



सीमा शुल्क के आयुक्त का कार्यालय (निवारक), 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-cu;tjmr@nic.in; adj-custjmr@nic.in

DIN – 20250671MM000000E3DA

1.	फाइल क्रमांक/ File Number	F. No. CUS/201/2025-Adjn. (Comp. no. 1594838)
2.	मूल आदेश क्रमांक/ Order-in-Original No.	04/ Additional Commissioner/ 2025-26
3.	द्वारा पारित/ passed by	एन. श्रुजन कुमार/N. Srujan Kumar अपर आयुक्त/ Additional Commissioner, सीमा शुल्क, निवारक/Customs (Preventive) जामनगर/ Jamnagar.
4.	Date of Order /आदेश दिनांक	23.06.2025
4.	Date of issue / आदेश जारी किया	23.06.2025
5.	कारण बताओ नोटिस क्रमांक एवं दिनांक Show Cause Notice Number & Date	DRI/CI/ENQ/79/2024-DRI-SRU- BHAVNAGAR dated 31.12.2024
6.	नोटिसी का नाम/ Name of Noticee	Whomsoever causing the transit of 02 wooden Box/Cases related to the Shipper M/s Takahasi Machinery Co. Ltd., 4-11 Aza Shinbo Ohaza Yamaya, Ojiya-Cit, Nilgata Pref. Japan (947-8506): Ownership calimed by M/s Takahasi Machinery Co. Ltd., 4-11 Aza Shinbo Ohaza Yamaya, Ojiya-Cit, Nilgata Pref. Japan (947-8506)
01.	इस आदेश की मूल प्रति संबन्धित व्यक्ति को निशुल्क प्रदान की जाती है।	
	The original copy of this order is provided free of cost to the person concerned.	
02.	इस मूल आदेश से व्यक्ति कोई भी व्यक्ति सीमा शुल्क अधिनियम, की धारा 1962 128A)(1)a सीमा शुल्क नियम (अपील), 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए-1 में अपील का प्रपत्र, दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियों संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। जिनमें से कम से कम)एक समाप्ति प्रति हो	

	<p style="text-align: center;">आयुक्त (अपील) वी मंजिल 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद – 380 009</p>	
	<p>Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).</p>	
03.	<p>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) 0.50पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची –I, मद 6 के तहत निर्धारित किया गया है।</p>	
	<p>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 paisa only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.</p>	
04.	<p>अपीलीय ज्ञापन के साथ शुल्क भुगतान /जुर्माना /अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962 की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।</p>	
	<p>Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.</p>	
05.	<p>अपील प्रस्तुत करते समय यह मुनिश्चित करे की सीमा शुल्क अपील)) नियम, 1982 नियम (प्रोसीजर) और मिस्ट्रेट प्रक्रिया के सभी नियमों का पूरा पालन हुआ है। 1982</p>	
	<p>While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.</p>	
06.	<p>इस आदेश के खिलाफ आयुक्त (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।</p>	
	<p>An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.</p>	



Brief facts of the case :

Intelligence was received by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (hereinafter referred to as "DRI AZU") that the Shipper/Exporter M/s. Takahashi Machinery Co., Ltd., 4-11, Aza Shinbo Ohaza Yamaya, Ojiya-City, Nilgata Pref., Japan (947-8506) and the consignee M/s. Universal Shipping (Pvt.) Ltd., Mezzanine FL Bhoja Terrace, Shahrah-E-Liaquat, Karachi - Pakistan -74200 were carrying out the prohibited goods in transit. It was also gathered that the said goods were stuffed in Container No. TCKU1835350 and loaded in vessel M. V. CAP Andreas was carrying the consignment. Route of the said vessel was Singapore - Port Kelang (Malaysia) - Pipavav (India) - Karachi (Pakistan) - Nhava Sheva (India) - Colombo (Sri Lanka) - Port Kelang (Malaysia)

2. Acting on the intelligence, a discreet watch was kept on the movement of the said vessel "M. V. CAP Andreas" which got berthed on 14.07.2024 at Pipavav Port. After the vessel was berthed, the Pipavav Port (Operations), Pipavav was requested to offload the said container bearing number TCKU1835350 for further investigation.

2.1. The said container was offloaded from the said vessel and taken to M/s. Contrans Logistic Private Limited, Rajula- Amreli under the safe custody of the said CFS for examination.

2.2. It appeared that considering the nature of the goods, it was decided to examine the said goods from the experts of the concerned field. Upon request, a team of designated technical experts from DRDO, Hyderabad, Telangana was deputed for examination of goods. The goods stuffed in the container bearing number TCKU1835350 wherein the shipper was M/s. Takahashi Machinery Co., Ltd., Japan and the consignee was M/s. Universal Shipping (Pvt.) Ltd., Karachi, Pakistan, the examination was carried out under Panchnama dated 27.08.2024 accompanied with the Scientists of DRDO, Hyderabad, Telangana in the presence of two independent Panchas, the representatives of the concerned Shipping Line i.e. M/s. Ocean Network Express (I) Pvt. Ltd. and M/s. Contrans Logistic Pvt. Ltd., CFS. During the course of examination it was found that the goods is packed in two wooden boxes and after opening of boxes CNC Lathe Machine Model L30, Serial No. 4010 along with its accessories was found. During examination an operational data manual of the CNC Lathe Machine was also found. After the examination, the goods were re-stuffed in the same container number TCKU1835350 and was sealed in presence of panchas, DRDO Scientists, DRI Officers, representatives of Shipping Line /CFS with seal no. IN1414565. The custodian M/s. Contrans Logistic Pvt. Ltd. was handed over the said container in sealed condition for safe custody and was directed not to remove, part with, or otherwise deal with the goods covered under the subject consignment and ensure safe custody of the same till any further communication in the matter from DRI Authorities.

3. Examination of the consignment:

3.1. It appeared that the examination and on-site assessment of the goods stuffed in two wooden boxes was carried out by a team of designated technical experts from DRDO, Hyderabad, Telangana to understand the end use of said transit cargo.

3.2. It further appeared that the competent technical experts submitted their report which was forwarded vide letter DIC/SCOMET/4801/M/21 dated 17.09.2024 by the Assistant Director, DRDO, New Delhi, wherein it was inter alia submitted that:

"based on machine build structure, capacity to machine precise components, High end CNC Control, and Automated Tool Changer, it can be concluded that the machine is of ultra-precision class, capable of mass production of highly precision hardware. The equipment is capable to machine hardware having accuracies of less than 6 microns (6µm) and is found to be suitable for mass production of articles related to Defence, Aerospace and Nuclear applications. Further, the item is having dual-use application related to Defence, Aerospace and Nuclear applications and classified in SCOMET export control list as below:

SCOMET Item: Category-4

Category title: Nuclear-related other equipment, assemblies and components; test and production equipment; and related technology not controlled under Category-0

Applicable Sub-category: 4A002 (a)

The machine falls under this category as it is able to machine diameter more than 35 mm having positioning accuracies less than 6 microns (<6µm)".

4. SEIZURE OF GOODS:

Based on the report received from the designated technical experts, it appeared that the goods stuffed in 2 wooden Boxes were covered under the Category- 4: Nuclear-related other equipment, assemblies and components; test and production equipment; and related technology not controlled under Category- 0; Applicable sub category: 4A002 (a) of the SCOMET items and were attempted to be transited in violation of provisions of the Customs Act, 1962 read with Notification No. 5/2015-2020 dated 24.04.2017 of the Directorate of General of Foreign Trade (DGFT) issued under Foreign Trade (Development & Regulation) Act, 1992, which lists the SCOMET items, and further read with Weapons of Mass Destruction and their delivery systems (Prohibition of Unlawful Activities) Act, 1985. Therefore, the said goods with a declared invoice value of JPY 13,211,000



were seized vide Seizure Memo dated 28.09.2024 under Section 110 of the Customs Act, 1962 under the reasonable belief that being prohibited goods these are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962.

INQUIRY WITH THE PERSONS DURING INVESTIGATION:

5. During the investigation, statements of few persons, found concerned with the matter, were recorded under the statutory provisions of Section 108 of the Customs Act, 1962, which are summarized below:

5.1. Statement of Shri Mehulkumar Hasmukhrai Vyas, Senior Manager & Branch Manager of M/s. Ocean Network Express (India) Private Limited of Pipavav which is engaged in Shipping Line business and carrier of said container was recorded on 01.10.2024 under Section 108 of the Customs Act, 1962 wherein he inter alia stated that:

- M/s. Ocean Network Express Pte. Limited is the principal liner for M/s. Ocean Network Express (India) Private Limited and all the works in India related to their Principal Liner viz. M/s. Ocean Network Express Pte. Limited was looked after by M/s. Ocean Network Express (India) Private Limited
- The head of M/s. Ocean Network Express PTE Limited is situated in Singapore at 7 Straits View, #16-01 Marina One East Tower, Singapore and having its Indian head Office at Third Floor A wing, Fulcrum, Hiranandani, business Park, Sahar Road, Andheri East, Mumbai 400099. The primary work profile of the company as a shipping line as well as container line and it is engaged in Shipping / Transportation of goods maximum country of the world. There is an agreement between M/s. Ocean Network Express and M/s. Ocean Network Express (India) Pvt. Ltd.
- He is the Senior Manager and Branch Manager of Pipavav Branch and looking after the operation which includes Management of Branch office at Pipavav and also look after the documentation of import / export / transshipment cargo, Container Maintenance, Equipment Management, Filing of Customs document such as IGM, EGM, Vessel related activity i.e. arrival and departure formalities, field operations i.e. terminal operations, providing Import Advance List & Export Advance list etc.
- On being asked whether M/s. ONE (India) Pvt. Ltd. has gained status by registering as “authorised carrier” under the provisions of Sea Cargo Manifest and Transhipment Regulations, 2018 or got registration under the Import Manifest (Vessels) Regulations, 1971 earlier, he stated that as per his knowledge their Mumbai office has obtained the registration as “authorized carrier” under Sea Cargo Manifest and Transhipment Regulations, 2018. He has further stated that they are having centralised id and their head office at Bombay

enter their IGMs and they just carry out the local customs related work at Pipavav Port.

- On being asked whether he was aware about his statutory obligation as "authorised carrier", he stated that as an authorised carrier, as he understand, they are responsible for collecting the correct and complete details of the cargo they are booking and transporting and after confirming correctness thereof also required to declare the same on all declarations and customs papers with their subscribing about correctness thereof. In case any incorrect details are found they are supposed to inform the Customs department about such instances. They are also required to advise their clients including their other counterpart offices at foreign port to comply with the statutory provisions Indian law demands from them. They are also required to keep proper record and track of movement all the cargo arrived at Pipavav.
- On being asked about the expected route of vessel 'M.V. CAP Andreas' which arrived at Pipavav Port on 14.07.2024 he stated that the vessel 'M.V. CAP Andreas' started from Laemchabang Thiland and route of the said vessel was Singapore,- Port Kelang (Malaysia)- Pipavav (India),- Karachi (Pakistan) – Nhava Sheva (India) – Colombo (Sri Lanka)- Port Kelang (Malaysia).
- On being asked who filed IGM for vessel 'M.T. Cap Andreas' w.r.t. arrival at Pipavav Port on 14-07-2024, he stated that as per their regular practice IGM files at IGM desk at Mumbai office, they file it before 2-3 days arrival of vessel. In case of 'M.V. CAP Andreas' they have filed the IGM before 2-3 days. For the EGM the surveyor provides the data to EGM/IGM desk, Mumbai and accordingly, they file the EGM and they provide the copy of the same to Pipavav Branch for both EGM and IGM.
- On being asked how many containers were loaded in the said vessel 'M.V. CAP Andreas and from where the Container TCKU 1835350 was loaded, he stated that total 3188 containers were loaded out of which 1226, [1225+ 1(TCKU 1835350)] containers were for being discharged/unloaded at Pipavav Port. Remaining 1962 containers were ROB (Remain on Board) containers. 436 containers were loaded from Pipavav port in the said vessel 'M.V. CAP Andreas'. The container TCKU 1835350 was loaded in Vessel "Nagoya Tower" from YOKOHAM port of Japan and thereafter it was loaded in vessel "M.V. CAP Andreas" at Port Kelang (Malaysia).
- On being asked whether they declared all the goods lying on board of 'M.V. Cap Andreas' in IGM filed he replied in negative and stated that only details regarding containers unloaded/discharged at Pipavav were mentioned in the said IGM. Details of ROB (Remain On Board) containers were not disclosed in the said IGM.



- On being asked whether they declared '1X20' container covered under Bill of lading bearing No. ONEYTYOE70821800 in IGM, he replied in negative and stated that they didn't declared the same in IGM filed by them w.r.t. vessel 'M.V. CAP Andreas, as this container was not going to discharge Pipavav port.
- On being asked whether they aware that being agent of master of Ship, it is their duty to declare this 1X20' container in the IGM filed by you or to file separate list of such goods/containers on board, he stated that he is not aware about that the details of ROB container need to be filed or otherwise. In the IGM filed for "M.V. CAP Andreas" they had not covered this container details under Bill of Lading bearing No. ONEYTYOE70821800.
- On being asked he stated that the said container was loaded in vessel 'M.V. CAP Andreas' at Port Kalng, Malaysia and the said container was destined to Pakistan. Further, the said vessel 'M.V. CAP Andreas' arrived at Pipavav Port on around 12:30 hrs on 14-07-2024 for unloading and loading of cargo. Further on being asked whether the aforesaid 01 container for unloading at Pipavav Port, he stated that the said container was destined to Pakistan wherein the Shipper/exporter was M/s. NAIGAI Trans Line Ltd., Sunrise BLDG. 5th Floor 6-8, Bingo-Machi, 2-CHUO and consignee was M/s. Universal Shipping Private Limited, Mezzanine FL Bhoja Terrace, Shahrah-E-Liaquat Karachi, Pakistan-74200. On being asked he stated that the said 01 ROB containers were pertaining to container line M/s. ONE.
- He confirmed that the container bearing number TCKU1835350 was laden on the vessel Nagoya Tower" from YOKOHAM port of Japan and thereafter it was loaded in "M. V. CAP Andreas" at Port Kelang (Malaysia) which was destined for Karachi, Pakistan Port.
- the container bearing number TCKU1835350 were offloaded and thereafter, the Takahashi Compact CNC Lathe Model : L30 Serial No. 4010 CNC Machine, Collect Chuck, Air Chuck, Tool Holder for which shipper was M/s. Takahashi Machinery Co., Ltd., 4-11, Aza Shinbo Ohaza Yamaya, Ojiya-City, Nilgata Pref., Japan (947-8506) and the consignee Universal Shipping (Pvt.) Ltd., Mezzanine FL Bhoja Terrace, Shahrah-E-Liaquat, Karachi - Pakistan -74200 were examined under Panchnama proceedings dated 27.08.2024 in his presence and same goods re-stuffed in the said container bearing number TCKU1835350.
- the said goods were covered under the Bill of Lading No. ONEYTYOE70821800 dated 27.05.2024 covering the container number TCKU1835350 was issued by the M/s. Ocean Network Express Pte. Limited.

On being asked who mentioned the said description in the Bill of lading bearing No. ONEYTYOE70821800, he stated that the said

description was mentioned by M/s. ONE, Japan on the basis of shipping instruction along with shipping documents viz., invoice, packing list etc. submitted by the M/s. NAIGAI Trans Line Ltd.

- On being asked whether he was aware about the provisions of Section 30 of the Customs Act, 1962 and what are their understanding about said legal provisions, he stated that as per the provisions of Section 30 of the Customs Act, 1962 that on behalf of the person in charge of the vessel, they have to file Import Manifest with Customs alongwith the record therein and they are also supposed to subscribe to the correctness of the information provided in the said manifest.
- On being asked how do they file Import Manifest with Pipavav Customs for the vessels being attended by their company at Pipavav, whether it filed manually or electronically and who signed and subscribes the Import Manifest while filing the same with Customs, he stated that the IGM was filed electronically and they do provide copy thereof manually to Pipavav Customs. They have one person authorized for e-signing the documents related to Pipavav Customs viz. Ms Shilpa Bosco and she operates her work from their Mumbai head office.
- On being asked whether he was aware that to avoid any portion of the details pertaining to the cargo on board the vessel while filing Manifest of a particular vessel, particularly when in your system all such details are evidently available, is illegal, he stated that he is fully aware that they have to provide all the details and avoiding to provide details is against the law.
- On being asked whether they ever filed cargo declaration in Form XII, as prescribed vide Regulation 6 of SCMTR, 2018 or separate cargo declaration as prescribed vide Regulation 5(2) of the IMR, 1971, he stated that they have not filed any such declaration, as prescribed in the formats till date at Pipavav Customs per his knowledge.
- On being asked whether he was aware about the legal provisions pertaining to the SCOMET items, he stated that as no such export/ Import has been carried out, he does not know exact provisions.
- On being asked whether he was aware about the provisions pertaining to goods brought in transit in India, as provided in the Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005, he replied in negative and stated that he has not gone through the same.

5.2. Statement of Mrs. Shilpa Bosco, Deputy General Manager of M/s. Ocean Network Express (India) Private Limited of Mumbai who is engaged in Shipping Line business and carrier of said container was recorded on 11.11.2024 under Section 108 of the Customs Act, 1962 wherein she inter alia stated that:

- She is looking after the work related to Customer Service and documentation of Import /Export /transshipment of cargo, filing of Customs document such as IGM, providing of Import Advance List etc.
- IGM was filed by their vendor namely M/s. WNS Global Services, Mumbai / Hyderabad. As per her knowledge the IGM consist the information related the goods to be landed at Indian Port, Transshipment Goods and the SMTP. On being specifically asked she stated that they used not to declare in IGM the ROB goods i.e. the goods which are destined to foreign port. Further, there is contract between M/s. Ocean Network Express PTE Limited, Singapore and M/s. WNS Global Services that M/s. WNS Global Services will file IGM on behalf of all the global offices of M/s. Ocean Network Express PTE Limited.
- On being asked about the process of filing IGM, she stated that as per vessel schedule, their vendor M/s. WNS global Services, Mumbai download the bill of lading data from their systems viz. OPUS in the EDI format. EDI format consist only the local data (containers landed at Indian Port), Tranship data (containers to be unloaded at Indian Port but destined for foreign port) and SMTP (containers to ICD). And after digitally signed the same, IGM is uploaded on ICEGATE.
- On being asked she inter alia confirmed that the container bearing number TCKU1835350 was laden on the vessel Nagoya Tower" from YOKOHAMA port of Japan and thereafter it was loaded in "M. V. CAP Andreas" at Port Kelang (Malaysia) was destined for Karachi, Pakistan Port.
- On being asked about the number of containers loaded in the said vessel "M.V. CAP Andreas", she stated that total 3188 containers were loaded, out of which 1226 [1225 + 1 (TCKU1835350)] were for being discharged / unloaded at Pipavav Port. Remaining 1962 containers were ROB (Remain on Board) containers. 436 containers were loaded from Pipavav port in the said vessel.
- On being asked whether they declared all the goods lying on board of M.V. Andreas in IGM, she replied in negative and stated that only details regarding containers unloaded / discharged at Pipavav port were mentioned in the said IGM. Details of ROB (Remain on Board) containers were not disclosed in the said IGM.
- On being asked whether they aware that being agent of master of Ship, it is their duty to declare this 1X20' container in the IGM filed by you or to file separate list of such goods/containers on board, she stated that she is not aware about that the details of ROB container need to be filed or otherwise. In the IGM filed for "M.V. CAP Andreas" they had not covered this container details under Bill of Lading bearing No. ONEYTYOE70821800.

- On being asked she stated that the said container was loaded in vessel 'M.V. CAP Andreas' at Port Kalng, Malaysia and the said container was destined to Pakistan. Further, the said vessel 'M.V. CAP Andreas' arrived at Pipavav Port on around 12:30 hrs on 14-07-2024 for unloading and loading of cargo. Further on being asked whether the aforesaid 01 container for unloading at Pipavav Port, she stated that the said container was destined to Pakistan wherein the Shipper/exporter was M/s. NAIGAI Trans Line Ltd., Sunrise BLDG. 5th Floor 6-8, Bingo-Machi, 2-CHUO and consignee was M/s. Universal Shipping Private Limited, Mezzanine FL Bhoja Terrace, Shahrah-E-Liaquat Karachi, Pakistan-74200. On being asked she stated that the said 01 ROB containers were pertaining to container line M/s. ONE.
- On being asked about the description of the goods mentioned in the Bill of Lading No. ONEYTYOE70821800, she stated that the description of goods was declared as "Takahashi Compact CNC Lathe Model: L30 Serial No. 4010, CNC Machine, Collect Chuck Air Chuck, Tool Holder".
- On being asked who mentioned the said description in the Bill of lading bearing No. ONEYTYOE70821800, she stated that the said description was mentioned by M/s. ONE, Japan on the basis of shipping instruction along with shipping documents viz., invoice, packing list etc. submitted by the M/s. NAIGAI Trans Line Ltd.
- On being asked she stated that M/s. ONE (India) Pvt. Ltd. has obtained the registration as "authorized carrier" under Se Cargo Manifest and Transhipment Regulations, 2018 and as an authorised carrier, they are responsible for collecting the correct and complete details of the cargo, they are booking and transporting and after confirming correctness thereof also required to declare the same on all declarations and customs papers with our subscribing about correctness thereof. In case any incorrect details are found they inform the Customs department about such instances. They are also required to advise their clients including our other counterpart offices at foreign port to comply with the statutory provisions Indian law demands from them. We are also required to keep proper record and track of movement all the cargo arrived at different Ports.
- On being asked she stated that the IGM was filed electronically at Pipavav Port and she is the authorized for e-signing the IGM / documents related to Pipavav Customs.
- On being asked whether she was aware that while filing the Import Manifest with Customs, it is mandatory to give details of all cargo on board the vessel and also to subscribe to the truth of the content declared in the manifest, she replied in negative and stated that she is not aware about the regulations they have to furnish details of all the

cargo on board the vessel and give the declaration of the same being true in the manifest.

- On being asked whether she was aware that to avoid any portion of the details pertaining to the cargo on board the vessel while filing Manifest of a particular vessel, particularly when in your system all such details are evidently available, is illegal, she stated that she is aware that only cargo for Indian port discharge has to be filed in the manifest.
- On being asked whether they ever filed cargo declaration in Form-VIA & XII, as prescribed vide Regulation 4 & 6 respectively of SCMT, 2018 or separate cargo declaration as prescribed vide Regulation 5(2) of the IMR, 1971, she stated that they have not filed any such declaration, as prescribed in the formats till date at Pipavav Customs per his knowledge. However, as per their understanding in IGM only those containers are declared which is meant for landed at Indian Port, Transhipment Goods and the SMTP.
- On being asked whether she was aware about the legal provisions pertaining to the SCOMET items, she stated that as no such export/ Import has been carried out, she does not know exact provisions.
- On being asked whether she was aware about the provisions pertaining to goods brought in transit in India, as provided in the Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005, she replied in negative and stated that she has not gone through the same.
- On being asked whether she was aware about the provisions pertaining to goods brought in transit in India, as provided in the Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005, she replied in negative and stated that she has not referred the same till date.

6. The shipper M/s. Takahashi Machinery Co., Ltd., Japan through Embassy of Japan vide their letter 08.11.2024 has informed that they shipped the CNC lathe machine from the Port of Yokohama, Japan to Karachi, Pakistan in the container TCKU18355350/20FT. Further, the CNC lathe is a general CNC lathe exported after strict examination by the Ministry of Economy, Trade and Industry of Japan. It has been further requested to complete the necessary inspection and release their cargo as soon as possible.

7. RELEVANT PROVISIONS OF THE LAW IN SO FAR AS THEY APPLY TO THIS CASE:

7.1. As per the report of the competent technical experts, the item is having dual application related to defence, aerospace and nuclear application and classified in SCOMET export controlled list, use have a wide variety of applications that include commercial, defence and civil uses. A combination of the listed items can lead to both chemical synthesis and bio-fermentation applications of defence interest. It is further report that some of these items have dual-use applications and

classified in SCOMET export control list and therefore, covered under the Category- 4: Nuclear-related other equipment, assemblies and components; test and production equipment; and related technology not controlled under Category- 0; Applicable sub category: 4A002 (a) of the SCOMET items. The machine falls under this category as it is able to machine diameter more than 35 mm having positioning accuracies less than 6 microns ($<6\mu\text{m}$)".

FOREIGN TRADE (DEVELOPMENT & REGULATION) ACT, 1992

7.1.1. Vide Section 2(l) of the FTDR Act, 1992. The "specified goods or services or technology" has been defined, which included the goods, transit of which is prohibited or restricted because of imposition of conditions on the grounds of their being pertinent or relevant to India as a Nuclear Weapon State, or to the national security of India, or to the furtherance of its Foreign Policy or its international obligations under any bilateral, multilateral or international treaty, convenient, convention or arrangement relating to WMD or their means of delivery to which India is a party.

7.1.2. Chapter IVA, Section 14A (1) of FTDR Act, 1992, provides as follows:

In regard to controls on export of specified goods, services and technology referred to in this Chapter, the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005) shall apply to exports, transfers, re-transfers, brought in transit, trans-shipment of, and brokering in specified goods, technology or services.

7.1.3. As per Section 14A (2) of FTDR Act, 1992, all the provisions of WMD Act, 2005 are applicable for the items specified in Appendix 3 to Schedule II of ITC (HS) being goods specified under Section 14A (1) of FTDR Act, 1992.

7.1.4. The SCOMET List has been notified by DGFT under Appendix 3 to Schedule 2 of ITC (HS) Classification of Export and Import Items. The policy and procedures under SCOMET are outlined in Chapter 10 of FTP and HBP 2023, and the list is regulated under Chapter IVA of Foreign Trade (Development & Regulation) Act, 1992, as amended in 2010.

7.1.5. No exception has been provided by the Central Govt under Section 14A(3)(a) of FTDR Act, 1996 from applicability of the prohibitions and restrictions in respect of the said items.

7.1.6. In this context, the violation of the provisions of WMD Act, 2005 for the goods in transit may also constitute violation of the provisions of the Section 5, 14A and 14B(2) of the FTDR Act, 1992, making the offending goods together with any package, covering or receptacle and any conveyance as liable for confiscation under Section 11(8) of the FTDR Act, 1992 and also liable for penalty under Section 11(2) of the FTDR Act, 1992.

FOREIGN TRADE POLICY, 2023

As per para 2.23 of the FTP, the Transit of goods through India from/ or to countries adjacent to India shall be enabled and regulated in accordance with strategic and economic interests of India as well as the bilateral treaties between India and those countries. Such arrangements will be subject to conditions and restrictions as may be specified by DGFT in accordance with International Conventions / Treaties / Agreements.

7.3. CLASSIFICATION UNDER SCOMET LIST:

Vide Notification No. 38 (RE-2010)/2009-2014, dtd. 31.03.2011, issued under Section 5 and 14A of the FTDR Act, 1992, the Central Government notified the list of Specified goods, services and technologies i.e. SCOMET list vide Appendix-3 of Schedule 2 of the ITC (HS) Classification, This list has been updated from time to time.

7.4. THE CUSTOMS ACT, 1962:

7.4.1. As per Section 30(1) of the Customs Act, 1962, the person-in-charge of the vessel is required to deliver an Arrival Manifest or Import Manifest by presenting electronically prior to the arrival of the vessel in the Customs station, in such form and manner as may be prescribed.

7.4.2. As per the first proviso to Section 30(1) of the Customs Act, 1962, in case where it is not feasible to deliver arrival manifest by presenting electronically, the same are to be allowed to be delivered in any other manner.

7.4.3. Section 30(2) of the Customs Act, 1962 makes it mandatory for the person delivering the Import Manifest to subscribe to a declaration as to the truth of its contents.

7.4.4. Section 30(3) of the Customs Act, 1962 provides for permitting amendment of Import Manifest, if fraudulent intention is not found, but no such application for amending Arrival Manifest made so far.

7.4.5. Section 53 of the Customs Act, 1962 provides that subject to the provisions of Section 11 of the Customs Act, 1962, where any goods imported in a conveyance and mentioned in the arrival manifest or import manifest, as for transit in the same conveyance to any place outside India, the proper officer may allow the goods and the conveyance to transit without payment of duty, subject to such conditions as may be specified.

7.4.6. Section 106 of the Customs Act, 1962 empowers the proper officer of Customs to stop any conveyance, rummage and search such vessel, examine and search any goods in the vessel, break open the package for exercising powers.

7.4.7. Section 148 of the Customs Act, 1962 provides for making compliance by the person-in-charge of the vessel with the provisions of the Customs Act, 1962 through the agent appointed by him and such agent is under legal obligation to

comply with all issues including penalties and confiscation, which may be incurred of that matter.

7.4.8. Vide Notification No. 40-Cus dtd.06.06.1970, issued under Section 11 of the Customs Act, 1962, import of arms and ammunition, as defined in the Arms Act, 1959 (54 of 1959) has been prohibited absolutely, if the import is other than those imported by or on behalf of the Government of India or not in accordance with the provisions of Arms Act, 1959 (54 of 1959) and of the rules and orders made thereunder for the time being in force.

7.5. THE SEA CARGO MANIFEST AND TRANSHIPMENT REGULATIONS (SCMTR), 2018 SCMTR, 2018

7.5.1. Regulation 6 (1) of SCMTR requires that the cargo declaration in respect of arms, ammunition, explosive, radioactive material etc. for being carried as same bottom cargo should be delivered in Form XII. Regulation 6(2) requires that where the vessel does not carry any of such cargoes, then a Nil declaration should be delivered.

7.5.2. Regulation 10 of SCMTR specified the responsibilities of the authorised carrier, which reads as follows:

"(h) to advise his clients to comply with the provisions of the Customs Act, 1962 and in case of non-compliance should bring the matter to the notice of the Deputy/Assistant Commissioner of Customs, as the case may be.

(m) abide by all the provisions of the Customs Act, 1962 and the rules etc. made thereunder."

7.5.3. As per Regulation 15(1) of the SCMTR, notwithstanding anything contained in Regulation 4, 5 and 7 of the SCMTR, the authorised carriers were permitted to deliver the cargo declaration in VIA or VIB in respect of arrival manifest till 30.09.2020, which period was extended up to 01.11.2020 vide Notification No. 94/2020-Cus (NT), dtd.30.09.2020. There does not appear any further extension permitted thereafter by further amendment of Regulation 15(1) of the SCMTR. Irrespective this amendment and extension, there is no exclusion provided for making declaration under Form XII for arms, ammunition, explosive, radioactive material etc. as provided in Regulation 6 of the SCMTR.

7.5.4. As per Regulation 15(2) of the SCMTR, notwithstanding anything contained in the SCMTR, the authorised sea carriers were permitted to deliver the cargo declaration in form III of the IMR, 1971 in the manner as was applicable before the commencement of SCMTR till 30.09.2021, which period has been extended till 31.12.2021 vide Notification No. 78/2021- Cus (NT), dtd.30.09.2021. Here also it may be noted that in this transitional arrangement, the authorised carrier is

permitted to deliver only the cargo declaration in Form III, which they are required to deliver in Form VIA or VIB, as the case may be in terms of Regulation 4(2)(e) of the SCMTR. There is no such exception provided in respect of other declarations to be delivered in the Import Manifest, as provided vide Regulation 4(2) (a), (b), (c), (d) and (f) of the SCMTR. Again, it does not make any impact on declaration for arms, ammunition, explosive, radioactive materials etc. to be made in terms of Regulation 6 of the SCMTR.

7.5.5. It would be pertinent to mention here that the Form VIA and Form VIB, prescribed vide Regulation 4(2)(e)(i) and 4(2)(e)(ii) of the SCMTR, the said form is applicable for the categories of cargo/imported goods viz. Goods continue to be on-board in two categories viz. (i) domestic transit goods and (ii) Foreign transit goods. Explanation 4 has also been provided in respect of Foreign Transit cargo.

7.5.6. In the fields prescribed for the import manifest format prescribed vide Regulation 4(2)(e)(i), the field 25 pertains to cargo movement and in the said field the options provided are for home consumption, domestic transhipment, foreign transhipment, domestic transit and foreign transit.

7.5.7. In the same way, the fields prescribed for the import manifest prescribed vide Regulation 4(2)(e)(ii), the field 29 pertains to cargo movement and in the said field the options provided are for home consumption, domestic transhipment, foreign transhipment, domestic transit and foreign transit.

7.6. IMPORT MANIFEST (VESSELS) REGULATIONS, 1971

7.6.1. Even in respect of the erstwhile provisions of IMR, 1971, following were the noteworthy provisions:

- (1) *Regulation 3(1)(b) of the IMR, 1971 provided for delivering the Import manifest covering all the goods carried on a vessel.*
- (2) *Regulation 3(c)(iii) of IMR, 1971 prescribed the cargo declaration form in Form III, which should be of 430X340 Millimetres, as per Regulation 4 of the IMR, 1971.*
- (3) *As per Regulation 5 (1) of the IMR, 1971, the cargo declaration in Form III should be delivered in separate sheets in respect of each of the categories of (a) Cargo to be landed, (b) Unaccompanied Baggage, (c) Goods to be transhipped and (d) Same bottom cargo or retention cargo. The second proviso to Regulation 5 of the IMR, 1971 prescribed that in respect of same bottom or retention cargo, it would be sufficient if the details relating to nature of cargo and number of packages are declared.*
- (4) *Notwithstanding anything contained in aforesaid Regulation 5(1) of the IMR, 1971, as per Regulation 5(2)(a) of the IMR, 1971, the cargo declaration in respect of arms, ammunition, explosives etc. to be delivered in separate sheets, irrespective of whether the said cargo was*

for being carried as same bottom cargo and it should be set out in order for the port of loading.

(5) *The provisions of SCMTR were notified in suppression of IMR, 1971.*

7.6.2. The specific provision has also been made vide Regulation 5(2)(b) of IMR, 1971 that if the vessel does not carry any of the cargoes referred to in Regulation 5(2)(a) of IMR, 1971, as above, viz. arms, ammunition, explosives etc., a nil declaration should be delivered.

7.7. THE WEAPONS OF MASS DESTRUCTION (WMD) ACT, 2005

7.7.1. "Brought in transit" is defined under Section 4(b) of WMD Act, 2005 which reads as follows,

"4. *Definitions.* — *In this Act, unless the context otherwise requires, —*
(b) *"Brought in transit" - means to bring goods from any country into India by land, air, or amphibious means of transportation, where the goods are to be taken out from India on the same conveyance on which they are brought into India without any landing in India, but does not include a conveyance in innocent passage through Indian territory, Indian territorial waters or Indian airspace of a foreign conveyance carrying goods.*

Explanation I.—A conveyance is a foreign conveyance if it is not registered in India.

Explanation II. —A conveyance is in "innocent passage" if it is not engaged in relevant activity and passes through or above Indian territorial waters or airspace without stopping or anchoring in India;"

7.7.2. As per Section 5(1) of WMD Act, 2005 powers have been vested in Central Govt to notify categories of goods, whose transit etc., is to be regulated.

7.7.3. Section 11 of WMD Act, 2005 prohibits person for export any material equipment or technology knowing that such material, equipment or technology is intended to be used in the design or manufacture of a biological weapon, chemical weapon, nuclear weapon or other nuclear explosive device, or in their missile delivery systems.

7.7.4. Section 12 of WMD Act, 2005 prohibits person, for a consideration, under actual or implied contract, knowingly facilitate the execution of any transaction which is prohibited in the Act.

7.7.5. Section 13 of WMD Act, 2005 regulates the manner of transit of notified goods, which reads as under,

"13. Regulation of export, transfer, retransfer, transit and trans shipment-

(1) No item notified under this Act shall be exported, transferred, re-transferred, brought in transit or transhipped except in accordance with the provisions of this Act or any other relevant Act.

(4) The Central Government may notify any item as being subject to the provisions of this Act, whether or not it is covered under any other relevant Act; and when such item is exhibited, sold, supplied or transferred to any foreign entity or a foreigner who is resident, operating, visiting, studying, or conducting research or business within the territorial limits of India, or in its airspace or Exclusive Economic Zone, it shall constitute an offence."

Penalty has also been provided vide Section 18 of the WMD Act, 2005 for using false documents etc five times the value of the materials and not less than Rs. 5,00,000, when any person signs or uses, or causes to be signed or used, any declaration, statement or document submitted to the competent authority knowing or having reason to believe that such declaration, statement or document is forged or tampered with or is false in any material particular, and relates to items notified under this Act or any other relevant Act, including those related to relevant activity.

7.7.6. Offences by companies are also specified vide Section 20 of WMD Act 2005, in the following manner:

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

7.8 WEAPONS OF MASS DESTRUCTION AND THEIR DELIVERY SYSTEMS (PROHIBITION OF UNLAWFUL ACTIVITIES) IMPLEMENTATION RULES, 2016

7.8.1. Vide Notification dtd 18.06.2016, the WMDI Rules, 2016 have been notified, wherein in Chapter II Rule 18 of said rules, it was provided that the SCOMET list as appearing at App 3 of Sch II of ITC (HS) would be items to be regulated under Section 5(1) of WMD Act, 2005.

7.8.2. As per Rule 19 of the WMDI Rules, 2016 read with Section 7 (2) of WMD Act, 2005, The director General of Foreign Trade or an officer authorized by him shall be the Licensing Authority for the purpose of export of items falling under Category 1 to 7 of the SCOMET (Special Chemicals Organisms Materials Equipment and Technologies) list as appearing in Appendix 3 of Schedule 2 of Indian Trade Clarification based on Harmonized System of Coding (ITC (HS)) classification.

8. As per the above-mentioned report of designated technical experts, the consignment is covered under the Category- 4: Nuclear-related other equipment, assemblies and components; test and production equipment; and related technology not controlled under Category-0; Applicable sub category: 4A002 (a) of the SCOMET items. The machine falls under this category as it is able to machine diameter more than 35 mm having positioning accuracies less than 6 microns (<6 μ m)". Thus, the seized goods are covered under the provisions of Section 11 of the Customs Act, 1962 read with Section 5 and 14A(1) of the FTDR Act, 1992, 5(1) of the WMD Act, 2005.

9. ANALYSIS OF EVIDENCE RECOVERED AND SUMMARY OF FACTS REVEALED DURING INVESTIGATION:

9.1. Intelligence was received by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit that the Shipper M/s. Takahashi Machinery Co., Ltd., 4-11, Aza Shinbo Ohaza Yamaya, Ojiya-City, Nilgata Pref., Japan (947-8506) and the consignee Universal Shipping (Pvt.) Ltd., Mezzanine FL Bhoja Terrace, Shahrah-E-Liaquat, Karachi - Pakistan -74200 were carrying out the prohibited goods in transit. It was also gathered that the said goods were stuffed in the container number TCKU1835350 and a carrier vessel M. V. CAP Andreas was carrying the consignment route of the said vessel is Singapore - Port Kelang (Malaysia) - Pipavav (India) - Karachi (Pakistan) - Nhava Sheva (India) - Colombo (Sri Lanka) - Port Kelang (Malaysia).

9.2. Acting on the Intelligence, a discreet watch was kept on the movement of the said vessel M. V. CAP Andreas which got berthed on 14.07.2024 at Pipavav Port. After the vessel was berthed, container bearing number TCKU1835350 was offloaded from the said vessel and container taken to M/s. Contrans Logistic Private Limited, Rajula- Amreli for examination and it was placed under the safe custody of the said CFS.

9.3. Whereas, as the goods i.e. CNC Lathe Machine are highly technical, therefore, the said machine was examined along with a team of designated technical experts from DRDO, Hyderabad, Telangana. Accordingly, the examination was carried out under Panchnama dated 27.08.2024 in presence of the

representatives of the concerned Shipping Line and M/s. Contrans Logistic Private Limited. During examination, an operational data manual of the machine was also found.

9.4. The competent technical experts submitted their report which was forwarded vide letter DIC/SCOMET/4801/M/21 dated 17.09.2024 by the Assistant Director, DRDO, New Delhi, wherein, it was opined by the designated competent technical experts that it appears that the goods stuffed in 2 Boxes are covered under the Category- 4: Nuclear-related other equipment, assemblies and components; test and production equipment; and related technology not controlled under Category- 0; Applicable sub category: 4A002 (a) of the SCOMET items. The machine falls under this category as it is able to machine diameter more than 35 mm having positioning accuracies less than 6 microns ($<6\mu\text{m}$).

9.5. It therefore, appeared that the said SCOMET item were attempted to be transited in violation of provisions of the Customs Act, 1962 read with Notification No. 5/2015-2020 dated 24.04.2017 of the Directorate of General of Foreign Trade (DGFT) issued under Foreign Trade (Development & Regulation Act, 1992, which lists the SCOMET items, and further read with Weapons of Mass Destruction and their delivery systems (Prohibition of Unlawful Activities) Act, 2005. Therefore, the said goods with a declared invoice value of JPY 13,211 were seized under Section 110 of the Customs Act, 1962 vide seizure memo dated 28.09.2024 under a reasonable belief that being prohibited goods these are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962.

9.6. Whereas, as per Regulation 6 of SCMTR, the goods declaration in respect of arms, ammunition, explosives and radioactive material for import, export, transshipment or being carried as 'Same Bottom Cargo' is to be delivered mandatorily in Form XII, whereas the same was not declared by the authorized sea carrier i.e. M/s. Ocean Network Express (I) Pvt. Ltd. while filing IGM before the customs authority.

9.7. Whereas, as per the documents submitted by M/s. Ocean Network Express (India) Private Limited, it appears that the Shipper of the goods is M/s. Takahashi Machinery Co., Ltd., 4-11, Aza Shinbo Ohaza Yamaya, Ojiya-City, Niigata Pref., Japan (947-8506) whereas, the consignee is M/s. Universal Shipping (Pvt.) Ltd., Mezzanine FL Bhoja Terrace, Shahrah-E-Liaquat, Karachi - Pakistan -74200. Further, initial the said goods (in container TCKU1835350) was loaded in vessel "Nagoya Tower" from YOKOHAMA port of Japan and thereafter it was loaded in vessel "M.V. CAP Andreas" at Port Kelang (Malaysia).

9.8. Whereas, the shipper M/s. Takahashi Machinery Co., Ltd., Japan vide letter 08.11.2024 has confirmed that they shipped the CNC lathe machine from the Port of Yokohama, Japan to Karachi, Pakistan in the container TCKU18355350/20FT. Further, the CNC lathe is a general CNC lathe exported after strict examination by the Ministry of Economy, Trade and Industry of Japan. However, as per the report of competent technical expert, the machine is a 2-Axis slant bed type Precision

CNC lathe machine, manufactured by M/s. Takahashi Machinery Ltd (TMW), Japan having Machine Model No. L30 and Serial No. 4010. It is capable to machine hardware of the size diameter 120mm X 120mm length (approx.). It is equipped with high end latest FANUC 01-TF CNC control, capable of machining simultaneously up to 3 Axes (X, Z & C). The built in Spindle motor is of 2.2/3.7KW capacity having spindle speed of 8000rpm. It has Kitagawa N-04 make power chuck integrated to it which is capable to hold hardware of maximum diameter 120mm. From the performance data sheet recovered from machine operation manual it was inferred that the machine is of ultra precision class having static and positioning accuracies of less than 6 microns (<6mm). The machines with this kind of control systems are highly precise and are used in mass production of hardware. It has Automatic Tool Changer (ATC) attached to it, which makes it capable to mount multiple tools (upto 8nos.). Hence, based on machine build structure, capacity to machine precise components, High end CNC Control, and Automated Tool Changer, it can be concluded that the machine is of ultra-precision class, capable of mass production of highly precision hardware. The equipment is capable to machine hardware having accuracies of less than 6 microns (6 μ m) and is found to be suitable for mass production of articles related to Defence, Aerospace and Nuclear applications. Further, the item is having dual-use application related to Defence, Aerospace and Nuclear applications and classified in SCOMET export control list Category-4 and having applicable Sub-category: 4A002(a). The machine falls under this category as it is able to machine diameter more than 35mm having positioning accuracies less than 6 microns(<6mm).

9.9. At no stage the shipper has come forward to challenge or disapprove the said classification and neither produce any evidence against that the opinion provided by the expert. The said machine were brought in transit were also prohibited in the purview of WMD Act, 2005 and FTDR Act, 1992 and accordingly prohibited under Section 11 of the Customs Act, 1962. Therefore, the act of shipper attempted to be transit the said goods in violation of the provisions of the Customs Act, 1962 read with the Notification No. 5/2015-2020 dated 24.04.2017 of the DGFT issued under Foreign Trade (Development & Regulation) Act, 1992 which lists the SCOMET items, and the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005, are liable to confiscation under Section 111 (f), and 111 (n) of the Customs Act, 1962 read with Section 11 and Section 13 of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005. Thereby, the shipper has rendered himself liable for penalty under Section 112(a) & 112(b) of the Customs Act, 1962.

10. The relevant sections of the Customs Act, 1962 attracted to the present case are discussed as below:-

10.1. Section 111. Confiscation of improperly imported goods, etc.

The following goods brought from a place outside India shall be liable to confiscation:-

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an *1 [arrival manifest or import manifest]* or import report which are not so mentioned;

(n) any dutiable or prohibited goods transited with or without transhipment or attempted to be so transited in contravention of the provisions of Chapter VIII;

10.2. Section 112. 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,

10.3. Section 124. Issue of show cause notice before confiscation of goods, etc.

—*No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—*

(a) is given a notice in *[writing with the prior approval of the officer of Customs not below the rank of [an Assistant Commissioner of Customs], informing]* him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

11. Now, therefore, any person who was causing the transit of the consignment of 02 Wooden Boxes/Cases, covered under Bill of Lading No. ONEYTYOE70821800 dated 27.05.2024 is hereby called upon to show cause to the Additional Commissioner of Customs, Jamnagar Customs Preventive, Jamnagar having office at Office of the Commissioner of Customs (Preventive), Jamnagar, Rajkot-Jamnagar Highway, Near Victoria Bridge, Jamnagar – 361 001 within 30 (thirty) days from the date of receipt of the show cause notice, as to why

- i) the consignment of 02 wooden boxes having declared value (JPY 13,211,000 X 0.52) of Indian Rs. 68,69,720/- (Rupees Sixty Eight Lakhs Sixty Nine Thousand Seven Hundred Twenty only) should not be confiscated under the provisions of Section 111 (f) and 111(n) of the Customs Act, 1962 read with Section 11 and Section 13 of the



Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005.

ii) Penalty should not be imposed upon them under Section 112(a) & 112(b) of the Customs Act, 1962.

DEFENSE SUBMISSION:

12. The Noticee, M/s. Takahasi Machinery Co.Ltd. vide their letter dated 20.01.2025 filed defense submission; wherein they interalia submitted that CNC in question does not fall under 4A002(a) of the SCOMET List as the positioning accuracy of the L30 model (No.4010) based on ISO 230/2(1988) is 0.009336 mm (9.366 μ m) on the X axis and 0.009786 mm (9.786 μ m) on the Z-axis, which is not less than 6 μ m.

12.1 The model L30 machine No.4010 has a machinable diameter value of more than 35 mm, but the positioning accuracy based on ISO 230/2(1988) is not less than 6 μ m, so it does not fall under 4A002(a) of the SCOMET List. They further stated that on the other hand, the "Performance Test-Data" comes with the machine itself contains the results of positioning accuracy and repeated positioning accuracy based on the method that they have been using originally for many years. The inspection method and the inspection tools used are as described in the "Performance Test-Data", which is completely different from ISO 230/2(1988), and the measured value show completely different result of ISO 230/2(1988). They have further stated that the goods in question are a cargo that has been approved for export by the Ministry of Economy, Trade and Industry (Japan) after strict confirmation of the end user, purpose of use and processed product prior to export and, accordingly, L30 model (No.4010) does not fall under SCOMET List 4A002(a).

12.2 The Noticee, they vide their another letter dated 27.03.2025 has submitted that this machine L30 (No.4010) does not fall under 4A002(a) of the SCOMET List for the following reasons:

- 1) As stipulated by the SCOMET List, positioning measurements must be based on ISO 230/2 (1988). As already submitted in our written submission filed on 20.01.2025, the positioning accuracy measurement of this machine, L30 (No.4010), following to ISO 230/2 (1988) is 9.336 μ , the X-axis and 9.786 μ the Z-axis, which is not less than 6 μ .
- 2) Page 18, of the above Show Cause Notice, it was reported that "From the performance data sheet recovered from machine operation manual it was inferred that the machine is of ultra-precision class having static and positioning accuracies of less than 6 microns (<6mm)"
From the above, it is to submit that the positioning accuracy on which the report is based was not based on ISO 230/2(1988) conducted by DRI in India but was judged by citing the positioning accuracy contained in the performance data that recovered from machine operation manual.



3) As stated in their first written submission dated 20.01.2025, the positioning accuracy in their performance data that covered from machine operation manual is the result of a simplified positioning measurement based on their own measurement method, which is completely different from the measurement method in ISO 230/2(1988). They also relied upon their literature viz. Appendix 7 and Appendix 8, submitted vide their letter dated 20.01.25.

12.3 Thenafter, the Noticee, M/s. Takahashi Machinery Co.Ltd. vide their another letter dated 27.04.2025 has submitted that the measurement results of the positioning accuracy test and the repeatability test table in the Performance-Test Data Sheet- literature that was supplied with the machine (Model L30, No. 4010), are not result based on ISO 230/2(1988). Those results are based on Takahashi's original inspection method. They have submitted a comparison table to differentiate between the two methods.

Sl. No.	Inspection Standard	ISO 230/2(1988)	Takahashi's original
1.	Inspection Tools used	Optical Laser Length measuring instrument	Analog Dial Indicator
2.	Minimum Detection Unit	0.0001 μ	2 μ
3.	Reading Method	Digital(Automatic)	Eyes of Operator
4.	Inspection Result Calculation	Automatic Calculation by Software	Manual Calculation by Operator
5.	Measuring Range	250 mm (100% of stroke)	+/- 50mm (near center of stroke)
6.	Number of Measuring Point & Distance	26 points (+/- 10mm)	1 point (+/-50mm)
7.	Each Distance of Measuring Points	10mm	50mm
8.	Number of Repetitions	5 times (+250mm/-250mm)	7 times (+50mm/-50mm)

Therefore, according to them, the machine in question i.e. L30 (No.4010) does not fall under SCOMET List 4A002(a).

PERSONAL HEARING

13. Personal hearing in the matter was held on 25.03.2025. Mr. Kiyokazu Abe, Authorised Representative from M/s. Takahashi Machinery Co. Ltd., Japan and Mr. Naobumi Okabe, Authorised Representative from M/s. Naigai Trans Co. Ltd. attended the hearing on behalf of the Noticee and interalia stated that they have not received the copies of documents as listed in Annexure-A to the subject Show Cause Notice dated 31.12.2024 and requested to send the same via mail, so as to enable them to represent their case perfectly and requested to grant another Personal Hearing. The documents as requested were provided to the Noticee.

13.1 2nd Personal hearing in the matter was held on 25.04.2025. Mr. Kiyokazu Abe, Authorized Representative from M/s. Takahashi Machinery Co. Ltd., Japan and Mr. Naobumi Okabe, Authorized Representative from M/s. Naigai Trans Co. Ltd. attended the aforesaid hearing on behalf of the Noticee and interalia stated that the accuracy of their machine is more than 6 microns and does not meet the criteria of ISO 230/2(1988), therefore, the same does not fall under the category of SCOMET List. They assured to submit the documentary evidence related to their product/machine not falling under ISO 230/2(1988) and being not capable of maintaining the accuracy below 6 microns and thus, not falling under SCOMET. They have further requested to grant final hearing in the matter after submission of further documents.

13.3 Due to change in the Adjudicating Authority, one another Personal Hearing in the matter was held on 13.06.2025, Mr. Kiyokazu Abe, Authorized Representative from M/s. Takahashi Machinery Co. Ltd., Japan, Mr. Naobumi Okabe, Authorized Representative from M/s. Naigai Trans Co. Ltd. and Mr. Manjit Wasu (Interpreter/Translator) on behalf of M/s. Takahashi Machinery Co. Ltd., Japan and they interalia re-iterated the submissions made by them vide their letters dtd.20.01.2025, 27.03.2025 and 27.04.2025. Further, Mr. Kiyokazu Abe, Authorized Representative of M/s. Takahashi Machinery Co. Ltd., Japan stated that positioning accuracy of their machine is more than 6 microns, as per ISO 230/2(1988), hence the machine is not covered under SCOMET. Accordingly, they requested to decide the issue at the earliest.

DISCUSSION AND FINDINGS:

14. I have carefully gone through the facts of the case, Show Cause Notice and written Defense submissions dated 20.01.2025, 27.03.2025 and 27.04.2025 and personal hearing held in virtual mode on 25.03.2025, 25.04.2025 and 13.06.2025.

I find that, the issues to be decided in the instant case are as follows:

- i) Whether the seized "Compact Precision CNC Lathe (MICROSTAR L30)" machine is having accuracies of less than 6 microns, so as to fall under the 'SCOMET List 4A002(a)', Category - 4 or otherwise;
- ii) Whether the consignment of 02 wooden boxes having declared value (JPY 13,211,000 X 0.52) of Indian Rs. 68,69,720/- (Rupees Sixty Eight Lakhs Sixty Nine Thousand Seven Hundred Twenty only) should be confiscated under the provisions of Section 111 (f), 111(n) of the Customs Act, 1962 read with Section 11 and Section 13 of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 or otherwise
- iii) Whether the penalty should be imposed upon them under Section 112(a) & 112(b) of the Customs Act, 1962 or otherwise.



14.1 I observe that, acting on the intelligence, DRI had kept a discreet watch on the movement of the vessel "M. V. CAP Andreas" which got berthed at Pipavav Port on 14.07.2024. After the vessel was berthed, DRI requested the Pipavav Port (Operations), Pipavav to offload the said container bearing number TCKU1835350 for further investigation. The said container was offloaded from the said vessel and taken to M/s. Contrans Logistic Private Limited, Rajula- Amreli under the safe custody for examination.

14.2 I observe that, considering the nature of the goods, it was decided to get the said goods examined from the experts of the concerned field and accordingly, upon request, a team of designated technical experts from DRDO, Hyderabad, Telangana was deputed for examination of the said goods.

14.3 I observe that, the goods stuffed in the container bearing number TCKU1835350; wherein the shipper was M/s. Takahashi Machinery Co., Ltd., Japan and the consignee was M/s. Universal Shipping (Pvt.) Ltd., Karachi, Pakistan, was examined under Panchnama dated 27.08.2024 accompanied with the Scientists of DRDO, Hyderabad, Telangana and in the presence of two independent Panchas, the representatives of the concerned Shipping Line i.e. M/s. Ocean Network Express (I) Pvt. Ltd. and the representative of M/s. Contrans Logistic Pvt. Ltd., CFS.

14.4 I observe that, during the course of examination on opening of boxes i.e. cargo in transit lying on board without being declared in Import General Manifest, CNC Lathe Machine Model L30, Serial No. 4010 along with its accessories was found packed therein alongwith the operational data manual of the said CNC Lathe Machine thereof. The competent technical experts from DRDO Hyderabad submitted their report to DRDO New Delhi, which was then forwarded to DRI by DRDO New Delhi vide their letter DIC/SCOMET/4801/M/21 dated 17.09.2024 issued by the Assistant Director, DRDO, New Delhi, wherein it was inter alia mentioned that:

"Conclusion: After on-site examination of the seized item, based on machine build structure, capacity to machine precise components, High end CNC Control, and Automated Tool Changer, it can be concluded that the machine is of ultra-precision class, capable of mass production of highly precision hardware. The equipment is capable to machine hardware having accuracies of less than 6 microns (6µm) and is found to be suitable for mass production of articles related to Defence, Aerospace and Nuclear applications. Further, the item is having dual-use application related to Defence, Aerospace and Nuclear applications and classified in SCOMET export control list as below:

SCOMET Item: Category-4

Category title: Nuclear-related other equipment, assemblies and components; test and production equipment; and related technology not controlled under Category-0

Applicable Sub-category: 4A002 (a)

The machine falls under this category as it is able to machine diameter more than 35 mm having positioning accuracies less than 6 microns (<6 μ m)".

14.5 From the aforesaid report of the DRDO, I find that CNC Lathe Machine Model L30, Serial No. 4010 is having positioning accuracies of less than 6 microns and therefore falls under the 'SCOMET List 4A002(a)', Category - 4 and the same were attempted to be transited in vessel, "M. V. CAP Andreas" without declaration in Import General Manifest in violation to the provisions of Section 30 of the Customs Act, 1962 read with Notification No. 5/2015-2020 dated 24.04.2017 of the Directorate of General of Foreign Trade (DGFT) issued under Foreign Trade (Development & Regulation Act, 1992, which lists the SCOMET items and Weapons of Mass Destruction and their delivery systems (Prohibition of Unlawful Activities) Act, 2005.

14.6 I observe that, the Noticee in their defense reply dated 27.03.2025 contended that the positioning accuracy on which the report is based, was not based on ISO 230/2(1988) conducted by DRI in India but was judged by citing the positioning accuracy contained in the performance data that is recovered from machine operation manual. They further stated that the positioning accuracy in their performance data that covered from machine operation manual is the result of a simplified positioning measurement based on their own measurement method, which is completely different from the measurement method in ISO 230/2(1988). In this regard, I observe that, as per Noticee's website (<http://www.tmwjp.com>, <https://tmw-microstar.co.jp>) and information available in public domain (e.g. <https://jgoodtech.smrj.go.jp>), the Noticee-M/s. Takahashi Machinery Co. Ltd., Nilgata Prefecture, Japan is established in 1955 and they are in-to manufacture and sale of ultrahigh precision CNC Lathes. I also notice that, the technical specification documents accompanying the seized CNC Lathe Model L30 mentioned that the machine is capable of manufacturing a large quantity of high precision components and the machine has positional accuracies of less than 6 microns. Further, as per the Defense Research and Development Organization, Ministry of Defense letter dated 17.09.2024, the CNC Lathe L30 is capable to machine hardware having accuracies of less than 6 microns (6 μ m) and is found suitable for mass production of articles related to Defense, Aerospace and Nuclear applications. Further, DRDO has also mentioned that the item is having dual use applications related to Defense, Aerospace and Nuclear applications and classified in SCOMET export control list under sub-category 4A002(a).

14.7 In view of above factual situation, the Noticee's claim that the CNC machine under consideration is not capable of positional accuracies of less than 6 microns

appears to be an afterthought only to dodge the legal proceedings and to avoid confiscation and any penal action. Further, the Noticee, who is expert manufacturer in ultrahigh precision CNC machines, cannot contradict specifications contained in their own technical specification documents and dismiss the technical performance data sheet accompanying the CNC machine, by stating that this data is the result of a simplified positioning measurement, based on their own measurement method, which is different from ISO 230/2(1988).

14.8 Further, I observe that the Noticee is marketing and selling CNC L30 machine as capable of positional accuracies of less than 6 microns. Only when the goods are interdicted and seized for violation of Weapons of Mass Destruction Act, 2005 read with SCOMET List, they came up with the submission that these machines are not capable of positional accuracies of less than 6 microns. Hence, the submission of Noticee appears to be not true and contrary to the facts on records.

14.9 I further find that, the seized cargo, which has dual use applications related to Defense, Aerospace and Nuclear applications, which is being shipped to Karachi was not declared in Import General Manifest (IGM) in violation of Regulation 6 and 7 of SCMTR, 2018, Regulation 5 of IMR, 1971 and Weapons of Mass Destruction Act, 2005 read with Customs Act, 1962. As per Regulation 6 of Sea Cargo Manifest and Transhipment Regulations (SCMTR), the goods declaration in respect of arms, ammunition, explosives and radioactive material for import, export, transhipment or being carried as 'Same Bottom Cargo' is to be delivered mandatorily in Form XII, whereas the same was not declared by the authorized sea carrier i.e. M/s. Ocean Network Express (I) Pvt. Ltd. while filing IGM before the customs authority under the Import General Manifest with intention to avoid any kind of examination of offended goods.

15. In view of the provisions mentioned at para 7 above and as per discussion supra and in terms of the above-mentioned report of designated technical experts from DRDO, I find that the consignment, "Compact Precision CNC Lathe (MICROSTAR L30)" is covered under the Category- 4: Nuclear-related other equipment, assemblies and components; test and production equipment; and related technology not controlled under Category-0; Applicable sub category: 4A002 (a) of the SCOMET items. The machine falls under this category as it is able to machine diameter more than 35 mm having positioning accuracies less than 6 microns ($<6\mu\text{m}$)". Thus, the seized goods are covered under the provisions of Section 11 of the Customs Act, 1962 read with Section 5 and 14A(1) of the FTDR Act, 1992, 5(1) of the WMD Act, 2005. I, therefore find that, the said goods with a declared invoice value of JPY 13,211000 which were seized under Section 110 of the Customs Act, 1962 vide seizure memo dated 28.09.2024 under a reasonable belief that the same being prohibited goods are liable for absolute confiscation under the provisions of Section 111(f) & 111(n) of the Customs Act, 1962 read with Section 11 of the Customs Act, 1962 and read with Section 11 & 13 of the

Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005.

16. I observe that, Section 112 regarding Penalty for improper importation of goods, etc. stipulates,

"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) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

16.1 I find that, the Noticee, M/s. Takahashi Machinery Co., Ltd., Japan in violation to Section 11 & 13 of the Weapons Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 read with provisions of Section 11, 30 and 111 of the Customs Act, 1962, attempted to '**brought in transit**' prohibited goods viz. CNC Lathe Machine Model L30, Serial No. 4010 along with its accessories, hence, render themselves liable for penalty under Section 112(a)(i) of the Customs Act, 1962 ibid as these goods are liable for confiscation under Section 111 of the Customs Act, 1962, as already held in paras supra.

17. In view of the above discussion and findings, I pass the following order.

:: ORDER::

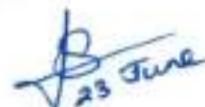
(i) I order for absolute confiscation of the consignment viz. Compact Precision CNC Lathe (Microstar Model L30, Serial No. 4010) Machine along with its accessories packed in 02 wooden boxes having declared value (JPY 13,211,000 X 0.52) of INR 68,69,720/- (Rupees



Sixty Eight Lakhs Sixty Nine Thousand Seven Hundred Twenty only) under the provisions of Section 111 (f) & 111 (n) of the Customs Act, 1962 read with Section 11 and Section 13 of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005, as the same being prohibited goods in nature.

(ii) I also impose penalty of INR 68,69,720/- on M/s. Takahashi Machinery Co. Ltd., Aza Shinbo Ohaza Yamaya, Ojiya-City, Niigata Pref., Japan (947-8506) ,under the provisions of Section 112(a)(i) of the Customs Act, 1962.

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



(N. Srujan Kumar)
Additional
Commissioner

DIN – 20250671MM000000E3DA

Date: 23.06.2025

फाइल सं : CUS/201/2025-Adjn.

BY SPEED POST/ HAND DELIVERY:

1. M/s. Takahashi Machinery Co., Ltd., 4-11, Aza Shinbo Ohaza Yamaya, Ojiya-City, Niigata Pref., Japan (947-8506) (to be served through the shipping line i.e. M/s. Ocean Network Express (India) Private Limited, Pipavav)

Copy to:

1. The Commissioner, Customs (Preventive), Commissionerate, Jamnagar
2. Additional Director, DRI, Zonal Unit, Ahmedabad
3. The Assistant Commissioner, Customs Division, Pipavav.
4. The Superintendent(RRA), Customs (Prev.), Jamnagar.
5. The Superintendent(TRC), Customs (Prev.), Commissionerate Jamnagar
6. Guard File.



