



**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)**

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F.No. CUS/APR/SCN/57/2022 GR. V

O/o. COMMUR-CUS-IMP-I-ZONE-I-MUMBAI

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

Date of Order: 21.02.2023

Date of Issue: 21.02.2023

C.A.O. No.: 78/2022-23/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)  
DIN No. 2023027700000000D3F3

**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.





## 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 सीमाशुल्क भवन, शूरजी वल्लभदास मार्ग, बेलार्ड एस्टेट,  
मुंबई-400001.

दूरध्वनि-22757401 फैक्स-22757402

ई-मेल: [adjn-commr-imp1nch@gov.in](mailto:adjn-commr-imp1nch@gov.in)

फा.सं. : CUS/APR/SCN/57/2022 GR. V O/o. COMMR-CUS-IMP-I-ZONE-I-MUMBAI

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

आदेश दिनांक: 21.02.2023  
जारी दिनांक: 21.02.2023

सी.ए.ओ. क्रमांक : 78/2022-23/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)  
DIN No. 2023027700000000D3F3

### 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 ड्रॉफ्ट 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 सीमाशुल्क अधिनियम, 1962 की धारा 129E के प्रावधानों के अनुपालन न करने के आधार पर निरस्त मानी जाएगी।

**Sub.: Adjudication of Show Cause notice F. No. CUS/APR/SCN-57/2022/GR-V dated 26.03.22 issued to M/s Navin Heavy Lifters on the issue of mis-declaration of value and mis-classification of CTH in the import of 'Unused 220 MT Sany All Terrain Crane Model no. SAC2200 W.S.A. Serial No. 14AC02203268, Chassis no. LFCNRG8P7E2004002, YOM 2014.**

### **Brief Facts of the Case**

On scrutiny of the Bills of Entry by the Central Intelligence Unit (CIU), Mumbai Customs Zone-I, it was noticed that **M/s Navin Heavy Lifters (IEC- 0395018927)<sup>1</sup>**, having address at 95/96, New Survey No.105/106, Dahisar Moori, Mumbra Panvel Road, Dahisar-400612 had filed Bill of Entry No. 8982045 dated 21.03.2017, through their CHA M/s Amba Shipping Agencies (AABPD7063PCH001), for import of 1 unit of '**Unused 220 MT Sany All Terrain Crane<sup>2</sup> Model SAC2200 W.S.A. Serial No.14AC02203268, Chassis No.LFCNRG8P7E2004002, YOM 2014' under Commercial Invoice No.IN20170217FY-1 dated 17.02.2017 for the value of EUR 516206.6 CIF.**

2. On scrutiny of documents, it was found that the said crane was as per Proforma Invoice No. SYIN20161219-01 dated 19.12.2016. The representative of the CHA submitted hard copies of the Bill of Entry 8982045 dated 21.03.2017 along with documents including the Proforma Invoice No. SYIN20161219-01 dated 19.12.2016, Purchase Order No. SANY/2016-17/01 dated 27.10.2016 wherein it was clearly mentioned the scope of supply as Unused Sany model SAC2200, 220T All Terrain crane having serial no. 14AC02203268 with left hand drive, joystick, ben engine, double winch, zf gearbox, Kessler axle, Sany cab with 43 mtr fixed jib and 78T counterweight, 4 hook blocks (160mt,80mt,35mt,13mt). It was noticed that though the above mentioned commercial invoice mentioned the description of the goods as "1 No. Sany 220 TON Tyre Mounted Crane as per Proforma Invoice No: SYIN20161219-01 dated 19.12.2016" without mentioning the model No., Year of Manufacture, etc. The said Proforma Invoice described the goods as "**Unused 220 MT Sany All Terrain Crane Model SAC2200, YOM 2014, Serial No.14AC02203268 – Price Euro 516206.6**". The terms of payment mentioned in the said Proforma Invoice at USD 10,000 equivalent to EUR 9470.6 paid as advance and balance EUR 506,736 through LC.

3. To ascertain the outward remittances, the LC bank i.e. Yes Bank, Thane Pokharan Branch was requested to provide the statement of account, credit and debit towards remittance, etc. The Yes Bank furnished the documents such as (i) Annexure-II Request letter for opening of import LC dated 09.01.2017 with documents, (ii) Proforma Invoice P.I.No.: SYIN20161219-01 dated 19.12.2016, (iii) statement of account, etc. Scrutiny of the

<sup>1</sup> hereinafter referred to as the importer

<sup>2</sup> also referred to as the all terrain crane or the crane



document Proforma Invoice P.I.No. :SYIN20161219-01 dated 19.12.2016 received from the Bank, showed the description as “**Refurbished** 220 MT Any All Terrain Crane....” (emphasis added)

4. On the basis of the above preliminary investigation, the importer was summoned for clarification under summons dated 19.04.2017 issued under section 108 of the Customs Act, 1962<sup>3</sup>. However, the importer neither appeared in person before the investigating officer nor made any submissions.

5. The said Bill of Entry 8982045 dated 21.03.2017 was assessed on **first check** with the following examination order:

**Examination order:**

*“Inspect lot, Open and Examine all, Check marks and nos., description, quantity, brand, model no., make, year of manufacture, country of origin, quantity with reference to invoice, packing list, bill of lading, chartered engineer’s certificate & all other documents, if any, submitted by the importer.*

*Please verify and specifically state: -*

- 1. That the imported machines are capital goods only and not parts of capital goods;*
- 2. That the imported machines are old and used second hand capital goods only;*
- 3. That the goods are not refurbished/re-conditioned/repared.If refurbished/re-conditioned/repared. Please state the fair cost of re-conditioning/repairs//refurbishing.*
- 4. The year of manufacture, make, model no. country of origin found on the machines/goods*
- 5. Lifting capacity if any;*
- 6. Whether the parts and accessories found/supplied with the machines are standard/essential or not;*
- 7. Whether the declared invoice value is fair or not. If not, then suggest fair value of the goods;*
- 8. Whether residual life of the imported machines is more than five years of otherwise*
- 9. That the goods are correctly classified, if not please suggest classification;*
- 10. That the year of manufacture as mentioned in the chartered engineer’s certificate corroborates to the physical conditions of the machine;*
- 11. Discrepancies/ITC violations, if any noticed during examination may be reported to group;*

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<sup>3</sup> also referred to as the Act .

12. *Examination may be conducted under AC/Docks supervision.*”

6. The examination of the said crane was examined by the docks staff and examination report dated 24.03.2017 was submitted as under:

**Examination Report**

*“ Inspected lot. opened and examined all. Checked marks and nos. Desc. qty, brand/model/YOM/coo w.r.t invoice, pkg list. Verified that*

1. *Imported crane is **old and unused capital goods**;*
2. *The imported goods are old and unused second capital goods;*
3. *As duly supported in invoice goods do not appear to be re-conditioned /refurbished/repared;*
4. *Make/model, sr.no. found and YOM as per invoice;*
5. *Parts & accessories are standard & essential;*
6. *The declared value i.e. euro 516206.60(CIF) appears to be fair. However, group may finalize the value on the basis of import documents & w.r.t. depreciation;*
7. *Declared CTH appears to be correct;*
8. *YOM as declared in invoice corroborates with the overall condition of the goods;*
9. *ITC violation/discrepancies may please be verified by group;*
10. *Goods examined under DC/Docks supervision;*
11. *Meter reading of crane is 1162 km only.”(emphasis supplied)*

7. On the basis of an examination report dated 24.03.2017, the Group assessed the B/E under CTH 84264900 for A.V. of Rs 3,71,73,585.89 and the payment of duty of Rs.98,24,328/- was paid vide Challan No.2017808777 dated 27.03.2017 and cleared the crane accordingly.

8. During the investigation, it was noticed that the importer had insured the said Unused 220 MT Sany All Terrain crane Model SAC2200 W.S.A Sr.No. 14AC02203268, Chassis no. LFCNRG8p7E2004002, YOM 2014 with New India Assurance Co Ltd., Mumbai and accordingly necessary enquiries were made with them and found that the importer M/s Navin Heavy Lifters had insured the crane with M/s New India Assurance Co. Ltd. **immediately after its importation on 23.03.2017** under Receipt No.13140081160000028539 for the sum of **Rs. 6,65,28,000/-**. From the said Insurance Certificate dated 23.03.2017, it was observed that all the other details such as chassis number, engine no. etc. were pertaining to the said imported all terrain crane under B/E No.8982045 dated 21.03.2017. Further, from this Insurance Certificate it is observed that the insurer had agreed to get the value of the goods appraised at Rs.6,65,28,000/- for the purpose

of insurance policy. Since the insurer has agreed for payment of the insurance premium at the insured amount of Rs.6,65,28,000/- this appears to be the agreed upon price by both the parties. **In terms of Rule 9 of the Customs Valuation Rules, 2007**, the insured value of the imported crane had to be taken for the purpose of charging Customs Duty. Such agreement of valuation of goods for the purpose of insurance is a relied upon element, the reason being that both the parties had concurred to the conditions of the insurance policy. Accordingly, the imported crane stand valued at Rs.6,65,28,000/- as per the insurance document issued by The New India Assurance Co. Ltd. (Govt. of India undertaking) for the said imported crane as insured by the importer M/s. Navin Heavy Lifters.

9. The subject goods under import was classifiable under CTH 87051000 heading Crane Lorries. Further Haryana Authority for Advance Ruling vide Advance Ruling No. HAR/HAAR/2017-18/5 dated 10.04.2018, categorically held that:

*“As regards the dependency on HSN explanatory notes, the Hon'ble Supreme Court of India, in the case of LML Ltd. Vs. Commissioner of Customs 2010(258) ELT 321(SC) has observed that HSN Explanatory Notes are a dependable guide while interpreting the Customs Tariff. The product of the applicant cannot be classified under Chapter heading 8426 as the applicant is not using works truck for producing truck mounted crane (TMC). As cranes are being mounted by the applicant on automobile chassis, the resultant product merits classification under chapter heading 8705, in view of HSN explanatory notes to Harmonised System of Nomenclature (HSN) The product manufactured/supplied by the applicant, which is resultant of mounting/fixing of crane on readymade trucks/lorries bought by them from truck/lorry manufacturers such as Ashok Leyland, TATA etc. and known as **truck mounted cranes (TC)**, is classifiable under heading 8705.”*

In view of the above, it appeared that all terrain cranes and truck cranes wherein the mounted cranes are found not to be integrally connected with the motor vehicle chassis are to be classified under CTH 8705100 which are specifically made for description of 'Crane Lorries'.

#### 10. **Import policy Conditions of CTH 8705**

***ITC (HS), 2012 SCHEDULE 1 – IMPORT POLICY has some policy conditions for CTH 8705 for import of vehicles and the same are as under:-***

*“(2) (I) A new imported vehicle (including all the vehicles other than Railway or Tramway) for the purposes of this Chapter shall mean a vehicle that: - (a) has not been manufactured/assembled in India; and (b) has not been sold, leased or loaned prior to importation into India; or (c) has not been registered for use in any country according to the laws of that country, prior to importation into India.*

*(II) The import of new vehicles shall be subject to the following conditions:*

*a. The new vehicle shall- (i) have a speedometer indicating the speed in kilometers per hour; (ii) have right hand steering, and controls (applicable on vehicles other than two and three wheelers); (iii) have photometry of the headlamps to suit "keep-left" traffic; and (iv) be imported from the country of manufacture.*

*b. In addition to the conditions specified in (a) above, the new vehicle shall conform to the provisions of the Motor Vehicles Act, 1988 and the rules made thereunder, as applicable, on the date of import.*

*c. Whoever being an importer or dealer in motor vehicles who imports or offers to import a new vehicle into India shall, (i) at the time of importation, have valid certificate of compliance as per the provisions of rule 126 of Central Motor Vehicle Rules(CMVR), 1989, for the vehicle model being imported, issued by any of the testing agencies, specified in the said rule; (ii) be responsible for all the provisions assigned to the manufacturer as per Rules 122 & 138 of CMVR, 1989 and for issuing Form 22, as per provisions of CMVR, 1989; and (iii) give an undertaking in writing that the proof of compliance to conformity of production as per rule 126A of CMVR shall be submitted within six months of the imports. In case of failure to do so, no further import of new vehicle of that model shall be allowed thereafter.*

*d. The import of new vehicles shall be permitted only through the Customs port at NhavaSheva, Kolkata, Chennai and Chennai Airport, Cochin, ICD-Tughlakabad and Delhi Air Cargo, Mumbai Port and Mumbai Air Cargo Complex, ICD Talegaon Pune.*

*e. The provisions of this notification will not apply to the imports of new vehicles- (i) for the purpose of certification as per para c(i) above; (ii) for the purpose of defence requirements;*

*f. The above mentioned provisions will also not apply to the import of new vehicles for R & D purpose by vehicle manufacturers and auto component manufacturers. However, the vehicles imported by both these categories for R & D will not be registered under the CMVR Rules in the country and will not ply on Indian roads. The customs will make necessary endorsement at the time of clearance of these vehicles.*

*g. In case the country of manufacture is a land locked country and the shipment takes place from another country, the vehicles would deemed to have been exported from the country of manufacture provided there are supporting documents to track the vehicles from the country of manufacture to the Port of Landing and from there, to the Port of Destination."*

Hence, the All Terrain Crane was having left hand drive and was not fulfilling the policy conditions. As the goods were not available for seizure, hence the same were not seized.

11. **Shri Dharak Navin Dedhia, partner of M/s. Navin Heavy Lifters gave his statement on 22.03.2022 under section 108 of the Customs Act, 1962**, wherein, he inter alia stated that

i. M/s Navin Heavy Lifters, a partnership firm, was started by his father Mr. Navin Premji Dedhia in the year 1988 having 04 partners viz. Mr. Navin Premji Dedhia, Mrs. Rashmi Navin Dedhia, Mr. Dharak Navin Dedhia and Mrs. Heena Dharak Dedhia.

ii. With regard to 220 MT Sany All Terrain Crane Model SAC 2200 with Standard Accessories having Sr. no. 14AC02203268 Chassis no. LFCNRG8P7E2004002;YOM 2014 (Un Used), he stated that Sany sales persons visited their office and informed them that **one 220 MT Sany All Terrain Crane Model SAC 2200 with Standard Accessories having Sr. no. 14AC02203268 Chassis no. LFCNRG8P7E2004002;YOM 2014 (Un Used)** was available in their Sany China factory premises and since he required the same, he had discussed with the Sany sales persons and given his quote in the form of Purchase Order dated 27.10.2016 which was accepted by them and given them Proforma invoice on 19.12.2016 as a token of acceptance.

iii. That as a precondition of Proforma Invoice, he has transferred USD 10000 through HDFC Bank and after that he had opened Letter of Credit through Yes Bank and forwarded the same to the Chinese counterpart on 20.01.2017 and after receiving the Letter of Credit, M/s Sany International Development Ltd. has shipped the Crane having Bill of Lading No. KKLUSH0007000 dated 27.02.2017.

iv. M/s Amba Shipping was their Custom House Agent, who were assigned clearance work of this All Terrain Crane; that after the shipment from China Port, the purchase documents were forwarded through the Chinese Bank to Yes Bank and Yes bank in turn given the same to them on 22.03.2017. The import documents were given to the CHA for clearance of the All Terrain Crane and the CHA prepared the Checklist and sent to them for verification of the facts which was confirmed by them.

v. **The bill of entry was filed under CTH 8426 as per the industry trade practice.** On being shown the physical examination order to him and asked whether the crane was subjected to inspection for Chartered Engineer's Certificate, he stated that they have not shown the crane to any of the Chartered Engineer for valuation; that he was not aware of the examination order and came to know about the same only today and that even their CHA did not inform them about the same at the time of clearance.

vi. **On being shown two proforma invoices of the same number and date given by the supplier M/s Sany International Development Limited wherein in one of the proforma invoice the description is shown as 'Refurbished' (received from YES Bank) which is**



signed by his father Shri NavinDedhia and in another Proforma Invoice the description is shown as 'Unused' (submitted at the time of clearance of the goods) which was signed by him, he stated that he was not aware of the two proforma invoices, as the same could be a typographical error; that the 'Refurbished' Proforma invoice was signed by his father at the time of opening Letter of Credit and the same was given to bank, but he was having the proforma invoice of 'unused' only; that he did not deny the fact that there are two proforma invoices.

vii. On being shown the photograph of the speedometer wherein the kilometres was shown as 1161.9 and asked whether the crane was old and used, he stated that the said crane was lying at Sany Heavy Industries, Changsha, China and the distance between Changsha to Shanghai port was approx. 1100 kms and the said crane came without load from factory to Port and hence the crane was old but unused.

viii. On being asked about the Technical parameters of the crane the weight of the crane which was shown as 60000 kgs, but the import documents shown as 155.437 tons, he stated that the weight of the overall travelling crane is 60000 kgs only; that the left over weight is (counter weight which was fitted at the time of operations) for the other accessories which was coming along the crane but will be fitted after the import which has come in 24 packages as given in the Packing list.

ix. On being shown insurance certificate dated 23.03.2017 issued by M/s New India Assurance wherein the value of the Crane is shown as Rs. 6,65,28,000 and year of manufacture is 2014, he stated that the invoice value is Approx. 3,71,73,585 plus duty was Rs,98,24,328 and the total cost for them was Rs. 4,69,97,913 and the insurance value was approx. 40% more as the insurance was taken under plant and machinery insurance policy wherein the provision 1 sum insured, it is mentioned that it is the requirement of this insurance that the sum insured shall be equal to the cost of replace of the insured property by new property of the same kind. On being shown another insurance certificate of the same value and same date i.e. 23.03.2017 issued by M/s New India Assurance but showing the year of manufacture as 2017, he stated that he has no knowledge of the insurance policy where the year of manufacture is 2017.

x. To the question of two proforma invoices of the same number and date but there is a change of description and also he had two insurance policies where all the details are same except year of manufacture, Shri Dharak Navin Dedhia could not able to explain but simply stated that he did not know.

xi. On being asked by showing the order of Haryana Authority of Advance Ruling, Goods and Service Tax, Advance Ruling No. HAR/HAAR/R/2017-18-18/5 dated 10.04.2018, wherein it is clearly ordered that Truck Mounted Cranes are classifiable

under CTH 8705 and not under CTH 8426, he stated that it was a trade practice that All Terrain cranes are classified in CTH 8426, hence they have also taken CTH as 8426.

xii. On being asked that Insurance Policies submitted by him from the date of import till date, wherein for the 1<sup>st</sup> year you have shown the value as Rs. 6,65,28,000/- and for the subsequent year i.e. for 2018-19, the same is shown as Rs.3,76,70,382 and for the rest of the years by depreciating the values, he stated that **during the 1<sup>st</sup> year the crane was insured under Contractor's Plant and Machinery where the Insured declared value was equivalent to value of new machine of the same kind and in subsequent years the crane was insured under Motor Misc. and special type of vehicle package whereas insured declared value is equal to the value of the invoice and depreciated every year.**

12. **In the above statement, Shri Dharak Navin Dhedia, Partner of M/s Navin Heavy Lifters, has stated that the insured value of Rs.6,65,28,000/- was inclusive of the invoice value Approx. Rs.3,71,73,585 plus duty Rs,98,24,328 and the total cost for them was Rs. 4,69,97,913 and the insurance value was approx. 40% more as the insurance was taken under plant and machinery insurance policy.** The importer has tried to mislead the investigation by stating that the insured value of the imported crane was inclusive of duty of Rs.98.24 lakhs, etc. as the importers have filed the Bill of Entry No.8982045 dated 21.03.2017 for clearance of the imported crane declaring that the crane was old and unused, which was assessed on the basis of first check with order whether CE certificate was submitted, the said crane was examined by the docks staff and given report without verification of CE certificate and on the basis of the examination report, the said BE was assessed finally for the AV of Rs. 3,71,73,585/- With duty payable as Rs. 98,24,328/-. The importer has paid the assessed duty of Rs.98.24,328/- vide Challan No. 2017808777 dated 27.03.2017 and cleared the imported crane. It is seen that the final assessment and payment was effected on 27.03.2017, whereas the Insurance Policy was made under the Receipt No. 13140081160000028539 dated 23.03.2017 by making payment of premium amount of Rs. 53,195/ against the insured value at Rs.6,65,28,000/- for the imported crane. It is also seen from the said Insurance Certificate that the above insured amount does not inclusive of any customs duty, etc. as in the said Insurance Certificate it is shown at Column – Description of items (Type, Manufacture, Capacity) it is clearly mentioned as “Machine Description SANY SAC2200 ALL TERRAIN CRANE REG.No. N.A., CHASSIS NO.LFCNRG8P7E2004002 ENGINE NO.776764 FLOATER BASIS, DISMANTLING & RE-ERECTION S.I. Rs.6,65,28,000/” **In his statement, to a specific question, the importer has stated that the insured value Rs. 6,65,28,000/- of the imported crane was declared on the basis of equivalent to the value of the new machine.**

13. It appears that the importer has suppressed the said Insurance Certificate and not submitted to the Customs the actual value of the imported crane. The importer has deliberately mis-declared the actual value of the crane. The importer has mis-classified the

CTH with an intention to evade custom duty and also to save the imported goods from the clutches of Policy conditions. During the investigation, two proforma invoices issued by the supplier were noticed with the same Proforma Invoice No and date but there was a change in one word in the description as '**Refurbished**' in one Proforma invoice and '**Un used**' in another Proforma invoice. This act of importers of collusion, wilful misstatement and suppression of the facts led to evasion of appropriate Customs Duty on the imported crane.

**Relevant Sections of the Customs Act, 1962:**

14. The relevant sections of the Customs Act, 1962 as relates to this case are reproduced here:

***Section 46 of Customs Act 1962 states:***

*"that the importer "while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any relating to the imported goods".*

*The importer also violated the provision of Section 46 of the Customs Act, 1962 which In the instance case, the importer has not declared the truth of the contents in the Bill of Entry and hence the goods found to mis-declared in respect of valuation and hence the same appeared to be liable for confiscation under Section 111(m) of the Customs Act, 1962 and for such act of omission and commission, the importer has rendered himself liable for penalty under Section 112(a) or 114A of the Customs Act 1962, ibid".*

***Section 111(d) states:***

*"any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;"*

***Section 111(m) states:***

*"any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54"*

***Section 112(a) states:***

*"who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act",*

**Section 114A states:**

*“Penalty for short-levy or non-levy of duty in certain cases.—Where the duty has not been levied or has not been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall, also be liable to pay a penalty equal to the duty or interest so determined:*

*Provided that where such duty or interest, as the case may be, as determined under sub-section (2) of section 28, and the interest payable thereon under section 28AB, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty or interest, as the case may be, so determined:*

*Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:*

*Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:*

*Provided also that where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AB, and twenty-five per cent. of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:*

*Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114”.*

**Section 114 AA states:**

*“If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used any declaration, statement or document which is false or incorrect in any material particular, In the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five time the value of goods”*

**Section 117 states:**

*“Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to*

*comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to penalty .”*

**Rule 12 of Customs Valuation Rules 2007 states:**

*“ Rejection of declared value. -*

*(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.*

*(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).*

*Explanation. -(1) For the removal of doubts, it is hereby declared that:-*

*(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.*

*(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.*

*(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -*

*(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;*

*(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;*

*(c) the sale involves special discounts limited to exclusive agents;*

*(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;*

*(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;*

*(f) the fraudulent or manipulated documents”.*

**Conclusions of Investigation:**

15. In view of the above facts, it appeared that the declared value of the crane which was imported and cleared under B/E 8982045 dated 21.03.2017, was appeared to have been mis-declared for the following reasons:

- a. Importer has held two Proforma Invoices having the same invoice number showing different descriptions, for the same goods with malafide intentions. In one of the Proforma invoice there is mention of 'Refurbished' which was then changed to the word 'Unused' in another proforma invoice. **Since the 'Refurbished' cranes can not be imported as per policy, importer suppressed this fact with change in description in invoice as 'Unused'.**
- b. The speedometer reading indicated that it was used for 1161.9 KMs, for which importer has attempted to cover up by saying that impugned crane was lying at Sany Heavy Industries, Changsha, China and the distance between Changsha to Shanghai port was approx. 1100 kms and the said crane came without load from factory to Port. However, he could not produce any documents /registration with the Transport Authority in China which is mandatory for movement on Roads in China.
- c. Importer had deliberately avoided to get inspection and valuation done by Expert Chartered Engineer,
- d. Importer had admittedly paid a premium of Insurance of Rs. 53,195/- against the insured value at Rs.6,65,28,000/- for the impugned Crane. He avoided to submit this insurance details to Customs while declaring the AV of Rs. 3,71,73,585/-. Also, he tried to cover up by saying that the Insured amount included the duty payable on it.
- e. No clarification by the importer and non-cooperation in the investigation.
- f. Mis-classification of All Terrain Crane in CTH 8426 instead of appropriate CTH 8705.

16. **Valuation:**

16.1 The Insurance certificate dated 23.03.2017 issued by M/s New India Assurance Co. Ltd. confirmed that the value of the crane was Rs 6,65,28,000/- as against the declared assessable value (AV) of Rs. 3,71,73,585/-. The importer had admitted that paid a premium of Insurance of Rs. 53,195/- against the insured value at Rs.6,65,28,000/- for the impugned Crane. The importer had given an unreasonable explanation that the insured value included duty amount. Assuming that without accepting, that the Insured value of impugned goods could be Rs. 3,71,73,585/- plus Rs. 98,24,328/- as duty would be Rs. 4,69,97,913 which is 40% less than actually insured value. Thus, Importer had suppressed the transaction value by

way of non-submission of Commercial value. Thus, it appeared that the importer had intentionally mis-declared the value of the crane in order to evade the appropriate Customs duty, hence the Commercial invoice value was liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

16.2 If the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9. **As the subject goods is a customised goods,** the value cannot be determined under rule 4 and 5 dealt with the value of identical and similar goods respectively. The value also cannot be determined under rule 7 and 8 through deductive and computive method under Rule 7 and 8 of the ibid respectively. As the value of the goods cannot be arrived at under Rules 4 to 8 of the Customs Valuation Rules, 2007, the Residual method under Rule 9 of the Customs Valuation Rules, 2007 is the best suited method. During investigation, It was found that the importer of crane M/s Navin Heavy Lifters insured the crane with M/s New India Assurance Co. Ltd. and the insurer have agreed to get the value of the goods appraised at Rs. 6,65,28,000/- for the purpose of the insurance policy. Further the insurer M/s Navin Heavy Industries agreed for payment of the insurance premium at the insured amount of Rs. 6,65,28,000/-, **this appeared to be the agreed upon price by both the parties.** Therefore, the insured value of the crane was to be taken for the purpose of charging Customs Duty. Such agreement of valuation of goods for the purpose of insurance was a relied upon element, the reason being that both the parties have concurred to the conditions of the insurance policy on that value. Accordingly, the crane was valued at Rs 6,65,28,000/- as per the insurance document issued by the New India Assurance Co. Ltd. for the said crane. If the value cannot be determined under rule 4 to 8, then fair value to be determined under rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. **Hence, the fair value of the subject goods should be re-determined as per the insurance value wherein the value is shown is higher i.e. Rs. 6,65,28,000/-.**

#### 17. Confiscability of the Subject Goods:

The subject goods covered vide B/E 8982045 dated 21.03.2017 were cleared for home consumption on 27.03.2017. Thus, impugned goods were not available for seizure, although liable for confiscation. The importer had intentionally suppressed the Insurance Certificate and actual transaction value. Instead the importer had two proforma invoices, having the same number but with different descriptions, for the same goods. They had also intentionally mis-declared the CTH of the cranes as 8426, as against 8705. It appeared that Importer was well aware that goods under CTH 8705 attract some policy conditions to be fulfilled under the Import Trade Control (ITC). In the Purchase Order, it was clearly mentioned that the All Terrain Crane under import is left hand drive but one of the conditions of the policy says that it must be right hand drive. The importer in his statement dated 22.03.2022, admitted that they had classified it as per trade practice. It appeared that to circumvent the policy conditions, the importer has classified the crane under CTH 8426 where there is less amount

of duty as well as there are no policy conditions. They had intentionally classified subject goods in CTH 8426 as against rightly classifiable under CTH 8705.

**18. Duty Difference:**

The appropriate duty calculation on the basis of re-determined value is summarised below. Table-A denotes the details regarding assessed custom duty on declared value and Table – B denotes the calculation of custom duty on the basis of re-determined value as the insurance value was being taken as assessable value and classification from CTH 8426 to CTH 8705 wherein the rate of Basic Customs duty is 10%. Both the tables are as under: -

TABLE -A (as declared and cleared)			TABLE –B (revised and re-determined)		
B/E No. 8982045 dated 21.03.2017			B/E No. 8982045 dated 21.03.2017		
CIF(EURO)		516206.6			
CIF(Rs.)	1 EUR = Rs.71.30	36805531			
Landing Charges	1%	368055.3			
Ass. Value(INR)		37173585	Ass. Value(INR)		66528000
BCD	7.50%	2788019	BCD	10.00%	6652800
CVD	12.50%	4995200	CVD	12.50%	9147600
Edu. Cess	2%	155664.4	Edu. Cess	2%	316008
Higher Edu. Cess	1%	77832.19	Higher Edu. Cess	1%	158004
Addl. Duty	4%	1807612	Addl. Duty	4%	3312096
<b>Duty assessed (Rs.)</b>		<b>9824328</b>	<b>Duty assessable (Rs.)</b>		<b>19586508</b>
			<b>Difference in Duty (Rs.)</b>		<b>9762181</b>

From the above, it is seen that the duty assessed on the given assessable value at Table A is Rs. 98,24,328/- and the duty assessed on the value taken from the insurance certificate at Table-B and change of CTH from 8426 where the duty rate is 7.5% to CTH 8705 where



there is a duty rate of 10% is Rs. 1,95,86,508/-, **the differential duty comes to Rs. 97,62,181/-.**

19. In view of the above, it was apparent that the importers had mis-declared the actual value of the imported crane, classification of the goods and also mis-declared the import crane as old. From the speedometer reading of the crane which showed 1162 kms as per the examination report, it was apparent that the imported crane was not old but new. Therefore, the value declared in the Bill of Entry for old and Unused Crane cannot be acceptable as the Insurance Certificate dated 23.03.2017 clearly established the value of the imported crane along with standard accessories as Rs.6,65,28,000/-. While the issuance of the above Insurance Certificate dated 23.03.2017, the imported crane was lying uncleared as the payment of assessed duty and clearance were effected on 27.03.2017. The importer has also wrongly declared the crane under 8426 as against the correct CTH of 8705. It appeared that the importers had acted with collusion, wilful mis-statement and suppression of facts while making declaration in respect of actual value before the Customs and filing the Bill of Entry for clearance of the crane, thereby, making the imported crane liable for confiscation under section 111(d) & 111(m) of the Customs Act 1962.

**20. Role of the firm/person(s) concerned:**

**20.1 M/s Navin Heavy Lifters:**

Mr. Dharak Navin Dedhia, Partner M/s Navin Heavy Lifters, in his statement dated 22.03.2022 had admitted that M/s Navin Heavy Lifters had dealt with the import of crane and its clearance through the CHA M/s Amba Shipping Agencies and with regard to the value at which the crane was insured, mislead the investigation. They have suppressed the actual Insurance Certificate dated 23.03.2017 under which they insured the said imported crane for the insured amount of Rs.6,65,28,000/- while the said crane was subjected to the examination on the basis of first check by the Customs. They had also not provided the CE Certificate as per the order passed for first check assessment to suppress the actual value as well as not submitted the insurance copy of the Crane taken from M/s New India Assurance Co. Ltd where the value is shown as Rs. 6,65,28,000/-. The importer has also wrongly declared the crane under CTH 8426 as against the correct CTH of 8705 to evade the customs duty as well as avoiding the ITC Policy conditions. The said acts of omission and commission by M/s Navin Heavy Lifters, making the imported crane liable for confiscation under section 111 (d) & 111(m) of the Customs Act, 1962, thereby M/s Navin Heavy Lifters became liable for penal action under section 114A and 114AA of the Customs Act, 1962.

**20.2 Shri Dharak Navin Dedhia, Partner of M/s Navin Heavy Lifters:**

He had admitted that he had dealt with the import of the crane and its clearance through the CHA M/s Amba Shipping Agencies and with regard to the value at which the crane was insured, he misled the investigation. He has suppressed the actual Insurance Certificate

dated 23.03.2017 under which he insured the said imported crane for the insured amount of Rs.6,65,28,000/- while the said crane was subjected to the examination on the basis of first check by the Customs. He has also not provided the CE Certificate as per the order passed for first check assessment to suppress the actual value as well as had not submitted the insurance copy of the Crane taken from M/s New India Assurance Co. Ltd where the value was shown as Rs. 6,65,28,000/-. He had also wrongly declared the crane under CTH 8426 as against the correct CTH of 8705 to evade the customs duty as well as avoiding the ITC Policy conditions. The said acts of omission and commission by Shri Dharak Navin Dedhia, making the imported crane liable for confiscation under section 111 (d) & 111(m) of the Customs Act, 1962, thereby he become liable for penal action under section 114A and 114AA of the Customs Act, 1962.

### **20.3 CHA M/s. Amba Shipping Agencies:**

The CHA was well aware that the subject Bill of Entry was filed for clearance of old and unused crane and the same has been assessed on first check basis with specific order for CE certificate. They failed to get the CE from the importer to furnish before the Customs. The CHA was also well aware of the fact that All Terrain Cranes are correctly classifiable under CTH 8705 instead had classified the All Terrain Crane under import in CTH 8426. As the mis declared crane was made liable to confiscation under the provisions of Customs Act, 1962, the deliberate act with malafide intention of the CHA not to get the value determined through CE, and to help the importer to get the All Terrain Crane cleared under CTH 8426 instead of CTH 8705 to evade the customs duty and clear the imported goods by declaring in CTH 8426 to keep away the imported goods from the clutches of Policy conditions as laid down in without any hindrance, render themselves liable for penal action under section 117 of the Customs Act, 1962

21. M/s Navin Heavy Lifters, Shri Dharak Navin Dedhia, Partner of M/s Navin Heavy Lifters and CHA M/s Amba Shipping Agencies had violated the provisions of Sections 14 and 46 of the Customs Act, 1962 and Rule 11 of the Customs Valuation Rules, 2007, in as much as they had deliberately mis-declared the value, mis-declared the CTH of the goods imported by them vide B/E No. 8982045 dated 21.03.2017 as explained in the foregoing paragraphs, thereby rendered the goods liable to confiscation under Section 111 (d) and Section 111(m) of the Customs Act, 1962. Penalty under section 114A and 114AA of the Customs Act, 1962 was liable to be imposable on M/s Navin Heavy Lifters, Shri Dharak Navin Dedhia, Partner of M/s Navin Heavy Lifters and Penalty under section 117 should not be imposed on CHA M/s Amba Shipping Agencies.

### **Charges levelled against the Noticees:**

22. **M/s Navin Heavy Lifters, Shri Dharak Navin Dedhia, Partner of M/s Navin Heavy Lifters** were called upon to Show Cause to the Commissioner of Customs (Import-I), NCH as to why:-

- (a) The classification of the imported Sany 220 MT All Terrain Crane declared under CTH 84264900 should not be rejected and the same should be classified under 87051000;
- (b) The declared value (AV) of Rs. 3,71,73,585/- in Bill of Entry No 8982045 dated 21.03.2017, should not be rejected for the purpose of assessment of the goods in terms of the provisions of Section 14 of the Customs Act, 1962 read with the provisions of Rule 12 of the Customs Valuation Rules, 2007 and the CIF value should not be re-determined at 6,65,28,000/- for assessment of B/E No. 8982045 dated 21.03.2017 in terms of Rule 9 of the Customs Valuation Rules, 2007.
- (c) The differential duty amounting to Rs 97,62,181 should not be demanded under section 28(4) of the Custom Act, 1962 along with applicable interest.
- (d) The goods imported vide B/E No. 8982045 dated 21.03.2017 and appearing to be of re-determined CIF value of Rs.6,65,28,000, should not be confiscated under Sections 111 (d) and 111(m) of the Customs Act, 1962 and Fine in lieu of confiscation be imposed.
- (e) Penalty under the provisions of Section 114A and Section 114 AA of the Customs Act, 1962 should not be imposed on M/s. Navin Heavy Lifters., and its Partner Shri Dharak Navin Dedhia.

23. **CHA M/s. Amba Shipping Agencies** was called upon to show cause to the Commissioner of Customs (Import-I), NCH as to why:-

- (a) Penal action under section 117 of the Customs Act,1962

#### **PERSONAL HEARING AND SUBMISSIONS OF THE NOTICEES**

24. A personal hearing was granted on 12.08.2022 to all three notices vide letter dated 08.07.2022. However, no one turned up for the hearing. Another opportunity of personal hearing was granted on 15.11.2022. On this day, Advocates Shri S.Vibu Nandhan and Shri. Sanjay Singhal appeared as authorised representatives on behalf of the importer/its partner and CHA respectively and put forth their oral arguments. The authorised representative on behalf of the importer and its partner submitted their written submission and placed reliance on Board's Circular No. 20/2022 dated 22.09.2022. The authorised representative of CHA also submitted their written submission along with additional submissions dated 18.09.22. Further another opportunity of personal hearing was granted to noticees on 09.02.23 vide letter dated 07.02.23 along with empanelled Chartered Engineer Shri Jitendra N. Darunkar

to provide clarification/submission on classification, valuation aspect and also requested presence of officer of investigating agency (CIU,NCH,Mumbai) to meet the ends of natural justice .

25. In pursuance of letter dated 07.02.23, Shri Vibu Nandhan, Advocate, Shri Dharak Navin Dedhia, Partner of M/s. Navin Heavy Lifters and Shri Jitendra N Darunkar, empanelled Chartered Engineer appeared for personal hearing on 09.02.23 to provide clarification/submission on classification and valuation issues of the subject case. No one appeared on behalf of the investigating agency CIU. A letter dated 09.02.23 was received from ADC, CIU stating that presently there is no officer well conversant with the case, so an officer from the Group may be called. It was decided that the records of this personal hearing will be sent to CIU for their comments to meet the ends of natural justice as on one is present from their side. However no comments were received from them.

**26. WRITTEN SUBMISSION OF IMPORTER:**

**LIMITATION CLAUSE**

- i. That in the present case, there is no positive inaction or deliberate attempt to mislead the revenue and none of the ingredients for enlargement of time to five years is present.
- ii. That the Bill of Lading was filed on 21.03.2017 and examination report was on 24.03.2017, pursuant to which the goods were cleared accordingly. The present Show Cause notice has been issued on 26.03.2022, after a period of five years from the relevant date. Accordingly, the instant Show Cause is governed by Section 28(4) of the Customs Act 1962 and said Show Cause notice is barred by limitation

**CLASSIFICATION**

- i. That the Show Cause Notice rely upon a ruling of the Haryana Authority for Advance Ruling No. HAR/HAAR/2017-18/5 dated 10.04.2018. Thus, it is clear that the judgement sought to be relied in the SCN after more than a year of the instant goods being cleared. The said judgement would operate prospectively. In this regard, reliance is placed on the judgement of the Hon'ble Supreme Court in M.A. Murthy v. State of Karnataka.
- ii. That the issue of cranes being imported are classified under CTH 8426 is well settled and confirmed by a series of judgments of higher judicial forums, including the Supreme Court. These decisions have consistently laid down that the cranes which are basically meant for lifting of material do not fall under Chapter 87 merely for the reason that they are capable of moving from one place to another. It is well settled that in the cranes, the lifting capacity or the function of lifting is the principal function and mobility is secondary, which merely augments the principal function of the machine.

- iii. That the HSN Note to Heading 8705, which specifically excludes the self-propelled wheeled machines in which the chassis and the working machines are specifically designed for each other to form an integral mechanical unit for performing the function of cranes, excavators and they remain classified in heading 8426.
- iv. It is not alleged in the Show Cause Notice that the instant goods comprise at least the following mechanical features: propelling engine, gearbox and controls for or gear-changing and steering and braking facilities or that it has the other essential automobile features referred to above.
- v. That Section Note 3 of Section XVI categorically states that in general, multifunctional machines are classified according to the principal function of the machine. Thus, even if the crane is mounted on wheels to enable mobility, the principal function of the machine remains that of a crane. Therefore, there cannot be any doubt that the crane is to be classified in Chapter 84
- vi. That reliance is placed on CC v. Sanghvi Movers Ltd. wherein the Hon'ble Supreme Court was pleased to uphold a judgement passed by the Appellate Tribunal which had in the impugned judgement held that the hydraulic truck mounted mobile cranes being capable of mobility from one place to another and at the place of operations used to get immobilised/fixed to earth with the help of outriggers to function as a crane and where a cabin was provided for operator in the superstructure to operate at altitude of 30 metres, was primarily meant to work as a crane and its mobility was only an additional advantage. It was held that as the chassis was manufactured to integrate with the crane, it was immaterial whether the power to the crane came from chassis or separately therefore. The product was held to be governed by the exclusion clause to Heading 8705 of Custom Tariff Act, 1975 and therefore was classifiable under Heading 8426 *ibid*. It was also observed that the description of goods in invoice packing list/bills of lading by itself cannot be the guiding factor in determining its classification.
- viii. That the contention sought to be made in support of the instant goods being classified under Chapter 87 is further negated by Chapter Note 7 of Chapter 84, which states that a machine which is used for more than one purpose is, for the purposes of classification, to be treated as if its principal purpose was its sole purpose.
- ix. That reliance is also placed on Commissioner of Customs vs Reliance Petroleum Ltd. and CCE v. Vijay Mining Equipments.

## VALUATION

i. That the Show Cause premised on the fact that the crane insured with M/s New India Assurance Co. Ltd. immediately after its importation, i.e. on 23.03.2017 for the sum of Rs. 6,65,28,000 and since the insurer has agreed for payment of the insurance premium at the insured amount, this appears to be the agreed upon price by both the parties.

ii. That the import documents already include marine insurance policy where the value of the goods is declared at 110% of the actual value. The value of 110% under the said policy is taken as per the Letter of Credit policy. The Marine Insurance Policy and Letter of Credit have already been submitted.

iii. That reliance is placed on case law of Wipro Ltd. v. ACC and Anand Mahindra vs. Commr. of Customs (Import), Mumbai and Orient Enterprises v. CC, and Nina Chaka Pvt. Ltd. v. CC. In view of the aforesaid, it is submitted that reliance placed on the insurance policy obtained by the importer is misplaced.

#### **PERSONAL LIABILITY OF PARTNER**

i. That the importer has not done or abetted any act or omission which has rendered the goods liable for confiscation. No mens rea has been pointed out. In this regard, reliance is placed on the judgement in the case of Anand Mahindra vs. Commr. of Cus. (Import).

#### **27. WRITTEN SUBMISSION OF CHA**

i. That CHA cannot be held responsible for the classification and valuation of the goods, when the same have been explicitly approved by the importer themselves.

ii. That the chartered engineer certificate is not a compulsory document. In the present instance, no such CE certificate has been submitted by the importer. It is clear that a Chartered Engineer Certificate is necessary only in case of used Second Hand Machines and not for valuation of Unused Machines. Therefore, the question of supply of Chartered Engineer certificate in the present import, comprising of old unused Crane, did not arise either at the time of assessment by the Group or Examination at the Docks stage. Therefore, the CHA cannot be made liable for non-submission of a CE certificate.

iii. The goods are not cranes mounted on independent Trucks but mobile cranes which are clearly classifiable under heading 8426 of the Customs Tariff Act, 1975.

#### **28. PERSONAL HEARING RECORD DATED 09.02.23**

28.1 In pursuance of letter dated 07.02.23, Shri Vibhu Nandhan, Advocate, Shri Dharak Navin Dedhia, Partner of M/s. Navin Heavy Lifters and Shri Jitendra N Darunkar, Empanelled Chartered Engineer appeared for personal hearing to provide clarification/submission on classification and valuation issues of the subject case. No one appeared on behalf of the investigating agency CIU. A letter dated 09.02.23 was received from ADC, CIU stating that presently there is no officer well conversant with the case; so an

officer from the Group may be called. It was decided that the records of this personal hearing will be sent to CIU for their comments to meet the ends of natural justice as no one is present from their side.

28.2 The noticees informed that the said crane has been deployed in their client site at Jamnagar since 2017. It was observed that the physical inspection of the crane is no more relevant to the valuation aspect as the condition of the crane would have substantially changed now over the last five years. For deciding the classification aspect, the catalogue of the crane with detailed analysis of its mechanical features was considered to be sufficient. Accordingly, the Chartered Engineer was requested to examine the catalogue of the said All Terrain Crane Model SAC 2200 and gave his findings on classification aspect in the light of the Board's Circular no 20/2022 dated 22.09.22. The said catalogue consisting of pages 1 to 35 is enclosed with this PH record after being signed by all the participants to this hearing.

### 28.3 Classification

The relevant aspects of classification as suggested by CE for the subject goods i.e. Sany make, Model SAC 2200 in line with Board Circular is elaborated below:

- i) **Movement under load:** During function of the All Terrain Crane, the machine propelling is locked by the means of SYMC load movement limiter system (mistake proofing) which is controlled from the operator cabin. With the help of Outriggers, the subject machine cannot move under the load as tyres lose contact with the ground. Hence it is amply clear that as these machines lift the load after the Outriggers are in an operational condition. The Outriggers lift the entire machine before lifting the load. Hence the Crane cannot move under load.
- ii) **Location of propelling and control elements:** The propelling is being done through the driver's cabin while it has a mistake proofing control which is from the operator's cabin. It has further clarified that the Crane (Superstructure) Cabin has the control to cut off the propelling function of the machine. The details of integration of the working machine with the chassis has been elaborated in the below point no IV.
- iii) **The number of Engines:** In subject goods, there are two engines, one is for lifting and another is for propelling function as per catalogue.
- iv) **Integration of the working machines with the chassis:** It may be appreciated that the chassis and Crane (Superstructure) are specially designed for each other and form an integral mechanical unit. On perusal of catalogue and previously inspected similar kinds of machines, we observed that the said All-Terrain Crane has a specially built Box Type Chassis for mounting of the Crane as per Catalogue. The Outriggers are integral part of the Chassis which anchors the All-Terrain Crane to the ground while lifting the load. When in operation, the entire load rests on the Outriggers and the same cannot move as it

is immobilized, raising the entire Crane along with the tyres, thus losing contact with the ground. It is evident from the catalogue that the Slew Bearing & Outriggers are crucial part of the subject goods and are designed specifically for the subject Crane(Superstructure) while taking into consideration the Centre of Gravity, Dimensions of the Chassis, Capacity of the Crane, Suspension & Steering Mechanism. Considering the above points, we can say that the All- Terrain Crane is a self-propelled wheeled machine where in the Chassis and the Crane (Superstructure) are specifically designed for each other, and form an integral mechanical unit for heavy loads lifting and moving/shifting radially (with the help of Slew Bearing). Further, we can confirm that the said Chassis cannot be used for any other purpose if separated from the lifting machine(Superstructure).

28.4 Hence, it is observed that chassis are specially designed for the subject goods & cannot be used for any other application. Similarly, Crane (Superstructure) is also designed with respect to the specific Box type chassis. Together they form a mechanically and electrically integrated unit. Hence, the All Terrain Crane Sany Model- SAC 2200 conforms to CTH 8426.

#### 28.5 Valuation Aspect

On the valuation aspect, the noticees has relied upon the case law of Nina Chaka Pvt Ltd vs Commissioner of Customs, New Delhi 2004 (163) E.L.T. 464 (Tri. Delhi), in which Hon'ble Tribunal has held that the insurance value can be taken as basis only after deducting the duties and taxes payable on the goods involving transfer from Seller's premises to Buyer's premises. Noticees submitted that Insurance value is as per Plant and Machinery Insurance policy which shall be equal to the cost of replacement of the insured machine by new machine of the same kind and same capacity, which shall mean its replacement cost. The insurance value of the subject goods which is agreed upon price by both parties is Rs. 6,65,28,000/- and the duties paid by importer is Rs. 98,24,328/- and other local taxes are not involved as Buyers premises is located at Wadala, Mumbai. After deducting the Custom duty, the value comes to be Rs. 5,67,03,672/-. Further noticees submitted that YOM of the subject goods is 2014. Now, the physical inspection of goods is no more relevant as goods were cleared on 27.03.2017 and are being used since 2017. The subject goods are directly dispatched from the Manufacturer's premises i.e Sany and as per submission of noticees and declared description of the goods are Old but Unused. Therefore, to arrive at the value of goods in the year 2017, it is required to give standard depreciation at the rate of 5.00% per year (On the basis of obsolescence factor) and total depreciation comes out to be 15% for 3 years i.e. from 2014 to 2017. So the depreciated value of subject Old but Unused Crane as per CE comes to Rs. 4,81,98,122/-.

28.6 However the noticees disagreed with the above valuation and requested for the depreciation from Original value goods as on 2017 and goods to be considered for the



depreciated value at the rate of 38% since the goods were lying idle at the factory premises thereby incurring wear and tear. The quantification of depreciated value comes to the tune of Rs.4.12 Crores and after deduction of custom duty to the tune of Rs 0.98 Crore, the final deduced value comes to the tune of Rs 3.14 Crore which is lesser than the declared value before customs .

### **DISCUSSION AND FINDINGS**

29. The case involves the following three noticees:

Noticee 1- M/s. Navin Heavy Lifters,

Noticee 2- Shri Dharak Navin Dedhia, Partner M/s. Navin Heavy Lifters,

Noticee 3- M/s. Amba Shipping Agencies (CHA),

I have carefully gone through the case records, the noticees' reply and their written submissions made during the course of personal hearings.

30. **Issues for determination:** The 3 noticees have made their verbal and written submissions under the following headings which can be treated as the issues before me for determination:

- a) Whether the subject Show Cause notice is time barred by limitation under Section 28(4) of the Customs Act 1962?
- b) Whether the all terrain crane imported vide B/E No. 8982045 dated 21.03.2017 is classifiable under CTH 87051000 heading "Crane Lorries" or under CTH 84264900 heading "Others" ?
- c) Whether the declared value of Rs.3,71,73,585/- of the crane should be rejected and the value should be re-determined at Rs. 6,65,28,000/- in terms of Rule 9 of the Customs Valuation Rules, 2007?
- d) Whether the goods imported vide B/E No. 8982045 dated 21.03.2017 should be held liable for confiscation under Sections 111 (d) and 111(m) of the Customs Act, 1962?
- e) Whether penalty under the provisions of Section 114A should be imposed upon M/s. Navin Heavy Lifters (Noticee-1)?
- f) Whether penalty under the provisions of Section 114AA should be imposed upon M/s. Navin Heavy Lifters and its Partner, Sh. Dharak Navin Dedhia?
- g) Whether penalty under the provisions of Section 117 of the Customs Act,1962 should be imposed upon CHA M/s. Amba Shipping Agencies?

Let me take up the issues one by one .

**31. Whether the subject Show Cause notice is time barred by limitation under Section 28(4) of the Customs Act 1962?**

31.1 The Noticees 1 and 2 submitted that the Bill of Lading was filed on 21.03.2017 and examination report was on 24.03.2017, pursuant to which the goods were cleared accordingly. The present Show Cause Notice has been issued on 26.03.2022, after a period of five years from the relevant date. Accordingly, the instant Show Cause is governed by section 28(4) of the Customs Act 1962 and said Show Cause is barred by limitation.

31.2 In this regard, it is observed that SCN was issued on 26.03.2022 under section 28(4) of the Customs Act, 1962 and the clearance of goods was done on 27.03.2017. The SCN is governed by Section 28(4) of the Customs Act, 1962 and same is reproduced here;

***"Section 28(4) of Customs Act, 1962***

*(4) Where any duty has not been <sup>10</sup>[levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*

*(a) collusion; or*

*(b) any wilful mis-statement; or*

*(c) suppression of facts,*

*by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been <sup>11</sup>[so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*

*Explanation 1. - For the purposes of this section, "relevant date" means,-*

*(a) in a case where duty is <sup>21</sup>[not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;*

*(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;*

*(c) in a case where duty or interest has been erroneously refunded, the date of refund;*

*(d) in any other case, the date of payment of duty or interest."*

31.3 From plain reading of the section, it appears that the proper officer shall within five years from the relevant date serve notice on the person chargeable with duty or interest which has been short-levied or short-paid. Here the relevant date as per Explanation 1(a) is on which the proper office makes an order for the clearance of the goods. The SCN was

issued on 26.03.2022 and clearance of the goods was done on 27.03.2017. Therefore, the SCN was issued within a time period of 5 years and was not time barred by limitation clause.

**32. Whether the goods imported vide B/E No. 8982045 dated 21.03.2017 are classifiable under CTH 87051000 heading “Crane Lorries” or under CTH 84264900 heading “Others”?**

32.1 On the classification issue, the noticees 1 and 2 have submitted that the subject cranes being imported are classified under CTH 8426 and the cranes which are basically meant for lifting of material do not fall under Chapter 87 merely for the reason that they are capable of moving from one place to another. It is well settled that in the cranes, the function of lifting is the principal function and mobility is secondary. That the HSN Note to Heading 8705 specifically excludes the self-propelled wheeled machines in which the chassis and the working machines are specifically designed for each other to form an integral mechanical unit for performing the function of cranes, excavators and they remain classified in heading 84.26. They placed reliance on the case laws of **CC vs. Sanghvi Movers Ltd<sup>4</sup>**, **Commissioner of Customs, Ahmedabad vs Reliance Petroleum Ltd<sup>5</sup>** and **CCE vs Vijay Mining Equipments<sup>6</sup>**. They further argued that the SCN relies upon the ruling of the Haryana Authority for Advance Ruling No. HAR/HAAR/2017-18/5 dated 10.04.2018 which was passed after more than a year of the instant goods being cleared and it would operate prospectively and not retrospectively.

32.2 In the present case, the said crane(old & unused) was cleared without a Chartered Engineer’s (CE’s) report at the time of clearance and there is also no CE report relied upon during investigation . The classification issue depends a lot on the mechanical & technical features of the crane and the chassis. So an expert opinion was felt desirable. Therefore the opinion of the empanelled Chartered Engineer Shri Jitendra N.Darunkar (who is regularly deployed at the Mumbai Port in the clearance of cranes) was recorded during the personal hearing on 09.02.23 in the presence of the noticees. The record of personal hearing was sent to the investigating agency (CIU, NCH, Mumbai) for their comments to meet the ends of natural justice, however no comments were received from them. During the said hearing , the noticees informed that the said crane has been deployed in their client site at Jamnagar since 2017. It was observed that the physical inspection of the crane is no more relevant to the valuation aspect as the condition of the crane would have substantially changed now over the last five years. For deciding the classification aspect, the catalogue of the crane with detailed analysis of its mechanical features was considered to be sufficient. Accordingly, the Chartered Engineer examined the catalogue of the said Sany All Terrain

<sup>4</sup> CC vs. Sanghvi Movers Ltd 2016(337) E.L.T. A 208(SC)

<sup>5</sup> Commissioner of Customs, Ahmedabad vs Reliance Petroleum Ltd 2006(193) ELT 226(Tri.Mum)

<sup>6</sup> CCE vs Vijay Mining Equipments (2020) 20 SCC 347

Crane Model SAC 2200 and gave his findings on classification aspect in the light of the Board's Circular no 20/2022 dated 22.09.22. The said catalogue consisting of pages 1 to 35 was signed by all the participants to the personal hearing and enclosed with the record of personal hearing.

32.3 On the basis of the available records, the CE recorded his findings as below:

*"i) Movement under load: During function of the All Terrain Crane, the machine propelling is locked by the means of SYMC load movement limiter system (mistake proofing) which is controlled from the operator cabin. With the help of Outriggers, the subject machine cannot move under the load as tyres lose contact with the ground. Hence it is amply clear that as these machines lift the load after the Outriggers are in an operational condition. The Outriggers lift the entire machine before lifting the load. Hence the Crane cannot move under load.*

*ii) Location of propelling and control elements: The propelling is being done through the driver's cabin while it has a mistake proofing control which is from the operator's cabin. It has further clarified that the Crane (Superstructure) Cabin has the control to cut off the propelling function of the machine. The details of integration of the working machine with the chassis has been elaborated in the below point no IV.*

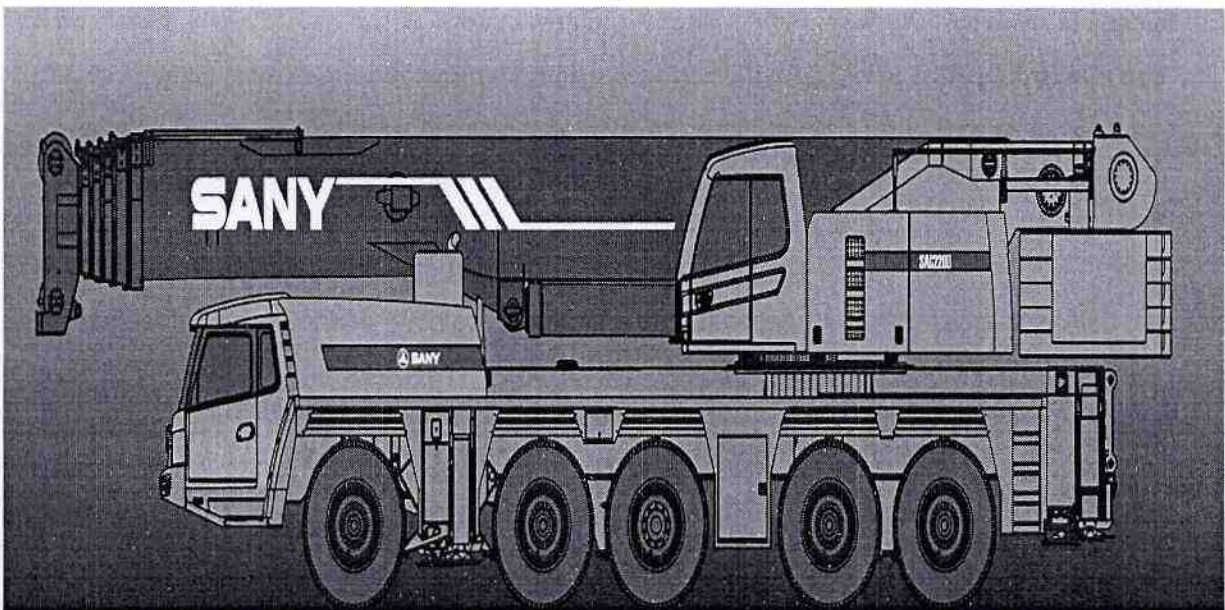
*iii) The number of Engines: In subject goods, there are two engines, one is for lifting and another is for propelling function as per catalogue.*

*iv) Integration of the working machines with the chassis: It may be appreciated that the chassis and Crane (Superstructure) are specially designed for each other and form an integral mechanical unit. On perusal of catalogue and previously inspected similar kind of machines, we observed that the said All-Terrain Crane has a specially built Box Type Chassis for mounting of the Crane as per Catalogue. The Outriggers are integral part of the Chassis which anchors the All-Terrain Crane to the ground while lifting the load. When in operation, the entire load rests on the Outriggers and the same cannot move as it is immobilized, raising the entire Crane along with the tyres, thus losing contact with the ground. It is evident from the Catalogue that the Slew Bearing & Outriggers are crucial part of the subject goods and are designed specifically for the subject Crane(Superstructure) while taking into consideration the Centre of Gravity, Dimensions of the Chassis, Capacity of the Crane, Suspension & Steering Mechanism. Considering the above points, we can say that the All- Terrain Crane is a self-propelled wheeled machine where in the Chassis and the Crane (Superstructure) are specifically designed for each other, and form an integral mechanical unit for heavy loads lifting and moving/shifting radially (with the help of Slew Bearing). Further, we can confirm that the said Chassis cannot be used for any other purpose if separated from the lifting machine(Superstructure).*

Hence, it is observed that chassis are specially designed for the subject goods & cannot be used for any other application. Similarly, Crane (Superstructure) are also designed with respect to the specific Box type chassis. **Together they form a mechanically and electrically integrated unit.** Hence, the All Terrain Crane Sany Model- SAC 2200 conforms to CTH 8426.”(emphasis added)

32.4 The details of the crane as given in the Product Catalogue submitted by the noticee (also available on supplier website [www.sanyglobal.com](http://www.sanyglobal.com)), is reproduced below for reference:

**“ SAC 2200 ALL-TERRAIN CRANE  
220 TONS LIFTING CAPACITY**



***SUPERSTRUCTURE***

**Cab** ■ It is made of safety glass and anti-corrosion steel plate with ergonomic design such as full-coverage soften interior, panoramic sunroof and adjustable seats etc., and humanized design provides more comfortable and relaxing operation experience. The display of load moment limiter integrates main console and operation display system, which clearly show the data of all operating superstructure conditions of lifting operation.

**Engine** ■ Type: Inline six-cylinder, water cooled, supercharged and inter-cooling diesel engine

■ Rated power: 170kw/2200r/min

■ Environment-protection: Emission complies with Euro III standard

■ Capacity of fuel tank: 260L

**Hydraulic system** ■ The adoption of high-quality main oil pump, slewing pump, main valve, winch motor and balance valve etc. key hydraulic parts ensure high stability and reliability of the system. Accurate parameter matching provides more excellent operation performance. The electric proportional variable displacement piston pump is used to adjust the pump displacement in real-time through the change of the opening of

*the electrical control handle, thus achieving high-precision flow control with no-loss of energy during operation. Self-developed dual pump converging / diversion main valve is used with single action dual-pump applied to ensure high converging efficiency and combined action dual-pump diversion applied to ensure good controllability.*

■ *The use of dead-weight luffing compensation hydraulic system ensures excellent lowering micro-mobility and stability.*

■ *Single-cylinder pin telescopic system is used for boom.*

■ *Jib is equipped with luffing cylinder to achieve 0°~40°infinitely luffing.*

■ *Closed slewing system is used with flow and direction changed through adjusting the angle of the swash plate of the variable pump, thus ensuring excellent micro-mobility and stable rotation.*

■ *Capacity of hydraulic oil tank: 1025L.*

**Control system** ■ *SYMC load moment limiter system developed by SANY can electrically control (PLC control) the crane. Two multi-directional handles can reset automatically. The crane movement can be adjusted through hydraulic pump and its speed can be controlled through regulating the engine speed.*

**Luffing system** ■ *Dead-weight luffing features higher energy saving capacity is applied. The use of single cylinder and arrangement of front hinge ensure easy luffing operation and reduce stress on the lifting boom. The electric proportional controlled balance valve is used. Luffing angle: 0°~ 82°.*

**Telescopic system** ■ *Six-section boom is applied with basic boom length of 13.5m and fully extended boom lifting height of 62m respectively. Max. lifting height is 103.5m including jib. It is made of fine grain high-strength steel with U-shaped section and telescopic operation driven independently by hydraulic system.*

**Slewing system** ■ *360°rotations is applied with Max. slewing speed up to 1.8r/min. One closed proportional variable pump and two axial constant-displacement plunger hydraulic motor are used. The use of electric proportional closed hydraulic circuit and electric proportional pedal can achieve emergency brake.*

**Hoisting system** ■ *Main winch adopts the electric proportional variable motor, providing good micro-mobility and stability of the winch and achieving infinitely variable speed. The use of self-developed closed slewing buffer system can ensure more stable rotation starting and braking process and excellent micro-mobility. Diameter of wire ropes of main and auxiliary winches is 24 mm and length of the wire ropes is 300m and 280m respectively.*

**Safety system** ■ *Load moment limiter: With analytical mechanics method, the load moment limiter calculation system is established based on the load mechanical model. Therefore, the rated hoisting accuracy can be up to ±3% through on-line non-load calibration, protecting the hoisting operation in all aspects. In case of overload operation, the system will issue an alarm automatically to provide safety guarantee for operation.*

■ *Hydraulic system is configured with the balance valve, overflow valve and two-way hydraulic lock etc. components, thus achieving stable and reliable operation of the hydraulic system.*

- *Main and auxiliary winches are configured with 3-wraps protectors to prevent over roll-out of wire rope.*
- *Boom and jib are configured with height limiters at ends to prevent over-hoist of the wire rope.*
- *Boom head is equipped with anemometer to detect whether the high-altitude wind speed is out of the allowable range.*

**Counterweight** ■ *Combined variable counterweights are used with 0t, 12.5t, 24t, 34.5t, 44.5t, 54.5t, 78.5t seven combinations. Good micro-mobility can be achieved through wireless remote control.*

### **Chassis**

**Driver's Cab** ■ *Cab is made of new steel structure self-developed by SANY, featuring excellent shock absorption and tightness, which is configured with swing-out doors at both sides, pneumatically suspended driver's seat and passenger's seat, adjustable steering wheel, large rear view mirror, comfort driver's chair with a headrest, anti-fog fan, air conditioner, stereo radio and complete control instruments and meters, providing more comfortable, safe and humanised operation experience.*

**Carrier frame** ■ *Designed and manufactured by SANY, anti-torsion box structure is welded by fine-grain high-strength steel plate to provide strong load bearing capacity.*

**Axles** ■ *All axles are steering axles and axles 1, 2, 4 and 5 are drive axles. Axles 1, 2, 4 and 5 are planetary transmission equipped with wheels differential locks. Axles 1 and 2 adopt the bar feedback hydraulic power steering systems and axles 3, 4 and 5 adopt the electrohydraulic control steering system with assist in speed control and special steering mode optional, ensuring easy steering and flexible operation.*

**Engine** ■ *Type: Inline eight-cylinder, water cooled, supercharged and inter-cooling diesel engine*

- *Rated power: 390kw/1800r/min*
- *Environment-protection: Emission complies with Euro III standard*
- *Capacity of fuel tank: 500L*

**Transmission system** ■ *Gearbox: Manual /Automatic gearbox is adopted with 12 gears and large speed ratio range, which meets the requirements of low grade ability speed and high speed travelling.*

- *Transfer case: Transfer case with a large input torque is used with rated torque up to 30000N.m and with differential lock air cylinder configured.*
- *Transmission shaft: With optimized arrangement of the transmission shaft, the transmission is more stable and reliable. For most optimized transmission, face-tooth coupling transmission shaft is used with large transmission torque.*

**Brakes system** ■ *Brakes system includes travelling brake, parking brake, hydrodynamic retarder brake and auxiliary brake.*

- *Parking brake: Force driven by accumulator is applied on the second to fifth axle.*

■ *Travelling brake: All wheels use the air servo brakes and dual-circuit brake system and are equipped with drum brakes.*

■ *Auxiliary brake: Engine is equipped with engine brake and exhaust brake to reduce crane speed in advance, reducing wear on the braking parts and saving cost significantly.*

**Suspension system** ■ *Axle suspension devices adopt the height-adjustable oil-gas suspension devices equipped with the hydraulic lock, with suspension height changed within  $\pm 150\text{mm}$  to achieve suspension, rigid locking, automatic levelling, overall lifting and lowering, single-point lifting and lowering modes. With good traffic ability and adaptability of a variety of operating conditions and road conditions, travelling smoothness, comfort ability and good side stability can be achieved. The increasing of the crane drive force can be achieved through lifting the third axle to adapt to the snow field and other complex road conditions etc.*

**Steering system** ■ *Servo power steering gear and dual-circuit system hydraulic steering device are used with emergency steering pump equipped. Axles 3, 4 and 5 adopt the electro-hydraulic steering control with steering adjusted through regulating the speed. Axle 3 steering will stop from 30km/h and from 60km/h for axles 4 and 5.*

■ *Six types steering modes: 1) Road running mode (default mode). 2) Full-wheel steering mode. 3) Crab-type mode. 4) Steering mode without deflection. 5) Independent rear-axle steering mode. 6) Steering mode with rear axle locked.*

**Outriggers** ■ *Four-point supporting with Max. vertical and horizontal span up to 9.0m $\times$ 8.5m, and full hydraulic horizontal and vertical outrigger cylinder telescopic movement are applied with the automatic level adjustment function.*

**Tyres** ■ *10\*16.00R25*

**Electrical system** ■ *Modern data bus system equipped with 24V DC power supply and two sets of batteries with 180AH for each set is used to cut off the power supply of undercarriage Chassis adopts CAN-bus system.*

■ *Chassis adopts CAN-bus system. Multifunctional centralized display system is used. Power consumption is small with maximum value of only 5w. Four functional keys are provided on the user interface. LCD display is used with contrast adjustable.*

32.5 From the above product catalogue, it is seen that the All Terrain Crane has been divided into 2 main parts: Superstructure and Chassis. The Superstructure consists of cab, engine, hydraulic system, control system, luffing system, telescopic system, slewing system, hoisting system, safety system, and counterweight. The Chassis consists of driver's cab, carrier frame, axles, engine, transmission system, brake system, suspension system, steering system, outriggers, tyres and electrical system. Thus, it is found that outriggers are mounted as part of chassis. Both the Superstructure and Chassis are manufactured by Sany as part of a complete unit. The Superstructure is the lifting/handling machinery (crane) which is mounted on chassis. The subject Crane is a self-propelled Crane as two engines are present in the subject goods. As per the Chartered Engineer's analysis, the crane does not move under load as outriggers are mounted on Chassis which anchors the All Terrain Crane to the ground while lifting the load.



32.6 It is also relevant here to go through the HSN notes of CTH 8426:

**“ 84.26 •SHIPS’ DERRICKS; CRANES, INCLUDING CABLE CRANES; MOBILE LIFTING FRAMES, STRADDLE CARRIERS AND WORKS TRUCKS FITTED WITH A CRANE.**

**• Overhead travelling cranes, transporter cranes, gantry cranes, bridge cranes, mobile lifting frames and straddle carriers:**

8426.11 • • Overhead travelling cranes on fixed support

8426.12 • • Mobile lifting frames on tyres and straddle carriers

8426.19 • • Other

8426.20 • Tower cranes

8426.30 • Portal or pedestal jib cranes

• Other machinery, self propelled :

8426.41 • • On tyres

**8426.49 • • Other**

• Other machinery :

8426.91 • • Designed for mounting on road vehicles

8426.99 • • Other

*The heading covers a number of intermittent action lifting or handling machines.*

**SELF-PROPELLED AND OTHER “MOBILE” MACHINES**

*In general, the heading covers not only fixed or stationary machines, but (with certain exceptions referred to below concerning machines mounted on transport equipment of the type falling in Section XVII) also mobile machines, whether or not self propelled.*

**The exceptions are :**

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(2) Machines mounted on automobile chassis or lorries.

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*On the other hand, this heading includes self propelled machines in which one or more of the propelling or control elements referred to above are located in the cab of a lifting or handling machine (generally a crane) mounted on a wheeled chassis, whether or not the whole can be driven on the road under its own power.*

*The cranes of this heading do not generally move under load or, if they do, the movement is limited and subsidiary to their main function of lifting.*”(emphasis added)

32.7 From the HSN notes of CTH 8426, I find that this heading covers a number of intermittent action lifting or handling machines like self propelled machines. Further the cranes of this heading do not generally move under load or, if they do, the movement is limited and subsidiary to their main function of lifting. From plain reading of the above notes, it appears that this heading includes self propelled machines in which one or more of the propelling or control elements referred to above are located in the cab of a lifting or handling machine (generally a crane) mounted on a wheeled chassis.

32.8 As regard the relevance of the HSN explanatory notes, the Hon'ble Supreme Court , in the case of **LML ltd. vs Commissioner of Customs**<sup>7</sup> has observed that HSN Explanatory Notes are a dependable guide while interpreting the Customs Tariff.

32.9 The SCN proposes the subject goods to classify in CTH 87051000 as Crane Lorries. Therefore , it is also relevant to go through the the HSN notes of CTH 8705:

***“87.05 SPECIAL PURPOSE MOTOR VEHICLES, OTHER THAN THOSE PRINCIPALLY DESIGNED FOR THE TRANSPORT OF PERSONS OR GOODS (FOR EXAMPLE, BREAKDOWN LORRIES, CRANE LORRIES, FIRE FIGHTING VEHICLES, CONCRETE, MIXER LORRIES, ROAD SWEEPER LORRIES, SPRAYING LORRIES, MOBILE WORKSHOPS, MOBILE RADIOLOGICAL UNITS).***

***8705.10 • Crane lorries***

***8705.20 • Mobile drilling derricks***

***8705.30 • Fire fighting vehicles***

***8705.40 • Concrete mixer lorries***

***8705.90 • Other***

*This heading covers a range of motor vehicles, specially constructed or adapted, equipped with various devices that enable them to perform certain non-transport functions, i.e., the primary purpose of a vehicle of this heading is not the transport of persons or goods.*

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<sup>7</sup> L.M.L. Ltd.Vs Commissioner of Customs 2010 (258) E.L.T. 321 (S.C.)

*The heading excludes:*

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*“MOTOR VEHICLE CHASSIS OR LORRIES (TRUCKS) COMBINED WITH WORKING MACHINES*

*It should be noted that to be classified under this heading, a vehicle comprising lifting or handling machinery, earth levelling, excavating or boring machinery etc., must form what is in fact an essentially complete motor vehicle chassis or lorry (truck) in that it comprises at least the following mechanical features: propelling engine, gearbox and controls for or gear- changing and steering and braking facilities.*

*On the other hand, self-propelled machines (eg. cranes, excavators) in which one or more of the propelling or central elements referred to above are located in the cab for a working machine mounted on a wheeled or track- laying chassis, whether or not the whole can be driven on the road under its own power, remain classified in, for example, heading 84.26, 84.29 or 84.30.*

*Similarly, this heading excludes self-propelled wheeled machines in which the chassis and the working machine are specifically designed for each other and form an integrated mechanical unit (e.g. self-propelled motor graders). In this case, the machine is not simply mounted on a motor vehicle chassis but is completely integrated with the chassis that cannot be used for other purposes and may incorporate the essential automobile features referred to above.*” (emphasis added)

32.10 From the plain reading of HSN notes of CTH 8705, I find that Crane Lorries are classifiable under CTH 870510. The heading includes the Crane Lorries which are not for the transport of the goods and covers the goods like Breakdown Lorries, Crane Lorries, Fire Fighting Vehicles, Concrete Mixer Lorries, Road Sweeper Lorries, Spraying Lorries, Mobile Workshops, Mobile Radiological Units. In the present case, the subject goods are completely different from the mentioned product description and product features are also different from the mentioned products. From product Catalogue, it is evident that the subject goods consist of Superstructure(Crane) and Chassis (Motor vehicle Chassis) and Crane is permanently mounted on motor vehicle Chassis. Both Crane and Chassis are specially designed for each other and are of same make and form an integral unit. It appears from the product catalogue that Crane(Superstructure) and Chassis are mechanically and functionally integrated with each other. From the above, it appears that the subject goods are covered under the exclusion criteria of CTH 8705.

32.11 In the case of *Commissioner of Customs and Central excise vs Vijay Mining Equipments(supra)*, the issue involved is whether drilling rigs mounted on motor vehicle

chassis are classifiable under Chapter subheadings 870300 or it is classified under Chapter sub-heading 843000 as claimed by the assessee. The Hon'ble Apex Court concluded that the Tribunal rightly held that when drilling rigs and the motor vehicles are integrally connected, the case would not fall within Chapter Heading 870300. Accordingly, it upheld the judgement of the Tribunal and classified the goods in heading 843000.

32.12 In the case of *CC vs. Sanghvi Movers Ltd(supra)* wherein the Hon'ble Supreme Court upheld a judgement passed by the Appellate Tribunal which had in the impugned judgement held that the **hydraulic truck mounted mobile cranes** was primarily meant to work as a crane and its mobility was an additional advantage. It was held that as the chassis was manufactured to integrate with the crane, it was immaterial whether the power to the crane came from chassis or separately. Therefore, the product was held to be governed by the exclusion clause of Heading 8705 of Custom Tariff Act, 1975 and therefore classifiable under Heading 8426.

32.13 In the case of **Reliance Petroleum Ltd(supra)**, the classification of Platform Ringer Crane and self-propelled modular transport system(SPMTS) imported by M/s. RPL was in dispute. The Hon'ble Tribunal held that Ringer Crane mounted on transporting equipment and together, they do not qualify to be motor vehicles of Chapter 87 of the Customs Tariff Act 1987 and was classifiable under Heading 8426. The propelling configuration of 8 self-propelled Modular Transport System (SPMTS) is not classifiable separately from the Ringer crane as the principal function is of the crane i.e. lifting and handling function. In the present case, the All Terrain Crane is also a self-propelled machine with principal function as Crane i.e. lifting and handling of goods and mobility of subject goods is an additional advantage.

32.14 In the case of *Collector of Central Excise Baroda v. LMP Precision Eng. Co. Ltd<sup>8</sup>*, the Hon'ble Supreme Court ruled on the classification of 'water well drilling rigs' mounted on motor vehicles chassis. By relying on the specific inclusion of 'mobile drilling derricks' under Heading 8705, the Hon'ble Court gave precedence to the 8705 over the inclusions mentioned in the Section notes to Heading 8430 and thus classified the goods under Heading 8705. The All Terrain Crane of the present case, is not specifically included in 8705.

32.15 I also find that few months after the issuance of the present SCN on 26.03.2022, CBIC issued a **Circular No. 20/2022-Cus dated 22.09.2022** on the same issue of classification of goods that undertake lifting and handling functions and have mobility as a function. The said Circular after referring to the HSN notes and Supreme Court Judgements of **Sanghavi Motors and LMP Precision (supra)** and after consultation with the International Centre for Automotive Technology (ICAT) and the Automotive Research

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<sup>8</sup> *Collector of Central Excise Baroda v. LMP Precision Eng. Co. Ltd.* [2004 (163) E.L.T. 290 (S.C.)]

Association of India (ARAI), prescribed the following broad principles that needed to be considered while classifying cranes.

**“ Important aspects for classification:**

2. A detailed examination of the relevant Section notes, Chapter notes and Explanatory notes of the headings 8426 and 8705 reveals the following aspects which guide the classification of mobile machines:-

**A. Movement under load**

*As a general principle it can be seen that mobile machines that can move under load are classifiable under 8705.*

*However, when the machine does not move under load or, if they do, when movement is limited and subsidiary to their main function, it is classifiable under 8426.*

**B. Location of propelling and control elements**

*It is clear that when one or more of the propelling or control elements that are features of an automobile chassis, are located in the cab of a lifting or handling machine (such as a crane) mounted on a wheeled chassis, the product is to be included in the heading 8426.*

*When there are two cabs in the mobile machine- one that houses the propelling function connected to the chassis and one having the controls for the handling and lifting, the inclusion or exclusion from a heading can only be decided by examining the integration of the chassis with the working machine*

**C. The number of engines**

*Whether the mobile machine comprises of a single engine used for propelling as well as lifting, or if it consists of two separate engines ie one each for propelling the vehicle and for the lifting function, does not have a bearing on the classification between 8426 and 8705. Presence of a separate engine only for the lifting and handling purpose is generally indicative of a larger load lifting capability of the mobile machine.*

**D. Integration of the working machine with the chassis**

*When the work machine is merely mounted (not integrated mechanically) on the chassis, the goods are classifiable under 8705.*

*When chassis and working machine are specially designed for each other and form an integral mechanical unit and the chassis cannot be used for any other purpose- the goods are excluded from 8705 and are thus classifiable under 8426.*

*Outriggers are crucial to the functioning of the mobile machine as they provide the necessary stability in order for the machine to lift heavy loads. If the outriggers are*

*connected to and are a part of the sub structure i.e. the chassis and are controlled from the engine fitted with the chassis, it implies that the functioning of the outriggers which are a part of the chassis are crucial to the functioning of the crane*

*In such a scenario, the superstructure i.e. the crane and the sub structure i.e. the chassis, can be said to be working in tandem and can thus be considered to be mechanically and electrically integrated and the goods are be classifiable under heading 8426.*

*In the absence of such integration of the chassis and working machine, the goods are classifiable under 8705.*

The said Circular mentions various criteria, but it appears to give primacy to the criteria of movement under load (primary function) and integration of the working machine to the chassis in line with the Supreme Court Judgements mentioned above.

32.16 The said Circular was not available when the SCN was issued. The SCN relies upon the Haryana Authority for Advance Ruling No. HAR/HAAR/2017-18/5 dated 10.04.2018. In this ruling, the applicant raised the question of the correct classification of Truck Mounted Crane(TMC) in CTH 8426 or 8705. The Advance Ruling under Section 98 of CGST/HGST Act,2017 found that the Truck Mounted Crane(TMC) is the resultant product of mounting/fixing of crane on readymade trucks/lorries and lorries are bought by applicant from truck & lorry manufactures such as Ashok Leyland, TATA .So Harayana Authority held that the Truck Mounted Crane is classifiable under heading 8705. In the said ruling, the trucks and lorries(Substructure) are from different manufacturers like Ashok Leyland,TATA and it is a complete vehicle. Thereafter Crane is fixed/mounted on it to make the resultant product Truck Mounted Crane. However in the present case, All Terrain Crane is made up of two parts; the Crane (Superstructure) and Chassis( Substructure); and both are from the same manufacturer M/s. Sany International and specially designed for each other. Because of this major difference , the said Haryana Authority Ruling is not relevant in the present case .

32.17 Further, I find that the prevailing assessment practice at Mumbai Custom house (INBOM1) of similar model of cranes is also in favour of CTH 8426. Vide E-office File No CUS/APR/ASS/1988/2021-GR-5-O/O COMMR-CUS-IMP-I-ZONE-I-MUMBAI dated 31.01.23, the Appraising Group 5 of INBOM1 port has finalised the assessment of 205 Bills of Entry covering 13 models of Sany All Terrain crane/Truck crane i.e. SAC1200S, SAC1600S, SAC3500S, SAC5000S, SRC400C, STC1100S, STC1600T7, STC250C4, STC450C5, STC500C5, STC600C5, STC800C5 and STC200C4 under CTH 8426 in the light of the principles laid down in the CBIC Circular no 20/2022 dated 22.09.2022.The above model numbers of Sany cranes are found to be similar on relevant parameters to the Sany All Terrain Crane Model SAC 2200 under consideration in the present case. The only difference between them is in the number of engines and load capacity .

32.18 From the above discussion, it is concluded that in the Sany All Terrain Crane Model SAC 2200, the Outriggers are mounted on Chassis and lift the entire machine before lifting the load. When in operation, the entire load rests on the Outriggers and the whole unit is immobilized, raising the entire crane along with the tyres, thus losing contact with the ground. Hence the subject goods cannot move under load. It is evident from the catalogue that the Slew Bearing & Outriggers are crucial part of the subject goods and are designed specifically for the subject Crane (Superstructure) while taking into consideration the centre of gravity, dimensions of the chassis, capacity of the crane, suspension & steering mechanism. Thus, I find that the All-Terrain Crane is a self-propelled wheeled machine in which the Chassis and the Crane (Superstructure) are specifically designed for each other, and form an integral mechanical unit for heavy loads lifting and moving/shifting radially (with the help of slew bearing). Together they form a mechanically and electrically integrated unit.

32.19 Therefore, from the product catalogue and CE's report dated 09.02.23 in the light of the Supreme Court Judgements, the Board's Circular and the current assessment practice, I find that the said crane is correctly classifiable under CTH 84264900 as declared by the importer.

**33. Whether the declared value of Rs.3,71,73,585 of subject goods should be rejected and the value should be re-determined at Rs. 6,65,28,000/- in terms of Rule 9 of the Customs Valuation Rules, 2007?**

33.1 In the SCN, the insured value declared in the insurance certificate dated 23.03.2017 issued by M/s New India Assurance Co. Ltd. was taken as the value of the crane was Rs 6,65,28,000/- after rejecting the declared Assessable value of Rs. 3,71,73,585/-. The importer had admitted that they paid a premium of Insurance of Rs. 53,195/- against the insured value at Rs. 6,65,28,000/- for the impugned Crane. The Customs valuation Rules were sequentially employed. It was found that value of the goods cannot be arrived at under Rules 4 to 8 of the Customs Valuation Rules, 2007, the residual method under Rule 9 of the Customs Valuation Rules, 2007 is the best suited method. The insurer M/s Navin Heavy Industries had agreed for payment of the insurance premium at the insured amount of Rs. 6,65,28,000/-, this **appeared to be the agreed upon price by both the parties**. Such agreement of valuation of goods for the purpose of insurance was a relied upon element, the reason being that both the parties have concurred to the conditions of the insurance policy on that value.

33.2 The Noticees 1 and 2 have opposed the insurance value based valuation by placing reliance upon the case law of *Wipro Ltd. v. ACC*<sup>9</sup>, *Anand Mahindra vs. Commr. of*

<sup>9</sup> Wipro Ltd. v. ACC 319 E.L.T. 177 (SC)

*Customs (Import), Mumbai*<sup>10</sup>, *Orient Enterprises v. CC*<sup>11</sup> and *Nina Chaka Pvt. Ltd. v. CC*<sup>12</sup>.

33.3 The case of **Orient Enterprises (supra)** related to the undervaluation of three consignments of skimmed milk powder imported from Canada. The charge on the importer was that the actual price paid for the goods was \$ 530 per MT (C.I.F.) as against the declared price of US \$ 356 per MT and one of the evidences relied upon by Revenue were some insurance memos. The Hon'ble Tribunal held that *no firm conclusions with reference to the valuation of the goods in question can be arrived at with the aid of these memos*. The case of **Nina Chaka Pvt Ltd (supra)** related to the insurance value being taken as a basis to prove undervaluation of nylon/polyester cloth with PVC backing . Against the declared assessable value of USD27822 , the goods were insured for USD 56589 . The Hon'ble Tribunal held that the insurance value can be taken as basis only after deducting the duties and taxes payable on the goods involving transfer from Seller's premises to Buyer's premises. The case of **Anand Mahindra (supra)** related to the undervaluation of the secondhand sail boat imported by the appellant and one of the evidences of undervaluation was that the vessel itself was insured for USD 350000 whereas the declared assessable value was USD260000. On this issue, the Hon'ble Tribunal relied upon **Orient Enterprises and Nina Chaka Pvt Ltd** and held that insurance value is not admissible evidence without elaborating much on this point. All these three case laws of *Orient Enterprises, Nina Chaka and Anand Mahindra (supra)* are Tribunal Judgements. The **Nina Chaka Pvt Ltd(supra)** has expounded the law more clearly that insurance value can be taken as basis only after deducting the duties and taxes payable on the goods involving transfer from Seller's premises to Buyer's premises.

33.4 The Hon'ble Supreme Court Judgement in the case of **Wipro Ltd (supra)** relied upon by the party, was on the issue of constitutional validity of proviso (II-i) of Rule 9(2) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 . The appellant had claimed that the said proviso was ultra vires Section 14(1) and Section 14(1-A) of the Customs Act, 1962 and also Article 14 and Article 19(1)(g) of the Constitution of India. Thus, this judgement is not at all relevant to the present case. Further , on the notices argument that fictional cost like landing charges, freight , insurance, etc. can be added only when actual cost is not ascertainable; I find that in the present case, the imported crane which was declared as old & unused was cleared without any Chartered Engineer's Certificate. The importer had given two different descriptions of the imported goods- "old and unused" and "refurbished" in two different documents. So, the Department had reasonable ground to reject the transaction value in this case.

<sup>10</sup> Anand Mahindra vs. Commr. of Customs (Import), Mumbai (2008) 226 E.L.T.371(Tri.Mum)

<sup>11</sup> Orient Enterprises v. CC 1986 (23) E.L.T. 507(T)

<sup>12</sup> Nina Chaka Pvt. Ltd. v. CC 2004(163) E.L.T.464(T)



33.5 The opinion of the Chartered Engineer on valuation of the crane was recorded during the personal hearing on 09.02.23 in the presence of the noticees. The Chartered Engineer opinion was that the insurance value of the subject goods which is agreed upon price by both parties is Rs. 6,65,28,000/- and the custom duties paid by importer is Rs. 98,24,328/- . The cost incurred After clearance from the port and transport of the crane to the importer's premise in Mumbai is not substantial as other local taxes /duties were not much at that time (as informed by the noticees). After deducting the Custom duty from the insurance value , it comes to be Rs. 5,67,03,672/-. The year of manufacture of the crane (as declared by the noticees and there is no dispute on this point) is 2014. The physical inspection of the imported crane is no more relevant as the subject goods cleared on 27.03.2017 are being used in Jamnagar since then . The noticees had declared the said goods as Old but Unused SAC 2200 All Terrain Crane. To arrive at the value of goods in the year 2017, the Chartered Engineer suggested that there needs to be given standard depreciation at the rate of 5.00% per year on the basis of obsolescence factor and total depreciation comes out to be 15% for 3 years i.e. from 2014 to 2017. Therefore, the depreciated value of the subject goods as per CE comes to Rs. 4,81,98,122/-.The noticees however objected to this depreciation percent taken by the CE and claimed higher depreciation. A copy of the record of this personal hearing was sent to the investigating agency CIU, NCH Mumbai on 10.02.23 with the request to send their comments , but till date no comments were received.

33.6 On the issue of valuation , I find that the insurance value was on the basis of the cost of a new crane . There is no dispute on the fact that the imported crane was manufactured in 2014 and had not been used much about 1162 km. The SCN itself claims that use for 1162 km implies that it is almost a new crane. The Hon'ble Tribunal's judgement in Nina Chaka Pvt Ltd. is very clear that the insurance value can only be adopted after giving reasonable deductions for local taxes, duties, etc. I find that the valuation adopted by the CE after deducting the customs duty, and the depreciation(5% for each year from 2014 to 2017) from the insurance value is quite reasonable and consistent with the Hon'ble Tribunal's ruling in Nina Chaka Pvt Ltd . The notices claim for 38% depreciation for 3 years (2014-2017) is not acceptable as they themselves declared the crane to be unused during the 3 year period. The Chartered Engineer also did not agree with their claim. Further, the local taxes, charges,etc. after clearance from the port prevailing have also been taken into account , which by noticees' own submission were not much at that time.Keeping all this in mind , I decide to reject the declared value of Rs.3,71,73,585/- of- the subject crane and redetermine its value at Rs. 4,81,98,122/- in terms of Rule 9 of the Customs Valuation Rules, 2007.

33.7 I further find the duty calculation on the basis of a re-determined value of Rs. 4,81,98,122/- is summarised below. Table-A denotes the details regarding assessed custom duty on declared value and Table – B denotes the calculation of custom duty on the basis of re-determined value being taken as assessable value

TABLE -A (as declared and cleared)			TABLE – B (revised and re-determined)		
B/E No. 8982045 dated 21.03.2017			B/E No. 8982045 dated 21.03.2017		
CIF (EURO)		516206.6			
CIF(Rs.)	1 EUR= Rs. 71.3	36805531			
Landing Charges (Rs.)	1%	368055.3			
Ass. Value (Rs.)		3,71,73,585	Re-determined Ass. Value(Rs)		4,81,98,122
BCD	7.50%	27,88,019	BCD	7.50%	36,14,860
CVD	12.50%	49,95,200	CVD	12.50%	64,76,623
Edu. Cess	2%	1,55,664.4	Edu. Cess	2%	2,01,829.65
Higher Edu. Cess	1%	77,832.19	Higher Edu. Cess	1%	1,00,914.83
Addl. Duty	4%	18,07,612	Addl. Duty	4%	23,43,694
<b>Duty assessed (Rs.)</b>		<b>98,24,328</b>	<b>Re-determined Duty (Rs.)</b>		<b>1,27,37,922</b>
<b>Difference in Total Duty (Rs.) = 29,13,594/-</b>					

33.8 From the table, I find that the duty assessed on the given assessable value at Table A is Rs. 98,24,328/- and the duty redetermined on the redetermined value is Rs. 1,27,37,922/- at Table-B. Therefore, **the differential duty comes to Rs. 29,13,594/-.**

**34. Whether the goods imported vide B/E No. 8982045 dated 21.03.2017 should be held liable for confiscation under Sections 111 (d) and 111(m) of the Customs Act, 1962?**

34.1 I find that the noticees had intentionally suppressed the actual description and value of the subject goods. Noticees have held two Proforma Invoices having same invoice number and same date showing different description, for the same goods with malafide intentions. In one of the Proforma invoice there is mention of description as 'Refurbished

220 MT Sany All Terrain Crane' which was then changed to word 'Unused 220 MT Sany All Terrain Crane' in another proforma invoice of same no and date. The noticees were aware that the insurance value of the subject goods which was agreed upon price by both parties, was much higher, still they undervalued and misdeclared the value of the subject goods. The Chartered Engineer's Certificate was not produced at the time of clearance of the goods. In this regard, it is relevant to go through Section 46 of the Customs Act, 1962 as mentioned below:

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

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

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

*(4A) The importer who presents a bill of entry shall ensure the following, namely:-*

*(a) the accuracy and completeness of the information given therein;*

*(b) the **authenticity and validity of any document supporting it;** and*

*(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force."(emphasis added)*

34.2 On perusal of the same, it can be said that it is the responsibility of the importer to ensure the accuracy and completeness of information in the Bill of Entry and truth of content of such Bill of Entry. I find that noticee 1 has not declared the truth of contents of description and value of the goods in the subject Bill of Entry. Hence, the importer has violated the provision of Section 46 of the Customs Act, 1962, therefore, the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**35. Whether penalty under the provisions of Section 114A should be imposed upon M/s. Navin Heavy Lifters (Noticee-1)?**

35.1 As evident from the above discussion, the Noticee -1 while filing the bill of entry for the imported crane did not declare its correct value. The Noticee -1 knew that the

insurance value of the said crane is much higher. The Noticee -1 knew that the said crane has only run for 1162 km and therefore it is almost like a new crane. Still a much lower value was declared to the Customs Department through the bill of entry and no certificate of Chartered Engineer was produced with the clear intention to hide the true value of the crane and to evade customs duty. The Noticee-1 also forged the proforma invoice. The Customs Department during investigation recovered two sets of proforma invoices with the same number and date( one filed with the bill of entry and the other filed with the Yes Bank) but with differing descriptions of goods. The above acts of omission and commission prove collusion and wilful misstatement on the part of the noticee-1 and have resulted in evasion of customs duty of Rs. 29,13,594/- thereby making them liable for penalty under section 114A of the Act .

**36. Whether penalty under the provisions of Section 114AA should be imposed upon M/s. Navin Heavy Lifters and its Partner, Sh. Dharak Navin Dedhia?**

**M/s. Navin Heavy Lifters:**

36.1 I find that for imposing a penalty under Section 114AA of the Customs Act, 1962, it is required to prove that there was a false/incorrect document which has been used by them knowingly and intentionally to evade payment of appropriate Customs duty. I find that M/s. Navin Heavy Lifters(Noticee-1) had intentionally suppressed the actual description of the subject goods. The investigation has revealed that there were two Proforma Invoices having the same invoice number and same date showing different description, for the same goods. In one of the Proforma invoice there is mention of description as "**Refurbished 220 MT Sany All Terrain Crane**" which was then changed to word "**Unused 220 MT Sany All Terrain Crane**" in another proforma invoice of same no and date. It is evident from the discussion that the invoice produced for clearance of goods is not an actual transaction invoice. The transaction documents were forged. Also no certificate of Chartered Engineer was produced with the clear intention to hide the true value of the crane. Hence,I find that the Noticee-1 is liable for penal action under section 114AA of the Customs Act, 1962.

**Shri Dharak Navin Dedhia, Partner of M/s Navin Heavy Lifters:**

36.2 Shri Dharak Navin Dedhia (Noticee - 2) in his statement dated 22.03.2022, stated that he is one of the four partners of the importer firm M/s Navin Heavy Lifters. The other three partners of the firm are Sh. Navin Premji Dedhia, Smt. Rashmi Navin Dedhia and Smt. Heena Dharak Dedhia. In this case, as discussed above two proforma invoices of the same number and date with differing description of the goods have been found which amounts to forgery and mis-declaration of the imported goods. The invoice filed with Yes Bank was signed by his father Sh. Navin Premji Dedhia and the other proforma invoice filed alongwith the Bill of Entry with the Customs Department was signed by the Noticee 2. The Noticee - 2 has accepted the existence of two proforma invoices with differing descriptions. The penalty

under Section 114 AA is on the action of producing a false or incorrect material. The action of forging two parallel proforma invoices with differing description of goods was done on behalf of the importer firm and I have held the importer firm liable for penalty under Section 114 AA. The partner Noticee - 2 has taken actions only as the representative or agent of the said firm and not in his individual capacity. Since I have already held the firm liable for penalty under the said section, it would not be proper to hold the partner separately responsible for the same action. Hence I refrain from imposing penalty under section 114 AA against the Noticee - 2.

**37. Whether penalty under the provisions of Section 117 of the Customs Act, 1962 should be imposed upon CHA M/s. Amba Shipping Agencies?**

37.1 The Noticee 3 submitted that he cannot be held responsible for the classification and valuation of the goods, when the same have been explicitly approved by the importer themselves. That the chartered engineer certificate is not a compulsory document. No such CE certificate has been submitted by the importer. Therefore, the CHA cannot be made liable for non-submission of a CE certificate. The goods are not cranes mounted on independent Trucks but mobile cranes which are clearly classifiable under heading 8426 of the Customs Tariff Act, 1975.

37.2 In this regard, I find that in the case of **Noble Agency v. Commissioner of Customs, Mumbai**<sup>13</sup>, the Division Bench of the CEGAT, West Zonal Bench, Mumbai observed:-

*“The CHA occupies a very important position in the Customs 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”*

The aforesaid observations of the CEGAT, West Zonal Bench, Mumbai was approved by Hon'ble Apex Court in the case of **K.M. Ganatra & Co**<sup>14</sup> and it was held that misconduct on behalf of CHA had to be viewed seriously.

37.3 The responsibility of the Custom House Agent (Customs Broker) becomes all the more heavier in the regime of self-assessment in customs introduced since 2011. The Customs Broker is expected to advise his client to comply to the provisions of the Act and

<sup>13</sup> Noble Agency v. Commissioner of Customs, Mumbai [2002 (142) E.L.T. 84 (Tri. -Mumbai)]

<sup>14</sup> K.M. Ganatra & Co [ 2016(332) E.L.T. 15 (S.C.)] = 2016-TIOL-13-SC-CUS

Rules and in case of non-compliance by the importer, he should bring it to the notice of the customs officer. The Customs Broker is also expected to exercise due diligence to ascertain the correctness of any information which he imparts to his client.

37.4 In the present case the Noticee - 3 (Customs Broker) knew that the imported crane is old and requires a Chartered Engineer's (CE) certificate for valuation. Still the CE certificate was not produced before the Customs Department at the time of clearance. The Noticee - 3 also appears to have knowledge of the fact that the proforma invoice filed with Bill of Entry containing the description "**Unused**" 220 MT SANY ALL TERRAIN CRANE, whereas the proforma invoice filed with the bank contained the description as "**Refurbished**" 220 MT SANY ALL TERRAIN CRANE. Still he did not report this difference to the Customs Department. Thus, I find that the Noticee - 3 was hand-in-glove with Noticee - 1 and 2 in their said acts of omission and commission proving collusion and wilful misstatement and resulting in evasion of customs duty of Rs. 29,13,594/-. Thus I find that the Noticee - 3 is liable for penal action under Section 117 of the Act.

### **ORDER**

38. In view of the above, I pass the the following order:

38.1 I confirm the classification of Sany 220 MT All Terrain Crane Model no. SAC2200 as declared under **CTH 84264900** ;

38.2 I reject the declared value of the goods imported vide Bill of Entry No.8982045 dated 21.03.2017 of **Rs. 3,71,73,585/-** in terms of Section 14 of the Customs Act, 1962 read with Rule 12 of the Customs Valuation Rules, 2007 and order for re-determination of value at **Rs. 4,81,98,122/-** in terms of Rule 9 of the Customs Valuation Rules, 2007 read with Section 14 of the Customs Act,1962.

38.3 I order for assessment of the goods imported vide Bill of Entry No. 8982045 dated 21.03.2017 on the basis of re-determined value of **Rs. 4,81,98,122/-** and I confirm the demand and order for recovery of differential duty of total **Rs. 29,13,594/- (Rupees twenty nine lakh thirteen thousand five hundred ninety four only)** under Section 28(8) of the Customs Act,1962 along with applicable interest under Section 28AA of the said act.

38.4 I order for confiscation of the goods imported vide Bill of Entry No. 8982045 dated 21.03.2017 having re-determined value of **Rs. 4,81,98,122/-** under Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the above said goods on payment of Redemption Fine of **Rs. 10,00,000/- (Rupees ten lakh only)** under Section 125 of the Customs Act 1962.

38.5 I impose a penalty equal to the short paid duty and interest upon the importer, M/s. Navin Heavy Lifters under Section 114A of the Customs Act, 1962, provided that where such duty and interest is paid within thirty days from the date of the order of the proper officer determining such duty, the amount of penalty liable to be paid under this section shall be twenty-five percent of the duty or interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to condition that the amount of penalty so determined has also been paid within the period of thirty days.

38.6 I impose a penalty of **Rs.20,00,000/- (Rupees twenty lakh only)** on M/s. Navin Heavy Lifters under the provisions of Section 114 AA of the Customs Act, 1962.

38.7 I refrain from imposing a penalty on Shri Dharak Navin Dedhia, Partner M/s. Navin Heavy Lifters under the provisions of Section 114 AA of the Customs Act, 1962, as I have imposed a penalty under this section on the importer firm for the same action and also discussed in para 36.2 above.

38.8 I impose a penalty of **Rs.2,00,000/- (Rupees two lakh only)** on M/s. Amba Shipping Agencies (CHA) under the provisions of Section 117 of the Customs Act, 1962.

39. This order is issued without prejudice to any other action that may be taken against the noticees or persons or imported goods under the provisions of the Customs Act 1962, or any other law for the time being in force in India.



*Vivek*

21.02.23

(Vivek Pandey)

Commissioner of Customs (Import-I),  
New Custom House,  
Mumbai- 400 001

To,

1. M/s. Navin Heavy Lifters (IEC 0395018927)  
201, Shilpin Centre, Near Wadala Udyog Bhavan, 40, G.D. Ambekar Road,  
Wadala West, Mumbai -400 031.
2. Shri Dharak Navin Dedhia, Partner M/s. Navin Heavy Lifters  
201, Shilpin Centre, Near Wadala Udyog Bhavan, 40, G.D. Ambekar Road,  
Wadala West, Mumbai -400 031.
3. M/s. Amba Shipping Agencies (AABPD7063PCH001)  
401, Rajgor Chambers, 99, Masjid Siding Road, above S.B.I., Masjid (East),  
Mumbai- 400 009.

Copy to:

1. The Pr. Chief Commissioner of Customs, Mumbai Zone-I,  
New Custom House, Mumbai.
2. The Deputy Commissioner of Customs, CIU, New Custom House, Mumbai.
3. ADG(CEIB), Central Economic Intelligence Bureau, Janpath Bhavan, B-wing, 6th  
Floor, New Delhi-110001.
4. Deputy Commissioner of Customs, Group-V, New Custom House, Mumbai.
5. Office Copy.



