आयुक्त सीमाशुल्क) आयात-I (का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT - I)
नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट, मुंबई - ४०० ००१
New Customs House, Ballard Estate, Mumbai- 400 001
Email- adjn-adc-jc-imp1@gov.in

File No: CUS/APR/SCN/787/2025-GR-5 **Date of Order: 16.10.2025**

DIN: 20251077000000666F3C **Date of Issue: 16.10.2025**

Order Passed by: **Ms. Deepika Kartik Tangadkar,**
Joint Commissioner of Customs, Import-I
New Custom House, Mumbai

Order No.14/JC/DKT/ADJN/2025-26

Name of Party/Noticee: M/s. Om Crane Pvt. Ltd.

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मूलआदेश

1. यह प्रति उस व्यक्ति के उपयोग के लिए नि:शुल्क दी जाती है जिसे यह जारी की गई है।
This copy is granted free of charge for the use of the person to whom it is issued.

2. इस आदेश के खिलाफ अपील इस आदेश के संचार की तारीख से साठ दिनों के भीतर और सीमाशुल्क अधिनियम, 1962 कीधारा 128(1) केतहत सीमाशुल्क आयुक्त) अपील (न्यूकस्टमहाउस, बलार्डएस्टेट, मुंबई400001 के समक्ष होगी। मांग किए गए शुल्क के 7.5% काभुगतान जहां शुल्क या शुल्कऔर जुर्माना विवाद में है या जुर्माना जहां अकेले दंड विवाद में है।

An appeal against this order shall lie before the Commissioner of Customs (Appeals), New Custom House, Ballard Estate, Mumbai 400001 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 1982 में प्रदर्शित फॉर्म सी-.ए.। में दो प्रति में की जानी चाहिए।अपील रुपये-/ 1.50 के न्यायालय फीस स्टांप 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 1970 कीअनुसूची 1 मेंप्रदर्शित रूपये -/1.50 की न्यायालय फीस स्टांप 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. 1.50 paise paid 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. 1.50 paise only as prescribed under Schedule 1, item 6 of the Court Fees Act, 1970.

4. इस निर्णय या आदेश के खिलाफ अपील करने वाला कोई भी व्यक्ति, अपील लंबित होनेपर, सीमाशुल्क अधिनियम, 1962 की धारा 129 ईके तहत उपरोक्त पैरा 2 के अनुसार राशि जमा करेगा, अपील के साथ इस तरहके भुगतान का प्रमाण प्रस्तुत करेगा, जिसमें विफलरहने पर अपील की जास कती है।सीमाशुल्क अधिनियम, 1962 की धारा 128(1) के प्रावधानों का अनुपालन न करने के कारण खारिज कर दिया गया।

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 are 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 128(1) of the Customs Act, 1962.

SUB: ADJUDICATION OF THE SHOW CAUSE NOTICE UNDER 28 (4) OF THE CUSTOMS ACT, 1962 READ WITH SECTION 124 OF THE ACT, IBID.

SCN No.: 04/2025-26 dated 05.06.2025

****

BRIEF FACTS OF THE CASE

It is stated in the Show Cause Notice (SCN) No.04/2025-26 dated 05.06.2025 that, **M/s OM Crane Private Limited (IEC - AADCO1479R)**, having its office situated at 501 & 502, Parth Solitaire, Plot No. 2, Sector-9E, Kalamboli, Navi Mumbai-410218, **(hereinafter referred to as "the importer")** had filed Bill of Entry No. 2891119 dated 15.10.2022 through the Custom Broker Firm M/s H.P Dagha Shipping & Logistic (11/1827) (**hereinafter referred to as "the Customs Broker"**) having CHA number as AFGPD0944R. The said Bill of Entry No. 2891119 dated 15.10.2022 was filed against Invoice No. SI-09-002 dated 02.09.2022 of M/s Sungsan Corporation, Korea and Bill of lading no. SSKYBOM2209010 dated 03.10.2022. The declared assessable value of the goods of the said Bill of Entry was Rs. 38,77,056/- and the duty payable thereon was Rs. 10,75,302/-.

2. An intelligence was received by Special Intelligence and Investigation Branch (Import-I), New Custom House, Ballard Estate, Mumbai that some of the Skylift has been cleared under chapter 84 rather than correct classification in chapter 87 of Customs Tariff Act, 1975. The goods declared as 'ONE UNIT OLD & USED HORYONG 45M SKYLIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787 WITH ACCESSORIES' was imported by M/s OM Crane Private Limited and bought from seller M/s Sungsan Corporation, Korea vide BE No. 2891119 dated 15.10.2022.

2.1 On the basis of intelligence, the documents, i.e. Invoice, Bill of Lading, and Certificate of Inspection uploaded on e-sanchit by the importer were scrutinized. The Chartered Engineer report dated 20.10.2022 uploaded on e-sanchit was also scrutinized, wherein description in technical specifications of Old, Used and Second hand Capital Goods were mentioned. The referred Chartered Engineer report mentioned Year of Manufacturing (YOM) as 2007-08, Chassis No. KL3C5AHF18K000787 along with value of the Skylift mounted on vehicle i.e. C&F USD 45,500 (Price of new machinery in the year of manufacture i.e. FOB USD 90,000) and residual life of more than 5 years was mentioned.

Pictures for this Skylift are shown below:

Picture-1: HORYOUNG SKYLIFTER SKY450 mounted on a vehicle (front side view)

Picture-2 HORYOUNG SKYLIFTER SKY450 mounted on vehicle (side view)

2.2 In this regard, inclusions mentioned in the explanatory notes to heading 87.05 of the Harmonized System of Nomenclature (HSN) were referred to:

(3) "Lorries (trucks) fitted with ladders or elevator platforms for the maintenance of overhead cables, street lighting, etc.; lorries (trucks) with an adjustable arm and platform ("dollies")" for cinematographic or television work.

2.3 CBIC Circular No.20/2022-Cus dated 22.09.2022, regarding Classification of goods that undertake lifting and handling functions and have mobility as a function, was also referred, which vide Para 9 reads as:

D. Integration of the working machine with the chassis

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

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

● *Outriggers are crucial to the functioning of the mobile machine as they provide the necessary stability in order for the machine to lifts heavy loads. If the outriggers are connected to and are a part of the sub structure i.e. the chassis and are controlled from the engine fitted with the chassis, it implies that the functioning of the outriggers which are a part of the chassis are crucial to the functioning of the crane.*

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

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

2.4 Accordingly, on the basis of scrutiny of the documents, explanatory notes and circular 20/2022-Cus dated 22.09.2022, investigation was initiated, by way of directing the importers to arrange the inspection of the impugned goods.

3. Investigation:

3.1 Bill of Entry No. 2891119 dated 15.10.20222 was filed by M/s OM Crane Private Limited for the import of goods declared as 'One Unit OLD & USED HORYOUNG 45M SKYLIFTER MODEL SKY450 CHASSIS S/NO KL3C5AHF18K000787 WITH ACCESSORIES'.

3.2 The import of second-hand capital goods requires an inspection report as per Circular No. 07/2020-Customs dated 05.02.2020, regarding Valuation of second-hand machinery, for determining the value, age of goods, etc. In this subject case, Chartered Engineer Shri Rajendra S. Tambi inspected the said goods and submitted a report dated 20.10.2022, which was uploaded on e-sanchit. The said report is as under:

3.2.1 Chartered Engineer (1st) Inspection Report dated 20.10.2022 against Bill of Entry 2891119 dated 15.10.2022:

RAJENDRA S. TAMBI
Chartered Engineer, Surveyor & Loss Assessor
IRDA License No.: SLA/36036 C
Categorized For Fire, Marine & Motor
Chartered Engineer Membership No.: AM/080806

403, Nilambari, Near NHP School,
Sector-19, Airoli, Navi Mumbai
Maharahstra - 400 708, India
+91-96999 61461
+91-93241 81461

ORIGINAL

OUR REF.: GA-RT/HPD-OM CRANE/167/2022-23 **Date: 20.10.2022**

CHARTERED ENGINEER CERTIFICATE

Form B
(Refer Para 6(d) of circular No. 07/2020 Dated-Customs dated 05th February 2020)

1. I, **Mr. Rajendra Tambi (Chartered Engineer)** hereby certify that I have carried out an inspection of the used machinery covered under **Invoice no.: SI-09-002 Date: 02.09.20222** issued by **SUNGSAN CORPORATION., Korea** as per the details given below.

2. I/We have visually inspected the second-hand machinery/capital goods and certify the following:

a) Place of Inspection: ID MBPT, Mumbai.
Date of Inspection: 19.10.2022
Duration of inspection: 1 Hrs.

b) **Details of Importer:**

i. Name: **M/S. OM CRANE PRIVATE LIMITED**
ii. Address: Branch SNo: 0
OFFICE NO - 501 & 502, PARTH
REIDENCY KALAMBOLI,
NAVI MUMBAI - 410218.
iii. Importer Code no.: AADCO1479R.

RAJENDRA S. TAMBI ★ M.No AM/080806 ★ Chartered Engineer

- **Commercial Details: (as per copies of import documents provided to us):**
  - **Invoice no.: SI-09-002 Date: 02.09.20222**
  - **Invoice Value: 45500.00 USD**
  - **Gross Weight: 15.930 MTS; No. Of Packages: 01**
  - **Bill of Entry No.: 2891119 Date. 15.10.2022**
  - **BL No: SSKYBOM2209010 Date: 03.10.2022**
  - **Exchange Rate: 1 EUR = 82.4000 INR, 1 USD = 82.4500 INR**
  - **Country of Origin: Korea,Republic of**

c) **Details of the goods:**

i. Name of Manufacture of Machine: **As per Annexure – I**
ii. Year of Manufacture of Machine: **As per Annexure – I**
iii. Serial no./ID No. or the manufacture's plate affixed on the machine: **As per Annexure – I**
iv. Descriptions of the machine: **As per Annexure – I**
v. Whether original invoice relating to the machine is available? : **Yes**

21.10.22

GOBINDA SAHA
INSPECTOR/EXAMINER
MUMBAI CUSTOMS.

A-308, 3rd Floor, Freight Forwarders Premises Co-op Soc. Ltd., Opp. JNPT Township, P. No.: 5, Sec.: 1
Dronagiri, Uran, Raigad - 400 707, Maharashtra, India ■ +91 99207 61855 ■ +91 99207 82311
E-mail: gauriassociates17@gmail.com ■ Visit Us: www.gauriassociates.net

vi. If yes, value _____ currency ____ date of invoice ___ (please enclose copy): **N.A**
vii. If no, please estimate the original sale price of the machinery: **As per Annexure I**
viii. Present condition of machinery and expected lifespan: **As per Annexure – I**

PHOTOS TAKEN DURING INSPECTION ARE ATTACHED TO THIS CERTIFICATE

ix. Has any reconditioning or repairs been carried out immediately preceding this inspection: YES(Reconditioning)
x. If yes, have these been carried out at the expense of the seller or by the purchaser or a third party? : **N.A**
xi. Are there invoices to indicate the cost thereof- (please enclose relevant invoices): **No**
xii. If No, then estimated cost thereof: **N.A**
xiii. Please briefly describe the nature of repairs and/or refurbishment: **Replacement of tyres and we have added this cost in reconditioning cost**
xiv. Were any charges incurred by the purchaser, for dismantling, packing and transporting the machinery to the port of export? If yes, please indicate the charges: Packing by the purchaser: **N.A**
xv. Is/are any catalogues/documentation of the machine available? If yes, please provide the details and copies: **N.A**

d) The following means/aids/technical reference material have been used for inspecting the goods-

i. The inspection is based on our physical find outs, verification and scrutiny of documents provided to us & technical specifications provided and accordingly verified by us.
ii. We have carried out only visual examination of the goods, as it was not possible to carry out any technical tests.
iii. There were no log books and/or maintenance records available as such the inspection of the goods was carried out without verifying any records.
iv. As far as the price in the year of manufacture (YOM) is considered, the exporter did not mentioned the prices of goods in the year of manufacture and it is not so easy to get it from the manufacturer due to various practical and commercial reasons.
v. However, the estimated purchase price in the year of manufacture is based upon the depreciation terms, technological advancements, obsolesce factor and our past experience on similar goods against which no documentary evidences could be verified.
vi. Since the secondhand/rejected/defective/equipments/C.G.'s are subject to variable opinions and conditions, this report is issued based on the documentary evidences provided and our physical inspection and findings of the item offered for our inspection at the time and place of inspection.
vii. Shall this certificate be accepted/rejected by whomsoever it may be concerned with the understanding that the CE/Firm jointly or severally are not responsible for any Claims/Damage.

RAJENDRA S. TAMBI
M.No. AM/0808056
Chartered Engineer

GOBINDA SAHA
INSPECTOR/EXAMINER
MUMBAI CUSTOMS.

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OUR REF.: GA-RT/HPD-OM CRANE/167/2022-23 **3**

3. I/We hereby declare that the particulars and statements made in this certificate are true and correct to my/our knowledge and ability.

Note: The description which has mentioned in Annexure – I, which include the accessories of the JLG boom lift are standard and essential.

E-waste: E-waste is any electrical or electronic equipment that's been discarded that are unwanted, not working, and nearing or at the end of their "useful life." Computers, televisions, VCRs, stereos, copiers, and fax machines are everyday electronic products.
The used Horyong 45m Skylifter based on conventional mechanical technology and it is not included in the e-waste machinery.

Date: 20.10.2022

Signature

Name: **Mr. Rajendra Tambi**
Designation: **C.E.**
Address: **403, Nilambari, Sector 19, Airoli.**
E-Mail Address: **tambiraj1@gmail.com**
Phone Number: **09324181461**

RAJENDRA S. TAMBI
Chartered Engineer

GOBINDA SAHA
INSPECTOR EXAMINER
MUMBAI CUSTOMS.

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ANNEXURE – I

Certificate No: GA-RT/HPD-OM CRANE/167/2022-23 **Date: 20.10.2022**

Invoice no.: SI-09-002 Date: 02.09.20222 **Bill of Entry No.: 2891119 Date. 15.10.2022**

Imported Old and Used Capital Goods.

Sr. No.	Description/Make/Model	Qty Nos	Year of Mfg.	Price of new machinery as in the year of Manufacture	Present Condition of Machinery	Expected Residual Life	Nature of Reconditioning carried out, if any & Cost of Reconditioning if yes.	Present Value	Asset	Sale Price of Supplier (Invoice Value)
1.	One Unit Old & Used Horyong 45m Skylifter; Model: SKY450; Serial No. KL3C5AHF18K000787 With Accessories Marks found on item: Serial No.: KL3C5AHF18K000787 Yom: 2007-08	01	2007-08	FOB: 90000.00 USD	Satisfactory	More than 5 years	Reconditioning (Replacement of tyres) We opine that the present asset value is fair and reasonable	C&F: 45500.00 USD + 1000.00 USD Reconditioning charges Total: 46500.00 USD	C&F: 45500.00 USD	

RAJENDRA S. TAMBI ★ Chartered Engineer ★ M.No. AM/08080046

GOBINDA SAHA
INSPECTOR/EXAMINER
MUMBAI CUSTOMS.

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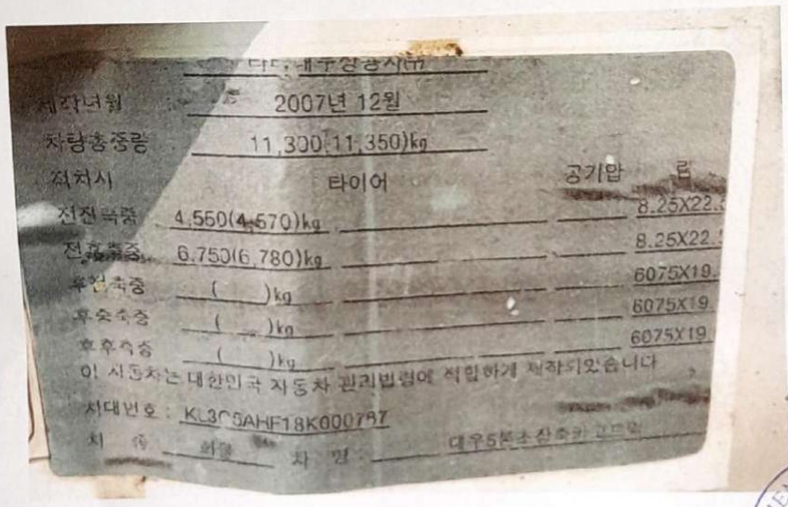

제작년월	2007년 12월
차량총중량	11,300(11,350)kg
적차시	타이어 / 공기압 / 림
전축륜중	4,550(4,570)kg — 8.25X22.5
전축륜중	6,750(6,780)kg — 8.25X22.5
후축륜중	( )kg — 6075X19.5
후후축중	( )kg — 6075X19.5
후후축중	( )kg — 6075X19.5

이 자동차는 대한민국 자동차 관리법령에 적합하게 제작되었습니다

차대번호 : KL3C5AHF18K000787

제 작 : 현대 차 명 : 대우5톤초장축카고

GOBINDA SAHA
INSPECTOR/EXAMINER
MUMBAI CUSTOMS.

RAJENDRA S. TAMBI
M No. AM/0808816
Chartered Engineer

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3.2.3 The above-mentioned inspection reports dated 20.10.2022 did not mention specifications related to technical aspects of the Skylift/Boomlift, with regards to mounting of Skylift on chassis, mechanical and electrical integration of Skylift with chassis, propelling type of Skylift, functionality and integration of outriggers, etc., amongst others.

3.3 Previously also M/s Sai Baba Crane Services had imported the Skylift mounted on the vehicle vide BE No. 3312171 dated 15.11.2022, wherein a Show Cause Notice dated 25.04.2023 has already been issued in a similar matter. Further, the said Skylift mounted on the vehicle was confiscated absolutely vide Order in original number 25/ADC/MKJ/ADJN/2024-25 order dated 16.05.2024

The facts provided by the 1st Chartered Engineer vide report dated 20.10.2022 were not found to be consistent with the preliminary findings of SIIB(I) through scrutiny of the import-related documents and preliminary verification of the declared particulars. It was observed that the technical assessment and factual details provided by the 1st Chartered Engineer did not align with the findings and raised concerns regarding the accuracy and completeness of the evaluation. Hence, the Chartered Engineer report dated 20.10.2022 was found doubtful.

In light of these discrepancies, and in order to ensure due diligence, it was deemed appropriate to obtain a second independent expert opinion from another empanelled Chartered Engineer, who has been involved in the inspection of Skylifts/Boomlifts on a regular basis. Accordingly, SIIB(I) vide letter dated 16.02.2023, along with reminders 28.02.2023 and 29.03.2023, directed the importer to arrange inspection of the goods imported vide BE No. 2891119 dated 15.10.2022. The inspection of the said Skylift mounted on vehicle chassis was conducted on 11.04.2023 by 2nd Chartered Engineer (CE) Shri S. D. Deshpande through Video Call/Conferencing in presence of Shri Pradeep Ramesh Obinindi, the CEO of importer M/s OM Crane Private Limited (IEC - AADCO1479R) and SIO/SIIB (I), NCH.

3.4 Chartered Engineer (2nd) Shri S. D. Deshpande Inspection Report dated 09.05.2023 (RUD-5C) with respect to BE 2891119 dated 15.10.2022:

a. *The said capital good is Old/Used Truck Mounted Telescopic Boomlift.*

b. *The said Capital good is around 15 years old (Year of Manufacture 2008 approx.)*

c. *The said DAEWOO Truck is Left Hand Drive.*

d. *The said DAEWOO Truck has a speedometer in Kilometers with total reading of 1,73,345 Kms. At the time of inspection it had a Indian RTO Registration No. GJ 15 SV 1603.*

e. *The said machinery is used for fitting & maintenance of overhead cables and streetlights.*

f. *We observed that, the slew bearing & outriggers are not integral part of the chassis of the truck. And, we can say that the said Boomlift & chassis of the truck are not working in tandem.*

g. *During the video conference examination, we observed that the said Boomlift and chassis of the truck are not mechanically integrated. The Boomlift is simply mounted / fabricated on the chassis of the truck with the help of welding & bolting. The chassis of the truck is not specifically designed for the said Boomlift.*

h. *Manufacturer of the Truck & Boomlift are different. Truck is DAEWOO make & the Boomlift is HORYONG make.*

i. *The outriggers are attached to the sub-structure/Boomlift and not to the chassis of the truck.*

j. *The Boomlift is Non Self-Propelled.*

k. *The Boomlift draws power in conjunction with engine of the truck.*

l. *There are two cabins/controls. One cabin of the truck houses propelling function connected to the chassis. Second cabin/control for lifting & handling of the Lift. From machine/lift cabin only truck's functions controlled are truck engine on/off function.*

m. *From machine/lift cabin/control none of the following functions are controlled*

- *Propelling of the truck engine,*
- *box control,*
- *Control of the gear changing,*
- *Steering control,*
- *Braking system facility.*

The CE report dated 09.05.2023 has also stated that the value of the goods is 46,500 USD CIF as compared to the value declared by the importer, i.e., 45,500 USD CIF. However, the Year of Manufacturing appears to be 2008, the same as mentioned by the earlier CE inspected in the presence of Docks officers.

3.5.1 Statement of Shri Pradeep Ramesh Obinindi, CEO of M/s OM Crane Private Limited (IEC - AADCO1479R), recorded on 04.07.2023 (RUD-6A):

Shri Pradeep Ramesh Obinindi, CEO of M/s OM Crane Private Limited (IEC - AADCO1479R), vide his voluntary statement recorded on 04.07.2023 under Section 108 of the Customs Act, 1962, interalia stated that:

i. *He was the CEO of M/s Om Cranes Pvt. Ltd. (TEC — AADCO1479R). His parents Shri Ramesh Rangarao Obinindi and Mrs. Hemavati Ramesh Obinindi were the director of that company. He had submitted the authorization letter from the director for presenting himself to execute decision and to provide information. He handled all the work and he was responsible for all the works related to the said firm.*

ii. *He had imported only this Skylift/Boomlift with vehicle. M/s Om Crane Pvt. Ltd. was the wholesole owner of this Skylift at then. This machine was working in Mopa, Goa on rent basis.*

iii. *Skylift and Boomlift are technically one and same in terms of functions. However, they can sort them out in two categories one is Skylift without vehicle and with vehicle. So, he accepted that the machine which was being imported by me vide BE NO. 2891119 dated 15.10.2022 was Skylift/boomlilft with vehicle.*

iv. *This was the machine i.e. Skylift with vehicle imported from South Korea. He had imported this Skylift with vehicle through internet in contact with Mr. Jeong T. Kim having contact no. +8225799583. He came in contact with the supplier through Internet. This machine i.e. Skylift with vehicle was a bit cheaper in South Korea than any other country.*

v. *He had classified this Sky lift under CTH 84279000 on consultation with CHA, relevant chapter headings and through internet. And he thought that classification was correct to the best of his technical knowledge.*

vi. *He had negotiated this sky lift for CIF USD 45500 through internet as declared in BE. He had remitted the advance amount of USD 45500 to the supplier M/s Sungsan Corporation, Seoul, SOUTH KOREA.*

vii. *On being asked that importers were classifying the Sky Lift under CTH 87053000, he told that he was unaware of this fact. He was not very much into this. He had classified the goods mainly on the basis of the data and references available on internet and he took full responsibility of the classification of this machine Skylift/Boomlift with vehicle.*

viii. *He had inquired about this machine in India and found that only till 24-meter height Skylifts were available in Indian market that too was very costly. However, he knew through internet that this machine is generally imported.*

ix. *As per his best knowledge, no vehicle controls could be handled from the upper cab/cabin situated with the machine i.e. Skylift. Outriggers were connected to machine i.e. Skylift only. Outriggers were not connected to the chassis of the vehicle.*

x. *He accepted that none of the following functions could be handled from the upper back cabin of the Skylift.*

1. Propelling engine
2. Gearbox
3 controls for gear changing
4. Steering
5. braking facilities

xi. *He accepted that his machine i.e. Skylift with vehicle fits into the definition at Sr. No. 3 of inclusions for chapter 87.05 of HSN Explanatory Notes.*

xii. *He has read this Circular 20/2022 dated 25.09.2022 as shown and he has accepted that the outriggers were not connected to and were not a part of the chassis of the vehicle and Chassis of the vehicle and machine i.e. Skylift were attached through bolting. And if this was taken into consideration, then Integration was not complete. As stated earlier also, he would like to say that they were not supposed to separate the machine from the chassis and they were going to use this as a single unit.*

xiii. *He was aware about the inspection dated 11.04.2023 and he was present on that day. In reply to Para 8 (of the 2nd CE Report), he would like to say that he was not aware of these technical aspects. However, he once again re-iterated that he was not going to use this machine and vehicle separately. He accepted that this vehicle was left hand drive and 15 years old. He also accepted that truck along with chassis is of Daewoo and Skylift/Boomlift was of Horyong make. The value presented in the above said report was given as USD 46500 that was similar to earlier report. He has declared the value as per the deal negotiated and the documents provided by the supplier. He had also remitted the amount in advance.*

xiv. *On being asked this vehicle had run a quite long duration and distance i.e. 102776.6 km and should be roadworthy according to Indian conditions for long run on roads. He interalia stated that Cranes imported in India are also Left Hand Drive (LHD) and still get registered with RTO. This machine Skylift with vehicle was also registered with RTO. Hence, this may be roadworthy then only registration was done. He said that this was a*

machine with 45m boom and hence could be said special equipment and such special projects were less in number in India. So it would not run much in India on roads.

xv. *On being asked whether this Sky Lift mounted on vehicle may be called Special Purpose Vehicle, and SPV should be classified under chapter 8705, he interalia stated that he was not so technical in nature. He once again re-iterated that he was not going to use this machine and vehicle separately.*

xvii. *There was no case registered against M/s OM Crane Private Limited till that date.*

xviii. *He has imported this Skylift for earning by way of renting it for different projects here in India. He requested to consider his vehicle in chapter 84 and release as per applicable duty and penalty if any. He requested to reconsider his case affirmatively. He also requested to release the goods after investigation at the earliest. He would appear before SIIB(I) as and when required to cooperate in the investigation. He was even ready to take the machine cleared and to re-export the vehicle or customs may scrap the vehicle as it has very less value as compared to machine.*

3.5.2 Further statement of Shri Pradeep Ramesh Obinindi, CEO of M/s OM Crane Private Limited (IEC - AADCO1479R), recorded on 29.11.2024 :

Shri Pradeep Ramesh Obinindi, CEO of M/s OM Crane Private Limited (IEC - AADCO1479R), vide his voluntary statement recorded on 19.11.2024 under Section 108 of the Customs Act, 1962, interalia stated that:

i. *He had thoroughly read policy conditions of the chapter 87 of HSN, available on DGFT website https://www.dgft.gov.in that asid that the import of second hand or used vehicles of Chapter 87 of HSN shall not be older than three years from the date of Manufacture; and that the second hand or used vehicle shall have right hand steering. However, Skylift/Boomlift with vehicle imported vide BE No. 2891119 dated 15.10.2022, did not comply with these policy conditions.*

ii. *It could be said that since Skylift/Boomlift with vehicle imported vide BE No. 2891119 dated 15.10.2022, did not comply with these policy conditions, they became prohibited goods as per section 2(33) of the Customs Act, 1962.*

iii. *It could be said that since Skylift/Boomlift with vehicle imported vide BE No. 2891119 dated 15.10.2022 were prohibited goods, they were liable for confiscation as per section 111 of the Customs Act, 1962.*

iv. *He would appear before SIIB(I) as and when required to cooperate in the investigation. He said that despite the fact that the chassis of the vehicle and machine i.e. Skylift/Boomlift were attached through bolting, they were not supposed to separate the machine from the chassis and they were going to use this as a single unit. He requested to consider his case positively and not to penalise him and/or his company. He was ready to keep only machines (Skylift/Boomlifts) and re-export the vehicles imported vide BE 2891119 dated 15.10.2022. He requested to consider his case positively.*

3.6 Statement of Customs Broker firm, M/s H. P. Dagha Shipping and Logistics (11/1827):

During the course of investigation to gather evidences about role played by CB firm, statement of Customs Broker, **Shri Hemant Dagha,** Kardex No. 1374, F Card Holder, CHA firm, **M/s H. P. Dagha Shipping & Logistics (11/1827)** was recorded under section 108 of the Customs Act, 1962 on 04.07.2023 wherein he inter-alia stated that;

i. ***M/s H.P Dagha Shipping and Logistic (11/1827)*** *is a firm. He is the Proprietor of the said firm. This firm was into clearing of import goods since 2012. He was in import and export mainly at Nhava Sheva and Mumbai Port. He was handling work for M/s Om Crane Pvt. Ltd., M/s Noor Lifters Pvt. Ltd. & M/s Worldwide Machines Impex here at Mumbai Port.*

ii. *Being a custom broker, he was fully aware of his duties and obligations. M/s Om Crane Pvt. Ltd. (IEC – AADCO1479R), M/s Noor Lifters Pvt. Ltd. (IEC – AAGCN4283R) & M/s Worldwide Machines Impex (IEC- AADFW1805E) were his clients since 2022. All three companies had issued letter, regarding authorization for clearance of Shipments in respect of Imports under Company seal and signature with KYC documents in respect of identity. He had submitted the signed copy of the same. He had cross verified all the documents through websites.*

iii. *Director/proprietor of M/s Wordwide Machines Impex (IEC – AADFW1805E), M/s Om Cranes Pvt. Ltd. (IEC – AADCO1479R) & M/s Noor Lifters Pvt. Ltd. (IEC – AAGCN4283R) had contacted him over telephone and handed over the documents like invoice, Packing List, B/L etc. of this import consignment by hand to clear the consignments. He had not cleared any of Skylift mounted on vehicle for any importer except those Skylifts mentioned above.*

iv. *He as CHA always tries to suggest the importer a classification proper only. However, importer had provided documents like Invoice, Bill of lading for Boomlift mentioning the details including CTH and accordingly, they had filed the BE in this subject case. He was not aware if any importer was filing this item Skylift/Boomlift under CTH 8705.*

v. *On being asked whether was he aware of the policy condition of chapter 87, he interalia stated that he was aware about the conditions of chapter 87 like right hand drive, speedometer in km, not older than 3 years. However, as this item Skylift/Boomlift was under chapter 84. So, in this particular case. He had not studied in detail the policy conditions of chapter 87.*

vi. *He stated that as a Customs Broker, He had filed this B/Es on the basis of the documents received from the importer and it was requested to take a lenient view in this case and investigate this case at the earliest.*

3.7 Classification of the goods

3.7.1 The importer has classified the impugned goods under heading 84.27 of HSN. Introduction to the Explanatory Notes to heading **84.27 of HSN** is reproduced here:

"This group includes:

(1) Trucks with mechanically elevating platforms for the maintenance of electric cables, public lighting systems, etc. (See the introduction to Explanatory Note to heading 84.26 regarding elevating platforms of this type mounted on Lorries.)".

3.7.2 Accordingly, the **Explanatory Notes to heading 84.26 of HSN** were referred to, the relevant part is reproduced below:

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

The exceptions are :
(b) Machines mounted on tractors or motor vehicles proper to Chapter 87.
(2) Machines mounted on automobile chassis or lorries
Certain lifting or handling machines (e.g., ordinary cranes, light breakdown cranes) are often mounted on what is in fact an essentially complete automobile chassis or lorry in that it comprises at least the following mechanical features: propelling engine, gear-box and controls for gear-changing, and steering and braking facilities. Such assemblies fall to be classified in heading 87.05 as special purpose motor vehicles, whether the lifting or handling machine is simply mounted on the vehicle or forms an integral mechanical unit with it, unless they are vehicles designed essentially for transport purposes falling in heading 87.04.
On the other hand, this heading includes self-propelled machines in which one or more of the propelling or control elements referred to above are located in the cab of a lifting or handling machine (generally a crane) mounted on a wheeled chassis, whether or not the whole can be driven on the road under its own power.
The cranes of this heading do not generally move under load or, if they do, the movement is limited and subsidiary to their main function of lifting
Also, relevant part of the introduction to the Explanatory Notes to heading **84.26 of HSN** reads as:
Lifting, loading, handling, etc., machines presented separately are, however, classified in this heading even if intended for incorporation in other machines or for mounting on transport vehicles or vessels of Section XVII.
The heading covers lifting or handling machines usually based on pulley, winch or jacking systems, and often including large proportions of static structural steelwork, etc.

3.7.3 Also, refer to the Explanatory Notes to heading **84.28 of HSN**. The relevant text is reproduced here:

The provisions of Explanatory Note to heading 84.26 apply, mutatis mutandis, to the equipment of this heading insofar as they concern self-propelled and other "mobile" machines, multi-function machines and lifting, loading, handling, etc., machines intended for incorporation in other machines or for mounting on transport vehicles or vessels of Section XVII.

The heading covers lifting or handling machines usually based on pulley, winch or jacking systems, and often including large proportions of static structural steelwork, etc.

3.7.4. The Skylift in this case is mounted on what is in fact an essentially complete automobile chassis, in which the chassis comprises the following mechanical features: propelling engine, gearbox and controls for gear-changing, and steering and braking facilities. Hence, irrespective of whether the lifting or handling machine is simply mounted on the vehicle or forms an integral mechanical unit with it, such assemblies fall to be classified in heading 87.05. Further, the Skylift in this case is not a self-propelled machine, was not presented separately, and it is neither based on a pulley nor a winch. Therefore, the said 'Skylift mounted on vehicle chassis' appears to be covered in the exceptions as mentioned in the explanatory notes to heading 84.26 of HSN, and hence cannot be classified under heading 8426 or 8427, or 8428 of HSN.

3.7.5 Relevant para of Explanatory Notes to heading 87.05 of HSN is reproduced below:

This heading covers a range of motor vehicles, specially constructed or adapted, equipped with various devices that enable them to perform certain non-transport functions, i.e., the primary purpose of a vehicle of this heading is not the transport of persons or goods.
The heading includes:
(3) Lorries (trucks) fitted with ladders or elevator platforms for the maintenance of overhead cables, street lighting, etc.; lorries (trucks) with an adjustable arm and platform ("dollies") for cinematographic or television work.
"It should be noted that to be classified in this heading, a vehicle comprising lifting or handling machinery, earth levelling, excavating or boring machinery, etc., must form what is in fact an essentially complete motor vehicle chassis or lorry (truck) in that it comprises at least the following mechanical features: propelling engine, gear box and controls for gear-changing, and steering and braking facilities.
On the other hand, self-propelled machines (e.g., cranes, excavators) in which one or more of the propelling or control elements referred to above are located in the cab of a working machine mounted on a wheeled or track-laying chassis, whether or not the whole can be driven on the road under its own power, remain classified in, for example, heading 84.26, 84.29 or 84.30.
Similarly, this heading excludes self-propelled wheeled machines in which the chassis and the working machine are specially designed for each other and form an integral mechanical unit (e.g., self-propelled motor graders). In this case, the machine is not simply mounted on a motor vehicle chassis, but is completely integrated with a chassis that cannot be used for other purposes and may incorporate the essential automobile features referred to above."

3.7.6 Para 9 (D) of CBIC Circular 20/2022-Customs dated 22.09.2022 also re-iterates the same:

D. Integration of the working machine with the chassis
● *When the work machine is merely mounted (not integrated mechanically) on the chassis, the goods are classifiable under 8705.*
● *When chassis and working machine are specially designed for each other and form an integral mechanical unit and the chassis cannot be used for any other purpose - the goods are excluded from 8705 and are thus classifiable under 8426.*
● *Outriggers are crucial to the functioning of the mobile machine as they provide the necessary stability in order for the machine to lifts heavy loads. If the outriggers are connected to and are a part of the sub structure i.e. the chassis and are controlled from the engine fitted with the chassis, it implies that the functioning*

of the outriggers which are a part of the chassis are crucial to the functioning of the crane.

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

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

3.7.7 In view of the explanatory notes and circular cited above, the goods, in this case, appear to be the Skylift fitted on the complete motor vehicle chassis, where the chassis comprises the following mechanical features: propelling engine, gear-box, and controls for gear-changing, and steering and braking facilities. Also, none of the control elements referred to above are located in the cab of the Skylift. Further, in the goods in the present case, the outriggers are attached to the supporting beam of the Skylift only, and the outriggers are nowhere directly attached to the chassis of the Vehicle. Additionally, outriggers cannot be controlled from the vehicle cabin; rather, these are controlled from the separate levers provided in the Skylift. Hence, the Skylift and Vehicle chassis can not be said to be working in tandem. Therefore, the said Skylift mounted on the vehicle chassis appears to be classifiable under the heading 87.05 of HSN.

3.7.8 Customs Tariff Head 84.27 vs 87.05:

8427	**Fork-lift trucks; Other works trucks fitted with lifting or handling equipment**									
8427 10 00	- Self-propelled trucks powered by an electric motor	u	7.50	7.50	---	18.00	0.75	27.735	Free	
8427 20 00	- Other self-propelled trucks	u	7.50	7.50	---	18.00	0.75	27.735	Free	
8427 90 00	- Other trucks	u	7.50	7.50	---	18.00	0.75	27.735	Free	

HS CODE (1)	ITEM DESCRIPTION (2)	UNIT (3)	BASIC (4)	EFFECTIVE (5)	PRE. (6)	IGST (7)	SWS (8)	TOTAL (9)	POLICY (10)	REMARKS (11)
8705	**Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, spraying lorries, mobile workshops, mobile radiological units)**									
8705 10 00	- Crane lorries	u	10.00	10.00	---	18.00	1.00	30.980	Free	
8705 20 00	- Mobile drilling derricks	u	10.00	10.00	---	18.00	1.00	30.980	Free	
8705 30 00	- Fire fighting vehicels	u	10.00	10.00	---	18.00	1.00	30.980	Free	
8705 40 00	- Concrete-mixer lorries	u	10.00	10.00	---	18.00	1.00	30.980	Free	
8705 90 00	- Other	u	10.00	10.00	---	18.00	1.00	30.980	Free	
8705	*---- Fuel cell motor vehicles	u	10.00	10.00	---	12.00	1.00	24.320		*GST Compensation Cess - Nil*

In view of the discussion in detail in supra, the Customs Tariff Heading of the imported goods 'Skylift mounted on a vehicle chassis' appears to be 87059000 rather than the declared CTH 84279000.

3.7.9 In the present case, the automobile vehicle chassis, on which the Skylift is mounted, comprises mechanical features, such as a propelling engine, gearbox, and

controls for gear-changing, steering, and braking facilities, and is, in fact, an essentially complete automobile chassis. The same has been accepted by the importer in their statement dated 04.07.2023 & 29.11.2024. Hence, irrespective of whether the lifting or handling machine is simply mounted on the vehicle or forms an integral mechanical unit with it, such assemblies fall to be classified in heading 87.05. Further, the Skylift in this case was not presented separately; it is not based on a pulley nor winch; it is not a self-propelled machine; Therefore, the said Skylift mounted on the vehicle chassis appears to be covered in the exceptions as mentioned in the explanatory notes to heading 84.26 of HSN, and hence cannot be classified under heading 8426 or 8427 or 8428 of HSN.

The goods in the present case are covered by the inclusion clause of explanatory notes to heading 87.05 of HSN which includes lorries (trucks) fitted with ladders or elevator platforms for the maintenance of overhead cables, street lighting, etc.; lorries (trucks) with an adjustable arm and platform ("dollies") for cinematographic or television work. The same has been accepted by the importer in their statement dated 04.07.2023 & 29.11.2024.

Further, the determining factor for exclusion under heading 87.05 is that one or more of the propelling or control elements referred to above are located in the cab of a working machine. However, in the 2nd CE Report dated 09.05.2023, the Chartered Engineer has categorically mentioned that the Skylift is mounted on an automobile chassis, that none of the propelling or control elements, from the propelling engine, gearbox, and controls for gear-changing, steering and braking facilities, are located in the cab of Skylift. The same has been accepted by the importer in their statement dated 04.07.2023 & 29.11.2024. Therefore, the goods in the present case are not covered by the exclusion clause of heading 87.05 of HSN.

Further, heading 87.05 of HSN excludes those self-propelled wheeled machines in which the chassis and the working machine are specially designed for each other and form an integral mechanical unit. Self-propelled is defined as moving or able to move without external propulsion or agency, i.e., able to move by its own power. However, the Skylift in this case does not have an engine or wheels of its own. It needs the external propulsion of the automobile chassis to move. Therefore, the Skylift cannot be termed as self-propelled. The same has been accepted by the importer in their statement dated 04.07.2023 & 29.11.2024.

In view of the 2nd CE Report dated 09.05.2023 and as accepted by the importer in their statement dated 04.07.2023 & 29.11.2024, in this case, the chassis and truck engine are of the Company ‘DEAWOO’. However, the Skylift fitted on the chassis is of the ‘HORYOUNG’ make. It appears that Skylift has a supporting beam, and the supporting beam of the Skylift is mounted through a nut bolt on the chassis of the vehicle. It appears, if the Skylift is dismounted from the chassis of the vehicle, then the chassis can be used for some other purpose also, and therefore the chassis is not specifically designed for the Skylift. This fact also gets corroborated through the 2nd CE Report dated 09.05.2023.

Therefore, on the basis of documents, statement of the importer dated 04.07.2023 & 29.11.2024, 2nd Chartered engineer report dated 09.05.2023, explanatory notes to chapter 87, and Circular No.20/2022-Cus dated 22.09.2022, it appears that the goods in the present case. i.e., Skylift mounted on the vehicle chassis was wrongly classified in the heading 8427 instead of proper classification in heading 8705.

Therefore, the Skylift mounted on a vehicle chassis should be classified in 87059000.

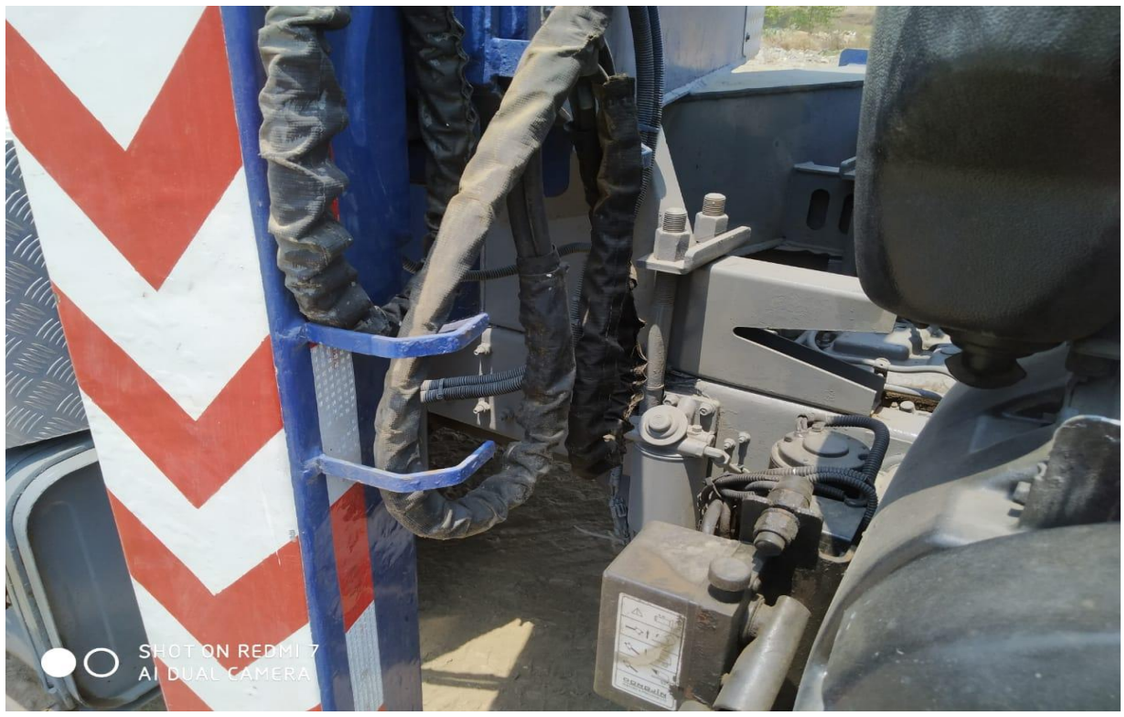
3.7.10 Policy Conditions to Chapter 87 as mentioned in Schedule 1 - Import Policy are as under:

Sr.	Notes
1	*(I) A second hand or used vehicle (including all the vehicles other than Railway or Tramway) for the purposes of this Chapter shall mean a vehicle that:* *(a) has been sold, leased or loaned prior to importation into India; or* *(b) has been registered for use in any country according to the laws of that country, prior to importation into India;* *(II) The import of second had or used vehicles shall be subject to the following conditions:-* *(a) The second hand or used vehicle shall not be older than three years from the date of manufacture;* *(b) The second hand or used vehicle shall:* *(i) have right hand steering, and controls (applicable on vehicles other than two and three wheelers);* *(ii) have a speedometer indicating the speed in Kilometres; and* *(iii) have photometry of the headlamps to suit "keep left" traffic.* *(c) In addition to the conditions specified in (a) and (b) above, the second hand or used vehicle shall conform to the provisions of the Motor Vehicle Act, 1988 and the rules made thereunder.* *(d) Whoever being an importer or dealer in motor vehicles who imports or offers to import a second hand or used vehicle into India shall,* *(i) at the time of importation, submit a certificate issued by a testing agency, which the Central Government may notify in this regard, that the second hand or used vehicle being imported into India has been tested immediately before shipment for export to India and the said vehicle conforms to all the regulations specified in the Motor Vehicles Act, 1988 of India and the rules made thereunder.* *(ii) At the time of importation, submit a certificate issued by a testing agency, which the Central Government may notify in this regard, that the second hand or used vehicle being imported into India has been tested immediately before shipment for export to India and the said vehicle conforms to the original homologation certificate issued at the time of manufacture.* *(iii) On arrival at the Indian port but before clearance for home consumption, submit the vehicle for testing by the Vehicle Research and Development Establishment, Ahmednagar of the*

	Ministry of Defence of the Government of India or Automotive research Association of India, Pune or Central Farm Machinery Training and Testing Institute, Budni, Madhya Pradesh for tractors, and such other agencies as may be specified by the Central Government, for granting a certificate by that agency as to the compliance of the provisions of the Motor Vehicles Act, 1988 and any rules made thereunder. *(iv) Import of these vehicles shall be allowed only through the customs port at Mumbai.* *(e) The second hand or used vehicles imported into India should have a minimum roadworthiness for a period of 5 years from the date of importation into India with assurance for providing service facilities within the country during the five year period. For this purpose, the importer shall, at the time of importation, submit a declaration indicating the period of roadworthiness in respect of every individual vehicle being imported, supported by a certificate issued by any of the testing agencies, which the Central Government may notify in this regard.*

Further, as per the Chartered Engineer (2nd) report dated 09.05.2023, the said Skylift/Boomlift with vehicle was left-hand drive and manufactured in approx.. 2008. Thus it appears that the importer had violated the policy conditions of Chapter 87, which rendered the goods liable for confiscation under the provisions of Section 111(d) & (m) of the Customs Act, 1962.

3.8 Chassis and machine: Regarding points 1 & 2 of para 9 (D) of CBIC Circular No. 20/2022-Customs above, it is observed that the chassis and truck engine is of Company 'DAEWOO'. However, the Skylift fitted onto the chassis is of 'HORYONG' make, and it has a supporting beam. This supporting beam of Skylift **is mounted through a nut-bolt on the chassis of the vehicle (as shown in Pictures 3 to 5)**. Therefore, it can be said that if the Skylift is dismounted from the chassis of the vehicle, then the chassis can be used for some other purpose also, and therefore, the chassis is not specifically designed for the Skylift.



Picture-3 Bolting of chassis of vehicle and beam of Skylift just behind the vehicle cabin

Picture-4 Bolting of chassis of vehicle and beam of Sky lift

Picture-5 The bolting of the Skylift with the back side of the chassis

3.9 Outriggers: Regarding point 3 of para 9 (D) of CBIC Circular No.20/2022-Customs above, it is observed that the outriggers are attached to the supporting beam of the Skylift only, and outriggers are nowhere directly attached to the chassis of the vehicle. The same has been confirmed by the 2nd CE vide reports dated 09.05.2023 and accepted by the importer in his statement dated 04.07.2023. Additionally, the outriggers cannot be controlled from the vehicle cabin; rather, these are controlled from the separate levers provided in the Skylift.

3.10 Regarding points 4 & 5 of para 9 (D) of CBIC Circular No. 20/2022-Customs, it can be concluded that the chassis and Skylift do not appear to be integrated mechanically as outlined in paras 3.9 and 3.10.

In view of the above, classification of mobile machines that undertake handling and lifting functions, as well as having mobility as a crucial feature, is to be decided on the basis of the **mechanical and electrical** integration.

As there is the absence of mechanical integration, which is a necessary condition, the electrical integration is not relevant in this subject matter. Whether the mobile machine comprises of a single engine used for propelling as well as lifting, or if it consists of two separate engines i.e., one each for propelling the vehicle and for the lifting functions, does not have a bearing on the classification between chapters 84 and 87.

3.11 In view of the above, the 2nd CE reports dated 09.05.2023 has also confirmed in the said matter that;

1. The said Sky Lift and chassis of the truck are not mechanically integrated. The Sky Lift is simply mounted / fabricated on the chassis of the truck with the help of welding & bolting. The chassis of the truck is not specifically designed for the said Sky Lift.

2. The slew bearing & outriggers are not integral part of the chassis of the truck. And, we can say that the said Sky Lift & chassis of the truck are not working in tandem.

3. Manufacturer of the Truck & Sky Lift are different. Truck is DAEWOO make & the Sky Lift is HORYOUNG make.

4. From machine/lift cabin/control none of the following functions are controlled:

Propelling of the truck engine,
Gear box control,
Control of the gear changing,
Steering control,
Braking system facility.

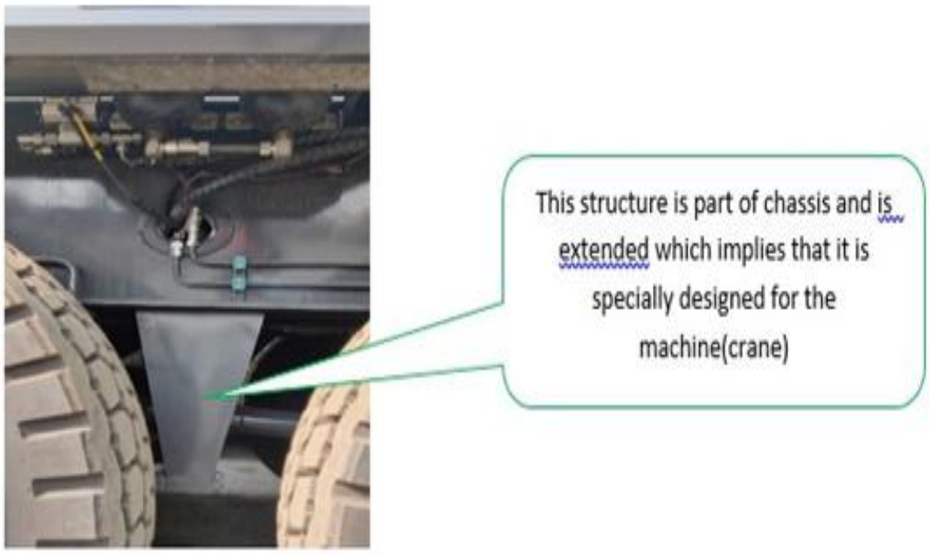
The vehicle chassis, in this case, comprises all the mechanical features referred to above, and none are located in the cab of the Skylift mounted on an automobile chassis. The chassis and Skylift do not appear to be integrated. Therefore, the goods cannot be classified in CTH 8427900 and should be classified under CTH 8705 as Special Purpose Vehicle.

4. Illustration of previously imported goods in chapter 84:

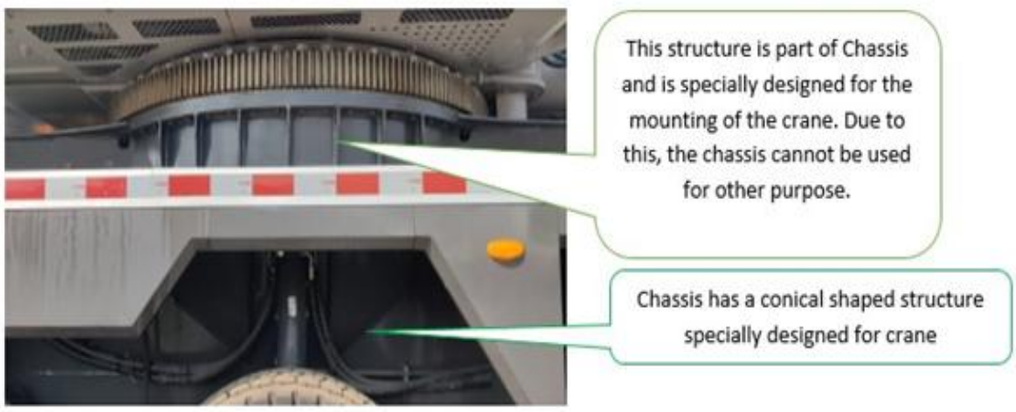
4.1 For illustration purposes, the pictures of the cranes previously imported at Mumbai Port are reproduced below. It is clearly seen that the machine (Crane) and chassis of the vehicle are integrated, and the chassis is specially designed for the crane. This is depicted in the pictures below.

Picture-10 Crane back side right outrigger

Picture-11 This picture shows the front side right outrigger of the crane.



Picture-12 This picture shows the middle part of the chassis of the crane



Picture-13 This picture shows the vehicle chassis specially designed for the crane

4.2 Data related to the import of Skylift has been collected and reproduced here for reference.

4.2.1 Import-related data collected from the ADVAIT portal shows that the Skylift without the chassis of the vehicle has been classified under CTH 84289090. As detailed below:

Sr	CTH	Full Item Description	IEC Name	Supplier Name	Port Code	Calendar Year
1	84289090	ONE UNIT USED JINWOO 45MTS JW450 TELESCOPIC BOOM LIFT / MANLIFT WITH STANDARD ACCESSORIES (**WITHOUT TRUCK CHASSIS**)ONE UNIT USED JINWOO 45MTS JW450 TELESCOPIC BOOM LIFT / MAN	ARIHANT LIFTERS	M J CRANES & AERIALS LLC	INNSA1	2023
2	84289090	ONE UNIT OLD & USED HORYONG SKY450 TELESCOPIC BOOMLIFT WITHSTANDARD ACCESSORIES (**WITHOUT TRUCK CHASSIS**.)ONE UNIT OLD & USED HORYONG SKY450 TELESCOPIC BOOMLIFT WITH	KMC TRADING & MARINE SERVICES	SUNGSAN CORPORATION	INNSA1	2023
3	84289090	USED AERIAL WORK PLATFORM - JINWOO 750, (75M) (YOM 2013) (**WITHOUT TRUCK CHASSIS**) (INV NO:JIMY/INJM248-J750.3-MC)USED AERIAL WORK PLATFORM - JINWOO 750, (75M) (YOM 2013) (WI	GROWORLD INFRASOL LLP	JANGBI MACHINERY	INNSA1	2023
4	84289090	BRONTO SKYLIFT F32RLX HYDRAULIC PLATFORM **WITHOUT CHASSIS** 00012394 SERIAL#57692-173BRONTO SKYLIFT F32RLX HYDRAULIC PLATFORM **WITHOUT CHASSIS** 000	BRIJBASI FIRE SAFETY SYSTEMS PRIVATE LIMITED	BRONTO SKYLIFT OY AB,	INBOM1	2022
5	84289090	BRONTO SKYLIFT F32RLX HYDRAULIC PLATFORM **WITHOUT**	BRIJBASI FIRE SAFETY	BRONTO SKYLIFT OY AB,	INBOM1	2021

		CHASSIS 00012394 SERIAL#57654-169BRONTO SKYLIFT F32RLX HYDRAULIC PLATFORM **WITHOUT CHASSIS** 000	SYSTEMS PRIVATE LIMITED			
6	84289090	ONE NO. BRONTO SKYLIFT S70XDT, SERIAL NO - 57619-120 (HYDRAULIC PLATFORM, **WITHOUT CHASSIS**)ONE NO. BRONTO SKYLIFT S70XDT, SERIAL NO - 57619-120 (HYDRAU	ABC INFRA EQUIPMENT PRIVATE LIMITED	BRONTO SKYLIFT QY AB	INBOM1	2021
7	84289090	1 UNIT OF BRONTO SKYLIFT S70XDT, SERIAL NO - 57618-119 (AERIAL HYDRAULIC PLATFORM, **WITHOUT CHASSIS**)1 UNIT OF BRONTO SKYLIFT S70XDT, SERIAL NO - 57618-119 (AERI	ASSAM BOMBAY CARRIERS PRIVATE LIMITED	BRONTO SKYLIFT QY AB	INBOM1	2021
8	84289090	ONE USED AERIAL WORKING PLATFORM - CTE-ZED20 - SERIAL NO -5609 (UPPER UNIT **WITHOUT CHASSIS ONLY**)ONE USED AERIAL WORKING PLATFORM - CTE-ZED20 - SERIAL NO -	R R INFRA EQUIPMENTS	MELITA TRADING LTD	INNSA1	2021
9	84289090	BRONTO SKYLIFT F32 HDT HYDRAULIC PLATFORM **WITHOUT CHASSIS** SH001033 L 10,04 W 2,5 H 3,4 MBRONTO SKYLIFT F32 HDT HYDRAULIC PLATFORM WITHOUT CHASSIS SH	BRIJBASI FIRESAFETY SYSTEMS PVT.LTD.	BRONTO SKYLIFT OY AB,	INBOM1	2017

4.2.2 The Skylift with Chassis/ Mounted on the chassis of the vehicle has been classified under CTH 8705. Data detailed below:

Sr	**CTH**	**Full Item Description**	**IEC Name**	**Supplier Name**	**Port Code**	**Calendar Year**
1	87053000	BRONTO SKYLIFT-F70RPX HYDRAULIC AERIAL LADDER PLATFORM **MOUNTED ONTO VOLVO**	All Departments of any State Government and agenci	BRONTO SKYLIFT OY AB,	INBOM1	2024

		CHASSIS#YV2XTY0G8RA338969 ENGINE#D13*2333489*KBRONTO SKYLIFT-F70RPX HYDRAULIC AERIAL LADDER PLATFORM MOUNT				
2	87053000	BRONTO SKYLIFT-F81HLA HYDRAULIC PLATFORM **MOUNTED ONTO VOLVOCHASSIS**#YV2XT40K0PA317625 ENGINE#D13*2241752*K7*A SERIAL#578BRONTO SKYLIFT-F81HLA HYDRAULIC PLATFORM MOUNTED ONTO VOLVO	All Departments of any State Government and agenci	BRONTO SKYLIFT OY AB	INBOM1	2024
3	87053000	BRONTO SKYLIFT-F54HDT HYDRAULIC PLATFORM (SNORKEL) **MOUNTED ONTO VOLVO CHASSIS**#YV2XTY0G2PA328578 ENGINE#D13*2288829*K7*ABRONTO SKYLIFT-F54HDT HYDRAULIC PLATFORM (SNORKEL) MOUNTED O	GUJARAT STATE FERTILIZERS & CHEMICALS LIMITED	BRONTO SKYLIFT OY AB.	INBOM1	2024
4	87053000	BRONTO SKYLIFT-F90HLA HYDRAULIC AERIAL LADDER PLATFORM **MOUNTED ONTO VOLVO CHASSIS**#YV2XT60K8PA317609 ENGINE#D13*2241720*KBRONTO SKYLIFT-F90HLA HYDRAULIC AERIAL LADDER PLATFORM MOUNT	All Departments of any State Government and agenci	BRONTO SKYLIFT OY AB	INBOM1	2024
5	87053000	BRONTO SKYLIFT F54 HDT AERIAL LADDER PLATFORM HYDRAILIC PLATFORM **MOUNTED ONTO VOLVO-CHASSIS** NO#YV2XTY0DXNA895706 ENGINBRONTO SKYLIFT F54 HDT AERIAL LADDER	STATE GOVT. MIN/DEPTS	BRONTO SKYLIFT OY AB.	INENR1	2023

		PLATFORM HYDRAILIC PLA				
6	87053000	BRONTO SKYLIFT F54 HDT HYDRAULIC PLATFORM **MOUNTED ONTO VOLVO-CHASSIS** NO#YV2XTY0D1NA301715 ENGINE#D13*2177702*K7*A SR#578BRONTO SKYLIFT F54 HDT HYDRAULIC PLATFORM MOUNTED ONTO VOLVO	STATE GOVT. MIN/DEPTS	BRONTO SKYLIFT OY AB.	INENR1	2023
7	87053000	BRONTO SKYLIFT-F70RPX 70MTR ARIAL LADDER HYDRAULIC PLATFORMF70 RPX **MOUNTED ON VOLVO FMX 460/8X4/WB 4600 CHASSIS** NO:YV2XBRONTO SKYLIFT-F70RPX 70MTR ARIAL LADDER HYDRAULIC PLATFORM	STATE GOVT. MIN/DEPTS	BRONTO SKYLIFT OY AB,	INBOM1	2023
8	87053000	BRONTO SKYLIFT HYDRAULIC PLATFORM F52RPX (52MTR)-**MOUNTED ONTO VOLVO FMX460 8X4 CHASIS**#YV2XTY0G3NA887148 SR NO.57646-076BRONTO SKYLIFT HYDRAULIC PLATFORM F52RPX (52MTR)-MOUNTED ONT	STATE GOVT. MIN/DEPTS	BRONTO SKYLIFT OY AB	INBOM1	2022
9	87053000	BRONTO SKYLIFT HYDRAULIC PLATFORM-F70RPX(70MTR)-**MOUNTED ONTO VOLVO FMX460 8X4 CHASSIS**#YV2XTY0G7NA892692 SR#57728-126 EURBRONTO SKYLIFT HYDRAULIC PLATFORM-F70RPX(70MTR)-MOUNTED ONTO	STATE GOVT. MIN/DEPTS	BRONTO SKYLIFT OY AB	INBOM1	2022

10	87053000	BRONTO SKYLIFT-F90HLA (90MTR) PROCUREMENT OF HYDRAULIC PLATFORM **MOUNTED ONTO VOLVO FMX460/10X4 CHASSIS**#YV2XTY0K5MA868622BRONTO SKYLIFT-F90HLA (90MTR) PROCUREMENT OF HYDRAULIC PLATF	STATE GOVT. MIN/DEPTS	BRONTO SKYLIFT OY AB,	INBOM1	2022
11	87053000	BRONTO SKYLIFT F90 HLA HYDRAULIC PLATFORM **MOUNTED ON CHASSIS**VOLVO FMX540/12X4/WB6100/EURO 6 CHASSIS#YV2XT60G6MB343174BRONTO SKYLIFT F90 HLA HYDRAULIC PLATFORM MOUNTED ON CHASSIS	STATE GOVT. MIN/DEPTS	BRONTO SKYLIFT OY AB,	INBOM1	2022
12	87053000	BRONTO SKYLIFT F81 HLA HYDRAULIC PLATFORM **MOUNTED ONT VOLVO CHASSIS** NO.YV2XT40KXMA872299 EN#D13*2036756*K5*A SR#57550-00BRONTO SKYLIFT F81 HLA HYDRAULIC PLATFORM MOUNTED ONT VOLVO	STATE GOVT. MIN/DEPTS	BRONTO SKYLIFT OY AB,	INBOM1	2021
13	87053000	BRONTO SKYLIFT F70RPX WORKING HEIGHT ARIAL HYDRAULIC PLATFORM (AHP) TO BE **MOUNTED ON VOLVO CHASSIS** & FABRICATION THEREOBRONTO SKYLIFT F70RPX WORKING HEIGHT ARIAL HYDRAULIC PLATFOR	STATE GOVT. MIN/DEPTS	BRONTO SKYLIFT OY AB,	INBOM1	2021
14	87053000	SUPPLY,DELIVERY ,MOUNTING ,TESTING, TRAINING & COMMISSIONING OF AERIAL HYDRAULIC PLATFORM (WORKING HEIGHT	STATE GOVT. MIN/DEPTS	BRONTO SKYLIFT OY AB,	INBOM1	2021

		55 MM)BRONTO SKYLIFT MODEL F55RLX **MOUNTED ONTO VOLVO CH**#YV2XTYOG5L				
15	87053000	BRONTO SKYLIFT MAKE 90MTR ARIAL LADDER PLATFORM F-90 HLA MODEL **MOUNTED ON VOLVO MAKE CHASSIS** NO.YV2XT60G6LA856 039 ENGINEBRONTO SKYLIFT MAKE 90MTR ARIAL LADDER PLATFORM F-90 HLA MOD	STATE GOVT. MIN/DEPTS	BRONTO SKYLIFT OY AB,	INBOM1	2021
16	87053000	REPAIR WORKS OF BRONTO SKYLIFT F54HDT 56887-225 WORK PLATFORM UNIT,**MOUNTED ONTO VOLVO TRUCK CHASSIS**, WITH CHASSIS NO.YU2REPAIR WORKS OF BRONTO SKYLIFT F54HDT 56887-225 WORK PLATFOR	JSW STEEL LIMITED	BRONTO SKYLIFT OY AB	INENR1	2017
17	87053000	HYDRAULIC PLATFORM BRONTO SKYLIFT F78 HLA **MOUNTED ON VOLVO FM 500 10X4X6 CHASSIS**#YV2XB20G 6GA793275 ENGINE#D13*625574 *A4*HYDRAULIC PLATFORM BRONTO SKYLIFT F78 HLA MOUNTED ON VOLVO F	MUNICIPAL CORPORATI ON OF GREATER BOMBAY	M/S.BRO NTO SKYLIFT OY AB,	INBOM1	2017

4.2.3 M/s BRONTO SKYLIFT OY AB, is a company founded in 1938 and it came in its current form in 1972. The Company is a world market leader. The company has held the world record for fire service platforms on a truck chassis at a height of 112 m. Most of the imports of this item are from Supplier M/s. Bronto Skylift in India and all the Skylift with Chassis imported by M/s BRONTO SKYLIFT OY AB, are declared under CTH 8705.

5. Summary of the investigation:

5.1 The impugned goods, i.e. Skylift is not presented separately; it was presented as Skylift mounted on vehicle chassis. Also, it appears that the Skylift is neither based on a pulley nor a winch.

5.2 The exceptions as mentioned in explanatory notes to heading 84.26 of the HSN states that:

(b) Machines mounted on tractors or motor vehicles proper to Chapter 87.
(2) Machines mounted on automobile chassis or lorries.
Certain lifting or handling machines (e.g., ordinary cranes, light breakdown cranes) are often mounted on what is in fact an essentially complete automobile chassis or lorry in that it comprises at least the following mechanical features : propelling engine, gear-box and controls for gear-changing, and steering and braking facilities. Such assemblies fall to be classified in heading 87.05 as special purpose motor vehicles, whether the lifting or handling machine is simply mounted on the vehicle or forms an integral mechanical unit with it, unless they are vehicles designed essentially for transport purposes falling in heading 87.04.

5.3 The impugned goods appear to be the Skylift fitted on the motor vehicle chassis, which comprises the mechanical features & control elements viz. Propelling of the truck engine, Gearbox control, Control of the gear changing, Steering control, & Braking system facility. However, none of the control elements referred to above are located in the cab of the Skylift mounted on an automobile chassis. Therefore, the impugned goods are covered by exceptions as mentioned in the explanatory notes to heading 84.26 of the HSN, and since the same applies to heading 84.27, they are excluded from heading 84.27 also.

5.4 The impugned goods i.e. Skylift mounted on the vehicle appear to be covered by Point 3 of the inclusions as mentioned in the explanatory notes to heading 87.05 of the HSN, which says

(3) "Lorries (trucks) fitted with ladders or elevator platforms for the maintenance of overhead cables, street lighting, etc.; lorries (trucks) with an adjustable arm and platform ("dollies")" for cinematographic or television work.

5.5 In view of the para 9(B) of CBIC Circular No. 20/2022 dated 25.09.2022, Skylift is not a self-propelled machine. Moreover, one or more of the propelling or control elements from the propelling engine, gearbox, and controls for gear-changing, steering, and braking facilities should be located in the cab of a working machine. None of these 5 elements appear to be present in the cab of the working machine i.e. Skylift.

5.6 In view of para 9(D) of CBIC Circular No.20/2022 dated 25.09.2022, the chassis and truck engine is of Company DAEWOO in this subject case. However, the Skylift is fitted onto the chassis and is of HORYOUNG make. It appears that the Skylift has a supporting beam, and the supporting beam of the Skylift is mounted through a nut-bolt on the chassis of the vehicle. Therefore, if the Skylift is dismounted from the Chassis of the vehicle then the chassis can be used for some other purpose also, and therefore chassis is not specifically designed for the Skylift. Hence, one of the main benchmarks laid down in CBIC Circular No. 20/2022 dated 25.09.2022 for the classification under CTH 84 is that the chassis and beam of Skylift should be integrated as a whole & inseparable, appears to be violated in this case.

5.7 Further, it is also observed that the outriggers are attached to the supporting beam of the Skylift only and outriggers are nowhere directly attached to the chassis of the Vehicle. Additionally, outriggers cannot be controlled from the vehicle cabin rather these are controlled from the separate levers provided in the Skylift.

5.8 On analysing the NIDB data, it is observed that the Skylift/Boomlift with Chassis/ Mounted on vehicle chassis is classified under CTH 8705. The Skylift/Boomlift without the chassis of the vehicle is classified under CTH 84289090.

5.9 In view of the above, the machine without a vehicle chassis is classified under CTH 8428. Hence, Skylift, whether articulated or telescopic (as without truck), is classifiable in 84 chapter & any lifting machine with vehicle is classified under CTH 8705 as a special purpose vehicle. It is sufficient for classification as a special purpose vehicle if the unit is specially construed and equipped for special services or functions. As the impugned Skylift is specially construed for special services or functions, it should be classified in chapter 87.

5.10 As Skylift mounted on a vehicle chassis is a special purpose vehicle and hence, Skylift mounted on a vehicle chassis should be classified under Chapter 8705 only as per Rule 3(a) of General Interpretation Rules. However, even if there is any dispute for Skylift mounted on a vehicle chassis as a special purpose vehicle, then the heading that occurs last in numerical order, i.e. 8705 is applicable in the said case as per Rule 3(c) of General Interpretation Rules.

5.11 Contraventions with respect to Policy conditions of Chapter 87:

5.11.1 Policy condition for chapter 87 states that the second-hand or used vehicle shall not be older than three years from the date of manufacture; However, this Skylift mounted on vehicle chassis was manufactured in the year 2008.

5.11.2 Policy condition for chapter 87 states that the second-hand or used vehicle shall have right-hand steering and controls. However, this Skylift mounted on vehicle chassis is left-hand drive, whereas the requirement as prescribed in the policy condition for chapter 87 states rather the second-hand or used vehicle shall have right-hand steering and controls.

5.11.3 Policy condition for chapter 87 states that whoever being an importer or dealer in motor vehicles who imports or offers to import a second-hand or used vehicle into India shall, at the time of importation, submit a certificate issued by a testing agency, which the Central Government may notify in this regard, that the second hand or used vehicle being imported into India has been tested immediately before shipment for export to India and the said vehicle conforms to the original homologation certificate issued at the time of manufacture. However, the importer has not submitted any such certificate.

5.11.4 Policy condition for chapter 87 states that whoever being an importer or dealer in motor vehicles who imports or offers to import a second-hand or used vehicle into India shall, On arrival at the Indian port but before clearance for home consumption, submit the vehicle for testing by the Vehicle Research and Development Establishment, Ahmednagar of the Ministry of Defence of the Government of India or Automotive Research Association of India, Pune or Central Farm Machinery Training and Testing Institute, Budni, Madhya Pradesh for tractors, and such other agencies as may be specified by the Central Government, for granting a certificate by that agency as to the compliance of the provisions of the Motor Vehicles Act, 1988 and any rules made thereunder. However, the importer has not complied with this condition.

5.11.5 The second-hand or used vehicles imported into India should have a minimum roadworthiness for a period of 5 years from the date of importation into India with assurance for providing service facilities within the country during the five-year period. For this purpose, the importer shall, at the time of importation, submit a declaration indicating the period of roadworthiness in respect of every individual vehicle being imported, supported by a certificate issued by any of the testing agencies, which the Central Government may notify in this regard.

This Skylift mounted on the vehicle has run 1,73,345 Kms, which means this vehicle carrying Skylift is meant for long-distance travel on the road, and the importer is required to submit a declaration indicating the period of roadworthiness supported by a certificate. However, the importer has not submitted any such certificate.

5.12 Hence, on the basis of 2nd CE Report dated 09.05.2023, HSN Explanatory Notes, CBIC Circular No. 20/2022 dated 25.09.2022 & visual inspection of the Skylift through video conferencing, it appears that this Skylift mounted on vehicle appears to be wrongly described/mis-declared as “Skylift” instead of “Skylift mounted on vehicle” & misclassified in chapter 84 rather than the correct classification in chapter 87. In addition, the said goods appear not to be complying with the import policy conditions for chapter 87. Therefore, this Skylift mounted on a vehicle becomes prohibited for import.

6. Confiscability of the goods

6.1. On the basis of investigation, it appears that the goods Skylift mounted on a vehicle chassis is wrongly described/misdeclared as “Skylift” instead of “Skylift mounted on vehicle chassis” & is wrongly classified in chapter 84 instead of CTH 8705 and that the said goods appear to violate the policy conditions of chapter 87, which rendered the goods liable for confiscation under the provisions of Section 111 of the Customs Act, 1962.

The location of the said sky lift mounted on vehicle was traced to M/s Om Crane Pvt. Ltd., Ekta Compound, Plot No - 6, Tondre Village, Taloja, Navi Mumbai - 410208, and accordingly, the same was seized with supurdnama under the provisions of Section 110 of the Customs Act, 1962, vide seizure memo dated 11.12.2024 by SIIB(I), under the

reasonable belief that the said goods are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962.

7. Relevant Legal provisions of the Act:

7.1 As per Rule 3 of the Rules of Interpretation:

"3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:
(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
(c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

As a Skylift mounted on a vehicle chassis is a special purpose vehicle and hence, a Skylift mounted on a vehicle chassis should be classified under chapter 8705 only as per Rule 3(a) of General Interpretation Rules. However, even if there is any dispute for Skylift mounted on a vehicle chassis as a special purpose vehicle, then the heading that occurs last in numerical order, i.e. 8705 is applicable in the said case as per Rule 3(c) of General Interpretation Rules.

7.2 Policy Conditions for second hand or used vehicle of Chapter 87:

(I) *A second hand or used vehicle (including all the vehicles other than Railway or Tramway) for the purposes of this Chapter shall mean a vehicle that: -*

(a) *has been sold, leased or loaned prior to importation into India; or*
(b) *has been registered for use in any country according to the laws of that country, prior to importation into India;*

(II) *The import of second hand or used vehicles shall be subject to the following conditions:*

(a) *The second hand or used vehicle shall not be older than three years from the date of manufacture;*
(b) *The second hand or used vehicle shall:*
(i) *have right hand steering, and controls (applicable on vehicles other than two and three wheelers);*
(ii) *have a speedometer indicating the speed in Kilometres; and*
(iii) *have photometry of the headlamps to suit "keep left" traffic.*
(c) *In addition to the conditions specified in (a) and (b) above, the second hand or used vehicle shall conform to the provisions of the Motor Vehicle Act, 1988 and the rules made thereunder.*
(d) *Whoever being an importer or dealer in motor vehicles who imports or offers to import a second hand or used vehicle into India shall,*

(i) *at the time of importation, submit a certificate issued by a testing agency, which the Central Government may notify in this regard, that the second hand or used vehicle being imported into India has been tested immediately before shipment for export to India and the said vehicle conforms to all the regulations specified in the Motor Vehicles Act, 1988 of India and the rules made thereunder.*

(ii) *At the time of importation, submit a certificate issued by a testing agency, which the Central Government may notify in this regard, that the second hand or used vehicle being imported into India has been tested immediately before shipment for export to India and the said vehicle conforms to the original homologation certificate issued at the time of manufacture.*

(iii) *On arrival at the Indian port but before clearance for home consumption, submit the vehicle for testing by the Vehicle Research and Development Establishment, Ahmednagar of the Ministry of Defence of the Government of India or Automotive research Association of India, Pune or Central Farm Machinery Training and Testing Institute, Budni, Madhya Pradesh for tractors, and such other agencies as may be specified by the Central Government, for granting a certificate by that agency as to the compliance of the provisions of the Motor Vehicles Act, 1988 and any rules made thereunder.*

(iv) *Import of these vehicles shall be allowed only through the customs port at Mumbai.*

(e) *The second hand or used vehicles imported into India should have a minimum roadworthiness for a period of 5 years from the date of importation into India with assurance for providing service facilities within the country during the five-year period. For this purpose, the importer shall, at the time of importation, submit a declaration indicating the period of roadworthiness in respect of every individual vehicle being imported, supported by a certificate issued by any of the testing agencies, which the Central Government may notify in this regard.*

Policy Condition 1 and 2 [except for 1(II) (d) (iv) and 2(II) (d)] above shall not be applicable for import of automotive mining equipments, oil rigging equipments for operation in captive mines/oil rigging and vehicles for research and development purposes subject to the condition that the imported item is re-exported/scrapped under certification from the concerned authorities, once its purpose is served. Above condition is applicable for both old/used and new equipments/vehicles. Further these equipments/vehicles shall not ply on public roads, except for mobilization and demobilization purposes. (Policy condition 3(11))

7.3 DGFT Policy Circular No.21/2007 dated 14.12.2007 regarding Import of vehicles used in off-highway operations such as mining, industrial undertakings, irrigation, general construction etc.

"*2. The matter has been examined in consultation with Department of Road Transport and Highways. Accordingly, it is clarified that: -*

(a) Vehicles which are designed for off-highway operations in mining, industrial undertaking, irrigation and general construction though modified and manufactured with on or off or on and off highway capabilities, but are equipped to be driven on road on their own power and come on public road, even

incidentally, and for a short duration, are motor vehicles within the meaning of Section 2 (28) of the Motor Vehicle Act and are required to meet all the requirements under Central Motor Vehicle Rules, 1989 including homologation.
(b) Those vehicles which are purely off-highway construction equipment vehicles designed and adapted for use in enclosed premises, factories or mine other than road network and are not equipped to travel on public road on their own power, shall not be deemed as motor vehicle and as such fall outside the purview of Motor Vehicles Act, 1988 and Central Motor Vehicles Rules,1989.
3. Thus, if a vehicle cannot travel on public road on its own power and works exclusively in the enclosed premises is not required to meet the provisions of Motor Vehicle Act, 1988 and Central Motor Vehicles Rules, 1989."

7.4 Section 2(33) of Customs Act, 1962:

"Prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such good in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with".

The 'Indian Trade Classification (Harmonised System) of Import Items, 2017 [ITC (HS), 2017] has been notified by the Central Government in the exercise of the powers conferred by section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended) read with paragraph 2.01 of the Foreign Trade Policy, 2015-2020 vide Notification No. 36/2015-2020 dated 17.01.2017. The policy conditions so notified for Chapter 87 were not complied with by the impugned goods and hence the impugned goods appear to be prohibited goods in terms of Section 3 of Foreign Trade (Development and Regulation) Act, 1992 and Section 11(2)(s) of the Customs Act, 1962 [*the compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India*] and as per the definition of the "Prohibited goods" in Section 2(33) of the Customs Act, 1962.

7.5 Section 2(39) of Customs Act, 1962:
"smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;

7.6 SECTION 46 of Customs Act, 1962*. Entry of goods on importation*. –
(*4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.*

7.7 SECTION 110 of Customs Act, 1962. Seizure of goods, documents and things-
(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

[Provided that where it is not practicable to remove, transport, store or take physical possession of the seized goods for any reason, the proper officer may give custody of the seized goods to the owner of the goods or the beneficial owner or any person holding himself out to be the importer, or any other person from whose custody such goods have been seized, on execution of an undertaking by such person that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that where it is not practicable to seize any such goods, the proper officer may serve an order on the owner of the goods or the beneficial owner or any person holding himself out to be importer, or any other person from whose custody such goods have been found, directing that such person shall not remove, part with, or otherwise deal with such goods except with the previous permission of such officer.]

[(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.]

(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of -
(a) certifying the correctness of the inventory so prepared; or
(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or
(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.]

[(1D)Where the goods seized under sub-section (1) is gold in any form as notified under sub-section (1A), then, the proper officer shall, instead of making an application under sub-section (1B) to the Magistrate, make such application to the Commissioner (Appeals) having jurisdiction, who shall, as soon as may be, allow the application and thereafter, the proper officer shall dispose of such goods in such manner as the Central Government may determine.]

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:
[Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.]

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.
[(5) Where the proper officer, during any proceedings under the Act, is of the opinion that for the purposes of protecting the interest of revenue or preventing smuggling, it is necessary so to do, he may, with the approval of the Principal Commissioner of Customs or Commissioner of Customs, by order in writing, provisionally attach any bank account for a period not exceeding six months:
Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform such extension of time to the person whose bank account is provisionally attached, before the expiry of the period so specified.]

7.8 Section 111 of the Customs Act 1962:

The following goods brought from a place outside India shall be liable to confiscation: -

(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;

(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;

(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;

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

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an [arrival manifest or import manifest] or import report which are not so mentioned;

(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;

(h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) [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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];

(n) any dutiable or prohibited goods transitted with or without trans-shipment or attempted to be so transitted in contravention of the provisions of Chapter VIII;
(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

[(p) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.]

[(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.]

7.9 Section 112 of the Customs Act 1962, Penalty for improper importation of goods, etc.-

(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
(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,
shall be liable, -
(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 1 [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 4 [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.]

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

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has [****]been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

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

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

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

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 5 [28AA], and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

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

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

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

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

7.11 Section 114AA of the Customs Act, 1962: *Penalty for use of false and incorrect material. -*

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

7.12 Section 117 of the Customs Act, 1962: Penalties for contravention, etc., not expressly mentioned-

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding 1[four lakh rupees].

7.13 Section 122 of the Customs Act, 1962: Adjudication of confiscations and penalties. -

In every case under this Chapter in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged, -
(a) without limit, by a [Principal Commissioner of Customs or Commissioner of Customs] or a [Joint Commissioner of Customs];
[(b) up to such limit, by such officers, as the Board may, by notification, specify.]

7.14 Section 124 of the Customs Act 1962: Issue of show cause notice before confiscation of goods, etc. -

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in 1[writing with the prior approval of the officer of Customs not below the rank of 2 [an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

3[Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]

8. <u>Act of Commission or Omission by Noticee vis a vis Legal Requirement:</u>

8.1 M/s OM Crane Private Limited (IEC - AADCO1479R) vide bill of entry No. 2891119 dated 15.10.2022 had imported 'ONE UNIT OLD & USED HORYONG 45M SKYLIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787 WITH ACCESSORIES'. After investigation as discussed in detail in supra, it appears that the importer has suppressed the facts with respect to the description and classification, and mis-classified the goods

under chapter 84 of the HSN instead of correct classification under chapter 87 of HSN. By not declaring the complete description and by misclassifying the goods under chapter 84 of HSN, the importer has escaped the DGFT import policy conditions of chapter 87 which states that a second hand or used vehicle for the purposes of Chapter 87 shall not be older than three years and shall have right hand steering, and controls.

The non-compliance of the policy conditions of chapter 87 of HSN, has made the said goods prohibited for importation, and the same are liable for confiscation under Section 111(d) & (m) of the Customs Act, 1962. Thus, the importer has rendered consequentially themselves liable for penalty in terms of Section 112(a) of the Customs Act, 1962.

The act of importer to intentionally declare an in-complete description of the goods and to mis-classify the same in chapter 84 to circumvent the import policy conditions of chapter 87, is to be construed as usage of false declaration in terms of Section 114AA of the Customs Act, 1962.

8.2 Shri Pradeep Ramesh Obinindi, the CEO of the importer, responsible for work related to import has intentionally suppressed the complete description of the goods and mis-classified the same in chapter 84 to circumvent the import policy conditions of chapter 87, which has rendered the goods liable for confiscation under Section 111(d) & (m) of the Customs Act, 1962. Thus, Sh. Pradeep Ramesh Obinindi has rendered himself liable for penalty in terms of Section 112(a) of the Customs Act, 1962. Also, suppression of complete description of the goods and mis-classification of the same is to be construed as usage of false declaration in terms of Section 114AA of the Customs act, 1962.

8.3 The CHA, M/s H.P. DAGHA SHIPPING & LOGISTICS (AFGPD0944RCH001) has filed the Bill of Entry No. 2891119 dated 15.10.2022 for the import of ONE UNIT OLD & USED HORYONG 45M SKYLIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787 WITH ACCESSORIES' by M/s OM Crane Private Limited (IEC – AADCO1479R) and acted as a customs broker for the clearance of the said goods during import.

At the time of filing the Bill of Entry, the CHA was in possession of the Bill of Lading and Commercial invoice on the basis of which he would finalize the Bill of Entry and file it on the customs portal. Bill of Lading clearly mentions '1 Unit HORYONG 45 Skylifter, Model SKY450, C/No: KL3C5AHF18K000787'. The commercial invoice also had a description of the goods. It is pertinent to note that there is no new manufactured product available in the market with the said description. It is at best a custom-designed assembly of two different machinery to meet individual customers' required specifications. Thus, it appears that the CHA did not exercise due diligence on their part and merely accepted the incorrect classification under the CTH 8427 as provided by the importer, instead of advising their client to comply with the provisions of the Customs Act, 1962. Thereby, the CHA colluded with the importer in circumventing the DGFT import policy conditions of Chapter 87. Thus, the CHA has rendered himself for a penalty in terms of Section 112(a)

and the action under Regulation 14 and Regulation 18 of the Customs Brokers Licensing Regulations, 2018.

9. Now, therefore, in the exercise of the powers conferred under section 28(4) read with Section 124 of the Act, the importer, **M/s OM Crane Private Limited (IEC - AADCO1479R)**, was called upon to show cause to the Joint. Commissioner of Customs (Import-I), New Custom House, Ballard Estate, Mumbai-400001 within 30 (thirty) days from the date of receipt of this notice as to why:

a. The goods, imported vide Bill of Entry No. 2891119 dated 15.10.2022, should not be correctly Described as “Old & Used HORYONG Make Skylift 45M SKY450 mounted on the DAEWOO make vehicle chassis S/No- KL3C5AHF18K000787 with accessories”; and
b. The goods, imported vide Bill of Entry No. 2891119 dated 15.10.2022, should not be correctly classified under CTH 87059000 rather than declared CTH 84279000; and
c. The said goods, i.e. Skylift mounted on vehicle chassis; should not be held liable for absolute confiscation under section 111(d) & (m) of the Customs Act, 1962; and
d. Penalty should not be imposed on M/s OM Crane Private Limited (IEC - AADCO1479R) under 112(a) of the Customs Act, 1962.
e. Penalty should not be imposed on M/s OM Crane Private Limited (IEC - AADCO1479R) under 114AA of the Customs Act, 1962.

9.1 Shri **Pradeep Ramesh Obinindi**, the CEO of the importer, was also called upon to show cause to the Joint. Commissioner of Customs (Import-I), New Custom House, Ballard Estate, Mumbai-400001 within 30 (thirty) days from the date of receipt of this notice as to why:

a. Penalty should not be imposed on Shri Pradeep Ramesh Obinindi, under 112(a) of the Customs Act, 1962.
b. Penalty should not be imposed on Shri Pradeep Ramesh Obinindi, under 114AA of the Customs Act, 1962.

9.2 The CHA, **M/s H.P. DAGHA SHIPPING & LOGISTICS (AFGPD0944RCH001)** is hereby called upon to show cause to the Joint. Commissioner of Customs (Import-I), New Custom House, Ballard Estate, Mumbai-400001 within 30 (thirty) days from the date of receipt of this notice as to why:

a. Penalty should not be imposed on M/s **H.P. DAGHA SHIPPING & LOGISTICS (AFGPD0944RCH001**) under section 112(a) of the Customs Act, 1962.

WRITTEN SUBMISSION OF THE IMPORTER (Reply to SCN) :

10. Shri Lawrence Tauro, Advocate of M/s.Om Crane Pvt. Ltd. vide their letter dated 08.07.2025 has submitted written submission is reproduced as follows:-

10.1 Point-wise submissions in respect of the issues raised in the Show Cause Notice dated 06.06.2025:

10.2 Important Points to be considered for the Classification of goods:

a) Goods are classified by taking into consideration the scope of headings/ subheadings, related Section Notes, Chapter Notes, and the General Interpretative Rules (GIR). The GIR is a set of 6 rules for the classification of goods in the Tariff Schedule. These rules have to be applied sequentially.

b) Interpretative Rules play a very important role in the classification of the goods. Rule 1 of the GIR gives precedence to the Section notes/Chapter notes while classifying a product. Rule 2(a) applies to goods imported in assembled / unassembled condition. Such goods may be incomplete or finished form. Rule 2(b) is applicable to 'mixtures' and 'composite goods'. Goods which are not classifiable by application of Rule 2(b), will have to be classified by application of Rule 3. Rule 3 has three sub-rules. Rule 4 states that goods which cannot be classified by application of the preceding rules may be classified under the heading appropriate to the goods to which they are most akin. Rule 5 applies to packing materials/articles in which the goods are carried. Rule 6 provides the general guideline for the classification of goods under the appropriate subheading.

c) Any product for which there is no current classification can be listed under the other classification. This term encompasses all products described by the Header and Sub-header of a category.

10.3 The declared description is proper and correct, and there is no misdeclaration of description:

a) **M/s. OM Crane Private Limited (IEC - AADCO1479R),** having its office situated at 501 & 502, Parth Solitaire. Plot No. 2, Sector-9E, Kalamboli, Navi Mumbai-410218. **(hereinafter referred to as "the importer")** had imported 'ONE UNIT OLD & USED HORYONG 45M SKY LIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787 WITH ACCESSORIES' and filed a Bill of Entry No. 2891119 dated 15.10.2022 through the Custom Broker Firm M/s. H. P. Dagha Shipping & Logistics (11/1827). The said Bill of Entry No. 2891119 dated 15.10.2022, was filed against Invoice No. SI-09-002 dated 02.09.2022 of M/s Sungsan Corporation, Korea, and Bill of Lading No. SSKYBOM2209010 dated 03.10.2022. The declared assessable value of the goods of the said Bill of Entry was Rs. 38,77,056/- and the duty payable thereon was Rs. 10,75,302/-.

b) Noticee submits that, all the parameters, i.e., description, quantity, CTI, etc., were properly declared and no mis-declaration in the goods was found; therefore, the department released the consignment unconditionally for home consumption.

c) The goods were declared as per the invoice forwarded by our supplier. Secondly, it is an integrated self-propelled mechanical unit; therefore, the vehicle is not separately declared. The importer and the Customs Officers are very well aware that the old and used goods are always examined 100% on a 1st check basis in the Docks, as per the CBIC Circular and Customs appraising group practice, before releasing the goods for home consumption. Therefore, the allegation of mis-declaration is not sustainable.

d) Since the goods were old and used, as per the department's practice, the goods were examined 100% by the Customs officer under the supervision of Dy. Commissioner of Customs, Docks, before giving the out-of-charge for the goods for home consumption. Since, on examination, the goods were found as declared w.r.t. description, and it was released for home consumption. Therefore, the allegation of mis-declaration of the description in the SCN requires it to be set-aside.

10.4 <u>Justification for the imported goods, viz. 'ONE UNIT OLD & USED HORYONG 45M SKY LIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787 WTH ACCESSORIES' and filed for clearance vide BE No.2891119 dated 15.10.2022, is correctly and properly classified under C.T.I. 84279000:</u>

a) **M/s. OM Crane Private Limited (IEC - AADCO1479R),** having its office situated at 501 & 502, Parth Solitaire. Plot No. 2, Sector-9E, Kalamboli, Navi Mumbai-410218. **(hereinafter referred to as "the importer")** had imported ''ONE UNIT OLD & USED HORYONG 45M SKY LIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787 WTH ACCESSORIES' and filed a Bill of Entry No. 2891119 dated 15.10.2022 through the Custom Broker Firm M/s. H. P. Dagha Shipping & Logistics (11/1827). The said Bill of Entry No. 2891119 dated 15.10.2022, was filed against Invoice No. SI-09-002 dated 02.09.2022 of M/s Sungsan Corporation, Korea, and Bill of Lading No. SSKYBOM2209010 dated 03.10.2022. The declared assessable value of the goods of the said Bill of Entry was Rs. 38,77,056/- and the duty payable thereon was Rs. 10,75,302/-.

b) Noticee submits that, all the parameters, i.e., description, quantity, CTI, etc., were properly declared and no mis-declaration in the goods was found; therefore, the department released both the consignments unconditionally for home consumption.

c) Noticee submits that, the Bill of Entry No. 2891119 dated 15.10.2022 was **assessed finally by the concerned Appraiser & Dy./Asstt. Commissioner of Customs in the Appraising Group on a 1st check basis**. During the assessment of Group assessed Bill of Entry, the Appraising Group Officer's verified the declared description, Classification, Valuation, Notification benefit claimed (if any), duty rate, IGST rate, etc. The Concerned officers of the Group are experts and well-versed in dealing with the subject item on a regular basis, as they have to assess the goods classified in a limited

number of Chapters under the Customs Tariff for a specific period. Further, in groups assessed Bill of Entry, the goods were physically examined by the officers in the Docks, and after complying with the examination order and fully satisfied with the declaration, physical particulars, and duty payment, given an out-of-charge, i.e., allowed clearances for home consumption. The Bill of Entry was examined 100% by the Customs Dock Officers under the supervision of the DC/Docks, Mumbai, and the said facts can be verified from the Customs ICEGATE. **The Customs Officers physically verified that the Sky Lift is integrated with the Vehicle as a self-propelled mechanical unit, and the chassis cannot be used for any other purposes.**

The Bill of Entry was assessed finally under Section 17 of the Customs Act, 1962, and the assessment was never challenged by the department to date. Further, we add that, the work of proper classification and notification claimed, checking, or disallowing, and applicability of duty, DGFT Policy, Policy conditions of Chapter 87**,** etc., is the departmental function, at the time of Group assessment or at the final stage in the docks, before out-of-charge.

We submit that, the impugned goods were correctly and properly classified under CTI 8427900, and applicable Customs duty, IGST & CESS were paid. The goods were freely importable under the CTI 84279000.

d) **The extract of the CTH 8427 is reproduced below for ease of reference**:

8427 FORK-LIFT TRUCKS; OTHER WORKS TRUCKS FITTED WITH LIFTING OR HANDLING EQUIPMENT

8427 10 00 - Self-propelled trucks powered by an electric motor

8427 20 00 - Other self-propelled trucks

8427 90 00 - Other trucks

e) **What is a Sky Lift for ready reference is reproduced below**:

A sky lift mounted on a truck is considered a superstructure. In the context of trucks, a superstructure refers to the part of the vehicle that is built on top of the chassis and is designed for a specific purpose, different from the basic chassis itself. A sky lift, or aerial work platform, is a piece of equipment designed to lift personnel and materials to elevated heights, and **when integrated onto a truck chassis, it becomes the superstructure of that vehicle.**

Functionality:

The sky lift superstructure adds functionality to the truck, allowing it to perform tasks like maintenance, construction, or rescue operations at height.

Integration:

It's not just an attachment; it's a designed and integrated system that relies on the truck's chassis for support and mobility.

Specialized Purpose:

Superstructures, like sky lifts, are built to cater to specific needs, distinguishing the truck from standard cargo or transportation vehicles.

Therefore, the sky lift, when mounted on a truck, is a superstructure, not just an accessory.

f) Noticee submits that, the impugned goods are not used for the transportation of passengers or goods but are only used for specific purposes. Sky lifts primarily provide vertical reach, lifting workers and materials to a specific height. It is used for various applications requiring access to high-altitude work areas, such as construction, maintenance, and rescue operations. It's a versatile piece of equipment with a long reach, allowing workers to safely access and work on tall structures, wind turbines, buildings, and other elevated locations. Sky lifts are commonly used for tasks that require a stable platform at a certain height, such as window cleaning, building maintenance, or utility work.

g) Noticee submits that, the value of the old & used Truck w.r.t. the Sky Lift equipment, is very low. The value of the truck is around 30% and the equipment is around 70% of the total cost of the imported goods. The Truck provides mobility and enables the Sky Lift machine to be transported to different job sites. Hence, for the impugned goods, the principal function is of Sky Lift, and a very limited function is of mobility.

h) Noticee submits that, in reports issued by the different Chartered Engineers, the conclusion is contradictory, without any proper grounds for rejection of the first report dated 20.10.2022. Thus impugned SCN wherein the proposed absolute confiscation is erroneous, ignoring the first C.E. Certificate from the authorised local Chartered Engineer Mr. Rajendra Tambi, is thus totally unjustified. The C.E. Certificate dated 09.05.2023 issued by Mr. S. D. Deshpande is given without physical examination of the goods, and no grounds to prove that the Chassis of the truck is not specifically designed for the said sky lift. Therefore, the first report stands valid.

i) **In this case, the department has not submitted any material facts for justifying the non-acceptance of the first local Chartered Engineer Certificate or justifying that the imported goods are not** 'integrated self-propelled mechanical units'.

Though the Second Report of C. Eng. Dated 09.05.2023 is in favour of the Department, the Initial Report of C. Eng. Dated 20.11.2022 was in favour of the noticee, **the benefit of the doubt has to be given to the noticee, especially when the test is clarified to be subjective**.

The case law supporting our contention is mentioned below:

iiia) **Shri Lakshmi Cotsyn Ltd. Vs. Commissioner of Customs & C. Ex., Kanpur [2011(263) E.L.T. 299 (Tri. - Delhi)]**

Textiles - Test reports - Textured yarn or non-textured yarn - Contradictory reports - Having chosen to send the samples to three different laboratories simultaneously for testing, valid reason should be adduced for rejecting any report of laboratories which is in favour of party - Textile Committee is a specialized agency and CRCL is like a general physician - First report of Textile Committee given by Assistant Director cannot be easily

brushed aside - Second report prepared after test by technicians of Textile Committee and has been endorsed by Quality Assurance Officer - Second test not done by any other offer of higher rank than the one who conducted on first occasion or by team of officers - Endorsement of Quality Assurance Officer, the Director (Laboratory) of second report cannot automatically invalidate the first report - Though report of CRCL is in favour of Department, initial report of Textile Committee and report of GCTL were in favour of the party, **the benefit of doubt has to be given to party especially when test is clarified to be subjective**. [paras 8, 9, 10]

iiib) **Ocean Marketing Vs. Commissioner of C. Ex. & S.T., Jaipur [2017(348) E.L.T. 269 (Tri. - Delhi)]**

Classification of goods when conflicting reports of Chartered Engineers - Confiscation, fine and penalty - Misdeclaration of description of goods - Mixed scrap of brass and copper declared as honey scrap - Different opinions of different Chartered Engineers - First Chartered Engineer opined that goods are honey scrap whereas other two Chartered Engineers opined that goods are mixed scrap of brass and copper - Lower authorities not recorded any finding for not considering earlier reports furnished by experts - Appellant's contention that third Chartered Engineer is a Civil Engineer, hence, not competent to furnish report in field of metal and that Department influenced him for issuing report, not addressed by lower Appellate Authority - Standing of third Chartered Engineer being doubtful, his views cannot be considered as expert report and cannot be relied upon for classification of goods - **There being divergent reports from different Chartered Engineers, classification of impugned goods not free from doubt - Department should have extended benefit of favourable report to appellant** - Principle of natural justice violated by denial of cross-examination of third Chartered Engineer - **Hence, report of third Chartered Engineer cannot be relied on - Demand, confiscation, fine and penalty set aside** - Sections 111, 112(a) and 125 of Customs Act, 1962. [paras 5, 6, 7]

iiic) **Bansal Alloys and Metals Pvt. Ltd. Vs. Commissioner of Cus., Amritsar [2018(364) E.L.T. 269 (Tri. – Chan.)]**

Misdeclaration - Proof of - Metal rims - Visual examination indicating them to be old but serviceable - **Two Chartered Engineers, opinions obtained by Revenue gave contra reports of their possibility of use of metallic rims** - HELD: **Benefit of contra reports of different Chartered Engineers has to go to assessee** - It was more so as assessee was not allowed to cross-examine Chartered Engineer whose report was relied by Revenue and valuation in that report was only his personal opinion - Further, there was evidence to show that rims were actually used by importer in their furnace for manufacturing steel ingots - Hence, Revenue's plea that rims were reusable and serviceable items, rejected - Section 111 of Customs Act, 1962. [para 8, 10]

iv) Further, it is evident from the aforesaid facts that, the balance of the case is in favour of the Noticee and, therefore, on the ratio of the order of the Hon'ble High Court in

the case of CD Mining & Export Co. Vs. UOI reported in 2002 (150) ELT.1384 (Del.) – if there was any doubt, the benefit of the doubt should be given in favour of the Noticee.

j) In this case, there are two cabins/controls. One cabin of the truck houses a propelling function connected to the chassis. Second cabin/control for lifting & handling of the Lift. From the machine/lift cabin, only the truck's functions controlled are the truck engine on/off function. It is evident that, from the machine/lift cabin, the truck engine can be controlled. Truck mounted Sky Lifts being capable of mobility from one place to another and at the place of operations used to get immobilized/fixed to earth with the help of outriggers to function as a crane and where a cabin was provided for the operator in the superstructure to operate, was primarily meant to work as a Sky Lift and its mobility was only an additional advantage. As the chassis was manufactured to integrate with the Sky Lift, it was immaterial whether the power to the crane came from the chassis or separately therefore.

Noticee further submits that, it takes a special truck to provide a stable and reliable base for Horyong aerial platforms. These companies partner with Truck Makers to make these special trucks w.r.t Sky Lift heights to provide a stable and reliable base. **Trucks are made by business partners to the particular standards/requirements as per the agreement for Horyong. The Chassis, cabins, and Sky Lift were specially designed for each other, and formed integrated self-propelled/mechanical units.** Therefore, the impugned goods are correctly classified under CTI 84279000 and not under CTI 87059000 as proposed in the SCN. On this basis alone, the subject SCN requires to be set-aside.

The extract of the case law supporting our contention is reproduced below:

i) Sanghavi Movers Ltd. Vs. Commissioner of Customs, Jamnagar [2008(223)ELT. 641(Tri. – Anmd.)]

Cranes - Hydraulic truck mounted mobile cranes - Capable of mobility from one place to another and at a place of operation getting immobilized/fixed to earth with outriggers to function as crane - Cabin provided for operator in super structure for operation at altitude of 30 metres - HELD : Product was primarily meant to work as a crane and its mobility was only additional advantage - As chassis was manufactured to integrate with crane, it was immaterial whether power to crane came from chassis or separately - Product was governed by exclusion clause to Heading 8705 of Customs Tariff Act, 1975, and was classifiable under Heading 8426 ibid. [para 8]

Classification of goods - Description of goods in invoice packing list/bills of lading - This by itself cannot be guiding factor in determining classification. [para 8]

ii) The above case is confirmed by Hon’ble Supreme Court

Sanghavi Movers Ltd. Vs. Commissioner of Customs, Jamnagar [2016(337)ELT. A208(S.C.)]

iii) Commissioner of Customs, Ahmedabad Vs. Reliance Petroleum Ltd. [2006(193)ELT. 226(Tri. – Mumbai)]

Crane - Ringer crane mounted on transporting equipment and together they do not qualify to be motor vehicle of Chapter 87 of Customs Tariff Act, 1975 - Classifiable under Heading 84.26 ibid - Propelling configuration platform of 8 Self Propelled Modular Transport System (SPMTS) not classifiable separately than Ringer crane - Notification No. 11/97-Cus. [paras 2.2 (a), (b)]

Words and Phrases - Mobile crane would be one which can perform its function at different locations, a crane that can move with load to different sites would be a 'Travelling crane' like an EOT crane, while a crane on propelling platform haulage tractors or guided on rails, capable of operations at different sites would be a mobile crane. [para 2.2(c), (e)]

iv) Commissioner of Customs (Prev.), Gujarat Vs. Reliance Petroleum Ltd. [2008(227)ELT. 3(S.C)]

k) The US Ruling on Tariff Classification given below supports the case of the noticee that impugned goods are rightly classifiable under Customs Tariff Heading 8427.

US Ruling No. NY L89304 dated 27.12.2005 – the tariff classification of articulating boom lift from Finland is classified under CTH 8427.

l) Kind attention of the Ld. Adjudicating Authority is invited to CBIC Circular No. 20/2022-Cus. dated 22.09.2022 regarding the Classification of goods that undertake lifting and handling functions and have mobility as a function, the relevant portion of Para 9 is reproduced below:

D. Integration of the working machine with the chassis

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

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

Noticee submits that, from Para 7.3, sub-paras (c), (e), (i), (j) & (k) it is evident that the impugned goods are 'Integrated self-propelled mechanical units' purposes, and the chassis cannot be used for any other purposes, other than the mobility of the sky lift. Therefore, as per the CBIC Circular No. 20/2022-Cus. dated 22.09.2022, the goods are excluded from Chapter 87 and correctly covered under Chapter 84.

m) **The relevant portion of the explanatory notes of CTH 8705 for ready reference is reproduced below**:

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

Similarly, this heading **excludes self-propelled wheeled machines** in which the chassis and the working machine are specially designed for each other and form an

integral mechanical unit (e.g., self-propelled motor graders). In this case, the machine is not simply mounted on a motor vehicle chassis, but is completely integrated with a chassis that cannot be used for other purposes and may incorporate the essential automobile features referred to above.

n) Noticee submits that, the impugned goods are 'Integrated self-propelled mechanical unit' and the chassis cannot be used for any other purposes, other than the mobility of the sky lift. Therefore, the impugned goods are excluded from Chapter 87 and correctly covered in Chapter 84.

o) Noticee **submits that, it is a settled principle of law that if the department wishes to change the classification of the impugned** goods, viz. ONE UNIT OLD & USED HORYONG 45M SKY LIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787 WITH ACCESSORIES' and filed for clearance vide Bill of Entry No. 2891119 dated 15.10.2022, classified by an assessee under CTI 84279000, then it is for the department to discharge the burden and prove that the impugned goods fall under CTI 87059000, which includes within its scope **'Vehicles'**. The department has merely proposed, without any documentary evidence or cogent reasons, that the classification adopted by the noticee is not correct. It was imperative for the department to establish that the **impugned goods** were not Integrated self-propelled mechanical units. Only when the department discharges the burden of proof, that the burden of proof would shift to the assessee. In this connection, reliance can be placed on the decision of the **Supreme Court in H.P.L Chemicals v. CCE., Chandigarh, 2006 (197) E.L.T. 324 (S.C.) 2006 taxmann.com 42 (S.C.),** wherein the following observations have been made:

> "29. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue."

The extract of the case law supporting our contention is reproduced below:

i) Hero Motorcorp Ltd. Vs. Commissioner of Customs (NS-I), Raigad [2022(379)ELT. 214(Tri. - Mumbai)]

Classification of goods - Burden of proof - Classification is a matter relating to chargeability and burden of proof is squarely upon Revenue - If Department intends to classify goods under a particular heading or sub-heading different from claimed by assessee, Department has to adduce proper evidence and discharge burden of proof. [para 6]

ii) Polaris India Pvt. Ltd. Vs. Prin. Commr. of Cus., New Delhi [2023(386)ELT. 287(Tri. – Del.)]

Motor vehicles - Change in classification - Burden of proof - If department wishes to change classification proposed by assessee then it is for department to discharge the burden and prove that vehicles fall under Heading 8703 of Customs Tariff Act, 1975 - Department required to establish that vehicles primarily designed for transport of persons - Section 12 of Customs Act, 1962. [para 24]

p) Noticee submits that, the department has not given any cogent reasons or documentary/material evidence to prove that the impugned goods, wherein all the goods are examined by the department staff, "are not Integrated self-propelled mechanical units**"**. Thus, the impugned goods are correctly covered under CTI 84279000, and hence there are no **contraventions with respect to the Policy conditions of Chapter 87**. Therefore, the allegation of mis-classification and contraventions with respect to the Policy conditions of Chapter 87 is improper and arbitrary. Hence, on the basis of the grounds/clarifications given above, the SCN dated 06.06.2025 and proposition of absolute confiscation including penal action is required to be set-aside.

10.5 <u>Claiming classification under a particular heading does not amount to mis-declaration</u>:

a) Without prejudice to the above, it is submitted that claiming classification under a particular CTI, cannot be called 'suppression' or 'wilful misrepresentation' of facts.

b) In this regard, the decision of the Hon'ble Supreme Court in ***Northern Plastic Ltd. vs. CCE, 1998 (101) ELT 549 (SC)*** is relied upon, wherein it was held that claiming a particular classification and benefit of exemption in the Bills of Entry does not amount to mis-declaration under the Act. The relevant extract of the decision is reproduced below:

"19. Whether the appellant was entitled to the benefit of exemption under the said notification or not was a matter of belief of the appellant and not a matter of 'any other particular' with respect to the goods. The Collector and CEGAT were, therefore, clearly in error in holding that by claiming benefit of exemptions under notifications which really did not apply to the imported goods, the appellant had intentionally tried to evade proper payment of customs duty.

22....While dealing with such a claim in respect of payment of customs duty we have already observed that the declaration was in the nature of a claim made on the basis of the belief entertained by the appellant and therefore, cannot be said to be a misdeclaration as contemplated by Section 111(m) of the Customs Act. As the appellant had given full and correct particulars as regards the nature and size of the goods, it is difficult to believe that it had referred to the wrong exemption notification with any dishonest intention of evading proper payment of countervailing duty.

23. ***<u>We, therefore, hold that the appellant had not misdeclared the imported goods either by making a wrong declaration as regards the classification of the goods or by claiming benefit of the exemption notifications which have been found not applicable to the imported goods. We are also of the view that the declarations in the Bill of Entry were not made with any dishonest intention of evading payment of customs and countervailing duty.</u>***

29. *Therefore, neither on the ground of misdeclaration nor on the ground of import being unauthorized or illegal, the goods imported by the appellant were liable to confiscation. We; therefore, allow these appeal, set aside the order of confiscation and also the order levying fine of Rs. 5 lakhs in lieu of confiscation. We also set aside the order of penalty*

imposed upon the appellant. In view of the facts and circumstances of the cases, the parties shall bear their own cost."

(Emphasis supplied)

c) Para 2.7 of Chapter 3 of the CBEC Manual on Procedure for clearance of imported and export goods, states that while filing an EDI bill of entry, all the necessary declarations have to be made electronically. The original documents, such as a signed invoice, packing list, certificate of origin, test report, technical write-up, etc., are required to be submitted by the importer at the time of examination. The importer/CHA also needs to sign on the final documents before Customs clearance.

d) This situation did not change after the introduction of 'self-assessment' in the Customs law by the Finance Act, 2011 on 08.04.2011, by amendment of Section 17 of the Act.

e) The self-assessment only requires (as in the case of Central Excise — Self Removal Procedure), that the importer must himself indicate the classification of the imported goods in the Bill of Entry. This does not mean that in every case of self-assessment, the department is entitled to invoke the mis-declaration or extended period of limitation as provided in Section 28(4) of the Act.

f) It is mandatory on the part of the department to prove that the assessment of the imported goods at the time of import was obtained by mis-declaration or suppression of facts, etc., whether it is a self-assessed bill of entry, or Customs system-assessed bill of entry, or an officer-assessed bill of entry.

g) It is submitted that in the present case, the Show Cause Notice has not proved any conscious or intentional act of collusion, wilful mis-statement, or suppression of fact on the part of the noticee, except making a bald statement that noticee mis-declared the classification to evade the duty.

10.6 <u>Misclassification of CTI does not amount to mis-declaration</u>:

a) It is submitted that there is a difference between 'misclassification' and ‘mis-declaration' under the Customs law. However, the Show Cause Notice seems to obliterate this distinction conveniently without any legal or factual basis.

b) In this regard, the noticee places reliance on the case of ***Densons Pultretaknik vs. CCE - 2003 (155) ELT 211 (SC),*** wherein it was held by the Hon'ble Supreme Court that merely claiming classification does not amount to suppression of facts and therefore, an extended period of limitation is not invokable. A relevant portion of the judgment has been extracted below for ready reference:

*"7. Next question is - **whether the Tribunal was justified in invoking first proviso to sub-section (1) of Section 11A.** Prima fade, it is apparent that there was no justifiable reason for invoking larger period of limitation. **There is no suppression on the part of the appellant-firm in mentioning the goods manufactured by it.** The appellant claimed it on the ground that the goods manufactured by it were other articles of plastic.*

For the insulating fittings manufactured by it, the tariff entry was correctly stated. The concerned officers of the Department, as noted above, after verification approved the said classification list. ***This Court has repeatedly held that for invoking extended period of limitation under the said provision duty should not have been paid, short-levied or short-paid by suppression of fact or in contravention of any provision or rules but there should be wilful suppression. [Re : M/s. Easland Combines, Coimbatore v. The Collector of Central Excise, Coimbatore, C.A. No. 2693 of 2000 etc. decided on 13-1-2003] by merely claiming it under heading 3926.90 it cannot be said that there was any wilful misstatement or suppression of fact.*** *Hence, there was no justifiable ground for the Tribunal for invoking the first proviso to sub-section (1) of Section 11A of the Act."*

(Emphasis supplied)

c) In the case of ***CC, Bangalore vs. A. Mahesh Raj, 2006 (195) ELT 261*** the Hon'ble Karnataka High Court has held that there is a distinction between 'misclassification' of goods and 'mis-declaration of goods'. Relevant portions are extracted below for a ready reference:

"20...A misclassification of goods will only result in duty liability being at a different rate in terms of entry under which it is classified, whereas misdeclaration can be a situation of suppression, distortion and misrepresentation. In a situation of misclassification, only goods are disclosed or declared but goods are not properly classified for the purposes of determination of rate of duty, whereas in a case of misdeclaration, goods might not have been declared correctly at all, in the sense description is not of the actual goods also quantity may varying and mischief being deliberate and designed to avoid payment of customs duty. In case of misclassification, it may be bona fide case of wrong classification as the importer or the person clearing the goods may not be fully conversant with the Schedule to the Act"

d) Thus, it is submitted that the allegation of mis-declaration against the noticee is without any basis whatsoever. The noticee respectfully submits that in the present case, in the absence, of any collusion, wilful mis-statement, or suppression of facts on the part of the noticee, mis-declaration charges are not liable to be invoked on the ground of wrong classification.

10.7 <u>Goods not liable for confiscation under Section 111 (m) of the Customs Act, 1962, therefore, the fine is not sustainable against the noticee</u>:-

a) **Section 111(d)**: Any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force

b) Section 111(m): 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

transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54];

c) The noticee submits that, all the parameters in the impugned goods filed vide Bill of Entry No. 2891119 dated 15.10.2022 were found as declared in the import documents, and physically also the goods were found as declared. On the basis of the grounds/clarification given above, the impugned goods are not liable for confiscation under Sections 111 (m) and 111(d) of the Customs Act, 1962.

Further, submits that the goods were correctly and properly classified under CTI 84279000; therefore, the subject goods are not restricted and freely importable under the DGFT Foreign Policy. Thus, the impugned goods are not liable for confiscation/ absolute confiscation under Section 111(d) of the Customs Act, 1962.

c) Noticee submits that, if the subject goods are classified under CTH 8705 and there is a violation of 111(d) (presumed not accepted), the subject goods do not fall into the category of prohibited goods. It is a settled law that if imported goods are not prohibited, absolute confiscation is not warranted - Import of Vehicle not prohibited but restricted goods. Hence, the instant vehicles, as per the various judicial pronouncements, should be allowed/redeemed to be released for home consumption to maintain the uniformity of law.

The extract of the case laws supporting our contention is reproduced below:

i) J. S. Gujral Vs. Commissioner of Customs, Chennai [2017(358)ELT. 383(Tri. - Chennai)]

Confiscation - Absolute confiscation and penalty - Import of foreign made vehicle - Misdeclaration of name of country of origin as Japan in Bill of Entry when vehicle imported from Dubai - Violation of Customs Act, 1962 read with licensing notes at Serial No. 2(II)(a)(iv), (b) & (c) to Chapter 87 of ITC classification of exports and imports, stipulating new vehicle to be imported from country of manufacture, Japan in present case, and also non-production of Type Approval Certificate for claiming exemption from fulfilling conditions under import policy - HELD: Settled law that if imported goods not prohibited, absolute confiscation not warranted - Import of car not prohibited - Even if impugned car liable for confiscation, it can be released on payment of redemption fine as held by adjudicating authorities in identical cases - Order of absolute confiscation modified into order of confiscation with option to redeem vehicle on payment of appropriate redemption fine and Customs duty - Penalty imposed under Section 112(a) ibid upheld and penalty imposed under Section 117 ibid set aside - Matter remanded to adjudicating authority for determining redemption fine - Section 125 of Customs Act, 1962. [paras 8, 9, 10, 11]

ii) Fulford India Ltd. Vs. Commissioner of Cus. (Import), Nhava Sheva [2015(318)ELT. 527(Tri. - Mumbai)]

EXIM - Import of car - Homologation certificate not produced within six months from date of import of car, despite undertaking to do so - HELD: Car was liable to confiscation under Section 111(d) of Customs Act, 1962 - However, as car was used by company in India and there was no commercial consideration involved, quantum of fine and penalty need to be minimal - Considering value of car was ` 15.76 lakhs, fine of Rs. 1.5 lakhs and penalty of Rs. 75,000 approximately 10% and 5% of value of car, respectively, was appropriate - Sections 112 and 125 ibid. [para 5.1]

iii) Commissioner vs. Ankineedu Manganti (Import), Nhava Sheva [2015(321) ELT. A.55 (S.C.)]

Confiscation of imported vehicle for non-production of type approval certificate whether sustainable?

The Supreme Court Bench comprising Hon'ble Mr. Justice Aftab Alam and Hon'ble Mr. Justice R.M. Lodha on 4-4-2011 after condoning the delay granted leave in the Petition for Special Leave to Appeal (Civil) No. CC 5419 of 2011 filed by Commissioner of Customs, Cochin against the Judgment and Order dated 28-5-2010 of Kerala High Court, in Customs Appeal No. 11 of 2010 as reported in 2012 (275) E.L.T. 551 (Ker.) (Commissioner v. Ankineedu Manganti). While granting the leave, the Supreme Court passed the following order:

"Delay condoned.

Leave granted.

Hearing expedited.

Connect with C.A. Nos. 7062-7063 of 2009 @ SLP (C) Nos. 16190-16191 of 2009."

The Kerala High Court in its impugned order had held that the production of **type approval certificate in respect of imported vehicle mainly required to ensure that the vehicle is safe and road worthy for the public use and it is to be considered by the registering authority while registering the vehicle and not by the Customs Authority when it is imported**. Therefore, confiscation of vehicle for non-production of type approval certificate was not sustainable.

iv) Depe Global Shipping Agencies P. Ltd. Vs. C.C. (Import), Nhava Sheva [2017(345)ELT. 248 (Tri.- Mumbai)]

EXIM - Car - Import of - Confiscation and penalty - Import restricted and not permitted except against licence or in accordance with public notice issued in this behalf - Importer choosing second option but not complying conditions of D.G.F.T. Notification No. 4 (RE-2001)/97-2002, dated 31-3-2001 - Import of car in violation of import-export policy - Confiscation of car with option to redeem it on payment of fine and penalty upheld - Sections 111, 112 and 125 of Customs Act, 1962. [para 4]

10.8 M/s. Om Crane Pvt. Ltd. and Shri Pradeep Ramesh Obinindi, CEO of the firm are not liable for any penal action under Section 112(a) of the Customs Act, 1962:

i) ***Section 112****:-* ***PENALTY FOR IMPROPER IMPORTATION OF GOODS ETC****.*

Any person, -

(a) who, in relation to any goods, does or omits to do any act (a) 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 -.

ii) The consignment was Group Assessed and 100% physically examined before allowing the goods for home consumption at NCH, Mumbai. It needs to be appreciated the Apprg. Group & Dock's officers were satisfied with the declarations in the Bills of Entry before giving the out-of-charge. The officers did not think it necessary to change the CTI, IGST Schedule, or Sr. No. before giving the out-of-charge, as it was proper and correct.

iii) It is submitted that penalty cannot be imposed under Sections 112(a) of the Act as the noticee in relation to the impugned goods, did not or omitted to do any act (a) which act or omission would render such goods liable to confiscation under Section 111, or not abetted the doing or omission of such an act. The declaration in the import documents is as per the provisions of the Act, Rules, and Regulations, and consistent with the Statutory requirement and Law. There is no act of mis-declaration on the part of the noticee as per the clarifications/grounds given above. Therefore, the noticee is not liable for penal action.

Hence, it is evident from the aforesaid facts and grounds/clarifications that, the Noticee did not render the impugned goods liable for confiscation under the Customs Act, 1962, and the proposed penal action in the impugned notice requires to be set-aside.

iv) Noticee submits that, in this case, insofar as the penalty is concerned, there appears to be no ground to appreciate that the noticee has made any deliberate breach of law to cause evasion. It is only on the difference between the parties on classification, that litigation arose between them. Therefore proposition of a penalty in such circumstances is unjustified and requires to be set-aside.

The extract of the case laws supporting our contention is reproduced below:

Simplex Infrastructure Ltd. Vs. Commr. of Cus. (Import), Mumbai [2018(363)ELT. 521(Tri. Mumbai)]

Truck mounted boom concrete pump - Classification of - Assessee classifying imported goods under Tariff Item 8427 90 00 of Customs Tariff Act, 1975 - Said Item deals with trucks only which are of the kind, for example, fork-lift and other trucks with lifting or handling equipment - Heading 8705 ibid specifically dealt with special purpose vehicles - Imported goods, a special purpose vehicle which had undergone registration under Motor Vehicles Act, 1988 - Classification of goods under Tariff Item 8705 90 00 of Customs Tariff Act, 1975 correct. - To classify goods, technical literature may be of assistance. But

the character and nature of the goods submit to appropriate entry in Customs Tariff. [para 5]

Confiscation, redemption fine and penalty - Misdeclaration - Declaration of imported goods under different classification - No suppression or undue advantage by assessee at cost of Revenue - Nothing to give rise to confiscation - No redemption fine imposable since there was no circumstance for confiscation - Classification to attract appropriate rate of duty and other consequence of law - No deliberate breach of law to cause evasion - Dispute only on difference between parties on classification - Penalty to be waived - Sections 111, 112 and 125 of Customs Act, 1962. [paras 6, 7]

10.9 <u>No Penalty sustainable under Section 114AA of the Customs Act, 1962 on M/s. Om Crane Pvt. Ltd.</u>:

i) Noticee submits that, no penalty is imposable on them under Section 114AA of the Act as they have **not knowingly or intentionally made**, signed or used, or caused to be made, signed or used, any declaration, statement or document which was false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, on the basis of the grounds/clarifications given above. Further, the impugned goods are not liable for confiscation.

There is no evidence of any action (commission) or inaction (omission) on the part of the noticee. Therefore, the proposed penal action under Section 114AA is not applicable and it requires to be set-aside.

STANDING COMMITTEE ON FINANCE (2005 -2006) – FOURTEENTH LOK SABHA – THE TAXATION LAWS (AMENDMENT) BILL, 2005 – TWENTY SEVENTH REPORT. PRESENTED IN LOK SABHA – 13.12.2005 – LAID IN RAJYA SABHA – 13.12.2005. PARA 65 THE MINISTRY ALSO INFORMED AS UNDER – THE NEW SECTION 114AA (Inserted vide clause 24 of the bill) HAS BEEN PROPOSED CONSEQUENT TO THE DETECTION OF SEVERAL CASES OF FRAUDULENT EXPORTS WHERE THE EXPORTS WERE SHOWN ONLY ON PAPER AND NO GOODS CROSSED THE INDIAN BORDER. THE ENHANCED PENALTY PROVISION HAS BEEN PROPOSED CONSIDERING THE SERIOUS FRAUDS BEING COMMITTED AS NO GOODS ARE BEING EXPORTED, BUT PAPERS ARE BEING CREATED FOR AVAILING THE NUMBER OF BENEFITS UNDER VARIOUS EXPORT PROMOTION SCHEMES.

However, further, as per the said amendment bill, the penalty under Section 114 AA was proposed only for export matters, and hence it is not applicable to imported goods. Therefore, provisions of Section 114AA of the Customs Act, 1962 are not applicable to the noticee as the relevant act is applicable for export matters and the subject case pertains to the import consignment or import matter.

The noticee submits that, on the basis of the grounds/clarifications given above, in this case, **no condition precedent exists warranting a penalty.**

Hence, it is evident from the aforesaid facts that, the noticee did not render the impugned goods liable for confiscation under the Customs Act, 1962, and the proposed penal action in the SCN requires to be set-aside.

ii) Noticee submits that, in this case, insofar as the penalty is concerned, there appears to be no ground to appreciate that the noticee has made any deliberate breach of law to cause evasion. It is only on the difference between the parties on classification, litigation arose between them. Therefore proposition of penalty in such circumstances is unjustified and requires to be set-aside.

10.10 Noticee submits that, a penalty is not imposable on issues involving the interpretation of statutory provisions**.**

The extract of the case laws supporting our contention is reproduced below:

Commissioner Vs. Oracle India Pvt. Ltd. [2016(342)ELT. A40(S.C.)]

(8) Penalty not imposable on issues involving interpretation of statutory provisions.

Hence, it is evident from the aforesaid facts that, the noticee did not render the impugned goods liable for confiscation under the Customs Act, 1962, and the proposed penal action in the SCN requires to be set-aside.

10.11 In view of the above submissions, we humbly pray to your good self to kindly accord sympathetic and judicious consideration to the submission put forth as above and to drop the proceedings initiated by the said Show Cause Notice dated 06.06.2025.

Prayer

10.12 In the light of the above submissions,

a) we pray your Honour to withdraw all the allegations and charges pertaining to mis-classification and misdeclaration of goods and set-aside the absolute confiscation and penalty against the Noticee; drop the said proceedings initiated by the above Show Cause Notice No. 04/2025-26/Gr.V dated 06.06.2025 and

b) the noticee may be granted any other relief as may be deemed fit by the Adjudicating Authority, as the facts and circumstances of the case require.

10.13 We crave leave to add, alter, or amend any or all of the above submissions and to make any additional submissions that we may be advised to do either during or after the personal hearing.

10.14 We may kindly be granted an opportunity for a personal hearing before any decision is taken on the matter.

11. Shri Lawrence Tauro, Advocate of Customs Broker M/s. H. P. Dagha Shipping & Logistics vide their letter dated 03.07.2025 has submitted written submission is reproduced as follows:-

11.1 M/s. H. P. Dagha Shipping & Logistics (Customs Broker) had taken Authorization Letters and KYC-related documents from the importer, M/s. Om Crane Pvt. Ltd. for verifying the antecedents of the importer. Further, the noticee had also taken a printout of the IEC No. AADCO1479R to verify the IEC is valid.

11.2 The Bill of Entry was filed on the basis of the declaration in the Invoice and the Packing List & Customs Tariff Item as suggested and approved by the importer. As a CB, my client had a role only in preparing/filing Customs Documents such as Bill of Entry, etc., on the basis of a declaration submitted by the importer, arranging for the examination of cargo for home consumption. My client **was not aware of the actual goods, i.e.,** 'ONE UNIT OLD & USED HORYONG 45M SKY LIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787 WITH ACCESSORIES' and filed for clearance vide Bill of Entry No. 2891119 dated 15.10.2022, is are integrated self-propelled mechanical unit or not. In this case, any manipulation of invoice (presumed not admitted), packing list, etc, if any, whether intentionally or unintentionally, is by the importer, and the CB had no role in it.

Further, regarding the nature of the declared goods, whether the goods are “integrated self-propelled mechanical unit” or not, has to be certified by the Chartered Engineer who is qualified for this job or the Customs Officer who is supposed to have knowledge of the machines, as they regular deal with such type of machines. As per the importer's opinion, the impugned goods were “integrated self-propelled mechanical units” and cannot be used for any other purpose. The CB has no role in it. In the instant case, the invoice and packing list were submitted to the noticee by the importer, and the importer had suggested the CTH 84279000 because, as per their opinion the goods were integrated self-propelled mechanical units, and in the 1st Chartered Engineer, Mr. Rajendra Tambi vide Certificate dated 20.11.2022 there was no adverse remark. The importer had approved the checklist of Bill of Entry No. 2891119 dated 15.10.2022.

11.3 Noticee submits that, the goods are highly complex in nature and the classification of the goods, whether it should be classified under CTH 8427 or 8705, depends on whether the goods are integrated as one self-propelled mechanical unit or not. If the goods are “integrated self-propelled mechanical units,” they will be classified under CTH 8427, and if the goods are not “integrated self-propelled mechanical units,” then they will be classified under CTH 8705. The CB is not a machinery expert or a Chartered Engineer to certify the said facts; therefore, the CB has to rely on the opinion of the importer, the Chartered Engineer, and the Customs Officer. From the above, it is evident that, the CB has taken due care and diligence while filing the documents and clearing the subject consignment.

Secondly, we have always advised the importer to declare all the facts truthfully and not to violate the provisions of the Customs Act, 1962, allied acts, not to mis-declare CTI, and to declare fair value. Further, also informed them that any violation will lead to penal action.

11.4 Noticee submits that, all the parameters, i.e., description, quantity, CTI, etc., were properly declared and no mis-classification / mis-declaration of the goods was found; therefore, the department released both the consignments unconditionally for home consumption.

11.5 Noticee submits that, the Bill of Entry No. 2891119 dated 15.10.2022 was **assessed finally by the concerned Appraiser & Dy./Asstt. Commissioner of Customs in the Appraising Group on a 1st check basis**. During the assessment of the Group assessed Bill of Entry, the Appraising Group Officer's verified the declared description, Classification, Valuation, Notification benefit claimed (if any), duty rate, IGST rate, etc. The Concerned officers of the Group are experts and well-versed in dealing with the subject item on a regular basis, as they have to assess the goods classified in a limited number of Chapters under the Customs Tariff for a specific period. Further, in groups assessed Bill of Entry, the goods were physically examined by the officers in the Docks, and after complying with the examination order and fully satisfied with the declaration, physical particulars, and duty payment, given an out-of-charge, i.e., allowed clearances for home consumption. **The Bill of Entry was examined 100% by the Customs Dock Officers under the supervision of the DC/Docks, Mumbai**, and the said facts can be verified from the Customs ICEGATE. **The Customs Officers physically verified that the Sky Lift is integrated with the Vehicle as a self-propelled mechanical unit, and the chassis cannot be used for any other purposes.**

The Bill of Entry was assessed finally under Section 17 of the Customs Act, 1962, and the assessment was never challenged by the department to date. Further, we add that, the work of proper classification and notification claimed, checking, or disallowing, and applicability of duty, DGFT Policy, Policy conditions of Chapter 87**,** etc., is the departmental function, at the time of Group assessment or at the final stage in the docks, before out-of-charge.

We submit that, the impugned goods were correctly and properly classified under CTI 8427900, and applicable Customs duty, IGST & CESS were paid. The goods were freely importable under the CTI 84279000.

11.6 Noticee had advised the importer to comply with all the provisions of the Act. Noticee submits that, they had verified the CTI/Notifications claimed by the importer, as per their knowledge and ability, and also advises their client to comply with all the provisions of the Act, Rules, Regulations, etc. The noticee had exercised due care and had put in persistent efforts to ascertain the correctness of all information that he imparted

to his client in connection with the work of clearance of the imported consignment 'ONE UNIT OLD & USED HORYONG 45M SKY LIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787 WITH ACCESSORIES' filed for clearance vide Bill of Entry No. 2891119 dated 15.10.2022. Therefore, the allegation regarding not being advised to the importer requires it to be set-aside.

11.7 Noticee submits that, the impugned goods were classified under Customs Tariff Item (CTI), IGST Schedule/Sr. No. and notifications, Sr. No. claimed, as suggested by the importer and later on approved by the importer before filing the Bill of Entry No. 2891119 dated 15.10.2022.

11.8 Noticee submits that, they acted in a bonafide manner and exercised due diligence in their role as Custom Broker in connection with their work related to the subject consignment.

11.9 It is also relevant that the Customs officers (Supdt./Appraiser & Dy./Asstt. Commissioner of Customs) examined the cargo 100% and ensured compulsory Compliance before permitting the clearance for Bill of Entry No. 2891119 dated 15.10.2022, but did not think that the imported goods were mis-declared (**presumed misdeclared, not admitted**). If the experienced Customs officers could not detect any irregularity in the imported goods, it is unreasonable to expect CB to notice such irregularity.

11.10 Kind attention of the Hon'ble Commissioner is invited to Section 46(1) of the Customs Act, 1962 wherein it is stated that, **"it provides that the importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the Customs automated system] to the proper officer a bill of entry for home consumption or warehousing in such form and manner."**

The noticee submits that, from Section 46(1) it can be concluded that the importer files the Bill of Entry with Customs for clearance of goods for home consumption and all decisions regarding the declaration in the Bill of Entry are taken by the importer and Customs Broker only facilitates the importer to file the Bill of Entry on the basis of documents viz. Invoice, Packing List, Bill of Lading, etc., submitted by the importer to the CB. Also, the CTI, IGST Schedule/Sr. No. and notification/Sr. No. are suggested by the importer, and CB verifies the CTI as per their best knowledge. Therefore, on this ground, the proposed penal action is required to be set-aside.

11.11 Noticee submit that their association with the cargo in any manner whatsoever ends with the filing of the bill of entry, issuance of a delivery order against obtaining a discharge Bill of Lading, and arranging for delivery. Everything else beyond that has been at the instance of the Importer.

In these circumstances, the noticee was acting as a CB of the importer, being entitled to the clearance of the declared imported goods under the Customs Act, 1962.

11.12 There is no evidence forthcoming from the department while alleging the charges of violation of the Customs Act, 1962. The department has failed to conclusively demonstrate how the CB has violated the Act, etc. As per the practice, the noticee had always advised their client to comply with the correct procedure and the relevant provisions of the Customs Act, 1962, along with the Rules & Regulations. Any irregularity committed by the importer without their knowledge has to be detected by the department which is having the resources and wherewithal to do so. The CB cannot be charged for the violation committed by the importer without evidence to establish that the CB was conniving with the importer.

11.13 Noticee acted only as CB of the importer, whatever documents called for by the department for assessment were conveyed/delivered by the CB on behalf of the importer. The noticee submitted all the import documents to Customs, which were handed over to him by the importer. Beyond the said act, CB had no role to play in regard to the import documents. Therefore, whatever penalty proposed on the noticee in the impugned order is invalid, improper, unsustainable, and without any supporting pieces of evidence, and not conclusively proved. The noticee had acted diligently and taken all proper care while verifying the KYC documents.

11.14 Regarding the proposition of penalty in the impugned SCN under reply, the noticee submits that they are not responsible for the alleged mis-classification / declaration (presumed not admitted). **The goods were declared on the basis of the declaration given in the invoice, packing list, and bill of lading, which was handed over by the importer, and the Customs Tariff Item as suggested and approved by the importer. Hence, the responsibility for such a declaration lies with the importer, and not with the noticee.** Further, the GATT declaration and the other declaration were also signed by the importer. The noticee had not done any mis-classification / mis-declaration, nor by any of his acts had rendered the subject goods liable for confiscation. When there is no declaration or mis-declaration by the noticee the penal action per se is not warranted, and it is untenable in law.

The extract of the case laws supporting our contention is reproduced below:

Thawerdas Wadhoomal v/s CC (General) Mumbai,

[2008(221) ELT 252 (Tri.-Mumbai)]

- It was interalia held that “CHA files shipping documents on the basis of material given to him by his clients & if in case of such exercise of his functioning, he believes in good faith that these documents were genuine, he is not liable for penal action”

The said case was approved by Hon’ble Bombay High Court, in 2009 (240) ELT, A 143 (Bombay High Court)

Somayya Shipping Clearing Pvt. Ltd. V/s. CCE, Mumbai,

[2006 (197) ELT 552 (CESTAT)]

- *It was inter alia held that "CHA filed Bill of Entry showing description and value on basis of records made available by exporter and no evidence of knowledge on part of CHA of misdeclaration of description and value of goods - Further penalty under Section 114 of Customs Act, 1962 not imposable on ground that CHA failed to file authorisation letter - Penalty against CHA and its Director set aside"*

Sindhu Cargo Services Ltd. Vs. Commissioner of Customs,

[2008(226) ELT 282]

- it has been inter alia held that "revenue has no case that CHA was also a party to the alleged mis-declaration of value of the goods. The function of the CHA was to verify the correctness of the particulars mentioned in the Shipping Bills & the accompanying declarations attached thereto. This scrutiny was done by them with reference to the particulars borne on the relevant invoices. It was settled law that the CHA's function, in so far as declared particulars in Shipping Bills are concerned does not extend beyond this point.

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Akanksha Enterprises V/s. Commissioner of Customs, Mumbai-I,

[2006(203)E.L.T.125(Tri.-Del.)]

- *it was inter alia held that "CHA was not required to make any declaration of the value nor is he required, under the law to file description of the goods. His role is limited to facilitate the proper filing of the documents as received from the Exporter. He is not required to go into the authenticity of the value of the goods etc. His job is confined to the submissions of the papers as given by the Exporter.*

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Verti Impex Vs. CC, Tuticorin

[2004 (172) 347 (Tri.))

- *"Penalty- customs- Customs House Agent- No finding in impugned order that appellant did anything, or omitted to do anything, in connivance of, or with the knowledge of illegal acts of exporter- Penalty not imposable – Section 114 of Customs Act, 1962.*

11.15 The noticee carried out clearing work of the subject consignment in a bona fide manner, unintentionally and unknowingly about the fact that, the importer had mis-classified / mis-declared (presumed not admitted) the nature of the goods.

There is no suppression, misrepresentation, and there is no omission or commission of any act on the part of the noticee because of the clarifications/grounds given above. The nature of the impugned goods mis-classified or mis-declared (presumed not admitted) in the Bills of Entry, **then it is without the intention and knowledge of the noticee, and nowhere in the "SCN under reply" proved or come out that the noticee had prior knowledge of the same.**

11.16 It is further submitted that there was no malafide intention at any stage in the mis-classification / misdeclaration of goods (presumed not admitted) as alleged in the SCN under reply. Noticee acted at all times merely in their capacity as Customs Broker of the imported goods and did all that was required to be done in the performance of their duties with no malafide intentions whatsoever.

11.17 In these circumstances, noticee has not committed any act or omission in regard to the goods, making it liable to confiscation; they are not liable to any penalty. Noticee is not liable for abetment of any offence for the simple reason that the offence of commission or omission, if any, then it was perpetrated by the importer (presumed not admitted). Thus, there is no act or omission on the part of noticee, which would amount to abetment on their part. In any event, noticee had no knowledge of what the importer was up to regarding the mis-classification / misdeclaration (presumed not admitted) of the impugned goods and manipulation of documents, if any.

NO KNOWLEDGE

11.18 It is an admitted position in the impugned SCN under reply, that the noticee was not aware of the mis-classification / misdeclaration (presumed not admitted) of the impugned goods in any manner in the instant consignment imported in the name of M/s. Om Crane Pvt. Ltd, and it is further admitted position that they were not in any conspiracy (if any) with the importer.

11.19 Further, there is no documentary evidence to even remotely suggest that, the CB was aware of the alleged mis-classification / misdeclaration (presumed not admitted), prior to the clearance of the goods. Thus, the said fact categorically proves the bonafide and innocence of the CB.

11.20 Noticee most respectfully submits that, there is no allegation in the impugned SCN that the noticee has earned anything extra or over and above their normal clearance charges and/or was benefited in any other manner due to the alleged mis-classification / misdeclaration (presumed not admitted) of the impugned goods, which further proves their bonafide, and thus no penalty is imposable on them under Section 112(a) of the Customs Act,1962. Thus, the proposition of the penalty on the noticee is required to be set-aside.

11.21 Noticee says and submits that, the Hon'ble Commissioner may please appreciate that the facts and circumstances of the case clearly bring it on record that they had never suspected any wrongdoing by the importer or any other person. Thus, they handled the business of clearance of the goods with due care, and no lapse can be attributed to them. Even assuming without admitting that there was a lack of exercise of proper inspection, supervision, and diligence, even then no penalty is imposable under Section 112(a) of the Customs Act, 1962, as these cannot be the grounds for attributing penal liability under Section 112(a) of the Customs Act, 1962.

11.22 It may please be appreciated that there is no statement or document which even remotely suggests that there was any collusion on the part of the noticee, and thus the penalty proposed in the impugned SCN is totally erroneous.

11.23 The kind attention of the Hon'ble Commissioner is invited to the judgment of the Hon'ble Tribunal in the matter of **R.S. Travels 2007 (217) ELT 384 (Tri. Bang)** wherein the allegation of abetment/collusion to help the importer was set aside, **even though there was a statement of the importer to that effect**. In the present case, there being no evidence whatsoever of any abetment or collusion, and the inference is based merely on doubt and suspicion and thus the penalty proposed in the impugned SCN on the noticee is required to be set-aside, and it is prayed accordingly.

NO AIDING OR ABETTING – IN THE ABSENCE OF KNOWLEDGE

11.24 The Hon'ble Commissioner may also please appreciate that there is no allegation that the Company or its Chairman & Managing Director/Partner or any of its employees were aware of the alleged misdeclaration (presumed not admitted) of the impugned goods or they were involved in the fraud and thus no penalty can be imposed on them as an abettor in absence of knowledge as is held in the judgment of the Hon'ble Tribunal in the matter of – **Success Engineering – 2008 (232) ELT 330 (T), & Sai Shipping Service 2009 (239) ELT 104 (T)** and thus the proposition of penalty as far as it is directed against the CB firm is required to be withdrawn.

Tribunal in the case of *Nirmal Kumar Agarwal* v. *Commissioner of Customs (Gen.) Mumbai* [2013 (298) E.L.T. 133 (Tri.-Mum.)] observed that in the absence of any evidence showing the involvement of CHA as regards the fraudulent activities, ingredient of Section 114 cannot be held to be satisfied so as to impose penalties. Under similar circumstances, the penalty on the CHA was set aside in the case of *Prime Forwarders* v. *Commissioner of Customs, Kandla* [2008 (222) E.L.T. 137 (Tri.-Ahmd.)], wherein it was observed by the Tribunal that as CHA **acted on the basis of documents given to him and there is nothing to show that he was aware of containers being stuffed with the material other than the one declared**, it cannot be said, in the absence of any evidence to the contrary, that he was involved and had knowledge about the mis declaration. Further, in the case of *Akanksha Enterprises* v. *Commissioner of Customs, Mumbai* [2006 (203) E.L.T. 125 (Tri.-Delhi)], it was observed that CHA's role is limited to facilitate the proper filing of the documents as received from the exporter and he is not required to go into the authenticity of the value of the goods.

Para 6. In the present case also, the appellant filed shipping bills on the basis of documents received by them. If there is any difference in the value of the export consignment, the CHA cannot be held responsible for the same as it is not the duty of the CHA to adjudge the correct value of the goods. There is virtually no evidence on record to show that he was aware of the overvaluation of the export consignment and he

simplicitor proceeded by the declaration made by the exporters. In such a scenario, the appellant cannot be held liable for any aiding and abetting and consequently to penalty.

Para 7. In the case of *Adani Wilmar Ltd.* v. *Commissioner of Customs (Prev), Jamnagar* [2015 (330) E.L.T. 549 (Tri.-Ahmd.)] wherein it was held that non-following of the KYC norms of CHA Licence would result in breach of Regulation 13 of CHALR and not under Customs Act, 1962. In the absence of any evidence that CHA was aware of the alleged irregularities by the exporter, imposition of penalty on him is not justified. We find from the present impugned order that apart from the fact that the appellant did not physically verified the correctness of the address given to him by the exporter, whereas all other documents were verified from computer data and found to be correct. This fact by itself cannot lead to conclusion that he was aware of the overvaluation of the export consignment, thus calling for imposition of penalty upon him."

11.25 The findings in the SCN under reply have not brought to record that, the noticee, as a Customs broker or any of their employees, was involved in mis-classification / misdeclaration (presumed not admitted) of benefit claimed on the impugned goods. Thus the Customs broker cannot be said to have aided and/or abetted in any mis-classification benefit claimed while filing the import documents or handling clearances on behalf of the importer and in this regard Reliance is placed on the judgment the **Hon'ble Tribunal in the matter of – Giavudan India Pvt Ltd. – 2010 (261) ELT 975 (T)** and **Para 16** of the said judgment is reproduced hereinbelow for ready reference.

> **"Para 16.** As regards the appeal filed by Shri Veeresh Gowda, Director of M/s Manjunatha Shipping Pvt. Ltd., CHA, who processed the documents relating to import of the impugned consignments, the CHA acted on the information furnished to him by GIPL. Penalty is imposed on the appellant u/s 112(a) as he had not advised the importer as envisaged in Rule 13 of Custom House Agents Regulations 2004. **Unless it is found that false details in the import documents filed with the department were entered by the CHA knowingly, CHA cannot *prima facie* be held to have abetted mis-declaration of the goods under import and rendered the impugned goods liable for confiscation under the Act**. We observe that in a recent judgment of the **Hon'ble High Court of Delhi in the case of *Jasjeet Singh Marwaha* v. *Union of India* [**2009 (239) E.L.T. 407 **(Del.)] the honorable High Court** held that it was the obligation of a CHA to ensure that the entries made in the Bills of Entry filed by it were correct and it could be penalized for failure to enter correct particulars in the Bills of Entry under the Custom House Agents Regulations, 2004. Commissioner may examine if the appellant was aware of the mis declaration involved and yet did not bring the same to the notice of the authorities and facilitated mis declaration of the description of the goods".

The above judgment of the Hon'ble Tribunal has been affirmed by the **Hon'ble Supreme Court as reported in 2016(337)ELT A-42 (SC)**

NO PENALTY ON DOUBT OR SUSPICION:

11.26 The Hon'ble Commissioner may please appreciate that the SCN under reply is issued in a pre-meditated and mechanical manner on the basis of doubt and suspicion, and it may please be appreciated that it is settled law that no penalty can be imposed merely on the basis of doubt and suspicion howsoever grave it may be. The reliance is placed on the judgments of the **Hon'ble Supreme Court in the case of M/s. B.K. Industries vs. UOI-1993 (65) ELT 465 (SC)** wherein it is held that a vague allegation cannot merit any credence.

NO MENS - REA – NO PENALTY:

11.27 Without prejudice to the above submissions, the Hon'ble Commissioner may please appreciate that it is settled law that the penalty is imposed for some contumacious conduct or for deliberate violation of the provision of a particular statute. There is no allegation that the CB has violated any provision of any statute deliberately so as to gain unlawfully. On the contrary, it is an admitted position that the firm and its Chairman & M.D./ Partner were not aware of any alleged mis-classification / misdeclaration (presumed not admitted) of the impugned goods and benefit claimed on the impugned goods, and were not the beneficiary in any manner. Thus, no penalty is imposable on the undersigned. Reliance is placed on the following judgments in this regard:-

a) 1996 (88) E.L.T. 12 (SC);
Pratibha Processors Vs.
Union of India.

PROPOSITION
The Penalty is ordinarily levied for some contumacious conduct or for a deliberate violation of the provisions of the particular statute.

b) 1978 E.L.T. (J159) (S.C)
Hindustan Steel Ltd. V/s.
State of Orissa.

c) 1983 E.L.T 1261 (Tribunal)
Merck Spares, Delhi V/s.
C.C.E & C, New Delhi.

PROPOSITION
Mens rea to be established for the imposition of penalty. No penalty is imposable when the party acts in a bonafide belief that the goods are not liable to confiscation.

11.28 In view of the above, the Hon'ble Commissioner may please appreciate that the penal provision is erroneously invoked against the CB firm, and there is no justification for the imposition of a penalty on the CB firm. Thus, it is prayed that the SCN under reply as far as it is directed against the CB firm may please be ordered to be withdrawn.

11.29 It is mandatory on the part of the department to prove that the assessment of the imported goods at the time of import was obtained by mis-declaration or suppression of facts, etc., whether it is a self-assessed bill of entry, or Customs system-assessed bill of entry, or an officer-assessed bill of entry.

11.30 It is submitted that in the present case, the SCN under reply has not proved any conscious or intentional act of collusion, wilful mis-statement or suppression of fact on the part of the noticee, except making a bald statement that the noticee abetted in mis-classification / misdeclaration (presumed not admitted) of goods claimed by the importer to evade the duty.

11.31 ADVISORY OF CHIEF COMMISSIONER OF CUSTOMS, JNCH:

1. That appreciating the position that the Customs Brokers are being issued SCN under the provisions of sections 112 or 114 /114AA/117 of the Customs Act, for alleged violations of CBLR, The Chief Commissioner of Customs, Zone-II, JNCH **has recently issued an advisory** vide CCCO/LGL/MISC/277/2022-ADMIBO/O CC-CUS-ZONE-II NHAVA SHEVA interalia directing as under:-

3. Numerous judicial pronouncements exist wherein it has been, inter-alia, held that when **there is no evidence of abetment in the illegal importation of goods or wrong intent or prior knowledge about the violation, a penalty cannot be imposed on the Customs Broker.**

5. **Implicating Customs Brokers in a routine manner in matters involving interpretation of the statute is not only improper but also against the National Litigation Policy of the Government, as such cases invariably fall in Court.** This not only increases the number of legal disputes but also defeats the Government's objective of Ease of Doing Business by reducing the 'ease of paying taxes', which is a parameter for measuring 'Ease of Doing Business'.

6. It is therefor.

11.32 Further, the proceedings under CBLR and Customs Act are mutually exclusive, and a penalty cannot be imposed under Section 112 for any alleged violation of CBLR. The noticee in this regard relies upon the judgment of the Hon'ble Tribunal in the matter of- **M/s. Global Marine Agencies- Order No. 51835 of 2018 dt.**15.05.2018 wherein it was held as under:

Para 9:

"In view of the above discussions, we are of the view that the renewal of the Customs Broker License cannot be refused only for the reason that the appellant has been penalized under section 114. Regulation 18 (proviso) makes it absolutely clear that **the actions taken under the CBLR, 2013 will be without prejudice to the action that may be taken under the Customs Act, 1962, thereby making it explicit that the proceedings under the Act, as well as the Regulation, are distinct and separate."**

11.33 Penalty under Section 112(a) is not sustainable on the Noticee (No. 4):

*a) **Section 112**:- **PENALTY FOR IMPROPER IMPORTATION OF GOODS ETC**.*

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*

It is submitted that penalty cannot be imposed on the noticee under Section 112(a) of the Act, as the noticee has not done nor omitted to do any act which acts or omission would render such goods liable to confiscation under section 111 or abetted the doing or omission of such an act, nor had the knowledge or reason to believe that the subject goods are liable to confiscation, on the basis of the grounds/clarifications given above.

In the absence of any knowledge or reasonable belief that the goods cleared by him as a Customs Broker were liable to confiscation, the penalty proposed on the CB is improper and not sustainable.

Further, only the noticee acting as a CB of the importer, for the clearance of the instant goods, is not sufficient ground for imposition of penalty under Section 112(a) of the Customs Act, 1962, and therefore requires to be set-aside.

The extract of the case law supporting our contention is reproduced below:

Parekh & Sons Vs. Commissioner of Customs (P), Mumbai [2002(150) ELT. 1274 (Tri. Mumbai)]

Penalty - Knowledge or reasonable belief that the goods are liable to confiscation absent - Being acted as CHA, for the clearance, not sufficient ground for imposition of penalty under Section 112(b) of the Customs Act, 1962. [para 5]

11.34 Noticee submits that, in this case, insofar as the penalty is concerned, there appears to be no ground to appreciate that the noticee has made any deliberate breach of law to cause evasion. It is only on the difference between the parties on classification, that litigation arose between them. Therefore proposition of penalty in such circumstances is unjustified and requires to be set-aside.

The extract of the case laws supporting our contention is reproduced below:

Simplex Infrastructure Ltd. Vs. Commr. of Cus. (Import), Mumbai [2018(363)ELT. 521(Tri. Mumbai)]

Truck mounted boom concrete pump - Classification of - Assessee classifying imported goods under Tariff Item 8427 90 00 of Customs Tariff Act, 1975 - Said Item deals with trucks only which are of the kind, for example, fork-lift and other trucks with lifting or handling equipment - Heading 8705 ibid specifically dealt with special purpose vehicles - Imported goods, a special purpose vehicle which had undergone registration under Motor Vehicles Act, 1988 - Classification of goods under Tariff Item 8705 90 00 of Customs Tariff Act, 1975 correct. - To classify goods, technical literature may be of assistance. But the character and nature of the goods submit to appropriate entry in Customs Tariff. [para 5]

Confiscation, redemption fine and penalty - Misdeclaration - Declaration of imported goods under different classification - No suppression or undue advantage by assessee at cost of Revenue - Nothing to give rise to confiscation - No redemption fine imposable since there was no circumstance for confiscation - Classification to attract appropriate rate of duty and other consequence of law - No deliberate breach of law to cause evasion - Dispute only on difference between parties on classification - Penalty to be waived - Sections 111, 112 and 125 of Customs Act, 1962. [paras 6, 7]

11.35 Noticee submits that, a penalty is not imposable on issues involving the interpretation of statutory provisions.

The extract of the case laws supporting our contention is reproduced below:

Commissioner Vs. Oracle India Pvt. Ltd. [2016(342)ELT. A40(S.C.)]

(8) Penalty not imposable on issues involving interpretation of statutory provisions.

11.36 In view of the above, the Hon'ble Commissioner may please appreciate that the penal provision is erroneously invoked against the CB firm, and there is no justification for the proposition of a penalty on the CB firm. Thus, it is prayed that the impugned SCN dated 06.06.2025, as far as it is directed against the CB firm, may please be ordered to be withdrawn.

11.37 In view of the above submissions, we humbly pray to your good self to kindly accord sympathetic and judicious consideration to various submissions put forth as above and to drop the proceedings initiated by the said Show Cause Notice dated 06.06.2025.

PRAYER

11.38 In view of the above, the noticee submits and prays that, in light of the above submissions, we request your Honour to withdraw all the allegations against M/s. H. P. Dagha Shipping & Logistics (Noticee No.3) in the Show Cause Notice No. 04/2025-26/Gr.V dated 06.06.2025; drop the said proceedings initiated by the above Show Cause Notice against the Noticee (No. 3) and the Noticee (No. 3) may be granted any other relief as may be deemed fit by the Adjudicating Authority, as the facts and circumstances of the case require. We crave leave to add, alter, or amend any or all of the above submissions and to make any additional submissions that we may be advised to do either during or after the personal hearing. We may kindly be granted an opportunity for a personal hearing before any decision is taken in the matter.

RECORD OF PERSONAL HEARING

12. Personal Hearings in the matter were granted to the all three Noticee on 02.09.2025 and 08.10.2025, Shri Lawrence Tauro, Advocate/Authorized Representative of M/s. OM Crane Private Limited., appeared before the undersigned on 02.09.2025 through Video Conferencing for the scheduled Virtual Personal Hearing (PH) on behalf of all Noticees i.e. M/s Om Crane Pvt. Ltd., Shri Pradeep Ramesh Obinindi, CEO, M/s H.P. Dagha Shipping & Logistics (CB). During the hearing, Shri Lawrence Tauro reiterated the written submissions dated 03.07.2025 and 08.07.2025, which were received in the Adjudication Section on 22.08.2025 via the official Government e-mail, in response to the Show Cause Notice (SCN) issued to the Noticees.

Further, Shri Lawrence Tauro, requested that all the aforementioned submissions be duly considered and taken on record as their comprehensive submission/reply to the Show Cause Notice. The CHA had requested for 1st Check. Further, the Noticees pray to take a lenient view and kindly, drop the SCN. Accordingly, the record of this hearing is taken on file. He also sought an additional opportunity to be heard in order to provide further clarification and explanation if any department requires.

Shri Lawrence Tauro, Advocate/Authorized Representative of M/s. OM Crane Private Limited and CHA M/s.H.P. Dagha Shipping & Logistics appeared before the undersigned on 08.10.2025. During the hearing, he reiterated his stand as in earlier submission.

DISCUSSION AND FINDINGS

13. I have carefully gone through the records of the case, written submissions made by the importer and CHA and record of Personal Hearings. I proceed to decide the issue i.e. classification of the imported goods on the basis of same.

14. I find that Personal Hearings in the matter were granted to the Noticee on 02.09.2025. Shri Lawrence Tauro, Advocate/Authorized Representative of M/s. OM Crane

Private Limited and CHA M/s.H. P. Dagha Shipping & Logistics appeared for PH on 02.09.2025.

15. I find that the Importer has filed a Bill of Entry No. 2891119 dated 15.10.2022, for clearance of 'ONE UNIT OLD & USED HORYONG 45M SKYLIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787 WITH ACCESSORIES'. The said Bill of Entry was filed against Invoice No. SI-09-002 dated 02.09.2022 of M/s Sungsan Corporation, Korea and Bill of Lading No. SSKYBOM2209010 dated 03.10.2022. The declared assessable value of the goods of the said Bill of Entry was Rs.38,77,056/- and the duty payable thereon was Rs.10,75,302/-..

16. I find that, an intelligence was received by Special Intelligence and Investigation Branch (Import-I), New Custom House, Ballard Estate, Mumbai that some of the Skylifts/Boomlifts have been cleared under Chapter 84 rather than correct classification in Chapter 87 of Customs Tariff Act, 1975. The goods declared as 'ONE UNIT OLD & USED HORYONG 45M SKYLIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787 WITH ACCESSORIES' was imported by M/s OM Crane Private Limited and bought from seller M/s Sungsan Corporation, Korea vide BE No. 2891119 dated 15.10.2022.

17. I find that the 1st Chartered Engineer Shri Rajendra S. Tambi report dated 20.10.2022, wherein description in technical specifications of Old, Used and Second hand Capital Goods were mentioned, the Year of Manufacturing (YOM) as 2007-08, Chassis No. KL3C5AHF18K000787 along with value of the Skylift mounted on vehicle i.e. C&F USD 45,500 (Price of new machinery in the year of manufacture i.e. FOB USD 90,000) and residual life of more than 5 years was mentioned.

18. I find that inspection of the Sky Lift mounted on vehicle chassis imported vide BE No. 2891119 dated 15.10.2022 was conducted on 11.04.2023 by 2nd Chartered Engineer (CE) Shri S.D. Deshpande through Video Call/Conferencing in presence of Shri Pradeep Ramesh Obinindi, the CEO of the importer M/s. Om Crane Pvt Ltd and SIO/SIIB (I), NCH and the Chartered Engineer has given his report dated 09.05.2023 in the matter.

19. I find that, the 2nd CE report dated 09.05.2023 has also confirmed in the said matter that:

a. *The said capital good is Old/Used Truck Mounted Telescopic Boomlift.*

b. *The said Capital good is around 15 years old (Year of Manufacture 2008 approx.)*

c. *The said DAEWOO Truck is Left Hand Drive.*

d. *The said DAEWOO Truck has a speedometer in Kilometers with total reading of 1,73,345 Kms. At the time of inspection it had a Indian RTO Registration No. G] 15 SV 1603.*

e. *The said machinery is used for fitting & maintenance of overhead cables and streetlights.*

f. *We observed that, the slew bearing & outriggers are not integral part of the chassis of the truck. And, we can say that the said Boomlift & chassis of the truck are not working in tandem.*

g. *During the video conference examination, we observed that the said Boomlift and chassis of the truck are not mechanically integrated. The Boomlift is simply mounted / fabricated on the chassis of the truck with the help of welding & bolting. The chassis of the truck is not specifically designed for the said Boomlift.*

h. *Manufacturer of the Truck & Boomlift are different. Truck is DAEWOO make & the Boomlift is HORYONG make.*

i. *The outriggers are attached to the sub-structure/Boomlift and not to the chassis of the truck.*

j. *The Boomlift is Non Self-Propelled.*

k. *The Boomlift draws power in conjunction with engine of the truck.*

l. *There are two cabins/controls. One cabin of the truck houses propelling function connected to the chassis. Second cabin/control for lifting & handling of the Lift. From machine/lift cabin only truck's functions controlled are truck engine on/off function.*

m. *From machine/lift cabin/control none of the following functions are controlled*

- *Propelling of the truck engine,*
- *box control,*
- *Control of the gear changing,*
- *Steering control,*
- *Braking system facility.*

The CE report dated 09.05.2023 has also stated that the value of the goods is CIF 46,500 USD as compared to the value declared by the importer, i.e., CIF 45,500 USD. However, the Year of Manufacturing appears to be 2008, the same as mentioned by the earlier CE inspected in the presence of Docks officers.

20. I find that the matter was investigated by SIIB and on the basis of visual inspection & Chartered Engineer report dated 09.05.2023, it was suspected that Boom Lift/Sky Lift is mounted onto the chassis which was not specifically designed for it as truck engine & its is of Company 'DAEWOO'. However the Sky Lift/Boom Lift is fitted onto the chassis is of different company i.e. 'HORYONG'. Further, Boomlift/Skylilt has supporting beam, which is mounted through nut-bolt on the chassis of the Vehicle. The outriggers are attached to the supporting beam of the Boom Lift/Sky Lift and nowhere directly attached to chassis of the vehicle and that the outriggers are not controlled from vehicle cabin rather they are controlled from the separate levers provided in Boom Lift/Sky Lift. Therefore, if the Boom Lift/Sky Lift is dismounted from the chassis of vehicle then the chassis can be used for some other purpose also. It appeared that as per point 9D of Circular No.20/2022, the chassis and Boom Lift/Skylift are not integrated and therefore, the goods cannot be classified under CTH 84279000 and should be classified under CTH 8705 i.e. Special Purpose Vehicle.

Nomenclature of Customs Heading, Explanatory Notes and other documentary evidences read as under: -

(a) Point 3 of the inclusions of Chapter 87.05 of the explanatory notes of HSN says:

"(3) Lorries (trucks) fitted with ladders or elevator platforms for the maintenance of overhead cables, street lighting etc., lorries (trucks) with an adjustable arm and platform ("dollies")" for cinematographic or television work."

Customs Tariff 8705

HS CODE (1)	ITEM DESCRIPTION (2)	UNIT (3)	BASIC (4)	EFFECTIVE (5)	PRE. (6)	IGST (7)	SWS (8)	TOTAL (9)	POLICY (10)	REMARKS (11)
8705	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, spraying lorries, mobile workshops, mobile radiological units)									
8705 10 00	- Crane lorries	u	10.00	10.00	---	18.00	1.00	30.980	Free	
8705 20 00	- Mobile drilling derricks	u	10.00	10.00	---	18.00	1.00	30.980	Free	
8705 30 00	- Fire fighting vehicels	u	10.00	10.00	---	18.00	1.00	30.980	Free	
8705 40 00	- Concrete-mixer lorries	u	10.00	10.00	---	18.00	1.00	30.980	Free	
8705 90 00	- Other	u	10.00	10.00	---	18.00	1.00	30.980	Free	
8705	*---- Fuel cell motor vehicles	u	10.00	10.00	---	12.00	1.00	24.320		*GST Compensation Cess - Nil*

(b) Point B(1) of HSN Explanatory Notes of Chapter 84.27:

"Trucks with mechanically elevating platforms for the maintenance of electric cables, public lighting systems, etc. (See the introduction to Explanatory Note to heading 84.26 regarding elevating platforms of this type mounted on Lorries.)".

Customs Tariff 8427

8427	Fork-lift trucks; Other works trucks fitted with lifting or handling equipment								
8427 10 00	- Self-propelled trucks powered by an electric motor	u	7.50	7.50	---	18.00	0.75	27.735	Free
8427 20 00	- Other self-propelled trucks	u	7.50	7.50	---	18.00	0.75	27.735	Free
8427 90 00	- Other trucks	u	7.50	7.50	---	18.00	0.75	27.735	Free

(c) Point 9(D) of CRIC Circular No. 20/2022 dated 24.09.2022 says:

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

- *When chassis and working machine are specially designed for each other and form an integral mechanical unit and the chassis connot be used for any other purpose - the goods are excluded from 8705 and are thus classifiable under 8426.*

- Outriggers are crucial to the functioning of the mobile machine as they provide the necessary stability in order for the machine to lifts heavy loads. If the outriggers are connected to and are a part of the sub structure i.e. the chassis and are controlled from the engine fitted with the chassis, it implies that the functioning of the outriggers which are a part of the chassis are crucial to the functioning of the crane.

- In such a scenario, the superstructure i.e. the crane and the sub structure the chassis, can be said to be working in tandem and can thus be considered to be mechanically and electrically integrated and the goods are to be classifiable under heading 8428.

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

(d) ADVANCE RULING NO. HAR/HAAR/R/2017/18/5, Dated 10th April, 2018"

"As regards the dependency on HSN explanatory notes, the Hon'ble Supreme Court of India, in the case of LML Ltd. Vs. Commissioner of Customs 2010(258) ELT 321(SC) has observed that HSN Explanatory Notes are a dependable guide while interpreting the Customs Tariff. Hence, the product of the applicant cannot be classified under chapter heading 8428 as the applicant is not using works truck for producing truck mounted crane (TMC). As cranes are being mounted by the applicant on automobile chassis, the resultant product merits classification under chapter heading 8705, in view of HSN explanatory notes to Harmonized System of Nomenclature (HSN).

The product manufactured /supplied by the applicant, which is resultant of mounting/fixing of crane on readymade trucks/lorries bought by them from truck/lorry manufactures such as Ashok Leyland, TATA, etc, and known as truck mounted cranes (TMC), is classifiable under heading 8705."

- Order-In-Appeal No. MUM-CUS-KV-IMP-115/2022-23 NCH passed by the Commissioner of Appeals (Customs), NCH in the matter of Indo-Thai Airport Services Pvt. Ltd.

"After going through the facts of the case the Appellate Authority observed that as far as item no.1 is concerned the goods have been correctly classified under 84144090. The dispute is only regarding classification of item no. 2 of the subject Bill of Entry. The Custom Tariff item 84144090 deals with the Air compressors mounted on a wheeled chassis for towing. The two items are distinct in characteristics and not composite machine item no. 2 cannot be classified under same heading as of item no. 1. The two items are separate having distinct function as the power to operate the machine (ASU) come from itself and not from the item no. 2 i.e. Minibus Mercedes.

The Original Authority observed that on scrutiny of the catalogue provided by the appellant, it is seen that Basic Air Start Unit MSU 200 Skid is available as a standalone version, mounted on a trailer or mounted on a small motorized chassis. The units can be

*operated individually without vehicle support. It is also observed by the OA that in the picture the MSU 200 V is mounted on a Mercedes Benz 311 with *mark, which states that installation on other comparable vehicle chassis are possible according to customer's requirements. Thus, it is evident that both goods are separate and not a composite item and item no. 2 is not an essential part of item no.1. Hence, item no. 2 cannot be classifiable under CTH 84144090.*

Appellant submission's that at the subject vehicle do not full under CMVR it does not attract import policy conditions applicable to Chapter 87. In this regard, it is observed that as per the importability criteria, the old and used vehicles should not be more than 3 years from the date of manufacturing. In this case, as per CE Certificate, the vehicle item no.2 of the subject bills of entry is a left hand drive vehicle and the vehicle is more than 3 years old. Thus the item no.2 Mercedes Minibus does not qualify for import under the same and thus becomes prohibited for import. In view of the above, the impugned goods are liable for confiscation under section 111(d) and section 111(m) the Customs Act, 1962.

*Considering the facts that the catalogue submitted by the appellant themselves clearly mentions that MNU 200V is mounted on a Mercedes Benz 311 with Axtrik *mark which states that installation on other comparable vehicle chassis are possible according to customer requirements"*

(e) As per Rule 3 of the Rules of Interpretation:

"*3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those good even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3 (a) or 3 (b) they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

(f) Section 2(33) of Customs Act, 1962 stipulates:

"Prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include

any such good in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with".

In respect of CTH Classification

21. I find that from the description i.e. 'ONE UNIT OLD & USED HORYONG 45M SKYLIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787 WITH ACCESSORIES', does not mention the vehicle. However, its Chassis number is mentioned. Basically, a motor vehicle having chassis No. KL3C5AHF18K000787 has been imported mounted with a "Boom Lift/Sky Lift mechanism as it is clear from the pictures as mentioned above, invoice and self-declaration made by the importer that the make of the 'Boom Lift/Skylift' and the Motor Vehicle are different. It is not manufactured by one and the same manufacturer through a complete follow through process but the DAEWOO Motor Vehicle has been procured and HORYONG make "Boom Lift/Skylift' has been simply mounted therein. The Chartered Engineer Certificate dated 09.05.2023 also states that the 'Boom Lift/ Sky Lift' is simply mounted on the motor vehicle chassis and that they do not form one integrated unit. The report of the Chartered Engineer dated 09.05.2023 agrees with the recommendations made by the Central Board of Indirect Taxes and Customs in its Circular No. 20/2022 dated 22.02.2022 wherein it has stated that goods of Chapter 84 are those where the working unit is not simply mounted on motor vehicle chassis but is wholly integrated.

I find that the chassis and truck engine is of Company DAEWOO. However, the Boom Lift/Sky Lift is fitted onto the chassis and is of HORYONG make and it has supporting beam. This supporting beam of Boom Lift/Sky Lift is mounted through nut-bolt on the chassis of the vehicle. Therefore, it can be said that if the Boom Lift/Sky Lift is dismounted from the chassis of the vehicle, then the chassis can be used for some other purpose also and therefore chassis is not specifically designed for the Boom Lift/ Sky Lift.

22. I find that the outriggers are attached to the supporting beam of the Boom Lift/Sky Lift only and outriggers are nowhere directly attached to chassis of the vehicle. Additionally, the outriggers cannot be controlled from vehicle cabin rather these are controlled from the separate levers provided in the Boom Lift/Sky Lift. Therefore, it can be concluded that the chassis and Boomlift/Skylift do not appear to be integrated mechanically. As there is absence of mechanical integration which is a necessary condition, the electrical integration is not relevant in this subject matter. Whether the mobile machine comprises of a single engine used for propelling as well as lifting, or if it consists of two separate engines i.e. one each for propelling the vehicle and for the lifting functions, does not have a bearing on the classification between chapter 84 and 87.

The Chartered Engineer has also confirmed in the said matter that:-

(a) *The said Sky Lift and chassis of the truck are not mechanically integrated. The Sky Lift is simply mounted / fabricated on the chassis of the truck with the help of welding & bolting. The chassis of the truck is not specifically designed for the said Sky Lift.*

(b) The slew bearing & outriggers are not integral part of the chassis of the truck. We can say that the said Sky Lift & chassis of the truck are not working in tandem.

(c) Manufacturer of the Truck & Sky Lift are different. Truck is DAEWOO make & the Sky Lift is HORYOUNG make.

(d) From machine/lift cabin/control none of the following functions are controlled:

Propelling of the truck engine,
Gear box control,
Control of the gear changing,
Steering control,
Braking system facility.

(e) the said Skylift/Boomlift with vehicle was left-hand drive and manufactured in 2008 approx.

The Chartered Engineer Certificate is clear that the beam of the 'Boom Lift/Sky Lift' and the chassis are not wholly integrated but simply mounted by bolt and nut fittings and welded. Also, one important aspect of the CBIC Circular is that the outriggers are normally fitted onto the chassis of the vehicle in case of goods of Chapter 84 whereas in the present instance, it is clear from the pictures of the goods itself that the Outriggers are connected to the "Boom Lift/ Sky Lift' and not to the motor vehicle chassis. Therefore, another aspect to hold that the goods are rightly classifiable under heading 8705 is that the outriggers are not connected to the Chassis of the Motor vehicle.

23. I find that the Boom Lift/Sky Lift, in this case is not presented separately as it is mounted on a vehicle. In addition, the said Boom Lift/Sky Lift is neither based on pulley nor winch. Therefore, it does not fall under the inclusions of Chapter 8428. However, it is classifiable under CTH 87059000 rather than the declared CTH 84279000 as per point 3 of the inclusions of Chapter 8705 of the explanatory notes of HSN.

From the analysis of the NIDB and ECDB data (as per Para 4.2.2 above), I find that most of the imports having identical description i.e. SKY LIFT - SPECIAL PURPOSE VEHICLE CHASSIS NO …… are from supplier M/s Bronto Skylift in India and all these have been classified under heading 8705.

24. I rely upon Advance Ruling No. HAR/HAAR/R/2017/18/5. Dated 10th April, 2018 issued by Haryana Authority and the ruling states:

"As regards the dependency on HSN explanatory notes, the Hon'ble Supreme Court of India, in the case of LML Ltd. Vs. Commissioner of Customs 2010(258) ELT 321(SC) has observed that HSN Explanatory Notes are a dependable guide while interpreting the Customs Tariff. Hence, the product of the applicant cannot be classified under chapter heading 8426 as the applicant is not using works truck for producing truck mounted crane (TMC). As cranes are being mounted by the applicant on automobile chassis, the resultant product merits classification under chapter heading 8705, in view of HSN explanatory notes to Harmonized System of Nomenclaturer (HSN).

The product manufactured /supplied by the applicant, which is resultant of mounting/fixing of crane on readymade trucks/lorries bought by them from truck/lorry manufactures such as Ashok Leyland, TATA, etc. and known is truck mounted cranes (TMC), is classifiable under heading 8705."

Although the goods are not crane rather it is Skylift in this matter, but the machine is mounted on readymade truck/lorries and therefore classifiable under CTH 8705.

25. I find that in the Order-in-Appeal No. MUM-CUS-KV-IMP-115/2022-23 NCH passed by the Commissioner of Appeals (Customs), NCH in the matter of Indo-Thai Airport Services Pvt. Ltd., it was held that the Aircraft Air Start Unit (ASU) mounted on vehicle is classified under CTH 8705. In this regard, the appellate authority states:

*"The Original Authority observed that on scrutiny of the catalogue provided by the appellant, it is seen that Basic Air Start Unit MSU 200 Skid is available as a standalone version, mounted on a trailer or mounted on a small motorized chassis. The units can be operated individually without vehicle support. It is also observed by the OA that in the picture the MSU 200 Vis mounted on a Mercedes Benz 311 with * mark, which states that installation on other comparable vehicle chassis are possible according to customer's requirements. Thus, it is evident that both goods are separate and not a composite item and item no. 2 is not an essential part of item no.l. Hence, item no. 2 cannot be classifiable under CTH 84144090".*

26. I find that in case of similar kind of goods. US Rulings also says to classify these "special purpose motor vehicles" under CTH 8705.90.0000 of Harmonized Tariff Schedule of the United States (HTS). Some US rulings are as below:-

(i) *CLA-2-87 OT RR/NC/NE101 - The item concerned is a Hydraulic Lift Boom Truck,*
(ii) *CLA-2-87:S:N:N1:101 803117 - The Hems are identified as Mine Vehicles and Surveyor Vehicles,*
(iii) *CLA-2-87:OT: RR: NC: N1: 101 - The item concerned is an off-road Aerial Lift Vehicle (SPV104), sometimes referred to as a "cherry picker",*
(iv) *CLA-2-87: S:N:NI:101-868854 - The imported product is a special purpose Boom Truck,*
(v) *CLA-2 CO:R:C:M 951442 AJS - The Shire is a one ton 1920s replica motor vehicle built on a Ford Transit chassis.*

27. I find that as Boom Lift/ Sky Lift mounted on a vehicle chassis is a special purpose vehicle and hence, should be classified under Chapter 8705 only as per Rule 3(a) of General Interpretation Rules. Further, as per Rule 3(c) of the General Interpretation Rules, the heading that occurs last in numerical order, i.e. 8705 is applicable in the said case.

28. I rely upon the order passed by the Hon'ble Apex Court in identical case of Commissioner vs Alpha Services-2019 (24) G.S.T.L. J116 (S.C.) wherein after condoning the delay. Hon'ble Apex Court had dismissed the Civil Appeal No. 12237 of 2018 (Diary

No. 36477 of 2018) filed by Commissioner of Central Excise and Service Tax. Alwar against the CESTAT Final Order No. A/57996/2017-EX(DB), dated 21-11-2017 as reported in 2018 (10) G.S.T.L. 106 (Tri-Del) (Alpha Services Vs Commissioner).

The Appellate Tribunal in its impugned order dated 21.11.2017 observed that:

"In the appellant's factory, they are fabricating the Mobile Telescopic Towers out of steel structures and mounting the same on Chassis/Trailers. In some cases such Trailers/Chassis are purchased by the appellant and in other cases they are supplied free of charge by the customers. But in both cases, the goods which are cleared after manufacture are in the nature of Chassis/Trailers fitted with Mobile Towers. Such goods cannot be classified as fabricated steel structures falling under Heading 7308. The Adjudicating Authority has ordered classification of the goods under 7308 for the reason that the assessee themselves have classified the same under 7308 and the show cause notice did not propose any reclassification.

We are of the view that the Adjudicating Authority fell into serious error in ordering classification under 7308. It is obvious that the goods which are being cleared are motor vehicles on which Telescopic Towers have been mounted. These goods are appropriately classified under ***Heading 8705 as special purpose motor vehicles****."*

Thus, the Appellate Tribunal had held that Mobile Telescopic Towers, fabricated by mounting steel structures on chassis/trailers either purchased by assessee or supplied free of charge by customer are classifiable under Heading 8705 of Central Excise Tariff Act, 1985 as 'special purpose motor vehicle' and not under Heading 7308 ibid as 'fabricated steel structures".

29. I also rely upon the order passed by the Hon'ble CESTAT, West Zonal Bench. Mumbai in case of SIMPLEX INFRASTRUCTURE LTD. Versus COMMR. OF CUS. (IMPORT), MUMBAI 2018 (363) E.L.T. 521 (Tri. Mumbai) wherein it is held that:

"To classify goods, technical literature may be of assistance. But the character and nature of the goods submit to appropriate entry in Customs Tariff. When the tariff heading 8427 is read, it deals with trucks only which are of the kind, for example, fork-lift and other trucks with lifting or handling equipment. The goods dealt hy entry under CTH 8705 specifically deals with special purpose vehicles and attracts the imported goods to its fold. The purpose of the imported goods is to boom concrete mixer to carve useful purpose of construction activity. Mounting of the boom concrete mixer as has been done on the chassis visible from literature produced. It is appreciable that the vehicle came to India is a special purpose vehicle and the appellant also agrees that such special purpose vehicle has undergone registration under Motor Vehicles Act. Therefore, Revenue is correct to classify the goods under CTH 87059000".

30. In view of all the discussions above, finally, I am in view of that the classification of the imported goods is to be done on the basis of the General Rules of Interpretation. I find that as per the HSN Explanatory notes to heading 8705, these have to be considered Special Purpose Motor Vehicles and that heading 8705 excludes self-propelled wheeled

machines in which the chassis and the working machine are specially designed for each other and form an integral mechanical unit, whereas the Chartered Engineer Certificate dated 09.05.2023 clearly states that these are not forming an integral mechanical unit. Once the exclusion clause does not come into force, the goods are rightly classifiable under heading 8705 only. Rule 3(a) of the GIR comes into play as the special purpose motor vehicles are also classified under the said heading only.

31. I find that, Shri Pradeep Ramesh Obinindi, CEO of M/s. Om Crane Pvt Ltd in his statement dated 04.07.2023 recorded under Section 108 of the Customs Act, 1962 has also accepted that the machine which imported vide BE No.2891119 dated 15.10.2022 was Skylift/Boomlift with vehicle wherein no vehicle controls could be handled from the upper cab/cabin situated with the machine i.e. Skylift, and outriggers were connected to machine i.e. Skylift only, and not connected to the chassis of the vehicle. He also accepted that truck along with chassis is of Daewoo and Skylift/Boomlift was of Horyong make, and the said machine i.e. Skylift with vehicle fits into the definition at Sr.No.3 of inclusions for chapter 87.05 of HSN Explanatory Notes.

32 Accordingly, I hold that the impugned goods are correctly classifiable under CTH 87059000 as “Special Purpose Motor Vehicles – Other”.

In respect of Liability for Confiscation

33. As the goods are classified under heading 8705, the restrictions imposed vide ITC (HS) Policy will apply. As per policy conditions for second hand or used vehicle of Chapter 87, the second hand or used vehicle shall not be older than three years from the date of manufacture, have right hand steering and shall conform to the provisions of the Motor Vehicle Act, 1988. As per above provisions of the Motor Vehicles Act, 1988 and the Central Motor Vehicle Rules, 1989, the Boom Lift/Sky Lift is liable to be registered as a Motor Vehicle and necessarily need road worthiness certificate (Form 22) [Rule 47(g)] along with the customs clearance certificate [Rule 47(h)].

34. In view of the above, this vehicle carrying Boom Lift/ Sky Lift is meant for long distance travel on road and hence should be roadworthy as per the Motor Vehicle Act, 1988 and the rules made thereunder. Also, as per the CE Report vehicle is Left Hand Drive, older than 3 years from YOM. Hence, not fulfilling and violating the policy condition of chapter 87. So, the said imported goods become prohibited and import of the same cannot be allowed. Once the goods are in violation of the policy conditions, the same are liable for confiscation under Section 111(d) of Customs Act, 1962.

35. Further, in view of the foregoing discussion, the goods, i.e. ‘ONE UNIT OLD & USED HORYONG 45M SKYLIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787 WITH ACCESSORIES’, imported vide BE 2891119 dated

15.10.2011, have been held to be misclassified under CTH 84279000 instead of correct classification under CTH 87059000. Further, I find that there is misdeclaration as the declared description does not clearly state that the Boomlift is mounted on vehicle. Therefore, the impugned goods do not correspond in respect of description and classification with the Bill of Entry filed for their import, thereby attracting Section 111(m) of the Customs Act, 1962. Further, it is pertinent to mention that OOC was already given at the time of clearance for home consumption. Therefore, since the goods are not in custody of the department as 'imported goods', absolute confiscation cannot be implicated in the given circumstances. However, I order for confiscation of goods under section 111(d) with an option to pay redemption fine in lieu of confiscation under section 125 of the Customs Act, 1962.

36. Accordingly, I hold that the impugned goods are liable for confiscation under the provisions of Section 111(d) & 111(m) of the Customs Act, 1962.

In respect of Penalty against the Noticees

37 The Importer's in his written submission contends that the Skylift/Boomlift with chassis is a single integrated unit and hence classifiable under Chapter 84. There are two cabins/controls. One cabin of the truck houses a propelling function connected to the chassis. Second cabin/control for lifting & handling of the Lift. From the machine/lift cabin, only the truck's functions controlled are the truck engine on/off function. It is evident that, from the machine/lift cabin, the truck engine can be controlled.

38 I find that the claim of integration is contradicted by the technical findings of the second Chartered Engineer's report dated 09.05.2023. The report clearly establishes that the Boomlift/Skylift is merely mounted on a complete automobile chassis through welding and bolting, and the two are not specifically designed to function as a single integrated unit. The outriggers are attached solely to the Boomlift/Skylift sub-structure and not to the chassis. Furthermore, from the machine/lift cabin, the only truck function that can be controlled is the engine on/off function. None of the essential vehicle control elements—such as the propelling engine, gearbox, steering, or braking—are located in the Boomlift/Skylift cabin. Accordingly, the claim that the Boomlift/Skylift is fully integrated with the vehicle cannot be accepted.

39 The importer contends that the import of left-hand drive cranes is permitted, therefore import of left-hand drive Skylift/Boomlift should also be permitted. I find that the Policy conditions of Chapter 87 distinguish between cranes (classified under Chapter 84 when self-propelled and integrated) and motor vehicles (under Chapter 87). The present goods are not cranes under Chapter 84 but motor vehicles under Chapter 87, and hence must comply with the specific restrictions applicable to motor vehicles.

40 The importer contends that they did not intend to use the vehicle and Boomlift/Skylift separately, and hence they should be treated as an inseparable unit. In this regard, I find that classification depends on the inherent nature of the goods at the time of import and not on the subjective intention of the importer. The fact remains that the chassis and Boomlift/Skylift are manufactured by different entities, are joined only by bolting/welding, and the chassis can be used for other purposes if the Boomlift/Skylift is removed. Therefore, the importer's declared intention of not separating the units is irrelevant to tariff classification.

41 The noticees contends that the declared description is proper and correct and the subject Bills of entry were assessed finally by the concerned Appraiser & Dy./Asstt. Commissioner of Customs in the Appraising Group on a 1st check basis. The classification and notification claimed, checking, or disallowing, and applicability of duty, DGFT Policy, Policy conditions of Chapter 87, etc., is the departmental function, at the time of Group assessment or at the final stage in the docks, before out-of-charge.

42 I find that the contention of the noticee that the declared description is proper and that the assessment was completed on a first-check basis does not absolve them of responsibility, and does not automatically validate incorrect classification, misdeclaration, or non-compliance with applicable notifications, DGFT policy, or Chapter 87 conditions. Any error or misdescription in the Bills of Entry, whether detected at the Group stage, clearance or later, makes the goods liable for appropriate action under the Customs Act, including reassessment, confiscation, or penalty, as per law.

43. I find that of M/s. Om Crane Pvt. Ltd., being the importer of the goods, bore the primary responsibility for ensuring the accuracy of all particulars, particularly the description and classification of the goods, in the subject Bill of Entry. Their failure to do so resulted in mis-declaration and clearance of prohibited goods. I find that the importer had misdeclared the goods and violated the policy conditions of Chapter 87, which rendered the goods liable for confiscation under the provisions of Section 111(d) & 111(m) of the Customs Act, 1962.

44 Accordingly, I hold that the importer, M/s. Om Crane Pvt. Ltd, is liable to penalty under Section 112(a) of the Customs Act, 1962.

45. I find that the Show Cause Notice also proposes penalty on the importer on the grounds that declaration of incomplete description and misclassification is to be construed as usage of false declaration in terms of Section 114AA of the Customs Act, 1962. However, I find that no evidence has been produced on record to establish that the importer has knowingly and intentionally made incorrect particulars in the subject Bill of Entry. Accordingly, I hold that the importer, M/s. Om Crane Pvt. Ltd, is not liable to penalty under Section 114AA of the Customs Act, 1962.

46. I find that, Shri Pradeep Ramesh Obinindi, CEO of M/s. Om Crane Pvt Ltd in his statement dated 04.07.2023 recorded under Section 108 of the Customs Act, 1962 accepted that the machine imported vide BE No.2891119 dated 15.10.2022 was Skylift/Boomlift with vehicle and fits into the definition at Sr.No.3 of inclusions for chapter 87.05 of HSN Explanatory Notes and does not qualify for classification under Chapter 84. He has also accepted that, the said vehicle was left hand drive and 15 years old and therefore did not comply with Policy Conditions of Chapter 87. Shri Pradeep Ramesh Obinindi has also accepted that as CEO of the importer, he was responsible for work related to import.

47. In view of the above, I find that the failure on part of Shri Pradeep Ramesh Obinindi to correctly classify the goods resulted in misclassification and violation of Policy conditions of Chapter 87, thereby rendering the goods liable to confiscation under Section 111 of the Customs Act, 1962.

48. I find that, Shri Pradeep Ramesh Obinindi, CEO of M/s. Om Crane Pvt Ltd in his statement dated 04.07.2023 recorded under Section 108 of the Customs Act, 1962 accepted that the machine imported vide BE No.2891119 dated 15.10.2022 was Skylift/Boomlift with vehicle and fits into the definition at Sr.No.3 of inclusions for chapter 87.05 of HSN Explanatory Notes and does not qualify for classification under Chapter 84. He has also accepted that, the said vehicle was left hand drive and 15 years old and therefore did not comply with Policy Conditions of Chapter 87. Shri Pradeep Ramesh Obinindi has also accepted that as CEO of the importer, he was responsible for work related to import.

49. In view of the above, I find that the failure on part of Shri Pradeep Ramesh Obinindi to correctly classify the goods resulted in misclassification and violation of Policy conditions of Chapter 87, thereby rendering the goods liable to confiscation under Section 111.

50. Accordingly, I hold that the importer, Shri Pradeep Ramesh Obinindi, is liable to penalty under Section 112(a) of the Customs Act, 1962.

51. I find that the Show Cause Notice also proposes penalty against Shri Pradeep Ramesh Obinindi, CEO of M/s. Om Crane Pvt Ltd, on the grounds that suppression of complete description and misclassification is to be construed as usage of false declaration in terms of Section 114AA of the Customs Act, 1962. However, I find that no evidence has been produced on record to establish that the Shri Pradeep Ramesh Obinindi has knowingly and intentionally made incorrect particulars in the subject Bill of Entry. Accordingly, I hold that the Shri Pradeep Ramesh Obinindi, CEO of M/s. Om Crane Pvt Ltd, is not liable to penalty under Section 114AA of the Customs Act, 1962.

In respect of Customs Broker

52. I find that, Shri Hemant Dagha, Proprietor of M/s. H.P.Dagha Shipping and Logistics (CHA 11/1827) in his statement dated 04.07.2023 recorded under Section 108 of the Customs Act, 1962 accepted that, (i) importer had provided documents like Invoice, Bill of Lading, Packing List etc. to clear the consignment, (ii) the CHA always tries to suggest the importer a classification proper only, (iii) he was not aware if any importer was filing this item Skylift/Boomlift under CTH 8705, (iv) he was aware of the policy condition of chapter 87 like right hand drive, speedometer in KM, not older than 3 years.

53. The Noticee/CHA contends that the Bills of Entry were filed strictly on the basis of import documents provided by the importer i.e. Invoice, Packing List, Bill of Lading etc. As a Customs Broker, the Noticee claims to have had a limited role confined to preparing and filing Customs documents, arranging examination of cargo, and facilitating clearance for home consumption. It is further argued that the Customs Broker is not a technical expert capable of certifying the engineering aspects of the imported machinery, and therefore, reliance had to be placed on the importer's declaration, the Chartered Engineer's report, and the assessment by the Customs officers. On this basis, the Noticee asserts that he cannot be held responsible for the alleged misclassification or misdeclaration, which is stated to have originated from the importer's documentation.

54. I find that it is noted in the SCN that the Customs Broker was in possession of the Bill of Lading and Commercial Invoice describing the goods as '1 UNIT HORYONG 45M SKYLIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787'. The SCN further notes that no new manufactured product exists in the market with this description, and the goods are at best a custom-designed assembly of two different machines tailored to individual customer specifications.

55. The noticee has submitted that there appears to be no ground to appreciate that the noticee has made any deliberate breach of law to cause evasion. It is only on the difference between the parties on classification, that litigation arose between them. Therefore, proposition of penalty in such circumstances is unjustified and requires to be set-aside. Further, the noticee has placed reliance on several judicial pronouncements to contend that Customs Broker should not be implicated in routine matters involving interpretation of statute.

56. I find that the Customs Broker is not the sole authority to guide the importer to ensure that the goods are accurately declared and correctly classified in the import documentation. Further, the customs broker cannot be deemed to be an expert in subject matter of classification/valuation. Accordingly, the Customs Broker, not being aware of the actual nature of the goods, could not reasonably be expected to deviate from the classification declared by the importer, particularly when such declaration was supported

by an expert opinion in the form of the first Chartered Engineer's report. I find that there is insufficient evidence on record to establish that any failure on the part of the Customs Broker rendered the impugned goods liable to confiscation.

57. Therefore, I hold that the Customs Broker M/s H.P. DAGHA SHIPPING & LOGISTICS (AFGPD0944RCH001) is not liable for penalty under Section 112(a) of the Customs Act, 1962.

58. Thus in view of the above, I hold that the impugned goods were misdeclared and mis-classified under Chapter 84, and violating the policy condition of chapter 87, thereby rendering them liable for confiscation under Section 111(d) & Section 111(m) of the Customs Act 1962, and the importer along with the CEO of the importing firm, for their acts of omission and commission, accordingly rendered themselves liable for penalty under Section 112(a) of the Customs Act, 1962 respectively, as discussed supra.

ORDER

59. In view of the above, I pass the following order.

(i) I order to classify the imported goods i.e. 'ONE UNIT OLD & USED HORYONG 45M SKYLIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787 WITH ACCESSORIES' covered by Bill of Entry No.2891119 dated 15.10.2022 under CTH 87059000 of Custom Tariff Act, 1975.

(ii) I order for confiscation of the goods i.e. ONE UNIT OLD & USED HORYONG 45M SKYLIFTER; MODEL: SKY450; SERIAL NO. KL3C5AHF18K000787 WITH ACCESSORIES' with declared assessable value of Rs.38,77,056/- (Rupees Thirty Eight Lakh Seventy Seven Thousand Fifty Six only) under Section 111(d) & 111(m) of the Customs Act 1962. However, I give an option to the importer to redeem the same for re-export purpose only within 75 days of issue of this order on payment of Redemption Fine of **Rs.3,87,000/- (Rupees Three Lakhs Eighty Seven Thousand Only)** under section 125 of the Customs Act, 1962. If the goods are not redeemed for re-export, they are to be destroyed at the cost of importer as per Disposal Manual, 2019.

(iii) I also impose a penalty of **Rs.38,000/- (Rupees Thirty Eight Thousand Only)** on the importer M/s. Om Crane Pvt. Ltd., under Section 112(a) of the Customs Act, 1962.

(iv) I also impose a penalty of **Rs.38,000/- (Rupees Thirty Eight Thousand Only)** on the Shri Pradeep Ramesh Obinindi, CEO of M/s. Om Crane Pvt Ltd under Section 112(a) of the Customs Act, 1962.

This order is issued without prejudice to any other action that may be taken against the noticee(s) or against any other person(s) mentioned in the notice, under the provisions of the Customs Act, 1962 and/or any other law for the time being in force, in India.

Deepika 16/10/25.

(Deepika Kartik Tangadkar)
Joint Commissioner of Customs,
Adjudication Cell, Import-I,
New Custom House

To

1. M/s OM Crane Private Limited (IEC - AADCO1479R),
   501 & 502, Parth Solitaire, Plot No. 2,
   Sector-9E, Kalamboli, Navi Mumbai-410218

2. Shri Pradeep Ramesh Obinindi,
   101 Suryakoti CHS, Plot No. 16, Sector-19,
   Kharghar, Raigad, Maharashtra-410210

3. M/s H.P. Dagha Shipping & Logistics (AFGPD0944RCH001),
   305, Madhuban Building, Cochin Street,
   Ballard Estate, Mumbai-400001

Copy to:

1. The Commissioner of Customs, Import-I, New Custom House, Mumbai.
2. The Joint/Addl. Commissioner of Customs, SIIB(I), Import-I, New Custom House, Mumbai.
3. The Deputy Commissioner of Customs, Review Cell, Import-I, New Custom House, Mumbai.
4. The Asstt./Dy. Commissioner of Customs, Gr.V, NCH, Mumbai
5. The Asstt./Dy. Commissioner of Customs, Disposal Section, NCH, Mumbai
6. The Asstt./Dy. Commissioner of Customs, CBS Section, NCH, Mumbai
7. The Supdt. Of Customs (CHS), NCH, Mumbai-I for display on notice board.
8. CRU Section (Import-I), NCH, Mumbai
9. EDI Section for upload in Zone-I website
10. Office Copy.