



भारत सरकार

वित्त मंत्रालय/ राजस्व विभाग

केंद्रीय अप्रत्यक्ष कर एवं सीमाशुल्क बोर्ड - मुंबई अंचल-1, भारतीय सीमाशुल्क

**आयुक्त सीमाशुल्क (आयात-1) का कार्यालय**

द्वितीय मंजिल, नवीन सीमाशुल्क भवन, शूरजी वल्लभदास मार्ग, बेलाई एस्टेट,  
मुंबई-400001.

दूरध्वनि-22757401 फ़ैक्स-22757402

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

फा.सं. : GEN/ADJ/COMM/38/2021-ADJN

के द्वारा जारी किया गया : विवेक पाण्डेय  
आयुक्त सीमाशुल्क (आयात-1)

आदेश दिनांक: 30.03.2023  
जारी दिनांक: 30.03.2023

सी.ए.ओ. क्रमांक : 98/2022-23/CAC/CC(IMPORT-1)/VP/ADJ(IMP-1)  
DIN No.

### मूल आदेश

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





**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)**  
2<sup>nd</sup> FLOOR, NEW CUSTOM HOUSE, SHOORJI VALLABHDAS ROAD, BALLARD ESTATE,  
MUMBAI - 400001.

Tel. No. 22757401 Fax No. 22757402

e-mail: [adjn-commr-imp1nch@gov.in](mailto:adjn-commr-imp1nch@gov.in)

F.No. GEN/ADJ/COMM/38/2021-ADJN

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

Date of Order: 30.03.2023  
Date of Issue: 30.03.2023

C.A.O. No.: 98/2022-23/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)  
DIN No.

**ORDER-IN-ORIGINAL**

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

**Subject: Adjudication of Show Cause Notice<sup>1</sup> F.No. DRI/MZU/CI/INT-103/2019/5052 to 5059 dated 11.01.2021 relating to evasion of Customs duty amounting to Rs. 65,44,195/- by M/s. Vraj Construction Co. (IEC No. 2417506548) in the import of 'Wirtgen Slip Form Paver Model SP94' vide Bill of Entry No. 3430751 dated 29.09.2017 (filed by the Customs Broker, M/s Simon Brothers Pvt. Ltd., CB No. 11/457) by mis-declaring themselves as "sub-contractor", so as to avail Nil rate of Basic Customs Duty under Sr. No. 411 of Notification 50/2017-Cus dated 30.06.2017.**

**Brief facts of the case**

The facts contained in the SCN are summarised below.

2. Intelligence was developed by the DRI, Mumbai Zonal Unit that certain contractors were importing machines required for road construction by availing the benefit of Nil Customs duty under Notification No. 50/2017-Cus. dated 30.06.2017<sup>2</sup> in connivance with Mr. Vijay P. Shetty<sup>3</sup>, earlier working as manager in a Customs Broker firm, M/s. Simon Brothers Pvt. Ltd.<sup>4</sup>(PAN based CB No. AAACS8106LCH001), whereas the said benefit was only available to such contractors (importers) who were awarded the contract by the Government or to their sub-contractors who were named in such contract.
3. Accordingly, investigation was initiated and during preliminary enquiry, it was revealed that certain firms/ companies had imported different types of 'Slip Form Paver finishers for laying concrete pavement' (a road construction equipment) under Customs Tariff Item (CTI) 84791000 and availed benefit of Nil rate of Basic Customs Duty (BCD) under Sr. No. 368 of erstwhile Notification No. 12/2012-Cus. dated 17.03.2012 and its corresponding entry at Sr. No. 411 of Notification No. 50/2017-Cus. dated 30.06.2017 after implementation of GST. It is pertinent to mention that certain road construction equipment as mentioned at list 16 of erstwhile Notification No. 12/2012-Cus dated 17.03.2012 and at list 14 of the Notification No. 50/2017-Cus. dated 30.06.2017 were eligible to be imported at Nil rate of BCD, subject to certain conditions laid down under conditions No. 9 & 14 mentioned in the said Notifications respectively.
4. The relevant portion of the Customs Tariff Heading 8479 and the Notification No. 12/2012-Cus. dated 17.03.2012 and Notification No. 50/2017-Cus. dated 30.06.2017 are reproduced below for ease of reference: -

<sup>1</sup> The said SCN or SCN

<sup>2</sup> Also referred to as said Notification or exemption Notification

<sup>3</sup> Also referred to as Noticee-3

<sup>4</sup> Also referred to as Noticee-5



Vineet  
30.03.23

CTH 8479

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter			
8479 10 00	Machinery for public works, building or the like	u	7.5%	-

**NOTIFICATION NO. 12/2012-CUS. DATED 17.03.2012**

Sr. No.	Chapter of heading or sub-heading or tariff item	Description of goods	Standard Rate	Additional Duty Rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
368	84 or any other Chapter	Goods specified in List 16 required for construction of roads	Nil	-	9

List 16:

...

**(3) Slip form/fixed form paver finisher for laying concrete pavement**

...

**Condition 9:**

<b>Condition No.</b>	<b>Condition</b>
9.	<p><i>If, -</i></p> <p><i>(a) the goods are imported by-</i></p> <p><i>(i) the Ministry of Surface Transport, or</i></p> <p><i>(ii) a person who has been awarded a contract for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by the Public Works Department of a State Government, Metropolitan Development Authority or by a road construction corporation under the control of the Government of a State or Union territory; or</i></p> <p><i>(iii) a person who has been named as a sub-contractor in the contract referred to in (ii) above for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by Public Works Department of a State Government, Metropolitan Development Authority or by a road construction corporation under the control of the Government of a State or Union territory;</i></p> <p><i>(b) the importer, at the time of importation, furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, to the effect that he shall use the imported goods exclusively for the construction of roads and that he shall not sell or otherwise dispose of the said goods, in any manner, for a period of five years from the date of their importation:</i></p> <p><i>Provided that the said Deputy Commissioner of Customs or the Assistant Commissioner of Customs, may allow the importer to sell or dispose of any of the imported goods on payment of</i></p>



	<p><i>Customs duties at the rates applicable at the time of import but for this exemption, on the depreciated value of the goods to be calculated @ 5% on straight line method for each completed quarter starting from the date of importation of the said goods till the date of their sale subject to the condition that the concerned Ministry, Authority, Department or Corporation referred to in condition (a) above certifies that said goods in the project, for which duty free import was allowed, are no longer required for the project.</i></p>
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**NOTIFICATION NO. 50/2017-CUS. DATED 30.06.2017**

<i>Sr. No.</i>	<i>Chapter of heading or sub-heading or tariff item</i>	<i>Description of goods</i>	<i>Standard Rate</i>	<i>IGST</i>	<i>Condition No.</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>
4	84 or any other Chapter	Goods specified in List 14 required for construction of roads	Nil	-	14

**List 14:**

1) Slip form/fixed form paver finisher for laying concrete pavement

...

**Condition 14:**

<b>Condition No.</b>	<b>Condition</b>
14.	<p><i>If, -</i></p> <p><i>(a) the goods are imported by-</i></p> <p><i>(i) the Ministry of Surface Transport, or</i></p> <p><i>(ii) a person who has been awarded a contract for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by the Public Works Department of a State Government, Metropolitan Development Authority or by a road construction corporation under the control of the Government of a State or Union territory; or</i></p> <p><i>(iii) a person who has been named as a sub-contractor in the contract referred to in (ii) above for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by Public Works Department of a State Government, Metropolitan Development Authority or by a road construction corporation under the control of the Government of a State or Union territory;</i></p> <p><i>(b) the importer, at the time of importation, furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, to the effect that he shall use the imported goods exclusively for the construction of roads and that he shall not sell or otherwise dispose of the said goods, in any manner, for a period of five years from the date of their importation:</i></p> <p><i>Provided that the said Deputy Commissioner of Customs or the Assistant Commissioner of Customs, may allow the importer to sell or dispose of any of the imported goods on payment of Customs duties at the rates applicable at the time of import but for this exemption, on the depreciated value of the goods to be calculated @ 5% on straight line method for each completed quarter starting from the date of importation of the said goods</i></p>

	<p><i>till the date of their sale subject to the condition that the concerned Ministry, Authority, Department or Corporation referred to in condition (a) above certifies that said goods in the project, for which duty free import was allowed, are no longer required for the project.</i></p> <p><i>(c) Omitted.</i></p>
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5. It was revealed during preliminary verification that the said importers were submitting documents/ certificates at the time of clearance claiming that they were the sub-contractors for the construction of roads in India as per the contracts awarded by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by the Public Works Department of a State Government, Metropolitan Development Authority or by a road construction corporation under the control of the Government of a State or Union territory (hereinafter referred to 'primary/ original/ main contract') so as to fulfil the Notification condition; that however they were not named as a sub-contractor in the main contract. Further, it appeared that the said importers entered into sub-contractor agreement with the original contractor after the original contract was awarded to the said original contractor; that they had produced the said sub-contractor agreement at the time of Customs clearance of the said 'Slip Form Paver finishers for laying concrete pavement' so as to claim the Notification benefit.

**6. SEARCH OF THE PREMISE OF CUSTOMS BROKER (CB)/ LOGISTICS FIRM AND FOLLOW UP: -**

6.1 During the investigation, it was revealed that the Customs licence of the Customs Broker (CB) firm, M/s Simon Brothers Pvt. Ltd. was suspended in January, 2018 by Mumbai Customs due to an ongoing investigation pending against them in some other case, however, Shri Vijay P. Shetty, the then manager of the said CB firm was operating a logistics firm namely M/s Jal Trans Logistics<sup>5</sup> since the year 2008 and was facilitating Customs clearance of such goods by using licences of other Customs Broker firms.

6.2 Accordingly, the office premise of the said logistics firm, M/s Jal Trans Logistics at "A-403, Gokul Arcade, Subhash Road, Near Garware House, Vile Parle East, Mumbai – 400057" was searched. During the search, import documents related

<sup>5</sup> Also referred to as Noticee-4



to recently cleared road construction equipment cleared by a Customs Broker, M/s Dharma Exim & Logistics and past clearances handled by the Customs Broker, M/s Simon Brothers Pvt. Ltd. and others, were found in the said premise. The search was conducted under Panchanama dated 23.10.2018 and relevant records were recovered for the purpose of further investigation.

7. Voluntary Statement dated 24.10.2018 of Shri Vijay P. Shetty, Manager of M/s Jal Trans Logistics and the then manager of Customs Broker M/s Simon Brothers Pvt. Ltd. wherein he, inter-alia, stated as below: -

a. He was the sole manager in the said logistic firm M/s Jal Trans Logistics and he looked after marketing, operations and used to supervise the billing activities. They had a transportation/Customs Broker service agreement dated 10.01.2018 with M/s Wirtgen India Pvt. Ltd., Daund, Pune (a subsidiary of Wirtgen GMBH) for Customs clearance and local transportation of such imported goods supplied by M/s Wirtgen GMBH to Indian buyers. Accordingly, sales team of M/s Wirtgen India Pvt. Ltd. used to inform them about the prospective Indian buyers of 'various Slipform pavers of Wirtgen make'. In turn he used to contact the said buyers and offer logistics and Customs clearance services. Sometimes, the Indian buyers of the said Wirtgen equipment themselves contacted him for such services.

b. In the past, the Customs clearance was done through Customs Broker M/s Simon Brothers Pvt. Ltd from the year 2008 to January 2018, when the licence of M/s Simon Brothers Pvt. Ltd was suspended. Thereafter, they outsourced the Customs clearance work to another Customs Broker, Maj Shipping Pvt. Ltd. during January 2018 and February 2018. Afterwards, they outsourced the same to the Customs Broker, Sambasivam & Company during March 2018 and April 2018. Since March-April, 2018, they were outsourcing the Customs clearance work to a Customs Broker, Dharma Exim & Logistics (CB licence No. 11/2398 of Mumbai), a proprietary firm having registered address as "B2/1204, Runwal Estate, Ghodbunder Road, Behind R Mall, Chitalsar, Thane West, Maharashtra-400607" which was owned by Ms. Preeti Mohit Yadav. Shri Satish G. Shetty (his cousin) and Shri Kirpal B. Negi were Customs clerks in the said Customs Broker firm, and they looked after the Customs clearance at Nhava-Sheva Port, Mumbai Port and ACC Sahar.

c. On being asked about the preparation of Customs checklists and other documentation, he stated that the checklists were prepared in the premise of his logistics firm i.e. M/s Jal Trans Logistics by Shri Nitesh Anchan, the documentation clerk who used to prepare the checklist as per the documents received from the importers on Nitesh Anchan's email-id. Many times, the documents were also received by him (Shri Vijay P. Shetty) on his email-id, which in turn he used to

forward to Shri Nitesh Anchan for preparation of checklists. Thereafter, the said checklists were mailed to the importers for their confirmation. On being asked, he stated that he used to scrutinize the checklist after it was prepared by Shri Nitesh Anchan and thereafter it was sent to the concerned importers for their confirmation. On being asked as to how the Bills of Entry were filed in the ICEGATE system after confirmation of checklists and receipt of required documents from the importers, he stated that they used ONS software and the documents such as Bill of Lading, commercial invoice, packing list, etc. were uploaded digitally through e-sanchit and the Bill of Entry was filed in the ICEGATE system and this work was done by Nitesh Anchan.

d. On being asked, he stated that approximately 45 to 50 road construction equipment (majority were slip form pavers) were cleared by them, wherein benefit of Sr. No. 368 of Cus. Notification 12/2012 or Sr. no. 411 of Cus. Notification 50/2017 was availed.

e. On being shown the relevant condition No. 9 of Cus. Notification 12/2012 and condition No. 14 of Cus. Notification 50/2017, he confirmed that it was necessary that the name of the sub-contractor was required to be mentioned in the primary/main contract in order to avail the benefit of the said Notification by the sub-contractor. He also furnished details of the importers who had imported the subject equipment as sub-contractors and claimed the said Notification benefit. On being specifically asked as to whether the said sub-contractor importers had submitted copies of the primary/main contract during the clearance of their goods, he stated that some of the importers had given 2-3 pages of the primary/main contracts, whereas each such contract consisted of minimum 300 pages. As the complete contracts were not provided by the importers to them, hence the same were not submitted before the Customs during clearance. On being asked about the documents submitted during the clearance of such goods, he stated that generally copies of (i) Letter of Acceptance (ii) Sub-contract agreement (iii) Sub-contractor approval letter by contract awarding authority or by any sub-ordinate office and (iv) undertaking bond as per the Notification condition, were submitted at the time of clearance.

f. On being asked as to whether he verified that such sub-contractor was named in the primary/main contract, he stated that they had handled two different types of cases (i) In first type of cases, the primary/main contract were awarded to a Joint Venture Entity/ Consortium and a sub-contract/ sub-let agreement was executed between the Joint Venture Entity/ Consortium and one of the partners of the said Joint Venture Entity/ Consortium. In this case, the import was in the name of the said partner who got sub-contract work from the Joint Venture. The said sub-contract was approved by the concerned project awarding authority (ii) In second type of cases,

the primary/ main contract was awarded to a contractor who in turn executed a sub-contract/ sub-let agreement with a third party i.e. a sub-contractor. This sub-contract agreement was approved by the concerned project awarding authority.

g. On being shown the relevant condition no. 9 of Custom Notification No. 12/2012 and condition no. 14 of Custom Notification No. 50/2017, he accepted that mere name of an importer as "partner" of Joint Venture/ Consortium in the main/ primary contract did not entitle them to avail the said Notification benefit and as per the condition a(iii) of the said Notification, the importer's name must have been mentioned as sub-contractor in the main/ primary contract itself.

h. He was shown printouts of e-mail dated 26.07.2018 (12:54) along with trail mails dated 26.07.2018 (10:47 AM), 19.07.2018 (06:47 PM), 19.07.2018 (06:36 PM) and 19.07.2018 (08:42 AM) submitted by him during the course of Search Panchanama dated 23.10.2018. The image of the said e-mail and trail mails are produced below as **IMAGE-I to IMAGE-IV**:-

**IMAGE-I**

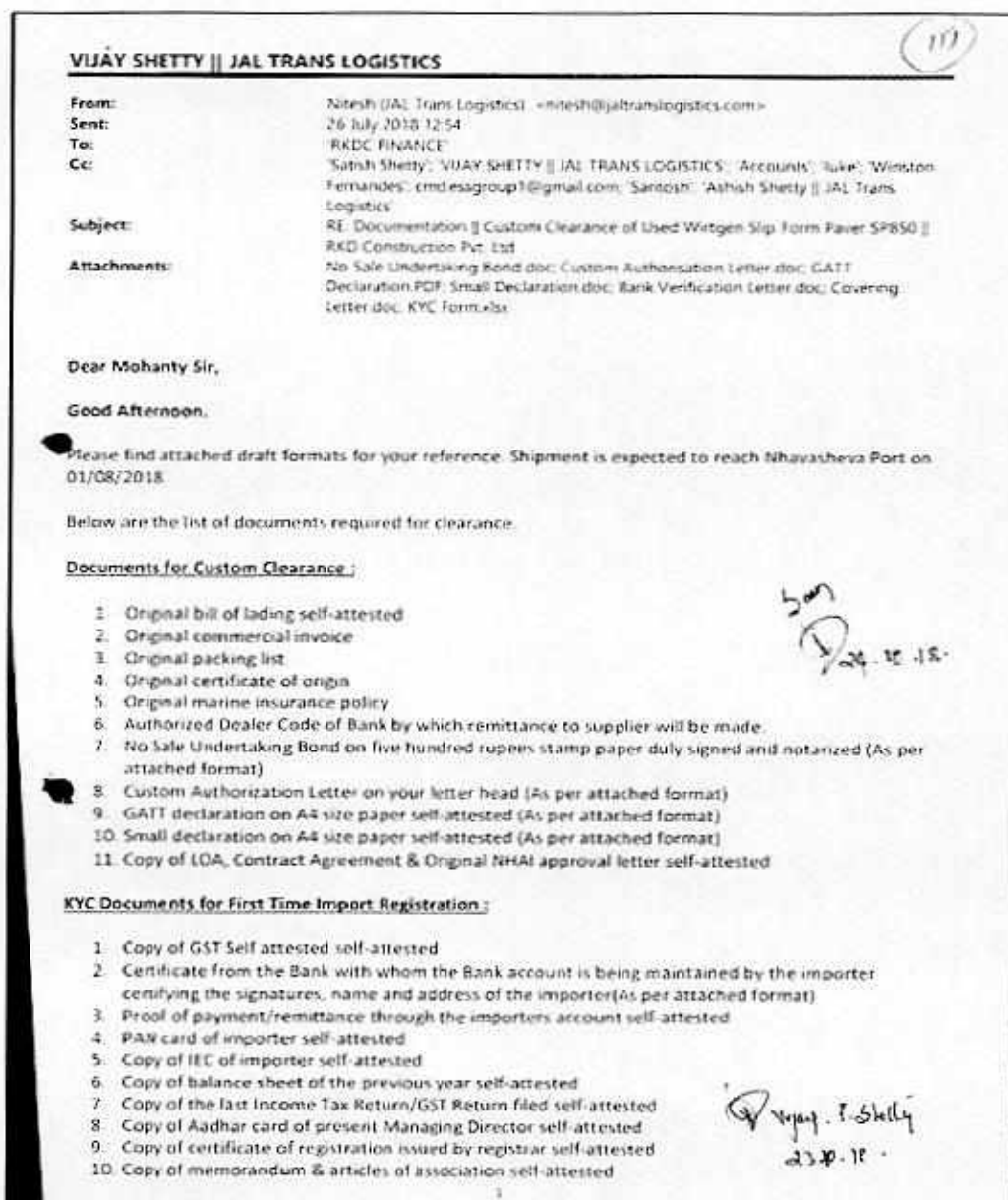


IMAGE-II


11. Covering letter on your letter head (As per attached format)  
12. KYC Form duly filled (As per attached format)

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NITESH ANCHAN

**JAL** Trans Logistics

A-403, 4<sup>th</sup> Floor, Gokul Arcade, Subhash Road, Near Garware House,  
Andheri East, Mumbai - 400057 Maharashtra, India  
Tel : +9122 66714739 to 44 Dir : +9122 66714742  
Fax : +9122 66714741  
HP : +91 8828043357 Email : nitesh@jaltranslogistics.com

 Save a tree. Don't print this e-mail unless it's really necessary.

From: VIJAY SHETTY || JAL TRANS LOGISTICS [mailto:vijay@jaltranslogistics.com]  
Sent: Thursday, July 26, 2018 10:47 AM  
To: 'RKDC FINANCE'; 'Nitesh (JAL Trans Logistics)'  
Cc: 'Satis Shetty'; 'Accounts'; 'luke'; 'Winston Fernandes'; cmd.essgroup1@gmail.com; 'Santosh'; 'Ashish Shetty || JAL Trans Logistics'  
Subject: Documentation || Custom Clearance of Used Wirtgen Slip Form Paver SP850 || RKD Construction Pvt. Ltd

Dear Nitesh

Please find attached soft copy of contract related documents and IEC / GST Regn of the customer for your reference. Kindly confirm list of documents to customer with their formats. Value of consignment is EUR 8,22,000.00 ( Based on this you may calculate bond value for No Sale Bond Undertaking ).

Mohanty Sir : As discussed you need to confirm Mr Winston to handover the shipping documents. Hence please confirm Winston Sir in writing so that we can collect original shipping documents from his Mumbai office. Our revised offer for clearance is as under.


1. All Statutory Charges such as Shipping Line / CFS / Stamp Duty / Loading and Unloading / Transportation Charges – Actual against Invoice and Receipt.
2. Opening / Re Packing and Delivery Expenses – Rs 2,000.00 per Container.
3. Misc and Sundry Expenses for Examination and Assessment – 0.65% on Ass Value ( Payable in Cash )
4. Chartered Engineer Certificate Charges – Rs 15,000.00
5. Attendance and Agency – 0.10% on Ass Value
6. GST – As Applicable @ 18%.

Thanks and Regards

VIJAY SHETTY

**JAL** Trans Logistics

A403 Gokul Arcade || Subhash Road || Near Garware House  
Vile Parle East || Mumbai - 400 057 Maharashtra || India  
Tel : +9122 66714739 to 44 || Dir : +9122 66714741  
Fax : +9122 66714741  
HP : +91 9819219791 || Email : vijay@jaltranslogistics.com

 Save a tree. Don't print this e-mail unless it's really necessary.

Srey  
29.10.18

Vijay P. Shetty  
22.10.18



IMAGE-III

From: VIJAY SHETTY || JAL TRANS LOGISTICS [mailto:vijay@jaltranslogistics.com]  
Sent: Thursday, July 19, 2018 6:47 PM  
To: 'RKDC FINANCE'  
Cc: 'Satis Shetty'; 'Accounts'; 'luke'; 'Winston Fernandes'; cmd.essgroup1@gmail.com  
Subject: RE: Offer || Custom Clearance of Used Wirtgen Slip Form Paver SP850 || RKD Construction Pvt. Ltd

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Dear Mohanty Sir


Draft sub contract agreement seems to be Okay.

Thanks and Regards

VIJAY SHETTY

**JAL** Trans Logistics

A403 Gokul Arcade || Subhash Road || Near Ganware House  
Vile Parle East || Mumbai - 400 057 Maharashtra || India  
Tel: +9122 66714739 to 44 || Dir: +9122 66714741  
Fax: +9122 66714741  
HP: +91 9819219791 || Email: vijay@jaltranslogistics.com

 Save a tree. Don't print this e-mail unless it's really necessary.

From: RKDC FINANCE [mailto:finance@rkdcpil.com]  
Sent: Thursday, July 19, 2018 6:36 PM  
To: VIJAY SHETTY || JAL TRANS LOGISTICS  
Cc: Satis Shetty; Accounts; luke; Winston Fernandes; cmd.essgroup1@gmail.com  
Subject: Re: Offer || Custom Clearance of Used Wirtgen Slip Form Paver SP850 || RKD Construction Pvt. Ltd

Sir,

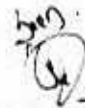
I am attaching herewith draft subcontract agreement for your reference. Pls. go through it & confirm is in line for obtaining customs exemption so that we shall do the agreement.

Regards.

Mohanty

On Thu, Jul 19, 2018 at 8:42 AM, VIJAY SHETTY || JAL TRANS LOGISTICS  
<vijay@jaltranslogistics.com> wrote:

Dear Mr Mohanty

  
29.10.18.

Good Morning.

As discussed and considering value of EUR 8,22,000.00, please find below our offer for Custom Clearance of Used Wirtgen Slip Form Paver SP850 under basic custom duty exemption.


  
Vijay. P. Shetty  
23.10.18.



IMAGE-IV

(13)

1. All Statutory Charges such as Shipping Line / CFS / Stamp Duty / Loading and Unloading / Transportation Charges – Actual against Invoice and Receipt.
2. Opening / Re Packing and Delivery Expenses – Rs 2,000.00 per Container.
3. Misc and Sundry Expenses for Examination and Assessment – 0.85% on Ass Value ( Payable in Cash )
4. Chartered Engineer Certificate Charges – Rs 15,000.00
5. Attendance and Agency – 0.15% on Ass Value
6. GST – As Applicable @ 18%.


As far supporting documents for an exemption is concerned, you have to prepare the same as informed yesterday. Sample documents are already have shared with you. Those documents are in line with Custom Notification.

Kindly confirm your understanding in writing about our offer so that we proceed further for documentation part for custom clearance.

Thanks and Regards

VIJAY SHETTY

**JAL** Trans Logistics  
A403 Gokul Arcade || Subhash Road || Near Garware House  
Vile Parle East || Mumbai - 400 057 Maharashtra || India  
Tel : +9122 66714739 to 44 || Dir : +9122 66714741  
Fax : +9122 66714741  
HP : +91 9819219791 || Email : [vijay@jaltranslogistics.com](mailto:vijay@jaltranslogistics.com)

 Save a tree. Don't print this e-mail unless it's really necessary.

29.10.18  
27.10.18

8. As per the above said e-mail conversation, Shri Vijay P. Shetty and his staff Shri Nitesh Anchan was conversing with Mr. Mohanty (an employee of one M/s RKD Construction Pvt. Ltd.), wherein they were guiding the said importer firm to prepare

documents viz. sub-contract agreement as per a draft agreement sent to them to avail the benefit of the said Customs Notification. Further, Shri Vijay P. Shetty had approved the draft sub-contract agreement sent by M/s RKD Construction Pvt. Ltd. During recording of his statement, Shri Vijay P. Shetty was asked about the purpose of this conversation and the basis of his approval to the sub-contract agreement, as he had no business/expertise in doing so. In reply, he stated that he had a sample sub-contract/ sub-let agreement for clearance of a past consignment and he merely compared both the sub-contract agreements and found the same in order and therefore, he okayed the said draft sub-contract agreements sent by the importer.

9. On the basis of examination of records taken over from the premise of M/s Jal Trans Logistics during Search Panchanama dated 23.10.2018, various importers were identified who had imported road construction equipment viz. 'Slip Form Paver Finisher' by declaring themselves as sub-contractor and thereby availed benefit of Nil BCD under Sr. No. 368 of erstwhile Notification No. 12/2012-Cus dated 17.03.2012 or Sr. No. 411 of Notification No. 50/2017-Cus dated 30.06.2017.

10. M/s Vraj Construction Co.<sup>6</sup> bearing IEC No. 2417506548, with its registered office at 'Block No. 4, 2nd Floor, Sardar Patel Shopping Centre, Jilla Panchayat Road, Amreli, Gujarat, PIN- 365601', was one of the said importers who had imported a 'Slip Form Paver Model SP94' vide Bill of Entry No. 3430751 dated 29.09.2017 by declaring themselves as 'sub-contractor' and availed benefit of Nil BCD under Sr. No. 411 of the Notification No. 50/2017-Cus dated 30.06.2017. The said Bill of Entry was filed by the Customs Broker, M/s Simon Brothers Pvt. Ltd. (CB No. 11/457) on behalf of the importer.

## 11. SCRUTINY OF IMPORT DATA:

11.1 The said Slip Form Paver was imported vide the Bill of Entry No. 3430751 dated 29.09.2017 through Mumbai Seaport, the details of which are as under at Table-I below:

TABLE-I

Sr. No.	Bill of Entry no. and date	Description as per BE	QTY (In unit)	CTI Declared and assessed	Assessable Value (in Rs.)	Duty Paid	Notification benefit taken
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<sup>6</sup> Also referred to as 'the importer or Noticee-1'

1	3430751 dated 29.09.2017	Wirtgen Slip Form Paver Model SP94 with its Accessories	1	84791000	71791950/ -	12922551 /-	BCD @ Nil as per Sr. No. 411 of Notificati on No. 50/2017- Cus. dated 30.06.20 17
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**11.2** During the clearance of the said goods, apart from import documents viz. import invoice, packing list and Bill of Lading, etc., certain other documents were submitted by the importer to claim the said Notification benefit. The details of the said documents at time of clearance of the said goods, are mentioned at Table-II below:

**TABLE-II**

Sr. No.	Document name	Subject	Remarks
1.	Concession Agreement <sup>7</sup> dated 09.08.2016	The Concession Agreement dated 09.08.2016 was executed between 'National Highways Authority of India, G-5&6, Sector 10, Dwarka, New Delhi' AND 'M/s MEP Sanjose Mahuva Kagavadar Road Private Limited, B1-406, 4 <sup>th</sup> Floor, Boomerang, Chandivali Farm Road, Andheri (East), Mumbai', for ' <i>Four Laning of Mahuva To Kagavadar Section of NH-8E from KM. 100.100 to KM 139.915 (Design Chainage from KM 100.450 to KM 140.470) (Package</i>	Only first few pages of the Volume-I of the said Concession Agreement were submitted during Customs Clearance. The Volume II and Volume III were not submitted to the Customs Authorities at all.

<sup>7</sup> Also referred to as the Agreement or CA

		<i>III) in the State of Gujarat on Hybrid Annuity Mode under NHDP Phase IV)</i>	
2.	Sub-contract Agreement dated 17.07.2017	The sub-contract agreement dated 17.07.2017 was executed between M/s MEP Sanjose Mahuva Kagavadar Road Private Limited AND the importer, M/s Vraj Construction Co. and the same was submitted by the importer to the Customs. As per the said agreement, the importer was given sub-contract for ' <i>laying of pavement quality concrete for rigid pavement using Slipform paver of width 9.5 meter along with allied equipment for expansion &amp; transverse joint &amp; cutting &amp; fixing of Dowel and Tie bar from km 120.450 to km 140.470 (20 km) on item contract of Rs. 20,75,31,379/</i> ' out of the Project awarded to M/s MEP Sanjose Mahuva Kagavadar Road Private Limited under the said Concession Agreement dated 09.08.2016.	
3.	Customs Undertaking	Submitted by the importer to the Customs Department at the time of clearance of the subject goods, wherein they had undertaken that the subject goods would exclusively be used for construction of National/ State Highways and they would not be sold or otherwise disposed of in any manner for the period 5 years from the date of importation as per the condition No. 14 for Sr. No. 411 of the Notification No. 50/2017-Cus. dated 30.06.2017.	

4.	Letter No. NHAI/SO/BHAV/P kg-III/D-424 dated 21.09.2017 issued by the Manager (Tech), Site Office Bhavnagar, National Highway Authority of India	Vide the said letter, the importer was accorded approval as Sub-Contractor of the Concessionaire to carry out the subject work and for seeking customs duty exemption.	
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**11.3** It is seen that in this case, the importer undertook to use the subject road paver for specified work given to them under the sub-contract agreement dated 17.07.2017 out of the main contract i.e. CA dated 09.08.2016. The National Highway Authority of India (The NHAI) had invited proposals by its Request for Proposal (RFP) dated 08.02.2016 for shortlisting of bidders to '*Augment the existing road from Km 100.100 (Design Chainage 110.450) to Km 139.915 (Design Chainage Km 140.470) on the Mahua to Kagavadar Section of the National Highway No. 8E in the State of Gujarat on design, build, operate and transfer (the 'DBOT Annuity' or 'Hybrid Annuity') basis.*' Bid of a consortium comprising 'MEP Infrastructure Developers Ltd. and Sanjose India Infrastructure & Constructions Pvt. Ltd. (JV)' was accepted. Thereafter, a Letter of Award (LoA) dated 25.06.2016 was issued to the said JV requiring them for execution of a Concession Agreement within 45 days from the date of receipt of the said LoA. As per the condition of the LoA, The said Consortium then promoted and incorporated a Concessionaire as a limited liability company under the Companies Act, 2013 in the name of M/s MEP Sanjose Mahuva Kagavadar Road Private Limited, Maharashtra (hereinafter referred to as 'M/s SMKRPL'). Thereafter, the CA was executed on 09.08.2016 between NHAI and M/s SMKRPL. Thereby, M/s SMKRPL became the original/ primary contractor of the said contract. Later, M/s SMKRPL entered into an agreement of Sub-Contract dated 17.07.2017 with M/s. Vraj Construction Co. i.e. the importer. It is pertinent to mention that in the subject case, a sub-contract agreement was signed between on 17.07.2017, i.e. after the execution of the original contract on 09.08.2016. The details of the said sub-contract agreement are mentioned at Sr. No. 2 of Table-II above.



**12. STATEMENT OF OTHER CONCERNED PERSONS: -**

**12.1** Statement of Shri Milan Kiritbhai Charadva, Manager of M/s. Vraj Construction Co., the importer was recorded on 10.06.2019 under Section 108 of the Customs Act, 1962<sup>8</sup>, wherein he, inter-alia, stated as below: -

- a. The Partner of the importer firm, Shri Vasantkumar Bavalal Movaliya<sup>9</sup> had been suffering from diabetes, Hypertension and Ischemic heart disease and had been advised not to travel long distance. Hence, he could not appear before the DRI officer for recording of his statement. He submitted a medical certificate issued by Dr. G. J. Gajera, M.D. in this regard. He stated that he was looking after accounts and filing of online tenders. He further submitted that they had imported the subject Wirtgen Slipform Paver vide the Bill of Entry No. 3430751 dated 29.09.2017. The NHAI authorities had awarded a contract for construction of part of National Highway 8E to M/s SMKRPL. Later, the concessionaire M/s SMKRPL entered into agreement of Sub-Contract with the M/s. Vraj Construction Co. i.e. the importer. The subject Slipform Paver was imported for the construction of the said project.
- b. On being asked as to how did they come into contact of Shri Vijay P. Shetty of M/s Jal Trans Logistics, he stated that Shri Raja Mukherjee, Director of M/s SMKRPL introduced them to Mr. Vijay P. Shetty to get the customs clearance done. He further stated that Shri Vijay P. Shetty informed that there was duty exemption in case of import of Slipform Paver machine.
- c. On being shown the relevant condition No. 14 of the Notification No. 50/2017-Cus., he stated that they had not gone through the terms and condition of either of the Notification No. 12/2012-Cus. or 50/2017-Cus. and they provided documents as per Shri Vijay P. Shetty's instruction. He further stated that their name was not referred/ mentioned as subcontractor in the main contract and hence, they violated the said condition of the Notification No. 50/2017-Cus. He undertook to convey the same to Shri Vasantkumar Bavalal Movaliya, the Partner of the importer firm.

**12.2** Statement of Shri Vimal Kakani, Authorised Representative of the importer, M/s Vraj construction Co., was recorded on 21.09.2020 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated as below: -

- a. He submitted a letter dated 21.09.2020 issued by Shri Vasantkumar Bavalal Movaliya, partner of the importer firm, wherein Shri Vimal Kakani was appointed as an authorised representative on behalf of him and the importer firm i.e. M/s Vraj Construction Co. to act, appear and represent in the subject investigation proceedings and to submit and file the necessary information/ documents. He also submitted a

<sup>8</sup> Also referred to as the Act

<sup>9</sup> Also referred to as Noticee-2

medical certificate issued by Dr. G. J. Gajera, M.D., wherein it was certified that Shri Vasantkumar Bavalal Movaliya was suffering from various diseases and hence was advised not to travel long distance.

- b. On being asked as to how was he related to M/s Vraj Construction Co., he stated that he was relative of Shri Vasantkumar Bavalal Movaliya, partner of the importer firm and used to assist them in execution and completion of various construction projects. On being asked about the purpose of import of the subject Wirtgen Slipform Paver vide the Bill of Entry No. 3430751 dated 29.09.2017 by M/s. Vraj Construction Co., he stated that the NHAI had invited proposals by its Request for Proposal dated 08.02.2016 for shortlisting of bidders to augment the existing road from Km 100.100 (Design Chainage 110.450) to Km 139.915 (Design Chainage Km 140.470) on the Mahua to Kagavadar Section of the National Highway No. 8E in the State of Gujarat on DBOT basis. Accordingly, a Request For Proposal dated 08.02.2016 was issued and bid of a consortium comprising MEP Infrastructure Developers Ltd. and Sanjose India Infrastructure & Constructions Pvt. Ltd. (JV) was accepted. Thereafter, a letter of Award dated 25.06.2016 was issued to them requiring execution of a Concession Agreement within 45 days. The said Consortium then promoted and incorporated a Concessionaire as a limited liability company under the Companies Act, 2013 in the name of M/s SMKRPL. Thereafter, the Concession Agreement was executed on 09.08.2016 between NHAI and M/s SMKRPL. Later, the Concessionaire M/s SMKRPL entered into an agreement of sub-contract dated 17.07.2017 with their firm M/s. Vraj Construction Co. and thereafter the Slipform Paver was used in the said construction. He further stated that he had been involved in the subject project since the same was given to M/s Vraj Construction Co. under the sub-contract agreement dated 17.07.2017 and they initiated talks with M/s Wirtgen India Pvt. Ltd. for procurement of the subject Wirtgen Slipform paver.
- c. On being asked that as to how M/s Vraj Construction Co. came into contact of Shri Vijay P. Shetty of M/s Jal Trans Logistics, Mumbai for customs clearance, he stated that as he was closely associated with the subject matter, he had asked 2-3 other known contractors who had imported the subject Slipform Pavers. They suggested names of 2-3 Customs Brokers. Thereafter, they chose Shri Vijay P. Shetty for customs clearance.
- d. On being shown that in the earlier statement dated 10.06.2019, Shri Milan Kiritbhai Charadva, Manager of M/s. Vraj Construction Co. had stated that it was Shri Raja Mukherjee, director of M/s SMKRPL who introduced them to Shri Vijay P. Shetty, he stated that as he had been very closely associated with this project, he reiterated that Shri Vijay P. Shetty was selected as per the suggestions of some of their known contractors.

- c. On being asked about the documents provided to Shri Vijay P. Shetty for customs clearance, he stated that he telephonically contacted Shri Vijay P. Shetty on behalf of Shri Vasantkumar Bavabhai Movaliya, Partner of M/s Vraj Construction Co., wherein Shri Vijay P. Shetty specifically asked as to whether they were original contractor or sub-contractor. When it was told to him that they were sub-contractor, he firstly asked to show the sub-contractor agreement. Thereafter, they sent him import documents viz. invoice, packing list and agreement related documents i.e. sub-contractor agreement and few pages of Concession Agreement dated 09.08.2016. On being asked as why did they not submit the complete copy of the concession agreement dated 09.08.2016, he stated that the 3 volumes of the said concession agreement were bulky and the complete copy was not sought by Shri Vijay P. Shetty. Therefore, they did not submit the complete copy of the said agreement.
- f. On being asked as to whether anyone from M/s Vraj Construction Co. had gone through the terms and conditions of the Customs Exemption Notification No. 50/2017 before the said goods were imported, he stated that nobody from M/s Vraj Construction Co. had gone through the terms and conditions of the said Customs exemption Notification No. 50/2017 before the said goods were imported. They were told that customs exemption was available to the contractor and sub-contractor for import of Slipform Paver.
- g. On being shown the relevant condition applicable to Sr. No. 411 of the Notification No. 50/2017-Cus., he accepted that as in this case, the sub-contractor agreement between M/s SMKRPL and M/s Vraj Construction Co. was executed on 17.07.2017 i.e. after the execution of Concession Agreement dated 09.08.2016 between the NHAI Authorities and M/s SMKRPL, it was not possible that name of M/s Vraj Construction Co. would be in the Concession Agreement. On being asked as to who had signed the subject sub-contract agreement dated 17.07.2017 on behalf of M/s Vraj Construction Co., he stated that it was Shri Vasantkumar Bavabhai Movaliya, partner of M/s Vraj Construction Co. who had signed the said sub-contract agreement on behalf of his firm.

**12.3** Statement of Mrs. Reshma Satish Shetty, Proprietress of M/s Jal Trans Logistics and Director of M/s. Simon brothers Pvt. Ltd. (CB licence No. 11/457 of Mumbai, under suspension) was recorded on 06.02.2020 under Section 108 of the Customs Act, 1962, wherein she, inter-alia, stated as below: -

- a. She started a proprietorship firm M/s Jal Trans Logistics in the year 2002-03. Initially, they used to undertake transportation and freight forwarding work for imported and export goods. Thereafter, in the year 2007-08, she and her husband Shri Satish G. Shetty started to give Customs clearance work to Customs Broker, M/s

- Simon Brothers Pvt. Ltd. (CB NO. 11/457 of Mumbai). Subsequently, they both were appointed as directors in the said Customs Broker, M/s Simon Brothers Pvt. Ltd. in February, 2010. The Customs Broker, M/s Simon Brothers Pvt. Ltd. did not have their own clientele and they used to depend upon M/s Jal Trans Logistics for Customs clearance work. They used to undertake Customs clearance work of machineries, project imports, bulk cargos and road construction equipment as given by M/s Jal Trans Logistics. The Customs Broker licence of M/s Simon Brothers Pvt. Ltd. got suspended in January, 2018 in some other cases and the said suspension has not yet been revoked. After suspension of the said licence, M/s Jal Trans Logistics have been outsourcing Customs clearance work to the Customs Broker M/s Dharma Exim and Logistics which was a proprietorship firm of Mrs. Preeti Yadav.
- b. Shri Vijay P. Shetty was working in the Customs Broker company, M/s Simon Brothers Pvt. Ltd. as Manager (Marketing & Operations) and he used to procure work from market and was overall incharge of documentations and operations. Further, as Manager (Marketing & Operations) in M/s Jal Trans Logistics, he used to procure work from market and has been overall incharge of documentations and operations. Further, Shri Nitesh Anchan as documentation clerk in M/s Jal Trans Logistics, used to assist Shri Vijay P. Shetty in co-ordination with Clients and used to prepare the checklist on the basis of import documents and upload the same on the ICEGATE website.
- c. On being asked as to how Shri Nitesh Anchan, the employee of M/s Jal Trans Logistics was able to upload checklist on ICEGATE website as they had no Customs Broker licence, Mrs. Reshma S. Shetty informed that presently, M/s Jal Trans Logistics were outsourcing Customs clearance work to a Customs Broker M/s Dharma Exim and Logistics which was a proprietorship firm of Mrs. Preeti Yadav. Since Mrs. Preeti Yadav did not have any office premise, the staff of M/s Jal Trans Logistics assisted them in documentation related work. Apart from M/s Dharam Exim, M/s Jal Trans Logistics had also outsourced Customs clearance work to some other Customs Brokers, e.g. Maj Shipping and Sambasivam & Company, etc.
- d. On being asked she stated that invoice was raised by M/s Jal Trans Logistics to the importers for aggregate service charges of transportation/ logistics and Customs clearance work. However, for Customs clearance work, M/s Simon Brothers Pvt. Ltd. used to raise bill against M/s Jal Trans Logistics. Similar mechanism of bills was adopted as and when M/s Jal Trans Logistics outsourced Customs clearance work to other Customs Brokers viz. M/s Dharm Exim and Logistics, etc.
- e. On being asked she stated that M/s Jal Trans Logistics had transportation and Customs clearance agreement with M/s Wirtgen India Pvt. Ltd.



- f. On being shown a list of 33 Bills of Entry of import of Slipform Pavers (which included the subject Bill of Entry No. 3430751 dated 29.09.2017), wherein Notification benefit under Sr. No. 368 of erstwhile Notification No. 12/2012-Cus dated 17.03.2012 or Sr. No. 411 of Notification No. 50/2017-Cus dated 30.06.2017 was taken by some importers, she stated that M/s Jal Trans Logistics had got the logistics/ transportation as well as Customs clearance work for these consignment. Thereafter, the Customs clearance work was outsourced to the Customs Brokers, M/s Simon Brothers Pvt. Ltd., M/s Dharma Exim and Logistics and M/s Sambasivam & Company as shown against each of the Bills of Entry.
- g. On being asked whether she was aware that the importers had to fulfil certain conditions while availing the duty exemptions under the said Notifications, she stated that she was aware of the matter of ongoing investigation. She further stated that in these cases, Customs classification i.e. CTH and Notification benefits were finalised by Shri Vijay P. Shetty in the respective checklists before it was uploaded in ICEGATE for generation of Bill of Entry by Shri Nitesh Anchan.
- h. On being asked as to whether the necessary documents viz. like copy of main contract, Letter of Acceptance, addendum/ corrigendum to the main contract were produced before the Customs Authorities in these cases, she stated the decision of getting such documents from the importers was taken by Shri Vijay P. Shetty and the documents received from the importers were produced before the Customs Authorities at the time of clearance.
- i. She was shown the statement of Shri Vijay P. Shetty recorded on 24.10.2018 under Section 108 of the Customs Act, 1962, wherein he interalia stated that only 2-3 pages of the primary/ main contract were given by the importers and the same were submitted to the Customs. On being asked as to why the complete agreement was not submitted to the Customs, she offered no comment.

**13. DISCUSSION ON LEGAL PROVISIONS REGARDING THE NOTIFICATION CONDITION AND ELIGIBILITY OF IMPORTER (DESIGNATED AS SUB-CONTRACTOR) AFTER EXECUTION OF MAIN CONTRACT: -**

- 13.1** In the present case, the contract i.e. the CA between the Concessionaire, M/s SMKRPL and NHAI was signed on 09.08.2016. The said CA comprised of 3 Volumes, the details of the same are at Table-III below:



**TABLE-III**

S. No.	Description	Page No.
01	Volume I – Concession Agreement & Schedules	1 to 241
02	Volume II – Annexures	242 to 722
03	Volume III – Drawings (Plan & Profile)	723 to 760

As mentioned in the remarks column of Sr. No. 1 of Table-II at Para 4.2 above, the importer/ Customs Broker had submitted only the first few pages of the Volume-I of the said CA before the Customs Authorities. The Volume II and Volume III were not submitted to the Customs Authorities at all. It is seen that certain documents were made as the integral part of the Concession Agreement as per the provisions made in the said CA itself at Para 1.2.1(u) under Volume-I of the said Agreement. The image of the relevant page is produced below as IMAGE-V:

**IMAGE V**

- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement and the Request for Proposals ("RFP") forms an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- (w) the damages payable by either Party to the other of them, as set forth in the Agreement, whether on per diem basis or otherwise, are mutually agreed genuine

Interpretation Para 1.2.1(u) of Volume I- Concession Agreement & Schedules



*Four Laning of Mahuva to Nagarodar Section of NH-8E from Km 106.100 to Km 139.915 (Design Change from Km 100.450 to Km 140.470) (Package III) in the State of Gujarat on Hybrid Annuity Mode under NHDP Phase II'*

80

Mode under NHDP Phase II'


It is seen that the provisions were made as *“the Schedules and Recitals to this Agreement and the Request for Proposals (“RFP”) forms and integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement.”*

**13.2** It appears that the importer was required to be named in the said Concession Agreement in order to become eligible for benefit as per Sr. No. 411 of the Notification No. 50/2017-Cus. dated 30.06.2017. Hence, it was necessary for the importer to submit the complete copy of the Concession Agreement comprising in 3 volumes, at the time of clearance of the subject goods to examine whether they were eligible for benefit under the subject exemption Notification. However, as mentioned at Para 4.2 above, the importer did not submit the complete documents and merely first few pages of the Volume-I of the said Agreement were submitted before the Customs Authorities. On scrutiny of the documents under Volume-I, Volume-II and Volume-III of the said Agreement, it was found that the importer's name was nowhere mentioned as a 'sub-contractor' in the Schedules and Recitals to the said Agreement or in the Request for Proposals, which formed the integral part of the said Agreement. Further, the importer's name was also not found in the said Agreement itself. This fact was also accepted by Shri Milan Kiritbhai Charadva, Manager of the importer firm and also by Shri Vimal Kikani, authorized representative of the importer firm during their statements dated 10.06.2019 and 21.09.2020 recorded under Section 108 of the Customs Act, 1962 respectively.

**13.3** It is pertinent to mention that certain companies/ firms other than the importer were named in *“Appendix IA- Letter comprising the technical bid”* to the Concession Agreement dated 09.08.2016. The said companies/ firms were named at 32(a) of the said Appendix 1A which stipulated as *“EPC contractors who would be executing EPC works who were nominated/ appointed as the EPC Contractors. executed works of the Project are Sanjose India Infrastructure & Construction Pvt. Ltd, Constructiora San Jose S. A. and MEP Infrastructure Developers Ltd and it is confirmed that these contractors meet the minimum criterion set out in our RFP for this Project.”* The image of the relevant page of the said Appendix 1A of the Concession Agreement is produced below as IMAGE-VI:

IMAGE-VI

MEP Infrastructure Developers Ltd. - San Jose India Infrastructure & Construction Pvt. Ltd. (JV)

23. The Bid Security in the form of a Bank's guarantee is attached.
24. The documents accompanying the Technical Bid, as specified in Clause 2.11.2 of the RFP, have been submitted in a separate envelope and marked as "Enclosures of the Bid".
25. We agree and undertake that the Bid is subject to the provisions of the Bidding Documents. In no case, we shall have any claim or right of whatsoever nature of the Project / Concession is not awarded to us or our Bid is not approved or rejected.
26. The Bid Project Cost has been quoted by us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Project cost and implementation of the Project.
27. We agree and undertake to abide by all the terms and conditions of the Bidding document.
28. We, the Concession Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement, all occurrence of Financial Close in accordance with the Concession Agreement.
29. We certify that in terms of the RFP, our Network is Rs. 639.37 Crore (Rs. Six Hundred and Thirty Nine Crores and Twenty Seven Lakhs Only) and Experience Score is 277.36 (Two Seven Seven and 36/100).
30. We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
31. We hereby submit our Bid as detailed in Financial Bid for undertaking the proposed Project in accordance with the Bidding Documents and the Concession Agreement.
32. (a) The EPC contractor who would be executing EPC works of the Project are San Jose India Infrastructure & Construction Pvt. Ltd., Construction San Jose S.A. and MEP Infrastructure Developers Ltd. and it is confirmed that these contractors meet the minimums criterion set out in our RFP for this Project. 
- (b) It is irrevocably agreed that the value of any contract for the EPC works awarded shall not be less than 20% of the EPC or 500 crore, whichever is less.

Clause 32 of Volume II of said CA mentioning the details of EPC Contractors



Hence, it appears that the customs duty exemption as provided at Sr. No. 411 of the Notification No. 50/2017-Cus. dated 30.06.2017 could be lawfully availed either by the Concessionaire i.e. M/s SMKRPL or by any of the firms named at Annexure 1A of the said Concession Agreement i.e. (i) San Jose India Infrastructure & Construction Pvt. Ltd; (ii) Construction San Jose S. A. or (iii) MEP Infrastructure Developers Ltd.

**13.4** As stated above, the importer, through the Customs Broker, had submitted the letter No. NHAI/SO/BHAV/Pkg-III/D-424 dated 21.09.2017 issued by the Manager (Tech), Site Office Bhavnagar, National Highway Authority of India, wherein the importer was accorded approval as *sub-contractor of the Concessionaire to carry out the work for seeking Customs Duty exemption*. It is submitted that vide the subject letter the NHAI Authorities had (i) approved the importer as sub-contractor to the original contractor and (ii) given no objection to seek Customs Duty exemption with reference to the Customs Notification No. 12/2012-Customs, which was already rescinded on 30.06.2017.

**13.5** The said NHAI's letter dated 21.09.2017 does not appear to be an integral part of the said Concession Agreement dated 09.08.2016 as such documents have already been defined in the Agreement itself as mentioned at Paras 6.1 & 6.2 above, wherein there is no mention of any sub-contract agreement. Therefore, only possibility through which the importer could have been named in the said Concession Agreement was through any subsequent insertion of their name by way of corrigendum/ addendum to the said Concession Agreement. In a similar case of import of Slip form Paver by an importer, M/s Raj Promoters and Civil Engineers Pvt. Ltd., Pune, a letter DRI/MZU/CI/INT-207/2018 dated 19.06.2019 was written by DRI to the Chief Engineer (NH), Public Works Department, Govt. of Maharashtra, Konkan Bhavan, Belapur, Navi Mumbai. Vide the said letter, it was asked as to whether their letter CENH/P-2/2801/2016 dated 21.10.2016 accepting M/s Raj Promoters and Civil Engineers Pvt. Ltd., Pune as sub-contractor, could be treated as corrigendum/ addendum to the main contract executed between them and a Joint Venture M/s PBA-RAJ JV. In their reply vide letter No. CENH/D-1/4292/2019 dated 04.12.2019, NHAI Authorities informed that the said letter could not be treated as corrigendum/ addendum to the said main contract as it was post tender activity. It is pertinent to mention that in that case, the main contract was executed on 22.01.2016, whereas the sub-contract agreement between M/s PBA-RAJ JV and M/s Raj Promoters and Civil Engineers Pvt. Ltd was executed on 11.08.2016. In the instant case also, the Concession Agreement was executed between 'M/s SMKRPL' and the NHAI Authorities on 09.08.2016, whereas the sub-contract agreement was executed on 17.07.2017. Hence, the sub-contract agreement in this case was also a post tender activity and it appears that the same cannot be treated as corrigendum/ addendum to the main contract i.e. Concession Agreement dated 09.08.2016, in light of the above clarification given by NHAI.

**13.6** Further, it appears that the said letter could in no way be construed as a 'Customs Duty Exemption Certificate' as presented by the importer/ Customs Broker before the Customs Authorities. The said letter only stipulated to 'seek' the customs

duty exemption, that too under the already rescinded Customs Notification. Moreover, as per the relevant condition of Sr. No. 411 of the Customs Notification No. 50/2017, there was no requirement of any such Customs Duty Exemption Certificate for availing the relevant duty exemption. It is also submitted that in any case, the NHAI Authorities were neither authorized nor entitled for issuing any such Customs Duty Exemption Certificate. Hence, vide the subject letter dated 21.09.2017, the NHAI Authorities had correctly advised the Concessionaire to seek duty exemption (from the Customs Authorities).

**13.7** It is submitted that in this case, the process of import of the subject Slipform paver was initiated months before the filing of the Bill of Entry. A chronology of events prior to actual import is as under:-

- a. Purchase Order No. 20170120-101006 (2) was placed by the importer on 23.01.2017 (as mentioned in the concerned commercial invoice No. 1900596799 dated 24.08.2017) for purchase of the subject Slipform Paver.
- b. Order confirmation Ref. No. Sales/Vraj/SP94&TCM180/PI/2017 letter dated 20.06.2017 was issued by the supplier.
- c. A Proforma invoice dated 20.06.2017 was issued by the supplier.
- d. The sub-contract agreement was signed on 17.07.2017.
- e. Thereafter, the concerned import invoice No. 1900596799 was issued on 24.08.2017
- f. The letter NHAI/SO/BHAV/Pkg-III/D-424 dated 21.09.2017 dated 21.09.2017 was obtained by the importer from the NHAI Authorities regarding approval of their appointment as sub-contractor. As discussed above, the said letter was later produced as a Customs Duty Exemption Certificate.
- g. The concerned Bill of Entry No. 3430751 dated 29.09.2017 was filed.

**13.8** As per the above-mentioned chronology of events, it is seen that the process of import of the subject Slipform Paver was initiated way before the execution of the sub-contract agreement on 17.07.2017. It implies that something had prompted the importer to execute the said sub-contract agreement. Further, the NHAI's letter dated 21.09.2017 was obtained just before the filing of the Bill of Entry on 29.09.2017. It is pertinent to mention that the importer had come into contact of Shri Vijay P. Shetty, the then manager of the Customs Broker, M/s Simon Brothers Pvt. Ltd. since the initiation of purchase of the said Slipform Paver. Therefore, it appears that the execution of sub-contract agreement and consequent obtainment of NHAI's letter dated 21.09.2017 were the pre-meditated acts by the importer in consultation/



connivance of the Customs Broker so as to fraudulently fulfil the condition stipulated against the Sr. No. 411 of the Notification No. 50/2017-Cus.

**13.9** In this case, the sub-contract agreement was executed after the original contract was signed. Hence, it appears that the importer could not have been named as a sub-contractor in the original contract as at the time of its execution, no sub-contract agreement was in existence. As per the terms of the subject Notification, it appears that 'a person who has been named as sub-contractor in the contract referred in (ii) above', implies in the instant case, a person who has been named as sub-contractor 'in the original contract' or in the integral part of the contract as discussed at Para 6.1 to 6.3 above. It appears that the word "named" signifies "to make reference to or speak about briefly but specifically". In other words, the importer should have been specifically named or designated as a sub-contractor explicitly as the EPC contractors (namely (i) Sanjose India Infrastructure & Construction Pvt. Ltd: (ii) Construction San Jose S. A. or (iii) MEP Infrastructure Developers Ltd.) were named at Annexure IA of the said Concession Agreement. Thus, the importer does not appear to satisfy the said essential condition of the Notification.

**13.10** Further in law, a sub-contractor is a person who is awarded a portion of a contract by the original contractor, who has entered into a bigger contract with the Principal. The sub-contractor performs work under a contract with the original contractor, rather than the principal who hired the original contractor. There appears to be no explicit provision available in the Concession Agreement regarding intimation of appointment of sub-contractor by the Concessionaire to the NHAI Authorities.

Although, Article 5 of the Concession Agreement deals with "OBLIGATIONS OF THE CONCESSIONAIRE". The Para 5.2.5 of the said Article 5 stipulates that: -

*5.2 Obligations relating to Project Agreements-*

*5.2.1 .....*

*.....*

*5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of the EPC contractor and an O&M Contractor and execution of the EPC Contract and O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and*

*public interest perspective, and the Authority hereunder shall endeavour to convey its decision thereon expeditiously and no later than 30 days from the date of receipt of the proposal alongwith the draft agreement by the Authority. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.*

In view of the above, it appears that concurrence of authority concerned for any post contractual sub-contract agreement is an internal check mechanism and limited to national security and public interest perspective. This too appears to clearly indicate that it was a post import/ post tender activity. Thus, the importer appears ineligible for the benefit under Sr. No. 411 of Notification No. 50/2017-Cus dated 30.06.2017.

**14. SUMMARY OF INVESTIGATION: -**

From the investigation carried out and as per the discussions in the foregoing paragraphs, it appears that: -

**14.1** M/s Vraj Construction Co., bearing IEC No. 2417506548, with its registered office at 'Block No. 4, 2nd Floor, Sardar Patel Shopping Centre, Jilla Panchayat Road, Amreli, Gujarat, PIN- 365601' had imported 'Wirtgen Slip Form Paver Model SP94' vide Bill of Entry No. 3430751 dated 29.09.2017 by declaring themselves as 'sub-contractor' and availed benefit of Nil BCD under Sr. No. 411 of the Notification No. 50/2017-Cus dated 30.06.2017. The said Bill of Entry was filed by the Customs Broker, M/s Simon Brothers Pvt. Ltd. (CB No. 11/457) on behalf of the importer.

**14.2** Scrutiny of the documents revealed that the importer had submitted the documents as elaborated at Table-II above, before the Customs Authorities. However, complete copy of the original contract i.e. CA dated 09.08.2016 was not produced before the Customs Authorities. Hence, the provisions relating to appointment/ concurrence of sub-contractor under Clause 5.2.5 of the said contract were never produced before Customs and hence the same were suppressed from the Customs authorities. Moreover, the NHAI's letter dated 21.09.2017 appeared to have been produced before the Customs Authorities as if the same was a Customs Duty Exemption Certificate. The said two documents appear to have been submitted as complementary to each other and thereby they suppressed the fact that 3 contractors other than the importer, were actually named in the main Contract i.e. Concession Agreement dated 09.08.2016 and thus only those 3 contractors apart from the Concessionaire himself were eligible for the subject notification benefit. In this case, the importer had entered into the sub-contract agreement with the principal after the

main contract i.e. CA was signed. Therefore, it appears that the sub-contractor cannot be said to be "named" under the main contract as required under the Notification condition. This aspect has also been endorsed by the Chief Engineer (NH), Public Works Department, Govt. of Maharashtra, Konkan Bhawan, Navi Mumbai, vide their above referred letter dated 04.12.2019.

**14.3** As per the statement of concerned persons as discussed at Para 13 above, it appears to be a well-planned modus operandi of Shri Vijay P. Shetty to mis-guide the Customs Authorities and circumvent the Notification condition. Moreover, Shri Vijay P. Shetty being experienced in the field of Customs clearance of road construction equipment and being well aware of the nitty gritty of the provisions of various Customs Exemption Notifications since the year 2008, it appears that he used to guide the importers to avail ineligible duty exemption under the Customs Notifications issued from time to time. Hence, it appears that Shri Vijay P. Shetty has played a pivotal role in evasion of Customs Duty in the instant case, wherein he in connivance with the importer, did not produce the requisite documents before the Customs Authorities. Further, the sub-contract agreement dated 17.07.2017 was prepared & executed at his behest. Further, the NHAI's letter dated 21.09.2017 was obtained immediately before the filing of the subject Bill of Entry and submitted to the Customs Authorities, suppressing the actual purpose of the said sub-contract agreement and the letter and thereby they wilfully availed the benefit of the said Customs Notification wrongly.

**15. PROVISIONS STIPULATED IN THE CUSTOMS ACT, 1962 RELATING TO THE CASE: -**

*"15.1 Sub-section (4) of section 46 of the Customs Act, 1962, specifies that, 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, relating to the imported goods.*

**15.2 SECTION 17. Assessment of duty. -**

- (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*
- (2) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.*
- (3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract,*

*broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.*

- (4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.*
- (5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any Notification issued therefore under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.*
- (6) Where re-assessment has not been done or a speaking order has not been passed on re- assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.*

*Explanation. – For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received."*

**15.3** *Circular No.17/2011- Customs dated 8<sup>th</sup> April, 2011 issued by the Ministry of Finance, specified that Section 17 of the Customs Act, 1962 provided for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be. The importer or exporter at the time of self-assessment was to ensure that he declares the correct classification, applicable rate of duty, value, and benefit of exemption Notifications claimed, if any, in respect of the imported / export goods while presenting Bill of Entry or Shipping Bill. The Bill of Entry or Shipping Bill self-assessed by importer or exporter, as the case may be, could be subject to*



*verification with regard to correctness of classification, value, rate of duty, exemption Notification or any other relevant particular having bearing on correct assessment of duty on imported or export goods. For the purpose of verification, the proper officer was also required to order for examination or testing of the imported or export goods, production of any relevant document or ask the importer or exporter to furnish any relevant information.*

**15.4** *Section 11(3) of The Foreign Trade (Development & Regulation) Act, 1992 provides that Where any person signs or uses, or causes to be made, signed or used, any declaration, statement or document submitted to the Director General or any officer authorised by him under this Act, knowing or having reason to believe that such declaration, statement or document is forged or tampered with or false in any material particular, he shall be liable to a penalty of not less than ten thousand rupees or more than five times the value of the goods or services or technology in respect of which such declaration, statement or document had been submitted, whichever is more.*

**15.5** *Section 111(m) of the Customs Act, 1962 provides that any goods which do not correspond in respect of value or in any other particulars with the entry made under this Act or in the case of baggage with the declaration made under section 77, are liable to confiscation.*

**15.6** *Section 111(o) of the Customs Act, 1962 (o) provides that any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer*

**15.7** *Section 112 of the Customs Act 1962 provides that Penalty for improper importation of goods, etc- Any person, -*

*(24) 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, or*

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable to penalty.*

**15.8** *Section 28(4) of the Customs Act, 1962 – Recovery of duties not levied or short-levied or erroneously refunded: -*



*Where any duty has not been levied or has been short-levied 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 so levied 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.*

**15.9** *Section 114A of the Customs Act, 1962 prescribes Penalty for short-levy or non-levy of duty in certain cases. -*

*Where the duty has not been levied or has 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 (8) 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 (8) of section 28, and the interest payable thereon under 28AA, 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 in a case 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 28AA, 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.*

*Explanation- For the removal of doubts, it is hereby declared that-*

*(24) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;*

*(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.*

**15.10 Section 114AA in the Customs Act, 1962**

*114AA. Penalty for use of false and incorrect material.—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 times the value of goods."*

**16.1** By not self-assessing the true and correct rate of BCD applicable on the subject goods, it appears that the importer wilfully did not pay the applicable BCD on the impugned goods. Moreover, they appeared to have mis-declared certain facts at the time of clearance of the said goods so as to wrongly avail the full exemption from BCD on the impugned goods under Notification No. 411 dated 30.06.2017, by violating its conditions & thereby evaded duty. Accordingly, the impugned goods, appear liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962.

**16.2** In view of the above, the importer appears to liable for imposition of penalty under section 112(a) *ibid* as their omissions and commissions discussed above, appear to had rendered the goods liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962..

**16.3** Therefore it appeared that: -

- (i) The total differential Customs Duty liability works out to be Rs. 65,44,195/- (Rupees Sixty Five Lakh Forty Four Thousand One Hundred Ninety Five Only) as detailed in Annexure – A to the Show Cause Notice;
- (ii) the duty short-levied appears liable to be demanded and recovered under the provisions of Section 28(4) of the Customs Act, 1962 along with the interest thereon under Section 28AA, *ibid*, if any;
- (iii) the goods imported by the importer appear to be liable to confiscation under Section 111(m) and Section 111(o) of the Customs Act;
- (iv) The importer appears liable for penalty under Section 114A of the Customs Act, 1962 for their act of suppression of facts and thereby causing short payment of Customs Duty on the impugned goods;
- (v) The importer appears liable for penalty under Section 112(a) of the Customs Act, 1962 as their act of omission and commission as discussed above, have made the impugned goods liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962.
- (vi) The act of the importer to create and submit the sub-contract agreement and NHAI's letter dated 21.09.2017 before the Customs Authority with wilful intention to evade Customs duty fraudulently, makes them liable for imposition for penalty under Section 114AA of the Customs Act, 1962.

**17. ROLE OF CONCERNED PERSONS IN FACILITATING THE SUBJECT IMPORT-LIABILITY TO PENALTIES: -**

**17.1** Shri Vijay P. Shetty, Manager of M/s Jal Trans Logistics and the then manager of Customs Broker, M/s Simon Brothers Pvt. Ltd.- Shri Vijay P. Shetty appears to have played the pivotal role in this modus-operandi, wherein various importers had availed ineligible exemption from BCD under the erstwhile Notification No. 12/2012-Cus. and corresponding Notification No. 50/2017-Cus. In the instant case too, as per his instruction, the importer did not provide the complete copy of the main contract i.e. CA dated 09.08.2016 but only limited documents as mentioned at Para 4.2 above, were submitted before the Customs Authorities, while suppressing the complete and true fact regarding appointment of importer as sub-contractor. Therefore, his acts of omission and commission appear to have rendered the impugned goods liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962. Therefore, he appears liable for imposition of penalty under Section 112(a) of the Customs Act, 1962. Moreover, his act of directing the importer to prepare and execute the sub-contract agreement and submitting the said sub-contract agreement

before the Customs Authority with wilful intention to wrongly avail duty exemption makes him liable for imposition for penalty under Section 114AA of the Customs Act, 1962.

**17.2** Shri Vasantkumar Bavalal Movaliya, the Partner of the importer firm- Shri Vasantkumar Bavalal Movaliya while importing the subject Slip form Paver self-assessed the Bill of Entry and claimed & availed full duty exemption from BCD under Sr. No. 411 of the Notification No. 50/2017-Cus. It appears that Shri Vasantkumar Bavalal Movaliya, the Partner of the importer firm had prepared the sub-contract agreement. It is reiterated that in this case, complete copy of Concession Agreement was not submitted before the Customs. Moreover, the sub-contract agreement was prepared and signed by Vasantkumar Bavalal Movaliya on behalf of the importer firm in order to avail ineligible duty benefit. Therefore, his acts of omission and commission appear to have rendered the impugned goods liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962. Therefore, he appears liable for imposition of penalty under Section 112(a) of the Customs Act, 1962. Moreover, his act of signing the sub-contract agreement and submitting the said sub-contract agreement before the Customs Authority with wilful intention to wrongly avail duty exemption makes him liable for imposition for penalty under Section 114AA of the Customs Act, 1962.

**17.3** M/s Jal Trans Logistics- M/s Jal Trans Logistics appear to have been involved in the subject duty evasion and have been utilized as a willing tool by Shri Vijay P. Shetty. There appears to be a connivance between M/s Jal Trans Logistics and the Customs Broker, M/s Simon Brothers Pvt. Ltd. There appears to be a connivance between Jal Trans Logistics and the Customs Broker, M/s Simon Brothers Pvt. Ltd. as practically both were being operated by the same set of persons. Mrs. Reshma S. Shetty, the proprietress of M/s Jal Trans Logistics appears to be well aware of modus-operandi adopted by Shri Vijay P. Shetty who was operating as Manager in her firm. Therefore, the acts of omission and commission of M/s Jal Trans Logistics appear to have rendered the impugned goods liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962. Accordingly, they appear liable for imposition of penalty under Section 112(a) of the Customs Act, 1962.

**17.4** M/s Simon Brothers Pvt. Ltd., the Customs Broker- M/s Simon Brothers Pvt. Ltd. appear to had not discharged their obligation and responsibilities as envisaged under Customs Broker Licencing Regulations, 2013 (CBLR, 2013) as their Manager Shri Vijay P. Shetty appeared to have indulged in the said modus-operandi in evasion of duty by adopting illicit means. Therefore, their acts of omission and commission appeared to have rendered the impugned goods liable for confiscation under Section



111(m) and Section 111(o) of the Customs Act, 1962. Therefore, they appear liable for imposition of penalty under Section 112(a) of the Customs Act, 1962.

- 18.** Therefore, M/s Vraj Construction Co., having IEC No. 2417506548, with its registered office at 'Block No. 4, 2nd Floor, Sardar Patel Shopping Centre, Jilla Panchayat Road, Amreli, Gujarat, PIN- 365601' were called upon to show cause, in writing, to the Adjudicating Authority Commissioner of Customs, Import-I, New Custom House, Ballard Estate, Mumbai- 400001, within thirty days of receipt of Notice, as to why:-
- a) The exemption of Basic Customs Duty availed under Sr. No. 411 of Notification No. 50/2017-Cus. dated 30.06.2017 on the goods imported vide Bill of Entry No. 3430751 dated 29.09.2017 should not be held as wrongly claimed by them and should not be denied;
  - b) The differential duty amounting to Rs. 65,44,195/- (Rupees Sixty Five Lakh Forty Four Thousand One Hundred Ninety Five Only) as calculated and annexed as Annexure 'A' to SCN in respect of the said Bill of Entry, should not be demanded and recovered under the provisions of Section 28(4) of the Customs Act, 1962 along with interest at the applicable rate under section 28AA,
  - c) The goods imported under the said Bill of Entry with the total assessable value of Rs. 7,17,91,950/- (Rupees Seven Crore Seventeen Lakh Ninety One Thousand Nine Hundred Fifty Only) should not be held liable for confiscation under the provisions of section 111(m) and Section 111(o) of the Customs Act, 1962;
  - d) Penalty should not be imposed upon them under the provisions of Section 112(a) or 114A of the Customs Act, 1962; and
  - e) Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962.
- 19.** Shri Vasantkumar Bavalal Movaliya, the Partner of the importer firm, was called upon to show cause in writing to the aforementioned Adjudicating Authority as to why penalty under Section 112(a) and 114AA of the Customs Act, 1962 should not be imposed on him.
- 20.** Shri Vijay P. Shetty, Manager of M/s Jal Trans Logistics and the then manager of Customs Broker, M/s Simon Brothers Pvt. Ltd. was called upon to show cause in writing to the aforementioned Adjudicating Authority as to why penalty under Section 112(a) and 114AA of the Customs Act, 1962 should not be imposed on him.



21. M/s Jal Trans Logistics was called upon to show cause in writing to the aforementioned Adjudicating Authority as to why penalty under Section 112(a) of the Customs Act, 1962 should not be imposed on them.
22. M/s Simon Brothers Pvt. Ltd. (CB No. 11/457 of Mumbai) were called upon to show cause in writing to the aforementioned Adjudicating Authority as to why penalty under Section 112(a) of the Customs Act, 1962 should not be imposed on them.

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

23. A personal hearing was granted on 17.11.2022 to all five noticees vide letter dated 02.11.2022. However, no one turned up for the hearing. Another opportunity of personal hearing was granted on 18.01.2023 vide letter dated 11.01.23. On this day, authorised representative Shri Prashant Patankar appeared in virtual mode for hearing on behalf of M/s. Jal Trans Logistics and Shri Vijay P. Shetty and put forth their oral arguments. He has submitted a final written submission and concluded his arguments. However, no one appeared on behalf of the other 3 noticees; M/s. Vraj Construction Co, Shri Vasantkumar Bavalal Movaliya, Partner of the firm and M/s. Simon Brother Pvt Ltd (CHA) on 18.01.23. Further another opportunity of personal hearing was granted to above 3 noticees on 25.01.23, however no one turned up for hearing. However written submission dated 28.01.23 submitted by Advocate Shri, Brijesh R Pathak on behalf of M/s. Vraj Construction Co. and Shri Vasantkumar Bavalal Movaliya. Further another opportunity of personal hearing was granted to noticees on 25.01.23, however no one turned up for hearing.

#### **24. Written Submission of Importer and its Partner Shri Vasantkumar Bavalal Movaliya:**

i) That there are no restrictions in the Concession Agreement for appointment of subcontractors. That from the relevant clauses, it emerges that after entering into concessioner's agreement, the concessioners have the unfettered rights to contract with EPC contractor whose selection is dependent upon approval of NHAI authorities after confirming public and national interest and concessioners are obliged to submit a copy of such executed EPC agreement within seven days, to the authorities. Such rights have arisen only after the execution of CA. The allegations in show cause notice that since EPC contract is dated after the date of CA, that the importer's name should have been mentioned in CA is an impossible proposition.

ii) That M/s. SMKRPL entered into an EPC contract on 17.07.2017 with importer and clause 14 of the said EPC contract mentioned that the CA shall be a part of the sub contract. In terms of para 5.2.5, this sub contract was not only vetted by NHAI

but they also accorded their approval after examining the public and national interests. As required under CA Clause 5.2.5, the importer was approved as EPC Contractor which can be seen in the approval letter dated 21.09.2017 of NHAI bearing no. NHAI/SO/NHAV/Pkg-III/D-424.

iii) That communication dated 04.12.2019 issued by the NHAI authorities signing for Chief Engineer (N.H.) Konkan Bhawan in matters of M/s Raj Path Infracon Pvt Ltd. The letter issued by a Chief Engineer (NH) expressing opinion on legal aspects of the agreements is inadequate, irrelevant and void for the purposes of defining an "addendum" to the contract and requested for cross examination of the Chief Engineer.

iv) That there are no grounds for denial of exemption and there are no grounds for demand of the differential duty amounting to Rs.65,44,195/- under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962. Consequently, there are no grounds for imposition of any penalty under provisions of Sections 112(a), 114A and 114AA of the Customs Act, 1962 on the Noticee & Co-Noticee.

v) That they placed reliance on case laws of Union of India vs. D.M. Revri and Satya Jain on Efficacy of Commercial Contracts. That extended period of limitation can not be invoked under Section 28(4) of the Customs Act, with allegation of suppression of facts and submission of incomplete documents and placed reliance on the case of Advanced Spectra Tek Pvt Ltd. vs Commissioner of Customs and Jai Prakash Industries Ltd.

vi) That the SCN was not being issued by the Proper Officer who had assessed the goods and the SCN is without jurisdiction, therefore the SCN has been issued without jurisdiction and it deserves to be dropped. In support they placed reliance on the case of Canon India Pvt Ltd. Further submitted that amendment in the Finance Act has been brought but it cannot have effect retrospectively.

## **25. Written Submissions of M/s. Jal Trans Logistics (JTL) and Shri Vijay P. Shetty**

i) That the M/s. Jal Trans Logistics (JTL) does not have any interface with Customs in the clearance of the subject consignment. JTL did not make any declaration before the Customs Therefore, JTL was not responsible for any declaration in the bill of entry or to the claim to the benefit of exemption notification. It follows that none of the acts or omissions of JTL can be considered as rendering the goods liable for confiscation, attracting penalty under section 112(a) of the Customs Act, 1962. That

JTL and Mr. Vijay Shetty have not done or omitted to do any act which would render the imported goods liable to confiscation as proposed in the SCN. JTL and Mr. Vijay Shetty having no interface with the Customs Authorities could not be held responsible for any of these act. They are not responsible for any declaration in the bill of entry or to the claim to the benefit of exemption notification. They relied upon the case of Northern Plastic Ltd.

ii) The SCN has only disputed the correctness of the claim to the exemption notification for concessional rate of BCD. Therefore, goods covered by the subject bill of entry are not liable for confiscation. JTL and Manager Vijay Shetty also believed that the sub-contractor approved by NHAI was entitled to the benefit of exemption. Even NHAI, apparently believed that the sub-contractor as approved by them was entitled to the exemption as may be noted from the NOC granted by NHAI. That the imported goods are not liable for confiscation under the provisions of section 111(o) of the Customs Act, 1962, even if it is held that the benefit of concessional rate of BCD was not applicable to the subject imported goods.

iii) That None of the documents presented to the Customs Authorities is false or incorrect. It cannot be said that the 'sub-contract agreement' was 'false or incorrect' in any manner. At the most, a view can be taken that the sub-contract agreement was not adequate to claim the exemption from BCD. In the present case, the subject bill of entry was filed based on the bonafide belief that the sub-contractor approved by NHAI was eligible for the exemption. The penalty under section 114AA is not invoked for not understanding the subtlety in use of expression 'sub-contractor named in the contract' as distinct from 'sub-contractor approved by the Project Authority'. Therefore, the Noticee Vijay Shetty is not liable for any penalty under section 114AA.

iv) It is humbly submitted that there would be no cause for imposition of penalty on Mr. Vijay Shetty, if penalty is not imposed on the firm JTL in respect of liability of the imported goods to confiscation. Also, Mr. Vijay Shetty should not be held liable for penalty even if JTL is held liable for penalty as Mr. Shetty has advised merely in the capacity of an employee of JTL and Mr. Shetty has not benefited personally in any manner. They placed reliance on case of Carpenter Classic Exim Pvt. Ltd. vs Commissioner of Customs, Bangalore, Gammon India Ltd. vs Commissioner of Customs.

## DISCUSSION AND FINDINGS

26. The case involves the following five noticees:

Noticee 1- M/s. Vraj Construction Co.,

Noticee 2- Shri Vasantkumar Bavalal Movaliya, Partner M/s. Vraj Construction Co.,

Noticee 3- Shri Vijay P. Shetty,(Manager of M/s. Jal Trans Logistics and the then manager of Customs Broker,)

Noticee 4- M/s. Jal Trans Logistics

Noticee 5- M/s. Simon Brother Pvt Ltd (CHA)

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

27. **Issues for determination:** The 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 SCN is without jurisdiction as Pr. ADG, DRI is not the 'Proper officer' to issue Show Cause notice under section 28 of the Customs Act, 1962?
- b) Whether the exemption of Basic Customs Duty availed under Sr. No. 411 of Notification 50/2017-Cus dated 30.06.2017 shall be applicable on the goods imported (Wirtgen Slip Form Paver Model SP94) vide Bill of Entry No. 3430751 dated 29.09.2017?
- c) Whether the goods imported under the said Bill of Entry with the total assessable value of Rs. 7,17,91,950/- should be held liable for confiscation under the provisions of section 111(m) and Section 111(o) of the Customs Act, 1962?
- d) Penalty on noticees.

Let me take up the issues one by one .

**28. Whether the SCN is without jurisdiction as Pr. ADG, DRI is not the 'Proper officer' to issue Show Cause notice under section 28 of the Customs Act, 1962?**

28.1 The Noticee- 1 and 2 submitted that the SCN was not being issued by the Proper Officer who had assessed the goods and the SCN is without jurisdiction. In support they



placed reliance on the case of Canon India Pvt Ltd. Further submitted that amendment in the Finance Act has been brought but it cannot have effect retrospectively.

28.2 I find that certain amendments were made in the Customs Act, 1962 vide Finance Act, 2022. The said amendments are reproduced hereinbelow for sake of brevity:-

87. For section 3 of the Customs Act, the following section shall be substituted, namely:— Classes of officers of customs. “3. There shall be the following classes of officers of customs, namely:—

(a) *Principal Chief Commissioner of Customs or Principal Chief Commissioner of Customs (Preventive) or Principal Director General of Revenue Intelligence;*

(b) *Chief Commissioner of Customs or Chief Commissioner of Customs (Preventive) or Director General of Revenue Intelligence;*

(c) *Principal Commissioner of Customs or Principal Commissioner of Customs (Preventive) or Principal Additional Director General of Revenue Intelligence or Principal Commissioner of Customs (Audit);*

(d) *Commissioner of Customs or Commissioner of Customs (Preventive) or Additional Director General of Revenue Intelligence or Commissioner of Customs (Audit);*

(e) *Principal Commissioner of Customs (Appeals);*

(f) *Commissioner of Customs (Appeals);*

(g) *Additional Commissioner of Customs or Additional Commissioner of Customs (Preventive) or Additional Director of Revenue Intelligence or Additional Commissioner of Customs (Audit);*

(h) *Joint Commissioner of Customs or Joint Commissioner of Customs (Preventive) or Joint Director of Revenue Intelligence or Joint Commissioner of Customs (Audit);*

(i) *Deputy Commissioner of Customs or Deputy Commissioner of Customs (Preventive) or Deputy Director of Revenue Intelligence or Deputy Commissioner of Customs (Audit);*

(j) *Assistant Commissioner of Customs or Assistant Commissioner of Customs (Preventive) or Assistant Director of Revenue Intelligence or Assistant Commissioner of Customs (Audit);*

(k) *such other class of officers of customs as may be appointed for the purposes of this Act.”.*

88. In section 5 of the Customs Act,— (a) after sub-section (1), the following sub-sections shall be inserted, namely:— “(1A) Without prejudice to the provisions contained in sub-section (1), the Board may, by notification, assign such functions



as it may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions. (1B) Within their jurisdiction assigned by the Board, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, by order, assign such functions, as he may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions.”; (b) after sub-section (3), the following sub-sections shall be inserted, namely:— “(4) In specifying the conditions and limitations referred to in sub-section (1), and in assigning functions under sub-section (1A), the Board may consider any one or more of the following criteria, including, but not limited to— (a) territorial jurisdiction; (b) persons or class of persons; (c) goods or class of goods; (d) cases or class of cases; (e) computer assigned random assignment; (f) any other criterion as the Board may, by notification, specify.

(5) The Board may, by notification, wherever necessary or appropriate, require two or more officers of customs (whether or not of the same class) to have concurrent powers and functions to be performed under this Act.”.

97. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal, or other authority, or in the provisions of the Customs Act, 1962 (hereinafter referred to as the Customs Act),— (i) anything done or any duty performed or any action taken or purported to have been taken or done under Chapters V, VAA, VI, IX, X, XI, XII, XIII, XIV, XVI and XVII of the Customs Act, as it stood prior to its amendment by this Act, shall be deemed to have been validly done or performed or taken;

(ii) any notification issued under the Customs Act for appointing or assigning functions to any officer shall be deemed to have been validly issued for all purposes, including for the purposes of section 6;

(iii) for the purposes of this section, sections 2, 3 and 5 of the Customs Act, as amended by this Act, shall have and shall always be deemed to have effect for all purposes as if the provisions of the Customs Act, as amended by this Act, had been in force at all material times.

*Explanation.*— For the purposes of this section, it is hereby clarified that any proceeding arising out of any action taken under this section and pending on the date of commencement of this Act shall be disposed of in accordance with the provisions of the Customs Act, as amended by this Act.”

**28.3** The aforementioned amendments in Section 3 of the Customs Act, 1962 and the validation of action taken under the Customs Act, 1962 vide Finance Act, 2022 have not been stayed by any court of law. In this regard, I rely upon the judgement of the Hon'ble High Court in the matter of **N. C. Alexander**<sup>10</sup>, wherein the validity of SCNs issued by

<sup>10</sup> N. C. Alexander vs Commissioner of Customs and others-2022 (381) E.L.T. 148 (Mad.)

DRI was challenged through various writ petitions after **Canon India<sup>11</sup>** judgement and enactment of the Finance Act, 2022. Hon'ble High Court while disposing of the said writ petitions held that pursuant to the amendment of Section 3 of the Customs Act, 1962 by Finance Act, 2022, officers from the Directorate of Revenue are explicitly recognized as Officers of Customs and Show Cause Notices issued by officers of DRI cannot be assailed in view of validation in Section 97 of Finance Act, 2022 to pending proceedings. Relevant paras of the said judgement are reproduced below for the sake of brevity:

*“295. Thus, officers from Group-B who are already from the Customs Department can be appointed as “Officers of Customs”. Similarly, the Officers of Directorate of Revenue Intelligence (DRI) are appointed as “Officers of Customs” under notification issued under Section 4(i) of the Customs Act, 1962.*

*297. Further, show cause notices issued under various provisions cannot be stifled to legitimize evasion of Customs duty on technical grounds that the Officers from Directorate of Revenue Intelligence (DRI) were incompetent to issue notices and were not officers of customs.*

*298. Insofar as completed proceedings i.e. where proceedings have been dropped prior to passing of Finance Act, 2022 is concerned, the proceedings cannot be revived. However, the pending proceedings have to be decided in the light of the validation in Section 97 of the Finance Act, 2022.*

*299. In the light of the above discussion, the challenges to the impugned show cause notices and the Orders-in-Original on the strength of the decision of the Hon'ble Supreme Court in Canon India Private Limited v. Commissioner of Customs, 2021 (376) E.L.T. 3 (S.C.) fail.*

*308. Rest of the writ petitions in Table-II challenging the impugned show cause notices are dismissed by directing the jurisdictional adjudicating authority to pass appropriate orders on merits and in accordance with law preferably within a period 120 days from the date of receipt of a copy of this order.*

*312. Pending proceedings are directed to be completed in the light of the validations contained in Section 97 of the Finance Act, 2022.”*

**28.4** In view of the above, it is concluded that the issue of jurisdiction of DRI officers to issue SCNs under Section 28 of the Act, is settled as of now by the Finance Act 2022. Therefore, I find that the SCN issued by Pr. ADG, DRI, MZU is legal and proper.

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<sup>11</sup> Canon India Pvt. Ltd. vs Commissioner of Customs-2021 (376) E.L.T. 3 (S.C.)

29. Whether the exemption of Basic Customs Duty availed under Sr. No. 411 of Notification 50/2017-Cus dated 30.06.2017 shall be applicable on the goods imported vide Bill of Entry No. 3430751 dated 29.09.2017?

29.1 I find that a Concession Agreement<sup>12</sup> was entered into on 9th August 2016 between the National Highways Authority of India (NHAI ) and M/s. MEP Sanjose Mahua Kagavdar Road Private Limited (M/s. SMKRPL)<sup>13</sup> for the purpose of 'Four-Laning of Mahuva to Kagavadar section of NH8E from Km 100.100 To Km 139.915 in the State Of Gujarat on Hybrid Annuity Mode Under NHDP Phase IV'. In simple words, the project was for a four-laning of around 39 km of national highway in Gujarat. The said CA comprised of 3 Volumes, running into around 760 pages, and contain various Annexures.

TABLE-III

S. No.	Description	Page No.
01	Volume I – Concession Agreement & Schedules	1 to 241
02	Volume II – Annexures	242 to 722
03	Volume III – Drawings (Plan & Profile)	723 to 760

29.2 Certain portions of the CA require special mention. The Article 1 of the CA dealt with Definitions and Interpretations. The Para 1.2.1 (t) of Volume I the said CA stated that "any agreement ,consent, approval, authorization, notice, communication, information or report required under or pursuant to this agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such party or the Independent Engineer, as the case may be, in this behalf and not otherwise".It implies that any further sub-contract under this contract has to be signed by the duly authorised representative of NHAI.

29.3 The para 1.2.1 (u) of Volume I of the said CA(reproduced below as Image-V) stated that "the Schedules and Recitals to this agreement and the Request for Proposals (RFP) forms an integral part of this agreement and will be in full force and effect as though they were expressly set out in the body of this agreement". It implies that all the three volumes of the CA containing various Schedules and Recitals were integral part of the CA, which should have been produced before the Customs Department as required under the said exemption notification.

<sup>12</sup> The said CA or CA in short  
<sup>13</sup> referred to as the Concessionaire

**IMAGE V**

- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement and the Request for Proposals ("RFP") forms an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine

Interpretation Para  
1.2.1(u) of Volume  
I- Concession  
Agreement &  
Schedules




Four Laning of Mahuva to Kaporadar Section of NH-8E from Km 100.100 to Km 139.915 (Design  
Clearance from Km 100.450 to Km 140.470) (Package III) in the State of Gujarat on Hybrid Annuity  
80 Mode under NHDP Phase II

(STK)Center-Adp-Cus-Ins-Zone-I-Mum, APPRAISER, CUSTOMS IMP-I-ZONE-I/MUMBAI on 15/02/2023 04:31 PM

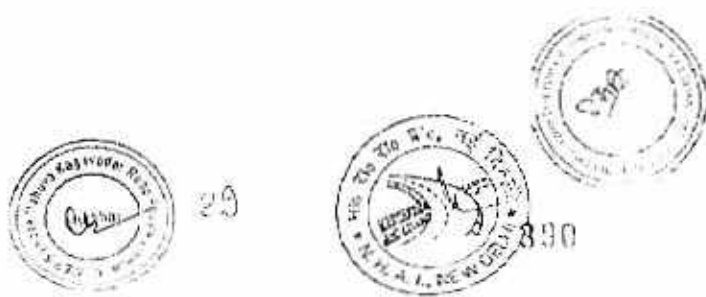
29.4 At page 386 of the Volume II of the CA contains Appendix 1A is the letter comprising the Technical Bid dated 09.04.2016 issued by Shri Sameer A. Apte, authorised signatory of M/s. MEP Infrastructure Developers Limited and Sanjose India Infrastructure & Construction Pvt Ltd (JV) issued to Shri K.V. Singh, General Manager (T), NHAI, Dwarka, New Delhi. The Para 32(a) of this letter for Technical Bid mentions that 'The EPC contractors who would be executing EPC works of the Project are Sanjose India Infrastructure & Consortium Pvt Ltd, Constructora San Jose S.A. and MEP Infrastructure Developers Ltd. and it is confirmed that these contractors meet minimum criterion set out in the RFP for this project.' The image of the relevant page is reproduced below as IMAGE-VI:

IMAGE-VI

MEP Infrastructure Developers Ltd. (Sanjeev Infra Infrastructure & Construction Pvt. Ltd. (SIIC))

23. The Bid Security in the form of a Bank Guarantee is attached.
24. The documents accompanying the Technical Bid, as specified in Clause 2.11.2 of the RFP, have been submitted in a separate envelope and marked as "Enclosures of the Bid".
25. We agree and undertake that the Bid is subject to the provisions of the Bidding Documents. In no case, we shall have any claim or right of withdrawal/return of the Project Concession is not awarded to us as the Bid is not opened or received.
26. The Bid Project Cost has been quoted by us after taking into consideration all the terms and conditions stated in the RFP and Concession Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Project cost and implementation of the Project.
27. We agree and undertake to abide by all the terms and conditions of the RFP document.
28. We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Consortium under the Concession Agreement, all recurrence of Financial Close in accordance with the Concession Agreement.
29. We certify that in terms of the RFP, our Networth is Rs. 839.27 Crore (Rs. Six Hundred and Thirty Nine Crores and Twenty Seven Lakhs Only) and Experience Score is 222.16 (Two Sixty Seven Score, One and 16/100 Part).
30. We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
31. We hereby submit our Bid as indicated in Financial Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.
32. (a) The EPC contractors who would be executing EPC works of the Project are Sanjeev Infra Infrastructure & Construction Pvt. Ltd., Construction, Sanjeev S.A. and MEP Infrastructure Developers Ltd. and it is confirmed that these contractors meet the minimum criterion set out in our RFP for this Project. 
- (b) It is irrevocably agreed that the value of any contract for the EPC works awarded shall not be less than 20% of the TFC or 500 crore, whichever is less.

Clause 32 of volume-I of said CA mentioning the details of EPC Contractors





This letter implies that three EPC contractors are recognised by the said CA, who are:

1. Sanjose India Infrastructure & Consortium Pvt Ltd
2. Constructora San Jose S.A.
3. MEP Infrastructure Developers Ltd.

Except these three, no other contractor or sub-contractor has been named in the entire CA. There is a Stamp of NHAI, New Delhi signed by Shri K.V. Singh, General Manager (T), NHAI on all the pages of the CA, which implies that Shri K.V. Singh, GM (T), NHAI sitting at NHAI office, New Delhi was the proper authorised representative for the purpose of issuing any further modification/addendum/corrigendum of the CA to include any contractor or sub-contractor.

**29.5** As evident from above, the Noticee-1 M/s Vraj Constructions Co. was not listed in any of the pages of this CA in any capacity. Still they filed the Bill of Entry no 3430751 dated 29.09.2017 under self assessment mode and claimed exemption benefit under Sr. no 411 of Notification no 50/2017-Cus. dated 30.06.2017. Now let us have a look at the notification-

***NOTIFICATION NO. 50/2017-CUS. DATED 30.06.2017***

<i>Sr No.</i>	<i>Chapter of heading or sub-heading or tariff item</i>	<i>Description of goods</i>	<i>Standard Rate</i>	<i>IGST</i>	<i>Condition No.</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>
<i>411</i>	<i>84 or any other Chapter</i>	<i>Goods specified in List 14 required for construction of roads</i>	<i>Nil</i>	<i>-</i>	<i>14</i>

***List 14:***

***1) Slip form/fixed form paver finisher for laying concrete pavement***

...

**Condition 14:**

<b>Condition No.</b>	<b>Condition</b>
14.	<p><i>If, -</i></p> <p><i>(a) the goods are imported by-</i></p> <p><i>(i) the Ministry of Surface Transport, or</i></p> <p><i>(ii) a person who has been awarded a contract for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by the Public Works Department of a State Government, Metropolitan Development Authority or by a road construction corporation under the control of the Government of a State or Union territory; or</i></p> <p><i>(iii) a person who has been named as a sub-contractor in the contract referred to in (ii) above for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by Public Works Department of a State Government, Metropolitan Development Authority or by a road construction corporation under the control of the Government of a State or Union territory;</i></p> <p><i>(b) the importer, at the time of importation, furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, to the effect that he shall use the imported goods exclusively for the construction of roads and that he shall not sell or otherwise dispose of the said goods, in any manner, for a period of five years from the date of their importation;</i></p> <p><i>Provided that the said Deputy Commissioner of Customs or the Assistant Commissioner of Customs, may allow the importer to sell or dispose of any of the imported goods on payment of Customs duties at the rates applicable at the time of import but for this exemption, on the depreciated value of the goods to be calculated @ 5% on straight line method for each completed quarter starting from the date of importation of the said goods</i></p>

	<p><i>till the date of their sale subject to the condition that the concerned Ministry, Authority, Department or Corporation referred to in condition (a) above certifies that said goods in the project, for which duty free import was allowed, are no longer required for the project.</i></p> <p><i>(c) Omitted.</i></p>
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**29.6** The notification states that the person liable for claiming duty exemption is a person who has been awarded a contract or a person who has been named as a sub-contractor in the contract for the construction of roads in India and the contract has to be signed by or on behalf of 5 Government Agencies namely:

- i) Ministry of Surface Transport
- ii) NHAI
- iii) Public Works Department of a State Government
- iv) Metropolitan Development Authority
- v) Road Construction Corporation under the control of the State Government or a Union Territory.

This implies that any contract document naming a sub-contractor for the purpose of customs duty exemption has to be approved by the authorised representative of any one of these five agencies, as applicable. The relevant agency in the present case was NHAI and the authorised representative as discussed above was Shri K.V. Singh, General Manager (T), NHAI.

**29.7** Hence, it appears that the customs duty exemption as provided at Sr. No. 411 of the Notification No. 50/2017-Cus. dated 30.06.2017 could be lawfully availed either by the Concessionaire i.e. M/s. SMKRPL or by any of the firms named at Annexure IA of the said Concession Agreement i.e. (i) Sanjose India Infrastructure & Construction Pvt. Ltd (ii) Constructora San Jose S. A. or (iii) MEP Infrastructure Developers Ltd.

**29.8** During the clearance of the said goods, following documents were submitted by the importer before Customs to claim the said Notification benefit as shown in Table-II below:

TABLE-II

Sr. No.	Document name	Subject	Remarks
1	Concession Agreement dated 09.08.2016	The Concession Agreement dated 09.08.2016 was executed between 'National Highways Authority of India, G-5&6, Sector 10, Dwarka, New Delhi' AND 'M/s MEP Sanjose Mahuva Kagavadar Road Private Limited, B1-406, 4 <sup>th</sup> Floor, Boomerang, Chandivali Farm Road, Andheri (East), Mumbai', for ' <i>Four Laning of Mahuva To Kagavadar Section of NH-8E from KM. 100.100 to KM 139.915 (Design Chainage from KM 100.450 to KM 140.470) (Package III) in the State of Gujarat on Hybrid Annuity Mode under NHDP Phase IV</i> '	It is admitted by the noticees themselves that they did not submit the full 760 pages of the Agreement before the Customs Department at the time of the clearance of the machine, they had only submitted the first few pages of the CA which did not contain pages from 385 onwards where the EPC contractors were named. So, the names of the three EPC contractors as well as the name of the proper authorised representative of NHAI with the responsibility to recognise any sub-contractor of the contract contained in Annexure-1A(page 385 of the CA), were suppressed from the Customs Department.

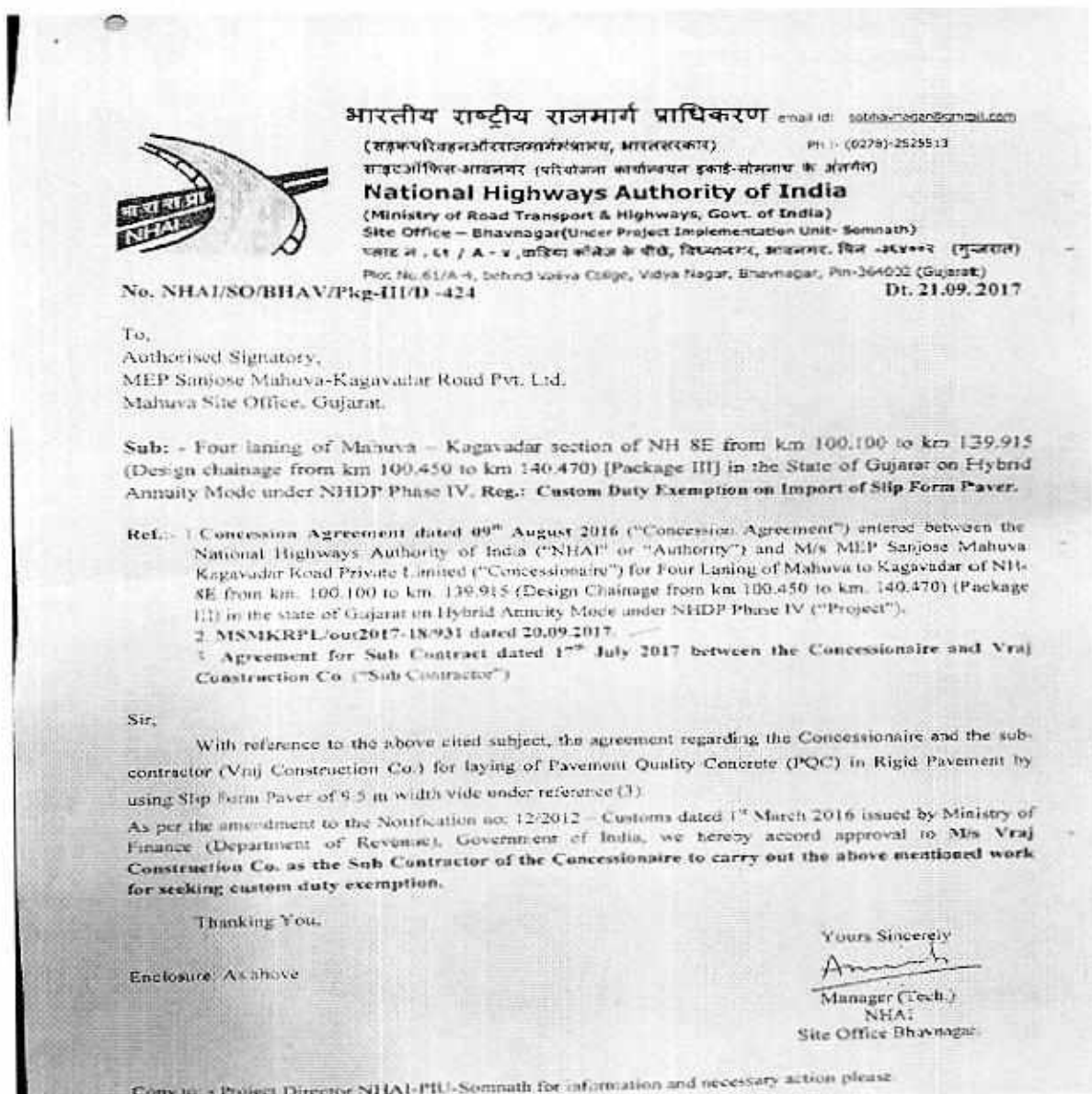


2	Sub-contract Agreement dated 17.07.2017	<p>The sub-contract agreement dated 17.07.2017 was executed between M/s MEP Sanjose Mahuva Kagavadar Road Private Limited AND the importer, M/s Vraj Construction Co. and the same was submitted by the importer to the Customs. As per the said agreement, the importer was given sub-contract for <i>'laying of pavement quality concrete for rigid pavement using Slipform paver of width 9.5 meter along with allied equipment for expansion &amp; transverse joint &amp; cutting &amp; fixing of Dowel and Tie bar from km 120.450 to km 140.470 (20 km) on item contract of Rs. 20,75,31,379/'</i> out of the Project awarded to M/s MEP Sanjose Mahuva Kagavadar Road Private Limited under the said Concession Agreement dated 09.08.2016.</p>	<p>This sub-contract agreement cannot be accepted as a contract for the purpose of the said notification, as any amendment or corrigendum or extension of the said CA had to be signed by the authorised representative of the concerned Government Agency i.e. NHAI , which was not done.</p>
3	Customs Undertaking	<p>Submitted by the importer to the Customs Department at the time of clearance of the subject goods, wherein they had undertaken that the subject goods would exclusively be used for construction of National/ State Highways and they would not be sold or otherwise disposed of in any manner for the period 5 years from the date of importation as per the condition No. 14 for Sr. No. 411 of the Notification No. 50/2017-Cus. dated 30.06.2017.</p>	

4	Letter No. NHAI/SO/BHAV/Pkg-III/D-424 dated 21.09.2017 issued by the Manager (Tech), Site Office Bhavnagar, National Highway Authority of India	Vide the said letter, the importer was accorded approval as Sub-Contractor of the Concessionaire by Manager (Tech), Site Office Bhavnagar, NHAI, to carry out the subject work and for seeking customs duty exemption.	The Manager (Tech), Site Office Bhavnagar, NHAI was not the authorised representative of NHAI to incorporate any sub-contractor in the said CA.
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29.9 The letter No. NHAI/SO/BHAV/Pkg-III/D-424 dated 21.09.2017 issued by the Manager (Tech), Site Office Bhavnagar, National Highway Authority of India is reproduced below as IMAGE-VII :

IMAGE-VII



**29.10** I find that vide the subject letter, the Manager(Tech), NHAI, site office Bhavnagar had (i) approved the noticee-I as sub-contractor of the Concessionaire and (ii) to seek Customs Duty exemption with reference to the Customs Notification No. 12/2012-Cus, which was already rescinded on 30.06.2017. I find that the said letter dated 21/9/2017 issued by the Manager(Tech), NHAI Site Office Bhavnagar, who was not authorised signatory to the CA. Even copy of this letter has not been marked to the proper authorised representative of NHAI at Dwarka office, New Delhi.

**29.11** Further, I agree with para 6.6 of the SCN that the said letter could in no way be construed as a 'Customs Duty Exemption Certificate' as presented by the noticees before the Customs Authorities. The said letter only stipulated to 'seek' the customs duty exemption, that too under the already rescinded Customs Notification. The Bhavnagar Site Office of NHAI was not authorised to issue such letter.

**29.12** So, the Noticee-I's defence is based entirely on two improper documents. One, the sub-contact agreement with a private party named M/s. MEP Sanjose Mahua Kagavdar Road Private Limited (M/s. SMKRPL) which is an EPC contractor and not a Government Agency. Second, a letter from a Site Manager of NHAI's site office at Bhavnagar approving them to be a sub-contractor but this letter is not signed by Shri K.V. Singh, GM (T) NHAI, Dwarka, New Delhi office, who was the proper authorised representative for the purpose of this Concession Agreement. Further it is admitted by the noticees themselves that they did not submit the full 760 pages of the Agreement before the Customs Department at the time of the clearance of the machine, they had only submitted the first few pages of the CA which did not contain pages from 385 onwards where the EPC contractors were named. So, the names of the three EPC contractors as well as the name of the proper authorised representative of NHAI with the responsibility to recognise any sub-contractor of the contract evident from Annexure-1A(page 385 of the CA), were suppressed from the Customs Department. This fact has also been accepted by Shri Milan Kiritbhai Charadva, Manager of the importer firm and also by Shri Vimal Kikani, authorised representative of the importer firm in their voluntary statements dated 10.06.2019 and 21.09.2020 recorded under Section 108 of the Customs Act, 1962 respectively.

**29.13** Therefore, both these two documents do not appear to be part of the said CA dated 09.08.2016 as there is no mention of these two documents in the entire CA. Therefore, the only possibility through which the noticee-I could have been named in the said CA was through any subsequent insertion of their name by way of corrigendum/ addendum to the said CA.

29.14 Further I find that there is a long gap of 1 year between the sub-contract agreement dated 17.07.2017 and the said CA dated 09.08.2016. Further, it appears strange that the purchase order for the said machine was placed on 23.01.2017 when the importer had not got the sub-contract for the project, which happened much later on 17.07.2017. This is unusual because normally a person would only order an expensive Rs. 7 Crore machine with Customs Duty liability of Rs 65 Lakh only after deciding whether he is liable to get customs exemption or not. It also indicates that the importer ordered the machine first without the so called sub-contractor status and the documents for the same were later created under the guidance of Shri Vijay P. Shetty to claim duty exemption.

29.15 Shri Vimal Kikani, authorised representative of the importer firm in his statement dated 21.09.2020 has accepted that the said sub-contractor agreement between M/s. SMKRPL and M/s Vraj Construction Co. was executed on 17.07.2017 i.e. after the execution of CA dated 09.08.2016 between the NHAI Authorities and M/s. SMKRPL, it was not possible that the name of M/s Vraj Construction Co. would be in the Concession Agreement. Shri Vijay P. Shetty, Manager of M/s Jal Trans Logistics and the then manager of Customs Broker M/s Simon Brothers Pvt. Ltd. in his statement dated 24.10.2018 has also confirmed that it was necessary that the name of the sub-contractor was required to be mentioned in the primary/ main contract in order to avail the benefit of the said Notification by the sub-contractor.

29.16 The Para 5.2.5 of Article 5 of the CA volume I stated that '*The selection or replacement of EPC contractor and an O&M contractor and execution of EPC contract and O&M contract shall be subject to the prior approval of the authority from national security and public interest perspective*'. The Noticees have argued that as per 5.2.5 of this CA, the EPC contractors have unfettered rights to appoint sub-contractors and the view of the Customs Department that all the sub-contractors of a project should have been named in the original Concession Agreement itself is an impossible proposition in the context of a large road construction project which required appointing of sub-contractors only after the main tender is accorded. They also claimed that their subsequent sub-contract Agreement has been vetted and approved by NHAI.

29.17 On examining the relevant Notification and the Concession Agreement closely, I find that the intention of the Legislature behind this notification is to limit the duty exemption to only those contractors or sub-contractors who are explicitly named in the contract implying the main contract where at least one of the five parties is a Government authority or PSU or Government Corporation. So even after awarding the tender if any sub-contractor has to be appointed, it has to be approved by the proper authorised representative of the said government agency who have signed the initial contract. Any interpretation of the exemption notification which makes it open ended and stretchable



could not be legal as it is settled law that an exemption notification has to be interpreted strictly. The clause 5.2.5 of the CA also states that appointing of contractors has to be approved by the authorised representative of NHAI.

**29.18** It is settled law that exemption notifications have to be interpreted strictly. I place reliance upon **Commissioner of Customs (Import), Mumbai vs Dilip Kumar & Company**<sup>14</sup>. The word 'contract' (approving any contractor or sub-contractor of the road project) in the said notification has to be interpreted strictly, i.e. a document which is signed by an authorised representative of one of the five Government agencies. Therefore the sub-contract agreement signed by a private party and another letter signed by Manager, Bhavnagar site office, NHAI cannot be given meaning of the word 'contract' as used in the said notification.

**29.19** Further, in a similar case of import of Slip form Paver by an importer, M/s Raj Promoters and Civil Engineers Pvt. Ltd., Pune, a letter DRI/MZU/CI/INT-207/2018 dated 19.06.2019 was written by DRI, MZU to the Chief Engineer (NH), Public Works Department, Govt. of Maharashtra, Konkan Bhavan, Belapur, Navi Mumbai. Vide the said letter, it was asked as to whether their letter CENH/P-2/2801/2016 dated 21.10.2016 accepting M/s Raj Promoters and Civil Engineers Pvt. Ltd., Pune as sub-contractor, could be treated as corrigendum/ addendum to the main contract executed between them and a Joint Venture M/s PBA-RAJ JV. In their reply vide letter No. CENH/D-1/4292/2019 dated 04.12.2019 NHAI Authorities informed that the said letter could not be treated as corrigendum/ addendum to the said main contract as it was post tender activity. It is pertinent to mention that in that case, the main contract was executed on 22.01.2016, whereas the sub-contract agreement between M/s PBA-RAJ JV and M/s Raj Promoters and Civil Engineers Pvt. Ltd was executed on 11.08.2016.

**29.20** In the present case also, the CA was executed between M/s. SMKRPL and the NHAI Authorities on 09.08.2016, whereas the sub-contract agreement was executed on 17.07.2017. Hence, the sub-contract agreement in this case was also a post tender activity and it appears that the same cannot be treated as corrigendum/ addendum to the main contract i.e. CA dated 09.08.2016, in light of the above clarification given by NHAI.

**29.21** The Noticee-1 requested for Cross Examination of Chief Engineer (NH), Public Works Department, Govt. of Maharashtra, Konkan Bhavan, Belapur, Navi Mumbai. I find that the clarifications issued by the Chief Engineer, NHAI are in the case of M/s. Raj Promoters and Civil Engineers Pvt Ltd which has only interpretational or clarificatory value in the present case. It is only supplementary to other direct evidences as discussed above. The clarification given at para 3 of the said letter that approval of sub contractor by

<sup>14</sup> Commissioner of Customs (Import), Mumbai vs Dilip Kumar & Company [2018 (361) ELT 577 (SC)]

NHAI can not be treated as Corrigendum/Addendum to the main contract is evident from the general interpretation of the clauses of the CA as original signatory to the CA. Furthermore, I find that the Noticee-1 did not provide any specific reasons or arguments as to why they are requesting cross-examination of the Chief Engineer. The clarification issued by the Chief Engineer is self-explanatory, and Noticee-1 has not explained what purpose cross-examination would serve, given that the SCN has already provided sufficient corroborative evidence. Therefore, I am not inclined to grant Noticee-1 the opportunity to cross-examine the Chief Engineer. In this regard, reliance is placed upon the case laws of **Commissioner of Customs, Hyderabad vs. Tallaja Impex<sup>15</sup>**, **Patel Engg. Ltd.<sup>16</sup>** and **Sridhar Paints<sup>17</sup>**.

i) Hon'ble Tribunal in the case of **Commissioner of Customs, Hyderabad vs. Tallaja Impex(supra)** held that *"In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross examination cannot be claimed as a matter of right."*

ii) Hon'ble Bombay High Court in the case of **Patel Engg. Ltd.(supra)** held that *"right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors - Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated."*

iii) Hon'ble Tribunal in the case of **Sridhar Paints(supra)** held that *"..... denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, we find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized"*

Therefore, I find that cross-examination cannot be asserted as an absolute entitlement of the noticee. The SCN has arrived at its findings not solely based on the clarification issued by the Chief Engineer, but also on the basis of various other incriminating records.

29.22 The Noticee-1 has relied upon the case laws of **Union of India vs D.M.Revri<sup>18</sup>** and **Satya Jain versus Anis Ahmed Rushdie<sup>19</sup>** to argue that narrow and pedantic interpretation to words used in contract is unnecessary. The principle of business efficacy should not apply to a contract where the intention of the two parties is easily found out from the plain reading of the contract. The case of the Customs Department in the said

<sup>15</sup> Commissioner of Customs, Hyderabad V. Tallaja Impex- 2012(279) ELT 433 (Tri.)

<sup>16</sup> Patel Engg. Ltd. vs UOI-2014 (307) ELT 862 (Bom.)

<sup>17</sup> Sridhar Paints v/s Commissioner of Central Excise, Hyderabad- 2006(198) ELT 514 (Tri-Bang)

<sup>18</sup> Union of India vs D.M.Revri-1976 (9) TMI 179 - SC

<sup>19</sup> Satya Jain (d) thr. lrs. & ors. versus Anis Ahmed Rushdie (d) tr. lrs. & ors. - 2012 (12) TMI 1170 - SC

SCN is not built upon any difficult or convoluted interpretation of the contract ignoring the plain and simple meaning of it. The case in simple words is that DRI received intelligence that Sh. Vijay Shetty used to contact Indian buyers ordering road construction machines from M/s. Wirtgen Gmbh Germany and then hatched a conspiracy to get sub-contract agreements & other documents signed with certain contractors of NHAI, showing these Indian buyers as sub-contractors of any NHAI road project, only for the purpose of wrongly availing customs duty exemption. All the guidance in the false documentation was provided by Sh. Vijay P. Shetty(Noticee-3). After a detailed investigation, DRI,MZU found that the importer was not named as a sub-contractor in the CA. The subsequent documents created by the importer to claim exemption were not signed by the proper authorised representative of NHAI and therefore exemption was sought to be denied in the SCN. Hence, these case laws do not help the noticees.

**29.23** Thus, I conclude that the sub-contract agreement was executed after the CA was signed. Hence, the noticee-1 could not have been named as a sub-contractor in the original contract as at the time of its execution, no sub-contract agreement was in existence. As per the terms of the subject notification, it appears that '*a person who has been named as sub-contractor in the contract referred in (ii) above*', implies in the instant case, a person who has been named as sub-contractor in the original contract or in the integral part of the contract as discussed at above. It appears that the word "named" signifies "to make reference to or speak about briefly but specifically". In other words, the noticee-1 should have been specifically named or designated as a sub-contractor explicitly as the other mentioned EPC contractors. Thus, the Noticee-1 does not appear to satisfy the said essential condition of the Notification.

**29.24** In view of the above, it is concluded that the noticees in a planned manner suppressed the relevant facts before the Customs Department for wrongly claiming benefit of the exemption notification. Therefore it is concluded that noticee-1 is not eligible for the notification benefit of BCD under Sr. No. 411 of Notification No. 50/2017-Cus. dated 30.06.2017 and they have to pay the applicable BCD@7.5% in CTH 8479. The total duty difference as per Annexure-A of SCN comes out as Rs. 65,44,195/-.

**30 Whether the goods imported under the said Bill of Entry with the total assessable value of Rs.7,17,91,950/- should be held liable for confiscation under the provisions of section 111(m) and Section 111(o) of the Customs Act, 1962?**

**30.1** As per Section 46 of the Customs Act, 1962, the importer of any goods, while making entry on the customs automated system to the proper officer, 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. He shall ensure the

accuracy and completeness of the information given therein and the authenticity and validity of any document supporting it.

**30.2** From the discussion above , it appears that the Noticee-1 had in a planned manner suppressed the relevant facts and intentionally evaded customs duty by wrongfully claiming the benefit of said Notification No. 50/2017-Cus. dated 30.06.2017 on the impugned goods and hence, contravened the provisions of section 46 of the Customs Act, 1962 read with Section 11(3) of the Foreign Trade (Development and Regulation) Act, 1992.

**30.3** I find that the Section 17 of the Customs Act, 1962 , substituted w.e.f. 08.04.2011 provides for self-assessment of goods by the importers. *An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*

**30.4** Under the self-assessment procedure, it is obligatory on the part of noticee-1 to correctly declare all the particulars such as description of the goods, CTHs and Notifications for claim of applicable rates of duties. While claiming any classification or exemption, it is obligatory on the part of the importer to check the applicability of classification/exemption claimed by them to the imported goods.

**30.5** Therefore, by not self-assessing the true and correct rate of BCD applicable on the subject goods, it can be said that the noticee-1 wilfully did not pay the applicable BCD on the impugned goods. They had mis-declared certain facts in a planned manner, at the time of clearance of the said goods so as to wrongly avail the full exemption from BCD on the impugned goods under Sr. No. 411 of Notification No. 50/2017-Cus. dated 30.06.2017, by violating its conditions and thereby evaded applicable duty of Rs. 65,44,195/-. Thus I conclude that the subject goods are liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962.

### **31. Penalty on Noticees:**

#### **31.1 Whether the demand under Section 28(4) of the Act is sustainable?**

**31.1.1** Noticees argued that an extended period of limitation can not be invoked under Section 28(4) of the Customs Act, 1962 and placed reliance on the case of **Advanced Spectra Tek Pvt Ltd.**<sup>20</sup> and **Jai Prakash Industries Ltd.**<sup>21</sup>

**31.1.2** I note that if there is non- levy of duty, short levy or short payment by reason of collusion or any wilful mis-statement or suppression of facts by the importer or employee of the importer, Section 28 (4) of the Customs Act, 1962 shall be applicable.

<sup>20</sup> Advanced Spectra Tek Pvt Ltd. vs Commissioner of Customs 2019(369) E.L.T.871(Tri-Mum)

<sup>21</sup> Jai Prakash Industries Ltd. vs. Commissioner of Central Excise Chandigarh 2002 (146) E.L.T. 481(S.C.)



**31.1.3** In the present case, DRI, MZU had received specific intelligence that Sh. Vijay Shetty used to contact Indian buyers ordering road construction machines from M/s. Wirtgen Gmbh Germany and then hatched a conspiracy to get sub-contract agreements & other documents signed with certain contractors of NHAI, showing these Indian buyers as sub-contractors of any NHAI road project, only for the purpose of wrongly availing customs duty exemption. All the guidance in the false documentation was provided by Sh. Vijay P. Shetty(Noticee-3). After a detailed investigation, DRI, MZU found that the importer was not named as a sub-contractor in the CA. The subsequent documents created by the importer to claim exemption were not signed by the proper authorised representative of NHAI. This is proved not only by the documentary evidence and voluntary statements of the noticees, but also by circumstantial evidence which shows that order for the said road construction machine was placed many months prior to the signing of the said so called sub-contract agreement which was also not proper. Thus, there is clear evidence of conspiracy and fraud and suppression of facts by the Noticee-1 in the present case which surely attracts application of section 28(4).

**31.1.4** Both the case laws of **Advanced Spectra Tek Pvt Ltd and Jai Prakash Industries Ltd (supra)**, relied upon by the noticee dealt with cases where the Court found that intention to suppress facts or to evade duty was not there. In the present case, these ingredients are very much found and established by evidence. Hence, the two case laws stand distinguished.

**31.2 Penalty under section 112(a) or 114A on M/s. Vraj Construction Co. (Noticee-1) & Shri Vasantkumar Bavalal Movaliya(Noticee-2)**

**31.2.1** As discussed above, I find that in the subject Bill of Entry self-assessed by the Noticee-1, they declared themselves to be sub-contractor 'named' in the main contract, which they were not; and thereby claimed ineligible exemption from BCD under the Notification No. 50/2017-Cus, as discussed above. Under the self-assessment procedure, it is obligatory on the part of importers to declare truthfully all the particulars relevant to the assessment of the goods, ensuring their accuracy and authenticity, which the noticee clearly failed to do with wrong intention. They suppressed the fact before the Customs Department regarding the purpose of appointment of them as the sub-contractor after tender allotment and further arranging subsequent NHAI's letter to claim the undue notification benefit at the time of clearance of the said imported goods. Thus Noticee-1, by their various acts of omission and commission discussed above, are liable for penalty under section 112(a) of the Act for improper importation of goods. Since the improper importation of goods has also resulted in short levy of customs duty of around Rs. 65 lakhs, they are also found to be liable for penalty under section 114A of the Act. I note that both the penalties are mutually exclusive.

**31.2.2** The Noticee-2 was one of the partners of the importing firm. The sub-contract agreement dated 17.07.2017 was prepared and signed by the noticee-2 on behalf of the importing firm. Under his watch, the complete copy of the CA was not submitted before the Customs thereby suppressing the relevant facts. There is clear failure of his supervision as the managing partner to ensure compliance of law. Therefore, his acts of omission and commission resulting in improper importation of goods, appear to have rendered the said goods liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962. Therefore, noticee-2 is also liable for imposition of penalty under Section 112(a) of the Customs Act, 1962.

**31.3 Penalty under section 114AA on M/s. Vraj Construction Co.(Noticee-1) & Shri Vasantkumar Bavalal Movaliya(Noticee-2)**

**31.3.1** In the present case, DRI, MZU had received specific intelligence that Sh. Vijay Shetty used to contact Indian buyers ordering road construction machines from M/s. Wirtgen GmbH Germany and then hatched a conspiracy to get sub-contract agreements & other documents signed with certain contractors of NHAI, showing these Indian buyers as sub-contractors of any NHAI road project, only for the purpose of wrongly availing customs duty exemption. The order for the said road construction machine was placed many months prior to the signing of the said so-called sub-contract agreement which proves that claiming of exemption was an afterthought by the importer after entering into conspiracy with Sh. Vijay Shetty. The said NHAI letter was also gotten few days prior to the filing of the BE. All the guidance in the false documentation was provided by Sh. Vijay P. Shetty(Noticee-3). After a detailed investigation, DRI, MZU found that the importer was not named as a sub-contractor in the CA. The subsequent documents created by the importer to claim exemption were not signed by the proper authorised representative of NHAI. This is proved not only by the documentary evidence and voluntary statements of the noticees, Thus, there is clear evidence of conspiracy and fraud and suppression of facts in the case. The said acts of omission and commission of Noticee-1 in collusion with Noticee-3 resulted in use of false and incorrect material in the clearance of goods, hence liable for penal action under section 114AA.

**31.3.2** On the use of false and incorrect material, 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 a penalty under section 114AA against the Noticee -2.

**31.4 Penalty under section 112(a) and section 114AA on Shri Vijay P. Shetty, (Noticee-3) Manager of M/s Jal Trans Logistics and the then manager of Customs Broker, M/s Simon Brothers Pvt Ltd.**

**31.4.1** The Noticee-3 and 4 argued that they do not have any interface with Customs in the clearance of the subject consignment and did not make any declaration before the Customs Department. That none of the documents presented by them to customs is false or incorrect. The Noticee-4 provides only logistics support and they only advised the noticee-1 on documentation necessary for Customs clearance. Therefore, they are not responsible for any declaration in the bill of entry or to the claim of benefit of exemption notification and claim to any exemption are the matters of belief of the assessee and relied upon the case of **Northern Plastic Ltd**<sup>22</sup>. Further added that the Noticee-3 should not be held liable for penalty and relied upon the case of **Carpenter Classic Exim Pvt. Ltd.**<sup>23</sup> and **Gammon India Ltd.**<sup>24</sup>

**31.4.2** I find that Noticee-3 was the manager of M/s. Jal Trans Logistics and then manager of Customs Broker firm(Noticee-4). He was the sole manager in the said logistic firm and looked after marketing, operations and used to supervise the billing activities. They had a transportation/Customs Broker service agreement dated 10.01.2018 with M/s. Wirtgen India Pvt. Ltd., Daund, Pune (subsidiary of Wirtgen GMBH-Supplier) for Customs clearance and local transportation of such imported goods supplied by M/s. Wirtgen GMBH to Indian buyers. Accordingly, the sales team of M/s Wirtgen India Pvt. Ltd. used to inform them about the prospective Indian buyers of 'various Slipform pavers of Wirtgen make'. In turn he used to contact the said buyers and offer logistics and Customs clearance services. Sometimes, the Indian buyers of the said Wirtgen equipment themselves contacted him for such services.

**31.4.3** Further from email conversations mentioned in the SCN, I find that Noticee-3 and his staff Shri Nitesh Anchan was conversing with Mr. Mohanty (an employee of one M/s RKD Construction Pvt. Ltd.), wherein they were guiding the said importer firm to prepare documents viz. sub-contract agreement as per a draft agreement sent to them to avail the benefit of the said Customs Notification. Further, Noticee-3 had approved the draft sub-contract agreement sent by M/s RKD Construction Pvt. Ltd. It shows that under the guidance of noticee-3, the draft sub-contract agreements were prepared to avail ineligible benefit of Notification No. 50/2017-Cus. dated 30.06.2017

**31.4.4** I find that Noticee-3 has mis-guided the Customs Authorities and circumvented the notification condition. He is experienced in the field of Customs clearance of road construction equipment and well aware of the nitty gritty of the provisions of various Customs Exemption Notifications since the year 2008. He used to guide the importers to avail ineligible duty exemption under the Customs Notifications issued from time to time. Hence, I find that Noticee-3 has played a pivotal role as a mastermind in evasion of Customs Duty in the instant case, wherein he in connivance with the noticee-1, did not

<sup>22</sup> Northern Plastic Ltd vs Collector of Customs & Central Excise 1998(101) E.L.T. 549(S.C.)

<sup>23</sup> Carpenter Classic Exim Pvt. Ltd. vs Commissioner of Customs, Bangalore 2006(200) E.L.T. 593(Tri-Bang)

<sup>24</sup> Gammon India Ltd. vs Commissioner of Customs(Import) Mumbai, 2019 (369) E.L.T. 918 (Tri-Mum)



produce the requisite documents before the Customs Authorities. Further, the sub-contract agreement dated 17.07.2017 was prepared & executed at his behest. Further, the NHAI's letter dated 21.09.2017 was obtained immediately before the filing of the subject Bill of Entry and submitted to the Customs Authorities, suppressing the actual purpose of the said sub-contract agreement and the letter and thereby they wilfully availed the benefit of the said Customs Notification wrongly.

**31.4.5** I find that the Noticee-3 was the manager of M/s. Jal Trans Logistics and then manager of Customs Broker played the pivotal role in this modus-operandi, wherein various importers had availed ineligible exemption from BCD under the erstwhile Notification No. 12/2012-Cus. and corresponding Notification No. 50/2017-Cus. In the instant case too, as per his instruction, the noticee-1 did not provide the complete copy of the main contract i.e. CA dated 09.08.2016 but only limited documents were submitted before the Customs Authorities, while suppressing the complete and true fact regarding appointment of importer as sub-contractor. Therefore, his acts of omission and commission have rendered the subject goods liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962. Therefore, he is liable for imposition of penalty under Section 112(a) of the Customs Act, 1962.

**31.4.6** The case of **Northern Plastic Ltd(supra)** pertained to January 1998, when the appellant imported 59 jumbo rolls of Photographic Colour Films (Unexposed) Positive. The Hon'ble Supreme Court observed that the appellant had not described the rolls as jumbo rolls but had given the length and width of each roll. The word "jumbo" is only indicative of size of the goods and the appellant having specifically stated the size of each roll it was not necessary, as there was no such requirement of law, for him to have described the goods which were in the form of rolls as jumbo rolls. So, there was no misdeclaration on the part of the importer as there was no dishonest intention of evading payment of customs and countervailing duty. The present case belongs to a different legal regime of self-assessment where unlike the case of **Northern Plastics**, the onus now lies on the importer to correctly self-assess the Bill of Entry. Moreover the dishonest intention is apparent from the fact that the importer was not the sub-contractor of a road project when he ordered the machine from Germany. It is only after getting information from a German Supplier, Noticee-3 contacted the importer and got an improper sub-contract agreement & other documents made seven months later. DRI found that Noticee-3 was doing it repeatedly as a modus operandi after obtaining client information from Germany, knowing fully well that these clients were not sub-contractors named in the main contract. Hence, the present case is fundamentally different from **Northern Plastics Ltd (supra)**.

**31.4.7** The Noticee-3 argued that he should not be held liable for the penalty even if M/s. JTL is held liable and relied upon **Carpenter Classic Exim** and **Gammon India Ltd (supra)** where Hon'ble Tribunal set aside personal penalty on employees of the appellant



firm on the ground that they had acted under the directions of bosses and there is no evidence to show that they personally benefited from the under-invoicing. No specific act of omission or commission on the part of individuals contributed to the confiscation and they are not benefited in any way and are executing directions emanating from more responsible levels. However in the present case, Noticee-3 was the manager of the M/s. Jal Trans Logistics(JTL) and then manager of a Customs Broker firm. He is in a senior position and final decisions were taken by him. He played the pivotal role in this modus-operandi, wherein various importers had availed ineligible exemption from BCD under the erstwhile Notification No. 12/2012-Cus. and corresponding Notification No. 50/2017-Cus. Therefore, this case does not help the Noticee-3.

**31.4.8** Therefore, I find that Noticee-3's said acts of omission and commission resulting in improper importation of goods, appear to have rendered the said goods liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962. Therefore, noticee-3 is liable for imposition of penalty under Section 112(a) of the Customs Act, 1962.

**31.4.9** As discussed above, the said acts of omission and commission of Noticee-3 resulted in use of false and incorrect material in the clearance of goods, hence he is also liable for penal action under section 114AA.

**31.5 Penalty under section 112(a) on M/s. Jal Trans Logistics (Noticee-4).**

**31.5.1** The Noticee -4 argued that they provided only logistics support and they advised on documentation necessary for Customs clearance. Therefore, they are not responsible for any declaration in the bill of entry or to claim the benefit of exemption notification.

**31.5.2** I find that the noticee-4 have been involved in the subject duty evasion and have been utilised as a willing tool by the noticee-3. There was also connivance between noticee -4 and noticee-5 as practically both were being operated by the same set of persons. Mrs. Reshma S. Shetty, the proprietress of noticee-4 appears to be well aware of modus-operandi adopted by noticee-3 who was operating as Manager in her firm. Therefore, the acts of omission and commission of noticee-4 had rendered the impugned goods liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962. Accordingly, they are liable for imposition of penalty under Section 112(a) of the Customs Act, 1962.

**31.6 Penalty under section 112(a) on M/s. Simon Brothers Pvt. Ltd. (CB No. 11/457 of Mumbai) (Noticee-5).**

**31.6.1** I find that Noticee-5 had not discharged their obligation and responsibilities as envisaged under Customs Broker Licencing Regulations, 2013 (CBLR, 2013) as their Manager Shri Vijay P. Shetty indulged in the said modus-operandi in evasion of duty by

adopting illicit means. There was a connivance between noticee 4 and noticee-5 as practically both were being operated by the same set of persons. The CHA firm allowed itself to be misused by its Manager in this serious fraud.

**31.6.2** I find that Noticee- 5 had knowledge that the appointment of the noticee-1 as a sub-contractor had nothing to do with the relevant Notification, even then they appear to have chosen not to disclose the same to the Customs and had suppressed the said fact to claim the benefit of subject exemption notification as discussed above, with intent to evade payment of applicable Customs duty. Thus, the manner adopted by the noticee-5 in suppressing the relevant facts so as to avail full exemption from basic customs duty appears to be indicative of their *mens rea*.

**31.6.3** In this regard, I find that in the case of **Noble Agency v. Commissioner of Customs, Mumbai**<sup>25</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”*

**31.6.4** 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>26</sup> and it was held that misconduct on behalf of CHA had to be viewed seriously.

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

<sup>25</sup> Noble Agency v. Commissioner of Customs, Mumbai [2002 (142) E.L.T. 84 (Tri. -Mumbai)]

<sup>26</sup> K.M. Ganatra & Co [ 2016(332) E.L.T. 15 (S.C.) ] = 2016-TIOL-13-SC-CUS

**31.6.6** Therefore, I find that their above discussed acts of omission and commission have rendered the impugned goods liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962. Therefore, they are liable for imposition of penalty under Section 112(a) of the Customs Act, 1962.

**ORDER**

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

**32.1** I deny the exemption of basic customs duty availed under Sr. No. 411 of Notification No. 50/2017-Cus. dated 30.06.2017 on the goods imported vide Bill of Entry No. 3430751 dated 29.09.2017.

**32.2** I confirm the differential duty amounting to **Rs. 65,44,195/- (Rupees Sixty Five Lakh Forty Four Thousand One Hundred Ninety Five Only)** (as calculated and annexed as Annexure 'A' to SCN in respect of the said Bill of Entry) under the provisions of Section 28 of the Act along with applicable interest under section 28AA of the Act.

**32.3** I hold the goods imported under the said Bill of Entry with the total assessable value of Rs. 7,17,91,950/- (Rupees Seven Crore Seventeen Lakh Ninety One Thousand Nine Hundred Fifty Only) liable for confiscation under the provisions of section 111(m) and Section 111(o) of the Act. However, in lieu of confiscation, I impose a redemption fine of **Rs. 15,00,000/-(Rupees Fifteen Lakh Only)** under Section 125 of the Act.

**32.4** I impose a penalty equal to the short paid duty and interest upon the importer, M/s. Vraj Construction Co. under Section 114A of the Act, 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.

**32.5** I impose a penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakh Only)** upon M/s. Vraj Construction Co. under the provisions of Section 114AA of the Act.

**32.6** I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** upon Shri Vasantkumar Bavalal Movaliya, the Partner of the firm under the provisions of Section 112(a) of the Act.

**32.7** I impose a penalty of **Rs. 5,00,000/-( Rupees Five Lakh Only)** upon Shri Vijay P. Shetty, Manager of M/s Jal Trans Logistics and the then manager of Customs Broker, M/s Simon Brothers Pvt. Ltd under the provisions of Section 112(a) of the Act.

**32.8** I impose a penalty of **Rs. 25,00,000/- (Rupees Twenty Five Lakh Only)** upon Shri Vijay P. Shetty, Manager of M/s Jal Trans Logistics and the then manager of Customs Broker, M/s Simon Brothers Pvt. Ltd under the provisions of Section 114AA of the Act.

32.9 I impose a penalty of Rs. 5,00,000/- ( Rupees Five Lakh Only) upon M/s. Jal Trans Logistics under the provisions of Section 112(a) of the Act.

32.10 I impose a penalty of Rs.5,00,000/- ( Rupees Five Lakh Only) upon M/s. Simon Brothers Pvt. Ltd. (CB No. 11/457) under the provisions of Section 112(a) of the Act.

33. 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  
30.03.2023

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



To,

1. M/s Vraj Construction Co.,  
Block No. 4, 2<sup>nd</sup> Floor,  
Sardar Patel Shopping Centre,  
Jilla Panchayat Road  
Amreli, Gujarat, PIN- 365601.
2. Shri Vasantkumar Bavallal Movaliya,  
Partner of M/s Vraj Construction Co.,  
Block No. 4, 2<sup>nd</sup> Floor,  
Sardar Patel Shopping Centre,  
Jilla Panchayat Road,  
Amreli, Gujarat, PIN- 365601.
3. Shri Vijay P. Shetty,  
Manager, M/s Jal Trans Logistics (earlier Manager,  
M/s Simon Brothers Pvt. Ltd.),  
A-403, Gokul Arcade, Subhash Road,



Near Garware House, Ville Parle (E), Mumbai – 400057.

4. M/s Jal Trans Logistics,  
A-403, Gokul Arcade,  
Subhash Road, Near Garware House,  
Ville Parle (E), Mumbai – 400057.

5. M/s Simon Brothers Pvt. Ltd. (CB No. 11/457)  
A-207, Western Tower, Western Express Highway,  
Next to Bisleri Co., Andheri (East), Mumbai- 400069.

**Copy to:**

1. The Pr. Chief Commissioner of Customs, Mumbai Zone-I,  
New Custom House, Mumbai.
2. The Principal Additional Director General, DRI, MZU,13, Sir Vithaldas  
Thackersey Marg, Opposite Patkar Hall, New Marine Line, Mumbai - 400 020.
3. ADG(CEIB), Central Economic Intelligence Bureau, Janpath Bhavan, B-wing, 6th  
Floor, New Delhi-110001.
4. The Deputy Commissioner of Customs, CBS, New Custom House, Mumbai.
5. Office Copy.