

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 2

CUSTOMS Appeal No. 10679 of 2024- DB

(Arising out of OIO-AHM-CUSTOM-000-PR-COMMR-38-2024-25 dated 08.08.2024 passed by Pr. Commissioner Customs -Ahmedabad)

Van Oord India Pvt Ltd.

201-2nd Floor, Central Plaza,
166 CST Road, Kalina Santa Cruz,
East Mumbai-Maharashtra-400098

.....Appellant

VERSUS

Commissioner of Customs- Ahmedabad

Office of the Pr. Commr. of Customs,
1st Floor, Custom House,
Opp. Old High Court Navrangpura,
Ahmedabad-Gujarat-380009

.....Respondent

With

CUSTOMS Appeal No. 10680 of 2024- DB

(Arising out of OIO-AHM-CUSTOM-000-PR-COMMR-38-2024-25 dated 08.08.2024 passed by Pr. Commissioner -Ahmedabad)

UMESH KALE

Logistics Executive Of Van Oord India Pvt Ltd
201 2nd Floor, Central Plaza,
166 CST Road, Kalina Santa Cruz,
East Mumbai-Maharashtra-400098

.....Appellant

VERSUS

Commissioner of Customs- Ahmedabad

Office of the Pr. Commr. of Customs,
1st Floor, Custom House,
Opp. Old High Court Navrangpura,
Ahmedabad-Gujarat-380009

.....Respondent

APPEARANCE:

Shri B V Kumar & Shri B Venugopal, Advocate with Shri P P Jadeja, Consultant for the Appellant

Shri Jaspreet Singh Sukhija, Additional Commissioner (AR) for the Respondent

CORAM:

HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 11039-11040/2025

DATE OF HEARING: 15.07.2025

DATE OF DECISION: 13.11.2025

SATENDRA VIKRAM SINGH

M/s Van Oord India Pvt Ltd and Ors. (Appellant) imported two old and used Tugs viz "Coaster Rambler" (IMO 9304904) and "Coaster Voyager" (IMO 9660322) with consumables on re-export basis, for execution of ONGC Dredging project at Hazira Port in terms of contract dated 15.06.2018. The

appellant claimed concessional rate of customs duty as well as IGST under Notification No. 72/2017-Cus dated 16.08.2017. The appellant were issued a show cause notice No. VII/10-14/COMM./OND/2023-24 dated 04.09.2023, for reassessing the bills of entry No. 7960728 dated 07.09.2018 and 8712607 dated 02.11.2018 filed by them. A proposal to demand differential duty of Rs. 6,82,50,033/- under Section 28(4) along with interest under Section 28AA of the Customs Act, 1962 was also made in the SCN besides confiscation of the imported goods under Section 111(o) along with penalties under Section 112(a),112(b), 114A, 114AA and 117 of the said Act. Separate penalty under Section 112(a), 112(b), 114AA and 117 was proposed on Shri Umesh Kale, Technical Administrator of the appellant.

1.1 The matter was adjudicated by the Principal Commissioner wherein he disallowed benefit of Notification No.72/2017- Cus. dated 16.08.2017 confirmed customs duty of Rs.6,82,50,033/- under Section 28(4) alongwith interest under Section 28 AA of the Customs Act,1962. He imposed redemption fine of Rs. 6.5Cr in lieu of confiscation of the seized goods. He imposed equal penalty on the appellant under Section 114AA and a penalty of Rs.5 Lakhs under Section 114A of the Act but dropped the proposal to impose penalty on the appellant under Section 112(a), 112(b) and 117 of the Customs Act, 1962. He also imposed a penalty of Rs. 5 Lakhs on Shri Umesh Kale, Technical Administrator/ Logistic Executive of the appellant each under Section 112(a)(ii) and 114AA of the Customs Act, 1962. Hence, these appeals.

2. In the appeals, the appellant took the following grounds: -

a) Tug Coaster Voyager, completed its operations in terms of the contract around 18.12.2018 and thereafter, it was exported vide shipping bill No. 9709245 dated 18.12.2018. After the export, they requested the Deputy Commissioner to cancel re-export bond and return their original Bank guarantee. The Deputy Commissioner, Customs Hazira issued a Certificate dated 18.12.2018 to the effect that Coaster Voyager

has been converted from coastal run to foreign run on 19.12.2018. The Superintendent of Customs also issued port clearance No. F-662/18-19 dated 21.12.2018.

b) The Coaster Rambler completed its operation on 24.12.2018 and it was re-exported vide shipping bill no. 9866006 dated 24.12.2018. The Deputy Commissioner of Customs, Hazira issued a certificate dated 24.12.2018 to the effect that Coaster Rambler has been converted from coastal run to foreign run on 26.12.2018 and the port clearance was given by the concerned Superintendent.

c) The adjudicating authority dis-allowed benefit under Notification No. 72/2017-Cus dated 16.08.2017 on two impugned Tugs on the ground that tugs do not come within the meaning of "Machinery, Equipment or Tools" by relying on the decision of Mumbai Tribunal in the case of Shipping Corporation of India as reported in 2014(312) ELT 305 and the decision of Chennai Tribunal in the case of International Seaport Dredging Ltd Vs. Commissioner of Customs, Tiruchirappalli as reported in 2019 (366) ELT 723.

d) The adjudicating authority ignored their written submissions vide letter dated 18.07.2024 and also various cited decisions wherein Tribunal as well as High Court of Bombay have directed the department to sanction draw back since the vessels/tugs were re-exported.

f) The adjudicating authority relied on the decision of Hon'ble Supreme Court in the case of M/s. G S Auto Internation Ltd Vs. Collector as reported in 2023 (152) ELT 3 (SC) and also on the decision in the case of M/s. Jaishri Engineering Company Pvt Ltd reported at 1989 (40) ELT 214 (SC), M/s. Purewal Associates Ltd reported at 1996 (87) ELT 321 (SC) and Dunlop India Ltd & Madras Rubber Factory Ltd Vs. UOI reported at 1983 (13)ELT 1566 (SC).

g) The words "Machinery, Equipment or Tools" mentioned in Notification No.72/2017-Cus. dated 16.08.2017 have not been defined in the said notification or is Customs Act or the Rules made thereunder and so, these are required to be classified as understood in trade or commercial parlance, depending on their functions as known in the industry. As per literature provided by the International Association of Dredging Companies, 'Tugs' come within the meaning of 'Auxiliary Equipment' being crucial to the smooth functioning of a dredging operation. Auxiliary Equipments include a wide variety of equipments that are not dredgers but are integral to support dredging operation. A number of floating Auxiliary Equipment are multicastr, heavy lifting crane vessels, workboats, tenders, towboats, tugboats, stationary or self-propelled barges, anchor pontoons, floating line pontoons, booster stations, crew boats and survey vessels. Being auxiliary equipments, these are entitled to exemption under above notification.

h) Extended period of limitation cannot be invoked as Bills of Entry were self-attested which were verified/examined and cleared for home consumption in terms of Sec.17(2) of the Customs Act, 1962. They claimed benefit of Notification which was further checked by the customs authorities and Tugs were cleared on execution of Bond and Bank Guarantee. The said goods were re-exported under shipping bills after verification/examination by the customs authorities. Thus, all the facts were well known to customs authorities' and therefore, suppression, mis-statement etc. cannot be alleged.

i) The show cause notice dated 04.09.2023 has been issued to them on the basis of decision of Chennai Tribunal in the case of International Seaport Dredging Ltd. Vs. Commissioner of Customs, Tirucharapalli (cited supra). During investigation, Shri Umesh Kale, Technical Administrator as well as Customs Brokers were interrogated by the department. There is

no other dispute except availability of benefit of Notification No.72/2017-Cus dated 16.08.2017. Assessments were completed under Section 17 of the Customs Act, 1962 and therefore, question of mis-declaration/ mis-statement and suppression of facts on their part is unsubstantiated.

j) The decision of CESTAT Chennai in the case of International Seaport Dredging Ltd. (supra) was passed on 10.01.2019 which is after the date of filing of Bills of Entry for import as well as shipping bills for export. This shows that even the department was of the view that the benefit claimed by the appellant is in order. It is incorrect to charge the appellant with mis-declaration/ mis-statement for invoking extended period for re-opening assessment in terms of following decisions:-

- Shahnaz Ayurvedics Vs. CCE, Noida 2004 (173) E.L.T. 337 (All.) [paras 74 & 75 of the decision]. Also affirmed by Hon'ble Supreme Court as reported in 2004 (174) E.L.T. A34 (S.C.)
- S. Kumars Ltd. Vs. CCE, Indore-I 2007 (211) E.L.T. 124 (Tri.-Del.). Also affirmed by Hon'ble High Court of Madhya Pradesh as reported in 2016 (335) ELT A167 (MP)
- Bayer India Ltd. Vs. CC, Mumbai 2006 (198) E.L.T. 240 (Tri. Mumbai). Also affirmed by the Supreme Court as reported in 2015 (324) ELT 17 (SC)
- Super Shiv Shakti Chemical Pvt. Ltd. Vs. Commissioner of C. Ex., Udaipur -2019 (369) E.L.T. 1279 (Tri. - Del.).

The instant show cause notice issued on 04.09.2023 is beyond the normal period of two years and therefore, demand of duty is time barred. They rely on the decision in the case of Shipping Corporation of India Vs. Commissioner of Customs (Import), Mumbai (cited supra) and also on the decision in the case of Abaris Healthcare vs CCE & ST, Chandigarh reported at 2018 (362) ELT 153, (Tri-Chan) wherein it was held that though the appellant have claimed benefit under a notification and the department failed to issue show

cause notice within one year of claiming the benefit, extended period of limitation is not invocable.

k) Completed assessment cannot be re-opened unless order of assessment is challenged. They rely on the decision in the case of ITC Ltd. Vs. CCE reported at 2019 (368) ELT 216 (SC), decision of Punjab and Haryana High Court in the case of Jairath International Vs. UOI reported at 2019 (370) ELT 116 (P&H). In a series of decisions as mentioned below, same ratio has been followed:-

- M.K. Shah and Co. Vs. Commissioner of Customs (Airport &Acc), Kolkata - (2023) 2 Centax 34 (Tri.-Cal)
- Final Order No. 76465-76466/2023 dated 24.08.2023 of Kolkata Tribunal in the case of Rajib Saha Vs. CC (Preventive), Shillong,
- Final Order No.A/85925-85934/2024 in the case of Bimal P. Shah & Others, passed by the Mumbai Bench of Hon'ble CESTAT.

l) Assuming without admitting that imported Tugs do not fall within the meaning of "Machinery, Equipment or Tools" for the benefit of exemption under Notification No.72/2017-Cus. dtd. 16.08.2017 and they are liable to pay the full duty but in that case, they are entitled to claim drawback of 95% of such duty under Section 74(1) and 74(2) and the Re-export of imported goods (Drawback of Customs Duties) Rules, 1995. Vide Challan No.827 and 828 both dtd. 31.07.2024, they had paid differential duty of 5% (i.e. duty payable – drawback (@95% of the duty) available to them on re-export of the imported goods) along with interest as below:-

(Amount in Rs.)

TUG	B.E.No./ Date	Duty Demanded	Applicable Drawback	Interest @ 18%	(Amount in Rs.) Duty + Interest paid
Coastal Rambler	7960728/ 07.09.2018	2,32,62,026/-	1,97,72,722/-	17,23,572/-	**34,31,795/-
Coastal Voyager	8712607/ 02.11.2018	4,67,75,507/-	4,44,36,731/-	11,58,645/-	**23,03,613/-

They sent copy of the Challans to the Adjudicating Authority vide e-mail dated 02.08.2024 but it was not taken into consideration. There is no allegation against them that they have not fulfilled the condition as stipulated under Section 74(1) & 74(2) and the Re-export of imported goods (Drawback of Customs Duties) Rules, 1995. The denial of drawback is contrary to the decisions in the case of Shipping Corporation of India and International Seaport Dredging Ltd cited supra.

m) It is not correct to Confiscate imported Tugs which are not physically available and have been re-exported by the appellant. They rely on the decision of the Larger Bench in the case of M/s. Shiv Kripa Ispat Pvt. Ltd. Vs. Commissioner of C. Ex. & Cus., Nasik reported at 2009 (235) ELT 623 (Tri. - LB). {Also upheld by Hon'ble Bombay High Court in the case of Commr. Vs. Rishi Ship Breakers reported in 2015 (318) ELT A259 (Bom.)}. Reliance is also placed on the case of Chinku Exports as reported at 1999 (112) ELT (Trib-Kolkata) which held that, "when the goods are not available for confiscation and when any bond with a security are not available the redemption fine imposed was totally outside the purview of the legal provisions." This decision was approved by the Hon'ble Supreme Court as reported in 2005 (184) ELT A36 (SC). Similar decisions were given in the following cases:-

- Associate Marketing Service Vs. CC, Airport -2006 (195) ELT 287 (Tri.-Chennai)
- Shivalayan Spinning & Weaving Mills P. Ltd. v. CC, Amritsar- 2002 (146) ELT 610 (T)
- Prudential Pharmaceuticals Ltd. v. CC-2001 (136) ELT 1057 (T)
- Shilpa Trading Co. V. CC, Bangalore- 2008 (224) ELT 453 (Tri. -Ban.)

n) Demand of interest and penalties imposed cannot be sustained as they have very strong case both on merits as well as on limitations.

2.1 Shri Umesh Kale, Technical Administrator/ Logistic Executive of the appellant pleaded that being an employee of the company, he carries out

routine and regular functions as assigned to him relating to customs clearances which he discharges based on his limited experience and knowledge. Statements given by him were answers to the pointed questions and nowhere, he has admitted the benefit of ineligible exemption of Notification either knowingly or intentionally. The benefit was claimed as per industry practice and as per advise of the customs broker. Thus, he pleads that he cannot be penalized under Section 112(a)(ii) and 114 AA of the Act on the charges of deliberate misdeclaration or claim of ineligible exemption. He prays for setting aside the penalty on him.

3. During arguments, learned Advocate highlighted the grounds taken in the appeals and various decisions supporting the appellant's case. He stressed that extended period of limitation is not invocable in this case as the show cause notice has been issued after the decision of Chennai Tribunal in International Seaport Dredging Ltd. case. There is no deliberate attempt on their part to claim ineligible benefit of the Notification and therefore, extended period is not invocable in this case. Their case is strong both on merits as well as on limitation and therefore, they are not liable to any interest as well as penalty. Regarding, penalty on Shri Umesh Kale, under Section 112(a)(ii) and 114AA of the Customs Act, learned Advocate pleaded that he was discharging his functions as an employee of the appellant company and as such, has no independent role in the entire case. Therefore, he cannot be penalized under the Customs Act for misdeclaration. He pleads for setting aside the penalties imposed on Shri Umesh Kale under above Sections.

4. Learned AR during hearing mentioned that the Tugs imported by the appellant do not fall under the category of "Machinery, Equipment or Tools" and hence, they are ineligible to the benefit of Notification No.72/2017- Cus. dtd. 16.08.2017. He reiterated the findings of the Adjudicating Authority to plead his case that the appellants are liable to pay differential customs duty along with interest and penalties. Regarding invocation of extended period, he

submits that the goods were cleared on execution of bond and therefore, non following of the conditions of the bond will lead to demand of differential duty. He also justified imposition of penalty on Shri Umesh Kale as during the relevant time he was handling the import related matters of the company and was the concerned person with whose guidance and connivance, ineligible benefit of Notification was availed by the appellant. He relies on the following laws:-

- 2014 (312) ELT 305 (Tri-Mum) - Shipping Corporation of India Ltd Vs. CC (Import), Mumbai
- Final Order No. 40046/2019 dtd. 10.01.2019 - International Seaport Dredging Ltd
- 2003 (152) ELT 3 (SC) - GS Auto International Ltd Vs. CCE, Chandigarh
- 1989 (40) ELT 214 (SC) - Jaishri Engineering Co P Ltd Vs. CCE
- 1996 (87) ELT 321 (SC) - Purewal Assocaites Ltd Vs. CCE
- 1983 (13) ELT 1566 (SC) - Dunlop India Ltd & Madras Rubber Factory Ltd Vs. Union of India

5. We have heard the rival submissions and also gone through the written submissions made by both the sides. The issue to be decided in this case is whether two tugs viz. "Coaster Rambler" and "Coaster Voyager" imported by the appellant are "Machinery, Equipment or Tools" for availing benefit of Notification No.72/2017- Cus. dated 16.08.2017? The appellant contends that two tugs were imported by them for execution of ONGC dredging project at Hazira port. It is also their contention that these are "Auxiliary Equipment" and hence, covered within the definition of "Machinery, Equipment or Tools" which entitles them the benefit of above notification. Another plea is that as all things were in the knowledge of the department, extended period is not invocable in this case. They also assailed penalties imposed on the appellant as well as on their employee on Shri Umesh Kale. Their alternate argument is that in case duty demand is sustained against them, they are entitled to the

benefit of duty drawback as per Section 74 of the Customs Act, 1962 as the impugned two tugs have been re-exported out of India, after completing all the procedural formalities with the customs. As such, they are entitled to the benefit of drawback to the extent of 95% of the duty payable by them on import of two tugs. To show positive intent, the appellant paid differential duty of Rs.57,35,408/- vide two challans bearing Nos. 827 and 828, both dated 31.07.2024 along with applicable interest. Revenue on the other hand pleads that the appellant is not entitled to the benefit of Notification NO.72/2017-Cus. dated 16.08.2017 and are therefore, liable to pay not only the differential customs duty along with interest but also penalties. They also justify imposition of penalty on Shri Umesh Kale. In support, both sides have relied on several case laws (cited supra).

5.1 The Notification No.72/2017-Cus. dated 16.08.2017 which exempts payment of Customs duty on temporary import of leased machinery, equipment and tools, is reproduced as under:-

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 27/2002-Customs, dated the 1st March, 2002 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 124(E), dated the 1st March, 2002 except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby 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, namely :-

TABLE

Description of goods	Limitations and conditions	Extent of exemption
(1)	(2)	(3)
Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs	(1)the goods have been taken on lease by the importer for use after import; (2)the importer makes a declaration at the time of import that the goods are being imported temporarily for execution of a contract; (3)the import of such machinery, equipment or tools is covered under item (b) of clause 1 or item (f) of	In the case of- (i) goods which are re-exported within three months of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of five per cent.;

<p>Tariff Act, 1975 (51 of 1975).</p>	<p>clause 5 of Schedule II of the Central Goods and Services Act, 2017;</p> <p>(4) the said goods are re-exported within three months of the date of such import or within such extended period not exceeding 18 months from the date of said import, as the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, may allow;</p> <p>(5) where the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, grants extension of the aforesaid period for re-export, the importer shall pay the difference between the duty payable under the relevant clause in column (3) and the duty already paid at the time of their import;</p> <p>(6) the importer executes a bond, with a bank guarantee, undertaking -</p> <p>(a) to pay integrated tax leviable under sub-section (1) of section 5 of the Integrated Goods and Services Act, 2017 on supply of service covered by items 1(b) or 5(f) of Schedule II of the Central Goods and Services Act, 2017;</p> <p>(b) to re-export the said goods within three months of the date of import or within the aforesaid extended period;</p> <p>(c) to produce the goods before the Assistant Commissioner of Customs or the Deputy Commissioner of Customs for identification before re-export;</p> <p>(d) to pay the balance of customs duty, along with interest, at the rate fixed by notification issued under section 28AA of the Customs Act, 1962, for the period starting from the date of import of the said goods and ending with the date on which the duty is paid in full, if the re-export does not take place within the stipulated period; and</p> <p>(e) to pay on demand an amount equal to the integrated tax along with applicable interest payable on the said goods but for the exemption under this notification in the event of violation of any of the above conditions.</p>	<p>(ii) goods which are re-exported after three months, but within six months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of fifteen per cent.;</p> <p>(iii) goods which are re-exported after six months, but within nine months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of twenty-five per cent.;</p> <p>(iv) goods which are re-exported after nine months, but within twelve months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of thirty per cent.;</p> <p>(v) goods which are re-exported after twelve months, but within fifteen months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of thirty-five per cent.;</p> <p>(vi) goods which are re-exported after fifteen months, but within eighteen months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of forty per cent.,</p> <p>of the aggregate of the duties of customs, which would be leviable under the Customs Act, 1962 read with any notification for the time being in force in respect of the duty so chargeable.</p>
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Note : The goods imported under this concession shall not be eligible for drawback under sub-section (2) of section 74 of the Customs Act, 1962.

5.2 We find that the issue in hand is squarely covered by the decision of Mumbai Tribunal in the case of Shipping Corporation of India Vs. Commissioner of Customs (Import), Mumbai and International Seaport Dredging Ltd Vs. Commissioner of Customs, Tiruchirappalli (cited supra). In both the cases, it was held that tugs fall under Chapter Heading 89.04 of Customs Tariff Act as they are designed to assist ships in distress and not for transport of persons and goods. Tugs were the goods and not merely conveyance. Therefore, these were liable to customs duty at the rate and value prevalent on the date of importation. The relevant para 6.12 of the decision in the case of Shipping Corporation of India is reproduced below:-

"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.

5.3 We also find that Chennai Tribunal again took up this issue in the case of M/s. International Seaport Dredging Ltd. Vide Final Order No.40046/2019 dated 10.01.2019, they held that Chapter 89 which is vide enough, covers ships, boats and also floating structures and without the fear of contraction, it can safely be assumed that the workboats imported by the appellant in their case are covered under Chapter 89 and not as "Machinery, Equipment or Tools" etc. These work Boats may perhaps came with machinery, equipment like spare parts, accessories and consumable and not vice-versa. The fact of classification depends on the characteristics of the boat and not the items that came along with the boat. On the basis of above reasoning, they held that the work Boats which is termed as tugboat is classifiable under Chapter 89.

5.4 In view of the above, we hold that tugboats imported by the appellant are not machinery, equipment or tools, as these are specifically covered under Chapter Heading 8904 and therefore, two tugs imported by the appellant in this case are not entitled to the benefit of Notification No.72/2017-Cus. dated 16.08.2017.

5.5 As regards invocation of extended period, we find that the Adjudicating Authority has elaborately discussed the grounds taken for invocation of extended period. The appellant, apart from saying that they were not aware of the decision of Chennai Tribunal in the case of Internation Sea Port Dredging, have not come up with any other explanation as to why tug boats imported by them should be classified as "Machinery" for availing ineligible benefit of Notification. The issue was already decided in 2014 by Mumbai Tribunal in the case of Shipping Corporation of India. Therefore, agreeing with the view of the learned Adjudicating Authority, we hold that extended period has rightly been invoked in this case. Regarding confiscation of two seized tug boats, we find that the show cause notice proposes their confiscation under

Section 111(o) of the Customs Act, 1962, the said Section is reproduced below:-

"(o) 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;"

We find in this case that the appellant have misclassified imported tug boats under wrong Chapter Heading to avail ineligible benefit and therefore, ingredients of Section 111(o) are satisfied in this case. Accordingly, we concur with the view of the learned Adjudicating Authority on confiscation of two seized tug boats valued Rs.65 Crores.

5.6 As regards alternate plea taken by the appellant, we find that the facts of the case clearly reveal that both the tugs were exported in December 2018. The tug "Coaster Rambler" imported vide Bill of Entry No.7960728 dated 07.09.2018 was exported on 24.12.2018 after three months period whereas, tug "Coaster Voyager" imported vide Bill of Entry No.8712607 dated 02.11.2018 was exported within 3 months on 18.12.2018. There is also no doubt that both the tugs were exported after completing all the formalities by the Customs. We find that in similar circumstances, this benefit was allowed by the Tribunal in the case of Shipping Corporation of India Limited. The relevant 6.13 of the said decision is reproduced below:-

"6.13 *The appellants have alternatively argued that drawback of the duty would be available under Section 74 of the Customs Act inasmuch as the vessels have gone back after the salvage operations, within a period 3 months from the date of their importation. There is merit in this argument. The Id. consultant for the Revenue has not contested this point and has left the issue for appropriate decision by this Tribunal. We find that under Section 74(2) read with Notification No. 19/65-Cus., dated 16-2-1965 as amended, if the imported goods are re-exported as such within a period of 3 months from the date of importation, 95% of the import duty paid is eligible as drawback to the exporter. In the present case, there is no dispute that the vessels have been re-exported within a period of 3 months from their date of importation. In the case of Sedco Forex International Drilling Inc. v. CC, Mumbai [[2001 \(135\) E.L.T. 625](#)], in a similar situation, this Tribunal directed the Revenue to re-compute the duty liability after taking into the drawback. Following the said*

decision, in the present appeals also, we direct the Revenue to work out the duty liability after taking into account the drawback that the appellants would be entitled to, after completing the necessary formalities, if any required."

Respectfully agreeing with the above decision of allowing benefit of drawback on export of tug boats imported temporarily, we hold that in the instant case also, the appellant is entitled to the drawback benefit under Section 74 of the Customs Act, 1962.

5.7 Relying on the decision in the case of Shiv Kripa Ispat Pvt. Ltd. and Chinku Exports, the appellant have challenged confiscation of the imported tugs on the ground that these are not physically available as the same were re-exported. We find that this has elaborately been discussed by the Adjudicating Authority in para 20.1 and 20.2 of the impugned order. We find that Hon'ble Madras High Court in the case of Visteon Automotive Systems India Limited reported at 2018 (009) GSTL 0142 (Madras) and Hon'ble Gujarat High Court in the case of Synergy Fertichem Pvt. Ltd. reported at 2020 (33) G.S.T.L. 513 (Guj.), have held that availability of the goods is not necessary for confiscation of the seized goods. The opening words of Section 125 mention that, "Whenever confiscation of any goods is authorized by this Act....." brings out the point clearly. Qua power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. Once power of authorization of confiscation of goods gets traced to that Section, physical availability of the goods is not so much relevant. The redemption is in fact, to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves goods from getting confiscated. Therefore, physical availability of goods does not have any significance for imposition of redemption fine under Section 125 of the Act. We therefore, agree with the learned Adjudicating Authority that non availability of goods physically does not impact their confiscation and imposition of redemption fine. We however find that the learned Adjudicating

Authority has imposed very heavy redemption fine equal to 10% of the value of the tugs. What has been saved by the appellant in this case is an amount equal to 5% of the duty because if the appellant had paid full duty, they would have been entitled to 95% of the duty amount as draw back. Therefore, quantum of redemption fine to be imposed in lieu of confiscation in this case should be governed by the amount of benefit that would have been accrued to the appellant.

5.8 Regarding penalty, we find that the learned Adjudicating Authority has imposed a penalty equal to duty, under Section 114A of the Customs Act, 1962 and a further penalty of Rs.5 Lakhs under Section 114AA of the Customs Act, 1962. We find that it would be reasonable if the penalty on the appellant under Section 114A is imposed equal to differential duty amount. We therefore direct the learned Adjudicating Authority to first compute the differential duty payable by the appellant after allowing the drawback benefit to them and then decide the quantum of redemption fine in terms of para 5.7 above and the amount of penalty under Section 114A. Needless to say, duty already paid by the appellant should also be taken into account while computing the interest liability on the appellant.

5.9 As regards, penalty of Rs.5 Lakhs each on both the appellants, under Section 114AA, we find that penalty under this Section can be imposed, *"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."* The Adjudicating Authority has imposed penalty on the ground that the appellant knew about the decision in the case of International Sea Port Dredging but still they availed the exemption of duty. We are not convinced with this reasoning as the facts in the case do not bring out ingredients of this Section for imposition of penalty under Section 114AA. We therefore, set aside the above penalty on both the appellants.

5.10 As regards penalty of Rs.5 Lakhs on Shri Umesh Kale under Section 112(a)(ii), we find that the said Section reads as, *Any person,—“(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

(i).....

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher: Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;”

As Shri Umesh Kale was involved in filing of Bills of Entry for claiming wrong benefit of Notification No.72/2017- Cus. dated 16.08.2017 which rendered the goods liable to confiscation under Section 111, we are of the view that he is liable to penalty under this Section. We are not convinced with the argument that being an employee of the appellant firm, no penalty should be imposed on Shri Umesh Kale. We however feel that a lenient view should be taken in such cases as being an employee, he is not going to be directly benefited. Therefore, it would be justified if a penalty of Rs. One Lakh is imposed on Shri Umesh Kale (Appellant No.2), under Section 112(a)(ii) of the Customs Act,1962.

6. We partly allow the appeal filed by the Appellant No. 1 by way of remand as discussed above. The Adjudicating Authority shall compute the differential duty liability and interest, quantum of redemption fine and the penalty on the appellant under Section 114A in terms of observations made above. The appeal filed by the Appellant No.2 is partly allowed in terms of para 5.9 and 5.10 above.

7. The appeals are disposed of in above terms.

(Pronounced in the open court on 13.11.2025)

**(SOMESH ARORA)
MEMBER (JUDICIAL)**

**(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)**

Bharvi