



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, बेलार्ड एस्टेट,
मुंबई-400001.

दूरध्वनि-22757401 फैक्स-22757402

ई-मेल: adjn-commr-imp1nch@gov.in

फा.सं. : S/10-Adjn-15/2005 VA

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

आदेश दिनांक: 31.08.2023
जारी दिनांक: 31.08.2023

सी.ए.ओ. क्रमांक : 38/2023-24/CAC/CC(IMPORT-1)/VP/ADJ(IMP-1)
DIN No. 202309770000006656EB

मूल आदेश

- 1- यह प्रति उस व्यक्ति के प्रयोग के लिए निः शुल्क है, जिसके लिए यह पारित किया है।
- 2- इस आदेश के विरुद्ध क्षेत्रीय पीठ, सीमाशुल्क, उत्पाद एवं सेवाकर अपीलीय अधिकरण, जय सेन्टर, चौथा एवं पांचवा तल, 34 पी. डी. मेलो रोड, पूना स्ट्रीट, मस्जिद बन्दर (पूर्व) मुंबई 400 009 को अपील की जा सकती है।
- 3- सीमाशुल्क (अपील) नियमों 1982 के नियम 6 के आधार पर अपील फॉर्म सी ए-3 में जैसा कि उक्त नियम में संलग्न है के आधार पर की जानी चाहिए। अपील चार प्रतियों में की जानी चाहिए एवं 90 दिनों के अन्दर दायर की जानी चाहिए एवं उसके साथ उस आदेश की चार प्रतियां संलग्न होनी चाहिए जिसके विरुद्ध अपील की गई हो (इन प्रतियों में कम से कम एक प्रति अभिप्रमाणित प्रति होनी चाहिए)। अपील के साथ सीमाशुल्क अधिनियम 1962 की धारा 129A की उपधारा (6) के अन्तर्गत लागू रु.1,000/-, रु.5,000/- अथवा रु.10,000/- का, क्रास किया हुआ बैंक ड्रॉफ्ट अधिकरण की पीठ के सहायक रजिस्ट्रार के नाम जारी किया होना चाहिए। यह बैंक ड्राफ्ट ऐसे राष्ट्रीय बैंक का होना चाहिए जिसकी शाखा उस जगह स्थित हो जहां अधिकरण पीठ स्थित है।
- 4- अपील अधिकरण पीठ के सहायक रजिस्ट्रार अथवा इस संबंध में उनके द्वारा अधिकृत किसी भी अधिकारी के कार्यालय में प्रस्तुत की जानी चाहिए अथवा सहायक रजिस्ट्रार या ऐसे अधिकारी के नाम पंजीकृत डाक द्वारा भेजी जानी चाहिए।
- 5- जो व्यक्ति इस आदेश के विरुद्ध अपील करना चाहता है वह इस अपील के लंबित रहने तक दंडराशि या अपेक्षित शुल्क की साढ़े सात प्रतिशत धनराशि को जमा करे और ऐसे भुगतान का साक्ष्य प्रस्तुत करे। ऐसा न करने पर यह अपील 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)
2nd FLOOR, NEW CUSTOM HOUSE, SHOORJI VALLABHDAS ROAD, BALLARD ESTATE,
MUMBAI – 400001.

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F.No. : S/10-Adjn-15/2005 VA

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

Date of Order: 31.08.2023
Date of Issue: 31.08.2023

C.A.O. No.: 38/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 202309770000006656EB

ORDER-IN-ORIGINAL

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

Subject: Second round of adjudication of Show Cause Notice dated 12.05.2005 issued vide F.No. 50D/71/2004-C.I.(Pt.V) by ADG DRI New Delhi to M/s Jindal Steel & Power Ltd. and others, in pursuance of the Hon'ble CESTAT's Remand Order No. A/90749/17/CB dated 14/11/2017, regarding evasion of customs duty of Rs. 75,50,766/- in the import of goods by wrongly availing Customs Duty Exemption under Notification No. 84/97-Cus. dated 11.11.97, as amended by Notification No. 85/99-Cus., dated 6.7.99, No. 119/99-Cus., dated 2.11.99, No. 75/2001-Cus., dated 6.7.2001 and 107/2001-Cus., dated 12.10.2001 by forging the Project Implementing Authority Certificates.

Brief facts of the case

This is the second round of adjudication of the SCN dated 12.05.2005 issued vide F.No. 50D/71/2004-C.I.(Pt.V)¹ after the Hon'ble Tribunal vide Order No. A/90749/17/CB dated 14/11/2017² remanded back the 1st OIO dated 29.09.2006 issued vide F.No. DRI 50D/71/2004-C.I & S/10-15/2005 VA and ordered that *"In view of the rivalry submissions as above and also the tribunal having taken a view that the appeal should go back to the adjudicating authority till the decision of the Apex Court, it is proper to send back all the appeals to the adjudicating authority who shall pass appropriate order on the basis of outcome of the Apex Court judgment in Mangali Impex case which has been admitted in Civil Appeal No. 20453 of 2016 as reported in 2016 (339) ELT A49 (SC), granting reasonable opportunity of hearing to both the sides. We may state that when an appeal is admitted by Apex Court whether the order appealed is stayed or not makes no difference to law since the order appealed is under challenge and the Tribunal should not overreach the jurisdiction of the apex Court as has been held by the Apex Court in Union of India v. West Coast Paper Mills Ltd. 2004 (164) ELT 375 (SC)."*

2. The facts of present case are that an information was available with the **Directorate of Revenue Intelligence Hqrs, New Delhi**³ that the various companies including **Jindal Steel & Power Limited**⁴, Post Box No. 16, Kharsia Road, Raigarh, Chattisgarh having corporate office at Jindal Centre, 12 Bhikaiji Cama Place, New Delhi (IEC No. 3399000197) were claiming the benefit of exemption of customs duties based on forged Project Implementing Authority Certificates. DRI accordingly initiated investigation into the wrong availment of Customs Duty Exemption under Notification No. 84/97-Cus. dated 11.11.97, as amended by Notification No. 85/99-Cus dated 6.7.99, No. 119/99-Cus dated 2.11.99, No. 75/2001-Cus dated 6.7.2001 and 107/2001-Cus dated 12.10.2001 by forging the **Project Implementing Authority Certificates**⁵. As per the Notification, the Central Government, being satisfied that it is necessary in the public interest so to do, exempts all

¹ Also referred to as the notice or the SCN

² Also referred to as the Tribunal Remand Order

³ Also referred to as DRI Hqrs

⁴ Also referred to as JSPL or Noticee-1

⁵ Also referred to as PIAC



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the goods imported into India for execution of projects financed by the United Nations or an International Organization and approved by the Government of India from the whole of the duty of Customs, whole of the additional duty of Customs and the whole of the special duty of Customs leviable provided that the importer, at the time of clearance of the goods, in case the said goods are intended to be used in a project financed by the World Bank, the Asian Development Bank or any other International organisation other than those listed in the annexure to the said notification and said project has been approved by the Government of India, produces a certificate from the executive head of the Project Implementing Authority and countersigned by an officer not below the rank of Joint Secretary to the Government of India in the concerned Line Ministry in the Government of India, that the said goods are required for the execution of the said project and the said project has duly been approved by the Government of India.

3. During the course of investigations it was found that one Shri Rakesh Yadav, Junior Finance Officer, Department of Economic Affairs, Ministry of Finance, Govt. of India, had been involved in issuance of such forged PIACs.

4. Statements of Shri Rakesh Yadav, Junior Finance Officer, Department of Economic Affairs, Ministry of Finance, Govt. of India were recorded on 29.7.2004 and 30.07.2004 under Section 108 of the **Customs Act, 1962⁶**, wherein he stated, inter-alia, that he was working as Junior Finance Officer in Ministry of Finance, Govt. of India and he was looking after World Bank assisted projects in power, coal, environment, structural adjustment loans etc. that he was reporting to Shri Sunil K. Bhargava, Director (FB) through Dr. Madhumati, Under Secretary; that he had indulged in forging and fabricating PIACs while working in the Fund Bank Section, Department of Economic Affairs, Ministry of Finance, Govt. of India since the year 2002; that he had forged/fabricated PIACs only in cases of ICICI Bank loans given to various sub-projects undertaken by various Private Sector/Public Sector companies funded by World Bank/Asian Development Bank; and that as per his remembrance he had issued about 30 to 40 such certificates till that date.

4.1 On being shown a file containing copies of PIAC No. ICICI/WB/IPPP/Customs/04 dated 4.4.2002 alongwith letter D.O.No. 5/4/93-FBIV dated 16.4.2002, ICICI/WB/IPPP/Customs/05 dated 16.4.2002 and ICICI/WB/IPPP/Customs/06 dated 24.4.2002 alongwith letter D.O.No. 5/4/93-FBIV dated 29.4.2002, ICICI/WB/IPPP/Customs/07 dated 21.5.2002 alongwith letter D.O.No. 5/4/93-FBIV dated 4.6.2002 and ICICI/WB/IPPP/Customs/08 dated 4.6.2002 alongwith letter D.O.No. 5/4/93-FBIV dated 14.6.2002 in respect of JSPL he stated, inter-alia, that those PIACs had been forged and fabricated by him. On being asked to explain as to how he fabricated the PIACs, he stated that he looked for some correspondences in the FB Division files where

⁶ Also referred to as the Act

Director(ADB) had signed some correspondences as link officer; that he took one such correspondence and kept it on a glass (desktop) available on his table and traced the signature and fabricated the PIACs; and that in similar fashion he traced the signature of Joint Secretary (i.e., Joint Secretary to the Government of India, Ministry of Finance) on the PIACs; that he traced the signature of Director(ADB), Department of Economic Affairs, Ministry of Finance, Govt. of India and Joint Secretary (FB), Department of Economic Affairs, Ministry of Finance, Govt. of India from the original signature of those officials which were available in his office records.

4.2 On being asked whether he agreed with the fact that PIACs forged by him had been utilized for evasion of Customs duty in respect of the imports of the goods by respective borrowers of the loan under the World Bank/Asian Development Bank Loans, he stated, that it was a fact that the PIACs fabricated by him had been utilized for claiming duty exemption at the time of import of goods; and that he had committed an offence in abetting evasion of Customs Duty by various firms by utilizing the forged PIACs issued by him.

5. Statement of Dr. Adarsh Kishore, Secretary to the Govt.of India, Ministry of Heavy Industries & Public Enterprises, Udyog Bhavan, New Delhi (formerly Additional Secretary (FB,ADB & Ext.Fin.), Ministry of Finance, Govt.of India) was recorded on 5.8.2004 under Section 108 of the Customs Act, 1962 wherein he stated, inter-alia, that he was posted in the Ministry of Finance in the capacity of Additional Secretary to the Govt. of India during the period October, 2002 to June,2003.

5.1 On being shown PIAC No. ICICI/WB/IPPP/Customs/04 dated 4.4.2002 addressed to the Commissioner of Customs, JNPT, Nhava Sheva, PIAC Nos. ICICI/WB/IPPP/Customs/05 dated 16.4.2002, ICICI/WB/IPPP/Customs/06 dated 24.4.2002 & PIAC No. ICICI/WB/IPPP/Customs/07 dated 21.5.2002 addressed to the Commissioner of Customs, Kolkata Airport and PIAC No. ICICI/WB/IPPP/Customs/08 dated 4.6.2002 addressed to Commissioner of Customs, Mumbai Sea Port, for claiming Customs duty exemption which were purported to have been counter-signed by the Additional Secretary (FB, ADB & Ext. Fin.) for the Ministry of Finance, he stated that the signatures as appearing on those certificates were not his signatures and that he had not seen those documents earlier in his capacity as Additional Secretary (FB, ADB & Ext.Fin.). He further stated that such documents were, in any case, not expected to be counter signed by the Department of Economic Affairs, Ministry of Finance as it was not the 'Line Ministry' concerned with the imports for projects; that such papers were also not expected to be submitted for counter-signatures to the officers of the rank of Additional Secretary or above; and that he was not aware as to who could have forged those documents with his signatures and he categorically stated that those signatures were not put on those papers by him.

6. Statement of Shri Subhash Chandra Garg @ S.C. Garg, Joint Secretary (Plan Finance-I), Ministry of Finance, Government of India then Director (FB), Department of Economic Affairs, Ministry of Finance, Government of India was recorded on 6.8.2004 under Section 108 of Customs Act, 1962. On being shown letter D.O.No. 5/4/93-FBIV dated 16.4.2002 addressed to the Commissioner of Customs, JNPT, Nhava Sheva in respect of PIAC No. ICICI/W/IPPP/Customs/04 dated 4.4.2002, letter D.O.No. 5/4/93-FBIV dated 29.4.2002 addressed to the Commissioner of Customs, Kolkata Airport, Kolkata in respect of PIAC No. ICICI/WB/IPPP/Customs/05 dated 16.4.2002 and ICICI/WB/IPPP/Customs/06 dated 24.4.2002, letter D.O.No. 5/4/93-FBIV dated 4.6.2002 addressed to Commissioner of Customs, Kolkata Airport, Kolkata in respect of PIAC No. ICICI/WB/IPPP/Customs/07 dated 21.5.2002 and letter D.O.No. 5/4/93-FBIV dated 14.6.2002 addressed to the Commissioner of Customs, Mumbai Sea Port in respect of PIAC No. ICICI/WB/IPPP/Customs/08 dated 4.6.2002 purportedly bearing his signature as Director(FB), Department of Economic Affairs, Ministry of Finance, Govt. of India, he categorically denied having signed those documents. He stated that those signatures looked like his signatures but were not his signatures and he had not seen those documents earlier; that the covering letter and certificate were not supposed to be issued by the Department of Economic Affairs but by the concerned Line Ministry as specified in the relevant Customs notification and that he was not aware as to who could have forged those signatures.

7. Statement of Shri Rajeev Aggarwal, General Manager - Corporate Finance, JSPL recorded under Section 108 of the Customs Act, 1962 on 17.8.2004 wherein he stated, inter-alia that JSPL was engaged in the business of manufacturing sponge iron, steel and generation of power at Raigarh, Chhattisgarh; that JSPL imported following equipments under the World Bank Line of Credit No:3780 - IN for Industrial Pollution Prevention Project funded by International Bank for Reconstruction and Development (IBRD) of the World Bank group for which ICICI Bank Ltd. had been appointed as Project Implementing Authority, through Mumbai Port, JNPT, Nhava Sheva Port and Kolkata Port:-

- (i) Complete Unit of Vibrating Basket Centrifuge Model HSG 1300.
- (ii) Coal Fines Belt Press Filters alongwith accessories.
- (iii) Single Deck Reverse Slope Inclined Vibrating Screen complete with accessories.
- (iv) Bearings;

that JSPL had utilized PIACs issued by the ICICI Bank Ltd. and counter-signed by Ministry of Finance, Government of India and they had cleared the above mentioned imported goods availing full exemption of Customs duty; that JSPL had approached ICICI Bank Ltd. for financing their project of Blast Furnace and Coal Washery at a estimated cost of Rs. 135 crore proposed to be funded with term loan of Rs. 100 crore from ICICI Bank

Ltd. and internal accruals of Rs. 35 crore; that ICICI Bank Ltd. explained to them that since the project of Coal Washing is concerned under Pollution Prevention Project and ICICI Bank Ltd. being the nodal agency, ICICI would get them concessional funding from World Bank for coal washery project; that according to ICICI Bank Ltd., JSPL were entitled for following benefits:-

- (i) Concessional funding @ 1.5% p.a. subject to a ceiling of Rs. 1.50 crores on interest side
- (ii) Zero duty imports under Customs Notification No. 85/99 as amended;

that World Bank Group issued final clearance of JSPL's Coal Washery project vide their sanction letter dated 20.3.2002 through ICICI Bank Ltd. for a total amount of Rs.21.2489 cr. (US \$ 4.427 million); that based on that sanction letter ICICI Bank Ltd. issued Project Implementing Authority Certificates duly executed by Shri S.Mukherjee, Executive Director and sent it through courier to JSPL's office with a covering letter to Ministry of Finance, Government of India; that ICICI Bank Ltd. advised JSPL to contact Shri Rakesh Yadav and hand over the papers to him for getting it signed from Additional Secretary, Department of Economic Affairs, Ministry of Finance, Government of India; that he (i.e. Shri Rajeev Aggarwal) went to Ministry of Finance, North Block, New Delhi and enquired about Shri Rakesh Yadav; that Shri Rakesh Yadav spoke to him over phone at reception and came at the reception to collect the paper, that Shri Rakesh Yadav told him to contact after 4 - 5 days and get the papers collected; office boy of Shri Rajeev Aggarwal used to go and hand over and collect the papers from Ministry of Finance, Government of India; that he used to send those papers to Mumbai Office and Kolkata Office of JSPL to produce before Customs authorities to get the equipments cleared; that he (i.e. Shri Rajeev Aggarwal) was introduced to the name of Shri Rakesh Yadav by a representative of ICICI Bank Ltd. namely, Shri Z. Irani and Shri Girish Mahajan; that he (i.e., Shri Rajeev Aggarwal) never contacted any officer of Ministry of Finance, Government of India other than Shri Rakesh Yadav as there was no difficulty/delay in getting the Project Implementing Authority Certificates counter-signed by the Ministry of Finance.

7.1 On being shown the statement dated 5.8.2004 of Dr. Adars Kishore and statement dated 6.8.2004 of Shri Subhash Chandra Garg recorded under Section 108 of Customs Act, 1962 he stated, inter alia that on the basis of these statements he observed that PIAC Nos. ICICI/WB/IPPP/Customs/04 dated 4.4.2002, ICICI/WB/IPPP/Customs/05 dated 16.4.2002, ICICI/WB/IPPP/Customs/06 dated 24.4.2002, ICICI/WB/IPPP/Customs/07 dated 21.5.2002 and ICICI/WB/IPPP/Customs/08 dated 4.6.2002 had been forged.

8. Statement of Shri Anand T. Kusre, General Manager, in-charge Technology Group, ICICI Bank was recorded under Section 108 of the Customs Act, 1962 on 02.08.2004 wherein he stated, inter-alia, that he joined ICICI Bank Ltd as Project Officer in the year

1980; that he was in-charge of Technology Group since October 2001; that as General Manager in-charge of Technology Group his responsibilities were managing programmes for technology development and health-care etc; that he was assisted in his work by Shri Anil Malhotra, Chief Manager and a group of Managers; that ICICI Bank Ltd had signed a loan agreement with Asian Development Bank (ADB) under Urban Environment Infrastructure Facility Project (UEIP) for US \$ 30 million being line of Credit No: 1720/IN; that the line of credit was available upto September 2004; that term loans under UEIP projects were extended to borrowers by ICICI Bank Ltd, who undertook to execute projects which were approved by ADB under that category; that as per ADB terminology the borrowers who availed such loans from banks were called sub-borrowers; that as per the practice, sub-borrowers submitted proposal to Business group in the ICICI Bank which was appraised and evaluated and sanctioned by the Business Group and loan was disbursed to the borrower; that if the equipments covered by the entire loan or part of it fell under UEIP scheme approved by ADB, the Technology group sought approval from ADB; that under UEIP line of credit, ICICI Bank had been designated as the Project Implementing Authority by the ADB; that the sub-borrower who availed loan under UEIP were entitled to exemption from payment of Customs and Central Excise duties on the equipment acquired by them under that project; that for facilitating that exemption, a certificate in the capacity of Project Implementing Authority was required to be issued by the Executive head of the bank specifying the details of the equipments which were sought to be acquired by the sub-borrowers; that as per Notification issued by Government of India the certificate required counter-signature from an officer not below the rank of Joint Secretary to the Government of India in the concerned Line Ministry in the Government of India.

9. Statement of Shri Zarasp Irani, Manager, ICICI Bank Ltd. was recorded on 04.08.2004. On being asked as to why counter-signature of the Joint Secretary in the Ministry of Finance on the PIAC issued by ICICI Bank Ltd were considered necessary he stated that the Notification issued by the Government of India, under which exemption from payment of Customs duty is granted to the sub-borrowers, required counter-signature on the PIAC by an officer not below the rank of Joint Secretary to the Government of India in the concerned Line Ministry; that according to ICICI Bank Ltd. the Line Ministry for the PIAC issued by them was Ministry of Finance. He further stated that Line Ministry meant a Ministry in the Government of India, which was so nominated with respect to a project by the Government of India. On being asked he stated that he was not aware whether for projects appraised by the ICICI Bank Ltd. under World Bank or ADB Line of Credit, such nominations from the Ministry of Finance (Department of Economic Affairs) were received vis-à-vis each project under that line of project.

10. Further, statement of Shri Zarasp Irani, Manager, ICICI Bank Ltd was recorded on 12.01.2005 wherein he stated inter-alia that PIACs were prepared by him as per instruction

from his superiors and he put up the said PIACs to them for signatures; and that thereafter the PIACs were handed over to the customers or their authorised agent for handling the work relating to the counter-signature of the officers of Ministry of Finance.

11. Statement of Dr. G. Madhumati, Under Secretary (Fund Bank), Department of Economic Affairs, Ministry of Finance, Government of India, New Delhi was recorded under section 108 of Customs Act, 1962 on 19.01.2005 wherein she stated, inter alia, that she was looking after all matters relating to loan/credit, grants assistance of World Bank.

11.1 On being shown copies of Project Implementing Authority Certificate No. ICICI/WB/IPPP/Customs/04 dated 4.4.2002 alongwith letter D.O.No. 5/4/93-FBIV dated 16.4.2002, ICICI/WB/IPPP/Customs/05 dated 16.4.2002 and ICICI/WB/IPPP/Customs/06 dated 24.4.2002 alongwith letter D.O.No. 5/4/93-FBIV dated 29.4.2002, ICICI/WB/IPPP/Customs/07 dated 21.5.2002 alongwith letter D.O.No. 5/4/93-FBIV dated 4.6.2002 and ICICI/WB/IPPP/Customs/08 dated 4.6.2002 alongwith letter D.O.No. 5/4/93-FBIV dated 14.6.2002 in respect of JSPL, she confirmed that those certificates and forwarding letter had never been issued from the Department of Economic Affairs; that as per the conditions of the Notification No: 84/97-Cus dated 11.11.97 as amended, the Department of Economic Affairs did not have the authority to counter-sign the PIACs; that the PIACs required to be countersigned by the officers not below the rank of Joint Secretary to the Government of India in the concerned Line Ministry; that Department of Economic Affairs, Ministry of Finance had the specific role of only initiating the World Bank assistance and was not the implementing agency for the World Bank assisted projects.

12. During investigation JSPL vide letter dated 13.08.2004 deposited three Demand Draft amounting to Rs. 32,57,994/-, Rs. 32,30,095/-, and Rs.10,62,677/-which were deposited subsequently in the account of Commissioner of Customs (Import), New Custom House, Mumbai vide Challan No. 974 dated 30.9.2004, Commissioner of Customs (Import), Nhava Sheva vide Challan No. Nil dated 23.8.2004 and Commissioner of Customs (Port), Custom House, Kolkata vide Challan No. I-161 dated 15.3.2005, respectively.

13. Scrutiny of the records seized, records obtained during investigation and the various statements recorded under Section 108 of Customs Act, 1962 revealed following facts:-

13(i) JSPL had taken a loan of Rs.21.25 Crore (US \$ 4.427 million) through ICICI Bank Ltd. for the Coal Washery project on World Bank's Industrial Pollution Prevention Project.

13(ii) JSPL cleared goods duty free vide Bill of Entry No.736946 dated 23.4.2002 through Nhava Sheva Port, Bills of Entry No. 51 dated 6.5.2002 and 52 dated 6.5.2002

through Air Cargo Complex, Kolkata, Bill of Entry dated 6.6.2002(Rotation no. 168/2002 dt 17.4.2002) through Kolkata Port and Bill of Entry No. 271611 dated 21.6.2002 through Mumbai Port claiming exemption under Notification No. 84/97-Cus dated 11.11.97, as amended. For claiming such exemption a certificate from the executive head of the Project Implementing Authority and countersigned by an officer not below the rank of a Joint Secretary to the Government of India, in the concerned Line Ministry in the Government of India was required.

13(iii) According to submissions made by ICICI Bank Ltd vide letter C. No. TG/10050 dated 25.01.2005, ICICI Bank Ltd sent a letter IPPP/52 dated 3.4.2002 addressed to Additional Secretary, Department of Economic Affairs, Ministry of Finance, Government of India enclosing PIAC No. ICICI/WB/IPPP/Customs/04 dated 4.4.2002 duly signed by their Project Director in favour of JSPL to avail of the Customs duty exemption against the procurement of equipment under World Bank's Industrial Pollution Prevention Project to JSPL. ICICI Bank Ltd. vide letter Nos.TECH/692 dated 17.4.2002, TECH/999 dated 26.4.2002, TECH/1919 dated 22.5.2002, TECH/2455 dated 6.6.2002 addressed to Shri Praveen Khandelwal, Senior Manager(Finance),JSPL enclosed letter IPPP/690 dated 17.4.2002 addressed to Additional Secretary, Department of Economic Affairs, Ministry of Finance, Government of India and PIAC No. ICICI/WB/IPPP/Customs/05 dated 16.4.2002, PIAC No. ICICI/WB/IPPP/Customs/06 dated 24.4.2002,PIAC No. ICICI/WB/PPP/Customs/07 dated 21.5.2002, letter IPP/2456 dated 6.6.2002 addressed to Additional Secretary, Department of Economic Affairs, Ministry of Finance, Government of India and PIAC No. ICICI/WB/IPPP/Customs/08 dated 4.6.2002, respectively ICICI Bank Ltd. requested JSPL to return copy of PIAC to them after countersigning by MOF. ICICI Bank Ltd. charged JSPL Rs.1 cr. as loan processing fee.

13(iv) PIAC No. ICICI/WB/IPPP/Customs/04 dated 4.4.2002 addressed to the Commissioner of Customs, JNPT, Nhava Sheva, PIAC Nos. ICICI/WB/IPPP/Customs/05 dated 16.4.2002, ICICI/WB/IPPP/Customs/06 dated 24.4.2002 & PIAC No. ICICI/WB/IPPP/Customs/07 dated 21.5.2002 addressed to the Commissioner of Customs, Kolkata Airport and PIAC No. ICICI/WB/IPPP/Customs/08 dated 4.6.2002 addressed to the Commissioner of Customs, Mumbai Sea Port purportedly counter-signed by Additional Secretary (FB,ADB & Ext.Fin.) for Ministry of Finance were forged and the said PIACs were not signed by Dr. Adarsh Kishore, Additional Secretary FB,ADB & -Ext.Fin.), Ministry of Finance, Government of India and he had not seen those documents earlier in his capacity as Additional Secretary (FB,ADB & Ext.Fin.), Ministry of Finance, Govt.of India.

13(v) Letter D.O.No. 5/4/93-FBIV dated 16.4.2002 addressed to Commissioner of Customs, JNPT, Nhava Sheva in respect of PIAC No. ICICI/WB/IPPP/Customs/04 dated 4.4.2002, letter D.O.No. 5/4/93-FBIV dated 29.4.2002 addressed to the Commissioner of

Customs, Kolkata Airport, Kolkata in respect of PIAC Nos. ICICI/W/IPPP/Customs/05 dated 16.4.2002 and ICICI/WB/IPPP/Customs/06 dated 24.4.2002, letter D.O.No. 5/4/93-FBIV dated 4.6.2002 addressed to Commissioner of Customs, Kolkata Airport, Kolkata in respect of PIAC No. ICICI/WB/IPPP/Customs/07 dated 21.5.2002 and letter D.O.No. 5/4/93-FBIV dated 14.6.2002 addressed to Commissioner of Customs, Mumbai Sea Port in respect of PIAC No. ICICI/WB/IPPP/Customs/08 dated 4.6.2002 purportedly bearing the signature of Shri S. C. Garg, Director(FB), Department of Economic Affairs, Ministry of Finance, Govt. of India were forged and those letters were not signed by Shri Subhash Chandra Garg, Director(FB), Department of Economic Affairs, Ministry of Finance, Government of India and he had not seen those documents earlier.

13(vi) Scrutiny of relevant files of the Ministry of Finance as well as statements of Dr. Adarsh Kishore, Shri S. C. Garg and Dr. G. Madhumati indicated that Department of Economic Affairs, Ministry of Finance, Government of India, New Delhi had never issued letters D.O.No. 5/4/93-FBIV dated 16.4.2002 addressed to Commissioner of Customs, JNPT, Nhava Sheva, D.O.No. 5/4/93-FBIV dated 29.4.2002 addressed to the Commissioner of Customs, Kolkata Airport, Kolkata, D.O.No. 5/4/93-FBIV dated 4.6.2002 addressed to the Commissioner of Customs, Kolkata Airport, Kolkata, D.O.No. 5/4/93-FBIV, dated 14.6.2002 addressed to the Commissioner of Customs, Mumbai Sea Port purportedly signed by Shri S.C. Garg, Director (FB) and PIAC No. ICICI/WB/IPPP/Customs/04 dated 4.4.2002 addressed to the Commissioner of Customs, JNPT, Nhava Sheva, PIAC Nos. ICICI/WB/IPPP/Customs/05 dated 16.4.2002, ICICI/WB/IPPP/Customs/06 . dated 24.4.2002 & PIAC No. ICICI/WB/IPPP/Customs/07 dated 21.5.2002 addressed to the Commissioner of Customs, Kolkata Airport and PIAC No. ICICI/WB/IPPP/Customs/08 dated 4.6.2002 addressed to the Commissioner of Customs, Mumbai Sea Port purportedly counter-signed by the Additional Secretary (FB,ADB & Ext.Fin.) for the Ministry of Finance. These letters and PIACs are forged.

13(vii) JSPL arranged the forged/fabricated counter-signature on the letter D.O.No. 5/4/93-FBIV dated 16.4.2002 addressed to the Commissioner of Customs, JNPT, Nhava Sheva & PIAC No. ICICI/WB/IPPP/Customs/04 dated 4.4.2002, letter D.O.No. 5/4/93-FBIV dated 29.4.2002. addressed to the Commissioner of Customs, Kolkata Airport, Kolkata & PIAC Nos. ICICI/WB/IPPP/Customs/05 dated 16.4.2002, ICICI/WB/IPPP/Customs/06 dated 24.4.2002 , letter D.O.No. 5/4/93-FBIV dated 4.6.2002 addressed to the Commissioner of Customs, Kolkata Airport, Kolkata & PIAC No. ICICI/WB/IPPP/Customs/07 dated 21.5.2002 and letter D.O.No. 5/4/93-FBIV dated 14.6.2002 addressed to the Commissioner of Customs, Mumbai Sea Port & PIAC No. ICICI/WB/IPPP/Customs/08 dated 4.6.2002 issued from Shri Rakesh Yadav by paying bribe to Shri Rakesh Yadav.

13(viii) As per the conditions of the Notification No. 84/97-Cus dated 11.11.97, as amended, the PIACs are required to be countersigned by the officers not below the rank of Joint Secretary to the Government of India in the concerned Line Ministry and the Department of Economic Affairs, Ministry of Finance had the specific role of only negotiating the World Bank assistance and was not the implementing agency for the World Bank assisted projects.

13(ix) JSPL imported goods through Nhava Sheva Port as per details in Annexure-1 to the show cause notice, claiming customs duty exemption under Notification No. 84/97-CUS dated 11.11.97, as amended, on the basis of forged/fabricated PIAC No. ICICI/WB/IPPP/Customs/04 dated 4.4.2002 issued under the covering letter D.O.No. 5/4/93-FBIV dated 16.4.2002. JSPL imported goods through Air Cargo Complex, Kolkata, as per details in Annexure-2 to the show cause notice, claiming Customs duty exemption under Notification No. 84/97-Cus dated 11.11.97 as amended on the basis of forged/fabricated PIAC Nos. ICICI/WB/IPPP/Customs/05 dated 16.4.2002, ICICI/WB/IPPP/Customs/06 dated 24.4.2002 issued under covering letter D.O.No. 5/4/93-FBIV dated 29.4.2002. JSPL imported goods through Kolkata Port as per details in Annexure-3 to the show cause notice, claiming Customs duty exemption under Notification No. 84/97-Cus dated 11.11.97 as amended on the basis of forged/fabricated PIAC No. ICICI/WB/IPPP/Customs/07 dated 21.5.2002 issued under the covering letter DO. No. 5/4/93-FBIV dated 4.6.2002. JSPL imported goods through Mumbai Port as per details in Annexure-4 to the show cause notice, claiming customs duty exemption under Notification No:84/97-CUS dated 11.11.97 as amended on the basis of forged/fabricated PIAC No. ICICI/WB/IPPP/Customs/08 dated 4.6.2002 issued under covering letter D.O.No. 5/4/93-FBIV dated 14.6.2002.

14. From the foregoing, it appeared that:-

(i). JSPL had taken a loan through ICICI Bank for the Coal Washery project on World Bank's Industrial Pollution Prevention Project.

(ii). ICICI Bank Ltd. issued PIAC No. ICICI/WB/IPPP/Customs/04 dated 4.4.2002 addressed to the Commissioner of Customs, JNPT, Nhava Sheva, PIAC Nos. ICICI/WB/IPPP/Customs/05 dated 16.4.2002, ICICI/WB/IPPP/Customs/06 dated 24.4.2002 & PIAC No. ICICI/WB/IPPP/Customs/07 dated 21.5.2002 addressed to the Commissioner of Customs, Kolkata Airport and PIAC No. ICICI/WB/IPPP/Customs/08 dated 4.6.2002 addressed to the Commissioner of Customs, Mumbai Sea Port. ICICI Bank Ltd sent these PIACs to JSPL with a request to return copies of PIACs to them after countersigning by MOF.

(iii). JSPL imported goods through Nhava Sheva Port as per details in Annexure-1 to the show cause notice claiming Customs duty exemption under Notification No. 84/97-CUS

dated 11.11.97 as amended on the basis of forged/fabricated PIAC No. ICICI/WB/IPPP/Customs/04 dated 4.4.2002 issued under covering letter D.O.No. 5/4/93-FBIV dated 16.4.2002. JSPL imported goods through Air Cargo Complex, Kolkata as per details in Annexure-2 to the show cause notice claiming Customs duty exemption under Notification No. 84/97-CUS dated 11.11.97 as amended on the basis of forged/fabricated PIAC Nos. ICICI/WB/IPPP/Customs/05 dated 16.4.2002, ICICI/WB/IPPP/Customs/06 dated 24.4.2002 issued under covering letter D.O.No. 5/4/93-FBIV dated 29.4.2002. JSPL imported goods through Kolkata Port as per details in Annexure-3 to the show cause notice claiming Customs duty exemption under Notification No. 84/97-CUS dated 11.11.97 as amended on the basis of forged/fabricated PIAC No. ICICI/WB/IPPP/Customs/07 dated 21.5.2002 issued under covering letter D.O.No. 5/4/93-FBIV dated 4.6.2002. JSPL imported goods through Mumbai Port as per details in Annexure-4 to the show cause notice claiming Customs duty exemption under Notification No. 84/97-CUS dated 11.11.97 as amended on the basis of forged/fabricated PIAC No. ICICI/WB/IPPP/Customs/08 dated 4.6.2002 issued under covering letter D.O.No. 5/4/93-FBIV dated 14.6.2002.

(iv) JSPL arranged the forged/fabricated counter-signature on the letter D.O.No. 5/4/93-FBIV dated 16.4.2002 addressed to the Commissioner of Customs, JNPT, Nhava Sheva & PIAC No. ICICI/WB/IPPP/Customs/04 dated 4.4.2002, letter D.O.No. 5/4/93-FBIV dated 29.4.2002 addressed to the Commissioner of Customs, Kolkata Airport, Kolkata & PIAC Nos. ICICI/WB/IPPP/Customs/05 dated 16.4.2002, ICICI/WB/IPPP/Customs/06 dated 24.4.2002, letter D.O.No. 5/4/93-FBIV dated 4.6.2002 addressed to the Commissioner of Customs, Kolkata Airport, Kolkata & PIAC No. ICICI/WB/IPPP/Customs/07 dated 21.5.2002 and letter D.O.No. 5/4/93-FBIV dated 14.6.2002 addressed to the Commissioner of Customs, Mumbai Sea Port & PIAC No. ICICI/WB/IPPP/Customs/08 dated 4.6.2002.

(v) JSPL colluded with Shri Rakesh Yadav in obtaining the forged PIAC No. ICICI/WB/IPPP/Customs/04 dated 4.4.2002 addressed to the Commissioner of Customs, JNPT, Nhava Sheva issued under letter D.O.No. 5/4/93-FBIV dated 16.4.2002, PIAC Nos. ICICI/WB/IPPP/Customs/05 dated 16.4.2002 & ICICI/WB/IPPP/Customs/06 dated 24.4.2002 addressed to the Commissioner of Customs, Kolkata Airport issued under letter D.O.No. 5/4/93-FBIV dated 29.4.2002, PIAC No. ICICI/WB/IPPP/Customs/07 dated 21.5.2002 addressed to the Commissioner of Customs, Kolkata Airport issued under letter D.O.No. 5/4/93-FBIV dated 4.6.2002, and PIAC No. ICICI/WB/IPPP/Customs/08 dated 4.6.2002 addressed to the Commissioner of Customs, Mumbai Sea Port issued under letter D.O.No. 5/4/93-FBIV dated 14.6.2002 which were produced before the concerned Customs Authorities at the respective ports of import for availing benefit of exemption Notification No. 84/97-Cus dated 11.11.97 as amended.

(vi) In view of the collusion and wilful mis-statement in the Bills of Entry as detailed in Annexure-1, Annexure-2, Annexure-3 and Annexure-4 of the show cause notice about the truthfulness of the contents thereof and also suppression of the facts that PIACs were obtained fraudulently and were not obtained from the concerned Line Ministry, duty exemptions under Notification No. 84/97-CUS dated 11.11.97 as amended availed for import of goods as detailed in the said Annexures did not appear to be available to JSPL; thereby they appeared liable to pay differential Customs duty in terms of the extended time limit as per the first proviso of Section 28(1) of Customs Act, 1962, and interest on duty not levied under Section 28AB ibid.

(vii) JSPL procured the PIACs by fraud and collusion with active abetment of ICICI Bank Ltd. and Shri Rakesh Yadav; and JSPL evaded Customs duty by claiming exemption under Notification No. 84/97-CUS dated 11.11.97 as amended in respect of goods as detailed in the said Annexures on the basis of forged/fabricated PIACs thereby rendering the goods liable for confiscation under Section 111(o) of the Customs Act, 1962 and JSPL, therefore, appeared liable to penal action under Section 114A of the Act.

(viii) ICICI Bank Ltd. was aware that PIACs required countersignature from the officer of Line Ministry and abetted the said evasion of Customs duty by assisting in the act of forgery and fabrication of PIACs of JSPL by sending the letters addressed to Additional Secretary, Department of Economic Affairs, Ministry of Finance, Government of India along with the PIACs to JSPL instead of sending directly to concerned Line Ministry of Govt. of India for countersignature. These acts of theirs were in relation to the goods imported availing exemption under Notification No. 84/97-CUS dated 11.11.97 as amended on the basis of such forged/fabricated Project Implementing Authority Certificates rendering them (the impugned goods) liable for confiscation under Section 111(o) of the Act and therefore ICICI Bank Ltd. appeared liable for penal action under Section 112(a) of Customs Act, 1962 for their acts of omission/commission.

(ix) Shri Rakesh Yadav abetted the said evasion of Customs duty as he was responsible for the act of forgery and fabrication of Project Implementing Authority Certificates used for claiming exemption under Notification No. 84/97-Cus dated 11.11.97 as amended which rendered the said goods (the impugned goods) liable for confiscation under Section 111(o) of the Customs Act, 1962 and therefore he also appeared to be liable for penal action under Section 112(a) of the Customs Act, 1962.

15. Therefore, JSPL were called upon to show cause vide show cause notice dated 12.05.2005 issued vide DRI.FNO.50D/71/2004-C.I. (Pt.V), in writing, to the Commissioners of Customs (Import), Jawahar Custom House, Nhava Sheva, New Custom House Mumbai, Sea Port and Air Cargo Complex, Kolkata, in respect of the goods

imported under Bills of Entry as detailed in Annexure-1 to 4 to the show cause notice, as to why:

- (i) the benefit of Notification No. 84/97-Cus. dated 11.11.97 as amended should not be denied in respect of goods imported under the said Bills of Entry;
- (ii) the said goods should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962;
- (iii) Customs duty as mentioned below should not be demanded from them under proviso to Section 28 (1) of the Customs Act, 1962;
 - (a) Rs. 32,30,095/- in respect of B/E No.736946 dt 23.4.2002 relating to imports through Nhava Sheva Port,
 - (b) Rs. 4,15,334/- in respect of B/E Nos. 51 and 52 both dated 6.5.2002 in respect of imports through Air Cargo Complex, Kolkata,
 - (c) Rs. 6,47,343/- in respect of B/E dt 6.6.2002 relating to imports through Kolkata Sea Port,
 - (d) Rs. 32,57,994/- in respect of B/E No.271611 dated 21.6.2002 relating to imports through New Custom House, Mumbai,
- (iv) interest should not be recovered from them on duty not levied/ not paid in terms of Section 28AB of the Customs Act, 1962;
- (v) penalty under Section 114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid; and
- (vi) the amounts deposited during investigation should not be appropriated and adjusted towards the Customs duties and penalty payable by them under the notice.

16. ICICI Bank Ltd., and Shri Rakesh Yadav were called upon by the same show cause notice to show cause, in writing, to the respective Commissioners of Customs at Mumbai, JNPT and Kolkata, in respect of the goods imported under Bills of Entry Nos. as detailed in Annexures 1 to 4 to the show cause notice, as to why penalty under Section 112(a) of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

Details of first round of adjudication and remand order of the Hon'ble CESTAT

17. Since the instant show cause notice involved clearances not only from Mumbai Port but also through Jawaharlal Nehru Port, Kolkata Port and Air Cargo Kolkata, a Notification No. 87/2005 - Cus (NT) dated 28.09.2005 was issued by the Central Board of Excise & Customs appointing the Commissioner of Customs (Import), New Custom House

as common adjudicating authority for adjudicating this particular case. The said SCN dated 12.05.2005 was adjudicated in the first round vide CAO No. 123/2006/CAC/CC(I)/AKP/Gr.VA dated 29.09.2006. Operative portion of the said order is reproduced below:

47. *The imports under the above mentioned 5 Bills of Entry are not eligible for exemption under notification no. 84/97-Cus dated 11.11.1997.*
48. *Customs duty amounting to Rs.32,30,095/- in respect of goods valued at Rs 63,58,455/- and covered by B/E No.736946 dt 23.4.2002 relating to imports through Nhava Sheva Port, is hereby confirmed u/s 28 of the Customs Act, 1962, and is appropriated from the deposit of Rs.32,30,095/- made by M/s JSPL on 23.8.2004 [refer para 11 above].*
49. *Customs duty amounting to Rs. 4,15,334/- in respect of goods valued at Rs 3,17,587/- and covered by B/E Nos 51 and 52 both dated 6.5.2002 in respect of imports through Air Cargo Complex, Kolkata, is hereby confirmed u/s 28 of the Customs Act, 1962, and is appropriated from the deposit of Rs.10,62,677/- made by M/s JSPL on 15.3.2005 [refer para 11 above], leaving a balance of Rs 6,47,343/-.*
50. *Customs duty amounting to Rs.6,47,343/- in respect of goods valued at Rs 12,74,297/- and covered by B/E dt 6.6.2002 relating to imports through Kolkata Sea Port, is hereby confirmed u/s 28 of the Customs Act, 1962, and is appropriated from the balance mentioned in para 49 above.*
51. *Customs duty amounting to Rs.32,57,994/- in respect of goods valued at Rs 64,13,374/- and covered by B/E No.271611 dated 21.6.2002 relating to imports through Mumbai Sea Port, New Custom House, Mumbai, is hereby confirmed u/s 28 of the Customs Act 1962, and is appropriated from the deposit of 32,57,994/- made by M/s JSPL on 30.9.2004 [refer para 11 above].*
52. *M/s JSPL are also liable to pay interest on the above amounts under section 28AB of the Customs Act, 1962, which comes to Rs 45,14,546/- till 30.9.2006 [worksheet enclosed] Interest will continue to accumulate if they do not pay this amount by the due date.*
53. *Goods totally valued at Rs.1,48,63,713/- in respect of all the above five Bills of Entry are confiscated under section 111(o) of the Customs Act, 1962. Since the goods have already been cleared I impose a fine of Rs 15,00,000/- (Rupees Fifteen Lakhs only) in lieu of confiscation. If they do not pay this amount the goods lying in their factory/possession should be taken custody of as ownership would stand transferred to the Government of India by virtue of section 126 of the Customs Act, 1962.*

54. Keeping the role of each noticee in mind I impose the following penalties on them. While imposing penalty on Shri Rakesh Yadav, who was a Govtservant at the time of commission of the offence, the fact has been kept in mind that he has already undergone detention under COFEPOSA and he would also be liable for action under departmental proceedings including possible prosecution by the CBI.

Sr. No.	Name of the Noticee	Amount of Penalty in Rs.
1.	M/s Jindal Steel and Power Ltd.	50 Lakh
2.	M/s ICICI Bank Ltd.	10 Lakh
3.	Shri Rakesh Yadav	2 Lakh

17.1 Noticee-1 preferred an appeal against the said OIO before the Hon'ble CESTAT vide appeal nos. C/25/07-MUM. The Hon'ble Tribunal vide Order No. A/90749/17/CB dated 14/11/2017 disposed the said appeals and ordered that:

In view of the rivalry submissions as above and also the tribunal having taken a view that the appeal should go back to the adjudicating authority till the decision of the apex Court, it is proper to send back all the appeals to the adjudicating authority who shall pass appropriate order on the basis of outcome of the apex Court judgment in Mangali Impex case which has been admitted in Civil Appeal No. 20453 of 2016 as reported in 2016 (339) ELT A49 (SC), granting reasonable opportunity of hearing to both the sides. We may state that when an appeal is admitted by apex Court whether the order appealed is stayed or not makes no difference to law since the order appealed is under challenge and the Tribunal should not overreach the jurisdiction of the apex Court as has been held by the apex Court in Union of India v. West Coast Paper Mills Ltd. 2004 (164) ELT 375 (SC).

17.2 The said order of Hon'ble CESTAT was accepted by the Commissioner of Customs on 03/01/2018 and the said case file was transferred to Call Book subsequently. Further, after certain amendments in the Act vide Finance Act, 2022, the said case file was taken out of the Call Book on 30.11.2022.

Details of personal hearing and noticees submissions

18. Personal hearings were granted to the noticees to appear on 24.04.2023, 07.07.2023, 12.07.2023, 03.08.2023 and 14.08.2023. Shri Hersh Choudhary, Advocate, representative of Noticee-1 attended PH on 03.08.2023 and 14.08.2023 and further submitted their final submissions by email. Noticees-2 & 3 did not appear for the said personal hearings.

Summary of submissions of Noticee-1

18.1 The substantive requirement of the Exemption Notification was met in the present case, the denial of exemption, merely on the ground of some procedural infirmity is *ex-facie* perverse. Reliance placed on following judgements:

- A. Mangalore Chemicals & Fertilisers Limited v. Deputy Commissioner [1991 (8) TMI 83 – Supreme Court]
- B. Suksha International v. Union of India [1989 (39) ELT 503 (SC)]
- C. Formica India Division v. Collector of Central Excise [1995 (3) TMI 98 – Supreme Court]
- D. Union of India v. Farheen Texturisers & Ors. [2010 (7) TMI 982 – Bombay High Court]

18.2 The Noticee further submits that since the Noticee was eligible for availing the benefit of the Exemption Notification, the Project Implementing Authority, i.e. ICICI Bank, had issued the PIACs to the Noticee. It is further submitted that the Noticee has successfully undertaken the project, which is evident from the report uploaded on the website of the World Bank, which clearly indicates the details of the project of the Noticee and that the said project was successfully completed.

18.3 It is further submitted that the Exemption Notification at the clause (ii) to the Proviso also imposes a procedural condition of submitting certificate from the executive head of the Project Implementing Authority at the time of clearance of imported goods, certifying that the said goods are intended to be used in a project financed *inter alia* by the World Bank, and that the project has been approved by the Government of India. Additionally, it also requires that the said certificate be countersigned by an officer not below the rank of a Joint Secretary to the Government of India, in the concerned Line Ministry in the Government of India. In the present facts, the requisite certificates were issued by the Project Implementing Authority in respect of the impugned imports. The present dispute is only limited to the countersignature on these certificates, which allegedly were found to be forged. However, this position does not render the certificate by itself being forged or for that matter it does not render the Noticee ineligible for the benefit of the exemption, as all mandatory and substantive requirements for being eligible to claim exemption had been complied with.

18.4 It is clear that the Ministry of Finance was not the concerned Line Ministry to counter sign the PIAC and at the relevant time there was no Line Ministry nominated for the concerned imports, consequently the fact whether or not the countersignature on the PIAC was proper is inconsequential in the present facts. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **SRF Ltd. Vs CC, Chennai** [2015 (318) ELT 607 (SC)], wherein it was held that the benefit of an exemption

notification cannot be denied if the condition is such that it is practically impossible to satisfy such condition.

18.5 The Noticee further submits that the eligibility of the Noticee and the procedure for availing the customs exemption was reinforced by the fact that ICICI Bank reissued the PIACs to the Noticee and forwarded such PIACs through the Ministry of Finance to the Ministry of Environment and Forest for counter-signatures. Therefore, it is evident that the Noticee was and has always been eligible to avail the benefit of the Exemption Notification.

18.6 Without prejudice to the above, the Noticee submits that all concerned parties, including the Customs authorities, were under the *bona fide* belief that the Ministry of Finance was the Line Ministry under the Exemption Notification. The PIACs issued by ICICI Bank to the Noticee specifically mentioned the name of the concerned officer in the Ministry of Finance from whom the counter-signature was required to be obtained. Further, the certificates, duly countersigned, were submitted with the Customs authorities at the time of clearance of the imported goods, which was accepted by the Customs authorities since they shared the *bona fide* belief of the Noticee that the Ministry of Finance was indeed the Line Ministry. In light thereof, no *mala fide* intention or collusion can be attributed to the Noticee.

18.7 The Noticee submits that it has all throughout acted in a *bona fide* manner. The record reflects that it had obtained all the requisite documents required under the Exemption Notification and basis the representation/information given by ICICI Bank after the bank had sent the same for being countersigned to the Ministry of Finance for obtaining countersigned copies of the certificates. The conduct of the Noticee can be further ascertained from the fact that it *suo motu* moved the Hon'ble Chhattisgarh High Court to seek appropriate directions for designation of 'Line Ministry', as required under the Exemption Notification.

18.8 The Noticee submits that there is no evidence on record to even indicate that it had colluded with Mr. Rakesh Yadav and/or ICICI Bank in fraudulently obtaining the counter-signatures on the certificates. This allegation is also not supported by the statements of Mr. Rakesh Yadav (co-Noticee) and Mr. Anand T. Kusre (from ICICI Bank). Infact, the certificates issued by ICICI Bank clearly recorded the name of Dr. Adarsh Kishore (Ministry of Finance) and thereby, indicating that the certificates had to be countersigned by him.

18.9 Therefore, it was ICICI Bank who directed the Noticee to handover the envelope bearing the PIAC to Mr. Yadav, working with the Ministry of Finance and thereafter, to collect the certificates from Mr. Yadav. The Noticee otherwise had no occasion to interact with Mr. Rakesh Yadav. This argument is also supported by the statement of Mr. Rajeev Agarwal (General Manager – Corporate Finance in the Noticee company). Hence, the

Noticee had no knowledge or per se involvement in getting the counter-signature done and the Department is put to strict proof in respect thereof.

18.10 Without prejudice to the above, the Noticee submits that there was no reason for it to have resorted to collusion/mis-statement/suppression, as alleged under the captioned SCN. The Noticee had all the required documents and had they known that the Ministry of Finance was not the 'Line Ministry', they would have taken necessary steps to determine and obtain the certificates from the designated Line Ministry. It is safe to assume that the Line Ministry would have counter signed the certificates issued in favour of the Noticee. Therefore, there seems to be no plausible reason why the Noticee would commit the actions, as alleged in the captioned SCN.

18.11 Without prejudice to the above, the Noticee submits that the purpose of a counter-signature, as contemplated under the Exemption Notification, was to merely verify and/or attest the contents of the PIAC issued by ICICI Bank. The project undertaken by the Noticee was funded and approved by the World Bank and it was further approved by the Government of India. It was only on obtaining such approvals, that the Noticee was issued the PIACs. Therefore, the counter signature on such PIACs was to merely attest and acknowledge the contents of the PIACs. Further, another purpose of such counter signature was to intimate the concerned Line Ministry of the commencement of implementation of the project, so that the Line Ministry could appropriately govern/oversee such implementation of the project. Therefore, the Noticee submits that the requirement of counter signature was only a procedural requirement and when all substantive conditions have been met by the Noticee, it would be unjust to deny the benefit of the Exemption Notification to the Noticee.

18.12 Without prejudice to the above, the Noticee submits that the captioned SCN has been issued beyond the statutory limitation period of six months under Section 28 of the Act, as applicable during the relevant period. It is further submitted that since the ingredients for invocation of the extended period of limitation have not been satisfied in the facts and circumstances of the present case, the captioned SCN is required to be dropped on this ground alone, being barred by limitation.

18.13 In this regard, it is submitted that the extended period of limitation could not have been invoked against the Noticee, as neither the Noticee had any knowledge nor involvement in the alleged fraud, if any, or suppression. There is no dispute that the Noticee was otherwise eligible for exemption under the Exemption Notification, as such "intent" to evade tax cannot, by any stretch of imagination, be imputed against the Noticee. The Hon'ble Supreme Court in *Chemphar Drugs & Liniments* - 1989 (40) ELT 276 (SC), had held that for alleging fraud and suppression for invoking extended period of limitation, positive evidence of action on the part of Noticee to evade payment of duty must be

established. In the present facts, there is no evidence which suggests, let alone prove, that the Noticee was in any way involved in getting countersignature on the certificates. In absence of such evidence, it is submitted that the Department has not met its burden and the extended period of limitation could not have been invoked.

18.14 The irregularity in the counter-signature, albeit for no fault of the Noticee, is a rectifiable error and can, at best, be construed as a procedural infirmity for which substantive benefit ought not be denied to the Noticee. It is submitted that during the relevant point in time, no Line Ministry had been notified by the Ministry of Finance and therefore, ICICI Bank proceeded on the *bona fide* belief that Ministry of Finance is the Line Ministry. Further, even when the Ministry of Environment and Forests was notified as the Line Ministry pursuant to the directions of the Hon'ble Chhattisgarh High Court, the said Ministry refused to countersign the PIACs (forwarded to them by ICICI Bank) on account of the pendency of adjudication of the present matter. Therefore, once the captioned SCN is adjudicated by your good office, the Ministry of Environment and Forests may deem it fit to countersign the PIACs and therefore, any irregularity that may have occurred in the past cannot be held to be fatal to the entitlement of the Noticee to avail benefit of the Exemption Notification.

18.15 The Noticee submits that no penalty under Section 114A of the Act can be imposed upon the Noticee. The captioned Show Cause Notice had proposed imposition of penalty under Section 114A of the Act. However, the Adjudicating Authority had, vide order dated 29.06.2006, consciously refrained from imposing penalty under Section 114A of the Act. The non-imposition of penalty under Section 114A of the Act was not contested by the Revenue before the Hon'ble CESTAT. Therefore, the Noticee submits that insofar as the aspect of imposition of penalty under Section 114A of the Act is concerned, it has attained finality in the facts and circumstances of the present case and accordingly, no penalty under Section 114A of the Act is imposable on the Noticee and similarly, the extended period of limitation cannot be invoked qua the Noticee.

18.16 Without prejudice to the above, the Noticee further submits that the captioned SCN having been issued by the DRI, who was not the "proper officer" defined under Section 28 of the Act, is without jurisdiction and therefore, deserves to be dismissed on this count as well. In this regard, the Noticee relies on the decision of the Hon'ble Bombay High Court in the case of *Elite Aromas v. Union of India* in Writ Petition No. 1929 of 2023, wherein it was held that since the question of jurisdiction of the DRI to issue Show Cause Notices as also the subsequent amendment brought about by the Finance Act, 2022 are currently *sub judice* before the Hon'ble Supreme Court in the Review Petition filed in *Canon India Pvt. Ltd. v. Commissioner of Customs* [AIR 2021 SC 1699] and Civil Appeal No. 6142 of 2019 (*Union of India & Ors. v. Aspam Petrochem Pvt. Ltd.*) respectively, the orders impugned therein were stayed until the final disposal of the said matters by the Hon'ble Supreme

Court. In view of the above direction of the Hon'ble Bombay High Court, as also the CESTAT remand order dated 14.11.2017 issued in the present matter, the Noticee prays that the present adjudication be stayed till the issue regarding jurisdiction of DRI to issue Show Cause Notices, is finally decided by the Hon'ble Supreme Court.

DISCUSSIONS AND FINDINGS

19. The present SCN dated 12.05.2005 was issued to the following three noticees:

Noticee-1: M/s Jindal Steel & Power Ltd.

Noticee-2: M/s ICICI Bank Ltd.

Noticee-3: Shri Rakesh Yadav

20. I have carefully gone through the SCN, records of the case, submissions of the noticees and records of personal hearing held before me. Noticees-2 & 3 did not appear for the 4 personal hearings given to them. Therefore, I am deciding the case instituted against them by DRI ex parte on the basis of available records. Noticee-1 have appeared and have made their final submissions.

21. I find that the Hon'ble Tribunal vide Order No. A/90749/17/CB dated 14/11/2017 remanded back the 1st OIO dated 29.09.2006 issued vide F.No. DRI 50D/71/2004-C.I & S/10-15/2005 VA and ordered that *"In view of the rivalry submissions as above and also the tribunal having taken a view that the appeal should go back to the adjudicating authority till the decision of the apex Court, it is proper to send back all the appeals to the adjudicating authority who shall pass appropriate order on the basis of outcome of the apex Court judgment in Mangali Impex case which has been admitted in Civil Appeal No. 20453 of 2016 as reported in 2016 (339) ELT A49 (SC), granting reasonable opportunity of hearing to both the sides. We may state that when an appeal is admitted by apex Court whether the order appealed is stayed or not makes no difference to law since the order appealed is under challenge and the Tribunal should not overreach the jurisdiction of the apex Court as has been held by the apex Court in Union of India v. West Coast Paper Mills Ltd. 2004 (164) ELT 375 (SC)."*

22. The remand by the Hon'ble Tribunal is on the limited issue of jurisdiction. I find that the issue in the case of *Mangali Impex* was the jurisdiction of DRI officers to issue SCNs under Section 28 of the Act. Similar issue came up later before the Hon'ble Supreme Court in *Canon India* case, wherein the Hon'ble Court ruled that DRI officers do not have power to issue SCN under section 28 of the Act. So the only issue before me is the legality of the SCN with respect to **Mangali Impex**⁷ judgement of the Hon'ble Delhi High Court and **Canon India**⁸ judgement of the Hon'ble Supreme Court.

⁷ *Mangali Impex vs. Union of India-2016 (335) ELT 605 (Del.)*

⁸ *Canon India Pvt. Ltd. vs Commissioner of Customs-2021 (376) E.L.T. 3 (S.C.)*

23. Let me deal with this issue now:

24. I find that certain amendments were made in the Customs Act, 1962 vide Finance Act, 2022. The relevant sections are reproduced below for reference:-

“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*

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

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

(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.”. (emphasis added)*

88. In section 5 of the Customs Act,— (a) after sub-section (I), 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.” (emphasis added)

25. In view of the above, I find that the Finance Act 2022 overrides the judgement of the Hon’ble Delhi High Court in Mangali Impex and Judgement of the Hon’ble Supreme Court in Canon India. 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. I also refer to the judgement of the Hon’ble Madras High Court in the matter of **N. C. Alexander**⁹, wherein the validity of SCNs issued by DRI was challenged through various writ petitions in the wake of Canon India(supra) Judgement and after enactment of the Finance Act, 2022. Hon’ble High Court while disposing of the said writ petitions held that pursuant to the amendment in Section 3

⁹ N. C. Alexander vs Commissioner of Customs and others-2022 (381) E.L.T. 148 (Mad.)

of the Act by Finance Act 2022, officers from the Directorate of Revenue Intelligence 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 the Finance Act 2022 to pending proceedings. Relevant paras of the said judgement are reproduced below:

“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.” (emphasis added)

26. I find that the N.C. Alexander Judgement(supra) has not been dissented/stayed by the Hon’ble Supreme Court in any proceedings so far. Therefore, in view of the above, I find that the SCN issued by ADG DRI, is legal and proper.

27. On examining rest of the the issues raised in the SCN dated 12.05.2005 and the submissions of noticees, I find that my predecessor Commissioner in the 1st OIO dated 29.09.2006 in paras 28 to 45 has given detailed findings on all such issues. I find his findings on the issues raised are reasonable and just and the same are reproduced below:

" 28. The basic issue involved is regarding interpretation of Notfn. No. 84/97-Cus dated 11.11.87 as amended by Notification No. 85/99-Cus., dated 6-7-1999, No.119/99-Cus. dated 2-11-1999, Notification No. 75/2001 dtd. 06-07-01 and Notification No. 107/2001-Cus. dated 12.10.2001. The text of the notification, as applicable during the relevant period, is reproduced below:-

" In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), read with subsection (4) of section 68 of the Finance (No. 2) Act, 1996 (33 of 1996), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all the goods imported into India for **execution of projects financed by the United Nations or an International Organisation and approved by the Government of India**, from the whole of the duty of Customs leviable thereon under First Schedule to the Customs Tariff Act, 1975 (SI of 1975), the whole of the additional duty of Customs leviable thereon under section 3 of the said Customs Tariff Act and the whole of the special duty of Customs leviable under section 68 of the Finance (No. 2) Act 1996 (33 of 1996);

Provided that the importer, at the time of clearance of the goods, produces before the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, having jurisdiction, -

(i) in case the said goods are -

(a) Imported by an international organisation listed in the Annexure appended to this notification and intended to be used in a project that has been approved by the Government of India and financed (whether by a loan or a grant) by such an organisation, a certificate from such organisation that the said goods are required for the execution of the said project and that the said project has duly been approved by the Government of India; or

(b) Imported for use in a project that has been approved by the Government of India and financed (whether by a loan or a grant) by an international organisation listed in the said Annexure, a certificate from an officer not below the rank of Deputy Secretary to the Government of India, in the Ministry of Finance (Department of Economic Affairs) that the said goods are required for the execution of the said project and that the said project has duly been approved by the Government of India;

(ii) *in case the said goods are intended to be used in a project financed (whether by a loan or a grant) by the World Bank, the Asian Development Bank or any other international organisation other than those listed in the Annexure, and the said project has been approved by the Government of India, a certificate from the executive head of the Project Implementing Authority and countersigned by an officer not below the rank of a Joint Secretary to the Government of India, in the concerned Line Ministry in the Government of India, that the said goods are required for the execution of the said project and that the said project has duly been approved by the Government of India, and*

(iii) *in case the said goods are intended to be used in a project financed (whether by a loan or a grant) by the World Bank, the Asian Development Bank or any other international organisation, other than those listed in the Annexure and the said project has been approved by the Government of India for implementation by the Government of a State or a Union Territory, a certificate from the executive head of the Project Implementing Authority and countersigned by the Principal Secretary or the Secretary (Finance), as the case may be, in the concerned State Government or the Union Territory, that the said goods are required for the execution of the said project, and that the said project has duly been approved by the Government of India for implementation by the concerned State Government.*

Explanation. - For the purposes of this notification, -

(a) *"international organisation" means an international organisation to which the Central Government has declared, in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), that the provisions of the Schedule to the said Act shall apply;*

(b) *"Line Ministry" means a Ministry in the Government of India, which has been so nominated with respect to a project, by the Government of India, in the Ministry of Finance (Department of Economic Affairs).*

ANNEXURE:

1. *United Nations Development Programme,*
2. *United Nations International Childrens' Fund,*
3. *Food and Agricultural Organisation,*

4. International Labour Organisation,
5. World Health Organisation,
6. United Nations Population Fund.
7. United Nations World Food Programme.
8. United Nations Industrial Development Organisation."

29. *There is no dispute regarding the fact that the impugned goods were intended to be used in a project financed by the World Bank. There is also no dispute regarding the fact that the said project has been approved by the Govt. of India. There is also no dispute on the issue that the project implementation authority in this case was the ICICI Bank and they had accordingly issued five such certificates, covering imports through Mumbai Sea Port, Nhava Sheva Sea Port, Kolkata Sea and Airports. The dispute relates only to the identification of the correct LINE Ministry in the GOI whose officer (not below the rank of Joint Secretary) was required to countersign the project implementing authority certificate. M/s JSPL have contended that since they were so advised by ICICI Bank they genuinely believed that the LINE ministry was the Ministry of Finance.*

30. *To appreciate this defence point, it is necessary to examine the definition of LINE Ministry as given in the Notification. It clearly says that the Line Ministry would be a Ministry in the Govt. of India which has been so nominated with respect to a project by Govt of India in the Ministry of Finance (Deptt. Of Economic Affairs). In this case none of the noticees have been able to show any letter, order or notification from the Dept. Of Economic Affairs, GOI, nominating the concerned Ministry as LINE Ministry for the instant project, during the relevant period (It was only much later, after the case was booked by the DRI, that the importers approached the Ministry of Finance for notifying the 'line' Ministry; which was later notified, in November 2005, as the Ministry of Environment and Forests, GOI]. It is clear that the line Ministry had to be nominated with respect to each project. There is no evidence in the form of correspondences or otherwise to show that any of the noticees, particularly ICICI Bank, the project Implementation Authority, at any stage sought to know, before the detection of this case, from the Department of Economic Affairs the name of the appropriate Line Ministry for the project for which they were releasing the funds. ICICI Bank have mentioned that they presumed, bonafidely, that the appropriate line Ministry was the Ministry of Finance. This not only reflects ignorance of law on their part but also a total lack of basic common sense. They cannot then claim innocence in an offence or crime committed as a direct result of their lapse, negligence/ignorance. In case of*

negligence of this type 'strict liability' has to be imposed. When companies and financial institutions of this stature make such careless blunders it can only be concluded that this was done with a particular design and motive. The attendant circumstances support this conclusion.

31. *The certificates in this case have been given by the ICICI Bank and it was their responsibility to get certificates countersigned by the appropriate officer in the Line Ministry. That ICICI Bank was aware of this responsibility is evident from the letter addressed by them to the Additional Secretary, Ministry of Finance forwarding copies of the certificates for countersignature. The letter from ICICI Bank could have been sent by post, courier or by their representative directly to the Ministry of Finance. In their wisdom they chose to send it through the representative of the project owner, Ms JSPL, who in turn used the "good offices" of Shri Rakesh Yadav, to get the countersignature. M/s JSPL were merely acting as the agents of M/s ICICI. The responsibility of getting the countersignature was that of the Project Implementing Authority- ICICI Bank in this case. If they handed over these letters to some other agency they did so at their own peril and they cannot now come back and say that they were under a bonafide belief that the forged signatures were genuine. This can be best illustrated by taking the example of the issue of a passport. A citizen is required to apply for the passport directly to the passport office. If for his own convenience or otherwise, he hands over the application to another person or tout and later on the passport is found to be forged, he cannot claim ignorance/innocence. The fact that ICICI had asked JSPL to return a copy of the PIAC duly countersigned by the Joint Secretary, indicates that they were aware of their responsibility to issue the PIAC complete in all respects. A certificate which does not contain the required signatures is nothing but a piece of paper. It acquires the status of a certificate only when it is issued complete in all respects.*

32. *The other point raised by the noticees is that since the certificate of the PIA is genuine, the exemption should be granted to the imports as the requirement of countersignature is merely an attestation and in fact is only a procedural requirement. Nothing could be farther from the truth. This argument implies that the requirement of the countersignature by an officer of the level of Joint Secretary and above to the Govt of India, is redundant and at most an empty formality. The wordings of the exemption notification clearly imply that the certificate of the PIA is worthless unless it is countersigned by the appropriate officers of the LINE ministry. It cannot even be said that once the PIA has issued a certificate the countersignature by the proper officer of the Line Ministry is a mere formality and the officer has no option but to sign it. This again presupposes that the*

appropriate line Ministry to the GOI is a mere rubber stamp and that no application of mind is involved in countersigning the certificate. If that be so, why require the signature of such a senior officer of the Govt of India and not let it be signed by a much junior gazetted officer like the Under Secretary. One cannot anticipate or presume the internal checks or guidelines which are necessary before the proper officer signs the certificates. One reason could be that since the line of credit of the ADB as well as the particular project under which the imports are proposed to have been effected, have been approved by the GOI it is only appropriate that the GOI be the final authority to decide whether the particular project is actually covered for the line of credit or not and also whether the equipments proposed to be procured /imported are necessary for the said project. In any case this is only an assumption and it is not necessary for DRI to indicate the significance of the signature by a Joint Secretary. This burden was cast on the noticees which they have not discharged.

33. *Further, the Hon'ble Supreme Court of India in the matter of Eagle Flask Industries Ltd. Vs. Commissioner of Central Excise, Pune in Civil Appeal No.4647 of 1998 decided on 02.09.04 [2004 (171)ELT 296(SC)] held that "condition of exemption notification has to be strictly complied with for availing its benefit and condition of filing declaration/ undertaking under exemption notification is not merely procedural. Hence exemption to be denied for non-observance of said conditions".*

34. *It has also been contended by the noticees that the certificates can now even be regularized if the Line Ministry countersigns the Certificates. In fact M/s JSPL did approach the 'Line Ministry' - Ministry of Environment and Forests in this case to countersign the said certificates but the Ministry declined to do so. On this issue it will be relevant to refer to the decision of the Hon'ble CEGAT, Northern Bench, New Delhi in the case of ICI India Ltd. Vs. Commissioner of Customs, Calcutta (2003(151)ELT336 (Tri-Del)) wherein it was held that " ...A fake document is ab-initio unlawful and void. Any amount of official action upon such a document cannot sanctify it or otherwise make it lawful. Such a document cannot give rise to any right or benefit in law". This is the legal position settled by the Hon'ble Supreme Court of India in New India Assurance Co. Vs. Kamla & others(2001(4) SCC 342). In that case, the main issue which was considered by their Lordships, with reference to relevant provisions of the Motor Vehicles Act, 1988, was as to whether a fake driving licence would get legally sanctified by reason of its renewal by the statutory authority. Their Lordships gave their ruling in Para 13 of their judgment as under:*

"The observation of the Division Bench of the Punjab & Haryana High Court in National Insurance Co. Ltd. Vs. Sucha Singh (1994 ACJ 374 (P&H)) that renewal of a document which purports to be a driving licence, will robe even a forged document with validity on account of Section 15 of the Act, propounds a very dangerous proposition. If that proposition is allowed to stand as a legal principle, it may, no doubt, thrill counterfeiters the world over as they would be encouraged to manufacture fake documents in a legion. What was originally a forgery would remain null and void forever and it would not acquire legal validity at any time by whatever process of sanctification subsequently done on it. Forgery is antithesis to legality and law cannot afford to validate a forgery.

35. *Another point indirectly made by the noticees is that they had nothing to gain by trying to get forged signatures of the officers of the Ministry Of Finance. This is too simplistic an assertion. In all cases the PIAC were dispatched to the respective Commissioners after the goods had already been dispatched by the foreign supplier to India. In fact in 4 cases the goods had already landed in India before they procured the forged certificates. Any delay would have entailed huge demurrage and detention costs. In any case, every gain or loss cannot be gauged in terms of direct monetary terms. Getting something done quickly which in the normal course would take some time also has financial implications for all parties concerned. Thus M/s JSPL had lots to gain if the certificates were countersigned urgently and for this they were willing to go to any lengths. Similarly, in the case of ICICI Bank they would have got the payments released from ADB early. None of the noticees were involved with the project only for social service or altruistic reasons. They are all commercial entities and they were all associated with the Project for commercial gain. Everyone had something to gain from it, some immediately, some subsequently.*

36. *Apart from the above, it cannot be ruled out that there could have been a possibility (for reasons which will probably remain in the realm of conjecture) about which all the noticees were aware, that there was some shortcoming in the project for which there was a probability that the proper officer of the LINE Ministry may not countersign the certificates.*

37. *Thus the impugned goods were cleared against forged certificates which implies that the condition of Notfn No. 84/87-Cus dated 11.11.1997 were not satisfied, making the goods liable for confiscation under section III(o) of the Customs Act, 1962. It may be appropriate to refer to the judgment of Hon'ble High Court of Kolkata in the matter *Shekh Mohd. Sayeed Vs. Assistant Commissioner**

of Customs [2000 (126)ELT 121(CAL)] wherein it was held - ".....The respondents' case is that the licence used by the petitioner is a forged one; and if such forgery is proved in appropriate proceedings, the import of the goods would be unlawful and would attract the confiscatory and penal provisions of the Customs Act and other statutes". And it was further held in the same judgment that " ...if the allegation of forgery is true, the goods must be held to have brought in to India contrary to prohibition imposed by law as contemplated by Section 111(d) of the Act, and in that case such goods are liable to confiscation and.....".

38. *A point has been raised by Shri Rakesh Yadav that this is not a case of smuggling and hence he cannot be said to have abetted smuggling. This contention is not correct since smuggling has been defined in section 2(39) of the Customs Act, 1962 as any act which would make the goods liable for confiscation. Since the goods have been held to be liable for confiscation in this case under section 111(o) of the Customs Act, 1962, it is definitely a case of smuggling and Shri Rakesh Yadav, by forging the Certificates, has abetted the same.*

39. *A point has been raised by ICICI that since the entire amount of duty stands paid by JSPL prior to the issuance of the instant show cause notice, no penalty should be imposed and they have relied upon the decision of the Larger bench of the CESTAT in the case of Commissioner, v/s Machino Montell Ltd., 2004 (168) ELT 446. However this case cannot be of much help to them. This was a case relating to Central Excise and it was inter alia held that if duty is paid prior to issue of show cause notice, mandatory penalty under Section 11 AC of the Central Excise Act, 1944, would not be imposable. The corresponding provision under the Customs Act relating to mandatory penalty is Section 114A of the Customs Act, 1962. Thus the ratio of the said decision would merely imply that Section 114A cannot be invoked in this case to impose mandatory penalty on M/s JSPL. This issue was also raised recently before another Large Bench of the CESTAT in the case of Al-Fala (Exports) Vs Commissioner of Central Excise, Surat -I reported in 2006 198 ELT 343 (Tri.- LB) wherein it was held, relying on the case of Machino Montell Ltd, that though Section 114A of the Customs Act, 1962, could not be invoked where duty is deposited before the issue of show cause notice, but the customs department was free to impose penalties under Section 112, 114 or 116 of the Customs Act, 1962 depending upon the facts of the case. In short, therefore, the decision in the case of Machino Montell Ltd does not debar the department from imposing any penalty under the Customs Act, 1962. In the instant case the actions of M/s JSPL have made the goods liable for confiscation under Section 111(o) of the Customs Act, 1962 and hence penalty can definitely be imposed on them under Section 112(a) of the Customs Act, 1962.*

40. *M/s JSPL have raised the point of time-bar. In this case the documents may not have been forged by JSPL but they were the ones to bring it into circulation. One cannot take advantage of forged documents and when caught, feign ignorance/innocence. In such cases strict liability is placed on the person found with the forged document. The fact of the matter is that goods were cleared against forged documents. This not only amounts to misdeclaration but also to fraud, suppression of facts and collusion. In that case, as per the proviso to section 28(1) of the Customs Act, 1962, demands can be raised within five years of the date of clearance. Thus the demand is not time-barred in this case.*

41. *M/s JSPL were the main persons who contacted Shri Rakesh Yadav and obtained the forged signatures. Hence they are directly responsible for the crime. Since they were responsible for clearance of goods against forged documents, which made the goods liable for confiscation under section 111(o) of the Customs Act, 1962, they are liable for penal action under section 112(a) of the Customs Act, 1962.*

42. *As regards the role of M/s ICICI Bank Ltd, though they might not have been directly involved in the act of forgery, their acts of omission and commission have been discussed in para 31 above and their gross negligence resulted in forged certificates being produced for seeking exemptions from Customs duty. Had they taken their responsibilities properly and acted with due diligence, as was expected of a PIA, this fraud would not have been perpetrated. Shri Zarasp Irani, Manager, ICICI Bank Ltd in his statement dated 04.08.2004 had confirmed that they were aware that the 'line' Ministry had to be notified by the Deptt of Economic Affairs and for the present Project no such notification had been issued. Even then they sent JSPL to the Ministry of Finance and that too a particular person by the name Shri Rakesh Yadav. They are, therefore, liable for penal action 112(a) of the Customs Act, 1962, for abetment as their acts of commission and omission resulted in making the imported goods liable for confiscation u/s 111(o) of the Customs Act, 1962. Further it has been held in the case of **Airport Authority of India Ltd vs CC, New Delhi [2003(158) ELT 33(Tri-Del)]** that penalty can be imposed under section 112(a) for abetment on account of negligence also.*

43. *Both M/s. JSPL & ICICI have pleaded that since there was no mens rea on their part, penalty should not be imposed. On this aspect, it is observed that mens rea is not a pre-requisite for imposing penalty u/s 112(a) of the Customs Act, 1962. This clause does not use expressions like 'willful', 'knowingly', etc. to attribute any intent. This clause prescribes a strict liability without need to establish mens rea. **The Actus Reus is itself the offence.** The position is different in respect of clause (b) of Section 112 where the expression used is "... which he knows*

or has reasons to believe are liable for confiscation ----" By the mere fact that goods have become liable for confiscation under any clause of section 111 of the Customs Act, 1962, penalty can be imposed on all the persons who have been responsible for making the goods liable for confiscation. Even for abetment, clause (a) of Section 112 can be invoked. If the main act of the person does not require mens rea for imposition of penalty, the same can not be a precondition for abetment. M/s. ICICI Ltd. have relied upon the definition of abetment u/s 107 of the Indian Penal Code, 1860. It is observed that the said definition or reference can be used only in respect of criminal offences for which the IPC has been enacted. The IPC cannot be applied for offences u/s 112(a) of the Customs Act, 1962, which are basically civil offences. Further, Section 5 of the IPC clearly states that nothing in the said IPC shall apply or affect the provisions of any 'special laws'. 'Special Law' has been defined in Section 41 of the IPC as a law applicable to a particular subject. The Customs Act, 1962, is definitely a special law relating to the subject of imports and exports and hence the definition of abetment u/s 107 of the IPC cannot be applied for interpreting the word 'abetment' appearing in Section 112(a) of the Customs Act, 1962. There are a plethora of judgements that mens rea is not necessary for imposing penalty u/s 112(a) of the Customs Act, 1962 [Dineshchandra Jamnadas Gandhi vs. State of Gujarat- 1989(40) ELT 230 SC, Gujarat Travancore Agency vs. Commissioner of I/T -1989 (42) ELT 350 (SC), Pine Chemical Suppliers vs Collector of Customs - 1993(67)ELT25(SC) and in the case of Z B Nagarkar Vs Union of India -1999 (112) ELT 772 (SC), and subsequently reiterated in a number of CESTAT decisions, e.g. Imperial Trading vs Commissioner of Customs, Nhava Sheva, 2005(181)ELT29(Tri-Mumbai)

44. As regards Shri Rakesh Yadav, he is the main person who committed the forgery and he has admitted this in his statement. For his acts of commission leading to the confiscation of goods he is liable for penal action u/s 112(a) of the Customs Act 1962.

45. The amount of custom duty evaded has not been challenged by any of the noticees." (emphasis added at several places above)

28. I agree with the above findings of my predecessor Commissioner in the OIO dated 29.09.2006.

29. I also take note of the ratio contained in the judgements in the cases of **Banshi Dhar Lachhman Prasad¹⁰**, **SPL Industries Limited¹¹** and **Gautam Diagnostic Centre¹²** which state that remand proceedings ordered on a person's own appeal cannot be subjected

¹⁰ Banshi Dhar Lachhman Prasad & Anr-1978 (2) E.L.T. (J 385) (S.C.)

¹¹ SPL Industries Limited vs Commissioner of Central Excise, New Delhi-II-2003(159) ELT 720(T)

¹² Gautam Diagnostic Centre vs Commissioner Of Customs, Mumbai-2003(159) ELT 678(T)

to a greater penalty than that imposed on him in the original order unless specifically stated in the remand order. Therefore, I am inclined to agree with the first Adjudication Order No. 123/2006/CAC/CC(I)/AKP/Gr.VA dated 29.09.2006 on the quantum of penalty to be imposed.

30. In view of the above I pass the following order.

ORDER

30.1 The imports under the above mentioned 5 Bills of Entry are not eligible for exemption under Notification No. 84/97-Cus dated 11.11.1997 as amended.

30.2 Customs duty amounting to **Rs.32,30,095/- (Rupees thirty two lakh thirty thousand ninety five only)** (Details as per Annexure-1 to the SCN) in respect of goods valued at **Rs. 63,58,455/-** and covered by B/E No.736946 dated 23.4.2002 relating to imports through **Nhava Sheva Port**, is hereby confirmed under section 28 of the Act and is appropriated from the deposit of Rs.32,30,095/- made by M/s JSPL on 23.8.2004.

30.3 Customs duty amounting to **Rs. 4,15,334/- (Rupees four lakh fifteen thousand three hundred thirty four only)** (Details as per Annexure-2 to the SCN) in respect of goods valued at Rs. 8,17,587/- and covered by B/E Nos 51 and 52 both dated 6.5.2002 in respect of imports through **Air Cargo Complex, Kolkata**, is hereby confirmed under section 28 of the Act and is appropriated from the deposit of Rs.10,62,677/- made by M/s JSPL on 15.3.2005.

30.4 Customs duty amounting to **Rs.6,47,343/- (Rupees six lakh forty seven thousand three hundred forty three only)** (Details as per Annexure-3 to the SCN) in respect of goods valued at **Rs. 12,74,297/-** and covered by B/E dated 06.06.2002 relating to imports through **Kolkata Sea Port**, is hereby confirmed under section 28 of the Act and is appropriated from the deposit of Rs.10,62,677/- made by M/s JSPL on 15.3.2005.

30.5 Customs duty amounting to **Rs.32,57,994/- (Rupees thirty two lakh fifty seven thousand nine hundred ninety four only)** (Details as per Annexure-4 to the SCN) in respect of goods valued at **Rs. 64,13,374/-** and covered by B/E No. 271611 dated 21.6.2002 relating to imports through **Mumbai Sea Port**, New Custom House, Mumbai, is hereby confirmed under section 28 of the Act and is appropriated from the deposit of 32,57,994/- made by M/s JSPL on 30.9.2004.

30.6 M/s JSPL are also liable to pay interest on the above amounts under section 28AA (erstwhile 28AB) of the Act.

30.7 Goods totally valued at **Rs.1,48,63,713/-** (Details as per Annexures-1, 2 3 & 4) in respect of all the above five Bills of Entry are confiscated under section 111(o) of the Act.

Since the goods have already been cleared, I impose a fine of Rs 15,00,000/- (Rupees fifteen lakh only) in lieu of confiscation.

30.8 Keeping the role of each noticee in mind I impose the following penalties on them under section 112(a) of the Act.

Sr. No.	Name of the Noticee	Amount of Penalty in Rs.
1.	M/s Jindal Steel and Power Ltd.	50 Lakh
2.	M/s ICICI Bank Ltd.	10 Lakh
3.	Shri Rakesh Yadav	2 Lakh



Vivek
21.08.2023

(Vivek Pandey)

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

To

1. M/s. Jindal Steel & Power Limited,
Jindal Centre, 12 Bhikaiji Cama Place, New Delhi.
2. M/s. ICICI Bank Limited through Shri Sandeep Bakhshi, MD & CEO, ICICI Bank,
ICICI Bank Towers, Mumbai, K7-400051. (Sandeep.Bakhshi@icicibank.com)
2. M/s ICICI Bank Limited, ICICI Bank Towers, Bandra Kurla Complex,
Mumbai-400051.
2. M/s ICICI Bank Limited, ICICI Bank Towers, Near Chakli Circle, Old Padra Road,
Vadodara, Guj-390007.
3. Shri Rakesh Yadav, 141,
Sector-3, Type- 4, Sadiq Nagar, New Delhi-110049.
3. Shri Rakesh Yadav, S/o Shri Ram Prasad Yadav,
353, Sector-3, Sadiq Nagar, New Delhi-110049.

Copy to:

1. The Pr. Chief Commissioner of Customs, Mumbai Zone-I, New Custom House,
Mumbai.

2. The ADG, DRI, DZU, D Block, I.P. Bhavan, I.P. Estate, New Delhi-110002.
3. The Pr. Commissioner of Customs, NS-V, Jawaharlal Nehru Custom House, Nhava Sheva, Uran Raigad, Maharashtra-400707.
4. The Pr. Commissioner of Customs, Air Cargo Complex, NICT Building, Air Cargo Complex, NSCBI Airport, Kolkata-700052.
5. The Pr. Commissioner of Customs(port), Custom House, 15, 1, Strand Rd, Fairley Place, B.B.D. Bagh, Kolkata, West Bengal 700001.
6. ADG(CEIB), Central Economic Intelligence Bureau, Janpath Bhavan, B-wing, 6th Floor, New Delhi-110001.
7. The Deputy Commissioner of Customs, Group-VA, New Custom House, Mumbai.
8. The Deputy Commissioner of Customs, CHS Section, New Custom House, Mumbai. (For display on notice board)
9. Office Copy.

