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-20260971MN00002CE07A

क	फ़ाइल संख्या FILE NO.	S/49-259/CUS/JMN/OCT/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-72-2026-27
ग	पारितकर्ता PASSED BY	Shri Vishwajeet Singh Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.09.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	VIII/6(a)-10/2023-24 dated 17.05.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.09.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1. M/s Agrasen Ship Breakers Pvt. Ltd. Plot No. 113, Sosiya Ship Breaking Yard, Sosiya, P.O. Manar, 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 Agrasen Ship Breakers Pvt. Ltd. Plot No. 113, Sosiya Ship Breaking Yard, Sosiya, P.O. Manar, Bhavnagar (herein after referred to as the "Appellant for the sake of brevity) has filed the present appeal against speaking order dated 17.05.2023 (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 filed bill of Entry for No 5820340-2023-24 Dated 05.05 2023 for clearance of the subject vessel tor home consumption through EDI and requested for provisional assessment of the same in accordance with section 17 of the Customs Act, 1962 and also submitted an undertaking regarding production of original Memorandum of Agreement within Thirty Days along with all other relevant documents. As the time of provisional assessment of the subject vessel, it was found that the Appellant had classified self-assessed various items lying on the said vessel, as under:

Sl.No.	Description	CTH	SCD(Adv)	SWS on (BCD)	IGST AIDC (Adv)	AIDC
1	Vessel	8908 00 00	0%	10%	18%	
2	Fuel Oil- (Outside E/Room Tanks)	8908 00 00	0%	10%	18%	
3	LDO –(Outside E/Room Tanks)	8908 00 00	0%	10%	18%	
4	LUB Oil–(Outside E/Room Tanks)	8908 00 00	0%	10%	18%	
5	Fuel Oil –(Inside E/Room Tanks)	8908 00 00	0%	10%	18%	
6	LDO–(Inside E/Room Tanks)	8908 00 00	0%	10%	18%	
7	Lub Oil–(Inside E/Room Tanks)	8908 00 00	0%	10%	18%	
8	Provisions	9805 90 00	10%	10%	18%	5%
9	Paints	3814 00 20	10%	10%	18%	

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10	Thinner	3814 00 20	10%	10%	18%	
11	Chemical	3814 00 20	10%	10%	18%	
12	Acid	3814 00 20	10%	10%	18%	
13	Grease	3814 00 20	10%	10%	18%	

1.3 The Adjudicating Authority observed that the classification of various goods imported on board alongwith ship for breaking-up re classifiable as per Para#2 of the Circular No. 37/1996-Cus dated 03.07.1996, which read's as under-

"2. The issue was, referred to World Customs Organisation, Brussels, who has opined that :-

(a) movable gears such as lifting and handling machinery, anchors, navigational equipment, machine tools, fire-fighting equipment form part of vessel's normal equipment and hence classified under Heading 89.08.

(b) Fuel and oil contained in the vessel's machinery and engines can also be regarded as forming integral part of the vessels and hence be classified under Heading 89.08.

(c) Spares parts (such as propellers), whether or not in a new condition and movable articles (furniture, kitchen equipment, table-ware etc.) ***showing clear evidence of use*** and which have formed part of normal equipment of vessels, are classifiable under Heading 89.08.

(d) Remaining fuel and oil (other than that mentioned in sub-para (b) above and ***other ship stores***, including drinks and foodstuff are classifiable separately in their own appropriate headings."

1.4 The Adjudicating Authority further observed that as regards the classification of fuel & oil, provisions of Sub-Para (b) & (d) of Para#2 of aforesaid circular is relevant. As per sub-para (b), fuel & oil contained in the vessel's machinery and engines, can also be regarded as forming integral part of the vessels, hence classifiable under Heading 89.08. As per Para 2(d) of the said Circular, the Remaining Fuel and on other than that mentioned in sub-para (b) i.e. other than contained in the vessel's machinery and engines) are classifiable separately in their own appropriate headings and not under Heading 89,08. In fact, fuel & oil contained in the vessel's machinery and engines cannot be measured practically, therefore, the quantity of such fuel & oil is not taken on record. The "remaining fuel and oil is such fuel & oil, which are stored in storage

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tanks, drums etc., irrespective of location of tanks, as declared by the Master of the Vessel during the course boarding formalities, on the basis of Surveyor's Report. As such, as per Para 2(d) of the said Circular, such Remaining Fuel & Oil is classifiable in their own appropriate headings i.e. respective Train Sub-Heading Tariff Items under Head CTH 27.10.

1.5 The Adjudicating Authority further observed that the Tribunal, Mumbai in case of Priya Blue Industries Ltd. [2006 (200) ELT 506 (Tri.Mum.)] observed that "the classification is dependent upon the location of the fuel and oil. In this case there is no dispute that fuel and lubricating oil was contained in a tank kept in the engine room. Therefore, it cannot be considered as being contained in the vessel's machinery and engine. "A Tax Appeal No. 08 of 2007 filed by M/s. Priya Blue Industries Ltd. to challenge the said CESTAT Order before High Court of Gujarat, Ahmedabad was dismissed at admission stage holding that "When there is concurrent findings of the Tribunal and Commissioner (Appeals), Central Excise and Customs, Ahmedabad that the fuel was neither in the engine nor in the machinery, no case is made out for admission of this appeal."

1.6 The Adjudicating Authority further observed that in a reference arose in case of Priya Holdings Pvt. Ltd. [2003 (153) E.L.T. 104 (Tri. -Del)] that "The bunkers containing oil were to be treated as part of the vessel's machinery and were classifiable under Heading No. 89.08 of the Schedule to the Customs Tariff Act, 1975? Hon'ble High Court of Gujarat, Ahmedabad, while answering the said question / reference, observed at Para 13 of the said order, as under :-

13. noted earlier, before the Tribunal, the learned counsel had placed reliance upon the Book titled "Ship Design and Construction" for demonstrating that fuel and oil contained in the engine department tanks is always associated and connected with the machinery and engine of the ship which forms an integral part of the vessel. The learned counsel had also submitted that as per the definition of LDT of ship, oil stored in other tanks on the ship are not included in the LDT, however, oil in engine room tanks is included in the LDT and it, therefore, forms part of the vessel and is classifiable along with the ship under Heading No. 89.08. Based upon the aforesaid evidence led before it, the Tribunal has, accordingly, come to the conclusion that the fuel and oil contained in the bunkers, that is, engine room tanks of the vessel form on integral part of the vessel, and therefore, would be classifiable under Heading 89.08; whereas the fuel contained in the other tanks would be classifiable under their own headings. It may also be recalled that as per the commentary in the Book titled "Ship Design and Construction" the fuel contained in the engine tanks are associated

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and connected with the machinery and engine of the ship, and such oil is called fuel and oil contained in the vessel's machinery and engines and is regarded as forming integral part of the engine. If the fuel and oil contained in the engine tanks is considered to be fuel and oil contained in the vessel's machinery and engines, the same would directly fall within the ambit of sub-para (b) of paragraph 2 of the above referred Circular No. 37/96-Cus. Once the fuel and oil contained in the bunkers, that is, engine room tanks, fall within the ambit of sub-para (b), as a natural corollary the some would be classifiable along with the vessel under Heading No. 89.08.

1.7 The Adjudicating Authority further observed that Hon'ble High Court of Gujarat in case of Priya Holding (P) Ltd. Vs. C C [2013 (288) ELT 347 (Guj.)] based its decision on the reference made before the Tribunal upon the Book titled "Ship Design and Construction" for demonstrating that fuel and oil contained in the engine department tanks is always associated and connected with the machinery and engine of the ship and such machinery and engines forms an integral part of the vessel. Another reference was also made before the Tribunal that as per the definition of LDT of ship, oil stored in other tanks on the ship are not included in the LDT, however, oil in engine room tanks is included in the LDT and it, therefore, forms integral part of the vessel and is classifiable along with the ship under Heading No. 89.08. Based on such evidences, the Tribunal has, come to the conclusion that the fuel and oil contained in the bunkers, that is. engine room tanks of the vessel form an integral part of the vessel's machinery and engine. and therefore, classifiable under Heading 89.08.

The essences of the order passed by Hon'ble High Court in case of Priya Holding Pvt. Ltd.. is that, in case of any ship or vessel, if at all-

(a) fuel & oil stored in tanks can be considered as forming integral part of the vessel's machinery and engines only, if such tanks are assocuted and connected with machinery and engine of the ship, and

(b) fuel & oil stored in such tanks are included in the LDT of the ship.

--- such fuel & oil can be regarded as contained in vessel's machinery, and engine. to form an integral part of the vessel so as to classify under CTH 8908. If at all, either of the criteria is not fulfilled, i.e. to say tanks are not associated and connected with machinery and engine of the ship OR fuel & oil stored in such tanks are not included in the LDT of the ship, it is difficult to consider such fuel & oil as contained in the vessel's machinery and engines, to regard it as, forming integral part of the vessel, and in turn to fall within the ambit of sub-para (b) of paragraph 2 of the above referred Circular No. 37/96-Cus. so as to classify along with the vessel under Heading No. 89.08.

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1.8 The Adjudicating Authority further observed the definition of Lightship / Lightweight / Light Displacement Tonnage (LDT).s per Book "Ship Design and Construction" published y the Society of Naval Architects and Marine Engineers, New York (page#23), reads as

The light ship weight shall be the weight of the ship with all its equipment and outfit including permanent ballast (solid and liquid), spare parts, regardless of by whom furnished, wates in boilers to normal steaming level, machinery in working condition, lubricating oil in all machinery, but no in storage tanks, water in piping system in machinery spaces, water in fresh water system and fire-mains, but without any items of consumable or variable load, as liquids in double bottom tanks, deep tanks, storage or reserve supply tanks, or any allowance for cargo, stores, passengers, crew and their effects"

1.9 The Adjudicating Authority further observed as per the above definition, the weight of the lubricating oil in all machinery is included in Lightship and the weight of liquids in storage or reserve supply tanks are not included in Lightship.

1.10 The Adjudicating Authority further observed the goods viz "Vessel and other floating structure for Breaking up is classifiable under Tariff Item 89080000. Thus, goods viz. floating structure which is capable of breaking-up, is only covered by Tariff Entry 89080000 and no other goods, whatsoever it may be, be it fuel & oil or provision/consumable stores, is covered under is. Further "Stores" includes fuel, may remain without payment of duty during the tenure of vessel is foreign-going vessel and such stores is liable to Customs duty in its respective Tariff Heading as soon as her nature of foreign-going vessel is ceased to.

1.11 The importer has filed the Bill of Entry No. 5820340 dated 05.05.2023 and appears to have classified the bunkers i.e. Fuel Oil, LDO/HSD and Lube Oils (both inside and outside engine room tanks) under CETH 8908 by relying on Hon'ble Supreme Court Order dated 05.04.2023, the Apex Court observed in the said order that Tribunal Order dated 16.02.2022 and 01.12.2022 is correct. The said Tribunal Orders deals with the classification of fuel & oil contained inside engine room tanks only, and not with regard to fuel & oil contained out-side engine room tanks. Hence, reliance is mis-placed on Supreme Court Order dated 05.04.2023 to claim classification of fuel & oil outside engine room tanks alongwith vessel /ship under CTH 8908. As regards classification of fuel & oil contained inside engine room tanks, the said Tribunal Orders dated 16.02.2022 and 01.12.2022, are passed based on the judgment of Hon'ble Gujarat High Court in case of Priya Holding Pvt. Ltd [2013 (288) E.L.T. 347 (Guj.), wherein

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issue involved was classification of fuel & oil contained / lying inside engine room tanks only. As per this judgement, only such fuel & oil which are lying inside engine room tanks and form part of LDT of the ship, may be regarded as contained in vessel's machinery and engine to form integral part of the vessel, so as to fall within ambit of Para 2(b) of Circular No. 37/1996 to classify it under CTH 8908. As per the available records viz. Master's declaration regarding location of tanks and their connectivity & Surveyor's Report, fuel & oil were stored in tanks and are not included in the LDT, therefore, it cannot be considered an integral part of the vessel, so as to form part of the vessel and to classify along with vessel under CTH $908.

1.12 In view of the above, the Adjudicating Authority held that provisional assessment of fuel & oil (bunkers) Inside & Outside Engine Room Tanks, resorted to by the importer under CTH 8908 in the Bill of Entry has been re-assessed to CETH 2710.

1.13 Being aggrieved with above speaking order the Appellant preferred the present appeal.

2. Grounds of Appeal

2.1 Legal Position Finally Settled - Classification of Oils in Bunker Tanks

The Appellant submitted that the issue regarding the classification of oil contained in the bunker tanks of vessels imported for breaking is conclusively settled and no longer open to dispute. The Hon'ble Gujarat High Court in Priya Holding Pvt. Ltd. [2013 (288) E.L.T. 347 (Guj.)) held that oils contained in bunker tanks in the engine room form an integral part of the vessel and are therefore classifiable under CTH 8908 along with the vessel, and not under CETH 2710. This position was followed by the Hon'ble CESTAT. Ahmedabad in its Common Order No. A/11792-11851/2022 dated 01.12.2022 in the case of Navyug Ship Breaking Co. Dhan Steels Pvt. Ltd. & Ors. vs C.C., Jamnagar (Prev.) [2022 (12) TMI 100-CESTAT Ahmedabad). The Tribunal also observed that even in the case of bunker tanks situated outside the engine room, if such tanks are connected to the machinery of the vessel, the oils therein are also to be treated as part of the vessel.

2.2 The Appellant further submitted that the legal position has attained finality upon being affirmed by the Hon'ble Supreme Court in M/s Mahalaxmi Ship Breaking Corp. & Ors. vs Commissioner of Customs, Bhavnagar [2023 (4) TMI 1250 - SC = 2023 (384) E.L.T. 482 (SC)], wherein the Revenue's appeals were dismissed, thereby upholding the CESTAT's order that bunker oils are

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assessable as part of the vessel under CTH 8908. Thus, the Apex Court has conclusively laid down that bunker oils, whether inside or outside the engine room, cannot be classified separately under Chapter 2710.

2.3 Thus, based on the above, the Appellant further submitted that in light of the above judicial pronouncements and departmental implementation, the impugned order dated 17.05.2023 reclassifying oils under CETH 2710 is patently contrary to the binding decisions of the Hon'ble High Court, the Hon'ble Tribunal, and the Hon'ble Supreme Court, as well as the departmental circular and practice. The impugned order deserves to be quashed.

2.4 On the basis of the above, the Appellant prayed for the following

(i) Set aside the impugned speaking order dated 17.05.2023 passed by the Adjudicating Authority reclassifying the oils contained in bunker tanks under CETH 2710 in view of settled legal position by Hon'ble Apex Court in the case of Mahalaxmi Ship Breakers Corp. & Ors Vs Commissioner of Customs, Bhavnagar [2023(4) TMI 1250-SC=2023(384) E.L.T. 482 (SC)]

(ii) Grant any other remedy as may court deems fit in the interest of justice.

3. PERSONAL HEARING:

Opportunity of personal hearing was granted to the Appellant. Shri Rahul Gajera appeared for personal hearing in virtual mode on 15.07.2026 wherein he re-iterated written submission filed during the appeal. He also drew attention to correspondence with the Custom Division, Alang and submitted that the correspondence shows that appeal has been filed form the date of receipt of speaking order within the statutory time limit. Therefore, this factual position may kindly be considered. If any contrary material is produced on behalf of the department, they may be served a copy of such material and opportunity may be granted to rebut the same.

4. DISCUSSION AND FINDINGS:

4.1 The Appellant has filed the present Appeal on 07.10.2025. The speaking order was issued on 17.05.2023 and there appears to be substantial delay between the date of speaking order and date of filing of appeal. Accordingly, email dated was send to the Custom Division, Bhavnagar to inform about the date of receipt of order by the Appellant. The Division office vide email dated 29.09.2026 submitted copy of the order wherein the authorized representative has duly signed in token of the receipt of OIO, however, there is no date mentioned along with the signature. The screen shot of the signature is reproduced below for

ready reference. :

In view of the above, provisional assessment of fuel & oil (bunkers) Inside & Outside Engine Room Tanks, asserted to by the importer under CTH 8908 in the Bill of Entry has been re-assessed to CETH 2710.

(AMAN SAXENA)
DEPUTY COMMISSIONER

Copy submitted to :

1) The Additional Commissioner (RRA),Customs (Prev.), HQ, Jamnagar
2) The Superintendent (Tech.), Customs Division, Bhavnagar.
3) Guard file.

AGRASEN SHIP BREAKERS PVT. LTD.

AUTHORISED SIGN.

Thus, from the above I find no conclusive evidence suggesting date of receipt of speaking order dated 17.05.2023.The Appellant in its submission dated 30.09.2025 has categorically mentioned that they the speaking order was serviced upon them on 19.08.2025 on their request vide letter dated 28.07.2025. Therefore, I have no option left but to rely on the submission made by the Appellant and admit the appeal for discussion on merit.

4.2 I find that the matter pertains to the issue of classification in the matter and not amount has finalized in the speaking order therefore, 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, Bhavnagar was requested for submission of comments of the appeal filed by the Appellant vide letter dated 06.08.2026 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 limited issue to be decided is as under :

(i) Whether speaking order dated 17.05.2023 passed by the Adjudicating Authority reclassifying the oils contained in bunker tanks under CETH 2710 in view of settled legal position by Hon'ble Apex Court in the case of Mahalaxmi Ship Breakers Corp. & Ors Vs Commissioner of Customs, Bhavnagar [2023(4) TMI 1250-SC=2023(384) E.L.T. 482 (SC)]

4.5 The statutory mandate under Section 17(1) of the Customs Act, 1962 allows an importer to self-assess the duty leviable on imported goods. However, Section

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17(4) empowers the proper officer to re-assess the goods if the self-assessment is found to be incorrect. Furthermore, Section 19 of the Act explicitly deals with goods consisting of articles liable to different rates of duty. It states that except where articles are integral parts or accessories of the main article, distinct commodities imported together must be assessed at their respective rates.

4.6 The Appellant places heavy reliance on the Supreme Court judgment in *Mahalaxmi Ship Breaking Corp.* to argue that *all* oil on board must be classified under CTH 8908. Therefore, it is important to refer to the above judgment which is reproduced below for ready reference.

3. The Revenue is in appeal(s) against two orders passed by Customs, Excise & Service Tax Appellate Tribunal [CESTAT] *i.e.* orders dated 16-2-2022 and 1-12-2022.

4. The issue agitated by it is that the Oil in the Bunker Tanks of the Engine Room/outside the Engine Room of the vessels sent for being broken up, are to be assessed separately or as part of the vessels to be scrapped. In the appeals preferred by the Revenue, which are directed against the orders of the CESTAT dated 16-2-2022 and 1-12-2022, the CESTAT ruled that the oil is to be assessed as part of the Ship.

5. However, in an earlier appeal [*Mahalaxmi Ship Breaking Corp. ETC.* v. *Commissioner of Customs, Bhavnagar*, which is the subject matter of Civil Appeal Nos. 5318-5342/2009 before this Court], the CESTAT ruled otherwise *vide* order dated 29-5-2009, stating that both the articles are to be separately assessed.

6. Having considered both the orders as well as the submissions of the parties, this Court is of the view that the later view expressed in the orders dated 16-2-2022 and 1-12-2022 [which are the subject matters of Diary No(s). 24220 of 2022, Diary No(s). 8943 of 2023, Diary No(s). 10272 of 2023, Diary No(s). 10034 of 2023, Diary No(s). 11290 of 2023, Diary No(s). 8954 of 2023, Diary No(s). 10267 OF 2023, Diary No(s). 10031 of 2023] is correct. The Revenue's appeals are, accordingly, dismissed.

7. Pending interlocutory application(s), if any, is/are disposed of.

Civil Appeal Nos. 5318-5342/2009

8. For the reasons stated in the above order, the civil appeals are allowed.

9. Pending interlocutory application(s), if any, is/are disposed of.

The Hon'ble Apex Court in the aforementioned judgment has upheld the order dated 16.02.2022 and 01.12.2022. The CESTAT in its order dated 16.02.2022 in the case of M/s Shree Saibaba Ship Breaking Company Vs Commissioner of Customs (Preventive), Jamnagar has categorically relied upon the judgment of the Hon'ble High Court of Gujarat in the case of M/s Priya Holding Pvt. Ltd. v. Commissioner of Customs — 2013 (288) E.L.T 347 (Guj.) wherein the Hon'ble High Court has held as under:-

" Ship - Fuel and oil in the engine room tank of the vessel - Whether to be classified with the ship under Heading 89.08 of Customs Tariff Act, 1975 or under their own heading - Tribunal's finding based on the Book titled "Ship Design and Construction" that fuel and oil contained in the engine department tanks is always

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associated and connected with the machinery and engine of the ship which forms an integral part of the vessel and hence would be classifiable under Heading 89.08 ibid upheld"

4.7 Thus, from the meticulous reading of the said judgment, read harmoniously with the Hon'ble Gujarat High Court's ruling in *Priya Holding Pvt. Ltd. [2013 (288) E.L.T. 347 (Guj.)]*, reveals that oil outside the engine room is assessable along with the vessel *only if* it forms an integral part of the vessel's functioning machinery i.e., it is contained in "bunker tanks" actively plumbed and connected to the ship's propulsion or auxiliary engines.

4.8 The crux of the present dispute is purely factual. The Adjudicating Authority has rightly drawn attention to the Master's Declaration and the Surveyor's Report specific to this vessel. The records categorically establish that the fuel and oil in dispute were stored in isolated storage tanks. These tanks were *not* connected to the vessel's machinery, nor were they capable of feeding the engine without external transfer mechanisms. Furthermore, the weight of these liquids was strictly excluded from the vessel's Light Displacement Tonnage (LDT), as per standard naval architectural definitions.

4.9 When fuel is carried merely as cargo or in isolated reserve tanks not integrated into the vessel's propulsion system, it ceases to be "fuel contained in the vessel's machinery" as envisaged in Para 2(b) of Circular No. 37/1996-Cus. Instead, it squarely falls under Para 2(d) of the said Circular, which mandates that "remaining fuel and oil... are classifiable separately in their own appropriate headings."

4.10 I find that the Supreme Court's ruling in *Mahalaxmi* applies to "bunker tanks" (integral fuel tanks). It does not grant a carte blanche exemption to classify distinct, unattached, and non-integral commercial quantities of petroleum products under CTH 8908 simply because they arrived on a vessel meant for breaking. To allow such an interpretation would render Section 19 of the Customs Act, 1962, redundant and lead to severe revenue leakage, allowing distinct commodities (like heavy petroleum stores) to escape their rightful tariff under Chapter 27.

4.11 I am of the firm opinion that the burden of proof lies heavily on the Appellant to demonstrate that the tanks in question were operationally connected to the ship's machinery. The Appellant has failed to produce any technical schematic, piping diagram, or independent surveyor evidence to rebut the Adjudicating Authority's factual finding of non-connectivity.

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4.12. In view of the detailed discussions above, I find no legal or factual infirmity in the impugned order passed by the Assistant Commissioner. The Adjudicating Authority has correctly invoked Section 19 of the Customs Act, 1962, and rightly re-assessed the non-integral oils under CETH 2710.

Accordingly, I pass the following order:

5. The appeal filed by M/s Agrasen Ship Breakers Pvt. Ltd. is hereby rejected. The Speaking Order dated 17.05.2023 passed by the Assistant Commissioner, Customs Division, Bhavnagar is upheld and confirmed in its entirety.

सत्यापित/ATTESTED

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

Vishwajeet Singh
30.09.2026.

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

F. No. S/49-259/CUS/JMN/OCT/2025-26

By Registered post A.D/Email

M/s Agrasen Ship Breakers Pvt. Ltd. Plot No. 113, Sosiya Ship Breaking Yard, Sosiya, P.O. Manar, Bhavnagar.

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