



सीमा शुल्क (निवारक) के आयुक्त का कार्यालय, सीमा शुल्क भवन,
जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास,
जामनगर (गुजरात) – 361 001

Office of the Commissioner of Customs (Preventive),
'Seema Shulk Bhavan', Jamnagar – Rajkot Highway,
Near Victoria Bridge, Jamnagar (Gujarat) – 361 001

Email: commr-custjmr@nic.in; adj-custjmr@nic.in

DIN – 20250371MM0000666B11

1.	फाइल क्रमांक/ File Number	F. No. CUS/5918/2024-Adjn. (Comp. no. 1503221)
2.	मूल आदेश क्रमांक/ Order-in-Original No.	19/ Additional Commissioner/ 2024-25
3.	द्वारा पारित/ passed by	अमित कुमार सिंह /Amit Kumar Singh अपरआयुक्त/ Additional Commissioner, सीमा शुल्क, निवारक/Customs (Preventive) जामनगर/ Jamnagar.
4.	Date of Order /आदेश दिनांक Date of issue / आदेश जारी किया	28.03.2025 28.03.2025
5.	कारण बताओ नोटिस क्रमांक एवं दिनांक Show Cause Notice Number & Date	VIII/10-89/ADC/O&A/2016 dated 02.05.2016
6.	नोटिसी का नाम/ Name of Noticee	M/s OOCL (India) Pvt. Ltd. Office No. 120, Logix Park CFS, Near Fourway Road, Pipavav Port, Taluka – Rajula, District – Amreli (Gujarat) – 365 560

01. इस आदेश की मूल प्रति संबंधित व्यक्ति को निशुल्क प्रदान की जाती है।

The original copy of this order is provided free of cost to the person concerned

02. इस मूल आदेश से व्यक्ति कोई भी व्यक्ति सीमा शुल्क अधिनियम, की धारा 196(2)(128A)(1)a(सीमा शुल्क अपील)) नियम, 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए-1 में अपील का प्रपत्र, दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। जिनमें से कम से कम एक प्रमाणित प्रति हो।

आयुक्त अपील
वी मंजिल 7, मृदुल टावर,
टाइम्स ऑफ इंडिया के पीछे,
आश्रम रोड,
अहमदाबाद – 380 009

Commissioner (Appeals),
7th Floor, Mrudul Tower,
Behind Times of India,
Ashram Road,
Ahmedabad – 380 009

Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in

	Form No. CA-1 shall be filed in duplicate 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).
03.	अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये) 0.50 पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची -I, मद 6 के तहत निर्धारित किया गया है। The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
04.	अपीलीय ज्ञापन के साथ शुल्क भुगतान /जुर्माना /अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है। Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.
05.	अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील)) नियम, और सिस्टेट प्रक्रिया (प्रोसीजर) 1982 नियम, के सभी नियमों का पूरा पालन हुआ है। 1982 While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.
06.	इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के %7.5के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है। An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.

Brief facts of the case:

The present proceeding has been taken up on account of the Hon'ble CESTAT, West Zonal Bench, Ahmedabad, Final Order No. A/11344/2023 dated 19.06.2023 passed in the matter of **M/s OOCL (India) Pvt. Ltd., Pipavav** (hereinafter referred to as "**the Noticee**") whereby Hon'ble CESTAT had set aside the Impugned Order-in-Appeal No. JMN-CUSTOM-000-APP-54-17-18 dated 06.02.2018 and remanded back the matter to the original Adjudicating Authority for fresh adjudication after providing the copy of Valuation Report of Bhaskar G. Bhatt, Panchnama dated 05.11.2015 and worksheet of manner of calculation of duty, to the Noticee. While remanding the matter to the original Adjudicating Authority, the Hon'ble CESTAT observed that the above mentioned documents were not provided to the Noticee and the nature of these documents were critical to the Noticee's defense and in absence of these documents a proper defense cannot be made by the Noticee.

2. In earlier proceedings, the original Adjudicating Authority vide the Order-in-Original No. 298/Joint Commissioner/2016-17 dated 06.03.2017 had adjudicated the Show Cause Notice No. VIII/10-89/ADC/O&A/2016 dated 02.05.2016 issued to M/s. OOCL (India) Pvt. Ltd, Pipavav. M/s. OOCL (India) Pvt. Ltd., Pipavav preferred Appeal against the Order-in-Original No. 298/Joint Commissioner/2016-17 dated 06.03.2017, which was decided by Order-in-Appeal No. JMN-CUSTOM-000-APP-54-17-18 dated 06.02.2018, and has been set aside by the Hon'ble CESTAT by way of remanding back the matter to the original Adjudicating Authority for fresh adjudication after providing the aforesaid documents to the Noticee. Therefore, the present remand proceedings are in respect of the Noticee i.e. M/s. OOCL (India) Pvt. Ltd., Pipavav in connection to Show Cause Notice No. VIII/10-89/ADC/O&A/2016 dated 02.05.2016.

3. Briefly stated, the facts of the case are that on the basis of the information collected from various CFSs about empty containers lying with them for more than six months, it was found that total 09 containers of M/s. OOCL (India) Private Limited, Room No.1, Ground Floor, Port Users Complex, Pipavav - 365 650, Taluka - Rajula, were lying at different Customs facilities viz. 07 Containers at CFS M/s. Contrans Logistics Pvt. Ltd., 01 Container at CFS M/s. Gujarat Pipavav Port Ltd. (GPPL-APM terminal) and 01 Container at CFS M/s LCL Logistics (India) Ltd., all the said three CFSs are falling under the jurisdiction of CH- GPPL, Pipavav, Taluka – Rajula. All these 09 containers were imported on re-export basis at Pipavav port availing the exemption from payment of whole of Customs duty and whole of Additional duty leviable thereon under the virtue of Notification No. 104/94-Customs dated 16.03.1994 (hereinafter referred to as "**the said Notification**"). The Noticee after the import of the said containers failed to follow the procedures as laid down in the said Notification inasmuch as they failed to re-export the said 09 Containers within the prescribed time period of six months as envisaged therein in the said Notification. Therefore, under the reasonable belief that the same are liable for confiscation for violation of the condition as laid down in the said Notification, total 09 containers of M/s. OOCL

(India) Private Limited, which were lying at different Customs Facilities viz. 07 Containers at CFS M/s. Contrans Logistics Pvt. Ltd., 01 Container at CFS M/s. Gujarat Pipavav Port Ltd. (GPPL-APM terminal) and M/s 01 Container at CFS M/s LCL Logistics (India) Ltd., all three CFSs falling under the jurisdiction of CH- GPPL, Pipavav, Tal. Rajula as detailed at Annexure-A, were placed under seizure vide Seizure Memo dated 05.11.2015 and were handed over to the respective CFSs for safe custody on 05.11.2015.

4. The said Notification reveals that there is an exemption from payment of whole of Customs duty and Additional duty, subject to execution of Bond with the Assistant/ Deputy Commissioner of the respective Customs formations and the bond amount may be specified by the Assistant/ Deputy Commissioner. The Noticee was not required to file the Bill of Entry and follow the import procedures, while importing containers as an importer for home consumption. The Noticee need not follow the normal procedures of clearances but should file a continuity bond and debit/ credit should be made on import/ export of the regular containers while importing containers on re-export basis as a shipping line. Also, the Noticee need not submit a copy of Bill of Lading (B/L), only manual IGM is required to be filed indicating the number of empty containers temporarily imported as envisaged in the Circular No. 83/1998-Cus dated 05.11.1998 as amended.

5. The Noticee imported 09 containers on re-export basis by availing the benefit of the said Notification and failed to re-export the same within stipulated time limit of six months as per the conditions laid down in the said Notification and did not seek any extension of time limit for re-export from the proper officer.

6. A statement of Shri Kuldip Thakar, Branch In-charge of the Noticee was recorded on 25.02.2016 under Section 108 of Customs Act, 1962, in which he *inter alia* stated that their company is engaged in linear activities of containers at various sea ports of India; that they have permission from Customs to file continuity bond for import and re-export of the containers; that they are not filing any Bills of Entry at the time of import of containers and that they file continuity bond with the Customs which entails them from the responsibility and liability to re-export the containers back out of India within 180 days of its landing; that as and when the containers are re-exported out of India, they submit relevant details for cancellation in the continuity bond accordingly to maintain the bond value in order; that there are total 09 containers which have already crossed the stipulated time limit of 180 days; apart from these 09 containers, there are no other containers which have not been exported within 180 days of their import; that they could not take extension permission for the said 09 containers; that they have not filed any Bills of Entry for the said 09 containers which have exceeded the stipulated time limit to be re-exported; that they have one reefer container which got heavily damaged in an accident at the time of handling by their custodian, i.e. APMT (after import) and the same is

not seaworthy for re-export; that they have not claimed any insurance for this container in India, but they have approached the terminal for the claim for this damage.

7. The Noticee imported 09 empty containers by availing the benefit of the said Notification, whereby the empty containers were to be re-exported within six months. The said Notification exempts freight containers of durable nature from payment of duty of customs and the whole of additional duty payable provided the containers are re-exported within six months for which a continuity bond is to be executed by the importers or the shipping agent. The Noticee had imported 09 empty containers by availing the benefit of said Notification, but failed to re-export the same within the stipulated time-limit of six months from import.

8. In view of the above and material evidence available on records, it transpires that the Noticee had imported 09 containers at Pipavav Port on re-export basis availing the benefit of the said Notification i.e. Notification No. 104/94-cus dated 16.03.1994. They have neither re-exported the said 09 containers within the stipulated period of six months nor seek any extension from the proper officer, as per the provisions laid down in the said notification. The said 09 containers were seized on 05.11.2015 under the reasonable belief that they are liable for confiscation under Section 111(o) of the Customs Act, 1962, for the violation mentioned above.

9. The said 09 containers therefore appeared to have been imported without payment of customs duty and the appropriate customs duty is required to be recovered from the Noticee under Section 28(4) of the Customs Act, 1962 read with the conditions of Bond executed by the Noticee. The value of the said Containers comes to Rs. 9,30,041/- as per Valuation Report dated 18.04.2016 submitted by Shri Bhasker G. Bhatt, Government Approved Valuer. Therefore, customs duty to be recovered in the instant case comes to Rs. 2,73,813/-. Since, the Noticee failed to pay the customs duty of Rs. 2,73,813/-, appropriate interest is also recoverable from them under Section 28AA of the Customs Act, 1962. Though the Noticee was aware of the fact that they were required to either export the said 09 containers after the lapse of time limit of six months or take extension for further period from the proper officer, as admitted by them in the statement of Shri Kuldip Thaker, Assistant Manager, Branch In-charge, they did not do so till same was detected by the Customs Preventive Officers. Therefore, it appeared that they deliberately avoided the payment of customs duty and thereby they have rendered themselves liable for penalty under section 112(a) of the Customs Act, 1962.

10. From the facts discussed hereinabove and material evidences available on record, it appeared that the Noticee had full knowledge that they were importing 09 containers under re-export basis availing the benefit of the said Notification wherein the conditions as laid down that the said containers have to be re-exported within six months of its import. Therefore, the said 09 containers are liable for confiscation under Section 111(o) of the Customs Act, 1962,

thereby rendering themselves liable for penal action under Section 112(a) and Section 114A of the Customs Act, 1962.

11. The investigation culminated in-to issuance of the Show Cause Notice No. F. No. VIII/10-89/ADC/O&A/2016 dated 02.05.2016 to M/s OOCL (India) Pvt. Ltd. to show cause as to why:

- i. 09 empty containers totally valued at Rs. 9,30,041/- involving customs duty of Rs. 2,73,813/- should not be confiscated under section 111(o) of the Customs Act, 1962;
- ii. Customs duty of Rs. 2,73,813/- should not be demanded and recovered under provisions of Section 28(4) of the Customs Act, 1962/ by executing bond filed by them under Notification No. 104/94-Customs dated 16.03.1994;
- iii. The interest on the aforesaid customs duty should not be demanded under Section 28AA of the Customs Act, 1962;
- iv. Penalty should not be imposed on M/s OOCL (India) Pvt. Ltd. under Section 112(a) as well as under Section 114A of the Customs Act, 1962.

12. Further, as per the directions of the Hon'ble CESTAT, Ahmedabad, given vide Order dated 19.06.2023, before proceeding for adjudication in the matter, the copy of the Valuation Report of Shri Bhaskar G. Bhatt, Panchnama dated 05.11.2015 and worksheet of manner of calculation of duty were provided to the Noticee vide departments letter dated 17.01.2025 and 28.01.2025 through speed post and email, which has been acknowledged by them vide email dated 03.02.2025. However, no defense reply in respect of the said Show Cause Notice dated 02.05.2016 was submitted by the Noticee at the material point of time.

Records of the Personal Hearing & Defense Reply:

13. The Personal Hearing in the matter was held on 18.02.2025 through virtual mode. The same was attended by Shri Kuldip B. Thakar, Authorized Representative, on behalf of the Noticee and at that time he informed that he will file his written reply within a period of 10 days in the matter and has nothing to add further. He also added that no further personal hearing in the matter is required.

13.1 Subsequently, the Noticee vide their email dated 03.03.2025 submitted their reply dated 02.03.2025 to the said Show Cause Notice dated 02.05.2016 as follows:

- i) That the import of all the containers was never completed as the same had never crossed the customs barriers. Therefore, same cannot be considered as imported into India and no duty of customs is payable by them. In this regard they rely on the decision of the Hon'ble Apex Court in the case of *Garden Silk Mill Ltd. v. UOI- 1999 (113) E.L.T. 358 (SC)*; wherein it has been held that the import of goods into India would commence when the same cross into the territorial waters but continues and is completed when

the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and the bill of entry for home consumption is filed. The noticee submits that as the import in the present case is itself not completed the demand of duty is therefore not sustainable and is required to be set aside in interest of justice.

- ii) That in the instant case, the containers were with various CFS, thus, the containers being in the custody of an entity other than the Noticee and the containers were damaged due to fire at the CFS which was not in control of the Noticee, thus, fastening of the responsibility on the Noticee for re-export of the containers is impossible for the Noticee to perform and accordingly the demand cannot be made from the Noticee in such circumstances. In this regard, they rely on the order of the Hon'ble CESTAT, Mumbai in the case of Kutch Shipping Agency Pvt. Ltd. Vs Commissioner of Customs (General), Mumbai, as reported at 2017-TIOL-1415-CESTAT-MUM, wherein it has been held as under :

6. In addition to the non-sustainability of the notice for recovery of duty, the facts pertaining to the non-compliance of conditions prescribed in notification no. 104/94 dated 16th March 1994 should not be lost sight of. It is acknowledged that the said containers had not been taken into the custody of either the noticee or any assignee of the noticee. It is recorded that one of the containers had been seized by an agency empowered under the Customs Act 1962 and that others remained with the custodian appointed under Customs Act, 1962 along with the imported goods contained therein. In the circumstances of the containers being in the custody of an entity other than the noticee, an agent of the shipping company to whom the containers belonged, the fastening of responsibility on the appellate for re-export of the containers is without justification at this stage. Impossibility of performance of an obligation cannot be held to the detriment of the noticee.

- iii) That on the basis of facts on record, it can be observed that most of the containers were damaged and not fit for use. However, valuation has been arrived at by the department as per the Valuation Report dated 18-4-2016 given by Shri Bhaskar G. Bhatt, Govt. Approved Valuer, wherein, the Valuer has certified that the containers belong to OOCL shipping line seized by Customs Jamnagar, having fair market value for Rs. 10.19 lakhs. Further, it has been also reported that he has personally visited the CFS on 24-25-November, 2015 and inspected detained containers, documents related to detained items after interception by Customs Jamnagar and on the basis of the said details, the said containers were not sea worthy.
- iv) That it is apparent that the Chartered Engineer has submitted his report in a very casual manner probably without inspecting the containers in question for the simple reason that the learned Chartered Engineer has nowhere stated that the container were badly damaged by fire rather he has stated that the containers were seized by the customs.

Thus, the report of the Chartered Engineer is erroneous and the demand on such report is not sustainable, especially when the inspection was done by the learned Chartered Engineer without the presence of the representative of the noticee. Legally no reliance can be placed on such un-admitted evidence in terms of settled principles of law.

- v) That the notice has erroneously proposed demand under section 28 of the Customs Act, 1962 to recover the duty without adducing any evidence to conclude the ingredients for invoking the extended period. They had themselves informed the Assistant Commissioner of Customs, Custom House, Pipavav vide their letter dated 19th November, 2010 that the container OOLU 8302690 got burnt due to raging fire at the CFS. Moreover all the containers were in the CFS or with the Custodian which is a Customs Bonded area and by no stretch of imagination it can be presumed that the Department was not aware about the damage of containers in fire.
- vi) Thus, the demand of Customs duty by invoking the extended period is not sustainable as the notice issuing authority has invoked the extended period only on the grounds that the noticee had failed to re-export the said 9 containers within the stipulated time of six months and that the goods were seized on 05.11.2015 under the reasonable belief that they were liable for confiscation under Section 111(o) of the Customs Act, 1962,
- vii) The noticee further submits that the department has alleged that the disputed containers were imported in 2010 and even after completion of 5 years the same were not re-exported but the demand was raised under section 28(4) of the Customs Act, 1962 only on 02.05.2016, which depicts that the demand has been raised beyond the period of 5 years stipulated in the said section, which is beyond scope of the provisions of the Customs Act, 1962.
- viii) That they had made a prayer before the learned Commissioner vide their letter dated 01.06.2016 for granting remission under Section 23 of the Customs Act, 1962. They further submit that the present notice may kindly be decided only after the application requesting remission of duty is disposed off.
- ix) That the confiscation of the goods in dispute cannot be carried out under Section 111(o) as the same is applicable only when any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.
- x) The noticee submits that the said containers were not imported under the Customs Act for home consumption and the condition imposed is only to re-export the same within a

period of six months, which could not be done by the noticee in the instant case in view of the said 9 containers were not sea worthy due to badly damaged by fire.

- xi) That the proposals made in the show cause notice for imposition of penalty under Section 112(a) and 114A of the Customs Act, 1962 are not applicable in the instant case. The noticee submits that penalty for improper importation is applicable under Section 112(a) of the Customs Act, 1962, when a person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act. The noticee further submits that provisions of Section 114A of the Act *ibid* can be made applicable only in those case where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest.
- xii) The noticee submits that the provisions of Section 112(a) and 114A are not applicable in this case as the goods were lying in the CFS in a completely damaged situation, thus, the allegation that the Customs duty was payable or that the noticee did not pay the duty by reason of collusion or any wilful mis-statement or suppression of facts can by no stretch of imagination be considered as a fact. The noticee submits that the goods were available under the Customs supervision during the entire period and by no means can the shipping line clear the said containers for home consumption without payment of duty as the prime object of the containers is to transport the goods. The noticee therefore submits that the provisions of Section 112(a) and Section 114A of the Act cannot be made applicable in this case.

Discussion and Findings:

14. I have carefully gone through the entire case records, SCN issued and defence put forth by the Noticee vide their letter dated 02.03.2025 as well as the contentions raised by them during the course of personal hearing. I find that the issue to be decided in the case on hand is that as to whether:

- (i) The total 09 containers imported by the Noticee i.e. M/s OOCL (India) Pvt. Ltd. on re-export basis in terms of Notification No. 104/94-Customs dated 16.03.1994 are liable for confiscation under section 111(o) of the Customs Act, 1962;
- (ii) the total 09 containers imported by the Noticee i.e. M/s OOCL (India) Pvt. Ltd. on re-export basis in terms of Notification No. 104/94-Customs dated 16.03.1994 are liable to customs duty under Section 28(4) of the Customs Act, 1962 enforcing Bond filed by them under Notification no. 104/94-Customs dated 16.03.1994, alongwith interest under Section 28AA of the Customs Act, 1962;

(iii) penalty is imposable under Section 112(a) and 114A of the Customs Act, 1962.

15. Before proceeding with the case, a glance of the provisions of the Notification No. 104-1994-Cus dated 16.03.1994 (as amended) is needed for better understanding of the facts. I observe that the provisions of the said Notification stipulates as follows:

Notification No. 104/94-Cus., dated 16-3-1994

Exemption to containers of durable nature.

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts containers which are of durable nature, falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from, -

a) the whole of the duty of customs leviable thereon under the said First Schedule; and

b) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act:

Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so:

Provided further that in any particular case, the aforesaid period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit.

15. On perusal of the aforesaid Notification, it is amply clear that, the said exemption is available subject to the condition that the Importer, by execution of a Bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs, binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner or else pay the duty leviable thereon in the event of the Importer's failure to do so.

16. From the records placed before me, I observe that in the instant case, the Noticee had imported the 09 containers in question by availing the benefit of the said Notification, executing bond to re-export the imported containers within the stipulated time frame of six months from the date of their importation. However, the Noticee neither re-exported the said 09 containers within the specified period of six months from the date of importation nor sought any extension to re-export the same as envisaged under proviso to the aforesaid Notification. I also observe that the Noticee has never apprised Customs department regarding their failure to re-export the 09 containers within stipulated time frame, which is the onus on their part as per conditions of the Bond. I find that, the Noticee shall either re-export the imported containers within stipulated time frame of six months from the date of importation or shall sought extension to re-export the imported containers on or before the expiry of the initial period of

six months in terms of proviso to the Notification No.104/94-Cus dated 16.03.1994. However, in the instant case, the Noticee has failed to comply with both the conditions.

17. I observe that, the Noticee only at the time to reply to Show Cause Notice dated 02.05.2016 for first time vide his letter dated 01.06.2016 brought to the knowledge of the Customs that 09 containers of theirs viz. 07 containers were damaged due to a fire at CFS Contrans Logistics Pvt. Ltd. In the month of November, 2010, 01 container was damaged due to a fire at CFS LCL Logistix (India) Pvt. Ltd. in the year 2010 and 01 container was damaged while being discharge from the vessel in February, 2015, which itself makes it clear that, its afterthought on the part of the Noticee to apprise department of the incident of fire and subsequent loss, so as to avoid the payment of duty of customs.

17.1 I find that, the Noticee never before issuance of the Show Cause Notice dated 02.05.2016 has ever sought exemption from payment duty of customs, since, 2010 when the incident pertaining to the fire took place at CFSs. I also find that the Noticee took plea that, they had themselves informed the Assistant Commissioner of Customs, Custom House, Pipavav vide their letter dated 19th November, 2010 that the container OOLU 8302690 got burnt due to raging fire at the CFS. However, the instant case pertains to seizure of 09 empty containers which could not be re-exported by them within prescribed time limit of six months in compliance of Notification No.104/94-Cus dated 16.03.1994. Hence, the Noticee in veil of taking plea of their letter dated 19th November, 2010 manipulated the facts of the case. Actually, it is only when the Customs department issued Show Cause Notice to the Noticee for the breach of conditions of the Bond executed as a part of Notification No.104/94-Cus dated 16.03.1994; the Noticee took shelter of provisions of the customs Act to avoid payment of duty of customs.

17.2 I find that, the Noticee only after a period of almost 09 years has now vide letter dated 02.03.2025 addressed to the Assistant Commissioner, Customs House, Pipavav for first time revealed that they wish to relinquish the title of the containers seized vide Panchanama dated 05.11.2015, when the department has already issued them the Show Cause Notice demanding duty of customs for the breach of conditions specified under Bond executed in compliance of Notification No. 104/94-Cus dated 16.03.1994 issued under Section 25(1) of the Customs Act, 1962. Here, I find that, proviso to the Section 23(2) of the Customs Act, 1962 stipulates that, "Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force". It is therefore, I find that, request of the Noticee to relinquish the title of offended goods liable for confiscation for the violation of the condition of the Notification No. 104/94-Cus dated 16.03.1994 not acceptable in terms of proviso Section 23(2) of the Customs Act, 1962.

17.3 I observe that, the Noticee in the veil of relinquishing the title of offended goods tried to avoid payment of duty of customs with respect to non-fulfilment of condition of the Notification No. 104/94-Cus dated 16.03.1994 to re-export the imported containers within six months simultaneously tried to avoid the payment of duty of customs by seeking the shelter of remission by filing the Application dated 02.03.2025 for the same only after the period of 09 years from the date of issuance of the Show Cause Notice, which indicates that the Noticee is contending the issue only to avoid payment of duty of customs. I further observe in the Noticees said letter dated 02.03.2025, they had claimed that vide their earlier letter dated 01.06.2016 they had filed the application for remission for the said 09 containers. However, on-going through the Noticees said letter dated 01.06.2016 exhibiting the subject matter as Show Cause Notice F. No. VIII/10-89/ADC/O&A/2016 dated 02.05.2016, I find that they had only intimated the reasons for not re-exporting the said 09 containers alongwith their lying place of location. The reasons advanced by them towards not able to re-export of the said 09 containers were mainly due to fire incident at CFS and subsequently non-settlement of dues with the concerned CFSs. I find that nowhere in the said letter dated 01.06.2016, the immunity under Section 23 of the Customs Act, 1962 was sought by them.

18. I further observe that, the Noticee in order to avoid the payment of duty of customs has tried to manipulate the facts with submission that, the import of all the containers was never completed as the same had never crossed the customs barriers. In this regard they relied upon the decision of the Hon'ble Apex Court in the case of *Garden Silk Mill Ltd. v. UOI- 1999 (113) E.L.T. 358 (SC)*; wherein it has been held that the import of goods into India would commence when the same cross into the territorial waters but continues and is completed when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and the bill of entry for home consumption is filed.

19. Here, I find that, the said 09 imported containers were proposed to be used as conveyance by the Noticee to handle EXIM Cargo and that every imported container to be used as conveyance are first unloaded at jetty of any particular port of import, which is declared as landing place under Section 8(a) of the Customs Act, 1962 and therefore, event of unloading of imported goods on jetty can be very well interpreted as become part of the mass of the country of Import. Hence, the facts of the instant case is not squarely applicable to the case law relied upon by the Noticee.

20. I further observe, the Noticee in his defense reply dated 03.03.2025 at para 20 contended that, Valuation Report dated 18-4-2016 issued by Shri Bhaskar G. Bhatt, Govt. Approved Valuer is of very casual nature and Chartered Engineer/Valuer has nowhere stated that the container were badly damaged by fire whereas the Noticee themselves in their aforesaid reply dated 03.03.2025 at para 19 admitted that, Chartered Engineer/Valuer, Shri

Bhaskar G. Bhatt reported that, the containers seized by the Customs were not sea worthy. Here, I find that, it is matter of simple understanding that, the Customs department appointed Govt. Approved Valuer for the valuation of containers only because containers were damaged in fire and its fair price can be determined in terms of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, without any prejudice or otherwise the Customs would have simply relied upon the value of containers being declared by the Noticee at the time of import.

21. I observe that, the Noticee in his reply dated 03.03.2025 at Para 22 contested that the department had erroneously proposed the demand under Section 28 of the Customs Act, 1962 to recover duty without adducing any evidence invoking the extended period. Here, I observe that, CBIC under Section 25(1) of the Customs Act, 1962 had notified Notification No.104/94-Cus dated 16.03.1994 with intention to facilitate Shipping lines to avail the benefit of import of durable containers to be used as conveyance for handling EXIM Cargo, subject to execution of bond to re-export such imported containers within stipulated time frame of six months from the date of importation or in case failure to do so shall pay duty leviable thereon in the event of the importers failure, which itself clarifies that, in case any importer fails to re-export the containers imported availing the benefit Notification No.104/94-Cus dated 16.03.1994, duty of customs leviable thereupon can be recovered enforcing the bond executed in compliance of the subject Notification, hence, the matter pertaining to extension of period to recover duty under Section 28 of the Customs Act, 1962 is not applicable in the instant case, as the provisions of Section 28 *ibid* to be read harmoniously with the conditions of the Bond to recover duty of customs not paid. Further, the Noticee before issuance of Show Cause Notice has never approached the department for the extension of period to re-export imported containers although provision for the same was always available with them at every stage before expiry of initial period of six months from the date of importation. Hence, it is failure on the part of the Noticee *in toto* to have neither re-exported containers within stipulated time frame nor sought any extension for the same.

22. In view of above, I find that, the Importer is liable to pay Customs duty amounting to Rs. 2,73,813/- under Section 28(4) of the Customs Act, 1962 read with Bond executed in compliance of Notification No.104/94-Cus dated 16.03.1994 on 09 empty containers totally valued at Rs. 9,30,041/- as per Valuation Report dated 18.04.2016 issued by Shri Bhaskar G. Bhatt, as well as for payment of interest as applicable in terms of Section 28AA of the Customs Act, 1962.

23. I further find that, as the Noticee failed to comply with the conditions of Notification No.104/94-Cus dated 16.03.1994 i.e. the Noticee neither re-exported the imported containers within stipulated time frame of six months from the date of importation nor sought extension

to re-export the imported containers on or before the expiry of the initial period of six months in terms of proviso to the Notification No.104/94-Cus dated 16.03.1994, hence, containers imported with conditions to re-export within six months seized vide Panchnama dated 05.11.2015 are liable for confiscation under Section 111(o) of the Customs Act, 1962, which stipulates, *"any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."*

24. I further observe that, Section 125 (1) of the Customs Act, 1962 regarding Option to pay fine in lieu of confiscation stipulates, *"Whenever confiscation of any goods is authorized 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."* It is therefore, I find that, the Noticee may be provided with an option to pay fine in lieu of confiscated goods for its redemption.

25. Now, I proceed to consider the proposal of penalty under Section 114A of the Customs Act, 1962 against the Importer. I find that demand of customs duty total amounting to Rs. 2,73,813/- (Rupees two lakh, seventy three thousand, eight hundred and thirteen only) has been made under Section 28(4) of the Customs Act, 1962 enforcing bond executed in compliance of Notification No.104/94-Cus dated 16.03.1994. Hence, as a natural corollary penalty is imposable on the Noticee under Section 114A of the Customs Act, 1962, 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 wilful mis-statement or suppression of facts by the Noticee has been clearly established as discussed in the foregoing paras and hence, I find that, this is the fit case for imposition of quantum of penalty equal to the amount of duty and interest in terms of Section 114A *ibid*.

26. Further, penalty has also been proposed on the Noticee under Section 112 of the Customs Act, 1962. In this regard, I find that, fifth proviso of Section 114A stipulates that, *"where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114."* Hence, I refrain from imposing penalty on the Noticee under Section 112 of the Customs Act, 1962.

27. In view of the foregoing discussions and findings, I pass the following order:

ORDER

- (i) I order to confiscate the 09 empty containers totally valued at Rs. 9,30,041/- (Rupees nine lakh, thirty thousand and forty one only), under Section 111(o) of the Customs Act, 1962, which were seized vide Seizure Memo dated 05.11.2015. However, I give an option to the Noticee to redeem the said confiscated goods on payment of redemption fine of Rs. 93,000/- (Rupees ninety three thousand only) under Section 125 of the Customs Act, 1962, within one hundred and twenty days from the receipt to this order or else this option shall become void in terms of sub-section (3) of the Section 125 of the Customs Act, 1962, unless an appeal against such order is pending.
- (ii) I order to pay the total customs duty of Rs. 2,73,813/- (Rupees two lakh, seventy three thousand, eight hundred and thirteen only) under Section 28(4) of the Customs Act, 1962 read with bond executed in compliance to provisions of the Notification No. 104/94-Cus dated 16.03.1994 as well as appropriate Interest at the applicable rate, under Section 28AA of the Customs Act, 1962.
- (iii) I impose a penalty of Rs. 2,73,813/- (Rupees two lakh, seventy three thousand, eight hundred and thirteen only) under Section 114A of the Customs Act, 1962 on the Noticee. However, I give an option, under proviso to Section 114A, to the Noticee, to pay 25% of the amount of total penalty imposed under Section 114A, subject to payment of total amount of duty and interest confirmed at (ii) above, and the amount of 25% of penalty imposed under Section 114A within 30 days of receipt of this order.
- (iv) I refrain from imposition of penalty under Section 112 of the Customs Act, 1962 in terms of fifth proviso of Section 114A of the Customs Act, 1962.

(Amit Kumar Singh)

Additional Commissioner

Date: 28.03.2025

F. No. CUS/5918/2024-Adjn.

BY Speed Post/ Email:

To

M/s OOCL (India) Pvt. Ltd.

Office No. 120, Logix Park CFS,

Near Fourway Road, Pipavav Port, Taluka – Rajula,

District – Amreli

Gujarat – 365560

Copy to:

1. The Commissioner of Customs (Prev.), Jamnagar – Kind Attention RRA, Hqrs. Jamnagar.
2. The Assistant Commissioner, Customs House Pipavav.
3. The Assistant Commissioner, Systems, Customs (P), Jamnagar.
4. The Superintendent, TRC, Customs (Preventive), Hqrs., Jamnagar.
5. Guard File.