



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS),अहमदाबाद AHMEDABAD,

चौथी मंजिल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20260271MN0000333C8B

क	फाइलसंख्या FILE NO.	S/49-388/CUS/JMN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	JMN-CUSTM-000-APP-436-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.02.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Final Assessment Order No 1072/SBY/2024-25 dated 29.08.2024 and corrigendum dated 17.02.2026 issued from F. No. SBY/226/2012-13
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	26.02.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. Hariyana Ship Demolition Pvt Ltd., GF-1,"ATLANTA" ATABHAI CHOWK, OPP- JOGGERS PARK-1 Bhavnagar 364002



- यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.
This copy is granted free of cost for the private use of the person to whom it is issued.
- सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय,

	(राजस्वविभाग) संसदमार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।	
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.	
	निम्नलिखित सम्बन्धित आदेश/Order relating to :	
(क)	बैगज के रूप में आयातित कोई माल.	
(a)	any goods imported on baggage.	
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.	
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.	
(ग)	सीमा शुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.	
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.	
3.	पुनरीक्षण आवेदन पत्र संगत नियम आवली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उसके साथ निम्नलिखित कागजात संलग्न होने चाहिए :	
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :	
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.	
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.	
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो	
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any	
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां	
(c)	4 copies of the Application for Revision.	
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमा शुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलानटी. आर. 6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो एसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-	
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमा शुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी. ए. -3 में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमा शुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench

	दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016	2 nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन, सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररूपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो; पाँचहज़ाररूपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो; दसहज़ाररूपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने, मांगेगएशुल्कके 10% अदाकरनेपर, जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं, यादंडके 10% अदाकरनेपर, जहांकेवलदंडविवादमेंहैं, अपीलरखाजाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए .	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-	
(a)	in an appeal for grant of stay or for rectification of mistake or for any other purpose; or	
(b)	for restoration of an appeal or an application shall be accompanied by a fee of five hundred rupees.	



ORDER-IN-APPEAL

M/s. Hariyana Ship Demolition Pvt Ltd., GF-1,"ATLANTA" ATABHAI CHOWK, OPP-JOGGERS PARK-1 Bhavnagar 364002 (hereinafter referred to as "the appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the Final Assessment Order No 1072/SBY/2024-25 dated 29.08.2024 and corrigendum dated 17.02.2026 issued from F. No. SBY/226/2012-13 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Customs Division, Bhavnagar (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant had imported vessel MV CRECIENTE for breaking up and filed Bill of Entry No. SBY/226/2012-2013, dated 08.11.2012 for clearance of the said vessel for home Consumption under Section 46 of the Customs Act. 1962 along with relevant documents. Since the appellant did not have the original copies of MOA, Commercial Invoice and Bill of Sale, they requested to assess the Bill of Entry provisionally and submitted PD bond for the same. They have paid customs duty assessed provisionally. The Bill of Entry was assessed provisionally for want of original documents. Further, the appellant has submitted original/notarized copies of Commercial Invoice, Bill of Sale and MOA for Final Assessment.

2.1 Vessels coming for breaking up are being classified under CTH 8908. The appellant has classified the vessel in CTH 8908. However, the Fuel and Oil contained inside/ outside the Engine Room Tanks and its classification was under dispute. The dispute regarding classification of Fuel and Oil lying in Bunker Tanks Inside/ outside Engine Room i.e. whether under CTH 2710 or under CTH 8908 along with vessels for breaking up has been settled by Hon'ble Supreme Court in its Order dated 05.04.2023 passed in Civil Appeal No. 5318-5342/2009, Hon'ble Supreme Court has upheld the common Order No. A/11792-11851/2025 dated 17.10.2022/01.12.2022 passed by CESTAT and also validated the view expressed by the CESTAT therein.

2.2 The adjudicating authority vide the impugned order following the common Order No. A/11792-11851/2022 dated 17.10.2022/01.12.2022 passed by CESTAT, Ahmedabad and also following the earlier FAO No. 2430352/SBY/2023-24 dated 24.07.2023 has held that fuel & oil contained in Bunker Tanks inside / outside Engine Room are liable to be classified under CTH 8908 along with the vessel, as covered under para 2(b) of circular no. 37/96-Cus. Dated 03.07.1996. The remaining fuel and oil i.e. fuel and oil not contained in Bunker Tanks or Engine Room Tanks

are liable to be classified under its respective heading in Chapter 2710 and finally assessed the subject Bill of Entry.

3. Being aggrieved with the impugned Order, the appellant has filed the present appeal contending as under;

- The appellant submit that the impugned Final Assessment Order dated 29.08.2024/03.09.2024 passed by the Assistant Commissioner is bad in law and not in accordance with the provisions of the Customs Act 1962.
 - The appellant draws the attention to the Final Assessment Order No. 1072/SBY/2024-25 dated 29.08.2024/03.09.2024 passed by the Assistant Commissioner Customs Bhavnagar has erred and passed the order without granting an opportunity of personal hearing and thereby principle of natural justice has been violated.
 - Further the appellant while provisional assessment of captioned Bill of Entry as directed by department paid the duty amount of Rs. 76677582/- vide challan No.IMP-SBY-441/2012-13 on dated 08.11.2012. Further as per advise of department your appellant paid differential duty (With interest) Rs. 128839/-under protest vide TR6 Challan No-IMP.SBY/174/2014-15 on 17.04.2016. On going through the impugned FAO it is noticed that said payment of differential duty has not taken into account by the assessing officer while issuing final assessment order.
 - It is stated in annexure of impugned final assessment order that payment of Rs. 416520/-has been made by the appellant vide TR6 Challan-IMP/SBY/443/dated 09.11.2012, in fact records of the appellant nowhere indicates such payment have been done by us.
 - While issuing final assessment order the assessing officer has cited reference of Hon'ble Tribunal Ahmedabad's Final Order No. A/11792-11851/2022 dated 17.10.2022/01.12.2022 and also of order dated 05.04.2023 of Hon'ble Supreme Court in Civil Appeal No. 5318-5342/2009, but annexure to final assessment order does not indicate the implementation of such superior forum.
- At Sr. No. 8, Annexure B- Final Assessment wherein under column " CVD an amount of " Rs. 398299/- has been shown. It is not understood by the appellant as to how said amount has been arrived at or worked out by Assessing officer when there no mention of such payment in corresponding Colman while provisional assessment-Annexure-A.
- The appellant, therefore, craves leaves to pray to direct the Assistant Commissioner Customs Bhavnagar, to issue fresh final assessment order after affording an opportunity of personal hearing.



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4. Shri Rahul Gajera, Advocate appeared for personal hearing on 07.08.2025 on behalf of the appellant. He reiterated the written submission made at the time of filing appeal.
5. Before going into the merits of the case, it is observed that the appeal has been filed beyond normal period of 60 days but within the condonable period of 30 days as stipulated under Section 128(1) of the Customs Act, 1962. Appellant has requested for condoning the delay in filing the said appeals on the ground that the said impugned Order has been sent by department at Ship Breaking Plot Alang instead of Bhavnagar office address of the appellant. Since no vessel for breaking our plot is closed since about one and half year and our security staff who received the post, has not taken proper care to handover to us or to intimate about the receipt post/order. Thus there is delay in filing the appeal. Therefore, taking a lenient view to meet the ends of justice, I allow the appeal as admitted condoning the delay in filing the appeal beyond the normal period of 60 days under proviso to the Section 128(1) of the Customs Act, 1962.
6. I have gone through the facts of the case available on record, grounds of appeal and submissions made during personal hearing. It is observed that the appellant had imported vessel MV CRECIENTE for breaking up and filed Bill of Entry No. SBY/226/2012-2013 dated 08.11.2012 for clearance of the said vessel for home Consumption under Section 46 of the Customs Act. 1962 along with relevant documents. Since the appellant did not have the original copies of MOA, Commercial Invoice and Bill of Sale, they requested to assess the Bill of Entry provisionally and submitted PD bond for the same. They have paid customs duty assessed provisionally. The Bill of Entry was assessed provisionally for want of original documents. Further, the appellant has submitted original/notarized copies of Commercial Invoice, Bill of Sale and MOA for Final Assessment. Vessels coming for breaking up are being classified under CTH 8908. The appellant has classified the vessel in CTH 8908. However, the Fuel and Oil contained inside/ outside the Engine Room Tanks and its classification was under dispute. The dispute regarding classification of Fuel and Oil lying in Bunker Tanks Inside/ outside Engine Room i.e. whether under CTH 2710 or under CTH 8908 along with vessels for breaking up has been settled by Hon'ble Supreme Court in its Order dated 05.04.2023 passed in Civil Appeal No. 5318-5342/2009, Hon'ble Supreme Court has upheld the common Order No. A/11792-11851/2025 dated 17.10.2022/01.12.2022 passed by CESTAT and also validated the view expressed by the CESTAT therein. The adjudicating authority vide the impugned order following the common Order No. A/11792-11851/2022

dated 17.10.2022/01.12.2022 passed by CESTAT, Ahmedabad and also following the earlier FAO No. 2430352/SBY/2023-24 dated 24.07.2023 has held that fuel & oil contained in Bunker Tanks inside / outside Engine Room are liable to be classified under CTH 8908 along with the vessel, as covered under para 2(b) of circular no. 37/96-Cus. Dated 03.07.1996. The remaining fuel and oil i.e. fuel and oil not contained in Bunker Tanks or Engine Room Tanks are liable to be classified under its respective heading in Chapter 2710 and finally assessed the subject Bill of Entry.

6.1 I have gone through the impugned order and observe that no personal hearing was granted before issuance of the impugned order. I am of the considered view that a reasonable opportunity of being heard is required to be provided. The appellant has also submitted that they had not been provided with an opportunity of hearing before passing of the impugned order. Therefore, requirement of natural justice was not satisfied. Thus, the impugned order has been issued in violation of the principles of natural justice. Since no personal hearing was given to the appellant, there is no finding of the adjudicating authority on the contentions raised by the appellant. Therefore, I find that remitting of the case for passing speaking orders after providing the appellant with an opportunity for personal hearing becomes *sine qua non* to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section of (3) of Section 128A of the Customs Act, 1962, for passing speaking order by the adjudicating authority by following the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs - 2004(173) ELT 117 (Guj.), judgment of Bombay Hon'ble High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. - [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. - Del)] holding that Commissioner(Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962.

7. In view of the foregoing, the appeal is allowed by way of remand to the adjudicating authority for passing a reasoned and speaking order, after affording the appellant an adequate opportunity of personal hearing. The adjudicating authority is directed to examine all relevant facts, documents, and submissions placed on record during the appeal proceedings. Based on such examination, fresh orders shall be issued expeditiously, strictly in accordance with the principles of natural justice and the applicable legal provisions. It is clarified that, while passing this order, no findings or views



have been expressed on the merits of the case or on the submissions made by the appellant. These shall be independently examined and considered by the adjudicating authority in accordance with law.

7. In view of above, the appeal filed by the appellant is allowed by way of remand.

सत्यापित/ATTESTED
Amit
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

Amit
(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

F. No. S/49-388/CUS/JMN/2024-25
5923

Dated -26.02.2026

To,

1. M/s. Hariyana Ship Demolition Pvt Ltd.,
GF-1, "ATLANTA" ATABHAI CHOWK,
OPP-JOGGERS PARK-1 Bhavnagar 364002,



Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Commissioner of Customs, Customs, Jamnagar.
3. The Deputy/Assistant Commissioner of Customs, Customs Division, Bhavnagar.
4. Guard File