



सीमा शुल्क निवारक के आयुक्त का कार्यालय, सीमा शुल्क भवन,  
जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास,  
जामनगर (गुजरात)- 361 001

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

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DIN – 20250371MM000033353C

1.	फाइल क्रमांक/ File Number	F. No. VIII/10-88/ADC/O&A/2016
2.	मूल आदेश क्रमांक/ Order-in-Original No.	20/ Additional Commissioner/ 2024-25
3.	द्वारा पारित/ passed by	अमित कुमार सिंह / Amit Kumar Singh अपरआयुक्त/ Additional Commissioner, सीमा शुल्क, निवारक/Customs (Preventive) जामनगर/ Jamnagar.
4.	Date of Order /आदेश दिनांक	28.03.2025
	Date of issue / आदेश जारी किया	28.03.2025
5.	कारण बताओ नोटिस क्रमांक एवं दिनांक	VIII/10-88/ADC/O&A/2016 dated 27.04.2016
6.	नोटिसी का नाम/ Name of Noticee	M/s. Maersk Line Pvt. Ltd., Office No. 21/22/23, 2 <sup>nd</sup> Floor, Port Users Complex, Pipavav-365 650 (Taluka-Rajula) Dist.-Amreli

01.	इस आदेश की मूल प्रति संबन्धित व्यक्ति को निशुल्क प्रदान की जाती है। The original copy of this order is provided free of cost to the person concerned
02.	इस मूल आदेश से व्यवधित कोई भी व्यक्ति सीमा शुल्क अधिनियम, 1962 की धारा 128A(1)a(सीमा शुल्क) अपील (नियम, 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है।फॉर्म सीए-1 में अपील का प्रपत्र, दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है।) जिनमें से कम से कम एक प्रमाणित प्रति हो।।
	आयुक्त अपील 7वी मजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद- 380 009
	Commissioner (Appeals), 7 <sup>th</sup> Floor, Mrudul Tower, Behind Times of India, Ashram Road, Ahmedabad – 380 009
03.	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).
03.	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 पर रुपये) 0.50 पचास पैसे केवल (का कोर्ट फीस

	स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची - I, मद 6 के तहत निर्धारित किया गया है।
	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.
04.	अपीलीय ज्ञापन के साथ शुल्क भुगतान /जुर्माना /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। 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.
05.	अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क (अपील) नियम, 1982 और सिस्टेट प्रक्रिया) प्रोसीजर (नियम, 1982 के सभी नियमों का पूरा पालन हुआ है। While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.
06.	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। 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.

**Brief facts of the case:**

The present proceedings have been taken up on account of the Final Order No. A/10330/2024 dated 05.02.2024 passed by the Hon'ble CESTAT, West Zonal Bench, Ahmedabad, in the matter of **M/s. Maersk Line India Pvt. Ltd.**, Office No. 21/22/23, 2<sup>nd</sup> Floor, Port Users Complex, Pipavav-365 650 Taluka-Rajula (hereinafter referred to as "the Noticee") whereby Hon'ble CESTAT had set aside the Impugned Order-in-Appeal No. JMN-CUSTM-000-APP-57-17-18 dated 07.02.2018 and remanded back the matter to the original Adjudicating Authority for fresh adjudication with the directions that assessment of the duty has to be done after arriving of proper valuation as per provisions, related to the 39 containers in question and by following of the natural justice. While remanding the matter to the original Adjudicating Authority, the Hon'ble CESTAT observed that the valuation of the containers involved therein was not done with full transparency and such valuation report was not allowed to be commented upon by the Noticee.

2. In earlier proceedings, the original Adjudicating Authority vide the Order-in-Original No. 297/Joint Commissioner/2016-17 dated 13.02.2017 had adjudicated the Show Cause Notice No. VIII/10-88/ADC/O&A/2016 dated 27.04.2016 issued to **M/s. Maersk Line India Pvt. Ltd.**, Pipavav. **M/s. Maersk Line India Pvt. Ltd.**, Pipavav, preferred Appeal against the Order-in-Original No. 297/Joint Commissioner/2016-17 dated 13.02.2017, which was decided by Order-in-Appeal No. JMN-CUSTM-000-APP-57-17-18 dated 07.02.2018 and has been later on set aside by the Hon'ble CESTAT by way of remanding back the matter to the original Adjudicating Authority for fresh adjudication for assessment of the duty on proper valuation after allowing the natural justice. Therefore, the present remand proceedings are in respect of the Noticee i.e. **M/s. Maersk Line India Pvt. Ltd.**, Pipavav in connection to the Show Cause Notice No. VIII/10-88/ADC/O&A/2016 dated 27.04.2016.

3. Briefly stated, the facts of the case are that, the Noticee being a Shipping Line was engaged in the import of containers which were of durable nature, by availing the benefit of the exemption Notification No. 104/94-Cus dated 16.03.1994 (hereinafter referred to as "the said Notification") without payment of whole of the Customs duty and whole of the Additional duty leviable thereon. However, on the basis of the intelligence, it was observed that the Noticee after import of total 39 containers failed to follow the procedures as laid down in the said notification inasmuch as they failed to re-export the said 39 Containers within the prescribed time period of six months as envisaged therein in the said Notification. Therefore, under the reasonable belief that the same are liable for confiscation due to violation of the condition as laid down in the said Notification, total 39 containers of the Noticee, which were lying at different Customs Facilities viz. 11 Containers at M/s Gujarat Pipavav Port Ltd. and 28 containers at CFS of M/s. Contrans Logistics Pvt. Ltd., were seized vide Seizure Memo dated 05.11.2015 as

detailed at Annexure-A attached to the said Show Cause Notice dated 27.04.2016 and were handed over to the respective custodians for safe custody on 05.11.2015.

4. The said Notification reveals that there is an exemption from payment of whole of the Customs duty and Additional duty, subject to execution of Bond with the Assistant/ Deputy Commissioner of the respective Customs formations and the bond amount may be specified by the Assistant/ Deputy Commissioner. The Noticee was not required to file the Bill of Entry and follow the import procedures while importing containers as an Importer for home consumption. The Noticee need not follow the normal procedures of clearances but should file a continuity bond and such bond should be debited/ credited on import/ export of the regular containers. Also, the Noticee need not submit a copy of Bill of Lading (B/L), only manual Import General Manifest (IGM) is required to be filed indicating the number of empty containers temporarily imported on re-export basis availing the benefit of the said Notification as per procedure envisaged under the Circular No. 83/1998-Cus dated 05.11.1998 as amended.

5. The Noticee had imported 39 containers on re-export basis by availing the benefit of the said Notification and failed to re-export the same within the stipulated time limit of six months as per the conditions laid down in the said Notification and did not seek any extension of time limit for re-export of same from the proper officer, therefore, the same were liable for confiscation for violation of the condition as laid down in the said Notification No. 104/94-Cus dated 16.03.1994.

6. Shri Mobin Choudhari, Senior Executive (Operations) of the Noticee, in his Statement 03.03.2016 *inter-alia* stated that, their company is engaged in liner activities of containers at various sea ports of India; that they have permission from Customs to file continuity bond for import and re-export of the containers; that renewal of the continuity bond is done on yearly basis with guarantee to re-export imported containers within six months from the date of import at gateway ports; that after re-export, they apply for cancellation of the same to maintain credit balance; that said 39 containers are lying at M/s. Gujarat Pipavav Port Ltd (GPPL) (11 containers) and M/s. Contrans Logistics Pvt. Ltd. (28 containers); that they had not taken permission for extension of time limit in case of the said containers; that all containers get exported against authenticate and well processed shipping bill/EGM.

7. The said 39 containers, therefore appeared to have been imported without payment of customs duty and thus, the appropriate customs duty is required to be recovered under Section 28(4) of the Customs Act, 1962 enforcing the bond executed to comply with the conditions of Notification No.104/94-Cus dated 16.03.1994. The value of the said containers comes to Rs. 32,20,324/- as per Valuation Report dated 18.04.2016 submitted by Shri Bhasker G. Bhatt, Government Approved Valuer. Therefore, customs duty to be recovered in the instant case

comes to Rs. 9,48,095/- under the provisions of Section 28(4) of the Customs Act, 1962 by enforcing bond filed by them to comply with the conditions of Notification No. 104/1994-Cus dtd. 16.03.1994. Since, the Noticee failed to pay the customs duty of Rs. 9,48,095/-, appropriate interest is also recoverable from them under Section 28AA of the Customs Act, 1962.

8. In the light of the facts discussed in the foregoing paras and material evidence available on records, it transpired that the said party had imported 39 containers at Pipavav Port on re-export basis availing the benefit of Notification No. 104/94-Cus. However, they neither re-exported the said 39 containers within the stipulated six months nor sought any extension from the proper officer as per the provisions laid down in the said Notification. The said containers were seized on 05.11.2015 under reasonable belief that the same are liable for confiscation under Section 111(o) of the Customs Act, 1962, for violation mentioned above.

9. It appeared that the said acts of omission and commission rendered the impugned goods liable to confiscation under the provisions of Section 111(o) of the Customs Act, 1962 and the Noticee is also liable for penalty under Section 112(a) of the Customs Act, 1962.

10. It further appeared that the Noticee was well aware of the fact that they were required to either export the said 39 containers before the lapse of time limit of 6 months or shall obtain extension for further period from the proper officer to re-export the containers imported by availing the benefit of the said Notification, as admitted by Shri Mobin Choudhari, Sr. Executive (Operations) of the Noticee in his statement dated 03.03.2016, that they did not do so till the same was detected by the Customs Preventive Officers. It is also admitted by him that they are maintaining the details of such import of containers in their computer system and were aware that six months period was already over, however, they deliberately failed to take any action viz. either to pay duty on such containers or seek extension of time limit for re-export of the same. Therefore, it appeared that, they knowingly and deliberately suppressed the vital facts from the department with intent to evade payment of Customs duty and thereby rendered themselves liable for penalty under Section 114A of the Customs Act, 1962.

11. The investigation culminated into issuance of the Show Cause Notice No. VIII/10-88/ADC/O&A/2016 dated 27.04.2016 to the Noticee i.e. M/s. Maersk Line Pvt. Ltd., having their office at No. 21, 22, 23, 2ndFloor, Port Users Complex, Pipavav, requiring them to show cause as to why:

- (i) 39 empty containers totally valued at Rs. 32,20,324/- involving Customs duty of Rs. 9,48,095/- should not be confiscated under section 111(o) of the Customs Act,1962;
- (ii) Customs duty of Rs. 9,48,095/- should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962 enforcing

- bond executed to comply with the conditions of Notification No. 104/1994-Cus dated 16.03.1994;
- (iii) The interest on the aforesaid Customs Duty should not be demanded under Section 28AA of the Customs Act, 1962;
  - (iv) Penalty should not be imposed on M/s. Maersk Line Pvt. Ltd., under Section 112(a) as well as under Section 114A of the Customs Act, 1962;

**Defense reply:**

**12.** The Noticee vide their letter dated 17.02.2025 had submitted that; they had imported 39 Containers into India along with the cargo during the international voyage which were exempted from payment of customs duty subject to the condition that the said containers are to be re-exported within six months from India under Notification No. 104/94-Cus dated 16.03.1994 as amended; that 28 Containers lying at the M/s. Contrans Logistics Pvt. Ltd. were damaged due to a fire on 7th November, 2010 and the same was informed to Customs vide letter dated 01.02.2011; that even extension for re-exports of certain containers were sought vide letter dated 23.02.2012; that in the same way by letter dated 24.02.2012 request for domestication of the damaged containers was also made; that similarly, vide letter dated 13.03.2014 it had sought extension for re-export of the certain containers; that in respect of the remaining 11 Containers lying at GPPL, Pipavav, it was submitted that these were structurally damaged containers and were not fit to be loaded onto a vessel and hence, have become unfit for commercial use.

**12.1** The Noticee further submitted that the said 39 damaged containers were seized by the proper officer on 05.11.2015 and subsequently, the SCN dated 27.04.2016 was issued, which was adjudicated vide OIO No. 297/Joint Commissioner/2016-17 dated 13.02.2017; that in this regard, the Noticee had paid duty of Rs. 9,48,095/-, interest of Rs. 9,59,366/-, 25% penalty of Rs. 4,76,865/- (through oversight paid 25% of duty and interest instead of duty amount only) and fine of Rs. 3,22,000/- vide TR-6 Challan No. CUS/1348, 1349, 1350 & 1351/16-17 all dated 31.03.2017; that they preferred an appeal against the said Order before the Commissioner (Appeals) who upheld the order of the original authority; that thereafter on being preferred appeal by them before the Hon'ble CESTAT, Ahmedabad, the penalty of Rs. 9,48,095/- under Section 114A of the Customs Act, 1962 was set aside and the matter was remanded back for the determination of duty on proper valuation as per the provisions.

**12.2** The Noticee also submitted that in view of the clear directions of the CESTAT vide Order dated 05.02.2024, and in absence of copy of Valuation Report dated 18.04.2016 and without placing reliance upon the same in the said SCN dated 27.04.2016, it is requested that for the purpose of determination of Customs duty, which value is to be taken and what ground may be made known to them, so as to defend the matter in proper perspective; that duty cannot be determined on the value of Rs. 32,20,324/- as done in Annexure – B to the impugned SCN, in

addition to that it is further admitted fact on record that as per the Seizure Memo, the value of the 39 damaged containers is Rs. 16,00,000/- only; that proposal in the SCN for computation of the Customs duty of Rs. 9,48,095/- on so called realizable value of Rs. 32,20,324/- is totally erroneous and, therefore, same cannot be done.

**Records of Personal Hearing:**

13. Before proceeding for the personal hearing in the matter, in view of the directions of the Hon'ble CESTAT, Ahmedabad, as given vide its Order dated 05.02.2024, a fresh valuation of the said 39 Containers lying at respective Customs facilities, was conducted on 19.02.2025, by Shri Pankaj N. Udani (Skil Link India), the Government approved and empaneled Valuer, Ahmedabad. In view of following the principles of natural justice to the Noticee and to provide the transparency of the Valuation process, the fresh valuation of the said 39 containers was conducted in presence of the representative of all the stakeholders including Shri Bhavik Poriya, the representative of the Noticee, to provide them the opportunity to defend the valuation process, if they found it objectionable. Shri Pankaj N. Udani (Skil Link India), the Government approved valuer, submitted its valuation report vide its Valuation Report dated 21.02.2025, which was forwarded to the Noticee vide letter dated 26.02.2025. The acknowledgement of the same was submitted by the Noticee vide their Acknowledgement dated 10.03.2025 to the effect that they had received the Valuation Report dated 21.02.2025 and confirmed that the inspection of the said 39 containers was conducted in presence of Shri Bhavik Poriya on 19.02.2025.

14. The Personal Hearing in the matter was held on 10.03.2025. Shri P. D. Rachchh, Advocate on behalf of the Noticee, attended the same in virtual mode. During the course of hearing, he reiterated his submission dated 17.02.2025. He further submitted that though the CESTAT had ordered for proper valuation after following principle of natural justice, there is no provision under the Customs Act, 1962 and valuation rules made thereunder to adopt the valuation report of the Government Valuer for the purpose of determining of customs duty. He also submitted that taking a fresh valuation report amounts to new investigation in the matter and at this stage SCN cannot be improved. Therefore, the new valuation report cannot be taken into consideration for the purpose of assessment of customs duty. It may amount to taking of new ground at this stage, which is not permissible at all. It has been also submitted that the Hon'ble Tribunal has nowhere asked to take new valuation report, on the contrary has asked to adopt the valuation as per provisions. So such valuation report of current date which was neither the part of the investigation nor part of the show cause notice be used in the matter at least for determination of customs duty that too in remand case. It is further submitted that in any case though the representative was present during the course of inspection of the goods it cannot be said that they agree with the valuation done by the Government approved Valuer. It can be agitated before the adjudicating authority especially when adjudicating authority communicates that department wants to rely upon such valuation report. It is submitted that they does not

agree with the valuation report as according to them nothing can be realized from those containers, so zero valuation may be adopted. It was further submitted that in any case the average value of Rs. 36,300/- per container as arrived at by the Government Approved Valuer is without any ascertainment of weight of each container that too after noting that same are in total loss category/ scrap category and there is a loss in tare weight of the container. Since, there is no realizable value of goods looking to peculiar circumstances of the case which is evident from the fact that even after more than 10 years goods are lying in port area/CFS area. So zero duty may be determined and order for refund of duty already paid with interest and penalty as penalty is already set aside by Hon'ble CESTAT. Alternatively, it was submitted that department cannot go beyond the Show Cause Notice and therefore, value for redemption offered i.e. Rs. 3,22,000/- may be taken for the purpose of valuation and balance duty, interest and penalty may be ordered for refund.

**14.1** The Noticee vide their email dated 18.03.2025 submitted their further submission vide letter dated 18.03.2025, wherein they submitted that as per settled position of law nobody can travel beyond the scope of the SCN and also cannot make out new case, therefore, either entire demand may be set aside considering the zero value of the 39 total loss category of container or alternatively the value equal to the fine amount of Rs. 3,22,000/- as imposed while passing earlier Order-in-Original dated 13.02.2017 as seized valued at Rs. 16,00,000/- was after confiscation redeemed at Rs. 3,22,000/- only. The Noticee further submitted that consequent upon confiscation property is seized goods vested upon Government and same was redeemed at Rs. 3,22,000/- only so any other value other than that may not be correct value for determination of duty. As per the settled law, the adjudicating authority cannot go beyond the scope of SCN and in this regard they rely on the 12 following case laws:

- (i) Commissioner of C. Excise, Ghaziabad Vs Babur India Ltd. – 2004(166) ELT255 (Tri.Del.)
- (ii) Hindustan Polymers Co. Ltd. Vs Collector of C. Ex. Guntur – 1999(106) ELT12 (SC)
- (iii) Warner Hindustan Ltd. Vs Collector of C. Ex., Hyderabad – 1999(113) ELT24(SC)
- (iv) Sharp Batteries Vs Commr. of C. Ex. Mumbai- III – 2002(145) ELT611 (Tri. Mumbai)
- (v) Vasper Concepts (P) Ltd. Vs Comr. of C. Ex. Bangalore – 2006(199) ELT711 (Tri.Bang.)
- (vi) HAVER Standard India P Ltd. Vs Comr. of C. Ex. Vadodara – 2009(245) ELT216 (Tri.Ahmd)
- (vii) ND Metal Ind. Ltd. Vs Commissioner of C. Ex. Vapi - 2013(292) ELT520 (Tri. Ahmd)
- (viii) CCE, C&ST, Belgaum Vs Swaranagri Wire Insulations Pvt. Ltd. - 2014(301)ELT46(KAR.)
- (ix) Manikya Plastichem P Ltd. Vs Comr. of C. Ex. Bangalore-III – 2003(160) ELT273 (Tri Bang)
- (x) Pavan Tyres Ltd. VS Comr. of C. Ex. Chandigarh – 1996(81) ELT244 (Tri.)
- (xi) Jay AR Enterprises Vs Commr. Customs (Sea) Chennai – 2007(210) ELT459 (Tri. Chennai)
- (xii) Jindal Vijayanagar Steels Ltd. Vs Commr. Customs Mangalore – 2006(206) ELT529(Tri.Bang)

**Discussion and findings:**

15. I have carefully gone through the facts of the case, the Order dated 05.02.2024 of the Hon'ble CESTAT, Ahmedabad, OIA dated 07.02.2018, OIO dated 13.02.2017, Show Cause Notice dated 27.04.2016 alongwith written defence submission dated 17.02.2025 & 18.03.2025 and contents of the personal hearing held in the matter, in virtual mode on 10.03.2025.

16. I find that the limited issue to be decided in the present case on remand back to the Adjudicating Authority by the CESTAT vide their Final Order No. A/10330/2024 dated 05.02.2024, is to ascertain that which valuation is to be adopted for the purpose of assessment of duty of customs i.e. fresh valuation of damaged containers arrived at by the Government Valuer, Shri Pankaj N. Udani (Skil Link India) in presence of Shri Bhavik Poriya on 19.02.2025 and reported vide his Valuation Report dated 21.02.2025 or the valuation of damaged containers as contested by the Noticee in his defense reply dated 18.03.2025, as the CESTAT vide para 8 in their Final Order No. A/10330/2024 dated 05.02.2024 pronouncing the judgement has already held that, ".....we agree that duty in absence of remission was payable, as import which is subject matter of levy can even take place when goods enter in territorial waters. And only in normal case, the collecting point is deferred till Bill of Entry is filed. However, if goods get destroyed on port, the remission provision comes into play, which in this case was not sought. The assessment of duty etc., however has to be done on proper valuation after following natural justice, therefore, we hold that containers though could be subjected to duty, but assessment has to be on proper valuation arrived as per provisions and by following of natural justice. Appeal is allowed by way of remand on this aspect. As far as penalty is concerned, we hold that same under Section 114(A), which requires malicious intent, cannot be sustained in the facts of this matter specifically considering the supervening fact of fire after imports. Same is therefore dispensed with."

17. I observe that, 39 containers were imported by the Noticee without payment of Customs duty by availing benefit of the Notification No.104/94-Cus dated 16.03.1994 executing bond thereof to comply with the conditions of the said Notification and therefore, I find that, the appropriate customs duty is required to be recovered from the Noticee under Section 28(4) of the Customs Act, 1962 enforcing the bond executed to comply with the conditions of Notification No.104/94-Cus dated 16.03.1994.

18. I observe that, the Noticee vide their defense reply dated 17.02.2025 made the statement that, "in view of the clear directions of the CESTAT vide Order dated 05.02.2024, and in absence of copy of Valuation Report dated 18.04.2016 and without placing reliance upon the same in the said SCN dated 27.04.2016, it is requested that for the purpose of determination of Customs duty, which value is to be taken and what ground may be made known to them so as to

defend the matter in proper perspective, that duty cannot be determined on the value of Rs. 32,20,324/- as done in Annexure – B to the impugned SCN, in addition to that it is further admitted fact on record that as per the Seizure Memo, the value of the 39 damaged containers is Rs. 16,00,000/- only." The said statement of the Noticee makes it amply clear that, the Noticee has apparently admitted the value of 39 damaged containers as Rs. 16,00,000/- as per the said Seizure Memo and has requested to not place reliance upon the erstwhile Valuation Report dated 27.04.2016.

19. I further observe that, the value of the said containers were earlier taken as Rs. 32,20,324/- as per the Valuation Report dated 18.04.2016 submitted by Shri Bhasker G. Bhatt, Govt. Approved Valuer and therefore, the customs duty to be recovered from the Noticee at the instant time was assessed to Rs. 9,48,095/- (Rupees nine lakh, forty eight thousand and ninety five only). However, as per the direction of the CESTAT, Ahmedabad, issued vide Final Order No. A/10330/2024 dated 05.02.2024 in Customs Appeal No. 11217 of 2018 and as per request of the Noticee to not place reliance upon the erstwhile Valuation Report dated 27.04.2016, the valuation of the said 39 Containers in presence of Shri Bhavik Poriya, the representative of the Noticee was conducted on 19.02.2025 by Shri Pankaj N. Udani (Skil Link India), the Government approved and empaneled Valuer, Ahmedabad, to arrive at proper valuation by following the principles of natural justice. Shri Pankaj N. Udani (Skil Link India), the Government approved and empaneled Valuer, Ahmedabad vide his Valuation Report dated 21.02.2025 arrived at the value the said 39 containers damaged by fire as Rs. 14,15,700/- (Rupees fourteen lakh, fifteen thousand and seven hundred only). The Valuer arrived at the said value by considering the various crucial parameters with respect to the condition of damaged containers as on date, which is specifically mentioned in his Valuation Report dated 21.02.2025, which is reproduced herein below in verbatim:

*"In my opinion 39 Nos of containers i.e. 28 nos of containers at CFS Contrans Yard and 11 Nos of containers at GPPL Port side lying in Yard since last 10 – 12 years, it is examined deeply and found that all the 39 Nos of containers are total loss category/ scrap category due to the fire burns, corrosion (as it is lying in open yard), damaged, bursted, dented and improper stacking due to all this above condition there is loss in tare weight of the container.*

*Hence an average tare weight of the container has been taken in consideration for valuation. Further to mention that the scraped containers shall only be used for the melting purpose, it is to mention that the containers have to be cut into pieces of 2 Feet x 2 Feet maximum, as the opening of the melting furnace is approximately 3 Feet dia. Maximum and to get maximum output the scarp is to be of small pieces. The details of the assessed valuation of each container and condition are enclosed in the valuation report and CE Certificate."*

20. I find that, the said valuation was duly carried out on 19.02.2025 in the presence of Shri Bhavik Poriya, the representative of the Noticee, who at the material point of time had never contested the value of damaged containers, arrived at by Shri Pankaj N. Udani (Skil Link India),

the Government approved and empaneled Valuer, Ahmedabad. I, therefore find that, it is afterthought on the part of the Noticee to have contested the Valuation Report dated 21.02.2025 at later stage to avoid the payment of applicable duty of customs on proper valuation determined in his presence. I further find that, it is matter of simple understanding that, the Customs department appointed Govt. Approved Valuer for the valuation of containers only because containers were damaged in fire and its fair price can be determined in terms of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, without any prejudice or otherwise the Customs would have simply relied upon the value of containers being declared by the Noticee at the time of their import. Moreover, there is provision in the Customs Act, 1962 to seek remission of duty of customs in case of destroyed goods; however, the Noticee never sought the same. The said fact is also observed by the Hon'ble CESTAT Ahmedabad in para 8 of their Final Order No. A/10330/2024 dated 05.02.2024, wherein it is specifically pronounced that, "*.... if goods get destroyed on port, the remission provision comes into play, which in this case was not sought.*" It is therefore, I find that, the Noticee is liable to pay duty of customs on the said containers beyond doubt and therefore, as contested by the Noticee in case value of said 39 damaged containers is to be taken as zero then there will be no duty on such goods, which itself makes it clear that such demand of the Noticee on the basis of surmises and conjectures is not admissible within the ambit of the law or the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

**20.1** In view of the above, I find that the Noticee is liable to pay the duty on the said 39 containers, which has also been confirmed by the Hon'ble CESTAT, Ahmedabad vide its Order dated 05.02.2024 after observing that as the Notice had not sought the remission of duty, thus, in absence of remission duty is payable. Therefore, in view of the said Valuation Report dated 21.02.2025 and discussions as hereinabove, the duty liability of the Noticee arrives as per the table follows:

(Amount in rupees)

Duty liability on the basis of the value ascertained vide Certificate Ref. No. PNU/SLI/24-25/297 Dated 21-02-2025 issued by Shri Pankaj N. Udani (Skil Link India), the Government approved and empaneled Valuer, Ahmedabad.					
SR. NO.	CONTAINER NO.	SIZE	NAME OF CFS	VALUE AS PER CE REPORT	Applicable Duty
1	MSKU6567430	40	CTL	36300	10687
2	PONU7537050	40	CTL	36300	10687
3	UESU4534846	40	CTL	36300	10687
4	MSKU0910449	40	CTL	36300	10687
5	MAEU8185649	40	CTL	36300	10687
6	SEAU8536190	40	CTL	36300	10687
7	TCNU9901345	40	CTL	36300	10687
8	MRKU0014414	40	CTL	36300	10687
9	MSKU6415524	40	CTL	36300	10687
10	MAEU8398372	40	CTL	36300	10687
11	KSKU9219762	40	CTL	36300	10687
12	MAEU6407140	40	CTL	36300	10687

13	MRKU0277956	40	CTL	36300	10687
14	PONU7658257	40	CTL	36300	10687
15	PONU7872850	40	CTL	36300	10687
16	TCKU9527499	40	CTL	36300	10687
17	POCU1118767	40	CTL	36300	10687
18	MSKU0055837	40	CTL	36300	10687
19	UESU4152550	40	CTL	36300	10687
20	MSKU9154240	40	CTL	36300	10687
21	PONU1551045	40	CTL	36300	10687
22	MSKU6700630	40	CTL	36300	10687
23	PONU1949337	40	CTL	36300	10687
24	PONU7635591	40	CTL	36300	10687
25	MSKU6935742	40	CTL	36300	10687
26	MSKU9242952	40	CTL	36300	10687
27	MAEU8314540	40	CTL	36300	10687
28	MSKU8176352	40	CTL	36300	10687
29	MSKU4218172	20	GPPL	36300	10687
30	MSKU5785099	20	GPPL	36300	10687
31	PONU7393224	45	GPPL	36300	10687
32	UETU2059041	20	GPPL	36300	10687
33	PONU7623517	45	GPPL	36300	10687
34	PONU0638881	20	GPPL	36300	10687
35	GESU4280202	45	GPPL	36300	10687
36	MWMU6396656	45	GPPL	36300	10687
37	MSKU5009460	20	GPPL	36300	10687
38	MSKU2428863	20	GPPL	36300	10687
39	MWCU6733926	45	GPPL	36300	10687
<b>T O T A L</b>				<b>14,15,700</b>	<b>4,16,793</b>

21. I further observe that, the Noticee vide their email dated 18.03.2025 further pleaded that in case value of 39 containers can't be considered as zero than alternatively the value of the containers may be taken equal to the fine amount of Rs. 3,22,000/- as imposed while passing the earlier Order-In-Original dated 13.02.2017 as seized valued at Rs. 16,00,000/- was after confiscation redeemed at Rs.3,22,000/- only.

22. In this regard, I further find that, as the Noticee failed to comply with the conditions of the Notification No. 104/94-Cus dated 16.03.1994 i.e. the Noticee neither re-exported the imported containers within the stipulated time frame of six months from the date of importation nor sought extension to re-export the imported containers on or before the expiry of the initial period of six months in terms of proviso to the Notification No.104/94-Cus dated 16.03.1994, hence, containers imported with conditions to re-export within six months seized vide Seizure Memo dated 05.11.2015 are liable for confiscation under Section 111(o) of the Customs Act, 1962, which stipulates that, *"any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."* I find that, the said confiscated goods were offered to be redeemed in compliance to the provisions of Section 125(1) of the Customs Act, 1962 on payment of redemption fine of Rs. 3,22,000/-, which can be redeemed only on the

payment of applicable duty of customs and can't be considered as overall value of confiscated goods for the purpose of valuation during the assessment, which is settled law and can be well deduced from Section 14 of the Customs Act, 1962 read with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

23. I therefore find that, the Noticee's contention to take the value of 39 containers as Rs. 3,22,000/- with submission that as per settled position of law nobody can travel beyond the scope of the SCN and also cannot make out new case, is without any legality, as the valuation of the 39 containers carried out on 19.02.2025 is in order to follow the principles of natural justice in compliance of the orders of the CESTAT, Ahmedabad issued vide Final Order No. A/10330/2024 dated 05.02.2024 in Customs Appeal No. 11217 of 2018 and as per their own request of the Noticee made while filing defense reply dated 17.02.2025 i.e. to not place reliance upon erstwhile Valuation Report dated 27.04.2016.

24. I further observe that the 2<sup>nd</sup> proviso to Section 125(1) of the Customs Act, 1962 regarding Option to pay fine in lieu of confiscation stipulates, "*Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of Section 115 such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*" It is therefore, I find that, the Noticee's could not comprehend the fact that redemption fine may be or may not be the market price of the goods confiscated but always less than the market price of the confiscated goods. In instant case, the market price of the 39 containers liable for the confiscation being damaged in nature has been arrived at on valuation of the same by Shri Pankaj N. Udani (Skil Link India), the Government approved and empaneled Valuer, Ahmedabad duly carried out on 19.02.2025 in presence of Shri Bhavik Poriya, the representative of the Noticee, who at the material point of time had never contested the value of damaged containers, arrived at by the valuer.

25. I, therefore find that the total value of the 39 containers damaged in fire is to be taken as Rs. 14,15,700/- (Rupees fourteen lakh, fifteen thousand and seven hundred only) which is as per the Valuation Report dated 21.02.2025 issued by Shri Pankaj N. Udani (Skil Link India), the Government approved and empaneled Valuer, Ahmedabad for the assessment of duty of customs duty. Further, I observe that the Noticee had argued that opting for new valuation of the said 39 containers amounts to travelling beyond the scope of the Show Cause Notice and in support of their contention they had relied upon 12 different case laws of various forums as stated above. In this regard, I observe that as discussed hereinabove, the valuation dated 21.02.2025 was conducted by the department for following the principles of natural justice, by adhering to the directions of the Hon'ble CESTAT, Ahmedabad given vide its Order dated 05.02.2024 and as per the Noticee's own request and therefore, the same does not amount to travelling of the issue beyond the scope of the show cause notice. Hence, I find that the 12 various case laws as relied upon by the Noticee are not applicable in the instant case.

26. In view of the foregoing discussions, I find that the Noticee failed to comply with the conditions of Notification No.104/94-Cus dated 16.03.1994 i.e. the Noticee neither re-exported the imported containers within stipulated time frame of six months from the date of importation nor sought extension to re-export the imported containers on or before the expiry of the initial period of six months in terms of proviso to the Notification No.104/94-Cus dated 16.03.1994, hence, containers imported with conditions to re-export within six months seized vide Seizure Memo dated 05.11.2015 are liable for confiscation under Section 111(o) of the Customs Act, 1962. I further find that, as the said goods are liable for confiscation under sub-section (o) of Section 111 of the Customs Act, 1962, the same falls under the category of 'smuggled goods' as defined under Section 2(39) of the Customs Act, 1962 which defines 'smuggling' as "*in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 and section 113*" and therefore, the Noticee has rendered himself liable for penalty for improper importation of goods, etc. under Section 112(a)(ii) of the Customs Act, 1962.

27. I further observe that, in the Show Cause Notice dated 27.04.2016 at Para 12(iv) & 12(v) penalty was proposed under Section 112(a) of the Customs Act, 1962 and Section 114A of the Customs Act, 1962 respectively. However, as a natural corollary in the Order-In-Original dated 13.02.2017 due to demand of duty of customs penalty was imposed under Section 114 A of the Customs Act, 1962 considering the limitation prescribed under the fifth proviso to Section 114A of the Customs Act, 1962. However, in the instant case, the Hon'ble CESTAT, Ahmedabad vide its Final Order No. A/10330/2024 dated 05.02.2024 had set aside the penalty imposed under Section 114A of the Customs Act, 1962, but as the goods being liable for confiscation, the Noticee is liable for penalty under provisions of Section 112(a)(ii) of the Customs Act, 1962 as discussed *supra*.

28. In view of the above discussions and findings, I pass the following order:

**ORDER**

- (i) I order to confiscate all the 39 empty containers totally valued at Rs. 14,15,700/- (Rupees fourteen lakh, fifteen thousand and seven hundred only) arrived as per the Valuation Report dated 21.02.2025 issued by Shri Pankaj N. Udani (Skill Link India), the Government approved and empaneled Valuer, Ahmedabad, under Section 111(o) of the Customs Act, 1962, which were seized vide Seizure Memo dated 05.11.2015. However, I give an option to M/s. Maersk Line India Pvt. Ltd., to redeem the said confiscated goods on payment of redemption fine of Rs. 1,42,000/- (Rupees one lakh and forty two thousand only) under Section 125 of the Customs Act, 1962, within one hundred and twenty days from the receipt to this order or else this option shall

become void in terms of sub-section (3) of the Section 125 of the Customs Act, 1962, unless an appeal against such order is pending; I also order for appropriation of the Redemption Fine to the extent of Rs. 1,42,000/-, (Rupees one lakh and forty two thousand only) under Section 125 of the Customs Act, 1962 which was paid by the Noticee vide Challan No. CUS/1351/16-17 dtd. 24.03.2017, if the noticee has exercised the option to redeem the confiscated goods within one hundred and twenty days from the receipt to this order.

- (ii) I order to pay the customs duty of Rs. 4,16,793/- (Rupees four lakh, sixteen thousand, seven hundred and ninety three only) as applicable on the said 39 containers by considering their total assessable value as Rs. 14,15,700/- (Rupees fourteen lakh, fifteen thousand and seven hundred only), under Section 28(4) of the Customs Act, 1962 read with bond executed in compliance to provisions of the Notification No. 104/94-Cus dated 16.03.1994 as well as appropriate interest at the applicable rate, under Section 28AA of the Customs Act, 1962; I also order for the appropriation of the Customs Duty to the extent of Rs. 4,16,793/-, (Rupees four lakh, sixteen thousand, seven hundred and ninety three only) under Section 28(4) of the Customs Act, 1962 as well as order to appropriate the applicable amount of interest leviable under Section 28AA of the Customs Act, 1962, which were paid by the Noticee vide Challan No. CUS/1348/16-17 dtd. 24.03.2017 and Challan No. CUS/1349/16-17 dtd. 24.03.2017 respectively.
- (iii) I impose penalty of Rs. 41,700/- (Rupees forty one thousand and seven hundred only) under Section 112(a)(ii) of the Customs Act, 1962 on the Noticee; I also order to appropriate the Penalty amount to the extent of Rs. 41,700/-, (Rupees forty one thousand and seven hundred only) under Section 112(a)(ii) of the Customs Act, 1962 which was paid by the Noticee vide Challan No. CUS/1348/16-17 dtd. 24.03.2017.



(Anil Kumar Singh)  
Additional Commissioner  
Date: 28.03.2025

F. No. VIII/10-88/ADC/O&A/2016

BY Speed Post/ Email:

To  
M/s. Maersk Line India Pvt. Ltd.,  
Office No. 21/22/23, 2<sup>nd</sup> Floor, Port Users Complex,  
Pipavav-365 650 Taluka-Rajula

Copy to:

- (i) The Commissioner of Customs (Prev.), Jamnagar.
- (ii) The Assistant Commissioner, Customs House Pipavav.
- (iii) The Assistant Commissioner, Systems, Customs (P), Jamnagar.
- (iv) The Superintendent, TRC, Customs (Preventive), Hqrs., Jamnagar.
- (v) Guard File.