

	<p>सीमाशुल्क)निवारक (के आयुक्तकाकार्यालय, सीमाशुल्कभवन, जामनगर-राजकोटहाइवे, विक्टोरियाब्रिजकेपास, जामनगर) गुजरात-361 001</p> <p>Office of the Commissioner of Customs (Preventive), 'Seema Shulk Bhavan', Jamnagar – Rajkot Highway, Near Victoria Bridge, Jamnagar (Gujarat) – 361 001</p> <p>Email: commr-custjmr@nic.in; adj-custjmr@nic.in</p>
F. No. CUS/ 1033/2024-Adjn.	Date: 09.04.2024

DIN- 20240471MM00006656B2

SCN No. ADC-01/2024-25

SHOW CAUSE NOTICE

(issued under Section 28 of the Customs Act, 1962)

M/s Compass Shipping Agency 308, Prithvi Plaza, Opp. Ghogha Circle, Bhavnagar 364001 (hereinafter referred to as "**the Noticee**"), was appointed as Shipping Agent by the owner of the vessel to discharge customs clearance formalities for vessel MT "BOW FLOWER (IMO No. 9047491) (hereinafter referred to as "**the said vessel**") at Alang anchorage for breaking purpose. The BOW FLOWER arrived at Alang Anchorage on **18.04.2022 from Kandla Port (India)** and the boarding of the said vessel was carried out on **18.04.2022**.

2. Whereas, the Master of the said vessel provided the details of the quantity of the bunker & provision / stores consumed during last voyage from **Kandla to Alang (Bhavnagar)**. On the basis of these details, the Shipping Agent filed the the Manual Bill of Entry **No.8343665-A on 02.06.2022** and self-assessed the Value of Bunker & Provision / Store as **Rs. 63,14,883/-** and Customs duty payable thereon as **Rs. 14,11,291/-** 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
(1)	Fuel Oil (FO)	27101950	Nil	0	0
(2)	Marine Gas Oil (MGO)	27101930	57.500 MT /67646 Ltr.	Rs. 61,51,832.00	Rs.13,62,235/-
(3)	Lubricating Oil (LO)	27101980	350 Ltrs	Rs.1,48,251.00	Rs.36,307/-
(4)	Provision / Stores	21069099	74 Kgs.	Rs.14,800.00	Rs.12,749/-
	TOTAL			Rs.63,14,883/-	Rs.14,11,291 /-

3. Whereas, it appears that the Duties of Customs leviable / payable on High Speed Diesel (HSD) / Marine Gas Oil (MGO) 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) 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) 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) @ Rs.4.20 per Liter on High Speed Diesel (HSD) Oil;
- (f) Social Welfare Surcharge on imported goods is levied under the provisions of Section 110 of the Finance Act, 2018 (13 of 2018) at the rate of 10% on the aggregate of duties, taxes and cesses 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 It therefore appears from the above provisions, that, Duties of Customs payable on the Marine Gas Oil (MGO) (CTSN 27101930) worked out to be **Rs. 22,76,822/-** for the quantity **67646** Ltrs having assessable value of Rs. 61,51,832 / - as under :-

Sr. No.	Types of Duties	Rate of Duty	Marine Gas Oil (MGO) / HSD
1	Quantity	---	67646 Ltr.
2	Assessable Value (In Rs.)	---	Rs. 61,51,832/-
3	Basic Customs Duty (BCD) [Notification No. 52/2017-Cus. dated 30.06.2017 (Sr. No. 3)]	2.5%	Rs. 1,53,796/-
4	Agriculture Infrastructure and Development Cess (AIDC)	Rs. 4/- per Liter.	Rs. 2,70,588/-
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. 5,41,176/-
6	Road and Infrastructure Cess equivalent to Additional Duty of Customs [(Sr. No. 02)	Rs. 8/- per Liter.	Rs. 5,41,176/-

	(as amended)]		
7	Basic Excise Duty as per Section 3 of the Central Excise Act, 1944 [Notification No. 11/2017-CE dated 30.06.2017 (Sr. No. 3(ii)) (as amended)]	Rs. 4.20 per Liter.	Rs. 2,84,117/-
8	Social Welfare Surcharge Notification No. 12/2021-Cus. dated 01.02.2021 [@ 10% of 3 + 4 + 5 + 6 + 7]	@ 10%	Rs. 1,79,085/-
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) [No. 53/2017-Cus.dated 30.06.2017 (as amended)]</i> [4%age of 2+3+5+6+7]	@4%	Rs. 3,06,884/-
10	Total duty on MGO/HSD [3 to 9]		Rs. 22,76,822/-

3.2 **It appears that** total Import duty payable on goods cleared vide Bills of Entry comes to **Rs.23,25,878** / - (*Duty payable Marine Gas Oil (MGO) / High Speed Diesel (HSD) Oil* Rs. 2276822/-+ *Duty Payable on Lub Oil* Rs.36,307 + *Duty Payable on provisions* Rs.12,749 /-).

3.3 Whereas, it appears that the Duties of Customs self-assessed/paid by the shipping agent is **Rs.14,11,291/-**, vide Challan no. IMP-SBY/11/2022-23 dated 20.07.2022. Thus, it appears that the Shipping Agent has short-paid Customs duty amounting to **Rs.9,14,587/-** and thereby contravened the provisions of Section 12 of the Customs Act, 1962. Hence, the duty short-paid of **Rs.9,14,587/-** is required to be demanded and recovered from the said shipping Agent under Section 28 of the Customs Act, 1962 along with interest thereon under Section28AA of the Customs Act, 1962.

4. Whereas, it further appears that, since the Noticee shipping agent has contravened the provisions of Section 12 of the Customs Act, 1962, therefore, they have rendered themselves liable for penalty under Section 117 of the Customs Act, 1962.

5. Legal provision of the Customs Act, 1962 attracted.

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 1 [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.

Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—(1) Where any duty has not been levied or not paid or short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, — (a) the proper officer shall, within [two years] from the relevant date, serve notice on the person

chargeable with the duty or interest which has not been so levied [or paid] or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice: Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;] (b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of, — (i) his own ascertainment of such duty; or (ii) the duty ascertained by the proper officer, the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

Section 28AA. Interest on delayed payment of duty—(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

Section 117. Penalties for contravention, etc., not expressly mentioned.—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 [one lakh rupees].

6. Whereas it appears that the Noticee has contravened the provision of Section 12 of Customs Act, 1962 as duty has been short paid and therefore is required to pay the differential duty recoverable under Section 28 along with applicable interest under Section 28AA.

7. Whereas, as stipulated under proviso to clause (a) to sub-section (1) of Section 28 of the Customs Act, 1962 and in pursuance of Regulation 3(1) of the Pre-Notice Consultation Regulations, 2018, vide the letter F N. CUS/1033/2024-Adjn dated 21.03.2024, the Noticee was accorded an opportunity to file submission in the matter and in case, if he wished to be heard in person by the adjudicating authority. It was further impressed upon in the letter that, if no reply is received, than the proper officer shall proceed to issue Show Cause Notice without any further communication.

7.1 Whereas, the Noticee did not make any submission in response to the above referred communication made to them under Pre-Notice Consultation Regulations, 2018. Therefore, considering no response in the matter from the Noticee it is decided to issue the show cause notice.

8. Now, therefore, **M/s. Compass Shipping Agency, 308, Prithvi Plaza, Opp. Ghogha Circle, Bhavnagar -364002** is hereby called upon to show cause to the Additional Commissioner of Customs (Preventive), Jamnagar having his office at "Seema Shulk Bhavan", Jamnagar Rajkot Highway, Besides Chamber of Commerce, Jamnagar, within 30 days from the date of receipt of this Show Cause Notice, as to why:-

- (a) the differential Customs duty of **Rs.9,14,587/-** 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.

9. The Shipping Agent is hereby directed to file his submission if any, to this Show Cause Notice within 30 days from the date of receipt of Show Cause Notice. Further, the Shipping Agent is also directed to produce all evidences upon which they intend to rely in support of their defense at the time of showing cause.

9.1 The Shipping Agent is further directed to indicate in their written reply as to whether they wish to be heard in person before the case is decided. If no mention is made about the same in their written explanation, it will be presumed that they do not desire a personal hearing and the case will be decided on the basis of the evidences and records available on file.

9.2 If no cause is shown by them against the action proposed to be taken within 30 days of receipt of this Show Cause Notice or if they do not appear before the adjudicating authority when the case is posted for hearing, the case would be decided on merits, on the basis of evidence available on records, without any further reference to them.

10. This Show Cause Notice is issued without prejudice to any other action that may be taken against them or against any person(s), under the provision of the Customs Act, 1962 and/or the Rules framed there under or under any other law for the time being in force.

11. Department reserves its right to amend, modify or supplement this notice at any time prior to the adjudication of the case.

12. The documents relied upon for the issuance of this notice are as per List attached with the Show Cause Notice.

59/04/2024
(हरकिरपाल खटाना) / Harkirpal Khatana
अपरआयुक्त / Additional Commissioner

F. No: CUS/1033/2024-Adjn.

Date: 09.04.2024

BY REGD POST/ EMAIL

To,
M/s. Compass Shipping Agency,
308, Prithvi Plaza,
Opp. Ghogha Circle,
Bhavnagar -364002

Copy to:

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

List of Relied Upon Documents

Sr. No.	Description	Remarks
1	Bill of Entry no. 8343665-A dated 02.06.2022 filed with SBY, Alang, Bhavnagar.	Available with the Noticee.
2.	Annexure-A (Revised duty calculation sheet)	Enclosed.

ANNEXURE = A

RE-ASSESSMENT OF BILL OF ENTRY - REVISED DUTY CALCULATION SHEET

VESSEL NAME	MT BOW FLOWER										BE NO	8331665-A	BE DATE	02.06.2022	ADDL. DUTY OF TOTAL CUSTOMS [NOTIF. NO. 53/2017-Cus. DUTY]								
	NAME OF SHIPPING AGENT	WIS COMPASS SHIPPING AGENCY	CTH	QTY.	SQC	Rate	Ass. Value	BASIC CUSTOMS DUTY (NOTI. NO. 02/2017-CUS)	AD. CESS @ Rs. 4.00/LTR. (NOTI. NO. 01/2023-CUS)	BASIC EX. DUTY (NOTIF. NO. 1/2017-CE)	SPL ADDL. EXCISE DUTY (NOTI. NO. 05/2019-CE)	ROAD & INFRA CESS (19/2019-CE)	SOCIAL WELFARE SURCHARGE	IGST									
SL No.	Decription	CONSU. MED																					
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)
1	FUEL OIL	27101939	0	LTR	0	0.0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.00	18.00	0	0.00	0	0.00	0	0.0
2	HIGH SPEED DIESEL	27101930	67647	LTR	90,9402	6353832	2.5	153796.0	4.00	27058	4.00	284117	8.00	541176	8.00	541176	10.00	179085	0.00	0	4.00	306984	2275822.0
3	LUBRICATING OIL	27101979	350	LTR	423,5754	148251	5.0	743.0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.00	741	18.00	28153	0.00	0	36307.0
4	PROVISION	98059000	74	KGS	260	14800	50.0	7400.0	2.50	370	0.00	0.00	0.00	0.00	0.00	0.00	10.00	777	18.00	4202	0.00	0	12749.0
5	PAINT/THINNER/GREASE	931480320	0	LTR/KGS	0	10.0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.00	0	18.00	0	0.00	0	0.0
DUTY RE-ASSESSED (REVISED ASSESSMENT)								6314883	168669	270958	284117	541176	541176	541176	541176	10.00	18.00	23355	306984	2275822.0			
DUTY ORIGINALLY ASSESSED								6314883	168509		284117	541176	541176	541176	541176	10.00	18.00	23355	285237	1411291.0			
DIFFERENTIAL DUTY (DUTY NOW PAYABLE)								0	0	270958	0	548806	0	548806	0	0	0	81176	21647	914587			

INSPECTOR
C. D. BHAVNAGAR

SUPERINTENDENT
C. D. BHAVNAGAR

ASST. COMMISSIONER
C. D. BHAVNAGAR