



भारत सरकार

वित्त मंत्रालय/ राजस्व विभाग

केंद्रीय अप्रत्यक्ष कर एवं सीमाशुल्क बोर्ड – मुंबई अंचल-I, भारतीय सीमाशुल्क

आयुक्त सीमाशुल्क (आयात-I) का कार्यालय

**द्वितीय मंजिल, नवीन सीमा शुल्क भवन, शूरजी वल्लभदास मार्ग, बेलार्ड एस्टेट,
मुंबई-400001.**

दूरध्वनि-22757401 फैक्स-22757402

ई-मेल: adjn-commr-imp1nch@gov.in

फा. सं. : CUS/APR/MISC/2429/2022-23 GR. V(B)

**के द्वारा जारी किया गया : विवेक पाण्डेय
आयुक्त सीमाशुल्क (आयात-I)**

**आदेश दिनांक: 19.12.2023
जारी दिनांक: 19.12.2023**

**सी.ए.ओ. क्रमांक : 53/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. - 20231277000000424145**

मूल आदेश

- 1- यह प्रति उस व्यक्ति के प्रयोग के लिए निः शुल्क है, जिसके लिए यह पारित किया है।
- 2- इस आदेश के विरुद्ध क्षेत्रीय पीठ, सीमाशुल्क, उत्पाद एवं सेवाकर अपीलीय अधिकरण, जय सेन्टर, चौथा एवं पांचवा तल, 34 पी. डी. मेलो रोड, पूना स्ट्रीट, मस्जिद बन्दर (पूर्व) मुंबई 400 009 को अपील की जा सकती है।
- 3- सीमाशुल्क (अपील) नियमों 1982 के नियम 6 के आधार पर अपील फॉर्म सी ए-3 में जैसा कि उक्त नियम में संलग्न है के आधार पर की जानी चाहिए। अपील चार प्रतियों में की जानी चाहिए एवं 90 दिनों के अन्दर दायर की जानी चाहिए एवं उसके साथ उस आदेश की चार प्रतियां संलग्न होनी चाहिए जिसके विरुद्ध अपील की गई हो (इन प्रतियों में कम से कम एक प्रति अभिप्रमाणित प्रति होनी चाहिए)। अपील के साथ सीमाशुल्क अधिनियम 1962 की धारा 129A की उपधारा (6) के अन्तर्गत लागू रु.1,000/-, रु.5,000/- अथवा रु.10,000/- का, क्रास किया हुआ बैंक ड्रॉफ्ट अधिकरण की पीठ के सहायक रजिस्ट्रार के नाम जारी किया होना चाहिए। यह बैंक ड्राफ्ट ऐसे राष्ट्रीय बैंक का होना चाहिए जिसकी शाखा उस जगह स्थित हो जहां अधिकरण पीठ स्थित है।
- 4- अपील अधिकरण पीठ के सहायक रजिस्ट्रार अथवा इस संबंध में उनके द्वारा अधिकृत किसी भी अधिकारी के कार्यालय में प्रस्तुत की जानी चाहिए अथवा सहायक रजिस्ट्रार या ऐसे अधिकारी के नाम पंजीकृत डाक द्वारा भेजी जानी चाहिए।
- 5- जो व्यक्ति इस आदेश के विरुद्ध अपील करना चाहता है वह इस अपील के लंबित रहने तक दंडराशि या अपेक्षित शुल्क की साढ़े सात प्रतिशत धनराशि को जमा करे और ऐसे भुगतान का साक्ष्य प्रस्तुत करे। ऐसा न करने पर यह अपील सीमा शुल्क अधिनियम, 1962 की धारा 129E के प्रावधानों के अनुपालन न करने के आधार पर निरस्त मानी जाएगी।



GOVERNMENT OF INDIA
MINISTRY OF FINANCE/ DEPARTMENT OF REVENUE
CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS, INDIAN CUSTOMS - MUMBAI ZONE - I
OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT-I)
2nd FLOOR, NEW CUSTOM HOUSE, SHOORJI VALLABHDAS ROAD, BALLARD ESTATE,
MUMBAI - 400001.

Tel. No. 22757401 Fax No. 22757402

e-mail: adjn-commr-imp1nch@gov.in

F. No. : CUS/APR/MISC/2429/2022-23 GR. V(B)

Passed by: VIVEK PANDEY
COMMISSIONER OF CUSTOMS (IMPORT-I)

Date of Order: 19.12.2023
Date of Issue: 19.12.2023

C.A.O. No.: 53/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. - 20231277000000424145

ORDER-IN-ORIGINAL

1. This copy is granted free of charge for the use of the person to whom it is issued.
2. An appeal against this order lies to the Regional Bench, Customs, Excise and Service Tax Appellate Tribunal, Jai Centre, 4th & 5th Floor, 34 P. D'Mello Road, Poona Street Masjid Bunder (East), Mumbai 400 009.
3. The appeal is required to be filed as provided in Rule 6 of the Customs (Appeals) Rules, 1982 in form C.A.3 appended to said rules. The appeal should be in quadruplicate and needs to be filed within 90 days and shall be accompanied by Four copies of the order appealed against (at least one of which should be certified copy). A crossed bank draft drawn in favour of the Asstt. Registrar of the Bench of the Tribunal on a branch of any nationalized bank located at a place where the bench is situated for Rs. 1,000/-, Rs. 5,000/- or Rs. 10,000/- as applicable under Sub Section (6) of the Section 129A of the Customs Act, 1962.
4. The appeal shall be presented in person to the Asstt. Registrar of the bench or an Officer authorized in this behalf by him or sent by registered post addressed to the Asstt. Registrar or such Officer.
5. Any person desirous of appealing against this decision or order shall pending the appeal deposit seven and a half per cent of the duty demanded or the penalty levied therein and produce proof of such payment along with the appeal failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129E of the Customs Act, 1962.

Subject: - Second Round Adjudication in respect of SCN F.No. SG/INV-32/UKJ/17-18 SIIB (I) dated 02.02.2018 alleging mis-classification and undervaluation in the import of vessel declared as "Old & Used self-propelled Platform supply Vessel Sagar Fortune, earlier known as Pacific Amethyst as per MNR CERT MMD" by M/s S. S. Offshore Pvt. Ltd, Mumbai; after remand back by Hon'ble CESTAT's Order No. A/85536-85539/2022 dated 09.06.2022 - reg.

Brief Facts of the Case

M/s **S. S. Offshore Pvt. Ltd**¹ (IEC No. 0310062918) having their office premises at 4th floor, Viraj Impex House, 47, D'mello Road, Mumbai - 400 009, through their Customs Broker M/s **Babaji Shivram Clearing and Carriers Pvt. Ltd**², filed a **Bill of Entry No. 2630993** dated **28.07.2017**³ for import of a vessel declared as **Old & Used self-propelled Platform supply Vessel Sagar Fortune**⁴, earlier known as 'Pacific Amethyst' along with other bunkering goods which were present on board of the subject vessel. The Bill of Lading No. of the subject vessel was 001 dated 01.07.2017 and the supplier was M/s Swire Pacific Offshore operations (PTE) Ltd., Singapore. The details of all the goods declared in the said BE are as follows:

TABLE-1

Sr. No.	Description of the Goods Declared in the B/E	Quantity	CTH	Value Declared In Rs.
1.	Old & used self-propelled platform supply Vessel Sagar Fortune	1 nos.	89019000	13,82,89,200
2.	Foods Stores & provisions on Board	400 Kgs	21069099	65,852
3.	Bunkering Inventory, HFHSD	80,000 Ltr.	27101930	22,38,968
4.	Lube Oil	1470 Ltr.	27101980	1,93,604
5.	Grease	6 Kg	27129090	395.11
6.	Paint & Thinner	180 Ltr.	32089090	47,413

1.2. The value of the subject vessel was declared as Rs. 13.82 Crore (CIF) with all standard equipment and the vessel was classified under Customs Tariff Heading (CTH) 89019000. The importer had claimed the benefit of exemption available under Sr. No. 551 of Notification 50/2017 dt 30.06.2017 wherein the Basic Customs Duty was Nil. The said Bill of Entry was assessed on 1st Check basis and the Out of Charge thereof was accorded by the Docks on 03.08.2017 at 1628 hours. Subsequent thereto, on request of the Importer, the subject Vessel was converted from foreign run to coastal run on 03.08.2017 itself.

Vinod
13.12.23



¹ Also referred to as the importer or Noticee-1

² Also referred to as the CB or Noticee-4

³ Also referred to as the said BE

⁴ Also referred to as the vessel

2.1. An intelligence gathered by the Special Intelligence and Investigation Branch, Import-1 Commissionerate, New Custom House, Mumbai Customs Zone-I⁵ that the Import General Manifest (IGM) No. 2170547 dated 26.07.2017 filed by M/s Babaji Shivram Clearing & Carriers Pvt. Ltd. under Section 30 of **the Customs Act, 1962**⁶ and Bill of Lading No. 001 dated 01.07.2017 made inter-alia, mention of "Call Sign: AWWN as per the specification of the Tug", at one place. As per the Customs Tariff, the tugs were classifiable under CTH 8904 and attract Customs Basic duty @5%. The officers of SIIB (I), searched the said vessel "Sagar Fortune" on 04.8.2017. During the course of said search operations, the officers found some documents i.e. IMO Declaration, Log Book entries, etc. which indicated, prima-facie, inconsistency and discrepancy in the declared quantities of various oils available on board. It was learnt that the vessel was maintaining a logbook only from the period from which the said vessel was purchased by M/s S. S. Offshore Pvt. Ltd., the logbook for a period earlier to that was not made available to the officers of SIIB (I). The IMO Ship Declaration was a form used to declare hazardous materials on board the vessel. The IMO Shipper's Declaration form was mandatory for shipments of dangerous goods by sea under the International Maritime Organization regulations, which was to be prepared by the master of the vessel and presented before the Customs. During the search, another IMO Ship Declaration in original was found signed by the Master of vessel 'Sagar Fortune', apart from the one submitted to the Customs at the time of filing of Bill of Entry again in original for the same vessel while on foreign run, showing, different figures for the amount/quantum of bunkering goods remained on board, "Sagar Fortune" than the ones available in the IMO submitted to Customs for the purpose of assessment. The Table-2 below shows the inconsistency in the quantity declared in the B/E and quantity available as per the IMO declaration found on board the subject vessel during search operations in respect of following items:

TABLE - 2

Sr. No.	Name of the Oil	Quality declared In bill of Entry	Quantities mentioned in Master's IMO Declaration found on board the " Sagar Fortune" on 04.08.2017
1.	MGO (High Speed Diesel)	80 KL	33 KL
2.	Lubricating Oil	1470 LTRs.	9220 Ltrs.
3.	Hydraulic Oil	Not declared	5250 Ltrs.

2.2 Apart from the above, following noticed from documents recovered during the course of the search of the subject vessel:

a. Hand written note dated 03.08.2017 (time-2300 Hours) which was signed by 2nd Engineer of "Sagar Fortune" and 2nd Engineer of Sagar Prince wherein it was mentioned that MGO 50 m³ (KL) quantity had been transferred from vessel 'Sagar Fortune' to another vessel 'Sagar Prince'.

⁵ Also referred to the SIIB(I)

⁶ Also referred to as the Act

On enquiry it was learnt that vessel 'Sagar Prince' also belongs to the Importer of the subject vessel, i.e. M/s S. S. Offshore Pvt. Ltd.

b. On scrutiny of the entries made in the logbook available on board, it was found that there was an entry in the logbook dated 03.08.2017 and on 04.08.2017 showing the entry of 77.6 m³ (KL) quantity of Fuel Oil remaining on Board in the vessel "Sagar Fortune", while the handwritten note dated 03.08.2017 found on board the subject vessel, shows that MGO 50 m³ (KL) quantity was transferred to another vessel 'Sagar Prince'. However, the logbook entry did not show or record any incidence of transfer of Fuel Oil to another vessel. The subject IMO declaration found on-board the vessel during the course of search, also declares quantities of Lube Oil as 9220 Ltrs. (against the declared quantity of 1470 Ltrs.) and Hydraulic Oil as 5250 Ltrs. (which was not declared on arrival in B/E).

c. Further, it was seen that the subject vessel had entered the Indian waters on 28.07.2017 and the quantity of fuel oil (MGO) remaining on board declared on arrival was shown as 80 KL and the logbook entry dated 03.08.2017 of the subject vessel was still showing the quantity as 77.6 m³ (KL) of MGO.

2.3 However, the handwritten note dated 03.08.2017 showed that 50 m³ (KL) had been transferred from the subject vessel to vessel Sagar Prince. The said handwritten note regarding transfer of MGO had been signed by second engineers of both the vessels, it was evident that 50 m³ (KL) quantity of MGO had been transferred to vessel 'Sagar Prince' from the vessel 'Sagar Fortune' on 03.08.2017 at or before 11 pm. As the officers of SIIB (I) had on 04.08.2017 found the MGO on board to be 77 m³ KL even after the transfer of 50 m³ KL quantity of MGO, it therefore, becomes obvious that there was at least 127 (77+50) m³ (KL) quantity of MGO (HGHS) remaining on Board on the morning of 03.08.2017. The logbook readings indicate that the subject vessel consumes about 0.6 KL of Fuel Oil every day at stationary position at P&V Anchorage. Therefore, by adding 0.6 m³ (KL) of quantity by way of reverse calculation from 03.08.2017 to 28.07.2017, the Fuel Oil remaining on Board (MGO) at the time of entry of the vessel in Indian waters on 28.07.2017 works out to 130 m³ (KL). Therefore, it could be inferred that there was at least 130 KL of MGO on board the subject vessel on 28.07.2017 when it entered India. But the IMO declaration found on board the subject vessel by the Officers of SIIB (I) shows the quantity of MGO on 28.07.2017 at 133 KL. It was therefore apparent that 133 KL of MGO was onboard the subject vessel on 28.07.2017 when it entered Indian water while the importer declared only 80 KL on arrival of the subject vessel.

a. Therefore, from the above it can be said that there was a huge difference in the quantities declared in B/E and actual quantities found on board on 04.08.2017 as per IMO declaration certified by Master of the vessel and logbook entries. It, therefore, appears that there was deliberate mis-declaration of 53 KL quantity of MGO by the importer with an intention to evade Customs duty thereon.

b. Further, the importer had mis-classified the remaining on board goods i.e. High Speed Diesel (MGO), by classifying them under CTH 2710 1940, whereas the correct classification would be under CTH 2710 1930 wherein the duty structure is as follow-

TABLE - 3

Sr. No	Duty Structure	Duty Percentage
1.	Basic Customs Duty (BCD)	5%
2.	Countervailing Duty (CVD)	14%
3.	Rs. 12.69/- per Ltr (as per Notification No. 11/2017) dt. 30.06.2017	Rs. 12.69/- per Ltr
4.	Edu. Cess	2%
5.	H.Edu.Cess	1%
6.	SAD	4%
7.	Rs. 6/- per Ltr (Notification No. 7/2015 dated 01.03.2015).	Rs. 6/- per Ltr

2.4. Further, the importer had classified vessel “old and used self-propelled platform supply vessel Sagar Fortune earlier known as Pacific Amethyst” under CTH 89019000 and had sought the benefit of exemption of basic Customs duty available under Serial No. 551 of Customs Tariff Notification Number 50/2017 dated 30.06.2017 wherein the Customs basic duty was 'NIL'. The value of the subject vessel was declared as Rs. 13.82 Crores (2.1 Million USD) (CIF) by the importer in the Bill of Entry, Further observations were as under;

a. As per the copy of the provisional certificate of Singapore Registry issued by MPA Singapore dated 08.01.2008, submitted by the Importer, the subject Vessel was built in the year 2007 at China by Jingijang Nanyang Shipbuilding Co Ltd. China and was assigned the name Dalini Topaz' having IMO No. 9458327. In the description of the ship, it was mentioned as "Steel Offshore Supply vessel". In the box below Owner's particulars was mentioned as 'Salvin Far East Pte Ltd., Singapore.

b. The subject vessel was, thereafter, bought by M/s Swire Pacific Offshore Operations (PTE) Ltd., Singapore and vide Certificate of Singapore Registry issued by MPS Singapore, dated 30.04.2009, the subject vessel was re-named as 'Pacific Amethyst' having IMO No. 9458327. In the box description of the ship, it was mentioned as "Steel Offshore Supply vessel" as earlier, when the owner was Salvin Far East Pte. Ltd, Singapore.

c. Thereafter, the Importer had bought the subject vessel from M/s Swire Pacific Offshore Operations [PTE) Ltd., Singapore and vide Provisional Certificate of Indian Registry, dated 30.06.2017, the same was re-named as "Sagar Fortune". In the box of description of the ship, it was mentioned as "Transverse, Steel Offshore Supply vessel” which was different from the earlier two times of registrations. The importer had also produced a copy of approval/allotment of name, official number and signal letter from Ministry of Shipping, Mercantile Marine

Department, Mumbai vide ref. No. RS 2570/27440 dated 17.05.2017. The Importer had also produced a copy of Memorandum of Agreement dated 12.05.2017 between M/s Swire Pacific Offshore Operation (PTE), Singapore and the Importer for the purchase of the subject vessel at the price of USD 2,100,000/-.

2.5. During the course of investigations, the Importer vide their various letters had submitted the following documents:

- i. A copy of the Provisional certificate of Singapore Registry for the Vessel "Dalini Topaz" dated 08.01.2008, which describes it as "Offshore Supply Vessel".
- ii. A copy of Certificate of Singapore Registry, issued on dated 30.04.2009, for the Vessel "Pacific Amethyst" which describes it as "Steel Offshore Supply Vessel"
- iii. Copy of Builders certificate from Pacific Ocean Engineering & Trading PTE Ltd.
- iv. Deletion certificate having No. DELC-0171-17 issued by, Director of Marine, Maritime and Port Authority of Singapore.
- v. Copy of Provisional certificate of Indian Registry for vessel "Sagar Fortune" dated 23.06.2017,
- vi. Memorandum of Agreement dated between M/s Swire Pacific Offshore Operation (PTE), Singapore and the Importer. For the purchase price of USD 2,100,000.
- vii. Copy of Bill of sale dated 29.06.2017
- viii. Copy of Indian Registry of Shipping (IRS class) Survey report dated 07.07.2017, mentioning the ship type as "Offshore Support Vessel".
- ix. Copy of approval/allotment of name, official number and signal letter from Ministry of Shipping, Mercantile Marine Department, Mumbai vide ref. No. RS 2570/27440 dated 17.05.2017.
- x. Chartered Engineer certificate from Harish & Company, dated 29.07.2017, which describes the vessel as "Offshore Support Vessel and which provides the depreciated current value of the vessel as USD 21,00,000. The said CE certificate also predicts the value of the subject vessel in the year of Manufacture at USD 46,20,000.
- xi. Copy of Specification sheet of Swire Pacific Offshore, classifying the vessel "Pacific Amethyst" as "ABS, *A1, Fire Fighting Vessel Class 1, Offshore Support Vessel, Circle E, *AMS. *DPS-2.
- xii. Pre Purchase Inspection report by DNV-GL (Det Norske Veritas (Pty) Ltd.) dated 26.04.2016 for the Vessel M/V Pacific Amethyst stating it, as Offshore Support Vessel.

2.6. Before buying the subject vessel, the Importer had done the pre-purchase survey/inspection by DNV-GL [Det Norske Veritas (Pty) Ltd.]. The DNV-GL vide their inspection report No. 20817008 dated 26.04.2017 for the Vessel Pacific Amethyst (now known as Sagar Fortune) have classified the subject vessel as *ABS *AI, Fire Fighting Vessel Class 1, Offshore Support Vessel, Circle E, AMS, *DPS-2".

2.6.1 After the arrival of the subject vessel in India and after filling of B/E No. 2630993 dated 28.07.2017, the importer had appointed a Chartered Engineer M/s Harish and Company for inspection of the vessel in terms of Board's Circular No. 25/2015 dated 15.10.2015. M/s Harish and Company vide their report ref. No. HC-MUM/S.S.OFFSHORE PVT LTD./MARINE/001/2017-18 dated 29.07.2017, had mentioned under the heading of specification that on physical inspection the vessel was a Cargo Ship (offshore Support Vessel), and had valued the subject vessel at USD 2,100,000.00 which was the same as declared by the Importer in the B/E/Invoice.

2.7. During the course of investigation, the office premises of the Importer were searched under the provisions of Section 105 of the Customs Act, 1962, and certain incriminating documents, which were considered relevant for the purpose of investigation, were taken over under Panchanama.

2.7.1 One of the documents recovered during the said search at the premises of Importer on 10.08.2017, was a certificate of Classification, dated 02.10.2013 issued by American Bureau of Shipping for the vessel Pacific Amethyst. The said ABS certificate of Classification had classified the subject vessel as "*A, Fire Fighting Vessel Class 1, Offshore Support Vessel, (E) (i.e. Circle E), "AMS, *DPS-2."

2.8. Further, from the other documents recovered during the search at the premises of the Importer on 10.08.2017 it had come to notice that:

- i. A survey report prior to selling of the subject vessel from class ABS was found, in which on page No. 5 the word towing was used while describing the functions of the vessel, about which when questioned the Importer stated that it was typographical error.
- ii. All such charges Le. Brokerage charge, Survey charge and charges towards ROB consumables etc, which were required to be added to the value of the goods, were not added to the value of the goods while declaring the same to the Customs.
- iii. The Importer had declared the agreement/purchase price of the vessel Le. USD 21,00,000/- as the CIF value of the goods in the B/E
- iv. The value declared in the sale agreement between M/s Swire Pacific Offshore and the Importer was USD 21,00,000/-
- v. The subject vessel was handed over/delivered to the Importer by the seller at Cape Town, South Africa. Thereafter, the vessel came to Mumbai port on its own motion. However, since the vessel has come on its own motion, the total cost incurred during the journey and the cost of Insurance was required to be added to purchase price of USD 21,00,000/- to arrive at CIF of the subject vessel.

2.8(a) During the course of investigation, in his statement **Shri Sachin Kshirsagar, Director of the importer company**⁷, recorded under section 108 of the Customs Act, 1962 on 14.08.2017

⁷ Also referred to as Noticee-2

inter-alia stated that through international broker Shri Ajit Arote of M/s Om Sai, they came to know about the sale of subject Supply vessel Pacific Amethyst belonging to M/s Swire Pacific PTE, Singapore: that the deal of purchase was finalized at USD 2.1 million; that the mutual agreement for sale of the vessel between M/s Swire Pacific PTE and the Importer, was done vide sale agreement dated 12th of May 2017; that as per the agreement the delivery of the vessel was to be made at Cape town, South Africa; that before purchasing the said vessel ICAS class DNV GL Surveys, surveyed the vessel and submitted report to the Importer; that as per the agreement 15% (USD 315000) of the agreed value was to be paid as Advance payment and the balance payment of 85% and ROB charges (USD 1780000) was made against the delivery at Cape Town; that the importer prepared the vessel for sailing after completing the formalities of survey by IRS class for Indian flag, name change and Class certificates and the vessel eventually sailed on 5 July 2017.

(b) Shri Sachin Kshirsagar, in his statement, further stated that the said vessel was a supply vessel for carrying Man and Material; that they had filed an e- Tender for M/s ONGC project and had filed a bid for PSV 3000 Dwt type of vessel; that for M/s ONGC, the first Priority for chartering services was a vessel having Indian Flag, which was basically the reason for the said purchase and import of the said supply vessel; that as per class notation, the said vessel was an Offshore Support Supply Vessel; that the said vessel could work as per the vessel's specification capability and class notations; that the said vessel could carry passengers, deck cargo, supply fuel, fresh water, mud tank, cement tank and with respect to external Fire Fighting job, could position itself by using DP mode; that he had seen the certificate of Classification of ABS dated 02.10.2013 wherein the certificate particular of Ship description of vessel was mentioned as 'Offshore Support and Fire Fighting Vessel' and as per class notation is 'ABS A1, Fire Fighting Vessel class 1, Offshore Support Vessel, Circle E, AMS, DPS-2; that he had seen certificate of Indian Register of Certificate (IRS) Ref: BOM171SPS018 dated 04.07.2017 wherein the certificate of Ship type of vessel was mentioned as 'Other Cargo Ship (Offshore Support Vessel)': that he had seen page no. 5 of ABS Survey Manager Survey status report print dated 23.01.2017 of vessel "Pacific Amethyst wherein functions of vessel were mentioned as 'Fire Fighting Vessel Class 1, Towing' which appears to be a typographical error by ABS class; that while taking over the vessel at Cape town on 29.06.2017, they had checked the class certificate dated 28.06.2017 of ABS which mentioned the vessel notation as 'ABS A1, Fire Fighting Vessel class 1, Offshore Support Vessel, Circle E, AMS, DPS-2', that he had seen the B/E and invoice bearing no. AME - 01 dated 22.06.2017 for the import of old & used vessel "Sagar Fortune" and invoice bearing no. Sagar Fortune -00 AME 01 dated 24.07.2017 for bunker & provisions and had signed them as a token of having seen them; that the invoice was on CIF basis and delivery at Cape Town and the details therein was correct as per his knowledge; that he had purchased the vessel in Cape Town as per mutually agreed MOA terms dated 12.05.2017 and registered it under Indian Flag there itself and brought the said vessel at Mumbai Port for the said M/s ONGC contract on their own operational cost and the insurance paid was on yearly basis to move anywhere in Indian waters

under Protection and Indemnity insurance; that the purchase price was USD 2.1 Million CIF and he was not aware of the Customs Valuation Rules and that the brokerage charges, Pre-inspection charges... and Oils Remaining on Board (ROB) were required to be included in the transaction value of the goods for which he would consult with his custom broker and if the same was applicable, then they would pay the duty accordingly.

(c) In his statement of Shri Kamlesh J. Joshi, one of the Director, M/s Babaji Shivram Clearing & Carriers Pvt. Ltd was also recorded under Section 108 of Custom Act, 1962 on 18.08.2017 inter-alia stated that the subject B/E had been filed by their Company M/s Babaji Shivram Clearing & Carriers Pvt. Ltd.; that Shri Tarique Pathan, Vice President in their company, brought the said business; that thereafter, their Vessel division filed the IGM and the CHA division handled the documents for clearance of the subject goods; that the Importer had given them 3. Import Invoices (Vessel, Bunkering, Provisions), Bill of Lading, MMD Registration certificate, Certificate of Singapore Registry of change, of owner, Minimum Safe Manning documents, International load line certificate, International Tonnage certificate, Insurance policy; that the importer had already given them the MMD provisional registry Certificate of "Sagar fortune" and Singapore registry certificate for Vessel "Pacific Amethyst" and other documents i.e. Import Invoice, Minimum Safe manning documents which describe the Vessel as "Offshore supply Vessel, that they had also confirmed from the Importer regarding the Class/Type of Vessel so that the vessel could be correctly classified according to its Class/Type, that the Bill of Lading was provided by the Importer, which was being handled by their Vessel division, which was a different division than the one which used to file the B/E; that the B/E was filed based on the documents given to them by the Importer and the confirmation received from the Importer; that they had raised the issue of Tug being mentioned in the B/L but the importer confirmed that the subject vessel was Offshore Supply Vessel, and hence they had classified it under 8901 9000; that based on the certificate of Registry and MMD certification and the confirmation received from the Importer that the subject vessel was 'Offshore Supply Vessel', they had classified the subject vessel under 8901 9000; that the ullage report of official Survey with respect to the various oils remain on board was not given by the Master/owner of the Vessel; that they had correctly classified HSD under CTH 2710 1930 at the time of submission/noting of the documents for the first check of the B/E but system automatically also took the transformer oil duty which was not applicable in HSD; that before final assessment of the B/E, the said transformer oil duty had to be removed/deleted; that there was a general practice in Assessing Group to delete non-applicable Transformer Oil duty which System accepts against CTH 2710 erroneously; that due to this it might had changed Additional Duty of Rs. 15/- per litre which was reflected at the time first check Bill of Entry.

(d) In his statement **Shri Harish H. Bhatia, Chartered Engineer, Proprietor of M/s Harish and Company**⁸ appointed by the importer, recorded on 16.08.2017 under Section 108 of Customs Act, 1962 inter-alia stated that they were in the business of Surveyors, Loss Assessor

⁸ Also referred to as the Noticee-3

and Valuers of movable & immovable assets; that they were also approved by IRDA for Marine Hull 'A' Category; that his firm was empanelled for valuation/examination of second hand (old & used) machines imported at New Customs House, Mumbai vide Public Notice No. 22/2015 dated 21.04.2015 issued by Commissioner of Customs (Import-1), Mumbai; that while conducting the survey he used to visit and make physical inspection, which includes condition of the vessel and confirms the IMO no. of the vessel; that thereafter he used to enter the vessel and checks all facilities and overall condition of the vessel; that further he used to check the Engine Room and inspects the running condition of engines and also checks purpose & usage of the vessel as per description; that Shri Sachin Kshirsagar, Director of M/s S. S. Offshore Pvt. Ltd. had approached his firm for inspection of Offshore Supply vessel "Sagar Fortune" for which arrangements were made by the Importer; that on the basis of the report of Pre-Purchase Inspection issued by DNV-GL (Det Norske Veritas (Pty) Ltd.), ABS classification & Indian Register of Shipping he had prepared the survey report for vessel Sagar Fortune; that as per ABS classification & IRS classification it meets the requirement of 'Offshore Support Vessel: that as far as his knowledge, there was not much difference between Offshore Supply Vessel' and 'Offshore Support Vessel'; that however, his report states "Offshore Support Vessel"; that the manufacturer of the vessel was Jingjiang Nanyang Shipbuilding Co. Ltd. and as per the details of the vessel inspected on page no. 3 of his report which mentions specification as Cargo ship (Offshore support Vessel) that hence the vessel was Offshore Support Vessel; that his representative Shri Uday Chander Bhatia, a qualified Mechanical Engineer and Surveyor had visited and inspected the said vessel "Sagar Fortune" on 28.07.2017 along with the owners of the vessel and carried out detailed inspection and taken necessary photographs; that he could not personally board the vessel because he had severe knee problem; that he had seen the vessel anchored from outside, that there appeared to be no change in the vessel nor did it appear that any re- refurbishing/reconditioning was carried out; that the value had been arrived as per purchase invoice shown to him by the Importer and also as per local market inquiry carried out; that the Importer only informed him that the sale price was the CIF value of the vessel; that the agreement copy of vessel was not provided to him by the Importer and that the Importer had given him the purchase invoice copy of the vessel and based on the value mentioned in the invoice, the CIF value of the vessel had been worked out; that the normal procedure being followed was to multiply the CIF value by 2.5 times to arrive at a value of the vessel, at the time of its manufacture.

2.9. As the preliminary investigation indicated that there was, prima-facie, a mis-declaration of description and value in respect of the said vessel as well as mis-declaration of quantities of various oils remaining on board, the vessel Sagar Fortune was seized on 16.08.2017, under Panchanama, under the provisions of Section 110 of the Customs Act, 1962, in the reasonable belief that the same was liable to confiscation under the provisions of Section 111 of the Customs Act, 1962. The same was, however, handed over to the Master of the vessel, vide Supratnama dated 16.08.2017, for safe custody under the provisions of provision to Section 110 (1) of the

Customs Act, 1962. A seizure memo for seizure of the subject vessel was also issued on 21.08.2017.

2.10. Similarly, the Directorate General of Shipping, Mercantile Marine Dept. Mumbai (MMD) vide their letter No. RS-2570/28020 dated 17.08.2017 forwarded the following documents,

- i. the copy of Memorandum of Agreement,
- ii. copy of Bill of Sale,
- iii. copy of Provisional certificate of Registry/certificate of survey to this office.

(a) In the Report submitted by M/s Harish & Co., Chartered Engineer appointed by the Importer, vide Ref. No. HC-MUM/S.S.OFFSHORE PVT.LTD. /MARINE/001/2017-18 dated 29/07/2017, against the column "Name of the inspecting person/inspector" the name of Shri Harish H. Bhatia was mentioned, that there was no mention of Shri Uday Chandra Bhatia, on the said report. However, in his statement under section 108 of Customs Act, 1962, Shri Harish H Bhatia had stated that he had not boarded the subject vessel personally. As he had not inspected the vessel personally, and appeared to have calculated the value of the subject vessel only on the basis of the invoice provided by the Importer. Hence, the inspection conducted by the said Chartered Engineer appeared to be dubious and untrustworthy and name of Shri Uday Chandra Bhatia was only an afterthought to legalize or authenticate his report made without surveying the ship as required. Accordingly, thereafter, an independent Chartered Engineer, Shri Rajendra Tambi (empanelled for New Customs House Mumbai vide Public Notice No. 22/2015 dated 21.04.2015) was appointed for doing independent inspection and survey of the subject vessel and to ascertain the type, class, functions and other various technical aspects of the subject vessel. He was also asked to ascertain the true value of the said vessel as the same was old & used. Shri Rajendra Tambi, Chartered Engineer, had visited the subject vessel and submitted his inspection report vide ref. No. CC184 dated 05.09.2017. In the said report the Chartered Engineer had inter-alia submitted that,

"All shipping terminology terms vessel supporting rigs and offshore support vessel. These can be used for tugging and anchoring operation of rigs as well as also supply consumable to such platforms as use of anchoring and tugging operation are not full time. Thus, offshore support vessel is a broad term which includes platform supply vessels also."

(b) Pulling or holding any other marine vessel or platform requires special capacities of on board machineries and machinery specifications and their layout. Inspected vessel did not have such capacities and layout of machinery.

(c) It is also mentioned that since ABS gave notation as "Fire Fighting Vessel" alongside "Offshore support Vessel: and since provisions of machineries and machinery specification and

their layout did not indicate the same as Tug. Hence as per their opinion it was an "Offshore Support Vessel" and not Tug but could be converted to a Fire Fighting Vessel.

(d) The said independent chartered engineer in his said report has ascertained the value of the said vessel to be at USD 5000000/- (Rs. 32.60 Crores) after allowing depreciation and excluding the cost of expenses made by the Importer, in the present condition of the subject vessel.

2.11 (a) The Importer vide their letter dated 21.08.2017 had requested for provisional release of the vessel. The request of the importer for provisional release of the vessel was acceded by the Commissioner of Customs (Import -1) in terms of the provisions of Section 110A of the Customs Act, 1962 on 14.09.2017 subject to the following conditions:

- i. Acceptance of Bond of 100% re-determined value of Rs. 41.45 Crores, and
- ii. Acceptance of Bank guarantee of 30% of the re-determined above mentioned value for the purpose of security and surety of the government revenue.

(b) The above decision was conveyed to the Importer vide letter dated 25.09.2017. The importer aggrieved by the said decision had filed an appeal before the Hon'ble CESTAT. The Hon'ble CESTAT while disposing of the said appeal directed the learned authority to pass a public order, after giving an opportunity to the applicants of being heard. The Department, having regard to the fact that a Writ petition had already been filed in Hon'ble High Court of Punjab and Haryana on the question of jurisdiction of the Hon'ble CESTAT to entertain appeals on decisions passed under Section 110A of the Customs Act, 1962, also filed a writ petition in the Hon'ble High Court of Bombay against the said order of the Hon'ble CESTAT, raising a substantial question of law "Whether the CESTAT had jurisdiction to entertain an Appeal against a letter allowing provisional release of Vessel "Sagar Fortune" under Section 110A of the Customs Act, 1962. The said Writ petition had since been dismissed by the Hon'ble High Court of Bombay vide its oral judgment dated 28.12.2017, wherein the Hon'ble High Court had answered the said question of law in the affirmative. Consequently, an order for Provisional Release of the subject vessel was passed, after giving personal hearing to the importer, vide Order-in-Original C.A.O. No. 29/2017-18 dated 11.01.2018, wherein the subject vessel was allowed to be released provisionally in terms of Section 110A of the Customs Act, 1962 subject to the following conditions:

- i. Submission and acceptance of Bond equal to estimated value of Rs. 41.45 Crores, and
- ii. Submission and acceptance of Bank guarantee of 30% of the estimated value, minus the duty already paid by the importer.

(c) Meanwhile, having confronted with the discrepancies found in oils remain on board, the Importer paid an amount of Rs. 17,15,315/-, towards part differential duty on account of mis-declaration of those Bunkering goods vide Challan No. 62 dated 24.08.2017.

2.12. Further during the course of investigations, in his statement of Shri Lalu Natarajan, Ship Survey cum Deputy Director General of Shipping (Technical), Mercantile Marine Department, Mumbai recorded under Section 108 of the Customs Act, 1962 on 16.11.2017 inter-alia stated that their organization was an Indian maritime organization looking after the safety of ships, registration, certification, survey, examination and certification of seafarers, approval of Fire Fighting and lifesaving equipment manufacturers, Maritime Training Institute; that it works under the Directorate General of Shipping, that at major Indian ports they had branches; that based on the certificate of survey issued by: Recognized organizations (class), the registry (provisional/permanent) Certificate was issued; that only the Indian Registry of Shipping could issue provisional certificate and others could issue statutory certificate; that based on those certificate of survey, the registrars of Mercantile Marine Department used to issue the permanent registry certificate; that the registry certificate was issued to the vessel "Sagar Fortune" based on requirements, like,

- i. Bill of sale, produced by the Buyer which was submitted by the Buyer from the seller,
- ii. Declaration of Ownership - An authorized person from the Buyer declares that the Vessel, belongs to them and endorses the prescribed forms before the registrar;
- iii. Board Resolution: that they are going buy the ship, and authorizing a person to sign on their behalf;
- iv. Carving and marking, which stated IMO number, Name of the Vessel and port of Registry, which is verified on board by surveyor and endorsed if in order,
- v. Certificate of Survey;
- vi. Protocol of delivery and acceptance;

2.13 Based on these above documents, provisional registry was issued by Indian Register of Shipping, when the vessel was abroad and when duly authorized by the registrar, that they used to verify the earlier registry certificate, the deletion certificate, B/E for home consumption, and currently valid statutory certificates before issuance of final registry certificate; that based on the description taken from certificate of survey, previous registry certificate and provisional registry certificate, the Registry Certificate was issued for the description mentioned as "Offshore Supply Vessel"; that Offshore Supply Vessel, was basically carrying the cargo and people to the offshore field and return, and in the case of Offshore Support vessel, in addition to those function they might be providing standby support at the offshore Unit location; that with regard to the certificate issued by American Bureau of Shipping for the vessel "Pacific Amethyst" wherein description vessel was mentioned as "offshore support & Fire Fighting vessel, he stated that in this particular case the IRS was the authorized Recognized Organisation (RO), who had issued the provisional registry certificate and based on their certificate of survey and provisional registry issued, the description of the same had been taken in the permanent registry certificate. On being asked to offer their say on IRS having assigned the vessel with class notation as "SUL Offshore support vessel, IY Agni 1(2400 CUM/HR) DP (2), but their registry certificate assigns the said vessel Sagar Fortune as "Offshore Supply Vessel", he stated that in the interim certificate

of class preview No. BOM17F016 dated 04.07.2017. where similar description had been mentioned as "SUL Offshore Support Vessel, IY AGNI 1 (2400 CUM/HR), DP (2)", which was submitted by the RO; that there was not much difference between offshore Support Vessel and offshore supply vessel from the registration point of view; that this description was given by the Recognized Organisation to identify the type of vessel and not by the Registrar.

(a) In his statement of Shri K. K. Sanjeev, Head of the Department (classification and certification) Indian Registry of Shipping, Mumbai recorded under Section 108 of the Customs Act, 1962 on 06.12.2017 inter-alia stated that IRS was a classification society, they used to classify the Ships as per the class rules and regulations; that they were RO to various Flag administration including India; that as authorised by various Flag Administration, including India, they used to carry out necessary statutory survey and certification of Ships; that when specifically authorised to carry out provisional registry of a ship, after verification of necessary documents as per authorization, IRS could issue provisional registry to a Ship for six months; that all provisional registry documents were put in a sealed envelope and forwarded to Principal Officer, MMD through ship representative; that the Principal Officer, MMD authorises IRS to issue provisional registry when the ship was out of India; that in India provisional registration of the ship was carried out by Mercantile Marine Department directly; that when authorised by flag Administration, they used to carry out safety management system, security management system and maritime labour convention audits on board ships; that the provisional registry was issued based on authorization and also referring to the previous registration of the ship/vessel; that immediately after issuance of provisional registry, class entry survey would commence as per Rules and Regulation of IRS; that statutory survey and certification as authorised by Flag Administration and based on various Merchant Shipping (MS) notices and IMO convention requirement, would be issued after satisfactory completion of the survey on board; that for statutory surveys attending surveyor would also refer to IRS procedures for the Ship; that when the vessel was classed with an International Association of Classification Societies (IACS), existing class and statutory certificates issued previously to the vessel would be referred; that a general examination of the vessel as per IRS procedures would be carried out and on satisfactory completion of survey class certificate and statutory certificate equivalent to previous class notation stated in class certificate and data from the statutory certificate, would be issued; that from the records available with IRS office, certificate of registry dated 30.04.2009 issued by MPA Singapore (Singapore Flag) describes the vessel as "Steel offshore supply vessel"; that IRS attending surveyor had taken all data from the previous registry to issue provisional registry of the subject vessel; that it was a general practice that was being followed while issuing provisional registry that the data from the previous registry was carried on; that likewise interim certificate of class preview was prepared equivalent to previous class certificate of ABS; that it was the class certificate which gives details of class notations of that particular vessel; that in the instant case the interim certificate of class preview appears to have been prepared based on certificate of class issued by ABS; that it was the class certificate with notation which gives the

exact description of the vessel and certificate of registry gives only a general description; that as per ABS class notations,

- i. A1 -stands for full sea going vessel;
- ii. Fire Fighting Vessel Class-1- the vessel is capable of firefighting level 1; there are other level-2 and level-3. in this case the vessel was level-1, the lowest of the level capabilities;
- iii. Offshore Support Vessel - this vessel could support activities of offshore installations like oil rigs;
- iv. Circle (E)- Equipment's, means anchor and chain cable was certified by ABS
- v. AMS -machinery, like engine, propulsion system etc., was classed with ABS,
- vi. DPS-2 Dynamic Positioning system level 2, means capability to maintain the vessel at one position.

(b) Shri K. K. Sanjeev further stated that DPS-2 or DP-2 as per IRS class notation, indicates the vessel was equipped with machinery which enables the vessel to stand at predetermined stationery position to carry out precision jobs; that the subject vessel in instant case could perform as a support vessel for the functions of offshore Oil installations and in addition to that the vessel was capable of firefighting role for oil installations; that as per classification rules and as per previous class notations, the subject vessel was assigned class notation as offshore support vessel, and supply vessel notation was not assigned.

2.14. During the course of investigations, in his statement Capt. Bijoy Kumar Sharma, Senior Surveyor, Indian Registry of Shipping, Mumbai, who had carried out the survey of the subject vessel recorded under Section 108 of the Customs Act, 1962 on 13.12.2017 inter-alia stated that he was engaged in survey of vessels i.e. he used to board the ships, nominated/allotted for survey and used to do the full survey, for example survey of safety, security, verification of safe manning, condition of Hull and Machinery, etc. of the ships and accordingly, after survey a survey report was issued; that on completion of the survey, he endorses/issues trading certificates i.e. mandatory certificates required as per International rules and regulation of the Ship; that at the time of building of the ship, the design and class was decided and accordingly the ship was built, and after completion of the ship at that place, class certificate was issued; that based on those class certificate the Flag issues its registry certificate, which used to continue until and unless there was some major modification; that such major modification was done under the supervision of the Class; that in this particular case the vessel was already classified by ABS class, and registry certificate was issued by Singapore Flag, that accordingly, this particular Vessel 'Sagar Fortune' was surveyed by him and on completion of Survey the class notation "SUL, Offshore Support Vessel, IY, Agni 1(2400 Cum/hr), DP(2)" was assigned to the Vessel; that provisional certificate of registry was issued based on description of vessel mentioned in the earlier certificate of registry issued by MPA, Singapore dated 30.04.2009; that whereas, the vessel's interim certificate of class was issued based on the certificate of class issued by ABS dated 02.10.2013; that the provisional certificate of registry issued by them or the registry

certificate issued by MPA Singapore, describes the vessel in broader terms and hence the word 'Offshore Supply Vessel' was being used to describe the type of vessel; that he would like to clarify that the Class certificate was the documents which describes the actual type of vessel; that in this case the vessel 'Sagar fortune' had been classed as 'Offshore Support Vessel' along with 'SUL, IY, Agni 1(2400 Cum/hr), DP(2); that the Notation like DP-2 and Agni-1 which were found installed on the Vessel were additional features apart from the normal support role that it performs; that DP-2 was a dynamic positioning system which maintains a specific position of the vessel at all times; that this system was useful mostly in the offshore operations and when the vessel intends to works as support and close to Rigs/platforms; that mostly during the monsoon season the vessel could maintain its position and help in supporting the rigs/platforms; that with the help DP-2 this vessel could remain in very close proximity to Rigs/ platforms for duration for providing necessary support to the rigs/ platforms: that the firefighting notation Agni-1 means firefighting system of level-1, having discharge rate of 2400 cubic meter per hours capacity, and could be used for fighting/dousing fire of other vessel/rigs/platforms; that it was not mandatory for supply or support vessel to have those systems; that those were additional features with which this vessel had been equipped; that the 40 cabins present in the subject vessel, were meant for accommodating specialized persons (SPS persons) like technicians, surveyors, Engineers, Divers, Ship's crew, etc; that those cabins could also be used for rescuing the staff of Rigs/ Platforms; that thought the ABS survey status issued on 23.01.2017 shows the functions of the subject vessel as Fire Fighting and Towing, that however, in IRS class certificate the said Towing notation was not assigned, as ABS class certificate dated 02.10.2013 vessel had not assigned with Towing notation and hence above notation was not mentioned in their interim certificate of class; that neither any towing winch system nor any towing hook had been found installed on the vessel; that the vessel could not function as towing vessel; features like Agni I and DP-2 etc. were additional features for support vessel; that the vessel had two special features i.e. Agni I and DP-2; that with the advantage of DP-2 system it could remain in close proximity to the Rigs/Platforms and provide various supports for a longer duration of time; that as Agni I and DP-2 require the vessel to remain stationary it could be said that the navigability of this vessel becomes subsidiary to those two functions; that after going through the chapter 89 of Customs Tariff and considering those additional features of Agni 1 and DP-2, which require the vessel to remain stationary and which makes its navigability subsidiary to those two functions.

3.1 The investigation conducted and documents/evidence available on record had revealed that the value of the said vessel had been incorrectly declared by the Importer as Rs.13.82 Crores; that the Importer had claimed that his purchase value was the CIF value and that he had not added any cost of Insurance or cost of Freight to it as the vessel had moved on its own; that the vessel was an old and used vessel and Board's Circular No. 25/2015 dated. 15.10.2015 had prescribed guidelines for valuation of such second hand goods; that the importer in terms of the provisions of the said Circular, had appointed a Chartered Engineer (CE) who had also valued the said vessel at USD 21,00,000/- on the basis of the value mentioned in the invoice provided

by the Importer. Further, the CE in his deposition had stated that he did not board the vessel personally for surveying the same. As the said CE had not personally boarded the said vessel and had given its valuation on the basis of invoice, the valuation given by him could not be considered reliable. As the value arrived by the said CE appears unreliable, the value mentioned in the subject import invoice appears to have become unreliable when considered with the physical condition of the subject vessel. As this value was not found to be reliable, it becomes liable for rejection in terms of Rule 12 read with Rule 3 of Customs Valuation (Determination of value of Imported Goods) Rules, 2007; that the goods in the instant case being second hand vessel its value could, therefore needs to be determined under Rule 9 as per Board's Circular No. 25/2015 dated 15.10.2015, by getting the valuation done by appointing an independent CE for inspection of the subject second hand goods. Accordingly, an independent CE was appointed by the department for the same. The independent CE had valued the said vessel at USD 5000000/- (Rs. 32.60 Crores) after allowing depreciation and excluding the cost of expenses made by the Importer, in the present condition of the vessel. It appears that the value of USD 21,00,000/- mentioned in the import invoice no. AME-01 dated 22.06.2017 did not represent the true and correct value of the subject vessel as mentioned above. Therefore, it appears that the inspection report earlier issued by CE, Shri Harish Bhatia needs to be rejected. Therefore, the value of Rs. 32.60 Crores determined in terms of provisions of Rule 9 of Customs Valuation (Determination of value of Imported Goods) Rules, 2007, read with the provisions of Circular No. 25/2015 dated 15.10.2015 represents the re- determined Transaction Value of the subject vessel.

3.2 (a) As discussed, the declared Transaction Value of the subject vessel appears to be liable for rejection and required to be re-determined at Rs. 32.60 Crores in terms of provisions Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, read with the provisions of Circular No. 25/2015 dt. 15.10.2015, the cost of insurance and freight charges further needs to be added to the said value to arrive at the CIF value. However, the Importer had not provided the actual cost of insurance and freight, the same needs to be added to the cost of the vessel in terms of the provisions of Rule 10 (2) of Customs Valuation (Determination of value of Imported Goods) Rules, 2007. Further as the importer had paid various other charges, as detailed in para 2.6 to 2.7 above, on purchase of the said vessel and before its importation into India, the same needs to be added to arrive at the CIF value in terms of the provisions of Rule 10(2) of Customs Valuation (Determination of value of Imported Goods) Rules, 2007. Therefore, following charges/expenses need to be added to the re-determined IMV of Rs. 32.60 Crores to arrive at the re-determined CIF value of the subject Vessel.

- i. The Importer had paid USD 92,107 to M/s Swire Pacific Offshore Operations (Pte) Ltd., raised vide Invoice No. OPE 2017/06-032 dated 21.06.2017 toward ROB consumables.
- ii. However, thereafter a credit note had been issued vide credit Note No. CN OPE 2017/06-002 dated 30.06.2017 for USD 58,565.51 which needs to be debited while arriving at the CIF value.

- iii. As per invoice No. AA/SSOPL/INV/0017/08062017 dated 08.06.2017 raised by M/s Om Sai an amount of USD 42,000/- was paid towards brokerage charges to Ajit Arote of M/s Om Sai.
- iv. USD-6803.77 + USD 846.63 was paid Ship Agency M/s Inchcape (for store to National Ship chandlers on 04.07.2017
- v. DNV – GL Surveys was paid as advance USD 3000 for a total bill of USD 6050.
- vi. Thus, the CIF value of the subject vessel comes to Rs. 40,18,46,357/-

(b) Accordingly, the predetermined CIF value of the subject vessel amounts to Rs. 40,18,46,357/-, the assessable value thereof, after adding 1% to the CIF value, works out to Rs. 40,58,64,821/-, which represents the re-determined value of the subject vessel "Sagar Fortune" on which the duties and applicable interest needs to be recovered in terms of provisions of Section 28(4) and 28 AA of the Customs Act, 1962.

3.3. From the documents available on record it could be seen that though the B/L had indicated that the subject vessel was a tug and the Invoice No. AA/SSOPL/INV/0017/08062017 dated 08.06.2017 towards the brokerage from M/s Om Sai also described the said vessel as Tug and further the survey by ABS also mentioned the functions of the subject vessels as 'Firefighting and towing. It was also evident from the report of the CE, Shri Rajendra Tambi and deposition of Capt. Shri Bijoy Kumar Sharma, Surveyor IRS, that the vessel Sagar Fortune, lacks the machinery and equipment considered necessary for towing or tugging operations. As these two individuals, who were experts in their respective fields, had personally inspected and surveyed the subject vessel, due weightage needs to be given to their opinion. Though, the ABS survey report and the capacity of the engine of the subject vessel suggests that the subject vessel had towing capacity, it nevertheless appears that such tugging or towing capacity might be available to a limited extent only, though it also appears that with certain modifications it could be enhanced into a full-fledged tugger. Therefore, it could be concluded that the subject vessel may not have a full-scale tugging capacity at this stage and as such may not be liable for classification under heading 8904 of chapter 89 of the Customs Tariff.

3.4 However, it is also seen from the investigation carried out and evidence/documents available on record that the Provisional Certificate of Singapore Registry for the Vessel "Dalini Topaz" dated 08.01.2008, the Certificate of Singapore Registry for the vessel "Pacific Amethyst", issued on dated 30.04.2009, the Provisional Certificate of Indian Registry dated 30.06.2017 for the vessel "Sagar Fortune", the final certificate of Indian registry dated 05.10.2017 issued for the vessel "Sagar Fortune", all describe the said vessel as "Steel Offshore Supply Vessel. However, as per Shri K. K. Sanjeev and Capt. Bijoy Kumar Sharma, all those above documents gave only generic description of the said vessel; that it was the class certificate which provides the exact class notation and description of a vessel. It could therefore be seen that the description "Offshore Supply Vessel" was merely a general description of the vessel Sagar Fortune and that the exact description and class of the said vessel would be as per the description

and class mentioned in the class certificate of the said vessel. It could be seen that the Interim certificate of class No. BOM17F016 dated 04.07.2017 issued by Indian Register of Ships (IRS) and the final certificate of class No. 17472 dated 28.09.2017 issued by class IRS for the vessel Sagar Fortune gave the description and class of the said vessel as "SUL, Offshore Support Vessel, IY, Agni 1(2400 Cum/hr), DP (2)". Further the survey status report dated 07.07.2017 of IRS also gave the description and class of the subject vessel as "SUL, Offshore Support Vessel, IY, Agni 1(2400 Cum/hr), DP (2)", it could also be seen that the class certificate dated 02.10.2013 issued by the American Bureau of Survey (ABS) and its survey status report (print date 23.01.2017) had also given the description and class of the vessel "Pacific Amethyst" (now known as "Sagar Fortune") as "AI, Fire Fighting Vessel Class 1. Offshore Support Vessel, Circle E, AMS, DPS-2". Further, DNV-GL vide their inspection report certificate No. 20817008 dated 26.04.2017 for the Vessel Pacific Amethyst (now known as 'Sagar Fortune') had mentioned the Class of the subject vessel as "ABS AI, Fire Fighting Vessel Class 1, Offshore Support Vessel, Circle E, AMS, DPS-2". It was therefore evident that the vessel "Sagar Fortune " was an Offshore support vessel having additional features like firefighting capability of Class 1 and DPS-2 (or DP-2). Those two features which were found available in the subject offshore support vessel were generally not found on offshore support vessels and this vessel appears to have been built with those features with specific purpose. This vessel was equipped, since its manufacture, with advanced fire fighting capabilities of class 1, with the help of which it was capable of dousing fires on other vessels/oil rigs/platforms efficiently, which gave the said vessel a major edge over the other vessels falling in the category of Offshore support vessels. Besides the said advanced fire fighting capacity, the vessel was also equipped, since its manufacture, with an advanced dynamic positioning system (DPS-2) which provides it with a capability to maintain its position in close proximity to other vessels/oil rigs/platforms even in monsoons. This means that the vessel was meant for staying in very close proximity to the oil rigs/platforms to provide support to such oil rigs/platforms including the support in the form of firefighting and apparently that was why the importer had imported it to employ it at oil rigs of M/s ONGC to provide such support to its rigs by remaining alongside them in very close proximity. The vessel was also equipped with 40 cabins on-board. Capt. Shri Bijoy Kumar Sharma, Surveyor of IRS, who had surveyed the said vessel, had deposed that those cabins were meant to provide accommodation to specialized persons (SPS persons) like Technicians, Surveyors, Engineers, Divers, Ship's crew, etc; that those cabins could also be used for rescuing the staff of Rigs/Platforms in case of an emergency. It therefore appears that the importer had imported the vessel so that it could be kept in very close proximity to oil rigs such as that of M/s ONGC to provide support in various forms and if need be it could douse the fire on such rigs and also accommodate its technicians in the cabins available on-board this vessel. It is, therefore, evident from all those features available on the said vessel that those functions and purposes were its main functions and that the navigability of this vessel was subsidiary to those functions because if navigability and supply was to be considered its primary functions then those special and features/functions like firefighting, DPS and large number of cabins, which were otherwise not available on other supply/support vessels,

become redundant and ineffective. In this context, the deposition of Capt. Shri Bijoy Kumar Sharma, expert Surveyor of IRS, who had personally surveyed the said vessel, was also very important. He had stated that as Agni I and DP-2 require the vessel to remain stationary and that it could be said that the navigability of the vessel becomes subsidiary to those two functions. He had further stated that navigability of the vessel had become subsidiary to two main functions of the vessel namely Agni 1 and DP-2, i.e. Fire Fighting and Dynamic Positioning System. He was an expert in surveying vessels and classifying them as per shipping parlance and as such was technically qualified to determine the class notation, which he had agreed, remains the same as that given by ABS i.e. American Bureau of Shipping. In that sense the opinion of Capt. Shri Bijoy Kumar Sharma regarding classification under the Customs Tariff could definitely be considered as an expert's opinion. It could be seen from the Chapter heading 8905 of Customs Tariff that it covers those vessels, wherein the function of navigability was subsidiary to their main function. Further, the classification of goods that were imported into India was governed by the Principles of general rules of interpretation. According to Rule 3 of the same, the heading which provides the most specific description shall be preferred to headings providing a more general description. In the instant case it appears that, the term Offshore Support Vessel is generic term as evidenced by the statements of experts, whereas the ABS class notation "ABS, *A1, Fire Fighting Vessel Class 1, Offshore Support Vessel, Circle E *AMS. *DPS-2" which has remained unchanged (lack of evidence of any modification having been carried out in the subject vessel), appears to make the subject vessel appropriately classifiable under Chapter 8905 9090. However, even if it is assumed by the Importer that there were two CTHs that merit equal consideration, the subject vessel needs to be classified under the heading which occurs last in numerical order among those which equally merit consideration as per Rule 3 of the above rules. It, therefore, appears from the above that the vessel 'Sagar Fortune' which had been classified by the importer under CTH 89019000 was rightly classifiable under CTH 89059090, which attracts Basic Customs Duty @5%. It therefore also appears that the importer had deliberately mis-declared the CTH of the subject vessel as 89019000 with an intention to evade duty. As such, it appears that the subject vessel was liable to be properly classifiable under CTH 89059090, with the basic Customs duty @ 5%, now appears leviable on the subject vessel by virtue of it getting classified under CTH 89059090. Therefore, the total differential duty on the subject vessel on 'account of its re-classification and re- determination of value is as worked out in the below Table - 5:

TABLE - 5

Sr. No.	Description	USD	INR
1.	Re-determined IMV of the Vessel 'Sagar Fortune'	50,00,000	32,60,00,000
2.	Other charges including: for ROB paid to the seller- Brokerage-pre-inspection survey-	88,370	57,61,699
3.	Total FOB		33,17,61,699
4.	Freight 20%		6,63,52,340

5.	Insurance 1.125%		37,32,319
6.	CIF		4018,46,357
7.	Assessable Value		4058,64,821
8.	5% Basic		202,93,241
9.	CESS (2+1)%		6,08,797
10.	GST 5%		213,38,343
11.	Total Duty		422,40,381
12.	Duty Paid		6914460
13.	Duty Difference		3,53,25,921

3.5 The differential duty of Rs.3,53,25,921/- on account of mis-declaration of value and CTH of the vessel therefore needs to be demanded and recovered from the Importers in terms of the provisions of Section 28(4) of the Customs Act, 1962, along with the applicable interest thereon under Section 28AA *ibid*.

3.6 It is also evident from the investigations and documents/evidence available on record that the Importer had mis-declared the quantity of various oils remaining on-board. Table II of Para 2.1 of the Show Cause Notice provides the details of quantities declared by the Importer on arrival of the subject vessel in India and the actual quantities available on-board the said vessel. Further, the CTH of High Speed Diesel (MGO), had been declared under CTH 27101940, whereas it was correctly classifiable under the CTH 27101930. Therefore, as the quantities of those oils had been mis-declared and the CTH of MGO had also been mis-declared, the differential duties thereon on account of those mis-declarations need to be recovered in terms of provisions of Section 28(4) of the Customs Act, 1962. Those differential duties were as shown in the tables below:

TABLE – 6

HFHSD (MGO) (CTH 27101930) [Total Qty = 133000 LTR @ 0.425 USD (CIF)]			
Sr. No.	Rs.		
1.	CIF (USD)	56525	
2.	Ex. Rate	65.2	3685430
3.	Landing charge	1%	36854.3
4.	Ass. Val (Rs.)		3722284.3
5.	BCD	5%	186114.22
6.	CVD	14%	547175.79
7.	Rs. 12.69/per Ltr.	12.69	1687770
8.	Edu. Cess	2%	64381.20
9.	H. Edu. Cess	1%	32190.60
10.	SAD	4%	281516.64
11.	Rs. 6/ per Ltr.		798000
12.	Total Duty (Rs.)		2799148.45

13.	Duty Paid (Rs.)		774503.9
14.	Duty Difference (Rs.)		2024644.55

TABLE – 7

LUBE OIL (CTH 27101980) [Total Qty = 9220 LTR @ 2 USD]			
Sr. No.			Rs.
1.	CIF (USD)	18440	
2.	Ex. Rate	65.2	1202288
3.	Landing charge	1%	12022.88
4.	Ass. Val (Rs.)		1214310.88
5.	BCD	5%	60715.54
6.	Edu. Cess	2%	1214.31
7.	H. Edu. Cess	1%	607.16
8.	IGST	18%	229832.62
9.	Total Duty (Rs.)		292369.63
10.	Duty Paid (Rs.)		46614
11.	Duty Difference (Rs.)		245755.63

TABLE - 8

HYDRAULIC OIL (CTH 27102000) [Total Qty = 5250 LTR @ 2 USD]			
Sr. No.			Rs.
1.	CIF (USD)	10500	
2.	Ex. Rate	65.2	684600
3.	Landing charge	1%	6846
4.	Ass. Val (Rs.)		691446.00
5.	BCD	5%	34572.3
6.	Edu. Cess	2%	691.45
7.	H. Edu. Cess	1%	345.72
8.	IGST	18%	130869.98
9.	Total Duty (Rs.)		166479.45
	Not Declared in B/E		

TABLE - 9

Total Duty from the above: from the above tables(VI-VIII) (Rs.)	32,57,997.53
Total Duty paid in respect of the above Oil Remaining on Board (Rs.)	8,21,117.9
The Duty Diff. (Rs.)	24,36,879.63

3.7. Therefore, the importer appears also to be liable to pay an amount of Rs. 24,36,879/- towards total differential duty on those oils, on account of mis- declaration in quantities and CTH of oils remaining on board the subject vessel, in terms of the provisions of Section 28 (4) of the Customs Act, 1962, along with the applicable interest thereon under section 28AA *ibid*.

4. From the evidence gathered during the course of investigations and its analysis in the foregoing Paras it appeared that :

4.1 M/s S.S. Offshore Pvt. Ltd. had mis-declared the value of the old and used vessel Sagar Fortune imported by them vide Bill of entry No. 2630993 dated 28.07.2017. The said mis-declared value of Rs.13,82,89,200/- (Assessable Value), therefore, is liable for rejection in terms of the provisions of Rule 12 and Rule 3 of the Customs Valuation (Determination of value of Imported goods) Rules, 2007. The value of the subject vessel, therefore, is liable to be re-determined, in terms of the provisions of Rule 9 of the Customs Valuation (Determination of value of Imported goods) Rules, 2007 read with the provisions of Circular No. 25/2015 dated 15.10.2015. This re-determined Assessable value of the subject vessel, therefore, works out to be Rs 40,58,64,821/- as shown in Para 3.2 & 3.4 above. It therefore appears that the importer had deliberately resorted to mis-declaration of the value of the vessel in order to evade duty thereon. This act of mis-declaration of value of the subject vessel has contravened the provisions of Section 46(4) of the Customs Act, 1962, which has rendered the vessel Sagar Fortune liable to confiscation in terms of the provisions of Section 111(m) of the Customs Act, 1962. Further the Chartered Engineer certificate produced by the importer does not appear to be reliable as the said CE had admitted that he had not personally boarded the subject vessel and thus had not physically surveyed and inspected the same, while he had given the valuation thereof on the basis of invoice given by the importer. It therefore appears that the importer has deliberately mis-declaration on the part of the importer appears to have rendered the subject vessel liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962, also appears to have made them liable for penal action in terms of the provisions of Section 112 (a) or Section 114A, and Section 114 AA the Customs Act, 1962.

4.2 The importer at the time of the import of the subject vessel Sagar Fortune had classified the same under CTH 89019000 in the subject B/E filed for import thereof. They had also claimed exemption of basic Customs duty available to the said CTH 89019000 under serial number 551 of Customs Notification Number 50/2017 dt.30.06.2017, wherein the BCD is @ NIL The importer had however not submitted, during the process of clearance of the said vessel, the crucial class certificate of the said vessel either from IRS which describes the said vessel as SUL, Offshore Support Vessel, IY, Agni 1(2400 Cum/hr), DP(2)" or from ABS which describes the said vessel as "A, Fire Fighting Vessel Class 1, Offshore Support Vessel, (E) (i.e. Circle E), "AMS, DPS-2," Had they submitted those class certificates at the time of filing B/E or thereafter it would have been noticed that the subject vessel was a fire fighting vessel of class 1 having DPS-2 also and the subject vessel would have been classified under the CTH 89059090, wherein

there was no exemption of BCD under the Notification number 50/2017 and as such the importer appears liable to pay BCD @5% on the subject vessel. It therefore appears that the importer had deliberately not submitted those class certificates and deliberately not classified the subject vessel under the CTH 89059090 with intention to evade duty thereon, as those documents could only be recovered during the search operation. By the said act, the Importer appeared to have contravened the provisions of Section 46 (4) of the Customs Act, 1962, and had thereby rendered the subject vessel Sagar Fortune liable for confiscation in terms of the provisions of Section 111 (m) of the Customs Act, 1962. This deliberate and wilful act also appears to have made them liable for penal action in terms of the provisions of Section 112 (a) or Section 114 A, and Section 114 AA of the Customs Act, 1962.

4.3 As the subject vessel had deliberately been mis-declared with respect to its classification and value, differential duty of Rs. 3,53,25,921/- as worked out in Para 3.4 above, appears liable to be recovered from the importer in terms of the provisions of Section 28(4) of the Customs Act, 1962, along with the applicable interest thereon under section 28AA *ibid*.

4.4 The importer had also mis-declared the quantities of MGO (High Speed Diesel), Lubricating oil, and Hydraulic oil remaining on board the vessel Sagar Fortune as detailed in the table II of Para 2.1 of the SCN. Besides those they had also mis-declared the classification of MGO under the Customs Tariff head. It therefore appears that the importer had deliberately mis-declared the quantities of those oils, mis-declared CTH of MGO and had not declared the hydraulic oil with an intention to evade Customs duty thereon. By the said act, the Importer appears to have contravened the provisions of Section 46 (4) of the Customs Act, 1962, which had rendered the subject goods liable to confiscation in terms of the provisions of Section 111(1) and 111(m) of the Customs Act, 1962. This wilful and deliberate act also made the importer liable for penal action in terms of the provisions of Section 112 (a) or Section 114 A, and Section 114 AA of the Customs Act, 1962.

4.5 Further, on account of the mis-declaration of quantities of different oils on boards detailed in the table II of the para 2.1 of the SCN, a total differential duty of Rs. 24,36,879/-, as detailed in Table VI, VII and VIII of Para 3.5 of the SCN, appear liable to be recovered on these goods from the importer in terms of provisions of Section 28(4) of the Customs Act, 1962, along with the applicable interest thereon under Section 28 AA *ibid*.

4.6 It appeared that Shri Sachin Kshirsagar, Director, M/s S. S. Offshore Pvt. Ltd has wilfully and deliberately suppressed the value of the subject vessel and class certificates issued by ABS and IRS which would had made it clear to the Customs that the subject vessel was to be classified under CTH 89059090 instead of CTH 89019000 as declared by Shri Sachin Kshirsagar at the time of filing of subject B/E. Those acts of deliberate mis-declaration appear to have been done with an intention to evade duty. As there are two IMO declarations, one submitted to the Customs and one seized on board the subject vessel during the course of search which gave different figures for oils remaining on board. He also appears to have deliberately mis-declared

the quantities of various oils remaining on board the subject vessel, as detailed in Table II of Para 2.1, with an intention to evade duty. Those acts of omission and commission and submission/signing of documents which were these, on the part of Shri Sachin Kshirsagar appears to have rendered the subject vessel and goods liable to confiscation appear to have also made him liable for penal action in terms of provisions of Section 112 (a) and Section 114AA of the Customs Act, 1962.

4.7 The Chartered Engineer Shri Harish Bhatia had issued the inspection report dated 29.07.2017 for the vessel "Sagar Fortune" in which it had been claimed that the subject vessel had been inspected by him. However, Shri Harish Bhatia in his statement had stated that he had not boarded the vessel personally. It is therefore evident that he had not inspected the subject vessel personally. Therefore, his claim in the inspection report dated 29.07.2017 that he had carried out the inspection of the vessel "Sagar Fortune" was false. He had issued a certificate/report which incorrectly/falsely claims that he had inspected the subject vessel. He had, therefore, signed and submitted an inspection report with respect to the inspection of vessel "Sagar Fortune" which was incorrect or false. Shri Harish Bhatia, on account of this signing and submission of inspection report dated 29.07.2017, appears to have become liable for penal action in terms of the provisions of Sections 112(a) and 114AA of the Customs Act, 1962, for intentionally signing documents, in transaction of business under the Customs Act, which were false or incorrect.

4.8 It appeared that the Customs Broker M/s Babaji Shivram Clearing and Carriers Pvt. Ltd. had deliberately not submitted the class certificate of the subject vessel and details of Insurance and Freight charges to the Customs. Had they submitted the requisite certificate/information it would have become clear that the subject vessel was classifiable under CTH 89059090. Those Class certificates were absolutely necessary for determining the Class of the vessel and its consequent classification under the Customs Tariff. The said CB had failed to direct the importer to provide those documents for onward submission to the Customs. They had also not given the various charges, costs which were to be added for arriving at assessable value. The claim of the CB that they were not provided with those documents by the importer, does not absolve them from their obligations under the Customs Act as well as the Customs Broker Licensing Regulations, 2013 (now Customs Broker Licensing Regulations, 2018). The Customs Broker by not demanding those documents from the importer and not submitting them to the Customs had thereby aided and abetted in the acts of commission and omission on the part of the importer which had rendered the subject vessel liable for confiscation. The Customs Broker M/s Babaji Shivram Clearing and Carriers Pvt. Ltd. thereby appears to have become liable for penal action in terms of provisions of Section 112(a) and 114AA of the Customs Act, 1962.

4.9. Show cause notice vide SCN No. SG/ INV-32/ UKJ/17-18/SIIB (1) dated 01/02.02.2018 was issued to the as to why:

- i. the declared assessable value of Rs. 13,82,69,200/- of the vessel Sagar Fortune declared by the importer vide B/E No. 2630993 dated 28.07.2017 should not be rejected in terms of Rule 12 and Rule 3 of the Customs Valuation (Determination of value of Imported goods) Rules, 2007,
- ii. the value of the vessel "Sagar Fortune" should not be re-determined at Rs. 40,58,64,821/- (Assessable Value) as detailed in para 3.4 above, in terms of the provisions of Rule 9 of the Customs Valuation (Determination of value of Imported goods) Rules, 2007, read with the provisions of Circular No. 25/2015 dt 15.10.2015,
- iii. the classification of vessel Sagar Fortune under the CTH 89019000 as made by the importer should not be rejected and why it should, not be re-classified under the CTH 89059090,
- iv. the vessel Sagar Fortune imported vide B/E No. 2630993 dated 28.07.2017 should not be confiscated in terms of provisions of Section 111(m) read with Section 46(4) of the Customs Act, 1962 for mis-declaration of its value and mis- declaration of its classification,
- v. the classification of High Speed Diesel (MGO) under the Customs Tariff Heading 27101940 should not be rejected and why it should not be reclassified under the Customs Tariff heading 27101930,
- vi. 133000 Ltr of MGO valued at Rs. 37,22,284/-, 9220 Ltr of Lubricating Oil value at Rs. 12,14,311/- should not held liable to confiscation in terms of provisions of Section 111(l) and 111(m) read with Section 46(4) of the Customs Act, 1962 for mis-declaration of their respective quantities and mis-declaration of CTH MGO, and why (quantity of 5250 Ltr) hydraulic oil, which had not been declared in the B/E No. 2630993 dated 28.07.2017, should not be held liable to confiscation in terms of provisions of Section 111(l) read with Section 46(4) of the Customs Act, 1962,
- vii. a total differential duty of Rs. 3,53,25,921/ on the vessel Sagar Fortune, should not be demanded and recovered from importer in term of provisions of Section 28(4) of Customs Act, 1962, alongwith applicable interest thereon in terms of the provisions of Section 28AA of the Customs Act, 1962.
- viii. differential duty of Rs. 20,24,644/- on MGO, differential duty of Rs.2,45,755/- on lube oil and duty of Rs. 1,66,479/- (Totally amounting to Rs. 24,36,879/-), should not be demanded and recovered from importer in terms of provisions of Section 28(4) of the Customs Act, 1962, along with applicable interest thereon in terms of the provisions of Section 28AA of the Customs Act, 1962 and why the amount of Rs.17,15,315/- deposited by the importer vide Challan No. 62 dt. 24.08.2017 should not be appropriated towards part recovery of this differential duty.
- ix. a penalty should not be imposed on the Importer under the provisions of Section 112(a) or 114A, and 114AA of the Customs Act, 1962.
- x. A penalty should not be imposed on Shri Sachin Kshirsagar, Director, M/s S. Offshore Pvt. Ltd, under the provisions of Section 112(a) and 14AA of the Customs Act, 1962.

- xi. A penalty should not be imposed on Shri Harish Bhatia, under the provisions of Section 112(a) and 14AA of the Customs Act, 1962.
- xii. A penalty should not be imposed on the Customs Broker M/s Babaji Shivram Clearing and Carriers Pvt. Ltd, under the provisions of Section 112(a) and 14AA of the Customs Act, 1962.

5. The SCN dated 02.02.2018 was adjudicated by the Commissioner of Customs, Import (I) vide Order-in-Original CAO/29/2018-19 dated 26.11.2018:

- 1. I reject the declared Assessable value of Rs.13,82,89,200/- (Rs. Thirteen Crore Eighty Two Lakh Eighty Nine Thousand Two Hundred only.) was rejected, of the vessel Sagar Fortune declared by the importer M/s S. S. Offshore Pvt. Ltd., who imported the subject vessel vide Bill of Entry No. 2630993 dtd. 28.07.2017 in terms of Rule 12 and Rule 3 of the Customs Valuation (Determination of Value Of Imported goods) Rules, 2007,*
- 2. I re-determine the value of the vessel "Sagar Fortune" at Rs. 40,58,64,821/- (Assessable Value) (Rs. Forty crore fifty-eight lakh sixty-four thousand eight hundred twenty one only.) as discussed above, in terms of the provisions of Rule 9 of the Customs Valuation (Determination of Value of Imported goods) Rules, 2007, read with the provisions of Circular No. 25/2015 dt. 15.10.2015,*
- 3. I reject the classification by the import of vessel Sagar Fortune under the CTH 89019000 and re-classify the subject vessel under the CTH 89059090.*
- 4. I confiscate the vessel Sagar Fortune of declared value of Rs. 13,82,89,200/- (Re-determined value of Rs. 40,58,64,821/-) imported vide Bill of Entry No. 2630993 dtd 28.07.2017 in terms of provisions of Section 111(m) read with Section 46(4) of the Customs Act, 1962 for mis-declaration of its value and mis-declaration of its classification, and I impose a redemption fine of Rs. 2,50,00,000/- (Rs. Two crore fifty lakh only) under section 125 of the Customs Act, 1962 on the importers, in lieu of confiscation;*
- 5. I reject the classification of High Speed Diesel (MGO) under the Customs Tariff Heading 27101940 and re-classify under the Customs Tariff heading 27101930.*
- 6. I confiscate 133000 Ltr of MGO valued at Rs. 37,22,284/-, 9220 Ltr oil Lubricating Oil value at Rs. 12,14,311/-, in terms of provisions of Section 111(l) and 111(m) read with Section 46(4) of the Customs Act, 1962 for mis- declaration of their respective quantities and mis-declaration of CTH of MGO, and I also confiscate 5250 Ltr. (determined A.V. Rs. 6,91,446/-) hydraulic oil, which had not been declared in the Bill of Entry No. 2630993 dtd.28.07.2017, in terms of*

provisions of Section 111(l) read with Section 46(4) of the Customs Act, 1962, and a redemption fine of Rs. 6,00,000/- (Rs. Six lakh only) under section 125 of the Customs Act, 1962 on the importers, in lieu of confiscation of these goods.

7. I confirm and demand total differential duty of Rs.3,53,25,921/- (Rs. Three crore fifty-three lakh twenty-five thousand nine hundred twenty-one only) on the vessel Sagar Fortune, from importers M/s. S.S. Offshore Pvt. Ltd. in terms of provisions of Section 28(4) of Customs Act,1962, along with applicable interest thereon in terms of the provisions of Section 28AA of the Customs Act, 1962.

8. I confirm and demand the differential duty of Rs. 20,24,644/- (Rs. Twenty lakh twenty four thousand six hundred forty four only.) on MGO, differential duty of Rs. 2,45,755/- (Rs. Two lakh forty-five thousand seven hundred fifty-five only) on lube oil and duty of Rs. 1,66,479/- (Rs. One lakh sixty-six thousand four hundred seventy-nine only) on hydraulic oil (Total amounting to Rs. 24,36,879/-), from importers M/s S.S. Offshore Pvt. Ltd. in terms of provisions of Section 28(4) of the Customs Act, 1962, along with applicable interest thereon in terms of the provisions of Section 28AA of the Customs Act, 1962. I order appropriation the amount of Rs. 17,15,315/- (Rs. Seventeen lakh fifteen thousand three hundred fifteen only) deposited by the importer vide Challan No. 62 dt. 24.08.2017 towards part recovery of this differential duty.

9. I impose a penalty of Rs. 3,77,62,800/- (Rs. Three crore seventy seven lakh sixty two thousand eight hundred only) plus the interest amount payable thereon (under Section 28AA of the Customs Act,1962), on M/s S. S. Offshore Pvt. Ltd. under Section 114A of the Customs Act, 1962. If the duty and interest as demanded above is paid within 30 days of the communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.

10. I impose a penalty of Rs. 2,00,00,000/- (Rs. Two crore only) on M/s S. S. Offshore Pvt. Ltd. under the provisions of Section 114AA of the Customs Act, 1962.

11. I impose a penalty of Rs. 37,75,000/- (Rs. Thirty Seven lakh seventy-five thousand only) on Shri Sachin Kshirsagar, Director of M/s S. S. Offshore Pvt. Ltd. under the provisions of Section 112(a) of the Customs Act, 1962.

12. I impose a penalty of Rs.75,00,000/- (Rs. Seventy five lakh only) on Shri Sachin Kshirsagar, Director of M/s S. S. Offshore Pvt. Ltd. under the provisions of Section 114AA of the Customs Act, 1962.

13. I impose a penalty of Rs. 10,00,000/- (Rs. Ten lakh only) on Shri Harish H. Bhatia, Proprietor of M/s Harish and Company under the provisions of Section 112(a) of the Customs Act, 1962.

14. I impose a penalty of Rs. 25,00,000/- (Rs. Twenty five lakh only) on Shri Harish H. Bhatia, Proprietor of M/s Harish and Company under the provisions of Section 114AA of the Customs Act, 1962.

15. I impose a penalty of Rs. 10,00,000/- (Rs. Ten lakh only) on M/s Babaji Shivram Clearing & Carriers Pvt. Ltd. under the provisions of Section 112(a) of the Customs Act, 1962.

16. I impose a penalty of Rs. 25,00,000/- (Rs. Twenty five lakh only) on M/s Babaji Shivram Clearing & Carriers Pvt. Ltd. under the provisions of Section 114AA of the Customs Act, 1962.

6. Aggrieved by the Order-in-Original passed by the Commissioner of Customs, Import (I), noticees 1, 2, 3 and 4 filed appeals in the Hon'ble CESTAT, Mumbai.

6.1 Hon'ble CESTAT in its Final Order No. A / 85536-85539/2022 dated 09.06.2022 identified that the dispute comprised three elements of addition of value of stores and bunkers that were not declared and mis-declared, non-inclusion of freight, insurance and other charges, incurred before arrival and applicable rate of duty. The counsel for the noticees restricted his contentions only to the latter two. Hon'ble CESTAT observed that customs contested the classification of the vessel and reliance was placed on 'class certificate' issued by American Bureau of Shipping (ABS) and the corresponding portion (or A1) of the ABS Rules for Building and Classing Marine Vessels. Further reliance was placed on 'certificate of class' issued by Indian Register of Shipping describing the vessel as 'SUL, "Offshore Support Vessel" IY AGNI 1 (2400 CUM/HR), DP (2)' denoting compliance with rules for hull, appendages and equipment, compliance with standards for self-propulsion, capability of early stage firefighting and close rescue operations and of fitment with automatic controls for positioning merit alternate classification other than the declared.

6.2 Hon'ble CESTAT observed that learned counsel stood by the transaction value declared to be fair as per MOA. He further stated that the valuation determined by the first Chartered Engineer had been rejected for inappropriate reasons in as much as the value itself was not doubted but the competence of the surveyor was and, merely because, instead of the proprietor himself inspecting the vessel, another person, no less qualified, had been deputed for the purpose.

6.3. The counsel of the noticees argued that the report of the second Chartered Engineer was unreliable as he was nominated by customs authorities and that the original value adopted by him, before adjusting for present value, was not based on any documentary ascertainment but an

estimate of his own. Furthermore, he urged to discard the report as cross-examination of the surveyor, which would have contradicted its foundational integrity, had been denied. Counsel also stated that all the other charges brokerages are inclusive in MOA hence no value enhancement should be done. The Authorized Representative submitted that the report of the Chartered Engineer engaged by the appellant had been correctly rejected as he had admitted, in a statement, to not having inspected the vessel personally or having perused the 'memorandum of agreement (MoA) for ascertainment of the several conditions therein.

6.4. Hon'ble CESTAT observed that the valuation should be the transactional value and not the re-determined value of the 2nd CE appointed by the Customs. Hon'ble CESTAT also rejected customs claim for addition of freight and insurance to assessable value on account of self-propulsion and non-requirement of exclusion insurance for registration purpose (sale transaction).

6.5. Hon'ble CESTAT in its Order dated 09.06.2022 ordered to set aside the enhancement of value of the impugned vessel and the penalties imposed on the noticees in the order-in-original dated 26.11.2018. Hon'ble CESTAT stated that they were unable to firm up on the applicable classification for want of determination in the impugned order between heading 8905 and heading 8906 of the First Schedule to Customs Tariff Act, 1975 and set aside the impugned order and remanded the matter back to the original authority for a fresh decision on the claim of the appellant for fitment within heading 8906 of First Schedule to Customs Tariff Act, 1975. Relevant para of the Order dated 09.06.2022 is reproduced as below:

“24. In the light of this inadequacy, we are unable to firm up on the applicable classification for want of determination in the impugned order between heading 8905 and heading 8906 of the First Schedule to Customs Tariff Act, 1975. That gap must be bridged to enable which we set aside the impugned order and remand the matter back to the original authority for a fresh decision on the claim of the appellant for fitment within heading 8906 of First Schedule to Customs Tariff Act, 1975. As this remand is intended to arrive at the appropriate classification, the appellant may also make its submissions for fitment within the original classification, in addition, should they choose to do so.

25. The enhancement of value of the impugned vessel is set aside in accordance with our findings supra. The sole issue that remains is the choice of the appropriate classification. The controversy is contentious and the alternative classification proposed by customs authorities is based upon reliance on technical features to distinguish it from a capability inherent in all vessels that put out to sea in terms of subordination to its principal function. With that complexity to be resolved, there is no scope for indicting the individuals in these proceedings for deliberate misdeclaration. That the benefit of an exemption has been sought to be availed does not, of itself, render such claim to be with intent to evade duty.

Furthermore, the role of these individuals in the misdeclaration of stores and bunkers is not evident in the impugned order. The penalties imposed on the individuals are, accordingly, set aside to allow their appeals.”

7. The Noticee 1 filed a Customs Application (ROM) No. 85616 of 2022 in the Appeal No. C/85825/2019 under Section 129B(2) of the Customs Act, 1962 seeking rectification of mistake and / or seeking clarification in respect of the Hon’ble CESTAT Final Order Nos. A/85536-85539/2022 dated 09.06.2022 passed by the Hon'ble Tribunal A/85536-85539/2022 dated 09.06.2022 in Appeal No. C/85825/2019. In the Application (ROM) No. 85616 of 2022 the Noticee 1 clarification on the following issues:

- a. Confiscation of Vessel and consequential redemption fine;
- b. Confiscation of stores and consequential redemption fine;
- c. Imposition of penalties on the Applicant under Sections 114A and 114AA of the Customs Act, 1962.

8. Hon’ble Tribunal in its Miscellaneous Order No. M/85593/2022 dated 29.08.2022 ordered dismissed the application. However, Hon’ble Tribunal in the Order dated 29.08.2022 stated the Noticee 1 has the freedom to raise the issues before the adjudicating authority. Relevant part of the Order dated 29.08.2022 is reproduced below:

“ On submission of Learned Counsel for the applicant, the application is dismissed as withdrawn with liberty to the applicant to raise the issues before the adjudicating authority.”

9. The Department filed a Civil appeal in Hon’ble Supreme Court against the CESTAT Order dated 09.06.2022. The Hon’ble Supreme Court vide its Order dated 07.11.2022 dismissed the appeal of Department and upheld the CESTAT, Mumbai Order dated 09.06.2022.

Record of Personal Hearing

10. In the light of Hon’ble CESTAT Order dated 09.06.2022, wherein the matter has been remanded back for fresh adjudication in purview of classification of goods and penalties on individuals has been set aside, the role of the Noticee No. 3, being the Chartered Engineer appointed by the importer in terms of Board’s Circular No. 25/2015 dated 15.10.2015 has been limited to valuation of the vessel by virtue of the Hon’ble CESTAT order and has no role in classification of the vessel, he was not called for personal hearing.

11(a). Personal Hearing Memorandums dated 20.04.2023 ,02.05.2023, 16.05.2023 and 19.10.2023 were issued to Noticees-1, 2 & 4 to appear on 28.04.2023, 04.05.2023, 22,05.2023, 20.10.2023 and 02.11.2023 respectively. Representative of the noticees -1 & 2, Shri T.

Vishwanathan, Advocate and representative of the Noticee -4 Shri Prashant Patankar, consultant attended the same.

11(b). During the personal hearing on 24.05.2023, a Contract Agreement “ONG /COL/ HMM/ CSR/ CH/ ML/ VESSELS/ 03/ 2017/ P76BC17014/ SagarFortune/ 9010027255” dated 25.04.2018 between the ONGC and the Noticee 1 was submitted by the representative of the Noticee 1.

Summary of submissions of the Noticees-1 and 2

12. Shri T. Vishwanathan, Advocate and representative of the Noticee-1 and 2 submitted their submission dated 28.04.2023, 12.05.2023, 24.05.2023 and 14.07.2017 on classification of goods. Noticees-1 & 2 submitted their submissions on the following points: -

12.1. Classification of the goods imported by M/s S. S. offshore Pvt. Ltd.

12.1.1 M/s. S.S. Offshore Pvt. Ltd had imported the vessel ‘Sagar Fortune’ imported vide Bill of Entry No. 2630993 dated 28.07.2017. The said goods were classified under CTH 89019000. They have also claimed exemption of basic custom duty available to the CTH 89019000 under serial No. 551 of Customs Notification No. 50/2017 dated 30.06.2017. They had submitted the crucial class certificate of Indian registry of Shipping dated 10.03.2023 which is the final authority to classify all Indian Flag Vessels. which describes the said vessel as SUL, MULTIPURPOSE OFFSHORE SUPPORT VESSEL, (SUPPLY, AGNI 1(2400CUM/HR)).

12.1.2 Noticee-1 & 2 had submitted the copy of Rules and Regulations for the Construction and Classification of Steel Ship 2022, under chapter -8 which describes Multi Purpose Offshore Support Vehicle. The para 1.2.3 of above said rules and regulations describes that *vessel intended for the several roles /services related to offshore support will be assigned notation MULTIPURPOSE OFFSHORE SUPPORT VESSEL, in combination with the applicable additional class notations listed in Table 1.2.2 for each intended role /service are complied with and vessels are equipped and prepared at all times to engage in operations related to the relevant roles services. It is responsibility of the Owner to select the additional notations suitable for intended service and insure that the vessel is operated in a safe environment with respect to the risk and explosion.* This offshore support vessel is equipped with AGNI- 1. Agni-1 denotes that the ship is equipped for early stage firefighting and rescue operations close to structure including means for self-protection of the vessel.

12.1.3 The noticees 1 and 2 had submitted the Notification of Award of Contract No. ONG/COL/HMM/CSR/CH/ML/VESSELS/03/2017/P76BC17014/SagarFortune/9010027255 dated 01.03.2018 for charter hire of Platform Supply Vessels (PSV 3000 DWT). The said notification of awards describes that the price is inclusive of all charges, mobilization and demobilization taxes, fees levies, lubricants, grease etc. whatsoever, payable in connection with execution of works /services under this tender. Fuel and water would be provided by ONGC.

12.2 Scope of work: -The scope of work for which the present vessel in question was hired by ONGC vide Contract dated 25.04.2018 is primarily for transportation of cargo and persons.

12.2.1 It was submitted that from the above Scope of Work, it is amply clear that the subject vessel is specifically designed for and has been used for transporting men and material between the base and offshore installations as well as between offshore installations. Further, the Statement of Work sets out the type of cargo the vessel should be equipped to carry and has set out in detail the specifics in this regard. Hence, it is submitted that this contract for charter hire was awarded to the Noticee 1 & 2 after ONGC had satisfied itself that the subject vessel is equipped to meet the Statement of Work requirements mentioned above.

12.2.2 It was submitted that the Vessel is capable of accommodating 50 people while the vessel is manned by a crew. This additional accommodation available clearly goes to show that the vessel is used to transport men from the base to offshore installation as well as between offshore installations. Thus, even from the Vessel specifications, it is amply clear that the Vessel 'Sagar Fortune' is used to carry men as well as material.

12.3 It was also submitted that the noticees had thereafter imported similar vessels which were classified under Heading 89.01 and this classification was not disputed by the Department. The details of similar vessels imported by the Noticee were provided in the Table - 10 below:

TABLE - 10

Sl.No	Bill of Entry Number and Date	Vessel Name	Classification adopted
1.	4488925/28062021	PSV SAGAR ENERGY	89019000

The Vessel 'Sagar Fortune' is not classifiable under Heading 89.05. The Navigability of the vessel is not subsidiary to the main function.

12.4 The Department is proposing to classify the vessel in question under Heading 89.05 of the Customs Tariff as "other vessel", the navigability of which is subsidiary to its main function. It is also the contention of the department that the vessel in question is also a firefighting vessel by relying on the fact that the Vessel is Agni-1 capable.

12.5 The HSN Explanatory Notes to the heading 89.05 categorizes the vessels classifiable under the said heading into three categories.

- a. Light-vessels, fire-floats, dredgers, floating cranes and other vessels the navigability of which is subsidiary to their main function;
- b. Floating docks; and
- c. Floating or submersible drilling or production platform.

The Department has sought to classify the Vessel under the Heading 89.05 by bringing the same under Category (b) as a fire-float.

12.6 It was submitted that the subject Vessel cannot be equated to a Fire-Float as a Fire-float/fireboat is a specialized watercraft with pumps and nozzles designed for fighting shoreline and shipboard fires. They are frequently used for fighting fires on docks and shore side warehouses as they can directly attack fires in the supporting underpinnings of these structures. Fire-floats also have an unlimited supply of water available, pumping directly from below the hull and can be used to assist shore based firefighters when other water is in low supply or is unavailable.

12.7 It was submitted that as per the HSN Explanatory Notes, the vessels of Category (A) mentioned above perform their function in a stationary position. They include light vessels; drill ships, fire floats, dredgers of all kinds, salvage ships for the recovery of sunken vessels: permanently moored air sea rescue floats; bathyscaphes; pontoons fitted with lifting or handling machines and pontoons clearly designed to serve as a base for these machines. Thus a fire-float as envisaged under Heading 89.05 is used solely for fighting fire and remains in a stationary position. Navigability of the vessel is secondary as the main function is to douse fire and not navigation.

12.8 It was also submitted that both the Handbook of Notations issued by the Indian Register of Shipping and the American Bureau of Shipping Notations clarify that Agni-1 notations, respectively, only imply capability for early stage firefighting and rescue operations. It is only Agni-2 and Agni-3 capable vessels which are equipped for continuous firefighting operations and to cool structures. It is also submitted that the subject Vessel has never engaged in any firefighting operations till date.

12.9 Notices 1 & 2 has relied upon the judgements of **Lewek Altair Shipping Company**⁹, **HAL Offshore Limited**¹⁰, **Hede FerroMinas Pvt. Ltd**¹¹, **Prince Marine Transport**¹² and **Raj Shipping Agencies Ltd**¹³ for classification of the vessel under heading 8901.

12.10 It was also submitted that in the alternative and without prejudice to the above submissions, the vessel is classifiable under heading 8906.

12.11 It was also submitted that 0 P-2 capability is used to maintain the position of the vessel while loading and unloading cargo and is not solely used for firefighting operations. The classification of a vessel having Dynamic Positioning System was considered in the case of Lewek Altair Shipping Company *supra*.

⁹ Lewek Altair Shipping Company Vs CC,2019(366) ELT 318

¹⁰ HAL Offshore Limited Vs.CC (I), Mumbai ,2014 (303) ELT 119

¹¹ Hede FerroMinas Pvt. Ltd Vs CC (I), Mumbai 2016 (334) ELT 540

¹² Prince Marine Transport Vs CC, (I) Mumbai 2015(327) ELT 283

¹³ Raj Shipping Agencies Ltd Vs CC(I), Mumbai 2015 (329) ELT 913

12.12. On Confiscation of the imported Vessel ‘Sagar Fortune’:

- a. The imported vessel was cleared on first check basis after thorough verification of the documents and physical examination of the vessel by the Customs Officers. Even the quantity of stores was physically verified by the Customs Officers who certified the same. Therefore, the Noticees cannot be alleged to have mis-declared any material information, including description of the vessel.
- b. The fact that the imported vessel has firefighting capability also was duly informed to the Department. While the invoice and other documents described the vessel as offshore supply vessel, the classification of the vessel was mentioned as “ IRS, FiFI Class 1, DP 2” in the IMO declaration. Thus, it is incorrect to say that the fact of additional features of firefighting and dynamic positioning were deliberately not informed by the Noticees to the Department.
- c. In any case, the Noticee has declared the vessel with its generic description correctly, In any case, the original proceedings allege only misclassification and not misdeclaration.

12.13 Penalty cannot be imposed under Section 112 of the Act: It was submitted that confiscation is not warranted and penalty is not imposable under any of the provisions of Sections 112, 114A, 114AA or 117 since the noticees have not done any act or omitted to do any act or omission which have rendered the goods imported by them liable to confiscation under Section 111 of the Act.

12.14 The Noticee 1 gave submissions dated 14.07.2023 pursuant to the visit of the vessel on 06.06.2023 and consequently, the report submitted by the SIIB(I). In the submission the Noticee submitted that the Visit Report has inconclusively, without providing necessary justification, concluded that the primary function of the vessel is not transport of men and cargo because of the presence of firefighting pumps and Dynamic Positioning system ,despite finding that the subject vessel does transport men and material. The Noticee further argued that due regard has not been given to the fact that' the Scope of Work of the ONGC Contract specifically mentions such transport and does not mention anything about the ancillary capability of firefighting, which as a matter of fact has never been used. Furthermore, the Noticee reiterated the arguments made in the previous submissions.

Summary of submissions of Noticees-4

13. Shri Prashant Patankar, Advocate, representative of Noticee–4 submitted their submission dated 25.05.2023 on behalf of Customs Broker M/s. Babaji Shivram Clearing & Carriers Pvt. Ltd.

- a. The Order of the Commissioner of Customs CAO No. 32/CAC/CC(G)/RC/CBS (Adj) dated 09.07.2019 exonerating the CB under CBLR.

- b. Inquiry Report dated 29.05.2019 clarified there is no evidence that the custom Broker M/s. Babaji Shivram Clearing and Careers Pvt. Ltd violated the CBLR 2013. Inquiry reported that 29.05.2016 exonerated the Customs broker.
- c. Advisory No. 1/2022 dated 29.12.2022

13.1. The Noticee - 4 submitted judgment of **Devraj M Salim**¹⁴ under which it is ordered that penalty is not imposable as CHA specifically requested for assessment on “First Check’ Basis.

13.2 The Noticee -4 submitted judgment of **Amritlakshmi Machine Works**¹⁵ and **M. Vasi**¹⁶ for abetment presupposes knowledge of the proposed offense and benefit to be driven by abettors.

13.3 Classification and claim to notification are not matters of ‘declaration’ of other particulars. The Noticee 4 has placed reliance upon case law of **Northern Plastics Ltd**¹⁷.

13.4 It was also submitted that the CB is not required to go into the authenticity of declarations by exporter. CHA’s job is confined to submission of documents given by exporter as also to identify exporter before Customs Authorities. The noticee has placed reliance upon case laws of **Morkis Shipping & Trading Pvt. Ltd**¹⁸, **Akanksha Enterprise**¹⁹ and **Vetri Impex**²⁰

13.5 Furthermore, it was submitted that penalty not imposable in the absence of involvement or knowledge about mis declaration. The Noticee placed reliance upon case laws of **Prime Forwarders**²¹, **Sai Shipping Services**²² and **Success Engineering**²³. The noticee has placed reliance upon case laws of **Hindustan Steel Ltd**²⁴ and submitted that the penalty is not imposable merely because it is lawful to do so.

Vessel Visit on 06.06.23

14. In the presence of Adjudicating authority, empanelled chartered Engineer Shri S. D. Deshpande, SIIB (I) officer, adjudicating cell officer, Director of M/ s. S.S. Offshore, Shri Sachin Khirsagar and Shri T. Vishwanathan, Advocate, a visit of impugned Vessel Sagar fortune was undertaken on 06.06.2023. SIIB submitted a visit report stating that :

14.1 The vessel "Sagar Fortune" was previously known as "Pacific Amethyst". This vessel is a Multipurpose Offshore Support Vessel. It can supply goods and passengers & can provide

¹⁴ Devraj M salim Vs CC(I) Mumbai 2015 (316) E.L.T 139 (Tri-Mumbai)

¹⁵ Amritlakshmi Machine Works Vs CC(I),Mumbai 2016 (316) E.L.T 139(Bom)

¹⁶ CC, Mumbai Vs M.Vasi 2003 (151) E.L.T 312 (Tri-Mum)

¹⁷ Northern Plastics Ltd Vs CCE Kolkata ,1998 (101) E.L.T

¹⁸ CC,Tuticorin Vs Morkis Shipping & Trading Pvt. Ltd 2015(317) E.L.T 3(Mad) ,2008(227) E.L.T 577 (Tri-Chennai)

¹⁹ Akanksha Enterprise Vs CC, Mumbai-I ,2006 (203) E.L.T(Tri-Delhi)

²⁰ Vetri Impex Vs CC Tuticorin ,2004(172) E.L.T 347 (Tri-Chennai)

²¹ Prime Forwarders Vs CC ,Kandla ,2008 (222) E.L.T 137 (Tri-Ahmd.)

²² Sai Shipping Services Vs CC, New Delhi, 2009 (239) E.L.T 104 (Tri-Del)

²³ Success Engineering Vs CC Kandla 2007(215) E.L.T (Tri-Ahmd)

²⁴ Hindustan Steel Ltd Vs state of Orissa,1978 (2) E.L.T (J159) (S.C)

support to any offshore activity in various ways like firefighting, supporting Rigs / Offshore Installations along with the supply.

14.2 This vessel was registered as Offshore Support Vessel and Fire Fighting Vessel Class 1 and DPS-2 with the American Bureau of Shipping (ABS), which is a well-known name in the field of agency for classification of vessels. However, this vessel is currently registered as an Offshore Supply Vessel with Indian Agency and classified as a Multipurpose Offshore Support Vessel with Indian Register of Shipping (IRS).

14.3 Even if this vessel may be in agreement for supply only, this vessel is capable of being as an offshore support vessel as per the specifications, capability and class notation of the vessel. It can be used for these capabilities as and when required. Supply function is one of the types of support. Hence, an offshore support vessel may also supply the man and material including other supporting operations as detailed above. However, an offshore supply vessel is only meant for supply of man and material.

14.4 The vessel is fire fighting Class 1 as mentioned in the previous classification of ABS and AGNI-I as mentioned in the current classification of IRS in terms of the firefighting system equipped and installed in the vessel. This vessel is equipped with two firefighting pumps having capacity of 1200 cubic meters (about half the volume of an olympic-size swimming pool) per hour each as per norms of AGNI I. AGNI I denotes that the ship is equipped for early-stage firefighting and rescue operations close to structures including means for self-protection of the vessel. Hence, it can be used for firefighting / dousing fire of other vessels / rigs / platforms etc.

14.5 The vessel is equipped with a Dynamic Positioning System (DPS-2). The same is mentioned in the previous classification of ABS and as well as current classification of IRS. DPS-2 denotes that the ship is fitted with automatic controls of position keeping and/or heading with automatic standby controls and redundancy in design and equipment as required by part 5, chapter 24 of the Rules. Types of DPS are DPS (0), DPS (1) and DPS (2). DPS-2 is one of the advanced dynamic positioning systems. This function is one of the required add-ons for proper firefighting and positioning functions.

14.6 AGNII and DPS-2 are the additional features apart from the support functions provided by the vessel. DPS-2 is an add on for both support function and firefighting function, It is not mandatory for supply or support vessels to have these systems like AGNi-1 and DPS-2.

14.7 It is evident from all these features available on this vessel that these functions and purposes are its main functions and that the navigability of this vessel is subsidiary to these functions. Because if navigability and supply is to be considered its primary functions then these specific features/ functions like Fire fighting (2 pumps having capacity of 1200 cubic meter per hour and monitors to discharge the water accordingly), DPS and large Accommodation, which

are otherwise not available on other supply or support vessels, becomes redundant and ineffective.

14.8. This vessel may be treated as Offshore Support & Fire Fighting Vessel as classified in ABS Class since it is designed and built for the same.

Discussion & Findings

15. The present SCN dated 02.02.2018 was issued to the following 04 noticees:

Noticee-1: M/s S.S. Offshore Pvt.Ltd.

Noticee-2: Shri Sachin Kshirsagar (Director: S.S. Offshore Pvt. Ltd)

Noticee-3: Shri Harish Bhatia (Proprietor M/s. Harish and Company)

Noticee-4 : Babaji Shivram Clearing & Carriers Pvt. Ltd.

I have gone through the said Show Cause Notice, replies/submissions of the noticees made during the personal hearings and all other case records .

16. The said SCN was adjudicated in the first round by the Commissioner of Customs (Import), Mumbai vide Order in Original (OIO) No. CAO 29/2018-19 dated 26.11.2018. The Noticees 1, 2, 3 & 4 filed appeals in the Hon'ble CESTAT against the said OIO. Hon'ble CESTAT disposed off the appeals of the Noticees 1, 2, 3 & 4 vide Order No. A/85536-85539/2022 dated 09/06/2022. Relevant para of the Order dated 09.06.2022 is reproduced as below:

“24. In the light of this inadequacy, we are unable to firm up on the applicable classification for want of determination in the impugned order between heading 8905 and heading 8906 of the First Schedule to Customs Tariff Act, 1975. That gap must be bridged to enable which we set aside the impugned order and remand the matter back to the original authority for a fresh decision on the claim of the appellant for fitment within heading 8906 of First Schedule to Customs Tariff Act, 1975. As this remand is intended to arrive at the appropriate classification, the appellant may also make its submissions for fitment within the original classification, in addition, should they choose to do so.

25. The enhancement of value of the impugned vessel is set aside in accordance with our findings supra. The sole issue that remains is the choice of the appropriate classification. The controversy is contentious and the alternative classification proposed by customs authorities is based upon reliance on technical features to distinguish it from a capability inherent in all vessels that put out to sea in terms of subordination to its principal function. With that complexity to be resolved, there is no scope for indicting the individuals in these proceedings for deliberate misdeclaration. That the benefit of an exemption has been sought to be availed does not, of itself, render such claim to be with intent to evade duty.

Furthermore, the role of these individuals in the misdeclaration of stores and bunkers is not evident in the impugned order. The penalties imposed on the individuals are, accordingly, set aside to allow their appeals.”

17. The Hon'ble CESTAT in its Order dated 09.06.2022 has dropped the charge of undervaluation and remanded the matter back on the limited issue of appropriate classification under 8901, 8905 or 8906. The Tribunal has also set aside the penalties imposed on individuals. It is also seen that the Hon'ble Tribunal's Order does not contain any findings on confiscations of the vessel and stores and the imposed redemption fines, in lieu of confiscations, on the Noticee 1 in the first round of adjudication. Also, the Tribunal's Order does not contain any finding on penalties imposed on entities other than individuals.

18. The Noticee 1 filed an Application (ROM) No. 85616 of 2022 in the Appeal No. C/85825/2019 in the CESTAT, Mumbai seeking clarification in respect of the Hon'ble CESTAT Order dated 09.06.2022 on the issues of confiscations of the vessel and stores and the imposed redemption fines, in lieu of confiscations, and imposition of penalties under Sections 114A and 114AA of the Act on the Noticee 1 in the first round of adjudication since the Order did not contain its findings on these issues. Hon'ble Tribunal in its Miscellaneous Order No. M/85593/2022 dated 29.08.2022 dismissed the application of the Noticee 1 and directed to raise these issues before the adjudicating authority. Relevant part of the Order dated 29.08.2022 is reproduced below:

“On submission of Learned Counsel for the applicant, the application is dismissed as withdrawn with liberty to the applicant to raise the issues before the adjudicating authority.”

19. The Department filed a Civil Appeal in the Hon'ble Supreme Court against the CESTAT Order. The Hon'ble Supreme Court vide its Order dated 07.11.2022 dismissed the appeal of the Department and upheld the CESTAT, Mumbai Order dated 09.06.2022, which became final on issues decided by it.

20. Since the Hon'ble Tribunal has given finding on some issues and left some; let me clearly tabulate the issues which are open before me, as shown in Table -11:

TABLE - 11

Sr. No.	Charges levelled in the SCN	Issues decided in the 1st OIO dated 26.11.2018	Issues decided in Hon'ble CESTAT Order dated 09.06.22 upheld by Hon'ble Supreme Court	Present Status of the issue (whether final or not)
1	Rejection of the declared assessable value of Rs. 13,82,69,200/- by the importer vide B/E No. 2630993 dated 28.07.2017 in terms of Rule 12 and Rule 3 of the CVR, 2007,	Rejected the declared assessable value of Rs. 13,82,69,200/- by the importer vide B/E No. 2630993 dated 28.07.2017 in terms of Rule 12 and Rule 3 of the CVR, 2007,	Rejection of the declared assessable value is set aside	The issue has attained finality.
2	redetermination of the value of the vessel "Sagar Fortune" at Rs. 40,58,64,821/- (Assessable Value) in terms of the provisions of Rule 9 of the CVR, 2007	Redetermined the value of the vessel "Sagar Fortune" at Rs. 40,58,64,821/- (Assessable Value) in terms of the provisions of Rule 9 of the CVR, 2007	The enhancement of value of the impugned vessel is set aside	The issue has attained finality.
3	Rejection of classification of vessel Sagar Fortune under the CTH 89019000 and reclassification under the CTH 89059090,	Rejected classification of the vessel under CTH 89019000 and reclassified under the CTH 89059090,	Remanded back for a fresh adjudication on issue of classification	Issue is open and to be decided.

4	Confiscation of the the vessel in terms of provisions of Section 111(m) read with Section 46(4) of the Act, for mis-declaration of its value and mis-declaration of its classification	Confiscated the the vessel in terms of provisions of Section 111(m) read with Section 46(4) of the Act, for mis-declaration of its value and mis- declaration of its classification and imposed a redemption fine of Rs. 2,50,00,000/- under section 125 of the Act, on the importers, in lieu of the confiscation;	The Order does not contain any finding on confiscation of the vessel and the imposed redemption fine, in lieu of confiscation,on Noticee 1 in the first round of adjudication	The issue of confiscation of the vessel on mis- declaration of its nature/classifica tion is to be decided.
5	Rejection of classification of High Speed Diesel (MGO) under the CTH 27101940 and reclassification under the CTH 27101930,	Rejected classification of High Speed Diesel (MGO) under the CTH 27101940 and reclassified under the CTH 27101930,	The Order does not contain any finding on Rejected classification of High Speed Diesel (MGO) under the CTH 27101940 and reclassified under the CTH 27101930.	Issue has attained finality since Noticee 1 has accepted the order after the first round of adjudication.
6	Confiscation of 133000 Ltr of MGO and 9220 Ltr of Lubricating Oil in terms of provisions of Section 111(l) and 111(m) read with Section 46(4) of the Act, for mis-declaration of their respective quantities and mis-declaration of CTH MGO, and 5250 Ltr hydraulic oil, which had not been declared in the B/E No. 2630993	Confiscated 133000 Ltr of MGO and 9220 Ltr of Lubricating Oil in terms of provisions of Section 111(l) and 111(m) read with Section 46(4) of the Act, for mis-declaration of their respective quantities and mis-declaration of CTH MGO, and 5250 Ltr hydraulic oil, which had not been declared in the B/E No. 2630993 dated 28.07.2017, in terms of provisions of Section 111(l) of the Act and imposed a redemption fine of Rs.6,00,000/- under	The Order does not contain any finding on confiscation of the stores and the imposed redemption fine, in lieu of confiscation,on Noticee 1 in the first round of adjudication.	Confiscation was ordered on mis-declaration of respective quantities and mis-declaration of CTH of the stores. Since the importer has accepted the demand of duty on these stores, but raised the issue of the confiscation, the issue needs to be decided.

	dated 28.07.2017, in terms of provisions of Section 111(l) of the Act.	section 125 of the Act, on the importers, in lieu of the confiscations;		
7	Demand and recovery of a total differential duty of Rs. 3,53,25,921/ on the vessel Sagar Fortune in terms of provisions of Section 28(4) of the Act, along with applicable interest thereon in terms of the provisions of Section 28AA of the Act.	Confirmed the demand and recovery of a total differential duty of Rs. 3,53,25,921/ on the vessel Sagar Fortune in terms of provisions of Section 28(4) of the Act, along with applicable interest thereon in terms of the provisions of Section 28AA of the Act.	Remanded back for a fresh adjudication on issue of classification	Issue to be decided
8	Penalties on firms and individuals under sections 112(a), 114A and 114AA of the CA'62.	Imposed penalty on Noticee 1 under Sections 114A and 114AA of the Act. Also imposed penalties on Noticees 2, 3 and 4 under Sections 112(a) and 114AA of the Act.	Penalties on individuals set aside.	Penalties on firms relating to the issues of mis-classification of the vessel and misdeclaration of stores & fuel oil, etc. is open and to be decided.

21. From the above Table - 11, it can be seen that the charges of undervaluation of the vessel and consequent confiscation and penalties due to undervaluation stand dropped. The Noticee 1 has accepted the issue of rejection of classification of High Speed Diesel (MGO) under the CTH 27101940 and reclassification under the CTH 27101930. Noticee-1 has also accepted confirmed demand of differential duty of Rs. 20,24,644/- on MGO, Rs. 2,45,755/- on lube oil and duty of Rs. 1,66,479/- on hydraulic oil (Total Rs. 24,36,879/-), in terms of provisions of Section 28(4) of the Act, along with applicable interest thereon in terms of the provisions of Section 28AA of the Act, and appropriation of the amount of Rs. 17,15,315/- deposited by the importer towards part

recovery of this differential duty. Hon'ble Tribunal has set aside the imposition of penalties on individuals observing that there is no intent to evade customs duty, deliberate misclassification and they do not have any role in misdeclaration of stores and bunkers. Therefore penalties on the individuals under Sections 1114A and 114AA of the Act have been set aside. However, there are no findings given on penalties on noticee firms and penalty under section 112(a) which does not require intent to evade duty.

22. Hon'ble Tribunal has remanded the matter back to arrive at appropriate classification of the vessel. Hon'ble Tribunal, also in its Miscellaneous Order No. M/85593/2022 dated 29.08.2022 directed Noticee 1 to raise the issues, which do not contain its findings in the Hon'ble CESTAT Order dated 09.06.2022, before the adjudicating authority. Therefore, from the details of the Table -11 and the issues raised by the Noticee 1 and 4 in their submissions and personal hearings, I find the following issues are open before me for determination in this adjudication :

- i. Whether the impugned vessel 'Sagar Fortune' is classifiable under CTH 8905 instead of declared CTH 8901 or suggested CTH 8906?
- ii. Whether the vessel is liable for confiscation for mis-declaration of its nature/classification under Section 111(m) of the Act?
- iii. Whether differential duty (arising out of mis-classification of vessel)can be demanded under Section 28 of the Act in respect of the vessel imported vide B/E No. 2630993 dated 28.07.2017 along with applicable interest thereon in terms of the provisions of Section 28AA of the Act?
- iv. Whether the store items (133000 Ltr of MGO, 9220 Ltr of Lubricating Oil and 5250 Ltr hydraulic oil) are liable for confiscations in terms of provisions of Sections 111(l) and 111(m) of the Act.
- v. Whether penalties should be imposed on the importer firm (Noticee-1) and the CHA firm(Noticee-4) under Section 112(a) of the Act on the charge of improper importation due to mis-classification of vessel and mis-declaration of stores?

23. The charge levelled on Noticee No. 3, being the Chartered Engineer appointed by the importer, was limited to wrong valuation of the vessel. Since the undervaluation charge stands dropped by virtue of the Hon'ble CESTAT Order dated 09.06.2022 having been upheld by the Hon'ble Apex Court; I find that there are no disputed issues relating to Noticee 3 which require adjudication. Accordingly, the Noticee 3 was not called for personal hearing during this second round of adjudication. Hence, I have to decide the 5 issues discussed supra only in respect of the Noticees 1, 2 & 4.

24. Personal hearings have been duly conducted with the Noticees 1, 2 & 4. Now, let me take up the issues one by one.

25. Whether the impugned vessel 'Sagar fortune' is classifiable under CTH 8905 instead of declared CTH 8901 or suggested CTH 8906?

25.1 I find that M/s. S. S. Offshore Pvt. Ltd imported the vessel under tariff item 89019000, claiming an exemption of Nil basic custom duty available under Sr. No. 551 of Notification No. 50/2017 dated 30.06.2017. An exemption of Nil basic custom duty was available during the material time under Sr. No. 555 of the Notification No. 50/2017 dated 30.06.2017 for goods of CTH 8906 which the Noticee-1 is claiming as an alternate classification. Also, an exemption of basic custom duty @ 5% was available under Sr. No. 553 of the Notification No. 50/2017 dated 30.06.2017 for goods under CTH 890590 where the Department intends to classify the vessel.

25.2 The SCN has alleged that the impugned vessel 'Sagar Fortune' should be classified under tariff item 89059090 instead of declared tariff item 89019000. The SCN has alleged that the vessel is actually an "Offshore Support Vessel" with features: Class 1 firefighting capability and DPS-2 (or DP-2) dynamic positioning system. That the vessel can stay in close proximity to oil rigs, providing support and firefighting capabilities. That Capt. Shri Bijoy Kumar Sharma, the surveyor who actually surveyed the vessel, emphasized the vessel's main functions as Agni 1 and DP-2, with navigability being subsidiary to these functions and also stated that class certificate is the most accurate source for determining a vessel's class notation and description, rather than the generic descriptions found in other documents. On the basis of various registrations and certifications given to the vessel by different classification societies and agencies, reports of shipping experts and chartered engineers; the SCN has alleged that the said vessel is classifiable under tariff item 89059090 instead of declared tariff item 89019000.

25.3 I find that Hon'ble CESTAT vide Order No. A/85536-85539/2022 dated 09/06/2022 has emphasized that the classification should not be based solely on the certificates issued by registry and classification societies. Rather, the classification should factor in the actual functionalities, design, and the intended and potential uses of the vessel. This underscores the need to have a holistic perspective on classification, not confined to just paperwork.

25.4 For the purpose of determining the appropriate classification of the vessel "Sagar Fortune", a combination of certification, expert opinions, comparative analysis, and on-ground functionalities needs to be considered. As stressed by the Hon'ble CESTAT, while certificates provide an essential framework, they should not be the sole determinant for classification. The ultimate aim is to ensure that the classification resonates with the vessel's inherent design, purpose, and capabilities. This requires meticulous examination of evidentiary facts and documents on record, which will be discussed in the coming paragraphs.

25.5 It is seen that the said vessel was built by Jingjiang Nanyang Shipbuilding Co, China in 2007 and assigned IMO no. 9458327 upon registration as 'Dalini Topaz' of type 'steel offshore supply vessel' owned by M/s Salvin Far East Pte Ltd, Singapore as per provisional Certificate of Singapore Registry dated 8.01.2008 issued by Marine and Port Authority Singapore. A fresh

Certificate of Singapore Registry was issued on 30.04.2009, bearing the same number and type, upon renaming as 'Pacific Amethyst' under the ownership of M/s Swire Pacific Operations (Pte) Ltd, Singapore. After purchase of the vessel, now called 'Sagar Fortune', by the importer. Over the years, it changed ownerships and names from "Dalini Topaz" to "Pacific Amethyst" to finally "Sagar Fortune". The various certifications and registrations undergone by the impugned vessel since its inception have been summed up in Table - 12 below:

TABLE - 12

(Tabulated chronological summary of various certificates /registrations given to the vessel)

Date of certificate	Name of certificate & Agency giving it.	How the impugned vessel has been defined/classified in the certificate
08.01.2008	Provisional Certificate of Singapore Registry, MPA, Singapore.	Steel Offshore Supply Vessel
30.04.2009	Fresh Certificate of Singapore Registry, MPA, Singapore.	Steel Offshore Supply Vessel
02.10.2013	American Bureau of Shipping (ABS) issued a Certificate of Classification. This was not mentioned in the bill of Entry, invoice, etc..	A1, Fire Fighting Vessel Class 1, Offshore Support Vessel, Circle E, AMS, and DPS-2
23.01.2017	American Bureau of Shipping (ABS) in 2017 Survey Status Report	A1, Fire Fighting Vessel Class 1, Offshore Support Vessel, Circle E, AMS, and DPS-2
23.05.2017	Provisional Certificate of MMD(Indian Registry). This was mentioned in the bill of Entry.	Transverse Steel Offshore Supply Vessel
07.07.2017	Indian Register of Shipping (IRS) Survey Status Report. This was not mentioned in the bill of Entry , invoice, etc..	SUL, Offshore Support Vessel, IY, Agni 1(2400 Cum/hr), DP (2)
26.04.2017	Pre-purchase Survey/Inspection by the Det Norske Veritas (Pty) Ltd (DNV-GL)	Fire Fighting Vessel Class 1, Offshore Support Vessel, Circle E, AMS, DPS-2

25.6 Understanding various names & terms involved in the certificates.

25.6.1 Indian Register of Shipping (IRS) : Recognizing the necessity for a leading maritime nation such as India to have its own classification society, the Government of India constituted a Steering Committee (known as Mudaliar Committee) whose recommendation for formation of an Indian classification society was accepted by the Government of India in 1974. Thus, in March 1975, Indian Register of Shipping (IRS) was established as a Public Limited Company under section 25 of the Indian Companies Act, 1956 with no share capital, no shareholders and distributing no dividends and seeking to promote the objects for which it was established which include to provide faithful and accurate classification and record of mercantile shipping classed with IRS.

25.6.2 American Bureau of Shipping (ABS) : The American Bureau of Shipping (ABS) is an American maritime classification society established in 1862. It started with a mission to promote the security of life, property, and the natural environment, primarily through the development and verification of standards for the design, construction and operational maintenance of marine and offshore assets. ABS's core business is providing global classification services to the marine, offshore, and gas industries.

25.6.3 Terms used in ABS class certificate : The ABS class notation indicates the vessel is specially designed with enhanced firefighting, offshore support, dynamic positioning and automation capabilities beyond those of a typical supply vessel. These specialized systems for firefighting, cargo/personnel transfer, anchoring/towing operations indicate the vessel's primary function is to provide support, not just supply, to offshore facilities. The notation reflects the vessel's design character for offshore support and firefighting.

- i. **Offshore Support Vessel:** Offshore vessels are industrial use vessels different from passenger ships. The Offshore Support Vessel notation indicates that the vessel is designed to provide support to offshore oil and gas operations. This includes tasks such as transporting personnel and equipment, providing fire-fighting services, and carrying out maintenance and repair work.
- ii. **AI:** This notation indicates compliance with the Hull requirements of the ABS Rules or their equivalent for unrestricted ocean service and survey by the Bureau during construction of the vessel.
- iii. **Fire Fighting Vessel Class 1:** The Fire Fighting Vessel Class 1 notation indicates that A Classification notation indicating that a vessel has the capability to fight external fires and is fitted with a water spray protection system for cooling the vessel's surface to enable close operation for early stages of fire fighting and rescue operations; and that the systems are in accordance with the applicable requirements of Part 5, Chapter 9 of the ABS Rules for Building and Classing Steel Vessels Under 90 meters (295 feet) in Length. Minimum fire fighting equipment includes two (2) water monitors capable of discharging 1200 m³/hr each.

- iv. **Circle E:** This notation is a classification symbol that signifies that the equipment of anchors and chain cables of the vessel is in compliance with the requirements of the Rules, or with the requirements corresponding to the service limitations noted in the vessel's classification which have been specifically approved for the particular service. Compliance with **Á** requirements is a condition of classification for vessels, for which the equipment number (EN) calculated in accordance with 3-5-1/3.1 of the ABS Rules for Building and Classing Steel Vessels is equal to or greater than 205. Vessels intended for towing operation or vessels for which EN is less than 205 are not required to have as a condition of classification. (3-5-1/7 of the ABS Rules for Building and Classing Steel Vessels Under 90 meters (295 feet) in Length.)
- v. **AMS:** is a classification notation that indicates that a vessel's machinery, boilers and systems have been constructed and installed under survey by the Bureau in accordance with the requirements of the ABS Rules. The AMS notation is intended for all new construction of ABS classed self-propelled vessels and offshore units.
- vi. **DPS-2:** The Dynamic Positioning System notation DPS-2 indicates that a self-propelled (or non-self propelled) vessel is fitted with a system of thrusters, positioning instruments and control systems capable of automatically maintaining the position and heading at sea without external aid within a specified operating envelope under specified maximum environmental conditions during and following any single fault excluding a loss of compartment or compartments; and that the systems are in accordance with the applicable requirements of Part 4, Chapter 3 of the ABS Rules for Building and Classing Steel Vessels. The assigned numeral "2" indicates the degree of redundancy.

25.6.4 Terms Used in IRS class certificate

- i. **SUL:** The SUL notation in its expanded form of 'Sarvoutam Langer' indicates that the vessel has been classed with IRS where the hull and its appendages and equipment (i.e. anchors, chain cables, hawsers) meet the Rule requirement.
- ii. **Offshore support vessel:** The Offshore support vessel notation indicates that the vessel is designed to provide support to offshore oil and gas operations. This includes tasks such as transporting personnel and equipment, providing fire-fighting services, and carrying out maintenance and repair work.
- iii. **IY :** The IY notation in its expanded form as 'Indian Yantra' and denotes that for self-propelled seagoing vessels, the machinery installation complies with the applicable requirements of the IRS.
- iv. **Agni 1 (2400 CUM/HR):** The Agni 1(2400 CUM/HR) notation indicates that the vessel is equipped for early stage fire fighting with pumps that can deliver 2,400 cubic meters of water per hour.
- v. **DP (2):** The DP (2) notation in its expanded form " Dynamic Positioning (2) denotes that the vessel is fitted with automatic controls of position keeping and/or heading with automatic standby controls and redundancy in design and equipment as required by Part

5, Chapter 24 of the Rules. DP system allows vessels to maintain their position and heading in a dynamic environment, such as in rough seas.

25.6.5 From the Table-12 supra, it is seen that the Provisional Certificate of Singapore Registry dated 8.01.2008 and fresh Certificate of Singapore Registry dated 30.04.2009, issued by the Maritime Port Authority (MPA) of Singapore, identified the vessel primarily as a "Steel Offshore Supply Vessel". This suggests a broad classification as a general offshore supply vessel. The American Bureau of Shipping (ABS) issued a Certificate of Classification dated 02.10.2013 that detailed the vessel's classification more comprehensively. It described the vessel as possessing capabilities defined under the categories "A1, Fire Fighting Vessel Class 1, Offshore Support Vessel, Circle E, AMS, and DPS-2". These notations underscore advanced functionalities such as firefighting, offshore support, and dynamic positioning. Subsequent documentation from ABS, namely the 2017 Survey Status Report, reaffirmed these classifications, emphasizing the vessel's roles in firefighting and offshore support. Further corroborating these classifications, pre-purchase survey/inspection by the Det Norske Veritas (Pty) Ltd (DNV-GL) in its Inspection Report dated 26.04.2017 mirrored the ABS certificate, highlighting the vessel's functions as a "Fire Fighting Vessel Class 1, Offshore Support Vessel, Circle E, AMS, DPS-2". The 2017 Provisional Certificate of Indian Registry (by MMD) categorizes the vessel as a "Transverse Steel Offshore Supply Vessel", suggesting a general classification akin to offshore supply. However, the IRS Survey Status Report dated 07.07.2017 reveals more advanced capabilities. It carries the notation "SUL, Offshore Support Vessel, IY, Agni 1(2400 Cum/hr), DP (2)", thereby emphasizing advanced firefighting capabilities through the Agni-1 classification and advanced positioning through the DP-2 notation. It is admitted fact that the class certificates by ABS and IRS have precedence value over registry certificates.

25.6.6 The IRS class notations categorized the vessel as a "Multipurpose Offshore Support Vessel", underlining its versatility in supporting offshore activities. The vessel has been acknowledged to possess both firefighting (through "AGNI 1" notation) and dynamic positioning capabilities (DP2). The former suggests that the vessel can engage in early-stage firefighting near offshore platforms, and the latter affirms its advanced dynamic positioning system. The vessel is equipped with cargo handling equipment, anchors, and mooring apparatus, pointing to its role in offshore cargo handling and other support functions.

25.6.7 From the scrutiny of class certificates and associated documentation reviewed supra, I find that both ABS and IRS classification agencies have identified the vessel's multifunctional role. ABS, in particular, emphasized its offshore support and firefighting capabilities, while IRS identified it as a multipurpose offshore support vessel. This consistency between two prominent classification agencies underscores the vessel's design intent and functional capacities. The vessel's advanced features, such as Agni-1 and DP-2, though not mandatory for standard supply vessels, amplify its offshore support capabilities. Consequently, the vessel's classification should consider these multifaceted roles and capabilities.

25.7 Expert's opinion

25.7.1 To understand the technical features and certificates of the vessel; the SCN has relied upon certain experts' opinions from IRS, DG Shipping, etc. recorded under section 108 of the Customs Act, 1962 and the Chartered Engineer's reports. A summary of these evidences is given in Table - 13 below.

TABLE - 13

Sl. No.	Name of person	Reference no and date of report /statement	Relevant extract of the report/statement
1	M/s Harish and Company, Chartered Engineer (CE).	report ref. No. HC-MUM/S.S.OFFS HORE PVT LTD./MARINE/001/2	Date of inspection : 29.07.2017 description of machine : Sagar Fortune (old and Used Self Propelled Platform Supply Vessel). D
2	Sh. Rajendra S. Tambi, CE	Report Ref No. CC184 dated 05.09.2017	Date of inspection : 31.08.2017 Description of Vessel : Motor Ship Class: ABS *A1, Fire Fighting Vessel Class 1/ Offshore Support Vessel.
3.	Sh. S.D. Deshpande, CE	Report Ref No. SDD/CE/SIIB/MBPT/010 dated 27.06.2023 (Report on observations made during visit by Adjudicating Authority)	It is a Multipurpose Offshore Support Vessel with Agni 1 and DPS-2 as additional and special features. It is not mandatory for support or supply vessels to have these two features. Hence, these two features dominate its functions and navigability becomes subsidiary to these functions.
4	Shri Sachin Kshirsagar, Director, M/s S.S. Offshore Pvt. Ltd.	Statement dated 14.08.2017 recorded under Section 108 of the Customs Act, 1962	He admitted that the vessel can function as per its specification capabilities and class notations of ABS and IRS certificates which include external fire fighting job.

5	Shri Lalu Natarajan, Ship Survey cum Deputy Director General of Shipping (Technical), Mercantile Marine Department	Statement dated 16.11.2017 recorded under Section 108 of the Customs Act, 1962	The classification takes into account documents such as the Bill of Sale, Declaration of Ownership, previous registry certificate etc. The provisional certificate of Indian Registry for the vessel "Sagar Fortune" was issued based on such documents and previous registry which described the vessel as an "Offshore Supply Vessel"
6	Shri K. K. Sanjeev, Head of the Department (classification and certification) Indian Registry of Shipping, Mumbai	Statement dated 06.12.2017 recorded under Section 108 of the Customs Act, 1962	It was the class certificate with notation which gives the exact description of the vessel and certificate of registry gives only a general description; that as per ABS class notations.
5	Capt. Bijoy Kumar Sharma, Senior Surveyor, Indian Registry of Shipping, Mumbai,	Statement dated 13.12.2017 recorded under Section 108 of the Customs Act, 1962	He clarified that that the Class certificate was the documents which describes the actual type of vessel; that in this case the vessel 'Sagar fortune' had been classed as 'Offshore Support Vessel' along with 'SUL, IY, Agni 1(2400 Cum/hr), DP(2); that the Notation like DP-2 and Agni-1 which were found installed on the Vessel were additional features apart from the normal support role that it performs; that DP-2 was a dynamic positioning system which maintains a specific position of the vessel at all times

25.7.2 I find that Shri Lalu Natarajan, Ship Survey cum Deputy Director General of Shipping (Technical), Mercantile Marine Department, Mumbai clarified the core functions and responsibilities of the Mercantile Marine Department which primarily involve ensuring safety standards, registration, certification, and other ship-related protocols. Shri Lalu Natarajan, in his statement, highlighted the procedure followed in the classification of vessels. The classification takes into account documents such as the Bill of Sale, Declaration of Ownership, Board Resolution, previous registry certificate and others. The certificate of registry for the vessel "Sagar Fortune" was issued based on such documents as an "Offshore Supply Vessel". Shri Lalu Natarajan has further stated that there is a subtle distinction between 'Offshore Support Vessel' and 'Offshore Supply Vessel'. The 'Offshore Supply Vessel' carries cargo and people to offshore facilities and the 'Offshore Support Vessel' provides standby support to offshore facilities in addition to the functions of the 'Offshore Supply Vessel'

25.7.3 I find that Shri K. K. Sanjeev, Head of the Department (classification and certification) Indian Registry of Shipping emphasized that the IRS functions to classify ships according to class rules and regulations. I find that Shri K. K. Sanjeev in his voluntary statement recorded under Section 108 of the Act on 16.11.2017 inter-alia stated that in the provisional registration by the IRS, a general practice is followed by the IRS where all the data of the vessel is taken from the previous registry. Accordingly, in the provisional registration by the IRS for the vessel describing the vessel as 'Transverse steel offshore supply vessel, all the data of the vessel were taken from the previous registry dated 30.04.2009 issued by MPA Singapore which described the vessel as 'Steel offshore supply vessel'. Likewise, an interim certificate of class preview is prepared equivalent to previous class certificate of ABS dated 02.10.2013 and the class certificate with notation gives the exact description of the vessel and the certificate of registry gives only a general description.

25.7.4 I also find that Capt. Bijoy Kumar Sharma, Senior Surveyor, Indian Registry of Shipping, Mumbai, who had carried out the survey of the subject vessel, in his voluntary statement recorded under Section 108 of the Act on 13.12.2017 inter-alia stated that at the time of building of the ship, the design and class is decided and accordingly the ship is built, and after completion of the ship at that place, class certificate is issued; Based on those class certificates, the Flag issues its registry certificate, which continues until and unless there is some major modification. Any major modification is done under the supervision of the Class; In this particular case, the vessel was already classified by ABS, and a registry certificate was issued by Singapore Flag; The Class certificate is the document which describes the actual type of vessel. This particular Vessel 'Sagar Fortune' was surveyed by him and on completion of Survey the class notation "SUL, Offshore Support Vessel, IY, Agni 1(2400 Cum/hr), DP(2)" was assigned to the Vessel. The vessel had two special features i.e. Agni I and DP-2 which are not mandatory for a supply or support vessel. These are additional features with which the vessel was equipped; DP-2 is a dynamic positioning system which maintains a specific position of the vessel at all times. With the advantage of the DP-2 system, it could remain in close proximity to the Rigs/Platforms and provide various supports for a longer duration of time; The firefighting notation Agni-1 means firefighting system of level-1 could be used for fighting/dousing fire of other vessel/rigs/platforms; As Agni I and DP- 2 require the vessel to remain stationary, it could be said that the navigability of this vessel becomes subsidiary to those two functions.

25.7.5 The opinion of the experts discussed supra should be given due importance to understand the details of the vessel for classification purposes. For this, I take support from the observation of the Hon'ble Supreme Court in the case of **Konkan Synthetics Fibres**²⁵, relevant part of the Order is reproduced below:

“9. It is a settled proposition in a fiscal or taxation law that while ascertaining the scope or expressions used in a particular entry, the opinion of the

²⁵ Commissioner of Customs (Import), Mumbai Vs. Konkan Synthetics Fibres 2012 (278) E.L.T. 37 (S.C.)

expert in the field of trade, who deals in those goods, should not be ignored, rather it should be given due importance. In Collector of Customs v. Swastic Woollens (P) Ltd., 1988 Supp SCC 796, this Court has observed thus:

"4. We are of the opinion that when no statutory definition is provided in respect of an item in the Customs Act or the Central Excises Act, the trade understanding, meaning thereby the understanding in the opinion of those who deal with the goods in question is the safest guide. See Union of India v. Delhi Cloth & General Mills. South Bihar Sugar Mills Ltd. v. Union of India, Dunlop India Ltd. v. Union of India, In re Colgate Palmolive (India) Pvt. Ltd., CST v. S.N. Bros., Kanpur, and also the famous observations of Justice Cameron in His Majesty The King v. Planters Nut and Chocolate Co. Ltd. ""

25.7.6 From the discussions on examination of statements of experts, I find that the vessel 'Sagar Fortune' is primarily classified as an offshore support vessel, with specialized firefighting and dynamic positioning capabilities. It can be comprehensively ascertained that the "Sagar Fortune" is not just an ordinary supply vessel. It is designed and equipped for multifunctional roles in offshore operations, such as transporting goods and personnel, providing fire fighting support, and aiding offshore activities. The vessel's advanced features, such as Agni-1 and DP-2, though not mandatory for standard supply vessels, amplify its offshore support capabilities. This suggests that while the vessel can navigate, its primary functions and special features may at times override its navigational purpose.

25.8.1 For the purpose of having a first hand understanding of the vessel's features; a joint visit of the vessel was undertaken on 06.06.2023 by the Adjudicating Authority, empaneled Chartered Engineer Shri S. D. Deshpande, Shri Bhuwanesh Kumar Dixit, SIO/SIIB(I), Shri Kumar Mahendra, Superintendent of Customs (P)/Adjudication Cell, Director of M/s. S.S. Offshore, Shri Sachin Khirsagar and Shri T. Vishwanathan, Advocate. A round of the vessel was taken and the noticees showed and explained the fire fighting and dynamic positioning systems among other features of the vessel to the visiting team.

25.8.2 After the visit, the Chartered Engineer submitted its report dated 27.06.2023 to the SIIB(I) and consequently based on the CE report, the SIIB(I) submitted a Visit Report vide F. No. CUS/SIIB/MISC/972/2022-SIIB(I) dated 10.07.2023 interalia emphasizing that it is a Multipurpose Offshore Support Vessel with Agni 1 and DPS-2 as additional and special features. It is not mandatory for support or supply vessels to have these two features. Hence, these two features dominate its functions and navigability becomes subsidiary to these functions. Both the CE and SIIB(I) emphasized on the ABS classification of the ship to be most reliable, which classified the ship as Offshore Support & Fire Fighting Vessel. The Noticee 1 also gave submissions dated 14.07.2023 pursuant to the visit of the vessel on 06.06.2023 and consequently, the report submitted by the SIIB(I).

25.8.3 I find that the vessel has been equipped with specific features, such as the DPS-2 and Agni-1 systems. These are not standard for conventional supply or support vessels. Thus, while navigability remains an inherent function, the vessel's primary purpose extends beyond this due to these specialized features. The vessel's design and features make it adaptable for various offshore tasks. For instance, even if it's presently in an agreement for supply purposes, it retains the capacity to function as an offshore support vessel as and when required. This functional flexibility sets it apart from a vessel designed solely for supply purposes.

25.9.1 The noticees' contentions regarding classification under CTH 8901: It has been contended that the impugned vessel 'Sagar Fortune' merits classification under Customs Tariff Heading (CTH) 8901 which covers vessels designed for transport of goods or persons. In support, they have submitted the certificate dated 10.03.2023 issued by Indian Registry of Shipping (IRS) which, being the final authority for Indian flag vessels, classifies 'Sagar Fortune' as a "Multipurpose Offshore Support Vessel (Supply, AGNI 1)". The noticees refer to the IRS rules defining multi purpose offshore support vessels as having add-on capabilities through class notations. They argue the 'AGNI-1' notation denotes early-stage fire fighting abilities, not a dedicated firefighting role. Further, the noticees have produced ONGC charter documents showing the vessel was hired for supply operations for transport of personnel and materials. This, they claim, establishes the primary function as navigability and supply. The noticees also argued that the vessel lacks specialized machinery and layout specific to a firefighting or towing vessel and its navigability and supply roles are not subordinated to other functions.

25.9.2 Alternative plea for CTH 8906: The noticees argued that alternatively, without prejudice to above contentions, the noticees pleaded that the vessel merits classification under CTH 8906 which covers vessels not specified elsewhere. They further argued that the vessel lacks a dedicated firefighting role necessitating classification under CTH 8905. The dynamic positioning feature also does not render navigability subsidiary. The noticees submitted that the vessel's attributes do not match specialized vessels under CTH 8905 and rather represent 'other vessels' under CTH 8906. They contend that even if CTH 8901 and 8905 appear equally applicable, the vessel should classify under CTH 8906 as per General Rule 3(c).

25.9.3 Case Laws: The noticees have argued that the subject vessel merits classification under heading 8901. They have placed reliance upon the case laws of **Lewek Altair Shipping Company**²⁶, **HAL Offshore Limited**²⁷, **L&T Sapura Shipping (P) Ltd**²⁸, **Hede Ferrominas Pvt Ltd**²⁹, **Prince Marine Transport**³⁰ and **Raj Shipping Agencies Ltd**³¹. Now let me deal with these case laws one by one.

²⁶ Lewek Altair Shipping Company Vs CC,2019(366) ELT 318

²⁷ HAL Offshore Limited Vs.CC (I), Mumbai ,2014 (303) ELT 119

²⁸ L&T Sapura Shipping (P) Ltd Vs. CC 2016 (343) ELT 1144

²⁹ Hede FerroMinas Pvt. Ltd Vs CC (I), Mumbai 2016 (334) ELT 540

³⁰ Prince Marine Transport Vs CC, (I) Mumbai 2015(327) ELT 283

³¹ Raj Shipping Agencies Ltd Vs CC(I), Mumbai 2015 (329) ELT 913

(a). In the case of **HAL Offshore Limited** supra, they imported a Multi-purpose Support Vessel (MSV) "HAL-Anant" vide B/E No. 806570, dated 20-11-2007 declaring the goods as self-propelled second-hand supply vessel M.V. Hal Anant (Ex-M.V. Dulam Providence). The goods after examination by the customs were classified under CTH 89019000 and assessed accordingly. Subsequently CIU intervened and found that the importer's contract with the ONGC revealed that ONGC used the terms Multi-purpose Support Vessel to mean a vessel which is capable of multi-purpose functions like fire-fighting, diving support, helicopter operation, rescue operations and pollution control operations etc. and because of these functionalities, MSV is different from ordinary Supply Vessel. Hence, CIU alleged that the importers had suppressed the information regarding the contracts entered into by them with the ONGC at the time of import of the vessels, thereby suppressing the functionality of the vessel to evade customs duty by misclassifying them as supply vessels instead of multi-purpose vessels where the navigability is subsidiary to the main function of the vessel. The Hon'ble Tribunal decided the classification in favour of 8901 on the ground that the vessels had been certified as "SUPPLY VESSEL" in the certificates by Indian Registry of Shipping and Bureau Veritas with unrestricted navigation. The certificates in HAL Offshore Limited supra did not indicate any specialized offshore support roles. They simply classified the vessel as a generic "Supply Vessel". On the contrary, the IRS and ABS certificates in the present case of M/s. S S Offshore classify the ship as a fire fighting Agni1 and Support Vessel. All the experts have admitted that class certificates of ABS and IRS of Sagar Fortune have precedence over registration certificates where the supply vessel is mentioned. The contract with ONGC is also based on fixed daily payment and not variable depending on weight of goods carried. A Fire fighting ship also can navigate distances and can supply persons or goods, but since they have huge pumping systems and DPS-2 (dynamic positioning systems) to balance the ship and keep it stationary during fire and rescue operations holding them eligible for grading of Agni-1 and DPS-2 from reputed ship classification societies. Thus Agni -1 and DPS-2 become its main feature and navigability becomes secondary. In view of these points, the case law of HAL Offshore supra is distinguishable from the present case.

(b). In the case of **Lewek Altair Shipping Company** supra, they imported vessels "Lewek Altair" and "Lewek Atlas" and filed Bills of Entry, classifying them under Chapter Heading 89019000 of the Customs Tariff and claimed the benefit of Exemption Notification No. 12/2012-Cus., dated 17-3-2012 as amended. These vessels were meant to support oil rigs of ONGC in their offshore drilling platforms. The vessels in question were used to transport personnel and equipment from shore to the platform and back. Revenue's case was that such vessels are to be correctly classifiable under CTH 89059000 and were not eligible for exemption under Notification No. 12/2012-Cus., dated 17-3-2012. Hon'ble Tribunal concluded in favour of CTH 89019000 by holding that navigation indeed, was the primary function of the vessels and dynamic positioning system helped to perform this function efficiently. Similarly, loading or unloading goods or embarking or disembarking personnel were incidental to the transportation.

The present case is different because the vessel has been classed as "Offshore Support Vessel Agni 1 DPS-2" by IRS and ABS classification societies with explicit technical notations regarding specialized firefighting and dynamic positioning abilities, which was not the case in the case of Lewek Altair supra.

(c). In the case of **L&T Sapura Shipping (P) Ltd** supra, the dispute relates to the classification of a heavy duty crane cum-pipe laying ship between CTH 8901 and 8905. The Hon'ble Tribunal held that *"the finding of the Adjudicating Authority that the said vessel LTS 3000 merits classification under Chapter Heading 8905 is totally incorrect inasmuch as the chapter heading starts with the clause that it covers light vessel, fire floats, dredgers, etc., the navigability of which is subsidiary to the main function. The understanding of the ld. Adjudicating Authority that vessel LTS 3000 having a crane fitted to it would fall under floating cranes seems to be incorrect as it is on record that vessel LTS 3000 is self navigating ocean going vessel."* This fact was clearly ascertainable from the certificate of class as given by the Indian Register of Shipping as "SUL IY DP-1". In the present case of SS offshore, the IRS has classed the Sagar Fortune Vessel as "SUL, Offshore Support Vessel, IY, Agni 1(2400 Cum/hr), DP (2)". Thus in the present case, Agni-1 and DP-2 are specifically mentioned in all class certificates. These features are not present in all support or supply vessels, hence they are the dominating features of the vessel in the present case unlike L&T Sapura.

(d). The case of **Raj Shipping Agencies Ltd** supra, related to the import of Vessel 'Offshore Hunter' from Kuwait. The Vessel was mentioned as a supply vessel by Kuwait registry but mentioned as "tug" in contract documents. Hon'ble CESTAT held that *"The question which arises is that if the vessel is used for carrying persons and cargo as well as for towing operations, what is the primary purpose for which the vessel is designed. Merely having a winch does not lead to conclusion that the vessel is a tug. Supply and passenger ships can also have a winch. To decide the issue at hand, in the absence of any technical document of the design of the vessel, we have to rely on the Certificate of Indian Registry issued under the Merchant Shipping Act, 1958. The description retrieved from the web-site QUASIS by Revenue cannot be preferred over the certificate given by the Registrar of Indian Ships....In our considered view and on the basis of the analysis above, we find that the Heading 8901 provides the more specific description. Therefore there is no doubt about the applicability of rule 3a which states that the heading which provides the most specific description shall be preferred. In the present case, the vessel is designed as a supply vessel for transport of persons as per the Certificate of Indian Registry."* Thus, the hon'ble Tribunal gave primary importance to the IRS Certificate. The IRS Certificate in the present case of SS Offshore describes the Vessel as "SUL, Offshore Support Vessel, IY, Agni 1(2400 Cum/hr), DP (2)". The Vessel initially in foreign country was classed as a Fire Fighting Vessel and also by ABS Registry which is a well known classification society. Hence, the Raj Shipping case law by placing greater reliance on initial class certificates of the Kuwait registry and IRS Registry actually goes against the noticees.

(e). The case laws of **Hede Ferrominas Pvt Ltd** and **Prince Marine Transport** supra, are based on the CESTAT Judgement in the case of HAL Offshore and are on similar lines and hence distinguishable from the present case.

25.10 Classification based on intrinsic characteristics over end-use of the vessel

For classification of a vessel or any object for customs and tariff purposes, it is essential to understand that a vessel's inherent design and features should be the primary factors, not its potential usage. The reason is simple, end-use can fluctuate, but a vessel's foundational characteristics remain constant. End-use is a variable factor that can change depending on a buyer's intention, operational shifts, or market demands but, the inherent design, equipment, and capabilities of the vessel are objective facts that do not vary with its intended usage. In the present case of the vessel "Sagar Fortune", while it can serve as a supply vessel, it is equally adept at supporting offshore operations, firefighting, and maintaining its position near offshore structures for extended durations. Its design allows for a multitude of uses, from basic supply tasks to intricate offshore missions. If the vessel is to be classified based on possible uses, it would invite ambiguity and might not reflect the vessel's true potential. Therefore, it is important to recognize that even if the vessel "Sagar Fortune" is currently under a supply contract, its innate features make it capable of fulfilling various offshore roles. This adaptability differentiates it from vessels designed for a singular purpose.

25.11 Evaluation of notices' submissions vis-a-vis Inspection Findings, class certificates, Contract Agreement between ONGC and Noticee 1 and expert opinions

25.11.1 After reviewing the submissions made by the noticees, I compared them with the observations from the physical inspection of the vessel 'Sagar Fortune' on 06.06.2023, Contract Agreement between ONGC and Noticee 1, class certificates, and expert opinions. The goal is to find whether noticees' submissions are consistent with the evidences.

25.11.2 The inspection observations note that the vessel has firefighting and dynamic positioning capabilities as per both its previous ABS and current IRS classifications. However, the noticees' submissions seem to downplay the fire fighting role and do not highlight the advanced DPS-2 system. While arguing the vessel has general offshore support function, the submissions are silent on its specialized firefighting and dynamic positioning abilities observed during inspection. The emphasis on ONGC charter for supply operations overlooks the fact, as observed in contract agreement and during inspection, that the vessel remains capable of and equipped for offshore support activities besides mere supply role.

25.11.3 Analysis of Noticee-1's Contract with ONGC on Deployment of Vessel

(a). The Noticee 1 has submitted a copy of contract dated 25.04.2018 (valid for a period of 3 years) with ONGC to show how the Vessel is being used. The Noticee-1 did not submit the contract for the period 2017-18. They have also taken a stand that its contract dated 25.04.2018

with ONGC mentions the vessel as a *platform supply vessel* in its scope of work. The scope of work (schedule C of the contract) in the contract is reproduced below:

“Schedule-C

SCOPE OF WORK

Platform Supply Vessel (PSV) of not less than 3000 DWT

- a) To carry men and material between base and offshore installations, as well as between offshore installations only where such facilities are available.*
- b) To carry out stand by and rescue operations in offshore. if required.*
- c) To assist in exigencies arising in offshore.*
- d) To carry out routine surveillance in offshore for safety and security reasons.*
- e) Standby at SBM tankers in offshore.*
- f) To carry out any other field work which may be within the natural capabilities of the chartered vessel, as instructed by base/field In-charge for ONGC's own operations and that of JV/NELP partners.*
- g) The Vessel should available for offshore work round the clock. 24 hours, a day, during the term of the Charter Party.*
- h) The above work shall always be performed within the vessel's natural capabilities and within safe parameters.*
- i) In case of PSV the vessel should be able to carry and transfer SOBM (synthetic oil based mud) in addition to normal water based mud. Brine Solutions and Base Oils Necessary certification to be obtained by the contractor.”*

(b). It is seen that the Scope of Work mentions the vessel as Platform Supply Vessel but this appears contradictory to the class certificate of the vessel given by Indian Register of Shipping as “SUL, Offshore Support Vessel, IY, Agni 1(2400 Cum/hr), DP (2)”. Also this description in the scope of work stands contradictory to the class of vessel mentioned in the American Bureau of Shipping Certificate as “A1, Fire Fighting Vessel Class 1, Offshore Support Vessel, Circle E, AMS, and DPS-2”. Moreover, the substance over form legal doctrine holds that the economic substance of a transaction should be considered over the legal form in order to determine the true nature of the transaction. In the case of **Associated Hotels of India vs R.N. Kaporr**³², the Hon’ble Supreme Court held that the nomenclature of the agreement may not be relevant at all times. It is the test of the intention of the parties derived from the substance of the contract which determines the true nature of the transaction. Similar view has been taken by the Karnataka High Court in the case of **Lakshmi Audio Visual**³³.

³² MANU/SC/0168/1959

³³ MANU/AA/0711/2001

(c). Applying the substance over form doctrine to the Noticee-1's 2018 contract with ONGC especially the scope of work, point (b) says that the vessel has to carry out standby and rescue operations. Point(c) says to assist in exigencies arising offshore, point (d) says to carry out routine surveillance in offshore for safety and security reasons. A pure supply vessel cannot carry out such responsibilities as rescue is a specialized job. Against point (a) which mentions about supply job, there are 3 points (b), (c) and (d) which mention specialized rescue support jobs. Therefore the scope of work can be said to be dominated by rescue and support jobs than supply job. A pure supply vessel contract will not have majority of clauses devoted to rescue, support and surveillance. Also as per clause (g), the vessel should be available 24 hours round the clock which also indicates towards its firefighting and rescue role. As per schedule 'E' of the contract (Schedule of rates) the charge of the vessel is USD 4500 per day. The contract of the vessel is fixed for 1095 days with this rate. The payment does not depend on the volume or weight of the goods transported or the trips made or the distance covered. Hence, the contract looks in substance to be a contract of a fire fighting and rescue vessel which also transports men and goods, rather than that of a supply vessel which also does fire-fighting. Hence, by the legal doctrine of substance prevailing over form; the scope of work cannot be said to be of a supply vessel as claimed by Noticee 1. This also makes it clear that natural capabilities of the vessel in fire fighting and dynamic positioning was at disposal of the ONGC in the contract agreement.

25.11.4 The noticee's emphasis on supply operations is despite offshore support features noticed during inspection and specified in ABS and IRS certificates. Expert opinions confirm that certificates accurately reflect the vessel's design and capabilities, contrary to the generic offshore supply function argued by the noticees. Therefore, certain key aspects of the certificates, experts opinions, inspection findings, vessel contract, etc. regarding the vessel's advanced capabilities seem inconsistent with the noticees' submissions that attempt to underline its general supply function. The noticees emphasize a generalized function of the vessel, whereas the evidence points towards its specialized roles.

25.12 I have carefully reviewed the class certifications, documents received from IRS, ABS Certification, the pre-purchase survey/inspection by DNV-GL, the statements tendered by Shri K. K. Sanjeev, Head of the Department (classification and certification) Indian Registry of Shipping and Capt. Shri Bijoy Kumar Sharma, Senior Surveyor, Indian Registry of Shipping, Mumbai, submissions made by the noticees, and the reports on vessel's visit, I hereby arrive at the following findings regarding type and specifications of the vessel:

25.12.1 The vessel, previously known as "Dalini Topaz" and later "Pacific Amethyst", has been referred to as an "Offshore Supply Vessel" in earlier certificates. However, its current and more enhanced classification labels it as a multipurpose offshore support vessel. This transition underscores that while its end-use might have historically been more supply-focused, its intrinsic capabilities and design always equipped it for more extensive operations.

25.12.2 The classification certificates issued by IRS and ABS, corroborated by the inspection report, reveal that the vessel has specialized capabilities like advanced 2400 cbm/hr firefighting and dynamic positioning system. The "Sagar Fortune" is not just confined to the transportation of goods and personnel. Its classification as a "Multipurpose Offshore Support Vessel" confirms that it is well-equipped to provide various forms of support to offshore operations, like aiding Rigs or Offshore Installations. This underscores its functional flexibility in offshore scenarios. While the vessel can perform as a supply-only entity, its design, class notations, and specifications make it abundantly clear that it is equipped to do much more. This is especially evident in its ability to provide different kinds of support, not just the transport of goods and personnel.

25.12.3 The depositions of the IRS and ABS experts affirm that the class certificates accurately reflect the vessel's design and intended purpose. The vessel has been equipped with specific features, such as the DPS-2 and Agni-1 systems. These are not standard for conventional supply or support vessels.

25.12.4 From the above discussions of the vessel's various capabilities, it appears that capabilities of firefighting and dynamic positioning dominate the navigation function.

Applying the General Rules of Interpretation (GRI) of the Customs Tariff Act, 1975

25.13 The Customs Tariff Headings 8901, 8905 and 8906; relating to the present dispute are reproduced in Table- 14 below :

TABLE - 14

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential areas
(1)	(2)	(3)	(4)	(5)
8901	CRUISE SHIPS, EXCURSION BOATS, FERRY-BOATS, CARGO SHIPS, BARGES AND SIMILAR VESSELS FOR THE TRANSPORT OF PERSONS OR GOODS			
8901 10	Cruise ships, excursion boats and similar vessels principally designed for the transport of persons; ferry-boats of all kinds :			
8901 10 10	Ships	u	10%	-
8901 10 20	Launches	u	10%	-
8901 10 30	Boats	u	10%	-
8901 10 40	Barges	u	10%	-
8901 10 90	Other	u	10%	-
8901 20 00	Tankers	u	10%	-
8901 30 00	Refrigerated vessels, other than those of Sub-heading 8901 20	u	10%	-
8901 90 00	Other vessels for transport of the goods and other vessels for the transport of both persons and goods	u	10%	-

8905	LIGHT-VESSELS, FIRE-FLOATS, DREDGERS, FLOATING CRANES, AND OTHER VESSELS THE NAVIGABILITY OF WHICH IS SUBSIDIARY TO THEIR MAIN FUNCTION; FLOATING DOCKS; FLOATING OR SUBMERSIBLE DRILLING OR PRODUCTION PLATFORMS			
8905 10 00	Dredgers	u	10%	-
8905 20 00	Floating or submersible drilling or production platforms	u	10%	-
8905 90	Other :			
8905 90 10	Floating docks	u	10%	-
8905 90 90	Other	u	10%	-
8906	OTHER VESSELS, INCLUDING WARSHIPS AND LIFEBOATS OTHER THAN ROWING BOATS			
89061000	Warships	u	10%	-
89069000	Other	u	10%	-

25.14 As seen in the Table-14 above, *Heading 8901 covers Cruise Ships, Excursion Boats, Ferry-boats, Cargo Ships, Barges and similar vessels for the transport of persons or goods.* It covers a broad spectrum of vessels designed primarily for the transport of goods, persons, or both, principally used for transporting either goods or people. *Heading 8905 covers light-vessels, fire-floats, dredgers, floating cranes, and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms.* It covers a broad spectrum of vessels with a primary function other than navigation. It includes a fire float, which is defined as a fire fighting ship like the impugned vessel. *Heading 8906 covers Other vessels, including warships and lifeboats other than rowing boats.* It covers a broad spectrum of vessels that are not included in the more specific headings 89.01 to 89.05. These range from warships to specific service vessels.

25.14.1 Let us now examine the above headings in the light of the General Rules of Interpretation (GRI) and the Additional Notes to Customs Tariff Act, 1975. By application of Rule 1 of GRI, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes.

25.14.2 Rule 2 of the GRI is not applicable in the present case since it addresses the classification of unfinished or unassembled goods, stating that such items should be classified as if they were complete, provided they maintain their essential character.

25.14.3 Rule 3 of GRI provides that when by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be decided on the basis of Rule 3 (a) onwards.

25.14.4 Rule 3(a) of GRI reads as *“The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more*

headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.” Heading 8901 covers cargo ships which transport persons and goods. Heading 8905 covers fire fighting ships (also known as fire floats). The present vessel Sagar Fortune has both characteristics i.e. those of a supply(cargo)vessel and of a fire-fighting & support vessel. It has to either fit in 8901 or 8905. The heading 8906, covering a broad spectrum of vessels not specified in prior headings and is a residual category. So, the vessels which have been covered in headings prior to 8906 do not merit classification under this heading. Hence by virtue of Rule 3(a), CTH 8906 goes out of contention.

25.14.5 The vessel has various certificates as detailed in Table 12 supra. Some describe it as a Supply Vessel and some as a Fire-fighting Support Vessel. It is an admitted fact that among all certificates or registrations ; IRS and ABS class certificates are the most reliable class certificates which tilt the balance in favour of Fire-fighting Support classification. The contract with ONGC, though it contains a supply clause as well, has pre-dominant rescue support features. From the visit to the vessel on 06.06.23 and discussion with noticees’ representatives, SIIB officer and the chartered engineer, it also emerged that most vessels these days have multi-functional features. Supply vessel is a broad category and it has various sub-classes. Nowadays the difference between a pure supply or a pure support vessel has become blurred. It is also difficult to distinguish between a pure support and a pure supply vessel. Fire fighting Support Vessels also have cargo carrying capacities in a limited manner and they do supply jobs also, as it makes no economical sense to keep them stationary all round the year. For the purpose of Fire-fighting , this vessel had two fire fighting pumps having capacity of 1200 cubic meters each (about half the volume of an olympic-size swimming pool) per hour as per norms of AGNI-I. Normal supply vessels may have some kind of basic fire-fighting system, but not advanced fire-fighting pumps like Sagar Fortune. AGNI-I standard classification denotes that the ship is equipped for early-stage firefighting and rescue operations close to structures including means for self-protection of the vessel. Hence, it can be used for firefighting / dousing fire of other vessels /rigs / platforms etc. which is also seen from the ONGC’s contract. The Dynamic Positioning system DPS-2 is one of the advanced dynamic positioning systems, which has application during normal supply operations of the ship , but its actual capability is tested only during fire-fighting and rescue operations wherein its job is to keep the ship stable and stationary. The vessel's advanced features, such as Agni-1 and DP-2, though not mandatory for standard supply vessels, amplify its offshore support capabilities. This suggests that while the vessel can navigate, its special features during fire incidents, other crisis, etc. may override its navigational purpose.Hence by the test of most specific description , Fire fighting & dynamic positioning system & support take precedence over the supply role of the vessel. Considering the vessel’s various capabilities of firefighting, dynamic positioning etc. which make the navigability of the vessel subsidiary to these primary functions, I keep in mind that Fire Float Vessels, which are

fire-fighting ships, are specifically mentioned under CTH 8905. Hence , the classification of the said vessel tilts in favour of classification under the specialised category of vessels of CTH 8905 by virtue of Rule 3(a) of GRI. .

25.15 Even if we still consider the classification dispute between 8901 and 8905 open for academic discussion; going ahead among the GRI Rules of the Import Tariff , Rule 3 (b) relates to *Mixtures, composite goods consisting of different materials or made up of different components*, and hence is not found applicable to the present case. Then we come to Rule 3(c) of GRI of the Import Tariff, which states: *When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.*In the present case, even if we consider headings 8901 and 8905 have equal specificity in terms of Rule 3(a) of GRI. Therefore, by the test of Rule 3(c) of GRI also, I find that heading 8905, appearing last in numerical order among specific headings 8901 and 8905, is the applicable heading for the vessel "Sagar Fortune".

25.16 It is a settled principle of classification that when an item is covered under a specific sub-heading, residual sub-heading cannot be pressed into classification. Classification of goods in a residual provision is only appropriate if there is no tariff category that covers the goods more specifically. Rule 6 of GRI explains the procedure for classifying items at the sub-heading level. Since, I have arrived at the conclusion that the Multipurpose Offshore Support Vessel, equipped for firefighting, offshore support, and possessing dynamic positioning capabilities is covered under specific heading 8905, it is imperative to delve deeper into the sub-headings. Accordingly, the ‘Multipurpose Offshore Support Vessel, equipped for firefighting, offshore support, and possessing dynamic positioning capabilities covered under specific heading 8905, and not being covered under any specific sub-heading of the said heading, trickles down to residual ‘sub-heading’ 890590. Further, the subject vessel, not being covered under any specific ‘tariff item’ under subheading 890590, trickles down to residual tariff item 89059090 as mentioned in Table -15 below :

TABLE - 15

HS Code	Item Description	Unit	Basic Duty (Scheduled)	Basic Duty (Notification)
8905	LIGHT-VESSELS, FIRE-FLOATS, DREDGERS, FLOATING CRANES, AND OTHER VESSELS THE NAVIGABILITY OF WHICH IS SUBSIDIARY TO THEIR MAIN FUNCTION; FLOATING DOCKS; FLOATING OR SUBMERSIBLE DRILLING OR PRODUCTION PLATFORMS			
8905 10 00	Dredgers	u	10	

8905 20 00	Floating or submersible drilling or production platforms	u	10	
8905 90	Other :			
8905 90 10	Floating docks	u	10	
8905 90 90	Other	u	10	
	Basic Duty Exemption			
8902, 8904 00 00 or 8905 90	All goods (excluding vessels and other floating structures as are imported for breaking up) (Read with Condition No. 84) [S. No (553) in Ntnfn 50-Customs/2017 dated 30.06.2017]			5

25.17 In view of the above discussion , I conclude that the most appropriate classification of the said vessel would be 8905 9090.

26. Whether the vessel is liable for confiscation for mis-declaration of its classification under Section 111(m) of the Act?

26.1 I find that the Noticee 1 in its submissions has argued that the imported vessel was cleared on first check basis after thorough verification of the documents and physical examination of the vessel by the Customs Officers. Even the quantity of stores was physically verified by the Customs who certified the same. Therefore, the Noticee can not be alleged to have mis-declared any material information, including description of the vessel. The Noticee 1 argued that while the invoice and other documents described the vessel as an offshore supply vessel, the classification of the vessel was mentioned as “IRS, FiFi Class 1, DP 2” in the IMO declaration.

26.2 I note that the Finance Act 2011 introduced 'Self-Assessment' of Customs duty in respect of imported and export goods by the importer or exporter . This means that while the responsibility for assessment has been shifted to the importer / exporter, the Customs officers have the power to verify such assessments and make re-assessment, where warranted. Post implementation of self assessment by suitable changes to Sections 17, 18, 46 and 50 of the Customs Act, 1962, the responsibility and onus lay with the importer to make true and correct declarations in respect of all the goods imported by them. In the Bill of Entry No.2630993 dated 28.07.2017 filed by Noticee-1 , the vessel has been described as “Old & Used self-propelled Platform supply Vessel Sagar Fortune earlier was known Pacific Amethyst **as per MNR CERT MMD**”. Here the words MNR CERT MMD refers to Provisional Certificate dated 23.05.2017 issued by MMD (Mercantile Marine Department), also known as Indian Registry but different from Indian Register of Shipping, which is an independent classification society). This Provisional certificate of MMD mentioned the vessel as Transverse Steel Offshore Supply Vessel. All the shipping experts have admitted that the provisional certificate of MMD is not so

significant with respect to class of vessel; ABS and IRS class certificates are more reliable to describe the nature of the vessel. Still Noticee-1 chose not to mention the ABS and IRS classifications in the bill of Entry, invoice, etc. The importer firm (Noticee-1) is a well reputed shipping firm having imported a number of vessels so far. They had full knowledge of these facts and difference between various certificates. Noticee-1 has subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Customs Act, 1962 in respect of their Bill of Entry. Yet the Noticee-1 never disclosed the two IRS and ABS class certificates to the customs at any stage and these certificates were only found during the search of the vessel.

26.3 On the issue of first check, I rely upon the Hon'ble CESTAT judgment in the case of **M/s. Surendra Electricals**³⁴. In this case an excess quantity of 42% of goods were found on the first check examination and the Noticee took defence of first check to escape confiscation and penalty. The Hon'ble Tribunal held that :

“...We find that the law does not distinguish between the first check and the second check. What is important is if the appellant made the correct declaration in the bill of entry or not. The bill of entry was filed on 20.09.2017 by the appellant. It does not matter whether the appraising group, thereafter, decides to assess the goods first based on the documents and then gets them examined or gets the goods examined first. In both cases, the mis-declaration in the bill of entry is already complete.”

26.4 Section 111(m) suggests that any goods which do not correspond in respect of value or in any other particular with the entry made under the Customs Act, 1962, is liable for confiscation. In the discussions supra, I have arrived that the vessel merits classification under CTH 89059090. Since the classification of the vessel does not correspond in respect of CTH and descriptions declared in the B/E No. 2630993 dated 28.07.2017, as a consequence of various acts of omission and commission of the Noticee-1, I find the vessel is liable for confiscation in terms of provisions of Section 111(m) read with Section 46(4) of the Act.

27. Whether differential duty can be demanded under Section 28 of the Act in respect of the vessel imported vide B/E No. 2630993 dated 28.07.2017 along with applicable interest thereon in terms of the provisions of Section 28AA of the Act?

27.1 I find that SCN has proposed a demand of a total differential duty of Rs 3,53,25,921/- on the vessel imported vide Bill of Entry No. 2630993 dated 28.07.2017 in terms of provisions of Section 28 (4) of the Customs Act, 1962, along with applicable interest thereon in terms of the provisions of Section 28AA of the Customs Act, 1962. In the discussions supra, it is established that the vessel merits classification under CTH 89059090 by virtue of which the basic customs

³⁴ CESTAT, Delhi Order NO. 50956/2023 Dated 24.07.2023 in case of M/s Surendra Electricals Vs. Principal Commissioner, Customs (Export)-New Delhi (ICD TKD) Tughlakabad, in Customs Appeal No. 51035 of 2020

duty @5% is leviable on the vessel on availment of benefit of Sr. No 553 of Notification No. 50-Customs/2017 dated 30.06.2017.

27.2 This total duty demand of Rs. 3,53,25,921/- was on account of both undervaluation and misdeclaration of the vessel. Since the demand for undervaluation stands dropped by virtue of the Hon'ble CESTAT Order, having been upheld by the Hon'ble Supreme Court; the differential duty demand only on account of misclassification of the vessel is calculated in the Table -16 below:

TABLE -16

Sr. No.	Particulars	In Rupees
1	Assessable Value	13,82,89,200
2	BCD @5%	69,14,460
3	CESS (2+1)%	2,07,433
4	IGST @ 5%	72,70,555
5	Total duty	1,43,92,448
6	Duty paid	69,14,460
7	Duty Difference	74,77,988

27.3 Having confirmed the classification above; I confirm the differential duty demand of Rs. 74,77,988/- (Rupees seventy four lakhs seventy seven thousands nine hundred eighty eight only) on Noticee-1 under Section 28 of the Act.

28. Whether the store items (133000 Ltr of MGO, 9220 Ltr of Lubricating Oil and 5250 Ltr hydraulic oil are liable for confiscations in terms of provisions of Sections 111(l) and 111(m) of the Act.

28.1 I find that the Noticee 1 has accepted confirmation of demand of differential duty of Rs. 20,24,644/- on MGO, differential duty of Rs. 2,45,755/- on lube oil and duty of Rs. 1,66,479/- on hydraulic oil in the first round of adjudication. Section 111(m) suggests that any goods which do not correspond in respect of value or in any other particular with the entry made under the Customs Act, 1962, is liable for confiscation. Also, Section 111(l) stipulates that any goods which are not included or in excess of those included in the bill of entry are liable for confiscation. So, the 133000 Ltr of High Speed Diesel (MGO), whose classification and quantity was misdeclared, is liable for confiscation under sections 111(l) and 111(m) of the Act. Further, 9220 Ltr of Lube Oil whose quantity was misdeclared is liable for confiscation under sections 111(l) and 111(m) of the Act. Furthermore, 5250 Ltr of hydraulic oil, which was not declared in the bill of entry is liable for confiscation under sections 111(l) and 111(m) of the Act.

29. Whether penalties should be imposed on the importer firm (Noticee-1) and the CHA firm (Noticee-4) under Section 112(a) of the Act on the charge of improper importation due to mis-classification of vessel and mis-declaration of stores?

29.1 Penalty on Noticee-1 under Section 112(a) of the Customs Act, 1962 :

As discussed above, the Noticee 1's action submitting the IMO declaration to the Customs at the time of filing the Bill of Entry is not held to be a complete and proper action. Even though the IMO declaration described the vessel as 'IRS, FiFi Class 1, DP 2', this was not sufficient disclosure especially in the era of self-assessment by importer. The Noticee 1, being a well reputed shipping firm having imported a number of vessels in the past, knew very well that ABS and IRS class certificates are the proper documents to be disclosed to Customs for classification of a multi-functional vessel like 'Sagar Fortune', still they chose not to mention the ABS and IRS class certificate in the Bill of Entry, invoices etc. On the contrary, they mentioned the Provisional Certificate of Indian Registry (by MMD) in the Bill of Entry which was not proper. These acts of omission and commission on the part of Noticee 1 resulted in misclassification and improper importation of the vessel. Large quantities of MGO, Lubricant Oil and other ship stores have also been misdeclared. Hence, I find that Noticee 1 is liable for penalty under Section 112(a) of the Act for misclassification of the vessel and misdeclaration of ship stores. Reliance is also placed on the Hon'ble CESTAT judgment in the case of Surendra Electricals supra on the issue of first check.

29.2 Penalty on Noticee-4 under Section 112(a) of the Customs Act, 1962 :

Noticee 4 is a well known reputed CHA firm involved in the importation of many vessels in the past. By virtue of their experience of the shipping industry they fully knew that the ABS and the IRS class certificates are the proper documents to be disclosed to Customs for proper classification of the vessel, yet the Bill of Entry which was filed under the self-assessment mode declared the vessel as a supply vessel and mentioned the Provisional Certificate of Indian Registry. It appears that they deliberately chose to declare a Provisional Certificate of Indian Registry which was far less reliable than the IRS and ABS class certificates of the vessel for classification purposes. Thus, the CHA firm by wrongly advising the importer firm on the certificate to disclose to the Customs had the knowledge of the proposed offence and benefit to be derived on the abettor and therefore, caused abatement with the act of improper importation. On the ground taken by the Noticee 4 that since first check has been opted for, there is no offence; I rely upon the Hon'ble CESTAT judgement in the case of **M/s. Surendra Electricals** supra, wherein the Hon'ble Tribunal has observed:

"...We find that the law does not distinguish between the first check and the second check. What is important is if the appellant made the correct declaration in the bill of entry or not. The bill of entry was filed on 20.09.2017 by the appellant. It does not matter whether the appraising group, thereafter, decides to

assess the goods first based on the documents and then gets them examined or gets the goods examined first. In both cases, the mis-declaration in the bill of entry is already complete.”

29.3 In this case of Surendra Electricals supra, the Hon’ble CESTAT upheld the confiscation and penalty even though the first check was given and 42% goods were found to be in excess. The defence of the Noticee 4 that their choosing the first check option shows their innocence and absence of guilty mind also appear far-fetched because it is a well established practice and procedure in customs that all second hand vessels are subjected to first check. The first check is almost a mandatory procedure in the case of second hand vessels and it is not an option which the importer or the CHA exercises. Moreover, they have also misdeclared substantial quantity of ship stores leading to evasion of customs duty.

29.4 The Noticee 4’s reliance on the case of **Devraj M. Salian supra** is misplaced because in the Devraj M. Salian case the CHA had submitted the IRS class certificate which clearly described the class of the vessel as a Tug / Supply Vessel (recorded in para 5.1 of the judgement); whereas in the present case of M/s. S. S. Offshore, it is noticed that both the Noticees 1 and 4 deliberately chose not to submit the IRS and ABS class certificates before the Customs and they also mentioned the MMD Provisional Certificate in the Bill of Entry which all the experts opined was not a proper certificate to decide the classification of the vessel.

29.5 The Noticee 4 has also relied upon **Northern Plastic supra** on the ground that classification and claim to notification are not matters of declaration. In the case of Northern Plastic the dispute was related to whether the goods were to be classified as Cinematographic Colored Films (unexposed) Positive or as Photographic Films in Rolls. The Hon’ble Supreme Court held that the classification claim by the importer was on the basis of bonafide belief and cannot be said as misdeclaration under section 111(m) of the Customs Act, 1962. The appellant had given full and correct description as regards nature and size of goods and therefore, no dishonest intention hence charges of confiscation and penalty were dropped. In the present case of M/s. S S Offshore, as discussed above, the IRS and ABS class certificates of the vessel were not disclosed to the Customs. On the contrary the Bill of Entry mentioned the provisional certificate issued by MMD (Indian Registry) which all the experts have opined that it was not a proper document to decide the proper classification of the vessel. The option of first check was also not an option before the importer and the CHA but it was default procedure in the case of second hand vessels. Hence the first check examination conducted in the present case is not a proof of innocence and honesty of the Noticees. Non-disclosure of crucial documents amounts to dishonesty. Hence the present case is distinguishable from the case of Northern Plastics supra.

29.6 In the Hon'ble CESTAT's judgment in the case of **Noble Agency**³⁵ upheld by **Apex Court**³⁶, it was held that contraventions by CHAs have to be viewed seriously. The relevant para 12 of the judgement is reproduced below.

“ The CHA occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations.”(emphasis added)

29.7 The role of the CHA cannot be passive, that by going for first check, all its responsibility goes away. Hon'ble CESTAT, Delhi, in the case of **Shri Chinta Haran Ojha, CHA**³⁷, emphasized the proactive role and responsibility of the CHA in proper classification of goods by stating : *“We find that it is the duty of the Customs House Agents that wherever it is found that the description given in the invoice does not explain and facilitate the correct classification of the import consignment, Custom House Agent should ask for the product catalogue/treatment literature for reaching at the right classification of the import goods and also to ensure the compliance of provisions of other allied statutes such as Import Export Policy, Bureau of Indian Standards Act etc. We find a complacency on the part of the CHA to have made classification of the import consignment without getting the veracity of the nature of the import goods verified from the technical literature etc. and to resort to a classification which resulted in evasion of the customs duty”*(emphasis added)

29.8 Accordingly, in view of the above discussion I find that Noticee 4 is liable for penal action under Section 112(a) of the Act for misdeclaration of the vessel and misdeclaration of ship stores.

30. Accordingly, in view of the above, I pass the following order.

Order

30.1. I reject classification of the vessel Sagar Fortune under tariff item 89019000 by the importer and reclassify it under tariff item 89059090.

³⁵ 2002 (142) E.L.T. 84 (Tri. - Mumbai)

³⁶ Approved in 2016 (332) ELT 15 (Supreme Court)

³⁷ CESTAT, Delhi Order NO. 50571/2020 Dated 12.03.2020 in case of Shri Chinta Haran Ojha, CHA Vs. The Principal Commissioner of Customs, ACC(Import), NCH, New Delhi, in Customs Appeal No. 52445 of 2018

30.2 I confiscate the vessel Sagar Fortune of declared value Rs. 13,82,89,200/- imported vide Bill of Entry No. 2630993 dated 28.07.2017 in terms of provisions of Section 111(m) read with Section 46(4) of the Customs Act, 1962 for mis-declaration of its classification, and I impose a redemption fine of **Rs. 15,00,000 (Rupees fifteen lakhs only)** under section 125 of the Customs Act, 1962 on the importer, in lieu of confiscation.

30.3 I confiscate 133000 Ltr of MGO valued at Rs. 37,22,284/-, 9220 Ltr of Lubricating Oil valued at Rs. 12,14,311/- in terms of provisions of Section 111 (l) and 111 (m) read with Section 46(4) of the Customs Act, 1962 for mis-declaration of their respective quantities and mis-declaration of CTH of MGO, and I also confiscate 5250 Ltr (determined A.V. of Rs. 6,91,446/-) of hydraulic oil, which had not been declared in the Bill of Entry No. 2630993 dtd. 28.07.2017 in terms of provisions of Section 111(l) read with Section 46 (4) of the Customs Act, 1962. I impose a redemption fine of **Rs. 4,00,000/- (Rupees four lakhs only)** under section 125 of the Customs Act, 1962 on the importer, in lieu of confiscation of these goods.

30.4 I reject the benefit claimed @Nil rate of BCD under Serial No. 551 of Customs Notification No. 50/2017 dated 30.06.2017 under tariff item 89019000, for the goods imported vide bill of entry No. 2630993 dated 28.07.2017 and confirm and demand the differential duty of **Rs. 74,77,988 (Rupees seventy four lakhs seventy seven thousands nine hundred eighty eight only)** on the vessel Sagar Fortune under Section 28 of the Act along with applicable interest thereon in terms of the provisions of Section 28AA of the Act.

30.5 Total differential duty of **Rs. 24,36,879/- (Rupees twenty four lakhs thirty six thousands eight hundreds seventy nine only)** on MGO, lube oil and hydraulic oil stands confirmed vide 1st Order-in-Original dated 26.11.2018 to be recovered from the Noticee 1, as it was not challenged by them before the Hon'ble Tribunal .

30.6 I impose penalty of **Rs. 9,00,000 /- (Rupees nine lakhs only)** on M/s S. S. Offshore Pvt Ltd under the provisions of Section 112(a) of the Customs Act, 1962.

30.7 I impose penalty of **Rs. 4,00,000/- (Rupees four lakhs only)** on M/s Babaji Shivram Clearing & Carriers Pvt. Ltd. under the provisions of Section 112(a) of the Customs Act, 1962.



Vivek
19.12.23

(Vivek Pandey)
आयुक्त सीमा शुल्क (आयात-I)
Commissioner of Customs (Import-I),
नवीन सीमा शुल्क भवन, मुंबई
New Custom House, Mumbai-01

To,

1. M/s S.S. Offshore Pvt. Ltd.
4th Floor , Viraj Impex House
47 D' Mello Road Mumbai-400009
2. Shri Sachin Kshirsagar , Director,
M/s S.S. Offshore Pvt. Ltd.
4th Floor , Viraj Impex House
47 D' Mello Road Mumbai-400009
3. M/s. Babaji Shivram Clearing & Careers Pvt. Ltd.,
4th Floor, Rex Chambers, Ballard Estate,
Mumbai 400001

Copy to:

1. The Pr. Chief Commissioner of Customs,
New Customs House, Mumbai Customs Zone-I,
Mumbai-400001.
2. The Additional Director General,
Central Economic Intelligence Bureau,
A-Wing, 1 st Floor, Janpath Bhawan, Janpath, New Delhi
3. The Pr. Commissioner of Customs (General), CBS Section
New Customs House, Mumbai Customs Zone-I,
Mumbai-400001 for taking necessary action on the Customs Broker
4. The Dy./Asst. Commissioner of Customs,
SIIB(I), Import -I
New Customs House, Mumbai Customs Zone-I,
Mumbai-400001.
5. The Dy./Asst. Commissioner of Customs,
Appraising Gr. VB
New Customs House, Mumbai Customs Zone-I,
Mumbai-400001.
6. The Supdt./CHS, NCH,

New Customs House, Mumbai Customs Zone-I,
Mumbai-400001.– For Display on Notice Board.

7. Office Copy.