



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

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

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SHOW CAUSE NOTICE

(Issued under the provisions of Section 28(4) of the Customs Act, 1962 read with Section 125 of the Customs Act, 1962)

An intelligence gathered by the officers of the CH-Vadinar indicated that a vessel/tanker namely "**MT Desh Bhakt**" having Indian Flag owned by **M/s. Shipping Corporation of India Ltd.** having office at Shipping House, 245 Madame Cama Road, Mumbai (Maharashtra) – 400 021 (hereinafter referred to as "**the Noticee**"), was converted into foreign run vessel from Bedi/ Rozi port on 05.12.2021 and proceeded to Duqm, Oman, in ballast for dry docking and was returned to Vadinar Port on 28.07.2022 after dry docking of the same at Oman. However, the Noticee neither filed the shipping bill for export of the said vessel from Bedi port to Oman and nor filed the Bill of Entry for re-import of the said vessel on return of the said vessel at Vadinar Port after dry docking of the same from Oman, so as to avoid the payment of the applicable duties of customs to be paid on the repairing/ dry docking charges, to & fro freight and insurance.

2. Whereas, acting on an intelligence, investigation was initiated and Summons dated 13.09.2022 and 23.09.2022 were issued to the Noticee to submit the details with supporting documents pertaining to the cost of dry docking, to & fro freight from Bedi/ Rozi to Duqm, Oman and Oman to Vadinar, copy of Insurance Policy, etc.

3. Whereas, a Statement of Shri P. Uday Bhaskar, Deputy General Manager (B&T) of the Noticee was recorded on 10.10.2022 under Section 108 of the Customs Act, 1962 (**RUD-01**), wherein he *inter alia* stated that the vessel 'MT Desh Bhakt' had departed from Bedi Port, India on 05.12.2021 to Duqm, Oman in ballast as a conveyance for dry dock only. The shipping bill was not filed for export of the said vessel and after dry dock, the vessel has visited to Fujairah for bunkering and after that it arrived at Vadinar port on 28.07.2022 as a conveyance in ballast only and they had not filed the Bill of Entry for re-import of the said vessel, however, they have filed the Bill of Entry only for the conversion of the vessel from foreign run to coastal run; that they

will pay IGST @ 5% on the cost of dry dock charge in view of the Notification No. 03/2021-Integrated tax dated 02.06.2021 in the GSTR-3B for the month of September, 2022. He further stated that in view of the Notification No. 45/2017-Cus dated 30.06.2017 as amended by 36/2021-Cus. dated 19.07.2021, they are not required to file the Bill of Entry at the time of re-import of the vessel and discharge the IGST liability on the cost of repairing, insurance and both ways freight. He also stated that they will provide the required documents within a week.

4. Whereas, vide letter dated 01.11.2022, the Noticee has provided the required documents (RUD-02). Thereafter, letter dated 03.05.2024, 27.05.2024, 09.09.2024 and 30.09.2024 have been issued to the Noticee to provide the bi-furcation of the IGST paid for the month of September-2022 and details in respect of the re-import of the vessel 'MT Desh Bhakt' comprising particulars of cost of dry docking, cost of fuel incurred as total freight from Bedi Port to Oman and back to Vadinar after dry docking, salary of crew and provisions consumed, port handling charges and cost of insurance etc. The Noticee had provided certain documents vide their letter dated 30.05.2024 (RUD-03) and 04.10.2024 (RUD-04).

5. During the course of further investigation and on scrutiny of the documents submitted by the Noticee, it appeared that the Noticee had neither filed the shipping bill for export of vessel to Oman for dry docking nor had filed bill of entry for re-import of the said vessel at Vadinar port on return of the said vessel at Vadinar Port after dry docking of the same at Oman and had also not paid the applicable duties of customs on the repairing/ dry docking charges, to & fro freight and insurance charges in view/ compliance of the Notification No. 45/2017-Customs dated 30.06.2017 & Notification No. 46/2017-Customs dated 30.06.2017 as amended by Notification No. 36/2021-Cus & 37/2021-Cus both dated 19.07.2021 respectively. The details of the liability of the payment of the duty of customs calculated on the basis of the documents provided by the Noticee are as per following Table- A:

Table – A

(Amount in Rs.)

Calculation of Duty on re-import of vessel MT Desh Bhakt after Dry Docking at foreign Port						
Cost of Dry Docking	Insurance for 292 days against hull and Machinery Premium	Freight for both ways			Grand Total	IGST@5%
		Cost of Fuel (From Bedi Port to Oman & back to Vadinar Port)	Salary paid and Provisions consumed during the duration of Dry Docking of vessel	Port Handling Charges (At Bedi Port and Vadinar port)		
A	B	C	D	E	$F=(A+B+C+D+E)$	$G=F*0.05$
248869037	2559916	62888687	20338012	7885240	342540892	1,71,27,045

Whereas, in view of the foregoing Table-A, it appears that, the Noticee is liable to pay the total amount of IGST of Rs. 1,71,27,045/- (Rupees one crore, seventy one lakh, twenty seven thousand and forty five only), alongwith applicable interest on re-import of vessel MT Desh Bhakt after Dry Docking at foreign Port.

6. LEGAL PROVISIONS/ CONTRAVENTION:

6.1 Whereas, Sl. No. 2 of the table appended to the Customs Notification No. 45/2017-Customs dated 30.06.2017 & Notification No. 46/2017-Customs dated 30.06.2017 as amended by Notification No. 36/2021-Cus & 37/2021-Cus both dated 19.07.2021 respectively, is reproduced as follows in verbatim:

Sl. No.	Description of goods	Condition
2	Goods, other than those falling under Sl. No. 1 exported for repairs abroad	<i>said duty, tax or cess which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred for not), insurance and freight charges, both ways</i>

6.2 Further, Circular No 16/2021-Customs dated 19.07.2021 stipulates,

“.....

2. Notification Nos. 45/2017-Customs and 46/2017-Customs, both dated 30th June, 2017, issued at the time of implementation of GST, prescribe certain concession from duty/ taxes on re-import of goods exported for repair outside India. These notifications, specifically serial No. 2 *ibid*, clearly specify that goods exported (other than those exported under claim of benefits listed), when re-imported into India, are exempt from so much of the duty of customs leviable thereon which is specified in the said First Schedule of the Customs Act, 1962, and the integrated tax, compensation cess leviable there on respectively under sub-section (7) and (9) of section 3 of the said Customs Tariff Act, 1975 as is in excess of the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred for not) insurance and freight charges both ways.

3. Therefore, the said notification prescribes that duties or taxes (including BCD, IGST, etc.) at the applicable rates will be payable on such imports, calculated on the value of repairs, insurance and freight, instead of the value of the goods itself. Similar concession existed in pre-GST period too, vide Notification No. 94/96-Customs, whereby, the customs duty (BCD, additional duty of customs under section 3 of Customs Tariff Act, 1975, etc.) were payable on the value of repairs instead of the entire value of goods in such imports.

4. GST rate and exemptions are prescribed on the recommendation of the GST Council. The Council, at the time of roll out of GST decided to continue the concession as were available under the said notification No. 94/96-Cus, with only consequential amendment, i.e. replacing additional duties of customs with IGST and Compensation cess, as discussed in the 14th Meeting of the GST Council. Accordingly, under GST, IGST and Compensation cess were made

applicable on the value of repairs, insurance and freight on re-import of goods sent abroad for repair.

5. Again, during the 37th GST Council Meeting, while examining the request to make available the credit of ITC paid on aircraft engines and parts exported for repairs and later re-imported, the leviability of IGST on such imports, on the cost of repairs, insurance and freight charges, was affirmed. In fact, this was never disputed in first place and the request was to allow credit of the IGST so paid. Similarly, while examining the question of GST rate on maintenance, repair and overhauling (MRO) services in respect of aircraft, aircraft engines and other components and parts, the leviability of IGST on such re-imports was again affirmed by the GST Council in its 39th meeting, making it explicitly clear that such goods reimported after repair from outside India attract IGST on the repair, freight and insurance value. In the said discussion, the IGST levied on such goods re-imported after being exported abroad for repairs was a significant factor considered by the GST Council while deciding the rate on MRO services. The above deliberations of the GST Council leave no doubt that the Council had consciously recommended for levy of IGST and cess, albeit at the repair, insurance and freight cost instead of the entire value of goods imports, on the basis of which the said notifications No. 45/2017-Cus and 46/2017-Cus were issued.

6. Recently, in the matter of M/s Interglobe Aviation Limited versus Commissioner of Customs, in its Final Order Nos. 51226-51571/2020 dated the 2nd November, 2020 {2020(43)G.S.T.L.410(Tri.-Del.)}, the Hon'ble CESTAT Principal Bench, New Delhi on analysis of Notification No. 45/2017-Customs, has interpreted that intention of legislation was only to impose basic customs duty on the fair cost of repair charges, freight and insurance charges on such imports of goods after repair. The Hon'ble CESTAT has thus concluded that integrated tax and compensation cess on such goods would be wholly exempt. An appeal has been preferred by the Department before the Hon'ble Supreme Court against the said Order.

7. In the above background, the matter was placed before the GST Council in its 43rd Meeting held on the 28th May, 2021. The GST Council deliberated on the issue and recommended that a suitable clarification, including any clarificatory amendment, if required, may be issued for removal of any doubt, to clarify the decision of the GST Council that re-import of goods sent abroad for repair attracts IGST and cess (as applicable) on a value equal to the repair value, insurance and freight.

8. Accordingly, as recommended by the GST Council, it is clarified that Notification Nos. 45/2017-Customs and 46/2017-Customs, both dated the 30th of June, 2017 were issued to implement the decision of the GST Council taken earlier, that re-import of goods sent abroad for repair attracts IGST on a value equal to the repair value, insurance and freight. Further, in the light of the recommendations of the GST Council in its 43rd Meeting, clarificatory amendments has been made in the said notifications, vide notification Nos. 36/2021-Customs and 37/2021-Customs, both dated 19th July, 2021, without prejudice to the leviability of IGST, as above, on such imports as it stood before the amendment."

6.2.1 In view of the above provisions, it appears that the Noticee is liable for the payment of applicable duties of customs on cost of dry docking, cost of fuel incurred as

total freight from Bedi Port to Oman and back to Vadinar after dry docking, salary of crew and provisions consumed, port handling charges and cost of insurance, etc. However, it appears that the Noticee has not paid the IGST on a value equal to the repair value, insurance and freight to the tune of Rs.1,71,27,045/- as detailed in Table-A above.

6.3 Whereas, in this regard, Circular No. 16/2012-Customs dated 13.06.2012 stipulates,

“.....

3.1 *In this regard, it is stated that as the provisions of Section 29 of the Customs Act, 1962 read with Section 2(22) and 2(25), the term 'imported goods', interalia, includes vessels entering India from any place outside the country (India). These vessels may fall into any of the following category (i) Foreign flag vessels i.e., vessels that have been registered outside India and which carry imported/ exported goods or passengers, during its foreign run (voyage from a port outside India to an Indian port, whether touching any intermediate port in India or not); (ii) Vessel entering India for the first time on arrival in the country, for registration as Indian Flag vessel; (iii) Vessels which are intended for conversion from foreign run to coastal run/ trade (voyage between two or more Indian ports); and (iv) Vessels which are brought into India for breaking up.*

3.2 *Foreign flag vessels: These are the vessels that are registered abroad and its entry into the country is for carrying cargo or passengers, as a conveyance. Hence, there is no requirement for filing an IGM, Bill of Entry for foreign flag vessel which is being used as conveyance. However, the requirement for filing an import manifest in the prescribed manner for the goods or passengers which are being carried in the vessel, on its entry into an Indian port in terms of the provisions under Section 30 of the Customs Act needs to be complied with.*

3.3 *Indian Flag Vessel: In terms of the provisions of Part-V of the Merchant Shipping Act, 1958, vessels entering into India for the first time, are required to be registered with specified authority of the Mercantile Marine Department as Indian ship, which can then display the national character of the ship as Indian Flag Vessel for the purpose of Customs and other purposes specified in the said Act. Such Indian ship or vessel may be used for foreign run or exclusively for coastal run/ trade. Further, any ship or vessel may be taken outside India or chartered for coastal trade in India, only after obtaining the requisite licence from the Director General of Shipping, under the provisions of Section 406 or 407, respectively, of the said Merchant Shipping Act. Hence, in all such cases the Customs declarations such as IGM, Bill of Entry is required to be filed with jurisdictional Customs authority.*

3.4 *Vessels for conversion into coastal run: Any vessel could be used for coastal run/ trade after obtaining requisite clearance from Director General of Shipping and on fulfilment of certain specified conditions under Section 407 of the Merchant Shipping Act, 1958. In case of foreign going vessel, exemption from import duties, including CVD, have been extended vide serial No. 462 of Notification No.12/2012-Cus. dated 17.03.2012, subject to prescribed conditions, which binds the importer to file fresh Bill of Entry at the time of its conversion for coastal run/ trade and payment of applicable duty on such conversion of vessel for costal run/ trade. Similarly, excise duty is also payable on vessels which are being used for coastal trade vide serial No. 306 of notification No.12/2012-Cus.*

dated 17.03.2012. Hence, if any Indian Flag vessel which is used for time being as foreign going vessel is converted for use in coastal trade or any vessel which is to be used for coastal trade, there is a need to file a Bill of Entry for payment of applicable duty as CVD.

3.5 *Vessels for breaking up:* Vessel and other floating structures intended for breaking up are liable to payment of applicable duty. All vessels for the transport of persons or goods, falling under heading 8901 (excluding those which are imported for breaking up) are fully exempt from payment of import duty under vide serial No. 461 of Notification No.12/2012-Cus. dated 17.03.2012, subject to the condition that the importer should file fresh Bill of Entry at the time of its breaking up of the vessel after its importation. Hence, in these cases the importer has to file an IGM and Bill of Entry, claiming the exemptions may be applicable, at the time of initial import and later file fresh Bill of Entry at the time of breaking up of the vessel as per the condition attached to the aforesaid exemption.

4. In view of the above, it is clarified that in respect of foreign flag vessels, for Indian flag vessels, there is no requirement of filing of IGM and Bill of Entry, since its usage is as conveyance. In respect of Indian flag vessels and vessels for breaking up as explained in para 3.3 and 3.5 above, the importer has to file IGM and Bill of Entry, under the provisions of the Customs Act, 1962. As regards the vessel for conversion into costal run/ trade as detailed in para 3.4, since the changes in the duty structure for levy of CVD on vessels which are being converted for coastal trade was initially imposed from 1.3.2011, and subsequently retrospective exemption has been provided for the period 1.3.2011 to 16.3.2011 vide clause 129 of the Finance Act, 2012, the requirement for filing IGM and Bill of Entry may be insisted in all such cases w.e.f. 17.03.2012, that is the date from which levy of CVD has come into force.

5. It is also clarified that all vessels including foreign going vessels for its entry into / exit from the country during its journey as foreign going vessel and the Indian flag vessel / Indian Ship for subsequent use as foreign going vessel would not require filing of IGM and Bill of Entry as conveyance, since the same are not imported goods to be cleared for home consumption.

6. Accordingly, the field formations may adjudicate the cases involving any violation where the IGM or Bill of Entry in respect of import of vessel was not filed at the time of import, on its first arrival in India or on its conversion into coastal trade and appropriate penal action be taken against the offenders."

6.4 Moreover, Section 2(22) of the Customs Act, 1962 defines 'goods' which includes the vessel for the purpose of levy of duty of customs when the same is not used as conveyance. While, Section 46 of the Customs Act 1962, stipulates, "(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed" that Bill of Entry needs to be filed at the time of re-import after dry docking but neither the shipping bill was filed at the time of export of vessel nor the Bill of Entry was filed at the time of re-import at Vadinar.

6.5 Section 50(1) of the Customs Act, 1962 related to Entry of goods for exportation stipulates,

"(1) the exporter of any goods shall make entry thereof by presenting electronically on the customs automated system to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in such form and manner as maybe prescribed:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner."

6.5.1 The relevant portion of Section 46 of the Customs Act, 1962 related to Entry of goods on importation stipulates,

"(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed :

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the day (including holidays) preceding the day on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:

Provided further that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided also that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed."

6.5.2 In view of the foregoing, it appears that, the Noticee has violated the provisions of Section 50 of the Customs Act, 1962 by non-filing of the shipping bill for export of

vessel to Oman for dry docking and subsequently provisions of Section 46 of the Customs Act, 1962 by non-filing bill of entry for re-import of the said vessel at Vadinar port on return of the said vessel at Vadinar Port after dry docking of the same at Oman, which is mandatory compliance for the purpose of levy of duties of customs under Section 12 of the Customs Act, 1962, thus, rendering themselves liable to penalty under Section 114 of the Customs Act, 1962 and Section 117 of the Customs Act, 1962 respectively apart from other penal action. The provisions of Section 114 and Section 117 of the Customs Act, 1962, read as:

Section 114 - Penalty for attempt to export goods improperly, etc. reads as-

"Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, -

- (i) *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;*
- (ii) *in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher: Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;*
- (iii) *in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.*

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 four lakh rupees.

6.6 Section 2(39) of the Customs Act, 1962 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.*"

6.7 As the Noticee, in the instant case has violated the provisions of Section 50 *ibid* and Section 46 *ibid* above, it appears that, the vessel "MT Desh Bhakt" is liable for confiscation under the provisions of Section 113(h) and/or Section 111(l) of the Customs Act, 1962, for improper exportation of goods and/or improper importation of goods and therefore, it appears that, the Noticee has rendered himself liable for penalty for improper exportation of goods under section 114 of the Customs Act, 1962 alongwith

penalty for improper importation of goods, etc. under Section 112 of the Customs Act, 1962 respectively.

6.7.1 Section 113(h) of the Customs Act, 1962 related to Confiscation of goods attempted to be improperly exported, etc. stipulates,

"(h) any goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77"

6.7.2 Section 111(l) of the Customs Act, 1962 related to Confiscation of improperly imported goods, etc. stipulates,

"(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77"

6.7.3 Section 112 – Penalty for improper importation of goods, etc. stipulates,

Any person, -

- a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or
- b)
 - (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;
- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

- (iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;
- (iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

6.8 From the above provisions, it appears that in the instant case, the nature of the vessel could not be treated as 'conveyance' and the same is to be treated as 'goods' as the Indian Flag Vessel, 'M T Desh Bhakt' of the Noticee had performed its voyages in ballast to foreign ports only for the sole purpose of dry docking and returned in ballast at Vadinar Port after its dry docking at Oman. It therefore appears that, the Noticee was required to file the shipping bill for export of the said vessel from Bedi port to Oman and subsequently required to file Bill of Entry for re-import of the said vessel on return of the said vessel at Vadinar Port after dry docking of the same at Oman, for the purpose of levy of duties of customs on the repairing/ dry docking charges, to & fro freight and insurance as envisaged under Notification No. 45/2017-Customs dated 30.06.2017 and Notification No. 46/2017-Customs dated 30.06.2017 as amended by Notification No. 36/2021-Cus & 37/2021-Cus both dated 19.07.2021 respectively.

6.9 Whereas, it also appears that the Noticee has re-imported vessel MT Desh Bhakt after dry docking at foreign port, without payment of IGST on a value equal to the repair value, insurance and freight as detailed in Table-A hereinabove and this fact was willfully suppressed by them before the Customs authorities, which may be corroborated from the fact that, they have filed the Bill of Entry only for the conversion of vessel and tactfully avoided the filing of the Shipping Bill for Export in respect of said vessel to Oman for dry docking with intention to conceal the fact that the said vessel was actually sailing to foreign land Oman for the purpose of dry docking & has also avoided filing of subsequent Bill of Entry of re-import of vessel to avoid payment of duties of customs.

6.10 Whereas, it was only possible to unveil the fact on account of Intelligence developed by the department that the Noticee has avoided the payment of duties of customs as applicable on dry docking of the said vessel in terms of Notification No. 45/2017-Customs dated 30.06.2017 & 46/2017-Customs dated 30.06.2017 as amended by Notification No. 36/2021-Cus & 37/2021-Cus both dated 19.07.2021 and therefore, such duties of customs is liable to be recovered from them under the provisions of Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA of the Customs Act, 1962. Such act of omission and commission on their part thereby rendered themselves liable for penalty under Section 114A of the Customs Act, 1962.

Section 28(4) of the Customs Act, 1962, stipulates,

"Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

- (a) *collusion; or*
- (b) *any wilful mis-statement; or*
- (c) *suppression of facts,*

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so 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."

Section 28AA of the Customs Act, 1962 stipulates,

(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.*

(2) *Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.*

(3) *Notwithstanding anything contained in sub-section (1), no interest shall be payable where,-*

- a. *the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and*
- b. *such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.*

Section 114 A of the Customs Act, 1962 reads as follows:

"SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases. - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined"

7. Whereas, from the fact and circumstances of the case as discussed in the foregoing para(s), it appears that the Noticee has re-imported the vessel 'MT Desh Bhakt' after dry docking at foreign port and has not paid the IGST on a value equal to the repair value, insurance and freight in terms of Customs Notification No. 45/2017- Customs dated 30.06.2017 & 46/2017-Customs dated 30.06.2017 as amended by Notification No 36/2021 & 37/2021 both dated 19.07.2021, as detailed in Table-A

above. It also appears that, the Noticee has not filed the Bill of Entry for import of vessel i.e. 'MT Desh Bhakt' after dry docking and also not filed the shipping bill for export of vessel from Bedi port in terms of Circular No 16/2012-Customs dated 13.06.2012.

8. Whereas, during the course of investigation, the Noticee has paid the IGST @ 5 % on the cost of dry dock charges amounting to Rs. 1,22,04,806/- (Rupees one crore, twenty two lakh, four thousand, eight hundred and six only) in the GSTR-3B for the month of September-2022.

9. Whereas, in terms of Section 28BB of the Customs Act, 1962, the due date of completion of investigation in the matter was 12.09.2024, however, in terms of the proviso to Section 28BB (1) of the Customs Act, 1962, Hon'ble Commissioner of Customs had granted the extension of period for completion of the investigation, to further period of one year i.e. up-to 11.09.2025.

10. Now, therefore, for the aforementioned reasons, the Noticee i.e. **M/s. Shipping Corporation of India Ltd.** having office at Shipping House, 245 Madame Cama Road, Mumbai (Maharashtra) – 400 021, is hereby called upon to show cause to the Commissioner of Customs (Preventive), Jamnagar having his office situated at Seema Shulk Bhavan, Near Victoria Bridge, Jamnagar-Rajkot Highway, Jamnagar (Gujarat) - 361001, within thirty days from the receipt of this notice, as to why:

- (a) Vessel "MT Desh Bhakt" should not be confiscated under the provisions of Section 113(h) and/or Section 111(l) of the Customs Act, 1962;
- (b) The IGST amounting to **Rs. 1,71,27,045/-** (Rupees one crore, seventy one lakh, twenty seven thousand and forty five only) (as mentioned in Table-A hereinabove) should not be recovered under Section 28(4) of the Customs Act, 1962 and at the same time, the amount of **Rs. 1,22,04,805/-** (Rupees one crore, twenty two lakh, four thousand, eight hundred and six only) paid vide GSTR-3B for the month of September-2022 should not be appropriated against the IGST recoverable from them as mentioned above;
- (c) Interest at the appropriate rate on the above duty amount should not be recovered in terms of Section 28AA of the Customs Act, 1962;
- (d) Penalty should not be imposed under Section 114A of the Customs Act, 1962 for short payment of duty of customs;
- (e) Penalty should not be imposed under Section 112 in lieu of confiscation on account of improper importation;
- (f) Penalty should not be imposed under Section 114 for non-filing of shipping bill of the vessel for export from Bedi port to Oman for dry docking;
- (f) Penalty should not be imposed under Section 117 for contravention of section 46 of the Customs Act, 1962 for not filing the Bill of Entry of the vessel for re-import at Vadinar port after dry docking.

11. The Noticee is required to note that their written submissions, if any, should reach this Office within 30 (thirty) days from the date of receipt of this Notice or within the time limit as extended by the adjudicating authority. The Noticee should specifically state in their written submission to this notice as to whether they desire to be heard in person or otherwise.

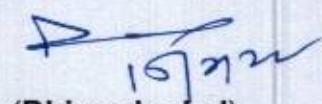
12. If no cause is shown by them against the action proposed above within 30 days from the date of receipt of this Show Cause Notice or if they do not appear before the adjudicating authority as and when the case is posted for hearing, the case is liable to be decided ex-parte on the basis of facts and evidences available on record, without any further reference to them.

13. This Show Cause Notice is issued without prejudice to any other action that may be taken against the Noticee or any other person(s) under the provisions of the Customs Act, 1962 and the Rules & Regulations made there under or any other law for the time being in force.

14. The documents relied upon in this Show Cause Notice are listed in **Annexure-R** attached to this Show Cause Notice.

15. The Department reserves its right to amend, modify or supplement this notice at any time on the basis of available/ further evidences prior to the adjudication of the case.

16. The Noticee also has an option under Section 127B of the Customs Act, 1962 to settle the case through Settlement Commission by filing an application, if eligible.



(Dhirendra Lal)
Commissioner

F. No. CUS/1969/2025-Adjn.

Date: 15.07.2025

BY Email/ Speed Post:

To

M/s Shipping Corporation of India,
Shipping House, 245 Madame Cama Road,
Mumbai (Maharashtra) – 400 021.

Copy to:

1. The Deputy Commissioner, Customs Division, Jamnagar.
2. The Superintendent, Customs House, Vadinar.
3. Guard File.

ANNEXURE – R

List of the Relied Upon Documents (RUD) in respect of Show Cause Notice No. Commr-01/2025-26 dated 15.07.2025 issued to M/s Shipping Corporation of India, Shipping House, 245 Madame Cama Road, Mumbai (Maharashtra) – 400 021.

Sr. No.	Description of the Document	Remarks
1.	Statement of Shri P Uday Bhaskar, Deputy General Manager (B&T) of M/s. Shipping Corporation of India Ltd. dated 10.10.2022 under Section 108 of the Customs Act, 1962.	Copy enclosed
2.	Copy of letter dated 01.11.2022 of M/s. Shipping Corporation of India Ltd.	Available with the Noticee
3.	Copy of letter dated 30.05.2024 of M/s. Shipping Corporation of India Ltd.	Available with the Noticee
4.	Copy of letter dated 04.10.2024 of M/s. Shipping Corporation of India Ltd.	Available with the Noticee

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Statement of Shri P. Uday Bhaskar (Mobile No. 9819958681, Aadhar No. 881120226322) son of Venkatachalampathi Rao Pakola, aged 49 years, resident of 1103, Bloomingdale, Ghodbunder Road, Hiranandani Estate, Thane, Maharashtra- 400607, Deputy General Manager (B&T) of M/s. Shipping Corporation of India (M/s SCI), recorded under section 108 of the Customs Act, 1962 before the Superintendent of Customs House Vadinar, in the Office of The Superintendent of Customs House Vadinar '2nd Floor Tanna House', Saru Section Road, Jamnagar on 23.09.2022.

I, P. Uday Bhaskar, Deputy General Manager (B&T) of M/s. Shipping Corporation of India, hereby present myself at around 11:30 AM of today, i.e., 10.10.2022 in response to the Summons dated 23.09.2022 issued in connection with inquiry regarding Re-import of vessel MT Desh Bhakt at Vadinar.

Before proceeding upon to record my statement under section 108 of the Customs Act, 1962, I am given full understanding of the provisions of the said section. In accordance therewith, I am under obligation to state the truth and facts relevant to the enquiry only. Also, I am given understanding that the said statement of mine could be used as an evidence and understanding about the consequences in case of failure to state the truth and facts relevant to the enquiry or the facts narrated by me found to be misleading. Such consequences may include penultimate actions as envisaged in the Indian Penal Code.

I, being satisfied with the sufficient understanding of the aforesaid provisions and the consequences, request you officer voluntarily to enter my statement in English on the computer which is in question-answer format and as follows:

Q. No.01: Do you agree with the details mentioned above and about your name, age, profession, address, etc.?

Ans.01: Yes sir, I have read all such details carefully and state that these are absolutely correct.

Q. No.02: Can you please tell about your educational qualification and knowledge about the languages which you can write, speak, read and understand properly?

Ans. 02: Yes sir, I state that my educational qualification is B. Com and MBA (Finance) and to state that I am well versed with the languages, Hindi and English which I can read, write, speak & understand properly.

Chawla
10/10/22

*P. U. Bhaskar 10/10/22
(P. UDAYABHASKAR)*

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Statement of Shri P. Uday Bhaskar (Mobile No. 9819958681, Aadhar No. 881120226322) son of Venkatachalampathi Rao Pakola, aged 49 years, resident of 1103, Bloomingdale, Ghodbunder Road, Hiranandani Estate, Thane, Maharashtra- 400607, Deputy General Manager (B&T) of M/s. Shipping Corporation of India (M/s SCI), recorded under section 108 of the Customs Act, 1962 before the Superintendent of Customs House Vadinar, in the Office of The Superintendent of Customs House Vadinar '2nd Floor Tanna House', Saru Section Road, Jamnagar on 23.09.2022.

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Q. No.02: Can you please tell about your educational qualification and knowledge about the languages which you can write, speak, read and understand properly?

Ans. 02: Yes sir, I state that my educational qualification is B. Com and MBA (Finance) and to state that I am well versed with the languages, Hindi and English which I can read, write, speak & understand properly.

Chamalgh
10/10/22

P. U. Bhaskar 10/10/2022
(P. UDAYABHASKAR)

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Q.No. 03 What is the business activity of M/s Shipping Corporation of India ?

Ans.03 : Shipping Corporation of India is national carrier. It is in the business of shipping. It owns 59 ships as on date and it is involved in manning and managing of Government Vessels.

Q.No.04: What are the roles and responsibilities held by you in M/s SCI ?

Ans. 04: I am DGM (Bulk and Tanker Division) responsible for Customer receivable.

Q.No.05: Who is the person responsible for filing Shipping Bills and Bills of Entry for clearance of vessels ?

Ans.05: The respective local agents in the port, who files Shipping Bills and Bills of Entry on our directions.

Q.No.06: When this vessel was departed/ exported from India to Duqm, Oman ?

Ans.06: This vessel departed from India on 05.12.2021 to Duqm, Oman.

Q.No.07: Vessel MT Desh Bhakt departed/exported from Bedi port to Duqm Oman in ballast, Is it true?

Ans.07: Yes, Vessel MT Desh Bhakt departed from Bedi Port in Ballast.

Q. No. 08: Can you state whether the vessel MT Desh Bhakt departed from India as a Goods or Conveyance ?

Ans. 08: Vessel sailed off as a conveyance only.

Q. No. 09: Did the vessel MT Desh Bhakt performed any business activity during this voyage i.e. from Bedi port to Duqm, Oman?

Ans. 09: No. It has gone for drydock only.

Q.No.10: What was the purpose of the voyage of vessel from Bedi to Duqm Oman?

Ans.10: It has gone for drydocking.

Q.No.11: Whether any Shipping Bill was filed for Re-export of the vessel?

Ans.11: All our vessels are foreign going vessels and periodically converted to coastal status for commercial activities. This vessel was on coastal status and doing coastal businesses and reverted to foreign going

Chanday Singh
10/12/22

Page 2 of 5

P.U.Bharat
10/12/22

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vessel and then it went for drydock purpose. Therefore, shipping Bill was not filed.

Q.No.12: Please provide the copy of contract of dry docking?

Ans.12: Copies of the internal approval of tender to Duqm, Oman for drydocking as well as stem order, are submitted.

Q.No.13: Please furnish the details of drydocking and other port related expenses incurred at the drydocking port.

Ans. 13: All charges related to drydock are included in the tax invoice raised by Oman drydock Company. All the detailed documents are enclosed with the invoice.

Q. No.14: Please provide the copy of the ledger of all parties involved in dry docking?

Ans.14: Only M/s J.M. Baxi, as an agent, are involved for the said purpose. Copy of Ledger will be provided within a week, through our local agents.

Q.No.15: Can you provide the details of total freight from Bedi to Duqm and Duqm to Vadinar?

Ans.15: There is no freight involved for this activity.

Q. No:16: Can you provide the details of fuel consumption during the voyage from Bedi to Duqm, Fuel consumed at the drydock port and Fuel consumption from Duqm to Vadinar ?

Ans. 16: We will provide the details within seven working days.

Q. No. 17: Can you provide the details of salary paid to the crew and provisions consumed during the voyage from Bedi to Duqm, at the drydock port and from Duqm to Vadinar ?

Ans. 17: We will provide the details within seven working days.

Q.No.18: Whether the voyage between Duqm, Oman to Vadinar was performed in ballast?

Ans.18: Yes.

Q. No. 19: Can you state whether the vessel MT Desh Bhakt arrived in India as a Goods or Conveyance ?

Chawla
10/10/2021

P.U.Ghosh
10/10/2021

Ans. 19: Vessel arrived as a conveyance only. (43)

Q. No. 20: Did the vessel MT Desh Bhakt performed any business activity during this voyage i.e. from Duqm, Oman to Vadinar?

Ans. 20: No. It has returned after drydock in ballast only.

Q.No.21: Can you provide the details of Insurance of the vessel MT Desh Bhakt?

Ans.21: Copy of Insurance is submitted herewith.

Q. No. 22: What was the purpose of visit of vessel to Fujairah ?

Ans. 22: The purpose of visit of vessel to Fujairah was for bunkering.

Q. No.23: After drydocking, this vessel arrived at which first port in India ?

Ans. 23: The vessel arrived at Vadinar port on 28.07.2022.

Q.No. 24: Whether any Bill of Entry was filed at Vadinar for Re-import of the Vessel MT Desh Bhakt?

Ans. 24: Bill of Entry was not filed for re-import. It was filed only for the conversion of the vessel from foreign run to coastal. We will pay IGST@ 5% on the cost of drydock charge as per Notification No. 03/2021- Integrated Tax dated 02.06.2021 in the GSTR-3B for the month of September- 2022. Copy of the Notification is attached. Subsequently, we will submit the details of payment.

Q.No.25: What is the present market value of the vessel MT Desh Bhakt ?

Ans. 25: We will provide the details within seven working days.

Q.No. 26: You are being shown Notification No.45/2017 dated 30.06.2017 as amended by 36/2021 dated 19.07.2021.

Ans. 26: I have seen the Notification No. 45/2017 dated 30.06.2017, as amended by 36/2021 dated 19.07.2021 and signed the same in token of being seen.

Q.No.27: Do you agree that in view of Q.No. 26, you are required to file Bill of Entry at Re-import & discharge IGST on cost of repairing, insurance and both ways freight?

Ans.27: No, I do not consider it as re-importation of vessel.

Chayan Singh
10/10/22

P. V. Chahar
10/10/22

PM
Q.No.28: Do you agree that you have contravened Section 46, Section 111(f) and Section 111(j) of the Indian Customs Act, 1962?

Ans.28: No.

Q.No.29: Do you agree that you have violated conditions of notification no. 45/2017 as amended by notification no 36/2021 and have not disclosed the cost/expenses incurred upon vessel's dry docking before the department?

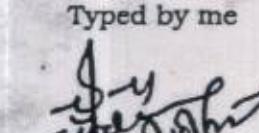
Ans.29: No, I don't agree.

On being asked I have to state that I assure you that I will remain present as and when my presence required by the department in the present case. I also assure that I will co-operate the department in the entire investigation in the matter in future also.

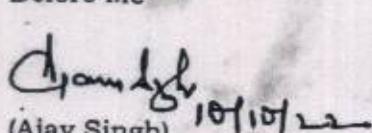
My foregoing statement has been entered in English at my request in the computer by your officer today and facts mentioned are as per my say that too voluntarily. During the proceedings of statement recording, cordial atmosphere to express my version fearlessly and voluntarily has been maintained wherein no coercion or threats or inducement or hurting to religious sentiments has been observed. Accordingly, the statement is written at my free expressions which are based on true facts. I also promise to present myself as and when required to cooperate in the official proceedings and endorse the entire statement as true & correct in token thereof I put my dated signature on its all Five (05) pages.

P.U.Bhaskar 10/10/2022
(Shri P. Uday Bhaskar)
DGM (B&T)
M/s. Shipping Corporation of India.

Typed by me


(Neena)
Inspector
CH-Vadinar

Before Me


(Ajay Singh)
Superintendent
Ch- Vadinar