imported by them can function without the use of ADP machine and the input can be taken internally from the machine itself; that after going through the tariff and circular, the product is rightly classifiable under 844339 as "other devices"; that in conclusion, he will consult his team and revert back.

1.7.9 Shri Pulin Vaidhya, when asked the reason for frequently changing the ports for import of their products, stated that they import from Nhava Sheva in case of large volume of imports and if the imports are in smaller quantities, they import through Air Cargo. When queried about the reason for changing the classification of CIJ printers from 84433290 to 84433250 from September, 2016, he stated that he is not aware of the reason for change in the classification and that it is being dealt by the CHA. In reply to the query as to whether he informed the duty payment under protest in ICD Sabarmati to Mumbai

Air Cargo and Ahmedabad Air Cargo for clearance of these printers, he stated that he has not changed the classification to 84433910 for clearances at Mumbai and Ahmedabad Air Cargo and he has also not informed these formations about the duty payment under protest at ICD Sabarmati in respect of BE Nos. 4833260 and 4877048 during September, 2019.

1.7.10 To a query about the import of parts of CIJ printers, he stated that the parts are imported as per service requirements and are classified under 84439959 without payment of duty; that in case of clearances by DHL, they are cleared on payment of duty under 84439990. In conclusion, he stated that the correct CTH of the products imported by their company should be 84433910 for the machines and 84439990 for the parts as the machines have an in-built processor and can function independently without connecting to an ADP machine based on the provisions explained to him; however, he would consult his team for further course of action and that he was ready to pay any differential duty arising due to the change in classification; that in respect of duty payment for past consignments, he stated that he understands the provisions explained to him as to why machines are rightly classifiable under 84433910 and parts under 84439990. When asked as to what is the CTH under which he is proposing to clear the consignments of continuous inkjet printers and its parts in future, he stated that he requires time till 24th February to consult with his team for conclusion of the matter.

1.8 Shri Pulin Vaidhya, in response to the summons issued to appear on 05/03/2020 at the DRI, Chennai office to produce documents pertaining to the imports made by the company and KYC documents and Customs Broker Licence, authorised his Country Head - Sales and Commercial officer to produce the documents as he could not come in person due to his daughter's exams. Further, he also made a voluntary deposit of Rs. 25 lakhs vide demand draft No. 155554 dated 07/03/2020 and requested time till 20th March, 2020 for further deposit of Rs. 25 lakhs and requested for show cause notice in order to explain their case before the adjudicating authority. Accordingly, further deposit of Rs. 25 lakhs was made voluntarily by the importer vide demand draft No. 743709 dated 19.03.2020. Both the demand drafts were forwarded to the Principal Commissioner/Commissioner of Customs, Air Cargo Complex, Ahmedabad for depositing to the Government account. The total voluntary payment of Rs. 50 lakhs by the importer was deposited to the Government account vide TR6 Challan No. 1846 dated 17/03/2020 and No. 01 dated 20/04/2020.

1.9 Meanwhile, summons were issued to Shri Pratik Shukla, CHA, CNG Clearing and Forwarding Agents Pvt. Ltd., to appear before officers of CZU-DRI under Section 108 of the Customs Act, 1962. In his voluntary statement dated 03/11/2020, Shri Pratik Shukla, CHA, CNG Clearing and Forwarding Agents Pvt. Ltd., stated that he started his career as employee in various CHA companies and after learning Customs clearance work, joined CNG Logistics as one of the Directors in 2012; that they are handling only export related work at Mumbai and the work is being handled by another Director; that in Ahmedabad, both export and import related work are being handled and the customs clearance work is handled by him; that the other Director at Ahmedabad looks after Sales and Billing only; that M/s. Optho Equipment Inc., M/s. Shelby Hospitals Ltd., M/s. KD Hospital, M/s. Apollo Techno, M/s. Surgicon Healthcare, M/s. Silverline Meditech are some of their major clients dealing in medical equipments in addition to Aztec Fluids & Machinery Pvt. Ltd.; that there are 13 employees in the Company including the Directors at Ahmedabad; that they have been associated with Aztec since 2012; that Aztec was importing only Inks for the printers from UK and started importing CIJ printers from China sometime in 2013; that they were importing one or two consignments through Ahmedabad Air Cargo and ICD Sabarmati, but they have started importing through Mundra Port and Mumbai Sea due to increase in air freight.

1.9.1 When enquired as to the list of document received by them for clearance of the goods, he stated that Proforma Invoice, Packing list, Commercial Invoice, Airway Bill (if by air), Bill of Lading (if by Sea), End Use letter (Technical writeup), Catalogue, BIS licence, EPR, Purchase Order, Remittance details-if paid or Credit details-if on credit, Authorisation letter are the main documents shared by Aztec for clearance of the goods; that the documents are sent by the importer through some employee; that they handle the entire clearance work at Ahmedabad; that in case of imports through Mundra port, the documents received from the importer are forwarded by them to M/s. Arihant Shipping and the customs clearance is being handled by M/s. Arihant Shipping; that in case of imports through Mumbai, they forward the documents from the importer to Shivansh Clearing and Forwarding Pvt. Ltd.; that they do not know about other CHAs; that they deal only with M/s. Arihant Shipping and Shivansh Clearing and Forwarding Pvt. Ltd. for the clearances through Mumbai ports.

1.9.2 When asked about the major products being imported by Aztec, the CHA stated that they import Ink, CIJ printers and also spare parts for CIJ printers. When asked to explain about who is behind the decision to classify the product and whether he had seen the catalogue of the product before deciding on the classification and the description of the product in the catalogue, the CHA stated that previously 4 or 6 digit HSN code was mentioned in the commercial invoice from the supplier in China; that the importer showed them the catalogue in which the product was mentioned as CIJ printers and informed that the imported product is classifiable under 84433250; that thereafter they used to fill up the check list and send the same for approval to the importer and they would file the documents for customs clearance after receipt of approval and other documents from the importer; that they have claimed NIL rate of duty exemption under notification No. 24/2005 Sl. No. 2E; that Shri Pulin Vaidhya only informed that his competitors were clearing similar products with NIL rate of duty by claiming notification No. 24/2004 Sl. No. 2E as Inkjet Printers and hence, they started filing the documents by claiming the notification exemption.

1.9.3 When queried as to how they have claimed the notification benefit for the imported products when there is no mention of CIJ Printer in the notification, the CHA stated that he is not aware of the technical details and that they have claimed the notification as told by Shri Pulin Vaidhya; that Shri Gaurav is the contact person in the company, to whom the documents and check list are sent for approval before filing for customs clearance and in some cases, they have taken oral approval over phone also.

1.9.4 When asked to explain the classification of parts of imported CIJ printers, he stated that they are being classified under 84439990. Further when asked how the parts are classified under 84439990, when they are classifying the CIJ printers imported under 84433250, he stated that they were classifying the parts under 84439990 only from the beginning on payment of duty without claiming the exemption; that once they were asked to clear the parts under 84439959 by the company, but the customs did not allow it and assessed the parts under 84439990 and that the company also accepted the change. Further, it was observed from the import data that BE No. 7911343 dtd. 04.09.2018 filed at Ahmedabad Air Cargo for parts of CIJ Printers was reassessed from 84439959 to 84439990. After this BE, they have cleared parts under 84439990 at Ahmedabad Air Cargo but continued to clear parts under various headings at other ports.

1.9.5 When asked as to why the CIJ printers should not be classified under 844339 when they are classifying the parts under 84439990, as the description for 84439990 is not for goods of heading 844331 and 844332, he stated that having seen the tariff entries, the CIJ printers should have been classified under 844339 if parts have been classified under 84439990; that they used to send the checklist for approval from the company before filing the documents with customs.

1.9.6 Further, he stated that they have filed the bills as per the instructions from the company and that they have no role to play; that they do not understand the technical details of the product; that the classification and availment of notification exemption has been done based on the instructions from the company.

1.10 Shri Pulin Vaidhya was again summoned to appear before officers of CZU-DRI under Section 108 of the Customs Act, 1962. In his statement dated 15/12/2020, he stated that he looks after the company affairs on the whole; that he only negotiated with supplier; that their imported product CIJ printers are also referred as Coding machines or CIJ coders or Marking machines or coding printers or variable data coding printers in trade parlance; that they have always described their products "CIJ Printers" in the sales invoice while selling to the customers; but while filing the Bill of Entry, the description is indicated as "Inkjet Printer". When queried as to why they are mentioning the product as "Inkjet Printer" in the Bill of Entry whereas both their website and the supplier's website mentions "CIJ printers" as the description of the product being imported by them, he stated that they are mentioning the description as per the description available in the commercial invoice of the supplier. When further asked whether he has ever brought this issue to the notice of Supplier, he stated that they have not ever brought this issue to the notice of supplier.

1.10.1 Shri Pulin Vaidhya was asked to explain the items that are coded/marked on the products using their printers for which he stated that name of the company for eg. Ashirwad pipes, batch no., expiry date, QR code, logo etc. are coded/marked on the products; that variable data viz., batch no. bar codes, unique identity number, batch no., expiry date etc. comes from the PLC (consists of only Input/Output functions) to the printing machine and static data viz., logo, brand name etc. can be programmed in the printer itself; that to his knowledge, the memory size of CIJ printer is in Kilobytes only. He also submitted a document describing the components and functioning of the CIJ printers and stated that the computer mentioned therein indicates a PLC.

1.10.2 When asked as to who decided on the classification of the product initially, he stated that he along with CHA, arrived at the HSN based on the classification being adopted by other companies importing these printers; that the CHA used to file Bill of Entry on their own, but for the past two years, they have brought in a system by which the CHA will take approval from the company before filing the Bill of Entry

1.10.3 To the query about the classification adopted for parts of printers at the time of import, the importer stated that even though they tried to clear the parts with NIL rate of duty under 84439959, but there was an objection from Customs for clearing the parts at NIL rate of duty as parts of Inkjet Printers; that thereafter they have been clearing the parts by paying duty @ 7.5% under 84439990; that they have not given any letter to Customs for duty payment under protest with respect to parts; that there is a difference in the classification with respect to parts even now as the clearances of parts by DHL are done on payment of duty, as DHL files the BoE and then deliver the goods and in case of other deliveries, the bill of entry is filed after their consent with NIL rate of duty.

1.10.4 When asked as to whether Laser Printers being imported by them are also used for coding and marking of products, he stated that they are making few imports of LT8030c/LT8030f Laser marking system in a year and these are also used for coding and marking of products.

1.11 As stated by Shri Pulin Vaidhya in his voluntary statement dtd. 15.12.2020 and as per diagram submitted by him showing the machine being connected to a computer/PLC/ADP, appeared contradictory to his voluntary statement dtd. 20.02.2020 wherein he has stated that input is fed in the machine itself as it has its own processor. It was observed from the sales invoice that the importer has supplied LT710 model of CIJ

printers to majority of its customers. It was also observed that importer has supplied LT710 model of CIJ printer to "Ms Divine Beverages" vide Invoice No. GST-1540 dtd. 07/08/2019" in Chennai.

1.12 An observational mahazar dated 08.01.2021 recording the working of LT710 model of CIJ Printer was drawn at the premises of M/s Divine Beverages. It can be seen from the video recording drawn vide the said Mahazar that input is being given in the machine itself and the machine is not connected to any computer or PLC for its functioning. Further the description is mentioned as "inkjet coding machine" on the machine.

1.13 Further vide voluntary statement dated 08.01.2021, Shri Mouriya Bharathi, Supervisor at Divine Beverages, who was present during the mahazar proceedings dated 08.01.2021 conducted at M/s. Divine Beverages office in presence of independent witnesses, stated that his role and responsibilities at M/s. Divine Beverages is to take care of overall operations which include supply of water cans/bottles, handling the operations of CIJ printer to print Batch No., Manufacturing date and MRP etc; that Continuous Ink Jet printer is a standalone device having display and keyboard which they use at M/s. Divine Beverages to print Batch No., Manufacturing date and MRP on water cans/bottles of various sizes; that it has a processor of its own having different configurations of different functions and the same also can be changed as per the requirements; that after the initial configuration done by the supplier, on a day-to-day basis, they change the manufacturing date and batch No. whereas bottle capacity has been configured initially; that in case of any defects or issues, they contact the technical expert one Shri Balakumar of the company in Tamil Nadu.

Key points from investigation

1.14 Nature of goods being imported

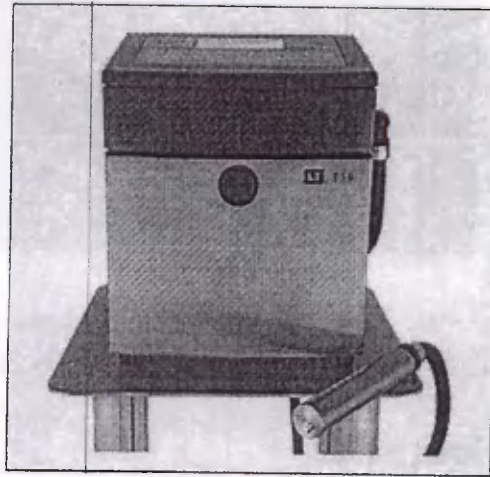
1.14.1 From the product brochures submitted by Shri Pulin Vaidhya vide statement dated 20.02.2020 and from the import data, it was seen that Aztec Fluid and Machinery Pvt. Ltd. is primarily importing various models of CIJ printers like LT710, LT1000S, 1000S+, 1000HS, 1000PI, 1000P+, 1000M, 1000M+ Model and their parts /accessories. They have also imported few consignments of Laser Printing Machines like LT8030C and LT8030F. They have mostly imported their products from supplier Lead Tech (Zhuhai) Electronic Co. Ltd., China.

A. CIJ Printer

1.14.2 From the product brochure, website of the supplier, website of the importer, voluntary statements of key personnel and observational mahazar drawn to understand the working of these machines, it appeared that the following are the salient features of CIJ Printers:

(i) Standalone machines

It can be seen from the image below that these machines are standalone machines that are huge in size.

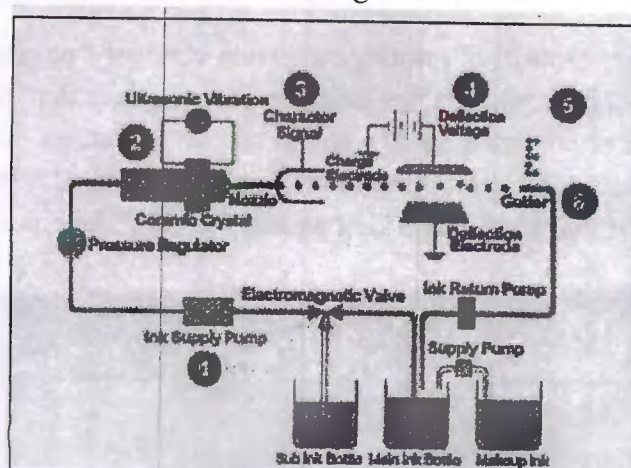


Externally the machine consists of an ink tank, console (keypad and screen) for feeding the data, a print head and power supply.

(ii) Working Mechanism

Internal structure of CIJ consists of Main tank, Pump, Decompression valve, Piezo element, nozzle, charging electrode plates, charge sensor, deflecting electrode plates, gutter, processor, solvent tank, ink tank.

As per the working submitted by Shri Pulin Vaidya vide voluntary statement dated 15.12.2020, the following appears to be the working mechanism:



Continuous inkjet (CIJ) printing is primarily used for coding and marking of products and packages. In this technology, a pump directs fluid from a reservoir to one or more small nozzles, which eject a continuous stream of drops at high frequency (in the range of roughly 50 kHz to 175 kHz) using a vibrating piezoelectric crystal. The drops pass through a set of electrodes which impart a charge onto each drop. The charged drops then pass a deflection plate which uses an electrostatic field to select drops that are to be printed and drops to be collected and returned for reuse.

(iii) Input and Output

The said printing machine can be operated from the machine itself as it has various inbuilt devices such as a display monitor, key board etc. and it can perform the functions of various printing operations from the display monitor itself. Input is fed through the keyboard and screen built in the machine and the same is printed on the packaging like plastic bottles.



As seen in the video recorded vide observational Mahazar dated 08.01.2021, the user enters the expiry and batch details in the machine itself and the same is printed on the bottles.

(iv) Continuous discharge of electric particles

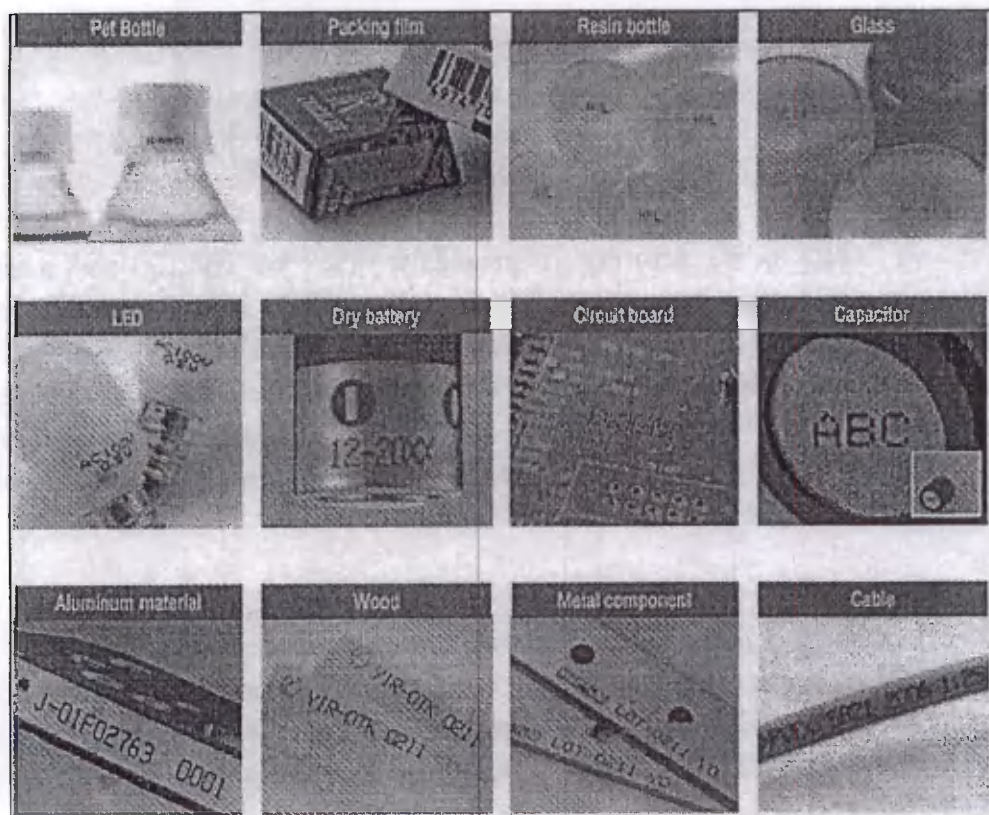
Ink particles are continuously discharged from the nozzle. The ink particles are charged, and deflecting electrodes are used to deflect the ink particles so that they are sprayed on the printing surface. Even when printing is not being performed, ink is continuously discharged at all times, which is why they are called continuous-type printers.

(v) Own processor

The machine can function on its own. It is not required to be connected to a computer or any other automatic data processing machine. As seen in the video from the observational Mahazar, that the machine is not connected to any computer or automatic data processing machine. It has its own processor and input is fed through the keyboard console on the machine.

(vi) Application

These machines are capable of printing on a wide variety of targets such as metals, resins, and glasses. The quick-drying ink enables printing on materials that do not absorb ink well. Continuous inkjet printers are used in a wide range of industries such as food, medicine, cosmetics, electronics, semiconductor, automotive, and metals for the purpose of batch coding and marking and are also referred as Batch Coding and Printing Machines.



B. Parts and Accessories of CIJ Printers

1.14.3 Importer had also imported various parts and accessories of CIJ Printers such as printer round head, sensor, frame, cabinet and fluid, LCD Panel, mould, filter, valve, spare parts etc.

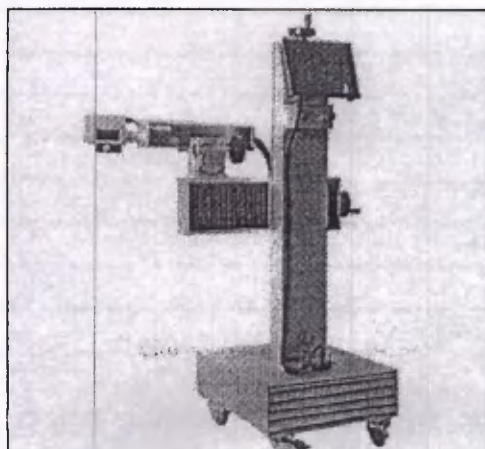
C. Laser Marking Machine

1.14.4 These machines are also used for the same purpose of coding and marking. Only difference is that they are based on laser technology while CIJ printers are based on inkjet technology. These machines are also standalone huge size machines that are capable of functioning of their own. The description of Laser marking machine given on the website of supplier Lead Tech (Zhuhai) Electronic Co. Ltd., China is as follows:

"The laser printing machine (laser marking machine) is one of the main products of LEAD TECH. UV laser marking machine is widely used to marking medical face mask, surgical face mask, mouth face mask, high-end electronic product appearance LOGO logo, food, PVC pipe, pharmaceutical packaging materials (HDPE, PO, PP, etc.) marking, micro perforation, flexible PCB board marking and scribing, etc.

LEAD TECH has great production capability and excellent technology. We also have comprehensive production and quality inspection equipment. Laser marking machine has fine workmanship, high quality, reasonable price, good appearance, and great practicality."

1.14.5 Below is the pictorial depiction of Laser Printing Machine LT8030f.



15. Analysis of CTH classification

1.15.1 CIJ Printers

Importer has classified these products under CTH 84433250. However, these goods appeared classifiable under 84433910 for the reasons discussed below:

i) Customs Tariff

A descriptive analysis of the Customs Tariff 2006-07 (Table A) alongwith the amendments thereof vide Notification No. 137/2006-Customs (NT) dated 29.12.2006 (Table B) is presented herewith to understand the classification of impugned goods, that existed before the present ITC(HS):

TABLE A (Prior to Notification No. 137/2006 Customs-NT)

CTH and sub heading	Description of item
8443	Printing machinery used for printing by means of the printing type, blocks, plates, cylinders and other printing components of heading 8442; inkjet printing machines, other than those of heading 8471; machines for uses ancillary to printing.
8443 51 00	Inkjet printing machine
8471	Automatic data processing machines and units hereof; magnetic or optical readers, machines for transcribing data on to data media in coded form and machines for processing such data, not elsewhere specified or included.
8471 60	Input or output units, whether or not containing storage units in the same housing
8471 60 10	Combined input or output units
	Printer:
8471 60 21	Line Printer
8471 60 22	Dot matrix printer
8471 60 23	Letter quality daisy wheel printer
8471 60 24	Graphic printer
8471 60 25	Plotter
8471 60 26	Laser jet printer
8471 60 27	Inkjet printer
8471 60 29	Other

TABLE B (After Notification No. 137/2006 Customs-NT)

CTH and sub heading	Description of item
8443	
8443 32	-- Other, capable of connecting to an automatic data processing machine or to a network
8443 32 10	Line printer
8443 32 20	Dot matrix printer
8443 32 30	Letter quality daisy wheel printer
8443 32 40	Laser jet printer
8443 32 50	inkjet printer
8443 32 60	Fascimile machine
8443 32 90	Other
8443 39 10	Inkjet printing machine

A plain reading of the relevant tariff heading points to the fact that prior to Notification No. 137/2006 Customs-NT, the various printers which are also known as output units of the automatic data processors such as line printer, dot matrix printer, letter quality daisy wheel printer, graphic printer, plotter, laser jet printer, inkjet printer were covered under the heading of automatic data processing machines and units thereof. Most of these printing devices are generally used in offices or at home and are known as printers in general trade parlance. After Notification No. 137/2006 Customs-NT, these output units of the automatic data processing machines have been brought under CTH 844332 "Other, capable of connecting to an automatic data processing machine or to a network" whereas Inkjet Printing machines are still separately classified under CTH 84433910. Accordingly, it appeared that the output units of automatic data processors such as line printer, dot matrix printer, letter quality wheel printer, graphic printer, plotter, laser jet printer, inkjet printer cannot work independently and hence, were classified together under the same CTH earlier. Even when the amendment to the CTH has been made vide Notification No. 137/2006-NT(Customs) dated 29.12.2006 and these output units have been taken out from the heading covered under automatic data processors, it has now been classified under subheading "Other, capable of connecting to an automatic data processing machine or to a

network" which implies that they are still a part and parcel of the automatic data processing machine i.e. these output units cannot work independently whereas on the other hand the inkjet printing machines which have been imported possess an inbuilt automatic data processor and can work independently and therefore, appeared classifiable separately under CTI 84433910.

ii) Board's Circular No. 11/ 2008- Customs dated 01.07.2008

Board vide Circular No. 11/2008-Customs dated 01.07.2008 has dealt with the issue of classification of large format printers. The reasoning given in para 3.4 of circular for classifying large format printers as Inkjet printers is as follows:

"These printers do not have an in-built ADP machine and cannot do any processing by themselves and do not have any independent function sans the use of a computer. They are solely dependent on the ADP machine or network for inputs to carry out the activity of printing. The Large Format Printers are connectable to an ADP machine or to a network by simply attaching a cable and thus satisfy the conditions of connectability enumerated in explanatory notes."

However, as seen from the observational mahazar dated 08.01.2021 that these imported inkjet printing machines/continuous inkjet printers do not require to be connected to computer or ADP for functioning. They possess an inbuilt automatic data processor and it can work independently. Hence, based on the above reasoning also, the imported machines did not appear to be classifiable as "inkjet printers" under 8443 3250 but rather as inkjet printing machines under 8443 3910. The same contention was accepted by Shri Pulin Vaidhya in his voluntary statement dated 20.2.2020

iii) Rule 3(a) of General Rules of Interpretations of 1st Schedule to Customs Tariff Act,1975-Specific over General

Rule 3(a) of General Rules of Interpretations of 1st Schedule to Customs Tariff Act, 1975 reads as: "3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows: (a) The heading which provides the most specific description shall be preferred to headings providing a more general description ..."

A plain reading of the sub-heading 84433250 and 84433910 indicates the items as "Inkjet Printer" and "Inkjet Printing machine" respectively. The sub heading 84433910 "Inkjet Printing machine" is found to be more specific in terms of the characteristics and specifications. Accordingly, the imported inkjet printing machines appear classifiable specifically under 84433910 as "Inkjet Printing Machine" and not as "Inkjet Printer" under 84433250 as declared by the importer. Even otherwise, it is general rule of interpretation of the First Schedule of the Customs Tariff Act, 1975 that a specific heading should be preferred over general heading which is the case here as "Inkjet Printing Machine" falls under a specific heading 84433910.

iv) Test of Common Trade Parlance

Further applying the test of common trade parlance, the following differences can be noticed between "inkjet printer" and "CIJ Printer" which appeared to indicate that "CIJ Printer" are not "inkjet printers" as referred in common trade parlance.

Feature	Inkjet Printer	Inkjet printing machine/Continuous Inkjet Printer/Coding Inkjet Printer

Trade Parlance	In common trade parlance referred to office desktop printers	In common trade parlance referred to industrial printers for batch coding and marking
Method	On-demand - With this method, only the amount of ink particles necessary for printing are discharged. The ink nozzles are arranged vertically within the printer. Ink particles are instantaneously discharged from the nozzle and are sprayed on the target. Piezo and thermal are the methods used to apply pressure to the ink particles and discharge them.	Continuous-In this method, ink particles are continuously discharged from the nozzle. The ink particles are charged, and deflecting electrodes are used to deflect the ink particles so that they are sprayed on the printing surface. Ink particles that are not deflected are collected, returned to the ink tank, and reused. Even when printing is not being performed, ink is continuously discharged at all times, which is why they are called continuous-type printers.
Ink Discharge	The amount of ink discharged can be controlled with high accuracy by controlling the voltage	Highly viscous and quick drying ink can be used because ink is discharged continuously at high pressure.
Input	Connected to a computer that gives the print input	Capable of printing on its own. It does not require to be connected to computer or automatic data processing machine
Print Target	Dedicated paper is needed to perform the printing	Capable of printing on a wide variety of targets such as metals, resins, and glasses.
Application	For office use.	Not suitable for office use. Used in variety of industries like food, bottles, pharmaceuticals etc
Image		

Even on the website of importer viz. aztefluid.com, these machines are referred as inkjet print coding machine/CIJ Printer. A screenshot of the webpage is given below:



The imported inkjet printing machines are not easily available in the open market, these are very huge in size and are specifically made for coding and marking purpose. It therefore, appeared that inkjet printers which are normally used in conjunction with computer in office or home would be classifiable under CTH 84433250, whereas looking into the specifications of the imported machines in terms of its size, weight, its specific use for printing, it appeared liable for classification under CTH 84433910.

v) Primary Function (Essential Character)

Further, if a machine is meant for any primary function, then the additional function will not take it away from the main description. In the instant case, primary function of these machines is for coding and marking the packaging of various products and mere connectivity to a network or an automatic data processor does not render the printing machine as a printer.

vi) Rule 3(c) of General Rules for the Interpretation

Furthermore, when the imported item is said to be classifiable under two headings i.e. one as declared by the importer under 84433250 and the second under 84433910 contended by the Revenue, even if recourse to general interpretative rules is also taken by resorting to principles of Rule 3(c) of the General Rules for the Interpretation of the First Schedule of the Customs Tariff Act, 1975 that the goods shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. Accordingly, the subject-imported inkjet printing machines will again appear classifiable under CTH 84433910 only.

1.15.2 Parts and accessories of CIJ Printer

1.15.2.1 Parts and accessories of CIJ Printers imported by importer include printer round head, sensor, frame, cabinet and fluid, LCD panel, mould, filter, valve, spare parts etc. It is observed that importer has not adopted any consistent CTH classification for these goods in bills of entry. Importer had declared these goods under 84718000, 84433290, 84439951 & 84439959 vide various bills of entry. It was also observed that in some bills of entry importer has cleared these goods @ 7.5% BCD under 84439990.

1.15.2.2 Applicability of various CTIs declared by importer for these goods is discussed below:

- i. 84718000 - As far as the classification of parts/accessories are concerned, HSN explanatory notes to Chapter XVI mentions that in general, parts which are suitable for use solely or principally with particular machines or apparatus or with a group of machines or apparatus falling in the same heading, are classified in the same heading as those machines or apparatus subject to the exclusions mentioned in the HSN. Since the machines imported by the importer appeared classifiable under 8443, parts and accessories also appeared classifiable under 8443. Hence, the same did not appear to be classifiable under 84718000.
- ii. 84433290 - From plain reading of Customs Tariff, it appeared that the heading 84433290 is not applicable for parts and accessories.

844332	--	Other, capable of connecting to an automatic data processing machine or to a network
8443 32 10	---	Line printer
8443 32 20	---	Dot matrix printer
8443 32 30	---	Letter quality daisy wheel printer
8443 32 40	---	Laser jet printer
8443 32 50	---	Ink jet printer
8443 32 60	---	Facsimile machine
8443 32 90	---	Other

- iii. 84439951 and 84439959 - Both these CTIs are for parts and accessories of goods falling under heading 844331 and 844332. It is discussed in detail above in para 1.15.1 that subject goods did not appear classifiable under heading 844332 and rather appeared classifiable under 844339. Hence, the parts and accessories of these goods also did not appear classifiable under 84439951 and 84439959.

	-- <i>Parts and accessories :</i>
8443 91 00	-- Parts and accessories of printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442
8443 99	-- Other
8443 99 10	--- Automatic documents feeders of copying machines
8443 99 20	--- Paper feeders of copying machines
8443 99 30	--- Sorters of copying machines
8443 99 40	--- Other parts of copying machines
	--- Parts and accessories of goods of sub-heading 8443 31, 8443 32
8443 99 51	--- Ink cartridges, with print head assembly
8443 99 52	--- Ink cartridges, without print head assembly
8443 99 53	--- Ink spray nozzle
8443 99 59	--- Other
8443 99 60	--- Parts and accessories of goods of sub-heading 8443 39
8443 99 90	--- Other

1.15.2.3 Further, from plain reading of HSN, the parts and accessories of these machines appeared classifiable under 84439960 (for parts and accessories of goods falling under 844339) / 84439990 (for other parts).

1.15.3 Laser Marking Machine

1.15.3.1 Importer had also imported few consignments of Laser Marking Machines declared as "laser printers" under 84433240.

1.15.3.2 Characteristics of Laser Marking Machine are similar to that of inkjet printing machine or CIJ Printer except that it works on the technology of laser rather than inkjet. However, it is used for coding and marking purpose only. Further, as discussed above, in terms of Notification No. 137/2006-Customs(NT) dated 29.12.2006 and Board Circular No. 11/2008-Customs dated 01.07.2008, laser printers that work as an output for automatic data processing machines appeared classifiable under 84433240.

1.15.3.3 However, Laser Marking Machines imported by importer cannot function as desktop printer. They have their own processor and are not required to be connected to an automatic data processing machine for inputs. Hence, as per Rule 3(a) of GIR (specific over general) the sub heading 84433990 was found to be more specific in terms of the characteristics and specifications in as much as the imported laser marking machines are not required to be connected to automatic data processing machines.

1.15.3.4 Further, in trade parlance the term Laser Printer is referred to Desktop Printers and not to Coding and Marking Machines. Hence, as discussed supra, these Laser Marking Machines did not appear to be classifiable under 84433240 as Laser Printer and rather appear classifiable under 84433990.

1.15.3.5 Further, even if recourse to general interpretative rules is also taken by resorting to principles of Rule 3(c) of the General Rules for the Interpretation of the First Schedule of the Customs Tariff Act, 1975 that the goods shall be classified under the heading which occurs last in numerical order among those which equally merit consideration, the subject-imported laser marking machines will again appear classifiable under CTI 84433990 only.

1.16 Exemption notifications being claimed

1.16.1 CIJ Printer

1.16.1.1 Exemption notification being claimed by importer on import of CIJ Printer is Notification No. 24/2005-Customs dated 1st March, 2005, Sr. No. 2E.

1.16.1.2 Opening para of the notification reads as *"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the following goods, falling under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below, when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, namely:-"*

1.16.1.3 From the above, it appeared that the above notification exempts the goods of the description specified in column (3) of the Table below and falling within the Chapter, heading, sub-heading or tariff item as are specified in the corresponding entry in column (2). Hence, in order to avail these notification benefit a product must first match with the description specified in Column (3) read with the relevant list and must fall within the CTH heading mentioned in Column (2) subject to any other conditions as specified in the notification.

1.16.1.4 Further, description of goods and tariff heading given for above S. No. 2E in the notification is as follows:

Notification No. declared and availed	Tariff Heading Specified in Column 2	Description of Goods as Specified in Column 3
Notification No. 24/2005 S. No. 2E	8443 32 50	All Goods

1.16.1.5 Hence, it appeared that benefit of S. No. 2E in Notification No. 24/2005 can only be extended to goods that are classifiable under CTH 84433250. It is discussed in detail in Para 1.15.1 above that impugned goods i.e. "CIJ Printers" did not appear to be classifiable under CTH 84433250 and rather appeared to be classifiable under CTH 84433910. Therefore, the impugned goods i.e. CIJ Printers did not appear to be eligible to claim exemption benefit under this notification.

1.16.2 Parts of CIJ Printers / Printing Machinery

1.16.2.1 Exemption notifications claimed by importer on import of parts and accessories of CIJ printer are:

- i) Notification No. 24/2005-Customs dated 1st March, 2005, S. No 8.

1.16.2.2 Opening para of the notification reads as *"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the following goods, falling under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below, when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, namely:-"*

1.16.2.3 From the above, it appeared that the above notification exempts the goods of the description specified in column (3) of the Table below and falling within the Chapter, heading, sub-heading or tariff item as are specified in the corresponding entry in column (2). Hence, in order to avail these notification benefit a product must first match with the description specified in Column (3) read with the relevant list and must fall within the CTH heading mentioned in Column (2) subject to any other conditions as specified in the notification.

1.16.2.4 Further, description of goods and tariff heading given for above S. No. 8 in the notification is as follows:

Notification No. declared and availed	Tariff Heading Specified in Column 2	Description of Goods as Specified in Column 3
Notification No. 24/2005 S. No. 8	8471	All Goods

1.16.2.5 Hence, it appeared that benefit of S. No. 8 in Notification No. 24/2005 can only be extended to goods that are classifiable under CTH 8471. It is discussed in detail in Para 1.15.2 above that impugned goods i.e. "Parts of CIJ Printers" did not appear to be classifiable under CTH 84718000 and rather appeared to be classifiable under CTH 84439960. Therefore, the impugned goods i.e. "Parts of CIJ Printers" did not appear to be eligible to claim exemption benefit under this notification.

ii) Notification No. 50/2017, S. No. 459

1.16.2.6 Further, description of goods and tariff heading given for above S. No. in the notification is as follows:

Notification No. declared and availed	Tariff Heading Specified in Column 2	Description of Goods as Specified in Column 3
Notification No. 50/2017 S. No. 459	8443	Parts for manufacture of printers falling under sub heading 8443 32 except 8443 99 51, 8443 99 52, 8443 99 53

1.16.2.7 Hence, it appeared that benefit of S. No. 459 in Notification No. 50/2017 can only be extended to Parts for manufacture of printers falling under sub heading 844332 except 84439951, 84439952, 84439953 that are classifiable under CTH 8443 subject to condition 9 of the notification.

1.16.2.8 It is discussed in detail in Para 1.15.1 above that "CIJ Printers" did not appear to be classifiable under CTH84433250 and rather appeared to be classifiable under CTH 84433910. Hence, these parts and accessories did not appear to be used for manufacture of printers falling under sub-heading 844332 and therefore, do not appear to be eligible for exemption benefit under the said notification.

1.16.3 Lascr marking machines

1.16.3.1 Exemption notification being claimed by importer on import of Laser Marking Machines is Sr. No. 2D of “Notification No. 24/2005-Customs dated 1st March, 2005”.

1.16.3.2 Opening para of the notification reads as *“In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the following goods, falling under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below, when imported into India, from the whole of the duty of customs leviable thereon. under the said First Schedule, namely:-”*

1.16.3.3 From the above, it appeared that the above notification exempts the goods of the description specified in column (3) of the Table below and falling within the Chapter, heading, sub-heading or tariff item as are specified in the corresponding entry in column (2). Hence, in order to avail these notification benefit a product must first match with the description specified in Column (3) read with the relevant list and must fall within the CTH

heading mentioned in Column (2) subject to any other conditions as specified in the notification.

1.16.3.4 Further, description of goods and tariff heading given for above S. No. in the notification is as follows:

Notification No. declared and availed	Tariff Heading Specified in Column 2	Description of Goods as Specified in Column 3
Notification No. 24/2005 Sr. No. 2D	8443 32 40	All Goods

1.16.3.5 Hence, it appeared that benefit of Sr. No. 2D in notification No. 24/2005 can only be extended to goods that are classifiable under CTH 84433240. It is discussed in detail in Para 1.15.3 above that impugned goods i.e. "Laser Marking Machines" did not appear to be classifiable under CTH 84433240 and rather appeared to be classifiable under CTH 84433990. Therefore, the impugned goods i.e. "Laser Marking Machines" did not appear to be eligible to claim exemption benefit under this notification.

1.17 Statutory Provisions

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

- CBIC Circular No. 17/2011 dated 08.04.2011 regarding ‘Implementation of Self-Assessment in Customs’.
- Section 17 - Assessment of duty.
- Section 25 - Power to grant exemption from duty.
- Section 28 - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.
- Section 28AA - Interest on delayed payment of duty.
- Section 46 - Entry of goods on importation.
- Section 111(m) - Confiscation of improperly imported goods, etc.
- Section 112 - Penalty for improper importation of goods etc.
- Section 114A - Penalty for short-levy or non-levy of duty in certain cases.
- Section 114AA - Penalty for use of false and incorrect material.
- General Rules of Interpretation of 1st Schedule to Customs Tariff Act, 1975.
- Regulation 10 of Customs Brokers Licensing Regulations, 2018 - Obligations of Custom Broker.

1.18 Extended Period for demand of duty under Section 28(4).

It appeared that Aztec Fluid and Machinery Pvt. Ltd. had imported goods by wilfully and intentionally mis-declaring and mis-classifying in order to avail the benefit of exemption notifications and clear them without payment of appropriate customs duty as discussed below:

1.18.1 There are different types of printers available in the market viz. inkjet printer, dot matrix printer, laser printer, graphic printer, line printer to name a few and each of them are known as printers in general trade parlance which are generally used at home or office in conjunction with a computer for the purpose of printing. These printers are generally classified under various Sub-headings of CTH 8443. However, in the present case the importer had imported specifically designed huge size machines capable of marking and coding using the inkjet technology and

laser technology and termed/declared them as "Inkjet Printers" and "Laser Printer" under subheading of CTH 84433250 and 84433240 and also filed the bills of entry accordingly.

1.18.2 Further, it appeared that the description of these machines is different in the website of the importer/brochure submitted by the importer as well as on the website of supplier than the description given in the invoices and bills of entry; that the importer had described these products on their website/brochure as "Inkjet Print Coding Machine" or "CIJ Printer" while the supplier Leadtech Zhuhai Electronics Co. Ltd., China had mentioned them as "CIJ Printer" on their website. Shri Pratik Shukla, CHA vide his voluntary statement dtd. 03.11.2020 had deposed that the importer showed them the catalogue in which the product was mentioned as CIJ printers. It appeared that there was a deliberate effort to mis-declare the goods in the invoice other than what is mentioned on the website of supplier as well as on importer's own website, to facilitate their mis-declaration in the bills of entry.

1.18.3 This deliberate effort by the importer to mis-declare the description of the goods in bills of entry is evident from the fact that when the importer has sold the same goods to other customers, he has adopted appropriate description.

1.18.3.1 When enquired about the business model, Shri Pulin Vaidya vide his voluntary statement dtd. 20.02.2020, had stated that they are importing products from Leadtech Zhuhai Electronics Co. Pvt. Ltd., China and are into distribution and after sales service of their products. When further enquired as to whether they are importing any computer printers, Shri Pulin Vaidya vide his voluntary statement dtd. 20.02.2020 stated that they are not importing any computer printers and are only importing printers used for coding and marking products. From this, it appeared that they are selling and exporting the same goods that they are importing from Leadtech Zhuhai Electronics Co. Pvt. Ltd., China.

1.18.3.2 However, it was observed that the description given in the sales invoice and export invoice of same goods is different from their import invoice. Shri Pulin Vaidhya in response to summons dtd. 05.03.2020, submitted sales invoice and export invoice for FY 2018-19 and FY 2019-20. It was observed from the sales invoices and export invoices submitted that the importer had always given the description as "CIJ Printer" in its sales invoice and also in its export invoices. However, import invoices and bills of entry have been filed with description "Inkjet Printer". From the invoices submitted, it was observed that not even a single sales invoice or export invoice had been issued by the importer with the description "Inkjet Printer" as given in the import invoices for same goods. Therefore, it appeared that the importer had knowingly and intentionally mis-declared these goods as "Inkjet Printer" in Bills of Entry in order to misclassify them and evade custom duty.

1.18.4 Further, Shri Pratik Shukla, CHA vide his voluntary statement dtd. 08/11/2020 had deposed that Shri Pulin Vaidhya informed that his competitors were clearing similar products with NIL rate of duty by claiming Notification No. 24/2004, Sl. No. 2E as Inkjet Printers and hence, they started filing the documents by claiming the notification exemption. When Shri Pulin Vaidya was asked as to who decided on the classification of the product initially, he stated that he along with CHA, arrived at the HSN based on the classification being adopted by other companies importing these printers. From this it appeared that classification and exemption notification had not been decided on the basis of technical characteristics of the products or GRIs but rather with the sole intention to pay duty @NIL rate; that there was sufficient deliberation about proper classification but importer chose to classify them wrongly.

1.18.5 It was also observed that there had been no consistency in classification and exemption notification w.r.t. "Parts and Accessories" of CIJ printer by the importer. To a query about the import of parts of CIJ printers, Shri Pulin Vaidhya in his voluntary statement dtd. 20.02.2020

had stated that the parts are imported as per service requirements and are classified under 84439959 without payment of duty; that in case of clearances by DHL, they are cleared on payment of duty. When Shri Pratik Shulda (CHA) was asked how the parts are classified under 84439990, when they are classifying the CIJ printers imported by the importer under 84433250, he stated that they were classifying the parts under 84439990 only from the beginning on payment of duty without claiming the exemption; that once they were asked to clear the parts under 84439959 by the company, but the customs did not allow it and assessed the parts under 84439990 and that the company also accepted the change. In case of DHL consignments, they had cleared them without notification benefit at 7.5% rate of duty and importer had never raised any objection with them or with customs. From this, it appeared that the importer knew very well that these are not parts of inkjet printers of CTH 844332 and hence, are not classifiable under CTH 84439959 but still chose to classify them wrongly whenever it was possible/feasible to misclassify them.

1.18.6 Further, Shri Pulin Vaidhya in his voluntary statement dtd. 15.12.2020 had submitted a working diagram wherein the machine was shown taking inputs from a computer/ADP. However, when the functioning of one of their most sold model i.e. LT710 was recorded under observational mahazar dtd. 08.01.2021, it was seen that the machine was working on its own and was not connected to any computer/ADP or PLC for input. The operator was feeding the data like batch No., expiry data etc. in the machine itself. It appeared that Shri Pulin Vaidya had tried to provide this misleading information for the sake of covering up their evasion.

1.18.7 It was also observed, that ICD Khodiyar Group DC had issued a speaking order dtd. 08/11/2019 and changed the CTH to 84433910 for B.E No. 4833260 dtd. 09/09/2019 and B.E No. 4877048 dtd. 12/09/2019. The importer had filed an appeal with Commissioner (Appeals) against the speaking order dtd. 08/11/2019. However, it was observed that importer filled subsequent bills at other ports like Mumbai and Ahmedabad but continued to mis-declare these goods as "Inkjet Printers" under CTH 84433250 and paid BCD @NIL on import.

1.18.8 This being so, it appeared that the importer was required to discharge the differential duty in respect of the previous bills of entry wherein imported goods had been mis-classified and wherein notification benefit had been availed in order to clear them at lesser rate of duty but it appeared that the same had not been done fully by them nor had they instructed their CHA to do so. They had voluntarily paid Rs. 50 Lakhs towards their partial duty liability which was deposited to the Government account vide TR6 Challan No. 1846 dated 17/03/2020 and No. 1 dated 20/04/2020.

1.18.9 RMS facility is a trust based facility extended by the government to facilitate easy and faster clearance wherein, the government trusts the self assessment made by the assessee and it facilitates non-intrusive clearance. However, from the discussions made supra, it appeared that, Aztec Fluid and Machinery Pvt. Ltd. had misused the RMS facility extended to them by the department in violation of Section 46 of Customs Act, 1962. The omissions and commissions of Aztec Fluid and Machinery Pvt. Ltd. appeared to be deliberate acts for the reasons discussed in the preceding paras. Therefore, it appeared that they have wilfully and knowingly mis-declared and misrepresented the description of goods/CTH with the sole intention to avoid payment of higher duties. Hence, it appeared, this case is a fit case for invoking extended period for demand of duty under Section 28(4) of the Customs Act, 1962.

1.19 Quantification of Duty

a) CIJ Printers declared as "Inkjet Printers"

1.19.1 In view of above discussion, the details of various CTH declared, Sl. Nos. of different notifications and their corresponding rates of duty at which the duty has been discharged as well as the Sl. Nos. and notification No., along with their corresponding rates of duty at which they should have paid the duty are summarized vis-a-vis the applicable period, in the tables below:

CIJ Printer (BCD and Total Duty Liability)											
Sl. No	Applicable Period	Custom House	CTH Declared and self assessed	Notification No./ Sl. No. (declared and self-assessed)	Rate at which BCD was paid	CTH Proposed	Notification No./Sl. No. (proposed in the notice)	Rate at which BCD is proposed	Assessable Value	Differential Duty Liability (BCD)	Total Duty Liability (Including applicable IGST, cess and surcharge)
1	From 20/09/2017 to 15/02/2020	INAMD 4	84433250	24/2005 Sno 2E	0	84433910	Merit Rate	7.5	10,25,89,436	76,94,208	99,06,103
2	From 06/09/16 to 22/11/2019	INBOM 4	84433250	24/2005 Sno 2E	0	84433910	Merit Rate	7.5	2,02,74,228	15,20,567	18,92,600
3	From 04/10/2017 to 08/01/2019	INSA11	84433250	24/2005 Sno 2E	0	84433910	Merit Rate	7.5	8,64,58,087	64,84,357	83,07,516
4	From 12/02/2019 to 16/08/2019	INSBI6	84433250	24/2005 Sno 2E	0	84433910	Merit Rate	7.5	1,10,97,104	8,32,283	10,80,303
Total									22,04,18,855	1,65,31,414	2,11,86,522

1.19.2 Consequently, it appeared that there has been short levy of Basic Custom Duty for Rs. 1,65,31,414/- as detailed in **Annexure B-Sheet CIJ Printer** of the subject Notice. Therefore, the total differential duty amounting to **Rs. 2,11,86,522 (Rupees Two Crores Eleven Lakh Eighty Six Thousand Five Hundred and Twenty Two Only)** (including applicable IGST, surcharge and cess) appeared liable to be demanded in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the ibid Act.

b) Parts of CIJ Printer declared as "Parts of CIJ Printer/Spare Parts/ Parts and Accessories of Printing Machinery"

1.19.3 Details of various CTH declared, Sl. Nos. of different notifications and their corresponding rates of duty at which the duty has been discharged as well as the Sl. Nos. and notification No., along with their corresponding rates of duty at which they should have paid the duty are summarized vis-a-vis the applicable period, in the tables below:

Parts of CIJ Printer (BCD and Total Duty Liability)											
Sl. No.	Applicable Period	Custom House	CTH Declared and self assessed	Notification No./ Sl. No. (declared and self-assessed)	Rate at which BCD was paid	CTH Proposed	Notification No./Sl. No. (proposed in the notice)	Rate at which BCD is proposed	Assesable Value	Differntial Duty Liability (BCD)	Total Duty Liability (Including applicable IGST, cess and surcharge)
1	From 23/02/16 to 02/05/2016	INAMD4	84433290	NA	0	84439960	Merit Rate	7.5	96,12,853	7,20,964	7,19,516
2	28/12/16	INBOM4	8443995	NA	0	84439960	Merit Rate	7.5	5,09,277	38,196	46,030
3	09/11/20	INDEL4	84439959	NA	0	84439960	Merit Rate	7.5	28,52,722	2,13,954	2,77,713
4	From 23/02/2016 to 21/09/2017	INSA11	84439951 84439959 84718000	50/2017 S.No 459, 24/2005 Sno 8	0	84439960	Merit Rate	7.5	3,55,35,678	26,65,176	32,21,420
Total									4,85,10,529	36,38,290	42,64,678

1.19.4 Consequently, it appeared that there had been short levy of Basic Custom Duty for Rs. 36,38,290/- as detailed in **Annexure B-Sheet Parts CIJ** of the subject Notice. Therefore, the total differential duty amounting to **Rs. 42,64,678/- (Rupees Forty Two Lakh Sixty Four Thousand Six Hundred and Seventy Eight Only)** (including applicable IGST, surcharge and cess) appeared liable to be demanded in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the ibid Act.

c) **Laser Marking Machines declared as "Laser Printer"**

1.19.5 Details of various CTH declared, Sl. Nos. of different notifications and their corresponding rates of duty at which the duty has been discharged as well as the Sl. Nos. and notification No., along with their corresponding rates of duty at which they should have paid the duty are summarized vis a vis the applicable period, in the tables below:

Laser Marking Machine											
Sl. No.	Applicable Period	Custom House	CTH Declared and self assessed	Notification No./ Sl. No. (declared and self-assessed)	Rate at which BCD was paid	CTH Proposed	Notification No./Sl. No. (proposed in the notice)	Rate at which BCD is proposed	Assesable Value	Differential Duty Liability (BCD)	Total Duty Liability (Including applicable IGST, cess and surcharge)
1	07/09/20	INAMD 4	84433240	24/2005 Sno 2E	0	84433990	Merit Rate	7.5	12,71,642	95,373	1,23,794
2	From 03/04/18 to 20/11/18	INSAII	84433240	24/2005 Sno 2E	0	84433990	Merit Rate	7.5	47,30,892	3,54,816.9	4,60,552.4
Total									60,02,535	4,501,90	5,84,347

1.19.6 Consequently, it appeared that there had been short levy of Basic Custom Duty for Rs. 4,50,190/- as detailed in **Annexure B- Sheet Laser Marking Machines** of the subject Notice. Therefore, the total differential duty amounting to **Rs. 5,84,347/- (Rupees Five Lakh Eighty Four Thousand Three Hundred and Forty Seven only)** (including applicable IGST, surcharge and cess) appeared liable to be demanded in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the ibid Act.

1.19.7 Further, it appeared that after initiation of investigation by the DRI, importer had cleared the goods under proposed CTH without notification benefit and had paid duty under protest. Hence, these BEs wherein duty had been paid under protest after 15.02.2020 were not covered in the subject show cause notice. Also, BE No. 4833260 dtd. 09/09/2019 and BE No. 4877048 dtd. 12/09/2019 filed at ICD Khodiyar for which speaking order dtd. 08/11/2019 had been issued and importer had paid duty under protest were also not covered in the subject notice.

1.20 **Confiscation of goods**

- In the instant case, Aztec Fluid and Machinery Pvt. Ltd., had in the imports made by them, subscribed to the truthfulness of the contents of declaration in respect of bills of entry filed by them, in terms of Section 46(4) of the Customs Act, 1962. As the goods were cleared on self-assessment under Section 17 of the Customs Act, 1962, it was the responsibility of the importer to declare the correct CTH, description, and to determine and pay the duty applicable in respect of the importing goods.
- It appeared that Aztec Fluid and Machinery Pvt. Ltd. were aware about the nature of products being imported as "CIJ Printer", "Parts of CIJ Printer" and "Laser Marking Machines" but knowingly declared the products as "Inkjet Printer", "Parts and Accessories of Printing Machinery" and "Laser Printer", respectively by classifying them under wrong tariff and by claiming ineligible notification benefit. As per Section

111(m) of the Customs Act, 1962, any goods, which do not correspond in respect of value or in any other particular with the entry, made under the Customs Act, 1962 are liable for confiscation under the said section. It appeared that the goods declared do not correspond to the tariff entry as well as to the description of goods in exemption notifications.

- c. In the instant case, Aztec Fluid and Machinery Pvt. Ltd. mis-declared "CIJ Printer", "Parts of CIJ Printer" and "Laser Printing Machines" as discussed in Para 1.1.18 above with the sole intention to misrepresent these goods in order to avail the exemption benefit of these notifications.
- d. Therefore, the above goods imported vide bills of entry as given in Annexure B-Sheet Final Summary appeared liable for confiscation under Section 111(m) of Customs Act, 1962 read with Section 46 and Section 17 of the Customs Act, 1962.
- e. Accordingly, "CIJ Printer", "Parts of CIJ Printer" and "Laser Marking Machines" imported by Aztec Fluid and Machinery Pvt. Ltd. which were wrongly classified and/or in respect of which exemption notification had been wrongly availed vide different notifications, but not available for seizure as detailed in Annexure B- Sheet Final Summary valued at Rs. 27,49,31,919/- (Rupees Twenty Seven Crore Forty Nine Lakh Thirty One Thousand Nine Hundred and Nineteen only), appended to the subject notice appeared liable for confiscation under Section 111(m) of the Customs Act, 1962.

1.21 Penalty on Aztec Fluid and Machinery Pvt. Ltd.

- a) Aztec Fluid and Machinery Pvt. Ltd. by mis-declaring the CTH classification and by mis-stating the description of goods in the bills of entry filed by them as discussed supra in Para 1.18 and Para 1.20 above, had rendered the goods liable for confiscation. Hence, Aztec Fluid and Machinery Pvt. Ltd. was liable for penalty under Section 112(a) of the Customs Act, 1962.
- b) Aztec Fluid and Machinery Pvt. Ltd. had wilfully and intentionally mis-declared the classification and description of the good imported in the bills of entry, as discussed supra in Para 1.18 above, for paying lesser duty. Consequently, Aztec Fluid and Machinery Pvt. Ltd. was liable for penalty under Section 114A of the Customs Act, 1962.
- c) Further, Aztec Fluid and Machinery Pvt. Ltd. were also liable to penalty in terms of Section 114AA of the Customs Act, 1962 for having intentionally made, used false and incorrect declaration / statements / documents to evade payment of legitimate Customs duties as discussed supra in Para 1.18 above.

1.22 Role-played and penalty on persons involved.

1.22.1 Shri Pulin Vaidhya, Managing Director

- a) Shri Pulin Vaidya was the managing director of the company and had set up the entire business. He was the overall in charge of the company. He had the technical knowledge of these machines. He was also the one who dealt with the supplier. He was the authorized signatory for customs as observed from the KYC documents. Further, CHA Shri Pratik Shukla vide his statement dated 08/11/2020 had stated that Shri Pulin Vaidya decided on the classification and exemption notification based on other competitors in order to clear the goods at NIL rate of duty which was accepted by Shri Pulin Vaidya vide his voluntary statement dtd. 15/12/2020.
- b) Further, it was seen that description of goods in invoice and bill of entry was different from what was given in their website and also from what was given in sales and export invoice. However, when questioned about it, Shri Pulin Vaidhya appeared to have given

contradictory replies. While justifying the description in bills of entry, he stated that in trade parlance these machines are called as "inkjet printers". While justifying the description in sales invoice, he stated that these machines are called as "CIJ" printer in trade parlance. Further, Shri Pulin Vaidya was also the authorized signatory for GST purposes as well, as per the details downloaded from GST application portal.

- c) Further when questioned and explained about the CTHs of various printers and printing machinery at the time of recording his voluntary statement, when he could not further justify the classification adopted by them, he stated that office desktop printers are inkjet printing machines. While it is common knowledge that office desktop printers are referred as "inkjet printers/laser printers".
- d) Also, Shri Pulin Vaidhya in his voluntary statement dated 20.2.2020 had stated that the machines were capable of working on their own and were not required to be connected to automatic data processing machines. However, at the time of recording his second voluntary statement dtd. 15/12/2020, he had submitted a diagram in which the machine is connected to computer/PLC/ADP. However, from the video recorded vide observational mahazar dtd. 08/1/2021, it can be seen that the machine was not connected to any computer or PLC. It functions on its own.
- e) From the above, it appeared that Shri Pulin Vaidhya was the person who appeared to have taken decision about the classification and exemption notifications to be availed. He knew very well about the nature of goods but still had decided to mis-declare them and misclassify them in order to evade BCD. Shri Pulin Vaidhya, despite being the authorized signatory of Aztec Fluid and Machinery Pvt. Ltd. for customs as well as GST, had also failed to justify properly as to why the description of goods in their bills of entry was different from their sales and export invoice and why they had never raised this issue with supplier. He also gave contradictory submissions in his voluntary statements wilfully to mislead the investigation in order to perpetrate the offence and to keep evading BCD. Hence, from the above it appeared that Shri Pulin Vaidya was wilfully and intentionally mis-declaring and misclassifying the product and had actively perpetrated the offence knowingly and he was therefore, liable for penalty under Section 112(a) and 114AA of the Customs Act, 1962.

1.22.2 CHA- CNG Clearing and Forwarding Agents Pvt. Ltd.

- a) Shri Pratik Shukla, Director, CNG Clearing and Forwarding Agents Pvt. Ltd. in his voluntary statement dated 08/11/2020 had stated that they had been associated with the importer since 2012 i.e. right from the beginning. He had also stated that Shri Pulin Vaidya had shown them the brochure in the beginning wherein the products were mentioned as "CIJ Printer". When shown the voluntary statement of Shri Pratik Shukla, Director, CNG Clearing and Forwarding Agents Pvt. Ltd. dated 08/11/2020, Shri Pulin Vaidya had accepted that he alongwith CHA i.e. CNG Clearing and Forwarding Agents Pvt. Ltd. had decided on the classification and exemption notification benefit.
- b) As per the Customs House Agents Licensing Regulations, 2018, Regulation-10, it was the duty of CHA, CNG Clearing and Forwarding Agents Pvt. Ltd. to advise their client to comply with the provisions of the Act and in case of non-compliance bring the matter to the notice of the Officers of Customs. It was their duty to exercise due diligence to ascertain the correctness of any information with reference to the work related to clearance of cargo. The Custom House Agent, Shri Pratik Shukla, CHA- CNG Clearing and Forwarding Agents Pvt. Ltd. was well aware of the nature of the imported good as he had stated in his voluntary statement dtd. 08/11/2020 that he had seen that brochure in the initial stage wherein goods were mentioned as "CIJ Printers" but still kept declaring the same as "Inkjet Printers" & classifying the same under CTH 84433250 instead of CTH 84433910.
- c) Shri Prateek Shukla, CHA in his voluntary statement agreed that he had come to the conclusion that the imported machine merit correct and proper classification under CTH

84433910 and not in CTH 84433250.

- d) From the above, it appeared that CHA - CNG Clearing and Forwarding Agents Pvt. Ltd. knew very well that such action will render the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, and hence, by such act they rendered themselves liable for penalty under Section 112(a) of the Customs Act, 1962.
- e) As far as role of other CHAs is concerned, on perusal of the imports made by the importer, it was observed that, apart from CHA, CNG Clearing and Forwarding Agents Pvt. Ltd. who filed majority of the bills of entry, there are some of the bills of entry which were filed by other CHAs too. The CHA, CNG Clearing and Forwarding Agents Pvt. Ltd. had informed that they had handed over the process of filing of such bills to some other CHAs in few ports. As it appeared that, there was wilful misstatement and suppression of facts to misclassify and mis-declare the goods by the importer and clearly known to CHA, CNG Clearing and Forwarding Agents Pvt. Ltd. at the time of filing the bills, but for the matter of convenience they had handed over the process of filing to other CHAs in some other ports, the involvement of other CHAs was not further investigated.

1.23 In view of the above, vide Show Cause Notice F. No. DRI/CZU/VIII/26/17/2020 dated 24.02.2021, Aztec Fluids & Machinery Pvt. Ltd. (IEC:0813008310), was called upon to show cause to the **Pr. Commissioner of Customs, Ahmedabad Air Cargo, Custom House, Navrangpura, Ahmedabad-380009**, as to why:

- a) the items declared as ‘..Inkjet Printer...’ as detailed in **Annexure B-Worksheet 1 CIJ Printer** appended to the subject notice, imported and classified by them under 84433250 should not be rejected and why the same should not be reclassified under 84433910;
- b) the items declared as ‘Parts of CIJ Printer/Printing Machinery...’ as detailed in **Annexure B-Worksheet 1 Parts CIJ** appended to the subject notice, imported and classified by them under 84433290 should not be rejected and why the same should not be reclassified under 84439960;
- c) the items declared as "Laser Printer" as detailed in **Annexure B-Worksheet 1 Laser Marking Machines** appended to the subject notice, imported and classified by them under 84433240 should not be rejected and why the same should not be reclassified under 84433990;
- d) the general exemption availed by them vide Notification No. 24/2005 dated 01/03/2005 (Sl. No. 2E) in respect of bills of entry for period from 20/09/2017 to 15/02/2020 as detailed in **Annexure B-Worksheet 1 CIJ Printer** appended to the subject notice should not be denied and should not be re-assessed to merit rate;
- e) the general exemption availed by them vide Notification No. 24/2005 dated 01/03/2005 (Sl. No. 2D) in respect of bill of entry No. 8734939 dtd. 07/09/2020 as detailed in **Annexure B-Worksheet 1 Laser Marking Machines** appended to the subject notice should not be denied and should not be re-assessed to merit rate;
- 1) total differential duty amounting to Rs. 1,07,49,413/- (Rupees One Crore Seven Lakh Forty Nine Thousand Four Hundred and Thirteen only) in respect of the goods imported and declared as "Inkjet Printer..." as detailed in the **Annexure B-Worksheet 1 CIJ Printer** and in respect of the goods imported and declared as "Parts/Spare Parts of CIJ Printer/Printing Machinery" as detailed in the **Annexure B-Worksheet 1 Parts CIJ** and in respect of the goods imported and declared as "Laser Printer" as detailed in the **Annexure B-Worksheet 1 Laser Marking Machine** appended to the subject notice should not be demanded in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Act, *ibid*.
- g) the impugned goods which were wrongly classified or in respect of which exemption notification had been wrongly availed vide different notifications, but not available

for seizure as detailed in **Worksheet 1-CIJ Printer** and **Worksheet 1-Parts CIJ and Worksheet 1-Laser Marking Machines** appended to the subject notice valued at **Rs. 11,34,73,931 (Rupees Eleven Crore Thirty Four Lakh Seventy Three Thousand Nine Hundred and Thirty One only)** should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

- h) penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962;
- i) penalty should not be imposed on them under Section 114A of the Customs Act, 1962;
- j) penalty should not be imposed on them under Section 114AA of the Customs Act, 1962;
- k) the voluntary deposit of Rs. 50 lakhs made vide TR-6 Challan No. 1846 dtd. 17/03/2020 and TR6 Challan No. 01 dtd. 20/04/2020 should not be appropriated against total duty liability.

1.24 Further, **Shri Pulin Vaidhya**, Managing Director, Aztec Fluids & Machinery Pvt. Ltd. (IEC:0813008310), was called upon to Show Cause to the Pr. Commissioner of Customs, Ahmedabad Air Cargo, Custom House, Navrangpura, Ahmedabad-380009, as to why penalty should not be imposed on him under **Section 112 and Section 114AA of the Customs Act, 1962.**

1.25 Further, **CNG Clearing and Forwarding Agents Pvt. Ltd.**, Ahmedabad was called upon to Show Cause to the Pr. Commissioner of Customs, Ahmedabad Air Cargo, Custom House, Navrangpura, Ahmedabad-380009, as to why penalty should not be imposed on them under **Section 112 of the Customs Act, 1962.**

1.26 In view of the above, vide Show Cause Notice F. No. DRI/CZU/VIII/26/17/2020 dated 24.02.2021, Aztec Fluids & Machinery Pvt. Ltd. (IEC:0813008310), was called upon to show cause to the **Commissioner of Customs, Nhava Sheva-V, JNCH, Nhava Sheva, Raigad, Maharashtra-400707**, as to why:

- a) the items declared as 'Inkjet Printer... as detailed in **Annexure B-Worksheet 2 CIJ Printer** appended to the subject notice, imported and classified by them under 84433250 should not be rejected and why the same should not be reclassified under 84433910;
- b) the items declared as 'Parts/Spare Parts of CIJ Printer/Printing Machinery...' as detailed in **Annexure B- Worksheet 2 Parts CIJ** appended to the subject notice, imported and classified by them under 84718000, 84439951, 84439959 should not be rejected and why the same should not be reclassified under 84439960;
- c) the items declared as "Laser Printer" as detailed in **Annexure B-Worksheet 2 Laser Marking Machines** appended to the subject notice, imported and classified by them under 84433240 should not be rejected and why the same should not be reclassified under 84433990;
- d) the general exemption availed by them vide notification No. 24/2005 dated 01/03/2005 (Sl. No. 2E) in respect of bills of entry for period from 04/10/2017 to 08/01/2019 as detailed in **Annexure B-Worksheet 2 CIJ Printer** appended to the subject notice should not be denied and should not be re-assessed to merit rate;
- e) the general exemption availed by them vide notification No. 24/2005 dated 01/03/2005 (Sr. No. 8) and notification No. 50/2017, Sr. No. 459 in respect of bills of entry for period from 23/02/2016 to 21/09/2017 as detailed in **Annexure B-Worksheet 2 Parts CIJ** appended to the subject notice should not be denied and should not be re-assessed to merit rate;
- 1) the general exemption availed by them vide Notification No. 24/2005 dated 01/03/2005 (Sl. No. 2D) in respect of bill of entry from 03/04/18 to 20/11/18 as detailed in **Annexure**

B-Worksheet 2 Laser Marking Machines appended to the subejct notice should not be denied and should not be re-assessed to merit rate;

- g) total differential duty amounting to Rs. 1,19,89,488/- (Rupees One Crore Nineteen Lakh Eighty Nine Thousand Four Hundred and Eighty Eight only) in respect of the goods imported and declared as "Inkjet Printer..." as detailed in the **Annexure B-Worksheet 2 CIJ Printer** and in respect of the goods imported and declared as "Parts of CIJ Printer/Printing Machinery" as detailed in the **Annexure B-Worksheet 2 Parts CIJ** and in respect of the goods imported and declared as "Laser Printer" as detailed in the **Annexure B-Worksheet 2 Laser Marking Machine** appended to the subject notice should not be demanded in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the ibid Act
- h) the impugned goods which were wrongly classified or in respect of which exemption notification had been wrongly availed vide different notifications, but not available for seizure as detailed in **Worksheet 2 - CIJ Printer, Worksheet 2-Parts CIJ** and **Worksheet 2-Laser Marking Machines** appended to the subject notice valued at Rs. 12,67,24,648/- (Rupees Twelve Crore Sixty Seven Lakh Twenty Four Thousand Six Hundred and Forty Eight only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- i) penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962;
- j) penalty should not be imposed on them under Section 114A of the Customs Act, 1962;
- k) penalty should not be imposed on them under Section 114AA of the Customs Act, 1962;

1.27 Further, **Shri Pulin Vaidhya**, Managing Director, Aztec Fluids & Machinery Pvt. Ltd. (IEC:0813008310), was called upon to Show Cause to the Commissioner of Customs, Nhava Sheva-V, JNCH, Nhava Sheva, Raigad, Maharashtra-400707, as to why penalty should not be imposed on him under **Section 112 and Section 114AA of the Customs Act, 1962.**

1.28 Further, **CNG Clearing and Forwarding Agents Pvt. Ltd.**, Ahmedabad was called upon to Show Cause to the Commissioner of Customs, Nhava Sheva-V, JNCH, Nhava Sheva, Raigad, Maharashtra-400707, as to why penalty should not be imposed on them under **Section 112 of the Customs Act, 1962.**

1.29 In view of the above, vide Show Cause Notice F. No. DRI/CZU/VIII/26/17/2020 dated 24.02.2021, Aztec Fluids & Machinery Pvt. Ltd. (IEC:0813008310), was called upon to show cause to the **Additional / Joint Commissioner of Customs, Group 5, Air Cargo Complex, Sahar, Andheri (East), Mumbai-400099**, as to why:

- a) the items declared as 'Inkjet Printer...' as detailed in **Annexure B-Worksheet 3 CIJ Printer** appended to the subject notice, imported and classified by them under 84433250 should not be rejected and why the same should not be reclassified under 84433910;
- b) the items declared as 'Parts of CIJ Printer/Printing Machinery...' as detailed in **Annexure B-Worksheet 3 Parts CIJ** appended to the subject notice, imported and classified by them under 84439959 should not be rejected and why the same should not be reclassified under 84439960;
- c) the general exemption availed by them vide notification No. 24/2005 dated 01/03/2005 (Sl. No. 2E) in respect of bills of entry for period from 06/09/16 to 22/11/2019 as detailed in **Annexure B-Worksheet 3 CIJ Printer** appended to the subejct notice should not be denied and should not be re-assessed to merit rate;
- d) total differential duty amounting to **Rs. 19,38,630/- (Rupees Nineteen Lakh Thirty Eight Thousand Six Hundred and Thirty only)** in respect of the goods imported and declared as "Inkjet Printer..." as detailed in the **Annexure B-Worksheet 3 CIJ Printer**

and in respect of the goods imported and declared as "Parts of CIJ Printer/Printing Machinery" as detailed in the **Annexure B-Worksheet 3 Parts CIJ** appended to the subject notice should not be demanded in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the ibid Act

- e) the impugned goods which were wrongly classified or in respect of which exemption notification had been wrongly availed vide different notifications, but not available for seizure as detailed in **Worksheet 3 - CIJ Printer** and **Worksheet 3-Parts CIJ** appended to the subject notice valued at Rs. 2,07,83,504/- (**Rupees Two Crore Seven Lakh Eighty Three Thousand Five Hundred and Four only**) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- f) penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962;
- g) penalty should not be imposed on them under Section 114A of the Customs Act, 1962;
- h) penalty should not be imposed on them under Section 114AA of the Customs Act, 1962;

1.30 Further, **Shri Pulin Vaidhya**, Managing Director, Aztec Fluids & Machinery Pvt. Ltd. (IEC:0813008310), was called upon to Show Cause to the Additional / Joint Commissioner of Customs, Group 5, Air Cargo Complex, Sahar, Andheri (East), Mumbai-400099, as to why penalty should not be imposed on him under **Section 112 and Section 114AA of the Customs Act, 1962**.

1.31 Further, **CNG Clearing and Forwarding Agents Pvt. Ltd.**, Ahmedabad was called upon to Show Cause to the Additional / Joint Commissioner of Customs, Group 5, Air Cargo Complex, Sahar, Andheri (East), Mumbai-400099, as to why penalty should not be imposed on them under **Section 112 of the Customs Act, 1962**.

1.32 In view of the above, vide Show Cause Notice F. No. DRI/CZU/VIII/26/17/2020 dated 24.02.2021, Aztec Fluids & Machinery Pvt. Ltd. (IEC:0813008310), was called upon to show cause to the **Additional / Joint Commissioner of Customs, ICD Khodiyar, Custom House, Navrangpura, Ahmedabad-380009**, as to why:

- a) the items declared as 'Inkjet Printer...' as detailed in Annexure B-Worksheet 4 **CIJ Printer** appended to this notice, imported and classified by them under 84433250 should not be rejected and why the same should not be reclassified under 84433910;
- b) the general exemption availed by them vide notification No. 24/2005 dated 01/03/2005 (Sl. No. 2E) in respect of bills of entry for period from 12/02/2019 to 16/08/2019 as detailed in Annexure B-Worksheet 4 **CIJ Printer** appended to this notice should not be denied and should not be re-assessed to merit rate;
- c) total differential duty amounting to Rs. 10,80,303/- (Rupees Ten Lakhs Eighty Thousand Three Hundred and Three only) in respect of the goods imported and declared as "Inkjet Printer..." as detailed in the Annexure B-Worksheet 4 **CIJ Printer** appended to this notice should not be demanded in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the ibid Act
- d) the impugned goods which were wrongly classified or in respect of which exemption notification has been wrongly availed vide different notifications, but not available for seizure as detailed in **Worksheet 4 - CIJ Printer** appended to this notice valued at **Rs. 1,10,97,104/-** (Rupees One Crore Ten Lakh Ninety Seven Thousand One Hundred and Four only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- e) penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962;
- f) penalty should not be imposed on them under Section 114A of the Customs Act, 1962;
- g) penalty should not be imposed on them under Section 114AA of the Customs Act, 1962;

1.33 Further, **Shri Pulin Vaidhya**, Managing Director, Aztec Fluids & Machinery Pvt. Ltd. (IEC:0813008310), was called upon to Show Cause to the Additional / Joint Commissioner of Customs, ICD Khodiyar, Custom House, Navrangpura, Ahmedabad-380009, as to why penalty should not be imposed on him under **Section 112 and Section 114AA of the Customs Act, 1962**.

1.34 Further, **CNG Clearing and Forwarding Agents Pvt. Ltd.**, Ahmedabad was called upon to Show Cause to the Additional / Joint Commissioner of Customs, ICD Khodiyar, Custom House, Navrangpura, Ahmedabad-380009, as to why penalty should not be imposed on them under **Section 112 of the Customs Act, 1962**.

1.35 In view of the above, vide Show Cause Notice F. No. DRI/CZU/VIII/26/17/2020 dated 24.02.2021, Aztec Fluids & Machinery Pvt. Ltd. (IEC:0813008310), was called upon to show cause to the **Deputy / Assistant Commissioner of Customs, Group 5, ACC, New Custom House, Near IGI Airport, New Delhi-110037**, as to why:

- a) the items declared as 'Spare Parts of Inkjet Printer...' as detailed in **Annexure B-Worksheet 5 Parts CIJ** appended to the subject notice, imported and classified by them under 84439959 should not be rejected and why the same should not be reclassified under 84439960;
- b) total differential duty amounting to Rs. 2,77,713/- (Rupees Two Lakh Seventy Seven Thousand Seven Hundred and Thirteen only) in respect of the goods imported and declared as "Spare Parts of Inkjet Printer..." as detailed in the **Annexure B-Worksheet 5 Parts CIJ** appended to the subject notice should not be demanded in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the ibid Act
- c) the impugned goods which were wrongly classified or in respect of which exemption notification had been wrongly availed vide different notifications, but not available for seizure as detailed in **Worksheet 4 - CIJ Printer** appended to the subject notice valued at Rs. 28,52,722/- (Rupees Twenty Eight Lakh Fifty Two Thousand Seven Hundred and Twenty Two only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- d) penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962;
- e) penalty should not be imposed on them under Section 114A of the Customs Act, 1962;
- f) penalty should not be imposed on them under Section 114AA of the Customs Act, 1962;

1.36 Further, **Shri Pulin Vaidhya**, Managing Director, Aztec Fluids & Machinery Pvt. Ltd. (IEC:0813008310), was called upon to Show Cause to the Deputy / Assistant Commissioner of Customs, Group 5, ACC, New Custom House, Near IGI Airport, New Delhi-110037, as to why penalty should not be imposed on him under **Section 112 and Section 114AA of the Customs Act, 1962**.

1.37 Further, **CNG Clearing and Forwarding Agents Pvt. Ltd.**, Ahmedabad was called upon to Show Cause to the Deputy / Assistant Commissioner of Customs, Group 5, ACC, New Custom House, Near IGI Airport, New Delhi-110037, as to why penalty should not be imposed on them under **Section 112 of the Customs Act, 1962**.

1.38 Vide Sr. No. 8 of CBIC Notification No. 26/2021-Customs (N.T./CAA/DRI) dated 30.03.2021, Pr. Commissioner / Commissioner of Customs, NS-V, JNCH, was appointed as Common Adjudicating Authority of the subject SCN. Accordingly, I have taken up this SCN bearing F. No. DRI/CZU/VIII/26/17/2020 dated 24.02.2021 for adjudication in respect of all the Bills of Entry mentioned therein in Annexure-B pertaining to aforementioned 5 different ports.

2. WRITTEN SUBMISSIONS OF THE NOTICEES

The three Noticees viz. (i) Aztec Fluids & Machinery Pvt. Ltd., Ahmedabad; (ii) Sh. Pulin Vaidhya, Managing Director, Aztec Fluids & Machinery Pvt. Ltd., Ahmedabad; and (iii) CNG Clearing and Forwarding Agents Pvt. Ltd., Ahmedabad, submitted replies to the SCN. The submissions made by the Noticees are as under:

2.1 Submissions of Aztec Fluids & Machinery Pvt. Ltd., Ahmedabad, and Sh. Pulin Vaidhya, Managing Director, Aztec Fluids & Machinery Pvt. Ltd., Ahmedabad

Aztec Fluids & Machinery Pvt. Ltd., Ahmedabad, and Sh. Pulin Vaidhya, Managing Director, Aztec Fluids & Machinery Pvt. Ltd., Ahmedabad, vide letter dated 27.09.2025, submitted a common reply to the subject SCN. Vide above reply, they denied all the allegations made in the subject SCN. The brief of the submissions made by the Noticees, in their words, is as under:

2.1.1 The adjudication of the subject show cause notice cannot be undertaken at the present point of time in as much as they had filed SCA 5562 of 2021 before the Hon'ble High Court of Gujarat on the grounds that the DRI officers are not proper officers for the purpose of issuing show cause notice under Section 28(4) of the Customs Act, 1962. The Hon'ble High Court vide judgment dated April 1, 2022 in the SCA filed by them and other allied matters, quashed the show cause notice and order in originals while holding that DRI officers are not proper officers for the purpose of issuing show cause notices under Section 28(4) Customs Act, 1962 and hence, the show cause notice was quashed subject to the outcome of the review petition filed by the Department before the Hon'ble Supreme Court in the case of M/s. Canon India Pvt. Ltd. being civil appeal No. 1827/2018. The Hon'ble High Court quashed the notices subject to the outcome of the review petition, however, till today, the department has not filed any civil application for modification of the final judgment dated April 1, 2022, whereby these notices stand quashed. Although the department has succeeded in its review application before the Hon'ble Supreme Court and the Hon'ble Supreme Court has conclusively held that the DRI officers are empowered to issue show cause notice under the Customs Act, 1962. That automatically would not mean that the final direction given by the Hon'ble High Court quashing the subject show cause notice has been overruled or modified so as to enable the department to proceed with adjudication of the show cause notice. For the purpose of carrying the adjudication proceedings further, the department was to file a civil application for modification of the judgment dated April 1, 2022 or file a review application before the Hon'ble High Court to review the final direction issued in the judgment dated April 1, 2022. It is only the Hon'ble Gujarat High Court which can modify and review its judgment dated April 1, 2022 and further clarify that in view of the review application filed by the department being allowed by the Supreme Court, the judgment dated April 1, 2022 would not come in way of the adjudication of the show cause notice and that the show cause notice which was quashed by this judgment dated April 1, 2022 is now reinstated. Therefore, the adjudication of the subject show cause notice is premature at this stage and cannot be proceeded with without suitable directions from the Hon'ble High Court. Adjudicating the case so long as the final direction given by the Hon'ble High Court is operating may lead to contempt of the judgment delivered by the Hon'ble High Court inasmuch as the final direction has not yet been reviewed or modified till today. Hence, this point may be considered before proceeding with the adjudication of the present case.

2.1.2 Without prejudice to the above-mentioned submission, it is emphasized that the issue regarding classification of inkjet printers such as LT1000S+ and LT710 has already been decided by the Hon'ble Tribunal in their own case. The CESTAT, Ahmedabad vide its decision reported at 2023 (11) TMI 175 came to a conclusion that these models of printers were correctly classifiable under the category of inkjet printers under CTH 84433250 and were subject to nil rate of duty. Therefore, the contentions which are raised in the subject show cause notice for the

very same goods have already been answered in their favour by the CESTAT, Ahmedabad. Therefore, on this ground alone the proposals levelled in the show cause notice for reclassification of the goods and proposing to levy differential amount of duty along with interest hold no water. They are enclosing a copy of the appeal filed before the Hon'ble CESTAT Ahmedabad and the Commissioner of Customs (Appeals) Ahmedabad to show that the very same model of printers were involved in these cases and ultimately the Hon'ble Tribunal has decided the case in their favour and upheld the classification under CTH 84433250. The subsequent disputes concerning other bills of entry also reached the Commissioner of Customs (Appeals), Ahmedabad who vide OIA No. MUN-CUSTOM-000-APP-27 to 40-24-25 for these very same models of printers came to a conclusion that CTH 84433250 was the correct classification inasmuch as these printers could be connected with an ADP machine with the help of USB. In this OIA, the Commissioner of Customs (Appeals) also observed that from the records it is concluded that the order of the CESTAT, Ahmedabad was accepted by the Department and no further appeal was preferred against such order by the Department.

2.1.3 In the above proceedings which were carried on in appeal before the Commissioner of Customs (Appeals), Ahmedabad and the CESTAT, Ahmedabad, were based upon a chartered engineer's certificate which was done by the Government registered Charter Engineer on the request of the Customs department. The Chartered Engineer, Mr. D.P. Jani in the certificate dated 20.09.2019 and further certificate dated 25.09.2019 while analyzing inkjet printers like LT1000S came to a conclusion that these devices are fed with data from outside source. This point is also taken into consideration by the Hon'ble CESTAT, Ahmedabad in its final order and therefore, the allegations levelled in the show cause notice that these CIJ printers are standalone printers and do not need an automatic data processing machine are wrong allegations. When the department approved Chartered Engineer has himself verified the CIJ printers and given findings that the device is fed with data from outside source, then the allegations levelled in para 14 of the show cause notice which suggest that these machines can function on their own and do not require a connection to a computer are not sustainable.

2.1.4 Classification of CIJ Printers:

2.1.4.1 The most important aspect of an Inkjet printer is that it can be attached to a computer or automatic data processing machine or to a network, whereas an ink-jet printing machine is not required to be connected to a computer or automatic data processing machine for working. In the Circular dated 01.07.2008, for Large Format Printers, it is clarified that the aspect of classification depends on whether a printer is or is not capable of being connected to an automatic data processing machine or to a network. In this regard, it is clarified that the difference between Heading 844332 and the Tariff items there under and Heading 844339 and the Tariff items there under is that goods covered under Heading 844332 must be capable of being connected to an ADP machine or to a network, whereas goods covered under Heading 844339 are those which are NOT connectable to an ADP machine or a network. The difference is in the terms of sub-heading 844332 which reads as: -- Others, capable of connecting to an automatic data processing machine or to a network whereas sub-heading 844339 simply reads as: -- Other.

2.1.4.2 With regard to this, it is very important to resort to the General Rules for Interpretation of the tariff. Under the General Rules for Interpretation of the First Schedule to the CTA, 1975, as per Rule 1 for legal purposes the classification shall be determined in terms of heading read with relative Section or Chapter Note, if any. It is only in case the Heading or Note does not require determination in terms of the Rules 2 onwards then Rule 1 itself is sufficient to finalize the determination. The Rules from Rule 2 onwards can be looked into, only if by application of Rule 1, the determination is not possible. By virtue of Rule 1 alone, classification of Ink Jet printers is straightaway under Heading 844332 being most specific and not under Heading 844339 being more general. Furthermore, even in a worst-case scenario, if Rule 3(a) (read with Rule 1) is

applied then the heading 844332 which provides for the MOST specific description shall be preferred to heading 844339 providing a MORE general description. The description: 1) -- Other, capable of connecting to an automatic data processing machine or to a network: is MORE specific compared to: 2) -- other: which is MORE general. A similar controversy about a similar product and whether it is classifiable under CTH 84433250 or 84433910 came up before the Appellate Tribunal in the case of M/s. Monotech Systems Ltd. reported at 2020 (373) ELT 718. In the case of M/s. Monotech Systems Ltd., the goods imported were scodix S75 digital inkjet printer which was classified by M/s. Monotech Systems Ltd. under CTH 84433250. It was the department's view that the goods would be classifiable under CTH 84433910 on the grounds that the goods were not inkjet printer but digital inkjet press and that such goods would be an inkjet machine and not inkjet printer. In this case also, the question about the size and dimension of such machine, its application and its connecting ability to automatic data procession machine came up for consideration. The goods involved in this case were similar to the goods involved in the present case and the product scodix S75 digital inkjet printer also has similar characteristics to the inkjet printer imported by us. As per literature available on these goods, scodix S75 has a dimension of 3,509 X 1,883 X 2,576 mm. and a weight of about 2,379 kgs. This product is capable of working with or without an ADP and this product also has connect ability to an automatic data processing machine, but can also work as a standalone unit and undertake printing activity without an ADP also. In other words, the product scodix S75 can be connected to an ADP and can receive data from such ADP but can also work without an ADP. From the dimensions and weight, it is clear that this product also has industrial application and is not a printer which would be used in an office or a small enterprise. When the controversy with regards to this product had arisen, the Tribunal examined the issue and came up to a conclusion that as per the Board's Circular No. 11/2008-Cus dated 01.07.2008 along with the HSN explanatory notes on the given chapter tariff heading, it is clear that the core condition for classification under CTH 84433250 is that it can be connected with an automatic data processing machine or network; that when a printer has connecting ability to local area network or to an automatic data processing machine, then as per the Board's Circular dated 01.07.2008 and the HSN explanatory notes to Chapter 84, such goods would be classifiable under CTH 84433250 as inkjet printers. In the present case, the imported goods are having a dimension of 4,840 X 1,995 X 1,530 mm. along with a net weight of about 1,150 kgs. The dimensions and weight are quite similar to that of the product for which the appellate tribunal has given its findings that it is classifiable under CTH 84433250 as an inkjet printer. Also, the fact that the Board's circular dated 01.07.2008 has categorically suggested that even large format printers would be classifiable under 84433250 if they can be connected to an ADP. The rational of the decision of the Hon'ble Tribunal in the case of M/s. Monotech Systems Ltd. (supra) is clearly applicable to the present case, and therefore, the proposals in the Show Cause Notice are illegal and liable to be vacated in the interest of justice.

2.1.4.3 Without prejudice to the above-mentioned arguments, it is submitted that it is mandatory for inkjet printers to bear a BIS marking. The erstwhile Ministry of Communications and Information Technology (MCIT then), new Ministry of Electronics and Information Technology (MeitY in short) have issued Order No. S. O. 2357 (E) dated 07.12.2012 (2012 Order in short) mandating that the Electronics and Information Technology Goods specified in the Schedule to the Order can be dealt with only after obtaining for such specified goods the Bureau of Indian Standards (BIS) Registration and the authority to mark such goods with BIS mark (self-declaration). A copy of the BIS papers including a BIS approved Laboratory test report and BIS standard marking license granted to the foreign supplier for the models of the printers imported also prove it beyond doubt that the goods imported are "Ink-jet Printers" capable of connecting to an automatic data processing machine or to a network.

2.1.4.4 The BIS standard IS: 13252:2003 pertains to Printers and Plotters and for every import of the Inkjet Printers in the present case as well as past cases; the imported goods have been directed to be re-exported under fine in the absence of the foreign supplier not holding BIS

Registration, or allowed clearance against proof that the foreign supplier holds for the printer models in question the BIS Registration IS: 13252 category of products and the license to mark the products with BIS mark. The BIS registration held by the foreign supplier is valid for the models imported and in the BIS certificate, the BIS have mentioned the product category as Printers, Plotters and the product name as INK JET PRINTER (Printer).

2.1.5 Classification of Laser Printers:

2.1.5.1 As per para 15.3 of the show cause notice the classification undertaken by them under CTH 84433240 of the goods like laser printers of LT8000 series as Laser Jet printers is proposed to be changed under CTH 84433990 which is a residual entry. The case of the department is similar to the inkjet printers and in para 15.3.3 it is mentioned that these laser marking machines cannot function as desktop printers and they have their own processor and are not required to be connected to an automatic data processing machine and hence, they are classifiable under CTH 84433990 and not as laser jet printers under CTH 84433240. In this regard, the department has not taken into consideration the literature of printers like LT8000 before coming to a conclusion that they do not require a connection to an automatic data processing machine. The features of the machines as mentioned in the brochure clearly show that the interface is USB and RS485. RS485 is a system by which machines like printers are connected to an automatic data processing machine and they receive commands from such automatic data processing machines. Basically, RS485 is a widely used connection by which machines are connected to external sources like personal computers or automatic data processing machines. As discussed in the earlier paragraph for the purpose of CTH 844332, the only requirement is that the machine should be able to receive data from an automatic data processing machine and there is no further requirement that a printer should be used as a desktop printer. As a matter of fact, the Hon'ble Tribunal in the case of Monotech Systems (Supra) and their own case has already interpreted that if a printer has the capability to connect to an automatic data processing machine and receives commands from such automatic data processing machines, then they are classifiable as printers which are capable of connecting to an automatic data processing machines and to a network. The literature of the inkjet printers also shows that those printers also had USB and RS485 interface and could receive commands from a computer. The objection that in common parlance laser printers are referred to as desktop printers also does not have any merit inasmuch as in the show cause notice it is itself admitted that the laser marking machines are of a similar technology to the continuous inkjet printers and the only difference is that the laser marking machines work on laser technology. Therefore, when the Hon'ble Tribunal has already held the continuous inkjet printers being capable of connecting to a computer are classifiable under CTH 84433250, then similar machines using laser technology and being capable of connecting to an automatic data processing machine are classifiable under CTH 84433240. Therefore, it is clear that the objection raised in the show cause notice like in common parlance laser printers are desktop printers and that imported machines do not function as desktop printers are allegations without any basis inasmuch as the tariff entry CTH 84433240 does not mention that the laser printers which are usable with desktop computer are the only printers classifiable under such entry. The Hon'ble Tribunal has in the case of Monotech System (Supra) also considered that the size of the machines and industrial application does not change the fact that the printers were running on inkjet technology and were capable of being connected to an automatic data processing machine. Therefore, the usage of the printer in industrial scenario or as personal desktop printer would not govern the classification of laser printers being capable of connecting to an automatic data processing machine inasmuch as there are only two requirements namely 1) the printer should work on laser technology and 2) such printers should be able to connect with an automatic data processing machine. Furthermore, the literature of M/s. Leadtech also does not show that laser printers are completely independent units and do not need any connection with an automatic data processing machine. Therefore, the demand is solely based on assumptions and presumptions without any cogent evidence and hence, the proposal to change the classification is not sustainable in the eyes of law.

2.1.6 Classification of Parts:

2.1.6.1 The department has proposed to reclassify the parts of CIJ printers on the ground that as per HSN explanatory notes, parts which are suitable for use solely or principally with particular machines are classified in the same heading as those machines. They have classified the goods like electronic board, stand frame, LCD panels etc. under CTH 844339959 which is a heading which covers parts of goods falling under subheadings 844331 and 844332. They have classified print heads with micro nozzle under CTH 84439951 which is a heading meant for ink cartridges and print head assembly of goods falling under 844331 and 844332. It is undisputed fact that the parts and accessories of goods classifiable under CTH 844331 and 844332 are classifiable as parts and accessories under headings like 84439951, 84439953 and 84439959 which are specific headings which cover parts and accessories of goods of subheadings 844331 and 844332. The department has proposed to reclassify the goods under CTH 84439960 which is meant for parts and accessories of goods falling under 844339. It is therefore, essential to consider the classification of the goods in which these parts and accessories are used and as to whether the goods are classifiable under CTH 844332 or 844339. The department has proposed to classify the parts under CTH 84439960 while considering that the goods are classifiable under CTH 844339 and hence, the parts would be classifiable under CTH 84439960. On a clear consideration of the show cause notice, it is clear that the proposal to classify parts under CTH 84439960 is completely misconceived on two grounds. Firstly, as discussed in the preceding paragraphs the Hon'ble Tribunal has in their own case for continuous inkjet printers categorically held that they are classifiable under CTH 84433250 and when the goods are classifiable under such CTH, then the parts and accessories would fall under CTH 84439951 and 84439959. Secondly, if goods like print head assembly with micronozzle which they have classified under CTH 84439951, is to be reclassified then the classification would fall under CTH 84439959 as other parts of goods of subheadings 844331 and 844332. The chapter tariff heading 84439951 and 84439959 both enjoy nil rate of duty and therefore, even if some goods like print head assembly have to be re-classified, then the only possible classification would be CTH 84439959. To support the classification proposed by the department, first the principal goods in which such parts and accessories are to be used are to be reclassified under CTH 84433910, however, when the Hon'ble Tribunal has already held that such classification is not sustainable for continuous inkjet printers and the department has accepted the order of the Tribunal and such observation is also made by the Commissioner of Customs (Appeals), Ahmedabad, while allowing their appeal for the same inkjet printer models like LT710 and LT1000S, then, automatically the proposed classification for the parts and accessories of these CIJ printers is not sustainable. Therefore, the proposal to change classification from CTH 84439959 and 84439951 to 84439960 is a proposal which is not sustainable and hence, such proposal and consequent differential demand of duty is liable to be vacated in the interest of justice. It is again emphasized that the department has at no stage disputed that these parts and accessories are solely and principally usable with the CIJ printers.

2.1.7 Non-Invocation of the extended period of limitation:

2.1.7.1 The show cause notice is issued invoking the provisions of Section 28(4) of the Customs Act, 1962, which can only be invoked in cases where the assessee fails to pay duty with an intention to evade the payment of tax and Section 28(4) specifically talks about situations like wilful misstatement, suppression of facts, fraud etc. with an intention to evade the payment of tax. However, as stated above, the controversy regarding classification of the very same goods which are a subject matter of the present proceedings stands covered in their favor by the decision of the CESTAT, Ahmedabad and also the Commissioner of Customs (Appeals), Ahmedabad. Therefore, when the Department has accepted the order passed by the CESTAT, Ahmedabad and the Commissioner of Customs (Appeals) and has never filed any further appeal against such orders, elements like fraud, wilful misstatement or suppression of facts cannot be alleged against them. They have been importing these printers since a very long time and they

have always adopted the classification of these goods under CTH 84433250. The Department has been aware about such classification adopted by them since a very long time and such classification was disputed and contested up to the level of the Hon'ble Tribunal and was ultimately settled in their favour. Therefore, on these grounds alone Section 28(4) cannot be pressed into service against them so as to recover the differential amount of duty while invoking the extended period of limitation. Therefore, the proposal to invoke Section 28(4) is completely illegal in the facts and circumstances of the present case especially when the order of the Hon'ble Tribunal and the Commissioner (Appeals), Ahmedabad is in their favour.

2.1.7.2 Furthermore, in the entire show cause notice, it is nowhere mentioned that there was an element of fraud, wilful misstatement or suppression of facts with intent to evade the payment of tax. Therefore, merely by mentioning Section 28(4) without the ingredients in the show cause notice, the provision of the extended period of limitation cannot be invoked. The Hon'ble Supreme Court in cases like HMM Limited – [1995 (76) ELT 497 (SC)], Cosmic Dyes Chemical V/s CCE, Bombay reported in [1995 (75) ELT 721 (SC)], and Rajbahadur Narayan singh Sugar Mills Ltd. V/s UOI reported in [1996 (88) ELT 24 (SC)] has held that five elements for which larger period of limitation can be invoked by the Revenue referred to different and diverse situations and therefore, the Revenue must allege and prove with evidence as to which of the five ill-intentions for invoking larger period of limitation existed in a particular case. The ingredients of Section 28(4) are similar to the provisions of Section 11A of the Central Excise Act, 1944 and hence, such decisions are applicable. Thus, as per the settled position, the department has to specifically state the nature of suppression or wilful misstatement so as to invoke the provisions of Section 28(4) of the Customs Act, 1962, which are similar to the provisions of Section 11A of the Central Excise Act, 1944. Since the SCN is silent on such ingredients, the invocation of Section 28(4) is unjustified. It is a settled legal position that no malafide could be attributed to the assessee when the dispute was about classification of goods. The Hon'ble Allahabad High Court in case of Shahnaz Ayurvedics [2004 (173) ELT 337], Hon'ble Supreme Court in cases like Commissioner V/s. Ishaan Research Lab (P.) Ltd. [2008 (230) ELT 7] and the Hon'ble Tribunal in cases like Haryana Roadways Engineering Corporation Ltd. [2001 (131) ELT 662] and Wipro Ltd. [2005 (179) ELT 211] have held that penal provisions were not invocable against the assessee when the dispute was of classification of the goods and also that suppression of facts or such ill intention could also not be alleged against the assessee when the dispute was that of classification of the goods. In the present case also, the case is one of classification of goods and therefore, the confiscation of goods and penalties are unwarranted. Therefore, the allegation of suppression of facts with an intent to evade the payment of tax is completely baseless inasmuch as an assessee cannot be blamed to hold a bona-fide belief that the goods are classifiable under a certain CTH. Therefore, the proceedings being hit by limitation are liable to be dropped in the interest of justice.

2.1.8 Confiscation:

2.1.8.1 In facts also, the goods imported by them cannot be held to be liable for confiscation; and certainly not under Section 111(m) of the Customs Act. When any goods do not correspond in respect of value or any other particular with the entry made under this Act, then such goods are liable to confiscation under Section 111(m) of the Act. But in the present case, all the material particulars including description of the goods and value of the goods have been correctly and truthfully declared in the Bills of Entry filed for the imported goods. With each and every Bill of Entry, all import documents like the supplier's invoice, country of origin certificate, packing list, bill of lading etc. have also been submitted before the proper Customs officers; and no discrepancy has been found in the particulars mentioned in the bills of entry on one hand and such particulars appearing in the import documents on the other hand. Though it is alleged in the show cause notice that the goods in question were classifiable under CTH 84433910 and 84433990 but different Tariff headings/sub-headings were declared for the goods in the bills of entry, it is yet not decided that the classification of CTH 84433910 and 84433990 were the

correct and most appropriate classifications; and it is also not established that they were aware of the above classification being correct and most appropriate, but still however, they deliberately mis-classified the goods under other Tariff headings/subheadings. Classification of goods is a question of law, and so is the case about claim for any exemption notification. It is a settled legal position that even when a wrong classification was declared by the assessee and/or benefit of a Notification was claimed though not available, such dispute would not ipso facto mean any malafide intention on part of the assessee, and omission or commission with malafide intention cannot be inferred only because a wrong classification and/or a wrong benefit of exemption notification/s was claimed. In the facts of the present case, the classification declared in the bills of entry and also the claims for exemption notifications have been accepted and allowed by the proper Custom officers in charge of the Custom Stations of import. In this view of the matter, the proposal to hold the imported goods liable for confiscation is unjustified in facts also. Therefore, proposal of holding the imported goods liable to confiscation also deserves to be withdrawn at once in the interest of justice.

2.1.9 Penalty

2.1.9.1 Section 112/114A of the Customs Act is invoked for imposing penalty on them. Penalty is a quasi-criminal action, and therefore a specific case for penalty and a specific provision for imposing penalty have to be made out in a show cause notice. Referring to Section 112/114A of the Act is not a sufficient compliance of penal provisions, because it is not clear nor disclosed in the show cause notice whether Section 112 is attracted for penalty or Section 114A is applicable for penalty. The situations covered under these two provisions are different, and the ingredients of these two provisions are also not common.

2.1.9.2 However, none of these provisions is attracted in the facts of the present case.

- a) Under Clause (a) of Section 112 of the Customs Act, penalty can be imposed on any person who does or omits to do any act which act or omission would render the goods liable to confiscation under Section 111, or abets the doing or omission of such an act. In the present case, it is not shown in the show cause notice what was the action or omission by them, which rendered the goods liable to confiscation.
- b) Section 111(m) of the Act is invoked for confiscation of the goods, but this provision is not attracted in the present case as prima facie explained hereinabove. Moreover, they have done everything which was expected of an importer like filing a bill of entry, submitting all import documents with the bill of entry, paying the Custom duties assessed by proper Customs officers and clearing the goods for home consumption when it was allowed by the proper Custom officer in charge of the Customs station. As regards omission, no case is made out in the show cause notice about any omission or failure in complying with provisions and requirements of the Customs Act by them. The question of abetment in any omission or commission does not arise in the present case. Therefore, Section 112(a) of the Act is not attracted in this case, and no penalty could be imposed thereunder on them.
- c) Section 114AA of the Customs Act is also invoked in the present case, but this provision is applicable only if a person knowingly or intentionally made, signed or used, or caused to be made, signed or used, any declaration, statement or document which was false or incorrect in any material particular, in the transaction of any business for the purposes of the Customs Act. Here also, knowledge or intention on part of the person concerned are pre-conditions for imposing penalty.
- d) There is no evidence to show that we knew that the cargo in question was classifiable elsewhere than what was declared, and there is also no evidence to show that they intentionally used false information about description of such cargo while transacting

business for the purpose of the Customs Act. They had no reason to doubt declarations made by the overseas supplier in the normal course of business. It is not shown in the show cause notice as to how they had knowledge about the declared classification of the imported goods being incorrect and still they intentionally used such description for the cargo in any of the declarations, documents or the like submitted for fulfilling the obligations under the Customs Act. The mandatory condition of Section 114AA of the Act about knowledge and intention on part of the person while using false or incorrect declaration and documents is conspicuously missing in the present case, and therefore Section 114AA of the Customs Act is not attracted in the present case.

- e) Penalty under Section 114AA and 112 has also been proposed on Shri Pulin Vaidya. For the purpose of imposing penalty on the Managing Director of a company, it is essential to show that false and incorrect material was used by him with complete knowledge. Both the provisions need the proof of intent for the purpose of imposing penalty and without there being any cogent evidence regarding the personal involvement of the MD, penalty cannot be imposed on assumptions and presumptions. The SCN nowhere specifies that Shri Pulin Vaidya knowingly mis-declared the impugned goods and is also silent regarding whether Shri Vaidya knowingly and intentionally made false documents to facilitate the imports. The matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the land mark case of Messrs Hindustan Steel Limited reported in 1978 ELT (J159) wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so. The Apex Court has further held that only in cases where it was proved that the person was guilty of conduct contumacious or dishonest and the error committed by the person was not bonafide but was with knowledge that he was required to act otherwise, penalty might be imposed. It is held by the Hon'ble Supreme Court that in other cases where there were only irregularities or contravention flowing from bonafide belief, even a token penalty would not be justified. Therefore, proposals for confiscation of the goods and imposing penalty on them deserve to be withdrawn in the interest of justice.

2.2 Submissions of CNG Clearing and Forwarding Agents Pvt. Ltd., Ahmedabad

CNG Clearing and Forwarding Agents Pvt. Ltd., Ahmedabad, vide letter dated 19.03.2021, submitted their reply to the subject SCN. Vide above reply, they denied all the allegations made in the subject SCN. The brief of the submissions made by CNG Clearing and Forwarding Agents Pvt. Ltd., Ahmedabad, in their words, is as under:

2.2.1 This proceeding against them are unjustified and unsustainable because they have not done anything nor have they omitted to do anything which act or omission would have rendered the goods imported by their client liable to confiscation, and they have also not abetted the doing or omission of such an act; and therefore, the ingredients of Section 112(a) of the Act are not satisfied in this case. Moreover, there is no mis-declaration and mis-classification of the imported goods because the goods imported by their client were examined and verified by competent Custom Officers before the Bills of Entry were finalized and Customs duties were assessed, and thus, proper verification and checking of the goods with reference to their description as well as the import documents having been properly carried out by the Customs Officers at the time of assessment of the Bills of Entry, there is no justification in now alleging against them that there was mis-declaration and mis-classification of the imported goods and that they failed to bring such matter to the notice of the Customs Authorities. The allegations and suggestions made against them are unsustainable in facts as well as in law, and therefore the proposal to impose penalty on them under Section 112(a) of the Act does not hold any water.

2.2.2 The present dispute is regarding the goods imported by their above referred client, which were classified under CTH 84433250, 84433240 and 84433290 / 84439951 / 84439951 /

84439959 / 84718000 of the Customs Tariff in the Bills of Entry filed for the goods. The Bills of Entry were filed along with all requisite documents, and classification as well as assessment of duty upon allowing concessional rate of Customs duty under Notification No. 24/2005-Cus dated 01.03.2005 was approved by the Customs Officers in charge of assessment work. It is also an undisputed fact that similar goods imported at Nhava Sheva Customs House were assessed to duties under CTH 8443, and assessment order made on Bill of Entry filed at Custom House Nhava Sheva was also considered by the Customs Authorities at Ahmedabad while accepting classification of the goods in question under CTH 8443. It is only now that the DRI Authorities have made out a case that the goods in question were CIJ printers specifically covered under CTH 84433910, and that therefore, such goods not being in the nature of Laser Printers/inkjet printers were chargeable to 7.5% rate of duty. It is only now that DRI Authorities have suggested that exemption from basic Customs duty allowed to the goods in question was inadmissible in as much as the goods of CTH 84433250 were exempted from BCD by virtue of Sr. No. 2E of Notification No. 24/2005-Cus, but the goods in question were classifiable under CTH 84433910, and accordingly, the exemption claimed for the goods in question was wrong. Similarly, for items i.e. parts of CIJ Printers/Printing Machinery classified under CTH 84433290, 84718000, 84439951, 84439959 by them, the classification is proposed under CTH 84439960; for items classified under CTH 84433240, the classification is proposed under CTH 84433990 and further the general exemption availed vide notification No. 24/2005 is proposed to be denied along with the proposal to reassess bills of entry.

2.2.3 They have also noted that reference is given in this show cause notice to various material available on websites, and it is suggested that such material indicated that the goods in question were CIJ Printers, Laser Marking Machine, parts and accessories of CIJ Printers used for product marking and coding and the importer was aware of the actual identity/description as well as the end use of the goods, but importer continued with description of the goods in import documents as "Inkjet printers, laser printers and parts and accessories" for availing undue benefit of exemption meant for the goods of CTH 84433250, and that the importer suggested wrong classification to them as their CHA. The statement of their Director, Shri Pratik Shukla is also recorded by DRI Officer on 03.11.2020, and it is suggested in view of this statement that the goods in question were covered under the description CIJ Printers, Laser Marking Machine, parts and accessories of CIJ Printers given under CTH 84433910, 84433990 and 84439960 and also that they had not considered the catalogue from M/s. Aztec Fluids & Machinery Pvt. Ltd. though it was their responsibility as a CHA to determine correct classification. On this basis it is suggested that they failed in fulfilling obligations cast on them as a CHA under Regulation 10 of the CHA Regulation and that they became a party to evasion of Customs duty.

2.2.4 However, the above basis adopted in the show cause notice for proposing to impose penalty on them is wholly illegal and unjustifiable. There has not been any mis-declaration or mis-classification of the goods so far as they are concerned, and they have also not become a party to any evasion of Customs duty. They, therefore, request to consider the circumstances and the back ground in which the goods in question came to be classified under CTH 84433250, and how assessment of duty was made by the Custom Officers who were also responsible for assessing the classification of the goods and applicable rate of Customs duty while clearing the goods on the basis of documents filed by them.

2.2.4.1 They had filed Bills of Entry for M/s. Aztec Fluids & Machinery Pvt. Ltd. with all requisite documents like Purchase Invoice, Packing List, Certificate for Country of Origin etc; it was after considering all these documents that competent Custom Officers approved classification of the goods under CTH 84433250, 84433240 and 84433290 / 84439951 / 84439951 / 84439959 / 84718000 and for Mundra and Mumbai port they had forwarded the documents to other CHAs for the purpose of filing Bills of Entry. It is not the case of the Revenue that any of the required documents was not submitted by them with the Bills of Entry and thus it is not a case against them that there was any failure on their part in submission of all

the documents required for assessment of duty and determination of classification so as to enable the Custom Officers to assess the Bills of Entry.

2.2.4.2 It is also on record of the case that similar goods imported at Nhava Sheva Customs House were classified under CTH 84433250, 84433240 and 84433290 / 84439951 / 84439951 / 84439959 / 84718000 and the assessed Bill of Entry for the goods imported at Nhava Sheva and also Mundra port was also available with them because it was provided by their client. When similar goods of other importers were classified under CTH 84433250, 84433240 and 84433290 / 84439951 / 84439951 / 84439959 / 84718000, there was no requirement for calling for any detailed literature or catalogue for the goods in question, in as much as such literature may be required when there was no precedent for classification of the imported goods. In fact, the Bill of Entry is a public document and details thereof are also published on the website of the Customs Department, and therefore, the Custom Officers at Ahmedabad were also aware about approval of the classification of the similar goods in question at another Customs House. It was in these circumstances that they had on the basis of information provided by Aztec Fluids & Machinery Pvt. Ltd. for the purpose of classification of the goods had filed bills of entry. When classification of the goods was to be determined by Customs Department and documentary evidence in this regard was also available, there was hardly any requirement to go into technical details of the goods for the purpose of determining classification at their end.

2.2.4.3 It is required to be appreciated that as a CHA, they are obliged to verify genuineness of the documents given to them by the client and also the antecedents of the client; but there is no dispute in this case about the genuine existence of Aztec Fluids & Machinery Pvt. Ltd. or about their IEC number or about genuineness and authenticity of the documents given by them to them. They had verified the description appearing in the import documents and it was the same description that had been shown in the Bills of Entry. Thus, they have taken proper care in verifying genuineness of the client and authenticity of the import documents, and also in ensuring that description and details of the goods were given in the Bills of Entry in accordance the description and details recorded in the import documents. There is no failure on their part in this regard also.

2.2.4.4 In the above back ground, the case of mis-declaration and misclassification of the imported goods and the issue whether CHA could be held as guilty and liable for penalty in cases like the present one or not may be considered.

2.2.5 First of all, it is not established that there was any mis-declaration or misclassification of the goods in question, and therefore, the whole basis of this proceedings is unsubstantiated and hence, unsustainable. Whether the goods in question merit classification under CTH 84433250, 84433240 and 84433290/ 84439951/ 84439951/ 84439959/ 84718000 or under CTH 84433910, 84433990 and 84439960 is still to be decided; but it is also noteworthy that classification of these goods under CTH 84433250, 84433240 and 84433290/ 84439951/ 84439951/ 84439959/ 84718000 was approved and accepted by Custom authorities at Nhava Sheva, and also at Ahmedabad in respect of more than two dozen Bills of Entry filed during February, 2019 to August, 2019. Therefore, prima facie, the classification of the goods under CTH 84433250, 84433240 and 84433290/ 84439951/ 84439951/ 84439959/ 84718000 appears to be in order.

2.2.5.1 Curiously, the revenue has made proposal in the show casue notice on the basis of the statement of their Director, Shri Pratik Shukla taken on 18.01.2020. It is suggested that he has deposed that Mr. Vaidhya had informed about their competitors clearing similar products at nil rate of duty and also that he along with his CHA decided on the classification on the basis of classification made by other companies importing similar product. It is however, submitted that statement of a person cannot be relied upon for classification of a product. Whether the goods fall under CTH 84433250, 84433240 and 84433290/ 84439951/ 84439951/ 84439959/ 84718000 or under CTH 84433910, 84433990 and 84439960 is a matter of interpretation, and classification

is to be determined keeping in view the nature of the goods and scheme of rival entries of the Tariff; and not on the basis of statements or admissions of any person. Thus, a statement of a CHA is insignificant and irrelevant in the matter of classification of goods. Moreover, the Custom officers in charge of assessment of duties were also aware about the definitions given under Harmonized Commodity Description and Coding System, and the Custom authorities were also aware what was "CIJ Printer, Laser Marking Machine, Parts and Accessories" and what was Inkjet Printer, Laser Printers and parts with reference to HSN Explanatory notes. But still however, the Custom authorities at Nhava Sheva, Mundra as well as at Ahmedabad have accepted classification of the goods in question as Inkjet Printer, Laser Printers and parts under CTH 84433250, 84433240 and 84433290/ 84439951/ 84439951/ 84439959/ 84718000, and therefore, suggestion made at para 22 of the Show Cause Notice that they as a CHA became party to the evasion of customs duty is ex-facie incorrect and unauthorized. If a CHA could be considered to be a party to evasion of customs duty only because a case of wrong classification of the goods was made out, then even the Customs officers were also a party to evasion of customs duty because the Bills of Entry were assessed and finalised by Custom authorities, and not by a CHA.

2.2.5.2 It is also suggested that they were shown the catalogue of the products imported by the importer i.e. Aztec Fluids & Machinery Pvt. Ltd. where the description of the goods was shown to be CIJ printers and therefore, they were aware that the classification of the products was deliberately suppressed by them and the same was not brought to the knowledge to the officers of the Customs. It is pertinent to note that at para 9.3 of the show cause notice, it is also mentioned that they have deposed specifically that they are not having technical details of the said product. As explained above, they acting in the capacity of the CHA do not have the technical knowledge of the products being imported by the importers. The importers may be involved in importing numerous kinds and types of products and all such products have different technical use and classification. Therefore, expecting a CHA to possess specific technical knowledge regarding all the products imported by the importer is not at all possible. Had it been a case, the documents submitted by them to the department for clearance of goods are not correct or tempered may result in negligence on their part, but they should have been versed with the technical knowledge of the product is a proposal which is not tenable at all. Therefore also, the suggestion made in this case that there was misdeclaration and mis-classification of imported goods and that they had become a party to evasion of customs duty has no legs to stand.

2.2.5.3 In any case, classification of goods and claim for exemption are pure questions of law because they involve interpretation which is best left to the assessing officers. In case of Commissioner V/s. Ishaan Research Lab. Pvt. Ltd. [2008 (230) ELT 7 (SC)], the Hon'ble Supreme Court has held that dispute of classification of products was an issue where the person claiming wrong classification could also not be held guilty of suppression or mis-statement. In case of Shahnaz Ayurvedics [2004 (173) ELT 337 (All.)], the Hon'ble Allahabad High Court has also held that when a classification list was once approved by the Revenue, it could not be alleged that there was any wilful evasion on part of the person concerned, and also because classification of goods and admissibility of exemption Notification were questions of law where difference of opinion was possible. In cases like Haryana Roadways Engineering Corporation Ltd. [2001 (131) ELT 662] and Wipro Ltd. [2005 (179) ELT 211], the Appellate Tribunal has also held that allegations of suppression of facts or mis-statement cannot be levelled when differential duty liability was alleged on account of classification dispute or denial of exemption Notification because difference in opinion between the Revenue and the assessee in the matter of classification or admissibility of exemption Notification was a case involving interpretation of legal provisions. In this view of the matter also, the proposal to impose penalty on them is unsustainable because no such penal action could be proposed against a CHA in case of alleged mis-declaration or misclassification of the imported goods, more so when classification and admissibility of exemption notification in this case have been approved by the Custom

authorities at Nhava Sheva, Mumbai as well as at Ahmedabad by accepting several Bills of Entry over a period of long time.

2.2.6 Proposal of imposing penalty on them is even otherwise an illegal and unauthorized action because penalty under Section 112(a) of the Act could be imposed on a CHA only if the CHA acted in a malafide manner, that is to say, any wrong information was submitted on behalf of the importer knowingly, and wrong declaration was submitted on behalf of the importer even though the CHA knew that any information or declaration being submitted by him on behalf of the importer was not true or correct. It is held by the Hon'ble Gujarat High Court in cases like Vaz Forwarding Ltd. [2011 (266) ELT 39] that penalty on a CHA was not justified even in a case where the importer had used a forged Advance Licence unless it was established with evidence that the CHA knew about the forgery and still handled the document and abetted the importer in clearance of goods, and it is also held in cases like Nimesh Suchde [2007 (209) ELT 276], J.G. Exports [2000 (121) ELT 754], Thawerdas Wadhoomal [2008 (221) ELT 252], Setwin Shipping Agency [2010 (250) ELT 141], Moricks Shipping and Trading Pvt. Ltd. [2008 (227) ELT 577] and Air Travel Enterprises India Ltd. [2009 (239) ELT 275] that a CHA could not be penalized only because the importer had committed a fraud or forgery because a CHA was not expected to look into details of genuineness of the documents or about credibility of the importers.

2.2.6.1 The principle that emerges from all these decisions and judgements is that penalty was not imposable on a CHA if the CHA had not involved himself in any illegal activity knowingly, and penal action cannot be taken against a CHA only because there was some irregularity on part of his client in importing or exporting any goods. This principle is fully applicable in the present case also because, admittedly, they have not been involved in any illegal import nor have they indulged in any mis-classification or mis-declaration for any personal gain. Be that as it may, they have not done anything nor omitted to do anything in contravention of the Customs Act and therefore, there is no reason for imposing any personal penalty on the appellant in the present case.

2.2.7 If the CHA did not have any such knowledge or information, and he was acting strictly in accordance with the instructions given to him by the importer, then the CHA could not be held guilty of any offence under the Customs Act, even if his client i.e. the importer had indulged in any mal-practices or malafide activity. It is a settled legal position that a CHA could be held to be guilty and liable for penalty under the Customs Act only if he was aware about mis-declaration or mis-deeds of the importer whose goods were being handled by him, but if the CHA was not aware about any illegality or irregularity on the part of the importer for whom the documents like a Bill of Entry were filed by a CHA, then no penalty under the Customs Act could be justifiably imposed on him. The following case laws may therefore be considered in this regard.

- a) Maruti Transports - 2004 (177) ELT 1051;
- b) R.S. Travels - 2007 (217) ELT 384;
- c) Air Travel Enterprise India Limited - 2009 (239) ELT 275;
- d) Glory Agencies - 2009 (244) ELT 596;
- e) Sai Shipping Services - 2009 (239) ELT 104;
- f) Commissioner Vs. Moriks Shipping and Trading Pvt.Ltd. - 2008 (227) ELT 577;
- g) Prime Forwarders - 2008 (222) ELT 137;
- h) Premier Instruments and Controls Limited - 2008 (227) ELT 139;
- i) Ashok Jaiswal - 2006 (200) ELT 122;
- j) Setwin Shipping Agency (supra).

Therefore, it would be imperative to consider in these proceedings also whether they had acted in accordance with the instructions given to them by the importer and whether they had

submitted the documents to the Customs authorities in accordance with the information and documents given to them by the clients or not; or whether they had any knowledge or information that the goods of Aztec Fluids & Machinery Pvt. Ltd. were not those which were declared in the documents like invoice and packing list, and therefore, they had acted in collusion with the importer or not.

2.2.7.1 In this view of the matter, there is no case of any mis-classification or misdeclaration by them nor have they become party to evasion of customs duty. They had acted in a bonafide manner, and they had conducted the CHA work in accordance with the obligations cast on them under the CHA Licensing Regulations. There is no breach of Regulation 10 of the above Regulations also, because the present one is not a case where there was any misdeclaration or mis-classification of the imported goods that they were aware of and still they did not bring the matter to the notice of the Custom authorities. On the contrary, all the relevant facts including assessment order made for classifying the goods under CTH 84433250, 84433240 and 84433290/ 84439951/ 84439951/ 84439959/ 84718000 were within the knowledge of the proper Custom officers. Therefore, the present one is not a case where they have done anything or they have omitted to do anything or they have abetted any such doing or omission which would render the goods in question liable for confiscation. Proposal to impose penalty on them therefore, deserves to be vacated in the interest of justice.

2.2.7.2 At the further out set, the very initiation of the proceedings in the present case is without authority of law and also without jurisdiction. The present show cause notice has been issued under Section 28 of the Customs Act and the authority issuing the present show cause notice i.e. Additional Director General of DRI is not the competent authority for issuing the same. Therefore, on this ground itself the initiation of proceeding being invalid, the present proceeding may be withdrawn and may be closed in the interest of justice.

3. RECORD OF PERSONAL HEARINGS

There are three Noticees in the subject SCN viz. (i) Aztec Fluids & Machinery Pvt. Ltd., Ahmedabad; (ii) Sh. Pulin Vaidhya, Managing Director, Aztec Fluids & Machinery Pvt. Ltd., Ahmedabad; and (iii) CNG Clearing and Forwarding Agents Pvt. Ltd., Ahmedabad. In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, all the Noticees were granted opportunity of Personal Hearing (PH). A date-wise record of personal hearings is as under:

3.1 An opportunity for PH was granted to all the Noticees on 22.09.2025. However, the Noticees did not attend the PH and vide letter dated 17.09.2025 requested for adjournment and grant of another date for PH.

3.2 Therefore, another opportunity for PH was granted to all the Noticees on 06.10.2025. Availing the said opportunity of PH, authorised representative of the Noticees, Mr. Amal P. Dave, Advocate, appeared before the Adjudicating Authority on 06.10.2025 on behalf of all the three Noticees. During the PH, he reiterated the submissions made in their written reply as under:

- (i) The classification of printers adopted by them is correct.
- (ii) The issue regarding classification of same goods i.e. inkjet printers, has already been decided by the Hon'ble CESTAT, Ahmedabad, in their own case and the same has been accepted by the Department. On the basis of the above judgement, Commissioner of Customs (Appeals), Ahmedabad, has also allowed their appeals.
- (iii) Regarding classification of parts of printers, when the Hon'ble CESTAT, Ahmedabad has decided the issue of classification of Continuous Inkjet Printers (CIJ) and the department has accepted the order of the Tribunal, then automatically the proposed classification for the parts and accessories of these CIJ printers is not sustainable.

- (iv) Regarding the allegations against M/s. CNG Clearing and Forwarding Agents Pvt. Ltd., when the declared classification has been upheld by the Hon'ble CESTAT, Ahmedabad, then no penalty can be imposed on the Custom Broker.

4. DISCUSSION AND FINDINGS

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

4.2 I find that the subject SCN was issued on 24.02.2021 by Addl. Director General, DRI, Chennai Zonal Unit. However, as per CBIC Instruction No. 04/2021-Cus. dated 17.03.2021, directing to keep SCNs pending in view of the Hon'ble Supreme Court judgement dated 09.03.2021 in Civil Appeal No. 1827 of 2018 in the case of Canon India Pvt. Ltd., the subject SCN was transferred to Call Book. Concurrently, the importer also filed a Special Civil Application No. 5562 of 2021 in the Hon'ble High Court of Gujarat, against the subject SCN, challenging the same in the light of aforesaid Hon'ble Supreme Court judgement dated 09.03.2021. Hon'ble High Court of Gujarat vide Interim Order dated 26.03.2021, stayed the further proceedings pursuant to the impugned SCN. Subsequently, after the amendments w.r.t. 'Proper Officer' for issuing SCNs were made in the Customs Act, 1962 vide Finance Act, 2022, the SCN was taken out from Call Book on 01.04.2022. However, vide Order dated 01.04.2022, Hon'ble High Court of Gujarat without entering into the merits of the case, quashed the subject SCN issued by the DRI, on the basis of the ratio laid down in aforesaid Hon'ble Supreme Court judgement dated 09.03.2021, in the case of Canon India Pvt. Ltd. In the above Order, Hon'ble High Court of Gujarat explicitly mentioned that this (quashment) would be subject to the outcome of review petition pending before the Apex Court in the case of Commissioner of Customs Vs. Canon India Pvt. Ltd. [Review Petition (Civil) No. 400/2021 (Diary No. 9580/2021) filed on 07.04.2021]. In view of the above, the subject SCN was again transferred to the Call Book. Subsequently, in the above Review Petition, Hon'ble Supreme Court vide its Review Order dated 07.11.2024 upheld that DRI officers are 'proper officers' with the jurisdiction to issue SCN under the Customs Act, 1962. In the light of the above Apex Court judgement, the subject SCN was taken out from the Call Book and is taken up for adjudication within the time limit as per Section 28(9) of the Customs Act, 1962.

4.3 In compliance to the provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) on 22.09.2025 and 06.10.2025 was granted to all the Noticees. Availing the said opportunity, all the Noticees attended the PH on 06.10.2025. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the submission / contention made by the Noticees.

4.4 The fact of the matter is that a Show Cause Notice F. No. DRI/CZU/VIII/26/17/2020 dated 24.02.2021 was issued to 3 Noticees viz. (i) Aztec Fluids & Machinery Pvt. Ltd., Ahmedabad (IEC: 0813008310); (ii) Sh. Pulin Vaidhya, Managing Director, Aztec Fluids & Machinery Pvt. Ltd.; and (iii) CNG Clearing and Forwarding Agents Pvt. Ltd., Ahmedabad, on the basis of investigation conducted by the Directorate of Revenue Intelligence (DRI), which indicated that Continuous Ink Jet (CIJ) Printers, Laser Marking Machine, and Parts & Accessories of CIJ Printer were being mis-classified by the Noticees to claim lower rate of Customs duty. During the said investigation, it appeared that Continuous Ink Jet (CIJ) Printers, Laser Marking Machine, and Parts & Accessories of CIJ Printer were being mis-declared as Inkjet Printers, Laser Printers, and Parts & Accessories of Printing Machinery and were being mis-classified under CTI 84433250, 84433240 and 84433290 / 84439951 / 84439959 / 84718000 instead of 84433910, 84433990 and 84439960, respectively, thereby resulting in evasion of legitimately payable Customs duty. Thus, the SCN proposes rejection of the declared

classification and re-classification of the goods, denial of availed exemption Notification benefit and reassessment on merit rate of duty. Further, the SCN proposes demand of total differential duty to the tune of Rs. 2,60,35,547/- (Rupees Two Crore Sixty Lakh Thirty Five Thousand Five Hundred Forty Seven Only) in terms of Section 28(4) of the Customs Act, 1962, along with applicable interest in terms of Section 28AA *ibid*; confiscation of the impugned imported goods having total assessable value of Rs. 27,49,31,919/- (Rupees Twenty Seven Crore Forty Nine Lakh Thirty One Thousand Nine Hundred Nineteen Only) under Section 111(m) *ibid*; and imposition of penalty on the importer, Aztec Fluids & Machinery Pvt. Ltd. and the 2 Co-noticees under the penal sections of the Customs Act, 1962.

4.5 Before delving into the substantive allegations made in the SCN, I will discuss and give my findings on the issue raised by Aztec Fluids & Machinery Pvt. Ltd., in their submission that adjudication of the subject SCN cannot be undertaken at the present point of time.

4.5.1 The Noticee has contended that the adjudication of the subject SCN cannot be undertaken at the present point of time as the same was quashed by the Hon'ble High Court of Gujarat vide Order dated 01.04.2022, subject to the outcome of the review petition filed by the Department before the Hon'ble Supreme Court in the case of Canon India Pvt. Ltd. Although the Department has succeeded in its review application before the Hon'ble Supreme Court and the Hon'ble Supreme Court has conclusively held that the DRI officers are empowered to issue SCN under the Customs Act, 1962, but that automatically would not mean that the final direction given by the Hon'ble High Court quashing the subject SCN has been overruled or modified so as to enable the department to proceed with adjudication of the SCN. The Department has not filed any civil application for modification of the aforesaid final judgment dated 01.04.2022, whereby this SCN stand quashed. For the purpose of carrying the adjudication proceedings further, the department was to file a civil application for modification of the judgment dated 01.04.2022 or file a review application before the Hon'ble High Court to review the final direction issued in the judgment dated 01.04.2022. Therefore, the adjudication of the subject SCN is premature at this stage and cannot be proceeded with without suitable directions from the Hon'ble High Court.

4.5.2 In this regard, I find that though it is a fact that the Hon'ble High Court of Gujarat vide Order dated 01.04.2022 had quashed the subject SCN, however, I find that the said quashment was not absolute but conditional. In the said Order, the Hon'ble High Court of Gujarat had explicitly mentioned that this quashment would be subject to the outcome of Review Petition of the Department pending before the Apex Court in the case of Commissioner of Customs Vs. Canon India Pvt. Ltd. Thus, the Hon'ble High Court had itself inserted the above condition on the operability of the said Order. In the aforesaid Review Petition, Hon'ble Supreme Court vide its Review Order dated 07.11.2024 had upheld that DRI officers are 'proper officers' with the jurisdiction to issue SCN under the Customs Act, 1962. Therefore, I find that vide the above Apex Court judgement dated 07.11.2024, the quashment of the subject SCN automatically gets nullified, more so when the Hon'ble High Court had itself made the operability of its order conditional i.e. subject to the outcome of the said Review Petition of the Department. I find that pursuant to the Apex Court judgement dated 07.11.2024, the subject SCN is live and there is no bar on taking up its adjudication to conclude the proceedings to their logical end. In view of the above, I do not find merit in the Noticee's claim and accordingly, reject the same.

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

- (i) Whether the items declared as '**Inkjet Printer...**' as detailed in **Annexure B - Worksheet 1-4 CIJ Printer** appended to the subject notice, imported and classified by Aztec Fluids & Machinery Pvt. Ltd. under CTI 84433250 should be rejected and whether the same should be reclassified under CTI 84433910;

- (ii) Whether the items declared as **'Parts / Spare Parts of CIJ Printer / Parts of CIJ Printer / Spare Parts of Inkjet Printer / Printing Machinery'** as detailed in **Annexure B - Worksheet 1-3 & 5 Parts CIJ** appended to the subject notice, imported and classified by Aztec Fluids & Machinery Pvt. Ltd. under CTI 84433290 / 84439951 / 84439959 / 84718000 should be rejected and whether the same should be reclassified under CTI 84439960;
- (iii) Whether the items declared as **'Laser Printer'** as detailed in **Annexure B - Worksheet 1-2 Laser Marking Machines** appended to the subject notice, imported and classified by Aztec Fluids & Machinery Pvt. Ltd. under CTI 84433240 should be rejected and whether the same should be reclassified under CTI 84433990;
- (iv) Whether the general exemption availed by Aztec Fluids & Machinery Pvt. Ltd. vide Notification No. 24/2005 dated 01/03/2005 (Sl. No. 2E) in respect of bills of entry for period from 06/09/16 to 15/02/2020 as detailed in **Annexure B - Worksheet 1-4 CIJ Printer** appended to the subject notice should be denied and should be re-assessed to merit rate;
- (v) Whether the general exemption availed by Aztec Fluids & Machinery Pvt. Ltd. vide Notification No. 24/2005 dated 01/03/2005 (Sl. No. 8) and Notification No. 50/2017 dated 30.06.2017 (Sl. No. 459) in respect of bills of entry for period from 23/02/2016 to 21/09/2017 as detailed in **Annexure B - Worksheet 2 Parts CIJ** appended to the subject notice should be denied and should be re-assessed to merit rate;
- (vi) Whether the general exemption availed by Aztec Fluids & Machinery Pvt. Ltd. vide Notification No. 24/2005 dated 01/03/2005 (Sl. No. 2D) in respect of bills of entry from 03/04/2018 to 07/09/2020 as detailed in **Annexure B - Worksheet 1-2 Laser Marking Machines** appended to the subject notice should be denied and should be re-assessed to merit rate;
- (vii) Whether total differential duty amounting to **Rs. 2,60,35,547/- (Rupees Two Crore Sixty Lakh Thirty Five Thousand Five Hundred Forty Seven Only)** in respect of the goods imported and declared as 'Inkjet Printer...' as detailed in the **Annexure B - Worksheet 1-4 CIJ Printer**, in respect of the goods imported and declared as 'Parts / Spare Parts of CIJ Printer / Parts of CIJ Printer / Spare Parts of Inkjet Printer / Printing Machinery' as detailed in the **Annexure B - Worksheet 1-3 & 5 Parts CIJ** and in respect of the goods imported and declared as 'Laser Printer' as detailed in the **Annexure B - Worksheet 1-2 Laser Marking Machine** appended to the subject notice should be demanded from Aztec Fluids & Machinery Pvt. Ltd. in terms of Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the ibid Act;
- (viii) Whether the impugned goods which were wrongly classified or in respect of which exemption notification has been wrongly availed vide different notifications, but not available for seizure, as detailed in **Worksheet 1-4 CIJ Printer, Worksheet 1-3 & 5 Parts CIJ and Worksheet 1-2 Laser Marking Machines** appended to the subject notice valued at **Rs. 27,49,31,919/- (Rupees Twenty Seven Crore Forty Nine Lakh Thirty One Thousand Nine Hundred Nineteen Only)** should be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- (ix) Whether penalty should be imposed on Aztec Fluids & Machinery Pvt. Ltd. under Section 112(a) of the Customs Act, 1962;
- (x) Whether penalty should be imposed on Aztec Fluids & Machinery Pvt. Ltd. under Section 114A of the Customs Act, 1962;
- (xi) Whether penalty should be imposed on Aztec Fluids & Machinery Pvt. Ltd. under Section 114AA of the Customs Act, 1962;
- (xii) Whether the voluntary deposit of Rs. 50 lakhs made vide TR-6 Challan No. 1846 dtd. 17/03/2020 and TR6 Challan No. 01 dtd. 20/04/2020 should be appropriated against total duty liability;
- (xiii) Whether penalty should be imposed on Sh. Pulin Vaidhya, Managing Director, Aztec Fluids & Machinery Pvt. Ltd., under Section 112 and 114AA of the Customs Act, 1962;

(xiv) Whether penalty should be imposed on CNG Clearing and Forwarding Agents Pvt. Ltd., under Section 112 of the Customs Act, 1962.

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

4.8 **Whether the items declared as 'Inkjet Printer...' as detailed in Annexure B - Worksheet 1-4 CIJ Printer appended to the subject notice, imported and classified by Aztec Fluids & Machinery Pvt. Ltd. under CTI 84433250 should be rejected and whether the same should be reclassified under CTI 84433910.**

4.8.1 I find that the main issue involved here is the classification of goods "Continuous Ink Jet (CIJ) Printers" which were declared in the import documents as "Inkjet printers" by the importer and classified under CTI 84433250. The department has contended that CIJ Printers are specialized standalone printing machines which are capable of functioning on their own without being connected to a computer or any other automatic data processing machine and are therefore, appropriately classifiable under CTI 84433910. To understand the classification, I go through the tariff classification scheme, chapter notes of the Chapter 84 and the relevant explanatory notes. The same are reproduced hereunder:

8443 31 00	--	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
8443 32	--	Other, capable of connecting to an automatic data processing machine or to a network
8443 32 10	---	Line printer
8443 32 20	---	Dot matrix printer
8443 32 30	---	Letter quality daisy wheel printer
8443 32 40	---	Laser jet printer
8443 32 50	---	Ink jet printer
8443 32 60	---	Facsimile machine
8443 32 90	---	Other
8443 39	--	Other
8443 39 10	---	Ink-jet printing machine
8443 39 20	---	Electrostatic photocopying apparatus operated by - reproducing the original image directly onto the copy (direct process)
8443 39 30	---	Electrostatic photocopying apparatus operated by - reproducing the original image via and intermediate onto the copy (indirect process)
8443 39 40	---	Other photocopying apparatus incorporating an - optical system
8443 39 50	---	Other photocopying apparatus of contact type

4.8.2 One of the contentions of the importer with regard to classification of the printers in question under CTI 84433250 is on the basis that the impugned printers have capability of being connected to an Automatic Data Processing Machines (ADPM). To understand and to get clarity on the 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.

4.8.3 Going by the Chapter Notes of Chapter 84, it is clear how the different types of systems/ units/ input-output devices/ equipment/ conjunctive machines with specific functions but incorporating with ADPM, are to be treated in the scheme of classification in this chapter.

4.8.4 I find that the importer has contended that the goods in question qualify in the CTI 84433250 on the grounds that heading at six-digit level covers “printers capable of connecting to an automatic data processing machine or to a network”. They have also referred the General Rules for Interpretation of the tariff in this regard.

4.8.5 On the other hand, the department has made out a case on the ground that the goods under import are not “Ink jet printer” but are actually specialised and advanced “Continuous Inkjet Printers” which are capable of functioning on their own without being connected to a computer or any other automatic data processing machine and are therefore, rightly classifiable under the specific heading for such machines under CTI 84433910.

4.8.6 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.”

4.8.7 I find that 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 Continuous Ink Jet (CIJ) Printers in the subject import 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 functioning. It is a printing machine with inbuilt processing mechanism for its functioning. Just because it can be connected to an ADPM does not qualify it to be classified in CTI 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 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.

4.8.8 I find force in the department's argument that various printers which are also known as output units of the automatic data processors such as line printer, dot matrix printer, letter quality daisy wheel printer, graphic printer, plotter, laser jet printer, inkjet printer are covered under the CTH 844332. Most of these printing devices are generally used in offices or at home and are known as printers in general trade parlance. These output units of the automatic data processing machines are classifiable under CTH 844332 as "*Other, capable of connecting to an automatic data processing machine or to a network*", whereas, Continuous Inkjet (CIJ) Printers which have been imported possess an inbuilt automatic data processor and can work independently and are therefore, classifiable under CTI 84433910. I find that the department in support of its argument has presented a cogent evidence in the form of Mahazar dated 08.01.2021, video recording the working of LT710 model of CIJ Printer drawn at the premises of M/s Divine Beverages, which showed that Continuous Ink Jet Printer is a standalone device having display and keyboard and that input is being given in the machine itself and the machine is not connected to any computer/ADPM or PLC (Programmable Logic Controller) for its functioning. Further, the description is mentioned as "inkjet coding machine" on the machine.

4.8.9 I find that even Sh. Mouriya Bharathi, Supervisor at Divine Beverages, whose role and responsibilities at Divine Beverages was interalia, handling the operations of CIJ printer, in his voluntary statement dated 08.01.2021, had confirmed that Continuous Ink Jet printer is a standalone device having display and keyboard which they use at Divine Beverages to print Batch No., Manufacturing date and MRP on water cans/bottles of various sizes. He further confirmed that it has a processor of its own having different configurations of different functions and the same also can be changed as per the requirements.

4.8.10 I find that even Shri Pulin Vaidhya, Managing Director of Aztec Machinery & Fluids Pvt. Ltd., in his voluntary statement dated 20/02/2020, admitted that the Continuous Inkjet Printers imported by them can function without the use of ADP machine and the input can be taken internally from the printer itself; and that after going through the tariff and Circular, the product is rightly classifiable under 844339 as "other devices".

4.8.11 I find that the CTI 84433910 as "Inkjet Printing machine" is more specific heading in terms of the characteristics and specifications of the Continuous Ink Jet printers under import. Therefore, in terms of the Rule 3(a) of General Rules of Interpretations of 1st Schedule to Customs Tariff Act, 1975, specific heading i.e. CTI 84433910 should be preferred over general heading i.e. CTI 84433250, as "Inkjet Printing Machine" falls under a specific

heading 84433910. Further, I find that even by application of Test of Common Trade Parlance; Primary Function i.e. Essential Character of the product; and Rule 3(c) of General Rules of Interpretation, the impugned goods are rightly classifiable under CTI 84433910.

4.8.12 I find that from the information collected from the website of the foreign supplier and also website of the importer / brochure submitted by the importer, it is seen that the importer has given different description of the imported goods in the invoices and bills of entry. The importer had described these products on their website/brochure as "Inkjet print coding machine" or "CIJ Printer" while the supplier Leadtech Zhuhai Electronics Co. Ltd., China had mentioned them as "CIJ Printer" on their website. Even, the importer has always described their products as "CIJ Printers" in the local sales invoice while selling to the customers. This suggests that the imported Continuous Ink Jet printers are rightly classifiable under CTI 84433910. However, the importer while filing the Bill of Entry, has wrongly indicated the description as "Inkjet Printer" to claim classification under CTI 84433250. I find that the technical specifications taken from the website/ brochure support classification of the goods in question in category of specialised printing machine. Hence, the imported goods are to be treated as "Inkjet Printing Machine", and the appropriate classification for such machines with specific function should be under CTI 84433910, which is for Inkjet Printing Machines.

4.8.13 Here in this case, it is evident that the Continuous Inkjet (CIJ) Printers under import is used for product marking and coding. They perform a specific function of industrial printing and these printers are used for marking on industrial products viz. aluminium profiles, mineral water bottles, cool drinks, wires, cables etc. The said printing machine can be operated from the machine itself as it has inbuilt devices such as a display monitor, key board, etc. and it can perform the functions of various printing operations from the display monitor itself. Input is fed through the keyboard and screen built in the machine and the same is printed on the packaging like plastic bottles, etc. Thus, it is clear that the Continuous Inkjet (CIJ) Printer can function on its own. It is not required to be connected to a computer or any other automatic data processing machine. It has its own processor and input is fed through the keyboard console on the machine. It has an inbuilt processing system and its functioning suggest that it is appropriately classifiable under Tariff Head 84433910.

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

- CTSH 844332 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. dated 01.07.2008, which emphasizes functional independence as the key criterion.

4.8.15 I find that the one important aspect which led to confusion regarding classification for the different types of Printers V/s Printing Machine is that if such articles are connectable or capable to be connected with an ADPM with or without use of 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, USB, RS485 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, the composite machines having

printers, scanners, photo copier features these days all come with blue tooth / USB / Wi-Fi connectivity feature and can allow remote connectivity or online data transfer between the ADPM and the Printer/ scanner/ photocopier. Nevertheless, in case data cable / USB slot is removed from ADPM or from the Printer/ scanner/ photocopier, the absence of connectability of these machines is 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 / USB. 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 purpose of data transfer connected, as they themselves can have alternative data processing unit (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 Printers (84433250) or Printing Machine (84433910) would become redundant.

4.8.16 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 which are specially designed and self-sufficient printing machines 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 or might be having their inbuilt limited data processing capabilities, which function as software support or having input-output device for the machine.

4.8.17 Now coming to the submissions of importer vide their defence submissions dated 27.09.2025, I note that in their submission the importer has stated that the issue regarding classification of inkjet printers such as LT1000S+ and LT710, has already been decided by the Hon'ble CESTAT, Ahmedabad in their own case; that the Hon'ble CESTAT, Ahmedabad vide its Final Order No. A/12400-12421/2023 dtd. 02.11.2023 came to a conclusion that these models of printers were correctly classifiable under the category of inkjet printers under CTI 84433250 and were subject to nil rate of duty. I note that the importer has stated that the Chartered Engineer while analyzing inkjet printers like LT1000S came to a conclusion that these devices are fed with data from outside source, and that this point is also taken into consideration by the Hon'ble CESTAT, Ahmedabad in its final order. Further, the importer has also referred to the decision of the Hon'ble CESTAT, Chennai in the matter of Monotech Systems Ltd. to argue that the impugned imported goods are rightly classifiable under CTI 84433250.

4.8.17.1 In this regard, I find that Hon'ble CESTAT, Principal Bench, New Delhi vide its Final Order No. 50750-50751/2025 dated 21.05.2025 in the matter of Kajaria Ceramics Ltd. Vs Commissioner of Customs (I & G), New Customs House, New Delhi while deciding a similar matter regarding classification of Ink Jet Printers has upheld their classification under CTI 84433910. In the said Order, the Hon'ble Tribunal has taken note of the fact the subject printers are capable of executing printing operations without the necessity of an external ADP machine. The Hon'ble Tribunal observed that the critical determinant is whether the machine requires an external device for its essential operation, which in the said case, it did not. Applying the Rule 3(a) and 3(c) of the General Rules of Interpretation, the Hon'ble Tribunal held that the impugned printers covered under the said matter are rightly classifiable under CTI 84433910. It is pertinent to mention here that in the above Order, the Hon'ble Tribunal, New Delhi has discussed both the aforementioned decisions of Hon'ble CESTAT, Ahmedabad in the matter of the Aztec Fluids & Machinery Pvt. Ltd., Ahmedabad and of Hon'ble CESTAT, Chennai in the matter of Monotech Systems Ltd.

4.8.17.2 As observed in the foregoing paras, I find that in the instant case also as evident from the Mahazar dated 08.01.2021; Voluntary statement dated 08.01.2021 of Sh. Mouriya Bharathi, Supervisor at Divine Beverages; and also, admission in the voluntary statement dated 20/02/2020 by Shri Pulin Vaidhya, Managing Director of Aztec Machinery & Fluids Pvt. Ltd., the impugned Continuous Ink Jet Printer imported by the importer is a standalone device having display and keyboard and is capable of functioning on its own without it being connected to any computer/ADPM or PLC (Programmable Logic Controller) for its functioning. Therefore, in terms of CBIC Circular No. 11/2008-Cus. dated 01.07.2008 and by applying the Rule 3(a) and 3(c) of the General Rules of Interpretation, the impugned printers are rightly classifiable under CTI 84433910. In view of the above, I find that findings of Hon'ble CESTAT, Principal Bench, New Delhi in the matter of Kajaria Ceramics Ltd. are applicable in the instant case. Therefore, the reliance by the importer on the decision of Hon'ble CESTAT, Ahmedabad in the matter of the Aztec Fluids & Machinery Pvt. Ltd., Ahmedabad and of Hon'ble CESTAT, Chennai in the matter of Monotech Systems Ltd., do not support their case and accordingly, I reject the same.

4.8.18 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."

4.8.18.1 Here from the above, it is evident beyond doubt that the impugned Continuous Ink Jet (CIJ) Printers is a advanced Printing Machine with inbuilt processor and control system which takes care of all the functional and operational output of the machine. The predominant function of the Continuous Ink Jet (CIJ) Printers is for product marking and coding and these are not feature job works which are usually handled in routine domestic and office environments. As rightly brought out in the investigation these are industrial commercial activities and are being handled by advanced and specialised machine with features akin to Printing machines for such functions. In normal printers classifiable under CTH 84433250, the print command are 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 is 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 Continuous Ink Jet (CIJ) Printers of various models are all comprised of their own processing and control mechanism and the machine is primary and not peripheral. From the said understanding it is evident that the Continuous Ink Jet (CIJ) Printers 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 computer, are performing a specific function and are qualified to be classified in the headings appropriate to their respective functions or, failing that, in residual headings. Hence, the appropriate heading for the printing machines, i.e. Continuous Ink Jet (CIJ) Printers under which it is liable to be classified is CTI 84433910.

4.8.19 The Continuous Ink Jet (CIJ) Printers are not “Ink jet printer” but are actually very specialized and advanced “Inkjet Printing machine” which are liable to be classified under the specific heading for such machines under CTI 84433910. Hence, the impugned goods are to be treated as “Inkjet Printing Machine”, and the appropriate classification for such specific machine with specific function should be under CTH 84433910 which is for Inkjet Printing Machines.

4.8.20 In view of above, I hold that the classification under CTI 84433250 of the items declared as ‘Inkjet Printer...’ as detailed in Annexure B - Worksheet 1-4 CIJ Printer appended to the subject notice, imported by Aztec Fluids & Machinery Pvt. Ltd., should be rejected and the same should be reclassified under CTI 84433910.

4.9 Whether the items declared as ‘Parts / Spare Parts of CIJ Printer / Parts of CIJ Printer / Spare Parts of Inkjet Printer / Printing Machinery’ as detailed in Annexure B - Worksheet 1-3 & 5 Parts CIJ appended to the subject notice, imported and classified by Aztec Fluids & Machinery Pvt. Ltd. under CTI 84433290 / 84439951 / 84439959 / 84718000 should be rejected and whether the same should be reclassified under CTI 84439960.

4.9.1 I find that the importer, Aztec Fluids & Machinery Pvt. Ltd. has imported various parts and accessories of CIJ Printers such as printer round head, sensor, frame, cabinet and fluid, LCD Panel, mould, filter, valve, spare parts etc. and had declared them in import documents as ‘Parts and Accessories of Printing Machinery’. I observe that importer has not adopted any consistent CTI classification for these goods in bills of entry and had declared these goods under CTI 84718000, 84433290, 84439951 & 84439959 vide various bills of entry as detailed in Annexure-B to the SCN. However, the SCN alleges that the subject goods are rightly classifiable under tariff item 84439960.

4.9.2 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>
	---	<i>Parts and accessories of goods of sub-heading 8443 31, 8443 32:</i>
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>
8443 99 59	----	<i>Other</i>
8443 99 60	---	<i>Parts and accessories of goods of sub-heading 8443 39</i>
8443 99 90	---	<i>Other</i>

4.9.3 On going through the above tariff headings, I note that parts & accessories of goods of sub-heading 8443 39 are classifiable under CTI 84439960. The importer in his submission has argued that the subject parts and accessories are rightly classified under their respective CTI as the principal goods (printers) in which these parts and accessories are used are classifiable under CTI 84433250. In this regard, in the foregoing sub-paras of para 4.8, I have already held in my findings in respect of Continuous Ink Jet (CIJ) Printers that the same are rightly

classifiable under CTI 84433910. Therefore, from plain reading of the HSN, the parts and accessories of these Continuous Ink Jet (CIJ) Printers are rightly classifiable under 84439960.

4.9.4 Further, as far as the classification of parts/accessories are concerned, HSN explanatory notes to Chapter XVI mentions that in general, parts which are suitable for use solely or principally with particular machines or apparatus or with a group of machines or apparatus falling in the same heading, are classified in the same heading as those machines or apparatus subject to the exclusions mentioned in the HSN. Since the Continuous Ink Jet (CIJ) Printers imported by the importer are classifiable under CTH 8443, its parts and accessories are also classifiable under CTH 8443.

4.9.5 In view of the above, I hold that the classification under CTI 84433290 / 84439951 / 84439959 / 84718000 of the items declared as 'Parts / Spare Parts of CIJ Printer / Parts of CIJ Printer / Spare Parts of Inkjet Printer / Printing Machinery' as detailed in Annexure B - Worksheet 1-3 & 5 Parts CIJ appended to the subject notice, imported by Aztec Fluids & Machinery Pvt. Ltd., should be rejected and the same should be reclassified under CTI 84439960.

4.10 Whether the items declared as 'Laser Printer' as detailed in Annexure B - Worksheet 1-2 Laser Marking Machines appended to the subject notice, imported and classified by Aztec Fluids & Machinery Pvt. Ltd. under CTI 84433240 should be rejected and whether the same should be reclassified under CTI 84433990.

4.10.1 I find that the importer, Aztec Fluids & Machinery Pvt. Ltd. had imported 'Laser Marking Machines' which were declared in the import documents as 'Laser Printers' and classified under CTI 84433240. However, the SCN alleges that the subject goods are rightly classifiable under tariff item 84433990.

4.10.2 I find that the issue involved in the classification of 'Laser Marking Machines' is identical to that of classification of 'CIJ Printers' in as much as the contention of the importer with regard to their classification under CTI 84433240 is on the same basis that the impugned printers have capability of being connected to an Automatic Data Processing Machines (ADPM), whereas, the department has contended that they are specialized standalone printing machines which are capable of functioning on their own without being connected to a computer or any other automatic data processing machine and are therefore, appropriately classifiable under CTI 84433990.

4.10.3 The importer has argued that when the Hon'ble Tribunal in the case of Monotech Systems and their own case has already held the continuous inkjet printers being capable of connecting to a computer are classifiable under CTH 84433250, then similar machines using laser technology and being capable of connecting to an automatic data processing machine are classifiable under CTI 84433240.

4.10.4 I find that the characteristics of Laser Marking machine are similar to that of inkjet printing machine or CIJ Printer except that it works on the technology of laser rather than inkjet. These Laser Marking machines are also used for the same purpose of coding and marking. These machines are also standalone huge size machines that are capable of functioning on their own and accordingly, in terms of Board Circular No. 11/2008-Customs dated 01.07.2008, they are rightly classifiable under CTI 84433240. Further, in para 4.8.17.2 above, I have already held that the reliance by the importer on the decision of Hon'ble CESTAT, Ahmedabad in the matter of the Aztec Fluids & Machinery Pvt. Ltd., Ahmedabad and of Hon'ble CESTAT, Chennai in the matter of Monotech Systems Ltd., do not support their case and have accordingly, rejected the same.

4.10.5 I find that these Laser Marking Machines cannot function as desktop printer. They have their own processor and are not required to be connected to an automatic data processing machine for inputs. Hence, as per Rule 3(a) of GIR (specific over general) the sub-heading 84433990 is more specific in terms of the characteristics and specifications as the imported laser marking machines are not required to be connected to automatic data processing machines.

4.10.6 Further, in trade parlance the term laser printer is referred to as desktop printers and not to coding and marking machines. Hence, these laser-marking machines are not classifiable under CTI 84433240 as Laser Printer and are rather correctly classifiable under CTI 84433990.

4.10.7 Further, even by application of Rule 3(c) of the General Rules for the Interpretation of the First Schedule of the Customs Tariff Act, 1975, the goods shall be classified under the heading which occurs last in numerical order among those which equally merit consideration, and the subject Laser Marking Machines will again be classifiable under CTI 84433990 only.

4.10.8 In view of the above, I hold that the classification under CTI 84433240 of the item 'Laser Marking Machines' declared as 'Laser Printer' as detailed in Annexure B- Worksheet 1-2 Laser Marking Machines appended to the subject notice, imported by Aztec Fluids & Machinery Pvt. Ltd., should be rejected and the same should be reclassified under CTI 84433990.

4.11 Whether the general exemption availed by Aztec Fluids & Machinery Pvt. Ltd. vide Notification No. 24/2005 dated 01/03/2005 (Sl. No. 2E) in respect of bills of entry for period from 06/09/16 to 15/02/2020 as detailed in Annexure B - Worksheet 1-4 CIJ Printer appended to the subject notice should be denied and should be re-assessed to merit rate.

4.11.1 I note that the importer, Aztec Fluids & Machinery Pvt. Ltd. had claimed duty exemption benefit under Sr. No. 2E of Notification No. 24/2005-Customs dated 01.03.2005, on import of Continuous Ink Jet (CIJ) Printers. The description of goods and tariff heading given for above S. No. 2E in the notification is as follows:

Notification No. & S. No.	Tariff Heading Specified in Column 2	Description of Goods as Specified in Column 3
Notification No. 24/2005, S. No. 2E	8443 32 50	All Goods

4.11.2 I find that the above notification Sr. No. exempts all goods falling within the CTI 84433250 from the whole of the duty of customs. Hence, in order to avail this notification benefit, a product must fall within the CTI 84433250, subject to any other conditions as specified in the notification.

4.11.3 In this regard, in the foregoing sub-paras of para 4.8, I have already held in my findings in respect of Continuous Ink Jet (CIJ) Printers that the same are rightly classifiable under CTI 84433910. Therefore, the benefit of duty exemption under Sr. No. 2E of Notification No. 24/2005-Customs dated 01.03.2005, is not available to Continuous Ink Jet (CIJ) Printers which are classifiable under CTI 84433910. It is a settled position that a statute or notification must be interpreted and construed strictly as per the wording. There is no room of any addition or modification therein.

4.11.4 In view of the above, I hold that the general exemption availed by Aztec Fluids & Machinery Pvt. Ltd. vide Notification No. 24/2005 dated 01/03/2005 (Sl. No. 2E) in respect of bills of entry for period from 06/09/16 to 15/02/2020 as detailed in Annexure B - Worksheet 1-4

CIJ Printer appended to the subject notice, should be denied and the same should be re-assessed to merit rate.

4.12 Whether the general exemption availed by Aztec Fluids & Machinery Pvt. Ltd. vide Notification No. 24/2005 dated 01/03/2005 (Sl. No. 8) and Notification No. 50/2017, Sl. No. 459 in respect of bills of entry for period from 23/02/2016 to 21/09/2017 as detailed in Annexure B - Worksheet 2 Parts CIJ appended to the subject notice should be denied and should be re-assessed to merit rate.

4.12.1 I note that the importer, Aztec Fluids & Machinery Pvt. Ltd. had claimed duty exemption benefit under Sr. No. 8 of Notification No. 24/2005-Customs dated 01.03.2005 and Sr. No. 459 of Notification No. 50/2017 dated 30.06.2017, on import of parts and accessories of Continuous Ink Jet (CIJ) Printers. The description of goods and tariff heading given for above S. Nos. in the notifications, is as follows:

Notification No. & S. No.	Tariff Heading Specified in Column 2	Description of Goods as Specified in Column 3
Notification No. 24/2005, S. No. 8	8471	All Goods
Notification No. 50/2017 S. No. 459	8443	Parts for manufacture of printers falling under sub heading 8443 32 except 8443 99 51, 8443 99 52, 8443 99 53

4.12.2 I find that the above notifications Sr. Nos. exempt the goods of the description specified in column (3) of the Table and falling within the Chapter, heading, sub-heading or tariff item as are specified in the corresponding entry in column (2). Hence, in order to avail these notification benefit a product must first match with the description specified in Column (3) read with the relevant list and must fall within the CTH heading mentioned in Column (2) subject to any other conditions as specified in the notification.

4.12.3 In this regard, in the foregoing sub-paras of para 4.9, I have already held in my findings in respect of parts and accessories of Continuous Ink Jet (CIJ) Printers that the same are rightly classifiable under CTI 84439960. Therefore, the benefit of duty exemption under Sr. No. 8 of Notification No. 24/2005-Customs dated 01.03.2005 and Sr. No. 459 of Notification No. 50/2017 dated 30.06.2017, is not available to parts and accessories of Continuous Ink Jet (CIJ) Printers which are classifiable under CTI 84439960. It is a settled position that a statute or notification must be interpreted and construed strictly as per the wording. There is no room of any addition or modification therein.

4.12.4 In view of the above, I hold that the general exemption availed by Aztec Fluids & Machinery Pvt. Ltd. vide Notification No. 24/2005 dated 01/03/2005 (Sl. No. 8) and Notification No. 50/2017 dated 30.06.2017 (Sl. No. 459) in respect of bills of entry for period from 23/02/2016 to 21/09/2017 as detailed in Annexure B - Worksheet 2 Parts CIJ appended to the subject notice should be denied and the same should be re-assessed to merit rate.

4.13 Whether the general exemption availed by Aztec Fluids & Machinery Pvt. Ltd. vide Notification No. 24/2005 dated 01/03/2005 (Sl. No. 2D) in respect of bills of entry from 03/04/2018 to 07/09/2020 as detailed in Annexure B - Worksheet 1-2 Laser Marking Machines appended to the subject notice should be denied and should be re-assessed to merit rate.

4.13.1 I note that the importer, Aztec Fluids & Machinery Pvt. Ltd. had claimed duty exemption benefit under Sr. No. 2D of Notification No. 24/2005-Customs dated 01.03.2005, on import of Laser Marking Machines. The description of goods and tariff heading given for above S. No. 2D in the notification is as follows:

Notification No. & S. No.	Tariff Heading Specified in Column 2	Description of Goods as Specified in Column 3
Notification No. 24/2005, S. No. 2D	8443 32 40	All Goods

4.13.2 I find that the above notification Sr. No. exempts all goods falling within the CTI 84433240 from the whole of the duty of customs. Hence, in order to avail this notification benefit, a product must fall within the CTI 84433240, subject to any other conditions as specified in the notification.

4.13.3 In this regard, in the foregoing sub-paras of para 4.10, I have already held in my findings in respect of Laser Marking Machines that the same are rightly classifiable under CTI 84433990. Therefore, the benefit of duty exemption under Sr. No. 2D of Notification No. 24/2005-Customs dated 01.03.2005, is not available to Laser Marking Machines which are classifiable under CTI 84433990. It is a settled position that a statute or notification must be interpreted and construed strictly as per the wording. There is no room of any addition or modification therein.

4.13.4 In view of the above, I hold that the general exemption availed by Aztec Fluids & Machinery Pvt. Ltd. vide Notification No. 24/2005 dated 01/03/2005 (Sl. No. 2D) in respect of bills of entry from 03/04/2018 to 07/09/2020 as detailed in Annexure B - Worksheet 1-2 Laser Marking Machines appended to the subject notice should be denied and the same should be re-assessed to merit rate.

4.14 Whether total differential duty amounting to Rs. 2,60,35,547/- (Rupees Two Crore Sixty Lakh Thirty Five Thousand Five Hundred Forty Seven Only) in respect of the goods imported and declared as 'Inkjet Printer...' as detailed in the Annexure B -Worksheet 1-4 CIJ Priuter, in respect of the goods imported and declared as 'Parts / Spare Parts of CIJ Printer / Parts of CIJ Printer / Spare Parts of Inkjet Printer / Printing Machinery' as detailed in the Annexure B - Worksheet 1-3 & 5 Parts CIJ and in respect of the goods imported and declared as 'Laser Printer' as detailed in the Annexure B - Worksheet 1-2 Laser Marking Machine appended to the subject notice should be demanded from Aztec Fluids & Machinery Pvt. Ltd., in terms of Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the ibid Act.

4.14.1 I have already held in foregoing paras that the various goods imported by the Noticee as mentioned in Annexure-B to the subject SCN, were mis-classified and had availed ineligible Notification benefit. Thus, after having determined the correct classification of the imported goods and non-admissibility of the duty exemption notification benefit thereon, it is imperative to determine whether the demand of differential Customs duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. The relevant legal provision is as under:

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

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

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

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has

been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

4.14.2 The importer has contended that they had disclosed all the particulars in bills of entry, thus, there was no suppression and mis-declaration on their part. The importer has further argued that they adopted the classification / entries of the relevant notifications under a bona fide belief that their goods are covered under the said HSN Code / entry; that extended period of limitation cannot be invoked as the issue involved is of classification of goods / claim of notification entry, which is purely an issue of interpretation.

4.14.3 In terms of Section 46(4) of the Customs Act, 1962, the importer is required to make a true and correct declaration in the Bill of Entry submitted for assessment of Customs duty. However, in the instant case, I find that the importer has mis-declared the description of the imported goods as "Inkjet Printers", "Parts and Accessories of Printing Machinery" and "Laser Printer" instead of correct description as "Continuous Ink Jet (CIJ) Printers", "Parts of CIJ Printers" and "Laser Marking Machine", respectively, with an intention to mis-classify the goods under incorrect CTH and claim ineligible exemption Notification benefit. Thus, the Noticee has deliberately evaded payment of applicable duty on the impugned imported goods. By resorting to this deliberate and wilful evasion of duty, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, I find that this wilful and deliberate act was done with the clear intention to evade payment of due duty. As the Noticee has mis-classified the impugned goods under incorrect CTI / availed ineligible Notification benefit and evaded the payment of the applicable duty thereon on the date of importation, the Noticee can only come clean of its liability by way of payment of duty not paid.

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

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

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

4.14.7 In the instance case, by declaring the goods imported under wrong CTI and availing ineligible Notification benefit, the importer had an intent to evade duty in order to pay customs duty at lower rate and thereby to get financial benefits. The importer suppressed the facts by misclassifying the impugned goods and claiming undue duty benefits under the aforesaid notifications leading to short payment of customs duties. As there is wilful mis-statement and suppression of facts, extended period of 5 years can be invoked in the present case for demand of duty under Section 28(4) of the Customs Act, 1962.

4.14.8 From the above, it is evident that at the time of filing of the Bills of Entry, the Noticee had wilfully mis-classified the imported goods, suppressed their correct CTI and fraudulently claimed the benefit of ineligible exemption Notification with a fraudulent intention to defraud government by paying lesser duty. As the Noticee has paid the duty at a lower rate than what was legitimately payable, the differential duty so not paid is liable to be recovered from them.

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

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

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

4.14.11 Accordingly, the differential duty resulting from re-classification of the imported goods under correct CTI and denial of wrongly claimed exemption notification benefit as per the subject Show Cause Notice, is recoverable from Aztec Fluid and Machinery Pvt. Ltd. under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

4.14.12 Therefore, I hold that the total differential duty amounting to Rs. 2,60,35,547/- (Rupees Two Crore Sixty Lakh Thirty Five Thousand Five Hundred Forty Seven Only) in respect of the goods imported and declared as 'Inkjet Printer...' as detailed in the Annexure B -Worksheet 1-4 CIJ Printer, in respect of the goods imported and declared as 'Parts / Spare Parts of CIJ Printer / Parts of CIJ Printer / Spare Parts of Inkjet Printer / Printing Machinery' as detailed in the Annexure B - Worksheet 1-3 & 5 Parts CIJ and in respect of the goods imported and declared as 'Laser Printer' as detailed in the Annexure B - Worksheet 1-2 Laser Marking Machine appended to the subject notice, should be demanded from Aztec Fluids & Machinery Pvt. Ltd., in terms of Section 28(4) of the Customs Act, 1962.

4.14.13 Further, as per Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions, it is evident that regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of *Pratibha Processors Vs UOI [1996 (88) ELT 12 (SC)]*. In *Directorate of Revenue Intelligence, Mumbai Vs. Valecha Engineering Limited*, Hon'ble Bombay High Court observed that, in view of Section 28AA, interest is automatically payable on failure by the assessee to pay duty as assessed within the time as set out therein.

4.14.14 I have already held in the above paras that the differential Customs duty amounting to Rs. 2,60,35,547/- (Rupees Two Crore Sixty Lakh Thirty Five Thousand Five Hundred Forty Seven Only) should be demanded and recovered from the Noticee under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, I hold that in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential Customs duty should also be recovered from the Noticee.

4.14.15 In view of the above discussion, I hold that in addition to the duty short paid, interest on the aforementioned delayed payment of Custom duty should be recovered from the Importer, Aztec Fluid and Machinery Pvt. Ltd., under Section 28AA of the Customs Act, 1962.

4.15 **Whether the impugned goods which were wrongly classified or in respect of which exemption notification has been wrongly availed vide different notifications, but not available for seizure, as detailed in Worksheet 1-4 CIJ Printer, Worksheet 1-3 & 5 Parts CIJ and Worksheet 1-2 Laser Marking Machines appended to the subject notice valued at Rs. 27,49,31,919/- (Rupees Twenty Seven Crore Forty Nine Lakh Thirty One Thousand Nine Hundred Nineteen Only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.**

4.15.1 I note that the SCN proposes confiscation of goods imported vide Bills of Entry mentioned in Annexure-B to the subject SCN, having total assessable value of Rs. 27,49,31,919/- (Rupees Twenty Seven Crore Forty Nine Lakh Thirty One Thousand Nine Hundred Nineteen Only) under the provisions of Section 111(m) of the Customs Act, 1962.

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

- (m) *Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77, in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of Section 54;*

4.15.3 I find that the description of the CIJ Printers, Parts of CIJ Printers and Laser Marking Machines is different in the website of the importer/ in the brochure submitted by the importer as well as on the website of supplier, than the description given in the invoices and bills of entry. I find that there was a deliberate effort to mis-declare the goods in the Invoices, to facilitate their mis-declaration in the bills of entry. This deliberate effort by the importer to mis-declare the description of the goods in bills of entry is evident from the fact that when the importer had sold the same goods to other customers, they had adopted appropriate description. The importer was selling and exporting the same goods that they were importing from Leadtech Zhuhai Electronics Co. Pvt. Ltd., China. However, the description given in the sales invoice and export invoice of same goods is different from their import invoice.

4.15.4 I find that classification and exemption notification had not been decided on the basis of technical characteristics of the products or GRIs but with the sole intention to pay nil/ lower rate of duty. I find that even when Group DC of ICD Khodiyar issued a speaking order dtd. 08/11/2019 and changed the classification to CTI 84433910, the importer continued to mis-declare these goods as "Inkjet Printers" under CTI 84433250 and paid BCD @NIL on subsequent bills of entry filed at other ports like Mumbai and Ahmedabad. Further, in respect of clearance of parts and accessories of CIJ Printers, there was no consistency in their classification and the importer chose to classify them wrongly whenever it was possible/feasible to misclassify them.

4.15.5 I have already held in the foregoing paras that the various goods imported by the Noticee as mentioned in Annexure-B to the subject SCN, were mis-classified and the importer had availed ineligible Notification benefit thereon. The Noticee was very well aware of the actual nature of the imported goods and the applicable correct CTI and ineligibility of claimed Notification benefit. As discussed in the foregoing paras, it is evident that the Noticee deliberately suppressed the correct CTI and wilfully mis-classified the imported goods and claimed ineligible Notification benefit, resulting in short levy of duty. This deliberate suppression of facts and wilful mis-classification resorted by the Noticee, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, I find that the acts of omission and commission on part of the Noticee have rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

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

4.15.7 I find that Section 111(m) provides for confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry is made under the Customs Act, 1962. I have to restrict myself only to examine the words "*in respect of any other particular with the entry made under this act*" would also cover case of mis-classification and claim of ineligible Notification benefit. As this act of the importer has resulted in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(m) is justified and sustainable.

4.15.8 As per Section 46 of the Customs Act, 1962, the importer of any goods, while making entry on the Customs automated system to the Proper Officer, shall make and subscribe to a

declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed. He shall ensure the accuracy and completeness of the information given therein and the authenticity and validity of any document supporting it.

4.15.9 I find that the importer while filing the Bill of Entry for the clearance of the subject goods had subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a Bill of Entry, in the electronic form. Section 46 of the Act makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2011 (issued under Section 157 read with Section 46 of the Act), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the Service Centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

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

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

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

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

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

With effect from 29.03.2018, the term 'assessment' in sub-section (2) of Section 2 *ibid* means as follows:

(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-

- a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*
- b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;*

- c) *exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;*
- d) *the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;*
- e) *the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods,*
- f) *any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,*
and includes provisional assessment self-assessment, re-assessment and any assessment in which the duty assessed is nil;

4.15.11 From a plain reading of the above provisions related to assessment, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Customs Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the importer to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from 29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that Aztec Fluids & Machinery Pvt. Ltd. has deliberately failed to discharge this statutory responsibility cast upon them.

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

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

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

4.15.15 In view of the foregoing discussion, I hold that the impugned goods which were wrongly classified or in respect of which exemption notification has been wrongly availed vide different notifications, but not available for seizure, as detailed in Worksheet 1-4 CIJ Printer, Worksheet 1-3 & 5 Parts CIJ and Worksheet 1-2 Laser Marking Machines appended

to the subject notice valued at Rs. 27,49,31,919/- (Rupees Twenty Seven Crore Forty Nine Lakh Thirty One Thousand Nine Hundred Nineteen Only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.15.16 As the importer, through wilful mis-statement and suppression of facts, had misclassified the goods and claimed ineligible notification benefit while filing Bills of Entry with intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) is justified & sustainable in law. However, I find that the goods imported are not available for confiscation. But I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)] wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

4.15.16.1 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.).

4.15.16.2 I also find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

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

4.15.16.4 In view of above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the impugned goods become liable for confiscation. Hon'ble Bombay High Court in case of M/s Unimark reported in 2017(335) ELT (193) (Bom) held Redemption Fine (RF) imposable in case of liability of confiscation of goods

under provisions of Section 111(o). Thus, I also find that the goods are liable for confiscation under other sub-sections of Section 111 too, as the goods committing equal offense are to be treated equally. I opine that merely because the importer was not caught at the time of clearance of the imported goods, can't be given different treatment.

4.15.16.5 In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc. reported vide 2009 (248) ELT 122 (Bom)- upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case. I observe that the present case also merits imposition of Redemption Fine having held that the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, since the impugned goods are not prohibited goods, the said goods are required to be allowed for redemption by the owner on payment of fine in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

4.16 Whether penalty should be imposed on Aztec Fluids & Machinery Pvt. Ltd. under Section 112(a) of the Customs Act, 1962.

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

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

4.16.3 In view of the above, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on the importer, Aztec Fluids & Machinery Pvt. Ltd. under Section 112 of the Customs Act, 1962.

4.17 Whether penalty should be imposed on Aztec Fluids & Machinery Pvt. Ltd. under Section 114A of the Customs Act, 1962.

4.17.1 I find that as per Section 114A, imposition of penalty is mandatory once the elements for invocation of extended period is established. Hon'ble Supreme Court in *Grasim Industries Ltd.*

V. *Collector of Customs, Bombay* [(2002) 4 SCC 297=2002 (141) E.L.T.593 (S.C.)] has followed the same principle and observed:

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

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

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

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

4.17.2 As I have held above, that the extended period of limitation under Section 28(4) of the Customs Act, 1962 for the demand of duty is rightly invoked in the present case. Therefore, penalty under Section 114A is rightly proposed on the importer, Aztec Fluids & Machinery Pvt. Ltd., in the impugned SCN. Accordingly, Aztec Fluids & Machinery Pvt. Ltd. is liable for a penalty under Section 114A of the Customs Act, 1962.

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

4.18 Whether penalty should be imposed on Aztec Fluids & Machinery Pvt. Ltd. under Section 114AA of the Customs Act, 1962.

4.18.1 I find that the importer had mis-declared the impugned imported goods by mis-classifying the same by deliberately and knowingly giving inappropriate declaration of CTH, to claim lower rate of duty. In the Bills of Entry and invoices filed for clearance of impugned goods, the importer had deliberately mis-declared the description of the imported goods as "Inkjet Printers", "Parts and Accessories of Printing Machinery" and "Laser Printer" instead of correct description as "Continuous Ink Jet (CIJ) Printers", "Parts of CIJ Printers" and "Laser Marking Machine", respectively, with an intention to mis-classify the goods under incorrect CTH and claim ineligible exemption Notification benefit. Thus, I find that the importer had furnished documents such as Bills of Entry and its invoices, containing false or incorrect material particular with the purpose of clearance of the imported goods with lower duty rates. In the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. I find that the importer was actively and knowingly involved in evading Customs duty by resorting to suppression of the correct CTI and mis-classification of imported goods before Customs authorities which rendered the goods liable for confiscation under Section 111(m) of Customs Act, 1962. The importer cleared the mis-classified impugned imported goods by knowingly and intentionally resorting to use of false and incorrect declaration, statement and documents. In

view of the above facts, I find that Aztec Fluids & Machinery Pvt. Ltd., has deliberately and intentionally committed the contraventions as discussed supra covered under the ambit and scope of Section 114AA of the Customs Act, 1962 and accordingly, have rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

4.19 Whether the voluntary deposit of Rs. 50 lakhs made vide TR-6 Challan No. 1846 dtd. 17/03/2020 and TR6 Challan No. 01 dtd. 20/04/2020 should be appropriated against total duty liability.

4.19.1 I note that it is mentioned in the subject SCN that during the course of investigation, the importer, Aztec Fluids & Machinery Pvt. Ltd. had voluntarily deposited in the Government account, an amount of Rs. 50,00,000/- (Rupees Fifty Lakh Only) vide TR-6 Challan No. 1846 dtd. 17/03/2020 and TR6 Challan No. 01 dtd. 20/04/2020. In view of my upholding the demand of short paid duty from the importer, I hold that the aforesaid amount of Rs. 50,00,000/- should be appropriated towards recovery of the said short paid duty from the importer, after due verification of the Challans.

4.20 Whether penalty should be imposed on Sh. Pulin Vaidhya, Managing Director, Aztec Fluids & Machinery Pvt. Ltd., under Section 112 and 114AA of the Customs Act, 1962.

4.20.1 I find that Shri Pulin Vaidya was the Managing Director of Aztec Fluids & Machinery Pvt. Ltd., and had set up the entire business. He was the overall in charge of the company and had the technical knowledge of the imported machines and their parts and accessories. He was also the one who dealt with the supplier. He was the authorized signatory for Customs & GST purpose. He was the final authority with regard to classification of goods imported by the company. Therefore, I find that in the instant case Shri Pulin Vaidya was responsible for the mis-classification of the "Continuous Ink Jet (CIJ) Printers", "Parts of CIJ Printers" and "Laser Marking Machine", before the Custom authorities. This was corroborated by the CHA, Shri Pratik Shukla, who vide his statement dated 08/11/2020 had stated that Shri Pulin Vaidya decided on the classification and exemption notification based on other competitors in order to clear the goods at NIL rate of duty. The same was also accepted by Shri Pulin Vaidya vide his voluntary statement dtd. 15/12/2020.

4.20.2 I find that the description of goods in invoice and bill of entry was different from what was given in the importer's website and also from what was given in sales and export invoice. However, when questioned about it, Shri Pulin Vaidhya gave contradictory replies and tried to justify the same by giving untenable arguments. Shri Pulin Vaidhya also gave contradictory submissions with regard to the stand-alone functionality of the imported "Continuous Ink Jet (CIJ) Printers" and "Laser Marking Machine". Thus, Shri Pulin Vaidhya tried to mislead the investigation in order to perpetrate the offence and to keep evading BCD.

4.20.3 From the above, I find that while dealing with Customs clearance of the impugned goods, Shri Pulin Vaidhya was instrumental in determining the description and classification of the goods being imported. He was very well aware of the correct description and classification of the impugned goods, but still, he knowingly mis-declared and mis-classified the same before Customs authorities. I find that Shri Pulin Vaidhya, being a final authority with regard to classification of the said importer firm, was the conspirator of this whole fraud involving mis-declaration, mis-classification of goods and claiming ineligible exemption notification, to evade payment of correct duty.

4.20.4 Thus, I find that Shri Pulin Vaidhya was fully aware of correct classification of the imported goods and was also aware that their mis-classification and claim of ineligible notification benefit, would lead to evasion of the Customs duty. His wilful and deliberate acts

have rendered the impugned goods liable to confiscation under the provision of the Section 111(m) of the Customs Act, 1962. This wilful and deliberate mis-declaration and mis-classification of the imported goods by Shri Pulin Vaidhya with an intention to pay lesser customs duty, has rendered him liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

4.20.5 Further, as observed in the foregoing paras, in the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. Shri Pulin Vaidhya being final authority with regard to classification of the importer firm was well aware of its operation and was having control over its affairs. I find that Shri Pulin Vaidhya was actively and knowingly involved in evading Customs duty by resorting to mis-classification of imported goods and claiming ineligible exemption notification, before Customs authorities which rendered the goods liable for confiscation under Section 111(m) of Customs Act, 1962. Shri Pulin Vaidhya tried to mislead the investigation by giving contradictory statements. Shri Pulin Vaidhya cleared the mis-classified impugned imported goods by knowingly and intentionally resorting to use of false and incorrect declaration and documents. The aforesaid acts of omission and commission of Shri Pulin Vaidhya resulted in use of false and incorrect declaration and documents in the clearance of the impugned goods, hence, I find that he is also liable for penal action under Section 114AA, *ibid*.

4.21 Whether penalty should be imposed on CNG Clearing and Forwarding Agents Pvt. Ltd., under Section 112 of the Customs Act, 1962.

4.21.1 I have held in the foregoing paras that the impugned imported goods were mis-declared and mis-classified by the importer. The Customs clearance of the impugned imported goods covered under Bills of Entry as detailed in Annexure-B to the subject SCN, was undertaken by the Custom Broker (CB), CNG Clearing and Forwarding Agents Pvt. Ltd. I find that when the voluntary statement dated 08/11/2020 of Shri Pratik Shukla, Director, CNG Clearing and Forwarding Agents Pvt. Ltd., was shown to Shri Pulin Vaidya, he accepted that he alongwith CB i.e. Shri Pratik Shukla, had decided on the classification and exemption notification benefit. I find that Shri Pulin Vaidya alongwith the CB, Shri Pratik Shukla had decided on the classification and claiming of exemption notification benefit, not on the basis of technical characteristics of the products or GRIs but rather with the sole intention to pay duty @NIL rate.

4.21.2 I find that the CB, Shri Pratik Shukla, Director, CNG Clearing and Forwarding Agents Pvt. Ltd. was well aware of the nature of the imported good as he had stated in his voluntary statement dtd. 08/11/2020 that he had seen the brochure of the imported goods in the initial stage wherein goods were mentioned as "CIJ Printers" but still he kept declaring the same as "Inkjet Printers" & classifying the same under CTI 84433250 instead of correct CTI 84433910. In the aforesaid statement, Shri Pratik Shukla agreed that the imported machine merit correct and proper classification under CTI 84433910 and not in CTI 84433250.

4.21.3 I find that while undertaking the clearance of these goods, the Customs Broker was in possession of all the relevant import documents pertaining to these consignments and was aware of the goods being mis-declared and mis-classified. The Customs Broker had undertaken clearance of multiple consignments of the importer, Aztec Fluids & Machinery Pvt. Ltd. over a period of time and was thus, aware of this consistent mis-declaration and mis-classification being resorted to by the importer causing loss to Government Revenue.

4.21.4 As per the provisions of the Customs Brokers Licensing Regulations, 2018, it was obligatory on the part of the Customs Broker to advise their client to comply with the provisions of the Act, other allied Acts and the Rules and Regulations thereof, and in case of non-compliance, the Customs Broker shall bring the matter to the notice of the Deputy Commissioner

of Customs or Assistant Commissioner of Customs, as the case may be. But in the instant case, the Customs Broker, CNG Clearing and Forwarding Agents Pvt. Ltd. undertook clearance of multiple consignments of the importer which were mis-declared and mis-classified. The Customs Broker was well aware of this mis-declaration and mis-classification, but still failed to bring the same to the notice of the department.

4.21.5 Also, being a Customs Broker (CB), it was expected from them to possess sufficient knowledge of the classification of the goods so that they can guide their clients and ensure correct classification of imported goods. From the facts of the case, I find that the Customs Broker, CNG Clearing and Forwarding Agents Pvt. Ltd. failed to guide the importer to ensure correct description and classification, rather they aided the importer in resorting to this mis-declaration and mis-classification. Further, after evading the legitimately payable duty thereon, the Customs Broker handled and cleared the mis-declared and mis-classified offending goods.

4.21.6 From the above, I find that due to these deliberate acts, the Customs Broker, CNG Clearing and Forwarding Agents Pvt. Ltd., aided and abetted the importer to indulge in undervaluation and evasion of legitimate Customs duty. Therefore, I find that Customs Broker, CNG Clearing and Forwarding Agents Pvt. Ltd. had not discharged their obligation and responsibilities as envisaged under Customs Broker Licencing Regulations, 2013 (CBLR, 2013).

4.21.7 I find that the CB was having sufficient experience in their field and had handled clearance of multiple consignments. It was, therefore, expected from them to have exercised sufficient due diligence before undertaking clearance of the impugned goods. However, I find that in the instant case, they have undertaken clearance of the mis-declared and mis-classified goods of the importer without scrutinizing the veracity of the same. This raises serious question regarding their capability of performing their duties as Customs Broker. These acts and/or omissions on their part have rendered the impugned goods liable to confiscation under Section 111(m) of the Customs Act, 1962, thus making them liable for penalty under the provisions of Section 112 *ibid*.

4.21.8 In this regard, I note that in the case of *Noble Agency Vs. Commissioner of Customs, Mumbai* [2002(142)E.L.T. 84 (Tri.-Mumbai)], the Division Bench of the CEGAT, West Zonal Bench, Mumbai observed:

"12. The CHA occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations. Any deliberate contravention of the law has to be dealt with most seriously. "

The aforesaid observations of the CEGAT, West Zonal Bench, Mumbai was approved by Hon'ble Apex Court in the case of *Commissioner of Customs Vs. K.M. Ganatra & Co.* [2016 (332) E.L.T. 15 (S.C.)] and it was held that misconduct on behalf of CHA had to be viewed seriously.

4.21.9 The responsibility of the Customs Broker becomes all the more important and serious in the regime of self-assessment in Customs introduced since 2011. The Customs Broker is expected to advise his client to comply with the provisions of the Act and Rules and in case of

non-compliance by the importer, he should bring it to the notice of the Customs officer. The Customs Broker is also expected to exercise due diligence to ascertain the correctness of any information which he imparts to his client.

4.21.10 Therefore, I find that above discussed wilful and deliberate acts of omission and commission of Customs Broker, CNG Clearing and Forwarding Agents Pvt. Ltd., have rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Therefore, they are liable for imposition of penalty under Section 112 of the Customs Act, 1962.

4.21.11 In view of the above findings, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on Customs Broker, CNG Clearing and Forwarding Agents Pvt. Ltd. under Section 112 of the Customs Act, 1962.

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

ORDER

- (i) I reject the classification under CTI 84433250 of the items declared as '**Inkjet Printer...**' as detailed in **Annexure B - Worksheet 1-4 CIJ Printer** appended to the subject notice, imported by Aztec Fluids & Machinery Pvt. Ltd. and reclassify the same under CTI 84433910.
- (ii) I reject the classification under CTI 84433290 / 84439951 / 84439959 / 84718000 of the items declared as '**Parts / Spare Parts of CIJ Printer / Parts of CIJ Printer / Spare Parts of Inkjet Printer / Printing Machinery**' as detailed in **Annexure B - Worksheet 1-3 & 5 Parts CIJ** appended to the subject notice, imported by Aztec Fluids & Machinery Pvt. Ltd. and reclassify the same under CTI 84439960.
- (iii) I reject the classification under CTI 84433240 of the items declared as '**Laser Printer**' as detailed in **Annexure B - Worksheet 1-2 Laser Marking Machines** appended to the subject notice, imported by Aztec Fluids & Machinery Pvt. Ltd. and reclassify the same under CTI 84433990.
- (iv) I deny the general exemption availed by Aztec Fluids & Machinery Pvt. Ltd. vide Notification No. 24/2005 dated 01/03/2005 (Sl. No. 2E) in respect of bills of entry for period from 06/09/16 to 15/02/2020 as detailed in **Annexure B - Worksheet 1-4 CIJ Printer** appended to the subject notice and order to re-assess the said bills of entry to merit rate.
- (v) I deny the general exemption availed by Aztec Fluids & Machinery Pvt. Ltd. vide Notification No. 24/2005 dated 01/03/2005 (Sl. No. 8) and Notification No. 50/2017 dated 30.06.2017 (Sl. No. 459) in respect of bills of entry for period from 23/02/2016 to 21/09/2017 as detailed in **Annexure B - Worksheet 2 Parts CIJ** appended to the subject notice and order to re-assess the said bills of entry to merit rate.
- (vi) I deny the general exemption availed by Aztec Fluids & Machinery Pvt. Ltd. vide Notification No. 24/2005 dated 01/03/2005 (Sl. No. 2D) in respect of bills of entry from 03/04/2018 to 07/09/2020 as detailed in **Annexure B - Worksheet 1-2 Laser Marking Machines** appended to the subject notice and order to re-assess the said bills of entry to merit rate.
- (vii) I confirm the demand of total differential duty amounting to **Rs. 2,60,35,547/- (Rupees Two Crore Sixty Lakh Thirty Five Thousand Five Hundred Forty Seven Only)** in

respect of the goods imported and declared as 'Inkjet Printer...' as detailed in the **Annexure B -Worksheet 1-4 CIJ Printer**; in respect of the goods imported and declared as '**Parts / Spare Parts of CIJ Printer / Parts of CIJ Printer / Spare Parts of Inkjet Printer / Printing Machinery**' as detailed in the **Annexure B - Worksheet 1-3 & 5 Parts CIJ**; and in respect of the goods imported and declared as '**Laser Printer**' as detailed in the **Annexure B - Worksheet 1-2 Laser Marking Machine** appended to the subject notice and order to recover the same from Aztec Fluids & Machinery Pvt. Ltd. in terms of Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Act, *ibid*.

- (viii) I confiscate the impugned goods which were wrongly classified or in respect of which exemption notification had been wrongly availed vide different notifications, but not available for seizure, as detailed in **Worksheet 1-4 CIJ Printer, Worksheet 1-3 & 5 Parts CIJ and Worksheet 1-2 Laser Marking Machines** appended to the subject notice, valued at **Rs. 27,49,31,919/- (Rupees Twenty Seven Crore Forty Nine Lakh Thirty One Thousand Nine Hundred Nineteen Only)** under Section 111(m) of the Customs Act, 1962.

I also impose a redemption fine of **Rs. 1,35,00,000/- (Rupees One Crore Thirty Five Lakh Only)** on Aztec Fluids & Machinery Pvt. Ltd. in lieu of confiscation, under Section 125(1) of the Customs Act, 1962.

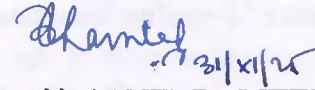
- (ix) I impose penalty equivalent to differential duty of **Rs. 2,60,35,547/- (Rupees Two Crore Sixty Lakh Thirty Five Thousand Five Hundred Forty Seven Only)** along with **applicable interest** under Section 28AA of the Customs Act, 1962, on Aztec Fluids & Machinery Pvt. Ltd. under Section 114A of the Customs Act, 1962.

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

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

- (xv) I impose penalty of **Rs. 50,00,000/- (Rupees Fifty Lakh Only)** on Aztec Fluids & Machinery Pvt. Ltd. under Section 114AA of the Customs Act, 1962.
- (xvi) I appropriate the voluntary deposit of Rs. 50 lakhs made by Aztec Fluids & Machinery Pvt. Ltd. vide TR-6 Challan No. 1846 dtd. 17/03/2020 and TR6 Challan No. 01 dtd. 20/04/2020, against total duty liability of Aztec Fluids & Machinery Pvt. Ltd.
- (xvii) I impose penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakh Only)** on Sh. Pulin Vaidhya, Managing Director, Aztec Fluids & Machinery Pvt. Ltd., under Section 112 of the Customs Act, 1962.
- (xviii) I impose penalty of **Rs. 10,00,000/- (Rupees Ten Lakh Only)** on Sh. Pulin Vaidhya, Managing Director, Aztec Fluids & Machinery Pvt. Ltd., under Section 114AA of the Customs Act, 1962.
- (xix) I impose penalty of **Rs. 10,00,000/- (Rupees Ten Lakh Only)** on CNG Clearing and Forwarding Agents Pvt. Ltd., under Section 112 of the Customs Act, 1962.

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



(अनिल रामटेके / ANIL RAMTEKE)

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

To,

- 1A. Aztec Fluids & Machinery Pvt. Ltd.,
5th Floor / Top Floor, Takshashila Square, Krishna Baugh,
Cross Road, Opp. Sankalp Restaurant,
Maninagar, Ahmedabad – 380008, Gujarat
- 1B. Aztec Fluids & Machinery Pvt. Ltd.,
1, Jaihind Society, Rambaug,
Maninagar, Ahmedabad – 380008, Gujarat
2. Sh. Pulin Vaidhya,
Managing Director, Aztec Fluids & Machinery Pvt. Ltd.,
5th Floor / Top Floor, Takshashila Square, Krishna Baugh,
Cross Road, Opp. Sankalp Restaurant,
Maninagar, Ahmedabad – 380008, Gujarat
3. CNG Clearing and Forwarding Agents Pvt. Ltd.,
101, Loha Bhavan, Nr. Old High Court Lane, Income Tax Circle,
Ashram Road, Ahmedabad – 380009, Gujarat

Copy to:

1. The Pr. Commissioner of Customs,
Ahmedabad Air Cargo, 1st Floor, Custom House,
Navrangpura, Ahmedabad – 380009
2. The Pr. Addl. Director General,
Directorate Of Revenue Intelligence, Chennai Zonal Unit,
27, G. N. Chetty Road, T. Nagar,
Chennai – 600017, Tamil Nadu
3. The Additional / Joint Commissioner of Customs,
Group 5, Air Cargo Complex,
Sahar, Andheri (East), Mumbai – 400099
4. The Additional / Joint Commissioner of Customs,
ICD Khodiyar, 1st Floor, Custom House,
Navrangpura, Ahmedabad - 380009
5. The Addl. Commissioner of Customs,
Group-VA, NS-V, JNCH, Nhava Sheva.

6. Deputy / Assistant Commissioner of Customs,
Group 5, Air Cargo Complex, New Custom House,
Near IGI Airport, New Delhi-110037
7. AC/DC, Review Cell, Chief Commissioner's Office, JNCH
8. AC/DC, Centralized Revenue Recovery Cell, JNCH
9. The Dy./Asstt. Commissioner of Customs, Customs Broker Section, New Custom House,
Ballard Estate, Mumbai – 400 001
10. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
11. EDI Section.
12. Office copy.

