भारत सरकार
वित्त मंत्रालय/ राजस्व विभाग
केंद्रीय अप्रत्यक्ष कर एवं सीमाशुल्क बोर्ड भारतीय सीमाशुल्क ,I-मुंबई अंचल –
आयुक्त सीमाशुल्क (आयात-II) का कार्यालय
द्वितीय मंजिल, नवीन सीमा शुल्क भवन, शूरजी वल्लभदास मार्ग, बेलार्ड एस्टेट, मुंबई-400001.

दूरध्वनि-022-22757457 **ई-मेल: *adjncell-imp2nch@gov.in***

फा. सं. : F. No. S/10-118/2023-24/Commr/NS-V/CAC/JNCH
CUS/APR/MISC/6578/2024-Adjudication Section

के द्वारा जारी किया गया : श्री कुमार अमरेन्द्र नारायण
आयुक्त सीमाशुल्क (आयात-) II

आदेश दिनांक: 21.08.2025
जारी दिनांक: 21.08.2025

सी.ए.ओ. क्रमांक : 87/2025-26/CAC/CC/Imp-II/KAN/Adjn-(Imp-II)
DIN-20250877000000081891E

मूल आदेश

1- प्रति उस व्यक्ति के प्रयोग के लिए नि: शुल्क है, जिसके लिए यह पारित किया है।

2- इस आदेश के विरूद्ध क्षेत्रीय पीठ, सीमाशुल्क, उत्पाद एवं सेवाकर अपीलीय अधिकरण, जय सेन्टर, चौथा एवं पांचवा तल, 34 पी. डी' मेलो रोड, पूना स्ट्रीट, मस्जिद बन्दर (पूर्व(मुंबई 400 009 को अपील की जा सकती है।

3- सीमाशुल्क (अपील(नियमों 1982 के नियम 6 के आधार पर अपील फॉर्म सी ए-3 में जैसा कि उक्त नियम में संलग्न है के आधार पर की जानी चाहिए। अपील चार प्रतियों में की जानी चाहिए एवं 90 दिनों के अन्दर दायर की जानी चाहिए एवं उसके साथ उस आदेश की चार प्रतियां संलग्न होनी चाहिए जिसके विरूद्ध अपील की गई हो)इन प्रतियों में कम से कम एक प्रति अभिप्रमाणित प्रति होनी चाहिए(। अपील के साथ सीमाशुल्क अधिनियम 1962 की धारा 129A की उपधारा (6) के अन्तर्गत लागू रु.1,000/-, रु.5,000/- अथवा रु.10,000/- का, क्रास किया हुआ बैंक ड्रॉफ्ट अधिकरण की पीठ के सहायक रजिस्ट्रार के नाम जारी किया होना चाहिए। यह बैंक ड्राफ्ट ऐसे राष्ट्रीय बैंक का होना चाहिए जिसकी शाखा उस जगह स्थित हो जहां अधिकरण पीठ स्थित है।

4- अपील अधिकरण पीठ के सहायक रजिस्ट्रार अथवा इस संबंध में उनके द्वारा अधिकृत किसी भी अधिकारी के कार्यालय में प्रस्तुत की जानी चाहिए अथवा सहायक रजिस्ट्रार या ऐसे अधिकारी के नाम पंजीकृत डाक द्वारा भेजी जानी चाहिए।

5- जो व्यक्ति इस आदेश के विरूद्ध अपील करना चाहता है वह इस अपील के लंबित रहने तक दंडराशि या अपेक्षित शुल्क की साढ़े सात प्रतिशत धनराशि को जमा करे और ऐसे भुगतान का साक्ष्य प्रस्तुत करे। ऐसा न करने पर यह अपील सीमा शुल्क अधिनियम, 1962 की धारा 129E के प्रावधानों के अनुपालन न करने के आधार पर निरस्त मानी जाएगी।

COMMISSIONER OF CUSTOMS (IMPORT-II) NEW CUSTOM HOUSE, MUMBAI

GOVERNMENT OF INDIA

MINISTRY OF FINANCE/ DEPARTMENT OF REVENUE
CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS, INDIAN CUSTOMS - MUMBAI ZONE – I

OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT-II)

2nd FLOOR, NEW CUSTOM HOUSE, SHOORJI VALLABHDAS ROAD, BALLARD ESTATE,
MUMBAI – 400001.

Tel. No. 022-22757457 **e-mail: *adjncell-imp2nch@gov.in***

F. No. S/10-118/2023-24/Commr/NS-V/CAC/JNCH
CUS/APR/MISC/6578/2024-Adjudication Section

Passed by: Shri Kumar Amrendra Narayan **Date of Order: 21.08.2025**
COMMISSIONER OF CUSTOMS (IMPORT-II) **Date of Issue: 21.08.2025**

C.A.O. No.: 87/2025-26/CAC/CC/Imp-II/KAN/Adjn-(Imp-II)
DIN-20250877000000081891E

ORDER-IN-ORIGINAL

1. This copy is granted free of charge for the use of the person to whom it is issued.
2. An appeal against this order lies to the Regional Bench, Customs, Excise and Service Tax Appellate Tribunal, Jai Centre, 4th & 5th Floor, 34 P. D'Mello Road, Poona Street Masjid Bunder (East), Mumbai 400 009.
3. The appeal is required to be filed as provided in Rule 6 of the Customs (Appeals) Rules, 1982 in form C.A.3 appended to said rules. The appeal should be in quadruplicate and needs to be filed within 90 days and shall be accompanied by four copies of the order appealed against (at least one of which should be certified copy). A crossed bank draft drawn in favour of the Asstt. Registrar of the Bench of the Tribunal on a branch of any nationalized bank located at a place where the bench is situated for Rs. 1,000/-, Rs. 5,000/- or Rs. 10,000/- as applicable under Sub Section (6) of the Section 129A of the Customs Act, 1962.
4. The appeal shall be presented in person to the Asstt. Registrar of the bench or an Officer authorized in this behalf by him or sent by registered post addressed to the Asstt. Registrar or such Officer.
5. Any person desirous of appealing against this decision or order shall pending the appeal deposit seven and a half per cent of the duty demanded or the 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.

Subject: Adjudication of Show Cause Notice No. 1143/23-24/Commr./NS-V/CAC/JNCH dated 25.08.2023 issued to M/s Jatrana Mercantile Pvt. Ltd. for import of "Video Lights" and "Ring Lights".

BRIEF FACTS OF THE CASE

Specific intelligence was developed by Directorate of Revenue Intelligence, Kolkata Zonal Unit(hereinafter also referred to as DRI) that during the period 2018-2021 *M/s Jatrana Mercantile Private Limited*, Khasra No. 145/1, Main Road, Khera Kalan, North West Delhi, Delhi-110082 having IEC: 0505011085 (hereinafter also referred to as JMPL/the importer) and Shri Om Prakash Rana and Shri Sandeep Rana, both Directors, had wrongly classified the goods they imported viz. "DIGITEK BRAND RING LIGHT" and "DIGITEK BRAND LED VIDEO LIGHT" under Tariff Item 90066100 leading to evasion of Customs Duty. The intelligence suggested that the goods declared as above were actually to be treated as photographic LED lighting equipment and therefore classifiable under 94054090. The intelligence also revealed that IMS Mercantiles Pvt. Ltd., 704, 7thFloor, Ring Road Mall, Sector-3, Rohini, New Delhi-110085 was the major buyer of M/s Jatrana Mercantile Private Limited.

2. Based on the intelligence, a preliminary scrutiny was conducted on the data/declarations available with the DRI in respect of the imports made by M/s JMPL (Details of Bills of Entry are tabulated in **Annexure-X** and copy of Bills of Entry and other import documents are attached as **RUD-1**). It was found that **between 29.08.2018 and 20.08.2021**, M/s JMPL had imported the said two items i.e. DIGITEK Brand LED Ring Light and DIGITEK Brand LED Video Light, classifying both the items under Tariff Item 90066100. The intelligence suggested that these were correctly classifiable under CTH 94054090.

2.1 On scrutiny, it was observed that M/s. JMPL had changed the description of the goods when they filed the Bills of Entry by omitting the word "video" when compared with the description given in the Bills of Lading. For instance, M/s JMPL has described the item imported under Bill of Entry No. 3780170 dated 24.06.2019 as "DIGITEK BRAND RING LIGHT 18" (DRL 18 H) 18" RING LIGHT WITH BATTERY HOLDER WITH BALL HEAD, PHONE HOLDER" and classified the goods under Tariff Item 90066100 whereas, in the concerned Bill of Lading the goods were described as "VIDEO LED RING LIGHT". Likewise, M/s JMPL has described the items imported under B/E No. 2221745 dated 04.01.2021 as "DIGITEK BRAND RING LIGHT 18 INCHES DRL 18 H (PHOTOGRAPHIC ACCESSORIES)" & "DIGITEK BRAND RING LIGHT 18 INCHES DRL 18 R (PHOTOGRAPHIC ACCESSORIES)" whereas, in the concerned Bill of Lading the goods were described as "VIDEO LED RING LIGHT". It was found that the items declared as DIGITEK BRAND RING LIGHT in the Bills of Entry were described as VIDEO LED RING LIGHT in most of the concerned Bills of Lading.

2.2. The duty structure for the two CTH's, as was extant during the relevant period, is shown in the Table below:

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Table-A

Sl. No.	CTH		Basic Customs Duty	SWS	IGST	Effective Rate of Duty
1.	90066100		10%	1%	18%	30.98%
2.	94054090	Until 31.01.2020	20%	1%	12%	36.64%
		W.e.f. 01.02.2020	25%	1%	12%	42.80%

2.2.1. To ascertain the actual nature of the goods imported by M/s JMPL, the description of the goods was looked up on the website https://www.digitek.net.in of IMS Mercantiles Pvt. Ltd. and reputed e-commerce websites. On the website https://www.digitek.net.in, DIGITEK Brand LED Ring Light was shown as under **(RUD-2)**:

The DIGITEK BRAND RING LIGHT 18 INCHES DRL 18H was shown on www.amazon.in as under **(RUD-3)**:

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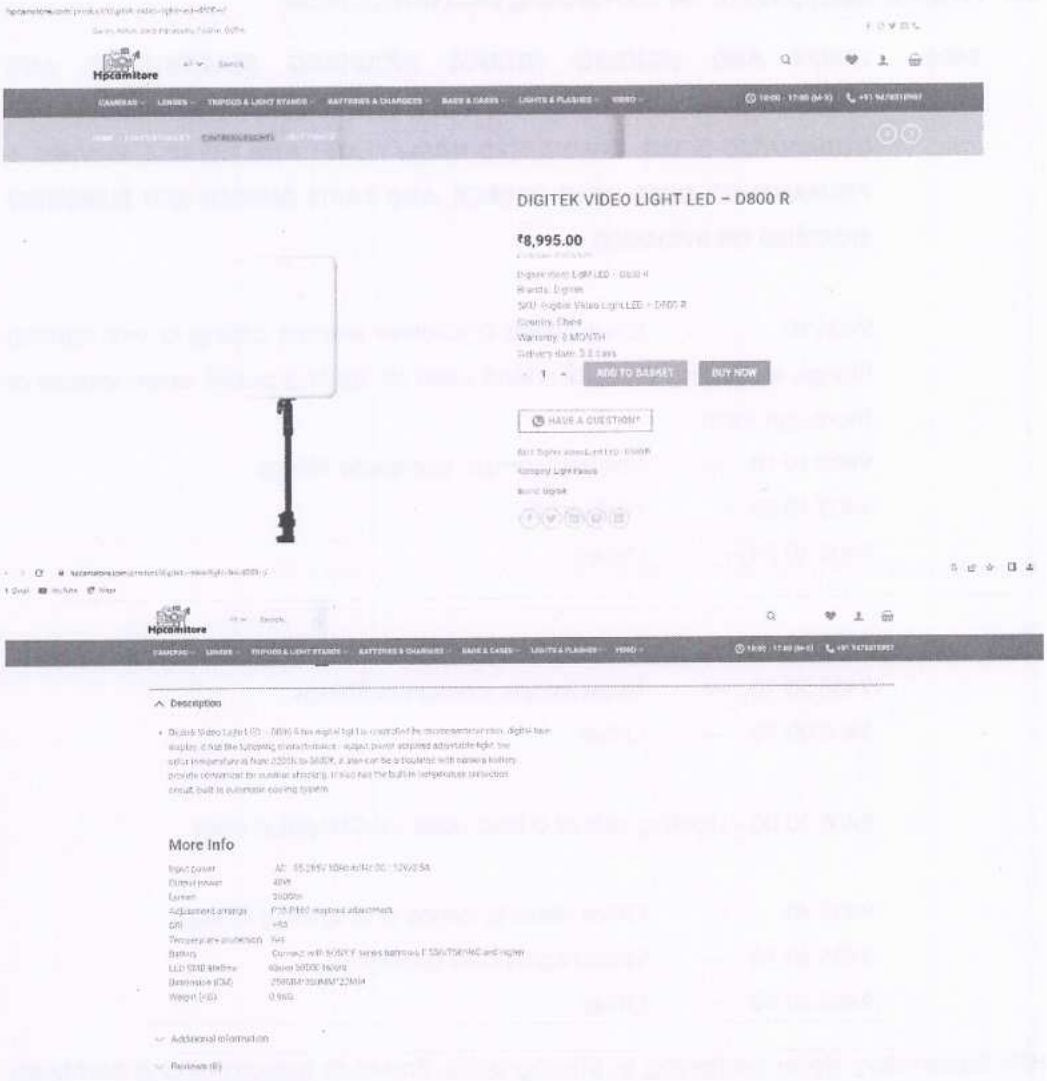
The DIGITEK LED VIDEO LIGHT D800R was shown on the website www.hpcamstore.com which deals in various products of photographic industry of different brands as under **(RUD-4)**:



From the details available on www.digitek.net.in, www.amazon.in and www.hpcamstore.com, it appears that DIGITEK Brand LED Ring Light is an LED light of ring shape **which emits continuous light and is used in photo-shoot, video-shoot, live stream, makeup, etc. and, DIGITEK Brand LED Video Light is a LED light PANEL which emits continuous light and which is used for outdoor shooting.**

2.2.2. As per the First Schedule of the Customs Tariff Act, 1975, the description of the Tariff Item 90066100 is as under:

9006: PHOTOGRAPHIC (OTHER THAN CINEMATOGRAPHIC) CAMERAS; PHOTOGRAPHIC FLASHLIGHT APPARATUS AND FLASHBULBS OTHER THAN DISCHARGE LAMPS OF HEADING 8539

...

- Photographic flashlight apparatus and flashbulbs:

9006 61 00 -- Discharge lamp ("electronic") flashlight apparatus

9006 69 00 -- Other

	-	Parts and accessories:
9006 91 00	--	For cameras
9006 99 00	--	Other

Further, during the relevant period, as per the First Schedule of the Customs Tariff Act, 1975, the description of the Sub-heading 9405 was as under:

9405: LAMPS AND LIGHTING FITTINGS INCLUDING SEARCHLIGHTS AND SPOTLIGHTS AND PARTS THEREOF, NOT ELSEWHERE SPECIFIED OR INCLUDED; ILLUMINATED SIGNS, ILLUMINATED NAME-PLATES AND THE LIKE, HAVING A PERMANENTLY FIXED LIGHT SOURCE, AND PARTS THEREOF NOT ELSEWHERE SPECIFIED OR INCLUDED

9405 10	-	Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thorough fares:
9405 10 10	---	Hanging lamps, complete fittings
9405 10 20	---	Wall lamps
9405 10 90	---	Other
9405 20	-	Electric table, desk, bedside or floor-standing lamps:
9405 20 10	---	Table lamps, complete fittings
9405 20 90	---	Other
9405 30 00	-	Lighting sets of a kind used for Christmas trees
9405 40	-	Other electric lamps and lighting fittings:
9405 40 10	---	Searchlights and spotlights
9405 40 90	---	Other

HSN Explanatory Notes pertaining to photographic flashbulb apparatus and flashbulbs mentions the following:

"This group covers photographic flashlight apparatus and flashbulbs which are used for professional or amateur photography, in photographic laboratories or in photogravure work.

*These devices produce very bright light for a very short duration (flash) and are **thus distinguished from photographic lighting equipment of heading 94.05**."*

(Emphasis supplied)

Thus, on preliminary scrutiny, as per the provisions of the First Schedule of the Customs Tariff Act, 1975, the aforesaid items viz., DIGITEK Brand LED Ring Light and DIGITEK Brand LED Video Light imported by M/s JMPL do not appear to be classifiable under 90066100 as these items are not devices which produce intense light for a very short duration (flash). Since these items actually produce continuous light, therefore, the

same do not appear to be categorised as photographic flashlight apparatus and flashbulbs but appear to be appropriately classifiable under 94054090.

2.3. Therefore, summon dated 31.03.2022 **(RUD-5)** under Section 108 of the Customs Act, 1962 was issued to M/s JMPL requesting for providing the import documents, copies of the contracts between M/s JMPL and its overseas suppliers, catalogue/technical literature of the lights under imports, and the details of local sale of the imported items to local buyers. In response of the summon, M/s JMPL submitted a letter dated 12.04.2022 **(RUD-6)** along with some import documents i.e., Bills of Entry coupled with Packing Lists, Commercial Invoice, and Bills of Lading, 4 nos. of outward tax invoices billed to M/s IMS Mercantiles Pvt. Ltd. and product details printed on A4 pages.

2.3.1 In the said letter dated 12.04.2022, M/s JMPL inter alia submitted as follows:

(i) "The customs authorities never ever objected to adoption of HSN 90066100 even when occasionally the imports were duly appraised by the customs authorities.

(ii) Upon receipt of this information, the company sought legal advice and was told by experts that w.e.f. 01.01.2022, there had been significant amendment in tariff heading 9405 and new entry has been introduced as 94054200;

(iii) Experts have also suggested that w.e.f. 01.01.2022, the impugned goods should be classified under 94054200 only;

(iv) However, for the period prior to 01.01.2022, there is no common advice to suggest that since 9405 has got completely revised w.e.f. 01.01.2022, and in the absence of the tariff heading 94054200 prior to 01.01.2022, can these goods be still classified under other non-specific sub-heading of 9405 or not.

(v) We request your kind honour to provide a detailed departmental opinion/stand on the same so that the matter can attain justification. This is especially critical in light of the fact that the tariff heading adopted w.e.f. 01.01.2022 by the department was non-existent prior to 01.01.2022.

(vi) Post 01.01.2022, the company has always classified the impugned goods in the tariff heading 94054200.

(vii) We request your kind honour to confirm the legal position and we offer to pay the differential tax if the departments issued necessary justification for duty differential."

2.4 Another summon dated 21.04.2022 **(RUD-7)** under Section 108 of the Customs Act, 1962 was issued to Shri Sandeep Rana, one of the Directors of M/s JMPL, for appearance in the Kolkata DRI office on 28.04.2022 to give evidence. Along with the summon, the opinion **(RUD-8),** as sought by M/s JMPL in their aforesaid letter dated 12.04.2022, regarding the applicable Tariff Item in respect of the said imported goods was also conveyed wherein it was mentioned *inter alia* that the heading 9006 corresponds to photographic flashlight apparatus and flashbulbs whereas, the heading

9405 corresponds to lamps and lighting fittings including searchlights and spotlights and parts thereof not elsewhere specified or included in the Tariff. It was also asserted that the heading 9405 did exist during the impugned period. It was opined that as the imported items actually produce continuous light, the same cannot be treated as flashlight apparatus and accordingly, the same cannot be classified under the heading 9006.

2.5 In response of the summon dated 21.04.2022, M/s JMPL submitted another letter dated 27.04.2022 **(RUD-9)** wherein it was *inter alia* reiterated that prior to 01.01.2022 the impugned products were categorically not covered under 94054200. That, in fact, such an entry did not even exist until 01.01.2022. Further, in response of the summon, Shri Seetharaman, representative of the company duly authorised by the company, appeared before the DRI officer on 28.04.2022 and tendered his statement on behalf of the company. In his statement **(RUD-10)** Shri Seetharaman inter alia stated:

(i) M/s Jatrana Mercantile Pvt Ltd. was engaged in import of photographic accessories and light items which were used for photographic purposes;

(ii) He had been working in the capacity of Accountant in the firm since April 2021;

(iii) Prior to April 2021 he was employed as Accountant in M/s IMS Mercantile Pvt. Ltd. which is also engaged in similar trade only;

(iv) On being confronted with the Customs Tariff and Explanatory Notes for the CTH 9405 and 9006 and asked to explain why the imported items viz., DIGITEK Brand LED Ring Light and DIGITEK Brand LED Video Light were classified by M/s JMPL under CTH 90066100, whereas, in terms of the Customs Tariff, Explanatory Notes of HSN the said items are rightly classifiable under CTH 9405, he replied that he had seen all the said notes, that just like all other importers were importing such items under CTH 9006, his firm also followed the same practice and that the classifications had been done by mistake only.

(v) On behalf of his company, he submitted that there was loss of government revenue due to mis-classification of the impugned goods. However, the said mis-classification was due to bonafide misunderstanding on the part of the company. After understanding the issue, the company was ready to pay the short-levied duty along with interest for which the company will be submitting demand draft of Rs. 20 lakhs by 04.05.2022 positively. Due to poor financial condition of the company, the company will not be able to pay the entire differential amount in one go and hence would request to allow to pay in instalments.

2.6 Subsequently, vide letter dated 04.05.2022 **(RUD-11)** M/s JMPL submitted a Demand Draft (No. 524850 dated 02.05.2022) of Rs.20,00,000/- against the differential duty liability. However, M/s JMPL mentioned in the letter that the amount was being paid under protest. Further, in the letter they also acknowledged of the Department having apprised them about the Department's interpretation regarding classification of impugned goods under the heading 9405. However, they requested for issuance of

formal notice/order in the instant case. The Demand Draft of amount Rs.20,00,000/- was forwarded by DRI **(RUD-12)** to the Principal Commissioner of Customs, Nhava Sheva-I with a request to deposit the same towards the differential duty liability. Thereafter, vide letter dated 31.01.2023 **(RUD-13)** M/s JMPL submitted another Demand Draft of Rs.15 lakhs, also under protest, to DRI to be adjusted towards the differential duty liability. The Demand Draft of amount Rs.15,00,000/- was forwarded by DRI **(RUD-14)** to the Customs Commissionerate with a request to deposit the same towards the differential duty liability. Vide letter dated 16.05.2023 **(RUD-15)** the Deputy Commissioner of Customs (Import), Nhava Sheva-V informed the DRI that both the said Demand Drafts of total amount Rs. 35,00,000/- have been deposited in the Government treasury under Challan No. HC 132 dated 18.04.2023(for the demand draft of amount Rs.15,00,000/-) and Challan No HC 270 dated 24.05.2022 (for the demand draft of amount Rs.20,00,000/-).

2.7. During the investigation, M/s JMPL also provided a catalogue of Ring Light **(RUD-16)**. The appearance of the Ring Light is matching with that shown in Para 3.1 supra.

2.8. LEGAL PROVISIONS APPLICABLE TO THE INSTANT CASE

2.8.1 Provisions of the Customs Act, 1962

Section 17. Assessment of duty. -

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

(2) The proper officer may verify the entries made under section 46 or section 50 and the self- assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

...

Section 46. Entry of goods on importation. -

[...]

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(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, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a bill of entry shall ensure the following, namely:-

(a) the accuracy and completeness of the information given therein;

(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 other law for the time being in force.]

[...]

Section 111. Confiscation of improperly imported goods, etc. -

The following goods brought from a place outside India shall be liable to confiscation: -

[...]

(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act 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;

[...]

SECTION 112. Penalty for improper importation of goods, etc.-

Any person, -

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

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

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [1][not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

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Provided *that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;*

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.

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

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

Provided that where such duty or interest, as the case may be, as determined under 3 [sub-section (8) of section 28, and the interest payable thereon under section [28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

...

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

...

Section 114AA: Penalty for use of false and incorrect material.

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If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

2.8.2 Provisions of the Customs Tariff Act, 1975

Classification of goods in the First Schedule of the Customs Tariff Act, 1975, is governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2.(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

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 (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

...

2.8.3. From the investigation conducted in the case, it appears that DIGITEK BRAND RING LIGHT imported by M/s JMPL is an LED light of ring shape which emits continuous light and is used in photo-shoot, video-shoot, live stream, makeup, etc. The said item has been placed by www.amazon.in under the category "Continuous Output Lighting". Further, DIGITEK Brand LED Video Light imported by M/s JMPL is a LED light PANEL which emits continuous light and which is used for outdoor shooting. This light has also been placed by www.hpcamstore.com under the category "Continuous Lights". Up to the year 2021, at the time of imports, M/s JMPL had declared both the items under Tariff Item 90066100. However, in March 2022 and afterwards M/s JMPL have imported DIGITEK BRAND RING LIGHT declaring the same under Tariff Item 94054200. Rule 1 of the General Rules for The Interpretation of the First Schedule of the Customs Tariff Act, 1975, says that classification shall be determined according to the terms of the headings of the schedule. The heading 9006 of the First Schedule of the Customs Tariff Act, 1975, covers "Photographic flashlight apparatus and flashbulbs":

9006: Photographic (other than cinematographic) cameras; Photographic flashlight apparatus and flashbulbs other than discharge lamps of heading 8539

...

- **Photographic flashlight apparatus and flashbulbs:**

9006 61 00 -- Discharge lamp ("electronic") flashlight apparatus

9006 69 00 -- Other.

HSN Explanatory Notes pertaining to photographic flashlight apparatus and flashbulbs mentions the following:

"This group covers photographic flashlight apparatus and flashbulbs which are used for professional or amateur photography, in photographic laboratories or in photogravure work.

***These devices produce very bright light for a very short duration (flash)** and are **thus distinguished from photographic lighting equipment of heading 94.05**."*

(Emphasis supplied)

A conjoint reading of Tariff Heading 9006 and the HSN Explanatory Notes makes it clear that only photographic flashes/flashbulbs which produce very bright light for a very short duration could be classifiable under the said heading. The Explanatory Notes makes it amply clear that photographic lighting equipment, which are not flashes/flashbulbs would be correctly classifiable under Heading 9405.

It is clear from the literature and the product descriptions on the website of Digitek, as well as reputed e-commerce websites that the imported items viz., DIGITEK BRAND RING LIGHT and DIGITEK Brand LED Video Light are not flashes/flashbulbs, but emit continuous light. By virtue of this, it appears that they cannot be classified under the tariff heading 9006, and for the relevant period, the goods were classifiable under CTH 94054090.

The Heading 9405 of the said Schedule covers *inter alia* the lighting fittings not elsewhere specified or included in the schedule. As per Section 104(iii) of the Finance Act, 2021, with effect from the 1st January 2022, the First Schedule has been amended. However, the terms of the said part of heading 9006 has not undergone any change. Further, the terms of Heading 9405 covers "the lighting fittings not elsewhere specified or included in the Schedule" both before and after the amendment of the Schedule.

Before the Amendment of the schedule:

9405: LAMPS AND LIGHTING FITTINGS INCLUDING SEARCHLIGHTS AND SPOTLIGHTS AND PARTS THEREOF, NOT ELSEWHERE SPECIFIED OR INCLUDED; ILLUMINATED SIGNS, ILLUMINATED NAME-PLATES AND THE LIKE, HAVING A PERMANENTLY FIXED LIGHT SOURCE, AND PARTS THEREOF NOT ELSEWHERE SPECIFIED OR INCLUDED

...

9405 40 - **Other electric lamps and lighting fittings:**

9405 40 10 -- Searchlights and sportlights

9405 40 90 --- Other

...

After the Amendment of the schedule:

9405: LUMINAIRES AND LIGHTING FITTINGS INCLUDING SEARCHLIGHTS AND SPOTLIGHTS AND PARTS THEREOF, NOT ELSEWHERE SPECIFIED OR INCLUDED; ILLUMINATED SIGNS, ILLUMINATED NAME-PLATES AND THE LIKE, HAVING A PERMANENTLY FIXED LIGHT SOURCE, AND PARTS THEREOF NOT ELSEWHERE SPECIFIED OR INCLUDED

...

- **Other electric luminaires and lighting fittings:**

9405 41 00 -- Photovoltaic, designed for use solely with light-emitting diode (LED) light sources

9405 42 00 -- Other, designed for use solely with light-emitting diode (LED) light sources

9405 49 00 -- Other

9405 50 00 - Non-electrical luminaires and lighting fittings

...

Thus, in view of the terms of Headings 9006 and 9405 of the First Schedule of the Customs Tariff Act, 1975, in both the circumstances, i.e., before and after the amendment of the Schedule, the impugned items, viz., DIGITEK BRAND RING LIGHT and DIGITEK Brand LED Video Light, do not appear to be classifiable under 9006 as the said heading only covers the lights which produce flash light, i.e., a very bright light for a very short duration, not a continuous light. The said items appear to be classifiable under Heading 9405 which covers the lighting fittings not elsewhere specified or included. Before the amendment, the said items appear to be classifiable under Tariff Item 9405 4090. Therefore, it appears that M/s JMPL have incorrectly classified the said items up to 2021, although from March, 2022 onwards, M/s JMPL appear to be correctly classifying the items.

2.9 While recording the statement dated 28.04.2022 under Section 108 of the Customs Act, 1962, when the representative of M/s JMPL was confronted with the extant legal provisions and requested to explain why DIGITEK Brand LED Ring Light and DIGITEK Brand LED Video Light, were classified by M/s JMPL under 90066100, whereas in terms of the Customs Tariff and Explanatory Notes of HSN, the said items are rightly classifiable under CTH 9405, he stated that as other importers were importing such items under the heading 9006, M/s JMPL had also followed the same; he stated that the classifications had been done by mistake. He also stated that the company was ready to pay the short-levied duty along with interest. However, subsequently the company deposited Rs. 35 lakhs towards the differential duty under protest, and requested for issuance of the Show Cause Notice for the demand in the matter.

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2.10 The view of M/s. JMPL that after the amendment in the Schedule introduced by the Finance Act, 2021, the said items became classifiable under the Heading 9405 appears to have no merit as even before the amendment, the said heading was the residual heading accommodating the lighting fittings not elsewhere specified or included and it remains the residual heading after the amendment as well. The terms of the Heading 9006 categorically accommodate only the flashlights and flashbulbs along with the cameras in both the circumstances, i.e., after the amendment and before the amendment in the Schedule. M/s JMPL have stated that the tariff entry 94054200 did not exist at the time of import, while ignoring that the heading 9405 was very much in existence, and it was the residual heading even at the time, and an appropriate classification was to be found within 9405. Further, the HSN Explanatory Notes clearly states that only flash lights are to be classified under the heading 9006 and photographic lighting equipment would find classification under 9405. Therefore, the importer's contention regarding the appropriate entry not existing at the time of the impugned imports appears to be bereft of any logic.

2.11. On being informed about the discrepancies in the classifications of the said items by the DRI, the response of M/s JMPL have not been consistent. Under the statement dated 28.04.2022 recorded under Section 108 of the Customs Act, 1962, the representative of the company stated that the company adopted the same classification as was done by other importers of the similar items. He did not have any explanation for the discrepancy in terms of extant provisions of the Customs Tariff Act, 1975. He stated that the company had understood the issue and the duty short levied due to mis-classification would be paid by the company. However, afterwards they came up with a reason that up to 2021, the company declared the items under the heading 9006 and not under 9405 as during the said period the terms of the heading 9405 was different from those after the amendment brought about under the Finance Act, 2021. The apparent lack of merit in this line of argument has already been discussed at para 6.2 above. From these statements, it appears that M/s JMPL have wilfully mis-classified the goods at the time of import to evade the payment of appropriate amount of Customs duty, and is now fishing for explanations to justify their illegal conduct.

2.11.1 Further, as mentioned at Para 2.1 supra, M/s JMPL also appears to have wilfully changed the actual description of the VIDEO LED RING LIGHT (as mentioned in the Bills of Lading) into DIGITEK BRAND RING LIGHT in the Bills of Entry because the description VIDEO LED RING LIGHT amply suggests that it can be used in video recording which also implies that it emits continuous light as otherwise it cannot be used for video recording. This change in description and **specifically the omission of the word "video"** while filing the Bills of Entry appears to have been deliberately done in order to mislead the Customs as to the real nature of the imported goods, and thus M/s. JMPL appears to have indulged in wilful misstatement to claim the incorrect classification.

2.12. By mis-classifying the impugned goods at the time of imports, M/s JMPL have not ensured the accuracy of the information given in Bills of Entry. M/s JMPL have, thus,

contravened the provisions of section 46(4)A of the Customs Act, 1962 by wilfully mis-classifying the impugned goods just to evade payment of due amount of customs duty. Due to mis-declaration of the Tariff Item in respect of the impugned goods imported under the 47 Bills of Entry (as mentioned in Annexure-X) imported through Nhava Sheva, the due amounts of Basic Customs Duty (BCD) and Social & Welfare Surcharge (SWS) have not been paid.

2.12.1 The total differential customs duty (BCD + SWS) amounting to **Rs. 2,06,79,536/-** (as per Column I of the following Table) in respect of the consignments under the said 47 Bills of Entry, calculated on the basis of re-determined Tariff Item appear to be recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA *ibid.* as the said customs duty appears to have been short paid by resorting to wilful mis-statement.

Table-B

Sl.No.	No. of B/E	Item description	Declared CTH	Proposed CTH	Declared Assessable Value (Rs.)	Duty Amount (BCD+SWS)INR		
						Paid	*Payable*	*Recoverable*
A	B	C	D	E	F	G	H	I
1	47	DIGITEK BRAND RING LIGHT/DIGITEK Brand LED Video Light	90066100	94054900	13,52,48,497	1,48,77,335	3,55,56,871	2,06,79,536

(Detailed calculation of the recoverable duty has been done in Annexure 'X' attached with this Report.)

2.12.2 The said contravention appears to have rendered the goods imported under the said 47 Bills of Entry, which had been imported by M/s JMPL during the impugned period, liable to confiscation under Section 111(m) of the Customs Act, 1962. Shri Om Prakash Rana and Shri Sandeep Rana, being the directors of the company were responsible for the operations of the company and therefore, appear to be responsible in the commission of the said wilful mis-classification of the goods by filing the false declaration in the Bills of Entry before the Customs. They appear to have conspired to make falsified declarations in respect of the impugned goods, which made these goods liable to confiscation under Section 111(m) of the Customs Act, 1962, with the *mala fide* intention to evade the applicable customs duty. For the said act of commission or omission of the company and its directors rendering the said goods liable to confiscation, M/s JMPL and its directors appear to be liable to penalty under Section 112(a) of the Customs Act, 1962.

2.12.3 M/s. JMPL also appear to be liable to penalty for short-levy of duty of **Rs. 2,06,79,536/-** in respect of the consignments under the said 47 Bills of Entry under Section 114A of the Customs Act, 1962. Shri Om Prakash Rana and Shri Sandeep Rana, being the directors of the company and responsible for the imports of the impugned items made by M/s JMPL, also appear to be liable to penalty under Section 114AA of the Customs Act, 1962, as they have knowingly and intentionally made and caused false declaration in respect of the classifications of the impugned goods while presenting the Bills of Entry regarding the impugned goods.

2.12.4 Thus, in view of the above said facts, it appears that:

(i) The declared classification of the goods described as DIGITEK Brand Ring Light and DIGITEK Brand LED Video Light under the Tariff Item **90066100** in respect of the said 47 Bills of Entry is liable to be rejected, and the same needs to be classified under Tariff Item 94054090;

(ii) The said goods under the 47 Bills of Entry having total assessable value of **Rs. 13,52,48,497/-**(as per Column F of the Table-B) are liable to confiscation under section 111(m) of the Customs Act, 1962;

(iii) The differential duty amounting to **Rs.2,06,79,536/-** in respect of the 47 Bills of Entry (as per Column I of the Table) calculated on the basis of re-determined classification is recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962, as the same has been short paid by resorting to wilful mis-statement;

(iv) the deposit of Rs. 35,00,000/- made vide two separate Demand Drafts is liable to be appropriated towards the duty demand above;

(v) Applicable Interest is recoverable from M/s Jatrana Mercantile Private Limited on the said differential duty amounts under Section 28 AA of the Customs Act, 1962;

(vi) M/s Jatrana Mercantile Private Limited is liable to penalty for short-payment of duty of amount **Rs.2,06,79,536/-** in respect of the 47 Bills of Entry under Section 114A of the Customs Act, 1962.

(vii) Shri Om Prakash Rana and Shri Sandeep Rana (both directors of M/s JMPL), being responsible for the imports of the goods made by the company, are liable to penalty under Section 112(a) of the Customs Act, 1962.

(viii) M/s Jatrana Mercantile Private Limited and its directors, Shri Om Prakash Rana and Shri Sandeep Rana, being responsible for making false declarations in the Bills of Entry filed before Customs are also liable for penalty under Section 114AA of the Customs Act, 1962.

2.13. In view of the above, **M/s Jatrana Mercantile Private Limited, Khasra No. 145/1, Main Road, Khera Kalan, North West Delhi, Delhi-110082(IEC: 0505011085)**, and its directors named Shri Om Prakash Rana and Shri Sandeep Rana were called upon to show cause, in writing, to the Commissioner of Customs, Nhava Sheva-V, Jawaharlal

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Nehru Customs House, Mumbai Customs Zone-II, having office at Jawaharlal Nehru Customs House, Nhava Sheva Tal-Uran, Dist. Raigad, Maharastra-400707, as to why:

(i) the declared classification of the goods described as DIGITEK Brand Ring Light and DIGITEK Brand LED Video Light under the Tariff Item **90066100** in respect of the said 47 B/Es is not liable to be rejected, and the same should not be classified under Tariff Item 94054090;

(ii) the impugned goods imported under the cover of 47 Bills of Entry (as detailed in **Annexure-X**) having total assessable value of **Rs. 13,52,48,497/-** should not be held liable to confiscation under section 111(m) of the Customs Act, 1962;

(iii) the differential duty thereon amounting to **Rs.2,06,79,536/-(Rupees two crores, six lakhs, seventy-nine thousand, five hundred and thirty-six only)** should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, along with the applicable interest under Section 28AA *ibid.*, as they have indulged in wilful misstatement;

(iv) the amount of Rs. 35,00,000/- (Rupees thirty-five lakh) deposited vide two Demand Drafts towards differential duty should not be appropriated against the demand above;

(iv) penalty should not be imposed on M/s Jatrana Mercantile Private Limited under Section 114A of the Customs Act, 1962 for indulging in wilful misstatement resulting in short-payment of Customs duty;

(vi) penalty should not be imposed on Shri Om Prakash Rana and Shri Sandeep Rana (both directors of M/s JMPL) under Section 112(a) of the Customs Act, 1962 for the violations detailed hereinabove; and

(vii) penalty should not be imposed on M/s Jatrana Mercantile Private Limited and its directors, Shri Om Prakash Rana and Shri Sandeep Rana, under Section 114AA of the Customs Act, 1962 for deliberately making a false declaration in their Bills of Entry.

NOTICEES' WRITTEN SUBMISSION

3. M/s Jatrana Mercantile Private Limited, vide their letter dt. 25.01.2024, submitted their written reply to the show cause notice wherein they, inter-alia, submitted as under: -

A. That **M/s Jatrana Mercantile Private Limited** (hereinafter referred to as the '**Noticee**' or the '**Importer**') having their place of business at Khasra No. 145/1, Main Road, Khera Kalan, North West Delhi, Delhi-110082, having IEC 0505011085, is in receipt of the captioned Show Cause Notice No. 1143/2023-24/Commr./NS-V/CAC/JNCH dated 25.08.2023 (hereinafter referred to as the '**SCN**') the

'**impugned Notice**') issued by Commissioner of Customs, Nhava Sheva-V, JNCH, Mumbai Customs Zone-II, Raigad, Maharashtra-400707 (hereinafter referred to as the '**issuing authority**'). A copy of the SCN is annexed herewith and marked as **Annexure-I**.

B. That the aforementioned SCN is verbatim of the Investigation Report filed before the issuing authority by the Additional Director of Directorate of Revenue Intelligence (hereinafter referred to as the '**DRI**') and therefore, the facts and grounds mentioned herein for the SCN shall be applied *mutatis mutandis* on the Investigation Report submitted by the DRI.

C. That the Noticee are in the business of importing various lights used by photographers in their studios or for photography purposes such as lights with monopod/ bipod/ tripod stand and white umbrellas to diffuse direct light and provide soft lighting with a combination of flash lights that are triggered with camera sensors; ring lights; square lights for additional lighting, etc. These lights are LED based lights with stands and frames and exclusively used by photographers, videographers and cinematographers. The Noticee has been importing the said goods since 2014 and clearing the goods under Customs Tariff Heading (CTH) 9006 6100 – *"Photographic (other than cinematographic) cameras; photographic flashlight apparatus and flash bulbs other than discharge lamps of heading 8539 – Discharge lamp ("electronic") flashlight apparatus"*.

D. The goods pertaining to this matter are **Photographic Ring Lights** and **Photographic Video Lights** of **DIGITEK Brand** (hereinafter referred to as the '**impugned goods**') used by the **Social Media Influencers, Content Creators, Youtube Video/Content Creators and Photographers** to use as photographic accessories to light up close range photographs and videos, to be primarily captured or recorded by the Photographic Cameras and high-end mobile phones having photographic capabilities. The impugned goods have a cluster of LED Lights which emits bright light to produce no shadow aperture. The impugned goods are imported and sold with or without the phone holders in as much as they are designed to be used only with the phones having cameras. Copies of the advertisement materials along with a brief description of the impugned goods is annexed herewith and marked as **Annexure-II**.

E. That since 2014, the Noticee imported the impugned goods at Air Cargo Complex, Sahar and JNCH, Nhava Sheva Ports. Since the impugned goods were used as an accessory to photographic equipment, the impugned goods were declared as photographic accessories and were classified under the most relevant Customs Tariff Heading (**CTH**) 9006 6100. The imported goods were cleared by the Customs Authorities, sometimes even after 100% examinations and no infirmity was ever found against the classification adopted by the Noticee. A

copy of one of such examination report is annexed herewith and enclosed as **Annexure-III**.

F. As per the impugned Notice, a special intelligence was gathered by the DRI, Kolkata Zonal Unit that for the for the period of **August, 2018 to August, 2021** (hereinafter referred to as the '**relevant period**'), the Noticee has imported the impugned goods from China under Customs Tariff Heading (**CTH**) 9006 6100 wherein the Basic Customs Duty (**BCD**) is levied at the rate of 10%, whereas as per the DRI, the correct classification of impugned goods should be under 9405 4090 taxable at the rate of 20% until 31.01.2020 and 25% from 01.02.2020. It is thus alleged in para 1 of the SCN that the Noticee and their Directors has wrongfully classified the impugned goods leading to evasion of Customs Duty.

G. That the issuing authority has completely and conveniently ignored the fact that the impugned goods were subject to BCD at the rate of 10% under both CTH viz., CTH 9006 as well as 9405 before 14.12.2017. Hence, from 2014 onwards, the Noticee had no reason to choose CTH 9006 to allegedly evade duty of Customs.

H. That the SCN further states that a preliminary scrutiny of the import documents and declarations made by the Noticee during the relevant period was conducted and it is alleged that in the Bills of Entry (**BOEs**), the description of impugned Goods is declared as '**DIGITEK BRAND RING LIGHT**' whereas in the Bills of Lading, it is declared by the Chinese entity as '**VIDEO LED RING LIGHT**'. Hence, it is alleged that the Noticee has omitted the term 'Video' as mentioned in the Bills of Lading (which is actually prepared and filed by the Chinese entity). At a later stage, this allegation transpires into the sole basis of invocation of extended period of limitation under Section 28 (4) of the Customs Act, 1962 (hereinafter referred to as the '**Act**') as per para 10.1 and para 11.4 of the SCN.

I. However, such claim made in the SCN is not entirely correct as in few of the BOEs filed by the Noticee, the term 'Video' is explicitly mentioned in the description of impugned goods which were cleared by the Customs authorities. It is also important to note that the Noticee has been importing such goods from 2014 onwards and the Noticee has been mentioning the term 'Video' since then. Copies of few BOEs wherein the term 'Video' is mentioned is annexed herewith and marked as **Annexure-IV**.

J. Whereas, in para 3 and para 4 of the SCN, the classification of the impugned goods is being ascertained only by citing the listings on e-commerce websites and description mentioned therein. Apart from the excerpts taken from the e-commerce website, there has been no further analytical discussion of the nature and function of the impugned Goods in as much as no scientific or technical discussions have been cited in the SCN. As such, the SCN is devoid of any

comments from any technical expert or any personnel having any knowledge of the design, usage and commerciality of the impugned Goods. Nevertheless, the excerpts taken from the e-commerce websites is annexed herewith and marked as **Annexure-V**.

K. Thereafter, after reiterating the CTH extracts of 9006 and 9405, the issuing authority relies on the HSN Explanatory Notes pertaining to the Chapter 90.06 Part (II) Photographic Apparatus and Flashbulbs which is reproduced below as reference:

> *"This Group covers photographic flashlight apparatus and flashbulbs which are used for professional or amateur photography, in photographic laboratories or in photogravure work*
>
> *These devices produce very bright light for a very short duration (flash) and are thus distinguished from photographic lighting equipment of heading 94.05."*

L. That apart from reiteration of aforementioned lines of HSN Explanatory Notes, there is no further analysis of any Chapter Notes of Schedule I of Customs Tariff Act, 1985 (hereinafter referred to as the '**CTA**') or any further source to derive the classification, and solely based on the aforementioned Note in isolation, it is alleged that the impugned goods shall be classified under CTH 9405 and not under 9006 as adopted by the Noticee. It is relevant to note that the HSN Explanatory Notes is a commentary issued by the World Customs Organizations (**WCO**) which is not publicly accessible and requires a good amount of subscription fees. Further, the industry is not aware of having to rely on these HSN Explanatory Notes as there is no mention of the same in the CTA that is applicable to the public at large. Nevertheless, the classification scheme in India is guided by the Schedule I to the CTA and as such, HSN Explanatory Notes is not binding on anyone in this Country.

M. That on this pre-conceived notion, a summon dated 31.03.2022 under Section 108 of the Act was served upon to the Noticee requesting certain documents. A response dated 12.04.2022 was filed by the Noticee wherein along with furnishment of certain documents, it was submitted that they have imported identical goods in the past which were duly appraised and assessed by the Customs Authorities and no objection has been received against them in the past. In the said response, the basis on which the change in classification has been alleged by the DRI was sought. A copy of the Summon dated 31.03.2022 along with its response dated 12.04.2022 is collectively annexed herewith and marked as **Annexure-VI**.

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N. In the response dated 12.04.2022, it was also submitted by the Noticee that the CTA has been amended and new entries and amendments have been made by the Government and that as per the legal advice received by the Noticee and considering the recent amendments brought up in CTH 9405 w.e.f. 01.01.2022, the classification was changed to CTH 94054200 as it covered the luminaires having LED after such amendment. Hence only after the amendment w.e.f. 01.01.2022, the impugned goods should be classified under CTH 9405 as prior to the amendment, the more specific entry covering the impugned goods was 9006 6100. Also, in the said response, the basis on which the change in classification has been alleged by the DRI was sought by the Noticee.

O. That another Summon dated 21.04.2022 was issued to the Director of the Noticee. Along with the Summon dated 21.04.2022, a copy of the DRI's opinion was also provided which is the basis for the investigation initiated against the Noticee and classification adopted by the DRI. In the DRI's Opinion, the excerpts of the HSN Explanatory Notes of WCO, as reiterated in the preceding paragraphs, transpired for the first time in the investigation. A copy of the Summon dated 21.04.2022 along with the DRI's Opinion for Classification is annexed herewith and marked as **Annexure-VII**.

P. That in response to the Summon dated 21.04.2022, a letter dated 27.04.2022 was filed wherein the Noticee submits that they are engaged in the import of impugned goods for the past several years and have classified them under the same CTH. In this regard, sample BOEs for the periods even prior to the relevant period were submitted. Hence, they submitted that there is no intention to evade any Customs Duty since their past imports were cleared and 9006 6100 was the CTH adopted by the entire industry. The Noticee further submitted the Legal Opinion issued by their legal advisers on the classification issue.

Q. That the Noticee also emphasized that a specific entry for the classification of impugned goods under CTH 9405 was introduced only w.e.f. 01.01.2022 and prior to that, there is no infirmity if the impugned goods were classified under CTH 9006 6100. Also, since the demand has been claimed after several years of consistently clearing the impugned goods after 100% examination and accepting the classification adopted by the Customs Department, the financial strain on the Noticee for the reason of escalation of Customs Duty was also cited which may put the Noticee on the verge of Bankruptcy considering that all through these years they have acted in a *bonafide* belief and manner. A copy of the response dated 27.04.2022 is annexed herewith and marked as **Annexure-VIII**.

R. That on 28.04.2022, the representative of the Noticee appeared before the DRI and tendered his statement wherein the excerpts of HSN Explanatory Notes of WCO was put before the representative and the questions for the statements

were asked with a preconceived notion that the impugned goods were undisputedly covered under CTH 9405 and the Noticee has caused loss to the department of revenue. Since the representative was hailing from Accounts background and was not an expert on the classification of goods, he duly replied to the questions of DRI by stating that they are *bonafide* importers and given the excerpts of HSN Explanatory Note, the Noticee may have mistaken while classifying the impugned goods under CTH 9006 6100. Whereas, as instructed by the Noticee, a proposal for upfront payment of Rs. 20,00,000/-, **under protest**, was submitted by the representative of the Noticee. A copy of the statement tendered by the representatives of the Noticee is annexed herewith and marked as **Annexure-IX**.

S. That vide letter dated 04.05.2022, the Noticee paid the amount of Rs. 20,00,000/- through Demand Draft, **under-protest**, and requested the DRI to issue a Show Cause Notice so that the allegations may be contested. Thereafter, on 31.01.2023, the Noticee paid another amount of Rs. 15,00,000/-, **under-protest**. A copy of both the letters filed by the Noticee is collectively annexed herewith and marked as **Annexure-X**.

T. Thereafter, in para 9 of the SCN it is alleged that since the impugned goods emits continuous lights, the impugned goods should have been classified under CTH 9405, which is supported by the conjoint reading of CTH 9006 and HSN Explanatory Notes. It is further emphasized that post amendment in CTH 9405, the Noticee is classifying the impugned goods under CTH 9405 4200; however, there has not been any substantial change in classification in as much as the impugned goods were covered under CTH 9405 even before the amendment. However, the reliance has been placed solely on the HSN Explanatory Notes and no additional literature or evidences has been produced by the issuing authority.

U. That in para 9.2 of the SCN, it is stated that even prior to the amendment w.e.f. 01.01.2022, CTH 9405 was a residual heading accommodating the lighting fittings not elsewhere specified or included and it remains the residual heading after the amendment as well. Whereas, CTH 9006 categorically accommodates only the flashlights and flashbulbs along with the cameras in both the circumstances, i.e., after the amendment and before the amendment in the schedule.

V. That in para 10 of the SCN, it is alleged that on one hand, the representative of the Noticee understood the issue and stated that the short-levied duty shall be paid by the Noticee, however, after tendering statement the Noticee came up with the reason that only after the amendment in CTH 9405 w.e.f. 01.01.2022 the impugned goods shall be covered under CTH 9405. Considering this, it is alleged that the Noticee willfully mis-classified the impugned goods at the time of import to evade Customs Duty and is now fishing for explanation. While citing this, the

issuing authority completely ignored the letter dated 12.04.2022 and 27.04.2022 (as annexed) wherein the Noticee has explicitly submitted that they are classifying the impugned goods under CTH 9405 only after amendment brought up in CTH 9405 w.e.f. 01.01.2022 and hence, there is no substance in this allegation.

W. Whereas in para 10.1, the issue of mentioning the word 'Video' in the BOEs is again brought up to support the invocation of extended period by the issuing authority while citing that the Noticee is engaged in wilful mis-statement to claim the incorrect classification as well as in contravention of provisions of Section 46 (4A) of the Act.

X. Accordingly, it is alleged that the total differential duty amounting to the tune of **Rs. 2,06,79,536/-** is liable to be recovered from the Noticee under Section 28 (4) of the Act along with interest under Section 28 AA of the Act. It is further alleged that the impugned goods imported by the Noticee is liable to be confiscated under section 111 (m) of the Act.

Y. That it is alleged in the SCN that the Directors of the Noticee by the name of Shri Om Prakash Rana and Shri Sandeep Rana are indulged in making false declaration with a *malafide* intention to evade the Customs Duty. Therefore, the Noticee along with its Directors are liable to penalty under Section 112 (a) of the Act.

Z. That a penalty to the tune of Rs. 2,06,79,536/- under Section 114 A of the Act and penalty on the directors of the Noticee under Section 114 AA of the Act is alleged to be imposed. Accordingly, the impugned Notice has been issued to the Noticee.

REPLY TO SCN

The Noticee denies the allegations in the SCN and submits that the allegations are erroneous both on facts and in law inasmuch as it has been raised without considering and appreciating the correct facts of the case and are based on entirely incorrect interpretation of the law. In this respect, the Noticee makes the following submissions which are without any prejudice to and independent to each other.

1. **That the allegation upon the Noticee that he has knowingly chosen a wrong CTH to classify the impugned goods so as to evade higher rate of basic customs duty is highly incorrect in as much as prior to 14.12.2017, the rates of BCD on both the CTH were the same viz., 10%**

1.1. It has been alleged by the issuing authority that the Noticee has imported the impugned goods from China under CTH 9006 6100 wherein the BCD is levied at

the rate of 10%, whereas as per the DRI, the correct classification of impugned goods should be under 9405 4090 taxable at the rate of 20% until 31.01.2020 and 25% from 01.02.2020. It is thus alleged in para 1 of the SCN that the Noticee and their Directors have wrongfully classified the impugned goods leading to evasion of Customs Duty.

1.2. That the issuing authority has completely, and perhaps, conveniently and purposefully ignored the fact that **the impugned goods were subject to BCD at the rate of 10% under both CTH viz., CTH 9006 as well as 9405 before 14.12.2017**. Hence, from 2014 onwards, the Noticee had no reason to choose CTH 9006 to allegedly evade duty of Customs.

1.3. For the purpose of reference, the rate of BCD of goods under 9405 and 9006, during different time frames, are as follows:

CTH	BCD Rate – Merit (as of date)	Remarks
9006	10%	Rate remains the same since 2014
9405	25%	Rate was 10% before 14.12.2017
		Rate changed to 20% with effect from 14.12.2017
		Rate changed to 25% with effect from 02.02.2020

1.4. Given the above, it becomes abundantly clear that there was no reason for the Noticee to have classified the goods under CTH 9006 at the time of commencement of imports of the impugned goods for the very first time in 2014 for the sole reason that the rate of BCD was lower as compared to the alleged CTH 9405 by the DRI and issuing authority. It appears that the DRI has finalised the investigation report to merely harass and arm-twist the Noticee as there is no merit in the SCN so issued.

1.5. Sample copies of the Bills of Entry filed in 2014 with respect to impugned goods is enclosed as **Annexure XI**.

1.6. That merely on the aforesaid submissions, the SCN deserves to be dropped.

2. That during the relevant period, the impugned goods were rightly classified under CTH 9006 6100, it being the more specific entry, and not under CTH 9405 4090 as alleged by the issuing authority during the concerned period. The classification of the DRI and the issuing authority is solely based on the HSN Explanatory Notes of WCO which is not the appropriate way to arrive at the classification of any article.

2.1. It is alleged in the SCN that as per the HSN Explanatory Notes, for the relevant period, the impugned goods should have been classified under chapter 9405 4090 and not under chapter 9006 6100 for the reason that Chapter 9006 covers

only flashbulbs and flashlights, emitting light for a very brief moment, whereas the continuous photographic lighting equipment are covered under CTH 9405.

Whether HSN Explanatory Notes can be the sole factor to decide the Classification or its just a secondary aid for classification

2.2. That on the aspect of classification, **there is no literature, scientific data or trade parlance materials are produced and except for the excerpts of HSN Explanatory Notes. The whole case of the issuing authority is solely based on the few lines mentioned in the HSN Explanatory Notes**. As such, the copy of HSN Explanatory Notes is not easily available to the industry at large and on the other hand, we have our own Schedules with CTA which is passed by the legislature and binding on all importers, courts and quasi-judicial authorities. In the impugned Notice, there is not a single discussion on chapter notes of CTA, precedents with respect to the classification of impugned goods or any other details. Hence, it is important to deduce the sanctity of this literature and whether or not it is binding on the authorities constituted under the Act and Courts of this country.

2.3. In this regard, in the case of **A. Nagaraju Bros. vs. State of Madhya Pradesh; 1994 (72) ELT 801 (SC)**, it is held by the Hon'ble Supreme Court that there cannot be one single universal test to determine the classification of a product. While considering this Judgment, a three-member bench of Hon'ble Supreme Court in the case of **O.K. Play (India) Ltd. vs. CCE, Delhi-III, Gurgaon; 2005 (180) ELT 300 (SC)**, wherein it is thus held:

> *"**6.** Before dealing with the issue of classification, certain points are required to be clarified.*
>
> ***7.** In the case of A. Nagaraju Brothers v. State of Andhra Pradesh reported in [1994 (72) E.L.T. 801], it has been held by this Court that no one single universal test can be applied for correct classification. There cannot be a static parameter for correct classification.*
>
> ***8.** Further, the scheme of the Central Excise Tariff is based on Harmonized System of Nomenclature (for short "HSN") and the explanatory notes thereto. Therefore, HSN along with **the explanatory notes provide a safe guide for interpretation of an Entry**.*
>
> ***9.** Further, **equal importance is required to be given to the Rules of Interpretation** of the Excise Tariff. Under Rule 3(a), it is provided that the heading which provides a specific description shall be preferred to a heading having a more general description. For example, in the case of "toys" referred to in the HSN Heading and the Tariff Heading, the description refers to reduced size model of an Article used by adults. This test helps us to understand the difference between "toys and miniature".*

10. Lastly, it is important to bear in mind that functional utility, design, shape and predominant usage have also got to be taken into account while determining the classification of an item."

[Emphasis Supplied]

2.4. That in the aforementioned Judgment, it is held that the HSN Explanatory Notes are a safe guide for interpretation of an Entry. There are other Judgments of the Apex Court which discusses the persuasive value of these Notes and it may be used as an aid to arrive at a classification. However, it is nowhere mentioned that the HSN Explanatory Note is binding on any authority whatsoever and should be the sole basis to arrive at a classification.

2.5. That in the case of **Chetna Polycoats (P) Ltd. vs. CCE; 1988 (37) ELT 253 (Tribunal-Del)**, the larger bench of Hon'ble Delhi Tribunal had thus held:

"6. It is no doubt true that the schedule to Central Excise Tariff Act, 1985, is a far more detailed and sophisticated tariff nomenclature than its predecessor schedule. It is also based on the "Harmonised Commodity description and coding system" evolved by the Customs Cooperation Council, Brussels. ***The new schedule has many in-built aids to the interpretation of its headings and sub-headings. These are the section notes and chapter notes which have got statutory force and rules for the interpretation of the schedule, which also have statutory force. The explanatory notes which are not part of the schedule have no statutory force and are only of persuasive value.*** *These notes, drawn up by experts in the field, are a valuable aid to the understanding of the scope of the headings and the sub-headings* ***but if the interpretation of the entries in the schedule (C.E.T. 1985), in the light of the aforesaid legal aids and in the light of case law, point to a conclusion contrary to, or different from that indicated by the explanatory notes, the former shall prevail****. Therefore, reliance on the explanatory notes has to be tempered with due regard to the aforesaid considerations."*

[Emphasis Supplied]

2.6. That as per the aforementioned Judgment, it is held that though the Explanatory Notes are useful aids of classification in the Central Excise Tariff as long as the interpretative rules and headings of the latter and case laws do not point to contrary conclusion. The aforementioned case was maintained by the Hon'ble Supreme Court in the case of **Collector vs. Chetna Polycoats (P) Ltd., 1991 (55) ELT A67 (SC)**, thereby settling this issue.

2.7. Further, in the case of **Coen Bharat Ltd. vs. Commissioner of C. Ex., Vadodara; 2007 (217) ELT 165 (SC)**, the Hon'ble Supreme Court has thus held:

"5. There is no merit in these civil appeals. In our view entry 73.22 expressly covers air heaters. Assessee is the manufacturer of hot air generator. It is true that central excise tariff is essentially based on HSN explanation. ***However, Explanatory Notes in HSN are to be invoked if there is any ambiguity in the tariff items under the Central Excise Tariff. In the present case there is no such ambiguity. The words used in 73.22 are referred to air heaters. Therefore, in our view resort to HSN Explanatory Note was not required.*** *This reason is in addition to the reasons given by the Tribunal of the technical side in the impugned judgment to classify the "air heaters" manufactured by the appellant under entry 73.22."*
[Emphasis Supplied]

2.8. In the aforementioned Judgment, it is categorically held by the Hon'ble Supreme Court that the HSN Explanatory Notes should be referred only when there is any ambiguity in the tariff items. In the case of the Noticee, the SCN is not even hinting towards any ambiguity and is blatantly resorting solely on the HSN Explanatory Note to arrive at a conclusion. In fact, the Chapter Notes and Headings in the Schedule to CTA leaves no room for any ambiguity. As such, the reliance on the HSN Explanatory Notes is unsettling the easily portrayed classification notes and makes it ambiguous.

2.9. In the case of **Protek Circuits & Systems Ltd. vs. CCE, Chennai; 2012 (280) ELT 522 (Tri Chennai)**, the Hon'ble Supreme Court has thus held:

"8. The function of the impugned goods has been adequately described in the impugned order and there is no dispute about the same nor is there any need to reproduce the details of the functions of the impugned goods. It is clear that these goods are used for making printing plates by a process which transfers a photograph/artwork and/or text for printing on to a film which is subsequently transferred to a printing plate. Printing plates are required to be used in offset printing machinery for actual printing of texts including pictures. From the entry under Heading 8442 and 9009, we find that the former includes machinery, apparatus and equipment for preparing or making printing blocks, plates etc. This description under Heading 8442 appears to be more appropriate to cover the impugned goods, viz. Metal Halide Light Exposing System for Offset Printing Plate Making rather than under the entry photocopy apparatus covered under Heading 9009. ***We are of the view that it is not necessary to refer to the details of the HSN explanatory notes when comparison of the relative legal texts in the disputed headings indicate a clear classification under one of the headings****, as under Heading 8442 in this case. Since in the grounds of appeal, the appellants themselves have opted for*

alternative classification under Heading 8442 and the same seems to be more appropriate than Heading 8443 or 9009, we order classification of the impugned Metal Halide Light Exposing System for Offset Printing plate making under Heading 8442. Parts of such system also get classified under the same heading."

[Emphasis Supplied]

2.10. That in the case of **CCE, Kanpur vs. Rationale Iron & Steel Co.; 2017 (6) GSTL 203 (Tri-All)**, it is thus held that:

"6. Having considered the rival contentions and on perusal of Page 1 of show cause notice wherein at Para 3 of show cause notice tariff description of goods falling under Tariff Item No. 8438 50 00 are stated as "Machinery for the industrial preparation or manufacture of food or drink" and on perusal of the contention of Revenue about the Explanatory Notes, ***we find the ground raised by Revenue are not sustainable because the Explanatory Notes have no force of law and they are only for guidance*** *whereas the finding of ld. Commissioner (Appeals) is on the basis of Central Excise Tariff Act, 1985 enacted by Indian Parliament. We, therefore, hold that the ground raised by Revenue are not sustainable. We, therefore, dismiss the appeal filed by Revenue. The respondents will be entitled to consequential relief, if any, in accordance with law."*

[Emphasis Supplied]

2.11. **It is thus established by virtue of the aforementioned precedents held by the Hon'ble Supreme Court as well as Hon'ble Tribunals, which is constituted under the law, that the HSN Explanatory Notes are one of the aids which can be used to arrive at a conclusion and have persuasive value. Whereas, the SCN portrays this literature ahead of the statute and the statutory notes of Schedule to CTA. It is of utmost importance for the Noticee to clear this biased approach of the issuing authority to initiate a constructive classification.**

Description of the impugned goods

2.12. That the impugned goods are known as **Photographic Ring Lights** and **Photographic Video Lights** of **DIGITEK Brand** which are used by the **Social Media Influencers, Content Creators, Youtube Video/Content Creators and Photographers** as photographic accessories to light up close range photographs and videos, to be primarily captured or recorded by the Photographic Cameras and high-end mobile phones with photography features. The impugned Goods is having a cluster of LED Lights which emits bright light to produce no shadow aperture. The impugned goods are imported and sold with or without the phone

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holders in as much as they are designed to be used only with the phones with cameras.

2.13. That the ring lights is a circular light or flash with a hole in the center for a camera or phone. These are used by the vloggers to create flattening, even lighting, by fashion photographers for beauty shots, and by macro photographers for even lighting while taking a close up.

2.14. The main purpose of these lights is to cast a flash or an even light onto the subject. This reduces the shadow in the face and minimizes blemishes, while illuminating the eyes. These lights typically give off clear, white light, and comes with a mount in the center where one can place a camera or a smartphone. It is a substitute to a full lighting setup. It also comes with a remote.

2.15. It is pertinent to note that except for being used as a photographic accessory, these ring lights have no other use and the essential character of these impugned goods is to be used along with a camera. These cannot be used as a standing or floor lamp or luminaries. Few pictures of the impugned goods are annexed herewith as **Annexure-XII**.

2.16. Whereas, with same characteristics and features, the Photographic Video light is rectangular in shape and having a module to manage color modes and dim the lighting. Few pictures of the impugned goods are annexed herewith as **Annexure-XIII**.

2.17. It is pertinent to note that these lights are contemporary photographic lights and are made of cluster of LEDs assembled together.

Analysis of the CTH adopted by the Noticee and alleged by the issuing Authority

2.18. That as per the classification adopted by the Noticee, the impugned goods are classified under the CTH 9006 (most appropriately under 9006 6100 which is reproduced below for reference:

9006		PHOTOGRAPHIC (OTHER THAN CINEMATOGRAPHIC) CAMERAS; PHOTOGRAPHIC FLASHLIGHT APPARATUS AND FLASH BULBS OTHER THAN DISCHARGE LAMPS OF HEADING 8539			
90063000	-	Cameras specially designed for underwater use, for aerial survey or for medical or surgical examination of internal organs; comparison cameras for forensic or criminological purposes	U	10%	-
90064000	-	Instant print cameras	U	10%	-
	-	Other cameras:			
900653	--	For roll film of a width of 35 mm:			
90065310	---	Fixed focus 35 mm cameras	U	10%	-

90065390	---	Other	U	10%	-
900659	--	Other:			
90065910	---	Fixed focus 110 mm cameras	U	10%	-
90065990	---	Other	U	10%	-
	-	Photographic flashlight apparatus and flashbulbs:			
90066100	**--**	**Discharge lamp ("electronic") flashlight apparatus**	**U**	**10%**	**-**
90066900	--	Other	U	10%	-
	-	Parts and accessories:			
90069100	--	For cameras	kg.	10%	-
90069900	--	Other	kg.	10%	-

2.19. Whereas, the issuing authority along with the DRI is alleging the classification under CTH 9405 (most appropriately under 9405 4090) during the relevant period which is reproduced below:

CTH 9405 – Prior to 01.01.2022

9405		Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included			
9405 10	-	Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thorough fares :			
9405 1010	---	Hanging lamps, complete fittings	U	25%	-
9405 1020	---	Wall Lamps	U	25%	-
9405 1090	---	Other	U	25%	-
9405 20	-	Electric table, desk, bedside or floor-standing lamps:			
94052010	---	Table lamps, complete fittings	U	25%	-
94052090	---	Other	U	25%	-
9405 3000	-	Lighting sets of a kind used for Christmas trees:			
9405 40	-	Other electric lamps and lighting fittings:			
9405 4010	---	Searchlights and sportlights	U	25%	-
9405 4090	---	**Other**	U	**25%**	-
9405 50		Non-electrical lamps and lighting fittings			
9405 5010	---	Hurricane lanterns	U	25%	-
9405 5020	---	Miner's safety lamps	U	25%	-
	---	Oil pressure lamps :			
9405 5031	----	Kerosene pressure lanterns	U	25%	-
9405 5039	----	Other	U	25%	-
9405 5040	---	Solar lanterns or lamps	U	25%	-
	---	Other oil lamps:			
9405 5051	----	Metal	U	25%	-

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9405 5059	----	Other	U	25%	-
9405 60	-	Illuminated signs, illuminated name-plates and the like:			
94056010	---	Of plastic	U	25%	-
94056090	---	Of other materials	U	25%	-
	-	Parts :			
94059100	--	Of glass	kg.	25%	-
94059200	--	Of plastics	kg.	25%	-
94059900	--	Other	kg.	25%	-

2.20. It is pertinent to note that with effect from 01.01.2022, there has been change in the CTH 9405 while incorporating the luminaires and LEDs. The amended CTH 9405 w.e.f. 01.01.2022 is reproduced below for reference:

CTH 9405 – With Effect from 01.01.2022

9405		luminaires and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included			
	-	Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares:			
94051100	--	Designed for use solely with light-emitting diode (LED) light sources	U	25%	-
94051900	--	Other	U	25%	-
	-	Electric table, desk, bedside or floor-standing luminaires:			
94052100	--	Designed for use solely with light-emitting diode (LED) light sources	U	25%	-
94052900	--	Other	U	25%	-
	-	Lighting strings of a kind used for Christmas trees:			
94053100	--	Designed for use solely with light-emitting diode (LED) light sources	U	25%	-
94053900	--	Other	U	25%	-
	-	**Other electric luminaires and lighting fittings:**			
94054100	--	Photovoltaic, designed for use solely with light-emitting diode (LED) light sources	U	25%	-
94054200	--	**Other, designed for use solely with light-emitting diode (LED) light sources**	**U**	**25%**	-
94054900	--	Other		25%	-
94055000	-	Non-electrical luminaires and lighting fitti	U	25%	-

	-	Illuminated signs, illuminated name-plates and the like:			
94056100	--	Designed for use solely with light-emitting diode (LED) light sources	U	25%	-
94056900	--	Other	U	25%	-
	-	Parts :			
94059100	--	Of glass	kg.	25%	-
94059200	--	Of plastics	kg.	25%	-
94059900	--	Other	kg.	25%	-

2.21. Hence, in order to arrive at any conclusion, reference should be made to the **General Rules for the Interpretation of the First Schedule of the Customs Tariff Act, 1975** (hereinafter referred to as the "General Rules of Interpretation") which provides as follows:

"Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

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:

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*(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 (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 (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

...."

2.22. In the present matter, the issue is with respect to two CTHs, i.e. CTH 9006 and 9405. The Noticee are clearing their imports under the description mentioned in the Chapter Note of CTH 90 as *"Photographic (other than cinematographic) cameras; **photographic flashlight apparatus and flash bulbs** other than discharge lamps of heading 8539 – **Discharge lamp ("electronic") flashlight apparatus**"*, whereas, the issuing authority is alleging the classification under Chapter Note of CTH 94 as *"Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included; Other electric lamps and lighting fittings: Other"*.

2.23. In this regard, the arrangement of the application of General Rules of Interpretation is appropriately analysed in the case of **CCE, Nagpur vs. Simplex Mills Co. Ltd.; 2005 (181) ELT 345 (SC)**, wherein it is observed:

"11. The rules for the interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2

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of that Act. According to Rule 1 titles of Sections and Chapters in the Schedule are provided for ease of reference only. But for legal purposes, ***classification "shall be determined according to the terms of the headings and any relevant section or Chapter Notes". If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule-I gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules. The appellants have relied upon Rule 3. Rule 3 must be understood only in the context of sub-rule (b) of Rule 2 which says inter alia that the classification of goods consisting of more than one material or substance shall be according to the principles contained in Rule 3. Therefore when goods are prima facie, classifiable under two or more headings, classification shall be effected according to sub-rules (a), (b) and (c) of Rule 3 and in that order.*** *The sub-rules are quoted:-*

"(a) The heading which provides the most specific description shall be preferred to heading 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, 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, which cannot be classified by reference to (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 (a) or (b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration."

2.24. That while considering Section Notes, the impugned goods appear to be more appropriately falling under chapter 90 which reads as *"Optical,* ***Photographic,*** *Cinematographic, Measuring, Checking, Precision, Medical or Surgical Instruments and* ***Apparatus****; Clocks and Watches; Musical Instruments; Parts and* ***Accessories Thereof***", whereas, Section Notes of Chapter 90 reads as "***Miscellaneous Manufactured Articles***".

2.25. Most importantly, the Chapter Note 2 (b) of CTH 90 reads as:

"2. Subject to Note 1 above, parts and accessories for machines, apparatus, instruments or articles of this Chapter are to be classified according to the following rules :

(a)...

(b) other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;

2.26. That considering the Section Notes and Chapter Notes of both entries, the impugned goods appear to be more appropriately classified under CTH 90.

2.27. That at the time of import, the only available entry for classifying the impugned goods were CTH 9006 6100 as reproduced below:

9006		**Photographic (Other Than Cinematographic) Cameras ; Photographic Flashlight Apparatus And Flash Bulbs Other Than Discharge Lamps Of Heading 8539**			
	-	**Photographic flashlight apparatus and flashbulbs:**			
90066100	--	**Discharge lamp ("electronic") flashlight apparatus**	U	10%	-

2.28. Whereas, the relevant extract of CTH 9405 is reproduced below:

9405		**Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included**			
9405 40	-	**Other electric lamps and lighting fittings:**			
9405 4010	---	Searchlights and spotlights	U	25%	-
9405 4090	---	**Other**	U	25%	-

2.29. Given the above, it may be seen that CTH 9006 6100 is a more specific entry as compared to CTH 9405 4090. Therefore, given the Rule 3(a) of the General Rules of Interpretation, the heading which provides the most specific description shall be preferred to headings providing a more general description. In the given scenario, CTH 9006 6100 will be the most appropriate entry under which the goods can be classified.

Specific Entry should be preferred over residuary entry

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2.30. That in the SCN, even when there is specific entry for the impugned goods, the issuing authority is forcing to classify them in the residuary entry. In this regard, in the case of **Dunlop India Ltd. & Madras Rubber Factory Ltd. vs. UOI; 1983 (13) ELT 1566 (SC)**, it is thus held that:

> *"**37.** It is good fiscal policy not to put people in doubt and quandary about their liability to duty, when a particular product like V.P. Latex known trade and commerce in this country and abroad is imported, it would have been better if the article is eo nomine, put under a proper classification to avoid controversy over the residuary clause. As a matter of fact in the Red Book (Import Trade Control Policy of the Ministry of Commerce) under Item 150, in Section II, which relates to "rubber, raw and gutta percha, raw", synthetic latex including vinyl pyridine latex and copolymer of styrene butadiene latex are specifically included under the sub-head "Synthetic Rubber". We do not see any reason why the same policy could not have been followed in the I.C.T. book being complementary to each other. **When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause.** The question of competition between two rival classifications will, however, stand on a different footing."*
>
> [Emphasis Supplied]

2.31. That in the case of **HPL Chemicals Ltd. vs. CCE, Chandigarh; 2006 (197) ELT 324 (SC)**, it is thus held that:

> *"32. It was submitted by the learned Senior Counsel appearing for the Revenue that the goods were classifiable under Heading No. 38.23 (now 38.24) as "residuary products of chemical or allied industries not elsewhere specified or included" which was the last item covered by Heading No. 38.23. The said Heading No. 38.23 is only a residuary heading covering residual product of chemical or allied industries "not elsewhere specified or included". **In the present case since the goods were covered by a specific heading, i.e., Heading No. 25.01, the same cannot be classified under the residuary heading at all. This position is clearly laid down in Rule 3(a) of the Interpretative Rules set out above. As per the said Interpretative Rule 3(a), the heading which provides the most specific description shall be preferred to the heading providing a more general description."***
>
> [Emphasis Supplied]

2.32. That in the case of **Bharat Forge & Press Industries (P) Ltd. vs. CCE; 1990 (45) ELT 525 (SC)**, wherein it was thus held that:

"3. The question before us is whether the Department is right in claiming that the items in question are dutiable under tariff entry No. 68. ***This, as mentioned already, is the residuary entry and only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry. In other words, unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item****."*

[Emphasis Supplied]

2.33. That in the case of **Mauri Yeast India Pvt. Ltd. vs. State of UP; 2008 (225) ELT 321 (SC)**, it is thus held that:

"30. ***It is now a well settled principle of law that in interpreting different entries, attempts shall be made to find out as to whether the same answers the description of the contents of the basic entry and only in the event it is not possible to do so, recourse to the residuary entry should be taken by way of last resort."***

...

48. ***We, therefore, are of the opinion that if there is a conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another the residuary entry, the former should be preferred****."*

[Emphasis Supplied]

2.34. Similarly, in the case of **C.C. (General), New Delhi vs. Gujarat Perstorp Electronics Ltd.; 2005 (186) ELT 532 (SC)**, it is thus held:

"57. There is still one more aspect which is relevant. It cannot be disputed and is not disputed before us and is also concluded by a decision of a three Judge Bench in Associated Cement Co. Ltd. that the basic heading is 49.01. It deals with "Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets". 49.11 covers "Other printed matter, including printed pictures and photographs". ***Thus, specific or basic heading is 49.01 and residual entry is 49.11. Priority, therefore, has to be given to the main entry and not the residual entry.*** *According to the Company, the case is covered by the main entry under 49.01, and in that view of the matter, one cannot consider the residual entry 49.11."*

[Emphasis Supplied]

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2.35. That in the case of **Alosco Graintech Pvt. Ltd. vs. CCE, Chandigarh-II; 2019 (365) ELT 944 (Tri-Chan.)**, wherein it was thus held that:

> *"7....On going through the above provisions, we find that the conveyors and elevators manufactured by the appellants are designed, specifically, for rice mills which has not been disputed by the adjudicating authority in the impugned order, wherein it has been observed by the adjudicating authority that "the goods in question are basically conveyors and elevators, which are used for the transportation of the rice in a rice mill from one stage to the another. They can be horizontal as well as vertical as per the requirement of the Industry". These conveyors and elevators manufactured by the appellants specifically designed for use in rice mills are supplied along with the other rice mill machinery to the rice millers. These facts are not in dispute, therefore, the combination of machines and the conveyors and elevators supplied by the appellants along with other rice milling machinery to the rice millers is a combination of machine which ultimately perform the function of rice milling. Thus, as per Section notes the entire machinery is classifiable under Heading 8437 which is for machinery used in milling industry and it is not disputed that these elevators and conveyors being manufactured by the appellants were not used for milling industry.* ***The Central Excise Tariff is clear with respect to this aspect that the said machines if supplied as a combination of machines would be covered under the main Heading 8437, therefore, the reliance on the explanatory note to HSN is not warranted as the HSN explanatory note is not a law but they are only guiding factor for classification when the section note to the Central Excise Tariff is clear on the aspect wherein it has been clarified that the said items are to be classified under the main machine. Therefore, the department cannot place reliance upon the explanatory notes to change the classification of the said items."***
> [Emphasis Supplied]

2.36. That in the case of **CCE, Aurangabad vs. Videocon Industries Ltd.; 2023 (384) ELT 628 (SC)**, wherein it is thus observed:

> *"25. The difficulty in accepting the revenue's argument, in this case, is that it jumps over interpretive instructions. One, General Note (1) states that classification has to be in consonance with terms and headings in chapter notes.* ***Two, Rule 3(a) categorically enjoins that in regard to classification, the heading providing for a "more" specific description prevails over the general one.*** *Three, Note 1(m) - in Chapter 85 excludes the application of articles falling in Chapter 90. In this Court's opinion, this note, along with the General Note 3(a) [of the General Rules of*

Interpretation] that headings that are specifically provided, should be preferred over the general ones, is decisive."

[Emphasis Supplied]

2.37. Given the vast precedents with respect to debate on classification of a product in a specific category over a residuary category, and considering the Chapter Notes of Chapter 90, the more appropriate classification of the impugned goods is CTH 9006 6100 and not under CTH 9405 4090.

Commercial Parlance/Common Parlance & Popular Sense for contemporary classification

2.38. It is submitted that it is a unique case wherein the **orthodox flashbulbs and flashlights are gradually getting out of date and is being replaced with more appropriate lights made of LEDs and while the descriptions are still there in the HSN Explanatory Notes as well as CTA, the commercial parlance and the popular sense associated with such matters plays an important part**. Whereas, the Courts has corrected such anomalies time and again while using the Commercial/Common/Trade Parlance to deduce the contemporary classification. While applying this test, the impugned goods shall undisputedly fall under the CTH 9006 6100 for the relevant period, it being an accessory to photographic equipment.

2.39. That in the case of **CCE, New Delhi vs. Connaught Plaza Restaurant (P) Ltd.; 2012 (286) ELT 321 (SC)**, the item 'Soft Swirl' was analyzed by the Hon'ble Supreme Court to figure out whether or not it shall be classified under the entry of Ice-Creams. The Hon'ble Apex Court thus held:

"38. On the basis of the authorities cited on behalf of the assessee, it cannot be said that "ice-cream" ought to contain more than 10% milk fat content and must be served only frozen and hard. Besides, even if we were to assume for the sake of argument that there is one standard scientific definition of "ice-cream" that distinguishes it from other products like 'soft serve', we do not see why such a definition must be resorted to in construing excise statutes. Fiscal statutes are framed at a point of time and meant to apply for significant periods of time thereafter; they cannot be expected to keep up with nuances and niceties of the gastronomical world. The terms of the statutes must be adapted to developments of contemporary times rather than being held entirely inapplicable. It is for precisely this reason that this Court has repeatedly applied the "common parlance test" every time parties have attempted to differentiate their products on the basis of subtle and finer characteristics; it has tried

understanding a good in the way in which it is understood in common parlance."

[Emphasis Supplied]

2.40. It is further submitted that the impugned goods are nothing but the substitute of flashlights and flashbulbs used by the photographers. The functions of contemporary flashlights are not meant to provide a flash for a short period. The art of photography has evolved and now a days the flashlights are emitting continuous lights. As such, the flashlights as referred in the SCN or HSN Explanatory Note are infrequently used in current times. In this regard, in the case of **CCE, Amritsar vs. DL Steel; 2022 (381) ELT 289 (SC)**, it is thus held: rarely

> *"12. We would, at this stage, take on record the well-settled principle that words in a taxing statute must be construed in consonance with their commonly accepted meaning in the trade and their popular meaning. When a word is not explicitly defined, or there is ambiguity as to its meaning, it must be interpreted for the purpose of classification in the popular sense, which is the sense attributed to it by those people who are conversant with the subject matter that the statute is dealing with. This principle should commend to the authorities as it is a good fiscal policy not to put people in doubt or quandary about their tax liability. The common parlance test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law-maker. However, the above rule is subject to certain exceptions, for example, when there is an artificial definition or special meaning attached to the word in a statute, then the ordinary sense approach would not be applicable."*
>
> [Emphasis Supplied]

2.41. That in the case of **Dunlop India & Madras Rubber Factory Ltd. (Cited Supra)** it was held and advocated that the Articles should be classified on the basis of popular sense and not in scientific and technical sense. It is thus held by the Apex Court:

> *"36. We are, however, unable to accept the submission. It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry."*
>
> [Emphasis Supplied]

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2.42. That in the case of **Akbar Badruddin Jiwani vs. CC; 1990 (47) ELT 161 (SC),** it was most importantly held that:

> *"53. It is apparent from all these reports that the calcareous stone of specific gravity of 2.5% is not marble technically and scientifically. The finding of the Appellate Tribunal is, therefore, not sustainable.* ***It is, of course, well settled that in Taxing Statute the words used are to be understood in the common parlance or commercial parlance but such a trade understanding or commercial nomenclature can be given only in cases where the word in the Tariff Entry has not been used in a scientific or technical sense and where there is no conflict between the words used in the Tariff Entry and any other Entry in the Tariff Schedule.*** *In the instant case, in the Tariff Entry No. 25.15 in the ITC Schedule, Appendix 1-B, Marble, Travertine, Ecaussine, Alabaster and other calcareous stones of an apparent specific gravity of 2.5 or more have been mentioned whereas in Entry No. 62 only the word `Marble' has been mentioned as a restricted item for import, the other calcareous stones such as travertine, ecaussine, alabaster etc. have not been mentioned in Entry No. 62. In these circumstances, some significance has to be attached to the omission of the words travertine, ecaussine and other calcareous monumental or building stones of an apparent specific gravity of 2.5 or more and Alabaster from the ITC Schedule in Entry No. 62 of Part B, Appendix 2 of Import and Export Policy for April 1988 - March 1991. The only natural meaning that follows from this is that Entry 62 is confined only to marble as it is understood in a petrological or geological sense and as defined by the Indian Standard Institute and not as mentioned in the opinion given by the Indian Bureau of Mines on visual observation and it does not extend to or apply to other calcareous stones mentioned in the ITC Schedule. Moreover, the commercial nomenclature or trade meaning cannot be given to marble in as much as such a meaning if given will render otiose, redundant the terms travertine, ecaussine, alabaster and other calcareous monumental or building stone of an apparent specific gravity of 2.5% or more whether or not roughly trimmed or merely cut by sawing."*
>
> [Emphasis Supplied]

2.43. That in the case of **G.S. Auto International Ltd. vs. CCE, Chandigarh; 2003 (152) ELT 3 (SC)**, it is thus held that:

> *"15. The question that needs to be adverted to is whether the goods in question can appropriately be classified under Tariff Item 52 or not having been specified elsewhere, they fall under Tariff Item 68. In construing these*

items, what is the proper test to be applied? Is it the functional test or is it commercial identity test which would determine the issue. It seems to us that this question is no longer res integra. It fell for consideration of this Court earlier and it was laid down that the true test for classification was the test of ***commercial identity*** *and not the functional test. It needs to be ascertained as to how the goods in question are referred to in the market by those who deal with them, be it for the purposes of selling, purchasing or otherwise."*

[Emphasis Supplied]

2.44. It is thus submitted that the issuing authority has blindly relied on the HSN Explanatory Notes without any application of his mind and ignored the crucial jurisprudence originating from the precedents of the Hon'ble Apex Court. If we ignore the concerned excerpts of HSN Explanatory Notes, there shall not be any confusion to classify the impugned goods under CTH 9006 6100. When such is the case, the HSN Explanatory Note should be ignored and reliance may be placed on the other statutory texts and binding precedents. Given the nature of the goods, one should question that whether the impugned Goods at the time of import could have been classified under the then available CTH 9405 given the commercial identity of the product and its common parlance and its use.

2.45. On this ground alone, the SCN must be dropped in as much as there is no infirmity on the classification adopted by the Noticee.

3. The SCN is time barred as the extended period of limitation under Section 28 (4) is not invocable in this case as no case of collusion, wilful misstatement or suppression of facts can be made against the Noticee. For this reason, even the penalty alleged to be imposed under Section 114 A of the Act should be dropped.

3.1. The submissions made by the Noticee at Para 1 of the Reply to the instant SCN is being relied upon to indicate that the Noticee has from 2014 onwards been importing the impugned goods by classifying the said goods under CTH 9006 on the understanding that they are photographic accessories. That during such time the rate of BCD for the said CTH 9006 was 10% while the rate of BCD under 9405 was also 10%. This aspect has not been brought out by the issuing authority in the SCN to perhaps hide the same and prove that the Noticee had purposefully classified the said goods under CTH 9006 so as to avail a lower rate of BCD and thereby invoke the extended period of limitation and levy penalties.

3.2. Whereas, it is abundantly clear that from 2014 to 14.12.2017 the rates of BCD under **under both CTH viz., CTH 9006 as well as 9405 was the same viz., 10%**. Sample Bills of Entry have already been enclosed by the Noticee as Annexure XI to evidence the same. Hence, the allegations of the DRI and the issuing authority that there was

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an intention to evade payment of Customs duty is highly incorrect and on this ground the provisions pertaining to the levy of penalties and invocation of extended period of limitation squarely falls.

3.3. That even further, as per the Annexure-X enclosed with the SCN, the first BOEs against the impugned goods were filed by the Noticee on 29.08.2018 which was cleared by the Customs Authorities without any objection and few of the BOEs were even 100% examined by the Customs authorities. Thereafter, for the next thirty-six (36) months, the impugned goods imported by the Noticee were cleared and some even after thorough examination. That this clearly establishes the fact that even the Customs authorities had confirmed the classification under CTH 9006 given the nature of goods being imported during the relevant period.

3.4. That as discussed in the preceding paragraphs, the major reason for the Noticee to adopt the classification was that they are used as a photographic accessory and even the whole photographic industry was importing the impugned goods under CTH 9006 which can be clear from the extract of a letter from DRI Kolkata itself as shared with the Noticee. The said extract of the DRI letter is annexed herewith as **Annexure-VII**.

3.5. That the SCN has been issued under the provisions of Section 28 (4) of the Act which is reproduced below for reference:

> ***"28. Recovery of duties not levied or not paid or short-levied or short-paid] or erroneously refunded.***
>
> ***(1)....***
>
> ***(2).....***
>
> *(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."*

3.6. Further, the relevant extract of the provision of Section 114 A under which the penalty has been levied against the Noticee is reproduced below for reference:

> *"**SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases.** - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [1][sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined"*

3.7. That as per the aforementioned provision, a SCN can be served while invoking the extended period of Five Years only when the ingredients of collusion, any wilful mis-statement of suppression of facts is established through evidences. Also, for imposing the Penalty under Section 114 A, these ingredients are *sine qua non* for invocation. In the present case, the impugned goods were cleared by the issuing authority for several years after thorough examination. It is only when the DRI has a piece of HSN Explanatory Note, the classification adopted by the Noticee was disputed by the DRI which resulted in issuance of the SCN.

3.8. That as per the settled precedents and clear mandate of law, for invocation of extended period of limitation and for the imposition of Penalty under Section 114 A, the issuing authority will have to establish the aforementioned ingredients, beyond any reasonable doubt, or else the SCN could have been levied under normal period of limitation i.e. within two years from the relevant date and no penalty under Section 114 A can be levied. Given this proposition of law, the whole demand is time barred as well as no penalty under Section 114 A can be levied.

3.9. In this regard, it is pertinent to place reliance on the Judgment of Supreme Court in the case of **Uniworth Textiles Ltd. vs. CCE, Raipur; 2013 (288) ELT 161 (SC)**, wherein it is thus held that it is essential to establish collusion, misstatement or suppression of facts before invoking such provision, otherwise there would be no situation under which the normal period should apply.

3.10. That in the SCN, a deliberate attempt for establishing the ingredients of Section 28 (4) of the Act and Section 114 A of the Act is reproduced below for reference:

> *"10.1. Further, as mentioned at para 2.1 supra, M/s JMPL also appears to have wilfully changed the actual description of the VIDEO LED RING LIGHT (as mentioned in the Bills of Lading) into DIGITEK BRAND RING LIGHT in the Bills of Entry because the description VIDEO LED RING LIGHT amply suggests that it can be used in video recording which also implies that it emits continuous light as otherwise it cannot be used for video recording.*

This change in description and specifically the omission of the word "video" while filing the Bills of Entry appears to have been deliberately done in order to mislead the Customs as to the real nature of the imported goods, and thus M/s JMPL appears to have indulged in wilful misstatement to claim the incorrect classification."

3.11. It is submitted that there is no strength in the aforementioned allegation of the issuing authority in as much as there are several BOEs wherein the description "VIDEO LED RING LIGHT" is mentioned. Such consignment was duly cleared under the disputed classification and the issuing authority had no objection as such during the time of import. Hence, this allegation raised by the issuing authority is bereft of any truth and should be ignored.

3.12. It is also submitted that the Noticee has been importing the said goods from 2014 onwards. This aspect has not been brought out in the investigation report of the DRI and the resultant SCN. As such, the Noticee has been explicitly mentioning the term 'Video' in the Bills of Entry being filed since 2014. There has been no questioning on the classification of the goods since 2014 even when the goods have been 100% examined by the Customs authorities.

3.13. Further, the Bills of Lading is an essential document which is present at the time of import as it is not the case of the Customs Authority that only the BOEs are checked at the time of clearance. The Bills of Lading was always presented before the Customs Authorities at the time of clearance of goods. Further to above, since the Bills of Lading is prepared by the foreign supplier and not executed by the Noticee, it is completely wrong on the part of the issuing authority to allege the mis-statement and omission on the part of the Noticee. While raising these petty allegations, the issuing authority is merely fishing for any reason to deliberately allege mis-statement on account of the Noticee.

3.14. It is thus submitted that there is no record or evidence produced by the issuing authority in support of the ingredients mentioned in Section 28 (4) and 114 A of the Act and therefore no case for invocation of extended period of limitation or penalty can be made out against the Noticee. It appears that the issuing authority is merely trying to create a situation so as to be able to justify invocation of extended period of limitation. However, in light of the submissions made above, the issuing authority clearly does not have a case to prove evasion.

3.15. The Noticee relies on the decision of the Hon'ble Supreme Court in the case of **Anand Nishikawa Co. Ltd. vs CCE; 2005 (188) E.L.T. 149 (S.C.),** wherein dealing with the issue of limitation under proviso to Section 11A of the Central Excise Act, 1994, which is *para materia* to proviso to Section 28 (4) of the Act, it was held as under:

"27. Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. vs. Collector of Central Excise, Bombay, [1995 Suppl. (3) SCC, 462], we find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made herein above that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in proviso to section 11A of the Act. We are, therefore, of the firm opinion that where facts were known to both the parties, as in the instant case, it was not open to the CEGAT to come to a conclusion that the appellant was guilty of "suppression of facts"....."

3.16. In the case of **Padmini Products Limited vs. CCE; 1989 (43) ELT 195 (SC)**, the Hon'ble Supreme Court held as follows:

"8. ...It was observed by this Court that something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability beyond the period of six months had to be established. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful mis-statement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case."

3.17. In **Pushpam Pharmaceuticals Co. vs. Collector of Central Excise; 1995 (78) ELT 401, 403 (Supreme Court), it was held that, that the expression suppression of facts is to be construed strictly because it has been used in the Company of such strong word as fraud, collusion or wilful default. It does not mean omission. The act must be deliberate. In taxation, it can only have one meaning the correct information was not disclosed deliberately to escape from payment of tax. Where facts are known to both the parties, the omission by one to do what he might have done, does not render it suppression. Thus, mere omission to disclose the correct information is not a suppression of facts unless it was deliberate to escape the payment of duty.**

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3.18. In **Collector of Customs vs. Tin Plate Co. of India Ltd., 1996 (87) E.L.T. 589 (Supreme Court)**, it was held that, the suppression of facts would mean a deliberate or conscious omission to state a fact with the intention of deriving wrongful gain.

3.19. Thus, from the above-mentioned judgements it has been affirmed that the suppression can be only considered when there is the intent to evade or escape from the payment of tax. In taxation, mere omission which does not lead to any evasion of tax by any means cannot be considered as suppression.

3.20. The Noticee further places reliance on the decision of the Hon'ble Apex Court in the case of **CCE vs. Chemphar Drugs & Liniments; 1989 (40) E.L.T. 276 (S.C.)**, wherein, it has been held that the extended period is invocable only when there is positive act of suppression on the part of the assessee i.e., the assessee is in knowledge of the duty liability but has deliberately withheld the information from the department. The relevant extract is reproduced below:

> *"8. ...In our opinion, the order of the Tribunal must be sustained. In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or willful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, beyond the period of six months."*

3.21. That Hon'ble Supreme Court, in the case **Tamil Nadu Housing Board vs. Collector of Central Excise, Madras; 1994 (74) E.L.T. 9 (SC)**, held that:

> *"3. ...When the law requires an intention to evade payment of duty then it is not mere failure to pay duty. It must be something more. That is, the Appellant must be aware that the duty was leviable and it must deliberately avoid paying duty. It is made more stringent by use of the word 'intent'. In other words, the Appellant must deliberately avoid payment of duty which is payable in accordance with law."*

3.22. Reliance is further placed on the decision of the Hon'ble Apex Court in the case of **Continental Foundation Jt. Venture vs. Commr. of C. Ex., Chandigarh-I, 2007 (216) E.L.T. 177 (S.C.)**, wherein the Apex Court has lucidly explained the meaning of terms appearing under Section 11A of the Central Excise Act, 1944 (*para materia*

to Section 28 (4)) for invoking extended period of limitation. The Court has held that extended period is invocable only when there is intention on the part of the assessee to evade the duty liability. The relevant extract of the judgment is reproduced below:

> *"10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct."*

3.23. As far as collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word 'willful', preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty.' Therefore, there cannot be suppression or mis-statement of fact, which is not willful and yet constitute a permissible ground for the purpose of the Section 28 (4), mis-statement of facts, must be willful.

3.24. Since there is no collusion, willful misstatement or deliberate suppression of facts on the part of the Appellant, in view of the above binding judgment of the Apex Court, the extended period of limitation is not invocable in this case.

3.25. Further, in the case of **Vikram Logistics & Maritime Service Pvt. Ltd. vs. Commr. of Cus., Mysore; 2014 (301) E.L.T. 497 (Tri. - Bang.)**, the following has been observed:

> *"5.1 ...Nowhere it can be said that the appellant has to prove beyond doubt that he has not committed an offence. In quasi judicial proceedings, it would be atrocious to say that the appellant has to prove beyond doubt that he has no knowledge while the department itself has to prove the case against the appellant to the extent of preponderance of probability."*

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3.26. Furthermore, in the present case, at any point, there was no intention to evade payment of duty and there was no collusion, willful misstatement, or suppression of facts by the Noticee and therefore there was no reason or occasion for invoking the larger period of limitation.

3.27. Accordingly, as there is no proof of suppression of facts by the Noticee. The Noticee places further reliance in the case of **Nat Steel Equipment Pvt. Ltd. vs. Collector, 1988 (34) E.L.T. 8 (S.C.)**, wherein it has been held that, extended period of five years is inapplicable, in the absence of proof of suppression of facts.

3.28. Accordingly, it is submitted that none of the circumstances as specified under the Act for the invocation extended period are applicable to the facts of the case. The impugned SCN is bad in law to the extent it has invoked Section 28 (4) along with Section 114 A and is therefore, liable to be dropped.

The matter which involves interpretation of law, extended period of limitation cannot be invoked.

3.29. That without prejudice to the aforesaid submissions which clear the stand of the Noticee in adopting the classification of CTH 9006, the classification of the impugned goods can at best be related to interpretation of law. It is a settled position of law that under such circumstances, extended period of limitation cannot be invoked.

3.30. That in the case of **International Merchandising Company, LLC vs. CST, New Delhi; 2022 (67) GSTL 129 (SC)**, wherein it is thus held:

> *"**24.** We are of the considered view that the Tribunal having come to the conclusion that **the issue turned upon an interpretation of the provisions of Section 65(68) and Section 65(86b) of the Finance Act, 1994, there was no warrant to allow the invocation of the extended period of limitation and to direct the determination of the penalty following the re-quantification of the demand**. The extended period of limitation would clearly not stand attracted in respect of the first show cause notice dated 20 October, 2009. The show cause notice shall hence have to be confined to the normal period of limitation excluding the extended period.*
>
> ***25.** As far as the penalty is concerned, **we are of the considered view that there was no warrant for the imposition of the penalty as the dispute in the present case essentially turned on the interpretation of the statutory provisions and their inter-play with the circular issued by the CBEC.** Finally, we also order and direct that the view of the Tribunal on the applicability of the provisions of Section 65(86b) of the Finance Act, 1994 as amended*

has been reversed by this Court. On remand in pursuance of the impugned order of the Tribunal, the adjudicating officer shall abide by the above directions."

[Emphasis Supplied]

3.31. Reliance is placed on the Judgment of **Mr Utility Products Pvt. Ltd. vs. CCE, Delhi-II; 2017 (7) G.S.T.L. 248 (Tri. - Del.)**, wherein it was thus held:

"6. The ld. counsel pleads that subject matter is interpretation of law and extended period of limitation is not invocable and penalty is also not liable to be imposed. The Tribunal for similar facts in case of Aarti Drugs Ltd. v. CCE, Thane-II, 2015 (324) E.L.T. 594 (Tri.-Mumbai) holds that where it is a question of interpretation for correct clarification duty is payable only for 'normal period'. The Tribunal in this case inter alia observes as under :

> *"7.....We see no justification to invoke the extended time period.* ***The case is a matter of interpretation****. We have seen the ER 1 returns for the said period. The appellant had clearly declared the description of the product as "Nation Feed Grade" in all their E.R. 1s.* ***Therefore, there being no mis-statement, duty is payable only for the normal period of time limitation. For the same reason that extended time period is not applicable. Confiscation, fine and penalty are also not sustainable.*** *However, interest would be payable under Section 11AB corresponding to the amount of duty upheld."*

6.1 Considering the facts of the case and following the ratio of Tribunal's decision (supra), ***it is clear that subject matter is a matter of interpretation of law. Therefore, the demand beyond the normal period is not sustained and for the same reason no penalty is liable to be imposed on the assessee. The duty for the 'normal period' only is confirmed along with interest.***"

[Emphasis Supplied]

3.32. That in the case of **Sankhla Udyog vs. CCE & ST, Jaipur, 2015 (38) S.T.R. 62 (Tri. - Del.)**, it was thus held that:

"6. As may be observed, ***the adjudicating authority has clearly stated that there was interpretation of law involved and he extended the benefit of Section 80 of Finance Act, 1994 for not imposing any penalty. It clearly shows that the ingredients required for invoking extended period are not present in this case. Indeed in the entire adjudication order there is no word as to how the extended period is invocable. As such we find that the extended period is not invocable in this case."***

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[Emphasis Supplied]

3.33. It is further submitted that the issuing authority has relied upon HSN Explanatory Notes to arrive at the alleged classification of goods. This itself signifies that the issuing authority has not been able to justify the classification from the mere interpretation of the CTA. Hence, the matter is clearly an issue of "interpretation" and hence, without prejudice the submissions advanced hereinabove, the extended period cannot be invoked in the present matter and penalty deserves to be dropped.

3.34. Accordingly, it is submitted that none of the circumstances as specified under the Act for the invocation of extended period of limitation and penalty are applicable to the facts of the case. **The impugned notice is bad in law to the extent it has invoked extended period of limitation and imposed penalty on the Noticee and is therefore, liable to be dropped.**

4. That the impugned goods are not liable to be confiscated under Section 111 of the Act and therefore, no penalty under can be levied on the Noticee and its directors.

4.1. That in the SCN, it is alleged that the impugned goods are liable to be confiscated under Section 111 (m) of the Act. However, nowhere in the impugned Notice there is any mention of the reason for such confiscation under Section 111 of the Act, especially under Section 111 (m) of the Act. Merely on the basis of classification issue, the goods cannot be held liable for confiscation. In this regard, the provision of Section 111 (m) of the Act is reproduced below for reference:

> ***"SECTION 111. Confiscation of improperly imported goods, etc.*** *- The following goods brought from a place outside India shall be liable to confiscation : -*
>
> *(a)....*
> *(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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;"*

4.2. That the issue in the case of the Noticee is not in respect of the valuation of impugned goods but only with respect to the classification. Therefore, it is apparent that the issuing authority has erred in mentioning the correct provision of Section 111 of the Act. It is understood that the non-mentioning of the specific sub section is not fatal, but the SCN should be specific to the nature of violation and

the particular provision and clauses which are violated. Merely classification dispute would not make impugned goods liable for confiscation. For that, reliance is placed on the Judgment in the case of **Gajanan Visheshwar Birjur vs. UOI; 1994 (72) ELT 788 (SC)**.

4.3. Without prejudice, it is certainly explained in the preceding paragraphs that the Noticee firmly believes that the impugned goods were classifiable under CTH 9006 and no *mala fide* or incriminating evidence has been proved by the issuing authority. Hence, even if the classification adopted by the Noticee is held wrong, it still does not qualify to be covered under provisions of Section 111, especially under Section 111 (m) of the Act. For that, reliance is placed on the Judgment of Hon'ble Kolkata Tribunal in the case of **CC (Port), Kolkata vs. Chirag Corporation; 2020 (374) ELT 444 (Tri-Kolkata)**.

4.4. That in the case of **CC (import), Nhava Sheva vs. Vodafone Essar Gujarat Ltd.; 2020 (373) ELT 421 (Tri-Mumbai)**, wherein it was held that when the issue relates to the classification of goods and no material facts has been suppressed or mis declared while claiming classification, confiscation and penalty cannot be sustained. Also, in **Ajanta Ltd. vs. CC, Kandla; 2019 (370) ELT 308 (Tri-Ahm.)**, it is held that matter of classification can be a subject matter of opinion and therefore, in these circumstances, imposition of penalty and confiscation is not justified.

4.5. It is further held in the catena of Judgments that when there is no specific evidence against the misdeclaration of any kind, confiscation under Section 111 is unwarranted. Whereas, since the provisions of Section 111 cannot be invoked, no penalty can be imposed on the Noticee under Section 112 of the Act.

4.6. Further, it is submitted that the penalty under Section 114AA of the Act is only imposable when a person with a *mala fide* intent makes, signs or uses any declaration, statement or document which is false. Therefore, the essential ingredient to invoke this section is the *mala fide* intention to use any false material and this is absent given the facts and circumstance of the present case.

4.7. In this regard, Section 114AA of the Act is reproduced below:

> ***"Section 114AA. Penalty for use of false and incorrect material.***
> *If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

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4.8. In the case of **Sree Ayyanar Spinning & Weaving Mills Ltd. vs. C.C., Tuticorin, 2019 (370) E.L.T. 1681 (Tri-Chennai)**, Tribunal while dealing with the issue of imposition of penalty under Section 114AA of the Act observed that the Words "knowingly" and "intentionally" touches upon the culpability of the mindset *ab initio*, as a result the burden of proof to establish *mala fides* in such cases are heavily on the Revenue. In this case, the penalty was held to be non-imposable when the fact finding itself was held to non-satisfactory. The relevant extract is as follows:

> *"10. Viewed from any angle, it is but obvious that the Adjudicating Authority has been injudicious and peremptory in imposition of the impugned penalty under Section 114AA ibid, since, unless it is proved that the person to be penalized has knowingly or intentionally implicated himself in use of false and incorrect materials, there can be no justification for penalty under this Section. This requirement of factual finding itself is not there and nor has it been answered satisfactorily either in the show cause notice or in the orders of the lower authorities and hence, I do not have any hesitation in setting aside the same."*

4.9. In this regard, while considering this as a classic case of classification and interpretational dispute, the SCN fails to bring out any evidences against the director of the Noticee. That in **Naam Exports vs. Commissioner of Customs, Tuticorin, 2022 (382) E.L.T. 251 (Tri-Chennai),** penalty under Section 114AA of the Act was set aside when nothing was brought out to prove that the appellant had knowingly and intentionally made any false documents.

4.10. Further, in **Sameer Santosh Kumar Jaiswal vs. Commissioner of Customs (Import-II), Mumbai 2018 (362) E.L.T. 348 (Tri-Mumbai)**, it was held that a person will be liable to penalty under Section 114AA only when the person knowingly makes the false declaration or signs any such document. The penalty in this case was held to be not imposable as the appellant had performed no such act as specified under Section 114AA of the Act.

4.11. Reliance in this regard is further placed on:

(i) **C.C. (Import), Mumbai vs. Tiong Woon Project & Contracting (I) P. Ltd., 2017 (356) E.L.T. 138 (Tri-Mumbai)**

(ii) **M/s Mahadev Granites vs. Commissioner of Customs, Chennai 2021 (9) TMI 814 – CESTAT Chennai**

(iii) **Savithri Jewellers Pvt. Ltd. vs. Commissioner of Customs, Mumbai-II, 2020 (374) E.L.T. 754 (Tri.-Mumbai)**

4.12. Therefore, it is established that the Noticee has not provided any false declaration in order to realise undue benefit of double neutralisation. The issuing authority itself has failed to provide any relevant material in order to prove the essential

ingredients to invoke penalty under Section 114AA of the Act. It is also established that the impugned goods are not liable for confiscation as there was no improper import that took place. Hence, the penalty under Section 112 (a) and Section 114AA of the Act is not imposable on the Noticee and its directors.

5. That given the above, since no incremental duty is leviable on the Noticee, the demand of interest under Section 28 AA is unwarranted. Also, while there are no justifiable grounds for the demand of duty, confiscation of impugned goods and imposition of penalty under various Sections of the Act, the deposit of Rs. 35,00,000/- should be refunded in the Order passed against the impugned Notice along with applicable interest.

6. The Noticee further states that, it wishes to be heard in person before the case is finally adjudicated and, in this regard, the Personal Hearing may be scheduled at the earliest.

7. The Noticee also craves leave to add, amend or alter any of the grounds of the submissions before the matter is finally adjudicated.

8. That given the facts and circumstances of the present matter commonly applies on the Company and its two Directors (Om Prakash Rana and Sandeep Rana), the present reply may be considered as being individually filed by the three Noticees.

Personal Hearing

4. Personal hearing in the instant matter was granted to the noticees on 20.05.2025. Shri Ankur Jain, Advocate appeared on behalf of the noticees. He reiterated the submission dated 25.01.2024 i.e. reply to the Show Cause Notice and denied all the allegations made in the SCN. He requested additional 10-15 days to submit further written submissions. Detailed submission of the notice was received vide email dated 28.05.2025 which is as under:

A. Facts of the case:

(i) Background: -

- The present proceedings arise pursuant to the issuance of **Show Cause Notice No. 1143/23-24/Commr./NS-V/CAC/JNCH dated 25.08.2023** (hereinafter referred to as "**the SCN**"), issued by the Commissioner of Customs, Nhava Sheva-V, JNCH, Mumbai Customs Zone-II, to **M/s Jatrana Mercantile Private Limited** (hereinafter referred to as "**the Noticee**"), a private limited company having its registered office at Khasra No. 145/1, Main Road, Khera Kalan, North West Delhi, Delhi-110082 and IEC No. 0505011085.

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- The SCN is based substantially on the Investigation Report of the Directorate of Revenue Intelligence (DRI), and inter alia alleges misclassification of imported goods purportedly leading to evasion of customs duty.

- All of which the Noticee, most respectfully, denies.

B. Nature of business and import history:

- The Noticee is engaged in the import and distribution of LED-based photographic lighting equipment (including ring lights and video lights) under the brand name "DIGITEK" **since the year 2014**. These products are primarily used by photographers, videographers, and content creators.

- The impugned goods have consistently been classified under Customs Tariff Heading (CTH) 9006 6100, covering "Photographic flashlight apparatus", and were regularly cleared through Air Cargo Complex, Sahar, and JNCH, Nhava Sheva, **often after 100% examination by Customs authorities**, without any objection (refer Annexure-III).

- The imported lighting apparatus is specifically designed to emit shadow-free light for photographic and videographic purposes, including compatibility with high-end mobile devices. Certain models are equipped with phone holders; others are not (Annexure-II).

C. Allegation in the Show Cause Notice:

- The SCN alleges that during the period from August 2018 to August 2021, the Noticee misclassified the imported goods under CTH 9006 6100 (attracting Basic Customs Duty at 10%), instead of CTH 9405 4090 (attracting 20% BCD up to 31.01.2020 and 25% thereafter), thereby allegedly evading customs duty amounting to Rs. 2,06,79,536/-.

- The SCN further asserts that the Noticee deliberately omitted the term "Video" in the description of goods in the Bills of Entry (BOEs), referring only to "DIGITEK BRAND RING LIGHT" instead of "VIDEO LED RING LIGHT" as stated in the corresponding Bills of Lading, thereby allegedly misleading the Customs Department and justifying invocation of the extended limitation period under Section 28(4) of the Customs Act, 1962. However, Annexure-IV establishes that several BOEs do, in fact, contain the word "Video".

- The SCN seeks to rely on the Harmonized System of Nomenclature (HSN) Explanatory Notes to contend that CTH 9006 applies only to flash apparatus producing a brief burst of light, whereas CTH 9405 applies to continuous lighting equipment. This contention is not supported by any technical or scientific evaluation and appears to rely primarily on publicly available e-commerce listings (Annexure-V).

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- On the basis of the above, the SCN proposes confiscation of the impugned goods under Section 111(m) of the Customs Act, 1962 and seeks to impose penalties upon the Noticee and its directors, Mr. Om Prakash Rana and Mr. Sandeep Rana, under Sections 112(a), 114A, and 114AA of the said Act.

D. Key Contextual Facts: It is pertinent to note that **from 2014 until 14.12.2017, the applicable BCD under both CTH 9006 and CTH 9405 was 10%**, thereby negating any plausible motive for misclassification to evade duty during that period.

E. Responses and Conduct of the Noticee:

- In reply to the summons dated 31.03.2022, the Noticee submitted its response dated 12.04.2022, pointing out that identical goods were consistently cleared under CTH 9006 without objection by Customs, and requested the DRI to provide a technical or legal basis for the alleged reclassification (Annexure-VI).

- Consequent to the amendment in the Tariff Heading 9405, effective 01.01.2022, which introduced specific sub-headings for LED luminaires, the Noticee classified the imported goods under CTH 9405 4200, while maintaining that CTH 9006 6100 was appropriately applied for the earlier period (Annexure-VI, VIII).

- In its reply dated 27.04.2022 to a further summons issued on 21.04.2022, the Noticee reiterated that classification under CTH 9006 was consistent with trade practice and industry norms, and also submitted a legal opinion in support of its classification (Annexure-VII, VIII).

- On 28.04.2022, the Noticee's authorised representative, having an accounting background, appeared before the authorities and, while acknowledging the possibility of differing interpretations of the classification under the HSN Explanatory Notes, maintained the bona fides of the Noticee and offered to make a payment of Rs. 20,00,000 under protest, which was subsequently deposited on 04.05.2022. A further payment of Rs. 15,00,000 was made on 31.01.2023, both under protest, while seeking issuance of a formal SCN for adjudication (Annexure-IX, X).

- In all Rs. 35,00,000 has been deposited under protest on being asked to do so.

F. Additional Contention in the SCN:

- The SCN claims that even prior to the 2022 amendment, the nature of the goods—being continuous light-emitting—warrants their classification under CTH

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9405. However, this contention is made without any expert or technical corroboration and relies solely on the text of HSN Notes.

- The SCN also infers that the Noticee's post-2022 classification under CTH 9405 4200 is retrospective evidence of prior misclassification, while ignoring the contemporaneous practice and legal rationale consistently maintained by the Noticee.

- The SCN attributes wilful misstatement to the omission of the term "Video" in some BOEs and invokes Section 46(4A) of the Customs Act, 1962 to support the charge of suppression of material facts with intent to evade duty and justify extended limitation.

G. Impact and prejudice:

- The retrospective demand of customs duty amounting to over Rs. 2 Crores, accompanied by proposed confiscation and personal penalties, is likely to impose severe financial strain on the Noticee, who has acted consistently in good faith and in line with prevailing classification practices that were accepted by the Customs Department over several years.

D. Grounds of reply:

Argument 1: The demand is time-barred and the penalty under section 114a is not sustainable:

- At the very outset, it is submitted that the impugned Show Cause Notice is barred by limitation, as the extended period under Section 28(4) of the Customs Act, 1962 is not invocable in the present case. The SCN makes no legally tenable case of *collusion, wilful misstatement, or suppression of facts* on the part of the Noticee. Consequently, the penalty proposed under Section 114A of the Act is also liable to be set aside ab initio.

  Date of SCN: **25.08.2023**

  Period of Dispute covered: **August 2018 to August 2021**

  Normal period under Section 28 of Customs Act – **2 years**

- As submitted at Paragraph 1 of the Reply to the SCN, the Noticee has, **since 2014, consistently classified the imported goods under CTH 9006 as photographic accessories**. During the relevant period—i.e., 2014 to 14.12.2017—the Basic Customs Duty (BCD) applicable to CTH 9006 and CTH 9405 was identical, viz., 10%. This fact, which materially undermines the charge of intention to evade

duty, is conspicuously absent from the SCN, evidently to give the false impression that the Noticee misclassified the goods to gain a duty advantage.

- The **parity in duty rates** between the contested headings (CTH 9006 and 9405) until 14.12.2017 is corroborated by representative Bills of Entry enclosed as *Annexure XI*. It is, therefore, wholly unsustainable to allege any intent to evade duty, a prerequisite for invocation of Section 28(4) and imposition of penalty under Section 114A.

- Further, the first imports of the impugned goods under the present classification began on 29.08.2018, as evidenced by Annexure X to the SCN. These **consignments were cleared by Customs, in some cases after 100% examination, without objection**. The classification under CTH 9006 was thus tacitly accepted by the Customs Authorities for a continuous period of 36 months.

- The impugned classification was adopted bona fide by the Noticee on the understanding that the goods were photographic accessories. This **classification was consistent with the prevailing practice in the photographic industry**, which is confirmed by an extract of a DRI communication annexed herewith as *Annexure VII*.

- The SCN has been issued under Section 28(4) of the Act, which permits a longer limitation period of five years only upon a finding of *collusion, wilful misstatement, or suppression of facts*. The full text of Section 28(4) has been reproduced in the Reply and need not be repeated herein.

- Likewise, penalty under Section 114A can only be imposed if the duty has been short-paid *by reason of* any of the three aforementioned ingredients. These elements are *sine qua non* for invocation of both the extended limitation period and the penalty provision.

- In the present case, **the entire dispute arises from a difference of opinion on classification, sparked only after the DRI obtained a specific HSN Explanatory Note**. Until such point, no objection was ever raised. This completely belies the existence of any deliberate suppression or misstatement.

- It is well settled that for the invocation of the extended limitation period and imposition of penalty under Section 114A, **the Department must prove the existence of *mens rea*—that is, the necessary mental element of wilful intention—**

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beyond reasonable doubt. The burden is squarely upon the Department to establish the same.

- The **Hon'ble Supreme Court** in ***Uniworth Textiles Ltd. v. CCE, Raipur*** **[2013 (288) ELT 161 (SC)]** held that a case for extended limitation cannot be made out unless one of the statutory ingredients under Section 28(4) is conclusively established.

- The SCN alleges that the Noticee deliberately altered the description of the goods in the Bills of Entry from "VIDEO LED RING LIGHT" (as per the Bills of Lading) to "DIGITEK BRAND RING LIGHT", allegedly to mislead Customs. This allegation is factually incorrect. Several Bills of Entry, filed contemporaneously, explicitly describe the goods as "VIDEO LED RING LIGHT", and were cleared without objection. This entirely negates the suggestion of wilful suppression or misstatement.

- The Noticee has been importing these goods since 2014 and has consistently declared them as "video lights" in the Bills of Entry. This longstanding practice was well within the knowledge of the Department. Goods were regularly examined and cleared, including after 100% inspection. Thus, no case of non-disclosure or concealment can be sustained.

- The Bills of Lading, generated by foreign suppliers, were submitted to Customs at the time of clearance. The allegation that the Noticee had altered or misdescribed goods based on the B/L is completely without foundation. It is a settled principle that third-party generated documents cannot be a basis for alleging suppression or misstatement by the importer.

- The SCN fails to cite any document, record, or evidence that proves collusion, wilful misstatement, or suppression of facts. The attempt to invoke Section 28(4) appears to be a mere pretext to artificially extend the limitation period in a classification dispute.

- In ***Anand Nishikawa Co. Ltd. v. CCE*** [2005 (188) ELT 149 (SC)], the **Hon'ble Supreme Court** held that mere failure to declare does not amount to suppression. There must be a *positive act* on the part of the assessee to withhold information. Where facts are known to both parties, suppression cannot be alleged.

- In ***Padmini Products Ltd. v. CCE*** [1989 (43) ELT 195 (SC)], the **Hon'ble Supreme Court** reiterated that something more than inaction or negligence is required to justify invocation of the extended period.

- In ***Pushpam Pharmaceuticals Co. v. CCE*** [1995 (78) ELT 401 (SC)], **Hon'ble Supreme Court** held that suppression of facts must be construed *ejusdem generis* with terms like "fraud" and "collusion", and must necessarily be deliberate.

- Similarly, in ***Collector of Customs v. Tin Plate Co. of India Ltd.*** [1996 (87) ELT 589 (SC)], **Hon'ble Supreme Court** held that suppression requires a conscious omission intended to derive wrongful gain.

- The consistent judicial pronouncements confirm that the extended limitation period and penalty provisions are applicable only in cases involving *mens rea* and intentional evasion. That is not the case here.

- In ***CCE v. Chemphar Drugs & Liniments*** [1989 (40) ELT 276 (SC)], **Hon'ble Supreme Court** held that to invoke the extended period, it must be proved that the assessee *knew* of their duty liability and deliberately withheld information.

- Likewise, in ***Tamil Nadu Housing Board v. CCE*** [1994 (74) ELT 9 (SC)], the **Hon'ble Supreme Court** ruled that the presence of *intent* to evade is mandatory for invocation of the longer limitation period.

- In ***Continental Foundation Jt. Venture v. CCE*** [2007 (216) ELT 177 (SC)], the **Hon'ble Supreme Court** made it clear that suppression must involve deliberate concealment with intent to evade. Mere omission or incorrect statements do not suffice.

- It follows that for a misstatement or suppression to justify invocation of Section 28(4), it must be *wilful*, i.e., accompanied by intent to evade. The Noticee's conduct does not meet this threshold.

- In view of the foregoing binding judgments, and in the absence of any evidence suggesting deliberate evasion, the invocation of the extended limitation period under Section 28(4) and penalty under Section 114A is clearly unsustainable.

- Lastly, reliance is placed on ***Vikram Logistics & Maritime Service Pvt. Ltd. v. Commr. of Customs, Mysore*** [2014 (301) ELT 497 (Tri. - Bang.)], wherein it was held

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that the burden to prove suppression lies with the Department and cannot be shifted onto the assessee.

Argument 2: The allegation of intentional misclassification is untenable due to parity in bcd rates prior to 14.12.2017:

- The primary allegation in the impugned Show Cause Notice (SCN) that the Noticee intentionally misclassified the impugned goods under Customs Tariff Heading (CTH) 9006 6100 instead of CTH 9405 4090, with an intent to evade Basic Customs Duty (BCD), is factually incorrect and legally unsustainable.

- The SCN contends that the impugned goods were imported under CTH 9006 6100 attracting a BCD rate of 10%, whereas the Directorate of Revenue Intelligence (DRI) alleges that the correct classification ought to have been under CTH 9405 4090, which attracted a BCD rate of 20% until 31.01.2020 and 25% thereafter.

- However, the SCN conveniently omits a material and legally relevant fact: both CTH 9006 and CTH 9405 attracted a BCD rate of 10% until 13.12.2017. It is only w.e.f. 14.12.2017 that the BCD under CTH 9405 increased to 20%, and thereafter to 25% from 02.02.2020.

- The Noticee commenced importation of the impugned goods as early as 2014 under CTH 9006 6100. At that time, there was no rate differential between CTH 9006 and CTH 9405. Thus, there existed no financial incentive or motive for the Noticee to prefer CTH 9006 over CTH 9405.

- A comparative chart of the BCD rates applicable under both headings during the relevant periods is reproduced below for reference:

CTH	BCD Rate – Historical Timeline	Remarks
9006	10% (Since 2014 onwards)	Rate remained constant
9405	10% (Until 13.12.2017), 20% (14.12.2017–01.02.2020), 25% (From 02.02.2020)	Rate increase occurred post 14.12.2017

- In light of the above, it is evident that the adoption of CTH 9006 by the Noticee in 2014 and thereafter was not driven by any intent to evade customs duty, since the BCD rate under both headings was identical at the time of first import.

- It is further submitted that the allegation of wilful misclassification made by the DRI and reiterated in the SCN appears to be arbitrary, speculative, and aimed at arm-twisting the Noticee, as it ignores this critical factual context.

- The Noticee relies upon sample copies of Bills of Entry filed in the year 2014 under CTH 9006 6100 in respect of the impugned goods, enclosed herewith as Annexure XI, to demonstrate that this classification has been consistently adopted since inception.

- It is a settled principle of law that the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962 must be founded upon clear evidence of intent, suppression or wilful misstatement. In the present case, the absence of motive (due to rate parity) negates any scope for applying the extended limitation.

- The classification under CTH 9006 has been followed consistently for years, accepted by Customs authorities at various ports (including after 100% examination), and never objected to until the DRI initiated this investigation. This prolonged acceptance further evidences the bona fide conduct of the Noticee.

- The SCN is vitiated by its failure to acknowledge this material fact and presents an incomplete and misleading picture by selectively referring only to periods post-2017. Such omission renders the SCN arbitrary and devoid of legal merit.

- In view of the above, the Noticee submits that the allegation of wilful misclassification is devoid of any factual foundation. On this ground alone, the entire proceedings initiated vide the SCN deserve to be dropped forthwith.

Argument 3: Impugned goods rightly classified under CTH 9006 6100 as photographic apparatus; reliance on HSN notes is misplaced:

(A) Classification under CTH 9006 6100 is Legally Justified

1. The Noticee submits that the impugned goods, i.e., *DIGITEK brand photographic ring lights and video lights*, imported during the period from August 2018 to August 2021, were rightly classified under CTH 9006 6100 as *"Photographic flashlight apparatus."*

2. These products are specifically designed and used as accessories for photography and videography, and are therefore classifiable under CTH 9006 6100, being the more specific entry, as opposed to CTH 9405 4090, which is a residual heading covering "other electric lamps and lighting fittings."

3. The Show Cause Notice (SCN) incorrectly alleges that these goods fall under CTH 9405 4090, relying solely on HSN Explanatory Notes that restrict CTH 9006 to flashbulbs emitting brief light, and argue that continuous lighting equipment must be classified under CTH 9405 4090.

(B) HSN Explanatory Notes Are Persuasive, Not Binding

4. The Noticee asserts that the reliance of the SCN on HSN Explanatory Notes is misplaced, as they lack statutory force and cannot override provisions of the Customs Tariff Act, 1975 (CTA), including Section Notes, Chapter Notes, and General Rules of Interpretation (GRI).

5. HSN Notes are also not freely accessible to the public, requiring subscription for access, and thus cannot be treated as binding law.

6. The following judicial precedents support the proposition that HSN Notes are only persuasive aids:

- *A. Nagaraju Bros. v. State of M.P.*, 1994 (72) ELT 801 (SC) – No universal test; classification must consider multiple factors.
- *O.K. Play (India) Ltd. v. CCE*, 2005 (180) ELT 300 (SC) – Functional utility and usage prevail; HSN Notes are only guides.
- *Chetna Polycoats (P) Ltd. v. CCE*, 1988 (37) ELT 253 (Tri), affirmed by SC (1991 (55) ELT A67) – Section/Chapter Notes override HSN Notes.
- *Coen Bharat Ltd. v. CCE*, 2007 (217) ELT 165 (SC) – HSN Notes relevant only in cases of ambiguity, not when tariff language is clear.
- *Protek Circuits & Systems Ltd. v. CCE*, 2012 (280) ELT 522 (Tri) – Where headings are clear, HSN reliance is unwarranted.
- *CCE v. Rationale Iron & Steel Co.*, 2017 (6) GSTL 203 (Tri) – HSN Notes have no statutory authority.
- *Alosco Graintech Pvt. Ltd. v. CCE*, 2019 (365) ELT 944 (Tri) – Chapter Notes of CTA take precedence.
- *CCE v. Videocon Industries Ltd.*, 2023 (384) ELT 628 (SC) – Rule 3(a) and specific tariff entry must prevail.

(C) Functional & Commercial Character of Goods Supports CTH 9006

7. The impugned goods are LED-based photographic ring lights (circular, camera/phone mountable) and video lights (rectangular with dimmable settings), specifically used by photographers, content creators, and vloggers to produce shadow-free, focused lighting.

8. these products serve as modern substitutes for traditional photographic flashlights, offering consistent illumination for photographic purposes and enhancing image quality—an essential function of CTH 9006 goods.

9. These are not general-purpose luminaires such as domestic lighting or floor lamps, but are purpose-built for photographic application, thereby falling squarely under Chapter 90, which covers "Optical and Photographic Instruments."

10. Annexures XII and XIII provide product images and specifications substantiating their photographic application.

(D) Specific Entry of CTH 9006 Prevails Over Residual Entry of CTH 9405

11. The impugned goods are classifiable under **CTH 9006 6100** – "Photographic flashlight apparatus," which is a **specific entry**, in contrast to **CTH 9405 4090** – "Other electric lamps and lighting fittings not elsewhere specified," a **residual entry**.

12. Judicial authority mandates that specific entries prevail over residual or general ones, as held in:

- *Dunlop India Ltd. v. UOI*, 1983 (13) ELT 1566 (SC) – Classification must avoid consigning goods to residuals if specific headings exist.
- *HPL Chemicals Ltd. v. CCE*, 2006 (197) ELT 324 (SC) – Specific headings override catch-all residuals.
- *Bharat Forge & Press Industries (P) Ltd. v. CCE*, 1990 (45) ELT 525 (SC).
- *Mauri Yeast India Pvt. Ltd. v. State of UP*, 2008 (225) ELT 321 (SC).
- *CC v. Gujarat Perstorp Electronics Ltd.*, 2005 (186) ELT 532 (SC).
- *Alosco Graintech Pvt. Ltd. v. CCE*, 2019 (365) ELT 944 (Tri).
- *CCE v. Videocon Industries Ltd.*, 2023 (384) ELT.628 (SC).

(E) Application of General Rules for Interpretation (GRI)

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13. **GRI Rule 1** mandates classification based on headings, read with **Section and Chapter Notes**. Notably:

- **Note 2(b) to Chapter 90** mandates that accessories used solely or principally with photographic apparatus fall under Chapter 90.
- Thus, the impugned goods, used solely with cameras and photographic setups, merit classification under CTH 9006.

14. **GRI Rule 3(a)** dictates that when two headings apply, the **most specific description** must prevail. Here, **CTH 9006** is clearly more specific than the generic heading under **CTH 9405**.

- *CCE v. Simplex Mills Co. Ltd.*, 2005 (181) ELT 345 (SC) – Reiterates Rule 3(a) principle.

(F) Later Classification Change Does Not Affect Prior Legitimacy

15. On **01.01.2022**, the Customs Tariff was amended to create a separate sub-heading **CTH 9405 4200** for LED luminaires. In compliance, the Noticee has adopted the updated classification from that date.

16. This amendment signifies that **prior to 2022**, LED-based photographic lighting did **not** fall under CTH 9405, reinforcing the Noticee's stand that CTH 9006 6100 was correct for the relevant period.

(G) Commercial Parlance Supports Classification under CTH 9006

17. In trade and commercial parlance, the impugned goods are widely recognised as **photographic accessories**, not general lamps.

18. Judicial decisions confirm that **common trade understanding prevails** over technical or literal interpretations:

- *CCE v. Connaught Plaza Restaurant*, 2012 (286) ELT 321 (SC).
- *CCE v. DL Steel*, 2022 (381) ELT 289 (SC).
- *Dunlop India Ltd.*, 1983 (13) ELT 1566 (SC).
- *Akbar Badruddin Jiwani v. CC*, 1990 (47) ELT 161 (SC).
- *G.S. Auto International Ltd. v. CCE*, 2003 (152) ELT 3 (SC).

(H) Conclusion

19. The Noticee's classification under **CTH 9006 6100** is substantiated by:

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- Functional use as photographic apparatus,
- Trade and commercial identity,
- Specificity under CTA and GRI Rule 3(a),
- Chapter 90 Note 2(b),
- Consistent judicial support.

20. The SCN's reliance on **HSN Notes alone**, without reference to statutory notes or any technical or trade evidence, is insufficient to dislodge the Noticee's long-standing classification.

21. Accordingly, the SCN is liable to be dropped in toto, as the impugned classification is legally correct, factually justified, and commercially sound.

Argument 4- That the impugned goods are not liable to be confiscated under Section 111 of the Act and therefore, no penalty is imposable on the Noticee or its Directors.

- It is alleged in the SCN that the impugned goods are liable to confiscation under Section 111(m) of the Act. However, the SCN conspicuously fails to disclose any specific grounds or factual basis for invoking this provision. The invocation of Section 111(m) is mechanical, unsupported by any allegation regarding misdeclaration of value or any other particulars of the import declarations. A mere difference in classification, in the absence of misdeclaration or suppression of facts, cannot render goods liable to confiscation under Section 111.

- It is submitted that the dispute in the present case is limited solely to classification. There is no allegation whatsoever regarding misdeclaration of value or other particulars of the import entry. Therefore, the necessary precondition for invoking Section 111(m)—namely, discrepancy in declared particulars—is not met. The Show Cause Notice fails to establish the applicability of Section 111(m), and as such, the proposed confiscation is unsustainable in law.

- It is settled law that a classification dispute, in the absence of misdeclaration or suppression, does not attract confiscation under Section 111. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in *Gajanan Visheshwar Birjur v. Union of India*, 1994 (72) ELT 788 (SC), wherein it was held that confiscation cannot be sustained merely on account of classification differences.

- Further reliance is placed on the judgment of the Hon'ble CESTAT, Kolkata in *Commissioner of Customs (Port), Kolkata v. Chirag Corporation*, 2020 (374) ELT 444 (Tri-Kolkata), wherein it was held that in the absence of any mala fide intent or incriminating material, goods cannot be confiscated merely due to misclassification.

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- The Hon'ble CESTAT in *CC (Import), Nhava Sheva v. Vodafone Essar Gujarat Ltd.*, 2020 (373) ELT 421 (Tri-Mumbai), has held that where the dispute pertains to classification, and there is no allegation of suppression or misdeclaration, confiscation and penalty are not sustainable. Likewise, in *Ajanta Ltd. v. CC, Kandla*, 2019 (370) ELT 308 (Tri-Ahmd.), it has been reiterated that classification disputes are interpretational in nature and do not, by themselves, warrant penalty or confiscation.

- It is a settled proposition of law that in the absence of positive evidence of misdeclaration or fraud, Section 111 cannot be invoked. As a corollary, where confiscation is unsustainable, penalty under Section 112 of the Act is also not imposable.

- With respect to the penalty proposed under Section 114AA, it is submitted that such penalty is leviable only upon proof of *mens rea*, i.e., the presence of deliberate intent to make a false or incorrect declaration. In the present case, the classification adopted by the Noticee was bona fide and based on its understanding of the applicable legal provisions. The SCN is completely silent on any specific act or material that would establish mens rea or deliberate falsification.

- Thus, the essential ingredients for invocation of Section 114AA are:

  (a) a declaration or statement that is false or incorrect in any material particular; and

  (b) such falsity must be committed *knowingly or intentionally*.

- The Hon'ble Tribunal in *Sree Ayyanar Spinning & Weaving Mills Ltd. v. Commissioner of Customs, Tuticorin*, 2019 (370) ELT 1681 (Tri-Chennai), has held that the burden of proving deliberate falsity lies heavily upon the Department. The Tribunal held that unless there is specific evidence of intentional falsification, penalty under Section 114AA cannot be imposed.

- In *Naam Exports v. Commissioner of Customs, Tuticorin*, 2022 (382) ELT 251 (Tri-Chennai), it was held that penalty under Section 114AA is not imposable in the absence of evidence to show that the declaration made was knowingly false. Similarly, in *Sameer Santosh Kumar Jaiswal v. Commissioner of Customs (Import-II), Mumbai*, 2018 (362) ELT 348 (Tri-Mumbai), the Tribunal held that the imposition of penalty under Section 114AA requires proof of the person having made a false declaration knowingly, which was absent in that case.

- Further reliance is placed on the following authorities where penalties under Section 114AA were set aside due to absence of evidence of mala fide intent or falsity:

- *(i) CC (Import), Mumbai v. Tiong Woon Project & Contracting (I) P. Ltd.*, 2017 (356) ELT 138 (Tri-Mumbai);

  (ii) *Mahadev Granites v. Commissioner of Customs, Chennai*, 2021 (9) TMI 814 (CESTAT Chennai);

  (iii) *Savithri Jewellers Pvt. Ltd. v. Commissioner of Customs, Mumbai-II*, 2020 (374) ELT 754 (Tri-Mumbai).

- Therefore, it is respectfully submitted that the impugned classification was adopted bona fide and based on a reasonable interpretation of tariff entries. There is no evidence to establish that the Noticee made any false declaration, nor is there any suggestion of intent to evade duty. Consequently, the proposed confiscation under Section 111, penalty under Section 112(a), and penalty under Section 114AA are all unwarranted and liable to be dropped.

- Since no differential duty is sustainable against the Noticee, the consequential interest under Section 28AA of the Act is also not leviable. Further, in the absence of any justifiable duty demand or penal action, the deposit of Rs. 35,00,000/- made by the Noticee should be refunded along with applicable interest as per law.

- The Noticee respectfully requests an opportunity for personal hearing prior to the final adjudication of the matter. The same may be scheduled at the earliest convenience.

- The Noticee craves leave to add, amend or supplement any grounds or submissions during the course of proceedings or upon emergence of further facts or clarifications.

- The present reply may be deemed to be individually filed by the three Noticees, i.e., the Company and its Directors Mr. Om Prakash Rana and Mr. Sandeep Rana, and the same submissions apply to all of them in pari materia.

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5. Discussion and Findings:

5.1 I find that the subject Show Cause Notice was issued on 25.08.2023. On 31.07.2024, the Chief Commissioner of Customs, JNCH, Mumbai Zone-II has granted extension of time limit to adjudicate the case up to 24.08.2025 as per the first proviso to Section 28(9) of the Customs Act, 1962. Therefore, the case has now been taken for adjudication proceedings within the time limit as per Section 28(9) of the Customs Act, 1962.

5.2 I have carefully gone through the Show Cause Notice, the submissions made in writing by M/s Jatrana Mercantile Pvt. Ltd. ("the Noticee"), the records of investigation conducted by DRI, and the case law cited in defence. The main issues for determination are:

1. Correct classification of the imported goods "DIGITEK Brand Ring Light" and "DIGITEK Brand LED Video Light" during the relevant period (Aug 2018 – Aug 2021).
2. Whether the extended period under Section 28(4) of the Customs Act, 1962 is invocable.
3. Whether the goods are liable to confiscation under Section 111(m) of the Act.
4. Whether penalties under Sections 112(a), 114A and 114AA are imposable.

5.3 Classification Dispute: The Noticee has contended that their goods were correctly classifiable under **CTH 9006 6100** as "photographic flashlight apparatus" on the ground that they are accessories used by photographers and videographers. They have further argued that the specific entry under CTH 9405 covering LED-based luminaires was introduced only w.e.f. 01.01.2022, and hence prior to that date the more specific entry was CTH 9006 6100.

5.3.1 I find no merit in this argument for the following reasons:

- **Nature of the goods**: Investigation has clearly established, with reference to manufacturer's catalogue, e-commerce listings, and physical attributes, that both products emit *continuous light* and are intended for use in photo/video shoots, live streaming, etc. They are not designed to produce a short-duration burst (flash), which is an essential attribute of "photographic flashlight apparatus" under Heading 9006.
- **HSN Explanatory Notes**—while not binding—are a recognised interpretative aid, repeatedly relied upon by the Hon'ble Supreme Court (e.g., *O.K. Play (India) Ltd.*, 2005 (180) ELT 300 (SC)). The Notes clearly state that continuous lighting equipment is excluded from 9006 and falls under 9405.
- **Heading 9405 existed prior to 01.01.2022** and covered "lamps and lighting fittings not elsewhere specified or included", which is wide enough to include LED ring

lights and LED panel lights. The 2022 amendment merely created more granular sub-classifications but did not alter the essential coverage. Thus, even prior to 01.01.2022, the impugned goods were appropriately classifiable under 9405 40 90.

5.3.2 Notes of Chapter 90 exclude Searchlights or Spotlights. Chapter Notes 1 (ij)is reproduced below:

1. This Chapter does not cover:

.....

(ij) Searchlights or Spotlights of heading 9405;

Oxford dictionary defines spotlight "as a lamp projecting a narrow, intense beam of light directly on to a place or person, especially a performer on stage". A little search on google shows the use of spotlights and as mentioned in Britannica "spotlight device is used to produce intense illumination in a well-defined area in stage, film, television, ballet, and opera production".

Wikipedia defines photographic flashlight as "a flash is a device used in photography that produces a brief burst of light at a color temperature of about 5500 K to help illuminate a scene".

In view of the above definitions, it appears that the impugned goods are not Photographic flashlights but more akin to spotlights which are used in photography and videography. The said ring lights emit continuous light for longer period of time which is not the property of photographic flashlights.

5.4 Distinguishing Case Law Cited by the Noticee: The Noticee has relied on several decisions to argue that HSN Explanatory Notes are not binding and classification must be based only on tariff text, section notes, and chapter notes.

- **A. Nagaraju Bros. v. State of A.P.** and **O.K. Play (India) Ltd.** – These cases actually support the Department's stand that HSN Explanatory Notes are a *safe guide* and should be used along with Rules of Interpretation, functional utility, design, and usage. In the present case, functional utility (continuous lighting) and HSN guidance both point towards Heading 9405, not 9006. It supports the case of revenue that HSN explanatory notes along with chapter notes provide a safe guide for interpretation and this approach has been adopted by the investigating team in the instant case.

- **Chetna Polycoats (P) Ltd.** – This decision states that explanatory notes have persuasive value and may be relied upon unless contrary to statutory text or

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case law. Here, there is no contradiction between tariff text and the explanatory notes—both exclude continuous lighting equipment from Heading 9006.

- **Coen Bharat Ltd.** – Held that HSN need not be referred to if there is no ambiguity. In this case, the ambiguity arises because the goods are photographic accessories *but* not flash apparatus—hence, classification requires distinguishing between flash and continuous lighting, exactly the purpose served by the HSN Notes.

- **Protek Circuits & Systems Ltd.** and **Rationale Iron & Steel Co.** – These cases reiterate that classification must flow from tariff text, supported by other aids where necessary. Here, application of Rule 1 and relevant Section Notes, supported by HSN, leads to Heading 9405.

Thus, none of the judgments cited assist the Noticee in sustaining classification under Heading 9006. On the contrary, the principles laid down therein, when applied to the facts, support the classification under Heading 9405.

5.5 Extended Period & Wilful Misstatement: The Noticee has argued that they have been following industry practice since 2014 and Customs had earlier cleared the goods under 9006. However, the investigation revealed that:

- In several Bills of Entry, the word "Video" appearing in the supplier's description ("VIDEO LED RING LIGHT") was omitted in the importer's declaration. This omission concealed the fact that the product was suitable for continuous video lighting—pointing towards deliberate misstatement.

- Even if other importers made similar declarations, each importer is individually responsible under Section 46(4A) to ensure the correctness of the declaration.

- The change to correct classification post-March 2022 shows that the Noticee was aware of the correct heading but continued earlier misclassification during the relevant period.

These factors establish wilful misstatement/suppression, justifying invocation of Section 28(4).

Distinction from Padmini Products Ltd. (1989) and Pushpam Pharmaceuticals Co. (1995):

The Hon'ble Supreme Court in *Padmini Products Ltd.* held that extended period can only be invoked when there is "something positive" such as deliberate withholding of information, and that whether such wilful misstatement exists is a question of fact. In *Pushpam Pharmaceuticals*, it was further clarified that "suppression" must be deliberate

and with intent to evade, and mere omission or mutual knowledge of facts between parties is insufficient.

Applying these principles to the present case, I find that the following factual matrix satisfies the "deliberate" and "positive act" threshold laid down by the Apex Court:

1. **Omission of the term "Video"** – The supplier's documents described the goods as "VIDEO LED RING LIGHT", which unambiguously indicates continuous lighting for video purposes. In a majority of the Bills of Entry, the Noticee omitted the word "Video", thereby concealing the essential characteristic that excluded the product from Heading 9006. This is not a mere oversight but a positive alteration of description.
2. **Knowledge of true nature** – The Noticee has been importing and marketing the same products domestically, with advertisements and catalogues clearly describing their continuous lighting function. They were thus aware that the goods could not be "flashlight apparatus" under 9006.

Given these facts, I hold that the present case involves **conscious and deliberate misstatement and suppression with intent to evade duty**, as envisaged in *Padmini Products* and *Pushpam Pharmaceuticals*. The ratio of these decisions, therefore, does not assist the Noticee — instead, the factual requirements they stipulate for invoking the extended period are fully met in this matter.

5.6 Liability to Confiscation and Penalty: I find that the SCN proposes confiscation of goods under the provision of Section 111 (m) of the Customs Act, 1962. Provisions of Section 111(m) of the Customs Act, 1962 states that,

> *[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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section(1) of section 54;*

5.6.1 In the present case, the goods are liable to confiscation under Section 111(m) of the Customs Act, 1962, since the importer wilfully mis-declared the description and classification of the imported goods in the Bills of Entry with the intent to avail a lower rate of duty. The omission of the word "Video" from the description, despite its presence in the Bills of Lading, and the deliberate declaration under CTH 9006 instead of the correct CTH 9405, resulted in the goods "not corresponding in material particulars" with the entry made under the Act. Such mis-declaration constitutes a contravention squarely attracting Section 111(m), as it relates not only to value but to any "particular" of the declaration, including description and tariff classification, and is supported by consistent judicial interpretation that mis-declaration in classification/description

amounts to a material discrepancy rendering the goods liable for confiscation. By misclassifying and misstating the nature of the goods in the Bills of Entry, the Noticee rendered them liable to confiscation under Section 111(m). Consequently, penalty under Section 112(a) is imposable on the Directors for their role in the misdeclaration and Section 114A is attracted for short-levy of ₹2,06,79,536/-.

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

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The operating words of Section 125, "Whenever confiscation of any goods is authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act....."

5.6.3 In the present case, it is established from the investigation that M/s Jatrana Mercantile Pvt. Ltd., as the importer of record, filed Bills of Entry containing false declarations in material particulars, namely the description and classification of the imported goods, with the intent to avail a lower rate of duty. The evidence further shows that Shri Om Prakash Rana and Shri Sandeep Rana, both Directors, were in charge of and responsible for the conduct of the company's business and had knowledge of, and consented to, the said mis-declarations, thereby "causing" such false declarations to be made within the meaning of Section 114AA of the Customs Act, 1962. They deliberately omitted the word "video" in the description of the

goods given in the Bill of Lading. Hence, making them liable for penalty under Section 114AA of the Customs Act, 1962.

5.7 In view of the foregoing discussions and findings, I pass the following order:

Order

(i) I reject the classification declared by M/s Jatrana Mercantile Pvt. Ltd. under CTH 9006 6100 in respect of the goods "DIGITEK Brand Ring Light" and "DIGITEK Brand LED Video Light" imported under the Bills of Entry and re-classify the said goods under CTH 9405 4090 for the relevant period.

(ii) I confirm the demand for recovery of differential customs duty amounting to **₹2,06,79,536/- (Rupees Two Crore Six Lakh Seventy-Nine Thousand Five Hundred Thirty-Six only)** from M/s Jatrana Mercantile Pvt. Ltd. under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA ibid.

(iii) I appropriate the sum of ₹35,00,000/- (Rupees Thirty-Five Lakh only) already deposited by M/s Jatrana Mercantile Pvt. Ltd. towards the confirmed duty liability.

(iv) I order to confiscate the impugned goods imported under the said 47 Bills of Entry, having total assessable value of **₹13,52,48,497/- (Rupees Thirteen Crore Fifty-Two Lakh Forty-Eight Thousand Four Hundred Ninety-Seven Only)** under Section 111(m) of the Customs Act, 1962. However, i give an option to redeem the said goods to the importer on payment of redemption fine of **₹1,35,00,000/-(Rupees One Crore Thirty-Five Lakh Only)** under provision of Section 125 (1) of the Customs Act, 1962.

(v) I impose a penalty equal to the duty i.e. **₹2,06,79,536/- (Rupees Two Crore Six Lakh Seventy-Nine Thousand Five Hundred Thirty-Six only)** and interest on M/s Jatrana Mercantile Pvt. Ltd. under Section 114A of the Customs Act, 1962, provided where such duty and interest is paid within thirty days from 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 the interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days.

(vi) I impose a penalty of **₹5,00,00,000/- (Rupees Five Crore Only)** on M/s. Jatrana Mercantile Pvt. Ltd. under Section 114AA of the Customs Act, 1962.

(vii) I impose a penalty of **₹20,00,000/- (Rupees Twenty Lakh Only)** each on Shri Om Prakash Rana and Shri Sandeep Rana, Directors of M/s Jatrana Mercantile Pvt. Ltd., under Section 112(a) of the Customs Act, 1962.

(viii) I impose a penalty of **₹5,00,00,000/- (Rupees Five Crore Only)** each on Shri Om Prakash Rana and Shri Sandeep Rana under Section 114AA of the Customs Act, 1962.

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

21/8/25

(Kumar Amrendra Narayan)
Commissioner of Customs (Import-II)
New Customs House, Mumbai Zone-I

To:

1. M/s Jatrana Mercantile Pvt Ltd.
   Khasra No. 145/1, Main Road, Khera Kalan,
   North West Delhi, Delhi – 110082.
2. Sh. Om Prakash Rana,
   Khasra No. 145/1, Main Road,
   Khera Kalan, North West Delhi, Delhi – 110082
3. Sh. Sandeep Rana,
   Khasra No. 145/1, Main Road, Khera Kalan,
   North West Delhi, Delhi – 110082

CHIEF COMMISSIONER OF CUSTOMS
22 AUG 2025
NEW CUSTOM HOUSE MUMBAI 400 001

Copy to:

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2. The Additional Director, DRI, Kolkata Zonal Unit.
3. The Additional Commissioner, Group VB, JNCH, Nhava Sheva.
4. The AC/DC, Centralized Revenue Recovery Cell, JNCH
5. The Centralized Adjudication Cell, NS-V, JNCH, Nhava Sheva.
6. Notice Board.
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Mumbai - 400 001.

DEPARTMENT OF POSTS INDIA
REGISTRATION BRANCH
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Journal of uninsured registered letters posted **by Adjudication Section (Import-II)**
New Custom House, Ballard Estate, Mumbai-400 001
At the G.P.O/BOM-POST OFFICE ON THE **22.08.2025**

F.No. S/10-118/2023-24/Commr./NS-V/CAC/JNCH **Date: 22.08.2025**

Sr. No.	Name & Address	Destination Post Office	EMS No.
1.	M/s Jatrana Mercantile Pvt Ltd. Khasra No. 145/1, Main Road, Khera Kalan, North West Delhi, Delhi – 110082.	Delhi – 110082.	EM833709390IN
2.	Sh. Om Prakash Rana, Khasra No. 145/1, Main Road, Khera Kalan, North West Delhi, Delhi – 110082.	Delhi – 110082.	EM833709386IN
3.	Sh. Sandeep Rana, Khasra No. 145/1, Main Road, Khera Kalan, North West Delhi, Delhi – 110082.	Delhi – 110082.	EM833709491IN
4.	The Additional Director, DRI, Kolkata Zonal Unit, CBD 93, International Financial Hub, Action Area-CBD New Town, Kolkata-700161	Kolkata-700161	EM833710438IN
5.	Asst./Dy. Commissioner of Customs, Centralised Adjudication Cell, MUMBAI-II JNCH, NHAVA SHEVA, Tal-Uran, Dist.-Raigad,Maharastra-400707	Maharastra-400707	EM833710424IN
6.	Asst./Dy. Commissioner of Customs, Centralised Revenue Recovery Cell, MUMBAI-II JNCH, NHAVA SHEVA, Tal-Uran, Dist.-Raigad,Maharastra-400707	Maharastra-400707	EM833710415IN
7.	The Addl. Commissioner of Customs, Group VB, NS-V, MUMBAI-II JNCH, NHAVA SHEVA, Tal-Uran, Dist.-Raigad,Maharastra-400707	Maharastra-400707	EM833710282IN