



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,
चौथी मंज़िल 4th Floor, हड्को बिल्डिंग HUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,
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DIN: - 20250971MN0000333F7B

क	फ़ाइल संख्या FILE NO.	S/49-335,336,337/CUS/JMN/24-25
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-314 to 316-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	25.09.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	As detailed in table 1 of the Order
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	25.09.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Shree Digvijay Cement Co. Ltd, Digvijaygram, Sikka, Dist Jamnagar
1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.	
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2.	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।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(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 दस्तावेजों 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 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/-
(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 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 :



	सीमाशुल्क, केंद्रीय 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
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 हजार रुपए.	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; पाँच हजार रुपए	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 हजार रुपए.	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 ।	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

Three appeals, as per details given in Table - 1 below, have been filed by M/s Shree Digvijay Cement Co. Ltd, Digvijaygram, Sikka, Dist Jamnagar (hereinafter referred to as the 'appellant') in terms of Section 128 of the Customs Act, 1962 against the following Order in Original (hereinafter referred to as the 'impugned order') as per Table-1.

Table-1

Sr No	Appeal No	Appeal filed on	Order in Original No.	Date
1	S/49-335/CUS/JMN/2024-25	18.09.2024	01/AC/CHS/24-25	28.05.2024
2	S/49-336/CUS/JMN/2024-25	18.09.2024	02/AC/CHS/24-25	28.05.2024
3	S/49-337/CUS/JMN/2024-25	18.09.2024	03/AC/CHS/24-25	28.05.2024

2. Facts of the case, in brief, is that the appellant having IEC No. 0388020920 had imported consignment of Steam (Non coking) Coal falling under CTH 27011920 at Sikka Port. They have filed Bills of Entry for the import of Steam (Non coking) Coal in bulk of Australian origin at Sikka Port. In the absence of relevant documents/ information, the said Bills of Entry were provisionally assessed by the Competent Authority for want of original documents and Test Reports. The provisional duty was paid by the appellant at the relevant time before clearance of imported goods. They also executed PD Bonds of duty amount. The said Bills of entry was finalized on the basis of original documents submitted by the importer and Test Report vide Final Assessment orders as detailed below in Table II.

Table II

Sr No	FAO No	Date
01	86/FAO/CHS/2022-23	02.08.2022
02	87/FAO/CHS/2022-23	02.08.2022
03	88/FAO/CHS/2022-23	02.08.2022

2.1 Being aggrieved from the FAO as mentioned in Table II above, the appellant filed an appeal against the FAO issued by the Deputy Commissioner, Custom House Sikka, before Hon'ble Commissioner of Appeals, Ahmedabad and the same was decided by Hon'ble Commissioner of Appeals, Ahmedabad vide the following Order in Appeal:




- OIA No. JMN-CUSTM-000-APP-92-23-24 dated 19.09.2023,
- OIA No. JMN-CUSTM-000-APP-93-23-24 dated 20.09.2023
- OIA No. JMN-CUSTM-000-APP-91-23-24 dated 14.09.2023

Wherein the issue was remanded to the adjudicating authority for passing speaking order, after providing opportunity of personal hearing to the appellant. It was also directed that the adjudicating authority shall examine available facts, documents and submission made by the appellant on the issue of inclusion of barge charges in the assessable value.

2.2 In de novo adjudication the adjudicating authority vide the impugned orders has held that the transaction value of the imported goods in terms of section 14 of the Customs Act, 1962 would include the costs incurred up to the place of importation. Thus, in the instant cases, as the place of importation is jetty/import yard where the cargo is offloaded. As the barge charges have been incurred before the commodity/goods reached the jetty/import yard, the barge charges have to be included in the assessable value. The adjudicating authority has confirmed the differential amount of duty along with interest thereon as provided under Section 18(3) of Customs Act, 1962. The adjudicating authority has also imposed penalty under Regulation 7 of Customs (Finalization of Provisional Assessment) Regulations, 2018.

3. Accordingly, the appellant aggrieved by the impugned orders has filed the present appeals and mainly contended that:

- The Deputy Commissioner has erred in failing to appreciate that goods were brought at Sikka Port for being cleared for home consumption at Sikka Port and all the charges for bringing them to Sikka Port have been included in the freight element that is an integral part of the CIF price of the goods for the purpose of discharging customs duty. The barge charges are part of stevedoring charges on which appellant have suffered Goods & Service tax. Hence, the impugned order would amount to double taxation, which is not envisaged under the provisions of Section 12 of Customs Act, 1962.
- The appellant hereby says and submits that as per para 3 (b) of Notification No. 91/2017-Cus (NT) dated 26.09.2017, the substituted Rule 10 (2) of Customs Valuation rules, 2007 reads that-



"(2) For the purpose of sub-section (1) of Section 14 of the Customs Act, 1962 (32 of 1962) and these Rules, the value of the imported goods shall be the value of such goods, and shall include -

(a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;

As per the Explanation to the said rule, the cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on charter vessels, lighterage or barge charges.

- As per Rule 2 (da) inserted in Customs Valuation Rules, 2007 by Notification No. 91/2017-Cus (N.T.) dated 26.09.2017, 'place of importation' means the customs station where the goods are brought for being cleared for home consumption or being removed for deposit in a warehouse. The term "customs station" is defined in section 2 (12) of Customs Act, 1962 as any customs port. As per section 2 (12) of Customs Act, 1962, "customs port" means any port appointed under clause (a) of section 7 to be a customs port. In this case, the vessel had already arrived at the place of importation i.e. customs station (Sikka Port) and unloading of coal was undertaken at the anchorage which is within the port limits. The substituted Rule 10 (2) provides for inclusion of cost of transportation to the place of importation, which, in this case is Sikka Port and such cost is already covered in the freight component of CIF. The rule does not provide for charging any amount over and above the cost of transportation beyond the place of importation. Hence, the adjudicating authority has erred in considering "jetty" as place of importation whereas the law would define "place of importation" as customs station i.e. Sikka port.
- The appellant further submitted that no legal authority is cited to interpret the expression "port of importation" as the jetty and not the customs station (port). Therefore, there is no legal authority or provision to add any charges in assessable value on account of barge charges, beyond the place of importation.
- The appellant says and submits that even CBIC Circular No. 39/2017-Cus dated 26.09.2017 relied by the adjudicating




authority would use the expression "place of importation" to mean the customs station (and not jetty).

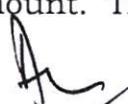
- The appellant further submitted that they are not liable to penalty under Regulation 7 of Customs (Finalization of Provisional Assessment) Regulations, 2018 inasmuch as this is not a case where had disregarded any communication sent to them in accordance with Regulation 4(2) ibid. Hence, the appellant would say and submit that penalty imposed on them under Regulation 7 of Customs (Finalization of Provisional Assessment) Regulations, 2018 is liable to be quashed and set aside.

4. Shri Vikas Mehta, Consultant, appeared for personal hearing on 24.09.2025. He reiterated the submissions made at the time of filing appeal.

5. Before going into the merits of the case, it is observed that the appeals filed by the appellant have been filed beyond normal period of 60 days but within the condonable period of 30 days as stipulated under Section 128(1) of the Customs Act, 1962. Appellant have requested for condoning the delay in filing the said appeal on the ground that the appeals could not be filed timely owing to mis-communication among office staff as the person looking after customs and litigation matters was on leave for some time due to health reasons of his family member at Delhi. Therefore, taking a lenient view to meet the ends of justice, I allow the appeal as admitted, condoning the delay in filing the appeal beyond the normal period of 60 days under proviso to the Section 128(1) of the Customs Act, 1962.

6 I have carefully gone through the appeal memorandum as well as records of the case, submissions advanced by the appellant during personal hearing as well as the documents and evidences available on record.

6.1 It is observed that the appellant having IEC No. 0388020920 had imported consignment of Steam (Non coking) Coal falling under CTH 27011920 at Sikka Port. They have filed Bills of Entry for the import of Steam (Non coking) Coal in bulk of Australian origin at Sikka Port. In the absence of relevant documents/ information, the said Bills of Entry were provisionally assessed by the Competent Authority for want of original documents and Test Reports. The provisional duty was paid by the appellant at the relevant time before clearance of imported goods. They also executed PD Bonds of duty amount. The said Bills of entry were




finalized on the basis of original documents submitted by the importer and Test Report vide Final Assessment orders as detailed in Table II above. Being aggrieved by the FAO as mentioned in Table II above, the appellant filed appeals against the FAO issued by the Deputy Commissioner, Custom House Sikka, before Hon'ble Commissioner of Appeals, Ahmedabad, who vide Order in Appeal as mentioned in Para 2.1 above has remanded the matter to the adjudicating authority for passing speaking order, after providing opportunity of personal hearing to the appellant. The adjudicating authority vide the impugned order has held that the transaction value of the imported goods in terms of section 14 of the Customs Act, 1962 would include the costs incurred up to the place of importation i.e. barge charges have to be included in the assessable value. The appellant contended that such charges are not includable in the assessable value for customs duty purposes.

6.2 It is observed that in a recent decision the Hon'ble Tribunal, vide Final Order No. 10233-10234/2025 dated 08.04.2025, passed in the case of M/s Nayara Energy Limited [Customs Appeal No. 10984 of 2016-DB read with Customs Appeal No. 11039 of 2016-08], involving a similar issue, the Hon'ble Tribunal has remanded the matter to the adjudicating authority for examination of certain factual aspects. I have perused the said Final Order and observe that the Hon'ble Member (Judicial), in Paragraph 19 (a) to (f), made specific observations warranting further verification, and accordingly, the matter was remanded to the original adjudicating authority, as directed in Paragraphs 20 and 21 of the order. The relevant paras are reproduced as under:

"19. Guided by the above decision, we find that shifting charges in the anchorage cannot be strictly considered as unloading/ loading charges at the port in view of statutory provisions and case law discussed. The question as to whether any further addition to CIF value for transportation charges is warranted or not, needs elaborate discussions and findings on various aspects and some of these, inter alia, are as follows: -

- a) Whether the goods at any stage prior to their landing at the final port destination were cleared for home consumption or not?*
- b) Whether a permission by the proper officer had been given under Section 33 and 34 for moving the Cargo to the barge and whether the*




goods were accompanied by a boat note under Section 35 of the Customs Act, 1962?

c) Whether the mother vessel by which goods arrived could or could not anchor at the main port?

d) Whether the Jetty at which goods were eventually discharged was included or not included in the bill of lading as port of discharge.

e) Whether who paid the consideration (even if buyer) is relevant consideration or not or any emergent situation relating to draft of the ship as mentioned in para 60 and 61 (cited supra) of the Ispat Industries case of apex court.

f) Whether the duty demand was raised consequent upon finalization of provision assessments, if same were involved?

20. We find that elaborate discussions, on all these points is not coming forth in the impugned order, as well as in the order of adjudicating authority. We, therefore, remand the matter and direct adjudicating authority to consider all these aspects including others on point of rate/transportation cost that may be raised by the litigant parties, to arrive at its decision, affording full opportunity to the appellants.

21. Matter is, therefore, remanded to the original authority to give findings accordingly, in the light of decision cited (supra) of Ispat Industries by Hon'ble Apex Court. Order is therefore set aside and Appeal is allowed by way of remand."

6.3 It is further observed that the Hon'ble Member (Technical) was of the view that the loading/unloading charges incurred during the transfer of cargo from the mother vessel to barges, for onward movement to the jetty, are includable as part of the cost of transportation. Accordingly, the Hon'ble Member opined that the appeals merit dismissal. The relevant paras are reproduced as under:

"32 All the case laws relied by the appellant are for period prior to 2007 and therefore not applicable in view of changes in Section 14 of the Customs Act. In view of above the Loading/ Unloading charges incurred during movement of Cargo from mother ship to barges for further movement of cargo to jetty is includable as cost of transportation.

33. The appeals therefore deserves to be dismissed."

6.4 In view of the above difference of opinion, the matter was placed before the Hon'ble President for nomination of a third member to resolve the issue. The third member held that:

"8. Therefore, I am in agreement with Hon'ble Member (Judicial) and hold that the matter is required to be remanded to the adjudicating authority to undertake necessary verification of the points highlighted by him at Para 19 (a) to (f) and as per the directions given by him at Para 20 and Para 21 of the Interim Order."

In view of the majority order, appeal was allowed by way of remand for conducting, inter-alia, verification on points (a) to (f) as detailed in Para 20 of the order.

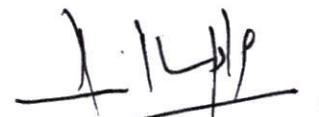
6.5 In view of the above, and following the Final Order No. 10233-10234/2025 dated 08.04.2025 of the Hon'ble CESTAT, Ahmedabad, in the case of M/s Nayara Energy Limited [Customs Appeal No. 10984 of 2016-DB read with Customs Appeal No. 11039 of 2016-08], the present appeals are also remanded for verification on points (a) to (f) as detailed in Paragraph 20 of the said order.

7. The appeals filed by the appellant are allowed by way of remand.



सत्यापित/ATTESTED

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


 (Amit Gupta)

Commissioner (Appeals),
 Customs, Ahmedabad

By Registered Post A.D.

F.No. S/49-335,336,337/CUS/JMN/24-25
 3698

Dated: 25.09.2025

To

- (1) M/s Shree Digvijay Cement Co. Ltd.,
 Digvijaygram, Sikka, Dist. Jamnagar.
- (2) Shri Vikas Mehta, Consultant,
 D'legal- Advocates & Consultants,
 1st Floor, Plot No. 159, Sector 1A, Gandhidham-370 201 (Kutch).

Copy to:

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