



सीमाशुल्ककेआयुक्तकाकार्यालय (निवारक),सीमाशुल्कभवन,
जामनगर-राजकोटहाइवे,विक्टोरियाब्रिजकेपास,
जामनगर001 361 – (ગુજરાત)

**Office of the Commissioner of Customs (Preventive),
'Seema Shulk Bhavan', Jamnagar – Rajkot Highway,
Near Victoria Bridge, Jamnagar (Gujarat) – 361 001**

Email: commr-custjmr@nic.in; adj-custjmr@nic.in

DIN -

	<p>आयुक्त अपील 4 वी मंजिल, हुड़को बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-</p>	<p>Commissioner (Appeals), 4th Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad – 380 009</p>
	<p>Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).</p>	
03	<p>अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पररुपये (0.50पचास पैसे के बराबर (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची -I, मद 6 के तहत निर्धारित किया गया है।</p>	
	<p>The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paisa only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.</p>	
04	<p>अपीलीय ज्ञापन के साथ शुल्क भुगतानजुर्माना/ अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क / अधिनियम, 1962 की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।</p>	
	<p>Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.</p>	
05	<p>अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील) नियम, और सिस्टेट प्रक्रिया 1982 सीजर) नियमप्रो), के सभी नियमों का पूरा पालन हुआ है। 1982</p>	
	<p>While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.</p>	
06	<p>इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के 7.5% के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।</p>	
	<p>An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.</p>	

Brief facts of the case:

1. M/s Trans Tide Shipping Agency, having office at Shreeji 101, Plot No. 8/C, Opp. Bhagini Mandal Hospital, Bhavnagar-364002 (hereinafter referred to as "**the Shipping Agent**"), was appointed as Shipping Agent by the owner of the vessel to discharge customs clearance formalities for vessel M.V. TUG NOVE (hereinafter referred to as "**the said vessel**") at Alang anchorage for breaking purpose. The said vessel arrived at Alang Anchorage on 05.01.2022 from DIU Port (India) and the boarding of the said vessel was carried out on 07.01.2022.

2. The Master of the said vessel provided the details of the quantity of the bunker & provision / stores consumed during last voyage from **DIU to Alang (Bhavnagar)**. On the basis of these details, the Shipping Agent filed the Manual Bill of Entry **No. 7019246-A on 07.02.2022** and self-assessed the Value of Bunker & Provision / Store as **Rs. 20,89,061/-** /- and Customs duty payable thereon as **Rs. 8,73,091/-** in the said Bill of Entry, as per the details given below :-

Sr. No.	Description of Goods	HSN / Custom Tariff Head	QUANTITY	Assessable Value (In Rs.)	Duty Self-assessed / Paid (Rs.)
(1)	Fuel Oil (FO)	27101950	Nil	0	0
(2)	Marine Gas Oil (MGO)	27101930	32.424 MT /38600 Ltr.	Rs. 1833577.00	Rs. 662550/-
(3)	Lubricating Oil (LO)	27101980	40 Ltrs	Rs. 15484.00	Rs. 3793/-
(4)	Provision / Stores	21069099	1200 Kgs.	Rs. 240000.00	Rs. 206748/-
TOTAL				Rs. 2089061.00	Rs. 873091/-

3. The Duties of Customs leviable / payable on High Speed Diesel (HSD) Oil classifiable under CTSN 27101930, are as under :-

(a) the duties of customs is levied as per Section 12 of the Customs Act, 1962 read with Notification No. 52/2017-Cus. dated 30.06.2017 (Sr. No. 3) (as amended) @ 2.5% on High Speed Diesel (HSD) Oil;

(b) Agriculture Infrastructure and Development Cess on Imported goods is levied under the provisions of Section 124 of the Finance Act, 2021 (13 of 2021) read with Schedule-VII at the rate of Rs. 4.00 per Liter on High Speed Diesel (HSD) Oil;

(c) Additional Duty of Customs on imported goods equivalent to Special Additional Excise Duty (SAED) is levied under the provisions of Section 147 of the Finance Act, 2002 (20 of 2002) read with Schedule-VII and No. 05/2019-CE (as amended vide Notf.no. Notification No.09/2021-Central Excise dtd.03.11.2021) at the rate of Rs 8.00 per Liter on High Speed Diesel (HSD) Oil;

(d) *Road and Infrastructure Cess on imported goods equivalent to Additional Duty of Customs is levied under the provisions of Section 111 of the Finance Act, 2018 (13 of 2018) read with Schedule-VI and Notification No. 18/2019-Cus. dated 06.07.2019 (Sr. No. 02) (as amended vide Notification No.52 /2021-Customs dated 03.11.2021) at the rate of Rs. 8.00 per Liter on High Speed Diesel (HSD) Oil;*

(e) *the duties of excise is levied as per Section 3 of the Central Excise Act, 1944 read with Notification No. 11/2017-CE dated 30.06.2017 (Sr. No. 3(ii)) dated 30.06.2017 (Sr. No. 3) (as amended vide Notification No.01/2021-CX. dated 01.02.2021) @ Rs.4.20 per Liter on High Speed Diesel (HSD) Oil;*

(f) *Social Welfare Surcharge on imported goods is levied under the provisions of Chapter VI of Finance Act, 2018, of Section 108 (3) at the rate of 10% on the aggregate of duties, taxes and cess which are levied and collected under section 12 of the Customs Act, 1962 (52 of 1962) on High Speed Diesel (HSD) Oil;*

(g) *the Additional Duty of Customs on imported goods under Sub-section (5) of Section (3) of the Customs Tariff Act, 1975 (51 of 1975) in lieu of the sales tax, value added tax, local tax and other taxes or charges leviable on sale or purchase or transportation read with No. 53/2017-Cus.dated 30.06.2017 (as amended) at the rate of 4% ad-valorem on High Speed Diesel (HSD) Oil;*

3.1 Total duties of Customs leviable / payable on the Marine Gas Oil (MGO) (CTSH 27101930) for the quantity 38600 ltrs. and assessable value amounting to Rs. 23,68,758/- comes to the tune of **Rs. 11,84,320/-**, as under:-

Sr. No.	Types of Duties	Rate of Duty	Marine Gas Oil (MGO) / HSD
1	Quantity	---	38600 Ltr.
2	Assessable Value (In Rs.)	---	Rs. 1833577/-
3	Basic Customs Duty (BCD) [Notification No. 52/2017-Cus. dated 30.06.2017 (Sr. No. 3)]	2.5%	Rs. 45839/-
4	Agriculture Infrastructure and Development Cess (AIDC)	Rs. 4/- per Liter.	Rs. 154400/-
5	Addl. Duty of Customs equivalent to Special Additional Excise Duty (SAED). [No. 05/2019-CE dated 06.07.2019 (as amended)]	Rs. 8/- per Liter.	Rs. 308800/-
6	Road and Infrastructure Cess equivalent to Additional Duty of Customs [(Sr. No. 02) (as amended)]	Rs. 8/- per Liter.	Rs. 308800/-
7	Basic Excise Duty as per Section 3	Rs. 4.20	Rs. 162120/-

	of the Central Excise Act, 1944 [Notification No. 11/2017-CE dated 30.06.2017 (Sr. No. 3(ii)) (as amended)]	per Liter.	
8	Social Welfare Surcharge Notification No. 12/2021-Cus. dated 01.02.2021 [@ 10% of 3 + 4 + 5 + 6 + 7]	@ 10%	Rs. 97996/-
9	<i>the Additional Duty of Customs on imported goods under Sub-section (5) of Section (3) of the Customs Tariff Act, 1975 (51 of 1975)</i> <i>[No. 53/2017-Cus.dated 30.06.2017 (as amended) @4%age of 2+3+5+6+7]</i>	@4%	Rs. 106365/-
10	Total duty on MGO/HSD [3 to 9]		Rs. 11,84,320/-

3.2 Therefore total duty payable comes to Rs. 13,94,861/- (*Duty payable Marine Gas Oil (MGO) / High Speed Diesel (HSD) Oil Rs. 11,84,320/- + Duty Payable on Lub Oil Rs. 3793+ Duty Payable on provisions Rs. 2,06,748/-*) as against self-assessed duty amounting to Rs. 8,73,091/- paid by the shipping agent vide Challan no. IMP-SBY/73/2021-22 dated 26.02.2022. It appeared that the Shipping Agent has short-paid Customs duty amounting to **Rs. 5,21,770/-** and thereby contravened the provisions of Section 12 of the Customs Act, 1962 and rendered them liable for penalty under Section 117 of the Customs Act, 1962.

4. The Noticee was accorded an opportunity to file submissions in pursuance of Regulation 3(1) of the Pre-Notice Consultation Regulations, 2018, and a personal hearing in the matter was also fixed on 16.01.2024.

4.1 Shri N. K. Maru and Shri U.H.Kureshi, Consultants and authorised representative of M/s. Trans Tide Shipping Agency, Bhavnagar attended the hearing and submitted written submission dated 12.01.2024 and re iterated the same. They further submitted that the vessel was TUG, used for toeing a dead vessel. In both cases Tugs were in foreign run, not converted to coastal run and no coastal cargo has been transported. Therefore vessel was in foreign run and question of recovery of duty on consumption of bunkers by foreign going vessel does not arise.

4.2 In the written submission dated 12.01.2024 the noticee referred their submission in the matter dated 02.10.2023 made to the A.C., Customs Bhavnagar to say that we were not liable to pay the so called disputed levy of coastal duty as the vessel under reference had never been converted in to Coastal Run as provided under Chapter XIII of the Customs Act, 1962; that therefore the issue raise is without authority of law; that they are not at all

liable to pay the so called demand of Coastal duty in pursuance of various provisions as contemplated under Chapter XII of the Customs Act, 1962; they refer Section 93 of the Customs Act, 1962 with reference to Bill relating coastal goods and to say that no such "documents" had been produced by the master of the vessel at the time of arrival of the vessel at the Alang port; that the department had not taken in to consideration this aspect; that the said vessel arrived under cover of valid port clearance as statutory been issued up to the voyage at ship breaking yard Alang to designated plot of the Registered ship breaker's who had imported subject vessel only for breaking purpose. These factual circumstances are well known to the department, we have fully explain the status of actual voyage as proceedings imitated for levy of so called unwarranted coastal duty. They relied upon case laws of (i) Shipping Corporation of India Ltd- 1987 (29) ELT 182 (Tri), (ii) South East Asia Shipping Company Ltd -1989(43) ELT 479 (Tri) (iii) Scindia Steam Navigation Co Ltd – 2000 (123) ELT 91 (CAL) and (iv) Circular No. 58/97 dated 6.11.2997 read with letter No. 450/66/2005-Cus. IV dated 24.11.2005. (v) M/s.Jain Marine Services 2009 (240) ELT 723 (Tri- Ahmd) (vi) M/s. Jain Marine Services – 2011(264) ELT A 37 (Guj).

4.3 During the course of Pre-consultation hearing, the consultants did not agreed to the proposal paying duty and they submitted their written submission and relied upon case laws to substantiate their submissions in support non levy of customs duty in this case. Considering the above submissions of the Noticee and the pre-notice consultation, it is decided to issue Show Cause Notice.

5. Therefore, M/s Trans Tide Shipping Agency, having office at Shreeji 101, Plot No. 8/C, Opp. Bhagini Mandal Hospital, Bhavnagr-364002 was issued a show cause notice No. **SCN No. ADC-15/2023-24** dated 17.01.2024 as to why:-

- (a) the shot paid differential Customs duty of **Rs.5,21,770/-** levied under provisions of Section 12 of the Customs Act, 1962 & other relevant provisions discussed hereinabove should not be demanded and recovered under Section 28 of the Customs Act, 1962;
- (b) interest payable thereon under Section 28AA of the Customs Act, 1962 should not be charged upon and recovered from them for not paying the applicable Customs duty as above; and
- (c) Penalty under Section 117 of the Customs Act, 1962 should not be imposed upon them for contravention of the provisions of Section 12 of the Customs Act, 1962.

DEFENCE SUBMISSION:

6. The Noticee filed reply dated 18.01.2024 to the Show Cause Notice wherein they *inter alia* submitted that they had explained the matter to the Assistant Commissioner, Customs Division, Bhavnagar on 2.10.2023 and a copy of the written submission dtd. 2.10.2023 is submitted for record and to consider this submission while deciding the captioned Show Cause Notice dtd. 17.1.2024.

6.1 In the written submission dtd. 02.10.2023 amongst other things they submitted that they had fully apprised the department that they were not liable to pay coastal duty on various grounds as explained to the Assistant Commissioner, Customs Division, Bhavnagar; the submissions may be read with the provisions of Chapter XII of Customs Act, 1962; that the Customs duty can be levied when "Foreign Going Vessel" is converted into carrying out coastal goods which not the case here; that therefore differential coastal duty amounting to Rs. 5,21,770/- was far away from the statutory provision of Section 12 of the Act; that they never requested for provisional assessment; that they were acting as a "Registered Shipping Agent" as provided under Section 148 of Customs Act, 1962 and accordingly they had attended the Customs boarding formalities right from the arrival of the vessel Tug. /MV Nove , as ship breaking yard Alang is only for "breaking purpose read with "specific tariff entry no. 8908 of the Customs Tariff Act, 1975.

6.2 That they wanted to draw attention to the various provisions as provided under Section 41 of Customs Act, 1962 read within the Rules and Regulation framed there under; that they enclose a self-attested copy of "TUG NOVE- LAST 10 PORT OF CALLS" , from this chart declared by the master of the vessel, it has been clearly found on record that "subject vessel" appears to had been voyaged on different dates as mentioned from sr. No. 1 to 10 read with read with particulars mentioned under the "column " describe as UNLOCODE" ;that on going through this chart it is clearly found that the subject vessel had been voyaged in the capacity as "Ocean going vessel" in as much as this facts and circumstances appears to be true and correct on the very ground that the subject vessel had been touched Oman also; that from factual position ,it is clearly established that the subject vessel had been lastly voyaged from Jafraabaud to Bhavnagar for any commercial business in the capacity as "Foreign going vessel". That if this vessel had been used for carrying for "coastal goods" than the Master of the vessel would have been produce such document to "unload such coastal goods", but in the present

case the ship under reference had been reached at Ship Breaking yard only for braking purpose and specifically has been classified under chapter heading no. 8908 of the Customs Tariff Act, 1975; that this submission may be consider while deciding the issued as raise by department.

6.3 That if these submission would take on record in deciding the present issue than the subject vessel which had been arrived at Alang port had not been reached at Alang at in the capacity as Coastal Cargo vessel. Therefore the issue raised in the Show Cause Notice for recovery of such "Coastal duty" is far away from the section 28 of the Customs Act,1962 so far as the present voyage of subject vessel is concerned in other words , it is to say that the subject vessel had never been converted in to coastal run vessel; that therefore, the present issue initiated is in violation of provisions of Customs Act, 1962 in the circumstances that the subject vessel had been dealt with by them in the capacity vessel as foreign going vessel and imported at SBY Alang by M/s Bhikkamal Chhotelal Exim Pvt. SRY Alang who is the registered ship breakers having plot No 16, Ship Recycling Yard Alang.

6.4 That in view of the above details submission, the noticee requested to drop the proceedings as the demand in not in accordance with the provisions of Customs Act, 1962; that that the subject Pre Show cause notice for demanding the so called recovery of differential Coastal duty Rs. 5,21,770/- in respect of ship Tug/ MV Nove is not proper, correct and legal and deserves to be closes the issue.

7. In their defence submission dated 18.01.2024 they *inter-alia* amongst other things submitted that they had fully apprised to the department that they were not liable to pay coastal duty on the various grounds/submittion/as stated therein too. The levy of such Customs duty is levied when such "Foreign going vessel" is "converted in to carrying out Coastal Goods" only and only on the circumstances when such Coastal Goods" are to be transported through a vessel from one coastal port to another coastal port which should have been "declare" by the proper Customs Officer" for loading and unloading of such Indigenous Goods to be loaded and unloaded within the Territorial area of Coastal Ports. In the present case it is admitted fact that the subject vessel had never been voyaged from one Indian port to another Indian port for loading or unloading of Coastal Goods, but the vessel under reference had been used as conveniences for unloading of old used imported ship to be unloaded at the designated registered ship breaking plot own by registered ship breaking plot. whereas in the present case the vessel under reference had been arrived at Ship breaking Yard Alang under cover of valid Port Clearance of

the vessel under reference which had been issued in the capacity as "Foregoing vessel" unless and until the said vessel "had not been unloaded/beached at the designated ship breaking plot situated within the area of ship breaking yard Alang. In other words the vessel under reference had not been issued for transportation of Indigenous goods from one Indian port to another Indian port; that as per provision of Section 95 , the Mater of the vessel had to provide a copy of "An Advice Book" which would have been signed by Master of the vessel, but in the present case no such material evidence have been disclose for levy of such unwarranted Coastal duty but paid with bona fide intention only to avoid delay in completing the import procedure up to the pressing of Import General Manifest before custom officer; that these all facts and circumstances are well known to the department before issuance of such unwarranted demand of such coastal duty; that thus this act of the debarment was in fact not true, correct and legal but appears to have been issued by ignoring the proper interpretation of various provisions as "Set forth" in the Chapter XII of the Customs Act, ; that they have proved on basis of the various document either produce at the time of initiating such action for so called wrong recovery of coastal goods as initiated at the first initial stage by the Assistant Commissioner of Customs has wrongfully raised the issue and to whom we had also categorically reply that they were not liable to pay so called coastal duty on so called coastal goods. Therefore, the subject so cause notice deserves to be dropped.

7.1 That in their submission dtd. 02.10.2023,they had also categorically submitted that they are not liable to pay the so called "Coastal duty" as demanded without disclosing the previous history when they have also paid up duty of the so called duty of Customs for Rs. 8,73,021/- paid vide challan No. IMP-SBY/73/2021-22 dtd. 26.02.2022 only and only with an intent to avoid prolong delay in making /completion of the due Customs formalities being "Registered Shipping Agent" who is required to full filled all such obligation before completion of filling of Import documents so far as dealt with to board the vessel under reference "which was known as Ocean going vessel at the material time and only been "Manifested the whole vessel as cargo for unloading of /beaching of "of the subject vessel at the designated ship breaking yard plot ;that these all activities were known to the department at the material time ;that therefore the subject issue raise is not proper, correct, and legal as such irrelevant "grounds" appears to have been taken on record to sustain the so called "illegal activities" so far as the disputed levy of "Coastal duty is concerned" ; that in the present issue , previously they have already relied various settled case laws; that they request to consider these case laws again and pray to extent healthy cooperation in the matter being settled issues

within all four corners of Customs Law; that previously so many Ocean going vessel had been anchored at the Alang Port Yard under cover of valid port clearance capacity as Ballast only, issued by other proper custom officer coming under the various Customs ports falling under the jurisdiction of Indian/foreign ;that in other words it is to say and submit that subject vessel never been used for loading/unloading the coastal cargo for one Indian port to other post.

7.2 That they are enclosing self attested copy of Voyage memo / Port of call list which clearly shows that the subject vessel has been voyage within the international port from Singapore to Alang and never had been converted in the capacity as coastal run vessel; that they are also enclosing copy of Form III – Cargo Declaration as statutory provided under section 30 of Customs act 1962, which is part and partial of the IGM itself which shows/ found that in the said form it has been mentioned that the said vessel had been arrived at Alang anchorage in Ballast condition for demolition purpose only and also shown Other Cargo – NIL which had been certified by the Master of the vessel and Inspector Customs (Boarding officer); that it is clearly establish that there is no any nexus with so called levy of coastal duty which is in fact deserves to be drop; that in view of the above submission, proceedings may be dropped and if not agree, they may be granted a person hearing to observe the principle natural of justice.

7.3 In continuation of their defence, the Shipping Agent vide their letter dated 24.01.2024 (reced on 29.01.2024) again reiterated the submissions made earlier and made at the time of personal hearing held during pre-notice consultation on 16.01.2024. They finally requested to drop the proceedings and they do not wish to be heard in person in the subject matter.

7.4 The shipping Agent again vide their letter dated 21.02.2024(recd on 23.02.2024) reiterated their earlier defence submission in their favour; that in addition , they enclosed a copy of "To Whom It May Concern Dated 07.01.2022", a vital document showing that the said Tug had never been voyaged in the capacity as Coastal Run vessel which has been wrongly interpreted by the Department. They finally requested to decide the proceedings considering their detailed submission.

DISCUSSION & FINDINGS:

8. I have carefully gone through the facts of the case, Show Cause Notice and written defence submissions as well as the submissions made by the Noticee during the personal hearing held on 16.01.2024 in Pre-Notice Consultation in terms of Regulation 3(1) of the Pre-Notice Consultation Regulation,2018.

9. The issues to be decided in the instant case are:-

(a) whether the Noticee is liable to pay Customs duty on actual consumption of ship stores / Fuel Oil (bunkers) consumed between the **DIU Port(India) to Alang**.

(b) whether the Noticee has short paid the Customs Duty of Customs as proposed in the Show Cause Notice or not.

(c) Whether Penalty under Section 117 of the Customs Act, 1962 is imposable upon the Noticee or not.

10. I find that the SCN alleges and proposes recovery of short payment of duty of Customs on Marine Gas Oil as the Noticee while filing Bill of Entry self-assessed the Customs duty payable on consumption of Bunkers (including Marine Gas Oil) and Ship Stores between Diu Port and Alang Port. The Noticee self-assessed and paid total duty on Marine Gas Oil (CTH 27101930) Rs.6,62,550/- as against duty payable worked out to Rs.11,84,320/-. Hence, the demand of differential duty of Rs.5,21,770/-in the Show Cause Notice.

11. It is noticee's contention that the vessel was not converted to coastal run as it was not carrying coastal cargo from **Diu** port and hence the vessel was a foreign going vessel in terms of Section 2 (21) of the Customs act, 1962 exempted from payment of duties of Customs on consumption of bunkers and ship stores in terms of Section 87 of the Customs Act, 1962. The Noticee also discussed procedures related to conversion of foreign going vessel to coastal run vessel and the duty leviable there on. The Noticee referred CBEC Circular No 58/97 dated 6.11.1997 to submit that it is not the case that request for coastal conversion of the Tug Nove was made either at Port of Diu or at Alang. The noticee has challenged the levy of Customs duty itself on consumption of Bunkers and provisions during the voyage of the vessel from Diu Port to Alang in terms of Section 12 of the Customs Act, 1962.

12. I observe that the Board vide Circular No. 58/97 dated 6.11.1997 prescribed Procedure for collection of duty on ship stores consumed during coastal run upon specific request of the Master of the Vessel and do not deal with legal obligation to pay Customs duties under the Customs Act, 1962.

13. I find that the vessel in question is a TUG and it is undisputed facts that as per port clearance No. F-29/21-22 dated 19.12.2021 issued by the SBY, Alang, the port clearance is issued for TUG "Nove" for Dubai Port, UAE Port. I also find that Noticee themselves accepted the facts in their defence submission that the master of Tug vide his declaration dated 07.01.2022 informed that the Tug Nove received instruction to proceed Dubai from Bhavnagar on 19.12.2021 and during underway to Dubai, received instruction to proceed Diu port till further instruction. Accordingly, the Tug Nove was diverted to Diu Port and anchored till 04.01.2022. Again on telephonic instruction on 04.01.2022, they proceeded to SBY Alang, Bhavnagar for demolition of the vessel. Therefore, the facts not in dispute in the Show Cause Notice that the TUG Nove undertook voyage from Diu to Alang in the territorial water of India.

14. Now, the fact remains that Noticee themselves paid the Customs duty vide Challan No. IMP-SBY/73/2021-2022 dated 26.02.2022 by filing Bill of Entry No. 7019246-A dated 07.02.2022. Therefore, levy of Customs duty under Section 12 of the Customs Act, 1962, and duty liability of the Noticee on consumption of the Bunkers and ship stores (provisions) during vessel's voyage from Diu Port to Alang was not in dispute at that time and hence not part of the show cause notice. However, the Noticee in their reply solely relied upon their contention that there is no duty liability at all on consumption of the ship stores and bunkers/ fuel oil during the voyage of the vessel from Diu to Alang as the vessel was a Foreign Going Vessel. The noticee raised the issue of levy of Customs duty on import under Section 12 of the Customs Act, 1962 upon receipt of the Show Cause Notice only when duties short paid were demanded from them. However, I proceed to take up the matter as the issue of levy of Customs duty under Section 12 is raised by the Noticee. To better appreciate the contention of the Noticee and the issue involved, relevant definition and provisions of Customs Act, 1962 are discussed as under:

15. The word "Import" as defined in Section 2(23) of the Customs Act, 1962 and "India" as defined in Section 2(27) of the Customs At, 1962 reads as under:-

Section 12 of the Customs Act,1962 which provides for levy of Customs duty on goods imported into India reads as under:-

"SECTION 12. Dutiable goods. — (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of Customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

"Section 2. Definitions: In this Act, unless the context otherwise requires:-

(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India

(27) "India" includes the territorial waters of India;"

15.1 Above three provisions of the Customs Act, 1962 stipulate that duty is chargeable on goods imported into India. Importation takes place once goods enter into territorial waters of India and the event of importation/ import attracts provisions of Customs Act, 1962 including levy of duty under Section 12 of the Act. The word 'import' is defined in Section 2(23) and, unless the context otherwise requires 'import' with its grammatical variations and cognate expressions means bringing into India from a place outside India. The word 'India' is defined in Section 2(27) which is an inclusive definition and it states that 'India' includes the territorial waters of India. Thus, the combined effect of the words 'import' and 'India' in these two sub-sections of Section 2 is that import takes place when goods are brought into the territorial waters of India from a place outside India. The duties of Customs are levied with reference to goods and the taxable event is the import of goods within India i.e. within territorial waters. The above provisions do not provide for levy of duty beyond territorial waters and the definition of "India" as quoted above does not unless otherwise specified, include beyond territorial waters.

15.2 The definition of term "foreign going vessel or aircraft" as defined in sub-section (21) of Section 2 which reads as under:-

"(21) "foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes –

- (i) any naval vessel of a foreign Government taking part in any naval exercises;**
- (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;**
- (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;"**

Section 87 of the Customs Act, 1962 reads as under :

"Imported stores may be consumed on board a foreign-going vessel or aircraft. Any imported stores on board a vessel or aircraft (other than stores to which Section 90 applies) may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft."

15.3 There are two conditions in Section 2(21). The first condition is that there must be carriage of goods or passengers between a foreign port and an Indian port. The second condition is that the vessel in question must be engaged in the carriage of such goods or passengers. In the case in hand, the voyage of TUG Nove from Diu Port to Alang port i.e. within territorial waters of India, was performed between two Indian ports in Indian territorial waters only. Therefore, once the vessel sailed from Port of Diu (India) for Alang Port of India for its own purpose i.e. for breaking purpose in India (i.e. at Alang), it was not sailing between the port outside India and a port in India and journey between Diu and Alang was not necessitated under a foreign run i.e. *carriage of goods between any port in India and any port outside India* as defined in Section 2(21) of the Customs Act, 1962. Therefore, irrespective of its itinerary, the vessel TUG Nove was engaged in carrying cargo between two Indian ports during the voyage from Diu port to Alang port. Therefore, the ship stores and bunkers consumed during the journey between two Indian port within the territorial waters of India are goods brought into the territorial waters of India from a place outside India and the duties of Customs are levied with reference as the taxable event i.e. the import of goods within India i.e. within territorial waters has been taken place. As regards applicability of Section 87 contended by the Noticee, I find that as long as the vessel or the aircraft holds the status as a foreign-going vessel, exemptions contained in Section 87 applies without any doubt. However, once the stores consumed when the vessel was involved in operations within Indian territorial waters, benefit of Section 87 of the Customs Act, 1962 cannot be extended.

16. I find it relevant to mention Instruction No.15/2018 dated 4.10.2018 issued by the CBIC clarifying law point of levy of duties of Customs under Section 12 in case of on board consumption of ship stores within territorial waters of India by the Cruise vessels while in foreign run. The CBIC vide Instruction No.15/2018 dated 4.10.2018 in the matter of duty on consumption of Ship Store by Cruise Vessels touching Indian Ports has clarified and stipulates that duty is payable on liquor and other consumed

stores during the transit of a cruise vessel through territorial waters of India. This clarification in Instruction No.15/2018-Cus is in line with my interpretation discussed in foregoing Paras. Clause 2(v) of the Instruction reads as under:-

"(v) The definition of Indian Customs waters has been extended up to EEZ in Finance Act, 2018. 'Indian Customs Water' finds mention in various sections of Customs Act primarily related to enforcement. Dutiability of an imported product is governed by Section 12 of the Customs Act which is unaffected by the impact of said amendment. A cruise vessel calling on an Indian port would, therefore, be liable to pay duty on liquor and other consumed stores during its transit through territorial waters or its period of stay at port in India. Mere passage through Indian Customs water without calling on at any of the Indian ports would not attract Customs duties."

16.1 The position of law as explained in the Instruction No.15/2018-Customs dated 04.10.2018 is that dutiability of an imported product is governed by Section 12 of the Customs Act and duty is to be paid on consumed stores during vessel's transit through territorial waters or its period of stay at port in India. The fact remains that during the course of its movement between coastal ports in India, the vessel TUG Nove has consumed certain stores, and bunkers. The fact not disputed is that the stores are consumed within the territorial waters. Though the Noticee paid the self-assessed Customs duty of Rs.8,73,091/- at the material time on the basis of consumption of ship stores based on inventory declared by the Master of the Vessel without any protest & challenge about its leviability, now, while contesting the issue did not dispute the revised duty calculation of import duties payable on Marine Gas Oil proposed in the SCN.

17. I find that the Hon'ble Supreme Court of India's judgment on the issue of collecting duty in such cases and applicability of Section 87 in the case of M/s. Aban Loyd Chiles Offshore Ltd Vs U.O.I reported as 2008 (227) ELT 24 (SC) is applicable in this case. The Hon'ble Supreme Court of India has held as under:-

"79. It may not be correct to contend that the oil rigs installed by the appellants answer the description "foreign going vessel". A vessel may be a foreign going vessel but if the oil rig is situated in the area to which the Customs Act applies or extends, the aid of Section 2(21) of the Customs Act cannot be taken to get the benefit under Sections 86 and 87 of the same Act. The principle underlying under Sections 86 and 87 is that the stores are consumed on board by a foreign going vessel. If the so-called foreign going vessel is located within a territory over which the coastal State has complete control and has sovereign right to extend its fiscal laws to such an area with or without modifications and the stores were consumed in the area to which the Customs Act has been extended,

reference or reliance to the vessel being a foreign going vessel shall be of no consequence and the Customs duty would be leviable as the goods are consumed within the territory to which the Customs Act has been extended as per the Maritime Zones Act, 1976 and the International Convention UNCLOS, 1982."

17.1 The Hon'ble CESTAT in the case of M/s. Asian Cablesip Pvt Ltd reported as 2020(374) ELT 597 (Tri-Bang), relying on the Hon'ble Supreme Court of India's judgment *supra*, in matter of Foreign Going Vessel engaged to carry out repairs of cables located in South East Asia and Indian Ocean Area, has held that Customs Duty on ship stores consumed while the vessel was performing operations within Indian territorial waters requires to be paid. The relevant portion of the order reads as under:-

"26. *On a plain reading of Section 87 as above, it is evidently clear that as long as the vessel or the aircraft holds the status as a foreign-going vessel, exemptions contained in Section 87 applies without any doubt. Going by the ratio of the judgment of the Hon'ble Supreme Court in the case of Aban Loyd Chiles Offshore Ltd., 2008 (4) TMI 19 (SC) = 2008 (227) E.L.T. 24 (S.C.) held that :*

"79. *It may not be correct to contend that the oil rigs installed by the appellants answer the description "foreign going vessel". A vessel may be a foreign going vessel but if the oil rig is situated in the area to which the Customs Act applies or extends, the aid of Section 2(21) of the Customs Act cannot be taken to get the benefit under Sections 86 and 87 of the same Act. The principle underlying under Sections 86 and 87 is that the stores are consumed on board by a foreign going vessel. If the so-called foreign going vessel is located within a territory over which the coastal State has complete control and has sovereign right to extend its fiscal laws to such an area with or without modifications and the stores were consumed in the area to which the Customs Act has been extended, reference or reliance to the vessel being a foreign going vessel shall be of no consequence and the Customs duty would be leviable as the goods are consumed within the territory to which the Customs Act has been extended as per the Maritime Zones Act, 1976 and the International Convention UNCLOS, 1982."*

From the above, we find that though the status of an FGV is not altered by the fact that such vessel or aircraft has run to a domestic Port or Airport during such time, duty on the stores consumed when the vessel was involved in operations within Indian territorial waters, needs to be collected in view of the above judgment. We find that Hon'ble Bombay High Court in the case of Pride Foramer has also taken the same view. This Bench has also followed the same in the case of Focus Energy, 2019 (11) TMI 22 (CESTAT BANG.) Therefore, we find that the appellants require to pay duty on the ship stores consumed by them while they were operating in the territorial waters of India. The appellants claim that such operations were only once during 4th October 2007 to 6th October 2007 and the applicable duty payable is Rs. 1,63,479. However, this is a matter of fact and the same requires to be ascertained/verified from the records like vessel's log books, correspondence with their masters, telecom authorities, information submitted to Port and Customs etc. For this reason, the matter requires to go back to the adjudicating authority for computation of the duty liability.

27. We find that Learned Authorized Representative for the Department has reiterated the findings of the Learned Commissioner. However, as per our discussion above, the contentions of the Department have been

countered and held to be not maintainable under law. We also find that the cases relied upon by the Authorized Representative cannot help the cause of the Department. We find that the decision in the case *Aban Loyd Chiles Offshore Ltd., Pride Foramer (supra)* concerned about the vessels which were rigs engaged in oil exploration in the designated areas of continental shelf and exclusive economic zone, which were declared by a notification to be a part of India for a limited purpose. However, we find that the cases are relevant only to the extent they decide the applicability of duty-free stores during the period the vessels were in Indian territorial waters. Moreover, the submissions of the Learned AR are based on stray correspondence and no investigation to that extent appears to have been done in this regard. The crux of the argument of the department was that the vessel was berthed in Cochin for most of the time during the disputed period and thus it ceases to be foreign going vessel. Moreover, we find that the vessel was anchored in Cochin Port and was under the watchful eyes of Customs and Port authorities. Many times, Customs authorities have boarded the vessel as demonstrated by the counsel for the appellants. Customs officers were supervising the bonded stores of the vessel. It was well within the right and mandate of Customs authorities to advise the appellants to ensure that there were no procedural and other infractions. No proof of such efforts and correspondence, if any, has been placed on record before us. It can be seen that the arguments of adjudicating authority were controverted and we are inclined to hold that the impugned vessel is foreign going vessel and as such the exemption in terms of Section 87 of the Customs Act, 1962 is available to the appellants, despite the fact that it was lying berthed at Cochin for most part of the time. However, in view of the Hon'ble Apex Court's decision in *Aban Loyd case (supra)*, we find that the duty on the ship stores consumed while the vessel was performing operations within Indian territorial waters requires to be paid by the appellants. Learned Counsel for the appellants has fairly conceded the same and expressed willingness to pay the same."

17.2 The Hon'ble CESTAT in the case of C.C. Vs Shipping Corporation of India reported as 1985 (21) E.L.T. 778 (Tribunal) has in similar matter held as under:-

“6. The case of *M.T. Netaji Subhas Bose* and the case of *Nancy Dee* are different. *Nancy Dee* was specially chartered and brought to India for the purpose of lightering work of wheat carrying from super tankers. This is not the case with *M.T. Netaji Bose*. The vessel was itself a foreign cargo carrying ship which arrived from Kharg Island in the Persian Gulf with foreign cargo for Madras and Visakhapatnam. There is no evidence that it was destined to go to Calcutta. When she went to Calcutta she did so only to carry crude oil taken from *M.T. Zakir Hussain* at Visakhapatnam. Nor is there any evidence that *M.T. Zakir Hussain* was destined to discharge foreign crude at Calcutta and that *M.T. Netaji Subhas Bose* merely helped to carry the cargo to its intended destination. *M.T. Netaji Subhas Bose* diverted at Visakhapatnam, an Indian port in order to carry cargo to Haldia another Indian port. It makes no difference that the cargo was a foreign cargo. The fact was that cargo was carried between one Indian port and another by a ship that was not meant to undertake that voyage. Nor was it meant to lift Indian cargo at Calcutta for any foreign port as is proved by the fact that she left that port in ballast, touching Vizag again which she left on 24-1-1978 also in ballast. The run from Vizag to Calcutta between 19 and 22-1-1978 was clearly a coastal run to carry cargo between two Indian ports, and no other. We are, therefore, unable to agree with the Shipping Corporation of India that the demand for duty made by the Vizag Customs was incorrect.

17.3 In an another case of vessel being sailed in territorial waters of India, the Hon'ble CESAT in the case of M/s. Bharat Petroleum Corporation Ltd, Bombay reported as 1984 (17) ELT 413 (Tribunal) [maintained in 1989

(43) ELT A131 (Supreme Court)] has allowed the benefit of exemption from Excise duty on bunkers supply to a foreign going vessel sailing between two Indian port i.e. Bomaby and Kolkata while in Foreign Run and held that status of the Vessel has to be ascertained with regard to facts and circumstances of the case.

17.4 My above views are supported by the ratio in the above discussed judgments and in view of the matter I am not inclined to consider defense theory and the judgment relied upon by the Noticee. The said judgment relied upon by the noticee are issued in connection with the peculiar facts and circumstances therein which also includes non-acceptance of Departmental Appeal based on litigation policy which do not have precedence value.

18. In the light of the above discussion and relying on the above case laws, I hold that the Noticee is required to pay Customs duty on ship stores, bunker, provisions, alcohol etc. consumed on Vessel TUG NOVE during its transit through territorial waters or its period of stay at port in India calculated on the basis of self-declaration made by the Master of a Vessel. Therefore, Customs duty is rightly paid by the Noticee however remained short paid as it was wrongly self-assessed by them.

19. I find that Customs duty payable on Marine Gas Oil (CTH 27101930) which includes basic Customs duties along with other duties and Cess as imposed under various provisions is as under:-

Sr. No.	Types of Duties	Rate of Duty	Marine Gas Oil (MGO) / HSD
1	Quantity	---	38600 Ltr.
2	Assessable Value (In Rs.)	---	Rs. 1833577/-
3	Basic Customs Duty (BCD) [Notification No. 52/2017-Cus. dated 30.06.2017 (Sr. No. 3)]	2.5%	Rs. 45839/-
4	Agriculture Infrastructure and Development Cess (AIDC)	Rs. 4/- per Liter.	Rs. 154400/-
5	Addl. Duty of Customs equivalent to Special Additional Excise Duty (SAED). [No. 05/2019-CE dated 06.07.2019 (as amended)]	Rs. 8/- per Liter.	Rs. 308800/-
6	Road and Infrastructure Cess equivalent to Additional Duty of Customs [(Sr. No. 02) (as amended)]	Rs. 8/- per Liter.	Rs. 308800/-
7	Basic Excise Duty as per Section 3 of the Central Excise Act, 1944 [Notification No. 11/2017-CE]	Rs. 4.20 per Liter.	Rs. 162120/-

	dated 30.06.2017 (Sr. No. 3(ii)) (as amended)]		
8	Social Welfare Surcharge Notification No. 12/2021-Cus. dated 01.02.2021 [@ 10% of 3 + 4 + 5 + 6 + 7]	@ 10%	Rs. 97996/-
9	<i>the Additional Duty of Customs on imported goods under Sub-section (5) of Section (3) of the Customs Tariff Act, 1975 (51 of 1975)</i> <i>[No. 53/2017-Cus.dated 30.06.2017 (as amended) [4%age of 2+3+5+6+7]</i>	@4%	Rs. 106365/-
10	Total duty on MGO/HSD [3 to 9]		Rs. 11,84,320/-

19.1 The noticee in their submissions has challenged the levy of Customs duty itself however not disputed duty calculations amounting to Rs.11,84,320/- payable on MGO as worked out above and proposed in the Show Cause Notice. Thus, actual duty payable and difference arose due to short payment while filing the Bill of Entry is not in dispute. Therefore, I find that the differential duty of Rs.5,21,770/- short paid on MGO (CTH 27101930) is required to be paid by the Noticee. In view of above facts, I confirm the demand of differential duty of Rs. 5,21,770/- to be recovered from the Noticee under Section 28 (1) of the Customs Act,1962 along with interest under Section 28 AA of Customs Act,1962 as proposed in the Show Cause Notice

20. The Show Cause Notice also proposes penalty on the Noticee under Section 117 of the Act which reads as under: -

“Section 117 Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees”

20.1 I find that Section 17 of the Customs Act, 1962 provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in electronic form, as per Section 46 or 50 respectively and therefore, under self-assessment, it is the responsibility of the importer or exporter to ensure that he declares the correct classification, country of origin, applicable rate of duty, value, benefit or exemption notification claimed, if any in respect of the imported / exported goods while presenting Bill of Entry or Shipping Bill. In the present case, I find that the Noticee has not paid appropriate duty leviable under Section 12 of the Customs Act, 1962 as much as they failed to self-assess correct duty liability under Section 17 of the Act and presenting

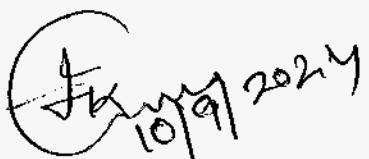
incorrect Bill of Entry under Section 46 by not declaring all relevant provisions and notifications attracting duty liability. Since the Noticee has violated the provisions of Section 12 read with Section 17 and 46 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, I find that Noticee is liable to penalty under Section 117 of Customs Act, 1962, as proposed in the Show Cause Notice.

21. In view of the above, I pass following order:

:: O R D E R ::

- (I) I confirm the demand of differential duty of **Rs.5,21,770/- (Rupees Five Lakhs Twenty One Thousand Seven Hundred and Seventy only)** under Section 28(1) of the Customs Act, 1962. The same should be paid by / recovered from the Noticee forthwith.
- (II) I order to charge and recover applicable interest leivable on the confirmed amount of differential Customs Duty, as per (I) above, under Section 28AA of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.
- (III) I impose penalty Rs. 50,000/- [Rupees Fifth thousand only] on M/s. Trans Tide Agency, Bhavnagar under Section 117 of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

This order is issued without prejudice to any other action that may be taken against the importer or any other person under the Customs Act, 1962 or any other law for the time being in force.



हरकिरपाल खटाना
(Harkirpal Khatana)
अपरआयुक्त/ Additional Commissioner
सीमाशुल्क) निवारक/(Customs (Preventive)
जामनगर/ Jamnagar

Date: 10.09.2024
फाइल सं: CUS/59/2024-Adjn.

BY RPAD/SPPED POST/HAND DELIVERY:

**M/s Trans Tide Shipping Agency,
Shreeji 101, Plot No. 8/C,
Opp. Bhagini Mandal Hospital,
Bhavnagar-364002**

Copy to:

1. The Commissioner, Customs (Preventive), Commissionerate, Jamnagar
2. The Superintendent(TRC), Customs (Preventive), Commissionerate Jamnagar
3. The Assistant Commissioner, Customs Division, Bhavnagar.
4. Guard File.