IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75967 of 2026

(Arising out of Order under ARPT/WH/MISC/271/2026-Admn (AP)-O/o Pr Commr-Cus-AP/ACC-Kolkata bearing No. I/4782512/2026 dated 14.10.2026 passed by the Commissioner of Customs (Airport & Air Cargo Commissionerate), N.S.C.B.I. Airport, Dumdum, Kolkata – 700 052, West Bengal)

M/s. Nuance Group (India) Private Limited : Appellant
08-136, WeWork Manyata Redwood, Block D3,
Manyata Tech Park Road, Thanissandra, B Nagavara,
Bengaluru, Karnataka – 560 045

VERSUS

Commissioner of Customs (Airport & A.C.C.) : Respondent
O/o. Principal Commissioner of Customs (Airport & A.C.C.),
N.S.C.B.I. Airport, Dumdum,
Kolkata, West Bengal – 700 052

APPEARANCE:

Shri Soumendra Nath Mookherjee, Senior Advocate,
Shri Naman Choudhury, Advocate,
Shri Navin Agrawal, Advocate,
Shri Debayan Sen, Advocate,
Shri Giridhar Dhelia, Advocate,
Shri Niket Ojha, Advocate,
For the Appellant

Shri Shambhoo Nath, Special Counsel,
Shri Subrata Debnath, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76590 / 2026

DATE OF HEARING: 12.11.2026

DATE OF DECISION: 13.11.2026

ORDER: [PER SHRI R. MURALIDHAR]

Considering the urgency of the matter, vide our Order dated 02.11.2026, we had allowed the Early hearing request made by the appellant and the matter was posted for hearing on 04.11.2026, with the consent of both the sides.

1.1. On 04.11.2026, the Revenue made a submission indicating that they were in the process of appointing a Special Counsel in this case. Accordingly, the matter had been adjourned to 12.11.2026, so that the Revenue could be granted the opportunity of being represented by a Special Counsel.

1.2. Today, on behalf of the Revenue, the Ld. Special Counsel Shri Shambhoo Nath has appeared. The appellant is represented by the Ld. Senior Counsel Shri Soumendra Nath Mookherjee and other ld. advocates.

2. At the outset, the Ld. Special Counsel for the Revenue has mentioned that they have received a letter on 10.11.2026 intimating that one Public Interest Litigation Writ Petition "*is being filed*" before the Hon'ble High Court at Calcutta by some third party. He submits that this fact may may be taken on record.

2.1. We have gone through the letter dated 10.11.2026 submitted by the Ld. Special Counsel, which has been written by one Mr. Prabir Adhya, Advocate, Calcutta High Court, wherein the said individual has addressed letters to various institutions, including the C.B.I.C., stating that a Public Interest Litigation is "*intended to be filed before the Hon'ble High Court at Calcutta on the reopening i.e. 12th November, 2026"*. Therewith, a copy of the synopsis has been attached, without any signature.

2.2. On going through the above letter written by the said person, a few questions arise, which are being discussed hereunder:

2.3. The person writing the letter about the "*intended PIL*" is neither the appellant nor respondent in the

present case. Therefore, as per us, he has no *locus standi* in the present proceedings, before this Tribunal.

2.4. It is observed from the unsigned synopsis that this person is citing the entire details of the present case including the issue involved therein. Since the Revenue's Adjudication proceedings are not public documents, we do not know as to how this person could be privy to such minute details.

2.5. Such a letter being written to the Ministry and to others, specifically ensuring that it reaches the Revenue officials, for onward transmission to their Special Counsel to mention the same before the Bench, makes us take the view that the same is being done with an intent to put indirect pressure / influence on the Tribunal at the time of Hearing, which is not appreciated by the Bench.

2.6. If, as claimed by the person, he is intending to pursue the matter before the Hon'ble High Court, as a citizen he has his rights to do so. But to send information about this to the Revenue and other authorities on the eve of Hearing, smacks of something sinister about the entire transaction.

2.7. We are writing separately to the concerned Revenue officials with our specific notings from our observation of the unsigned synopsis, for taking appropriate action including before the Hon'ble High Court as and when the "*intended PIL*" reaches there.

2.8. Both the sides i.e., the appellant / applicant of the Licence, duly represented by the Ld. Senior Counsel and others, and the Revenue, duly represented by the Ld. Special Counsel and their Authorized Representative, have agreed that they are

ready to argue the case before us, without any further reference to the "*intended PIL*". Therefore, with the consent of both the sides, we have taken up the Appeal for disposal.

3. The facts of the case are that the appellant had filed an application seeking Special Warehouse Licence under Section 58A of the Customs Act, 1962 for its duty-free operations at Netaji Subhas Chandra Bose International (NSCBI) Airport, Kolkata. The said application was filed on 21.08.2026.

4. On 29.09.2026, that is after about 38 days, a Notice came to be issued by the Principal Commissioner of Customs (Airport & A.C.C.), Kolkata wherein the appellant was asked to Show Cause:

> 1. As to why the application for the grant of Special Warehouse Licence under Section 58A of the Customs Act, 1962 should not be rejected in terms of Regulation 3(2)(c) of the Special Warehouse Licensing Regulations, 2016, owing to the penalties sustained under Sections 112 and 114 of the Customs Act, 1962;
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> 2. As to why the application should not be rejected on grounds of misdeclaration in Part-II, Point No. 5 of the statutory application.

4.1. The appellant filed their detailed reply vide letter dated 05.10.2026 clarifying that the Penalty under Section 112 and 114 was imposed in respect of the issue that arose in June 2009 which were decided by the Tribunal in 2017. The appellant also attended the Personal Hearing granted to them on 07.10.2026. The appellant submitted that imposing of penalty is towards contravention and not towards as '*offence*' committed by them. They cited the legal provisions and case laws in their defence. They also clarified that

the Management team had undergone complete change from 2017 and submitted the details of the new Management personnel. The details of such License granted at Kempegowda International Airport, Bengaluru, along with AEO granted at T2 of the same Airport, was submitted to show the present unblemished credentials of the appellant.

4.2. However, the adjudicating authority has passed the impugned Order on 14.10.2026 rejecting their request for issue of Special Warehouse Licence.

5. Being aggrieved, the appellant has filed their Appeal before this Tribunal.

6. The Ld. Senior Advocate appearing on behalf of the appellant takes us through Sl. No. (5) of the Declaration filed with the application submitted before the Customs authorities, which reads as under: -

> *"DECLARATION*
>
> .
> .
> .
>
> *5. I/We have neither been penalized or convicted nor are being prosecuted for an offence under the Customs Act, 1962 or Central Excise Act, 1944 or Finance Act, 1994"*

6.1. He submits that their request for grant of Licence has been rejected on the ground that (i) vide CESTAT Final Order No. 31055/2017 dated 10.07.2017 (Appeal No. C/20207/2014), the Hon'ble Tribunal had upheld the penalties of Rs.50,000/- imposed under Section 112 and Rs.50,000/- imposed under Section 114 of the Customs Act, 1962 and (ii) vide CESTAT Final Order No. A/31966/2017 dated 08.11.2017, the Hon'ble Tribunal had upheld the

penalty of Rs. 3,00,000/- under Section 112 of the Customs Act, 1962, which as per the adjudicating authority amounted to the appellant having been penalized for an '*offence*' and that therefore the appellant does not meet the requirement of Sl. No. (5) of their Declaration; that the lower authority has recorded that though the appellant was imposed with these penalties, they had given in the declaration that they had not been penalized or convicted or prosecuted for an offence under the Customs Act, 1962 or Central Excise Act, 1944 or Finance Act, 1994. It is submitted that on these points/grounds, their request for Licence came to be rejected.

6.2. The Ld. Senior Advocate points out that penalties imposed under Sections 112 and 114 of the Customs Act, 1962 cannot be treated to be a penalization on account of an *'offence'* being committed by the appellant. He takes us through the relevant Customs Act 1962 - Chapter XIV containing Sections 111 to 127 as well as Chapter XVI containing Sections 132 to 140A. It is his submission that the Act maintains a clear distinction between these two Chapters. It is argued in this regard that the Sections falling under Chapter XIV speak of only **penalties**, whereas those under Chapter XVI pertain to **offences and prosecutions**; that since Section 112 and 114 of the Act fall within the ambit of Chapter XIV, the penalties imposed thereunder cannot be said to be in the nature of *offences* at all. It is his stand that only if any penalization is under any of the Sections under Chapter XVI only, the same can be termed as an '*offence*', which is not the case here.

6.3. On this issue, he relies on the case-law of *M/s. Kundan Care Products Ltd. v. Commissioner of Customs, New Delhi [2024 (8) TMI 271 – CESTAT, New Delhi]* to submit that the issue in that case was identical to the present issue, wherein the Principal Bench of the Tribunal has clearly held that penalties imposed under Section 112 of the Customs Act, 1962 cannot be termed as an *'offence'*, so as to deny the License.

6.4. He also relies on the case-law of *M/s. Hari Krishna Exports Pvt. Ltd. v. Commissioner of Customs, Airport Special Cargo Commissionerate [Final Order No. A/86175/2026 dated 22.09.2026 in Customs Appeal No. 86290 of 2025 – CESTAT, Mumbai]* wherein, on an identical issue, the Mumbai Bench of the Tribunal, relying upon the cited case law of *Kundan Care Products Ltd. (supra)* as well as another decision, of the Chennai Bench in *M/s. Mumbai Travel Retail Pvt. Ltd. v. Commissioner of Customs, Chennai [2025 (5) TMI 778 – CESTAT, Chennai],* has held that imposition of penalties under Section 112 / 114 of the Act would not amount to any *offence*.

6.5. Without prejudice to the above submissions, additionally, the Ld. Senior Advocate submits it would also be relevant to go through the present credentials the appellant. It is stated that in respect of the same appellant, Licence No. 01/2023 was issued by the Principal Commissioner of Customs, Kempegowda International Airport, Bengaluru, to operate the Customs Warehouse. He produces a copy of the same.

6.6. He further drew attention to the fact that the appellant has been awarded Authorized Economic Operator Certificate (Importer & Exporter) (known as

'AEO') vide Certificate dated 29.05.2023 under T2, by the AEO Programme Manager in respect of Bengaluru International Airport. He also produces a copy of the same.

6.7. He therefore submits that these documentary evidence prove that the appellant has been found to be eligible for such Licence and has been granted the same under the same provisions of Customs Act 1962. They have also been granted the status of AEO, which is granted only for those having highest standards in their operating efficiency.

6.8. He further refers to Page 126 of their Compilation [reply to the Notice dated 05.10.2026], and submits that they have clarified that the issue which was before the Tribunal in the Orders dated 10.07.2017 and 08.11.2017, pertained to proceedings initiated in June, 2009, which had culminated in the said Final Orders passed on 10.07.2017 and 08.11.2017; that the appellant had already clarified vide their letter dated 05.10.2026 addressed to the adjudicating authority, that at the time of the June, 2009 events, the appellant was a 50:50 joint venture between (a) Shoppers Stop Limited and (b) The Nuance Group AG, during which period the operational management responsible for the business, pertaining to Hyderabad operations, was different. Now the venture has undergone change of partners with effect from October 2017. It is submitted that following the change in ownership and management, the appellant has implemented a materially stronger operating and control environment.

6.9. In view of these submissions, the Ld. Senior Counsel canvasses that the penalties had been imposed under Sections 112 and 114 of the Customs

Act, 1962 in respect of contraventions noticed in 2009 i.e., almost more than about 17 years back, whereas subsequently, in 2017, the entire composition of the company has changed, with internationally reputed persons taking part in the management; that their credentials are further established in view of the Licence being granted by the Principal Commissioner of Customs, Kempegowda International Airport as also the AEO status accorded to them.

7. Therefore, the Ld. Senior Advocate for the appellant submits that the arguments advanced on account of merits as stated as well as the factual details narrated, along with the strong unblemished present credentials, may be taken note of by the Hon'ble Bench.

8. Accordingly, it is prayed by the Ld. Senior Advocate that the appeal be allowed, giving a specific direction to the Revenue authorities to issue the Special Warehouse Licence within the next few days so that the appellant would be in a position to fulfil the condition of starting the operations by 18.11.2026; he submits that in case the issuance of the Licence is delayed and not obtained within six months of the Letter of Intent dated 18.05.2026 i.e., by about 18.11.2026, as per Article 3.1.2 of the Concession Agreement, the award shall be cancelled, the Security Deposit of Rs.59,61,15,675.33/- shall stand forfeited and the appellant shall be debarred from AAI tenders for three years.

9. On the other hand, the Ld. Special Counsel appearing on behalf of the Revenue relies on the case-law of *M/s. Bhagwati Products Ltd. v. Commissioner of Customs (Pre.), Noida [Final Order Nos. 70859-70860/2025 dated 12.12.2025 in Customs Appeal No. 70604 of 2025 & anr. – CESTAT, Allahabad]* and submits that in the said case, the Tribunal had relied on the Hon'ble Supreme Court's five Judge Constitutional Bench decision in *Maqbool Hussain [1983 (13) E.L.T. 1284 (S.C.)] to* hold that penalties are in the nature of an *'offence'*. Accordingly, he argues that once the appellant has been imposed with penalties under Sections 112 and 114 of the Act, the appellant has contravened Regulation 3(2)(c) and thus the appellant mis-declared at Sl. No. (5) of the Declaration given by them; that the appellant, knowing fully well that they had been imposed with these penalties, still declared that they have not been penalized. He therefore submits that the adjudicating authority was correct in coming to the conclusion that the appellant is not meeting the required criteria for issuance of the Licence. Accordingly, he prays that the appeal may be dismissed.

10. Heard both the sides, perused the appeal papers and the documentary evidence placed before us.

11. The relevant portion of Special Warehouse Licensing Regulations (SWLR), 2016, is extracted below:

> "3. Licensing of special warehouse.—(1) Upon an application being made to license a special warehouse, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may issue a licence to an applicant who,—
>
> ……

(2) The principal Commissioner of Customs or the Commissioner of Customs, as the case may be, shall not issue a licence to an applicant if,—

(a) he has been declared an insolvent or bankrupt by a Court or Tribunal;

(b) he has been convicted for an offence under any law for the time being in force;

(c) he has been penalised for an offence under this Act, the Central Excise Act, 1944 (l of 1944) or Chapter V of the Finance Act, 1994 (32 of 1994);

(d) he is of unsound mind and stands so declared by a competent Court; Or

(e) the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, is satisfied that

(i) the site or building of the proposed special warehouse is not suitable for secured storage of dutiable goods;

(ii) the site or building of the proposed special warehouse is not suitable for general supervision by officers of customs;

(iii) bankruptcy proceedings are pending against the applicant; or

(iv) criminal proceedings are pending against the applicant and the offences involved are of such nature that he is not a fit person for grant of licence."

11.1. The License can be denied on account of any of the clauses under (a) to (d) or on account of (i) to (iv) of clause (e) of the Regulation 3(2). In the present

case, the Notice has been given applying Regulation 3(2)(c). Admittedly, the Revenue has not taken any other ground while taking up the proceedings towards the Licence application made by the applicant / appellant.

12. We find that the issue boils down to coming to a conclusion on as to whether the imposition of penalties under Sections 112 and 114 of the Customs Act, 1962 could be treated as *"being penalized for an offence",* as is being canvassed by the Revenue, or, imposing of penalty under the said Act *"would not amount to an offence"*, as is being canvassed by the appellant.

13. The second point raised by the Adjudicating authority about the appellant mis-declaring at Sl. No.5 of their Declaration in the Application, would entirely depend on the outcome of our conclusion on the first point given above.

14. We have gone through the Table differentiating between the scope of Chapter XIV and Chapter XVI of the Customs Act, as given by the Ld. Senior Advocate for the appellant, which is reproduced below: -

	Chapter XIV (Sections 111-127)	**Chapter XVI (Sections 132-140A)**
Heading	Confiscation of goods and conveyances and imposition of penalties	Offences and prosecutions
Nature	Civil/administrative liability	Criminal liability
Operative words	"*shall be liable to a penalty*" (Sections 112, 114, 114A, 117 etc.)	"*shall be punishable with imprisonment or with fine, or with both*" (Sections 132, 133, 135 etc.)

Forum	Adjudicating officer under Section 122, after show cause notice under Section 124	Criminal court (Magistrate), on complaint with prior sanction under Section 137
Standard	Departmental adjudication; appeal under Sections 128/129A	Criminal trial; Code of Criminal Procedure/BNSS
Termination	Order-in-original/appellate order	Conviction / acquittal; compounding of "offences" under Section 137(3)

14.1. From the above table, it can be seen that specifically, Chapter XVI deals with "**OFFENCES AND PROSECUTIONS**" whereas, in respect of Chapter XIV, there is no mention whatsoever about offences.

14.2. We find that the word 'offence' has not been defined under the Customs Act, 1962. For this, we have to refer to the definition provided under the General Clauses Act, 1897. The relevant portion of the same is reproduced below: -

> *"3. Definitions.—In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—*
>
> *.*
>
> *.*
>
> *.*
>
> *(38) "offence" shall mean any act or omission made punishable by any law for the time being in force;"*

14.3. We find that this issue has been dealt with in detail by the Principal Bench of the Tribunal in the case of ***M/s. Kundan Care Products Ltd. v. Commissioner of Customs, New Delhi [2024 (8) TMI 271 – CESTAT, New Delhi],*** wherein, after considering the arguments put forth by both the sides, it was held as follows: -

> *"24. Chapter XIV of the Customs Act deals with 'confiscation of goods and conveyances and imposition of penalties', while Chapter XVI deals with 'offences and prosecutions'.*
>
> *25. It would be pertinent to note that sections 42(2)(f), 59(1)(c), 72(1)(a), 73A(3), 109A, 111, 113, 117, 143(2), 156(1)(g) and 158(2)(il) relate to* ***'contravention' of the provisions of the Customs Act or 'contravention' of any law****.*
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> *26. On the other hand, sections 23(2), 26A(1) (d) (iii), 68(c), 104(1), 109A, 127B(1)(b), 127H(1)(3), 127L(1)(ii), 135(1)(d)(i), 135A, 1358, 136(2)(b), 137(1),(2)(a)(b), (3)(a)(b) & (d), 138, 138A, 140 and 140A* ***deal with committing an 'offence' or prosecution of an offence under the Customs Act.***
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> *27. This apart, section 1(2) of the Customs Act that extends the Customs Act to the whole of India and, save as otherwise provided in the Customs Act, it applies also to an 'offence' or 'contravention' thereunder committed outside India by any person. The same sub-section (1) uses both the words 'offence' and 'contravention'. It is, therefore, clear that the meaning assigned to these two words in the Customs Act is different.*
>
> *.....*

33. Section 112 of the Customs Act, under which the penalty of Rs.1.5 lacs was imposed upon the appellant by order dated 24.01.2022, is contained in Chapter XIV of the Customs Act. The order dated 24.01.2021 records a finding that the appellant had violated/contravened the provisions of section 46 of the Customs Act.

34. There is a marked difference between a penalty imposed for 'contravention' of the provisions of the Customs Act and punishment imposed for committing an 'offence'. Chapter XVI of the Customs Act deals with 'offences' and 'prosecutions'. Section 132 provides that a person who makes a false declaration or files a false document shall be punishable with imprisonment for a term which may extend to two years or with fine or with both. Section 133 also provides that any person intentionally obstructs any officer of customs in exercise of any powers conferred under Customs Act shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both. Likewise, other sections like section 134 and 135 also deal with punishment of imprisonment or with fine or both. Section 104 of the Customs Act deals with power to arrest. It provides that if an officer of customs has reason to believe that any person has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and every person arrested shall without unnecessary delay, be taken to a magistrate. On the other hand, provisions for 'contravention' of the provisions of the Customs Act generally impose a penalty in terms of money. It cannot, therefore, generally be said that any 'contravention' would amount to an 'offence' under the Customs Act.

35. Regulation 3(2)(c) of the 2016 Regulations provides that the Principal Commissioner of Customs

shall not issue a licence to an applicant if he has been penalised for an offence under the Customs Act. The declaration that was given by the appellant with the application for seeking a licence stated that the appellant has not been penalised for an offence under the Customs Act. Regulation 3(2)(c) does not state that the license shall not be issued if penalty has been imposed for 'contravention' of the provisions of the Customs Act.

36. The appellant had not been penalised for an 'offence' under the Customs Act. It cannot, therefore, be urged that by not making reference to the order dated 24.01.2022 passed by the Additional Commissioner of Customs imposing a penalty upon the appellant under section 112(a) of the Customs Act for contravention of the provisions of section 46 of the Customs Act, the appellant had withheld vital information from the department or had made a false statement.

...

44. In view of the aforesaid, it can safely be concluded that the order dated 24.01.2022 passed by the Additional Commissioner, that alone has been made the basis for cancelling the License issued to the appellant, does not penalise the appellant for an 'offence' under the provisions of the Customs Act. Only a penalty has been imposed upon the appellant for 'contravention' of the provisions of section 46 of the Customs Act. The order dated 17.08.2023 passed by the Commissioner, therefore, cannot be sustained.

45. The impugned order dated 17.08.2023 passed by the Commissioner is, therefore, set aside and the appeal is allowed."

[Emphasis supplied]

14.4. We find that the Bench has clearly distinguished the '*contravention*' and '*offence*'. It has also observed that since the appellant had been imposed with penalty, their Declaration stating that they have not been penalized of any offence, is not a case of mis-declaration. We hold that the cited case law is squarely applicable to the present case.

14.5. The same view has also been expressed by the Chennai Bench in the case of ***M/s. Mumbai Travel Retail Pvt. Ltd. v. Commissioner of Customs, Chennai [2025 (5) TMI 778 – CESTAT, Chennai]*** wherein, while dealing with a similar issue, it has been observed as under: -

> *"27. Coming to the substantive merits of the Appeal, the short question is whether the Principal Commissioner was justified in refusing the Appellant a special warehouse license solely on the ground that the Appellant had been penalized under Section 112(a) of the Customs Act in the past. Considering the facts and the law, it is the case of the appellant that the impugned order cannot be sustained. The denial of the license in the present circumstances is legally untenable and improper.*
>
> *28. Section 58A of the Customs Act provides for licensing of special warehouses wherein certain classes of imported goods (as notified by the Board) may be deposited without payment of duty. The power to grant the license is vested in the Principal Commissioner of Customs. The section itself lays down no specific criteria or disqualifications except that the grant is "subject to such conditions as may be prescribed." The conditions and procedural requirements are prescribed in the Special Warehousing Licensing Regulations, 2016 (issued under the authority of Section 157 read with Section 58A of the Customs Act). Regulation 3 of the 2016*

Regulations deals with eligibility. Regulation 3(2) enumerates certain conditions under which the license shall not be issued to an applicant. Among "the these, (c) reads: the Principal Commissioner or Commissioner shall not issue a license if the applicant has been penalized for an offence under the Customs Act, 1962, the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994".

29. This clause is central to the dispute the Principal Commissioner invoked it, taking the view that the Appellant, having been penalized under Section 112(a) of the Customs Act, fell foul of this condition. On a plain reading, Regulation 3(2)(c) indeed appears to bar grant of license to anyone who has been penalized for an offence under the Act. ***However, the crux of the matter lies in the interpretation of the phrase "penalized for an offence under the Customs Act."***

30. The above phrase cannot be read in isolation or given an unduly literal meaning divorced from the context of the scheme of the parent Act, i.e. Customs Act. ***A holistic reading of the Customs Act reveals a clear distinction between contraventions that attract civil penalties and offences that attract criminal prosecution.*** *This distinction has both textual and jurisprudential support.*

31. The Act itself segregates the topics: Chapter XIV (Sections 111-127) is titled "Confiscation of goods and conveyances and imposition of penalties"- violations dealt with here (like improper importation, misdeclaration, etc.) result in confiscation of goods and monetary penalties on persons (e.g. Section 112, 114). In contrast, Chapter XVI (Sections 132-140A) is titled "Offences and prosecutions" which covers criminal offences like false declarations (Section 132), fraudulent evasion of duty (Section 135),

obstruction of officers (Section 136), etc., which can result in prosecution and possible imprisonment. The use of the word "offence" in Chapter XVI strongly indicates a context of crime and prosecution. Indeed, Section 135 is the principal penal provision creating offences that are cognizable and non-bailable.

32. When Regulation 3(2) (c) disqualifies an applicant who "has been penalized for an offence under the Customs Act," a reasonable construction is that it targets those applicants who have been found guilty of offenses of a kind that denote serious wrongdoing essentially those entailing mens rea and prosecuted as crimes or subject to Compounding in lieu of prosecution. If, on the other hand, every customs infraction leading to a penalty was meant to be included, the legislation could have simply said "penalized under the Act" (omitting "for an offence"). The added words "for an offence" must be given meaning. We interpret them as referring to offences in the sense of Chapter XVI offences or similarly grave violations.

33. This interpretation is buttressed by the decision in Kundan Care Products Ltd. (supra), which is directly on point. In that case, this Tribunal (Principal Bench, New Delhi) was confronted with the identical Regulation 3(2)(c) when a license was cancelled on the premise that a prior Section 112(a) penalty constituted an "offence" that the licensee had failed to disclose. The Tribunal disagreed with the Revenue's broad brush approach, and made an important delineation: it held that a penalty under Section 112, which arises from a contravention of the Customs Act, is not the same as being "penalized for an offence" under the Customs Act. The Tribunal noted that the appellant in that case had not been prosecuted or convicted for any offence under the Act, and therefore the declaration it made that it had

not been penalized for an offence was essentially true in the intended legal sense. Consequently, the cancellation of the license was set aside. The salient point from Kundan Care (supra) is that the mere fact of a monetary penalty under Section 112 does not automatically trigger the disqualification in Regulation 3(2)(c), because that regulation's scope is confined to penalties for "'offences", which was understood to mean something other than every contravention. We find ourselves in full agreement with the rationale and are in fact bound to follow this decision. It aligns with the scheme of the Customs Act and avoids an overbroad result that Would treat minor/transgressions and serious crimes identically.

34. Applying that reasoning here, the Appellant's case is if anything more compelling than Kundan Care (supra). There is no allegation that the Appellant misled the authorities or suppressed information in its application. It simply became ineligible in the eyes of the Principal Commissioner because of Regulation 3(2) (c). Now, if we interpret Regulation 3(2)(c) in the restrictive sense as discussed above, the Appellant was not, in truth, penalized for an "offence" under the Customs Act: the penalty under Section 112(a) was for a wrong claim of exemption (a civil contravention) and not for an offence under Chapter XVI. No court convicted the Appellant of any offense; no compounding of an offense (under Section 137) was involved either. Therefore, disqualifying the Appellant on this ground was based on a misapplication/misinterpretation of the law.

35. Even if one were to accept the Department's view that any penalty under the Customs Act counts as an "offence" for Regulation 3(2)(C), the license rejection is to be held to arbitrary and unsustainable. The language "shall not issue a license if..." in Regulation 3(2) may seem mandatory, but in context it should

guide the discretion of the Commissioner, not eliminate it. If every penalty, however trivial the underlying contravention could lead to automatic rejection, the result would be draconian. If one were to label this penalty as an "offence", it would mean that thousands of importers who routinely face minor penalties (for classification disputes, short payments, procedural lapses, etc.) are all "offenders" under the Customs Act, a proposition that the Customs law itself does not subscribe to.

36. In this instant case, the Principal Commissioner failed to consider the nature and gravity of the Appellant's past violation. The Appellant's transgression was essentially an over-claim of an exemption for samples, which was not outright smuggling or fraud, but an interpretational issue (as evidenced by the fact that the goods were allowed conversion to warehousing in the very OIO and no Section 114A penalty for fraud was imposed).

37. Admittedly, beyond the bear fact of penalty, the Principal Commissioner in the order has not pointed out to any other factor which would impugn the appellant's ability/suitability to operate a Special Bonded Warehouse. There is also no whisper or doubt about insolvency or any pending criminal investigation; nor is there any finding with regard to technical shortcomings in the proposed facility. In fact, the appellant's prior conduct insofar as complaint is concerned, was limited to a one-of incident, for which it was penalized. That incident, as discussed, was certainly not in the nature that would point to dishonesty, rather it was relating to a disputed exemption on imported goods. Hence, denying the license on this single criteria is not justified.

38. In view of the above discussions, the impugned order, in our view, is not sustainable, since it is based

on an erroneous interpretation of Regulation 3(2) (c) and Section 58A of the Customs Act. Accordingly, the impugned order deserves to be set aside, which we hereby do and since there are no other grounds forthcoming from the impugned order pointing out towards the disqualification of the appellant for the license, the appellant is entitled for the consequential benefit.

39. In the result, appeal is allowed."

[Emphasis supplied]

14.6. In the above cited case, while dealing with an identical issue, the Bench came to an independent conclusion, including holding "*If, on the other hand, every customs infraction leading to a penalty was meant to be included, the legislation could have simply said "penalized under the Act" (omitting "for an offence"). The added words "for an offence" must be given meaning. We interpret them as referring to offences in the sense of Chapter XVI offences or similarly grave violations.".* We find that the observations in this case, as well as the conclusion arrived therein, would be squarely applicable to the facts of the present case.

14.7. Again, in ***M/s. Hari Krishna Exports Pvt. Ltd. v. Commissioner of Customs, Airport Special Cargo Commissionerate [Final Order No. A/86175/2026 dated 22.09.2026 in Customs Appeal No. 86290 of 2025 – CESTAT, Mumbai],*** the Tribunal has held as under: -

"2.3 The appellant had submitted an application before the Proper officer of customs, i.e., the Deputy Commissioner of Customs, for grant of license for setting up of private bonded warehouse for gems and jewellery, vide letter dated 27.05.2022 along with

requisite application form and supporting documents. In dealing with the application, the learned Commissioner of Customs had found that the appellant had committed certain offences under the Customs Act, 1962, dealing with undervaluation of imported machinery, non-establishment of identity in re-import of diamonds, valuation dispute in export of rough diamonds, short supply in re-import under Notification No. 45/2017-Customs. Accordingly, he has rejected the application filed by the appellant for grant of private bonded warehouse license under Section 58 ibid on the above grounds in the impugned order. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

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In view of the settled legal position as held in the above referred cases of Mumbai Travel Retail Private Limited (supra) and Kundan Care Products Limited (supra), we find that the issue arising out of the present dispute is no more res integra. Accordingly, we do not find any merits in the impugned order passed by the learned Commissioner, in not granting the private bonded warehouse license by rejecting the application filed by the appellant and consequently set aside the same.

10. In the result, the impugned order 31.01.2015 passed by the learned Commissioner is set aside and the appeal filed by the appellant is allowed in their favour."

[Emphasis supplied]

15. We find that in all the above case-laws, it has been consistently held that the imposition of penalties under Section 112 or 114 of the Customs Act, 1962, while would be in the nature of '*contravention*', would not amount to committing any '*offence*'. The case laws have specifically dealt with relevant provisions like Section 1(2), Chapter XIV and Chapter XVI to individually and jointly come to a conclusion that grant of License cannot be refused on account of any penalty imposed on the applicant. We have no hesitation to apply these case laws to the present appeal. Accordingly, we set aside the impugned Order and allow the appeal.

16. We have given due consideration to the case-law of ***M/s. Bhagwati Products Ltd. v. Commissioner of Customs (Pre.), Noida [Final Order Nos. 70859-70860/2025 dated 12.12.2025 in Customs Appeal No. 70604 of 2025 & anr. – CESTAT, Allahabad]*** cited by the Ld. Special Counsel for the Revenue. The relevant portion of this Order is reproduced below:

> *"4.4 Appellant have submitted by relying on the provisions of General Clauses Act, 1897 (Act X of 1897) to argue that the word offence used in clause 3 (2) (c) refers to offences which are punishable as per the provisions of Section 132, 133, 134 & 135 of Customs Act, 1962, and would not be in respect of the other contraventions for which the penalties have imposed under other provision of the Customs Act, 1962. We are not impressed by the said argument of the appellant.* ***A constitutional bench (five judges) of Hon'ble Supreme Court has in case of Maqbool Hussain [AIR 1953 SUPREME COURT 325-1983 (13) E.L.T. 1284 (S.C.)]*** *observed as follows:*

"The question that arises for our determination in this appeal is whether by reason of the proceedings taken by the sea Customs Authorities the appellant could be said to have been prosecuted and punished for the same offence with which he was charged in the Court of the Chief Presidency Magistrate, Bombay. There is no doubt that the act which constitutes art offence ***under the Sea Customs Act as also an offence under the Foreign Exchange Regulation Act*** *was one and the same, viz., importing the gold in con-travention of the notification of the Government of India dated the 25th August, 1948.* ***The appellant could be proceeded against under section 167(8) of the Sea Customs Act as also under section 23 of the Foreign Exchange Regulation Act in respect of the said act****. Proceedings were in fact taken under section 167(8) of the Sea Customs Act which resulted in the confiscation of the gold. Further proceedings were taken under section 23 of the Foreign Exchange Regulation Act by way of filing the complaint aforesaid in the Court of the Chief Presidency Magistrate' Bombay, and the plea which was taken by the accused in bar of the prosecution in the Court of the Chief Presidency Magistrate, was that he had already been prosecuted and punished for the same offence and by virtue of the provisions of article 20(2) of the Constitution he could not be prosecuted and punished, again.*

The word offence has not been defined in the Constitution. But article 367 provides that the General Clauses Act, 1897 (Act X of 1897), shall apply for, the interpretation of the Constitution. Section 3(37) of the General Clauses Act defines an offence to mean any act or omission made punishable by any law for the time being in force and there is no doubt that both under the provisions of ***section 167 (8) of the Sea Customs Act and section 23 of the Foreign Exchange Regulation Act the act of the***

appellant was made punishable and constituted an offence. *In order however to attract the operation of article 20(2) the appellant must have been prosecuted and punished for the same offence when proceedings were taken by the Sea Customs Authorities. The High Court did not go into the question as to whether the appellant was prosecuted when proceedings were taken before the Sea Customs Authorities. It considered the question of punishment in the first instance and thought it necessary to arrive at a' finding as to the ownership of the confiscated gold before it could consider the application of the appellant. In the opinion of the High Court the appellant could be said to have been punished only if it were established that he was the owner of the confiscated gold. If he was the owner, the confiscation was a punishment, which would not be so if he was not the owner of the gold. This question of the ownership of the gold was not in our opinion material. The gold was found in the possession of the appellant when he landed at the Santa Cruz airport. The appellant was detained and searched by the Customs Authorities and the gold was seized from his person. Proceedings under section 167(8) were taken by the Customs Authorities and after examining witnesses an order was passed on the 19th December, 1949, confiscating the gold and giving an option to the owner to pay a fine of Rs. 12,000 in lieu of such confiscation under section 183 of the Sea Customs Act. Copy of this order was forwarded to the appellant and for all practical purposes the appellant was treated as the owner of the confiscated gold.....*

The question whether the Sea Customs Authorities when they entertained proceedings for confiscation of the gold in question acted as a judicial tribunal has got to be determined in accordance with the above tests. ***The Sea Customs Act, 1878, 'was enacted***

to consolidate and amend the law relating to the levy of sea customs duties*. The hierarchy of the officials are the Customs Collector, who is the officer of Customs for the time being in separate charge of a custom house, the Chief Customs Officer who is the Chief Executive Officer of the Sea Customs for a port and the Chief Customs Authority which is the Central Board of Revenue. Sections 18 and 19 enact prohibitions. and restrictions on importation and exportation of goods and section 19(a) provides for detention and confiscation of goods whose importation is prohibited. After making various provisions for the levy of sea customs duties, Chapter XVI enacts offences and penalties and several offences mentioned in the first column of the schedule to section 167 are made punishable with penalties mentioned in the third column thereof. Item 8 relates to the offence committed by the importation of goods contrary to the prohibition or restriction imposed in that behalf under sections 18 and 19 of the Act and penalty prescribed for such an offence is:-*

"Such goods shall be liable to confiscation; any person concerned in any such offence shall be liable to a penalty not exceeding three. times the value of the goods, or not exceeding one thousand rupees."

Chapter XVII prescribes the procedure relating to offences, appeals, etc. Powers of search are given to the officers of customs but provision is made that a person about to be searched can, require the officer to take him previous to search before the nearest Magistrate or Customs Collector.

Search warrant can only be issued by the Magistrate and can be executed in the same way and has the same effect as a search warrant issued under a law relating to criminal procedure. Powers are also given to the officers of Customs to arrest persons

reasonably suspected of having committed an offence under the Act but the person arrested is to be forthwith taken before the nearest Magistrate or Customs Collector. The Magistrate is entitled either to commit such person to jail or order him to be kept in custody of the police for such time as is necessary to enable the Magistrate to communicate with the proper officers of Customs. No such power is given to the Customs Collector. Section 181(A) also provides for the detention of packages containing certain publications imported into the States. Section 182 provides that except in the case of certain offences therein mentioned which involve proceedings before a Magistrate confiscation, increased rate of duty or penalty can be adjudged by the Customs Authorities therein mentioned and section 183 provides for option to be given to the owner of the goods confiscated to pay in lieu of confiscation such fine as the officer thinks fit, Section 186 provides that the award of any confiscation, penalty or increased rate of duty under the Act by an officer of Customs is not to prevent the infliction of any punishment to which the person affected thereby is liable under any other law. An appeal is provided under section 188 from a decision or order of the officer of Customs to the Chief Customs Authority who is thereupon to make such further enquiry and pass such order as he thinks fit confirming, altering or annulling the decision or order appealed against. Section 191 provides for a revision by the Central Government on the application of a person aggrieved by any decision or order passed by an officer of Customs or the Chief Customs Authority from which no appeal lies. Section 193 provides for the enforcement of the payment of penalty or increased rate of duty as adjudged against any person by an officer of Customs. If such officer is not able to realise the unpaid amount from other goods in charge he can notify in writing to any Magistrate within the local limits of whose jurisdiction such

person may be, his name and residence and the amount of penalty or increased rate of duty unrecovered and such Magistrate is thereupon to proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself.

It is clear on a perusal of the above provisions that the powers of search, arrest and detention are given to the Customs Authorities for the levy of sea customs duties and provision is made at the same time for a reference to the Magistrate in all cases where search warrants are needed and detention of the arrested person is required. Certain offences of a serious nature are to be tried only by Magistrates who are the only authorities who can inflict punishments by way of imprisonment. Even though the customs officers are invested with the power of adjudging confiscation, increased rates of duty or penalty the highest penalty which can be inflicted is Rs. 1,000. Confiscation is no about one of the penalties which the Customs Authorities can impose but that is more in the nature of proceedings in rem than proceedings in personam, the object being to confiscate the offending goods which have been dealt with contrary to the provisions of the law and in respect of the confiscation also an option is given to the owner of the goods to pay in lieu of confiscation such fine as the officer thinks fit. All this is for the enforcement of the levy of and safeguarding the recovery of the customs duties. There is no procedure prescribed to be followed by the Customs Officer in the matter of such adjudication and the proceedings before the Customs Officers are not assimilated in any manner whatever to proceedings in courts of law according to the provisions of the Civil or the Criminal procedure Code. The Customs Officers are not required to act judicially on legal evidence tendered on oath and they are not authorised to administer oath to any witness.

The appeals, if any, lie before the Chief Customs Authority which is the Central Board of Revenue and the power of revision is given to the Central Government which certainly is not a judicial authority. In the matter of the enforcement of the payment of penalty or increased rate of duty also the Customs Officer can only proceed against other goods of the party in the possession of the Customs Authorities. But if such penalty or increased rate of duty cannot be realized therefrom the only thing which he, can do is to notify the matter to the appropriate Magistrate who is the only person empowered to enforce payment as if such penalty or increased rate of duty had been a fine inflicted by himself. The process of recovery can be issued only by the Magistrate and not by the Customs Authority. All these provisions go to show that far from being authorities bound by any rules of evidence or procedure established by law and invested with power to enforce their own judgments or orders the Sea Customs Authorities are merely constituted administrative machinery for the purpose of adjudging confiscation, increased rates of duty and penalty prescribed in the Act. The same view of the functions and powers of Sea Customs Officers was expressed in& decision of the Bombay High Court to which our attention was called. (See Mahadev Ganesh Jamsandekar v. The Secretary of State for India in Council ((1922) L.L.R. 46 Bom. 732.]).

4.5 In the case of ***Additional Coll. Of Cus., Calcutta Vs Sitaram Aggarwala [1999 (110) E.L.T. 185 (S.C.)]*** *a constitutional bench (five judges) of Hon'ble Supreme Court has held as follows:*

4. ***Section 167(8)*** *of the Act is a penal section the object of which is not only to prevent the evasion of the payment of duties but also to prevent smuggling*

of goods resulting in the depletion of foreign exchange and jeopardising the economic stability of the country. For that purpose it has to be given an interpretation to cover all those who aid and abet in these nefarious activities whether they are principals or accessories who assist the smugglers or supplement their efforts. The use of the words "concerned in" in Section 167(8) shows that a person may be concerned in the importation of smuggled gold, without being a smuggler himself countravening any of the provisions of the Foreign Exchange Act. Therefore the High Court was right when it observed that if any one is interested or consciously takes any step whatever to promote the object illegally bringing bullion into the country, then even if no physical connection is established between him and the thing brought he will be guilty."

4.6 In the case of ***Sachidananda Banerjee, A.C.C., Calcutta Vs Sitaram Agarwala [1999 (110) E.L.T. 292 (S.C.)]*** *another constitutional bench (five judges) of Hon'ble Supreme Court has held as follows:*

"11. ***We may briefly indicate the scheme of the Act in order to appreciate the purpose behind Section 167(81).*** *The object of the Act is to provide machinery for the collection inter alia of import duties and for the prevention of smuggling. With that object customs frontiers are defined, (Ch. I); customs officers are appointed with certain powers, (Ch. II); ports, wharves, customhouses, warehouses and boarding and landing-stations are provided for, (Ch. III); prohibitions and restrictions of imports and exports are envisaged, (Ch. IV); levy of and exemption from custom duties and the manner in which it has to be done is provided, (Ch. V); drawbacks i.e. refunds are provided in certain circumstances, (Ch. VI); arrival and departure of*

vessels is controlled, (Ch. VII and Ch. VIII); provision is made for the discharge of cargo, (Ch. IX), and clearance of goods for home consumption (Ch. X); provision is also made for warehousing and transhipment., (Chapters XI, XII); provisions are also made for exportation or shipment and re-landing (Ch. XIII); special provisions have been made relating to spirit (Ch. XIV) and coasting trade (Ch. XV). Then comes Ch. XVI dealing with offences and penalties. Offences enumerated in Ch. XVI are of two kinds; first there are contraventions of the Act and rules thereunder which are dealt with by customs officers and the penalty for which is imposed by them. These may be compendiously called customs offences. Besides these there are criminal offences which are dealt with by Magistrates and which result in conviction and sentence of imprisonment and/or fine. These two kinds of offences have been created to ensure that no fraud is committed in the matter of payment of duty and also to ensure that there is no smuggling of goods, without payment of duty or in defiance of any prohibition or restriction imposed under Ch. IV of the Act.

12. It is necessary for our purpose to set out two provisions of Section 167 which is in Ch. XVI. These are Section 167(8) and 167(81). Section 167(8) is in these terms:-

"167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively :-

…..

It will be seen that Section 167(8) deals with what we have called customs offences while Section 167(81) deals with criminal offences. It is well-settled by the decisions of this Court that goods

which have been imported against the prohibition or restriction imposed under Ch. IV of the Act are liable to confiscation at any time after import and this liability extends even in the hands of third persons who may not have had anything to do with the actual import. So long as it is proved that the goods had been imported against the restrictions imposed under Chapter IV, the goods remain liable to confiscation whenever found even if this is long after the import is over and even if they are in possession of persons who had nothing to do with the actual import. It is also well-settled by the decisions of this Court that the second part of the penalty relating to any person applies only to a person concerned in the importation or exportation of the goods and does not apply to a person found in possession of the smuggled goods who had nothing to do with the importation or exportation thereof (see Shivanarayna Mahato v. Collector of Central Excise and Land Customs) C.A. 288 of 1964, decided on August 14, 1965."

[Emphasis supplied]

16.1. We find that in the above cited case-law, the Bench has extensively cited the Supreme Court judgements. It can be observed that in all the cases referred to by the Bench, the issue pertained to the offence in terms of Section 167(8) of the Sea Customs Act, 1878 and Section 23 of the Foreign Exchange Regulation Act, 1973, both of which are not the statutes forming part of the subject matter of the present litigation. With due respect, we find that the Bench, without actually going into the relevance of the present provisions Section 1(2), Chapter XIV and Chapter XVI and Sections thereof, has overwhelmingly laid emphasis on the Supreme Court judgement, which was rendered in respect of that earlier Sea Customs Act. In their order portion itself

[as reproduced by the Bench] the Hon'ble Supreme Court has held "***section 167 (8) of the Sea Customs Act and section 23 of the Foreign Exchange Regulation Act the act of the appellant was made punishable and constituted an offence." On the other hand under the present Customs Act 1962, 'contravention' and 'offence' have different treatment for penalizing.***

17. While the other cited cases, on identical issue, have confined themselves the Customs Act, 1962 provisions to come to a correct conclusion, the Bench in the case of *Bhagwati Products Ltd.* has waded into unchartered territory and has imposed the ratio pertaining to the Sea Customs Act and FERA to the provisions of the Customs Act, 1962, which with due respect, we find to be erroneous. The detailed discussions of case law of ***Kundan Care Products Ltd.***, though cited during the arguments therein, had not been given due consideration by the Bench. Therefore, we find that the case law of *Bhagwati Products Ltd.* cited by the Ld. Special Counsel is clearly distinguishable and hence, cannot be applied to the facts of the present case.

18. We find that the case-laws of *Kundan Care Products Ltd. (supra), Mumbai Travel Retail Pvt. Ltd. (supra)* and *Hari Krishna Exports Pvt. Ltd. (supra)* are all directly on the issue before us, clearly dealing with the provisions of the Customs Act, 1962. Hence, we take a considered view that these case-laws are squarely applicable to the facts of the present case.

19. Since the appellant has also made elaborate submissions on their credentials, we are also bound to have a look at them. The relevant documents in this regard are extracted hereinbelow: -

- **Reply to Notice submitted by the appellant, as on record:**

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- Final Order dated 08.11.2017 in Appeal No. C/30204/2017, which sustained the demand of duty and interest, and penalties, arising from shortages (including 332 bottles of liquor) and discrepancies in bonded stock registers.

1.3 Since the CESTAT Final Order No. 31055/2017 dated 10.07.2017 has attained finality and has neither been stayed nor quashed by any superior court of law, indicating that the Noticee stands penalized under the Customs Act, 1962 and whereas Regulation 3(2)(c) of the Special Warehouse Licensing Regulations, 2016 mandates that the Noticee shall not be issued a licence under these regulations if he has been penalised for an offence under the Act, the Central Excise Act, 1944 (1 of 1944) or Chapter V of the Finance Act, 1994 (32 of 1994), the Licensing Authority should be restricted from granting a licence to the Noticee with unquashed penalties under the Customs Act, 1962,

1.4 Further, since in Part-II (Declaration), Point No. 5 of the statutory application form submitted by the Noticee, it was declared that the Noticee has never been penalized under the Customs Act, 1962, the same tantamounts to be factually incorrect in view of the penalties upheld by the Hon'ble CESTAT in Final Order No. 31055/2017 and accordingly the application is liable for rejection on grounds of misdeclaration.

1.5 On that basis, the Notice calls upon the Noticee to explain why its application for the grant of Special Warehouse Licence under Section 58A of the Customs Act, 1962 should not be rejected:

- under Regulation 3(2)(c) of the Regulations, on the footing that the Noticee sustained penalties under Sections 112 and 114 of the Customs Act, 1962; and
- on the ground of misdeclaration at Part-II (Declaration), Point No. 5 of the statutory application form.

1.6 Now, aggrieved by the allegation made in the impugned Notice, the Noticee is filing this reply making the following detailed submissions which are in the alternative and without prejudice to each other

2.0 Reply to the Impugned Notice

2.1 While strongly denying the charges brought about in the impugned Notice, the Noticee humbly submits that the said Notice has been raised without proper and just appreciation of the facts as well as of the law, is beyond jurisdiction and is based on mere conjecture and surmises and is therefore wholly unsustainable, bad-in-law and void ab-initio and should be quashed and/or set aside and/or dropped forthwith to meet the ends of justice.

2.2 **Submission on Facts**

2.2.1 At the outset, it is respectfully submitted that the CESTAT orders referred to in the impugned Notice were passed in 2017, but the underlying events did not occur in 2017. The proceedings originated from searches and physical stock verification carried out in June 2009 in relation to the Noticee's erstwhile duty-free operations at Rajiv Gandhi International Airport, Hyderabad.

2.2.2 At the time of the June 2009 events, the Noticee was a 50:50 joint venture between:

a) Shoppers Stop Limited, holding 24,600,000 equity shares, representing 50% of the paid-up equity share capital; and
b) The Nuance Group AG, holding 24,600,000 equity shares, representing the remaining 50%.

and during 2009, the Board comprised of :

1. Roberto Graziani;
2. Christopher Arthur Wood;
3. Carlo Adolf Bernasconi;
4. Chandrashekhar Bhalchandra Navalkar;
5. Vivek Manohar Nath Mathur; and
6. Salil Puliankodan Kunjiraman Nair.

2.2.3 In this regard, we would like to draw your kind attention to the fact that the operational management responsible for the erstwhile Hyderabad business was appointed and functioned within this earlier JV framework and all the personnel responsible for managing the Hyderabad operations during the relevant period are not part of the Noticee's present management responsible for the overall management of the Noticee including the proposed Kolkata operations. Further, it should be noted that the Noticee's consistent position in the historical proceedings was that the deliberate unauthorized removals were undertaken by identified members of the then-local Hyderabad management and staff, acting in their individual capacity and outside their authority and such conduct was neither authorized, directed nor condoned by the Noticee as a matter of corporate policy.

2.2.4 Even when the Final Order No. 31055/2017 was pronounced on 10 July 2017, the Noticee continued to be owned equally by Shoppers Stop Limited and The Nuance Group AG. The shareholder records immediately preceding the ownership transition show that both shareholders held 41,410,000 equity shares each, representing 50% each.

Copy of the list of directors and shareholder under the erstwhile structure is enclosed and marked as **Annexure 1**

2.2.5 In this regard, we would like to draw your kind attention to the fact, that there was fundamental change in the ownership and control of the Noticee on and from 6 October 2017, when Shoppers Stop Limited transferred 41,409,999 equity shares to The Nuance Group AG and the balance one equity share to The Nuance Group AG jointly with the group shareholder and following the transfer, The Nuance Group AG held 103,524,999 equity shares and the remaining one share was held jointly by The Nuance Group AG and Dufry Participations AG and consequently Shoppers Stop Limited consequently ceased to be a shareholder of the Noticee.

Copy of the Register of Members is enclosed and marked as **Annexure 2**

2.2.6 In this regard, it is humbly submitted that ownership transition was accompanied by a material reconstitution of the Board, in particular,

a. Salil Nair ceased on 31 May 2017;
b. Gopal Asthana was appointed on 6 June 2017 and ceased on 6 October 2017;
c. Sanjay Chakravarti ceased on 6 October 2017;
d. B. V. M. Rao ceased on 6 October 2017;
e. Dimantha Kinigama was appointed as an additional director on 6 October 2017; and
f. John Macdonald Forrest ceased on 27 November 2017.



and as on 31 March 2018, the directors recorded were Dimantha Kinigama, Kavanal Balasundaram Ranjithkumar and Luis Marin Mas Sarda.

Copy of the details of appointment and cessation of Directors is enclosed and marked as **Annexure 3**

2.2.7 Accordingly, while the corporate name and legal identity of the Noticee continued, the Indian JV shareholder exited completely, the Board was materially reconstituted, and the management and reporting framework were aligned with the Dufry group, now known as Avolta. The present management is therefore fundamentally different from the operational management associated with the 2009 Hyderabad proceedings. Thus the Noticee presently forms part of the Avolta group and the corporate ownership records reflect that Dufry International AG holds 100% of The Nuance Group AG and Avolta AG holds 100% of Dufry International AG.

2.2.8 The Noticee is presently governed by a professionally constituted Board comprising Mr. Vivek Jhunjhunwala and Mr. Jagvir Singh Rana, who were nominated by Avolta AG and appointed as directors of the Noticee. Their stewardship, together with Avolta's global governance and compliance framework, provides experienced senior-level oversight of the overall operations including the proposed Kolkata operations and reinforces the Noticee's capacity to operate the special warehouse in a responsible, transparent and compliant manner.

Copy of the List of Affiliates is enclosed and marked as **Annexure 4**

2.2.9 In this regard, it would be relevant to mention that Avolta is a global travel-experience group operating across duty-free, duty-paid, travel retail, convenience and food and beverage channels. The group's corporate materials report operations across 70 countries, more than 1,000 locations and more than 5,100 outlets, supported by over 77,000 team members. Avolta has also received extensive international recognition across travel retail, airport food and beverage, loyalty, digital innovation, customer experience, marketing, sustainability and operational leadership.

Copy of the details of Avolta as a Group and its Management Capability in the form of a PPT is enclosed and collectively marked as **Annexure 5A and 5B respectively**

2.2.10 Following the change in ownership and management, the Noticee has implemented a materially stronger operating and control environment. The present control framework includes, inter alia:

a) SAP-based recording of goods receipts against approved purchase orders;
b) physical verification of imported goods against the Bill of Entry, invoice, packing list and transport documents;
c) receipt and opening of sealed bonded consignments in the presence of Customs officers;
d) immediate discrepancy reporting in cases of shortage, excess, pilferage or damage;
e) written de-bonding requests and Customs permission for movement of bonded goods;
f) physical counting and movement under Customs escort;
g) documented acknowledgement of receipt at the shop floor;
h) periodic physical inventory verification using RF scanners;
i) separate first and second counts by different users;
j) recounts where the first and second counts do not match;



19.1. We find that the appellant in their reply to the Commissioner, had clarified about the entire management structure change carried out with effect from 2017. They had also enclosed the relevant documentary evidence. When the '*contravention*' / '*offence*' has taken place in 2009 and the Management team undergoes considerable change with new partners coming in from October 2017, due weightage should have been given to this by the Commissioner. In the interest of justice and fairplay, the past contravention of the outgoing partner, cannot be weaponized to deny the License to the present appellant with excellent credentials.

- **Licence No. 01/2023 granted by Principal Commissioner of Customs (Airport & ACC), Bengaluru:**

ARPT/WH/MISC/34/2023-Admn-AP-O/o Pr Commr-Cus-AP and ACC-Bengaluru 70

/1389089/2023

चीमा शुल्क के प्रधान आयुक्त का कार्यालय
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
हवाई अड्डा एवं एअर कार्गो कॉम्प्लेक्स AIR PORT & AIR CARGO COMPLEX,
केंपेगौडा अंतर्राष्ट्रीय हवाईअड्डा,
Kempegowda International Airport,
देवनहल्ली,बैंगलूरु–560 300. Devanahalli, Bengaluru - 560 300.
Email ID: commrapacc-cusblr@nic.in
Phone No.080-22001422 Fax No.080-22001448

दिनांक / Dated: As Approved

चीमा शुल्क अधिनियम, 1962 की धारा 58 ए के तहत विशेष भंडारण लाइसेंस, विशेष भंडारण लाइसेंस विनियम, 2016 के साथ पठित
SPECIAL WAREHOUSING LICENCE UNDER- SECTION 58A OF THE CUSTOMS ACT, 1962 READ WITH SPECIAL WAREHOUSING LICENSE REGULATIONS, 2016

लाइसेंस सं. / LICENCE No. 01/2023

M/s. Nuance Group India Pvt. Ltd., Kempegowda International Airport, Bengaluru is hereby granted a licence for their premises as described below under Section 58A of the Customs Act, 1962 as a Special Warehouse for the storage of goods covered under Notification No.72/2016 dated 14.05.2016 and meant for supply to Duty Free Shops for sale to International Passengers under Chapter XI of the Customs Act, 1962 subject to conditions prescribed herein. The Licenced premises of Warehouse is situated at Kempegowda International Airport, Passenger Terminal Building 2 (T-2), Devanahalli, Bangalore - 560 300. The dimension of the premises is as below: -

भंडारण गृह का क्षेत्रफल / Area of Warehouse		
क्रम सं / Sl. No.	बेसमेंट रूम नं / Basement Room No	क्षेत्रफल / Area (Sqm)
1	R 27 (BW - 1)	470

The Licence is issued subject to fulfillment and compliance of all the terms and conditions/procedures laid down under Customs Act, 1962 and all Rules, Regulations, Circulars and Notifications as amended from time to time, subject to fulfillment of the following conditions:

नियम और शर्तें / TERMS & CONDITIONS

1. The license issued in this regard shall not be transferrable and shall remain valid till it is surrendered or cancelled.
2. The Solvency Certificate, All Risk Insurance Policy, Lease Agreement and other requirements stipulated in Regulation 3 and 4 of Special Warehousing Licensing Regulations, 2016 shall be renewed from time to time and maintained by the Licensee.

1

NUANCE GROUP INDIA PRIVATE LTD

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3. The Licensee, in terms of sub-section (1) of Section 59 of the Customs Act, 1962 shall execute Triple Duty Bond at the Customs Station of import with respect to the goods to be cleared for deposit in a warehouse; (Circular No.18/ 2016 Cus. dated 14.05.16 refers).

4. The premises shall be provided with such facilities, equipment, space and personnel as are sufficient to control access to the warehouse and provide secure storage of goods in it including doors and other building components of sturdy construction, secure locks on doors and windows, signage that prominently indicates that the site or building is a customs warehouse, and facilitate examination of goods by officers of customs from time to time and shall have computerized system for accounting of receipt, storage operations & removal of goods as per the Special Warehouse (Custody & Handling of goods) Regulations 2016.

5. The licence holder shall maintain records of the receipt, handling, storage and removal of goods into and from the warehouse and such other activities prescribed and keep record of drawal of samples from the warehoused goods under the Act or under any other law and also keep copies of the Bills of Entry, transport documents, Forms for transfer of goods from a warehouse, shipping bills or bills of export etc. and the records and accounts required to be maintained for a minimum period of five years. Licensee shall also preserve updated digital copies of the above records at a place other than the warehouse, to prevent loss of records due to natural calamities, fire, theft, skillful pilferage or computer malfunction.

6. The Licensed premises shall always be kept under lock having access control with the Bond Officer and no person shall enter the warehouse or deposit or remove any goods therefrom except in his presence.

7. A Licensee shall file with the bond officer a monthly return of the receipt, storage, operations and removal of the goods in the warehouse, within ten days after the close of the month to which such returns relates.

8. The goods imported by the licensee are allowed to be warehoused for initial warehousing period of one year. In case any imported goods remain in the warehouse beyond the initial warehousing period the licencee shall apply for its extension to the jurisdictional Customs Authorities of the port of import, before two months of its expiry.

9. The Customs authorities shall have over all control and shall have access to the Warehouse at any time without notice for inspection of the goods under bond.

10. The Licensee of a special warehouse shall undertake to bear costs of Customs supervision on Merchant Over Time basis or on Cost Recovery as per Regulation 3 of the Special Warehouse Regulations 2016 and circular no. 20 / 2016 - Customs dated 20th May 2016 read with Circular No.32/2016 dated 13.07.2016 as determined by the Principal Commissioner / Commissioner regarding the basis for recovery of costs.

11. The Warehouse Keeper shall obtain a Digital Signature from authorities licensed by the Controller of Certifying Authorities for filing of electronic documents required under the Act, rules or regulations.

12. This License shall remain valid and unless, it is cancelled in terms of the provisions under section 58 B or sub-regulation (2) of regulation 8 of Special warehousing Licensing Regulations, 2016 the license will be co-terminus with the validity of the insurance

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VANCE GROUP INDIA PRIVATE LIMITED

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policy/Rental/Lease Agreements and will be valid on renewal/ extension of the insurance policy/Rental/Lease Agreements by the Licensee.

13. Where the initial warehousing period specified in Sec.61 is expiring in a particular month, the licensee shall furnish such information to the bond officer on or before the 10th day of the month immediately preceding the month of such expiry, and follow the provisions prescribed under the Special Warehouse (Custody and Handling of Goods) Regulations, 2016 read with Board Circular No.25/2016 Cus dated 08.06.2016.

14. The Licensee shall maintain Electronic records of receipt, handling, storage and removal of the warehouse goods based on data elements contained in Form 'A' /Form 'B' appended to Circular No.32/2016. The data should be maintained as per systems of "Stock Keeping Unit".

15. The Warehouse shall have facilities such as Computer, Photocopier, Scanner and Printer in the Warehouse.

16. The goods imported should be bonded and cleared from the Warehouse only in an approved manner in accordance with the provisions contained in Chapter IX of the Customs Act, 1962 and Warehoused Goods (Removal) Regulations, 2016 and Special Warehouse (Custody and Handling of Goods) Regulations, 2016 and instructions issued from time to time.

17. The Licensee shall also follow all other terms and conditions that may be laid down by the Central Board of Excise and Customs and the Licensing authority, from time to time.

18. The licencee is liable to penalty in accordance with the provisions of the Customs Act, 1962, for contravention of any of the terms and conditions, abets such contravention, or fails to comply with any of the Regulations issued from time to time.

Signed by
Kajal Singh
Date: 23-08-2023 17:03:04

(काजल सिंह)
(KAJAL SINGH)
प्रधान आयुक्त सीमा शुल्क
PRINCIPAL COMMISSIONER OF CUSTOMS
हवाई अड्डा एवं एअर कार्गो कॉम्प्लेक्स / ACC & AIRPORT,
बेंगलुरु / BENGALURU

To

M/s.Nuance Group India Pvt Ltd
(With directions to update, their new licence number and date in the EDI system at the concerned port of import)

Copy to:

The Additional Commissioner of Customs, Air Cargo Complex, Bengaluru for information and necessary action.

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20. The above document shows that the present appellant has been granted the License to operate at KIA, Bengaluru in 2023.

- **T2 Authorized Economic Operator (AEO) Certificate dated 29.05.2023 issued to the appellant:**



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सत्यमेव जयते

केन्द्रीय अप्रत्यक्ष कर एंव सीमा शुल्क बोर्ड
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
वित्तमंत्रालय
MINISTRY OF FINANCE
भारत सरकार
GOVERNMENT OF INDIA

T2

प्राधिकृत आर्थिक संचालक प्रमाण-पत्र
AUTHORIZED ECONOMIC OPERATOR CERTIFICATE
(IMPORTER & EXPORTER)

AEO
भारतीय सीमा शुल्क
INDIAN CUSTOMS

प्रमाण-पत्र संख्या Certificate Number : INAAKCS4860P2F234

कम्पनी का नाम : M/s NUANCE GROUP (INDIA) PRIVATE LIMITED

Name of Company : BENGALURU INTERNATIONAL AIRPORT, ALPHA 3 AIRLINE BUILDING, 1ST FLOOR, DEVANAHALLI, BENGALURU-560300

IEC Number : 0307037509

अन्तर्राष्ट्रीय आपूर्ति श्रृंखला को सुरक्षित रखने हेतु आपकी प्रतिबद्धता का सम्मान करते हुए एवं डब्ल्यू.सी.ओ. के सेफ फ्रेमवर्क ऑफ स्टैंडर्ड के अनुसरण में सी.बी.आई.सी. के परिपत्र संख्या 33/2016-सीमा शुल्क, दिनांक 22.07.2016 (यथा संशोधित) के अन्तर्गत भारतीय सीमा शुल्क अपने प्राधिकृत आर्थिक संचालक (ए.ई.ओ.) कार्यक्रम में आपके प्रतिष्ठित संगठन को प्रमाणित करता है।
यह प्रमाण-पत्र 28/05/2026 तक वैध है।

In recognition and appreciation of your commitment to secure the international supply chain and in compliance with the WCO's SAFE Framework of Standards, Indian Customs certifies your esteemed organization in its Authorised Economic Operator (AEO) programme under CBIC Circular Number 33/2016-Customs, dated 22.07.2016 (as amended).
This certificate is valid upto 28/05/2026 .

समंजस दास
Samanjasa Das
ए. ई. ओ. कार्यक्रम प्रबंधक/ मुख्य आयुक्त
AEO Programme Manager/ Chief Commissioner
अन्तर्राष्ट्रीय सीमा शुल्क निदेशालय
Directorate of International Customs

स्थान : नई दिल्ली
Place : New Delhi
दिनांक: 29/05/2023
Dated : 29/05/2023

This Certificate is digitally signed by AEO Programme Manager

21. This Document shows that the appellant has been accorded the Authorized Economic Operator's [AEO] Certificate, which requires several strict regulatory compliance requirements.

22. Admittedly, it is observed the appellant has been granted the Licence and AEO in 2023, without any issue being raised about the penalties imposed on them in 2017 for the SCN issued in 2009.

23. When the above documents are read together, it gets clarified that the appellant's past contravention, cannot / should not come in the way of their getting the License.

24. We hold that the penalties imposed under Section 112 or 114 of the Customs Act, 1962 are in the nature of penalty towards '*contravention*' and not towards any '*offence*'. Therefore, the same would not amount to any contravention of the conditions prescribed under Regulation 3(2)(c) of the Special Warehouse Licensing Regulations (SWLR), 2016. Since the appellant carried a Bonafide belief that the penalties imposed were not any '*offence*' by nature, their non declaration about the past penalties cannot be treated as mis-declaration. Thus, we hold that the appellant has correctly declared the factual detail at Sl. No. (5) of their Declaration.

25. In view of the foregoing, we set aside the impugned order and allow the appeal holding that the appellant would be eligible for the Special Warehouse License applied for by them.

26. Taking into consideration the fact that if they do not start the operation by 18th November, 2026, the appellant would be put to financial loss and also is likely to lose the contract to operate the Warehouse itself, we direct the concerned Licensing Authorities to issue the Licence latest by 15th November, 2026.

27. The Registry is directed to issue the Certified copy of this Order to the appellant and the respondent-Revenue [to the Office of the Authorized Representative (A.R.) of the Revenue - CESTAT] *'by hand'* (*dasti*). The Office of the A.R. – CESTAT, is directed to send the copy of this order *'by hand'* (*dasti*) to the License issuing authority so as to avoid any unnecessary delay.

28. The Office of the A.R. to report of the compliance of this order by 16th November, 2026.

(Order pronounced in the open court on **13.11.2026**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd