आयुक्त सीमा शुल्क का कायाालय, आयात I-, न्यू कस्टम् हाउस, मुंबई- 400001
OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT-I)
1st FLOOR NEW CUSTOM HOUSE, BALLARD ESTATE,
MUMBAI – 400 001
email id: adjn-adc-jc-imp1nch@gov.in

F. No. CUS/APR/LC/132/2023-GR-4-O/O COMMR-CUS-IMP-I-ZONE-I-MUMBAI

Date of Order:- 17.04.2025
Date of Issue:- 17.04.2025

DIN- 20250477000000000F6CF

Order No. 01/ADC/PC/ADJ/**2025-26**

Order Passed by: Dr. Prashant Chauhan, Additional Commissioner of Customs, Import-I, New Custom House, Mumbai Customs Zone-I

Name of Parties/Noticees:- M/s LINXON INDIA PRIVATE LIMITED

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मूलआदेश

1. यह प्रति उस व्यक्ति के उपयोग के लिए नि: शुल्क दी जाती है जिसे यह जारी की गई है।
This copy is granted free of charge for the use of the person to whom it is issued.

2. इस आदेश के खिलाफ अपील इस आदेश के संचार की तारीख से साठ दिनों के भीतर और सीमाशुल्क अधिनियम, 1962 की धारा 128(1) के तहत सीमाशुल्क आयुक्त (अपील) न्यू कस्टम हाउस, बलार्ड एस्टेट, मुंबई-400001 के समक्ष होगी। मांग किए गए शुल्क के 7.5% का भुगतान जहां शुल्क या शुल्कऔर जुर्माना विवाद में है या जुर्माना जहां अकेले दंड विवाद में है।

An appeal against this order shall lie before the Commissioner of Customs (Appeals), New Custom House, Ballard Estate, Mumbai- 400001 under Section 128(1) of the Customs Act, 1962 within Sixty days from the date of communication of this order and on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty where penalty alone is in dispute.

3. अपील सीमाशुल्क (अपील) नियम 1982 में प्रदर्शित फॉर्म सी.ए.–I में दो प्रति में की जानी चाहिए।अपील रुपये 1.50 /- के न्यायालय फीस स्टांप तथा इस आदेश या आदेश की प्रति के साथ संलग्न होनी चाहिए। यदि आदेश की प्रति संलग्न की जाती है तो इसमें भी न्यायालय फीस अधिनियम 1970 कीअनुसूची 1 में प्रदर्शित रूपये 1.50/- की न्यायालय फीस स्टांप भी होना चाहिए।

The appeal should be in duplicate and should be filed in Form CA – 1 appeared in Custom (Appeals) Rule, 1982. The appeal should bear a court fee stamp of Rs. 1.50 paise paid only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a court fee stamp of Rs. 1.50 paise only as prescribed under Schedule 1, item 6 of the Court Fees Act, 1970.

4. इस निर्णय या आदेश के खिलाफ अपील करने वाला कोई भी व्यक्ति, अपील लंबित होनेपर, सीमाशुल्क अधिनियम, 1962 की धारा 129 ई के तहत उपरोक्त पैरा 2 के अनुसार राशि जमा करेगा, अपील के साथ इस तरहके भुगतान का प्रमाण प्रस्तुत करेगा, जिसमें विफल रहने पर अपील की जा सकती है।सीमाशुल्क अधिनियम, 1962 की धारा 128(1) के प्रावधानों का अनुपालन न करने के कारण खारिज कर दिया गया।

Any person appealing against this decision or order shall, pending the appeal, deposit the amount as per Para 2 above under Section 129E of the Customs Act, 1962 are 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 128(1) of the Customs Act, 1962.

5. यदि इस आदेश के खिलाफ अपील दायर की जाती है, तो अपील संख्या और तारीख की सूचना निर्णय प्राधिकारी का कार्यालय, अपर/संयुक्त सीमा शुल्क आयुक्त का कार्यालय, आयात-I, दूसरी मंजिल, न्यू कस्टम्स हाउस, बैलार्ड एस्टेट, फोर्ट, मुंबई - 400 001 को दी जानी चाहिए।

If an appeal is filed against this order, the appeal number and date should be intimated to the Office of the Adjudicating Authority at Office of Addl. Commissioner of Customs, Import-I, 2nd Floor, New Customs House, Ballard Estate, Fort, Mumbai - 400 001.

BRIEF FACTS OF THE CASE

M/s LINXON INDIA PRIVATE LIMITED (IEC No. AAHCK4182H) having address at G F 14, TOWER B, GROUND FLOOR, VATIKA MINDSCAPE, SECTOR 27 D, NEAR SARAI KHAWAJA METRO STATION, RANGE 16, DIVISION FARIDABAD NORTH, FARIDABAD, HARYANA-121003 had cleared goods declared as "Conductor rails", hereinafter referred to as 'impugned goods' vide Bill of Entry (details of Bill of Entry as per below Table-A) and classified them under the Customs Tariff Heading (CTH) 76042990 i.e. "ALUMINIUM BARS, RODS AND PROFILES; Other", of the First Schedule to the Customs Tariff Act, 1975, at New Custom House (NCH), Mumbai Customs Zone-I, Mumbai(INBOM1). The importer had paid BCD @7.5% under CTH 76042990 instead of applicable of BCD @ 10% under CTH 86080090 of the First Schedule to the Customs Tariff Act, 1975.

Table-A

S.No	B/E No.	B/E Date	Country of Origin	Item Description	Inv No.	Item No.	CTH
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	5662218	01-10-2021	GERMANY	CONDUCTOR RAIL	1	1	76042990

Assess Value(Item)	Total Duty Paid	BCD@10%	SWS@10 %	IGST@18 %	Total duty payable	Diff. of duty
(9)	(10)	(11)	(12)	(13)	(14) = [(11+12+13)]	(15) = [(14-10)]
2,58,41,972/-	71,67,271/-	25,84,197/-	2,58,419.7/-	51,63,226/-	80,05,843/-	8,38,571.96/-

2. As per the Customs Tariff Act 1975, the "RAILWAY OR TRAMWAY TRACK FIXTURES AND FITTINGS; MECHANICAL (INCLUDING

ELECTROMECHANICAL): Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical): Other" are classified under CTH 86080090 and attracts BCD at the rate of 10% along with other applicable duties.

3. It has been observed that "Conductor rails" were imported by the M/s LINXON INDIA PRIVATE LIMITED under the CTH 76042990 "ALUMINIUM BARS, RODS AND PROFILES; Other; Other" vide Bill of Entry (details in Table-A) and levied BCD@ 7.5%.

4. The imported item "Conductor rails" are the third rail, also known as a live rail, electric rail or conductor rail, is a method of providing electric power to a railway locomotive or train, through a semi-continuous rigid conductor placed alongside or between the rails of a railway track. It is used typically in a mass transit or rapid transit system, which has alignments in its own corridors, fully or almost fully segregated from the outside environment.

5. It appeared that the imported goods, i.e. 'Conductor Rail', are not merely structures made of Aluminium but are significant part used for providing electric power to a railway locomotive or train, through a semi-continuous rigid conductor placed alongside or between the rails of a railway track. Hence, it shall not fall in the category of ALUMINIUM BARS, RODS AND PROFILES. The 'Conductor Rail' (impugned goods) imported by the importer under the Bill of Entry (as detailed in Table-A) appeared to be tramway track fixtures and fittings and appear correctly classifiable under CTH 86080090 and attract BCD @10% instead of CTH 76042990 BCD @7.5%.

6. The third rail, also known as the conductor rail, is a key railway fitting used in certain railway and metro systems to supply electric power to trains. This component plays a critical role in electrified railway systems, particularly in urban transit and metro networks. The third rail is considered a specialized railway fitting because it directly interfaces with rolling stock to enable efficient energy transfer. In summary, the third rail is a vital railway fitting, especially for urban transit systems. Its classification as a railway fitting would reflect its role in electrical infrastructure, contributing to the operational efficiency of electrified railways.

7. Fittings and fixtures are components that are attached to a structure for a specific purpose. They are not meant to be easily removed or replaced. The third rail is a vital component of an electrified railway system. It supplies power to trains and is permanently installed along the track. While the third rail might not be as commonly associated with the term "fitting and fixture" as some other components, its function and permanent installation align with the definition, making it a valid classification.

Therefore, it appears that the conductor rail may be treated as fixtures and fittings of railway or tramway track although not attached to the railway or tramway track directly.

8. Thus, it appears that the conductor rails shall come under the tramway track fixtures and fittings and classifiable under 86080090 and attracts BCD@10% instead of @7.5%.

9. Further, it appears that the importer has declared the wrong CTH 76042990 - "ALUMINIUM BARS, RODS AND PROFILES; Other; Other" for the importation of goods as declared above and paid BCD@7.5% instead of applicable of BCD@10% under CTH 86080090 - "RAILWAY OR TRAMWAY TRACK FIXTURESAND FITTINGS; MECHANICAL (INCLUDING ELECTOMECHANICAL):Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical): Other" with an intention to evade proper duty, which led to short levied/ short paid custom duty due to wrong Basic Custom Duty, amounting to Rs. 8,38,572/- (Rupees Eight Lakhs Thirty-Eight Thousand Five Hundred and Seventy-Two only) as detailed in Table-A above and liable to be recovered under section 28(4) of the Customs Act, 1962.

10. With the introduction of the Self-Assessment Scheme, the onus is on the Noticee to comply with the various laws, determine his tax liability correctly and discharge the same. The Importers are required to declare the correct description, value, classification, notification number, if any, of the imported goods. Self- assessment is supported by Section 17, 18 and 46 of the Customs Act, 1962 and the Bill of Entry (Electronic Declaration) Regulation, 2011. The Importer is squarely responsible for self-assessment of duty on imported goods and filing all declarations and related documents and confirming these are true, correct, and complete. Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent importers would face penal action on account of wrong self-assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provisions under the Customs Act, 1962 or the allied acts. This Act of the Importer renders the goods liable for confiscation under Section 111 (m) of the Customs Act, 1962. Further, the Importer by their acts of omission/commission appears to have rendered himself liable for penalty under Section 112 (a) and/or 114 A of the Customs Act, 1962.

11. The relevant provisions of law relating to import, assessment of duty, and the liability of the goods to confiscation and imposition of penalty are as per the provisions of the Customs Act, 1962 as amended from time to time.

12. Moreover, as per legal provisions, the importer is required to declare the correct description, value, classification, notification number, if any, on the imported goods as per the provisions of section 46(4A) of the Customs Act, 1962 and the Bill of Entry (Electronic Declaration) Regulation, 2011. The importer is squarely responsible for correct declaration of CTH for the imported goods and filing all declaration and related documents and confirming these are true, correct, and complete. However, it appears that the importer failed to declare the correct HSN Code for the subject imported goods and it appears that this act of the importer rendered the goods liable for confiscation under section 111(m) of the Customs Act, 1962.

13. It appears that this act of omission and commission of declaration of incorrect CTH Number of the goods in the Bill of entry, with an intention to evade proper duty, has rendered the subject goods liable to confiscation in terms of provisions of Section 111(m) of the Customs Act, 1962 read with provisions of Section 46 (4) and 46 (4A) ibid, which in turn appears to have made the importer liable for penal action in terms of provisions of Section112(a) and/or 114A of the Customs Act,1962.

14. It, therefore, appears that-

i. The claimed classification under 76042990 "ALUMINIUM BARS, RODS AND PROFILES; Other" under the subject Bills of Entry is not correct and liable to be rejected and re-determined under CTH 86080090 - "RAILWAY OR TRAMWAY TRACK FIXTURES AND FITTINGS; MECHANICAL (INCLUDING ELECTOMECHANICAL): Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical): Other" of the Customs Tariff Act 1975.

ii. The consequent short paid/short levied duty as detailed in Table –A above, due to wrong declaration of CTH Number, amounting to Rs. 8,38,572/- (Rupees Eight Lakhs Thirty-Eight Thousand Five Hundred and Seventy-Two only) is liable to be demanded and recovered from importer under Section 28(4) of Customs Act, 1962, along- with applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962.

iii. This act of declaration of wrong CTH Number 76042990, with an intention to evade proper duty, which resulted in short payment of BCD on the impugned goods, appears to have made the subject goods valued at Rs. 2,58,41,973/- (Rupees Two Crore Fifty-Eight Lakhs Forty-One Thousand nine hundred and seventy-three only) liable for confiscation in terms of provisions of Section 111 (m) of the Customs Act, 1962, read with provisions of Section 46(4) and 46(4A) ibid.

iv. This act of omission and commission, the incorrect claim of CTH Number has rendered the subject goods liable to confiscation in terms of provisions of Section 111 (m) of the Customs Act, 1962, read with provisions of Section 46(4) and 46(4A) ibid, which in turn appears to have made the Importer liable for penal action in terms of provisions of Section 112(a) and/or 114A of the Customs Act, 1962.

15. Now, therefore, importer M/s. LINXON INDIA PRIVATE LIMITED (IEC No. AAHCK4182H) having address G F 14, TOWER B, GROUND FLOOR, VATIKA MINDSCAPE, SECTOR 27D, NEAR SARAI KHAWAJA METRO STATION, RANGE 16, DIVISION FARIDABAD NORTH, FARIDABAD, HARYANA-121003 was hereby called upon to Show Cause to the Joint Commissioner of Customs, Group IV, New Custom House, Ballard Estate, Mumbai - 400001, within 30 days of the receipt of this notice, as to why:

i) The BCD benefits derived from claiming classification under CTH 76042990 "ALUMINIUM BARS, RODS AND PROFILES; Other" should not be denied and CTH 86080090 "RAILWAY OR TRAMWAY TRACK FIXTURES AND FITTINGS; MECHANICAL (INCLUDING ELECTOMECHANICAL): Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical): Other" should not be applied for the impugned goods.

ii) Consequent Short paid/short-levied duty amounting to Rs. 8,38,572/- (Rupees Eight Lakhs Thirty-Eight Thousand Five Hundred and Seventy-Two only) along with applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962, should not be demanded and recovered from the Importer on the said imported goods, as detailed in Table-A above, in terms of provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of provisions of Section 28AA of the Customs Act,1962;

iii) Imported goods as mentioned in Table-A above, valued at Rs. 2,58,41,973/- (Rupees Two Crore Fifty-Eight Lakhs Forty-One Thousand nine hundred and seventy-three only) should not be held liable for confiscation in terms of provisions of Section 111(m) of the Customs Act, 1962, read with provisions of Section 46(4) and 46(4A) ibid.

iv) Penalty should not be imposed on M/s LINXON INDIA PRIVATE LIMITED (IEC No. AAHCK4182H) under Section 112(a) and/or 114A of Customs Act, 1962.

Personal Hearing and submissions

16.1 The First Personal Hearing Memorandum dated 11.02.2025 was issued to the importer, M/s Linxon India Private Limited, via DIN No. 20250277000000000BF88,

requesting their appearance and submissions if any on 18.02.2025 for a virtual Personal Hearing.

In response, Mr. Keyur Thummar, Assistant Manager - Exim Rail - AMEA of M/s Linxon, submitted a letter dated 14.02.2024, along with a previous letter dated 20.12.2023, via email on 14.02.2025. In the letter dated 14.02.2025, they provided a list of eight representatives attending the Personal Hearing and also submitted company ID cards and government-issued ID cards for all the attendees.

However, the importer was requested to submit a proper authority letter, duly signed by the designated signatory, authorizing the representatives to attend the Personal Hearing on their behalf, through an email dated 17.02.2025. In response, via email dated 17.02.2025, Mr. Keyur Thummar attached the revised request letter (for attending the Personal Hearing virtually), signed by the designated signatory of M/s Linxon India Pvt Ltd, as per the attached Importer-Exporter Certificate (IEC). Additionally, he attached letter No. LIPL/RO/KMRL/CUS/003 dated 17.02.2025, which was in response to the Demand cum Show Cause Notice.

Vide the above letter dated 17.02.2025, Mr. Vivek Kumar Rawat (Operations Director) of M/s Linxon India Pvt. Ltd. has submitted reply to Demand cum Show Cause Notice received under 76/24-25/ Gr-4 dated 6th Jan'25.

Mr. Vivek Kumar Rawat has referred following documents in his letter.

1. *B/E No. 5662218 Date 01.10.2021*
2. *e-F. No. CUS/APR/LC/132/2023-GR-4 Din No. 20231277000000000EB30 Date 07.12.2023*
3. *Letter from Linxon India Pvt Ltd (Ack.-Correspondence computer no. 6798175) dated 20th Dec'23*
4. *Demand cum Show Cause Notice number 76/24-25/ Gr-4 dated 6th Jan'25*

Further, he replied to the Demand cum Show Cause Notice received under ref (4) regarding the Short-levy of Duty on import of CONDUCTOR RAILS due to incorrect misclassification and inter alia mentioned that-

He emphasized that the Conductor Rails are neither a track fixture nor a track fitting. Instead, it is an article made of Aluminium and is only laid along the Metro Rail Tracks, as per the design requirements of the Project, to fulfil the purpose of transmitting power to the Metro Rail Rolling Stock for subsequent operation.

In fact, it is an optional electrical equipment, required to transmit power; since this transmission could also be achieved with alternate system of overhead catenary and conductor wire system. Hence, Conductor Rails are not a mandatory component as a Railway Track is for a Railway or Tramway. Please note that in Chennai Metro Project this electric component to transmit power is in the form of Overhead Catenary and Conductor Wire System In lieu of Conductor Rails.

Further, he drew attention towards the fact that numerous other equipment, apparatus, articles, tools, machines, inter alia for transmitting power, are involved in Metro Rail Projects which are required towards its operation but are positioned at various locations spanning from Stations to Viaducts, especially cable, cable trays etc., which are also laid along the tracks. Hence, the fact that an article is positioned along/ between the tracks shall not be construed as a track fixture/fitting; the track fixtures/fittings are self-explanatory.

He also submitted that CTH 8608 00 expressly specifies that '8608 00 90: Others' corresponds to the parts of 'Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signaling, safety or traffic control equipment for railway, tramways, roads, inland waterways, parking facilities, port installation or air-fields'. However, the Conductor Rail is not a part of either track fixture and fittings or mechanical signalling or safety or traffic control equipment, as explained above, but mere an electrical component to transmit power to in this case Metro Rail Rolling Stock.

Further, The General rules for the Interpretation of Import Tariff stipulate that classification, firstly, shall be determined according to the terms of the headings and, secondly, the headings providing most specific descriptions shall be preferred to headings providing a more general description. Thus, under heading 7604 'Aluminum Bars, Rods and Profiles', the Conductor Rail, under sub-heading 2990 citing its profile, has been categorized.

Moreover, the foregoing paragraph renders for any further inferences to be drawn regarding whether Conductor Rails is/ is not a fitting and fixture for Railway Systems, let alone for Railway/ Tramway Track. Needless to mention that in line with the manner in which your good office is treating Conductor Rail as fixture and fitting of Railway/ Tramway Track shall categorize other electrical components, elucidated above, under CTH 8608 00.

It is of paramount to state here in consideration of aforesaid contents, the Conductor Rail is being imported under CTH 76042990 in line with prevailing market practice in India across all Metro Projects. Notwithstanding with the foregoing, please find enclosed the European Custom Tariff Document from Linxon's Supplier of Conductor Rails, concerning the subject classification (both original copies, in German and English translation copy).

For your ready reference, the technical points of imported Conductor Rails are enlisted below:

- *The product is a long profile in the shape of a so called "Vignolschiene".*
- *The predominant material in terms of weight is aluminium alloy (AlMgSiO225), combined at a steel bearing made from stainless steel (X6Cr17).*
- *The mass ratio Aluminium / Steel is almost 90% / 10%.*
- *The product is used as a conductor rail for the operation of electric railway systems.*
- *With regards to tariff classification, it is a product made form an aluminium alloy.*

In addition to above, he iterated that a similar notice was issued to Linxon under ref (2) which was responded back by Linxon vide ref (3) in similar to the contents above.

In wake of contents above, please be prevailed upon that the imported Conductor Rails has been classified correctly under CTH 76042990 and payment of any difference in paid duty shall not be applicable to Linxon.

First Personal Hearing was conducted on 18.02.2025; Shri Keyur Thummar, Assistant Manager (EXIM), Shri Arindam Roy Chowdhury, Project Manager, and Shri Mohit Agarwal, Head of Legal & Contracts, APAC, on behalf of M/s Linxon India Pvt. Ltd., attended the scheduled virtual personal hearing via video conferencing before the Adjudicating Authority.

During the hearing, the representatives reiterated the points made in their submission dated 17.02.2025. Shri Arindam Roy Chowdhury further clarified that *the imported goods have been correctly classified under CTH 76042990 (Aluminium Bars, Rods, and Profiles) of the Customs Tariff Act, 1975, as "Conductor Rails." He emphasized that these goods are electronic components used to supply electricity to railway tracks and are solely used for railways*.

Shri Mohit Agarwal further stressed that *aluminium is the primary component in the imported goods, which justifies their classification under the aforementioned tariff heading. He also highlighted that the goods were imported from Railtech, Germany, the sole supplier for this item.*

Shri Arindam Roy Chowdhury additionally informed that *other importers are also bringing in similar goods from Germany under the same tariff heading. He requested an extension of three weeks to submit additional documentation, which includes*:

i) *The names of other importers*

ii) *Original supplier invoices*

iii) *Legible and clear copies of the European Community Customs Tariff Information (EUROPAISCHE GEMEINSCHAFT-VERBINDLICHE ZOLLTARIFAUSKUNFT) certificate*.

Accordingly, the personal hearing was concluded with the request for a three-week extension to submit the additional documentation.

Further, vide email dated 04.03.2025, the importer submitted response letter no. LIPL/RO/KMRI/CUS/004 dated 03.03.2025.

Vide the above said letter ***dated 03.03.2025*** *Mr. Vivek Kumar Rawat (Operations Director) of M/s Linxon India Pvt. Ltd. has referred following documents.*

Referenced Documents:

1. *B/E No. 5662218 Dt. 01.10.2021*
2. *e-F. No. CUS/APR/LC/132/2023-GR-4 Din No. 2023127700000000EB30 Dt. 07.12.2023*
3. *Linxon request letter (Ack-Correspondence computer no. 6798175) Dated 20.12.2023*
4. *Show Cause Notice No. 76/24-25/ Gr-4, Dated 06.01.2025 issued by Group IV*
5. *Personal Hearing Memorandum-DIN 2025027700000000BF88 Dt. 11.02.2025*
6. *Linxon response letter No. LIPL/RO/KMRI/CUS/003 Dated 17.02.2025*
7. *Linxon email dated 17.02.2025*
8. *Linxon email dated 19.02.2025 towards "Record of Personal Hearing dated 18.02.2025 with Adjudicating Authority: Dr. Prashant Chauhan, Additional Commissioner of Customs (Import-I)".*

Further, Mr. Vivek Kumar Rawat (Operations Director) informed that supporting documents under ref (7), pertaining to the subject matter, we, Linxon India Pvt Ltd ("LINXON"), hereby submit the following additional documentation as instructed by the Additional Commissioner of Customs via ref (8):

1. *Names of other Importers: - M/s. REHAU Polymers Pvt. Ltd.*

   Address: Plant Vadodara, Survey No. 785, Nexus Industrial Park Phase 2, Vadodara-Halol Road, Taluka: Waghodia 391510, Vadodara, India.

2. *Annexure-1: Invoice copy of the exporter selling the Conductor Rails to M/s. REHAU Polymers Pvt. Ltd. along with an extracted copy of Bill of Entry (BOE) No. 8113006 dated 31.01.2025 for the same consignment. The BOE clearly reflects the importation of Conductor Rails under HSN code 76042990.*
3. *Annexure-2: Copy of the Original Supplier Invoice from M/s. RALITECH ALU SINGEN as received.*

4. *Annexure-3: Bill of Lading (BOL) of other importers as received from the supplier. Please note that the supplier will not be able to provide all details related to their importers due to the sensitivity of the data. Therefore, it is requested that the BOL No. be referred to for extracting the importer details.*

5. *Annexure-4: Legible and clear copies of the European Community Customs Tariff Information (EUROPÄISCHE GEMEINSCHAFT-VERBINDLICHE*

   ZOLLTARIFAUSKUNFT) certificate.

He further submitted that Linxon certainly hopes that the aforesaid contents further support the justification presented in ref (7) & ref (8). Thus, Linxon once again requests your esteemed office to consider that the imported Conductor Rails have been classified correctly under CTH 76042990 and that payment of any difference in paid duty shall not be applicable to Linxon.

He further informed that Linxon remains poised to provide any further clarification or attend any additional personal hearings regarding this matter.

16.2 Second personal hearing letter dated 10.03.2025 was issued to the importer M/s Linxon India Private Limited vide DIN No. 20250377000000000CF49 for appearing on 20.03.2025 for virtual Personal Hearing. Second Personal Hearing was conducted on 20.03.2025; Shri Keyer Thummar, Assistant Manager (EXIM), Shri Arindam Roy Chowdhury, Project Manager, and Shri Mohit Agarwal, Head of Legal & Contract, APAC representing M/s Linxon India Pvt. Ltd., attended the virtual personal hearing.

During the virtual hearing, the representatives reiterated the submission made vide their letter dated 03.03.2025. Further, they informed that they have no additional submissions to make in the matter. They have also submitted that they do not require any further Personal Hearing (PH) regarding the matter.

The representatives also expressed their willingness to provide any further documents or information via email, if the Adjudication Authority deems it necessary.

Accordingly, the personal hearing was concluded.

Discussion and Findings

17. I have gone through the records of the case, show cause notice, relied upon documents, written submissions and other evidences on record etc. I find that in the present case, the following issues are required to be determined: -

i. **Whether the goods are mis-declared in terms of classification and lead to duty evasion?**

ii. **Whether the demand raised u/s 28 (4) by invoking extended period is justified**?

iii. **Whether the subject goods are liable for Confiscation Under section 111(m) of Customs Act, 1962?**

iv. **Whether the importer is Liable for Penalty under section 112(a) and/or 114A of the Customs Act?**

18. Whether the goods are mis-declared in terms of classification and lead to duty evasion?

18.1 I find that the importer M/s LINXON INDIA PRIVATE LIMITED (IEC No. AAHCK4182H), (here-in-after referred to as 'importer') had cleared the goods declared as "Conductor Rail" (here-in-after referred to as 'impugned goods') vide Bills of Entry 5662218 dated 01.10.2021 and classified them under the under CTH 76042990 'ALUMINIUM BARS, RODS AND PROFILES: Other; Others of the First Schedule to the Customs Tariff Act, 1975. The importer had paid BCD @7.5% under CTH 76042990 on the assessable value of Rs. 2,58,41,973/- (Rupees Two Crore Fifty-Eight Lakhs Forty-One Thousand nine hundred and seventy-three only).

18.2. I find that a conductor rail, also known as a live rail, electric rail or third rail, is a method of providing electric power to a railway locomotive or train, through a semi-continuous rigid conductor placed alongside or between the rails of a railway track. Conductor rail is a special power transmission system installed along the tram track which supplies electric energy to the train. Conductor rail is a form of contact net, also known as the third rail. Its function is the same as that of overhead conductor rail, which is used to transmit electric energy to the electric vehicle group. The difference is that the conductor rail is a special track set beside the tram track, and the tram receives electric energy by contacting it with the extended third rail contact shoe.

Conductor Rails, also known as third rails, are also integral to electrified railway systems, particularly in metro and urban transit networks. They are semi-continuous rigid conductors placed alongside or between railway tracks to supply electric power to trains, as admitted by the importer. Their function is not merely incidental but critical to the operation

of rolling stock in systems designed for third-rail power supply. Unlike optional equipment, Conductor Rails are permanent installations in such systems, interfacing directly with trains to enable energy transfer. The importer's comparison of third rail to the overhead catenary systems is irrelevant, as the choice of power transmission (third rail or overhead) is system-specific. In third-rail systems, Conductor Rails are indispensable, akin to tracks in any railway system. The analogy to cables or cable trays fails because these are general electrical components, whereas Conductor Rails are specialized railway components designed exclusively for railway electrification, aligning with the definition of railway fittings.

Thus, I find that the imported goods, 'Conductor Rail', is not merely a structure / rod/ bar made of Aluminium and hence does not fall in the category of ALUMINIUM BARS, RODS AND PROFILES. The 'Conductor Rail' is a specialized significant part used for providing electric power to a railway locomotive or train, through a semi-continuous rigid conductor placed alongside or between the rails of a railway track. The impugned goods imported by the importer under the Bills of Entry (as detailed in Table A) "Conductor Rail" are actually tramway track fixtures and fitting and correctly classifiable under CTH 86080090 and attract BCD @10% instead of CTH 76042990 BCD @7.5%. The third rail, also known as the conductor rail, is a key railway fitting used in certain railway and metro systems to supply electric power to trains. This component plays a critical role in electrified railway systems, particularly in urban transit and metro networks. The third rail is considered a specialized railway fitting because it directly interfaces with rolling stock to enable efficient energy transfer. In summary, the third rail is a vital railway fitting, especially for urban transit systems. Its classification as a railway fitting reflects its role in electrical infrastructure, contributing to the operational efficiency of electrified railways.

18.3 I also find that Fittings and fixtures are components that are attached to a structure for a specific purpose. They are not meant to be easily removed or replaced. The third rail is a vital component of an electrified railway system. It supplies power to trains and is permanently installed along the track. While the third rail might not be as commonly associated with the term "fitting and fixture" as some other components, its function and permanent installation align with the definition, making it a valid classification. I, therefore, do not subscribe to the submission of the importer that conductor rail cannot be treated as fixtures and fitting of railway or tramway track for not being attached to the railway or tramway track directly.

18.4 I find that the Conductor Rail imported by M/s LINXON INDIA PRIVATE LIMITED is a track fixture and fitting, as it is a key component of the electrified railway system. While the importer argues that it is merely an electrical component for power transmission, however, the Conductor Rail plays an integral role in the railway infrastructure, which is why it falls under CTH 86080090, which specifically covers

railway or tramway track fixtures and fittings. The fact that the Conductor Rail is placed alongside or between the tracks directly contributes to the functioning of the railway system, providing electric power to the rolling stock. Therefore, it should be considered a railway fixture, despite the argument that it is an optional electrical system. This distinguishes it from mere electrical apparatus like cables, which are not classified as track fixtures.

18.5 I find that the Conductor Rail is a permanent fixture of the railway system and fulfils a critical function in the electric supply to trains. The fact that it is an electrical component does not exclude it from the category of mechanical/electromechanical parts used in the construction of the railway track infrastructure. Under CTH 86080090, items used to support the railway system, such as power supply systems, are correctly categorized as track fixtures and fittings, even if they are not directly part of the rail. The argument that other metro projects use overhead catenary systems is irrelevant, as the classification of goods depends on the specific nature and function of the items, not on alternative systems that may be used in other projects.

18.6 Further, I find that CTH 86080090 covers railway or tramway track fixtures and electromechanical fittings. While the importer claims that the Conductor Rail is not related to track fixtures, the definition under this heading includes components such as rails, track components, and other electromechanical fittings, such as power rails. Conductor Rails are integral to the railway system's operation and therefore, are rightly categorized under this heading. The General Rules for Interpretation of the Tariff (GRTI) in the Customs Tariff also support the classification of goods according to their function and use in the overall system, which in this case is the railway or metro system. The Conductor Rail, though it transmits power, plays a vital role in ensuring the proper functioning of the metro rail system and is specifically designed for the purpose, just like other railway fittings, making CTH 86080090 the correct classification.

18.7 I find that track fixture or fitting do not have to be physically attached to the rail to be considered part of the track system. The term encompasses all components that contribute to the integrity and functionality of the railway infrastructure. Therefore, the Conductor Rail, although it is placed alongside the tracks and not directly attached to the rail itself, should be classified as part of the railway track fixtures under CTH 86080090, as it fulfils the same role in the power supply infrastructure.

18.8 I find that the classification under CTH 76042990 (“Aluminium Bars, Rods and Profiles”) is incorrect because Conductor Rails are not simply aluminium profiles. While they may be made from aluminium, they are not merely bars or rods as declared by the importer; they are electrical components integrated into the railway or metro system,

designed to transmit power, which is not the primary function of typical aluminium profiles. The Conductor Rail's specific design and function as a live rail for transmitting power to the rolling stock make it a specialized railway fitting, not a general-purpose aluminium profile. It's over generalised classification as Aluminium Bars, Rods, and Profiles is inconsistent and incongruent with its actual use in the railway system.

18.9 I find that the market practice referred to by the importer is not a legal provision. The Customs Department is tasked with interpreting and enforcing the Customs Tariff Act, and the classification of goods must be based on the correct interpretation of the law, not on practice followed by some other importer. The importer's claim that this classification is consistent with practices across all metro projects in India is unsubstantiated and does not provide any legal justification for the claimed classification under CTH 76042990. Customs law is clear in requiring the correct application of tariff headings based on the function and role of the goods, which in this case, the Conductor Rail is more appropriately categorized under CTH 86080090.

18.10 I find that the purported European Customs documents submitted like supplier invoice and Bill of lading provided by the importer refers to the classification of Conductor Rails under CTH 76042990, which is again just an interpretation by the foreign supplier; merely the interpretation by a foreign supplier cannot be basis for classification of impugned goods under the Indian Customs Tariff and its interpretation. The classification of goods must align with the Indian Customs Tariff Act, 1975, and HS Explanatory Notes. Moreover, the documents describe the goods as aluminium profiles used as Conductor Rails, which does not preclude their classification as railway fittings under CTH 8608.

18.11 I find that the Department's Position is grounded in the specific function of the Conductor Rail within the context of railway infrastructure. The Conductor Rail, despite being composed of aluminium, is specifically designed for use in the electrification system of metro or railway tracks. Its role in transmitting power to the rolling stock categorically aligns it with railway track fixtures and fittings under CTH 86080090. This classification is consistent with the General Rules for the Interpretation of Tariff that prioritize functional characteristics over material composition. Even though the Conductor Rail may appear to be an aluminium profile, its primary role within the railway system is to provide electrical power, making it a track fixture rather than just an aluminium component.

18.12 I find that importer has submitted Bill of entry of M/s. REHAU Polymers Pvt. Ltd. classifying the Conductor Rail under HSN Code 76042990, this is not determinative for Linxon's case. I find that each importer's classification should be assessed based on the specific nature and function of the goods, not merely on other importers' view on classification. Further, from the copy of BE, I also find that the above Bill of entry of M/s.

REHAU Polymers Pvt. Ltd referred by the importer was RMS facilitated Bill of entry; accordingly, assessment and examination was not prescribed for the same.

Classification by other importers or their suppliers does not establish legal correctness, as it may reflect similar misinterpretations. The Bill of Entry (BOE No. 8113006 dated 31.01.2025) cited by the importer cannot be taken as precedent without verification. Market practice, while relevant, is unequivocally subordinate to legal provisions. The Customs Tariff Act, 1975, and GRI take precedence over industry trends, especially when evidence suggests misclassification. The importer's reliance on supplier invoices and Bills of Lading reinforces only the generalised material description (aluminium profiles) but does not address the functional role of Conductor Rails as railway fittings.

The European certificate itself describes the goods as aluminium profiles used as Conductor Rails, which aligns with their material composition along with reinforcing their functional role as railway fittings under CTH 8608. Supplier invoices and Bills of Lading confirm the goods' description but do not override the legal framework of the Indian Customs Tariff. The technical details (90% aluminium, 10% steel) reinforce the Department's view that material composition is secondary to function for classification purposes. The importer's submission of other importers' details is noted but insufficient to alter the classification, as it lacks legal weight compared to tariff provisions.

18.13 It is important to mention that the General Rules for the Interpretation of the Harmonized System (HS) are crucial for determining the correct tariff code and duty rate for imported or exported goods.

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. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

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

(c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified

under the heading which occurs last in numerical order among those which equally merit consideration.

Going by this Rule 3 (a) of the General Rules for the Interpretation, I find that the declared goods 'Conductor Rail' merit classification under CTH 86080090 which provides most specific description of the impugned goods instead of CTH 76042990 which gives a more general description. Moreover, even in hypothetical case of declared goods meriting consideration under both CTH 76042990 and CTH 86080090, the latter CTH 86080090 would get preference for the purpose of classification of the said goods in terms of Rule 3 (c) of the General Rules for the Interpretation.

18.14 Hence, I find that the Importer M/s LINXON INDIA PRIVATE LIMITED (IEC No. AAHCK4182H) has mis-classified the impugned goods under CTH 76042990 wilfully with an intention to evade the customs duty. Accordingly, I hold that differential duty amounting to Rs. 8,38,572/- (Rupees Eight Lakhs Thirty-Eight Thousand Five Hundred and Seventy-Two only) liable to be paid in respect of Bill of Entry No. 5662218 dated 01.10.2021 mentioned in the SCN by the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

18.15 In the instant case, as the mis-classification is material to the amount of duty leviable thereon, it becomes indistinguishable from suppression because it deprives the Revenue of actual duty leviable on the imported goods. The Supreme Court of India in *Union of India v. E.I.D. Parry (India) Ltd. (2000) 2 SCC 223* held that wrong classification of goods amounted to misrepresentation, especially when it affected the computation of duties or taxes. Thus, I am of the view that mis-classification, when material, is treated as suppression if it results in misleading authorities or obtaining undue benefits.

19. Whether the demand raised u/s 28 (4) by invoking extended period is justified?

19.1 All the facts as discussed above show that the importer has misclassified the impugned goods covered under subject Bill of Entry filed by the importer in spite of having knowledge. It is evident that the importer has wilfully mis-stated the goods as "Aluminium Bars, Rods and Profiles", thereby concealing the true nature/function of the goods. They have suppressed these facts from the department and wrongfully classified the impugned goods under CTH 76042990 which is not admissible as per Customs Tariff. Therefore, extended period of 5 years as provided under 28(4) of the Customs Act, 1962, is applicable for recovery of the short-paid Customs duty under Section 28(4) of the Customs Act, 1962, along with applicable interest thereon, under Section 28AA of the Customs Act, 1962. Therefore, for same reasons stated herein above, the importer is liable for recovery of duty under Section 28(4) of the Customs Act, 1962, and has also rendered themselves liable for penalty under Section 112(a)/114A of the Customs Act, 1962.

19.2 Section 28(4) ibid provides that *"Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, - (a) collusion; or (b) any willful mis-statement; or (c) suppression of facts, by the importer of 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."*

19.3. On perusal of the said provision, I find that three reasons have been provided for invocation of extended period provision, collusion or any wilful mis-statement or suppression of facts. Thus, Section 28(4) requires any one of the three ingredients to invoke extended period limitation. Since the word 'or' is used to link alternatives apart from other uses in English language, it can be derived that the word 'or' has been used to link alternatives in Section 28(4) of the Customs Act, 1962. Thus, I find that applying the principle of alternative ibid, any of the alternative facts of collusion, any wilful mis-statement, suppression of facts, should be available to invoke extended period.

19.4 In view of above findings, the demand raised u/s 28 (4) by invoking extended period is justified. For justification of invoking extended period, I put my reliance on the following decisions: -

2013 (294) E.L.T. 222 (Tri. - LB): UNION QUALITY PLASTIC LTD. Versus COMMISSIONER OF C.E. & S.T., VAPI [Misc. Order Nos. M/12671-12676/2013- WZB/AHD, dated 18-6-2013 in Appeal Nos. E/1762-1765/2004 and E/635-636/2008]

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 willful omission was either admitted or demonstrated, invocation of extended period of limitation was justified.

2013 (290) E.L.T. 322 (Guj.): SALASAR DYEING & PRINTING MILLS (P) LTD. Versus C.C.E. & C., SURAT-I; Tax Appeal No. 132 of 2011, decided on 27-1-2012

Demand - Limitation - Fraud, collusion, wilful misstatement, etc. - Extended period can be invoked up to five years anterior to date of service of notice - Assessee's plea that in such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, wilful mis-statement, etc., rejected as it would lead to strange and anomalous results;

2005 (191) E.L.T. 1051 (Tri. - Mumbai): WINNER SYSTEMS Versus COMMISSIONER OF CENTRAL EXCISE & CUSTOMS, PUNE: Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19-7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum.

Demand - Limitation - Blind belief cannot be a substitute for bona fide belief – Section llA of Central Excise Act, 1944. [para 5]

2006 (198) E.L.T. 275 - Interscape v. CCE, Mumbai-I.

19.5 From the above discussion and judicial pronouncements, I find that the Noticee have knowingly involved in mis-declaration of classification of the imported goods. Further Hon'ble Supreme Court in the case of *CC Madras V/s D Bhuramal - [1983 (13) ELT 1546 (SC)] has held that "The department is not required to prove the case with mathematical precision but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the facts in issue."*

19.6 In this case, it is evident with enough reasons and justifications about deliberate attempt on the part of Importer to evade duty of Customs.

19.7 Thus, it is a case where intentional evasion of Customs duty *(mens-rea)* is evident, and therefore, the provisions of Section 28(4) are rightly invocable. Accordingly, considering the facts of the case and evidences on record, as discussed in above paras, I find that the provisions of Section 28(4) of the Customs Act, 1962 have been rightly applicable as also alleged in the Show Cause Notice.

19.8 I, therefore, hold that the importer had wrongly declared the impugned goods 'Conductor Rail' under CTH under CTH 76042990 and paid BCD @7.5% instead of CTH 86080090 which attracts BCD @10% with an intention to evade proper duty, which led to short levied/ short paid custom duty amounting to Rs. 8,38,572/- (Rupees Eight Lakhs Thirty-Eight Thousand Five Hundred and Seventy-Two only) as detailed in Table-A which is liable to be recovered under section 28(4) of the Customs Act, 1962.

20. Whether the subject goods are liable for Confiscation Under section 111(m) of Customs Act, 1962?

20.1 Now, I proceed to examine the next issue whether the goods cleared in the past Bill of Entry No. 5662218 dated 01.10.2021 should be confiscated under Section 111(m) of the Customs Act, 1962, and whether redemption fine can be imposed on the importer. The main issue before me in this regard is whether ordering confiscation of goods under Section 111 and imposing redemption fine in lieu of confiscation under Section 125 of the Customs Act, 1962 possible even in the cases where the goods are not physically available for confiscation.

20.2 As regards proposal of confiscation, I find that the importer M/s LINXON INDIA PRIVATE LIMITED (IEC No. AAHCK4182H) has not paid legitimate customs duty

through mis-classification by wilful mis-statement and suppression of the facts. This act of omission and commission by the importer violated provisions of section 17 and Section 46 (4) & Section 46 (4A) and has rendered the goods imported vide Bill of Entry No. 5662218 dated 01.10.2021 liable for confiscation under section 111 (m) of the Customs Act, 1962. The acts of commission/omission on the part of the Importer i.e. mis-classification of impugned goods in contravention of Section 17 and 46 of the Customs Act, 1962 supra as in the instant case is squarely covered under Section 111 (m) of the Customs Act, 1962. Hence, I hold that import consignment of 'Conductor Rail' cleared in the past vide Bill of Entry No. 5662218 dated 01.10.2021 with assessable value of Rs. 2,58,41,973/- (Rupees Two Crore Fifty-Eight Lakhs Forty-One Thousand nine hundred and seventy-three only) is liable to confiscation under Section 111(m) of the Customs Act, 1962.

20.3 As far as imposition of redemption fine is concerned, I find that the Hon'ble Courts in various judicial pronouncements have held that the physical availability of the goods does not have any significance for imposition of redemption fine under Section 125 of the Act. In this regard, I place my reliance on the following judgements as detailed below:

(i) In case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) regarding imposition of Redemption Fine in absence of goods liable for confiscation, 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), 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."

20.4 Accordingly, I hold that redemption fine is imposable in respect of goods which are found to be liable for confiscation but had already been cleared for home consumption and were not available for seizure/confiscation.

21. Whether the importer is Liable for Penalty under section 112(a) and/or 114A of the Customs Act?

21.1 In view of facts & discussion above, I find that the importer has wilfully misclassified the impugned goods under CTH 76042990 and paid BCD @7.5% instead of correct CTH 86080090 wherein BCD payable is @10% with an intention to evade proper duty, which led to short levied/ short paid custom duty due to wrong classification, amounting to Rs. 8,38,572/- (Rupees Eight Lakhs Thirty-Eight Thousand Five Hundred and Seventy-Two only) detailed in Table-A above and liable to be recovered under section 28(4) of the Customs Act, 1962 along with applicable interest thereon.

21.2 I see that the Bill of Entry has been filed under Self-Assessment scheme. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filling a Bill of Entry, in the electronic form and Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make entry for the imported goods by presenting a Bill of Entry electronically to the Proper Officer.

21.3 The Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the Service Centre. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct description, value, classification, notification No., if any, in respect of the imported goods while presenting the Bill of Entry.

21.4 The importer while presenting a bill of entry 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, relating to the imported goods. Further, Section 46(4) mandates that importer at the time of filing of Bill of Entry shall ensure the following:

a) The accuracy and completeness of the information given in the Bill of Entry.

b) The authenticity and validity of any document supporting it: and

c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any law for the time being in force.

21.5 Further, I find that the Hon'ble High Court of Bombay in the case of COMMR. OF CUS. (IMPORTS), NHAVA SHEVA Versus IMPERIAL TRADING LLC [2010 (253) E.L.T. 373 (Bom.)] held that:

Under sub-section (4) of Section 17 of the Customs Act, 1962, the importer is required to make declaration and subscribe to the truth of the contents while filling the bill of entry. Section 17(4) provides for cases where declaration is found to be different from the actual contents of the consignment. Together these provisions cast duty on the importer to make true declaration of the goods. Proviso to Section 46(4) also stipulates that when the importer is unable to furnish all particulars for want of full information, he may request for examination of the goods, pending production of such information. Therefore, if the importer has any difficulty in making proper declaration of the goods due to doubts or any other reason, he has to avail remedy under the said proviso. Despite these safeguards and cautions provided in law, if the bill of entry is found to contain erroneous declaration, it is not open to the importer to claim that it is not mis-declaration.

21.6 Therefore, I find that the importer has wilfully misclassified the impugned goods under CTH 76042990 and paid BCD @7.5% instead of correct CTH 86080090 wherein BCD payable is @10% with an intention to evade proper duty, and thus, contravened the provisions of Section 17 and 46 of the Customs Act, 1962. The act and omission / commission on the part of the Importer have resulted in non-payment of duty of Rs. 8,38,572/- (Rupees Eight Lakhs Thirty-Eight Thousand Five Hundred and Seventy-Two only) which is to be paid by / recovered from the Importer under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

21.7 As far as penalty under Section 114A is concerned, I find that M/s LINXON INDIA PRIVATE LIMITED (IEC No. AAHCK4182H) has indulged in deliberate and wilful evasion of customs duty. As discussed in the foregoing paras, the impugned goods are not merely ALUMINIUM BARS, RODS AND PROFILES but metro railway track fixtures and fitting which is integral to its functioning by supplying electrical energy to the train; and this fact has not been disputed by the importer also. Therefore, based on these facts the appropriate classification of the impugned goods 'Conductor Rail' in the harmonized system should have been railway track fixtures and fitting under CTH 86080090 wherein BCD payable is @10% instead of ALUMINIUM BARS, RODS AND PROFILES under

CTH 76042990 wherein BCD payable is @7.5% as the later description does not represent actual characteristics of the impugned goods. Thus, on this count the importer has mis-declared the goods in as much as they declared them as mere ALUMINIUM BARS, RODS AND PROFILES instead of railway track fixtures and fitting even though they were aware of the true nature and function of the said goods to evade due duty.

21.8 I find that the importer was aware of the actual description of the impugned goods as track fixtures and fitting which is correctly classifiable under CTH 86080090 wherein BCD payable is @10%. In spite of knowing the facts, the importer had wrongly classified the goods under CTH 76042990 wherein BCD payable is @7.5% to pay less duty amount by 2.5% BCD. This act of the importer has resulted in short payment of Duty to the tune of Rs. 8,38,572/- (Rupees Eight Lakhs Thirty-Eight Thousand Five Hundred and Seventy-Two only) in respect of past Bill of Entry No. 5662218 dated 01.10.2021.

21.9 In view of the above facts, I find that the importer M/s LINXON INDIA PRIVATE LIMITED (IEC No. AAHCK4182H) has not paid legitimate customs duty by wilful mis-statement and suppression of the facts. This act of omission and commission by the importer resulted in short payment/levy of duty. Thus, I find that demand of duty amounting to Rs. 8,38,572/- (Rupees Eight Lakhs Thirty-Eight Thousand Five Hundred and Seventy-Two only) for past Bill of Entry No. 5662218 dated 01.10.2021 is recoverable in terms of section 28 (4) of the Customs Act, 1962 and interest is applicable thereon under section 28AA of the Customs Act, 1962. Therefore, I hold that importer M/s LINXON INDIA PRIVATE LIMITED (IEC No. AAHCK4182H) is liable for penalty under Section 114A of the Act ibid.

21.10 In view of the entire above discussion, I find that the importer M/s LINXON INDIA PRIVATE LIMITED (IEC No. AAHCK4182H) has mis declared their import consignment and what they have imported were metro railway track fixtures and fitting classifiable under CTH 86080090 wherein BCD payable is @10% against the payment of 7.5% BCD paid by the importer by wrongfully classified the impugned goods under CTH 76042990. I, therefore, uphold the findings of the auditing authority classifying the import consignments under CTH 86080090 wherein BCD payable is @10%. I also find all reason to confirm demand of Customs duty under Section 28(4) of the Customs Act, 1962 by invoking the extended time proviso as I find that the importer have been fully aware as to what is being imported by them and they have consciously misdeclared their product as ALUMINIUM BARS, RODS AND PROFILES under CTH 76042990 wherein BCD payable is @7.5%. As discussed in preceding paragraphs it has come out very categorically that what has been imported by the importer was railway track fixtures and fitting classifiable under CTH

86080090 wherein BCD payable is @10%. This attempt of misdeclaration was consciously done to evade customs duty @2.5% BCD on assessable value. In view of this, I uphold the proposal of recovery of duty of Rs. 8,38,572/- (Rupees Eight Lakhs Thirty-Eight Thousand Five Hundred and Seventy-Two only) for past Bill of Entry No. 5662218 dated 01.10.2021 in terms of section 28 (4) of the Customs Act, 1962 and interest as applicable thereon under section 28AA of the Customs Act, 1962 as well as imposition of the penalties on the importer M/s LINXON INDIA PRIVATE LIMITED (IEC No. AAHCK4182H) as per the provision of Sections 114A of the Customs Act, 1962.

21.11 Ordering confiscation of goods under Section 111 of the Customs Act, 1962 would render the importer liable for penalty under Section 112 of ibid as proposed in this Show-Cause-Notice. However, a penalty under Section 112 cannot be imposed if a penalty is already imposed under Section 114A. Consequently, by virtue of the fifth proviso to Section 114A, no penalty can be imposed under Section 112 if penalty has already been imposed under Section 114A. Therefore, I could not impose a penalty under Section 112 (a) since I have already confirmed a penalty under Section 114A and the two penalties are mutually exclusive.

O R D E R

22. On consideration of all relevant facts, circumstances, material available on records and in pursuance of the aforesaid findings, I, hereby, pass the following order:

(i) I reject the claimed/ self-assessed CTH 76042990 for impugned goods under subject Bills of Entry No. 5662218 dated 01.10.2021 (as mentioned in Table-A above) and order to classify and re-assess the impugned goods 'Conductor Rail' under CTH 86080090 wherein BCD@10% is leviable.

(ii) I confirm the demand of Differential Duty of Rs. 8,38,572/- (Rupees Eight Lakhs Thirty-Eight Thousand Five Hundred and Seventy-Two only) along with applicable interest thereon, on the said imported goods under subject Bill of Entry No. 5662218 dated 01.10.2021, as detailed in Table-A above, in terms of provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of provisions of Section 28AA of the Customs Act,1962.

(iii) I order for the confiscation of the Imported goods under subject Bills of Entry No. 5662218 dated 01.10.2021 (as mentioned in Table-A above), valued at Rs. 2,58,41,973/- (Rupees Two Crore Fifty-Eight Lakhs Forty-One Thousand nine hundred and seventy-three only) in terms of provisions of Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the

goods on payment of fine of Rs. 25,00,000 (Twenty-Five Lakh) under Section 125 (1) of the Customs Act, 1962

(iv) I impose penalty equal to the short duty paid (Rs. 8,38,572/- (Rupees Eight Lakhs Thirty-Eight Thousand Five Hundred and Seventy-Two only) and interest upon the importer M/s LINXON INDIA PRIVATE LIMITED (IEC No. AAHCK4182H) under Section 114A of the Customs Act, 1962 towards the Imported goods under subject Bills of Entry No. 5662218 dated 01.10.2021 (as mentioned in Table-A above) provided that where such duty and interest is paid within thirty days from the date of the order of the proper officer determining such duty, the amount of penalty liable to be paid under this section shall be 25% of the duty or interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to condition that the amount of penalty so determined has also been paid within the period of thirty days. I do not impose penalty under Section 112 (a) as penalty under Section 114A of the Act has already been imposed.

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

17/4/25

(Dr. Prashant Chauhan)
Addl. Commissioner of Customs
Import-I, NCH, Mumbai.

By Email./Regd. ADD./Speed Post
M/s LINXON INDIA PRIVATE LIMITED (IEC No. AAHCK4182H)
G F 14, TOWER B, GROUND FLOOR, VATIKA MINDSCAPE, SECTOR 27 D, NEAR SARAI KHAWAJA METRO STATION, RANGE 16, DIVISION FARIDABAD NORTH, FARIDABAD, HARYANA-121003

Copy to:

1. The Commissioner of Customs (Import-1), New Custom House, Mumbai.
2. Asst./Dy. Commissioner of Customs, CRRC, IMPORT-I, NCH, Mumbai.
3. Asstt. /Dy. Commissioner of Customs, Gr-4, Mumbai Zone-I
4. The Dy. /Asst. Commissioner of Customs, Review Cell Import-I, New Custom House,
5. Superintendent of Customs, CHS, NCH Mumbai-I, for display on notice board
6. Asstt. /Dy. Commissioner of Customs, EDI, Mumbai Zone-I, NCH (for upload on website)
7. Office Copy