CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Miscellaneous Application No. 85309 of 2023
(On behalf of Appellant)

In

Customs Appeal No. 85568 of 2023

(Arising out of Order-in-Original CAO No. CC-GSS/15/2022-23 Adj. (I) ACC dated 10.01.2023 read with corrigendum dated 13.03.2023 passed by the Commissioner of Customs (Import), Air Cargo Complex (ACC), Sahar, Andheri (East), Mumbai)

SHM Shipcare Pvt. Ltd. **... Appellants**
16-A, Press Building, Ground Floor,
Magazine Street, Darukhana
Mazagaon, Mumbai– 400010.

Versus

Commissioner of Customs (Import), **.... Respondent**
Air Cargo Complex (ACC),Sahar
Andheri (East), Mumbai– 400099.

Appearance:

Shri Yogesh S Patki, Advocate for the Appellant
Shri Syndney D'Silva, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85084/2024

Date of Hearing: 08.09.2023

Date of Decision: 16.02.2024

Per: M.M. PARTHIBAN

This appeal has been filed by M/s SHM Shipcare Private Limited, [earlier known as SHM Shipcare], Mumbai (herein after, referred to as 'the appellants'), assailing Order-in-Original CAO No. CC-GSS/15/2022-23 Adj. (I) ACC dated 10.01.2023 read with corrigendum dated 13.03.2023 (herein after, referred to as 'the impugned order') passed by the Commissioner of Customs (Import), Air Cargo Complex (ACC), Sahar, Andheri (East), Mumbai.

2.1. Briefly stated, the facts of the case are that the appellants herein are holding a private bonded warehouse license in F. No. S/15-31/12/13 Bond NCH dated 17.07.2012 issued by the Assistant Commissioner of Customs, Import Bond Department, Office of the Commissioner of

Customs (Import), New Custom House, Ballard Estate, Mumbai under Section 58 of the Customs Act, 1962 for the storage of warehousing the imported goods/ equipment/ parts/ components/ Spares/ raw materials/ consumables for Boats/Vessels without payment of customs duties/ import duty on the first importation thereof and the said license is duly renewed from time to time. Similarly, the appellants are also holding a private bonded warehouse for manufacturing of 'High-Speed FRP Boats' under Section 65 ibid, in terms of Manufacture and Other Operations in Warehouse Regulations, 1966, as amended which is valid till the license issued under Section 58 for the Premises is in effect.

2.2 On the basis of information received from the Commissioner of Customs (Import), New Custom House vide Reference dated 28.07.2021, that the appellants importer instead of filing ex–bond Bills of Entry (B/E) for the warehoused raw materials/goods at the port of import i.e., ACC, Sahar have filed manual ex–bond Bills of Entry for the clearance of Boats without paying the Customs Duty on the raw materials used for making the Boats, at New Custom House, Mumbai. Further, the appellants have filed ineligible notification benefit claiming the exemption from payment of customs duty. Thus the Department had initiated show cause proceedings against the appellants. The Show Cause Notice (SCN) dated 14.01.2022 was issued on the appellants proposing for demand of customs duty amounting to Rs.4,51,52,580/- along with applicable interest in respect of raw materials used for manufacturing the Boats which are imported by the warehousing bills of entry under Section 28(4) of the Customs Act, 1962 and for confiscation of such raw materials for violation of section 111(m) ibid, besides imposition of penalties under Sections 112(a) or 112(b), 114A, 114AA ibid. After providing personal hearing to the appellants on 03.11.2022, the learned Commissioner of Customs had adjudicated the case by passing the impugned Order dated 10.01.2023, wherein he confirmed the adjudged demands along with interest as proposed in the SCN, besides imposition of 100% mandatory penalty under section 114A ibid. Further, he confiscated the raw materials imported under various bills of entry which are being utilized for manufacture of Boats totally valued at Rs.23,09,22,239/- and offered the same to be released on payment of redemption fine of Rs.2,30,00,000/- under Section 125(1) ibid. Being aggrieved with the above impugned order, the appellants have filed this appeal before the Tribunal.

2.1 Learned Advocate appearing for the appellants, stated that they are a manufacturer of Boats/Vessels operating under a private bonded warehouse license issued by the Customs authorities under Sections 58 and 65 of the Customs Act, 1962. The entire activity right from import of raw materials to clearance of final product is functioning under customs control and supervision. All documents including B/Es and Annexure-II declaration in the prescribed format giving details of raw materials consumed, had been verified and approved by the Customs officers. Thus he claimed that the Department is aware of the complete facts including non-filing of B/E in respect of raw materials consumed in the manufacture of final product and that they are claiming the customs duty exemption under serial number 558 of notification No.50/2017-Customs dated 30.06.2017. Hence, he submitted that the demand of Customs duty by invoking the extended period under section 28(4) ibid is not legally sustainable. In support of their stand he submitted the following decisions of the Hon'ble Supreme Court in the cases below:

(i) *Aban Loyd Chiles Offshore Ltd., Vs. Commissioner of Customs, Maharashtra* reported in 2006 (200) E.L.T. 370 (S.C.)

(ii) *Anand Nishikawa Co. Ltd. Vs. Commissioner of Central Excise, Meerut* reported in 2005 (188) E.L.T. 149 (S.C.)

(iii) *Fedders Lloyd Corporation Pvt. Ltd. Vs. Collector of Central Excise, New Delhi* reported in 2002 (149) E.L.T. 1426 (S.C.)

(iv) *Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur* reported in 2013 (288) E.L.T. 161 (S.C.)

2.2 Learned Advocate further submits on the merits of the case, that the appellants have been importing the subject goods, for use in manufacture of Boats under the legal provisions of Section 65 of the Customs Act, 1962 without payment of duty, by filing the B/Es for into bond clearance duly following the prescribed procedure. These include submission of application to the Assistant Commissioner of Customs, Bond Department, ACC, Sahar for clearance of imported goods along with space availability certificate in their warehouse situated at Ghodbunder Road, Thane; execution of General bond, transit bond and transit insurance for the subject goods; filing of Bill of Entry in Indian Customs EDI System (ICES) and upon arrival of the goods in the private bonded warehouse, submission of the warehousing certificate to the Assistant Commissioner of Customs, Bond Department, ACC, Sahar, informing that the entire goods have been properly received in their warehouse, and there was no shortage or any other discrepancy during the transportation of goods from the port of import/ACC, Sahar to the private bonded warehouse. Further, the final products of FRB Boats manufactured in the private bonded warehouse were cleared by them availing 'Nil' import duty exemption available to such goods in notification No.50/2017- Customs Dated 30.06.2017. However instead of mentioning the exemption entry of serial number 559, they had mentioned incorrectly entry of serial number 558, as both relate to similar goods classifiable under Chapter heading 8901, 8902, 8904, 8905 (except 890520) or 8906.

2.3 Furthermore he submitted that the issue of show cause proceedings initiated by the customs authorities and the port of import/ACC is without jurisdiction, as demand of customs duty on imported raw material contained in the final/finished products manufactured under bonded warehouse in terms of section 65 ibid, in the above case is no longer under dispute, in view of the decision of Larger Bench of the Tribunal in the case of *Ferro Alloys Corporation Ltd., Vs. Collector of Customs (Appeals), Bhubaneswar* reported in 1995 (77) E.L.T. 310 (Tribunal) and the orders of the Tribunal in the cases of *Commissioner of Central Excise, Jaipur-I Vs. M/s Paras Fab International* reported in 2009 (237) E.L.T. 711 (Tri.-Del.) and *Indian Oil Corporation Ltd., Vs. Commissioner of Customs, Jamnagar* reported in 2008 (225) E.L.T. 226 (Tri. - Ahmd.) wherein was categorically held that the question of demanding differential duty on clearances made by the officers at the port of import does not arise. He also submitted that the incorrect mentioning of the exemption entry serial number cannot take away the benefit, when another serial number of exemption entry is applicable to the appellants. Hence, he submitted that the goods were not liable for confiscation, and the demand of duty, imposition of penalty in the impugned order is not legally sustainable.

3.1 Learned Authorised Representative (AR) appearing for the Revenue reiterated the findings recorded by the learned Commissioner of Customs (Import), ACC in the impugned order dated 10.01.2023 and stated that the appellants have been importing inputs for manufacture of Boats by availing the procedure to be followed in the case of manufacturing operations undertaken in private bonded warehouse under section 65 of the Customs Act, 1962. However, they failed to fulfil the requirements of Manufacture and other Operations in Warehouse Regulations, 1966 and the Regulations 8 & 11 of Warehouse (Custody and Handling of Goods) Regulations, 2016 and the CBIC instructions issued by Circular No.38/2018-Customs dated 18.10.2018, No.22/2016-Customs dated 31.05.2016. Thus in respect of raw materials cleared duty-free used for manufacture final products contained in 10 B/Es, on which the customs duty have been confirmed along with interest, imposition of penalty and offering redemption fine on confiscation of goods, is sustainable.

3.2 It was further submitted by learned AR, that on limitation, the demand of duty under extended period is sustainable as the imported goods were under self-assessment and the notification benefit was availed by the appellants. There is a clear case of appellants' wilful mis-declaration in classification, availment of notification benefit with the intention to avoid payment of applicable import duties. Further in respect of claim for exemption under serial No.599, the appellants are required to follow the procedure set out in Customs (Import of Goods at a Concessional Duty for Manufacture of Excisable Goods) Rules, 1996. CBIC's circular No.38/2018-Customs dated 18.10.2018 categorically provide payment of import duty on the imported goods contained in the certain final product, to be paid at the time the supply of the product from the warehouse by filing ex-bond as prescribed.

3.3 Learned AR also stated that in terms of the decision taken by the Tribunal in the case of *Trafigura India Pvt. Ltd. Vs. Union of India* reported in 2023-TIOL-737-HC-AHM-CUS in respect of imported goods by the appellant, invoking of extended period on the grounds of suppression is sustainable. In view of the above, he prayed that the appeals filed by the appellant may be dismissed.

4. Heard both sides and perused the records of the case. We have also considered the additional written submissions given in the form of paper books by learned Advocate for the appellants as well as Authorised Representative for the Revenue.

5. Brief issues for consideration in the present case before us are the following:

(i) whether the appellants importer have complied with the requirements of legal provisions (a) for making an entry of the imported goods under Section 46 of the Customs Act, 1962, and

(b) for clearance of goods for deposit, manufacturing in private bonded warehouse in terms of legal provisions under various Sections of Chapter IX ibid;

(ii) whether the importer is eligible for availing the benefit of Notification No.50/2017-Customs dated 30.06.2017 on the impugned goods at the time of ex-bond clearance of final products manufactured in the private bonded warehouse;

(iii) in the context of clearance of final products i.e., Boats as above, without paying the Customs duty on the raw materials used for making such boats, which were initially warehoused at the time of import, whether the same import duty on raw materials is liable to be paid at the time of clearance of final products;

(iv) whether such clearance of final products, without paying customs duty on the inputs, raw materials etc., makes it liable for confiscation under Section 111(m) ibid and consequently the appellants importer by their acts of omission and commission also become liable for penalty under Section 112 (a) and/or (b) ibid.

6.1 The learned Commissioner of Customs in the impugned order had given a finding on the issues at (i) to (iv) above, as follows:

"22.2 The question whether there is a distinction between the clearances under Section 65 of the Customs Act, 1962 and those under Section 68 ibid needs to be examined. It is seen that importer has cleared his finished products from the warehouse. He has a license for warehouse too under Section 58. However, in terms of Board's circular No.38/2018 – Customs dated 18.10.2018 relating to "Procedure to be followed in cases of manufacturing or other operations undertaken in bonded warehouse under section 65 the Customs Act", it has been categorically mentioned at para 6 as under:

> *"6.To the extent that the resultant product whether emerging out of manufacturing or other operations in the warehouse is cleared for domestic consumption, such a transaction squarely falls within the ambit of "supply" under Section 7 of the Central Goods and Service Tax Act,2017 (hereinafter referred to as the, "CGST Act"). It would therefore be taxable in terms of section 9 of the CGST Act, 2017 or section 5 of the Integrated Goods and Services Tax Act, 2017 depending upon the supply being intra-state or inter-state. The resultant product will thus be supplied from the warehouse under the cover of GST invoice on the payment of appropriate GST and compensation cess, if any.* ***As regards import duties payable on the imported goods contained in so much of the resultant products are concerned, same shall be paid at the time of supply of the resultant product from the warehouse for which the licensee shall have to file an ex-bond Bill of entry and such transactions shall be duly reflected in the accounts prescribed under Annexure B****."*

From the above para it emerges that it is incumbent on the importer that he has to file ex-bond Bills of entry for these raw materials that are being for manufacture of the finished product and such ex-bond

Bs/E are to be filed at the place of importation in terms of Board's circular No.22/2016-Cus. dated 31.05.2016 read with Public notice No. 16/2016 issued by General Commissionerate of Air Cargo Complex, Sahar. The procedure mentioned is in relation to "Manufacture and Other Operations in Warehouse Regulations, 1966" (MOOWR, 1966) under Section 65 read with Warehouse (Custody and Handling of Goods) Regulations, 2016.

Thus, the importer is liable to pay the duty on the imported goods contained in so much of the resultant products are concerned, same shall be paid at the time of supply of the resultant product from the warehouse for which the licensee should have to file an ex-bond Bill of entry

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Thus the importer by removing the raw material for manufacturing boats without playing the same for home consumption under Section 68 of the Customs Act, 1962 has violated the Warehouse (Custody and Handling of Goods) Regulations, 2016. ….

24. I find that the Board's Circular No. 3/2016-Customs dated 18.10.2016 read with the above Regulations clearly stipulates that the importer has to file Ex-bond Bill of Entry for removal of the goods under Section 68 and pay the applicable duty. Hence, the importer by removing the raw materials for manufacturing boats, without clearing the same for home consumption, under Section 68 of the Customs Act, 1962 has violated the aforesaid provisions.

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25.2 …..In view of the established Regulations it is clear that the importer is liable for payment of import duty on raw materials used for the manufacture of the finished product.

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28. ….. In the instant case, it is evident that the vital facts have been mis-stated with respect to the particulars of the impugned goods and therefore, I find that the importer has violated the provisions of Customs Act, 1962 and has failed to ensure that his declaration I relation to the impugned goods is true and correct. Having violated the relevant provisions, the importer has rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Therefore, I hold that the importer by his act of mis-declaration/mis-classification have rendered the impugned goods valued at Rs.23,09,22,239/- (as per Annexure-B to the SCN) liable for confiscation in terms of the provisions of Section 111(m) of the Customs Act, 1962.

29…… Thus, taking support from the aforesaid guiding judgement, I find that the fact that the impugned goods are not available for confiscation does not prevent me to impose redemption fine.

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30.1….. I find that there is no evidence on record or brought out in the impugned SCN with regard to importer having intentionally signed or used any declaration which is false or incorrect for imposing under section 114AA of the Customs Act, 1962 and hence I do not impose penalty on the importer section 114AA ibid.

31. I hold that the importer in the instant matter has failed to comply with the provisions under the Customs Act, 1962 and has wilfully mis-stated the facts with the intention to evade duty….. Further, by virtue of the proviso to section 114AA of the Act, 1962. Separate penalty cannot be imposed under section 112 of the Act when a penalty has been imposed under section 114 AA of the Customs Act, 1962 and I refrain myself doing so."

6.2 Thus, from the above findings and conclusions arrived at by the learned Commissioner of Customs in the impugned order, it is seen that he had confirmed the adjudged demands and confiscated the impugned raw materials contained in the finished products and offered them on redemption fine of Rs.2,30,00,000/- as well as imposed penalty under Section 112 ibid on the above basis.

7. In context with the conclusions of the learned Commissioner in the impugned order and to address the issues under consideration referred above in paragraph 5, we would like to refer the relevant legal provisions contained in Section 46, 58, 59, 60, 64, 65, 67, 68 of the Customs Act, 1962 and Rules, Regulations framed thereunder to decide on the legality of the actions for demand of appropriate duty leviable of the subject goods under dispute; regarding confiscation of goods and for imposition of penalty on the appellants.

"***Section 46. Entry of goods on importation. -***

(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically[1] [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing [2] [in such form and manner as may be prescribed]:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically [1][on the customs automated system], allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1)before the end of the day (including holidays) preceding the day on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

1. Inserted by section 76 (w.e.f. 29-3-2018) of the Finance Act, 2018 (13 of 2018).
2. Substituted by section 76 (w.e.f. 29-3-2018) of Finance Act, 2018 (13 of 2018), for "in the prescribed form".

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(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, [3] [and such other documents relating to the imported goods as may be prescribed].

[4][(4A) The importer who presents a bill of entry shall ensure the following, namely:-
(a) the accuracy and completeness of the information given therein;
(b) the authenticity and validity of any document supporting it; and
(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa."

"Section 58. Licensing of private warehouses. -
The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

Section 59. Warehousing bond.
(1) The importer of any goods in respect of which a bill of entry for warehousing has been presented under section 46 and assessed to duty under section 17 or section 18 shall execute a bond in a sum equal to thrice the amount of the duty assessed on such goods, binding himself-

(a) to comply with all the provisions of the Act and the rules and regulations made thereunder in respect of such goods;

(b) to pay, on or before the date specified in the notice of demand, all duties and interest payable under sub-section (2) of section 61; and

(c) to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.

(2) For the purposes of sub-section (1), the Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.

(3) The importer shall, in addition to the execution of a bond under sub-section (1) or sub-section (2), furnish such security as may be prescribed

(4) Any bond executed under this section by an importer in respect of any goods shall continue to be in force notwithstanding the transfer of the goods to another warehouse.

3. Substituted by section 76 (w.e.f. 29-3-2018) of Finance Act, 2018 (13 of 2018), for "relating to the imported goods".

4. Inserted by section 76 (w.e.f. 29-3-2018) of Finance Act, 2018 (13 of 2018).

(5) Where the whole of the goods or any part thereof are transferred to another person, the transferee shall execute a bond in the manner specified in sub-section (1) or sub-section (2) and furnish security as specified under sub-section (3).

Section 60. Permission for removal of goods for deposit in warehouse.

(1) When the provisions of section 59 have been complied with in respect of any goods, the proper officer may make an order permitting removal of the goods from a customs station for the purpose of deposit in a warehouse.

[1][Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.]

(2) Where an order is made under sub-section (1), the goods shall be deposited in a warehouse in such manner as may be prescribed.

Section 64. Owner's right to deal with warehoused goods. -

The owner of any warehoused goods may, after warehousing the same, -
(a)inspect the goods;
(b)deal with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
(c) sort the goods; or
(d) show the goods for sale.

Section 65. Manufacture and other operations in relation to goods in a warehouse.

(1) With the permission of the Principal Commissioner of Customs or Commissioner of Customs and subject to the provisions of section 65A and such conditions as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.

(2) Where in the course of any operations permissible in relation to any warehoused goods under sub-section (1), there is any waste or refuse, the following provisions shall apply: -

(a) if the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported :

Provided *that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form;*

(b) if the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.

Section 67. Removal of goods from one warehouse to another.

The owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

Section 68.Clearance of warehoused goods for home consumption. -

Any warehoused goods may be cleared from the warehouse for home consumption, if -

(a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;

(b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; and]

(c) an order for clearance of such goods for home consumption has been made by the proper officer :

Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

Provided further that] the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon:

Provided also that the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force."

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(3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics."

Section 15. Date for determination of rate of duty and tariff valuation of imported goods. -

(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;
(b) in the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section;
(c) in the case of any other goods, on the date of payment of duty:

***Provided** that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.*

(2) The provisions of this section shall not apply to baggage and goods imported by post.

Manufacture and Other Operations in Warehouse Regulations, 1966.

9. Maintenance of accounts.- The manufacturer shall maintain accounts relating to stocks, raw materials, goods in process, finished goods, waste and refuse in proper form: Provided that where the manufacturer maintains for his own purpose such detailed accounts and has carried out such alterations in the form of accounts as may be required in this behalf, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may in his discretion direct such forms of accounts to be adopted as the proper form.

Private Warehouse Licensing Regulations, 2016.

Regulation 3. Licensing of private warehouse.-

(1) Upon an application being made to license a private warehouse, the Principal Commissioner of Customs or Commissioner of Customs ,as the case may be, may issue a licence to the applicant who, -

(a) is a citizen of India or is an entity incorporated or registered under any law for the time being in force;

(b) submits an undertaking to comply with such terms and conditions as may be specified by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be;

(c) furnishes a solvency certificate from a scheduled bank for an amount to be specified by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be:

Provided *that the condition of furnishing a solvency certificate shall not be applicable to an undertaking of the Central Government or State Government or Union territory.*

(2) The Principal Commissioner of Customs or the Commissioner of Customs , as the case may be, shall not issue a licence to an applicant if, -

(a) he has been declared an insolvent or bankrupt by a Court or Tribunal;

(b) he has been convicted for an offence under any law for the time being in force;

(c) he has been penalised for an offence under the Act, the Central Excise Act, 1944 (1 of 1944) or Chapter V of the Finance Act, 1994 (32 of 1994);

(d) he is of unsound mind and stands so declared by a competent Court; or

(e) the Principal Commissioner of Customs or the Commissioner of Customs , as the case may be, is satisfied that-
(i) the site or building of the proposed private warehouse is not suitable for secure storage of dutiable goods;
(ii) the site or building of the proposed private warehouse is not suitable for general supervision by officers of customs;
(iii) bankruptcy proceedings are pending against the applicant; or
(iv) criminal proceedings are pending against the applicant and the offences involved are of such nature that he is not fit person for grant of licence .

Manufacture and Other Operations in Warehouse (no. 2) Regulations, 2019.

Regulation 9. Conditions for transport of goods. -

(1) Where the goods are transported from the customs station of import to a warehouse or from one warehouse to another warehouse or from the warehouse to a customs station for export, the load compartment of the means of transport shall be securely sealed with a one-time-lock:

Provided *that the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may having regard to the nature of* *goods or manner of transport, permit transport of such goods without affixing the one-time-lock.*

(2) where the goods to be warehoused are removed, from the customs station of import to a warehouse, the one-time-lock as per sub-regulation (1) shall be affixed by the proper officer of customs.

(3) where the warehoused goods are removed from one warehouse to another warehouse the one-time-lock as per sub-regulation (1) shall be affixed by the license.

(4) where the warehoused goods are removed, from the warehouse to a customs station for export, the one-time-lock as per sub-regulation (1) shall be affixed by the license.

Regulation 14. Removal of resultant goods for home consumption. -

(1) A licensee may remove the resultant goods from warehouse for home consumption:

Provided *that a bill of entry for home consumption has been filed in respect of the warehoused goods contained in so much of the resultant goods and the import duty, interest, fine and penalties payable, if any, in respect of such goods have been paid.*

(2) The licensee shall retain a copy of the bill of entry filed and take into record the goods removed.

Regulation 17. Maintenance of records in relation to warehoused goods. -

(1) A licensee shall, -

(i) maintain detailed records of the receipt, handling, storing, and removal of any goods into or from the warehouse, as the case may be, and produce the same to the bond officer, as and when required;

(ii) keep a record of each activity, operation or action taken in relation to the warehoused goods;

(iii) keep a record of drawal of samples from the warehoused goods under the Act or any other law for the time being in force; and

(iv) keep copies of the bills of entry, transport documents, Forms for transfer of goods from a warehouse, shipping bills or bills of export or any other documents evidencing the receipt or removal of goods into or from the warehouse and copies of the bonds executed under section 59.

(2) The records and accounts required to be maintained under sub-regulation (1) shall be kept updated and accurate and preserved for a minimum period of five years from the date of removal of goods from the warehouse and shall be made available for inspection by the bond officer or any other officer authorized under the Act.

(3) A licensee shall also preserve updated digital copies of the records specified under sub- regulation (1) at a place other than the warehouse to prevent loss of records due to natural calamities, fire, theft, skillful pilferage or computer malfunction.

(4) A licensee shall file with the bond officer a monthly return of the receipt, storage, operations and removal of the goods in the warehouse, within ten days after the close of the month to which such return relates.

7. From the plain reading of above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any

imported goods, an importer is required to file a Bill of Entry (B/E) giving all required particulars of such imported goods for assessment to duty and depending upon whether such imported goods are required for clearance towards warehousing or home consumption, such of the legal provisions governing warehousing or customs clearance for home consumption would apply on such goods.

8.1. From the facts of the case, as provided in Annexure-A & B to the SCN dated 14.01.2022, the imported raw materials have been brought into the country by the appellants by filing various Bills of Entry for warehousing and the same were assessed to duty by the Customs officers at the port of import i.e., Air Cargo Complex, Sahar and seaport of Nhava Sheva. Thus, we find that the appellants had complied with the requirements of Section 46 ibid by filing an entry on importation of the goods into the country, and there is no case for any non-compliance in this regard.

8.2. It is also a fact that these raw materials were used in the manufacture of final products brought into their private bonded warehouse by the appellants importer under proper license/permission as follows:

> (i) **License for Private Bonded warehouse** for the storage of warehousing the capital goods, equipment, parts, components, spares, raw materials, consumables for Boats/Vessels without payment of customs import duty under Section 58 ibid in F.No. S/15-31/12-13 Bond NCH dated 17.07.2012, initially issued for valid upto 16.07.2014 and renewed thereafter;
>
> (ii) **Permission for manufacture of 'High Speed FRP Boats'** at the Private Bonded Warehouse situated at 53-A, Sasunavghar, Ahmedabad Highway, Versova Bridge, Behind Gurudwara Khatyawadi, Ghodbunder Road, Thane, under Section 65 ibid.

Thus, we also find that the requirements of obtaining license/permission for storage of imported goods in an area approved by the competent Customs authorities and for manufacturing process in relation to such goods have also been fulfilled by the appellants as required under Section 58 and 65 of the Customs Act, 1962.

8.3 The gist of the details in respect of imported raw materials and the resultant final products manufactured under the private bonded license under various Bills of entry in this case are tabulated in the SCN and extract of the same, for ease of reference are given below:

Sl. No.	Into Bond B/E Nos. & Date of raw materials consumed		Ex-bond B/E No. & date of final product cleared		Duty demanded in raw materials contained therein Rs.
(1)	(2)		(3)		(4)
1	2214193	23.06.2017	103330	04.04.2018	10,41,250
	2347321	07.07.2017			
	2480179	17.07.2017			
	2544481	21.07.2017			
	2644769	29.07.2017			
2	8176351	13.01.2017	103346	04.05.2018	63,04,268
	8191528	16.01.2017			
	8350720	28.01.2017			
	8343366	27.01.2017			
	5409064	26.05.2016			
	7441934	14.01.2016			
	8564952	15.02.2017			
	8610969	20.02.2017			
	8658958	23.02.2017			
	9277043	12.04.2017			
	9273169	12.04.2017			
	9311017	15.04.2017			
	9340609	17.04.2017			
	9526098	02.05.2017			
	9939005	02.06.2017			
	9984376	06.06.2017			
	2142208	19.06.2017			
	2214193	23.06.2017			
	2287951	30.06.2017			
	2347321	07.07.2017			
	2406665	11.07.2017			
	2479423	17.07.2017			
	2480179	17.07.2017			
	2663944	31.07.2017			
	2905932	19.08.2017			
	2780597	09.08.2017			
	3407046	27.09.2017			
	3565180	10.10.2017			
	3574939	11.10.2017			
	3722882	23.10.2017			
	3942857	11.10.2017			
3	8350720	28.01.2017	107146	21.02.2019	39,58,158
	8343366	27.01.2017			
	8610969	20.02.2017			
	8658958	23.02.2017			
	9984376	06.06.2017			
	2905932	19.08.2017			
	3574939	11.10.2017			
	4050244	18.11.2017			
	4335784	11.12.2017			
	4716569	18.01.2018			
	4948328	25.01.2018			
	4975950	29.01.2018			
	5028816	01.02.2018			
	5128086	08.02.2018			
	5041533	03.02.2018			
	5172079	12.02.2018			
	5289641	20.02.2018			
	5351273	26.02.2018			
	5357594	26.02.2018			
	5443436	**05.03.2018**			
	5443995	05.03.2018			
	5376344	27.02.2018			
	5569530	14.03.2018			
	5516726	09.03.2018			
	5693141	22.03.2018			
	5773463	28.03.2018			
	5874001	06.04.2018			
	5907746	09.04.2018			
	5922543	10.04.2018			
4	21 different B/Es		108793	09.07.2019	81,89,000

Sl. No.	**Into Bond B/E Nos. & Date of raw materials consumed**	**Ex-bond B/E No. & date of final product cleared**		**Duty demanded in raw materials contained therein Rs.**
(1)	*(2)*	*(3)*		*(4)*
5	8 different B/Es	110073	24.10.2019	36,59,410
6	10 different B/Es	111443	20.01.2020	63,76,347
7	9 different B/Es	3687435	23.12.2005	6,77,030
8	9 different B/Es	5310653	18.05.2016	54,69,388
9	15 different B/Es	5409064	26.05.2017	80,27,314
10	12 different B/Es	1108632	06.03.2017	14,64,543
	Total duty demanded on raw materials consumed in the final products manufactured in & cleared from, private warehousing bonded premises			**4,51,52,580**

On reading of the details in the above table, we find that the final products have been manufactured in the private bonded warehouse of the appellants by using the raw materials, inputs, etc., imported through ACC and Nhava sheva ports vide various B/Es indicated in column (2). Further, the said final products have been cleared in total 10 B/Es as indicated in column (3) from the said private bonded warehouse of the appellants. The department had demanded the total import duty on raw materials etc. consumed in the said final products as detailed in column (4) and the same had been confirmed in the impugned order.

8.4. In this context, we find that in an illustrative case of B/E No.5443436 dated 05.03.2018 under which the inputs/raw materials have been received into the private bonded warehouse and used in the manufacture of boats have been shown in the SCN to have demanded a duty of Rs.4,79,250/- out of the total duty of Rs.39,58,158 in that entry at serial No.3 of the above table. We have perused the records of the case with respect to this particular illustrative transaction. The 'marine air conditioning parts' for manufacture of ship classifiable under Customs tariff item 8415 9000 have been imported under B/E No.5443436 dated05.03.2018 for warehousing for a total value of Rs.11,38,902.86/- and import duties at the rate of 10% BCD, 28% IGST and 10% SWS have been determined as the applicable duty by the customs officers at ACC, Sahar. In this regard we find that firstly, the appellants importer vide their letter dated 05.03.2018 had requested the Assistant Commissioner of Customs, Bond Department, ACC, Sahar for clearance of imported goods under Airway Bill No.23569014061 for which they had filed the B/E No. 5443436 dated 05.03.2018 and have executed the triple duty bond along with space availability certificate Ref No.68/17-18 dated 05.03.2018 obtained from the Superintendent of Customs/ Bond Officer, New Custom House, Mumbai indicating that there is sufficient space in their private bonded warehouse under Section 58 & 65 ibid, for storage and manufacture operation of the goods covered under Invoice No.SO1711066P dated 22.11.2017 of the said airway bill. Accordingly, the goods have been assessed for the applicable import duties and the said duties were debited in the General Bond for Rs.14,37,751/- (triple amount of duty); Transit bond for Rs.4,79,250/- (total duty) and for transit insurance Rs.4,79,250/- for permitting deposit in warehouse without payment of duty under Section 60 ibid and for the transfer of the imported goods in terms of Section 67 ibid, for movement from one port premises to the bonded warehouse. We also find that upon arrival of the said imported goods a re-warehousing certificate/intimation Ref. No. S/6 GEN-03 dated 02.04.2018 has been given by the Bond Officer of the New Custom House, Mumbai to the Deputy Commissioner of Customs, ACC, Sahar indicating that the imported goods under B/E No.5443436 dated 05.03.2018 have been duly received in the private bonded warehouse of the appellants on 07.03.2018 and the same has been warehoused on 08.03.2018; and stating that there is no shortage or any other discrepancy noticed in the said goods. Further, we also find that the Bond department officers viz., Superintendent of Customs, AC/DC of Customs in the Bond department of ACC, Sahar have in the light of the re-warehousing certificate produced by the appellants, have cancelled the general bond, transit bond and released the same to the extent of the duty debit of the imported goods in the said B/E, and also made an endorsement in the B/E for receipt of such certificate for having re-warehoused the goods in the private bonded warehouse. Thus, we find that the entire procedure in respect of granting permission for removal of goods for deposit in warehouse under Section 60 ibid, removal of goods from port of import to warehouse under Section 67 and the requirement of Regulations for properly complying with the provisions for transfer, removal of goods and its proper accounting in the manufacturing process warehousing bond have been duly followed by the appellants. Further, we also find that it is not the case of Revenue that the appellants importer have not complied with the proper receipt, accounting of the imported goods in their private bonded warehouse. It is only the issue of demand of duty on the raw materials etc. consumed in the final products cleared from the private bonded warehouse, which is in dispute in the present case. Furthermore, we also find that the finished goods manufactured out of such raw materials/ inputs imported as explained above, have also been removed from the private bonded warehouse by the appellants on payment of applicable import duties on the date of presentation of Bill of Entry in terms of Section 15(1)(b) ibid, by claiming exemption from basic customs duty under entry S. No. 558 of Notification No.50/2017-Customs dated 30.06.2017 and upon payment of effective rate of IGST at 5% as per S. No.250 at Schedule-I of Notification No.1/2017-Integrated Tax (Rate) dated 28.06.2017. These clearances of final product i.e., Boats classifiable under CTI 8906 9000 from the appellants private bonded warehouse have been duly assessed and after payment of duty as determined by the Customs authorities of New Custom House, Mumbai, these goods have been allowed for home consumption clearance. It is also not the case of the Revenue, that there was any short payment of duty that is being demanded in respect of final products cleared from the appellants' private bonded warehouse.

8.5 In the case before us, the contending issue connected with the above is that the appellant importer has not filed ex-bond bills of entry with the port of import i.e., ACC, Sahar and had wrongly instead filed the ex-bond bills of entry at New Custom House, Mumbai for clearance of final products. In this regard, we find that as explained in the previous paragraphs at 8.3 & 8.4, all procedure and assessment of imported goods have been duly followed by the appellants and in terms of Section 68 ibid, duties of customs applicable on the clearance of final products manufactured from the imported raw materials in the private bonded warehouse, would be applicable at the time clearance for home consumption of such final products. As regards the jurisdiction to which Customs authority, the Bill of Entry for home consumption for clearance of warehoused goods shall be filed, it has been provided in Section 68 ibid, that Superintendent of Customs as the proper officer under that section would order for clearance of the said goods, after having satisfied that the applicable import duty etc., have been paid.

8.6 Further, we also find that the above issue is no more in dispute in view of a number of decisions taken by this Tribunal. The Special Bench of this Tribunal in the case of *Ferro Alloys Corporation Ltd. Vs. Collector of Customs (Appeals), Bhubaneswar* – 1995 (77) E.L.T. 310 (Tribunal) had held that in terms of warehousing provisions of the Customs Act, 1962, the jurisdiction for raising demand of short levy is with the proper officer having jurisdiction over the warehouse/EOU and not the Custom House where the goods were assessed for into Bond Bill of Entry. The relevant paragraphs of the said order is extracted below:

> *"4.The submissions made by both the sides have been carefully considered. The referring Bench had found that they were unable to agree with the earlier decision of the Tribunal in the case of Ferro Alloys Corporation Ltd. (supra) as regards jurisdiction to raise demand of duty on exempted goods found to be not utilised as per terms of exemption by an E.O.U. The Ferro Alloys Corporation decision has held that where original assessment into bond had been done at the Custom House through which the goods were imported, then any reassessment in respect of the warehoused goods can be done only by the same Custom House and the officers having jurisdiction over the warehouse cannot disturb the classification adopted by the Custom House of origin but can only apply the rate of duty prevalent on the date of actual removal of the goods from the warehouse as per Section 15 of Customs Act, 1962. During the arguments before the Larger Bench, it was pointed out that a subsequent decision on the same notification in the case of Collector of Central Excise, Chandigarh v. Delta Hamlin Ltd. (supra) had also followed the ratio of Ferro Alloys Corporation decision as regards jurisdiction. Para 15.3 of the Ferro Alloys Corporation decision and para-5 of the Delta Hamlin decision are as below:-*
>
> * * * * * * * * * * *
>
> *From the above, it may be seen that both the decisions have relied heavily on the precedent Tribunal decisions in the case of Relish Foods (Pvt.) Ltd. v. Collector of Customs, reported in 1990 (45) E.L.T. 622 (Tribunal) and M.K. Fisheries v. Collector of Customs, reported in 1989 (41) E.L.T. 408 (Tribunal). However, it is noted that both those decisions were given in the context of jurisdiction to raise demand in respect of and consequent upon misuse of materials imported duty free against Advance Licence under the Duty Exemption Entitlement Scheme (DEEC) covered by Customs Exemption Notification No. 117/78 conditional upon proof of utilisation of the imported raw material in the export product. Under that Scheme the material is imported duty free on the strength of Duty Exemption Entitlement Certificate issued along with the Advance Licence in terms of the exemption notification. The DEEC indicates separately the quantity and description of material allowed to be imported under exemption and also the quantity and description of the export product which is to be produced out of the imported exempted material which is to be exported in fulfilment of the export obligation. In such a scheme the goods are cleared on filing Bill of Entry for Home Consumption at the port of import. There is no clearance initially on assessment into bond and a subsequent clearance on ex - bond Bill of Entry at all. The DEEC Scheme also envisages export through the same Custom House at which time there is scope for the Custom House of origin to ascertain by debit of the DEEC consignmentwise whether the condition for duty*

free import earlier allowed had been fulfilled as per terms of the exemption notification. The obligation of the importer to pay differential duty, if any, for non-fulfilment of the condition for exemption is secured by a bond executed for the purpose. It will, therefore, be seen that under such a scheme, it will be logical to hold that the jurisdiction for raising demand for short payment of duty would lie with the Custom House through which the goods had been cleared. But such is not the situation in the present case where there is full play of the provisions of warehousing as contained in Chapter IX of the Customs Act, 1962 in working out the exemption notification No. 13/81. The goods imported herein are cleared for being warehoused on an into bond Bill of Entry and not Home Consumption Bill of Entry at the Custom House of origin, and in bond manufacture of the export product takes place at appellants' E.O.U. which is licensed under Section 58 of Customs Act, 1962 as a private bonded warehouse from where ex-bond clearances will have to take place. The decisions of the Tribunal in the case of Collector of Customs v. Instrumentation Ltd., reported in 1990 (45) E.L.T. 570 (Tribunal) and Sandeep Woollen Mills cited therein, relied upon by learned Senior Departmental Representative, on the other hand, more aptly covered such a situation. Para-6 of the Instrumentation Ltd. decision runs as follows: -

* * * * * * * * * * *

The Tribunal has held in these two decisions that in a situation of clearance of warehoused goods, the jurisdiction for raising demand for short levy or refund on reassessment will be with the proper officer granting ex-bond clearance. This view of the Tribunal finds support in the Madras High Court decision in the case of Collector of Customs, Madras v. Tungabhadra Fibres Ltd., reported in 1994 (71) E.L.T. 655 (Mad.). The High Court had held that the assessment of goods into bond on a warehousing Bill of Entry is only tentative and such assessment being made only for the purpose of execution of warehousing bond, is not conclusive. Para-6 of the Madras High Court decision reads as follows: -

* * * * * * * * * * *

Therefore, the reservations expressed by the referring Bench in the present case, about the aptness of the Ferro Alloys Corporation Ltd. decision as regards the jurisdiction in a situation under the warehousing provisions of the Customs Act, 1962, are well-founded. For the reasons discussed above, it has to be held that in the circumstances of this case the jurisdiction for raising demand for short levy will be with the proper officer having jurisdiction over the E.O.U. and not the Custom House where the goods were assessed on an into bond Bill of Entry for the purpose of being warehoused."

8.7 We also find that similar views have been expressed by the Tribunal in the Final Order dated 08.01.2008 in the case of *Indian Oil Corporation Ltd Vs. Commissioner of Customs, Jamnagar* – 2008 (225) E.L.T. 226 (Tri. Ahmd.) on this issue. The relevant paragraph of the above order of the Tribunal is extracted below:

"6. We have carefully considered the submissions. It is not disputed that the entire goods imported by the appellant were warehoused by filing Into-Bond bills of entries in the Vadinar Port; that they have been removed under bond without payment of duty to the warehouses at the refineries at places which are outside the jurisdiction of Commissioner of Customs, Jamnagar; that the duty on the

warehoused goods have been paid at the time of clearance from the warehouses; that finalization of provisional assessment and action for demand of differential duty/refund of excess collected has been undertaken by the officers in-charge of receiving warehouses. Under these circumstances the submissions of the Ld. advocate for the appellant that the Commissioner, Jamnagar cannot demand differential duty is valid. It is not a case where the goods removed under bond were not received at the destination i.e. at the receiving warehouses. When the goods have been admittedly received in the warehouses at Madura, Koyali, Panipat and the duty payments have taken place only at the time of clearance from the warehouses, the question of demanding differential duty on such clearances by the officers at the port of import does not arise."

8.8 In view of the above discussion at paragraphs 8.1 to 8.7 above, we are of the considered view that the appellants importer have duly complied with the requirements of legal provisions for making an entry of the imported goods under Section 46 of the Customs Act, 1962, and for clearance of goods under warehousing provisions contained under Chapter IX of the Customs Act, 1962.

9.1 On second issue, that is whether the appellants importer is eligible for availing benefit of Notification No.50/2017-Customs dated 30.06.2017 under serial No. 558 or 559 in respect of imported raw materials/inputs etc. at the time of ex-bond clearance of final products manufactured in their private bonded warehouse, we have perused the relevant exemption entries in the said notification along with relevant conditions. For ease of reference the same are extracted and given below:

"G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3 of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012-Customs, dated the [1][17th March, 2012] published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 185(E), dated the 17th March, 2012, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India, -

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and

(b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table :

TABLE

S. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
1.	1	Animals and birds imported by zoo	Nil	-	-
		xx xxxxxxxx			
558.	Any Chapter	Raw materials and parts, for use in the manufacture of goods falling under heading 8901, 8902, 8904, 8905 (except sub-heading 8905 20) or 8906, in accordance with the provisions of section 65 of the Customs Act, 1962 (52 of 1962). Explanation: Nothing contained in this exemption shall have effect on or after 24th day of November, 2015	Nil	-	85
559.	Any Chapter	Raw materials and parts, for use in the manufacture of goods falling under heading/tariff item 8901, 8902, 8904 00 00, 8905 (except tariff item 8905 20 00) or 8906 Explanation.- For the purposes of this entry, it is clarified that in the case of raw materials and parts already imported under S.No. 558 above and lying unutilized,- (i) the unit will furnish a separate bond to the jurisdictional Deputy Commissioner of Central tax or the Assistant Commissioner of Central tax or the Deputy Commissioner of State tax or the Assistant Commissioner of State tax, as the case may be, giving details of such goods and also undertake to utilize the same for manufacture of goods falling under heading/tariff item 8901, 8902, 8904 00 00, 8905 (except tariff item 8905 20 00) or 8906; and (ii) In the event of failure to use such goods for the specified purpose, the unit shall pay on demand, an amount equal to the duty payable on such goods but for the exemption under this notification	Nil	-	9
		xx xxxxxxxx”			

The said explanation in the entry at S. No. 559 was later amended which is also captured below for the sake of clarity, even though such changes have been effected subsequent to the period of dispute.

"Explanation. - For the purposes of this entry, it is clarified that in the case of raw materials and parts already imported under S. No. 558 above and lying unutilized, -

(i) the unit will furnish a separate bond to the [1][Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017], giving details of such goods and also undertake to utilize the same for manufacture of goods falling under heading/tariff item 8901, 8902, 8904 00 00, 8905 (except tariff item 8905 20 00) or 8906; and

(ii) In the event of failure to use such goods for the specified purpose, the unit shall pay on demand, an amount equal to the duty payable on such goods but for the exemption under this notification:
[2][Provided that nothing contained in this Sl. No. shall have effect after the 31st March, 2025.]

"Annexure

Condition No.	Condition
9.	If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.
xx	xxxxxxxx
85.	If any of the goods manufactured from the imported raw materials and parts are subsequently intended to be broken up, a fresh bill of entry in respect of such manufactured goods shall be presented to the Commissioner of Customs and thereupon these goods shall be chargeable with the duty which would be payable as if such manufactured goods had been imported and entered for home consumption, under section 46 of the Customs Act, 1962 (52 of 1962), on the date of the presentation of such fresh bill of entry, for the purposes of break-up of such manufactured goods."

9.2 On careful reading of the above exemption entries, it is clear that the final product i.e., 'Boats' classifiable under Customs Tariff Item 8901 1020 is mentioned as one of the chapter heading to which the imported goods are being used for its manufacture, in the column (3) providing the 'description of goods' under both the exemption entries at S. No.558 & 559 of Notification No.50/2017-Customs dated 30.06.2017; further, the scope of goods covered under both such exemption entries state raw materials and parts classifiable under 'any chapter'. Thus, it can be concluded that by way of the scope of coverage of goods, there is no dispute about the applicability of exemption from payment of customs duty to the imported goods for its use in manufacture of ships/vessels in the present case. The only dispute in the present case is that the exemption under S. No. 558 is available upto 24.11.2015; and thereafter the exemption entry at S. No.559 is applicable, provided any person claiming such exemption should follow the prescribed conditions.

[1]Substituted (w.e.f. 2-2-2021) by Notification No. 2/2021-Cus., dated 1-2-2021.
[2]Inserted (w.e.f. 2-2-2023) by Notification No. 2/2023-Cus., dated 1-2-2023."

9.3 We find that there is a specific explanation added to the entry at S. No.559, enabling its applicability in respect of goods originally imported by availing of the concession/exemption under S. No. 558, if they are still lying in stock in the unit functioning under bonded warehouse for providing separate bond to the jurisdictional authorities, in respect of such goods. The said explanation also specify that it is only in the event of failure to use such goods for the specified purpose, then the unit shall be required to pay on demand, an amount equal to the duty payable on such goods but for the exemption under this notification. The condition for availing the said exemption is also to follow the procedure prescribed in respect of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 which was later amended by Rules of 2022.These rules had prescribed the procedure to be followed in giving intimation to the jurisdictional authorities under whose control manufacture operations were being undertaken about the requirement of imported inputs, and duly accounting for such inputs in manufacture for specified end use as provided in the exemption notification. In the present case, when the imported goods were brought into the private bonded warehouse, the appellants have duly followed the procedure by complying with the warehousing provisions under the Customs Act, 1962. The appellant importer being a private bonded warehouse licensed under section 58 and 65 ibid, there was no requirement to pay import duty on the materials taken into such warehouse from the port of import under customs custody, for the purpose of authorised operations within the private bonded warehouse. Further, considering that the imported goods meant for warehousing has been assessed to duty by the Customs officers at the port of import, it cannot be said that the exemption available under S. No.559, under which the appellant had followed the proper procedure for warehousing the goods, can be denied to the appellants at this distant stage, as the exemption entry under S. No. 558 have been continued under entry at S. No.559, even though it was wrongly indicated by the appellants and the Customs officers assessing the goods had also not raised any objection to the appellants' claim. Thus, we find that in the present case, the raw materials/inputs used in the manufacture of 'boats' being a specified product duly following the procedure under Customs Act, 1962, under the control of customs authorities are fully exempted from payment of Customs duty under S. No. 558 (upto 23.11.2015) or 559 of the above said notification No.50/2017-Customs dated 30.06.2017.

9.4. We find that our above views have also been supported by the judgement of the Hon'ble Supreme Court in the case of *Collector of Central Excise, Baroda Vs. Indian Petro Chemicals* – 1997 (92) E.L.T. 13 (S.C.), wherein the Apex Court had dismissed the Civil Appeal No.884 of 1988 filed by the department by holding as follows:

> *"We have read the judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal under appeal. It came to the conclusion that two exemption notifications were applicable and gave to the assessee the benefit of that notification which was more beneficial to it. Having read the judgment and order and heard learned counsel, we see no good reason to interfere with the judgment and order under appeal. The appeal is dismissed. No order as to costs."*

9.5 We also find that the legal provisions contained in sub-sections 7 to 10A of Section 3 of the Customs Tariff Act, 1975 provide the legal basis for charge of GST on the imported goods, including warehoused goods under specified circumstances therein. The extract of these provisions are given below:

> *"(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be.*
>
> *(8) For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of—*
>
> > *(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and*
> >
> > *(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).*
>
> *(8A) Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 (52 of 1962) are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the integrated tax under sub-section (7) shall be,—*

(a) where the whole of the goods are sold, the value determined under sub-section (8) or the transaction value of such goods, whichever is higher; or

(b) where any part of the goods is sold, the proportionate value of such goods as determined under sub-section (8) or the transaction value of such goods, whichever is higher:

Provided that where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a) or clause (b):

Provided further that in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (8).

Explanation.— For the purposes of this sub-section, the expression "transaction value", in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods.

(9) Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (10) or sub-section (10A), as the case may be.

(10) For the purposes of calculating the goods and services tax compensation cess under sub-section (9) on any imported article where such cess is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of—

(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

(10A) Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 (52 of 1962) are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the goods and services tax compensation cess under sub-section (9) shall be,—

(a) where the whole of the goods are sold, the value determined under sub-section (10) or the transaction value of such goods, whichever is higher; or

(b) where any part of the goods is sold, the proportionate value of such goods as determined under sub-section (10) or the transaction value of such goods, whichever is higher:

Provided that where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last of such transaction shall be the transaction value for the purposes of clause (a) or clause (b):

Provided further that in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (10).

Explanation.—For the purposes of this sub-section, the expression "transaction value", in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods.

(11) The duty or tax or cess, as the case may be, chargeable under this section shall be in addition to any other duty or tax or cess, as the case may be, imposed under this Act or under any other law for the time being in force.

(12) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act."

From careful reading of the above legal provisions, we find that the only situation under which the GST is payable in respect of warehoused goods, is provided under 8A of the Customs Tariff Act, 1975 to state that "where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 (52 of 1962) are sold to any person before clearance for home consumption". Thus, in the case before us, in respect of the imported raw materials which have been used in the manufacture of final products under a private bonded warehouse, as there is no clearance for home consumption by person by sale, we find that there is no situation arising for the levy of GST under the provisions of Section 8A ibid.

9.6 As regards payment of IGST on the imported raw materials/inputs taken into the private bonded warehouse of the appellants importer, it is claimed by the Revenue that the same being in the nature of supply of warehoused goods (i.e., to say that goods deposited in a warehouse) to any person before clearance for home consumption GST is payable. In this regard, we find that in terms of Schedule-III entry at 8(a) to Section 7 of CGST Act, 2017 it has been specifically provided that the same shall not be treated as 'supply' of goods. Thus, no IGST would be leviable on such imported raw materials consumed in the manufacture of the final products.

9.7 However, we find that the learned Commissioner in the impugned order had confirmed the adjudged demands on the basis of CBIC Circular No. 34/2019-Customs dated 01.10.2019 wherein on payment of IGST/CGST on the finished goods it has been clarified by the CBIC in Para 8 and 9 of the said Circular No. 34/2019-Customs as follows:

> *"8.To the extent that the resultant product (whether emerging out of manufacturing or other operations in the warehouse) is cleared for domestic consumption, such a transaction squarely falls within the ambit of "supply" under Section 7 of the Central Goods and Service Tax Act,2017 (hereinafter referred to as the, "CGST Act"). It would therefore be taxable in terms of section 9 of the CGST Act, 2017 or section 5 of the Integrated Goods and Services Tax Act, 2017 depending upon the supply being intra-state or inter-state. The resultant product will thus be supplied from the warehouse to the domestic tariff area under the cover of GST invoice on the payment of appropriate GST and compensation cess, if any. As regards import duties payable on the imported goods contained in so much of the resultant products are concerned, same shall be paid at the time of supply of the resultant product from the warehouse for which the licensee shall have to file an ex-bond Bill of entry and such transactions shall be duly reflected in the accounts prescribed under Annexure B. As per MOOWR, 2019, the applicant shall also inform the input-output norms, wherever considered necessary, for raw materials and final products and shall also inform the revised input-output norms in case of change therein.*
>
> *9.The waste generated during the course of manufacture of the resultant product may be cleared for home consumption as per clause (b) to sub-section (2) of section 65 of the Customs Act on payment of applicable duties of customs and GST."*

As we had discussed the issue of levy of GST on imported raw materials/inputs used in the manufacture of final products under bonded warehouse under the Customs control, in detail at paragraphs at 9.3 and 9.4, we do not find any legal basis for the conclusion arrived at in the impugned order on the basis of aforesaid CBIC's clarification, as we find that the legal provisions of sub-sections 7 and 8A of the Customs Tariff Act, 1975 and the entry at 8(a) of the Schedule-III read with Section 7 of CGST Act, 2017 have specifically provided that the same shall not be treated as 'supply' of goods for subjecting to levy of GST. Thus, we are of the considered view that in respect of the issue under dispute at (ii) and (iii), the appellants importer is not required to pay import duty in respect of the raw materials/inputs consumed in the final products manufactured under a private bonded warehouse, duly licensed by jurisdictional Customs authorities.

9.8 Upon further examination of the facts, we find that it is only in respect of the final products manufactured from the private bonded warehouse, at the time of its clearance, the appellants are required to pay the applicable duties, under Section 68 ibid. In other words, appellants importer as a unit licensed under Sections 58 and 65 ibid was permitted to import capital goods, raw materials etc. and warehoused them without payment of duty. Manufacture and other operations in a bonded warehouse is only a duty deferment scheme and the applicable duties is payable at time of clearance of final products. Thus both BCD and IGST on imports stand deferred during the period the goods remains in the bonded warehouse. The duty deferment is without any time limitation.In the case of capital goods, the import duties (both BCD and IGST) stand deferred till they are cleared from the warehouse for home consumption or are exported. The capital goods can be cleared for home consumption as per Section 68 read with Section 61 of the Customs Act on payment of applicable duty without interest. The capital goods can also be exported after use, without payment of duty as per Section 69 of the Customs Act. In the present case, the adjudged demands is not in relation to the demand of import duty in respect of final products cleared from the warehouse. Further, the authorities under whose control the private bonded warehouse of the appellants were functioning had not raised any demand in respect of the clearances of final products for home consumption from the warehouse. Further, in terms of the entry at S. No.5 of Notification No.26/2022-Customs (N.T.) dated 31.03.2022, 'Superintendent/ Superintendent Customs (Preventive)/ Appraiser in-charge of the appellants' private bonded warehouse is the 'proper officer' for the purpose of Section 68 ibid and it is only on his permission, such final products have been cleared for home consumption. Thus, we do not find it necessary to go into these details, as these are not the subject matter of the case before us. It is for the jurisdictional customs authorities to decide on whether the finished goods, when removed for home consumption have been paid with appropriate duty and such clearances are in compliance with the various legal provisions of warehousing under Chapter IX of the Customs Act, 1962.

10. As regards the disputed issue at (iv) in respect of confiscation of imported raw materials under Section 111(m) ibid and imposition of consequent penalty on the appellants importer for their acts of omission and commission under Section 112 (a) and/or (b) ibid, having discussed the issue of compliance to the provisions of warehousing in respect of imported goods and in manufacture of final products by the appellants in the customs bonded warehouse in detail under paragraphs 8.1 to 8.5, we do not find any basis on which any violation of omission or commission in the entry made for import of goods could be fastened on the appellants. It is further evidential from the conclusion arrived at by the learned Commissioner of Customs in the impugned order at paragraph 30.1 by holding that there is no evidence on record of any incorrect or false declaration having been made by the appellants importer, and hence we find that there is no ground for alleging violation of Section 111(m) ibid by the appellants. Thus, we do not find it legally sustainable to hold that the imported goods are liable for confiscation on account of the mis-declaration in the Bills of entry filed by the appellants importer. Thus, consequent penalty on the appellants importer is also not liable to be imposed under Section 112 ibid.

11. In view of the foregoing detailed discussions, analysis and findings recorded in the above paragraphs, we conclude that the imported raw materials/inputs used in the manufacture of final products under a Customs bonded warehouse in terms of Section 58 and 65 of the Customs Act, 1962 are not liable for payment of import duties at the time of clearance of such final products manufactured in the said customs bonded warehouse.

12. Therefore, we are of the considered view that the impugned order dated 10.01.2023 passed by the learned Commissioner of Customs (Import), Air Cargo Complex (ACC), Sahar, Mumbai by confirming the adjudged demands is not sustainable and thus, the same is set aside.

13. In the result, the confirmation of adjudged demands as per the impugned order dated 10.01.2023 on the appellants is set aside and the appeals are allowed in favour of the appellants.

14. Miscellaneous application filed by the appellants for change of name of the appellants in cause title from 'SHM Shipcare' to 'SHM

Shipcare Pvt. Ltd.' is considered and the same is allowed. Accordingly, the MA stands disposed off.

(Order pronounced in open court on 16.02.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha