



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंजिल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
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DIN - 20250871MN0000113491

क	फाइल संख्या FILE NO.	S/49-44/CUS/JMN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	JMN-CUSTM-000-APP-238-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	07.08.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Final Assessment Order No. 305/DC/JMR/T/2023-24 dated 05.03.2024
ङ	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	07.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Benline Agencies (India) Pvt. Ltd. Plot no. 443, 2 nd floor, Sector 1/A, Near oslo circle, Gayatri mandir road, Gandhidham- 370201.



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	<p>सीमाशुल्क अधिनियम 1962 की धारा 129 डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।</p> <p>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.</p> <p>निम्नलिखित सम्बन्धित आदेश/Order relating to :</p> <p>(क) बैगेज के रूप में आयातित कोई माल।</p> <p>(a) any goods exported</p> <p>(ख) भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।</p> <p>(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.</p> <p>(ग) सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।</p> <p>(c) Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.</p> <p>3. पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :</p> <p>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 :</p> <p>(क) कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।</p> <p>(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.</p> <p>(ख) सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो</p> <p>(b) 4 copies of the Order-in-Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षण के लिए आवेदन की 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-</p> <p>(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</p>

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.				
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं।				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table border="0"> <tr> <td style="vertical-align: top;">सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td style="vertical-align: top;">दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
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5.	<p>सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-</p> <p>Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -</p> <p>(क) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रुपए।</p> <p>(a) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;</p> <p>(ख) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए</p> <p>(b) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;</p> <p>(ग) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रुपए।</p> <p>(c) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees</p> <p>(घ) इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।</p> <p>(d) An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.</p>				
6.	<p>उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए।</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Ben Line Agencies (India) Pvt. Ltd., Plot No. 443, 2nd Floor, Sector 1/A, Near Oslo Circle, Gayatri Mandir Road, Gandhidham-370201, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Final Assessment Order No. 305/DC/JMR/T/2023-24 dated 05.03.2024 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Customs, Jamnagar (hereinafter referred to as the 'Assessing Authority').

2. Facts of the case, in brief, are that - The vessel MV MEDI PERTH arrived at Bedi Port on 06.07.2021 and was converted from foreign run to coastal run on 07.07.2021. As per the "List of Last 10 Ports of Call" submitted, the vessel had discharged foreign cargo at Pipavav Port on 05.07.2021 before sailing to Bedi, thereby treating Pipavav as the last Indian port of call. Consequently, the appellant, on behalf of the Master of the vessel, filed Bill of Entry No. F-16/21-22 dated 13.07.2021 for bunkers and provisions intended to be consumed during the coastal run. The said Bill of Entry was provisionally assessed under Section 18 of the Customs Act, 1962 due to the pending test results of bunker samples and absence of documentation indicating the actual quantity of bunkers and provisions remaining onboard at the time of conversion, which was necessary to determine actual consumption during the coastal run. The appellant paid 110% of the estimated duty, amounting to ₹7,71,000, on 15.07.2021 through TR-6 Challan No. 21/15-07-2021, in line with Board Circular No. 58/1997 dated 06.11.1997, and submitted a provisional bond valued at ₹7,70,905. Representative samples of HSD, lubricating oil, and fuel oil were collected from the vessel on 07.07.2021 and sent for analysis to the Chemical Examiner, Custom House Laboratory, Kandla, via Test Memos C-01/IMP/2020-21, C-02/IMP/2020-21, and C-03/IMP/2020-21, all dated 07.07.2021. The Lab Reports Nos. 4838 (dated 29.10.2021), 4839 (dated 01.11.2021), and 4840 (dated 15.11.2021) confirmed the samples as HSD, lubricating oil, and fuel oil, respectively. The vessel was subsequently reverted back from coastal run to foreign run at Mangalore Port on 17.07.2021. Prior to the filing of the Bill of Entry, the Appellant, vide letter dated 10.07.2021, informed Customs that their Principals objected to the valuation method adopted by the Department, asserting that duty should be calculated based on contemporary import prices, either as available on NIDB or at prices at which bunker suppliers imported similar bunkers at other ports. They further contested the methodology used to calculate consumption, which included



bunker usage from the first port of arrival to the port where coastal cargo was to be loaded. The appellant paid the duty under protest and continued to maintain their objections in subsequent letters dated 15.09.2021, 24.01.2022, 08.06.2022, and 13.02.2024, wherein they also submitted evidence of NIDB rates and referred to Bill of Entry No. 0011/21.06.2021 that was finally assessed at Customs Kandla, to support their contention. They further relied on relevant decisions of the Commissioner (Appeals) in similar matters to justify their valuation method and duty calculations.

2.1 Subsequently, the Assessing authority passed the impugned order as under:

- (i) He finally assessed the Bill of Entry No. F-16 dated 13.07.2021 for total Customs duty of Rs. 10,79,600/-, under Section 18 of the Customs Act, 1962 and appropriate Rs. 7,71,000/- paid vide TR-6 Challan No. 21/15-07-2021 dated 15.07.2021 at the time of provisional assessment against the duty confirmed of Rs. 10,79,600/-.
- (ii) He ordered, the Appellant to pay differential duty of Rs. 3,08,600/- along with the applicable interest.

3. SUBMISSIONS OF THE APPELLANT:

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

3.1 The Appellant submits that the Customs authority failed to finalize the Bill of Entry within the mandated 15-day period from the date of conversion of the vessel from coastal to foreign run, as per CBEC Circular No. 58/97-Cus dated 08.06.1997. In the present case, the reversion certificate was issued on 17.07.2021 by New Mangalore Customs and forwarded in sealed cover to Bedi Customs. A request for finalization was made vide letter dated 15.09.2021. However, the final assessment occurred only on 05.03.2024 over two and a half years later. This inordinate delay has caused severe financial hardship and loss to the Appellant.

3.2 The Assessing Authority, in Para 8 of the impugned order, wrongly stated that the BOE valuation was done voluntarily by the Appellant using IOCL prices. The Appellant clarifies that this pricing method is a prevailing practice under Jamnagar Customs jurisdiction, where IOCL export prices are used for assessing bunker consumption during coastal voyages. This practice is contrary to Section 14 of the Customs Act, 1962 read with the Customs Valuation Rules, 2007. IOCL's pricing includes domestic elements such as storage, insurance, handling,

and profit margins, making it unsuitable for import valuation. The Appellant paid the duty under protest and challenged both the pricing methodology and the quantity calculation, asserting that the impugned order is legally untenable and liable to be quashed.

3.3 The Appellant contends that where transaction value under Rule 3(1) is not applicable, the valuation must proceed sequentially under Rules 4 to 9. This legal requirement has been reinforced by the Hon'ble Supreme Court in *Century Recycling Metals Pvt. Ltd. vs. Union of India* [2019 (367) ELT 3 (SC)]. The failure to adopt this statutory framework renders the final assessment flawed.

3.4 The Assessing Authority's reliance on IOCL export prices as contemporaneous import values are in direct violation of Rule 9(2) of the Valuation Rules, which prohibits using domestic selling prices or export prices of Indian goods for import valuation. IOCL/HPCL supply domestically manufactured goods, and their prices reflect internal costs and profit, not international trade values. Therefore, IOCL export prices cannot be a valid reference. The only alternative is Rule 9(1) (Residual Method), which mandates valuation using reasonable means consistent with the principles of the Rules, preferably using contemporaneous NIDB data.

3.5 The value of bunkers consumed during the coastal run must be determined under Section 14 of the Customs Act read with Rule 3 of the Valuation Rules. Rule 2(g) defines "transaction value" as the price actually paid or payable when sold for export to India. Since this condition is not met in the present case, valuation must proceed under Rules 4 to 9. The Assessing Authority's failure to follow this sequential approach renders the impugned order invalid.

3.6 The Appellant had submitted comprehensive representations dated 13.12.2022 and 07.02.2024, supported by decisions of appellate authorities, explaining why IOCL prices are not acceptable and why the port of conversion is the correct point for calculating bunker consumption. These submissions were arbitrarily disregarded.

3.7 Para 9 of the impugned order reveals that Jamnagar Customs relies on a longstanding practice of using IOCL prices. However, such administrative practice, even if widespread, cannot override statutory provisions. The Appellant has consistently challenged this method from the time of provisional assessment, and finalizing the BOE using the same invalid method violates Section 14 and the Valuation Rules.

3.8 The Appellant had submitted BOE No. 0011 dated 21.06.2021 from Kandla Customs as evidence of contemporaneous import value under Rule 4.

Despite this BOE falling within the 90-day window as per Rule 7(2), the Assessing Authority dismissed it, claiming the BOE was not sufficiently recent or lacked specific mention of NIDB reference. This rejection contravenes Rule 4(3), which mandates accepting the lowest value among identical goods. The Appellant also notes that the assessing officer has discretion to refer to NIDB data, but the selected price must conform to the Rules and reflect the lowest available within the relevant time frame.

3.9 Para 11 of the impugned order acknowledges the consistent use of IOCL prices by Jamnagar Customs. However, this very admission confirms the Appellant's primary grievance: that an illegal practice has been institutionalized, bypassing legal valuation norms. This entrenched but flawed practice cannot withstand judicial scrutiny.

3.10 The Hon'ble CESTAT, Kolkata in M/s. Seatrans Shipmanagement Services Pvt. Ltd. [Final Order No. 77295/2023 dated 10.10.2023 and Misc. Order No. 75069/2024 dated 20.02.2024], unequivocally held that IOCL prices cannot be used to determine value under Customs Valuation Rules. The matter was remanded for revaluation based on NIDB data. Further, Commissioner (Appeals), Bhubaneswar in OIA No. 74-89/CUS/CCP/2023 dated 12.06.2023 in M/s. ACT Inraport Ltd. also emphasized adopting NIDB contemporaneous import prices in place of IOCL/HPCL pricing.

3.11 The Appellants submit that the issue involved in the present case has been consistently adjudicated in favor of the assessee by various Appellate Commissioners across multiple customs jurisdictions. The common observations in all such decisions are:

- (a) That IOCL export sale prices adopted for assessment of Bills of Entry at the time of vessel conversion are not valid for determining assessable value;
- (b) That bunker consumption should be computed from the port of conversion, as this location represents the actual transition from foreign to coastal run, thereby enabling accurate assessment of quantity and value.

Decisions in support of the Appellant's contention include:

Paradeep Custom Station:

- OIA No. 05-84/CUS/CCP/2021 dated 26.02.2021 – M/s. Seatrans Shipmanagement Services Pvt. Ltd./M/s. Seatrans Marine Pvt. Ltd. (covering 48 cases from Paradeep & 32 from Dhamra).
- OIA No. 112-159/CUS/CCP/2021 dated 16.12.2021 – M/s. Seatrans Shipmanagement Services (48 cases).

Dhamra Custom Station:

- OIA No. 160-172/CUS/CCP/2021 dated 17.12.2021 – M/s. Seatrans

Marine Pvt. Ltd. (13 cases).

- OIA No. 16-29/CUS/CCP/2022 dated 23.02.2022 – M/s. Seatrans Marine Pvt. Ltd. (14 cases).

Gopalpur Custom Station:

- OIA No. 151/CUS/CCP/2022 dated 15.12.2022 – M/s. Seatrans Marine Pvt. Ltd.

Mangaluru Customs:

- OIA Nos. 335-336/2021 dated 03.09.2021, OIA No. 442/2021 dated 12.10.2021, and OIA No. 062/2024 dated 14.03.2024 – M/s. ACT Inraport Ltd. (covering 6 cases in total).

Marmagoa Customs:

- OIA No. GOA-CUSTM-000-APP(VNT)-057-2021-22 dated 31.12.2021, and OIA No. GOA-CUSTM-000-APP(VNT)-060-2021-22 dated 06.01.2022 – M/s. Hiralal & Co.

Mumbai Customs:

- OIA No. MUM-CUSTM-SXP-74/2017-18 dated 28.07.2017 – M/s. ACT Inraport Ltd.

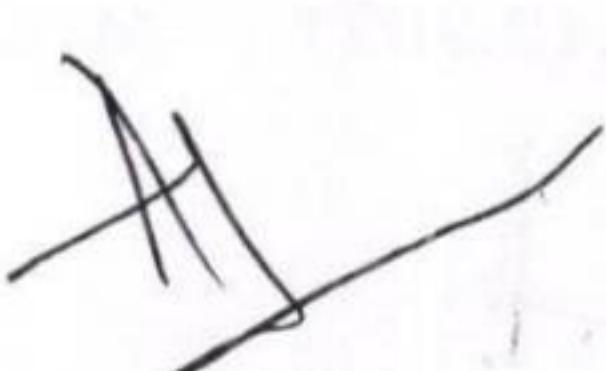
These decisions uniformly reject the use of IOCL pricing and direct valuation based on contemporaneous import prices using NIDB data.

3.12 The Appellant strongly objects to the finding in Para 12 of the impugned order, wherein the Assessing Authority states that the decisions of Commissioners (Appeals) from other zones are not binding. The Appellants submit that such reasoning is contrary to the doctrine of judicial discipline. The Hon'ble Supreme Court in *Union of India v. Kamalakshi Finance Corporation Ltd.*, 1991 (55) ELT 431 (SC), categorically held that orders passed by appellate authorities are binding on subordinate officers. The relevant observation reads:

"It is of utmost importance that, in disposing of quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction... The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities."

Accordingly, the Assessing Authority's refusal to follow settled appellate precedent without any contrary judgment from a superior forum or stay on operation of such orders is contrary to law and undermines the rule of consistency and fairness in taxation.

3.13 The Assessing Authority also failed to follow the ratio laid down in OIA No.



JMN-CUSTM-000-APP-70-23-24 dated 20.07.2023, passed by the Lt. Commissioner of Customs (Appeals), Ahmedabad in the case of M/s. Fairdeal Shipping Services, Jamnagar. In this case, the Appellate Authority specifically rejected valuation based on IOCL bunker prices, directing that assessment must be done using contemporaneous import prices under the Customs Valuation Rules.

Key observations from Paras 7.3 and 7.4 of the above order include:

- Para 7.3: The Adjudicating Authority finalized the BOE arbitrarily, relying on IOCL supply prices, without applying the Customs Valuation Rules, rendering the order unsustainable in law.
- Para 7.4: Both the Department and the Appellant agreed that assessment must be based on contemporaneous imports. The order emphasized consistency with previous decisions by Customs, Dhamra, reinforcing that IOCL pricing cannot form the basis for finalization.

The Jamnagar Custom House falls under the jurisdiction of the Commissioner (Appeals), Ahmedabad. Therefore, the Assessing Authority is bound to follow the precedent laid down by the Appellate Authority in the same jurisdiction, and any deviation amounts to judicial indiscipline.

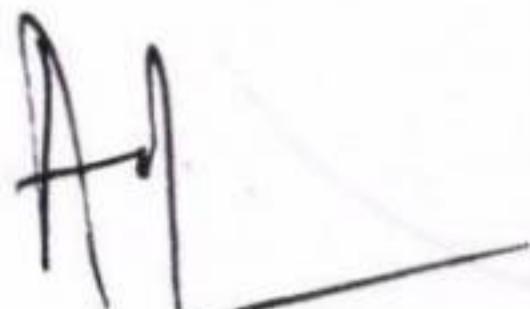
3.14 The Appellant submits that the method adopted by the Assessing Authority to compute bunker consumption from the port where the vessel first arrived in India (Pipavav) is flawed. The correct method is to calculate bunker consumption from the port of conversion, i.e., Bedi Port, where the vessel officially converted from foreign to coastal run.

3.15. The procedure adopted in the present case is inconsistent with the Board's Circular No. 58/97-Cus dated 06.11.1997. Specifically:

- Para 3 of the Circular provides that duty should be collected only on bunker stores likely to be consumed during the coastal run, and the Bill of Entry must be finalized within 7 days of conversion to coastal run.
- Annexure-A, Para 11 to the Circular mandates that duty refunds may be claimed on reversion to foreign run, based on quantity actually consumed during coastal voyage—not an arbitrary estimate from a previous port.

In the instant case, the vessel discharged foreign cargo at Pipavav and proceeded in ballast to Bedi Port, where it was converted for coastal operations. Therefore, the bunker consumption for duty calculation should rightly be computed from Bedi Port. The Adjudicating Authority's reliance on Pipavav as the starting point lacks legal basis and contradicts the prescribed procedure.

PERSONAL HEARING:



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

DISCUSSION AND FINDINGS:

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

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

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

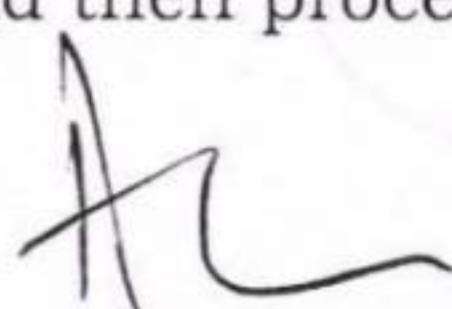
5.2 The fundamental principle of customs valuation is that the value of imported goods is the transaction value, i.e., the price actually paid or payable for the goods when sold for export to India. Section 14 of the Customs Act, 1962, and Rule 3 of the CVR, 2007, establish this. However, when the transaction value cannot be determined or is not acceptable, other methods are to be applied sequentially. The Appellant's contention that IOCL export prices are not a valid basis for valuation under Customs Valuation Rules is well-founded. Rule 9(2) of CVR, 2007, specifically states that no value shall be determined on the basis of "the selling price in India of the goods produced in India" or "the price of the goods on the domestic market of the country of exportation." The IOCL prices,

being domestic or export prices from India for indigenously produced goods (or goods supplied within India), clearly fall under these exclusions. The purpose of customs valuation is to determine the value of imported goods when sold for export to India. Prices prevalent in the Indian domestic market (like IOCL prices) are not relevant for this determination as they include domestic levies, transportation, storage, and profit margins beyond the import value.

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

5.4 The Appellant explicitly provided a contemporaneous import Bill of Entry (BOE No. 000011 dated 21.06.2021 assessed at Kandla Customs) as evidence for valuation. The Assessing Authority's rejection of this evidence on the grounds that it was not "explicitly mentioned" as per NIDB or that its filing month was different from the Bill of Entry in question is highly pedantic and contrary to the spirit of valuation rules. Rule 4(3) of CVR, 2007, allows for the use of the "lowest" transaction value of identical goods, and Rule 7(2) allows a reasonable timeframe (90 days) for sales after importation. The Assessing Authority's duty is to determine the correct assessable value using "reasonable means consistent with the principles and general provisions" of the CVR, 2007 (Rule 9 - Residual Method). This often requires actively searching and considering available NIDB data.

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



through valuation rules, preferably using NIDB data for contemporaneous imports.

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

5.7 As highlighted by the Appellant and explicitly stated in the provided PDF, the CESTAT has addressed this very issue in Fairdeal Shipping Services Vs C.C., Jamnagar. The Final Order indicates that the Commissioner (Appeals) had previously remanded the matter, directing reassessment based on a specific contemporaneous Bill of Entry (No. 14 dated 14.05.2018) from Sikka. The subsequent ROM order (Misc. Order No. 10601/2024) clarified that the Adjudicating Authority must verify if that Bill of Entry was based on IOCL price, and if so, it cannot be used for Rule 4 or 5. Instead, the assessment must follow CVR Rules 4 to 9 sequentially using NIDB data. This clearly indicates that the CESTAT itself recognizes the illegitimacy of using IOCL prices for valuation and mandates a proper sequential valuation using NIDB.

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

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

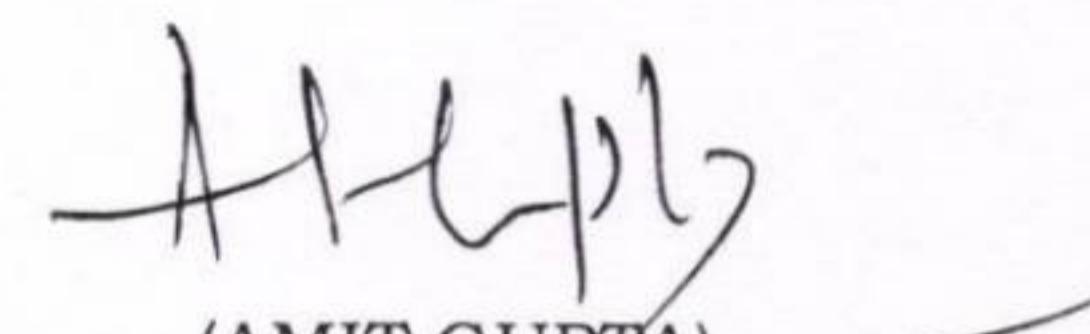
6. In view of the above findings and in exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) I hereby set aside the Final Assessment Order No. 305/DC/JMR/T/2023-24 dated 05.03.2024.

(ii) I remand the matter to the Assessing Authority for de novo adjudication with the directions to specifically consider and apply the principles laid down by the CESTAT in Fairdeal Shipping Services Vs C.C., Jamnagar (Final Order No. 12304/2024 dated 03.10.2024 and Miscellaneous Order No. 10601/2024 dated 03.12.2024).

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




(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-44/CUS/MUN/2023-24

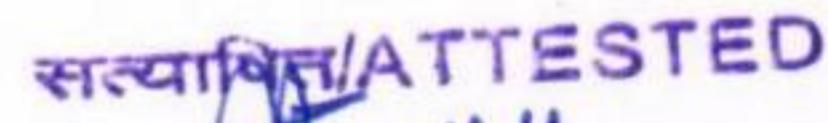
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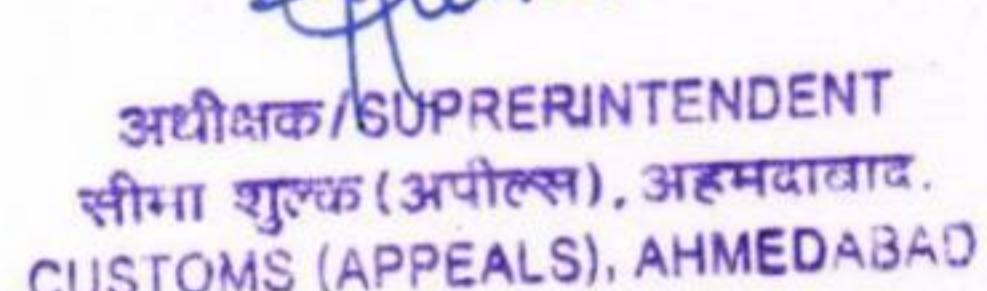
Date: 07.08.2025

By Registered post A.D/E-Mail

To,

M/s. Ben Line Agencies (India) Pvt. Ltd.
Plot No. 443, 2nd Floor, Sector 1/A,
Near Oslo Circle, Gayatri Mandir Road,
Gandhidham, Dist. Kutch (Gujarat), Pin: 370 201.


सत्यापित/ATTESTED


अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

Copy to:

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