प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद

सीमाशुल्कभवन, आलइंडीयारेडीऑकेबाजुमे, नवरंगपुरा ,अह्मदाबाद 380009

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निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फा. सं./F. No.: VIII/10-23/Pr Commr/O&A/2024-25

DIN- 20251071MN000000CDF6

आदेशकीतारीख/Date of Order :15.10.2025

जारीकरनेकीतारीख/Date of Issue :15.10.2025

द्वारापारित :- **शिव कुमार शर्माप्रधान आयुक्त ,**

Passed by :- Shiv Kumar Sharma, Principal Commissioner

मूलआदेशसंख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-29-2025-26 dated 15.10.2025 in the case of M/s. Larsen & Toubro Hydrocarbon Engineering Limited (Presently known as M/s. Larsen & Toubro Limited), 2, Powai Campus, Powai, Mumbai – 400072.

1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन , गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, *Ahmedabad* – 380004.

3. उक्त अपील प्रारुप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए) अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क अधिनियम,1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act,1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरूद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमे विवाद है उसका भुकतान करके अपील की जा शकती है।

7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. VIII/10-23/Pr Commr/O&A/2024-25 dated 05.12.2024 issued by the Principal Commissioner of Customs, Ahmedabad to M/s. Larsen & Toubro Hydrocarbon Engineering Limited (presently known as M/s. Larsen & Toubro Limited), 2, Powai Campus, Powai, Mumbai – 400072.

BRIEF FACTS OF THE CASE:

M/s. Larsen & Toubro Hydrocarbon Engineering Limited (which is now amalgamated into M/s. Larsen & Toubro Limited), 2, Powai Campus, Powai, Mumbai – 400072 (hereinafter referred to as 'the Importer' for the sake of brevity) having IEC No.0313079269, are engaged in import of old and used non and self-propelled Anchor Handling Tugs falling under Customs Tariff Item 89040000 of the Customs Tariff Act, 1975.

2. It was noticed during test check of records of the Customs House, Surat for the period from 2019-20 to 2023-24 by the Auditors of the CRA Ahmedabad team, that the Importer had availed cumulative benefit of two entries i.e. Serial No. 404 for the BCD Component and Serial No. 557B for the IGST component available under Notification No.50/2017-Customs, dated 30.06.2017, as amended, on the following 04 Bills of Entry filed by them for clearance of imported goods viz. Old & Used Non & Self-Propelled Anchor Handling Tugs falling under Customs Tariff Item 89040000 of the Customs Tariff Act, 1975:

Bill of Entry No.	Date	Assessable value
6712802	31.01.2020	227018531
6948816	20.02.2020	273099078
9269084	21.10.2020	308880000
9823790	04.12.2020	199682438

2.1 The Importer by availing the benefit under Serial No. 404, the exemption of BCD was claimed and by availing the benefit under Serial No. 557B, the exemption of IGST was claimed. Such a cross-combination of rates of column-4 and column-5 of the table given under Notification No.50/2017-Customs, dated 30.06.2017, as amended, was not admissible.

2.2 The Sr. Audit Officer, CRA Ahmedabad during verification observed that claiming benefits of both entries simultaneously resulted in short payment of Rs. 5,32,07,872/- in respect of the above 4 Bills of Entry filed by the Importer for clearance of imported goods viz. Old & Used Non & Self-Propelled Anchor Handling Tugs falling under Customs Tariff Item 89040000 of the Customs Tariff Act, 1975, as detailed in Annexure-A to the show cause notice and was not in accordance with the stipulations of the said notification.

Upon further analysis, it appeared that the Importer had misinterpreted the provisions laid out in the notification. The notification clearly delineates the conditions under which specific exemptions can be availed, and the intention behind it is to allow either the benefit of Basic Customs Duty (BCD) exemption or the Integrated Goods & Services Tax (IGST) exemption, but not both concurrently for the same consignment.

2.3 This discrepancy prompted a detailed examination by the Audit team to determine the extent of the miscalculation and to ensure compliance with correct application of the notification. The audit revealed that the Importer consistently utilized the benefits of both serial numbers over multiple consignments, thereby accumulating a significant shortfall in the payment of customs duties and taxes.

2.4 The office of the Directorate General of Audit (Central) Ahmedabad, 4th Floor, Audit Bhawan, Navrangpura, Ahmedabad-380009, vide letter dated 06.08.2024 raised an audit objection (OBS-1455021) that the Importer had failed to pay the duty to the tune of Rs. 5,32,07,872/- at the time of clearance of the imported goods.

2.5 In response to the above audit objection raised by CRA audit, the Importer was requested to pay the duty along with applicable interest, vide letter F.No. CH/673/24-25 dated 07.08.2024 issued by the Assistant Commissioner, Customs House, Surat. In reply, the Importer vide their letter dated 23.08.2024 informed that they were entitled for cumulative benefit of the two entries of Notification No. 50/2017-Customs, dated 30-06-2017, as amended and denied to make the payment citing reasons for not paying the duty.

3. As per Notification No.50/2017-Customs, dated 30.06.2017, as amended, goods of specified descriptions, when imported into India is exempted–

(a) from so much of the duty of Customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said table; and

(b) from so much of Integrated Tax leviable thereon as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said table subject to fulfillment of the specified conditions, if any.

3.1 The general format/template of prescribing exemption vide aforesaid notification is as under–

(i) If the Notification has prescribed any exemption from BCD, it has mentioned the rate of BCD in column (4) titled 'Standard Rate', above which, any BCD payable is exempted.

(ii) If the Notification has prescribed any exemption from IGST, it has prescribed the rate of IGST in Column (5), above which it is exempted.

(iii) If the Notification has '-' (hyphen) sign in either in column (4) or in column (5), it means that there is no exemption from BCD or IGST respectively on that item under the said Notification and the same is payable at the rate payable otherwise.

(iv) If a column has prescribed rate in column (4), but '-' (hyphen) in column (5), it means that the BCD on that item is exempted, but IGST is payable at the applicable rates.

(v) If a column has '-' (hyphen) in column (4) but has mentioned any rate in column (5), it means that IGST on that item is exempted, but the BCD is payable at the applicable rates.

3.2 From the provisions discussed above, it can be noticed that Item No. (a) and (b) of the said Notification applies simultaneously to each item and not in isolation i.e. if any goods fall under a particular Serial Number of the table prescribed in the said Notification, then the entries of Column (4) and Column (5) of the said table apply jointly and not severely on the said goods.

3.3 It cannot be the case if any imported goods fall under more than one serial number of the said Notification, then the Importer may opt to avail the benefit of Column Number (4) in respect of one entry, and benefit of Column Number (5) of another

entry of the same table. At the best, the Importer can select either of the eligible entries of the said Notification, which is more beneficial to him, but he cannot choose heterogeneous combination of Column (4) and Column (5) of different eligible entries.

3.4 Also, if any goods fall under more than one entry of the said Notification, the Importer cannot avail cumulative benefit of all the entries of exemption notifications. In such cases also, he can avail the benefit of only one entry of his choice, and he has the discretion to select that entry which may be more beneficial to him. But in no case, he can select cumulative benefits of more than one entry.

3.5 Exemption of BCD and IGST under Serial Numbers 404 and 557B of Notification No. 50/2017-Customs, dated 30-06-201, as amended, are as under:

Sr. No.	Standard rate over which BCD exempted	Rate above which IGST is exempted
404	Nil	5%(till 17.07.2022) & 12% w.e.f. 18.07.2022
557B	--	Nil

3.5.1 Thus, the Importer–

(i) Claiming benefit of Sr. No. 404 will get exemption from BCD but will have to pay IGST as if there is no exemption, i.e. at the existing rate of 5% vide Sr. No. 246 of Schedule-I of Notification No.1/2017-IGST (Rate), as amended, and

(ii) Claiming benefit of Sr. No. 557B will have to pay Customs Duty at the prevailing rate, but he will get exemption from payment of IGST.

3.6 Thus, the Importer was eligible for benefit of two different entries (Sr. No. 404 and Sr. No.557B) simultaneously. Accordingly, it was at the option of the Importer to select any one of the two entries i.e. Sr. No. 404 or 557B whichever was more beneficial to them and pay the duty of BCD and IGST accordingly.

3.7 In no case the Importer can have either cumulative benefit of both the entries for which they were eligible or any heterogeneous

combination of two taxes i.e. BCD and IGST selected from both the entries for which they were eligible.

3.8 However, it was found that the Importer availed the benefit of both the entries mentioned above, though they were eligible to claim benefit of only single entry of a particular notification at a time.

3.9 It appeared that Importer has imported Old & Used Non & Self-Propelled Anchor Handling Tugs by wrongly availing the exemption benefits provided under Notification No.50/2017-Customs, dated 30.06.2017, as amended from time to time. It appeared that the Importer was fully aware of the said notification and the same was in the public domain too, however, despite being fully aware of the subject notification they wilfully misstated the coverage of the imported goods under the particular both serial numbers simultaneously of the said notification, as amended, with intent to evade payment of duty. The Importer had by wilful misstatement wrongly availed the benefit of two entries of the same notification simultaneously on 'Old & Used Non & Self-Propelled Anchor Handling Tugs' imported by them vide subject 4 Bills of Entry. Thus, it appeared that the Importer had wilfully evaded the applicable Customs duties/IGST on the imported goods imported vide 4 Bills of Entry, as detailed in Annexure-A to the show cause notice.

3.10 From the facts and circumstances stated above, it appeared that the benefit of exemption under Serial No. 557B of Notification No. 50/2017-Customs, dated 30.06.2017 was more advantageous to the Importer compared to Serial No. 404 of the said Notification. Thus, by doing so, the Importer evaded payment of Integrated Goods and Services Tax (IGST) amounting to Rs.5,32,07,872/- (calculated @5%), while simultaneously claiming the exemption of Basic Customs Duty (BCD) under Serial No. 557B. Summary of the IGST liability is detailed in attached Annexure-A and also tabulated as under:

Sr. No.	Custom House Code	Description of goods	Assessable Value (Rs.)	Differential Duty Payable (IGST in Rs.)
1.	INMDA1	**Old & Used Non & Self-Propelled Anchor Handling**	1,00,86,80,047/-	5,32,07,872/-

		Tugs		
TOTAL			1,00,86,80,047/-	5,32,07,872/-

3.11 The Integrated Goods and Services Tax Act, 2017 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of Customs are levied on the said goods under the Customs Act, 1962. Section 5 of the Integrated Goods and Services Tax Act, 2017 stipulates that "Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962."

3.12 As per sub-section 7 of Section 3 of the Customs Tariff Act, 1975, any article which has been imported into India shall, in addition, be liable to Integrated tax at such rate not exceeding forty percent, as is leviable under Section 5 of the Integrated Goods and Service Tax, 2017 on a like article on its supply in India, on the value of the Imported article as determined under sub-section 8 or sub-section 8A as the case may be.

4.1 Therefore, it appeared that in the instant case, the Importer has imported Old & Used Non & Self-Propelled Anchor Handling Tugs valued at Rs. 100,86,80,047/- (Rupees One Hundred Crore, Eighty-Six Lakh, Eighty Thousand and Forty-Seven Only) and cleared the same for home consumption without discharging applicable customs duties, in contravention of the provisions of exemption Notification No. 50/2017-Customs, dated 30-06-2017, as amended. Consequently, it appeared that the Importer is liable to pay an amount of Rs. 5,32,07,872/- (Rupees Five Crore, Thirty-Two Lakh, Seven Thousand, Eight Hundred and Seventy-Two Only) towards Integrated Goods and Services Tax (IGST) calculated @5% on the imported goods, as per the provisions of Section 28(4) of the Customs Act, 1962, read with Section 3 of the Customs Tariff Act, 1975, read with Section 5(1) of the Integrated Goods & Service Tax, 2017 (as amended) along with applicable interest under Section 28AA of the Customs Act, 1962.

4.2 The Importer had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 in all their import consignments. Further, consequent upon the amendments to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' has been introduced. Section 17 of the Customs Act, 1962 effective from 08.04.2011, provides for self-assessment of duty on imported goods by the Importer by filing a Bill of Entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the Importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2018 (issued under Section 157 read with Section 46 of the Customs Act, 1962), Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the Importer who has to doubly ensure that he declares correct description of the imported goods, their correct classification, applicable rate of duty, value, and benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April 2011, it is added and enhanced responsibility of the Importer to declare correct description, value, notification, etc. and to correctly determine and pay the duty in respect of the imported goods. Further, meaning and definition of assessment has been substituted by the Finance Act, 2018 dated 29.03.2018, which states that "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable with reference to the tariff classification of the imported goods, value of imported goods, exemption or concession of duty, tax, cess or any other sum consequent upon any notification issued in respect of imported goods, quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of

imported goods, origin of imported goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods and any other specific factor which affects the duty, tax, cess or any other sum payable on imported goods and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil, as determined in accordance with the provisions of the Customs Tariff Act. Thus, in the self-assessment regime, onus is on the Importer to correctly mention the applicable notifications and pay applicable duties, however, in the instant case, the Importer had completely failed in fulfilling his responsibility by not paying applicable Customs duties/ IGST and the Importer has failed to maintain the accuracy and completeness of the details filed in the respective Bills of Entry for import of subject goods by wrong availment of exemption Notification No.50/2017-Customs, dated 30.06.2017, as amended from time to time, thereby evaded payment of IGST.

4.3 The Importer had wrongly filed 04 Bills of Entry and assessed the duties on above said goods which resulted in short levy and short payment of duties amounting to Rs. 5,32,07,872/-. From the advent of self-assessment in 2011, the Importer while presenting the Bill of Entry shall make and subscribe to a declaration as on the truth and correctness of the contents of the Bill of Entry and classify the goods under appropriate tariff item. In the instant case, the Importer wilfully not paid the applicable duties. The Importer had not shown any intent to suo moto pay the duties which reveal their intent to evade the same. Thereby, they wilfully mis-declared the vital facts in the Bills of Entry filed, which led to short payment/non-payment of applicable duties. Therefore, it appeared that the duties not paid is required to be recovered by invoking extended period under Section 28(4) of the Customs Act, 1962 along with interest at appropriate rate as applicable under Section 28AA of the Customs Act, 1962 read with Section 5(1) of the Integrated Goods & Service Tax, 2017 (as amended).

4.4 The Importer had imported Old & Used Non & Self-Propelled Anchor Handling Tugs valued at Rs. 1,00,86,80,047/- vide 04 Bills of Entry by availing the benefit of dual entry of a single notification, which was actually not available to them and they could

only avail the benefit of single entry of the subject notification. Thus, by the above acts and commission, the Importer has contravened the provisions of Section 46 and Section 111(m) of the Customs Act, 1962, and Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules 1993, in as much as the Importer has taken wrong benefit of the dual entry of Notification No. 50/2017-Customs, dated 30.06.2017, as amended, while filing the Bills of Entry at the time of the importation of the subject imported goods. Therefore, the said goods valued at Rs.1,00,86,80,047/- are liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.5 It also came to light, that scheme of amalgamation of the Importer viz. M/s Larsen & Toubro Hydrocarbon Engineering Ltd (Transferor company) with M/s Larsen & Toubro Limited (Transferee Company) took place in the years 2021 & 2022 and NCLT Mumbai bench has sanctioned the said amalgamation on 02.02.2022 and the appointed date has been fixed as 01.04.2021. Hence, M/s Larsen & Toubro Hydrocarbon Engineering Ltd stands dissolved without being wound up. According to clause 7.4 of scheme, all past and future liabilities, obligations of the Importer viz. M/s Larsen & Toubro Hydrocarbon Engineering Ltd have been transferred to M/s Larsen & Toubro Limited. Since then, M/s Larsen & Toubro Limited is responsible for all the actions done by M/s Larsen & Toubro Hydrocarbon Engineering Ltd i.e. the Importer in the past.

4.6 The Importer viz. M/s Larsen & Toubro Hydrocarbon Engineering Limited which is now amalgamated into Larsen &Toubro Ltd, for the above acts and commissions, has rendered themselves liable to penalty under Section 114A of the Customs Act, 1962 and Section 112 of the Customs Act, 1962.

5. Therefore, a Show Cause Notice bearing F.No. VIII/10-23/Pr Commr/O&A/2024-25 dated 05.12.2024 was issued to the Importer asking them to Show Cause to the Principal Commissioner, Customs House, Ahmedabad, having his office at 2ndFloor, Custom House, Navrangpura, Ahmedabad, Gujarat 380009, as to why:

(i) the imported goods viz. Old & Used Non & Self-Propelled Anchor Handling Tugs totally valued at Rs. 100,86,80,047/- (Rupees One Hundred Crore, Eighty Six Lakh, Eighty Thousand

and Forty Seven only) imported vide Bills of Entry, as listed in Annexure-A to the show cause notice, should not be held liable for confiscation as per provisions of Section 111(m) of the Customs Act, 1962. Since the said goods are already cleared and are not available for confiscation, why fine in lieu of confiscation should not be imposed upon them under section 125 of the Customs Act, 1962;

(ii) the benefit of Sr. No. 404 of the Notification No. 50/2017-Customs, dated 30.06.2017 with respect to the import of Old & Used Non & Self-Propelled Anchor Handling Tugs should not be denied;

(iii) The differential amount of Customs duty aggregating to Rs. 5,32,07,872/-(IGST @ 5%) (Rupees Five Crore, Thirty Two Lakh, Seven Thousand, Eight Hundred and Seventy Two Only) leviable on the imported goods covered under Bills of Entry, as detailed in Annexures-A to the show cause notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 read with Section 5(1) of the Integrated Goods & Service Tax, 2017 (as amended);

(iv) Interest at the appropriate rate on the total duty demanded at Sr. No. (iii) above should not be demanded and recovered from them, under Section 28AA of the Customs Act, 1962.

(v) Penalty should not be imposed upon them under Section 114A and/or Section 112 of the Customs Act, 1962.

DEFENCE:

6. M/s Larsen & Toubro Ltd., Mumbai vide letter dated 12.02.2025 have submitted their defence reply to the above show cause notice dated 05.12.2024, under which they have interalia submitted that :-

6.1 Prior to its amalgamation with M/s Larsen & Toubro Ltd., the Hydrocarbon Division was a separate company by the name of M/s. Larsen & Toubro Hydrocarbon Engineering (LTHE); that the Hydrocarbon Division is engaged in execution of EPC projects for Oil and Gas Sector and it fabricates various structures to be installed on

the offshore oil exploration area and it provides the said services in domestic market to various public sector units like ONGC, IOCL, HPCL, etc.

6.2 The fabrication of structures is undertaken at the fabrication yard/facility at Hazira in the State of Gujarat from where the said fabricated structures are transported to Mumbai High for providing the aforesaid hydrocarbon services. For the purpose of transporting the structures, LTHE during the relevant period from 31.01.2020 to 04.12.2020, had imported 4 Tugs under 4 Bills of entry filed at Magdalla Port, under the Surat Customs House. The said Tugs are used in towing the barges on which fabricated structures are loaded and thus the tugs transport the structures loaded on barges from one place to another. The present SCN has incorrectly mentioned the description of the goods as old & used non & self-propelled. Undisputedly, the goods under dispute in the present case are "tugs", whose primary and sole function is to the tow the barges, which is not possible without propulsion.

6.3 The denial of exemption is proposed only for the exemption claimed under the Sr.No. 404 of Notification No.50/2017-Cus then no demand of IGST can be raised against them, as the said exemption from payment of IGST was claimed under the entry at Sr. No.557B, which is not proposed to be denied.

6.4 It is well settled that show cause notice is the foundation of case, the department cannot raise demand of IGST, without denying the benefit as per the exemption Notification in show cause notice. The show cause is therefore bereft of allegation and issued without application of mind. The Hon'ble Supreme Court in CCE v. Ballarpur Industries Ltd. [2007 (215) ELT 489 (8C)], has categorically held that the show cause notice is the foundation in the matter of levy and recovery of any duty, penalty or interest.

6.5 In Commissioner of Customs, Mumbai Vs. Toyo Engineering India Limited reported in 2006 (201) E.L.T.513 (SC), the Hon'b1e Supreme Court held that the Department cannot travel beyond the show cause notice. The present show cause notice has not denied the benefit of Sr.No.557B of Notification No.50/2017-Cus, thus the proceedings initiated for purported recovery of the IGST are untenable and unsustainable in law and liable to be dropped.

6.6 Once respective conditions attached to each of the Serial Number under which the exemption is claimed are fulfilled and there is no dispute as to entitlement of the said exemptions under both the serial numbers, then the proposal to deny the same for the sole reason that they are not contained in same serial number of exemption notification is extraneous, is untenable and unsustainable in law. In any event there is no express prohibition in the entire Notification No. 50/2017-Cus restricting the exemption to only one entry.

6.7 The different exemption entries under different serial numbers of the same Notification are independent benefits and concessions. In support of the submission, they have relied upon the judgement of the Hon'ble Bombay High Court in the case of Coca Cola India Pvt. Ltd. Vs CCE, Pune [2009 (242) ELT 168 (Bom)].

6.8 It is settled position in law that benefit of both entries are available together for respective duty components. In this regard they have relied upon the decision of CESTAT in the case of CC, Calcutta Vs Hindustan Motors Ltd. [1998 (98) ELT 557 (Tribunal)].

6.9 It is clarified in Circular No.41/2013-Cus dated 21.10.2013 that cumulative benefit can be availed under 2 Notifications, one for BCD and other for CVD. Reliance has been placed on Circular No.23/2012-Cus dated 30.08.2012, according to which exemption of one duty is independent to exemption to another duty.

6.10 They have been regularly importing the tugs from the last 25 years and have been consistently claiming simultaneous exemption for both BCD and CVD in the past as well. Having accepted the exemption claimed by them in respect of tugs since last 25 years, it is incumbent upon the department to accept the same for the impugned tugs also, in view of the well enshrined principles of consistency and judicial discipline.

6.11 The reliance placed on judgements cited in the show cause notice by the department is untenable and unsustainable in law, as the said judgments are not applicable in cases where

exemptions/benefits are claimed by the Importer in respect of 2 different levies viz. IGST and BCD.

6.12 The impugned 4 Bills of Entries were duly assessed by the proper officers of Customs and the goods were cleared only after the issuance of assessed Bills of Entry and out of charge orders, by the proper officer. As per records, no appeals were filed by the department against the assessment orders i.e., assessed bills of entry and out of charge order, passed by the proper officer before the Commissioner (Appeals) under Section 128 of the Act. Hence, the issues concerning import of impugned goods including the exemptions claimed by LTHE had attained finality and any issues arising out of finalisation of such Bills of Entry cannot be questioned or agitated by the department subsequently by initiating show cause proceedings against the Importer. In this regard they have relied on the judgements passed in the case of Collector of Central Excise, Kanpur Vs. Flock (India) Pvt. Ltd., reported in 2000 (120) ELT 285 (S.C.), Controller of Estate-Duty, Gujarat I Versus MA Merchant – 1989(5) TMI 49 - Supreme Court and Commissioner of Income Tax (Central) -I, New Delhi Versus Vatika Township Private Limited - 2014 (9) TMI 576 - Supreme Court (LB).

6.13 If they would have had paid the Customs duties, it would have taken the duty drawbacks after the re-export. They are eligible to take duty applicable drawback of the duties, as long as the goods qualify for re-export and fulfil the statutory conditions of Section 74.

6.14 The goods are exempted from Customs Duty and IGST in terms of Notification No. 72/2017 -Customs dated 16.08.2017. The said notification is applicable for the tugs classified under Chapters 89 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

6.15 There is no allegation of collusion or suppression against them. It is clear that both the exemptions claimed by them under the entries at Sr. No. 404 and Sr. No 557B of Notification No. 50/2017-Cus are clearly reported and disclosed in the Bills of Entry filed by them. Therefore, Section 28(4) of the Act cannot be applied in the present case as the necessary ingredients to invoke Section 28(4) is missing. In this regard, they relied upon the judgements in the case of Continental Foundation Joint Venture v. Commissioner of Central

Excise, Chandigarh [2007 (216) ELT 177(SC)] and Cosmic Dye Chemical v. Collector of Central Excise, Bombay [1995 (75) ELT 721 (SC)].

6.16 In view of the above, no allegation of wilful mis-declaration can be raised against them, the proceedings in the present case cannot be initiated under Section 28(4) of the Act and therefore the show cause notice is liable to be dropped on this ground alone.

6.17 In the event they are held liable to pay IGST, they would be entitled to claim ITC of the same. Therefore, the demand of IGST is revenue neutral and there is no loss to the exchequer.

6.18 There is no mis-declaration of goods under Section 111 (m) of the Act and thus, the imported goods are not liable to be confiscated. Mere claiming of an erroneous exemption as per the department cannot be the basis to invoke Section 111(m) of the Act to confiscate the imported tug. Reliance in this regard has been placed upon the judgment of the Hon'ble CESTAT in the case of Jayesh P. Surana Vs. Commissioner of Customs (Imports), Chennai [2009 (241) E.L.T. 87 (Tri.—Chennai)].

6.19 The subject goods cannot be confiscated as the same is neither seized nor available for confiscation.

6.20 It is a settled position in law that when the imported goods are not available for confiscation, no fine can be imposed for redemption thereof. In this regard, reliance has been placed on the judgment of the Hon'ble Bombay High Court in Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc. [2009 (248) ELT 122 (Bom.)]. The said judgment has been affirmed by the Hon'ble Supreme Court as reported in 2010 (255) ELT A120 (SC).

6.21 In the present case, none of the ingredients of Section114A are satisfied, thus no Penalty under Section 114A can be imposed upon them. Since goods are not liable to confiscation, no penalties under Section 112 are imposable. It is a settled position in law that no penalty can be imposed where there is no demand [Coolade Beverages Limited (2004) 172 ELT 451 (All.)].

6.22 The show cause notice has allegedly demanded interest under Section 28AA of the Act on the IGST payable under Section 3(7) of the Customs Tariff Act, 1975. Though Section 3(12) of the Customs Tariff Act, 1975 borrowed the provisions of Act for the purpose of duty, tax or cess chargeable under the said Section, there was no provision, express or implied, in the Act, enabling the department to demand interest on the IGST payable under Section 3(7) of the Customs Tariff Act, 1975. Sub Section 12 was substituted vide Section 106 of the Finance Act (No.2), 2024 dated 16.08.2024 w.e.f. 16.08.2024, incorporating provisions for demanding interest and penalties. Thus, prior to 16.08.2024, during the relevant period from 31.01.2020 to 04.12.2020, there was no provision, express or implied, in the Act, enabling the department to demand interest on the IGST payable under Section 3(7) of the Customs Tariff Act, 1975.

6.23 In this regard, they have relied on the decision of the Hon'ble Bombay High Court in the case of the Mahindra & Mahindra Ltd. v. Union of India [2023) 3 Centax 261(Bom)], wherein the Hon'ble High Court has held that penalty and interest is not leviable in absence of charging section under Section 3 of the Customs Tariff Act, 1975. The aforesaid judgement of Hon'ble Bombay High Court has been affirmed by the Hon'ble Supreme Court - UOI vs Mahindra & Mahindra Ltd. [2023 (386) E.L.T. 11 (SC)]. In view of the above, imposing interest on demand pertaining to IGST leviable under Section 3(7) of the Customs Tariff Act, 1975 is without jurisdiction and bad in law.

6.24 In view of the above submissions, the proceedings initiated pursuant to the present show cause notice under reply, are liable to be dropped.

6.25 They have requested for personal hearing before any decision adverse to them is taken on the show cause notice under reply.

PERSONAL HEARING:

7. A personal hearing was held on 03.10.2025 wherein Shri Mihir Mehta, Advocate appeared for personal hearing virtually (online mode) on behalf of the Importer and reiterated the contents of their written submission dated 12.02.2025. He requested for time

upto 13.10.2025 for filing their additional submission. The importer vide their letter dated 13.10.2025 submitted their additional submission wherein they have interalia stated that :-

7.1 The demand in the show cause notice raised on L & T Hydrocarbon Engineering Ltd. (LTHE), being a non-existent entity is without jurisdiction and liable to be set aside on this ground itself. In this regard, they have placed reliance on the judgment of the Hon'ble Supreme Court in the case of Pr. Commissioner of Income Tax Vs. Maruti Suzuki India Ltd. [(2020) 18 SCC 331].

7.2 Denying the exemption claimed under entry at Serial No. 557B on the ground that the exemption is already claimed for BCD under Serial No. 404, has resulted in double taxation, as IGST is already paid on the same transaction on lease rentals paid under reverse charge mechanism under Section 5(3) of the IGST Act.

FINDINGS:

8. I have carefully gone through the show cause notice dated 05.12.2024, defence reply submitted by the Importer and relevant case records. I have also gone through the Audit Objection raised by CRA, Ahmedabad, based on which the show cause notice has been issued.

9. The core issues before me for decision in the present case are as under:

(i) Whether the Importer is eligible for exemption available under two serial numbers of same notification simultaneously i.e. under Serial No. 404 for exemption of Basic Customs Duty (BCD) and under Serial No. 557B for exemption of Integrated Goods & Service Tax (IGST) of Notification No. 50/2017-Customs, dated 30.06.2017, as amended, in respect of the imported goods imported by them?

(ii) If the Importer is not eligible for simultaneous benefit of exemption under two serial numbers of same notification, whether the benefit of exemption available under Serial No. 404 of Notification No. 50/2017-Customs, dated 30.06.2017, should be rejected or otherwise?

(iii) Whether the imported goods totally valued at Rs. 1,00,86,80,047/-(Rupees One Hundred Crore, Eighty Six Lakh, Eighty Thousand and Forty Seven only) imported vide four Bills of Entry, as listed in Annexure-A to the show cause notice, should be confiscated under Section 111(m) of the Customs Act, 1962 and fine in lieu of confiscation should be imposed upon the Importer, under section 125 of the Customs Act, 1962, since the said goods are already cleared and are not available for confiscation?

(iv) Whether the differential amount of Customs duty aggregating to Rs. 5,32,07,872/-(IGST @ 5%) (Rupees Five Crore, Thirty Two Lakh, Seven Thousand, Eight Hundred and Seventy Two Only) leviable on the imported goods covered under Bills of Entry, as listed in Annexure-A to the show cause notice, should be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 read with Section 5(1) of the Integrated Goods & Service Tax, 2017 (as amended) along with applicable interest under Section 28AA of the Customs Act, 1962? and

(v) Whether penalty should be imposed upon the Importer under Section 114A and/or Section 112 of the Customs Act, 1962?

10. The brief issue involved in the instant case is that the Importer filed four Bills of Entry No. 6712802 dated 31.01.2020, 6948816 dated 20.02.2020, 9269084 dated 21.10.2020 and 9823790 dated 04.12.2020 at Magdalla Port, Surat for home clearance of imported goods viz. Old & Used Self Propelled Anchor Handling Tugs falling under Customs Tariff Item 89040000 of the Customs Tariff Act, 1975, totally valued at Rs. 1,00,86,80,047/- availing the benefit of duty exemption available under Serial No. 404 for exemption of Basic Customs Duty (BCD) and under Serial No. 557B for exemption of Integrated Goods & Service Tax (IGST) of Notification No. 50/2017-Customs, dated 30.06.2017, as amended. The Auditors of CRA, Ahmedabad, during the course of audit raised objection that claiming benefits of both entries concurrently for the same consignment is not admissible and the Importer can claim either the benefit of Basic Customs Duty (BCD) exemption under Serial No. 404 or the Integrated Goods & Services Tax (IGST) exemption under Serial No. 557B of Notification No.

50/2017-Customs, dated 30.06.2017, as amended. The Sr. Audit Officer, CRA Ahmedabad observed that claiming benefits of both entries simultaneously has resulted in short payment of IGST amounting to Rs. 5,32,07,872/- in respect of the above 4 Bills of Entry filed by the Importer for clearance of the imported goods viz. Old & Used Self Propelled Anchor Handling Tugs.

11. I find that the Importer viz. M/s Larsen & Toubro Hydrocarbon Engineering Ltd has been amalgamated into M/s Larsen & Toubro Limited w.e.f. 01.04.2021, which is sanctioned by NCLT Mumbai bench on 02.02.2022. According to clause 7.4 of scheme, all past and future liabilities, obligations of the Importer viz. M/s Larsen & Toubro Hydrocarbon Engineering Ltd have been transferred to M/s Larsen & Toubro Limited. Since then, M/s Larsen & Toubro Limited is responsible for all the actions done by M/s Larsen & Toubro Hydrocarbon Engineering Ltd i.e. the Importer in the past. Therefore, the Importer M/s Larsen & Toubro Hydrocarbon Engineering Ltd is presently known as 'M/s Larsen & Toubro Limited.'

12. Now, I proceed to examine the issues to be decided by me one by one in the light of the records of the case and the submissions made by the Importer.

12.1 As regards the admissibility of exemption available under Serial No. 404 for exemption of Basic Customs Duty (BCD) and under Serial No. 557B for exemption of Integrated Goods & Service Tax (IGST) of Notification No. 50/2017-Customs, dated 30.06.2017, as amended, I would like to make a reference to the said notification. As per Notification No. 50/2017-Customs, dated 30.06.2017, as amended, goods of specified descriptions, when imported into India are exempted–

(a) from so much of the duty of Customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said table; and

(b) from so much of Integrated Tax leviable thereon as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said table subject to

fulfillment of the specified conditions, if any.

subject to any of the conditions, specified in the Annexure to the said notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table.

12.1.1 The exemptions available under Serial No. 404 and Serial No. 557B of Notification No. 50/2017-Customs, dated 30.06.2017, as amended, are reproduced as under:

Table

S.No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated goods & Services Tax	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
404	84 or any other Chapter	Goods specified in List 33 required in connection with: (a) petroleum operations undertaken under petroleum exploration licenses or mining leases, granted by the Government of India or any State Government to the Oil and Natural Gas Corporation or Oil India Limited on nomination basis, (b) petroleum operations undertaken underspecified contracts (c) petroleum operations undertaken underspecified contracts under the New Exploration Licensing Policy (d) petroleum operations undertaken underspecified contracts under the Marginal Field Policy (MFP) (e) coal bed methane operations under taken under specified contracts under the Coal Bed Methane Policy	Nil	5% (till17.07.2022) 12% (From 18.07.2022)	48
557B	Any Chapter	All goods, vessels, ships [other than motor vehicles] imported under lease, by the Importer for use after import	-	Nil	102

12.1.2 I find that in the instant case there is no dispute/allegation regarding non compliance of the conditions stipulated against the above serial numbers by the Importer. Therefore, I do not offer my comments in this regard.

12.1.3 I find from the above table that under Serial No. 404, the customs duty is 'Nil', however, an Importer has to pay Integrated Goods and Services Tax (IGST) @5%/12% for availing the said benefit of customs duty exemption. Similarly, IGST is 'Nil' under Serial No. 557B and for availing the said benefit, an Importer is required to pay Customs duty at the applicable rate at the relevant time. In the instant case, the Importer has availed the exemption benefit of Customs duty and IGST available under the above Serial Nos. 404 and 557B simultaneously and got cleared the imported goods viz. Old & Used Self Propelled Anchor Handling Tugs without payment of any duty.

12.1.4 I find that the main dispute in the instant case is whether the Importer is entitled for the benefit of exemption under both the serial numbers viz. 404 and 557 of the same notification i.e. Notification No. 50/2017-Customs, dated 30.06.2017, as amended. I have carefully gone through various judgements pronounced by appellate authorities and I find that it is settled law that in the event of two entries being available in an exemption notification, the Importer is entitled to avail the benefit of most beneficial entry. In this regard, I place reliance on the following case laws:

(i) Cipla Ltd. Vs. Commissioner of Customs, Chennai reported in 2007 (218) E.L.T. 547 (Tri. - Chennai) passed by the Hon'ble CESTAT, Chennai.

[*Held:* Exemption - Option to choose - If two entries in an exemption notification are applicable to given goods, the assessee can legitimately claim under the more advantageous entry.]

(ii) Collector of Central Excise, New Delhi Vs. Thermopack Industries reported in 2003 (160) E.L.T. 1150 (Tri. - Del.) passed by the Hon'ble CESTAT, New Delhi.

[*Held:* Exemption when available under two entries - Assessee can avail any one of them - Goods being eligible under both Serial Nos. 39, as well as 40 of Notification No. 53/88-C.E., assessee had option to avail exemption under either of the two Serial Nos. - Hence, benefit availed under Serial No. 40 of Notification ibid, not deniable. - *The Sl. Nos. 39 and 40 are not similarly worded, and it was the option of the assessee to pay the duty at the applicable rate under Sl. No. 40, and not to avail the full exemption under*

Sl. No. 39, which in any case was subject to the condition as given in Column 5 of the Table annexed to exemption Notification.]

(iii) Agro Tech Foods Ltd. Vs. Commissioner of C.Ex. & S.T., Jaipur-I reported in 2016 (332) E.L.T. 161 (Tri. - Del.) passed by the Hon'ble CESTAT, New Delhi.

[*Held:* Exemption under S. No. 244(B) and S. No. 244(C) of Notification No. 6/2002-C.E. - In any case both entries ibid are not mutually exclusive - Settled law that in event of two entries being available in an exemption notification, assessee entitled to avail benefit of most beneficial entry .]

12.1.5 In view of the above judgements wherein the facts of the cases are identical to the facts of the case on hand, there is no scope for taking a different view in this matter. Moreover, the above judicial rulings on the subject issue are having binding precedents on all lower judicial/quasi judicial authorities as held by the Hon'ble Supreme Court in case of M/s. Kamlakshi Finance Corporation Ltd. as reported at 1992 Supp (1) Supreme Court Cases 648.

12.1.6 The Importer in their defence reply has contended that the reliance placed on the above judgements which have also been cited in the present show cause notice is untenable and unsustainable in law, as the said judgments are not applicable in cases where exemptions/benefits are claimed by the Importer in respect of 2 different levies viz. IGST and BCD. I do not agree with the aforesaid contention of the Importer, as the above judgements need to be interpreted liberally and not in a way that the same can be beneficial to the Importer. In the above judgments, the appellate authority has categorically held that in the event of two entries being available in an exemption notification, the Importer will be entitled to avail benefit of most beneficial entry. If the same logic is applied to the present case on hand, the Importer is entitled to avail exemption either under serial No. 404 according to which BCD is Nil and IGST is @5% or under serial No. 557B according to which BCD is @applicable rate and IGST is Nil, of the impugned Notification No. 50/2017-Customs, dated 30.06.2017, as amended. Therefore, I hold that the aforesaid contention of the Importer is not tenable.

12.1.7. Further, the Importer in their defence reply has placed reliance on Circular No.41/2013-Cus dated 21.10.2013 and Circular No.23/2012-Cus dated 30.08.2012 in support of their claim that they are eligible for exemption benefit available under both the

entries of Notification No. 50/2017-Customs, dated 30.06.2017, as amended. I have gone through the contents of the said circulars and I find that the said circulars have been issued specifically for the products viz. Steam Coal and Fertilizer giving clarification on applicability of CVD on the said products. Therefore, the said circulars are not applicable to the present case.

12.1.8 In view of the above, I hold that the importer is not entitled to avail cumulative benefit/heterogeneous combination of two taxes i.e. BCD and IGST under two serial numbers of same notification i.e. under Serial No. 404 for exemption of Customs duty and under Serial No. 557B for exemption of IGST of Notification No. 50/2017-Customs, dated 30.06.2017, as amended in respect of four Bills of Entry No. 6712802 dated 31.01.2020, 6948816 dated 20.02.2020, 9269084 dated 21.10.2020 and 9823790 dated 04.12.2020 filed by the Importer for clearance of imported goods viz. Old & Used Self Propelled Anchor Handling Tugs. The Importer is eligible for duty exemption either under Serial No. 404 or under Serial No. 557B of Notification No. 50/2017-Customs, dated 30.06.2017, as amended, which is more beneficial to them.

12.2 The second issue for decision before me is whether the benefit of exemption available under Serial No. 404 of Notification No. 50/2017-Customs, dated 30.06.2017, should be rejected or otherwise.

12.2.1 I have already held that the Importer is eligible for duty exemption either under Serial No. 404 or under Serial No. 557B of Notification No. 50/2017-Customs, dated 30.06.2017, as amended, which is more beneficial to them. For checking the serial number which is more beneficial to the Importer, the duties payable by the Importer for availing duty exemption under each serial number in respect of four Bills of Entry, as per Annexure-A to the show cause notice, are detailed as under:

Serial No. of Notfn. No. 50/2017-Cus, dt. 30.06.2017	Customs duty payable (BCD + SWS)	Integrated Goods & Services Tax (IGST) payable.
404	Nil	5,32,07,872
557B	5,54,77,403	Nil

12.2.2 It can be seen from the above that for availing the exemption benefit of Customs duty available under Serial No. 404 of

Notification No. 50/2017-Customs, dated 30.06.2017, as amended, the Importer is required to pay IGST amounting to Rs.5,32,07,872/- and for availing the exemption benefit of IGST available under Serial No. 557B of Notification No. 50/2017-Customs, dated 30.06.2017, as amended, the Importer is required to pay Customs duty (BCD + SWS) amounting to Rs.5,54,77,403/-. Thus, for availing the exemption benefit under Serial No. 557B, the Importer has to pay more duty amounting to Rs.22,69,531/- than they would be required to pay for availing the exemption benefit under Serial No. 404 of Notification No. 50/2017-Customs, dated 30.06.2017, as amended. I, therefore, find that the exemption benefit available under Serial No. 404 of Notification No. 50/2017-Customs, dated 30.06.2017, as amended, is more beneficial to the Importer.

12.2.3 However, it has been inadvertently mentioned in the show cause notice that the exemption benefit under Serial No. 557B of Notification No. 50/2017-Customs, dated 30.06.2017, as amended is more beneficial to the Importer and the show cause notice has proposed to deny the benefit available under Serial No. 404 of Notification No. 50/2017-Customs, dated 30.06.2017, as amended. The Importer in their defence reply has contended that the present show cause notice has not denied the benefit of Sr.No.557B of the Notification No.50/2017-Cus, therefore the proceedings initiated for purported recovery of the IGST are untenable and unsustainable in law and liable to be dropped. In this regard, they have also relied on the judgements passed by the Hon'ble Supreme Court in the case of CCE v. Ballarpur Industries Ltd. [2007(215) ELT 489 (8C)] and Commissioner of Customs, Mumbai Vs. Toyo Engineering India Limited reported in 2006 (201) E.L.T.513 (SC).

12.2.4 The above contention of the Importer is not at all justifiable and I do not agree with the same. I find that it is a well settled proposition of law that non-mention/wrong mention of any section, rule or provision of law does not vitiate the show cause notice. To fortify my stand, I rely on the ratio of the following decisions pronounced by the Hon'ble Tribunals and Supreme Court:

12.2.4.1 The Hon'ble CESTAT, West Zonal Bench, Mumbai in the case of Sidhharth Shankar Roy Vs. Commissioner of Customs Mumbai reported in 2013 (291) E.L.T. 244 (Tri. – Mumbai), has held that penalty cannot be resisted on the ground that Section 114 ibid

was not invoked in the show cause notice or in the impugned order as show cause notice and impugned order brought out a clear case for imposing penalties. The relevant para is reproduced hereunder:

> *"17.6 The department has established beyond reasonable doubt that the appellants colluded with each other in the Customs area of Sahar airport on 8-1-1996 for the prospective export of the foreign currency without any permission of the Reserve Bank of India. Their conduct rendered the foreign currency liable to confiscation under Section 113(d). Therefore the appellants are liable for penalty under Section 114 of the Act. This penalty, in our view, cannot be resisted on the ground that Section 114 was not invoked in the show- cause notice or in the impugned order. Non-mention of Section 114 or mention of a wrong provision of law cannot be fatal to the Revenue inasmuch as the show-cause notice and the impugned order have brought out a clear case for imposing penalties on the appellants on the ground that they rendered the foreign currency liable to confiscation."*

12.2.4.2 The Hon'ble CESTAT, West Zonal Bench, Mumbai in the case of Capgemini India Pvt. Ltd. Vs. Commissioner of Central Excise, Pune-I reported in 2019 (369) ELT 1164 (Tri.-Mumbai) has held that "Incorrect citing of exemption notification in SCN is attributable to oversight and not fatal to proceedings" **relying on the decisions of Hon'ble Supreme Court of India in the case of J.K. Steel Ltd. [1978 (2) E.L.T. J355 (S.C.)] and Pradyumna Steel Limited [1996 (82) E.L.T. 441 (S.C.)].**

12.2.4.3 The Hon'ble Supreme Court of India in the case of J.K. Steel Ltd. reported in 1978 (2) E.L.T. J355 (S.C.) has held that Show cause notice citing wrong rule not vitiated if issuing authority competent to issue it under correct rule. The relevant para is re-produced hereunder:

> *"45. I shall now take up the question of limitation. The written demand made on March 21, 1963 purports to have been made under Rule 9(2) of the rules. Therein the assessing authority demanded steel ingot duty which according to it the assessee had failed to pay. Quite clearly Rule 9(2) is inapplicable to the facts of the case. Admittedly the assessee had cleared the goods from the warehouse after paying the duty demanded and after obtaining the permission of the concerned authority. Hence there is no question of any evasion. Despite the fact that the assessee challenged the validity of the demand made on him, both the Assistant Collector as well as the Collector ignored that contention; but when the matter was taken up to the Government it treated the demand in question as a demand under Rule 10. The Government confined the demand to clearance affected after December 21, 1962. The demand so modified is in conformity with Rule 10. But the contention of the assessee is that the demand having been made under Rule 9(2) and there being no indication*

in that demand that it was made under Rule 10, the Revenue cannot now change its position and justify the demand under Rule 10 at any rate by the time the Government amended the demand, the duty claimed became barred even under Rule 10. We are unable to accept this contention as correct. There is no dispute that the officer who made the demand was competent to make demands both under Rule 9(2) as well as under Rule 10. If the exercise of a power can be traced to a legitimate source, the fact that the same was purported to have been exercised under a different power does not vitiate the exercise of the power in question. This is a well-settled proposition of law. In this connection reference may usefully be made to the decisions of this Court in P. Balakotaiah v. The Union of India, 1958 SCR 1052 = (AIR 1958 SC 232) and Afzal Ulah v. State of U.P., 1964 - 4 SCR 991 = (AIR 1964 SC 264). Further a common form is prescribed for issuing notices both under Rule 9(2) and Rule 10. The incorrect statements in the written demand could not have prejudiced the assessee. From his reply to the demand, it is clear that he knew as to the nature of the demand. Therefore, I find no substance in the plea of limitation advanced on behalf of the assessee."

12.2.4.4 The Hon'ble Supreme Court of India in the case of Collector of Central Excise, Culcutta Vs. Pradyumna Steel Limited reported in 1996 (82) E.L.T. 441 (S.C.) has held that Mere mention of wrong provision of law when power exercised is available even though under a different provision, is by itself not sufficient to invalidate exercise of that power. The relevant para is re-produced hereunder:

"3. It is settled that mere mention of a wrong provision of law when the power exercised is available even though under a different provision, is by itself not sufficient to invalidate the exercise of that power. Thus, there is a clear error apparent on the face of the Tribunal's order dated 23-6-1987. Rejection of the application for rectification by the Tribunal was, therefore, contrary to law."

12.2.4.5 The Hon'ble CEGAT, Northern Bench, New Delhi in the case of R.C. Verma Vs. Commissioner of Customs (ICD), Tuglaqabad reported in 2001 (138) ELT 1026 (Tri.-Del.) has held that mere mentioning of wrong section or provision of law, not to make adjudication proceedings void ab initio, when no prejudice can be said to have been caused to appellants on account of such mistake. The relevant Para 10 of the said decision is as under:

"10. The learned Counsel for the appellants however has also pointed out another defect in the impugned order by contending that in the show cause notice section for confiscation of goods mentioned was 113(h)(ii) of the Act. Whereas in the impugned order the confiscation of the goods had been ordered only under Section 113(i) of the Act. But in our view, this is only a typographical mistake in the order which did not vitiate the entire proceedings. No prejudice can be said to had been caused on account of

that mistake to the appellants. They were fully aware of the facts. It is also settled law that mere mention of wrong section or provisions of law would not in any manner make the adjudication proceedings void ab initio. Therefore, we are unable to subscribe to the contention of the counsel for the appellants."

12.2.5 I have gone through the case laws relied on by the Importer in support of their claim that the show cause notice is invalid. The Hon'ble Supreme Court in the case of Commissioner of C.Ex., Nagpur Vs. Ballarpur Industries Ltd. reported in 2007 (215) E.L.T. 489 (S.C.) has held that "If there is no invocation of Rule 7 of the Valuation Rules 1975 in the show cause notice, it would not be open to the Commissioner to invoke the said rule." The Hon'ble Supreme Court in the case of Commissioner of Customs, Mumbai Vs. Toyo Engineering India Ltd. reported in 2006 (201) E.L.T. 513 (S.C.) has held that if the grounds did not find mention in the show cause notice, the Department cannot travel beyond the show cause notice. The facts of the present case are altogether different from the above cases. In the present case, it is not the case of non invocation of provisions of particular rule or grounds in the show cause notice, as involved in the above cases which have been relied on by the Importer. In this case, it is only a typographical error that the proposal for denial of exemption benefit under Serial No. 404 of Notification No. 50/2017-Customs, dated 30.06.2017, as amended, was made in the show cause notice instead of denying the exemption benefit available under Serial No. 557B of the said Notification. Therefore, the ratio of the decision of the Hon'ble Supreme Court in the above cases, are not applicable to the present case.

12.2.6 Further, the Sr. Audit Officer, CRA Ahmedabad in the Audit Report dated 06.08.2024, based on which the present show cause notice has been issued, has categorically mentioned in Para-F that *"Total value of goods so imported was Rs.523,88,58,250/- on which the assesses were required to pay IGST @ 5% after claiming exemption of BCD which was more beneficial under Sl.No. 404 in the case of M/s. Hydrocarbon Engineering Limited and Sl.No. 551 in the case of other two assesses."* Further, the department has relied upon the said Audit Report dated 06.04.2024 in the show cause notice and copy of the same has also been provided to the Importer. It is also a fact that the demand of IGST has been correctly made in the show cause notice in terms of the said Audit Report. Therefore, I find that it is only a typographical error due to which Importer

cannot escape from the payment of IGST which is otherwise chargeable on the imported goods. Further, in the cases where exemption is available under two serial numbers of a notification, being adjudicating authority I am bound to give the benefit of duty exemption under the serial number which is more beneficial to the Importer.

12.2.7 I, therefore, allow the benefit of exemption available under Serial No. 404 of Notification No. 50/2017-Customs, dated 30.06.2017, as amended, as the same is more beneficial to the Importer. Consequently, I reject the benefit of exemption availed by the Importer under Serial No. 557B of Notification No. 50/2017-Customs, dated 30.06.2017, as amended.

12.3 The third issue for decision before me is whether the imported goods viz. Old & Used Self Propelled Anchor Handling Tugs totally valued at Rs. 1,00,86,80,047/- imported vide the subject four Bills of Entry, should be confiscated under Section 111(m) of the Customs Act, 1962 and fine in lieu of confiscation should be imposed upon the Importer, under section 125 of the Customs Act, 1962 since the said goods are not available for confiscation, or otherwise.

12.3.1 I find that the Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(m) of the Customs Act, 1962. If the goods have been described wrongly or the value of the goods has been incorrectly declared, such goods would come under the purview of Section 111(m) of Customs Act, 1962. In the instant case the Importer has improperly availed IGST exemption under Serial No.557B of Notification No. 50/2017-Customs, dated 30.06.2017, as amended, as they are not entitled to avail cumulative benefit/ heterogeneous combination of two taxes i.e. BCD and IGST available under two different serial numbers i.e. 404 and 557B of Notification No. 50/2017-Customs, dated 30.06.2017, as amended for the same product, therefore, the imported goods viz. Old & Used Self Propelled Anchor Handling Tugs totally valued at Rs. 1,00,86,80,047/- imported vide the subject four Bills of Entry by wrongly availing the benefit of exemption under Serial No. 557B of Notification No. 50/2017-Customs, dated 30.06.2017, as amended, are liable for confiscation under Section 111(m) of Customs Act, 1962.

12.3.2 I find that in terms of Section 46 (4) of the Customs Act, 1962, the Importer was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs Duty. However, the Importer has contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have wrongly availed cumulative benefit/ heterogeneous combination of two taxes i.e. BCD and IGST available under two different serial numbers i.e. 404 and 557B of Notification No. 50/2017-Customs, dated 30.06.2017, as amended, thereby they have short paid the duty with clear intent to evade payment of Customs Duty. Thus, I find that they have violated the provisions of Section 46(4) of the Customs Act. All these acts on the part of Importer have rendered the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962.

12.3.3 As the impugned imported goods are found to be liable for confiscation under Section 111 (m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125 (1) of the Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. Section 125 (1) ibid reads as under:

> ***"SECTION 125. Option to pay fine in lieu of confiscation.*** *— (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit"*

12.3.4 In the instant case, the Importer has wrongly availed the benefit exemption of IGST available under Serial No. 557B of Notification No. 50/2017-Customs, dated 30.06.2017, as amended. I find that in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment in the case of M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) wherein the Hon'ble High Court of Madras has observed as under:

> *"23. The penalty directed against the Importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of*

fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....",brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fines in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

....

....

...."

12.3.5 The Hon'ble High Court of Gujarat by relying on aforesaid judgment, in the case of Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.), has held interalia as under: -

"174. ***.....*** *In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;*

"23. The penalty directed against the Importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."

12.3.6 In view of the above, I hold that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of subject goods viz. Old & Used Self Propelled Anchor Handling Tugs totally valued at Rs. 1,00,86,80,047/- imported vide the subject four Bills of Entry, though the said goods are not available for confiscation.

12.4 The fourth issue for decision before me is whether the differential amount of Customs duty aggregating to Rs. 5,32,07,872/-(IGST @ 5%) (Rupees Five Crore, Thirty Two Lakh, Seven Thousand, Eight Hundred and Seventy Two Only) leviable on the imported goods covered under four Bills of Entry, should be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 read with Section 5(1) of the Integrated Goods & Service Tax, 2017 (as amended) alongwith applicable interest under Section 28AA of the Customs Act, 1962, or otherwise.

12.4.1 As discussed at paras supra, the Importer has wrongly availed the exemption of IGST available under Serial No. 557B of Notification No. 50/2017-Customs, dated 30.06.2017, as amended in respect of the imported goods viz. Old & Used Self Propelled Anchor Handling Tugs totally valued at Rs. 1,00,86,80,047/- imported vide the subject four Bills of Entry, which has resulted in evasion of Customs duty (IGST) amounting to Rs. 5,32,07,872/- by the said Importer. I find that in order to sensitize the Trade about its benefit and consequences of mis-use, Government of India has issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self Assessment 2011 ' was required as prior to enactment of the provision of 'Self-Assessment', mis-classification or wrong availment of duty exemption etc., in normal course of import, was not considered as mis-declaration or mis-statement. Under para 1.3 of Chapter-I of the above manual, Importers/Exporters, who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options:

(a) Seek assistance from Help Desk located in each Custom Houses, or

(b) Refer to information on CBIC/ICEGATE web portal www.cbic.gov.in, or

(c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or

(d) An Importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied.

Para 3(a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para 2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent and habitually noncompliant Importers/Exporters could face penal action on account of wrong Self-Assessment made with intent to evade Duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

12.4.2 After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2017, it is the responsibility of the Importer to correctly declare the description, classification, applicable exemption Notification, applicable Duties, rate of Duties and its relevant Notifications etc. in respect of said imported goods and pay the appropriate duty accordingly. In the instant case, it is apparent that the Importer despite being in knowledge of the fact that they are eligible for duty exemption available under only one serial number which is beneficial to them, they intentionally and knowingly mis-declared the particulars of Notification in the Bills of Entry and wilfully claimed the benefit of exemption available under both the serial numbers i.e. under Serial No. 404 for exemption of Customs duty and under Serial No. 557B for exemption of IGST of Notification No. 50/2017-Customs, dated 30.06.2017, as amended with malafide intention to evade payment of Customs duty at appropriate rate. It is therefore very much apparent that Importer has wilfully violated the provisions of Section 17(1) of the Customs Act, 1962 in as much as they have failed to correctly self-assess the impugned goods and have also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962. Thus, Importer has indulged in wrong availment of exemption available under Serial No. 557B of

Notification No. 50/2017-Customs, dated 30.06.2017, as amended with clear intent to evade payment of Customs Duty. By adopting this modus in respect of the impugned goods, the Importer has short paid Customs duty (IGST) amounting to Rs. 5,32,07,872/- (Rupees Five Crore, Thirty Two Lakh, Seven Thousand, Eight Hundred and Seventy Two only), which merits invocation of extended period for demand of the said Customs Duty under the provisions of Section 28(4) of the Customs Act, 1962. I, therefore, find and hold that total Customs Duty (IGST) amounting to Rs. 5,32,07,872/- in respect of the impugned goods cleared under four Bills of Entry, as detailed in Annexure-A to the Show Cause Notice, is recoverable from the Importer invoking the provision of extended period under Section 28(4) of the Customs Act, 1962.

12.4.3 It has also been proposed in the Show Cause Notice to demand and recover interest on the aforesaid Customs Duty under Section 28AA of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay duty in accordance with the provisions of Section 28 ibid, in addition to such duty, such person is also liable to pay interest at applicable rate as well. Thus, the said Section provides for payment of interest automatically along with the duty confirmed/determined under Section 28 ibid. I have already held that Customs Duty (IGST) of Rs. 5,32,07,872/- is liable to be recovered under Section 28(4) of the Customs Act, 1962. Therefore, I hold that interest on the said Customs Duty determined/confirmed under Section 28(4) ibid is required to be recovered under Section 28AA of the Customs Act, 1962.

12.4.3.1 The Importer in their defence reply has contended that prior to 16.08.2024, there was no provision in the Customs Act, enabling the department to demand interest on the IGST payable under Section 3(7) of the Customs Tariff Act, 1975 and imposing interest on demand pertaining to IGST is without jurisdiction and bad in law. In this regard, they have relied on the decision of the Hon'ble Bombay High Court in the case of Mahindra & Mahindra Ltd. v. Union of India [2023) 3 Centax 261(Bom)], which has been affirmed by the Hon'ble Supreme Court - UOI vs Mahindra & Mahindra Ltd. [2023 (386) E.L.T. 11 (SC)]. I find that this contention of the Importer is not acceptable as the said decision is with regard to pre-GST era. Period covered in the said decision was November, 2004 to January, 2007 and period covered in the present case is

January, 2020 to December, 2020. The said decision of Mahindra & Mahindra Ltd reported in (2023) 3 Centax 261 (Bom.) relied on by the Importer is distinguishable on the following grounds.

- In the case of Mahindra & Mahindra Ltd, the issue under dispute was charging Section for interest and penalty. According to the Department, the charging Section for imposition of CVD, SAD & Surcharge was Section 12 of the Customs Act, 1962. Hon'ble Court held that charging section for imposition of CVD, SAD & Surcharge was Section 3(1) of Customs Tariff Act, 1975, Section 3(A) of Customs Tariff Act, 1975 and Section 19 (1) of the Finance Act,2000 respectively which did not have provisions for imposition of penalty and interest.

- In the instant case, the demand of IGST has been made in terms of provision of Integrated Goods & Services Tax Act, 2017 and the charging Section for IGST on import is Section 5(1) of the Integrated Goods & Services Tax Act, 2017. Relevant Para of Section 5(1) of the IGST Act, 2017, is re produced as under:

  "SECTION 5. Levy and collection.
  (1) .....
  Provided that the integrated tax on goods *[other than the goods as may be notified by the Government on the recommendations of the Council]* imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962)."

- Hon'ble Supreme Court in the case of Cosmo Films Ltd has held that *"IGST is levied under the IGST Act, 2017 and is collected, for convenience, at the* customs point through the machinery under the Customs Act, 1962."

12.4.3.2 I also find that Hon'ble Supreme Court on 11.03.2016 dismissed Civil Appeal filed by Atul Kaushik (Oracle India Ltd) reported in Oracle India Pvt. Ltd. v. Commissioner [2016 (339) E.L.T. A136 (S.C.)] against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015 as reported in 2015 (330) E.L.T. 417 (Tri.-Del.) (Atul Kaushik v. Commissioner) holding that "We see no reason to interfere with the impugned order passed by Customs, Excise & Service Tax Appellate Tribunal". Relevant Para of the decision of Final Order Nos. A/52353-52355/2015-CU(DB) dated

29.07.2015 of CESTAT reported in 2015 (330) E.L.T. 417 (Tri.-Del.) (Atul Kaushik v. Commissioner) is re-produced as under:

"16. The appellants have also contended that penalty, interest and confiscation cannot be invoked in respect of evasion of countervailing duty (levied under Section 3 of the Customs Tariff Act, 1975) on the ground that the provisions relating to these aspects have not been borrowed into Section 3 of the Customs Tariff Act, 1975. In support of the principle that the penalty cannot be levied in the absence of penalty provision having been borrowed in a particular enactment, the appellants cited the judgments in the case of Khemka & Co. (supra) and Pioneer Silk Mills Pvt. Ltd. (supra). We are in agreement with this proposition and therefore we refrain from discussing the said judgments. The appellants also cited the judgment in the case of Supreme Woollen Mills Ltd. (supra), Silkone International (supra) and several others to advance the proposition that penalty provisions of Customs Act were not applicable to the cases of non-payment of anti-dumping duty and that the same principle is applicable with regard to leviability of interest [India Carbon Ltd. (supra) and V.V.S. Sugar (supra)]. We have perused these judgments. Many of them dealt with Anti-dumping duty/Special Additional Duty (SAD) leviable under various sections (but not Section 3) of Customs Tariff Act, 1975 and in those sections of the Customs Tariff Act, 1975 or in the said Act itself, during the relevant period, there was no provision to apply to the Anti-dumping duty/SAD the provisions of Customs Act, 1962 and the rules and regulations made thereunder including those relating to interest, penalty, confiscation. In the case of Pioneer Silk Mills (supra), the duty involved was the one levied under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and its Section 3(3) only borrowed the provisions relating to levy and collection from the Central Excise Act, 1944 and in view of that it was held that the provisions relating to confiscation and penalty could not be applied with regard to the duties collected under the said Act of 1957. None of these judgments actually deal with the CVD levied under Section 3 of the Customs Tariff Act, 1975. The impugned countervailing duty was levied under Section 3 of Customs Tariff Act, 1975. Sub-section (8) of Section 3 of the said Act even during the relevant period stipulated as under : -

"S. 3(8) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act."

It is evident from Section 3(8) of the Customs Tariff Act, 1975 quoted above that all the provisions of Customs Act, 1962 and the rules and regulations made thereunder have been clearly borrowed into the said Section 3 to apply to the impugned CVD and so it is obvious that provisions relating to fine, penalty and interest contained in Customs Act, 1962 are expressly made applicable with regard to the impugned countervailing duty. We must, however, fairly mention that in case of Torrent Pharma Ltd. v. CCE, Surat, CESTAT set aside penalty for evasion of Anti-dumping duty, CVD and SAD (para 16 of the judgment) on the ground that penal provisions of Customs Act, 1962 had not been borrowed in the respective sections of Customs Tariff Act, 1975 under which these duties were levied, but this decision of CESTAT regarding CVD suffered from a fatal internal contraction inasmuch as CESTAT itself in para 14 of the said judgment had expressely taken note of the fact that vide Section 3(8) of the Customs Tariff Act, 1975, the provisions of Customs Act, 1962 and the rules and regulations made thereunder had been made applicable to CVD charged (under Section 3 of Customs Tariff Act, 1975). In the light of this analysis, we hold that this contention of the appellant is legally not sustainable."

Thus, the said order of Tribunal has been affirmed by the Hon'ble Supreme Court whereas Special Leave Petition in case of Mahindra & Mahindra Ltd bearing Diary No. 18824/2023 has been dismissed by Hon'ble Supreme Court holding that "No merit found in the Special Leave Petition". Whereas, the Hon'ble Supreme Court has dismissed the Civil Appeal filed by Oracle India Pvt. Ltd (Atul Kaushik) against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015.

12.4.3.3 In the case of Workmen of Cochin Port Trust Vs. Board of Trustees of the Cochin Port Trust and Another 1978 AIR 1283, the Hon'ble Three Judges Bench held as under:

> *"The effect of non-speaking order of dismissal without anything more indicating the grounds or reasons of its dismissal must by necessary implication be taken to have decided that it was not a fit case where special leave should be granted. It may be due to several reasons. It may be one or more. It may also be that the merits of the award were taken into consideration and this Court felt that it did not require any interference. But since the order is not a speaking order it is difficult to accept the argument that it must be deemed to have necessarily decided implicitly all the questions in relation to the merits of the award."*
>
> *The dismissal of special leave petition by the Supreme Court by a non-speaking order of dismissal where no reasons were given does not constitute res judicata. All that can be said to have been decided by the Court is that it was not a fit case where special leave should be granted."*

12.4.3.4 I, therefore, find that there is no restriction in recovery of interest on the amount of Customs Duty (IGST) amounting to Rs. 5,32,07,872/- from the Importer under Section 28AA of the Central Excise Act, 1962.

12.5 Now, I proceed to decide the fifth issue i.e. the proposal for imposition of penalty under Section 114A of the Customs Act, 1962 or Section 112 of the Customs Act, 1962, against the Importer. In the present case, the show cause notice has been issued under Section 28 (4) of the Central Excise Act, 1962.

12.5.1 I find that the Show Cause Notice has proposed penalty under the provisions of Section 114A of the Customs Act, 1962 on the Importer. The penalty under Section 114A can be imposed only if the duty demanded under Section 28 ibid by alleging wilful mis-statement or suppression of facts etc. is confirmed/determined

under Section 28(4) of the Customs Act, 1962. As discussed in the foregoing paras, Importer has deliberately and knowingly indulged in suppression of facts in respect of their imported goods and has wilfully and wrongly availed the benefit of exemption available under Serial No. 557B of Notification No. 50/2017-Customs, dated 30.06.2017, which was not available to them, with an intention to avoid the payment of Customs Duty.

12.5.2 Further, I find that demand of Customs Duty amounting to Rs. 5,32,07,872/- has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to duty plus interest in cases where the duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts. In the instant case, the ingredient of suppression of facts and wilful mis-statement by the Importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of duty plus interest in terms of Section 114A ibid.

12.5.3 The fifth proviso to Section 114A of the Customs Act, 1962 provides that penalty under Section 112 shall not be levied if penalty under Section 114A of the Customs Act, 1962 has been imposed and the same reads as under:

> *"Provided also that where any penalty has been levied under this Section, no penalty shall be levied under Section 1I2 or Section 114."*

12.5.3.1 In the instant case, I have already found that the Importer is liable to penalty under Section 114A of the Customs Act, 1962 and therefore, I hold that penalty under Section 112 is not imposable in terms of the 5th proviso to Section 114A of the Customs Act, 1962.

13. The importer has contented in their defence reply that the show cause notice has been raised on LTHE, being a non-existent entity is without jurisdiction and liable to be set aside on this ground

itself. They have also placed reliance on the judgment of the Hon'ble Supreme Court in the case of Pr. Commissioner of Income Tax Vs. Maruti Suzuki India Ltd. [(2020) 18 SCC 331]. I do not agree with the above contention of the importer. The show cause notice has been addressed to "M/s. Larsen & Toubro Hydrocarbon Engineering Limited (**which is now amalgamated into M/s. Larsen & Toubro Limited**), 2, Powai Campus, Powai, Mumbai – 400072" from which it is very much clear that the present name of 'M/s. Larsen & Toubro Hydrocarbon Engineering Limited' is 'M/s. Larsen & Toubro Limited'. Further in Para 5.6 of the show cause notice it has been mentioned that **"M/s L & T Hydrocarbon Engineering Ltd has been amalgamated with M/s Larsen & Toubro Limited w.e.f. 01.04.2021. Hence, M/s L & T Hydrocarbon Engineering Ltd stands dissolved without being wound up. According to clause 7.4 of scheme, all past and future liabilities, obligations of M/s L & T Hydrocarbon Engineering Ltd have been transferred to M/s Larsen & Toubro Limited and that since then, M/s Larsen & Toubro Limited is responsible for all the actions done by M/s L & T Hydrocarbon Engineering Ltd in the past."** It is crystal clear from the above Para 5.6 of the show cause notice that M/s Larsen & Toubro Limited is responsible for all liabilities arising out of the present show cause notice. I have gone through the judgment of the Hon'ble Supreme Court in the case of Pr. Commissioner of Income Tax Vs. Maruti Suzuki India Ltd. [(2020) 18 SCC 331] relied upon by the importer. In the said case Income Tax Department had issued assessment orders in the name of an entity which had been amalgamated with Maruti Suzuki India Ltd. and the Hon'ble Supreme Court has held that assessment orders issued against a company that has ceased to exist due to a merger are void ab initio. In the present case, it has been clearly mentioned in the show cause notice that **M/s. Larsen & Toubro Hydrocarbon Engineering Limited' has been amalgamated with 'M/s. Larsen & Toubro Limited'** from which it is very much implied that the subject show cause notice has been issued to 'M/s. Larsen & Toubro Limited'. I find that the facts and circumstances in the present case is absolutely different from the above case relied upon by the importer. Therefore, the above contention of the importer is untenable and liable to be rejected out rightly. The importer cannot escape from the payment of applicable customs duty payable by them on import of the impugned goods by making such a frivolous argument.

14. The importer in their defence reply has further contended that denying the exemption claimed by them under Serial number 557B of Notification No. 50/2017-Customs, dated 30.06.2017, as amended, has resulted in double taxation, as IGST is already paid on the same transaction on lease rentals paid under reverse charge mechanism by them. I do not agree with the above contention of the importer. I find that IGST demanded in the present case is the customs duty payable by the importer against the import of tugs and the IGST paid by the importer on the lease rentals is the duty payable by them against the services received by them from a foreign supplier i.e. owner of the tugs for providing their output services i.e. the services provided to their customers. Therefore, both the transactions are different and there is no double taxation in the present case. Further, Government has introduced mechanism of Input Tax Credit (ITC) in GST, to eliminate the cascading effect of taxes and the taxes paid under reverse charge mechanism are available to the importer as ITC if the stipulated conditions are fulfilled. In view of the above, the above contention of the importer is not tenable and liable to be rejected.

15. The Importer in their defence reply has pleaded that no appeals were filed by the Department against the assessment orders i.e., assessed bills of entry and out of charge order, passed by the proper officer and any issues arising out of finalisation of such Bills of Entry cannot be questioned or agitated by the Department subsequently by initiating show cause proceedings against the Importer. The said plea of the Importer is not tenable.

15.1 It can be seen that Section 28 of the Customs Act, 1962 has an exclusive provision covering the aspect pertaining to non-levy, short levy and erroneous refund. There is no provision or requirement under the Customs Act, 1962 of review of an assessment order before raising demand under Section 28 of the Customs Act, 1962. For raising demand under Section 28 on grounds of short payment/short levy in final assessment etc., no review /appeal against final assessment is required. The demand of non-levy, short-levy and of recovery of erroneous refund under Section 28 of the Act is an independent provision. Provisions of Section 28 satisfy the principles of natural justice by making it mandatory for issuance of show cause notice and to allow the party to have a full hearing on the charges that would be made against

them. The proceeding under Section 28 are of exclusive nature, in as much as, independent proceedings are held by issue of show cause notice by the department by which it sets out the reason for claiming non-levy, short-levy relying on evidence. The Importer gets full opportunity to know the charges levelled against them as well as the evidence on which the charges are levelled and in turn place their case with supporting evidence in defence.

15.2 The aforesaid issue is settled by the higher judicial fora wherein it is held that Section 28 of the Customs Act, 1962 can be invoked for short levy or non levy of customs duty even if assessment order is not appealed under Section 129 of the Customs Act, 1962. The Hon'ble High Court of Madras in the case of M/s. Venus Enterprise Vs CC, Chennai, reported in 2006 (199) ELT 405 (Mad.) and affirmed by the Hon'ble Supreme Court [2007 (209) ELT A61 (S.C.)], after considering the Apex Court's earlier judgment in the case of M/s. Priya Blue Ind [2004 (172) E.L.T. 145 (S.C.)] has held that in case of short levy, there is no lack of jurisdiction on the part of the adjudicating authority to issue show cause notice under Section 28 of the Act after clearance of the goods. Relevant Para 6 of the judgment is reproduced hereunder:

> *"6. With regard to question No. l, the law is well settled that a show cause notice under the provisions of Section 28 of the Act for payment of customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance of the goods under Section 47 of the Act vide Union of India v. Jain Shudh Vanaspati Ltd. [1996 (86) E.L.T. 460 (S.C.)].Therefore, as rightly held by the Tribunal, if the contention of the appellant's counsel that when the goods were already cleared, no demand notice can be issued under Section 28 of the Act is accepted, we will be rendering the words "where any duty has been short-levied" as found in Section 28(1) of the Act as unworkable and redundant, inasmuch as the jurisdiction of the authorities to issue notice under Section 28 of the Act with respect to the duty, which has been short levied, would arise only in the case where the goods were already cleared. In view of the clear finding with regard to the mis-declaration and suppression of value, which led to the under-valuation and proposed short levy of duty, we do not see any lack of jurisdiction on the part of the adjudicating authority to issue notice under Section 28(1) of the Act."*

15.3 The Hon'ble CESTAT in the case of Rajesh Gandhi Vs CC (Import), Mumbai reported in 2019 (366) ELT 529 (Tri-Mumbai), has held that demand can be raised without challenging the assessment under Section 17 of the Customs Act,1962. The relevant Part of the order is reproduced below:-

"6. *Before we proceed to adjudge the legality and propriety of the confirmation of differential duty, the confiscation and the imposition of penalties, the preliminaries must be dealt with. These pertain to the permissibility for invoking proviso to Section 28 of Customs Act, 1962 without challenge to the assessment effected under Section 17 of Customs Act, 1962 before the goods were cleared from control of Customs Authorities and the extent of applicability of judicial precedent from the decisions cited by Learned Authorised Representative.*

7. *The Tribunal, in re Rahul Ramanbhai Patel, as pointed out by Learned Authorised Representative, besides examining the relevancy of statements to fasten the consequences of undervaluation, did also consider the first supra and followed earlier decisions to render the finding that -*

'6..... One of the questions of law framed by the Hon'ble High Court reads thus :-
'Whether the Tribunal was right in holding that the order of assessment on which no appeal was preferred, can be reopened by issue of fresh show cause notice under Section 28A of Customs Act, in the light of the apex court's decision reported in 2004 (172) E.L.T. 145 (S.C.) in the case of Priya Blue Industries Ltd. v. Commissioner of Customs?'

The Hon'ble High Court answered the above question in favour of the Revenue in paragraph 6 of its judgment, which is reproduced below :-

'6. With regard to question No. 1, the law is well-settled that show cause notice under the provisions of Section 28 of the Act for payment of customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance of goods under Section 47 of the Act vide Union of India v. Jain Shudh Vanaspati Ltd. [1996 (86) E.L.T. 460 (S.C.)]. Therefore, as rightly held by the Tribunal, if the contention of the appellant's counsel that when the goods were already cleared, no demand notice can be issued under Section 28(1) of the Act is accepted, we will be rendering the words "whether any duty has been short-levied" as found in Section 28(1) of the Act as unworkable and redundant, inasmuch as the jurisdiction of the authorities to issue notice under Section 28 of the Act with respect to the duty, which has been short-levied, would arise only in the case where the goods were already cleared. In view of the clear finding with regard to the mis-declaration and suppression of value, which led to the evaluation and proposed short-levy of duty, we do not see any lack of jurisdiction on the part of the adjudicating authority to issue notice under Section 28(1) of the Act.'

7. We are told that the SLP filed against the above decision of the High Court was dismissed by the Apex Court [Venus Enterprises v. Commissioner - 2007 (209) E.L.T. A61 (S.C.)].

8. We also note that this Tribunal followed Jain Shudh Vanaspati Ltd. (supra) and Venus Enterprises (supra) in Ford India Private Limited v. Commr. of Customs, Chennai [2008 (228) E.L.T. 71 (Tri.-Chennai)]. On the other hand, in the cases of Hitaishi Fine Kraft Indus Pvt. Ltd. (supra) and Shimnit Machine Tools & Equipment Ltd. (supra), the decision of the Supreme Court in Jain Shudh Vanaspati (supra) was not considered.

9. In the result, we reject the plea made by the Ld. Counsel that it was not open to the Department to reopen the assessment under Sec. 28 of the Customs Act.'

8. *Though in a different context, the ratio of the decision of the Tribunal in disposing of the appeal of Knowledge Infrastructure Systems Private Ltd. & Others v. Additional Director General, Directorate of Revenue Intelligence,*

Mumbai [Final Order Nos. A/86617-86619/2018, dated 31st May, 2018] is that after the clearances of imported goods effected under Section 47 of Customs Act, 1962, subject as it is to satisfaction of the proper officer that the goods had discharged the appropriate duty liability and were not prohibited for import, subsequent discovery of non-eligibility for such clearance, on either of these two counts, deems such clearances to have been tentative, and rectifiable, under proceedings that invoke Section 28 and/or specific provisions of Section 111 of Customs Act, 1962, is unequivocally applicable here.

9. *In the light of this consistent stand, demonstrated in judicial precedent reiterated across time and space, the claim of the appellant that the assessment of the impugned goods at the time of clearance precludes any remedy other than appeal is not acceptable.*

15.4 In light of the above well settled principle of law, contention raised by the Importer that Show Cause Notice is invalid in the absence of valid appeal against the out of charge/Bill of Entry is not tenable. Accordingly, I hold that the Show Cause Notice issued under Section 28 (4) of the Customs Act is proper, correct and legal.

16. The Importer has further contented in their defence reply that in the event they are held liable to pay IGST, they would be entitled to claim ITC of the same, therefore, the demand of IGST is revenue neutral. I do not agree with the above contention of the Importer, as revenue neutrality is not an excuse for non-payment of applicable duty. I find that the Hon'ble Delhi Tribunal in the case of ACL Mobile Ltd. v. Commissioner reported in 2019 (20) G.S.T.L. 362 (Tribunal Del) has held that revenue neutrality cannot be extended to a level that there is no need to pay tax on the taxable service. The relevant para is reproduced hereunder:

"13. *Regarding the last issue with reference to tax liability of the appellant on the facility of availing server/web hosting provided by the Foreign Service provider, we note that providing space in the server is essential and important infrastructure requirement for the appellant. Though, the explanation to BSS gives only inclusive definition of infrastructure support, examining the present context of the support received by the appellant by way of server hosting, we are of the considered view that the same will fall under the overall category of infrastructural support service, which is part of the BSS. Regarding the contention of the appellant, that they need not pay service tax as the situation is revenue neutral, we note that the question of revenue neutrality as a legal principle to hold against a tax liability is not tenable. In other words, no assessee can take a plea that no tax need have been paid as the same is available to them as a credit. This will be against the very basic canon of value added taxation. The revenue neutrality can at best be pleaded as principle for invoking bona fideness of the appellant against the demand for extended period as well as for penalty which*

require ingredients of mala fide. Reliance was placed by the Ld. Consultant regarding the submission on revenue neutrality, on the decision of the Tribunal in Jet Airways (supra). We have noted that in the said decision the Tribunal recorded as admitted facts that the appellant are using the said facility for the taxable output services. We note that no such categorical assertion can be recorded in the present case. Even otherwise we note that the availability or otherwise of credit on input service by itself does not decide the tax liability of output service or on reverse charge. The tax liability is governed by the legal provisions applicable during the relevant time in terms of Finance Act, 1994. The availability or otherwise of credit on the amount to be discharged as such tax liability cannot take away the tax liability itself. Further, the revenue neutrality cannot be extended to a level that there is no need to pay tax on the taxable service. This will expand the scope of present dispute itself to decide on the manner of discharging such tax liability. We are not in agreement with such proposition."

16.1 Further, I find that the Hon'ble Supreme Court in the case of Star Industries Vs. Commissioner reported in 2015 (324) E.L.T. 656 (S.C.) has held as under:

*"**35.** It was submitted by the learned counsel for the assessee that the entire exercise is Revenue neutral because of the reason that the assessee would, in any case, get Cenvat credit of the duty paid. If that is so, this argument in the instant case rather goes against the assessee. Since the assessee is in appeal and if the exercise is Revenue neutral, then* there was no need even to file the appeal. Be that as it may, if that is so, it is always open to the assessee to claim such a credit."

16.2 In the present case, the Importer has wrongly availed the benefit of IGST exemption available under Serial No. 557B of Notification No. 50/2017-Customs, dated 30.06.2017, as amended. I, therefore, hold that in absence of payment of IGST by the Importer, their plea of revenue neutrality is not tenable. The ratio of the judgements related to revenue neutrality relied upon by the Importer is not applicable to the present case, as the fact and circumstance of the said cases are different from the present case.

17. The Importer has also contended in their defence reply that the goods are exempted from Customs Duty and IGST in terms of Notification No. 72/2017 -Customs dated16.08.2017 and the said notification is applicable for the tugs classified under Chapters 89 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). They have also contended that if they would have had paid the Customs duties, they would have taken the duty drawbacks after the re-export as they are eligible for drawback. The above contentions of

the Importer are not tenable and justifiable. In the era of self-assessment, onus is on the part of Importer to choose the benefit of correct Notification which is more beneficial to them, at the time of filing of Bills of Entry in respect of the imported goods or it is the discretion of the Importer to pay the applicable duty and avail the benefit of duty drawback at the relevant time. There is no provision in the law to give the benefit of a notification or duty drawback, if the same are not claimed by the Importer while filing the Bill of Entry in respect of the imported goods. I, therefore, hold that the above contentions of the Importer are not in consonance with the statutory provisions and hence not sustainable in the eyes of the law.

18. The Importer has further contended in their defence reply that the department has been accepting the exemption claimed by them in respect of tugs since last 25 years, therefore, it is incumbent upon the department to accept the same for the impugned tugs also. I do not agree with the above contention of the Importer. The factual truth regarding wrong availment of Notification No.50/2017-Customs, dated 30.06.2017, as amended, came to light only after the in-depth and detailed scrutiny of the records maintained by the Importer by CRA Audit Team during the course of Audit. Further, it is not necessary that the characteristics of the imported goods in the past would be the same in respect of the goods imported under the present Bills of Entry. The exemption of a notification would be available to an Importer only if he fulfils the conditions stipulated in the exemption notification prevailing at the relevant time, which may be amended from time to time. Hence, the above contention of the Importer is untenable and requires outright rejection.

19. I find that the Importer in their written submission has placed reliance on various case laws/judgments in support of their contention on issues raised in the Show Cause Notice. In this regard, I am of the view that the conclusions arrived may be true in those cases, but the same can not be extended to other case(s) without looking to the hard realities and specific facts of each case. Thus decisions/judgements were delivered in different context and under different facts and circumstances, which cannot be made applicable in the facts and circumstances of this case. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs.

Alnoori Tobacco Produced reported in 2004 (170) ELT 135 (SC) has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs. CCE, Delhi reported in 2004 (173) ELT 113 (SC) wherein it has been observed that one additional or different fact may make difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again, in the case of Commissioner of Customs (Port), Chennai Vs. Toyato Kirloskar Motor P. Ltd. reported in 2007 (213) ELT 4 (SC), it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.

20. In view of my findings in the paras supra, I pass the following order:

ORDER

20.1 I hold that the imported goods viz. Old & Used Self Propelled Anchor Handling Tugs, totally valued at Rs. 1,00,86,80,047/-(Rupees One Hundred Crore, Eighty Six Lakhs, Eighty Thousand and Forty Seven only) imported vide four Bills of Entry, as listed in Annexure-A to the show cause notice, are liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. Larsen & Toubro Hydrocarbon Engineering Limited (presently known as M/s. Larsen & Toubro Limited), 2, Powai Campus, Powai, Mumbai – 400072, the option to redeem the goods on payment of Fine of Rs.10,00,00,000/- (Rupees Ten Crore only) under Section 125 of the Customs Act, 1962 in lieu of confiscation;

20.2 I allow the exemption benefit available under Sr. No. 404 of Notification No. 50/2017-Customs, dated 30.06.2017, as amended, with respect to the import of Old & Used Self Propelled Anchor Handling Tugs, as the same is more beneficial to the Importer. I, therefore, deny the exemption benefit availed by M/s.

Larsen & Toubro Hydrocarbon Engineering Limited (presently known as M/s. Larsen & Toubro Limited), 2, Powai Campus, Powai, Mumbai – 400072, under Sr. No. 557B of Notification No. 50/2017-Customs, dated 30.06.2017, as amended;

20.3 I confirm the demand of Customs duty amounting to Rs. 5,32,07,872/-(IGST @ 5%) (Rupees Five Crore, Thirty Two Lakh, Seven Thousand, Eight Hundred and Seventy Two Only) leviable on the imported goods imported by M/s. Larsen & Toubro Hydrocarbon Engineering Limited (presently known as M/s. Larsen & Toubro Limited), 2, Powai Campus, Powai, Mumbai – 400072, under four Bills of Entry, as detailed in Annexures-A to the show cause notice issued under Section 28(4) of the Customs Act, 1962 read with Section 5(1) of the Integrated Goods & Service Tax, 2017 (as amended), under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same.

20.4 Interest at the appropriate rate shall be charged and recovered from M/s. Larsen & Toubro Hydrocarbon Engineering Limited (presently known as M/s. Larsen & Toubro Limited), 2, Powai Campus, Powai, Mumbai – 400072 under Section 28AA of the Customs Act, 1962 on the duty confirmed at Para 20.3 above.

20.5 I impose penalty of Rs. 5,32,07,872/- (Rupees Five Crore, Thirty Two Lakh, Seven Thousand, Eight Hundred and Seventy Two Only) plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Larsen & Toubro Hydrocarbon Engineering Limited (presently known as M/s. Larsen & Toubro Limited), 2, Powai Campus, Powai, Mumbai – 400072. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the Importer viz. M/s. Larsen & Toubro Hydrocarbon Engineering Limited (presently known as M/s. Larsen & Toubro Limited), 2, Powai Campus, Powai, Mumbai – 400072 to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order. I refrain from imposing penalty under section 112 of the Customs Act, 1962, since as per fifth proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

21. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.

22. The Show Cause Notice bearing F.No. VIII/10-23/Pr Commr/O&A/2024-25 dated 05.12.2024 is disposed off in above terms.

15.10.2025

(Shiv Kumar Sharma)
Principal Commissioner of Customs

F.No. VIII/10-23/Pr Commr/O&A/2024-25 Date: 15.10.2025

DIN- 20251071MN000000CDF6

By Speed Post/E-Mail/By Hand

To:

M/s. Larsen & Tourbo Hydrocarbon Engineering Ltd.,
(Presently known as M/s. Larsen & Toubro Limited),
2, Powai Campus, Powai, Mumbai – 400072.

Copy to:

(1) The Chief Commissioner of Customs, Ahmedabad Zone
(2) The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.
(3) The Deputy Commissioner, Customs House, Surat.
(4) The Superintendent (System), Customs HQ., Ahmedabad for uploading on the Official website of Customs Commissionerate, Ahmedabad.
(5) Guard File.