

	<p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, NS-I</p> <p>सीमाशुल्क प्रधानआयुक्त का कार्यालय, एनएस-1 CENTRALIZED ADJUDICATION CELL (NS-V), JAWAHARLAL NEHRU CUSTOM HOUSE, केंद्रीकृतअधिनिर्णयनप्रकोष्ठ (एनएस-व), जवाहरलालनेहरूसीमाशुल्कभवन, NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707 न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400707</p>
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Date of Order: 02.02.2026

आदेश की तिथि : 02.02.2026

Date of Issue:

जारी किए जाने की तिथि:

02.02.2026

02.02.2026

DIN 20260278NW00006176A8

F. No. S/10-181/2024-25/COMMR/GR IIAB/NS-I/CAC/JNCH

SCN No. 1700/2024-25/ COMMR/Gr II(A-B)/NS-1/CAC/JNCH dated 04.02.2025

Passed by: Shri Yashodhan Wanage

पारितकर्ता: श्री यशोधन वानागे

Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva

प्रधानआयुक्त, सीमाशुल्क (एनएस-1), जेएनसीएच, न्हावाशेवा

Order No.: 376/2025-26 /Pr. Commr./NS-I /CAC /JNCH

आदेश सं. : 376 /2025-26/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

Name of Party/Noticee: M/s Air Liquide India Holding Pvt. Ltd. (IEC-0596028539) and Others

पक्षकार (पार्टी)/ नोटिसीकानाम: मेसर्स एयर लिक्विड इंडिया होल्डिंग प्राइवेट लिमिटेड (आईईसी-0596028539) और अन्य

ORDER-IN-ORIGINAL

मूलआदेश

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इस आदेश की मूलप्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सीईएसटीएटी, पश्चिमीप्रादेशिकन्यायपीठ (वेस्टरीजनलबेंच), ३४, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई- ४००००९ को अपील कर सकता है, जो उक्तअधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

3. Main points in relation to filing an appeal:-

3. अपील दाखिल करने संबंधी मुख्यमुद्दे:-

Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - फार्म नं. सीए३, चारप्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए).

Time Limit-Within 3 months from the date of communication of this order.

समयसीमा- इसआदेशकीसूचनाकीतारीखसे३महीनेकेभीतर

Fee- (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.

फीस- (क) (एक हजार रुपये—जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये या उससे कम है।

(b) Rs. Five Thousand - Where amount of duty & Page 2 of 64 interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh.

(ख) पाँच हजार रुपये— जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है।

(c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.

(ग) दसहजाररुपये—जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५० लाख रुपये से अधिक है।

Mode of Payment - A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

भुगतान की रीति— क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायक रजिस्ट्रार, सीईएसटीएटी, मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

General - For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवाकर अपील अधिकरण (प्रक्रिया) नियम, १९८२का संदर्भ लिया जाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129 of the Customs Act 1962.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्धृतशास्ति का ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

1. BRIEF FACTS OF THE CASE

1.1 M/s. Air Liquide India Holding Pvt. Ltd. (IEC-0596028539) having address at Plot B-1, Chakan Industrial Area, PH-II Village Sawardari, Tehsil-Khed, Pune, Maharashtra filed **Shipping Bill No. 2801946 dated 29.07.2024** through their CHA M/s. JEM LOGISTICS SOLUTIONS - AAJFJ7816QCH001 for Re-Export of **120 Empty Cylinder of DMF Acetylene** under CTH 73090090 imported on returnable basis vide **Bill of Entry Nos. 9525296 dated 04.01.2024, 7357869 dated 14.08.2023 & 4390724 dated 28.01.2023**. Shipping Bill No. 2801946 dated 29.07.2024 was filed on the NFEI basis & FOB value of Shipping Bill is Rs. 7305470.03 & Value of each cylinder is shown as Rs. 119272.98

1.2 During scrutiny of import documents, Export docks officer observed that exporter had imported DA PUR and DMF Acetylene under CTH 29012910 filled in cylinders on return basis (as per declaration) and paid applicable duty only on chemical/gas (Acetylene) filled in the cylinders. It was found that the importer neither declared the returnable cylinders as separate items in respective import documents nor has claimed any exemption notification/benefit for import of cylinders (imported on returnable basis). As such the importer had failed to discharge applicable duty obligation on the cylinders at the time of import.

1.3 Furthermore, as per the PESO certificate/ license given at the time of import (mentioned in respective import bills of entry) there was specific condition for import of said gas/chemical in cylinders, which is stated as below:

“Please note that the cylinders in question after emptied shall be returned to the supplier of the cylinders under intimation to this office. The copies of re-export bond and bank guarantee executed to The President of India through Commissioner of Customs shall be submitted to this office for reference and record. This permission does not absolve you to obtain necessary permission/license from any other authorities.”

1.4 Export Docks officer asked CHA/exporter to provide details regarding duty payment on cylinder at the time of import or details regarding any exemption notification claimed on import of cylinder on returnable basis, as there was not any notification mentioned in import bill of entry. Also, exporter was asked to provide details/copy of re-export bond and bank guarantee which was to be submitted at the time of import (as cylinders were imported on returnable basis). However, CHA/ exporter had failed to provide the same.

1.5 In addition to above, Export Docks officer extracted previous import data also and verified from 1.5 system, wherein one bill of entry no. 6280765 dated 17.11.2021 was found. In the said bill of entry, same item i.e. **DMF Acetylene under CTH 29012910 filled in cylinders on return basis (as per declaration)** was imported. In the said bill of entry also no exemption notification was claimed. Applicable duty was paid on DMF Acetylene. Cylinders (on returnable and rotation basis) were declared as separate item in bill of entry. However, cylinders were mis-declared under CTH 29012910 and duty was paid which was applicable on DMF Acetylene. In re-export shipping bill cylinders are declared under RITC 73090090. As such, it appeared that importer has mis-declared the cylinder under wrong CTH, which result in short payment of duty.

1.6 Further email dated 13.08.2024 was sent to exporter seeking clarification regarding shipping bill no. 2801946 dated 29.07.2024 and the same is reproduced below:

- i. *“Duty payment on cylinder at the time of import, if any paid,*
- ii. *Details regarding any exemption notification claimed on cylinder on returnable basis, as no exemption notification was mentioned in above said import bills of entry.*
- iii. *Details/copy of re-export bond and bank guarantee which was to be submitted at the time of import (as cylinder are imported on returnable basis)”*

1.7 In response of which a letter dated 16.08.2024 addressed to AC, Export Docks was received on email stating that they had imported DMF Acetylene Gas vide bills of entry No. 9525296 dated 04.01.2024, 7357869 dated 14.08.2023 & 4390724 dated 28.01.2023. While importing the shipment vide bill of entry No. 9525296 dated 04.01.2024, they had submitted the bond.

1.8 However, for bills of entry No. 7357869 dated 14.08.2023 & 4390724 dated 28.01.2023 RE bond was not submitted for the shipment and further they have requested to allow re-export of the shipment.

1.9 In this regard it was observed that bond was provided only for one bill of entry no. 9525296 DT. 04.01.24 under notification number 104/94-Cus dated 16.03.1994. However, in said bill of entry no exemption/Re-Export notification was found mentioned under which benefit was taken at the time of import and that can be considered at the time of re-export. Further this bond had not been presented to Customs for acceptance.

Relevant provisions of the said notification are as under:

“Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importers failure to do so :

Provided further that in any particular case, the aforesaid period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit.”

1.10 Furthermore as per condition of notification no. 104/94-Cus dated 16.03.1994 goods were to be re-exported within six months or such extended period as approved by the competent authority. However, exporter had also failed to provide documentary evidence regarding the extension in re-export period.

1.11 No re-export notification was mentioned/ claimed by the exporter in any of the bills of entry no. i.e. 9525296 dated 04.01.24, 7357869 dated 14.08.2023 & 4390724 dated 28.01.2023 which are mentioned in re-export shipping bill. Exporter vide letter dated 16.08.2024 addressed to AC, Export Docks stated that they had imported the cylinders on returnable basis under notification no. 104/94-Cus dated 16.03.1994 but have failed to re-export within time period or provide any documentary evidence regarding the extension.

1.12 Accordingly matter was forwarded to Group for verify and extract the past import data regarding import of cylinders on returnable basis, if any, along with above said 4 nos. of

bills of entry (9525296 DT. 04.01.24, 7357869 DT. 14.08.2023 & 4390724 DT. 28.01.2023 and 6280765 dated 17.11.2021) to ascertain the exact duty implications, correct CTH, applicability of SIMS, to verify Re-export Bond & BG, if any submitted and re-export period extension approval.

1.13 Importer vide letter submitted that they serve innovative gas solutions and technologies to a wide range of Industrial and Healthcare customers, they sell a wide range of industrial gases - pure and mixtures across industries for gas applications such as welding and cutting, heat treatment, inert gas blanketing, oxy-combustion, annealing, wastewater treatment. They import DMF Acetylene gases in steel type of Cylinders for Industrial use and are supplied to our customers Tata, Bosch & Kalyani and many more. These gases are imported in steel types of Cylinders. The gases are used for welding/cutting purposes. These cylinders were imported on the returnable basis to their supplier for re-filling purposes. They informed that the current RE- export of 120 empty cylinders were imported with (DMF) Acetylene gases vide three Bill of Entries. The details of the same were as follows:-

	BE No.	Date	Total No. of Cylinders Imported	No. of Cylinders Re-Exported	Already Re-exported SB No. & Dt.	Current SB No. & Dt.
1	4390724	28.02.23	120	48	2459260 dt. 14.07.23	
				60	6515926dt. 04.01.24	
				12		2801946 dt. 29.07.24
2	7357869	14.06.23	120	72	9159278 dt. 16.04.24	
				48		2801946 dt. 29.07.24
3	9525296	04.01.24	096	60		2801946 dt. 29.07.24
				36 under utilization yet to re-exported		
			336	336		

Further, exporter submitted that 48 no. of cylinders imported under B/E No. 6280765 dated 17.11.2021 were re-exported back to the shipper vide Shipping No. 8491445 dated 24.02.2022 (36 Cylinders)& 2300798 dated 22.06.2022 (12 cylinders). In view of the above, exporter humbly stated that there was some delay in re export of the above Cylinders due to delay in utilization of the gases beyond their control. they could not furnish Re-export bond at the time of Import for the reason that these Bill of Entry were cleared under RMS and also

note that Customs Duty of the DMF gases were paid as applicable. They did not intend to keep the cylinders in India as all the cylinders imported are on returnable basis and since the bond and Empty Cylinders were re-exported back after 6 months due to the gas utilization was delayed due to internal production and hence they were unable to meet the required time to complete the re-export process. Further, they had requested to kindly permit the current shipment of 120 Cylinders as it was incurring heavy demurrage apart from the loss of business. Subsequently, Importer vide letter 19.12.2024 submitted that they were in process of scrutiny of documents in this matter and it is taking a longer time as the documents are very old. However, it was identified that the 240 cylinders purchased by them and they have paid applicable duty against 240 cylinders imported vide bill of entry No.859360 dt.16.04.2009 & 694395 dt.25.09.2009. However, the complete reconciliation of all the transactions since 2009 will take time and will submit all the details to authority. Further they requested Show Cause Notice may be issued to them of any further clarity required by authority pertaining to the shipment. They also requested for release the export consignment as the same had been held for long & it was impacting their business. They would submit applicable bank guarantee or re-export bond for provisional release of the shipment.

1.14 Accordingly, Export Consignment of 120 Cylinders vide Shipping Bill No. 2801946 dated 29.07.2024 was released provisionally after taking Bond & Bank Guarantee of Rs. **73,50,000/-** equal to assessable value of Shipping Bill No. 2801946 dated 29.07.2024 i.e. Rs. 7305470.03/- as per Board Instructions vide **Circular No. 30/2013-Customs Dated 05.08.2013.**

1.15 Further, past data of Import of 5 years was extracted from EDI system & scrutinized wherein below mentioned Bills of Entry were found wherein Cylinders have been imported & bond not submitted.

Table-I

S. No.	BE No	BE Date	Customs Broker	Item Desc	Qty	Unit	Unit price (SGD)	Asses s Val	Duty Paid
1	6689652	30-01-2020	JEM LOGISTICS SOLUTIONS	LASAL 201 Laser Mix Gas in 10L Litre Aluminium Cylinder-8 CYLINDER IN 1PLT(PESO NO.G/H/Q/MH/04/200(G62670) DT 23.12.2019	12.8	KG S	718.75	520862	110657
2	8629387	28-08-2020	JEM LOGISTICS SOLUTIONS	DMF ACETYLENE (COP)-108 CYLINDER IN 12PLT(PESO NO.G/HQ/MH/04/665(G66007)DT 27-07-20)SO CYLINDER ON RETUN BASIS	732.88	KG S	7.44482	452474	96128
				DMF ACETYLENE (COP)-(AL SG)-12 CYLINDER IN 1PLT(PESO NO.G/HQ/MH/04/665(G66007)DT 27-07-20)SO CYLINDER ON RETUN BASIS	67.12	KG S	7.44458	41438	8804
3	2230020	04-01-2021	JEM LOGISTICS SOLUTIONS	DMF ACETYLENE (COP)-120 CYLINDER IN 10PLT(PESO NO.G/HQ/MH/04/971(G72305)DT 01-06-21)SO CYLINDER ON RETUN BASIS	800	KG S	7.578	639946	135957

4	47267 73	19-07- 2021	TRANSGLO BAL LOGISTICS	DMF ACETYLENE (COP) -120 CYLINDER IN 10PLT(PESO NO.G/HQ/MH/04/1328(G80643) (DT 12-07-21) SO CYLINDER ON RETURN BASIS	800	KG S	7.578	58939 6	1252 17
5	62807 65	17-11- 2021	TRANSGLO BAL LOGISTICS	DMF ACETYLENE (COP) -48 CYLINDER IN 4PLT(PESO NO.G/HQ/MH/04/1889(G84222) (DT 01-09-21) SO CYLINDER ON RETURN BASIS	360	KG S	6.736	15496 2	3292 2
				WM250 CYLINDER (WITHOUT VALVE)(CYLINDERS ARE ON RETURNABLE& ROTATION BASIS)	48	NO S	1000	31904 02	6778 01
6	69686 10	06-01- 2022	DSV COLOAD & CLEARANC E PVT LTD	DMF ACETYLENE (COP)-120 CYLINDER IN 10PLT(PESO NO. G/HQ/MH/04/2299(G92181) DT 21-12-21 SO CYLINDER ON RETURNABLE BASIS)	800	KG S	7.578	95058 5	2019 52
7	76159 77	23-02- 2022	JEM LOGISTICS SOLUTIONS	DMF ACETYLENE (COP)-108 CYLINDER IN 9PLT-SO CYLINDER ON RETUN BASIS	720	KG S	8.334	88762 0	1885 75
8	97339 71	26-07- 2022	JEM LOGISTICS SOLUTIONS	DMF ACETYLENE (COP)-120 CYLINDER IN 10PLT-SO CYLINDER ON RETUN BASIS	800	KG S	8.334	79513 1	1689 26
9	31142 09	01-11- 2022	JEM LOGISTICS SOLUTIONS	DMF ACETYLENE (COP)-84 CYLINDER IN 7PLT-SO CYLINDER ON RETUNBASIS	518. 5	KG S	9.001 04	56158 4	1193 09
10	43907 24	28-01- 2023	JEM LOGISTICS SOLUTIONS	DMF ACETYLENE (COP)-120 CYLINDER IN 10PLT-SO CYLINDER ON RETUN BASIS	783	KG S	12.68 97	85295 4	1812 10
11	57350 03	29-04- 2023	JEM LOGISTICS SOLUTIONS	DMF ACETYLENE (COP)-84 CYLINDER IN 7PLT-SO CYLINDER ON RETUNBASIS	523	KG S	13.29 87	67784 5	1440 08
12	73578 69	14-08- 2023	SAI DUTTA SHIPPING AGENCY PVT LTD	DMF ACETYLENE (36 CYLINDER PACKED IN 3 PLT) (CYLINDER ON RETURN BASIS)	229. 35	KG S	12.99 67	29252 9	6214 8
				DMF ACETYLENE (84 CYLINDER PACKED IN 7 PALLETS) (CYLINDER ON RETURN BASIS)R228446, R228436,R228447,R228458,R2284 59,R228	535. 15	KG S	12.99 67	68256 7	1450 11
13	95252 96	04-01- 2024	SAV LOGISTICS	DA PUR 72M3 12 CYL PLT N3.0 (F) - COP - 96 CYLINDER IN 8 PLT-SO CYLINDER ON RETURN BASIS (QTY: 576M3)	585. 8	KG S	13.56 91	79089 6	1680 26
14	28170 53	30-03- 2024	SAI DUTTA SHIPPING AGENCY PVT LTD	DA PUR 72M3 12 CYL PLT N3.0(F) (24 CYLINDER PACKED IN 2 PLT)(CYLINDER ON RETURNABLE BASIS) CYL.NO. 24178, 24103, 24167,	152. 9	KG S	12.99 67	18871 6	4009 3
				DA PUR 72M3 12 CYL PLT N3.0(F) -COP (CYLINDER ON RETURNABLEBASIS) (96 CYLINDER PACKED IN 8 PLT) (CYL.NO. 02755, 02818,	611. 6	KG S	12.99 67	75486 4	1603 71
Total Assessable Value								1,30,24,770	

1.16 In reference to the Bills of Entry mentioned above (excluding B/E No. 6280765 dated 17-11-2021), it had been observed that the cylinders were neither separately declared in the respective Bills of Entry nor were the applicable duties paid on the imported cylinders. Additionally, the importer has neither claimed the benefit under Notification No. 104/94-Customs dated 16.03.1994, nor has the required re-export bond been submitted for the cylinders in the Bills of Entry listed in Table-I.

Furthermore, with regard to B/E No. 6280765 dated 17-11-2021, the importer had misclassified the cylinders under CTH 29012910, instead of the correct classification under CTH 73110090. This misclassification has resulted in evasion of customs duty, as the customs duty under CTH 29012910 is 21.245%, whereas the duty under CTH 73110090 is 30.980%. Consequently, the importer, by failing to declare the cylinders in the Bills of Entry listed in Table-I, had evaded a differential duty of Rs. 2,47,98,354/- (Rupees Two Crore Forty-Seven Lakh Ninety-Eight Thousand Three Hundred Fifty-Four Only), as detailed in Table-II.

Therefore, it appeared that the duty of Rs. 2,47,98,354/- is recoverable under Section 28(4) of the Customs Act, 1962, along with the applicable interest under Section 28AA of the Customs Act, 1962. In addition, the goods appear to be liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962.

TABLE-II

S.No.	BE No	BE Date	No. of Cylinder Imported	Unit rate (SGD)	Conversion rate	AV	Duty Rate	Applicable Duty	Duty Paid	Differential Duty
1	6689652	30-01-2020	8	1000	53.55	428400	30.98%	132718	0	132718
2	8629387	28-08-2020	120	1000	55.75	6690000	30.98%	2072562	0	2072562
3	2230020	04-01-2021	120	1000	56.4	6768000	30.98%	2096726	0	2096726
4	4726773	19-07-2021	120	1000	56.05	6726000	30.98%	2083715	0	2083715
5	6280765	17-11-2021	48	1000	56.35	2704800	30.98%	837947	677801	160146
6	6968610	06-01-2022	120	1000	56.8	6816000	30.98%	2111597	0	2111597
7	7615977	23-02-2022	108	1000	56.9	6145200	30.98%	1903783	0	1903783
8	9733971	26-07-2022	120	1000	58.5	7020000	30.98%	2174796	0	2174796
9	3114209	01-11-2022	84	1000	59.15	4968600	30.98%	1539272	0	1539272
10	4390724	28-01-2023	120	1000	62.6	7512000	30.98%	2327218	0	2327218
11	5735003	29-04-2023	84	1000	62.7	5266800	30.98%	1631655	0	1631655
12	7357869	14-08-2023	120	1000	62.65	7518000	30.98%	2329076	0	2329076

13	95252 96	04-01- 2024	96	100 0	63.4	6086400	30.98 %	188556 7	0	1885567
14	28170 53	30-03- 2024	120	100 0	63.2	7584000	30.98 %	234952 3	0	2349523
TOTAL			1388			8,22,34, 200		254761 55		2479835 4

1.17 Further, it appeared that importer had not taken Landing permission as per Rule 32 of Gas Cylinder Rules, 2016 of Bills of Entry mentioned in Table-I along with Table – III below as same was not found uploaded in E-Sanchit. Subsequently, it appeared that the Importer had also violated provisions of DGFT Notification No. 17/2015-20 dated 05.09.2019 by not doing compulsory **SIMS** registration. Importer also imported “BUTTERFLY VALVE” without BIS Certificate vide B/E No. 3031932 dated 06.03.2021 in violation of Butterfly Valves (Quality Control) Order, 2020. Thus goods appear to be liable for confiscation under Section 111(d) of Customs Act 1962.

TABLE-III

S. N o.	B/E No.	BE Date	CHA	CTH	Item Desc	Qty	Unit price	Assess Val	Duty Paid
1	69469 91	19-02- 2020	ALL-WAYS Logistics (CHA) Pvt Ltd	28459 090	DEUTERIUM GAS[D2] CAS 7782-39-0 NON- RADIOACTIVE, FLAMMABLE [ITEM NO.DG-4900- CG- 1245G]UN NO.1957/CLASS2.1 CYLINDER NO.D3	18.68 Kgs	3280 CAD	3946436. 2	109454 4.1
				73110 090	CYLINDERS15 NOS. ARE THE PROPERTY OF DEUTRAMED SEND TO AIR LIQUIDE (I) HOLDING PVT.LTD ON RETURNABLE BASIS AND NOTFOR SA	1089. 32 Kgs	8.26 CAD	579706.9 3	0
2	79380 60	18-06- 2020	JEM LOGISTICS SOLUTION S	73110 090	AIR GAS TANK 17 BAR SERIAL NO C290257 MANUFACTURER CRYOLOR YEAR 2018-(Country of Origin-India)	1050 0 Kgs	19.59 SAR	4739548. 31	177590 8.7
3	81773 75	15-07- 2020	JEM LOGISTICS SOLUTION S	73101 010	PART NO-01CM5H250- CM5H-250 LIQUID HELIUM / STORAGE/TRANSPORTDEW AR S/N 4151 THRU 4162 (EMPTY STEEL SYLINDER) (12PIECES)	1857. 7 Kgs	33.33 CAD	4907894. 42	152046 5.6
4	83327 63	30-07- 2020	ALL-WAYS Logistics (CHA) Pvt Ltd	28459 090	DEUTERIUM GAS[D2]CAS 7782-39- 0 NON- RADIOACTIVE, FLAMMABLE [ITEM NO.DG-4900-CG- 1245G]UN NO.1957/CLASS2.1 CYLINDER NO. D3	26.15 Kgs	3280.2 5 CAD	5451383. 8	151194 1.3
				73110 090	CYLINDERS 21 NOS.ARE THE PROPERTY OF DEUTRAMED SEND TO AIR LIQUIDE (I) HOLDING PVT.LTD ON RETURNABLE BASIS AND NOT FOR SALE	1458. 85 Kgs	8.64 CAD	800752.9 6	0

				28459 090	Cylinder No.D3357086,D3357003, D3357036,D3357002,D3357 080,D3357095,D3357082,D 3357068,D3357044,D33570 34,D3357094,	0.000 1 Kgs	0.01 CAD	0	0
				28459 090	Cylinder No.D3357069,D3357085, D3357079,D3357087,D3198 156, D3197074,D3197110,D3197 056, D3197127,D3337100	0.000 1 Kgs	0.01 CAD	0	0
5	88107 06	14-09- 2020	JEM LOGISTICS SOLUTION S	73101 010	PART NO-01CM5H250- CM5H-250 LIQUID HELIUM / STORAGE/TRANSPORTDEW AR 5/N 4163 THRU 4174 (EMPTY STEEL SYLINDER) (12PIECES)	1876. 8 Kgs	30.11 USD	4760143. 78	147469 2.5
6	62805 59	17-11- 2021	TRANSGLO BAL LOGISTICS	28459 090	D2 GAS @ 99.99% (DG- 4900-CG-001G) (QTY: 12190 G, U/P:3.48)	1219 0 gms	3.48 CAD	2913440. 22	808042 .6
				73110 090	UN CYLINDER WITH WATER CAPACITY OF 48.8 LITRES, AND NOMINALLY A DEUTERIUM GAS (AS PER INVOICE) -CYL-G-488 (CYLINDERS A	10 Nos.	375 CAD	257545.7 8	79787. 8
7	68801 27	29-12- 2021	CLASSIC CLEARING & FORWARD ING	28459 090	DEUTERIUM GAS - D2 GAS CAS NO: 7782-39-0 [ITEM NO.DG-4900-CG-001G] UN NO.1957/CLASS2.1	12.19 Kgs	3480 CAD	2873064. 3	796844 .4
				73110 090	UN CYLINDER WITH A WATER CAPACITY OF 48.8 LITRES, AND NOMINALLY A DEUTERIUM GAS VOLUME OF 7,300 LITRES (21.1 DEGREES C &	10 Nos.	375 CAD	253976.5 8	0
8	78589 44	14-03- 2022	JEM LOGISTICS SOLUTION S	28459 090	DEUTERIUM GAS - D2 GAS @99.99% [ITEM NO. DG- 4900-CG-001G] UN NO.1957/CLASS2.1	19.50 4 kgs	3480 CAD	4457815. 51	123637 5.2
				73110 090	UN CYLINDER WITH A WATER CAPACITY OF 48.8 LITRES, AND NOMINALLY A DEUTERIUM GAS VOLUME OF 7,300 LITRES (21.1 DEGREES C	16 Nos.	375 CAD	394067.3 1	122082 .1
9	88098 45	24-05- 2022	JEM LOGISTICS SOLUTION S	84193 900	ACT900CM3PFB1-ACT900 AL 400/50 WCTBH BM13 TCP/IP DRYER-(Madein Italy)	1 Nos.	17211. 3 EUR	1555428. 85	431398 .2
1 0	93263 72	29-06- 2022	JEM LOGISTICS SOLUTION S	28459 090	DEUTERIUM GAS-(Item-DG- 4900-CG-001G)-D2 Gas @ 99.99%-Class 2.1, UN 1957	24.38 Kgs	3480 CAD	5537481. 78	153582 0.5
				73110 090	UN Cylinder with water capacity of 48.8 litres & nominally a deuterium gas on Returnable Basis 20 Cylinder -as per invoic	20 Nos.	600 CAD	783214.3	0
1 1	30319 32	06-03- 2021	JEM LOGISTICS	84818 090	BUTTERFLY VALVE AND SPARE PARTS FOR	119 Kgs.	11596. 64 JPY	977906.1 4	271222 .3

			SOLUTION S		BUTTERFLY VALVE-(COO- JAPAN)-(45pcs)				
					Total			4,51,89,8 07	

1.18 Further, for the acts of omission and commission including landing of said goods without obtaining permission from Commissioner of Customs, clearing goods without compulsory SIMS registration & BIS Certificate & evading applicable customs duty on cylinders, the importer appeared to be liable for penalty under Section 112 (a)/114A and 117 of the Customs Act, 1962.

1.18.2 From the Table –III it appeared that Importer in past had imported cylinder on returnable basis correctly claiming Notification No. 104/94 dated 16.03.1994 & as per clarification provided vide **Circular No. 51/2020-Customs dated 20-11-2020**. Thus it appeared importer had knowingly & intentionally neither declared cylinder in Bs/E separately nor paid duties on the cylinders imported. Thus it appeared that importer is liable for penalty under Section 114AA of the Customs Act, 1962.

1.18.3 Further, all Customs Brokers as per Table-I & III cleared goods in violation of Rule 32 of Gas Cylinder Rules, 2016 read with Butterfly Valves (Quality Control) Order, 2020 & Compulsory SIMS Registration. Further, customs broker had filed Bills of Entry without declaring cylinders separately to avoid applicable customs Duties.

1.19 As per section 17(1) of the Act, "An Importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods. "Thus, in this case the importer had self-assessed the Bills of Entry and appears to have willfully not declared cylinders separately. As the importer got monetary benefit due to said act, it was apparent that the same was done deliberately by not declaring cylinders separately in the Bills of Entry during self-assessment. Therefore, differential duty is recoverable from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the said Act.

1.20 It appeared that the Importer had given a declaration under section 46(4) of the Act, for the truthfulness of the content submitted at the time of filing Bill of Entry. However, the applicable Duty on the subject goods was not paid by the Importer at the time of clearance of goods. It also appears that the Importer has submitted a false declaration under section 46(4) of the Act. By the act of presenting goods in contravention to the provisions of section 111(d) & 111(m) it appeared that the Importer had rendered the subject goods liable for confiscation under section 111(d) & 111(m) of the Customs Act 1962. For the above act of deliberate omission and commission that rendered the goods liable to confiscation. Accordingly, the Importer also appears liable to penal action under Section 114A/112A & 117 of the Customs Act, 1962.

1.21 From the foregoing, it appeared that the Importer & Customs Broker had willfully not declared cylinders separately to evade Customs Duty; that the Importer and Customs Broker had submitted a incomplete declaration under section 46(4) of the said Act. Due to this act of omission of Importer & Customs Broker, there has been loss to the government exchequer equal to the differential duty. Thus, the Importer & Customs Brokers appear liable to penal action under Section 114AA of the Customs Act, 1962.

1.22 Accordingly, Show Cause Notice bearing No. 1700/2024-25/COMMR/Gr II(A-B)/NS-1/CAC/JNCH dated 04.02.2025 was issued to importer M/s. Air Liquide India Holding Pvt. Ltd. (IEC-0596028539) seeking as to why:

- i. Differential duty amount of Rs. 2,47,98,354/- (Rupees Two Crore Forty-Seven Lakh Ninty Eight Thousand Three Hundred Fifty Four only) with respect to the cylinders not declared separately covered under Bill of entry as mentioned in Table -II above should not be demanded under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.
- ii. The subject goods as detailed in Table I, Table II & Table III having a total assessable value of Rs. 14,04,48,777/- (Rupees Fourteen Crore Four Lac Forty Eight Thousand Seven Hundred Seventy Seven only) should not be held liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962.
- iii. Penalty should not be imposed on the importer under Section 112 and/or Section 114 A of the Customs Act, 1962.
- iv. Penalty should not be imposed on the importer under Section 114AA of the Customs Act, 1962.
- v. Penalty should not be imposed on the importer under Section 117 of the Customs Act, 1962.
- vi. Bank Guarantee of amount Rs. 73,50,000/- should not be encashed & same may not be appropriated against differential duty demand with applicable interest, fine & penalty.
- vii. Bond submitted of amount Rs. 73,50,000/- should not be enforced to collect differential duty demand with applicable interest, fine & penalty.

1.22.1 Further Show Cause Notice bearing No. 1700/2024-25/COMMR/Gr II(A-B)/NS-1/CAC/JNCH dated 04.02.2025 was also issued to Customs Brokers M/s. JEM Logistics Solutions, M/s. All-Ways Logistics (CHA) Pvt Ltd, M/s. Transglobal Logistics, M/s. Classic Clearing & Forwarding, M/s. DSV Coload & Clearance Pvt Ltd, M/s. Sai Dutta Shipping Agency Pvt Ltd and M/s. Sav Logistics seeking as to why:

- i. Penalty should not be imposed on the importer under Section 112 and/or Section 114 A of the Customs Act, 1962.
- ii. Penalty should not be imposed on the importer under Section 114AA of the Customs Act, 1962.
- iii. Penalty should not be imposed on the importer under Section 117 of the Customs Act, 1962.

2. WRITTEN SUBMISSIONS OF NOTICEES

2. The Importer, M/s. Air Liquide India Holding Pvt. Ltd. (IEC-0596028539) vide their letter dated 03.12.2025 gave written submissions and inter-alia submitted as below:

2.1.1 They submitted that the company is incorporated under the Companies Act, 1956 and has been operating in India since 1992, and are a leader in industrial and medical gases, engaged inter alia in procurement, storage, transportation and supply of gases using specialised cylinders and allied infrastructure. Around 2008, they commenced supply of DMF Acetylene Gas, used for welding, cutting, brazing and chemical synthesis, by importing the Gas from overseas suppliers in specialised cylinders duly approved under the Gas Cylinder Rules, 2004/2006. All such imports were supported by valid PESO Certificates (Form-D).

2.1.2 They initially purchased cylinders and imported them along with Gas in 2009. The first import was made vide Bill of Entry No. 859360 dated 16.04.2009 involving 4 pallets (48 cylinders), followed by import of 16 pallets (192 cylinders) vide Bill of Entry No. 694395 dated 25.09.2009. In both Bills of Entry, Gas and cylinders were declared as separate line items, classified under CTI 2901 29 10 and CTI 7309 00 10 respectively, and Basic Customs Duty @10% was duly paid on both. These Bills of Entry were filed prior to the self-assessment regime and were physically examined and appraised by Customs. After import, the Gas was supplied domestically in the same duty-paid cylinders. Upon consumption, empty cylinders were returned and re-exported to the overseas supplier for refilling under Shipping Bills, supported by export invoices declaring no commercial value. The same cylinders were thereafter re-imported filled with Gas, with Customs duty discharged only on the value of the Gas, while the cylinders were declared as “returnable.”

2.1.3 To ensure continuity of supply, they also obtained 9 pallets (108 cylinders) on lease from M/s Air Liquide Singapore, ownership of which remained with the lessor as duly certified. Both owned and leased cylinders were used strictly under the same rotational import-export model. Each pallet comprises 12 uniquely numbered cylinders permanently linked to a specific pallet number, and these pallet numbers were consistently declared in every Bill of Entry and Shipping Bill, enabling one-to-one correlation of import, re-export and re-import. Further, in 2021, they purchased an additional 4 pallets (48 cylinders) vide Bill of Entry No. 6280765 dated 17.11.2021, wherein Gas and cylinders were again declared separately, and the said Bill of Entry was examined by Customs, as reflected in ICEGATE records.

2.1.4 They have used only 396 cylinders (33 pallets) since commencement of the business, comprising 24 owned pallets (288 cylinders) and 9 leased pallets (108 cylinders). These cylinders have been continuously rotated, and no additional cylinders have ever been introduced. Their operations commenced prior to April 2011 and continued seamlessly through subsequent regimes including SWIFT, the Central Original Document Verification Cell, and Turant Suvidha Kendras. PESO Certificates and supporting documents were consistently uploaded and verified, and several Bills of Entry were examined or queried by Customs, clearly demonstrating full departmental knowledge and acceptance of the long-standing practice. The entire model of importing Gas in duty-paid and leased cylinders on a returnable basis has been transparent, traceable, compliant, and consistently followed since 2009, with no suppression of facts, mis-declaration or intent to evade Customs duty.

2.1.5 They submit that the impugned SCN, at Table-II, erroneously records import of 1388 cylinders during the relevant period. They have obtained and used only 396 cylinders (33 pallets), of which 288 cylinders (24 pallets) are owned and 108 cylinders (9 pallets) are on

lease. All cylinders have been rotated under the import–re-export–re-import model, and the figure of 1388 represents merely instances of import rather than distinct cylinders.

2.1.6 The first Bill of Entry listed in Table–II pertains to 8 cylinders imported vide Bill of Entry No. 6689652 dated 30.01.2020, which falls beyond the statutory period of five years from the date of issuance of the impugned SCN. In terms of Section 28(4) of the Customs Act, 1962, read with Explanation 1(a) to Section 28, the relevant date is the date on which the proper officer makes an order for clearance of goods, and any demand in respect of these cylinders is therefore time barred.

2.1.7 They submit that in view of the above, the computation of cylinder imports in the impugned SCN is erroneous and, without prejudice, should be considered only in relation to 396 cylinders, while the alleged differential duty in respect of the 8 cylinders imported vide BOE dated 30.01.2020 is barred by limitation and liable to be dropped at the threshold.

2.1.8 The Cylinders under consideration were initially imported by them during 2009–2010 and have since been repeatedly exported and re-imported under a rotational model. Subsequently, they also imported 4 additional pallets of Cylinders vide Bill of Entry No. 6280765 dated 17.11.2021.

2.1.9 It is submitted that once Customs assessments are re-opened, all the impugned BOEs are open for all purposes. Reliance is placed on the decision of the Hon'ble Tribunal, New Delhi in Lili Foam Industries (P) Ltd. v. Collector of Central Excise, 1990 (46) ELT 462 (Tri.), wherein it was held that even if the assessee did not contest the rate of duty at the initial stage, they are entitled to question differential duty once the Department seeks to re-open assessment. Similarly, in Bakeman's Home Products Pvt. Ltd. v. Collector of Customs, Bombay, 1997 (95) ELT 278 (Tri.) and Decora Ceramics Pvt. Ltd. v. Collector of Central Excise, Rajkot, 1998 (100) ELT 297 (Tri.), it was held that an assessee can challenge prior classification or rate of duty in a re-opened assessment. Further, in Polydyne Corporation v. Collector of Central Excise, Mumbai, 1999 (108) ELT 94 (Tri.-Del.), the Tribunal held that an assessee cannot be estopped from raising such issues once the assessment is questioned.

2.1.10 In view of the above, all the impugned BOEs are open for all purposes and they claim, at this stage, the benefit of exemption under Sl. No. 5 of Notification No. 45/2017 dated 30.06.2017 ("NN 45/2017").

2.1.11 It is submitted that the benefit of an exemption notification can be claimed even at a later stage. Reliance is placed on the decision of the Hon'ble Supreme Court in Share Medical Care v. Union of India, 2007 (209) ELT 321 SC, wherein it was held that an applicant cannot be debarred from claiming the benefit of a notification merely because it was not claimed initially. This principle has been consistently followed by the Hon'ble Courts and Tribunals, including:

Hero Cycles v. Union of India, 2009 (240) ELT 490 (Bom.) – denial of benefit due to inadvertent non-claim is impermissible;

Commissioner of Customs, Chennai v. Kankai Imports, 2008 (223) ELT 62 (Tri.-Chennai) – exemption under a notification can be availed even if not claimed at import;

Unichem Laboratories Ltd. v. CCE, Bombay, 2002 7 SCC 145; Applicom India Ltd. v. CC, Bangalore, 2007 213 ELT 317 (Tri.-Bang.) – benefit of exemption can be claimed at any stage;

M/s Chhaged Foods Pvt. Ltd. v. CC, Ahmedabad, 2024-VIL-265-CESTAT-Ahm. – beneficial notifications like NN 45/2017 can be claimed at any stage if conditions are satisfied.

2.1.12 NN 45/2017 provides exemption from customs duty on goods re-imported into India to the extent specified in Column 3 of the notification table. They are eligible to claim exemption under Sl. No. 5 as the Cylinders re-imported and are not covered under Sl. Nos. 1–4B (which relate to exports under DEEC, Advance Authorization, DFIA, EPCG, repair exports, or aircraft-related goods) and also satisfy the definition of “re-import” since the same goods exported earlier have been re-imported into India.

2.1.13 It is submitted that there were 396 Cylinders across 33 pallets which were rotated out of and back into India. Each re-import constitutes a transaction of “re-import” under NN 45/2017. The Cylinders were re-imported within the permissible period of five years from export, which may be extended up to two years by the Commissioner.

2.1.14 Further, they satisfy the conditions of NN 45/2017:

- i. The Cylinders were not exported under any Duty Exemption Scheme (DEEC/Advance Authorization/DFIA/EPCG/DEPB) or any scheme under Chapter 4 of the Foreign Trade Policy;
- ii. The Cylinders re-imported are identical to those exported, as evidenced by pallet-wise one-to-one correlation in import invoices.

2.1.15 Accordingly, they are eligible to claim the benefit of NN 45/2017 on all imports of Cylinders during the relevant period. The Cylinders imported under the rotational model satisfy all conditions specified in the notification, and the demand for differential duty under the impugned SCN is, therefore, untenable and liable to be dropped.

2.1.16 It is submitted that they are entitled, alternatively, to claim the benefit of exemption under Notification No. 104/94-Cus. (“NN 104/94”) even at this stage, as all imported Cylinders have been re-exported, either within six months or within extended periods dictated by operational exigencies. NN 104/94, issued under Section 25 of the Customs Act, 1962, provides full exemption from customs duty and IGST on durable containers temporarily imported, subject to re-export and the execution of a bond. CBIC Circular No. 51/2020 dated 20.11.2020 clarifies that containers which are durable, reusable, identifiable at the time of re-export, and otherwise satisfy the conditions of NN 104/94 are eligible for exemption, and prescribes procedural formalities such as separate declaration in Bills of Entry, execution of continuity re-export bond, and re-export within six months, extendable by the Assistant Commissioner upon sufficient cause. They have always complied with the substantial conditions of NN 104/94, as the Cylinders imported with DMF Acetylene Gas were eventually re-exported after utilization of the gas, thereby fully meeting the legislative intent of providing exemption to containers temporarily imported for cargo transport.

2.1.17 Most of the Cylinders were re-exported within one year from the date of importation, including 408 instances within six months. The timeline for re-export is often dependent on operational exigencies, such as market demand and customer requirements, which are outside their control. The fact that some re-exports exceeded six months does not amount to substantive non-compliance. As clarified in Circular No. 51, procedural requirements such as timely re-export, bond execution, and separate declaration are meant to ensure orderly compliance, but failure to adhere strictly to them in some instances does not defeat the entitlement to exemption under NN 104/94.

2.1.18 Reliance is placed upon the Hon'ble CESTAT decision in *M/s Intermark Shipping Agencies Pvt. Ltd. vs. Commissioner of Customs, Kandla – 2014 (314) ELT 557 (Tri. – Ahmd.)*, where it was held that once containers are allowed to be re-exported, the prescribed period effectively extends to the actual date of export, and no duty can be demanded if the containers are not seized or confiscated. Similarly, in *CCE vs. JS Gupta & Sons – 2015 (318) ELT 63 (Tri. – Del.)*, the Tribunal held that procedural lapses, without prejudice to the revenue, cannot defeat substantive entitlement to exemption. The facts in the present case are analogous, as all Cylinders, except those exported vide SB No. 2801946 dated 29.07.2024, were allowed to be re-exported by Customs. Accordingly, the time limit for re-export under NN 104/94 should be deemed extended to the actual dates of re-export, in line with Circular No. 51 procedures.

2.1.19 Reliance is also placed on *M/s Vaibhav Global Ltd. vs. Commissioner of Customs, Jaipur – Final Order No. 50369/2022*, where the Tribunal emphasized that entitlement under an exemption notification cannot be denied due to mere procedural lapses, provided the substantive conditions are fulfilled. Procedural lapses, such as delay in re-export or non-execution of bond in some cases, do not constitute non-compliance with the substantive conditions of NN 104/94. Circular No. 51 further recognizes the procedural nature of these requirements while outlining the process for temporary import and re-export of durable containers.

2.1.20 Reliance is further placed upon *Lovy International vs. Commissioner of Customs (Export), ICD TKD – 2024 (388) ELT 501 (Tri. – Del.)*, where the Tribunal upheld that entitlement under a scheme cannot be denied due to procedural lapses if the substantive requirement — export of goods — is satisfied. By analogy, they are fully entitled to the benefit under NN 104/94, as all imported Cylinders have been re-exported, and Circular No. 51 prescribes mechanisms, such as bond execution and re-export, that they have substantially complied with.

2.1.21 In light of the above, it is submitted that the Assistant Commissioner is empowered under NN 104/94 to extend the six-month re-export period. They request that this power be exercised to deem the re-export period extended to the actual dates of re-export, thereby allowing the full benefit of NN 104/94. The substantial condition — re-export of imported durable Cylinders — has been complied with in all instances, and no procedural lapse, as outlined in Circular No. 51, should be allowed to deprive them of the exemption.

2.1.22 A detailed chart capturing each instance of import and subsequent re-export of Cylinders is enclosed as Annexure – 14, demonstrating that every imported Cylinder was re-exported without being used for home consumption. NN 104/94, as clarified by Circular No. 51, was intended to provide relief to importers/exporters in such circumstances. They are fully compliant with its substantive requirements, and the differential duty demanded in the impugned SCN is therefore liable to be dropped, with the benefit of NN 104/94 allowed at this stage, alternatively to their claim under NN 45/2017.

2.1.23 It is submitted that except for Circular No. 51/2020, nowhere under the Customs Act, 1962, or the regulations made thereunder, is it prescribed that durable containers imported on a temporary basis must be declared as separate line items in Bills of Entry. They have always declared the Cylinders as imported on returnable basis, which is adequate disclosure. The requirement of separate declaration flows solely from Circular No. 51, which is clarificatory in nature and binding only on Customs officers, not on importers. They also submit that under Sections 12 and 14 of the Customs Act, 1962, duty is chargeable on the transaction value, being the price actually paid or payable for the imported goods. The import

transactions covered under Table-II of the SCN pertain only to DMF Acetylene Gas and did not involve procurement of cylinders; consequently, the transaction value declared in the relevant Bills of Entry did not include cylinder value. They further submit that wherever cylinders were imported as goods, the same were declared separately and duty discharged, as reflected in the Bills of Entry listed in Table-I of the SCN. Even the computation of differential duty confirms this position, as the value of cylinders was borrowed at SGD 1,000/- from Shipping Bill No. 2801946 dated 29.07.2024, since no cylinder value existed in the import documents.

2.1.24 Reliance is placed on the decisions of the Hon'ble Supreme Court in Commissioner of Central Excise, Bhopal vs. Minwool Rock Fibres Ltd. and Tata Teleservices Ltd. vs. Commissioner of Customs, which establish that departmental circulars cannot impose new conditions or restrict statutory exemptions. This principle was reaffirmed by Hon'ble CESTAT in M/s JD Engineering vs. Commissioner of Central Excise and Samsung India Electronics Pvt. Ltd. vs. Deputy Commissioner of Customs, where it was held that a circular issued after a notification cannot create new substantive obligations or narrow the scope of an exemption.

2.1.25 They have always substantially complied with the conditions of NN 104/94, including re-export of all Cylinders. Any procedural omission, such as non-declaration as separate line items, was inadvertent and does not amount to evasion of duty, especially as the department was aware that they had omitted to claim the benefit of NN 104/94. The acknowledgment of this fact by the Ld. CC itself demonstrates that the exemption was available and the transaction was revenue neutral. Accordingly, the allegation of evasion or improper conduct is without basis.

2.1.26 They submit that the entire issue is revenue neutral, as all Cylinders imported filled with DMF Acetylene Gas have been subsequently re-exported. A detailed statement demonstrating one-to-one correlation of each instance of import and corresponding re-export, supported by unique pallet and cylinder numbers, has been furnished as Annexure-14. In such circumstances, no revenue loss arises and the issuance of the impugned SCN proposing recovery of duty on Cylinders separately is unwarranted.

2.1.27 Without prejudice, they submit that even assuming the proposed differential duty were payable, they would be entitled to drawback of 98% of such duty upon re-export under Section 74 of the Customs Act. The Cylinders are identifiable goods, duly exported under Shipping Bills after import, and the correlation of imports and exports is conclusively established through pallet-wise and cylinder-wise identification reflected in invoices and shipping documents forming part of Annexure-14.

2.1.28 They further submit that, except for four instances pertaining to Bill of Entry No. 6689652 dated 30.01.2020 (relating to Lasal Gas), all instances of re-export occurred within two years from the relevant date of import. The said Bill of Entry falls beyond the statutory five-year period prescribed under Section 28(4) of the Customs Act, and therefore lies outside the scope of the present proceedings. Accordingly, the substantive conditions for drawback stand satisfied, reinforcing their plea of complete revenue neutrality.

2.1.29 Reliance is placed on settled judicial precedents holding that where a transaction is revenue neutral, demand of duty is unsustainable, including: *CCE v. Textile Corporation of Marathwada Ltd.*, 2008 (231) ELT 195 (SC); *CCE, Vadodara v. Narmada Chematur Pharmaceuticals Ltd.*, 2005 (179) ELT 276 (SC); *K.V. Rao v. CCE & Cus.*, 2008 (222) ELT 267 (Tri.-Bang.), affirmed by the Hon'ble Supreme Court in 2016 (337) ELT A41 (SC); *SRF Ltd. v. CCE*, 2007 (220) ELT 201 (Tri.-Chennai), affirmed in 2016 (331) ELT A138 (SC);

and *Oboi Laboratories Pvt. Ltd. v. CCE*, 2015 (321) ELT 472 (Tri.-Mumbai), affirmed in 2015 (325) ELT A213 (SC).

2.1.30 They contend that invocation of the extended period under Section 28(4) of the Customs Act is wholly unsustainable. The impugned SCN alleges non-declaration of Cylinders as separate line items, non-payment of duty, non-claim of Notification No. 104/94-Cus., non-execution of re-export bond, and mis-classification in Bill of Entry No. 6280765 dated 17.11.2021. These allegations, even if assumed, do not establish collusion, wilful misstatement, or suppression of facts as required under Section 28(4).

2.1.31 They submit that Section 28(4), being an exception to the normal limitation under Section 28(1), must be construed strictly. Reliance is placed on *Pushpam Pharmaceuticals Co. v. CCE*, 1995 (78) ELT 401 (SC); *Tamil Nadu Housing Board v. CCE*, 1994 (74) ELT 9 (SC); and *CCE v. Punjab Laminates Pvt. Ltd.*, 2006 (202) ELT 578 (SC), wherein the Hon'ble Supreme Court held that extended limitation can be invoked only upon clear evidence of intent to evade duty.

2.1.32 They further submit that all material facts were always within the knowledge of the department. Several Bills of Entry were examined or queried by Customs, including historical imports since 2009 under the same rotational model. The Cylinders were consistently declared as "returnable" in the description column of Bills of Entry. In such circumstances, suppression cannot be alleged. Reliance is placed on *Orissa Bridge & Construction Corpn. Ltd. v. CCE*, 2011 (264) ELT 14 (SC) and *CCE, Indore v. Syncom Formulation (I) Ltd.*, 2004 (172) ELT 77 (Tri.-Del.).

2.1.33 They also rely upon *Gammon India Ltd. v. CCE*, 2002 (146) ELT 173 (Tri.), affirmed by the Supreme Court; *Lovely Food Industries v. CCE*, 2006 (195) ELT 90 (Tri.); *Jalla Industries v. CCE*, 2000 (117) ELT 429 (Tri.); and *Rivaa Textile Inds. Ltd. v. CCE*, 2006 (197) ELT 555 (Tri.), affirmed by the Gujarat High Court, to submit that extended limitation is not invocable where the department was aware of the factual matrix.

2.1.34 They submit that they acted under a bona fide belief that separate declaration of Cylinders was required only when the Cylinders were purchased, and not when imported on a returnable basis. Such bona fide belief negates invocation of extended limitation, as held in *CCE v. Surat Textile Mills Ltd.*, 2004 (167) ELT 379 (SC) and *3M India Ltd. v. CC*, 2020 (373) ELT 385 (Tri.-Bang.).

2.1.35 They further submit that the issue involved is one of interpretation of exemption notifications and procedural requirements, for which extended limitation is impermissible. Reliance is placed on *Singh Brothers v. CCE*, 2009 (14) STR 552 (Tri.-Del.); *Steelcast Ltd. v. CCE*, 2009 (14) STR 129 (Tri.-Del.); and *K.K. Appachan v. CCE*, 2007 (7) STR 230 (Tri.-Bang.).

2.1.36 Without prejudice, they submit that even an incorrect claim of exemption or classification does not per se amount to wilful misstatement or suppression, particularly under the self-assessment regime. Reliance is placed on *Amrit Corp. Ltd. v. CC (Import)*, 2016 (333) ELT 340 (Tri.-Mumbai); *Lewek Altair Shipping Pvt. Ltd. v. CC*, 2019 (366) ELT 318 (Tri.-Hyd.), affirmed by the Supreme Court; and *Midas Fertchem Impex v. Principal CC*, 2023 (1) TMI 998 (CESTAT).

2.1.37 In view of the foregoing, they submit that mere non-declaration of Cylinders as separate line items, particularly when declared as returnable and fully re-exported, cannot constitute wilful mis-declaration or suppression. The impugned SCN fails to bring any cogent

evidence of intent to evade duty. Accordingly, invocation of extended period under Section 28(4) and the consequential demand are legally untenable and liable to be dropped.

2.1.38 They submit that the proposal for confiscation of Cylinders under Sections 111(m), 111(d) and 111(o) of the Customs Act, as alleged in Paras 16 and 17 of the SCN, is wholly unsustainable. The allegations are premised on the same set of facts relied upon for invocation of extended limitation under Section 28(4), namely alleged non-declaration, non-obtaining of Landing Permission under Rule 32 of the Gas Cylinder Rules, 2016, alleged violation of SIMS Notification No. 17/2015-20 dated 05.09.2019, and alleged non-compliance with BIS requirements in respect of Butterfly Valves imported under Bill of Entry No. 3031932 dated 06.03.2021. They submit that none of these allegations establish any misdeclaration, prohibition, or violation of post-import conditions so as to attract confiscation.

2.1.39 With respect to Section 111(m), they submit that there was no misdeclaration of value or any other material particular in the impugned Bills of Entry. In each Bill of Entry, the Cylinders were expressly declared as being imported on a returnable basis. The imports were consistently effected since 2009, and the department had full knowledge of the transactional pattern, as evidenced by examination and query in six out of thirteen Bills of Entry covered under Table-II of the SCN, including detailed examination of Bill of Entry No. 6280765 dated 17.11.2021. The SCN does not adduce any evidence of misdeclaration and is based merely on assumptions, rendering Section 111(m) inapplicable.

2.1.40 As regards Section 111(d), they submit that confiscation can arise only when goods are imported contrary to a statutory prohibition. The Cylinders are not prohibited goods under the ITC (HS), the Customs Act, or any other law. The alleged non-obtaining of Landing Permission under Rule 32 of the Gas Cylinder Rules is purely procedural. They had obtained PESO licences in Form-D under the same Rules and filed the same with each Bill of Entry, upon scrutiny of which Out-of-Charge was granted by the proper officer. Further, SIMS registration is not applicable to Cylinders imported on returnable basis, as clarified by DGFT Policy Circular No. 29/2015-20 dated 04.10.2019. Therefore, no prohibition exists so as to invoke Section 111(d).

2.1.41 With respect to Section 111(o), they submit that the said provision applies only to non-fulfilment of post-import conditions attached to an exemption. In the present case, there is no violation of any post-import condition, as all Cylinders imported along with DMF Acetylene Gas were re-exported after use, thereby complying with Notification No. 104/94-Cus. Reliance is placed on *Global Boards Ltd. v. CC*, 2019 (368) ELT 1113 (Tri.-Mumbai) and *Stainox Alloys Pvt. Ltd.*, 2020 (10) TMI 287 (CESTAT), wherein it was held that once duty consequences are neutralised or conditions complied with, Section 111(o) is not invocable.

2.1.42 They further submit that confiscation under Section 111 is impermissible once goods have been cleared for home consumption. In the present case, all Cylinders were cleared under valid Bills of Entry and are no longer "imported goods" within the meaning of Section 2(25) of the Customs Act. Reliance is placed on *Bussa Overseas & Properties Pvt. Ltd. v. C.L. Mahar*, 2004 (163) ELT 304 (Bom.), affirmed by the Supreme Court; *Southern Enterprises v. CC*, 2005 (186) ELT 324 (Tri.-Bang.); and *Shiv Kripa Ispat Pvt. Ltd.*, 2009 (235) ELT 623 (Tri.-LB), holding that goods not available and already cleared cannot be confiscated.

2.1.43 In view of the above factual position and settled judicial precedents, they submit that none of the provisions of Section 111(m), 111(d), or 111(o) are attracted in the present case.

The impugned SCN fails to establish misdeclaration, prohibition, or breach of post-import conditions. Accordingly, the proposal for confiscation of Cylinders under Section 111 of the Customs Act is legally untenable and liable to be dropped in entirety.

2.1.44 They contend that the proposal to recover interest under Section 28AA of the Customs Act is unsustainable in law. Interest under Section 28AA is purely consequential and can arise only where the principal duty demand is legally payable. Since, as discussed earlier, the demand of differential duty on Cylinders imported under the impugned Bills of Entry is itself not sustainable, no interest can survive. Reliance is placed on the settled principle laid down by the Hon'ble Supreme Court in *Pratibha Processors v. Union of India*, 1996 (88) ELT 12 (SC), and followed in *CC v. Jayanthi Krishna & Co.*, 2000 (119) ELT 4 (SC), that interest is merely accessory to the principal demand and cannot be levied when the duty itself is not payable.

2.1.45 They further submit that no penalty is imposable on them under Sections 112(a), 114A, 114AA or 117 of the Customs Act, as proposed in the SCN. It is a settled legal position that when the duty demand itself fails, penal consequences automatically fall. Reliance is placed on *Collector v. H.M.M. Ltd.*, 1995 (76) ELT 497 (SC), *Nakoda Textile Industries Ltd.*, 2009 (240) ELT 199 (Bom.), affirmed in *Balakrishna Industries*, 2006 (201) ELT 325 (SC), holding that penalty cannot be sustained when no duty is legally payable.

2.1.46 With respect to Section 112(a), they submit that the said provision can be invoked only if the goods are liable to confiscation under Section 111. As discussed earlier, the Cylinders imported and cleared under the impugned Bills of Entry, including Bill of Entry No. 6280765 dated 17.11.2021 and others listed in Tables I–III of the SCN, are not liable to confiscation under Sections 111(m), 111(d) or 111(o). In absence of any act or omission rendering the goods liable to confiscation, penalty under Section 112(a) is not legally invocable.

2.1.47 As regards penalty under Section 114A, they submit that the mandatory ingredients of wilful misstatement, suppression of facts or collusion are completely absent. The imports were consistently declared as Cylinders imported on returnable basis, examined by Customs, and cleared after scrutiny. The department had full knowledge of the import pattern over several years. It is a settled position that when extended period under Section 28(4) is not invocable, penalty under Section 114A also fails. Reliance is placed on *Videomax Electronics*, 2011 (264) ELT 466 (Tri.-Bom.) and the judgment of the Hon'ble Supreme Court in *Rajasthan Spinning & Weaving Mills*, 2009 (238) ELT 3 (SC).

2.1.48 They also submit that penalties under Sections 112(a) and 114A cannot be imposed simultaneously in view of the express bar contained in the fifth proviso to Section 114A. This position is supported by decisions in *Shri Bhuvanesh Engineering Works*, 2018 (5) TMI 1680 (CESTAT-Bangalore), *Videomax Electronics* (supra), *Associate Marketing Services*, 2006 (195) ELT 287 (Tri.-Chennai), and *Ashwani Kumar*, 2021 (376) ELT 321 (Tri.-Del.).

2.1.49 Regarding penalty under Section 114AA, they submit that the said provision was enacted to deal with cases of fraudulent or paper exports involving forged documents and availing export incentives without movement of goods. In the present case, the Cylinders were actually imported and subsequently re-exported, without claiming any export incentive. There is no allegation or evidence of use of any false or fabricated document. Reliance is placed on *Sri Krishna Sounds & Lightings*, 2018 (7) TMI 867 (CESTAT Chennai), *Hindustan Inox Ltd.*, Final Order dated 26.08.2024, *Parag Domestic Appliances*, 2017 (10) TMI 812 (CESTAT Bangalore), *Premax Logistics*, 2017 (4) TMI 483 (CESTAT Chennai),

and other decisions holding that Section 114AA is not applicable in bona fide import transactions.

2.1.50 They further submit that penalty under Section 117, being a residuary provision, is also not invocable. Where penalties are already proposed under specific provisions such as Sections 112 or 114A, Section 117 cannot be simultaneously invoked. Moreover, the SCN fails to identify any specific contravention not covered elsewhere. Reliance is placed on *Ruby Impex*, 2017 (357) ELT 1239 (Tri.-All.), *M. Renganathan*, 2009 (235) ELT 860 (Tri.-Chennai), *Saisea Logistics*, 2009 (246) ELT 543 (Tri.-Mumbai), and *Central Warehousing Corporation*, 2012 (285) ELT 249 (Tri.-Chennai).

2.1.51 They finally submit that no penalty is imposable in the absence of mens rea and where the issue involved is one of interpretation of law. The Cylinders were declared as returnable based on bona fide belief, and exemption under Notification No. 104/94-Cus (and alternatively NN 45/2017 or Section 74) was claimed in good faith. There is no evidence of deliberate defiance, suppression or intent to evade duty. Reliance is placed on *Hindustan Steel Ltd.*, 1978 (2) ELT (J159) (SC), *Akbar Badruddin Jiwani*, 1990 (47) ELT 161 (SC), and several Tribunal decisions holding that penalty is not warranted in interpretational disputes.

2.1.52 They also submitted ECL summary showing payment amounting to Rs. 81,95,821/- vide challan no. 1103857176 dated 30.10.2025.

2.1.53 In view of the above facts, legal provisions and binding judicial precedents, they submit that neither interest nor any penalty under Sections 112(a), 114A, 114AA or 117 of the Customs Act is sustainable in the present case, and the proposals in the impugned SCN are liable to be dropped in entirety.

2.2 The Customs Broker, M/s. JEM Logistics Solutions vide letter dated 09.01.2026 gave written submissions and inter-alia submitted as below:

2.2.1 They have submitted that they have at all times acted with due diligence and in compliance with the provisions of the Customs Act, 1962, the Rules and Regulations made thereunder, and allied laws governing import and export. It is contended that all statutory compliances were followed to the best of their ability and that there was no deliberate or intentional lapse attributable to them in the present case.

2.2.2 They have further submitted that they have no proprietary interest in the imported or exported cylinders and derive only agency charges for services rendered, which have been received through proper banking channels. It is asserted that they have not gained any benefit from the alleged duty evasion and that, in any event, liability towards duty, interest or penalty, if any, is required to be borne by the importer alone. They have therefore disassociated themselves from any alleged loss to the Government exchequer.

2.2.3 They have contended that there is no loss of revenue in the present case since the cylinders in question are either duty-paid or have been imported on a rotation basis along with gas and re-exported after being emptied. Reliance has been placed on detailed import-export correlation data annexed as *Annexure-A* to demonstrate continuous rotation of cylinders and absence of diversion. It is further submitted that the importer has discharged customs duty on a substantial number of cylinders, details of which form part of the said annexure.

2.2.4 They have also relied upon Notification No. 104/94-Cus dated 16.03.1994, submitting that cylinders imported on returnable basis are not liable to duty, and have pointed out that the SCN itself acknowledges that the importer had correctly availed the said exemption in the

past, as clarified by Circular No. 51/2020-Customs dated 20.11.2020 (refer para 18.2 of the SCN). It is contended that once the cylinders are either duty-paid or re-exported, the allegation that adequate safeguards were not taken to protect revenue is unfounded.

2.2.5 With regard to the allegation of non-compliance with Rule 32 of the Gas Cylinder Rules, 2016, they have argued that the said Rules apply only to cylinders containing *compressed gas*. Relying upon the definition of “gas cylinder” under Rule 2(xxviii) of the Gas Cylinder Rules, 2016, it is contended that the gas imported in the present case is not compressed gas and, therefore, the containers cannot be treated as “gas cylinders” for the purposes of the said Rules.

2.2.6 They have further relied upon Rules 29 to 32 of the Gas Cylinder Rules, 2016 (enclosed as *Annexure-B*) to submit that the licensing and landing permission requirements prescribed therein are expressly applicable only to cylinders filled with compressed gas. It is emphasised that it is not even the case of the department that the gas imported under the relevant Bills of Entry was compressed gas, and hence, invocation of the Gas Cylinder Rules, 2016 is legally misplaced and inapplicable to the facts of the present case.

2.2.7 They have submitted that the allegation relating to the Butterfly Valve (Quality Control) Order, 2020 dated 17.06.2020 (refer para 18.3 of the SCN) is misconceived and legally untenable. It is contended that the butterfly valves form an integral part of the cylinders which are imported on returnable basis and re-exported along with empty cylinders. In terms of Item No. 2 of the said Order, goods meant for export are expressly excluded from its applicability. Since re-export is legally treated at par with export, the requirement of BIS certification is not attracted. Reliance has also been placed on the Summary of IS 13095:2020 issued by BIS, clarifying that butterfly valves used in industrial applications such as oil & gas, chemical, power, pharmaceutical and allied sectors are outside the scope of the said standard.

2.2.8 With respect to applicability of the Steel Import Monitoring System (SIMS) introduced vide Notification No. 17/2015-20 dated 05.09.2019, they have submitted that SIMS is applicable only to goods meant for domestic consumption and not to goods imported on returnable or temporary basis. Reliance has been placed on DGFT Policy Circular No. 29/2015-20 dated 04.12.2019, which clarifies that SIMS registration is not required for returnable steel racks imported on temporary import basis as they are not meant for domestic consumption. The said position was further reiterated by Public Notice No. 106/2019 dated 26.11.2019 issued by the Commissioner of Customs, JNCH.

2.2.9 They have further submitted that SIMS requirements became operational only from 16.10.2020 vide Public Notice No. 19/2015-20 dated 28.09.2020, and wherever customs duty was paid on the imported cylinders under the relevant Bills of Entry (as detailed in *Annexure-A*), SIMS registration was duly obtained in compliance with law. Accordingly, it is contended that there is no violation of SIMS provisions attributable to them.

2.2.10 They have strongly contested the proposal for imposition of penalties under Sections 112, 114A, 114AA and 117 of the Customs Act, 1962, submitting that the SCN substantively invokes only Section 114AA (para 20.3 thereof) and does not contain any specific allegations, ingredients or grounds for invoking Sections 112, 114A or 117. It is argued that in the absence of allegation of confiscation under Section 111, penalty under Section 112 is not maintainable. Reliance has been placed on the decision of CESTAT Chennai in *Ragavan Paper Process v. Commissioner of Customs, Chennai* [2025 (11) TMI 1738], wherein it was held that penalty under Section 112 is not imposable in the absence of mens rea or knowledge that goods were liable to confiscation.

2.2.11 Regarding Section 114A, they have submitted that the said provision is applicable only to the person liable to pay customs duty, whereas they acted merely as Customs Brokers and had no statutory liability to discharge duty or interest. As regards Section 114AA, it is contended that there is no allegation or evidence of knowingly or intentionally making or using any false or incorrect declaration or document. Mere allegation of “incomplete declaration” does not satisfy the statutory ingredients of Section 114AA. Reliance has been placed on *Juthaman, Air Cargo Helpers v. Commissioner of Customs, Chennai* [2025 (11) TMI 1652 – CESTAT Chennai].

2.2.12 In respect of Section 117, they have submitted that the said residual penalty provision can be invoked only when no specific penalty is provided elsewhere, whereas in the present SCN penalties have already been proposed under Sections 112, 114A and 114AA without any independent discussion or grounds under Section 117. Reliance has been placed on *Akshay Logistics v. Commissioner of Customs, Raigad* [2025 (7) TMI 495 – CESTAT Mumbai], wherein it was held that minor procedural infractions without revenue implication do not warrant imposition of penalty under Section 117.

2.2.13 They have further submitted that all Bills of Entry were filed strictly on the basis of invoices and packing lists provided by the importer, wherein the returnable nature of cylinders was clearly indicated and duly declared in the Bills of Entry. Details of imports, duty-paid cylinders, re-exports and corresponding Shipping Bills have been furnished in Annexure-A, all of which are verifiable from the departmental EDI system. It is contended that the department was always aware of the rotational nature of the imports and hence there was no mis-declaration, suppression or wilful misstatement.

2.2.14 They have concluded that the entire case against them rests on erroneous application of the Gas Cylinder Rules, 2016, Butterfly Valve (Quality Control) Order, 2020 and SIMS provisions, none of which are applicable to the facts of the present case. In the absence of any revenue loss, mens rea or statutory violation attributable to them, they have prayed for dropping of proceedings and non-imposition of penalties.

2.3 The Customs Broker, M/s. ALL-WAYS Logistics (CHA) Pvt Ltd vide letter dated 11.08.2025 gave written submissions and inter-alia submitted as below:

2.3.1 They submitted that they are a licensed Customs Broker holding CB Licence No. R-13/DEL/CUS/2013, engaged in customs clearance for over 12 years without any blemish, and were handling clearance work for M/s Air Liquide India Holding Pvt. Ltd., Pune. The importer was engaged in import of Deuterium Gas (D₂ Gas) under CTH 28459090, filled in cylinders on returnable basis, with applicable duty paid on the gas content. The present SCN pertains only to empty cylinders proposed for re-export, including 120 cylinders exported vide Shipping Bill No. 2801946 dated 29.07.2024, which were provisionally released against bond and bank guarantee. Investigation was conducted by JNCH officers and SCN dated 04.02.2025 was issued.

2.3.2 They stated that, as reflected in Table-III of the SCN, they had filed two Bills of Entry for clearance of cylinders, wherein description, quantity and value were correctly declared, cylinders were separately valued under Notification No. 104/94-Cus, goods were examined prior to assessment, duty was paid, and out-of-charge was granted without any objection. It was contended that once assessment attained finality, Section 28 and penal provisions are not attracted in the absence of collusion, wilful misstatement or suppression. Reliance was placed on *ITC Ltd. v. CCE, Kolkata-IV* [2019 (368) ELT 216 (SC)]. They further submitted that the Bills of Entry referred to valves in the SCN were not handled by them and that SIMS was not applicable.

2.3.3 They argued that penalty under Section 112 and/or Section 114A is not imposable as the goods were neither prohibited nor rendered liable to confiscation under Section 111(d) or (m) by any act or omission on their part, and there was no abetment or mens rea. They were neither summoned nor investigated, and no statement was recorded. Reliance was placed on Syndicate Shipping Services Pvt. Ltd. [2003 (154) ELT 756], Harbhajan Kaur [1991 (56) ELT 273], V. Lakshmipathy [2003 (153) ELT 640], Nazir-ul-Rehman [2004 (174) ELT 493], and Owens Corning Enterprises (I) Pvt. Ltd. [2011 (270) ELT 547], to submit that penalty requires positive evidence of knowledge and intentional involvement, which is absent in the present case.

2.3.4 They further submitted that Section 114A cannot apply to them as they are not the person liable to duty, and Section 114AA is not attracted since there is no allegation or evidence of knowingly making or using false declarations or documents. It was emphasized that a Customs Broker's role is limited to filing documents based on importer-supplied records, relying upon Akanksha Enterprises [2006 (203) ELT 125] and Dipankar Sen [2003 (159) ELT 260]. They also contended that penalty under Section 117 is unsustainable in the absence of any specific contravention attributable to them, relying on Vivek Joshi [2004 (178) ELT 526], Jeevaraj [1985 (22) ELT 44 (Kar.)], and Hindustan Steel Ltd. [1978 (2) ELT J159 (SC)]. Reliance was also placed on Instruction No. 20/2024-Cus dated 03.09.2024, advising against making Customs Brokers co-noticees in interpretational matters unless abetment is established.

2.3.5 They concluded that the empty cylinders were correctly declared, examined and cleared, are not liable to confiscation, and that there is no evidence of mis-declaration, suppression, abetment or mala fide intent on their part. Accordingly, they denied all allegations in the SCN and prayed for dropping of penalties under Sections 112, 114A, 114AA and 117 of the Customs Act, 1962.

2.4.1 The Customs Broker, M/s. Transglobal Logistics has not provided any written submissions.

2.5 The Customs Broker, M/s. Classic Clearing & Forwarding vide letter dated 05.01.2026 and 21.02.2025 gave written submissions and inter-alia submitted as below:

2.5.1 They submitted that they are a licensed Customs Broker and were made a co-noticee in the SCN dated 04.02.2025 issued to M/s Air Liquide India Holding Pvt. Ltd. They clarified that out of 11 Bills of Entry referred to in Table-III of the SCN, they handled only one shipment, namely Bill of Entry No. 6880127 dated 29.12.2021 (Sr. No. 7 of Table-III). In respect of this consignment, they correctly declared the gas under CTH 28459090 and cylinders under CTH 73110090, availed Notification No. 104/94-Cus dated 16.03.1994, and the importer executed a re-export bond and 100% bank guarantee of ₹41,906, along with submission of PESO approval. The consignment was examined, duty was paid, and clearance was granted, demonstrating full compliance with customs requirements.

2.5.2 They contended that the allegations in the SCN alleging non-declaration of cylinders, violation of Rule 32 of the Gas Cylinder Rules, 2016, SIMS requirements, and wilful suppression under Section 46(4) are factually incorrect as far as they are concerned. They emphasized that cylinders were separately declared and revenue was duly safeguarded through bond and bank guarantee. Since re-export of empty cylinders was never entrusted to them, they had no role or involvement in that activity. Accordingly, they denied any act or omission leading to duty evasion or loss of revenue, and submitted that penal provisions under Sections 112, 114A, 114AA and 117 of the Customs Act, 1962 are not attracted in their case.

2.5.3 They further submitted that as a Customs Broker, their role is confined to filing Bills of Entry based on documents and information provided by the importer, and they are not required to independently verify classification, valuation or eligibility to exemption notifications. In support, reliance was placed on *Brijesh International v. Commissioner of Customs* [2017 (352) ELT 229 (Tri-Del)], wherein it was held that penalty on a CHA is unsustainable in the absence of evidence showing knowledge of misdeclaration. Reliance was also placed on *Aspinwall & Co. v. CCE, Trichy* [2001 (132) ELT 644 (Tri-Chennai)], holding that a CHA's responsibility is limited to facilitation of clearance and ends upon release of goods.

2.5.4 They concluded that since they handled only one import shipment, correctly declared the goods, ensured execution of bond and bank guarantee, and there is no evidence of wilful misdeclaration, suppression or abetment, the proposal to impose penalties under Sections 112, 114A, 114AA and 117 is legally unsustainable. Accordingly, they prayed for dropping of proceedings against them, while also stating that they had submitted written submissions and did not seek personal hearing, requesting adjudication on the basis of records and submissions.

2.6.1 The Customs Broker, M/s. DSV Coload & Clearance Pvt. Ltd. have not provided any written submissions.

2.7 The Customs Broker, M/s. Sai Dutta Shipping Agency Pvt Ltd vide letter dated 05.01.2026 and 21.02.2025 gave written submissions and inter-alia submitted as below:

2.7.1 They submit that the Show Cause Notice has been issued under Section 28(4) of the Customs Act, 1962 without establishing any collusion, wilful misstatement, suppression of facts, or mens rea on their part. The investigation and allegations in the SCN are primarily directed against the importer/exporter, and no independent findings, evidence, summons, statements, or Relied Upon Documents have been brought on record to demonstrate their involvement or abetment.

2.7.2 They state that out of fourteen Bills of Entry referred to in the SCN, they handled only two consignments, namely Bill of Entry No. 7357869 dated 14.08.2023 and Bill of Entry No. 2817053 dated 30.03.2024. No specific contravention or act of omission or commission has been identified in respect of these two Bills of Entry, and the SCN contains only generalized and omnibus allegations without examining these consignments independently.

2.7.3 They contend that the allegations regarding violation of Rule 32 of the Gas Cylinder Rules, 2016 are misconceived, as the consignments handled by them involved duly declared acetylene gas with cylinders declared on a returnable basis. They acted in good faith based on the importer's documents and instructions, without any intent to contravene the law, and the cylinders were ultimately re-exported, resulting in no loss to the exchequer.

2.7.4 They deny liability under the Butterfly Valves (Quality Control) Order, 2020, stating that the only Bill of Entry involving butterfly valves, i.e. Bill of Entry No. 3031932 dated 06.03.2021, was not handled by them. The SCN does not allege, nor provide any evidence, that the two Bills of Entry cleared by them involved butterfly valves or BIS non-compliance, rendering the allegation against them unsustainable.

2.7.5 They further submit that the allegation relating to non-compliance with the Steel Import Monitoring System (SIMS) under DGFT Notification No. 17/2015-2020 is factually and legally untenable, as SIMS applies only to goods falling under Chapters 72, 73, and 86,

whereas the goods were declared and consistently accepted by Customs under CTH 29012910. No reclassification proceedings or objections were raised at the time of clearance.

2.7.6 They argue that the proposed reclassification of goods under CTH 73110090 through the SCN is impermissible without setting aside the accepted self-assessment by following due process of law. Reliance is placed on the Hon'ble Supreme Court judgment in ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV, 2019 (368) E.L.T. 216 (S.C.), which holds that a self-assessment is an appealable assessment order and cannot be altered collaterally through proceedings such as the present SCN.

2.7.7 They submit that, even otherwise, a Customs Broker cannot be penalized for alleged misclassification when acting on the basis of technical documents provided by the importer. Reliance is placed on CBIC Instruction No. 20/2024-Customs dated 03.09.2024, which mandates that the role and abetment of a Customs Broker must be clearly established with cogent evidence before initiating penal action.

2.7.8 They challenge the invocation of penalties under Sections 112, 114A, 114AA, and 117 of the Customs Act, 1962, stating that the SCN fails to specify the applicable clause of Section 112, does not establish confiscability under Section 111, and simultaneously invokes mutually exclusive penal provisions without satisfying statutory prerequisites. Reliance is placed on Shri Sanjay Vasantlal Shah v. CCE, Raigad, 2015 (5) TMI 1123 (CESTAT Mumbai) to submit that such vague and omnibus penal proposals are bad in law.

2.7.9 They further submit that Section 114A is inapplicable as there is no determination of short-levy or duty demand against them, nor any finding of collusion or suppression. Similarly, Section 114AA cannot be invoked in the absence of any knowingly false or materially incorrect declaration, and Section 117 is inapplicable where no independent contravention is established.

2.7.10 In view of the above facts and settled legal position, they submit that the allegations in the SCN, insofar as they relate to them, are vague, unsubstantiated, and legally unsustainable, and therefore the proceedings and proposed penalties against them deserve to be dropped in toto.

2.8 The Customs Broker, M/s. SAV Logistics vide letter dated NIL gave written submissions and inter-alia submitted as below:

2.8.1 They submitted that the Show Cause Notice relates to import of DMF Acetylene Gas by M/s Air Liquide India Holding Pvt. Ltd. (IEC: 0596028539) and that they, M/s SAV Logistics Limited, handled only one consignment for the said importer, namely Bill of Entry No. 9525296 dated 04.01.2024, after which they were not associated with any further shipments of the importer. The gas was imported in cylinders intended for re-export.

2.8.2 They stated that prior to filing the said Bill of Entry, they had prepared and shared a draft checklist through the freight forwarder clearly declaring the cylinders as a separate item under CTH 73110090 and invoking Notification No. 104/94-Cus dated 16.03.1994, along with requirement of execution of a re-export bond with bank guarantee. However, the importer, through the freight forwarder, expressly instructed that cylinders should not be declared separately, pursuant to which the Bill of Entry was filed on the basis of the amended checklist provided by the importer.

2.8.3 They further submitted that they had repeatedly advised the importer, through the freight forwarder, regarding statutory requirements including separate declaration of

cylinders, execution of re-export bond, SIMS registration under DGFT Notification No. 17/2015-20 dated 05.09.2019, and landing permission under Rule 32 of the Gas Cylinder Rules, 2016. Emails dated 01.01.2024, 02.01.2024 and 03.01.2024 were relied upon to show that such requirements were communicated and followed up, and that assurances were given by the importer that SIMS registration would be provided, which was never done.

2.8.4 They contended that the re-export bond dated 11.12.2023 was executed by the importer on their advice, though it was not submitted for acceptance by the jurisdictional authority. They asserted that the record establishes that they acted in good faith, had informed the importer of all legal requirements, and that the alleged non-compliance occurred due to the importer's instructions. While expressing regret for not independently informing the jurisdictional AC/DC, they denied any mala fide intent and sought leniency.

3. RECORDS OF PERSONAL HEARING

3.1 Opportunity for personal hearing in the matter was granted to the Noticees on 09.01.2026, 19.01.2026 and subsequently on 27.01.2026 and the same was attended by notices as follows:

3.2.1 During the PH on 09.01.2026 Shri Dhruv Matta, Advocate, on Behalf of Importer M/s. Air Liquide India Holding Pvt. Ltd. (IEC-0596028539) and Shri R.K. Tomar and Shri Gaurav Sarfare, both Advocate on behalf of Customs Broker M/s. JEM Logistics Solutions and M/s. Sai Dutta Shipping Agency Pvt Ltd, appeared for Personal Hearing in person (as requested by respective notices).

3.2.2 Shri Dhruv Matta Advocate, on Behalf of Importer M/s. Air Liquide India Holding Pvt. Ltd. (IEC-0596028539) submitted that the SCN is based on the incorrect presumption that there have been imports of 1388 cylinders during the impugned period. The Importing company provided details that the cylinders imported by it were unique and identifiable in each transaction and that duties had been paid on its owned inventory. It was also submitted that during the relevant period only 33 pallets of cylinders, each containing 12 cylinders each were under consideration. The importers owns 24 of such pallets. Further, the assessments in Show Cause Notice are open for all purposes and evidence available on record reflects that the imported goods are covered by Notification No. 45/2017-Cus. Additional submissions were also made on inapplicability of SIMS, Gas Cylinder Rules and Valves Quality Control Order. Subsequently they submitted that the present case is not a case of misdeclaration or concealment. The documents submitted on record show a pattern of compliance and bonafide approach before the Customs. Instances of previous queries and examinations were also cited.

3.2.3 Shri R.K. Tomar and Shri Gaurav Sarfare, both Advocate on behalf of C.B. M/s. JEM Logistics Solutions and M/s. Sai Dutta Shipping Agency Pvt Ltd submitted that the Brokers accept and adopt the position stated by the company (importer) and the SCN does not highlight any evidence of abetment towards the brokers and thus penalties against the brokers are unsustainable. They further submitted that they also showed documents to suggest that all relevant information was always submitted to the Customs Department

3.2.4 Conclusively, they parties have undertaken to submit a combined written submission within 10 working days summarising their arguments with references to page numbers from their submissions and that the importer will also provide a breakup of leased inventory vs owned inventory for the impugned period.

3.3.1 During the PH on 19.01.2026 Shri N.D. George Advocate, on behalf of Customs Broker M/s. ALL-WAYS Logistics (CHA) Pvt Ltd and Shri Arjun Reki and Shri Abhay Raj Varma both Advocate on behalf of Customs Broker M/s. DSV Coload & Clearance Pvt Ltd, appeared for Personal Hearing virtually.

3.3.2 Shri N.D. George Advocate, on behalf of Customs Broker M/s. ALL-WAYS Logistics (CHA) Pvt Ltd submitted that they had filed two Bills of Entry of behalf of the importer being Bill of Entry Nos. 6946991 dt. 19.02.2020 and 8332763 dt. 30.07.2020 for clearance of Deutirium Gas (D2 Gas) cylinders on return basis. The goods were examined by the assessing officers before clearance of goods. The noticee has classified cylinder values separately as per notification No. 104/94. There is no valves therefore, registration under SIMS is not applicable. The importer has obtained PESO certificate before the shipment. The importer has filed Shipping Bill No. 7392324 dt. 11.01.2022 wherein they have re-exported the empty cylinders and the Bond have been cancelled. They have also relied upon case laws in support of the said contention and contended that the penal provisions under Customs Act, are not attracted in so far as the appellant is concerned.

3.3.3 Shri Arjun Reki and Shri Abhay Raj Varma both Advocate on behalf of Customs Broker M/s. DSV Coload & Clearance Pvt Ltd submitted that that DSV acted as Customs Broker only for one Bill of Entry No. 6968610 dated 06.01.2022 out of 14 Bills of Entry covered in the SCN. It is contended that there is no allegation or evidence of abetment, collusion, mens rea or undue benefit on the part of DSV. The Bill of Entry was filed on the basis of documents and instructions provided by the importer, duly supported by PESO licence, and was assessed and cleared by Customs. Reliance is placed on CBIC Instruction No. 20/2024-Customs and Advisory No. 02/2024 (Mumbai Zone-II), which caution against mechanically making Customs Brokers co-noticees in interpretative disputes in the absence of proven abetment. It is submitted that responsibility for classification, valuation, exemption under Notification No. 104/94-Cus. and post-clearance obligations rests with the importer. Accordingly, DSV has prayed that proceedings and penalty proposals against it under the Customs Act, 1962 be dropped.

3.4.1 During the PH on 27.01.2026 Shri Mr. Reynold D'Cruz, Vice President of M/s. Transglobal Logistics on behalf of Customs Broker M/s. Transglobal Logistics and Shri Vijay Ranjan, Director of M/s. SAV Logistics on behalf of Customs Broker M/s. Sav Logistics, appeared for Personal Hearing virtually.

3.4.2 Shri Mr. Reynold D'Cruz, Vice President of M/s. Transglobal Logistics on behalf of Customs Broker M/s. Transglobal Logistics submitted that they had filed in all three (3) documents for customs clearance on account of M/s. Air Liquide India Holding Pvt Ltd., of

which two documents invoices did not mention separate value of Cylinders, after checking with consignee they were informed there was no separate value for cylinders and were asked to file BOE based on the value declared on the invoice. Further, one (1) document against invoice no 220327 showed separate value of cylinder and BOE No. 6280559 was filed accordingly. Re export Bond and BG was submitted for the clearance of the said shipment. They also submitted Order in Origin issued by Chennai Customs to them - Trans Global Logistics (Order in Origin no. 117312/2026 dt 14/01/26).

3.4.3 Shri Vijay Ranjan, Director of M/s. SAV Logistics on behalf of Customs Broker M/s. Sav Logistics submitted that they had informed all the facts. All the related documents (i.e. multiple emails sent to client to take correct actions) with evidence and proof has already been submitted to IO in Delhi Customs. They further submitted that there was no mala fide intention on their part to break the trust of the department and requested to the department to take matter on leniency.

4.DISCUSSION AND FINDINGS

4.1 I have carefully gone through the Show Cause Notice, material on record and facts of the case, as well as written and oral submissions made by the noticees. Accordingly, I proceed to decide the case on merit.

4.2 The adjudicating authority has to take the views/objections of the noticees on board and consider before passing the order. In the instant case, the personal hearing was granted to the Importers on 09.01.2026, 19.01.2026 and 27.01.2026 by the Adjudicating Authority which was attended by the Shri Dhruv Matta Advocate, on Behalf of Importer M/s. Air Liquide India Holding Pvt. Ltd. (IEC-0596028539), Shri R.K. Tomar and Shri Gaurav Sarfare, both Advocate on behalf of Customs Broker M/s. JEM Logistics Solutions and M/s. Sai Dutta Shipping Agency Pvt Ltd, Shri N.D. George Advocate, on behalf of Customs Broker M/s. ALL-WAYS Logistics (CHA) Pvt Ltd , Shri Arjun Reki Advocate on behalf of Customs Broker M/s. DSV Coload & Clearance Pvt Ltd, Shri Mr. Reynold D'Cruz, Vice President of M/s. Transglobal Logistics on behalf of Customs Broker M/s. Transglobal Logistics and Shri Vijay Ranjan, Director of M/s. SAV Logistics on behalf of Customs Broker M/s. Sav Logistics. The recordings of the personal hearing are placed in para 3 of this order.

4.3 I find that in compliance to the provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunities for Personal Hearing (PH) were granted to the Noticees. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegations made in the Show Cause Notice as well as the submissions / contentions made by the Importers.

4.4 I find that, during scrutiny of export documents by the Export Docks Officer, the Importer had imported DA PUR and DMF Acetylene gases under CTH 29012910 in steel cylinders declared as returnable, but had discharged customs duty only on the gas content and not on the cylinders. It was found that the cylinders, despite having independent commercial identity, were neither declared separately in the Bills of Entry nor assessed to duty, and no

exemption notification or re-export bond was claimed at the time of import. Consequently, the matter was referred to the concerned Group for verification of past imports, correct classification, duty implications, applicability of SIMS, existence of re-export bond or bank guarantee, and compliance with re-export timelines.

4.5 The importer further vide letter dated 19.12.2024 sought provisional release of the export consignment citing business hardship and undertook to furnish bond and bank guarantee. Accordingly, pending adjudication, I find that, the export consignment of 120 empty cylinders covered under Shipping Bill No. 2801946 dated 29.07.2024 was provisionally released against execution of bond and furnishing of bank guarantee of Rs. 73,50,000/- , in terms of Board Circular No. 30/2013-Customs dated 05.08.2013, without prejudice to further proceedings under the Customs Act, 1962.

4.6 The present proceedings emanate from Show Cause Notice No. 1700/2024-25/COMMR/Gr II(A-B)/NS-1/CAC/JNCH dated 04.02.2025 issued to M/s. Air Liquide India Holding Pvt. Ltd. (IEC-0596028539) and Customs Brokers M/s. JEM Logistics Solutions, M/s. All-Ways Logistics (CHA) Pvt Ltd, M/s. Transglobal Logistics, M/s. Classic Clearing & Forwarding, M/s. DSV Coload & Clearance Pvt Ltd, M/s. Sai Dutta Shipping Agency Pvt Ltd and M/s. Sav Logistics. The Show Cause Notice alleges that the Importer has imported gases filled in cylinders and paid applicable duty only on chemical/gas filled in the cylinders. However, the Importer neither declared the returnable cylinders as separate items in respective bills of entry nor has claimed any exemption notification/benefit for import of cylinders. Further, in reference to the Bills of Entry as mentioned in Table-I of the said Show Cause Notice (excluding B/E No. 6280765 dated 17-11-2021), the cylinders were neither separately declared in the respective Bills of Entry nor were the applicable duties paid on the imported cylinders. Additionally, the importer has neither claimed the benefit under Notification No. 104/94-Customs dated 16.03.1994, nor has the required re-export bond been submitted for the cylinders in the Bills of Entry listed in Table-I of the said Show Cause Notice and with regard to B/E No. 6280765 dated 17-11-2021, the importer had misclassified the cylinders under CTH 29012910, instead of the correct classification under CTH 73110090. This misclassification has resulted in evasion of customs duty, as the customs duty under CTH 29012910 is 21.245%, whereas the duty under CTH 73110090 is 30.980%. Consequently, the importer, by failing to declare the cylinders in the Bills of Entry listed in Table-I of the said Show Cause Notice, has evaded a differential duty of Rs. 2,47,98,354/- (Rupees Two Crore Forty-Seven Lakh Ninety-Eight Thousand Three Hundred Fifty-Four Only), as detailed in Table-II of the said Show Cause Notice.

4.7 Further, aforesaid Show cause Notice also alleges that, Importer had not taken Landing permission as per Rule 32 of Gas Cylinder Rules, 2016 of Bills of Entry mentioned in Table-I along with Table – III of the said Show Cause Notice as same was not found uploaded in E-Sanchit. Subsequently, the Importer has also violated provisions of DGFT Notification No. 17/2015-20 dated 05.09.2019 (as amended) by not doing compulsory SIMS registration. Importer also imported “BUTTERFLY VALVE” without BIS Certificate vide B/E No. 3031932 dated 06.03.2021 in violation of Butterfly Valves (Quality Control) Order, 2020. The Show Cause Notice has proposed to demand differential customs duty amounting to Rs. 2,47,98,354/- along-with applicable interest under Section 28AA of the Customs Act, 1962. The goods as detailed in Table I, Table II & Table III of the Show Cause Notice having a total assessable value of Rs. 14,04,48,777/- (Rupees Fourteen Crore Four Lac Forty Eight Thousand Seven Hundred Seventy Seven only) have been proposed for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962. Penalties under Sections 112 and/or

Section 114 A, Section 114AA and Section 117 of the Customs Act, 1962 have been proposed against importer M/s. Air Liquide India Holding Pvt. Ltd. (IEC-0596028539). Furthermore, penalties have also been proposed against all the Customs Broker namely M/s. JEM Logistics Solutions, M/s. All-Ways Logistics (CHA) Pvt Ltd, M/s. Transglobal Logistics, M/s. Classic Clearing & Forwarding, M/s. DSV Coload & Clearance Pvt Ltd, M/s. Sai Dutta Shipping Agency Pvt Ltd and M/s. Sav Logistics under Section Sections 112 and/or Section 114 A, Section 114AA and Section 117 of the Customs Act, 1962.

4.8 The Importer on the other hand have contended that the Show Cause Notice is factually incorrect in as much as it proceeds on the premise that 1388 cylinders were imported, whereas according to the Importer only 396 cylinders were owned/leased by the importer and were rotated and that the imported goods were gases, correctly declared and assessed under Chapter 29 of the Customs Tariff and that the cylinders used for transportation were not independent goods but returnable containers repeatedly used on a rotation basis, involving no permanent import. The Importer has submitted that there is no legal requirement to declare cylinders separately and that Board Circulars cannot impose such an obligation. It has further been contended that the cylinders were subsequently re-exported and, therefore, the benefit of exemption under Notification No. 45/2017-Cus is available even if not claimed at the time of import, or alternatively under Notification No. 104/94-Cus on the basis of alleged substantial compliance. The Importer has also argued that the situation is revenue neutral, that all imports were made through duly filed Bills of Entry with no suppression or mis-declaration, that the practice followed was long-standing and the Importer has further argued that in the absence of mens rea penal provisions under Sections 112, 114A, and 114AA of the Customs Act, 1962, are not attracted.

4.9 On careful perusal of the Show Cause Notice and case records, I find that following main issues are involved in this case which are required to be decided:

(A) Whether or not differential duty of Rs. 2,47,98,354/- (Rupees Two Crore Forty Seven Lakh Ninty Eight Thousand Three Hundred Fifty Four only) with respect to the cylinders, not declared separately, and imported under Bills of entry mentioned in Table -II of the Show Cause Notice is recoverable under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.

(B) Whether or not the subject goods as detailed in Table I, Table II & Table III having a total assessable value of Rs. 14,04,48,777/- (Rupees Fourteen Crore Four Lac Forty Eight Thousand Seven Hundred Seventy Seven only) are liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962.

(C) Whether or not penalties are imposable on the importer i.e. M/s Air Liquide India Holding Pvt. Ltd. (IEC-0596028539) under Section 112 and/or Section 114 A, Section 114AA and Section 117 of the Customs Act, 1962.

(D) Whether or not Bank Guarantee of Rs. 73,50,000/- is to be encashed and the same to be appropriated against the differential duty demand along with applicable interest, fine & penalty.

(F) Whether or not penalties should be imposed on the Customs Brokers i.e. M/s. JEM Logistics Solutions, M/s. All-Ways Logistics (CHA) Pvt Ltd, M/s. Transglobal Logistics,

M/s. Classic Clearing & Forwarding, M/s. DSV Coload & Clearance Pvt Ltd, M/s. Sai Dutta Shipping Agency Pvt Ltd and M/s. Sav Logistics under Section 112 and/or Section 114 A, Section 114AA and Section 117 of the Customs Act, 1962.

5. After having framed the substantive issues raised in the SCN which are required to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN, provision of the Customs Act, 1962, nuances of various judicial pronouncements as well as Noticees' oral and written submissions and documents / evidences available on record.

(A) Whether or not differential duty of Rs. 2,47,98,354/- (Rupees Two Crore Forty Seven Lakh Ninety Eight Thousand Three Hundred Fifty Four only) with respect to the cylinders, not declared separately, but imported under Bills of entry mentioned in Table -II of the Show Cause Notice is recoverable under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.

5.1.1 In the Show Cause Notice, it has been alleged that the importer, M/s Air Liquide India Holding Pvt. Ltd. (IEC-0596028539), imported gases filled in cylinders and discharged customs duty only on the chemical/gas content, without declaring the cylinders as separate import goods and without claiming any exemption notification in respect of such cylinders. It has been alleged that the cylinders, though repeatedly imported along with gas, were not declared separately in the Bills of Entry nor assessed to duty. The Importer has contested the allegations on the ground that the Show Cause Notice is factually incorrect, contending that it proceeds on the premise that 1388 cylinders were imported, whereas according to the Importer only 396 cylinders were owned or leased by them and were rotated repeatedly during the relevant period. The Importer has further contended that the cylinders are merely containers for gas and do not require separate declaration.

5.1.2 I find that the above contention of the Importer is misplaced, misconceived, and founded on an erroneous understanding of the scope and purport of the Show Cause Notice. The Show Cause Notice alleges that there are 14 instances of importation of cylinders, as evidenced by the Bills of Entry enumerated in table-1 of the Show Cause Notice. This factual position is not disputed by the Importer and, in fact, stands admitted in their own tabulated statements filed along with the reply. Therefore, the attempt of the Importer to shift the focus from the number of import transactions to the number of cylinders owned or leased is clearly misplaced.

5.1.3 I further find that the Importer's reliance on the concept of repetition or rotation of cylinders is legally untenable. The Customs Act, 1962 does not recognise continuity of goods based on ownership, leasing arrangements, or repeated physical movement of the same goods. What is relevant under the Customs law is the act of importation into India. Each entry of goods into India is regulated through a separate Bill of Entry, and duty liability arises afresh on each such importation.

5.1.4 It is a settled position of law that each act of importation constitutes an independent and complete taxable event under Section 12 of the Customs Act, 1962, read with Section 15 thereof. The taxable event is the import of goods into India, and the charge of customs duty crystallises at the time of import, irrespective of subsequent use, ownership, rotation, or re-export of the goods. In this regard, reliance is placed on the judgment of the Hon'ble

Supreme Court in *Garden Silk Mills Ltd. v. Union of India* [1999 (113) ELT 358 (SC)], wherein it was held that:

“Truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfilled before the goods can be brought inside the customs barriers... the taxable event being reached at the time when the goods reach the customs barriers and the bill of entry for home consumption is filed.”

5.1.5 I find that the statutory scheme of the Customs Act reinforces this position. Section 12 levies customs duty on goods imported into India; Section 46 mandates filing of a Bill of Entry for every import; and Section 15 fixes the rate of duty and tariff valuation with reference to the date of filing of the Bill of Entry or the date of entry inwards of the vessel. These provisions clearly recognise each import covered by a separate Bill of Entry as an independent and distinct taxable transaction. Repetitive or continuous imports of identical goods do not merge into a single transaction merely because the goods are claimed to be the same or are repeatedly used.

5.1.6 I further find that the Customs Act does not permit aggregation or consolidation of multiple imports on the basis of ownership, leasing, rotation, continuity, or identity of goods. Even assuming, without admitting, that the same physical cylinders were imported repeatedly, each entry into India through a separate Bill of Entry results in a fresh assessment and a separate duty liability, unless the importer has validly claimed and complied with a specific and valid exemption notification at the time of such import. In the absence of such claim and compliance, duty liability crystallises independently in respect of each importation and cannot be extinguished or diluted on the ground that the goods were identical, repeatedly used, or subsequently re-exported.

5.1.7 I also find that the Importer’s contention that cylinders are merely containers and do not require separate declaration is contrary to the Customs Tariff and valuation provisions. Cylinders are movable goods with independent commercial identity, classifiable separately under Chapter 73110090, and are not integral or inseparable parts of the gas. The requirement to declare all imported goods in the Bill of Entry flows directly from the Customs Act and Rules and is not dependent on the manner in which the importer chooses to treat the goods commercially.

5.1.8 I further observe that in other instances, the Importer has separately declared cylinders under the appropriate tariff heading and has claimed exemption benefits by following the prescribed procedures. This clearly establishes that the Importer was fully aware of the correct legal position and the statutory requirements under the Customs law. Selective compliance in certain cases and non-compliance in the present case cannot be attributed to any bona fide belief and points towards conscious and deliberate non-declaration.

5.1.9 In view of the discussions and findings recorded in the foregoing paragraphs, I hold that the Importer’s attempt to merge multiple import transactions into a single ownership-based or rotation-based narrative is legally unsustainable and has no sanction under the Customs Act, 1962. Rotation or repeated use of the same cylinders, as claimed by the Importer, does not dispense off with the statutory obligation to correctly declare, classify, and discharge customs duty in respect of each importation. Accordingly, the submissions made by the Importer on this count are rejected.

5.2.1 I find that the Importer has contended that since the cylinders were subsequently re-exported, the benefit of Notification No. 45/2017-Cus dated 30.06.2017 (as amended) is available to them. It has been argued that such re-export establishes continuity of goods and that the imports were merely repetitive in nature, involving the same cylinders on rotation. The Importer has further contended that the benefit of the said notification can be claimed even at the adjudication stage and that the substantive exemption cannot be denied merely on procedural or technical grounds.

5.2.2 I have carefully examined the above submissions of the Importer and find that the same are misconceived, untenable, and not acceptable for the reasons discussed hereinafter. At the outset, it is an undisputed fact on record that the Importer did not separately declare the cylinders as independent goods under the appropriate Customs Tariff Heading 73110090 at the time of import, nor did they claim the benefit of Notification No. 45/2017-Cus dated 30.06.2017 (as amended) in the Bills of Entry mentioned in Table-I and Table-II of the Show Cause Notice. Instead, the Importer chose to declare the gas and the cylinders together under CTH 29012910, thereby treating the cylinders as an inseparable and incidental part of the gas. By adopting such a mode of declaration, the Importer consciously avoided declaring the cylinders as distinct imported goods capable of assessment under any re-export-linked exemption framework.

5.2.3 I find the importer's contention that they are presently entitled to the benefit of Notification No. 45/2017-Cus dated 30.06.2017 (as amended), though not claimed at the time of import, to be untenable. The eligibility to an exemption notification is required to be examined and claimed at the relevant time of import, supported by proper declaration and fulfillment of prescribed conditions. Having consciously opted not to claim the said notification at the material time, the importer cannot now seek its retrospective application to undo the legal consequences arising from non-compliance. In this regard, the well-settled legal maxim "*Vigilantibus non dormientibus jura subveniunt*" meaning thereby that the law aids those who are vigilant and not those who sleep over their rights squarely applies. The importer, having failed to exercise due diligence and vigilance at the time of filing the Bills of Entry, cannot be permitted to resurrect an unclaimed exemption at a belated stage to defeat the proceedings initiated under the Customs Act, 1962.

5.2.4 I further find that Notification No. 45/2017-Cus dated 30.06.2017 (as amended) is a conditional exemption notification and its applicability necessarily presupposes that the importer clearly identifies, declares, and seeks assessment of the goods intended to be covered thereunder at the time of import itself. The notification also prescribes specific conditions for availing the exemption, including satisfaction of the Assistant/Deputy Commissioner of Customs regarding the identity and correlation of the goods sought to be exempted. In the present case, since the cylinders were neither declared separately nor assessed under Notification No. 45/2017-Cus dated 30.06.2017 (as amended) and no exemption benefit was claimed at the time of import, the Importer failed to comply with the mandatory conditions of the said notification.

5.2.5 I also find that the contention of the Importer is wholly untenable and contrary to the clear scope and intent of Notification No. 45/2017-Cus dated 30.06.2017 (as amended). A plain reading of the said notification establishes that it applies exclusively to re-import of goods which were earlier exported from India, subject to strict and cumulative conditions, including prior export under claim of drawback or refund, correlation between exported and re-imported goods, and fulfilment of specified documentary requirements. In the present case,

the cylinders under dispute do not constitute re-imported goods but form part of the initial importation along with gas. Therefore, the foundational requirement for applicability of Notification No. 45/2017-Cus dated 30.06.2017 (as amended) itself is absent.

5.2.6 I further observe that the act of declaring gas and cylinders together under a single tariff heading had the effect of suppressing the independent identity of the cylinders at the time of filing of the Bills of Entry, as detailed in Table-I and Table-II of the Show Cause Notice. As a consequence, the imports were assessed and cleared as imports of gas alone, without the cylinders being identified, examined, or assessed as distinct goods proposed to be covered under any re-export-linked conditional exemption.

5.2.7 I find that subsequent re-export of the cylinders, whether actual or claimed on paper, does not retrospectively alter the nature of the original import nor does it cure the non-compliance with the mandatory conditions prescribed under Notification No. 45/2017-Cus dated 30.06.2017 (as amended). The eligibility to a conditional exemption has to be examined at the time of import and cannot be claimed or regularised at the stage of adjudication on the basis of subsequent events.

5.2.8 In view of the discussions and findings recorded in the foregoing paragraphs, I hold that the Importer, having failed to separately declare the cylinders under CTH 73110090 and having suppressed their independent identity by declaring gas and cylinders together under CTH 29012910, is not entitled to claim the benefit of Notification No. 45/2017-Cus dated 30.06.2017 (as amended) at this stage. Accordingly, the claim for benefit under Notification No. 45/2017-Cus dated 30.06.2017 (as amended) raised by the Importer is rejected.

5.3.1 I find that the Show Cause Notice has alleged that in respect of the Bills of Entry mentioned in Table-I thereof (excluding B/E No. 6280765 dated 17.11.2021), the cylinders imported along with gas were neither separately declared in the respective Bills of Entry nor were the applicable customs duties discharged on such cylinders. It has further been alleged that the importer neither claimed exemption under Notification No. 104/94-Customs dated 16.03.1994 (as amended) nor executed the mandatory re-export bond as prescribed under the said notification for the cylinders covered under the Bills of Entry listed in Table-I.

5.3.2 I further find that with regard to B/E No. 6280765 dated 17.11.2021, the Show Cause Notice has specifically alleged mis-classification of the cylinders under CTH 29012910 instead of the correct classification under CTH 73110090. Such mis-classification resulted in short-payment of duty, as the effective rate of duty under CTH 29012910 was 21.245%, whereas the applicable duty under CTH 73110090 was 30.980%. Consequently, by failing to declare and correctly classify the cylinders in the Bills of Entry listed in Table-I, the Importer have evaded differential customs duty amounting to ₹2,47,98,354/-, as quantified in Table-II of the Show Cause Notice.

5.3.3 I find that the Importer has alternatively claimed eligibility for exemption under Notification No. 104/94-Customs dated 16.03.1994 (as amended) on the ground of claimed “substantial compliance” with the conditions prescribed therein. The Importer has contended that since the cylinders were ultimately re-exported, denial of exemption would be unjustified and contrary to the intent of the notification.

5.3.4 I find that Notification No. 104/94-Cus dated 16.03.1994 (as amended) is a conditional exemption notification and prescribes both substantive as well as procedural

requirements as conditions precedent for availing the exemption. The notification, inter alia, mandates:

- (i) separate declaration of the containers intended to be re-exported;
- (ii) execution and acceptance of a re-export bond with the jurisdictional customs authority at the time of import;
- (iii) furnishing of bank guarantee wherever applicable;
- (iv) assessment of the goods under the said notification at the time of import; and
- (v) re-export of the goods within six months from the date of import or within such extended period as may be permitted by the competent authority.

Relevant provisions of the said notification are as under:

“Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importers failure to do so :

Provided further that in any particular case, the aforesaid period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit.”

These conditions are mandatory in nature and go to the root of eligibility.

5.3.5 The relevant portion of Notification No. 104/94-Cus dated 16.03.1994 (as amended) clearly stipulates that the importer shall execute a bond binding himself to re-export the containers within the stipulated period and to furnish documentary evidence thereof to the satisfaction of the Assistant/Deputy Commissioner of Customs, failing which the duty leviable shall become payable.

5.3.6 I find that it is an admitted and undisputed fact on record that in the present case:

- (i) the cylinders were not declared separately in the Bills of Entry;
- (ii) no exemption notification, including Notification No. 104/94-Cus dated 16.03.1994 (as amended), was claimed at the time of import; and
- (iii) the mandatory re-export bond and bank guarantee were neither executed nor accepted by the Department at the time of clearance of the goods.

5.3.7 I find that failure to comply with the essential conditions of Notification No. 104/94-Cus dated 16.03.1994 (as amended) at the time of import renders the exemption inapplicable ab initio. Subsequent re-export, howsoever genuine, cannot cure the foundational illegality in the import transaction. The clarification issued vide Circular No. 51/2020-Customs dated 20.11.2020 also categorically reiterates that exemption under Notification No. 104/94-Cus dated 16.03.1994 (as amended) is conditional upon strict fulfilment of the prescribed requirements.

5.3.8 I further find that cylinders possess independent commercial identity, durability, and repeated usability and are classifiable separately under CTH 73110090 of the Customs Tariff Act, 1975. Accordingly, they were required to be declared as separate items in the Bills of

Entry filed under Section 46 of the Customs Act, 1962 in order to avail exemption under Notification No. 104/94-Cus dated 16.03.1994 (as amended).

5.3.9 I also observe that the Show Cause Notice has brought on record that the Importer, in the past as detailed in table 3, has imported cylinders on returnable basis by correctly declaring them separately, claiming exemption under Notification No. 104/94-Cus dated 16.03.1994 (as amended), and complying with the procedure as clarified under Circular No. 51/2020-Customs. This clearly establishes that the Importer was fully aware of the statutory requirements.

5.3.10 In view of the above, I find that the Importer has knowingly and intentionally neither declared the cylinders separately nor discharged the applicable duty/claimed appropriate notification in the impugned imports. Accordingly, I hold that the Importer is not entitled to the benefit of Notification No. 104/94-Cus dated 16.03.1994 (as amended), and the claim is rejected as legally untenable.

5.4.1 The Importer has further argued that there is no legal requirement under the Customs Act, 1962 to separately declare the cylinders and that Board Circulars cannot impose such an obligation. It has been contended that cylinders are merely incidental to the gas imported and do not require independent declaration.

5.4.2 I find this argument to be wholly devoid of merit and contrary to the provisions of the Customs Act, 1962 and the Customs Tariff Act 1975. Cylinders are distinct movable goods with independent commercial identity, durability, and repeated usability, and are classifiable separately under CTH 73110090. They are not consumed along with the gas and cannot be equated with ordinary packing material. The Importer's own admission that the cylinders are imported on "returnable and rotation basis" itself establishes that they are capital goods and not integral parts of the gas.

5.4.3 I find that Section 46 of the Customs Act mandates a true, correct, and complete declaration of all imported goods. The Customs Tariff and valuation provisions under Section 14 require each classifiable item to be declared and assessed separately. Failure to declare the cylinders therefore amounts to mis-declaration and suppression of material particulars affecting assessment and levy of duty.

5.4.5 I further find that the Importer was fully aware of the requirement to separately declare cylinders in terms of Notification No. 104/94-Cus dated 16.03.1994 (as amended) read with Board's Circular No. 51/2020-Customs. This fact is conclusively established from the Bills of Entry listed in Table-III of the Show Cause Notice, wherein the Importer has correctly declared the cylinders under CTH 73110090, claimed exemption under Notification No. 104/94-Cus dated 16.03.1994 (as amended), and complied with all prescribed procedural requirements.

5.4.6 I find that the conduct of the Importer clearly demonstrates conscious and deliberate non-compliance. Selective compliance in certain cases and non-declaration in the impugned imports cannot be attributed to interpretational ambiguity or bona fide belief. On the contrary, it establishes intentional suppression of material facts with an intent to evade duty.

5.4.7 In view of the foregoing discussions and findings, I hold that the non-declaration and mis-classification of cylinders is a substantive violation affecting assessment and levy of

customs duty and cannot be condoned. Accordingly, the submissions made by the Importer are rejected.

5.5.1 I find that the Show Cause Notice has alleged mis-classification of the cylinders under CTH 29012910 instead of the correct classification under CTH 73110090 resulted in short-payment of duty amounting to ₹2,47,98,354/-, as quantified in Table-II of the Show Cause Notice. The Importer has contended that the present case is revenue neutral on the ground that the cylinders were subsequently re-exported and, therefore, no loss of revenue has occurred to the Government.

5.5.2 I have carefully examined the above contention and find that the plea of revenue neutrality raised by the Importer is misconceived and legally unsustainable. It is a settled position of law that customs duty is levied on goods at the time of importation in terms of Section 12 of the Customs Act, 1962, and the rate of duty and valuation are determined in accordance with Section 15 of the Act. The duty liability crystallizes at the time the goods enter the territorial waters of India and are presented for clearance through filing of a Bill of Entry. Subsequent events such as use, retention, rotation, or re-export of the goods are irrelevant for the purpose of levy of duty, unless the goods were assessed under a valid exemption or conditional notification at the time of import.

5.5.3 I find that in the present case, as clearly brought out in the Show Cause Notice, the Importer did not declare the cylinders separately in the majority of the Bills of Entry listed in Table-I thereof, nor did they claim any exemption notification or comply with any re-export-linked conditions at the time of import. Accordingly, the imports stood assessed and cleared as final imports, and the duty liability crystallized independently in respect of each such importation. In the absence of compliance with any exemption notification at the time of import, the plea of revenue neutrality is devoid of any legal basis.

5.5.4 I further find that the Importer has alternatively contended that even if duty is held to be payable on the imported cylinders, they would be entitled to drawback under Section 74 of the Customs Act, 1962 on account of subsequent re-export of the cylinders, and therefore no effective loss of revenue has occurred.

5.5.5 I find that this contention is devoid of merit and legally untenable. Section 74 of the Customs Act, 1962 merely provides an enabling provision for grant of drawback of import duty on goods which are subsequently re-exported, subject to fulfilment of prescribed statutory conditions and procedural requirements. The entitlement to drawback under Section 74 is neither automatic nor unconditional and does not arise merely on account of re-export of the goods. Unless the importer establishes strict compliance with the conditions governing drawback, no right to drawback can be claimed as a matter of course.

5.5.6 In view of the foregoing discussions and findings, I hold that the plea of revenue neutrality raised by the Importer, whether on the ground of subsequent re-export or alleged eligibility for drawback under Section 74 of the Customs Act, 1962, is legally untenable and is accordingly rejected.

5.6.1 I find that the Show Cause Notice has alleged that the Importer failed to obtain permission for landing of imported gas cylinders as mandated under Rule 32 of the Gas Cylinder Rules, 2016, in respect of the Bills of Entry mentioned in Table-I read with Table-III thereof. It has been specifically recorded in the Show Cause Notice that no permission of

the Commissioner of Customs under Rule 32 was found uploaded on the e-Sanchit portal in respect of the said imports. For clarity and proper appreciation of the issue, the relevant provisions of Rules 29, 31 and 32 of the Gas Cylinder Rules, 2016 have been reproduced below:

“IMPORTATION OF CYLINDERS, VALVES AND LPG REGULATORS

PART I GENERAL

29. Licence for import of gas cylinders. - (1) *No person shall import any gas cylinders filled or intended to be filled with any compressed gas except under and in accordance with the conditions of a licence granted under these rules and the relevant provisions of Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992).*

(2) *No person shall import any valve and LPG regulator intended to be fitted on the gas cylinder except under and in accordance with the conditions of approval or licence granted under these rules.*

(3) *The person importing cylinders shall have necessary infrastructure, handling transportation and storage facility including emergency action plan and qualified and trained technical manpower.*

(4) *If the import of the cylinders filled with compressed gas is exceeding the quantity exempted under rule 44 of these rules, licence to store compressed gas in cylinders granted in Form F is obligatory.*

PART II IMPORTATION BY SEA

31. Production of licence for import.-*Every person desiring to import cylinder filled with any compressed gas or intended to be so filled, valve and LPG regulator shall produce personally or through his agent, before the Commissioner of Customs his licence for the import of such gas **cylinder, valve or LPG regulator**, as the case may be.*

32. Permission of the Commissioner of Customs.(1) *No imported cylinder, valve and LPG regulator shall be landed except with the permission of the Commissioner of Customs.*

(2) *If the Commissioner of Customs is satisfied that the gas cylinder, valve and LPG regulator can lawfully be imported, he shall permit it to be landed.*

(3) *Nothing in this rule shall affect the power of the Commissioner of Customs to detain the gas cylinder, valve and LPG regulator under any other law for the time being in force.”*

5.6.2 I find that the Importer has contended that they were in possession of a valid licence issued by the Petroleum and Explosives Safety Organisation (PESO) under the Gas Cylinder Rules, 2016 and that the alleged failure to obtain specific landing permission from the Commissioner of Customs under Rule 32 is merely a procedural lapse which cannot be questioned at a later stage. I have carefully examined this contention in the light of the allegations made in the Show Cause Notice and the statutory provisions governing the import of gas cylinders, and I find the same to be untenable, misconceived and contrary to the express mandate of the Gas Cylinder Rules, 2016.

5.6.3 A combined, harmonious and purposive reading of Rules 29, 31 and 32 of the Gas Cylinder Rules, 2016 clearly establishes that the import of gas cylinders—whether filled with compressed gas or intended to be so filled—is subject to strict statutory control and conditional upon cumulative compliance with licensing as well as landing permission requirements. Rule 29 categorically prohibits import of gas cylinders filled or intended to be filled with compressed gas except under and in accordance with a licence granted under the said rules. Rule 31 further mandates that such licence shall be produced before the Commissioner of Customs at the time of import, thereby statutorily integrating Customs control into the regulatory framework.

5.6.4 Rule 32 of the Gas Cylinder Rules, 2016 goes a step further and unambiguously provides that no imported cylinder, valve or LPG regulator shall be landed except with the permission of the Commissioner of Customs. The language employed in Rule 32 is explicit, mandatory and admits of no discretion. The rule does not restrict its applicability only to cylinders already filled with compressed gas, as contended by the Importer. On the contrary, it expressly covers “imported cylinder, valve and LPG regulator” simpliciter, thereby making prior permission of the Commissioner of Customs a mandatory condition precedent for lawful landing of such goods.

5.6.5 I find that the Importer’s attempt to construe Rule 32 as a mere procedural formality, or to limit its scope only to filled cylinders, is wholly contrary to the object, intent and scheme of the Gas Cylinder Rules, 2016. The said rules are framed to ensure safety, regulatory oversight and strict control over the import, handling and circulation of gas cylinders, which are inherently hazardous articles. Any interpretation that dilutes or trivialises the mandatory nature of Rule 32 would defeat the very purpose of the statutory safeguards embedded in the rules.

5.6.6 I further find that the Importer’s reliance on possession of a PESO licence is misplaced. While obtaining a PESO licence under Rule 29 is a necessary condition, it is by no means sufficient compliance in itself. The statutory framework clearly envisages dual and independent compliance—first, possession of a valid licence, and second, production of such licence before the Commissioner of Customs and obtaining explicit permission prior to landing of the goods. Mere possession of a PESO licence does not override, substitute or dispense with the mandatory requirement of obtaining landing permission under Rules 31 and 32.

5.6.7 In the present case, as clearly brought out in the Show Cause Notice, the Importer failed to obtain and produce permission of the Commissioner of Customs under Rule 32 prior to landing of the imported gas cylinders. The absence of such permission is evident from records and was also not rebutted by the Importer through submission of any documentary evidence. The subsequent clearance of goods or utilisation thereof cannot retrospectively cure or condone the non-compliance with a mandatory statutory requirement which is required to be fulfilled prior to landing.

5.6.8 In view of the foregoing discussion and findings, I hold that the contention advanced by the Importer that non-obtaining of landing permission under Rule 32 is a mere procedural lapse is devoid of merit and is hereby rejected. I further hold that the Importer has failed to comply with the mandatory requirement of obtaining permission of the Commissioner of Customs under Rule 32 of the Gas Cylinder Rules, 2016 prior to landing of the goods. Accordingly, the imported gas cylinders are held to be in contravention of law due to non-fulfilment of the policy condition prescribed under the said rules, as rightly alleged in the Show Cause Notice.

5.7.1 I find that the Show Cause Notice has alleged that the Importer contravened the provisions of DGFT Notification No. 17/2015-20 dated 05.09.2019 (as amended) by importing steel items without undertaking mandatory registration under the Steel Import Monitoring System (SIMS). The relevant provisions of the said notification have been reproduced below:

“c. The Steel Import Monitoring System (SIMS) shall require importers to submit advance information in an online system for import of items in the Annex and obtain an automatic Registration Number by paying registration fee of Rs.1 per thousand subject to minimum of Rs.500/ and maximum of Rs. 1 lakh on CIF value. The importer can apply for registration not earlier than 60th day before the expected date of arrival of import consignment. The automatic Registration Number thus granted shall remain valid for a period of 75 days. The requirement of advance registration of minimum 15 days from the expected date of arrival of import consignment under SIMS has been abolished.”

5.7.2 I find that the Importer has contended that SIMS registration is not applicable in the present case on the ground that the cylinders were imported on a returnable basis and were not meant for domestic consumption. In support of this contention, the Importer has relied upon Policy Circular No. 29/2015-20 dated 04.10.2019, which clarifies that SIMS is not applicable to returnable steel racks imported on a temporary import basis.

5.7.3 I find that the reliance placed by the Importer on the said Policy Circular is misplaced and untenable. The circular relied upon by the Importer is a specific and limited clarification issued in respect of steel racks imported temporarily and returned after use. The impugned goods in the present case are not steel racks but gas cylinders, which are independently manufactured articles having a distinct commercial identity, durability, and repeated usability. The applicability of a clarification issued for steel racks cannot be extended by analogy to gas cylinders, particularly when the notification itself does not provide for any such exemption.

5.7.4 I further find that the impugned cylinders are classifiable separately under Customs Tariff Heading 73110090, which falls under Chapter 73 of the Customs Tariff Act, 1975. Chapter 73 goods are expressly covered under the Annexure to DGFT Notification No. 17/2015-20 dated 05.09.2019 (as amended). Therefore, the gas cylinders imported by the Importer squarely fall within the category of notified steel items for which SIMS registration is mandatorily required prior to importation.

5.7.5 I find that the contention of the Importer that SIMS applies only to goods intended for domestic consumption is not supported by the language of the DGFT notification. DGFT Notification No. 17/2015-20 dated 05.09.2019 (as amended) does not carve out any general exemption for goods imported on a returnable basis or for goods intended to be re-exported. The obligation under SIMS is triggered by the act of importation of notified steel items and is independent of their end-use, duration of stay in India, or subsequent re-export.

5.7.6 I further find that the argument of “returnable basis” advanced by the Importer is also factually inconsistent with the manner in which the goods were declared at the time of import. The cylinders were neither declared as goods imported temporarily nor were they imported under any specific customs procedure or exemption scheme that dispenses with compliance of DGFT policy conditions. I also observe that the Importer has failed to produce any documentary evidence to establish that the impugned cylinders were exempted from SIMS requirements under any statutory provision.

5.7.7 I find that the importer has adopted an inconsistent and self-serving stand in the present case. While they have sought to disregard CBIC Circular No. 51/2020 dated 20.11.2020 on the ground that circulars are binding only on Customs officers, are merely clarificatory, and cannot impose substantive conditions on exemption notifications, they simultaneously seek to rely upon Policy Circular No. 29/2015-20 dated 04.10.2019 to claim non-applicability of SIMS to returnable steel racks. Such selective reliance clearly amounts to approbation and reprobation. **Circulars cannot be rejected when adverse and relied upon when convenient.** This contradictory conduct renders the importer’s submissions untenable and devoid of credibility.

5.7.8 In view of the foregoing discussion and findings, I hold that the contention of the Importer that SIMS registration is not applicable to the impugned cylinders is devoid of merit and is rejected. I further hold that the Importer has contravened the provisions of DGFT Notification No. 17/2015-20 dated 05.09.2019, as amended, by importing gas cylinders classifiable under Customs Tariff Heading 73110090 without undertaking mandatory SIMS registration. The allegation made in the Show Cause Notice on this count is therefore sustained.

5.8.1 I find that the Show Cause Notice has alleged that the Importer imported Butterfly Valves without obtaining mandatory Bureau of Indian Standards (BIS) certification, in contravention of the provisions of the Butterfly Valves (Quality Control) Order, 2020, read with IS 13095:2020, vide Bill of Entry No. 3031932 dated 06.03.2021. The said Quality Control Order mandates that butterfly valves covered under IS 13095:2020 shall conform to the prescribed standard and bear the Standard Mark of BIS as a condition precedent for import.

5.8.2 I find that during the personal hearing, the Importer has contended that the butterfly valves imported by them are intended for industrial applications such as oil and gas, power

generation, chemical industries, food processing, pharmaceuticals, marine, defence, fire services and allied sectors, and therefore fall outside the scope of the Butterfly Valves (Quality Control) Order, 2020. This submission has been examined with reference to the allegations made in the Show Cause Notice.

5.8.3 I find that the above submission of the Importer is not acceptable. As specifically alleged in the Show Cause Notice, the butterfly valves in question were imported separately vide Bill of Entry No. 3031932 dated 06.03.2021 and were cleared through a regular Bill of Entry as a normal import. No declaration, endorsement or claim seeking exemption from mandatory BIS certification under the Butterfly Valves (Quality Control) Order, 2020 was made at the time of import.

5.8.4 I further find that the exclusion provided under the Butterfly Valves (Quality Control) Order, 2020 in respect of valves used in specified industrial applications is not automatic or blanket in nature. The burden squarely lies on the importer to establish, by way of credible, contemporaneous and verifiable documentary evidence, that the imported valves are specifically designed and intended for such exempted industrial use, as alleged in the Show Cause Notice.

5.8.5 In the present case, I find that the Importer has failed to produce any technical literature, product catalogues, engineering drawings, specifications, test certificates, end-use certificates or any other documentary evidence demonstrating that the imported butterfly valves were specifically designed for exclusive use in the exempted industrial sectors cited by them. Mere assertions regarding intended use, unsupported by technical or documentary proof, cannot be accepted for the purpose of claiming exclusion from the operation of a statutory Quality Control Order.

5.8.6 I find that compliance with the Butterfly Valves (Quality Control) Order, 2020 constitutes a policy condition issued under the relevant statutory framework, and non-fulfilment of such condition renders the import in contravention of law. In the present case, as brought out in the Show Cause Notice, the Importer has neither produced a valid BIS certificate nor established eligibility for exclusion under the said Order.

5.8.7 In view of the foregoing discussion and findings, I hold that the submissions advanced by the Importer are devoid of merit and are rejected. I further hold that the Importer has imported butterfly valves in violation of the provisions of the Butterfly Valves (Quality Control) Order, 2020 read with IS 13095:2020, by failing to obtain mandatory BIS certification and by failing to substantiate any claim of exclusion. Accordingly, the allegation made in the Show Cause Notice on this count is sustained.

5.9 In view of the detailed discussion and findings recorded in the foregoing paragraphs, and after careful examination of the allegations made in the Show Cause Notice, the statutory provisions governing import of gas cylinders and butterfly valves, and the submissions advanced by the Importer, I find that the Importer has failed to discharge the burden cast upon them under the Customs Act, 1962 and allied laws. The record clearly establishes that the Importer did not separately declare the imported cylinders as distinct goods, misclassified them by declaring gas and cylinders together, and failed to discharge applicable customs duty at the time of import. The claims for exemption at this stage under Notification No. 45/2017-Cus dated 30.06.2017 (as amended) and Notification No. 104/94-Cus dated 16.03.1994 (as amended) have been found to be inadmissible due to non-fulfilment of mandatory conditions

at the time of import. Further, the gas cylinders were imported without compliance with mandatory requirements of obtaining prior landing permission from the Commissioner of Customs under the Gas Cylinder Rules, 2016 and without adherence to DGFT Notification No. 17/2015-20 dated 05.09.2019 (as amended) mandating SIMS registration for steel items. I further find that the butterfly valves were imported without mandatory BIS certification as required under the Butterfly Valves (Quality Control) Order, 2020, and that the Importer has failed to substantiate any claim of exclusion through technical or documentary evidence. The Importer's reliance on returnable basis, industry practice, PESO licence, or SIMS policy circulars is found to be misplaced, factually unsupported and legally untenable as discussed in the above paras. Accordingly, I hold that the allegations contained in the Show Cause Notice stand established, the submissions of the Importer are rejected, and the impugned imports are liable for determination of duty, interest, fine and penalty under the relevant provisions of the Customs Act, 1962, as dealt with in the succeeding paragraphs.

5.10 After having determined that the noticee had failed to discharge applicable customs duty on cylinders by not declaring them separately under correct CTH and inadmissibility of exemption notification benefit due to non-fulfilment of mandatory conditions at the time of import, it is imperative to determine whether the demand of differential Customs duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. The relevant legal provision is as under:

SECTION 28(4) of the Customs Act, 1962.

Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. –

(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.

5.11 I find that the imported gas cylinders were not declared or classified as independent goods in the impugned Bills of Entry. The Show Cause Notice has clearly brought out that only the gas contents were declared and classified, while the cylinders, though imported along with the gas, were neither separately declared in the respective Bills of Entry (Except bill of entry no. 6280765 dated 17.11.2021) nor were the applicable duties paid on the imported cylinders as detailed in Table-I of the said Show Cause Notice. Further as discussed in foregoing paras in other instances (detailed in table-III of the said Show Cause Notice) the Importer had correctly declared gas cylinders separately, classified them under the appropriate Customs Tariff Heading and has claimed exemption benefits by following the prescribed procedures. This clearly establishes that the Importer was fully aware of the legal

requirement of separate declaration of cylinders. The selective non-declaration of cylinders in the impugned Bills of Entry therefore cannot be attributed to any bona fide belief or interpretational ambiguity and evidences conscious suppression of material facts. Such suppression directly resulted in non-assessment and non-payment of customs duty, causing loss to the Government exchequer.

5.12 Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. Under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, it is the added and enhanced responsibility of the importer, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In the instant case, the notice by not declaring the cylinders as separate import goods under correct classification, thereby evading payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit to the importer. Since the importer has wilfully not declared the cylinders and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invocable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

5.13 In view of the foregoing, I find that, due to deliberate/wilful non declaration and classification of cylinders in selective bills of entry, duty demand against the Importer has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

- (a) 2013(294) E.L.T.222(Tri.-LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos. M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]

In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified.

- (b) 2013(290) E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I; Tax Appeal No. 132 of 2011, decided on 27.01.2012.

Demand - Limitation - Fraud, collusion, wilful misstatement, etc. - Extended period can be invoked up to five years anterior to date of service of notice - Assessee's plea that in such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, wilful misstatement, etc., rejected as it would lead to strange and anomalous results;

- (c) 2005 (191) E.L.T. 1051 (Tri. - Mumbai): Winner Systems Versus Commissioner of Central Excise & Customs, Pune: Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19-7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum.

Demand - Limitation - Blind belief cannot be a substitute for bona fide belief - Section 11A of Central Excise Act, 1944. [para 5]

(d) 2006 (198) E.L.T. 275 - Interscape v. CCE, Mumbai-I.

It has been held by the Tribunal that a bona fide belief is not blind belief. A belief can be said to be bona fide only when it is formed after all the reasonable considerations are taken into account;

5.14 As per Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions it is evident that regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of Pratibha Processors Vs UOI [1996 (88) ELT 12 (SC)].

5.15.1 In view of the above, I find that the cylinders were neither separately declared in the respective Bills of Entry (except B/E No. 6280765 dated 17-11-2021) as mentioned in Table-I of the said Show Cause Notice nor were the applicable duties paid on the imported cylinders. Additionally, the importer has neither claimed the benefit under Notification No. 104/94-Customs dated 16.03.1994 (as amended), nor has the required re-export bond been submitted for the same. Further, with regard to B/E No. 6280765 dated 17-11-2021, the importer had misclassified the cylinders under CTH 29012910, instead of the correct classification under CTH 73110090. This misclassification has resulted in evasion of customs duty, as the customs duty under CTH 29012910 is 21.245%, whereas the duty under CTH 73110090 is 30.980%. I further find that the importer has contended that the first Bill of Entry listed in Table-II, namely Bill of Entry No. 6689652 dated 30.01.2020 covering 8 cylinders, is beyond the statutory period of five years from the date of issuance of the impugned Show Cause Notice. However, as per the Explanation to Section 28 of the Customs Act, 1962, the “relevant date”, in cases where duty has not been levied, not paid, short-levied or short-paid, is the date on which the proper officer makes an order for clearance of the goods. In the present case, the out-of-charge date in respect of the said Bill of Entry is 06.02.2020. Since the Show Cause Notice has been issued on 04.02.2025, the demand pertaining to the said Bill of Entry clearly falls within the extended period of limitation prescribed under Section 28(4) of the Customs Act, 1962. Accordingly, the contention of the importer on limitation is not tenable and is rejected.

5.15.2 Therefore, the importer, M/s Air Liquide India Holding Pvt. Ltd. (IEC-0596028539) by failing to declare the cylinders in the Bills of Entry listed in Table-II of the said Show Cause Notice, is liable to pay the differential duty amount of **Rs. 2,47,98,354/- (Rupees Two Crore Forty-Seven Lakh Ninety-Eight Thousand Three Hundred Fifty-Four Only)**,

under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period along with the applicable interest under Section 28AA of the Customs Act, 1962.

(B) Whether or not the subject goods as detailed in Table I, Table II & Table III having total assessable value of Rs. 14,04,48,777/- (Rupees Fourteen Crore Four Lakh Forty Eight Thousand Seven Hundred Seventy Seven only) are liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962.

5.16 I find that the importer, M/s Air Liquide India Holding Pvt. Ltd. had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 in all their import declarations. Thus, under the scheme of self-assessment, it is the importer who has to doubly ensure that he declares the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, there is an added and enhanced responsibility of the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

5.17 I also find that, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the Importer to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from 29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that the importer, M/s Air Liquide India Holding Pvt. Ltd. has deliberately failed to discharge this statutory responsibility cast upon them.

5.18 Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the subject case, the imported gas cylinders were neither declared as independent goods nor classified separately under the appropriate Customs Tariff Heading in the Bills of Entry (except B/E No. 6280765 dated 17-11-2021) as mentioned in Table-I of the said Show Cause Notice. Further, with regard to B/E No. 6280765 dated 17-11-2021, the importer had misclassified the cylinders under CTH 29012910, instead of the correct classification under CTH 73110090. I also find that the Importer was fully aware of the requirement of separate declaration and assessment of cylinders, as is evident from other instances covered under Table-III of the Show Cause Notice where cylinders were correctly declared and exemption under Notification No. 104/94-Cus dated 16.03.1994 (as amended) was claimed. Therefore, it is apparent that omission to declare the cylinders as separate import goods, coupled with the non-declaration of their classification by the importer resulted in the Bills of Entry not corresponding

to the actual goods imported. Due to this deliberate suppression of facts and wilful misclassification, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer.

5.19 I further find that the cylinders were imported without compliance with the mandatory policy conditions governing their import, including the requirement of SIMS registration in terms of provisions of DGFT Notification No. 17/2015-20 dated 05.09.2019, as amended and landing permission of the Commissioner of Customs under the Gas Cylinder Rules, 2016. I further find that the Butterfly Valves imported vide Bill of Entry No. 3031932 dated 06.03.2021, without mandatory BIS certification, as required under the Butterfly Valves (Quality Control) Order, 2020.

5.20.1 I find that the SCN proposes confiscation of goods as detailed in Table-I, II and III of the said Show cause notice under the provisions of Section 111(m) and Section 111(d) of the Customs Act, 1962. Provisions of these Sections of the Act, are re-produced herein below:

“SECTION 111. Confiscation of improperly imported goods, etc. — The following goods brought from a place outside India shall be liable to confiscation:

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

111 (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54

5.20.2 I find that Section 111(m) of the Customs Act, 1962 provides for confiscation of goods where such goods do not correspond, in respect of value or any other material particular, with the entry made under the Act. I have already held in the foregoing paragraphs that the gas cylinders imported by the Importer, as detailed in Table-I and Table-II of the Show Cause Notice, were not declared as independent goods in the Bills of Entry, were not classified separately under the appropriate Customs Tariff Heading, and were not subjected to assessment and payment of applicable customs duty at the time of import. I further observe that in respect of certain Bills of Entry covered under Table-III of the Show Cause Notice, the Importer had correctly declared gas cylinders separately, classified them under the appropriate tariff heading and claimed exemption benefits only after fulfilling the prescribed conditions. This clearly establishes that the Importer was fully aware of the statutory requirement of separate declaration and classification of cylinders. The selective omission to declare the cylinders in the impugned Bills of Entry, therefore, cannot be attributed to any bona fide belief and reinforces the finding of deliberate suppression of material facts. The non-declaration and non-classification of the cylinders as distinct import goods amounts to mis-declaration and suppression of material particulars in the import documents thereby attracting the provisions of Section 111(m) of the Customs Act, 1962.

5.20.3 I further find that Importation of goods in contravention of a law for the time being in force squarely attracts the provisions of Section 111(d) of the Customs Act, 1962 and the said gas cylinders were imported in contravention of mandatory statutory and policy conditions, including the provisions of DGFT Notification No. 17/2015-20 dated 05.09.2019, as amended

for SIMS registration and landing permission of the Commissioner of Customs under the Gas Cylinder Rules, 2016, as discussed and upheld in the preceding paragraphs. I further find that the Importer imported Butterfly Valves without obtaining mandatory Bureau of Indian Standards (BIS) certification, in contravention of the provisions of the Butterfly Valves (Quality Control) Order, 2020, read with IS 13095:2020, vide Bill of Entry No. 3031932 dated 06.03.2021. As already held in the foregoing paragraphs, the Importer failed to produce a valid BIS certification and also failed to establish eligibility for any exclusion under the said Quality Control Order.

5.21.1 In view of the above findings, I hold that the gas cylinders imported by the Importer, as detailed in Table-I, II and Table-III of the Show Cause Notice, and the butterfly valves imported as detailed in Table-III of the Show Cause Notice, are liable to confiscation under Sections 111(d) and 111(m) of the Customs Act, 1962. ***However, I find that the goods imported vide Bills of Entry as detailed in Table-I, II and Table-III of the Show Cause Notice are not available for confiscation.*** In this regard, I find that the confiscability of goods and imposition of redemption fine are governed by the provisions of law i.e. Section 111 and 125 of the Customs Act, 1962, respectively, regardless of the availability of goods at the time of the detection of the offence. I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)] wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).”

5.21.2 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.).

5.21.3 I also find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

5.21.4 I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

5.21.5 I find that the declaration under Section 46(4) of the Customs Act, 1962 made by the importer at the time of filing Bills of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/ Bond are liable for confiscation under Section 111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962. A few such cases are detailed below:

- a. M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);
- b. M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);
- c. M/s SacchaSaudhaPedhi Vs. Commissioner of Customs (Import), Mumbai reported in 2015 (328) ELT 609 (Tri-Mumbai);
- d. M/s Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai reported in 2017(335) ELT (193) (Bom)
- e. M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

“if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962, then the mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine.”

- f. Commissioner of Customs, Chennai Vs. M/s Madras Petrochem Ltd. as reported in 2020 (372) E.L.T. 652 (Mad.) wherein it has been held as under:

“We find from the aforesaid observation of the Learned Tribunal as quoted above that the Learned Tribunal has erred in holding that the cited case of the Hon'ble Supreme Court in the case of Weston Components, referred to above is distinguishable. This observation written by hand by the Learned Members of the Tribunal, bearing their initials, appears to be made without giving any reasons and details. The said observation of the Learned Tribunal, with great respect, is in conflict with the observation of the Hon'ble Supreme Court in the case of Weston Components.”

5.21.6 In view of above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the goods become liable for confiscation.

5.22 Once the imported goods are held liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962, they cannot have differential treatment in regard to imposition of redemption fine, merely because they are not available, as the fraud could not be detected at the time of clearance. In view of the above, I hold that the present case also merits the imposition of a Redemption Fine, having held that the impugned goods are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

(C) Whether or not penalties are imposable on the importer i.e. M/s Air Liquide India Holding Pvt. Ltd. (IEC-0596028539) under Section 112 and/or Section 114 A, Section 114AA and Section 117 of the Customs Act, 1962.

5.23 The Show Cause Notice has proposed imposition of penalties on the importer, M/s Air Liquide India Holding Pvt. Ltd. under the provisions of Section 112(a) and/or Section 114A, Section 114AA and Section 117 of the Customs Act, 1962.

The said sections are reproduced as under: -

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, shall be liable,-

- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 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 percent of the the duty sought to be evaded or five thousand rupees, whichever is the greater;

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 a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

- (v) *in the case of goods falling both under clauses (ii) and (iii), to a penalty 6 [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.*

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 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:

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.

Section 117 of the Customs Acts 1962:- Penalties for contravention, etc., not expressly mentioned -
Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding 1 [four lakh rupees]

5.24 I find that in the instant case, the Importer has failed to correctly declare and self-assess the imported goods, despite being fully aware of the statutory requirement to declare and assess all independently assessable goods at the time of filing the Bills of Entry. As discussed in the foregoing paragraphs, the Importer deliberately omitted to declare the gas cylinders separately, while being conscious of their independent identity and duty liability. Such omission was not inadvertent but was a conscious act of suppression of material facts, undertaken with the intent to evade payment of the applicable Customs duty. Further, the deliberate non-declaration and suppression of material particulars relating to the cylinders amount to wilful mis-statement and suppression of facts. The conduct of the Importer, particularly when viewed in light of their correct compliance in other instances, clearly establishes the presence of ‘mens rea’ to evade payment of legitimate duty. Once such wilful suppression and intent to evade duty are established, the invocation of the extended period of limitation, as well as the applicability of confiscation and penal provisions under the Customs Act, 1962, follow as a natural consequence.

5.25 It is a settled law that fraud and justice never dwell together (*Frauset Jus nunquam cohabitant*). Lord Denning had observed that “*no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything*”. There are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon’ble Supreme Court in

case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at paras 31 and 32 held as follows:

“31. ‘‘Fraud’’ as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. **It is also well settled that misrepresentation itself amounts to fraud.** Indeed, innocent misrepresentation may also give reason to claim relief against fraud. **A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood.** It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. (Ram Chandra Singh v. Savitri Devi and Ors. [2003 (8) SCC 319].

32. ‘‘Fraud’’ and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in *Samsung Electronics India Ltd. Vs Commissioner of Customs, New Delhi* reported in 2014(307)ELT 160(Tri. Del). In *Samsung case*, Hon’ble Tribunal held as under.

‘‘If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of *Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.)* it has been held that by ‘‘fraud’’ is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. ‘‘Fraud’’ involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly, a ‘‘fraud’’ is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another’s loss. It is a cheating intended to get an advantage. (Ref: *S.P. Changanarayana Naidu v. Jagannath* [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :*RoshanDeenv. PreetiLal* [(2002) 1 SCC 100], *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* [(2003) 8 SCC 311], *Ram Chandra Singh’s case (supra)* and *Ashok Leyland Ltd. v. State of T.N. and Another* [(2004) 3 SCC 1].

Suppression of a material fact would also amount to a fraud on the court [(Ref: Gowrishankarv. Joshi Amha Shankar Family Trust, (1996) 3 SCC 310 and S.P. Chengalvaraya Naidu's case (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: UOI v. Jain Shudh Vanaspati Ltd. - 1996 (86) [E.L.T.](#) 460 (S.C.) and in Delhi Development Authority v. Skipper Construction Company (P) Ltd. - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non est. So also no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of Chengalvaraya Naidu reported in (1994) 1 SCC 1 : AIR 1994 SC 853. Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education (2003) 8 SCC 311.

A person whose case is based on falsehood has no right to seek relief in equity [Ref: S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: Commissioner of Customs v. Essar Oil Ltd., (2004) 11 SCC 364 = 2004 (172) [E.L.T.](#) 433 (S.C.)].

When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of K.I. Pavunnyv.AC, Cochin - 1997 (90) [E.L.T.](#) 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.

It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) [E.L.T.](#) 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred.”

5.26 I find that, in the present case, as discussed in detail in the foregoing paragraphs, the Importer failed to declare the cylinders as independently assessable goods and thereby did not subject them to assessment and payment of duty. I further find that such non-declaration was not on account of any interpretational issue or bona fide belief. On the contrary, records reveal that in other import consignments, as detailed in Table-III of the said Show Cause Notice, the Importer has correctly declared cylinders separately, classified them appropriately and claimed exemption benefits by following the prescribed procedure. This clearly establishes that the Importer was fully aware of the legal requirement of separate declaration and assessment of cylinders. The selective non-declaration in the impugned Bills of Entry therefore amounts to wilful suppression of material facts with intent to evade payment of duty.

5.27 I find that the differential duty confirmed in the present case has arisen solely due to deliberate suppression of material facts and wilful non-declaration of independently assessable goods, resulting in short-levy of Customs duty. Since the demand has been sustained under the proviso to Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation, the conditions prescribed for imposition of penalty under Section 114A stand fully satisfied. Accordingly, I hold that the Importer is liable to penalty under Section 114A of the Customs Act, 1962.

5.28.1 I further find that by filing Bills of Entry without declaring cylinders as independent goods, the Importer knowingly made false and incomplete declarations in contravention of Section 46(4) of the Customs Act, 1962. Such deliberate furnishing of incorrect particulars in statutory documents squarely attracts the provisions of Section 114AA of the Customs Act, 1962.

5.28.2 I further find that Section 114AA of the Customs Act, 1962 provides for imposition of penalty where any 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 the Act. In the instant case, the importer deliberately resorted to non-declaration of cylinders as independent import goods and filed Bills of Entry by treating the gas and the cylinders as a single commodity, despite being fully aware that cylinders are independently classifiable goods under the Customs Tariff. I further find that although the importer, in certain instances, claimed benefit of Notification No. 104/94-Cus dated 16.03.1994 (as amended) for cylinders imported on returnable basis, as clarified vide Circular No. 51/2020-Customs dated 20.11.2020, they simultaneously mis-declared and misclassified the cylinders, inter alia, in Bill of Entry No. 6280765 dated 17.11.2021 by classifying the same under CTH 29012910 applicable to gas, instead of declaring the cylinders separately under the appropriate tariff heading. Such conscious misclassification and suppression of material particulars resulted in evasion of applicable customs duty on the cylinders and rendered the declarations made in the Bills of Entry false and incorrect in material particulars. I therefore hold that the importer knowingly furnished incorrect declarations and used false documents in the course of importation, squarely attracting penal action under Section 114AA of the Customs Act, 1962.

5.28.3 I find that the ingredients for invocation of Section 114AA stand fully satisfied in the instant case. The omission to declare cylinders separately cannot be treated as a mere procedural lapse, as the cylinders were admittedly imported along with the gas and their non-declaration had a direct bearing on assessment, levy of duty and compliance with allied statutory requirements. The act of filing such Bills of Entry, therefore, amounts to knowing use of documents containing incorrect particulars in a material respect.

5.28.4 I note that the applicability of penal action under Section 114AA has been clearly brought out in the Show Cause Notice. The conduct of the importer demonstrates conscious and deliberate filing of incomplete declarations, resulting in suppression of material facts from the Customs authorities. Such conduct squarely attracts the provisions of Section 114AA of the Customs Act, 1962.

5.28.5 Furthermore, I find that the Hon'ble CESTAT, New Delhi in the case of M/s S.D. Overseas vs The Joint Commissioner of Customs in Customs Appeal No. 50712 OF 2019 had dismissed the appeal of the petitioner while upholding the imposition of penalty under Section 114 AA of the Customs Act, wherein it had held as under:

28. As far as the penalty under Section 114AA is concerned, it is imposable 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. We find that the appellant has misdeclared the value of the imported goods which were only a fraction of a price the goods as per the manufacturer's price lists and, therefore, we find no reason to interfere with the penalty imposed under Section 114AA.

5.28.6 There are several judicial decisions in which penalty on Companies under section 114AA of the Customs Act, 1962 has been upheld. Following decisions are relied upon on the issue -

- i. M/s ABB Ltd. Vs Commissioner (2017-TIOL-3589-CESTAT-DEL)
- ii. Sesa Sterlite Ltd. Vs Commissioner (2019-TIOL-1181-CESTAT-MUM)
- iii. Indusind Media and Communications Ltd. Vs Commissioner (2019-TIOL-441-SC-CUS)

These decisions affirm that furnishing incorrect or incomplete particulars in statutory Customs documents with knowledge attracts penal consequences under Section 114AA.

5.28.7 I further find that the present case does not involve a mere interpretational dispute or a bona fide error. The existence, identity and import of cylinders are undisputed. Therefore, the non-declaration of cylinders as independent goods cannot be attributed to ignorance or oversight. The importer has knowingly used Bills of Entry containing false and incomplete declarations, thereby contravening the provisions of the Customs Act. Accordingly, I hold that the importer is liable for penalty under Section 114AA of the Customs Act, 1962 for knowingly making and using declarations and documents which were false and incorrect in material particulars.

5.29 I find that the contraventions established in the present case are directly linked to wilful suppression and false declaration resulting in evasion of duty, which have been specifically dealt with under Sections 114A and 114AA of the Customs Act, 1962. Imposition of penalty under Section 112(a) in addition to penalties under the aforesaid Sections would amount to penalising the Importer multiple times for the same set of acts. However, I note that in terms of the fifth proviso to Section 114A of the Customs Act, 1962, where penalty is imposable under Section 114A for duty determined under the proviso to Section 28(4), no penalty shall be imposed under Section 112 of the Act for the same act or omission and imposition of any separate penalty under Section 112(a) of the Customs Act, 1962 is not warranted. Accordingly, I refrain from imposing any penalty under Section 112(a) of the Customs Act, 1962.

5.30 I further find that Section 117 of the Customs Act, 1962 is a residuary provision applicable only in cases where no specific penalty is provided under the Act. Since the acts and omissions of the Importer are squarely covered under Sections 114A and 114AA, invocation of Section 117 is neither required nor justified. Hence, no penalty is imposed under Section 117 of the Customs Act, 1962.

(D) Whether or not Bank Guarantee of amount Rs. 73,50,000/- is to be encashed and same to be appropriated against differential duty demand with applicable interest, fine & penalty.

5.31.1 I find that Export Consignment of 120 Cylinders vide Shipping Bill No. 2801946 dated 29.07.2024 was released provisionally after taking Bond & Bank Guarantee of Rs. 73,50,000/- equal to assessable value of Shipping Bill No. 2801946 dated 29.07.2024 i.e. Rs. 7305470.03/. In view of the findings recorded hereinabove, I find that the differential Customs duty demand along with applicable interest has been rightly confirmed against the Importer under the provisions of Section 28(4) read with Section 28AA of the Customs Act, 1962, and that the subject goods have been held liable to confiscation with imposition of redemption fine and penalties under the provisions of Customs Act, 1962.

5.31.2 Accordingly, I find that the Bank Guarantee of Rs. 73,50,000/- furnished by the Importer shall be encashed and the proceeds appropriated towards the confirmed dues, including differential duty, interest, redemption fine and penalties.

5.31.3 I further find that the importer has submitted an ECL summary along with written submissions dated 03.12.2025 evidencing payment of an amount of Rs. 81,95,821/- vide challan No. 1103857176 dated 30.10.2025. A copy of the said e-payment receipt, downloaded from the ICEGATE portal (<https://foservices.icegate.gov.in/#/epayment/download-receipt>), confirms the aforesaid payment. On verification of the challan particulars, it is observed that the said amount of Rs. 81,95,821/- has been deposited specifically against "Notice under Section 28(4) of the Customs Act, 1962", wherein said the Show Cause Notice date i.e. 04.02.2025 and DIN initials 2025027700 has been clearly mentioned. Thus, I find that the said payment has been made in direct reference to the demand proposed in the present Show Cause Notice.

5.31.4 Accordingly, the amount of Rs. 81,95,821/- deposited vide challan No. 1103857176 dated 30.10.2025 is liable to be appropriated towards the confirmed Government dues including duty, interest, fine and penalty arising out of the present proceedings .

(F) Whether or not penalties are imposable on the Customs Brokers i.e. M/s. JEM Logistics Solutions, M/s. All-Ways Logistics (CHA) Pvt Ltd, M/s. Transglobal Logistics, M/s. Classic Clearing & Forwarding, M/s. DSV Coload & Clearance Pvt Ltd, M/s. Sai Dutta Shipping Agency Pvt Ltd and M/s. Sav Logistics under Section 112 and/or Section 114 A, Section 114AA and Section 117 of the Customs Act, 1962.

5.32 I find that the said Show Cause Notice proposes penalty on the Customs Brokers i.e. M/s. JEM Logistics Solutions, M/s. All-Ways Logistics (CHA) Pvt Ltd, M/s. Transglobal Logistics, M/s. Classic Clearing & Forwarding, M/s. DSV Coload & Clearance Pvt Ltd, M/s. Sai Dutta Shipping Agency Pvt Ltd and M/s. Sav Logistics under Section 112 and/or Section 114 A, Section 114AA and Section 117 of the Customs Act, 1962. Relevant provisions of said sections had already been produced in above paras.

5.33 I have carefully examined the written and oral submissions made by all the Customs Brokers, namely M/s. JEM Logistics Solutions, M/s. All-Ways Logistics (CHA) Pvt Ltd, M/s. Transglobal Logistics, M/s. Classic Clearing & Forwarding, M/s. DSV Coload & Clearance Pvt Ltd, M/s. Sai Dutta Shipping Agency Pvt Ltd and M/s. Sav Logistics. I find that the submissions made by the Customs Brokers are largely identical and reiterative in

nature. They have uniformly asserted that they acted only on the basis of documents and instructions furnished by the importer, had no independent role in classification or assessment of the goods, and that the responsibility for correct declaration rests with the importer under the self-assessment regime. I observe that these contentions have already been examined and conclusively dealt with in the preceding paragraphs of this Order while adjudicating the allegations contained in the Show Cause Notice against the importer. The submissions of the Customs Brokers do not bring forth any new facts or legal grounds warranting separate or further consideration. Accordingly, in order to avoid repetition and unnecessary elaboration, I do not consider it necessary to repeat the same discussions again.

5.34 I find the contentions of the Customs Brokers to be untenable and lacking legal substance. A licensed Customs Broker is a vital link in the customs clearance mechanism and cannot be reduced to the role of a passive conduit or mere data entry operator. Under the Customs Brokers Licensing Regulations, a Customs Broker is statutorily mandated to exercise due diligence, verify the correctness of declarations, and ensure compliance with the provisions of the Customs Act, 1962 and all allied laws. This obligation extends beyond mechanical filing and includes advising the importer on statutory requirements having a direct bearing on assessment, control and clearance. In the present case, the nature of the goods as gas filled in cylinders was evident from the import documents handled by the Customs Brokers, yet the cylinders were not declared as independent goods in several Bills of Entry.

5.35 I further find that gas cylinders are regulated goods, independently classifiable under the First Schedule to the Customs Tariff Act, 1975, and are governed by a well-defined statutory and policy framework. Import of cylinders filled with gas is specifically regulated under the Gas Cylinder Rules, 2016, wherein Rules 29 to 32, in particular Rule 32, mandate that no imported gas cylinder shall be landed except with the permission of the jurisdictional Commissioner of Customs. In addition, the import of steel cylinders is also subject to compliance with the Steel Import Monitoring System (SIMS) as prescribed under the relevant DGFT notifications No. 17/2015-20 dated 05.09.2019 (as amended) and import of Butterfly Valve” is subject to BIS Certificate in terms of Butterfly Valves (Quality Control) Order, 2020. Despite the above statutory requirements being clear and unequivocal, I find that the Customs Brokers failed to discharge their obligations by neither advising the importer nor ensuring compliance with the mandatory requirements relating to landing permission under Rule 32 of the Gas Cylinder Rules, 2016, SIMS registration prior to filing of Bills of Entry and compliance of mandatory BIS Certificate in terms of Butterfly Valves (Quality Control) Order, 2020. The omission to verify and ensure compliance with these binding legal requirements at the stage of filing the Bills of Entry constitutes a serious breach of the duty of due diligence cast upon the Customs Brokers, and cannot be condoned as a procedural lapse.

5.36 I also find it significant that, as brought out in Table-III of the said Show Cause Notice, in certain Bills of Entry filed by the Customs Brokers themselves, cylinders were declared as separate line items. This clearly establishes that the Customs Brokers were fully aware that cylinders are independently classifiable goods requiring separate declaration and assessment. However, despite such knowledge, the Customs Brokers filed other Bills of Entry as detailed in table-I of the said Show Cause Notice, treating gas and cylinders as a composite commodity, without separate declaration of cylinders. This selective and

inconsistent manner of declaration demonstrates conscious disregard of statutory requirements and cannot be brushed aside as a mere procedural lapse.

5.37 I find that by filing Bills of Entry with incomplete and incorrect declarations, without ensuring separate declaration of cylinders and without compliance with mandatory requirements such as SIMS registration, BIS certification and landing permission, the Customs Brokers facilitated suppression of material facts. I find that such facilitation was not accidental or inadvertent. The nature of the goods, the recurring pattern of imports, and the documentary trail clearly demonstrate that the Customs Brokers were fully aware, or at the very least ought to have been aware, that gas cylinders are independently regulated goods subject to distinct legal controls. Despite this, they neither raised objections nor sought clarification, nor advised the importer to comply with the statutory requirements, thereby consciously allowing non-compliant imports to be processed through the Customs. These acts and omissions directly contributed to improper importation and rendered the goods liable to confiscation under Sections 111(d) and 111(m) of the Customs Act, 1962. The role played by the Customs Brokers, therefore, goes beyond clerical assistance and squarely falls within the ambit of abetment as contemplated under the Customs Act.

5.38 Accordingly, I find that the Customs Brokers, by their acts of commission and omission, failed to discharge the statutory duties cast upon them under the Customs Act, 1962. Their failure to exercise due diligence, verify correctness of declarations and ensure compliance with mandatory legal requirements facilitated improper import and abetted acts which rendered the goods liable to confiscation under the provisions of the Customs Act, 1962. They are, therefore, liable to penalty under Section 112(a) of the Customs Act, 1962 for abetment of such acts

5.39 I further hold that penalty under Section 114A of the Customs Act, 1962 is not applicable to the Customs Brokers, as the said provision is attracted only against persons who are chargeable with or liable to pay duty by reason of wilful misstatement, suppression of facts or collusion, and the Customs Brokers, not being importers or persons chargeable with duty, do not fall within its ambit. I also hold that penalties under Sections 112(a) and 114A cannot be imposed simultaneously for the same acts, as Section 112(a) specifically governs acts of improper import and abetment thereof, whereas Section 114A is a duty-linked penalty; accordingly, once liability of the Customs Brokers is appropriately determined under Section 112(a), invocation of Section 114A is legally unsustainable.

5.40.1 I have carefully examined the proposal in the Show Cause Notice for imposition of penalty on the Customs Brokers under Section 114AA of the Customs Act, 1962 and the submissions made by them in defence. Section 114AA provides that where any person knowingly or intentionally makes, signs, 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 under the Customs Act, such person shall be liable to penalty. The scope of the said provision is wide and covers not only the importer but also any intermediary, including a Customs Broker, who knowingly participates in the use of false or incomplete statutory documents.

5.40.2 In the present case, I find that the Customs Brokers were actively involved in filing Bills of Entry wherein cylinders, which are independently classifiable, regulated and subject to specific statutory controls, were either not declared separately or were incorrectly treated as part of the gas, despite being aware of the true nature of the goods and the applicable legal

requirements. The records reveal that in certain Bills of Entry, as detailed in Table-III of the Show Cause Notice, the Customs Brokers had, in other instances, declared cylinders separately, thereby clearly establishing their knowledge that cylinders are required to be declared as independent goods. Despite such knowledge, they proceeded to file Bills of Entry with incomplete and incorrect declarations in the present case.

5.40.3 I further find that the Customs Brokers were aware, or ought to have been aware, that gas cylinders attract mandatory compliance requirements, including landing permission under Rule 32 of the Gas Cylinder Rules, 2016, compliance with the Safety Information Monitoring System (SIMS) in terms of provisions of DGFT Notification No. 17/2015-20 dated 05.09.2019 (as amended), and conformity with Butterfly Valves (Quality Control) Order, 2020. Notwithstanding such awareness, they knowingly facilitated filing of Bills of Entry without ensuring declaration of cylinders as separate goods and without ensuring compliance with the aforesaid statutory requirements. Such conduct goes beyond mere negligence or procedural lapse and clearly establishes conscious and intentional use of statutory documents containing false and incomplete particulars. By filing and using Bills of Entry with material omissions and incorrect declarations relating to the nature, classification and regulatory status of the imported goods, the Customs Brokers knowingly caused false declarations to be used for the purposes of the Customs Act, 1962. The acts and omissions of the Customs Brokers, therefore, squarely satisfy the ingredients of Section 114AA, namely, knowledge, intentional conduct and use of false or incorrect documents in the transaction of Customs business. Accordingly, I find that the Customs Brokers, by knowingly and intentionally using Bills of Entry containing false and incomplete material particulars, have rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962, in addition to their liability under Section 112(a) for abetment.

5.41 I find that invocation of Section 117 of the Customs Act, 1962 is not warranted in the facts of the present case. Section 117 is a residuary penal provision, intended to apply only where no specific penalty is provided elsewhere in the Act. In the instant case, the acts of omission and commission on the part of the Customs Brokers, resulting in abetment of improper import and misdeclaration, are squarely and specifically covered under Section 112(a) and Section 114AA of the Customs Act, 1962. Once a specific penal provision is applicable and invoked, recourse to the residual provision under Section 117 is neither justified nor legally sustainable.

6. In view of the facts of the case, the documentary evidences on record and findings as detailed above, I pass the following order:

ORDER

6.1 I confirm the demand of differential Customs duty aggregating to **Rs. 2,47,98,354/- (Rupees Two Crore Forty-Seven Lakh Ninety-Eight Thousand Three Hundred Fifty-Four Only)**, in respect of Bills of Entry as detailed in Table-II of the Show Cause Notice, under Section 28(4) of the Customs Act, 1962 and order that the same shall be recovered from the importer, M/s Air Liquide India Holding Pvt. Ltd. (IEC-0596028539), along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

6.2 Even though the goods are not available, I hold the impugned goods imported vide Bills of Entry as mentioned at Table-I, II & III of SCN having total declared assessable value

of Rs. **14,04,48,777/- (Rupees Fourteen Crore Four Lac Forty-Eight Thousand Seven Hundred Seventy Seven only)** liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. However, I impose a redemption fine of **Rs. 70,00,000 /- (Rupees Seventy Lakhs only)** on importer, M/s Air Liquide India Holding Pvt. Ltd. in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

6.3 I impose a penalty equivalent to differential duty of **Rs. 2,47,98,354/- (Rupees Two Crore Forty-Seven Lakh Ninety-Eight Thousand Three Hundred Fifty-Four Only)** along with the applicable interest thereon, on the importer, M/s Air Liquide India Holding Pvt. Ltd. under Section 114A of the Customs Act, 1962.

6.4 I impose penalty of **Rs. 70,00,000 /- (Rupees Seventy Lakhs only)**, on the importer, M/s Air Liquide India Holding Pvt. Ltd. under Section 114AA of the Customs Act, 1962.

6.5 I refrain from imposing penalty on importer M/s Air Liquide India Holding Pvt. Ltd. under Section 112 (a) and Section 117 of the Customs Act, 1962.

6.6 I order that the amount of **Rs. 81,95,821/- (Rupees Eighty-One Lakh Ninety-Five Thousand Eight Hundred and Twenty-One only)** deposited by the importer vide challan No. 1103857176 dated 30.10.2025 shall also be appropriated towards the confirmed Government dues, including differential duty, applicable interest, redemption fine and penalties.

6.7 I order that the Bank Guarantee of **Rs. 73,50,000/- (Rupees Seventy-Three Lakh Fifty Thousand only)** furnished by the importer to be encashed and appropriated towards the confirmed Government dues arising out of the present proceedings, including differential duty, applicable interest, redemption fine and penalties.

6.8 I impose a penalty of **Rs.3,50,000/- (Rupees Three Lakh and Fifty Thousand Only)** on Customs Broker M/s. JEM Logistics Solutions under Section 112(a) of the Customs Act, 1962

6.9 I impose a penalty of **Rs.7,00,000/- (Rupees Seven Lakh Only)** on Customs Broker M/s. JEM Logistics Solutions under Section 114AA of the Customs Act, 1962

6.10 I refrain from imposing penalty on Customs Broker M/s. JEM Logistics Solutions under Section 114A and Section 117 of the Customs Act, 1962

6.11 I impose a penalty of **Rs.50,000/- (Rupees Fifty Thousand Only)** on Customs Broker M/s. All-Ways Logistics (CHA) Pvt Ltd under Section 112(a) of the Customs Act, 1962

6.12 I impose a penalty of **Rs.1,00,000/- (Rupees One Lakh Only)** on Customs Broker M/s. All-Ways Logistics (CHA) Pvt Ltd under Section 114AA of the Customs Act, 1962

6.13 I refrain from imposing penalty on Customs Broker M/s. All-Ways Logistics (CHA) Pvt Ltd under Section 114A and Section 117 of the Customs Act, 1962

6.14 I impose a penalty of **Rs.75,000/- (Rupees Seventy Five Thousand Only)** on Customs Broker M/s. Transglobal Logistics under Section 112(a) of the Customs Act, 1962

6.15 I impose a penalty of **Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand Only)** on Customs Broker M/s. Transglobal Logistics under Section 114AA of the Customs Act, 1962

6.16 I refrain from imposing penalty on Customs Broker M/s. Transglobal Logistics under Section 114A and Section 117 of the Customs Act, 1962

6.17 I impose a penalty of **Rs.25,000/- (Rupees Twenty Five Thousand Only)** on Customs Broker M/s. Classic Clearing & Forwarding under Section 112(a) of the Customs Act, 1962

6.18 I impose a penalty of **Rs.50,000/- (Rupees Fifty Thousand Only)** on Customs Broker M/s. Classic Clearing & Forwarding under Section 114AA of the Customs Act, 1962

6.19 I refrain from imposing penalty on Customs Broker M/s. Classic Clearing & Forwarding under Section 114A and Section 117 of the Customs Act, 1962

6.20 I impose a penalty of **Rs.25,000/- (Rupees Twenty Five Thousand Only)** on Customs Broker M/s. DSV Coload & Clearance Pvt Ltd under Section 112(a) of the Customs Act, 1962

6.21 I impose a penalty of **Rs.50,000/- (Rupees Fifty Thousand Only)** on Customs Broker M/s. DSV Coload & Clearance Pvt Ltd under Section 114AA of the Customs Act, 1962

6.22 I refrain from imposing penalty on Customs Broker M/s. DSV Coload & Clearance Pvt Ltd under Section 114A and Section 117 of the Customs Act, 1962

6.23 I impose a penalty of **Rs.50,000/- (Rupees Fifty Thousand Only)** on Customs Broker M/s. Sai Dutta Shipping Agency Pvt Ltd under Section 112(a) of the Customs Act, 1962

6.24 I impose a penalty of **Rs.1,00,000/- (Rupees One Lakh Only)** on Customs Broker M/s. Sai Dutta Shipping Agency Pvt Ltd under Section 112(a) of the Customs Act, 1962

6.25 I refrain from imposing penalty on Customs Broker M/s. Sai Dutta Shipping Agency Pvt Ltd under Section 114A and Section 117 of the Customs Act, 1962

6.26 I impose a penalty of **Rs.25,000/- (Rupees Twenty Five Thousand Only)** on Customs Broker M/s. Sav Logistics under Section 112(a) of the Customs Act, 1962

6.27 I impose a penalty of **Rs.50,000/- (Rupees Fifty Thousand Only)** on Customs Broker M/s. Sav Logistics under Section 112(a) of the Customs Act, 1962

6.28 I refrain from imposing penalty on Customs Broker M/s. Sav Logistics under Section 114A and Section 117 of the Customs Act, 1962

7. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/firms concerned, covered or not covered by this show cause notice, under the provisions of Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

(यशोधन वनगे /**Yashodhan Wanage**)

प्रधान आयुक्त, सीमा शुल्क/ **Pr. Commissioner of Customs**

एनएस-1, जेएनसीएच / **NS-I, JNCH**

To,

1. M/s. Air Liquide India Holding Pvt. Ltd.

Plot B-1, Chakan Industrial Area,
PH-II Village Sawardari,
Tehsil Khed, Pune,
Maharashtra

2. M/s. JEM LOGISTICS SOLUTIONS

Unit No. 1A, Aawas Apartment, Gr. Floor,
Sahar Pipeline Road, Andheri (E)- 400059.

3. M/s. ALL-WAYS Logistics (CHA) Pvt Ltd

7th Floor, Office No 707,
Annexe Prabhat Centre, Sector-1A
CBD Belapur, Navi Mumbai,
Thane, Maharashtra, 400614

4. M/s. TRANSGLOBAL LOGISTICS

A3 & A4 Jai Vidyadani Co-Op. Sor .
Omnagar, Sahar Pipeline,
Andheri(E), Mumbai-400099

5. M/s. CLASSIC CLEARING & FORWARDING

B-507, Pranik Chamber,
Sakivihar Road,
Sakinaka-400072

6. M/s. DSV COLOAD & CLEARANCE PVT LTD

B-204, The Qube,
International Airport Approach Road,
Marol Naka, Andheri (E)- 400059

7. M/s. SAI DUTTA SHIPPING AGENCY PVT LTD

Flat 10, Jain House, 1st Floor,
154 Jerbai Wadia Road, Parel ,
Mumbai, Maharashtra, India – 400012

8. M/s. SAV LOGISTICS

A-501, 5th Floor,
Pranik Chambers, Saki Vihar Road,
Andheri(E), Mumbai-400072

Copy to:

1. The AC/DC, Appraising Group IIAB, JNCH
2. The AC/DC, Chief Commissioner's Office, JNCH
3. The AC/DC, Centralized Revenue Recovery Cell, JNCH
4. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
5. EDI, JNCH through email for uploading the same in JNCH website
6. Office Copy