



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
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 DIN-20250971MN000000C020

क	फाइल संख्या FILE NO.	S/49-135/CUS/AHD/2024-25 S/49-139/CUS/AHD/2024-25
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-214 & 215-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	03.09.2025
ड	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	Order-In-Original No. 11/AC/ACC/OIO/ SANDVIK/2024-25 dated 19.06.2024 passed by the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad.
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	03.09.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	<p>Appellant-1: M/s. Sandvik Mining & Rock Technology India Pvt. Ltd. (Formerly known as M/s. Sandvik Asia Pvt. Ltd.), Mumbai Pune Road, Dapodi, Pune - 411012.</p> <p>Appellant-2: M/s. DHL Logistics Pvt. Ltd., 201A, Silver Utopia, Cardinal Gracias Road, Chakala, Andheri (East), Mumbai - 400099.</p>

- यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
 This copy is granted free of cost for the private use of the person to whom it is issued.
- सीमाशुल्क अधिनियम 1962 की धारा 129 डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3



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



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



ORDER-IN-APPEAL

M/s. Sandvik Mining & Rock Technology India Pvt. Ltd. (Formerly known as M/s. Sandvik Asia Pvt. Ltd.), Mumbai Pune Road, Dapodi, Pune – 411012 (hereinafter referred to as 'the Appellant-1' or 'the importer') and M/s. DHL Logistics Pvt. Ltd., 201A, Silver Utopia, Cardinal Gracias Road, Chakala, Andheri (East), Mumbai – 400099 (hereinafter referred to as 'the Appellant-2' or 'the Customs Broker') have filed the present appeals against the Order-In-Original No. 11/AC/ACC/OIO/SANDVIK/2024-25 dated 19.06.2024 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the Appellant-1 has imported different types of Pumps by filing various Bills of Entry through the Appellant-2, who is a Customs Broker. During the course of Audit by officers of Customs Revenue Audit for the period July-2018 to September-2018, it was noticed that various importers had imported different types of pumps viz. (1) Piston Pumps, Chemical Pump and Gear, Internal Gear Pump, Fuel Pump, Pump for ceramic industries/Machine; and (ii) Centrifugal Pump, Spare parts for ceramic machine; which were liable to IGST @ of 28% and 18% respectively. It appeared that the goods were cleared on payment of IGST at lower rate than the applicable rate, resulting in short levy of IGST by classifying the goods under incorrect Sr. No. of the Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017.

3. A Show Cause Notice dated 27.06.2023 was issued to the importer proposing to levy IGST @28% and 18%, under Schedule IV and Schedule III respectively, of IGST Notification No. 01/2017 dated 18.06.2017 and for demand of differential duty of Rs.4,42,950/- with interest and penalty under the provisions of Section 28(4), 28AA and 114A of the Customs Act, 1962. In this SCN, a penalty under Section 117 ibid has also been proposed on the Customs Broker.

4. After considering written and oral submissions of the noticees, the adjudicating authority has passed the impugned order. The findings of the adjudicating authority are as under:

"16(a). I have carefully gone through the facts of the case, the defence replies of the Noticees and record of personal hearing. I find that four different rates of IGST are applicable for pumps falling under CTH 8413.



(i) Serial No. 231 of Schedule I covers hand pump and parts thereof

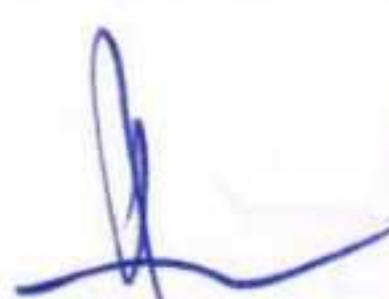
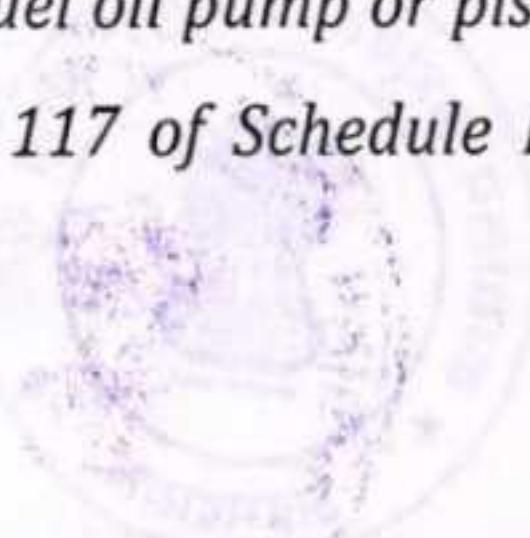
(ii) Serial No. 192 of Schedule II covers power driven pump primarily designed for handling water, namely, centrifugal pumps (horizontal and vertical), deep tube-well turbine pumps, submersible pumps, axial flow and mixed flow vertical pumps

(iii) Serial No. 317A of Schedule III covers concrete pumps (84134000), **other rotary positive displacement pumps (841360)** and

(iv) Serial No. 117 of Schedule IV covers **pumps for dispensing fuel or lubricants of the type used in filling stations or garages (841311)**, **Fuel, lubricating or cooling medium pumps for internal combustion piston engines (841330)**.

(b). The description of the goods imported by M/s. Sandvik Asia Pvt. Ltd. under Bills of Entry listed in Annexure A to SCN, as mentioned in the Bills of Entry and in respective imported documents are fuel / oil pump or piston pump, which indicate their use for dispensing fuel or in piston engines. As such these items would be covered by Sr. No. 117 of Schedule IV to Notification No. 1/2017 dated 28.06.2017-Integrated Tax (Rate). The Importer has shown readiness to pay 28% IGST. I find no fundamental difference between the items for which the Importer is ready to pay IGST @ 28% and others remaining items. In fact the importer himself has suggested different items being leviable to higher GST in their responses. In their defence reply dated 31.07.2023, they informed readiness to pay IGST @ 28% in respect of item No. 1, 2, 8, 13, 14, 17, 18 and 21. However, during personal hearing Shri Rohan Nawase who attended hearing on behalf of Importer submitted an Annexure A, which showed that they were ready to pay IGST @ 28% on items mentioned at Sr. No. 1, 2, 8, 13, 14, 17, 18 and 21. Therefore, I hold that all the items covered in SCN (i.e. mentioned in Annexure A) being fuel / oil pump or piston pump are chargeable to IGST @ 28% under Sr.no. 117 of Schedule IV to Notification No. 1/2017 dated 28.06.2017-Integrated Tax (Rate).

(c) With respect to liability of penalty on Importer under Section 114 A of Customs Act 1962, I find that the importer was fully aware about the nature of the imported goods as fuel oil pump or piston pump. I note that such pumps are clearly described under Sr. No. 117 of Schedule IV to Notification No. 1/2017 dated 28.06.2017-Integrated Tax



(Rate). However, despite being fully aware of the facts, they mis-stated the applicable Schedule and Sr. No. for levying IGST at lower rates. Therefore, I find that provisions of Section 28 (4) of Customs Act 1962 are justifiably attracted to recover differential duty amounting to **Rs. 4,42,950/-** on imported goods mentioned in Annexure A and Importer liable to penalty under Section 114A of Customs Act 1962.

(d) With regard to liability of Customs Broker M/s. DHL Logistics, for penalty under Section 117 of Customs Act 1962, I find that the Customs Broker was in complete knowledge of the description of the goods in import documents which indicated the goods to be fuel / oil pump or piston pump. The goods were classified under CTH 8413. On going through the contents of Sr. No. 117 of Schedule IV it is clear that fuel / oil pump or piston pump are covered said Sr. Number. Even in some case, IGST @ 5% applicable for hand pump and parts thereof, has been applied for goods imported by M/s. Sandvik Asia Pvt. Ltd which has no relation with such goods. Therefore, I find that the Customs Broker have failed to exercise due diligence to ascertain the correctness of the information imparted to the Importer and thus have rendered themselves liable to penalty under Section 117 of Customs Act 1962 for contravention of provisions of Section 146 read with Customs Brokers Licensing Regulations, 2018 and that of Section 46 (3) of Customs Act 1962."

5. In view of the above discussion and findings, the adjudicating authority has ordered to levy IGST @ 28% under Sr. No. 117 of Schedule IV to Notification No. 1/2017 dated 28.06.2017-Integrated Tax (Rate) read with Section 3(7) of Customs Tariff Act, 1975, read with Section 12 of Customs Act, 1962, and ordered to recover duties of customs, short paid, amounting to Rs. 4,42,950/- in terms of provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA ibid from M/s Sandvik Asia Pvt. Ltd. He imposed a penalty of Rs. 4,42,950/- on the importer under section 114A of the Customs Act, 1962, by mentioning that penalty would be 25% of duty amount, if paid within 30 days of order along with duty and interest. He also imposed a penalty of Rs. 5,000/- under section 117 of the Customs Act, 1962 on the CHA/Customs Broker viz. M/s. DHL Logistics.

Filing of appeal (pre-deposit and time-limit)

6. Being aggrieved, the Appellant-1 has filed the appeal on 20.08.2024. In the Form C.A.-1, the date of communication of the O.I.O. dated 19.06.2024 has been shown as 24.06.2024. Thus, the appeal has been filed within the normal period of 60 days. The Appellant-1 has submitted a copy of T.R.6 Challan No. 3108 dated 19.07.2024 towards payment of entire Duty amount of Rs.4,42,950/-, Interest of Rs.3,94,509 and Penalty @ 25% of Rs.1,10,738/-,



totaling to Rs.9,48,197/-.

7. Appellant-2 has filed the appeal on 09.08.2024. In the Form C.A.-1, the date of communication of the O.I.O. dated 19.06.2024 has been shown as 20.06.2024. Thus, the appeal has been filed within the normal period of 60 days. The Appellant-2 has submitted a copy of T.R.6 Challan No. 3284 dated 08.08.2024 towards payment of pre-deposit of Rs.375/- calculated @ 7.5% of penalty of Rs.5,000/-.

8. As both the appeals have been filed within normal period of 60 days as stipulated under Section 128(1) of the Customs Act, 1962, and requirement of pre-deposit under the provisions of Section 129E ibid, has been complied, these appeals have been admitted and being taken up for disposal.

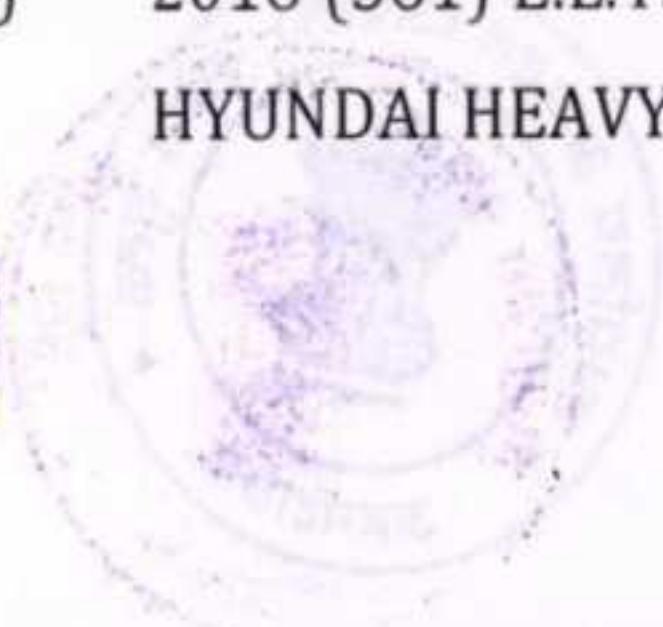
Grounds of Appeal submitted by the importer M/s. Sandvik Mining and Rock Technology India Pvt. Ltd. ('Appellant-1')

9. The Appellant-1 has raised various contentions in the Grounds of Appeal, which are as follows:

Whole demand is barred by limitation:

9.1 The show cause notice was issued on 27.06.2023 for the imports during the period from 04.07.2018 to 28.09.2018. There is no allegation in the show cause notice that the importer has mis-declared the description of the goods. There is no case made out of any "wilful" or intent to evade duty to bring in the case of "fraud" and "collusion". There is no case of stated "misstatement" or "suppression of fact". Hence, the department should have issued the SCN within 2 years from the date of assessment of the goods. In this regard, the importer has relied upon numerous case laws. Some of them are as under:

- i) 2013 (288) E.L.T. 161 (S.C.) UNIWORTH TEXTILES LTD. Versus COMMISSIONER OF CENTRAL EXCISE, RAIPUR
- ii) 2013 (288) E.L.T. 172 (Pat.) ASHIRVAD ENTERPRISES PVT. LTD. Versus CESTAT, KOLKATA
- iii) 2009 (238) E.L.T. 3 (S.C.) UNION OF INDIA Versus RAJASTHAN SPINNING & WEAVING MILLS
- iv) 2018 (361) E.L.T. 837 (Bom.) COMMR. OF CUS. (IMPORTS), MUMBAI Versus HYUNDAI HEAVY INDUS. CO. LTD.



9.2 The importer has also relied upon the case of HLS Asia Ltd. Versus Commissioner Service Tax Commissionerate 2023 (73) G.S.T.L. 539 (Tri. - Del.) wherein it has been held that incorrect assessment and payment of service tax by assessee would not amount to deliberate misdeclaration and suppression of facts with intent to evade tax; therefore, extended period of limitation was not invokable.

9.3 The importer further submitted that the pumps imported by them are, in fact, Hydraulic/gear pumps/variable Displacement/Air Conditioning Drive Pumps with applicable GST @18% under entry No. 317A or residuary entry No.453 of Schedule III of Notification No.1/2017-Integrated tax (Rate) dated 28.06.2017.

9.4 The importer further submitted that they have rightly declared the description and classification of the imported goods and subsequently presented the documents before the proper officer for verification/scrutiny and allow for clearance of the goods. On satisfying all the parameters the proper officer had allowed the goods to be cleared by giving 'Out of Charge' Order. It proves that the importer/ Appellant had no intention to embezzled any government revenue. In spite of that the Appellant would like to mention that **mere claiming benefit of wrong Sr. No. of Notification/Schedule is not an offence.** In this regard, the importer/Appellant relied on the following case law:

- i) DIMENSION DATA INDIA PVT. LTD. Versus COMMISSIONER OF CUSTOMS [2021 (376) E.L.T. 192 (Bom.)] - upheld by the Hon'ble Supreme Court of India vide Commissioner v. Dimension Data India Private Ltd. - 2022 (379) E.L.T. A39 (S.C.)]
- ii) SIRTHAI SUPERWARE INDIA LTD. Versus COMMR. OF CUSTOMS, NHAVA SHEVA-III [2020 (371) E.L.T. 324 (Tri. - Mumbai)]

9.5 The importer further submitted that there was no mala fide intention on the part of them and classification is matter of interpretation, so, no penalty is imposable.

9.6 In view of the above submissions, the Appellant-1 has requested to set aside the impugned order with consequential relief.

10. Vide email dated **12.08.2025**, Shri. Ashwani Kumar Prabhakar, Advocate for the Appellant-1, has submitted following **Additional Submissions:**



10.1 Impugned Imported pumps are rotary positive displacement pumps falling under entry Sr. No. 317A, inserted by amendment in 2017:

The impugned imported pumps are rotary positive displacement pumps and also fall under entry Sr. No. 317A and the same entry was inserted in Schedule III of the Basic Notification 1/2017 dated 28.06.2017 vide Notification No. 43/2017-I.T. (Rate), dated 14-11-2017 and the same is as under:

Notification No. 43/2017-I.T. (Rate), dated 14-11-2017 - IGST Rates reduced as per GST Council decisions — Amendment to Notification No. 1/2017-I.T. (Rate)

(C) in Schedule III-18%,

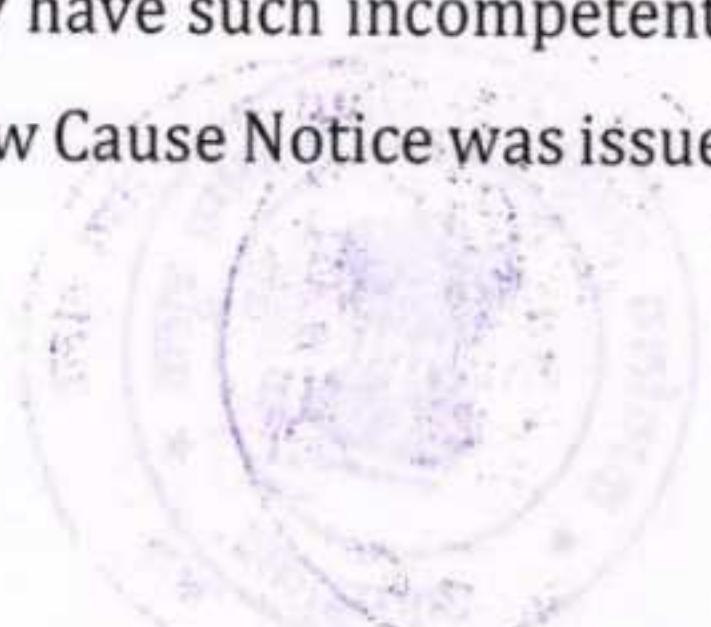
(lxxix) after S. No. 317 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely :-

"317A	8413	<i>Concrete pumps [8413 40 00], other rotary positive displacement pumps [8413 60]</i>
317B	8414	<i>Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters [other than bicycle pumps, other hand pumps and parts of air or vacuum pumps and compressors of bicycle pumps]";</i>

10.2 Extended period not invokable:

The whole case has been based on audit of the records, therefore, the extended period is not invokable. Reliance is placed on the following case laws:

SANTOSH KUMAR GHOSH Versus COMMISSIONER OF CUS. (PREV.), KOLKATA [2009 (245) E.L.T. 530 (Tri. - Kolkata)] - Demand - Limitation - Brass scarp - Import of - Assessing officers and Audit officers have been negligent in duty and have not kept track of notifications prescribing tariff value for impugned goods - Impugned goods assessed under normal valuation provisions although tariff valuation notifications were issued several months ago - Department to face consequences if they have such incompetent officers who are not even aware of basic notifications - Show Cause Notice was issued after more than three and a half years of normal period



of limitation - Demand time-barred - Impugned order set aside - Proviso to Section 28 of Customs Act, 1962. [para 4]

The above case law was upheld by the Hon'ble Calcutta High Court **[Commissioner v. Santosh Kumar Ghosh - 2011 (267) E.L.T. A57 (Cal.)]**

10.3 Revenue neutral situation:

Even if the Importer/ Appellant would have paid the IGST at the rate of 28%, the importer was entitled for the IGST credit. So, the whole situation is revenue neutral. Therefore, the extended period cannot be invoked in the said matter. Reliance is placed on the following case laws:

- i) 2003 (153) E.L.T. 7 (S.C.) AMCO BATTERIES LTD. Versus COLLECTOR OF CENTRAL EXCISE, BANGALORE
- ii) 2020 (33) G.S.T.L. 250 (Tri. - Hyd.) ASMITHA MICROFIN LTD. Versus COMMR. OF CUS., C. EX. & S.T., HYDERABAD-III

10.4 Pre Notice Consultation cannot be converted to a show cause notice invoking extended period:

There are two provisions for issue of notice under Section 28 of the Custom Act, 1962, one under Section 28(1) and other under Section 28(4) of the Custom Act, 1962. Both the provisions of Section 28 (1) and Section 28 (4) are **exclusive of each other**.

The pre-notice consultation is a provision provided under Section 28 (1) of the Act and is for the normal period. But, there is no provision of pre-notice consultation provided under Section 28 (4) of the Act. Once a pre-notice consultation is issued under Section 28 (1) of the Act and the noticee replied the same and the revenue remains silent for three years, subsequently the revenue cannot issue a show cause notice under Section 28 (4) of the Act invoking extended period. Thus, the show cause notice is not as per the provisions of the Act and the Pre-Notice Consultation Regulations made thereunder. Therefore, the show cause notice itself is without jurisdiction and is liable to be dropped.

Grounds of Appeal submitted by the Customs Broker M/s. DHL Logistics Pvt. Ltd. ('Appellant-2')

11. The Appellant-2 has raised various contentions in the Grounds of Appeal, which are as follows:



11.1 It is submitted that the rate of IGST on the impugned goods was adopted on the basis of import documents and after instructions and approval of the Importer, considering that the imported goods were highly technical in nature. As per the importer's confirmation the impugned goods were classified under Chapter heading 8413 and Integrated Goods and Services Tax ("IGST") @ 18% was applied in terms of Sr. No. 317A of Schedule III of Notification No. 01/2017-IT(Rate) dated 28.06.2017 (as amended).

11.2 The Appellant submits that it has been incorrectly held in the impugned order that the pumps in question attract IGST @ 28% in terms of Sr. No. 117 of Schedule IV of Notification No. 01/2017-IT (Rate) dated 28.06.2017 (as amended). The Appellant are under the bona fide belief that the impugned goods are not "Fuel Pumps" falling under Schedule IV of Notification No. 01/2017-IT (Rate) dated 28.06.2017 (as amended) and are, in fact, "Hydraulic pumps" with applicable IGST rate of 18% under entry no. 317A of Schedule III of Notification No. 1/2017 -Integrated tax (Rate) dated 28 June, 2017. Based on the definition and function of fuel pump and Hydraulic Pump it is evident that Hydraulic pump is a mechanical device that is used to convert mechanical power into hydraulic energy. Hydraulic pumps are used to pump the hydraulic fluid from tank to hydraulic motors and cylindrical ram for working. While a Fuel pump pumps liquid fuel from a fuel tank to the internal combustion engine. The function of a fuel pump is circulating fuel continuously to run the engine and fuel filtration. The products imported by the importer are used in different final products such as Compactor, Excavator and Wheel Loader.

11.3 It is submitted that claiming the benefit of a notification for the purpose of payment of IGST by itself does not amount to mis-declaration of goods. It may be noted that goods imported by the importer and the subject matter of this appeal are technical goods and the classification and rate of duty was adopted based on the documents and discussions with the representatives of the Importers. Based on the understanding of the goods given by the representatives of the Importer, classification and rate of IGST was claimed in respect of the bills of entry covered by the impugned order.

11.4 The Appellant submits that it is well settled position in law that laying claim to a notification, whether admissible or not, is a matter of belief of and does not amount to mis-declaration. This was held by the Hon'ble Supreme Court of India in ***Northern Plastic Ltd. Versus Collector of Customs & Central Excise.*** Therefore, none of the alleged acts or



omissions on the part of the Appellant in acting as Customs Broker have rendered the imported goods liable to confiscation. Accordingly, the Appellant are not liable for penalty.

11.5 It is submitted that the Appellant has applied the appropriate rate of IGST and has not committed any acts of omission or commission in this regard.

11.6 In view of the aforesaid submission, it is clear that the Appellant has declared the correct description, classification and rate of IGST based on the import documents and instructions from the importer.

11.7 As submitted above, the rate of IGST determined in the impugned order appears to be patently inapplicable. The rate of IGST applied by the Appellant was bona fide based on the material on record. The importer vide their letter dated 31.07.2023, addressed to the Assistant Commissioner of Customs detailed the items under import and their functionality. The said letter clearly states that the products are hydraulic pumps which attract IGST @ 18%.

11.8 Further, assuming without admitting that rate of IGST applied by the Appellant was not correct, that by itself cannot be ground to impose penalty on the Appellant.

11.9 It is submitted that the Appellant reiterates that the rate of IGST applied by them was bona fide based on the documents on record.

11.10 It is now well settled that claiming a wrong notification based on its understanding of the tariff per se would not amount to mis-declaration or suppression. Classification of goods, determination of correct rate of duty and valuation of goods are part of the assessment proceedings.

11.11 It is not the case of the Department that description given in the Bills of Entry was not the same as appearing in the import documents. Even the impugned Order-in-original does not hold that the name/ description of the product appearing in the bills of entry are not as per the import documents.

11.12 A penalty of Rs 5000/- is imposed on the Appellant under Section 117 of the Act. Section 117 of the Act reads as under:



SECTION 117. *Penalties for contravention, etc., not expressly mentioned.* — Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees].

11.13 It is submitted that the sine qua non for imposition of penalty under Section 117 of the Act is completely missing in the present case. The Appellant has not contravened any provision of the Act nor abetted in any such contravention, which we were duty-bound to comply with.

11.14 The Appellant have fully complied with the provisions of the Customs Act in acting as customs broker of the Importer.

11.15 It is reiterated that the subject goods have been classified correctly and appropriate amount of IGST has been declared and paid thereon.

11.16 It is not the case of the department that the Appellant have participated or acted mala fide. The Appellant have classified the goods bona fide and claimed appropriate rate of IGST.

11.17 Without prejudice and in any event, the Appellant submit that it is a settled position in law that the issue of classification and rate of duty, being complex and factual, it cannot be said that the Customs Broker should have all the information and nuances pertaining to the goods relevant for classification or that the customs broker should form a correct opinion as regards such a complex issue. In this regard, reliance is placed on the following judgments:

- i. HIM Logistics Pvt. Ltd. v. Commissioner of Customs, New Delhi, 2016 (340) ELT 388 (Tri.- Del.)
- ii. Brijesh International v. Commr. Of Cus. (Import & General), New Delhi, 2017 (352) ELT 229 (Tri.- Del.)
- iii. International Exim Agency v. Commissioner of Cus., Chennai, 2009 (242) ELT 267 (Tri.- Chennai)

11.18 It is a settled position in law that no penalty can be imposed in cases involving issues of interpretation. In this regard, reliance is placed on the following decisions:



- b. C.C.E vs Swaroop Chemicals (P) Ltd. [2006 (204) ELT 492 (Tri)]
- c. Haldia Petrochemicals Ltd. vs. CCE [2006 (197) ELT 97 (Tri)]
- d. CCE vs. Telco Ltd. [2006 (196) ELT 308 (Tri)]
- e. Siyaram Silk Mills Ltd. vs. CCE [2006 (195) ELT 284 (Tri)]
- f. CCE vs. Sikar Ex-Serviceman Welfare Co-op. Society Ltd. [2006 (4) STR 213 (Tri)]
- g. Hindustan Steel Ltd. vs. State of Orissa [1978 (2) ELT (J 159) (SC)]
- h. Fibre Foils Ltd. vs. C.C. E [2005 (190) ELT 352 (Tri)]
- i. ITEL Industries Pvt. Ltd. vs. CCE [2004 (163) ELT 219 (Tri)]
- j. Birla Corporation Ltd. vs. CCE [2002 (148) E L T 1249 (Tri)]

11.19 In any event, in Hindustan Ferodo Ltd. v. Collector of Central Excise, Bombay [1997 (89) ELT 16 (SC)], the Hon'ble Supreme Court has categorically held that the onus of establishing that the goods are liable to reclassified lies entirely on the Department.

11.20 In the present case, it is submitted that the said onus of proving that the rate of IGST on the imported goods ought to be redetermined has not been discharged satisfactorily. Thus, it is submitted that no penalty can be imposed on the Appellant without discharging the said onus for redetermining the rate of IGST on the imported goods.

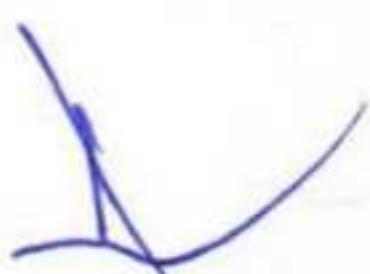
11.21 In view of the above, it is submitted that the Appellant have not made any contravention of any provision under the Act and thus, no penalty is liable to be imposed under Section 117 of the Act.

11.22 Further, no penalty can be imposed under Section 117 of the Act for contravention of CHB Regulations. In fact, the Appellant by applying rate of IGST on the imported goods as per understanding did not contravene any of the Regulation of CHB Regulations.

11.23 The Appellant reiterates that the rate of IGST applied was bona fide. No penalties can be imposed for filing a Customs declaration bona fide based on the documents provided by the importer in the absence of any allegation of forgery or manipulation of documents.

11.24 It is further submitted that, admittedly, the Appellant had no prior knowledge of the nature of the goods or their functionality.

11.25 It is submitted that the order of the Respondent imposing penalty on the Appellant is otherwise bad in law and liable to be set aside.



Personal Hearing

26.1 Personal Hearing in respect of the Appellant-1 was held in physical mode on 08.08.2025, which has been attended by Shri. Ashwani Kumar Prabhakar, Advocate; Shri. Rohan Nawase, Deputy Manager and Shri. Sachindra Boruah, Manager, Tech Support. They reiterated the written submissions made at the time of filing of appeal. They have submitted a Sheet showing that in 10 cases they have accepted and in other cases they have not accepted the enhanced rate by giving justification. The Advocate, on behalf of the Appellant-1, also stated that the whole demand is barred by limitation, as the whole case is based on Audit and this is Revenue Neutral situation. Further, self-assessment cannot be the sole ground for invoking extended period.

26.2 Personal Hearing in respect of the Appellant-2 has been held in virtual mode on 08.08.2025, which was attended by Shri. Kautak K. Singh, Head-Customs Compliance. He reiterated the written submissions and further stated that the present issue is technical and interpretational in nature. He referred Board's Instruction No. 20/2024, which suggests that implicating Customs Brokers as co-noticees in a routine manner, in matters involving interpretation of statute, must be avoided.

Findings:

27. One set of the appeal memorandums filed by both appellants have been forwarded to the adjudicating authority for comments, but no reply has been received. Under this situation, I rely upon the submissions made by the appellants.

28. I have carefully gone through the impugned order and written as well as oral submissions made by or on behalf of the appellants. The issues to be decided in the present appeals are as under:

- (i) Whether the Appellant-1 importer is liable to pay differential IGST (with interest and penalty) on various types of pumps as demanded in the impugned order by invoking extended period of limitation under Section 28(4)?
- (ii) Whether the Appellant-2 Customs Broker is liable for penalty under Section 117 in this case?



Findings regarding liability to pay differential IGST on various types of pumps

29. At the outset, I find that there is an amendment to Notification No. 01/2017-Integrated Tax (Rate), by Notification No. 43/2017-Integrated Tax (Rate) dated 14.11.2017. By the said amendment, Sr.No. 317A has been **inserted** in Schedule-III of the Notification No. 01/2017-Integrated Tax (Rate), which prescribes 18% rate of IGST on "*Concrete pumps [8413 40 00], other rotary positive displacement pumps [8413 60]*"; whereas simultaneously the said goods have been **omitted** from Sr.No. 117 of Schedule-IV (28%) of the said Notification. Thus, the rate of IGST on the goods viz. "*Concrete pumps [8413 40 00], other rotary positive displacement pumps [8413 60]*" have been reduced to 18% from 28% w.e.f. 14.11.2017. However, the goods "**Pumps for dispensing fuel or lubricants of the type used in filling stations or garages [8413 11], Fuel, lubricating or cooling medium pumps for internal combustion piston engines [8413 30]**" attracts 28% IGST under Sr. No. 117 of Schedule-IV of the said Notification.

30. The Appellant-1 has already shown their willingness to pay IGST @ 28% on the pumps mentioned at Sr. No. 1, 2, 8, 11, 13, 14, 17, 18 and 21, which according to them falls under Sr. No. 117 of Schedule-IV of the said Notification. For remaining types of pumps, the Appellant-1 has contested that they are rotary positive displacement pumps and so, falling under Sr.No. 317A of Schedule-III of Notification No. 01/2017-Integrated Tax (Rate), as amended by Notification No. 43/2017-Integrated Tax (Rate) dated 14.11.2017. In this regard, I find that the adjudicating authority has not discussed item-wise applicability of IGST Rates under these two competing entries. There is no finding of the adjudicating authority to the effect whether the disputed items/pumps, are of the type which are used in filling stations or garages or not. As mentioned in Annexure 'A' to the SCN dated 27.06.2023, there are 27 entries of different types of pumps, for which demand of differential duty has been raised. Therefore, the adjudicating authority should have discussed applicability of relevant entry of the said Notification, item-wise, in the Order-in-Original. Instead, he mentioned, "*I find no fundamental difference between the items for which the Importer is ready to pay IGST @ 28% and others remaining items*" and then held that "*all the items covered in SCN (i.e. mentioned in Annexure A) being fuel / oil pump or piston pump are chargeable to IGST @ 28% under Sr.no. 117 of Schedule IV to Notification No. 1/2017 dated 28.06.2017-Integrated Tax (Rate)*" [Para 16(b) of the impugned order refers].

31. I am of the view that the aforesaid findings of the adjudicating authority are not legal and proper. The importer has submitted item-wise description (as per Annexure 'A' of SCN) and use of the imported pumps in 'Final Remarks' column during the Personal Hearing. It is



not known whether the importer had submitted these particulars, including end use of various types of pumps, before the adjudicating authority or not. So, the matter is required to be remanded back to the adjudicating authority. As regards the imported pumps, which are mentioned at Sr. No. 1, 2, 8, 11, 13, 14, 17, 18 and 21 of Annexure 'A' to the SCN, there is no dispute regarding applicability of 28% IGST and resulting into short payment of differential duty on these items. Therefore, the adjudicating authority should examine applicability of proper rate of IGST in remand proceedings in respect of each of the remaining items and give item-wise findings regarding applicable rate of IGST.

32. As regards sustainability of invoking extended period of limitation under Section 28(4) and imposition of penalty, the adjudicating authority has merely observed, "*With respect to liability of penalty on Importer under Section 114 A of Customs Act 1962, I find that the importer was fully aware about the nature of the imported goods as fuel oil pump or piston pump. I note that such pumps are clearly described under Sr. No. 117 of Schedule IV to Notification No. 1/2017 dated 28.06.2017-Integrated Tax (Rate). However, despite being fully aware of the facts, they mis-stated the applicable Schedule and Sr. No. for levying IGST at lower rates. Therefore, I find that provisions of Section 28 (4) of Customs Act 1962 are justifiably attracted to recover differential duty amounting to Rs. 4,42,950/- on imported goods mentioned in Annexure A and Importer liable to penalty under Section 114A of Customs Act 1962. [Para 16(c) of the impugned order refers].* In this regard, I am of the view that these findings are not proper and sufficient to uphold invoking extended period of limitation and to impose penalty under Sections 28(4) and Section 114A of the Customs Act, 1962. According to the appellant, there was no mis-declaration in respect of description of goods, but the only allegation is regarding mis-stating the wrong serial number of Notification No. 1/2017-Integrated Tax (Rate). I find that there are no findings of the adjudicating authority in the impugned order as to how demand of duty by invoking extended period of limitation is sustainable, particularly when the case law cited by the appellant, as mentioned hereinabove, are in favour of them.

33. In view of the above position, I am of the view that the matter is required to be remanded back to the adjudicating authority for considering submissions of the appellant in respect of every types of imported pumps and also on the issue of applicability of extended period of limitation under Section 28(4). The adjudicating authority shall pass a fresh order after following principles of natural justice. It is expected that the importer shall furnish the item-wise end-use to the adjudicating authority in the de novo adjudication proceedings.



34. As regards powers of Commissioner (Appeals) to remand the matters, I rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs [2004 (173) E.L.T 117 (Guj.)], judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and Orders of Hon'ble Tribunals in cases of Prem Steels P. Ltd. [2012-TIOL-1317-CESTAT-DEL] and Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri. - Del)] wherein it was held that Commissioner (Appeals) has power to remand the case under Section 35A (3) of the Central Excise Act, 1944 and Section 128A (3) of the Customs Act, 1962.

Findings regarding penalty on Customs Broker

35. The adjudicating authority has observed that the Customs Broker was in complete knowledge of description of goods indicated to be fuel / oil pump or piston pump; that the said goods are covered under Sr. No. 117 of Schedule IV of Notification No. 1/2017-IT (Rate); therefore, he found that the Customs Broker have failed to exercise due diligence to ascertain the correctness of the information imparted to the Importer and thus have rendered themselves liable to penalty under Section 117 for contravention of provisions of Section 146 read with Customs Brokers Licensing Regulations, 2018 and that of Section 46 (3) of Customs Act, 1962. In this regard, I find that there is no allegation in this case that the description of goods has been mis-declared. Neither in the SCN, nor in the OIO, the description of the imported goods has been changed. The only dispute is regarding applicability of proper Schedule and Serial Number of Notification No. 1/2017-IT (Rate). Therefore, I find that there is no mis-declaration of goods on part of the Customs Broker.

36. As regards the alleged contravention of Sections 46(3) and Section 146 of the Customs Act, 1962, I reproduce the text of the said provisions, which are as under:

"SECTION 46. Entry of goods on importation. — (1)

(3) The importer shall present the bill of entry under sub-section (1) [before the end of the day (including holidays) preceding the day] on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing :

Provided that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:



Provided further that a bill of entry may be presented [at any time not exceeding thirty days prior to] the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India :

Provided also that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed."

"SECTION 146. Licence for customs brokers. — (1) No person shall carry on business as a customs broker relating to the entry or departure of a conveyance or the import or export of goods at any customs station unless such person holds a licence granted in this behalf in accordance with the regulations.

(2) The Board may make regulations for the purpose of carrying out the provisions of this section and, in particular, such regulations may provide for —

(a) the authority by which a licence may be granted under this section and the period of validity of such licence;

(b) the form of the licence and the fees payable therefor;

(c) the qualifications of persons who may apply for a licence and the qualifications of persons to be employed by a licensee to assist him in his work as a customs broker;

(d) the manner of conducting the examination;

(e) the restrictions and conditions (including the furnishing of security by the licensee) subject to which a licence may be granted;

(f) the circumstances in which a licence may be suspended or revoked; and

(g) the appeals, if any, against an order of suspension or revocation of a licence, and the period within which such appeal may be filed."

After going through the above, I find that in the present case, no provision of Section 43(3) or Section 146 has been contravened by the Customs Broker.

37. As regards the allegation that the Customs Broker failed to exercise due diligence to ascertain the correctness of information, I find that Regulation 10(e) of the Customs Brokers Licensing Regulations (CBLR), 2018, requires that a broker to exercise due diligence to ascertain the correctness of any information they impart. Failure to exercise due diligence, if any, attracts action by Customs Department under the provisions of CBLR, 2018. Whereas, in the impugned order, no proceedings under the Customs Brokers Licensing Regulations,

2018 have been initiated against the Customs Broker. Therefore, in the present proceedings, I do not have to examine whether the Customs Broker has exercised due diligence or not, in terms of CBLR, 2018.

38. I also find that the submissions made by the Customs Broker, as reproduced hereinabove, are squarely applicable and the case law relied upon are in favour of them. Further, I find that the CBIC, vide **Instruction No. 20/2024-Cus dated 03.09.2024**, has directed that *implicating Customs Brokers as co-noticee in a routine manner, in matters involving interpretation of statute, must be avoided unless the element of abetment of the Customs Brokers in the investigation is established by the investigating authority.* In the present case, there is no allegation regarding abetment of Customs Broker in this case.

39. I have also referred the **Advisory No. 01/2022-JNCH dated 02.12.2022** issued with approval of the Chief Commissioner of Customs, Mumbai Zone-II from F.No. CCCO/LGL/MISC/277/2022-ADMN-O/o CC-CUS-ZONE-II-NHAVA SHEVA. In the said Advisory, it has been inter alia mentioned that *implicating Customs Brokers in a routine manner in matters involving interpretation of statute is not only improper but also against the National Litigation Policy of the Government, as such cases invariably fall in Court. This not only increases the number of legal disputes but also defeats the Government objective of Ease of Doing Business by reducing the 'ease of paying taxes', which is a parameter for measuring 'Ease of Doing Business'.* It is therefore advised that such practice of routinely proposing penal provisions under the Customs Act, 1962 against Customs Brokers by Audit Commissionerate in matters involving interpretation of statute should be avoided. I find that in the case on hand also, the objection has been raised during the course of Audit and the aforesaid Advisory is squarely applicable.

40. In view of the above Instruction of CBIC and Advisory of Mumbai Zone-II, Nhava Sheva, I am of the view that the penalty of Rs. 5,000/- imposed on the Appellant-2 Customs Broker under Section 117 is not sustainable and therefore liable to be set aside.

41. In view of the above facts and findings, I pass the following order.

Order

41.1 I set aside the Order-In-Original No. 11/AC/ACC/OIO/ SANDVIK/2024-25 dated 19.06.2024 passed in respect of the Appellant-1 and direct the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad, to pass de novo adjudicating order by keeping in



mind the directions given hereinabove. The appeal filed by the Appellant-1 viz. M/s. Sandvik Mining & Rock Technology India Pvt. Ltd. is allowed by way of remand.

41.2 I set aside the impugned Order-In-Original to the extent it imposes a penalty of Rs.5,000/- under Section 117 on M/s. DHL Logistics Pvt. Ltd. and allow the appeal filed by them.





(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F.No. S/49-135/CUS/AHD/2024-25
S/49-139/CUS/AHD/2024-25

Date: 03.09.2025

By E-mail (As per Section 153(1)(c) of the Customs Act, 1962)

To

M/s. Sandvik Mining & Rock Technology India Pvt. Ltd.
(Formerly known as M/s. Sandvik Asia Pvt. Ltd.),
Mumbai Pune Road, Dapodi, Pune - 411012.
(email: shripad.d.kulkarni@sandvik.com rohan.nawase@sandvik.com)

M/s. DHL Logistics Pvt. Ltd.,
201A, Silver Utopia, Cardinal Gracias Road,
Chakala, Andheri (East), Mumbai - 400099
(email: Kautak.Singh@dhl.com Jigar.Shah@dhl.com)

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
(email: ccohm-guj@nic.in)
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
(email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)
3. The Deputy/Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad
(email: aircargo-amd@gov.in accusacc@gmail.com)
4. Shri. Ashwani Kumar Prabhakar, Advocate, M/s. KPL Legal, Navi Mumbai
(email: admin@kpslegals.com kpslegal11@gmail.com)
5. Guard File.
