

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Customs Appeal No. 85759 of 2017

(Arising out of Order-in-Original No. 10/KVSS(10) ADG(ADJ.)/DRI, MUMBAI/2016-17 dated 17.02.2017 passed by the Additional Director General (Adjudication), DRI,, Mumbai)

M/s. A V Global Corporation Pvt. Ltd.

Appellant

No.201, New Delhi House,
Barakhamba Road, New Delhi 110 021.

Vs.

Additional Director General (Adjudication)

Respondent

Directorate of Revenue Intelligence,
2nd floor, Old Building, New Custom House,
Ballard Estate, Mumbai 400 001.

WITH

Customs Appeal No. 86106 of 2017

(Arising out of Order-in-Original No. 10/KVSS(10) ADG(ADJ.)/DRI, MUMBAI/2016-17 dated 17.02.2017 passed by the Additional Director General (Adjudication), DRI,, Mumbai)

M/s. Mitsubishi Electric Asia Pte Limited

Appellant

307, Alexandra Road, 5-01/02, Electric Building,
Singapore 159943

Vs.

Additional Director General (Adjudication)

Respondent

Directorate of Revenue Intelligence,
2nd floor, Old Building, New Custom House,
Ballard Estate, Mumbai 400 001.

WITH

Customs Appeal No. 86107 of 2017

(Arising out of Order-in-Original No. 10/KVSS(10) ADG(ADJ.)/DRI, MUMBAI/2016-17 dated 17.02.2017 passed by the Additional Director General (Adjudication), DRI,, Mumbai)

M/s. Mitsubishi Electric India Pvt. Ltd.

Appellant

M-38/1, Middle Circle, Connaught Place,
New Delhi 110 001.

Vs.

Additional Director General (Adjudication)

Respondent

Directorate of Revenue Intelligence,
2nd floor, Old Building, New Custom House,
Ballard Estate, Mumbai 400 001.

WITH

Customs Appeal No. 86143 of 2017

(Arising out of Order-in-Original No. 10/KVSS(10) ADG(ADJ.)/DRI, MUMBAI/2016-17 dated 17.02.2017 passed by the Additional Director General (Adjudication), DRI,, Mumbai)

Shri Manoranjan Nayak

Appellant

Asst. General Manager (Supply Chain),
M/s. Mitsubishi Electric India Pvt. Ltd.,
M-38/1, Middle Circle, Connaught Place,
New Delhi 110 001.

Vs.

Additional Director General (Adjudication)

Respondent

Directorate of Revenue Intelligence,
2nd floor, Old Building, New Custom House,
Ballard Estate, Mumbai 400 001.

WITH

Customs Appeal No. 86144 of 2017

(Arising out of Order-in-Original No. 10/KVSS(10) ADG(ADJ.)/DRI, MUMBAI/2016-17 dated 17.02.2017 passed by the Additional Director General (Adjudication), DRI,, Mumbai)

Shri Rajeev Sharma

Appellant

Head (Corporate Services & Strategic Planning),
M/s. Mitsubishi Electric India Pvt. Ltd.,
M-38/1, Middle Circle, Connaught Place,
New Delhi 110 001.

Vs.

Additional Director General (Adjudication)

Respondent

Directorate of Revenue Intelligence,
2nd floor, Old Building, New Custom House,
Ballard Estate, Mumbai 400 001.

WITH

Customs Appeal No. 86145 of 2017

(Arising out of Order-in-Original No. 10/KVSS(10) ADG(ADJ.)/DRI, MUMBAI/2016-17 dated 17.02.2017 passed by the Additional Director General (Adjudication), DRI,, Mumbai)

Shri Hiroaki Ashizawa

Appellant

Ex-Director & General Manager,
M/s. Mitsubishi Electric India Pvt. Ltd.,
M-38/1, Middle Circle, Connaught Place,
New Delhi 110 001.

Vs.

Additional Director General (Adjudication)

Respondent

Directorate of Revenue Intelligence,
2nd floor, Old Building, New Custom House,
Ballard Estate, Mumbai 400 001.

WITH

Customs Appeal No. 86146 of 2017

(Arising out of Order-in-Original No. 10/KVSS(10) ADG(ADJ.)/DRI, MUMBAI/2016-17 dated 17.02.2017 passed by the Additional Director General (Adjudication), DRI,, Mumbai)

Shri Shinji Yamabe

Ex-Managing Director,
M/s. Mitsubishi Electric India Pvt. Ltd.,
M-38/1, Middle Circle, Connaught Place,
New Delhi 110 001.

Appellant

Vs.

Additional Director General (Adjudication)

Directorate of Revenue Intelligence,
2nd floor, Old Building, New Custom House,
Ballard Estate, Mumbai 400 001.

Respondent

AND

Customs Appeal No. 88039 of 2018

(Arising out of Order-in-Appeal No. 361 (Gr-V)/2018(JNCH)/Appeal-II dated 28.03.2018 passed by the Commissioner of Customs (Appeal-II), Mumbai-II, Nhava Sheva)

M/s. Mitsubishi Electric India Pvt. Ltd.

B-4 Gala No.1 to 11, Survey No.6/1,
2, 4, Mumbai Nashik Highway Padga,
Thane, Bhiwandi 421 101.

Appellant

Vs.

Commissioner of Customs, Nhava Sheva-I

JNPT, Custom House, Nhava Sheva, Raigad 400 707.

Respondent

Appearance:

Shri Ganesh K.S. Iyer with Shri Rajat Bose and Neeladr, Advocates, for
the Appellant

Shri Ramesh Kumar, Assistant Commissioner, Authorised
Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

Date of Hearing: 28.02.2022

Date of Decision: 28.02.2022

FINAL ORDER NO. **A/85491-85498/2022**

PER: SANJIV SRIVASTAVA

These appeals are directed against order-in-original No 10/KVSS(10) ADG(ADJ.)/DRI, MUMBAI/2016-17 dated 17.02.2017 of the Additional Director General (Adjudication), DRI, Mumbai and order-in-appeal No 361 (Gr-

V)/2018(JNCH)/Appeal-II dated 28.03.2018 of the Commissioner of Customs (Appeals-II), Mumbai-II, Nhava Sheva. By the impugned order, the Additional Director General held as follows:

"7 Accordingly, in view of the aforesaid discussions, I pass the following Order:

7.1 I reject the following classification and reclassify the same as below:

- i) I reject classification of room air conditioners (RAC) with model nos. MSH GE 35/50 VB + MUH GE 35/50 VB, MSZ EF 25/35/50 + MUZ EF 25/35/50 and MSZ HJ 25/35/50 VA + MUZ HJ 25/35/50 VA under CTH 84151010 in respect of bills of entry as detailed in column 9 of Worksheet I to the Show Cause Notice and reclassify the same under CTH 84158190 as detailed in column 21 of worksheet I to the notice.*
- ii) I reject the classification of room air conditioner of series MSH GE 60 VB + MUH GE 60 VB and all CMVRF (other than CMVRF with only outdoor unit of series PUCY) under CTH 84151010 or as 'parts of air conditioners under under CTH 84159000 in respect of bills of entry as detailed in column 9 of Worksheet I to the Show Cause Notice and re-classify the CTH 84158110 as detailed in column 22 of the Worksheet I to the Show Cause Notice.*
- iii) I reject the classification of packaged air conditioners of com model nos. PE 4/5/6 EAK + PU 4/5/6 YAKD, PE 5AAK+PU EN 4/8/12 EAK + PU 4/8/12, series PEY with model nos. 24/30/36/422 SUY KA 24/30/36/42/48 VA and series PE GAK with model, 8/10/16/20 GAK + PU 8/10/2*8/2*10 YAKD and CMVRF with indoor units along with outdoor units PUCY (only) imported within diversity ratio 50% to 130% imported under CTH 84151010 or as conditioners' under CTH 84159000 in respect of various bills of e detailed in column 9 of worksheet I to the Show Cause Notice and classify the same under CTH 84158210 as detailed in column 21 Worksheet I to this notice.*

- iv) *I reject the classification of packaged air conditioners of series SE with model nos. SE 2/2.5 AKD + SU 2/2.5 VAKD, PEY series with model nos. PEY 18 KA + SUY KA 18 VA and PE series of model nos. PE 3EAK+PUŽVAKD and PE 3AAK+PUŽVAKD under CTH 84151010/84151090 in respect of various bills of entry as detailed in column 9 of worksheet I to this notice, and re-classify the same under CTH 84158290 as detailed in column 21 of the worksheet I to this notice.*
- v) *I reject the classification of indoor units and outdoor units of CMVRF imported by M/s MEIPL without satisfying the diversity ratio of 50% to 130% or the indoor units of PAC and RAC imported without matching outdoor unit or the outdoor units of PAC and RAC imported without matching indoor unit under CTH 84151010 under various bills of entry as mentioned in column 9 of worksheet I to this notice and re-classify the same as 'parts of air conditioners' under CTH 84159000 as detailed column 21 of worksheet I to the notice.*
- vi) *I reject the classification of panel of series CMP CMW, SLP ZAAW SLP2ALW etc. all parts of PAC or CMVRF, under CTH 39269099 or under CTH 84151010 imported vide various bills of entry as detailed column of worksheet I to this notice, and reclassify the same as 'parts conditioners' under CTH 84159000 as detailed in column 21 of Worksheet I to the Show Cause Notice.*
- vii) *I reject the classification of item described as grill of series PMP under CTH 73142080 imported vide various bills of entry as detailed in column 9 of Worksheet I to this notice and reclassify the same as parts of air conditioners under CTH 84159000 as detailed in column 21 of the worksheet I to this notice*
- viii) *I reject the classification of branch pipe, outdoor twinning kit, joint pipe, header under CTH 74112900 imported vide various bills of entry as stated in column 9 of Worksheet I to this notice and reclassify the same as parts of air conditioners under CTH 84159000 as detailed in column 21 of the worksheet I to this notice.*

- ix) *I reject the classification of indoor heat exchanger and outdoor heat exchangers imported vide various bills of entry as detailed in column 9 of Worksheet I to this notice under CTH 84195090 and reclassify the same as 'parts of air conditioners' under 84159000 as detailed in column 21 of worksheet I to this notice.*
- x) *I reject the classification of the BM adapter of series BAC HD 150 imported under various bills of entry as detailed in column 9 of Worksheet to this notice under CTH 85044030 and hold the same as 'parts of air conditioners' under CTH 84159000 as detailed in column 21 of worksheet to the notice.*

Consequently due to reclassification as in (i) to (x) above, I reject the declared notification no. with corresponding serial No., based on which excess concessional duty benefit was availed, as mentioned in column no. 15 & 16 of the Worksheet and amended/ reassess the same as mentioned in column 23 & 24 of the Worksheet I to this Notice.

However, I accept the following classifications done by the noticee:

- 1) I uphold classification of remote controllers imported under various bills of entry as detailed in column 9 of worksheet I to the Show Cause Notice under CTH 85437099.*

7.2 Counter Veiling Duty:

I reject the declared value of goods as in column No. 13 of the Worksheet I to the Notice for the purpose of levy of CVD in respect of imports of RAC or PAC or CMVRF air conditioners within diversity ratio of 50% to 130% and parts of air conditioners listed in column no.20 of Worksheet I to the notice and re-determine the same in terms of the first proviso to Section 3(2) of the Customs Tariff Act, 1975 as mentioned in Column No. 22 of the Worksheet I to the No proviso to Section 3(2) of the Customs Tariff Act, 1975 read with the Section 4A of the Central Excise Act, 1944 on RSP basis, as the same attract the provisions of Legal Metrology Act, 2009 and the Rules made there under(as applicable).

7.3 Consequentially due to 7.1. and 7.2 above, I demand duty amounting to Rs. 9,70,68,548/- (Rupees Nine Crore Seventy Eight Thousand Five Hundred Forty Eight only) and Rs. 8,46,091 Forty Six Thousand and Ninety One only) from the noticees MEIPLA and MEAPL respectively in respect of goods imported vide 561 Bills of Entry and 5 Bills of Entry in case MEAPL under proviso to Section 28(1)/ Section 28(4) of the Customs Act, 1962, as applicable during the period of currency.

7.4 I also demand interest under Section 28AA/Section 28AB of the Customs Act, 1962 as applicable during the material period of currency, on the said amount of differential duty.

7.5 I order that the amount of Rs 4,47,89,600/- (Rupees Four Forty Seven Lakh Eighty Nine Thousand Six Hundred only) voluntarily paid by noticees be adjusted against the adjudication liabilities and I also order enforcement of the bank guarantees executed during the provisional releases seized goods towards the liabilities arising out of this notice.

7.6 I order confiscation of the seized goods imported vide bills of entry (except wireless remote controller) as detailed in Worksheet III to this notice totally valued at Rs. 16,09,06,981/- under Section 111(d) and Section 111(m) d the Customs Act, 1962. However, I refrain from confiscating the wireless Remote Controller seized by DRI (as detailed in Worksheet I) totally valued at Rs 9,90,294/- under Section 111(d) and Section 111(m) of the Customs Act, 1962. However, I give an option to redeem the goods under Section 125 of the Customs Act, 1962 on payment of Redemption Fine amounting to Rs. 3,00,00,000 (Rupees Three Crore only).

7.7 I also order confiscation of the other goods except Wireless Controller imported by the noticee vide the remaining bills of entry and seized goods as mentioned above) totally valued at Rs.127,93,52,737/-under Section 111(d) and 111(m) of the Customs Act. 1962. however, as the goods are not physically available I do not propose to impose redemption fine although the noticees are liable for penalty on account of these goods also.

7.8 Penalty company:

- i) I impose penalty of Rs. 9,70,68,548/- (Rupees Nine Crore Seventy Lakh Sixty Eight Thousand Five Hundred and Forty Eight only) along with interest thereon on M/s. Mitsubishi Electric India Private Limited and penalty of Rs. 8,46,091/-(Rupees Eight Lakh Forty Six Thousand and Ninety One only) along with interest thereon on M/s. Mitsubishi Electric Asia Pvt. Limited under Section 114A of the Customs Act, 1962.
- ii) I also impose penalty of Rs. 1,00,00,000/- (Rupees One Crore only) on Ms. Mitsubishi Electric India Private Limited and penalty of Rs. 1,00,000/ Rupees One Lakh only)on M/s. Mitsubishi Electric Asia Pvt. Limited under Section 114AA of the Customs Act, 1962.

7.9 Personal penalty

- a) I impose penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on Shri Manoranjan Nayak, Senior Manager (Supply Chain Management) under Section 112(a) of the Customs Act, 1962.
- b) I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) on Shri Manoranjan Nayak, Senior Manager (Supply Chain Management)under Section 114AA of the Customs Act, 1962.
- c) I impose penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on Shri Rajeev Sharma, General Manager, (Supply Chain Management) on under Section 112(a) of the Customs Act, 1962.
- d) I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only)on Shri Rajeev Sharma, General Manager, (Supply Chain Management) refrain from imposing penalty under Section 114AA of the Customs Act, 1962.
- e) I impose a personal penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on Shri Horoaki Ashizawa, Director and General Manager, Living Environment Division, M/S MEIPL under Section 112(a) of the Customs Act, 1962.
- f) I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) on Shri Horoaki Ashizawa, Director and General Manager, Living Environment Division M/s MEIPL under Section 114AA of the Customs Act, 1962.

- g) I impose penalty of Rs. 8,00,000/- (Rupees Eight Lakh only) on Shri Shine Yamabe, Managing Director, M/S MEIPL under Section 112(a) of the Customs Act, 1962*
- h) I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) on Shri Shine Yamabe, Managing Director, M/S MEIPL under Section 114AA of Customs Act, 1962.*

7.10 Penalty on CB

- i) I impose a personal penalty of Rs. 1,00,000/- (Rupees One Lakh only) on M/s. A.V. Global & Co. CB under Section 112(a) of the Customs Act, 1962*
- ii) I impose a personal penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s. A.V. Global & Co., CB under Section 114AA of the Custom Act, 1962*
- iii) I refrain from imposing penalty on M/s. S.K. Jain & Company under Section 112(a) and Section 114AA of the Customs Act, 1962.*

2.1 This case is based on the show cause notice issued by the Additional Director General DRI. However during the hearing held on 11.11.2021, counsels for appellant stated that he would not take plea of jurisdiction on the basis of decision of Hon'ble Apex Court in case of Canon and argue the case on merits only.

3.1 We have heard Shri Ganesh K S Iyer, Shri Rajat Bose and Neeladr, Advocates for the appellants and Shri Ramesh Kumar, Assistant Commissioner, Authorized representative for the revenue.

3.2 Arguing for the appellants learned counsel submits:

- The following allegations in the Impugned Order are being challenged by the Appellant:
 - Room Air Conditioning Systems (RAC) units cannot be classified under Customs Tariff Heading (CTH) 84151010, of the First Schedule of the Customs Tariff Act, 1975, and have to be classified under CTH 84158190.
 - City Multi Variable Refrigerant Flow Systems (CMVRF) units, are not 'parts of air conditioners, but are complete air-conditioning systems; Hence they are not classifiable under CTH 84159000.

- RAC units have to be classified under CTH 84151010:
- RAC units are split type air conditioners which comprise of one indoor unit and one outdoor unit and do not require ducting [ductless] for installation and distribution of air flow. Units under dispute (MSG-GE, MSZ-HJ and MSZ-EF) are thus ductless (one indoor evaporator connected with one condenser, and have both cooling and heating function.
 - The single dash CTH 841510 and triple dash CTH 84151010 - under such single dash for 'split system', always gets precedence over another double dash CTH 841581, appearing subsequently, under single dash 'Other [units not covered under 841510]
 - The HSN Explanatory Notes to sub-heading 841510 provide that as all split systems, when connected together, contain a condenser unit for external installation plus evaporator units for internal installation, and are "ductless", they are to be classified herein. Further, this sub heading 841510 excludes all forms of ducted central air conditioning systems, which may be classified as CTH841581. The presence of heat pump is immaterial for classification.
 - The case is squarely covered under the judgment of Daikin Air Conditioning vide order dated 11 September 2020, where this Hon'ble bench of the CESTAT has held that there is no descriptive restriction in sub-heading no. 841510 to conclude that heating capability is not intended for coverage by that tariff entry. Further, the CESTAT has clearly held that all ductless systems are to be classified under CTH 841510. This judgment has also been supported by another judgment of this Hon'ble bench of the CESTAT in International Aircon Private Limited [2020-TIOL-1536 MUM), which has upheld similar contentions.

- CMVRF (indoor/outdoor) units are parts and not air conditioners:
 - The imported goods are separate indoor units and outdoor units, of varying capacity, and not complete air conditioners. (BOE]
 - Each imported unit is imported and presented separately at the time of import, and there is no one to one co-relation between any number of indoor units to an outdoor unit.
 - The units are also sold separately by the overseas Supplier and further, in retail by the importer in India, with separate unit pricing.
 - At time of import, no one part can be correlated to another part, and the parts, by themselves, cannot operate as a complete air conditioner. The combination of parts is unknown at the time of import. The combined cooling capacity of the indoor units cannot be in the range of 50% to 130% of the cooling capacity of the outdoor unit [diversity ratio) as it is not known how many indoor units make the combination with outdoor units.
 - Rule 2(a) of the General Rules of Interpretation of the Customs Tariff provide that article presented in a disassembled form, can only be classified as a complete article, provided when presented they have the essential characteristic of the finished article. This is not the case here as per the grounds mentioned above.
- CMVRF units should alternatively be classified as CTH 84151010 - Split Systems
 - Even if assuming but not admitting, that the imported units cannot be classified as parts of air conditioner, under CTH 84159000, the same has to be classified under CTH 84151010, as split systems. All split systems have heat pumps and

the presence of heat pump is immaterial for classification.

- As mentioned in Point 3A(c) above, CTH sub-heading 841510 is the correct classification for all 'ductless' split systems. Since, a CMVRF is also a ductless split system, it has to be classified in this sub heading.
 - Section Note 4 to Section XVI of the Customs Tariff Act provides that where a machine consists of individual components, whether separate or interconnected, intended to contribute to a clearly defined function, then the whole machine is to be classified in the heading appropriate to that function. The clearly defined function here is a 'split system ductless air conditioner', and hence it has to be classified as such.
 - The classification is settled by the decisions of the Mumbai CESTAT in Daikin Air Conditioning and International Aircon, mentioned supra.
- Benefit of Notification No. 85/2004 (Cus) dated 31 August 2004 or Notification No. 46/2011 (Cus) dated 1 June 2011, for imports from Thailand, are applicable. Since CMVRF parts are classified under CTH 841590 or alternatively under CTH 841510, they are entitled to complete exemption from Basic Customs Duty (under entry 1103 (CTH 841590) of Notification 46/2011 or under entry 49 (CTH 841510] of Notification 85/2004. RAC units are to be charged to 0% BCD under entry 49 (CTH 841510), of Notification 85/2004.
- Penalty cannot be imposed for cases involving classification or cases where there is no wilful misstatement leading to short payment of duty and further, as there is no suppression of facts by the Appellant, the extended period of limitation is not applicable.

3.3 Arguing for the revenue learned Authorized Representative re-iterated the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument on the appeal.

4.2 The issues for determination in the present appeals can be listed as follows:

- I. Classification of Air conditioners with both heating and cooling functions under Custom Tariff.
- II. Classification of the parts of Air Conditioner.
- III. Admissibility of exemption under Notification No. 85/2004 (Cus) dated 31 August 2004 or Notification No. 46/2011 (Cus) dated 1 June 2011
- IV. Whether the Air Conditioners need to be assessed on the basis of MRP/ RSP for the purpose of levy of countervailing duty.
- V. Whether the goods are liable for confiscation and whether the importers, their employees and the Custom Broker liable to penalties

4.3 Principal Additional Director General has while adjudicating the show cause notice, has recorded on the issue of classification of Air Conditioners as follows:

"6.2 CLASSIFICATION OF AIR CONDITIONERS

6.2.1 I find that the DRI has alleged that Room Air Conditioners (RAC) with Model No. MSH-GE 35/50 VB + MUH GE 35/50 VB, MSZ EF 25/35/50 + MUZ EF 25/35/50 and MSZ HJ 25/35/50 VA + MUZ HJ 25/35/50 VA have both heating and cooling capacity and that they incorporate a refrigerating unit and a heat pump with a valve for reversal of cooling/heat cycle and perform dual function of heating and cooling premises and hence they are appropriately classifiable under tariff sub-heading 841581. Similarly, DRI came to the conclusion that the Air Conditioners with matching outdoor unit which are of capacity less than 2 tons, are classifiable under tariff item 84158190 and the split air conditioner of series MSH GE 60 VB with matching outdoor unit which is of capacity 2 tons is appropriately classifiable under tariff item 84158110.

6.2.1.1 As per the brochure, Room Air Conditioner (RAC) Split Type come in different series/ models like MS-G, MS-GK, MS-H,

MS-D, MS-E, MSY-GE, MSH-GE, MSZ-EF and MSZ-HJ. The relevant features of the ACs covered under aforesaid series are as under -

- *All the aforesaid series of ACs comprise of one indoor unit and one outdoor unit*
- *Indoor unit and outdoor unit are connected through copper piping for refrigerant's flow.*
- *No ducting is required for installation and distribution of air flow*
- *MS-G, MS-GK, MS-H, MS-D, MS-E, and MSY-GE series does not have the heating function.*
- *MSH-GE, MSZ-HJ and MSZ-EF series of air-conditioners provide both heating and cooling effect. The outdoor unit of these series of air conditioners has inbuilt reversible valve to perform heating function*
- *The compressor in outdoor unit of MSY-GE series and MSZ-EF series of air conditioners is driven by an inbuilt Inverter Circuit Board.*

6.2.1.2 I find that investigation revealed that the Air Conditioners of series/ models like MS-G, MS-GK, MS-H, MS-D, MS-E, MSY-GE have only cooling capacity and hence, are rightly classifiable under the tariff sub-heading 841510. The dispute in the present case relates only to MSH-GE, MSZ-HJ and MSZ-EF series of ACs. I notice that DRI has alleged in the Show Cause Notice that these three series of ACs have both heating and cooling capacity and that they incorporate a refrigerating unit and a valve for reversal of cooling/heat cycle (reversible heat pumps) and perform a dual function of heating and cooling premises. Therefore, they are appropriately classifiable under tariff sub-heading 841581.

6.2.1.3 I find that the noticees on the other hand, submitted that these three series of RAC are correctly classifiable under tariff item 84151010 as they

- i) Are split system type AC and both indoor & outdoor unit and other essential components are imported together;*
- ii) Are ductless;*

iii) Require separate evaporator for each area to be air conditioned (in these models, only one indoor unit is used, which is used for a single room/ area to be air conditioned)

The notices stressed upon the fact that the Air Conditioners fulfilling three conditions are appropriately classifiable under tariff item 84151010

6.2.1.4

6.2.1.5 I find that Chapter heading relevant for classification of the indoor units and outdoor units of various types of AC (when imported as complete unit or as parts), is tariff heading 8415 of the First Schedule to the Customs Tariff Act. Tariff heading 8415 is re-produced as under:

<i>Tariff Item</i>		<i>Description</i>
<i>8415</i>		<i>Description of goods Air-conditioning machines, comprising a motor driven fan and elements for changing the temperature and humidity including those machines in which the humidity cannot be separately regulated</i>
<i>8415 10</i>	<i>-</i>	<i>Window or wall types, self-contained or "split system":</i>
<i>8415 10 10</i>	<i>---</i>	<i>Split System</i>
<i>8415 10 90</i>	<i>---</i>	<i>Other</i>
<i>8415 20</i>	<i>-</i>	<i>Of a kind used for persons in motor vehicles:</i>
<i>8415 20 10</i>	<i>---</i>	<i>For buses</i>
<i>8415 20 90</i>	<i>---</i>	<i>Other</i>
	<i>-</i>	<i>Other</i>

8415 81	--	<i>Incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle (reversible heat pumps):</i>
8415 81 10	---	<i>Split air-conditioner two tonnes or above</i>
8415 81 90	---	<i>Other</i>
8415 82	--	<i>Other, incorporating a refrigerating unit:</i>
8415 82 10	---	<i>Split air-conditioner two tonnes or above</i>
8415 82 90	---	<i>Other</i>
8415 83	--	<i>Not incorporating a refrigerating unit:</i>
8415 83 10	---	<i>Split air-conditioner two tonnes or above</i>
8415 83 90	---	<i>Other</i>
8415 90 00	-	<i>Parts</i>

It emerges from above table that tariff heading 8415 covers certain air conditioning machines, comprising a motor driven fan or blower and elements for changing the temperature and humidity for maintaining require temperature and humidity in closed spaces. Tariff heading 8415 also covers parts of such machineries.

6.2.1.6 In order to determine the scope and structure of tariff heading 8415 reliance can be placed on the Explanatory Notes to Harmonized Nomenclature (hereinafter referred to as "HSN Explanatory Notes") which has been recognized as most important guide to interpret Schedule I to the Custom Tariff Act.

6.2.1.7

6.2.1.11 I find that the scope of Chapter sub-heading 8415 10 covers air conditioning machines of window or wall type, self-contained or "split system". It is also a matter of fact that explanatory notes to heading 8415 specified that they may be in the form of "split system which operate when connected together, i.e. a condenser unit or external installation plus an evaporator unit for internal installation. It further specified that they are ductless and utilize a separate evaporator for each area to be air conditioned. It was never under dispute that the ACs of Models RAC series MSH-GE 35/50/60 VB, MSZ-EF 25/35/52 and MSZ HJ 25/35/50 with matching outdoor units MUH GE 35/50/60 VB, MUZ Er 25/35/50 and MUZ-HJ 25/35/50 VA, respectively have both cooling and heating capacity and are ductless. Thus it is evident that the said air conditioners are classifiable under Heading 8415 without any doubt. However, the issue 15 further classification at the sub-heading and tariff item level. The Explanatory Notes to the sub heading 84 15.10 clearly emphasizes upon the element of a separate evaporator for each room. However, I observe same is silent on the presence of one condenser and one evaporator. From the scope of this sub-heading and the explanatory notes above, **it is seen that impugned items are not expressly excluded from this sub-heading. However to arrive at correct classification the scope of the sub-heading 8415.81 too needs to be analysed.**

6.2.1.12 Now coming to sub-heading 841581, it is seen that the scope of 841581, specifies that air conditioning machine incorporating a refrigerant unit and a valve for reversal of the cooling and heat cycle (reversible heat pumps) are classifiable under the said sub-heading. It is a matter of fact that PAC series MSH-GE 35/50/60 VB, MSZ-EF 25/35/52 and MSZ-HJ with matching outdoor units MUH GE 35/50/60 VB, MUZ EF 25/35/50 and MUZ-HJ 25/35/50 VA, respectively have both cooling and heating capacity. To elaborate, these air conditioners incorporate a refrigerating unit and a valve for reversal of cooling/heat cycle (reversible heat pumps) and perform a dual function of heating and cooling the premises, thereby fulfilling the conditions of sub

heading 8415.81. Therefore, the impugned items are also classifiable under sub heading 8415.81.

6.2.1.13 I find that the noticees, in support of their claim has relied upon United States Tariff which covers split system type air conditioners incorporating a refrigerating unit and a valve for reversal of the cooling/ heat cycle (reversible heat pumps) within the scope of tariff sub heading 8415 10.

6.2.1.14 I have perused the relevant entry of Harmonized Tariff Schedule of the United States (2016) and observe that sub-heading 8415.10 covers air conditioners of Window or wall types, self-contained or "split system" and under the sub-heading 84151080 the items incorporating a refrigerating unit and a valve for reversal of the cooling/heat cycle (Reversible heat pumps) are included. Analogy of the two tariffs, reveal that though there is a specific mention of the impugned item in the US Tariff under Chapter Sub Heading 84151010, there is no specific mention of the same in the Indian Customs Tariff. Reference to US Tariff could be made only for the purpose of clarification in case of lack of clarity in classification under the Indian Tariff but not to counter express provisions of Indian Tariff. It is abundantly clear that the Chapter Headings/sub-headings with supporting explanatory notes specifically state the feature/technicalities of the product with certain inclusions/exclusions. The absence of the specific mention of the impugned items in the sub-heading 841510, undoubtedly, reveal the intent of the legislature in not classifying the impugned items under the said sub-heading. It is a well-known fact that HSN mandates only classification up to 6 digit level and next 2 digits are left to the countries concerned, hence analogy from U. S. Tariff cannot be drawn in the light of the difference in the two Tariffs.

6.2.1.15 I find that as discussed above the impugned goods i.e. RAC Series split air conditioners appears to be classifiable under tariff item 84151010 as well as under tariff item 84158110. I notice that it is well settled

position and as per the accepted canons, classification of goods are to be determined by application of the General Rules for the Interpretation of Import Tariff Schedule to the Customs Tariff Act, 1975, which are extracted below:

***THE GENERAL RULES FOR THE INTERPRETATION OF
IMPORT TARIFF***

.....

The narration of Rule of GIR supra clearly elaborates that when 2 or more headings seem to apply for a product, the one which provides the most specific description of the product should be used. In the instant case, it appears that the air conditioners which have both cooling and heating capacity is appropriately sub-heading 841581 rather than in the sub-heading 841510. In support of my contention that the heading which provides the most specific description shall be preferred to the Heading providing a more generic description, I rely upon the following decisions

- 1) Moorco India Ltd. v. CC[1994 (74) ELT 5 (SC)],*
- 2) CCE v. SPM India Ltd. [2007 (211) ELT 573 (Tri.)]*
- 3) CCE v Woodcraft [1995 (77) ELT 23 (SC)]*
- 4) Collector of Customs v Business Forms Ltd [2002 (142) ELT 18 (SC)]*
- 5) Grasim Industries Ltd. Vs. Collector of Customs, Bombay [(1998 (103) E.L.T. 515 (Tribunal)],*
- 6) Commissioner of Central Excise, Bhopal Vs. Minwool Rock Fibres Ltd. [2012 (278)E.L.T.581 (S.C.)],*
- 7) Sanwar Agarwal vs Commissioner Of Customs (Port) &... on 7 April, 2016 in WP No. 496 of 2015*

In all the decisions cited above, the Hon'ble Courts have observed that if the description of the item were covered by a specific heading, the same could not be classified under the residuary heading.

6.2.1.16 Accordingly, I hold that the impugned RAC conditioners are classifiable under Chapter sub heading 8415 81. The said Chapter Heading is further segregated in the form of two triple dash entries.

8415 81	--	<i>Incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle (reversible heat pumps):</i>
8415 81 10	---	<i>Split air-conditioner two tonnes or above</i>
8415 81 90	---	<i>Other</i>

6.2.1.17 I notice that the triple dash entry under Chapter sub heading 84158110 specifically includes split air conditioner two tonnes and above and the sub heading 84158190 covers other items. Accordingly, the split air conditioners of series MSH-GE 35/50NB, MSZ-EF 25/35/50 and MSZ-HJ 25/35/50 with matching outdoor unit which are of capacity less than 2 tons, appears to be classifiable under tariff item 84158190. Also, the split air conditioner of series MSH GE 60 VB with matching outdoor unit which is of capacity 2 tons is appropriately classifiable under tariff item 84158110.

6.2.1.18 In view of foregoing, the classification of differ conditioners (RAC), under the appropriate headings, in terms specifications are as under:

<i>S.No</i>	<i>Product Description</i>	<i>Classification adopted by the Noticee</i>	<i>Classification Ascertained in the adjudication</i>
1	<i>Room Air Conditioners (RAC) with Model No. MSH-GE 35/50 VB + MUH GE 35/50 VB, MSZ EF 25/35/50 + MUZ EF 25/35/50 and MSZ HJ 25/35/50 VA + MUZ HJ 25/35/50 VA</i>	<i>84151010</i>	<i>84158190</i>
2	<i>RAC of series MSH GE 60VB + MUH GE 60 VB</i>	<i>85151010 or 84159000</i>	<i>84158110</i>

	<i>and all City Multi Variable Refrigerant Flow (CMVRF) (other than CMVRF with only outdoor unit of series PUCY)</i>		
--	--	--	--

6.2.2 CLASSIFICATION OF CMVRF

6.2.2.0 I find that M/s. MEIPL upto May 2013 were classifying the said air conditioners (CMVRF) with diversity ratio of 50 to 130% under tariff item 84151010/84151090/84158190/84158390. After May 2013, they described by indoor and outdoor units of CMVRF as 'parts of air conditioners' and started classifying them under tariff item 84159000.

.....

6.2.2.4 I find that the noticees have contended that till May 2013, complete CMVRF ACs were imported as a set as one consignment under single Bill of Entry and hence they classified the same under 84151010. As per Section Note 4 to Section XVI and SI Rule 2(a), the same are classifiable as complete AC.

.....

6.2.2.5 I find that the noticee has contended that post May 2013, they were importing indoor units and outdoor units separately and maintaining stock of the same for sale to different projects as and when required and since the indoor units and outdoor units are imported separately they are rightly classifiable as parts. I find that the noticees, gave specific submissions for their imports, prior to" May 2013 and post May 2013, which are as under:

PRE MAY 2013– The noticees submitted that, till May 2013, complete ACs were imported as a set as one consignment under single bill of entry. As per Section Note 4 to Section XVI and GI Rule 2(a), the same are complete AC. In CMVRF, as already mentioned, customers have an option to choose indoor units as per their requirements and make a customized combination

(set), needless to say in all the cases within such a case as per Noticee there are two possibilities:

- i) Ducting is required - It will be required in case ceiling concealed duct of detailed indoor units, i.e. of PEFY series are used. As per the detailed analysis in such cases, complete CMVRF type AC (except ones with outdoor unit) will be classified under tariff sub heading 841581 and complete CMVRF type with PUCY series of outdoor unit will be classified under tariff sub heading 841582*
- ii) Ducting is not required - It will not be required in cases where ceiling duct type indoor units, i.e. of PEFY series are not used. As per the analysis above, in such cases, complete CMVRF type AC irrespective of the type of outdoor unit or in other words, the provision for heating and cooling function or only cooling function will be classified under tariff sub heading 841510.*

POST MAY 2013-Post May 2013, they were importing indoor units and outdoor units separately and maintaining stock of the same for sale to different projects as and when required and since these were imported separately and not as a set, they are correctly classifiable under 84159000.

6.2.2.6 Thus the noticees have proposed different classification for the pre and post 2013, which are as under:

<i>CMVRF - Pre May 2013 - which does not require ducting</i>	<i>84151010</i>
<i>CMVRF – Pre May 2013 – which requires ducting without PUCY series of outdoor unit</i>	<i>841581</i>
<i>with PUCY series of outdoor unit</i>	<i>841582</i>
<i>CMVRF - Post May 2013 - Indoor and Outdoor units coming not as a set, but in bulk</i>	<i>84159000</i>

I find that the noticees submitted that with respect to the CMVRF Air Conditioners, imported prior to May 2013, the customers have an option to choose indoor units and there are two possibilities-i) Ducting is required i.e. PEFY series, and ii) Ducting is not required i.e. PEFY series are not used. The noticees have

also submitted that between the period 2011 to May 2013, out of 31 shipments 23 shipments were carrying PEFY/ Ducted IDUs. To be more specific, in 74% cases, the noticees accepted the classification proposed by the DRI. In 26% cases, according to the noticees, since they did not carry ducts i.e. of PEFY series are not used and in such cases CMVRF type ACs (irrespective of the type of outdoor unit i.e. whether or not the provision for heating and cooling function or only cooling function) will be classified under tariff sub heading 841510.

6.2.2.7 I find that Chapter sub heading 8415 10 covers window or wall types, self-contained or "split system" and Chapter sub heading 8415 81 covers incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle (reversible heat pumps). Both these Chapter headings are not specific about the implications of ducting requirement. Further, these units have valve for reversal of the cooling or heat cycle i.e. have both cooling and heating capacity. Accordingly, these kinds of air conditioners are specifically covered under Chapter Heading 841581 as elaborately discussed, under paras 6.2.1 to 6.2.1.17

6.2.2.8

6.2.2.9 To classify the CMVRF, in addition to explanatory notes to HSN discussed above, it is pertinent to place reliance on Note 4 to Section XVI of the Customs Tariff. It states that:

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

6.2.2.10 It is observed that indoor unit and outdoor unit of CMVRF imported as separate components when interconnected by way of pipes/ducts through which the coolant circulates, perform as a complete machine with a clearly defined function, as split air conditioner incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle. To be specific it

appears that the multiple indoor units in combination with outdoor units of CMVRF, though not fitted together to form a whole, at the time of import, constitute a functional unit intended to contribute together to a clearly defined, specifically covered under chapter subheading 841581.

6.2.2.11 Moreover, in terms of Rule 2(a) of the said GIR rules, 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 goods. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as completed or finished by virtue of this rule), presented unassembled or disassembled. In the instant case, The CMVRF consists of two or more machines (multiple indoor units plus outdoor unit) when fitted together form a whole composite machine (air conditioning system) and the composite machine is covered as such by a particular sub-heading 841581, the indoor/ outdoor units even presented unassembled cannot be treated as parts of air conditioner.

6.2.2.12 Therefore, it appears that the indoor units and outdoor units of CMVRF (other than CMVRF with PUCY series of outdoor units) when imported with the diversity ratio within 50% to 130% have to be classified as split air conditioner incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle under sub-heading 841581. As all the CMVRF (pre May 2013 and post May 2013) are above 2 ton, they are appropriately classifiable under tariff item 84158110.

6.2.2.13 Chapter Heading 8415 82 includes 'Other, incorporating a refrigerating unit' whereas Chapter 8415 81 includes 'Incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle'. With respect to CMVRF, which have outdoor units of series PUCY, which have only cooling capacity when connected to multiple indoor units, when imported with the diversity ratio within 50% to 130%, applying the same analogy have to be classified as split air conditioner incorporating a refrigerating unit under sub heading 841582. As all the CMVRF air conditioners are above 2 ton, they are appropriately classifiable under tariff item 84158210.

6.2.2.14 The noticees have contended that in certain cases where ceiling concealed duct type indoor units i.e. of PEFY series are not used and in such cases, complete CMVRF type AC (irrespective of the type of outdoor unit or in other words, the provision for heating and cooling function or only cooling function) will be classified under tariff sub heading 841510. I find that out of the Air Conditioners CMVRF, 74% cases were carrying PEFY/Ducted IDUs. I notice that in Chapter Heading 8415 10, the Window or wall types self-contained or "split system" are included, whereas in 8415 8110, split air conditioners two tonnes and above are included. All the CMVRF type ACs imported by the noticees are above two tonnes, hence the more appropriate classification is 8415 8110.

6.2.2.15 Accordingly, in view of foregoing, the classification of different types of split air conditioners (CMVRF), under the appropriate headings, in terms of the technical specifications are as under:

S.No.	Product Description	Classification adopted by the Noticee	Revised Classification
1	City Multi Variable Refrigerant Flow (CMVRF) (other than CMVRF with only outdoor unit of series PUCY) (within diversity ratio)	85151010 or 84159000	84158110
2	CMVRF with multiple indoor units along with outdoor units PUCY (only) imported within diversity ratio 50% to 130% (within diversity ratio)	84151010 or 84159000	84158110

4.4 From the perusal of the above referred paragraphs of impugned order, we find that adjudicating authority has in

respect of the classification RAC found that the RAC with both heating and cooling functions can be classified under heading 84151010 (as claimed by the appellant) as well as under tariff item 84158110 (as proposed in the show cause notice. However by applying the general rules of interpretation of tariff, stating that classification should be made in the heading which is more specific. The finding of the Commissioner that heading 84158110 is more specific is without any basis. While doing so he has distinguished the Ruling on the US tariff classifying the same goods under Heading 84151010. While Principal ADG, holds that there is no dispute in respect of classification at the four digit level, the dispute is in respect of classification at six digit level. He discusses elaborately the Explanatory Notes of HSN and finally concludes vis the vis the Ruling on US tariff, by saying that *"I have perused the relevant entry of Harmonized Tariff Schedule of the United States (2016) and observe that sub-heading 8415.10 covers air conditioners of Window or wall types, self-contained or "split system" and under the sub-heading 84151080 the items incorporating a refrigerating unit and a valve for reversal of the cooling/heat cycle (Reversible heat pumps) are included. Analogy of the two tariffs, reveal that though there is a specific mention of the impugned item in the US Tariff under Chapter Sub Heading 84151010, there is no specific mention of the same in the Indian Customs Tariff."* However the observations made by the Principal Additional Director General, while ignoring the ruling on US Tariff is contrary to sub article (3) to Article 3 of *The International Convention on the Harmonized Commodity Description and Coding System (HS Convention)* entered into force on 1 January 1988, to which India is signatory and also the fact that Customs Tariff has been fully aligned with the HSN, till the six digit level. Article 3 of the convention reads as follows:

"Article 3

Obligations of Contracting Parties

1. Subject to the exceptions enumerated in Article 4 :

(a) Each Contracting Party undertakes, except as provided in subparagraph (c) of this paragraph that from the date on which this Convention enters into force in respect of it, its Customs

tariff and statistical nomenclatures shall be in conformity with the Harmonized System. It thus undertakes that, in respect of its Customs tariff and statistical nomenclatures:

- (i) it shall use all the headings and subheadings of the Harmonized System without addition or modification, together with their related numerical codes;*
- (ii) it shall apply the General Rules for the interpretation of the Harmonized System and all the Section, Chapter and Subheading Notes, and shall not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System; and*
- (iii) it shall follow the numerical sequence of the Harmonized System;*
- (b);*
- (c)*

2. In complying with the undertakings at paragraph 1 (a) of this Article, each Contracting Party may make such textual adaptations as may be necessary to give effect to the Harmonized System in its domestic law.

3. Nothing in this Article shall prevent a Contracting Party from establishing, in its Customs tariff or statistical nomenclatures, subdivisions classifying goods beyond the level of the Harmonized System, provided that any such subdivision is added and coded at a level beyond that of the six-digit numerical code set out in the Annex to this Convention.”

4.5 In view of the above the contracting parties are allowed to make expansions, beyond the six digits as provided by the HSN. Any expansion made beyond six digit level, i.e. to eight digit in case of India or USA would not alter the classification of the goods as provided for by the HSN till six digit level. Hence Principal ADG, has by making such observation by referring to the eight digit expansion made in US and India to distinguish the ruling is erroneous and cannot be agreed to. The HSN Explanatory Notes determine the Classification of impugned goods upto six digit level, and Principal ADG, also accepts in the impugned order that dispute is in respect of the classification at six digit level. Both India and US tariff, are aligned with HSN

upto six digit level, and the expansion beyond that is mere sub grouping of the groups of items classifiable at six digit level. Hence the any difference in the tariff at eight digit level cannot be reason for drawing the distinction between the entries at the six digit level, which are identical in case of the tariffs across the world as per this convention. So we are not in position to agree to this contention of the Principal ADG.

4.6 For determining the classification of the goods at six digit level, in terms of the Customs tariff or HSN, reference is made to the tariff entries till six digit level, in the following table-

8415		Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated.
8415.10	-	Window or wall types, self-contained or "split-system"
8415.20	-	Of a kind used for persons, in motor vehicles
	-	Other :
8415.81	--	Incorporating a refrigerating unit and a valve for reversal of the cooling/heat cycle (reversible heat pumps)
8415.82	--	Other, incorporating a refrigerating unit
8415.83	--	Not incorporating a refrigerating unit
8415.90	-	Parts

4.7 The reason for why we have reproduced this table after deleting the expansions to the eight digit level, is obvious, as Principal ADG holds has held by comparing the entries at eight digit level to hold that 85158110 and 84158190 are more specific. For determining the classification it is settle principle that that entries at same level are comparable, but it does not imply that apple and oranges are comparable. To compare the entries at four dash level, one has to ascertain that entries at all

the earlier levels too are comparable, i.e. at single -, double -, and triple ---. Now the comparable entries at single dash level are obviously **"Of a kind designed to be fixed to a window, wall, ceiling or floor, self-contained or "split-system"" and "Other"**. If the impugned goods are to be assigned classification at single dash level, as they satisfy the description as per 841510, and cannot be pushed to residuary description of "other" the competing single dash entry. Also the finding of the Principal ADG to the effect that entry at 841581, is more specific cannot survive because this entry is itself the further expansion of single -, residuary entry "other".

4.8 Principal ADG has in para 6.2.1.11, recorded after his examination, stating that **"From the scope of this sub-heading and the explanatory notes above, it is seen that impugned items are not expressly excluded from this sub-heading. However to arrive at correct classification the scope of the sub-heading 8415.81 too needs to be analysed."** Having stated that the goods are covered by the heading 84151010, he has stated that at single dash level impugned goods are classifiable under heading 841510 and the comparable heading at single dash '-' level is "other". From the perusal of entries which Principal ADG finds competing, we find that the relevant single dash "-" entries are,

- 8415.10 - Window or wall types, self-contained or "split-system"
- Other :

4.9 Following the same principle as stated in the impugned order by referring series of case laws in para 6.2.1.15, we are of the view that there are no two competing entries, but a single specific entry for classification of the impugned goods. Tribunal has in case of Reliance Jio Infocomm Ltd [2021-TIOL-661-CESTAT-MUM] held as follows:

"13. The relevant portions of the General Rules and the General Explanatory Notes contained in the First Schedule also need to be examined. They are reproduced below:

**"THE FIRST SCHEDULE- IMPORT TARIFF GENERAL RULES
FOR THE INTERPRETATION OF THIS SCHEDULE**

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

1. *****

2. *****

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.*

THE GENERAL EXPLANATORY NOTES TO IMPORT TARIFF

1. *Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "--", the said article or group of*

articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". Where the description of an article or group of articles is preceded by "---" or "----", the said articles or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".

2. *****

3. *****"

14. It would be clear from aforesaid that a single dash (-) at the beginning of a description denotes an article that belongs to a group covered under a heading. A double dash (--) indicates that the article is a sub-classification of the preceding article that has a single dash. Similarly, a triple dash (---) or a quadruple dash (----) indicate that the article is a sub-classification of the preceding article that has a double dash or triple dash."

In case of Woodcraft India Ltd [1995 (77) ELT 23 (SC)], Hon'ble Supreme Court held as follows:

"18. *We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN...."*

In case of MOORCO (India) Ltd [1994 (74) ELT 5 (SC)], Hon'ble Supreme Court held as follows:

"The applicability of the rule arises when the goods consisting of more than one material fall in two or more headings. It is further clear that each of the classes are mutually exclusive. What is covered in (a) cannot be classified in (b) and (c) operates when neither applies. It is like a residuary clause. The primary

question, therefore, is whether the goods manufactured by the appellant fall in clause (a) as if it can be classified with reference to (a) then clauses (b) and (c) would not apply. Clause (a) incorporates the common and general principle that the goods which can be classified specifically with reference to any heading should be placed in that category alone. The specific heading of classification has to be preferred over general heading. The clause contemplates goods which may be satisfying more than one description. Or it may be satisfying specific and general description. In either situation the classification which is the most specific has to be preferred over the one which is not specific or is general in nature. In other words, between the two competing entries the one most nearer to the description should be preferred. Where the class of goods manufactured by an assessee falls say in more than one heading one of which may be specific, other more specific, third most specific and fourth general. The rule requires the authorities to classify the goods in the heading which satisfies most specific description. For instance, taking the case of the appellant the item manufactured by the appellant is described and used as flow meter. It is an instrument for measuring volume as well. Flow meter is specifically classified in Heading No. 90.24. Whereas the Heading 90.26 is general in nature. It applies to every production meter or calibrating meter for gas, liquid and electricity supply. Therefore, on the finding recorded by the Assistant Collector, the goods produced by the appellant specifically fall in Heading No. 90.24. They may also fall in Heading No.90.26 but that being more general entry preference should have been given to the entry 90.24 as the goods satisfy most specific description of being flow meter. The Tribunal or the appellate authority without advertng to it applied clause (c) and levied duty under 90.26 as it was a latter heading. But clause (c) would apply only if clauses (a) and (b) do not apply. Since the goods manufactured by the appellant satisfied the specific description of Tariff Heading 90.24 being a flow meter, the Tribunal committed an error of law in classifying it under Tariff Heading 90.26 as it was a latter item under the classification list.”

4.10 Hence we are of the considered opinion that classification of RAC as determined by the Principal ADG cannot be sustained and the classification as claimed by the appellant under 84151010 is correct. Same view has been expressed by the tribunal in case of Daikin Air Conditioning [2020 (374) E.L.T. 768 (Tri. - Mumbai)] and International Aircon Private Limited [2020-TIOL-1536 MUM)]. In case of Daikin tribunal stated as follows:

"12. *It would appear that the Explanatory Notes to the Harmonized System of Nomenclature has not been properly appreciated by the adjudicating authority. The extract cited by Learned Authorized Representative does not advance the cause of the impugned order as that pertains to the heading itself and, in the absence of, evidence that the impugned goods incorporate a refrigerant unit with reversible heat pump, the procedure for elimination of incorrect description must be in compliance with the General Rules for Interpretation of the Import Tariff*

13. *From Heading No. 8415 of First Schedule to the Customs Tariff Act, 1975, it is seen that air-conditioning machines comprise of a motor driven fan and elements for controlling humidity and temperature. Generally, and more particularly in the retail segment, such machines are either of 'window or self-contained' or 'split system' types. There are several other equipment which are designed for larger spaces and for applications that go beyond residential or commercial. In the structuring of the sub-headings, emphasis is placed on the 'split system' and, by default, the 'window' types. All other air-conditioning equipment are relegated to the residuary categorization and it is within such that 'split air-conditioners' finds deployment. From this, it can be inferred that 'split system' air-conditioning machines and 'split air-conditioners' are distinct. Neither has the show cause notice nor the adjudicating authority forayed an elaboration of either; that these existed at the eight digit level under different sub-headings did not appear to have impressed itself, let alone the need for appreciating the distinction on the adjudicating authority. That, at the six digit level of comparability, accompanied, as they are, by '- -', and not '- - -', attaching to the claimed tariff item, the segregation, ranging from the presence of 'refrigerant unit with heat*

reversible pump' to an incorporation of none with the existence of 'refrigerant unit' alone in between, should make it apparent, considering every air-conditioning machine to be capable of cooling, that the 'refrigerant unit' referred to in sub-headings under the residuary branch of dichotomy is not the normal cooling system but a special feature. This aspect appears to have been lost sight of in the impugned order prompted, probably, by the intent to proceed directly to an ostensibly conforming description. The additional feature, whose presence or absence, determines the sub-heading within the residuary category, has not been established as incorporated in the impugned goods. In the absence of such, customs authorities are not enabled to proceed to the tariff item below the sub-heading. The impugned order is flawed for that reason.

14. *The classification declared by the appellant at the time of import corresponds to the description of 'split system' and the scope of 'split system' is elaborated in the sub-heading notes in the Explanatory Notes to the Harmonised System of Nomenclature. From this, it can be inferred that the description corresponding to sub-heading 8415 10 is intended for 'window' and 'split system' air-conditioning machines. In this dispute, we are not concerned with the former and it merely suffices to note that the residuary description, corresponding to Tariff Item No. 8415 10 90, would cover all 'window' type air-conditioners. As far as 'split systems' are concerned, the segregation of the system into an external condenser and an internal evaporator is its most basic characteristic. If the presumption of cooling capability existing only with refrigerant units, as it appears in the impugned order, is unquestioned, the source of cooling in the goods, to which Tariff Item No. 8415 10 10 applies, appears to have been glossed over deliberately. Undoubtedly, every article under Heading No. 8415 has to have a cooling facility. Nevertheless, the adjudicating authority set out with the assumption that, irrespective of the cooling equipment in 'split systems', the cooling system in the impugned goods was a refrigerant unit. Neither is there any ground for such supposition in the show cause notice nor is there reason to conclude that the cooling source in the 'split system' was absent in the impugned*

goods and substituted by another. There is no descriptive restriction in sub-heading No. 8415 10 to conclude that heating capability is not intended for coverage by that tariff entry. The impugned order has failed to exclude applicability of description of 'split systems' to the impugned goods which would have entailed some knowledge of what that is."

4.11 In case of International Aircon, tribunal stated as follows:

17. The sanctity of the classification narrative lies in its inexorable logic from beginning to end and within itself. Hence, the groupings, as well as descriptions, have a significance that are not to be ignored. The General Rules for Interpretation also acknowledges this inherent logic and rule 3 is applicable when goods are classifiable under two headings. It is now settled law that though the importer may seek a classification it is the responsibility of the assessing officer to determine the appropriate heading; hence the application of rule 3 of General Rules of Interpretation are not intended for resolving difference of opinion between importer and assessing officer but for guiding the assessing authority in clarifying for itself when in doubt over two headings. From the impugned order, the adjudicating authority did not appear to have been beset with such dilemma. Furthermore, the said Rules, except for rule 6, are concerned with headings and hence the first mandate to an assessing authority is to determine the appropriate heading at the four-digit level. Thereafter, the six-digit and eight-digit level are to be ascertained with reference to the descriptions. The deemed erasure of any other heading thereafter precludes comparison with any tariff item that is not within the determined sub-heading. Hence, the rival entries must lie within the same group. The specificity of description could not have been determined by comparison at the six-digit or eight-digit level across headings. Not only is such an exercise bereft of logic but is also inconsistent with The General Explanatory Notes to Import Tariff which lays down the hierarchical precedence, and significance of '-', '- -', and '- - -' in the second column of the Schedule.

18. Under the primary residuary grouping at the '-' level, the distinction among the three sub-headings is determined by the incorporation of 'refrigerating unit', at the first instance, in 'air

conditioning machines' and the incorporation of 'valve for reversal of heat or cooling cycle' subsequently. As these sub-headings and tariff items within the residuary category are so distinguished and the expression 'refrigerating unit' is not defined, it cannot be supposed that it refers to the 'cooling unit' for if it did, the first heading would have no place within the description of 'air conditioning machines'. It, therefore, is intended for some component other than the normal cooling facility built into all 'air conditioning machines' and, by not subjecting that expression to the test of existence in the impugned goods, the show cause notice has tripped upon itself in its haste to carry the impugned goods beyond the scope of eligibility for the exemption notification. The applicability of sub-heading no. 841581, 841582 and 841583 to the impugned goods lacks substance.

19. The impugned goods are not 'window' type but they are all of the 'split' type with an external condenser unit and an indoor evaporator unit. In the Explanatory Notes to the Harmonized System of Nomenclature pertaining to sub-heading no. 841510, we find no qualifying characteristic that restricts the adoption thereof to 'cooling facility' alone; neither is there any capacity qualification included therein. The existence of such under a parallel hierarchy in the residual category within the four-digit level cannot be insinuated into the specified category merely to exclude coverage under the latter. That would be tantamount to conferring approval to the attempt by the adjudicating authority to alter the logic, and structure, of the Schedule beyond the pale of General Rules of Interpretation and The General Explanatory Notes to Import Tariff.

20. There is no doubt that the expression 'refrigerating unit' is not defined and we have observed that, to deem the 'cooling unit' to be the 'refrigerating unit', an entire sub-heading the tariff would stand erased which is neither within the empowerment of the Tribunal let alone the adjudicating authority. In the absence of definition, the appreciation of common parlance meaning would have rendered the task of the adjudicating authority in this exercise more meaningful. That the test of common parlance is paramount has been held by the

Hon'ble Supreme Court in Atul Glass Industries v. Commissioner of Central Excise [1986 (25) ELT 473 (SC)] and the lack thereof, in the adjudication order, for ascertaining the scope of the residuary heading deprives it of legal sanctity. Before attempting re-classification, the adjudicating authority has failed to determine the scope of the primary residual heading and the consequential effect on the sub-headings and tariff items within it. The adjudicating authority has insinuated non-existent restrictive qualifications on the description of, and tariff item under, sub-heading no 841510 of the First Schedule to Customs Tariff Act, 1975 and that, too, without the assistance of definition of, or common parlance understanding of, the expression 'refrigerant unit' rendering the re-classification to lack the authority of law."

4.13 On the issue of the goods declared as "parts" of CMVRF, claiming classification under heading 84151010 or 84159000, adjudicating authority has determined the classification under heading 84158110. For the period prior to 2013, appellants were importing the parts of CMVRF as complete unit, and claimed classification under the heading 84151010. Post 2013, appellant changed the practice, and started importing the goods as parts under different Bill of Entries. Thus post 2013, the impugned goods which were imported were never presented for assessment as complete CMVRF and according classified the impugned goods under heading 84159000 as parts. Adjudicating authority has without making any distinction between the manner of importation both pre and post 2013, classified these goods as complete unit under heading 84158110. We do not find ourselves in agreement with the decision of the adjudicating authority classifying these goods under heading 84158110 for the reasons sated by us in para 4.4 to 4.11.

4.14 Post 2013 appellants were importing these goods as parts and were filing the Bill of Entry declaring them as parts. Adjudicating authority has for the reasons stated by him in the impugned order, treated the imported goods as complete Unit by applying the "test of essential character". However while doing so he has ignored the basic fact that at the time of importation and assessment these goods were never presented together as

complete unit. Hence the classification arrived at by the adjudicating authority cannot be sustained. Hon'ble Supreme Court has in case of Sony India Pvt Ltd [2008 (231) ELT 385 (SC)] held as follows:

"14. We have already held that in this case the goods brought were not having the essential character of CTVs. We do not find anything to take a view that the goods were in unassembled or dis-assembled condition and they should be taken to be the complete CTVs, particularly when there is no finding recorded anywhere on facts that all these goods could make 1500 CTVs. However, we accept the argument that the goods brought in different consignments separately on the basis of valid import licences would not attract the import duty as if they were the finished goods. We have already referred to this aspect vis-a-vis the facts in Phoenix International's case where the goods were brought in one and the single consignment and they were all brought together though they were imported by two companies, i.e., PIND and PIL fraudulently.

15. Shri Lakshmikumaran, learned counsel for the respondent also drew our attention to the HSN Explanatory Notes as it stood prior to 1997 which is as under:

"(VII) For the purpose of this Rule, articles presented unassembled or disassembled means articles the components of which are to be assembled either by means of simple fixing devices (screws, nuts, bolt, etc.) or by riveting or welding, for example, provided only simple assembly operations are involved."

Learned counsel further points out that in a decision in CCE v. Woodcraft [(1995) 3 SCC 454] this Court took the view that HSN Explanatory Notes should be referred to for understanding the true scope and meaning of expressions used in the Customs Tariff. He further points out that the Revenue did not dispute the fact that complicated processing of imported parts had to be done before they could be fit in the assembly of CTVs. Shri Vikas Singh, learned ASG also did not dispute this fact during the debate before us that a complicated process had to be exercised before these components could be brought in use for CTVs. There is also a specific finding by the Tribunal on this issue. In

that view since the concerned Explanatory Note was applicable, there would be no question of treating these notes to be in unassembled or disassembled condition since a complicated process had to be exercised and then before it could be used for the assembly of the CTVs. Of course this Explanatory Note was further amended by adding the words "no account is to be taken in that regard of the complexity of the assembly method. However, the components would not be subjected to any further working operation for completion into the finished stage". It is an admitted position that this amendment was not there and therefore, the complexity of the assembly method would have to be taken into consideration at least in case of the present goods since the concerned period is pre 1997 period. The Tribunal has correctly held that the HSN Explanatory Notes to Rule 2(a) had to be applied while considering the relevant Tariff Entry. It has also correctly held after considering the whole process that the process involved in the user of the components is the complex manufacturing process during which many components are subjected to working operation requiring sophisticated machinery and skilled operators. Further it has correctly assessed the effect of the amendment of HSN Explanatory Notes which came on 14-3-1997. We approve of the finding given by the Tribunal in para 25 of its order which takes into account the fact that there was no amendment to Clause (v) while this is amended to the effect that complexity of the assembly method was made irrelevant. However, it was made clear that the components would not be subjected to any further working operation for completion in the finished state. The Tribunal has referred in details to the manufacturing process to show that some of the components require further working operation for completing the manufacturing process and further that CTV is not a machine which is presented in assembly for the sake of convenience of packing, handling or transport. We are, therefore, in agreement with the finding that even applying the amended HSN Explanatory Notes the position would be no different.

16. Our attention was invited to a very interesting decision reported in Modi Xerox Ltd. v. CCE, New Delhi [1998 (103)

E.L.T. 619] which was confirmed by this Court in 2001 (133) E.L.T. A91 (it must be noted that the decisions in Woodcraft Products is specifically confirmed in this decision). In this case, the Tribunal had relied on Tara Chand's case as also the CC v. Mitsun Electronics Works [1987 (30) E.L.T. 345 (Cal. HC)] which we have made reference in the earlier part of this judgment. The Tribunal had held that the fax machine in completely knocked down condition imported by the appellant being not a fax machine but part thereof, the benefit of exemption under Notification No. 59/88/Cus., dated 1-3-1988 would not be available. Very interestingly, it was claimed by the importer that it had imported the fax machine and not the components obviously because the duty payable on the components was more. The Tribunal came to the conclusion that in view of Section Note 2 to Section XVI Rule 2(a) would not apply and confirmed the import of goods as components. While interpreting Explanatory Note to Rule 2(a), the Tribunal had held that this Rule would apply only when the imported articles presented in unassembled or disassembled can be put together by means of simple fixing device or riveting or welding. It came to the conclusion that fax machines were not the type of goods which were normally traded or transported in knocked down condition and therefore, the imports were that of the components and not of fax machines. Shri Lakshmikumaran also invites our attention to the fact that Chapter 64 dealing with footwear does not have a note similar to Note 2 in Section XVI. Thus this position would render support to the proposition that Rule 2(a) would apply only when the imported articles presented unassembled or disassembled can be put together by means of simple fixing device or by riveting or welding. We have already pointed out in the earlier part of our judgment that the complicated process would be required for the user of those parts.

17. Lastly, we must take stock of the argument of Shri Lakshmikumaran that Section Interpretative Rule 2(a) would not be applicable at all in this case. For this he invited our attention to Rule 1 of Interpretative Rules as also to the decision in

Simplex Mills v. Union of India [2005 (181) E.L.T. 345 (S.C.)] wherein this Court had held in para 11 as under :

"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 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 sector 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."

Relying on this the further contention of the counsel is that Section Note 2 of Section XVI provides mandate for classification of the parts of machines falling under Section XVI. In terms of Rule 1 of Interpretative Rules, invocation of Rule 2(a) for certain categories of goods covered in Section XVI like the goods of CTVs are prohibited. For this the learned counsel relied on the decision in *Modi Xerox (supra)*. In that view the learned counsel says that Rule 2(a) would not be applicable at all. This question needs no consideration here particularly in view of the interpretation that we have given to Rule 2(a). On facts, we have already found that Rule 2(a) would not be applicable to the present case since there is no question of the goods having the essential character of CTVs. In that view, the question of applicability of Section 2(a) on this account need not be gone into in this judgment.

18. We also approve of the reliance by the Tribunal on the reported decision in *Susha Electronics Industries v. CC [1989 (39) E.L.T. 585]*, *Trident Television Pvt. Ltd. v. CC [(1990) 45 E.L.T. 24]*, *Vishal Electronics Pvt. Ltd. v. CC, Bombay [1998 (102) E.L.T. 188]*, *Sharp Business Machines (supra)* and the judgment of the Calcutta High Court in *HCL Ltd. (supra)*."

4.15 Following the decision of the Hon'ble Apex Court as above we are of the view that CMVRF, when imported and presented

together in unassembled/ disassembled condition on a single Bill of Entry for supply against a unique project would be classified under heading 84151010 (pre-2013) and when presented separately as part against different bill of entries filed over a period of time shall be classified as parts under heading 84159000. Accordingly the order of adjudicating authority to this extent is set aside.

4.16 On the issue of classification of parts adjudicating authority has observed as follows:

"6.2.3 CLASSIFICATION OF PART (REMOTE CONTROLLER)

6.2.3.1 I find that the noticees have also imported parts of Air Com Different parts imported by the noticee are fans, compressor, pumps panels, panel parts, grills, branch pipes, outdoor twinning kit, join indoor and outdoor heat exchanger, remote controllers, BM adapter set had also imported indoor and outdoor units of RAC, PAC and CMVRF separately

6.2.3.2 I find that the Classification of parts of machines falling Chapter 84 is determined as per Section Note 2 read with Section Note Section XVI. Section Note 1 mentions that this section does not cover, inter parts of general use, as defined in Note 2 to Section XV, of base metal (Si XV), or similar goods of plastics (Chapter 39).

Similarly, Section Note 2 to Section XVI of the Tariff Act, which states that sup to Note 1 to this Section, Note 1 to Chapter 84 and Note 1 to Chapter 85, pem machines (not being parts of the articles of heading 8484, 8544, 0040 8547) are to be classified according to the following rules -

a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than heading 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings.

b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 84.79 or 85.43) are to be classified with machines of that kind or in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate. However parts which are equally suitable for use

principally with the goods of headings 85.17 and 85.25 to 85.28 are to be classified in the heading 85.17.

c) all other parts are to be classified in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29, or 85.38 as appropriate or failing that in heading 84.87 or 85.48.

6.2.3.3 I find that the noticees had been classifying wired remote controllers under tariff item 84159000 and wireless remote controller under tariff item 85437099. which covers 'other electrical machines and apparatus having individual functions, not specified or included elsewhere in Chapter 85'. I also find that according to DRI, Wireless Remote Controllers are correctly classifiable as parts of AC under tariff item 84159000 as they are specifically designed for the purpose of activating the features in an air conditioner and are principally designed to operate an air conditioning system and have essential character as parts of AC.

6.2.3.4"

4.17 Since adjudicating authority has determined the classification of "Remote Controller" as claimed by the appellant to be correct, and is not disputed by the revenue before us we do not take up the same for any further discussion.

4.18 On the issue of the admissibility of exemption under Notification No 85/2004-Cus and Notification No 46/2011-Cus, adjudicating authority has observed as follows:

"6.2.4 WHETHER THE BENEFIT OF THE NOTIFICATION NO. 85/2004 CUS/ NOTIFICATION NO. 46/2011-CUS BE EXTENDED TO THE NOTICEES:

6.2.4.0

6.2.4.1 I find that records reveal that M/S MEIPL has availed benefit of concessional rate of basic customs duty (BCD) as per notification no.85/2004 CUS dated 31/08/2004 (SI.No.49), notification no.46/2011-Cus dated 01/06/2011 (SI.No. 1103 (1)) and notification no. 12/2012-Cus dated 17/03/2012 (SI.No.336) in case of imports made vide 356, 79 and 33 bills of entry, respectively. Similarly, in case of MEAPL, it is seen that they had availed concessional rate of basic customs duty (BCD) as per notification no. 85/2004-CUS dated 31/08/2004 (SI.No.49) in

case of 5 Bills of entries. The relevant portions of the notifications, wherein exemption is claimed by the noticees are as under:

In terms of Sl. 49 of Notification No. 85/2004-Cus, goods falling under chapter subheading 8415 10 imported from Thailand are exempt from payment of BCD as under:

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description as specified in column (3) of the Table below and falling under the sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), as specified in the corresponding entry in column (2) of the said Table, when imported into India from Thailand, from the whole of the duty of customs leviable thereon which is specified in the said First Schedule subject to the condition that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the exemption under this notification is claimed are of the origin of Thailand, in accordance with provisions of Interim Rules of Origin, published with the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 101/2004-Customs (N.T.), dated the 31st August, 2004."

S No	Sub-heading or Tariff Item	Description of Goods
49	8415 10	All Goods

6.2.4.2 I find that it is a matter of fact that Sl. No. 49 of the Notification No. 85/2004-Cus provides conditional exemption from payment of BCD to all goods falling under customs tariff sub-heading 8415 10, when imported from Thailand. This exemption is available subject to fulfilment of condition that the importer proves to the satisfaction of the Assistant/Deputy Commissioner of Customs that the imported goods in respect of which exemption is claimed are of the origin of Thailand in accordance with the provisions of Interim Rules of Origin modified vide Notification No 101/2004-Cus (NT) dated

31.08.2004 in terms of rules notified under notification no. 101/2004-Cus (N.T) dated 31/08/2004, the conditions for preferential tariff concessions for trade between India and Thailand are that the goods exported to India or Thailand should fall within description of goods (including HS Code) eligible for concession in India or Thailand. I find that it is a matter of fact that the noticees had classified the split air conditioner goods under Chapter Heading 84151010. As elaborately discussed by me, in the preceding paras, the impugned goods i.e. RAC, PAC and CMVRF air conditioners, are appropriately classifiable under tariff item 84158110, 84158190, 84158210. These Chapter subheadings do not figure in the notification no. 85/2004 dated 31/08/2004, thereby attracting levy of BCD at merit rate. Therefore, I hold that the noticees M/S. MEIPL and MEAPL are ineligible for the said concession under the relevant notification.

6.2.4.3 ' Now, coming to notification no. 46/2011-Cus dated 01/06/2011 (SI.No. 1103 (1)), it is noticed that benefit of concessional rate of 2.5% BCD till 31/12/2013 and nil rate of BCD thereafter is available to goods falling under tariff item 84159000. In the instant case, M/S MEIPL has cleared all their CMVRF air conditioners, irrespective of the diversity ratio, as parts of air conditioners under 84159000 and claimed the benefit of S. No.1103 of notification no. 46/2011 dated 01/06/2011. As discussed by me, in the paras related to classification. I have reached a conclusion, that the said CMVRF air conditioners are rightly classifiable under customs tariff item 84158110 or 84158210 (sl. no. 1102 of the said notification no. 46/2011 dated 01/06/2011), thereby attracting levy of higher rate of BCD. By classifying the impugned goods under CTH 84159000 and claiming the benefit of Sl. No. 1103 of notification no. 46/2011 dated 01/06/2011, M/S MEIPL has paid lesser duty thereby evading the duty, which is liable to be recovered from the noticees.

6.2.4.4 Further, in respect of certain parts of air conditioners M/S MEIPL has claimed the benefit of notification no. 12/2012 dated 17/03/2012 (SI. No.336) and paid BCD @ 7.5%. However, the impugned goods imported by M/S MEIPL appear to be classifiable under 84159000 attracting BCD at a merit rate of

10%. I also find that the noticees have accepted that the parts of air conditioners (except classification of remote controller) are rightly classifiable under Chapter Heading 84159000 and the ineligible benefit availed by them. In view of this the said benefit claimed by the noticees is liable to be recovered from them.

6.2.5 Eligibility of benefit under Notification No. 46/2011-Cus dated 01.06.2011 (ASEAN):

6.2.5.0 From the foregoing I find that the imported goods viz RAC, PAC and CMVRF air conditioners appear to be appropriately classifiable under tariff item 84158110, 84158190, 84158210, 84158290 which do not figure in the notification no.85/2004 dated 31/08/2004, thereby attracting levy of BCD at merit rate. However, M/S MEIPL have classified them under CTH 84151010/84151090 and claimed the benefit of SI.No.49 of notification no.85/2004 and cleared the impugned goods at "nil" rate of basic customs duty, thereby evading payment of appropriate duty of customs.

6.2.5.1 The noticees submitted that without prejudice to their earlier claim for classification under tariff item 84151010 and benefit under Notification No. 85/2004 Cus, even if the AC's in question are in fact classifiable under sub heading 841581/841582/841583, then also for the imports made post May 2011 from Thailand, the noticee is entitled to claim concessional rate of duty in terms of Sl. No. 1102 of the Notification No. 46/2011 Cus dated 01.06.2011.

6.2.5.2 The noticees submitted that simultaneous benefit is also provided to ACs and its parts falling under Chapter Heading 8415 under Notification No. 46/2011-Cus. Benefit under this notification is available to all the imports made post May 2011. Relevant portion of Notification No. 46/2011-Cus.have been reproduced below:

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 153/2009-Customs, dated the 31st December, 2009 (G.S.R. 9441, dated the 31st December, 2009), except as respects things done or

omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description as specified in column (3) of the Table appended hereto and falling under the Chapter, Heading, Sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entry in column (2) of the said Table, from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in, column (4) of the said Table, when imported into the Republic of India from a country listed in APPENDIX-1; or column (5) of the said Table, when imported into the Republic of India from a country listed in APPENDIX-II:

Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India) Rules, 2009, published in the notification of the Government of India in Ministry of Finance 9Department of Revenue) No189/2009-Customs (N.T.), dated 31st December 2009.

<i>S.No.</i>	<i>Sub-heading or Tariff Item</i>	<i>Description of Goods</i>	<i>Rate (in percentage unless other-wise specified)</i>	
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
<i>1101</i>	<i>841510</i>	<i>All goods</i>	<i>7.0</i>	<i>8.0</i>
<i>1102</i>	<i>841581 to 841583</i>	<i>All Goods</i>	<i>7.0</i>	<i>8.0</i>
<i>1103</i>	<i>841590</i>	<i>All Goods</i>	<i>2.5</i>	<i>6.0</i>

APPENDIX I

S.No	Name of the Country	S.NO	Name of the Country
1	Malaysia	2.	Singapore
3	Thailand	4	Vietnam
5.	Myanmar	6	Indonesia
7	Brunei Darussalam	8	Lao People's Democratic Republic

APPENDIX II

S. No.	Name of the Country
1	Philippines

6.2.5.3 The noticees submitted that Notification No. 46/2011-Cus was amended on 31.12.2013 vide Notification No. 57/2013-Cus dated 31.12.2013. Rate of duty for the goods falling under Chapter Heading 8415 were revised as under:

S.No.	Sub-heading or Tariff Item	Description of Goods	Rate (in percentage unless other-wise specified)	
1	2	3	4	5
1101	841510	All goods	6.0	7.0
1102	841581 to 841583	All Goods	6.0	7.0
1103	841590	All Goods	0	4.0

6.2.5.4 I find that as an alternative the noticee has claimed the concessional benefit of BCD vide Notification No. 46/2011 Cus in place of earlier claimed Notification No. 85/2004 Cus with respect to the impugned goods. I find that the second exemption is available to the noticees with effect from 01.06.2011 i.e. after

the introduction of self-assessment regime. In other words, the onus was completely on the importers to file the correct declaration, taking into consideration, the eligibility, available exemptions etc. In the instant case the noticees have intentionally and wrongfully availed benefit of the Notification No. 85/2004 Cus when the Notification No. 46/2011 Cus was also in place. To distinguish between the two notifications, Notification No. 85/2004 is more advantageous to Notification No. 46/2011 Cus, inasmuch as the exemption is "Nit" under Notification No. 85/2004 as compared to concessional BCD in case of the Notification No. 46/2011. Undoubtedly, the noticees have claimed the benefit of the former Notification, when the said Notification was in force. Certainly, the act on their part, would have definitely been detrimental to exchequer, had the same been unnoticed. Any exemption is an option given to the parties which they may or may not claim. Exemption can neither be given suomotu nor after the parties relinquish their right to the claim, in my opinion, the benefit should have been claimed at the time of filing of Bill of Entry, and not at a later stage. I notice that the classification aspects are as per the prevailing instructions, sets of rules, acts and procedures etc. I understand that no force or no law permits seeking alternative claim, which makes the claim of the noticees redundant and non est in law. In this connection I am relying on the case of Maha Lakshmi Packagers Versus Commissioner of C. Ex., Chandigarh -I 2015 (329) E.L.T. 823 (Tri. - Del.) wherein it was held that "Filing of declaration not mere procedural or technical requirement - Declaration necessary to prevent misuse of exemption notification and to enable jurisdictional Assessing Officer to examine eligibility - As such, exemption under said notification to be available to assessee only with effect from date of filing declaration on 28.06.2010." Hence, I find that the noticee is not entitled for exemption under Notification No. 46/2011-Cus dated 01.06.2011 (ASEAN) (S. No. 1102).

4.19 Since we have held that the impugned goods namely RAC and CMVRF air conditioners are classified under the heading 841501010 and 84159000 as claimed by the appellants while filing the Bill of entry benefit of the exemption notifications as

claimed under the Notifications 85/2004 CUS dated 31/08/2004 (S1.No.49), notification no.46/2011-Cus dated 01/06/2011 (SI.No. 1103 (1)) will be admissible to them. Adjudicating authority in para 6.2.4.1, 6.2.4.2 and 6.2.4.3 has after referring to the said notifications opined stating that the benefit of exemption under these notifications is admissible to the all goods classified under heading 8415010 and since he has held that these goods are classifiable under headings 84158110, 84158190, 84158210 i.e. the headings not specified under these exemption notifications, hence benefit of these exemption notification is not admissible to them. Since we have held that the classification of the impugned goods as determined by the adjudicating authority cannot be upheld, and the classification as claimed by the appellants at the time of filing the Bill of Entry is correct classification, benefit of exemption Notification No 85/2004-Cus as claimed by the appellants under heading 84151010 and 84151090 is admissible to them.

4.20 Entry at SI No 336 of the notification No 12/2012 dated 17/03/2012

336.	7411 or 7412	All goods	7.5%	-	-
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The exemption under this notification is admissible in respect of the goods classifiable under heading 7411 or 7412, and is not admissible in respect of the goods classifiable under heading 84159000. Hence the observations made by the adjudicating authority in para 6.2.4.4 cannot be faulted with.

4.21 On the issue of determination of countervailing duty on the basis of RSP, we find that adjudicating authority has observed as follows:

"6.3 APPLICABILITY OF RSP BASED ASSESSMENT:

6.3.0 I find that the noticees have contended that AC is not a pre packaged commodity and thus is outside the scope of Legal Metrology Act, 2009 and that Packaged Commodities Rules should not be made applicable to ACs, especially split system type ACs inasmuch as when a commodity is sold in pre packaged form, the consumer cannot see the product as such at the time of purchase and has to rely on the package of the product. In

support of their claim, they have also relied upon various judgments to imply that PC rules do not apply to goods which are packaged merely for their safety, during transportation.

6.3.1 I find that the impugned goods imported by the noticees comes within the purview of definition of pre-packaged commodities. I further find that the contentions of the noticees that the decision to buy an AC depends on certain circumstances to protect consumers' interest does not hold good, for the reason that the onus is always on the buyer whether to rely on the leaflet of the package or opt to get a demo in the show room. There is no hard and fast phenomena that the consumer has examined the package in detail before buying the goods. The possibility that the consumer checks certain demo and opts for a different consignment, seeing the technical features or otherwise, cannot be lost sight of. I also find that the noticee has cited the case of Eureka Forbes Limited vs. Union of India and Other AIR 2003 Andhra Pradesh 275 wherein it is held that a protective cover during transportation cannot be treated as pre-packed' commodity. I notice that the cited case law by the noticee is distinct from the instant case inasmuch as it is on record that all the air conditioners and parts of air conditioners imported by the noticee, were in packaged form in ready to use condition, without any modification, which is also corroborated by the authorized persons/representative of the Company, during the investigation proceedings. Therefore the cited case law is squarely inapplicable to the instant case.

6.3.2 I further find that the noticees have contended that the ACs are sold on the basis of technical specifications and not on the basis of their unit weight or volume. The noticees have put up certain frivolous justifications to support their contention that ACs are sold on the basis of their technical specifications. Here, I feel it relevant to mention that the point for determination is not how the consumer buys a particular product i.e. whether he/she resorts to the technical specifications or relies on the instructions on the package, but whether the goods are sold in retail packages or otherwise and whether the goods comes within the purview of packaged Commodity Rules. Undoubtedly, the goods imported by the noticees are covered under Notification No.

49/2008 dated 24.12.2008, thereby attracting the provisions of Section 4A of the Central Excise Act.

6.3.3 In terms of Section 4A, the Central Government may by Notification in the official gazette specify any goods in relation to which it is required under the provisions of Standards of Weights and Measures Act, 1976 or the rules made there under or any other law for the time being in force to declare on the package thereof the retail sale price of such goods to which the provisions of Sub-section (2) shall apply. It was submitted that as per this section, there were two requirements, first is that the goods should be specified by Central , Government by Notification and second is that the goods should be one in relation to which it is required under the provisions of the Standards of Weights and Measures Act, 1976 or the rules made thereunder or any other law for the time being in force to declare on the package thereof the retail sale price of such goods. Further, the goods imported by the noticees does not fall under the excluded category under Rule 34 of Standards of Weights and Measures (Packaged Commodities) Rules, 1977. Undoubtedly, the goods are notified under the notification and attract the provisions of Section 4A of the Central Excise Act, 1944. Further, the impugned goods are found to be in a packaged form, in ready to use condition without any modification, which ultimately satisfies the second condition, attracting the provisions of the Standards of Weights and Measures Act. Therefore, since the impugned goods imported by the noticees satisfies the conditions therein, befit into RSP based assessment under the relevant rules. Further, it is also a matter of fact that the impugned goods are well covered within the definition of Standards of Weights and Measures (Packaged Commodities) Rules and does not fall under the excluded category. In support of my findings, I would like to rely upon the decisions of the Tribunal in the case of Nestle India Limited v. CCE, Jayanti Food Processing Pvt. Ltd. v. CCE, BPL Telecom (P) Ltd. v. CCE, Cochin, ITEL Industries Pvt. Ltd. v. CCE, Calicut and CCE, New Delhi v. Ishaan Research Laboratories Pvt. Ltd. wherein Hon'ble CESTAT had taken a consistent view that once the goods are notified under Section 4A(1) they are liable to be assessed on the basis of declared

MRP as per Section 4A(2) and under Standards of Weights and Measures Act or the rules made thereunder and once the assessee does not fall under any of the exceptions provided under Rule 34 on the goods are to be assessed on the basis of MRP irrespective of the fact whether MRP is declared on those goods or not.

6.3.4 The noticees have also submitted that for the period post 10.05.2012, CMVRF type ACs are not liable for MRP based assessment as the same are sold to industrial/institutional consumers and thus excluded from the scope of PC.

6.3.5 I find that Notification No. 49/2008 dated 24.12.2008 includes alt goods under Chapter Heading 8415, except 841520, but specifically window room air-conditioners and split air conditioners of capacity upto 3 tonnes, are covered under the said Notification. The said Notification was subsequently amended vide Notification No. 26/2012-CE (NT), DT. 10/05/2012, wherein all goods except the goods falling under Chapter Heading 841520 are included thereby enhancing the percentage of abatement and also ruling out the condition of category of air conditioners. Thus, it is apparent that the CMVRF ACs are also within the scope of the relevant notification, thereby subjecting the goods to RSP based assessment.

6.3.6 Now, coming to the aspect of the claim of the noticees, that the CMVRF ACs are exempt due to its nature as the same is for industrial/ institutional consumers, I find that during the investigation proceedings, Shri Manoranjan Nayak, deposed that all air conditioners, including CMVRF are sold without any modification. He admitted to not resorting to any repacking and also admitted that they have not paid CVD on RSP basis on all the items imported under heading 8415 after the amendment of Notification No. 49/2008(CE)-NT dated 24/12/2008 due to non-updation/ ignorance of the above amendment. It is a matter of fact that they started paying duty on RSP basis for the air conditioners and the parts of air conditioners viz., indoor and outdoor units only, after initiation of investigation. They had accepted that they had not paid duty on RSP basis during the interim period from 10/05/2012 to June 2013 and also for the parts of air conditioners from 10/05/2012. Thus it is obvious that

once the CMVRF type ACs are sent to end use consumers without any modification. the same attracts for MRP based assessment. Besides, the noticees themselves have admitted that post investigation they started declaring RSP based assessment, which totally nullifies the claim of the noticee that CMVRF Type ACs are not liable for MRP based assessment.

6.3.7 I find that it is not under dispute that the impugned goods are not covered under the Notification No. 49/2008 dated 24.12.2008 and includes all goods under Chapter Heading 8415, except 841520 but specifically window room air-conditioners and split air conditioners of capacity upto 3 tonnes, are covered under the said Notification. The said Notification was subsequently amended vide Notification No. 26/2012-CE (NT), DT. 10/05/2012, wherein all goods except the goods falling under Chapter Heading 841520 are included thereby enhancing the percentage of abatement. Thus, by the new Notification all the air conditioners except the goods falling under Chapter Subheading 841520. are subjected to RSP based assessment.

6.3.8 It is a matter of record that the impugned air conditioners i.e. RAC, PAC and CMVRF imported by the noticees are in the form of retail packages and is admittedly sold to the consumers, without any modifications. Further, it is an admitted position in the instant proceedings, that the noticee does not have a manufacturing unit, thereby resorting to the process of any subsequent alteration/modification. Further, it is on record that the authorized persons of the noticees, have admitted during the course of investigation that they have not paid CVD on RSP basis on all the items imported under heading 8415 after the amendment of Notification No. 49/2008(CE)-NT dated 24/12/2008 due to non updation/ ignorance of the above amendment. Moreover, it is also an admitted position on record that the noticees from June 2013 have started paying duty on RSP basis for the air conditioners and the parts of air conditioners.

6.3.9 The aforementioned position clearly reveals that M/s Mitsubishi was required to pay CVD on RSP basis. Further, the impugned goods imported by the noticees are notified under the aforementioned Notifications. Now, in order to finalize, whether

the impugned goods imported by the noticee are subjected to RSP based assessment, I also like to examine the legal provisions in force on the issue.

6.3.10 As per proviso to Section 3(2) of the Customs Tariff Act, 1975 the value in respect of certain goods/articles imported into India, to which provisions of Legal Metrology Act, 2009 and Rules made thereunder are applicable, shall be deemed to be the retail sale price declared on the imported articles less such amount of abatement as the Central Government may allow. On such items, additional duty of customs (usually referred to as CVD) is leviable in terms of section 4A of the Central Excise Act, 1944 read in conjunction with Notification No. 49/2008 - CX (NT) dated 24/12/2008. The said notification prescribes the extent of abatement to be given to the goods covered under RSP based levy. As per the said Notfn. dated 24/12/2008 (as amended on 10/05/2012) with particular reference to SI. No. 68, all goods except 841520, falling under chapter heading 8415 are subjected to RSP based CVD levy with effect from 10/05/2012 and extent of abatement is 35%.

6.3.11 It is pertinent to emphasize here that all these air conditioners i.e. RAC, PAC and CMVRF have been imported in the form of retail packages and can be sold as such to the retail consumer in ready to use condition. It is also on record that in certain cases, the declared RSP were lesser than the standard price list of CMVRF provided by M/S MEIPL (RSP for CMVRF were declared after the initiation investigation i.e. from May 2013). Section 3 of the Customs Tariff Act, 1975, envisages that if there are more than one RSP for a particular product, the maximum of the same has to be taken for calculating the CVD. Applying the same, the actual RSP of the impugned goods imported by M/s MEIPL have been arrived by taking the maximum prevailing RSP for a product.

6.3.12 it is also on record that even though, the Customs broker had brought to their knowledge about the amendment in the notification no. 49/2008, they still chose to not follow the said notification, for the reason that they are getting similar goods cleared at Chennai Seaport, without following the said notification. They further gave a letter to Customs that these

models are meant for industrial use and does not require clearance on MRP basis and based on the said letter, the goods were cleared by Customs.

6.3.13 In view of the foregoing, it is apparent that the noticees, through adoption of various propaganda refrained from paying CVD on RSP basis thereby implying adverse revenue implications, which resulted in evasion of Customs Duty.

6.3.14 It is obvious that the words 'not for retail sale' for all the air conditioners above 3 tons, is with the sole intention to misguide Customs and evade Customs duty for the reason that the air conditioners above 3 tons and parts of air conditioners are liable to be assessed for CVD on RSP basis after the amendment of notification no.49/2008-CE (NT) dated 24/12/2008 on 10/05/2012. They had also added the words "captive consumption", "not for retail sale" to the description of the goods. Therefore, it is abundantly clear that M/S MEIPL has clearly misstated about the impugned goods under import so as to justify clearance of goods without assessment on RSP basis.

6.3.15 I notice that M/s. MEIPL is an accredited client enjoying assured facilitation (no assessment and no examination) except subject to random and minimal verifications and is enjoying all the privileges of a status holder. Being the recipient of the highest privilege in the trade parlance, it is highly unwarranted and uncalled for on the part of M/S MEIPL to indulge in wrong classification, mis declaration, suppression of actual description of impugned goods and providing information/clarification contrary to the facts, thereby enabling themselves to avoid payment of proper Customs duty by not subjecting their goods to assessment of CVD on RSP basis.

6.3.16 Further, as per para 5 of General Notes Regarding Import Policy of ITC (HS), in terms of Paragraph 2.2 of the Foreign Trade Policy, all packaged products which are subjected to Legal Metrology (Packaged Commodities Rules, 2011), when produced/sold in domestic market shall be subject to compliance of all the provisions of the said rules, when imported into India and all pre-packaged commodities imported into India, shall in particular carry the declarations which include the maximum retail sale price at which the commodity in packaged form is sold

to the ultimate consumer. In the instant case, as discussed supra, the impugned goods imported by M/S MEIPL in the form of retail packages, which can be sold as such without any value addition. However, admittedly, the MRP of the impugned goods have not been affixed and paid or has been mis-declared on all air conditioners above 3 ton and parts of air conditioners. Also, the fact that M/s Mitsubishi does not indulge in any manufacturing activities on the impugned goods totally belies their claim. Therefore, it appears that the noticees imported the impugned goods, without duly following the conditions laid down by Legal Metrology Act, 2009 and the rules made thereunder.

6.3.17 The noticees have further contended that DRI has incorrectly re determined MRP of different models of ACs by taking into consideration the maximum prevailing MRP for such models. According to the noticees, the compliance needs to be with respect to every package. The noticees inferred upon various case laws in support of their claim. I find that during the course of investigations, price list containing the RSP of RAC and PAC, Standard price list of CMVRF and maximum retail price of parts of air conditioners were submitted by M/S MEIPL. It is noticed that, in certain instances for air conditioners of CMVRF the declared RSP were lesser than the standard price list of CMVRF provided by M/S MEIPL (RSP for CMVRF were declared after the initiation investigation i.e. from May 2013). Section 3 of the Customs Tariff Act, 1975, envisages that if there are more than one RSP for a particular product, the maximum of the same has to be taken for calculating the CVD. I also find that the noticees did not provide any satisfactory explanation with respect to the variance in the declared RSP and the Pricelist. Applying the same, the actual RSP of the impugned goods imported by M/s MEIPL have been arrived by taking the maximum prevailing RSP for a product and I find no reason to differ from the views of the investigation.

6.3.18 The noticees have further contended that no Rules for the determination of RSP/MRP in case of imported goods and therefore re determination of MRP and consequent demand of duty is not legally sustainable. I find that the noticees have contended that though Customs Tariff Act, 1975 has borrowed

the Notification issued under Section 4A(1) and the provisions of sub section (2) of Section 4A of the Central Excise Act, 1944, the provisions of the determination of RSP under 4A(4) of the Central Excise Act, 1944 has not been made applicable to Section 3(2) of the Customs Tariff Act, 1975. In support of their contention, the noticees also relied upon the ratio laid down by Supreme Court in case of ITC Ltd. Vs. CCE reported in 2004 (171) ELT 433; Commissioner vs. Pushpaman Forgings reported in 2003 (153) ELT A 89 (SC); Pushpaman Forgings vs. Commissioner of Central Excise, ABB Bangalore in support of their claim that the proposed re-determination of MRP is legally unsustainable

6.3.19 I find that it is a matter of fact that the provisions of Central Excise Acts/ Rules and Customs Act Rules are para material to determine RSP. It is a settled position that in the case of Central Excise Acts, the duty is payable on manufacture at the time of clearance of goods and in case of Customs, the Customs duty is payable at the time of importation of goods.

6.3.19.1 I find that the arguments of the noticees are that the provisions of Section 4A of the Central Excise Act cannot be relied upon to determine the value in terms of proviso to Section 3 (2) of the Customs Tariff Act as there is no legal machinery prescribed to ascertain the retail sale price under the situation specified in sub-section (4) of Section 4A.

6.3.19.2 I have carefully examined the arguments. I find that the proviso to Section 3(2) states that "Provided that in case of an article imported into India-a) in relation to which it is required under the provisions of Standards of Weights and Measures Act, 1976 or the rules made there under or under any other law for the time being in force, to declare on the package thereof the retail sale price of such article and b) where the like article produced or manufactured in India or in case where such like article is not produced or manufactured, then the class or description of articles to which the imported article belongs, is the goods specified by the notification in the official gazette under sub-section (1) of Section 4A of the Central Excise Act, 1944. It is abundantly clear that once the goods are specified under Section 4A (1) of the Central Excise Act, necessarily the

CVD is to be charged on MRP basis. Similarly, the proviso to Section 3(2) of Customs Tariff Act unambiguously states that in case of such goods, the retail sale price has to be declared on the package.

6.3.20 I find that Section 3(2) of the Customs Tariff Act is a self-contained law and Section 12 of the Customs Act, 1962 is the charging section of duty which states that "except as otherwise provided in this Act or any other law for the time being in force duties of Customs shall be levied at such rate as may be specified under the Customs Tariff Act, 1975. The Hon'ble Bombay High Court in case of Subhash Photographics Vs. Union of India 1992(62) ELT 270 (Bom) held that the two enactments form a composite legislation. It was held that "The Customs Tariff Act, 1975 specifies the rates at which the duties of customs shall be levied under the Customs Act, 1962. The rates are specified in the schedules to the said act. A perusal of scheme of these two enactments makes it absolutely clear that though these are two separate enactments, one cannot be given effect to without the other. Section 12 of the Customs Act levies the charge and indicates the whole taxable event, without, thereby specifying the rates, which, undoubtedly, is being specified by the Customs Tariff Act, 1975.

6.3.21 It is unequivocally clear that the Customs Tariff Act, 1975 specifies the rates of duty. This enactment is only for the purpose of specifying the rates at which the duty of Customs would be levied under the Customs Act, 1962. Section 12 of the Customs Act is thus complete only when it is read with the Customs Tariff Act, 1975.

6.3.22 It is settled position that the second component of Customs duty is countervailing duty, which is equal to the excise duty under the Central Excise Act, 1944/ Central Excise Tariff Act, 1975. It is a common phenomenon that goods imported, being not manufactured in India will not be chargeable to excise duty. Thus the goods produced or manufactured in India would be at a disadvantageous position and hence, in order to have the same level playing field in respect of imported goods vis-à-vis indigenous goods as far as excise duties are concerned, the concept of CVD was introduced.

6.3.23 As per Section 3(2) of the Customs Tariff Act, 1975, normally, the countervailing duty is charged on the value as determined under Section 14 of the Customs Act, plus the basic customs duty. This is the scheme of valuation of goods for purpose of computing CVD under Section 3 and is in the nature of deemed value. However, for certain notified goods, the excise duty is charged under Section 4A and not under Section 4 of the Central Excise Act, 1944. Under Section 4A, the value is not the transaction value but is with reference to the retail sale price of the goods. Thus it is evidently clear that for the goods specified under Section 4A, it is not the transaction value but value arrived at taking RSP declared on such goods less abatement, if any, as the Central Government may allow by notification. Further, explanation | after sub-section (4) of Section 4A defines "Retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes local or otherwise. Section 3(1) of the Customs Tariff Act as also the purposes and objects of Section 3, indicates that RSP minus abatement would be taken as the value for the purpose of CVD. As per the proviso under Section 3(2) of the Customs Tariff Act, 1975, the countervailing duty at the time of import will again be calculated in the same way as is being done for excise purpose i.e. importer will be required to declare RSP on the goods imported. Also, under Section 3(2), for the goods covered under RSP scheme, transaction value does not exist and there is no need to go for value which is deemed in nature.

6.3.24 I find that the purpose and object of Section 3 of the Customs Tariff Act is to levy additional duty equal to excise duty so that the Indian manufacturers of similar goods are not put to any disadvantageous position. The declaration relating to RSP has to be true and correct declaration,

6.3.25 I find that once the goods are specified under Section 4A(1) of the Central Excise Act, necessarily the CVD is to be charged on MRP basis. The proviso to Section 3(2) of Customs Tariff Act unambiguously states that in the case of such goods, the retail sale price has to be declared on the package as required under the Standards of Weights and Measures Act,

(SWM). The critical words are "required" and "declared" in the case of imported goods which are specified under Section 4(A)(1) of the Central Excise Act.

6.3.26 As discussed in the proceeding paras, the impugned goods imported by the noticees were in packaged form, in ready to use condition. Therefore once we goods are notified under Section 4A and the goods are imported by the noticees in packaged form, the entire argument on this ground is superfluous, redundant and non-est. Therefore, even though no separate machinery provisions are made, I hold the Customs Act borrows the provisions of the Central Excise Act and works in tandem.

6.3.27 To substantiate my view, I rely upon the three bench decision of Hon'ble CESTAT Mumbai dated 19.05.2015 in case of Nitco Tiles Ltd. vs. CC(Import), Mumbai, wherein the third member duly appointed to sort out the difference of opinion by the two member bench, opined that even if there are no machinery provisions laid down in Section 3(2) of the CTA and Section 4A(4) of the Central Excise Act, it cannot be concluded that Section 3(2) of the Customs Tariff Act will become ineffective and the law rendered otiose.

6.3.28 I also rely upon the judgments Rupani Spinning Mills Pvt Ltd vs Union of India 1992 (60) ELT 77 (Guj), Shipping Corporation of India vs. Colir. Of Cus. Madras reported in 1998 (98) ELT 78 (Mad.), Mahim Patram Private Ltd. vs. Union of India 2007 (7) STR 110 (S.C), J. Srinivasa Rao v. Govt. of Andhra Pradesh & Another - 2006 (13) SCALE 27, M/s. spat Industries Ltd. vs. Commissioner of Customs, Mumbai JT 2006 (12) SC 379 2006 (9) SCALE 652, Sudhir Chandra Nawn vs. Wealth Tax Officer 1969 (1) SCR 108 which convey beyond doubt that the absence of Rules or machinery provisions cannot make the law inoperative. The statute has to be seen in proper perspective as workable. In view of the above analysis, I form a considered opinion that reference to Section 4A(1) and 4A(2) of the Central Excise Act is fully applicable to the explanation to Section 3(2) of the Customs Tariff Act. The contentions are therefore rejected.

6.3.29 It is a fact that as discussed in paras supra, M/S MEIPL have assessed the CVD of air conditioners above 3 ton and parts of air conditioners on transaction value instead of RSP basis. It can be seen in all the bills of entry filed by them, they have declared that "wherever the RSP is applicable same has been truthfully declared". Hence, in the case of assessing the goods on RSP basis, it is clear that responsibility is trusted upon the importer to declare the correct RSP and get the CVD subjected to assessment on RSP basis. It is fact that M/\$ MEIPL do not have any manufacturing unit for air conditioners and all the goods imported by them were for trading and are sold as such to the dealers/customers under a tax invoice. While this being the case, they have got the impugned goods assessed for CVD on normal transaction basis and to facilitate such assessment, they in the bills of entry filed have suffixed the wordings such as "not for retail sale", "captive consumption" etc with the description of the goods, thereby misleading the Customs. Further, in case of queries raised by Customs, they have mis led the Customs by furnishing false information/ facts about the goods imported. Some instances of such mis-declarations (not exhaustive) are as under:

6.3.29.1 M/S MEIPL has filed bill of entry No. 9424139 dated 26/02/2013 filed at ICD, Tughlakabad for import of CMVRF air conditioners. The indoor unit models are PCFY, PEFY, PKFY and PLFY and matching outdoor unit was PUHY well within the diversity ratio. In the description given in the bill of entry the words 'not for retail sale', which are not there in the supplier's invoice were added to the item description. Shri Manjoranjana Nayak had admitted that these units are not only used for industrial or business premises but also are sold on retail basis to high end customers under tax invoice. With respect to bills of entry nos. 8537834, 8537737, 8537626 all dated 20/11/2012 filed at Nhava Sheva Port, M/S MEIPL had given letter titled 'to whomsoever it may concern' and stated that goods imported under these bills of entry are industrial type of air conditioners used for project supplies to Industries/Commercial buildings/Hostels and not sold to house hold. Further, since these air conditioners are used for project supplies, which are of

higher capacity and not sold through retail and thus cannot be covered under RSP/MRP rule. He had also stated that whoever raises the purchase order for supply of CMVRF air conditioners, the essential parts viz., indoor units, outdoor units, controllers, etc. are supplied on retail sale basis to dealers/distributors/high end customers as per the purchase orders received. In the bill of entry No.2129403 dated 14/05/2013 filed at Chennai Seaport, M/S MEIPL along with description of CMVRF, has added the words 'not for retail sale'. Shri Manoranjan reiterated that as CMVRF are not normally sold through counter/showrooms, they have mentioned the words as 'not for retail sale' and confirmed that these units were sold to high end customers under a tax invoice on retail sale basis.

*6.3.29.2 Similarly for PAC, M/S MEIPL in the bill of entry nos. 9556602 dated 13/03/2013, filed at ICD, Tughlakabad, for import of PS5JAKSD+PU5YKDSE, have not paid duty based on RSP and with the description of goods the words 'not for retail sale' was added. When asked to comment, he admitted that the declaration in the item description as "not for retail sale" has been made inadvertently on a presumption that these high end models are intended for industrial consumers; that in actual, these units are also sold on retail basis to the customers under a tax invoice without altering the packages of the imported item to a customer. In the case of bill of entry no. 9437101 dated 28/02/2013 for clearance of PAC series air conditioner PE-16GAK + 2*PUSYAKD, it seems the Customs has raised a query to declare the RSP. In this connection, M/S MEIPL had given reply that these models are not retail models so MRP would not apply. When asked about this, he stated in this case also we have given letter to Customs that these air conditioners are not meant for retail sale and levying duty based on MRP is not applicable and stated that in order to substantiate their saying that the model is not meant for retail sale they added the words 'not for retail sale' along with the description of the goods in the bill of entry. In their letter dated 14/03/2013 to the Deputy Commissioner of Customs, ICD, Tughlakabad, M/S MEIPL has sought permission to amend the bill of entry No. 9556602 dated 13/03/2013 for inclusion of words 'not for retail sale' with respect to indoor units*

and outdoor units of PAC model no. PS5JAK+PU5YKD. Shri Manoranjan Nayak had contended that the wording and selling are two different things, that they in order to clear the imported goods from Customs, have mentioned the words 'not for retail sale' for all the air conditioners above 3 tons; that their marketing pattern is that they have appointed dealers and distributors to effect sale, that the dealers/distributors negotiate the orders with the end customers; that whoever raises the purchase order for supply, including end customers, they will effect supply of goods to them by raising sales invoice and on payment of VAT. He had admitted it is retail sale only but to high end customers/dealers. With respect to bill of entry No.9171839 dated 30/01/2013 filed at Chennai Seaport, M/S MEIPL has requested the Customs Broker, M/s A.V. Global through email dated 30/01/2013 sent by Shri Rajesh Garewal, to remove MRP from last two items shown in the checklist bill of entry as the air conditioners viz., PS5JAK+PU5YKD were above 3 Ton.

6.3.29.3 Further, as regards parts of air conditioner, in the case of bill of entry no.7245228 dated 26/08/2012, it seems the Customs has raised a query regarding RSP based CVD on parts of air conditioner. In the said bill of entry, M/S MEIPL has imported indoor units of CMVRF and other parts of CMVRF. The customs broker, Shri S.K. Jain through their email dated 29/06/2013 has forwarded the copy of amendment in notification no.49/2008 (CE) dated 24/12/2008 but still the noticees resorted to clear the goods without RSP.

6.3.29.4 With respect to the bill of entry No.4884961 dated 11/10/2011, they have described the goods CMVRF as parts of air conditioner (captive consumption). Similarly in another bill of entry No.6940325 dated 28/5/2012. service spare parts were imported and declared in the bill of entry as 'captive consumption'. In view of the foregoing, it is apparent that the goods imported by the noticees are cleared on transaction value basis, thereby violating the prevalent instructions in force and also by resorting to various means of evading RSP. In view of the detailed findings supra, I hold that the demand of non levied/short-levied CVD, as proposed is legally sustainable.

6.3.30 From the foregoing, it is amply clear that M/S MEIPL and M/s. MEAPL have mis-declared the description, wrongly classified the goods, wrongly availed the benefit of exemption notifications and not paid CVD on RSP basis of the impugned goods imported vide 561 bills of entry. The calculation sheet annexed with the Show Cause Noticee reveal that the actual duty on the goods imported vide 561 bills of entry works out to Rs. 37,68,93,810/- (Rupees thirty seven crore sixty eight lakh ninety three thousand eight hundred and ten only) as against Rs 27,64,32,525/- (Rupees twenty seven crore sixty four lakh thirty two thousand five hundred and twenty five only) paid by them, thereby resulting in short levy of Rs. 10,04,61,285/- (Rupees ten crore four lakh sixty one thousand two hundred and eighty five only). Similarly with respect to 5 consignments imported in the name of M/S MEAPL, as discussed supra have mis-declared the description, wrongly classified the goods and cleared the goods on transaction value and wrongly availed the benefit of exemption notifications not applicable to them and thereby evaded payment of appropriate customs duties. In the light of the above, the actual duty payable on the goods imported by M/S MEAPL vide the 5 bills of entry works out to Rs 25,11,485/- (Rupees twenty five lakh eleven thousand four hundred and eighty five only) as against Rs 16,65,393/- (Rupees sixteen lakh sixty five thousand three hundred and ninety three only) paid by them, resulting in short levy of Rs 8,46,091/- (Rupees eight lakh forty six thousand and ninety one only). Accordingly, the same is liable to be demanded in terms of Section 28(1)/Section 28(4) of the *ibid* Act.”

4.21 On the issue of the Applicability of RSP based assessment for determination of the countervailing duty, the learned counsel appearing for the appellants submitted that though initially they were disputing the same, but on re-examination of the issue he admits that the goods in question were to be subjected to RSP based assessment for determination of the countervailing duty payable. In view of the submissions made by the learned counsel, in our view demand that arises on the basis of RSP based assessment and determination of countervailing duty needs to be upheld. As the same has not be quantified

separately the matter needs to be remanded back to the original authority for re-quantification of the demand on this account.

4.22 On the issue of invoking the extended period of limitation for making the demand of duty, Principal ADG has recorded as follows:

6.4.2 The Noticees have contended that they had not suppressed or mis represented any fact to the Customs Authorities and they had adopted the classification as per their understanding with respect to different tariff entries. I notice that the noticees have accepted most of the classifications proposed by the DRI, citing reasons of non-wilful act or any malafide and a genuine case of inadvertence. I find that the noticees are holding accredited status, thereby enjoying the privileges of priority in clearances. Being in such a privileged position, it was expected of the noticees to give the correct declaration, especially in the self-assessment era, where the onus is on them to file correct declaration. Gaining ineligible benefits by putting revenue at stake and sheltering themselves under no ay malafide interest, is highly uncalled for.

6.4.3 I find that out of the 1030 consignments of air conditioners and its parts (covered by equivalent no. of bills of entry) imported by Living Environment Division of M/S MEIPL, it appears that in case of 561 consignments (covered by equivalent no. of bills of entry), they have wrongly classified the impugned goods under tariff item 84151010, 84151090 and 84159000 instead of customs tariff item 84158110, 84158190, 84158210 or 84158290, availed benefit of higher concession under various Sl. Nos. of different notifications, as discussed supra, which do not seem to be available to them and have also not paid countervailing duty (CVD) under proviso to Section 3(2) of the Customs Tariff Act, 1975 Similarly with respect to the imports made vide 5 bills of entry, it appears M/s MEAPL have wrongly classified the impugned air conditioners under customs tariff item 84151010 instead of customs tariff item 84158210, 84158290 and 84159000 and availed benefit of notification no. 85/2004-Cus dated 31/08/2004 (SI.No. 49) which do not seem to be available to them and not paid countervailing duty CVD

under proviso to Section 3(2) of the Customs Tariff Act, 1975 in respect of 5 bills of entry.

6.4.4 I find that it is a matter of fact that M/s MEIPL and M/s. MEAPL in order to avail the benefit of concessional rate/nil rate of basic customs duty, had resorted to adopt varied classification depending upon the port of import/country of origin, mis-declaring the description of the goods to suit the classification made and by providing wrong/false information to the Customs in case any queries being raised. It is also on record that when Customs at Nhava Sheva denied them benefit of the concessional rate of basic customs duty, they imported the same from other ports. The explanation that they had accepted the classification changed by Nhava Sheva Customs due to the urgency of the product does not, in any manner, seem to be satisfactory inasmuch as, post self-assessment regime, the onus is casted on the importers to arrive at the correct classification. It was the duty or rather responsibility of the noticees, to suomotu inform Chennai Customs of the classification changed by Nhava Sheva Customs. The noticees cannot, in any manner, play hide and seek, in the trade parlance, especially when the government has entrusted faith upon them and has given them liberty to declare. Undoubtedly, the declaration has to be true and correct and the violators putting the revenue to risk, needs to be viewed seriously.

6.4.5 I notice that MEIPL have assessed the CVD of air conditioners above 3 ton and parts of air conditioners on transaction value instead of RSP basis. It can be seen in all the bills of entry filed by them, they have declared that "wherever the RSP is applicable same has been truthfully declared". Hence, in the case of assessing the goods on RSP basis, it is clear that responsibility is trusted upon the importer to declare the correct RSP and get the CVD subjected to assessment on RSP basis. It is a matter of fact that M/s MEIPL do not have any manufacturing unit for air conditioners and all the goods imported by them were for trading and are sold as such to the dealers/customers under a tax invoice. While this being the case, they have got the impugned goods assessed for CVD on normal transaction basis and to facilitate such assessment in the bills of entry filed they

have suffixed the wordings such as "not for retail sale", "captive consumption" etc. with the description of the goods, thereby mis-guiding the Customs. Further, in case of queries raised by Customs, they have mis-led the Customs by furnishing false information/facts about the imported goods as discussed herein below.

6.4.6 M/s MEIPL has filed bill of entry no. 9424139 dated 26/02/2013 filed at ICD, Tughlakabad for import of CMVRF air conditioners. The indoor unit models are PCFY, PEFY, PKFY and PLFY and matching outdoor unit was PUHY well within the diversity ratio. In the description given in the bill of entry the words 'not for retail sale', which are not there in the supplier's invoice were added to the item description. When asked to comment, Shri Manoranjan stated that the words 'not for retail sale' were added for all the items of CMVRF where the diversity ratio is within 50% to 130% on the presumption that these high end models are intended for industrial consumers. However, he also stated that these units are not only used for industrial or business premises but also are sold on retail basis to high end customers under tax invoice. With respect to bills of entry nos. 8537834, 8537737, 8537626 all dated 20/11/2012 filed at Nhava Sheva Port, M/s MEIPL had given letter titled to whomsoever it may concern' and stated that goods imported under these bills of entry are industrial type of air conditioners used for project supplies to Industries/Commercial buildings/Hostels and not sold to house hold; that since these air conditioners are used for project supplies which are of higher capacity and not sold through retail and thus cannot be covered under RSP/MRP rule. When the fact that M/s MEIPL do not involve themselves in erection and commission of any indoor units/outdoor these are sold directly to dealers/customers without changing the packing was brought to notice of Shri Manoranjan and asked for reasons as to why they are given such letters to Customs, he stated that they were of the impression that RSP based levy was for the sale made over the counter; that whoever raises the purchase order for supply of CMVRF air conditioners, the essential parts viz., indoor units, outdoor units, controllers, etc are supplied on retail sale basis to

dealers/distributors/high end customers as per the purchase orders received in the bill of entry no.2129403 dated 14/05/2013 filed at Chennai Seaport, M/S MEIPL along with description of CMVRF, has added the words 'not for retail sale'. In this connection, when Shri Ashok Mehta of M/s A.V. Global, the Customs Broker was enquired, he stated that at the time of sending check list bill of entry for approval, they have not included the words 'not for retail sale', but M/S MEIPL insisted them to add the words 'not for retail sale' in the description. When asked, Shri Manoranjan reiterated that as 'CMVRF' are not normally sold through counter/ showrooms, they have mentioned the words as 'not for retail sale' and confirmed that these units were sold to high end customers under a tax invoice on retail sale basis.

*6.4.7 With respect to PAC, M/S MEIPL in the bill of entry nos. 9556602 dated 13/03/2013, filed at ICD, Tughlakabad, for import of PS5JAKSD+PUSYKDSE, have not paid duty based on RSP and with the description of goods the words 'not for retail sale' was added. When asked to comment, Shri Manoranjan admitted that the declaration in the item description as "not for retail sale" has been made inadvertently on a presumption that these high end models are intended for industrial consumers; that in actual, these units are also sold on retail basis to the customers under a tax invoice without altering the packages of the imported item to a customer. In the case of bill of entry no. 9437101 dated 28/02/2013 for clearance of PAC series air conditioner PE-16GAK + 2*PUSYAKD, it seems the Customs has raised a query to declare the RSP in this connection, M/s MEIPL had given reply that these models are not retail models so MRP would not apply. When asked about this, he stated that in this case also they had given letter to Customs that these air conditioners are not meant for retail sale and levying duty based on MRP is not applicable and state that in order to substantiate of their saying that the model is not meant for rotor sale they added the words 'not for retail sale' along with the description of the goods in the bill of entry. In their letter dated 14/03/2013 to the Deputy Commissioner of Customs, ICD. Tughlakabad, M/S MEIPL has sought permission to amend the bill of entry No*

9556602 dated 13/03/2013 for inclusion of words 'not for retail sale' with respect to indoor units and outdoor units of PAC model no. PS5JAK+PU5YKD. On showing the above letter and also the letters given by them in respect of bill of entry 9437101 dated 28/02/2013, Shri Manoranjan was asked to clarify as to whether they have never sold PAC PE-16GAK or PS-5JAK to retail customers, he stated that the wording and selling are two different things, that they in order to clear the imported goods from Customs have mentioned the words 'not for retail sale' for all the air conditioners above 3 tons; that their marketing pattern is that they have appointed dealers and distributors to effect sale; that the dealers/distributors negotiate the orders with the end customers; that whoever raises the purchase order for supply, including end customers, they will effect supply of goods to them by raising sales invoice and on payment of VAT. On being queried as to whether it tantamount to retail trading, he stated that it is retail sale only but to high end customers/dealers. With respect to bill of entry No.9171839 dated 30/01/2013 filed at Chennai Seaport, M/S MEIPL has requested the Customs Broker, M/s A.V. Global through email dated 30/01/2013 sent by Shri Rajesh Garewal, to remove MRP from last two items shown in the checklist bill of entry as the air conditioners viz., PSSJAK+PUSYKD were above 3 Ton. When enquired, Shri Manoranjan stated that they were of the presumption that air conditioners up to 3 ton are only assessed to duty on RSP basis and hence they have requested the customs broker to remove the MRP from air conditioners of model PS5JAK+PU5YKD.

6.4.8 Further, as regards parts of air conditioner, in the case of bill of entry No.7245228 dated 26/08/2012, it seems the Customs has raised a query regarding RSP based CVD on parts of air conditioner. In the said bill of entry, M/S MEIPL has imported indoor units of CMVRF and other parts of CMVRF. The customs broker, Shri S.K. Jain through their email dated 29/06/2013 has forwarded the copy of amendment in notification no.49/2008 (CE) dated 24/12/2008 and asked him to furnish the RSP for the parts. Shri Manoranjan has replied that the said notification is not applicable for air conditioner spare

parts and has forwarded the bill of entry filed by AV Global at Chennai for clearance of similar parts without RSP. With respect to indoor units, he has given a letter titled 'to whomsoever it may concern' that these models of indoor units are meant for industrial use and are not split AC and hence no MRP is required. When asked as to why he has indulged in non-declaration of RSP when it is known that RSP based CVD is applicable on parts of air conditioners, he stated that it is a fact that they have received the email along with the attached notification wherein the customs broker has brought to their knowledge the amendment in the Notification No. 49/2008; that however, as they are getting similar goods cleared at Chennai Seaport, without following the said notification, they requested him to approach the customs for clearance and provided them with a copy of bills of entry filed at Chennai seaport; that as the broker insisted upon them to give letter, they gave a letter to Customs that these models are meant for industrial use and does not require clearance on MRP basis and based on the said letter, the goods were cleared by Customs. He further stated that as based on said letter the goods were cleared, they have not given relevance to the applicability of the said notification for their subsequent imports; that after the investigation of DRI, they understood the implication of the Notification and they started implementing the same by declaring MRP for all air conditioners including CMVRF, indoor and outdoor units declared as parts of air conditioners; that however, as the quantum of other parts of air conditioners are more, the supplier has declined to print ma stickers on the product and hence they have not disclosed the same at the time of import: that after the seizure of parts consignments by DRI in August, 2014 they have started declaring the MRP for spare parts and accessories that presently they are declaring RSP on all the products classifiable under CTH 8415.

6.4.9 Further, M/S MEIPL in the bill of entry No.4884961 dated 11/10/2011 have described the goods CMVRF as parts of air conditioner (captive consumption). Similarly in another bill of entry No.6940325 dated 28/5/2012, service spare parts were imported and declared in the bill of entry as 'captive

consumption'. Both the bills of entry were filed at ICD, Patparganj. When enquired, Shri Manoranjan stated that that they have not imported the CMVRF for their office purposes and reiterated that they do not have any manufacturing unit. He further stated that the goods received in bill of entry No.6940325 are service spare parts for CMVRF; that he did not know the actual reason for mentioning these parts during the said imports as 'captive consumption'.

6.4.10 I find that the aforementioned documentary evidences, duly corroborated with the testimony of the authorized persons, makes it apparent that M/S MEIPL and M/s. MEAPL resorted to mis-declaration wilfully. It is a matter of fact and as agreed by the Authorized persons that they had knowledge that the air conditioners above 3 tons and parts of air conditioners are liable to be assessed for CVD on RSP basis after the amendment of notification no. 49/2008. CE (NT) dated 24/12/2008 on 10/05/2012. Further, they had also resorted to clear the impugned goods without RSP based assessment by adding the "captive consumption", "not for retail sale" to the description of the goods . when Customs raised queries, M/S MEIPL have submitted false claims and the impugned goods cleared. Thus it is abundantly clear that M/S MEIDI deliberately misstated the impugned goods under import so as to justify of goods without assessment on RSP basis, hence this case justifies invoking of the extended period as per proviso to section 28(1)/ Section 28 (4) of the Customs Act, 1962 as applicable during the relevant period.

6.4.11 I find that the noticees have contested that prior to introduction of self-assessment, the onus was on the Revenue to classify the goods and verifying the correctness of declarations made by the importers in the Bills of Entry in relation of the imported goods. In support of their claim they have also relied upon the case of Hindustan Ferodo Limited v. Collector of Central Excise, Bombay, Union of India vs. Garware Nylon Ltd., Jay Kay Exports & Industries and Ganesh International vs. Commissioner of Central Excise. Further, in support of their contention that misclassification does not amount to mis-declaration, the Noticee has relied upon the judgements of Densons Pultretaknik vs. CCE,

CC Bangalore vs. Mahesh Raj, CCE vs. Ishaan Research Lab (P) Ltd., Chamundi Die Cast (P) Ltd. vs. CCE , Collector of Central Excise vs. Chemphar Drugs & Liniments, Cosmic Dye Chemical vs. Collector of Central Excise, Anand Nishikawa Co. Ltd. vs. Commissioner of Central Excise, Commissioner of Central Excise, Aurangabad vs. Bajaj Auto Limited etc. and contended that to invoke extended period under Section 28 of the Customs Act, it has to be proved that there was a conscious or intentional act of collusion, wilful mis-statement or suppression of fact, on the part of the importer.

6.4.12 I find that the Noticee have submitted that the show cause notice is barred by limitation has no substance. The show cause notice has been issued by invoking Section 28(4) of the Customs Act, 1962. Section 28(4) ibid provides that "where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part paid or erroneously refunded, by reason of, - (a) collusion; or (b) any willful mis-statement; or (c) suppression of facts, by the importer or the exporter or the agent or employee of the importer or the 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 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 be pay the amount specified in the notice." Thus, the ingredients which are necessary for issuance of show cause notice for extended period of five years are - non-levy or short-levy of duty etc. by way of collusion, any willful mis-statement or suppression of facts. In the present case, the reasons for invocation of extended period has been alleged in the SCN as 'mis-statement and 'suppression of facts'.

As seen from above, sufficient analysis, Bill of Entry vice have been done in the impugned order to justify invoking the extended period of limitation. We also note that in the analysis specific references have been made to mis-declarations etc, in respect of the declaration of RSP for the purpose of determination of the countervailing duty. In view of the specific findings recorded for determining the demand on account of mis-

declaration/ non-declaration of RSP while determining the countervailing duty we are of the view that extended period of limitation will be invokable as per proviso to section 28 (1)/ Section 28 (4) of the Customs Act, 1962.

4.23 Having determined as following:-

- the issue of classification of RAC and CMVRF air conditioners, upholding the classification as claimed by the appellants while filing the bill of entry, to be correct;
- benefit under the exemption notifications as claimed by them under notification No 85/2004-Cus to be admissible to them;
- the assessment for determination of countervailing duty to be made on the basis of the RSP, and not on the basis of the transaction value as claimed by the appellant;

The matter needs to be remanded back to adjudicating authority for determination and re-quantification of demand accordingly.

4.24 For confiscation of the seized goods, in the impugned order, Principal ADG records as follows:

"6.5.4 I find that during the course of investigation, seizures were conducted and the impugned goods lying at various godowns were seized by the investigation. The SCN has alleged that the seized/other goods are liable to confiscation under Section 111(d) and (m) of the Customs Act, 1962. As discussed in the preceding paras, the noticees have resorted to mis-declaration by attempting to wrongly classifying the goods and also by availing the ineligible notifications in force, which tantamount to violation of the provisions of Section 46(4) of the Customs Act, 1962, and also rendering the same liable to confiscation under Section 111 of the Customs Act, 1962. It is on record that the noticees resorted to mis-classification, with a deliberate attempt to evade payment of proper customs duty which is totally uncalled for, especially, in the self-assessment era, when the onus to declare correct description/classification/eligible notifications etc. is on the importers. It was the noticees' responsibility to act in tune with the governments faith deposited on them especially when they are status holders. However, it is evidently clear that the

noticees resorted to mis-classification and claiming benefits of ineligible notifications, which undoubtedly, renders the impugned goods liable to confiscation."

4.25 However since the issue of the classification and admissibility of exemption notification has been determined in favour of the appellants, the only issue that needs re-determination is vis a vis the quantification of the demand of countervailing duty on the basis of RSP, we also set aside the order of confiscation of the goods and redemption fines imposed as have been held by the tribunal in case of Sirthai Superware India Ltd [2020 (371) E.L.T. 324 (Tri. - Mumbai)] stating as follows:

"4.9 *From plain reading of the said clauses of Section 111, we do not find that these sub-clauses, are applicable to cases where the classification of claim of exemption is found to be erroneous. The fact that the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the application of these two clauses. Hence the order holding goods liable for confiscation and imposition of penalty under Section 112(a) cannot be sustained."*

However at the time of re-determination of quantum of countervailing duty short paid, adjudicating authority should re-determine, whether for that reason the goods are liable for confiscation and re-determine the quantum of redemption fine if any accordingly.

4.26 Since the issue in respect of the classification and admissibility of exemption notification has been determined in favour of the appellants hence the penalty imposed on them under section 114 A to cannot be sustained to the extent it relates to these aspects. Thus the penalty imposed under this section is set aside. In respect of the short payment of countervailing duty as we are remanding the matter back to the adjudicating authority for re-quantification of demand penalty if any is imposable on the appellant.

4.27 Section 114 AA of the Customs Act, 1962 read as follows:

"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."

From plain reading of the said section it is quite evident that penalty under this section is impossible only in case where the 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. Thus for imposing penalties under this section, adjudicating authority is required to determine existence of such declaration, statement or document which is false or incorrect in material particulars. In the present case without making any determination to this penalties under this section have been mechanically imposed by the adjudicating authority. Such penalties imposed without determining existence of such documents and the connection of the such document with the person, penalties imposed under this section cannot be sustained. Thus we set aside the order imposing penalties under this section.

4.26 On the issue of penalty imposed on functionaries of the importers, and CHA, impugned order observes as follow:

"6.7 As the omissions and commissions of the noticees M/S MEIPL and M/S 'MEAPL, have been elaborately dealt by me, supra, I now proceed to go through the violations of the other co-noticees associated with the main noticee

6.7.1 I find that Shri Manoranjan Nayak, Senior Manager (Supply Chain Management), Shri Rajeev Sharma, General Manager (Supply Chain Management) both personnel of M/s MEIPL, Shri Horoaki Ashizawa, Director & General Manager, Living Environment Division, and Shri Shine Yamabe, Managing Director, responsible at the helm of affairs at M/s MEIPL and M/s MEAPL, have each given false declarations in the bills of entry, submitted false information contrary to facts to the Department, induced the Customs Broker/Customs House Agent not to

declare the retail sale price etc., are equally and personally liable to penalty under Section 112 (a) of the Customs Act, 1962. Similarly, the aforesaid discussions also reveal that the co-noticees resorted into deliberate mis-declaration by using false declarations in various documents, which covers the ingredients required to penalize them under Section 114 AA of the Customs Act, 1962.

6.7.2 Role of Customs Broker Shri S.K. Jain.

6.7.3 Role of Customs Broker A.V. Global & co.

6.7.3.1 I find that the Show Cause Notice has alleged that the Customs Broker(CB) aided and abetted the importer in mis-classifying the goods and also proposed imposition of penalty under Section 112(a) and Section 114AA of the Customs Act, 1962.

6.7.3.2 I find that the CB had attended to the clearances of the following goods imported from different ports by the main notice M/s. MEIPL. The role of the CB while handling the following Bills of Entries are as under:

<i>Bill of Entry</i>	<i>Role</i>
<i>9424139 dated 26/02/2013 filed at ICD, Tughlakabad</i>	<i>words "not for retail sale" were added at the behest of the importer. It has been proved during the investigation proceedings that the addition was with the prime knowledge of the importers.</i>
<i>B/E 2129403 dated 14/05/2013 filed at Chennai</i>	<i>words "not for retail sale" were added at the behest of the importer. It has been proved during the investigation proceedings that the addition was with the prime knowledge of the importers. The said words were not there in the checklist and was added later on at the behest of the importers</i>
<i>Bill of Entry no.9171839 dated 30/01/2013 filed by Chennai.</i>	<i>The checklist was forwarded by the CB M/s. A.V. Global dated & Co. to the importers for approval. The importers 30/01/2013 through email, to remove MRP from last two items</i>

	<i>shown in the checklist bill of entry as the air conditioners viz., PS5JAK+PU5YKD were above 3 Ton.</i>
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6.7.3.3 I find that with respect to the aforementioned Bills of Entries, the modus operandi or rather resorted mis-classification and non-declaration of RSP, was at the behest of the importers. Though, it is an acceptable fact that the CBS have an important role in ensuring correctness and truthfulness of the declarations and is expected to act within the limitations of CBLR, the very fact that the prime noticee is an accredited client, enjoying all the privileges of a status quo importer, makes the CB tend to believe in the versions submitted by the importer. Further, the very fact that the RSP based assessment as well as the classification related issues/queries were tackled by the importer directly with the Customs officers, provides limited scope for the CB to re-discover an element of malpractices etc. However, before concluding the omissions and commissions of the CB, I would like to place reliance on the following.

6.7.3.4 It is on record that while assessing the bill of entry no. 821154 dated 15/10/2012 filed for import of CMVRF air conditioners (within diversity ratio) from Thailand customs changed the classification of the air conditioners from 84151010 to 84158110 and denied the benefit of notification and assessed the impugned goods under merit rate of duty. M/S MEIPL has accepted the changed classification and has paid merit rate of duty without any protest. It is pertinent to mention here that no appeal was also filed by M/s MEIPL for the change in classification. Further, in the subsequent 2 bills of entry viz., 8537626 and 8537737, both dated 20/11/2012, filed at Nhava Sheva for import of CMVRF air conditioners, they have classified them under CTH 84158190 and cleared the air conditioners imported from Thailand under merit rate of duty. However, during the same period, i.e. on 26/11/2012, M/S MEIPL has filed bill of entry no 8586807 at Chennai Seaport for clearance of CMVRF and have classified them under in 84151010 and the subject B/E was RMS facilitated and no assessment and examination was prescribed for the said B/E. It is a matter of fact that all the said bills of entry were filed by M/s A.V. Global

Corporation Private Limited, their Custom House Agent. When Shri Ashok Mehta, the Director of M/s AV Global was questioned, he stated that only on the instructions of M/s MEIPL they have classified the goods under tariff item 84151010 at Chennai Seaport and they had not informed the Customs at Tughlakabad and Chennai about the change/amendment in classification at Nhava Sheva for identical goods imported by M/S MEIPL.

6.7.3.5 I find that the CB, M/s. A.V. Global & Co. attended to the aforementioned Bills of Entry, filed at Nhava Sheva and Chennai ports. It is on record that the CB was well aware of the changed classification and the acceptance of the same by the party. It is also on record that the CB filed the Bill of Entry with the same description at Chennai by classifying the same under 84151010, even though, the Nhava Sheva Customs re-classified the similar items under 84158110, which was accepted by the importer. There is nothing on record which reveal that the CB did make an effort to inform the Customs Officers at Chennai that the item with the same description was cleared by Nhava Sheva Customs by re-classifying the same under Chapter subheading 84158110. The CB acts as a link between the Customs and the importers and it was their duty or rather responsibility to bring into picture the true facts. Since, the said Bills of Entries, both at Nhava Sheva and Chennai, were handled by the CB. MS. AV Global & Co. and that too, in a short lapse of time, it was very much easy for the CB to co-relate the facts and bring out whatsoever discrepancies. Though it is an admitted position that the CB filed the said Bill of Entry at Chennai as per the advice of the importers, the CB also had a duty to bring to the notice of Customs, any sort of noticed discrepancy. Therefore, in my considered opinion, the CB erred in bringing the fact of adopting different classifications at different ports to the notice of Customs and such act of omission and commission is in violation of the provisions of Regulation 11(d) of the CBLR, 2013, which renders the CB also liable for penal action under Section 112(a) of the Customs Act, 1962. Similarly, in view of the fact that the CB knowingly resorted to mis classification and mis-declaration, they are equally liable to be penalized under Section 114AA of the Customs Act, 1962."

4.27 We do not find much merits and justification in the order for imposition of penalty. In such cases which are based on the interpretation of tariff entries and admissibility of exemption notification, we find that charges of deliberate misdeclaration to evade duty cannot be sustained, more so over when these issues have been determined in the favour of appellants. In our view the order imposing the penalties on functionaries of the importers and CHA cannot be sustained without assigning specific role to them. We therefore set aside the penalties under section 112 (a) and 114AA imposed on the functionaries of importer and custom broker, following the decision in case of Anand Metal Industries [2005 (187) ELT 119 (T)]

"5. In respect of the penalties imposed on the firm as well as on the partner, as the dispute in question in respect of classification which is purely a legal issue, therefore, the penalties imposed on the firm as well as on the partner are set aside....."

4.28 Appeal No C/88039/2018, has been filed by the appellant challenging the order of Commissioner (Appeal) remanding the matter back to original authority for passing a speaking order in terms of Section 17(5) of Customs Act, 1962. In para 21, Commissioner (Appeal) has observed as follows:

"21. In view of above, the assessment orders in respect of the impugned 02 Bills of entry are set aside and the Asst/ Deputy Commissioner Group V, NS-I, JNCH is directed to make the reassessment of the said Bills of Entry afresh and issue speaking order as required under Section 17 (5) of the Customs Act, 1962. The appellant should also be given opportunity of making submissions and personal hearing in compliance of principles of natural justice."

In our view the aforesaid order of the Commissioner (Appeals) is unblemished and needs to be sustained. While upholding the said order, we notice that the issue of classification and admissibility of exemption notification which we have considered earlier in respect of the earlier imports made by the appellant is in dispute. Therefore while considering the matter in remand proceedings as per the order of the Commissioner (Appeals), adjudicating authority should take note of the observations made by us in this order on these issues and decide accordingly.

5.1 Appeal No C/86106/2017 (Mitsubishi Electric Asia Pte Ltd) and Appeal No C/86107/2017 (Mitsubishi Electric India Pvt Ltd) are partly allowed as per our observations made in para 4.23, 4.25 & 4.26 above.

5.2 Appeal No C/85759/2017 (M/s A V Global Corporation P Ltd), C/86143/2017 (Shri Manoranjan Nayak), C/86144/2017 (Shri Rajeev Sharma) C/86145/2017 (Shri Hiroaki Ashizawa), C/86146/2017 (Shri Shine Yamabe) are allowed.

5.3 Appeal No C/88039/2018 is disposed off subject to the observations made by us in para 4.28.

5.4 As the issues are quite old, the adjudicating authority should determine the matters in remand proceedings within a period of three months from the date of receipt of this order.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(P. Dinesha)
Member (Judicial)

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