



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडियों के बाजू में, नवरंगपुरा, अहमदाबाद 380009
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निबन्धित पावती डाक द्वारा / By **SPEED POST A.D.**

फा. सं./ F. No.: VIII/10-14/Commr./O&A/2023-24

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आदेश की तारीख/Date of Order :08.08.2024
जारी करने की तारीख/Date of Issue :08.08.2024

द्वारा पारित/Passed by:- **शिव कुमार शर्मा, प्रधान आयुक्त**
Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-38-2024-25 dated 08.08.2024 in the case of M/s Van Oord India Pvt. Ltd. 201, 2nd Floor, Central Plaza, 166, C.S.T. Road, Kalina, Santa Cruz East, Mumbai, Maharashtra - 400098.

- 1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंजिल, बहुमाली भवन, गिरिधर नगर पुल के बाजू में, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad - 380004.
3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It 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 certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal 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.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्ष जुरमाना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. VIII/10-14/Commr./O&A/2023-24 dated 04.09.2023 issued by the Commissioner, Customs, Ahmedabad in the case of M/s Van Oord India Pvt. Ltd. 201, 2nd Floor, Central Plaza, 166, C.S.T.Road, Kalina, Santa Cruz East, Mumbai, Maharashtra – 400098 & Shri Umesh Kale, Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited, Mumbai.

Brief facts of the case:

M/s. Van Oord India Private Limited, Mumbai (IEC No. 0302072195), having registered office at 201, 2nd Floor, Central Plaza, 166, C.S.T. Road, Kalina, Santacruz East, Mumbai, Maharashtra - 400098 (hereinafter referred to as "the Importer" or "the Noticee" for the sake of brevity) is a leading international contractor specializing in dredging, marine engineering and offshore projects (oil, gas and wind).

2. The specific intelligence developed by the Officers of Directorate of Revenue Intelligence, Jamnagar Regional Unit indicated that M/s. Van Oord India Private Limited, Mumbai (IEC NO. 0302072195), having registered Office at 201, 2nd Floor, Central Plaza, 166, C.S.T. Road, Kalina, Santacruz East, Mumbai, Maharashtra - 400098 (hereinafter referred to as "the Importer") have imported two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) with consumables on re-export basis at Hazira Port by wrongly availing the benefit under Notification No.72/2017-Customs dated 16.08.2017.

3. On verification of the data, it was found that M/s. Van Oord India Private Limited, Mumbai (IEC No. 0302072195) had filed following two Bills of Entry by wrongly availing exemption under Notification No.72/2017-Customs dated 16.08.2017 at Hazira Port.

Table-1

Bill of Entry No.& Date	Description of goods	Assessable Value of the goods	Duty paid
7960728/ 07.09.2018	TEMP.IMP.ON RE-EXPORT BASIS ONE UNIT USED TUG "COASTAL RAMBLER" NETHERLANDS, BUILT 2004 IMO NO:9304904 (AS PER INVOICE)	21,58,88,879	5,93,694
8712607/ 02.11.2018	TEMP IMP.ON RE-EXPORT BASIS OLD & USED TUG COASTAL VOYAGER IMO NO 9660322 (AS PER INVOICE)	43,41,11,438	11,93,806
	Total	65,00,00,317	17,87,500

4. Notification No.72/2017-Customs dated 16.08.2017 provides exemption to Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). The subject goods viz. Old and used Tugs are not Machinery, equipment or tools and hence cannot be termed or classified as Machinery, equipment or tools.

5. There are several case laws of various judicial fora wherein exemption under Notification No.72/2017-Customs dated 16.08.2017 to the Tugs/goods falling under Chapter 89 have been denied. CESTAT, Chennai in Appeal No. C/00379/2012 in the case of M/s. International Seaport Dredging Ltd., Chennai has also denied the exemption under the said Notification. The said judgement of CESTAT, Chennai is based on the judgment of CESTAT, Mumbai in the case of Shipping Corporation of India Ltd., wherein Hon'ble Tribunal has held that "To be eligible for the concession, the goods should be machinery, equipment or tools. Tugs and barges can, by no stretch of imagination, be considered as falling in this category. They fall under Chapter 89 as "Ships, boats and floating structures". Therefore, in our view, the appellant would not be eligible for any duty concession under the said Notification and the claim in this regard is not sustainable".

6. Statements and Inquiry:

6.1 In view of the above, the investigation was initiated by the Officers of DRI by way of issuing Summons and calling for the details of import.

6.2 Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited, Mumbai appeared in pursuance of the Summons issued to the Importer and his statement was recorded on 15.05.2023 under Section 108 of the Customs Act, 1962, wherein he interalia admitted that-

- He is working as Technical Administrator/Logistics Executive with M/s. Van Oord India Private Limited, Mumbai (IEC NO. 0302072195) since 2009; that he is looking after work related to Import, Export & Logistics in the said Company and is responsible for all the matters related to Import, Export & Logistics undertaken by the said Company.

- M/s. Van Oord India Private Limited, Mumbai (IEC NO.0302072195) is engaged in dredging industry. The said Company was incorporated in the year 1997.

- He confirmed that the Bills of Entry No. 7960728/07.09.2018 & 8712607/02.11.2018 at Hazira Port were filed by M/s. Van Oord India Private Limited, Mumbai (IEC NO. 0302072195).

- Under the said Bills of Entry, they had imported two old and used Tugs on re-export basis viz. (1) Tug "Coastal Rambler" IMO No. 9304904 alongwith its consumables under Bill of Entry No. 7960728/07.09.2018 and (2) Tug "Coastal Voyager" IMO No. 9660322 alongwith its consumables under Bill of Entry No. 8712607/02.11.2018.

- They had imported the two tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) by classifying them under CTH 8904 0000 which is for Tugs and pusher crafts.

- They have availed exemption of 95% of Basic Duty and IGST under Notification No.72/2017-Customs, dated 16.08.2017 for the import of above two tugs.

- When asked that exemption under Notification No.72/2017-Cus, dated 16.08.2017 is available to Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), whereas the tugs imported by them were classifiable under Chapter 89 and can by no stretch of imagination be called as Machinery, equipment or tools falling under Chapters 84, 85, 90 or any other Chapter, then what was the reason that they availed the exemption, he replied that as per the industry practice, they claimed exemption of Notification No.72/2017-Customs dated 16.08.2017 in the Bills of Entry No. 7960728/07.09.2018 & 8712607/02.11.2018 at Hazira Port. He further stated that according to their interpretation, they believed the tugs imported by them for dredging purpose are auxiliary dredging equipment.

- Since his reply was that they have claimed the exemption as per the industry practice, he was asked whether he can name the Importers who are availing the said exemption while importing tugs to which he replied that he was unable to state name of any other Importer. However, he was aware of a judgment of CESTAT Chennai in Appeal No. C/00379/2012 in the case of M/s. International Seaport Dredging Ltd., Chennai wherein CESTAT, Chennai has denied the benefit of Notification of the similar goods imported by the said Importer but against which the said party has filed appeal.

- On being asked that if they believed the goods i.e. two tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) were equipments, then what is the reason for classifying the same under Chapter 89 instead of Chapter 84 or any other relevant Chapter, he replied that the goods i.e. two tugs viz. **Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) imported under the Bills of Entry No. 7960728/07.09.2018 & 8712607/02.11.2018 were having characteristics of Tug, and therefore they classified them under Chapter 89.**

- On being asked about the scope of work of the above said two tugs, he submitted copy of two Charter Party Agreements, both dated 20th July, in respect of both the tugs. The said Charter Party Agreements were between M/s. Van Oord India Private Limited and M/s. Acta Marine BV, Netherlands. As per Clause 17 of the said Charter Party Agreements, both the tugs were to be employed for Tug push assistance of TSHD (Trailing Suction Hopper Dredger) and survey operations as per Charterers' instructions. He added that the said scope of the work is normal for a tug.
- On being shown two Registration Certificates bearing No.16718/2017 in respect of Tug Coastal Voyager and No.7022/2016 in respect of Tug Coastal Rambler submitted by the Importer and asked to confirm the type of vessel shown in both the Registration Certificates, he confirmed that in both the Registration Certificates, the goods in question i.e. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) have been registered as Tug/Tugboat.
- On being shown two sheets containing Technical specifications provided by the Importer in respect of both the tugs and asked to state what was the type of vessel mentioned in the said specifications, he confirmed that in both the sheets of technical specifications, the type of vessel is shown as Tug Unrestricted Navigation. So, he agreed that the said Technical specifications describes the goods as Tug only.
- On being asked, as to who is taking decisions about classification of goods and claiming exemption of Notification while importing or exporting the goods, he stated that at M/s. Van Oord India Private Limited, Mumbai (IEC NO. 0302072195), he himself used to take decision in all Customs related matters, including classification, claiming exemption of Notification etc.
- In view of his earlier replies, he was asked whether he agreed that two Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322), imported under Bills of Entry No. 7960728/07.09.2018 & 8712607/02.11.2018 did not fall under the category of Machinery, equipment or tools as mentioned in Notification No.72/2017-Customs dated 16.08.2017 and therefore, the exemption claimed by them was not available on the goods imported under above said Bills of Entry, he admitted in response, that the goods i.e. two Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322), imported under Bills of Entry No.7960728/07.09.2018 & 8712607/02.11.2018 did not fall under the category of Machinery, equipment or tools as mentioned in Notification No.72/2017-Customs, dated 16.08.2017 and therefore, the exemption claimed by them is not available on the goods imported under above said Bills of Entry.
- On being asked whether he agreed that by wrongly claiming the benefit of Notification No. 72/2017-Customs dated 16.08.2017, they have evaded the applicable Customs Duty and IGST on imported goods, he admitted that benefit of Notification No.72/2017-Customs dated 16.08.2017 is not available on the goods imported by them under the Bills of Entry No. 7960728/07.09.2018 & 8712607/02.11.2018 considering the judgement of CESTAT Chennai in Appeal No. C/00379/2012 in the case of M/s. International Seaport Dredging Ltd., Chennai. So, their claim for exemption has resulted in short payment/evasion of the applicable Duty i.e. Customs Basic Duty @ 5% (on CTH 89040000) and IGST @ 5%. He further added that they had also claimed benefit under Sl.No.553 of Notification No.50/2017-Customs dated 30.06.2017 and Sl.No.248 of Schedule-I of Notification No. 01/2017-Integrated Tax (Rate), dated 28.06.2017 in the above said Bills of Entry.
- On being asked about the Customs Broker, he stated that M/s. Chandra Shipping & Trading Services was their Customs Broker for the subject import.
- On being shown the provisions of Section 17 and Section 46 of the Customs Act, 1962 according to which, it is the responsibility of the Importer to ensure that he declares the correct details, applicable rate of Duty, value, benefit or exemption Notification claimed, if any in respect of the imported goods while presenting Bill of

Entry to the Customs Authorities and on being asked whether he admitted that by wrongly claiming benefit of exemption Notification in their imports as discussed above, they have violated the provisions of Customs Act, 1962, he admitted the violation of above said provisions of the Customs Act, 1962 by wrongly claiming the benefit of Notification No.72/2017-Customs dated 16.08.2017.

6.3 Shri Kamlakar Nangre, Manager of M/s. Chandra Shipping & Trading Services, Mumbai appeared in pursuance of the Summons issued to the Customs Broker and his statement was recorded on 16.05.2023 under Section 108 of the Customs Act, 1962, wherein he interalia admitted that-

- His Firm has acted as Customs Broker/CHA of M/s. Van Oord India Private Limited, Mumbai (IEC NO. 0302072195) in the year 2017 to 2019 only; that after that the Importer has not worked with them.
- He confirmed that his Firm M/s. Chandra Shipping & Trading Services, Mumbai was the Customs Broker/CHA in the Bills of Entry No. 7960728/07.09.2018 & 8712607/02.11.2018 filed at Hazira Port by M/s. Van Oord India Private Limited, Mumbai (IEC NO. 0302072195).
- He also confirmed that M/s. Van Oord India Private Limited, Mumbai (IEC NO. 0302072195) had imported two old and used Tugs on re-export basis viz. (1) Tug "Coastal Rambler" IMO No. 9304904 alongwith its consumables under Bill of Entry No. 7960728/07.09.2018 and (2) Tug "Coastal Voyager" IMO No. 9660322 alongwith its consumables under Bill of Entry No. 8712607/02.11.2018.
- On being asked, he stated that they had filed Bills of Entry for the two tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) by classifying them under CTH 8904 0000, which is for Tugs and pusher crafts.
- On being asked whether they claimed any exemption for the import of the above said tugs, he replied in the affirmative and stated that as instructed by their client, on behalf of them, they had claimed exemption of 95% of Basic Duty and IGST under Notification No.72/2017-Customs dated 16.08.2017 for the import of the above two tugs.
- On being asked that the said exemption under Notification No.72/2017-Customs dated 16.08.2017 is available to Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), whereas the tugs imported by the Importer were classifiable under Chapter 89 and can by no stretch of imagination be called as Machinery, equipment or tools falling under Chapters 84, 85, 90 or any other Chapter, then why did they avail the exemption, he stated that he joined M/s. Chandra Shipping & Trading Services, Mumbai in September, 2019; that his ex-colleague ShriAvinashRane was the person who has dealt with this import. However, he further added that so far as he knew, as per the general practice and client's request, they claimed exemption of Notification No.72/2017-Customs dated 16.08.2017 in the Bills of Entry No.7960728/07.09.2018 & 8712607/ 02.11.2018 at Hazira Port.
- On being asked whether they availed the said exemption for any other Importer while importing tug, he replied in the negative.
- On being asked to explain that being a Customs Broker/CHA, they were supposed to have sufficient knowledge of Customs Act, Rules, Regulations & Procedures instead of relying on the wrong practice followed by other Importers/Exporters and by helping the Importer to avail the wrongful benefit under Notification No.72/2017-Customs, dated 16.08.2017, they had aided in their malafide

intention to evade Customs Duty on import, he replied about the reason for claiming the benefit under Notification No. 72/2017-Customs dated 16.08.2017 that the Importer as well as their Firm, at the relevant time, were of the belief that the tugs imported for dredging purpose were dredging equipments.

- When asked that if they were of the belief that the goods i.e. two tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) were equipments, then what was the reason for classifying the same under Chapter 89 instead of Chapter 84 or any other relevant Chapter referring to equipments, he admitted in response, that the goods i.e. two tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) imported under the Bills of Entry No. 7960728/07.09.2018 & 8712607/02.11.2018 were having characteristics of Tug, and therefore they classified them under Chapter 89.

- On being asked about the scope of the work for both the subject tugs, he submitted copy of two Charter Party Agreements, both dated 20th July, in respect of both the tugs. The said Charter Party Agreements were between M/s. Van Oord India Private Limited and M/s. Acta Marine BV, Netherlands. As per Clause 17 of the said Charter Party Agreements, both the tugs were to be employed for Tug push assistance of TSHD (Trailing Suction Hopper Dredger) and survey operations. He further added that the said scope of the work is normal for a tug.

- On being shown two Registration Certificates bearing No. 16718/2017 in respect of Tug Coastal Voyager and No.7022/2016 in respect of Tug Coastal Rambler submitted by M/s. Van Oord India Private Limited, Mumbai and asked to confirm the type of vessel as per the Registration Certificates, he confirmed that in both the Registration Certificates, the goods in question i.e. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) had been registered as Tug/Tugboat.

- On being asked to go through the Technical specifications provided by M/s. Van Oord India Private Limited, Mumbai in respect of both the tugs and to state what was the type of vessel mentioned in the said specifications, he confirmed that in both the sheets, titled as (1) Sheet titled as Coastal Voyager, Shoalbuster 3209 and (2) Sheet titled as Coastal Rambler, Shoalbuster 2609, were showing Technical specifications of the tugs; that the type of vessel shown in these sheets of Technical specification are as "Tug Unrestricted Navigation". He agreed that the said Technical specification describe the goods as Tug only.

- In view of his earlier replies he was asked as to whether he agreed that two Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322), imported under Bills of Entry No. 7960728/07.09.2018 & 8712607/02.11.2018 do not fall under the category of Machinery, equipment or tools as mentioned in Notification No.72/2017-Customs dated 16.08.2017 and therefore, the exemption claimed by them was not available on the goods imported under above said Bills of Entry, he replied in the affirmative and agreed that the goods i.e. two Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322), imported under Bills of Entry No. 7960728/07.09.2018 & 8712607/02.11.2018 do not fall under the category of Machinery, equipment or tools as mentioned in Notification No.72/2017-Customs dated 16.08.2017 and therefore, the exemption claimed was not available on the goods imported under above said Bills of Entry.

- On being asked whether he agreed that by wrongly claiming the benefit of Notification No.72/2017-Customs dated 16.08.2017, there had been an evasion of applicable Customs Duty and IGST on imported goods, he replied in the affirmative and admitted that benefit of Notification No. 72/2017-Customs dated 16.08.2017 was not available on the goods imported by M/s. Van Oord India Private Limited under the Bills of Entry No. 7960728/07.09.2018 & 8712607/02.11.2018. Hence, claim for exemption had resulted in short payment/evasion of the applicable Duty i.e. differential Customs Basic Duty @ 4.75% (on CTH 89040000), SWS and IGST @ 5%

considering that that they had claimed benefit under Sl.No. 553 of Notification No.50/2017-Customs dated 30.06.2017 and Sl. No. 248 of Schedule-I of Notification No.01/2017-Integrated Tax (Rate), dated 28.06.2017 in the above said Bills of Entry.

7. Summary of the Investigation:

7.1 The subject goods i.e. two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) with consumables on re-export basis were imported by the Importer under two Bills of Entry detailed below:

Table-2

Bill of Entry No & Date	Description of goods	Assessable Value of the goods (in Rs.)	Duty paid (in Rs.)
7960728/ 07.09.2018	TEMP.IMP.ON RE-EXPORT BASIS ONE UNIT USED TUG "COASTAL RAMBLER" NETHERLANDS, BUILT 2004 IMO NO:9304904 (AS PER INVOICE)	21,58,88,879	5,93,694
8712607/ 02.11.2018	TEMP IMP.ON RE-EXPORT BASIS OLD & USED TUG COASTAL VOYAGER IMO NO 9660322 (AS PER INVOICE)	43,41,11,438	11,93,806
	Total	65,00,00,317	17,87,500

7.1.1 The Importer has rightly classified the subject goods i.e. two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) with consumables on re-export basis under CTH 8904 0000 which is for Tugs and pusher craft.

7.1.2 In the above said two Bills of Entry, the Importer had claimed and availed exemption of 95% of BCD, applicable SWS & full IGST under Notification No.72/2017-Customs dated 16.08.2017.

7.1.3 The Importer has claimed and availed benefit of Sl.No.553 of Notification No.50/2017 Customs, dated 30.06.2017 for Basic Customs Duty and paid effective rate of 5%.

7.1.4 For IGST, the Importer has opted Sl.No.248 of Schedule-I of Notification No. 01/2017-Integrated Tax (Rate), dated 28.06.2017 which suggests applicable rate of 5% IGST, but by virtue of Notification No.72/2017-Customs dated 16.08.2017, they had wrongfully availed exemption from payment of applicable IGST also.

7.2 Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited, Mumbai, duly authorized, appeared on behalf of the Importer on 15.05.2023 to give his statement under Section 108 of the Customs Act, 1962. In his statement, he clearly admitted that the goods i.e. two Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322), imported under Bills of Entry No.7960728/07.09.2018 & 8712607/02.11.2018 do not fall under the category of Machinery, equipment or tools as mentioned in Notification No. 72/2017-Customs dated 16.08.2017 and therefore, the exemption claimed by them was not available on the goods imported under above said two Bills of Entry.

7.2.1 Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited, Mumbai was shown the documents such as Registration Certificate, sheets mentioning Technical Specification, Charter Party Agreement in respect of both the tugs. On seeing these documents, he admitted that the goods are actually Tugs which do not fall under the category of Machinery, equipment or tools as mentioned in Notification No.72/2017-Customs dated 16.08.2017.

7.2.2 Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited, Mumbai also admitted in his statement dated 15.05.2023 that their claim for exemption has resulted in short payment/evasion of the applicable Duty. He further accepted that it was the responsibility of the Importer to ensure that it declares the correct details, applicable rate of Duty, value, benefit or exemption Notification claimed, if any in respect of the imported goods while presenting Bill of Entry to the Customs Authorities but by wrongly claiming the exemption in the above said two Bills of Entry, they have violated the provisions of Section 17 & 46 of the Customs Act, 1962.

7.3 Shri Kamlakar Nangre, Manager of M/s. Chandra Shipping & Trading Services, Mumbai, the Customs Broker in the subject import had appeared on behalf of the Customs Broker on 16.05.2023 to give his statement under Section 108 of the Customs Act, 1962. In his statement, he clearly admitted that the goods i.e. two Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322), imported under Bills of Entry No. 7960728/07.09.2018 & 8712607/02.11.2018 do not fall under the category of Machinery, equipment or tools as mentioned in Notification No.72/2017-Customs dated 16.08.2017 and therefore, the exemption claimed by them was not available on the goods imported under above said Bills of Entry.

7.3.1 Shri Kamlakar Nangre, Manager of M/s. Chandra Shipping & Trading Services, Mumbai was shown the documents such as Registration Certificate, sheets mentioning Technical Specification, Charter Party Agreement in respect of both the tugs. On seeing these documents, he admitted that the goods are actually Tugs which do not fall under the category of Machinery, equipment or tools as mentioned in Notification No. 72/2017-Customs dated 16.08.2017.

7.3.2 Shri Kamlakar Nangre, Manager of M/s. Chandra Shipping & Trading Services, Mumbai also admitted in his statement dated 16.05.2023 that their claim for exemption has resulted in short payment/evasion of the applicable Duty. He further accepted that it was the responsibility of the Importer to ensure that it declares the correct details, applicable rate of Duty, value, benefit or exemption Notification claimed, if any in respect of the imported goods while presenting Bills of Entry to the Customs Authorities but by wrongly claiming the exemption in the above said two Bills of Entry, they have violated the provisions of Section 17 & 46 of the Customs Act, 1962.

7.4 The documents submitted by the Importer contains two Charter Party Agreements, both dated 20th July, in respect of both the tugs (RUD-07 & 08). The said Charter Party Agreements are between M/s. Van Oord India Private Limited and M/s. Acta Marine BV, Netherlands. As per Clause 17 of the said Charter Party Agreements, both the tugs were to be employed for Tug push assistance of TSHD (Trailing Suction Hopper Dredger) and survey operations. The said scope of the work is normal for a tug.

7.5 In the two Registration Certificates, bearing No. 16718/2017 ((RUD-09)in respect of Tug Coastal Voyager and No. 7022/2016 (RUD-10) in respect of Tug Coastal Rambler submitted by M/s. Van Oord India Private Limited, Mumbai, the goods in question i.e. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) have been registered as Tug/Tugboat.

7.6 The documents submitted by the Importer also contain sheets (1) Sheet titled as Coastal Voyager, Shoalbuster 3209 and (2) Sheet titled as Coastal Rambler, Shoalbuster 2609 , both of them were showing technical specifications of the tugs. The type of vessel shown in these sheets of technical specification is as "Tug Unrestricted Navigation". The Importer as well as the Customs Broker agreed to the fact that the said Technical specifications describe the goods as Tug only.

7.7 The Importer was well aware of the judgement of CESTAT Chennai in Appeal No. C/00379/2012 in the case of M/s. International Seaport Dredging Ltd., Chennai wherein exemption under erstwhile Notification No.27/2008-Customs dated 01.03.2008 to the Tugs/goods falling under Chapter 89 had been denied (reported in ELT 2020 (371) E.L.T. 529 (Tri. - Chennai)). The said judgement of CESTAT, Chennai is based on the judgement of CESTAT, Mumbai in the case of Shipping Corporation of India Ltd., wherein Hon'ble Tribunal has held that "To be eligible for the concession, the goods should be machinery, equipment or tools. Tugs and barges can, by no stretch of imagination, be considered as falling in this category. They fall under Chapter 89 as "Ships, boats and floating structures". Therefore, in our view, the appellant would not be eligible for any duty concession under the said Notification and the claim in this regard is not sustainable."

In reply to one of the questions during the course of recording of the statement, he clearly admitted that in view of the above stated judgement of CESTAT, Chennai, the exemption claimed by them was not available to them.

7.8 In view of the above discussion, it is apparent that the goods i.e. two Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322), imported under Bills of Entry No.7960728/07.09.2018 & 8712607/02.11.2018, does not cover the description of goods mentioned in column 1 of Notification No.72/2017-Customs dated 16.08.2017 and accordingly, Importer is liable to pay applicable Duty that had been short paid.

8. VIOLATION OF LEGAL PROVISIONS OF CUSTOMS ACT, 1962:

8.1 Vide Finance Act, 2011, "Self-Assessment" has been introduced w.e.f. from 08.04.2011 under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of Duty on import and export goods by the Importer or Exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in the Electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the responsibility of the Importer or Exporter to ensure that he declares the correct classification, applicable rate of Duty, value, benefit or exemption Notification claimed, if any, and other details in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it appears that the Importer has deliberately and knowingly contravened the above said provisions with a malafide intention to evade Customs Duty.

8.2 Thus, it appears that the Importer has wrongfully availed the exemption under Notification No.72/2017-Customs dated 16.08.2017 and thereby availed ineligible exemptions in respect of BCD, SWS and IGST respectively on the import of two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) with consumables on re-export basis, which has rendered the imported Tugs liable for confiscation in terms of Section 111(o) of the Customs Act, 1962.

8.3 The Importer has contravened the provisions of the Customs Act, 1962, by wrongly availing the benefit of Notification No.72/2017-Customs dated 16.08.2017. The Importer as well as the Customs Broker in their statements have clearly admitted that it was well within their knowledge that the goods in question are having characteristics of Tug/vessel which are classifiable under Chapter 89, yet they declared the goods to be machinery and/or equipment and wrongfully availed the exemption. Classification of the goods under Chapter 89 by the Importer as well as the Customs Broker is clear evidence indicating that it was well within their knowledge that the goods are having characteristics of Tug/Vessel and not machinery/equipment. Thus, although they were aware that the Duty exemption claimed by them in the import of two old and used Tugs on re-export basis was not available to them for the imports made by them, they resorted to mis-declaration/mis-statement and suppression of facts at the material time of import. It has been stated by Shri Umesh Kale, Authorized person of the Importer that the Importer is in this field for more than 25 years, therefore they are supposed to have sufficient knowledge

about the goods. Hence, by no stretch of imagination, can such mis-declaration and misstatement be regarded as without the Importer's will and intention. By these acts of omission and commission, the Importer has rendered themselves liable to penalty under Sections 112(a), 112(b) and Section 114A of the Customs Act, 1962.

8.4 From the foregoing paras, it also appears that the Importer has intentionally and wilfully made declarations, statements, documents etc., which are false and/or incorrect in nature. This act of mis-declaration by the Importer during the transaction of their business has made them liable for penalty under Section 114AA of the Customs Act, 1962 too.

8.5 Further, since the Importer has violated the provisions of Section 17, 46 and 50 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, they shall also be liable to penalty under Section 117 of the Customs Act, 1962.

9. Demand of Duty and Interest:

As discussed in the foregoing paras, it appears that M/s. Van Oord India Private Limited, Mumbai (IEC No. 0302072195) was always aware that the Duty exemption claimed by them in the import of two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) with consumables on re-export basis was not available to them for the imports made by them but they had deliberately suppressed these facts at the material time of import. Therefore, the Duties evaded/exemption wrongfully availed on imports made by M/s. Van Oord India Private Limited, Mumbai (IEC NO. 0302072195), by availing the benefit of exemption Notification No.72/2017-Customs dated 16.08.2017, is liable to be demanded and recovered from them under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962.

The Duty evaded by the Importer by wrongly claiming benefit of Notification No. 72/2017-Customs dated 16.08.2017 is as under:

Table-3

Sr. No.	Item Description	Duty Payable	
		B/E No.7960728/ 07.09.2018 Tug - COASTAL RAMBLER	B/E No. 8712607/ 02.11.2018 Tug - COASTAL VOYAGER
1	Assessable Value (in Rs.)	21,58,88,879	43,41,11,438
2	BCD @ 5% (in Rs.) (Importer has opted Sl.No. 553 of Notification No. 50/2017-Cus, dated 30.06.2017 in the Bills of Entry)	1,07,94,444	2,17,05,572
3	Social welfare surcharge @10% on BCD (in Rs.)	10,79,444	21,70,557
4	Total Customs Duty (in Rs.)	1,18,73,888	2,38,76,129
5	Value for IGST (in Rs.)	22,77,62,767	45,79,87,567
6	IGST @5% (in Rs.) (Importer has opted Sl.No.248 of Schedule-I of Notification No. 01/2017-Integrated Tax (Rate), dated 28.06.2017)	1,13,88,138	2,28,99,378
7	Total Duty Payable (in Rs.).	2,32,62,026	4,67,75,507
8	BCD & SWS already paid as per Importers' assessment (in Rs.)	5,93,694	11,93,806
9	Differential Duty yet to be paid (in Rs.)	2,26,68,332	4,55,81,701
10	Total Duty to be paid in respect of	6,82,50,033	

Thus, the total Duty recoverable from the Importer under the provisions of Section 28(4) of the Customs Act, 1962 comes to Rs.6,82,50,033/- alongwith interest payable thereon in terms of Section 28AA of the Customs Act, 1962.

10. Role played and personal penalty:

10.1 Whereas Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited, Mumbai, in his statement, recorded under Section 108 of the Customs Act, 1962, dated 15.05.2023 has admitted that he is looking after work related to Import, Export & Logistics in M/s. Van Oord India Private Limited, Mumbai (IEC NO. 0302072195) and is responsible for all the matters related to Import, Export & Logistics undertaken by the said Company. He also admitted that at M/s. Van Oord India Private Limited, he used to take decision in all Customs related matters, including classification, claiming exemption of Notification etc. He also admitted to have wrongly availed the benefit of exemption Notification and by wrongly availing the benefit of exemption Notification, he has thereby, violated various provisions of the Customs Act, 1962. It, therefore, appears that Shri Umesh Kale is the person who played an important role in the wrong availment of the benefit of exemption Notification by the Importer. It therefore, appears that the action plan to evade the Duty was prepared by or on the direction of Shri Umesh Kale and thereby undue benefits under Notification No.72/2017-Customs dated 16.08.2017 had been taken by the Importer.

10.2 It further appears that Shri Umesh Kale, Technical Administrator/ Logistics Executive of M/s. Van Oord India Private Limited, Mumbai had consciously and deliberately dealt with the goods which he knew or had reasons to believe were liable to confiscation under the provisions of Section 111(o) of the Customs Act, 1962 in respect of goods imported by wrongly availing the benefit of exemption Notification No.72/2017-Customs dated 16.08.2017. By these acts and omissions, he has rendered himself liable for penalty under Section 112(a) & 112(b) of the Customs Act, 1962. Further, as he had also violated the provisions of Section 17, 46 and 50 of the Customs Act, 1962 which was his duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, he shall also be liable to penalty under Section 117 of the Customs Act, 1962.

10.3 By this act, Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited, Mumbai had knowingly made, signed or used or caused to be made, signed or used declarations, statements and/or documents and presented the same to the Customs authorities, which were false and incorrect in as much as they were not representing the true, correct and actual nature of the imported goods and thereby contravened the provisions of the Customs Act, 1962 as stated in paras supra. Therefore, Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited, Mumbai has rendered himself liable for penalty under Section 114AA of the Customs Act, 1962.

11. In view of above, Show Cause Notice No. VIII/10-14/Commr./O&A/2023-24 dated 04,09,2023 issued to M/s. Van Oord India Private Limited, Mumbai (IEC NO. 0302072195), 201, 2nd Floor, Central Plaza, 166, C.S.T. Road, Kalina, Santacruz East, Mumbai, Maharashtra - 400098 calling upon to show cause in writing to the Commissioner of Customs, Ahmedabad having, within 30 days of the Receipt of Notice, as to why:-

(i) The Bills of Entry bearing Nos.7960728/07.09.2018 and 8712607/ 02.11.2018 filed for import of two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) with consumables on re-export basis should not be reassessed and the benefit of Notification No. 72/2017-Customs dated 16.08.2017 should not be denied;

(ii) The differential Duty, as mentioned in Table-3 hereinabove, amounting to **Rs.6,82,50,033/- (Rupees Six Crore, Eighty Two Lakh, Fifty Thousand and Thirty Three only)** should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA ibid;

(iii) The goods i.e. two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) with consumables on re-export basis imported under Bills of Entry bearing Nos. 7960728/07.09.2018 and 8712607/02.11.2018 valued at **Rs.65,00,00,317/- (Rupees Sixty Five Crore, Three Hundred and Seventeen only)** should not be held liable for confiscation under the provisions of Section 111(o) of the Customs Act, 1962;

(iv) Penalty should not be imposed upon them under Section 112(a) & 112(b) of the Customs Act, 1962 for goods mentioned at (iii) above;

(v) Penalty should not be imposed upon them under the provisions of Sections 114A, 114AA and 117 of the Customs Act, 1962.

13.2 Also the said Show Cause Notice No. VIII/10-14/Commr./O&A/2023-24 dated 04.09.2023 were issued to Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited, 201, 2nd Floor, Central Plaza, 166, C.S.T. Road, Kalina, Santa cruz East, Mumbai, Maharashtra-400098 calling upon to show cause in writing to the Commissioner of Customs, Ahmedabad within 30 days of the Receipt of this Notice, as to why:-

Penalty should not be imposed on him under Sections 112(a) & 112(b), Section 114AA and Section 117 of the Customs Act, 1962.

14 Written Submission: M/s. Van Oord India Private Limited and Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited submitted their additional written submission vide letter dated 25.10.2023 and additional submission filed by Advocate Shri B.V.Kumar vide their letter dated 18.07.2024 wherein they interalia stated as under:

14.1 that in terms of the proviso under Section 28(1)(a) of the Customs Act, 1962, before the issue of a show cause notice the proper officer shall hold pre-notice consultation with the person chargeable with the duty or interest in such manner as may be prescribed and invited attention to the Pre-notice Consultation Regulations, 2018, and cited the decision of the Hon'ble High Court of Delhi In the case of Gulati Enterprises vs. C.B.I. & C as reported in (2023) 2 Centax 98 (Del) and Victory Electric Vehicles International Pvt. Ltd. as reported in (2022) 1 Centax 29 (Del), and stated that since Pre-notice Consultation has not been done by the Department, with Van Oord and Umesh Kale, which has caused prejudice to the respondents and to that extent the present proceedings have been vitiated by not complying with the statutory provisions;

14.2 That Coastal Rambler was imported on a temporary basis under B.E. No. 7960728 dtd. 7.9.2018 for the said ONGC Dredging Project; that the vessel is registered in Netherlands and was built in 2004; that the Tug was cleared on payment of duty of Rs. 5,93,694 and Van Oord executed a Bank Guarantee No. 811-02-0077210 dated 15.9.2018 given by DBS Bank, Mumbai for an amount of Rs. 2,27,00,000/-; that the validity of bank guarantee was valid upto 15.12.2018. On the basis of the request made by the Importer, the validity of the BG was extended upto 15.3.2019; that Bank Guarantee was issued by the DBS Bank Ltd., Mumbai Branch, and the validity of the re-export bond was also extended upto 15.3.2019 and the differential duty and interest has been paid by Van Oord which has been accepted by the Customs Department; that the Coastal Rambler completed its operations in terms of the contract entered into with ONGC on or around 24.12.2018; that after completing the dredging operations the Tug Coastal Rambler was exported under the cover of S.B. No. 9866006 dated 24.12.2018 which was filed for re-export along with

Export Invoice No. 343382/C.Rambler/1-REXP dtd.19.12.2018; that the Dy. Commissioner of Customs, Custom House, Hazira issued a Certificate dated 24.12.2018 to the effect that Coastal Rambler has been converted from Coastal Run to Foreign Run on 26.12.2018 at 16:50 hours at Adani Hazira Port. Port clearance No. F-677/18-19 dated 26.12.2018 was also issued by the Supdt. Custom House, Hazira; that the Original Bank Guarantee No. 811-02-0077210 dtd. 15.9.2018 and 5.12.2018 which was valid upto 15.3.2019 for an amount of Rs. 2,27,00,000/- was released by the Supdt. of Customs, Custom House, Hazira vide letter F.No.CH/Hazira/BG/1068/18-19 dtd. 28.1.2019 addressed to the Bank Manager, DBS Bank Ltd., Mumbai - 400 021;

14.3 That the Coastal Voyager was imported on a temporary basis under B.E. No. 8712607 dtd. 2.11.2018 for the said ONGC Dredging Project; that the vessel is registered in Netherlands and was built in 2012; that the Tug was cleared on payment of duty of Rs. 11,93,806; that Van Oord executed a Bank Guarantee No. 811-02-0077719 dated 13.11.2018 given by DBS Bank, Mumbai for an amount of Rs. 4,55,82,000.00/-; that the validity of bank guarantee was valid up to 12.02.2019; that Coastal Voyager completed its operations in terms of the contract entered into with ONGC on or around 18.12.2018 and after completing the dredging operations the Tug Coastal Voyager was exported under the cover of S.B. No. 9709245 dated 18.12.2018, along with Export Invoice No. 343382/C.Voyager/1-RE dtd. 17.12.2018. The export value was declared at Rs. 40,15,59,437.50 FOB; that the Dy. Commissioner of Customs, Custom House, Hazira issued a certificate dated 18.12.2018 to the effect that Coastal Voyager has been converted from Coastal Run to Foreign Run on 19.12.2018 at 17:30 hours at Adani Hazira Port. Port clearance No.F-662/18-19 dated 21.12.2018 was also issued by the Supdt. of Custom House, Hazira; that the differential duty has been paid by the Importer at the rate of 5% / 15% as the case may be, in terms of Not. No.50/2017-Cus dated 30.6.2017 as amended by Not. No.6/2018-Cus dated 2.2.2018 vide Sl.No.553; that in the instant case, since the re-export of Coastal Rambler took place on 24.12.2018 i.e., after a period of three months from the date of importation, the differential duty at 15% was required to be paid in terms of Not. No.72/2017-Cus dated 16.8.2017. This has been paid by Van Oord;

14.4 That the words "Machinery, equipment or tools" mentioned in Not. No. 72/2017-Cus dtd.16.08.2017 have not been defined and In the absence of a statutory definition of the words "Machinery, Equipment or Tools the said goods (Tugs) are required to be classified as to how the said goods are understood or described in commercial parlance. Further, the classification of the said goods would also depend on their functions and the use for which they are put to as available in the technical dictionaries; that in this connection they referred and relied upon the following definitions of the word "Equipment":

(a) Foreign Trade Policy 2015-2020, Para 9.08 defines Capital Goods as follows:'

"Capital Goods": means any plan, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control.

(b) The Law Lexicon by P. Ramanatha Aiyer

Equipment: A ship was part of the 'equipment' of the business of the ship owner whose ship carries Ore/bulk/Oil. – *Coltman vs Bibby Tankers Limited* (1987) 3, All ER 1068, 1071 (HL).

(c) Section 2(22) of the Customs Act, 1962 defines goods as follows:

"Goods" includes, Vessels; Aircrafts; and Vehicles Stores; Baggage; Currency and negotiable instruments; and Any other kind of movable property"

(d) Lawinsider.com gives the following definitions, for 'Movable Property', 'Goods' and 'Equipment'.

Movable property means property of every description except immovable property.

Goods mean all the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.

Equipment is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest, in any of the foregoing.

14.5 That they also referred and relied upon the literature provided by the International Association of Dredging Companies in which it has been clearly mentioned that 'Tugs' would come within the meaning of Auxiliary Equipment. Auxiliary Equipment includes a wide variety of equipment that are not dredgers, but are integral to supporting dredging operations; that for the international dredging contracts, trailing suction hopper dredgers and cutter suction dredgers form the foundation of their dredging fleets; that practically speaking, however, dredging projects also require an ample number of floating auxiliary equipment; that those include:

- Multicats
- Heavy lifting crane vessels
- Workboats
- Tenders
- Towboats, tugboats
- Stationary or self-propelled barges
- Anchor pontoons, floating line pontoons
- Booster stations
- Crew boats
- Survey vessels.

14.6 That it can be seen from the above definitions that the word 'Equipment' has a wide connotation and the impugned goods, viz., Tug 'Coastal Rambler' and Tug 'Coastal Voyager' which are auxiliary equipment necessary for dredging, and have been imported temporarily into India for carrying out dredging operations against a contract awarded by ONGC to Van Oord; that to put it differently, 'Coastal Rambler' and Tug 'Coastal Voyager' were imported into India temporarily for providing dredging services to ONGC in Adani Hazira Port; that in terms of definitions given above the impugned goods, viz., Tug 'Coastal Rambler' and Tug 'Coastal Voyager' were providing services to ONGC and as such would fall within the definition of 'Equipment';

14.7 That In the light of the above definitions Van Oord submits that in the absence of a definition in the tariff or fiscal entry with an explanation or a definition, the understanding of the said goods in common trade parlance for the said goods is required to be taken into consideration for determining the classification of a 'good'; that the basic character, function and use of the said goods including for rendering services are relevant factors while determining the classification of a product;

14.8 That It is therefore submitted that the impugned goods are entitled to the benefit of exemption in terms of Not. No. 72/2017-Cus. Dtd. 16.8.2017, since the said goods (Tugs) have been imported into India for rendering dredging services; that in the instant case, the Department have not cited or placed on record any specific evidence to show that the impugned goods do not come within the meaning of 'Equipment' and therefore are not entitled to the benefit of Not. No. 72/2017-Cus dated 16.8.2017, except citing the decisions in the case of International Seaport Dredging Ltd vs. Commr. of Cus. Tiruchirapalli - 2019(366) ELT 723 (Tri - Chennai) and Shipping Corporation of India Ltd. vs. Commissioner - 2014(312) ELT 305(Trib), which have not attained finality; that in the instant case keeping in mind the definitions cited supra and read harmoniously would clearly show that 'Tugs' come within the meaning of 'Equipment', as mentioned in Not. No. 72/2017-Cus Dtd. 16.08.2017; that they cited the decision of Hon'ble Supreme Court rendered in the case of Commr. Of Cus. (PREV), Gujarat vs. Reliance Petroleum Ltd. - 2008(227)E.L.T. (S.C.) wherein the Apex Court inter alia, held as "It is well established that in interpreting the meaning of words in a taxing statute, the acceptance of a particular word by the trade and its popular meaning should commend itself to the authority";

14.9 That in terms of Sec. 74 of the C.A., 1962 when any goods are capable of being easily identified which had been imported into India and upon which any duty has been paid on importation and are entered for export the proper Officer makes an order permitting clearance for exportation, 95% of such duty shall be paid as drawback subject to the conditions mentioned therein; that in the decisions cited by the Department itself, that if the fact of export of the imported goods is not disputed then the said goods would be entitled to get drawback if duty is paid at the time of importation; that in the instant case duty at of 5% or 15% as the case may be has been paid at the time of importation and for the balance duty, bank guarantees were executed and the same were cancelled after the export of the two tugs, viz., Tug 'Coastal Rambler' and Tug 'Coastal Voyager' were re-exported after completion of the dredging operations in terms of the Contract with ONGC dtd 15.6.2018; that in this connection they referred and relied upon the following decisions:

- Birla VXL Ltd. vs. CCE, Chandigarh- 1998 (99) E.L.T.387 (Tri. - N. Delhi)
- IOC Ltd. vs. CCE, Calcutta-II - 2004 (178) E.L.T. 834 (Tri. Kol.)

That in the above two decisions it was, inter alia, held that when imported goods are re-exported they are not liable to duty in terms of the notification under which the said goods have been imported and were re-exported within the time limits stipulated in the said notification, subject to the entitlement as mentioned under Section 74 of the Customs Act, 1962, and the regulations made there under;

14.10 That the two decision relied by the Department have not attained finality; that it can be seen from the decisions cited by the Department, viz., Shipping Corporation of India Ltd. vs. Commr. of Cus. (Import), Mumbai - 2014 (312) E.L.T. 305 (Tri. - Mumbai) and International Seaport Dredging Ltd. vs. Commr. of Cus., Tiruchirapalli - 2019 (366) E.L.T. 723 (Tri.- Chennai), have not attained finality. Further, in both the cases, Tribunal as well as the High Court of Bombay have directed the Department to sanction drawback / refund of duty since the Tugs were re-exported.

14.11 That in the instant case the impugned Tugs viz., Coastal Rambler and Coastal Voyager were imported at Hazira Port for carrying out "Maintenance Dredging Around Wellhead Platform NTP-1 and Spoil Disposal offshore Against Tender No. Q16PC17005" under the cover of B.E. No. 7960728 / 7.9.2018 and B.E. No. 8712607 / 2.11.2018 and after completing first check and examination were re-exported under the cover of S.B. No. 9866006 dated 24.12.2018 and S.B. No. 9709245 dated 18.12.2018, respectively; that further it has been recorded that the Importer have

complied with all conditions of Not. No. 72/2017-Cus and submitted all the relevant documents based upon which the original Bank Guarantees and Re-export Bonds were cancelled and returned to Van Oord. [Pg. No. 93 and 123]; that it is therefore the submission of the Noticees that in terms of Sec 128(1) of the Customs Act, 1962, the demand for the differential duty is barred by limitation since, the question of mis-declaration, collation or any wilful mis-statement or separation of facts does not arise in this case; that assuming without admitting that the benefit of Not. No. 72/2017-Cus dated 16.8.2017 has been claimed incorrectly, it is settled law that on that count penalties cannot be imposed on the importer;

14.12 That it is settled law that claiming an incorrect classification or the benefit of an ineligible exemption notification does not amount to making a false or incorrect statement because it is not an incorrect description of the goods or their value but only a claim made by the Importer and thus, even if the importer makes a wrong classification or claims ineligible exemption, he will not be liable to pay differential duty and interest thereon and penalties under Section 112(a), 114A and 114AA of the Customs Act, 1962; that in this connection cited the decision of Tribunal Hyderabad in case of CCE & ST Hyderabad II vs. Sandor Medicaids Pvt. Ltd - 2019 (367) E.L.T. 486 (Tri - Hyd) 2019(367) ELT A 318 (SC), and Lewek Altair Shipping Pvt. Ltd vs. CC Vijayawada - 2019 (366) E.L.T. 318(Tri - Hyd), Midas Fertchem Impex Pvt. Ltd. vs. Pr. Commr. of Customs (Import) N. Delhi - 2023(384) ELT 397 (TRI - DEL):

14.13 That the demand, if any, beyond the period of limitation would not be sustainable in law, in as much as there was no suppression of facts, either in the description of the goods or their valuation; that the dispute is in respect of classification of the imported goods and the claim for concessional rate of duty under the relevant notification; that as submitted supra, no penalties are leviable when the dispute relates classification of the imported goods and the claim for concessional rate of duty; that in the instant case and on the basis of the judicial decisions cited supra and the ratio decidendi laid therein, penalties under Sec. 112(a), 112(b), 114A and 114AA and 117ibid are not leviable on the Importer (Van Oord); that for the same reasons the penalties proposed to be imposed on Umesh Kale are also not sustainable in law.

14.14 That the impugned tugs were imported on re-export basis after payment of applicable duties; that after completion of dredging operations in terms of the contract entered into by them with ONGC, the said tugs were re-exported as mentioned supra and the Re-exports Bonds and Bank Guarantees executed by them were cancelled and returned to the importer, therefore the impugned goods are not available for confiscations under Section 111(o) of the Customs Act, 1962; that it is settled law that when goods are not available for confiscation, no redemption fine can be imposed in lieu of confiscation. In this connection Van Oord would like to refer to and rely upon the following decisions :

- Shiv Kripa Ispat Pvt. Ltd. v. CCE, Nashik - 2009 (235) ELT 623 (Tri.-LB)
- Associate Marketing Service v. CC, Airport -2006 (195) ELT 287 (Tri.-Chennai)
- Shiwalayan Spinning & Weaving Mills P. Ltd. v. CC, Amritsar- 2002 (146) ELT 610 (T)
- Chinku Exports v. CC, Calcutta- 1999 (112) ELT 400 (T)
- Affirmed by S.C. 2005 (184) ELT A36 (S.C.)
- Prudential Pharmaceuticals Ltd. v. CC-2001 (136) ELT 1057 (T)
- Shilpa Trading Co. V. CC, Bangalore- 2008 (224) ELT 453 (Tri. - Ban.)

14.15 That the above submissions may also be taken as submissions being made on behalf of Umesh Kale; that he is an employee of the Company (Van Oord) and carries out the assigned duties to the best of his ability and limited knowledge of Customs law

or procedures; that he has no personal interest to deliberately mis-declare or claim an ineligible exemption;

14.16 That without prejudice to the above it stated that the Statement of Mr. Umesh Kale dated 15.5.2023 recorded by the Senior Intelligence Officer DRI, Jamnagar, was not recorded in accordance with the replies given by him particularly to the questions numbers 12, 13, 14 & 16.

15 Personal Hearing: Personal hearing for M/s. Van Oord and M/s. Umesh Kale was fixed on 22.07.2024. However, Advocate of the Importer asked date of 25.07.2024 for personal hearing. Accordingly, personal hearing was fixed for importer as well as its employee Shri Umesh Kale on 25.07.2024. Shri B.V. Kumar, Advocate, requested for virtual hearing on 25.07.2024. Accordingly, virtual hearing was conducted on 25.07.2024 in virtual mode wherein Advocate Shri B.V. Kumar and Shri Umesh Kale reiterated their written submission dated 25.10.2023 and dated 18.07.2024. Further vide their E mail dated 25.07.2024 submitted two statements regarding differential duty with interest, if payable after considering Duty Drawback Entitlement for Coastal Rambler and Costal Voyager.

16 Discussion & Findings: I have carefully gone through the Show Cause Notice dated 04.09.2023, written submission dated 25.10.2017-and additional submission dated 18.07.2024 filed by the Advocate of M/s. Van Oord India Pvt. Ltd and records of personal hearing held on 25.07.2024. Issues for consideration before me in these proceedings are as under-

- i) Whether the Importer is eligible to avail the benefit of the Notification No.72/2017-Customs Dated 16.08.2017 claimed by them on the import of two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) with consumables on re-export basis imported under Bill of Entry No. 7960728/07.09.2018 and 8712607/02.11.2018?
- ii) Whether differential Duty amount of Rs.6,82,50,033/- (Rupees Six Crore, Eighty Two Lakh, Fifty Thousand and Thirty Three only) for the import of two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) under Bill of Entry Nos.7960728/07.09.2018 and 8712607/ 02.11.2018 respectively should be demanded and recovered in terms of Section 28(4) of the Customs Act, 1962, along with interest under Section 28AA of the Customs Act, 1962?
- iii) Whether the goods imported by M/s. Van Oord India Pvt. Ltd under aforesaid Bills of Entry is liable for confiscation under Section 111 (o) of the Customs Act, 1962 or otherwise?
- iv) Whether the Importer is liable for penalty under the provisions of the various sections as proposed in the Show Cause Notice?
- v) Whether Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited, is liable for penalty under Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962?

17. Whether the Importer is eligible to avail the benefit of the Notification No.72/2017-Customs Dated 16.08.2017 claimed by them on the import of two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) with consumables on re-export basis imported under Bill of Entry No. 7960728/07.09.2018 and 8712607/02.11.2018?

17.1 The basic issue involved in the instant case is whether the Old and used Tugs imported by M/s. Van Oord India Pvt. Ltd can be considered as **Machinery**,

equipment or tools and consequently eligible for exemption notification no. No.72/2017-Customs Dated 16.08.2017 or otherwise.

17.2 Notification No. 72/2017-Customs dated 16.08.2017 exempts goods of the description specified in column (1) of the Table annexed hereto, from the payment of so much of the customs duty leviable thereon under First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in column (3) of the said Table and from the whole of the integrated tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975 subject to the limitations and conditions specified in column (2) thereof. Column No.(1) is 'Description of goods wherein "**Machinery, equipment or tools**, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)" are mentioned. Thus, only the **Machinery, equipment or tools**, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)" are eligible for the said exemption.

17.3 I find that Chapter 84 is for "Nuclear Reactors, Boils, **Machinery** and Mechanical Appliances and parts thereof ". Chapter 85 is for "Electrical **Machinery** and Equipment and Parts thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers and parts and Accessories of such Articles" and Chapter 90 is for "Optical, Photographic, Cinematographic, Measuring, Checking, Precision, Medical or Surgical Instruments and **Apparatus**; Parts and Accessories thereof". Thus, on harmonious reading of the description of goods covered under Chapter 84,85 and 90, it is observed that only the goods which can be considered as Machinery, Equipments and Tools falling under any chapters of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) is eligible for exemption from customs duty leviable thereon under First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in column (3) of the Table of the Notification No. 72/2017-Customs dated 16.08.2017 and from the whole of the integrated tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975.

17.4 I find that importer has filed Bill of Entry No 7960728/07.09.2018 with description of imported old and used Tug as "TEMP.IMP.ON RE-EXPORT BASIS ONE UNIT USED TUG "COASTAL RAMBLER" NETHERLANDS, BUILT 2004 IMO NO:9304904 (AS PER INVOICE) and Bill of Entry No. 8712607/02.11.2018 with description of imported old and used Tug as " TEMP IMP.ON RE-EXPORT BASIS OLD & USED TUG COASTAL VOYAGER IMO NO 9660322 (AS PER INVOICE)". Customs Tariff Item is declared as "8904000' in aforesaid both the Bills of Entry. It is pertinent to mention that the description of goods covered under Chapter 89 as well as Customs Tariff Item No. 8904000 as declared by the importer in their said Bills of Entry. Chapter Heading 89 is for "Ships, Boats and Floating Structures" and Customs Tariff Head No. '8904' is for "**Tugs and Pusher craft**". I find that Notification No. 72/2017-Customs dated 16.08.2017 is for those goods which are "**Machinery, equipment or tools**, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), whereas as per the description mentioned in CTH 8904, imported old and used tugs do not qualifies as "**Machinery, equipment or tools**". Therefore, I find that importer is not eligible for benefit of Notification No. 72/2017-Customs dated 16.08.2017.

17.5 I find that importer has contended that the words "Machinery, equipment or tools" mentioned in Notification No. 72/2017- Cus dtd.16.08.2017 have not been defined and in the absence of a statutory definition of the words "Machinery, Equipment or Tools, the said goods (Tugs) are required to be classified as to how the said goods are understood or described in commercial parlance. I find that said plea is not tenable as the said Notification has clearly defined the words "**Machinery, equipment or tools**". **The Notification clearly says that "Machinery, equipment or tools**, falling under Chapters 84, 85, 90 or any other Chapter of the First

Schedule to the Customs Tariff Act, 1975 (51 of 1975)". Thus, only the **Machinery, equipment or tools**, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)" are eligible for said exemption. There is no dispute that importer has imported old and used tugs under Customs Tariff Item No. 8904000 which is for **"Tugs and Pusher craft"**.

17.6 I find that Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited, in his statement recorded on 15.05.2023 has admitted that Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) imported under the Bills of Entry No. 7960728/07.09.2018 & 8712607/02.11.2018 were having characteristics of Tug, and therefore they classified them under Chapter 89. Further, on being asked about the scope of the work for both the subject tugs, he submitted copy of two Charter Party Agreements, both dated 20th July, in respect of both the tugs. The said Charter Party Agreements were between M/s. Van Oord India Private Limited and M/s. Acta Marine BV, Netherlands. As per Clause 17 of the said Charter Party Agreements, both the tugs were to be employed for Tug push assistance of TSHD (Trailing Suction Hopper Dredger) and survey operations. He further added that the said scope of the work is normal for a tug.

17.7 Further, I find that documents submitted by the Importer also contain sheets (1) Sheet titled as Coastal Voyager, Shoalbuster 3209 and (2) Sheet titled as Coastal Rambler, Shoalbuster 2609, both of them were showing technical specifications of the tugs. The type of vessel shown in these sheets of technical specification is as "Tug Unrestricted Navigation". The Importer as well as the Customs Broker agreed to the fact that the said Technical specifications describe the goods as Tug only.

17.8 On perusal of documents submitted by the Importer, it is revealed that document are titled as "Coastal Voyager, Shoalbuster 3209 and as "Coastal Rambler, Shoalbuster 2609", showing technical specifications of the Vessel. The technical specification of vessel shown in these sheets as "Tug Unrestricted Navigation". Further, I find that as per the Clause 17 of the Charter Party Agreements between M/s. Van Oord India Private Limited and M/s. Acta Marine BV, Netherland, both the tugs were to be employed for Tug push assistance of TSHD (Trailing Suction Hopper Dredger) and survey operations. Thus, tugs used for push assistant of Dredger, cannot be termed or considered as machinery, equipment or tools. Tug is totally different and distinct goods than the machinery, equipment or tools and in commercial terms also it is known as tug only and the importer has also made the agreement as a 'Tug' only and have not made charter agreement as machinery, equipment or tools.

17.9 I find that, in the identical case, Hon'ble Delhi Tribunal in the case of Shipping Corporation of India Ltd. vs. Commr. of Cus. (Import), Mumbai reported in 2014 (312) E.L.T. 305 (Tri. - Mumbai) has interalia held as under.

"6.12 In the light of the above discussions, import duty demand on vessels Smit Lumba, imported by the Shipping Corporation of India and Posh Giant-1 and Salvaree imported by M/s. J.M. Baxi & Co. are sustainable in law and the appellants are liable to pay customs duty in accordance with law. The appellants have not disputed either the valuation or the duty calculations adopted for confirmation of demand. However, the appellants have claimed that they would be eligible for the benefit of Notification No. 27/2002-Cus. as amended. The said Notification provides for duty concessions on "Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975" subject to the conditions that the goods have been taken on lease by the importer for use after importation; the importer makes a declaration at the time of import that the goods are being imported temporarily for execution of a contract; the said goods are re-exported within six months of the date of importation or within such extended period not exceeding one year from the date of importation, as the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, may allow. The concessional rate of duty prescribed is

fifteen per cent. of the aggregate of the duties of customs, which would be leviable, in the case of goods which are re-exported within six months of the date of importation. In the case of goods which are re-exported after six months, but within one year of the date of importation, the rate of duty chargeable would be thirty per cent. of the aggregate of the duties of customs. To be eligible for the concession, the goods should be either machinery, equipment or tools. Tugs and barges can, by no stretch of imagination, be considered as falling in this category. They fall under Chapter 89 as "Ships, boats and floating structures". Therefore, in our view, the appellant would not be eligible for any duty concession under the said Notification and the claim in this regard is not sustainable."

Further, following the said decision, Hon'ble Chennai Tribunal in the case of International Seaport Dredging Ltd. vs. Commr. of Cus., Tiruchirapalli reported in 2019 (366) E.L.T. 723 (Tri.- Chennai) has also interalia held as under:

"7. The facts which are unambiguous are that the Bill of Entry carried the description of the goods as a work boat per se from which it is clear that what is imported in the first place is the work boat which perhaps came with machinery/equipment like spare parts, accessories and consumables and not vice versa. Therefore, to our minds, the decisive factor for classification depends on the characteristic of the boat and not the items that came along with the boat.

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12. The import of work boat which is termed as a tug boat is not disputed and therefore, Chapter 89 which is wide enough, covers ships, boats and also floating structures and without the fear of contradiction we can safely assume that the impugned goods are also covered under this Chapter. The grounds of appeal and even the written submissions and the arguments advanced during the course of hearing do not anywhere dispute the above facts."

17.10 I find that importer has contended that the impugned goods are entitled to the benefit of exemption in terms of Notification No. 72/2017-Cus. Dtd. 16.8.2017, since the said goods (Tugs) have been imported into India for rendering dredging services. I find that said plea is not acceptable as the Notification No. 72/2017-Cus. Dtd. 16.8.2017 clearly says the exemption for **"Machinery, equipment or tools"**, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)" whereas the importer has imported Tugs falling under Customs Tariff Item No. 8904000 and in commercial terms the imported goods Coastal Voyager, Shoalbuster 3209 and (2) Sheet titled as Coastal Rambler, Shoalbuster 2609 are known as tugs only and it is not known as equipment for dredger or dredging services. I find that classification cannot be done on end use/ function test but it should be based on commercial identity. There is no dispute that the importer had imported Tug and they have classified under Customs Tariff Item No. 8904000 which is for **"Tugs and Pusher craft"** and further commercially the impugned goods is known as Tug. Further, to fortify my stand, I rely on the ratio of decision of Hon'ble Supreme Court rendered in case of G.S. Auto International v. Collector reported in 2003 (152) E.L.T. 3 (S.C.) wherein it has been interalia held as under:

“15. The question that needs to be adverted to is: whether the goods in question can appropriately be classified under Tariff Item 52 or not having been specified elsewhere, they fall under Tariff Item 68. In construing these items, what is the proper test to be applied? Is it the functional test or is it commercial identity test which would determine the issue. It seems to us that this question is no longer res integra. It fell for consideration of this Court earlier and it was laid down that the true test for classification was the test of commercial identity and not the functional test. It needs to be ascertained as to how the goods in question are referred to in the market by those who deal with them, be it for the purposes of selling, purchasing or otherwise.

16. In *Jaishri Engineering Co. (P) Ltd. v. Collector of Central Excise* [1989 (40) E.L.T. 214] this Court considered the question whether High Pressure Connectors meant for lubricating purposes were classifiable under Tariff Item 52 of the Central Excise Tariff as ‘nuts’ or under Tariff Item 68 as ‘integral part of diesel engine pipes’. It was found that the said goods were not manufactured according to any special specifications as integral parts of machinery, rather some of these nuts were also purchased from the market while those being manufactured by the assessee were also sold to outside buyers as nuts; further, those goods were commercially known and bought and sold as nuts. On that finding, it was held that they were classifiable under Tariff Item 52.

17. In *Purewal Associates Limited (supra)*, two appeals were dealt with by this Court. The subject-matter of the first appeal was classification of screws, Lid screws, Barrel axle screw, Bridge screw and the Dial Key screw which were used as parts in manufacturing watches. It was contended that they would fall under Tariff Item 52 as they were nothing but screws. It was observed that the Tribunal had rightly taken note of the test laid down by this Court in several decisions but misdirected itself in applying it. The test is that while interpreting the entries in the Schedule, they must be construed and understood as in common parlance and words used by the Legislature must be given their popular sense, namely that sense people conversant with the subject matter with which the statute was dealing would attribute to it. Applying the test of commercial parlance for identity of the goods and referring to the observation of this Court in *Plasmac Machine Mfg. Co. Pvt. Ltd. v. Collector of Central Excise* [1991 (51) E.L.T. 161 (S.C.)], it was held that the goods were classifiable under Tariff Item 68. The other appeal dealt with thirty two articles of different kinds of connecting rod bolts (bolt rear wheel, bolt front wheel, etc). It is on this part of the judgment that Mr. Dileep Tandon has placed strong reliance to show that nuts and bolts even if integral parts of machinery would be falling under Tariff Item 52. It would be useful to notice here the following observation in paragraph (16) :

“16. Before us the materials in question were produced and we could appreciate the conclusion that they are nuts and bolts as commonly understood though they differ in shape and are manufactured to order.”

Further, I rely on the ratio of decision of Hon’ble Supreme Court rendered in case of *Dunlop India Ltd. & Madras Rubber Factory Ltd. Vs. Union of India and others* reported in 1983 (13) ELT1566 (S.C) wherein it has been inter alia held as under:

“31. It is well established that in interpreting the meaning of words in a taxing statute, the acceptation of a particular word by the Trade and its popular meaning should commend itself to the authority.

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36. *We are, however, unable to accept the submission. It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry.*

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42. *We are clearly of opinion that in the state of the evidence before the revisional authority no reasonable person could come to the conclusion that V.P. Latex would not come under rubber raw. The basis of the reason with regard to the end-use of the article is absolutely irrelevant in the context of the entry where there is no reference to the use or adaptation of the article. The orders of the authority are, therefore, set aside. In the result the appeals are allowed with costs."*

I find that in the present case, there is no dispute that importer had imported two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) and classified the same under Customs Tariff Item No. 8904000 as Tug and further, people in trade and commerce are conversant with the imported goods 'Tug'. I find that the impugned goods is commercially known as 'tug' and not a 'machinery, equipment or tools'. Further, invoices as well as its relevant documents along with technical specification and registration documents of said both the Tug refers the impugned goods as Vessel/Tug as commercially known and no where it is mentioned 'as machinery or equipments or tools required for dredging and further it would be used for providing dredging service. Therefore, I find that the impugned goods is commercially known as tug and not a machinery, equipment or tools, therefore, I do not find merits in the contention of the importer.

17.11 I find that the Hon'ble Supreme Court in the case of M/s Dilip Kumar & Co. reported at 2018 (361) ELT 577 (SC) has laid down the principle wherein it has been observed as under:

*"The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. **If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense.**The words used declare the intention of the Legislature. In *Kanai Lal Sur v. Paramnidhi Sadhukhan*, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.*

I find that wording of Notification No. 72/2017- Cus dated 16.08.2017 is plain and unambiguous. Notification No. 72/2017-Customs dated 16.08.2017

exempts "**Machinery, equipment or tools**, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)", however, importer with intent to evade the payment of customs duty have considered the goods as equipment and have wrongly availed the benefit of the said notification.

In view of the above discussion, I find that importer is not eligible for benefit of Notification No. 72/2017-Customs dated 16.08.2017.

18. Whether the consequential actions such as re-determination of Customs Duty alongwith interest on differential Customs Duty, on M/s. Van Oord India Pvt. Ltd. arise or otherwise?

18.1 Keeping the aforesaid discussions in mind, I proceed to examine the matter further. I find that in order to sensitize the Trade about its benefit and consequences of mis-use, Government of India has issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self Assessment 2011 ' was required as prior to enactment of the provision of 'Self-Assessment', mis-classification or wrong availment of Duty exemption etc., in normal course of import, was not considered as mis-declaration or mis-statement. Under para 1.3 of Chapter-I of the above manual, Importers/Exporters, who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options: (a) Seek assistance from Help Desk located in each Custom Houses, or (b) Refer to information on CBIC/ICEGATE web portal www.cbic.gov.in, or (c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or (d) An importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied. Para 3(a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para 2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent and habitually noncompliant Importers/Exporters could face penal action on account of wrong Self-Assessment made with intent to evade Duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

18.2 After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2017, it is the responsibility of the Importer to correctly declare the description, classification, applicable exemption Notification, applicable Duties, rate of Duties and its relevant Notifications etc. in respect of said imported goods and pay the appropriate Duty accordingly. In the instant case, it is apparent that importer despite being in knowledge of the fact that the imported goods were old and used tugs, intentionally and knowingly adopted the modus operandi to mis-state the correct classification of imported goods and willfully claimed benefit of Notification No. 72/2017- Customs dated 16.08.2017 with malafide intention to evade payment of Customs Duty at appropriate rate. It is therefore very much apparent that Importer has willfully violated the provisions of Section 17(1) of the Customs Act, 1962 in as much as they have failed to correctly self-assess the impugned goods and have also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962. Thus, Importer have indulged in wrong availment of Notification No. 72/2017-Customs dated 16.08.2017 and thereby to evade payment of Customs Duty at the appropriate rate. By way of adopting this modus in respect of impugned goods M/s. Van Oord India Pvt. Ltd. had short paid the Customs Duty of **Rs.6,82,50,033/- (Rupees Six Crore, Eighty Two Lakh, Fifty Thousand and Thirty Three only)** which merits invocation of extended period for demand of the said Customs Duty under the provisions of Section 28(4) of the Customs Act, 1962. I,

therefore, find and hold that the aforementioned Duty is recoverable from them under the provisions of Section 28(4) of the Customs Act, 1962.

18.3 I find that importer has contended that the impugned Tugs viz., Coastal Rambler and Coastal Voyager were imported at Hazira Port for carrying out "Maintenance Dredging Around Wellhead Platform NTP-1 and Spoil Disposal offshore Against Tender No. Q16PC17005" under the cover of B.E. No. 7960728 / 7.9.2018 and B.E. No. 8712607 / 2.11.2018 and after completing first check and examination were re-exported under the cover of S/B No. 9866006 dated 24.12.2018 and S/B No. 9709245 dated 18.12.2018, respectively and it has been recorded that the Importer have complied with all conditions of Not. No. 72/2017-Cus and submitted all the relevant documents based upon which the original Bank Guarantees and Re-export Bonds were cancelled and returned to Van Oord and therefore demand for the differential duty is barred by limitation since, the question of mis-declaration, collation or any wilful mis-statement or separation of facts does not arise in this case;

I find that said contention is not tenable as at the time of re-export only the identity of the goods as to whether the goods is same which was imported or otherwise is examined. Had it been not investigated by the DRI, the liability of paying customs duty would have been evaded. It was the importer, inspite of having the knowledge of appropriate description of imported goods and commercially known as 'Tugs' and decisions of Hon'ble Tribunals regarding denial of benefit of erstwhile Notification rejecting the claim of the importer that Tugs are not equipment, the said importer with clear intent to evade the payment of customs duty have availed the benefit of said notification and therefore, there are sufficient ingredients for invoking the extended period and demand notice is rightly issued under Section 28 (4) of the Customs Act, 1962.

19. It has also been proposed in the Show Cause Notices to demand and recover interest on the differential Customs Duty **Rs.6,82,50,033/- (Rupees Six Crore, Eighty Two Lakh, Fifty Thousand and Thirty Three only)** in respect of the imports under Section 28AA of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 ibid, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus, the said Section provides for payment of interest automatically along with the Duty confirmed/ determined under Section 28 ibid. I have already held that the differential Customs Duties of **Rs.6,82,50,033/- (Rupees Six Crore, Eighty Two Lakh, Fifty Thousand and Thirty Three only)** is liable to be recovered from the Importer under Section 28(4) of the Customs Act, 1962. I, therefore hold that the interest on the said Customs Duty determined/confirmed under Section 28(4) ibid is to be recovered under Section 28AA of the Customs Act, 1962.

20 Show Cause Notice proposes for the confiscation of the imported goods i.e. two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) with consumables on re-export basis imported under Bills of Entry bearing Nos. 7960728/07.09.2018 and 8712607/02.11.2018 valued at **Rs.65,00,00,317/- (Rupees Sixty Five Crore, Three Hundred and Seventeen only)** under the provisions of Sections 111(o) of the Customs Act, 1962.

20.1 As discussed in paras supra, M/s. Van Oord India Private Limited have imported the impugned goods i. e. two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) with consumables on re-export basis imported under Bills of Entry bearing Nos. 7960728/07.09.2018 and 8712607/02.11.2018 by availing the benefit of exemption Notification No.72/2017-Customs dated 16.08.2017. As the said Notification No. 72/2017- Customs dated 16.08.2017 is applicable only to temporary import of leased machinery, equipment & tools whereas the importer had imported two old and used Tugs viz. Tug Coastal

Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) which are neither machinery, equipment & tools . The importer was well aware that the goods they imported on re-export basis was 'Tug' to be used as Dredger, however with clear intent to evade the payment of Customs duty, they cleared the same treating as equipment and by way of adopting this modus in respect of impugned goods, M/s. Van Oord India Private Limited had cleared goods valued at valued at **Rs.65,00,00,317/- (Rupees Sixty Five Crore, Three Hundred and Seventeen only)** from Hazira Port, without paying Customs Duty at applicable rate. Thus importer has deliberately and knowingly indulged in suppression of facts in respect of their imported product and has wilfully and wrongly availed the benefit of Notification No. 72/2017- Customs dated 16.08.2017 which was not available to them, with an intent to evade payment of higher rate of Customs Duty and also contravened the provisions of Section 46(4) of the Customs Act, 1962. In terms of Section 46(4) of the Customs Act, 1962, the Importer is required to make and subscribe to a declaration as to the truth of the contents of the Bills of Entry submitted for assessment of Customs Duty. Section 111 (o) of the Customs Act, 1962 provides for confiscation of "any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer". In the present case, the condition was that benefit of Notification No. 72/2017-Customs dated 16.08.2017 is eligible only to leased machinery, equipment and tools temporary imported whereas the importer under the guise of equipment imported two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) with consumables on re-export basis imported under Bills of Entry bearing Nos. 7960728/07.09.2018 and 8712607/02.11.2018 which do not correspond in respect of description/classification of the goods. In this case, Importer has resorted to wrong availment of benefit of Notification as mentioned above in the Bills of Entry filed by them with an intention to avoid higher Duty liability that would have otherwise accrued to them. Thus, provisions of Section 111(o) of the Customs Act, 1962 would come into picture. In the present case, importer has wilfully and wrongly availed the benefit Notification No. 72/2017- Customs dated 16.08.2017 which was not available to them with an intent to evade payment of higher rate of Customs Duty, hence the provisions of Section 111(o) comes into play. I thus find that wilful and wrong availment of the benefit of the aforementioned Notification by Importer has rendered the impugned goods liable for confiscation under Sections 111(o) of the Customs Act, 1962. I, therefore, hold the goods valued at **Rs.65,00,00,317/- (Rupees Sixty Five Crore, Three Hundred and Seventeen only)** liable to confiscation under the provisions of Section 111(o) *ibid*. Further, the aforementioned goods are not physically available for confiscation, and in such cases, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for

confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

20.2 I also find that Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, has held *inter alia* as under: -

“.

174. In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of *M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal*, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act....”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).”

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above.”

In view of the above, I find that imported goods valued at **Rs.65,00,00,317/- (Rupees Sixty Five Crore, Three Hundred and Seventeen only)** though not available are liable for confiscation under Section 111(o) of the Customs Act, 1962.

21. Whether the Importer is liable for penalty under Section 114A and Section 114AA of the Customs Act, 1962:

21.1 The Show Cause Notice proposes penalty under the provisions of Section 114A of the Customs Act, 1962 on importer. The Penalty under Section 114A can be imposed only if the Duty demanded under Section 28 *ibid* by alleging wilful mis-statement or suppression of facts etc. is confirmed/determined under Section 28(4) of the Customs Act, 1962. As discussed in the foregoing paras, Importer has deliberately and knowingly indulged in suppression of facts in respect of their imported goods and has wilfully and wrongly availed the benefit of Notification No. 72/2017- Customs dated 16.08.2017 which was not available to them, with an intention to avoid the higher Duty liability that would have otherwise accrued to them. I have already held that the differential Customs Duty of **Rs.6,82,50,033/- (Rupees Six Crore, Eighty Two Lakh, Fifty Thousand and Thirty Three only)** is to be demanded and recovered from Importer under the provisions of Section 28(4) of the Customs Act, 1962. As the provision of imposition of penalty under Section 114A *ibid* is directly linked to Section 28(4) *ibid*, I find that penalty under Section 114A of the Customs Act, 1962 is to be imposed upon importer M/s. Van Oord India Pvt. Ltd.

21.2 With regard to the proposal for imposition of penalty under Section 114AA of the Customs Act, 1962, I find that importer knew that they were not eligible for the benefit of Notification No. 72/2017- Customs dated 16.08.2017 however, with clear intent to evade the payment of Customs Duty have wrongly declared Notification No. 72/2017- Customs dated 16.08.2017 in the Bills of Entry and made false declaration in the Bills of Entry for the clearance of imported goods claiming exemption of said notification. The importer was well aware that the said Notification No. 72/2017- Customs dated 16.08.2017 was applicable only to temporary import of leased machinery, equipment & tools, however, with clear intent to evade the payment of customs duty they imported two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) which are neither machinery, equipment & tools, however in guise of equipment got the clearance of the same and mis-declared the said Notification in Bills of Entry. Thus, they have rendered themselves liable for penal action under Section 114AA of the Customs Act, 1962.

21.3 Further, to fortify my stand on applicability of Penalty under Section 114AA of the Customs Act, 1962, I rely on the decision of Principal Bench, New Delhi in case of Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi) wherein it has been held that *"Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority"*.

22. Whether the Importer is liable for penalty under 112(a) & 112(b) of the Customs Act, 1962?

I find that fifth proviso to Section 114A stipulates that "where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114" Hence, I refrain from imposing penalty on the importer under Section 112 of the Customs Act, 1962 as penalty has been imposed on them under Section 114A of the Customs Act, 1962.

23 Whether Importer is liable for penalty under the provisions of Section 117 of the Customs Act, 1962?

23.1 I find that Show Cause Notice also proposes Penalty under Section 117 of the Customs Act, 1962. Section 117 of the Customs Act, 1962 reads as under:

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 [one lakh rupees].

I find that this is a general penalty which may be imposed for various contravention and failures where no express penalty is elsewhere provided in the Customs Act, 1962. In present case, since express penalty under Section 114 A of the Customs Act, 1962 for short payment of duty by reason of wilful mis-statement and suppression of facts, and penalty under Section 114AA of the Customs Act, 1962 for false declaration in Bills of Entry have already been found imposable as discussed herein above. Therefore, I hold that Penalty under Section 117 of the Customs Act, 1962 is not warranted and legally not sustainable.

24. I find that importer has contended that in terms of the proviso under Section 28(1)(a) of the Customs Act, 1962, before the issue of a show cause notice the proper officer shall hold pre-notice consultation with the person chargeable with the duty or interest in such manner as may be prescribed and invited attention to the Pre-notice Consultation Regulations, 2018, and cited the decision of the Hon'ble High Court of Delhi In the case of Gulati Enterprises vs. C.B.I. & C as reported in (2023) 2 Centax 98 (Del) and Victory Electric Vehicles International Pvt. Ltd. as reported in (2022) 1 Centax 29 (Del), and stated that since Pre-notice Consultation has not been done by the Department, with Van Oord and Umesh Kale, which has caused prejudice to the respondents and to that extent the present proceedings have been vitiated by not complying with the statutory provisions;

I find that said contention is not tenable as the Pre-notice consultation is required in case of notice to be issued under Section 28 (1) of the Customs Act, 1962 whereas in the present case, the show cause notice has been issued under Section 28 (4) of the Customs Act, 1962. Regulation 3 (c) of the Pre- Notice Consultation Regulations, 2018 read as *"notice" means a show cause notice referred to in sub-section (1) of section 28 of the Act.* Further Para 5 of the master Circular No. 1053/2/2017-CX., dated 10-3-2017 clearly says that ***"5.0 Consultation with the noticee before issue of Show Cause Notice: Board has made pre show cause notice consultation by the Principal Commissioner/ Commissioner prior to issue of show cause notice in cases involving demands of duty above Rs. 50 lakhs (except for preventive/offence related SCN's) mandatory vide instruction issued from F. No. 1080/09/DLA/MISC/15, dated 21st December 2015. Such consultation shall be done by the adjudicating authority with the assessee concerned. This is an important step towards trade facilitation and promoting voluntary compliance and to reduce the necessity of issuing show cause notice"***. The present Show cause notice is issued based on the investigation of DRI. Therefore, I find that said plea of the importer and its employee Shri Umesh Kale is not tenable. Further, to sustain my view I rely on the ratio of decision of Hon'ble Jharkhand High Court rendered in case of Himachal Construction Co. Vs. Union of India reported in 2021 (377) ELT545 (Jhar) wherein it has been interalia stated as under:

".....Upon consideration of the facts and circumstances discussed, it prima facie appears that the SCN fell into the category of preventive show cause notice falling under the exception under para-5.0 of the master circular dated 10th March, 2017. Had the proceedings not been initiated, the liability of paying service tax might have been evaded."

25 I find that imported has contended that terms of Sec. 74 of the C.A., 1962 when any goods are capable of being easily identified which had been imported into India and upon which any duty has been paid on importation and are entered for export the proper Officer makes an order permitting clearance for exportation, 95% of such duty shall be paid as drawback subject to the conditions mentioned therein; that in the decisions cited by the Department itself, that if the fact of export of the imported goods is not disputed then the said goods would be entitled to get drawback if duty is paid at

the time of importation; that in the instant case duty at the rate of 5% or 15% as the case may be has been paid at the time of importation and for the balance duty, bank guarantees were executed and the same were cancelled after the export of the two tugs, viz., Tug 'Coastal Rambler' and Tug 'Coastal Voyager' were re-exported after completion of the dredging operations in terms of the Contract with ONGC dtd 15.6.2018; that in this connection they referred and relied upon the following decisions:

- Birla VXL Ltd. vs. CCE, Chandigarh- 1998 (99) E.L.T.387 (Tri. - N. Delhi)
- IOC Ltd. vs. CCE, Calcutta-II - 2004 (178) E.L.T. 834 (Tri. Kol.)

I find that aforesaid contention is not tenable as Notification No. 72/2017 - Customs dated 16.08.2017 specifically says that "The goods imported under this concession shall not be eligible for drawback under sub-section (2) of section 74 of the Customs Act, 1962. Further, importer has simply stated that the imported goods have been re-exported. Further, importer has not produced any evidence that they have claimed drawback under Section 74 (2) of the Customs Act, 1962. I find that Hon'ble Mumbai High Court in the case of Expotec International Ltd Vs. Union of India reported in 2022 (382) ELT 628 (Bom) has inter alia held as under:

".....There is a duty exemption as provided in Notification No. 27/2002 for those who import machinery or tools for execution of a contract and re-export the same within the prescribed period. This concession was given because the Central Government was satisfied that it was necessary in the public interest so to do, where the importer has taken the goods on lease for use after importation and at the time of importation makes a declaration that the goods are being imported temporarily for execution of a contract. Such conclusions are not prescribed under Section 74 or notification issued under Section 74(2).

Therefore, the concession given to such importer was that he need not pay the entire 100% of the customs duty payable under the said Act but would pay only 15% or 30%, as the case may be. They do not have to pay the entire 100% and then claim a drawback of 85% or 70%, as the case may be.

Hence, those who fall under Notification No. 27/2002 are not entitled to any drawback under Section 74.

21.*Therefore, we are unable to accept the stand of petitioner that drawback has to be given even where a concession has been availed of under Notification No. 27/2002. The submissions of petitioner that the note given in Notification No. 27/2008 amends the earlier notification and, therefore, the position that no drawback can be claimed should come into force only from 1st March, 2008 and for the period in question also is not acceptable. As noted above, Notification No. 27/2002 is issued under Section 25(1) of the said Act and not under Section 74 of the said Act. Further, the conditions prescribed under Notification No. 27/2002 are not prescribed under Notification No. 19/1965 issued under sub-section (2) of Section 74. Further, we agree with Mr. Bangur that the note in Notification No. 27/2008 is also clarificatory. We have to also note that Notification No. 27/2008 is not the same as Notification No. 27/2002 as it is an amendment to the said notification and lays down further limitations and conditions and extent of exemption.*

22.*In our view, petitioner would have been entitled to a drawback of either 85% or 70% depending on when the goods were re-exported, if they had paid 100% customs duty and not filed declarations under Notification No. 27/2002. Since petitioner had not paid 100% duty availing of Notification No. 27/2002 and had already availed of concession as per Notification No. 27/2002, petitioner is not entitled to any drawback. By paying the concessional rate of customs duty at the time of import, petitioner has already availed of the benefit of drawback and as such the drawback payment made was erroneous."*

Thus applying the ratio of above decision, I find that contention raised by the importer is not tenable and therefore, the above decision cited by them is not helpful to them. Further, statement regarding the differential duty with interest, if payable after considering Duty Drawback Entitle for Coastal Rambler and Coastal Voyage submitted vide their E mail dated 25.07.2024 is also not acceptable as the Notification No. 72/2017 –Customs dated 16.08.2017 specifically says that “The goods imported under this concession shall not be eligible for drawback under sub-section (2) of section 74 of the Customs Act, 1962.

26. Whether Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited, is liable for penalty under Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962?

26.1 I find that Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited was responsible for import and involved in deciding the description and classification of the imported i. e. two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) with consumables on re-export basis imported under Bills of Entry bearing Nos. 7960728/07.09.2018 and 8712607/02.11.2018 by wrong availment of benefit of Notification No. 72/2017-Customs dated 16.08.2017. Thus his act and omission rendered the goods liable for confiscation under Section 111 (m) of the Customs Act, 1962 and thereby Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited rendered himself liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962.

26.2 I also find that the Show Cause Notice proposes to impose penalty on Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited under Section 114AA of the Customs Act, 1962. I find that Shri Umesh Kale, in his statement recorded on 15.05.2023 has specifically stated that Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) was for unrestricted navigation as per the Technical Specification. Further, he admitted that he was well aware of the judgement of CESTAT Chennai in Appeal No. C/00379/2012 in the case of M/s. International Seaport Dredging Ltd., Chennai wherein exemption under erstwhile Notification No.27/2008-Customs dated 01.03.2008 to the Tugs/goods falling under Chapter 89 had been denied (reported in ELT 2020 (371) E.L.T. 529 (Tri. - Chennai)). Further, he admitted that Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322), imported under Bills of Entry No. 7960728/07.09.2018 & 8712607/02.11.2018 do not fall under the category of Machinery, equipment or tools as mentioned in Notification No.72/2017-Customs dated 16.08.2017 and therefore, the exemption claimed by them was not available on the goods imported under above said Bills of Entry. Thus, I find that Shri Umesh Kale, with clear intent to evade the payment of Customs Duty has wrongly availed the benefit of Notification No.72/2017-Customs dated 16.08.2017. Hence, I find that Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited has knowingly and intentionally made, signed or caused to be made and presented to the Customs authorities such documents which he knew were false and incorrect in respect of imported goods. Hence, for the said act of contravention, Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited is liable for penalty under Section 114AA of the Customs Act, 1962.

26.3 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited From the findings as discussed in **Para 26.1 & 26.2** hereinabove, Penalty has been held imposable under Section 112 (a) (ii) of the Customs Act, 1962 for the act and omission on the part of Shri Umesh Kale, Technical

Administrator/Logistics Executive of M/s. Van Oord India Private Limited which rendered the goods liable for confiscation under Section 111 (o) of the Customs Act, 1962 and Penalty under Section 114AA found imposable for false declaration in Bills of Entry. Since, specific penalty under Section 112 (a) (ii) of the Customs Act, 1962 & 114AA of the Customs Act, 1962 for contravention of Section 111 (m) and false declaration in Bills of Entry has found imposable, I do not find it worth to impose penalty under Section 117 of the Customs Act, 1962 which is for contravention not expressly mentioned.

27. In view of the discussions and findings in paras supra, I pass the following order:

::ORDER::

27.1 I disallow the benefit of Notification No.72/2017-Customs dated 16.08.2027 claimed by M/s. Van Oord India Pvt. Ltd., and Bill of Entry No.7960728/07.09.2018 and 8712607/ 02.11.2018 filed for import of two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) with consumables on re-export basis be re-assessed accordingly.

27.2 I confirm the demand of Differential Customs Duty amounting to **Rs.6,82,50,033/- (Rupees Six Crore, Eighty Two Lakh, Fifty Thousand and Thirty Three only)** for the import of two old and used Tugs viz. two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) under Bill of Entry Nos.7960728/07.09.2018 and 8712607/ 02.11.2018 respectively by M/s. Van Oord India Pvt. Ltd., under Section 28(4) of the Customs Act, 1962 read with Section 28(8) of the Customs Act, 1962 and order to recover the same.

27.3 Interest at the appropriate rate shall be charged and recovered from M/s. Van Oord India Pvt. Ltd., under Section 28AA of the Customs Act, 1962 on the duty confirmed hereinabove at Para 27.2 above.

27.4 I hold two old and used Tugs viz. two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322) under Bill of Entry Nos.7960728/07.09.2018 and 8712607/ 02.11.2018 respectively valued at **Rs. 65,00,00,317/- (Rupees Sixty Five Crore, Three Hundred and Seventeen only)** liable for confiscation under Section 111(o) of the Customs Act, 1962. However, I give M/s. Van Oord India Pvt. Ltd., the option to redeem the goods on payment of Fine of **Rs.6,50,00,000/- (Rupees Six Crore and Fifty Lakh only)** under Section 125 of the Customs Act, 1962.

27.5 I impose penalty of **Rs.6,82,50,033/- (Rupees Six Crore, Eighty Two Lakh, Fifty Thousand and Thirty Three only)** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Van Oord India Pvt. Ltd under Section 114A of the Customs Act, 1962 in respect of Bill of Entry Nos.7960728/ 07.09.2018 and 8712607/ 02.11.2018 filed for import of two old and used Tugs viz. Tug Coastal Rambler (IMO 9304904) and Tug Coastal Voyager (IMO 9660322). By M/s. Van Oord India Pvt. Ltd. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the importer, to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.

27.6 I refrain from imposing any penalty on M/s. Van Oord India Pvt. Ltd., under Section 112(a)& (b) of the Customs Act, 1962.

27.7 I impose a penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** on M/s. Van Oord India Pvt. Ltd under Section 114AA of the Customs Act, 1962.

27.8 I refrain from imposing any penalty on M/s. Van Oord India Pvt. Ltd under Section 117 of the Customs Act, 1962.

27.9 I impose a penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** on Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited under Section 112(a)(ii) of the Customs Act, 1962.

27.10 I impose a penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** on Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited., under Section 114AA of the Customs Act, 1962.

27.11 I refrain from imposing any penalty on Shri Umesh Kale, Technical Administrator/Logistics Executive of M/s. Van Oord India Private Limited under Section 117 of the Customs Act, 1962.

28. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.

29 The Show Cause Notice No. VIII/10-14/Commr./O&A/2023-24 dated 04.09.2023 is disposed off in above terms.



(Shiv Kumar Sharma)
Principal Commissioner

DIN- 20240871MN000000D6ED

F. No. VIII/10-14/Commr./O&A/2023-24

Date: 08.08.2024

BY Speed Post /Hand Delivery/Email:
To,

1. M/s. Van Oord India Private Limited,
201, 2nd Floor, Central Plaza,
166, C.S.T.Road, Kalina, Santacruz East,
Mumbai, Maharashtra - 400098.

2. Shri Umesh Kale, Technical Administrator/
Logistics Executive
M/s. Van Oord India Private Limited,
201, 2nd Floor, Central Plaza,
166, C.S.T.Road, Kalina, Santacruz East,
Mumbai, Maharashtra - 400098.

Copy to:-

1. The Chief Commissioner of Customs, CCO, Customs, Ahmedabad.
2. The Additional Director General, DRI, Ahmedabad Zonal Unit, Unit No.15, Magnet Corporate Park, 100 Ft. Thaltej Hebatpur Road, Off. Sola Over Bridge, Ahmedabad – 380054 for information please.
3. The Additional Commissioner of Customs (TRC), Ahmedabad for information please
4. Deputy Director DRI, Regional Unit, Jamnagar for information please.
5. The Deputy/Assistant Commissioner of Customs, Hazira Port for information please.
6. The Superintendent (System), Customs HQ, Ahmedabad in PDF format for uploading on the website of Customs Commissionerate, Ahmedabad. Guard File.