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-20260871MN0000DBC2E2

क	फ़ाइल संख्या FILE NO.	S/49-217 to 219/CUS/JMN/AUG/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-50 to 52-2026-27
ग	पारितकर्ता PASSED BY	Shri Vishwajeet Singh Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	10.08.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	06 to 08/CUS-REF/2025-26 Dated 12.08.2025
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	10.08.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1. M/s Malwi Ship Breaking CO. Plot No. 58(24 D), Ship Recycling Yard, Alang, Bhavnagar

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

1.1 M/s Malwi Ship Breaking CO. Plot No. 58(24 D), Ship Recycling Yard, Alang, Bhavnagar (herein after referred to as the "Appellant for the sake of brevity) has filed the present appeals against Orders-In-Original 06 to 08/CUS-REF/2025-26 all dated 12.08.2025 (herein after referred to as the "impugned orders") issued by the Assistant Commissioner, Customs Division, Bhavnagar (herein after referred to as the "Adjudicating Authority).

1.2 The Appellant imported following vessels/ship for breaking purpose and filed bills of entry for home consumption under Section 46 of the Customs Act, 1962. The Bills of Entry were assessed provisionally assessed for want of original documents.

Sl.No.	Name of the Ship /Vessel	Bill of Entry No.	Date of Bill of Entry
1	MV AD 90	7968108	22.03.2022
2	MV DAHA	9721266	26.07.2022
3	MV COLORS	9893662	09.12.2020

1.3. There was some dispute with regard to assessment of Customs duty of the Fuel and Oil (Fuel Oil, Marine Oil, Lube Oil) contained in the Bunker tanks inside /outside engine room of the vessel /ship. Importer claimed that Fuel and Oil (Fuel Oil, Marine Oil, Lube Oil) contained in the Bunker tanks inside /outside engine room of the vessel /ship was to be assessed to duty under CTH 8908 along with 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.

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. 1079/2631159/SBY/2024-25 dated 11.09.2024 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. Therefore, in view of the aforementioned judgment of the Hon'ble Tribunal, all the above mentioned Bills of Entry were finally assessed as tabulated below.

Sl.No.	Name of the Ship /Vessel	Bill of Entry No.	Date of Bill of Entry	Final assessment Order	Date of final assessment
1	MV AD 90	7968108	22.03.2022	969/2583862/SBY/2023-24	10.06.2024
2	MV DAHA	9721266	26.07.2022	1361/2746082/SBY/2024-25	19.02.2025
3	MV COLORS	9893662	09.12.2020	1327/SBY/2024-25	21.01.2025

1.5 Consequent to the Final assessment of Bills of Entry the, Appellant filed refund claim as tabulated below.

Sl.No.	Bill of Entry No.	Final assessment Order	Date of final assessment	Amount of refund filed	Date of filing refund
1	7968108	969/2583862/SBY/2023-24	10.06.2024	75,469/-	18.06.2025
2	9721266	1361/2746082/SBY/2024-25	19.02.2025	3,45,585/-	19.06.2025
3	9893662	1327/SBY/2024-25	21.01.2025	1,41,621/-	21.06.2025

The Adjudicating Authority sanctioned the refund claims vide the impugned orders and credited the same to the Consumer Welfare Fund.

1.6 Being aggrieved by the impugned orders, the Appellant preferred the present appeals.

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

2.1. The Appellant submitted that the impugned order of Assistant Commissioner by which he has sanctioned the refund of the excess duty paid and has ordered the same to be credited in to the Consumer Welfare Fund on the ground of unjust enrichment is not tenable in law and is liable to be set aside. He should have ordered the refund to the credit of appellant instead. The Appellant further submitted that the adjudicating authority has not considered the submission submitted and ground of refund submitted in the refund application and passes the impugned order, without giving any opportunity to be heard in person to the Appellant and passed the impugned order as "ex-parte". The Appellant further submitted that the act of crediting the sanctioned refund amount in to the so called Consumer Welfare Fund of the department is not genuine, correct proper tenable and required to be set aside.

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2.2 The Appellant further submitted that in fact the Appellant had sold out the disputed stock of bunkers at very less price prevailing at the time and sale/removal of disputed bunkers after completion of Provisional assessments. The Appellant also submitted some sample copies of Sales invoices of Bunkers as (hereinafter referred to as Exhibit -H collectively it is evident from the Bill of Entry and the Appellant's Sales Invoices, that the price at which the Appellant sold the imported Bunkers is much below the import price/value of the Bunkers on which the duty was assessed. Therefore, they have not been able to even recover the import price of the Bunkers, much less the duty paid thereon. Consequently, the question of the Appellant having passed on and recovered from the buyers, the duty paid on the Bunkers does not arise. Clearly, therefore the burden of the said duty has been borne by the Appellant and has not been passed on to any other person.

2.3 The Appellant further submitted that Chartered Accounts M/s Parshva Shah & Co., in his three Certificates s all dated 26.06.2025 verified and certified that, an amount of Rs. 75,469/-, Rs. 3,45,585/-and Rs. 1,41,621/- is receivable from customs department shown as 'Custom duty Refund Receivable" Account treating the same as balance sheet item, in the books of accounts maintained by them for F.Y. 2025-26, & the receivable amount of Rs. 75,469/-, Rs. 3,45,585/- and Rs. 1,41,621/-has been carried forward in the books of account till date and that therefore that incidence of customs duty or Rs. 75,469/-, Rs. 3,45,585/- and Rs. 1,41,621/-claimed as refund has not been passed on to any other person.

2.4 The Appellant further submitted that merely because the duty amount was debited to expenses in Profit & Loss Account, it does not follow that incidence thereof was passed on to the buyers, when the price at which the Bunkers were sold to the buyers, was even less than the import price on which the duty was assessed. The Appellant further submitted that the Assistant Commissioner has proceeded on the premise that since the duty paid on the Bunkers was debited to expenses, it must be considered to have been passed on to the buyers by the Appellant. The said premise on which the Order of the Assistant Commissioner is based is untenable in law. The Appellant further submitted that it is settled law that debit of the duty amount to expenses, without corresponding addition in the import price to arrive at the local sale price, means that Appellant has absorbed and borne the said amounts and it cannot lead to the conclusion that the Appellant has passed on the incidence thereof. In the present case, not only has the Appellant not added the duty amount to the import price to arrive at the

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local sale price, but in fact, the local sale price is even below the import price on which the duty is assessed.

2.5 The Appellant further submitted that notwithstanding contain anything in foregoing submissions, it is to point out that the Chartered Accountant has clearly certified in his Certificates d dated 26.06.2025 that incidence of Customs paid on the bunker (oil and Fuel) etc. has not been passed on any other person.

2.6. The Appellant had relied upon the following settled case laws wherein the concerned authority has clearly held that "in such cases", the question of "unjust enrichment" does not arise, which are viz;

(i) Elantas Beck India Ltd v CCE-2016 (339) ELT 325: Para 5
(ii) Birla Corporation Ltd v CCE-2008 (231) ELT 482: Para 5
(iii) 2015 (317) E.L.T. 637 (Tri. Del) in case of Business Overseas Corporation v/s C. C. (Import & General), New Delhi wherein it has been held that;

"Refund - Unjust Enrichment Bar of Goods sold at loss, i.e., cost price was more than sale price during period in dispute -Retail sale price decreased during the period in dispute - Higher cost of goods imported when taken into consideration, manufacturing cost of final product increased whereas retail sale price decreased Chartered Accountant certified that differential duty not recovered from customers - Importer discharged burden of proof by producing Chartered Accountant's Certificates , burden shifted to Revenue to prove recovery of extra duty paid from customers by producing positive evidence - Revenue failed to advance any evidence to rebut Chartered Accountant's Certificates - Department not disputed cost data about manufacturing cost of goods and average selling price during period in dispute - Department's contention that no businessman would sale their goods at loss, not supported by any evidence - Incidence of duty not passed on to customers - However, appellants already availed Cenvat credit of R25,28,755, not entitled to cash refund of remaining ` 10,63,065 - Section 27 of Customs Act, 1962"

2.7 The Appellant further submitted before deciding the Appeals these settled case laws may kindly be considered as to whether the provisions of unjust enrichment are applicable or otherwise. The submission is submitted without prejudice to the provisions of Section 27(2)(g) of the Customs Act, 1962.

2.8 The Appellant further submitted that the in present case, the question of invoking the provisions of unjust enrichment does not arise. Therefore, the sanctioned refund amount has been wrongfully credited in to the so called

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Consumer Welfare Fund/Account which is not proper, correct, justified, tenable and required to be set aside.

2.9 Therefore, the Appellant prayed

(i) To set aside the impugned orders and pray to pay the sanctioned refund amount in cash.

(ii) To grant consequential relief, as deemed fit.

3. PERSONAL HEARING:

Opportunity of personal hearing was granted to the Appellant. The Appellant vide letter dated 03.08.2026 have foregone the opportunity of personal hearing in all the appeals.

4. DISCUSSION AND FINDINGS:

4.1 The date of the impugned order and the date of filing appeal by the Appellant is tabulated below.

Impugned Order No.	Date of Order	Date of Filing appeal	Remark
06/CUS-REF/2024-25	12.08.2025	29.08.2025	File within 60 days of the order
07/CUS-REF/2024-25	12.08.2025	29.08.2025	File within 60 days of the order
08/CUS-REF/2024-25	12.08.2025	29.08.2025	File within 60 days of the order

Thus, based on the above, I find that the Appellant had the filed the appeal 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 sanction 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 of the appeal filed by the Appellant vide letters 09.09.2025 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

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forth by the Appellants in their appeal. The following issues arise for determination:

i) Whether the Appellant is eligible for refund of differential duty 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 Bills of Entry as detailed below under Section 46 of the Customs Act. 1962.

Sl.No.	Name of the Ship /Vessel	Bill of Entry No.	Date of Bill of Entry
1	MV AD 90	7968108	22.03.2022
2	MV DAHA	9721266	26.07.2022
3	MV COLORS	9893662	09.12.2020

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 provisionally. Subsequently, the Bills of Entry were finally assessed vide different Final Assessment Order Nos. passed by the Assistant Commissioner, Customs Division, Bhavnagar. The details of final assessment order and amount of refund filed is as under.

Sl.No.	Bill of Entry No.	Final assessment Order	Date of final assessment	Amount of refund filed	Date of filing refund
1	7968108	969/2583862/SBY /2023-24	10.06.2024	75,469/-	18.06.2025
2	9721266	1361/2746082/SB Y/2024-25	19.02.2025	3,45,585/-	19.06.2025
3	9893662	1327/SBY/2024-25	21.01.2025	1,41,621/-	21.06.2025

Consequently, the appellant had filed refund claims along with Certificates dated 26.06.2025 issued by C. A. M/s Parshva Shah & Co with respect to each import.

4.6 The adjudicating authority on scrutiny of the refund claims observed that the Appellant has submitted CA Certificates which neither disclosed the details of supporting documents on the basis of which such Certificates were issued not financial records viz. copy of Audited Balance Sheet etc. had been provided. In

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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, Certificates 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.

4.7 Accordingly, the adjudicating authority has sanctioned the refund claims 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;

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(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:

[(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 Certificates dated 26.06.2025 issued by C A M/s Parshva Shah & Co. wherein it is has been verified that the Appellant has paid customs duty vide different challans for the import. It is further verified vide the aforementioned Certificates that the Appellant has taken input tax credit of IGST and shown total amount of customs duty as expenditure in profit and loss account. [considering profit and loss accounts for F.Y. 2021-22 and F.Y.

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2025-26 (till dated)} and an amount of Rs. 75,469/-, Rs. 3,45,585/-and Rs. 1,41,621/-has been shown receivable from customs department and the same is shown as "Customs Duty Refund. Receivable" account. The Certificates further states that amount receivable has been carried forward in the books of account till dated and therefore further certified that the incidence of customs duty has not been passed on to any other person. I find that the C.A. Certificates made a bald statement that the incidence of customs duty claimed as refund has not been passed on to any other person without any supporting documents. Therefore, the CA Certificates produced in these cases without supporting documents cannot be considered for discharging the burden of unjust enrichment. 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 2025-26 as the refund were filed on dated mentioned para supra.

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, Certificates 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 Certificates 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 Certificates has not given to give any Certificates 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 Certificates 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 Certificates alone is not the conclusive proof of having not passed on the incidence of duty to the customers. A Certificates 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 s 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.)
(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 Certificates , is not sufficient by itself to discharge this burden. Such a Certificates 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 orders.

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5. In view of the above, I do not find any infirmity with the impugned orders and the same is upheld. The appeals filed by the appellant are rejected.

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

Vishwajeet Singh
10.08.2026.

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

F. No. S/49-217 to 219/CUS/JMN/AUG/2025-26

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M/s Malwi Ship Breaking CO. Plot No. 58(24 D), Ship Recycling Yard, Alang, Bhavnagar.

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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, Custom Division, Alang, Bhavnagar.
4. Guard File