



ALO Law Office- IDT Tax / Arbitration / Litigation

Date: 11.06.2025

CESTAT Mumbai- SCMTR Not Enforceable at Time of Shipment

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Mumbai, quashed a punitive order issued by the Commissioner of Customs (General), Nhava Sheva, against Aiyer Shipping Agency Pvt. Ltd., citing improper application of the Sea Cargo Manifest and Transshipment Regulations, 2018 (SCMTR) and misinterpretation of the Customs Act, 1962.

Background of the Case

The appeal stemmed from a penalty order issued against Aiyer Shipping Agency in connection with two shipping bills dated 07.01.2022, involving export of 297.541 MTs of SHG Jumbo Zinc by Hindustan Zinc Ltd. The exporter had used Direct Port Entry (DPE) and e-sealing, but due to procedural timing, the Let Export Order (LEO) was obtained after the vessel 'MV Thorsky' had sailed on 09.01.2022. This resulted in an EGM error: "LEO date greater than sailing date".

Customs Department's Action

The Commissioner imposed:

- Suspension of operations under Regulation 11 of SCMTR
- ₹50 lakh redemption fine under Section 125 of the Customs Act
- ₹20 lakh penalty under Section 114(iii)
- ₹50,000 penalty under Regulation 13 of SCMTR

The grounds for action included alleged violations of:

- **SCMTR, 2018:** Regulations 5 and 10(1)(m)
- **Customs Act, 1962:** Sections 34, 39, 40, 41, and 113(d), (f), (g)

Legal Contentions by Aiyer Shipping

Represented by Advocate, the appellant contended that:

- Aiyer Shipping acted as an agent of NVOCC, not as Authorised Sea Carrier, hence not responsible for EGM filing.
- The SCMTR regulations were not yet fully enforced at Nhava Sheva on the shipment date due to transitional provisions under Regulation 15(2).
- There was no violation of Customs Act provisions, and the delay in LEO was procedural, not intentional or fraudulent.

CESTAT's Observations and Key Findings

The CESTAT Bench of Hon'ble Shri S.K. Mohanty (Judicial) and Shri M.M. Parthiban (Technical) made the following findings:

1. **SCMTR Not Applicable on Relevant Date:** Regulations 5 and 10(1)(m) were not enforceable at JNCH Nhava Sheva until 01.12.2024, and the incident in question occurred in January 2022.
2. **No Breach of Sections 34, 39, 40 & 41 of the Customs Act:**
 - The vessel had entry outward clearance.
 - Goods were loaded under customs supervision.
 - The responsibility to furnish LEO lies with the exporter, not the shipping agent.
3. **No Justification for Penalties or Confiscation:** Allegations under Sections 113(d), (f), (g) and corresponding penalty under 114(iii) were held to be unsubstantiated.
4. **Public Notices Considered:** The tribunal referred to multiple JNCH Customs Public Notices allowing manual LEO and system error tolerance, reinforcing the need for trade facilitation.

Final Verdict

The Tribunal set aside the impugned order and held that:

“There is no violation of SCMTR or Customs Act provisions by Aiyer Shipping Agency. The order passed by the Commissioner is unsustainable in law.”

The appeal was allowed in full, delivering a major relief to the appellant.

Conclusion

This ruling is pivotal in reinforcing:

- The importance of natural justice in adjudication (in this case, a Bombay High Court ruling had earlier quashed a related order for lack of hearing).
- The need for clarity on regulatory timelines, especially in transitional legal frameworks like SCMTR.

- The delineation of responsibilities between exporters, customs brokers, shipping lines, and agents under customs law.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Mumbai

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**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 87233 of 2024

(Arising out of Order-in-Original No. 137/2024-25/COMMR/SCMTR/NS-G/CAC/JNCH dated 06.09.2024 passed by Commissioner of Customs (General), JNCH, Nhava Sheva.)

Aiyer Shipping Agency Private Limited

1201/1202 Meraki Areana, Opposite R.K. Studio
Sion Trombay Road, Chembur
Mumbai – 400 071.

.....Appellants

VERSUS

Commissioner of Customs (General)

Jawaharlal Nehru Customs House (JNCH)
Nhava Sheva-Customs General Commissionerate
Nhava Sheva, District Raigad
Maharashtra - 400 707.

.....Respondent

APPEARANCE:

Shri Rafiq Mohammed, Advocate for the Appellants
Shri Rajiv Ranjan, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85866/2025

Date of Hearing: 07.02.2025

Date of Decision: 06.06.2025

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Aiyer Shipping Agency Private Limited, Mumbai (herein after, referred to as 'the appellants'), assailing Order-in-Original No. 137/2024-25/COMMR/SCMTR/NS-G/CAC/JNCH dated 06.09.2024 (herein after, referred to as 'the impugned order') passed by Commissioner of Customs (General), JNCH, Nhava Sheva Customs General Commissionerate, Nhava Sheva.

2.1 Brief facts of the case, leading to this appeal, are summarised below:

2.2 The appellant herein, M/s Aiyer Shipping Agency Private Limited, Mumbai, is a company registered as an 'Authorised Sea Agent' (ASA) under Sea Cargo Manifest and Transshipment Regulations, 2018 (referred to as SCMTR, 2018 for short) in the jurisdiction of Commissionerate of Customs (General), JNCH, Nhava Sheva. There were two Shipping Bills (S/Bs) viz.,

S/B Nos. 7304634 and 7304635 both dated 07.01.2022 filed for export of 297.541 MTs of 'SHG Jumbo Zinc (minimum of 99.995%) in 12 containers by the exporter M/s Hindustan Zinc Limited through their customs broker (CB) M/s Western Carriers (India) Limited. Since, the exporter was exporting the goods under self-sealing procedure with electronic/e-seal verification, the containers arrived at the JNCH, Nhava Sheva port under Direct Port Entry (DPE) procedure at Jasai holding yard on 09.01.2022 (Sunday) and subsequently the containers were moved inside the JNCH port terminals on the same day for export through the vessel 'MV Thorsky'. In respect of the above exports, the customs broker was able to present the assessed S/Bs for obtaining Let Export Order (LEO) only on 10.01.2022, and as the vessel was scheduled to depart/sail on 09.01.2022, the LEO copy of S/Bs could not be presented to the master of the vessel before it was leaving the port of export, and while processing the S/Bs for allowing drawback on exports, the error message of "LEO date greater than sailing date" appeared in the customs EDI system. Therefore, the appellants had taken up the matter of rectifying the EGM error, by filing request letter to the proper officer of customs on the basis of letter given by the shipping company dated 12.05.2022.

2.3 The matter was investigated by the departmental authorities and on the basis of facts and evidences available on record, and order-in-original dated 14.03.2024 was passed by the learned Commissioner of Customs ordering for suspension the operations of M/s Aiyer Shipping Agency Pvt. Ltd. from 01.04.2024 to 15.04.2024 and imposed penalty, redemption fine for violations of section 33, 34, 39, 40 & 41 of the Customs Act, 1962 and also imposed penalty under regulation 11 of the SCMTR, 2018, for failure to comply with provisions of regulations 5 & 10(1)(m) of the SCMTR, 2018. In this regard, the appellants have filed a Writ Petition No.4816 of 2024 before the Hon'ble High Court of Bombay on the ground that no opportunity of hearing was given to them before a drastic order affecting their livelihood was passed. On hearing the said case, the Hon'ble High Court vide its judgement dated 28.03.2024 had quashed the said order dated 14.03.2024 and directed the customs authorities to issue show cause notice to the appellants and after giving a reasonable opportunity for hearing to them, allowed the Commissioner to pass an order in accordance with the law. Consequent to this, the order dated 14.03.2024 was withdrawn vide office letter dated 29.03.2024 and a Show Cause Notice (SCN) dated 08.04.2024 was issued to the appellants.

2.4 On the basis of inquiry proceedings initiated under SCMTR, 2018; inquiry report dated 24.06.2024, the learned Commissioner of Customs had passed the impugned order dated 06.09.2024 for suspending the operations of the appellants for a period from 23.09.2024 to 06.10.2024. Besides the above, the said order also imposed redemption fine of Rs.50,00,000/- under Section 125 of the Customs Act, 1962, consequent to confiscation of impugned export goods under sub-sections (d), (f) & (g) of Section 113 *ibid* and also imposed penalties of Rs.20,00,000/- under Section 114(iii) *ibid* and Rs.50,000/- under Regulation 13 of SCMTR, 2018 on the appellants for allowing regularization of two S/Bs dated 07.01.2022. Feeling aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

3.1 Learned Advocate submitted that the decision to suspend the operations of the appellants is ultra vires as they are not the 'Authorised Sea Carrier' who is required to file the Export General Manifest (EGM) and hence the action taken in the impugned order under Regulation 11 *ibid* for alleged violations of regulations 5, 10(1)(m) *ibid* is improper. Since the appellants are not the person in charge of the vessel carrying the export goods, learned Advocate pleaded that the appellants are not liable for imposition of penalty alleging violation under sub-sections (d), (f) & (g) of Section 113 *ibid*, Section 114(iii) *ibid*.

3.2 Further, learned Advocate also submitted that the SCMTR, 2018 has not yet been implemented by the Central Board of Indirect Taxes & Customs (CBIC); even though these regulations were introduced in the year 2018, as its implementation has been extended by way of transitional provisions under regulation 15 (2) of SCMTR, 2018; hence, he stated that the appellants cannot be penalised for violation of the said regulations.

3.3 Furthermore, learned Advocate stated that appellants have acted only as an agent of the Non-Vessel Operating Common Carrier (NVOCC) and issued bill of lading to the exporter. Hence the impugned order is incorrect in holding them as an agent of an NVOCC liable for violation of non-filing of EGM and for exporting the goods without a valid Let Export Order of shipping bill under sections 40, 41 *ibid*. Learned Advocate by relying on the order in the case of *HK Shipping Services Pvt. Ltd. Vs. Commissioner of Central Excise & Customs, Rajkot* – 2000 (120) E.L.T. 676 (Tri.-Bom.) had pleaded that the appellants are not agent of the conveyance, and therefore the conclusion arrived for imposition of penalty

on the appellants is not sustainable. Hence, he stated that the impugned order is liable to be set aside.

4. On the other hand, learned Authorised Representative for Revenue reiterated the findings recorded by the Commissioner in the impugned order,

5. Heard both sides and perused the records of the case.

6. The issue involved herein is to decide the following:

(i) Whether the appellants have violated the provisions of Regulations 5, 10(1)(m) of SCMTR, 2018 and Sections 34, 39, 40, 41 of the Customs Act, 1962, or not?

(ii) Consequent to the above determination of the issues, whether the appellants are liable for suspension of their operations under Regulation 11 of SCMTR, 2018 or not?

(iii) Whether the impugned goods covered under two shipping bills for which the LEO copy of shipping bill was not submitted, is liable for confiscation under sub-sections (d), (f) and (g) of Section 113 *ibid* and whether appellants are liable for penalty under Sections 114(iii) of the Customs Act, 1962 and Regulation 13 of SCMTR, 2018.

7.1 The specific sub-regulations which were alleged to have been violated by the appellants are Regulations 5 and 10(1)(m) of SCMTR, 2018, and hence there are two distinct charges framed against the appellants. We find that the Regulation 10 of SCMTR, 2018, provide for the obligations that a authorised carrier in carrying the import or export goods. Regulation 5 *ibid* provide for delivery of documents specified therein. Further, Regulations 11, 12, 13 *ibid* provide the procedure for initiating suspension action and for imposition of penalty. These are as follows:

Sea Cargo Manifest and Transshipment Regulations, 2018

"5. Delivery of a Departure Manifest. — (1) *An authorised sea carrier carrying imported goods, export goods, coastal goods or goods meant for foreign transit or foreign transshipment, shall before the departure of the vessel from the port, deliver the departure manifest to the proper officer electronically :*

Provided that where it is not possible to deliver the departure manifest electronically, then the manifest shall be delivered manually in duplicate with the approval of Commissioner of Customs before the departure of the vessel.

(2) *The departure manifest shall consist of, -*

(a) *a general declaration in Form-III;*

(b) *a vessel's stores list in Form-IV;*

the authorised carrier, for the purpose of ascertaining the correct position.

(4) The authorised carrier shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs, declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) Deputy Commissioner of Customs or Assistant Commissioner of Customs, shall prepare a report of the inquiry recording his findings after the conclusion of the inquiry.

(6) The jurisdictional Commissioner of Customs shall provide to the authorised carrier a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, and shall require the authorised carrier to submit within the specified period not being less than thirty days any submission against the findings of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(7) The jurisdictional Commissioner of Customs shall, after considering the report of the inquiry, and the submission thereon, if any, made by the authorised carrier, pass such orders as he deems fit.

13. Imposition of Penalty. — *An authorised carrier who contravenes any provision of these regulations shall be liable to a penalty which may extend to rupees fifty thousand."*

xxx

xxx

xxx

xxx

15. Transitional provisions.—*(1)Notwithstanding anything contained in regulations 4, 5 and 7, the authorised carrier may deliver the cargo declaration in Form-VIA or Form-VIB and Form-VIIA or Form-VIIB or arrival and departure manifest in Form-VIII or Form-VIIIA, for the period of forty-five days from the date of commencement of these regulations*

(2) Notwithstanding anything contained in these regulations, the authorised sea carrier shall continue to deliver the cargo declaration in Form III of the Import Manifest (Vessels) Regulations, 1971 and Form I of the Export Manifest (Vessels) Regulations, 1976, in the manner as was applicable before the commencement of these regulations, till 1st November, 2019."

7.2 On perusal of Notification No.38/2018-Customs (N.T.) dated 11.05.2018 vide which the Sea Cargo Manifest and Transshipment Regulations (SCMTR), 2018, were notified by the Government, it transpires that SCMTR intends to bring about transparency, predictability of movement, advance collection of information for expeditious clearance of vessels in import/export of goods. The said SCMTR, 2018 supersedes the earlier regulations viz. Import Manifest (Vessels) Regulations, 1971 and Export Manifest (Vessels) Regulation, 1976. The new Regulations stipulate for advance notice by authorized carriers for goods arriving in or being exported out of India through gateway seaports and further movement between Customs stations. They stipulate the obligations, roles and responsibilities for the various stakeholders involved in movement of

imported/export goods. While introducing these new Regulations, the CBIC had consulted various stakeholders, and based on the feedback received several changes were incorporated and the said regulations was made effective from 01.08.2019 with transitional provisions under Regulation 15 till 30.09.2020. Relevant paras of Circular 12/2021-Cus. is given below:

Circular No. 12/2021-Customs

F. No.450/58/2015-Cus IV(Pt)
Government of India
Ministry of Finance Department of Revenue
(Central Board of Indirect Taxes & Customs)

Room No.227B, North Block,
New Delhi, dated the 30th June, 2021

To,

All Principal Chief Commissioners/ Chief Commissioners of Customs/ Customs (Preventive)
All Principal Chief Commissioners/ Chief Commissioners of Customs & Central tax,
All Principal Commissioners/ Commissioners of Customs/ Customs (Preventive),
All Principal Commissioners/ Commissioners of Customs & Central tax,
All Principal Director Generals/ Director Generals under CBIC.

Madam/Sir,

Subject: Implementation of the Sea Cargo Manifest and Transshipment Regulations.

Kind reference is invited to the Circular No. 43/2020- Customs dated 30th September 2021 on the implementation of Sea Cargo Manifest and Transshipment Regulations.

2. Sea Cargo Manifest and Transshipment Regulations (SCMTR), 2018, were notified vide Notification No.38/2018-Customs (N.T.) dated 11.05.2018. The SCMTR seek to bring about transparency, predictability of movement, advance collection of information for expeditious clearance and supersedes the earlier regulations viz. Import Manifest (Vessels) Regulations, 1971 and Export Manifest (Vessels) Regulation, 1976. The Regulations stipulate for advance notice by authorized carriers for goods arriving in or being exported out of India through gateway seaports and further movement between Customs stations. They stipulate the obligations, roles and responsibilities for the various stakeholders involved in movement of imported/export goods. Based on the feedbacks from the various stakeholders, the changes were incorporated and the said regulations was made effective from 1st of August, 2019 with transitional provisions under Regulation 15 till the 30th of September, 2020.

3. Considering the disruptions caused due to Covid-19 Pandemic and non-readiness of the stakeholders, Board has issued several notifications time to time and the last one being Notification No. 50/2021-Customs (N.T.) dated 31.05.2021, vide which the transitional provisions under Regulation 15(2) have been extended till 30th June 2021 to enable submission of manifests under erstwhile regulations.

5. Board has reviewed the progress of the adoption of the new formats/procedures by the stakeholders. While it is noticed that the registration of the entities and submission of National Bonds is almost complete, very few entities keep filing the declarations as stipulated in the SCMTR. The Adoption of new message formats by the stakeholders is approx. 22% in case of Sea Carriers, while it is 31% for the transshippers. It is also seen that, the filing in Export related messages is exceptionally low, compared to the import related messages. In this stage it may be appreciated that complete and error free details of containers and its movement during Stuffing and the transshipment will greatly facilitate filing of Export messages. On analysis, it is seen that 44% of custodian has adopted new messages and only 36% of Stuffing Report is being filed by custodian in new format. As the same is not being filed in the new format, this leading to difficulty in further integration.

8. Further, Board vide Customs Notification No. 56/2021 -Customs (N.T) dated 30.06.2021 has extended the transitional provisions of SCMTR till 31st July 2021 for to enable carriers continue mandatory filing on parallel basis.

9. The Principal Chief/Chief Commissioners of Customs are requested to issue Public Notices and guide the trade suitably to ensure smooth implementation of the Sea Cargo Manifest and Transshipment Regulations.

7.3 Taking into account of disruptions caused due to Covid-19 Pandemic and non-readiness of the stakeholders, CBIC had issued Notification No.94/2020-Customs (N.T.) dated 30.09.2020, vide which the transitional provisions under Regulation 15(2) were further extended from 01.10.2020 till 31.03.2021 to enable submission of manifests under erstwhile regulations. However, as per Regulation 15(1), mandatory filing of different declarations in new format in a phased manner is provided for as per the annexure-A to this circular.

7.4 Furthermore, different timelines are prescribed by the Government so that trade has sufficient time to comply with the new regulations in a phased manner. It is also seen that vide Regulation 15(2), the mandatory compliance requirements for submissions of declarations and manifests under the said regulations was applied as per the dates prescribed for different customs ports as mentioned therein. The extract of the said Notification No.57/2024-Customs (N.T.) dated 31.08.2024 is given below. On careful perusal of these details, it transpires that in respect of JNCH Customs of Nhava Sheva port, the transitional provisions were in vogue till 30.11.2024, as per sr. no. 6 of the aforesaid notification.

7.5 On perusal of the recent Circular No. 10/2025-Customs dated 28.03.2025 issued by CBIC, it clearly transpires that the Central Government had intended to bring in a new regulations governing the electronic declaration, processing of all customs work relating to arrival and departure of vessel/conveyances in the form of SCMTR, 2018, with a purpose of achieving the twin objective of reducing the dwell time in customs process and transaction cost in international trade. However, due to various technical difficulties and the lack of preparedness of the stakeholders in participating and filing of details under SCMTR, 2018, implementation of such regulations were kept on extended for more than five years until 31.05.2025, with transitional provisions taking care of filing of essential details as per the previous regulations in force.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

Notification No. 57/2024-Customs (N.T.)

New Delhi, dated 31 August, 2024

G.S.R. (E). - In exercise of the powers conferred by section 157, read with sections 30, 30A, 41, 41A, 53, 54, 56, sub-section (3) of section 98 and sub-section (2) of section 158 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following regulations further to amend the Sea Cargo Manifest and Transshipment Regulations, 2018, namely: -

1. Short title and commencement - (1) These regulations may be called the Sea Cargo Manifest and Transshipment (Third Amendment) Regulations, 2024.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Sea Cargo Manifest and Transshipment Regulations, 2018, -

(i) In regulation 15, in sub-regulation (2), for the words, figures and letters, "till 31st August, 2024", the words, figures and letters, "till the date mentioned in column (3) of the table below for the Customs Ports mentioned in the column (2) of the said table." Shall be substituted.

(ii) after Form-XII, the following table shall be inserted, namely: -

Table

[Refer Regulation 14(2)]

Sr. No.	Customs Ports	Date till which the transitional provisions are applicable
(1)	(2)	(3)
1.	Mormugao (INMRM1)	10.09.2024

2.	Mangalore (INNML1)	30.09.2024
3.	Mumbai (INBOM1) and Kandla (INIXY1)	15.10.2024
4.	Tuticorin (INTUT1) and Vishakhapatnam (INVTZ1)	31.10.2024
5.	Ennore (INENR1), Kattupalli (INKAT1) and Cochin (INCOK1)	15.11.2024
6.	All the Customs Ports other than mentioned at Sr. No. 1 to 5 above	30.11.2024

[F. No. 450/58/2015- Cus-IV(Pt.I)]

धनंजय सिंह
(Dhananjay Singh)

Under Secretary to the Government of India

Circular No. 10/2025-Customs

F. No. 450/58/2015-Cus.IV(Pt.I)
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes & Customs)

Room No. 229-A, North Block, New Delhi,
Dated the 28th March, 2025

To,

All Principal Chief Commissioners/Chief Commissioners (Customs/Customs (Preventive)/Customs & Central Tax),
All Principal Commissioners/Commissioners of Customs/Customs (Preventive),
All Principal Director General/Director Generals under CBIC.

Subject: Implementation of the Sea Cargo Manifest and Transhipment Regulations (SCMTR)-reg.

Madam/Sir,

The Board has examined the implementation of the Sea Cargo Manifest and Transhipment Regulations (SCMTR), 2018 and it has been noted that the messages to be filed by Carriers on arrival of the cargo has been made mandatory. However, the messages to be filed by Carriers (including Shipping Lines/Freight Forwarders) on export of cargo at sea ports has not yet been tested sufficiently, leading to non-implementation of SCMTR. Similarly, transhipment messages have also not been tested by transhippers (shipping lines, custodians, train operators, as the case may be).

2. In this regard, attention is invited to penal provisions provided in the Regulation no. 13 of the Sea Cargo Manifest and Transhipment Regulations (SCMTR), 2018 issued vide notification no. 38/2018-Customs (N.T.) dated 11th May, 2018, wherein, an authorized carrier who contravenes any provision of these regulations shall be liable to a penalty which may extend to rupees fifty thousand. It is expected that the respective stakeholders comply with the legal provisions, so far as it relates to the implementation of the SCMTR, thus not attracting penal provisions.

3. Hence, as a last facilitation measure, the transitional provisions for the SCMTR is being extended till 31.05.2025, so that the interim time available be gainfully utilized by all the stakeholders for filing declarations in the prescribed format electronically without any penal provisions.

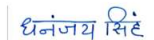
4. The Officers under your jurisdiction may be sensitised not to take penal actions during the interim period in case of efforts taken by the various stakeholders in filing the declarations in the prescribed format electronically. The efforts taken by the stakeholders to be closely monitored and nudged for filing in the new format in a timely manner.

5. The Chief Commissioners of Customs in coordination with the Directorate General of Systems are requested to conduct weekly outreach programs in their respective zones so that the extended time frame is fully utilized by all stakeholders for smooth implementation of SCMTR.

6. This Circular may be given wide publicity by issuing suitable Trade Notice/Public Notice. Difficulties, if any, in the implementation of the above Circular may be brought to the notice of the Board.

7. Hindi version follows.

Yours faithfully,



(Dhananjay Singh)

Under Secretary to the Government of India
Email: uscusa4.dor@gov.in

7.6 Hence, under such circumstances where CBIC had specifically directed the Chief Commissioners/Commissioners of Customs to sensitise the field officers not to take penal action in the interim period, we find that the impugned order invoking the provisions of such SCMTR, which is yet to be implemented on the relevant date of two S/Bs concerning the present case i.e., both dated 07.01.2022, for imposition of suspension of the operation of the appellants and imposition of penalties on the appellants does not stand for legal scrutiny.

7.7 Therefore, it could be concluded that all the requirements for declaration of details including the alleged requirements under Regulation 5 *ibid* in the case of appellants in respect of JNCH Nhava Sheva port would be operational only when the entire SCMTR, 2018 was made fully operations for the specific port of import/export. It is an undisputed fact that the impugned two S/Bs concerning the present case are both dated 07.01.2022, for which the SCMTR, 2008 does not apply on that date as the said regulations was made operational for JNCH, Nhava Sheva port after the expiry of transitional provisions upto 30.11.2024 i.e., w.e.f. from 01.12.2024. Therefore, we are of the considered view, that the impugned order holding that the Regulations 5 and 10(1)(m) *ibid* have been violated by the appellants does not stand the scrutiny of law.

8.1 In order to address the issues concerning alleged violation of Sections 34, 39 ,40, 41, 113(d), 113(f) and 113(g) of Customs Act, 1962 and for imposition of penalty under Section 114(iii), we would like to refer the relevant legal provisions contained in Customs Act, 1962.

Customs Act, 1962

"Goods not to be unloaded or loaded except under supervision of customs officer.

Section 34. Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer :

Provided that the Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case give special permission, for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.

Export goods not to be loaded on vessel until entry-outwards granted.

Section 39. The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel.

Export goods not to be loaded unless duly passed by proper officer.

Section 40. The person-in-charge of a conveyance shall not permit the loading at a customs station—

(a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter;

(b) of baggage and mail bags, unless their export has been duly permitted by the proper officer.

Delivery of departure manifest or export manifest or export report

Section 41. (1) The person-in-charge of a conveyance carrying export goods or imported goods or any other person as may be specified by the Central Government, by notification, shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, a departure manifest or an export manifest by presenting electronically, and in the case of a vehicle, an export report, in such form and manner as may be prescribed and in case, such person-in-charge or other person fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-in-charge or other person shall be liable to pay penalty not exceeding fifty thousand rupees.

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to deliver the departure manifest or export manifest by presenting electronically, allow the same to be delivered in any other manner.

(2) The person delivering the departure manifest or export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the departure manifest or export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.

Confiscation of goods attempted to be improperly exported, etc.

Section 113. The following export goods shall be liable to confiscation :—

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

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xxx

(f) any goods which are loaded or attempted to be loaded in contravention of the provisions of section 33 or section 34;

(g) any goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be water-borne for being loaded on any

vessel, the eventual destination of which is a place outside India, without the permission of the proper officer;

Penalty for attempt to export goods improperly, etc.

Section 114. Any person 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 113, 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 three times the value of the goods as declared by the exporter or the value as determined under this Act], whichever is the greater;

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

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

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater."

8.2 In terms of the legal provisions of Sections 34 and 39 *ibid*, export goods shall not be loaded on to a vessel except under the supervision of proper officer of Customs and the master of the vessel shall not permit loading of any export goods, until an order has been granted for entry outwards for such vessel by the proper officer of customs. It is not the case of Revenue, that the vessel 'MV Thorsky' which sailed out from JNCH Nhava Sheva port on 09.01.2022 was not given 'Entry Outwards' by Customs authorities and the loading of the containers/export goods was not supervised by the proper officer of Customs. The only allegation levelled in the present case of two S/Bs is that Let Export Order copy was not provided to the shipping line/master of the vessel on 09.01.2022 when it sailed duly obtaining the Entry Outwards by the Customs authorities, after all the export goods have been loaded under the supervision of proper officer of Customs. Therefore, there is no case for violation of the provisions of Section 34 and 39 of the Customs Act, 1962 in the present case.

8.3 It also transpires from plain reading of Section 41 *ibid* that the requirement of submission of Export General Manifest (EGM) before the departure of the vessel is primary responsibility of the person in-charge of the vessel or his agent, as may be specified through notification issued by the Central Government. Therefore, the shipping lines, NVOCC or shipping

agent or such other authorised persons alone are responsible for filing the EGM within the prescribed time. The facts of the case also indicate that it is not the case of Revenue, that the EGM for vessel 'MV Thorsky' in respect of its voyage out of India on 09.01.2022 has not been filed. Therefore, there is no case of violation of Section 41 *ibid*, in the present case.

8.4 In respect of the requirements under Section 40 *ibid*, the person-in-charge of a vessel shall not permit the loading of export goods, unless the shipping bill covering such export goods have been duly passed by the proper officer of customs and such S/B has been handed over to him by the exporter. Plain reading of the legal provision under Section 40 *ibid* clearly stipulate that the requirement of submission of S/B with the permission of the Customs officer permitting export i.e., 'Let Export Order' (LEO) rests with the exporter. There is no specific role of shipping agent in fulfilling the requirement under Section 40 *ibid*, as opposed to the requirement of Section 41 *ibid*, where it is provided that besides the person-in-charge of a conveyance carrying export goods, any other person who may be specified by the Central Government, by notification is also responsible for compliance of such legal provisions. Therefore, we are of the considered view that the appellants cannot be held liable for any failure with respect to compliance with the requirement of Section 40 *ibid*.

8.5 Further, we find that the Commissioner of Customs (General), JNCH and other Commissioner of Customs, NS-II and NS-IV of JNCH have issued various instructions, standing orders being trade facilitation measures for expeditious customs clearance of cargo. These are contained in Public Notices No. 03/2017 dated 09.01.2017; No.138/2020 dated 23.10.2020; No.13/2017 dated 31.01.2017 & No.47/2017 dated 31.03.2017. Further, Public Notices No. 163/2016 dated 01.12.2016 & No. 174/2016 dated 15.12.2016 provide for Standard Operating Procedure consequent to commencement of "Document Processing Area" in the Parking Plaza and Gate Automation for Export & Import through NSCIT/NSIGT, GTI & JNPCT, in order to provide a single point documentation processing in case of exports. In the Public Notice No. 03/2017 dated 09.01.2017, at paragraph 5(b) it has been clarified that "*it is the responsibility of the Port Terminal Operator to ensure that once any container has entered the Parking Plaza within the prescribed time limit, the vessel is not missed. In this regard, if required, they may issue advisory prescribing the timelines so that if any container has entered the Parking Plaza within those time lines, its loading*

on the vessel has to be ensured subject to compliance of Customs Act or any other law." Further, in Public Notice No.13/2017 dated 31.01.2017 it has also been provided that in case of any delay in processing of S/Bs due to system issues, in order to ensure that the export goods does not miss the vessel in which it is to be sailed out of the country, manual clearances/manual Let Export Order (LEO) has been allowed on case to case basis. On careful perusal of the aforesaid instructions of the Customs authorities, it clearly transpires that customs clearance of exports, including grant of LEO has been facilitated to ensure that the export goods does not miss the vessel and the exporter(s) are put to loss or delay in export, on account of the inefficiency or unexpected problems that may arise in customs clearance of exports.

8.6 Furthermore, the Customs EDI system provides for processing of Shipping Bill under the following processes viz.,

- (i) S/B filing by the exporter or his agent/customs broker;
- (ii) Goods registration, enabling presentation of the export goods along with documents at CFS or other permitted places;
- (iii) Examination of the export goods, for determining its permissibility for export in terms of customs and other applicable laws;
- (iv) Filing of EGM by shipping lines; and
- (v) Processing and Release of drawback.

As in the present case, the export consignments of M/s Hindustan Zinc Limited were extended by the Customs authorities with Direct Port Entry facility and facility of e-sealing permission, and the export goods were being transported by rail from Kota to BMCT Terminal, Nhava Sheva. This had ensured that the e-seal verification was completed by customs appraisers before the containers were allowed into the terminal. In case the goods are brought to any of the CFS or other area earmarked for exports, then for examination of the goods at the CFS/shed, the CHA/CB or the exporter has to present the Check List along with all original documents such as Invoice, Packing List etc. to the Inspector/EO. The Inspector/EO will feed the examination report and forward the document to Superintendent for issue of "Let Export Order' (LEO). The Inspector/EO has the option to raise query, seek guidance on examination, verify the documents attached etc. Hence, it could be seen that the process of issue "Let Export Order" for a S/B is the function of the proper officer of Customs, and in case of any undue delay in issue of LEO, the exporter or his agent

cannot be found fault and they cannot be allowed to loose the loading of export goods into the vessel, though which the export goods were planned to be exported. Essentially, to take care of such eventualities various error messages are generated in Customs EDI system, to ensure that these are rectified on examination of the merits of each case. Further, the purpose of generating various error messages is to ensure that the data captured with respect to exports/imports are properly validated and the Customs authorities ensure that all legal requirements have been met in the process. Some of the error messages relating to exports are as follows:

No.	Code	Error message
SACHE18	B	S/B already filed in another EGM No.
SACHE18	G	Sailing Report not entered
SACHE18	L	LEO date is greater than sail date
SACHE18	R	Record does not exists in C_sb_rottn for that EGM
SACHE18	P	Packets mentioned in EGM does not match with C_SB
SACHE18	N	Total No. of container does not match with C_Container
SACHE18	W	Total Qty in EGM does not match with gross Wt. C_SB
SACHE18	J	Nature of cargo in EGM does not match with C_SB

8.7 In view of the above discussion and analysis of the legal provisions which are alleged to have been violated in the present case, and on the basis of various instructions issued in the form of Public Notice by JNCH customs authorities, we are of the view that the appellants have not violated any of the legal provisions in not submitting the copy of LEO copy of the S/B to the person in-charge of the vessel, before the sailing of the vessel or EGM, particularly when the appellants have filed the request for rectification of such error.

9. On perusal of the legal provisions of Section 113 *ibid*, it transpires that essential ingredients of sub-section (d), (f), (g) such as attempt to export contrary to any prohibition; loading of goods in violation of Section 33, 34; loading of export goods in a vessel without obtaining permission of proper office of customs is not present in this case. No evidence for any allegation has been made to this effect, except that the LEO copy of S/Bs have not been given before the sailing of the vessel. Therefore, we are of the considered view that the alleged violation of sub-sections (d), (f), (g) to Section 113 *ibid* does not stand the legal scrutiny. Consequently, imposition of penalty under Section 114(iii) *ibid* also does not sustain.

10. In view of the foregoing discussions, we do not find any merits in the impugned order passed by the learned Commissioner of Customs (General), JNCH, Nhava Sheva in suspension of the operation of the appellants; for confiscation of export goods and consequent imposition of

redemption fine and for imposition of penalties, inasmuch as there is no violation of regulations 5, 10(1)(m) of SCMTR, 2018 and legal provisions under Sections 34, 39, 40, 41, 113(d), 113(f), 113(g) *ibid*, and the findings in the impugned order is contrary to the facts on record.

11. Therefore, by setting aside the impugned order dated 06.09.2024, we allow the appeal in favour of the appellants.

(Order pronounced in open court on 06.06.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)