

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Customs Appeal No. 40493 of 2024

(Arising out of Order-in-Original No.105317/2024 dated 08.03.2024 passed by Commissioner of Customs, Chennai-II (Import), Custom House, No.60, Rajaji Salai, Chennai 600 001)

M/s. Larsen & Turbo Ltd.,

....Appellant

L&T House,
Ballard Estate,
PO Box No.278,
Mumbai-400 001.

Versus

Commissioner of Customs,

... Respondent

Chennai II (Import),
Custom House,
No.60, Rajaji Salai,
Chennai-600 001.

APPEARANCE:

Shri Prakash Shah, Senior Advocate for the Appellant
Shri Suyog Bhawe, Advocate for the Appellant

Shri Anoop Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M.AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.41171/2025

DATE OF HEARING: 27.05.2025
DATE OF DECISION: 28.10.2025

Per : Shri P. Dinesha

The present appeal is filed by M/s. Larsen & Toubro Limited, aggrieved by the Order-in-Original No.105317/2024 dated 08.03.2024 passed by the Respondent-Commissioner of Customs, Chennai.

2. The Appellant is admittedly, *inter alia*, engaged in trading of large size mining machinery to mine and move large volume of mining material.

3. Brief facts of the case as gathered from the documents and pleadings before us, are that the Appellant regularly imported, *inter alia* 'Wheel Loaders' from M/s.Komatsu Limited ("Komatsu", for short).

4. This appeal pertains to the classification of three models (WA-380, WA-470 and WA-800) of wheel loaders imported by the Appellant from Japan under 11 Bills of Entry filed during the period 28.12.2018 to 01.07.2021.

5. In the said Bills of Entry, it appears that the goods in question viz., 'wheel loaders' were classified by the

Appellant under Tariff Item 8429 5900, as was the practice in vogue, read with Notification No. 69/2011-Cus. dated 29.07.2011 and the said wheel loaders were allowed to be cleared for home consumption.

6. The above claim of classification of the imported wheel loaders under Tariff Item 8429 5900, which according to the Appellant, was based on its belief that the same were meant for exclusive use in mines. The case of the Department is that the imported wheel loaders are classifiable under Tariff Item 8429 5100.

7. The Appellant contended that the classification claimed by the Appellant was accepted by the Department for past many years. The Appellant has annexed to its Appeal some of the specimen copies of Bill of Entries filed by the Appellant and its high seas purchasers during the period from 2005 to 2010. In the said Bill of Entries, the wheel loaders were assessed to duty by the proper officer under Tariff Item 8429 5900.

8. The wheel loaders imported by the Appellant were assessed to duty under Tariff Item 8429 5900 and allowed

to be cleared for home consumption on payment of duty under Tariff Item 8429 5900 both prior to and post the self-assessment regime. No dispute regarding the classification was raised by the Department prior to the present proceedings.

9. An investigation by the DRI, Cochin, resulted in issuance of a Show Cause Notice dated 31.07.2023 in respect of the 11 Bills of Entry, under Section 28 (4) of the Customs Act, 1962 alleging that the Appellant wrongly classified imported goods under Tariff Item 8429 5900, thereby proposing re-classification under Tariff Item 8429 5100 and to deny the benefit claimed under Notification No. 69/2011 dated 29.07.2011. Further, the Show Cause Notice proposed to demand differential duties of Rs. 4,64,39,734/- along with confiscation of goods under Section 111 (m) of the Customs Act as well as interest and penalty. It appears that the Appellant filed its detailed reply justifying the classification of goods in question and also highlighting its consistent approach insofar as classification was concerned, but however, the Commissioner of Customs, *vide* impugned Order-in-Original No. 105317/2024 dated 08.03.2024 rejected the contention of the Appellant

by re-classifying the disputed goods under Tariff Item 8429 5100; and confirmed the demand for differential duty of Rs. 4,64,39,734/- under 28(4) of the Customs Act along with interest under Section 28AA of the Customs Act and equivalent penalty under Section 114A of the Customs Act. The Respondent-Commissioner also held the imported goods as liable for confiscation under section 111(m) of the Customs Act and levied a redemption fine of Rs. 5,00,00,000/- under section 125 of the Customs Act, in lieu of confiscation. Further, he also imposed a penalty of Rs. 50,00,000/- under Section 114AA of the Customs Act on the Appellant.

10. We have heard Shri Prakash Shah, Ld. Senior Advocate and Shri Suyog Bhawe, Advocate appearing for the Appellant; and Shri Anoop Singh, Ld. Joint Commissioner, appearing for the Respondent-Commissioner.

11.1 The submissions made by the Learned Senior Counsel, Shri Prakash Shah, appearing for the Appellant, are summarized as under:

11.2 The imported wheel loaders are correctly classified under Tariff Item 8429 5900 and the classification under Tariff Item 8429 5100 as per the impugned order is incorrect.

11.3 The Tariff Item 8429 5100 merely covers front-end shovel loaders capable of picking material, transporting and discharging it.

11.4 Explanatory Note (IJ) to CTH 8429 carves out a sub-species of wheel loaders which are used in mines and distinguished the same from other self-propelled front end shovel loaders covered in the HSN Explanatory Note (H).

11.5 The wheel loaders imported by the Appellant are exclusively used for the purpose of handling the materials, minerals and other discharge generated in mines and loading the same onto other machines / trucks, the same were and are rightly classifiable under Tariff Item 8429 5900 only.

11.6 The reliance placed on the classification made by the Respondent on the import of wheel loaders from China (i.e.,

under Tariff Item 8429 5100) is erroneous in as much as the said wheel loaders were not used in mines but were used exclusively for training purposes.

11.7 It is an admitted fact that classification consistently adopted by the Appellant is accepted by the Department for past many years and it is not open for the Department to take somersault and change the classification only because the Appellant claimed exemption from payment of BCD. In support of this proposition, Ld. Senior Advocate placed reliance on the Apex Court judgment in the case of **Commissioner of Customs, Mangalore Vs ELF Gas India Limited** [2015 (324) ELT 644 (SC)].

11.8 In any event, provisions of Section 28(4) of the Act are wrongly invoked in the present case as the Appellant had declared the goods correctly and the Appellant was consistent in its classification for past many years.

11.9 The Appellant did not suppress or mis-state any facts in the present case. The Appellant had correctly described the goods in the Bills of Entry.

11.10 The Appellant and its High Seas Purchasers had imported identical goods in the past from to time.

11.11 Even prior to self-assessment regime, the Department assessed Bills of Entry under the same TI 8429 5900 which is verifiable.

11.12 The Appellant had continued with the same classification, which was determined and accepted by the Department for past many years.

11.13 This can, at best, be a case of mis-classification and it is settled law by series of judicial precedents that extended period under Section 28 (4) of the Customs Act, 1962 is not applicable when the goods are correctly described and only dispute is about correct classification.

11.14 The entire demand along with interest, penalty and fine are hence liable to be set aside as being time barred.

12.1 Per contra, learned A.R Shri Anoop Singh supported the findings of the impugned order and made the following submissions:

12.2 The classification adopted by the Appellant is incorrect since the imported wheel loaders are specifically covered under CTH 8429 5100.

12.3 Further, since the imported goods are wheeled machines with front mounted bucket to pick up material, the same are covered under Explanatory Note (H) and not under Explanatory Note (IJ), which covers loader transporters used in mines, whose main function is handling and not transporting.

12.4 The catalogue of the imported goods states that the product can be used in construction, agriculture or landscaping sectors and nothing in the catalogue suggests that the imported goods are meant for exclusive use in mines and in any case, the rival tariff entries do not prescribe any end use criteria.

12.5 During the relevant period, the Appellant had also imported identical wheel loader from China and had itself classified the same under CTH 8429 5100.

12.6 The invocation of extended period is therefore justified, in the light of the fact that the importer was well aware of the nature of the imported goods but resorted to misclassification for availing ineligible exemption benefits. He would thus pray for sustaining the impugned OIO, by rejecting the Appeal.

12.7 We have very meticulously considered the records and arguments of the rival parties in the context of the facts as brought out in the Show Cause Notice, reply thereto and impugned order.

13. The main issues that arise for decision in this Appeal are:-

- i) Whether the appropriate classification of the imported wheel loaders is under Tariff Item 8429 5900 [as declared by the Appellant] or under Tariff Item 8429 5100 [as modified by the Revenue]?
- ii) Whether the Revenue has justified in invoking the extended period of limitation, in the facts of the present case?

14. The rival entries insofar as the classification of impugned goods are concerned, are as follows:

Tariff Item		Description
(1)		(2)
8429		Self-Propelled Bulldozers, Angledozers, Graders, Levellers, Scrapers, Mechanical Shovels, Excavators, Shovel Loaders, Tamping Machines And Road Rollers
***	***	***
	-	Mechanical shovels, excavators and shovel loaders:
8429 5100	--	Front-end shovel loaders
8429 5200	--	Machinery with a 360 degrees revolving superstructure
8429 5900	--	Other

15. Further, the relevant HSN Explanatory Notes to CTH 8429 read thus:

The heading covers a number of earth digging, excavating or compacting machines which are explicitly cited in the heading and which have in common the fact that they are all self-propelled.

(H) Self-propelled shovel loaders: These are wheeled or crawler machines with a front mounted bucket which pick up material through motion of the machine, transport and discharge it.

Some “shovel-loaders” are able to dig into the soil. This is achieved as the bucket, when in the horizontal position, is capable of being lowered below the level of the wheels or tracks.

*(1) **Loader-transporters** used in mines: These machines, the main function of which is handling and not transport, are equipped with a front-mounted bucket which picks up bulk materials and discharges them into the body of the machine.*

16. From the above, it is clear that Tariff Item 8429 5100 covers wheeled machines with a front mounted bucket (loader), which will be used to transport the materials and discharge them. The said bucket acts as a shovel to dig the soil, and using the loader, it will transport the material and discharge it to vehicles.

17. In the present, it is an admitted fact that the imported wheel loader has a bucket fitted on the front of the wheeled machine and is a self-propelled machine. Further, the said bucket fitted in front of the machine could move up and down to pick up the material and transport the same to discharge it on vehicles like dumpers.

18. Thus, from a perusal of the tariff entry coupled with the above detailed description of the imported goods, we find that the imported 'wheel loaders' are covered under Tariff Item 8429 5100.

19. The Appellant's main argument is that the imported wheel loaders are exclusively used for the purpose of handling materials, minerals and other discharge generated in mines and for the said purpose, the Appellant has placed heavy reliance on the Explanatory Note (IJ) to CTH 8429.

20. However, we find that the identical machines imported from the same supplier from China were classified by the Appellant under Tariff Item 8429 5100. In this regard, as well from the Appellant's pleadings, it is evidently clear that the machine is capable of being used for more than one purpose.

21. We find that no doubt, the Department did accept the classification claimed by the Appellant for past several years, but that by itself cannot detract us from deciding the correct classification. Other than claiming that it has been following a consistent method, the Appellant is not able to adduce any supporting evidence and nor has it proved wrong the finding by the Commissioner that neither of the rival entries depends on the end-use. Considering the above therefore, we are of the considered opinion that imported

machines are correctly classifiable under the Tariff Item 8429 5100, especially when the rival entries do not contemplate any end-use therein.

22. In light of the above discussion, we do not find any justifiable reason to interfere with the finding in the Impugned Order that the wheel loader in question imported by the Appellant is correctly classifiable under Tariff Item 8429 5100. We thus uphold order of the learned Commissioner in regard to the classification of the imported goods as determined him.

23. We shall now deal with the contention of the Appellant that the demand for the extended period and imposition of penalty and confiscation of goods, being liable to be set aside.

24. We find that the Appellant had disclosed full and complete description of the imported goods in all the Bills of Entry, i.e., "Komatsu Wheel Loader" along with the model number. This was consistent with the practice followed in the past as can be seen from the specimen Bills of Entry annexed to the Appeal. There are no findings recorded by

the Respondent that the goods were not correctly described in the Bills of Entry.

25. We find from a perusal of the Bills of Entry filed in the past from 2005 to 2010, by the Appellant as well as its high seas purchasers, it is clear that, the Revenue had assessed the goods under CTH 8429 5900. This was the period when self-assessment regime was not introduced and the proper officer made the assessment, after examining the goods, and permitted clearance of the goods for home consumption.

26. From the above, it is clear that the Department itself was assessing the goods viz. wheel loaders under Tariff Item 8429 5900, when no exemption was claimed by the Appellant.

27. This Bench, in its order in **Faiveley Transport Rail Technologies India Pvt. Ltd. v. Commissioner of GST & Central Excise, Salem** [2024 (8) TMI 1143 – CESTAT Chennai], has observed that “it is not merely a blame worthy act that would trigger the evocation of the extended period of limitation, something more is required. The act

should have been done with the intention to evade payment of duty.” The said judgment has been affirmed by the Hon’ble Apex Court as reported at **2025 (4) TMI 368 – SC ORDER.**

28. Further, we find that a Co-ordinate Bench of this Tribunal in the case of **Medha Servo Drives Pvt. Ltd. v. Commissioner of Customs, Hyderabad** [2025 (3) TMI 1073 – CESTAT Hyderabad] has held thus:

“29. Insofar as the invocation of extended period is concerned, we find that there has been great deal of debate in terms of coverage under notification 57/2017, which covered multiple items falling under Chapter 85 in so much so that the CBIC has to come out with certain clarification in terms of Circular No.08/2023 dt.13.03.2023. We also find that the grounds taken in the SCN for invoking extended period is also not substantive apart from alleging that they have knowingly and intentionally misclassified their product despite knowing correct classification or as intimated by importer. We find that this could not be a ground for invoking extended period as no element as indicated under section 28(4) is forthcoming. It is a fact that they were classifying under certain heading which later on they switched to another heading. It is also a fact that the foreign supplier has indicated the heading 8517, whereas, they were adopting CTH 8542. It is also an admitted position that sometimes they have paid duty at 20% and sometimes at 10%. However, all these change of stands, etc., were in view of complex nature of classification involved as well as possibility of its being getting classified under two different or multiple headings. Therefore, obviously there is nothing wrong for the appellant to have a bonafide belief to choose a

heading which may be more beneficial to them even though, ultimately, it may not be found to be correct classification. However, this, per se, cannot become ground for invoking extended period of limitation. There has to be much more evidence on record to prove their deliberate plan or deliberate suppression in order to hoodwink the department into believing something else. Merely because they chose to claim classification under a heading, which they thought was more appropriate, it cannot be a ground for invoking extended period. Further, though the adjudicating authority has tried to bring in the concept of fraud for invoking extended period in the sense that they were deliberately misleading the department, it has neither been alleged in the SCN nor has been explained in what way the appellants were indulging in fraud. Therefore, in view of the facts of the case, as also cited case laws, we find that invocation of extended period is not tenable and therefore, to that extent the impugned order is liable to be set aside.

29. In the present case, in light of the admitted fact that the Department and the Appellant were consistently classifying goods under the Tariff Item 8429 5900 for past many years, we hold that no mala fide intention or motive can be attributed on the part of the Appellant. We find that the record clearly indicates that Appellant acted *bona fide* in claiming the assessing the goods under Tariff Item 8429 5900. We find that ingredients of Section 28 (4) of the Customs Act are not satisfied as the Appellant not only correctly described the goods but was consistent in claiming

the classification, which was accepted by the Department for past many years.

30. We, therefore, set aside the demand for the extended period. We uphold the demand for the normal period.

31. As regards confiscation and imposition of fine and penalties, we find that the Respondent has held the goods liable for confiscation on the sole ground that the Appellant mis-declared the classification and availed incorrect exemption.

32. We find that a co-ordinate Bench of this Tribunal has examined the issue of confiscation in case of incorrect classification and availment of incorrect exemption in the case of **Lewek Altair Shipping Pvt. Ltd. v. Commissioner of Customs, Vijayawada** [2019 (366) ELT 318 (Tri.- Hyd.)]. Relevant portion is extracted below:

“7. We have considered the arguments on both sides and perused the records including the statement by the Master of the vessel. The vessels in question are meant to support the ONGC’s oil drilling platform and were imported as such. The next question is how the vessels support the platform. As is

evident from all available documents that the vessels carry out this function by carrying personnel and equipment from shore to the platform and back. Such a function is essential for the offshore oil drilling platforms which are located far away from the shore. In such a factual matrix, we are unable to hold that the navigation of the vessels is not the primary function. We find that navigation indeed, is the primary function of the vessels and dynamic positioning system helps to perform this function efficiently. Similarly, loading or unloading goods or embarking or disembarking personnel are incidental to the transportation. Therefore, the vessels in question are rightly classifiable under Customs Tariff Heading 8901 90 00 as claimed by the appellant. Thus, in our view, the vessels cannot, by any stretch of imagination, fall under CTH 8905. Consequently the benefit of exemption Notification No. 12/2012-Cus. is also admissible to the appellant. The demand of duty under CTH 8905 90 90 denying the benefit of exemption Notification No. 12/2012-Cus., dated 17-3-2012 by Ld. Commissioner needs to be set aside and we do so. Consequently, no interest is also payable on such demand. We find that confiscation of vessels under Section 111(m) was only on the ground that the bill of entry claimed under Customs Tariff Heading which, according to the Commissioner, was incorrect. It was therefore held that in the entry made under Customs Act viz.; Bill of Entry, the Customs Tariff Heading was not correct and therefore the goods are liable to be confiscated under Section 111(m). As we have held that the goods in question are classifiable as claimed by the appellant, under CTH 8901 90 00, this allegation does not survive. Even otherwise, we find it hard to hold that an assessee who filed bill of entry with a Customs

Tariff Heading which is not correct, will render his goods liable to confiscation under Section 111 (m). The Customs Tariff Heading indicated in the Bill of Entry is only a self assessment by the appellant as per his understanding which is subject to re-assessment by the officers if necessary. Therefore, an assessee, not being an expert in the Customs law can claim a wrong tariff or an ineligible exemption notification and such claim does not make his goods liable to confiscation. It is a different matter if the goods have been described wrongly or the value of the goods has been incorrectly declared. In this case, although there was an allegation in the show cause notice that the invoices were initially submitted for a lower value and thereafter were revised for higher amount, the confiscation in the impugned orders were only on the ground that CTH in the bill of entry was incorrect. In our view, this cannot form the basis for confiscation of goods under Section 111(m). Therefore, the confiscations and the redemption fines need to be set aside and we do so. Consequently no penalties are imposable under Section 112(a). As far as the penalties under Section 114AA are concerned, these are imposable if a person knowingly or intentionally makes, signs or uses or causes to be made, signed or used, in a declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purpose of the Customs Act. Ld. Commissioner held "considering the facts of the case, it has to be held that on the ground of wilful misstatement regarding classification and availing of notification, I am constrained to hold that the importer is liable for penalty under Section 114AA of the Customs Act, 1962." Thus holding, he imposed a penalty of Rs. 1.00 crore on the appellant in

each of the impugned orders. In our considered view, claiming an incorrect classification or the benefit of an ineligible exemption notification does not amount to making a false or incorrect statement because it is not an incorrect description of the goods or their value but only a claim made by the assessee. Thus, even if the appellant makes a wrong classification or claims ineligible exemption, he will not be liable to penalty under Section 114AA of the Customs Act, 1962. Further, in these cases, we have already upheld the classification claimed by the appellant and therefore find that no penalty is imposable on the appellant.”

33. The above judgment is affirmed by the Hon’ble Apex Court in **Commissioner v. Lewek Altair Shipping Pvt. Ltd.** [2019 (367) ELT A328 (SC)].

34. In the present case as well, the Respondent has imposed penalties and fine on the ground that the Appellant mis-declared the classification and availed incorrect exemption. We find that the imposition of penalties and confiscation of goods on the ground of mis-classification and availment of incorrect exemption, especially when devoid of any *mala fide*, is not justified and are hereby set aside.

35. In view of the above, the Appeal is partly allowed and Impugned Order is sustained on the classification and

demand for the normal period, along with interest. The demand for extended period as well as confiscation of the goods and imposition of penalties and fine are set aside. The Appellant will be entitled to consequential reliefs, if any, in accordance with law.

(Order pronounced in open court on 28.10.2025)

(M.AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)