IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75809 of 2024

(Arising out of Order-in-Original No. KOL/CUS/A&A/Pr. COMMISSIONER/ADJN/11/2024 dated 13.03.2024 passed by the Principal Commissioner of Customs (Airport & A.C.C.), Custom House, 15/1, Strand Road, Kolkata – 700 001, West Bengal)

M/s. Eldyne Electro System Private Limited **: Appellant**
P-21, Old Ballygunge Road,
Kolkata – 700 019 (West Bengal)

VERSUS

Principal Commissioner of Customs **: Respondent**
Airport and Air Cargo Commissionerate,
Custom House, 15/1, Strand Road,
Kolkata – 700 001 (West Bengal)

WITH

Customs Appeal No. 75802 of 2024

(Arising out of Order-in-Original No. KOL/CUS/A&A/Pr. COMMISSIONER/ADJN/11/2024 dated 13.03.2024 passed by the Principal Commissioner of Customs (Airport & A.C.C.), Custom House, 15/1, Strand Road, Kolkata – 700 001, West Bengal)

Shri Santanu Basu, **: Appellant**
M/s. Eldyne Electro System Private Limited
P-21, Old Ballygunge Road,
Kolkata – 700 019 (West Bengal)

VERSUS

Principal Commissioner of Customs **: Respondent**
Airport and Air Cargo Commissionerate,
Custom House, 15/1, Strand Road,
Kolkata – 700 001 (West Bengal)

AND

Customs Appeal No. 75807 of 2024

(Arising out of Order-in-Original No. KOL/CUS/A&A/Pr. COMMISSIONER/ADJN/11/2024 dated 13.03.2024 passed by the Principal Commissioner of Customs (Airport & A.C.C.), Custom House, 15/1, Strand Road, Kolkata – 700 001, West Bengal)

Ms. Rupanjali Dey, **: Appellant**
M/s. Eldyne Electro System Private Limited
P-21, Old Ballygunge Road,
Kolkata – 700 019 (West Bengal)

VERSUS

Principal Commissioner of Customs **: Respondent**
Airport and Air Cargo Commissionerate,
Custom House, 15/1, Strand Road,
Kolkata – 700 001 (West Bengal)

APPEARANCE:

Shri Arnab Chakraborty, Advocate,
Shri Hasmukh Kundalia, Advocate,
For the Appellant(s)

Shri Subrata Debnath, Authorized Representative,
Shri Rajarshi Chakraborty, Authorized Representative,
Shri Sameer Chitkara, Authorized Representative,
for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76209-76211 / 2026

DATE OF HEARING: 17.09.2026

DATE OF DECISION: 24.09.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present three appeals have been filed by (i) M/s. Eldyne Electro System Pvt. Ltd., having its address at P-21, Old Ballygunge Road, Kolkata – 700019, IEC No. 0289015294, [hereinafter referred to as the "appellant-company" or "appellant no. 1"], (ii) Shri Santanu Basu, Chairman-cum-Managing Director of the appellant-company [hereinafter referred to as "appellant no. 2"], and (iii) Ms. Rupanjali Dey, Chief Financial Officer of the appellant-company [hereinafter referred to as "appellant no. 3"], against the Order-in-Original No. KOL/CUS/A&A/Pr. COMMISSIONER/ADJN/11/2024 dated 13.03.2024 passed by the Principal Commissioner of Customs (Airport & A.C.C.), Custom House, 15/1, Strand Road, Kolkata – 700001, whereby the classification declared by the appellant-company (importer) for the imported Digital Axle Counter ("DAC") under Customs Tariff Item No. 86080030 was rejected ordering re-classification of the same under Customs Tariff Item

No. 85301010, , differential Additional Customs Duty / Integrated Tax amounting to Rs.7,67,54,006/- under Section 3(7) of the Customs Tariff Act, 1975 read with Section 5 of the Integrated Goods and Services Tax Act, 2017 was confirmed by invoking Section 28(4) of the Customs Act, 1962, together with applicable interest under Section 28AA of the Act, the said goods valued at Rs.54,61,14,482/- were held liable to confiscation under Section 111(m) of the Customs Act, 1962 offering an option of redemption in lieu of a fine of Rs.5,00,00,000/- under Section 125 thereof, and penalties were imposed upon the respective appellants under Sections 114A, 112(a) and 114AA of the Act.

1.1. As all these three appeals emanate from a single adjudication order and involve a common classification dispute, all the appeals were clubbed and heard together, and are now being disposed of by this common order, with the consent of the parties. The details of the instant appeals are as under: -

Sl. No.	Appeal No.	Appellant	Issue under Challenge
1.	C/75809/2024-DB	M/s. Eldyne Electro System Pvt. Ltd.	Classification of Digital Axle Counters (Chapter 85 vs. 86) & Duty Demand of Rs.7,67,54,006/- under Section 28(4) of the Act, interest under Section 28AA ibid., penalty of Rs.7,67,54,006/- imposed under Section 114A ibid.
2.	C/75802/2024-DB	Shri Santanu Basu, Chairman-cum-Managing Director	Personal Penalties of: Rs.10,00,000/- imposed under Section 112(a) ibid.; Rs.15,00,000/- imposed under Section 114AA ibid.
3.	C/75807/2024-DB	Ms. Rupanjali Dey, Chief Financial Officer (CFO)	Personal Penalties of: Rs.3,00,000/- imposed under Section 112(a) ibid.; Rs.5,00,000/- imposed under Section 114AA ibid.

2. The principal dispute in the present proceedings pertains to the classification of the Digital Axle Counter (DAC), a railway safety, signalling and traffic-control apparatus, imported during the period from 02.08.2017 to 05.03.2019. The appellant-company classified the complete DAC under Customs Tariff Item No. 86080030, falling under Chapter Heading 8608, whereas the classification adopted by the Revenue in the impugned proceedings is under Customs Tariff Item No. 85301010 and parts thereof under Customs Tariff Item No. 85309000 falling under Chapter Heading 8530. The dispute in these appeals is on whether the Digital Axle Counter (DAC) imported by the appellant-company is merely electrical signalling equipment covered by Chapter Heading 8530 or whether, having regard to its complete functional configuration and particularly its electromechanical output stage, constitutes mechanical/electromechanical railway signalling, safety or traffic-control equipment falling within Chapter Heading 8608.

3. The Digital Axle Counter (DAC), which is imported by the appellants, is not confined to the Rail Contacts or the electronic processing units alone, but comprises four functionally interdependent constituents, namely:

i. The Rail Contacts, installed at the designated detection points on the railway rails;

ii. The Line Side Electronics Unit, commonly referred to as the EAK, situated in proximity to the Rail Contacts;

iii. The Central Evaluator, or ACE, ordinarily located at the station, relay room or another centralised location; and

iv. The relay/output stage, comprising the plug-in vital relays driven by the Central Evaluator, the pick-up/drop condition of which represents the clear/occupied status of the railway track section and whose contacts are utilised in railway interlocking and signal-clearance circuits.

3.1. For the purposes of the present appeals, the fourth component mentioned above viz. 'relay', is of particular significance to the appellant-company's case, since the relay constitutes the electromechanical output interface through which the digital determination of track occupation is translated into a physical electrical contact condition capable of operating the railway signalling and interlocking circuitry. The investigation, while elaborately dealing with the first three elements, did not separately incorporate this relay/output stage in its principal four-fold description of the DAC; the appellants, on the other hand, have specifically relied upon the said electromechanical stage as an integral part of the complete apparatus.

4. The facts of the case are that the appellant-company, namely, M/s. Eldyne Electro System Private Limited, is engaged in the field of railway signalling and safety equipment and, as stated during investigation, ordinarily supplies such equipment and allied materials to the Indian Railways. The DACs in question were procured by the appellant-company through high-sea-sale transactions from M/s. Thales India Pvt. Ltd. ("Thales India"), which

imported the said equipment from its parent/manufacturing entity, M/s. Thales GmbH, Germany. Orders for the subject goods were placed by M/s. Thales India upon M/s. Thales GmbH, Germany, on the basis of which the German manufacturer raised proforma invoices upon Thales India; the latter, in turn, raised invoices upon the appellant-company in accordance with the periodical agreements for high-sea sale entered into between M/s. Thales India and the appellant-company from July 2017 onwards. Upon purchase of the imported goods on high-sea-sale basis, the appellant-company filed the relevant Bills of Entry, discharged the assessed Customs duty treating the subject goods as classifiable under Customs Tariff Item 86080030, and cleared the consignments for home consumption and their onward supply to the Indian Railways in terms of orders placed by different Railway Divisions pursuant to the agreements entered into between the appellant-company and the Indian Railways. Specimen Bills of Entry and the documents evidencing the aforesaid transactions were produced in the course of the proceedings.

5. Prior to the introduction of the Goods and Services Tax (G.S.T.) regime, the goods imported by the appellant-company had been classified under Chapter Heading 8530, with the corresponding tariff classification under Customs Tariff Item No. 85309000 being reflected in the earlier import documentation. Upon the coming into force of the GST regime, with effect from 01.07.2017, the appellant-company undertook a review of the applicable statutory provisions with its legal consultants and, in the course thereof, revisited the classification of the DAC under the Customs Tariff. According to the

appellant-company, it was advised that the classification earlier adopted under Chapter Heading 8530 was not the appropriate classification and that the goods were more specifically covered by Chapter Heading 8608. The appellant-company accordingly altered its declared classification for the subsequent imports. The first consignment covered by the revised classification under Customs Tariff Item 86080030 was imported on 02.08.2017.

5.1. The said change in classification was undertaken, after intimating the same vide letter dated 10.11.2017 to the Commissioner of CGST, South Kolkata, specifically placing the issue of change in classification before the authorities. Along with the aforesaid representation, it furnished a specimen purchase order and the product literature of M/s. Thales India Pvt. Ltd., the Indian subsidiary through which the DACs were being procured from the German manufacturer. The appellant-company did not receive any communication raising an objection to the proposed classification under Chapter Heading 8608 and, on the basis of the material placed before the authorities and in the absence of any contrary communication, proceeded to classify the subsequent consignments imported under Customs Tariff Item 86080030. The said classification was thereafter accepted by the jurisdictional Customs authorities at Kolkata Airport & A.C.C. Commissionerate, and the imported consignments were assessed and cleared under Chapter Heading 8608 without any objection. The appellant-company has pointed out that none of the assessment orders covering such imports was reviewed or appealed against.

5.2. The goods were entered by the appellant-company under Section 46 of the Customs Act, 1962 and were permitted to be cleared for home consumption by the jurisdictional Customs authorities upon payment of the assessed duty in terms of Section 47 of the Act. The classification under Customs Tariff Item 86080030 was consequently acted upon consistently in the assessments covering the imports during the relevant period. Following the introduction of IGST, Chapter Heading 8530 attracted IGST at the rate of 18%, whereas goods falling under Chapter Heading 8608 were liable to IGST at the rate of 5%, and the appellant-company's revised classification subsequently attracted payment of tax at the lower rate. In any case, the appellant-company had stated before the authorities that there was no fiscal advantage to it at the ultimate stage of supply, since the Goods and Services Tax charged to the Indian Railways was recovered at the applicable rate from the ultimate customers.

6. The Notification which prescribed the relevant rates was Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017, which came into effect from 01.07.2017. The appellant-company had availed the benefit of the rate applicable to the goods classified under Customs Tariff Item 86080030 in terms of Sr. No. 242 of Schedule I to the said Notification. The case subsequently raised by the Department was that the Digital Axle Counters (DACs) were classifiable under Customs Tariff Item 85301010, attracting IGST at the rate of 18%, and that the appellant-company had thereby short-paid Additional Customs Duty / Integrated Tax, as leviable on the subject imports.

7. In or about February 2019, officers of the Directorate of Revenue Intelligence, Noida ("DRI-Noida") commenced an investigation into the classification adopted by the appellant-company. By letter dated 15.02.2019, the appellant-company was called upon to furnish documents relating to the imports under Chapter Heading 8608. The appellant-company sought thirty days' time for furnishing the requisite records.

8. On 05.03.2019, Ms. Rupanjali Dey, Chief Financial Officer (CFO) of the appellant-company, (the appellant no. 3 herein), appeared before DRI-Noida with an authority letter duly signed by the Director of the appellant-company on its behalf and submitted, inter alia, the technical literature relating to the DAC, the agreement entered into with M/s. Thales India Pvt. Ltd. and other documents connected with the imports and the product. A statement of appellant no. 3 was recorded under Section 108 of the Customs Act, 1962 on 05.03.2019. She stated, inter alia, that the appellant-company was a registered company engaged in railway signalling and safety items and that it predominantly supplied such materials to the Railways. She explained that the DAC is designed to detect railway axles in a defined section of railway track, the section being demarcated by a pair of detection points comprising Rail Contacts mounted on the rails/web. According to her statement, as the axles pass over the Rail Contact at the entry side of the section, an evaluator receives occupation information through the Rail Contact and the associated relay; when the wheels pass out of the Rail Contact at the exit side, the relay is dropped, indicating that the section is free. She further stated that, following the introduction of GST, the appellant-

company was importing the DAC under Customs Tariff Item 86080030, on payment of Basic Customs Duty at 7.5%, Social Welfare Surcharge at 10% and IGST at 5%, whereas the earlier imports had been classified under Customs Tariff Item 85309000. The appellant no. 3, in her statement, further explained that, at the time of implementation of GST, the appellant-company had itself entertained a doubt as to the appropriate HSN classification and had accordingly consulted several professionals before arriving at its revised classification. She stated that, upon detailed consideration of the product literature, the appellant-company had understood the goods to be properly covered by Customs Tariff Item 86080030, particularly having regard to the Rail Contact component. She described the Rail Contact as an assembly consisting of transmitter and receiver coils fitted on the railway rail. As stated by her, when an electrical signal in the form of a voltage waveform is passed through the transmitter coil, electromagnetic flux is generated; the flux links with the receiver coil and produces a corresponding waveform therein. According to the statement, no mechanical movement takes place within the Rail Contact and its functioning is based upon electromagnetic flux linkage/coupling.

8.1. Thereafter, by letter dated 18.04.2019, the appellant no. 3, through its response placed on record during investigation, reiterated the basis upon which the revised classification had been adopted. It was explained therein that the goods had earlier been imported under Chapter Heading 8530, but that, following a review of the new GST regime and the relevant Customs Tariff provisions with professional consultants, the appellant-company had been advised that the earlier classification was incorrect and that

Chapter Heading 8608 constituted the appropriate classification. She further relied upon the understanding of the technical literature and operating and maintenance manual and contended that the apparatus was operated from a control point situated at some distance by means involving, inter alia, wires and levers and accordingly had the characteristics of a mechanical/electromechanical device rather than a purely electrical device. It was also stated that the appellant-company was not deriving any ultimate fiscal advantage from the classification adopted under Chapter Heading 8608, since GST was being charged to the ultimate customers at the corresponding rate. The letter further relied upon the general principle that, where competing tariff entries are under consideration, the more specific description should be preferred, and reference was made to the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise v. M/s. Minwool Rocks Fibre Ltd., 2012*, in support of the proposition canvassed therein.

8.2. Ms. Rupanjali Dey / appellant no. 3 was again summoned and appeared before the investigating officers on 03.06.2019. She confirmed the spirit and contents of the letter dated 18.04.2019 and stated that, to the best of her knowledge and belief, she agreed with the facts set out therein. During questioning, however, she clarified that she was not herself a technical expert. In particular, when questioned about the nature of the wires referred to in the letter dated 18.04.2019, she stated that she would need to consult a technical expert. On being questioned regarding the levers referred to in the said letter and their functioning, she stated that, to her understanding, the "relay is acting like a lever", and

sought time to obtain technical support on the point. When questioned as to how the DAC was operated from a control point situated at some distance by movement of wires and levers, she explained that the letter had been prepared after discussions with the technical team and that she required technical assistance to explain the matter in greater detail.

9. A summons dated 19.06.2019 was thereafter issued to Shri Gautam Biswas, who appeared and gave his statement dated 01.07.2019. Shri Biswas disclosed that he was a B.E. (Electronics and Telecommunication) from the University of Kolkata/Bengal Engineering College (now IIEST, Shibpur), having completed the course in 1983. He had worked with Cetus Electronics Pvt. Ltd. and had joined the appellant-company in 2006 while continuing to function as an independent consultant and designer; he was stated to have been designated as Technical Director from 2012. He explained that his role involved providing technical guidance, particularly in relation to the implementation and design of new systems, including Train Protection and Warning Systems/Electronic Train Control Systems and Electronic Interlocking Systems proposed for introduction in India in collaboration with original equipment manufacturers such as Thales, and that he assisted the company in technical matters in conjunction with other technical personnel. In his statement, Shri Biswas explained the principal constituents and operation of the DAC. According to him, the Rail Contacts are mechanically fitted on the railway rails at points designated as "Detection Points"; each Rail Contact contains two sets of coils, one being the transmitter coil and the other the receiver coil, which are connected to the Line Side

Electronics or EAK through an integrated insulated cable. He stated that the Rail Contact does not contain an active electrical device of its own; that the transmitter coils are excited by an A.C. signal originating from the EAK, while the waveform picked up by the receiver coil is returned to the EAK; that the Rail Contacts are installed at the two ends of the section, defining the entry and exit Detection Points, and the influence caused by the passage of a metallic railway wheel upon the receiver waveform is sensed by the EAK. He further explained that the Line Side Electronics Unit, or EAK, is installed in weather-proof metal cabinets in proximity to the Rail Contacts; one EAK is connected to a Rail Contact through the copper wire contained in the integral cable of the latter; that the electronic circuitry of the EAK sends an A.C. waveform to the transmitter coil and receives the corresponding waveform generated in the receiver coil; that the receiver level is continuously compared against a level preset for the rail profile, and, when train wheels pass over the Rail Contact, the resulting influence upon the receiver waveform is sensed and counted by the EAK electronics; that the counts are continuously transmitted through a pair of wires to the Central Evaluator, with the count being computed taking into account the direction of movement. With respect to the Central Evaluator, or ACE, Shri Biswas stated that it is ordinarily situated in a station, relay room or other centralised location and is connected to a plurality of EAKs installed at the Detection Points along the line. The serial cards of the ACE are connected to the EAKs, and the CPU within the ACE receives the wheel counts corresponding to the entry and exit Detection Points and compares the same. Where the difference between the in-count and out-

count becomes zero, the section between the two Detection Points is treated by the CPU as "Free"; where the counts do not reconcile, the section is treated as "Occupied". Shri Gautam Biswas also elaborated upon the electromagnetic principle involved in the functioning of the Rail Contact. According to his statement, when the transmitter coil is excited by the EAK, an electromagnetic field is generated around it and the resulting electromagnetic flux becomes linked with the receiver coil; the alternating magnetic flux thereby produces an alternating current waveform in the receiver circuit of the EAK; the A.C. voltage generated in this manner is compared against the relevant reference level, while its amplitude and phase are influenced by the presence of metallic railway wheels between the transmitter and receiver coil sets. It was stated that the number of such influences is counted and the direction of movement is determined by the EAK. He specifically explained that, until electrical signals are supplied to the Rail Contact by the EAK, the Rail Contact remains in a passive state and can be activated only by electrical energy, since magnetic flux would otherwise not be generated.

9.1. Shri Gautam Biswas, however, also purportedly stated that the external relays were not an essential part of the DAC itself and, on the basis of the electronic and electromagnetic principle involved in the counting mechanism, expressed the view that the appropriate classification was under Chapter Heading 8530. He further stated that the DAC could not function without the electrical and electromagnetic effects upon which the axle-counting process depended. These aspects of his statement subsequently formed part of the material relied upon

in determining the classification adopted in the impugned proceedings.

10. Thereafter, summons was issued to Shri Santanu Basu, Chairman-cum-Managing Director of the appellant-company (the appellant no. 2 herein), and his statement was recorded under Section 108 of the Customs Act, 1962 on 18.11.2019. He was, inter alia, questioned regarding the nature, constitution and functioning of the Digital Axle Counter and the basis for its classification under Chapter Heading 8608. In explaining the functional operation of the DAC, he stated, inter alia, that the output generated by the system is processed through an electromechanical contact in the form of a "yes/no" voltage, which communicates the result of the detection and thereby enables the corresponding railway signalling/interlocking circuitry to recognise the detected condition. He canvassed that the Digital Axle Counter, viewed as a complete system, is an electromechanical system which operates primarily on the effect of electricity.

10.1. Shri Santanu Basu appeared again before the investigating authority on 29.11.2019 and made further statements in relation to the technical character and mode of operation of the DAC. He reiterated, inter alia, that the DAC is an electromechanical system and operates on the principle and theory of electromechanical properties. He further explained that the system becomes operative only upon being energised by an electrical voltage, consequent upon which the requisite electromagnetic flux is developed and the electrical/electromagnetic phenomenon is utilised for detection and determination of the condition of the

railway track section. The statements of appellant no. 2 thus formed part of the technical material gathered during investigation concerning the character of the DAC as a complete apparatus and the manner in which its electrical, electromagnetic and electromechanical elements cooperate to generate and communicate the final detection output.

11. Subsequently, during the investigation, statements and technical material relating to the supplier and the design of the DAC were also considered. The investigation took note of an Agreement for Sale of German Axle Counters entered into on 26.09.2012 between M/s. Thales India Pvt. Ltd., New Delhi, and the appellant-company for the sale of the Digital Axle Counters (DACs), together with the equipment list forming part of that agreement. The relevant pages of the agreement and the equipment list were taken on record. The supplier literature furnished by M/s. Thales India Pvt. Ltd. was also examined. In his statement under Section 108 of the Customs Act, 1962, Shri Kavindra Polisetty, Project Manager of Thales India Pvt. Ltd., who appeared as an authorised representative of the company, stated that the Digital Axle Counter is used to detect track-section occupancy, detects the passage of wheels and ensures the direction of travel.

12. According to the technical material considered during investigation: -

- the Digital Axle Counter supplied by Thales comprises the Rail Contacts (SK30H) and Track Side Electronic Unit (ZP30H), which constitute the outdoor units, together with the Axle Counter Central Evaluator (ACE), which constitutes the indoor equipment unit, and the

communication link, with or without PDCU. The power supply from the indoor equipment is converted and supplied through the trackside electronic units to the Rail Contacts.

- The applied electrical supply produces the requisite magnetic flux in the Rail Contact, and the movement of a railway wheel is sensed through the disturbance caused to that flux and translated into an electronic pulse. A section of track is defined by an entry and an exit Detection Point, and the DAC determines whether the section is clear or occupied by comparing the axle count entering the section with the axle count leaving it.

- At each detection point, the Rail Contact and the EAK together detect the influence of passing metallic wheels; the EAK processes and transmits the resulting wheel counts to the ACE; and the ACE compares the counts from the corresponding entry and exit Detection Points. When the in-count and out-count become equal, the corresponding section is treated as free, whereas any mismatch signifies occupation. The system is used for monitoring and controlling railway traffic at stations, junctions and level crossings and for determining the passage of trains over the same section of line.

12.1. The investigation principally treated the aforesaid operation as dependent upon the properties or effects of electricity, particularly the electromagnetic effect. It relied upon the relevant Chapter Notes and HSN Explanatory Notes and, inter alia, referred to Note 1(c) as excluding electrical signalling, safety or traffic-control equipment of

Heading 8530 from the scope of articles elsewhere in the chapter. Reference was also made to the General Scope and Structure of Chapter 85 and to the proposition that machines and appliances which depend for their operation upon the properties or effects of electricity, including electromagnetic effects, fall within Chapter 85. In relation to Chapter 86, the investigation referred to the description of apparatus of equipment described therein, in which the signal or similar function is operated from a control point, generally situated at some distance, by means including levers, cranks, rods, wires, chains, hydro-pneumatic devices or electric motors. The investigation, applying the aforesaid distinction, took the view that the DAC did not incorporate levers, cranks, rods, chains, hydro-pneumatic devices or an electric motor and that its operation was based upon the generation and disturbance of electromagnetic flux resulting from electrical energy. It was further observed that the system transmitted the information generated at the detection points on the railway track to the Line Side Electronics and thereafter to the Central Evaluator and that the DAC itself was not controlled from a remote control point in the manner contemplated in the relevant HSN Explanatory Note. On that basis, the investigation treated the apparatus as an electrical signalling/safety device falling within Chapter Heading 8530.

13. The appellants, however, placed emphasis upon the fact that the foregoing description captures only the sensing and processing stages and does not exhaust the architecture of the complete DAC. In particular, the appellant took the stand that the Central Evaluator, upon determining the status of the railway track section, drives the associated output

relays. The pick-up/drop condition of such plug-in vital relays represents the "clear" or "occupied" condition of the section, and the physical contacts of the relays thereafter operate within the railway interlocking and signal-clearance circuits. The appellants' case is that this relay/output stage is not an external or collateral adjunct unrelated to the DAC, but forms part of its functional architecture as the electromechanical interface through which the digitally processed result is converted into the physical contact condition required for the operation of the railway signalling and interlocking system. Thus, the complete apparatus, according to the appellants, performs an electromechanical function notwithstanding that the detection and computation stages employ electronic circuitry and electromagnetic principles.

14. The investigation also proceeded on the premise that the appellant-company's adoption of Chapter Heading 8608 after 01.07.2017 coincided with the introduction of the GST regime and the corresponding differential rate of IGST, and the subsequent proceedings treated the change in classification as deliberate and as resulting in short payment of duty. The investigation consequently concluded that the goods had been wrongly declared under Customs Tariff Item No. 86080030, that the more appropriate classification was Customs Tariff Item No. 85301010, and that the corresponding parts were appropriately covered by Customs Tariff Item No. 85309000. On the basis thereof, the differential duty / Integrated Tax was worked out at Rs.7,67,54,006/-.

15. The investigation culminated in Show Cause Notice No. DRI/NRU/CI-26/Int-0/Enq-125/2018 dated 31.12.2020, whereby it was alleged that the appellant-company had mis-declared the classification of the DACs with a view to fraudulently avail the lower rate of IGST applicable to Chapter Heading 8608. The notice proposed recovery of differential duty of Rs.7,67,54,006/- under the Customs Act, invoking the extended period contemplated under Section 28(4), together with applicable interest under Section 28AA. The notice further proposed confiscation of the imported goods under Section 111(m), imposition of redemption fine under Section 125, and penal consequences against the appellant-company and the co-appellants namely, Shri Santanu Basu and Ms. Rupanjali Dey, under the applicable provisions of the Customs Act, including Sections 112(a), 114A and 114AA.

15.1. The appellant-company and the individual appellants filed detailed replies contesting the proposed classification, the allegation of deliberate misdeclaration, the invocation of the extended period and the consequential confiscation and penalties.

15.2. The adjudication thereafter culminated in the impugned Order-in-Original No. KOL/CUS/A&A/Pr. COMMISSIONER/ADJN/11/2024 dated 13.03.2024 wherein, while examining the competing Chapter Headings 8530 and 8608, the Ld. Principal Commissioner of Customs (Airport & A.C.C.), Kolkata, took note of the relevant tariff descriptions and HSN Explanatory Notes. The impugned order particularly relied upon the distinction between electrical signalling equipment covered by Chapter Heading 8530 and the mechanical/electromechanical signalling

and traffic-control equipment covered by Chapter Heading 8608. The adjudicating authority in particular noted the HSN Explanatory Note (B) to Chapter Heading 86.08 which describes apparatus operated from a control point, generally at some distance, by means including electric motors, levers, cranks, rods, wires, chains and hydro-pneumatic devices, and proceeded on the basis that the DAC is a digital axle-counting system employing electronic sensors and advanced electronic circuitry to detect and count railway axles and to determine the occupied or unoccupied status of a defined track section. The lower authority was of the view that the DAC is installed beside the railway track and performs its sensing and computing functions autonomously and that it is not mechanically operated from a distant control point. On that footing, the ld. adjudicating authority held that the apparatus did not answer the description contemplated for the mechanical/electromechanical equipment of Chapter Heading 8608 and was instead appropriately classifiable under Chapter Heading 8530.

15.3. The ld. adjudicating authority also did not concur with the appellant-company's reliance upon the operating and maintenance literature and the Railway Maintenance Handbook. It was observed that the materials relied upon did not establish that the DAC was operated from a distant control point through levers, cranks, rods, wires, chains, hydro-pneumatic devices or an electric motor in the manner referred to in the HSN Explanatory Notes. The impugned order accordingly rejected the appellant-company's claim for classification under Chapter Heading 8608 and held the complete DAC classifiable under Chapter Heading 8530.

15.4. It was also observed by the ld. adjudicating authority, that Shri Santanu Basu and Ms. Rupanjali Dey, the appellant no. 2 and appellant no. 3 respectively, had tried to misguide the investigation, with a mala fide intent, to suppress the material facts, thus rendering themselves liable to penalty under the relevant provisions of the Customs Act, 1962, and instead, placed reliance on the statement of Shri Gautam Biswas dated 09.07.209 to hold that the imported goods pertained to Chapter 8530.

15.5. On the basis of the aforesaid observations, the Ld. Principal Commissioner held that the appellant-company had availed the benefit of the lower 5% Integrated Tax rate applicable to the goods classified under Chapter Heading 8608, whereas the goods, according to the ld. adjudicating authority, were liable to Integrated Tax at 18% under Chapter Heading 8530. Therefore, by way of the impugned order, the differential Additional Customs Duty / Integrated Tax amounting to Rs.7,67,54,006/- was consequently confirmed, together with applicable interest, the imported goods, valued at Rs.54,61,14,482/-, were ordered to be confiscated under Section 111(m) of the Customs Act giving the option to redeem the same on payment of a fine of Rs.5,00,00,000/- under Section 125 and a penalty of Rs.7,67,54,006/- was imposed upon the appellant-company under Section 114A of the Act. Further, in the said order, penalties of Rs.10,00,000/- under Section 112(a) and Rs.15,00,000/- under Section 114AA were imposed upon appellant no. 2 / Shri Santanu Basu, while penalties of Rs.3,00,000/- under Section 112(a) and Rs.5,00,000/- under Section 114AA were imposed upon appellant no. 3 / Ms. Rupanjali Dey.

16. It is against these findings, liabilities and consequential orders that the present three appeals arise.

17. During the course of arguments, the Ld. Counsel appearing on behalf of the appellants herein made various made submissions on facts and law, both orally and in writing, which can, inter alia, be broadly summarized as follows: -

DIGITAL AXLE COUNTER ("DAC") CORRECTLY CLASSIFIED UNDER CTH 8608

(i) The first and principal question which arises for consideration is the correct classification of the said goods. The competing tariff entries are Heading 8530 and Heading 8608 of the First Schedule to the CTA. Heading 8530 covers "Electrical signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields (other than those of heading 8608)", whereas Heading 8608 covers, inter alia, "mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing". Tariff Item 86080030 thereunder specifically covers "Other traffic control equipment for railways".

(ii) The said goods are Digital Axle Counters and components/sub-assemblies thereof designed for use in railway signalling, safety and traffic control. A Digital Axle Counter detects the passage of railway axles through defined detection points, determines whether a

particular track section is clear or occupied and provides the resultant status for use by the railway signalling and interlocking system. The nature and purpose of the equipment as railway signalling and traffic control equipment is, therefore, not in dispute. The material issue of dispute arising in the present case is whether, having regard to its complete operation, the DAC answers the description of "mechanical (including electro-mechanical)" signalling, safety or traffic control equipment contemplated by Heading 8608.

(iii) The language of Heading 8530 itself assumes considerable significance in resolving the said issue. Heading 8530 does not unconditionally encompass every item of electrical railway signalling or traffic control equipment. By the express words "other than those of heading 8608", the legislature has excluded from Heading 8530 equipment which answers the description contained in Heading 8608. The proper enquiry must, therefore, first be whether the said goods fall within Heading 8608. Upon such classification being established, Heading 8530 stands excluded by its own terms.

(iv) The same conclusion follows from the language and structure of Chapter 86. The title to Chapter 86 itself refers to "mechanical (including electro-mechanical) traffic signalling equipment of all kinds". Chapter Note 3 to Chapter 86 further provides, subject to Chapter Note 1, that Heading 8608 applies, inter alia, to "semaphores, mechanical signal discs, level crossing control gear, signal and point controls

and other mechanical (including electro-mechanical) signalling, safety or traffic control equipment, whether or not fitted for electric lighting, for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields." The tariff therefore expressly contemplates that signalling and traffic control apparatus having an electro-mechanical mode of operation falls within Heading 8608.

(v) It follows that the mere presence of electrical or electronic components, or the use of electricity and electromagnetic effects during operation, cannot by itself determine classification under Chapter 85. Such an interpretation would render the express words "including electro-mechanical" appearing in Heading 8608 substantially otiose. What requires examination is the nature and operation of the complete apparatus and whether electrical operation is integrated with mechanical actuation in carrying out its railway signalling or traffic-control function.

(vi) Chapter Note 1(c) to Chapter 86, which provides that Chapter 86 does not cover "electrical signalling, safety or traffic control equipment of heading 8530", does not detract from the aforesaid position. The exclusion applies to equipment which is properly classifiable under Heading 8530. It cannot be employed to presume that every apparatus making use of electricity or electromagnetic effects necessarily falls under Heading 8530, since Heading 8608 itself expressly includes electro-mechanical signalling and traffic control equipment. The two

provisions must be read harmoniously so that purely electrical equipment of Heading 8530 remains within Chapter 85, while mechanical and electro-mechanical equipment answering Heading 8608 remains within Chapter 86.

(vii) Rule 1 of the General Rules for the Interpretation of the First Schedule to the CTA requires classification to be determined according to the terms of the headings and the relevant Section and Chapter Notes. The express description in Heading 8608 must therefore receive effect before resort is made to any residual or secondary rule of interpretation. Even assuming that both headings merit consideration, Rule 3(a) further provides that the heading which furnishes the most specific description shall be preferred to a heading providing a more general description.

(viii) In the present case, Heading 8608 furnishes the more specific description once the actual composition and functioning of the Eldyne DAC is examined. Heading 8608 specifically identifies mechanical, including electro-mechanical, signalling, safety and traffic control equipment for railways, and Tariff Item 86080030 specifically covers "Other traffic control equipment for railways". Heading 8530, by contrast, is expressly qualified by the exclusion of equipment falling under Heading 8608. The relationship between the two headings is therefore not one of two independent and co-extensive entries; Heading 8530 expressly gives way where the equipment answers the description in Heading 8608.

(ix) The technical composition and functioning of the DAC is described in the Maintenance Handbook on Digital Axle Counter (Multi Section), Reference No. CAMTECH/2008/S/MSDAC/1.0, December 2008, issued by CAMTECH, Ministry of Railways. Part B thereof specifically deals with the "AzLM – Eldyne Multi Section Digital Axle Counter". Section 2, titled "Main Modules and their functions", identifies the principal modules of the Eldyne system as the outdoor track-side system comprising Rail Contacts (SK30H) and Track-Side Electronic Unit (EAK), the indoor Axle Counter Central Evaluator (ACE), and the communication link. Section 2.1.1 further records that when a railway wheel passes the Rail Contact, two time-offset signals are produced, which are processed by the EAK into IN and OUT counts and thereafter transmitted through the communication link to the ACE for further processing.

(x) The general description of a Multi Section Digital Axle Counter in the said Maintenance Handbook is equally material. Section 4 thereof, titled "Main Parts", expressly identifies the "Relay unit" as one of the principal parts of the MSDAC. Section 4.1.3, dealing with the "Central Evaluator", records that the Central Evaluator provides one vital relay output for each track section. Section 4.1.6, specifically titled "Vital relay drive and Relay unit", records that the vital relay or relays are driven by the Central Evaluator; that these are 24 V DC, 1000 ohm plug-in type relays; that the pick-up and drop conditions of the vital relay indicate respectively the clear and occupied status of the axle

counter; and that the contacts of the vital relay can be used in interlocking circuits, including the signal-clearance circuit.

(xi) The significance of the aforesaid technical description is that the functional operation of the DAC does not terminate merely in electronic processing or generation of data. The sequence proceeds from wheel detection and processing of the axle counts to the Central Evaluator, which in turn drives the vital relay; the pick-up or drop condition of that relay represents the clear or occupied condition of the relevant track section, and its contacts interface with the railway interlocking and signal-clearance circuits. The vital relay is therefore not an incidental electrical accessory detached from the functioning of the system, but an essential functional and output component of the integrated DAC apparatus. Thus, on a proper appreciation of the Handbook published by the Ministry of Railways, the observation in paragraph 69 of the impugned order that "relay feature" is not a component of the DAC and was allegedly used by the appellant to divert the issue of classification is rendered totally erroneous and false. On a perusal of the discussion and findings in the impugned order, it is also apparent that no significance whatsoever has been accorded to the Handbook and Manuals published by Indian Railways and which were relied on substantially during the impugned adjudication by the appellants.

(xii) The nature of the operation of such railway signalling relays is explained in the publication

S 19 – Signalling Relays & Cables, issued in November 2009 by the Indian Railways Institute of Signal Engineering & Telecommunications, Secunderabad ("IRISET"). Chapter 1 of the said publication deals with signalling relays generally. The publication explains that relays may be divided into DC and AC relays depending upon the means by which electrical energy in the coil is converted into mechanical energy for movement of the contacts. It further describes the armature as the movable component associated with the relay contacts.

(xiii) Chapter 3 of the aforesaid IRISET publication, dealing with shelf-type DC line and track relays, describes the mechanical sequence in greater detail. It identifies the armature, arm spring and front and back contacts as constituent parts of the relay and explains that, upon energisation of the electromagnet coil, a tractive torque acts upon the armature and raises it, thereby lifting the arm springs, opening the back contacts and closing the front contacts. Upon removal or reduction of current, the armature drops under gravitational force, opening the front contacts and closing the back contacts. The conversion of electrical energy into mechanical movement of the armature and consequential physical switching of the contacts is thus inherent in the operation of the DC railway signalling relay.

(xiv) Read together, the CAMTECH Maintenance Handbook, Reference No. CAMTECH/2008/S/MSDAC/1.0, December 2008, and the IRISET publication S 19 – Signalling Relays & Cables, issued in November

2009, demonstrate the complete functional sequence of the apparatus. Wheel passage is detected and electronically processed; the resultant information reaches the Central Evaluator; the Central Evaluator drives the 24 V DC vital relay; and energisation or de-energisation of that relay produces physical movement of its armature and contacts, which in turn provides the clear/occupied output for use in railway interlocking and signal-clearance circuits. The apparatus therefore integrates electrical and electronic processing with eventual and resulting electro-mechanical actuation in carrying out its railway traffic-control function.

(xv) The Eldyne DAC consequently answers the positive description in Heading 8608 as electro-mechanical signalling, safety or traffic control equipment for railways. Its use of electronic processing does not alter the essential fact that the operative signalling output of the complete system culminates in electro-mechanical actuation through the vital relay. Classification under Tariff Item 86080030 is therefore consistent both with the express wording of Heading 8608 and with the actual technical operation of the goods.

(xvi) Conversely, the basis adopted in the said impugned order that dependence upon electricity or electromagnetic effects necessarily takes the DAC into Heading 8530 overlooks the express inclusion of "electro-mechanical" equipment within Heading 8608. Such reasoning effectively disregards the electro-

mechanical limb of Heading 8608. The tariff does not warrant such a construction that disregards the plain language used in the description of the relevant chapter tariff head.

(xvii) In this context, the HSN Explanatory Notes to Heading 8608 are also relevant. In relation to mechanical, including electro-mechanical, signalling, safety or traffic control equipment, the Explanatory Notes describe apparatus in which the signal or other device may be operated from a control point through mechanical means, hydro-pneumatic devices or electric motors. The Explanatory Notes therefore themselves recognise that electrically actuated mechanisms may nevertheless retain their character as mechanical or electro-mechanical signalling equipment classifiable under Heading 8608.

(xviii) The HSN Explanatory Notes to Heading 8530 correspondingly state that the heading covers electrical traffic-control equipment but excludes similar equipment which is operated mechanically, even though electrical features may be incorporated therein, such equipment falling under Heading 8608. The distinction drawn by the HSN is therefore not between apparatus which uses electricity and apparatus which does not; rather, the material distinction is between electrical equipment on the one hand and mechanical or electro-mechanical signalling equipment on the other.

(xix) It is further settled that where one tariff entry provides a more specific description of the goods than another, the specific entry must

prevail. Reliance in this regard may be placed upon: -

- *Speedway Rubber Company v. Commissioner of Central Excise, 2002 (143) E.L.T. 8 (S.C.);*
- *Commissioner of Central Excise v. Maharshi Ayurveda Corporation Limited, 2006 (193) E.L.T. 10 (S.C.); and*
- *Commissioner of Central Excise v. Wockhardt Life Sciences Limited, 2012 (277) E.L.T. 299 (S.C.).*

(xx) In the present case, the express description of electro-mechanical railway signalling, safety and traffic control equipment under Heading 8608, read with Tariff Item 86080030, corresponds directly with the nature, exclusive railway use and complete operative function of the DAC.

(xxi) Accordingly, Heading 8608 constitutes the more specific and appropriate tariff entry for the said goods. Once the said goods are found to be covered by Heading 8608, the express parenthetical exclusion in Heading 8530, namely "other than those of heading 8608", operates by its own force. The classification adopted by Eldyne under Tariff Item 86080030 is therefore correct, whereas the contrary classification under Tariff Item 85301010 in the said impugned order is contrary to the express tariff entries, the relevant Chapter Notes and the technical literature governing the operation of the said goods.

II. ONUS OF ESTABLISHING THE COMPETING/ALLEGED CLASSIFICATION NOT DISCHARGED BY THE DEPARTMENT

(i) Without prejudice to the foregoing, it is submitted that the burden of establishing that the classification adopted by Eldyne under Heading 8608 is incorrect and that the said goods are instead classifiable under Heading 8530 lies squarely upon the Department. Where the Revenue seeks to displace the classification declared by an importer and substitute a competing tariff entry, it must establish, by cogent material and evidence, that the goods answer the description of the tariff entry proposed by it. A mere assertion that another heading is more appropriate does not discharge such burden.

(ii) The aforesaid principle stands settled by the Hon'ble Supreme Court in the following decisions: -

- *Union of India v. Garware Nylons Ltd., 1996 (87) E.L.T. 12 (S.C.);*
- *H.P.L. Chemicals Ltd. v. Commissioner of Central Excise, 2006 (197) E.L.T. 324 (S.C.);* and
- *State of Madhya Pradesh v. Marico Industries Ltd., 2016 (338) E.L.T. 335 (S.C.).*

(iii) The principle emerging therefrom is that where the taxing authority seeks to bring goods within a particular tariff entry, the onus lies upon such authority to establish the facts necessary for application of that entry by appropriate material and evidence.

(iv) In the present case, the Department was therefore required to establish affirmatively that the DAC imported by Eldyne constituted electrical signalling, safety or traffic control equipment of Heading 8530 and, equally importantly, that it did not fall within the express description of mechanical, including electro-mechanical, signalling, safety or traffic control equipment under Heading 8608. The said impugned order does not discharge that burden. Its conclusion proceeds principally upon the fact that the DAC utilises electricity and electromagnetic effects, without adequately addressing the complete functional operation of the apparatus, including the vital relay output and the mechanical movement of the relay armature and contacts forming part of the railway signalling function.

(v) The technical material on record, including the Maintenance Handbook on Digital Axle Counter (Multi Section), Reference No. CAMTECH/2008/S/MSDAC/1.0, December 2008, and the IRISET publication S 19 – Signalling Relays & Cables, issued in November 2009, supports the electro-mechanical character of the complete system for the reasons already stated hereinabove. No authoritative technical material of comparable character has been relied upon in the said impugned order to demonstrate that the Eldyne DAC is purely electrical equipment falling outside the scope of Heading 8608. The competing classification proposed by the Department therefore remains unsubstantiated and the burden of justifying the alleged

classification may not be said to have been discharged.

III. SECTION XVII NOTE 3 AND THE SOLE OR PRINCIPAL USE TEST SUPPORT CLASSIFICATION UNDER HEADING 8608

(i) The classification adopted by Eldyne is further supported by Note 3 to Section XVII of the First Schedule to the CTA. The said Note provides:

> *"References in Chapters 86 to 88 to 'parts' or 'accessories' do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory."*

(ii) The said provision embodies the sole or principal use test in relation to parts and accessories falling within Chapters 86 to 88. In the present case, the DAC and the components forming part thereof are railway-specific equipment designed and intended for use in the railway signalling, safety and traffic control system. The CAMTECH Maintenance Handbook, Reference No. CAMTECH/2008/S/MSDAC/1.0, December 2008, itself identifies Eldyne as an approved supplier of Multi Section Digital Axle Counters to Indian Railways and devotes Part B specifically to the AzLM – Eldyne Multi Section Digital Axle Counter. The character and principal use of the equipment are therefore intrinsically and exclusively connected with railway signalling and traffic control.

(iii) Note 2(f) to Section XVII, which refers to "electrical machinery or equipment (Chapter 85)", cannot be read in isolation so as automatically to exclude from Chapter 86 every railway component which employs electricity. Such an interpretation would render the sole or principal use test contained in Note 3 ineffective in respect of railway-specific signalling equipment and would also run contrary to the express inclusion of electro-mechanical signalling equipment within Heading 8608. Notes 2(f) and 3 must therefore be construed harmoniously, having regard to the nature, principal use and actual function of the goods concerned.

IV. THE DECISION OF THE HON'BLE SUPREME COURT IN WESTINGHOUSE SAXBY FARMER LTD. SUPPORTS CLASSIFICATION UNDER HEADING 8608

(i) The aforesaid interpretation stands substantially supported by the decision of the Hon'ble Supreme Court in *Westinghouse Saxby Farmer Ltd. v. Commissioner of Central Excise, Calcutta, 2021 (376) E.L.T. 14 (S.C.).* The dispute therein concerned relays used solely as railway signalling and traffic control equipment, which the assessee claimed to be classifiable under Heading 8608, whereas the Department sought classification under Chapter 85. In paragraphs 33 to 39 of the judgment, the Hon'ble Supreme Court examined Notes 2(f) and 3 to Section XVII and held that the sole or principal use test embodied in Note 3 could not be overlooked merely by invoking the exclusion in Note 2(f).

(ii) In paragraph 36 of *Westinghouse Saxby Farmer Ltd. (supra)*, the Hon'ble Supreme Court described Note 3 as embodying the "suitability for use test" or "user test" and held that parts suitable for use solely or principally with an article falling in Chapter 86 could not be taken to a different Chapter in a manner which would negate the object of group classification. In paragraph 37, the Court held that invocation of Note 2(f), while overlooking the sole or principal use test contained in Note 3, was unjustified where the relays were used solely as part of railway signalling and traffic control equipment. The classification under Heading 8608 was ultimately upheld in paragraph 39.

(iii) *Westinghouse Saxby Farmer Ltd. (supra)* is also significant for the present dispute because the Hon'ble Supreme Court expressly recognised that that railway-specific relays used as part of signalling equipment could appropriately fall under Heading 8608. The mere employment of electricity or electromagnetic effects was therefore not treated as determinative of Chapter 85 classification.

(iv) The present case stands on an even stronger footing inasmuch as the dispute concerns the complete DAC apparatus, whose functional chain culminates in the electromechanical operation of the Vital Relay used to communicate the clear or occupied status of the railway track section to the interlocking and signal-clearance circuits. If a railway-specific relay, notwithstanding its electrical energisation, is capable of classification under

Heading 8608 by reason of its railway signalling function and sole or principal use, the complete DAC incorporating such Vital Relay as an essential functional and output component cannot be excluded from Heading 8608 merely because electronic processing and electromagnetic effects precede such eventual/resulting electro-mechanical actuation.

(v) The ratio in *Westinghouse Saxby Farmer Ltd. (supra)* is directly material to the interpretation of Section XVII Notes 2(f) and 3, the treatment of railway-specific signalling relays, and the proposition that electrical operation by itself does not preclude classification under Heading 8608. Read with the express words "mechanical (including electro-mechanical)" appearing in Heading 8608 and the technical operation of the Eldyne DAC, the principle laid down therein strongly supports the classification adopted by Eldyne under Tariff Item 86080030. The stated decision in *Westinghouse Saxby Farmer Ltd (supra)* has been subsequently applied by this Tribunal in *Commissioner of Customs v. Bosch Limited, 2023 (12) TMI 386.*

V. STATEMENTS OF SHRI GAUTAM BISWAS IRRELEVANT, INCOMPLETE AND UNRELIABLE

(i) The said impugned order places substantial reliance upon the statements of Shri Gautam Biswas recorded by the DRI on July 1, 2019 and July 9, 2019 for arriving at the conclusion that the DAC is classifiable under Heading 8530. In particular, reliance has been placed upon his statements to the effect that the DAC depends

for its functioning upon electricity and electromagnetic effects and that, according to him, the characteristics of the subject goods did not correspond with Heading 8608. The said statements have thus been treated by the adjudicating authority not merely as evidence concerning the physical composition or functioning of the equipment, but effectively as an opinion determining the correct classification of the goods under the Customs Tariff.

(ii) Such an approach is fundamentally erroneous. Classification under the First Schedule to the CTA is not a purely technical or engineering enquiry. The physical composition, design and manner of operation of the goods are undoubtedly matters upon which technical evidence may be relevant; however, the legal consequence to be drawn from those facts, namely the tariff heading under which the goods fall, requires interpretation and application of the language of the competing tariff entries, the relevant Section Notes and Chapter Notes, the General Rules for the Interpretation of the First Schedule, and, where appropriate, the HSN Explanatory Notes and binding judicial precedent. The ultimate exercise of classification is therefore one which the statutory adjudicating authority is required to undertake upon an independent application of mind to both the technical facts and the governing tariff law.

(iii) Shri Gautam Biswas possessed no disclosed or apparent expertise in Customs law, tariff classification or interpretation of the CTA.

Nothing in his statements suggests any specialised knowledge of the General Rules for Interpretation, Section XVII Notes 2 and 3, Chapter Note 1(c) or Chapter Note 3 to Chapter 86, the legal relationship between Headings 8530 and 8608, or the principles governing classification under the Customs Tariff. His opinion as to whether the goods "fall" under Heading 8530 or do not answer Heading 8608 could therefore never substitute the statutory exercise which the adjudicating authority itself was required to perform. Gautam Biswas also fails to address the electromechanical operation of the Vital Relay and why such matter was disregarded entirely in course of rendering his opinion to the Department during interrogation.

(iv) At the highest, the statements of Shri Gautam Biswas could constitute material concerning particular technical features of the DAC, subject always to their admissibility and to the appellants' right to test the same in accordance with law. Whether those features bring the complete apparatus within "electrical signalling, safety or traffic control equipment" under Heading 8530 or within "mechanical (including electro-mechanical) signalling, safety or traffic control equipment" under Heading 8608 is a matter of tariff interpretation. A witness or technical consultant cannot conclusively determine that legal question by stating his own understanding of the tariff.

(v) The error assumes particular significance because the technical premise attributed to Shri Gautam Biswas — that the equipment depends

upon electricity and electromagnetic effects — does not, even if accepted as a fact, resolve the classification dispute. Heading 8608 itself expressly embraces "electro-mechanical" signalling, safety and traffic control equipment. The adjudicating authority was therefore required to proceed further and determine whether the complete operation of the Eldyne DAC, including the operation of the vital relay and the consequent mechanical movement of its armature and contacts, brings the apparatus within the express electro-mechanical limb of Heading 8608. Merely repeating that the equipment uses electricity or electromagnetic effects does not answer that statutory question.

(vi) The said impugned order ought, therefore, to have independently examined the Maintenance Handbook on Digital Axle Counter (Multi Section), Reference No. CAMTECH/2008/S/MSDAC/1.0, December 2008, issued by CAMTECH, Ministry of Railways; the IRISET publication S 19 – Signalling Relays & Cables, issued in November 2009; the actual composition and complete functional sequence of the Eldyne DAC; the terms of Headings 8530 and 8608; the relevant Section and Chapter Notes; and the applicable rules and judicial authorities. Instead, the opinion expressed by Shri Gautam Biswas during investigation has been substantially adopted as the basis for deciding the very tariff question which the adjudicating authority was itself entrusted to determine.

(vii) Such adoption of the conclusion of a technical consultant, without independently testing it against the governing provisions of the Customs Tariff, amounts to an abdication of the adjudicatory function. A quasi-judicial authority cannot substitute the opinion of a witness for its own interpretation of the statute. The finding of classification under Heading 8530, to the extent that it proceeds upon such unquestioning reliance, therefore suffers from non-application of mind and is arbitrary and perverse.

(viii) This is apart from the further infirmity that Shri Gautam Biswas did not cite any recognised technical publication, specification or other authoritative material in support of the conclusions attributed to him. On the contrary, the authoritative technical literature issued by Indian Railways, as discussed hereinabove, demonstrates that the functional output of the DAC includes operation of a 24 V DC vital relay and that such a relay effects physical movement of an armature and consequent switching of contacts. The adjudicating authority could not discard such objective technical literature in favour of an untested opinion without recording cogent reasons therefor.

(ix) There is, moreover, an independent evidentiary objection to reliance upon the said statements. Section 138B of the said Act prescribes the conditions subject to which a statement made and signed before a gazetted officer of Customs may be treated as relevant for proving the truth of its contents. The appellants had expressly sought cross-examination of Shri Gautam

Biswas in their written submissions dated February 13, 2024. The said impugned order notices such request but rejects the same substantially on the ground that the appellants had not established bias or malice on the part of Shri Biswas.

(x) The said reason is wholly beside the point. Cross-examination was sought because the statements were proposed to be used as substantive evidence upon disputed technical matters central to classification. The right to test such evidence does not depend upon first establishing personal hostility or bias on the part of the witness. Where the adjudicating authority proposes to rely upon the truth and technical correctness of the statements against the noticees, the statutory requirements of Section 138B and the principles of natural justice must be observed.

(xi) The statements of Shri Gautam Biswas thus suffer from substantial deficiencies. First, his purported opinion upon the proper tariff classification cannot substitute the independent legal determination required to be made by the adjudicating authority under the CTA. Secondly, even in respect of the technical facts spoken to by him, the statements could not lawfully be treated as substantive evidence against the appellants without compliance with Section 138B and without affording the requested opportunity of cross-examination. The opinion of Gautam Biswas conveyed in summary during an interrogation also fails to compare or study the existing literature on DAC and offers no

detailed observation on the operation of DAC as a complete system, and fails to deal with the critical functions of the Vital Relay and what impact the same has on the classification of the DAC and its components. The opinion of Shri Gautam Biswas is therefore incomplete, unqualified, unsubstantiated by law or literature, untested by cross examination, and cannot in any way serve as a substitute for the independent application of mind by the adjudicating authority. The impugned findings founded upon such statements are therefore liable to be disregarded and set aside.

(xii) In support of the aforesaid propositions, reliance is placed upon *M/s. Puma Ayurvedic Herbal (P) Ltd. v. Commissioner of Central Excise, Nagpur, 2006 (196) E.L.T. 3 (S.C.),* wherein the Hon'ble Supreme Court held that the opinion of a technical expert on the question of tariff classification is not determinative and that the function of such expert is essentially to furnish technical or analytical data; *Westinghouse Saxby Farmer Ltd. v. Commissioner of Central Excise, Calcutta, 2021 (376) E.L.T. 14 (S.C.),* particularly paragraphs 25 to 31, wherein the Hon'ble Supreme Court reiterated that classification is required to be determined by application of the terms of the tariff headings together with the relevant Section Notes, Chapter Notes and the General Rules for Interpretation; *H.P.L. Chemicals Ltd. v. Commissioner of Central Excise, Chandigarh, 2006 (197) E.L.T. 324 (S.C.)*, for the principle that the burden lies upon the Revenue to establish the competing classification by cogent

material; and *Commissioner of Customs, Mumbai Import-II v. Junaid Kudia, 2024 (388) E.L.T. 529 (S.C.)*, for the proposition that statements recorded under Section 108 of the said Act cannot be relied upon as substantive evidence for proving the truth of their contents without compliance with the requirements of Section 138B, including examination of the maker and affording an opportunity of cross-examination where sought.

VI. THE EXTENDED PERIOD UNDER SECTION 28(4) OF THE SAID ACT IS INAPPLICABLE

(i) Without prejudice to the submissions on merits, invocation of the extended period under Section 28(4) of the said Act is wholly unsustainable. The said provision can be invoked only where non-levy, short-levy, non-payment or short-payment of duty is shown to have arisen by reason of collusion, wilful misstatement or suppression of facts by the importer, exporter, agent or employee. Mere short-payment, assuming without admitting the same, is therefore insufficient; the Department must establish the existence of one of the statutorily prescribed culpable circumstances and a causal connection between such circumstance and the alleged short-payment.

(ii) The records of the present case disclose no concealment of any material fact. Eldyne commenced classification of the said goods under CTH 86080030 from August 2, 2017. Thereafter, by its representation dated November 10, 2017 addressed to the Commissioner of GST South, Kolkata, Eldyne

expressly disclosed its understanding that the appropriate classification of the DAC was under Heading 8608 and sought clarification in that regard. The said representation was accompanied, inter alia, by a specimen purchase order and product literature concerning the goods. The change in classification was thus expressly brought to the notice of the jurisdictional tax authorities and was not a classification adopted covertly or kept outside the knowledge of the Department.

(iii) More importantly, every import forming part of the present demand was made through Bills of Entry in which Eldyne expressly declared the classification under CTH 86080030. The goods were thereafter assessed and permitted clearance by the jurisdictional Customs authorities upon payment of duty on such basis. This course continued without objection until commencement of investigation by the DRI in or about February 2019. The very fact which is now alleged to constitute suppression, namely adoption of Heading 8608, was therefore expressly stated in the statutory import documents placed before the proper officer on each occasion.

(iv) The allegation that Eldyne had previously classified the same goods under Heading 8530 and subsequently changed such classification does not establish suppression, much less wilful suppression with intent to evade duty. Tariff classification is a question governed by law, and an assessee is not perpetually bound by an earlier classification which, upon

reconsideration of the relevant tariff provisions and technical material, it considers to be erroneous. In *Crompton Greaves Ltd. v. Commissioner of Customs and Central Excise, 1996 (87) E.L.T. 414 (Tribunal), affirmed in Crompton Greaves Ltd. v. Collector, 2002 (142) E.L.T. A182 (S.C.),* it was recognised that there can be no estoppel against law in a matter of classification.

(v) Further, where the description and identity of the goods have been correctly disclosed, a claim to a particular tariff treatment cannot, merely because the Department subsequently disputes it, be equated with misdeclaration. In *Northern Plastics Ltd. v. Collector of Customs and Central Excise, 1998 (101) E.L.T. 549 (S.C.),* the Hon'ble Supreme Court held, in substance, that where the goods are correctly and fully described, a claim to a particular exemption or tariff treatment, whether ultimately found admissible or otherwise, is a matter of the assessee's understanding and does not by itself amount to misdeclaration. The said principle was followed in *Sutures India Pvt. Ltd. v. Commissioner of Customs, 2009 (245) E.L.T. 596 (Tribunal),* affirmed in *Commissioner v. Sutures India Pvt. Ltd., 2010 (255) E.L.T. A55 (S.C.).*

(vi) The decision of the Hon'ble Supreme Court in *Westinghouse Saxby Farmer Ltd. v. Commissioner of Central Excise, Calcutta (supra),* particularly paragraphs 41 to 46, is also apposite. The Hon'ble Supreme Court declined to sustain invocation of the extended period

where the classification adopted by the assessee had been disclosed to and acted upon by the Department and there was no material establishing fraud, collusion, wilful misstatement or suppression of facts. The principle applies with equal force where, as in the present case, the classification under Heading 8608 was openly declared in the Bills of Entry and repeatedly accepted in assessment until the DRI subsequently took a different view.

(vii) The said impugned order seeks to infer an intention to evade duty substantially from the fiscal consequence of the change in classification. Under Serial No. 242 of Schedule I to Notification No. 1/2017-Integrated Tax (Rate) dated June 28, 2017, goods falling under Heading 8608 attracted integrated tax at the rate of 5%. Goods falling under Heading 8530, on the other hand, initially attracted integrated tax at the rate of 28% under Serial No. 156 of Schedule IV to the said Notification and, with effect from November 15, 2017, at the rate of 18% under Serial No. 384B of Schedule III thereto, as inserted by Notification No. 43/2017-Integrated Tax (Rate) dated November 14, 2017. The mere fact that the classification which Eldyne bona fide considered legally correct carried a lower rate of tax cannot establish collusion, wilful misstatement or suppression of facts with intent to evade payment of duty. If the fiscal advantage consequential upon adoption of a disputed classification were itself sufficient to establish the mental element required by Section 28(4) of the said Act, every classification dispute

involving differential rates would automatically attract the extended period, rendering the additional statutory requirements of Section 28(4) otiose.

(viii) On the contrary, Eldyne's conduct is inconsistent with any intention to conceal or suppress. The classification was expressly declared in the Bills of Entry; the change was independently disclosed by the representation dated November 10, 2017; product literature was furnished; the goods continued to be assessed and cleared under the declared classification; and, upon commencement of investigation, the technical literature and information sought by the DRI were furnished. These undisputed circumstances negate the allegation that any material fact was deliberately withheld from the Department.

(ix) In the premises, the essential jurisdictional conditions for invocation of Section 28(4) of the said Act are absent. The finding of wilful misstatement or suppression of facts with intent to evade payment of duty is unsupported by the record and proceeds merely from the Department's disagreement with the classification adopted by Eldyne. Invocation of the extended period is consequently illegal and the demand, to the extent falling beyond the normal period prescribed under Section 28, is barred by limitation.

VII. FAILURE TO ESTABLISH THAT ADJUDICATION WAS COMPLETED WITHIN THE PERIOD PERMISSIBLE UNDER SECTION 28(9) OF THE ACT

(i) The said show cause notice was issued on December 31, 2020, whereas Order-in-Original No. KOL/CUS/A&A/Pr.COMMISSIONER/ADJN/11/2024 was passed only on March 13, 2024. Section 28(9)(b) of the said Act requires determination of the amount of duty or interest within one year from the date of notice, subject to the exclusions and extensions expressly contemplated by the said provision and Section 28(9A).

(ii) It is not disputed that, in computing the relevant period, effect has to be given to the orders of the Hon'ble Supreme Court in In Re: Cognizance for Extension of Limitation, Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020, Order dated January 10, 2022, whereby the period from March 15, 2020 to February 28, 2022 was directed to stand excluded for purposes of limitation in judicial and quasi-judicial proceedings. The balance period accordingly became available from March 1, 2022.

(iii) The said impugned order further records that the matter had been placed in the Call Book pursuant to Instruction No. 04/2021-Customs dated March 17, 2021, issued under File No. 450/72/2021-Cus-IV, in view of the decision of the Hon'ble Supreme Court in Canon India Pvt. Ltd. v. Commissioner of Customs, Civil Appeal

No. 1827 of 2018, decided on March 9, 2021, and that the matter was subsequently taken out of the Call Book for adjudication under intimation dated July 25, 2022. Reliance is accordingly placed in the said impugned order upon Section 28(9A)(c) of the said Act.

(iv) The said impugned order thereafter merely states that "the competent authority has granted an extended period for adjudication under Section 28(9)" and, on that basis, rejects the objection as to limitation. The purported extension order is, however, neither identified by date or reference number nor reproduced or otherwise disclosed in the said impugned order. The authority which granted the extension, the circumstances recorded for granting the same, the precise period for which extension was granted and the date upon which such extension was granted are also not stated.

(v) The respondent authorities have therefore, failed to establish that the subject impugned adjudication was completed within the time permitted under the Act, particularly Section 28(9) thereof. The said impugned order is for this reason also, illegal, invalid and void ab initio.

VIII SHOW CAUSE NOTICE ISSUED WITHOUT JURISDICTION

(i) Moreover the show cause notice has been issued without the condition precedent therefor being satisfied and is ab initio bad and hence proceedings thereunder including the impugned order are without jurisdiction. The show cause

notice proposed and the impugned order confirmed recovery of alleged short paid additional customs duty/integrated tax under Section 28(4) of the Act. Section 28(1) of the Act provides for issuance of show cause notice for recovery of duty which has "not been levied or not paid or has been short levied or short paid or erroneously refunded". This provision applies when such non-payment or non-levy or erroneous refund is for reason other than collusion or any willful misstatement or suppression of facts. Similar provision is contained in Section 28(4) of the Act in case where such short payment or short levy or non-payment or non-levy or erroneous refund is by reason of collusion or any willful misstatement or suppression of facts. In the former case the period of limitation within which the show cause notice is required to be issued is two years whereas in the latter case the said period has been extended to five years, both from the relevant date as provided in the Explanation -1 of Section 28 of the Act. The condition precedent which has to be satisfied for issuance of show cause notice under either Section 28(1) or Section 28(4) of the Act is that there has to be a short levy or non-levy or short payment or non-payment or erroneous refund of duty in a particular case.

(ii) It is settled law that unless an assessment is completed there can be no question of any short levy or short payment or non-levy or non-payment of duty payable under the Act. It is only when assessment is complete in a particular case and it is found subsequently, in

the manner prescribed under the Act, that such assessment order is erroneous and that there has been either non-levy or non-payment of duty payable or short levy or short payment of such duty payable or erroneous refund of any duty involved in a particular case, that provisions of Section 28(1) or Section 28(4) are attracted. In terms of the Act the provisions under which such determination as to whether or not there has been, in a case of a particular assessment order passed, whereby duty payable by an assessee has either not been levied or not paid or has been short levied or short paid or erroneously refunded, are Section 128 read with Section 128A and Section 129D(2) of the Act. The assessment order has to be first got reversed or set aside through the process of appeal as provided for under Section 128 read with Section 128A and/or Section 129D(2) of the Act. It is only on setting aside of the said assessment order and determination by the Appellate Authority about the correctness of the contention that there has been short levy or short payment or non-levy or non-payment or erroneous refund of duty in a particular case, as the case may be, that it can be said that there has been short levy or short payment or non-levy or non-payment of duty as per the provisions of the Act. This is the settled principle, enunciated by Courts including the Apex Court. The Apex Court has specifically held that in terms of the amended definition of the expression “assessment” in Section 2(2) of the Act, the same includes self assessment and that such self assessment having also been

incorporated in Section 17(1) and (2) of the Act, irrespective of whether the self assessment is without passing of a speaking order, it has to be termed to be an order of assessment, even if the same is passed by endorsement on the Bill of Entry and that such an order has to be got modified/reversed under Section 128 of the Act or under other relevant provisions thereof, in accordance with law and, until the same is done, the said order of assessment (self assessment) continues to remain in force and applicable. In the instant case none of the subject assessments have been appealed against by the Department, upon review thereof in terms of Section 129D(2) of the Act, before the Commissioner (Appeals) under Section 128 read with Section 128A of the Act. The said assessment orders have, thus, attained finality. As such, it cannot be legally and validly held or said that there was short payment or short levy or non-payment or non-levy of customs duties.

(iii) Hence, the condition precedent for issuance of any show cause notice or initiating any proceeding in terms of Section 28(1) or Section 28(4) of the Act has not been and cannot be said to have been satisfied in the instant case. The show cause notice and therefore the impugned order are ex-facie without the condition therefor being satisfied and hence untenable and unsustainable ab initio.

IX CONFISCATION UNDER SECTION 111(m) OF THE SAID ACT IS UNSUSTAINABLE

(i) The said impugned order has held the imported goods valued at Rs.54,61,14,482/- liable to confiscation under Section 111(m) of the said Act. The said provision applies where goods do not correspond in respect of value or in any other particular with the entry made under the said Act. The condition precedent is therefore a material discrepancy between the goods imported and the particulars declared in the relevant entry.

(ii) No such discrepancy exists in the present case. The goods were disclosed as Digital Axle Counters and components thereof and there is no finding that Eldyne concealed the identity, quantity, value, country of origin or physical description of the imported goods. The controversy concerns the appropriate tariff heading applicable to goods whose identity and function were disclosed to the Department.

(iii) A bona fide claim to a particular tariff classification does not become a false declaration merely because the Department subsequently proposes another heading. The principle laid down in *Northern Plastics Ltd. v. Collector of Customs and Central Excise, 1998 (101) E.L.T. 549 (S.C.),* that a claim to a particular tariff or exemption treatment in respect of correctly described goods does not by itself constitute misdeclaration, applies squarely to the present case.

(iv) In any event, for the reasons already set out hereinabove, the classification under CTH 86080030 was correct. Once the very foundation of the alleged misclassification fails, the consequential finding that the goods were liable to confiscation under Section 111(m) necessarily fails with it. The order of confiscation is therefore illegal and liable to be set aside.

X REDEMPTION FINE UNDER SECTION 125 OF THE SAID ACT CANNOT SURVIVE

(i) The redemption fine of Rs.5,00,00,000/- imposed under Section 125 of the said Act is wholly consequential upon the finding that the goods were liable to confiscation under Section 111(m). Unless confiscation is first lawfully attracted, no question can arise of permitting redemption in lieu thereof.

(ii) The said impugned order records that the goods were not physically available for confiscation and relies upon the proposition that physical availability of the goods is not invariably necessary for imposition of redemption fine. Even assuming the said principle to apply, it does not dispense with the anterior requirement that the goods must first be legally liable to confiscation under Section 111. In the present case that foundational requirement itself is absent.

(iii) Accordingly, irrespective of the controversy concerning physical availability of the goods, the redemption fine cannot survive once the finding under Section 111(m) is set aside.

XI PENALTY UPON ELDYNE UNDER SECTION 114A OF THE SAID ACT IS UNSUSTAINABLE

(i) The penalty of Rs.7,67,54,006/- imposed upon Eldyne under Section 114A of the said Act is equally unsustainable. Section 114A is attracted where duty or interest has not been levied, short-levied, not paid or short-paid by reason of collusion or any wilful misstatement or suppression of facts. The culpable ingredients of the provision correspond materially with those required for invocation of the extended period under Section 28(4).

(ii) For the reasons already stated, there was no collusion, wilful misstatement or suppression of facts on the part of Eldyne. The revised classification was expressly disclosed; the representation dated November 10, 2017 was made to the jurisdictional Commissioner; the classification under CTH 86080030 appeared on the face of every relevant Bill of Entry; and the goods were repeatedly assessed and cleared on that basis.

(iii) Once the ingredients of Section 28(4) are absent, the equal penalty under Section 114A cannot independently survive. Further, upon the principal demand itself being set aside on classification, there remains no amount of duty upon which an equal penalty under Section 114A could be founded. The penalty imposed upon Eldyne is therefore liable to be set aside.

XII PENALTIES UPON SHRI SANTANU BASU UNDER SECTIONS 112(a) AND 114AA OF THE SAID ACT ARE UNSUSTAINABLE

(i) The said impugned order imposes upon Shri Santanu Basu a penalty of Rs.10,00,000/- under Section 112(a) and a further penalty of Rs.15,00,000/- under Section 114AA of the said Act. The allegations against him substantially arise from his role as Chairman and Managing Director of Eldyne, his involvement in the classification adopted by the company and the explanations furnished by him during investigation regarding the functioning of the DAC.

(ii) Section 112(a) requires the Department to establish that the person concerned, in relation to the goods, did or omitted to do an act which rendered the goods liable to confiscation under Section 111 or abetted the doing or omission of such an act. The provision therefore requires identification of a specific act or omission having the statutory consequence of rendering the goods confiscable.

(iii) No such act or omission has been established against Shri Santanu Basu. Participation in a corporate decision as to tariff classification, particularly one taken upon legal advice, disclosed to the authorities and thereafter reflected in openly filed Bills of Entry, does not constitute an act rendering goods liable to confiscation. Once confiscation under Section 111(m) itself fails, the derivative penalty under Section 112(a) necessarily fails.

(iv) The allegation that Shri Santanu Basu sought to mislead the investigation by explaining that the DAC was electro-mechanical also does not satisfy Section 112(a). Such statements were made during investigation long after importation and clearance of the goods and cannot retrospectively constitute the act or omission which rendered the goods liable to confiscation at the time of import.

(v) Section 114AA requires proof that a person knowingly or intentionally made, signed or used, or caused to be made, signed or used, a declaration, statement or document which was false or incorrect in a material particular in a transaction for the purposes of the said Act. The requirement of knowledge or intention is express and indispensable.

(vi) The said impugned order does not identify any particular declaration, statement or document attributable to Shri Santanu Basu which has been proved, by independent evidence, to have been knowingly or intentionally false. A technical explanation concerning the functioning of the DAC, even if the Department disagrees with it, cannot without more be converted into an intentionally false statement within the meaning of Section 114AA.

(vii) The penalties of Rs.10,00,000/- under Section 112(a) and Rs.15,00,000/- under Section 114AA imposed upon Shri Santanu Basu are consequently unsupported by the statutory ingredients of either provision and are liable to be set aside.

XIII PENALTIES UPON MS. RUPANJALI DEY UNDER SECTIONS 112(a) AND 114AA OF THE SAID ACT ARE UNSUSTAINABLE

(i) The said impugned order imposes upon Ms. Rupanjali Dey a penalty of Rs.3,00,000/- under Section 112(a) and a further penalty of Rs.5,00,000/- under Section 114AA of the said Act. Ms. Dey was the Chief Financial Officer of Eldyne and, as stated in her written submissions dated February 9, 2023, was a non-technical officer dealing principally with financial matters and acted upon the understanding of the product and its classification conveyed to her by the technical personnel of the company.

(ii) No specific act or omission has been identified against Ms. Dey which rendered the goods liable to confiscation under Section 111 or amounted to abetment of any such act. The broad allegation that she participated in or supported the company's classification under Heading 8608 cannot satisfy the statutory conditions of Section 112(a), particularly when such classification had been openly disclosed and repeatedly accepted in assessment.

(iii) The allegation under Section 114AA appears principally to arise from statements or correspondence attributed to Ms. Dey during investigation concerning the working of the DAC and whether the system was operated from a control point. Even assuming any part of her technical understanding to have been inaccurate, Section 114AA is not attracted by mere error or misunderstanding. The Department must establish that the statement

was made knowingly or intentionally despite knowledge of its falsity.

(iv) No such evidence has been identified in the said impugned order. A non-technical financial officer repeating an explanation received from the technical personnel of the company cannot, without cogent proof of knowledge and intention, be subjected to penal consequences under Section 114AA merely because the investigating authority preferred another technical interpretation.

(v) The penalties of Rs.3,00,000/- under Section 112(a) and Rs.5,00,000/- under Section 114AA imposed upon Ms. Rupanjali Dey are therefore arbitrary, unsupported by the statutory requirements and liable to be set aside.

XIV INTEREST UNDER SECTION 28AA OF THE SAID ACT IS CONSEQUENTIAL

(i) The demand for interest under Section 28AA of the said Act is consequential upon a legally sustainable determination of duty. Where no additional customs duty is payable, no question arises of charging interest thereon under Section 28AA.

(ii) Since the demand of Rs.7,67,54,006/- itself fails on classification and, in any event, the extended period under Section 28(4) is unavailable, the consequential demand for interest is also liable to be set aside.

17.1. In view of the premises aforesaid, the Ld. Counsel for the appellants have prayed for the setting aside of Order-in-Original No. KOL/CUS/A&A/

Pr.COMMISSIONER/ADJN/11/2024 dated March 13, 2024, on the grounds that the imported Digital Axle Counters and parts thereof are correctly classifiable under Heading 8608 rather than Heading 8530. Consequently, they seek the quashing of the demand for Integrated Tax amounting to Rs. 7,67,54,006/-, together with interest thereon, the order of confiscation of goods valued at Rs. 54,61,14,482/-, the redemption fine of Rs. 5,00,00,000/-, along with all consequential personal and corporate penalties fastened upon M/s. Eldyne Electro Systems Pvt. Ltd., Shri Santanu Basu, and Ms. Rupanjali Dey. Consequently, it is their prayer that the appeals be allowed, with all consequential reliefs as per law to meet the ends of justice.

18. On the other hand, the Ld. Authorized Representative of the Revenue justified the findings of the lower authority as recorded in the impugned order. The principal contentions of the Revenue are as under: -

(a) The impugned goods, namely Digital Axle Counter (DAC), imported by the appellant-company M/s. Eldyne Electro System Pvt. Ltd., are appropriately classifiable under Chapter Heading 8530 of the Customs Tariff, as correctly held in the impugned order, rather than under Chapter Heading 8608 as claimed by the appellant.

(b) Chapter Heading 8530 specifically covers electrical signalling, safety, or traffic control equipment for railways, whereas Chapter Heading 8608 covers mechanical (including electro-mechanical) signalling, safety, or traffic control equipment. The DAC system in question

relies on digital axle-counting mechanisms, electronic sensors, and advanced electronic circuitry to perform its core functions of detecting/counting railway axles and determining track occupancy.

(c) In accordance with HSN Explanatory Note (B) to Chapter Heading 86.08, mechanical/electro-mechanical equipment under Heading 8608 refers to apparatus operated from a control point—generally at some distance—by means including electric motors, levers, cranks, rods, wires, chains, and hydro-pneumatic devices.

(d) The DAC system is installed beside the railway track, where it performs its sensing, counting, and computing functions autonomously. It is not operated mechanically or electro-mechanically from a distant control point through levers, cranks, rods, wires, chains, or hydro-pneumatic devices as contemplated under Heading 8608.

(e) The reliance placed by the appellant-company on operating and maintenance literature as well as the Railway Maintenance Handbook was rightly rejected by the adjudicating authority, as these documents fail to establish that the DAC is operated from a distant control point via the mechanical or electro-mechanical means specified in the HSN Explanatory Notes to Chapter Heading 86.08.

(f) The ld. adjudicating authority correctly relied upon the statement of Shri Gautam Biswas dated 09.07.2019, which supports the finding that the imported goods pertain to Chapter Heading 8530, thus establishing the deliberate

misdeclaration and suppression on the part of the appellants with a view to avail undue benefit of lower rate of duty/tax.

(g) The imposition of penalties on the appellant-company under Section 114A of the Act as well as the co-appellants i.e., Shri Santanu Basu (appellant No. 2) and Ms. Rupanjali Dey (Appellant No. 3) under Sections 112(a) and 114AA ibid., is fully justified. Both co-appellants attempted to misguide the investigation with mala fide intent to suppress material facts.

18.1. In light of the submissions made above, the Ld. Authorized Representative of the Revenue contends that the appeals filed by the appellant-company, M/s. Eldyne Electro System Pvt. Ltd., as well as co-appellants Shri Santanu Basu and Ms. Rupanjali Dey, be rejected in their entirety as devoid of merit. Accordingly, he submitted that imported goods viz. Digital Axle Counter (DAC) merit classification under Chapter Heading 8530 and thus, the impugned order does not call for any interference.

19. Heard both the sides at considerable length and considered the documentary evidence placed on record.

20. Having given our anxious consideration to the rival submissions, the material placed on record and the technical literature concerning the goods in dispute, at the threshold, we deem it apposite to delineate, with some precision, the controversy which falls for determination in these appeals. The dispute is not, in essence, as to whether the Digital Axle Counter ("DAC") employs electrical energy, electronic circuitry or electromagnetic phenomena in the course of its

operation; those features are evidently embedded in its mode of functioning. The anterior and more determinative question is as to the correct tariff characterization of the complete apparatus viewed in its entirety and by reference to the function which it is designed to perform, and, in that context, whether the DAC is merely an electrical signalling/safety apparatus of Chapter Heading 8530 or constitutes mechanical/electromechanical railway signalling, safety or traffic-control equipment falling under Chapter Heading 8608.

20.1. The controversy, therefore, circumscribes a somewhat narrower and technically more exacting inquiry than that which might emerge from a mere juxtaposition of the words "electrical" and "mechanical". It would, therefore, be required to ascertain the true functional identity of the said apparatus, the nature in which its several constituent stages cooperate, the manner in which physical information pertaining to the movement of a railway wheel is sensed, processed, evaluated and ultimately translated into a condition capable of actuating the railway signalling and interlocking system, and, concomitantly, whether the complete architecture of the DAC, when so appreciated, bears the character of an electromechanical railway safety/signalling apparatus rather than that of an isolated electronic or electrical device.

20.2. It is in this regard that the appellant's defence of the DAC not merely being a loose aggregation of independently functioning electronic modules stands. It is their plea that a technical evaluation of the apparatus would reveal a sequentially integrated and fail-safe architecture in which each constituent stage

performs a distinct but indispensable function, the output of one stage constituting the operative input of the next and the system, in its functional conception, therefore constitutes a closed-loop safety mechanism extending from the physical detection of a railway wheel at the trackside to the ultimate generation of a physical relay condition employed in railway signalling and interlocking. The proper appreciation of this architecture is, in our considered view, indispensable before the competing tariff entries can meaningfully be examined.

20.3. It would also be necessary to dispel a possible imprecision arising from the separate procurement of the underlying goods. The DAC apparatus and the vital relay/output equipment may, as a matter of commercial procurement and import documentation, be separately supplied or imported. However, as rightly pointed out by the appellant, such separate invoicing or physical segregation, cannot ipso facto sever their functional nexus, without examining the same. It is the specific case of the appellant that the Digital Axle Counter (DAC) without the relay/output stage, and the relay, when brought together in the railway installation, operate as constituent limbs of one integrated functional system, the former generating and evaluating the safety decision and the latter converting that decision into the physical contact condition by which the railway signalling and interlocking apparatus is actuated. The classification exercise must, therefore, take due cognizance of the complete functional configuration and cannot be rendered otiose merely because one constituent of the operational chain is separately procured.

Functional Description of the Digital Axle Counter (DAC) System:

21. The material on record discloses that the Digital Axle Counter (DAC) systems deployed in railway installations constitute safety-critical train-detection arrangements whose principal function is to determine whether a defined section of railway track is occupied or clear. Unlike conventional track-circuit arrangements in which electrical continuity through the rails is utilised for determining occupancy, the DAC proceeds upon a digital "check-in/check-out" methodology. The passage of each railway axle at the entry and exit Detection Points is detected, electronically evaluated and compared, and the resultant condition of the track section is thereafter communicated to the signalling/interlocking infrastructure through the relay/output stage.

22. Viewed functionally, the system may be appreciated through four principal and sequential stages, namely: (I) the Rail Contacts constituting the outdoor detection points; (II) the Track-Side Electronic Unit or EAK; (III) the Central Evaluator or ACE; and (IV) the Vital Signalling Relay/Output Stage. The four stages collectively constitute the operational chain by which a physical railway event is transformed into a safety-signalling command.

(I) Rail Contacts — Outdoor Detection Point

- **Technical Nomenclature:** Model SK30H (comprising Transmitter and Receiver Heads).
- **Physical Location:** Installed directly on the web of the railway rails at designated entry/exit detection points.

- **Primary Function:** Act as the primary physical-to-electronic transducer/sensor. The transmitter heads (Tx) mounted on the outside emit distinct electromagnetic high-frequency signals toward the receiver heads (Rx) on the inside.

- **Operational Mechanism:** When a train passes, the metallic mass of the wheel flange interrupts the electromagnetic field between the Tx and Rx coils. This distortion produces a modulation in the output voltage, capturing raw physical wheel-passage data in real-time.

- **System Interdependence:** The Rail Contacts are purely raw data capture mechanisms; they cannot process direction, count axles, or generate signalling decisions independently.

22.1. The first stage comprises the Rail Contacts, technically identified in the relevant system as SK30H, comprising transmitter and receiver heads. These are installed directly upon the web of the railway rails at the designated entry and exit Detection Points of the track section under surveillance.

22.1.1. The Rail Contact constitutes the primary physical-to-electronic transducer of the system. The transmitter heads, mounted on the outer side, emit distinct high-frequency electromagnetic signals towards the receiver heads situated on the inner side. As a railway train passes over the detection point, the metallic mass of the wheel and, in particular, the wheel flange, interferes with the electromagnetic field existing between the transmitter and receiver elements. This disturbance manifests itself as a modulation or alteration in the output voltage

waveform and thereby captures, in real time, the occurrence of wheel passage. The operation of the Rail Contact is thus founded upon an interaction between a physical railway event and an electromagnetic sensing phenomenon. The Rail Contact, by itself, does not possess the algorithmic capability to count axles, determine their direction of movement or pronounce the ultimate status of the track section. It is, in that sense, the sensing limb of the larger apparatus and functions as the point at which the physical movement of a railway vehicle is first transduced into an electrical/electromagnetic signal capable of being processed by the succeeding stage.

22.1.2. The Rail Contacts comprise two sets of coils, namely the transmitter and receiver coils, which are connected to the Line Side Electronics Unit through an integrated insulated cable. The transmitter coil is excited by an alternating current signal originating from the EAK, whereupon an electromagnetic field is generated around the transmitter coil. The resulting electromagnetic flux links with the receiver coil and gives rise to a corresponding alternating-current waveform in the receiving circuit. The presence of a metallic railway wheel between the transmitter and receiver sets alters the amplitude and phase characteristics of the waveform. It is this alteration which furnishes the raw detection information upon which the subsequent axle-counting process proceeds.

22.1.3. Thus, while the Rail Contact does not contain an active electronic processing device of its own and remains in a passive state until electrically energised from the EAK, it is nevertheless an indispensable constituent of the complete DAC

system. In its absence there is no physical detection input to the electronic processing chain, and consequently no basis upon which the succeeding stages can perform the function for which the system is designed.

(II) Line Side Electronics Unit (EAK) — Trackside Processing Stage

- **Technical Nomenclature:** Track-Side Electronic Unit / EAK (Elektronische Achszähl Kasten).
- **Physical Location:** Housed in a weatherproof protective enclosure situated in immediate proximity (typically within 4 metres) to the Rail Contacts.
- **Primary Function:** Acts as the decentralized analog-to-digital converter, filtering agent, and local transmitter.
- **Operational Mechanism:** The EAK contains internal electronic circuitry (analog and digital cards) that processes the raw phase shifts and modulated voltages received from the Rail Contacts. By analyzing the phase relationship between the internal twin sensors, the EAK calculates both the axle count and the direction of movement (entry vs. exit).
- **System Interdependence:** The EAK converts these counts into secure, addressable digital data packets and transmits them along with its internal health/error diagnostics to the centralized indoor equipment. It does not possess the algorithmic capacity to determine if an entire section of track is clear or occupied.

22.2. The second stage is constituted by the Track-Side Electronic Unit (EAK), technically referred to as the Elektronische Achszähl Kasten. This unit is installed in a weatherproof protective enclosure in immediate proximity to the Rail Contacts, ordinarily within a few metres thereof, and performs the essential intermediary function between the physical detection point and the centralised evaluation apparatus.

22.2.1. The EAK contains the requisite electronic circuitry, including analogue and digital processing cards, and acts as the local processing and transmission stage of the system. Each EAK is connected to a Rail Contact through the copper conductors contained in the integrated cable associated with the Rail Contact. Its circuitry continuously supplies the requisite alternating-current waveform to the transmitter coil of the Rail Contact and receives the corresponding waveform picked up by the receiver coil.

22.2.2. The EAK processes the raw phase shifts and modulated voltage signals generated by the interaction between the electromagnetic field and the passing metallic wheel. By continuously comparing the received signal against the relevant preset reference level for the rail profile, the EAK detects the disturbances caused by passing wheels. Through analysis of the changes occurring in the waveform, including the phase relationship between the sensor signals, it calculates the axle count and determines the direction of movement, thereby distinguishing between entry-side and exit-side movement.

22.2.3. The significance of this stage lies in the fact that it does not merely relay an undifferentiated

electrical signal. It transforms the raw physical detection information into structured and addressable digital information. The wheel counts are transmitted continuously through the communication pair of wires to the Central Evaluator, accompanied, where applicable, by the relevant internal health and error diagnostics. Nevertheless, the EAK, by itself, does not pronounce whether the entire intervening track section is "Free" or "Occupied". Its function remains confined to the reliable detection, local processing, counting and transmission of the events occurring at the relevant Detection Point.

22.2.4. The mode of operation of the EAK also reinforces the functional interdependence of the system. The electromagnetic phenomenon generated at the Rail Contact furnishes the input; the EAK senses and processes the resulting disturbance; and the processed information is then transmitted to the central evaluating stage. The EAK is consequently neither an isolated electronic article nor a self-sufficient signalling apparatus, but an integral processing limb within the larger safety architecture.

(iii) Central Evaluator (ACE) — Centralised Decision-Making Stage

- **Technical Nomenclature:** Axle Counter Central Evaluator / ACE.
- **Physical Location:** Housed indoors within a highly secure environment, such as the station's interlocking relay room or a centralized cabin.
- **Primary Function:** Serves as the core diagnostic and algorithmic decision-making "brain" of the entire Multi-Section Digital Axle Counter (MSDAC) system.

- **Operational Mechanism:** Operating under strict fail-safe software architectures (typically featuring Safety Integrity Level 4 [SIL4] 2-out-of-2 or 2-out-of-3 microcomputer configurations), the ACE aggregates the digital data packets sent by all connected EAK trackside units. It performs algebraic calculations by continuously comparing total "In-Counts" against total "Out-Counts" for every designated track block section.

- **System Interdependence:** If In-Counts = Out-Counts, the computer determines the section is clear; if a mismatch occurs, it determines the section is occupied. However, the ACE outputs this life-critical safety evaluation purely as a low-voltage electronic state which *cannot* directly interface with or drive legacy railway signaling infrastructure or block instruments.

22.3. The third stage is the Axle Counter Central Evaluator (ACE), which constitutes the centralised evaluative and decision-making component of the Digital Axle Counter system. The ACE is ordinarily installed indoors, such as within the station, relay room, centralised cabin or another secured control environment, and is connected to the plurality of EAKs installed at the Detection Points along the relevant railway line.

22.3.1. The ACE receives, through its serial cards, the digital wheel-count information transmitted from the EAKs corresponding to the entry and exit Detection Points of each defined section. Operating through a fail-safe electronic architecture, the Central Evaluator continuously aggregates and compares the

total number of axles entering the relevant section with the total number of axles leaving it. In sophisticated Multi-Section Digital Axle Counter ("MSDAC") configurations, such processing is undertaken through safety-oriented microcomputer architectures designed to satisfy stringent railway safety requirements, including safety-integrity configurations such as SIL-4 arrangements.

22.3.2. The operative logic is both precise and consequential. Where the total "In-Count" equals the total "Out-Count", the system determines that the intervening section is clear; where the two counts do not reconcile, the section is treated as occupied. The ACE thus constitutes the central computational stage at which the separately detected railway events are translated into the final safety determination regarding the status of the track section.

22.3.4. The significance of the ACE, however, must not be viewed in isolation. The Central Evaluator merely arriving at the electronic conclusion "Free" or "Occupied" does not, by itself, bring about the corresponding physical operation of the railway signalling infrastructure. The electronic safety determination must still be presented to the signalling/interlocking apparatus in a form capable of actuating the relevant circuitry. It is at this precise juncture that the fourth and final stage assumes decisive functional importance.

(IV) Vital Signalling Relay - Output Stage

- **Technical Nomenclature:** Vital Signaling Plug-In Relays (typically Tractive Armature, Q-series / AC-Immune Biased Relays driven via Parallel Output Cards).

- **Physical Location:** Mounted on the indoor relay racks directly adjacent to, or driven by, the Central Evaluator (ACE).

- **Primary Function:** Acts as the vital electro-mechanical interface that translates digital safety computation into physical power routing for track signals and interlocking systems.

- **Operational Mechanism:** The low-voltage digital decisions rendered by the ACE actuate the coils of these plug-in vital relays. The electromechanical tractive armature moves physical copper/silver contacts to close or break a heavy electrical circuit. This mechanical movement physically shifts railway signals to green (clear) or red (danger) and drops the block-proving circuits across the line.

- **System Interdependence:** The system relies completely on this stage. If the vital relay is omitted, the Digital Axle Counter system is rendered a mute processor—incapable of executing its ultimate statutory purpose of safeguarding rail traffic control

22.4. The fourth stage comprises the Vital Signalling Relay/Output Stage, constituted by the plug-in vital relays driven through the relevant output cards associated with the Central Evaluator. These relays are ordinarily mounted upon relay racks in the indoor signalling environment, adjacent to or functionally driven by the ACE.

22.4.1. This stage is not merely an auxiliary appendage to the DAC. It constitutes the vital electromechanical interface through which the electronic safety determination produced by the ACE

is converted into a physical contact condition capable of being utilised by the railway signalling and interlocking circuitry.

22.4.2. The operational sequence is of particular relevance. The low-voltage electronic decision rendered by the ACE actuates the coil of the corresponding plug-in vital relay. Energisation of the relay produces movement of its electromechanical armature, thereby causing the physical opening or closing of the associated metallic contacts. Those contacts are, in turn, incorporated into the railway interlocking and signal-clearance circuits and thereby determine the corresponding signalling condition and the continuity of the block-proving or related safety circuits. The "pick-up" and "drop" conditions of the relay consequently constitute a physical representation of the electronically determined "clear" or "occupied" condition of the track section.

22.4.3. The relay/output stage thus performs a function qualitatively different from mere electronic computation. An electronic processor may conclude that a section is clear, but the railway signalling installation requires that conclusion to be embodied in a physical switching condition capable of participating in the interlocking logic. The vital relay provides precisely that bridge between electronic computation and electromechanical actuation. The movement of its armature and the consequent operation of the metallic contacts constitute the physical intervention through which the abstract digital determination is translated into an actionable signalling state.

22.4.4. The architecture assumes still greater significance when the system is considered as a whole. If the Rail Contacts are the sensory ingress of

the system, the EAK is the local processing and transmission limb, and the ACE is the central decision-making brain, the vital relay is the electromechanical terminus of the safety chain. The removal of the relay/output stage leaves the preceding units capable, at best, of detecting, processing and computing a condition, but disables them from communicating that condition to the conventional railway signalling and interlocking infrastructure in the form in which that infrastructure is designed to respond. The relay therefore completes the functional circuit rather than constituting an extraneous appendage to it.

Functional Unity of the Four Stages

23. The foregoing technical analysis makes it apparent that the four stages cannot, for purposes of understanding the true character of the apparatus, be viewed as unrelated or merely juxtaposed components. They constitute a continuous sequence of mutually dependent operations: the Rail Contact detects the physical wheel movement; the EAK processes the resulting electromagnetic disturbance and determines the wheel count and direction; the ACE compares the entry and exit counts and determines whether the track section is clear or occupied; and the vital relay converts that electronic determination into a physical electromechanical contact condition capable of operating the railway signalling and interlocking circuitry.

23.1. The system is thus functionally a single, indivisible safety architecture, even though its constituent units may be separately housed, separately procured or, in the case of the relay/output stage, separately imported. Physical separability cannot be conflated with functional separability. The

relevant enquiry is as to whether the respective elements coalesce in the finished installation to perform the very function which gives the article its identity. In the present case, the answer is manifestly in the affirmative.

23.2. Indeed, the architecture may be viewed as an unbroken chain of operational logic extending from the trackside physical event to the ultimate signalling consequence. A wheel passing a Detection Point disturbs the electromagnetic field; that disturbance is translated into an electrical waveform; the waveform is processed into a digital count and direction; the counts entering and leaving a defined section are computationally reconciled; the resultant safety status is generated as an electronic output; and that output, through the vital relay, is converted into an actual electromechanical switching condition in the railway signalling and interlocking network. No one of these stages, taken in isolation, performs the complete function of the Digital Axle Counter system; it is their coordinated interaction which constitutes the apparatus in its commercially and functionally intelligible form.

23.3. It is, therefore, this complete functional architecture which must inform the subsequent examination of the competing Chapter Headings. To characterise the goods solely by reference to the electronic principle employed at the sensing or processing stages, while severing from consideration the electromechanical output through which the safety determination is ultimately translated into railway signalling action, would amount to viewing the apparatus through an unduly truncated prism and

would not, in our considered view, capture its true functional identity.

24. Having delineated the functional architecture of the Digital Axle Counter, we may now turn to the competing tariff entries under which the rival classifications have been canvassed. The appellant-company has classified the complete DAC under Customs Tariff Item 86080030, whereas the classification adopted in the impugned order is under Customs Tariff Item 85301010, with the parts thereof sought to be brought under Customs Tariff Item 85309000. The rival entries fall respectively under Chapters 85 and 86 of the First Schedule to the Customs Tariff Act, 1975, and their respective descriptions assume significance in the context of the present dispute.

24.1. Chapter 85 of the Customs Tariff Act, 1975 is captioned:

> *"Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles."*

24.2. Within the said Chapter, Chapter Heading 8530 is described as follows:

> *"ELECTRICAL SIGNALLING, SAFETY OR TRAFFIC CONTROL EQUIPMENT FOR RAILWAYS, TRAMWAYS, ROADS, INLAND WATERWAYS, PARKING FACILITIES, PORT INSTALLATIONS OR AIRFIELDS (OTHER THAN THOSE OF HEADING 8608)"*

24.3. The relevant tariff structure under Heading 8530 is reproduced below:

Tariff Item		**Description of goods**	**Unit**	**Rate of duty**	
				Standard	*Preferential areas*
8530		**Electrical signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields (other than those of heading 8608)**			
8530 10	-	*Equipment for railways or tramways:*			
8530 10 10	---	For railways	u	7.5%	-
8530 10 20	---	For tramways	u	7.5%	-
8530 80 00	-	Other equipment	u	7.5%	-
8530 90 00	-	Parts	kg.	7.5%	-

24.4. The Department's classification proceeds upon the premise that the DAC answers the description of electrical signalling, safety or traffic-control equipment for railways, and is accordingly covered by Customs Tariff Item 85301010, while the relevant parts are sought to be covered under Customs Tariff Item 85309000. The parenthetical expression occurring in Heading 8530 - "other than those of Heading 8608"- is, however, of immediate significance, since the Heading itself recognises that equipment which properly answers the description of Heading 8608 is excluded from its ambit. The two Headings are consequently not entirely unrelated or mutually exhaustive descriptions in which one may be selected merely by identifying the presence of electricity in the article; their interrelationship necessarily requires the nature and character of the equipment to be examined with some degree of functional exactitude.

25. On the other hand, Chapter 86 bears the following description:

> *"Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signalling equipment of all kinds"*

25.1. Within the said Chapter, Chapter Heading 8608 is described as follows:

> *"RAILWAY OR TRAMWAY TRACK FIXTURES AND FITTINGS; MECHANICAL (INCLUDING ELECTOMECHANICAL) SIGNALLING, SAFETY OR TRAFFIC CONTROL EQUIPMENT FOR RAILWAY, TRAMWAYS, ROADS, INLAND WATERWAYS, PARKING FACILITIES, PORT INSTALLATION OR AIR-FIELDS; PARTS OF THE FOREGOING"*

25.2. The relevant tariff structure under Heading 8608 is reproduced below:

Tariff Item		**Description of goods**	**Unit**	**Rate of duty**	
				Standard	*Preferential areas*
8608		Railway or tramway track fixtures and fittings; mechanical (including electomechanical) signalling, safety or traffic control equipment for railway, tramways, roads, inland waterways, parking facilities, port installation or air-fields; parts of the foregoing			
8608 00	-	*Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railway, tramways, roads, inland waterways, parking facilities, port installation or air-fields; parts of the foregoing.*			
8608 00 10	---	Railway and tramway track fixtures and fittings	kg.	10%	-
8608 00 20	---	Mechanical equipment, not electrically powered for signalling to, or controlling, road rail or other vehicles, ships or aircraft	kg.	10%	-
8608 00 30	---	Other traffic control equipment for railways	kg.	10%	-
8608 00 40	---	Other traffic control equipment for roads or inland waterways including automatic traffic control equipment for use at ports and airport	kg.	10%	-
8608 00 90	---	Other	kg.	10%	-

25.3. Chapter Heading 8530 covers, in its ambit, electrical equipment for controlling traffic on railways, roads, inland waterways, parking facilities, port installations or airfields, whereas the corresponding tariff and HSN scheme for Chapter Heading 8608 contemplates mechanical, including electro-mechanical, signalling, safety or traffic-control equipment for railways, and Heading 8530, in turn, excludes equipment of the kind covered by Heading 8608. The classification issue thus, in our view, requires consideration of the Digital Axle Counter (DAC) as a complete apparatus and not merely by reference to any isolated electronic element thereof vis-à-vis the relevant tariff headings as noticed above.

26. At this stage, the relevant Chapter Notes governing the scope of Chapter 86 may be noticed:

> "Notes:
>
> 1. This Chapter does not cover:
>
> (a) railway or tramway sleepers of wood or of concrete, or concrete guide-track sections for hovertrains (heading 4406 or 6810);
>
> (b) railway or tramway track construction material of iron or steel of heading 7302; or
>
> (c) electrical signalling, safety or traffic control equipment of heading 8530.
>
> 2. Heading 8607 applies, inter alia, to:
>
> (a) axles, wheels, wheel sets (running gear), metal tyres, hoops and hubs and other parts of wheels;
>
> (b) frames, under frames, bogies and bissel-bogies;
>
> (c) axle boxes, brake gear;
>
> (d) buffers for rolling-stock; hooks and other coupling gear and corridor connections;
>
> (e) coachwork.

3. Subject to the provisions of Note 1 above, heading 8608 applies, inter alia, to:

(a) assembled track, turntables, platform buffers, loading gauges;

(b) semaphores, mechanical signal discs, level crossing control gear, signal and point controls and other mechanical (including electro-mechanical) signalling, safety or traffic control equipment, whether or not fitted for electric lighting, for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields."

27. Before proceeding further, the relevant provisions of Section XVII may also be noticed: -

"SECTION XVII

VEHICLES, AIRCRAFT, VESSELS AND ASSOCIATED TRANSPORT EQUIPMENT

Notes:

1. This Section does not cover articles of heading 9503 or 9508 or bobsleighs, toboggans and the like of heading 9506.

2. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:

(a) joints, washers or the like of any material (classified according to their constituent material or in heading 8484) or other articles of vulcanised rubber other than hard rubber (heading 4016);

(b) parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39);

(c) articles of Chapter 82 (tools);

(d) articles of heading 8306;

(e) machines and apparatus of headings 8401 to 8479, or parts thereof, other than the radiators for the articles of this Section, articles of heading 8481 or 8482 or, provided they constitute integral parts of engines or motors, articles of heading 8483;

(f) electrical machinery or equipment (Chapter 85);

(g) articles of Chapter 90;

(h) articles of Chapter 91;

(ij) arms (Chapter 93);

(k) lamps or lighting fittings of heading 9405; or

(l) brushes of a kind used as parts of vehicles (heading 9603).

3. References in Chapters 86 to 88 to "parts" or " accessories" do not apply to parts or accessories which are not suit-able for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory.

…"

Interplay between Heading 8530 and Heading 8608

28. Heading 8530 itself covers *"Electrical signalling, safety or traffic control equipment for railways … (other than those of heading 8608)"*. The parenthetical exclusion is significant. It indicates that the mere fact that an apparatus performs an electrical signalling, safety or traffic-control function for railways does not, by itself, conclude its classification under Heading 8530. The goods must first be examined with reference to Heading 8608 and, where they are covered thereunder, the exclusion contained in Heading 8530 assumes operation. Thus, the classification exercise cannot appropriately commence and end with the proposition that the DAC employs electrical or electromagnetic principles; it is necessary, in the first instance, to ascertain whether the complete apparatus answers the description of goods covered by Heading 8608.

28.1. Equally, the scope of Heading 8530 is specifically directed towards **electrical** signalling, safety or traffic-control equipment, subject to the express exclusion of goods falling under Heading 8608. This distinction becomes particularly relevant where the apparatus, although incorporating electrical

and electronic elements, is alleged to possess an **electro-mechanical** character falling within the express language of Chapter Note 3(b) to Chapter 86.

(b) Chapter Note 1(c) to Chapter 86

29. The scheme is further reinforced by Chapter Note 1(c) to Chapter 86, which provides that Chapter 86 does not cover *"electrical signalling, safety or traffic control equipment of heading 8530"*. The provision thus operates as a corresponding exclusion from Chapter 86 in respect of goods which are properly covered by Heading 8530. Read with the exclusion in Heading 8530 itself, the two provisions demonstrate that the competing headings are not to be applied in isolation. The decisive question is whether the goods fall within the description of **electrical signalling equipment of Heading 8530**, or whether, having regard to their construction and functional character, they are covered by Heading 8608, including the expressly recognised category of **electro-mechanical signalling, safety or traffic-control equipment**.

(c) Chapter Note 3(b) to Chapter 86

30. A significant aspect emerging from the aforesaid provisions is that Chapter Note 3(b) to Chapter 86 expressly provides that, subject to the provisions of Note 1, Heading 8608 applies, inter alia, to *"semaphores, mechanical signal discs, level crossing control gear, signal and point controls and other mechanical (including electro-mechanical) signalling, safety or traffic control equipment"* for railways and other specified applications. The specific inclusion of **"electro-mechanical"** equipment assumes considerable significance in the present case.

30.1. The expression employed in the Note is not confined to equipment operating exclusively through purely mechanical means; rather, it expressly encompasses equipment having an **electro-mechanical character**. Thus, the mere presence of electrical, electronic or electromagnetic components or principles in an apparatus cannot, by itself, be regarded as sufficient to exclude it from Heading 8608. The character of the complete apparatus, its functional architecture and the manner in which its electrical and electromechanical components cooperate towards the signalling, safety or traffic-control function would necessarily require consideration.

(d) Effect of Section XVII Notes

31. Note 2(f) to Section XVII, which the Revenue seeks to place reliance on, stipulates that the expression *"parts"* and *"parts and accessories"* does not include electrical machinery or equipment of Chapter 85. This provision is of significance while considering whether an electrical or electronic constituent can merely be treated as a "part" of an article falling under Chapter 86.

31.1. At the same time, Note 3 to Section XVII provides that references in Chapters 86 to 88 to *"parts"* or *"parts and accessories"* are to be taken as applying only to parts or accessories suitable for use solely or principally with the articles of those Chapters. The combined effect of these provisions is that, where a component is sought to be classified as a part of an article of Chapter 86, its relationship with the complete Chapter 86 apparatus, including its suitability for use principally therewith, assumes relevance; yet an electrical machinery or equipment

falling within Chapter 85 cannot be brought into the expression "parts" merely by virtue of its association with a Chapter 86 article.

32. These provisions are therefore required to be considered along with the actual functional integration of the constituent components of the Digital Axle Counter (DAC), rather than by examining any one component in isolation.

- **Maintenance Handbook, CAMTECH/2008/S/MSDAC/1.0, December 2008**

33. For the present purpose, it would be relevant to go through the Maintenance Handbook CAMTECH/2008/S/MSDAC/1.0, December 2008 issued by the Ministry of Railways, Government of India which provides contemporaneous technical material concerning the architecture and functioning of the Digital Axle Counter:

> "PART-A
>
> DIGITAL AXLE COUNTER (MULTI SECTION)
>
> 1. Introduction
>
> Axle counter is a device for monitoring a specified section of track for the presence of vehicle. Conventional Axle counters were designed with transistorized circuits and ICs. Now Axle Counters are designed using Micro-Controllers and Software program, and these are called as "Digital Axle Counters". The communication used in the system is by means of packets for exchange of information between units. This communication is in duplex mode and is fail safe. (In duplex mode data is exchanged between two connected devices in both directions simultaneously. Data flow takes place independently in both directions)

2. Types of Digital Axle Counter

There are two types in use:

Single Section Digital Axle Counter

Multiple Section Digital Axle Counter

Single section axle counters are generally used to monitor a single track section i.e there is only one entry point and one exit point for a particular track section, Digital data is transmitted directly between two axle counter field equipments by means of modem communication. Whereas a Multi Section Digital Axle Counter is used to monitor a portion of line called as "Track Section" confined by multiple Entry & Exit points. There are counting heads (Axle Detectors) at the beginning and end of each track section. These units are connected to an evaluation computer (Central Evaluator) which processes the information generated by the counting heads. If the number of axles counted in matches that counted out, the respective track section is indicated as being clear.

3. Multiple Section Digital Axle Counter

3.1 General Description

Multi Section Digital Axle Counter consists of axle detectors and field units configuring upto (n-1) track sections, where n is the number of detection points. It is capable of counting axles, count comparison, finding direction of axle movement, supervision, relay drive and transmission of counts and health of axle detectors and field units. The field units are connected to the Central Evaluator by transmission medium where transmission is in VF range.

....

The interconnection block diagram for MSDAC is given below:

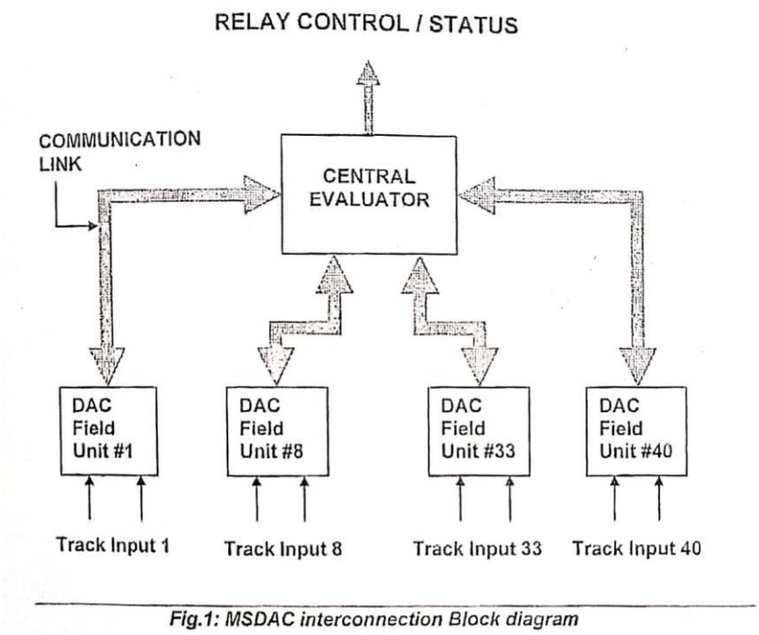


Fig.1: MSDAC interconnection Block diagram

4. Main Parts

The MSDAC broadly consists of following parts:

1. Axle detectors. 5. Line verification box

2. DAC field units. 6. Relay unit.

3. Central evaluator. 7. Event logger.

4. Reset Module/Panel. 8. Diagnostic terminal.

….

4.1.6 Vital relay drive and Relay unit

Vital Relay/Relays are driven by Central Evaluator. These are 24 V DC, 1000 ohm plug-in type relays. The vital relays are mounted in the space provided in the relay unit. The pick up and drop condition of the vital relay shows the clear and occupied status of the axle counter respectively. The contacts of vital relay can be used in interlocking circuits e.g. Signal clearance circuit.

…

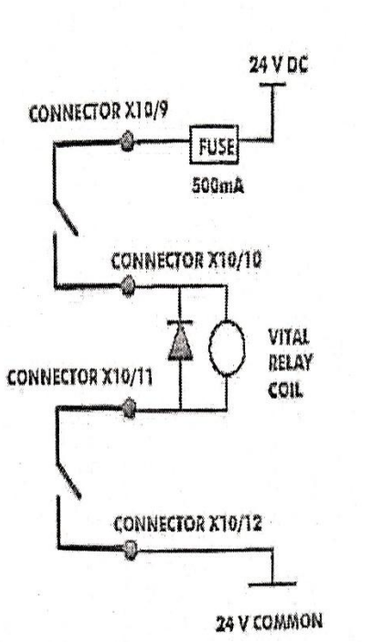
PART-B

Az LM

ELDYNE MULTI SECTION DIGITAL AXLE COUNTER

.
.
.

3.8.3. Connection of relays



The vital relay QN1 (8F-8B) output is derived from connectors X10/9, X10/10, X10/11 & X10/12 through the potential free contact of two relays provided on the Parallel Card. A diode (1N 4007) is connected across the vital relay coil to protect the Parallel Card from higher voltage generated across the relay coil during the change of position of relay.

...."

33.1. The above material touches upon the essential aspects of the Mult-Section Digital Axle Counter and inter alia, the role of the Vital Relay Unit within the overall architecture of the Digital Axle Counter. Paragraphs 1 to 3 of the Maintenance Handbook introduce the Digital Axle Counter and explain its functioning. The *"MSDAC Interconnection Block Diagram"* depicted as Fig. 1 under paragraph 3.1, *General Description*, is particularly instructive in this

regard. The diagram does not portray the relay circuitry as an external or unrelated apparatus; rather, it depicts the track inputs through the field units/rail contacts, their processing through the Central Evaluator, and the corresponding output through the Relay Control/Status stage.

33.1. The significance of the relay becomes still more apparent from paragraph 4 of the above Maintenance Handbook, which identifies the main parts of the Digital Axle Counter, expressly including the Relay Unit. Paragraph 4.1, dealing with the functions of the various parts of the MSDAC, specifically describes at paragraph 4.1.6 the "Vital relay drive and Relay Unit". The Vital Relay Unit is described as comprising 24V DC, 1000 ohm plug-in type relays, with the pick-up and drop conditions representing the "clear" and "occupied" status of the Digital Axle Counter. The output of the relay unit is connected to the interlocking circuits. The relay, therefore, is not merely an ancillary device placed downstream of an otherwise complete DAC; it constitutes the very interface through which the result arrived at by the Central Evaluator is translated into the requisite vital output for the railway signalling/interlocking system.

33.2. The same position is borne out by paragraph 3.8 under "PART-B" thereof, dealing with the installation of the Axle Counter Central Evaluator (ACE). At paragraph 3.8.3, the Handbook sets out the QN1 Vital Relay Circuit Diagram of the DAC, which further demonstrates that the vital relay circuitry forms part of the prescribed DAC architecture. The Handbook also indicates that the ACE is housed in a relay hut at the station and provides one vital relay output for each track section.

33.3. It is apparent that the nomenclature itself i.e., "Vital Relay" — is not without significance. It denotes a fail-safe mechanism through which the result determined by the Central Evaluator is conveyed in the form of the requisite output condition to the interlocking circuitry. The distinction between the electronic processing of the axle count and the physical relay output does not, in such circumstances, justify treating the latter as something external to the DAC. The two constitute successive and functionally interdependent stages of the same safety system: the field units detect the relevant input; the Central Evaluator processes and evaluates that input; and the Vital Relay Unit converts the resultant determination into the clear/occupied output required by the interlocking system.

33.4. In this functional architecture, the relay output is not an incidental or optional feature. Without the requisite output, the determination made by the Central Evaluator cannot be communicated to the interlocking circuit; and without such communication, the very signalling or safety function for which the DAC is deployed remains incomplete**.** The relay unit thus constitutes an essential component of the complete DAC system, notwithstanding that its physical form and electromechanical mode of operation may be distinguishable from the electronic processing units. This aspect assumes particular relevance when the expression **"electro-mechanical"** occurring in Chapter Note 3(b) to Chapter 86 is considered in conjunction with the actual construction and functional operation of the complete apparatus.

- **Railway Tender and Scope of Work**

34. The appellants have also placed on record the relevant Railway Tender documents, including the portion defining the Scope of Work for installation of the Digital Axle Counter system, which is also required to be looked into for the limited purpose of appreciating the manner in which the equipment is conceived and installed in an actual railway signalling environment. A sample copy of one of such Tender documents viz. Tender Notice No. S&T/Con/KGP/3rd Line/HIJ-NYA/15-16/06 dated 15.02.2016 issued by the South Eastern Railway is being reproduced below:-

South Eastern Railway
Tender Notice No. S&T/Con/KGP/3rd Line/HIJ-NYA/15-16/06 Dated: 15.02.2016

SIGNALLING SCHEDULE -"B" (Supply)
PART II

S. No.	DESCRIPTION of MATERIALS	Unit	Qty	Rate (in Rs.)	Amount
(1)	Supply of complete system of Multi Section type Digital Axle Counter (MSDAC) as per RDSO's specification No. RDSO/SPN/176/2013 and as per Manufacturer's specification. This will include final track clearance relay for each track section, detection point, housing for track side electronic and all accessories like deflector plate etc. as required for the system. System shall be equipped for 30 detection points and to cater for 19 track sections for a station of Kharagpur Division of South Eastern Railway. Inspection: RDSO	Set	5	9156232.80	45781164.00
(2)	Supply of **High Frequency Digital Axle counter Single section type** conforming to RDSO/SPN/177 /2012 or latest for Digital Axle counter & manufacturer spec. and approved by RDSO consisting of (1) High Availability Single section Digital Axle counter (Single Sensor type) and (2) Single section Digital Axle counter for IBS in double line section. This includes 2 sets of SSDAC complete with axle detectors, reset box, vital relay along with SVPDs, cable connectors & 2 sets of single sensor HASSDAC complete with axle detectors, reset box, vital relay alongwith SVPDs & cable connectors. The Scheme comprising of above will be implemented to monitor **8 detection points, and 6 Track sections** suitable for Intermediate Block signalling system for Double line block operation. **Inspection:** RDSO	set	2	2100000.00	4200000.00
1	All items with RDSO specification/drawings are to be procured from RDSO's approved suppliers enlisted in part-I. If part-I firm is not available then from part-II approved firms and if part-II firm is also not available then from any other firm as approved by Railway's Engineer. However small percentage of the above items, the total value of which, should not be more than 15 % of the total value of the items having RDSO Spec./Drg. Etc. of the subject tender, may be allowed to procure from RDSO's approved supplier enlisted in part-II if supplier of Part-I list refuses to supply the same in time.				
2	Company has to mention the Make /Model/Sl. No. As if for Tool Kits for installation /testing/ maintenance of the MSDAC, HASSDAC system.				
3	All the materials in Sch. B Pt.-II above are to be supplied to the store of SSE/SIG/CON/KGP and shall be inspected by the Railway's authorised representative before acceptance of the same.				
4	Supply of materials to be completed suitably from the date of issue of acceptance letter so that execution of work is not held up for want of materials				
5	The rates are inclusive of all other taxes, duties & ED.				
6	Before placing order for all the materials to the firm, Prior approval to be obtained from Dy. CSTE/Con/KGP Office.				
				Total of Schedule 'B Part II' Rs.	49981164.00

- 122 -

34.1. The "Description of materials" therein, inter alia, specifically contemplates the installation of the relay arrangement as part of the DAC set-up. This aspect lends further support to the appellant's contention that the Relay Unit is not an independent or extraneous apparatus merely associated with the DAC after its installation, but forms part of the prescribed configuration through which the DAC performs its intended signalling and safety function.

34.2. The said tender documents are also relevant from the standpoint of functional and commercial identity. Where the railway authority itself stipulates the relay installation as a component of the DAC system contemplated under the tender, the Revenue's attempt to regard the Relay Unit as something separate from the DAC cannot be sustained merely on the basis of its physical or functional distinction from the electronic processing units. The tender specifications, read with the Maintenance Handbook discussed above, therefore further fortify the appellant's stand that the Relay Unit constitutes an integral part of the complete DAC installation.

- **Encyclopaedia Britannica**

35. The appellants have also placed reliance upon an extract from the Encyclopaedia Britannica, under the subject *"Railroad — Invention, History & Facts"*, particularly the portion dealing with "Interlocking and routing", which is relevant for appreciating the ultimate safety function performed by the signalling system.

> *"Interlocking and routing*
>
> *The first attempts at interlocking switches and signals were made in France in 1855 and in Britain in 1856. Interlocking at crossings and junctions*

prevents the displaying of a clear signal for one route when clearance has already been given to a train on a conflicting route. Route-setting or route-interlocking systems are modern extensions of this principle. With them the signaling operator or dispatcher can set up a complete route through a complicated track area by simply pushing buttons on a control panel…"

35.1. The excerpt explains the functional purpose of interlocking, namely, that *"Interlocking at crossings and junctions prevents the displaying of a clear signal for one route when clearance has already been given to a train on a conflicting route."* This description is relevant in appreciating the purpose served by the Vital Relay arrangement in the present case. As acknowledged globally by authorities like the Encyclopedia Britannica, interlocking is functionally defined as preventing a clear signal for one route when clearance has already been given to a conflicting route. In the imported system, this ultimate safety enforcement is performed exclusively by the integrated electromechanical relays. Therefore, the system's essential character is not generic electronic calculation (Heading 8530), but a dedicated, trackside electro-mechanical safety apparatus tailored solely for railway use (Heading 8608). The fail-safe operation of the relay mechanism, including its pick-up and drop conditions, ensures that the requisite signalling condition is maintained or, upon loss of the appropriate energisation, reverts to the safe condition. Thus, the interlocking function further demonstrates that the ultimate purpose of the DAC is not confined to electronic detection or calculation of axle counts, but extends to the safe and controlled operation of railway signalling through an electromechanical output mechanism.

- **IRISET Technical Manual/Guide S19**

36. The technical character of the Relay Unit is further elucidated by the Technical Manual/Guide S19 on "Signalling Relays and Cables" issued by the Indian Railways Institute of Signal Engineering and Telecommunications (IRISET), which has also been placed on record by the appellants. The said document is relevant not merely for identifying the Relay Unit as a component of the railway signalling system, but also for appreciating its distinct electro-mechanical mode of operation.

> "CHAPTER 2: SIGNALLING RELAYS
>
> 2.1 INTRODUCTION
>
> A relay is an electromagnetic device, which is used to convey information from one circuit to another circuit through a set of contact i.e. front or back contact.
>
> Constructional and electrically, relays may be divided into DC and AC relays, because the means by which the electrical energy in the coil is converted in to mechanical Energy in order to move the contacts are fundamentally different. In DC type, the contacts are carried on an armature, forming part of a magnetic circuit in which a field is set up by the current flowing in the coils. In AC types, the contacts are attached by a link mechanism to a metal sector, disc or cylinder in which currents are induced by the alternating magnetic field produced by the currents in the coils.
>
> Every endeavor has been made to explain the action of each type of relay in the simplest possible manner.
>
> Relays are sophisticated switch gears used for remote control and succession control of various electrical equipment. In present days they are widely used because they are capable

of protecting the controlled equipment from cross feeding and overloading even as they cater for speedy operations.

Most of the relays in present day signaling are electromagnetic devices, although some of the relays control circuits through electronic components like diode/transistors/ Integrated Chips etc

Railway signaling relays are unique in that:

(a) They operate on low voltage and current

(b) They are more articulate as, according to their special features, they can work under restrictive conditions and in any specified manner. Virtually they can cater for all situations while contributing to speed and accuracy in operations.

2.2 CLASSIFICATION OF SIGNALLING RELAYS:

(a) According to the method of their mounting or fixture, they are classified as:

(i) Shelf type: Relays, which are loosely kept on shelves.

(ii) Plug in type: Relays, which are plugged into a pre- wired plug boards.

(b) According to their connection and usage, they are classified as:

(i) Track relays: Relay, which is directly connected to the track, to detect the presence of vehicle.

(ii) Line Relays: Other than track relay all are line relays. Relays connected to the selection circuit.

(c) According to their vitality or importance in ensuring train working safety, they are classified as:

(i) Vital Relays: All relays used for traffic control such as signal, point, controls, track detection etc.

(ii) Non-vital Relays: Relays, which operate control aids and accessories like warnings, buzzers, Indications etc.

(d) According to their special provisions to ensure reliability of their contacts, they are classified as:

(i) Proved type: are those whose normalization after each operation shall be proved in circuit controlled by their contacts. Contacts in which both the springs have metal surfaces on their tips. They may get fused due to high sparking current across them during operation. These may prevent relay normalization and causes unsafe condition in traffic control. To avoid this, proving of relay normalization after each operation is necessary.

(ii) Non-proved type: Need not to be proved to have been normalized after each operation as their contacts have at least one non-fusible contact (carbon contact)

(e) According to their feed source, relays are broadly classified as:

(i) DC relays: The relay, which requires DC power supply for its operations are, called DC relays. Among the DC relays.

> DC neutral relays: This relay closes the same set of contacts on energization, with Normal polarity or Reverse polarity supply.
>
> Polar Relays: This relay closes different set of contacts when energized with Reverse polarity supply. They may or may not have contact to close when de-energized.

(ii) AC Relay: AC Induction motor track relays. Time element relays, flashing indication control etc.

(iii) Electronic Relays: DC relays with electronic components in them are called electronic relays.

2.3 DC Neutral Relay

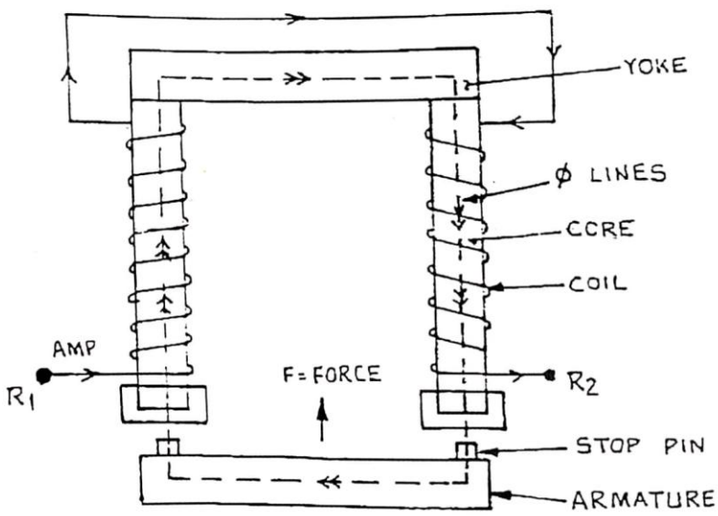


Fig: 2.1 DC NEUTRAL RELAY

....

Each Relay has usually one or two coils with a hollow center to accommodate a core. The coils are made up of a large numbers of turns of small gauge soft drawn copper wire. The two coils can be connected in series or parallel according to the requirement of relay resistance. The ends of the coils are terminated on binding post to which the control wires are connected. Each coil is placed around a core of specially selected Iron or steel having high permeability and low retentivity. The core should be susceptible to magnetism and at the same time should have little residual magnetism. The cores are connected at the top by a yoke to complete the magnetism coupling between two ends of coils. The bottom of each core is equipped with a large steel or Iron block known as pole piece or face.

A flat piece of Iron or steel called armature is supported by brackets, which are securely fastened to the pole piece. The armature, yoke, and the pole pieces are also made of specially selected iron or steel of the same quality as the core. The armature carries the metallic spring contacts, which are insulated from it.

The circuit through the coils of the relay is closed. It sets up a magnetic flux through the core, yoke and the armature. The flux passing between the armature and pole faces causes the armatures get attracted to the pole faces and armature picks up and closes front contacts. When the circuit is opened the magnetic flux collapses and the armature drops away by gravity from the pole faces, the front contacts break and back contacts close. The front and back contacts of the relay can be utilised to make or break other circuits. Two stop pins of non-magnetic material are fixed either on the armature or pole faces so that the armature cannot come in contact with the pole faces. It is essential to maintain a small air-gap between the armature and pole faces so that low value of residual magnetism may not retain the armature in picked up position and causes the relay to fail to drop away with a break in its control circuit.

.

.

.

CHAPTER 4: PLUG IN TYPE DC NEUTRAL LINE RELAYS (NON-PROVED TYPE)

4.1 Two styles made in this type to BR specifications are introduced on Indian railways, P-series/Q-series relays. They are called because their name code starts with these letters. However, P-series relays are going out of use gradually. Q series relays are now universally used with the

British signalling practice. Even as no separate IRS specifications are issued for these relays, they confirm to IRS specification No S23 and S34 (for testing procedures) broadly.

4.2 Plug in DC Neutral Relays of Non-Proved Type (Q-series relays)

The basic constructional features of these relays are as follows:

(a) Standard plug board common to all relays.

(b) Plug-sockets kind of interconnection between plug board and relay.

(c) A retaining clip provided to hold the relay firmly in the plug board, so that there is no possibility of loose electrical connections.

(d) Connectors, which are positively locked in to the plug board and can be withdrawn by a special tool to permit easy disconnection.

(e) Means for terminating permanent wiring to plug board on the connectors both by crimping & soldering.

(f) Registration device with specified coding combination in order to prevent a wrong relay being plugged.

(g) No electrical connection possible between plug board and the relay base until code pins have correctly engaged.

(h) Fixed contact positioned by adjustment cards and moving contact positioned by operating arm driven by the armature.

(i) Provision of helical spring to provide definite back contact pressure and aid in return torque.

(j) Provided with Non-proved (metal to carbon contacts) and all are independent contacts only.

4.3 DC Neutral line Relay -- Style QN1

The fundamental relay of the Q-series is the DC neutral line relay style QN1. All other relays of the Q series have been developed around the QN1 in an effect to standardize the components.

The iron circuits and the contact stacks are mounted on a molded base of extremely stable thermosetting material. Up to four contact stacks are fixed to the base, each with four independent contacts.

The iron circuit is mounted below the contact stacks. It consists of an 'L' shaped heel piece, core with bobbin and an armature. The armature pivots on a phosphor bronze pivot plate, which is riveted to the heel piece.

The contact springs are made of phosphor bronze. The fixed contacts are positioned by adjustment cards located on the brackets riveted to the heel piece, while the moving contacts are positioned by operating arms driven from the armature. All movable arm contacts are silver (sil) and fixed front and back contacts are silver impregnated graphite (Sig)

The relay is provided with a handle attached to molding base of the relay. A transparent cover covers all the components.

The rated life of relay shall be taken as 1000000 cycles under specified conditions of operation where one cycle consists of an operation followed by a release.

RELAY CONSTRUCTION:

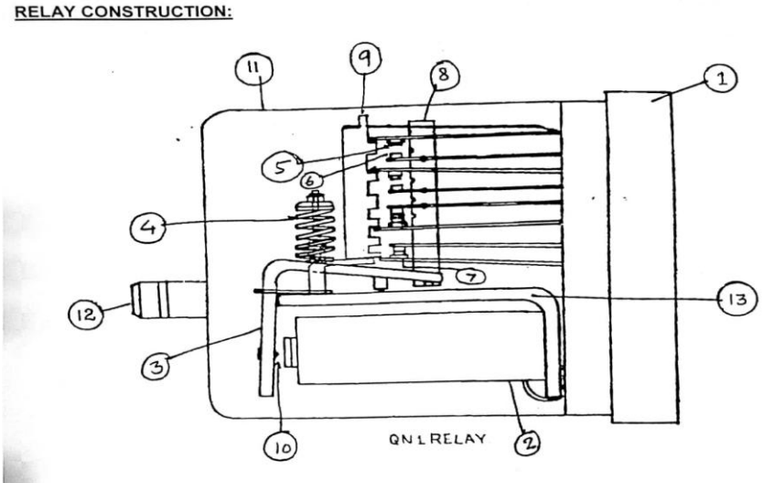


Fig : 4.1

....

1) Relay base

2) Electro-magnet

3) Armature

4) Pusher spring

5) Fixed front contacts

6) movable arm contact

7) Fixed back contact

8) Operating arm

9) Adjustment card

10) Residual pin

11) Transparent cover

12) handle

13) Heel piece

4.4 Details of Parts:

1. Base: It is a one piece moulding of non-hygroscope thermosetting material. Contact springs extend behind on it and below them are coil connection springs. Coding pins are fitted below these springs on the base in nominated positions.

2. Electro-magnet: It is mounted on the base below the contact stacks. It consists of a bar magnet core and an L-shaped heel piece that extends above to the front. A coil is wound on a bobbin over the core.

3. Armature: It is mounted on a phosphor bronze pivot plate riveted to the heel piece. A non-magnetic residual pin is

fixed on the inner face of armature facing the core in all the relays except the magnetic latch relay.

4. Pusher spring: It is fixed above the armature and helps in restoring it to its full released position when the relay is de-energized.

5. Contacts: The fixed front and back contact springs are held in position by adjustment cards located on a bracket riveted to the heel piece. These springs are preset against their stops on the adjustment cards so that equal pressure is obtained on all the contacts during their making. Contact wear during the life of relay has little affect on the contact pressure.

Operating arms each held between the armature and a holding spring on top of the contact stacks drives the moving arm springs.

All the front and back contacts of these relays are independent 'carbon-to-metal contacts except the heat-operated contacts of Time element relays. This ensures their non-fusibility.

6. A transparent cover: A transparent cover covers all the components.

7. A handle: a handle attached to moulding base of the relay.

8. A retaining clip: It is hooked onto the plug board over the relay and holds them tight together.

...."

36.1. Chapter 2 of the IRISET Manual deals with Signalling Relays. Paragraph 2.1, under the heading *Introduction*, explains the functioning of both DC and AC relays and, significantly, describes the conversion of electrical energy supplied to the coil into

mechanical energy. This is followed by paragraph 2.2(c), which specifically identifies "Vital Relays" as *"all relays used for traffic control such as signal, point controls, track detection, etc."*, as distinguished from non-vital relays. The description is of particular relevance to the present dispute since the Relay Unit employed in the DAC is a Vital Relay used precisely for track detection and the consequential signalling/safety function.

35.2. The mechanical aspect of the relay is made still more explicit in paragraph 2.3, which contains a diagram of a DC Relay and describes the construction and movement of its armature. The Manual explains that the armature, consisting of a flat piece of iron or steel, carries the metallic spring contacts and that the magnetic flux generated between the armature and the pole faces causes the armature to be attracted to the pole faces, whereby it picks up and closes the front contacts. Upon opening of the circuit, the magnetic flux collapses and the armature drops away from the pole faces under the action of gravity. Thus, the operation is not merely an electrical switching phenomenon; electrical energy is converted into a physical movement of the armature, which in turn produces the requisite mechanical movement of the contacts.

35.3. The same electromechanical construction is reflected in Chapter 4 of the Manual dealing with Plug-in Type DC Neutral Line Relays, and particularly in paragraph 4.3 and Fig. 4.1 relating to the construction of the DC Neutral Line Relay, Style QN1. The components specifically identified therein include the **armature** and the **pusher spring**, thereby demonstrating the physical and mechanical elements

through which the electrical excitation of the relay is translated into movement and contact operation.

35.4. The aforesaid material is of considerable significance when viewed alongside the actual functioning of the DAC. The Central Evaluator generates the requisite output corresponding to the *clear* or *occupied* condition of the track section. That output actuates the Vital Relay; the electromagnetic excitation of the relay coil causes the iron/steel armature to move against the restoring force of the spring/gravity arrangement, thereby changing the condition of the relay contacts. The resultant contact condition is then made available to the railway interlocking and signalling circuits. The sequence is consequently one of: -

> electrical input → electromagnetic action → mechanical movement of the armature → physical contact operation → vital signalling output.

35.5. The electromechanical character of this final and safety-critical output stage is therefore demonstrable from the technical literature itself.

35.6. It is also material that the IRISET Manual does not describe Vital Relays as ordinary electrical components in a general-purpose electrical apparatus. On the contrary, Vital Relays are specifically identified as relays used for traffic control, signal control, point control and track detection. The Relay Unit employed in the DAC thus possesses a specialised and principal use in railway signalling and safety applications. Its mechanical movement is an essential part of the process by which the electronically determined status of the track section is

converted into a physical signalling/interlocking condition.

35.7. In this context, the expression **"electro-mechanical"** occurring in Chapter Note 3(b) to Chapter 86 assumes direct relevance. The fact that the DAC employs electronic processing, electrical energy and electromagnetic principles at different stages of its operation does not efface the electromechanical character of the complete system where the final vital output is generated through the physical movement of the relay armature and contacts. The armature movement is, in substance, a mechanically produced movement brought about by electromagnetic action, and the resulting contact condition constitutes the vital output of the system.

35.8. This understanding also accords with the functional architecture reflected in the Maintenance Handbook of the Ministry of Railways, the IRISET Manual and the Railway Tender documents. The first identifies the Vital Relay Unit as one of the main parts of the DAC and specifies its *clear/occupied* output and connection with the interlocking circuits; the second establishes the electrical-to-mechanical conversion and identifies Vital Relays as railway traffic-control relays; while the tender documentation treats the relay installation as part of the prescribed DAC set-up. The three sets of documents, emanating from or relating to the railway signalling domain, thus converge upon the same conclusion: **the Relay Unit is not an extraneous apparatus subsequently associated with the DAC, but an integral and functionally indispensable component of the complete system.**

35.9. The relevance of Section XVII Note 3 also becomes apparent in this setting. Where the component under consideration is principally and specifically employed with an article of Chapter 86, its principal use assumes significance for classification. The Vital Relay in the present case is not a generic relay capable of indiscriminate use across unrelated equipment; the technical material placed on record identifies it as a specialised railway signalling relay and, in the DAC configuration, it performs the vital output function for track detection and interlocking. Its principal use and functional integration with the DAC therefore reinforce the classification of the complete apparatus within the statutory framework of Chapter 86.

35.10. The technical material now before us provides a concrete understanding of the very electromechanical mechanism which gives the Vital Relay its character. The armature, spring arrangement and physical movement of contacts are not incidental attributes; they constitute the mechanism by which the electronically processed determination of the DAC is transformed into the actual vital signalling output.

36. Accordingly, the Maintenance Handbook, the IRISET Manual and the Railway Tender documents, when read conjointly, materially fortify the appellant's case that the Relay Unit forms an integral part of the DAC and that the complete apparatus possesses an identifiable electro-mechanical signalling and safety character. The Revenue's approach of treating the relay as a separate and extraneous element, and consequently examining the DAC in its absence, would sever a functionally indispensable stage of the very

system whose classification is under consideration. Such an approach would also fail to give due effect to the express statutory recognition of *electro-mechanical signalling, safety or traffic control equipment* under Chapter Note 3(b) to Chapter 86.

General Rules for Interpretation of the Import Tariff

37. The aforesaid discussion concerning the tariff entries, the relevant Chapter and Section Notes, and the technical literature placed on record also falls to be considered in the context of the General Rules for the Interpretation of the Import Tariff. The said Rules cannot be applied in abstraction from the nature and construction of the goods under consideration. In the present case, the question is required to be examined with reference to the complete functional architecture of the Digital Axle Counter, including its Vital Relay Unit, rather than by isolating the electronic processing stage from the electromechanical output stage.

Rule 2(a) — Essential character of the complete article

37.1. Rule 2(a) provides, inter alia, that any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. The principle assumes relevance where goods are presented in a disassembled or incomplete form, but the constituent elements, taken together, are recognisable as a particular finished article.

37.2. In the present case, the DAC unit and the associated electromechanical Vital Relay Unit cannot be regarded as unrelated articles merely because their

respective functions are performed at different stages of the system. The technical material discussed hereinabove demonstrates that the Rail Contacts, Track-Side Electronic Unit, Central Evaluator and Vital Relay Unit constitute successive and functionally interdependent stages of one railway safety and signalling system. The Relay Unit, in particular, performs the vital output function whereby the *clear* or *occupied* status determined by the Central Evaluator is translated into the requisite physical contact condition for the interlocking circuitry.

37.3. The relay is thus not a mere accessory appended to an otherwise complete DAC. Its armature and contact mechanism provide the electromechanical output through which the processed result assumes its actual signalling consequence. In the absence of that output stage, the Central Evaluator may determine the status of the track section, but the complete system cannot communicate that determination in the prescribed vital form to the railway interlocking system. The essential character of the complete apparatus must, therefore, be appreciated by reference to the system as a whole.

37.4. The fact that the constituent units may be separately identifiable or may require assembly or installation at site cannot, by itself, alter their character where they are specifically designed and supplied to perform one predetermined and indivisible function. The goods, viewed in their intended configuration, constitute a dedicated railway signalling and safety system, rather than a collection of generic electrical or electronic articles. To the extent that the imported articles, as presented, possess the essential character of the complete DAC system, Rule 2(a)

consequently supports their consideration under the heading applicable to the finished apparatus.

Rule 3(b) — Essential character of composite goods

37.5. The same conclusion is reinforced when the matter is examined from the perspective of Rule 3(b), which concerns goods consisting of different materials or components which are, prima facie, classifiable under two or more headings and requires classification according to the component, material or constituent which gives the goods their essential character, where applicable.

37.6. The Revenue's approach proceeds substantially from the electronic attributes of the DAC—its processing cards, digital evaluation mechanism, sensors and electromagnetic detection process—and seeks, on that basis, to place the apparatus within Chapter 85. Such an approach, however, does not fully account for the functional result which the complete apparatus is designed to achieve. The Central Evaluator's processing of the detected axle information is not an end in itself. The processed determination is ultimately required to produce the *clear* or *occupied* condition through the Vital Relay Unit, which operates the physical contacts interfacing with the railway interlocking and signalling circuitry.

37.7. The electromechanical relay output is therefore not peripheral to the identity of the apparatus. It constitutes the vital safety interface between the electronic determination and the physical railway signalling/interlocking system. The essential character of the complete apparatus cannot consequently be equated merely with its capacity for electronic detection or data processing. Its defining

function is the safe detection and determination of track occupancy and the communication of that determination, through a fail-safe electromechanical output, to the railway signalling system.

37.8. Thus, even if the apparatus contains components which, when separately viewed, may possess characteristics ordinarily associated with Chapter 85, the classification of the complete system must have regard to the constituent which imparts its essential functional character. In the present case, the technical evidence demonstrates that the electromechanical Vital Relay Unit is integral to the completion of that function.

Section Note 3 to Section XVII — Principal use and functional association

37.9. The aforesaid Rules must further be read harmoniously with Section Note 3 to Section XVII, which provides that references in Chapters 86 to 88 to *parts* or *parts and accessories* are to be taken as applying to parts or accessories suitable for use solely or principally with the articles of those Chapters. The significance of this provision becomes particularly apparent in the present case, where the Revenue seeks to treat the Vital Relay as something separate from the DAC system.

37.10. The technical material on record indicates that the Vital Relays employed in railway signalling systems are specialised signalling relays, designed and specified for the requisite fail-safe railway application. They are not being employed in the DAC as generic electrical relays having an incidental association with railway equipment. Their very designation as “Vital Relays”, their use for

clear/occupied track status, their connection with railway interlocking circuits, and their prescribed configuration in the DAC architecture establish a direct and specialised relationship with railway signalling and safety equipment.

37.11. The principal-use consideration is therefore material. The relevant components are designed for, and principally used in, a highly specialised railway signalling environment and are functionally configured to interface with the DAC and the associated interlocking system. Their character cannot appropriately be determined by hypothesising an abstract possibility of use in some unrelated electrical application. What is material is their actual and intended use as components of the railway signalling apparatus under consideration.

37.12. Viewed cumulatively, Rule 2(a), Rule 3(b) and Section Note 3 to Section XVII point towards an assessment of the goods in their complete functional setting. The DAC is not merely an electronic device which happens to be installed beside a railway track. Its constituent stages culminate in a specialised electromechanical Vital Relay output which communicates the *clear* or *occupied* status to the railway interlocking system. The relay is accordingly not a detachable accessory in any meaningful functional sense; it is an integral component of the complete apparatus and is indispensable to the fulfilment of its intended railway safety and signalling function.

37.13. The General Rules of Interpretation, therefore, lend further credence to the conclusion that the essential character of the goods is required to be determined by reference to the complete, dedicated

railway signalling system and not by isolating its electronic components from its electromechanical output mechanism. This approach is also consistent with the express recognition in Chapter Note 3(b) to Chapter 86 of "electro-mechanical signalling, safety or traffic control equipment".

38. On a cumulative consideration of the technical literature and other documents placed on record by the appellants, together with the General Rules for Interpretation and the relevant Chapter and Section Notes, we are unable to subscribe to the proposition that the presence of digital circuitry, processors or electromagnetic sensing, by itself, renders the complete Digital Axle Counter an item of purely electrical equipment falling under Heading 8530. The expression "mechanical (including electro-mechanical) signalling, safety or traffic control equipment" occurring in Chapter Note 3(b) to Chapter 86 cannot be construed as though the expression "electro-mechanical" were confined to the traditional signalling arrangements employing only mechanical levers, rods, cranks or chains. Such an interpretation would render the express reference to "electro-mechanical" substantially otiose in the context of modern railway signalling systems. The essential characteristic of an electro-mechanical apparatus is that an electrical or electromagnetic input produces a corresponding physical mechanical movement, which performs or completes the operative function of the apparatus. The Vital Relay employed in the DAC answers this description in a direct and demonstrable manner.

38.1. The technical literature establishes that the electrical output of the Central Evaluator energises the

Vital Relay, whereupon electromagnetic flux causes the armature to move against the restoring force of the spring/gravity mechanism and changes the condition of the relay contacts. The resulting *clear* or *occupied* contact condition is then conveyed to the railway interlocking and signalling circuitry. The final safety-critical operation is, therefore, not merely the transmission or processing of an electrical signal; it involves an actual **electromagnetically induced mechanical movement of the armature and the consequent physical operation of the contacts**. The electromechanical character is thus inherent in the manner in which the vital output of the DAC is generated.

38.2. Nor can the electronic architecture of the EAK and the Central Evaluator displace this character. The DAC is, in its true construction, a **hybrid functional system** comprising electromagnetic detection, electronic signal processing and electromechanical actuation. The presence of sophisticated digital processing at the input and evaluation stages does not alter the character of the final signalling mechanism through which the processed result is converted into the vital railway output. The several stages perform complementary functions within one predetermined safety architecture.

38.3. The Revenue's approach of examining the electronic components in isolation would, in our considered view, result in a fragmented appreciation of the goods. The question is not whether an individual processor, evaluation card or sensor could, when severed from the system, be described as an electrical or electronic article. The question is the character of the complete apparatus as presented and intended to

function. A DAC does not perform its intended railway safety function merely by detecting and digitally counting axles. The detection and evaluation process culminates in the generation of the *clear* or *occupied* condition through the Vital Relay, which in turn interfaces with the railway interlocking system. The Relay Unit is therefore an intra-system component and not an incidental accessory.

38.4. This conclusion is further fortified by the principal-use test embodied in Section Note 3 to Section XVII. The Vital Relay, in the configuration under consideration, is a specialised railway signalling relay, employed for track detection and the transmission of the requisite vital output to railway interlocking circuits. Its use is not merely incidental to a railway installation; it is specifically designed and principally employed for the very purpose for which the DAC is constructed. The technical literature and the Railway Tender documents demonstrate that the relay installation forms part of the prescribed DAC configuration. Its physical separation from the other DAC units, whether for purposes of manufacture, packing, transportation or installation, cannot sever that functional and principal-use nexus.

38.4. The application of Rule 2(a) also warrants consideration in this context. Where the constituent articles are imported in a disassembled or incomplete form but are identifiable as components of a predetermined and dedicated apparatus and, taken together, possess the essential character of the complete article, their classification cannot appropriately be determined by treating each constituent as an independent article unrelated to the others. Similarly, under Rule 3(b), where different

components collectively constitute a composite apparatus, the essential character is to be determined from the component or combination of components which gives the goods their essential functional identity. In the present case, the electronic detection and processing stages and the electromechanical vital output stage cannot reasonably be divorced from one another in determining the character of the complete DAC.

38.5. The expression "electro-mechanical" in Heading 8608 must therefore be understood in the context of the actual operation of contemporary railway signalling equipment. It is not necessary that the entire apparatus should operate through mechanical levers, rods or cranks. It is sufficient, for purposes of the present controversy, that the apparatus incorporates an electromechanical signalling mechanism whereby an electrical/electromagnetic input produces a physical mechanical action which performs an essential signalling or safety function. The Vital Relay in the DAC demonstrably fulfils that requirement.

38.6. We also find considerable force in the appellant's contention that the DAC has no meaningful alternative industrial identity or utility divorced from its specialised railway application. The Rail Contacts, Track-Side Electronic Units, Central Evaluator and Vital Relay configuration are designed to operate together as a dedicated railway axle-counting and track-occupancy system. The final output is specifically intended for railway interlocking and signalling. The principal-use consideration thus operates as an additional indicator of the true classification of the apparatus.

38.7. The Revenue's contention that the DAC must necessarily fall under Heading 8530 merely because it employs electrical energy, electromagnetic sensing and digital processing, therefore, cannot be accepted. Heading 8530 itself contains the qualification "other than those of heading 8608", while Chapter Note 3(b) to Chapter 86 expressly brings within Heading 8608 *electro-mechanical signalling, safety or traffic control equipment*. These provisions cannot be rendered ineffective by treating every modern railway signalling apparatus employing electronic circuitry as necessarily "electrical" in character.

38.8. Viewed in this holistic manner, the DAC is a single, functionally integrated railway safety and signalling system, notwithstanding that its constituent stages may be separately identifiable and, depending upon the manner of importation, separately packaged or installed. The Vital Relay is not an external electrical switch added after completion of the DAC; it is the mechanism through which the system's electronic determination is converted into the physical, fail-safe signalling condition required by the railway interlocking system. The movement of the relay armature and the consequent change in contact condition constitute the electromechanical actuation which completes the DAC's safety function.

39. We are, therefore, of the considered view that the essential character, functional architecture and principal use of the complete DAC are consistent with the description of electro-mechanical signalling, safety or traffic control equipment covered by Heading 8608. The presence of electronic and digital components does not take the apparatus outside that heading. On the contrary, the technical evidence

establishes that the electronic and electromechanical stages operate as integrated parts of one dedicated railway safety system.

40. Accordingly, on a conjoint reading of the competing tariff entries, the relevant Chapter and Section Notes, the technical literature/documents, and the General Rules for Interpretation, we hold that the classification adopted by the appellants under Customs Tariff Item No. 86080030 is more appropriate, and thus the proposed classification under Customs Tariff Item 85301010, with consequential classification of parts under Customs Tariff Item 85309000, cannot be sustained. The principal demand founded upon such reclassification must, consequently, fail on merits.

Decision of the Hon'ble Supreme Court in Westinghouse Saxby Farmer Ltd. v. Commissioner of Central Excise, Calcutta [2021 (376) E.L.T. 14 (S.C.)]

41. It is to be noted that the aforesaid interpretation stands supported by decision of the Hon'ble Supreme Court in the case of *Westinghouse Saxby Farmer Ltd. v. Commissioner of Central Excise, Calcutta* as reported in *2021 (376) E.L.T. 14 (S.C.)*, wherein the dispute concerned relays used exclusively for railway signalling and traffic control. While the assessee claimed classification under Heading 8608, the Revenue sought to classify the relays under Chapter 85. In paragraphs 33 to 39 of the judgment, the Hon'ble Supreme Court examined Notes 2(f) and 3 to Section XVII and held that the sole or principal use test embodied in Note 3 could not be disregarded merely by invoking the exclusion contained in Note 2(f). In paragraph 36, the Court described Note 3 as

embodying the "suitability for use test" or "user test" and observed that parts suitable for use solely or principally with an article falling under Chapter 86 could not be diverted to another Chapter in a manner defeating the scheme of group classification. The Hon'ble Apex Court accordingly held that invocation of Note 2(f), while overlooking the sole or principal use test under Note 3, was unjustified where the relays were used solely as part of railway signalling and traffic control equipment, and ultimately upheld classification under Heading 8608. The relevant observations of the Hon'ble Supreme Court as reproduced below for the sake of ready reference: -

> *"33. Note 2(f) is relied upon by the Revenue, in view of the fact that Chapter Heading 8608 uses the words "parts of the foregoing" after the words "Railway or tramway track fixtures and fittings" etc. Chapter Heading 8608 does not specifically mention "electrical relays". The assessee's contention is that "it is part of the railway signalling safety or traffic control equipment" and that, therefore, Relays manufactured by them would fall under Chapter Heading 8608 due to the usage of the word "parts". It is this contention that is sought to be repelled by the Authorities by relying upon Note 2(f) of Section XVII.*
>
> *34. Though at first blush, Note 2(f) seems to apply to the case on hand, it may not, upon a deeper scrutiny.*
>
> *35. Note 3 of Section XVII reads as follows :*
>
> *"References in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or*

more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory."

36. What is recognized in Note 3 can be called the "suitability for use test" or 'the user test'. While the exclusion under Note 2(f) may be of goods which are capable of being marketed independently as electrical machinery or equipment, for use otherwise than in or as Railway signalling equipment, those parts which are suitable for use solely or principally with an article in Chapter 86 cannot be taken to a different Chapter as the same would negate the very object of group classification. This is made clear by Note 3.

37. It is conceded by the Revenue that the relays manufactured by the appellant are used solely as part of the railway signalling/traffic control equipment. Therefore, the invocation of Note 2(f) in Section XVII, overlooking the "sole or principal user test" indicated in Note 3, is not justified.

38. On the question as to what test would be appropriate in a given case, this court pointed out in A. Nagaraju Bros. v. State of A.P. [1994 Supp (3) SCC 122 = 1994 (72) E.L.T. 801 (S.C.)], as follows :

".....there is no one single universal test in these matters. The several decided cases drive home this truth quite eloquently. It is for this reason probably that the common parlance test or commercial usage test, as it is called, is treated as the more appropriate test, though not the only one. There may be cases, particularly in the case of new products, where this test may not be appropriate. In such cases, other tests like the test of predominance, either by weight of value or on some other basis may have to be applied. It is indeed not

possible, nor desirable, to lay down any hard and fast rules of universal application."

Therefore, the respondents ought not to have overlooked the 'predominant use' or 'sole/principal use' test acknowledged by the General Rules for the Interpretation of the Schedule.

39. As pointed out by the Commissioner (Appeals), the goods were previously classified (before 1993) under sub-heading 8536.90, but a revised classification list, classifying them under sub-heading 8608, submitted by the appellant, was approved by the competent Authority on 27-8-1993. After such specific approval of the classification list, it is not proper on the part of the Authorities to invoke Note 2(f) of Section XVII. Hence question No. 1 is answered in favour of the appellant and against the Revenue."

41.1. The ratio laid down in *Westinghouse Saxby Farmer Ltd. (supra*) is directly relevant to the interpretation of Section XVII Notes 2(f) and 3 and to the classification of railway-specific signalling relays. It also makes clear that the mere employment of electricity or electromagnetic effects is not, by itself, determinative of classification under Chapter 85.

41.2. Read with the express reference to "mechanical (including electro-mechanical)" signalling equipment in Chapter Note 3(b) to Chapter 86 and the technical character of the Eldyne DAC, the aforesaid decision substantially supports the classification adopted by the appellants under Customs Tariff Item 86080030. The said decision has also been subsequently applied by this Tribunal in the case of *Commissioner of Customs v. Bosch Limited [2023 (12) TMI 386].*

Examination of the Principal Objections Raised in the Impugned Order

41. Having considered the technical literature and the functional architecture of the DAC, it is now necessary to examine the principal reasons which weighed with the adjudicating authority in rejecting the classification under Heading 8608. We first propose to deal with the Revenue's reliance upon the exclusion contained in Section XVII Note 2(f) and, in particular, upon the expression contained in the HSN Explanatory Note to Heading 8608.

(a) The exclusion contained in Section XVII Note 2(f):

41.1. The reliance placed upon Section XVII Note 2(f), in our view, cannot be examined divorced from the scheme of the tariff as a whole. The said Note excludes electrical machinery or equipment of Chapter 85 from the expression "parts" or "parts and accessories" occurring in Section XVII. It does not, however, lay down that an apparatus which incorporates electrical or electronic components is, for that reason alone, excluded from Chapter 86. The exclusion operates upon the classification of a part or accessory; it cannot be employed to determine the classification of the complete apparatus by first severing from it a component which, on the technical evidence, constitutes an integral stage of its functioning.

41.2. In the present case, the question is not whether an independently imported generic electrical relay, considered in isolation, could be regarded as electrical equipment of Chapter 85. The question is the classification of the complete Digital Axle Counter system, whose architecture, as demonstrated by the

Maintenance Handbook, IRISET literature and the other documents on record, incorporates the Vital Relay as its essential electromechanical output stage. Once the goods are examined in their complete functional setting, Note 2(f) cannot be invoked to fragment the apparatus and thereby predetermine its classification.

(b) The HSN Explanatory Note to Heading 8608:

41.3. The principal reliance of the adjudicating authority is upon paragraph (B) of the HSN Explanatory Note to Heading 8608, which refers to apparatus in which the signal, point or other mechanism is operated from a control point, generally at some distance, by the movement of "levers, cranks, rods, wires, chains, etc.", or by hydro-pneumatic devices or electric motors.

41.4. We are unable to concur with the stand taken by the Revenue, which would in essence reduce the scope of Heading 8608 merely to traditional mechanical linkages of an earlier generation of railway signalling. It must be noted that a Vital Relay is not a software-based or static solid-state device, but an electromechanical switch. The application of electromagnetic flux causes physical movement of its armature, which performs a function analogous to that of a lever.

41.5. In fact, electromechanical signalling arrangement, in terms of modern technology, may or may not necessarily reproduce the physical architecture of a conventional signal box containing long rods, cranks and manually operated levers. Instead of a rigid approach, what is required to be seen is the functional principle underlying the said

Explanatory Note: an electrical or electromagnetic input produces a physical mechanical action which establishes or interrupts the requisite signalling condition. The Vital Relay employed in the DAC satisfies this essential characteristic. The energisation of its coil produces electromagnetic flux, the flux causes physical movement of the armature, and the movement changes the condition of the contacts which constitute the vital *clear/occupied* output.

41.6. Further, the reference in the HSN Note to "levers, cranks, rods, wires, chains, etc." cannot merely be treated as a closed catalogue of permissible mechanisms. The use of the expression "etc.", followed by separate reference to hydro-pneumatic devices and electric motors, itself indicates that the Note is describing the means by which the signalling or control operation may be effected, rather than freezing the heading to a particular historical technology. The statutory expression in Chapter Note 3(b), in any event, is broader and expressly recognises electro-mechanical signalling equipment.

41.7. Similarly, the mere fact that the command is generated electronically by the Central Evaluator would not take the apparatus outside the conceptual field of the Note. The relevant question is what happens at the point where the command is translated into the actual signalling condition. In the DAC, the electronically determined status is transmitted to the Vital Relay; the relay is energised or de-energised; its armature physically picks up or drops; and the resulting contact condition is conveyed to the interlocking circuitry. The command is thus not confined to a software instruction or an electronic computation. It culminates in a physical

electromechanical actuation having a direct consequence for railway signalling and safety.

41.8. This interpretation also avoids an incongruity in the tariff scheme. If the expression "electro-mechanical" in Chapter Note 3(b) were to be understood as excluding apparatus in which electronic processing precedes the mechanical actuation, virtually every technologically advanced railway signalling system could be excluded from Heading 8608 merely because its control architecture has progressed from mechanical levers to electronic evaluators and relay interfaces. Such an interpretation would substantially deprive the expression "electro-mechanical" of its intended field of operation and would fail to account for technological evolution in railway signalling.

41.8. The Maintenance Handbook and the IRISET Manual, which have been discussed in detail hereinabove, are particularly material in this regard. They demonstrate that the Vital Relay is the mechanism through which the electronically determined result is converted into the physical *clear/occupied* condition and ultimately connected to the interlocking circuit. The Revenue has not placed before us any technical material of comparable specificity which displaces this documented description of the system's operation. Therefore, we fail to agree with the conclusion drawn in the impugned order. The objection founded upon the absence of conventional levers, cranks or rods must, therefore, fail. The DAC is not sought to be classified under Heading 8608 merely because it happens to be installed in a railway environment. It is so classifiable because its complete architecture culminates in an

electromechanical signalling and safety operation, performed through the Vital Relay, which is an integral and indispensable part of the system. The contention that the DAC is incapable of classification under Heading 8608 because its control is generated electronically also overlooks the distinction between the generation of the command and the execution of the signalling function. The former may be electronic; the latter, in the present system, is electromechanical. It is the character of the complete apparatus and its specialised signalling function which have to be appreciated. Accordingly, the Revenue's reliance upon the HSN Explanatory Note to Heading 8608, to exclude the DAC from Heading 8608, cannot be accepted.

41.9. In this regard, it is also imperative to note that the traditional mechanical levers and cranks employed in railway signalling have, with technological advancement, evolved into electrically actuated electromechanical relays controlled by digital evaluators. The expression used in the HSN cannot, therefore, be construed as confined to obsolete mechanical arrangements, particularly when the ultimate output continues to involve physical electromechanical movement for controlling the railway signalling system.

(c) Statement of Shri Gautam Biswas:

41.10. From a perusal of the impugned order, it can be observed that the ld. adjudicating authority has also placed considerable reliance upon the statements of Shri Gautam Biswas recorded by the DRI on 01.07.2019 and 09.07.2019, particularly his opinion that the DAC and Relay are not having any relation for the purposes of classification as also that

the DAC, being dependent for its functioning upon electricity and electromagnetic effects, corresponds to Chapter Heading 8530. The said reliance, however, in our considered view, does not withstand scrutiny for the following reasons.

41.11. First, the impugned order has merely recorded the qualification of Shri Gautam Biswas as B.E. (Electronics and Telecommunication) and had been associated with the appellant as Technical Director, so as to justify his expertise. However, it is a fact that no actual certificate as to his expertise on the said subject so as to carry any substantial weight, has been brought on record. Further, admittedly, even the above designation of Technical Director has been disputed and denied by the appellants since the stage of adjudication, who claim that the said person was acting as a Technical Consultant. Be that as it may, it is well settled that personal opinion as to an appropriate tariff heading cannot substitute the statutory exercise of classification required to be undertaken by the adjudicating authority. The question whether the goods fall under Heading 8530 or 8608 is ultimately a matter of application of the tariff, Chapter Notes, Section Notes and the General Rules for Interpretation.

41.12. Secondly, the technical premise underlying his conclusion does not find any corroboration. The fact that the DAC operates through electricity and electromagnetic effects does not, by itself, establish classification under Chapter 85, particularly when Heading 8608 expressly encompasses "mechanical (including electro-mechanical)" signalling, safety or traffic-control equipment. More importantly, his statement, as relied

upon by the Revenue, does not adequately account for the Vital Relay Unit, its armature movement, pick-up/drop mechanism and its function in generating the *clear/occupied* output for the interlocking circuit.

41.13. Thirdly, the opinion attributed to Shri Biswas that the relay is not an essential part of the DAC is materially at variance with the Maintenance Handbook of the Ministry of Railways, the IRISET Manual and the Railway Tender documents already discussed. These documents specifically identify the Vital Relay as part of the DAC architecture and establish its role in producing the vital output. His opinion, therefore, cannot displace the contemporaneous and specialised technical literature placed on record.

41.14. Fourthly, the statements of Shri Biswas, insofar as they are sought to be used as evidence against the appellants, were also required to be considered in the light of Section 138B of the Customs Act, 1962. The statutory provision governs the circumstances in which statements recorded during investigation may be treated as relevant in adjudication. Judicial decisions have held that, where such a statement is relied upon against a noticee and its maker is available, the prescribed procedure for examination and cross-examination cannot be bypassed. In the present case, the appellants had specifically sought cross-examination of Shri Biswas to test the technical assertions attributed to him, which request, as per the submissions made before us, came to be rejected merely on the ground that the appellants had not established personal bias or malice on his part. The purpose of cross-examination was not confined to establishing bias; it was to test the

correctness, basis and completeness of his technical assertions, particularly when those assertions were relied upon to sustain the proposed classification and consequential demand. Where the statement is relied upon as substantive material against the noticee, the statutory safeguards governing its evidentiary use assume significance.

41.15. We therefore find that the statement/s of Shri Gautam Biswas, in the absence of demonstrated specialised expertise and technical consistency coupled with the failure to afford the appellants the requisite opportunity to test the disputed assertions through cross-examination, do not constitute a safe or sufficient foundation for sustaining the impugned classification or the consequential demands.

41.16. Apart from the above, we find force in the submission of the appellants that the observation in paragraph 69 of the impugned order that the alleged "deliberate inclusion of the relay feature" was an attempt to create "ambiguity and confusion" is wholly unsubstantiated. At the highest, the material on record could give rise to an allegation that the appellant had adopted an erroneous view of classification; it cannot, without any supporting material, be elevated into an assertion of deliberate inclusion with an intent to create confusion. The observation, therefore, remains a bald assertion unsupported by any cogent evidence and cannot constitute a sustainable basis for drawing an adverse inference against the appellant.

41.17. The impugned order has, further, proceeded to treat the Vital Relay as an article falling under CTH 8536, without adverting to the binding pronouncement of the Hon'ble Supreme Court in

Westinghouse Saxby Farmer Ltd. v. Commissioner of Central Excise, Calcutta, [2021 (376) E.L.T. 14 (S.C.)], wherein relays used solely as part of railway signalling/traffic-control equipment were held classifiable under Heading 8608 notwithstanding their electrical character. The said judgment had already been rendered on 08.03.2021 and was thus available well before the passing of the impugned order dated 13.03.2024. The contrary treatment of the relay under CTH 8536, without distinguishing or even meaningfully considering the ratio of the said decision, renders the reasonings in the impugned order unsustainable.

42. Therefore, taking an overall view of the rival contentions, the technical literature, the architecture and functioning of the Digital Axle Counter system, the relevant tariff entries and Chapter Notes, as also the principles governing classification, we are of the considered view that the electronic components of the DAC cannot be isolated from its ultimate electromechanical mode of operation. The imported apparatus is designed exclusively for configurations and applications of the Indian Railways and possesses no discernible alternate industrial utility. The Rail Contacts, EAK, ACE and the Vital Plug-in Relays constitute, notwithstanding their physical and consignment-wise separability, an integrated and functionally indivisible safety architecture, in which the passage of the wheel at the rail web initiates the sensing process, the resultant signals are processed and evaluated, and the ultimate safety condition is executed through the physical movement of the armature of the Vital Relay. The relay, therefore, cannot be regarded as an adventitious or independently functioning electrical switch; it is the

electromechanical extension through which the electronic determination of the DAC is translated into the physical signalling/interlocking condition. In the absence of such relay operation, the system would be incapable of executing its dedicated railway safety function. The goods, consequently, cannot be artificially disaggregated into two unrelated electrical articles; they constitute, in substance and in functional contemplation, a single specialised railway signalling and safety system presented in a split-consignment configuration.

42.1. The burden, therefore, lay upon the Revenue to establish, before displacing the classification adopted by the appellant, that the goods in their entirety were appropriately exigible to Heading 8530 as "electrical signalling, safety or traffic control equipment for railways" and, concomitantly, that their essential character did not bring them within the express ambit of Heading 8608 covering "mechanical (including electro-mechanical) signalling, safety or traffic control equipment", particularly when the said aspect, that Vital Relay formed an integral part of the DAC system, had been categorically highlighted by the appellants before the adjudicating authority. However, the Revenue has failed to discharge the said onus before rejecting the classification declared by the appellants. The material placed on record, particularly the authoritative railway technical literature, establishes the functional indispensability of the relay and the electromechanical character of the final output stage. The Revenue has not, in our considered view, discharged the requisite evidentiary burden so as to warrant the proposed departure from the appellant's declared classification.

42.2. The application of Rules 2(a) and 3(b) of the General Rules for the Interpretation of the Tariff fortifies the same conclusion. The essential character of the goods is not exhausted by the electronic processing undertaken within the EAK and ACE; it inheres in the complete chain of operation by which a physical railway event is sensed, electronically processed, logically evaluated and ultimately translated, through mechanical movement of the Vital Relay armature and its contacts, into a fail-safe signalling/interlocking condition. The aggregate character of the apparatus is thus that of specialised railway signalling and safety equipment, with an unmistakable electromechanical component at the very point where the processed information is converted into the operative safety output. Its principal and exclusive railway application further militates against treating the Vital Relay as a generic electrical article divorced from the specialised apparatus of which it forms an integral part.

43. In this conspectus, we hold that Chapter Heading 8608 constitutes the more specific and appropriate tariff entry for the goods in question. Once the goods are found to be covered by Heading 8608, the parenthetical exclusion contained in Heading 8530—"other than those of heading 8608"—operates proprio vigore, and the goods cannot, by reason merely of the presence of electrical and electronic components, be diverted to Heading 8530. The classification adopted by the appellant under Customs Tariff Item 86080030 is, therefore, found to be in consonance with the structure of the tariff, the relevant Chapter and Section Notes, the technical literature governing the apparatus, and the functional character of the goods. Conversely, the

reclassification adopted in the impugned order under Customs Tariff Item 85301010, with the alleged parts thereof being classified under Customs Tariff Item 85309000, is devoid of merit and cannot be sustained. The consequential demand of Integrated Tax founded upon such reclassification, together with the attendant interest and other consequences flowing therefrom, therefore, necessarily fails and is liable to be set aside.

Confiscation under Section 111(m) and imposition of Redemption Fine

44. The impugned order has held the imported goods, valued at Rs.54,61,14,482/-, liable to confiscation under Section 111(m) of the Customs Act, 1962. The said provision is attracted where the goods do not correspond, in respect of their value or in any other particular, with the entry made under the Act. The statutory pre-condition is thus the existence of a material discrepancy between the goods imported and the particulars declared in the relevant entry. No such discrepancy is discernible in the present case. The goods were duly declared as Digital Axle Counters and components thereof, and there is no finding that the appellant had suppressed their identity, quantity, value, country of origin or physical description. The controversy, as is evident from the record, is confined to the tariff classification applicable to goods whose identity, nature and function had been disclosed to the Department.

44.1. In any event, for the reasons already set out hereinabove, the classification adopted by the appellant under Customs Tariff Item No. 86080030 is itself found to be correct. Once the very foundation of the alleged misclassification is found to be untenable,

the consequential invocation of Section 111(m) cannot survive. The order of confiscation is, therefore, set aside. Consequently, the redemption fine imposed under Section 125 of the said Act, being purely consequential to such confiscation, also does not survive.

Invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962:

45. At this stage, and without prejudice to our findings on merits, the plea on limitation also warrants consideration. The impugned Show Cause Notice dated 31.12.2020 invokes the extended period under Section 28(4) of the Customs Act, 1962 in respect of imports made during the period from 02.08.2017 to 05.03.2019 by alleging that the short-payment of duty had occurred by reason of collusion, wilful misstatement or suppression of facts on the part of the appellants.

45.1. However, we observe that the record discloses circumstances wholly at variance with such an allegation. It is a fact on record that the appellant-company commenced declaring the goods under Customs Tariff Item No. 86080030 from 02.08.2017 and, by its representation dated 10.11.2017, expressly disclosed its understanding of the classification to the jurisdictional tax authorities, enclosing product literature and other supporting material. Thereafter, the Bills of Entry continued to be assessed and the goods cleared under the said declared classification without any objection from the Department. The classification was thus neither concealed nor adopted clandestinely. The ratio of *Westinghouse Saxby Farmer Ltd. v. Commissioner of Central Excise, Calcutta [2021 (376) E.L.T. 14 (S.C.)]*,

particularly the reasoning in paragraphs 41 onwards, is apposite: where the assessee had openly adopted a classification and there was no material establishing fraud, collusion, wilful misstatement or suppression, the extended period was held unavailable. The relevant portion of the said judgement is extracted below: -

> *"41. At the outset we should point out that this is not a case where the extended period of limitation would apply, especially in the light of the admitted position* ***that the assessee who had his product classified under sub-heading 8536.90 till the year 1993, specifically filed a classification list on 27-8-1993, reclassifying them under sub-heading 8608 and the same was also approved by the competent authority. Therefore, there is no question of any fraud or collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty****. It is not even the case of the Department that the appellant was guilty of any of these things, warranting the invocation of the extended period of limitation. Therefore, the conclusion is inescapable that the Revenue had only the normal period of limitation available to them to invoke the power under Section 11A.*
>
> *42. As a matter of fact the first Appellate Authority held in the penultimate paragraph of its Order as follows :*
>
> > *"I find that the subject goods were previously classified under sub-heading No. 8536.90 and then the appellant asked for reclassification of the goods under sub-heading No. 8608.00. The new classification was approved by the proper authority and the appellant paid duty according to the approved classification. Hence there is no violation of any provisions of law on the part of the appellant and therefore penalty is not imposable under rule 173Q.*
>
> *…..*
>
> *46. In any case all the show cause notices were issued only on and after 30-8-1995, raising a classification dispute, after having approved the classification list submitted on 27-8-1993. The dispute in the case on hand was one of classification alone, applicable to the product manufactured during the entire period after 27-8-1993. The*

dispute was not invoice-centric. Therefore, what was sought to be done by the Original Authority was actually to review the approval of the classification list submitted on 27-8-1993 by cleverly issuing separate notices covering certain specific periods. What is to be seen here is that the attempt to undo the effect of the approval of the classification done on 27-8-1993, was actually time- barred. Therefore, despite the fact that some of the individual notices were issued within the period of limitation either in respect of the part of the period or in respect of the whole of the period covered by them, the very invocation of Section 11A, in the facts and circumstances of the case, cannot be said to be within time."

[Emphasis supplied]

45.2. The same principle is reinforced by *Northern Plastics Ltd. v. Collector of Customs & Central Excise [1998 (101) E.L.T. 549 (S.C.)],* wherein the Hon'ble Supreme Court recognised that, where the description and particulars of the imported goods are correctly disclosed, a claim to a particular classification or exemption, even if subsequently found untenable, is essentially a matter of the importer's belief and does not, without more, amount to misdeclaration. Thus, the mere fact that the classification claimed by the appellants carried a lower rate of tax cannot, in isolation, furnish the requisite foundation for alleging wilful misstatement or suppression with intent to evade duty.

45.3. In this context, we also take note of the suo motu Order dated 10.01.2022 of the Hon'ble Supreme Court in *In Re: Cognizance for Extension of Limitation*, whereby the period from 15.03.2020 to 28.02.2022 was directed to stand excluded in computing limitation prescribed under general or special laws in respect of judicial and quasi-judicial proceedings, with the balance period of limitation available thereafter from 01.03.2022. In the present case, therefore, the period commencing from 15.03.2020 would have to be

considered as falling within the surviving period of ordinary limitation. However, it be noted that the same is for academic purposes alone, since the same stands otherwise vitiated in view of the findings on merits recorded hereinbefore.

45.4. Nevertheless, the Revenue having specifically invoked the extended period under Section 28(4), the statutory conditions for such invocation necessarily require consideration. As noticed hereinabove, the record discloses no concealment of the identity, nature, value or other material particulars of the imported goods. The classification under CTH 86080030 was openly declared in the Bills of Entry, was expressly disclosed to the jurisdictional authorities by the representation dated 10.11.2017, and was thereafter acted upon in assessment and clearance of the goods. The dispute thus essentially concerns the correctness of a tariff classification which was consciously disclosed and consistently maintained by the appellant. In the absence of material establishing collusion, wilful misstatement or suppression of facts with the requisite intent, the invocation of Section 28(4), to the extent indicated above, cannot legally sustain.

46. In view of the foregoing discussion, we hold that the essential ingredients for invocation of the extended period under Section 28(4) of the Customs Act, 1962 are not established on the facts of the present case. The differential duty demand, insofar as it is founded upon the invocation of the extended period, is therefore unsustainable and liable to be set aside, subject to the statutory exclusion of the aforesaid period directed by the Hon’ble Supreme Court (*supra*).

Imposition of penalty

47. We now turn to the penalties imposed upon the appellants. As per our findings hereinabove, the correctness of the classification adopted by the appellant-company has been affirmed. The penalties imposed upon the respective appellants are thus required to be examined in the light of the same vis-à-vis the relevant statutory provisions.

(i) Penalty upon the appellant-company / appellant no. 1 under Section 114A:

47.1. The penalty of Rs.7,67,54,006/- imposed upon M/s. Eldyne Electro System Pvt. Ltd., the appellant-company, under Section 114A of the said Act cannot be sustained. The said provision predicates the non-levy, short-levy, non-payment or short-payment of duty upon collusion or any wilful misstatement or suppression of facts. As already found, the classification under Customs Tariff Item No. 86080030 was openly declared in the Bills of Entry, the revised classification was expressly brought to the notice of the jurisdictional authorities by the representation dated 10.11.2017, and the goods were thereafter repeatedly assessed and cleared on the declared basis. No collusion, wilful misstatement or suppression has consequently been established. Moreover, once the principal demand itself fails on merits, no duty liability remains upon which the equal penalty contemplated under Section 114A could be founded. The penalty imposed upon the appellant-company, accordingly, stands set aside.

(ii) Penalties upon Shri Santanu Basu under Sections 112(a) and 114AA

47.2. Section 112(a) requires an act or omission in relation to the goods which renders them liable to confiscation under Section 111, or the abetment thereof. No such act or omission has been established against the appellant; and, the very finding of confiscability under Section 111(m) having failed, the consequential penalty under Section 112(a) cannot survive. The participation of Shri Santanu Basu / appellant no. 2 in the company's classification decision, or his subsequent explanation of the electromechanical functioning of the DAC during investigation, cannot retrospectively constitute an act rendering the goods liable to confiscation.

47.2.1. Section 114AA requires a person knowingly or intentionally to make, sign or use, or cause to be made, signed or used, a declaration, statement or document which is false or incorrect in a material particular. Mere difference in technical understanding, or an explanation which the Department may consider erroneous, cannot by itself satisfy the indispensable requirement of knowledge or intention. Further, no material has been brought on record to establish such deliberate falsity on the part of Shri Basu. Both penalties, of Rs.10,00,000/- under Section 112(a) and Rs.15,00,000/- under Section 114AA, on the appellant no. 2 are thus set aside.

(iii) Penalties upon Ms. Rupanjali Dey under Sections 112(a) and 114AA

47.3. As regards Ms. Rupanjali Dey / appellant no. 3, it is observed that she was the Chief Financial Officer and no specific act or omission has been established

on her part which rendered the goods liable to confiscation or amounted to abetment thereof. Her participation in the classification adopted by the company, in circumstances where the classification had been openly declared and acted upon in assessment, does not fulfil the statutory requirements of Section 112(a). Equally, the statements or explanations furnished by her during investigation, even if assumed to contain an erroneous technical understanding, cannot attract Section 114AA in the absence of evidence that any materially false statement was knowingly or intentionally made. The penalties imposed upon the appellant no. 3, of Rs.10,00,000/- under Section 112(a) and Rs.15,00,000/- under Section 114AA are also therefore set aside.

48. In view of the foregoing discussion and findings, we are unable to sustain the edifice upon which the impugned order has been constructed. The classification adopted by the appellants under Customs Tariff Item No. 86080030 is found to be in consonance with the functional character of the Digital Axle Counter as an integrated railway signalling and safety apparatus, including its indispensable electromechanical Vital Relay, whereas its reclassification under Customs Tariff Item No. 85301010 and, that of the alleged parts thereof, under Customs Tariff Item No. 85309000, is found to be devoid of merit. The consequential demand of Duty / Integrated Tax, therefore, has no sustainable foundation. Equally, as already observed hereinbefore, the consequential findings of confiscability and penal liability, being predicated upon the same infirm foundation, cannot survive.

49. As regards the ground taken by the appellant, that the adjudicating authority has not completed the adjudication proceedings within the period prescribed under Section 28(9) of the Customs Act, 1962, we note that the Ld. Counsel for the appellant has undertaken, both during the course of hearing and by way of subsequent written communication, that the said issue is not being pressed before this Tribunal. The present decision is, therefore, confined to and proceeds upon the other grounds and submissions advanced on behalf of the appellant, which have been considered and adjudicated upon hereinabove.

50. Consequently, the impugned Order-in-Original No. KOL/CUS/A&A/Pr. COMMISSIONER/ADJN/ 11/2024 dated 13.03.2024 is set aside in its entirety, including the demand of Integrated Tax amounting to Rs.7,67,54,006/-, together with the interest thereon, the order of confiscation of the impugned goods valued at Rs.54,61,14,482/- under Section 111(m) of the Customs Act, 1962 along with redemption fine thereof, and all consequential penalties imposed upon M/s. Eldyne Electro System Pvt. Ltd., Shri Santanu Basu and Ms. Rupanjali Dey.

51. In the result, the appeals stand allowed, with consequential relief, if any, in accordance with law.

(Order pronounced in the open court on **24.09.2026**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd