



सीमाशुल्क(अपील) आयुक्तकार्यालय,अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS), AHMEDABAD,
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DIN – 20251171MN0000818936

क	फ़ाइलसंख्या FILE NO.	(1)S/49-02/CA-2/CUS/MUN/2024-25 (2)S/49-01/CA-2/CUS/MUN/2025-26
ख	अपीलआदेशसंख्या ORDER-IN- APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	MUN-CUSTM-000-APP-393 to 394 -25-26
ग	पारितकर्ता PASSED BY	Shri AMIT GUPTA Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	07.11.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF FINAL ASSESSMENT ORDER/ORDER-IN -ORIGINAL (OIO) NO.	OIO No. MCH/ADC/AK/286/2023-24 dated 21.03.2024 & Corrigendum dtd. 14.05.2024 issued by Additional Commissioner of Customs , Mundra
	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	07.11.2025
	अपीलकर्तकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Assistant Commissioner of Customs, Import Assessment Group-V, Custom House, Mundra.



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है। This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं। Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods imported on baggage
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो। any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए : The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्यरसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उस से कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If



	the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रूपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	%10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के %10
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



ORDER - IN - APPEAL

Assistant Commissioner of Customs, Import Assessment Group-V, Custom House, Mundra (hereinafter referred to as the "Appellant Department") has filed the present appeals under Section 129 D(4) of the Customs Act, 1962 on the basis of Authorization / Review Order No. 02/OIO/2024-25, dated 27.06.2024 passed by the Principal Commissioner of Customs, Custom House, Mundra challenging the Order - in - Original No. MCH/ADC/AK/286/2023-24 dated 21.03.2024 (hereinafter referred to as the "impugned order") read with Corrigendum dtd. 14.05.2024 issued by Additional Commissioner of Customs, Mundra (hereinafter referred to as the "adjudicating authority") in the case of M/s. OOCL India Pvt. Ltd., ICC Chambers, 5th floor, Saki Vihar Road, Opp Santogen Silk Mills, Powai, Mumbai-400072 (hereinafter referred to as "Respondent No. 1") and Shri Koralagamage Anira Nishantha Jayawardhana, person-in charge / Master of vessel MV Shilling/005E at Mundra Port (hereinafter referred to as the "Respondent No.2")

2. Facts of the case, in brief, are that acting upon the intelligence received by the Directorate of Revenue Intelligence Ahmedabad Zonal Unit, Ahmedabad (hereinafter referred to as "DRI"), investigation was initiated in respect of goods brought by Container Ship MV Shiling /005E (IMO No. 9290452). M/s. OOCL India Pvt. Ltd. (hereinafter referred to as "M/s. OOCL India") was the Authorised Sea Carrier (hereinafter referred to as "ASC"), acting on behalf of the Master of MV Shiling/005E. The said ship was likely to arrive at Mundra on 18.11.2021 and in their capacity as ASC, M/s. OOCL India had delivered a prior Arrival Manifest/IGM No. 2296850 on 16.11.2021 electronically to the proper officer of Customs at Mundra in terms of Regulation 4 of the Sea Cargo Manifest and Transhipment Regulations, 2018 (hereinafter referred to as "SCMTR") and Regulation 5 of the Import Manifest (Vessels) Regulations, 1971 (hereinafter referred to as "IMR. 1971") read with Section 30 of the Customs Act, 1962. On primary scrutiny of the said arrival manifest, it was found that the ASC M/s. OOCL India had though delivered the arrival manifest with Mundra Customs on 16.11.2021, they had not filed any declaration in respect of "Same Bottom Cargo (SBC)"/"Cargo brought in Transit"/"Retention on Board Cargo (ROB)", which were meant for unloading at the destination other than Mundra Port.

2.1 On arrival of the vessel at Mundra on 18.11.2021, the Custom officer of Mundra Customs along with the officers of DRI boarded the said vessel. The Master of MV Shiling/005E provided the documents to the boarding officer.

2.2 Since the ROB/Transit/SBC cargo was not found in the arrival manifest delivered by the ASC at Mundra Customs and there was no amendment sought by the ASC in respect of the said arrival manifest, the Branch Manager of ASC was asked to provide the complete list of ROB



containers and other related documents. The ASC provided some documents vide letter dtd. 18.11.2021. The documents provided by the ASC vide letter dtd. 18.11.2021 included the list of the ROB Cargo. Upon going through the ROB Cargo list provided by the ASC, which they had received from the carriers viz. YML, COSCO and M/s. Orient Overseas Container Line Ltd. (hereinafter referred to as M/s. OOCL Ltd.), it was observed that there were seven shipping containers (flat racks) on board MV Shiling/005E vide Booking Number 2683539260, and they were located on the vessel at Bay No. 34, Slot No. 340814, 340614, 341014, 340714, 340414, 340914 and 340514

2.3 Vide letter dtd 18.11.2021, a copy of Draft B/L No. OOLU2683539260, which was without any date, was also provided by M/s. OOCL India, which was describing the description of cargo as 'Re-Export/Return of Empty Fuel Containers 7x40' Flat Racks -CY/CY, FCL/FCL. Total 28xFuel Containers' In the copy of draft B/L provided, the date of issuance of B/L was found blank. The particulars of cargo, mentioned in the draft B/L No. OOLU2683539260 were as per table in para 1.4 of the OIO.

2.4 On visual inspection of the goods by the boarding officer and DRI officers on board, it was observed that each shipping container was a flat rack container, each of them carrying 04 blue coloured fuel containers/tanks/casks mounted inside the saffron colour frames/specialised freight containers placed on the flat rack shipping containers. Shielding for the 28 casks was also provided. It was further observed that the 28 fuel containers were specialized tanks/casks and they were appearing as purposefully designed containers/tanks and the 28 fuel containers inside 7 frames/specialised freight containers containers/tanks in the B/L etc. documents, they were found duly labeled/marked with Hazardous Material Identification number "Radioactive II.... contents.... U (enriched equal to or less than 20%.... Activity 281.6 GBq" "UN 3327" etc. in accordance with the national and international regulations pertaining to the same. The "Type-II" Package label with Hazard Class 7 and activity written by hand. Type-1 Package label, Criticality 'Safety Index (CSI) for Fissile Material etc. were indicating carriage of nuclear material by the said 28 containers/tanks, although they were declared as empty containers.

2.5 As per Regulation 6 of SCMTR, the cargo declaration in respect of arms, ammunition, explosives and radioactive material for import, export, transshipment or being carried as 'Same Bottom Cargo' is to be delivered mandatorily in Form XII. Whereas from the documents produced by the ASC M/s. OOCL India as well as the Master of MV Shiling/005E and also from the visual inspection of aforesaid 07 containers and the cargo contained therein, it appeared that the 28 tanks being carried by 07 flat rack containers were specialized tanks appeared to be containing or relating to the arms, ammunition, explosive, radioactive material and accordingly the same are covered under the category of SCOMET and Weapons of Mass Destruction and Hazardous cargo, but the



same were mis-declared as "empty fuel tanks and the actual nature of the said tanks were not at all declared in the statutory declarations filed by the ASC. Hence, it prima facie appeared that the said 28 tanks/casks packed inside seven specialised freight containers/frames and those seven specialised freight containers/frames mounted on seven flat rack containers, were imported into India, in violation of the provisions of SCMTR, 2018, the Customs Act, 1962, Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (hereinafter referred to as "WMD Act, 2005") as well as the Foreign Trade (Development and Regulation) Act, 1992 (Hereinafter referred to as "FTDR Act, 1992").

2.6 Therefore, the said consignment of 28 tanks/casks kept in 07 frames/specialised freight containers and mounted on 07 flat rack containers was offloaded from the vessel and was detained for further detailed and specialized examination, vide Detention Memo dtd. 18.11.2021 issued by the Appraiser (SIIB), Custom House, Mundra, issued to the ASC M/s. OOCL India, representing the person in-charge of MV Shiling/005E as well as the container line. The said 28 tanks/casks + 07 specialised freight containers/frames 07 flat rack containers were placed in the Transworld CFS, Mundra for further examination and process under the Customs Act, 1962 and other laws. At the time of placing those containers in CFS, they were weighed and the approximate details as per table in para 17 of the OIO came to the notice, during such weighment. Against the aforesaid weighment details, the aggregate net weight of the goods being carried in the seven containers was declared as 76142.500 Kgs in the draft B/L.

2.7 At the request made by DRI, the competent technical expert visited Transworld CFS, Mundra on 20.11.2021 and he inspected and carried out the radiation survey of the suspected consignment detained at Mundra Port. Later on, vide letters dtd 23.11.2021, and 11.04.2022, he had, inter alia, submitted his report based on which it became apparent that the actual nature/description of the subject consignment of 28 fuel casks/tanks/containers, packed inside the 07 holding frames, which were further mounted inside the 07 flat rack containers, was neither declared by the ASC M/s. OOCL India in the prescribed manner, nor the same was reflected in the arrival manifest delivered by the ASC M/s. OOCL India before the proper officer of Mundra Customs. Further, there was no attempt from the ASC M/s. OOCL India to seek updation or amendment of the arrival manifest of MV Shiling. Further, the corresponding draft Bill of Lading of the said consignment merely declared the same as "empty fuel containers", in suppression of their actual nature i.e. items falling under Category "OB - Prescribed Equipment" in the SCOMET list, for usage in carriage of nuclear fuel materials falling in the category of OA-Prescribed substances. Therefore, the 28 casks/tanks/containers were found as imported into India, in violation of the provisions of Section 30 and 53 of the Customs Act, 1962, read with Regulation 6 of the SCMTR, Regulation 5 of the IMR, 1971 read with Regulation 15(2) of the SCMTR. It also appeared that the

said goods were imported in violation of various other legal provisions of the following allied enactments:

- a.) Section 14A, 14B and 5 of the FTDR Act, 1992
- b.) Section 5, 10 and 13 of the WMD Act, 2005.
- c.) Section 14(1) of the Atomic Energy Act, 1962 (hereinafter referred to as AE Act, 1962).
- d) Section 2(b) (iii) of the Arms Act, 1959 read with Rule 30 of the Arms Rule, 1962.

2.8 Therefore, the said 28 casks/tanks were reasonably believed as liable for confiscation under the provisions of Section 111(d), 111(f), 111(j), 111(n) and 111(o) of the Customs Act, 1962, whereas the 07 frames, in which these were fitted and the 07 shipping containers (flat racks), on which such frames and tanks/casks were mounted, appeared as liable for confiscation under Section 118(a) of the Customs Act, 1962 Accordingly, the subject goods viz. 07 shipping containers (flat racks), together with 28 fuel casks/tanks/containers and 07 holding frames, were placed under seizure by the officer of Customs under Section 110(1) of Customs Act, 1962 vide Seizure Memo dtd 24.11.2021, issued to the ASC M/s. OOCL India and the seized goods were handed over for safe custody to the representative of M/s. Transworld CFS vide Supratnama dtd 24.11.2021

2.9 In the meantime, vide letter dtd 22.11.2021, the ASC M/s. OOCL India requested the Principal Commissioner of Customs, Mundra for grant of Port Clearance for MV Shiling/005E from Mundra for further transit. The Principal Commissioner of Customs, Mundra permitted grant of Port Clearance to the vessel against execution of (a) Letter of Undertaking dtd 24.11.2021 by M/s. OOCL India, on behalf of the Master and Owner of the vessel to provide all assistance and information and (b) an undertaking to appear, as and when called for the subject case.

2.10 Accordingly, Show Cause Notice bearing File. No. GEN/ADJ/ADC/841/2022-Adjn-O/o Pr.Commr-Cus-Mundra dated 16.11.2022 was issued by the Additional Commissioner of Customs, Custom House, Mundra to any person or persons, who was/were causing the transit of the consignment of 28 nuclear fuel tanks/casks classifiable in the SCOMET list vide Entry No "0B" for prescribed equipments for carriage of goods of category "0A" pertaining to the nuclear materials, in 07 Specialized Freight Containers and 07 Flat rack containers, as well as (1) M/s. OOCL, Hong Kong, (2) M/s. OOCL India (3) M/s. Seaco Global Ltd. (4) M/s. Triton Container International Ltd., (5) Shri Koralagamage Anira Nishantha Jayawardhana, authorised sea carrier and person-in-charge/Master of vessel MV Shiling/005E at Mundra Port on 18.11.2021 to show cause individually and separately within 30 (Thirty) days from the date of receipt of the said Show Cause Notice, as to why



- i. The 28 nuclear fuel tanks/casks, having declared Invoice value of (CNY 2,24,00,000/- X Rs. 11.80=) Rs. 26,43,20,000/- should not be confiscated under the provisions of Section 111(d), 111(f), 111(j), 111(n) and 111(o) of the Customs Act, 1962;
- ii. The 07 Specialized Freight Containers/Frames having total value of (CNY 3,50,000/- x 11.80=) Rs. 41,30,000/- and 07 Flat rack containers, having total value of (USD 4275 X 75.10 X 7=) Rs. 22,47,368/- should not be confiscated under Section 111(d), 111(f), 111(j), 111(n) and 111(o) of the Customs Act, 1962 as well as Section 118(a) of the Customs Act, 1962;
- iii. Penalty should not be imposed separately on each of them under each of the provisions of Section 112(a), 112(b) and 114AA of the Customs Act, 1962

2.11 The adjudicating authority found that neither the empty nuclear fuel tanks/casks and the specialized freight containers/frames were owned by or belong to, in any way, to the noticees, nor the noticees were authorised representative of the shipper/supplier, therefore, the noticees cannot be said to have sufficient knowledge of the nuclear fuel tanks/casks and the specialized freight containers/frames. However, the technical expert deputed by the Department of Atomic Energy, who is an expert on the matter at hand, had reported that the specialised containers/frames and casks which have been used for transport of prescribed substances, fall under Category "0B-Prescribed Equipment" of the SCOMET list of India's export control. Further, in this context, the adjudicating authority found support from the Hon'ble Supreme Court judgment dated 29.02.2012 reported as 2012 (278) E.L.T. 37 (S.C.) in the case of M/s. Konkan Synthetic Fibre (Civil Appeal No. 951 of 2004) wherein the Hon'ble Supreme Court had held that the opinion of the expert in the field of trade who deals in the subject goods, should be given due importance, while dealing with fiscal or taxation laws.

2.12 As regards confiscation, the adjudicating authority observed that, as the instant case was a case of mis-declared cargo which was not reflected in arrival manifest or import manifest, which came to Mundra Port for transshipment to China and it was undisputed fact that there was no attempt to clear/remove the goods from Mundra Port to domestic area or/and in other place than destined place of transshipment, therefore, the adjudicating authority found that Sections 111(f) & 111(n) were applicable in the instant case and rest of the sub-sections of Section 111 of the Customs Act, 1962 mentioned in the SCN were not applicable here.



2.13 The adjudicating authority found that the impugned goods were destined for transshipment to China and it was undisputed fact that there was no attempt to clear/remove the goods from Mundra Port to domestic area or/and in other place than destined place of transshipment, therefore, the restriction for import against the HS Code 84014000 or Para 2.08 of the Foreign Trade Policy 2015-2020 would not be applicable in the instant case.

2.14 The shipper had declared the nuclear fuel tanks/casks as empty containers to M/s OOCL Hong Kong. Thus, the shipper had prepared the false and incorrect documents which had subsequently been used for keeping and carrying the said misdeclared cargo in the vessel and shipped from Karachi (Pakistan) to Shanghai (China) through Mundra Port. Since the 28 nuclear fuel tanks/casks had been mis-declared as fuel tanks, the same were liable for confiscation under Sections 111(f) & 111(n) of the Customs Act, 1962 as discussed above. Further, 07 Specialized Freight Containers/Frames were also liable for confiscation under Sections 111(f) & 111(n) read with Section 118(a) of the Customs Act, 1962 as the nuclear fuel tanks/casks were found inside 07 Specialized Freight Containers/Frames, which acted as a package for the nuclear fuel tanks/casks. Further, the adjudicating authority found that M/s. OOCL India Pvt. Ltd., ASC failed to comply with the provisions of SCMTR, 2018 and Shri Koralagamage Anira Nishantha Jayawardhana, person in charge of MV Shiling at Mundra on 18.11.2021 also failed to comply with the provisions of SCMTR, 2018. M/s. OOCL India Pvt. Ltd., ASC on behalf of Shri Koralagamage Anira Nishantha Jayawardhana, filed Arrival Manifest at Mundra through M/s. OOCL India, without clear details about 28 nuclear fuel tanks/casks. Therefore, it appeared that actions against both M/s. OOCL India Pvt. Ltd. and Shri Koralagamage Anira Nishantha Jayawardhana may lie under SCMTR, 2018.

2.15 Though the vessel MV Shiling had been used to carry/transport the impugned goods in contravention to the prohibitions discussed above, it was also fact that the goods were allowed to be carried on the basis of the declaration made in the relevant documents. As per the relevant law and international trade practice in this regard, declarations made by the exporter are the basis for Exim Trade, hence, in absence of any knowledge of mis-declaration, penal action against vessel owners cannot be justified.

2.16 It was also fact that none of these noticees were aware about mis-declaration of goods. As per the international trade practice, Exim Trade is conducted on the basis of declarations made in the relevant documents.

2.17 The adjudicating authority found that the Consultants/authorized representatives of all the Noticees in the Personal hearing and written defence submissions, had quoted and placed reliance



[Handwritten signature]

on various case laws/judgments in support of their contentions on the issues raised in the SCN. The adjudicating authority found that it is a settled principle that the connivance of owner, agent or captain of the vessel is essential in order to justify penal action against them. However, in the instant case the noticees had no knowledge/information regarding the goods. Therefore, their submissions had merits for consideration. Thus, it was observed that it was a case of mis-declared cargo, which came to Mundra Port for transshipment to China and it was undisputed fact that there was no attempt to clear/remove the goods from Mundra Port to domestic area or/and in other place than destined place of transshipment.

2.18 It was also a fact that neither any bill of entry has been filed for local clearance nor any importer, per se, for this purpose is involved, as defined under Section 2(26) of the Customs Act, 1962. The impugned cargo was found to be mis-declared as against what was declared in the documents submitted to Customs, hence the goods were liable for confiscation under Sections 111(1) & 111(n) of the Customs Act, 1962 and ordered accordingly.

2.19 The person liable to file IGM was shipping line/agents thereof on basis of the documents given by the shipper of exporting country; the offence involved in the case was about mis-declaration of the description by the shipper in exporting country, therefore, for this reason, Containers owners viz. M/s. OOCL Hong Kong, M/s. Seaco Global Ltd. and M/s. Triton Container International Ltd. should not be held responsible, though the mis-declared goods were held liable for confiscation. Accordingly, the 07 Flat rack containers were liable to be released to the respective shipping lines.

2.20 As for any person or persons, who was/were causing the transit of the consignment of 28 nuclear fuel tanks/casks classifiable in the SCOMET list vide Entry No "0B" for prescribed equipments in 07 Specialized Freight Containers and 07 Flat rack containers, no person/agent thereof had represented their case. It was not established whether any such person exists, or a dummy was created by those responsible persons, therefore, it was premature to decide a case against such said person whose existence was yet to be established. Further, since the goods were considered for absolute confiscation, whosoever that person(s) was responsible, will have to bear the losses of the attempted mis-declaration.

2.21 Accordingly, the said Show Cause Notice was adjudicated by the Adjudicating Authority wherein it was ordered to confiscate absolutely the 28 nuclear fuel tanks/casks under Sections 111(f) & 111 (n) of the Customs Act, 1962 along with 07 Specialised Freight Containers/Frames under Sections 111(1) & 111(n) of the Customs Act, 1962 as well as Section 118(a) of the Customs Act, 1962. The adjudicating authority ordered to release the 07 Flat rack containers to the respective



shipping lines. However, the adjudicating authority refrained from imposing penalties on any of the noticees.

SUBMISSIONS OF APPELLANT DEPARTMENT

3. Being aggrieved with the impugned order, the Appellant Department has preferred appeals against Respondent No. 1 and Respondent No. 2 on the grounds which are elaborated below:

3.1 The Additional Commissioner of Customs, Custom House, Mundra passed the impugned OIO dated 21.03.2024 & Corrigendum dated 14.05.2024 without delving into the merits of the case and refrained from penalizing persons found culpable for the serious lapse that occurred in the case.

3.2 In para 11.17 of the Order-in-Original, the adjudicating authority has recorded clear findings to the effect that the shipper had declared the nuclear fuel tanks/casks as empty containers to M/s. OOCL Hong Kong and that the shipper had prepared the false and incorrect documents which had subsequently been used for keeping and carrying the said mis-declared cargo in the vessel and shipped from Karachi (Pakistan) to Shanghai (China) through Mundra Port. Consequently, the said nuclear fuel tanks/casks were ordered for confiscation under Section 111(f) & 111(n) of the Customs Act, 1962. Additionally, 7 Specialised Freight Containers/Frames were also ordered for confiscation under Sections 111(f), 111(n) read with Section 118(a) of the Customs Act, 1962 as the nuclear fuel tanks/casks were found inside 07 Specialized Freight Containers/Frames, which acted as a package for the nuclear fuel tanks/casks.

3.3 However, M/s. OOCL India Pvt Ltd, i.e Respondent No. 1, being the Authorised Sea Carrier should have verified, confirmed and accordingly declared the nuclear fuel tanks/casks properly in the Arrival Manifest filed by them. They were under statutory obligation to comply with the provisions of Section 30 of the Customs Act, 1962, which they failed to do. Therefore, for such false or incorrect declaration, they were liable for penalty under Section 114AA of the Customs Act, 1962. Additionally, their acts of commission and omission rendered the nuclear fuel tanks/casks and frames/specialised freight containers/flat rack containers liable for confiscation, thereby making them liable for penalty under Section 112(a)/112(b) of the Customs Act, 1962 It was incumbent upon the adjudicating authority to impose penalties under the aforementioned sections. Thus, the adjudicating authority has erred by not imposing any penalty on M/s. OOCL India Pvt. Ltd

3.4 Shri Koralagamage Anira Nishantha Jayawardhana i.e Respondent No. 2 was the person in charge of MV Shiling, who allowed the loading of SCOMET listed items, without proper verification and confirmation, when the nuclear fuel tanks/casks were apparently found shielded and having tags/markings of nuclear fissile material visible. The documents pertaining to the said nuclear fuel tanks indicated them as mere fuel tanks, thereby suppressing its actual classification and categorisation as SCOMET item of "0B" category. After the issuance of the draft B/L, and ensuring transportation of 28 nuclear fuel tanks/casks, no final B/L was issued and the person in charge of the vessel did not confirm any such fact, indicating his involvement in the illegal act. He also failed to comply with document requirements under Section 38 of the Customs Act, 1962. He had filed Arrival Manifest at Mundra through M/s. OOCL India Pvt Ltd, without clear details about 28 nuclear fuel tanks/casks. He was under statutory obligation to comply with the provisions of Section 30 of the Customs Act, 1962, which he failed to do. Therefore, for such false or incorrect declaration, he was liable for penalty under Section 114AA of the Customs Act, 1962. Additionally, his acts of commission and omission rendered the nuclear fuel tanks/casks and frames/specialised freight containers/flat rack containers liable for confiscation, making him liable for penalty under Section 112(a)/112(b) of the Customs Act, 1962. It was incumbent upon the adjudicating authority to impose penalties under the aforesaid sections. Thus, the adjudicating authority has erred by not imposing any penalty on Shri Koralagamage Anira Nishantha Jayawardhana

3.5 In view of above facts and submissions, the Order in Original No. MCH/ADC/AK/286/2023-24 dated 21.03.2024 & Corrigendum dated 14 05 2024 passed by the Additional Commissioner of Customs, Custom House, Mundra in the case of M/s. OOCL India Pvt Ltd. and Shri Koralagamage Anira Nishantha Jayawardhana is not legal, proper and correct and therefore, in the interest of justice, Commissioner of Customs (Appeals), Ahmedabad may -

(i) Set aside the Order in Original No. MCH/ADC/AK/286/2023-24 dated 21.03.2024 & Corrigendum dated 14.05.2024 passed by the Additional Commissioner of Customs, Custom House, Mundra in respect of M/s. OOCL India Pvt. Ltd. and Shri Koralagamage Anira Nishantha Jayawardhana.

(ii) Grant stay on operation of the Order in Original No MCH/ADC/AK/286/2023-24 dated 21.03.2024 & Corrigendum dated 14 05 2024 passed by the Additional Commissioner of Customs, Custom House, Mundra in respect of M/s. OOCL India Pvt. Ltd. and Shri Koralagamage Anira Nishantha Jayawardhana

(iii) Order for imposition of penalty under Section 112(a)/112(b) and Section 114AA of the Customs Act, 1962 on M/s. OOCL India Pvt. Ltd.



(iv) Order for imposition of penalty under Section 112(a)/112(b) and Section 114AA of the Customs Act, 1962 on Shri Koralagamage Anira Nishantha Jayawardhana.

(v) Alternatively, order to remand the case back to the original adjudicating authority to determine and impose penalties under Section 112(a)/112(b) and Section 114AA of the Customs Act, 1962 on M/s. OOCL India Pvt. Ltd and Shri Koralagamage Anira Nishantha Jayawardhana.

vi) Grant any other relief as may be deemed fit under the law and in the interest of justice.

PERSONAL HEARING

4. Personal hearing in the matter was initially scheduled on 26.06.2025 for both Respondent No. 1 and 2. Accordingly , copies of departmental appeal were sent to Respondent No. 1 at their Gandhidham office address available on record, along with a copy meant for Respondent No. 2 to be served through Respondent No. 1 (as per the dispatch done in case of SCN and OIO) for comments/cross objections vide this office letter dtd. 11.06.2025. However the same was returned by post with a remark "left". Thereafter, the copies of departmental appeal for both the Respondents were sent to Respondent No. 1 at their Mumbai office address as per their website, vide letter dtd. 22.07.2025 wherein the personal hearing for both the Respondents was scheduled on 13.08.2025. The Respondent No. 1 vide their advocate's letter dtd. 12.08.2025 and 13.08.2025, sought adjournment. Further vide letter dtd. 10.09.2025, the advocate of Respondent No. 1 informed that they are only representing respondent No. 1 and that the Respondent No. 1 is not in contact with respondent No. 2 i.e Master of the Vessel . They also enclosed a mail dtd. 02.06.2023 sent by them to Mundra Customs as well as DRI wherein they have informed that the Email of the Master as made available to them is anirajaya@yahoo.com. Accordingly, an intimation for personal hearing scheduled on 16.10.2025 and copy of departmental appeal for comments /cross objection was sent to Respondent No. 2 on the email address i.e. anirajaya@yahoo.com on 10.10.2025 and 13.10.2025 respectively. However, the respondent No. 2 has not turned up for personal hearing held on 16.10.2025.

4.1 The personal hearing was held on 16.10.2025 wherein, Shri Saurabh Soparkar, Sr Advocate, Shri Rishabh Saxena, Advocate and Ms. Deepanshi Kapoor Advocate , appeared on the behalf of the Respondent No.1. They placed reliance on the submissions submitted vide Email dtd. 08.09.2025 which consisted of the following documents:-

(a) Compilation of submissions made before the adjudicating authority.

(b) Compilation of following Case laws relied upon:-

- (i) Cochin Port Trust vs. Arebee Star Maritime Agencies (P) Ltd reported at (2021) 11 Supreme Court Case 641.
- (ii) Document No. 2 - Maruti Suzuki Ltd. vs. CCE reported at (2009) 9 Supreme Court Cases 193.
- (iii) Arebee Star Maritime Agebcies Vs. Commissioner of C.Ex Rajkot reported at 2004 SCC Online CESAT 2317(2004)173 ELT 185.
- (iv) Order-In-Original No. MCH/ADC/RKC/08/2002-23 dtd.13.04.2022 issued by Additional Commissioner of Customs (Import), Custom House, Mundra in case of M/s. Winwin Global, M/s. Feedtech Shipping Indias Pvt Ltd , M/s. C.I.P. Global Co. Ltd.
- (v) B. Lakshmichand vs. Government of India reported at 1981 SCC OnLine Mad 461: 1983 ELT 322 128-131.
- (vi) Garden Silk Mills Ltd. & Ors. vs. Union of India & Ors. reported at (1999) 8 Supreme Court Cases 744
- (vii) Budget Logistics Pvt. Ltd. vs. CC, Air Cargo (Export) New Delhi – in Appeal No. C/50475-50478/2014-SM
- (viii) ARJ Exim India Manoj Kumar v. Commissioner of Customs (Port- Import) Chennai/Mumbai reported at 2018 SCC OnLine CESTAT 3010 .
- (ix) Commissioner of Customs v. Jai Industries Ltd. reported at 2017 SCC OnLine Hyd 467: (2018) 361 ELT 429.
- (x) Chhattisgarh State Coop. Bank Maryadit vs. Zila Shakari Kendriya Bank Maryadit reported at (2020) 6 Supreme Court Cases 411
- (xi) M/S Service Bureau vs. CC New Delhi Appeal No. C/51832/2017

(c) Compilation of following legal provisions, Rules and Regulations:-

- (i) Sea Cargo Manifest and Transhipment Regulations, 2018
- (ii) The Customs Act, 1962
- (iii) The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005
- (iv) The Foreign Trade (Development and Regulation) Act, 1992
- (v) The Atomic Energy Act, 1962
- (vi) The Atomic Energy (Radiation Protection) Rules,2004



- (vii) The Arms Act, 1959
- (viii) The Arms Rules, 2016.
- (ix) The Foreign Trade Policy [1st April 2015 - 31st March 2020]

DISCUSSION AND FINDINGS

5. I have carefully gone through the appeal memorandum filed by the Appellant Department as well as the impugned order. The issue to be decided in the present appeal is as under :-

- (a) Whether the impugned order passed by the adjudicating authority wherein he has dropped the penalty against the Respondent No. 1 and 2 proposed under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 vide Show Cause Notice dtd. 16.11.2022, is legal and proper, or otherwise.

5.1 It is observed that M/s. OOCL India had delivered a prior Arrival Manifest/IGM No. 2296850 on 16.11.2021 electronically to the proper officer of Customs at Mundra. It was noticed that M/s. OOCL India had not filed any declaration in respect of "Same Bottom Cargo (SBC)"/"Cargo brought in Transit"/"Retention on Board Cargo (ROB)", which were meant for unloading at the destination other than Mundra Port. On arrival of the vessel at Mundra on 18.11.2021, the Custom officer of Mundra Customs along with the officers of DRI boarded the said vessel. During the inspection of the goods by the boarding officer and DRI officers on board, it was observed that each shipping container was a flat rack container, each of them carrying 04 blue coloured fuel containers/tanks/casks mounted inside the saffron colour frames/specialised freight containers placed on the flat rack shipping containers. Shielding for the 28 casks was also provided. It was further observed that the 28 fuel containers were specialized tanks/casks and they were appearing as purposefully designed containers/tanks and the 28 fuel containers inside 7 frames/specialised freight containers containers/tanks in the B/L etc. documents, they were found duly labeled/marked with Hazardous Material Identification number "Radioactive II.... contents.... U (enriched equal to or less than 20%.... Activity 281.6 GBq" "UN 3327" etc. in accordance with the national and international regulations pertaining to the same. The "Type-II" Package label with Hazard Class 7 and activity written by hand. Type-1 Package label, Criticality 'Safety Index (CSI) for Fissile Material etc. were indicating carriage of nuclear material by the said 28 containers/tanks, although they were declared as empty containers.

5.2 The investigation as well as the Report of the technical expert deputed by DAE confirmed the cargo as the containers and casks used for transport of prescribed substances and falling under Category "0B-Prescribed Equipment of the SCOMET list of India's export control, which had arrived vide MV Shiling and had placed at Transworld CFS. Thus, investigation have established

mis-declaration of goods. In view of the same, the adjudicating authority has absolutely confiscated the 28 nuclear fuel tanks/casks which mis-declared as fuel tanks, under Sections 111(f) & 111(n) of the Customs Act, 1962. Further, 07 Specialized Freight Containers/Frames were also ordered for absolute under Sections 111(f) & 111(n) read with Section 118(a) of the Customs Act, 1962 as the nuclear fuel tanks/casks were found inside 07 Specialized Freight Containers/Frames, which acted as a package for the nuclear fuel tanks/casks.

5.3 I find that the adjudicating authority has critically examined the role of Respondent No. 1 and 2 to ascertain their culpability if any. From the facts, it emerged that the Respondent No. 1 made declarations pursuant to information received from the shipper. The shipper had declared the nuclear fuel tanks/casks as empty containers. It is undisputed fact that no Bill of Entry has been filed for Clearance of any imported goods. It is also on record that the impugned goods were destined for transshipment, as the cargo were shipped from Karachi (Pakistan) to Shanghai (China), through Mundra Port.

5.4 During the investigations, it was found that Respondent No. 1 failed to comply with the provisions of SCMTR, 2018 and Respondent No. 2 also failed to comply with the provisions of SCMTR, 2018 in as much as the Respondent No. 1 on behalf of Respondent No. filed Arrival Manifest at Mundra without clear details about 28 nuclear fuel tanks/casks. Looking to the violations of SCMTR, 2018 as discussed by the adjudicating authority, I am of the considered view that the appropriate actions against both M/s. OOCL India Pvt. Ltd. and Shri Koralagamage Anira Nishantha Jayawardhana can be initiated under SCMTR, 2018. It is also relevant to mention further observed there that the copies of the show cause notice in this matter was already forwarded to the Commissioner of Customs, Mundra Port as well as the Commissioner of Customs (General) Nhava Sheva Port for taking action under SCMTR, 2018.

5.5 Further, in case of cargo, where documents given to the shipping line and Master of Vessel do not indicate any violation, it is not possible for these stakeholders to detect a mis-declaration of the goods, in absence of any intelligence or/and having any input about such mis-declaration. It is also fact that none of these noticees were aware about mis-declaration of goods. As per the international trade practice, Exim Trade is conducted on the basis of declarations made in the relevant documents. It is observed that there was no attempt to clear/remove the goods from Mundra Port to domestic area or/and in other place than destined place of transshipment as no Bill of Entry was filed at the port. The empty containers which are found to be misdeclared cannot be treated as goods.



5.6 I find that the investigations have not proved the involvement of Respondent No. 1 & 2 for invoking penal action against them. From the records it is observed that the Respondent No. 1 & 2 had no knowledge/information regarding the nature of cargo. Further, the carrier is not required to check each and every cargo as the same are subjected to verification at the port of lading as well as port of discharge. In view of the same, I agree with the findings of the adjudicating authority that it is a case of mis-declared cargo, which came to Mundra Port for transshipment to China and it is undisputed fact that there was no attempt to clear/remove the goods from Mundra Port to domestic area or/and in other place than destined place of transshipment. In this regard, I find the case law of Arebee Star Maritime Agencies Versus Commissioner of C. Ex., Rajkot reported at (2004) 173 ELT 185 and cited by the Respondent No. 1 to be relevant in the present case wherein the Hon'ble Tribunal held as under :-

" 4 (e) ----Penalty under Section 112 are also not called for because the assessee company and its Director and the Manager are not proved to have knowingly dealt with the goods found liable to confiscation there is no material as regard confiscation of i.e. Ammonium Sulphate to have been knowingly imported by the Liner Agent. The penalty under Section 112 on the appellants cannot be upheld. The same is required to be set aside."

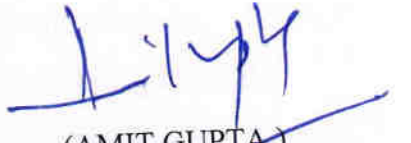
Further, I also place reliance on the case law of COMMISSIONER OF CUSTOMS (PREV.), SHILLONG Versus PIR KHONGSDIR as reported at 1998 (97) E.L.T. 332 (Tribunal) wherein the Hon'ble Tribunal held as under :-

"7. -----Penalty under Section 112(b) which has been invoked in the present circumstances, can be imposed only on a person concerned provided he has reason to believe that the gold was liable to confiscation. It cannot be said on the basis of evidence on record in this case including the statement of the respondent that the respondent could have reason to believe that the content of the packets which was given to him were liable to confiscation under the Customs Act. While I do not agree with the observations of the adjudicating authority that penalty under Section 112 (b) is not required to be imposed because the respondent was only a carrier but I find on the basis of the over-all evidence on record that there was no warrant for imposing any penalty on the respondent. Consequently, I do not find any substance in the Revenue's appeal for modifying the adjudicating authority's order by way of imposition of penalty on the respondent. Appeal is, therefore, dismissed."

Accordingly, I uphold the impugned order wherein penalties proposed against Respondent No. 1 and Respondent No. 2 have been set aside.



6. In view of the discussion and findings as above, the appeals filed by the Appellant Department against Respondent No. 1 and Respondent No. 2 are rejected .


(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

Date: 07.11.2025

F.No. S/49-02/CA-2/CUS/MUN/2024-25
F.No. S/49-01/CA-2/CUS/MUN/2025-26

By Speed Post/E-Mail
To,

1. The Assistant Commissioner of Customs,
Import Assessment Group-V, Custom House, Mundra.
2. M/s. OOCL India Pvt. Ltd.,
ICC Chambers, 5th floor, Saki vihar Road,
Opp Santogen Silk Mills, Powai,
Mumbai-400072.
3. Shri Koralagamage Anira Nishantha Jayawardhana,
person-in charge / Master of vessel MV Shilling/005E at Mundra Port
(Email:-anirajaya@gmail.com)



Copy to:

1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
2. The Pr. Commissioner of Customs, Custom House, Mundra.
3. The Additional Commissioner of Customs , Custom House, Mundra
4. Guard File.