

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85509 of 2023

(Arising out of Order-in-Original No. CC-GSS/14/2022-23 Adj. (I) ACC dated 19.12.2022 passed by the Commissioner of Customs (Import), Air Cargo Complex (ACC), Sahar, Mumbai.)

Larsen & Toubro Limited

L&T House, N.M. Marg,
Ballard Estate,
Mumbai – 400 001

.... Appellants

Versus

Commissioner of Customs (Import)

Air Cargo Complex (ACC), Sahar
Andheri (East), Mumbai – 400 099.

.... Respondent

APPEARANCE:

S/Shri Vishal Agarwal, along with Akshit Malhotra, Advocates for the Appellants
Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85701/2025

Date of Hearing: 10.02.2025

Date of Decision: 16.04.2025

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Larsen & Toubro Limited, L&T House, N.M. Marg, Ballard Estate, Mumbai – 400 001 (herein after, referred to as 'the appellants', for short), assailing Order-in-Original CAO No. CC-GSS/14/2022-23 Adj. (I) ACC dated 19.12.2022 (herein after, referred to as 'the impugned order') passed by the Commissioner of Customs (Import), Air Cargo Complex (ACC), Sahar, Andheri (East), Mumbai – 400 099.

2.1 Briefly stated, the facts of the case are that the appellants herein is, engaged in supply of water meters to the Pune Municipal Corporation. For this purpose, the appellants had imported "Battery operated Ultrasonic/ Electromagnetic Automatic Meter Reading (AMR) water meters" of different dimensions viz., 15MM, 20MM, 25MM, 40MM (shortly referred to as 'the water meters') from the supplier abroad M/s. Sensus Slovensko A.S., Slovakia. These water meters have been imported by the appellants in terms of the contract executed between them and Pune Municipal

Corporation (PMC), pursuant to a tender floated under an International Competitive Bid (ICB) for supply of a comprehensive water supply system for Pune city. As per terms and conditions of the tender, the bidder was to supply Battery operated inline non-intrusive Ultrasonic/Electromagnetic water meters with no moving parts to PMC, for installation at the consumer's premises for metering of potable water supply. The said meter was required to measure the water units in metre cube (m³) for volume and metre cube/hour (m³/h) or litres/hour (l/h) for flow rate. Pursuant to the successful bidding of the tender with PMC, an agreement dated 23.02.2018 was entered into between the appellants and PMC, for the execution of contract in which the appellants had in turn entered into a contract dated 16.03.2018 with M/s. Sensus Slovensko A.S., for procurement of the said imported Battery operated Ultrasonic/Electromagnetic AMR water meters. On import, the appellants have classified the water meters under Customs Tariff Item (CTI) 9026 1010 as 'Flow meters', and filed 16 Bills of Entries (B/Es) viz., three B/Es Nos.9118587 dated 04.12.2018, 9139702 dated 06.12.2018 & 2562597 dated 25.03.2019 for import through Jawaharlal Nehru Customs Commissionerate (JNCH) Customs; and thirteen B/Es Nos. 9139698 dated 06.12.2018; 2425892, 2425898, 2425900, 2425906 all dated 14.03.2019; 2472008, 2473484, 2464094, 2462657 all dated 18.03.2019; 2561567, 2561569, 2566612 all dated 25.03.2019; 2588267 dated 27.03.2019, for import through Air Cargo Complex (ACC), Sahar, Mumbai; and self-assessed all such B/Es by claiming the customs duty concession/exemption under serial No. 31 of Notification No.24/2005-Customs dated 01.03.2005, as amended. These goods were cleared by the appellants after obtaining customs clearance of the above B/Es from the jurisdictional customs authorities and imported goods were stored in the appellants' godown premises in Wagholi, Pune for further supply to PMC for use in the said Pune City water supply system.

2.2 According to intelligence developed by the officers of the Directorate of Revenue Intelligence, Amritsar, (DRI) that the appellants have entered into a contract with PMC under the 'Smart City Mission' for proper management of potable water and had imported AMR water meters by mis-classifying it under CTI 9026 1010, instead of correctly classifying it under CTI 9028 2000 as 'Liquid supply meters', DRI had initiated investigation into such imports. DRI had interpreted that these imported domestic potable water meters are mainly for volumetric measurement of

water and revenue billing thereof. On the basis of above intelligence, the business and godown premises of the appellants were searched and documents, imported goods were detained vide panchanams dated 03.12.2019 & 04.12.2019. Further, statements were recorded from persons concerned and the aforesaid detained goods were later seized under Seizure Memo dated 30.12.2019 on the reasonable belief that these imported goods are liable for confiscation under Section 111 of the Customs Act, 1962. The seized goods were also given on provisional release to the appellants, upon execution of bond and bank guarantee by the appellants for the requisite amount as determined by the appropriate authority, in respect of imports made through JNCH port and ACC, Sahar, Mumbai.

2.3 On completion of the detailed investigation, a Show Cause Notice (SCN) dated 30.04.2022 was issued demanding differential customs duty to the tune of Rs.3,32,46,581/- under section 28(4) of the Customs Act, 1962 along with interest and penalty, besides seeking confiscation of the imported goods, which were seized in the course of investigation, under section 111(m) *ibid*. The said SCN was adjudicated vide Order-in-Original dated 19.12.2022 by the learned Commissioner of Customs, wherein the proposals for demand of duty was confirmed under Section 28(4) *ibid* along with interest and the adjudicating authority also appropriated an amount of Rs.3,32,46,577/- paid by the appellants, besides imposition of redemption fine of Rs.3,00,00,000/- under Section 125(1) *ibid* and penalty of an amount equal to the duty demanded under Section 114A *ibid*. Feeling aggrieved with the said impugned order, the appellants has preferred this appeal before the Tribunal.

3.1 The Learned Advocate appearing for the appellants submitted that the disputed goods i.e., Battery operated Ultrasonic/ Electromagnetic AMR water meters had been imported by the appellants in terms of the contract executed with the Pune Municipal Corporation and these are flowmeters, which as per the terms of the tender/contract were required to *inter alia* indicate the rate of flow of the water in metre cube/hour (m^3/h) or litres/hour (l/h), in addition to indicating the volume of water in metre cube (m^3). It is submitted by him that the scope and coverage of entries given for classification of goods under Customs tariff and HSN being identical, the Explanatory Notes (EN) to HSN to the two competing headings viz: CTH 9026 and CTH 9028 have to be referred to for deciding on the correct classification. Learned Advocate stated that as per the EN

to CTH 9026, the said heading covers 'Flow meters' which indicates the rate of flow (in volume or weight per unit of time). The said heading excludes such apparatus which merely indicate the total amount of liquid (volume delivered) over a period of time. Further, he stated that the EN to heading 9028 clarify that the same applies to meters which are used for measuring volumetric units and specifically excludes Flow meters which measure the rate of flow.

3.2 Learned Advocate has also submitted that from the HSN explanatory notes it is evident that a Flow meter, i.e., the meter which indicates the rate of flow (volume or weight per unit of time) is clearly and specifically excluded from CTH 9028. It has been contended by him that, however, a meter which in addition to indicating the rate of flow also indicates the volume would squarely be covered by CTH 9026. Learned Advocate also submitted that there is no dispute about the fact that the water meters imported by the appellants *inter-alia* indicate the rate of flow as also the volume. Further, in explaining about the technical features of the imported goods, he drew attention to the fact that the product literature/brochure of the supplier state that one of the five key features of the product is its ability to measure low flow i.e., with the flow measurement down to one litre per hour, which helps to reduce undetected water leakage by procuring data at intervals as small as every 15 seconds. The brochure also records that unlike other solid meters the iPERL FLX uses remnant magnetic field technology which provides a linear measurement range even down to very low flow rates. The magnetic field acting on the water flowing through the flow channel generates an electrical voltage; this is proportional to the velocity of water (principle of magnetic-inductive flow measurement). Even the technical data sheet records permanent flow rate, starting flow rate, maximum flow rate, minimum flow rate, transitional flow rate. Therefore, he stated that the classification of impugned goods adopted by the appellants under CTH 9026 is correct and is legally sustainable.

3.3 It was further submitted by the learned Advocate that the department has proceeded on the premise that the function of the meter is to measure the consumption of the water i.e. the volume and therefore the imported goods are classifiable under CTH 9028 which has been rebutted by the appellants by explaining the features of the product, and that the classification has to be determined with reference to the terms of the relevant headings and the explanatory notes as given under the Indian

Customs Tariff. Learned Advocate also stated that the issue regarding classification of Flow meters under CTH 9026 (earlier CTH 9024 prior to the amendment to the tariff) is settled by the judgement of the Apex Court in the case of *Moorco (India) Ltd. Vs. Collector of Customs, Madras* - 1994 (74) E.L.T. 5 (S.C.). Therefore, he prayed that the appeal filed by the appellants be allowed.

4. On the other hand, the Learned Authorised Representative (AR) appearing for the Revenue has contended that water meters are specifically covered by description in CTI 9028 2000 and therefore applying Rule 1 of the General Rule of Interpretation of the First Schedule to the Customs Tariff, the water meters imported by the appellants are classifiable under CTH 9028. The fact that the goods imported are not classifiable under CTH 9026 is also evident from the fact that the appellants has not described the imported goods in the B/E as Flow meters; for this reason, he stated that even the decision in the case of *Moorco (India) Ltd. (supra)* cited by the appellants was also inapplicable. Insofar as the reliance on the HSN explanatory notes are concerned, it is contended by him that the Apex Court has in the case of *Coen Bharat Ltd. Vs. Commissioner of Central Excise, Vadodara* - 2007 (217) E.L.T. 165 (S.C.) held that HSN explanatory notes are not required to be relied upon while determining classification under the Central Excise Tariff, when there is no ambiguity in the Tariff item. Therefore, he pleaded that the classification decided in the impugned order is sustainable and the appeal filed by the appellants may not be entertained.

5. We have heard both sides and perused the case records and additional paper books submitted in this case by both sides.

6.1 The issue involved herein is to decide the classification of impugned goods imported by the appellants as to whether, the same merits classification under Customs Tariff Item (CTI) 9026 1010 as claimed by the appellants; or, is it classifiable under Customs Tariff Heading (CTI) 9028 2000 as determined by the learned Commissioner of Customs, for deciding on the appropriate levy of customs duty, in respect of various Bills of Entries filed during the disputed period. Further, it is also required to be decided whether the confirmation of the demand and appropriation of the differential duty which was paid by the appellants during investigation, consequent redemption fine and penalty is legally sustainable on the basis of the determination of the classification of impugned goods.

6.2 In order to address the above issue of classification of imported goods, we would like to refer the relevant legal provisions contained in Section 12 of the Customs Act, 1962; the Customs Tariff Act, 1975 and rules framed thereunder for consideration of proper and appropriate classification of the subject goods under dispute.

"Section 12. Dutiable goods. -

(1) 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 rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

"Section 1. Short title, extent and commencement. -

(1) This Act may be called the Customs Tariff Act, 1975.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 2. Duties specified in the Schedules to be levied. -

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

xxx

xxx

xxx

xxx

THE FIRST SCHEDULE – IMPORT TARIFF

(Refer Section 2)

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF

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

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

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

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

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

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

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

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

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

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

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

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

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are

comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

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 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 "- " or "--".

2. The abbreviation "%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in section 14 of the Customs Act, 1962 (52 of 1962), the duty being equal to such percentage of the value as is indicated in that column.

3. In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable.

ADDITIONAL NOTES

In this Schedule,—

(1)(a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;

(b) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;

(c) "tariff item" means a description of goods in the list of tariff provisions accompanying eight digit number and the rate of customs duty;

(2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;

(3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics."

6.3 From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the imported goods for its correct classification under the First Schedule to Customs Tariff Act, 1975 in accordance with the provisions of the Customs Tariff Act by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the

Customs Tariff Act, 1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

7. In the case before us, the contending classification of imported goods discussed in the impugned order are either under CTI 9026 1010 or under CTI 9028 2000 of the First Schedule to the Customs Tariff Act. Thus, it is clear that at the Chapter level, there is no difference of opinion among the department and the appellants; it is only at the level of heading i.e., CTH 9026 or CTH 9028, there is a difference of opinion. The dispute in classification therefore lies in the narrow compass of analysis of the appropriate Headings under which the impugned goods are covered as per the Customs Tariff and then classifying the impugned product under the corresponding Sub-heading, Tariff Item which is appropriate as per the legal principles of classification of goods. Now, we may closely examine the scope of the contending classification for determining correct classification of the imported goods. The various headings of entire Chapter 96 and the relevant headings and their tariff entries of contending Chapter headings 9026 and 9028, as provided in the First Schedule to the Customs Tariff Act are extracted as below:

"SECTION XVII

**OPTICAL, PHOTOGRAPHIC, CINEMATOGRAPHIC, MEASURING,
CHECKING, PRECISION, MEDICAL OR SURGICAL INSTRUMENTS AND
APPARATUS; CLOCKS AND WATCHES; MUSICAL INSTRUMENTS; PARTS
AND ACCESSORIES THEREOF**

CHAPTER 90

**Optical, photographic, cinematographic, measuring, checking, precision,
medical or surgical instruments and apparatus; parts and accessories
thereof**

Notes :

1. This Chapter does not cover :
(a) articles of a kind used in machines, appliances or for other technical
uses, of vulcanised rubber other than hard rubber (heading 4016), of
leather or of composition leather (heading 4205) or textile material
(heading 5911);

XXX XXX XXX XXX XXX
3. The provisions of Notes 3 and 4 to Section XVI apply also to this Chapter.

XXX XXX XXX XXX XXX
5. Measuring or checking optical instruments, appliances or machines
which, but for this Note, could be classified both in heading 9013 and in
heading 9031 are to be classified in heading 9031.

Chapter Heading	Description of goods
(1)	(2)
9001	Optical fibres and optical fibre bundles; optical fibre cables other than those of heading 8544; sheets and plates of polarising material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked
9002	Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked
9003	Frames and mountings for spectacles, goggles or the like, and parts thereof
9004	Spectacles, goggles and the like, corrective, protective or other
9005	Binoculars, monoculars, other optical telescopes, and mountings therefor; other astronomical instruments and mountings therefor, but not including instruments for radio-astronomy
9006	Photographic (other than cinematographic) cameras; photographic flashlight apparatus and flash bulbs other than discharge lamps of heading 8539
9007	Cinematographic cameras and projectors, whether or not incorporating sound recording or reproducing apparatus
9008	Image projectors, other than cinematographic; photographic (other than cinematographic) enlargers and reducers
9009	* * * *
9010	Apparatus and equipment for photographic (including cinematographic) laboratories, not specified or included elsewhere in this chapter; negatoscopes; projection screens
9011	Compound optical microscopes, including those for photomicrography, cine photo micrography or micro projection
9012	Microscopes other than optical microscopes; diffraction apparatus
9013	Lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this Chapter
9014	Direction finding compasses; other navigational instruments and appliances

Chapter Heading	Description of goods
9015	Surveying (including photo grammatical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders
9016	Balances of a sensitivity of 5 cg or better, with or without weights
9017	Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, callipers), not specified or included elsewhere in this chapter
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scienti graphic apparatus, other electromedical apparatus and sight-testing instruments
9019	Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus
9020	Other breathing appliances and gas masks, excluding protective masks having neither mechanical parts nor replaceable filters
9021	Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability
9022	Apparatus based on the use of X-rays or of alpha, beta, gamma or other ionising radiations, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators, control panels and desks, screens, examination or treatment tables, chairs and the like
9023	Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses
9024	Machines and appliances for testing the hardness, strength, compressibility, elasticity or other mechanical properties of materials (for example, metals, wood, textiles, paper, plastics)
9025	Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments
9026	Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading 9014, 9015, 9028 or 9032
9027	Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes
9028	Gas, liquid or electricity supply or production meters, including calibrating meters therefor
9029	Revolution counters, production counters, taximeters, mileometers, pedometers and the like; speed indicators and tachometers, other than those of heading 9014 or 9015; stroboscopes
9030	Oscilloscopes, spectrum analysers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionising radiations
9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors
9032	Automatic regulating or controlling instruments and apparatus
9033	Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90"

In plain reading of the various entries providing the description of the goods covered under respective headings of Chapter 90, starting from 9001 to 9033, it transpires that all instruments and apparatus and its parts & accessories are covered under this Chapter, irrespective of its usage in various fields/ technology areas or for various purposes. Further, these instruments can be broadly grouped depending upon its usage and other factors as given below:

(i) **Optical instruments/apparatus**, including Liquid Crystal Devices, laser instruments, covered under headings 9001 to 9005, 9012 and 9013;

(ii) **Photographic instruments/apparatus**, covered under headings 9006 and 9008;

(iii) **Cinematographic instruments/apparatus**, covered under headings 9007, and those used both in (ii) & (iii) under headings 9010 and 9011;

(iv) **instruments and apparatus for measuring, checking**, including those for navigational, surveying, weighing, drawing, flow, level, pressure or other variables of liquids, gases mathematical calculation, covered under headings 9014, 9015, 9016, 9017 and 9026;

(v) **precision instruments and apparatus** including thermometers, pyrometers, barometers, hygrometers and psychrometers etc.; physical or chemical analysis instruments; measuring or checking viscosity, porosity, expansion, surface tension, heat, sound, light, electrical quantities, alpha, beta, gamma, cosmic and other ionising radiations etc.; Gas, liquid or electricity supply or production meters, tachometers and speed indicators, models, instruments, apparatus, designed for educational, demonstrational purposes; instruments, apparatus for testing mechanical properties such as hardness, strength, compressibility, elasticity etc., of various materials and automatic regulating or controlling instruments and apparatus; parts and accessories thereof, covered under heading 9023, 9024, 9025, 9027, 9028, 9029, 9030, 9031, 9032 and 9033.

(vi) **medical or surgical instruments and apparatus** including dental, veterinary science, various therapies such as mechano, psychological, ozone, oxygen, aerosol etc., breathing, orthopaedic etc., including complex and highly advanced medical instruments using technology of X-Ray, Radiography, Computerized Tomography (CT), Gamma ray etc.; parts and accessories thereof, covered under headings 9018, 9019, 9020, 9021 and 9022.

From the details of the goods covered as explained above, it could be seen that the general content and arrangement of the goods classified under Chapter 90 covers a wide variety of instruments and apparatus which

are, as a rule, characterised by their high finish and high precision. Further, it is also explained in the WCO’s HS Explanatory notes that most of the goods covered under Chapter 90 are used mainly for scientific purposes (laboratory research work, analysis, astronomy, etc.), for specialised technical or industrial purposes (measuring or checking, observation, etc.) or for medical purposes. Some of these instruments are specified in certain headings, for example, compound optical microscopes (heading 90.11), electron microscopes (heading 90.12), other instruments and apparatus are covered by more general descriptions in headings which refer to a particular science, industry, etc. (e.g., astronomical instruments of heading 90.05, surveying instruments and appliances of heading 90.15, X-ray, etc., apparatus of heading 90.22). There are certain exceptions to the general rule that the instruments and apparatus of this Chapter are high precision types. For example, the Chapter also covers ordinary goggles (heading 90.04), simple magnifying glasses and non-magnifying periscopes (heading 90.13), divided scales and school rules (heading 90.17) and fancy hygrometers, irrespective of their accuracy (heading 90.25).

From the above, it could be seen that the various instruments and apparatus have been grouped in a manner that serves the purpose of classifying these goods as a homogenous group of similar articles, convenient for transacting in the international trade and not on the basis single or few parameters such as technology, complexity of the apparatus, material for which or on which it is used, etc. Therefore, we find that simple binoculars and complex refracting telescopes are classified under heading 9005. The two contending classification in the present dispute is falling under CTH 9026 or CTH 9028, and the respective tariff entries are given below:

"Tariff Item	Description of goods
(1)	(2)
9026	Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading 90.14, 90.15, 90.28 or 90.32
9026 10	- <i>For measuring or checking the flow or level of liquids:</i>
9026 1010	--- Flow meters
9026 1020	--- Level gauges
9026 1090	--- Other
9026 2000	- <i>For measuring or checking pressure</i>
9026 80	- <i>Other instruments or apparatus:</i>
9026 8010	--- Heat meters
9026 8090	--- Other
9026 90	- <i>Parts and accessories"</i>

And

"Tariff Item	Description of goods
(1)	(2)
9028	Gas, liquid or electricity supply or production meters, including calibrating meters therefor.
9028 1000	- Gas meters
9028 2000	- Liquid meters
9028 30	- <i>Electricity meters</i>
9028 3010	--- For alternating current
9028 3090	--- Other
9028 90	- <i>Parts and accessories</i>
9028 9010	--- For electricity meters
9028 9090	--- Other"

8.1 It could be seen that by applying the GIR 1, the position is made clear that Chapter Heading 90.26 covers within its scope and ambit, mainly of five broad categories of goods:

(i) first one i.e., "flow meters" which are instruments and apparatus for measuring or checking **flow of liquids or gases** covered under CTI 9026 1010;

(ii) the second one i.e., "Level gauges" which are instruments and apparatus for measuring or checking **level of liquids or gases** covered under CTI 9026 1020;

(iii) the third one i.e., instruments and apparatus for measuring or checking **pressure of liquids or gases**; covered under CTI 9026 2000;

(iii) the fourth one i.e., "heat meters" for **measuring or checking thermal energy of liquids or gases**; covered under CTI 9026 8010; and

(iv) the fifth one i.e., "Other instruments and apparatus" for measuring or checking (a) flow or level of liquids or gases covered under CTI 9026 1090; (b) other variables of liquids or gases covered under CTI 9026 8090 and (c) parts and accessories of all the above goods, covered under CTI 9026 9000.

8.2. Similarly, by applying same GIR 1, it could also be seen that Chapter Heading 9028 covers within its scope and ambit, mainly of four broad categories of goods:

(i) first one i.e., "**Gas supply or production** meters," covered under CTI 9028 1000;

(ii) the second one i.e., "**Liquid supply or production** meters," covered under CTI 9028 2000;

(iii) the third one i.e., “**Electricity supply or production** meters,” (a) for Alternating Current (AC) covered under CTI 9028 3010; (b) for other types of current such as DC etc. under CTI 9028 3090; and

(iv) the fourth one i.e., “parts and accessories” for (a) Electricity meters covered under CTI 9028 9010; (b) for all other apparatus or equipment under CTI 9028 9090.

These meters are generally fitted with a device driven at a speed proportional to the rate of fluid flow or to the electrical quantity being measured. They are often fitted in a bypass or shunt off the main or connected to measuring transformers, so that only part of the flow passes through them, but are calibrated so as to indicate the total quantity passing through the service pipes or through the main. Gas, liquid or electricity supply or production meters fall in this heading whether or not fitted with a clockwork recording device, or with a simple mechanical or electrical device for bringing controlling, signalling, etc., appliances into action.

8.3 From the above discussion on the scope of coverage of goods under the two contending CTIs in Chapter 90, in terms of GIR-1, we find that the CTI 9026 1010 deals with “instruments and apparatus for measuring or checking flow of liquid”, whereas the CTI 9028 2000 deals with products of “liquid supply or production meters”.

8.4 In order to further examine the classification in terms of various customs tariff entries under the two contending sub-headings CTI 9026 1010 or CTI 9028 2000, we would like to examine the HS explanatory notes of the WCO, which describe in detail the scope and coverage of goods under Customs classification. The HS explanatory notes to chapter heading 9026 *inter-alia* include measuring or checking apparatus incorporating an element sensitive to variation in the quantity to be measured for e.g., Bourdon tube, diaphragm, bellows, semiconductors and devices in which the variations are converted in electrical signals for such measurement. This heading also includes flow meters which operate by using magnetic fields, ultrasound or heat. While providing certain exclusion from the chapter heading 9026, it is specified that “*This heading excludes: (a)..... (b) Apparatus which **merely indicate** the total amount of liquid delivered over a period, which are classified as supply meters in heading 90.28*”. Similarly, HS explanatory notes to chapter heading 9028 *inter-alia* include meters that are used to measure in volumetric units the amount of fluid passing through a pipe. However, flow meters which measure rate of flow

are excluded from the scope of heading 9028, and are classifiable under heading 9026. On harmonious reading of the both the HS explanatory notes to chapter heading 9026 and 9028, it transpires that apparatus which **merely indicate** the total amount of liquid delivered over a time period, are classified in heading 90.28 as "supply meters"; and, instruments and apparatus for measuring or checking flow of liquid/water besides providing additional features including total quantity of liquid/water supplied would be classified in heading 90.26 as "flow meters". Therefore, by clear inference from WCO's HS Explanatory Notes, it can be concluded that an apparatus which indicates both the rate of flow and volume is not excluded from the ambit of CTH 9026.

8.5 It is a fact on record, as seen from the product brochure placed in the case file that the impugned water meters *inter-alia* measures the various flow rates of water in pipe line as m³/h or l/h, besides the total quantity of water flown in the pipe line over a period of time in cubic metre/m³. Therefore, it could be concluded that the impugned water meters which measure the flow rates of water, besides indicating the total quantity of water delivered to the consumer, and having other additional features for billing etc. would be classified only under CTH 9026, and not under CTH 9028 in terms of the above HS explanatory notes.

9.1 Further, in order to evaluate the proper classification of imported goods, we had also examined the facts of the case indicating the actual purpose or use of the imported goods. In other words, the distinction between the two contending classification of goods is better appreciated in examination of the impugned goods as to whether they are used for measuring or checking 'flow of liquid' or for determination of 'production or supply' of liquid including those used for such determination by calibrating the total quantity of production or supply, in order to arrive at the appropriate classification of the impugned goods.

9.2 On the factual matrix, it is not under dispute that all the disputed goods viz., "Battery operated Ultrasonic/Electromagnetic AMR water meters" of different dimensions viz., 15MM, 20MM, 25MM, 40MM have been imported by the appellants for the specific purpose of supply to the Pune Municipal Corporation (PMC). To this effect, we find that the International Competitive Bidding (ICB) issued by PMC vide Tender Notification No.1/2017 specify that the scope of tender is for '*study, survey, investigation, assessment, design validation and revamping of entire Water*

Supply System for Pune city including water audit, NRW reduction, SCADA, bill reading and generation, operation and maintenance of the system from Pure water sump of WTP to the consumer end – Package-I (Parvati WTP Zone)’. The technical specification of the water meters given in the said Tender, *inter alia*, include the measuring principle as given below:

ITEM	SPECIFICATIONS
Measuring Principle	A battery operated inline non-intrusive ultrasonic/ Electromagnetic water meter with no moving parts.
Measuring Units	The measuring units should be m ³ for volume and m ³ /h or l/h for flow rate.
Approvals and certifications	The meter should be type approved and verified according to international water meter Standard OIML R 49 and or ISO 4064...

Accordingly, tender agreement No.337 dated 23.02.2018 was also entered into by the appellants with the Chief Engineer, Water supply project of PMC for supply of water meters as per above specifications. Further, the appellants had also issued a Letter of Intent dated 16.03.2018 to their supplier abroad M/s. Sensus Slovensko A.S., Slovakia for manufacture and supply of water meters fulfilling such technical requirements/specifications.

9.3 In this regard, it is seen that International Organization for Standardization (ISO) standard 4064/ International Organization of Legal Metrology (OIML) standard R 49 specifies the metrological and technical requirements for water meters for cold potable water and hot water flowing through a fully charged, closed conduit or pipelines. The standards prescribed for such water meter instrument is intended to measure continuously, memorize, and display the volume of water passing through the measurement transducer at metering conditions. In the note to this standard it is mentioned that for a water meter, the sensor may be a disc, piston, wheel or turbine element, the electrodes on an electromagnetic meter, or another element. The element senses the flow rate or volume of water passing through the meter and is referred to as a “flow sensor” or “volume sensor”. It is also not under dispute that the terms and conditions of the PMC tender agreement clearly provide that the imported water meters should confirm to the aforesaid ISO 4064/OIML 49 standard, which *inter alia*, specify that it should measure continuously the water flowing in the pipe line for display of volume of water passing through it. Since, the essential condition for which the ISO 4064/OIML 49 standard apply is for measuring the flow of water passing through the pipe line and the volume of water is determined by applying the formula or calculation based on various parameters such as volumetric flow rate in cubic meters per second

or litres per second, velocity of water measures in meters per second, cross sectional area of pipe line measured in square meters, it is evident that the water meters are having the primary function of measuring the flow of water in pipeline. The product catalogue placed on record also indicate that the water meter, *inter alia*, measures the permanent flow rate, starting flow rate, maximum flow rate, minimum flow rate and transitional flow rate of water in pipe line, besides the total quantity of water flown in the pipe line over a period of time, calculated and shown, in cubic metre/m³. Therefore, we are of the considered view that in terms of the prescribed standards of the water meters to be fulfilled in the present case, the imported water meters are appropriately classifiable under CTI 9026 1010 as 'flow meters' for measuring the flow of water.

9.4 In terms of Section 8 of the Legal Metrology Act, 2009, as applicable to weights and measures/measuring instruments, no weight or measure shall be imported unless it conforms to the standards of weight or measure specified therein. Under the rules framed therein viz., Legal Metrology (General) Rules, 2011, in terms of Rule 13(2) *ibid*, every measuring instrument shall conform, as regards physical characteristics, configuration, construction details, materials, performance, tolerances and such other details, to the corresponding specifications laid down for such measuring instrument in Eight Schedule to the said Rules. The standards of conformity 'Water meters (domestic type)' have been specified under Part-III to Eighth Schedule to the Rules of 2011. The nominal sizes permitted therein for water meters are of 15mm, 20mm, 25mm, 40mm and 50mm and the imported goods conforms to this requirement. Further, the metrological characteristics are determined by the metering accuracy, nominal flow rate, minimum starting flow rate, transitional flow rate and maximum flow rate, all of which are complied by the impugned goods in question for supply to the PMC. As the metrological requirements for measuring instrument or apparatus used in any transaction with public are for protection of consumer's interest, the technical characteristics given in the said Rules of 2011 for measuring the various flow parameters provide the essential characteristics for the water supply meter. Therefore, from the perspective of the compliance requirements under the Legal Metrology Act, 2009 and the rules made thereunder also, the imported goods viz., water meters are to be classified as 'flow meters', as these are the metrological properties/characteristics on which the goods are tested for compliance.

9.5 Further, we also note that all imported goods entering into the country are governed by the policy provisions of the Foreign Trade Policy and more specifically the ITC HS Schedule providing the general and specific restrictions and conditions, if any. It is mandated in the General Notes relating to import policy that quality of the products that are subjected to mandatory Indian Standards, as applicable to the domestic goods, shall also be required to be complied with by the imported goods, as it is applied to the quality specified for the product as per the same Indian standards. The items under such mandatory BIS certification is given in Appendix-III of First schedule to the Import Policy of ITC-HS. In respect of BIS quality specifications for new products, it would be deemed to be part of the Appendix-III, from the date of implementation of the said Indian standards for the said products, and the imported products shall conform to the specified Indian Standard from the date of implementation. Bureau of Indian Standards have prescribed IS 779:1994 for "Water meters" of domestic type. Further, such standard also state that it is suitable for measuring the flow of cold potable water at a nominal pressure of 1MPa¹ (Max) ambient temperature. The volume of water passing through the water meter per unit of time; the volume being expressed in litres and the time in hours, minutes or seconds are given under the parameter 'flow rate' and the total volume of water which has passed through water meter in a given time is known as the flow delivered. Further, the technical characteristics determined for conformity with the IS standard also provide for maximum flow rate, nominal flow rate, minimum flow rate, flow rate range, transitional flow rate, pressure loss etc. Therefore, it is seen that the flow rates are the basic parameters for determining the conformity with the standards set for water meters (domestic type), and thus the imported water meters are more appropriately termed as 'flow meters' and not as 'supply or production meters'.

9.6 In terms of the functioning of the water meter under dispute, it is explained in the product literature that it is a static electromagnetic meter, which uses remanent magnetic technology that provides a linear measurement range even down to very low flow rates, in both sides of the pipe line. The magnetic field acting on the water flowing through the flow channel in the pipe lines generates an electrical voltage, that is proportional to the velocity of the water. In terms of the tender agreement entered by the appellants with PMC, these goods were required to clearly indicate the rate of flow (volume per unit of time) as also the volume of water. The

water meters that have been imported comply with this tender requirement as is evident from the suppliers brochure relied upon by the appellants, an extract of which appears in the adjudication order in paragraph 32.1, where it clearly records that the meters offer unparalleled low flow accuracy with high flow durability as also capture previously unmeasured low flow. We have also gone through the photographs of meter reading placed as part of the appeal memorandum which indicates the rate of flow at 2890 l/h as also the volume of water as 533 m³. As stated earlier, there is no dispute that the water meters imported by the appellants indicate both the 'rate of flow' as also the 'volume' of water. In fact, it is the requirement of IS 779:1994 of BIS that the water meter should have an 'indicating device' to provide a reliable, easy and unambiguous reading of the volume of water measured and expressed in litres. Similarly, the Part-III of the Eight Schedule to the Legal Metrology (General) Rules, 2011 also provide for 'flow delivered' to be the total volume of water which has passed through meter in a given time. Therefore, such an feature of indicating the total volume of water flown through the pipeline, in a mandatory requirement and such feature cannot alter the 'water flow meters' to be categorised as 'water supply/production meters'. Therefore, in terms of the discussion on the compliance requirements to various standards as per the laws in force and the tender agreement dated 23.03.2018 and letter of intent dated 16.03.2018 referred in paragraphs 9.2 to 9.5 above, the imported water meters are appropriately classifiable under CTI 9026 1010, and not under the CTI 9028 2000 of the First Schedule to the Customs Tariff Act, 1975.

9.7 Since, the imported water meters are meant for supply to the Water Supply System for Pune city, under the scheme of providing Pure water to the citizens, we had also examined the 'Manual on water supply and treatment system' developed by the Ministry of Housing and Urban Affairs, Government of India, which serve as a useful guide in understanding the water supply system under the *Atal Mission for Rejuvenation and Urban Transformation (AMRUT)*, in catering to the purpose by providing water supply facilities in 500 Class-I cities and *AMRUT 2.0 Mission* which aims to make all Indian cities 'water secure' and provide functional tap connections to all urban households. A specific chapter-13 has been devolved for "water meters" including its classification, explanation and use of such water meters, its essential characteristics, methods of metering the flow of water, installation, maintenance, etc., In the said manual, it is specifically mentioned that 'water flow meter' is a device used for measurement of flow

rate and quantity of liquids passing through the pipe line as a conduit. The extract of the said manual, providing for various types of water meters and explanation for electro magnetic water meters are given below:

13.3 Classification of Water Meters

13.3.1 Water meters are classified based on the purpose for which they are used.

- a. Water meter: Measuring quantity of water for billing
- b. Flow meter: Measuring rate of flow and quantity of water for monitoring and management of water supply system.

13.3.2 Water meters are classified based on the measuring technology used, most common ones are

- (a) Mechanical
 - (i) Single jet
 - (ii) Multi jet
 - (iii) Woltman
- (b) Electromagnetic
 - (i) Full bore
 - (ii) Insertion
- (c) Ultrasonic
 - (i) Clamp on
 - (ii) Insertion
 - (iii) Full bore

All the above classes of meters can also be classified based on the meter reading method used as:

(a) Manual

Meters manually read by the meter reader onsite and recorded

(b) Automatic Meter Reading (AMR)

Meter read and recorded by electronic devices carried by a meter reader walking / driving along the route at fixed intervals

(c) Advanced Metering Infrastructure (AMI)

Automatic transmission of the meter data to the centralised data centre at pre-determined intervals with no human intervention

The most prominent and widely used flow meter for bulk flow measurement is the full bore, inline electromagnetic flow meter. Traditionally, for household connections mechanical Class B Multi jet meters were used, however, with advancements in technology progressive water boards are opting for AMR water meters, especially for high consumption customers. Due to the various advantages, they offer like reduction of cycle time for billing and better customer service. Water flow meters are broadly classified into (i) Bulk flow and (ii) Domestic meters based on usage, as shown in Figure 13.1.



Figure 13.1: Classification of Water Flow Meter based on consumer category

13.6 Electromagnetic Water Meters

Electromagnetic or Magflow water meters’ function on the principle of electromagnetism, called Faraday’s Induction Law, to measure the velocity of the water passing through it. In an electromagnetic meter, a magnetic field is created across the pipe. When water, which is an electrical conductor, moves through the magnetic field, a voltage is induced which is detected by electrodes in the body of the meter. The voltage is directly proportional to the flow velocity, which allows the flow rate to be calculated. Domestic Electromagnetic meter DN15 to DN40 is shown in Figure 13.10 and Bulk Electromagnetic meter DN50 to DN300 is shown in Figure 13.11. They are

available in two models – a. Full bore and b. Insertion type. Insertion type can be used in retrofitting existing large diameter pipelines



Figure 13.10: Domestic Electromagnetic meter DN15 to DN40



Figure 13.11: Bulk Electromagnetic meter DN50 to DN300

The voltage is measured by two electrodes placed at right angles to the magnetic field. The sensor measurement is transmitted via an electric signal to an electronic counter, which converts the velocity readings to volume. The volume of consumption and/or flow rate is normally displayed on an LCD screen, but can also be obtained as an electronic signal to a telemetry system or flow logger.

Electromagnetic meters are accurate within their measuring range. Electromagnetic flow meters are generally accurate in the range from 0.3m/s to 10m/s and their accuracies are normally stated as a sum of the percentage of the reading and percentage of the full-scale value. Most electromagnetic flow meters are configured for a fixed flow velocity range, typically from 0.5 m/s to 10 m/s. These meter is only able to measure flow in the defined velocity range, and thus it is important to select the correct meter for a given situation. Typical accuracy values range from 0.5% to 0.1% but decrease at low flow rates. Electromagnetic Water Meters accuracy is defined as +/- 5% for lower operating flow range and +/- 2% for upper operating flow range (as per ISO 4064 Standard).

Advantages of electromagnetic meters are as follows:

- (i) No obstruction to flow;
- (ii) No pressure loss;
- (iii) No moving parts subject to wear, therefore there is hardly any maintenance
- (iv) Highly accurate and immune to variations in fluid density, pressure, viscosity, or temperature;
- (v) Measures only water, no air;
- (vi) No drift in accuracy over the product life;
- (vii) Composite body, not prone to theft;
- (viii) Very good low flow; and
- (ix) Meter life more than 10 years R800 metrology Class D meters.
- (x) No need for strainers or dirt- boxes.

13.7 . The Electromagnetic Domestic meters operates on battery and battery life is minimum 10 years.Ultrasonic Water Meters

Ultrasonic flow meters utilize the properties and behaviour of sound waves passing through moving water. The ultrasonic meters are of two types depending on different working mechanisms viz, Transit time meters and Doppler meters. The ultrasonic meters are also available as clamp-on, insertion type and inline type.

On perusal of the above details, it transpires that water meters are mainly categorised under various classification based on the flow measurement principle. Further, it is also seen that water flow meters which have nominal internal diameter/*Diametre Nominal* (DN) having a

measuring range, indicated normally, as DN15 to DN40 are referred to as 'domestic electromagnetic water meter', while meters from DN50 to DN300 are referred to as 'bulk electromagnetic meter'. In the electro magnetic water meters, which are akin to the imported goods, the magnetic field created through flow of water is used for determining the total quantity of water flown over a period of time for billing purpose to the consumers. Thus, even the quantity of water consumed or supplied to a consumer, is determined on the basis of flow of water and therefore, it is evidently proved that the impugned water meters of the category "Battery operated Ultrasonic/ Electromagnetic AMR water meters" are 'water flow meters' classifiable under CTI 9026 1010, and not 'water supply /production meters' classifiable under CTI 9028 2000.

10.1 In the impugned order, the learned Commissioner had given some of his finding in support of the classification of impugned goods under CTI 9028 2000 as below:

"32. I find that noticee has imported smart water metres under brand name "iPERL". However, the description given in the Bills of entry was "Battery Operated Ultrasonic/Electromagnetic AMR water metres". On perusal of the product description available in the supplier's website 'www.sensus.com' and the representative picture of the "iPERL water meter" it is observed as under:

(i) I find that the unit "M³" and "GALLONS" are explicitly mentioned on the display of the said goods and thus these water meters were capable of measuring amount of water passing through a pipe in volumetric term as the volumetric term 'm³' is displayed in the water meter.

(ii) The "M³" and "GALLONS" indeed are units for measurement of volume of liquids and fluid capacity. Thus the very availability of these units on display of the goods makes them classifiable at 9028.

(iii) The following benefits of the said goods are mentioned in the Brochure available on the supplier/manufacturer's (Sensus-Xylem brand) website 'https://www.xylem.com/...'

*32.1 The above said benefits are more than sufficient to indicate the impugned goods are smart water metres installed for **reading the consumption of water by the customers and preparing their bills accordingly....***

32.3 I find that these are smart water meters with advanced technology having additional features to detect leakages and manage distribution in an effective manner. These features do not take away the primary function of the device that impugned goods measure consumption i.e., volume and even used for billing purpose. Undoubtedly, the goods attract entry under Tariff Heading 9028, due to its very nature of measuring volumetric flow of water."

From the above extract of impugned order, it is evident that the learned Commissioner had confirmed the classification under CTI 9028 2000, on the premise that the primary function of the importer water meter is measuring the consumption of water and preparing the bills for the customers. In this regard, we find that classification of goods for the purpose of Customs is to be decided on the basis of legal provisions contained under the Customs Tariff Act, 1975 as explained in the preceding paragraphs 6.2 & 6.3 above and the facts of the case as discussed in preceding paragraphs. However, we are unable to find any specific evidence or fact, on the basis of which the learned Commissioner had come to the conclusion that the primary function of imported water meter is measuring the supply/consumption of water.

10.2 We also find that the learned Commissioner had relied upon the classification opinion given in Customs Ruling No. HQ H249751 dated 03.04.2015 mentioned in the SCN, and the details given therein for arriving at a decision in such ruling, for support of his decision in classifying the impugned goods in the present case under chapter 9028. In this regard, we find the Customs Ruling Online Search System (CROSS) is the decision of the authorities in the US Customs and Border Protection agency and it is a binding decision on such authorities and do not have any relevance for legal purposes of classification in India. Further, on careful reading of the same, it is seen that such a decision has also been taken on the fact that the imported goods examined therein *"measures household's water consumption per billing cycle, not the water's flow"*. As the imported goods in dispute in the present case are entirely different from the one referred therein, and the facts of the case are different, we are of the considered view that the learned Commissioner reproducing the portion of such CROSS decision in that customs ruling in paragraph 35.1 of the impugned order and seeking support for his decision for classification of impugned goods under chapter 9028 is not legally sustainable. Furthermore, the classification adopted by the supplier/other importer in a different B/E relied upon by the adjudicating authority for classifying the impugned goods under CTH 9028 without proper comparison of the products in question, does not stand the scrutiny of law.

10.3 In this regard, we have carefully gone through the legal provisions of the Act of 1975 as referred above, and find that for legal purposes, the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes. We

also find upon careful reading of the Chapter Note 3 to Chapter 90, which provide that Notes 3 and 4 to Section XVI apply also to Chapter 90. The said Section Notes, are extracted and given below:

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

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

On applying Note 3 above *mutatis mutandis* to Chapter 90, it would mean that among the contending classification under CTI 9026 1010 and CTI 9028 2000, even after taking into account the finding of the learned adjudicating authority that the imported water meters provide the billing utility to the consumer, we come to a considered opinion that the impugned goods would remain as the 'water flow meters', since in terms of functionality and conformity to the Indian and International standards, the essential function of the said goods remain as measuring the flow of water in domestic water pipe lines. Therefore, in terms of the above discussion on facts and on the basis of explanatory notes to HS and the Chapter Note 3 to Chapter 90, we are of the considered view that the imported water meters are appropriately classifiable under CTI 9026 1010, and not under the CTI 9028 2000.

10.4 We also find that the adjudicating authority, without any basis had concluded that the primary function of the water meters is to measure the volume of water and on such basis, he decided that the impugned goods are classifiable under CTH 9028. We find that the basis suggested by the adjudicating authority for arriving at a classification is clearly without any evidence or supporting fact, and therefore the same cannot be countenanced.

11. We also find that the issue of classification of Flowmeters is settled by the Hon'ble Supreme Court in the case of *Moorco (India) Ltd.*, (supra). The said judgement was, however, rendered in the context of the unamended Customs tariff, wherein CTH 9024 was similar to the present CTH 9026 and earlier CTH 9026 was similar to the present CTH 9028. One

of the difference in the earlier and the present tariff is that unlike the present tariff which in CTH 9026 excludes instruments and apparatus of CTH 9028 the earlier CTH 9024 did not have any such exclusion for the earlier CTH 9026. Despite there being no specific exclusion the Hon'ble Supreme Court by taking note of the fact that the earlier CTH 9024 was a specific heading for Flow meters, i.e. meters that indicate the rate of flow, held that the Flow meters are appropriately classifiable under earlier CTH 9024 which is similar to the present CTH 9026. The extract of the relevant paragraph in the said judgement dated 29.09.1994, is given below:

"4.....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 adverting 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."

From the above, it could be noticed that Hon'ble Supreme Court in its judgement has not given any credence to the submission of the Revenue to the effect that the Flow meter was capable of measuring the volume also and should for this reason be classified in the unamended CTH 9026 (similar to the present CTH 9028).

12. We also find that the ratio laid down by the Hon'ble Supreme Court on classification of water meters in *Moorco (India) Limited*, (supra) in the context of the present tariff has been followed by Co-ordinate Bench of the

Tribunal in another case of *Moorco (India) Ltd. Vs. Collector of Customs, Madras* - 1997 (91) E.L.T. 126 (Tribunal). The apparatus therein was capable of measuring the rate of flow as also the volume. The Tribunal taking note of the decision in the case of *Moorco (India) Ltd.* (supra) have held that 'Flow meters' would be classifiable under the old tariff under CTH 9024 and under CTH 9026 under the new tariff. The relevant paragraphs of the said order of the Tribunal are extracted and given below:

"3. *Ld. D.R. while reiterating department's arguments fairly conceded that in case of appellants themselves Hon'ble Supreme Court has given judgment in their favour in regard to flow meters.*

4. *We have heard both sides. It is contended by the appellants that the appellant's range of products include a complete control device for measuring and dispensing liquids for their customers and the range includes meter for measurement of rate of flow as well as volume of flow - a device to initiate action for variation between the actual and the desired rate and a device to control the flow by means of a valve. These meters are used for measuring petroleum products such as kerosene, diesel, petrol, etc. Typical example would be Madras Refineries Ltd. (MRL) selling to Indian Oil Corporation 5,000 kilolitre of petroleum products for further distribution to retail outlets. MRL would require the product delivery automatically commencing at a specified rate of flow (to avoid frothing of the fluid) increasing the rate of flow to higher value (to step up delivery of the fluid) and ensuring that the exact volume, contracted for (5000 kilolitres) is delivered. The meters manufactured by the appellants are exactly intended to serve this Sector. Hence is a device for measuring, controlling, stopping and operating an action device, an essential part of the meters supplied by the appellants to various process industries.*

The literature placed in the file under operating specifications refers to flow rate. Technical write-up dated December 28, 1987, indicates that the components had been imported for the manufacture of flow meters which measure rate of flow as well as volume of liquid and also incorporate control devices which compare the measured rate of flow or volume with that of actual flow or volume.

5. *Hon'ble Apex Court in the case of M/s. Moorco (India) Ltd. supra held with reference to old tariff that flow meter is specifically classifiable under Heading 90.24 whereas Heading 90.26 is general in nature. It applies to every production meter or any meter for gas, liquid or electricity supply. The Tribunal committed an error of law in classifying the goods under Heading 90.26.*

6. *This Tribunal also vide its Final Order C/1191-1194/96-B, dated 20th September, 1996, held that such goods under the old tariff are classifiable under old Tariff Heading 90.24 and under new tariff under 90.26 CTH.*

7. *Following the ratio of these orders, therefore, we hold that parts imported for flow meters would be classifiable under 90.24 under the old tariff and 9026.90 under the new tariff."*

13. While the issue of classification has to be decided only basis the technical specification and the relevant headings and the explanatory notes thereto, we will nonetheless deal with the submissions made by the Learned Authorised Representative to the effect that water meters are specifically covered under CTH 9028 as also since the appellants had not described the

imported goods as 'Flow meters' in the Bill of Entry the same cannot be classified under CTH 9026. We find both these arguments are absolutely untenable for the reason that firstly CTH 9028 does not cover water meters by name and even if they did, what would have been relevant is to examine the scope and ambit of the said CTH with reference to its Chapter/Section notes. Further the appellants not describing the imported goods in the Bill of Entry as Flow meters is in our view, no ground for ruling out classification under CTH 9026. It is not merely the description of the commodity, but the function and the characteristics thereof that has to be seen before deciding the appropriate classification, at least insofar as the two competing entries CTH 9026 and CTH 9028 are concerned. Further, reliance placed on the judgement of the Hon'ble Supreme Court in the case of *Coen Bharat Ltd.* (supra) does not help the case of the Revenue as in the facts of that referred case, there was a difference in the relevant entries in the Central Excise Tariff vis-à-vis that in the HSN, which is not the position in the present case. This fact has been clearly recorded by the Tribunal in its *Order No. 2899/2001-WZB/C-II dated 05.11.2001* reported in 2002 (145) E.L.T. 175 (Tri. – Mumbai), which was carried in appeal to the Apex Court. The Tribunal therein specifically records in paragraph 4 of its order, as "*it is necessary to note that the portion of heading 73.22 contained in the Central Excise Tariff differs from the portion in heading 73.22 in the HSN*". It is otherwise settled position of law laid down by the Hon'ble Supreme Court in a number of cases that where the HSN and Tariff are aligned, then the HSN explanatory notes are a safe guide for interpreting the Tariff. In the case of *Collector of Central Excise, Shillong Vs. Woodcraft Products Ltd.* - 1995 (77) E.L.T. 23 (S.C.) and in the case of *Commissioner of Central Excise, Salem Vs. Madhan Agro Industries (India) Private Limited* - (2024) 25 Centax 269 (S.C.), the Hon'ble Supreme Court have held that HSN tariff classification can be adopted as a safe guide for classification of goods in resolving the disputes. The relevant paragraph of the said judgement is extracted below:

"12. *It is significant, as expressly stated, in the Statement of Objects and Reasons, that the Central Excise Tariffs are based on the HSN and the internationally accepted nomenclature was taken into account to "reduce disputes on account of tariff classification". Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of Central Excise Tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. The ISI Glossary of Terms has a different purpose and, therefore, the specific purpose of tariff classification for*

which the internationally accepted nomenclature in HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred, in case of any difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI."

14. In view of the foregoing discussions and analysis, and on the basis of the judgements of the Hon'ble Supreme Court and the decision of the Tribunal as discussed above, we are of the considered view that the impugned goods are classifiable under CTI 9026 1010 of the First Schedule to the Customs Tariff Act, 1975. Accordingly, the impugned order dated 19.12.2022 classifying imported goods under heading CTI 9028 2000 does not stand the scrutiny of law and therefore it is liable to be dismissed. Accordingly, we set aside the impugned order dated 19.12.2022 to the extent it had confirmed the adjudged demands on the basis of such revised classification, and imposed fine and penalty on the appellants.

15. In the result, by setting aside the impugned order dated 19.12.2022, we allow the appeal filed by the appellant-importer in their favour with consequential relief, as per law.

(Order pronounced in open court on 16.04.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)