MANALI PRASANNA TILAK
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1556 OF 2026

Commissioner of Customs NS-I .. Petitioner

Versus

Vikas Retail Private Limited .. Respondent

WITH
CUSTOM APPEAL NO. 6 OF 2025
WITH
INTERIM APPLICATION (L) NO. 38982 OF 2024
IN
CUSTOM APPEAL NO. 6 OF 2025

Commissioner of Customs NS-I .. Appellant

Versus

Leo Distributors Pvt. Ltd. .. Respondent

WITH
CUSTOM APPEAL NO. 7 OF 2025
WITH
INTERIM APPLICATION (L) NO. 39048 OF 2024
IN
CUSTOM APPEAL NO. 7 OF 2025

Commissioner of Customs NS-I .. Appellant

Versus

Aahana Consultancy Limited .. Respondent

WITH
CUSTOM APPEAL NO. 10 OF 2025
WITH
INTERIM APPLICATION (L) NO. 38981 OF 2024
IN
CUSTOM APPEAL NO. 10 OF 2025

Commissioner of Customs NS-I .. Appellant

Versus

Pioneer Trading Corporation .. Respondent

WITH

CUSTOM APPEAL (L) NO. 38143 OF 2024
WITH
INTERIM APPLICATION (L) NO. 39073 OF 2024
IN
CUSTOMS APPEAL (L) NO. 38143 OF 2024

Commissioner of Customs NS-I .. Appellant

Versus

Trans Tyres LLP .. Respondent

WITH
CUSTOM APPEAL NO. 11 OF 2025
WITH
INTERIM APPLICATION (L) NO. 38983 OF 2024
IN
CUSTOM APPEAL NO. 11 OF 2025

Commissioner of Customs NS-I .. Appellant

Versus

Tiara Enterprises .. Respondent

WITH
CUSTOM APPEAL NO. 12 OF 2025
WITH
INTERIM APPLICATION (L) NO. 38988 OF 2024
IN
CUSTOM APPEAL NO. 12 OF 2025

Commissioner of Customs NS-I .. Appellant

Versus

Vikas Retail Private Limited .. Respondent

WITH
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2726 OF 2025 (AS)

Pioneer Trading Corporation .. Petitioner
Versus
Union of India and ors .. Respondents

WITH
WRIT PETITION NO. 2731 OF 2025 (AS)

Tiara Enterprises .. Petitioner
Versus
Union of India and ors .. Respondents

WITH
WRIT PETITION NO. 2728 OF 2025 (AS)

Leo Distributors Private Limited .. Petitioner
Versus
Union of India and ors .. Respondents

WITH
WRIT PETITION NO. 2727 OF 2025

Trans Tryres LLP .. Petitioner
Versus
Union of India and ors .. Respondents

WITH
WRIT PETITION NO. 2729 OF 2025 (AS)

Vikas Retail Private Limited .. Petitioner
Versus
Union of India and ors .. Respondents

WITH
WRIT PETITION NO. 2730 OF 2025 (AS)

Aahna Consultancy Limited	..	Petitioner
Versus		
Union of India and ors	..	Respondents

..

Mr. Anil Singh, Addl. Solicitor General with Mr.Jitendra Mishra, Ms.Sangeeta Yadav, Mr.Satyaprakash Sharma, Mr.Ashutosh Mishra and Mr.Rupesh Dube, Advocates for the appellant in all Customs Appeals and Petitioner in WP Nos.1556/2026 and respondent nos.7 and 8 in WP 2727/2025, 2728/2025, 2727/2025, 2729/2025, 2031/2025 and WP 2730/2025.

Ms.Megha Gupta with Ms.Lovanita Chitayala and Ms.Pranjali Khemnar i/b Hedgehog and Fox LLP for respondent nos.5 and 6 in WP 1556/2026 and for respondents in CUAPPL 38143/2024 and CUAPPL 11/2025.

Mr.Sriram Sridharan with Mr. Dhananjay Sethuraj and P. Baxi i/b Sriram Sridharan, Advocate for the petitioner in WP Nos.2726/2025, 2728/2025, 2727/2025, 2729/2025, 2730/2023 and 2731/2025 and for respondent in WP 1556/2026, CUAPP 6/2025, CUAPP 7/2025, CUAPP 10/2025 and CUAPP 12/2025.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
RESERVED ON : 9th APRIL, 2026
PRONOUNCED : 23rd JULY, 2026

JUDGMENT :- (Per Bharati Dangre, J)

1. Six Custom Appeals, along with one Writ Petition filed by the Commissioner of Customs, are taken up for hearing with six

Writ Petitions filed by the six assessees/Importers. The common question in the group of matters listed before us involve the correct classification of tyres imported by the assessees, declared as 'Brand New All Steel Radial Mining Tyres' classifiable under Customs Tariff Item (CTI) 40118000, as Mining/Special purpose tyres, which are freely importable, whereas the stand of the Directorate of Revenue Intelligence(DRI) is that the subject tyres declared by assessees fall under CTI 40112010 i.e. Truck and Bus Radial tyres (TBR), which are 'Restricted'.

The issue that arises for determination before us is whether the goods are correctly classifiable as being CTI 40118000, freely importable under Foreign Trade Policy, or they would fall under a Restricted category, and this classification dispute arose out of several Bills of Entry of the assessees dated 20/02/2024, 18/03/2024 and 4/04/2024.

2. We have heard learned counsel Mr. Sriram Shridharan for the Assessees/Importers in the Writ Petitions filed by them, and who also represent the respondents in the Custom Appeals filed by the Commissioner of Customs. Learned Additional Solicitor General Mr. Anil Singh along with Advocate Jitendra Mishra represent the appellants in the Appeals filed by the Customs Department and the respondents in the Writ Petition filed by the six assessees.

The gist of the background facts disclosed in the writ petitions filed by the assessees, disclose that they had been importing the subject goods which were declared by them as 'Brand New All Steel Radial Mining Tyres (Size 10.00 R20-18PR; Speed Not Exceeding 65 KMPH) since the year 2019 from various countries around the world, including China, Thailand, etc. and these goods were classified under CTI 40118000 of the Customs Tariff Act, 1975.

Since the petitioners before us have an identical cause of action, and the Custom Appeals filed by the Department has the impleadment of these six assessees, for the sake of convenience, we would take up the facts in Writ Petition No.2726/2025, where the petitioner is M/s. Pioneer Trading Corporation, and as far as the Department of Customs is concerned, and there is one Writ Petition filed by the Commissioner of Customs (WP No.1556/2026) for the sake of convenience, we would refer to the facts and grounds as set out in the said Writ Petition.

3. Before we proceed to appreciate the rival claims, it is necessary to set out the brief background and the existing statutory scheme for classifying different type of goods and the provisions thereof.

The Customs Tariff Act, 1975 is the statute holding the field governing the law relating to custom duties, and the rates at which the duties of customs shall be levied under the Customs Act, 1962 are specified in the First and Second Schedules, and Chapter 40 deals with "Rubber and articles thereof" and Tariff Heading 4011 pertain to "New Pneumatic

Tyres of Rubber" under which various subject items are covered including Radial Tyres, Tyres used on buses or lorries etc. Dependent upon the use of the tyres, the goods are classified as tyres used in Aircrafts, Motor-cycles, Motor-scooters, Bicycles etc. Tariff Entry 40118000 with rate of duty at 10%, with which we are concerned, reads thus:-

> "of a kind use on construction, mining or industrial handling vehicles and machines".

4. The Bureau of Indian Standards Act, 1986 provide for establishment of a Bureau for the harmonious development of the activities of standardisation, marking and quality certification of goods, and it has defined 'Indian Standard' to mean standard established and published by the Bureau, in relation to any article or process, indicative of the quality and specification of such article or process, and it include any standard recognized by the Bureau under Clause (b) of Section 10, and any standard published and established or recognized by the Indian Standards Institution, in force immediately before the establishment of the Bureau.

The 'License' contemplated under the said Act granted under Section 15 permit the use of the Indian Standard Certification mark in relation to any article or process which conform to the Indian Standard and included license granted under the Indian Standards Institution (Certification Marks) Act, 1952.

'Mark' as per the said Act, included a device, brand, heading, label, ticket, pictorial representation, name signature, word or letter, or numeral or any combination thereof. The term 'Standard Mark' convey the certification mark specified with the Bureau to represent a particular Indian Standard.

5. Section 14 of the Act authorise the Central Government, after consulting the Bureau, to publish an order in the Official Gazette notifying any article or process of any scheduled industry, conforming to the Indian Standard and direct the use of the Standard Mark under licence as 'compulsory' on such article or process, if the Central Government was of the opinion that it is necessary or expedient to do so in public interest.

6. For governing the Pneumatic tyres, the Ministry of Commerce and Industry, in exercise of power conferred under Section 14 of the Bureau of Indian Standards Act, 1986, formulated the Pneumatic Tyres and Tubes for Automotive Vehicles (Quality Control) Order 2009, which was directed to come into force after 180 days. Clause 3 thereof prohibit any person by himself, or through any person on his behalf from manufacturing, importing, storing for sale, selling or distributing Pneumatic tyres which did not conform to the specific standard and did not bear the standard mark of the bureau on obtaining certification marked licence.

The proviso, however, exempted (a) pneumatic tyres manufactured in India for export; and (b) pneumatic tyres imported by Original Equipment Manufacturers (OEM) and/their authorised companies for fitment on vehicles or after-sales meant for exports.

The Schedule appended to the said Order 2009 classified the tyres and assigned its conformation with the prescribed IS standards and it read thus:-

1.	Automative vehicles – Pneumatic tyres for two and three wheeled motor vehicles – specifications.	IS 15627
2.	Automative vehicles-Pneumatic tyres for passenger Car vehicles-Diagonal and radial Ply-Specification	IS 15633
3.	Automative vehicles-Pneumatic Tyres for commercial vehicles – Diagonal and radial ply Specification	IS 15636
4.	Automotive vehicles – Tubes for Pneumatic Tyres - Specification	IS 13098

7. The Office Memorandum issued on 13/12/2011, excluded the following type of tyres from the Order 2009

(i) Commercial Vehicle Tyres–Certain Types of tyres identified by Speed Symbols corresponding to speed below 80 km/h marked with Speed Symbols as A (A1 to A8), B, C, D or E.
(ii) Off the Road Tyres – The specific type of tyres used for Off The Road (OTR) vehicles carrying Tyre Tread Code marking such as C(C1, C2), E(E1 to E4, E7), G (G1 to G4), L (L2 to L5, L3S to L5S), IND or NHS.
(iii) Run Flat Tyres – Tyres marked RF or similar marking and carrying the Symbol….
(iv) Collapsible Mini Tyres.

8. To be followed by the said Memorandum, on 30/01/2012, the Government of India, Central Board of Excise and Customs, Tariff Unit, issued Instructions, as regards the implementation of QCO, 2009 with reference to the exclusion of certain commercial vehicles, Off the Road, Run Flat and Collapsible Tyres not covered under QCO, 2009.

The said instructions specifically clarified that in addition to the pneumatic tyres covered by Clauses 3(A) to 3(F) of the QCO, 2009, the following types of tyres shall not be covered and this included the Commercial Vehicle Tyres identified by the speed symbols corresponding to speed below 80 km/h marked with speed symbol A, B, C D or E.

The Tariff Unit further clarified that other than the exempted pneumatic tyres, no person shall by himself or through any person on his behalf import, store for sale, sell or distribute imported pneumatic tyres that do not conform to the specific standards and do not bear the BIS Standard Mark.

9. The Foreign Trade (Development and Regulation) Act, 1992 (for short 'FTDR Act') is the legislation governing India's International Trade, which empowers the Central Government to regulate, restrict and promote the import and export of the goods, services and technology. Directorate General of Foreign Trade (DGFT) implements the foreign trade policy. The said Act contemplate a license to import or export and include a Customs Clearance Permit.

Under the said enactment, the Central Government is empowered to make the provision for prohibiting, restricting or otherwise regulating in all cases or a specified classes of cases, the import or export of goods or services or technology by an order published in the official gazette.

All goods to which any order under sub-section (2) apply are deemed to be the goods, the import or export of which has been prohibited under Section 11 of the Customs Act, 1962.

10. The Foreign Trade Policy clearly stipulate that any goods/services, the export or import of which is 'restricted' may be exported or imported only in accordance with the authorization/permission or in accordance with the procedure prescribed in the notification/public notice issued in this regard, but no such compliance is warranted when the goods are free. The Foreign Trade Policy of 2023 by clause 2.1 has clarified as below :-

2.1 Policy regarding import/Exports of Goods

(a) Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed under 'Regulatory Updates' at https://dgft.gov.in.

(b) Further, there are some items which are 'Free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.

11. Applying the import policy to new pneumatic tyres of rubber, restrictions were imposed on certain goods including Radial tyres used on buses or lorries, and this restriction necessarily contemplate its conformation to Indian Standard with reference to the speed limits.

However, some of the goods under the said category did not contain any restrictions, and this included those falling in Tariff Entry 40118000 and covered the kind used on Construction, Mining or Industrial handling vehicles and machines.

12. Governing the principles of restriction, the Director General of Foreign Trade (DGFT), through notifications, is empowered to impose prohibition or restriction and when any goods/services, the export or import of which is restricted, then it would contemplate an authorization/permission in accordance with the procedure prescribed.

By the notification issued on 12/6/2020, in exercise of the powers conferred by Section 3 of Foreign Trade (Development and Regulation) Act, 1992 read with Foreign Trade Policy 2015-2020, the Central Government amended the import policy for all items under Indian Trade Classification Harmonized System {ITC (HS)} Code, and in respect of the tyres used on buses or lorries: Radials, which under the existing policy was 'Free', under the revised policy, it became 'Restricted' and the restriction was also imposed on the tyres used on motor cars, motor cycles, motor scooters etc. Thus, by the said notification, the import policy of pneumatic tyres with the items specified therein, was amended from 'Free' to 'Restricted'.

13. It is necessary to take note of the standards prescribed by the Bureau of Indian Standards in relation to pneumatic tyres used for automotive commercial vehicles. The Standards specify the general, dimensional and performance requirements of new pneumatic tyres, designed primarily for automatic vehicles. However, it clarified that it did not apply to tyre types identified by speed symbol corresponding to speeds below 80 km/h.

While categorizing the type of pneumatic tyre, the category of use was one of the criteria to be applied and this comprised of two specific uses

(1) Normal - Normal-road-use-tyres.
(2) Special - Special-use tyre, for example tyre for mixed use (both on and off the road) and /or restricted speed;
(3) Snow Tyre;
(d) Structure [diagonal (bias-ply), radia];
(e) Speed category;
(f) Load indices or maximum load and ply rating; and
(g) Nominal cross-section – Dimension when fitted to specific rim.

As far as the factor of speed is concerned, the Indian Standard (IS) prescribes that the speed indicated by a symbol at which the tyre can carry the load indicated by the associated Load Index or Maximum Load Capacity and the maximum speed which the tyre can sustain, to be expressed by speed symbol given in Table-3 and this contemplated speed from 80 km/h to 120 km/h with the speed symbol F to H.

The Indian Standards specify that the tyres shall be permanently and legibly marked on both sidewalls in case of symmetrical tyres and atleast on the outer sidewall in case of asymmetrical tyre, and in respect of speed symbol, an indication of the tyre's normal speed symbol, in form of the symbol set out in clause 3.28 is to be marked.

The BIS 2022 with regards to the Pneumatic tyres, revised the standards based on the international standards, including the Truck and Bus tyres with varying tyre capabilities and laboratory test methods as well as the new pneumatic tyres for vehicles other than passenger cars. Thus, IS 15636:2022, which specified the general, dimensional and performance requirements of new pneumatic tyres designed primarily, but not only for vehicles as defined in IS 14272:2011 but it specifically clarified that it do not apply to tyre types, identified by speed symbols corresponding to speed below 80 km/h.

As per IS 15636:2022, the speed symbol indicated by a symbol at which the tyre can carry load indicated by the Associated Load Index or Maximum Rated Load, was also expressed in Table-3 and the test requirements contemplated tyre dimensions, endurance test, load/speed performance test, tread wear indicators, tyres strength tests. The markings as prescribed in IS 15636:2022 contemplate (a) manufacturer's name or trade name; (b) Tyre size designation as given (c) an indication of the structure as below :-

(1) On diagonal (bias-ply) tyre: The character '-' or the letter 'D' placed in front of the rim-diameter marking:
(2) On radial-ply tyres: The letter 'R' placed in front of the rim-diameter marking and, optionally, the word 'RADIAL':

It also continued with the original standard of speed symbol and indication of its nominal speed and the second speed symbol, if applicable in form of symbol specified in 3.28. Once again, it covered speed from 80-120 km/h and speed below 80km/h did not fall within the purview of IS 1536:2022.

14. It is in the background of the above statutory scheme, we have to appreciate the facts involved in the proceedings before us.

The assessees before us have been importing subject goods from various countries including, China, Thailand, their goods being classified under CTI 40118000 of the Custom Tariff Act, 1975, which are 'New Pneumatic tyre of rubber, of a kind used for Construction, Mining or Industrial handling vehicles and machines'. According to the assessee, their goods were classified and described as 'Truck-Mining Tyres' and the goods had received regular clearance with no obstacle or objection being raised. With the notification issued on 12/6/2020, incorporating the import policy for various goods falling under Customs Tariff Heading (CTH) 4011 was amended from 'Free' to 'Restricted' and it also included tyres falling under CTI 4011 2010 Radial tyres.

As a result of this, with effect from 12/6/2020, Truck, Buses and Radial tyres (TBR), could be imported only if they are compliant with Bureau of Indian Standards IS 15636. It is the specific case of the assessee that, even after coming into force of the said notification, their goods were cleared without any objection as in the Bills of Entry, the goods were described as "Brand New Radial Mining Tyres" (Size 1000 R 20-18 PR) (Speed not exceed 65 km/ph) and they continued to be classified under CTI 40118000.

15. In 2020, one of the importer, Pioneer Trading Corporation sent a sample of goods to Indian Rubber Manufacturers Research Association (IRMRA) for testing purpose as it is an Authority, which undertakes testing of tyres as per Bureau of Indian Standards, and it ensure that rubber products, including tyres, meet the quality standards set up by the Ministry of Commerce and Industry.

The IRMRA vide test report dated 10/9/2020 certified that the 'intended for use of subject goods was mining application' and the remark in the column read as below :-

> "From the observed markings, the "Intended for use" of submitted tyre 10.00R20 1491/146D 18 PR BRAVIA MA GOLD TUBETYPE, REGROOVABLE is Mining applications."

Once again, in the year 2021, when Pioneer Trading Corporation forwarded the samples, a report was received from IRMRA on 4/3/2021 which confirmed that the tyres are suitable for mining applications.

16. Till the year 2022, the assessees successfully imported the subject goods with different Bills of Entry, with the goods classified under CTI 40118000.

In the year 2022, the consignments of the very same tyres, identical in size, Construction ply rating (18PR), speed category 'D' not exceeding 65 km/h, sidewall markings and declared end use, were imported by the assessees, by classifying them under CTI 40118000. This consignment was detained by the Central Intelligence Unit (CIU) on the suspicion of having been misclassified, though they fell under CTI 4011 2010.

The CIU itself forwarded representative samples to IRMRA for technical testing and on 15/9/2022, it was reported that the tyre is not under the scope of IS 15636:2012 due to speed symbol marked as 'D' i.e. 65 km/h maximum and moreover IS 15636:2012 is not suggesting any particular category speed symbol for tyre sizes listed in 'Indian Standard' and it completely depend upon manufacturer's design. Further, with reference to the endurance test, which is to be a specific test, according to the speed category, identified/marked on tyres, it was indicated that Table 26 therein, did not specify any value for test drum speed for speed symbol 'D' of forwarded samples, and due to unavailability of 'Test Drum Speed' for tyres identified by speed symbol 'D' in IS 15636:2012, no endurance test can be conducted.

The report, therefore, concluded thus :-

> "From the possible markings test observations, The Intended for Use of the sealed sent sample is MINING & LOGGING OFF THE ROAD applications'

17. Based upon the said report, the Department issued 'No Objection Certificate' (NOC) on 16/9/2022 and 3/10/2022, and released the goods for home consumption, thereby affirming the correctness of classification under CTI 40118000.

The disputed period giving rise to the proceedings before us, is between 20/2/2024 and 4/4/2024, when the assessees imported consignment of the subject goods in accordance with the settled and accepted classification, affirmed by the Department in 2022, pursuant to the investigation and testing carried out by CIU and classifying the goods as CTI 40118000. The investigation was initiated by Directorate of Revenue Intelligence (DRI), staking its claim that the goods of the assessees ought to be classified under CTI 40112010 as 'Restricted Truck and Bus Radial tyres' and not under CTI 40118000.

Pursuant thereto, the subject goods were seized on 6/3/2024 from the Nhava Sheva port as well as the godowns of the assessees. The DRI forwarded samples of the subject goods to IRMRA for testing and this time, while forwarding the sample, it requested the authority to ignore the speed mark embossed on the sidewalls of the tyres and evaluate the goods on the basis of the specified assumptions and parameters.

18. On the goods being seized, an application for provisional release under Section 110A of the Customs Act, 1962 was preferred by all the six assessees/importers, and it continued to harp on its demand for provisional release, but it did not yield any result.

In reference to the said request, the DRI communicated with the Commissioner of Customs, Nhava Sheva that the imported consignments which were seized, reveal that the assessees were getting embossed “D” mark, mining symbol and other marking to circumvent the policy restrictions imposed on the import of TBR tyres, and with regard to the request for release, it was decided that at the stage of investigation, NOC for provisional release of consignments cannot be granted because the investigation, so far revealed that the goods were imported by way of misdeclaration, and in violation of the policy restriction and more particularly, when there was a requirement of BIS Certification for import of such tyres in India.

19. It is worth to note that the consignments of the assessees were put on hold at Nhava Sheva Port as well as Mundra Port vide different bills of entries dated 20/2/2024. The petitioners/assessees were constrained to approach this Court, seeking a declaration that the action of the respondents in seizing the Radial Mining tyres vide seizure memos, was illegal, improper and in excess of their Authority and the petitioner sought provisional release of the goods during the pendency of the petition.

During the hearing, the counsel for the petitioners prayed for a limited relief of directing the Custom authorities to decide the applications for provisional release, and thereupon by order dated 07/5/2024, the petition was disposed of, directing the Commissioner of Customs to decide the application in a time bound manner.

The aforesaid directions resulted into an Order-in-Original passed by the Commissioner of Customs, rejecting the application for provisional release of consignments filed by the assessees and this rejection was primarily based upon a finding that the goods i.e. 'mining tyres' were seized under Section 110 of the Customs Act and the matter was pending for investigation with DRI, regarding whether the impugned consignments imported by the assessees are 'Truck and Bus Radial' (TBR) tyres classifiable under CTI 40112010 instead of 'Mining/off the Road' tyres classified by the assessees under CTI 40118000.

The Joint Commissioner of Customs rendered a finding that the investigation has revealed that the assessees were getting embossed 'D' marked mining symbol and other markings to circumvent the policy restrictions and since the matter was under investigation, the NOC could not be granted, in the wake of para 2(ii) of the Board Circular No.35/2017-Cus dated 16/8/2017, to the effect that "Goods that do not fulfill the statutory compliance requirements/obligations in terms of any Act, Rule, Regulation or any other law for the time being in force", did not permit its provisional release.

20. Being aggrieved by the order passed by the adjudicating authority, the Individual Assessees approached the Appellate Authority, the Commissioner of Customs (Appeals) and six Appeals were separately filed, relating to the seized consignments with reference to 22 Bills of Entry where the assessee had declared the seized goods under CTI 40118000.

The Appeals were filed on the ground that the impugned order passed was without application of mind and the import documents as well as Bills of Entry confirmed that the goods are Off the road/Mining tyres covered under HSN Code 40118000, and it was specifically contended that the Department of International Policy and Promotion had issued an Office Memorandum (OM) on 13/12/2011, exempting certain types of tyres from mandatory BIS registration which included Off The Road (OTR tyres) as well as such type of tyres corresponding to speed below 80 km/h with speed symbol 'A to E', and the said classification was further subsumed by the Ministry of Finance in its Circular dated 30/1/2012. Before the Appellate Authority, the assessees adopted a specific stand that the goods imported by them are covered by the said OM and Circular, which exempted them from mandatory BIS registration, and therefore, there was no question of mis-classifying the said goods.

The Appellate Authority considered the provisions contained in Section 110A of the Customs Act, 1962, pertaining to provisional release, but reliance was placed upon clause (2) of the Circular dated 16/8/2017, which prescribed that provisional release shall not be allowed in respect of 'Prohibited' goods under the Customs Act, or any other law for the time being in force.

Prohibited Goods is defined in Section 2(33) of the Customs Act, as ‘any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force’.

In the wake of the aforesaid, it was concluded that import of commercial tyres intended for use in heavy vehicles for transport are in ‘Restricted’ category and are only allowed on compliance of Indian Standards (IS) prescribed by the Government, and the investigation had revealed that the tyres are being used in the Commercial Vehicles and not for the intended purpose, and therefore, the finding of the Adjudicating Authority did not warrant any interference. In specific, the Appellate Authority observed thus :-

> “6.8 I am of the opinion that as per provisions of Section 110A of the Customs Act, 1962, the appellants have right to get the release of seized goods, however, at the same time, the adjudicating authority has to ensure the larger public interest and the interest of revenue. I find that it is a settled law that when there is a conflict between the public interest and private rights the public interest always prevail. In this regard, I rely upon the judgment in case of Gulam Abbas Vs. State of Uttar Pradesh (1982) 1 SCC 71, wherein the Hon’ble Supreme Court of India has held that “.... it is obvious that when there is a conflict between the public interest and private rights the former must prevail....”

Recording that the provisional release of the seized subject goods will lead to their future use in the local market in commercial heavy vehicles and keeping in view the road safety and public interest, it was held that the Adjudicating Authority had rightly rejected the request of the appellant for provisional release of the seized goods.

21. The aforesaid rejection by the Appellate Authority resulted in filing of six Customs Appeals before the Custom Excise and Service Tax Appellate Tribunal, (CESTAT) Mumbai, West Zonal Bench, and on due consideration of all the counter submissions, the CESTAT set aside the impugned order passed in Appeal and directed provisional release of the goods within two weeks from the release of the order, but made it subject to the following conditions :-

> (i) The importer shall furnish a bond for the value of the goods imported and seized;
>
> (ii) The importer shall also furnish a bank guarantee equivalent to five percent of the value of the goods;
>
> (iii) The importer shall furnish an undertaking that the goods shall not be sold to the dealers or the end-users who sell/use the tyres for vehicles plying on the road i.e. trucks, buses etc.

The aforesaid conclusion is reached by CESTAT on the basis of a detailed analysis of the rival submissions advanced, with the contention of the appellants being that the tyres of a kind used in Mining and other Off-road purposes, whereas the Department apprehended that the tyres are being misused as Trucks and Bus Tyres.

22. The CESTAT specifically rendered a finding as below :-

> "We find that the impugned goods are not subjected to any tests/analysis by any authority having technical competence. The apprehension of the department is on the basis of a statement, of Shri Pannalal Choudhary, who looks after maintenance of trucks belonging to M/s.Vikas Road Carriers Ltd, stating that these tyres are being used for trucks and buses. However, we find that no corelation has been made to identify the tyres imported by the appellants and the subsequent misuse, if any, thereof. It is settled principle of

> law that the classification of the goods is to be made with reference to the technical parameters of the goods in the condition in which they are imported and end-use or subsequent possible misuse cannot be a criteria for the classification of the goods. It is the contention of the Department that the imported tyres are of a kind used for buses and trucks on the road and are classifiable under CTH 4011 2010 and that the appellants are import in the same and trying to classify them under CETH 4011 8000 and are also arranging to mark the tyres with symbols to show that they are useful only for vehicles used for mining etc. However, we find that as of now the allegation is not established and the investigation is in progress. As of now based on the import documents the impugned goods are liable to be classified under CTH 4011 8000."

The Tribunal, therefore, concluded that the impugned orders had failed to appreciate the Circular dated 16/8/2017, to reach a conclusion that the goods prohibited under the Customs Act, 1962, or any other Act for the time being in force, may not be released provisionally, but according to CESTAT, the Circular advised that the prohibited goods may not be released provisionally, but the nature of the impugned goods being 'Prohibited', was yet to be established, and no test report was placed on record to conclude that they were prohibited goods.

23. The office of the Commissioner of Customs, once again made an attempt to oppose the provisional release of the goods of the assessee by filing an application under Section 129B(2) of the Customs Act for Rectification of Mistake (RoM) in the order dated 25/7/2024, and the application met the same fate, as the original order of which the rectification was sought, as they were rejected on 29/8/2024.

24. It is in this sequence of events, the Commissioner of Customs has filed Writ Petition No.1556/2026, by impleading all the six assessees as respondents, calling in question the impugned final order passed by CESTAT, and also the order passed on the Rectification of Mistakes (ROM) Applications. On the other hand, the six assessees/importers have filed six Writ Petitions, praying for implementation of the final order passed in their favour and praying for release of their goods forthwith, as CESTAT had directed its release, and though there was no stay granted in the proceedings filed by the Commissioner of Customs, the order dated 25/7/2024 is not complied, despite lapse of more than six months.

Alleging that the non-implementation of the order is a clear defiance of the order of the Tribunal and despite the repeated request being made to ensure compliance of the terms of the order dated 25/7/2024 since there was a failure on part of the respondents to release the subject goods, six Writ Petitions are instituted by the assessees.

25. At this stage, it would also be necessary for us to refer to the orders passed by this Court in the proceedings and on 24/10/2024, while hearing the Writ Petition filed by the Commissioner of Customs, it was noted that the Tribunal on 29/8/2024 had dismissed the Miscellaneous Application filed by the Department which was also impugned in the said Writ Petition and it was recorded that during the course of hearing of the original Appeal, the Bench had asked the authorised representative of the Department as to why tests are not conducted in respect of impugned consignments and he replied that no such test reports are available. However, during the hearing of the Rectification Application, he conceded that IRMRA reports were not earlier filed or brought to the notice of the Bench, but the same were produced now and the Revenue then claims that there was a mistake apparent on the record while passing a final order. However, in paragraph no.7 of the order, CESTAT concluded thus :-

> "We are of the opinion that there was no mistake apparent on record as the Bench was denied an opportunity of going through the documents which have submitted now by the Revenue. We find that it is a clear case of after-thought by the Revenue and therefore, we find that as per provisions of Section 129(B)2, Revenue is not free to agitate the very same matter on a different ground which was neither raised during the original hearing, nor the documents were made available to the Bench …."

26. On noting the aforesaid, according to the Division Bench, it was a serious matter that required consideration, and in particular, when the case involved huge financial stakes. The Bench specifically expressed thus :

> "The departmental officials/representatives wield powers, but they hold such power in trust and on the condition that it is diligently and responsibly exercised. May be there are some explanations, but allowing such a mater to go uninquiring into does not commend to us."

Therefore, the Joint Chief Department Representative, Mumbai Bench, CESTAT was directed to conduct a detailed inquiry into the said aspect and file a compliance report before the Court.

27. In compliance, a report was produced before the Court and in the order dated 26/11/2024, it was noted that at the time of sending of the comments vide letter dated 3/5/2024, the process of testing was incomplete as test reports of only 2 of the 41 samples tested were available and there was an apprehension that the assessees may attempt to tamper the evidence and the test reports and therefore, the report of the initial samples being tested were not shared with anyone.

28. Taking note of the aforesaid stand, this Court recorded that Shri Deepak Sharma had vehemently pleaded before the Bench that DRI must be conducting test on samples, but no test report was on record, and it was his stand that he never conceded that the goods are not being tested and there was no test report. The Bench noted the apparent contradiction in the narrative of Mr. Sharma and issued notice to him.

A statement was also made before the Court that the Department will institute Custom Appeals against the Tribunal's order dated 25/7/2024 and pursuant thereto, six Appeals are instituted by the Commissioner of Customs which are tagged along with the Writ Petition filed by it.

29. One important development which necessitate its mention at this stage, is the order dated 18/3/2025 when the Writ Petition filed by the Commissioner of Customs was under consideration.

The counsel for the Customs Department specifically contended that a significant share of imports by the Assessees pertained to a distinct model of tyres and the samples of the above tyres were drawn and collected by DRI and was currently with IRMRA. Noting that the tyres identified by speed symbols corresponding to speed below 80 km/h are excluded from the scope of IS 15636:2022 and when the assessee claimed that the tyres in question are marked with speed symbol 'D' corresponding to speed less than 65 km/hr and therefore, the IS 2022 is not applicable which has defined "special use tyres".

30. Making reference to the IS 15632:2022 where no tests are specified for the special use tyres, the Division Bench noted thus :-

> "11. In 2024, the disputed goods were tested by IRMRA. However, the tests were carried out on the specific assumptions/requests of the DRI. The letter by DRI requesting the IRMRA to test the subject goods as per specific assumptions is annexed at Exhibit-G to the additional affidavit dated 17th March, 2025 filed by the DRI (respondent nos.7 and 8). According to the respondents – importers, importers, as per the test reports of IRMRA, the tests were not conducted on the basis of IS 15636:2022. In other words, despite the tires being categorized as "D" marking (i.e., speed not to exceed 65 km/hr), the disputed goods were tested as "J/K" category (i.e., speed not to exceed 100 km/hr or 110 km/hr).
>
> 12. In light of the foregoing, the tests mentioned in paragraph 10 shall be conducted by IRMRA. This is on account of the fact that in 2022, similar tests were conducted by IRMRA (in terms of IS 15636:2022) when samples were drawn and forwarded by Central Intelligence Unit ('CIU'). IRMRA vide the test reports dated 15th September 2022, certified that the intended use of the tires was mining applications. Apart from the above tests, the IRMRA shall carry out any other test that it deems fit to determine whether the imported tires are of a kind used on construction, mining or industrial handling vehicles and machines. In the event the IRMRA also decides to do a speed test on the tires, the test report should indicate clearly

that at what speed the tires were tested and the duration of the test as well as the wear and tear, if any, on the said tires. We would request the IRMRA to conduct this test as expeditiously as possible and in any event, within a period of three weeks from today and submit its report to this Court in a sealed cover."

The aforesaid order was corrected by Speaking to the Minutes on 21/3/2025, to including some more models of tyres imported.

31. In pursuance to the said order, the IRMRA has furnished its report on 11/4/2025, under the title "Determining whether the tyres in question are Special use tyres or Normal use tyres"

We have perused the said Report which has tested the samples and the final opinion expressed by applying various tests, is to the following effect :-

"3. Opinions & Interpretations

Opinions and interpretations are based on the available standards and guidelines as on date:
3.1 Based on the markings (Speed Symbol D) available on the sidewall of the tires, the tires were classified as "Special Use Tires.
3.2 The suitability of the subject tires for "Normal on Road Highways applications" was declared based on the specific test carried out as per IS 15636:2022, irrespective of the speed symbol marked on Tire as per the customer's request.
3.3 In the absence of clear & specific guidelines and criteria for the classification of tires as use Tires" or "Normal Road Use Tires" either on the basis of specific performance testing such as endurance test, load-speed performance, plunger etc. or on the basis of Tread Pattern Test, Tread Depth Test and Sidewall Thickness Test, **laboratory not in position to state or determine whether the tires are "Special – use Tires" or "Normal Road Use Tires.**
3.4 It is also worthwhile to mention here that the subject matter is under the discussion in TED7 (AUTOMOTIVE TYRES, TUBES AND RIMS SECTIONAL COMMITTEE) of BIS which is an apex national standardization body.

32. Learned Senior Counsel Mr. Anil Singh along with Mr. Mishra representing the Petitioners/the Appellants, Commissioner of Customs, while mounting a challenge to the impugned order would submit that CESTAT has proceeded on a footing that there was no test report available corroborating the allegation of the Department that the imported tyres are TBR tyres and not Mining tyres. However, now the test reports being available, which fully corroborate the allegation of the Department, it is submitted that merely because the reports were not submitted before the CESTAT at the time of hearing of the Appeals filed by the Assessees, the CESTAT was wrong in not considering the said reports and permitting the provisional release of the goods, which were prima facie established to be 'prohibited goods'.

He would, therefore, insist that the matter shall be remanded back to the CESTAT to decide the application for provisional release afresh.

Relying on the affidavits filed before the Court by the DRI, he would submit that a justification is offered, why the test reports could not be submitted before the CESTAT at the time of hearing and before passing of order dated 25/07/2024. However, with reference to the affidavit dated 16/03/2025, Mr.Singh would submit that the imported tyres are 'prohibited goods' and, therefore, do not deserve its release provisionally. The affidavit adopt a specific stand that the import of tyres itself was in gross violation of the policy restrictions of DGFT and without BIS certificate and the affidavit has placed reliance upon the Whatsapp chat between the representative of Chinese manufacturer and the importers and reliance is placed upon the statements of various assessees, which would reflect the violation.

Mr.Singh would, therefore, rely upon the material as contained in the affidavit, to establish that the assessees along with their counterpart i.e. the Chinese manufacturer have embossed 'D' mark on the side wall of the tyres, so as to avoid DGFT restrictions and BIS requirements. According to him, IRMRA test report has confirmed the speed of the specimen forwarded as 100km/h or above, but the assessees have declared the maximum speed limit of the subject goods as 65km/h in the Bills of Entry and since they were embossed with mark 'D', the testing proceeded on an assumption that the speed do not exceed 65km/h.

Reliance is placed upon the statements of assessees and their employees and it is inferred from it that the tyres imported in the past with such declaration are found to be used in trucks for transportation of the goods. It is also alleged that the assesses changed the customs documents like commercial invoices, Bill of Lading etc, when they came to know about the DRI investigation. Further, some e-mails have been recovered during the course of investigation, wherein the assessees have claimed damages from the Chinese manufacturer in respect of the tyres of some model (imported as mining tyres with maximum speed of 65 km/h), showing the speed in 'J' category.

33. Inviting our attention to the financial implications, Mr.Singh would urge that in view of the policy restrictions by DGFT, in 2019 the import of TBR tyres was worth Rs.365 crores, whereas the import of mining tyres was worth Rs.15 crores approximately. However, after the policy restrictions, the import of TBR tyres showed significant decline to Rs.162 crores in 2020, Rs.104 crores in 2021, Rs.70 crores in 2022 and Rs.18 crores in 2023. On the other hand, there is a stark increase in the import of Mining tyres and from Rs.39 crores in 2020, it has enhanced to Rs.98 crores in 2021, Rs.182 crores in 2022 and Rs.491 crores in 2023.

According to Mr.Singh, the claim of the assessees that the imported tyres are 'special use tyres' and not 'normal use tyres', deserve to be tested by applying the various tests, including Tread Pattern Test, Tread Depth Test or Sidewall Thickness Test, but these tests are of no use in the facts and circumstances of the case, in the wake of 67th Session of Harmonized System (HS) Committee of the World Customs Organization (WCO), which has decided that Pneumatic tyres of rubber, intended for vehicles for the transportation of goods in construction, mining or industry shall be classified under Customs Tariff Subheading 4011 2010, which corresponds to new Pneumatic tyres of rubber, of a kind used in buses or lorries and it do not have reference to 'Treads'. He would specifically emphasize on the fact that the crucial test to be applied is, whether imported tyres are suitable for bus and truck/lorries and if they are, then they fall under restricted category as per DGFT policy of 2020 and must comply with BIS standards.

He would place reliance upon the decision of the Hon'ble Supreme Court in case of ***Union of India Vs. Raj Grow Impex LLP***[1], which has answered the question as to what goods are of prohibited category in the backdrop of the Foreign Trade (Development and Regulation) Act, 1992 and heavy reliance is placed upon the observations contained in paragraphs 66 and 67 of the said decision.

Mr.Singh would also place reliance upon the decision of this Court in the case of ***Glamstone Cosmetics Pvt. Ltd. Vs. Union of India (Writ Petition No.957 of 2026).***

34. Per contra, the learned counsel Mr.Sridharan representing the Importers/assessees in the backdrop facts, would assert that the subject goods are correctly classifiable under CTI 4011 8000, which are 'freely importable'. He would submit that the classification adopted by the assessees is based on long standing past practice and this was consistently accepted by the Customs Department itself, including approval by the Central Intelligence Unit. Based on this understanding, the assessees had been undertaking frequent import of the subject goods since 2019 and they had adopted the same description of the goods and classification, but no objection was ever raised by

1 2021(377) E.L.T. 145 (S.C.)

the Department and the goods received clearance. In the year 2020 and 2021, the assessees *suo moto* got the subject goods tested by IRMRA, which confirmed the intended use of tyres as 'Mining application'.

Further, according to Mr. Sridharan, in the year 2022, when identical goods of those which form part of the present consignment were detained by CIU on a suspicion of misclassification, the samples were forwarded by the Department to IRMRA and the test reports, once again confirmed that the tyres were intended for mining/off-the-road use and the Department granted clearance.

According to Mr.Sridharan, the subject goods fulfill the testing parameters laid down under the UN standards and they are classifiable as Off-the-road tyres/Mining tyres and by relying upon the parameters set by the Bureau of Indian Standards (BIS), he has invoked IS 15636:2022 dealing with automotive vehicles- pneumatic tyres for commercial vehicles, and according to him, the said standards cover tyres which correspond the speed above 80 km/h and they are not applicable to the subject goods, which are declared to have speed not exceeding 65 km/ph.

He would invoke the clauses of the UN Standards, prescribed for classification as professional Off-road tyres and, according to him, the subject goods fulfill all the relevant criteria, which establish that they are off-road mining purpose tyres and for this purpose, reliance is placed upon the

Certificate of Inspection dated 04/11/2024, issued by the Chartered Mechanical Engineer as well as a letter from one of the suppliers, Cantop International (Qingdao) Co. Ltd. affirming that the off-road tyre depth is more than 16mm and void to fill ratio is more than 35%, which is sufficient to establish that the subject tyres are rightly classifiable under CTI 4011 8000.

He would also canvass before us as to why the subject goods are not classifiable under CTI 4011 2010, as according to him, the reliance placed by the Department on the test report is not justiciable, as the request to carry out the tests was based on specific request and assumptions dictated by the Department, which is highly impermissible. According to him, the subject goods imported by the assessees bear symbol 'D', corresponding to a maximum designed speed of 65km/h and the tyres identified by such speed symbol are excluded from the scope of IS 15636:2022, as it is intended to cover speed exceeding 80km/h and above. This exclusion, according to Mr. Sridharan, is further reinforced by the statutory framework under the pneumatic tyres and tubes for Automotive Vehicles (Quality Control) Order, 2009 read with the binding classifications issued by the Department of Industrial Policy and Promotion dated 13/12/2011 and the CBEC Instruction dated 30/01/2012, which unequivocally exclude tyres bearing speed symbols 'A to E' from the Quality Control Regime. Thus, according to him, the subject tyres being identified by speed symbol ‘D’ fall outside the purview of IS 15636:2022.

In addition, he would submit that in the order passed by this Court on 18/03/2025, the Court had noted that IRMRA itself acknowledged that the earlier reports furnished to the DRI were issued only in response to the specific requests made by the DRI, including a direction to conduct testing as per BIS standards irrespective of the speed symbol marked on the tyres and IRMRA further confirmed that the tests were conducted on an assumed higher speed category, contrary to the manufacturer’s embossed marking and, therefore, according to Mr.Sridharan, the report could not have been relied upon.

35. Mr.Sridharan is extremely critical about the Department’s conduct, which had been consistently granting clearance for identical goods imported by other assessees in the years 2025 and 2026, but in respect of the assessees, who are before the Court, the said benefit is denied and this is despite the fact that the CESTAT has granted provisional release of the goods, based on the fulfillment of certain conditions and the conditions have been fulfilled.

By way of an additional affidavit, the Petitioners (6 Assessees) have placed the details of the Bills of Entry to whom the Customs Department has granted clearance, and as it is evident from the Bills of Entry, the goods of the same description falling under the same classification have been allowed clearance without any objection at Mundra Port and, therefore, the question is raised as to how can there be a discrimination in respect of the same subject goods at different Ports.

According to the learned counsel, the reliance upon the decision in the case of ***Raj Grow Impex LLP***(supra) is wholly misplaced and he has placed before us the distinguishing factors to distinguish the ratio flowing from the said decision, when it was noted that the imports were made in violation of the prescribed quantitative restrictions which defeated the very object of the policy and pose serious adverse consequences to the national economy. Thus, in the opinion of the learned counsel, ***Raj Grow Impex LLP***(supra), do not lay down any proposition that every disputed import involving the restricted items, must be treated as 'prohibited' and nor does it bar the provisional release under Section 110A of the Customs Act, where the very classification of the goods is under dispute.

36. Without prejudice to the aforesaid submissions, Mr.Sridharan would submit that even if it is assumed that the subject goods are 'prohibited', the denial of provisional release is unsustainable, as a mere allegation of prohibition cannot justify indefinite detention of goods pending adjudication, particularly when the statutory framework itself contemplate multiple possible outcomes in respect of such goods.

Reliance is placed upon Section 125 of the Customs Act, 1962, when the goods are held to be prohibited, the Adjudicating Authority is vested with discretion, either to order absolute confiscation or permit redemption of goods upon payment of redemption fine. Thus, even under this provision, absolute confiscation is not an automatic consequence and rather in the cases, where goods are not prohibited, an option of redemption is available is his contention. Thus, according to Mr.Sridharan, the statute draws a clear distinction between Prohibited and Non-Prohibited goods and in any case, presently when there is no conclusive finding that the goods are 'Prohibited', in such a case, the order of the CESTAT directing the provisional release is perfectly within the framework of the statute. Reliance is placed upon the decision of the Apex Court in the ***Commissioner of Customs Vs. Atul Automation Pvt. Ltd.***[2], which has distinguished between the 'Restricted' and 'prohibited' goods. Reliance is also placed upon the following decisions of Madras High Court :-

(1) Commissioner of Customs (Sea Port-Import), Chennai Vs. City Office Equipments[3]***;***

(2) Black Gold Technologies Vs. Union of India[4]***; and***

(3) Yash Oro India Private Limited Vs. Principal Commissioner of Customs, Chennai-VII[5]

In the wake of the aforesaid, Mr.Sridharan would insist on release of the goods in compliance of the directions of the CESTAT, as the assessees have ensured compliance of the conditions, subject to which the provisional release is granted.

36. In the wake of the power being conferred by Section 14

2 [2019 (365)E.L.T. 465 (S.C.)]
3 [2019(336) E.L.T. 19 (Mad.)]
4 [2020(384) E.L.T. 507 (Mad.)]
5 [2024(389)E.L.T. 169 (Mad.)]

of the Bureau of Indian Standards Act, 1986 the Central Government/Ministry of Commerce and Industry, after consulting the bureau, declared the 'Pneumatic Tyres and Tubes for Automotive Vehicles (Quality Control) Order 2009, which prohibit manufacture, sell, distribution, etc. of Pneumatic Tyres which did not conform to the specified standard and did not bear the standard mark of the bureau on obtaining certification marks license. However, this prohibition did not apply to Pneumatic tyres manufactured in India for export or pneumatic tyres imported by Original Equipment Manufacturers (OEM) and/or their authorised companies for fitment on vehicles meant for export.

The said order prescribe standards for different type of pneumatic tyres and IS 15636 was made applicable to 'pneumatic tyres for commercial vehicles – diagonal and radial ply specification'.

Based upon the aforesaid directives, it is the submission of the assessee that the QCO, 2009 excluded commercial vehicle tyres which are identified by speed symbols and symbol 'D' is one of them and these tyres were never subjected to restriction of bearing the BIS Standard Mark.

37. Our attention is invited to the IS 15636, which was prescribed for Automotive Vehicles-Pneumatic Tyres for Commercial Vehicles and the Indian Standards, categorized the pneumatic tyres based upon its manufacturer's name and brand name, tyres size designation and category of use.

Dependent upon the category of use the tyres were further classified as normal road use, special use and/or restricted-speed applications.

One of the specifications in IS 15636 pertain to speed symbol, which was indicated by a symbol at which the tyre can carry the load indicated by the Associated Load-Index or Maximum Rated Load. The maximum speed which the tyre can sustain was expressed by speed symbol in Table 3 and as per IS 15636:2012, speed symbol F to H were allotted for corresponding speed starting at 80 km/h to to 210 km/h.

Symbol 'D' do not find place in IS 15636, clearly indicating that the tyre with speed limit below 80 km/h is not covered by IS 15636. Since the tyre with marking 'D' was not covered by IS 15636, which was the requirement of QCO, 2009, it is the Petitioners/Assessees contention that the tyres imported by them with mark 'D' could not have been imposed with the condition of it being in conformity with the BIS Standards as these tyres were excluded and this was evident from the first revision of Indian Standard 15636:2012.

38. Indian Trade Classification (Harmonized System) (for short "ITC(HS)") classify goods into free, restricted or prohibited by adopting 8 digit coding system managed by the Director General of Foreign Trade (DGFT). It has set out the general provisions governing import and export of goods and services and exports and imports are 'Free', unless regulated by way of a 'Prohibition' or 'Restriction' or exclusive trading through State Trading Enterprises as laid down in the ITC(HS) of Exports and Imports.

The Import/Export Policy for all goods is indicated against each item in ITC(HS) as set out in the Schedule and it clearly contemplate that the domestic laws/rules/orders/ regulations/technical specifications/environmental, safety and health norms applicable to domestically produced goods shall apply *mutatis mutandis* to imported goods unless specifically exempted. However, the goods to be utilized/consumed in manufacture of export products as notified by DGFT are exempted from domestic standards/quality specifications.

DGFT, through a Notification is empowered to impose restrictions on export and import which is necessary for various purposes including protection of public morals, human, animal or plant life or health etc. Any goods/services, the export or import of which is 'restricted' may be exported or imported only in accordance with an authorization/permission or in accordance with the procedure prescribed in the Notification/public notice issued in this regard.

The Foreign Trade Policy (FTP) declare from time to time, has categorized the goods as 'Free' when they can enter without licence or 'Restricted' when the goods require a specific import licence or prior approval from the designated authorities including Bureau of Indian Standards (BIS).

Prohibited goods are the goods, import or export of which is subject to any prohibition under the Customs Act, 1962 or any other law for the time being in force and the regime for prohibited goods is specifically set out under Chapter IV of the Customs Act, where the Central Government is empowered to prohibit either absolutely or subject to such conditions as may be prescribed in the Notification, the import or export of goods of any specified description and this shall include various purposes, one of the prime being prevention of smuggling and conservation of foreign exchange and safeguarding the balance of payments apart from various other purposes enumerated in Section 11(2).

Sub-section (3), however, make it absolutely clear that any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force or any rule or regulation made or any order or notification issued, shall be executed under the provisions of the Customs Act only if such prohibition or restriction is notified under the provisions of the Customs Act, subject to such exceptions, modifications or adaptations as the Central Government may deem fit.

39. The Foreign Trade Policy, 2023 made exports and imports free except when regulated. It is in exercise of the power conferred by Section 3 of the FT (DR), 1992 and the Foreign Trade Policy, 2015-2020 amended by the Central Government from time to time, a Notification was issued on 12/06/2020 by Ministry of Commerce with reference to items under ITC (HS) Code of Chapter 40 Schedule 1 and the ITC(HS) Code goods which as per the existing policy were 'Free', became restricted and this included Tariff Item 4011 2010 - 'of a kind used on buses and lorries Radials'. However, even in this notification, Tariff Entry 4011 8000, pertaining to new pneumatic tyres of rubber – of a kind used on construction, mining or industrial handling vehicles and machines was not included.

The effect of the notification was clear; that tyres classifiable under CTI 4011 2010 became 'Restricted' whereas tyres falling under CTI 4011 8000 continued to remain freely imported.

40. The dispute before us involves the aforesaid regimes in force and the goods of the Petitioners assessee imported vide different Bills of Entry were subjected to investigation from February 2024 to April, 2024 on the basis that the goods do not conform to the standards prescribed and the goods are classifiable as 'Restricted' truck and bus radial Tyres and hence they were seized from the Port as well as the godowns of the assessee. They were subjected to IRMRA testing and when DRI forwarded the samples along with its letter dated 02/04/2024, it directed IRMRA to ignore the speed marking embossed on the side walls of the tyres and to evaluate the goods on specified assumptions and parameters.

We have perused the said reports and we find that when DRI forwarded the request letter, it required the following tests to be carried out :-

"i) Evaluation of tyres for speed Index K category;
ii) Evaluation of tyres for PR rating 18;
iii) Evaluation of tyres for Rim size;
iv) Evaluation of tyres for load capacity/index of the tyre and
v) Whether the samples qualify on the other standards required for BIS 15636 : 2022?"

It also requested for report on suitability for its use on road in excess of speed category 80 km/h.

The IRMRA in its report specifically opined thus :-

> "Assumptions made during evaluation:
> Though the said sample with speed category D (65 kmph max.) is out of scope of IS 15636:2022, following assumptions made during evaluation as per specific request to judge the suitability for use on road in excess of speed category of 80 kmph"

The tests were carried out and the following report was delivered :-

> "A) From the test findings given in Annexure II and III the tyre sample : 10.00R20 149/146D 18PR 999GOLD TUBETYPE (Brand BRAVIA, pertaining to M/s.Pioneer Trading Corporation) meets the requirements of dimension test (Clause no.:4.1), Endurance test done as per K speed rating (110 kmph max.), radial construction and normal category of use (Clause no.:4.2), Tread wear indicators (Clause no.4.4) and Tyre strength test done as per 18 PR truck and bus category (Clause no.:4.5) of IS 15636:2022.
> B) Based on assumptions made during evaluation (ref. Annexure I) and various tests findings according to IS 15636:20-2022 as above, in our opinion, the tyre sample 10.00R20 149/146D 18PR 999GOLD TUBETYPE (Brand BRAVIA, pertaining to M/s. Pioneer Trading Corporation) is suitable for on road (normal highway service) truck and bus applications up to speed category K (110 kmph max.)."

41. The goods of the assessees being detained, an application was made for provisional release in terms of Section 110A which was rejected by the Order in original and the Appellate Order passed by the Commissioner of Customs (Appeals), Mumbai-II. However, the CESTAT by order dtd. 25/07/2024 granted release of the seized goods of the assessee subject to the requirement of; a)furnishing a bond for the value of the goods imported and seized; b)furnishing a bank guarantee equivalent to 5% of the value of the goods and c)furnishing of undertaking that goods shall not be sold to the dealers or end users.

The Revenue filed Rectification of Mistakes (RoM) Application on the primary ground that the Tribunal had allegedly failed to consider certain IRMRA test reports, which according to the Department indicated that the tyres were radial.

Recording that the reports were relied upon for the first time at the rectification stage and had not been placed on record or not relied upon at the time when the final hearing took place, resulting into the order dated 25/07/2024, the Application for Rectification was rejected.

Arising therefrom, we have two sets of proceedings; the first, Writ Petition filed by Revenue raising a challenge to the ROM orders and the set of Appeals raising a challenge to the impugned order dated 25/07/2024 and second, we have Writ Petitions filed by the assessee claiming release of their goods.

42. During the pendency of investigation, when the application was made by the assessees for release of their goods from the consignment detained on the ground that the goods imported are Truck and Bus Radial (TBR) tyres instead of mining/off-road tyres as declared in the bill of entry. The seizure of the goods was premised in the background that the investigation conducted revealed that mark 'D' was embossed on the goods to circumvent the policy restrictions. The provisional release of the goods was refused by the DRI on the ground of mis-declaration and violation of policy restrictions and also on the ground of the goods not being compliant with the BIS certificate.

The goods belonging to the assessee were detained at two Ports.

43. The order in-original passed by the Commissioner, in relation to all the six assessees is based upon a Circular of the Customs Department dated 16/08/2017 issued under Section 110-A of the Customs Act, where the provisional release is not allowed in case of goods prohibited under the Customs Act, 1962 or any other Act for the time being in force.

Reliance was placed on the decision of the Madras High Court, where it is held that sufficient discretion is vested in the Adjudicating Authority to deny provisional release of goods, when they are smuggled or the import is treated as illegal and is in violation of statutory provision.

This order was confirmed by the Commissioner of Customs, once again by relying upon the Circular and treating the goods as 'Prohibited' goods apart from the fact that their release would lead to their entry in the local market, affecting the road safety and public interest.

44. The aforesaid order, however, did not find favour with the CESTAT and though a specific argument is canvassed that the investigation in respect of the said goods was in progress, the CESTAT expressed the view that the issue was presently restricted only whether the goods deserve provisional release and it was noted that they were not subjected to any Test/analysis by any authority having technical competence and the accusation of the Department, that the Importers wrongly classified the goods as CTI 40118000, so that they can be only used in mining was a serious charge, which was not yet established and based upon the declaration that the goods are rightly classified, the provisional release is directed.

The reliance upon the Circular of 16/08/2017 was found to be not applicable, as it had advised that the prohibited goods may not be released provisionally, but it is not yet established that the goods are 'prohibited' and in any case, the intention of the Circular was not to stop the provisional release of the goods, which are 'Restricted' and which could be deemed to be prohibited by virtue of deeming provision under Section 2 of the Customs Act and the apprehension of the Department that the impugned tyres were mis-declared and likely to be misused, the usage after import cannot be the criteria for classification.

45. It is worth to note that during the pendency of the present proceedings, pursuant to the order passed by the

Division Bench on 18/3/2024, the IRMRA furnished a report in regards the 'Brand New All Steel Radial Mining Tyres with speed symbol 'D' (65km Maximum)'. The report forwarded to this Court on 11/4/2025 record that in terms of the said order, following certain tests are to be carried out for determining, whether the tyres are of 'special use' or 'normal road use' tyres and this involve the Tread Pattern Test and Tread Depth Test. However, the report before us has indicated thus :-

> **"2.1 Tread Pattern Test:**
>
> **2.1.1** Tire Tread design/pattern is a complex integration of multiple structural elements including tread blocks, ribs, grooves, and sipes, each of these elements contributes uniquely to the tire's performance characteristics. The design of these elements, i.e. geometry, orientation and spacing is based on the intended application of the tire to ensure optimal performance. The tread pattern design is highly proprietary and solely under the purview of the tire manufacturer.
>
> **2.1.2** As per the requirements laid down in **IS 15636: 2022** (Automotive vehicles Pneumatic tyres for commercial vehicles - Diagonal and radial ply), as per clause no. 3.1.1.c.2 Special Use Tire, (e.g. Tire for mixed use (both on and off the road) and/or restricted speed such as Mining & logging (Table 10), Military application including sand cum highway and sand applications (Table 23-27)) requirements are well covered corresponding to the max. speed category symbol in Table 10 (Mining & logging) and Table 24 (Military Sand cum Highway) of IS 15636:2022.
>
> **2.1.3** However, it is evident from the list of Tires under Special category of use in **IS 15636:2022**, the standard does not suggest or restrict any specific tread patterns to qualify/certify under the category of special or normal use Tires.
>
> **2.1.4 In the absence of specific guidelines and criteria for conformity of the standard / test method on tread pattern test and specific test method for determination of void to fill ratio on tire, we are not position to conduct the Tread Pattern Test.**
>
> **2.2 Tread Depth Test:**
>
> **2.2.1** Tread depth is same as NSD (Non-Skid Depth) which was already recorded in each report issued earlier towards the subjected tires under specific clause of 4.1, Tire Dimensions.

Clause No.	Test	Specification	Observation	Remarks
4	TEST REQUIREMENTS			
4.1	Tyre Dimensions	Rim Size:- 8.0 x 20		I.P.- 930 kPa
	Conditioning temperature:26.0° C			
	Conditioning duration : Min 24 hrs			
4.1.1.1	Sectional width of tyre (mm)	284-308	285	Conforms
4.1.1.2	Tyre outer diameter (mm) (Highway)	1068-1102	1096	Conforms
	Non skid depth (mm)	......	23.24	For record

Figure 1. Cropped Section of the report indicating Non-Skid Depth **(Tread Depth)"**

The Tread Depth Value of the assessees with reference to its manufacturer is also worked out during analysis. It is also observed that IS 15636:2022 does not specify/suggest any minimum criteria/specification for Tread Depth and as far as the sidewall thickness is concerned, in absence of any guidelines, the methodology and criteria for conformity of the standard on Sidewall Thickness test is also not capable of being conducted. In the wake of the available standards and guidelines, and the markings (speed symbol D), the tyres are classified as 'special use tyres' and it is also clarified that the suitability of the subject tyres for 'Normal on Road Highways applications' was declared based on the specific test carried out as per IS 15636:2022 irrespective of the speed symbol marked on tyres as per the customer's request. In conclusion, it is recorded thus :-

> **"3.3** In the absence of clear & specific guidelines and criteria for the classification of tires as "Special use Tires" or "Normal Road Use Tires" either on the basis of specific performance testing such as endurance test, load-speed performance, plunger etc. or on the basis of Tread Pattern

> Test, Tread Depth Test and Sidewall Thickness Test, **laboratory not in position to state or determine whether the tires are "Special - use Tires" or "Normal Road Use Tires."**

46. From the aforesaid report, it can, therefore, be observed that the subject goods are not yet established to be 'prohibited' goods and the guidelines dated 16/08/2017 for provisional release of seized imported goods, pending adjudication under Section 110A of the Customs Act, issued by the Ministry of Finance has prohibited the provisional release only when the goods are 'Prohibited' under the Customs Act, 1962. The facts before us would reveal that pursuant to the intelligence received that the assessees are engaged in the import of TBR tyres from China, which are classifiable under CTI 40112010, but by mis-declaring them as 'mining tyres', which can be used for construction/mining, they are evading the customs duty and circumventing the policy restrictions imposed by the DGFT, searches were conducted at the office and godown premises of the assessee. The DRI alleged that the assessees used to get mining symbol (person with shovel) 'D' mark evidencing speed category of tyres less than 65km/ph and it was embossed on the sidewalls of the tyres from their overseas suppliers/manufacturers to mislead the authorities. The consignment of the goods imported by the assessees were put on hold and the samples were forwarded to IRMRA, a BIS approved lab, and the test report, according to the DRI, indicated the goods to be restrictive. However, we have noted the report dated 15/09/2022 that the CIU sent sample of tyres to IRMRA certified that the 'intended for use' of goods (tyres) was for mining application.

Worth it to note that at that time, the consignments which were detained, were cleared by the Customs Department and this continued for the period upto 2024. The provisional release is refused in favour of the assessee on the ground that the goods are prohibited and the term 'prohibited' has a definite meaning assigned and the goods must be prohibited under the Customs Act, 1962.

47. The distinction between 'prohibited' goods and 'restricted' goods is evident and 'prohibited' goods are the one, which are covered under Chapter IV and and for which purpose, there is a Notification issued by the Central Government prohibiting the import or export of the goods, with the specification set out and this prohibition is necessary for the reasons stated in sub-section (2) of Section 11. On the contrary, as per the foreign trade policy, the export and import is free except, when it is regulated by prohibition or restriction.

The prohibition imposed on pneumatic tyres and tubes for automotive vehicles in the Quality Control Order, 2009 is, that it shall conform to the specified standard and standard which is fixed by the Bureau of Indian Standards and it shall bear the standard mark of the Bureau on obtaining certification of Marks license. The automotive vehicles/pneumatic tyres for commercial vehicles, according to the Quality Control Order, must conform to IS 15636, but the Quality Control Order itself excluded the commercial vehicle tyres identified by speed symbol corresponding below 80km/ph, which included the mining tyres. Apart from this, IS 15636, do not regulate tyres with speed symbol below 80km and do not cover tyres with speed symbol 'D' and, therefore, the condition of it being compliant with Indian Standard do not apply to the said tyres and IS 15636:2022 is not applicable to such tyres.

48. The stand of the Customs Department that the goods become prohibited because it contemplate obtaining of DGFT license and BIS certification and since, the goods were not compliant with the two stipulations, they become prohibited, is not a stand which appeal to us at all. The DGFT license, as contemplated, is required only beyond category 'D' and since, the goods of the assessee do not warrant compliance with the BIS certification and also do not warrant DGFT license, in our view, in no case, they can be classified as prohibited goods, as under the Customs Act, the import of some goods, which is completely banned, are 'prohibited' goods, but the goods which can be permitted to be imported, subject to the statutory compliance like obtaining DGFT license or some obligations to be adhered to like securing the Bureau of Indian Standards certificate, in our view, can never be classified as 'prohibited' goods.

In ***Commissioner of Customs Vs. Atul Automation Pvt. Ltd.*** (supra), the Apex Court had drawn this distinction, with reference to the provision of the Foreign Trade Act, and while applying the Foreign Trade (Regulations) Rules, 1993 provided confiscation, for contravention of the Act, Rules or Orders thereunder, but which permitted release on redemption charges equitable to the market value of the goods, the Apex Court observed thus :-

> “Section 3(3) of the Foreign Trade Act provides that any order of prohibition made under the Act shall apply *mutatis mutandis* as deemed to have been made under Section 11 of the Customs Act also. Section 18A of the Foreign Trade Act reads that it is in addition to and not in derogation of other laws. Section 125 of the Customs Act vests discretion in the authority to levy fine in lieu of confiscation. The MFDs were not prohibited but restricted items for import. A harmonious reading of the statutory provisions of the Foreign Trade Act and Section 125 of the Customs Act will therefore not detract from the redemption of such restricted goods imported without authorisation upon payment of the market value. There will exist a fundamental distinction between what is prohibited and what is restricted. We therefore find no error with the conclusion of the Tribunal affirmed by the High Court that the respondent was entitled to redemption of the consignment on payment of the market price at the reassessed value by the Customs authorities with fine under Section 112(a) of the Customs Act,1962.”

49. Mr.Sridharan has placed reliance upon various orders, reflecting distinction between the ‘prohibited’ goods and ‘restricted’ goods and one such decision from Madras High Court in case of ***Yash Oro India Private Limited*** (supra), when the Court directed release of the goods, by observing that the discretion vested in the Adjudicating Authority to decide an application for provisional release, it is permissible for the High Court under Article 226 of the Constitution, to exercise such a discretion. Noting that under sub-section (2) of Section of the FTDR Act, the Central Government has the power to prohibit, restrict or otherwise regulate imported goods or services and it was held that in absence of notification under any statute classifying the goods as 'prohibited', the goods are not 'prohibited' and if they are not so, then the Court directed its provisional release under Section 110-A of the Customs Act.

Another decision to which our attention is invited is the decision of Division Bench of Punjab & Haryana High Court in ***Shree Balaji Industries Vs. Additional/Joint Commissioner of Customs***[6], where it was noted that watermelon seeds are 'restricted' goods, but they cannot be treated as 'prohibited' goods, in absence of any permission/authorisation for the DGFT, provisional release was assured.

50. Mr.Singh, the learned ASG, would rely upon the decision of ***Union of India Vs. Raj Grow Impex LLP*** (supra), but we have perused the said decision carefully to find that it involved import of certain beans, peas and pulses. The assessee filed ten bills of entry for clearance of yellow peas, imported under the cover of interim order passed by the Rajasthan High Court and he got released 7,500 MTs of goods, but the remaining were not released. He, therefore, approached the High Court, seeking issuance of mandamus and the interim order came to be passed.

The factual aspects involved in the matter would reveal that by notification issued under Section 3 of the Foreign Trade (Development and Regulation) Act, 1992, the Central Government notified the import policy under ITC (HS), 2017 Schedule I under which Exim Code 07136000 Pigeon Peas were

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restricted. However, as per the revised policy, the condition imposed reads thus :-

> "Import of Pigeon Peas (Cajanus Cajan)/Toor Dal shall be subject to an annual (fiscal year) quota of 02 lakh MT as per procedure to be notified by Directorate General of Foreign Trade:
>
> Provided that this restrictions shall not apply to Government's import commitments under any Bilateral or Regional Agreement or Memorandum of Understanding."

When the goods were refused to be released, and the Bombay High Court was approached by filing a writ petition, a relief was payed for issuance of directions to the respondents to clear the goods imported by the petitioner vide different bills of entry. After the proceedings had gone through the various stages, of the order being passed in-original and order being passed in appeal, when the question arose, whether the subject goods are to be treated as 'restricted' or 'prohibited', the learned ASG referred to sub-sections (2) and (3) of Section 3 of the FTDR Act and Sections 2(33) and 11 of the Customs Act and submitted that the notifications in question, placing a quantitative restriction on the import of certain pulses, which was upheld by the Court, was issued under sub-section (2) of Section 3 and the goods of the respondents were covered by the said notification and they are deemed to be 'prohibited' goods under Section 11 of the Customs Act.

It is also submitted that an upper limit of 1.5 lakh MTs of import quantity was placed and, therefore, any import within the cap of 1.5 lakh MTs will be import of restricted goods but, in excess thereof, they would become prohibited goods.

The assessee, however, argued that the subject goods fell within 'Restricted' category, as the notifications placed quantitative restrictions, but there was no order/notification prohibiting the import of these goods. It is in this background, by applying the well settled principles in law relating to the categorisation of goods as 'prohibited' or 'other than prohibited', and by taking note of the fact that it has been well settled that 'any prohibition' meant every prohibition and restriction is also one type of prohibition, it was held that the goods in question having been imported in contravention of the notification and being import beyond permissible quantity and without license, are 'prohibited' goods for the purpose of the Customs Act.

The aforesaid decision is clearly distinguishable as beyond the particular quantity prescribed, there was a complete embargo in importing the goods and, therefore, we find that the Court reached a conclusion that since it was not permissible to import the goods beyond particular quantity, they become prohibited goods and, therefore, the case is clearly distinguishable.

51. Mr.Sriram Sridharan has placed reliance upon the order passed by the learned Single Judge of Calcutta High Court in the case of ***Adishwar Impex Pvt. Ltd. Vs. Principal Commissioner of Customs & Ors. (WPO No.257 of 2025 decided on 10/07/2025)*** which involve import of pneumatic tyres under HSN Code 40118000.

On reading of the said order, we find that the issue before the learned Single Judge is exactly the same as before us, as writ petition was filed for a direction to the respondents to release the goods covered under the two bills of entry, the petitioner being engaged in the business of import of tyres for the vehicles used in the mining and excavation area as well as for normal road, the import of which was regulated by QC Order, 2009. As per the petitioner, having regard to the BIS clearance exemption vide CBEC instruction dated 30/01/2002 issued under the Control Order, certain off-road tyres were not covered by the Control Order and the tyres imported under the bills of entry being off the road (OTR) tyres, they were exempted from BIS clearance.

Upon the goods being detained by the Department while awaiting the test report, and the test report obtained by the Department revealed that the tyres do not require BIS markings, since the Department did not release them, the petitioner demanded its release, as they were detained on the ground that they are 'prohibited'.

Dealing with a somehow similar contention, the following observation is relevant for our purpose and it reads thus :-

> "9. From the above, it will be amply clear that merely because the areas on which such heavy movers traverse might sometimes include roads also is not enough to hold that they were "adapted for use upon roads". According to the Hon'ble Supreme Court such use of heavy movers may only be ancillary and incidental to the main use. In view thereof, the respondents must ascertain the primary use of the tyres in question while deciding on the applicability of the exemption memorandum. As rightly pointed out by Mr. Mehta that the petitioner cannot be held responsible for wrongful user of the tyres for which they are not meant, they may invite consequences but cannot be a ground to withhold the goods.

> Having regard thereto and taking note of the fact that the investigation is pending at the end of the respondents for a considerable period, I am of the view that the investigation should be brought to a logical conclusion as expeditiously as possible, but not later than four weeks from the date of communication of this order. Unless the respondents choose to drop the proceedings, show cause, if any, must be issued within two weeks thereof. The petitioner shall, in the event of issuance of show cause or in the alternative of non-issuance of the show cause, if the goods are not released, be entitled to apply for provisional release of the goods. If there are no other impediments, the application for the provisional release will be considered subject to petitioner agreeing and undertaking to pay highest rate of duty and penalty and providing an undertaking that the goods would only be used on off-road basis."

Since the tyres were held on adjudication to be 'Free', it was held that the assessee can apply for its provisional release.

52. The Writ Petition filed by the Customs Department praying for recalling the order passed by the CESTAT on ROM Application, in our view, do not have any merit, as we find that the Tribunal was perfectly justified in rejecting the said Application by observing that the relevant material in form of the report of IRMRA was not made available to it when the appeals filed by the appellants were decided on 25/07/2024 and there was no reason for reviewing the said order.

This Court also took serious cognizance of the fact that the report, though available, was not presented before the CESTAT, but subsequently it is revealed that the entire report of all the samples that have forwarded, was not available. In any case, we do not intend to get into the said aspect.

53. It is pertinent to note that during the pendency of proceedings before us, we are informed that show-cause notice has been issued to the assessees before us under Section 28 read with Section 124 of the Customs Act, by alleging that they are engaged in the import of TBR tyres classifiable under CTH/HSN Code 40112010 from China, Thailand and Vietnam by mis-declaring the same as ‘Mining Tyre/Off the Road Tyres’ classifiable under CTH/HSN Code 40118000 and based on the intelligence in regards to the import of the said goods, suggesting that the assessees were not compliant with BIS requirements certificate, the show-cause notice has asked them to show cause as to why the goods covered under the bills of entry should not be treated as TBR tyres and classified under Tariff Heading/HSN Code 4011 2010 instead of the declared CTH/HSN Code 4011 8000 by the assessee and as to why they shall not be confiscated under Section 111(d), m) and (o) of the Customs Act, 1962. The show-cause notice also asked the assessee to show-cause as to why the differential duty amount of Rs.8,37,80,608/- should not be demanded in terms of Section 28(4) of the Customs Act alongwith the applicable interest as per Section 28AA of the Customs Act. Since, now the show-cause notice is also issued to the assessee, for appropriate classification of the goods, and the detailed show-cause notice has confronted the assessee with the material available with the Commissioner of Customs, we expect that the issue about the classification of the goods, which have been imported by the Petitioners, shall be put to rest.

However, since we are of the view that, as on date, there is no material to show that the goods are ‘prohibited’, provisional release of the goods which are confiscated, shall not be opposed. In fact, the CESTAT had directed the provisional release on compliance of certain conditions and Mr. Sridharan has made a categorical statement before us, that the said conditions have been complied with and even when the Rectification of Mistakes (ROM) Application came be rejected, we are of the firm opinion that the order passed by the CESTAT deserves to be complied with. Hence, the following order.

: **ORDER** :

1. Writ Petition No.1556 of 2026, Customs Appeal Nos.6, 7, 10, 11 and 12 of 2025 and Custom Appeal (L) No.38143 of 2024, filed by the Customs Department, are dismissed.

The pending Interim Applications, if any, stand disposed of.

2. Writ Petition Nos.2726/2025, 2731/2025, 2728/2025, 2727/2025, 2729/2025 and 2730/2025, filed by the Assessees, stand allowed.

3. We direct that the goods of the Assessees, which are subject matter of the Appeals in the proceedings before us and which were also covered by the order of CESTAT dated 25/07/2024 be provisionally released, within a period of four weeks from the date of passing of this order, subject to the compliance of the conditions set out in the order and if these conditions are complied with or upon the conditions being complied with, within a period of two weeks from today,

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4. Needless to state that the observations made by us, while deciding the present proceedings shall have no impact upon the adjudication of the proceedings, which are initiated by the Department of Customs by issuance of show-cause notice to the assessees on 27/02/2025 and which are pending for adjudication.

(MANJUSHA DESHPANDE, J.) (BHARATI DANGRE, J.)

At this stage, on pronouncement of the judgment, the counsel for the Department of Revenue Intelligence ('DRI')/Customs Department requests for its stay.

However, in the wake of the fact that the release of the goods on provisional basis is already delayed, pursuant to the order passed by the CESTAT on 25/7/2024 as well as the Rectification of Mistake being disallowed, we refuse to grant the stay as prayed for.

(MANJUSHA DESHPANDE, J.) (BHARATI DANGRE, J.)

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