

सीमाशुल्क अपील) आयुक्तका कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
 चौथी मंजिल 4th Floor, हुडको भवन HUDCO Bhawan, ईश्वर भुवन रोड IshwarBhuvan Road
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
 दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250571MN000000B4FE

क	फाइलसंख्या FILE NO.	S/49-98 & 99/CUS/JMN/2023-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्क अधिनियम, 1962 की धारा 128 के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	JMN-CUSTOM-000-APP-007 & 008-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	27.05.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	07-08/ADC/2023-24 dated 31.08.2023
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	27.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1. M/s United Futuristic Trade Impex P. Ltd., Plot No. 32,33,42 & 43, Office No. 105, Ratna Kala Complex, Mundra, Kachchh, Gujarat - 370421. 2. M/s Samundra Marine Services P. Ltd., 214, 1 st floor, Rajmandir Complex, Fourway Road, Near Pipavav Port main gate, Pipavav.

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है। This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं। Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order. निम्नलिखित सम्बन्धित आदेश/Order relating to:

(क)	बैगज के रूप में आयातित कोई माल.
(a)	any goods imported on baggage
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न जाए या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र) जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलानटी. आर. 6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन फॉर्म सी. ए. 3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के सम्मुख निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
दूसरी मंज़िल, बहुमाली भवन, गिर्धर नगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.

(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए .
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेशके विरुद्ध अधिकरणके सामने मांगे गए शुल्क के अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, अपील खर्चा होगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होना चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER IN APPEAL

M/s. United Futuristic Trade Impex Pvt. Ltd., Plot No. 32, 33, 42 & 43, Office No.105, Ratna Kala Complex, Mundra, Kachchh, Gujarat-370421 (IEC-0314042539) (hereinafter referred to as "the appellant") and M/s Samundra Marine Services P. Ltd., 214, 1st floor, Rajmandir Complex, Fourway Road, Near Pipavav Port main gate, Pipavav (hereinafter referred to as "the Shipping Agent") have filed the present appeals in terms of Section 128 of the Customs Act, 1962 against Order-in-Original No. 07-08/Additional Commissioner/2023-24, dated 31.08.2023 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Customs(Preventive), Jamnagar (hereinafter referred to as "the adjudicating authority").

2. Fact of the case, in brief, are that the appellant and M/s. Oleo Energy (I) Pvt. Ltd., Plot No.83, Ground Floor, Rishabh Arcade, Sector No.8, Gandhidham, Kachchh, Gujarat-370201 (IEC- AADCO4560F) had filed Bills of Entry at Pipavav Port, as detailed below for clearance of total 5277.614 MTs of Bitumen Grade VG 40 in Bulk, purchased from M/s. Petro Star FZE, UAE.

Sr. No.	B/E No. and Date	Name of the Importer	Quantity (MTs)	Invoice Value (Rs.)	Assessable Value (Rs.)
1	6640324 dated 11.12.2021	United Futuristic Trade Impex Pvt. Ltd.	3500.00	12,29,43,644/-	12,29,90,378/-
2	6640362 dated 11.12.2021	United Futuristic Trade Impex Pvt. Ltd.	500.00	1,75,63,387/-	1,75,70,063/-
3	6640363 dated 11.12.2021	Oleo Energy (I) Pvt. Ltd.	500.00	1,75,63,387	1,76,13,375/-
4	6640365 dated 11.12.2021	Oleo Energy (I) Pvt. Ltd.	777.614	2,73,15,047/-	2,73,92,814/-
Total			5277.614	18,53,85,465/-	18,55,66,630/-

2.1. On the basis of intelligence received, the Vessel MT. YLW (IMO 9360398) was boarded by the officers of Preventive Section, HQ, Jamnagar and SIIB, Pipavav on 31.01.2022 at GPPL, Pipavav. During the course of investigation, it was found that the cargo covered under Bills of Lading No. YLW/211209-01, YLW/211209-02, YLW/211209-03, YLW/211209-04, all dated 09.12.2021 were issued at Sohar, Oman in favour of M/s. United Futuristic Trade Impex Pvt. Ltd. and were declared to be of Iraq origin loaded at port of Sohar, Oman. However, the investigation further revealed that the master of the Vessel had discharged 5277.614 MTs of Bitumen VG 40 by manipulating the country of origin i.e. Iraq instead of Iran.

2.2. Statement of Shri Abhinav Gupta, Master of the Vessel MT YLW (IMO No.9360398) was recorded on 31.01.2022 under Section 108 of the Customs Act, 1962 by the Customs (Prev.), Jamnagar wherein, he interalia stated that they had loaded the cargo i.e. 5277.614 MTs of Bitumen Grade VG 40 from Shahid Rajaie Port, Iran. Further, the following documents were retrieved from the mobile of the Captain, Shri Abhinav Gupta, the master of the vessel MT. YLW.

- i. Port Clearance Certificate "Marine Affairs No. RAJA140003536" dated 26.11.2021 issued to MT.YLW by Ports & Maritime General Directorate of Hormozgan Province, Islamic Republic of Iran.
- ii. Port Clearance Certificate "Marine Affairs No. RAJA140003695" dated 07.12.2021 issued to MT YLW by Ports & Maritime General Directorate of Hormozgan Province, Islamic Republic of Iran.
- iii. Port Clearance Certificate "Marine Affairs No. RAJA140003989" dated 27.12.2021 issued to MT YLW by Ports & Maritime General Directorate of Hormozgan Province, Islamic Republic of Iran.
- iv. Port Clearance Certificate "Marine Affairs No. RAJA140004315" dated 15.01.2022 issued to MT YLW by Ports & Maritime General Directorate of Hormozgan Province, Islamic Republic of Iran.
- v. Nextex Message slip showing date of Shooting-18 till 22 December 2021 at Bandar Abbas.
- vi. A copy of chat messages in the whatsapp of the Captain's mobile, wherein he chatted with Jyoti on 11.01.2022 and discussing about arrival of the vessel in Bandar Abbas.
- vii. Key Meeting Report (Cargo operation for Tanker) dated 14.01.2022 issued at Bandar Abbas, Iran retrieved from whatsapp chat in Captain's mobile with Chief officer Vikas Bugaliya.
- viii. A copy of list of last 10 Ports of Call submitted by the captain during boarding of the vessel.



2.3 On being asked about the above Port Clearance Certificates, he inter-alia admitted that he did not declare the Shahid Rajaie Port, Iran in the port of call list. In respect of PC mentioned at (ii) above, he admitted that they have earlier loaded a cargo i.e. Bitumen from Iranian port which was discharged at the Pipavav port on 12.12.2021 and it was actually of Iran Origin. However, the origin of the said cargo was declared as IRAQ by the importer and the captain of the Vessel. Further, in respect of PC mentioned at (iv) above, the captain of the vessel in his statement dated 31.01.2022 admitted that they have loaded a cargo i.e. Bitumen from Iran port on 15.01.2022, which was discharged at the Karwar port on 22.01.2022 and it was of Iran origin. Further, during the rummaging, the following documents were also found at the said vessel:

- i. Bill of lading No.KAZSH/01YW22/13-A, issued on 13.01.2022 at Khor Al Zubair, Iraq.
- ii. Cargo Manifest dated 13.01.2022 at Khor Al Zubair, Iraq.
- iii. Exit Permit dated 13.01.2022 issued by Basrah Residency, Department of Residency affairs, General Directorate of nationality, Ministry of Interior, Republic of Iraq.
- iv. Basrah Port clearance No. 000122 dated 13.01.2022.

2.4 In respect of the above documents, the captain of the vessel stated that the said documents pertaining to Iraq are false and fabricated and further stated that the said documents were made to mislead the Customs authorities regarding origin of the goods i.e. Bitumen. That, he had been instructed by the Captain Madhvendra of M/s. Safe Seas Marine Services to not to divulge the above details on paper and not to disclose Iranian port before the Customs authority in India. That the said details regarding Iranian port were never disclosed on paper as advised by Captain Madhvendra of M/s. Safe Seas Marine Services and as an employee, he had to follow their instructions. Further, that the Port Clearance at Basrah were arranged by the Captain Madhvendra of M/s. Safe Seas Marine Services, and the Bills of Lading were also prepared by them. As per instructions, he had signed the Bills of Lading prepared by them. He further stated that the said vessel was lying at the Shahid Rajaie Port, Iran from 11.01.2022 to 15.01.2022 for loading of Bitumen.

2.5 The facts stated by the captain of the vessel in his statement dated 31.01.2022, were also confirmed by the Chief officer of the vessel, Shri Vikas Bugalia in his statement dated 01.02.2022 and by the representative of the captain of the vessel, Shri Vinaykumar Shrivastava, in his statement dated 08.02.2022.

2.6 A statement of Ms. Shabana Sheikh Nasir, Director of M/s. United Futuristic Trade Impex Pvt. Ltd. was recorded on 11.02.2022 before the

Superintendent (Prev.), Jamnagar wherein she inter-alia stated that they have imported 5277.614 MTs of Bitumen Grade VG40 at Pipavav Port and the whole cargo was cleared vide Bills of Entry No.6640324, 6640362, 6640363 and 6640365, all dated 11.12.2021. The said Cargo was purchased from the supplier M/s. Petro Star FZE, UAE on CFR basis and it was verbally finalised that the cargo to be supplied will be of origin of a non-sanctioned country and however, the same was nowhere mentioned in the purchase contract. Further, they do not know how to verify the genuineness of the origin of the cargo. Further, she submitted Certificate of Origin wherein the port of loading was mentioned as Sohar, Oman. However, on being shown the statement dated 31.01.2022 of Shri Abhinav Gupta, captain of the vessel MT. YLW, wherein he inter-alia admitted that the cargo was loaded from Iranian Port, she agreed to the same and admitted that there is a discrepancy in the port of loading mentioned in the Country of Origin certificate. Further, the statement dated 31.01.2022 of the captain of the vessel and the various Port Clearance issued by Republic of Iran, retrieved from the mobile phone of the captain were shown wherein she stated that as regards the country of origin of the said cargo is concerned, they rely upon the Country of Origin certificate provided by the supplier and that they do not know about the actual origin of the cargo.

2.7 A search was conducted at the premises of M/s. United Futuristic Trade Impex Pvt. Ltd., 105, Ratna Kala Complex, Opp. Subham Petrol Pump, Shivam Park, Adani Road, Mundra, Kutch under Panchnama dated 02.02.2022 and at another premises of M/s. United Futuristic Trade Impex Pvt. Ltd., 429, 4th Floor, ~~Chambers~~ Chambers, Tardeo Main Road, Mumbai under Panchnama dated 08.02.2022. However, no incriminating documents related to the illegal import of Bitumen of Iran Origin were found from the said premises.

2.8 The vessel MT YLW valued at Rs. 28,23,75,000/- as per Marine Hull & Machinery/War Risks Insurance Policy was placed under seizure vide Seizure Memo dated 01.02.2022 under the provision of Section 110(1) of the Customs Act, 1962 under the reasonable belief that vessel MT YLW had been used as a means of transportation for the mis-declared cargo and the same is liable to confiscation under Section 115 of the Customs Act, 1962.

2.9 The Additional Commissioner, Customs(P), Jamnagar approved request for provisional release of vessel subject to execution of Bond for the full value of the seized vessel i.e. Rs. 28,23,75,000/- and upon submitting the Bank Guarantee or Security Deposit of an amount of Rs. 2,75,00,000/- to cover the amount of levies, fine and penalty that may be imposed under the Customs Act, 1962. Accordingly, the said vessel was provisionally released on 17.02.2022.

2.10. The investigation in the matter culminated into issuance of Show Cause Notice No. ADC-14/2022-23 dated 29.03.2023 issued by the Additional Commissioner, Customs (Preventive), Jamnagar wherein the appellant was called upon to show cause to the as to why:

- i. the "Bitumen VG 40" of quantity 4000.000 MTs valued at Rs. 14,05,60,441/- (Rupees: Fourteen Crores Five Lakhs Six Thousand Four Hundred Forty-One Only) should not be held liable for confiscation under Section 111 (m) of the Customs Act, 1962.
- ii. Penalty under Section 112(a) of the Customs Act, 1962 should not be imposed.

2.11 Further, M/s. Atlantic Global Shipping Pvt. Ltd., Agent of Vessel MT. YLW, on behalf of the Master of Vessel was called upon to show cause to the Additional Commissioner, Customs (Preventive), Jamnagar as to why:

- i. the Vessel "MT YLW (IMO9360398)" valued at Rs. 28,23,75,000/- should not be confiscated under Section 115 (2) of the Customs Act, 1962 as the same has been used as conveyance in carrying the mis-declared goods.
- ii. Penalty under Section 112 (b) and Section 114 AA of the Customs Act, 1962 should not be imposed.

2.12 Further, the Shipping Agent, M/s. Samudra Marine Services Pvt. Ltd., 214, 1st Floor, Rajmandir Complex, Fourway Road, Near Pipavav Port Main Gate, Pipavav had filed IGM No.2298805 dated 10.12.2021 for the discharge of 5277.614 MTs of Bitumen at Pipavav Port, declaring the Port of Loading as Sohar, Oman, IRAQ. However, as per the Statement of the Master of the Vessel Shri Abhinav Gupta, recorded on 31.01.2022 under Section 108 of the Customs Act, 1962, the vessel had visited Shahid Rajaie Port in Iran and loaded 5277.614 MTs of Bitumen Grade VG 40 from there and no loading/discharge took place at Sohar Port in IRAQ. These facts were also culminated into issuance of Show Cause Notice No. No.ADC-03/2023-24 dated 05.06.2023 issued by the Additional Commissioner, Customs (Preventive), Jamnagar wherein M/s. Samundra Services Pvt. Ltd., Agent of the Vessel MT. YLW, on behalf of the Master of the Vessel was also called upon to show cause, as to why:

- i. The vessel "MT YLW" (IMO9360398) valued at Rs. 28,23,75,000/- should not be confiscated under Section 115 (2) of the Customs Act, 1962 as the same has been used as conveyance in carrying the mis-declared goods.
- ii. Penalty under Section 112(b) and Section 114AA of the Customs Act, 1962 should not be imposed.

2.13 The Adjudicating authority after having gone through the facts of the case passed the impugned order as under:

- i. confiscated the Vessel "MT YLW (IMO9360398)" valued at Rs. 28,23,75,000/- seized under the seizure Memo dated 01.02.2022 under the provisions of Section 115 (2) of the Customs, 1962 and imposed fine of Rs. 50,00,000/- in lieu of confiscation under Section 125 (2) of the Customs Act, 1962 in addition to any other charges payable.
- ii. Imposed penalty of Rs. 20,000/- upon M/s. Samudra Marine Services Pvt. Ltd., the vessel agent, on behalf of the Master of the Vessel under Section 112(b)(iii) of the Customs Act, 1962.
- iii. Imposed penalty of Rs. 20,00,000/- upon M/s. Samudra Marine Services Pvt. Ltd., the vessel agent, on behalf of the Master of the Vessel under Section 114.AA of the Customs Act, 1962.
- iv. Held the "Bitumen VG 40" of quantity 4000.000 MTs valued at Rs. 14,05,60,441/- imported by M/s. United Futuristic Trade Impex Pvt. Ltd. liable for confiscation under the provisions of Section 111(m) of the Customs, 1962. However, refrained from imposing redemption fine under Section 125(2) of the Customs Act, 1962 due to non-availability of goods.
- v. Imposed penalty of Rs. 1,00,000/- upon M/s. United Futuristic Trade Impex Pvt. Ltd., under Section 112(a)(ii) of the Customs Act, 1962.

3. Being aggrieved with the impugned order the Appellant and the Shipping Agent have filed the present appeals and mainly contended that:

1. Contention of the Appellant:

The Ld. Additional Commissioner has erred in issuing the order in original dated 31.08.2023, without considering the facts and appreciating the submission made, provisions of law, etc. on the issue.

- The adjudicating authority erred in holding them liable for mis-declaring the country of origin in the bills of entry No. 6640324 and 6640362 both dated 11.12.2021 and they were neither concerned nor aware of any manipulation done by the Master of the Vessel in the Log Sheet of last ten ports of call.
- They neither availed nor claimed any concessional rate of Custom duty in respect of Bitumen discharged from the Vessel MT YLW and that the consignment was purchased on bonafide belief about the correctness of the import documents received from the seller.
- No incriminating documents were seized in the course of search operation carried out in their office premises.
- Nothing has emerged in the course of investigation that they had made any mis-declaration or any mis-statement with intention to evade payment



of duty and that the import documents received were considered to be true and correct with no reasons to doubt about the same.

- The Bitumen was already discharged in to the shore tanks and the same was detained by Customs under detention memo dated 07.02.2022 and that the goods detained were released finally vide letter F. No. VIII/26-10/SIIB/Misc.- Corr./20-21 dated 23.03.2022 with no bond and bank guarantee and this established that there was no omission or commission on their part which could render the goods liable for confiscation.
- They may not be affixed with any vicarious liability about any false or incorrect declaration of the impugned goods in the import documents and may not be held liable for imposition of any penalty.
- No concessional rate of Custom duty was availed by them on the basis of country of origin of the goods and therefore being a Revenue neutral case any technicality involved in the origin of goods may not attract any penalty under Customs Act, 1962 upon them.

3.2 Further, the shipping agent contended that:

- The adjudicating authority erred in holding them as an agent of the vessel MT YLW merely for the reason that they had filed IGM for the said vessel with Customs. That, by way of filing IGM they did not possess an authority to act for and on behalf of vessel and the owned company M/s. B A Shipping INC Panama. That, in the instant case the said vessel MT YLW valued at Rs. 28,23,75,000.00 after its seizure on 01.02.2022 on account of transportation of mis-declared cargo was handed over to its agent M/s. Atlantic Global Shipping P. Ltd. which is mentioned at Para 11 of the order in original with directions not to move or sail from Pivapav anchorage without prior permission from the competent authority.
- On an application filed by M/s. Atlantic Global Shipping P. Ltd. for provisional release of the vessel, on approval of the Additional Commissioner of Customs, the Deputy Commissioner of Customs at Pivapav provisionally released the vessel on execution of bond of full value of Rs. 28,23,75,000.00 and bank guarantee of Rs. 2,75,00,000.00 to cover amount of levies, fine and penalty that could be imposed under the Customs Act, 1962 upon them.
- They did not act as an agent for purpose of taking possession, making request for provisional release, executing bond for Rs. 28,23,75,000.00 and furnishing of the bank guarantee of Rs. 2,75,00,000.00 and for taking provisional release from Pipavav Customs which is a fact on record at para 11 of the impugned order. In view of the fact they did not act as an agent of the vessel MT YLW or its owner M/s. B A Shipping Line, Panama for purpose of release of the vessel from Pipavav Customs and that there was



no power of attorney from the vessel or its owner with them by which it could be construed that they had the authority to get provisional release of the Vessel on execution of bond and bank guarantee and to take possession of the Vessel from Pipavav Custom authorities on its provisional release.

- The impugned order at Para 30 failed to mention the name of the agent upon whom a redemption fine of Rs. 50,00,000.00 was imposed under the provisions of Section 125 (2) of the Customs Act, 1962 and whereas it is also mentioned that the fine of Rs. 50,00,000.00 so imposed shall be recovered from the bank guarantee of Rs. 2,75,00,000.00 without mentioning the authority to recover/adjust the same under the provisions of Customs Act, 1962 and whereas M/s. Atlantic Global Shipping P. Ltd. who were mentioned as agent of Vessel MT YLW for purpose of confiscation and penalty under Section 115(2) and 112 (b) & Section 114 AA respectively, the name of the company M/s. Atlantic Global Shipping P. Ltd. is not mentioned in the impugned order and it could be inferred that the imposition of redemption fine is relating to Atlantic Global Shipping Company and them.
- Their registration with Customs as an agent of the vessel is for facilitating filing of IGM for and on behalf of vessel and that the IGM is filed as per the documents received from the Vessel MT YLW and that they are not concerned with the last ten port of call of the vessel or any information relating to the sailing of the impugned vessel in its voyage from the port of origin and as such they had no power of attorney from the Vessel to act as an agent for purposes other than filing of IGM. That there is no smuggling of goods involved in the instant case, no allegations of transportation of any prohibited or restricted goods in the vessel MT YLW, no direct or indirect impact on the revenue even if it is presumed that the imported goods were of Iranian origin and that there is free trade between India and Republic of Iran and whereas nothing has emerged in investigations that anyone from the vessel company was benefited by any manipulations in the log sheet of last ten ports of call and as such even if presuming that there was a deliberate manipulation in the log sheet but in the absence of any beneficiary of such manipulation the same is redundant, meaning less and does not attract penal provisions under the Customs Act, 1962 when the manipulations were caused beyond Indian customs boundaries and the provisions of Customs Act, 1962 do not apply.
- In the course of investigations made by Pipavav Customs it has not emerged at any point of time that they had any information or mens rea about any manipulations in the Log Sheets of last ten ports of call by the master of the Vessel at Iran, Iraq or at U.A.E. and whereas it could only be



known on receipt of the show cause notice and that they had acted bonafidely with clear intentions in the matter of filing IGM for the Vessel which took berth at Pipavav port. That, they and the owner of the Vessel MT YLW namely B A Shipping Line Panama are two separate legal entities and that for any legal purposes such as receiving of show cause notice, execution of bond and bank guarantee, taking provisional release of the vessel there is required to be an agreement or a specific power of attorney to perform a particular function and in the absence of any such legal document, they cannot be considered as an agent of the Vessel company.

- The matter of maintaining the Log Sheet is purely in the domain of the Vessel and its authorities and that it appears from the documents on record that the said manipulations in Log Sheets occurred outside the boundary of India and it is strange that they were made a noticee for the same with no act of omission and commission for any violation of provisions of Customs Act, 1962 and whereas there was no attempt on their part to file incorrect IGM deliberately with intention to mention incorrect origin of goods in the IGM.
- They had no mens rea about any manipulations in the Log Sheet by the Master of the Vessel and as such they did not do any act of omission or commission rendering the goods liable for confiscation and therefore the imposition of penalty under Section 112(b)(ii) was not warranted and hence it merits to be set aside.
- They are not the agent of the Vessel and whereas the agent of the Vessel is recognized in the impugned order as M/s. Atlantic Global Shipping P. Ltd. as per para 11 read with para 17 of the impugned order and as such the imposition of penalty under Section 114 AA of the Customs Act, 1962 is misplaced and void.
- Nothing has emerged in the course of investigations that they knowingly or intentionally used false or incorrect information or any material particulars in transactions of business and whereas IGM is filed based upon the documents received from the vessel and there has been no malafide intention to use false or incorrect material by them, as such the penalty imposed under Section 114 AA of the Customs Act, 1962 as an agent of the vessel is totally misplaced.
- It is worth mentioning that the Custom officers seized the vessel which was empty and that there was no mis declaration of goods as Bitumen was discharged from the vessel and there is no allegation of mis declaration of classification of the goods. That, there was no smuggling of any goods in the said vessel as Customs did not allege any smuggling of goods in the said vessel so also there is no such confirmation in the order in original appealed against that there was any smuggling of goods. That, the Master



of the Vessel Mr. Abhinav Gupta in his statement had accepted about manipulation in the log sheet of the country of origin of the goods and not that any goods other than Bitumen was discharged from the vessel clandestinely to construed that smuggling of goods took place from the vessel to attract provisions of Section 115(2) of Customs Act, 1962. Thus, in the instant case there was no violation of provision of Section 115(2) of the Customs Act, 1962.

4. Personal hearing in the matter of the Appellant and the Shipping agent was held on 23.04.2025 which was attended by Shri Sarvesh Mathur, Advocate on behalf of the Appellant and the Shipping agent. During the personal hearing he reiterated his written submissions and an additional submission was also submitted in respect of the Shipping agent during the personal hearing.

5. I have carefully considered the submissions made by the Appellant and the Shipping agent along with relevant case laws, relied upon documents, additional submission and the impugned order. The main issues to be determined in the present case are:

- i. Whether the "Bitumen VG 40" of quantity 4000.000 MTs valued at Rs. 14,05,60,441/- imported by the Appellant is liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 in facts and circumstances of the present case or otherwise
- ii. Whether the appellant is liable for penalty under Section 112 (a)(ii) of the Customs Act, 1962 in facts and circumstances of the present case or otherwise.
- iii. Whether the Vessel "MT YLW (IMO9360398)" valued at Rs. 28,23,75,000/- seized under the seizure Memo dated 01.02.2022 is liable for confiscation under the provisions of Section 115(2) of the Customs, 1962 in facts and circumstances of the present case or otherwise.
- iv. Whether redemption fine of Rs. 50,00,000/- imposed under Section 125 (2) of the Customs Act, 1962 in lieu of confiscation of the vessel under section 115(2) of the Customs Act, 1962 in facts and circumstances of the present case is correct or otherwise.
- v. Whether Penalty imposed upon the shipping agent on behalf of the Master of the Vessel under Section 112 (b)(ii) of the Customs Act, 1962 in facts and circumstances of the present case is correct or otherwise.
- vi. Whether Penalty imposed upon the shipping agent on behalf of the Master of the Vessel under Section 114AA of the Customs Act, 1962 in facts and circumstances of the present case is correct or otherwise.

6. It is observed that the matter revolves around the importation of 5277.614 MTs of Bitumen Grade VG 40 in bulk, purchased by M/s. United Futuristic

Trade Impex Pvt. Ltd. and M/s. Oleo Energy (I) Pvt. Ltd. from M/s. Petro Star FZE, UAE. The cargo was declared to be of Iraq origin, and the Bills of Entry were filed at Pipavav Port on 11.12.2021 for clearance of the said cargo. However, based on intelligence gathered, the officers from the Preventive Section, Jamnagar and SIIB, Pipavav Port boarded the vessel MT YLW on 31.01.2022. It was found that the cargo was not from Iraq as declared but was loaded from Shahid Rajaie Port, Iran. The master of the Vessel Shri Abhinav Gupta, in his statement, admitted that the bitumen was indeed loaded from Iran and not from Iraq. The captain further revealed that documents declaring the cargo's origin as Iraq were falsified to mislead customs authorities in India. The captain confessed that the incorrect documentation was done under the instructions of Captain Madhvendra of M/s. Safe Seas Marine Services. Further investigation into the vessel and the captain's mobile phone revealed a series of documents, including port clearance certificates from Iran, messages detailing the vessel's activities in Iran, and records of the vessel's true port of call. These documents contradicted the declared origin of Iraq in the shipping and import paperwork, indicating that the port of loading/origin of the goods had been mis-declared.

6.1 Statements were recorded from key individuals involved, including the vessel's chief officer, who corroborated the captain's statement regarding the mis-declaration of port of loading. Further, Ms. Shabana Sheikh Nasir, Director of M/s. United Futuristic Trade Impex Pvt. Ltd., admitted that they relied on the Country of Origin certificates provided by the supplier and were unaware of the actual origin of the cargo. Searches at the premises of M/s. United Futuristic Trade Impex Pvt. Ltd. yielded no incriminating documents, but the then vessel's agent, M/s. Samudra Marine Services Pvt. Ltd., was found to have submitted incorrect declarations in the Import General Manifest (IGM) about the port of loading. As a result of the mis-declaration of port of loading, the Customs authorities seized the vessel MT YLW, valued at Rs. 28.23 crore, under Section 110 of the Customs Act. The vessel was detained at Pipavav Port with instructions not to leave without the Customs' written approval. The provisional release of the vessel was later granted after a bank guarantee was submitted by the vessel's agent, M/s. Atlantic Global Shipping Pvt. Ltd., as per the conditions outlined by the Customs authorities. Following a thorough investigation, a Show Cause Notice was issued to the involved parties, including the appellant and the Shipping agent regarding the mis-declared cargo and its origin. The said Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order dated 31.08.2023.

6.2 Now as regards to confiscation of the goods under section 111(m) of the Customs Act, 1962, it is observed that the adjudicating authority at Para 27.2 of

the impugned order recorded that the noticee while presenting a Bill of Entry has to make and subscribe to a declaration as to the truth of the contents of such Bills of Entry and shall, in support of such declaration produce to the proper officer the invoice if any and any such other documents relating to the imported goods as may be prescribed as provided under Section 46 of the Customs Act, 1962. The adjudicating authority further stated that the noticee has to examine the veracity of the contents to be declared in the Bills of Entry and therefore, cannot take excuse as they have acted on the basis of documents supplied by the supplier to follow something, which is required by law in particular manner, not followed would be illegal inasmuch as one has to proceed only in the manner prescribed under law. Further, the adjudicating authority placed reliance upon the decision of larger Bench of CESTAT in the case of CCE Vs. Avis Electronics Pvt. Ltd. reported at 2000(117) E.L.T. 571 (Tri-LB).

6.3 I concur with the view of the adjudicating authority in respect of Section 46 of the Customs Act, 1962, which stipulate that when presenting a Bill of Entry, the noticee is required to make and subscribe to a declaration affirming the accuracy of the contents of the Bill of Entry. In support of this declaration, the noticee must present to the appropriate officer the invoice, if any, and any other prescribed documents relating to the imported goods, as outlined in Section 46 of the Customs Act, 1962. However, the issue that arises is the documentation upon which the importer generally bases and subscribes to such a declaration, as mandated by Section 46(4) of the Customs Act, 1962. In my considered view, the declaration is typically made based on the documents provided by the supplier concerning the imported goods, which the importer relies upon to affirm the accuracy of the Bill of Entry. Furthermore, the importer submits relevant supporting documents related to the imported goods, as supplied by the supplier, to the proper officer.

6.4 In the case at hand, the Appellant has filed the Bills of Entry based on documents provided by the supplier. Further, there is no evidence to establish any collusion between the supplier and the appellant concerning the manipulation of the port of loading or the country of origin with respect to the imported goods. Moreover, the investigation does not indicate that the appellant has deviated from the proper procedure or filed the Bill of Entry in a manner contrary to the requirements of Section 46 of the Customs Act, 1962. Accordingly, the findings of the adjudicating authority in this matter are not justifiable. It is also observed that the decision of the Larger Bench of the CESTAT in CCE vs. Avis Electronics Pvt. Ltd., reported in 2000 (117) E.L.T. 571 (Tri-LB), which was relied upon by the adjudicating authority, is not applicable to the facts and circumstances of this case. The decision in the said case pertains

to procedural violations, whereas the issue in the present case is confined to a discrepancy in the port of loading and/or country of origin as stated in the Bill of Entry.

6.5 Further in para 27.3 of the impugned order in context to the Appellant's contention that there was no duty implication in the present case and as such merely for the reasons that the employee of the vessel had incorrectly maintained their voyage information and therefore, they cannot be held responsible for proposing confiscation of the imported goods and for imposition of penalty under the provisions of the Customs Act, 1962, the adjudicating authority held that it is vicarious responsibility of the importer to ensure that the compliance of Customs law and procedure are done to the hilt. If the importer is left out without any consequences, it would breed this sort of outright case of mis-declaration of the country of origin, and it would embolden the similarly placed importer's for committing such acts of omission and commission, which is not at all acceptable.

6.6 In this regard, upon perusal of the statements of the Appellant, the master of the Vessel, the chief officer of the Vessel, and Ms. Shabana Sheikh Nasir, Director of M/s United Futuristic Trade Impex Pvt. Ltd., it is clear from a plain reading of these statements that the Appellant had no knowledge of the change in the port of loading by the master of the Vessel. The investigation does not present any evidence to suggest that the Appellant played any role in the alleged act of falsifying documents related to the port of loading or the country of origin. In the absence of any evidence indicating the Appellant's involvement or complicity in such actions, it cannot be concluded that the Appellant committed any omission or commission in this regard.


6.7 Further at para 27.4 of the impugned order the adjudicating authority pointed out that the Appellant has not lodged any legal battle with the exporter for sending the cargo which is altogether from different country of origin and therefore on this count also the importer cannot cast away its responsibility in the entire act of omission and commission on the ground that they were not aware regarding the country of origin and its mis-declaration in the Bill of Entry.

6.8 In this regard, it is observed that omission and commission cannot be assumed or presumed solely on the basis that the appellant has not initiated any legal action against the supplier. It is essential to have concrete evidence to establish any wrongdoing on the part of the appellant, and the mere failure to pursue legal action does not, in itself, imply any fault or misconduct. Therefore, any conclusion regarding omission or commission must be supported by clear and compelling evidence, which, in this case, has not been presented.



6.9 Further at para 27.5 of the impugned order the adjudicating authority in context to the contention of the importer that there was no implication of Customs duty held that though there was no duty implication in the present case, however, it is evident that the importer has mis-declared the country of origin of the imported goods and this act of omission and commission on their part has rendered the said goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and thereby they have also rendered themselves liable for penal action under Section 112(a)(ii) of the Customs Act, 1962

6.10 It is further observed that the findings of the adjudicating authority in holding the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, and consequently imposing penal action under Section 112(a)(ii) of the Customs Act, 1962, given the facts and circumstances of this case is not justified. In my considered opinion, a country of origin certificate is crucial primarily in cases where the importer claims a preferential rate of duty or when there are restrictions on the import of goods from a particular country. In the present case, neither of these conditions is applicable to the imported goods.



6.11 Furthermore, it is an undisputed fact that no customs duty implications arise from any discrepancy in the country of origin or the port of loading, and there were no prohibitions or restrictions on importing the goods from Iran. It has also been clearly established that the appellant played no role in, nor had any knowledge of, the actions taken by the master of the vessel. Further, it is an undisputed fact that the country of origin certificate, which is typically issued by the relevant authority of the exporting country, does not involve the importer in India. Given this, the question arises that if the country of origin certificate is issued by the appropriate authority in the exporting country, how can it be asserted that the master of the vessel forged the country of origin certificate, especially when no connivance between the appellant and the supplier has been established in the investigation.

6.12 Therefore, in my considered view, it was the port of loading that was manipulated by the master of the vessel, not the country of origin, as these are two distinct concepts. The port of loading refers to the location from which the goods are loaded, while the country of origin pertains to the country where the goods were produced or manufactured, which may differ from the port of loading. From the case records, it is apparent that no investigation was conducted regarding the country of origin certificate issued by the relevant authority of the exporting country. Moreover, it is important to consider why an importer would intentionally mis-declare the port of loading or the country of origin when there are no customs duty implications, nor any restrictions or prohibitions on the goods being imported. The reason for such an omission or commission has not

been provided by the adjudicating authority and was not adequately addressed during the investigation.

6.13 In view of the above, it is clear that the declaration made by the appellant regarding the port of loading and country of origin was solely based on the documents received from the supplier. There is no evidence to suggest any omission or commission on the part of the appellant in mis-declaring the port of loading or country of origin. Therefore, in light of the facts and circumstances of the present case, it would be unjust to hold the impugned goods liable for confiscation under Section 111(m) and to impose a penalty under Section 112(a)(ii) of the Customs Act, 1962. Further, I rely upon the judgment of the Hon'ble Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Mumbai, West Zonal Bench, in Final Orders Nos. A/85889-85891/2023 and A/85895/2023, dated 11.05.2023 wherein while dealing with a similar matter on factual matrix, the Hon'ble Tribunal has set aside the confiscation of goods and penalties imposed upon the appellants in the said matter. The facts and circumstances of the present case bears a striking similarity to the above mentioned case decided by the Hon'ble CESTAT, Mumbai, West Zonal Bench. The relevant portion of the said judgement is reproduced as under:

"8. The first issue that comes up relates to the place of origin. There is no contention on the part of customs authorities that appellants had insisted upon sourcing from Iran or that they had any commercial engagements with suppliers in Iran that was sought to be obfuscated by a paper trail through Dubai/Sharjah. On the contrary, the entire proceedings have been carried through on the presumption that there is no engagement other than with the contracted suppliers. The sole evidence of goods not being of Taiwanese/Omani origin, as contained in the bills of lading, are the records of passage by MT Braveworth from Fujairah to Sohar en route to India having been interrupted by allegedly calling at Dayyer in Iran and of MT Chem Trader having called at Bander Imam Khamenei in Iran before arrival at Jebel Ali for the next voyage to Mumbai. There is no evidence on record, elicited through official channels, of the facts relating to the movement of the vessels. The impugned orders have placed emphasis on the statements recorded from the master of the respective vessels but, in the absence of official confirmation from authorities at Oman/UAE about the port clearance submitted for entry at Sohar/Jebel Ali where, acknowledgedly, the two vessels departed for arrival in Kandla/Mumbai, it cannot be concluded that such evidence can be relied upon to visit detriment upon importers who had no commercial engagement with the vessels or her masters.....

13. We have deliberately not touched upon any of the decisions cited by both sides in support of their legal submissions. We have relied entirely upon the factual matrix of the case, in the records as well as submissions, and the law as set out in Customs Act, 1962 to render the finding here. We did so, with deliberate intent, for demonstrating



that it is obligatory on the part of adjudicating authority to evaluate the proposals put forth in the show cause notice on the basis of available facts and law and that any detriment, of duty or fine/penalties, visited upon an importer without examination of the role of the noticee on the circumstances leading to the conclusion of having breached Customs Act, 1962 is not only inappropriate but tantamount to executive overreach that rule of law abhors.

14. For the above reasons, we set aside the impugned orders and allow the appeals."

6.14. In view of the above findings and respectfully following the decision of the Hon'ble Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Mumbai, West Zonal Bench, in Final Orders Nos. A/85889-85891/2023 and A/85893/2023, dated 11.05.2023, I hereby set aside confiscation of the impugned goods under Section 111(m) and consequently the redemption fine imposed under Section 125(2) of the Customs Act, 1962 in lieu of confiscation of the goods.

6.15. As regards to imposition of penalty under Section 112(a)(ii) of the Customs Act, 1962 on the appellant, I find that since the confiscation of the goods has already been set aside, therefore the penalty under Section 112(a)(ii) of the Customs Act, 1962 cannot sustain and the same is also set aside.

6.16. Now as regards to the confiscation of the vessel under Section 115(2) of the Customs Act, 1962 it is observed that the adjudicating authority in para 26.11 of the impugned order held that since the vessel has been used as means of transport knowingly for the offending goods, it is liable for confiscation under Section 115(2) of the Customs Act, 1962. I have carefully perused the provision of Section 115 (2) of the Customs Act, 1962 and the same is reproduced as under:

Section 115. Confiscation of conveyances.

"(2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal."

From a plain reading of the abovementioned provision, it is evident that Section 115(2) of the Customs Act, 1962, stipulates that a conveyance can be confiscated under this section only when it is **used as a means of transport for smuggling goods or in the carriage of smuggled goods**. In the present case, the essential element—the **smuggled nature of the goods or the smuggling of goods**—has not been established. Moreover, since the confiscation of the

impugned goods has already been set aside in the preceding paragraph, and in the absence of any findings from the adjudicating authority regarding the smuggled nature of the goods, I am of the considered opinion that the confiscation of the vessel under Section 115(2) of the Customs Act, 1962, is not justifiable. Consequently, the confiscation of the vessel is hereby set aside.

6.17 As regards to the imposition of penalty under Section 112(b)(ii) of the Customs Act, 1962 on the Shipping agent on behalf of master of the Vessel, I find that, since the confiscation of goods has already been set aside in the para supra, therefore the penalty imposed under Section 112(b)(ii) will not sustain and the same is hereby set aside.

7. Now as regards to imposition of penalty under Section 114AA of the Customs Act, 1962 on the Shipping agent on behalf of the master of the Vessel, it is observed that the adjudicating authority in its findings has clearly established that the master of the vessel has knowingly and intentionally manipulated the port of loading and provided incorrect details in the IGM through their shipping agent i.e. M/s Samundra Marine Services Pvt. Ltd. Further, the contention of the Shipping agent that they are not liable for penalty on behalf of the master of the Vessel is misplaced and unsustainable. This argument does not hold merit to the extent that it seeks to absolve the Shipping agent from liability. I find that Section 148(2) of the Customs Act, 1962 contains provisions that make the agent of the vessel liable for the fulfilment of penalties and confiscations incurred by the person in charge of the Vessel in relation to any matter under the Customs Act, 1962. The relevant text of Section 148(2) of the Customs Act, 1962 is reproduced as under:

Section 148. Liability of agent appointed by the person in charge of a conveyance.

"(2) An agent appointed by the person in charge of a conveyance and any person who represents himself to any officer of customs as an agent of any such person in charge, and is accepted as such by that officer, shall be liable for the fulfilment in respect of the matter in question of all obligations imposed on such person in charge by or under this Act or any law for the time being in force, and to penalties and confiscations which may be incurred in respect of that matter."

From the plain wordings of the aforementioned provision it is evident that agent of the Vessel is liable to penalties and confiscation incurred by the person in charge of the Vessel in relation to any matter under Customs Act, 1962. Therefore, the contention of the Shipping agent that penalty imposed upon them is misplaced is not tenable in this regard. Now, in order to determine whether the penalty imposed under Section 114AA of



the Customs Act, 1962, is legally valid, it is crucial to examine whether the essential elements for imposing a penalty under this section are present in the facts and circumstances of the present case. Section 114AA of the Customs Act, 1962 is reproduced as under:

Section 114AA. Penalty for use of false and incorrect material.

"If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

7.1 In my considered opinion, for imposition of penalty under Section 114AA of the Customs Act, 1962, following elements should be present:

- i. A declaration, statement or document intentionally or knowingly signed by any person.
- ii. The said declaration, statement or document should be false or incorrect.
- iii. The said declaration, statement or document should be used in transaction of any business for the purpose of Customs Act.

If these elements are not established, the imposition of a penalty under Section 114AA would not be legally justifiable in the present case.

7.2 I find that all the essential elements for imposing a penalty under Section 114AA of the Customs Act, 1962, except the one mentioned at point (iii) in para supra, are present in the present case. As per the records, it is observed that the mis-declared Import General Manifest (IGM) has not been used as a document in any business transaction for the purpose of the Customs Act, 1962. It is further noted that there is no implication on customs duty in this case concerning the declaration of the incorrect IGM, and there is no indication, at any point during the investigation, that any undue benefit was availed by the appellant, the Shipping agent, or the master of the Vessel from the filing of the incorrect IGM. Since the said IGM was not used in any transaction of business, the necessary element for imposing a penalty under Section 114AA is absent. Moreover, it is crucial to understand the intent behind the enactment of Section 114AA in the Customs Act, 1962. The provision aims to penalize those who deliberately or knowingly provide false or incorrect documents with the intent to evade customs duties or circumvent other provisions of the Act. In the absence of a business transaction or any harm caused by the mis-declaration, the intent

to impose a penalty under this provision does not seem substantiated in the present case. The matter was very well explained by the Hon'ble Member (Technical) of CESTAT Mumbai in its judgement in the matter of Suresh Kumar Aggarwal, Vs. Commissioner of Customs-III, Order No. ~~A/85533/2004~~. The relevant text of the said order is reproduced as under:

"9.2 After detailed examination, the Standing Committee on Finance had submitted its Twenty Seventh Report on the Taxation Laws (Amendment) Bill, 2005 on 12.12.2005. In the said report, the Committee's observation on the newly inserted Section 114AA brings out more clarity to the legislative intent and purport of this Section. The relevant paragraphs of the said 27th Report of the Standing Committee on Finance is extracted and given below: -

Clause 24 (Insertion of new section 114AA)

62. Clause 24 of the Bill reads as follows:

After section 114A of the Customs Act, the following section shall be inserted, namely: -

"114AA. Penalty for use of false and incorrect material. if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

63. The information furnished by the Ministry states as follows on the proposed provision:

"Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A."

64. It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, Which might lead to harassment of industries, by way of summoning an importer to give a 'false statement' etc. Questioned on these concerns, the Ministry in their reply stated as under:



"The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that an importer can be summoned under section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case."

65. The Ministry also informed as under:

The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."

66. The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment.

NEW DELHI;

GEN. (RETD.) B.C. KHANDURI,

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Standing Committee on Finance.

From the above detailed discussion and examination of the legal provisions as introduced in the Taxation (Amendment) Bill, 2005, which inter alia includes Section 114AA, it could be concluded that Section 114AA was examined in detail by the Standing Committee on Finance, before it was brought into the Customs Act by Taxation Laws (Amendment) Act, 2006 w.e.f. 13.07.2006. During the examination of the Section 114AA by the Standing Committee on Finance on the

representatives of trade expressing that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an exporter/importer to give a 'false statement' etc., it was explained by the Ministry of Finance that new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports, where the exports were shown only on paper and no goods crossed the Indian border. The imposition of enhanced penalty is applicable for serious frauds being committed as no goods are ~~being~~ exported, but papers are being created for availing the number of benefits under various export promotion schemes. On such explanation given by the Ministry of Finance, the Standing Committee on Finance considered recommending the above amendment with the observations for its proper implementation so that there is no undue harassment on the exporters.

10.1 From the above detailed discussions and analysis, in answering the question of imposition of penalty on the appellant in the role of Partner of customs broker firm, under Section 114AA *ibid*, I had come to the following conclusions. In appreciation of the aspect of various rules for interpretation of statute, I had attempted to apply firstly the 'literal rule' of interpretation to see the plain meaning of the legal provision contained in Section 114AA *ibid* as discussed in paragraphs 8.1 to 8.4 above, and thus have come to the conclusion that the provision for imposition of penalty under Section 114AA is applicable in a situation and on any person making an action stated therein sans goods.

10.2 In order to further examine whether such attempt has lead me to the proper conclusion, I had also attempted to apply the 'mischief rule' of interpretation by analysing what was the legal provision for imposition of penalty before insertion of the Section 114AA *ibid*, what was the mischief or defect for which the penal provision under Section 114AA was firstly introduced, what remedy the Parliament ~~has~~ provided to cure such defect and what is the true reason of the remedy in my analysis in paragraphs 9.1 and 9.2 above. Thus, I had come to the conclusion that the penalty provided under Section 114AA *ibid* is only in respect of transacting any business with Customs sans goods, i.e., fake paper transactions without involving export of goods.

10.3 In the result, I had also confirmed that the conclusions arrived by me as above, by applying the 'Golden rule' of interpretation in order

to ensure that in the above attempt in interpretation of a statute, whether my conclusion had led to an absurd result, so as to avoid deriving any meaning of the words in Section 114AA *ibid*, that these does not turn in to any such absurdity, by discussing the issue at paragraphs 8.5 and 8.6 as well as at paragraphs as 9.3 and 9.4.

7.3 This judgment provides a detailed interpretation of the application of Section 114AA of the Customs Act, 1962, and the necessary elements for imposing penalties. Therefore, it is clear that the provisions of Section 114AA can only be invoked in circumstances where the forgery of documents has directly led to the evasion of Customs Duty or where the person forging the documents has availed any undue benefits, particularly in cases where the export of goods has not taken place.

7.4 In view of the aforementioned findings and relying on the explanation provided by the Hon'ble CESTAT Mumbai in its judgment in the matter of Suresh Kumar Aggarwal Vs. Commissioner of Customs-III, Order No. A/85533/2024, I find that the penalty cannot be imposed under Section 114AA of the Customs Act, 1962, in the facts and circumstances of the present case. Therefore, the penalty imposed under Section 114AA on the shipping agent on behalf of the master of the vessel is hereby set aside.

8. The Appeals filed by the Appellants are hereby allowed with consequential relief, if any, in accordance with law.



(Signature)
(Amit Gupta)
Commissioner (Appeals)
Customs, Ahmedabad

Date: 27.05.2025

F.No. S/49-98,99/CUS/JMN/2023-24

By Registered Post A.D.

9/11/2025

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- (ii) M/s Samundra Marine Services P. Ltd., 214, 1st floor, Rajmandir Complex, Fourway Road, Near Pipavav Port main gate, Pipavav

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