

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
BANGALORE**

Regional Bench COURT-1

**Customs Appeal No. 26041 of 2013**

[Arising out of the Order-in-Original No. 04/2012 dated 19.12.2012 passed by the  
Commissioner of Customs, Mangalore.]

**M/s. Victor Hotels and Motels Ltd.,  
(Presently known as Delta Corp. Ltd.)**

850, Delta Centre, Off N.H. 17, Porvorim, Bardez,  
Goa 403521.

**.....Appellant**

**VERSUS**

**Commissioner of Customs**

New Custom House, Panambur,  
Mangalore-575010.

**.....Respondent**

**WITH**

**i. Customs Appeal No. 26042 of 2013(Mr. Anil Malani)**

[Arising out of the Order-in-Original No. 04/2012-Commr. dated 27.12.2012  
passed by the Commissioner of Customs (Appeals), Mangaluru.]

**ii. Customs Appeal No. 26043 of 2013(Mr. Hasan Hajee Co.)**

[Arising out of the Order-in-Original No. 04/2012-Commr. dated 27.12.2012  
passed by the Commissioner of Customs (Appeals), Mangaluru.]

**iii. Customs Appeal No. 26044 of 2013(Mr. Ashish Kapadia)**

[Arising out of the Order-in-Original No. 04/2012-Commr. dated 27.12.2012  
passed by the Commissioner of Customs (Appeals), Mangaluru.]

**Appearance:**

Mr. Jithendra Motwani, Advocate for Appellant

Mr. K.A. Jathin, Authorized Representative (AR) for Respondent

**Coram:**

**Hon'ble Dr. D. M Misra, Member (Judicial)**

**Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)**

**FINAL ORDER Nos. 22222-22225 of 2025**

Date of Hearing: 09.04.2025

Date of Decision: 08.10.2025

**Per: Pullela Nageswara Rao**

These 4(four) Appeal Nos. C/26041, 26042, 26043, 26044/2013 are filed by the Appellants against the Order-in-Original No. 04/2012 dated 19.12.2012 issued by Commissioner of Customs, Mangalore.

2. The brief facts are M/s. Victor Hotels and Motels limited, the appellant, a 100% subsidiary of M/s. Delta Corporation limited filed bill of entry no. 3868285 dated 22.06.2011 for the clearance of goods declared as **"old and used 1994 vessel for transport of passenger' vessel M.V Horseshoe Casino inclusive of equipment fixture and standard equipment"**, claimed classification of the vessel under Customs Tariff Heading(CTH) 8901 1010 with the benefit at Sl. No. 352 of Notification No. 21/2002-Cus dated 01.03.2002, wherein the basic customs duty (BCD) is wholly exempted and benefit of exemption of Notification No. 1/2011-CE dated 01.03.2011 for Countervailing Duty (CVD). The appellant along with the bill of entry submitted a copy of bill of lading dated 30.04.2011, where the description of the vessel was mentioned as **'old and used M.V. Horseshoe Casino vessel'** along the commercial invoice from M/s. Horseshoe Hammond LLC, USA dated 16.11.2010 for the purchase of the vessel mentioned in the invoice as **M.V."HORSESHOE CASINO"** for an amount of US\$ 3,000,000. The goods were examined on first check by the customs. M/s. Intertek, who is the independent chartered engineer appointed by the department inspected the vessel on 23.06.2011 and 24.06.2011 and vide certificate dated 24.06.2011 certified that the Cost Insurance Freight (CIF) value of the passenger vessel is fixed at US\$ 6,349,869. Thereafter the bill of entry was finally assessed and the duty was assessed as per the value determined by the independent Chartered Engineer vide certificate dated 24.06.2011 and as per the classification declared by the appellant under Customs Tariff Heading (CTH) 8901 1010 with the benefit of exemption Notification No. 21/2002-Cus dated 01.03.2002 with Basic Customs Duty (BCD) at 'nil' rate of duty and Notification No. 1/2011-CE dated 01.03.2011 for CVD and other customs levies as

applicable. The total assessed value was Rs. 29,27,70,213/- and duty assessed was Rs.2,78,62,004/.

3. The Department of Revenue intelligence (DRI) on an intelligence has taken up the case for investigation on 8th September 2011 in relation to classification and valuation of the impugned vessel imported by the appellant. During the investigation the appellant deposited an amount of Rs. 6,90,18,083/- towards customs duty along with interest under protest on 14.09.2011. Before completion of the investigations the vessel was seized on 29.05.2012 under the provisions of section 110 of the Customs Act, 1962 on the ground that the vessel had been imported without proper payment of customs duty and it is alleged that vessel was misclassified under Customs Tariff Heading (CTH) 89011010 of the Customs Tariff Act, 1962 so as to avail ineligible benefit at Sl. No. 352 of Notification No. 21/2002-Cus dated 01.03.2002. The vessel was released under Supratnama dated 29.05.2012.

4. On completion of the investigation a show cause notice dated 08.06.2012 was issued wherein it was alleged that;

i) *The Vessel MV Horseshoe Casino imported vide Bill of Entry No. 3868285 dated 22.06.2011 should not be now reclassified under Customs Tariff Heading No. 8903 99 90 and reassessed at the applicable rate of duty.*

ii) *Consequent to reclassification under CTI 89039990, the benefit of Notification no. 21/2002-Cus dated 01.03.2002 (Sr no. 352) should not be denied to the casino vessel imported.*

iii) *The transaction value of the said imported vessel M.V. Horseshoe Casino should not be rejected under Rule 12 of Customs Valuation of Imported Goods Rules, 2007 on the grounds mentioned in Para 5.2 of this Notice;*

iv) *The value of the said imported vessel M.V. Horseshoe Casino Vessel should not be redetermined at Rs. 35,80,74,723/- (Rupees Thirty five Crores Eighty Lakhs Seventy Four*

*Thousand Seven Hundred Twenty Three only) thereby and re-assessed at the applicable rate of duty.*

- v) Differential duty of Rs. 6,92,37,774/- (Rupees six crores ninety two lakhs thirty seven thousand seven hundred and seventy four only) should not be demanded under the provisions of Section 28 of the Customs Act, 1962 along with interest thereon as applicable.*
- vi) Interest applicable on above mentioned duty amounts should not be recovered under section 28AA of the Customs Act, 1962*
- vii) The vessel M.V. Horseshoe Casino now valued at Rs. 35,80,74,724/- (Rupees Thirty five crores eighty lakhs seventy-four thousand seven hundred and twenty four only) CIF should not be confiscated under Section 111(m) of the Customs Act, 1962.*
- vii) Penalty should not be imposed under Sec 114A of the Customs Act, 1962 on M/s. Victor Hotels & Motels Ltd for knowingly mis declaring the vessel as a passenger vessel of Customs Tariff Heading 89011010 and for knowingly suppressing the value of the costs and services incurred in the import of the vessel with the intention to evade payment of Customs duty applicable thereto.*
- ix) Penalty should not be imposed on; Shri Anil Malani, Director of M/s. Victor Hotels & Motels Ltd., Shri Ashish Kapadia, Managing Director, M/s. Delta Corp. Ltd., M/s. Hassan Hajee & Co. CHA, Mangalore and M/s. GVP Forwarders Mumbai under Section 112(a) of the Customs Act, 1962 for aiding and abetting in the act of misdeclaration of the vessel as passenger vessel and suppressing the value of the costs and services incurred in its import.*

*x) The amount of Rs. 6,90,18,083.20 already deposited by them should not be appropriated against the liabilities towards the duty and interest amount as hitherto demanded.*

5. The Appellant vide their letter dated 19 June 2012, requested the Respondent that, since almost the entire amount of duty has already been paid by them along with interest, requested the Respondent to provisionally release the vessel. The Respondent, through the Assistant Commissioner of Customs, vide provisional release order dated 03.07.2012 informed the Appellants that the vessel is permitted to be provisionally released subject to the conditions of furnishing a bond for an amount equal to the value of seized vessel i.e. Rs. 35,80,74,723/- along with security in the form of Bank Guarantee with auto renewal clause for an amount of Rs. 14,00,00,000/- so as to safeguard the Revenue interest. Aggrieved by the Provisional Release order dated 03.07.2012, the Appellants filed a Writ Petition No. 24133/2012 before the Hon'ble Karnataka High Court. The Hon'ble Karnataka High Court by its order dated 07.08.2012, disposed the Petition filed by the Appellants, directing them to file an Appeal before this Hon'ble Tribunal. In view of the aforesaid directions, the Appellants filed an appeal before this Hon'ble Tribunal under Section 129A of the Customs Act 1962. This Hon'ble Tribunal by order dated 06. 07.2012 modified the provisional release order by directing the Appellants to pay Rs. 27.00,000/- in cash and furnish a bank guarantee for 10% of the value of the impugned vessel. In compliance of the aforesaid order the Appellants deposited an amount of Rs. 27,00,000/- and furnished a Bank Guarantee for 10% value of the vessel along with a Bond and the impugned Vessel was provisionally released. In the meanwhile, an Application under the Right to information Act 2005, was made by the Appellants on 08.10.2012 requesting the Commissioner of Customs, Marmagoa to provide information about classification of similar Vessel 'MV Boa Sorte' and Vessel 'M.V. San Domino'. The Commissioner of Customs vide letter dated 07.11.2012 informed the Appellant that while classification of Vessel MV San Domino is under dispute, Vessel M.V. Boa Sorte was classified under CTH 89011010. The appellant contended that, Vessel

MV. Boa Sorte is a similar vessel which has a casino on board and the same as stated above has been classified under Customs Tariff Heading 89011010 by the department. The Appellants after receiving the documents sought by them filed a final reply to the show cause notice dated 16.11.2012, making various submissions in relation to classification and valuation of the vessel. The Appellants were heard on 20.11.2012 by the Commissioner of Customs, Mangalore.

6. The Commissioner of Customs. Mangalore by his Order-in-Original No 04/2012-Commr dated 19.12.2012 rejected the contentions of the Appellants on classification and valuation of the vessel and passed the following order;

- i. I order reclassification of the vessel M.V. Horseshoe Casino Imported vide Bill of Entry no. 3868285 dated 22/6/2011 under Customs Tariff Heading No. 8903 9990 and order reassessment at the applicable rate of duty.*
- ii. Consequent to reclassification under CTH 8903 9990, I deny the benefit of Notification No 21/2002-Cus dated 1-03-2002 (Sr no. 352) to the casino vessel imported in respect of exemption availed from Basic Customs Duty. Further I hold that the Importer is not eligible for concessional rate of 1% of CVD (Additional duty) under Notification No. 1/2011 CE dated 01.03.2011 and the correct Notification applicable for this purpose is Notification No. 2/2008 CE dated 01.03-2008 stipulating concessional CVD @10% Ad-valorem / vacate the protest under which an amount of Customs duty of Rs. 2.78.62.004/- (inclusive of CVD) was paid by the importer on 28-06-2011, i.e., subsequent to the import of the vessel.*
- iii. I reject the transaction value of the said Imported vessel M.V Horseshoe Casino under Rule 12 of Customs Valuation of Imported Goods Rules, 2007,*
- iv. I re-determine the value of the said Imported vessel M.V Horseshoe Casino at Rs 35.80,74,723/- (Rupees Thirty five crores*

*eighty lakhs seventy four thousand seven hundred twenty-three only) thereby and order reassessment at the applicable rate of duty,*

- v. I confirm the demand of differential duty of Rs. 6.92.37,774/- (Rupees six crores ninety two lakhs thirty seven thousand seven hundred and seventy four only) under the provisions of Section 28 of the Customs Act, 1962 along with interest thereon as applicable,*
- vi. I order recovery of Interest applicable on the above mentioned duty amounts under section 28AA of the Customs Act 1962:*
- vii. I order confiscation of the vessel M.V. Horseshoe Casino now valued at Rs. 35.80,74,723/- (Rupees Thirty five crores eighty lacs seventy four thousand seven hundred and twenty three only) under Section 111(m) of the Customs Act 1962;*
- viii. I impose a redemption fine of Rs 3,60,00,000/- in terms of Section 125 of Customs Act, 1962 on the importer in lieu of confiscation of the vessel. I order for recovery of this amount by way of enforcing the bank guarantee of Rs. 6 crores furnished at the time of provisional release of the vessel;*
- ix. I impose a penalty equal to Rs 6.92.37.774/- plus applicable interest determined and recoverable under Sec 28AA of the Customs Act 1962 on the duty demanded at Sr. No. (v) above on M/s Victor Hotels & Motels Ltd. for knowingly mis-declaring the vessel as a passenger vessel under Customs Tariff Heading 89011010 and for knowingly suppressing the value of the costs and services incurred in the Import of the vessel with the intention to evade payment of Customs duty applicable thereto, under section 114A of Customs Act, 1962.*
- x. I impose penalty of Rs 50.00.000/- on Shri. Anil Malani Director of M/s. Victor Hotels & Motels Ltd. Rs. 50,00,000/-on Shri Ashish Kapadia, Managing Director M/s. Delta Corp Ltd. and*

*Rs.25,00,000/- on M/s. Hassan Hajee & Co. CHA Mangalore under Section 112(a) of the Customs Act, 1962 for aiding and abetting in the act of misdeclaration of the vessel as passenger vessel and suppressing the value of the costs and services incurred in its import and hence rendering the goods liable for confiscation,*

- xi. I refrain from imposing any penalty on M/s. GVP forwarder Pvt. Ltd, Mumbai for the reasons discussed above;*
- xii. I order for appropriation of the amounts deposited by the importer at the time of investigation of the case and at the time of provisional release of the vessel and I also order for enforcement of the bank guarantee furnished by them. towards the adjudication levies made in this order against the importer. Further, I vacate the protest made by the importer while paying an amount of Rs. 6,90,18,083/- on 15.09.2011 at the time of investigation of the case. I also order to adjust the amounts of Rs. 2,00,000/- and Rs. 25,00,000/- that were paid vide TR-6 Challan dated 08.10.2012 as duty and interest. respectively in terms of order dated 06.09.2012 of CESTAT, Bangalore towards the above adjudication levies.*

7. Aggrieved by the Order-in-Original No. 04/2012-Commr dated 19.12.2012 passed by the Commissioner of Customs, Mangalore, the Appellants filed these 4(four) Appeal before the Tribunal.

8. The learned counsel for the appellant during the hearing reiterated the submissions and grounds of appeal in the appeal memorandum and further submitted that the impugned vessel is rightly classified under Customs Tariff Heading 8901 which reads as under;

| Tariff Item<br>(1) |  | Description<br>(2)                                                                                                        |
|--------------------|--|---------------------------------------------------------------------------------------------------------------------------|
| 8901               |  | Cruise Ships, Excursion Boats, Ferry-Boats, Cargo Ships, Barges and similar vessels for the transport of Persons or goods |

|          |     |                                                                                                                                |
|----------|-----|--------------------------------------------------------------------------------------------------------------------------------|
| 890110   |     | Cruise ships, excursion boats and similar vessels principally designed for the transport of persons; ferry boats of all kinds: |
| 89011010 | --- | Ships                                                                                                                          |
| 89011020 | --- | Launches                                                                                                                       |
| 89011030 | --- | Boats                                                                                                                          |
| 89011040 | --- | Barges                                                                                                                         |
| 89011090 | --- | Other                                                                                                                          |

8.1 Relevant portion of Harmonized Systems Nomenclature ("HSN") for Customs Tariff Heading (CTH) 8901 reads as under:

**"89.01- Cruise ships, excursion boats, ferry boats, barges and similar Vessels for transport of persons or goods;**

|         |                                                                                                                           |
|---------|---------------------------------------------------------------------------------------------------------------------------|
| 8901.10 | Cruise ships, excursion boats and similar Vessels principally designed for transport of persons; ferry boats of all kinds |
| 8901.20 | Tanker                                                                                                                    |
| 8901.30 | Refrigerated Vessels, other than those of sub-heading 8901.20                                                             |
| 8901.90 | Other Vessels for the transport of goods and other Vessels for the transport of both persons and goods                    |

*This heading covers all Vessels for the transport of persons or goods, other than vessels of heading 89.03 and lifeboats ( other rowing boats), troop ships and hospital ships (heading 89.06), they may be for sea navigation or inland navigation (e.g. on lakes, canals, rivers, estuaries)*

*The heading includes:*

- (1) Cruise ships and excursion boats;*
- (2) Ferry boats of all kinds, including train ferries, car ferries and small river ferries;*
- (3) .....*
- .....*

8.2 However, the Department has erroneously classified the impugned vessel under Customs Tariff Heading (CTH) 8903 which reads as under:

|          |    |                                                                                  |
|----------|----|----------------------------------------------------------------------------------|
| 8903     |    | Yachts and <b>other vessels for pleasure or sports</b> ; rowing boats And canoes |
| 89031000 | -- | Inflatable                                                                       |
|          | -  | Others                                                                           |
| 89039100 | -- | Sailboats, with or without auxiliary motor                                       |
| 89039200 | -- | Motorboats, other than outboard motorboats                                       |
| 890399   | -- | Other                                                                            |

|          |     |        |
|----------|-----|--------|
| 89039910 | --- | Canoes |
| 89039990 | --- | other  |

Relevant portion of HSN for CTH 8903 reads as under:

**" 89.03-Yachts and other Vessels for pleasure of sports;  
rowing boats and canoes":**

|         |    |                                               |
|---------|----|-----------------------------------------------|
| 8903.10 | -  | Inflatable                                    |
|         | -  | Other:                                        |
| 8903.91 | -- | Sailboats, with or without auxiliary motor    |
| 8903 92 | -- | Motorboats, other than outboard<br>motorboats |
| 8903.99 | -- | Other                                         |

*This heading covers all vessels for pleasure or sports and all rowing boats and canoes.*

*This heading includes yachts, marine jets and other sailboats and motorboats, dinghies, kayaks, sculls, skiffs, pedalos (a type of pedal operated float), sports fishing Vessels, inflatable craft and boats which can be folded or disassembled.*

*This heading also covers lifeboats propelled by oars (other lifeboats fall in heading 89.06)*

*Sailboats are however, excluded (heading 95.06)"*

9. The learned counsel submits that the Impugned Order while erroneously classifying the impugned vessel under Customs Tariff Heading (CTH) 8903 and alleging undervaluation of the impugned vessel held as under:

*"10. Now, it has to be analyzed as to what is the principal function /purpose /use for which the vessel was built. From the records of the case such as (1) Certificate of inspection dated 24-04-2008 issued by the US Coast Guard, Department of Homeland Security USA (SL No.6-Annexure R to SCN) (ii) Survey report dated 26-08-2010 of M/s Ovid London (SL No. 7-Annexure R to SCN)-(iii) Pre-purchase survey report dated 05 09-2010 of Captain Kelly Pulsifer & Associates, INC, it is clear that the impugned vessel M. V. Horseshoe Casino was a Casino boat intended for gaming operations and not for carriage of passengers. The importer is not disputing the fact that the vessel was engaged in casino activities prior to the purchase. Even the future use is meant for casino activities only. Therefore, going by the use and function of the vessel I come to the conclusion that the vessel cannot be classified under CTH 8901 but is correctly classifiable under CTH 8903 as a vessel for pleasure.....*

*.....*

*12. Though the above agencies have specified the vessel as a passenger vessel, the importer has not furnished any evidence to suggest that the vessel was actually used as a passenger vessel anytime prior to the purchase of the vessel.*

*13. With regard to the above classification /description/ certificate mentioning the impugned vessel as a passenger vessel, I am of the opinion that it has been made with an intention to distinguish the vessel from a cargo vessel. So far as certificate issued by the Ministry of Shipping, the vessel has been certified as a passenger vessel because additional class for vessel for pleasure or sports is not available. Since only two major classes are available, the*

*vessel has to be classified either as a cargo vessel or as a passenger vessel. In any case, the above classification effected under various international provisions/ Indian Merchant Shipping Act is not relevant for the purposes of Indian Customs where the law applicable for the classification of import goods is Customs Tariff Act, 1975 and the First Schedule thereto.*

*14. It is pertinent to mention here that report dated 05-09-2010 at (i) above given by Captain Kelly Pulsifier & Associates, Inc though describes the vessel in the first para of the said report as a twin diesel, twin screw, twin rudder welded steel passenger vessel, it hastens to add the purpose of the vessel as purpose designed and built for the casino day trade in Jacksonville, FL. USA. It is therefore clear from this report that the purpose and design of the vessel was to carry out casino day trade and not the transport of passengers.*

.....

.....

*21. Though the importer contends that several vessels have been classified under CTH 8901, they have furnished information in respect of only one such vessel viz M. V. Boa Sarte, which was imported way back in the year 2007. The importer have not furnished any evidence to show that M. V. Boa Sorte is exactly similar to the present impugned vessel M. V. Horseshoe Casino. In the absence of such evidence, the claim to classify both vessels under the same tariff heading is not in order.*

.....

.....

*25. From the above proviso, it is clear that transaction value in the case of imported goods shall include any amount paid or payable for costs and services in addition to the selling price. Moreover, in the present case, sale invoice dated 16-11-2010*

*shows the hailing port as Hammond, USA. But the Bill of lading dated 30-04-2011 shows the port of lading as Quebec, Canada. Since the said invoice is on FOB basis, the costs from Hammond to Quebec City would naturally fall on the seller M/s. Horseshoe Hammond LLC. The expenditure incurred by the buyer, M/s. Victor Hotels & Motels Ltd. from port Hammond to Quebec would Have been payable to the seller under whose control the vessel remained and therefore, I hold that the said expenditure is includible in the transaction value in terms of first proviso to section 14 ibid. The payments in foreign exchange towards various services availed by the importer prior to import amounting to Rs. 5,70,19,040/-(listed at Annexure A. 1 to SCN) were suppressed at the time of filing Bill of Entry. The importer had also incurred an expenditure in Indian Rupees of Rs. 1,11,84,185/- (as listed in Annexure A.2 to SCN) towards travel costs etc., prior to the import of the vessel. Both these expenditures are therefore liable to be included in the transaction value in terms of section 14 of Customs Act, 1962.*

*26. Further, the importer has contested the inclusion of undeclared demurrage charges of Rs 80,84,554/- incurred during the wet tow of the vessel from Hammond port to Quebec, in the assessable value. They rely on the judgment of Hon'ble Supreme Court in the case of Commissioner Vs IOCL-2004 (165) ELT 257 (SC). Here I find at para 21 of judgment that the Hon'ble Supreme Court has not decided the issue on merits but merely said that adjudicating officer wrongly included the demurrage in the assessable value contrary to the direction of the CBEC at a time when the circular had not been withdrawn. As there is no order on merits, the importer is not entitled to take support from this judgment. Therefore, I hold that the said demurrage charges are rightly includible in the assessable value as proposed in the SCN.*

27. *The importer further contended that the SCN erroneously proposes to include in the assessable value an amount of approx. Rs 2.25 crores spent for repairing the damaged pipeline at Quebec due to ingress of water into the engine room and that their insurance claim is yet to be settled. As regards this contention, ongoing through the records, I find that SCN does not propose to include any amount as 'insurance claim'. Instead I notice that in Annexure-1 at Sl. No.38 a huge expenditure amount of Rs 2,21,02,229 towards 'supply of labour and material for the removal of water from the vessel' is mentioned. This amount being the expenditure incurred prior to the import of vessel is rightly includible in the assessable value. It may be seen that the said expenditure is not linked to any insurance claim in the SCN.*

28. *The importer further submits that so far as CVD is concerned they are eligible for exemption under Notification No. 1/2011 CE dated 01-03-2011 under which the concessional rate of duty is 1% ad valorem for the goods falling under CTH 8901. This submission cannot be accepted in view of my finding that the impugned vessel is correctly classifiable under CTH 8903 for which benefit of exemption under notification No. 1/2011 CE dated 01-03-2011 is not available. For the goods under CTH 8903 concessional rate of CVD is higher i.e. @ 10% ad valorem under notification No. 2/2008 CE dated 1-3-2008 in force at the relevant time of importation. This rate of duty has been correctly applied in the SCN i.e. @10% ad valorem while computing CVD. ....*

10. The learned counsel submits that the Respondent failed to appreciate the contentions raised by the Appellant as corroborated by the Chartered Engineer's Certificate as well as various technical literature and erred in holding that the impugned vessel is classifiable under Customs Tariff Heading (CTH) 8903 as against the Customs Tariff Heading (CTH) 8901 as declared by the Appellants and also erred in holding that the Appellant has undervalued the impugned vessel.

11. The learned counsel submits that the issue of classification of the impugned vessel as a 'pleasure vessel' under Customs Tariff Heading (CTH) 8901 is no longer *res integra* and already settled in favour of the Appellant. Reliance in this regard is placed on the decision of the Hon'ble CESTAT, Ahmedabad in **Ashok Khetrapal Vs. Commissioner of Customs, Jamnagar [2014 (304) ELT 408 (Tri.Ahmd.)]** wherein it was held that since a casino vessel imported by the importer is principally designed to carry passengers, the same has been correctly assessed under Customs Tariff Heading (CTH) 8901. Relevant extract is reproduced hereunder:

*"5.5 Above definition of a pleasure vessel gives support to the argument made by the Advocate of the importer that a vessel for pleasure or sport should be meant for personal consumption /use of the person /owner of a vessel. It is evident from the facts on record that the vessel POG imported by the importer is not used for personal use of the owner for pleasure or sport but is used for commercial purposes as a 'Casino vessel'. There is thus force in the argument of the importer that when the appropriate authorities under Section 3(38) of the Merchant Shipping Act, 1958, by issuing required certificates, have opined POG to be a passenger ship or Special Trade Passenger Ship then there is no ground for the adjudicating authority to hold that POG is not a passenger ship designed to carry passengers when no contrary opinion of another competent authority is brought on record saying that POG is a vessel for pleasure or sport.*

*5.6 Temporary use of POG in a stationary position will not change the classification of POG when the same is capable of moving across the seas /oceans but has to be mostly made stationary due to the restrictions imposed by the local laws. It will be a strange situation to classify a vessel under CTH 8901 if used for making trips to open sea, with a night halt arrangement in the sea, but classify the same vessel under CTH 8903 if used in a predominantly stationary position. **In view of the above***

***observations, we are of the opinion that Casino vessel POG imported by the importer is principally designed to carry passengers and has been correctly assessed under CTH 8901."***

(Emphasis supplied)

11.1 In Commissioner of **Central Excise, Goa Vs. Vijai Marine Services [Excise Appeal No: 86759 of 2016]** the vessel therein was identical to the impugned vessel. The Hon'ble CESTAT, Mumbai while classifying the vessel 'MV Royale Floatel' under CTH 8901, which was designed to be used to carry passengers, observed and held as under.

*"3. The adjudicating authority came to the conclusion that, notwithstanding the subsequent 'bare boat charter and ultimate deployment as a floating casino, the evidence on record did not advance the proposal in the notice and that the vessel failed classification, at the time of clearance, as anything other than as conveyance for persons. Relying upon the extensive correspondence with the Commissionerate, the inspection effected by the surveyor M/s. Ericson and Richards (Goa), the photographs made available to the central excise authorities, it was concluded in the impugned order that the changes brought after clearance by respondent herein would have no impact on the classification. Further reliance was placed by the adjudicating authority on the registration of the vessel as 'passenger ship' under the Inland Vessels Act, 1917 and on the certificate issued by the Indian Register of Shipping as that of 'passenger vessel' which, according to the adjudicating authority, precluded description as 'pleasure boat' as held by the Tribunal in Raj Shipping Agency Ltd v. Commissioner of Customs [2015-TIOL1405-CESTAT-MUM). Disinclined to rely upon 'no objection certificate' dated 5th June 2014 issued by the Directorate of Health Services, Goa, indicating it to be a casino vessel, the adjudicating authority has held that the said authority lacked the relevant technical expertise to assist in classification of the impugned goods. Taking note of the*

*independent operations of the holding company and its two subsidiaries, the adjudicating authority did not find that relationship among them sufficed for concluding that the intent was for deployment as other than passenger vessel. Likewise, the budgeting documents of the holding company, as well as the statements of the officials of the holding company, were found to be wanting in the face of other overwhelming evidence. The reliance placed on the decision of the Tribunal in Commissioner of Central Excise, Goa v Waterways Shipyard Pvt Ltd (2013 (297) ELT 77 (Tr.Mumbai))], which was also found to be surprisingly, unseemly, has been discarded on facts in the impugned order.*

.....

*6. The original authority has established that the impugned vessel was, at the time of clearance, not endowed with the wherewithal to operate as a casino. This aspect is also not seriously disputed by Revenue. The original authority has further gone on to identify, supported by appropriate judicial decisions, the group of vessels intended to be classified under heading no. 8903 of the First Schedule to the Central Excise Tariff Act, 1985. Mere moral indignation against this logical finding will not carry weight and it is only logical counters that we are required to look to in resolving this dispute. In our opinion, too, the opulence of the vessel or facilities available on board should not metaphonically capsize the classification on the figurative iceberg of taxation. It is also surprising that the show cause notice has invoked judicial pronouncement to allege flaws in classification when case law as precedent gives support only to findings and cannot be the basis for determining tax liability which should be founded on nothing but deviation from the statute.*

.....

*14. In the light of the decision in re Ashok Khetrapal and the absence of other binding precedent on the classification of 'casino*

*vessels' as 'pleasure boats', we are not required to examine the other submissions based on other decisions. We accordingly find no reason to interfere with the order of the adjudicating authority."*

12. The learned counsel submits that in view of the aforesaid, following the principles of judicial discipline and consistency, the Impugned Order ought to be quashed and set aside and the present appeal ought to be upheld. it is a trite law that where the facts and circumstances are identical, a consistent view ought to be taken by the department. Reliance is placed on the following decisions:

**a. Gammon India Ltd. Vs. Commissioner of Customs, Mumbai [2011 (269) E.L.T. 289 (S.C.)] wherein it was held that a decision of a coordinate bench ought to be followed:**

*"Before parting, we wish to place on record our deep concern on the conduct of the two Benches of the Tribunal deciding appeals in the cases of IVRCL Infrastructures & Projects Ltd. (supra) & Techni Bharathi Ltd. (supra). After noticing the decision of a co-ordinate Bench in the present case, they still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment, thereby creating a judicial uncertainty with regard to the declaration of law involved on an identical issue in respect of the same Exemption Notification. It needs to be emphasised that if a Bench of a Tribunal, in identical fact-situation, is permitted to come to a conclusion directly opposed to the conclusion reached by another Bench of the Tribunal on earlier occasion, that will be destructive of the institutional integrity itself. What is important is the Tribunal as an institution and not the personality of the members constituting it. If a Bench of the Tribunal wishes to take a view different from the one taken by the earlier Bench, the propriety demands that it should place the matter before the President of the Tribunal so that the case is referred to a Larger Bench, for which provision exists in the Act itself."*

**b. Viral Builders v. Union of India [2016 (42) STR 980 (Guj.)..**

*"It is further submitted that the department cannot be allowed to take a contrary stand and with the change of authorities from state to state the law cannot vary. If such a practice by the department is propagated, then such judicial inconsistency will shake public confidence in administration of justice. The same assessee would have to litigate in different jurisdictions for the same issue even when the said issue stands settled in its favour."*

13. The learned counsel submits that in view of the aforesaid legal and factual background, since the facts and allegations of the present case are identical to the facts and allegations in the case of **Vijai Marine (supra)** and **Ashok Khetrapal (supra)**, the impugned order is liable to be set aside on this count itself.

14. The learned counsel submits that; without prejudice to the aforesaid and in any event, a similar vessel viz., 'M.V. Boa Sorte' etc., which ply in Goa, has been classified under Customs Tariff Heading (CTH) 8901 and are chargeable with 'nil' duty; the Appellant was informed by the Commissioner of Customs vide his reply letter dated 07.11.2012 to an RTI, 2005 application made by the Appellant dated 08.10.2012 regarding classification of similar vessel 'M.V. Boa Sorte' that the same is classified under Customs Tariff Heading (CTH) 89011010; the Vessel 'M.V. Boa Sorte' was similar to the impugned vessel in the present case and was equipped with a casino on board; it is settled law that once the Department has accepted classification of a similar vessel under Customs Tariff Heading (CTH) 8901, it should not be proposing a differential classification for similar vessels in other instances and should maintain a uniform approach whilst classifying; the Respondent has failed to consider the aforementioned contention of the Appellants on the mere grounds of failure to produce any evidence to show that the impugned vessel and 'M.V. Boa Sorte' is identical imported by the Appellant when it was always open for the Respondent to verify the fact from the relevant website. In any event, the evidence now produced by the Appellant prove beyond doubt that that vessel MV

Boa Sorte is similar to the said Vessel in dispute; the Respondent also failed to appreciate the fact that such Vessels are used for pleasure and enjoyment are often equipped with facilities like casino, bars, restaurants, discos, etc., and every passenger on board has to pay for the ticket which does not fall under CTH 8901 when similar other vessels have been classified under CTH 8901; reference can be made to the Hon'ble Supreme Court in **Unipatch Rubber Ltd. Vs. Commissioner of Central Excise [2011 (272) E.L.T. 340 (S.C.)]** wherein similar products of two Manufacturers were classified under different chapter headings, where the Tribunal order was set aside and remanded to Commissioner (Appeals) to determine the rightful classification after considering the products of the Assessee vis-a-vis other manufacturers; In a similar case of Damodar J. Malpani . Collector (2002 (146) E.L.T. 483 (S.C.)), the Hon'ble Supreme Court observed that the Tribunal's order discriminated between two like manufacturers and held that the least the Tribunal could have done in the interest of uniformity was to call upon the Revenue Authorities to explain why they were making a distinction between the appellant's product; reliance was placed on the case by the Hon'ble Tribunal in CCE Vs. Narendrakumar & Co. [2008 (232) E.L.T. 866] which emphasized on the question of uniform taxation by maintaining uniformity in classification of the said products especially when Commissionerates all over India have classified the ingredients used in the said product under a specific chapter head; it is now apparent that the Respondent has meted discriminatory classification between identical vessels by classifying the impugned vessel under CTH 8903 when at least one similar vessel namely M.V Boa Sorte plying in Goa was allowed classification under CTH 8901 without demur, making the impugned order discriminatory and contrary to the tenets of settled law.

15. The learned counsel submits that the departmental representative erred in relying upon decision of Mumbai Tribunal in the case of Waterways Shipyard Pvt. Ltd., in as much as the same is not applicable to the facts of the present case unlike in the case of waterway shipyard, in the present case, the applicant has provided ample

evidence to show that the vessel has been registered as Passenger vessel by experts, including Ministry of Shipping; the Show Cause Notice itself records and does not dispute the statement of Mr. Kelly stating that the vessel was earlier used to ferry passengers in the Great lake; it goes on to show that vessel was designed as a passenger vessel and the usage as casino vessel cannot be the reason to change CTH 8901 to CTH 8903; the decision of the Mumbai Tribunal in the case of Waterways Shipyard has classified the vessel under CTH 8903 on the basis of its usage which is contrary to plain and unambiguous language of chapter 8901. Undisputedly chapter 8901 is not a use based chapter. It is also important to note that the Hon'ble Mumbai Tribunal in its subsequent decision Of Commissioner of Central Excise, Goa v. Vijai Marine Services 2019 (12) TMI 634 CESTAT Mumbai and Hon'ble Ahmedabad Tribunal in the case of Ashok Khetrapal Vs. Commissioner of Customs Jamnagar-2014 (304) ELT 408 (Tri.) have distinguished the decision of Waterways Shipyard; the decision of Hon'ble Mumbai Tribunal in Waterways Shipyard is in any event per incuriam as the same is contrary to law settled by the Hon'ble Supreme Court to the effect that classification of a product cannot be determined on its use unless the legislature provides for the same. Reliance in this regard is placed on the decision of the Supreme Court in the case of CCE Delhi V/s. Carrier Aircon Ltd 2006 (7) TMI 8-Supreme Court; therefore the reliance placed by the departmental representative on the decision of Mumbai Tribunal in the case of Waterway Shipyard is completely misplaced and not tenable.

16. The learned counsel submits that on a bare perusal of the provisions of CTH 8901 it is clear that CTH 8901 covers Cruise Ships, excursion boats and similar vessels principally designed for transport of person; Respondent failed to appreciate the relevant portion of HSN for CTH 8901 which includes passenger vessel and the said fact that the impugned vessel has the capability to carry passengers and in fact does carry passengers is undisputed in the SCN or the Impugned Order; It is further submitted that the Respondent erred in not appreciating the fact that there are multiple certificates and reports issued by various

agencies and departments which were relied upon by the Appellant for the purposes of classification of the impugned vessel as a passenger vessel; The Respondent failed to appreciate the following documents which depicted the purpose, classification and capability of the impugned vessel to carry passengers, thereby, proving the premeditated mindset of the Respondent to confirm the demand on the Appellant:

- i) A report by Captain Kelly Pulsifier & Associates, Inc. dated 05.09.2010 described the facilities equipped like passenger spaces that accurately depicts its suitability for the intended purpose.
- ii) The Certificate of Classification issued by the USCG under Section 2.05 of the Code of Federal Regulations (Title 46, Part 2) and Certificate of Classification List D issued by the International Register of Shipping both dated 22.11.2010 which classifies the impugned vessel as a "Passenger Vessel".
- iii) A provisional certificate issued by ST Kitts and Levis, International Ship Registry dated 22.11.2010 have classified the impugned vessel as a Passenger Vessel.
- iv) A letter dated 02.11.2010 issued by the Secretary Maritime permitting transfer to the Indian Registry, also went on to classify the said vessel as a passenger vessel.
- v) A report by Manley Brother LLC dated 25.02.2009 ascertaining the valuation of the said vessel, specifically mentioned the passenger capacity as 2340, which highlights its intended purpose and capability.
- vi) The Chartered Engineer Certificate dated 24.06.2011 on the basis of which duty was paid at the time of import, also described the said vessel as a passenger vessel.

vii) A provisional certificate issued by the Ministry of Shipping, Government of India dated 04.01.2012 under Section 40(1) of the Merchant Shipping Act, 1958 also classified as a passenger vessel.

17. The learned counsel submits that; it is a trite law that an expert opinion must be given credence in determining classification of a product and the same cannot be ignored. Reliance in this regard is placed on the following decisions:

**a. CCE v. BHEL [2018 (10) G.S.T.L. 3 (S.C.)]:**

"6. Insofar as the particular assessment is concerned, from the report of the expert as extracted above, it is clear that the said expert had suggested that the respondent-assessee should be asked to file separate list of the parts which are essential for the boiler and other parts which are used in the boilers but which are not essential parts thereof.

*"7. We do not know as to whether the aforesaid exercise has been carried out by the Revenue in the present assessment year. Be that as it may, in the face of the opinion of the expert and the HSN note, details of which have been extracted above, we are of the view that the Primary Authority as well as the First Appellate Authority was perfectly justified in coming to the conclusion that the components of the boilers cleared as parts but essential to put into operation the boilers, would be classifiable under sub-heading 8402.10 and not as claimed by Revenue under sub-heading 8402.90. We, therefore, do not find any infirmity in the order assailed before us so as to justify taking of a view different from what has been recorded by the First Authority as well as the Appellate Authority."*

**b. Parle Agro (P) Ltd. v. Commr. of Commercial Taxes [2017 (352) E.L.T. 113 (S.C.)]:**

*"60. The above materials which were filed by the appellant before the Clarification Authority were relevant materials for*

*understanding the manufacture process and the nature and contents of ultimate product. The expert authority and its opinion which were relied by the appellant were required to be adverted to both by the Clarification Authority as well as by the High Court and we are of the opinion that expert opinion and materials have been erroneously discarded.*

**c. CCE Vs. Greaves Ltd. (2002 (148) E.L.T. 59 (Tri. maintained by the Hon'ble Supreme Court in (2003 (157) ELT A37 (Supreme Court))].**

d. Herbal Products Vs. Commissioner Of C. Ex., Calicut [2002 (146) E.L.T. 126 (Tri. Bang.) as affirmed by the Hon'ble Supreme Court in Commissioner Vs. Herbal Products [2004 (164) E.L.T. A127 (S.C.)]. 19

**e. Skol Breweries Ltd. Vs. CCE [2017 (7) G.S.T.L. 102 (Tri. Mumbai)]**

**f. Linkwell Telesystem Pvt. Ltd. Vs. CCE & ST [2017 (358) E.L.T. 1172 (Tri. - Hyd.)].**

**g. Panama Chemical Works Vs. UOI [1992 (62) E.L.T. 241 (M.P.)]**

18. The learned counsel submits that; in the present case, since the aforesaid agencies, more particularly the Ministry of Shipping, are well acclaimed and an independent authority, their opinion is very relevant and in view of the judicial precedents above, the expert opinion provided by the aforesaid agencies ought to be relied upon. It is pertinent to note that the Ministry of Shipping which is the sole and Apex Indian Ministry responsible for formulation and administration of the rules, regulations and laws relating to ports, shipping and waterways, has also opined that the impugned vessel is classified as a "Passenger Vessel". Thus, since the experts in the present case have unanimously opined that the impugned vessel is nothing but a "Passenger Vessel", the same ought to be rightly classified under CTH

8901. Moreover, since the Department has not provided any expert opinion of its own, the expert opinion provided by the aforesaid agencies is relevant for determining the classification of the impugned vessel.

19. The learned counsel submits that it is trite law that the class certificates are conclusive to prove classification of the impugned vessel under CTH 8901 of the Tariff Act. Reliance is placed on the judgment of the Hon'ble Tribunal, Mumbai in Raj Shipping Vs. CC [2015 (329) ELT 913 (Tri.-Mumbai)] which was also relied upon in the case of Vijai Marine (supra) wherein it was held as under:

"6.5 The question which arises is that if the vessel is used for carrying persons and cargo as well as for towing operations, what is the primary purpose for which the vessel is designed. Merely having a winch does not lead to conclusion that the vessel is a tug. Supply and passenger ships can also have a winch. To decide the issue at hand, in the absence of any technical document of the design of the vessel, we have to rely on the Certificate of Indian Registry issued under the Merchant Shipping Act, 1958. The description retrieved from the web-site QUASIS by Revenue cannot be preferred over the certificate given by the Registrar of Indian Ships. In any case it describes the vessel as tug /supply ship and not as tug alone. Moreover a disclaimer is claimed by the web-site regarding the information given by it."

19.1 Hence considering the expert opinion, the impugned vessel is rightly classifiable under CTH 8901 as against CTH 8903 as claimed by the Respondent; the Respondent has proceeded with an erroneous assumption that the impugned vessel is not classifiable under CTH 8901 merely because it failed to provide accommodation, when such a requirement is not discernible in neither CTH 8901 nor its explanatory notes, and therefore, is without any basis.

The impugned vessel cannot be classified under CTH 8903 as a pleasure vessel:

19.2 The learned counsel submits that; by no stretch of imagination, the impugned vessel can be classified under CTH 8903 as a 'pleasure vessel' even if assumed that the said vessel is not classifiable under 8901 as alleged by the Department; Upon a bare perusal of CTH 8903 when read with HSN as reproduced, it is observed that the said chapter covers small crafts meant for individual or private use, essentially not for commerce or available to public and to be used for pleasure or sports like "yachts, marine jets and other..." fall under it; the department whilst attempting to classify the impugned vessel under CTH 8903 as a pleasure vessel or a vessel meant for pleasure or sport is not in dispute, but it is its failure to appreciate the true meaning of the term 'Pleasure Vessel' that has to be appraised; 'Pleasure vessel' has not been defined under the Excise Act, Tariff Act, HSN or the Merchant Shipping Act and would require an appraisal and interpretation not too rigid in terms of its commercial or trade understanding or according to its popular meaning or common parlance in its relevant subject matter as held by the Hon'ble Supreme Court in the cases of Commissioner Of Customs & C. Ex., Amritsar Vs. D.L. Steels CCE [2022 (381) E.L.T. 289 (S.C.)] and New Delhi Vs. Connaught Plaza Restaurant (P) Ltd. [2012 (286) ELT 321 SC)]; thus, it is important to understand the meaning of the term "pleasure vessel" and import the meaning for using it in the current context used globally in various statutes and reports as follows:

- i) *In the Market Research Report (2009) issued by the Italian Trade Commission, for the Boating industry in India, pleasure boats have been inter-alia described as boats for personal use, either transport or leisure or boats owned by corporations, used as a communicating vessel for its top executives or for leisure and parties.*

*Source:*<http://italiaindia.com/images/uploads/pdf/boating-intustry-in-india-market-research-2009.pdf>

- ii) *In the U.K. Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, defines it as a vessel used*

*for the time being "for the sport or pleasure of the owner or the immediate family or friends of the owner" when wholly owned by individual(s) and as used "for sport or pleasure and on which the persons on board are employees or officers of the body corporate, or their immediate family or friends" when owned by a body corporate.*

- iii) In Pleasure Craft Regulations & Equipment, UK defines it as "used for the sport or pleasure of the owner (and not for financial gain".*
- iv) In the Western Australian Marine Act, 1982, defines it as a vessel used wholly for the purpose of recreational or sporting activities and not for hire or reward; and any other Vessel declared as pleasure Vessel.*
- v) Differentiation between "Pleasure Vessels" and other Vessels - Transport Canada Bulletin.*
- vi) Border check for pleasure crates in Finland.*
- vii) Merchant Shipping (Pleasure Vessel) Regulations, 2003 published in Yachtsman by Anglo Irish Bank.*
- viii) The Merchant Shipping (Categorization of Registries of Relevant British Possessions) Order 2003. 23*
- ix) Information on the Regulations Applicable to Pleasures Vessels. (the aforesaid have been submitted during hearing as Compilation 2)*

19.3 As is seen from the abovementioned definitions, ships certified by the appropriate authority, as in the current case, as a passenger ship has clearly been excluded from the ambit of 'Pleasure boats'. A combined reading of the abovementioned definitions makes it abundantly clear that the Respondent failed to appreciate the globally understood definition of a 'pleasure vessel' requires it to be either personally owned and or used wholly for the purposes of sole pleasure

of the owner and not for any commercial gain and also disregards marine laws by erroneously distinguishing the term 'Pleasure vessel' or 'Vessel for Pleasure' under the Tariffs Act when both are equated at par in real; the impugned vessel in the instant case was intended to be used as a vessel for commercial gain and not for the personal or sole use of the owner. Therefore, the proposal to classify the impugned vessel under CTH 8903 on the ground that the same is a pleasure vessel is incorrect and bad in law; Reliance is once again placed on the decision of Ashok Khetrapal (supra) wherein the Hon'ble Tribunal has held that a casino Vessel (named as Pride of Goa) is correctly classifiable under Heading 8901. The above judgment also differentiated "Pleasure Vessels" as mentioned under Heading 8903 to be vessels that were meant for the personal use of the owner for pleasure or sports. The said judgment adopted the definition of pleasure vessels as discussed above and inter alia held that: the words 'Passenger', 'Passenger Ship' and 'Pleasure Vessel' have neither been defined under the Customs Tariff Act nor in the HSN explanatory notes. The words 'Passenger' and 'Passenger Ship' 'Special Trade Passenger' and 'Special Trade Passenger Ship' have been defined under Section 3(24) and 3(25, 3(47B) and 3(47C) of the Merchant Shipping Act, 1958; as per the above definitions, it is not necessary, as contended by the Revenue that a passenger has to be carried from one place to another in a ship in order to hold that a vessel is a 'passenger ship'.

20. The learned counsel submits that; without prejudice to the aforesaid, even if it is assumed (without admission) that the vessel has a casino on board, the mere presence of a built-in casino does not change the characteristic of the impugned vessel as a 'passenger vessel'. In any event the casino games, namely games of electronic amusement, slot machines have been permitted in 5-star hotels and off-shore vessels does not change its original character as a 5-star hotel and similarly, a passenger ship having casino facility does not become a casino or a gaming house; the judgment of the Hon'ble Supreme Court in the case of **V.M. Salgaoncar [1998 (99) ELT 3]**, the said vessel is appropriately classifiable under CTH 8901 as the basic characteristics of

the said vessel is ferrying passengers as the same is capable of doing so from one destination to another and for the purpose of classification the genre of the vessel is required to be taken into consideration and not the actual or incidental purposes for which the vessel is actually employed or may be employed from time to time; Reliance is once again placed on the judgement passed in the case of Ashok Khetrapal (supra) wherein it was held that:

*"5.6 Temporary use of POG in a stationary position will not change the classification of POG when the same is capable of moving across the seas/oceans but has to be mostly made stationary due to the restrictions imposed by the local laws. It will be a strange situation to classify a vessel under CTH 8901 is used for making trips to open sea, with a night halt arrangement in the sea, but classify the same vessel under CTH 8903 if used in a predominantly stationary position. In view of the above observations, we are of the opinion that Casino vessel POG imported by the importer is principally designed to carry passengers and has been correctly assessed under CTH 8901."*

21. The learned counsel submits that; in any event the Respondent ought to have appreciated that it is not in dispute that CTH 8903 covers smaller type of Vessels like "yachts, sail boats, motorboats...". It is well settled law that under the principle of "Noscitur a Sociis" or "ejusdem generis" two or more words susceptible of analogous meaning are grouped together and the meaning of the words is judged by the company it keeps and is applicable to the words 'Yachts and other Vessels for pleasure or sports, rowing boats and canoes' appearing in CTH 8903. The Hon'ble Supreme Court in the case of Rohit Pulp & Paper Mills Ltd. v. Collector of Central Excise [1990 (47) ELT 491 (SC)] has held as under:

*"The principle of statutory interpretation by which a generic word receives a limited interpretation by reason of its context is well established. In the context with which we are concerned, we can legitimately draw upon the "noscitur a sociis" principle. This*

*expression simply means that "the meaning of a word is to be judged by the company it keeps." Gajendragadkar, J. explained the scope of the rule in State v. Hospital Mazdoor Sabha (1960-2 S.C.R. 866) in the following words:*

*"This principle has been applied in a number of contexts in judicial decisions where the Court is clear in its mind that the larger meaning of the word in question could not have been intended in the context in which it has been used. The cases are too numerous to need discussion here. It should be sufficient to refer to one of them by way of illustration. In Rainbow Steels Ltd. v. C.S.T. (981-2 S.C.C. 141) this Court had to understand the meaning of the word 'old' in the context of an entry in a taxing tariff which read thus :*

*"Old, discarded, unserviceable or obsolete machinery, stores or vehicles including waste products Though the tariff item started with the use of the wide word 'old', the Court came to the conclusion that "in order to fall within the expression old machinery' occurring in the entry, the machinery must be old machinery in the sense that it has become non-functional or non-usable". In other words, not the mere age of the machinery, which would be relevant in the wider sense, but the condition of the machinery analogous to that indicated by the words following it, was considered relevant for the purposes of the statute."*

22. The learned counsel submits that a similar view has been taken by the Hon'ble Supreme Court in Parle Agro (P) Ltd. Vs. Commr. Of Commercial Taxes, Trivandrum [2017 (352) E.L.T. 113 (S.C.)], Coastal Paper Ltd. Vs. Commissioner of C. Ex., Visakhapatnam [2015 (322) E.L.T. 153 (S.C.)], Pradeep Aggarbatti Vs. State of Punjab [1997 (96) ELT 219 (SC)] and Rainbow Steel Ltd. Vs. CST [1981 SSC (2) 141]; in view of the above-mentioned judgments, it is submitted that the Respondent alleging that CTH 8903 covers all types of vessel and same does not prescribe any parameters towards the size of the vessel is

totally contrary to the principles of Noscitur a Sociis as the word 'all vessels' are to be interpreted in relation to categories of Vessels mentioned under CTH 8903 and the said vessels would have an element of similarity to be classified under the same chapter. If the findings of the Respondent are assumed to be correct then all vessels including cruise ships will be covered under chapter 8903 as even cruise ships are meant for pleasure, which is not the intention of the Legislature; without prejudice to the aforesaid and in any event the Respondent ought to have appreciated the fact that cruise ship making trips round the world or sailing in rivers, canals, estuaries and coastal waters like cruise vessels cruising in the Mississippi River in America or its likes are generally equipped with facilities for pleasure and enjoyment like cabins, pools, bars and even casinos which are often bigger in size than the casino in the said vessel, however these vessels not classified as a pleasure vessel; in view of the aforesaid submissions the impugned vessel being a passenger vessel is correctly classified under CTH 8901 as against CTH 8903 and the impugned order is bad in law and deserves to be set aside.

23. The learned counsel submits that; classification of imported goods needs to be determined in accordance with the form in which they were presented for assessment to the Customs Authority; the Respondent has erroneously sought classification of the subject vessel under CTH 8903 based on a flawed assumption that the imported vessel is intended to be used for the same purpose as it was being used for prior to her import i.e., a casino vessel; even if the case of the Department is to be accepted, it is an undisputed fact that the Department is seeking to classify the vessel under CTH 8903 alleging that the same has a casino on board. It is submitted that the said basis of the Department is incorrect as it is an undisputed fact that when the subject vessel was imported and presented for assessment to the Customs Authority, it was a passenger vessel with no casino on board. Reliance in this regard is placed on the following wherein it has categorically been mentioned that the subject vessel did not have a casino on board:

a. A report by Captain Kelly Pulsifier & Associates, Inc. dated 05.09.2010 "There is no casino (gaming) equipment aboard the vessel".

b. The Chartered Engineer Certificate dated 24.06.2011 "During our survey / Inspection we have verified and certified following equipments accommodations facilities on board "M.V. HORSESHOE CASINO: Hull/ Steel, Main Engines, Propellers, Deck Machinery. Double Drum Winch, Discharge Pumps, Radio and Navigational Equipments, Safety Equipments, Fire Fighting."

c. Statement of Shri Kairoze N. Motishah, Director of M/s. IMS Ship Management (P) Ltd". During the vessel inspection it was noted that there was no gaming equipment on board, only the vessel and its integral operating equipment were the key parts on board. **The gaming equipment was not supposed to be a part of the vessel sale as it was not allowed by the regulations of the State of Indiana USA. The gaming equipment been removed from the vessel prior to putting it up for sale."**

d. Statement of Shri Anil Malani, Director, M/s. Highstreet Cruises-On examination of the vessel they found that the gaming equipment had been removed and what was being offered was a bare shell of the vessel; that no equipment were removed or added on board the vessel; They had not imported any gaming equipment for installation on board the vessel. that however-M/s Victor Hotels did not obtain any EPCG license; that no decision with regard to the, gaming equipment on board the M.V. Horseshoe casino had been taken."

24. The learned counsel submits that; in view of the above submissions, the subject vessel is rightly classified as a 'passenger vessel' under CTH 8901 as it is trite law that classification of imported goods needs to be determined in accordance with the form in which they were presented for assessment to the Customs Authority. Reliance

in this regard is placed on the decision of the Hon'ble Supreme Court in **Commissioner of Customs, New Delhi Vs. Sony India Ltd. [2008 (231) E.L.T. 385 (S.C.)]** wherein the Hon'ble Supreme Court held as under;

*"11. Again the meaning of terms "as presented" in Rule 2(a) would clearly imply that the same refers to presentation of the incomplete or unfinished or unassembled or dis-assembled articles to the customs for assessment and classification purpose. It is also a settled position in law that the goods would have to be assessed in the form in which they are imported and presented to the customs and not on the basis of the finished goods manufactured after subjecting them to some process after the import is made. In the reported decision in Vareli Weaves Pvt. Ltd. v. Union of India [1996 (83) E.L.T. 255 (S.C.)] the question was as to whether the countervailing duty was liable to be left on the imports made by the assessee at a stage they would reach subsequent to their import after undergoing a process. It was contended that such goods could be subjected to duty only in the State in which they were imported. It was held that the countervailing duty must be levied on goods in the State in which they are when they are imported. This was on the basis of Section 3 of the Customs Tariff Act. Though there is no reference to Rule 2(a), in our opinion, the same Rule should apply subject of course to the applicability of the Rule. We have already held that the Rule is not applicable. Similar view was taken in Dunlop India and Madras Rubber Factory Ltd. v. UOI [1983 (13) E.L.T. 1566 (S.C.)."*

25. The learned counsel submits that; reliance in this regard is further placed on the decision of **Urmila & Co. Pvt. Ltd. Vs. Collector of Customs, Bombay [1998 (104) E.L.T. 97 (Tribunal)]** wherein it was held that the items for survey which were not part of the basic design of the vessel could not change the character and classification of the vessel. Relevant extract of the same is reproduced hereunder:

*"We have already referred to above that the vessel in question was designed and registered as a vessel for pleasure. Its fittings, fixtures and equipment indicated that it was usable not for carrying cargoes or passengers for commercial purposes but was for vacation, enjoyment etc. The items for survey which were not part of the basic design of the vessel could not change the character and classification of the vessel."*

26. In view of the aforesaid legal and factual submission, considering the fact that at the time of import, casino was not on board of the subject vessel, the same cannot be classified under CTH 8903, even as per Department's own allegations.

27. The learned counsel submits that; End use of a product cannot be the basis of classification; the Respondent has erroneously sought classification of the impugned vessel under CTH 8903 based on a flawed assumption that the imported vessel is intended to be used for the same purpose as it was being used for prior to her import i.e., a casino vessel, a finding that is contrary to the settled law that end use of a product cannot be the basis of determining classification of a product under a specific chapter heading. Reference can be made to the decision of the Hon'ble Supreme Court in Commissioner Vs. Carrier Aircon Ltd. [2006 (199) E.L.T. 577 (S.C.)] wherein it stipulated the consideration of a number of factors like statutory fiscal entry, basic character, function and use of the goods for determining its classification and not the end use to which it is put to. The relevant extract of the same is reproduced hereunder

*"15. End use to which the product is put to by itself cannot be determinative of the classification of the product. See Indian Aluminium Cables Ltd. v. Union of India and Others, 1985 (3) S.C.C. 284.*

*There are a number of factors which have to be taken into consideration for determining the classification of a product. For the purposes of classification, the relevant factors inter alia are*

*statutory fiscal entry, the basic character, function and use of the goods. When a commodity falls within a tariff entry by virtue of the purpose for which it is put to, the end use to which the product is put to, cannot determine the classification of that product."*

28. Similarly, the Hon'ble Supreme Court in the case of V.M. Salgaoncar (supra) observed that the usage of a commodity could vary based on differences in season, ports and managers and hence must look into the commodity to classify it and not just the test of dominant use. Relevant extract is reproduced hereunder:

*"20. We do not think that, in the present case, the question whether a transshipping Vessel is an ocean-going Vessel, can solely rest on the test of its dominant use to which their owners put them at times. Use may vary from season to season, port to port and also managers to managers. So in this area of understanding use of the article stands down-staged, and the Court must look at to know what actually the commodity is."*

29. The learned counsel submits that in view of the aforesaid judgments, the classification of a vessel is based on its basic characteristics like its capacity to ferry passengers and it is the genre of the vessel which is to be considered and not the actual or incidental purposes for which the vessel is actually employed or may potentially be employed for a period; the impugned vessel was classified as a passenger vessel by several authorities including the Ministry of Shipping and is not disputed. Yet, the Respondent has erroneously proceeded with the assumption that such a passenger vessel could be converted to a pleasure vessel merely because it would also be engaged in conducting casino activities; Chapter 8903 of the Tariff Act does not provide for use based classification, whenever the legislature has intended to classify a product based on its use the same has been mentioned in the heading of that particular chapter; the Adjudicating authority has gone beyond the plain language of Chapter 8903 which does not provide for use-based classification; a car used as restaurant

or kitchen or fruit stall will still be classified as a car; the findings of the Respondent classifying the impugned vessel on the basis of the end use, disregarding the law laid in the aforementioned judgments, deserves to be quashed.

30. The learned counsel submits that; the burden of proving classification is on the Department; it is a settled law that the burden to prove classification is on the Department, the Hon'ble Supreme Court in the case of **P.L. Chemicals Ltd. Vs. CCE, Chandigarh [2006 (197) E.L.T. 324 (S.C.)]** has held as under: -

*"This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub- heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue,"*

31. The learned counsel submits that, similar view has been taken by the Hon'ble Supreme Court in the case of Puma Ayurvedic Herbal Pvt. Ltd. v. CCE, Nagpur (2006 (196) E.L.T. 3(S.C.)) wherein it was held as under:

*"On the other hand, the revenue led no evidence of any sort to rebut the evidence led by the assessee. It is settled law that burden of showing correct classification lies on the revenue. The revenue has done precious little in this case to discharge this burden".*

32. In the present case, the Respondent has failed to produce any evidence that corroborated or supported their proposed classification of the impugned vessel under the category of a 'Pleasure Vessel' and erred in holding that the Appellants failed to prove that the said vessel was classified as a 'passenger vessel'. On the contrary, the Appellants have produced a plethora of evidence in the form statutory documents as mentioned hereinabove and even attempted to define the term pleasure

vessel by placing reliance on various international statutes, etc., to establish its rightful classification as a passenger vessel; the Respondent failed to appreciate that the said vessel was already classified as a passenger vessel prior to import and once it was not in dispute, the Appellants were not bound to show the usage of the same and could not erroneously rely on the usage of the vessel for the purpose of classification; since the Respondent failed to discharge its burden cast upon them to substantiate their proposal to classify the said vessel as a pleasure vessel, such proposal of classification under CTH 8903 deserves to be set aside.

33. The learned counsel submits that; the Respondent has erred in rejecting the submissions of the Appellant in relation to valuation of the vessel and included the costs mentioned in Annexures A-1 and A-2 of the show cause notice (SCN) to the assessable value ("AV") of the said vessel; on a bare perusal of Rule of the Customs Valuation (Determination of value of imported goods) Rules, 2007 ("CVR, 2007"), the condition precedent to include any expenditure to the Assessable Value (AV) of an imported product is that the said expenditure must be incurred as a condition of sale of the said imported product; however, on a bare perusal of the expenses as mentioned at Table YYY, none of the expenses have been incurred by the Appellant as a condition of sale of the impugned vessel and as such cannot form part of the Assessable Value (AV); the Respondent erred in not appreciating the fact that it is trite law that:

a. Charges incurred towards demurrage charges are not includible in the Assessable Value (AV) of the vessel. It was held in the case of Commissioner Vs. Indian Oil Corporation Ltd. (2004 (165) ELT 257 (S.C.)) that-

*"Following the circular issued by the Central Board of Excise and Customs with regard, inter alia to demurrage charges it in no uncertain terms excludes demurrage from the assessable value. In the light of the judicial principles enunciated earlier, it was not open to the appellant to either issue the show cause notice or*

*contend otherwise. The demand based on an assessable value inclusive of demurrage cannot be sustained as long as the circular remained operative and as long as the decisions cited earlier remain good law. Thus demurrage was wrongly included by the adjudicating officer in the assessable value contrary to the directive of the CBEC at a time when the circular had not been withdrawn. A similar view was taken in the case of Coromandel Fertilizers Ltd. [2000 (115) E.L.T 7 (S.C.) and Associated Cement Co. Ltd., (1998 (104) E.L.T. 395 (Tri)).*

b. Charges which are governed by a separate contract and are not a condition for sale of the said vessel, do not form a part of the consideration paid for the said vessel in M/s. Expert Industries Pvt Ltd. Vs. Commissioner of Customs, Bangalore [2010 (261) E.L.T. 607 (Tri. - Bang.)]. it is held that-

*" ..... The said note has been illustrated in para 17 in the decision of the Hon'ble Supreme Court in the case of Tata Iron & Steel Co. Ltd. v. CCE&C, Bhubaneshwar- 2000 (116) E.L.T. 422 (S.C.). As per the said decision and in terms of note to Rule 4, in the instant case, the Project Consultancy charges, which are clearly distinguishable and paid separately, are not includible or cannot be added to the Transaction Value declared by the appellant....*

*...In view of the above circumstances, we are of the view that the Project Consultancy charge, which has nothing to do with the imported goods and is covered by a separate contract, cannot be included in the assessable value even by applying Rule 9(1)(e) of the Valuation Rules. Consequently, we set aside the impugned order and allow the appeal with consequential relief...*

34. The learned counsel submits that; the Respondent erred in including the Insurance amounting to approx. Rs. 2.25 Crores in the Assessable Value (AV) of the impugned vessel; the said amount was incurred by the Appellant for salvaging the impugned vessel after its

purchase and the said amount has nothing to do with the sale of the impugned vessel and as such the same could not have been included in the AV; the Respondent erred in not appreciating the fact that the said amount is pending with the insurance company and once the said amount is reimbursed by the insurance company, the same will amount to the Appellant not having incurred any expenditure to salvage the impugned vessel and therefore, the question of including the same in the AV does not arise at all; The Respondent has further failed to appreciate that the travel costs mentioned in part A, B and C of the Annexure - A 2 of the SCN are not related to the expenses incurred as a condition of sale of the impugned vessel and cannot in any way form part of the transaction value of the impugned vessel.

35. The learned counsel submits that; since the subject vessel is old and used, Chartered Engineer's certificate ought to be followed; it is an undisputed fact that the impugned vessel is an old and used vessel as the same has duly traversed international waters from USA to India and prior to the purchase agreement was used by the seller; thus, once it is not in dispute that the subject vessel is old and used, the same is to be treated as a second-hand vessel as the terms "old and used" and "second hand" are synonyms. Reliance in this regard is placed on the decision of this Hon'ble CESTAT in Cinda Engineering & Constructions Pvt. Ltd. v. C.C., Cochin [2013 (289) E.L.T. 509 (Tri. Bang.)] wherein it has been held that the old and used scaffoldings imported by the appellant are to be considered as "second hand capital goods"; further, it is not in dispute that the Appellant had paid the applicable duties on the CIF value of USD 63,49,869/- as certified by their Chartered Engineers (CE), M/s. Intertek, vide the Chartered Engineers (CE) Certificate dated 24.06.2011; once it is settled that the subject vessel is old and used /second hand vessel, valuation of second hand machinery as certified by a Chartered Engineers (CE) ought to be accepted by the Department; the Central Board of Excise & Customs ("CBEC") vide the following Circulars regarding Valuation of second hand machinery have issued guidelines to state that that Inspection / Appraisement Reports issued by the Chartered Engineers (CE) or their equivalent, based in the

country of sale of the second hand machinery shall be accepted by all Custom Houses:

**a. Circular No. 4/2008-Cus., dated 12-2-2008:**

*"8. Guidelines in respect of some other issues related to valuation of second hand machinery are as follows:*

*For valuation of second hand machinery/capital goods, the assessing officers must insist on importers submitting a certificate issued by an independent Chartered Engineer or any equivalent in the country of supply. The certificate should indicate inter alia:*

*(i)...."*

**b. Circular No. 25/2015-Cus., dated 15.10.2015:**

*"10. For this purpose, the Board has decided that Inspection/Appraisal Reports issued by Chartered Engineers, or their equivalent, based in the country of sale of the second hand machinery shall be accepted by all Custom Houses."*

**c. Circular No. 7/2020-Cus., dated 05.02.2020:**

*"4.8 For this purpose, the Board has decided that Inspection/Appraisal Reports issued by Chartered Engineers, or their equivalent, based in the country of sale of the second hand machinery shall be accepted by all Custom Houses."*

36. It is settled position in law that the Department is bound by the Circulars issued by the CBEC. In other words, for the purpose of maintaining discipline and consistency in the department and the CBEC being the highest statutory authority in the department, any circular issued by the CBEC has to be followed by the officers until and unless it is shown that the Circular is contrary to any law laid down by the Supreme Court or any judgment of the High Court with regard to the issue covered by the Circular. In support of the said proposition reliance is placed on the following decisions:

**a. CCE Vadodara Vs. Dhiren Chemicals Industries [2002 (139) ELT 3 (SC):**

*"9. We need to made it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue."*

**b. CCE, Bolpur Vs. Ratan Melting and Wire Industries [2008 (231) ELT 22 (SC):**

*"6. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."*

**c. Paper Products Ltd. Vs. CCE-1999 (112) ELT 765 (SC):**

*"5. It is clear from the above said pronouncements of this Court that, apart from the fact that the Circulars issued by the Board are binding on the Department, the Department is precluded from challenging the correctness of the said Circulars even on the ground of the same being inconsistent with the statutory provision. The ratio of the judgment of this Court further precludes the right of the Department to file an appeal against the correctness of the binding nature of the Circulars. Therefore, it is*

*clear that so far as the Department is concerned, whatever action it has to take, the same will have to be consistent with the Circular which is in force at the relevant point of time."*

37. The learned counsel submits that; in the entire show cause notice (SCN) or the Impugned Order, the Respondent /Department has neither disputed the Chartered Engineer (CE) Certificate nor provided any reason as to why the valuation as certified in the CE Certificate ought to be rejected or not relied upon; it is trite law that the Department cannot discard the value of second-hand machinery certified in the foreign supplier's CE certificate produced by the importer when the same was fair and reasonable without any corroborative evidence challenging the genuineness of such certificate. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in Commissioner Vs. Anish Kumar Spinning Mills [2005 (182) E.L.T. A92 (S.C.)] which upheld the decision of the Hon'ble CESTAT, Chennai in Anish Kumar Spinning Mills v. Commissioner [2004 (172) E.L.T. 394] wherein it was held as under:

*"4. In the case of Commissioner of Customs, Chennai v. DTE Exports Private Ltd. (2003 (151) E.L.T. 380) cited by Id. Counsel, this Bench held that the value of second-hand machinery certified in the Chartered Engineer's Certificate produced by the importer was fair and reasonable and hence not liable to be discarded. The department's appeal against this decision was dismissed by the Supreme Court (2003 (158) E.L.T. A75 (S.C.)). The facts of the cited case are similar to those of the instant case and, therefore, the cited case law can be appropriately followed in the instant case.*

*5. In the result, we hold that the declaration, by the appellants, of year of manufacture as well as of the value of the imported second-hand machinery is liable to be accepted for all purposes. The declared value (transaction value) is liable to be accepted in terms of Section 14 of the Customs Act for assessment of the goods for duty of Customs. There being no misdeclaration on the part of the appellants, the order of confiscation and penalty*

*cannot be sustained. Accordingly, the order of the Commissioner is set aside and this appeal is allowed."*

38. The learned counsel places reliance in this regard on the following decisions:

- a. Commissioner of Customs, Chennai Vs. DTE Exports Private Ltd. (2003 (151) E.L.T. 380) as maintained by the Hon'ble Supreme Court in Commissioner Vs. DTE Exports Pvt. Ltd. [2003 (158) E.L.T. A75 (S.C.)].**
- b. Jindal Poly Films Ltd. Commissioner of Customs (Import), Mumbai (2012 (286) E.L.T. 423 (Tri. Mumbai))**
- c. Rakesh Process & Print v. CC [2018 (360) ELT 174 (Tri-Chennai)]**
- d. Commr. Of Cus. (Preventive), Amritsar v. Bhawana Spinning Mills [2013 (289) E.L.T. 504 (Tri. Del.)].**
- e. South India Traders v. Commissioner of Customs, Tuticorin [2010 (261) E.L.T. 891 (Tri. Chennai)].**
- f. PSM Spinning Mills v. Commissioner of Customs, Mumbai [2002 (146) E.L.T. 559 (Tri. Chennai)].**
- g. Rugmini Ram Raghav Spinners Pvt. Ltd. v. Commr. Of Cus., Chennai [1998 (103) E.L.T. 366 (Tribunal)].**

39. The learned counsel submits that, in view of the aforesaid, the transaction value as arrived at and declared in the Chartered Engineer's Certificate ought to be accepted as the correct valuation and the Impugned Order confirming the demand on the Appellant for undervaluation ought to be set aside on this count itself.

40. The learned counsel submits that Goods not liable for confiscation, penalty and redemption fine was erroneously imposed; the Respondent erred in holding that the impugned vessel is liable for confiscation under Section 111 (m) of the Act and further erred in imposing redemption

fine of Rs. 3,60,00,000/- under Section 125 of the Act; the Appellants had aptly described the vessel in the Bill of Entry in accordance with the import documents and bonafide believed in its classification as a 'passenger vessel' under CTH 8901 as per which the values were declared well in accordance with the provisions of the Act. Hence, there has been no violation of Section 111(m) as there was no difference in describing the goods to corresponding value or particulars in the entry, which is necessary for the confiscation. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court Northern Plastic Ltd. Vs. Commissioner of Customs and Central Excise [1998 (101) E.L.T. 549 (S.C.)] and this Hon'ble CESTAT in Petroplus International marketing FZCO Vs. Commissioner [2006 (205) E.L.T. 1041 (Tribunal)] as approved by the Hon'ble Karnataka High Court in Commissioner Vs. Petroplus International Marketing FZCO (2012 (275) E.L.T. A18 (Kar.)).

41. The learned counsel submits that in the present case, no expert opinion was obtained by the Respondent to ascertain the correctness of the declaration by the Appellant. Moreover, the expert opinions, predominately the one given by the Ministry of Shipping, has accepted the classification of the impugned vessel as done by the Appellant viz., CTH 8901. In view of the same, it is submitted that the goods are not liable to be confiscated as held in by the Hon'ble Tribunal, Chandigarh in Satya Industries Vs. Commissioner [2016 (344) E.L.T. 639 (Tribunal)]; it is trite law that if the misdeclaration of imported goods are not properly established or the undervaluation is not substantiated with evidence, confiscation under Section 111(m) is unjustified. Reliance in this regard is placed on the following decisions:

- a. Commissioner of Customs (Port), Kolkata v. Bhawani Enterprises [2017 (353) ELT 234 (Tri - Kolkata)].**
- b. Lupin India v. Commissioner of Central Excise, Mumbai-III [2017 (348) ELT 686 (Tri - Mumbai)].**
- c. Lietronics Vijay India Pvt. Ltd. Vs. Commissioner of Customs, Chennai (2009) 234 E.L.T. 535 (Tri-Chennai)]. 46**

42. The learned counsel submits that for the reasons given in their submissions, the demand proposed in the impugned SCN is not sustainable in law and hence the question of levy of penalty does not arise as in the case of **CCE Vs. H.M.M. Limited (1995 (76) ELT 497 (SC))** wherein the Hon'ble Supreme Court held that the question of penalty would arise only if the Department is able to sustain the demand. Similarly, in the case of **CCE, Aurangabad Vs. Balakrishna Industries [2006 (201) ELT 325 (SC)]**, the Hon'ble Supreme Court has held that penalty is not imposable when differential duty is not payable. Therefore, the proposal for imposition of penalty and redemption fine upon the Appellant is not sustainable in law.

43. The learned counsel submits that; it is not in dispute that in the present case, it was only after the first check examination, the impugned vessel was finally assessed and duty was paid as per value determined by an Independent Chartered Engineer's (CE) Certificate and hence, the Appellant is not liable to be imposed with redemption fine and penalty under the present circumstances; the Respondent erred in not appreciating the fact that for attracting penalty under Section 114A of the Act, *mens rea* is an essential requirement as has been held in the case of Commissioner of Central Excise, Raigad Vs, Indo Dacin Leather 2011 (272) E. L.T. 430 (Tri. Mumbai)). Further in the case of H. Kumar Gadecha Vs. Commissioner of Customs, Ahmadabad [2009 (243) E.L.T. 248 (Tri. Ahmd.)], no penalty was imposed in the absence of malafide intention; as stated above Appellant genuinely believed that the expenses mentioned in Annexure A1 and Annexure A2 are not includible in the assessable value (AV) of the impugned vessel and the impugned vessel is appropriately classifiable under Customs Tariff Heading 8901.

44. The learned counsel submits that at the outset, the demand confirmed vide the Impugned Order has no basis in law and deserves to be set aside. Further, in view of the aforesaid legal and factual submission the Appellant is not liable to pay the differential customs duty on the alleged undervaluation and misclassification of the

impugned vessel as imported by the Appellant; it is trite law that when the demand itself is not sustainable, there is no question of levy of interest. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court of India in the case of **Pratibha Processors Vs. Union of India (1996 (88) ELT 12 (SC)]** wherein it was held that:

*"The "interest" payable under Section 61(1)(2) of the Act is a mere "accessory" of the principal and if the principal is not recoverable payable, so is the interest on it. This is a basic principle based on common sense and also flowing from the language of Section 61(1)(2) of the Act. Payment of interest under Section 61(2) is solely dependent upon the exigibility or factual liability to pay the principal amount, that is, the duty on the warehoused goods at the time of delivery. At that time, the principal amount (duty) is not payable due to exemption. So, there is no occasion or basis to levy any interest, either."*

45. The learned counsel submits that this position has also been upheld subsequently in the decision of the Hon'ble Supreme Court in the case of **Commissioner of Customs, Chennai Vs. Jayathi Krishna & Co. [2000 (119) E.L.T. 4 (S.C.)]**. In view of the aforesaid legal and factual submission, since the demand itself is unsustainable, there is no question of imposition of interest in the present case.

46. The learned counsel as regards liability of the impugned vessel for confiscation and imposition of redemption fine of Rs 3,60,00,000/- under Section 125 of Customs Act, 1962 in lieu of confiscation of the vessel and the imposition of a penalty equal to Rs 6,92,37,774/- plus applicable interest determined and recoverable under Sec 28AA of the Customs Act 1962 on the duty demanded on M/s. Victor Hotels & Motels Ltd., for knowingly mis-declaring the vessel as a passenger vessel under Customs Tariff Heading 89011010 and for knowingly suppressing the value of the costs and services incurred in the import of the vessel with the intention to evade payment of Customs duty applicable thereto, under section 114A of Customs Act, 1962 and imposition penalty of Rs. 50,00,000/- on Shri. Anil Malani Director of M/s. Victor

Hotels & Motels Ltd., Rs. 50,00,000/-on Shri Ashish Kapadia, Managing Director M/s. Delta Corp Ltd. and Rs.25,00,000/- on M/s. Hassan Hajee & Co. CHA Mangalore under Section 112(a) of the Customs Act, 1962 for aiding and abetting in the act of misdeclaration of the vessel as passenger vessel and suppressing the value of the costs and services incurred in its import and hence rendering the goods liable for confiscation, submits that; the Respondent erred in holding that the impugned vessel is liable for confiscation under Section 111 (m) of the Act and further erred in imposing redemption fine of Rs. 3,60,00,000/- under Section 125 of the Act; the Appellants had aptly described the vessel in the Bill of Entry in accordance with the import documents and bonafide believed in its classification as a 'passenger vessel' under CTH 8901 as per which the values were declared well in accordance with the provisions of the Act. Hence, there has been no violation of Section 111(m) as there was no difference in describing the goods to corresponding value or particulars in the entry, which is necessary for the confiscation. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court Northern Plastic Ltd. Vs. Commissioner of Customs and Central Excise [1998 (101) E.L.T. 549 (S.C.)] and this Hon'ble CESTAT in Petroplus International marketing FZCO Vs. Commissioner [2006 (205) E.L.T. 1041 (Tribunal)] as approved by the Hon'ble Karnataka High Court in Commissioner Vs. Petroplus International Marketing FZCO (2012 (275) E.L.T. A18 (Kar.)); in the present case, no expert opinion was obtained by the Respondent to ascertain the correctness of the declaration by the Appellant. Moreover, the expert opinions, predominately the one given by the Ministry of Shipping, has accepted the classification of the impugned vessel as done by the Appellant under CTH 8901; therefore the goods are not liable to be confiscation as held in by the Hon'ble Tribunal, Chandigarh in Satya Industries VS. Commissioner [2016 (344) E.L.T. 639 (Tribunal)]; it is trite law that if the misdeclaration of imported goods are not properly established or the undervaluation is not substantiated with evidence, confiscation under Section 111(m) is unjustified. Reliance in this regard is placed on the following decisions:

- a. Commissioner of Customs (Port), Kolkata v. Bhawani Enterprises [2017 (353) ELT 234 (Tri - Kolkata)].**
- b. Lupin India v. Commissioner of Central Excise, Mumbai-III [2017 (348) ELT 686 (Tri - Mumbai)].**
- c. Lietronics Vijay India Pvt. Ltd. Vs. Commissioner of Customs, Chennai ((2009) 234 E.L.T. 535 (Tri-Chennai)].**

46.1 The learned counsel further submits that without prejudice to the above, the demand proposed in the Impugned SCN is not sustainable in law and hence the question of levy of penalty does not arise as held in the case of CCE us. H.M.M. Limited (1995 (76) ELT 497 (SC)] wherein the Hon'ble Supreme Court held that the question of penalty would arise only if the Department is able to sustain the demand. Similarly, in the case of CCE, Aurangabad vs. Balakrishna Industries (2006 (201) ELT 325 (SC)], the Hon'ble Supreme Court has held that penalty is not imposable when differential duty is not payable. Therefore, the proposal for imposition of penalty and redemption fine upon the Appellant is not sustainable in law; it is not in dispute that in the present case, it was only after the first check examination, the impugned vessel was finally assessed and duty was paid as per value determined by an independent Chartered Engineer (CE) Certificate and hence, the Appellant is not liable to be imposed with redemption fine and penalty under the present circumstances; the Respondent erred in not appreciating the fact that for attracting penalty under Section 114A of the Act, *mens rea* is an essential requirement as has been held in the case of Commissioner of Central Excise, Raigad Vs, Indo Dacin Leather 2011 (272) E. L.T. 430 (Tri. Mumbai)). Further in the case of H. Kumar Gadecha Vs. Commissioner of Customs, Ahmadabad [2009 (243) E.L.T. 248 (Tri. Ahmd.)], no penalty was imposed in the absence of malafide intention; appellant genuinely believed that the expenses mentioned in Annexure A1 and Annexure A2 are not includible in the Assessable Value (AV) of

the impugned vessel and the impugned vessel is appropriately classifiable under Customs Tariff Heading (CTH) 8901.

47. The learned Authorized Representative (AR) for the Revenue reiterated the findings of the Commissioner in the impugned order and further submitted that; the issues to be decided are:

(i) Whether the imported vessel 'M.V. Horseshoe Casino' is classifiable under Customs Tariff Heading (CTH) 8901 as a 'passenger vessel' or under Customs Tariff Heading (CTH) 8903 as a 'pleasure vessel'.

(ii) Whether remittances made by the appellant towards payment of various services availed prior to import and expenses incurred towards costs prior to purchase of the impugned vessel were suppressed from the knowledge of the department so as to avoid inclusion of the same in the assessable value of the vessel.

48. The learned Authorized Representative (AR) submits that the Classification of vessels has been stipulated based on their specific use / function/ purpose for which they were built. The impugned vessel is a casino boat intended for gaming operations and not for carriage of passengers. It was imported for the sole purpose of operating an offshore casino. Hence, it cannot be classified under CTH 8901 but correctly classifiable under CTH 8903 as a vessel for pleasure.

49. The learned Authorized Representative (AR) placed reliance on the following case laws:

**(a) Commissioner of C.Ex, Goa Vs. Waterways Shipyard Pvt Ltd [2013(297) ELT 77(Tri- Mumbai)]**

**(b) M/s Advani Pleasure Cruise Co. Pvt Ltd Vs. Commr. Of Customs (I), Nhava Sheva [2019(11) TMI 128-CESTAT Mumbai]**

As per proviso to section 14 of the Customs Act, 1962, transaction value in the case of imported goods shall include any amount paid or payable for costs and services. Hence, remittances made by the

appellant towards payment of various services availed prior to import and expenses incurred towards costs prior to purchase of the impugned vessel are liable to be included in the transaction value in terms of section 14 of the Customs Act. The findings of the Order-in-Original No. 04/2012 dated 19.012.2012 are reiterated, the appeals filed are liable to be rejected.

50. Heard both sides and perused the records. The detailed submissions and the case laws submitted by the learned counsel and the learned Authorised Representative (AR) have been examined.

51. The issues involved in this case are:

- a. whether the imported vessel is classifiable under Customs Tariff Heading (CTH) 8901 or under Customs Tariff Heading (CTH) 8903 without the benefit a Sl. no. 352 of Notification No. 21/2002-Cus dated 01.03.2002 for BCD and Notification No. 1/2011-CE dated 01.03.2011 for CVD;
- b. whether the value declared by the appellant can be accepted as the assessable value for assessment of the goods to the duties of customs as per section 14 of the Customs Act, 1962.
- c. whether remittances made by the appellant towards payment for various services availed prior to import and expenses incurred towards costs prior to purchase of the impugned vessel were suppressed from the knowledge of the department so as to avoid inclusion of the same in the assessable value of the vessel.
- d. whether the vessel M.V. Horseshoe Casino valued at Rs. 35,80,74,724/- (Rupees thirty five crores eighty lakhs seventy four thousand seven hundred and twenty four only) CIF is liable for confiscation under Section 111(m) of the Customs Act, 1962.
- e. whether penalty is imposable under section 114A of the Customs Act, 1962 on M/s. Victor Hotels & Motels Ltd., for knowingly mis-declaring the vessel as a passenger vessel under Customs Tariff Heading (CTH) 89011010 and for knowingly suppressing the

value of the costs and services incurred in the import of the vessel with the intention to evade payment of Customs duty applicable thereto.

- f. whether, penalty is imposable on; Shri Anil Malani, Director of M/s. Victor Hotels & Motels Ltd., Shri Ashish Kapadia, Managing Director, M/s. Delta Corp. Ltd., M/s. Hassan Hajee & Co. CHA, Mangalore under section 112(a) of the Customs Act, 1962 for aiding and abetting in the act of misdeclaration of the vessel as passenger vessel and suppressing the value of the costs and services incurred in its import.

52. In this regard it is pertinent to analyse the purpose, usage, meaning of the different terms used with regard to the description of the goods in the contending Customs Tariff Headings (CTH) 8901 as declared by the appellant and Customs Tariff Headings (CTH) 8903 as determined by the Revenue.

51.1 Customs Tariff Heading (CTH) 8901 reads as under;

| Tariff Item<br>(1) |     | Description<br>(2)                                                                                                                     |
|--------------------|-----|----------------------------------------------------------------------------------------------------------------------------------------|
| 8901               |     | Cruise Ships, Excursion Boats, Ferry-Boats, Cargo Ships, Barges and similar vessels for the <b>transport of persons or oods</b>        |
| 890110             | -   | Cruise ships, excursion boats and similar vessels <b>principally designed for the transport of persons</b> ; ferry boats of all kinds: |
| 89011010           | --- | Ships                                                                                                                                  |
| 89011020           | --- | Launches                                                                                                                               |
| 89011030           | --- | Boats                                                                                                                                  |

|          |     |        |
|----------|-----|--------|
| 89011040 | --- | Barges |
| 89011090 | --- | Other  |

52.2 The Relevant portion of Harmonized Systems Nomenclature ("HSN") for Chapter Heading 8901 reads as under:

**"89.01- Cruise ships, excursion boats, ferry boats, barges and similar Vessels for transport of persons or goods:**

|         |   |                                                                                                                           |
|---------|---|---------------------------------------------------------------------------------------------------------------------------|
| 8901.10 | - | Cruise ships, excursion boats and similar Vessels principally designed for transport of persons; ferry boats of all kinds |
| 8901.20 | - | Tanker                                                                                                                    |
| 8901.30 | - | Refrigerated Vessels, other than those of sub-heading 8901.20                                                             |
| 8901.90 | - | Other Vessels for the transport of goods and other Vessels for the transport of both persons and goods                    |

This heading covers all Vessels for the transport of persons or goods, other than Vessels of heading 89.03 and lifeboats ( other rowing boats), troop ships and hospital ships (heading 89.06), they may be for sea navigation or inland navigation (e.g. On lakes, canals, rivers, estuaries)

The heading includes:

- (1) Cruise ships and excursion boat;
- (2) Ferry boats of all kinds, including train ferries, car ferries and small river ferries;

(3) .....

53.1 Revenue has classified the impugned vessel under Customs Tariff Heading (CTH) 8903 which reads as under:

|          |     |                                                                                  |
|----------|-----|----------------------------------------------------------------------------------|
| 8903     |     | Yachts and <b>other vessels for pleasure or sports</b> ; rowing boats And canoes |
| 89031000 | --  | Inflatable                                                                       |
|          | -   | Others                                                                           |
| 89039100 | --  | Sailboats, with or without auxiliary motor                                       |
| 89039200 | --  | Motorboats, other than outboard motorboats                                       |
| 890399   | --  | Other                                                                            |
| 89039910 | --- | Canoes                                                                           |
| 89039990 | --- | other                                                                            |

53.2 Relevant portion of HSN for Chapter Heading 8903 reads as under:

" **89.03-Yachts and other Vessels for pleasure of sports; rowing boats and canoes:**

|         |    |                                            |
|---------|----|--------------------------------------------|
| 8903.10 | -  | Inflatable                                 |
|         | -  | Other:                                     |
| 8903.91 | -- | Sailboats, with or without auxiliary motor |
| 8903 92 | -- | Motorboats, other than outboard motorboats |
| 8903.99 | -- | Other                                      |

*This heading covers all vessels for pleasure or sports and all rowing boats and canoes.*

*This heading includes yachts, marine jets and other sailboats and motorboats, dinghies, kayaks, sculls, skiffs, pedalos (a type of pedal operated float), sports fishing Vessels, inflatable craft and boats which can be folded or disassembled.*

54. An analysis of the two contending Customs Tariff Headings (CTH) 8901 and 8903 shows that to be eligible for classification under Customs Tariff Heading (CTH) 8901 it is necessary that the vessel is **'principally designed for transportation of persons or goods'**. We find that the impugned vessel **'old and used M.V. Horseshoe Casino'** has been designed to be used as a 'casino' vessel and not for transportation of persons. Further as per the information on records of the vessel before it was imported into India was operating as a casino vessel and it was used as a casino vessel. Therefore, we find that the vessel is principally not designed for transportation of the persons which is the important criterion for classifying the goods under Customs Tariff Heading (CTH) 8901. The appellant has contended that the vessel imported is capable of going into the sea and therefore it can also carry some passengers and therefore it gets classified under Customs Tariff Heading (CTH) 8901. We find that to be classified under Customs Tariff Heading (CTH) 8901 the vessel needs to be principally designed for the purpose of transportation of the persons, which means that the vessel is equipped with the required features for travel of the passengers from one place to another, however the impugned vessel is designed for casino activities and incidentally could also involve carrying to the sea the persons going on the vessel for the purpose of enjoying the benefits of the casino. Most of the casinos which are in operations world over are stationary near the coast or somewhere closer to the coast and therefore these casinos are mostly stationary, and which may be capable of going to sea as a part of casino entertainment. The capability to go on to the sea does not make such vessels to be a vessel which is principally designed for transportation of the persons. Further, to be classified under Customs Tariff Heading (CTH) 8901 the vessel needs to

be principally designed for transportation of persons /passengers. The impugned casino vessel is not principally designed for transportation of the persons, therefore, to call a casino vessel to be a vessel which is principally designed for transportation of persons would be incorrect. The Customs Tariff Heading (CTH) 8901 also covers cruise ships and similar other vessels which are principally designed for transportation of persons, incidentally such vessels would also have certain entertainment facilities including a casino on board. The contention of the appellant is that since most transport vessels which transport persons also have casinos, therefore the impugned casino vessel is also eligible for classification under the Customs Tariff Heading (CTH) 8901. The impugned vessel is principally designed for the purpose of entertainment associated with a casino operation. The impugned vessel has been registered and was used before it was imported as a casino vessel and therefore the dismantling of the casino equipment or facilities from the vessel would not make it a vessel which is principally designed for transportation of the persons. The main purpose of a casino vessel for which it is built is to provide all the facilities a casino would have however since it is a floating vessel, therefore the added feature of this vessel is that it can also take the persons who have come for the casino entertainment for a ride on the sea and that does not make the vessel a passenger carrying vessel. The reliance placed by the appellant on the decision of the Hon'ble CESTAT, Ahmedabad in **Ashok Khetrapal Vs. Commissioner of Customs, Jamnagar**, (supra) wherein it was held that '*since a casino vessel imported by the importer is principally designed to carry passengers, the same has been correctly assessed under Customs Tariff Heading (CTH)*' would not come to their rescue since the impugned vessel has been imported as a casino has been a casino vessel and the purpose for which it is imported is also for casino gaming /pleasure. The persons visit the casino vessel for gaming and not for transport from one place to another, therefore the principal and dominant use of the vessel is for casino gaming /pleasure and not for transportation of the passengers /persons. The fact that the vessel on import has been registered with Ministry of Shipping, Government of

India dated 04.01.2012 under Section 40(1) of the Merchant Shipping Act, 1958 which provisionally certified the impugned vessel as a passenger vessel because an additional class for vessel for pleasure or sports is not available, since only two major classes are available, the vessel has to be classified either as a cargo vessel or as a passenger vessel, undisputedly the impugned vessel is not a cargo vessel therefore the other category available for registration for the Ministry of Shipping is as a passenger vessel. Customs Tariff Heading (CTH) 8903 covers all vessels irrespective of the size which are meant for pleasure, impugned casino vessel undoubtedly is meant for gaming /pleasure and not for transportation. We find that the appellant has also contended that the classification should be based on the goods as imported and not based on the end use of the goods as per the customs classification system. We find in this case the imported vessel has been principally designed for the purpose of a casino and not for the transportation of the passengers, further the activity of casino comes under the category of gaming /pleasure and therefore the vessel which has been imported which was earlier used prior to the import as a casino is for the purpose of gaming /pleasure and therefore the vessel is a pleasure vessel rightly classifiable under Customs Tariff Heading (CTH) 8903 and therefore the contention of the appellant that end use should not be the criteria for the classification, we find that the vessel has been used as a casino vessel for gaming/pleasure therefore the classification of the goods is not based on the intended purpose but on the basis of the purpose for which the vessel has been designed and built, therefore the contention of the appellant that the classification has no bearing on the end use and therefore it should be classified as a vessel under Customs Tariff Heading (CTH) 8901 is not tenable for the reason that impugned vessel has not been designed for transportation of passengers and it has been designed for the purpose of gaming /pleasure and therefore it is a vessel to be classified under the category of 'pleasure vessel' under Customs Tariff Heading (CTH) 8903. Therefore, the classification of the impugned vessel under Customs Tariff Heading (CTH) 8901 is not proper and it is rightly classifiable under Customs Tariff Heading (CTH)

89039990 and not under Customs Tariff Heading (CTH) 89011010 as declared by the appellant.

55. The other issue involved in this case is with regard to the costs incurred by the appellant before the goods were imported into India and it is alleged that the same were not included in the declared value of the vessel when the bill of entry was filed. The sale invoice dated 16.11.2010 shows the hailing port as Hammond, USA, however the Bill of lading dated 30.04.2011 shows the port of lading as Quebec, Canada. The invoice is on FOB basis, therefore the costs from Hammond USA to Quebec Canada would have to be borne by the seller M/s. Horseshoe Hammond LLC. The expenditure incurred by the buyer, M/s. Victor Hotels & Motels Ltd. from port Hammond USA to Quebec Canada would have been payable to the seller under whose control the vessel remained and therefore, the said expenditure is includible in the transaction value in terms of first proviso to section 14 *ibid*. We find that the inclusion of this amount in the assessable value is tenable.

56. The adjudicating authority has confirmed the inclusion of the payments in foreign exchange towards various services availed by the importer prior to import amounting to Rs. 5,70,19,040/-(listed at Annexure A. 1 to SCN, includes supply of labour and material for the removal from water from the vessel of Rs. 2,21,02,229/-) which were not included at the time of filing Bill of Entry. The importer had also incurred an expenditure Rs. 1,11,84,185/- (as listed in Annexure A.2 to SCN) towards travel costs etc. prior to the import of the vessel. We find that both these expenditures are not liable to be included in the transaction value in terms of section 14 of Customs Act, 1962.

57. The Adjudicating Authority has confirmed the inclusion of undeclared demurrage charges of Rs 80,84,554/- incurred during the wet tow of the vessel from Hammond port USA to Quebec, Canada in the assessable value. We find that the said demurrage charges are not includible in the assessable value.

58. The Adjudicating Authority has confirmed inclusion in the assessable value an amount of approximately, Rs 2.25 crores spent for repairing the damaged pipelines of the vessel at Quebec Canada due to ingress of water into the engine room and that their insurance claim is yet to be settled. As per the records, this amount was not proposed for inclusion as 'insurance claim'. As per Annexure-1 to Show cause notice at Sl. No.38 this amount of Rs 2,21,02,229 was towards 'supply of labour and material for the removal of water from the vessel'. The said expenditure is not linked to any insurance claim in the SCN. We find that this amount being the expenditure incurred for the salvage of the vessel at Quebec port Canada for which an insurance claim is pending and on receipt of the insurance claim this amount would not be an expenditure prior to the import of vessel, hence not includable in the assessable value.

59. The importer further submits that so far as CVD is concerned the exemption under Notification No. 1/2011 CE dated 01.03.2011 under which the concessional rate of duty is 1% ad valorem is for the goods falling under Customs Tariff Heading (CTH) 8901. Since we find that the impugned vessel is correctly classifiable under Customs Tariff Heading (CTH) 8903 for which benefit of exemption under Notification No. 1/2011-CE dated 01.03.2011 is not available and for the goods under Customs Tariff Heading (CTH) 8903 concessional rate of CVD is higher i.e. @ 10% ad valorem under notification No. 2/2008-CE dated 01.03.2008 in force at the relevant time of importation. We find this rate of duty has been correctly applied in the SCN i.e. @10% ad valorem while computing CVD and is sustainable.

60. We also find that the impugned vessel being 'old and used' is required to be assessed by the certified chartered engineer which has been done in this case and the certified chartered engineer has determined the value of the goods at USD\$ 6,349,869 and also the goods have been cleared based on that valuation and thereafter on intelligence the matter was taken up by DRI and the investigation taken up has shown that there is a mis-declaration of classification of

the vessel as under Chapter Heading 8901 as opposed to Chapter Heading 8903 and therefore the benefit of Sl. No. 352 of Notification No. 21/2002-Cus dated 01.03.2002 and Notification No. 1/2011-CE dated 01.03.2011 for CVD is not available to the imported vessel. Further certain costs and services amounts have not been included in the assessable value of the impugned goods and therefore to that extent the demand of duty differential is liable to be paid by the appellant. Further, proceedings were initiated in this case with regard to the confiscation of the vessel in view of the mis-declaration of the classification of the vessel under Chapter Heading 8901 as opposed to Chapter heading 8903 and non-inclusion of the cost and services amounts incurred prior to the import of the impugned vessel. Therefore, it was held liable for confiscation under section 111(m) of the Customs Act, 1962. In this regard we find that the vessel as per the declaration of the goods in the bill of entry they are declared as **'old and used vessel for passenger transport, vessel M.V. Horseshoe Casino'**. Therefore, the fact that the bill of lading and the commercial invoice also show that the impugned goods as **'M.V. Horseshoe Casino'** there is no mis-declaration of the fact that the imported vessel is a casino vessel, however the classification declared under Customs Tariff Heading (CTH) 8901 by the appellant was incorrect and it is for the department while assessing the goods as per the declaration should have taken up the issue with regard to the classification which is primarily the responsibility of the customs department and since they have not contested the classification when the impugned vessel was assessed to duty therefore it cannot be held that the importer has willfully misstated the classification since the classification by the appellant or the importer is based on their understanding of the Customs Tariff Act. 1975. In view of above discussion, we hold that the confiscation of the vessel under section 111(m) of the Customs Act, 1962 is not proper and not tenable.

61. We find that the impugned order has imposed penalty equal to Rs. 6,92,37,774/- plus applicable interest determined and recoverable under Sec 28AA of the Customs Act 1962 on the duty demanded on

M/s. Victor Hotels & Motels Ltd. for knowingly mis-declaring the vessel as a passenger vessel under Customs Tariff Heading 89011010 and for knowingly suppressing the value of the costs and services incurred in the Import of the vessel with the intention to evade payment of Customs duty applicable thereto, under section 114A of Customs Act, 1962. Further, the impugned order has imposed penalty of Rs. 50,00,000/- on Shri. Anil Malani Director of M/s. Victor Hotels & Motels Ltd., Rs. 50,00,000/- on Shri Ashish Kapadia, Managing Director M/s. Delta Corp Ltd., and Rs.25,00,000/- on M/s. Hassan Hajee & Co. CHA Mangalore under Section 112(a) of the Customs Act, 1962 for aiding and abetting in the act of misdeclaration of the vessel as passenger vessel and suppressing the value of the costs and services incurred in its import and hence rendering the goods liable for confiscation. We find the imposition of penalties on the appellant and co-appellants is not tenable for the reason that the goods have not been mis-declared in the bill of entry and the supporting documents also mentioned about it being a 'casino vessel' therefore it is for the department who have examined the impugned vessel in detail to determine where the goods are rightly classifiable under the Customs Tariff and having not done so at the time of assessment of the goods we cannot hold that the persons who were involved in the pre-procurement and procurement of this vessel have abetted in misclassification of the impugned vessel. Further, we find that the inclusion of costs and services amounts incurred prior to the import of the vessel have not been included in the assessable value when the bill of entry was filed. The appellant and the co-appellants have contended that the nature of costs and services for which certain amounts have been incurred are such they were of the bonafide belief that they are not includable in the assessable value of the impugned vessel. The non-inclusion of certain costs and services for which certain amounts have been incurred or not in the nature of regular expenses in such imports and therefore the appellant and the co-appellants have entertained a belief that they are not includable in the assessable value. We have examined the nature of the costs and services incurred

by the appellant prior to the import of the vessel and we find that the belief entertained by the appellant and co-appellants is bona fide. We have held that the impugned goods are not liable for confiscation under section 111(m) of the Customs Act, 1962. In view of the above discussion, we find that the appellant and the co-appellants are not liable for penalty under section 114A and under section 112(a), respectively of the Customs Act, 1962.

62. In view of the above discussion, Appeal No. C/26041/2013 is partially allowed in the above terms. Appeals Nos. C/26042/2013, C/26043/2013 and C/26044/2013 are allowed with consequential relief, if any, as per law. Accordingly, all the 4(four) appeals are disposed.

*(Order pronounced in Open Court on 08.10.2025)*

**(D.M. Misra)**  
**Member (Judicial)**

**(Pullela Nageswara Rao)**  
**Member (Technical)**

Sasi