

1  
Treasury Rule 92)  
Challan of amount paid into the  
Canara Bank / State Bank of India

Challan No.....  
Accounting Collectorate Officer,  
Pay & Accts. Officer, Bangalore,  
Division : The Customs & Central Excise.

AIR CARGO COMPLEX / I.C.D.

Range.....

Bank STATE BANK OF INDIA / CANARABANK

Code No.....

Name & Address of the Assessee / Remitter.....  
Millar Lubia  
Electronic Pvt Ltd.

Whom tendered : M/s. Sanco Trans Ltd.

Full Particulars of the remittance of authority If any	HEAD OF ACCOUNT (Major Head Customs Duties Minor Head (Indicate below the appropriate Head from the list on the reverse)	Account Tendered				Counter Signature of the Departmental Officer (Where Required)
		By Cash		By Cheque Draft any Order etc.		
		Rs.	P.	Rs.	P.	
Y / AWB No.	037 Customs			63,03,096	00	DD No 157786
ate :	Imports Duty					
IE. No. AA53639	Differential					
ate : 18-05-20	Duty and					
5182769	Interest					
5582769						
5517353						
5689856						
8358256	TOTAL			63,03,096	00	

In words Rupees Sixty Three Lakh Three Thousand  
and ninety six only  
Date 20.05.20  
Signature of Tenderer Venugop

(To be filled by the Bank)

Received payment ( in words) Rupees.....

Date.....

Bank's Receipt Stamp



SBI		Devanahalli Air Cargo Complex	
BENGALURU - 560 300		NON EXCISE DUTY PAID	
Signature of the authorised officer of the Bank		Name of the Branch	
BI code 11353	20 MAY 2020	BI code 11353	
CASH	CLEARING	TRANSFER	
Maker	Checker 1	Checker 2	

Bank of America



EA Chambers, Express Avenue, 8th Floor No.49,  
50 L, Whites Road, Royapettah, Chennai - 600  
014

IFSC: BOFA0CN6215, BOFA0BG3978



Issued in arrangement with SBI, Mumbai Main Branch  
Payable at PAR at all SBI branches

Bank Reference 6215140D0G74000

Valid for 3 months only

1 9 0 5 2 0 2 0  
D D M M Y Y Y Y

Pay THE COMMISSIONER OF CUSTOMS, BANGALORE\*\*\*\*\*

or Order

रुपये Rupees Sixty three lakhs three thousand ninety six rupees only

को या उनके आदेश पर

अदा करें

₹

\*\*\*63,03,096.00\*\*\*

A/c. No. 31743307233

By order of: INDIA MEDTRONIC PRIVATE LIMITED



A/C PAYEE ONLY  
NOT NEGOTIABLE

*Vishwanathan*

*R. Parameswaran*

S. Ganapathi

R. Parameswaran

Pls sign above

STATE BANK OF INDIA

CBS MENU: Service Branch - Dividend Warrant Menu

Payment through fund transfer - Screen No. 51073, Inward Clg. (Manual) - Screen No. 51071

BEFORE RETURNING Please contact on - 022-22691446/22654955

157786 400002010: 000544 29

Bank of America



EA Chambers, Express Avenue, 8th Floor No.49, 50  
L, Whites Road, Royapettah, Chennai - 600 014

Please direct any enquiries about this payment to our  
Payments Enquiries Service at the location shown  
quoting Our Reference: 140D0G74000

By order of:

INDIA MEDTRONIC PRIVATE LIMITED

Date: 19 May 20

We Enclose a Cheque

For: INR\*\*\*63,03,096.00\*\*\*

To: THE COMMISSIONER OF CUSTOMS, BANGALORE

Delivery: Mail

Check No.: 157786

Cust Ref 140D0G74000

Remittance Advice

Invoice	Date	PO/Remarks	Original Amount	Deductions	Amount Paid
		PRINT ON SBI STATIONERY IN BANGLORE BR AND HANDOVER TO VISHWANATHA			
				INR	0.00

*Ram*  
*20/05/2020*  
*5 upda (SMB)*

# Medtronic

## India Medtronic Pvt Ltd

CIN: U33110MH1993PTC204814

Doshi Towers, 6th Floor,

156, Poonamallee High Road,  
Kilpauk, Chennai - 600010, India  
www.medtronic.co.in

Date: 19.05.2020

To,  
The Deputy Commissioner of Customs,  
Air cargo complex  
Bangalore International Airport  
Devanahalli,  
Bengaluru - 560300

Dear Sir,

**Sub: Classification of Camera Control Unit Set under Customs Tariff Act, 1975**

**Ref: 1) Query vide Letter in C. No. VIII/10/391/2019 BACC SIIB dated 23<sup>rd</sup> December 2019**

**2) Submissions vide letter dated 6<sup>th</sup> February 2020, filed on 7<sup>th</sup> February 2020**

**3) Submissions vide letter dated 2<sup>nd</sup> May 2020, filed on 4<sup>th</sup> May 2020**

### 1.0 Background

1.1 We, India Medtronic Private Limited (hereinafter referred to as 'Medtronic' or 'the Company' or "we"), are the holder of IEC no. 3496003171. The Company is primarily engaged in the import and re-sale of medical instruments and appliances in India.

1.2 Medtronic had imported the captioned product ("Camera Control Unit Set" or "CCU Set" or "the product") and classified the product under Customs Tariff Heading (CTH) 9018 of Custom Tariff Act ("CTA"), 1975, basis the fact that this product can be used only with medical instruments and not for general use. However, from 2019 onwards the CCU Set imported has been classified by the Company under CTH 8525 and appropriate customs duty has been paid. The Customs authorities have accepted both the classifications and the bill of entries were assessed.

1.3 Now, in December 2019, your good self has raised a query vide captioned letter dated 23<sup>rd</sup> December 2019, whereby it has been mentioned that the Camera Control Unit Set should be classified under CTH 8525 80 90 'Television cameras, digital cameras and video camera recorders - Others' and therefore directed us to pay a differential duty of INR 63,57,011 along with applicable interest and penalty, on account of wrong classification of the product.

A copy of the captioned letter dated 23<sup>rd</sup> December 2019 is enclosed as **Exhibit – I**

1.4 We had filed our response to the captioned letter dated 23<sup>rd</sup> December 2019, vide our letter dated 6<sup>th</sup> February 2020, filed on 7<sup>th</sup> February 2020.

A copy of our submissions filed on 7<sup>th</sup> February 2020 is attached as **Exhibit – II**

1.5 In the course of time, certain additional facts regarding the functioning of the product came to our light which necessitated the re-examination of the appropriate classification of the Camera Control Unit Set.

1.6 Accordingly, we filed the captioned letter dated 2<sup>nd</sup> May 2020 before your good-self on 4<sup>th</sup> May 2020 requesting for an additional time of two weeks to inform your good-self about any modification or additions in our submissions.

A copy of our submissions filed on 4<sup>th</sup> May 2020 is attached as **Exhibit – III**

1.7 Upon re-examination of the additional facts with respect to the functioning of the product, we would like to make the below submission for your kind consideration. We request you to kindly consider this submission in suppression of our submission dated 6<sup>th</sup> Feb 2020.

# Medtronic

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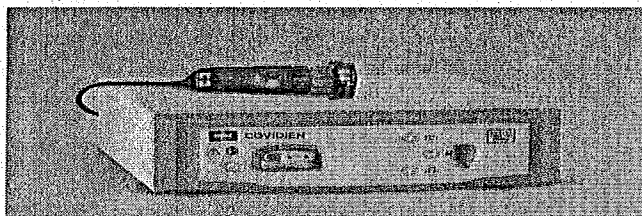
Doshi Towers, 6th Floor,

156, Poonamallee High Road,  
Kilpauk, Chennai – 600010, India  
www.medtronic.co.in

### 2.0 Our Submission:

#### Detailed description and functions of the Camera Control Unit Set:

- 2.1 Camera Control Unit Set is a combination of Camera Control Unit along with the Camera head. The Camera Control Unit enables the configuration of the Camera head (mounted over Camera Control Unit) and defines the basic settings. The Camera Control Unit performs image settings, white balance, captures images before or during procedures with the pre-defined camera head buttons.
- 2.2 The Camera Control Unit is a device used for the reception, conversion, and transmission of data and it pulls data from the camera head and sends it to the monitor. It is the electronic component that the camera head plugs into (as input), it processes the information, and sends it to the monitor.
- 2.3 The CCU Set is a part/ component of a 'Laparoscopic Visualization System' and cannot function on a standalone basis. The CCU set is principally designed to be used for medical or surgical purposes only. An image of the CCU set (in the condition at the time of import) is attached below for your reference and consideration:



- 2.4 In view of the technical facts governing the use of the imported product, and upon undertaking a bona-fide review of the appropriate classification, we are accepting the classification of CCU Set under Chapter 8525 by virtue of Chapter Note 2(a) read with Chapter Note 1(h) of Chapter 90, read along with the HSN explanatory notes to CTH 8525.
- 2.5 We would like to highlight that in the calculation sheet referred as **Annexure A** to the captioned letter dated 23 December 2019, the basic customs duty (BCD) rate has been considered as 15% under CTH 85258090. We submit that as per **Sr. No. 502A of Notification No. 50/017 – Customs dated 30<sup>th</sup> June 2017 as amended by Notification No. 92/2017 - Customs dated 14<sup>th</sup> December 2017**, the BCD rate applicable for all goods (except CCTV camera/IP camera) falling under CTH 852580 at 10%. Therefore, the applicable rate of BCD on classification of CCU set under CTH 8525 shall be 10%.
- 2.6 Further, we submit that it is a settled principle in law that the benefit of a legitimate exemption should be allowed while computing the duty payment. In this connection, reliance is placed in the decision of the Hon'ble Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) in the case of **Zenith Computers Ltd [2017-TIOL-1087-CESTAT-MUM]** held that
- "We find that the Commissioner (Appeals) finding that the Appellants had not initially claimed exemption in the Bills of Entry is also not tenable in light of settled position of law that the legitimate exemption, which was otherwise available under the statute, cannot be denied just because of the same was not claimed initially. We are of the view that although the benefit of said Notification was not claimed by the Appellants at the time of import, but claimed later, the legitimate exemption, which was otherwise available, should not have been denied."*
- 2.7 Further, reliance is also placed on the decision of the Hon'ble CESTAT in the case of **Rallis India [2016 (12) TMI 11 - CESTAT MUMBAI]** wherein it was held that:

*"In our view, there is no reason to deny the alternate exemption notification. If the importer fails to comply with the condition of the notification which was claimed at the time of import, the duty is required to be paid as per the rate applicable and as per any other notification, if available to the imported goods. Only because the*

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*notification was not claimed at the time of import and claimed later, the legitimate exemption, which otherwise available under the statute, cannot be denied. This issue has been settled in the various judgments."*

- 2.8 In view of the above, the Company undertakes to pay the differential duty along with applicable interest, as per the calculation attached in **Exhibit – IV**. The challan evidencing the payment made is enclosed as **Exhibit – V**.
- 2.9 With respect to the applicability of penalty under Customs Act, 1962, reference is made to Section 28 of the Customs Act, 1962 which clearly states that if the customs duty along with the interest is paid before issuance of show cause notice, the customs officer shall not serve any show cause notice for duty or interest or any penalty under Customs Act 1962.

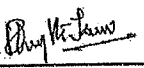

The relevant para of Section 28 (2) of the Customs Act, 1962, is reproduced here-in-below:

*(2) The person who has paid the duty along with 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*

- 2.10 We submit that the case in hand squarely falls under Section 28(2) of the Customs Act, 1962. Further our bonafide intentions are proved from the fact that the classification was suo-moto changed by the Company the moment we realized that the correct classification should be 8525 and accordingly imported all the shipments in 2019 under 8525, which is also accepted in the captioned letter dated 23<sup>rd</sup> December 2019. Therefore, we submit that penalty is not payable in the instant case.
- 2.11 Without prejudice to the above, we would like to highlight that it is a settled principle in law that penalty is attracted where there is a mala fide intent i.e. an intention to evade payment of taxes or any will-full misstatement or suppression of facts. Reliance is placed on the judgement pronounced by the Hon'ble Supreme Court in the case of **Hindustan Steel Ltd. vs. State of Orissa 1978 E.L.T. 154** wherein it was held that 'an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation.'
- 2.12 In view of aforesaid submissions, we request you to accept the payment of differential customs duty along with interest and close the proceedings. Please consider this submission in supersession to our earlier submissions made on 7<sup>th</sup> February 2020.

Yours Faithfully,

For India Medtronic Private Limited

Authorized Signatory

Name: R. Ranjith Kumar

Title: Country Manager

Encl: As Enclosed

**India Medtronic Private Limited**

Calculation of differential duty and interest on CCU

Details						
S. No.	BoE No.	BoE Date	Item Sl. No.	CTH claimed	Item description	Assessable Value
1	4453639	18/12/2017	3	90189044	(95.3731) Camera Control Unit 95.3731 SET FV10X1	3,598,623
2	5182769	12/02/2018	4	90189096	(95.3731) Camera Control Unit	7,621,882
3	5517353	09/03/2018	1	90189096	(95.3731) Camera Control Unit	3,810,941
4	5647202	19/03/2018	2	90189096	(95.3731) Camera Control Unit	1,270,314
5	5689856	22/03/2018	11	90189096	(95.3731) Camera Control Unit	3,810,941
6	8358256	06/10/2018	1	90189096	(95.3731) Camera Control Unit	2,974,475

Duty paid					
BCD rate	BCD amount	SWC/Cess am	IGST rate	IGST amount	Total duty
7.50%	269,897	8,097	12%	465,194	743,188
10.00%	762,188	76,219	12%	1,015,235	1,853,642
5.00%	190,547	19,055	12%	482,465	692,067
5.00%	63,516	6,352	12%	160,822	230,689
5.00%	190,547	19,055	12%	482,465	692,067
10.00%	297,448	29,745	12%	396,200	723,392

Duty payable						
Proper CTI	BCD rate	BCD amount	SWC/Cess at	IGST rate	IGST amount	Total duty
85258090	10%	359,862	10,796	28%	1,111,399	1,482,057
85258090	10%	762,188	76,219	28%	2,368,881	3,207,288
85258090	10%	381,094	38,109	28%	1,184,440	1,603,644
85258090	10%	127,031	12,703	28%	394,814	534,548
85258090	10%	381,094	38,109	28%	1,184,440	1,603,644
85258090	10%	297,448	29,745	28%	924,467	1,251,659

Differential Duty payable				Interest calculation			
BCD amount	SWC/Cess amount	IGST amount	Total duty	Date of payment	Delay days	Interest amount	
89,966	2,699	646,205	738,869	21/05/2020	885	268,726	
-	-	1,353,646	1,353,646	21/05/2020	829	461,167	
190,547	19,055	701,975	911,577	21/05/2020	804	301,195	
63,516	6,352	233,992	303,859	21/05/2020	794	99,150	
190,547	19,055	701,975	911,577	21/05/2020	791	296,325	
-	-	528,267	528,267	21/05/2020	593	128,738	
<b>4,747,796</b>				<b>1,555,300</b>			

Differential Duty Paid 6,303,096

**Note:**

1) Sr. No. 502A of Notification No. 50/2017 - Customs dated 30 June 2017 provides for BCD exemption at 10% to goods falling under CTH 8525 80 - All goods other than CCTV cameras/ IP cameras

