	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	

दस्तावेज पहचान संख्या/ Document Identification Number (DIN) – 20250671MM0000224269

1. फ़ाइल क्रमांक/ File Number	CUS/5634/2024-Adjn. (Computer File No. 1486327)
2. मूल आदेश क्रमांक/ Order-In-Original Number	JAM-CUSTM-PRV-COM-001-25-26
3. आदेश पारित करने वाला प्राधिकारी/ Authority Passing the Order	धिरेंद्र लाल / Dhirendra Lal आयुक्त/ Commissioner, सीमा शुल्क निवारक(/ Customs (Preventive), जामनगर/ Jamnagar.
4. आदेश की तिथि/ Date of Order	24.06.2025
5. आदेश जारी करने की तिथि/ Date of issue of Order	24.06.2025
6. कारण बताओ नोटिस संख्या और तारीख/ Show Cause Notice number and date	संख्या/ No.: COMMR-05/2024-25 दिनांक / dated: 23-10-2024
7. नोटिस पाने वाले का नाम/ Name of the Noticee	M/s International Seaport Dredging Pvt. Ltd., 1 st Floor, Ocean Square, Thiruvika Industrial Estate, Ekkattuthangal, Guindy, Chennai – 600 032 मेसर्स इंटरनेशनल सीपोर्ट ड्रेजिंग प्राइवेट लिमिटेड, प्रथम तल, ओशन स्क्वायर, थिरुविका इंडस्ट्रियल एस्टेट, एक्कटटुथंगल, गुइंडी, चेन्नई – 600 032

8. 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.
9. इस मूल आदेश से व्यथित कोई भी व्यक्ति, सीमा शुल्क अधिनियम, 1962 की धारा 129A(1)(a), सीमा शुल्क (अपील) नियम, 1982 के नियम 6(1) के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से तीन महीने के भीतर फॉर्म सीए-3 में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए-3 में अपील का प्रपत्र, चार 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)

सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण, पश्चिम जोनल बेंच, दूसरी मंजिल, बहुमाली भवन असरवा, गिरधर नगर ब्रिज के पास, गिरधर नगर, अहमदाबाद, (गुजरात) – 380 004	Customs, Excise and Service Tax Appellate Tribunal (West Zonal Bench) 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad (Gujarat) – 380 004
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Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-3, within three months from the date of receipt of this order, under the provisions of Section 129A(1)(a) of the Customs Act, 1962, read with Rule 6(1) of the Customs (Appeals) Rules, 1982. The form of appeal in Form No. CA-3 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).

10. 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 - 1, 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.

11. अपील के साथ, सीमा शुल्क अधिनियम, 1962 की धारा 129 (A) की उप-धारा (6) के अंतर्गत किसी भी राष्ट्रीयकृत बैंक द्वारा न्यायाधिकरण की उक्त पीठ के सहायक रेजिस्ट्रार के पक्ष में रेखांकित बैंक ड्राफ्ट रु. 1000/-, रु. 5000/- या रु. 10,000/- जैसा भी लागू हो, ऐसे स्थान पर स्थित शाखा के लिए जारी किया जाना चाहिए, जहां पर उक्त पीठ स्थित है।

The appeal should be accompanied with a cross demand draft in favour of the Assistant Registrar of the Bench of the Tribunal, on a branch of any Nationalized Bank located at a place where the bench is located for Rs. 1,000/- (in cases where the duty, interest, fine, or penalty demanded is Rs. 5 lakh or less), Rs. 5,000/- (in cases where the duty, interest, fine, or penalty demanded is more than Rs. 5 lakhs but less than Rs. 50 lakhs) and Rs. 10,000/- (in cases where the duty, interest, fine, or penalty demanded is more than Rs. 50 lakhs) as applicable under Sub-Section (6) of the Section 129(A) of the Customs Act, 1962.

12. अपीलीय ज्ञापन के साथ शुल्क भुगतान/ जुर्माना/ अर्ध दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962, की धारा 129 (E) 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 129 (E) of the Customs Act, 1962.

13. अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क (अपील) नियम, 1982 और सिस्टेट प्रक्रिया (प्रोसीजर) नियम, 1982 के सभी नियमों का पूरा पालन हुआ है।

While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.

14. इस आदेश के खिलाफ अपील, सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के 7.5% के 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 Customs, Excise and Service Tax Appellate Tribunal, 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:

M/s. International Seaport Dredging Private Limited, 1st Floor, Ocean Square, Thiruvika Industrial Estate, Ekkattuthangal, Guindy, Chennai- 600 032 (hereinafter referred to as **"the Noticee"**) holding IEC No. 0504016580, had entered into Contract (Letter of Award) for capital dredging of rock materials and reclamation works for LNG Port Terminal Facilities at Village: Bhankodar, Near Jafrabad, Gujarat (India).

2. The Noticee had made temporary import of the goods mentioned hereunder in Table-A on re-export basis, wherein the goods were imported on No-Sale & Non-Transfer of ownership, for execution of Dredging Projects on lease/ rent:

Table-A

Sl. No.	Bill of Entry No. & Date	Description of goods (CTSH)	Qty.	Assessable Value (INR)	Rate of Duty	Duty paid (INR)	Date of OOC
(1)	3250489 / 10.11.2022	(TEMP. IMP ON RE-EXPORT BASIS - DREDGING EQUIPMENTS) DONUTS FLOATE - RID 1 100 X OD 3500 X 14200 (FREE OF COST) (FOR DREDGING OPERATION) (CTSH -89079000)	01 Unit	5383072.33	BCD - 10%, SWS-10%, IGST-18% (Aggregate of Duties of Customs - 30.98%)	29607/-	26.11.2022
(2)	4064532 / 06.01.2023 (Inv.-01 / Item- 01)	(TEMP. IMP ON RE-EXPORT BASIS - ONE UNIT SELF-PROPELLED AHT (MULTICAT AUXILIA - IMO-9855537 - BUILT - 2019, (FREE OF COST) (FOR DREDGING OPERATION) (CTSH -89040000)	01 Unit	960561707	BCD - 10%, SWS-10%, IGST-18% (Aggregate of Duties of Customs - 30.98%)	52818183	14.01.2023

3. The Noticee had classified the above mentioned goods under Customs Tariff Heading No. 89079000 & 89040000 of the First Schedule to the Custom Tariff Act, 1975 (hereinafter referred to as **"the said goods"**) and had availed the benefit of the Notification No. 72/2017-Cus dated 16.08.2017 to claim exemption from payment of customs duty. Notification No. 72/2017-Cus dated 16.08.2017 read as follows:-

Notification No. 72/2017-Cus. Dated 16.08.2017 - Exemption to temporary import of leased machinery, equipment & tools:

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 27/2002-Customs, dated the 1st March, 2002 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 124(E), dated the 1st March, 2002 except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description specified in column (1) of the Table annexed hereto, from the payment of so much of the customs duty leviable thereon under First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in column (3) of the said Table and from the whole of the integrated tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975 subject to the limitations and conditions specified in column (2) thereof, namely :-

TABLE

Description of goods (1)	Limitations and conditions (2)	Extent of exemption (3)
Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).	<p>(1) the goods have been taken on lease by the importer for use after import;</p> <p>(2) the importer makes a declaration at the time of import that the goods are being imported temporarily for execution of a contract;</p> <p>(3) the import of such machinery, equipment or tools is covered under item (b) of clause 1 or item (f) of clause 5 of Schedule II of the Central Goods and Services Act, 2017;</p> <p>(4) the said goods are re-exported within three months of the date of such import or within such extended period not exceeding 18 months from the date of said import, as the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, may allow;</p> <p>(5) where the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, grants extension of the aforesaid period for re-export, the importer shall pay the difference between the duty payable under the relevant clause in column (3) and the duty already paid at the time of their import;</p> <p>(6) the importer executes a bond, with a bank guarantee, undertaking -</p> <p>(a) to pay integrated tax leviable under sub-section (1) of section 5 of the Integrated Goods and Services Act, 2017 on supply of service covered by items 1(b) or 5(f) of Schedule II of the Central Goods and Services Act, 2017;</p> <p>(b) to re-export the said goods within three months of the date of import or within the aforesaid extended period;</p> <p>(c) to produce the goods before the Assistant Commissioner of Customs or the Deputy Commissioner of Customs for identification before re-export;</p> <p>(d) to pay the balance of</p>	<p>In the case of-</p> <p>(i) goods which are re-exported within three months of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of five per cent.;</p> <p>(ii) goods which are re-exported after three months, but within six months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of fifteen per cent.;</p> <p>(iii) goods which are re-exported after six months, but within nine months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of twenty-five per cent.;</p> <p>(iv) goods which are re-exported after nine months, but within twelve months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of thirty per cent.;</p> <p>(v) goods which are re-exported after twelve months, but within fifteen months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of thirty-five per cent.;</p> <p>(vi) goods which are re-exported after fifteen months, but within eighteen months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of forty per cent.,</p> <p>of the aggregate of the duties of customs, which would be leviable under the Customs Act, 1962 read with any notification for the time being in force in respect of the duty so chargeable.</p>

	<p>customs duty, along with interest, at the rate fixed by notification issued under section 28AA of the Customs Act, 1962, for the period starting from the date of import of the said goods and ending with the date on which the duty is paid in full, if the re-export does not take place within the stipulated period; and</p> <p>(e) to pay on demand an amount equal to the integrated tax along with applicable interest payable on the said goods but for the exemption under this notification in the event of violation of any of the above conditions.</p>	
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Note: The goods imported under this concession shall not be eligible for drawback under sub-section (2) of section 74 of the Customs Act, 1962."

4. During the audit of records of the Noticee by CRA, Ahmedabad, it appeared that, the goods mentioned in Table-A above imported by the Noticee were floating apparatus falling under CTH 89079000 & 89040000 and the Noticee themselves have voluntarily filed the Bills of Entry classifying the goods under the said heading. Further, these goods appear to be floating structure in nature. The title of Chapter 89 read as "Ships, boats and floating structures". Careful reading of the Notification No. 72/2017-Cus. transpires that the goods mentioned in Col.1 – Description of the Goods – states that the goods to qualify to avail the benefit of said notification should be "Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)", whereas in the present case, it appeared that the goods in question imported by the Noticee are 'floating structures' and therefore, appeared not to fall in the category of any machinery, equipment or tools. Hence, it appeared that these goods in question do not qualify for benefit under the Notification No. 72/2017-Cus dated 16.08.2017.

5. It further appeared from the above that, the goods described hereinabove viz. (1) DONUTS FLOATE – RID 1 100 X OD 3500 X I4200 and (2) ONE UNIT SELF-PROPELLED AHT (MULTICAT AUXILIA – IMO-9855537 – BUILT – 2019 covered under two Bills of Entry i.e. Bills of Entry No. 3250489 dated 10.11.2022 and No. 4064532 dated 06.01.2023 imported by the Noticee, are not eligible for exemption from Customs Duties under Notification No.72/2017-Cus., they attract duties of Customs as tabulated here-in-below under Table-B:

Table-B

Sr. No.	Types of Duties	DESCRIPTION OF THE GOODS	
		DONUTS FLOATE – RID 1 100 X OD 3500 X I4200	ONE UNIT SELF-PROPELLED AHT (MULTICAT AUXILIA – IMO-9855537 – BUILT – 2019
(1)	Bill of Entry No. & Date	3250489 / 10.11.2022	4064532 / 06.01.2023
(2)	CTH No.	89079000	89040000
(3)	Assessable Value (INR)	53,83,073/-	96,05,61,707/-
(4)	Basic Customs Duty (BCD) @ 10% adv. (INR)	5,38,307/-	9,60,56,171/-
(5)	Social Welfare Surcharge (@ 10% of BCD (INR)	53,831/-	96,05,617/-
(6)	Value for calculation of Integrated Tax (IGST) (INR)	59,75,211/-	106,62,23,495/-

(7)	Integrated Tax (IGST) (@5%)	2,98,761/-	5,33,11,175/-
(8)	Total Customs Duty Payable (2+3+5)	8,90,899/-	15,89,72,858/-
(9)	Customs Duty paid	88,821/-	5,28,18,183/-
(10)	Differential Duty payable	8,02,078/-	10,61,54,675/-
	TOTAL short levy of Customs Duty	Rs.10,69,56,753/-	

5.1 As per the calculation of customs duty stipulated in the above table, it appeared that the Noticee is liable to pay total customs duty amounting to Rs. 15,98,63,757/- (Rs.8,90,899/- + Rs. 15,89,72,858/-) in respect of the aforesaid two Bills of Entry. It further appeared that as against the above duty liability, the Noticee had paid the Customs duty amounting to Rs. 5,29,07,004/- (Rs. 88,821/- + Rs. 5,28,18,183/-), while clearing the imported goods. Therefore, it appeared that there is short-levy of duty amounting to Rs.10,69,56,753/-, as calculated in the table above. Further, it appeared that the Noticee had also voluntarily paid the interest amounting to Rs. 1,23,721/- and penalty of Rs. 75,26,391/- subsequently.

6. RECOVERY OF DUTIES, CONFISCATION OF GOODS & IMPOSITION OF PENALTIES

6.1 Section 17(1) of the Customs Act, 1962 reads as: -

Section 17. Assessment of duty. – (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

Board Circular No. 17/2011-Customs dated 08.04.2011 reproduced here under for ready reference:

'.....Self-Assessment' of Customs duty in respect of imported and export goods by the importer or exporter, as the case may be. This means that while the responsibility for assessment would be shifted to the importer/exporter, the Customs officers would have the power to verify such assessments and make re-assessment, where warranted.

2..... The importer or exporter at the time of self-assessment will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported/export goods while presenting Bill of Entry or Shipping Bill.....;

6.2 Section 28 of the Customs Act, 1962 provides for recovery of duties not levied or not paid or short-levied or short-paid as under:

(1)-----

(2)-----

(3)-----

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

6.3 Section 28AA of the Customs Act, 1962 provides for levy of interest on delayed payment of duty as under:

"(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3)

6.4 Section 46(4) of the Customs Act 1962 provides that, *"the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed."*

6.5 Section 46(4A) of the Customs Act, 1962 provides that, *"the importer who presents a bill of entry shall ensure the following, namely:-*

- (a) the accuracy and completeness of the information given therein;*
- (b) the authenticity and validity of any document supporting it; and*
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force."*

6.6 Section 111(m) of the Customs Act, 1962 provides for confiscation of improperly imported goods as under:

"111. Confiscation of improperly imported goods, etc. –*The following goods brought from a place outside India shall be liable to confiscation:-*

.....

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case baggage with the declaration made under Section 77 in respect thereof or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of Section 54.

....."

6.7 Section 112 of the Customs Act, 1962 provides for penalty for improper importation of goods, etc. – Any person,

- (a) 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, or*
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111,*

shall be liable,-

- (i)*
- (ii)*
- (iii)*

(iv)
(v)

6.8 Section 114A of the Customs Act, 1962 provides for penalty for short-levy or non-levy of duty in certain cases as under:

"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 willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined."

6.9 The import of goods has been defined in the IGST Act, 2017 and Section 5 of the IGST 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 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"*. Further, as per Sub-Section 7 of Section 3 of 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 IGST Act 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."*

7. As per Section 17 of the Customs Act, 1962, an importer entering any imported goods under Section 46, shall self-assess the duty leviable on such goods. In the instance case, it appears that the Bills of Entry, as detailed in Table-A above, were wrongly assessed and therefore, these bills of entries are required to be re-assessed in terms of the provision of Section 17 of the Customs Act, 1962. Since, the terms assessment includes re-assessment, accordingly these Bills of Entry are required to be re-assessed in terms of the provisions of Section 17 of the Customs Act, 1962.

8. It appeared from the above that imported goods, as mentioned in Table-A above, are floating structures and thereby do not qualify for benefit of any concession in customs duty under Notification No. 72/2017-Cus dated 16-08-2017, instead the same would attract full customs duty, as applicable. It further appeared that the Noticee being fully aware of the fact that though their imported goods being undisputedly 'floating structures' falling under Chapter 89 and not Machinery, Equipment or Tools falling under Chapter 84, 85 or 90 as mandated in the said Notification, they have wrongly availed the benefit of exemption notification by knowingly and deliberately indulging in mis-representation of above material facts at the time of self-assessment of the said Bills of Entry with an intention to evade payment of applicable Customs Duty. Thus, the Bills of Entry appeared to have been self-assessed incorrectly to avail the benefit of the said Notification which was inadmissible to them, as discussed hereinabove, resulting in short-payment of Customs Duty amounting to Rs.10,69,56,753/- as calculated in Table-B above. Moreover, the fact of short-payment of customs duty came to the notice of the department only at the time of audit of the Bills of Entry. Therefore, it appeared that the short-paid customs duties amounting to Rs. 10,69,56,753/- are required to be demanded and recovered under Section 28(4) of the Customs Act, 1962 along with appropriate interest under Section 28AA of the Customs Act, 1962.

9. It further appeared that the Noticee have imported goods covered under two Bills of Entry as detailed in Table-A above, totally valued at Rs. 96,59,44,780/-, by deliberately mis-declaring the imported goods as Machinery, Equipment or Tools instead of floating structures, in contravention of the provisions of Section 46(4) of the Customs Act, 1962. In terms of Section 46(4) of Customs Act, 1962, the Noticee was required to make a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty, which in the instant case, the Noticee failed to do in respect of imports of the said goods through CH Pipavav. For these contraventions and violations, the goods appear to fall under the ambit of 'smuggled goods' within the meaning of Section 2(39) of the Customs Act, 1962, and are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

10. It also appeared that the aforesaid acts of suppression of facts and wilful mis-statement by the Noticee led to short levy and short-payment of customs duty of Rs.10,69,56,753/-, as mentioned in Table-B above, thus, rendering them liable for penalty under Section 114A of the Customs Act, 1962, inasmuch as the duty amounting to Rs.10,69,56,753/- was short levied and short-paid by reason of wilful mis-statement and suppression of facts with a mala fide intention of evasion of Customs duty by wrongly claiming the benefit under Notification No.72/2017-Cus dated 16-08-2017, which was inadmissible to them. All the aforesaid acts of omission and commission on the part of the Noticee appeared to have rendered the subject imported goods totally valued at Rs. 96,59,44,780/- liable for confiscation under Section 111(m) of the Customs Act, 1962 and the Noticee therefore, appeared to be liable to penalty under Section 112 of the Customs Act, 1962.

11. The above observations culminated into issuance of the Show Cause Notice No.Commr-05/2024-25 dated 23.10.2024 to the Noticee to show cause as to why:

- (a) the benefit of Exemption Notification No. 72/2017-Cus dated 16.08.2017 claimed by the Noticee, M/s. International Seaport Dredging Private Limited, Chennai- 600032, should not be denied and Customs duty, as applicable, should not be recovered from them;
- (b) the differential Customs duty amounting to Rs.10,69,56,753/- (Rupees ten crore, sixty nine lakh, fifty six thousand, seven hundred and fifty three only), as detailed in Table-B above, short paid by them, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;
- (c) interest on the Customs duty as mentioned in (b) above should not be charged and recovered from them, under the provisions of Section 28AA of the Customs Act, 1962;
- (d) the imported goods valued at Rs. 96,59,44,780/- (Rupees ninety six crore, fifty nine lakh, forty four thousand, seven hundred and eighty only), as detailed in Table-B above, should not be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962;
- (e) Penalty should not be imposed upon them under the provisions of Section 112 and / or 114A of the Customs Act, 1962.

Defense reply:

12. The Noticee vide their letter ref.no. Nil dated 26.12.2024 received on 02.01.2025 had submitted as follows:

- (i) They are engaged in providing the capital and maintenance dredging operations to the port authorities at various ports in India and for the purposes of providing the intended dredging operations to be undertaken by them. They do temporarily import dredgers, work boats, tools and dredging equipment etc., which after its required use are re-exported to the overseas supplier from whom they have sourced temporarily on lease basis. They submit that they are also registered with the GST authorities for payment of GST on their operations for which they use both the local and imported equipments.
- (ii) They strongly believe that the dredgers and work boats etc., which are temporarily imported for use in dredging operations by obtaining the said goods on lease basis, are necessarily to be re-exported back to the owners/lessors after such use, are exempted from the payment of IGST vide Notification No: 50/2017-Cus dated 16.08.2017. [Sl. No: 557 B with condition no 103]. As the work boat and the various dredging equipments temporarily imported by them for their operations could only be regarded as apparatus/equipments, they had also availed the customs duty benefit [BCD] under Notification No. 72/2017-Cus. and which benefit was also duly extended to them on the import of such goods by the proper assessing officers of customs.

12.1 The submissions in respect of each of the bills of entry are as follows:

A. Import under BE No. 3250489/ 10.11.2022 –

- i. Vide the above BE, the "donut floater" a dredging equipment was imported temporarily for using at Jafrabad Port and was re-exported vide SB No: 8918312/ 29.03.2023. The said goods were declared as only dredging equipment in the BE for the purpose of assessment and clearance under Notification No. 72/2017-Cus, both for concessional customs duty and for the full exemption from the payment of the IGST. The said BE was assessed accordingly under Section 17 of the Customs Act, and thereafter, the OOC order was issued by exercising the powers under Section 47 of the Customs Act, thereby indicating that the declaration and self-assessment made by them in respect of the subject goods covered by the said bill was duly approved by the proper statutory authority. At the time of import, they had paid the duty BCD @ 5% amounting to Rs. 29,607/- and furnished a bond/ guarantee for the remaining 95% of the duty foregone on the said goods. As the said equipment could not be re-exported within the period of three months, they took extension of time from the appropriate authority by another three more months by remitting the differential duty @ 10% amounting to Rs. 62,255/-. After due re-export and on production of the required documents, the bond and bank guarantee furnished by them were discharged and returned to them after being cancelled by the proper officer of customs, a fact which again is not disputable.
- ii. Now, after a lapse of over two years, the impugned notice claims that the floating structures imported under the impugned Bill of Entry (BE) and classified under CTH 8907 are ineligible for temporary import benefits under the relevant customs notification. This reassessment is proposed without disputing or reviewing the declared description of the

goods as dredging equipment, which was properly assessed under Section 17 of the Customs Act. Secondly, the notice fails to recognize that reassessment should occur while the goods are still under customs control and within the prescribed period under Section 17(5) of the Customs Act, which has already expired. Thirdly, the Notice also overlooks the fact that the impugned notification covers not only machinery, equipment, or apparatus under specific chapters but also those classified under other chapters of the Customs Tariff. Thus, the classification of the goods under Chapter 89 does not hinder the exemption. The only condition in the notification is that machinery, equipment, or apparatus classified under any Customs Tariff chapter, when imported for temporary use and subsequently re-exported while adhering to prescribed limitations, qualifies for a duty exemption beyond the percentage stipulated in Column 3 of the attached table depending upon the period of usage. Furthermore, as the assessment granting benefits under Customs Notification 72/2017 has not been reviewed under Section 129D of the Customs Act and has therefore become final, the present demand against them is not maintainable.

- iii. In addition to the fact that they have re-exported the equipment back to the supplier as per the conditions enumerated in the impugned notification without they would be eligible for the equivalent drawback if customs duties were assessed and paid on the subject goods. They also submit that the fact that they are registered with the GST authorities and paid the appropriate GST on the output supplies rendered by them to their customer by providing the dredging operations should create whole tax neutral position. This leaves no room for the demand for the duty/tax on the subject imports that have already been re-exported.
- iv. They further submit that the officers from the SIIB of the Jamnagar Preventive Commissionerate initiated enquiry with them vide letter F. No. Cus/SIIB/INV/52/2023 dated 19.04.2024 and while compelling them to discharge the appropriate customs duty with interest and penalty on the import of the work boat Multicat Auxilia covered by B/E No. 4064532 dated 06.01.2023 in respect of which the demand has also been proposed in this notice has never questioned or asked them to pay the differential duty on the equipment imported under BE No. 3250489/10.11.2022 i.e. Donut Floater. Whereas, on a total change of opinion and in a most arbitrary manner the demand for the huge differential duty has been proposed in this notice that to making very serious allegations against them which are not maintainable in the admitted facts of the case particularly the fact that the whole assessment was done with the knowledge of the proper officer only and the subject equipment was also already re-exported making the whole allegation not sustainable in law.
- v. Given the factual and legal position as outlined above, the allegation that they have misused the above exemption notification to slap the consequent demand for the payment of remaining duty, as proposed in the impugned notice, appears unjustified. Furthermore, they have duly paid the GST/IGST on our outward supply of services and have filed the necessary tax returns as mandated under the GST law. Therefore, the proposed differential duty demand of Rs. 8,02,078/- at this distant date does not stand to facts or law.

B. Import under BE No. 4064532/ 06.01.2023 –

- (i) Under the referenced bill of entry, they have imported the Dutch-flagged work boat "Multi Cat Auxilia," which sailed into India carrying personnel and materials. This boat is essential for operating the cutter suction dredger (CSD), as the CSD lacks self-propulsion. The Multi Cat work boat is a navigable, self-propelling vessel equipped with winches, large cranes, and various tools required for dredging and marine operations. The work boat is nothing but a mobile/ floating machine/ equipment, facilitating anchor movement of the dredger, lay and remove and dismantle the floating pipe lines and connect it with the dredger, sway the pipes to deposit the dredged materials in the designated place.
- (ii) In view of the undisputed fact that the multi-cat work boat Auxilia, was temporarily imported under a lease agreement for dredging and marine operations, with necessary machinery and equipment housed within it. The bill of entry was filed by declaring the same as machine/ equipment under Chapter 89 of the Customs Tariff Schedule, availing the benefit of Notification No. 72/2017-Cus dated 16.08.2017. The proper officer, after being fully satisfied considered the boat's eligibility for the exemption. They at the cost of repetition submit that the primary function of the multi cat boat is undertaking the dredging and marine operations and its navigation to transport men and material is only secondary which is ancillary to its marine operations. As submitted earlier, the notification applies to machines, equipment, apparatus, and tools etc. irrespective of the tariff item under which it may fall. The boat was temporarily imported specifically for its two large cranes, winches, and other tools etc. essential for dredging, without which the operations were not possible to be carried out at all. In the circumstances, it is submitted that even though the work boat was classified under Chapter 8904, it ought to have been classified only under 8905 and if not under 8901, but still the benefit of the above notification was not deniable to them as the said boat was fitted with machinery, equipment etc. and the notification covered all such goods falling under any of the tariff headings of the Indian customs tariff Act making it not possible to hold that the work boat was only a tug or pusher when it is not factually so or claiming it as a floating structure.
- (iii) The notification granted exemption from BCD beyond the reduced duty rate specified in the impugned notification for temporary imports, based on the duration of usage in India. Accordingly, at the time of import, they paid Rs. 43,96,744/- towards the 5% BCD and provided a bond and guarantee for the remaining 95% duty. Regarding IGST, it was fully exempted from its payment under Notification No. 50/2017-Cus dated 30.06.2017 [Serial No. 553], which the notice has completely omitted to take note of for reasons best known.
- (iv) While the above facts remain unchanged, during the operation of the work boat Multi Cat Auxilia in India, officers from the SIIB of the Jamnagar Preventive Commissionerate initiated an inquiry via their letter Cus/SIIB/INV/52/2023 dated 19.04.2024, issuing summons which they promptly attended through their representative. The investigating officers asserted that they were ineligible for the duty benefit on the Multi Cat Boat Auxilia and accordingly compelled their representative to pay Rs. 5,01,75,936/- towards the merit rate of duty, computed at 5% as per Serial No. 553 of Notification No. 50/2017 Customs dated 30.06.2017 for goods under CTH 8904. Additionally, Rs. 6,39,228/- was collected

as interest for delayed duty payment, bringing the total to Rs. 5,08,15,164/-, which they paid. Subsequently, on 08.02.2023 and 04.04.2024, further amounts of Rs. 1,23,721/- and Rs. 31,941/- were collected as interest on delayed duty payment. Additionally, a penalty of Rs. 75,26,391/-, amounting to 15% of the duty, was also recovered. To ensure timely completion of dredging and smooth re-export of the work boat without any hassle, they were left with no other option but to pay these huge sums, which they had paid under protest without prejudice to their right to contest the forced collection of duty and penalty, without following the due process of law.

- (v) Upon completion of the dredging operation, the temporarily imported Multi Cat Auxilia work boat was re-exported to the supplier under drawback SB No. 8383040/10.03.2023, in compliance with the conditions of Notification No. 72/2017-Cus under the customs supervision. Additionally, they received the drawback of the duty paid, to the extent eligible, as per Section 74 of the Customs Act read with the Re-export Drawback Rules.
- (vi) The present notice, while reducing the compulsory collection of the differential duty amount of Rs. 5,01,75,936/-, has omitted other crucial details, including the payment of interest and penalty, which is unfair and unacceptable. Additionally, the notice arbitrarily computed the customs duty at the tariff rate of 10%, disregarding the effective rate of 5% specified under Serial No. 553 of Notification No. 50/2017-Cus dated 30.06.2017. This rate was acknowledged and enforced by preventive officers, who compelled us to pay the duty along with interest and penalty. Furthermore, despite IGST on the subject goods under CTH 8904 being exempt as per the same notification, the impugned notice still computed and quantified it for demand. Thus, the notice quantified the differential duty arbitrarily and contrary to law. In fact, they submit that when they had paid the entire customs duty and interest and the interest in terms of Section 28 of the Customs Act, notice should have been issued except for vacating the protest lodged by them in the payment of the customs duty with interest and the penalty. Whereas, suppressing the true facts, the present notice had been issued to them demanding the huge duty and taxes which are not payable by them as per law more particularly when they had already discharged the duty with interest and the 15% penalty as insisted by the preventive officers and had also obtained substantial part of the duty paid as drawback.
- (vii) They further constraint to record that it is quite unfortunate that even inspite of their letter dated 26/09/2024 informing of the SIIB investigation and their consequent payment of differential duty, the present notice has been issued without acknowledging their communication. Moreover, the differential duty and tax were computed arbitrarily, without extending them the effective rates to which the goods are eligible unconditionally which should have been avoided in the interest of justice and fair play. They respectfully submit that the issue of exemption for BCD on the goods has already been addressed by the investigating officers; aligning with Notification No. 50/2017-Cus dated 30.06.2017 [Serial no. 553] and the further fact of their eligibility to avail IGST exemption in terms of the aforesaid very same notification not being disputable at all nothing seems to survive in the present proceedings.
- (viii) They wish to reiterate that after completing the dredging operation, they re-exported the multi-cat work boat Auxilia (SB No: 10.03.2023) and rightfully obtained the duty drawback. With the import and export process concluded as per law, there is nothing left

for adjudication except the refund of the penalty collected from them. As their temporary import was fully known to the assessing authority and involved no contumacious conduct or malafide intent, they respectfully urge not to proceed further with adjudication. Doing so would amount to impermissible double jeopardy under the law, and they request the refund of the penalty in the interest of justice.

12.2 They submit that when duty-paid imported goods, identifiable through import documents, are re-exported within two years, the exporter is legally entitled to customs duty drawback, subject to depreciation, as per Section 74 and the Re-Export of Imported Goods (Drawback) Rules, 1995. Under Notification No. 19 Cus dated 6th February 1965 (as amended), the Government has prescribed a graded percentage of drawback based on usage. To ease the burden on regular importers making temporary imports, reduce transaction costs, and free up blocked funds required for upfront duty payments, the Government introduced Notification No. 72/2017 Cus, allowing reduced duty collection at the same rate as the drawback, with all applicable conditions. This notification clarifies that those availing the duty benefit cannot claim a drawback. Consequently, temporarily imported goods re-exported are eligible for a BCD drawback paid at the time of import. Thus, demanding full BCD is a revenue-neutral proposition. In their case, for dredging equipment, they paid 15% duty without claiming a drawback upon re-export. However, for the multi-cat Auxilia, they were compelled to pay full BCD. Upon its re-export within three months, they were granted a drawback of Rs. 5,01,75,935/-.

12.3 The notice fails to appreciate the trade-friendly measures introduced through the above notification and instead interprets it in a way that reverses progress, forcing them to pay the entire duty upfront only to later claim the applicable drawback upon re-export. Had the customs authorities denied the exemption benefit at the time of assessment and required full duty payment, they could have paid the duty and claimed the drawback without incurring interest or penalties. Now that the temporarily imported goods have already been re-exported, compelling them to pay duty with interest and penalty post-export is unreasonable and unwarranted. It imposes undue financial hardship and unnecessarily forces them into litigation. Since this exercise is revenue-neutral, with no actual revenue loss or malafide availment of the exemption benefit, apart from an interpretational issue, they request the adjudicating authority to drop further proceedings. Doing so would prevent unnecessary escalation while ensuring a refund of the penalty collected from them, as the matter does not warrant invoking the extended period under Section 28(4) of the Act. Notably, the notice has invoked Section 114A only for penalty purposes, not for demanding differential customs or IGST duty, where reassessment under Section 17 of the Act remains applicable in the admitted facts of the case.

12.4 Regarding the IGST demand, any IGST paid at the time of import is available as Input Tax Credit (ITC) under Section 16 of the Act, allowing its utilization for GST payments on outward supplies. Had the department collected full IGST on the imports, they would have rightfully claimed it as ITC and used it for tax payments on taxable outward supplies. To streamline this process, particularly for imports used in further manufacturing or the supply of goods and services, the Government introduced an unconditional IGST exemption under Notification No. 50/2017-Cus. They availed this exemption and provided satisfactory evidence to the authorities upon re-exporting the work boat.

12.5 In their respectful view, both the demands for BCD and IGST constitute a revenue-neutral proposition. Therefore, initiating the present proceedings, despite the authorities having already collected the appropriate duty with interest, is unwarranted. It is also well-settled legal principle that in cases involving revenue neutrality, the demand for duty under Section 28(4), along with the consequent proposal to impose a penalty, cannot be sustained. This position has been upheld in multiple judicial decisions viz. 2015(323)ELT299(Mad.); 2015(320)ELT22(SC); 2016(339)ELT467(Tri.-Ahmd.); 2014 (313) E.L.T. 789 (Tri. - Bang.), 2012 (276) E.L.T. 532 (Tri. - Ahmd.), 2017 (348) E.L.T. 276 (Tri. - Mumbai), 2015 (329) E.L.T. 449 (Tri. - Mumbai), 2016 (336) E.L.T. 692 (Tri. - All.), and 2011 (267) E.L.T. 115 (Tri. - Del.). In light of this settled legal position, the proposed notice for demanding duty/tax and imposing a penalty should be withdrawn.

12.6 The proposal to confiscate the goods under Section 111(m) of the Customs Act is not valid, as the goods are no longer available for confiscation, having been cleared and re-exported under Customs authority orders. Furthermore, Section 111(m) does not apply in this case, as all actions were taken with the full knowledge of the assessing officers. There is no dispute regarding the declared description or value of the imported goods, meaning the provisions of Section 111(m) are not triggered. The goods were properly imported, correctly declared as per import documents, and assessed by Customs officers, who ordered a first-check examination before completing the assessment as follows:

Examination Order: *Inspect the goods. Examine the vessel (one unit old & used Vessel). Verify the description w.r.t. the declared CTH, invoice, packing list, bill of lading, and other import documents. Check and examine 100% of the items mentioned in the invoice of the vessel, stores and provisions, declaration under supervision of AC/DC. Verify the surveyor report, quantity of bunkers. Verify vessel facts sheet with standard accessories and equipment, prov on board etc. Verify declared items with ship's log book, bunkers, and provision. Examine in the presence of an independent, approved CE and appraise the value with the help of the CE in prescribed format annexed to Board's Circular No. 07/2020-CUS dated 05.02.2020. Verify the end-use of the imported item with the help of the chartered engineer and ensure that the chartered engineer is empaneled at the port of import and verify the relevant public notice for the same. Please enclose photograph of vessel along with attested CE report.*

Dock officers, following the given order, inspected the subject vessel/ goods in reference to import documents and in the presence of an empaneled chartered engineer. After obtaining the CE's certificate, they submitted their examination report to the assessing authority. Upon receiving both reports, the assessing authority completed the assessment, approved clearance based on the bond and bank guarantee provided, and accepted payment of the reduced effective duty. The goods, temporarily imported, have since been duly re-exported under customs supervision, eliminating any basis for invoking Section 111(m). Since Section 111(m) does not apply, a penalty under Section 112(a) is unwarranted. Furthermore, as this case does not involve duty demand under Section 28(4), imposing a penalty under Section 114A is also far-fetched and not maintainable.

12.7 The proposal to impose a penalty under Section 114A of the Customs Act is improper and erroneous, as the notice invoking Section 28(4) is bad in law and unsustainable due to the absence of the required special ingredients under sub-section (4). Similarly, a penalty under Section 112(a) is unwarranted, as there has been no misdeclaration of the description or value of the goods to attract Section 111(m). Since the appellant has not engaged in any wrongful act or

contumacious conduct in the temporary import of goods listed in para 1 of the notice, imposing a penalty in this case is not warranted in this case.

12.8 The noticee correctly and bona fide declared the description and value of the imported goods, and their self-assessment was duly approved by the assessing officer. A mere difference in perception by audit officers regarding the applicable duty or exemption does not constitute misdeclaration, especially when the facts prove otherwise. The allegation appears to be self-serving, as its absence would render the notice legally non-est and unsustainable. In support of this contention, the noticee relies on the following case laws;

- (a) RG Sales Pvt. Ltd. vs. CC [2002 (148) ELT 1076]
- (b) Northern Plastics Ltd. vs. CCE [1998 (101) ELT 549 (SC)]
- (c) Bhagya Lakshmi Poha Industries vs. CCE [2008 (231) ELT 627]

12.9 They submit that the present proceeding if at all sustainable, then only Section 28[1] of the Act could be invoked treating it as a case involving short levy or short payment and there is no scope whatsoever for invoking the provisions of Section 111 or 112[a] or 114A against them.

12.10 Without prejudice to previous submissions, they state that the multi-cat work boat, which operates alongside the Cutter Suction Dredger, should either be classified as part of the dredger under tariff heading 8905, making it eligible for the benefit of Serial No. 554 under Notification 50/2017, or at least under heading 89.01 by accepting that the multi-cat auxilia is an ocean-going vessel with the Dutch flag, then it qualifies for the benefit of Serial No. 551 of the same notification. In either case, no BCD or IGST is applicable on the import of the said vessel.

Records of Personal Hearing –

13. The personal hearing in the matter was held on 14.05.2025 and the same was attended by Shri N. Viswanathan, Advocate of the Noticee. He explained the details of the case thereby reiterating the contents of their reply submitted vide letter dated 26.12.2024 and also referred his earlier letter submitted vide email dated 02.05.2025 for the purpose of personal hearing. Vide the said both the submissions, it has been stated that CRA-initiated notice alleges short levy of duty on two temporary imports after more than two years, making it time-barred. The audit fails to recognize that the classification of the equipment under any chapter does not affect eligibility for concessional duty under Notification 72/2017-Cus, which applies to temporarily imported goods across tariff chapters. Since, the goods imported by the noticee are admittedly dredging equipment that too temporarily imported the exemption granted cannot be called into question. The Noticee imported the following goods -

- (i) A "Donut Floater", a dredging equipment, was temporarily imported vide BE No: 3250489/ 10.11.2022 and was subsequently re-exported. The temporary import and re-export are undisputed. The Customs department initially granted concessional customs duty (BCD @ 5%) and full IGST exemption under Notification 72/2017-Cus, considering it temporary import of machinery for dredging. A Bond/ Bank Guarantee was furnished for the remaining 95% duty. An extension for re-export was obtained with an additional 10% differential duty paid. Upon re-export, the bond/ BG were discharged.

- (ii) A "Multi Cat Auxilia" work boat, a self-propelling vessel with dredging equipment, was temporarily imported under a charter party agreement vide BE No. 4064532/ 06.01.2023. It was declared under Chapter 89.04, seeking benefits of Notification 72/2017-Cus, which was initially granted by Customs. The work boat is nothing but a mobile/ floating machine/ equipment used for moving the anchors of the dredger, lay, and remove and dis-mantle the floating pipe lines and connect it with the dredger, sway the pipes to deposit the dredged materials in the designate place without which the dredging operations cannot be undertaken. At import, 5% BCD (Rs. 43,96,744/-) was paid, and a Bond/ BG was furnished for the remaining 95%. Full IGST exemption was availed under Notification No: 50/2017-Cus (serial no. 553), a fact that has been omitted in the current notice.

13.1 The Noticee further submitted that subsequently, the SIIB initiated an inquiry, compelling them to pay the differential duty of Rs. 5,01,75,936/- (calculated at 5% BCD as per Notification 50/2017-Cus, serial no. 553, for CTH 8904), interest of Rs. 6,39,228/-. Later on, the officers on 08.02.2023 and on 04.04.2024 collected a further sum of Rs.1,23,721/- and Rs.31,941/- from them towards interest payable on the said delayed payment of duty. A penalty of Rs. 75,26,391/- (15% of duty) was also recovered. These payments were made to ensure timely completion of dredging and hassle-free re-export, with the intent to pursue appellate remedies. The work boat was re-exported (Drawback SB No: 8383040/ 10.03.2023) under customs supervision and drawback was subsequently granted under Section 74 of the Customs Act.

13.2 However, the present notice while reducing the compulsory collection of the differential duty amount of Rs. 5,01,75,936/- had made the additional demand by computing the same at the tariff rate of 10% by purposely omitting to take note of the effective rate of 5% as provided under serial no. 553 of Notification No. 50/2017-Cus dated 30.06.2017. It also incorrectly quantifies IGST despite its exemption under the same notification. Given that the entire differential duty, interest, and penalty have already been paid in the earlier proceeding, nothing further survives in this notice. It may not be out of place for them to mention that they had also re-exported the multi cat boat and were granted the drawback of Rs. 5,01,75,935/- consequent to the export of the subject work boat within a period of three months.

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 26.12.2024 and letter submitted vide email dated 02.05.2025 for the purpose of personal hearing, 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:

- (a) The benefit of Exemption Notification No. 72/2017-Cus, dated 16.08.2017 as claimed by the Noticee, M/s. International Seaport Dredging Private Limited, Chennai- 600032, is liable to be denied or otherwise and consequently, the customs duty including IGST, as applicable, should be recovered from them or otherwise;
- (b) The differential Customs duty amounting to Rs. 10,69,56,753/- (Rupees ten crore, sixty nine lakh, fifty six thousand, seven hundred and fifty three only), under Section 28(4) of the

Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act,1962, is to be demanded and recovered from them or otherwise;

- (c) The imported goods valued at Rs. 96,59,44,780/- (Rupees ninety six crore, fifty nine lakh, forty four thousand, seven hundred and eighty only), as detailed in Table-B above, should be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 or otherwise;
- (d) The penalty is to be imposed upon them under the provisions of Section 112 and / or 114A of the Customs Act, 1962 or otherwise.

15. For the sake of clarity, I hereby classify my findings separately for each of the Bills of Entry as follows:

(A) Import of work boat 'Multicat Auxilia' vide Bill of Entry No. 4064532 dated 06.01.2023:

- (i) I observe that, the Noticee had made temporary import of the work boat 'Multicat Auxilia' on No-Sale & Non-Transfer of ownership basis, for execution of Dredging Projects on lease/ rent vide Bill of Entry No. 4064532 dated 06.01.2023 availing the benefit of Notification No.72/2017-Cus dated 16.08.2017. At the material point of time, the Noticee had paid 5% of the duty of customs as applicable to payable there on Assessable Value availing the exemption in terms of clause (i) of the Column (3) of the Table appended to the Notification No.72/2017-Cus dated 16.08.2017, assuming that the said goods will be exported within the period of three months from the date of import on execution of dredging of rock materials and reclamation works for LNG Port Terminal Facilities at Village: Bhankodar, Near Jafrabad, Gujarat (India).
- (ii) I further observe that, the officers from the SIIB of the Jamnagar Preventive Commissionerate vide letter F. No. Cus/SIIB/INV/52/2023 dated 19.04.2024 initiated enquiry against the Noticee that, the goods viz. work boat 'Multicat Auxilia' imported vide Bill of Entry No. 4064532 dated 06.01.2023 is floating structure having separate identity is not the integral part of dredger i.e. machinery, equipment or tools and therefore, do not qualify for the availment of the benefit of exemption Notification No.72/2017-Cus dated 16.08.2017, which is specifically for the temporary import of "Machinery, equipment or tools falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)" for execution of a contract. At that juncture, the Noticee vide Challan dated 06.02.2023 paid a differential duty of customs to tune of Rs 5,01,75,936/- as well as interest of Rs.6,39,228/- for the period of 31 days and Rs.1,23,721/- vide Challan dated 09.02.2023 for the period of 6 days as applicable under Section 28AA of the Customs Act, 1962 and penalty of Rs.75,26,391/- vide Challan dated 06.02.2023 @ 15% in terms of Section 28(5) of the Customs Act, 1962. However, the Noticee refrained from the payment of applicable IGST leviable under Section 5 of the IGST Act, 2017 contending the issue that they are eligible for the exemption from the payment of IGST.
- (iii) I further observe that during the audit of records of the Noticee by CRA, Ahmedabad, it appeared that, the goods viz. work boat 'Multicat Auxilia' imported vide Bill of Entry No. 4064532 dated 06.01.2023 by the Noticee, were floating structure falling under CTH 89040000 and the Noticee themselves have voluntarily filed the Bill of Entry classifying the goods under the said heading. The title of Chapter 89 read as "Ships, boats and floating

structures". Careful reading of the Notification No. 72/2017-Cus. transpired to the CRA that the goods mentioned in Col.1 – Description of the Goods – states that the goods to qualify to avail the benefit of said notification should be "*Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)*", whereas in the present case, it appeared that the goods in question imported by the Noticee are 'floating structures' in nature and therefore, does not to fall under the category of any machinery, equipment or tools. Hence, it appeared to CRA that these goods in question do not qualify for benefit under the Notification No. 72/2017-Cus dated 16.08.2017 and the Noticee is liable to pay applicable duty of customs and IGST, which resulted in-to culmination of Show Cause Notice No. COMMR-05/2024-25 dated 23.10.2024.

(iv) I observe that, the Noticee vide letter ref. no. Nil dated 26.12.2024 and letter dated Nil submitted vide Email dated 02.05.2025 and during the personal hearing held on 14.05.2025 contended that, (i) a "Multi Cat Auxilia" work boat, a self-propelling vessel with dredging equipment, was temporarily imported under a charter party agreement vide Bill of Entry No. 4064532/ 06.01.2023. It was declared under Chapter 89.04, seeking benefits of Notification 72/2017-Cus, which was initially granted by the Customs. The work boat is nothing but a mobile/ floating machine/ equipment used for moving the anchors of the dredger, lay, and remove and dis-mantle the floating pipe lines and connect it with the dredger, sway the pipes to deposit the dredged materials in the designate place without which the dredging operations cannot be undertaken; (ii) the work boat, 'Multicat Auxilia' was temporarily imported specifically for its two large cranes, winches, and other tools etc. essential for dredging, without which the operations were not possible to be carried out at all. In the circumstances, even though the work boat was not classified under Chapter 8904, it ought to have been classified only under CTH 8905 or 8901, but still the benefit of the Notification No.72/2017-Cus dated 16.08.2017 was not deniable to them as the said boat was fitted with machinery, equipment etc. and the notification covered all such goods falling under any of the tariff headings of the Indian customs tariff Act making it not possible to hold that the work boat as only a tug or pusher; and (iii) the present notice while reducing the compulsory collection of the differential duty amount of Rs. 5,01,75,936/- had made the additional demand by computing the same at the tariff rate of 10% by purposely omitting to take note of the effective rate of 5% as provided under serial no. 553 of Notification No. 50/2017-Cus dated 30.06.2017. It also incorrectly quantified IGST despite its exemption under the same notification at Sr. No. 557B with Condition no. 103.

(v) In this regard, I find that, the main function of the dredger is to remove the sand, slurry etc., from the sea bed to increase its depth. There are various types of dredgers like cutter suction, trailer suction with self-propulsion, back hoe dredger etc. The selection of dredger and allied accessories like anchor boat and other dredge spread depends upon the area of operation. In instant case, the dredger under import is a 'cutter suction dredger'. Dredging takes place with this dredger moored in some way and it involves an initial powerful cutting action with suction and pumped discharge to barges or more commonly, via a pipeline to a remote onshore area for disposal of land reclamation. I further find that, dredger can work without multi-cat work boats as the same does not form an integral part of dredger and dredger can function independently without Multicat 'work boat'. I further find that, a cutter

suction dredger can operate without a multicat work boats and the same offers only assistance in various tasks related to dredging operations. A cutter suction dredger can very well move itself using spuds and winches and the Multicat is useful only to handle tasks like towing, pushing, anchor handling, and transporting materials. So basically multicat work boat is extra facility being imported by the Noticee to execute dredging process more effectively and in even absence of Multicat work boat, the dredging operations could have been accomplished using cutter suction dredger with other integral apparatus such as floating pipelines, dredger pumping units, etc.

- (vi) I therefore find that in the instant case, the Noticee has claimed the benefit of Notification No. 72/2017-Cus dated 16.08.2017 which covers Machinery, equipment or tools falling under Chapter 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) while Multicat work boat falls under none of the said category i.e. 'Machinery, equipment or tools' as it is having individual functions with no correlation to the cutter suction dredger. In actual sense, both facilities viz. cutter suction dredger and multicat work boat are mutually exclusive facilities and therefore, I find that, the 'Multicat Auxilia', a work boat do not qualify for the extension of benefit of the exemption Notification No.72/2017-Cus dated 16.08.2017.
- (vii) With respect to the Noticee's contention that even though the work boat was not classified under Chapter 8904, it ought to have been classified only under CTH 8905 or 8901, I find that, the Noticee at the time of filing Bill of Entry has voluntarily self-assessed the Multicat Auxilia, a work boat under the CTH 89040000 which specifically refers to 'tugs and pusher craft'. Further, I find that even at the time, when officer of SIIB of the Jamnagar Preventive Commissionerate initiated an inquiry against the Noticee that Multicat Auxilia, a work boat does not form the integral part of dredger and accordingly do not qualify for the extension of benefit of the exemption Notification No.72/2017-Cus dated 16.08.2017, the Noticee accepted the said fact and had paid differential duty of customs along with interest and penalty under the same CTH i.e. 89040000, which specifically refers to 'tugs and pusher craft'. However, the Noticee refrained from paying IGST on the grounds that they have temporarily imported Multicat Auxilia on charter hire basis under Notification No. 72/2017-Cus and 16.08.2023.
- (viii) I further find that, as per data downloaded from <https://hermansr.com>, the subject vessel AUXILIA (IMO 9855537, MMSI 244650204) is a Utility Vessel built in 2019 falls under the category of Hull Offshore Support Vessel, Tug, Anchor Handling Vessel and therefore, the same was aptly classified by the Noticee under the CTH 89040000, which specifically refers to 'tugs and pusher craft.' However, the Noticee as afterthought now trying to manipulate the classification, so as to re-classify 'Multicat Auxilia', a work boat under CTH 8901 or 8905 in order to take the benefit of effective rate of customs duty at 'Nil' rate in terms of Notification No.50/2017-Cus dated 30.06.2017 as amended from time to time, as the said imported work boat 'Multicat Auxilia' is found not to be part of dredger and therefore, does not qualify for the exemption from the payment of applicable duty of customs and IGST under Notification No.72/2017-Cus dated 16.08.2017. Accordingly, I find that, the Noticee is liable to pay applicable IGST on the import of work boat 'Multicat Auxilia' imported vide Bill of Entry No. 4064532 dated 06.01.2023.

(ix) I observe that, the Noticee contended that the present notice while reducing the compulsory collection of the differential duty amount of Rs. 5,01,75,936/- had made the additional demand by computing the same at the tariff rate of 10% by purposely omitting to take note of the effective rate of 5% as provided under Serial No. 553 of Notification No. 50/2017-Cus dated 30.06.2017. In this regard, for the sake of clarity, I would like to reproduce relevant portion of the Notification No. 50/2017-Cus dated 30.06.2017 as under:

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(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 under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) 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 any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

Sl. No.	Chapter or Heading or sub-heading or tariff items	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
553.	8902, 8904 00 00 or 8905 90	All goods (excluding vessels and other floating structures as are imported for breaking up)	5%	-	84

The Condition No. 84 of the aforesaid Notification is as follows:

Condition No.	Condition
84	<i>If the vessels and other floating structures are intended to be broken up after their importation, the importer shall present a fresh bill of entry to the Commissioner of Customs, and thereupon such goods shall be chargeable with the duty which would be payable on such goods as if they were entered for home consumption, under section 46 of the Customs Act, 1962 (52 of 1962), on the date of the presentation of such fresh bill of entry, for the purposes of break-up of such goods.</i>

(x) On-going through the aforesaid Notification, I find that, the Noticee's contention is appropriate that when any vessel and other floating structures imported for purpose other than for

breaking-up is leviable to the basic customs duty @ 5% under Sl. No. 553 of the Notification No. 50/2017-Cus dated 30.06.2017. I find that, the Noticee, at the time of filing of Bill of Entry, in order to claim the effective rate of BCD, has classified the imported goods under Sl. No. 553 of the Notification No. 50/2017-Cus dated 30.06.2017; wherein the Notification No. 50/2017-Cus under column (5) specify IGST payable @ '-', which as per Explanation to the Notification No. 50/2017-Cus ibid means Integrated Goods and Services Tax leviable on the goods as per the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with any other notifications issued under the said Act, for the time being in force. Accordingly, I find that, the Noticee is liable for the payment of IGST at the rate prescribed under relevant tariff Notification of IGST for the subject goods i.e. as per Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017; wherein the IGST on import of tugs and pusher craft is mentioned at Sl. No. 248 leviable @ 5%.

- (xi) I also find that, the Noticee's further contention that the department has incorrectly quantified IGST and despite its exemption under the same notification i.e. Notification No.50/2017-Cus dated 30.06.2017 at Serial No. 557B with condition no. 102 does not hold ground, as the imported goods can't be classified under two different Serial No.s' of any particular tariff Notification to take benefit of effective rate of duty of different category of duty i.e. BCD and IGST. In this regard, for the sake of clarity, I would like to place on record that, Notification No. 50/2017-Cus dated 30.06.2017 was amended vide Notification No. 85/2017-Cus dated 14.11.2017 vide which in the Table appended to the aforesaid Notification ibid, after Sl. No.557A and the entries relating thereto, the following was inserted, namely;

Sl. No.	Chapter or Heading or sub-heading or tariff items	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
557B	Any chapter	All goods, vessels, ships [other than motor vehicles] imported under lease, by the importer for use after import	-	Nil	102

Explanation.- (I) For the purposes of this notification, the rate specified in column (4) or column (5) of the said Table is ad valorem rate, unless otherwise specified; (II) For the removal of doubts,- (a) "-" appearing in column (4) means basic customs duty leviable on the goods as per the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) read with any other notifications issued under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), for the time being in force. (b) "-" appearing in column (5) means integrated Goods and Services Tax leviable on the goods as per the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with any other notifications issued under the said Act, for the time being in force.

- (xii) From the above, I observe that, IGST on import of All goods, vessels, ships [other than motor vehicles] imported under lease, by the importer for use after import is leviable to 'NIL', subject to condition no. 102, which was notified by Notification No. 65/2017-Cus dated 08.07.2017 and reproduced herein as follows:

Condition No.	Condition.
102	The importer, by the execution of bond, in such form and for such sum as may be

	<p><i>specified by the Commissioner of Customs, binds himself, -</i></p> <p><i>(i) to pay Integrated tax leviable under section 5(1) of the IGST Act, 2017 on supply of service covered by item 1(b) or 5(f) of Schedule II of the Central Goods and Services Tax Act, 2017;</i></p> <p><i>(ii) not to sell or part with the goods, without the prior permission of the Commissioner of Customs of the port of importation;</i></p> <p><i>(iii) to re-export the goods within 3 months from the expiry of the period for which they were supplied under a transaction covered by item 1(b) or 5(f) of Schedule II of the Central Goods and Services Tax Act, 2017 out of India;</i></p> <p><i>(iv) to pay on demand an amount equal to the integrated tax payable on the said goods but for the exemption under this notification in the event of violation of any of the above conditions."</i></p>
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(xiii) Accordingly, I find that, the Noticee in order to avail the benefit of IGST at 'NIL' rate shall require to comply with two pre-requisite conditions (i) the Noticee shall at the time of filing of Bill of Entry should have classified imported goods i.e. Multicat Auxilia under Sl. No.557B of the Notification No.50/2017-Cus dated 30.06.2017 as amended vide Notification No. 85/2017-Cus dated 14.11.2017; and (ii) the Noticee shall require to execute bond in such form and for such sum as may be specified by the Commissioner of Customs. However, in the instant case, the Noticee at the time of filing of Bill of Entry had classified imported 'Multicat Auxilia', a work boat under Sl. No. 553 of the Notification No. 50/2017-Cus dated 30.06.2017 and has not executed any bond in compliance of the condition no.102 ibid. I find that, when the Noticee came across the fact that, the goods viz. Multicat Auxilia, a work boat imported by them does not qualify the exemption from the payment of duty under Notification No.72/2017-Cus dated 16.08.2017 has tried put forth hypothetical classification to avoid any penal action.

(xiv) Now coming to the Noticee's contention that in the instant case there is revenue neutral proposition, that in so far as the demand for the IGST is concerned, whatever IGST paid by them at the time of import would be very much available as ITC to them in terms of Section 16 of the CGST Act, I find that, the Noticee can't refrain from the payment of IGST at the point of importation on the ground that ITC would have been admissible to them, when any particular tariff notification of IGST do not exempt the payment of IGST at the time of importation. If such would be the case, for the each import which when used in the furtherance of business, the importer would not pay applicable IGST on such grounds.

(xv) I further find that, as the Noticee has mis-declared Multicat Auxilia, a work boat as "Machinery, equipment or tools" of cutter suction system, so as to avail the benefit of exemption from the payment of applicable duty of Customs and IGST in terms of Notification No.72/2017-Cus dated 16.08.2017, however, as discussed supra, a Multicat Auxilia, a work boat is not the integral part of cutter suction dredger and it is therefore, the said goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

(xvi) I rely upon the judgment of Hon'ble CESTAT, South Zonal Bench, Chennai in the case of M/s. International Seaport Dredging Ltd. Versus Commr. Of Cus., Tiruchirapalli reported at 2019 (366) E.L.T. 723 (Tri. - Chennai); wherein it has been held that,

"12. The import of work boat which is termed as a tug boat is not disputed and therefore, Chapter 89 which is wide enough, covers ships, boats and also floating structures and

without the fear of contradiction we can safely assume that the impugned goods are also covered under this Chapter. The grounds of appeal and even the written submissions and the arguments advanced during the course of hearing do not anywhere dispute the above facts.

13.1 The above facts are *pari materia* with that of the Order of the Mumbai Bench of the Tribunal in the case of Shipping Corporation of India Ltd. (*supra*) relied on by the Ld. Advocate. In its Order, the Mumbai Bench after considering the rival contentions and also after going through several decisions relied on, has concluded as under:

"6.12 In the light of the above discussions, import duty demand on vessels Smit Lumba, imported by the Shipping Corporation of India and Posh Giant-I and Salvaree imported by M/s. J.M. Baxi & Co. are sustainable in law and the appellants are liable to pay Customs duty in accordance with law. The appellants have not disputed either the valuation or the duty calculations adopted for confirmation of demand. However, the appellants have claimed that they would be eligible for the benefit of Notification No. 27/2002-Cus. as amended. The said Notification provides for duty concessions on "Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975" subject to the conditions that the goods have been taken on lease by the importer for use after importation; the importer makes a declaration at the time of import that the goods are being imported temporarily for execution of a contract; the said goods are re-exported within six months of the date of importation or within such extended period not exceeding one year from the date of importation, as the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, may allow. The concessional rate of duty prescribed is fifteen per cent., of the aggregate of the duties of customs, which would be leviable, in the case of goods which are re-exported within six months of the date of importation. In the case of goods which are re-exported after six months, but within one year of the date of importation, the rate of duty chargeable would be thirty per cent., of the aggregate of the duties of customs. To be eligible for the concession, the goods should be either machinery or equipment or tools. Tugs and barges can, by no stretch of imagination, be considered as falling in this category. They fall under Chapter 89 as "Ships, boats and floating structures". Therefore, in our view, the appellant would not be eligible for any duty concession under the said Notification and the claim in this regard is not sustainable.

13.2 In view of the above, we do not see any reason to interfere with the findings of the lower authority on the classification and the denial of benefit of Notification No. 27/2008 (*supra*). "

Here, it is to mention that, Notification No.72/2017-Cus dated 16.08.2017 was issued in supersession to the Notification No.27/2002-Cus dated 01.03.2002 as amended vide Notification No.27/2008-Cus dated 01.3.2008.

(xvii) I further find that, the Noticee vide Shipping Bill No.8383603 dated 10.03.2023 exported the goods 'Multicat Auxilia' under the drawback claim @ 95% rate of customs duty paid at the time of importation amounting to tune of Rs. 5,01,75,936/- under sub-section (2) of the Section 74 of the Customs Act, 1962 and has received drawback as submitted them at Para 18 in their defense reply dated 26.12.2024 and therefore, the offended goods are physically not available for confiscation. However, as regards the goods in question i.e. Multicat Auxilia imported at Pipavav Port Bill of Entry No. 4064532 dated 06.01.2023, I find that, though the said offended goods can be held liable to confiscation under Section 111(m) of the Customs Act, 1962, but the same cannot be confiscated being physically not available for confiscation and thereby I refrain from imposing redemption fine in lieu of confiscation of the goods. In this regard, I hereby rely upon, the judgment rendered with regard to confiscation by the High Court of Judicature at Bombay; wherein the Hon'ble High Court in the case of COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI Versus FINESSE CREATION INC. Customs Appeal No. 66 of 2009, decided on 25-8-2009 cited in 2009 (248) E.L.T. 122

(Bom.), has stated that,

"whether goods cleared and not available for seizure, liable to confiscation - Redemption fine arises when goods are available and are to be redeemed - No question of redemption of goods when goods not available - Customs authorities empowered to order confiscation with discretion to release them on payment of redemption fine - Confiscation not arises if goods are not available for confiscation and consequent redemption - Fine not impossible once goods cannot be redeemed - Impugned Tribunal order holding fine in lieu of confiscation not impossible when goods were not available, sustainable - Sections 111 and 125 of Customs Act, 1962."

(xviii) Further, the Hon'ble Supreme Court Bench in the aforesaid case i.e. Commissioner v. Finesse Creation Inc. – reported at 2010 (255) E.L.T. A120 (S.C.) after condoning the delay dismissed the Petition for Special Leave to Appeal (Civil) No. CC 7373 of 2010 filed by Commissioner of Customs (Import) against the Judgment and Order dated 25-8-2009 in C.A No. 66 of 2009 of the High Court of Bombay, held,

"the High Court vide its impugned order had distinguished the Apex Court decision in case of Weston Components Ltd. [2000 (115) E.L.T. 278 (S.C.)]. While holding that concept of redemption fine arises in the event the goods are available and are to be redeemed, and if goods are not available, there is no question of redemption of goods. The High Court held that since goods were cleared earlier, not available for confiscation nor consequently redemption, therefore, Tribunal was right in holding that fine in lieu of confiscation was not impossible."

(xix) In view of the above deliberations, I am of the considered view that, as the goods in question are not available for redemption, imposition of redemption fine is not possible. I also place reliance on the following case laws in support of my above findings:

- (a) In the case of Commissioner v. Indu Nissan Oxo Chemical Industries - 2015 (324) E.L.T. A30 (Guj.), the Hon'ble High Court of Gujarat has held – "that the penalty in lieu of redemption fine was not impossible when the goods were not available for confiscation."
- (b) In the case of N.K. CHAUDHARI Versus COMMISSIONER OF CUSTOMS (EP), MUMBAI [2018 (363) E.L.T. 908 (Tri. - Mumbai)] it was held – "Confiscation and redemption fine - Non-availability of goods - In view of Larger Bench's decision in the case of Shiv Kripa Ispat [2009 (235) E.L.T. 623 (Tri.-LB.)], redemption fine not impossible when goods not available for confiscation - Accordingly, redemption fine set aside - Section 125 of Customs Act, 1962. [para 4]"

(xx) I find that, as the said goods are liable for confiscation under sub-section (m) of Section 111 of the Customs Act, 1962, the same falls under the category of 'smuggled goods' as defined under Section 2(39) of the Customs Act, 1962, which defines 'smuggling' as "in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 and section 113" and therefore, the Noticee has rendered himself liable for penalty for improper importation of goods, etc. under Section 112(a)(ii) of the Customs Act, 1962.

(xxi) Moreover, I further observe that, there is Note appended to the Notification No.72/2017-Cus dated 16.08.2017 to the effect that, "the goods imported under this concession shall not be eligible for drawback under sub-section (2) of Section 74 of the Customs Act, 1962." In view of the said provision, I find that the Noticee could not take two benefits simultaneously

for the same import i.e. claiming the concessional rate of duty of customs and IGST under Notification No. 72/2017-Cus ibid and taking drawback under sub-section (2) of the Section 74 of the Customs Act, 1962. It is therefore, irrespective any other discussion supra or otherwise also, the Noticee is not eligible to claim the benefit of Notification No.72/2017-Cus dated 16.08.2017, when he has already received drawback under sub-section (2) of the Section 74 of the Customs Act, 1962. I therefore find that, the Noticee is liable to pay the applicable duty of customs and IGST as detailed below:

Sl. No.	Duty Calculation	ONE UNIT SELF-PROPELLED AHT (MULTICAT AUXILIA - IMO-9855537 - BUILT - 2019
(1)	Bill of Entry No. & Date	4064532 / 06.01.2023
(2)	CTH No.	89040000
(3)	Assessable Value (INR)	96,05,61,707/-
(4)	Basic Customs Duty (BCD) @ 5% ad valorem (INR) in terms of Sl. No.553 of the Notification No.50/2017-Cus dated 30.06.2017	4,80,28,085/-
(5)	Social Welfare Surcharge (@ 10% of BCD (INR)	48,02,809/-
(6)	Value for calculation of Integrated Tax (IGST) (INR) ad valorem (INR) in terms of Sl. No.553 of the Notification No.50/2017-Cus dated 30.06.2017	1,01,33,92,601/-
(7)	Integrated Tax (IGST) (@5%)	5,06,69,630/-
(8)	Total Customs Duty Payable (2+3+5)	10,35,00,524 /-
(9)	Customs Duty paid	5,28,18,183/-
(10)	Differential Duty payable/Duty short levied	5,06,82,341/-

(xxii) Now, I proceed to consider the proposal of penalty under Section 114A of the Customs Act, 1962 against the Noticee. I find that the demand of customs duty total amounting to Rs. 5,06,82,341/- (Rupees five crore, six lakh, eighty two thousand, three hundred and forty one only) 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 natural corollary penalty is imposable on the Noticee/Importer under Section 114A of the Customs Act, 1962, which provides for penalty equal to duty or 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 or interest in terms of Section 114A ibid.

(xxiii) Further, penalty has also been proposed on the Noticee under Section 112 of the Customs Act, 1962. In this regard, I find that, the 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/Importer under Section 112 of the Customs Act, 1962.

(B) Import of 'donut floater' vide Bill of Entry No. 3250489 dated 10.11.2022:

- I observe that, the Noticee had made temporary import of 'donut floater' on No-Sale & Non-Transfer of ownership basis, for execution of Dredging Projects on lease/ rent vide Bill of Entry No. 3250489 dated 10.11.2022 availing the benefit of Notification No.72/2017-Cus

dated 16.08.2017. At the material point of time, the Noticee had paid 5% of the duty of customs as applicable to payable there on Assessable Value availing the exemption in terms of clause (i) of the Column (3) of the Table appended to the Notification No.72/2017-Cus dated 16.08.2017 *ibid*, assuming that the said goods will be exported within the period three months from the date of import on execution of dredging of rock materials and reclamation works for LNG Port Terminal Facilities at Village: Bhankodar, Near Jafrabad, Gujarat (India). However, as the goods can't be exported within the period of three months of importation, the Noticee on remitting the differential duty @ 10% amounting to Rs.62,255/- took extension of another three months in terms of clause (ii) of Column (3) the table appended to the Notification No.72/2017-Cus dated 16.08.2017 and finally re-exported the said goods vide Shipping Bill No: 8918312 dated 29.03.2023.

- ii. I further observe that during the audit of records of the Noticee by CRA, Ahmedabad, it appeared that, the goods viz. 'donut floater' imported vide Bill of Entry No. 3250489 dated 10.11.2022 by the Noticee were floating structure falling under CTH 89079000 and the Noticee themselves have voluntarily filed the Bill of Entry classifying the goods under the said heading. The title of Chapter 89 read as "Ships, boats and floating structures". Careful reading of the Notification No. 72/2017-Cus. transpired to the CRA that the goods mentioned in Col.1 – Description of the Goods – states that the goods to qualify to avail the benefit of said notification should be "*Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)*", whereas in the present case, it appeared that the goods in question imported by the Noticee are 'floating structures' in nature and therefore, does not to fall under the category of any machinery, equipment or tools. Hence, it appeared to CRA that these goods in question do not qualify for benefit under the Notification No. 72/2017-Cus dated 16.08.2017 and the Noticee is liable to pay applicable duty of customs and IGST, which resulted in-to culmination of Show Cause Notice No. COMMR-05/2024-25 dated 23.10.2024.
- iii. I observe that, the Noticee vide letter ref.no. Nil dated 26.12.2024 and letter dated Nil submitted vide Email dated 02.05.2025 and during the personal hearing held on 14.05.2025 contended that, (i) the "donut floater", a dredging equipment was imported temporarily for using at Jafrabad Port and was re-exported vide SB No: 8918312/ 29.03.2023. The said goods were declared as only dredging equipment in the Bill of Entry for the purpose of assessment and clearance under Notification No. 72/2017-Cus, both for concessional customs duty and for the full exemption from the payment of the IGST. The said B/E was assessed under Section 17 of the Customs Act, and thereafter, the OOC order was issued by exercising the powers under Section 47 of the Customs Act, therefore, reassessment can't be proposed without disputing or reviewing the declared description of the goods as dredging equipment, which was properly assessed under Section 17 of the Customs Act, 1962; (ii) re-assessment should occur while the goods are still under customs control and within the prescribed period under Section 17(5) of the Customs Act, which has already expired; and (iii) Notification No.72/2017-Cus covers not only machinery, equipment, or apparatus under specific chapters but also those classified under other chapters of the Customs Tariff. Thus, the classification of the goods under Chapter 89

does not hinder the exemption. The only condition in the notification is that machinery, equipment, or apparatus classified under any Customs Tariff chapter, when imported for temporary use and subsequently re-exported while adhering to prescribed limitations, qualifies for a duty exemption beyond the percentage stipulated in Column 3 of the attached table depending upon the period of usage.

- iv. I observe that, in the instant case, the Noticee at the time of import of the goods viz. 'donut floaters' vide Bill of Entry No. 3250489 dated 10.11.2022 had classified the same under CTH 89079000 and declared that the said goods as integral part of Cutter Suction Dredger i.e. dredging equipment, imported on lease/ rent with No-Sale & Non-Transfer of ownership basis, for execution of Dredging Projects at Jafrabad Port and has availed the benefit of Notification No.72/2017-Cus dated 16.08.2017. The main basis of the 'Donut Floaters' to be being eligible to avail the benefit of concessional rate of duty was that, it is indispensable equipment/ tool to execute dredging through 'Cutter Suction Dredger'. At this juncture, it is essential to determine, the actual use of 'Donut floaters' to arrive at the conclusion, as if the dredging process using 'Cutter Suction Dredger' can be executed in absence of 'Donut floaters' or otherwise.
- v. In this regard, I observe that, Dredging and Dredger are defined in the Chambers Dictionary of Science and Technology (revised edition) as follows:

"Dredging: A form of excavation conducted under water.

Dredge: (Civ. Engg.) Any apparatus used for excavation under water.

Dredger Excavator: It is defined in the above-named dictionary as a mechanical excavator working on the same principle as a 'bucket ladder dredger', but adopted for use on land.

Bucket Ladder Dredger: It is a vessel of small draught having a series of bucket moving in a continuous chain reading down into the material to be dredged and lifting it for discharge into the vessel itself or into an attendant vessel."

From the definitions of various Dredgers as extracted above, I find that Dredging, no doubt, means excavation. But there is definitely a need for continuous lifting of the dredged material and dumping the same at some other place. This can be done by a separate disposal system or discharge system can be a part of the Dredger by itself."

- vi. Referring to the British Standard Specification (BS 6349, Part - 5 : 199), I find that there are various types of Dredgers like Stationary Suction Hopper Dredger, Trailing Suction Hopper Dredger, Cutter Suction Dredger etc. The Dredger in the instant case is a Cutter Suction Dredger in contrast to the Hopper Dredger which keeps the dredged material in its hold (hopper). When the hold is filled up, the said Hopper Dredger moves to the designated area of discharging dredged materials without the assistance of any pipelines. In such type of Hopper Dredgers, neither the Suction Pipe nor the Discharge Pipe may be essential. In the case of Cutter Suction Dredger, the procedure for carrying out the dredging work is different. The Cutter-Head is fitted with the Dredger with a Suction Pipe beneath it. The said Cutter cuts the earth, rock etc. under the water when the dredged material accumulates. As these dredged material has to be taken from the Dredger for the continuous uninterrupted dredging work, Suction Pipe sucks the dredged material. The

Suction Pipes are connected with the discharge pipe with the aid of flanges/belts, nuts and bolts etc. The discharge pipes then throw these dredged materials at the designated area which may be at a distant place.

- vii. I observe that, as per Wikipedia in the context of dredging, "floaters" (also known as dredge pipe floats or dredging pipeline floaters) are buoyant devices, typically made of high-density polyethylene (HDPE) or polyurethane (PU), designed to keep dredging pipelines afloat on the water's surface. These floaters used for supporting the weight of the pipes and hoses used to transport dredged material, preventing them from sinking and causing damage to the waterway or hindering operations. However, 'Cutter Suction Dredgers' (CSDs) can connect to their discharge pipelines without using donut floaters and pipelines can also be laid down on seabed or along a shoreline.
- viii. In view of discussion supra, I find that, the donut floaters are supplementary floating structure to keep the pipelines afloat on water and dredging can be performed without using them. Hence, it does not form an integral part of 'Cutter Suction Dredger' and therefore, can't be allowed to be imported as machinery, equipment or tool of the 'Cutter Suction Dredger', availing the benefit of Notification No.72/2017-Cus dated 16.08.2017.
- ix. I find that, the Noticee misrepresented the facts before the department that 'Donut floaters' are integral part of 'Cutter Suction Dredger' and the same are indispensable for the working of Dredger, so as to avail the undue benefit of Notification No.72/2017-Cus dated 16.08.2017 and therefore the goods 'Donut floaters' imported vide Bill of Entry No. 3250489 dated 10.11.2022 under CTH 89079000 do not qualify for the benefit of Notification No.72/2017-Cus dated 16.08.2017 & the Noticee is liable for the payment of duty of customs including IGST as detailed below:

Sl. No.	Duty Calculation	Donut Floaters ID 1100 XOD 3500 X L4200
(1)	Bill of Entry No. & Date	3250489 / 10.11.2022
(2)	CTH No.	89079000
(3)	Assessable Value (INR)	53,83,072/-
(4)	Basic Customs Duty (BCD) @ 10% ad valorem (INR) in terms of the Notification No.50/2017-Cus dated 30.06.2017	5,38,307/-
(5)	Social Welfare Surcharge (@ 10% of BCD (INR)	53,831/-
(6)	Value for calculation of Integrated Tax (IGST) (INR) ad valorem (INR) in terms of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017	59,75,210/-
(7)	Integrated Tax (IGST) (@5%)	2,98,761/-
(8)	Total Customs Duty Payable (2+3+5)	8,90,899/-
(9)	Customs Duty paid	88,821/-
(10)	Differential Duty payable/Duty short levied	8,02,078/-

- x. With respect to the Noticee's contention that, the re-assessment should occur while the goods are still under customs control and within the prescribed period under Section 17(5) of the Customs Act, 1962, I observe that, Section 28(4) of the Customs Act, 1962, stipulates that,

"Where any duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-
(a) collusion; or
(b) any wilful mis-statement; or
(c) suppression of facts,
by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the

person chargeable with duty or interest which has not been so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."

- xi. I find that, during the Audit of the subject Bill of Entry by CRA only, it was found that the goods viz. 'donut-shaped floaters' are not the equipment of Cutter Suction Dredger but 'floating structure' in nature and the Noticee has mis-represented the facts before the Department by declaring the same as dredging equipment, so as to avail the undue benefit of the Notification No.72/2017 ibid and in absence of Audit such matter would have got suppressed. Now, therefore, I find that the Bill of Entry No. 3250489 dated 10.11.2022 needs to be re-assessed as normal import to levy the applicable duty of customs including IGST, denying the benefit of the Notification No.72/2017 ibid, so as to recover short-levied or short paid duty of customs including IGST, which is well within the purview of Section 28(4) of the Customs Act, 1962.
- xii. Further, I find that, the Noticee by mis-declaring the imported goods as the dredging equipment with the intention to avail the undue benefit of Notification No.72/2017-Cus ibid has violation the provisions of Section 111(m) of the Customs Act, 1962 and it is therefore, the said goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.
- xiii. However, as regards the goods in question i.e. donut floaters' vide Bill of Entry No. 3250489 dated 10.11.2022 had classified the same under CTH 89079000, I find that, though the said offended goods can be held liable to confiscation under Section 111(m) of the Customs Act, 1962, but the same cannot be confiscated being physically not available for confiscation and thereby I refrain from imposing redemption fine in lieu of confiscation of the goods. In this regard, I hereby rely upon, the judgment rendered with regard to confiscation by the High Court of Judicature at Bombay; wherein the Hon'ble High Court in the case of COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI Versus FINESSE CREATION INC. Customs Appeal No. 66 of 2009, decided on 25-8-2009 cited in 2009 (248) E.L.T. 122 (Bom.), has stated that,
- "whether goods cleared and not available for seizure, liable to confiscation - Redemption fine arises when goods are available and are to be redeemed - No question of redemption of goods when goods not available - Customs authorities empowered to order confiscation with discretion to release them on payment of redemption fine - Confiscation not arises if goods are not available for confiscation and consequent redemption - Fine not imposable once goods cannot be redeemed - Impugned Tribunal order holding fine in lieu of confiscation not imposable when goods were not available, sustainable - Sections 111 and 125 of Customs Act, 1962."*
- xiv. Further, the Hon'ble Supreme Court Bench in the aforesaid case i.e. Commissioner v. Finesse Creation Inc. – reported at 2010 (255) E.L.T. A120 (S.C.) after condoning the delay dismissed the Petition for Special Leave to Appeal (Civil) No. CC 7373 of 2010 filed by Commissioner of Customs (Import) against the Judgment and Order dated 25-8-2009 in C.A No. 66 of 2009 of the High Court of Bombay, held,

"the High Court vide its impugned order had distinguished the Apex Court decision in case of Weston Components Ltd. [2000 (115) E.L.T. 278 (S.C.)]. While holding that concept of redemption fine arises in the event the goods are available and are to be redeemed, and if goods are not available, there is no question of redemption

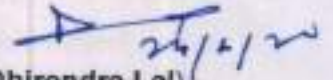
of goods. The High Court held that since goods were cleared earlier, not available for confiscation nor consequently redemption, therefore, Tribunal was right in holding that fine in lieu of confiscation was not imposable."

- xv. In view of the above deliberations, I am of the considered view that, as the goods in question are not available for redemption, imposition of redemption fine is not possible. I also place reliance on the following case laws in support of my above findings:
 - (a) In the case of Commissioner v. Indu Nissan Oxo Chemical Industries - 2015 (324) E.L.T. A30 (Guj.), the Hon'ble High Court of Gujarat has held – "that the penalty in lieu of redemption fine was not imposable when the goods were not available for confiscation."
 - (b) In the case of N.K. CHAUDHARI Versus COMMISSIONER OF CUSTOMS (EP), MUMBAI [2018 (363) E.L.T. 908 (Tri. - Mumbai)] it was held – "Confiscation and redemption fine - Non-availability of goods - In view of Larger Bench's decision in the case of Shiv Kripa Ispat [2009 (235) E.L.T. 623 (Tri.-LB.)], redemption fine not imposable when goods not available for confiscation - Accordingly, redemption fine set aside - Section 125 of Customs Act, 1962. [para 4]"
- xvi. I find that, as the said goods are liable for confiscation under sub-section (m) of Section 111 of the Customs Act, 1962, the same falls under the category of 'smuggled goods' as defined under Section 2(39) of the Customs Act, 1962, which defines 'smuggling' as "in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 and section 113" and therefore, the Noticee has rendered himself liable for penalty for improper importation of goods, etc. under Section 112(a)(ii) of the Customs Act, 1962.
- xvii. Now, I proceed to consider the proposal of penalty under Section 114A of the Customs Act, 1962 against the Noticee. I find that the demand of customs duty total amounting to Rs. **8,02,078/- (Rupees eight lakh, two thousand and seventy-eight only)** 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 natural corollary penalty is imposable on the Noticee/Importer under Section 114A of the Customs Act, 1962, which provides for penalty equal to duty or 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 or interest in terms of Section 114A ibid.
- xviii. Further, penalty has also been proposed on the Noticee under Section 112 of the Customs Act, 1962. In this regard, I find that, the 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/Importer under Section 112 of the Customs Act, 1962.
16. In view of the above discussion and findings, I pass the following order:

ORDER

- (i) I hereby deny the benefit of Notification No. 72/2017-cus dated 16.08.2017 with respect to import of goods viz. 'Multicat Auxilia', a work boat imported vide Bill of Entry No. 4064532 dated 06.01.2023 by the Noticee considering the same not being an integral part of cutter suction dredger and in view of the fact that, the Noticee has already received drawback on export of the imported goods viz. Multicat Auxilia under sub-section (2) of section 74 of the Customs Act, 1962 vide Shipping Bill No.8383603 dated 10.03.2023;
- (ii) I hereby deny the benefit of Notification No. 72/2017-cus dated 16.08.2017 with respect to import of goods viz. 'Donut floaters' imported vide Bill of Entry No. 3250489 dated 10.11.2022 by the Noticee considering the same not being an integral part of cutter suction dredger
- (iii) I hereby confirm the demand of differential duty of customs including IGST amounting to Rs.5,14,84,419/- (Rupees five crore, fourteen lakh, eighty-four thousand, four hundred and nineteen only) (i.e. Rs. 5,06,82,341/- on import of goods viz. 'Multicat Auxilia', a work boat imported vide Bill of Entry No. 4064532 dated 06.01.2023 and Rs.8,02,078/- on import of goods viz. 'Donut floaters' imported vide Bill of Entry No. 3250489 dated 10.11.2022), both under Section 28(4) of the Customs Act, 1962.
- (iv) I hereby order the Noticee to pay interest as applicable under Section 28AA of the Customs Act, 1962 on the demand of duty confirmed at para (iii) above;
- (v) I also hold goods imported vide Bill of Entry No. 4064532 dated 06.01.2023 and Bill of Entry No. 3250489 dated 10.11.2022 both availing the benefit of Notification No.72/2017-Cus dated 16.08.2017 liable for confiscation under Section 111(m) of the Customs Act, 1962. Since the goods are not available for confiscation, I refrain from imposing any fine in lieu of confiscation under Section 125(1) of the Customs Act, 1962;
- (vi) I hereby impose penalty of Rs.5,14,84,419/- (Rupees five crore, fourteen lakh, eighty-four thousand, four hundred and nineteen only) under Section 114A of the Customs Act, 1962;
- (vii) I refrain from imposing penalty under Section 112 of the Customs Act, 1962 in terms of fifth proviso to the Section 114A of the Customs Act, 1962.

17. This order is issued without prejudice to any other action that may be taken against the importer/Noticee or any other person under the Customs Act, 1962 or any other law for the time being in force.


(Dharendra Lal)
Commissioner

F. No. CUS/5634/2024-Adjn. (Computer F. No. 1486327)

Date: 24.06.2025

By Speed Post / E-Mail:

To

M/s. International Seaport Dredging Private Limited,
1st Floor, Ocean Square, Thiruvika Industrial Estate,
Ekkattuthangal, Guindy,
Chennai- 600032

Copy to:

1. The Chief Commissioner, Customs, Ahmedabad
2. Assistant Commissioner, Customs House, Pipavav.
3. Guard File.