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|  | सीमा शुल्क (निवारक) के आयुक्त का कार्यालय, सीमा शुल्क भवन, जामनगर - राजकोट हाइवे, विक्टोरिया ब्रिज के पास, जामनगर (गुजरात) - 361 001 |
| | Office of the Commissioner of Customs (Preventive), 'SEEMA SHULK BHAVAN', Jamnagar – Rajkot Highway, Near Victoria Bridge, Jamnagar (Gujarat) – 361 001 |
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दस्तावेज पहचान संख्या/

Document Identification Number (DIN)– 20250271MM000000DFFF

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| 1. | फाइल क्रमांक/ File Number | VIII/10-240/Commr/O&A/2014 VIII/10-297/Commr/O&A/2014 |
| 2. | मूल आदेश क्रमांक/ Order-In-Original Number | JAM-CUSTM-PRV-COM-009 & 010-24-25 |
| 3. | आदेश पारित करने वाला प्राधिकारी/ Authority Passing the Order | धिरेन्द्र लाल / Dhirendra Lal आयुक्त /Commissioner, सीमा शुल्क (निवारक) / Customs (Preventive), जामनगर /Jamnagar. |
| 4. | आदेश की तिथि/ Date of Order | 03-02-2025 |
| 5. | आदेश जारी करने की तिथि/ Date of issue of Order | 03-02-2025 |
| 6. | कारण बताओ नोटिस संख्या और तारीख/ Show Cause Notice number and date | संख्या/ No.: VIII/10-240/Commr/O&A/2014 दिनांक / dated: 22.09.2014 संख्या/ No.: VIII/10-297/Commr/O&A/2014 दिनांक / dated: 29.01.2015 [REMAND PROCEEDINGS AS PER CESTAT FINAL ORDER NO. A/11510-11511/2024 DATED 05.07.2024 IN APPEAL NO. 11011 OF 2017-DB & 10375 of 2018- DB, ARISING OUT OF OIO NO. 04 & 05/Commissioner/2015 DATED 16-07-2015] |
| 7. | नोटिस पाने वाले का नाम/ Name of the Noticee | श्री विनय सिंह, मैनेजिंग डायरेक्टर श्री राजेश विहाला, चेयरमैन फोरसी इंफ्रास्ट्रक्चर इक्विपमेंट्स प्रा. लिमिटेड, लक्ष्मी मॉल, लक्ष्मी इंडस्ट्रियल एस्टेट, नई लिंक रोड, अंधेरी (पश्चिम) मुंबई-400053. Shri Vinay Singh, Managing Director & Shri Rajesh Vihala, Chairman M/s. Fourcee Infrastructure Equipments Pvt. Ltd., Lakshmi Mall, Lakshmi Industrial Estate, New Link Road, Andheri (W), Mumbai -400053. |

1. इस आदेश की मूल प्रति संबंधित व्यक्ति को निशुल्क प्रदान की जाती है।
The original copy of this order is provided free of cost to the person concerned.
2. इस मूल आदेश से व्यथित कोई भी व्यक्ति, सीमा शुल्क अधिनियम, 129 की धारा 1962A)(1)a(, सीमा शुल्क नियम (अपील), 1982 के नियम 6(1) के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से तीन महीने के भीतर फॉर्म सीए 3-में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए 3-में अपील का प्रपत्र, चार प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। जिनमें से कम से कम एक)।(प्रमाणित प्रति हो

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

- अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये) 0.50 पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची -I, मद 6 के तहत निर्धारित किया गया है।

The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

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

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

- अपीलीय ज्ञापन के साथ शुल्क भुगतान अर्थ दंड का सबूत भी संलग्न करें अन्यथा सीमा शुल्क / जुर्माना / अधिनियम, 1962 की धारा 129(E) के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।

Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 129 (E) of the Customs Act, 1962.

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

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

- इस आदेश के खिलाफ अपील, सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के %7.5 के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।

An appeal, against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal, on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE :

Specific intelligence was received by the HQ, Preventive, Jamnagar, that M/s Fourcee Infrastructure Equipments Pvt. Ltd., Laxmi Mall, Laxmi Industrial Estate, New Link Road, Andheri(W), Mumbai, (hereinafter referred to as "the Noticee") were engaged in the import of Containers on re-export basis from Pipavav port and were availing the exemption from payment of whole of Customs duty and whole of Additional duty leviable under the virtue of Notification No.104/94-Customs dated 16.3.1994. The Noticee after the import of the containers failed to follow the procedures as laid down in the Notification 104/94-Customs, and overshot the period of six months envisaged therein in the Notification, where the empty containers imported were to be re-exported.

2. The Notification No.104/94-Customs dated 16.3.1994 reads as follows:

"Notification No. 104 dated 16th March 1994

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

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

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

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

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

3. The Noticee is an importer of containers as well as a Shipping line and hence, on import of the containers should give proper declaration to the Customs authority about the nature of import i.e. whether containers are imported on re-export basis or the containers are imported for the home consumption. But in the instant case the Noticee did not inform the customs authority about the usage of the imported containers for home consumption. The Noticee took the benefit of the dual status of being a Shipping line and importer of the container and adopted a modus operandi to clear the imported containers without payment of Customs duty and on being caught took the shelter of being a Shipping line or would excuse themselves by stating that the containers are imported and cleared on re-export basis.

4. There is an exemption from payment of whole of Customs duty and whole of Additional duty leviable with virtue of Notification No.104/1994 dated 16.3.1994, subject to execution of Bond with Assistant/Deputy Commissioner of the respective customs formations and the bond amount may be specified by the Assistant/Deputy Commissioner. The Noticee has to file the Bill of Entry and follow the import procedures, so as to monitor the duty free import of the containers. The Noticee need not follow the normal procedures of clearances but should file a continuity bond and debit / credit should be made on import/export of the regular containers. The said party need not submit a copy of B/L, only manual IGM is required to be filed indicating the number of empty containers temporarily imported as envisaged in the Circular no.83/1998-Cus dated 5.11.1998 as amended.

5. The Circular No.83/1998-Cus dated 5.11.1998 reads as below:

"Subject : Movement of containers and containerized cargo - Instruction regarding.

M/s Indian Freight Container Manufacturers Association has represented to Government of India that a huge dumping of empty containers into the system is affecting the off take of containers manufactured in the country because of lack of monitoring of the requirement to re-export the imported Containers within six months. Moreover, extinction beyond six months is granted by customs from time to time routinely. Ministry of Commerce have requested that in addition to close monitoring, bank guarantee be taken for Import of Containers.

2. On the issue of clearance of containerised cargo and re-export of marine containers, the attention is drawn to Board's earlier circular F.No. 434/ 17/ 94 - CUS. IV, dated 16th May, 1994. The Notification No. 104/94 as amended by Notification No. 101/95 dated 20.5.1995 exempts the freight containers of durable nature from payment of whole of the duty of customs and the whole of additional duty payable provided the containers are re-exported within six months for which a bond is executed by the importers or the shipping agent. It was stressed in the Circular dated 16.5.94 the extension may not be given routinely....."

6. The Noticee imported 163 empty containers, on re-export basis availing the benefit of Notification No.104/1994-Customs dated 16.3.1994 and they utilized the service of their authorised CHA M/s SSS Sai Shipping Pvt. Ltd., A-304, Classique Centre, Plot no.26, Mahal Industrial Estate, Off Mahakali Cross Road, Andheri(E), Mumbai, for clearance of the said 163 empty containers. Out of this 53 containers were imported per vessel CMA-CGM MOLIERE-328F on 21.02.2013 and 10 containers were imported per vessel SL MICHIGIN-1302 on 14.02.2013 and the same were removed under bond in the capacity of shipping line. The Noticee failed to re-export the said 163 empty containers as per the conditions laid down in the Notification no.104/1994-Customs dated 16.3.1994, nor did they seek any extension of time limit for export. On offence of the party being detected they sought to regularize the office by filing Non-EDI bills of entry. Further, the Noticee requested to allow the clearance of the 163 containers by filing Non-EDI bills of entry. The details of the Non-EDI Bill of Entry are as follows:

| Sr.No. | Bills of Entry No. and Date | No of containers | Assessable Value (in Rs.) |
|--------|-----------------------------|------------------|---------------------------|
| 1 | F-002/13-14 dtd.12.6.2013 | 100 | 14,35,17,541 |
| 2 | F-004/13-14 dtd. 19.07.13 | 53 | 8,09,47,932 |
| 3 | F-005/13-14 dtd. 19.07.13 | 10 | 1,52,73,195 |

7. The Noticee was granted permission by the Commissioner of Customs, Jamnagar, to file manual Bill of Entry for the 163 containers vide letters No. VIII/48-10/SYS/Non-EDI BE/2011-12-Pt-II dated 10.6.2013 and 16.09.2013.

8. The Noticee was requested to file the manual Bills of Entry along with the relevant documents and were directed to pay the customs duty along with interest for all the 163 containers which were imported on re-export basis as per Notification No.104/1994-Customs dated 16.3.1994 and which they failed re-export within the stipulated period. The Noticee thereafter filed the manual Bill of Entry as detailed below:

| Sr.No. | Bill of Entry No. and Date | No of containers | Assessable Value (in Rs.) | Duty(in Rs.) |
|--------|----------------------------|------------------|---------------------------|--------------------|
| 1 | F-002/13-14 dtd.12.6.2013 | 100 | 14,35,17,541 | 4,14,07,451 |
| 2 | F-004/13-14 dtd. 19.07.13 | 53 | 8,09,47,932 | 2,30,26,840 |
| 3 | F-005/13-14 dtd. 19.07.13 | 10 | 1,52,73,195 | 43,44,687 |
| | TOTAL | 163 | 23,97,38,668 | 6,87,78,978 |

8.1. The Noticee failed to pay up the total Customs duty of Rs. 6,87,78,978/-after filing the Bills of Entry even after several reminders issued on 09.10.2013, 14.10.2013 and 23.12.2013 by the Assistant Commissioner of Customs, Pipavav Port. Since the Noticee did not discharge the total Customs duty liability, HQ. office vide letter F. No. VIII/48-58/PI/HQ/12-13 dated 26.08.2014 requested the Additional Commissioner (SIIB), Jawaharlal Nehru Custom House, Uran, Raigad, Maharashtra to place the 100 empty containers lying at CWC, Kalamboli which were subsequently seized by the Superintendent (SIIB, Import), JNCH, Sheva, vide the seizure memo F.No.SG/Misc-o3/2014 SIIB (I)/JNCH dated 05.9.2014. Similarly, a letter dated 18.02.2014 was addressed to the Additional Commissioner (SIIB), Custom House, Kandla to place the 63 containers lying at Bhimasar, Gandhidham under seizure as they had been removed under bond but had exceeded the stipulated time period of six months. They were subsequently seized by the Superintendent (SIIB), CH Kandla vide seizure memo F. No. S/43-8/SIIB/2013-14 dated 26.03.2014.

8.2 To make further inquiry about nonpayment of duty for imported containers, Summon dated 03.11.2014 was issued to Shri Rajesh Vihala, Chairman of the Noticee to appear on 12.11.2014 along with original Bills of Entry and the details of evidencing of payment of Customs Duty before the Deputy Commissioner (Prev.), Customs H.Q., Jamnagar. However, he did not appear on the said date or thereafter. It appears he deliberately avoids his presence in the instance case. Further Summon dated 26.08.2014 was issued to Shri Vinay Singh, Managing Director of the Noticee

to appear on 09.09.2014 along with original Bills of Entry and the details of evidencing of payment of Customs Duty before the Superintendent (Prev.), Customs H.Q., Jamnagar. However, he did not appear on the said date or thereafter.

09. It appeared that the party had initially imported 163 empty containers on availing the Notification No. 104/1994-Customs dated 16.3.1994, wherein the empty containers were to be re-exported within six months. The Notification No.104/94 as amended by Notification No.101/95 dated 20.5.1995 exempts the freight containers of durable nature from payment of whole of the duty of customs and the whole of additional duty payable provided the containers are re-exported within six months for which a continuity bond is to be executed by the importers or the shipping agent. M/s Fourcee Infrastructure Equipments Pvt. Ltd., had imported 163 empty containers by availing the Notification No. 104/1994-Customs dated 16.3.1994, but failed to re-export the same with the stipulated time-limit of six months from import. The Noticee when confronted for not re-exporting the said 163 empty containers in contravention to the conditions of the Notification No.104/1994-Customs dated 16.3.1994, excused themselves that that they have imported the said empty containers as Shipping line, but later on filed the manual bills of entry, but failed to discharge the Customs duty of Rs. 6,87,78,978/- involved on the 163 containers.

10. In the light of the facts discussed in the foregoing paras and material evidence available on records, it transpired that M/s Fourcee Infrastructure Equipments Pvt. Ltd., had imported 163 SWAP body (fluid) containers, as a Shipping line, at Pipavav Port on re-export basis availing the benefit of Notification No.104/94. They failed to re-export the said 163 containers within the stipulated six months as per the provisions laid down in the said Notification. So they requested for clearance of such 163 containers by filing Non-EDI Bill of Entry. The Commissioner of Customs, Jamnagar, accorded permission to file the manual bill of Entry for 163 containers and were directed to clear the goods on payment of Customs duty along with interest. Since the party did not pay the Customs duty along with interest on the 163 containers (100 containers lying at CWC, Kalamboli and 63 containers lying at Bhimasar, Gandhidham) despite several reminders, they same were considered as offending goods and were seized vide seizure memo no. 12/2014 issued from F.No. SG/Misc-3/2014 SIIB(I)/JNCH dated 05.09.2014 (100 containers) and seizure memo F. No. S/43-8/SIIB/2013-14 dated 26.03.2014 (63 containers).

11. From the above it appeared that M/s Fourcee Infrastructure Equipments Ltd., imported 163 nos. of empty containers classifiable under CTH 86090000 and cleared them on availing the benefit of Notification No.104/94, but they failed to re-export the same within the stipulated six months as per the conditions of the Notification, nor they sought any extension from the competent authority. Thereafter, they filed the manual Bills of entry for home consumption. Since, they failed to pay the Customs duty along with interest and hence the said 163 containers have become offending goods and hence the same were seized. The Customs duty is required to be

recovered under Section 28(4) of the Customs Act, 1962. Since the noticee failed to pay the custom duty, interest is also recoverable from them under Section 28AA of Customs Act, 1962.

12. M/s Fourcee Infrastructure Equipments Ltd., filed manual Bills of entry for clearance of 163 nos. of empty containers with Customs, GPPL, Pipavav through their CHA M/s SSS Sai Shipping Pvt. Ltd. They did not care to pay the Customs duty along with the interest even after continuous follow up by the department. The Customs Duty covered under the Bill of Entry comes to Rs. **6,87,78,978/-** was required to be demanded and recovered under Section 28 of the Customs Act, 1962. The party did not respond to several reminders to pay up the duty and the Customs Duty liability was pending till date. Since the party failed to pay the Customs duty despite several reminders the extended period was rightly invocable under Section 28(4) of Customs Act, 1962. They deliberately avoided the payment of Customs Duty and thereby they have rendered themselves liable for penalty under Section 114A of the Customs Act, 1962. They deliberately avoided payment of customs duty and thereby they have rendered themselves liable for penalty under section 112(a) of the Customs Act, 1962.

13. From the facts discussed in the foregoing paras and material evidences available on record, it appeared that M/s Fourcee Infrastructure Equipments Ltd, had full knowledge that they were importing the 163 containers under re-export basis on availing the benefit of Notification No.104/94, wherein conditions is laid down that the imported goods i.e. containers have to be re-exported within six months of its import, so M/s Fourcee Infrastructure Equipments Ltd., a Shipping line and importer of containers with a malafide intention had utilized their status of Shipping line when caught by the Customs authorities, and when their re-export time limit jumps the stipulated six months. In the instant case, M/s Fourcee Infrastructure Equipments Ltd., had consciously and deliberately had imported the 163 containers after availing the Notification No.104/94, and did not satisfy the conditions laid down in the said Notification and failed to re-export the said containers within the stipulated time limit and later filed manual Non-EDI Bills of entry but failed to pay the Customs duty along with interest with an intention to evade the payment of Customs duty and hence the 163 empty containers are liable for confiscation under Section 111(o) of the Customs Act, 1962, thereby rendering themselves liable for penal action under Section 112(a) and 114A of the Customs Act, 1962.

14.1 It appeared that Shri Rajesh Vihala, Chairman of M/s Fourcee Infrastructure Equipments Ltd. did not respond to the summons issued by the department. Further, he had acted intentionally breach the condition of the Notification No. 104/94- and not re-exported the goods in time. Also, after filing B/ENo.F-002/13-14 dated 12.06.2013, he had not directed or instructed to his company or the employee thereof for payment of Customs duty involved. This action rendered by himself is liable for penalty under Section 112(a) of Customs Act, 1962.

14.2 Shri Vinay Singh, Managing Director of the Noticee was summoned to appear on 09.09.2014 to which he did not respond nor did he furnish the evidence of the duty payment. He deliberately avoided presenting himself before the department to inquire into the matter and had remained nonchalant to the departmental inquiry and investigation. Thereby he rendered himself liable for penal action under section 112(a) of the Customs Act, 1962.

15. Further, M/s SSS Sai Shipping Lines, CHA, engaged in the customs work failed to advise M/s Fourcee Infrastructure Equipments Ltd., about the provisions of the Notification No.104/94. Later on when the party filed the Bills of entry, CHA, failed to impress upon the party to pay the Customs duty due on them within the stipulated time along with interest. As per the Regulation 13(e) of Customs House Agents Licensing Regulations, 2004 (Regulation 11(g) of the Customs Brokers Licensing Regulations, 2013), a Custom House Agent shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage. As mentioned above, the CHA failed to guide the party to pay up the Customs duty within the stipulated time period of filing the Bills of entry, which resulted in loss of revenue to the extent of Rs. **6,87,78,978/-**. For the acts omission and commission on the part of CHA, they rendered themselves liable for penalty under Section 114A of the Customs Act, 1962. Also separate action against the CHA, M/s SSS Sai Shipping Lines, should be initiated for violating Regulation 13(e) of Customs House Agents Licensing Regulations, 2004 (Regulation 11(g) of the Customs Brokers Licensing Regulations, 2013).

16.1 Therefore Show Cause Notice No. F. No. VIII/10-297/Commnr/O&A/2014 dated 29.01.2015, Corrigendum dated 19.02.2015, and 24.02.2015 and 11.03.2015 was issued to M/s Fourcee Infrastructure Equipment Pvt. Ltd., having their office at Laxmi Mall, Laxmi Industrial Estate, New Link Road, Andheri(W), Mumbai, Shri Rajesh Vihalka, Chairman of the Noticee and CHA M/s. SSS Sai Shipping Pvt.Ltd., requiring them to show cause as to why:

- i) 100 containers covered under Bills of Entry No. F-002/13-14 dated 12.06.2013 valued Rs. 14,35,17,541/- involving Customs duty of Rs. **4,14,07,451/-** should not be confiscated under Section 111(o) of the Customs Act, 1962;
- ii) Customs duty of Rs. **4,14,07,451/- (Rupees Four Crore Fourteen Lakh Seven Thousand Four Hundred Fifty One Only)** should not be confirmed and demanded under section 18(2) of the Customs Act, 1962/the bond executed during the provisional assessment, read with proviso to Section 28(4) of the Customs Act, 1962 read with Section 12 ibid in respect of 100 containers seized at CWC, Kalamboli, from M/s Fourcee Infrastructure Equipment Private Ltd., for the goods

imported under Notification No.104/1994, and for misusing the said Notification;

- iii) the interest on the aforesaid Customs Duty should not be demanded under Section 28AA of the Customs Act, 1962;
- iv) penalty should not be imposed on M/s Fourcee Infrastructure Equipment Pvt. Ltd., under Section 112(a) as well as Section 114A of Customs Act, 1962;
- v) penalty should not be imposed on Shri Rajesh Vihala, Chairman of M/s Fourcee Infrastructure Equipment Pvt. Ltd., under Section 112(a) of the Customs Act, 1962; and
- vi) penalty should not be imposed on the Customs house agent, M/s SSS Sai Shipping lines, under Section 114A of the Customs Act, 1962 and separate action for violating Regulation 13(e) of Customs House Agents Licensing Regulations, 2004 should not be initiated;

16.2 Another show cause notice F. No. VIII/10-240/ Commr/O&A /2014 dated 22.09.2014, requiring them to show cause, as to why:

- (i) 63 containers covered under Bills of Entry No. F-004/13-14 and F-005/13-14 both dated 19.07.2013 totally valued at Rs. 9,62,21,127/- involving Customs duty of Rs. 2,73,71,527/- should not be confiscated under section 111(o) of the Customs Act, 1962;
- (ii) The Customs duty of Rs. 2,73,71,527/- (Rupees Two Crore Seventy Three Lakh Seventy One Thousand Five Hundred Twenty Seven Only) should not be demanded and recovered under proviso to section 28(4) of the Customs Act, 1962 read with section 12 in respect of 63 containers seized at Bhimasar, Gandhidham, from M/s. Fourcee Infrastructure Equipment Pvt. Ltd. for the goods imported under notification No. 104/1994, and for misusing the said notification;
- (iii) The interest on the aforesaid Customs Duty should not be demanded and recovered under section 28AA of the Customs Act, 1962;
- (iv) Penalty should not be imposed on M/s. Fourcee Infrastructure Equipment Pvt. Ltd., under section 114A of the Customs Act, 1962;
- (v) Penalty should not be imposed on Shri Vinay Singh, Managing Director of M/s. Fourcee Infrastructure Equipment Pvt. Ltd. under section 112(a) of the Customs Act, 1962; and
- (vi) Penalty should not be imposed on the Customs Broker, M/s. SSS Sai Shipping Lines, under section 114A of the Customs Act, 1962.

ADJUDICATION OF SHOW CAUSE NOTICE:

17. Above show cause notices were adjudicated vide Order-in-Original No. 04&05/Commissioner/2015 dated 16-07-2015 under which it was ordered for confiscation of 163 containers under Section 111(o) of the Customs Act, 1962 and imposed find of Rs.20,00,000/- in lieu of confiscation, under Section 125 of the Customs Act, 1962. Consequently, the demand of customs duty of Rs. 6,87,78,978/- in terms of Section 18(2) read with Section 28(4) and Section 12 of the Customs Act, 1962 was confirmed and ordered to recover by enforcing the bond executed under Notf. No.104/94-Cus. Dated 16-03-1994, along with interest in terms of Section 28AA of the Customs Act, 1962. Further, penalty Rs. 6,87,78,978/- under Section 114A of the Customs Act, 1962 was imposed on M/s. Fourcee Infrastructure Equipments Pvt.Ltd. and penalty Rs. 5,00,000/- was imposed upon Shri Rajesh Vihala, Chairman of M/s. Fourcee Infrastructure Equipments Pvt.Ltd. and Rs.2,00,000/- was imposed upon Shri Vinay Singh, Managing Director of M/s. Fourcee Infrastructure Equipments Pvt.Ltd. Also, ordered to initiate separate action for violating Regulation of Customs House Agents Licensing Regulations, 2004/ Customs Broker Licensing Regulations, 2013.

OUTCOME OF APPEAL:

13. Being aggrieved with the aforesaid Order limited to imposition of penalty upon Shri Vinay Singh, Managing Director of M/s. Fourcee Infrastructure Equipments Pvt.Ltd. and Shri Shri Rajesh Vihala, Chairman of M/s. Fourcee Infrastructure Equipments Pvt.Ltd., these Noticees filed Appeal No. 11011 of 2017-DB & 10375 of 2018-DB before the Hon'ble CESTAT, WZB, Ahmedabad and as per CESTAT Final Order No. 11510-11511/2024 dated 05.07.2024, the order appealed against is set aside limited to imposition of penalties on the above appellants, and matter is remanded to the Adjudicating Authority for passing a fresh order.

PERSONAL HEARING IN REMAND PROCEEDINGS:

14. In pursuance of CESTAT's Final Order No. 11510-11511/2024 dated 05.07.2024 remanding the matter to the original Adjudicating Authority for fresh adjudication limited to imposition of penalties on Shri Vinay Singh, Managing Director of M/s. Fourcee Infrastructure Equipments Pvt.Ltd. and Shri Shri Rajesh Vihala, Chairman of M/s. Fourcee Infrastructure Equipments Pvt.Ltd., personal hearing was scheduled on 13-11-2024, 26-11-2024 and 20-12-2024, however Shri Shri Vinay Singh, Managing Director of M/s. Fourcee Infrastructure Equipments Pvt.Ltd. and Shri Shri Rajesh Vihala, Chairman of M/s. Fourcee Infrastructure Equipments Pvt.Ltd. did not attend the personal hearing.

DISCUSSION AND FINDINGS :

15. I have carefully gone through the case records, the written submission dated 05-05-2015, filed prior to adjudication and issuance of OIO No.04&05/Commissioner/2015 dated 16-07-2015, as the Noticees did not file any fresh submissions nor remain present in person or virtually, for the Personal Hearing

in-spite of Personal Hearing scheduled on 13-11-2024, 26-11-2024 and 20-12-2024. The present proceedings are in pursuance of CESTAT's Final Order No. 11510-11511/2024 dated 05.07.2024 vide which the OIO appealed against bearing No. 04 & 05/Commissioner/2015 dated 16.07.2015 passed by the Commissioner of Customs, Customs (Prev.), Jamnagar, in Show Cause Notice No. VIII/10-240/Commr/O&A/2014 dated 22.09.2014 and Show Cause Notice No.VIII/10-297/Commr/O&A/2014 dated 29.01.2015 issued to the Noticees Shri Vinay Singh, Managing Director of M/s. Fourcee Infrastructure Equipments Pvt.Ltd. and Shri Shri Rajesh Vihala, Chairman of M/s. Fourcee Infrastructure Equipments Pvt.Ltd., has been set aside and the matter is remanded to the original Adjudicating Authority for fresh adjudication limited to decide upon imposition of penalties on them, under Section 112 of the Customs Act, 1962.

15.1 I therefore, find that the only issue to be decided in the present case is with regard to imposition of penalties under section 112(a) of the Customs Act, 1962, upon Shri Vinay Singh, Managing Director of M/s. Fourcee Infrastructure Equipments Pvt.Ltd. and Shri Rajesh Vihala, Chairman of M/s. Fourcee Infrastructure Equipments Pvt. Ltd. I also find that except for decision on imposition of penalties under Section 112 upon the above mentioned noticees, the original order No. 04&05/Commissioner/2015 dated 16-07-2015 issued by the Commissioner, Customs (Prev.), Jamnagar is operative in all manner.

16 I find that the penalty under Section 112 of the Customs Act, 1962 shall be imposable in cases wherein a person who is in relation to the goods, does or omits to do any act that would render the goods liable for confiscation, shall be liable for penalty.

17 I find from the records that the Noticees viz. Shri Vinay Singh, Managing Director of M/s. Fourcee Infrastructure Equipments Pvt.Ltd. and Shri Rajesh Vihala, Chairman of M/s. Fourcee Infrastructure Equipments Pvt.Ltd. have at no point of time till adjudication of the case, had contested that they were not the person/s involved in the planning and execution of the business, including the financial conditions, thereby construed that they were the person/s responsible with planning and finance of the Noticee firm. Also, from the records available before me, I find that both the Noticees have never intimated the department nor remain present before the investigation officers in response to the Summons issued to them, and disclose the details of the person holding the charge of movement of tank containers. Further, on perusal of the defence reply dated 05-05-2015, it is evidently forthcoming that prior to import of 163 containers involved in the present case, they had imported 700 containers wherein short payment of duties to the tune of Rs.7 Crores on account of wrong classification was detected, and it is an admitted fact that the Noticees were not in a position to pay the said differential duty so arised during the investigation on account of wrong classification even after many correspondences

made with the Noticee firm, but paid at much later stage only when the containers were not permitted for clearance from port. Therefore, I find that the Noticees were well aware of their financial crisis well before the import of present 163 containers. Further, it is pertinent to note that prior to import of these 163 containers, the Noticees imported and cleared the containers on payment of applicable duties. However, admittedly in spite of being aware of the financial crisis of the notice firm, they connived to import the goods in question i.e. 163 containers, by resorting to take the benefit of Notification No.104/1994 citing reason that these containers were to be used for the purpose of international trade, in order to defer the payment of duties, since the Notification exempts from payment of duties, if the imported containers are re-exported within six months. It is also on records that the Noticees intimated the department requesting to allow them file the Bills of Entry for domestic clearance after payment of duty, once the stipulated period was completed and even after filing the Bills of Entry, they failed to pay the applicable duties even until adjudication of the case, which is operative with regard to recovery of customs duties. Also, upon careful reading of the written submission dated 05-05-2015, I find that emphasis was only given upon confiscation of the goods in question by invoking Section 111(o) of the Customs Act, 1962, recovery of duties and levy of interest, which has been decided upon by the adjudicating authority vide OIO No.04&05/Commissioner/2015 dated 16-07-2015, and is still operative. However, nothing specific has been pleaded in the written submission dated 05-05-2015 with regard to imposition of penalty under Section 112(a) of the Customs Act, 1962, upon the Noticees Shri Vinay Singh, Managing Director of M/s. Fourcee Infrastructure Equipments Pvt.Ltd. and Shri Rajesh Vihala, Chairman of M/s. Fourcee Infrastructure Equipments Pvt. Ltd. Therefore, it is construed that the Noticees Shri Vinay Singh, Managing Director of M/s. Fourcee Infrastructure Equipments Pvt.Ltd. and Shri Rajesh Vihala, Chairman of M/s. Fourcee Infrastructure Equipments Pvt. Ltd., were the persons responsible for conniving to import the goods in question i.e. 163 containers, in spite of being aware of the financial crisis of the Noticee firm to the point wherein it was beyond their reach to pay the duties in real time, resorted to take the benefit of Notification No.104/1994, in order to defer the payment of duties, but intentionally did not re-export the same, thereby violated the conditions of Notification No.104/94. It is also on records that they depicted as to filing the Bills of Entry for domestic clearance of the 163 containers, but refrained from paying the applicable duties till the time of adjudication of OIO No.04&05 /Commissioner/ 2015 dated 16-07-2015, wherein the goods in question was ordered for confiscation under Section 111(o) of the Customs Act, 1962 and the said order is operative. The above deliberate act of the Noticees Shri Vinay Singh, Managing Director of M/s. Fourcee Infrastructure Equipments Pvt.Ltd. and Shri Rajesh Vihala, Chairman of M/s. Fourcee Infrastructure Equipments Pvt. Ltd., has led to evasion of Customs duty amounting to Rs. 6,87,78,978/-. This act of omission and commission by the Noticees Shri Vinay Singh, Managing Director of M/s. Fourcee Infrastructure Equipments Pvt.Ltd. and Shri Rajesh Vihala, Chairman

of M/s. Fourcee Infrastructure Equipments Pvt. Ltd., have rendered themselves liable for penalty under Section 112(a) of the Customs Act, 1962 and I hold accordingly.

18. In view of the above, I pass the following order:

ORDER

- (i) I impose penalty of Rs. 2,00,000/- (Rupees Two Lakhs Only) on the Noticee Shri Vinay Singh, Managing Director of M/s. Fourcee Infrastructure Equipments Pvt.Ltd., under Section 112(ii) of the Customs Act, 1962.
- (ii) I impose penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) on the Noticee Shri Rajesh Vihala, Chairman of M/s. Fourcee Infrastructure Equipments Pvt.Ltd., under Section 112(ii) of the Customs Act, 1962.

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


(Dhirendra Lal)
COMMISSIONER

F. No. VIII/10-297/Commnr/O&A/2014

VIII/10-240/Commr/O&A/2014

Date: 03-02-2025

By Speed Post/ Hand delivery/E-mail to:

To

- (1) Shri Vinay Singh, Managing Director,
M/s. Fourcee Infrastructure Equipments Pvt. Ltd.,
Lakshmi Mall, Lakshmi Industrial Estate,
New Link Road, Andheri (W),
Mumbai -400053
- (2) Shri Rajesh Vihala, Chairman,
M/s. Fourcee Infrastructure Equipments Pvt. Ltd.,
Lakshmi Mall, Lakshmi Industrial Estate,
New Link Road, Andheri (W),
Mumbai -400053

Copy submitted to:

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad.
2. The Additional Commissioner of Customs, SIIB(Import), JNPT, Tal. Uran, Dist. Raigad (Maharashtra) PIN 400 707.
3. The Assistant Commissioner of Customs (SIIB), CH Kandla.
4. The Assistant Commissioner of Customs, GPPL, Pipavav Port.
5. The Deputy Commissioner of Customs (Prev.), Customs HQ, Jamnagar.
6. The Assistant Commissioner, Systems/ STF, Customs (Prev.), Jamnagar.
7. Guard File.