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-20260971MN00006027E5

क	फ़ाइल संख्या FILE NO.	S/49-221, 255 to 258/CUS/JMN/SEP/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-53 to 57 -2026-27
ग	पारितकर्ता PASSED BY	Shri Vishwajeet Singh Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	17.09.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	02/CUS-REF/2025-26 dated 15.07.2025 03/CUS-REF/2025-26 dated 07.08.2025 04/CUS-REF/2025-26 dated 07.08.2025 05/CUS-REF/2025-26 dated 07.08.2025 09/CUS-REF/2025-26 dated 12.08.2025
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	17.09.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1. M/s Unique Ship Breaking Corporation, Plot No. 107-M, Sosiya Ship Braking Yard, Sosiya Alang, Bhavnagar

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क(	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported
(ख(	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग (	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.

(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, **1962** (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. **200/-**(रूपए दो सौ मात्र)या रु.**1000/-**(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.**6** की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.**200/-** और यदि एक लाख से अधिक हो तो फीस के रूप में रु.**1000/-**
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. **2** के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम **1962** की धारा **129** ए **(1)** के अधीन फॉर्म सी.ए.-**3** में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ — **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016 — 2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, **1962** की धारा **129** ए **(6)** के अधीन, सीमाशुल्क अधिनियम, **1962** की धारा **129** ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.

(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के %10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा **129** (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.

ORDER-IN-APPEAL

1. Brief facts of the case

1.1 M/s Unique Ship Breaking Corporation, Plot No. 107-M, Sosiya Ship Braking Yard, Sosiya Alang, Bhavnagar (herein after referred to as the "Appellant for the sake of brevity) has filed the present appeals against Orders-In-Original (herein after referred to as the "impugned orders") as tabulated below issued by the Assistant Commissioner, Customs Division, Bhavnagar (herein after referred to as the "Adjudicating Authority).

Sr.No.	OIO No.	Date of OIO	Bill of Entry No.
1	02/CUS-REF/2025-26	15.07.2025	5060873
2	03/CUS-REF/2025-26	07.08.2025	6754665
3	04/CUS-REF/2025-26	07.08.2025	8249050
4	05/CUS-REF/2025-26	07.08.2025	6909446
5	09/CUS-REF/2025-26	12.08.2025	6412354

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

Sl.No.	Name of the Ship /Vessel	Bill of Entry No.	Date of Bill of Entry
1	M T JEAN	5060873	16.08.2021
2	MV STAR SKN 151	6754665	2012.2021
3	MV SORMOVSKIY 40	8249050	12.04.2022
4	MV NERU	6909446	17.07.2023
5	MV GOLDSTAR NARI	6412354	26.11.2021

1.3. There was some dispute with regard to assessment of Customs duty of the Fuel and Oil (Fuel Oil, Marine Oil, Lube Oil) contained in the Bunker tanks inside /outside engine room of the vessel /ship. Importer claimed that Fuel and Oil (Fuel Oil, Marine Oil, Lube Oil) contained in the Bunker tanks inside /outside engine room of the vessel /ship was to be assessed to duty under CTH 8908 along with vessel. However, the Department was of the view that Fuel and Oil contained in Bunker Tanks were to be assessed to duty under respective CTH of Chapter 27.

1.4 Hon'ble CESTAT, Ahmedabad vide its orders A/11792-11851/2022 dated 17.10.2022/01.12.2022 has held that the oil contained in the Bunkers Tanks in

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the engine room of the vessel is to be assessed to duty under CTH 8908, along with the vessel coming for breaking up. Further, in adherence to aforesaid order of Hon'ble CESTAT, it has been decided by the Assistant Commissioner, Customs Division, Bhavnagar in Final Assessment Order No. 1079/2631159/SBY/2024-25 dated 11.09.2024 that Bunker Tanks containing oil are to be treated as part of vessel's machinery and the Oils contained in them are to be classified under CTH 8908 along with the vessel, as covered under para 2(b) of circular no. 37/96-Cus Dated 03.07.1996. Therefore, in view of the aforementioned judgment of the Hon'ble Tribunal, all the above mentioned Bills of Entry were finally assessed as tabulated below.

Sl.No.	Name of the Ship /Vessel	Bill of Entry No.	Date of Bill of Entry	Final assessment Order	Date of final assessment
1	M T JEAN	5060873	16.08.2021	922/2559695/SBY/2023-24	02.05.2024
2	MV STAR SKN 151	6754665	2012.2021	965/2584971/SBY/2023-24	10.06.2024
3	MV SORMOVSKIY 40	8249050	12.04.2022	996/2596691/SBY/2024-25	13.06.2024
4	MV NERU	6909446	17.07.2023	712/2534665/SBY/2023-24	19.06.2024
5	MV GOLDSTAR NARI	6412354	26.11.2021	1023/2588096/SBY/2024-25	10.06.2024

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

Sl.No.	Bill of Entry No.	Final assessment Order	Date of final assessment	Amount of refund filed	Date of filing refund
1	5060873	16.08.2021	922/2559695/SBY/2023-24	2,58,788/-	17.05.2025
2	6754665	2012.2021	965/2584971/SBY/2023-24	1,94,904/-	10.06.2025
3	8249050	12.04.2022	996/2596691/SBY/2024-25	1,15,090/-	12.06.2025
4	6909446	17.07.2023	712/2534665/SBY/2023-24	95,390/-	03.06.2025
5	6412354	26.11.2021	1023/2588096/SBY/2024-25	3,53,060/-	27.06.2025

The Adjudicating Authority sanctioned the refund claims and credited the same to Consumer Welfare Fund on account of unjust enrichment on part of the Appellant..

1.6 Being aggrieved by the impugned order, the Appellant preferred the present appeals as tabulated below.

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Sr.No.	OIO No.	Date of OIO	Appeal No.
1	02/CUS-REF/2025-26	15.07.2025	S/49-221/CUS/JMN/SEP/2025-26
2	03/CUS-REF/2025-26	07.08.2025	S/49-255 /CUS/JMN/SEP/2025-26
3	04/CUS-REF/2025-26	07.08.2025	S/49-256/CUS/JMN/SEP/2025-26
4	05/CUS-REF/2025-26	07.08.2025	S/49-257/CUS/JMN/SEP/2025-26
5	09/CUS-REF/2025-26	12.08.2025	S/49-258/CUS/JMN/SEP/2025-26

2. Ground of Appeal submitted by the Appellant

2.1. The Appellant submitted that the impugned order of the Assistant Commissioner by which he has sanctioned the refund of excess duty paid and has ordered the same to be credited to the Consumer Welfare Fund on the ground of unjust enrichment is not tenable in law and is liable to be set aside.

2.2 The Appellant further submitted that Chartered Accounts M/s P. A. Popatia & Co, 201/A Attabhai Chowk Bhavnagar has issued Chartered Certificate, who has confirmed / certified that the oil and fuels found in the ship at the time of import, on which duty was paid, were not passed on to any buyer or third party. Moreover, the certificate confirms that no Custom Duty was charged at the time of sale, indicating that the duty was not passed on to the customers and/or third parties.

2.3 The Appellant further submitted that it is evident from the Bill of Entry and the Appellant's Sales Invoices, that the price at which the Appellant sold the imported Bunkers is much below the import price/value of the Bunkers on which the duty was assessed. Therefore, the Appellant has not been able to even recover the import price of the Bunkers, much less the duty paid thereon. Consequently, the question of the Appellant having passed on and recovered from the buyers, the duty paid on the Bunkers does not arise. Clearly, therefore the burden of the said duty has been borne by the Appellant and has not been passed on to the buyers. The Appellant enclosed copies of sales invoices that would show that the Appellant has only recovered the GST payable on the local sales and not the import duty paid on the Bunkers.

2.4 The Appellant further submitted that merely because the duty amount was debited to expenses in Profit & Loss Account, it does not follow that incidence thereof was passed on to the buyers, when the price at which the Bunkers were sold to the buyers, was even less than the import price on which the duty was assessed: The Assistant Commissioner has proceeded on the premise that since

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the duty paid on the Bunkers was debited to expenses, it must be considered to have been passed on to the buyers by the Appellant. The said premise on which the Order of the Assistant Commissioner is based is untenable in law.

2.5 The Appellant further submitted that it is settled law that debit of the duty amount to expenses, without corresponding addition in the import price to arrive at the local sale price, means that Appellant has absorbed and borne the said amounts and it cannot lead to the conclusion that the Appellant has passed on the incidence thereof. In the present case, not only has the Appellant not added the duty amount to the import price to arrive at the local sale price, but in fact, the local sale price is even below the import price on which the duty is assessed.

2.6 The Appellant further submitted that on perusal of the sales invoices, it is clearly being found that your appellant had sold out disputed stock of bunker at very less price than the so called "transaction value" considered/ascertained by the Assessing Officer without disclosing such material evidences. Before passing the impugned order, the Adjudicating Authority has not given any opportunity to be heard in person to the Appellant and passed the impugned order as "ex-parte".

2.7 The Appellant further submitted that notwithstanding contain anything in foregoing submissions, it is to point out that the Chartered Accountant has clearly certified in his Certificated that incidence of Customs paid on the bunker (oil and Fuel) etc, has not been passed on the buyer of the goods or any other person read with provisions of Section 27(2) of the Customs Act, 1962.

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

(i) 2017 (48) S. T. R. 298 (Del) in case of Munch Food Products Ltd.v/s Commissioner wherein it has been held that;

The Appellant submitted that this settled case law may kindly be considered while invoking the provisions of unjust enrichment. This submission is being submitted without prejudice to the provision of Section 27(2)(g) customs Act, 1962.

2.9 The Appellant further submitted that in view of the above stated grounds of Appeal it is clearly establish that in the present case, the question of invoking the provisions of unjust enrichment does not arise. Therefore, the sanctioned refund amount has wrongfully credited in to the so called Consumer Welfare Fund/Account.

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2.10 Thus, based on the above submission the Appellant requested and prayed for the following relief.

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

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

3. PERSONAL HEARING:

Opportunity of personal hearing was granted to the Appellant. Shri N K Maru, Consultant appeared for personal hearing in virtual mode on 18.08.2026 wherein he re-iterated written submission filed during the appeal.

4.0 Comments from Customs Division, Bhavnagar

4.1 The Custom Division Office, Bhavnagar was requested for submission of comments of the appeal filed by the Appellant vide letters 11.08.2025. The Assistant Commissioner, Custom Division, Bhavnagar vide letter dated 06.08.2026. The Assistant Commissioner gave following para wise comments of grounds of appeal w.r.t. appeal filed against OIO No. 02/Cus-Ref/2024-25 dated 15.07.2025.

Comment on Para. 1

4.2 The Division office submitted that as per Section 27 of the Customs Act, 1962, read with the principle of unjust enrichment, refund claims are payable to the applicant only if it is established that the duty has not been passed on to any other person. In the present case, the appellant has failed to discharge the burden of proof required under law to show that the duty was borne by them alone. In the absence of such evidence, the Assistant Commissioner was correct in ordering that the sanctioned refund be credited to the Consumer Welfare Fund. This approach is consistent with statutory provisions and judicial precedents, ensuring that no undue benefit accrues to the claimant at the expense of consumers. The order thus safeguards public interest and is not liable to be set aside.

Comment on Para.2:-

4.3 The Division office submitted that in respect of the Para. 6 of the appeal, it is to submit that the claimant has failed to produce C.A. certificate in the format provided to them vide this office letter dated 16.06.2025 along with financial records viz. copy of Audited Balance Sheet and ledger for the financial

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year 2021-22 to 2024-25. Further, as per C.A. certificate dated 23.06.225 submitted by the claimant, it has been certified that M/s. Unique Ship Breaking Corporation has charged total amount of Customs Duty paid us expenditure to the statement of Profit & Loss for the year ended on 31.03.2022. They have also certified that the amount claimed as refund has been adjusted in the books of accounts for the F.Y. 2024-25 as refund receivable from Custom Department under heading loans and advances in Balance Sheet, this implies that amount claimed as refund has been shown as receivable consequent upon finalization of Bill of Entry vide FAO dated 10.06.2024 i.e. in the F.Y.2024-25 and not in the Financial Year 2021-22 to which the Bill of Entry pertains and duty was provisionally paid. which is not in accordance with the accounting principle. The duty paid was shown as expenditure in the Balance Sheet for the F.Y.2021-22 and formed part of the Protit & Loss account of the claimant and as a settled position in law that where the claimant has itself treated the refund amount due as expenditure and not as claims receivable, the claimant cannot be said to have passed the test of unjust enrichment Thus the claimant has failed to prove that incidence of custom duty has not been passed on to any other person.

Comment on Para.3:-

4.4 The Division office submitted that the Appellant's mere assertion that the disputed bunker stock was sold at a lower price after finalization of provisional assessment does not itself establish that the incidence of duty had not been passed on to the buyers The fact that the goods were sold at a price lower than the prevailing market price does not automatically lead to the conclusion that the duty burden was retained by the appellant. In the absence of reliable documentary financial records and other corroborative evidence which clearly establishing that the incidence of duty was not passed on, the presumption of unjust enrichment remains unrebutted.

Comment on Para.4:

4.5 The Division office submitted that the submission of the Appellant that the sale price was lower than the import price is not acceptable as it does not itself establish that the incidence of duty was not passed on to buyers. The duty amount having been debited to the Profit & las Account as an expense indicates that the burden was treated as a cost of business and mere sale at a loss cannot be equated with absorption of duty by the claimant. In the absence of credible evidences demonstrating that the duty element was not recovered from buyers, the claim that the duty incidence was not passed on remains unsubstantiated.

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The Assistant Commissioner has rightly concluded that the incidence of duty was passed on by the appellant, having regard to the fact that the duty paid on bunkers was debited to the expenditure account. When the duty is treated as a business expense and reflected in the cost structure of the entity, it is ordinarily presumed that such coat forms part of the pricing mechanism and is ultimately recovered from customers. The appellant has failed to produce sufficient and positive evidence to rebut this statutory presumption by demonstrating that the duty burden was born by them and not passed on to any other person. Therefore, the accounting treatment of the duty as an expense constitutes a relevant and significant factor supporting the finding that the incidence of duty had been passed on and the order of the Assistant Commissioner is legally justified

Comment on Para.5:

4.6 The Division office submitted that the fact that the duty amount was not separately added to the import price of the goods were sold at a price lower than the import price does not itself establish that the incidence of duty was borne by the appellant. The sale price is influenced by several factors including market conditions, competition, inventory considerations and overall business strategy. What is relevant for the purpose of unjust enrichment is whether the duty formed part of the appellant's cost structure. Since the duty was admittedly debited to the expenditure account, it constituted a business cost and there is a presumption that such cost was absorbed into the pricing mechanism of the entity. In the absence of clear and positive evidence demonstrating that the duty burden was not recovered directly or indirectly. Therefore, the mere comparison of import price and sale price is insufficient to establish that the incidence of duty was not passed on.

Comment on Para.6:-

4.7 The Division office submitted that the contention of the appellant is not tenable. The impugned order has been passed on the basis of the records, documents and evidences available on file. The burden to establish eligibility for refund rests upon the claimant and it is incumbent upon the appellant to furnish complete and satisfactory evidence in support of the claim. The Adjudicating Authority has examined the material available on record and fount the refuted claim inadmissible and accordingly passed the order.

Comment on Para. 7

4.8 The Division office submitted that as per C.A. certificate dated 20.05.2025 submitted by the claimant, it has been certified that M/s Unique Ship Breaking

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Corporation has charged total amount of Customs Duty paid an expenditure in the Balance Sheet for the year FY 2021-22 The Claimant has submitted a copy of ledger for the period 01.04.2025 to 02.06.2025, wherein the claimant has himself stated that the amount of s 2,58.788 now reversed for refund claim which has already been claimed at expenditure in the PY. 2021-22. This implies that the amount claimed as refund has been shown as receivable consequent upon finalization of Bill of Entry vade PAU dare 02.05.2024 Le. in the P.Y.2024-25 and not in the F.Y. 2021-22 to which the Bill of Entry pertains and duty was provisionally paid, which is not in accordance with the accounting principle. The duty paid was shown as expenditure in the Balance Sheet for the FY 2021-22 and formed part of profit and loss account of the Appellant and as a settled position in law that where the claimant has itself treated the refund amount due as expenditure and not as claim receivable

Comment on Para.:-8

4.9 The Division office submitted that The case laws relied upon by the appellant are distinguishable on facts and circumstances and cannot be applied mechanically to the present case. The issue of unjust enrichment has to be examined on the basis of evidence available in each individual case. In the present matter, the appellant has not produced sufficient and cogent evidence to conclusively establish that the incidence of duty was not passed to any other person

Comment on Para. 9:

4.10 The Division office submitted that no such para available in grounds of appeal

Comment on Para 10:

4.11 The Division office submitted that the applicability of the doctrine of unjust enrichment is governed by the statutory provisions of Section 27 of the Customs Act, 1962. The appellant's reliance Judicial precedents does not dispense with the appellant's obligation to discharge the burden of proving that the incidence of duty has not been passed in. The evidence on record has not adequately rebutted the presumption envisaged under law, therefore, the provisos relating to unjust enrichment have been rightly invoked.

Comment on Para. 11-

4.12 The Division office submitted that in grounds of appeal the para is numbered wrongly as whereas para 6 already exist in grounds of appeal

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4.13 Thus, based on the above, the Division office submitted that the view of the facts and records available, it has not been conclusively established that the duty incidence was borne by the appellant alone. Accordingly, the bar of unjust enrichment continues to operate and the refund amount has been correctly credited to the Consumer Welfare Fund in terms of Section 27 of the Customs A 1562. The impugned order is therefore legal and proper.

5. DISCUSSION AND FINDINGS:

5.1 The dates of the impugned order and the date of filing appeal by the Appellant are tabulated below.

Impugned Order No.	Date of Order	Date of Filing appeal	Remark
02/CUS-REF/2025-26	15.07.2025	10.09.2025	File within 60 days from the date of order
03/CUS-REF/2025-26	07.08.2025	26.09.2025	File within 60 days from the date of order
04/CUS-REF/2025-26	07.08.2025	26.09.2025	File within 60 days from the date of order
05/CUS-REF/2025-26	07.08.2025	26.09.2025	File within 60 days from the date of order
09/CUS-REF/2025-26	12.08.2025	26.09.2025	File within 60 days from the date of order

Thus, based on the above, I find that the Appellant had the appeal well within the time period of 60 days prescribed under the provisions of Section 128 of the Customs Act, 1962.

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

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

(i) Whether the Appellant is eligible for refund claim amounts as mentioned para supra by directly crediting it to their bank account instead of crediting the same to Consumer Welfare Fund.

5.4 It is observed that the appellant had imported vessels for breaking up/recycling and filed various Bills of Entry as mentioned para supra under

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Section 46 of the Customs Act. 1962. There was dispute in respect of classification of Fuel and Oil (Fuel Oil, Marine Gas Oil, Lub Oil), which was settled by the Hon'ble CESTAT, Ahmedabad, vide its Orders A/11792-11851/2022, dated 17.10.2022/01.12.2022 wherein it was held that the oil contained in the Bunkers Tanks in the engine room of the vessel is to be assessed to duty under CTH 8908, along with the vessel for breaking up. The Bills of Entry were assessed provisionally. Subsequently, the Bills of Entry were finally assessed vide different Final Assessment Orders mentioned above passed by the Assistant Commissioner, Customs Division, Bhavnagar. Consequently, the appellant had filed refund claims which were sanctioned and credited to Consumer Welfare Fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.7 It is undisputed that the goods in question have been sold to buyers and the transactions are shown as part of Profit and Loss Account. Further, it is observed that the appellant had submitted Certificate issued by C.A. P.A. Popatia & Co. wherein it is stated the Appellant has paid Basic Customs Duty for the imported vessels. The Certificate further states that sales invoice as well financial ledger and other records of the Appellant have been checked and certified that at the time of import of vessel, they have paid Customs Duty on import of

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ship/vessel and on the bunker (Oils and Fuels) and other stores etc. and the same has not been passed on the buyer of the goods or any other persons.

5.8 The Chartered Accountant/appellant has not submitted any documents to substantiate that the incidence of duty claimed as refund has not been passed on by him to any other person. Further, I also find that the Bills of Entry was filed during the year 2021-22 and 2022-23 and the certificate has failed to give any reasonable certificate regarding carrying forward of the amount till the year the Appellant filed refund application. The Appellant has also failed to given any evidence indicating the fact that there was no unjust enrichment on the part of the Appellant during the Financial year 2025-26 as the refund was filed on in the same Financial years on dates mentioned para supra. The CA has in the said Certificate made a bald statement that the incidence of customs duty claimed as refund has not been passed on to any other person without any supporting documents. Therefore, the CA Certificate produced in this case without supporting documents cannot be considered for discharging the burden of unjust enrichment.

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

(i) Shoppers Stop Ltd. - 2018 (8) G.S.T.L. 47(Mad.)

(ii) BPL Ltd. - 2010 (259) E.L.T. 526 (Mad.)

(iii) Crompton Greaves Ltd. - 2011 (22) S.T.R. 380(Tri. - Mum.)

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

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

5.10 Further the Hon'ble Supreme Court in the case of Sahakari Khand Udyog Mandali Ltd Vs Commissioner of C. Ex. & Cus [2005 (181) ELT 328 (SC)] has

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

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

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



Vishwajeet Singh
17.09.2026.

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

F. No. S/49-221, 255 to 258/CUS/JMN/SEP/2025-26

By Registered post A.D/Email

M/s Unique Ship Breaking Corporation, Plot No. 107-M, Sosiya Ship Braking Yard, Sosiya Alang, 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