



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

चौथी मंज़िल 4th Floor, हड्डोभवन HUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250671MN0000666B0B

क	फाइलसंख्या FILE NO.	S/49-122/CUS/MUN/2023-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	JMN-CUSTM-000-APP-028-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	17.06.2025
ड	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Speaking Order No. 14/2023-24 dated 13.07.2023 issued from F. No. VIII/6(a)- 25/2023-24
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	17.06.2024
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Shubh Arya Steel Pvt. Ltd., Arya House, Kherghada Street, Khargate, Bhavnagar - 364001
1.	यहप्रतिउपव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया है।	
	This copy is granted free of cost for the private use of the person to whom it is issued.	
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआ देशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकते 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 आया तितकोई माल.				
(a)	any goods imported on baggage.				
(ख)	भारत में आया तकरने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उत्तर रेनग एमालया उस गन्तव्य स्थान पर उत्तर रेनग एमाल 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 बना एगएनियमों 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 उसके साथ निम्नलिखित कागजात संलग्न होना 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 मद्दसं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रतिमें पचास पैसे की न्यायालय शुल्क टिकट लगा हो ना 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				
(ब)	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 (यथासंशोधित) में निर्धारित फीस जो अन्यरसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) यारु. 1000/- (रूपए एक हजार मात्र) जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलानटी. आर. 6 की दो प्रतियां। यदि शुल्क, मांग गया व्याज, लगाया गया दण्ड की राशि और रूपए एक लाख यात्रा उस से कम महोत्तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक होतो 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.	मद्दसं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि दिकोई 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 सेवाकर 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 :				
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5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहजाररुपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पाँचहजाररुपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहजाररुपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंडविवादमें,यादंडके 10%अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER-IN-APPEAL

M/s. Shubh Arya Steel Pvt. Ltd., Arya House, Kherghada Street, Khargate, Bhavnagar - 364001(hereinafter referred to as "the appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the Speaking Order No. 14/2023-24 dated 13.07.2023 issued from F. No. VIII/6(a)-25/2023-24 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Customs Division, Bhavnagar (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant had imported vessel MV MSC FEDERICA for breaking up as per Memorandum of Agreement dated 30.06.2023 and filed Bill of Entry No. 6697080, dated 03.07.2023 under Section 46 of the Customs Act, 1962. The Bill of Entry was provisionally assessed by classifying the goods viz. Vessels for breaking under CTH 89.08, Bunkers (inside/outside Engine Room Tank) under CTH 89.08, Provisions under CTH 98.05 and Paints, Thinner, Chemicals, Acid and Grease under CTH 3814. On production of Original Memorandum of Agreement with all other relevant documents, the Bill of Entry was finally assessed vide the impugned order by classifying fuel and oil (bunkers) inside and outside Engine Room Tanks under CTH 2710.

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

- The impugned order has been issued in violation of the order of the Hon'ble Supreme Court & High Court. The Hon'ble Supreme Court in the case of M/s. Mahalaxmi Ship Breaking Corp. etc. v/s. Commr. of Cus. (Prev.) reported in [(2023) 5 Centax 193 (S.C.)] has held that Fuel oil contained in bunker/tanks of engine room/outside engine room of vessels to be broken up were to be assessed along with vessels as their parts and not separately. The Hon'ble Supreme Court upheld the view taken by the Hon'ble CESTAT in the case of M/s. Shree Saibaba Ship Breaking Company vs. Commissioner reported in [(2023) 2 Centax 128 (Tri. - Ahmd.)] and declared as correct. The contrary view taken by the Hon'ble CESTAT in Kamdar Associates vs. Commissioner reported in [2016 (339) E.L.T. 158 (Tri.)] was not subscribed with by the Hon'ble Supreme Court and appeal filed thereagainst by appellant was allowed.
- The Hon'ble CESTAT in the case of M/s. Shree Saibaba Ship Breaking Company (Supra) following the judgment of the Hon'ble High Court of Gujarat in the case of M/s. Priya Holding Pvt. Ltd. v/s. Commr. of Cus. (Prev.) reported in [2013 (288) ELT 347 (Guj)] has held that the Fuel and

oil stored in the tanks in the engine room of the vessel is classifiable under CTH 89.08.

- The Hon'ble High Court of Gujarat in the case of M/s. Priya Holding Pvt. Ltd. (Supra) has held that the bunkers containing oil were to be treated as part of the vessel's machinery and were classifiable under heading No. 89.09 of the Schedule to the Customs Tariff Act, 1975. The appellant submits that the Deputy Commissioner mis-interpreted the order of the Hon'ble High Court while recording his findings at Para-5 of the impugned order. The Hon'ble High Court has not held what the Deputy Commissioner has concluded.
- During the relevant time, decision of the Hon'ble High Court of Gujarat in the case of M/s. Priya Holding Pvt. Ltd. (Supra) is binding to all lower authorities for purpose of classifying contents & interpretation of as to the quantity of fuel & oil as per clause (b) of circular no. 37/96-Cus as held by the Hon'ble High Court of Gujarat judgment relied upon by the appellant herein above. Hence, the fuel & oil lying in the engine room tanks should be classified under CTH 8908 of the Customs Tariff Act, 1975.
- Assistant Commissioner has shown judicial indiscipline in not abiding by the judicial pronouncements of the Hon'ble Supreme Court of India in the case of M/s. Mahalaxmi Ship Breaking Corp. (Supra). Thus, the present approach for classifying the bunkers lying inside Engine room tank in the bill of entry to CTH 2710 by issuing the impugned order is erroneous.

4. Shri Rahul Gajera, Advocate appeared for personal hearing on *04.06.2025 on behalf of the appellant. He reiterated the written submission made at the time of filing appeal. He relied upon the decision of Hon'ble Supreme court in the case of M/s Mahalaxmi Ship Breakers.

5. I have gone through the facts of the case available on record and grounds of appeal. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority classifying fuel and oil (bunkers) inside and outside Engine Room Tanks under CTH 2710 of the Customs Tariff Act, 1975, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the appellant had imported vessel MV MSC FEDERICA for breaking up as per Memorandum of Agreement dated 30.06.2023 and filed Bill of Entry No. 6697080, dated 03.07.2023 under Section 46 of the Customs Act, 1962. The Bill of Entry was provisionally assessed by classifying the goods viz. Vessels for breaking under CTH 89.08, Bunkers (inside/outside Engine Room Tank) under CTH 89.08, Provisions under CTH 98.05 and Paints, Thinner, Chemicals, Acid and

Greese under CTH 3814. On production of Original Memorandum of Agreement with all other relevant documents, the Bill of Entry was finally assessed vide the impugned order by classifying fuel and oil (bunkers) inside and outside Engine Room Tanks under CTH 2710.

5.2 It is observed that the Hon'ble Tribunal, Ahmedabad in Final Order No. A/11792-11851/2022, dated 01.12.2022 had settled the issue of classification of oil contained in the bunkers tank inside engine room of vessel imported for breaking and held that Oil contained in Bunker Tanks in Engine Room of Vessel imported for breaking up is classifiable under CTH 8908 along with such vessel. The relevant para 5.4 of the decision is reproduced hereunder:

"5.4 In view of the above, aforesaid decisions of the Hon'ble Gujarat High Court and this Tribunal, the impugned Orders holding that Oil inside the Bunker Tanks in engine rooms are to be assessed to duty under CTH 27.10 are liable to be set aside and Oil contained in Bunker Tanks in Engine Room of Vessel imported for breaking up is classifiable under CTH 8908 along with such vessel."

Thus, the classification of Oil contained in Bunker Tanks in Engine Room of Vessel imported for breaking is settled by the order of Hon'ble Tribunal dated 01.12.2022.

5.3 As regards the Oil contained in Bunker Tanks outside the engine room of vessel, since no speaking order was passed by the adjudicating authority in the aforesaid case, the Hon'ble Tribunal had remanded the matter to the adjudicating authority to pass speaking order in respect of duty pertaining to Oil contained in Bunker Tanks outside the engine room of vessel. However, it is observed that the Hon'ble Tribunal while remanding the issue of classification of Oil contained in Bunker Tanks outside the engine room of vessel had held that if the tanks containing Oils are connected with pipeline with the engine or machinery of the vessel, then the same be treated as integral part of the engine or machinery of the vessel. Thus, in my considered view only factual verification was required to be done whether the tanks containing Oils outside engine room are connected with pipeline with the engine or machinery of the vessel. The relevant Para 5.5 of the said order of the Tribunal is reproduced as under:

"5.5 As regards, the Oil contained in Bunker Tanks outside the engine room of vessel, despite duty was paid under protest, there is, however, no speaking order passed as regards the same. It can be seen that if the tanks containing Oils are connected with pipeline with the engine or machinery of the vessel, there may be no reason why the same

cannot be treated as integral part of the engine or machinery of the vessel. However, since there is no speaking order on that part of issue, we direct the adjudicating authority to pass speaking order in respect of duty pertaining to Oil contained in Bunker Tanks outside the engine room of vessel."

Thus, for the classification of oil contained in the Bunker Tanks outside Engine Room of the vessel imported for breaking, it was held that if the tanks containing Oils are connected with pipeline with the engine or machinery of the vessel, then the same is to be treated as integral part of the engine or machinery of the vessel and classifiable under CTH 8908 along with such vessel.

5.4 It is further observed that the Hon'ble Supreme Court in the case of Mahalaxmi Ship Breakers Corp. Versus Commissioner of Customs, Bhavnagar [(2023) 5 Centax 193 (S.C.)] had upheld the order of the Hon'ble Tribunal dated 01.12.2022. The relevant para of the order is reproduced as under:

"6. Having considered both the orders as well as the submissions of the parties, this Court is of the view that the later view expressed in the orders dated 16-2-2022 and 1-12-2022 [which are the subject matters of Diary No(s). 24220 OF 2022, Diary No(s). 8943 OF 2023, Diary No(s). 10272 OF 2023, Diary No(s). 10034 OF 2023, Diary No(s). 11290 OF 2023, Diary No(s). 8954 OF 2023, Diary No(s). 10267 OF 2023, Diary No(s). 10031 OF 2023] is correct. The Revenue's appeals are, accordingly, dismissed."

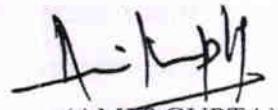
5.5 It is observed that the Hon'ble Tribunal vide Order dated 01.12.2022 has categorically decided the issue of classification of oil contained in the Bunker Tanks and the same has been upheld by the Hon'ble Supreme Court vide order dated 05.04.2023 reported at [(2023) 5 Centax 193 (S.C.)]. Thus, in view of categorical decision of Hon'ble Tribunal which was upheld by the Hon'ble Supreme Court, there is no scope left for further interpretation in the issue. Therefore, the impugned order passed by the adjudicating authority classifying fuel and oil (bunkers) inside and outside Engine Room Tanks under CTH 2710 is erroneous and not sustainable. The impugned order being devoid of merit is accordingly set aside.

5.6 By respectfully following the decision of Hon'ble Tribunal, Ahmedabad dated 01.12.2022 and the decision of the Hon'ble Supreme Court, it is held that the Oil contained in Bunker Tanks in Engine Room of Vessel imported for breaking up is classifiable under CTH 8908 of the

Customs Tariff Act, 1975 along with the vessel. The Bill of Entry may be assessed accordingly.

5.6.1 Further, as regards the classification of oil contained in Bunker Tanks outside the engine room of vessel, the matter is remanded to the adjudicating authority for passing speaking order after factual verification whether the tanks containing Oils outside engine room are connected with pipeline with the engine or machinery of the vessel.

6. The appeal filed by the appellant is disposed off in above terms.



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

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