



आयुक्त सीमाशुल्क) आयात-I (का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT - I)
नवीन सीमाशुल्क भवन, वेलाड ईस्टेट, मुंबई - ४०० ००१
New Customs House, Ballard Estate, Mumbai- 400 001
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File No: CUS/APR/MISC/7464/2025-GR-5(B)

Date of Order: 26.05.2026

DIN: 2026057700000000AD5

Date of Issue: 27.05.2026

Order No: 04/JC/AS/ADJ/2026-27

Order Passed by: Shri Arshdeep Singh,
Joint Commissioner of Customs, Import-I,
New Custom House, Mumbai Customs Zone-I

Name of Party/Noticee: M/s. Lilly Maritime Private Limited

मूल आदेश

ORDER-IN-ORIGINAL

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

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

२. इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२८ (१) के तहत आदेश की संसूचना की तारीख से साठ दिन के भीतर ऐसे मामले जहां शुल्क या शुल्क और जुर्माना विवादित हैं या जुर्माना जहां सिर्फ जुर्माना ही विवादित है, की ७.५ % राशि अदा करने पर सीमाशुल्क (आयुक्त) अपील का कार्यालय, नवीन सीमाशुल्क भवन, बेलाड ईस्टेट, मुंबई - ४०० ००१ के समक्ष की जा सकती है।

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

३. अपील सीमाशुल्क अपील नियम १९८२ में प्रदर्शित फॉर्म सी.ए.-१ में दो प्रति में की जानी चाहिए। अपील रुपये ५.०० के न्यायालय फीस स्टॉप तथा इस आदेश या आदेश की प्रति के साथ संलग्न होनी चाहिए। यदि आदेश की प्रति संलग्न की जाती है तो इसमें भी न्यायालय फीस अधिनियम १९७० की अनुसूची १ में प्रदर्शित रूपये ५.०० की न्यायालय फीस स्टॉप भी होना चाहिए।

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

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

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

BRIEF FACTS OF THE CASE

M/s Lilly Maritime Private Limited (IEC-0399020772) imported vessel named "MV Varshne" (IMO no. 9319507) vide Bill of Entry No. 4976182 dated 08.08.2021 with declared description as "1 Unit Old & Used Self Propelled Supply Vessel VARSHNE IMO NO 9319507 WITH ALL STD EQUIP & ACC" and classification under CTH 89019000 claiming NIL rate of BCD in terms of Notification No. 50/2017-Cus. dated 30.06.2017 (Sr. No. 551). However, intelligence received by Special Intelligence and Investigation Branch (Import-I) indicated that the said importer had mis-classified the vessel under CTH 89019000 to claim NIL rate of BCD in terms of Notification No. 50/2017-Cus. dated 30.06.2017 (Sr. No. 551).

2. Intelligence:

2.1 Regional Unit, DRI Gandhidham, vide letter dated 22.11.2023 had informed that a case against importer M/s Lilly Maritime Pvt. Ltd., Mumbai was booked wherein they had imported a vessel namely 'MV Sudarshan' (IMO no. 9030400) as "Old and used self-propelled offshore support vessel 'MV Sudarshan' with classification of said vessel under the CTH No. 89019000 of the Customs Tariff. However, said vessel was appropriately classifiable under CTH No. 89059090 and not under CTH No. 89019000.

Further vide above mentioned letter it was informed that M/s Lilly Maritime Pvt. Ltd., Mumbai have imported another vessel 'MV Varshne' (IMO No. 9319507) vide Bill of Entry No. 4976182 dated 08.08.2021, which has also been similarly mis-classified by them under CTH No. 89019000 instead of CTH No. 89059090 which attracts 10% BCD (effective rate 5% as per Notification No. 50/2017-Customs dated 30.06.2017). Hence, it was requested that investigation in respect of the import of the vessel 'MV Varshne' by M/s Lilly Maritime Pvt. Ltd., Mumbai may be carried out.

2.2 Acting upon the intelligence, a search under panchnama dated 05.12.2023 was carried at vessel MV Varshne in the presence of Captain of the vessel Shri K. K. Thankarajan. During panchnama the following observations as explained by captain of the vessel are listed here: -

1. The vessel has four-point mooring system: This system is basically used for four-point mooring to support fixed structures at open sea. The four-point mooring system is having four operational winches and one spare winch.
2. The vessel is equipped with Class FIFI-I firefighting system: This system is basically used as a fire fighter if there is a need of firefighting on any structure in sea such as vessel, platforms, rigs, other installations etc. The capacity of system is 2x1200 m³ per hour.
3. The vessel is equipped with a deck crane of 15-ton capacity.
4. The vessel also has AFT controls for main engine. The AFT control is used for manoeuvring of the vessel from back side.
5. The vessel is having bulk cement tanks and facility to discharge bulk cement using compressor pumps to rigs or other installations.
6. This vessel is having Hydraulic Oil Circulation tank for Winches.
7. This vessel is having Hydraulic Power Pack for winches and Capstans.
8. This vessel is having Two mud pumps and four mud tanks, which are used for supplying mud to rigs and other installations.

9. The vessel is having stern roller which is generally used for towing and anchor handling purpose.

Further, copies of certificate of class (containing four pages), Certificate of Indian registry (one page), Special Purpose Ship Safety Certificate (containing five pages) were submitted by Captain Shri K. K. Thankarajan.

Vessel was further examined under panchnama dated 27.3.2025, finding of the panchnama was same as earlier. However, during examination it was found that vessel has an incomplete four-point mooring system as it has only three main winch out of four, one main winch was not present on vessel, Vessel was also not equipped with Dynamic Positioning system.

From the facts and circumstances of the cases discussed above it appears that the said vessel is equipped with various machines such as four-point mooring system, FIFI-I firefighting system, Deck Crane, and stern roller specialized for the purpose of multipurpose offshore activities, supply functions, providing at offshore sites and Transportation of persons and goods. The main function of the vessel is an offshore support vessel.

Statements recorded under Section 108 of the Act:

Statements of importer:

3.1 Statement of Shri Vishwaprashanth Kumar, Director of M/s. Lilly Maritime was recorded on 15.05.2024 under Section 108 of the Customs Act, 1962 wherein he among other things inter-alia stated that:

- i. The company has two current bank accounts: Union Bank of India (UBI) State Bank of India (SBI). The details are as follows:

UBI: Beneficiary name: M/s Lilly Maritime Pvt. Ltd.

Account no. 315505010000183, IFSC code: U13IN0531553

Branch: Andheri East, Mumbai-400069

SBI: Beneficiary name: M/s Lilly Maritime Pvt. Ltd.

Account no. 10537063658, IFSC code: SBIN0000539

Branch: Raj Chamber, Andheri East, Mumbai-400069

- ii. On being shown the panchnama dated 5.12.2023, he interalia stated that the above information is true but partially correct. The vessel has an incomplete four-point mooring system wherein it is missing one complete winch, cow catcher, delta flipper anchors, etc. The system was not maintained and defunct at the time of purchase and has not been maintained or utilized till date. The vessel has a notation of FIFI I which is the bare minimum requirement by the class in order to carry out rescue in case of emergency due to fire. This ship is not designed to carry out continuous firefighting, neither possesses the required capabilities. The vessel does indeed have a deck crane, bulk cement tanks, compressors, hydraulic oil circulation tanks, power packs for winches and capstans. The ship was originally designed as an anchor handling tug but never installed. The requisite towing and anchor handling winches are neither present on-board nor were they ever installed to carry out duties of a tug. He was uncertain what was meant by multi-purpose offshore activities; however, the capabilities of the vessel were limited to carriage of cargo and passengers and basic fire-fighting in case of emergencies.

- iii. The vessel has been chartered to L&T Hydrocarbon Engineering Ltd. since its arrival in India.
- iv. On being shown the certificate of classification no. Nr DBAO/VGY/20210405200438 date 3.3.2021 issued by Bureau Veritas wherein the description of the vessel as "I HULL MACH, tug, firefighting ship 1 — water spraying; Special Service-Offshore support vessel Unrestricted navigation", he interalia stated that the subject vessel has been incorrectly labelled as a "TUG", He would check with the issuing authority, Bureau Veritas (BV) as to why this was the case. The vessel never possessed any Towing/Anchor-handling winches. Regarding the FiFi-I, the vessel did possess basic fire-fighting capabilities. He would also need to clarify from Bureau Veritas (BV) on the Special-Service-Offshore support vessel. Unrestricted navigation means that the vessel is not bound by any territory.

3.2 Further Statement of Shri Vishwaprashanth Kumar was recorded on 20.01.2025 under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that:

- i. On being further asked about the Bureau Veritas Class certificate wherein the description of the vessel as "I HULL MACH, tug, fire-fighting ship 1 — water spraying; Special Service-Offshore support vessel Unrestricted navigation", he interalia stated that he had communicated telephonically with classification society on which they replied that the surveyor was no longer employed with the society and the record were old. So he was unable to get clarification on the same.
- ii. The vessel was not a tug and did not contain a towing winch. Merely having a tugger winch onboard cannot change the functionality to a towing tug as these winches were not suitable for this purpose. Furthermore, the CE report only mentioned that the BV class has used the word "TUG" in its notation, but failed to highlight that the vessel is in fact a TUG or used for towing purpose. Rather the CE report says – "purpose of offshore support activities such supply and transportation of offshore project cargo and goods and firefighting if need arises."
- iii. Although the stern roller was used for towing and anchor handling purpose and this vessel also possesses a stern roller, it was neither a towing anchor handling vessel nor used for the same. It is true that the stern roller was incorporated at the time of building but the vessel was not built as an AHTS (Anchor Handling Towing Supply). It was missing the towing winches which were a double drum water fall winch along with a towing pin and shark jaw. Hence it was unfit for this purpose and renders this stern roller meaning less.
- iv. As mentioned earlier the subject vessel was not a tug or anchor handler. They had no control over what the previous classification society has given the notation. It was evident from the various certificates that the Indian class and flag administration do not consider the subject vessel as a tug. In such case classifying the subject vessel under CTH 8904 would be a mis-classification as this vessel doesn't possess the necessary quality.

From the above statements, it is evident that the importer was fully aware of the Bureau Veritas classification DBAO/VGY/20210405200438-E1 dated 3.3.2021 which included the notation "TUG", along with Fire-Fighting Ship I and Special Service - Offshore Support Vessel. Despite this knowledge, the importer repeatedly denied or deflected questions regarding the tug classification. His

claim that the vessel is not a tug was primarily based on the current absence of towing equipment, without addressing the original design intent or the official classification by Bureau Veritas. Furthermore, the importer admitted that he contacted BV, but could not obtain clarification as the responsible surveyor had left and records were “old,” thus no substantive response was received. Instead of transparently disclosing this critical classification detail, the importer has relied on selective interpretations of equipment functionality and deflected responsibility by referring to the Indian classification only.

Statement of Chartered Engineer:

3.3 Statement of Shri Raghuvir Singh J Muker, Former Chartered Engineer in M/s Sai Siddhi Associates was recorded on 02.04.2025 under Section 108 of the Customs Act, 1962 wherein he among other things inter-alia stated that:

- i. M/s. Lilly Maritime did not provide any pre-purchase inspection report, which was not required for the valuation process.
- ii. The Bureau Veritas certificate dated 03.03.2021 mentions classification symbols including “TUG”, “Firefighting Ship 1”, and “Offshore Support Vessel (Special Service)” for unrestricted navigation.
- iii. The Chartered Engineer acknowledged these notations and referred to them in his report dated 10.08.2021, page 8, while assessing the vessel’s suitability for offshore support and firefighting activities.
- iv. No major changes were found in the vessel as imported versus its new-build condition.
- v. During panchnamas, the vessel was found equipped with four-point mooring system (incomplete), deck crane, AFT control, cement and mud tanks, hydraulic systems, and a stern roller—all useful in supply and offshore operations.
- vi. The vessel does not have Dynamic Positioning (DP) capability.
- vii. Machinery like rudder, bow thruster, tugger winch, roller, and capstan aid in maneuvering and supply operations.
- viii. The four-point mooring system was incomplete (3 winches only), and this was clearly mentioned in the CE’s report.
- ix. Stern roller and FIFI-1 systems are acknowledged; stern roller is currently non-functional without towing winch.
- x. It is admitted that tug hulls are specially designed and strengthened.
- xi. The CE notes that BV may have classified the vessel as a TUG based on its hull structure, but he is unable to confirm this through visual inspection alone.
- xii. He accepts that the vessel has a high power-to-tonnage ratio of 2.11 kW/MT, which is required for tug-like operations.
- xiii. He confirms that supply vessels may also require similar power-to-tonnage ratios, but this one barely meets the threshold.
- xiv. He clarifies that speed cannot alone define vessel type, as it depends on load and sea conditions.
- xv. The CE acknowledges the possibility that the vessel was originally designed as an Anchor Handling Tug Supply (AHTS) vessel, but it lacks critical towing equipment like towing winch, shark jaw, and towing pin.
- xvi. He certifies the vessel as a supply vessel due to the absence of towing deck fittings, despite the possibility of it being designed as a tug.
- xvii. He does not dispute public databases (e.g., Equasis, GISIS) referring to the vessel as Offshore Tug/Supply Ship or AHTS, but maintains that the vessel lacks operational tug capability.

- xviii. The insurance certificate having no. 61157//1072066/696389/P&I/01 dated 25.02.2021 mentioning “ANCHOR HANDLING/TUG/SUPPLY” may be based on Bureau Veritas documentation, not a fresh independent assessment.
- xix. The explanatory notes under heading 89.04 (Customs Tariff) for “Tugs” are noted, but the CE states that visual inspection is insufficient to confirm hull strengthening.

The Chartered Engineer does not deny that the vessel may be classified as a TUG based on its Bureau Veritas certificate and supporting documentation like the insurance certificate or international databases. However, based on visual inspection and absence of essential towing equipment, he certifies the vessel as a supply vessel. His responses collectively acknowledge the design intent or classification possibility but emphasize the operational limitations in the vessel’s present form.

Statement of Master of vessel:

3.4 Statement of Shri Swarup Sengupta, Master of Vessel MV Varshne was recorded on 27.03.2025 under Section 108 of the Customs Act, 1962 wherein he among other things inter-alia stated that:

- i. Master has been serving on this vessel since 11 Jan 2025 and was previously Master on MV Sanghi Trishul.
- ii. The vessel is currently classed with Indian Register of Shipping (IRS) as a Supply Vessel, not a TUG.
- iii. As per the Master’s knowledge, IRS has never classified the vessel as a TUG.
- iv. He is unable to comment on why Bureau Veritas (BV) has given the vessel a “TUG” notation.
- v. He was unable to comment that either the vessel’s hull is specially designed strengthen hull as required for a TUG or not.
- vi. Vessel’s daily operations involve offshore supply—cargo and passenger transfer between Mumbai Port and offshore fields.
- vii. No towing or tug assistance operations have been carried out during his tenure.
- viii. The vessel is not designed for push-pull operations involving barges or offshore structures.
- ix. No bollard pull test certificate is available; the vessel lacks a towing winch.
- x. Although winches and ropes exist, the vessel lacks key components (anchors, sheaves, cow catchers) for four-point mooring operations.
- xi. Vessel maintains position during supply operations using soft mooring ropes to tie alongside another vessel/barge.
- xii. Vessel has never engaged in emergency towing or salvage operations, and lacks capability for towing.
- xiii. Vessel does not have towing hook or any towing gear (e.g., towing pins, shark jaws, winches).
- xiv. Stern roller is present but non-functional due to absence of towing arrangements—thus redundant.
- xv. He cannot comment on why BV or insurance documents mention TUG classification.
- xvi. The 15MT crane is only used for small cargo lifting; heavy items require shore or barge cranes.
- xvii. The vessel’s power-to-tonnage ratio is 2.11 kW/MT, which barely qualifies it as a sea-going tug based on academic research presented to him.

- xviii. The vessel's speed profile is consistent with both tug and supply vessels, but operationally aligns with supply functions.
- xix. Master confirms the vessel has not undergone modifications nor has any towing capacity been retained.
- xx. Even though the vessel was formerly named "SEABULK ADVANTAGE" and shown as a tug on public sites, Master defers commenting on such third-party classifications.
- xxi. He acknowledges that design similarity with TUGs may exist, but notes that without towing machinery, such classification lacks practical basis.
- xxii. States that towing winch and gear can be installed, but such structural feasibility is outside his expertise.

While the Master maintains that the vessel functions purely as a supply vessel with no towing capabilities and lacks critical towing equipment, he does not dispute the possibility that the vessel may have been classed as a TUG by Bureau Veritas or other entities based on hull design or original intent. His responses do not deny the classification by BV, but emphasize the current limitations and usage of the vessel.

3.5 Statement of Shri Shri Pawan Manohar Bodke, Assistant Manager of M/s. L & T Energy Hydrocarbon was recorded on 17.01.2025 under Section 108 of the Customs Act, 1962 wherein he among other things inter-alia stated that:

- i. I am hereby submitting charter party agreement dated 22.08.2024, wherein at box no. 17 to work as a supply vessel and to perform following function
 - a) Transportation of Materials, Fuel, Fresh Water and Passengers
 - b) Go alongside accommodation barge and to give stern approach to the platform for transfer of material on Platform.
 - c) Approach Boat Landing of Platform
- ii. On being asked about need of the machinery present on vessel e.g. "four-point mooring system", "deck crane", "AFT control for main engine", "Bulk cement and mud tank" "Hydraulic Oil Circulation tank", "Hydraulic Power Pack" and "stern roller" he stated that these machineries were not required for our requirement, because that need only deck space and accommodation. Deck space for material loading and accommodation for personnel transportation as per required. They didn't have requirement of Mud tank and deck crane and Four-point mooring system, deck crane, Mud tank are additional features available with the vessel which doesn't require as per our requirement of supply.
- iii. On being shown the certificate of classification Nr. DBA0/VGY/20210405200438-E1 issued from Bureau Veritas, he admitted that vessel may be used as a TUG with due permission of concerned authority and vessel MV Varshne can be used for towing purpose of other dumb barges being used in offshore operation.
- iv. On being shown the Customs Tariff Act, 1975, he stated that vessel may be classified in 8901 or 8904 both.

3.6 Reply from Indian Register of Shipping:

Classification society Indian Register of Shipping in response to this office letter dated 19.02.2025 submitted its reply vide letter dated 7.3.2025 wherein they informed that:

Change from Offshore Support to Supply Vessel:

The vessel was initially described as an **Offshore Support Vessel** in the interim class certificate having no. BOM21F015 dated 29.10.2021. Upon the owner's request and after compliance verification, IRS assigned the "Supply Vessel" notation on 31 October 2022 as per IRS Rules (Part 5, Vol. I, Ch. 8) as described in class certificate having no. 22896 dated 26.10.2023.

Difference Between Offshore Support & Supply Vessel:

Offshore Support Vessel: Supports offshore activities such as towing, firefighting, anchor handling, etc.

Supply Vessel: Specializes in transporting stores, materials, equipment, and personnel, and must meet additional IMO and structural strength requirements due to proximity operations near offshore platforms.

Special Purpose Ship Notation:

Following the owner's request to carry 22 "special personnel" and after satisfying the IRS Rules and IMO SPS Code, the vessel was assigned Special Purpose Ship notation on 26 October 2023.

Difference Between BV and IRS Class Descriptions:

While Bureau Veritas classified the vessel as Tug, Firefighting, Special Service – Offshore Support Vessel, IRS assigned it as a Supply Vessel without structural modification, based on strength and stability compliance under IRS rules and the owner's formal request.

Tug Classification Query:

Although the vessel was formerly listed as a Tug (or Anchor Handling Tug Supply) under BV and maritime databases, IRS did not assign the Tug notation because the vessel lacked essential towing equipment (e.g., towing hook or winch) and did not fulfill specific rule-based requirements in IRS classification standards for Tugs and AHTS vessels.

IRS does not categorically deny the vessel's past identity or potential as a Tug, as acknowledged through Bureau Veritas classification and historical data. However, IRS declined to assign the Tug or AHTS notation strictly due to technical non-compliance with its own rules regarding towing capability and stability. Importantly, the Supply Vessel notation was specifically assigned at the owner's request, following verification of compliance with relevant IRS rules. This decision reflects a procedural and standards-based classification approach rather than a factual denial of the vessel's operational history or prior capabilities.

3.7 Reply from Bureau Veritas (BV)

Classification society Bureau Veritas in response to this office letter dated 08.4.2025 submitted its reply vide mail dated 25.4.2025 wherein they informed that:

The class notations assigned by classification societies (ABS, BV, etc.) are technical designations based solely on compliance with the respective society's rules. They do not determine the vessel's status for legal or tax purposes.

American Bureau of Shipping (ABS) uses the term "Towing Vessel" (per ABS Rules Part 5, Ch. 11) for vessels designed primarily for towing services.

BV has an explicit "Tug" notation (Pt A, Ch 1, Sec 2, 4.10.2) for ships equipped for towing/pushing and that meet related standards, including bollard pull.

BV assigned the "Tug" notation as the equivalent of ABS's "Towing Vessel"

BV also assigned "Special Service – Offshore Support Vessel" to reflect the vessel's offshore operational capabilities inherited from the ABS "Offshore Support Vessel" notation

BV's "Special Service" notation is used for vessels with unique operational characteristics that do not fall under standard service notations. This covers roles such as research, support, training, and specialized offshore tasks, providing flexibility in classification.

The reply clarifies that the change of class from ABS to BV resulted in the vessel being assigned both "Tug" and "Special Service – Offshore Support Vessel" notations. This dual notation represents a recognition of the vessel's dual operational profile: as a towing-capable vessel and as an offshore support platform. Therefore, it can be reasonably considered that the vessel qualifies as a "Tug Offshore Support Vessel" under BV classification, acknowledging both its towing function (Tug) and offshore support role (Special Service).

4. Summary of the investigation:

4.1 M/s Lilly Maritime Pvt. Ltd. filed Bill of Entry No. 4976182 dated 08.08.2021 declaring the vessel MV Varshne (IMO No. 9319507) as an "Old and Used Self-Propelled Supply Vessel" under Customs Tariff Heading (CTH) 89019000. Based on this declaration, they claimed exemption from Basic Customs Duty (BCD) under Notification No. 50/2017-Cus. (Sr. No. 551). However, subsequent intelligence developed by the DRI Regional Unit, Gandhidham, indicated that the vessel was more appropriately classifiable under CTH 89059090 (or under 8904), thereby attracting BCD at 5%.

4.2 Following this input, (SIIB-I) initiated an investigation. A search was conducted onboard MV Varshne on 05.12.2023, during which the master of the vessel, Shri K.K. Thankarajan, confirmed the presence of a four-point mooring system, a FiFi-I fire-fighting system, a 15MT deck crane, AFT engine controls, bulk cement tanks, hydraulic oil circulation tanks, power packs for winches, mud pumps, and a stern roller. These features collectively indicated that the vessel was capable of performing complex offshore activities beyond basic supply functions, which aligned with the functionalities of an offshore support or tug vessel. In a second panchnama dated 27.03.2025, it was noted that the mooring system was incomplete, with one of the winches missing and no dynamic positioning system onboard.

4.3 The statement of Shri Vishwaprashanth Kumar, Director of M/s Lilly Maritime, recorded on 15.05.2024, acknowledged most of the vessel's features observed during the panchnama. He admitted that the vessel had a stern roller and hydraulic equipment but emphasized that the four-point mooring system was incomplete and non-functional. He also admitted that the vessel was not designed for continuous firefighting and lacked the necessary equipment for anchor handling or towing functions, even though it carried a FiFi-I classification. He further stated that the vessel was originally designed as an

anchor handling tug, but the essential towing winches and components were never installed. Regarding the Bureau Veritas certificate describing the vessel as a "Tug, Firefighting Ship, Special Service – Offshore Support Vessel", he denied the vessel's functionality as a tug and stated that he would seek clarification from Bureau Veritas.

4.4 In his subsequent statement dated 20.01.2025, Shri Vishwaprashanth Kumar reiterated that the vessel lacked towing winches and denied that the presence of a tugger winch or stern roller could qualify it as a tug. He accepted that Bureau Veritas had labeled it as a tug but attributed this to a possibly outdated or misapplied classification. He argued that classification under CTH 8904 would be inappropriate given the vessel's limited towing capacity.

4.5 The Chartered Engineer, Shri Raghuvir Singh J. Muker, in his statement dated 02.04.2025, confirmed that the vessel's Bureau Veritas classification included the notations "Tug," "Firefighting Ship 1," and "Special Service – Offshore Support Vessel." He stated that while these notations were reflected in his Chartered Engineer's report, he certified the vessel as a "supply vessel" based on physical inspection, as it lacked active towing winches, towing pins, or shark jaws. He acknowledged that the hull may have originally been designed as a tug but could not confirm this visually. He also confirmed the high power-to-tonnage ratio of 2.11 kW/MT, which is typically required for tug-class vessels, but emphasized that supply vessels could also possess similar power profiles. He further admitted that the vessel could have been designed as an AHTS (Anchor Handling Tug Supply), but in the absence of deck fittings for towing, it did not function as such at the time of import.

4.6 The Master of the vessel, Shri Swarup Sengupta, in his statement dated 27.03.2025, corroborated the absence of towing capability. He confirmed that the vessel was operating under IRS classification as a Supply Vessel and was being used solely for transporting personnel and cargo offshore. He stated that the vessel lacked a bollard pull certificate, towing hook, towing winch, or related gear, and emphasized that its stern roller was non-functional. Although he acknowledged the possibility that the vessel might have a tug-like hull or historical classification, he emphasized that it had not performed any towing or anchor-handling operations during his tenure.

4.7 Further, Shri Pawan Manohar Bodke, Assistant Manager of L&T Energy Hydrocarbon, which had chartered the vessel, stated that the vessel was hired purely for supply operations, including transport of materials, water, and personnel. He acknowledged the presence of equipment like a four-point mooring system and mud tanks but stated these were not required for L&T's operational needs. On being shown the BV classification certificate, he admitted that the vessel could be used for towing purposes with due authorization and that such classification may support its use under CTH 8904.

4.8 The Indian Register of Shipping (IRS), in their reply dated 07.03.2025, confirmed that the vessel was initially classified as an Offshore Support Vessel and was later assigned the Supply Vessel notation on 31.10.2022 upon the owner's request. IRS clarified the distinction between Offshore Support Vessels and Supply Vessels, emphasizing that while Offshore Support Vessels include towing and firefighting capabilities, Supply Vessels are meant primarily for cargo and personnel transport. IRS specifically noted that the vessel was not assigned

the Tug notation as it did not meet IRS requirements (e.g., towing hook, winch, stability parameters). However, IRS did not deny the vessel’s historical classification or potential design as a tug, noting instead that their classification was based on current technical compliance and owner’s request.

4.9 Bureau Veritas (BV), in their reply dated 25.04.2025, stated that the vessel was assigned the “Tug” notation as an equivalent to ABS’s “Towing Vessel” classification. BV confirmed that the dual classification as “Tug” and “Special Service – Offshore Support Vessel” reflected the vessel’s design and operational versatility. The BV response emphasized that classification notations are rule-based and do not determine legal or tax status. However, their classification as a Tug was clear and intentional, acknowledging both the vessel’s design and capabilities.

4.10 Further Shri Vishwaprashanth Kumar, Director of M/s. Lilly Maritime Pvt. Ltd. Submitted vide reply dated 13.6.2025 submitted that currently, Mr. Vishwaprashanth Kumar, Director of the company, is overseeing customs clearance matters and related decisions, with input from other top management personnel and agents. Previously, these responsibilities were handled by Mr. Rethina Kumar, Managing Director, who acted based on advice of former employees and customs agents, before making final decisions, he also submitted the list of director of M/s. Lilly Maritime which is detailed below:

LIST OF DIRECTORS AS ON 11/06/2025

Sl. No	Full Name of the Director	DIN	Designation	Status	Date of Appointment	Date of Resignation	Nature of Directorship
1	Mr. Rethina Kumar Krishna Swamy	01871205	Managing Director	Active	13-09-1996	NA	Executive Director
2	Ms. Vishwa Priya Rethinakumar	06538956	Director	Active	05-10-2012	NA	Director
3	Mr. Vishwaprashant Rethinakumar	06538986	Director	Active	05-10-2012	NA	Executive Director

The importer has reiterated their earlier submissions, asserting that the vessel has never operated as a tug and was always used solely for supply functions, both at the time of import and thereafter.

5. Classification of the Imported Goods

5.1 Relevant entry of Chapter 8901 of Customs Tariff Act are reproduced as under:

Tariff Item	Description of Goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
8901	CRUISE SHIPS, EXCURSION BOATS, FERRY-BOATS, CARGO SHIPS, BARGES AND SIMILAR VESSELS FOR THE TRANSPORT OF PERSONS OR GOODS			
8901 10	8901 10 - Cruise ships, excursion boats and similar vessels principally designed for the transport of persons; ferry-boats of all kinds:			
8901 10 10	Ships	u	10%	-
8901 10 20	Launches	u	10%	-
8901 10 30	Boats	u	10%	-
8901 10 40	Barges	u	10%	-
8901 10 90	Other	u	10%	-
8901 20 00	Tankers	u	10%	-
8901 30 00	Refrigerated vessels, other than those of Sub-heading 8901 20	u	10%	-
8901 90 00	Other vessels for transport of the goods and other vessels for the transport of both persons and goods	u	10%	-

Thus, the Chapter Heading 8901 covers “Cruise ships, excursion boats etc uses for transportation of passenger of goods.

Relevant entry of Chapter 8904 of Customs Tariff Act are reproduced as under:

Tariff Item	Description of Goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
89040000	TUGS AND PUSHER CRAFT	u	10%	

Thus, the Chapter Heading 8904 covers Tugs and Pusher Craft. For Better understanding of tariff item 89040000 HSN explanatory notes is produced below:

89.04 - Tugs and pusher craft.

This heading covers :

- (A) **Tugs.** These are vessels primarily designed for towing other craft. They may be of the type used for sea or for inland navigation. They are distinguishable from other vessels by their specially shaped and strengthened hulls, by their powerful engines disproportionate to the size of the vessel, and by various deck fittings designed to carry a tow rope, hawser, etc.
- (B) **Pusher craft.** These are vessels specially designed for pushing barges, lighters, etc. They are mainly distinguished by a snub bow (for pushing) and an elevated wheel house (which may be telescopic).

The heading also covers “pusher-tugs” designed for use both as pusher craft and as tugs. Like pusher craft they have a snub bow, but the stern is raked so that they can make way in that direction and tow barges, etc.

Tugs designed to assist ships in distress, are also covered by this heading.

The vessels of this heading are not designed for the transport of persons or goods. They may be fitted with specialised auxiliary equipment for fire-fighting, pumping, cargo heating, etc. However, fire-floats are excluded (heading 89.05).

Even if the importer's submissions are considered at face value—accepting that the vessel MV Varshne was not equipped with a complete towing system or that it was currently being used solely for offshore supply operations—there remains undeniable evidence that the vessel was originally designed, classed, and registered with core features of a tug. Bureau Veritas, a globally recognized classification society, assigned the vessel the “TUG” notation based on its design characteristics, including high power-to-tonnage ratio, stern roller, and structural hull configuration typical of anchor-handling or towing vessels. This clearly places it within the purview of Heading 8904, which covers “Tugs and Pusher Craft,” rather than Heading 8901, which is meant for vessels “principally designed for the transport of persons or goods.”

Further, even if the classification is contested and both headings—8901 and 8904—appear to merit equal consideration, the General Rules for Interpretation (GRI) of the Customs Tariff, specifically Rule 3(c), provide a definitive resolution. Rule 3(c) mandates that where classification cannot be determined under Rules 3(a) or 3(b), the correct classification shall be under the heading that occurs last in numerical order. In this case, CTH 8904 appears after CTH 8901 in the tariff schedule. Therefore, in the event of any ambiguity or interpretational parity between the two headings, GRI 3(c) directs that the vessel must be classified under 8904, reinforcing the conclusion that the importer's classification under 8901 is unsustainable even on a liberal reading of their own submissions.

6. Duty Calculation:

The goods were classified under CTH 89019090 where applicable duty is BCD@0%, SWS@10% of BCD, IGST@5%. However, the goods are rightly classifiable under CTH 89040000 where applicable duty is BCD@5%, SWS@10% of BCD, IGST@5%.

Declared Value during import /re-import	Basic Customs duty @ 5 %	SWS @10% of BCD	Total Assessable value	IGST @ 5% of assessable value	Total Duty Payable	Total duty already Paid during import /re-import	Remaining duty payable
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
7,51,43,182	3757159.1	375715.91	79276057.01	3963802.85	8096677.86	3757159.1	4339518.76

Thus, M/s Lilly have only paid Rs. 37,57,159/- for IGST @ 5 % at assessable value of Rs. 7,51,43,182/- at the time of clearance during import. Hence, the applicable Customs duty of Rs. 37,57,159/- along with SWS @ 10% of BCD and interest as applicable, is recoverable from M/s Lilly. Further, Differential IGST amounting to Rs. 2,06,643.75/- along with applicable interest is also recoverable from M/s Lilly. Hence, total duty (BCD+SWS+IGST) 43,39,518.76/- is recoverable with applicable interest.

7. Invocation of extended period of limitation

7.1 As per Section 46(4A) of the Act, it is mandatory for the importer to make a truthful declaration regarding the contents of the Bills of Entry filed under

Section 46(1) of the Act. Additionally, Section 46 of the Act, mandates that the importer must ensure the accuracy and completeness of the information provided therein; verify the authenticity and validity of any supporting documents and comply with any restrictions or prohibitions, if any, relating to the goods under the Act or under any other law for the time being in force.

7.2 Further, in terms of Section 17 of the Act, read with the definition of assessment specified under Section 2(2) *ibid*, it is obligatory for the importer to correctly self-assess the duty on the imported goods, with reference to the classification as well as value of the goods being entered by them in the Bill of Entry. It is specified that an incorrect self-assessment results in re-assessment of the duty and renders the importer liable to action in terms of the provisions of the Act.

7.3 It is apparent that goods not corresponding in respect of value or in any other declared particulars with the entry made under the Customs Act, 1962 are liable for confiscation under Section 111(m) of the Act; and the consequent penalty is imposable in terms of Section 112 of the Act, in the case of dutiable goods. Further, in cases where duty has not been levied on account of wilful mis-statement or suppression of facts, apart from the recovery of evaded duty under the provisions of Section 28 of the Act, the importer is also liable for penalty under Section 114A, equal to the duty or interest so determined.

7.4 It is evident from the facts discussed in foregoing paras that M/s Lilly Maritime Pvt. Ltd. and Shri Vishwaprashanth Kumar, Director of M/s. Lilly Maritime have suppressed the fact related to the correct classification of the vessel. The importer's reliance on the absence of certain equipment and failure to clarify the BV "Tug" notation—despite being aware of it—demonstrates suppression of material facts. The deliberate declaration of the vessel under CTH 8901 to claim nil BCD, instead of the correct heading CTH 8904, constitutes willful misstatement and misclassification under Section 28(4) of the Customs Act, 1962.

Further, Section 28(4) of the Customs Act, 1962 as amended, provides that-

“Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of -

- (a) collusion; or*
- (b) any wilful mis-statement; or*
- (c) suppression of facts,*

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

Hence, in the instant case, the extended period clause under Section 28(4) of the Customs Act, 1962 as amended, as quoted above, is applicable.

8. Role of Importer

8.1 In the case of the vessel MV Varshne (IMO No. 9319507), the importer, M/s Lilly Maritime Pvt. Ltd., has misclassified the vessel under Customs Tariff Heading (CTH) 89019000 as an "Old and Used Self-Propelled Supply Vessel" in order to avail a concessional nil rate of Basic Customs Duty (BCD) under Notification No. 50/2017-Cus (Sr. No. 551). However, based on the Bureau Veritas classification certificate submitted prior to import, the vessel was described as "Tug, Firefighting Ship, Special Service – Offshore Support Vessel". Despite being fully aware of this notation, the importer intentionally omitted this critical fact and chose a tariff heading that does not represent the vessel's true design and classification.

8.2 The importer's statements recorded under Section 108 of the Customs Act, 1962, further establish that the Director of M/s Lilly Maritime, Shri Vishwaprashanth Kumar, was not only aware of the classification assigned by Bureau Veritas but also accepted that the vessel was originally designed as an Anchor Handling Tug. Yet, instead of transparently declaring the vessel's classification, the importer selectively emphasized current use and minor equipment absence to argue against tug classification. The importer did not seek formal clarification from BV on the TUG notation and failed to disclose the vessel's design intention and classification history, thereby deliberately misleading Customs authorities.

8.3 Moreover, the reply from the Indian Register of Shipping (IRS) confirms that the vessel was initially classed as an Offshore Support Vessel, and the notation was later changed to "Supply Vessel" at the importer's request, not based on any structural modification. IRS further clarified that tug classification was not assigned solely due to non-availability of towing equipment, but did not deny that the vessel could have been designed and built as a tug or anchor-handling tug supply (AHTS) vessel.

8.4 Bureau Veritas, an internationally recognized classification society, confirmed that the "TUG" notation was intentionally assigned and equivalent to the American Bureau of Shipping (ABS) "Towing Vessel" designation. BV emphasized that the vessel's dual role as a tug and offshore support unit was formally recognized through classification. The importer chose not to highlight this information in the declaration made under Section 46 of the Customs Act, and instead classified the vessel under a heading that does not cover tugs or vessels not principally designed for transport of persons or goods.

8.5 From the above facts, it is evident that the importer knowingly suppressed material information and wilfully misdeclared the nature and classification of the imported vessel. The act is not a result of mere negligence or misinterpretation; rather, it amounts to a calculated attempt to evade customs duty by misusing a lower-duty CTH. Accordingly, M/s Lilly Maritime Pvt. Ltd. is liable for penalty under Section 112(a) and/or 114A of the Customs Act, 1962, for wilful misstatement and suppression of facts in relation to the import of MV Varshne.

9. Legal provisions involved as per Customs Act, 1962:

i) Section 17: Assessment of duty-

1. An importer entering any imported goods under Section 46, or an exporter entering any export goods under Section 50, shall, save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods.

2. The proper officer may verify the entries made under Section 46 or Section 50 and the self- assessment of goods referred to in sub-Section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary:

PROVIDED that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

3. For the purposes of verification under sub-Section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

4. Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

5. Where any re-assessment done under sub-Section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

6. Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manners as may be prescribed.

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

ii) Section 28. Recovery of duties not levied or not paid or shortlevied or short-paid or erroneously refunded.

(1) Where any duty has not been levied or not paid or short-levied or shortpaid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, —

(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of, —

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest:

Provided that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded.

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

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

iii) Section 28AA. Interest on delayed payment of duty.

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under subsection (2), whether such payment is made voluntarily or after determination of the duty under that section.

iv) Section 46. Entry of goods on importation. - *(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry..... bill of entry for warehousing or vice versa.*

v) Section 111. Confiscation of improperly imported goods, etc.

(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 3 [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 ;

vi) 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

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,

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 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 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 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.

vii) Section 114A. 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 3 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 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 3 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.

viii) Section 114AA. Penalty for use of false and incorrect material. —

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

10. Therefore, on the basis of investigation, the acts of omission/commission by M/s Lilly Maritime Private Limited, have rendered the vessel 'MV Varshne' liable for confiscation under Section 111(m) of the Customs Act, 1962 and made them liable for Penalties under Section 112(a) and/or 114A and 114AA of the Customs Act, 1962. Further, it appears that Shri Rethina Kumar, Managing Director of the importer M/s Lilly Maritime was well aware of the specifications, nature of the vessel at the time of Import. Accordingly, by such acts of omission/commission, Shri Rethina Kumar has rendered himself liable for Penalty Section 112(a) and/or 114 A and 114AA of the Act. Further, Shri Vishwaprashanth Kumar, Managing Director of M/s. Lilly Maritime is also liable for penalty under Section 112(a) and/or 114 A and 114AA of the Act, 1962.

11. Show Cause Notice

Accordingly, Show Cause Notice dated 22.12.2025 [hereinafter referred to as SCN] was issued to three noticees as below:

1. M/s Lilly Maritime Private Limited was called upon to show cause as to why
 - i. The vessel 'MV Varshne' classified under CTH 89019000 in Bill of Entry No. 4976182 dated 08.08.2021 should not be rejected and re-classified under CTH 89040000.
 - ii. The vessel 'MV Varshne' imported under Bill of Entry No 4976182 dated 08.08.2021, valued at Rs. 7,51,43,182/- should not be confiscated under Section 111(m) of the Customs Act, 1962.
 - iii. The duty amounting to Rs. 43,39,518.76/- recoverable on the imported goods i.e., the vessel 'MV Varshne' should not be demanded and recovered from them under Section 28(4) of the Act.
 - iv. Interest at the appropriate rate should not be charged in terms of Section 28AA of the Customs Act, 1962.
 - v. Penalty should not be imposed on them under Section 112(a) and/ or 114(A) and 114AA of the Customs Act, 1962.

2. Shri Rethina Kumar, Managing Director of M/s Lilly Maritime Private Limited, was called upon to show cause as to why penalty should not be imposed upon him Section 112(a) and/or 114 A and 114AA of the Act.

3. Shri Vishwaprashanth Kumar, Director of M/s Lilly Maritime Private Limited, was called upon to show cause as to why penalty should not be imposed upon him Section 112(a) and/or 114 A and 114AA of the Act.

12. Reply to Show Cause Notice

12.1 The noticees, namely M/s Lilly Maritime Private Limited and its Directors, submitted a joint written reply dated 23.01.2026, key points of which are as below:

- i. LMPL, a company engaged in ship management and offshore marine services since 1996, imported a second-hand offshore supply vessel, "M.V. Varshne", from UAE under Bill of Entry dated 08.08.2021. The vessel was imported for the purpose of charter hire to L&T Hydrocarbon Engineering Ltd., which was executing offshore contracts for ONGC at Bombay High. The vessel was intended to transport personnel, cargo, and supplies between shore and offshore locations and was continuously deployed for such operations after import.
- ii. The vessel was declared as "Old and Used Self-Propelled Supply Vessel" and classified under CTH 89019000, with LMPL availing the benefit of Notification No. 50/2017-Cus., resulting in Nil Basic Customs Duty, while IGST at 5% was paid on the declared value of Rs. 7.51 crore. LMPL contended that the vessel was correctly classified as a supply vessel capable of carrying goods and passengers, as supported by registration under the Merchant Shipping Act, 1958, as a "Supply Vessel" capable of carrying goods and persons; and safety certificates issued by the Indian Register of Shipping, demonstrating that the said vessel can carry 37 persons on board (including passengers) with not more than 15 crew and officers and not more than 22 passengers.
- iii. LMPL further submitted that the Show Cause Notice is not maintainable, is barred by limitation under Section 28(1) of the Customs Act, and that invocation of Section 28(4) is not sustainable. It was also argued that the vessel was correctly classifiable under CTH 89019000 and not under CTH 89059090 as alleged in the SCN.

I. That the said SCN is not maintainable:

- iv. LMPL contended that the Show Cause Notice (SCN) is not maintainable as it allegedly prejudices the issue even before adjudication. It was argued that the SCN records definitive findings against the importer, including allegations of deliberate suppression, wilful misdeclaration, and calculated evasion of customs duty, thereby indicating that the adjudicating authority had already formed an opinion on the matter. According to LMPL, this defeats the very purpose of an SCN, which is only to communicate proposed allegations and provide an opportunity for defence.
- v. In support of its contention, LMPL relied upon the judgment of the Hon'ble Calcutta High Court in Raghunandan Jalan v. CCE, 1981 (8) ELT 476 (Cal.), wherein it was held that if the authority has already closed its mind on the issue, the subsequent hearing becomes an empty formality and violates the principles of natural justice. LMPL therefore submitted that the impugned SCN is contrary to settled legal principles, renders the adjudication process biased, and is liable to be withdrawn.

II. That the said SCN is time-barred under Section 28(1) of the Customs Act:

- vi. LMPL submitted that the impugned SCN is barred by limitation under Section 28 of the Customs Act, 1962. It was argued that the Bill of Entry for import of the vessel was filed on 08.08.2021, whereas the SCN was issued only on 27.12.2025, well beyond the normal limitation period of two years prescribed under Section 28(1). Accordingly, the demand was stated to be time-barred unless the extended period under Section 28(4) could be validly invoked.
- vii. LMPL contended that invocation of Section 28(4) is unsustainable as there was neither suppression of facts, wilful misstatement, collusion, nor any intent to evade payment of duty. It was submitted that all relevant import documents, certificates, specifications of the vessel, and the Bill of Entry were fully disclosed before Customs authorities at the time of import, and the vessel was consistently classified under CTH 89019000 since 2021. LMPL argued that mere alleged misclassification cannot automatically amount to suppression unless accompanied by deliberate intent to evade duty.
- viii. It was further submitted that the SCN does not provide any concrete evidence or particulars establishing fraud, collusion, suppression, or wilful misstatement. According to LMPL, Customs authorities had examined the vessel and accepted the classification at the relevant time, and no discrepancy or concealment was ever pointed out. Therefore, the essential ingredients required for invoking the extended limitation period under Section 28(4) were absent. On these grounds, LMPL prayed that the SCN be held as time-barred and liable to be dropped without entering into the merits of the classification dispute.

III. That the said Vessel was classified correctly under CTH89019000, and does not fall within the classification under CTH89059090 as alleged in the said SCN.

- ix. LMPL submitted that the imported vessel "M.V. Varshne" is correctly classifiable under CTH 89019000 as a supply vessel principally designed and used for transportation of goods and persons, and not under CTH 8904/89059090 as alleged in the SCN. It was argued that the vessel has continuously operated as an offshore supply vessel under charter to L&T Hydrocarbon Engineering Ltd. for transportation of personnel, fuel, cargo, and materials between shore and offshore installations at Bombay High. The Department itself has not alleged that the vessel was ever deployed for towing operations after import.
- x. LMPL contended that classification must be determined based on the vessel's principal function, design, configuration, and actual use at the time of import, and not merely on broad or historical descriptions appearing in foreign classification certificates. According to LMPL, vessels classifiable under Heading 8904 are specialised tugs or pusher crafts equipped with towing machinery such as towing winches, shark jaws, towing pins, and reinforced towing fittings. In the present case, the vessel allegedly lacked such essential towing equipment, and the stern roller referred to in the SCN was stated to be non-functional in the absence of towing apparatus. Therefore, the vessel could not practically function as a tug.
- xi. LMPL further argued that the Bureau Veritas certificate relied upon in the SCN does not establish that towing was the vessel's principal function. On

the contrary, the certificate itself described the vessel as an offshore support vessel engaged in transportation of stores, materials, equipment, cargo, and passengers for offshore operations. LMPL also relied upon certificates issued by the Indian Register of Shipping, DG Shipping registration documents, and the opinion of the Chartered Engineer, all of which described the vessel as a supply/support vessel.

- xii. It was additionally submitted that vessels under Heading 8904 are not ordinarily designed for carriage of passengers or cargo (as distinct from crew /objects used by the ship itself), whereas the subject vessel was capable of carrying passengers and cargo and was continuously used for such transportation purposes. LMPL therefore maintained that the vessel squarely falls within CTH 89019000 as a transport/supply vessel and that the proposed reclassification under Heading 89059090 is factually and legally unsustainable.
- xiii. LMPL submitted that the mere presence of a stern roller on the vessel cannot justify classification under CTH 8904, particularly when the vessel lacks essential towing equipment such as towing winches, shark jaws, towing pins, and reinforced towing fittings required for tug operations. It was argued that the stern roller itself was non-functional in the absence of such towing machinery. LMPL therefore relied upon DG Shipping permits, vessel registration certificates, and classification certificates issued by the Indian Register of Shipping, all of which described the vessel as a supply/offshore support vessel classifiable under CTH 89019000.
- xiv. LMPL further contended that Customs classification must be determined on the basis of the vessel's present condition, design, configuration, and actual use at the time of import, and not on the basis of historical or superseded foreign certifications. According to LMPL, the Bureau Veritas certificate relied upon in the SCN does not conclusively establish the vessel as a tug. The reference to the word "tug" was stated to be merely part of a broader notation, whereas the certificate itself described the vessel as an offshore support vessel engaged in transportation of stores, materials, cargo, and passengers to offshore installations, along with incidental firefighting capability.
- xv. Relying upon Chapter Heading 8901, HSN Explanatory Notes, and judicial precedents, LMPL argued that Heading 8901 covers vessels principally designed for transportation of persons or goods, whereas Heading 8904 specifically applies to vessels primarily designed for towing or pushing other craft. Since the vessel was capable of carrying cargo and passengers and had continuously been used for offshore supply and transportation services, it squarely fell within CTH 89019000. LMPL emphasized that vessels under Heading 8904 are not ordinarily designed for carriage of goods or passengers and are distinguishable by essential and specialised towing characteristics, which were absent in the present vessel.
- xvi. LMPL also relied upon several Tribunal decisions, including *Lewek Altair Shipping Pvt. Ltd. v. Commissioner of Customs, Vijaywada- 2019 (366) ELT 318 (Tri-Hyd.)*, *Northern Plastic Ltd. v. Collector of Customs & Central Excise 1998 (101) ELT 549 (SC)*, *HAL Offshore Limited vs, Commissioner of Custom (Import), Mumbai 2014 (303) E. L. T. 119 (Tri. – Mumbai)*, *Prince Marine Transport Services Pvt. Ltd. v. Commissioner of Customs (Imports), Mumbai- 2014 SCC Online CESTAT 1636*, and *Hede Ferrominas Pvt. Ltd. vs. Commissioner of Custom (Import), Mumbai, 2016 (334) E. L. T. 540 (Tri.-Mumbai)*, wherein offshore support/supply vessels carrying personnel and cargo were held classifiable under CTH 8901 rather than

under headings applicable to tugs or specialised service vessels. It was argued that the consistent view of the Tribunal has been that classification should be based on statutory certificates, design, and principal function of the vessel, and not merely on isolated equipment or earlier nomenclature.

- xvii. On the issue of penalties, LMPL submitted that Sections 112(a) and 114A of the Customs Act were not invocable, as there was neither suppression, wilful misstatement, nor intent to evade duty. It was contended that mere adoption of a particular tariff classification in the Bill of Entry cannot render the goods liable for confiscation under Section 111(m), especially when the classification was declared openly and accepted at the time of import. LMPL therefore maintained that no duty demand, confiscation, interest, or penalty could survive and that the vessel was rightly eligible for Nil Basic Customs Duty under Notification No. 50/2017-Cus. dated 30.06.2017.

IV. FURTHER SUBMISSIONS REGARDING RELIED UPON DOCUMENTS (RUDs)

- xviii. LMPL denied the allegation that the vessel was deliberately misclassified under CTH 89019000 for the purpose of availing Nil Basic Customs Duty under Notification No. 50/2017-Cus. dated 30.06.2017. It was contended that the vessel was neither engaged in multifunctional offshore construction/drilling operations nor equipped or deployed as a tug or specialised support vessel falling under CTH 89059090. According to LMPL, the principal and actual function of the vessel has always been transportation of cargo and personnel, thereby justifying classification under Heading 8901.
- xix. LMPL submitted that all documents sought during investigation were duly furnished to the inquiry officer and that the records consistently demonstrated that the vessel was used only for transportation of goods and persons. Reliance was placed upon statements recorded under RUD-11 and RUD-12, wherein it was clarified that an offshore supply vessel is meant for transportation of manpower and goods and that the subject vessel never rendered tug or pusher craft services. LMPL also relied upon the Memorandum of Agreement with L&T Hydrocarbon Engineering Ltd. (RUD-6), which allegedly established that the vessel had been chartered exclusively as a supply vessel.
- xx. LMPL further denied any suppression of facts or wilful misstatement before Customs authorities. It was argued that all material particulars relating to the vessel, including its specifications and certificates, were fully disclosed at the time of import and throughout the investigation. LMPL also disputed the statement recorded from the Assistant Manager of L&T Hydrocarbon Engineering Ltd. (RUD-9), insofar as it suggested that the vessel could potentially be used as a tug upon obtaining permissions. According to LMPL, such statements were speculative, unsupported by technical evidence, and contrary to the certificates issued by recognised classification societies and the opinion of the Chartered Engineer, who had inspected the vessel and categorically identified it as a supply vessel.
- xxi. On this basis, LMPL contended that the ingredients necessary for invoking Section 28(4) of the Customs Act—namely collusion, suppression, or wilful misstatement with intent to evade duty—were entirely absent. Consequently, the SCN was argued to be barred by limitation and unsustainable in law. LMPL also submitted that no confiscation, penalty,

or interest could be imposed under the Customs Act, as there had been no deliberate false declaration or violation of law, and the vessel was correctly classifiable under CTH 89019000 as a transport/supply vessel.

12.2 Another written submission dated 03.05.2026, pursuant to Personal Hearing dated 27.04.2026 was made, key points of which are as below:

- i. LMPL's submissions in the captioned matter may be summarised as follows:
 - a) That the said SCN is time-barred under Section 28(1) of the Customs Act and Section 28(4) is inapplicable.
 - b) That the said Vessel was correctly classified under CTH89019000 and does not fall within the classification under CTH89059090 as alleged in the said SCN.
 - c) Penalty under Section 112A, 114A and 114AA of the Customs Act not attracted.
 - d) That the said SCN is not maintainable.

A. That the said SCN is barred by limitation:

- ii. LMPL submitted that the impugned SCN is ex facie barred by limitation under Section 28(1) of the Customs Act, 1962. It was pointed out that the vessel was imported on 08.08.2021, whereas the SCN was issued only on 22.12.2025 and received on 27.12.2025, well beyond the statutory limitation period of two years prescribed under Section 28(1). According to LMPL, the Department sought to invoke the extended limitation period under Section 28(4) solely by alleging suppression and wilful misstatement without establishing the mandatory ingredients required under law.
- iii. LMPL contended that the allegations of suppression in the SCN were based entirely on the alleged misclassification of the vessel under CTH 89019000 instead of Heading 8904/89059090. It was argued that classification is a matter of interpretation and self-assessment based on the importer's bona fide understanding of the tariff entries, subject to reassessment by Customs authorities. Therefore, a mere difference of opinion on classification cannot amount to suppression of facts or wilful misstatement. LMPL further submitted that even the SCN itself acknowledged that the vessel lacked essential towing equipment such as towing winches, towing pins, bollard pull certification, and related fittings necessary for functioning as a tug.
- iv. LMPL also denied any concealment regarding the Bureau Veritas certificate or the vessel's specifications. It was submitted that at the time of import, all relevant documents, including the Bureau Veritas classification certificate, Bill of Sale, Certificate of Registry, insurance documents, and other technical records, were duly furnished before Customs authorities. The vessel was cleared after examination and assessment with full knowledge of the Department. Hence, there was no withholding of material information or deliberate suppression with intent to evade duty.
- v. In support of its contentions, LMPL relied upon various judicial precedents (Pushpam Pharmaceuticals, Anand Nishikawa, Ballarpur Industries, and SJS Business Enterprises) and legal principles (Advanced Law Lexicon (6th Edn.)) to contend that suppression necessarily implies a deliberate and conscious act of withholding material information with an intent to evade payment of duty; the alleged suppressed fact must be material and such that, had it been disclosed, it would have affected the merits of the

matter; a mere classification dispute or incorrect interpretation of a tariff entry does not amount to wilful misstatement or suppression so as to justify invocation of the extended period of limitation. LMPL emphasized that where facts are known to both parties and all documents are disclosed, suppression cannot be alleged.

- vi. LMPL therefore argued that the SCN failed to provide any particulars or evidence of collusion, fraud, wilful misstatement, or suppression. In the absence of the jurisdictional requirements necessary for invoking Section 28(4), the extended limitation period was stated to be unavailable to the Department. Consequently, the SCN, having been issued beyond the normal limitation period under Section 28(1), was liable to be set aside as time-barred.

B. The Vessel- MV Varshne was classified correctly under CTH 89019000, and does not fall within the classification under CTH89059090, as alleged in the said SCN:

a) Customs Tariff Headings

- vii. The Noticees have relied upon the definition of “suppression of facts” as explained in P. Ramanatha Aiyar’s Advanced Law Lexicon, wherein it has been stated that suppression must be construed strictly and must involve a deliberate act intended to evade payment of duty. It has been emphasized therein that mere omission, failure to declare, or incorrect classification cannot by itself amount to suppression unless accompanied by conscious intent to derive wrongful gain or evade duty. Reliance has also been placed on the decisions in Pushpam Pharmaceuticals Co. v. Collector of Central Excise, Anand Nishikawa Co. Ltd. v. CCE, Gopal Zarda Udyog v. CCE, and Densons Pultretaknik v. CCE, wherein it has been consistently held that mere misclassification or failure to disclose legal consequences does not constitute wilful suppression of facts.
- viii. The Noticees have further relied upon the judgment of the Hon’ble Supreme Court in SJS Business Enterprises (P) Ltd. v. State of Bihar & Ors., wherein it was held that the suppressed fact must be a material fact having a bearing on the merits of the case. It has been contended that, in the present matter, all material particulars relating to the vessel, including classification certificates and technical documents, were admittedly furnished before the Customs authorities at the time of import and, therefore, no material fact can be alleged to have been suppressed.
- ix. Reliance has also been placed upon the judgment of the Hon’ble Supreme Court in Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd., wherein the Court, while referring to the decision in Continental Foundation Joint Venture Holding v. CCE, held that the expression “suppression” occurring alongside expressions such as “fraud” and “collusion” must be interpreted strictly, and that mere omission or incorrect statement would not amount to suppression unless made wilfully with intent to evade duty. It was further held therein that where facts are known to both parties, omission by one party cannot constitute suppression.
- x. The Noticees have additionally relied upon the judgment in Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay, wherein the Hon’ble Supreme Court held that the expression “suppression of facts” does not mean mere omission and that the act must be deliberate. On the strength of the aforesaid judgments and legal principles, the Noticees have contended that the dispute in the present case pertains merely to

classification of the vessel under competing tariff headings and that, in the absence of any deliberate withholding of material facts or intent to evade duty, invocation of the extended period under Section 28(4) of the Customs Act is unsustainable in law.

- xi. A perusal of the Customs tariff entries and HSN Explanatory Notes indicates that a vessel principally designed for the transportation of persons and goods cannot be classified under Heading 8904. The explanatory notes to Heading 8904 specifically describe tugs and pusher craft as vessels primarily designed for towing other craft and expressly provide that “the vessels of this heading are not designed for the transport of persons or goods.” Thus, the essential character of a vessel falling under Heading 8904 is that its primary and dominant function must be towing operations and not carriage of cargo or passengers. In the present case, the predominant function of the said Vessel is the transportation of passengers, crew, and cargo. It has been argued that the relevant tariff description employs expressions such as “primarily designed” and “main function,” thereby making the principal purpose and design of the vessel the determinative factor for classification. According to the Noticees, since the said Vessel is designed and utilized for carriage of persons and goods, its classification as a tug under Heading 8904 would be wholly inconsistent with its design, certification, and actual use, and therefore untenable in law.
- xii. The Noticees have contended that the predominant use and character of the said Vessel, M.V. Varshne, as a supply vessel for carriage of personnel and goods is clearly evidenced from contemporaneous statutory documents, namely the Special Purpose Ship Safety Certificate dated 26.10.2023, the Safety Management Certificate, and the IRS Certificate dated 31.10.2022. According to the Noticees, these documents consistently describe and certify the Vessel as a supply/passenger-cum-cargo vessel intended for transportation of persons and goods.
- xiii. The Noticees have further submitted that the Indian Register of Shipping (“IRS”) is an internationally recognized ship classification society functioning on behalf of the Maritime Administration of the Government of India and acts as the competent authority for classification and certification of Indian flag vessels. It has been argued that the certifications issued by the IRS, after due inspection and survey of the Vessel, possess substantial evidentiary value and conclusively establish the technical character and operational nature of the said Vessel.
- xiv. It has also been contended that the aforesaid certificates clearly demonstrate that M.V. Varshne was certified as a passenger vessel having the capacity to carry 37 persons on board, apart from crew members. Reliance has been placed upon Section 3(25) of the Merchant Shipping Act, 1958, which defines a “passenger ship” as a ship carrying more than twelve passengers. The Noticees have accordingly argued that, since the Vessel is certified to carry passengers and cargo, it squarely falls within the category of vessels intended for transport of persons and goods.
- xv. The Noticees have further submitted that the said Vessel is admittedly registered in India and owned by Noticee No. 1, a company having its principal place of business in India, and therefore the Vessel is governed by the provisions of the Merchant Shipping Act, 1958 by virtue of Sections 2 and 21 thereof. According to the Noticees, once the competent statutory authorities under the Merchant Shipping Act and the Indian Register of Shipping have classified the Vessel as a supply/passenger vessel, the

Revenue authorities cannot disregard such technical certification and reclassify the Vessel contrary to the findings of the competent maritime authorities.

- xvi. The Noticees have additionally contended that vessels falling under Heading 8904 are not predominantly designed or certified for carriage of passengers or cargo. A distinction has been sought to be drawn between “crew” and “passengers,” by arguing that crew members are engaged in operation and management of the Vessel, whereas passengers are persons intended to be transported or accommodated on board. It has also been argued that cargo refers to goods transported independently from one place to another, unlike stores or supplies consumed for operation of the Vessel itself. On this basis, the Noticees have contended that the design, certification, and operational use of M.V. Varshne clearly establish that it is a vessel for transportation of persons and goods and therefore correctly classifiable under CTH 8901 and not under Heading 8904.
- xvii. In *Raj Shipping Agencies Ltd. v. Commissioner of Customs (Import)*, the Hon’ble Tribunal held that the classification of a vessel must be determined primarily on the basis of its design, purpose, and statutory certifications issued by competent maritime authorities. The Tribunal observed that although the vessel possessed towing facilities and was at times used for towing operations, the contemporaneous records including the Kuwaiti Registry Certificate, Certificate of Indian Registry, and clarifications issued by the Mercantile Marine Department and Indian Register of Shipping consistently classified the vessel as an Offshore Supply Vessel. The Tribunal further held that the mere existence of towing equipment such as a winch would not render a vessel classifiable as a tug under CTH 8904, particularly when the vessel was designed and used for transportation of cargo and personnel. Reliance was also placed upon the HSN Explanatory Notes which specifically state that vessels under Heading 8904 are not designed for the transport of persons or goods. The Tribunal therefore concluded that where a vessel is capable of carrying passengers and cargo and navigation constitutes its principal function, classification under CTH 8901 is appropriate notwithstanding incidental towing operations.
- xviii. Similarly, in *HAL Offshore Ltd. v. Commissioner of Customs (Import), Mumbai*, the Tribunal held that offshore support vessels equipped with additional operational capabilities such as fire-fighting, diving support, inspection, maintenance, and rescue functions nevertheless remain supply vessels so long as their essential character and primary purpose continue to be transportation of cargo and personnel. The Tribunal rejected the Revenue’s attempt to classify such vessels under CTH 8905 merely on the basis of the activities undertaken for ONGC, holding that ONGC was not the competent authority to determine classification and that the classification assigned by the Indian Register of Shipping and Mercantile Marine Department carried greater evidentiary value. It was further held that vessels having unrestricted navigational capability, self-propulsion, and facilities for carriage of persons and cargo cannot be regarded as vessels whose navigability is merely subsidiary to their main function. The Tribunal emphasized that nomenclature such as “support vessel” is not determinative and that the true test is the vessel’s primary design and function.
- xix. Further, in *Lewek Altair Shipping Private Limited v. Commissioner of Customs, Vijayawada*, the Tribunal held that vessels deployed to support

offshore drilling platforms by transporting personnel and equipment between shore and offshore installations are properly classifiable under CTH 8901 90 00. The Tribunal observed that navigation remained the primary function of such vessels and that loading, unloading, embarking, and disembarking personnel were merely incidental to transportation. It was categorically held that such vessels could not fall under CTH 8905 by any stretch of imagination. The Tribunal further observed that a claim of classification under a particular tariff heading constitutes only a self-assessment and that even an incorrect classification claim would not amount to misdeclaration attracting confiscation or penalty under Sections 111(m), 112(a), or 114AA of the Customs Act, 1962.

xx. Likewise, in *Hede Ferrominas Pvt. Ltd. v. Commissioner of Customs (Import), Mumbai*, the Tribunal held that statutory certificates issued by maritime and shipping authorities describing a vessel as a “Supply Vessel” possess overriding evidentiary value for classification purposes. The Tribunal noted that certificates issued by the Panama Maritime Authority, Registrar of Shipping, Registrar of Indian Ships, Directorate General of Shipping, and other competent authorities consistently classified the vessel as an Offshore Supply Vessel/Other Cargo Ship. In contrast, reliance placed by the Revenue upon website descriptions, references in agreements, and isolated statements was held insufficient to displace the statutory certifications. The Tribunal accordingly held that the vessel was correctly classifiable under CTH 8901 and not under CTH 8904.

xxi. In the same vein, the Hon’ble Tribunal in *Prince Marine Transport Services Pvt. Ltd. v. Commissioner of Customs (Imports), Mumbai* held that where the Indian Register of Shipping and contemporaneous technical certificates classify a vessel as a supply vessel designed for transportation of persons and goods, the vessel would appropriately fall under CTH 8901. The Tribunal observed that the presence of winches or related fittings would not by itself establish that the vessel was a tug, particularly when such fittings were meant for movement of goods onboard and not for towing operations. The Tribunal further noted the absence of specialized hull structures and towing arrangements ordinarily associated with tug vessels under Heading 8904 and consequently upheld classification under CTH 8901.

b) Reliance on BV Certification:

xxii. The Department has placed undue reliance on an earlier certification issued by Bureau Veritas at the instance of the erstwhile owners, wherein the Vessel was described as “TUG: Fire Fighting Ship 1 – water spraying: Special service – Offshore support vessel unrestricted navigation.” It is submitted that upon import into India, the Vessel was required to undergo classification in accordance with the applicable Indian statutory framework.

xxiii. In the present case, the Indian Register of Shipping, being the competent classification authority under the Merchant Shipping Act, 1958, after due inspection and survey, classified the Vessel as a Supply Vessel [RUD-12 @ Page-176]. The IRS has further clarified that the Vessel does not satisfy the requirements applicable to Tugs or Anchor Handling Tugs, inter alia due to the absence of essential towing equipment such as a towing hook or towing winch and non-fulfilment of stability requirements [RUD-10 @ Para-5/Page-174]. Accordingly, the Vessel cannot be classified as a Tug under CTH 8904.

xxiv. Without prejudice, even the Bureau Veritas notation does not establish that towing was the principal function of the Vessel. On the contrary, the report itself records that the Vessel was intended for “offshore support activities such as supply and transportation of offshore project cargo and goods, and firefighting if need arises,” thereby reaffirming that the Vessel is essentially an offshore support/supply vessel engaged in transportation of goods and personnel.

c) Usage of the Vessel:

- xxv. It is an admitted position that, since its import, the said Vessel has been chartered to L&T Energy Hydrocarbon for use as a Supply Vessel for transportation of personnel and goods. This is corroborated by the statement of the Assistant Manager of L&T Energy Hydrocarbon, wherein it was categorically stated that the Vessel was chartered and operated as a Supply Vessel [See RUD-9, Question-5 @ Page 168]. Further, Question-6 @ Page 169 records that the Vessel was utilised for deck space, accommodation, loading of materials, and transportation of personnel.
- xxvi. Thus, the transportation of persons and goods constituted the primary function of the Vessel under the charter arrangement, thereby squarely bringing the Vessel within the ambit of CTH 8901.
- xxvii. Significantly, the impugned SCN does not allege that the said Vessel was ever actually deployed or used as a tug after importation. The SCN is completely silent regarding any towing operations undertaken by the Vessel. Therefore, even assuming that the Vessel may have been used as a tug prior to import, the relevant consideration for classification is its condition, design, and actual use at the time of import and thereafter. In the present case, the Vessel has consistently been used and chartered as a Supply Vessel and has therefore been correctly classified under CTH 8901 and not under CTH 8904.

d. Nomenclature of ‘Offshore Support’ irrelevant:

- xxviii. It appears that the SCN alleges that the Vessel was initially classified as an Offshore Support Vessel and was subsequently reclassified as a Supply Vessel at the instance of the Noticees. This allegation is misconceived, as there is no material distinction between an offshore support vessel and a supply vessel, except for certain additional features such as firefighting and allied operational capabilities. In *HAL Offshore Limited vs. Commissioner of Customs (Import), Mumbai* (supra), the Hon’ble CESTAT, at Para 16, specifically held that offshore support vessels are essentially supply vessels used for transportation of cargo and personnel to offshore platforms, albeit with additional features such as underwater diving, inspection, and firefighting capabilities, and accordingly classified the same under CTH 8901.
- xxix. Thus, the allegation of misclassification is fundamentally flawed and proceeds on an erroneous premise. The core allegation in the SCN is that the Vessel ought to have been classified as a tug and not as a supply vessel. Therefore, the alleged distinction between an offshore support vessel and a supply vessel is wholly irrelevant and does not advance the Department’s case.
- xxx. Without prejudice, the contention that the classification was altered at the instance of the Noticees is equally untenable. The Indian Register of Shipping (“IRS”), being an independent classification society, conducts its own inspection and assessment in accordance with applicable standards and grants classification based on its independent technical evaluation.

The Notices do not unilaterally determine or alter the classification of the Vessel.

e. Statement of the Chartered Engineer:

xxxii. The statement of the Chartered Engineer recorded at RUD-7 specifically notes that the said Vessel is not equipped with essential towing equipment such as shark jaws and towing pins, and therefore is incapable of performing the functions of a tug. The statement further records that the Vessel has, in fact, been operating as a supply vessel. This contemporaneous expert evidence conclusively establishes that the Vessel lacks the essential functional and technical characteristics of a tug. It is settled law that classification must be determined on the basis of the actual design, capability, and use of the Vessel, and not on any hypothetical or intended use. Accordingly, in the absence of the requisite towing equipment, the allegation that the Vessel ought to be classified as a tug is wholly unsustainable.

C. Section 112(a) and Section 114-A of the Customs Act not applicable:

- xxxiii. As LMPL is not liable for any short levy or short payment of duty under Sections 28(1) or 28(4) of the Customs Act, the provisions of Section 114A are also inapplicable. Consequently, no penalty or interest can be imposed on LMPL.
- xxxiiii. Further, Section 111 has not even been invoked in the impugned SCN and is therefore wholly inapplicable. It is settled law that merely claiming an incorrect tariff classification in a Bill of Entry does not render goods liable to confiscation under Section 111(m), since tariff classification is only a self-assessment subject to reassessment by the Department. Accordingly, Sections 111(m) and 112(a) are not attracted in the present case.
- xxxv. In *Lewek Altair Shipping Pvt. Ltd. v. Commissioner of Customs, Vijayawada* [2019 (366) ELT 318 (Tri.-Hyd.)], the Tribunal held that a wrong claim of classification or exemption does not amount to misdeclaration and cannot justify confiscation, penalty, or action under Sections 111(m), 112(a), or 114AA. Similarly, in *Northern Plastic Ltd. v. Collector of Customs & Central Excise* [1998 (101) ELT 549 (SC)], the Hon'ble Supreme Court held that an incorrect claim of classification or exemption does not amount to misdeclaration where the description and particulars of goods are correctly declared.
- xxxvi. Likewise, in *Prince Marine Transport Services Pvt. Ltd. v. Commissioner of Customs (Imports), Mumbai* [2014 SCC Online CESTAT 1636], the Tribunal held that a classification claimed on the importer's understanding cannot be treated as misdeclaration, particularly where the goods were examined and cleared by Customs authorities.
- xxxvii. Without prejudice, penalty under Section 114A can arise only where duty has been short-levied by reason of collusion, wilful misstatement, or suppression of facts. In the present case, the Vessel held a valid SPS Certificate, the classification as a Supply Vessel was fully disclosed, and all material facts were within the knowledge of the Department. Therefore, no allegation of suppression or wilful misstatement can survive, and neither the extended period nor penal provisions are invocable.
- xxxviii. Accordingly, the said Vessel was correctly classified under CTH 89019000 and was rightly eligible for NIL rate of Basic Customs Duty under Notification No. 50/2017-Cus. dated 30.06.2017. The benefit of the notification, having been validly availed, cannot now be denied in the absence of any misdeclaration or suppression of material facts.

D. Further submissions regarding relied upon documents (RUDs):

- xxxviii. It is denied that LMPL or its associates misclassified the said Vessel under CTH 89019000 to avail NIL rate of BCD under Notification No. 50/2017-Cus. dated 30.06.2017. It is further denied that the Vessel possessed facilities or undertook activities classifiable under CTH 89059090 or that it was ever used as a tug. The primary function of the Vessel has always been the transportation of cargo and personnel, and it is therefore correctly classifiable under CTH 8901.
- xxxix. LMPL has furnished all summoned documents to the Inquiry Officer, and the contents thereof are true and correct. None of the documents indicate that the Vessel was used for any primary function other than transportation of goods and personnel. The contents of RUD-11 and RUD-12 are reiterated and relied upon. An offshore supply vessel is used for transportation of manpower and goods, and the said Vessel neither functioned as nor rendered services as a tug or pusher craft.
- xl. LMPL further relies upon the Memorandum of Agreement executed with L&T Hydrocarbon Engineering Limited annexed to RUD-6, which clearly establishes that the Vessel was chartered as a supply vessel.
- xli. It is denied that there was any suppression by LMPL regarding the function of the Vessel. In any event, Section 28 does not contemplate alleged suppression vis-à-vis a third party, and there has been no suppression whatsoever from the Customs authorities.
- xlii. With respect to the statement of the Assistant Manager of L&T Hydrocarbon Energy at RUD-9, LMPL denies the assertion that the Vessel could be used as a tug upon obtaining permissions or that such possibility determines classification under Heading 8904. Such statements are unsubstantiated and contrary to the certifications issued by the recognised classification society after due inspection of the Vessel. In any event, the same stand contradicted by the statement of the Chief Engineer of M/s Sai Siddhi Associates recorded at RUD-7, who categorically opined that the Vessel was not equipped or capable of functioning as a tug.
- xliii. It is reiterated that the Vessel has at all material times been utilised as a supply vessel for transportation of personnel and goods. The Vessel is neither designed nor equipped for towing operations, and no such services were ever rendered by it. Accordingly, the allegation that the Vessel is classifiable as a tug is contrary to the factual and technical record and is liable to be rejected.
- xliv. Accordingly, the present case does not fall within the ambit of Section 28(4), as there has been no collusion, wilful misstatement, or suppression of facts by LMPL or its representatives. The impugned SCN is therefore barred by limitation.
- xlv. In any event, the Vessel is not liable to confiscation or penalty under the Customs Act, as there has been no contravention of the provisions of the Act. It is denied that LMPL or Rethina Kumar knowingly or intentionally made any false declaration in the Bill of Entry. The Vessel has been correctly classified under CTH 89019000 as a vessel used for transportation of persons and goods, and consequently no further duty, interest, confiscation, or penalty is payable.

13. Record of Personal Hearing

A personal hearing opportunity in the matter was granted to the noticees on 27.04.2026. The noticees were represented by Mr. Prathamesh Kamat, Advocate, Ms. Vineetha Khandelwal, Advocate, and Mr. Gurdeep Singh Sachar, Advocate, who appeared on their behalf and made oral submissions. The defence of the noticees was structured around three key issues: limitation under the Customs Act, classification of the imported vessel, and the applicability of penalties proposed in the Show Cause Notice.

On the issue of limitation, it was argued that the Show Cause Notice issued on 22.12.2025 was time-barred since the Bill of Entry had been filed on 08.08.2021, and the extended period under Section 28(4) could not be invoked in the absence of suppression, fraud, or wilful misstatement. It was contended that all relevant documents, including the Bureau Veritas certificate, had already been disclosed at the time of import. On merits, the counsel submitted that the vessel was correctly classifiable under CTH 8901 as a supply/offshore support vessel and not under CTH 8904 as a tug, emphasizing the absence of a towing winch and relying on classification and certifications issued by the Indian Registry of Shipping (IRS), which confirmed the vessel as a supply vessel fit for carrying personnel and cargo.

Regarding penalties, the counsel argued that provisions under Sections 114AA and 112(a) were not applicable due to absence of mens rea or abetment, and that the transaction was genuine. Judicial precedents were cited to support reliance on Indian classification authorities for classification purposes.

14. Discussion and Findings

I have gone through the facts of the case, material evidence on record, the Show Cause Notice dated 22.12.2025, oral & written submissions of the noticees. I find that reasonable opportunity of making representation against the Show Cause Notice has been given to the noticees, by way of personal hearing and written submissions. I now proceed and observe that in the present case, the following issues are required to be determined:

- i. Whether the vessel 'MV Varshne' imported vide Bill of Entry No. 4976182 dated 08.08.2021 merits rejection of declared classification under CTH 89019000 and liable to be re-classified under CTH 89040000.
- ii. Whether the impugned vessel valued at Rs. 7,51,43,182/- is to be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- iii. Whether the differential duty proposed in the Show Cause Notice is liable to be demanded and recovered from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the said Act.
- iv. Whether the importer is liable for penalty under Section 112(a) and/ or 114(A) and 114AA of the Customs Act, 1962.
- v. Whether Shri Rethina Kumar, Managing Director of M/s Lilly Maritime Private Limited and Shri Vishwaprashanth Kumar, Director of M/s Lilly Maritime Private Limited are liable for penalty under Section 112(a) and/or 114 A and 114AA of the Act.

15. Whether the vessel 'MV Varshne' imported vide Bill of Entry No. 4976182 dated 08.08.2021 merits rejection of declared classification under CTH 89019000 and liable to be re-classified under CTH 89040000.

15.1 The SCN contends that the imported vessel “MV Varshne” was incorrectly classified by the importer under CTH 89019000 for the purpose of availing Nil rate of Basic Customs Duty under Notification No. 50/2017-Cus. The SCN alleges that the vessel possessed substantial tug and anchor-handling characteristics and was therefore appropriately classifiable under CTH 89040000. In support of this allegation, reliance has been placed upon the panchnama findings, Bureau Veritas classification certificate dated 03.03.2021, the presence of features such as four-point mooring arrangement, stern roller, hydraulic systems, mud tanks, cement transfer facilities and the vessel’s high power-to-tonnage ratio. Accordingly, the SCN proposes rejection of the declared classification and reclassification under CTH 89040000.

15.2 The noticee contends that the vessel was correctly classified under CTH 89019000 since the vessel was operationally deployed as an offshore supply vessel under charter to L&T Hydrocarbon Engineering Ltd. for transportation of personnel, fuel, cargo, and materials between shore and offshore installations at Bombay High. The noticee submits that the vessel lacked essential towing and anchor handling equipment such as towing winch, towing hook, towing pins, shark jaw arrangement and bollard pull certification, and therefore did not possess operational towing capability. It is further submitted that the four-point mooring system was incomplete, the stern roller was non-functional and the vessel had never carried out towing or anchor handling operations after importation. The noticee further relies upon the classification assigned by Indian Register of Shipping (IRS), wherein the vessel was classified as a Supply Vessel.

15.3 I find that during the course of investigation and panchnama proceedings, the vessel was found equipped with technical and structural features commonly associated with Anchor Handling Tug Supply (AHTS) vessels, including stern roller arrangement, hydraulic systems intended for winches and capstans, high engine power configuration, Class FIFI-I firefighting system, AFT control systems and four-point mooring arrangement (though incomplete). Further, the Bureau Veritas Classification Certificate dated 03.03.2021 specifically describing the vessel as ‘Tug, Fire Fighting Ship I, Special Service – Offshore Support Vessel’ further indicates that the vessel was conceived and classed within the category of tug/offshore support vessels rather than as a conventional cargo transport vessel. The statements recorded during investigation, including that of Shri Vishwaprashanth Kumar and the Chartered Engineer, also acknowledge that the vessel possessed tug-related design characteristics and may originally have been designed as an Anchor Handling Tug Supply (AHTS) vessel.

15.4 I find that the HSN Explanatory Notes to Heading 89.04 describe tugs as vessels possessing specially shaped and strengthened hulls and powerful engines disproportionate to their size. In the present case, the Chartered Engineer in his statement has noted that, although the vessel lacked complete operational towing capability due to absence of certain critical equipment such as towing winch and shark jaw arrangement, it nevertheless possessed a high power-to-tonnage ratio of 2.11 kW/MT consistent with tug-like operations. The Chartered Engineer further observed that the Bureau Veritas classification as a “Tug” may have been based upon the vessel’s hull structure and technical configuration. It is also not in dispute that the vessel contained stern roller arrangement, hydraulic deck systems, offshore mooring configuration and AFT operational controls, though some of these features were not fully operational due to absence of certain components. I therefore find that the vessel possessed

the structural and technical characteristics of an AHTS/tug vessel at the time of importation, albeit with missing components, and such features are not ordinarily indicative of conventional transport/supply vessels.

15.5 The noticee has placed substantial reliance on the IRS classification describing the vessel as a “Supply Vessel”, in contrast to the earlier Bureau Veritas (BV) classification, and has argued that the domestic certification should prevail over the foreign/historic classification. I find that the issue in the present case is not one of assigning greater evidentiary value to the classification issued by IRS over that issued by BV, or vice versa. The certifications issued by classification societies are only persuasive in nature and serve as technical aids for understanding the vessel’s characteristics, design profile, and operational capabilities. The classification of the imported goods is required to be independently determined in terms of the Customs Tariff, relevant tariff headings, and applicable HSN Explanatory Notes, having regard to the overall characteristics and essential nature of the vessel.

15.6 I further find from the records that, vide letter dated 07.03.2025, the IRS itself clarified that the notation assigned by it was based upon owner’s request and after checking compliance with IRS rules and standards. IRS also clarified that, unlike BV, it could not assign “TUG” notation due to the absence of essential towing equipment and consequent non-fulfilment of relevant requirements under IRS standards. Significantly, the IRS has nowhere categorically denied the vessel’s earlier identity or capability as a Tug. I also find that, in the interim class certificate bearing No. BOM21F015 dated 29.10.2021, IRS had initially described the vessel as an “Offshore Support Vessel”. This supports the conclusion that the IRS certification primarily reflects operational compliance within the domestic maritime regulatory framework, i.e., whether the vessel, in its declared mode of operation, satisfies the relevant IRS standards for such class of vessels. Such certification is not determinative of classification under the Customs Tariff and cannot be mechanically adopted for customs purposes, particularly when the Tariff Schedule and the HSN Explanatory Notes provide specific principles governing tariff classification.

15.7 I further find that it is a settled principle of tariff classification that goods are to be classified on the basis of the description in the tariff and the design, characteristics and essential nature of the goods. I am unable to agree with the noticee’s contention that tariff classification can be made dependent solely upon the actual use or the particular commercial deployment chosen by the importer after importation. A vessel originally designed and structurally configured as an AHTS/tug vessel does not lose such essential character merely because, at a given point of time, it is deployed for supply-related operations. In the same line of reasoning, the temporary absence or non-installation of certain operational deck fittings (like the towing winch) in the instant case does not erase or negate the vessel's core structural architecture and offshore support/tug-like capabilities.

15.8 The noticee has placed reliance on *Raj Shipping Agencies Ltd. v. Commissioner of Customs (Import)*, C/88379/2014, C/88380/2014 & C/88381/2014 (CESTAT, Mumbai), *HAL Offshore Ltd. v. Commissioner of Customs (Import)*, Mumbai, 2014 (303) E.L.T. 119 (Tri.-Mumbai), *Lewek Altair Shipping Pvt. Ltd. v. Commissioner of Customs, Vijayawada*, 2019 (366) E.L.T. 318 (Tri.-Hyd.), *Hede Ferrominas Pvt. Ltd. v. Commissioner of Customs (Import)*,

Mumbai, 2016 (334) E.L.T. 540 (Tri.-Mumbai), and Prince Marine Transport Services Pvt. Ltd. v. Commissioner of Customs (Imports), Mumbai, 2015 (327) E.L.T. 283 (Tri.-Mumbai) to contend that classification of a vessel must be determined primarily on the basis of its design, HSN Explanatory Notes, and statutory certificates issued by competent maritime authorities such as the Registrar of Indian Ships, Mercantile Marine Department, and recognized classification societies, and where such certificates consistently classify a vessel as a supply vessel or offshore supply vessel, the same should prevail over commercial descriptions, contractual requirements, or incidental use such as towing or support operations.

15.9 I find that these case laws are distinguishable from the facts of present case inasmuch as the vessel was originally conceived and designed as an Anchor Handling Tug Supply (AHTS) vessel, and there exists a clear divergence in classification between Bureau Veritas and the Indian Register of Shipping. Further, even within the certifications issued by the Indian Register of Shipping, there is variation between interim and final certification, with the latter one issued substantially on owner's request confirming compliance with standards within the declared mode of operation. Therefore, unlike in the cited judgments, where classification was based on consistent statutory certification aligned with the vessel's design and the HSN Explanatory Notes, the present case involves competing classifications, coupled with the presence of extensive technical characteristics ordinarily associated with tug/AHTS vessels.

15.10 Accordingly, I hold that the declared classification under CTH 89019000 is liable to be rejected, and the vessel 'MV Varshne' is rightly re-classifiable under CTH 89040000.

16. Whether the impugned vessel valued at Rs. 7,51,43,182/- is to be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

16.1 The SCN contends that by classifying the vessel under CTH 89019000 and declaring it as an Old & Used Self Propelled Supply Vessel for the purpose of availing Nil rate of Basic Customs Duty, the importer rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

16.2 The noticee submits that adoption of a particular tariff classification is part of the statutory self-assessment process and that a mere difference of opinion regarding classification cannot amount to misdeclaration attracting confiscation under Section 111(m). The noticee has relied upon *Lewek Altair Shipping Pvt. Ltd. v. Commissioner of Customs, Vijaywada* – 2019 (366) ELT 318 (Tri-Hyd.), *Northern Plastic Ltd. v. Collector of Customs & Central Excise* – 1998 (101) ELT 549 (SC), and *Prince Marine Transport Services Pvt. Ltd. v. Commissioner of Customs (Imports), Mumbai* – 2014 SCC OnLine CESTAT 1636, to contend that a mere incorrect classification in the Bill of Entry does not constitute misdeclaration so as to attract confiscation under Section 111(m) of the Customs Act.

16.3 I find that the importer had declared the vessel in the Bill of Entry as an Old & Used Self Propelled Supply Vessel classifiable under CTH 89019000 and accordingly claimed exemption from Customs Duty. However, in view of the findings recorded in the preceding paragraphs, the vessel has been held to have characteristics associated with tug/AHTS vessels.

16.4 I further find that the present case is not one of a mere interpretational dispute arising from two equally plausible tariff entries. It is an admitted position that the importer was in possession of the Bureau Veritas classification certificate at the time of import, wherein the vessel was specifically described as “TUG, Fire Fighting Ship I, Special Service – Offshore Support Vessel”. Despite such knowledge, the importer chose to declare and present the vessel exclusively as a conventional supply vessel under CTH 89019000 for the purpose of claiming Nil Basic Customs Duty thereby misrepresenting its material characteristics. In these circumstances, I find that the case laws relied upon by the noticee are distinguishable from the present case.

16.5 I find that under the self-assessment framework introduced under Section 17 of the Customs Act, 1962, the importer bears the statutory responsibility of making a correct and complete declaration regarding classification and duty liability. In the present case, the incorrect self-assessment under CTH 89019000 was not merely a technical claim under a competing tariff entry, but amounted to misdeclaration of the classification-relevant characteristics of the imported vessel, resulting in short-levy of duty. Consequently, the imported goods did not correspond in material particulars with the declaration made under the Customs Act, 1962 and therefore became liable to confiscation under Section 111(m) of the Act.

16.6 Accordingly, I hold that the impugned vessel is liable for confiscation under Section 111(m) of the Customs Act, 1962.

17. Whether the differential duty proposed in the Show Cause Notice is liable to be demanded and recovered from the Noticee under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the said Act.

17.1 The SCN proposes recovery of differential customs duty on the ground that the noticee incorrectly classified the imported vessel under CTH 89019000 and thereby availed Nil rate of Basic Customs Duty under Notification No. 50/2017-Cus. The SCN further alleges that the noticee wilfully misdeclared and suppressed material particulars regarding the relevant nature and characteristics of the vessel with intent to evade payment of duty, thereby attracting the extended period of limitation under Section 28(4) of the Customs Act, 1962.

17.2 The Noticee submits that the classification adopted by it was bona fide and was in consonance with the IRS certification and the vessel’s operational deployment as a supply vessel. It is further submitted that all material documents, including the Bureau Veritas (BV) classification certificate, were furnished before Customs at the time of importation and therefore there was no suppression or wilful misstatement on its part. The dispute, if any, is merely interpretational in nature and consequently the extended period under Section 28(4) is not invocable.

17.3 The noticee further contends, relying upon P. Ramanatha Aiyar, Advanced Law Lexicon (6th Edn.), Pushpam Pharmaceuticals Co. v. CCE, 1995 Supp (3) SCC 462, Anand Nishikawa Co. Ltd. v. CCE, (2005) 7 SCC 749, SJS Business Enterprises (P) Ltd. v. State of Bihar, (2004) 7 SCC 166, and CCE v. Ballarpur Industries Ltd., (2007) 8 SCC 89, that suppression of fact requires a deliberate,

wilful non-disclosure with intent to evade duty, and cannot be inferred from mere omission or incorrect classification. It is further contended that where facts are already within the knowledge of the department, or where there is only a bona fide interpretational error without mens rea, the ingredients of Section 28(4), i.e., suppression, fraud, or wilful misstatement are not satisfied.

17.4 I find from the discussion in foregoing paras that the imported vessel has been held to be correctly classifiable under CTH 89040000 and not under CTH 89019000 as declared by the noticee. I find that the vessel, at the time of importation, has been held to possess substantial structural and technical characteristics associated with tug/AHTS vessels. I further find that the Bureau Veritas classification certificate dated 03.03.2021, which was admittedly available with the importer at the time of importation, specifically described the vessel as “TUG, Fire Fighting Ship I, Special Service – Offshore Support Vessel”.

17.5 I find that although the noticee claims to have submitted the Bureau Veritas certificate before Customs at the time of importation, it nevertheless chose to self-assess and declare the vessel merely as an Old & Used Self Propelled Supply Vessel under CTH 89019000 to avail Nil rate of Basic Customs Duty. Thus, despite being aware of the vessel’s tug/offshore-support classification and technical profile reflected in the Bureau Veritas records, the noticee did not classify the vessel accordingly and instead claimed the exemption available to vessels falling under Heading 8901.

17.6 I find that the judgments relied upon by the noticee were rendered in situations where there was no material indicating conscious misdeclaration or deliberate adoption of an incorrect declaration with knowledge of its duty implications. The records of the case reveal that the IRS certification as a Supply Vessel was issued subsequent to the filing of the Bill of Entry dated 08.08.2021. Further, the IRS itself clarified vide letter dated 07.03.2025 that the notation was assigned by it based upon the owner’s request and compliance with relevant operational standards. I find that the sequence of events indicates that despite knowledge of the vessel’s tug/offshore-support design profile reflected in the Bureau Veritas classification records available at the relevant time, the noticee chose to declare and assess the vessel as a supply vessel under CTH 89019000 for the purpose of availing Nil rate of duty. Therefore, the extensive reliance subsequently placed by the noticee upon the IRS classification as a Supply Vessel does not support the plea of bona fide belief.

17.7 In view of the above findings, I hold that the extended period of limitation is correctly invocable in the facts of the present case on account of wilful misstatement and suppression of material particulars. Consequently, the differential duty proposed in the SCN is liable to be demanded and recovered from the noticee under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

18. Whether the importer is liable for penalty under Section 112(a) and/or 114(A) and 114AA of the Customs Act, 1962.

18.1 The SCN contends that the importer M/s Lilly Maritime Private Limited is liable for a mandatory penalty equal to the duty evaded under Section 114A. The SCN further proposes penalties upon the importer under Section 112(a) and Section 114AA of the Customs Act, 1962.

18.2 The noticee submits that penal provisions are entirely inapplicable because there was no fraudulent intent, no short levy of duty, and no deliberate evasion. They argue that the claim of classification, even if held to be incorrect, does not attract penalties under Sections 112(a), or 114AA, and since the extended period is not invocable, Section 114A also fails.

18.3 I find that in view of the foregoing discussion, the differential duty has been held to be recoverable under Section 28(4) of Customs Act, 1962 for wilful misstatement and suppression of material particulars. Accordingly, the ingredients necessary for imposition of penalty under Section 114A stand satisfied. As per the proviso to Section 114A, when a penalty is levied under this specific section, no separate penalty shall be levied under Section 112 for the same act or omission. Regarding Section 114AA, I find that there is no substantive evidence on record that knowingly false or materially incorrect or forged/fabricated documents were submitted by the importer.

18.4 Accordingly, I hold that M/s Lilly Maritime Private Limited is liable for penalty under Section 114A of the Customs Act, 1962. I drop the proposals for penalty under Sections 112(a) and 114AA.

19. Whether Shri Rethina Kumar, Managing Director of M/s Lilly Maritime Private Limited and Shri Vishwaprashanth Kumar, Director of M/s Lilly Maritime Private Limited are liable for penalty under Section 112(a) and/or 114A and 114AA of the Act.

19.1 The SCN contends that Shri Rethina Kumar and Shri Vishwaprashanth Kumar were actively concerned with the import and customs-clearance related affairs of the importing company at the relevant time and were aware of the classification profile and technical characteristics of the imported vessel. The SCN therefore proposes penalties upon them under Sections 112(a), 114A and 114AA of the Customs Act, 1962

19.2 The noticees reiterate that the classification adopted for the imported vessel under CTH 89019000 was correct and in consonance with the IRS certification and vessel's deployment for supply-related operations, and accordingly, the question of imposition of personal penalties does not arise.

19.3 I find that penalty under Section 114A is not imposable upon the Directors in their individual capacities, as the said provision applies to the person liable to pay duty, namely the importing company, upon whom penalty under Section 114A has already been imposed. I further find that there is no evidence on record to establish that Shri Rethina Kumar or Shri Vishwaprashanth Kumar knowingly used any forged, fabricated or incorrect document in the course of importation so as to attract penalty under Section 114AA of the Customs Act, 1962.

19.4 As regards penalty under Section 112(a) of the Customs Act, 1962, I find that the imported vessel has already been held liable to confiscation under Section 111(m) of the Customs Act, 1962. I further find from the case records that Shri Rethina Kumar and Shri Vishwaprashanth Kumar were active Directors associated in decision making capacity with the customs related affairs of the importing company during the relevant period. The materials on record further establish that they were aware of the vessel's classification profile and

technical characteristics, including the Bureau Veritas “TUG” notation available at the time of importation. Therefore, they must bear responsibility for the mis-declaration of the essential character of the imported goods, which rendered the goods liable to confiscation under Section 111(m) of the Customs Act, 1962. The acts and omissions on part of Shri Rethina Kumar and Shri Vishwaprashanth Kumar, in the self-assessment under CTH 89019000 despite being aware of the vessel’s tug/AHTS design profile, renders them liable to penalty under Section 112(a) of the Act.

19.5 Accordingly, I hold Shri Rethina Kumar and Shri Vishwaprashanth Kumar liable for personal penalties under Section 112(a) of the Customs Act, 1962. The proposals to impose penalties on them under 114A and 114AA are dropped.

ORDER

20. In view of the findings and observations as made above, I pass the following order:

- i. I reject the classification under CTH 89019000 of the vessel ‘MV Varshne’ imported vide Bill of Entry No. 4976182 dated 08.08.2021 and order to re-classify the same under CTH 89040000.
- ii. I hold the vessel ‘MV Varshne’ imported under the Bill of Entry No. 4976182 dated 08.08.2021 valued at Rs. 7,51,43,182/- liable to confiscation under Section 111(m) of the Customs Act, 1962. However, as the goods are not physically available, I impose a redemption fine of ₹30,00,000/- (Rupees Thirty Lakhs only) on M/s Lilly Maritime Private Limited, in lieu of confiscation, under Section 125(1) of the Customs Act, 1962.
- iii. I confirm the differential duty amounting to ₹43,39,518.76/- (Rupees Forty Three Lakh Thirty Nine Thousand Five Hundred Eighteen and Seventy Six Paise only) under Section 28(8) of the Customs Act, 1962, to be recovered from M/s Lilly Maritime Private Limited, along with applicable interest under Section 28AA of the Customs Act, 1962.
- iv. I impose a penalty equal to the differential duty confirmed above and applicable interest thereupon on M/s Lilly Maritime Private Limited under Section 114A of the Customs Act, 1962. I drop the proposals to impose penalty on M/s Lilly Maritime Private Limited under Sections 112(a) and 114AA.
- v. I impose a penalty of ₹2,00,000/- (Rupees Two Lakhs only) on Shri Rethina Kumar, Managing Director of M/s Lilly Maritime Private Limited, under Section 112(a) of the Customs Act, 1962. I drop the proposals to impose penalty on him under Sections 114A and 114AA.
- vi. I impose a penalty of ₹2,00,000/- (Rupees Two Lakhs only) on Shri Vishwaprashanth Kumar, Director of M/s Lilly Maritime Private Limited, under Section 112(a) of the Customs Act, 1962. I drop the proposals to impose penalty on him under Sections 114A and 114AA.

21. This order is passed without prejudice to any other action which may be taken or purported to be taken against the noticees or any other concerned person under the Customs Act, 1962, or any other act for the time being in force in the Union of India.



(Arshdeep Singh)
Joint Commissioner of Customs
Import-I, New Custom House

To,

1. M/s Lilly Maritime Private Limited,
13/II, Tarun Industrial Estate,
Mogra Lane, Andheri (East),
Mumbai-400 069

2. Shri Rethina Kumar,
Manging Director, M/s Lilly Maritime Private Limited,
13/II, Tarun Industrial Estate, Mogra Lane,
Andheri (East), Mumbai-400 069.

3. Shri Vishwaprashanth Kumar,
Director, M/s Lilly Maritime Private Limited,
13/II, Tarun Industrial Estate, Mogra Lane,
Andheri (East), Mumbai-400 069.

Copy to:

1. The Commissioner of Customs (Import – I), New Custom House, Mumbai.
2. The Joint 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. VB, NCH, Mumbai.
5. The Additional Director, DRI Gandhidham Regional Unit, Plot No. 5 86 6, Ward 5A, Near Vinayak Hospital, Adipur- 370205, Kutch, Gujarat.
6. EDI Section for upload in Mumbai Customs Zone – I website.
7. Office Copy.
8. Notice Board.