



संघमेवः इष्टते

सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंजिल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250871MN0000222B0C

क	फ़ाइल संख्या FILE NO.	S/49-45/CUS/JMN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	JMN-CUSTM-000-APP-239-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	07.08.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. 306/DC/JMR/T/2023-24 dated 05.03.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	07.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Barbados Maritime Agencies Pvt. Ltd., 103, First Floor, Cams Corner, Bedi Port Road, Jamnagar-361002



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, 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)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न 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)	सीमाशुल्क 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 नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के 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 सीमाशुल्क 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 चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे 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 सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, 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 :				
	<table border="0"> <tr> <td style="vertical-align: top;">सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td style="vertical-align: top;">Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td style="vertical-align: top;">दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td style="vertical-align: top;">2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	<p>सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-</p> <p>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 -</p> <p>(क) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रुपए.</p> <p>(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;</p> <p>(ख) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रुपए</p> <p>(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 ;</p> <p>(ग) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रुपए.</p> <p>(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</p> <p>(घ) इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।</p> <p>(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.</p>				
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.				
	<p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				



ORDER-IN-APPEAL

The Present appeal has been filed by M/s. Barbados Maritime Agencies Pvt. Ltd., 103, First Floor, Cams Corner, Bedi Port Road, Jamnagar-361002, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 306/DC/JMR/T/2023-24 dated 05.03.2024 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Custom, Jamnagar (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the vessel MV PROPEL GLORY arrived at Bedi Port on 08.12.2022 and was converted from foreign run to coastal run on the same day. According to the submitted documents, including the list of the last 10 ports of call, the vessel had sailed to Bedi Port after discharging foreign cargo at Mumbai Port on 08.12.2022. Treating Mumbai as the last Indian port, the appellant filed Bill of Entry No. F-04 dated 13.12.2022 on behalf of the vessel's Master for bunker fuel and provisions intended for use during the coastal run. The Bill of Entry was provisionally assessed under Section 18 of the Customs Act, 1962, pending test results of bunker samples and documentation of quantities of bunker and provisions remaining onboard at the time of vessel reversion, to determine actual consumption during the coastal run. The Appellant paid 110% of the duty amounting to Rs. 5,20,518/- on 21.12.2022 via TR-6 Challan No. 63/20.12.2022 on the approximate quantity of bunkers likely to be consumed during the coastal run as per Board's Circular No. 58/1967 dated 06.11.1997 and filed a provisional bond for the same amount. Representative samples of HSD, lubricating oil, and fuel oil were drawn on 08.12.2022 and tested by the Customs Laboratory, Vadodara, which confirmed the nature of the samples through reports dated 02.03.2023. The vessel reverted to foreign run on 17.12.2022 at AHPL Hazira Port. To ascertain duty liability based on actual consumption, inventories at Mumbai Port (last foreign run Indian port) and at Hazira Port (reversion point) were compared. The Master declared provisions consumption at USD 7 per crew per day for the 12-day coastal run period (06.12.2022 to 17.12.2022), with 22 crew members, totaling USD 1848. After filing the Bill of Entry, the Appellant, via letter dated 13.12.2022, conveyed that their Principals disagreed with the Department's valuation method and urged adoption of contemporary import prices from NIDB or other ports. They also disputed the method of calculating bunker consumption from the first port of arrival to discharge import cargo and



subsequent coastal cargo loading.

2.1 Consequently, the Adjudicating Authority passed the following order:

(i) He finally assessed the Bill of Entry No. F-04 dated 13.12.2022 for total Customs duty of Rs. 5,06,811/- (Rupees Five Lakh Six Thousand Eight Hundred and Eleven only), under Section 18 of the Customs Act, 1962 and appropriated Rs.5,06,811/- out of 5,20,518/- paid vide TR-6 Challan No. 63/20.12.2022 dated 21.12.2022 by M/s. Barbados Maritime Agencies Pvt. Ltd., Jamnagar at the time of provisional assessment.

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted grounds which are as under: -

- The Appellant has submitted that the custom authority ought to have finalized the Bill of Entry within 15 days from the date of conversion of the vessel from coastal to foreign run as per terms of Circular No. 58/97 dated 08.06.1997. In the present case, the reversion certificate dated 17.12.2022 was issued by Hazira Customs forwarded to Bedi Customs in sealed cover. The Bill of Entry has been finally assessed on 05.03.2024 after a gap of almost 1 year and 2 months. The inordinate delay in finalizing the Bill of Entry has caused grievous injury and immense financial loss to the Appellants.
- The Appellant further contends that the Adjudicating Authority's observation in Para-8 of the impugned order that the Bill of Entry was based on the Appellant's own decision to adopt IOCL prices for bunker consumption and quantities is erroneous and factually incorrect. The Appellants explain that Customs Houses under Jamnagar Commissionerate traditionally adopt IOCL export prices for valuation of bunker fuel consumed during coastal voyages. However, this practice contradicts the provisions of Section 14 of the Customs Act, 1962, read with the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007. The Appellants pointed out to the Authority that IOCL prices include storage, transportation, insurance, handling costs, and profit margins, and thus cannot form the basis of bunker valuation. Since this contention was rejected, the Appellants paid the provisional duty under protest. They also challenged the incorrect method of calculating bunker consumption during the coastal voyage. The impugned order, having



ignored the statutory valuation provisions, is legally unsustainable and liable to be quashed.

- It is a settled principle that where the value cannot be determined under sub-rule (1) of Rule 3, it must be ascertained by applying Rules 4 to 9 stepwise. The Adjudicating Authority is bound to reject the declared price at provisional assessment when it does not comply with sub-rule (1) of Rule 3 and must apply Section 14 of the Customs Act along with the Customs Valuation Rules. The Appellants rely on the Hon'ble Supreme Court's decision in *Century Recycling Metals Pvt Ltd v. Union of India*, 2019 (367) ELT 3, which clarified that Rules 4 to 9 provide alternative valuation methods where the transaction value under Rule 3 cannot be determined. The judgment underscores that Rule 3, in conjunction with Rule 12 of the 2007 Rules, has primacy in valuation matters.
- The Appellant submit that the Adjudicating Authority's decision to finalize the Bill of Entry based on the assumption that IOCL export prices can be considered contemporaneous import prices is contrary to the provisions of Section 14 of the Customs Act, 1962, read with the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, for the following reasons.
- Firstly, the Appellant argue that IOCL/HPCL supplies are indigenously manufactured goods, which cannot be used as a basis for valuing imported goods under the proviso to Rule 9(2) of the Customs Valuation Rules. The proviso clearly states that no value shall be determined based on the selling price in India of goods produced in India or prices in the domestic market of the country of exportation. Therefore, adopting IOCL export prices as the valuation basis violates this provision. The Appellants submit that the only valid alternative under these circumstances is the "Residual Method" under Rule 9(1), which requires using reasonable means consistent with the Rules and available data, such as contemporaneous prices from the NIDB. It is the Customs Authority's obligation to adopt such contemporaneous values for finalizing the Bill of Entry.
- Secondly, the Appellant emphasize that imported goods must be valued strictly in accordance with Section 14 of the Customs Act, 1962, read with the Customs Valuation Rules, 2007. Rule 3 mandates that the value of imported goods be based on the transaction value, defined under Rule 2(g) as the price actually paid or payable for the goods sold for export to India. This transaction value is to be accepted unless exceptions under the proviso to Rule 3 apply. Section 14 requires the price to be the actual price



paid for export, with the buyer and seller unrelated, and the price being the sole consideration.

- In the present case, as the value cannot be determined under sub-rule (1) to Rule 3, the valuation should have followed a stepwise application of Rules 4 to 9. The Adjudicating Authority erred in ignoring these statutory provisions while determining the value of bunker fuel and provisions consumed during the coastal run, rendering the impugned order liable to be quashed and set aside.
- The Appellant submit that the Adjudicating Authority erred grievously by ignoring settled legal principles while finalizing the Bill of Entry (BOE). They had submitted detailed representations dated 13.12.2022 and 02.02.2024, explaining why IOCL export prices cannot be the basis for valuation of bunker and asserting that the port of conversion is the correct basis for calculating bunker consumption during the coastal run. The Appellants also relied on decisions from various Appellate Commissioners on identical issues to support their case.
- The Appellant highlight that the Adjudicating Authority admitted in Para-9 of the impugned order that valuation was based on IOCL prices, which have been the standard practice at all Customs Ports under the Jamnagar Commissionerate for long. However, they argue that this practice is incorrect and contrary to law, as IOCL prices cannot serve as a valid basis for valuation under Section 14 of the Customs Act, 1962, read with the Customs Valuation Rules, 2007. The Adjudicating Authority's reliance on this practice to finalize the BOE is thus flawed and unlawful.
- Regarding the Adjudicating Authority's observation in Para-10 that Bills of Entry filed at Kakinada and Hazira Customs Houses were not finalized on NIDB prices, the Appellant counter that this finding is factually incorrect. They submitted evidence of contemporaneous import prices based on NIDB data for Bills of Entry dated 14.10.2022 and 02.11.2022, which fall within the 90-day timeframe allowed by Customs Valuation Rules, 2007 (Rule 4(3) and Rule 7(2)). The Appellants emphasize that the said Bills of Entry were not for coastal conversion finalized on NIDB prices, contrary to the Adjudicating Authority's presumption.
- The Appellant further contend that the Customs Valuation Rules allow flexibility in applying valuation methods, permitting the use of contemporaneous import prices within 90 days before or after the importation date. Therefore, the evidence of NIDB prices submitted should have been considered for the BOE dated 13.12.2022. The failure to do so



violates the provisions of the Customs Valuation Rules and is legally unsustainable.

- In support, the Appellant rely on a precedent set by the Commissioner of Customs (Appeals), Bhubaneswar in OIA No. 74-89/CUS/CCP/2023 dated 14.06.2023 in the case of M/s. ACT Inraport Ltd, which upholds the use of such contemporaneous import data for valuation.
- Additionally, the Appellant submitted specific NIDB-based contemporaneous import prices for Fuel Oil and Lube Oil to substantiate their claim, which the Respondent failed to consider or provide any reason for rejection in the impugned order. Consequently, the Appellants assert that the impugned order is liable to be quashed and set aside for ignoring relevant evidence and misapplying the law.
- The Adjudicating Authority, under para-11 of the impugned order, has categorically confirmed that the prevailing practice at Jamnagar Customs is to use the price declared by IOCL as the basis for valuation of bunker. The Appellants submit that the fundamental challenge lies in the incorrect valuation method followed at Jamnagar Customs, which is unsupported by any legal provision as elaborated in the preceding paragraphs. Therefore, the impugned order is liable to be set aside.
- The issue involved is no longer res integra. The Hon'ble CESTAT, Kolkata, in Final Order No. 77295/2023 dated 10.10.2023 in Customs Appeal No. 76178 of 2016, read with Miscellaneous Order No. 75069/2024 dated 20.02.2024 in the case of M/s. Seatrans Shipmanagement Services Pvt. Ltd., observed that "taking the IOCL price in the instant case cannot be the basis of valuation of imported goods under the Customs Valuation Rules."
- The operative part of the order under Para 13 states:
"13. Taking these facts into account, we remand the matter to the adjudicating authority for the limited purpose of arriving at the value of fuel cost based on the NIDB Data."
- Further, while deciding identical issues covered in OIAs passed by various Appellate Commissioners, the common point of observation is:
"The objective is adoption of contemporary import price based on NIDB Data instead of adopting IOCL/HPCL Price."
- The Appellant rely on multiple identical issues decided by various Appellate Commissioners across their respective jurisdictions, wherein the common observations include:
"IOCL export sale price adopted for assessment of Bills of Entry on




conversion of vessel for arriving at the assessable value is not proper."

"The objective is to levy and collect duty on bunker consumed during the coastal run of vessel and for calculating the bunker quantity consumed during coastal run, the port of conversion is more appropriate for arriving at the correct quantity and value of bunker."

➤ **Illustrative OIAs include:**

Paradeep Customs Station:

- i) OIA No. 05-84/CUS/CCP/2021 dated 26.02.2021 by Lt. Commissioner of Customs (Appeals), Bhubaneswar, in M/s. Seatrans Shipmanagement Services Pvt. Ltd., covering 48 cases related to Paradeep and 32 cases related to Dhamra Customs.
- ii) OIA No. 112-159/CUS/CCP/2021 dated 16.12.2021 by the same authority covering 48 cases.

Dhamra Customs Station:

- i) OIA No. 05-84/CUS/CCP/2021 dated 26.02.2021 (common order for Paradeep & Dhamra).
- ii) OIA No. 160-172/CUS/CCP/202 dated 17.12.2021 covering 13 cases.
- iii) OIA No. 16-29/CUS/CCP/202 dated 23.02.2022 covering 14 cases.

Gopalpur Customs Station:

- i) OIA No. 151/CUS/CCP/2022 dated 15.12.2022 covering 1 case.

Mangaluru Customs:

- i) OIA No. 335-336/2021 dated 03.09.2021 covering 2 cases.
- ii) OIA No. 442/2021 dated 12.10.2021 covering 1 case.
- iii) OIA No. 062/2024 dated 14.03.2024 covering 3 cases.

Marmagao Customs:

- i) OIA No. GOA-CUSTM-000-APP(VNT)-057-2021-22 dated 31.12.2021 covering 1 case.
- ii) OIA No. GOA-CUSTM-000-APP(VNT)-060-2021-22 dated 06.01.2022 covering 1 case.

Mumbai Customs:

OIA No. MUM-CUSTM-SXP-74/2017-18 dated 28.07.2017 covering 1 case.

➤ The Adjudicating Authority's finding under para-12 of the impugned order that M/s. Barbados relied upon decisions/judgments pronounced by Commissioners (Appeals) of Mumbai, Goa, Bhubaneswar, and Gopalpur which are binding only within their jurisdictions is erroneous. The Authority has ignored numerous identical issues decided by various Appellate Commissioners. It is well established by the Hon'ble High Courts



and Supreme Court that judicial discipline requires that orders of appellate authorities are binding on subordinate authorities within their jurisdiction.

- In Union of India v. Kamakshi Finance Corporation Ltd. (1991 (55) ELT 431 (SC)), the Hon'ble Supreme Court held:

"6... It cannot be too vehemently emphasized that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of Tribunal. The principles of judicial discipline require that the order of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact the order of the appellate authority is not 'acceptable' to the department—and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by the competent court. If this healthy rule is not followed, it will only be undue harassment to Noticees and chaos in administration of tax laws."

- The Appellant submit that the findings of the Adjudicating Authority under para-13 of the impugned order contradict principles laid down in earlier decisions by the Appellate Commissionerate, Ahmedabad. The Authority failed to follow the principles in OIA No. JMN-CUSTM000-APP-70-23-24 dated 20.07.2023 passed by the Ld. Commissioner of Customs (Appeals), Ahmedabad in the case of M/s. Fairdeal Shipping Services, Jamnagar.

Extracts from Paras 7.3 & 7.4 of the said order state:

"Para 7.3: From combined reading of Para 20, 21 & 28 of the impugned order, I find the adjudicating authority finalized the Bill of Entry arbitrarily without following Customs Valuation Rules, 2007. The adjudicating authority upheld the Final Assessment order dated 22.07.2019 whereby Bill of Entry No. F-05 dated 21.05.2018 was assessed on IOCL bunker supply price, contradicting his own earlier findings. Therefore, the impugned order is bad in law and liable to be set aside."

"Para 7.4: Both the department and appellant agree that final assessment must be based on contemporary import prices. Final Assessment Orders passed by Assistant Commissioner, Customs Division, Dhamra in M/s. Seatrans Marine Pvt. Ltd. assessed the Bill of Entry on contemporaneous value of imported bunker. Accordingly, final assessment must be on basis



of contemporary import value."

- The Appellant submit that Jamnagar Customs falls under the jurisdiction of the Appellate Commissionerate, Ahmedabad. It is settled law that once the department accepts principles in earlier cases, it cannot adopt a contradictory stance in subsequent matters.
- The Appellant submit that the Adjudicating Authority erred in calculating the consumption of bunker fuel from the port where the vessel first arrived in India and completed discharge of its foreign cargo, instead of from the port where the vessel actually converted from a foreign run to a coastal run. In the present case, the vessel first arrived at Pipavav Port, discharged foreign cargo, and then sailed in ballast to Bedi Port, where it converted to coastal run. The Adjudicating Authority incorrectly finalized the Bill of Entry (BOE) based on bunker consumption from Pipavav Port, whereas, in accordance with Board's Circular No. 58/97-Cus dated 06.11.1997, bunker consumption should be calculated from the port of conversion, i.e., Bedi Port. The Circular clearly prescribes that the Steamer Agent must file the Bill of Entry upon conversion, and duty is to be assessed and collected within seven days from the date of conversion. Further, Annexure-A to the Circular lays down the procedure for duty collection on ship stores consumed during coastal run, requiring an inventory of stores at conversion and reversion ports. This approach was reaffirmed in Board's Circular No. 16/2012-Cus dated 13.06.2012, which emphasizes that the relevant date for filing the Bill of Entry and payment of applicable duty is the date of vessel conversion from foreign going to coastal run. The Appellants contend that these Board instructions are binding on the field formations unless superseded by specific directions.
- Moreover, several orders from various Commissioners of Customs (Appeals), including Bhubaneswar and Bengaluru, have consistently held that for assessing customs duty on bunker consumed during coastal voyages, the port of conversion is the appropriate reference point. These include OIA Nos. 112-159/CUS/CCP/2021, 160-172/CUS/CCP/2021, and 16-29/CUS/CCP/2022 from Bhubaneswar, as well as orders dated 03.09.2021, 12.10.2021, and 14.03.2024 from Bengaluru. The Commissioner of Customs (Appeals), Bengaluru, in his order dated 14.03.2024, observed that the lower authority's methodology of computing bunker consumption from the initial foreign port lacked legal basis and failed to follow the prescribed inventory procedure for collection of duty as per Board's Circular No. 58/1997. The actual consumption of bunker fuel



must be quantified from the date of conversion to coastal run.

- In addition, to address pending litigation and expedite assessments, the Commissioner of Customs (Preventive), Bhubaneswar, issued Facility Notice No. 02/2023 dated 10.08.2023. This notice lays down clear guidelines for provisional and final assessments under Section 18 of the Customs Act, 1962, in cases involving vessel conversion. It mandates valuation of bunker supplies based on contemporaneous import prices derived from NIDB data, applying Customs Valuation Rules (2007) from Rule 4 to Rule 9 sequentially. The quantification of bunker consumption must begin from the date of conversion, consistent with Board's Circular No. 58/97, and final assessment must be completed within 15 days of receipt of reversion documents.
- The Appellant further rely on Final Assessment Orders from various Customs Stations, such as Paradeep, Dhamra, and Kandla, where valuation and quantification of bunker consumption have been carried out correctly following the above principles. These assessments calculate bunker consumption starting from the port of conversion and value the bunker on contemporaneous import prices from NIDB data, demonstrating a settled administrative practice.
- In conclusion, the Appellant submit that the impugned order's reliance on IOCL prices for bunker valuation is incorrect and that valuation must be done based on contemporaneous import prices in accordance with Customs Valuation Rules. Additionally, the quantification of bunker consumption must be calculated from the date of conversion of the vessel from foreign to coastal run, as mandated by Board's Circular No. 58/97-Cus dated 06.11.1997. The Appellants pray that these submissions be accepted and the impugned order be set aside accordingly.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 10.06.2025, following the principles of natural justice wherein Shri Hardik Modh, Advocate, appeared for the hearing and re-iterated the submission made at the time of filing the appeal. He also referred to the decisions of Fairdeal Shipping Services Vs C.C. Jamnagar – Final Order No.12304/2024 and Misc. Order no.10601/2024 passed in ROM application filed in Fairdeal Shipping Services.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Deputy Commissioner, Custom Division, Jamnagar and the defense put forth by the Appellant in their appeal.



5.1 On going through the material on record, I find that following issues required to be decided in the present appeal which are as follows:

- (i) Whether the Adjudicating Authority's adoption of IOCL export prices as the assessable value for bunker consumed during coastal voyages is in conformity with Section 14 of the Customs Act, 1962, read with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- (ii) Whether the Adjudicating Authority correctly rejected the contemporaneous import prices submitted by the Appellant and failed to consider NIDB data for valuation.
- (iii) Whether the impugned order has adequately considered the principles laid down by the CESTAT in similar cases, particularly Fairdeal Shipping Services Vs C.C., Jamnagar (Final Order No. 12304/2024 and Misc. Order No. 10601/2024), and other similar orders from Appellate Commissioners.

5.2 The fundamental principle of customs valuation is that the value of imported goods is the transaction value, i.e., the price actually paid or payable for the goods when sold for export to India. Section 14 of the Customs Act, 1962, and Rule 3 of the CVR, 2007, establish this. However, when the transaction value cannot be determined or is not acceptable, other methods are to be applied sequentially. The Appellant's contention that IOCL export prices are not a valid basis for valuation under Customs Valuation Rules is well-founded. Rule 9(2) of CVR, 2007, specifically states that no value shall be determined on the basis of "the selling price in India of the goods produced in India" or "the price of the goods on the domestic market of the country of exportation." The IOCL prices, being domestic or export prices from India for indigenously produced goods (or goods supplied within India), clearly fall under these exclusions. The purpose of customs valuation is to determine the value of imported goods when sold for export to India. Prices prevalent in the Indian domestic market (like IOCL prices) are not relevant for this determination as they include domestic levies, transportation, storage, and profit margins beyond the import value.

5.3 This position has been consistently upheld by various appellate forums, as cited by the Appellant. The CESTAT Kolkata in M/s. Seatrans Ship Management Services Pvt. Ltd. (Final Order No. 77295/2023, Misc. Order No. 75069/2024) specifically held that "taking the IOCL price in the instant case cannot be the basis of valuation of imported goods under the Customs Valuation Rules" and directed the adjudicating authority to arrive at the value based on



NIDB data. This is a crucial precedent that the Adjudicating Authority appears to have overlooked or disregarded.

5.4 The Appellant explicitly provided contemporaneous import Bill of Entry (Bill of Entry No. 3126446 dated 02.11.2022 filed at Customs House, Kakinada and Bill of Entry No. 286967 dated 14.10.2022 filed at Customs House, Hazira) as evidence for valuation. The Adjudicating Authority's rejection of this evidence on the grounds that it was not "explicitly mentioned" as per NIDB or that its filing month was different from the Bill of Entry in question is highly pedantic and contrary to the spirit of valuation rules. Rule 4(3) of CVR, 2007, allows for the use of the "lowest" transaction value of identical goods, and Rule 7(2) allows a reasonable timeframe (90 days) for sales after importation. The Adjudicating Authority's duty is to determine the correct assessable value using "reasonable means consistent with the principles and general provisions" of the CVR, 2007 (Rule 9 - Residual Method). This often requires actively searching and considering available NIDB data.

5.5 The CESTAT in Fairdeal Shipping Services Vs C.C., Jamnagar (Misc. Order No. 10601/2024), after rectifying its earlier order, explicitly directed the Adjudicating Authority to "supply a copy of Bill of Entry No. 14 dated 14.05.2018 to the appellants" and to "verify if Bill of Entry No. 14 dated 14.05.2018 is based on IOCL price or otherwise. If the Bill of Entry No. 14 is based on IOCL price, then the same will not be used for the purpose of following Rule 4 or 5 of the Custom Valuation Rules. The assessment will be done by following Rule 4 to 9 on the Custom Valuation Rules sequentially.". This directive from CESTAT underscores the importance of verifying the nature of prices (i.e., whether they are true import prices or domestic sale prices) and then proceeding sequentially through valuation rules, preferably using NIDB data for contemporaneous imports.

5.6 The impugned order's blanket reliance on "long-standing practice" of using IOCL prices by Jamnagar Commissionerate cannot override the statutory provisions of Customs Act and CVR, 2007, or the binding judicial pronouncements.

5.7 As highlighted by the Appellant and explicitly stated in the provided PDF, the CESTAT has addressed this very issue in Fairdeal Shipping Services Vs C.C., Jamnagar. The Final Order indicates that the Commissioner (Appeals) had previously remanded the matter, directing reassessment based on a specific contemporaneous Bill of Entry (No. 14 dated 14.05.2018) from Sikka. The



subsequent ROM order (Misc. Order No. 10601/2024) clarified that the Adjudicating Authority must verify if that Bill of Entry was based on IOCL price, and if so, it cannot be used for Rule 4 or 5. Instead, the assessment must follow CVR Rules 4 to 9 sequentially using NIDB data. This clearly indicates that the CESTAT itself recognizes the illegitimacy of using IOCL prices for valuation and mandates a proper sequential valuation using NIDB.

5.8 The Appellant has also cited a plethora of other OIA's from various Commissioner (Appeals) across India (Mumbai, Bhubaneswar, Bengaluru, Goa) involving similar issues (e.g., ACT Inraport Ltd., Seatrans Shipmanagement Services Pvt. Ltd., Hiralal & Co.). These orders consistently held that IOCL export sale prices cannot be the basis for assessment and directed the use of contemporaneous import prices based on NIDB data. The Adjudicating Authority's failure to consider or distinguish these binding precedents indicates a lack of proper application of mind and adherence to judicial discipline.

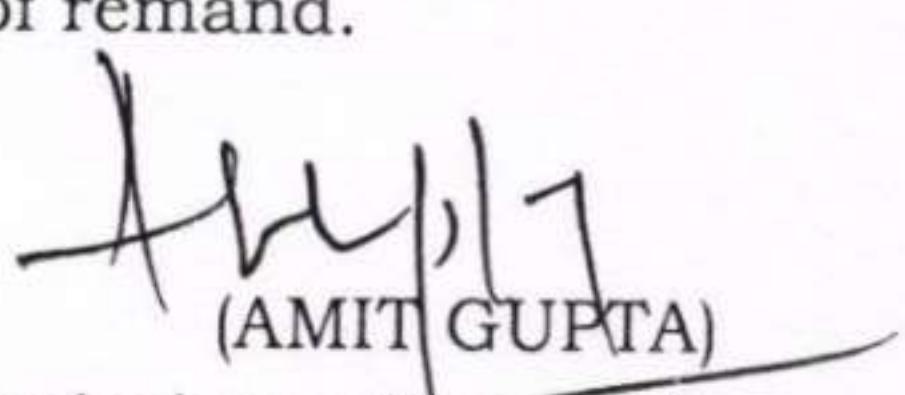
5.9 Considering the cumulative impact of the procedural infirmities and the clear misapplication of valuation principles contrary to established legal precedents (including the CESTAT order in Fairdeal Shipping Services which directly addresses the core valuation issue), the impugned order cannot be sustained. A de novo adjudication is necessary to ensure proper application of law and compliance with judicial pronouncements.

6. In view of the above findings and in exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

- (i) I hereby set aside the Final Assessment Order No. 306/DC/JMR/T/2023-24 dated 05.03.2024.
- (ii) I remand the matter to the adjudicating authority for de novo adjudication with the directions to specifically consider and apply the principles laid down by the CESTAT in Fairdeal Shipping Services Vs C.C., Jamnagar (Final Order No. 12304/2024 dated 03.10.2024 and Miscellaneous Order No. 10601/2024 dated 03.12.2024).

The appeal filed by the appellant is hereby allowed by way of remand.




 (AMIT GUPTA)
 Commissioner (Appeals),
 Customs, Ahmedabad

By Registered Post A.D/E-Mail

29/25

To,

M/s. Barbados Maritime Agencies Pvt. Ltd.,
 103, 1st Floor, Cams Corner,
 Bedi Port Road, Jamnagar-361002.

प्रत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT

रामा शुल्क (अपील्स), अहमदाबाद.

CUSTOMS (APPEALS), AHMEDABAD

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs (Preventive), Jamnagar.
3. The Deputy Commissioner of Customs, (Preventive), Jamnagar.
4. Guard File.

