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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75525 of 2026

(Arising out of Order-in-Original No. KOL/CUS/PR.COMMR/PORT/GR.V/49/2025 dated 14.10.2025 passed by the Principal Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Atul Automation **: Appellant**
Office No. 722, The Summit Business Bay,
Andheri Kurla Road, Behind Guru Nanak Petrol Pump,
Andheri East, Mumbai – 400 093

VERSUS

Principal Commissioner of Customs (Port) **: Respondent**
15/1, Strand Road,
Kolkata – 700 001

AND

Customs Appeal No. 75371 of 2026

(Arising out of Order-in-Original No. KOL/CUS/PR.COMMR/PORT/GR.V/49/2025 dated 14.10.2025 passed by the Principal Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Atul Kamdar **: Appellant**
4402, 44th Floor, B Wing, Three Sixty West,
Annie Besant Road, Worli,
Mumbai – 400 025

VERSUS

Principal Commissioner of Customs (Port) **: Respondent**
15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri S.K. Mohapatra, Advocate
Shri Subhrabrata Chattaraj, Consultant
Shri Arijit Goswami, Advocate
For the Appellant(s)

Shri A.K. Choudhary, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75747-75748 / 2026

DATE OF HEARING: 11.06.2026

DATE OF DECISION: 23.06.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

Customs Appeal No. 75525 of 2026 has been filed by M/s. Atul Automation Private Limited, Office No. 722, The Summit Business Bay, Andheri Kurla Road, Behind Guru Nanak Petrol Pump, Andheri East, Mumbai – 400 093 (hereinafter referred to as the appellant-company/ importer) challenging the Order-in-Original No. KOL/CUS/PR.COMMR/PORT/ GR.V/49/2025 dated 14.10.2025 (hereinafter referred to as the "impugned order") passed by the Ld. Principal Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001.

1.1. Customs Appeal No. 75371 of 2026 has been filed by Shri Atul Kamdar, Director of M/s. Atul Automation Private Limited, (hereinafter referred to as the appellant no. 2) against the same order, contesting the imposition of penalty on him under Section 114AA of the Customs Act, 1962.

1.2. Since both the appeals emanate from the same impugned order and involve common questions of fact and law, they were heard together and are being taken up for disposal by way of this common order.

2. Briefly stated, the facts leading to the present proceedings are that M/s. Atul Automation Private Limited, Mumbai (the appellant-company), imported four consignments of Old and Used Multi-Function Copying Printer Machines (MFDs) through Kolkata Port under Bills of Entry bearing Nos. 8965697 dated 28.11.2023, 9293207 dated 18.12.2023, 9471935 dated 30.12.2023 and 9667906 dated 15.01.2024, classifying the said goods under Customs Tariff Heading 84433100. The consignments comprised old and used MFDs of various makes and models and were declared accordingly in the respective Bills of Entry.

3. The imported goods were subjected to first-check assessment and were examined by Government-approved Empanelled Chartered Engineers in the presence of the jurisdictional Customs authorities. Upon examination, the goods were found to be old and used Multi-Function Copying Printer Machines and the description, make and model thereof were reported to be in conformity with the declarations made in the Bills of Entry. Since the goods were old and used in nature and certain issues relating to the applicable import policy and other regulatory requirements were perceived to arise, the matter came to be referred to the Special Intelligence and Investigation Branch (SIIB) for further investigation.

4. During the course of investigation, statements were recorded under Section 108 of the Customs Act, 1962 and various aspects concerning the imports in question were examined by the Revenue.

5. Subsequently, the consignments came to be seized by the Special Intelligence and Investigation Branch (SIIB). The goods were thereafter provisionally released pursuant to the orders passed by the Hon'ble Supreme Court and the proceedings culminated in adjudication by the Principal Commissioner of Customs, Port Commissionerate, Kolkata.

6. Thereafter, upon completion of investigation, a Show Cause Notice dated 13.01.2025 came to be issued to the appellant-company as well as Shri Atul Kamdar, Director of the appellant-company, proposing, inter alia, confiscation of the imported goods and imposition of penalties under the provisions of the Customs Act, 1962. In the Show Cause Notice,

the Revenue entertained a view that the imports in question were not in conformity with certain requirements governing the import of old and used Multi-Function Copying Printer Machines. In particular, it appeared to the Revenue that the appellant-company had not fulfilled the requirements relating to the Foreign Trade Policy, 2023, the Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2021 issued by the Ministry of Electronics and Information Technology, the requirement of Equipment Type Approval from the Wireless Planning and Coordination Wing of the Ministry of Communications and the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. It was thus alleged vide the aforesaid Notice that the imported goods were liable to confiscation under Section 111(d) of the Customs Act, 1962 and that penal consequences under the provisions of the said Act were also attracted.

6.1. Upon completion of the adjudication proceedings, the Ld. Principal Commissioner of Customs, Port Commissionerate, Kolkata, passed Order-in-Original No. KOL/CUS/PR. COMMR/PORT/ GR.V/49/2025 dated 14.10.2025, whereby the imported goods were held liable to confiscation under Section 111(d) of the Customs Act, 1962. However, an option was granted to redeem the same upon payment of redemption fine amounting to Rs.25,00,000/- under Section 125 of the Customs Act, 1962. Further, penalty amounting to Rs.45,00,000/- came to be imposed upon the appellant-company under Section 112(a)(i) of the Customs Act, 1962. Insofar as Shri Atul Kamdar, Director of the appellant-company (appellant no. 2 herein) is concerned, a separate penalty amounting to Rs.1,85,00,000/- was imposed upon him under Section 114AA of the Customs Act, 1962 on account of his alleged role in the transactions in question.

6.2. Aggrieved by the aforesaid Order-in-Original dated 14.10.2025, the appellant-company as well as Shri Atul Kamdar have filed the present appeals.

7. It is submitted by the Ld. Counsel appearing on behalf of the appellants that the Impugned Order has proceeded to confiscate the goods in question and impose heavy fine and penalty on four principal grounds, namely: -

(i) alleged violation of Import Policy under Para 2.31 of FTP 2023;

(ii) alleged non-compliance with the Compulsory Registration Order (CRO), 2021 (BIS);

(iii) alleged non-submission of Equipment Type Approval (ETA) from WPC; and

(iv) alleged non-compliance with the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (HOW Rules).

8. It is the contention of the appellant-company as well as the appellant no. 2 that the impugned order is legally untenable, factually incorrect, and unsustainable in law, in view of the following submissions: -

GROUND I — THE GOODS ARE FREELY IMPORTABLE UNDER FTP 2023 AND ARE NOT COVERED BY PARA 2.31(I)(b)

(i) The Respondent has held that the import of MFDs is "restricted" in terms of Serial No. I(b) of Para 2.31 of the Foreign Trade Policy (FTP) 2023 and that the Appellant ought to have obtained an authorisation from DGFT. This conclusion is fundamentally erroneous.

(ii) Para 2.31 of the FTP 2023 pertaining to second-hand capital goods reads as follows under Sl. No. I:

> *"(a) Second hand capital goods which are re-manufactured capital goods — Restricted; (b) Second-hand capital goods which are other than re-manufactured capital goods and are covered under electronics and IT goods — Restricted; (c) Second-hand capital goods which are not covered under (a) and (b) but are listed under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules — Restricted; (d) Other second-hand capital goods — Free."*

(iii) It is submitted that the MFDs imported by the appellant — being used office automation equipment — do not fall within the restricted sub-categories I(a), I(b), or I(c) of Para 2.31 of FTP 2023 and consequently fall under the residuary category of Sl. No. I(d), i.e., "Free". They are not re-manufactured goods, nor are they specifically "electronics and IT goods" attracting the restricted category under I(b). Even if they were to be so classified, the subsequent category I(d) operates as a catch-all for second-hand capital goods not covered under I(a) to I(c).

(iv) Reliance is placed by the appellant in this regard on the following decisions: -

- *M/s. Simple Machines v. Commissioner of Customs [(2024) 14 Centax 68 (Mad.)]*
- *M/s. Taanish Enterprises & Others v. Customs (W.P. No. 29418 of 2024)*

(v) That the Hon'ble Supreme Court of India has, in identical matters involving MFD importers, consistently directed provisional release of similar goods and stayed confiscation orders — an unequivocal recognition by the Apex Court that MFDs are not prohibited or absolutely restricted goods. It would be wholly incongruous if the lower adjudicating authority were to treat such goods as prohibited for import while the Apex Court has been granting reliefs to identically placed importers.

(vi) In light of the above, it is submitted that the Respondent's reliance on Para 2.31(I)(b) of the FTP 2023 to confiscate the goods is legally unsustainable and the confiscation order on this ground deserves to be set aside in its entirety.

GROUND II — THE GOODS ARE EXEMPTED FROM BIS REGISTRATION AS HIGHLY SPECIALISED EQUIPMENT (HSE)

(i) The Respondent has alleged that the MFDs require BIS registration under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2021 (hereinafter "CRO 2021"), and that the BIS certificates submitted by the appellants pertaining to the manufacturer M/s. Atul International LLC (USA) are inapplicable since the country of origin of the goods is China, Thailand, Japan, and Malaysia.

(ii) However, the Respondent has completely overlooked the exemption provision for Highly Specialised Equipment (HSE) contained in Para 8 of the CRO 2021, as amended vide S.O. No. 2844(E) dated 01.07.2021.

(iii) That the subject MFDs fulfil not one but two of the four criteria for HSE, namely:

- Criterion (b): The MFDs are powered by single phase power supply with current rating exceeding 16 Ampere; and
- Criterion (d): The MFDs have weight exceeding 80 Kg.

(iv) The Respondent's rejection of the HSE claim is premised on a self-fabricated extension of the legislative intent. After correctly quoting the MeitY clarification dated 14.05.2024 that "the exemption of HSE is meant for specialised equipment for which testing is not viable or not feasible because the import/manufacturing is low in volume", the Respondent proceeded to add — entirely on his own and without any documentary basis — that HSE is meant only for equipment like "high end servers imported by nuclear reactors, space programs, data centres/storages etc." This extension of the legislative intent beyond the clear statutory text is legally impermissible.

(v) The legislative text of Para 8 of the CRO, 2021 is unambiguous and categorical — it sets out four objective criteria (power supply, current rating, dimensions, weight) and requires fulfilment of any one criterion. The legislature has not restricted HSE to any particular sector or industry. Where the statute is clear, no room exists for the Respondent to import extraneous limitations. Reference is made to the settled principle of statutory interpretation that plain language of a statute must be given its ordinary meaning as held in the case of *Collector of Central Excise, Vadodara v. Dhiren Chemical Industries [(2002) 2 SCC 311].*

(vi) Further, the Respondent's own conduct is contradictory and discriminatory. In a prior order concerning similar goods imported by the appellant/importer, the Respondent had itself treated the goods as HSE and provisionally withheld release of only those units where the 100-unit threshold had been exceeded. The Tribunal in Final Order No. FO/C/A/77912-77915/2025-CU[DB] dated 16.12.2025 set aside even that limited restriction. The Respondent cannot be permitted to take diametrically opposite positions with respect to the same appellant and similar goods.

(vii) Without prejudice to the above, it is submitted that the BIS certificates bearing Registration No. R-41265640 and R-41264172, relating to printers of Canon Inc. and Xerox Corp. respectively, were duly issued by the BIS authority and were available in the public domain. The appellants relied upon these certificates in good faith. Any alleged infirmity in the manner in which these certificates were obtained must be attributed exclusively to the overseas supplier — M/s. Atul International LLC, USA — which is a legally separate and independent entity incorporated under US law, with no corporate control or shareholding link with the appellant-company. The Respondent cannot transfer liability arising from the overseas supplier's conduct to the Indian importer.

GROUND III — NO ETA FROM WPC IS REQUIRED; EVIDENCE RELIED UPON IS HEARSAY

(i) The Respondent has held that the MFDs require Equipment Type Approval (ETA) from the Wireless Planning and Coordination Wing (WPC) under the O.M. No. ETA-WPC/Policy/2018-19 dated 26.02.2019, read with CBIC Instruction No. 16/2022 dated 21.07.2022, since various models allegedly have wireless LAN capability. This finding is vitiated on multiple grounds:

A. The Chartered Engineer's Report is Based on Hearsay — Natural Justice Violated

- The Chartered Engineer's report — the sole basis for the WPC allegation — states that "as per information available from brochures and internet, the models like Canon IRA 4045, 4225...have Wireless LAN (optional)."
- However, the brochures and internet printouts were never supplied to the Appellant.
- No independent verification was conducted to ascertain whether the imported machines actually had the optional wireless components installed.

- Even the Chartered Engineer's report concedes that wireless LAN in 10 of the models is "optional", meaning the wireless module may or may not be physically present.

- Reliance upon such hearsay material, without affording the Appellant an opportunity to examine or rebut the underlying documents, constitutes a clear violation of the principles of natural justice. The Impugned Order therefore suffers from a fundamental procedural infirmity on this count.

B. MFDs are not Wireless Communication Equipment — ETA Not Mandatory

- As clarified in CBIC Instruction No. 23/2021-Cus dated 23.11.2021, equipment operating in license-exempt frequency bands and with low transmission power can be imported on the basis of self-declaration ETA via the SARALSANCHAR portal. The MFDs in question are not wireless communication devices by design. The mere existence of an optional wireless LAN port does not convert a multifunction printer into a wireless communication device requiring mandatory WPC approval.

- Without any physical verification of the actual wireless capability of the subject MFDs, the order holding the entire consignment liable for confiscation on this ground is grossly disproportionate and unsustainable.

GROUND IV — THE APPELLANT HAS COMPLIED WITH HOW RULES, 2016; CONFISCATION IS UNWARRANTED

(i) The Respondent has alleged that the MFDs violate the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (HOW Rules) on the grounds of: (i) absence of country-of-origin certificate; (ii) absence of DGFT-approved inspection agency certificate; (iii) non-filing of annual return with SPCB; and (iv) failure to meet A3 size printing capacity criteria.

(ii) It is submitted that each of these allegations/findings are factually incorrect or legally misconceived:

A. EPR Authorization — Duly Obtained and Submitted

- The appellant holds a valid EPR Authorization bearing Ref. No. B-29016(2582)/EPR/22/WM-III dated 05.02.2023, duly issued by the competent authority.
- The Respondent has rejected this document on the ground that it is a "documentary requirement for import, not a permission for import." This reading is manifestly incorrect. The EPR Authorization is the substantive compliance document required under the HOW Rules and the E-Waste Management Rules, 2016/2022.

B. Country-of-Origin Certificate — Submitted; and In-Country Inspection Conducted

- Country-of-Origin Certificate was submitted along with the Bill of Lading and packaging.

- In any event, as per CBIC Circular No. 07/2020-Cus dated 05.02.2020, in cases where the exporting country certificate is not available, post-import inspection by an approved Chartered Engineer in India is expressly permissible — which has been done in this case on a 100% first-check basis.

C. Annual Return with SPCB — Not Applicable for First-Time Importers

- As this is the appellant's first import after receiving the EPR Authorization, the question of an annual return for the previous year's import does not arise. The Respondent's insistence on this document in the context of a first-time importer is legally absurd.

D. A3 Printing Capacity — The MFDs are Capable of Printing up to A3 Size

- The appellant-importer has categorically stated and documented that the subject MFDs are capable of printing up to A3 size, which satisfies the Schedule VIII criteria. No contrary finding has been reached on the basis of any technical evidence.

E. No MOEF Clearance Required — As Held by the Hon'ble Madras High Court

- Rule 13(2) of the HOW Rules expressly provides that for goods under Part D of Schedule III (Basel No. B1110 — which covers MFDs), the importer does not require MOEF clearance, and only needs to file specified documents with Customs.

- The Madras High Court in *Taanish Enterprises (supra)* has categorically held that there is no prohibition on import of MFDs under the HOW Rules.

(iii) Furthermore, the Respondent has drawn the perverse conclusion in Para 26.3.8 of the Impugned Order that the imported goods have "negligible or very little active life left", while simultaneously relying upon the same Chartered Engineer's report for re-determining the assessable values upwards — a report which categorically opines that the goods have a life span of more than 7 years. The Respondent cannot selectively adopt findings of the Chartered Engineer that suit the Revenue and discard those that favour the appellants.

GROUND V — VALUATION REVISION DOES NOT CONSTITUTE MISDECLARATION; RE-DETERMINATION ACCEPTED

(i) The Respondent has rejected the declared values of all four Bills of Entry under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined the assessable values on the basis of the Chartered Engineer's certificate.

(ii) It is submitted that the appellant-importer has accepted the re-determined values for the purpose of duty payment. However, it is emphatically submitted that acceptance of a revised valuation does not, ipso facto, constitute misdeclaration. The valuation of second-hand goods is inherently subjective and estimation-based. Chartered Engineers and importers frequently arrive at different but equally plausible value assessments for used machinery. A mere difference of opinion on value cannot be elevated to the level of a punishable misdeclaration.

(iii) Accordingly, the valuation ground cannot provide any justification for confiscation or imposition of penalty.

GROUND VI — NO PENALTY ON THE APPELLANTS

(i) The penalty of Rs. 45,00,000/- on M/s. Atul Automation Pvt. Ltd. under Section 112(a)(i) and the penalty of Rs. 1,85,00,000/- on Shri Atul Kamdar under Section 114AA are entirely unsustainable for the following reasons:

A. No act or omission rendering goods liable to confiscation

- For a penalty under Section 112(a)(i) to be attracted, there must be an act or omission by which the goods have been rendered liable to confiscation. As per the submissions above, the goods are not liable to confiscation at all. In the absence of a valid confiscation, no penalty under Section 112(a)(i) can be sustained.

B. Full transparency and bona fide conduct

- All facts were fully disclosed in the Bills of Entry — the goods were declared as "Old & Used Multi-Function Copying Printer Machines"; 100% physical examination on first-check basis was requested by the appellant-company itself; all available documentation including EPR Authorization, BIS registration certificates, and Chartered Engineer's reports were submitted.

- The appellant operated on bona fide belief that all regulatory requirements had been met. The SCN itself acknowledges the submission of EPR Authorization, BIS certificates, and DGFT applications.

C. The statutory threshold for Section 114AA has not been met

- Section 114AA requires satisfaction of the essential conditions mentioned therein before any penalty can be imposed, which is absent in the present case.

- For imposition of penalty under Section 114AA, mens rea is required to be established on the part of the appellant no. 2, which the Revenue has failed to do.

D. Name appearing in an Overseas LLC is wholly insufficient

- The allegation of the Respondent for imposing penalty on the appellant no. 2 rests on merely the appellant's name allegedly appearing on the internet in connection with the overseas entity.

- M/s. Atul International LLC, USA is incorporated under the laws of the United States of America whereas the appellant-company, M/s. Atul Automation Pvt. Ltd. is incorporated under the Companies Act, 2013 in India. Both are distinct and separate legal entities.

- The Revenue has failed to discharge the burden of proof.

- The transactions between the two entities were conducted on a principal-to-principal basis. Similarity of names cannot be a basis for penalty.

E. No evidence of knowing or intentional use of any false document by appellant no. 2

- The BIS certificates submitted by the appellant no. 2 were genuine and publicly verifiable and the fraud, if any, was committed by the overseas supplier and not the appellants herein.

- Subsequent cancellation of BIS certificates cannot be imputed backwards as knowledge at the time of import.

- The impugned order is conspicuously silent on the specific act of the appellant no. 2 which constitutes making, signing, using or causing the use of a false document.

F. Statement under Section 108 does not establish guilty knowledge

- The Respondent has relied on the statement of the said appellant recorded under Section 108 of the Customs Act, 1962 on 22.02.2024, which does not establish guilty knowledge, but shows the appellants' transparency and bona fides.
- The act of applying for DGFT authorization before filing the Bills of Entry, as stated in the said statement, is wholly inconsistent with guilty knowledge or fraudulent intent; the same is evidence of bona fide conduct.

8.1. In view of the above submissions, the appellants inter alia prayed for setting aside the order of confiscation of the goods, imposition of redemption fine and imposition of penalties, as ordered by the ld. adjudicating authority vide the impugned order, and allowing the present appeals filed by them. Additionally, a prayer has also been made for release of the bank guarantee furnished by the appellant-company during provisional release.

9. On the other hand, the Revenue, through its Authorized Representative, has made the following submissions: -

(i) The Ld. Authorized Representative of the Revenue defended the impugned order and contended that the Respondent / ld. adjudicating authority has passed a detailed and reasoned speaking order as per the existing provisions of law. He specifically pointed out that second hand goods, except second hand capital goods, are restricted for import and can be imported only against an authorization issued by the DGFT, which the appellant could not produce in this case. The goods imported by the appellant i.e. multi-function devices incorporating printers, scanners and photocopiers etc. are not capital goods and are electronic goods, import of which is clearly restricted. Hence the goods imported by the Appellant have been rightly confiscated under Section 111(d) of the Act.

(ii) The MFDs imported by the appellant-company require BIS registration under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2021 (hereinafter "CRO 2021"), and that the BIS certificates submitted by the appellants pertaining to the manufacturer M/s. Atul International LLC (USA) are inapplicable since the country of origin of the goods is China, Thailand, Japan, and Malaysia.

(iii)The MFDs require Equipment Type Approval (ETA) from the Wireless Planning and Coordination Wing (WPC) under the O.M. No.

ETA-WPC/Policy/2018-19 dated 26.02.2019, read with CBIC Instruction No. 16/2022 dated 21.07.2022, since various models imported by the appellant have wireless LAN capability, as observed by the Chartered Engineer.

(iv) The MFDs violate the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (HOW Rules)

(v) The appellant-company has undervalued the goods in the Bills of Entry. Even though the appellant-company has accepted the value enhancement, the act of mis-declaration of the value remains and hence the goods are liable for confiscation for the alleged activity of undervaluation. Accordingly, penalty under Section 112(a)(i) has been rightly imposed on the appellant-company.

(vi) The BIS certificates submitted — bearing Registration Nos. R-41265640 and R-41264172 — were *"obtained by the overseas supplier M/s. Atul International LLC, USA by fraudulent means."* The BIS certificates which were obtained fraudulently were cancelled *after* the import. As the appellant's name appears in the website of the overseas company, the appellant was well aware of the fraudulent means of obtaining the BIS certificates.

9.1. Accordingly, the Ld. Authorized Representative of the Revenue submits that the impugned goods have been rightly confiscated and penalty has been rightly imposed on the appellants.

10. Heard both sides and perused the records available before us.

10.1. Upon hearing the parties, the following issues arise for our consideration: -

(I) Applicability of Para 2.31 of the Foreign Trade Policy, 2023 and whether the imported goods are freely importable or otherwise;

(II) Applicability of the Electronics and Information Technology Goods (Requirements of Compulsory Registration) Order, 2021 and the appellant's claim for exemption as Highly Specialised Equipment (HSE);

(III) Requirement of Equipment Type Approval (ETA) from the Wireless Planning and Coordination Wing (WPC) and the alleged wireless capability of the imported Multi-Function Devices;

(IV) Alleged contravention of the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016;

(V) Re-determination of value under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;

(VI) Whether penalty can be imposed upon M/s. Atul Automation Private Limited under Section 112(a)(i) of the Customs Act, 1962; and

(VII) Whether penalty can be imposed upon Shri Atul Kamdar under Section 114AA of the Customs Act, 1962.

10.2. We proceed to examine the aforesaid issues seriatim.

Issue No. I: Applicability of Para 2.31(1)(b) of FTP, 2023 and requirement of DGFT authorization

11. The Department's case primarily proceeds on the premise that the subject goods, namely Old and Used Multi-Function Copying Printer Machines, being "restricted" items in terms of Para 2.31(I)(b) of the Foreign Trade Policy, 2023, could not have been imported in the absence of an authorization issued by the Directorate General of Foreign Trade and, therefore, became liable to confiscation under Section 111(d) of the Customs Act, 1962.

11.1. It is not in dispute that the imports in question were effected through regular channels upon filing Bills of Entry wherein the goods were described as "Old and Used Multi-Function Copying Printer Machines" in the Bills of Entry filed. The consignments were subjected to first-check examination and the description, make and model of the goods were found to be in conformity with the declarations made by the appellant. Thus, there is no allegation that the goods had been clandestinely imported or that there had been any suppression as regards the identity or nature thereof. The allegation against the appellant-company is that the goods imported have violated the provisions of Para 2.31 of the Foreign Trade Policy.

11.2. Para 2.31 of the Foreign Trade Policy, 2023, under Sl. No. I, insofar as relevant, reads as under:

> *"(a) Second hand capital goods which are re-manufactured capital goods — Restricted;*
>
> *(b) Second-hand capital goods which are other than re-manufactured capital goods and are covered under electronics and IT goods — Restricted;*

(c) Second-hand capital goods which are not covered under (a) and (b) but are listed under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules — Restricted;

(d) Other second-hand capital goods — Free."

11.3. The case of the Department proceeds on the basis that the imported MFDs fall within the ambit of Clause (b) of Para 2.31 and, consequently, were liable to be treated as restricted goods requiring authorization. The appellant, on the other hand, has contended that the imported goods do not fall under any of the categories enumerated under Clauses (a), (b) or (c) and would, therefore, be covered by the residuary category under Clause (d), rendering the same freely importable.

11.4. We find that the imported goods are admittedly old and used Multi-Function Devices, which are classifiable as "electronics and IT goods". Paragraph 2.31(I)(b) of the Foreign Trade Policy, 2023 specifically covers second-hand capital goods, other than re-manufactured capital goods, which are covered under electronics and IT goods and categorises the same as "Restricted". Consequently, importation thereof is permissible only upon obtaining the requisite authorization from the Directorate General of Foreign Trade (DGFT). Admittedly, no such authorization had been obtained by the appellant-company in the present case.

11.5. Insofar as the reliance placed by the appellant upon the decision of the Hon'ble Madras High Court in *Simple Machines v. Commissioner of Customs (Chennai-II), Import [(2024) 14 Centax 68 (Mad.)]* is concerned, we are unable to accept the contention of the appellants that the said decision conclusively establishes that the subject goods are freely importable. We find substance in the contention advanced by the learned Authorized Representative for the Revenue that the said decision principally dealt with the issue of provisional release of the goods and, while granting such relief, the Hon'ble High Court had expressly left it open to the Customs authorities to proceed with the adjudication proceedings in accordance with law. It has further been brought to our notice that the issue is presently pending consideration before the Hon'ble Supreme Court. In these circumstances, the decision in *Simple Machines (supra),* in our considered view, cannot be relied upon to say that the goods in question are freely importable or that no authorization from the DGFT was required for their importation.

11.6. From the records, it is also seen that the present appellant had earlier approached the Hon'ble High Court at Calcutta vide WPA Nos. 6753, 6760, 6743 and 6749 of 2024 seeking provisional release of the goods. The order of the learned Single Bench directing provisional release was subsequently set aside by the Division Bench of the Hon'ble High Court vide Order dated 14.05.2024 in MAT Nos. 674, 675, 676 and 677 of 2024 and the matter was remanded for fresh consideration. Thereafter, the Hon'ble Supreme Court, by orders dated 18.11.2024 and 28.11.2024, directed provisional release of the goods in terms of the order of the learned Single Bench of the Hon'ble High Court, while specifically observing that such release would remain subject to the final orders to be passed in the adjudication proceedings under the provisions of the Act. Pursuant thereto, the goods came to be released provisionally upon execution of bond and furnishing of bank guarantee.

11.7. We also take note of the fact that, in several matters involving similarly situated importers, provisional release of the goods has been permitted, while simultaneously leaving it open to the Customs authorities to proceed with adjudication in accordance with law. For instance, a similar issue has been analysed by the Hon'ble High Court of Telangana in the case of *M/s. Arka Business Solutions v. Superintendent of Customs and ors. [Writ Petition No. 2014 and 843 of 2024 & connected matters decided on 08.02.2024],* wherein the Hon'ble Court has permitted provisional release of the goods on the above lines. The relevant observations therein are reproduced below: -

> *"26. Thus, for all the aforesaid reasons, it is ordered that let the respondent authorities pass an order on the application filed by the petitioners for provisional release of the goods subject to the conditions that:*
>
> *a) The petitioner shall pay/deposit the enhanced duty amount. On receipt of such enhanced duty amount paid by the petitioners, the goods in question shall be released within a period of four (04) weeks thereafter.*
>
> *b) For payment of such duty, quantification shall be made by the Customs forthwith within one (01) week from the date of receipt of a copy of this order. On receipt of such quantification, the payment shall be immediately made by the petitioners and on receipt of the payment in entirety, the goods shall be released as indicated above at the outer limit of four (04) weeks.*
>
> *c) It is made clear that this order will not stand in the way for ahead with the further Customs Department to go proceedings including the adjudication in the manner known to law.*
>
> *d) It is further made clear that so far as the condition of the petitioner that demurrage charges till date,*

> *for the goods be considered for waiver, in this regard, if any application is filed by the petitioners seeking such a waiver of demurrage charges, the same shall be considered and decided by the respondents objectively.*
>
> *27. In addition, the petitioners are also directed to provide a bank guarantee worth 10 percent of the total price of the goods imported by them…"*

11.7.1. We further ascertain that the issue itself is pending consideration before the Hon'ble Supreme Court. Hence, in our considered opinion, the same course deserves to be followed till such time a final decision is reached on the issue by the Hon'ble Supreme Court.

11.8. Accordingly, we are of the considered view that authorization from the DGFT was required for importation of the subject MFDs and, in the absence thereof, the goods are liable to be regarded as restricted goods. Consequently, we hold that the goods have been rightly held liable to confiscation under Section 111(d) of the Customs Act, 1962.

11.9. At the same time, we find that the imported goods are not prohibited goods in the absolute sense and that the issue involved has been the subject matter of considerable litigation before various judicial fora. We have also ascertained that, in respect of similar goods and similarly situated importers, the Hon'ble High Courts have permitted provisional release of the goods, while at the same time allowing the Customs authorities to proceed with adjudication in accordance with law. The same course has been adopted in the present case as well. Accordingly, we uphold the confiscation of the goods under Section 111(d) of the Customs Act, 1962, after provisional release thereof, and the imposition of redemption fine and penalty.

11.10. However, considering the facts and circumstances of the case, the redemption fine of Rs.25,00,000/- imposed under Section 125 of the Customs Act, 1962 and the penalty of Rs.45,00,000/- imposed upon M/s. Atul Automation Private Limited under Section 112(a)(i) of the Act appear to be on the higher side. Therefore, having regard to the nature of the dispute and in the absence of any allegation of clandestine importation or misdeclaration regarding the description of the goods, we reduce the redemption fine from Rs.25,00,000/- (Rupees Twenty Five Lakhs only) to Rs.10,00,000/- (Rupees Ten Lakhs only) and reduce the penalty imposed upon M/s. Atul Automation Private Limited under Section 112(a)(i) from Rs.45,00,000/- (Rupees Forty Five Lakh only) to Rs.15,00,000/- (Rupees Fifteen Lakhs only).

11.11. The issue stands answered accordingly.

Issue No. II : Applicability of CRO, 2021 and claim of exemption as Highly Specialised Equipment (HSE)

12. The next issue which falls for consideration pertains to the applicability of the Electronics and Information Technology Goods (Requirements of Compulsory Registration) Order, 2021 (CRO, 2021) and, more particularly, the appellant's claim that the subject goods are entitled to exemption as Highly Specialised Equipment (HSE) in terms of Paragraph 8 thereof.

12.1. The ld. adjudicating authority has proceeded on the basis that the BIS certificates furnished by the appellant, pertaining to M/s. Atul International LLC, USA, were inapplicable since the country of origin of the imported goods was stated to be China, Thailand, Japan and Malaysia and, consequently, concluded that the imported goods were non-compliant with the provisions of CRO, 2021.

12.2. We find that the aforesaid approach overlooks the appellant's principal contention founded upon Paragraph 8 of the Electronics and Information Technology Goods (Requirements of Compulsory Registration) Order, 2021, as amended vide Notification S.O. 2844(E) dated 01.07.2021, which reads as under:

> *"8. Exemption for Highly Specialized Equipment (HSE): HSE as per the criteria given below shall stand exempted from the application of this Order provided they are manufactured/imported in less than 100 units per model per year—*
>
> *(a) Equipment powered by three phase power supply; or*
>
> *(b) Equipment powered by single phase power supply with current rating exceeding 16 Ampere; or*
>
> *(c) Equipment with dimensions exceeding 1.5m × 0.8m; or*
>
> *(d) Equipment with weight exceeding 80 Kg."*

12.3. A plain reading of the aforesaid provision reveals that the legislature has prescribed objective and quantifiable criteria governing the grant of exemption. Significantly, no distinction has been drawn with reference to any particular sector, industry or end-use. The provision does not restrict the benefit only to equipment intended for nuclear installations, space programmes, data centres or similar specialised domains, as has been observed in the impugned order.

12.4. For considering the impugned goods as HSEs, the MFDs are required to satisfy at least one of the four criteria enumerated above. It is the specific case of the appellant-company that the imported MFDs satisfy two of the said criteria, namely—

- Criterion (b), inasmuch as the MFDs are powered by single phase power supply with current rating exceeding 16 Ampere; and

- Criterion (d), since the equipment has weight exceeding 80 kilograms.

The impugned order does not appear to have effectively dislodged the aforesaid factual position.

12.5. We further find that, while referring to the clarification dated 14.05.2024 issued by the Ministry of Electronics and Information Technology, the adjudicating authority has proceeded to hold that the exemption for Highly Specialised Equipment is intended only for equipment such as "high-end servers imported by nuclear reactors, space programmes, data centres/storages etc.". We are unable to discern any statutory basis for such an interpretation.

12.6. It is well settled that where the language employed by the legislature is plain and unambiguous, effect must be given to the same in its ordinary sense. The Hon'ble Supreme Court in *Collector of Central Excise, Vadodara v. Dhiren Chemical Industries [(2002) 2 SCC 311]* reiterated that the words used in a statutory provision must ordinarily be construed according to their natural meaning and no words can be added thereto under the guise of interpretation. In our considered view, the ld. adjudicating authority has travelled beyond the four corners of the statutory provision and sought to import restrictions which are not borne out from the text of Paragraph 8 of the CRO, 2021.

12.7. It has further been brought to our notice that the respondent's stand on this issue is contradictory to his own earlier stand taken in respect of similar goods imported by the same appellant as well as others where he has ordered release of MFDs upto 100 pieces per model, treating those as HSEs, without insisting on BIS registration.

12.8. Having regard to the totality of the facts and circumstances and upon a harmonious construction of Paragraph 8 of the Electronics and Information Technology Goods (Requirements of Compulsory Registration) Order, 2021, we are of the considered view that the findings recorded in the impugned order rejecting the appellant's claim of exemption as Highly Specialised Equipment cannot be sustained. Consequently, we hold that the imported goods cannot be treated as liable to confiscation on account of the alleged non-compliance with the provisions of CRO, 2021 and the issue is answered accordingly.

Issue No. III : Requirement of ETA from WPC and alleged wireless capability

13. The next issue which falls for consideration pertains to the allegation that the imported Multi-Function Devices required Equipment Type Approval (ETA) from the Wireless Planning and Coordination

Wing (WPC) of the Ministry of Communications under O.M. No. ETA-WPC/Policy/2018-19 dated 26.02.2019, read with CBIC Instruction No. 16/2022-Cus dated 21.07.2022, since certain models allegedly possessed wireless LAN capability.

13.1. The foundation of the aforesaid allegation rests upon the Chartered Engineer's reports dated 09.05.2024, wherein it has been observed that certain models of the imported MFDs possessed Wireless LAN capability and, accordingly, required compliance with the requirements prescribed under the aforesaid Office Memorandum and Instruction.

13.2. Upon perusal of the records, we find that the said conclusion of the Chartered Engineer is itself predicated upon information stated to have been gathered from brochures and internet sources. Significantly, the report itself records that certain models such as Canon IRA 4045, Canon IRA 4225 and other models have Wireless LAN capability as an "optional" feature. Thus, the very material relied upon by the Department proceeds on the premise that the wireless functionality may or may not be physically present in the machines imported by the appellant.

13.3. We further find that the brochures and internet printouts constituting the basis of the aforesaid opinion were admittedly never furnished to the appellant. Nor does it appear from the records that any independent verification or physical examination was undertaken with a view to ascertain whether the subject machines, as imported, were actually fitted with wireless modules or possessed operational wireless capability.

13.4. In our considered opinion, the findings recorded in the impugned order on this count are founded upon material which is, at best, secondary and derivative in nature. Reliance upon such material, without disclosing the underlying documents to the appellant and without affording an opportunity to controvert the same, does not appear to satisfy the requirements of fair procedure. It is trite that material adverse to a party ought ordinarily to be disclosed so as to enable an effective opportunity of rebuttal.

13.5. More importantly, the mere existence of a provision for optional wireless functionality in certain models cannot, ipso facto, lead to the conclusion that the machines imported by the appellant were equipped with such functionality. Suspicion, however grave, cannot substitute proof. In the absence of any positive material evidencing that the imported MFDs were, in fact, fitted with wireless modules necessitating Equipment Type Approval from WPC, the allegation remains in the realm of conjecture and surmise.

13.6. We also take note of the appellant's reliance upon CBIC Instruction No. 23/2021-Cus dated 23.11.2021 dealing with import of wireless equipment operating in licence-exempt frequency bands. In the facts and circumstances of the present case, we observe that the Department has failed to establish, by means of cogent and affirmative evidence, that the imported goods satisfied the description of wireless communication devices by design in the first place. The mere existence of an optional wireless LAN port would not convert a multifunction printer into a wireless communication device requiring mandatory WPC approval.

13.7. We are, therefore, of the considered view that the findings recorded in the impugned order regarding the requirement of Equipment Type Approval from WPC are not supported by satisfactory and affirmative evidence. Consequently, non-compliance with the WPC requirements cannot be regarded as an independent or additional ground warranting confiscation of the goods under Section 111(d) of the Customs Act, 1962.

13.8. Accordingly, to the aforesaid extent, the findings contained in the impugned order with regard to the alleged requirement of ETA from WPC are not sustainable and are liable to be set aside. The issue is answered in favour of the appellant-company.

Issue No. IV : Alleged violation of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016

14. We now proceed to examine the allegation regarding contravention of the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 ['HOW Rules' for short], which has also been relied upon as one of the grounds for confiscation of the imported goods under Section 111(d) of the Customs Act, 1962.

14.1. The impugned order has proceeded on the footing that the appellant failed to satisfy the requirements prescribed under the HOW Rules, 2016, inter alia, on account of the alleged non-submission of country-of-origin certificate, absence of certificate from a DGFT-approved inspection agency, non-filing of annual returns with the State Pollution Control Board and non-fulfilment of the A3 size printing criteria.

14.2. Upon careful examination of the records, we find that the appellant was admittedly holding a valid Extended Producer Responsibility (EPR) Authorization bearing Ref. No. B-29016(2582)/EPR/22/WM-III dated 05.02.2023 issued by the competent authority. The adjudicating authority, however, has sought to brush aside the said authorization on the ground that the same merely constitutes a documentary requirement for import and does not amount to permission for import. We are unable to subscribe to such a line of reasoning.

14.3. The EPR authorization is itself one of the substantive requirements envisaged under the statutory framework governing e-waste management. Once the appellant had obtained the said authorization from the competent authority and had placed the same on record, the same could not have been lightly disregarded while evaluating compliance with the provisions of the HOW Rules, 2016.

14.4. We are also unable to agree with the finding in the impugned order regarding the alleged non-submission of country-of-origin certificate. The appellant has consistently maintained that the requisite documents, including the country-of-origin certificate, accompanied the Bills of Lading and packaging. Be that as it may, CBIC Circular No. 07/2020-Cus dated 05.02.2020 itself contemplates a situation where the exporting country certificate is unavailable and permits post-import inspection by an approved Chartered Engineer in India. Admittedly, in the present case, the consignments were subjected to first-check examination and were inspected by a Chartered Engineer on a 100% basis. In such circumstances, the insistence upon the exporting country certificate, despite the alternative mechanism expressly recognized by the Board itself, appears to be misplaced.

14.5. The objection pertaining to non-filing of annual returns with the State Pollution Control Board is equally devoid of merit. It is the appellant's specific case that the present imports constituted the first import transaction undertaken after obtaining the EPR authorization. If that be so, the question of furnishing annual returns relating to a preceding period does not arise at all. The insistence upon production of such returns in the case of a first-time importer would, in our view, amount to requiring the impossible and would render the requirement wholly illusory.

14.6. We further find that the appellant has categorically asserted that it is on record that the imported MFDs are capable of printing up to A3 size and thereby satisfy the requirements stipulated in Schedule VIII to the HOW Rules. Significantly, no technical material has been brought on record by the Department to establish otherwise. In the absence of any contrary evidence, the said contention of the appellant cannot be brushed aside merely on assumptions and presumptions.

14.7. We also find considerable force in the appellant's reliance upon Rule 13(2) of the HOW Rules, 2016. It is not in dispute that the imported goods fall under Basel No. B1110 of Part D of Schedule III. The scheme of the Rules itself envisages that in respect of goods covered under Part D of Schedule III, no prior clearance from the Ministry of Environment, Forest and Climate Change is required and the importer is only required to furnish the prescribed documentation before the Customs authorities.

14.8. We further find substance in the submission of the appellant that the impugned order has adopted mutually destructive and contradictory positions with regard to the residual life of the imported goods. On the one hand, the adjudicating authority has observed that the goods had negligible or insignificant active life remaining, whereas, on the other hand, reliance has simultaneously been placed upon the very same Chartered Engineer's report for the purpose of enhancement of assessable value. The said report, however, categorically records that the machines possess a residual life exceeding seven years. In our considered opinion, the Department cannot be permitted to approbate and reprobate by selectively accepting those portions of the Chartered Engineer's report which support the Revenue and discarding those which operate in favour of the appellant. It is a settled principle that findings recorded in quasi-judicial proceedings must rest upon a consistent appreciation of evidence and cannot be founded upon contradictory assumptions.

14.9. The appellant has further submitted that the Hon'ble Madras High Court in *Taanish Enterprises (supra)* has categorically held that there is no prohibition on import of MFDs under the HOW Rules.

14.10. Having regard to the totality of the materials available on record, we are of the considered view that the allegations regarding contravention of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 have not been established in a satisfactory manner. Consequently, the alleged non-compliance with the HOW Rules cannot be regarded as furnishing an independent or additional basis for confiscation of the goods under Section 111(d) of the Customs Act, 1962.

14.11. Accordingly, to the aforesaid extent, the findings recorded in the impugned order on this issue are unsustainable and are liable to be set aside. The issue is answered in favour of the appellant-company.

Issue No. V : Re-determination of Value

15. We further find that the declared values under the four Bills of Entry were rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the assessable values came to be re-determined on the basis of the Chartered Engineer's certificates. The appellant has admittedly accepted the revised valuation for the purpose of discharge of duty liability.

15.1. However, in our considered view, mere acceptance of the re-determined assessable value cannot, by itself, lead to the inexorable conclusion that the appellant-company had indulged in wilful misdeclaration of value. It is trite that valuation of second-hand and used machinery is largely estimation-based and susceptible to variation depending upon the methodology adopted and the parameters taken into consideration. A divergence between the value declared by the importer and the value eventually arrived at by the Department on the basis of expert opinion cannot, ipso facto, be elevated to a charge of deliberate misdeclaration.

15.2. In the facts and circumstances of the present case, we are unable to discern any material on record to suggest that the acceptance of the revised valuation was accompanied by any contumacious conduct on the part of the appellant-company. We are, therefore, of the considered view that the re-determination of value, by itself, cannot furnish an independent or additional ground for confiscation of the imported goods or for imposition of penalties under the provisions of the Customs Act, 1962.

15.3. Consequently, while the enhanced valuation accepted by the appellant-company for the purpose of payment of duty does not call for any interference, the valuation aspect, in itself, cannot be treated as constituting a separate basis for sustaining the impugned action. The issue is answered accordingly in favour of the appellant-company.

Issue No. VI : Penalty on the Appellant-Company under Section 112(a)(i) of the Customs Act, 1962

16. The next issue pertains to the imposition of penalty upon M/s. Atul Automation Private Limited under Section 112(a)(i) of the Customs Act, 1962.

16.1. We find that the question relating to the liability of the appellant-company to penalty under Section 112(a)(i) of the Act has already been substantially considered while deciding Issue No. I hereinabove. In the present case, the appellant-company imported the subject goods, which are "electronics and IT goods" falling within the restricted category under Para 2.31(I)(b) of the Foreign Trade Policy, 2023, without obtaining the requisite authorization from the Director General of Foreign Trade. Such import, being in contravention of the provisions of the Foreign Trade (Development and Regulation) Act, 1992 read with the applicable provisions of the Foreign Trade Policy, rendered the goods liable to confiscation under Section 111(d) of the Customs Act, 1962 and, consequently, attracted penal consequences under Section 112(a)(i) of the said Act.

16.2. While upholding the confiscation of the goods and the liability to penalty in principle, we have, for the reasons recorded in paragraph 11.10 of this Order, taken note of the peculiar facts and circumstances of the case, including the nature of the dispute, the fact that the goods had been provisionally released pursuant to judicial orders passed in similar matters and the absence of any material suggestive of deliberate or contumacious conduct warranting imposition of penalty to the extent determined in the impugned order. Consequently, we have found it appropriate to interfere with the quantum of penalty and reduced the same from Rs.45,00,000/- (Rupees Forty-Five Lakhs only) to Rs.15,00,000/- (Rupees Fifteen Lakhs only), as already recorded by us in paragraph 11.10 of this Order. Accordingly, the appellant-company is liable to penalty under Section 112(a)(i) of the Customs Act, 1962, albeit to the reduced extent determined by us hereinabove.

16.3. The issue is answered in the above terms.

Issue No. VII : Penalty on Shri Atul Kamdar under Section 114AA of the Customs Act, 1962

17. The last issue which falls for consideration in the present appeals pertains to the imposition of penalty of Rs.1,85,00,000/- upon Shri Atul Kamdar, Director of M/s. Atul Automation Private Limited, under Section 114AA of the Customs Act, 1962.

17.1. We find that imposition of penalty under Section 114AA of the Customs Act, 1962 pre-supposes the existence of the essential ingredients contemplated therein. The said provision is attracted only where a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. Thus, the element of knowledge and conscious involvement assumes considerable significance.

17.2. In the present case, the principal allegation levelled by the Revenue against appellant no. 2 appears to be that his name was allegedly appearing on internet sources in connection with the overseas supplier, namely M/s. Atul International LLC, USA. We find that M/s. Atul International LLC, USA is a separate and distinct juridical entity incorporated under the laws of the United States of America, whereas M/s. Atul Automation Private Limited is a company incorporated under the Companies Act, 2013. The transactions between the two entities were admittedly conducted on a principal-to-principal basis and no material has been brought on record to establish any corporate identity, unity of interest, collusion or conscious involvement on the part of appellant no. 2.

17.3. It is an admitted position that BIS Registration Nos. R-41265640 and R-41264172 pertaining to Canon Inc. and Xerox Corporation had been issued by the competent authority and were available in the public domain. The appellant-company had relied upon the said registrations as furnished by the overseas supplier. In the absence of any evidence demonstrating that appellant no. 2 had knowledge of any alleged infirmity in the said certificates or had consciously participated in the making or use of any false document, the consequences, if any, arising out of the conduct of the overseas supplier cannot automatically be attributed to appellant no. 2.

17.4. Significantly, the impugned order is conspicuously silent as regards the specific act attributable to appellant no. 2 which would constitute making, signing, using or causing the use of any false declaration or document. Mere similarity of names or the subsequent cancellation of the BIS registrations cannot retrospectively lead to an inference that appellant no. 2 possessed the requisite knowledge at the time of import.

17.5. In our considered view, the Revenue has failed to discharge the burden of establishing that appellant no. 2 had knowingly or intentionally committed any act so as to attract the provisions of Section 114AA of the Customs Act, 1962. The essential ingredients required for invocation of the said provision are, therefore, found to be absent in the case on hand.

17.6. Consequently, the penalty imposed upon Shri Atul Kamdar under Section 114AA of the Customs Act, 1962 is set aside. The issue is answered accordingly in favour of appellant no. 2.

18. Before parting with the discussion on the individual issues, we deem it appropriate to clarify that, in view of our findings under Issue No. I, the order of confiscation of the subject goods under Section 111(d) of the Customs Act, 1962 survives solely on account of the contravention of Para 2.31(I)(b) of the Foreign Trade Policy, 2023 and the absence of the requisite authorization from the Director General of Foreign Trade.

18.1. We also deem it appropriate, in the facts and circumstances of the case, to direct that the bank guarantee furnished by the appellant shall stand adjusted towards the redemption fine and penalty payable by the appellant-company as quantified in this Order.

19. To summarise, the issues framed for determination are answered as under: -

(i) On the applicability of Para 2.31 of the Foreign Trade Policy, 2023, the imported Multi-Function Devices are held to be "electronics and IT goods" falling within the restricted category under Para 2.31(I)(b) of the Foreign Trade Policy, 2023 and, consequently, import thereof required authorization from the Director General of Foreign Trade. In the absence of such authorization, the goods are rightly held liable to confiscation under Section 111(d) of the Customs Act, 1962. However, having regard to the nature of the disputes and in the absence of any allegation of clandestine importation or misdeclaration regarding the description of the goods, we reduce the redemption fine from Rs.25,00,000/- (Rupees Twenty Five Lakhs only) to Rs.10,00,000/- (Rupees Ten Lakhs only).

(ii) The imported MFDs satisfy the criteria prescribed for Highly Specialised Equipment under Para 8 of the Electronics and Information Technology Goods (Requirements of Compulsory Registration) Order, 2021 and, therefore, the findings recorded in the impugned order regarding non-compliance with the provisions of the said Order are unsustainable. Accordingly, confiscation of the goods is not warranted on this ground.

(iii) The Revenue has failed to establish, on the basis of cogent and reliable evidence, that the imported MFDs required Equipment Type Approval from the Wireless Planning and

Coordination Wing. Consequently, confiscation of the goods cannot be sustained on this ground.

(iv) The allegations regarding contravention of the HOW Rules, 2016 have not been established in a manner known to law and, accordingly, confiscation of the imported goods is not sustainable on this ground.

(v) Mere re-determination of the assessable value on the basis of the Chartered Engineer's report and acceptance thereof by the appellant do not, by themselves, establish wilful misdeclaration. Consequently, the valuation aspect does not furnish an independent basis for confiscation of the goods or imposition of penalties.

(vi) The appellant-company is liable to penalty under Section 112(a)(i) of the Customs Act, 1962 for importation of the restricted goods without obtaining the requisite authorization under Para 2.31(I)(b) of the Foreign Trade Policy, 2023. However, having regard to the facts and circumstances of the case, the penalty is reduced from Rs.45,00,000/- (Rupees Forty-Five Lakhs only) to Rs.15,00,000/- (Rupees Fifteen Lakhs only).

(vii) The ingredients necessary for invocation of Section 114AA of the Customs Act, 1962 having not been established, the penalty imposed upon Shri Atul Kamdar under Section 114AA of the Customs Act, 1962 is set aside.

20. In view of the foregoing discussion, the impugned order is modified to the extent indicated hereinabove and the appeals are disposed of in the above manner, in accordance with law.

(Order pronounced in the open court on **23.06.2026**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd