	<b>सीमाशुल्ककेआयुक्तकाकार्यालय (निवारक),सीमाशुल्कभवन, जामनगर-राजकोटहाइवे,विक्टोरियाब्रिजकेपास, जामनगर001 361 – (गुजरात)</b>	
	<b>Office of the Commissioner of Customs (Preventive), 'Seema Shulk Bhavan', Jamnagar – Rajkot Highway, Near Victoria Bridge, Jamnagar (Gujarat) – 361 001</b>	
<b>Email: commr-custjmr@nic.in; adj-custjmr@nic.in</b>		
<b>DIN -</b>		
1.	फाइलक्रमांक/ File Number	CUS/60/2024-Adjn.
2.	मूलआदेशक्रमांक/ Order-in-Original No.	02/Additional Commissioner/2024-25
3.	द्वारापारित/passed by	हरकिरपाल खटाना/ Harkirpal Khatana अपरआयुक्त/ Additional Commissioner, सीमाशुल्क) निवारक/(Customs (Preventive) जामनगर/ Jamnagar.
4.	Date of Order/आदेशदिनांक	03.06.2024
	Date of issue / आदेशजारीकिया	03.06.2024
5.	कारणबताओनोटिसक्रमांकएवंदिनांक Show Cause Notice Number & date	ADC-16/2023-24 dated 17.01.2024
6.	नोटिसीकानाम/ Name of Noticee	M/s Trans Tide Shipping Agency, Shreeji 101, Plot No. 8/C, Opp. Bhagini Mandal Hospital, Bhavnagr-364002 Email:transtideshipping@gmail.com
01	इस आदेश की मूल प्रति संबंधित व्यक्ति को निशुल्क प्रदान की जाती है। The original copy of this order is provided free of cost to the person concerned	
02	इस मूल आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम, की धारा 1962(128A)(1)(सीमा शुल्क अपील) नियम), 1982 के नियम 3के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिनके भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है।फॉर्म सीए-1 में अपील का प्रपत्र,दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। जिनमें से कम से कम एक प्रमाणित प्रति हो।। आयुक्त अपील 4 वी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा,अहमदाबाद- Commissioner (Appeals), 4 <sup>th</sup> Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad – 380 009	
	Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).	
03	अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989	



	के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पररूपये ) 0.50पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची -I, मद 6 के तहत निर्धारित किया गया है।
	The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
04	अपीलीय ज्ञापन के साथ शुल्क भुगतानअर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क /जुर्माना / अधिनियम, 1962 की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।
	Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.
05	अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील)) नियम,और सिस्टेट प्रक्रिया 1982 प्रोसीजर) नियम,हुआ है। के सभी नियमों का पूरा पालन 1982
	While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.
06	इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के %7.5के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।
	An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.



### Brief facts of the case:

M/s Trans Tide Shipping Agency, having office at Shreeji 101, Plot No. 8/C, Opp. Bhagini Mandal Hospital, Bhavnagar-364002 (hereinafter referred to as "the Shipping Agent"), was appointed as Shipping Agent by the owner of the vessel to discharge Customs clearance formalities for vessel M.V. TUG BRITOIL 80 (hereinafter referred to as "the said vessel") at Alang anchorage for breaking purpose. The said vessel arrived at Alang Anchorage on 16.12.2021 from Jafrabad Port (India) and the boarding of the said vessel was carried out on 17.12.2021.

2. The Master of the said vessel provided the details of the quantity of the bunker & provision / stores consumed during last voyage from Jafrabad to Alang (Bhavnagar). On the basis of these details, the Shipping Agent filed the Manual Bill of Entry No. 6711574-B on 03.02.2022 and self-assessed the Value of Bunker & Provision / Store as Rs. 32,61,438/- and Customs duty payable thereon as Rs.11,43,665/- in the said Bill of Entry, as per the details given below :-

Sr. No.	Description of Goods	HSN / Custom Tariff Head	QUANTITY	Assessable Value (In Rs.)	Duty Self-assessed / Paid (Rs.)
(1)	Fuel Oil (FO)	27101950	Nil	0	0
(2)	Marine Gas Oil (MGO)	27101930	50.307 MT /59889 Ltr.	3026386.00	1040407/-
(3)	Lubricating Oil (LO)	27101980	450 Ltrs	176052.00	43125.00
(4)	Provision / Stores	21069099	295 Kgs.	59000.00	60133.00/-
	<b>TOTAL</b>			<b>3261438.00</b>	<b>1143665/-</b>

3.1 It appeared that the Duties of Customs leviable / payable on High Speed Diesel (HSD) Oil classifiable under CTSN 27101930, are as under :-

- (a) the duties of Customs is levied as per Section 12 of the Customs Act, 1962 read with Notification No. 52/2017-Cus. dated 30.06.2017 (Sr. No. 3) (as amended) @ 2.5% on High Speed Diesel (HSD) Oil;*
- (b) Agriculture Infrastructure and Development Cess on Imported goods is levied under the provisions of Section 124 of the Finance Act, 2021 (13 of 2021) read with Schedule-VII at the rate of Rs. 4.00 per Liter on High Speed Diesel (HSD) Oil;*
- (c) Additional Duty of Customs on imported goods equivalent to Special Additional Excise Duty (SAED) is levied under the provisions of Section 147 of the Finance Act, 2002 (20 of 2002) read with Schedule-VII and No. 05/2019-CE (as amended vide Notf.no. Notification No.09/2021-Central Excise dtd.03.11.2021) at the rate of Rs 8.00 per Liter on High Speed Diesel (HSD) Oil;*



- (d) Road and Infrastructure Cess on imported goods equivalent to Additional Duty of Customs is levied under the provisions of Section 111 of the Finance Act, 2018 (13 of 2018) read with Schedule-VI and Notification No. 18/2019-Cus. dated 06.07.2019 (Sr. No. 02) (as amended **vide Notification No.52 /2021-Customs dated 03.11.2021**) at the rate of Rs. 8.00 per Liter on High Speed Diesel (HSD) Oil;
- (e) the duties of excise is levied as per Section 3 of the Central Excise Act, 1944 read with Notification No. 11/2017-CE dated 30.06.2017 (Sr. No. 3(ii)) dated 30.06.2017 (Sr. No. 3) (as amended **vide Notification No.01/2021-CX. dated 01.02.2021**) @ Rs.4.20 per Liter on High Speed Diesel (HSD) Oil;
- (f) Social Welfare Surcharge on imported goods is levied under the provisions of **Chapter VI of Finance Act, 2018, of Section 108 (3) at the rate of 10%** on the aggregate of duties, taxes and cess which are levied and collected under section 12 of the Customs Act, 1962 (52 of 1962) on High Speed Diesel (HSD) Oil;
- (g) the Additional Duty of Customs on imported goods under Sub-section (5) of Section (3) of the Customs Tariff Act, 1975 (51 of 1975) in lieu of the sales tax, value added tax, local tax and other taxes or charges **leviable on sale or purchase or transportation read with No. 53/2017-Cus.dated 30.06.2017** (as amended) at the rate of **4% ad-valorem** on High Speed Diesel (HSD) Oil;

**3.2** In view of the above, Duties of Customs leviable / payable on the Marine Gas Oil (MGO) (CTSH 27101930) for the quantity 45290 ltrs. and assessable value amounting to Rs. 23,68,758/- comes to the tune of **Rs. 18,49,943/-**, as under :- **(Annexure-A)**

Sr. No.	Types of Duties	Rate of Duty	Marine Gas Oil (MGO) / HSD
1	Quantity	---	59889 Ltr.
2	Assessable Value (In Rs. )	---	Rs. 3026386/-
3	Basic Customs Duty (BCD) [Notification No. 52/2017-Cus. dated 30.06.2017 (Sr. No. 3)]	2.5%	Rs. 75660/-
4	Agriculture Infrastructure and Development Cess (AIDC)	Rs. 4/- per Liter.	Rs. 239556/-
5	Addl. Duty of Customs equivalent to Special Additional Excise Duty (SAED). [No. 05/2019-CE dated 06.07.2019 (as amended)]	Rs. 8/- per Liter.	Rs. 479112/-
6	Road and Infrastructure Cess equivalent to Additional Duty of Customs [ (Sr. No. 02) (as amended)]	Rs. 8/- per Liter.	Rs. 479112/-
7	Basic Excise Duty as per Section 3 of the Central Excise Act, 1944 [Notification No. 11/2017-CE dated 30.06.2017 (Sr. No. 3(ii)) (as amended)]	Rs. 4.20 per Liter.	Rs. 251534/-



8	Social Welfare Surcharge Notification <b>No. 12/2021-Cus. dated 01.02.2021</b> [@ 10% of 3 + 4 + 5 + 6 + 7]	@ 10%	Rs. 152497/-
9	<i>the Additional Duty of Customs on imported goods under Sub-section (5) of Section (3) of the Customs Tariff Act, 1975 (51 of 1975)</i> <b>[No. 53/2017-Cus.dated 30.06.2017 (as amended) ] [4%age of 2+3+5+6+7]</b>	@4%	Rs. 172472/-
10	<b>Total duty on MGO/HSD [3 to 9]</b>		<b>Rs. 18,49,943/-</b>

**3.3** In view of the above, total Import duty payable on goods cleared vide Bills of Entry comes to Rs. **19,53,191/-** (Duty payable Marine Gas Oil (MGO) / High Speed Diesel (HSD) Oil Rs. 18,49,943/-+ Duty Payable on Lub Oil Rs. 43,115+ Duty Payable on provisions Rs.60,113/-).

**3.4** It appeared that the Duties of Customs self-assessed/paid by the shipping agent was Rs.11,43,665/- vide Challan no. IMP-SBY/70/2021-22 dated 09.2.2022. Thus, it appeared that the Shipping Agent has short-paid Customs duty amounting to **Rs.8,09,526/-** and thereby contravened the provisions of Section 12 of the Customs Act, 1962. Hence, the duty short-paid of **Rs. 8,09,526/-** was required to be demanded and recovered from the said shipping Agent under Section 28 of the Customs Act, 1962 along with interest thereon under Section28AA of the Customs Act, 1962.

**4.** It further appeared that, since the said shipping agent has contravened the provisions of Section 12 of the Customs Act, 1962, therefore, they have rendered themselves liable for penalty under Section 117 of the Customs Act, 1962.

**5. Legal provision of the Customs Act, 1962 attracted here.**

**Section 12. Dutiable goods.**—(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of Customs shall be levied at such rates as may be specified under the 1 [Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.

**Section 28.** Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—(1) Where any duty has not been levied or not paid or short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, — (a) the proper officer shall, within [two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [or paid] or which has



been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice: Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the the person chargeable with duty or interest in such manner as may be prescribed;] (b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of, — (i) his own ascertainment of such duty; or (ii) the duty ascertained by the proper officer, the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

**Section 28AA.** Interest on delayed payment of duty—(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

**Section 117.** Penalties for contravention, etc., not expressly mentioned.—Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [one lakh rupees].

6. It appeared that the Noticee has contravened the provision of Section 12 of Customs Act, 1962 and therefore is liable to pay the differential duty along with applicable interest and penalty.

7.1 As stipulated under proviso to clause (a) to sub-section (1) of Section 28 of the Customs Act, 1962 and in pursuance of Regulation 3(1) of the Pre-Notice Consultation Regulations, 2018, the Noticee vide letter dated 04.01.2024, was accorded an opportunity to file submission and in case if he wished to be heard in person by the adjudicating authority he may appear for personal hearing on 16.01.2024. It was further impressed upon in the letter that, if no reply is received, than the proper officer shall proceed to issue Show Cause Notice without any further communication.



**7.2** The Noticee attended the personal hearing on 16.01.2014 wherein they submitted a written submission dated 12.01.2024 and further submitted that vessel is a TUG used for toeing a dead vessel; that the vessel was in foreign run not converted to coastal run and no coastal cargo has been transported; that therefore vessel was in foreign run and question of recovery of duty on consumption of bunkers by foreign going vessel does not arise.

**7.3** In the written submission dated 12.01.2024 the noticee referred their submission in the matter dated 2.10.2023 made to the A.C., Customs Bhavnagar to say that they were not liable to pay the so called disputed levy of coastal duty as the vessel under reference had never been converted in to Coastal Run as provided under Chapter XIII of the Customs Act, 1962; that therefore the issue raise is without authority of law; that they are not at all liable to pay the so called demand of Coastal duty in pursuance of various provisions as contemplated under Chapter XII of the Customs Act, 1962; that they refer Section 93 of the Customs Act, 1962 with reference to Bill relating coastal goods and to say that no such "documents" had been produced by the master of the vessel at the time of arrival of the vessel at the Alang port; that the department had not taken in to consideration this aspect; that the said vessel arrived under cover of valid port clearance as statutory been issued up to the voyage at ship breaking yard Alang to designated plot of the Registered ship breaker's who had imported subject vessel only for breaking purpose. These factual circumstances are well known to the department, they have fully explain the status of actual voyage as proceedings imitated for levy of so called unwarranted coastal duty. They relied upon case laws of (i) Shipping Corporation of India Ltd- 1987 (29) ELT 182 (Tri), (ii) South East Asia Shipping Company Ltd -1989(43) ELT 479 (Tri) (iii) Scindia Steam Navigation Co Ltd - 2000 (123) ELT 91 (CAL) and (iv) Circular No. 58/97 dated 6.11.2997 read with letter No. 450/66/2005-Cus. IV dated 24.11.2005. (v) M/s.Jain Marine Services 2009 (240) ELT 723 (Tri-Ahmd) (vi) M/s. Jain Marine Services - 2011(264) ELT A37 (Guj).

**7.4** During the course of Pre-consultation hearing, the noticee did not agreed to the proposal paying duty and they submitted their written submission and relied upon case laws to substantiate their submissions in support non levy of Customs duty in this case. Considering the above submissions of the Noticee and the pre-notice consultation, it was decided to issue Show Cause Notice.



8. Therefore, **M/s Trans Tide Shipping Agency**, having office at **Shreeji 101, Plot No. 8/C, Opp. Bhagini Mandal Hospital, Bhavnagr-364002** vide Show Cause Notice No. **ADC-16/2023-2024** dated **17.01.2024** called upon to show cause to the Additional Commissioner of Customs (Preventive), Jamnagar as to why:-

- (a) the shot paid differential Customs duty of **Rs.8,09,526/-** levied under provisions of Section 12 of the Customs Act, 1962 & other relevant provisions discussed hereinabove should not be demanded and recovered under Section 28 of the Customs Act, 1962;
- (b) interest payable thereon under Section 28AA of the Customs Act, 1962 should not be charged upon and recovered from them for not paying the applicable Customs duty as above; and
- (c) penalty under Section 117 of the Customs Act, 1962 should not be imposed upon them for contravention of the provisions of Section 12 of the Customs Act, 1962.

**Defence Submission:**

**9.1** The Shipping Agent vide their letter dated 18.01.2024 filed defence submission wherein they inter alia submitted that they had fully apprised to the department that they were not liable to pay coastal duty on the various grounds/submission/as stated therein too. The levy of such Customs duty is levied when such "Foreign going vessel" is "converted in to carrying out Coastal Goods" only and only on the circumstances when such Coastal Goods" are to be transported through a vessel from one coastal port to another coastal port which should have been "declare" by the proper Customs Officer" for loading and unloading of such Indigenous Goods to be loaded and unloaded within the Territorial area of Coastal Ports. In the present case it is admitted fact that the subject vessel had never been voyaged from one Indian port to another Indian port for loading or unloading of Coastal Goods, but the vessel under reference had been used as conveniences for unloading of old used imported ship to be unloaded at the designated registered ship breaking plot own by registered ship breaking plot. whereas in the present case the vessel under reference had been arrived at Ship breaking Yard Alang under cover of valid Port Clearance of the vessel under reference which had been issued in the capacity as "Foregoing vessel" unless and until the said vessel "had not been unloaded/beached at the designated ship breaking plot situated within the area of ship breaking yard Alang. In other words the vessel under reference had not been issued for transportation of Indigenous goods from one Indian



port to another Indian port; that as per provision of Section 95 , the Master of the vessel had to provide a copy of "An Advice Book" which would have been signed by Master of the vessel, but in the present case no such material evidence have been disclose for levy of such unwarranted Coastal duty but paid with bona fide intention only to avoid delay in completing the import procedure up to the pressing of Import General Manifest before custom officer; that these all facts and circumstances are well known to the department before issuance of such unwarranted demand of such coastal duty; that thus this act of the debarment was in fact not true, correct and legal but appears to have been issued by ignoring the proper interpretation of various provisions as "Set forth" in the Chapter XII of the Customs Act, ; that they have proved on basis of the various document either produce at the time of initiating such action for so called wrong recovery of coastal goods as initiated at the first initial stage by the Assistant Commissioner of Customs has wrongfully raised the issue and to whom we had also categorically reply that they were not liable to pay so called coastal duty on so called coastal goods. Therefore, the subject so cause notice deserves to be dropped.

**9.2** That they had also submitted a detailed submission vide letter dtd. 02.10.2023, wherein they had also categorically submitted that they are not liable to pay the so called "Coastal duty" as demanded without disclosing the previous history when they have also paid up duty of the so called duty of Customs for Rs. 1143665/- paid vide challan No. MISE/SBY/70/2021-22 dtd. 09.02.2022 only and only with an intent to avoid prolong delay in making /completion of the due Customs formalities being "Registered Shipping Agent" who is required to full filled all such obligation before completion of filling of Import documents so far as dealt with to board the vessel under reference "which was known as Ocean going vessel at the material time and only been "Manifested the whole vessel as cargo for unloading of /beaching of "of the subject vessel at the designated ship breaking yard plot ;that these all activities were known to the department at the material time ;that therefore the subject issue raise is not proper, correct, and legal as such irrelevant "grounds" appears to have been taken on record to sustain the so called "illegal activities" so far as the disputed levy of "Coastal duty is concerned" ; that in the present issue , previously they have already relied various settled case laws; that they request to consider these case laws again and pray to extent healthy cooperation in the matter being settled issues within all four corners of Customs Law; that previously so many Ocean going vessel had been anchored at the Alang Port Yard under cover of valid port clearance capacity as Ballast only, issued by



other proper custom officer coming under the various Customs ports falling under the jurisdiction of Indian/foreign ;that in other words it is to say and submit that subject vessel never been used for loading/unloading the coastal cargo for one Indian port to other post.

**9.3** That they are enclosing self-attested copy of Voyage memo / Port of call list which clearly shows that the subject vessel has been voyage within the international port from Singapore to Alang and never had been converted in the capacity as coastal run vessel; that they are also enclosing copy of Form III – Cargo Declaration as statutory provided under section 30 of Customs act 1962, which is part and partial of the IGM itself which shows/found that in the said form it has been mentioned that the said vessel had been arrived at Alang anchorage in Ballast condition for demolition purpose only and also shown Other Cargo – NIL which had been certified by the Master of the vessel and Inspector Customs (Boarding officer);that it is clearly establish that there is no any nexus with so called levy of coastal duty which is in fact deserves to be drop; that in view of the above submission, proceedings may be dropped and if not agree, they may be granted a person hearing to observe the principle natural of justice.

**9.4** In continuation of their defence, the Shipping Agent vide their letter dated 24.01.2024 again reiterated the submissions made earlier and made at the time of personal hearing held during pre-notice consultation on 16.01.2024. They finally requested to drop the proceedings and they do not wish to be heard in person in the subject matter.

**9.5** In their written submission dtd. 02.10.2023 amongst other things they submitted that they had fully apprised the department that they were not liable to pay coastal duty on various grounds; that the customs duty can be levied when "Foregin Going Vessel" is converted into carrying out coastal goods which not the case here; that they never requested for provisional assessment; were acting as a "Registered Shipping Agent" as provided under Section 148 of Customs Act, 1962 ; that they draw attention to the various provisions as provided under Section 41 of Customs Act, 1962 read within the Rules and Regulation framed there under; that if vessel had been used for carrying for "coastal goods" than the Master of the vessel would have been produce such document to "unload such coastal goods"; that if these submission would taken on record in deciding the present issue than the subject vessel which had been arrived at Alang port had not been reached at Alang at in the capacity as Coastal Cargo vessel; therefore the issue raised in the Show Cause Notice for recovery of such "Coastal duty" is far away from the section 28 of the Customs Act,1962 so



far as the present voyage of subject vessel is concerned in other words , it is to say an submit that the subject vessel had never been converted in to coastal run vessel; that therefore, the present issue initiated is in violation of provisions of Customs Act, 1962 in the circumstances that the subject vessel had been dealt with by them in the capacity vessel as foregoing vessel and imported at SBY Alang by M/s Bhikkamal Chhotelal Exim Pvt. SRY Alang who is the registered ship breakers having plot No 16, Ship Recycling Yard Alang.

#### **FINDINGS:**

**10.** I have carefully gone through the facts of the case, Show Cause Notice and written defence submissions as well as the submissions made by the Noticee during the personal hearing held on 16.01.2024 in Pre-Notice Consultation in terms of Regulation 3(1) of the Pre-Notice Consultation Regulation, 2018.

**11.** The issues to be decided in the instant case are:-

- (a) whether the Noticee is liable to pay Customs duty on actual consumption of ship stores / Fuel Oil (bunkers) consumed between the **Jafraabad Port(India) to Alang** while toeing a dead vessel from anchorage to Alang meant for breaking purpose.
- (b) whether the Noticee has short paid the Customs Duty of Customs as proposed in the Show Cause Notice or not.
- (c) whether Penalty under Section 117 of the Customs Act, 1962 is imposable upon the Noticee or not.

**12.** I find that the SCN alleges and proposes recovery of short payment of duty of Customs on Marine Gas Oil as the Noticee while filing Bill of Entry self -assessed the Customs duty payable on consumption of Bunkers (including Marine Gas Oil) and Ship Stores between Jafraabad Port and Alang Port. The Noticee self-assessed and paid total duty on Marine Gas Oil (CTH 27101930) Rs.10,40,407/- as against duty payable worked out to Rs.18,49,943/-. Hence, the demand of differential duty of Rs.8,09,526/- in the Show Cause Notice.


**13.** It is noticee's contention that the vessel was not converted to coastal run as it was not carrying coastal cargo from **Jafraabad** port and hence the vessel was a foreign going vessel in terms of Section 2 (21) of the Customs act, 1962 exempted from payment of duties of Customs on consumption of bunkers and ship stores in terms of Section 87 of the



Customs Act, 1962. The Noticee also discussed procedures related to conversion of foreign going vessel to coastal run vessel and the duty leviable there on. The Noticee referred CBEC Circular No 58/97 dated 6.11.1997 to submit that it is not the case that request for coastal conversion of the Tug Britoil 80 was made either at Port of Jafrabad or at Alang. The noticee has challenged the levy of Customs duty itself on consumption of Bunkers and provisions during the voyage of the vessel from Jafrabad Port to Alang in terms of Section 12 of the Customs Act, 1962.

14. I observe that the Board vide Circular No. 58/97 dated 6.11.1997 prescribed Procedure for collection of duty on ship stores consumed during coastal run upon specific request of the Master of the Vessel and do not deal with legal obligation to pay Customs duties under the Customs Act, 1962.

15. I find that the vessel in question is a TUG and as per port clearance No. F-03/21-22 dated 15.12.2021 issued by the Customs House, Jafrabad, the port clearance is issued for TUG "MV BRITOL 80 with MV RANDOPH YOST" for Alang Bhavnagar. Scanned Image is reproduced as under:-

  
OFFICE OF THE SUPERINTENDENT OF CUSTOMS  
CUSTOMS HOUSE, JAFRABAD, INDIA.

*Barizano* **PORT CLEARANCE**  
(Under Section 42 of the Customs Act, 1962)

PORT CLEARANCE NO. F-03/21-22 Date: 15.12.2021

Valid for 72 hours from 17:30 hours of 15.12.2021

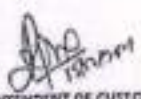
This is to certify that the Mentioned Vessel / TUG is permitted to sail as per below:

Vessel / TUG	: BRITOL 80 TOWING RANDOPH YOST
Master	: SAMUEL LUIS
Under Color	: SINGAPORE
Surthen	: 624
BMD	: 9518871

It is now cleared outward from JAFRABAD, Gujarat, INDIA, to "BHAVNAGAR", with Crew as per annexed list 14, INCLUDING MASTER. The Master of the said vessel has rendered / or has through the ship's agents undertaken to render an account of the import/export cargo and otherwise complied with all the regulations of this port.

Place: JAFRABAD.  
Date: 15.12.2021

*As directed by the Assistant Commissioner,  
Customs Division, Bhavnagar Port. It is being sent  
Subject to finalization at Bhavnagar origin office.*

  
SUPERINTENDENT OF CUSTOMS  
CUSTOMS HOUSE, JAFRABAD.  
SUPERINTENDENT OF CUSTOMS  
CUSTOM HOUSE, JAFRABAD



Therefore, the facts not in dispute in the Show Cause Notice are that TUG Britoil 80 undertook voyage from Jafrabad to Alang for towing a dead vessel in the territorial water of India.

16. Now, the fact remains that Noticee themselves paid the Customs duty vide Challan No. MISE/SBY/70/2021-2022 dated 09.02.2022 by filing Bill of Entry No. 6711574-B dated 03.02.2022. Therefore, levy of Customs duty under Section 12 of the Customs Act, 1962, and duty liability of the Noticee on consumption of the Bunkers and ship stores (provisions) during vessel's voyage from Jafrabad Port to Alang was not in dispute at that time and hence not part of the show cause notice. However, the Noticee in their reply solely relied upon their contention that there is no duty liability at all on consumption of the ship stores and bunkers/ fuel oil during the voyage of the vessel from Jafrabad to Alang as the vessel was a Foreign Going Vessel. The noticee raised the issue of levy of Customs duty on import under Section 12 of the Customs Act, 1962 upon receipt of the Show Cause Notice only when duties short paid were demanded from them. However, I proceed to take up the matter as the issue of levy of Customs duty under Section 12 is raised by the Noticee. To better appreciate the contention of the Noticee and the issue involved, relevant definition and provisions of Customs Act, 1962 are discussed as under:

16.1 The word "Import" as defined in Section 2(23) of the Customs Act, 1962 and "India" as defined in Section 2(27) of the Customs At, 1962 reads as under:-

Section 12 of the Customs Act, 1962 which provides for levy of Customs duty on goods imported into India reads as under:-

**"SECTION 12. Dutiable goods. — (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of Customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.**

**(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."**

**"Section 2. Definitions: In this Act, unless the context otherwise requires:-**

**(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India**



(27) **"India"** includes the territorial waters of India;"

**16.2** Above three provisions of the Customs Act, 1962 stipulate that duty is chargeable on goods imported into India. Importation takes place once goods enter into territorial waters of India and the event of importation/ import attracts provisions of Customs Act, 1962 including levy of duty under Section 12 of the Act. The word 'import' is defined in Section 2(23) and, unless the context otherwise requires 'import' with its grammatical variations and cognate expressions means bringing into India from a place outside India. The word 'India' is defined in Section 2(27) which is an inclusive definition and it states that 'India' includes the territorial waters of India. Thus, the combined effect of the words 'import' and 'India' in these two sub-sections of Section 2 is that import takes place when goods are brought into the territorial waters of India from a place outside India. The duties of Customs are levied with reference to goods and the taxable event is the import of goods within India i.e. within territorial waters. The above provisions do not provide for levy of duty beyond territorial waters and the definition of "India" as quoted above does not unless otherwise specified, include beyond territorial waters.

**16.3** The definition of term "foreign going vessel or aircraft" as defined in sub-section (21) of Section 2 which reads as under:-

***"(21) "foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes -***

- (i) any naval vessel of a foreign Government taking part in any naval exercises;*
- (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;*
- (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever,"*

Section 87 of the Customs Act, 1962 reads as under :

***"Imported stores may be consumed on board a foreign-going vessel or aircraft. - Any imported stores on board a vessel or aircraft (other than stores to which Section 90 applies) may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft."***

**16.4** There are two conditions in Section 2(21). The first condition is that there must be carriage of goods or passengers between a foreign port and an Indian port. The second condition is that the vessel in



question must be engaged in the carriage of such goods or passengers. In the case in hand, when the vessel TUG BRITOIL was carrying a dead vessel from Jafrabad Port to Alang port i.e. within territorial waters of India. The Voyage is between two Indian ports for commercial activity in Indian territorial waters. Therefore, once the vessel sailed from Port of Jafrabad (India) for Alang Port of India for its own purpose i.e. towing a dead vessel in India (i.e. at Alang), it was not sailing between the port outside India and a port in India and journey between Jafrabad and Alang was not necessitated under a foreign run i.e. *carriage of goods between any port in India and any port outside India* as defined in Section 2(21) of the Customs Act, 1962. Therefore, irrespective of its itinerary, the vessel TUG BRITOIL 80 was engaged in carrying cargo between two Indian ports during the voyage from Jafrabad port to Alang port. Thus, the ship was solely engaged in sailing in Indian territorial waters for its commercial activity i.e. transportation of goods or for that purpose towing a dead vessel. Therefore, it does not satisfy the first limb of the definition "*vessel for the time being engaged in the carriage of goods between any port in India and any port outside India*" as much as the vessel sailed between two Indian port in Indian territorial waters for its own commercial purpose and not engaged in carriage of goods from port outside India to port in India. Therefore, the ship stores and bunkers consumed during the journey between two Indian port within the territorial waters of India are goods brought into the territorial waters of India from a place outside India and the duties of Customs are levied with reference as the taxable event i.e. the import of goods within India i.e. within territorial waters has been taken place. As regards applicability of Section 87 contended by the Noticee, I find that as long as the vessel or the aircraft holds the status as a foreign-going vessel, exemptions contained in Section 87 applies without any doubt. However, once the stores consumed when the vessel was involved in operations within Indian territorial waters, benefit of Section 87 of the Customs Act, 1962 cannot be extended.

17. I find it relevant to mention Instruction No.15/2018 dated 4.10.2018 issued by the CBIC clarifying law point of levy of duties of Customs under Section 12 in case of on board consumption of ship stores within territorial waters of India by the Cruise vessels while in foreign run. The CBIC vide Instruction No.15/2018 dated 4.10.2018 in the matter of duty on consumption of Ship Store by Cruise Vessels touching Indian Ports has clarified and stipulates that duty is payable on liquor and other consumed stores during the transit of a cruise vessel through territorial



waters of India. This clarification in Instruction No.15/2018-Cus is in line with my interpretation discussed in foregoing Paras. Clause 2(v) of the Instruction reads as under:-

*" (v) The definition of Indian Customs waters has been extended up to EEZ in Finance Act, 2018. 'Indian Customs Water' finds mention in various sections of Customs Act primarily related to enforcement. Dutiability of an imported product is governed by Section 12 of the Customs Act which is unaffected by the impact of said amendment. A cruise vessel calling on an Indian port would, therefore, **be liable to pay duty on liquor and other consumed stores during its transit through territorial waters or its period of stay at port in India.** Mere passage through Indian Customs water without calling on at any of the Indian ports would not attract Customs duties."*

**17.1** The position of law as explained in the Instruction No.15/2018-Customs dated 04.10.2018 is that dutiability of an imported product is governed by Section 12 of the Customs Act and duty is to be paid on consumed stores during vessel's transit through territorial waters or its period of stay at port in India. The fact remains that during the course of its movement between coastal ports in India, the vessel TUG BRITOIL 80 has consumed certain stores, and bunkers. The fact not disputed is that the stores are consumed within the territorial waters. Though the Noticee paid the self-assessed Customs duty of Rs.11,43,665/- at the material time on the basis of consumption of ship stores based on inventory declared by the Master of the Vessel without any protest & challenge about its leviability, now, while contesting the issue did not dispute the revised duty calculation of import duties payable on Marine Gas Oil proposed in the SCN.

**18.** I find that the Hon'ble Supreme Court of India's judgment on the issue of collecting duty in such cases and applicability of Section 87 in the case of M/s. Aban Loyd Chiles Offshore Ltd Vs U.O.I reported as 2008 (227) ELT 24 (SC) is applicable in this case. The Hon'ble Supreme Court of India has held as under:-

*"79. It may not be correct to contend that the oil rigs installed by the appellants answer the description "foreign going vessel". A vessel may be a foreign going vessel but if the oil rig is situated in the area to which the Customs Act applies or extends, the aid of Section 2(21) of the Customs Act cannot be taken to get the benefit under Sections 86 and 87 of the same Act. The principle underlying under Sections 86 and 87 is that the stores are consumed on board by a foreign going vessel. **If the so-called foreign going vessel is located within a territory over which the coastal State has complete control and has sovereign right to extend its fiscal laws to such an area with or without modifications and the stores were consumed in the***



area to which the Customs Act has been extended, reference or reliance to the vessel being a foreign going vessel shall be of no consequence and the Customs duty would be leviable as the goods are consumed within the territory to which the Customs Act has been extended as per the Maritime Zones Act, 1976 and the International Convention UNCLOS, 1982."

18.1 The Hon'ble CESTAT in the case of M/s. Asian Cables Pvt Ltd reported as 2020(374) ELT 597 (Tri-Bang), relying on the Hon'ble Supreme Court of India's judgment *supra*, in matter of Foreign Going Vessel engaged to carry out repairs of cables located in South East Asia and Indian Ocean Area, has held that Customs Duty on ship stores consumed while the vessel was performing operations within Indian territorial waters requires to be paid. The relevant portion of the order reads as under:-

"26. On a plain reading of Section 87 as above, it is evidently clear that as long as the vessel or the aircraft holds the status as a foreign-going vessel, exemptions contained in Section 87 applies without any doubt. Going by the ratio of the judgment of the Hon'ble Supreme Court in the case of *Aban Loyd Chiles Offshore Ltd.*, 2008 (4) TMI 19 (SC) - 2008 (227) E.L.T. 24 (S.C.) held that :

"79. It may not be correct to contend that the oil rigs installed by the appellants answer the description "foreign going vessel". A vessel may be a foreign going vessel but if the oil rig is situated in the area to which the Customs Act applies or extends, the aid of Section 2(21) of the Customs Act cannot be taken to get the benefit under Sections 86 and 87 of the same Act. The principle underlying under Sections 86 and 87 is that the stores are consumed on board by a foreign going vessel. If the so-called foreign going vessel is located within a territory over which the coastal State has complete control and has sovereign right to extend its fiscal laws to such an area with or without modifications and the stores were consumed in the area to which the Customs Act has been extended, reference or reliance to the vessel being a foreign going vessel shall be of no consequence and the Customs duty would be leviable as the goods are consumed within the territory to which the Customs Act has been extended as per the Maritime Zones Act, 1976 and the International Convention UNCLOS, 1982."

From the above, we find that though the status of an FGV is not altered by the fact that such vessel or aircraft has run to a domestic Port or Airport during such time, duty on the stores consumed when the vessel was involved in operations within Indian territorial waters, needs to be collected in view of the above judgment. We find that Hon'ble Bombay High Court in the case of *Pride Foramer* has also taken the same view. This Bench has also followed the same in the case of *Focus Energy*, 2019 (11) TMI 22 (CESTAT BANG.) Therefore, we find that the appellants require to pay duty on the ship stores consumed by them while they were operating in the territorial waters of India.



The appellants claim that such operations were only once during 4th October 2007 to 6th October 2007 and the applicable duty payable is Rs. 1,63,479. However, this is a matter of fact and the same requires to be ascertained/verified from the records like vessel's log books, correspondence with their masters, telecom authorities, information submitted to Port and Customs etc. For this reason, the matter requires to go back to the adjudicating authority for computation of the duty liability.

27. We find that Learned Authorized Representative for the Department has reiterated the findings of the Learned Commissioner. However, as per our discussion above, the contentions of the Department have been countered and held to be not maintainable under law. We also find that the cases relied upon by the Authorized Representative cannot help the cause of the Department. We find that the decision in the case *Aban Loyd Chiles Offshore Ltd., Pride Foramer (supra)* concerned about the vessels which were rigs engaged in oil exploration in the designated areas of continental shelf and exclusive economic zone, which were declared by a notification to be a part of India for a limited purpose. However, we find that the cases are relevant only to the extent they decide the applicability of duty-free stores during the period the vessels were in Indian territorial waters. Moreover, the submissions of the Learned AR are based on stray correspondence and no investigation to that extent appears to have been done in this regard. The crux of the argument of the department was that the vessel was berthed in Cochin for most of the time during the disputed period and thus it ceases to be foreign going vessel. Moreover, we find that the vessel was anchored in Cochin Port and was under the watchful eyes of Customs and Port authorities. Many times, Customs authorities have boarded the vessel as demonstrated by the counsel for the appellants. Customs officers were supervising the bonded stores of the vessel. It was well within the right and mandate of Customs authorities to advise the appellants to ensure that there were no procedural and other infractions. No proof of such efforts and correspondence, if any, has been placed on record before us. It can be seen that the arguments of adjudicating authority were controverted and we are inclined to hold that the impugned vessel is foreign going vessel and as such the exemption in terms of Section 87 of the Customs Act, 1962 is available to the appellants, despite the fact that it was lying berthed at Cochin for most part of the time. However, in view of the Hon'ble Apex Court's decision in *Aban Loyd case (supra)*, we find that the duty on the ship stores consumed while the vessel was performing operations within Indian territorial waters requires to be paid by the appellants. Learned Counsel for the appellants has fairly conceded the same and expressed willingness to pay the same."

18.2 The Hon'ble CESTAT in the case of C.C. Vs Shipping Corporation of India reported as 1985 (21) E.L.T. 778 (Tribunal) has in similar matter held as under:-

"6. The case of *M.T. Netaji Subhas Bose* and the case of *Nancy Dee* are different. *Nancy Dee* was specially chartered and brought to India for the purpose of lightering work of wheat carrying from super tankers. This is not the case with *M.T. Netaji Bose*. The vessel was itself a foreign cargo carrying ship which arrived from Kharg Island in the Persian Gulf with foreign cargo



*for Madras and Visakhapatnam. There is no evidence that it was destined to go to Calcutta. When she went to Calcutta she did so only to carry crude oil taken from M.T. Zakir Hussain at Visakhapatnam. Nor is there any evidence that M.T. Zakir Hussain was destined to discharge foreign crude at Calcutta and that M.T. Netaji Subhas Bose merely helped to carry the cargo to its intended destination. M.T. Netaji Subhas Bose diverted at Visakhapatnam, an Indian ports in order to carry cargo to Haldia another Indian port. It makes no difference that the cargo was a foreign cargo. The fact was that cargo was carried between one Indian port and another by a ship that was not meant to undertake that voyage. Nor was it meant to lift Indian cargo at Calcutta for any foreign port as is proved by the fact that she left that port in ballast, touching Vizag again which she left on 24-1-1978 also in ballast. The run from Vizag to Calcutta between 19 and 22-1-1978 was clearly a coastal run to carry cargo between two Indian ports, and no other. We are, therefore, unable to agree with the Shipping Corporation of India that the demand for duty made by the Vizag Customs was incorrect.*

**18.3** In an another case of vessel being sailed in territorial waters of India, the Hon'ble CESAT in the case of M/s. Bharat Petroleum Corporation Ltd, Bombay reported as 1984 (17) ELT 413 (Tribunal) [maintained in 1989 (43) ELT A131 (Supreme Court)] has allowed the benefit of exemption from Excise duty on bunkers supply to a foreign going vessel sailing between two Indian port i.e. Bombay and Kolkata while in Foreign Run and held that status of the Vessel has to be ascertained with regard to facts and circumstances of the case.

**18.4** My above views are supported by the ratio in the above discussed judgments and in view of the matter I am not inclined to consider defense theory and the judgment relied upon by the Noticee. The said judgment relied upon by the noticee are issued in connection with the peculiar facts and circumstances therein which also includes non-acceptance of Departmental Appeal based on litigation policy which do not have precedence value.

**19.** In the light of the above discussion and relying on the above case laws, I hold that the Noticee is required to pay Customs duty on ship stores, bunker, provisions, alcohol etc. consumed on Vessel TUG BRITOL 80 during its transit through territorial waters or its period of stay at port in India calculated on the basis of self-declaration made by the Master of a Vessel. Therefore, Customs duty is rightly paid by the Noticee however remained short paid as it was wrongly self-assessed by them.

**20.** I find that Customs duty payable on Marine Gas Oil (CTH 27101930) which includes basic Customs duties along with other duties and Cess as imposed under various provisions is as under:



Sr. No.	Types of Duties	Rate of Duty	Marine Gas Oil (MGO) / HSD
1	Quantity	---	59889 Ltr.
2	Assessable Value (In Rs. )	---	Rs. 3026386/-
3	Basic Customs Duty (BCD) [Notification No. 52/2017-Cus. dated 30.06.2017 (Sr. No. 3)]	2.5%	Rs. 75660/-
4	Agriculture Infrastructure and Development Cess (AIDC)	Rs. 4/- per Liter.	Rs. 239556/-
5	Addl. Duty of Customs equivalent to Special Additional Excise Duty (SAED).[No. 05/2019-CE dated 06.07.2019 (as amended)]	Rs. 8/- per Liter.	Rs. 479112/-
6	Road and Infrastructure Cess equivalent to Additional Duty of Customs [(Sr. No. 02) (as amended)]	Rs. 8/- per Liter.	Rs. 479112/-
7	Basic Excise Duty as per Section 3 of the Central Excise Act, 1944 [Notification No. 11/2017-CE dated 30.06.2017 (Sr. No. 3(ii)) (as amended)]	Rs.4.20 per Liter.	Rs. 251534/-
8	Social Welfare Surcharge Notification No. 12/2021-Cus. dated 01.02.2021 [@ 10% of 3 + 4 + 5 + 6 + 7]	@ 10%	Rs. 152497/-
9	<i>the Additional Duty of Customs on imported goods under Sub-section (5) of Section (3) of the Customs Tariff Act, 1975 (51 of 1975) [No. 53/2017-Cus.dated 30.06.2017 (as amended)]</i> [4%age of 2+3+5+6+7]	@4%	Rs. 172472/-
10	<b>Total duty on MGO/HSD [3 to 9]</b>		<b>18,49,943/-</b>
11	<b>Duty Paid by Noticee on MGO (CTH 27101930)</b>		<b>(-)</b> <b>Rs. 10,40,407 /-</b>
12.	<b>Duty Short Paid (Differential) :</b>		<b>Rs. 8,09,526 /-</b>

**20.1** The noticee in their submissions has challenged the levy of Customs duty itself however not disputed duty calculations amounting to Rs.18,49,843/- payable on MGO as worked out above and proposed in the Show Cause Notice. Thus, actual duty payable and difference arose due to short payment while filing the Bill of Entry is not in dispute. Therefore, I find that the differential duty of Rs.8,09,526/- short paid on MGO (CTH 27101930) is required to be paid by the Noticee. In view of above facts, I confirm the demand of differential duty of Rs. 8,09,526/- to be recovered from the Noticee under Section 28 (1) of the Customs Act,1962 along with interest under Section 28 AA of Customs Act,1962 as proposed in the Show Cause Notice.



21. The Show Cause Notice also proposes penalty on the Noticee under Section 117 of the Act which reads as under:

*"Section 117 Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees"*

21.1 I find that Section 17 of the Customs Act, 1962 provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in electronic form, as per Section 46 or 50 respectively and therefore, under self-assessment, it is the responsibility of the importer or exporter to ensure that he declares the correct classification, country of origin, applicable rate of duty, value, benefit or exemption notification claimed, if any in respect of the imported/ exported goods while presenting Bill of Entry or Shipping Bill. In the present case, I find that the Noticee has not paid appropriate duty leviable under Section 12 of the Customs Act, 1962 as much as they failed to self-assess correct duty liability under Section 17 of the Act and presenting incorrect Bill of Entry under Section 46 by not declaring all relevant provisions and notifications attracting duty liability. Since the Noticee has violated the provisions of Section 12 read with Section 17 and 46 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, I find that Noticee is liable to penalty under Section 117 of Customs Act, 1962, as proposed in the Show Cause Notice.

22. In view of the above, I pass the following order:


**:: O R D E R ::**

- (I) I confirm the demand of differential duty of Rs.8,09,526/- (Rupees Eight Lakhs Nine Thousand Five Hundred Twenty Six only) under Section 28(1) of the Customs Act, 1962. The same should be paid by / recovered from the Noticee forthwith.
- (II) I order to charge and recover applicable interest leviable on the confirmed amount of differential Customs Duty, as per (I) above, under Section 28AA of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.



- (III) I impose penalty Rs. 80,000/- [Rupees Eighty Thousand only] on M/s. Trans Tide Agency, Bhavnagar under Section 117 of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

This order is issued without prejudice to any other action that may be taken against the importer or any other person under the Customs Act, 1962 or any other law for the time being in force.

  
03/06/2024  
हरकिरपाल खटाना  
(Harkirpal Khatana)  
अपरआयुक्त/ Additional Commissioner  
सीमाशुल्क) निवारक/(Customs (Preventive)  
जामनगर/ Jamnagar

दिनांक : ०३ २०२४.०६.  
Date: 03.06.2024  
फाइल सं : CUS/60/2024-Adjn.

**BY RPAD/SPPED POST/HAND DELIVERY:**

**M/s Trans Tide Shipping Agency,  
Shreeji 101, Plot No. 8/C,  
Opp. Bhagini Mandal Hospital,  
Bhavnagr-364002  
Email: transtideshipping@gmail.com**

**Copy to:**

1. The Commissioner, Customs (Preventive) Commissionerate, Jamnagar
2. The Superintendent (TRC), Customs (Preventive) Commissionerate, Jamnagar
3. The Assistant Commissioner, Customs Division, Bhavnagar.
4. Guard File.