



वित्तमंत्रालय | MINISTRY OF FINANCE
राजस्वविभाग | DEPARTMENT OF REVENUE

सीमाशुल्ककेप्रधानआयुक्तकाकार्यालय

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS

हवाईअड्डाएवंएअरकार्गोकॉम्प्लेक्स

AIR PORT & AIR CARGO COMPLEX

मेनज़िस एविएशन बोब्बा कार्गो टर्मिनल, देवनहल्ली-बेंगलुरु, 560300

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C.NO. VIII/10/391/2019 BACC SIIB

Date: 17.04.2021.

SCN Sl.No: 01/2021-22

DIN: 20210472MP00008184E1

SHOW CAUSE NOTICE

M/s.India Medtronic Pvt Ltd., No.41/41, C/o Kuhne and Nagel, Koduvalli Karani Village, Redhills, Thiruvallur High Road, Chennai – 600 055, holders of Import-Export Code No.3496003171 (*hereinafter also called 'the Importer' or 'the Company'*) have filed 06 Bills of Entry (*hereinafter also referred to as 'BEs'*) for import and clearance of items ***"Camera Control Unit"*** classified by them under Customs Tariff Head (*hereinafter referred to as 'CTH'*) 9018 9044 & 9018 9096 of the Customs Tariff, through Air Cargo Complex, Bengaluru (Indian Customs Port Location INBLR4).

2. The Importer has imported goods viz., *Camera Control Unit*, under 06 BEs during the period from December 2017 to October 2018 and under self-declaration, has classified the said imported goods *Camera Control Unit* under CTH 9018 9044 & 9018 9096 as falling under '*Endoscopes' or 'Laparoscopes'* under the broader description – '*Instruments and appliances used in medical, surgical, dental or veterinary sciences – under: Other Instruments and Appliances'*, and paid BCD @ 5% or 7.5% or 10%and IGST @ 12% in terms of Sl.No.218 of Schedule II of Notification No.01/2017 Integrated Tax (Rate) dated 28.06.2017. The import details of the said goods under the 06 BEs, are as detailed below.

'Camera Control Unit' - CTH: 9018 9044; 9019 9096.

Sl No	BE No & Date	Item Sl No	Description of Goods & CTH Claimed	Assessable Value	BCD Rate	BCD @ 10% (incl SW Cess) Paid	IGST Sch & Sl No	IGST Rate	IGST Paid	Total Duty Paid
1	4453639 18.12.2017	3	(95.3731) CAMERA CONTROL UNIT 95.3731 SET FV10X1 CTH: 9018 9044	3598623	7.5	269897	II-218	12%	465194	743188
2	5182769 12.02.2018	4	(95.3731) CAMERA CONTROL UNIT 35.3731 SET FV10X1 CTH: 9018 9096	7621882	10	762188	II-218	12%	1015235	1853642
3	5517353 09.03.2018	1	(95.3731) CAMERA CONTROL UNIT 95.3731 SET FV10X1 CTH: 9018 9096	3810941	5	190547	II-218	12%	482465	692067
4	5647202 19.03.2018	2	(95.3731) CAMERA CONTROL UNIT 95.3731 SET CTH: 9018 9096	1270314	5	63516	II-218	12%	160822	230689
5	5689856 22.03.2018	11	(95.3731) CAMERA CONTROL UNIT 95.3731 SET FV10X1 CTH: 9018 9096	3810941	5	190547	II-218	12%	482465	692067
6	8358256 06.10.2018	1	(95.3731) CAMERA CONTROL UNIT 95.3731 SET FV10X1 CTH: 9018 9096	2974475	10	297448	II-218	12%	396200	723392
TOTAL				23087176		1774143			3002381	4935045

3. In view of Note 1(h) and Note 2(a) to Section XVIII to the First Schedule of the Customs Tariff covering Chapters 90 to 92, the imported goods viz., *Camera Control Unit*, appeared to be mis-classified under CTH 9018 9044 & 9018 9096 and appeared to be rightly classifiable under CTH 8525 8090 of the Customs Tariff, which attracted BCD at the merit rate of 15% and IGST @ 28% in terms of Sl.No.151 of Schedule IV of Notification No.01/2017 Integrated Tax (Rate) dated 28.06.2017. Accordingly, on account of the mis-classification of the imported goods, the differential duty payable by the Importer, worked out to Rs.63,57,011/-, for the subject import under 06 BEs, as detailed under Annexure-I enclosed to this notice.

4. On the issue being addressed vide letter dated 23.12.2019 informing the mis-classification and requiring to pay the differential duty along with the applicable interest and applicable penalty, the Importer, vide their letters dated 06.02.2020 and 18.02.2020 initially defended their classification of the imported item. However, further, vide their letter dated 19.05.2020, the Importer intimated that upon re-examination of additional facts and the technical specifications and upon undertaking a bonafide review of the appropriate classification, they accept the classification of the imported item '*Camera Control Unit*' under CTH 8525 8090; that, in terms of Sl No.502A of Notification No.50/2017 Cus dated 30.06.2017 as amended by Notification No.92/2017 Cus dated 14.12.2017, the applicable rate for BCD was 10% for goods falling under CTH 8525 8090 and enclosed the computation of differential duty and interest which worked out to Rs.47,47,796/- towards differential duty and Rs.15,53,349/- towards interest on the said differential duty. They also enclosed Challan No.20 dated 20.05.2020 for having paid an amount of Rs.63,03,096/- towards the said differential duty and interest {Paid in excess by Rs.1,951/-}. The revised differential duty was verified and found to be in order.

5. Of the 06 BEs as detailed in Annexure-1 to this Notice, 04 BEs were facilitated through RMS by the System. Further, the differential duty paid by the Importer is beyond the normal period of two years, as opposed to the period contemplated under Section 28(1) of the Customs Act, 1962, in respect of the first 05 BEs as detailed in Annexure-1 to this Notice.

6. Consequent to the amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the Importer himself by filing a Bill of Entry, in the electronic form. Thus, under self-assessment, it is the Importer who has to ensure the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, etc., in respect of the imported goods while presenting the Bill of Entry. The imported items '*Camera Control Unit*', imported under 06 Bills of Entry, were self-assessed by the Importer under Section 17 of Customs Act, 1962 while being filed by them electronically under Section 46 of the Customs act, 1962 and 04 Bills of Entry were facilitated through RMS by the System, due to which, verification of the said assessment and examination by the proper officers were not prescribed in respect of the said Bills of Entry and thereby the goods were given out-of-charge on the basis of the declarations made by the Importers. Hence, it appeared that the Importer is liable to pay penalty.

7.1 A Statement of Shri.Ranjith Kumar, Country Manager (Supply Chain) of M/s.India Medtronics Pvt Ltd., Chennai, whose submissions or depositions are binding on the Company, was recorded on 22.03.2021, wherein, he has *inter alia* admitted and submitted as under, that:

- i. He takes care of compliances in respect of import and export, customs clearances and trade compliance.

- ii. The Company is engaged trading of the Medtronic goods manufactured globally; that, most of the goods are traded within India and about 3-4% is also exported; that, the goods are of Healthcare such as Spine Instruments, Sutures, Mesh, Ventilators.

7.2 On being drawn his attention to the office letter C.No.VIII/10/391/2019 BACC SIIB dated 23.12.2019 referring to the items imported under 06 Bills of Entry during the period from 18.12.2017 to 06.10.2018 as detailed in Annexure-A enclosed to the said letter, wherein the imported items viz., Camera Control Unit, were classified by them under CTH 9018 9044 & 9018 9096 and BCD paid @ 7.5%, 10% & 5% and IGST @ 12% in terms of Sl No 218 of Schedule II of Notification No.01/2017 IT (Rate) dated 27.06.2017, whereas, it was informed that the said items were rightly classifiable CTH 8525 8090, attracting BCD @ 15% and IGST @ 28% in terms of Sl No 151 of Schedule IV of Notification No.01/2017 IT (Rate) dated 27.06.2017, thus resulting in short payment of duty of Rs.63,57,011/-;

and further drawing his attention to their responses vide letters dated 06.02.2020, 18.02.2020 and 19.05.2020 and informing that in their final reply dated 19.05.2020, they had replied that upon re-examination of additional facts, the submissions made in the letter dated 19.05.2020, in suppression to the earlier submissions, may be considered; that, in view of the technical facts governing the use of the imported product and upon taking a bona-fide review of the appropriate classification, they are accepting the classification under CTH 8525, as called for by the Department, by virtue of Chapter Note 2(a) read with Chapter Note 1(h) of Chapter 90 read with HSN Explanatory Notes to CTH 8525; that, the BCD has been calculated by the Department @ 15% but CTH 8525 8090 attracts BCD @ 10% in terms of Sl No.502A of Notification No.50/2017 Cus dated 30.06.2017; that, the Company therefore undertakes to pay the differential duty along with applicable interest accordingly; that, a computation of differential duty with BCD @ 10% was submitted by them, wherein the differential duty worked out to Rs.47,47,796/- and the applicable interest worked out to Rs.15,55,330/-; that, accordingly, a Challan No.20 dated 20.05.2020 for having paid the sum of Rs.63,03,096/-;

and on being asked whether he agrees with the details of the contents mentioned as above, Shri.Ranjith Kumar admitted and submitted, that:

- iii. He agrees with the details of the contents mentioned above; that, he would also like to add that they had filed a letter dated 02.05.2020 with the Department stating that they were reconfirming certain facts about the product and therefore request to keep any further proceedings in abeyance until they filed additional submissions.

7.3 On further being drawn his attention the office letter dated C.No.VIII/10/391/2019 BACC SIIB dated 05.03.2021, wherein, the provisions of Self-Assessment under Section 17 of the Customs Act, 1962, was brought to their notice; that, most of the BEs were facilitated through RMS, was brought to their notice; that, due to facilitation through RMS, assessment & examination by the proper customs officers were neither prescribed nor undertaken and the goods were given out-of-charge based on your Self-Assessment, was brought to their notice; that, in view of most of the BEs being facilitated through RMS, they are liable for penalty under the provisions of Section 28 of the Customs Act, 1962, was brought to their notice; that, they have not responded to the letter dated 05.03.2021;

and on being asked whether they agree with the contents above and whether they agree that they are liable to penalty, Shri.Ranjith Kumar admitted and submitted, that:

- iv. He agrees with the contents of the letter as above. I have affixed my dated signature on the said references as a token of having seen and read the same that, to the said letter dated 05.03.2021, they are submitting our response vide letter dated 22.03.2021; that, they submit that there is no collusion and no suppression of facts by them; that, there was circumstantial evidence that upon re-examining of additional facts with reference to functioning of the product and after confirmation, the Company accepted the change in classification and discharged differential customs duties with applicable interest; that, the matter was with reference to interpretation of classification of CCU

set and they acted in good faith and discharged differential customs duty along with the applicable interest; that, they would also like to mention that the classification was changed to CTH 8525 for the impugned goods suo-moto by the Company for the imports made from 13.02.2019 onwards, which they have also stated in the letter dated 22.03.2021 at Para.1.3; that, therefore, they had no intention to evade payment of customs duties and they acted in good faith throughout the proceedings.

7.4 On being referred to their response to Q.6 in the Statement that they have submitted that the classification was changed to CTH 8525 for the impugned goods suo-moto by the Company for the imports made from 13.02.2019 onwards, which has also been stated in the letter dated 22.03.2021 submitted by them on 22.03.2021, and on being asked as to whether, then, were they not duty bound to check the CTH of the same products imported prior to 13.02.2019 and suo-moto pay the differential customs duties, if any, instead of the Department pointing out the same to them, Shri.Ranjith Kumar admitted and submitted, that:

- v. He submits that it was the Company's mistake to have not checked the prior imports; that, however, it was not a wilful act by the Company and on receipt of intimation from Department they discharged along with the applicable interest.

7.5 On being further asked that even when they claimed that they had suo-moto adopted the change in the classification of the impugned products, they have not agreed and paid the differential customs duties immediately on being pointed out by the Department vide letter dated 23.12.2019 but instead, vide your letters dated 06.02.2020 & 18.02.2020, they have gone on to rebut the Department's proposition and stand by the classification adopted by them in the impugned 06 BEs even when they were in the knowledge that the correct CTH should have been 8525 as per their claim that they have suo-moto revised the classification for the impugned goods;

and on being asked to explain, Shri.Ranjith Kumar admitted and submitted, that:

- vi. On receipt of Department's intimation, the Company was examining the technical aspects and functionality of the impugned goods and they were also examining why there was change in the classification; that, upon mis-understanding of the technical aspect of the impugned goods, they were of the view that the impugned goods were appropriately classifiable under CTH 9018 as it did not include any Camera; that, however, upon receipt of the correct information of the impugned goods, they filed letter dated 02.05.2020 and 19.05.2020 and accepted the classification under CTH 8525 as the appropriate classification; that, accordingly, they have discharged the applicable differential duty liability along with the applicable interest.

7.6 On being drawn his attention to the provisions of Section 28(1) & Section 28(2) of the Customs Act, 1962, Explanation-1 to Section 28 *ibid*, wherein, Section 28(1) *ibid* stipulates "*for any reason other than reasons of collusion or any wilful mis-statement or suppression of facts*"; that, Section 28(1) *ibid* also stipulates *the period as "two years from the relevant date"*: that, Relevant date in Explanation-1 means "*(a) in a case where duty is not levied or not paid or short-levied or short paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods*"; that, Section 28(2) *ibid* stipulates that "*the person who has paid the duty along with interest under clause (b) of sub-section (1)....shall not be served with a notice*";

and on being asked whether he agrees with the above, Shri.Ranjith Kumar submitted, that:

- vii. He agrees with the above.

7.7 On further being drawn his attention to the provisions of Section 28(4), Section 28(5) and Section 28(6) of the Customs Act, 1962, wherein, Section 28(4) *ibid* stipulates "*for reasons of fraud such as collusion or wilful mis-statement or suppression of facts, the proper officer, shall within five years from the relevant date, serve notice on the person chargeable*"; that, Section 28(5) *ibid*

stipulates “where any duty, interest has not been paid for reason of collusion or wilful mis-statement or suppression of facts and a notice has been served on a person, such person shall pay the duty, interest and the penalty equal to fifteen percent of the duty specified in the notice, within thirty days from the date of receipt of notice”; that, Section 28(6) *ibid* stipulates “where the Importer or the agent or the employee of the Importer, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion – (i) that the duty with interest and penalty has been in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A or 140, be deemed to be conclusive as to the matters stated therein”;

and on being asked whether he agrees with the above, Shri.Ranjith Kumar submitted that:

viii. He agrees with the above.

7.8 To the further queries, Shri.Ranjith Kumar, admitted and submitted:

- ix. That, he agrees that all the 06 BEs in question were self-assessed by them and declared the CTH 9018 9044 & 9018 9096 for the imported goods ‘Camera Control Unit’.
- x. That, 04 BEs out of the 06 BEs in question were facilitated through RMS and therefore, the same have not been seen or assessed by the department.
- xi. That, he agrees that the goods *Camera Control Unit* imported under the 06 BEs in question are rightly classifiable under CTH 8525 8090, which they have already accepted vide their letter dated 19.05.2020.
- xii. That, the impugned goods *Camera Control Unit* were wrongly classified under CTH 9018 9044 & 9018 9096 under the 06 BEs in question, which they have already accepted vide their letter dated 19.05.2020.
- xiii. That, however, they do not agree that the mis-classification of the subject goods *Camera Control Unit* under CTH 9018 9044 & 9018 9096, under self-assessment, is a wilful mis-statement, with an intention to pay lesser customs duties.

7.9 On being drawn his attention to a Statement dated 11.01.2021 deposited by Shri.Mariya Alasies, Senior Executive, of M/s.Sanco Trans Ltd., the Custom House Broker of M/s.India Medtronic Pvt Ltd., under Section 108 of the Customs Act, 1962, wherein, Shri.Mariya Alasies (*hereinafter referred to as ‘CHB’*), among other things, has submitted, that:

1. The Importer, M/s.India Medtronic Pvt Ltd., has given the CHB a ‘Master CTH / HSN file’ in respect of all their products. The Master CTH / HSN data is prepared by the Importer’s global team set for determining the CTH in respect of all their products. Based on the Master CTH / HSN file, the import product is identified and the CTH as given in the Master CTH / HSN file by the Company is arrived at. The CHB always rely on the Master CTH / HSN file given by the Company and the CTH was adopted for each of the line entry as per the Master CTH / HSN file.
2. In terms of the contractual agreement with the Company, the CHB is under instructions to follow the Master CTH / HSN file only. Therefore, as bound by the instructions of the Company, the CHB arrive and adopt the classifications as per the Master CTH / HSN file. The CHB do not deviate from the said instructions and the CHB does not have any role to arrive at the CTH independently.
3. Even in the instant case, the CHB has followed the Company’s instructions and adopted the CTH as per the Master CTH / HSN file. The Company has also strictly instructed the CHB to follow the Master CTH / HSN file only and that, if any issues arise regarding CTH or any other, relating to customs clearance, the Company M/s.India Medtronic Pvt Ltd., will directly clarify it to the Customs authorities.

and on being asked whether he agrees with the depositions made by Shri.Mariya Alasies, Senior Executive, M/s.Sanco Trans Ltd., and whether he also agrees that they have told the CHB that they will clarify issues regarding CTH if it arises, Shri.Ranjith Kumar admitted and submitted, that:

- xiv. He agrees with the depositions made by Shri.Mariya Alasies, Senior Executive, M/s.Sanco Trans Ltd., and he also agrees that they have told the CHB that they will clarify issues to the Customs Authorities regarding CTH if it arises.

7.10 On also drawing his attention to the copies of email correspondences between the CHB and the Importer, which is part of the Statement dated 11.01.2021 deposited by Shri.Mariya Alasies, Senior Executive, of CHB M/s.Sanco Trans Ltd., and relating to approval of checklist for the purpose of filing the Bills of Entry in respect of the subject imports under 06 BEs referred to, wherein, among others, they had instructed to file (i) BE 5517353 dated 09.03.2018 under HSN 9018 9096 and (ii) BE 8358256 dated 06.10.2018 under HSN 9018 9044 and on being asked whether he agrees that they had instructed the CHB to adopt the CTHs 9018 9096 and 9018 9044 for the subject imports, Shri.Ranjith Kumar admitted and submitted, that:

- xv. He agrees that they have instructed the CHB to adopt the CTHs 9018 9096 and 9018 9044 for the subject imports.
- 7.11 To the further queries, Shri.Ranjith Kumar admitted and submitted:
- xvi. That, he agrees that the classification under CTH 9018 9066 and 9018 9044 adopted for the subject imports were wrong and has been subsequently accepted by them vide letter dated 19.05.2020, which is after detection of the issue by the Department, resulting in short payment of customs duty to the extent of Rs.47,47,796/-; that, they had missed paying the differential customs duties until the Department's detection of the same.
- xvii. That, he agrees that had the Department not detected and brought to notice, the short payment of customs duties of Rs.47,47,796/-, would have gone un-noticed causing revenue loss to the exchequer, but, however, there was no suppression of fact and no intention to evade payment of customs duties.
- xviii. That, the payment of differential customs duties of Rs.47,47,796/- has been made vide Challan No.20 dated 20.05.2020, and the dates of import under the 06 BEs in question being 18.12.2017, 12.02.2018, 09.03.2018, 19.03.2018, 22.03.2018 & 06.10.2018 in the instant case, he agrees that the customs duties has been paid beyond 02 years in respect of 05 BEs listed at Sl No.01 to 05 of the Annexure.

7.12 On being brought to notice that his attention has already been drawn to Section 28(1) of the Customs Act, 1962 and on being asked that whether he agrees that the stipulation that "for any reason other than reasons of collusion or any wilful mis-statement or suppression of facts" applies to issues covered under the normal period i.e., 02 years from the relevant date, Shri.Ranjith Kumar submitted, that:

- xix. They had received intimation of the Department vide its letter on 23.12.2019 and upon receipt of the Department's letter within two years from the relevant date except 01 BE which was beyond 02 years, they have paid the differential customs duties along with the applicable interest for all the 06 BEs, irrespective of the fact that the letter was served for 01 BE beyond the period of two years.

7.13 On being brought to notice that his attention has already been drawn to Section 28(2) of the Customs Act, 1962 and on being asked whether he agrees that the stipulation that "where the duty along with interest has been paid under sub-section (1) of Section 28" applies to differential duties paid for the issues covered under the normal period i.e., 02 years from the relevant date, Shri.Ranjith Kumar submitted, that:

- xx. He does not agree; that, Section 28(1) prescribes the time of 02 years to serve the notice on the person and not for differential duties; that, as they have paid the applicable differential duty and applicable interest, they had no intention to evade payment of taxes.

7.14 On being brought to notice that his attention has already been drawn to Section 28(4) of the Customs Act, 1962 and on being asked whether he agrees that the stipulation that “for reasons of fraud such as collusion or wilful mis-statement or suppression of facts” applies to issues covered for the period which is beyond 02 years and for an act of wilful mis-statement, as in this case, Shri.Ranjith Kumar submitted, that:

xxi. He agrees to the above.

7.15 To sum up, repetitively, again drawing his attention to the facts of the subject case, that;

- (i) They have agreed that all the 06 BEs were self-assessed by them;
- (ii) They have agreed that the CTH 9018 9066 and 9018 9044 adopted by them, is wrong,
- (iii) 04 BEs out of 06 BEs have been facilitated through RMS because of which assessment or examination were not conducted by the Customs Authorities,
- (iv) The imported goods in question are appropriately classifiable under CTH 8525 8090,
- (v) The wrong classification adopted by them has resulted in short payment of customs duties to the extent of Rs.47,47,796/-,
- (vi) Had it not been detected by the Department, the short payment of customs duties would have gone unnoticed causing revenue loss to the exchequer,
- (vii) The differential customs duties have been paid beyond the normal period of 02 years but for 01 BE out of the 06 BEs in question.

and on being pointed out that, therefore, it is considered that the mis-classification of the impugned imported goods was an act of deliberate and wilful mis-statement with an intention to pay lesser customs duties and for the above reasons and acts, they are therefore liable to pay penalty in terms of Section 114A of the Customs Act, 1962

and on being asked whether they agree, Shri.Ranjith Kumar submitted, that:

xxii. They do not agree that there is an act of deliberate and wilful mis-statement with an intention to pay lesser customs duties and therefore, they are not liable to pay any penalty; that, further, the issue is with respect of interpretation of classification of the product which depends on the technical specifications of the said product, hence, penalty should not be imposed as the matter is related to interpretation of statute.

8.1 In terms of Section 28(1) of the Customs Act, 1962, ‘Where any duty has not been levied or not paid or has been short-levied or short paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts’

- a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short levied or short paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.
- b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of, -
 - i. his own ascertainment of such duty; or
 - ii. the duty ascertained by the proper officer.

8.2 In terms of Section 28(2) of the Customs Act, 1962, ‘The person who has paid the duty along with the interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest;

Provided that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under Section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, is served under clause (a) of sub-section (1) shall be deemed to be concluded.

8.3 In terms of Section 28(4) of the Customs Act, 1962, *'Where any duty has not been levied or not paid or has been short-levied or short paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of collusion or any wilful mis-statement or 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 not paid or has been short-levied or short paid or to whom the refund has been erroneously made, requiring him to show cause why he should not pay the amount specified in the notice.*

8.4 In terms of Explanation 1 to Section 28 of the Customs Act, 1962, *"Relevant Date" means, -*

- a) in a case, where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of the goods;*
- b) in a case where duty is provisionally assessed under Section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;*
- c) in a case where duty or interest has been erroneously refunded, the date of refund;*
- d) in any other case, the date of duty or interest.*

8.5 In terms of Section 114A of the Customs Act, 1962, *'Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of Section 28 shall also be liable to pay an equal penalty to the duty or interest so determined.*

9.1 Whereas, it appears that, it is a fact that the imported goods *'Camera Control Unit'* imported under 06 BEs as detailed in Annexure-1 to this Notice, were wrongly classified under CTH 9018 9044 and 9018 9096 of the Customs Tariff and therefore, it is a fact that there was short payment of customs duty by the Importer to the extent of Rs.47,47,796/- by adopting incorrect rates of BCD @ 5% or 7.5% or 10% and IGST @ 12% in terms of Sl.No.218 of Schedule II of Notification No.01/2017 Integrated Tax (Rate) dated 28.06.2017.

9.2 Whereas, it appears that, it is a fact the Importer has accepted that they have wrongly classified the imported goods *'Camera Control Unit'* and they have paid the differential duty of Rs.47,47,796/- so short paid, along with applicable interest vide Challan No.20 dated 20.05.2020.

9.3 Whereas, it appears that, it is a fact that 04 BEs out of the 06 BEs, were facilitated through RMS by the System because of which the assessment or examination were not prescribed or undertaken by the Customs Authorities and the impugned imported goods were cleared out-of-charge on the basis of the declarations made under their self-assessment.

9.4 Whereas, it appears that, it is a fact that the payment of differential customs duties of Rs.47,47,796/- has been made on 20.05.2020, and the dates of import under the 06 BEs in question being 18.12.2017, 12.02.2018, 09.03.2018, 19.03.2018, 22.03.2018 & 06.10.2018, the customs duties have been paid beyond 02 years in respect of 05 BEs listed at Sl No.01 to 05 of the Annexure.

9.5 Whereas, it appears that, the normal period of 02 years stipulated under Section 28(1) of the Customs Act, 1962, is for the purpose of duty or interest not paid or short-paid and the notice to be served on the person within a period of 02 years from the relevant date, is in relation to the amount of duty not paid or short-paid. Whereas, therefore, the contention of the Importer that the period of 02 years contemplated under Section 28(1) of the Customs

Act, 1962, is for issue of notice and not for payment of differential duties, as contended in the submission to Q.23 in the Statement dated 22.03.2021, is not correct and not tenable.

9.6 Whereas, it appears that, the Importer was in the knowledge of the misclassification of the imported goods inasmuch as they have admitted in the response to Q.6 in the Statement dated 22.03.2021 that the classification of the same goods was changed to CTH 8525 by them for the further imports made by them from 13.02.2019 onwards. Whereas, therefore, the Importer has deliberately and wilfully sought to ignore the imports of the impugned goods made prior to 13.02.2019 which were mis-classified and also deliberately and wilfully sought to ignore the fact that they had short-paid customs duties for such imports made prior to 13.02.2019. Whereas, it also appears that the Importer has admitted the fact that it is their mistake to have not checked the prior imports, as per their submission to Q.7 in the Statement dated 22.03.2021.

9.7 Whereas, it appears that, the instruction by the Importer to their CHB M/s.Sanco Trans Ltd., to adopt CTH 9018 9044 and 9018 9096 for the impugned imported goods and that they will directly clarify to the Customs Authorities if and when any issues arise regarding the CTH, as admitted by the Importer in their submissions to Q.17 in the Statement dated 22.03.2021, is a deliberate and wilful attempt at mis-classifying the impugned imported goods, with an intention to evade payment of customs duties.

9.8 Whereas, it also appears that, the attempt to defend the classification under CTH 9018 9044 & 9018 9096 vide their replies dated 06.02.2020 & 18.02.2020, in response to the Department's letter dated 23.12.2019, is also a deliberate and wilful attempt to hold on to the mis-classification of the impugned imported goods, with an intention to evade payment of customs duties.

9.9 Whereas, it appears that, the Importer has admitted to the fact that the short payment of customs duties, causing revenue loss to the exchequer, would have gone unnoticed but for the detection by the Department and that they have missed paying the differential customs duties until the Department's detection the same, as per their submissions to Q.19 & Q.20 in the Statement dated 22.03.2021. Whereas, therefore, the claim of the Importer that they have acted in good faith and paid the differential duty along with interest; that there is no suppression of fact and no intention to evade payment of customs duties, are not tenable.

9.10 Whereas, therefore, it appears that, the facts, (i) that the imported item *Camera Control Unit* was wrongly classified under CTH 9018 9044 & 9018 9096 of the Customs Tariff; (ii) that, the wrong classification of the imported item was accepted by the Importer and the resultant differential duty along with the applicable interest was paid by the Importer; (iii) that, the imported items under the 04 BEs out of the 06 BEs in question were cleared through RMS facilitation without the assessment or examination of the customs officers; (iv) that, the payment of differential duty and the partial interest, in question, was made beyond the period of 02 years from the dates of the Bills of Entry except for 01 BE; (v) that, the short payment of customs duties would have gone unnoticed causing revenue loss to the exchequer but for the detection of the same by the Department, are facts which are not in dispute by the Importer.

10.1 Whereas, it appears that, under self-assessment, it is the Importer who has to ensure the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, etc., in respect of the imported goods while presenting the Bill of Entry. In the instant case, it appears that the imported items '*Camera Control Unit*' imported under 06 Bills of Entry in question, were self-assessed by the Importer under Section 17 of Customs Act, 1962 while being filed by them electronically under Section 46 of the Customs act, 1962, by classifying or mis-classifying the impugned imported goods under CTH 9018 9044 & 9018

9096 on their own volition and 04 BEs out of the 06 Bills of Entry in question were facilitated through RMS by the System, due to which, verification of the said assessment and examination by the proper officers were not prescribed in respect of the said Bills of Entry and thereby the goods were given out of charge on the basis of the declarations made by the Importers under self-assessment.

10.2 Whereas, it appears that, it is fact that the imported item '*Camera Control Unit*' was deliberately and wilfully mis-classified by the Importer under CTH 9018 9044 & 9018 9096 of the Customs Tariff, on their own volition, for improper clearance to avail the benefit of lesser rate of customs duties, thereby deliberately and wilfully involving in the act of defrauding revenue to the Government. Whereas, therefore, it appears, that the above act falls within the stipulation of "for reasons of fraud such as collusion or wilful mis-statement or suppression of facts" and therefore, gets covered within the ambit of Section 28(4) of the Customs Act, 1962, which includes liability to penalty.

10.3 Whereas, in view of the above, it appears that the Importer has in collusion, deliberately and wilfully mis-stated the facts and short paid customs duties by adopting the incorrect rates of duties on account of their mis-classification of the impugned imported goods. Whereas, it appears the Importer has, therefore, rendered themselves liable to penal action in terms of Section 114A and in terms of Section 117 of the Customs Act, 1962.

10.4 Accordingly, it appears that the provisions of Section 28(4), Section 28AA and Section 114A and Section 117 of the Customs Act 1962 are invokable for recovery the duty short paid along with applicable interest and penalty.

11.1 In terms of Regulation 11 of the Customs Brokers Licensing Regulations, 2013 for the period upto 13.05.2018 and Regulation 10 of the Customs Brokers Licensing Regulations, 2018 {hereinafter referred to as 'CBLR'}, Custom House Brokers {hereinafter referred to as the 'CHB'}, licensed to carry on business relating to, among other things, import of goods, are governed by the regulations as stipulated in the CBLR and are obligated to conduct business in complete fulfilment of the conditions prescribed.

11.2 Whereas, therefore, the CHBs, are required to, among other things, advise his client to comply with the provisions of the Act, other Allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and exercise due diligence to ascertain the correctness of any information which he imparts to a client.

11.3 A Statement dated 11.01.2021 of Shri.Mariya Alasies, Senior Executive, of M/s.Sanco Trans Ltd., the Custom House Broker of M/s.India Medtronic Pvt Ltd., recorded under Section 108 of the Customs Act, 1962, wherein, Shri.Mariya Alasies, whose submissions or depositions are binding on the CHB, among other things, has submitted, that:

1. The Importer, M/s.India Medtronic Pvt Ltd., has given the CHB a 'Master CTH / HSN file' in respect of all their products. The Master CTH / HSN data is prepared by the Importer's global team set for determining the CTH in respect of all their products. Based on the Master CTH / HSN file, the import product is identified and the CTH as given in the Master CTH / HSN file by the Company is arrived at. The CHB always rely on the Master CTH / HSN file given by the Company and the CTH was adopted for each of the line entry as per the Master CTH / HSN file.
2. In terms of the contractual agreement with the Company, the CHB is under instructions to follow the Master CTH / HSN file only. Therefore, as bound by the instructions of the Company, the CHB arrive and adopt the classifications as per the

Master CTH / HSN file. The CHB do not deviate from the said instructions and the CHB does not have any role to arrive at the CTH independently.

3. Even in the instant case, the CHB has followed the Company's instructions and adopted the CTH as per the Master CTH / HSN file. The Company has also strictly instructed the CHB to follow the Master CTH / HSN file only and that, if any issues arise regarding CTH or any other, relating to customs clearance, the Company M/s.India Medtronic Pvt Ltd., will directly clarify it to the Customs authorities.

11.4 Whereas, it appears that, in terms of the CBLR, the CHB is required to exercise due diligence and advise their client to comply with regard to the proper and correct classification of the imported goods.

11.5 Whereas, therefore, it appears that the CHB M/s.Sanco Trans Ltd., conducting business with Customs on behalf of the Importer, were required to exercise due diligence and arrive at the proper classification of the imported goods instead of relying on the Master CTH / HSN file of the Importer. It also appears that the CHB M/s.Sanco Trans Ltd., in case of non-compliance by the Importer, were required to bring the matter to the notice of the authorities in the department, which the CHB has failed to do so.

11.6 Whereas, therefore, it appears that the CHB M/s.Sanco Trans Ltd., have failed to fulfil the obligations cast on them under license to perform as a CHB, thereby failing to comply with the provisions of CBLR and also have therefore abetted in the mis-classification of the imported goods resulting in short payment of customs duties by the Importer, thereby rendering themselves liable for penal action under Section 117 of the Customs Act, 1962.

11.7 Whereas, therefore, it also appears that the CHB M/s.Sanco Trans Ltd., have knowingly or intentionally caused the mis-classification of the imported goods resulting in short payment of customs duties by the Importer, with a deliberate intention to cause revenue loss to the exchequer. Hence, it appears that, they have failed to fulfil the obligations cast on them under license to perform as a CHB and failing to comply with the provisions of CBLR. Whereas, therefore, it appears that the CHB M/s.Sanco Trans Ltd., have rendered themselves liable for penal action under Section 114AA of the Customs Act, 1962.

12. Now, therefore, M/s.India Medtronic Pvt Ltd., No.41/41, C/o Kuhne and Nagel, Koduvalli Karani Village, Redhills, Thiruvallur High Road, Chennai – 600 055, are hereby called upon to show cause to the Additional Commissioner of Customs or Joint Commissioner of Customs, Airport & Air Cargo Commissionerate, Menzies Aviation Bobba Cargo Terminal, First Floor, Air Cargo Complex, Devanahalli, Bangalore as to:

- (i) Why the classification claimed by the Importer under CTH 9018 9044 & 9018 9096 of the Customs Tariff, for the imported items '*Camera Control Unit*', imported by them vide 06 Bills of Entry, during the period from December 2017 to October 2018, as detailed in Annexure-1 enclosed to this Notice, which has also been accepted by the Importer as wrong classification, should not be rejected.
- (ii) Why the said goods '*Camera Control Unit*', should not be held as rightly classifiable under CTH 8525 8090 of the Customs Tariff, attracting BCD @ 10% in terms of Sl No.502A of Notification No.50/2017 Cus dated 30.06.2017 read with Notification No.92/2017 Cus dated 14.12.2017 and IGST @ 28% in terms of Sl.No.151 of Schedule IV of Notification No.01/2017 Integrated Tax (Rate) dated 28.06.2017, which has also been accepted by the Importer as the correct classification.
- (iii) Why an amount of ₹ 47,47,796/- (Rupees Forty Seven Lakhs, Forty Seven Thousand, Seven Hundred and Ninety Six only), being the differential Customs duty (inclusive of BCD, SWS and IGST) in respect of the 06 Bills of Entry, as detailed in the Worksheet enclosed as **Annexure-1**, should not be demanded and recovered from them under the provision of Section 28(4) of the Customs Act, 1962.

- (iv) Why an amount of ₹ 47,47,796/- (Rupees Forty Seven Lakhs, Forty Seven Thousand, Seven Hundred and Ninety Six only), paid by the Importer vide Challan No.20 dated 20.05.2020, should not be appropriated towards the demand at (iii) above.
- (v) Why the applicable interest ₹ 15,53,349/- (Rupees Fifteen Lakhs, Fifty Three Thousand, Three Hundred and Forty Nine only), involved on the differential Customs Duties as mentioned at (iii) above, should not be demanded and recovered from them under the provisions of Section 28AA of the Customs Act, 1962.
- (vi) Why the amount of ₹ 15,53,349/- (Rupees Fifteen Lakhs, Fifty Three Thousand, Three Hundred and Forty Nine only) paid by the Importer vide Challan No.20 dated 20.05.2020, should not be appropriated towards the demand of interest at (v) above.
- (vii) Why penalty should not be imposed on the Importer under Section 114A of the Customs Act, 1962.
- (viii) Why penalty should not be imposed on the Importer under Section 117 of the Customs Act, 1962.

13. M/s.India Medtronics Pvt Ltd., Chennai, are hereby required to produce at the time of showing cause all the evidences upon which they intend to rely in support of their defence. They are also required to indicate in their written submission as to whether they wish to be heard in person before the case is adjudicate, failing which it will be construed that they do not wish to be heard in person.

14. If no reply is received within 30 days of receipt of this notice or if they do not appear before the adjudicating authority when the case is posted for hearing, the case is liable to be decided *ex-parte* based on the available evidence on record.

15. The department reserves the right to add, amend, modify, delete any part or the portion of this notice and any such addendum, amendment, modification, deletion, if made, shall be deemed to be part and parcel of this notice.

16. Attention is invited to the legal provisions relating to settlement of cases contained in Chapter XIV A of the Customs Act, 1962. You are eligible to avail the facility of the settlement of the case as per Section 127B of the Customs Act, 1962, subject to compliance of the provisions therein. In case you are interested in the same, you may apply to the Customs, Central Excise & Service Tax Settlement Commission, Additional Bench, II Floor, Narmada Block, Custom House, No.60, Rajaji Salai, Chennai – 600 001 as per the prescribed procedure and also inform the same to the Adjudicating Authority.

17. M/s.Sanco Trans Ltd., Bangalore, the Customs House Broker for the Importer, are also hereby called upon to Show Cause to the Additional / Joint Commissioner of Customs, Office of the Principal Commissioner of Customs, Airport and Air Cargo Complex, 1st Floor, Menzies Aviation Bobba Air Cargo Terminal, Kempegowda International Airport, Bengaluru – 560 300 as to why:

- i. Penalty under Section 117 of the Customs Act, 1962 should not be imposed on them for their failure to exercise due diligence and arrive at the proper classification of the imported goods instead of relying on the Master CTH / HSN file of the Importer thereby abetting in the act of improper classification resulting in payment of lesser customs duties, and for their failure to bring the matter to the notice of the authorities in the department.
- ii. Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on them for mis-classification of the imported goods resulting in short payment of customs duties by the Importer caused with a deliberate intention to mis-lead the Department and cause revenue loss to the exchequer, while doing business for the purpose of the Customs Act, 1962.

18. M/s.Sanco Trans Ltd., Bangalore, are hereby required to produce at the time of showing cause all the evidences upon which they intend to rely in support of their defence. They are also required to indicate in their written submission as to whether they wish to be heard in person before the case is adjudicate, failing which it will be construed that they do not wish to be heard in person.

19. If no reply is received within 30 days of receipt of this notice or if they do not appear before the adjudicating authority when the case is posted for hearing, the case is liable to be decided *ex-parte* based on the available evidence on record.

20. The department reserves the right to add, amend, modify, delete any part or the portion of this notice and any such addendum, amendment, modification, deletion, if made, shall be deemed to be part and parcel of this notice.

21. Attention is invited to the legal provisions relating to settlement of cases contained in Chapter XIV A of the Customs Act, 1962. You are eligible to avail the facility of the settlement of the case as per Section 127B of the Customs Act, 1962, subject to compliance of the provisions therein. In case you are interested in the same, you may apply to the Customs, Central Excise & Service Tax Settlement Commission, Additional Bench, II Floor, Narmada Block, Custom House, No.60, Rajaji Salai, Chennai – 600 001 as per the prescribed procedure and also inform the same to the Adjudicating Authority.

22. The following documents are relied upon in this show cause notice:

- (i) Worksheet for computation of differential duty of customs – *Annexure-1*.
- (ii) Statement dated 25.02.2021 of Shri.Ranjith Kumar, Country Manager (Supply Chain), of M/s.India Medtroncis Pvt Ltd., along with the enclosures – *Annexure-2*.
- (iii) Statement dated 11.01.2021 of Shri.Mariya Alasies, Senior Executive, M/s.Sanco Trans Ltd., along with the enclosures – *Annexure-3*.

Encl: As above.

(M.J.CHETHAN)

J/C Joint Commissioner of Customs
ACC, Bangalore.

To:

1. M/s.India Medtronic Pvt Ltd.,
No.41/41, C/o Kuhne and Nagel,
Koduvalli Karani Village, Redhills,
Thiruvallur High Road, Chennai – 600 055
2. M/s.Sanco Trans Ltd.,
No.2653, Skanda Sai,
First Floor, 2nd Cross, 15th Main, E-Block,
Sahakar Nagar, Bangalore – 560 092.

[S.P.A.D]

[S.P.A.D]

Copy to:

The Superintendent of Customs (Adjn), Airport & ACC Customs Commissionerate, Air Cargo Complex, Bengaluru- 560 300 along with the relied upon documents referred in the notice.

Received Original SCN along with
Annexures of M/s. India Medtronic Pvt Ltd. Chennai
(2) M/s. Sanco Trans Ltd. (CHA) Today
on 19.04.21

Narmadha
19/04/21
Sanco Trans Ltd
VENUGOPAL.P
9538890203