



आयुक्त सीमा शुल्क का कार्यालय, आयात I-, न्यू कस्टम् हाउस, मुंबई- 400001
OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT-I)
1st FLOOR NEW CUSTOM HOUSE, BALLARD ESTATE,
MUMBAI – 400 001

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| FILE NO. CUS/APR/MISC/4340/2022-GR-5(AB)-O/O COMMR-CUS-IMP-I-MUMBAI | ORDER NO. 46/JC/NS/ADJ/2024-25 |
| | DATE OF ORDER: 09-01-2025 |
| | DATE OF ISSUE: 09-01-2025 |
| DIN NO. | 20250177000000888D46 |
| ADJUDICATING AUTHORITY | NIDHISH VINAYAK SINGHAL Joint Commissioner of Customs, Import-I, New Customs House, Mumbai Customs-I |

ORDER – IN – ORIGINAL

**PASSED BY NIDHISH VINAYAK SINGHAL, JOINT COMMISSIONER OF CUSTOMS,
OFFICE OF THE COMMISSIONER OF CUSTOMS, IMPORT-I,
MUMBAI CUSTOMS-I, NEW CUSTOM HOUSE, MUMBAI.**

1. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

This copy is granted free of charge for the use of the person to whom it is issued.

2. इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम, 1962 की धारा 128(1) के तहत आदेश की संसूचना की तारीख से साठ दिन के भीतर ऐसे मामले जहां शुल्क या शुल्क और जुर्माना विवादित हैं या जुर्माना जहां सिर्फ जुर्माना ही विवादित है, की 7.5% राशि अदा करने पर सीमा शुल्क आयुक्त (अपील), मुंबई सीमा शुल्क-1, ग्राउंड फ्लोर, न्यू कस्टम् हाउस, बैलार्ड एस्टेट, फोर्ट, मुंबई - 400 001 के समक्ष की जा सकती है।

An appeal against this order shall lie before the Commissioner of Customs (Appeals), Mumbai Customs-I, Ground Floor, New Customs House, Ballard Estate, Fort, Mumbai - 400 001 under Section 128(1) of the Customs Act, 1962 within **Sixty days** from the date of communication of this order and on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty where penalty alone is in dispute.

3. अपील सीमाशुल्क अपील) नियम 1962 में प्रदर्शित फॉर्म सी.ए.-1 में दो प्रति में की जानी चाहिए। अपील रुपये 5.00 के न्यायालय फीस स्टॉप तथा इस आदेश या आदेश की प्रति के साथ संलग्न होनी चाहिए। यदि आदेश की प्रति संलग्न की जाती है तो इसमें भी न्यायालय फीस अधिनियम 1962 की अनुसूची 1 में प्रदर्शित रूपये

५.०० की न्यायालय फीस स्टॉप भी होना चाहिए।

The appeal should be in duplicate and should be filed in Form CA – 1 appeared in Custom (Appeals) Rule, 1982. The appeal should bear a court fee stamp of Rs.5.00 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a court fee stamp of Rs.5.00 only as prescribed under Schedule 1, item 6 of the Court Fees Act, 1970.

4. जो व्यक्ति इस निर्णय या आदेश के विरुद्ध अपील कर रहा है वह अपील को अनीर्णित रखेगा, और सीमाशुल्क अधिनियम, १९६२ की धारा १२९(ई) के उपबंधों के अंतर्गत पैरा २ के अनुसार धनराशि जमा कराएगा तथा अपील के समय उन भुगतान का प्रमाण प्रस्तुत करेगा, जिसके अनुपालन किए जाने पर सीमाशुल्क अधिनियम १९६२ की धारा १२८(१) के उपबंधों के अधीन अपील अस्वीकार कर दी जाएगी।

Any person appealing against this decision or order shall, pending the appeal, deposit the amount as per Para 2 above under Section 129E of the Customs Act, 1962 and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for noncompliance with the provisions of Section 128(1) of the Customs Act, 1962.

5. यदि इस आदेश के खिलाफ अपील दायर की जाती है, तो अपील संख्या और तारीख की सूचना निर्णय प्राधिकारी का कार्यालय, अपर/संयुक्त सीमा शुल्क आयुक्त का कार्यालय, आयात-1, प्रथम तल, न्यू कस्टम्स हाउस, बैलार्ड एस्टेट, फोर्ट, मुंबई - 400 001 को दी जानी चाहिए।

If an appeal is filed against this order, the appeal number and date should be intimated to the Office of the Adjudicating Authority at Office of Addl./Joint Commissioner of Customs, Import-I, 1st Floor, New Customs House, Ballard Estate, Fort, Mumbai - 400 001.

Subject: Show Cause Notice under Section 28(4) read with Section 124 of the Customs Act 1962 in Case of Non-levy of Additional Duty of Customs on import of High Speed Diesel (HSD)/Marine Gas Oil (MGO) by M/s Allianz Offshore Services Private Limited.

BRIEF FACTS OF THE CASE

A Show Cause Notice No. 61/2024-25/Gr.5 (B) dated 02.09.2024 was issued to the importer **M/s Allianz Offshore Services Private Limited (IEC: AAUCA0693G)** having address A-604, DELPHI ORCHARD AVENUE, HIRANANADANI BUSINESS PARK,

MUMBAI, MAHARASHTRA, 400076 (hereinafter referred to as the 'Importer'). The importer had filed **Bill of Entry No. 4158849 dated 01.06.2021 and 4146038 31.05.2021** through their authorized Customs Broker, **M/s Avani Aviation and Shipping Services**, for the clearance of goods declared as 'HSD (Vessel/Ship's Own Consumption) and MGO (Vessel/Ship's Own Consumption), respectively. These goods were classified under CTH 27101949 of the Customs Tariff. The details of the bills of entry and other particulars are as follows: -

| Sr. No. | BE No. | BE Date | Item Description | Inv No. | Item No. | CTH | Applicable Assessable Value (in Rs.) | Applicable Additional Customs Duty @4% (in Rs.) |
|--|---------|------------|--|---------|----------|----------|--------------------------------------|---|
| 1 | 4158849 | 01.06.2021 | HSD (Vessel/Ship's Own Consumption) | 2 | 1 | 27101949 | 12741817.3 | 509672.693 |
| 2 | 4146038 | 31.05.2021 | MGO (Vessel/Ship's Own Consumption) | 2 | 8 | 27101949 | 5993502.78 | 239740.111 |
| Total Applicable Additional Customs Duty: | | | | | | | | 749412.804 |

2. Whereas, as per Customs Tariff Act, 1975, "HSD/MGO" is classified under CTH 27101930/1949 and as per notification no. 53/2017- Customs dated 30 June, 2017 High Speed Diesel (HSD) falling under Heading 2710 of the first schedule to the Customs Tariff Act, 1975, is liable to an additional duty of Customs at the rate of four percent ad valorem.

3. Whereas, during the online scrutiny of bills of entry conducted by the Senior Audit Officer, Director General of Audit (Central), Mumbai, it was observed that two consignments of "High Speed Diesel (HSD)/Marine Gas Oil (MGO)" were imported in the year 2021 through the NCH Commissionerate. It was found that instead of mentioning Notification No. 53/2017 in the bills of entry, the importer, M/s Allianz Offshore Services Private Limited, had entered Notification No. 51/2017. As a result, the additional duty of customs on the imported goods, as applicable, was not paid. This misclassification led to a **short levy of duty amounting to Rs. 7,49,413/-** (Annexure attached).

4. Hence, as per the said audit objection, the total short-paid customs duty amounts to Rs. 7,49,413/-, which appears to be recoverable with respect to the impugned goods cleared vide Bills of Entry No. 4158849 dated 01.06.2021 and 4146038 dated 31.05.2021 by the importer.

5. In this regard, a demand notice vide F. No. CUS/APR/MISC/4340/2022-GR-5(AB) dated 16.11.2022 was issued to the importer under Section 28 of the Customs Act, 1962, for the payment of the differential duty amounting to Rs. 7,49,413/- along with the applicable interest.

6. In response to the demand notice, the importer, vide a letter dated 06.01.2023, stated that SAD is exempted under Notification No. 51/2017 dated 30.06.2017, as it was exempted prior to the introduction of the GST regime under Customs Notification No. 21/2012 dated 17.03.2012. The importer further mentioned that the Principal Commissioner of Customs (Appeal-II), Central Tax, Pune, passed an order stating that the exemption of SAD at 4% under Notification No. 51/2017 is applicable and set aside the demand of the Revenue to collect SAD at 4% on HSD, vide Order-in-Appeal No. Pune-CT-APP II-000-048/2020-21/368 dated 13.10.2020. Additionally, the importer attached a copy of the Technical Research Unit (TRU) letter, vide F. No. 354/214/2017-TRU dated 06.09.2017, regarding the clarification on the leviability of the Additional Duty of Customs (SAD) post-implementation of GST, effective from 01.07.2017, on goods that are outside the scope of GST.

7. Subsequently, a Pre-Notice Consultation vide F.No. CUS/APR/Misc/4340/2022-GR-5(AB) dated 31.01.2023 was issued to importer under Section 28 of the Customs Act, 1962 for payment of short paid Customs duty amounting to Rs. **7,49,413/-** along with applicable interest.

8. From the description and classification declared by the importer for the goods, as mentioned in the bills of entry, it appears that the impugned goods are liable for the payment of additional customs duty at the rate of 4% ad valorem, which amounts to Rs. 7,49,413/- under Notification No. 53/2017 dated 30 June 2017.

9. From the foregoing paragraphs, it appears that the importer has wrongly availed the benefit under Notification No. 51/2017 for the imported goods covered under the said bills of entry. Therefore, the short-paid duty amounting to Rs. 7,49,413/-, as applicable under

Notification No. 53/2017 dated 30 June 2017, is liable to be demanded from the importer in terms of Section 28(4) of the Customs Act, 1962, along with applicable interest and penalty.

10. Relevant portion of Notification no. 51 of 2017 dated 30.06.2017 is produced below:

“In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notifications of the Government of India, in the Ministry of Finance (Department of Revenue), No. 21/2012-Customs, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (1), vide number G.SR 194 (E), dated the 17th March, 2012, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description as specified in column (3) of the Table below, falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, from so much of the additional duty of Customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act, as is in excess of the amount calculated at the standard rate as specified in the corresponding entry in column (4) of the said Table.

Table

| Sl. No. | Chapter or heading or sub-heading or tariff item of the First Schedule | Description of goods | Standard Rate |
|----------------|---|--|----------------------|
| (1) | (2) | (3) | (4) |
| 1 | 27 | Petroleum Crude, petrol, diesel, petroleum gases and fuels | Nil |
| 2 | 27 | Compressed Natural gas for use in transport sector | Nil |

11. **Relevant portion of Notification no. 53 of 2017 dated 30.06.2017 is produced below:**

“ In exercise of the powers conferred by sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975),) , and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 19/2006-Customs, dated the 1st March, 2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 91 (E), dated the 1st March, 2006, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby directs that all goods of the description specified in column (3) of the Table below and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the said Act, as specified in the corresponding entry in column (2) of the said Table, having regard to the sales tax, value added tax, local tax and other taxes or charges leviable on sale or purchase or transportation of like goods in India, when imported into India, shall be liable to an additional duty of customs at the rate of four per cent *ad valorem*.

Table

| Sl. No. | Chapter or heading or sub- heading or tariff item of the First Schedule | Description of goods |
|----------------|--|---------------------------------------|
| (1) | (2) | (3) |
| 1 | 2709 00 00 | Petroleum Crude |
| 2 | 2710 | Motor spirit commonly known as petrol |
| 3 | 2710 | High speed diesel (HSD) |
| 4 | 2710 19 20 | Aviation Turbine Fuel |
| 5 | 2711 11 00 2711 21 00 | Liquefied natural gas and Natural Gas |

12. With the introduction of the Self-Assessment Scheme, the onus is on the importer to comply with the various laws, determine his tax liability correctly and discharge the same. The Importer is required to declare the correct description, value, classification,

notification number, if any, on the imported goods. Self-assessment is supported by Section 17, 18 and 46 of the Customs Act, 1962 and the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018. The importer is solely responsible for the self-assessment of duties on imported goods, as well as for filing all declarations and related documents, and confirming that these are true, correct, and complete. Self-assessment can result in assured facilitation for compliant importers. However, delinquent importers will face penal action for incorrect self-assessment made with the intent to evade duties or avoid compliance with the conditions of notifications, the Foreign Trade Policy, or any other provisions under the Customs Act, 1962, or allied acts.

13. Relevant Law Provisions to be applicable in the case are as under: -:

i. **Section 17(1) of the Customs Act, 1962** - An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

ii. **Section 28 (4) of the Customs Act, 1962** - Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

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

iii. **Section 28AA of the Customs Act, 1962** - (1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under

sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

- iv. **Section 46 (4) of the Customs Act, 1962** – The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.
- v. **Section 46 (4A) of the Customs Act, 1962** – The importer who presents a bill of entry shall ensure the following, namely: -
 - (a) the accuracy and completeness of the information given therein;
 - (b) the authenticity and validity of any document supporting it; and
 - (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.
- vi. **Section 111 (m) of the Customs Act, 1962** - any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.
- vii. **Section 112 (a) of the Customs Act, 1962** - Any person, who, in relation to any goods, does omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act shall be liable to penalty.

14. It, therefore, appears that-

- i. Importer had not paid the applicable additional Customs Duty for the goods imported under bills of entry no. **4158849 dated 01.06.2021 and 4146038 dated 31.05.2021** in terms of Notification No. 53 of 2017 dated 30.06.2017.
- ii. The short-paid/short-levied additional customs duty on imported goods covered under this notice, due to the incorrect claim or availing of benefits under Notification No. 51/2017 instead of the correct Notification No. 53/2017-Customs dated 30.06.2017, amounting to Rs. 7,49,413/-, appears to be liable to be paid, along with applicable interest and penalty, by the importer under Section 28(4) of the Customs Act, 1962.

- iii. This act of commission and omission on the part of the importer has rendered the subject goods liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962, and also appears to have made the importer liable for penal action under the provisions of Section 112(a) of the Customs Act, 1962.

15. Now, therefore, **M/s Allianz Offshore Services Private Limited (IEC: AAUCA0693G)** is hereby called upon to Show Cause to the **Joint Commissioner of Customs, Group 5B, New Custom House, Ballard Estate, Mumbai-400001** within 30 days on receipt of this notice, as to why:

- i. The short-paid/short-levied additional customs duty for the imported goods, as per **Bills of Entry No. 4158849 dated 01.06.2021 and 4146038 dated 31.05.2021**, amounting to Rs. 7,49,413/-, should not be demanded or recovered under Section 28(4) of the Customs Act, along with applicable interest thereon, in accordance with the provisions of Section 28AA of the Customs Act, 1962.
- ii. The imported goods, as per Bills of Entry No. 4158849 dated 01.06.2021 and 4146038 dated 31.05.2021, with a total assessable value of Rs. 1,87,35,320/- (Rupees One Crore Eighty-Seven Lakh Thirty-Five Thousand Three Hundred and Twenty only), should not be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.
- iii. Penalty should not be imposed on **M/s Allianz Offshore Services Private Limited** under Section 112 (a) of Customs Act, 1962.

Personal Hearing

16. Personal hearings (4 nos.) in this matter were scheduled on 17.10.2024, 05.11.2024, 27.11.2024, and 12.12.2024. In accordance with Section 153 of the Customs Act, 1962, notices for personal hearings were served to the noticee through India Post's 'Speed Post' service. According to the records available on the 'Track Consignment' section of the India Post website, all these notices were delivered to the noticee at his registered address well in advance of the scheduled hearing dates. Additionally, in compliance with the provisions of Section 153 of the Customs Act, 1962, which outlines the prescribed modes of serving notices, orders, or other communications, the hearing dates were prominently displayed on the department's notice board. However, neither the noticee nor any of his authorized representatives attended the personal hearing. Furthermore, the noticee has failed to submit

any written representation, either in physical or electronic form.

Discussion and Findings

17. I have carefully gone through the facts of the case by going through the Show Cause Notice No. 61/2024-25/Gr.5 (B) dated 02.09.2024, as well as documents and evidences available on record. Accordingly, I am proceeding to decide the matter based on the facts and evidence on record. The issues before me to be decided are as under:

- i. Whether the short paid/ short levied Additional Customs Duty amounting to **Rs 7,49,413/-**, for the goods imported vide **Bills of Entry no. 4158849 dated 01.06.2021 and 4146038 dated 31.05.2021**, is liable to be demanded/recovered under Section 28 (4) of Customs Act, along-with applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962.
- ii. Whether the imported goods vide **Bills of Entry no. 4158849 dated 01.06.2021 and 4146038 dated 31.05.2021** having total applicable assessable value amount of Rs.1,87,35,320/- (Rupees One Crore Eighty-Seven Lakh Thirty-Five Thousand Three Hundred and Twenty only), is liable for confiscation in terms of provisions of **Section 111(m) of the Customs Act, 1962**;
- iii. Whether the importer **M/s Allianz Offshore Services Private Limited** is liable for Penalty under Section 112 (a) of Customs Act, 1962.

18. I find that, in the instant case, a fair opportunity was provided to the importer to respond to the demand notice. However, the importer has failed to file any defence, despite a considerable amount of time having passed. I further find that the importer failed to avail themselves of the opportunities for personal hearings provided to defend their case. Neither the noticee nor the authorized representative appeared for the personal hearing on any of the four dates given to present their case, nor have they submitted any reply to the allegations mentioned in the above-mentioned Show Cause Notice (SCN). Thus, I find that sufficient time and opportunity have been given to the noticee, and therefore, the principles of natural justice have been complied with.

19. In this connection, I find that the Hon'ble Supreme Court, High Courts, and Tribunals, in several judgments/decisions, have held that an ex-parte decision does not amount to a violation of the principles of natural justice when sufficient opportunities for personal hearing have been provided to defend the case.

In support of the same, I rely upon the following judgments/orders as under: -

(a) Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), has observed that;

"Natural justice - The petitioner was given a full opportunity before the Collector to produce all evidence on which he intended to rely, but the petitioner did not request any opportunity to adduce further evidence. Therefore, the principles of natural justice were not violated. (Emphasis supplied)"

(b) Hon'ble High Court of Calcutta, in the case of KUMAR JAGDISH CH.SINHA VS. COLLECTOR OF CENTRAL EXCISE, CALCUTTA, reported in 2000 (124) E.L.T. 18 (Cal.) in Civil Rule No. 128 (W) of 1961, decided on 13-9-1963, has observed that;

"Natural justice - Show cause notice – Hearing – Demand: The principles of natural justice are not violated when, before making the levy under Rule 9 of the Central Excise Rules, 1944, the assessee was issued a show cause notice, his reply was considered, and he was also given a personal hearing in support of his reply – Section 33 of the Central Excises & Salt Act, 1944. It has been established both in England and in India (vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)), that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made thereunder which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' (Board of Education v. Rice, (1911) A.C. 179) and 'deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case' (Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)). [Para 16] (Emphasis supplied)"

(c) Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.), has observed that:

"Natural justice - Ex parte order by DGFT – EXIM Policy: A proper opportunity was given to the appellant to reply to the show cause notice issued by the Additional DGFT and to make oral submissions, if any, but the opportunity was not availed by the appellant. The principles of natural justice were not violated by the Additional DGFT in passing the ex parte order. Para 2.8(c) of the Export-Import Policy 1992-97 – Section 5 of the Foreign Trade (Development and Regulation) Act, 1992. (Emphasis supplied)"

(d) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD VS. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II [10 reported in 2004 (171) ELT. 412 (Tri. Mumhal), has observed that;

"Natural Justice- Personal hearing was fixed, and the reasons for not attending were provided by the lower authorities. The appellant cannot now demand another opportunity. The principles of natural justice were not violated. (para 3) (Emphasis Supplied)

(e) The Hon'ble Supreme court in the case of F.N. ROY Versus COLLECTOR OF CUSTOMS, CALCUTTA AND OTHERS reported in 1983 (13) E.I.T. 1296 (B.C.), has observed as under:

"Natural justice - Opportunity for personal hearing not availed of – Effect: The confiscation order cannot be held mala fide if passed without a hearing. If the petitioner was given an opportunity to be heard before the confiscation order but did not avail of it, the fact that they were not given an additional opportunity for personal hearing before the order was passed does not violate the principles of natural justice. (para 28) (Emphasis Supplied)"

(f) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) EL.T. 379 (S.C.), has observed as under;

"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the audi alteram partem rule, and the well-known principle was argued, asserting that an ex parte hearing without notice violated this rule. In our opinion, this rule has no application to the facts of this case, where the appellant was asked not only to send a written reply but also to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given, or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in assuming that the persons notified did not wish to appear before him when the case was to be considered. He could not be blamed if he proceeded on the material before him, based on the allegations in the show cause notice. Clearly, the Collector could compel an appearance before him, and giving a further notice in a case like this, indicating that the matter would be dealt with on a certain day, would be an ideal formality."

(g) The Hon'ble Delhi Tribunal reported as 2012 (286) E.L.T. 79 (Tri. - Del.): COMMISSIONER OF C. EX., CHANDIGARH Versus PEE IRON & STEEL CO. (P) LTD. [Final Order No. A/883/2012-EX(BR)(PB), dated 24-7-2012 in Appeal No. E/6066/2004] wherein it has been held that:

Hearing - Notice to the assessee was received back undelivered with a report stating that

the address was incorrect. No other address for the assessee was found on record. In this view, as the assessee could not be served the notice without undue delay and expense, the matter proceeded ex parte against the assessee. [para 9]

(h) The Hon'ble Tribunal, Chennai, in the case of V.K. Thampi Vs. Collector of Customs and Central Excise, Cochin [1988 (033) ELT 424], held at para 7 that 'an adjudicating authority is entitled to proceed ex-parte if the person concerned does not appear before it in response to a notice issued by it.'".

20. Further, on the issue of affording sufficient opportunities to the Noticee to defend himself vis-a-vis allegation made, I find it relevant to refer to the judgement of Hon'ble Allahabad High court in the case of Modipon Ltd. Vs CCE, Meerut, reported as 2002 (144) ELT 267 (AIL). The Hon'ble High Court, at Para 19, held as follows:-

“No doubt, hearing includes both written submissions and personal hearings; however, the principle of audi alteram partem does not make it imperative for the authorities to compel the physical presence of the party concerned for a hearing and continue adjourning the proceedings as long as the party concerned does not appear. What is imperative for the authorities is to afford the opportunity for a hearing. It is for the party concerned to avail of this opportunity. If the opportunity is provided, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the proper flow of justice, not instruments for delaying proceedings and obstructing justice. In the instant case, as stated in detail in the preceding paragraphs, repeated adjournments were granted to the petitioners, dates after dates were fixed for personal hearings, the petitioners filed written submissions, and the administrative officer of the factory appeared for personal hearings and filed written submissions. Therefore, in the opinion of this Court, there has been sufficient compliance with the principles of natural justice, as adequate opportunity for hearing was afforded to the petitioners.”

21. Hence, I proceed with the ex-parte finalization of the adjudication proceedings, based on the facts and evidence available on record.

22. I find that the importer, M/s Allianz Offshore Services Private Limited, had filed Bill

of Entry No. 4158849 dated 01.06.2021 and Bill of Entry No. 4146038 dated 31.05.2021 for the clearance of goods declared as 'HSD (Vessel/Ship's Own Consumption)' and 'MGO (Vessel/Ship's Own Consumption)', respectively, and classified the same under CTH 27101949 of the Customs Tariff. However, as per Notification No. 53/2017-Customs dated 30th June 2017, High-Speed Diesel (HSD) falling under Heading 2710 of the First Schedule to the Customs Tariff Act, 1975, is liable to an additional duty of customs at the rate of four percent ad valorem. The importer, instead of citing Notification No. 53/2017 in the Bills of Entry, availed the benefits of exemption under Notification No. 51/2017, thereby failing to pay the additional duty of customs on the imported goods, amounting to Rs. 7,49,413/-.

23. Thus, I have to decide whether the Special Additional Duty of Customs (SAD) under Section 3(5) of the Customs Tariff Act, 1975, is leviable on 'HSD (Vessel/Ship's Own Consumption)' and 'MGO (Vessel/Ship's Own Consumption)' as per Notification No. 53/2017-Customs dated 30th June, or, alternatively, whether the said goods (High-Speed Diesel) are eligible for exemption from Special Additional Duty of Customs (SAD) under Notification No. 51/2017 dated 30th June 2017.

24. Here, it is pertinent to note that Section 3(5) of the Customs Tariff Act, 1975, enables the Central Government to levy a duty on imported goods to counterbalance the sales tax, VAT, local tax, and other charges. The conditions and the maximum rate of levy that can be imposed are prescribed under Section 3(5) itself. The levy is applicable to goods imported. For ease of reference, Section 3(5) of the Customs Tariff Act, 1975, reads as follows:

Section 3(5) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four per cent of the value of the imported article as specified in that notification.

Explanation.- In this sub-section, the expression "sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or

transportation in India" means the sales tax, value added tax, local tax or other charges for the time being in force, which would be leviable on a like article if sold, purchased or transported in India or, if a like article is not so sold, purchased or transported, which would be leviable on the class or description of articles to which the imported article belongs, and where such taxes, or, as the case may be, such charges are leviable at different rates, the highest such tax or, as the case may be, such charge.

From the above, it is evident that in the case of import of goods, a levy of 4% Additional Duty of Customs is imposed under Section 3(5) of the Customs Tariff Act, 1975.

25. It is also apparent that the Additional Duty of Customs (SAD) under Section 3(5) of the Customs Tariff Act, 1975, was levied as per Notification No. 19/2006-Cus dated 01-03-2006, as amended by Notification No. 53/2017-Cus dated 30-06-2017. Notification No. 53/2017-Cus dated 30-06-2017 reads as follows:

In exercise of the powers conferred by sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 19/2006-Customs, dated the 1st March, 2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 91 (B), dated the 1st March, 2006, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby directs that all goods of the description specified in column (3) of the Table below and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the said Act, as specified in the corresponding entry in column (2) of the said Table, having regard to the sales tax, value added tax, local tax and other taxes or charges leviable on sale or purchase or transportation of like goods in India, when imported into India, shall be liable to an additional duty of customs at the rate of four per cent ad valorem.

Table

| Sl. No. | Chapter or heading or sub- heading or tariff item of the First Schedule | Description of goods |
|----------------|--|-----------------------------|
| (1) | (2) | (3) |

| | | |
|---|--------------------------|---------------------------------------|
| 1 | 2709 00 00 | Petroleum Crude |
| 2 | 2710 | Motor spirit commonly known as petrol |
| 3 | 2710 | High speed diesel (HSD) |
| 4 | 2710 19 20 | Aviation Turbine Fuel |
| 5 | 2711 11 00 2711 21 00 | Liquefied natural gas and Natural Gas |

26. Further, the Importer has claimed exemption from payment of such Additional Duty of Customs in terms of Notification No. 21/2012 dated 17-03-2012 (Sr. No 41) as amended by Notification No 51/2017-dated 30-06-2017 (Sr. No 1) on imported High Speed Diesel. Here, I find that certain items on Import are exempted from Additional Duty of Customs leviable under Section 3(5) of the Customs Tariff Act, 1975 in terms of Notification No: 21/2012-Cus dated 17-03-2012 as amended by Notification No: 51/2017-Cus dated 30-06-2017. Notification 51/2017-Cus dated 30-06-2017 reads as under:

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notifications of the Government of India, in the Ministry of Finance (Department of Revenue), No. 21/2012-Customs, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3. Sub-section (i), vide number G.S.R 191(E), dated the 17th March, 2012, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description as specified in column (3) of the Table below, falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, from so much of the additional duty of Customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act, as is in excess of the amount calculated at the standard rate as specified in the corresponding entry in column (4) of the said Table.

26.1. The relevant extract from Notification No. 21/2012-Cus dated 17-03-2012 and Notification No. 51/2017-Cus dated 30-06-2017 with respect to High-Speed Diesel is as follows:

Table

| Notification No. & Serial. No. | Chapter, heading, sub-heading or tariff item of the First Schedule | Description of goods | Standard rate |
|---|---|---|----------------------|
| (1) | (2) | (3) | (4) |
| 21/2012-Cus dated 17-03-2012 Sr No. 41 | 27 | Petroleum crude, kerosene for public distribution scheme, liquefied petroleum gas for domestic household consumer, petrol, diesel, coal, coke and petroleum gases and fuels | Nil |
| 51/2017-Cus dated 30-06-2017 Sr No 1 | 27 | Petroleum crude, petrol, diesel, petroleum gases and fuels. | Nil |

From the reading of the above notification, it is quite evident that complete exemption from the payment of the Additional Duty of Customs (SAD) leviable under Section 3(5) of the Customs Tariff Act, 1975, is admissible in respect of imported diesel.

27. Here, I find that the prerequisite to qualify for above said exemption is that the goods should be of the description as specified in column (3) of the Table provided in the said Notification, falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India. In the present case, the goods imported by the Importer are 'HSD (Vessel/Ship's Own Consumption) and MGO (Vessel/Ship's Own Consumption) falling under Chapter 27 of the Customs Tariff Act, 1975 which is included in the said Table of the Notification.

28. From the above, it is apparent that Notification No. 53/2017-Cus dated 30-06-2017 seeks to levy the Additional Duty of Customs (SAD) under Section 3(5) of the Customs Tariff Act, 1975, while Notification No. 51/2017-Cus dated 30-06-2017 seeks to exempt the Additional Duty of Customs (SAD) on diesel and other petroleum crude, fuels, gases, etc., classifiable under Chapter 27. Doubts were raised regarding the levy/exemption of the Additional Duty of Customs (SAD) under Section 3(5) of the Customs Tariff Act, 1975, in terms of the above-

mentioned notifications, due to the numbering/chronology of the aforesaid notifications.

29. In this regard, I find that in determining which Customs notification takes precedence in chronological order, the principle that later notifications supersede earlier ones is generally followed, provided both notifications directly address or amend the same matter. If two notifications conflict, the later-issued notification usually overrides the earlier one, as it reflects the most updated rules or policy. According to the principle of *lex posterior derogat priori* (later law overrides earlier law), the later notification supersedes the earlier one if they cover the same subject matter or create a conflict.

30. The entry, numbering, and chronology of the issuance of these aforementioned notifications provide a meaningful background to understanding their applicability to the impugned goods under consideration. I find that Notification No. 53/2017-Cus dated 30-06-2017, which seeks to levy the Additional Duty of Customs (SAD) on diesel and other petroleum crude, fuels, gases, etc., classifiable under Chapter 27, under Section 3(5) of the Customs Act, 1975, was issued after, and therefore takes precedence over, Notification No. 51/2017-Cus dated 30-06-2017, which seeks to exempt the Additional Duty of Customs (SAD) on the same goods. Thus, the legislative intention of issuing Notification No. 53/2017-Cus subsequent to Notification No. 51/2017-Cus is to ensure that the later-issued Notification No. 53/2017-Cus takes precedence over the earlier Notification No. 51/2017-Cus. While exemptions are exceptions, they should also be construed meaningfully and in context. In this case, giving precedence to the exemption under Notification No. 51/2017-Cus over Notification No. 53/2017-Cus, which seeks the levy of the Additional Duty of Customs (SAD) and was issued later, would render the later notification meaningless. This would be contrary to the statutory intention, which must be avoided.

31. It must be assumed that had the Central Government intended to extend the benefit of exemption from the payment of Additional Duty of Customs (SAD) on diesel and other petroleum crude, fuels, gases, etc., classifiable under Chapter 27, it would not have issued Notification No. 53/2017-Cus dated 30-06-2017 seeking to levy Additional Duty of Customs (SAD) subsequent to Notification No. 51/2017-Cus dated 30-06-2017, which sought to exempt such goods from Additional Duty of Customs (SAD). If the intent of the Central Government had been to exempt diesel and other petroleum crude, fuels, gases, etc., classifiable under Chapter 27 from the payment of Additional Duty of Customs (SAD), it

would not have issued a new notification seeking to levy Additional Duty of Customs (SAD) on such goods after the earlier exemption notification.

32. In this regard, I rely on the judgment of the Apex Court in *Union of India v. Indian Charge Chrome Ltd.* 1999 (112) ELT 753 (SC), wherein it was held that when there are conflicting customs notifications, the later notification prevails if it directly modifies or overrides the earlier one. The Court emphasized the importance of the chronological sequence and the intent of the later notification. In *Hyderabad Industries Ltd. v. Union of India* 1999 (108) ELT 321 (SC), which dealt with the interpretation of conflicting notifications under the Customs Act, the Hon'ble Court reiterated the principle that chronological order is significant.

33. Here, I place my reliance on the Hon'ble Supreme Court's decision in the case of *M/s Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)]*, wherein it is held as follows:

"52. To sum up, we answer the reference holding as under -

(1) Exemption notification should be interpreted strictly: the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue."

It is now the law of the land that exemption notifications should be interpreted strictly, and the burden of proving applicability lies on the assessee to show that their goods fall within the parameters of the exemption notification.

34. The law is well-settled that a person who claims an exemption or concession must establish that they are entitled to it. In *Novopan India Ltd.*, the Apex Court held that a person invoking an exception or exemption provision to relieve them of tax liability must clearly establish that they are covered by the said provision. In cases of doubt or ambiguity, the benefit should go to the State. However, in the present case, the importer, despite being given four opportunities to be personally heard, failed to present their case either in person or

through any written submissions regarding the applicability of exemption under Notification No. 51/2017-Cus dated 30-06-2017, as opposed to Notification No. 53/2017-Cus dated 30-06-2017, which seeks the levy of Additional Duty of Customs (SAD) on the imported goods under consideration.

35. In view of the above discussions, I, therefore, have no hesitation in holding that the importer is not entitled to exemption from the payment of Additional Duty of Customs (SAD) leviable under Section 3(5) of the Customs Tariff Act, 1975, in terms of Notification No. 51/2017-Cus dated 30-06-2017. Hence, the importer is liable to pay Additional Duty of Customs (SAD) on the imported goods to the tune of Rs. 7,49,413/- in terms of Notification No. 53/2017-Cus dated 30-06-2017. By following the principles laid down by the Hon'ble Apex Court for interpreting exemption notifications, I find that, in the present case, the benefit of exemption under Notification No. 51/2017-Cus dated 30-06-2017 from the payment of Special Additional Duty of Customs (SAD) leviable under Section 3(5) of the Customs Tariff Act, 1975, on the said goods imported by the importer, is not admissible to M/s Allianz Offshore Services Private Limited.

36. I have observed that the Bill of Entry has been filed under the Self-Assessment scheme. Section 17 of the Customs Act, effective from 11.05.2018, provides for the self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry in electronic form. Section 46 of the Customs Act, 1962, makes it mandatory for the importer to make entry for the imported goods by presenting a Bill of Entry electronically to the Proper Officer.

37. The Bill of Entry shall be deemed to have been filed and the self-assessment of duty completed when the electronic declaration is entered into the Indian Customs Electronic Data Interchange System, either through ICEGATE or via data entry at the Service Centre. Thus, under the self-assessment scheme, it is the responsibility of the importer to ensure that the correct description, value, classification, and notification number (if applicable) are declared in respect of the imported goods while presenting the Bill of Entry.

38. The importer, while presenting a Bill of Entry, shall make and subscribe to a declaration regarding the truth of the contents of such Bill of Entry and shall, in support of that declaration, produce to the proper officer the invoice, if any, relating to the imported

goods. Further, Section 46(4) mandates that the importer, at the time of filing the Bill of Entry, shall ensure the following:

- a) The accuracy and completeness of the information given in the Bill of Entry.
- b) The authenticity and validity of any document supporting it: and
- c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any law for the time being in force.

39. The Hon'ble High Court of Bombay, in the case of *COMMR. OF CUS. (IMPORTS), NHAVA SHEVA Versus IMPERIAL TRADING LLC [2010 (253) E.L.T. 373 (Bom.)]*, held that:

Under sub-section (4) of Section 17 of the Customs Act, 1962, the importer is required to make declaration and subscribe to the truth of the contents while filling the bill of entry. Section 17(4) provides for cases where declaration is found to be different from the actual contents of the consignment. Together these provisions cast duty on the importer to make true declaration of the goods. Proviso to Section 46(4) also stipulates that when the importer is unable to furnish all particulars for want of full information, he may request for examination of the goods, pending production of such information. Therefore, if the importer has any difficulty in making proper declaration of the goods due to doubts or any other reason, he has to avail remedy under the said proviso. Despite these safeguards and cautions provided in law, if the bill of entry is found to contain erroneous declaration, it is not open to the importer to claim that it is not mis-declaration.

40. Therefore, I hold that the importer has wrongly availed Exemption Notification No. 51/2017-Cus dated 30-06-2017 in Bills of Entry No. 4158849 dated 01.06.2021 and 4146038 dated 31.05.2021 for the clearance of goods declared as 'HSD (Vessel/Ship's Own Consumption)' and 'MGO (Vessel/Ship's Own Consumption)', respectively. The importer willfully failed to enter Notification No. 53/2017-Cus dated 30-06-2017, which seeks the levy of Additional Duty of Customs (SAD) at the rate of four percent ad valorem on the impugned goods, with the intention to evade the Additional Duty of Customs (SAD). This act of omission and commission on the part of the importer has resulted in the non-payment of Additional Duty of Customs (SAD) amounting to Rs. 7,49,413/- (Rupees Seven Lakh Forty Nine Thousand Four Hundred and Thirteen only), which is to be paid by or recovered from

the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

41. I find that the importer was aware that Notification No. 53/2017-Cus dated 30-06-2017, which seeks the levy of Additional Duty of Customs (SAD) on the imported goods, was issued subsequent to Notification No. 51/2017-Cus dated 30-06-2017, which exempts such imported goods from Additional Duty of Customs (SAD). As such, the later Notification No. 53/2017-Cus dated 30-06-2017 takes precedence over the earlier Notification No. 51/2017-Cus dated 30-06-2017, in accordance with the principle of *lex posterior derogat priori* (later law overrides earlier law). Despite being aware of this, the importer wrongly availed Notification No. 51/2017-Cus dated 30-06-2017 to exempt the imported goods from the payment of Additional Duty of Customs (SAD) at the rate of four percent ad valorem. In light of these facts, I find that M/s Allianz Offshore Services Private Limited has willfully mis-stated and suppressed material facts, leading to the non-payment of the legitimate Additional Duty of Customs (SAD). This act of omission and commission resulted in the short payment of duty.

42. In view of the above discussion, I find that the importer, M/s Allianz Offshore Services Private Limited, is not eligible for the benefit of Notification No. 51/2017-Cus dated 30-06-2017, under which the exemption was wrongfully claimed by the importer. I, therefore, uphold the findings of the auditing authority in denying the benefit of Notification No. 51/2017-Cus dated 30-06-2017 with respect to Bills of Entry No. 4158849 dated 01.06.2021 and 4146038 dated 31.05.2021. I also find no reason to deviate from confirming the demand for Customs duty under Section 28(4) of the Customs Act, 1962, by invoking the extended time proviso. The importer was fully aware that Notification No. 51/2017-Cus dated 30-06-2017, which sought to exempt such imported goods from Additional Duty of Customs (SAD), was superseded by the subsequent Notification No. 53/2017-Cus dated 30-06-2017, which sought to levy Additional Duty of Customs (SAD) on the imported goods. The misdeclaration appears to have been made consciously to evade the Additional Duty of Customs (SAD) at the rate of four percent ad valorem on the assessable value. In view of the foregoing, I uphold the proposal to recover the Additional Duty of Customs (SAD) of Rs. 7,49,413/- (Rupees Seven Lakh Forty-Nine Thousand Four Hundred and Thirteen only) for Bills of Entry No. 4158849 dated 01.06.2021 and 4146038 dated 31.05.2021, in terms of Section 28(4) of the Customs Act, 1962, along with applicable interest thereon under Section

28AA of the Customs Act, 1962.

43. As regards the proposal for confiscation, I find that the impugned goods, under Bills of Entry No. 4158849 dated 01.06.2021 and 4146038 dated 31.05.2021, with a total assessable value of Rs. 1,87,35,320/- (Rupees One Crore Eighty-Seven Lakh Thirty-Five Thousand Three Hundred and Twenty only), have been imported in contravention of Section 17 and 46 of the Customs Act, 1962, read with condition (d) of Notification No. 45/2017-Cus dated 30.06.2017. As such, these goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. Upon reviewing Section 111(m) of the Customs Act, 1962, it is evident that goods become liable for confiscation if there is a violation of the conditions relating to their importation or exemption. Specifically, if an importer wrongfully avails the benefit of an exemption notification by misdeclaring the goods, suppressing material facts, or failing to comply with the prescribed conditions, it amounts to a contravention of the Customs law. The acts of omission and commission on the part of the importer, particularly the wrongful availment of the benefit of Notification No. 51/2017-Cus dated 30.06.2017 for exemption from the Additional Duty of Customs (SAD), are squarely covered under Section 111(m) of the Customs Act, 1962. In view of the above, I hold that the impugned goods under Bills of Entry No. 4158849 dated 01.06.2021 and 4146038 dated 31.05.2021, with a total assessable value of Rs. 1,87,35,320/- (Rupees One Crore Eighty-Seven Lakh Thirty-Five Thousand Three Hundred and Twenty only), are liable for confiscation under Section 111(m) of the Customs Act, 1962.

44. As far as imposition of redemption fine is concerned, I find that the Hon'ble Courts in various judicial pronouncements have held that the physical availability of the goods does not have any significance for imposition of redemption fine under Section 125 of the Act. In this regard, I place my reliance on the following judgements as detailed below:

(i) In case of M/s Visteon Automotive Systems India Limited, reported in 2018 (9) G.S.T.L. 142 (Mad.) regarding imposition of Redemption Fine in absence of goods liable for confiscation, after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), the Hon'ble Madras High Court held in para 23 of the judgment as below:

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

45. Accordingly, I hold that a redemption fine shall be imposed in respect of goods that were found to be liable for confiscation but had already been cleared for home consumption and were not available for seizure or confiscation.

46. Regarding the issue of the imposition of a penalty on the importer, I find that what is important is the act or omission that leads to the confiscation of improperly imported goods. Section 111 of the Customs Act, 1962, deals with the confiscation of improperly imported goods, etc., and Section 112 prescribes a penalty for the improper importation of goods, etc. It becomes clear that both Section 111 and Section 112 are applicable only when the goods are held to be liable for 'confiscation' as improperly imported goods. Section 112 of the Customs Act, 1962, reads as follows:

Any person, —

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

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 17[not exceeding the value of the goods or five thousand rupees], whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher:

PROVIDED that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;]

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty 19[not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.

47. Perusal of Section 112(a) of the Customs Act, 1962, reveals that any act or omission on the part of the importer that would render imported goods liable to confiscation under Section 111 of the Customs Act, 1962, would render the importer of such goods liable for a penalty under Section 112(a) of the Act. As per the intention of the legislature, this part of clause (a) is applicable to the importer, exporter, and/or beneficial owner, as any omission or commission of the conditions of Section 111 by them would render the goods liable to confiscation. In view of the above, as I have already confirmed the confiscation of the impugned goods under Bills of Entry No. 4158849 dated 01.06.2021 and 4146038 dated 31.05.2021, with a total assessable value of Rs. 1,87,35,320/- (Rupees One Crore Eighty-Seven Lakh Thirty-Five Thousand Three Hundred and Twenty only) under Section 111(m) of the Customs Act, 1962, I, therefore, hold the importer, M/s Allianz Offshore Services Private

Limited, liable for a penalty under Section 112(a)(ii) of the Customs Act, 1962.

48. I am not inclined to find on merit the *mens rea* of the importer or any motive that can be attributed to the importer, as I find that neither Section 111 nor Section 112 of the Customs Act prescribes *mens rea* as a pre-condition for the confiscation of goods or the imposition of a penalty. I proceed on the basis that the existence of *mens rea* is not an essential ingredient to establish a contravention of a civil law, placing reliance on the judgments of the Supreme Court in the case of *Chairman, SEBI v. Shriram Mutual Fund - 2006 (5) S.C.C. 361* and *Pine Chemicals Suppliers v. Collector of Customs*, followed and applied by the High Court of Madras in *Commissioner of Customs (Export), Chennai-I v. Bansal Industries [2007 (207) E.L.T. 346]*. It is sufficient if, by the acts of commission or omission on the part of the importer, goods are rendered liable for confiscation. In this case, the impugned goods have undoubtedly been rendered liable for confiscation, and accordingly, I hold the offending goods liable for confiscation under Section 111 of the Customs Act, 1962, and impose a penalty on the importer under Section 112 of the Act.

49. Further, I hold the importer, M/s Allianz Offshore Services Private Limited, liable for a penalty under Section 112(a)(ii) of the Customs Act, 1962, since I find that the offending goods, namely 'HSD (Vessel/Ship's Own Consumption)' and 'MGO (Vessel/Ship's Own Consumption),' are freely importable and not 'prohibited goods' in terms of Section 2(33) of the Customs Act, 1962. The offence in the instant case is limited to the liability for the payment of the Additional Duty of Customs (SAD) on the part of the importer.

50. In view of the above discussions and findings, I pass the following order:

ORDER

- a) I hold that the benefit of exemption from the payment of Additional Duty of Customs (SAD), claimed under Notification No. 51/2017-Cus dated 30-06-2017 by the importer, M/s Allianz Offshore Services Private Limited, with respect to goods imported under Bills of Entry No. 4158849 dated 01.06.2021 and 4146038 dated 31.05.2021, having a total assessable value of Rs. 1,87,35,320/- (Rupees One Crore

Eighty-Seven Lakh Thirty-Five Thousand Three Hundred and Twenty only), is not entitled to them.

- b) I confirm the demand of Additional Duty of Customs (SAD) [as applicable under Notification No. 53/2017-Cus dated 30-06-2017], amounting to Rs. 7,49,413/- (Rupees Seven Lakh Forty-Nine Thousand Four Hundred and Thirteen only), along with applicable interest thereon, for the goods imported vide Bills of Entry No. 4158849 dated 01.06.2021 and 4146038 dated 31.05.2021, in terms of the provisions of Section 28(4) of the Customs Act, 1962, along with applicable interest in terms of the provisions of Section 28AA of the Customs Act, 1962.
- c) I order the confiscation of the imported goods under Bills of Entry No. 4158849 dated 01.06.2021 and 4146038 dated 31.05.2021, with a total assessable value of Rs. 1,87,35,320/- (Rupees One Crore Eighty-Seven Lakh Thirty-Five Thousand Three Hundred and Twenty only), in terms of the provisions of Section 111(m) of the Customs Act, 1962. However, I give the importer the option to redeem the goods upon payment of a **fine of Rs. 18,75,000/- (Rupees Eighteen Lakh Seventy Thousand only)** under Section 125(1) of the Customs Act, 1962. Further, as per the provisions of Section 125(3) of the Customs Act, 1962, if the option of payment of the fine is not exercised within 120 days from the date of this order, the same shall become void.
- d) I impose a penalty of **Rs. 74,941/- (Rupees Seventy-Four Thousand Nine Hundred and Forty-One only)** on the importer, M/s Allianz Offshore Services Private Limited, under Section 112(a)(ii) of the Customs Act, 1962.

51. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

(NIDHISH SINGHAL)
Joint Commissioner of Customs,
Import-I, New Customs House, Mumbai Customs-I

To:

Allianz Offshore Services Private Limited (IEC: AAUCA0693G)
A-604, DELPHI ORCHARD AVENUE,
HIRANANADANI BUSINESS PARK,
MUMBAI, MAHARASHTRA, 400076.

Copy to: -

1. The Commissioner of Customs, Import-I, NCH.
2. The Assistant Commissioner of Customs, Review Cell, Import-I, NCH.
3. The Assistant Commissioner of Customs, TRC, Import-I, NCH.
4. The Assistant Commissioner of Customs, Group - VB, Import-I, NCH.
5. The Assistant Commissioner of Customs, Group -6, Import-I, NCH
6. The Assistant Commissioner of Customs, Audit Co-Ordination Unit, Import-I, NCH,
Mumbai. (connected with Audit Observation reference: 28 dated 08.07.2022)
7. Notice Board
8. Office copy.