सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009.
दूरभाष क्रमांक Tel. No. 079-26589281

DIN-20260871MN0000C3E227

क	फ़ाइल संख्या FILE NO.	S/49-135/CUS/JMN/JUN/2025-26
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-47-2026-27
ग	पारितकर्ता PASSED BY	Shri Vishwajeet Singh Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	07.08.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	559/CUS-REF/24-25 dated 28.04.2025
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	07.08.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1. M/s Triveni Ship Breakers, LLP, Plot No. 23, Ship Breaking Year, Alang, Bhavnagar -364240

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.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी 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 है.
	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(	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported
(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.
(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 बनाए गए नियमों 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 उस के साथ निम्नलिखित कागजात संलग्न होने 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 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.
(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 दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	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 (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 हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित 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/-
(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.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध 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 :
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench** दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016 2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	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-
	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)	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 हज़ार रुपए.
(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)	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; पांच हज़ार रुपए
(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)	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 हज़ार रुपए.

(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)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के %10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।
(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.	**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.**
	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

1. Brief facts of the case

1. M/s Triveni Ship Breakers, LLP, Plot No. 23, Ship Breaking Year, Alang, Bhavnagar -364240 (herein after referred to as the "Appellant for the sake of brevity) has filed the present appeal against Order-In-Original No. 559/CUS-REF/2024-25 dated 28.04.2025 (herein after referred to as the "impugned order") issued by the Assistant Commissioner, Customs Division, Bhavnagar (herein after referred to as the "Adjudicating Authority).

1.2 The Appellant had imported a vessel M T SEAL for breaking up/ recycling at Plot No. 120, Sip Breaking Yard Sosiya, P.O. Manar, Bhavnagar and had filed self-assessed Bill of Entry No. 5104873 dated 19.08.2021 under section 46 of the Customs Act, 1962.

1.3 There were some dispute with regard to assessment of customs duty of the Fuel and Oil (Fuel Oil, Marine Gas Oil, Lub. Oil) contained in Bunker Tanks inside/ outside the engine room of the vessel. Importer claimed that Fuel and Oil contained in Bunker Tanks inside/ outside the engine room of the vessel was to be assessed to duty under CTH 8908 along with the vessel. However, the Department, was of the view that Fuel and Oil contained in Bunker Tanks were to be assessed to duty under respective CTH of Chapter 27 and accordingly the bill of entry was assessed to duty of Rs. 3,34,92,057/-. The respective Bill of Entry was assessed provisionally for want of original documents.

1.4. Hon'ble CESTAT, Ahmedabad vide its orders A/11792-11851/2022 dated 17.10.2022/01.12.2022 has held that the oil contained in the Bunkers Tanks in the engine room of the vessel is to be assessed to duty under CTH 8908, along with the vessel coming for breaking up. Further, in adherence to aforesaid order of Hon'ble CESTAT, it has been decided by the Assistant Commissioner, Customs Division, Bhavnagar in Final Assessment Order No. 695/2534660/SBY/2023-24 dated 19.03.2024/20.03.2024 that Bunker Tanks containing oil are to be treated as part of vessel's machinery and the Oils contained in them are to be classified under CTH 8908 along with the vessel, as covered under para 2(b) of circular no. 37/96-Cus Dated 03.07.1996. The bill of entry was finally assessed to duty of Rs. 3,32,66,381/- vide Final Assessment Order No. 695/2534660/SBY/2023-24 dated 19.03.2024/20.03.2024 passed by the Assistant Commissioner Customs Division, Bhavnagar.

1.5 Consequent to Final Assessment Order 695/2534660/SBY/2023-24 dated 19.03.2024/20.03.2024 passed by the Assistant Commissioner, Customs

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Division, Bhavnagar, the Appellant filed a refund claim of Rs. 2,25,676/- under Section 25 of the Customs Act, 1962.

1.6 The Adjudicating Authority observed that the Appellant had failed to prove the incidence of customs duty has not been passed on to any other person and this the Adjudicating Authority vide the impugned order sanctioned the refund of Rs. 1,91,250/- in terms of Section 27 of the Customs Act, and credited the same to Consumer Welfare Fund.

1.7 Being aggrieved by the impugned order, the Appellant preferred the present appeal.

2. **Ground of Appeal submitted by the Appellant**

2.1 The Appellant submitted that the Assistant Commissioner, vide impugned order has not at all dealt with the pleas made by the Appellant before him. Not only this, but the Assistant Commissioner also has neither asked any clarification form the appellant not granted any personal hearing while passing the impugned order which is in violation of principle of natural justice.

2.2 The Appellant further submitted the Assistant Commissioner has not recorded any findings on the arguments raised before him and have cursorily and mechanically dealt with the pleas of the Appellant.

2.3 The Appellant further submitted that in view of the above the impugned order is liable to be quashed and set aside as being issued in violation of principal of natural justice and also being illegal, invalid, void and bad in law.

2.4 The Appellant further submitted that the burden of tax has not been passed on the customers. The fact of the instant case is that the purchase price + the duty paid on bunkers lying inside the engine room were more than the selling price. The Appellant submitted that on perusal of the cost sheet (page 3 4 and 34.1) it can be inferred that the goods valued at Rs. 72,26,989/- have been sold at Rs. 28,71,859/- and thus the appellant has incurred a significant loss of Rs. 43,55,130/- a against the differential duty of Rs. 2,25,676/- and the cost of imported oil and fuel exceeds the actual sales price, indicating that the appellant has not profited unjustly form the customs duty paid on the bunker oil and fuels.

2.5 The Appellant further submitted that in the sale of imported oil and fuel, the incidence of duty has not been passed on to the customer and the same has been borne by them as could also be seen from the fact that the landed cost was more and the goods were sold at a price less than the landed cost, that the duty in the instant case and the loss incurred by them is more or less similar and

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therefore, the appellant submit that the incidence of burden has not been passed on by them to the actual customers. The appellant states that they have produced all accounts to satisfy the department that the duty burden has not been passed on to the actual consumers and the same has been borne by them only.

2.6 In view of the above, the appellant submitted that when the goods are sold at price lesser than the landed cost and the loss incurred being more or less similar to duty paid, then the plea that incidence of duty is not passed on to the actual customers and the provision of unjust enrichment is also not applicable. The appellant further submitted that if no separate duty/tax was included in sales invoice, it cannot be said that the same was recovered from customers. Moreover, even if it is held that Customs duty/cess was recovered from customers though it was not payable, such unpaid duty/cess no longer remains in the nature of duty/cess but becomes part of value recovered from the customer. If such excess recovery of duty/cess was not in the character of tax which was recovered from customers, doctrine of unjust enrichment would not apply in such case. In service tax regime, Hon'ble CESTAT in the case CCEX v/s J.R. Transformers Pvt Ltd 2014(36) STR 1167 (Tri-Del) held that where total consideration between parties was inclusive of taxes and no separate Service Tax collected from recipient there could be no inference of passing on burden of Service Tax to recipient. Therefore, no question of unjust enrichment would arise; the assessee was entitled to refund

2.8 The appellant further submitted that merely because the duty paid by them was shown as expenditure in the books of accounts that itself does not prove that the incidence of the duty paid was passed on to any other person; that what was recovered from customers were not duty/cess but only value of goods. Hence, Doctrine of unjust enrichment would not apply in our case.

2.9 The Appellant further submitted that having regard to the above submission, most respectfully, the appellant prays that, they are entitled to receive the amount of refund sanctioned by the Assistant Commissioner and credited to the Consumer Welfare Fund.

2.10 The appellant, in view of the above, submitted that the impugned order is liable to be quashed. The appellant prayed as under:

(1) A personal hearing may be granted before finalization of the appeal.

(2) the impugned order dated 28/04/2025 passed by the Assistant Commissioner be quashed and order to pay the sanctioned refund amount to the appellant with consequential relief.

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(3) such further and other relief may be granted as may be deemed fit.

3. PERSONAL HEARING:

Opportunity of personal hearing was granted to the Appellant. C.A. Shri Karan Parekh, authorized representative of the Appellant appeared for personal hearing on 05.08.2026 wherein he re-iterated written submission filed during the appeal.

4. DISCUSSION AND FINDINGS:

4.1 I find that the date of the impugned order is 28.04.2025 and the Appellant filed appeal on 09.06.2025 therefore, the appeal is filed well within the time period of 60 days prescribed under the provisions of Section 128 of the Customs Act, 1962.

4.2. I find that the matter pertains to the issue of refund thus there is no question of pre-deposit of 7.5% of duty demanded as prescribed under Section 129E of the Customs Act, 1962.

4.3 The Customs Division Office, Bhavnagar was requested for submission of comments on the appeal filed by the Appellant vide letter 08.07.2025 but no comments have been received by this office till date therefore, I am taking up the issue for decision based on the facts of the case and documentary evidence available on record.

4.4 I have carefully gone through the case records, show cause notice and corresponding order passed by the adjudicating authority and the defense put forth by the Appellants in their appeal. The following issues arise for determination:

> i) Whether the Appellant is eligible for refund of Rs. 1,91,250/- by directly crediting it to their bank account instead of crediting the same to Consumer Welfare Fund.

4.5 It is observed that the appellant had imported vessel for breaking up/recycling and filed Bill of Entry No. 5104879 dated 19.08.2021 under Section 46 of the Customs Act. 1962. There was dispute in respect of classification of Fuel and Oil (Fuel Oil, Marine Gas Oil, Lub Oil), which was settled by the Hon'ble CESTAT, Ahmedabad, vide its Orders A/11792-11851/2022, dated 17.10.2022/01.12.2022 wherein it was held that the oil contained in the Bunkers Tanks in the engine room of the vessel is to be assessed to duty under CTH 8908, along with the vessel for breaking up. The Bills of Entry were assessed

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provisionally. Subsequently, the Bill of Entry was finally assessed vide Final Assessment Order No. 695/2534660/SBY/2023-24 dated 19.03.2024/20.03.2024 passed by the Assistant Commissioner, Customs Division, Bhavnagar. Consequently, the appellant had filed refund claims along with Certificate dated 18.05.2025 issued by C. A. M/s Viresh Mehta & Co. wherein it is stated that the Appellant had paid Customs duty of Rs. 33503057vide two challans (1) Rs. 33250210vide challan No. 2036025235 dated 24.08.2021 and (2) Rs. 252847/- vide challan No. 2036128517 dated 28.08.2021 respectively for the import of the vessel. The Certificate also verified that out of total Customs duty of Rs. 33503057/-, the final amount of duty assessed as per the Final Assessment Order No. 695/2534660/SBY/2023-24 dated 19.03.2024 is Rs. 33266381/- resulting into excess payment of customs duty by the Appellant in respect of three items fuel oil, light diesel oil and lubricating oil. The certificate further certified that out of total customs duty payment of Rs. 3,35,03,057/- at Appellant has taken credit of IGST of Rs. 2,89,83,121/- and charged total remaining amount of basic customs duty of Rs. 40,99,033/- and surcharge of Rs. 4,09,903/- to the profit and loss account as expenditure for the financial year 2021-22 and no amount is kept as receivable from or deposit to customs department under heading of current assets or receivables in balance sheet as on the last date of the financial year 2021-22.

4.6 The adjudicating authority has on scrutiny of the refund claims observed that the Appellant has submitted CA Certificate which neither disclosed the details of supporting documents on the basis of which such certificate was issued not financial records viz. copy of Audited Balance Sheet etc. had been provided. In this connection it is observed that the Board in its Circular No. 07/2008 dated 28.05.2008 has stressed upon the need to go through the details of audited Balance Sheet and other related financial records, certificate of CA etc., which are relied upon, to verify as to whether the burden of duty and interest as the case may be, has not been passed on to any other person as for the doctrine of unjust enrichment. The findings of the adjudicating authority in the impugned order is as under:

"8.2 The claimant has submitted a copy of certificate issued by C.A. M/s Viresh A Mehta & Co. dated 18.03.2025 vide which it has been certified that no amount is kept as receivable from or deposit to Customs department under heading of current assets or receivables in balance sheet as on the last day of the financial year 2021-22. This implied that the duty paid was shown as expenditure and formed part of Profit and loss account of the claimant. Therefore, as a settled position in law that where the claimant has itself treated the refund amount due as expenditure and not as "claims receivable", the claimant cannot be said to have

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passed the test of unjust enrichment. Thus the claimant having failed to prove that incidence of customs duty has not been passed on to any other person, the amount of refund instead of being paid to them is liable to be credited to the Consumer Welfare Fund."

4.7 Accordingly, the adjudicating authority has sanctioned the refund claim of Rs 1,91,250/- in terms of Section 27 of the Customs Act, 1962 and credited the same to the consumer welfare fund vide the impugned order.

4.8 I have perused the relevant Section 27 (1A) and 27 (2) of the Customs Act, 1962 and same is reproduced as under:

(1A) The application under sub-section (1) shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty or interest in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty or interest, has not been passed on by him to any other person.

(2) If, on receipt of any such application, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that the whole or any part of the [duty and interest, if any, paid on such duty] paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

***Provided** that the amount of [duty and interest, if any, paid on such duty] as determined by the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to*

(a) the [duty and interest, if any, paid on such duty] paid by the importer, [or the exporter, as the case may be] if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;

(b) the [duty and interest, if any, paid on such duty] on imports made by an individual for his personal use;

(c) the [duty and interest, if any, paid on such duty] borne by the buyer, if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75;

(f) the [duty and interest, if any, paid on such duty] borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify:

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[(g) the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where —

(i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or

(ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment:]

***Provided** further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of [duty and interest, if any, paid on such duty] has not been passed on by the persons concerned to any other person.*

4.9 I have also perused Section 28 D of the Customs Act, 1962 and same is reproduced as under:

"SECTION 28D. Presumption that incidence of duty has been passed on to the buyer. — Every person who has paid the duty on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods."

From plain reading of the above legal provisions, it is clear that the appellant was required to submit documentary evidence to establish that the amount of duty in relation to which the refund is claimed was paid by him and the incidence of the duty has not been passed on by him to any other person. As per Section 28D of the Customs Act, 1962, the burden of proof is on the appellant to establish that they had not passed on the incidence of duty paid. Thus, until and unless the appellant satisfies with the relevant documents, indicating the fact that it has paid the duty and the same has not been passed on to the customers, such a claim cannot be accepted. Therefore, until the contrary is proved, there is a presumption provided under the statute that the duty has been passed on to the buyer.

4.10 It is undisputed that the goods in question have been sold to buyers and the transactions are shown as part of Profit and Loss Account. Further, it is observed that the appellant had submitted Certificate issued by C A Viresh A Mehta & Co. wherein it is has not been stated that the incidence of Custom Duty paid on bunker (oil and fuels) has not been passed on to the buyer of the goods or any other person. The CA certificate submitted by the appellant neither disclosed the details of the supporting documents on the basis of which such certificate was issued nor financial records viz. copy of Audited Balance Sheet, Sales Invoices etc. Further, I find that the Adjudicating Authority has correctly observed that the no amount is kept as receivable from Customs department under heading of current assets or receivables in balance sheet as on the last

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day of the financial year 2021-22. This implied that the duty paid was shown as expenditure and formed part of Profit and loss account of the claimant. Therefore, as a settled position in law that where the claimant has itself treated the refund amount due as expenditure and not as "claims receivable", the claimant cannot be said to have passed the test of unjust enrichment.

4.11 Further, as per the Board Circular No. 07/2008 dated 28.05.2008 wherein it has been stressed upon the need to go through the details of audited Balance Sheet and other related financial records, certificate of CA etc., to verify as to whether the burden of duty and interest as the case may be, has not been passed on to any other person as for the doctrine of unjust enrichment.

4.12 I also find that the CA certificate does not certify the fact the incidence of duty has not been passed to the customer by the Appellant. The Chartered Accountant/appellant has also not submitted any documents to substantiate that the incidence of duty claimed as refund has not been passed on by him to any other person. Further, I also find that the Bill of Entry was filed during the year 2021-22 and the certificate has not given to give any certificate regarding carrying forward of the amount till the year the Appellant filed refund application. The Appellant has also failed to given any evidence indicating the fact that there was no unjust enrichment on the part of the Appellant during the Financial year 2024-25 as the refund was filed on 18.03.2025. Therefore, the CA Certificate produced in this case without supporting documents cannot be considered for discharging the burden of unjust enrichment.

4.13 It is further observed that the Chartered Accountant's Certificate alone is not the conclusive proof of having not passed on the incidence of duty to the customers. A certificate of Chartered Accountant is just a corroborative evidence only as held by the Hon'ble High Court in the case of Commr. of C. EX., Aurangabad Versus Toyota Kirloskar Motors Ltd [2010 (256) E.L.T. 216 (Kar.)]. The Hon'ble High Court's view was not disturbed by the Hon'ble Supreme Court vide [2011 (274) E.L.T. 321 (S.C.)]. Further, in a number of decisions, it has been held that Chartered Accountant's certificates alone is not a sufficient evidence to discharge the burden cast upon the appellant to prove that incidence of duty has not been passed on to the customers. Further, it is the 'incidence of duty' and not the duty as such which is required to be shown to have not been passed on from the sale record, balance sheets and other related documents. In this regard, I rely upon the following case laws:

(i) Shoppers Stop Ltd. - 2018 (8) G.S.T.L. 47(Mad.)
(ii) BPL Ltd. - 2010 (259) E.L.T. 526 (Mad.)
(iii) Crompton Greaves Ltd. - 2011 (22) S.T.R. 380(Tri. - Mum.)

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(iv) UOI v. Solar Pesticides Pvt. Ltd. reported in [2000 (116) E.L.T. 401(S.C.)]

(v) M/s Ispat Industries Ltd Vs Commissioner of Customs (Mumbai) – [2015- TIOL-614-CESTAT-MUM].

4.14 Further the Hon'ble Supreme Court in the case of Sahakari Khand Udyog Mandali Ltd Vs Commissioner of C. Ex. & Cus [2005 (181) ELT 328 (SC)] has held that before claiming a relief of refund, it is necessary for the appellant to show that he has paid the amount for which relief is sought and he has not passed on the burden on consumers. Further, the Hon'ble Supreme Court in the case of Union of India Vs Solar Pesticides Pvt. Ltd. [2000 (116) ELT 401 (SC)] has held that "the expression "incidence of such duty" in relation to its being passed on to another person would take it within its ambit not only the passing of the duty directly to another person but also cases where it is passed on indirectly". The burden of proof is on the appellant to establish that they had not passed on the incidence of duty paid. Therefore, until the contrary is proved, there is a presumption provided under the statute that the duty has been passed on to the buyer. Therefore, the appellant in the present case has failed to cross the bar of unjust enrichment.

4.15. From the above, I am of the considered view that the burden of proof lies on the appellant to demonstrate that the incidence of duty has not been passed on to the buyer or end customer. In this regard, the Chartered Accountant's certificate, is not sufficient by itself to discharge this burden. Such a certificate is merely corroborative in nature and must be supported by documents and records which are duly prescribed by the ICAI. These documents must be diligently and duly enlisted so the same may be referred to. In view of the failure to provide sufficient evidence to overcome the bar of unjust enrichment, I am of the considered opinion that the appellant has not made out a case for refund. Accordingly, the appeal filed by the appellant is liable to be rejected.

4.16 Accordingly, I hold that the adjudicating authority has correctly credited the refund to Consumer Welfare Fund. I find no reason to interfere with the findings or the conclusions recorded in the impugned order.

5. In view of the above, I do not find any infirmity with the impugned order and the same is upheld. The appeal filed by the appellant is disallowed.

सत्यापित/ATTESTED

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

Vishwajeet Singh
07.08.2026.

(Vishwajeet Singh)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-135/CUS/JMN//JUN/2025-26

By Registered post A.D/Email

M/s Triveni Ship Breakers, LLP, Plot No. 23, Ship Breaking Year, Alang, Bhavnagar -364240

Copy to

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in).
2. The Commissioner, Customs(Prev), Jamnagar
3. The Deputy/Assistant Commissioner Customs Division, Bhavnagar.
4. Guard File.