CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT No. I

Customs Appeal No. 40549 of 2024

(Arising out of Order-in-Original No. 106063/2024 dated 05.04.2024 passed by Commissioner of Customs, Chennai II, No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

M/s. Ocean Sky Impex Pvt. Ltd. **...Appellant**
No. 33/4, North Street, Venkatesh PU,
Ayanavaram,
Chennai – 600 023.

Versus

Commissioner of Customs **...Respondent**
Chennai II Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

With

Customs Appeal No. 40553 of 2024

(Arising out of Order-in-Original No. 106063/2024 dated 05.04.2024 passed by Commissioner of Customs, Chennai II, No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

Mr. V. Karthik **...Appellant**
Managing Director,
M/s. Ocean Sky Impex Pvt. Ltd.,
No. 33/4, North Street, Venkatesh PU,
Ayanavaram,
Chennai – 600 023.

Versus

Commissioner of Customs **...Respondent**
Chennai II Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

And

Customs Appeal No. 40610 of 2024

(Arising out of Order-in-Original No. 106063/2024 dated 05.04.2024 passed by Commissioner of Customs, Chennai II, No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

Mr. Mahabir Prasad Sharma **...Appellant**
S/o. Shri Shiv Kumar Sharma,
R/o Flat No. 57, Bharat Apartment,
Sector-13, Rohini, North West,
Delhi – 110 085.

Versus

Commissioner of Customs **...Respondent**
Chennai II Commissionerate,
No. 60, Custom House,

Rajaji Salai,
Chennai – 600 001.

APPEARANCE:

For the Appellants : Mr. Prem Ranjan Kumar, Advocate
For the Respondent : Mr. Anoop Singh, Authorised Representative
Mr. Sanjay Kakkar, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 41044-41046 / 2025

DATE OF HEARING : 01.04.2025
DATE OF DECISION : 26.09.2025

Per Mr. VASA SESHAGIRI RAO

These Customs Appeal Nos. C/40549, 40553, 40610/2024 have been filed by the importer, M/s. Ocean Sky Impex Private Limited, Chennai (hereinafter called OSIPL for short), and two other co-noticees, Mr. V. Karthik, Managing Director of M/s. OSIPL and one Shri Mahabir Prasad against Order-in-Original No. 106063/2024 dated 05.04.2024 passed by the Commissioner of Customs, Chennai-II.

2. Briefly stated, the facts of the case are that the appellant filed bills of entry Nos. 2214121 dt. 29.08.2022, 2299510 dt. 04.09.2022 & 2299525 dt. 04.09.2025 for clearance of goods declared as "Polyester Coated Fabric (Polymric Compound)". Upon detailed examination of the

consignments by officers of DRI and testing of samples drawn from the consignments, it was found that the imported goods were mis-declared in respect of description and classification. After further investigation, a show cause notice was dated 15.04.2011 was issued to the appellant with the proposals to (i) reject the declared description, classification and assessable value in respect of the above said bills of entry No. 2214121 dt. 29.08.2022, 2299510 dt. 04.09.2022 and 2299525 dt. 04.09.2025 and re-determine the same as proposed in the show cause notice; (ii) demand differential duty of Rs. 90,03,347/- in terms of Section 28(4) of Customs Act, 1962 on the goods imported under bill of entry No. 2214121 dt. 29.08.2022, for which Out of Charge order was already given by the proper officer of Customs; (iii) confiscate the impugned imported goods for contravention of sections 111(l) and 111(m) of Customs Act, 1962; and (iv) impose penalties on the appellant under Section 112, 114A and 114AA *ibid*.

2.1 The description, classification and assessable value proposed in the snow cause notice for the impugned imported goods are as mentioned in the table below: -

BE No. & Date	Proposed Description	Proposed CTH	Proposed Value (Rs.)	Differential Duty in Rs. (including BCD/SWS/ADD/IGST
2299525/ 04.09.2022	Polyester woven fabric laminated with	59032090	8,14,04,704	4,62,56,607

	Polyurethane based material			
2299510/ 04.09.2022	Polyester woven fabric laminated with Polyurethane based material	59032090	4,26,53,792	1,54,26,648
	100% Polyester woven fabric	54076190		1,16,73,504
2214121/ 29.08.2022	100% Polyester woven fabric	54076190	1,30,93,280	90,03,747

2.2 On adjudication, the proposals made in the show cause notice were confirmed. However, the appellant was granted permission to re-export the goods subject to payment of (i) Fine of Rs.1,25,00,000/- imposed under Section 125 of Customs Act, 1962 for redemption of the goods imported under bills of entry No. 2299510 dt. 04.09.2022 & 2299525 dt. 04.09.2025 and Rs. 15,00,000/- imposed under Section 125 ibid for redemption of the goods imported under bill of entry No. 2214121 dt. 29.08.2022; (ii) Penalty of Rs. 70,00,000/- imposed on the appellant under Section 112(a) of the Customs Act, 1962 for rendering the goods imported under bills of entry No. 2299510 dt. 04.09.2022 & 2299525 dt. 04.09.2025 liable for confiscation; (iii) Penalty equal to the differential duty of Rs. 90,03,747/-, along with applicable interest, imposed on the appellant in terms of provisions of Section114A of the Customs Act, 1962 on account of the appellant being liable to pay the said differential duty determined under Sub Section (8) of Section

28 of Customs Act, 1962; and (iv) Penalty of Rs. 10,00,000/- imposed on the appellant under Section 114AA of Customs Act, 1962 for gross mis-declaration and wilful mis-statement of description and quantity in the bills of entry filed by the appellant. Separately, differential duty of Rs. 90,03,347/- was demanded from the appellant in terms of Section 28(4) of Customs Act, 1962 on the goods imported under bill of entry No. 2214121 dt. 29.08.2022, while at the same time it was also held that the said differential duty may not be payable in case the goods were re-exported upon payment of applicable fine and penalties.

3. The appellant has preferred the present appeal assailing the impugned Order-in-Original No. 106063/2024 dated 05.04.2014 passed by the Commissioner of Customs, Custom House, Chennai II in so far as it relates to imposition of fine and penalty on the appellant and making payment of the same by the appellant as a pre-condition for re-export of the impugned imported goods.

4. The Ld. Advocate Shri Prem Ranjan Kumar appeared and argued for the appellant and submitted that the consignments in question were wrongly shipped by the supplier and the Adjudicating Authority has not given any evidence to discard the same and therefore holding that the

appellant has wilfully mis-declared the imported goods and has suppressed the facts is erroneous.

4.1 The Ld. Advocate further submitted that the Adjudicating Authority has accepted the contentions of the appellant that the consignments were sent by mistake from the side of supplier and that they are ready to accept it back and accordingly the cargo can be allowed to be re-exported with applicable fine and penalty and in such case differential duty may not be payable. He submitted that once the Adjudicating Authority accepted the submission of the appellant with regard to wrong shipment by their supplier, there is no question of redemption fine and penalty for permitting re-export.

4.2 It is the Ld. Advocate's contention that the appellant had filed the bills of entry under FIRST CHECK as the appellant was not sure about the correct classification, the exact meterage of the goods and it was incumbent upon the proper officer to check all parameters including classification prior to assessment of the goods in question. Hence there was no question of intention to evade duty.

4.3 The Ld. Advocate averred that the allegation of intended mis-declaration was erroneous as the department themselves was not sure about the exact nature of the goods in question. The goods were sent for testing and only then the correct classification were ascertained which was not possible by a mere visual examination.

4.4 The Ld. Advocate for the appellant relied on the following judgments to submit that in the interest of justice the Appeal be allowed with consequential relief setting aside the impugned order in so far as it imposed redemption fine and penalty while permitting re-export.

i. *Sankar Pandi versus Union of India reported in 2002 (141) ELT 635 (Madras High Court)*
ii. *Selvam Industries Ltd. versus Commissioner of Customs, Tuticorin reported in 2021 (377) ELT 458 (Tri. Chennai) (SMB)*
iii. *Rose Mary International versus Comm. of Customs passed in Customs Appeal No. 41693 of 2019(SMB)*
iv. *Simplex Engineers & Traders versus Commissioner of Customs (Import) passed in Customs Appeal No. 41339 of 2019(SMB)*
v. *OMS Sivajothi Mills versus The Commissioner of Customs passed in Customs Appeal No. 40784 of 2019(SMB)*
vi. *Lalkalam Enterprises versus Comm. of Customs Chennai reported in 2018 (364) ELT 856 (Tri. Chennai) (Divisional Bench)*
vii. *Regal Impex versus Comm. of Customs ICD TKD New Delhi reported in 2016 (332) ELT 835 (Tri. Del) (Divisional Bench)*
viii. *Comm. of Customs Visakhapatnam versus HBL Power Systems Ltd. reported in 2019 (367) ELT 154 (AP High Court)*

ix. *Extreme Electronics Pvt. Ltd. versus Commissioner of Customs, Mundra Final Order No. 12711/2024 dated 14.11.2024*

5. *Per contra*, Shri Sanjay Kakkar, the Learned AR for the Revenue has submitted that the impugned case is one which was booked by DRI, on the basis of specific intelligence that the Appellant was importing fabrics by mis-classifying them with an intent to evade duty, specifically Anti-Dumping Duty. He submitted that the case involves huge mis-declaration on all counts – description, classification as well as quantity, all of which would have not come to notice, but for the specific intelligence and investigation.

5.1 The Ld. AR further submitted that based on the statement of Sh. V. Karthik, Managing Director of the Appellant company, it appears that the entire business was conducted as per the financial control and operational management of Sh. Mahabir Prasad, the co-Noticee. It was submitted that Sh. V. Karthik has clearly and categorically stated in both his voluntary statements under Section 108 of the Customs Act, that at each step of the conduct of business, he was instructed by Sh.Mahabir Prasad to act in a particular manner, that similar mis-declared goods had been imported in numerous past consignments. This fact has also been stated by Sh.V.Parthiban, Director of M/s Sri Sai Exim (Customs Broker) in his voluntary statement under Section 108 of the Customs Act.

5.2 The Ld. AR averred that Sh. Mahabir Prasad has been non-cooperative with the investigation and has avoided all answers. He also appears guilty of making false statements before the investigation officers, where he even denounced sending a mail to DRI on 10.01.2023. He appears to be the mastermind behind the entire plan to defraud revenue.

5.3 The Ld. AR submitted that the Appellants have not contested the nature, quantity, quality, etc. of the imported goods before the Adjudicating Authority. This amounts to acceptance of the contraventions and attempt to smuggle the goods by mis-declaration.

5.4 The Ld. AR argued that from the foregoing, there is no other option but to infer that the plan to clear mis-declared goods was a carefully planned activity and the plea of wrong-shipment appears to be a cooked-up argument, in as much as a first-check assessment also appears to be a part of the plan. He submitted that a first-check assessment is no substitute to a proper declaration, especially in a case where acceptedly similar goods have been mis-declared and imported in scores of earlier shipments. Acceptedly, the smuggling continued for scores of imports and there is no retraction of the statements given by the Noticees. The re-determined classification, quantity and valuation remain uncontested, as these are based on factual determination of testing of goods and detailed examination of the cargo.

5.5 It is the contention of Learned AR that the plea of wrong-shipment does not meet the eye by any stretch of prudent thought, since no foreign supplier who deals in international trade at such a high volume could be unaware of the good dispatched by them, for as long as 4 months. It was further submitted that the plea put forth by the Appellant must appear acceptable to atleast some basic level, it cannot be so weird or bizarre that sounds unacceptable at the face of it and could be dismissed at the threshold. The plea of wrong-shipment is not backed with any documentary evidence.

5.6 It was further submitted by Learned AR that as much as the onus is on the department to prove any charge contained in the Show cause Notice, it is equally applicable that the onus is on the importer-Appellant to provide evidence for the defence they adopt in the proceedings, in the absence of which the preponderance of probabilities ought to weigh against them. This is a case of gross mis-declaration with the intention to defraud revenue by a carefully planned operation. The option to re-export, citing a wrong-shipment is part of this plan as a residuary option to wriggle out of the situation.

5.7 The Ld. AR averred that the uncontested contraventions of Section 46, *viz*. mis-declaration of classification, description and valuation, rendered the goods liable for confiscation under Sections 111(l) and (m) ibid, attracting penal provisions. It was further submitted that once the goods are confiscated, the property vests with Government as per Section 126 of the Customs Act and it is only when an option for redemption is sought by the importer, the provisions of Section 125(1) come into play. However, Section 125(2) of the Customs Act imposes a condition that once the option under Section 125(1) for redemption is availed, the payment of duty and other charges (which indicates and includes interest and penalty) is an inseparable condition. The Adjudicating authority has rightly permitted re-export, as sought by the Appellant, after redemption of the goods, only "consequent" to payment of differential duty.

5.8 The Ld. AR relied on the decision of Larger Bench of this Tribunal in *Hemant Bhai R. Patel Vs Commissioner of Customs [2003 (153) ELT 226 (Tri-LB)]* to submit that the Adjudicating Authority had powers to impose redemption fine and penalty even when re-export was permitted.

5.9 Finally, the Learned AR prayed that the penalties imposed on Sh. V. Karthik, Managing Director of the Appellant company and Sh. Mahavir Prasad, co-noticee, as imposed by the Adjudicating Authority under Section 112(a) and 114A be confirmed for the overt role played by both repeat-offenders in the smuggling by mis-declaration and abetment thereof; and the appeal be dismissed and the Order of Original authority be upheld in the light of his submissions and also considering that the case is clearly writ with element of gross mis-declaration, with a conscious intent to defraud revenue by repeat offenders.

6. Heard both sides and perused the appeal records.

7. The issues for consideration in this appeal are: -

i. Whether redemption fine is imposable on the goods which are permitted to be re-exported.

ii. Whether penalties are imposable for contravening the provisions of the Customs Act, 1962 when goods are permitted to be re-exported.

8. We shall examine each of the issues in the light of the facts and circumstances of the case and the relevant legal provisions and judicial pronouncements. The appellant's argument is that once the Adjudicating Authority accepted the submission of the appellant with regard to wrong shipment by their supplier, there is no question of redemption fine and penalty for permitting re-export. Another contention of the appellant is that there was no question of intention to evade duty as they had filed the bills of entry under FIRST CHECK, whereby it was incumbent upon the proper officer to check all parameters including classification prior to assessment of the goods in question.

9. We find that in paras 77.2, 81 and 83 of the impugned order, the Adjudicating Authority has held as under: -

> *"77.2 From the above it is evident that M/s OSIPL had grossly mis-declared the description of the imported goods to evade payment of Customs duty / Anti Dumping duty as below:*
> *M/s OSIPL had not declared PU Coated Fabric (CTH 59032090) to evade payment of Anti Dumping duty as per the Notification No. 14/2022 dated 20.05.2022*

M/s OSIPL had not declared Polyester Woven Fabric (CTH 54076190) which had a rate of duty @20% per SQM or Rs. 150 per Kg whichever is higher."

"81. I find that the declared description of the above discussed 3 import consingments of fabric of M/s OSIPL do not correspond to the actual description of the import consignments since they are grossly mis-declared in quantity as well as description, as brought out in the paras above. It is also found that the said 3 import consignments were mis-declared to evade specific rate of Customs Duty. Therefore, the said 3 import consignments are liable for confiscation under the provisions of Section 111(l) and Section 111(m) of the Customs Act, 1962."

"83. I further find that bills of entry no. 2299525 & 2299510 both dated 04.09.202 are live consignments which has to be confiscated under the provisions of Section 111(l) and 111(m) of the Customs Act, 1962 for gross mis-declaration in both quantity as well as description. The third bill of entry no. 2214121 dt 29.08.22 for which out of charge was given was also seized and is liable for confiscation under the provisions of Section 111(l) and 111(m) of the Customs Act, 1962 for gross mis-declaration of imported goods in both quantity as well as description. This act of the importer shows mis-declaration and wilful mis-statement that led to the evasion of duty. Therefore, I find that the importer has suppressed the facts and willfully mis-stated the classification to evade applicable Customs Duties and hence, in respect of bill of entry no. 2214121 dt 29.08.2022, I find that it is a fit case for invoking the extended period of limitation of five years, in terms of Section 28(4) of the Customs Act, 1962. Therefore, in respect of bill of entry no. 2214121 dt 29.08.22, the total short levied Customs duty amounting to Rs.90,03,747/- (Rupees Ninety Lakhs Three Thousand

Seven Hundred and Forty Seven Only) demanded under Section 28(4) of the Customs Act, 1962 is liable to be confirmed and recovered under Section 28(8) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. Accordingly, penalty under Section 114A and Section 114AA of the Customs Act, 1962 is rightly invokable. I find that the importer have stated that the consignment was sent by mistake from the side of supplier and they are ready to accept it back and accordingly, they have requested for re-export of the cargo. Accordingly, the cargo can be allowed to re-export with applicable fine and penalties and in such case, differential duty may not be payable."

10. Further, in para 84 of the impugned order, the Adjudicating Authority referred to the letter dated 15.12.2022 of Shri V.Karthik, Managing Director, M/s. Oceam Sky Impex P. Ltd. addressed to the Principal Commissioner of Customs, Chennai and held that the averment made therein that the goods were wrongly supplied by the overseas suppliers is false.

11. Therefore, we find that the appellant's claim that the Adjudicating Authority accepted the submission of the appellant with regard to wrong shipment by their supplier is contrary to the facts obtaining in paras 77.2, 81, 83 and 84 of the impugned order.

12. The appellant's other contention that they have filed bills of entry under FIRST CHECK and therefore, the question of intention to evade duty does not arise is not supported by any legal provision of Customs Act, 1962 or by any documentary evidence produced by the appellant. Further, the findings of the Adjudicating Authority in paras 77.2, 81, 83 and 84 of the impugned order which we had occasion to discuss *supra* and which have not been rebutted by the Appellant lead us to the inevitable conclusion that the appellant intended to evade payment of Customs duty / Anti Dumping duty. While we are on this subject, we deem it appropriate to refer to the recent judgement passed by the Principal Bench of CESTAT in the case of *M/s. Surendra Electricals Vs Commissioner of Customs, (Export), New Delhi [2024 (1) TMI 536 - CESTAT New Delhi]* wherein it is held as follows: -

> *"The defence put forth by the appellant do not inspire any confidence in this regard. It cannot be accepted that the appellants were importing the goods without knowing the true nature of the goods. Appellants submission that they have opted for first check, also cannot be said to be valid defence for the reason that first check is a facility to determine the exact nature of the goods, and not a facility to mis-declare. The invoice of the Chinese Supplier is not having any details to infuse any confidence. Hence in our view the appellant have deliberately misdeclared the goods."*

Similar view has been taken by a Coordinate Bench of CESTAT, Mumbai in the case of *M/s. Swastik Creation and Shri Manish Shah, Proprietor Versus Commissioner of Customs, Air Special Cargo, Mumbai [2022 (11) TMI 1238 - CESTAT Mumbai]* by holding as follows: -

> *"Appellants submission that they have opted for first check, also cannot be said to be valid defence for the reason that first check is a facility to determine the exact nature of the goods, and not a facility to mis-declare."*

13. Further, after carefully considering all the facts of this appeal, it is to be noted that the imported quantity of fabric in metreage terms is more than 2.6 times of the declared quantity in respect of B.E No. 2214121 / 29.08.2022, is almost 3 times of the declared quantity in respect of B.E No. 2299510/04.09.2022 and is almost 1.4 times of the declared quantity in respect of B.E No. 2299510/04.09.2022. This is besides the mis-declaration in respect of description of imported goods. All of this would have gone unnoticed had the shipments not been intercepted by DRI and examined 100%. Citing the judgements in the case of *Eastern Silk Industries Ltd Vs. Commissioner of Customs (Airport/Admn), Kolkata and CC, Kandla Vs Essar Oil Ltd reported in 2004 (172) ELT 433 (SC)*, the Adjudicating Authority has held that: -

"88. From the case of EASTERN SILK INDUS. LTD. Versus COMMR. OF CUS. (AIRPORT/ADMN.), KOLKATA it is held that:-

> *"A Fraud in common parlance means dishonest dealing, deceit or cheating, etc.*
>
> *- It makes no difference whether fraud is committed by outrightly forging of documents or by wilful mis-declaration/misrepresentation - Fraud is fraud and there is no categories in mild frauds and severe frauds in taxation matters. Demand not time barred"*

In the present context, I find that M/s. OSIPL filed bills of entry with wrong description, quantity, value and classification, as ascertained from examination & testing deliberately to evade payment of duty and thus extended period of limitation is rightly invokable in respect of bill of entry no. 2214121 dt 29.08.22 for which Out of Charge was given.

89. I find that the Hon'ble Supreme Court in the case of CC Kandla vs Essar Oil Ltd reported in 2004 (172)E.L.T. 433 (S.C) held that: -

> *"Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to be deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud*

cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi and Ors. (2003 (8) SCC 319)."

90. In the present context, I find that M/s OSIPL filed bills of entry with wrong description, quantity, value and classification, as ascertained from examination & testing deliberately to evade payment of applicable customs duties. From legal precedents cited above, I find that the importers have a significant responsibility for accurate self-assessment, and any attempt to evade payment of duty through misdeclarations or fraudulent means can lead to penalties and demands. In the instant case, I find that they have wilfully mis-stated the classification and description to evade payment of applicable duties and thus penalties as proposed in the SCN are rightly invokable against the Noticees."

14. We find that the importer's attempt to claim innocence on the premise that a first-check assessment was sought does no good to their case as admittedly, they were regular importers of identical goods over the past and so must be well aware of the goods that they were regularly ordering and importing. It appears that almost 50 shipments in about 145 containers had been cleared by the importers, as per their own statement and it defies logic that the importer wouldn't be aware of what fabric they were dealing in – importing as well as selling in the domestic market. A first-check assessment, that too for an item that has been regularly imported, is no substitute for a proper declaration

as mandated under Section 46 of the Customs Act. It cannot be used as a ploy or a tool to wash off personal responsibilities and liabilities in the era of self-assessment and surreptiously fasten the liability of detecting the parameters of a product on the proper officer, for if that be the case, every delinquent importer would seek a first-check and claim innocence of not knowing their own goods, for which they had placed an order with their foreign supplier through a negotiated and/or protracted process as an arms-length transaction. A first-check procedure could definitely be resorted for any import but is justified only in special circumstances that justify the cause, such as where some uncertainty has arisen in understanding the nature of goods imported, which are either a new technological manufacture or something that remained amiss between the foreign supplier and the Indian importer or where the goods are required to be tested.

15. In such cases, the onus to prove that the importer was incapacitated in understanding the nature of the product being imported by them to determine the correct classification or value of the goods imported, that necessitated a first-check assessment would be on the importer. This is besides the cases where the proper officer may still feel a lack of sufficient information or data, beyond

what is provided by the importer, in enabling a proper assessment of the imported goods.

16. In the instant case, admittedly, the importer was a regular importer of the same goods and prudent understanding of the situation would lead only to the conclusion that he was aware of what was being purchased from the foreign suppler as every business transaction of purchase and sale happens only with a determination of the item being dealt with, including the precise technical characteristics thereof; any negotiation of pricing or terms of supply happens only after the transacted goods are clearly identified and defined.

17. In the instant case, the importer has not placed any documentary evidence in the nature of supplier’s test reports to justify the description of goods declared by them. Their claim of wrong shipment also sounds hollow under the circumstances as no supplier of such huge volume of goods would remain silent for as long as 4 months after the date of shipment if it was a case of wrong shipment, for which such suppliers already is expected to possess sufficient internal controls. The claim of a case of wrong shipment is not backed with any documentary evidence and the timing of such a claim makes it a suspect claim, intended only to

restrict the damage caused to their attempt to smuggle goods being curtailed by DRI. In fact, the case is built on a specific intelligence input received by DRI that the importer was evading huge tax liability for mis-declaring the description of goods and hence classification, which had a huge bearing on tax, especially the levy of Anti-Dumping Duty. Confronted with test reports, the importer has also conceded the factual position emanating therefrom. Therefore, we have no hesitation in holding that the first-check argument of the importer is merely a ploy to escape their liability for a proper declaration mandated under Section 46 of the Customs Act.

18. In view of the above, in the light of the fact that this is a case of mis-declaration of description, which has a direct bearing on classification, valuation and assessment of Customs duty, we hold that the importer-appellant's claim that they stand absolved of the offence due to assessment sought under 'first-check' basis lacks merit and hence the goods become liable for confiscation under Sections 111(l) and 111(m) of the Customs Act, as held in the impugned Order. The consequence of any confiscation under Customs Act is that, as per Section 126 of the Customs Act, the property vests in the Central Government and the officer adjudging confiscation shall take and hold possession of the confiscated goods.

19. Further, Section 125 of the Customs Act provides an option to pay fine, commonly called redemption fine, in lieu of confiscation. Section 125 is extracted below and reads as: -

> *"125. Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :*
>
> *xxxx xxxx xxxx*
>
> *Provided further that], without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*
>
> *(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]*
>
> *xxxx xxxx xxxx"*

20. The question raised by the appellant that when the goods have been re-exported, the question of confiscation of goods under Section 111(l) and (m) of the Customs Act 1962 does not arise and that no redemption fine could be imposed for goods re-exported is like putting the cart before the horse. Confiscation of offending goods under Sections 111(l) and (m) is an action precedent to allowing the same to be redeemed under Section 125 of the Customs Act 1962. The permission for re-export of goods that have been confiscated and sought to be redeemed, is an administrative order emanating from the importer's request for re-export of the goods and is not flowing from Section 125 of the Customs Act 1962. After confiscation, once the title of the property vests with Central Government as under Section 126, the re-export wouldn't be possible till the same are redeemed, of course on payment of fine imposed under Section 125. Redemption and re-export come into operation only after the importer gets back title to the confiscated goods on paying the redemption fine. That the permission for re-export has been bundled and passed in a quasi-judicial order pertaining to the confiscation and redemption of goods is only for administrative convenience.

21. Thus, an order permitting re-export of goods is sequentially a separate process which would come into play

only after the importer redeems the confiscated goods. Simply because the decision is bundled along with a quasi-judicial order will not change the sequence of events. This being so confiscation of goods under Section 111(l) and (m) of the Customs Act, 1962 is a must before the permission for the export of the said goods is given at the discretion of the Adjudicating Authority. Further, such a permission gives a certainty to the action the importer is permitted to take post redemption of the goods. It also makes it easier for the importer, who does not have to file a fresh application for export post redemption of the goods and await an uncertain outcome. The Appellants averment in this regard is hence rejected.

22. Having considered and given our findings on the submissions of the Appellant, we now turn our attention to the two issues which are before us, viz. whether redemption fine and penalties are imposable on the goods which are permitted to be re-exported.

23. We find that identical issues came up for consideration before the Larger Bench of this Tribunal in *Hemant Bhai R. Patel Vs Commissioner of Customs [2003 (153) ELT 226 (Tri-LB)]* and the Larger Bench held that it is open to the adjudicating authority to impose redemption fine

as well as penalty even when permission is granted for re-exporting the goods. Relevant portions of the decision of the Larger Bench read as follows: -

"The West Regional Bench at Bombay before whom the above appeals by importers came up for hearing sought to refer two issues for decision of the Larger Bench. The issues are as follows:-

(1) Whether in terms of Section 125 of the Customs Act, the power vests in the adjudicating authority to prescribe any fine for re-export when liability to confiscation under Section 111 is established?

(2) Whether in the circumstances where the misdeclaration, etc., is established leading to the orders of the confiscation of the goods, penalty is not leviable when the goods are sought to be re-exported?

On going through the detailed referal order we understand the issue No. (1) to mean whether in terms of Section 125 of the Customs Act power is vested with the adjudicating authority to impose redemption fine when liability to confiscation under Section 111 is established even when permission for re-export is granted. Both sides appearing before us also agree that scope of issue No.(1) is as above.

***2**.The reference was occasioned in view of the difference of opinion between Benches regarding the power of the adjudicating authority to impose redemption fine and penalty when re-export is permitted. The Bench before which the matter came up for hearing was not inclined to agree with view that when re-export is permitted no redemption fine and penalty can be imposed by the adjudicating authority. We make it clear that we are considering a situation where the goods imported are liable to be confiscated under Section 111 of the Customs Act and where the adjudicating authority is empowered to pass an order under Section 125 of the*

Customs Act to impose payment of a fine in lieu of confiscation and also penalty. ***It is relevant to note that the contention raised by the appellant that when re-export is permitted no redemption fine can be imposed is not based on the interpretation of any provision of statutory law or any specific legal principle. The source of the argument is from the view taken in certain decided cases.***

..

..

6*.The learned DR would on the other hand submit that a permission granted for re-export is irrelevant for exercise of the power to impose redemption fine when goods are confiscated. Once the goods are confiscated unless the importer redeems the goods by paying redemption fine he is not reacquiring the ownership of the goods which would entitle him either to clear for domestic consumption or for re-export. The decisions relied on by learned DR-*

(1) K & K Gems v. CC, Mumbai-I, 1998 (100) E.L.T. 70 (T) = 1998 (25) RLT 440

(2) Escorts Herion Ltd. v. CC, Mumbai, 1999 (107) E.L.T. 599 (T)

(3) Smt. Kusumbhai Dahyabhai Patel v. CC (P), Ahmedabad, 1995 (79) E.L.T. 292 (T) = 1995 (10) RLT 167.

(4) Kothari Filaments v. CC (Port) Calcutta, 2002 (144) E.L.T. 80 (Tri.-Kolkata)

The correct legal position has been explained in Paragraph 8 of the decision in K & K Gems v. CC in the following manner:-

"The main contention is that redemption levied for re-export in this case is without jurisdiction as Section 125 of Customs Act, 1962 does not empower such a levy. The relevant portion of Section 125 reads:-

> *'Whenever confiscation of any goods is authorised by this Act, the officer adjudicating it may, in the case of any goods the importation or exportation whereof, is prohibited under this Act and shall, in the case of*

> *any other goods give the owner of the goods, or where such owner is not known the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit.'*
>
> *It is also laid down in Section 125 that the fine shall not exceed market price of the goods less duty chargeable in respect of such goods. The fine is to be paid apart from the duty and charges payable on such goods. Section 126 of the Customs, 1962 lays down that when any goods are confiscated under the Customs Act, 1962 such goods shall thereupon vest in Central Government. Thus when goods are found to be offending goods and an order of confiscation is passed, then the goods shall vest in Central Government. If they are to be restored to the owner, the adjudicating authority can do so only under provisions of Section 125 which prescribes the option of a fine in lieu of confiscation. Thus Section 125 does not have a nexus with how the goods are dealt with after payment of fine in lieu of confiscation. The find envisaged thereunder is only to get over the order of confiscation irrespective of whether the goods are cleared for home consumption for re-export. When the importer makes a request for re-export it has been a general practice in Custom Houses to consider such a request having regard to the bona fides of such request. By re-exporting the goods the importer can avoid the payment of duty but not the fine in lieu of confiscation."*

In Escorts Herion Ltd., a similar view was taken after distinguishing Padia Sales Corporation. In Smt. Kusumbhai Dhyabhai Patel also Padia Sales Corporation was not followed. It was held that when goods are ordered to be confiscated they became the property of the Government and it can be cleared for home consumption or re-exported only after redeeming it after paying redemption fine. In Kothari Filaments the majority took the view that when redemption fine is paid and goods are redeemed the importer becomes *the full owner of the goods and it is open to him either to use it in domestic consumption or to re-export the same after complying with the relevant rules.*

...

...

***8**. In the light of the above discussion we have no hesitation to agree with the view expressed in the K & K Gems, Escorts Herion Ltd., Smt. Kusumbhai Dhyabhai Patel and Kothari Filaments. Section 111 of the Customs Act, empowers the Customs authorities to confiscate goods imported if any of the provisions contained under the sub-clauses is satisfied. Section 112 authorizes imposition of penalty. Section 125 contains the provisions enabling the Customs Officer to grant an option to the owner or the person from whose possession the goods have been seized to pay a fine in lieu of confiscation. In an adjudication proceeding as in the present case these are the provisions which would come into play. If the owner gets the goods released after payment of redemption fine, he may either clear it for home consumption or re-export the same subject to the relevant rules. A permission granted for re-export on the basis of a request made by the owner of the goods is outside the purview of the adjudication proceedings, as mentioned above. We, therefore, answer the questions referred in the affirmative and hold that it is open to the adjudicating authority to impose redemption fine as well as penalty even when permission is granted for re-exporting the goods. The reference is answered as above."*

24. Further, we find that identical issues also came up for consideration before this Tribunal in the case of M/s. Scania Commercial Vehicles India Pvt. Ltd. vs Commissioner of Customs, Chennai, which was decided recently in favour of

Revenue in Final Order No. 40621/2024 dated 07.06.2024 by placing reliance on the decision of Larger Bench of this Tribunal in *Hemant Bhai R. Patel Vs Commissioner of Customs [2003 (153) ELT 226 (Tri-LB)].* Relevant portions of the decision in Final Order No. 40621/2024 dated 07.06.2024 read as under:-

> *"6. Heard both sides. The question that needs to be answered is whether;*
>
> *A) when the goods have been re-exported, the question of confiscation of goods under Section 111(d) of the CA 1962 arises.*
>
> *B) no redemption fine is imposable on the goods that are re-exported.*
>
> *C) no penalty under Section 112(a) can be imposed when goods are re-exported."*
>
> *….*
>
> *….*
>
> *13. When goods are imported in breach of statutory provisions, Section 111(d) of the CA 1962 squarely applies as the goods become offending goods liable for confiscation. Confiscation of goods in the situation of a statutory breach by imported 'prohibited goods', is not discretionary. Section 111(d) of the CA 1962 reads as under;*
>
>> *111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation:-*
>>
>> *(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*
>
> *In its judgment in Zunjarrao Bhikaji Nagarkar v. Union of India [1999 (112) E.L.T. 772 (S.C.)], the Hon'ble Supreme Court examined the meaning of the word "liable" in the context of section 11AC of the Central Excise Act, 1944*

("the person who is liable to pay duty as determined under sub-section (2) of section 11A shall also be liable to pay a penalty equal to the duty so determined :") and Rule 173Q of the Central Excise Rules, 1944, ("then, all such goods shall be liable to confiscation and the manufacturer, producer, registered person of a warehouse or a registered dealer, as the case may be, shall be liable to a penalty."), which are similar to the context in this case. The Hon'ble Court held as under;

> *30. . . . What is the significance of the word "liable" used both in Rule 173Q and Section 11AC? Under Rule 173Q apart from confiscation of the goods the person concerned is liable to penalty. Under Section 11AC the word "also" has been used but that does not appear to be quite material in interpreting the word "liable" and if liability to pay penalty has to be fixed by the adjudicating authority. The word "liable" in the Concise Oxford Dictionary means, "legally bound, subject to a tax or penalty, under an obligation". In Black's Law Dictionary (sixth edition), the word "liable' means, "bound or obliged in law or equity; responsible; chargeable; answerable; compellable to make satisfaction, compensation, or restitution.... Obligated; accountable for or chargeable with. Condition of being bound to respond because a wrong has occurred. Condition out of which a legal liability might arise.... Justly or legally responsible or answerable."*
>
> *31. When we examine Rule 173Q it does appear to us that apart from the offending goods which are liable to confiscation the person concerned with that shall be liable to penalty up to the amount specified in the Rule. It is difficult to accept the argument of the appellant that levy of penalty is discretionary. It is only the amount of penalty which is discretionary. Both things are necessary : (1) goods are liable to confiscation and (2)) person concerned is liable to penalty."*
>
> *(emphasis added)*

Hence there is no discretion with the Proper Officer, not to confiscate goods that are found liable to such action as per section 111(d) of the CA 1962. As per the discussion above the Customs Act only provides a distinction between 'prohibited goods' and 'other goods' under Section 125(1) of the CA 1962 for the purpose of allowing redemption of the goods.

14. From the discussions it is clear that an order permitting re-export of goods is sequentially a separate process which would come into play only after the importer redeems the confiscated goods. Simply because the decision is bundled along with a quasi-judicial order will not change the sequence of events. This being so confiscation of goods under Section 111(d) of the CA 1962 is a must before the administrative permission for the export of the said goods is given at the administrative discretion of the Proper officer. Appellants averment in this regard are hence rejected.

No redemption fine is imposable on the goods that are re-exported.

15. The appellant has stated that it is a settled position of law that no redemption fine is imposable on the goods that are re-exported. We find that once goods are imported in contravention of any provisions of the CA 1962 they are liable for confiscation. Any breach of a statutory obligation under the Customs Act is a blameworthy conduct by the assessee. In case the goods involved are 'prohibited goods' it is within the discretion of the Proper Officer to absolutely confiscate the goods or to allow it to be redeemed on payment of a fine. To release prohibited goods without imposing a fine is not a valid option. After the appellant informed the Proper Officer that they were not in a position to fulfill the conditions of EPR 1986, it was incumbent on the Officer to confiscate the prohibited goods imported in violation of the said Rules. ***Once the offending goods are confiscated the title of the goods comes to be held by government and the mechanism for the importer to get back possession of the goods is by paying a redemption fine as decided by the Proper Officer. Hence the goods can only be taken repossession of with title by the importer, if he pays a fine.***

16. The appellant has stated that it is a settled position of law that no redemption fine is imposable on the goods that are to be re-exported. We have earlier seen that for the

Proper Officer to allow the redemption of prohibited goods is part of his discretionary jurisdiction. No court has laid down the law that prohibited goods, imported without authorization, are to be released for re-export without payment of redemption fine. Such a stance would only encourage importers smuggling / making improper import of goods, to take a chance with the law and if caught request for re-export of the offending goods without a fine. It would also be discriminatory that for the same offence the intended nature of clearance of the confiscated goods would determine the imposition of fine i.e. if the offending goods are cleared for home consumption fine is to be imposed and if the importer requests for its export, no fine can be imposed. The position is legally untenable. The offence does not get cured by the intended destination of the goods. Confiscated goods can be redeemed either for home consumption / warehousing or for export only on payment of a fine. I find that the impugned order is legal and proper and no interference in the discretion exercised by the Proper Officer is called for. The Hon'ble Supreme Court in its judgment in Duncan Industries Ltd. and Anr Vs Union of India [AIR 2006 SC 3699 / 2006 (3) SCC 129] held as under;

> *"We are broadly in concurrence with the reasoning of the High Court that in matters of administrative discretion it is not open to the courts to interfere in minute details, except on grounds of mala fides or extreme arbitrariness. Interference should be only within very narrow limits, such as, where there is a clear violation of a statute or a constitutional provision, or extreme arbitrariness in the Wednesbury sense."*

The appellants averments in this regard are hence rejected.

No penalty under Section 112(a) cannot be imposed when goods are re-exported.

18. A penalty is the result of a breach of statutory duty. The main object behind the imposition of penalty is deterrence. Re-export of the goods does not cure the breach of *statutory duty already committed. While a fine is imposed on the redemption of offending goods imported in breach of law, a penalty is levied on a person responsible for the breach of statutory duty. No interfere should ordinarily be made by an appellate body, in the discretionary order passed by a lower authority, just because another view might be possible, except on grounds of mala fides or extreme arbitrariness. No such ground has been made out in this case. Hence this plea also does not have any merit and is rejected.*

19. We shall next examine the judgments cited by the appellant. Reliance is placed by them in this regard on the following judgments;

(a) Siemens Limited v. Collector of Customs [1999 (113) E.L.T. 776 (S.C.)].
(b) Sankar Pandi v. Union of India [2002 (141) E.L.T. 635 (Mad.)], upheld by the Hon'ble Supreme Court in Union of India v. Sankar Pandi [2018 (360) E.L.T. A214 (S.C.)].
(c) M.K.A. Chinnasamy Nadar & Sons v. CC, Tuticorin [2021 (378) E.L.T. 511 (Tri. - Chennai)]
(d) M/s. Akshara & Co. v. CC, Chennai [2022 (3) TMI 825 – CESTAT CHENNAI]
(e) Royal Import and Exports v. CC, Tuticorin [2021 (377) E.L.T. 865 (Tri. - Chennai)
(f) Selvam Industries Ltd., v. Commissioner of Customs, Tuticorin reported in 2021 (377) ELT 458 (Tri Chennai)
(g) Lalkamal Enterprises v. Commissioner of Customs, Chennai I reported in 2018 (364) ELT 856 (Tri Chennai)
(h) Skylark Office Machines v. Commissioner of Customs, Chennai [2020 (374) E.L.T. 99 (Tri. - Chennai)
(i) M/s. SDS Ramcides Crop Science Pvt. Ltd. v. CC, Chennai II [2023 (7) TMI 891 - CESTAT CHENNAI]

20. As regards the judgments, the appellant has stated that as per the decision of the Hon'ble Supreme Court in Siemens Limited (supra) and Sankar Pandi (supra), in a case of re-export, redemption fine or duty cannot be imposed. We find that the Hon'ble Supreme Court has not laid down any such law in the said case. Its decision to order refund of the redemption fine were based on the peculiar facts of the case. So also in the case of the Hon'ble High Court in Sankar Pandi. The other judgments cited by the appellant are based on decisions of the Tribunal. In this *regards I propose to examine the Larger Bench decision in the case of Hemant Bhai R. Patel (supra), cited by Revenue, which is binding on a Bench of lesser strength. The question examined was that when re-export is permitted no redemption fine can be imposed, which is the same issue involved here. The Larger Bench of this Tribunal answered the question as under;*

> *"Section 112 authorizes imposition of penalty. Section 125 contains the provisions enabling the Customs Officer to grant an option to the owner or the person from whose possession the goods have been seized to pay a fine in lieu of confiscation. In an adjudication proceeding as in the present case these are the provisions which would come into play. If the owner gets the goods released after payment of redemption fine, he may either clear it for home consumption or re-export the same subject to the relevant rules. A permission granted for re-export on the basis of a request made by the owner of the goods is outside the purview of the adjudication proceedings, as mentioned above. We, therefore, answer the questions referred in the affirmative and hold that it is open to the adjudicating authority to impose redemption fine as well as penalty even when permission is granted for re-exporting the goods. The reference is answered as above."*

Judicial discipline requires that we follow the judgment of the Larger Bench. The appellant's plea is hence rejected.

21. For the reasons discussed, the impugned order is upheld and the appeal filed by the appellant is rejected and disposed of accordingly."

25. Thus, the ratio decidendi of both the above decisions is squarely applicable to the facts obtaining in this appeal and both the questions raised on imposition of redemption fine in case of allowing re-export of the imported impugned goods and levy of penalties are answered against the appellants.

26. The Appellant has placed reliance on the following judgments: -

i. *Sankar Pandi versus Union of India reported in 2002 (141) ELT 635 (Madras High Court)*
ii. *Selvam Industries Ltd. versus Commissioner of Customs, Tuticorin reported in 2021 (377) ELT 458 (Tri. Chennai) (SMB)*
iii. *Rose Mary International versus Comm. of Customs passed in Customs Appeal No. 41693 of 2019(SMB)*
iv. *Simplex Engineers & Traders versus Commissioner of Customs (Import) passed in Customs Appeal No. 41339 of 2019(SMB)*
v. *OMS Sivajothi Mills versus The Commissioner of Customs passed in Customs Appeal No. 40784 of 2019(SMB)*
vi. *Lalkalam Enterprises versus Comm. of Customs Chennai reported in 2018 (364) ELT 856 (Tri. Chennai) (Divisional Bench)*
vii. *Regal Impex versus Comm. of Customs ICD TKD New Delhi reported in 2016 (332) ELT 835 (Tri. Del) (Divisional Bench)*
viii. *Comm. of Customs Visakhapatnam versus HBL Power Systems Ltd. reported in 2019 (367) ELT 154 (AP High Court)*

These decisions are of no avail to the appellant in light of the discussions made in the case of *Scania Commercial Vehicles India Pvt. Ltd. Vs. Commissioner of Customs, Chennai [Final Order No. 40621/2024 dated 07.06.2024]* and the Tribunal's Larger Bench decision in the case of *Hemant Bhai R. Patel Vs*

Commissioner of Customs [2003 (153) ELT 226 (Tri-LB)] which we have discussed above.

27. We find that the judgment of Hon'ble Telangana and Andhra Pradesh High Court in the case of HBL Power Systems Ltd. is on a different issue of whether the Adjudicating Authority has the power to impose the condition that the goods should be re-exported after redemption.

28. We observe that the appellant has stated that as per the decision of the Hon'ble Supreme Court in Siemens Limited (*supra*) and Sankar Pandi (*supra*), in a case of re-export, redemption fine or duty cannot be imposed. We find that the Hon'ble Supreme Court has not laid down any such law in the said case. Siemens Limited was only a case where timelines for re-export were discussed and no law was laid. Its decision to order refund of the redemption fine was based on the peculiar facts of the case. So also, in the case of the Hon'ble High Court in Sankar Pandi. The other judgments cited by the appellant are based on decisions of the Tribunal where the facts were different and the legality of Sections 125 and 126 were not placed before the Courts.

29. The case of Extreme Electronics cited supra limited the observation of Tribunal to the decision of

provisional release of goods, that too only for re-export with a rider that the same shall not influence the adjudication of the case. As such, the Larger Bench decision in the case of Hemant Bhai R. Patel (*supra*), cited by Revenue, is binding on a Bench of lesser strength.

30. To conclude, the questions examined therein were whether when re-export is permitted, can redemption fine be imposed and penalties can be levied are the same issues involved here. The Larger Bench of this Tribunal answered both the questions as under: -

> *"Section 112 authorizes imposition of penalty. Section 125 contains the provisions enabling the Customs Officer to grant an option to the owner or the person from whose possession the goods have been seized to pay a fine in lieu of confiscation. In an adjudication proceeding as in the present case these are the provisions which would come into play. If the owner gets the goods released after payment of redemption fine, he may either clear it for home consumption or re-export the same subject to the relevant rules. A permission granted for re-export on the basis of a request made by the owner of the goods is outside the purview of the adjudication proceedings, as mentioned above. We, therefore, answer the questions referred in the affirmative and hold that it is open to the adjudicating authority to impose redemption fine as well as penalty even when permission is granted for re-exporting the goods. The reference is answered as above."*

In compliance to judicial discipline, we follow the judgment of the Larger Bench, and, the appellants' pleas are hence rejected. Thus, we hold that imposition of redemption fine even in case of allowing reimport and imposition of penalties is justified and so, are upheld.

31. In view of our above findings, we reject the appeal and uphold the impugned Order-in-Original No. 106063/2024 dated 05.04.2024 passed by the Commissioner of Customs, Chennai-II.

(Order pronounced in open court on 26.09.2025)

Sd/-	Sd/-
(AJAYAN T.V.)	**(VASA SESHAGIRI RAO)**
MEMBER (JUDICIAL)	MEMBER (TECHNICAL)

MK