CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 87854 of 2024

[Arising out of Order-in-Original CAO No. CC/HB/04/2024-25 Adj(X) ACC dated 30.09.2024 passed by the Commissioner of Customs (Export), Air Cargo Complex, Mumbai.]

SOL Mobiles Private Limited **.... Appellant**
A-204, Kol Dongri CHS,
Parsiwada, Sahar Road,
Andheri (E), Mumbai 400 099.

Versus

Commissioner of Customs, Air Cargo Complex **.... Respondent**
Mumbai Air Cargo Complex,
Sahar, Andheri (E),
Mumbai 400 099.

AND

CUSTOMS APPEAL No. 87855 of 2024

[Arising out of Order-in-Original CAO No. CC/HB/04/2024-25 Adj(X) ACC dated 30.09.2024 passed by the Commissioner of Customs (Export), Air Cargo Complex, Mumbai.]

Manjit Jha **.... Appellant**
Vice-President (Finance & Accounts)
M/s SOL Mobiles Private Limited
A-204, Kol Dongri CHS,
Parsiwada, Sahar Road,
Andheri (E), Mumbai 400 099.

Versus

Commissioner of Customs, Air Cargo Complex **.... Respondent**
Mumbai Air Cargo Complex,
Sahar, Andheri (E),
Mumbai 400 099.

Appearance:
Shri Anupam Dighe, Advocate for the Appellants

Shri Jitesh Kumar Jain, Authorised Representative for Respondent

CORAM:

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

FINAL ORDER NO. A/85654-85655/2026

Date of Hearing: 26.02.2026

Date of Decision: 12.05.2026

PER: M.M. PARTHIBAN

These appeals have been filed by M/s SOL Mobiles Private Limited, Mumbai (for short, referred to as "the appellant company") along with Shri Manjit Jha, Vice-President, Finance & Accounts of the appellant company (herein after, referred together as "the appellants", for short) assailing the Order-in-Original CAO No. CC/HB/04/2024-25 Adj.(X) ACC dated 30.09.2024 (herein after, referred to as "the impugned order") passed by the Commissioner of Customs (Export), Air Cargo Complex, Sahar, Andheri (East), Mumbai – 400 099.

2.1 The brief facts of the case are that the appellant company is engaged in trading of various brands mobile phones viz., Samsung, Redmi, Oppo, Honor, Motorola etc. They procure mobile phones locally from authorized channel partners in India and thereafter export the same through Air Cargo Complex Customs Commissionerate (ACC), Sahar, Mumbai. Against the export transactions undertaken in various Shipping Bills (S/Bs) by appellant exporter during the disputed period 2018-2019, in respect of 46 S/Bs out of total 112 S/Bs filed for export of mobile phones, the appellant exporter had claimed drawback benefits. An investigation was initiated by the Special Investigation and Intelligence Branch of the ACC, Sahar (SIIB-X), on the basis of a clarification issued by the Drawback Division of Central Board of Indirect Taxes & Customs (CBIC) vide letter F. No. 609/ 4/2020-DBK/1063 dated 25.09.2020 with respect to admissibility of duty drawback on export of 'unlocked/tested' mobile phones by merchant exporters. Further, statements were also recorded from various persons concerned and documents were also obtained from the appellants. It was observed by SIIB-X that the mobile phones which were locally procured by the appellants, were subjected to usage prior to export; this was done by unsealing the original packaging and activating the handsets through means such as placing calls, updating the language settings, or flashing the software, followed by repacking after removing the local SIM card and subsequently dispatching it for export. Further, in the "Regional Lock Guide" booklet accompanying Samsung brand mobile phones, SIIB-X observed that the unlocking of the mobile phone devices was a mandatory procedure to render them functional outside India. These activities of unlocking, activation and testing were performed after the manufacturing and packing processes

had been completed. Therefore, they concluded that these activities were carried out by the appellant merchant exporter prior to export of already manufactured goods. As a result, SIIB-X had interpreted that the exported goods had already been used by the exporter, disqualifying them from eligibility for Duty Drawback in accordance with the applicable rules and regulations.

2.2 On completion of investigation, SIIB-X had concluded that the appellant exporter had by mis-declaration of the description of mobile phones under export; by mis-stating that the mobile phones being exported were not taken into use after manufacture declaration and for omission, suppression of facts, had exposed the export goods of total FOB value of Rs.27,99,38,728/- for confiscation under Section 113(i) and 113(ia) of the Customs Act,1962 along with rejection of drawback benefits, imposition of penalty on the appellants under Section 114(iii), 114AA ibid and accordingly issued Show Cause Notice (SCN) to the appellants vide F. No. CUS/DBK/SCN/54/2023-DBK(EDI) dated 26.04.2024.

2.3 The said SCN dated 26.04.2024 was adjudicated by the learned Commissioner of Customs-IV (Export), ACC, Mumbai confirming all the proposals made in the SCN by issuing the Order-in-Original dated 30.09.2024, which is impugned herein. In the said order the adjudicating authority has confiscated the exported goods under Section 113(i) and 113(ia) of the Customs Act,1962 and allowed the same upon payment of redemption fine of Rs. 2,70,00,000/-; further, he also rejected drawback benefits being ineligible on such exports, and imposed penalties on the appellant company for Rs. 2,70,00,000/- and Rs.1,75,00,000/- on the appellant Shri Manjeet Jha under Section 114(iii), and further penalty of Rs.3,00,00,000/- on the appellant company and Rs.2,00,00,000/- on the appellant Shri Manjeet Jha under Section 114AA *ibid*. Feeling aggrieved with the said order dated 30.09.2024, which is impugned herein, the appellants have filed these appeals before the Tribunal.

3.1 During course of hearing of the appeals, learned Advocates for the appellants submitted that issue in these appeals is no more *res integra* in view of judgment passed by Hon'ble High Court of Delhi in the case of *AIMS Retail Services Pvt. Ltd. & Anr. Vs. Union of India & Ors.*,

reported in (2025) 28 Centax 243 (Del.), by which order the said clarificatory Circular dated 25.09.2020 had been quashed with an observation that unlocking/ activating of the mobile phones so as to enable the same to be used in a particular geographical territory outside India is mere 'configuration' of the product to make it usable and does not constitute "taken into use" under Proviso to Rule 3 of the Drawback Rules and therefore, nothing survived so as to make the order passed by the Commissioner enforceable. Learned Advocate further brought it to the attention of this Bench that the said decision of the Hon'ble Delhi High Court has attained finality upon dismissal of the Special Leave Petition-SLP (Civil) Dairy No. 30758/2025 filed by the respondent department, vide judgement of the Hon'ble Supreme Court dated 18.07.2025.

3.2 Learned Advocate further clarified that they had initially filed Writ Petition No.2848 of 2021 along with one another appellants M/s Kisha Telelinks Private Limited before the Hon'ble High Court of Bombay against the action of Commissionerate in not granting them drawback benefits on the basis of CBEC Circular dated 25.09.2020. The said issue was disposed of Hon'ble High Court of Bombay vide judgement dated 01.10.2025, directing the respondents department for processing and deciding the petitioners applications for duty drawback without relying on the Circular dated 25.09.2020. The present appeals filed by them before the Tribunal is with respect to imposition of redemption fine and penalties on the appellants. Therefore, he stated that they had not sought relief for the same issue before two appellate forums, and their case may be taken up by the Tribunal for consideration and disposal in their favour.

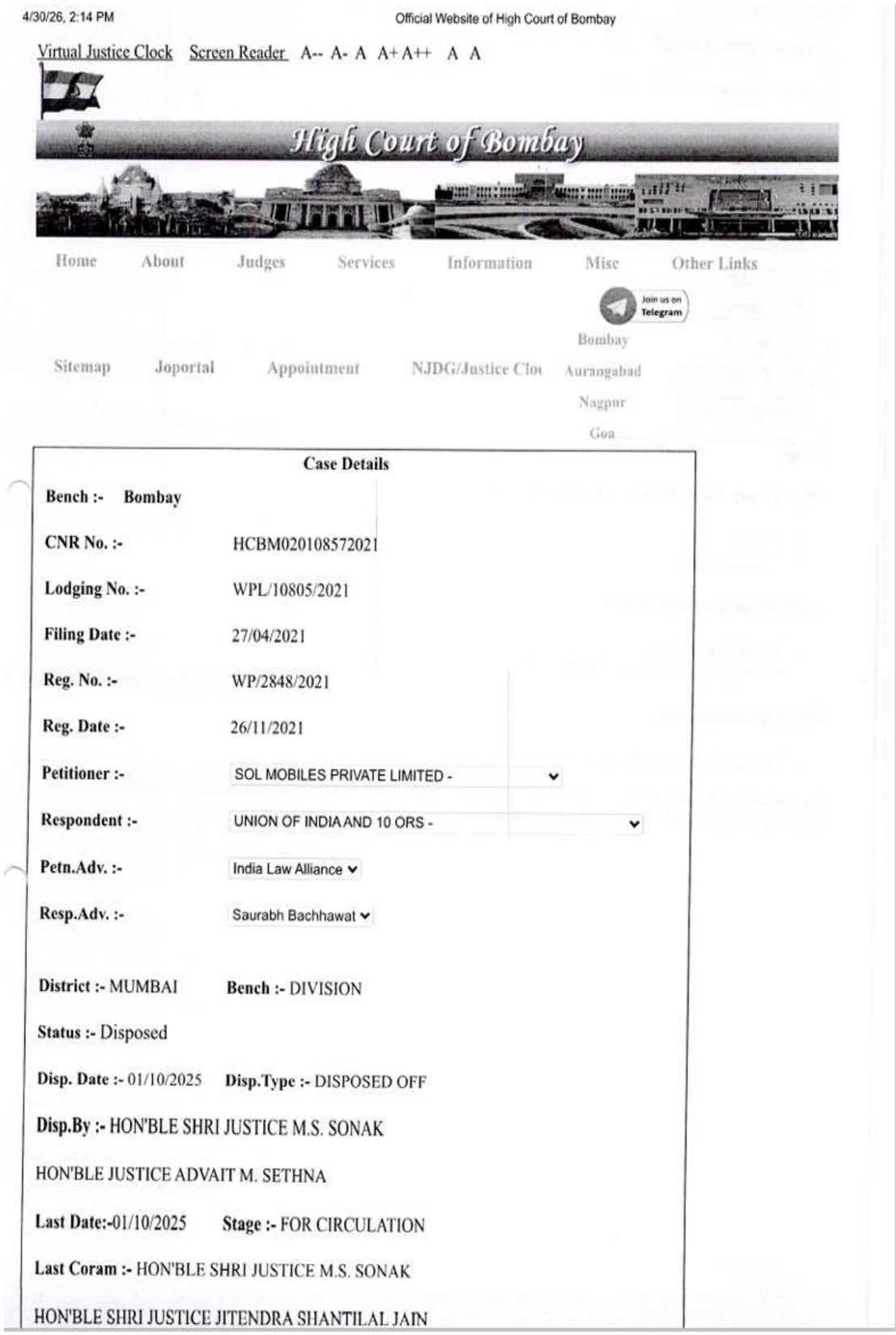
4. In response to such submission learned Authorised Representative (AR) argued in support of the reasoning and rationality of the order passed by learned Commissioner and while conceding to the fact that issue had attained finality at the Hon'ble Apex Court level, he justified the initiation of proceeding even after four years since neither Rule 17 of the Drawback Rules nor Section 75 of the Customs Act have prescribed any limitation period.

5. Heard both sides and carefully examined the case records. We have also perused the additional submissions made in the form written

paper books in this case and the case laws relied upon by both sides carefully.

6.1 The short issue for determination before the Tribunal is that in the facts and circumstances of the present case, whether the confiscation of goods and consequently imposition of penalty, is legally sustainable or not?

6.2 Before we proceed with the case in hand, it is clarified that earlier the Co-ordinate Bench of this Tribunal vide Miscellaneous Order No. 86396-86397/2025 dated 24.12.2025, had remarked that the appellants had mentioned about the pendency of the same issue before the Hon'ble High Court, and therefore directed the Registry for compliance about the fact that no other proceedings are pending before any other forum. Earlier vide Note dated 16.10.2025, the said Co-ordinate Bench had observed that it is imperative for the appellants to withdrawn their appeals from one of the forum so as to make them entitled to get appropriate relief from the other forum. Accordingly, the said Co-ordinate Bench restrained in passing any order and released these appeals from 'reserved order category' to be listed for fresh hearing upon compliance with the above directions of withdrawal. Based on the submissions made by the learned Advocate for the appellants, the matter was verified with the facts on record and the official website of the Hon'ble High Court of Bombay. In the judgement dated 01.10.2025 passed by the Hon'ble High Court of Bombay, in disposal of the W.P. No. 2848 of 2021, the name of petitioners have been mentioned as Kisha Telelinks Private Limited & Anr. However, on careful scrutiny of the complete details of the name of the petitioners it is noted that for the W.P. No. 2848 of 2021 lodged in the official data base with CNR No. HCBM 02010852021 with lodging No. WPL/10805/2021 filed on 27.04.2021 the names of the appellant herein viz., SOL Mobiles Private Limited also appears besides Kisha Telelinks Private Limited and the status of the case has been shown as "*Disposed Off*" and the date of disposal as "*01.10.2025*". The relevant extract of the same is given below:



4/30/26, 2:14 PM Official Website of High Court of Bombay

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High Court of Bombay

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Case Details

Bench :- Bombay

CNR No. :- HCBM020108572021

Lodging No. :- WPL/10805/2021

Filing Date :- 27/04/2021

Reg. No. :- WP/2848/2021

Reg. Date :- 26/11/2021

Petitioner :- SOL MOBILES PRIVATE LIMITED -

Respondent :- UNION OF INDIA AND 10 ORS -

Petn.Adv. :- India Law Alliance

Resp.Adv. :- Saurabh Bachhawat

District :- MUMBAI **Bench :-** DIVISION

Status :- Disposed

Disp. Date :- 01/10/2025 **Disp.Type :-** DISPOSED OFF

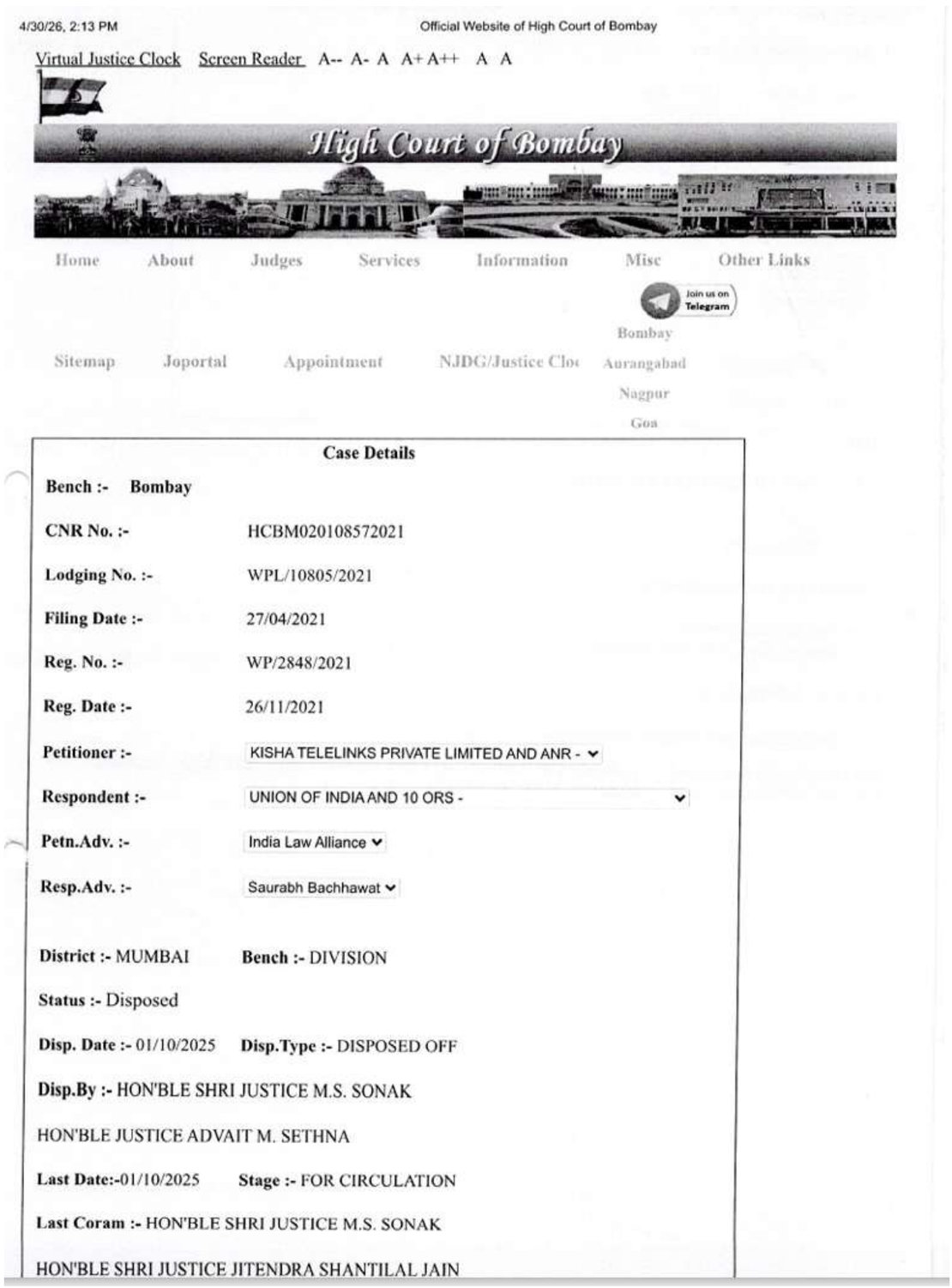
Disp.By :- HON'BLE SHRI JUSTICE M.S. SONAK

HON'BLE JUSTICE ADVAIT M. SETHNA

Last Date:-01/10/2025 **Stage :-** FOR CIRCULATION

Last Coram :- HON'BLE SHRI JUSTICE M.S. SONAK

HON'BLE SHRI JUSTICE JITENDRA SHANTILAL JAIN



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High Court of Bombay

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Bench :- Bombay

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Petitioner :- KISHA TELELINKS PRIVATE LIMITED AND ANR -

Respondent :- UNION OF INDIA AND 10 ORS -

Petn.Adv. :- India Law Alliance

Resp.Adv. :- Saurabh Bachhawat

District :- MUMBAI **Bench :-** DIVISION

Status :- Disposed

Disp. Date :- 01/10/2025 **Disp.Type :-** DISPOSED OFF

Disp.By :- HON'BLE SHRI JUSTICE M.S. SONAK

HON'BLE JUSTICE ADVAIT M. SETHNA

Last Date:-01/10/2025 **Stage :-** FOR CIRCULATION

Last Coram :- HON'BLE SHRI JUSTICE M.S. SONAK

HON'BLE SHRI JUSTICE JITENDRA SHANTILAL JAIN

From the above, it is evidential that the writ petition filed by the appellants before the Hon'ble High Court of Bombay had been disposed of vide judgement dated 01.10.2025 and the case is no more pending with the other forum i.e., Hon'ble High Court of Bombay. Therefore, we think it is appropriate to take up the appeals filed by the appellants before the Tribunal for final disposal without any further delay.

7.1 We find that the alleged offences dealing with unlocking and testing of mobile phones before these were exported by unsealing the original packaging and activating the handsets through placing calls,

updating the language settings, or flashing the software, followed by repacking after removing the local SIM card have been treated by the learned adjudicating authority as wilful suppression of accurate description of goods as the word 'activate' was not used and relevant facts concerning export goods were also mis-represented. Therefore, he concluded that the exported goods i.e., exported activated mobile phones having FOB value of Rs.26,89,32,117/- are liable to confiscation under Section 113(ia) of the Customs Act, 1962 and imposed consequent redemption fine and penalties on the appellants.

7.2 In this regard, we find that the Hon'ble High Court of Delhi in the case of *AIMS Retail Services Pvt. Ltd. and Others* (supra), had examined the issues in detail and have quashed that clarification issued by CBEC vide Circular dated 25.09.2020 with an observation that unlocking/ activating of the mobile phones so as to enable the same to be used in a particular geographical territory outside India is mere 'configuration' of the product to make it usable and does not constitute "taken into use" under Proviso to Rule 3 of the Customs and Central Excise Duties Drawback Rules, 2017. Therefore, consequent action of alleged mis-declaration of export product, mis-representation and suppression by the appellants exporter does not survive. The relevant extract of the said order is given below:

> *"79. In the opinion of this Court, the unlocking/activating of the mobile phones as per the procedures adopted by the Petitioners herein is mere 'Configuration' of the product to make it usable and does not constitute "taken into use" under proviso to Rule 3 of the Duty Drawback Rules. The Clarifications go beyond Section 75 of the Act and the Duty Drawback Rules since the interpretation sought to be given by CBIC is that unlocking/ activation of mobile phones constitutes "taken into use".*
>
> *The said interpretation which is contained in the Clarifications is not sustainable. Accordingly, the Clarifications issued by the CBIC are quashed."*

7.3 The above decision of the Hon'ble High Court was subsequently appealed before the Hon'ble Supreme Court by the department in Civil Appeal Diary No. 30758/2025. The said case was decided vide judgement dated 18.07.2025, wherein the Hon'ble Supreme Court by agreeing with the views of the Hon'ble High Court, had dismissed the Civil Appeals filed by the department. The extract of the said

judgement of the Hon'ble Supreme Court dated 18.07.2025 is given below.

1

ITEM NO.23 COURT NO.9 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No.30758/2025

[Arising out of impugned final judgment and order dated 13-02-2025 in WPC No. 9461/2023 13-02-2025 in WPC No. 10362/2023 13-02-2025 in WPC No. 10365/2023 13-02-2025 in WPC No. 10367/2023 13-02-2025 in WPC No. 10379/2023 13-02-2025 in WPC No. 10382/2023 13-02-2025 in WPC No. 10932/2023 13-02-2025 in WPC No. 10936/2023 13-02-2025 in WPC No. 10947/2023 13-02-2025 in WPC No. 10975/2023 13-02-2025 in WPC No. 11030/2023 13-02-2025 in WPC No. 14407/2024 13-02-2025 in WPC No. 14454/2024 13-02-2025 in WPC No. 1449/2024 13-02-2025 in WPC No. 1499/2024 13-02-2025 in WPC No. 8488/2024 13-02-2025 in WPC No. 891/2024 13-02-2025 in WPC No. 468/2025 13-02-2025 in WPC No. 496/2025 13-02-2025 in WPC No. 516/2025 13-02-2025 in WPC No. 518/2025 passed by the High Court of Delhi at New Delhi]

UNION OF INDIA & ORS. Petitioner(s)

VERSUS

M/S AIMS RETAIL SERVICES PRIVATE LIMITED Respondent(s)

(IA No. 155615/2025 - CONDONATION OF DELAY IN FILING SLPs)

Date : 18-07-2025 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) :
Mr. S Dwarakanath, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Mr. Hitarth Raja, Adv.
Mr. Amit Sharma-II, Adv.
Mr. Kamal Digpaul, Adv.
Mr. Mukesh Verma, Adv.

For Respondent(s) :
Mr. Balbir Singh, Sr. Adv.
Mr. Ritin Rai, Sr. Adv.
Mr. Rohit Gupta, Adv.
Mr. Dayaar Singla, Adv.
Mr. Karan Sachdev, Adv.
Mr. Siddhartha Jha, AOR

Validity unknown
Digitally signed by VISHAL ANAND
Date: 2025.07.21 18:01:16 IST
Reason:

UPON hearing the counsel the Court made the following
O R D E R

1. Delay condoned.

2

2. Having heard the learned counsel appearing for the petitioners and having gone through the materials on record, we find no good reason to interfere with the common impugned order passed by the High Court.

3. The Special Leave Petitions are, accordingly, dismissed.

4. Pending applications, if any, also stand disposed of.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)

The said judgement of the Hon'ble Supreme Court was further sought to be appealed under review with condonation of delay by the department. The Hon'ble Supreme Court in the review order dated 29.01.2026 has held that there is no ground for review and upheld its order. The relevant extract of the said judgement is given below:

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

REVIEW PETITION (CIVIL) NOS……../2026(@Diary No.69677/2025)

IN

SLP(C) No.19042/2025, SLP(C) No.19043/2025, SLP(C) No.19044/2025, SLP(C) No. 19045/2025, SLP(C) No. 19046/2025, SLP(C) No. 19047/2025, SLP(C) No.19048/2025, SLP(C) No.19049/2025, SLP(C) No. 19050/2025, SLP(C) No. 19051/2025, SLP(C) No.19052/2025, SLP(C) No.19053/2025, SLP© No.19054/2025, SLP(C) No. 19055/2025, SLP(C) No. 19056/2025, SLP(C) No. 19057/2025, SLP(C) No.19058/2025, SLP(C) No. 19059/2025, SLP© No.19060/2025, SLP(C) No.19061/2025 and SLP(C) No.19062/2025

UNION OF INDIA & ORS. Petitioner(s)

VERSUS

M/S AIMS RETAIL SERVICES PRIVATE LIMITED Respondent(s)

O R D E R

1. Delay of 108 days in filing the Review Petitions is condoned.

2. Application seeking exemption from filing certified copy of the impugned order is allowed.

3. These petitions have been filed by the petitioners seeking review of the Order dated 18th July, 2025 passed in the captioned Special Leave Petitions by which the said petitions were dismissed.

4. We have carefully gone through the Order dated 18th July, 2025 and the record. In our opinion, no case for review is made out. Consequently, the review petitions are dismissed.

……J
(J.B. PARDIWALA)

……J
(R. MAHADEVAN)

NEW DELHI;
29TH JANUARY, 2026.

Validity unknown
Digitally signed by VISHAL ANAND
Date: 17:16:1
Reason:

9. In view of the foregoing and on the basis of the judgements delivered by the Hon'ble Supreme Court in the case of *Aims Retail Services Private Limited* dated 29.01.2026, arising out of same issues under consideration and judgement delivered by the Hon'ble Supreme Court on the referred case, the confiscation of the impugned goods and imposition of penalty on the appellants, by the learned Commissioner of Customs vide impugned order does not stand the legal scrutiny.

10. In the result, the impugned order dated 30.09.2024 passed by the learned adjudicating authority is set aside and the appeals filed by the appellants are allowed in their favour, with consequential relief, if any, as per law.

(Order pronounced in open court on 12.05.2026)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha