



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN: - 20260271MN0000001611

क	फ़ाइल संख्या FILE NO.	S/49-54,172,358,386,502,503/CUS/JMN/24-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-441 to 446-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.02.2026
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	As per Table A of the order
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	26.02.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Transtide Shipping Agency, Shreeji-101, Plot no.8/C, Opp Bhagini Mandal Hospital, Bhavnagar-364002.



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 हैं.

	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.	
	निम्नलिखित सम्बन्धित आदेश/Order relating to :	
(क)	बैगेज के रूप में आयातित कोई माल.	
(a)	any goods imported on baggage.	
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.	
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.	
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.	
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.	
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :	
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :	
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.	
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.	
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो	
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any	
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां	
(c)	4 copies of the Application for Revision.	
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-	
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less; fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय 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	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.	
(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 हजार रूपए	
(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 हजार रूपए.	
(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

Six appeals have been filed by M/s Transtide Shipping Agency, Shreeji-101, Plot no.8/C, Opp Bhagini Mandal Hospital, Bhavnagar-364002 (hereinafter referred to as "the appellant") in terms of Section 128 of the Customs Act, 1962 against the Orders-in-Original (Details as per Table-A) (hereinafter referred to as "the impugned orders") passed by the Additional/Assistant Commissioner, Customs, Jamnagar/Bhavnagar (hereinafter referred to as "the adjudicating authority").

Table A

Sr. No	Appeal No	OIO No. & Date	OIO Issued by
01	S/49-54/CUS/JMN/2024-25	27/Addl Commr/23-24 dt 01.03.2024	Additional Commissioner
02	S/49-172/CUS/JMN/2024-25	02/Addl Commr/24-25 dt 03.06.2024	Additional Commissioner
03	S/49-358/CUS/JMN/2024-25	07/Addl Commr/24-25 dt 10.09.2024	Additional Commissioner
04	S/49-386/CUS/JMN/2024-25	57/AC/BVR/2024-25 dt 08.11.2024	Assistant Commissioner
05	S/49-502/CUS/JMN/2024-25	15/Addl Commr/24-25 dt 30.01.2025	Additional Commissioner
06	S/49-503/CUS/JMN/2024-25	14/Addl Commr/24-25 dt 29.01.2025	Additional Commissioner

2. Facts of the case, in brief, are that the appellant was appointed as Shipping Agent by the owner of the vessel to discharge customs clearance formalities for vessels as detailed in Table B below (hereinafter referred to as "the said vessels"). The said vessels arrived at Alang Anchorage for breaking purpose from various Indian Ports as detailed in Table B below and the boarding of the said vessels were carried out on different dated. The Master of the said vessels provided the details of the quantity of the bunker & provision / stores consumed during last voyage from last Indian Port to Alang (Bhavnagar). On the basis of these details, the Shipping Agent filed the Manual Bills of Entry on different dated as detailed in Table B below and self-assessed the Value of Bunker & Provision/Store and Customs duty payable thereon in the said Bills of Entry. The said bills of

entry were provisionally assessed and the provisionally assessed duty was paid by the appellant.

Table B

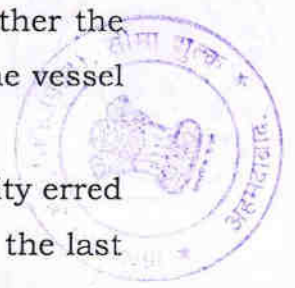
Appeal No	Name of Vessel	Name of Indian Port from where the Vessel Arrived at Alang	Manual Bill of Entry No & Date	Duty Demanded & Confirmed (in Rs)	Penalty Imposed (in Rs)
S/49-54/CUS/JMN/2024-25	MV TUG BRITOIL 80	Kandla Port	5912240-A dt 29.11.2021	6,12,191/-	60,000/-
S/49-172/CUS/JMN/2024-25	MV TUG BRITOIL 80	Jafrabad Port	6711574-B dt 03.02.2022	8,09,526/-	80,000/-
S/49-358/CUS/JMN/2024-25	MV TUG NOVE	Diu Port	7019246-A dt 07.02.2022	5,21,770/-	50,000/-
S/49-386/CUS/JMN/2024-25	MV TUG NOVE	Jafrabad Port	6711574-A dt 28.01.2022	3,31,553/-	34,000/-
S/49-502/CUS/JMN/2024-25	MV TUG YEVIN	Mumbai	8366358-A dt 22.06.2022	8,34,103/-	85,000/-
S/49-503/CUS/JMN/2024-25	MV TUG YEVIN	Mumbai	7417831-A dt 12.04.2022	5,42,896/-	60,000/-

2.1 The Department took a view that duty has been short-paid by the shipping agent as detailed in Table B above and thereafter issued Show Cause Notice raising a demand of the Differential Customs Duty as detailed in Table B above on Marine Gas Oil levied under provisions of Section 12 and recovery of duties short-paid under Section 28 of the Customs Act, 1962 along with interest charged under Section 28AA of the Customs Act, 1962. Further the SCN also proposed to impose penalty under Section 117 of the Customs Act, 1962 for contravention of the provisions of Section 12 of the Customs Act, 1962.

2.2 The Adjudicating authority, vide the impugned orders, has confirmed the aforementioned duty demand along with interest and also imposed penalty as detailed in Table B above under Section 117 of the Customs Act, 1962.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal and mainly contended that;

- The impugned orders of the adjudicating authority by which he has confirmed the duty on the fuel oil, lubricating oil etc. consumed during the voyage of the vessel from the last Indian port to Port of Alang is bad in law and cannot be sustained in law.
- Customs at Alang port has no jurisdiction to demand the duty on the said goods which was not imported at the port of Alang. The adjudicating authority, clearly erred in not appreciating that he lacked jurisdiction to demand the said duty on the goods which were never imported at the port of Alang.
- It is submitted that goods which are consumed by a foreign going vessel during its voyage between two Indian ports is excluded from the levy of customs duty as per section 87 of the customs act. The adjudicating authority erred in holding that the said vessels which sailed from Indian Port in ballast did not carry goods or passenger and hence the same cannot be treated as foreign going vessel. He erred in not appreciating that definition of goods include vessel and hence exclusion provided under section 87 would apply to the said vessel which was a foreign going vessel. He erred in not appreciating that appellant had not applied for conversion of the vessel in to coastal run, further the port clearance certificate clearly mentions the status of the vessel as Foreign Going Vessel.
- Without prejudice to the aforesaid, the adjudicating authority erred in demanding duty at Alang Port without having verified at the last Indian Port from where the said vessels were coming Customs as to payment of Customs duty on the good viz. fuel oil, lubricating oil etc. before demanding Customs duty at Alang port. This is particularly important because, in terms of instruction letter dated 8.12.2009 which requires customs at Alang to first confirm from master of the vessel, the filling of bill of entry at last Indian port of coastal consumption of ship stores, fuel oil etc.



- In view of above submission, the amount of duty deposited at the time of provisional assessment of the said Bills of Entry at the time of import of vessel is also not tenable and liable to be refunded. The appellant reserves his right to claim the said amount of duty so deposited which was legally not payable, however was made to pay to speed up the process of import of vessel.
- The appellant finally submitted that the impugned Orders may kindly be set aside with consequential relief.

4. Shri Rahul Gajera and Ms Anshu Gupta, Advocate, appeared for personal hearing in virtual mode on 04.02.2026. They reiterated the submissions made at the time of filing appeal. They vide written submission submitted that:

- At the outset, it is submitted that the subject goods were only provisionally assessed and the alleged differential duty on Marine Gas Oil (MGO/HSD) has been sought to be demanded by invoking Section 12 read with Section 28 of the Customs Act, 1962, along with interest under Section 28AA thereof. In such circumstances, the demand of duty and initiation of recovery proceedings without finalization of provisional assessment under Section 18 of the Customs Act, 1962 is not tenable.
- Accordingly, the Appellant prays that the impugned order be set aside, and the matter be remanded to the adjudicating authority for finalization of the provisional assessment after hearing appellant in accordance with law. Appellant in this behalf rely upon the following decisions:



- (i) Supreme Court – ITC Ltd., 2006 (10) TMI 149-Key Ratio
SC says: No SCN under Section 11A (equivalent to Section 28) can be issued without completing assessment.
“A proceeding under Section 11A cannot be initiated without completing the assessment proceedings.
- (ii) CESTAT – Roochees Time Pvt. Ltd., 2017 (6) TMI 696-CESTAT
NEW DELHI
Tribunal quashed demand because assessment was provisional and not finalized.
“Since the assessment is provisional and proper duty liability has not been quantified... proceedings under Section 28 are not sustainable.

The following submissions are being made on merits of the case:

➤ Issue

Whether customs duty is leviable on bunker fuel and ship stores consumed during the voyage from a port within India to Alang Ship Breaking Yard, when the vessel was a foreign-going vessel and not converted into a coastal run, considering the exemption provided under Section 87 of the Customs Act, 1962.

- The impugned Order confirming customs duty on fuel oil, lubricating oil and other ship stores consumed during the voyage from Mumbai/Jafrabad/Kandla/Paradip to Alang, is without jurisdiction and bad in law. Customs authorities at Alang had no authority to demand duty on goods which were neither imported nor assessed at Alang port. The demand is contrary to Section 12 of the Customs Act, 1962, which permits levy of duty only on goods imported at the relevant port.
- Mother vessel merely towed the dead vessel to Alang. The voyage was undertaken solely for towing a dead vessel for breaking and did not involve any carriage of cargo, passengers, or commercial coastal trade. Such towing activity does not alter the essential character of the tug, which continued to retain its foreign-going status and was never converted into a coastal run under Section 89 of the Customs Act, 1962. The Department has erred in demanding differential duty under Chapter 27 by treating bunkers consumed on tug as independent goods. When the classification of the vessel falls under Chapter 89, bunkers consumed during the voyage are ship stores and cannot be artificially segregated for separate assessment under Chapter 27. The towing of a dead vessel does not give rise to a separate import of bunkers at Alang. The impugned demand is therefore contrary to the scheme of the Customs Tariff and the Customs Act and is liable to be set aside.
- Without prejudice, the ship stores consumed onboard a foreign-going vessel, are exempt from customs duty under Section 87 of the Customs Act. The learned adjudicating authority erred in holding that the vessel was not foreign-going merely because it carried no cargo or passengers. The term "goods" under Section 2(22) includes a vessel, and therefore the vessel itself constituted goods. The appellant never sought conversion to coastal run under Section 89, and the Port Clearance Certificate conclusively certifies the vessel's foreign-going status.

- The demand was raised without verification from Customs authority of last port of call regarding payment of duty, if any, on the ship stores prior to departure. The demand, therefore, suffers from non-application of mind and is unsustainable.
- Merely sailing between two Indian ports does not convert a foreign-going vessel into a coastal run vessel in absence of conversion under Section 89. Section 87 grants an exemption to ship stores consumed on board a foreign-going vessel, and no statutory provision has been cited to deny such benefit in the present case.
- The voyage undertaken by the tug was limited to towing a dead vessel to an Indian port for the sole purpose of breaking. A dead vessel is non-operational, and incapable of navigation or carriage of goods or passengers. Such towing is merely a facilitative maritime movement to enable import for breaking and does not involve any carriage of goods for consideration or commercial exploitation. Therefore, the said activity does not constitute trading or commercial activity, nor can it be equated with coastal trade under the Customs Act, 1962. The incidental consumption of bunkers during towing does not alter the essential character of the voyage. Reliance on his behalf placed on following decision Lotus Danship Pvt. Ltd. v. C.C., Jamnagar (Prev.), 2024 (6) TMI 1015 (CESTAT Ahmedabad)).



Issue recently decided by Jurisdictional CESTAT, Ahmedabad, Final Order No. 10562/2025 dated 16.07.2025 (Bhavnagar Shipping Agency), which held that:

(i) ship stores/bunkers consumed during inter-port movement on a vessel retaining foreign-going status are excluded from duty under Section 87, and

(ii) mere filing of a Bill of Entry or movement between two Indian ports does not convert the vessel into coastal run absent conversion under Section 89. The Tribunal set aside the duty demand and penalty in materially similar facts.

The aforesaid Final order extract produced below:

7. In view of above observations, I have come to the conclusion that the demand of differential duty of Customs amounting to Rs.

96,136/- is not tenable. The learned Commissioner erred in holding that appellant is liable to pay differential duty along with applicable interest since the nature of voyage is 'coastal run' from Cochin to Alang and the learned Commissioner has ignored other facts and just relied on the appellant's submission of Bill of Entry and payment of Customs duty and wrongly came to the conclusion that it ceased to be in the nature of 'foreign going vessel' and can be considered in the nature of 'coastal run'. I also find that there seems to be no intention of the appellant to evade payment of Customs duty. Therefore, penalty imposed on the appellant under Section 114A of the Customs Act, 1962 is not sustainable and is liable to be set-aside and the appeal is liable to be allowed.

8. Consequently, the appeal is allowed. The demand of differential Customs duty amounting to Rs. 96,136/- along with interest is set-aside. Penalty of Rs. 96,136/- imposed under Section 114A of the Customs Act, 1962 is also set-aside.

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

5.1 Before going into the merits of the case, it is observed that the subject Bills of Entry were provisionally assessed. In order to ascertain the status of the subject Bills of Entry a report was called from the Customs Division, Bhavnagar along with copy of the subject Bills of Entry. On bare perusal of the subject Bills of Entry submitted, I find that the Bills of Entry has not been finalized and is still Provisional.

5.2 It is observed that the Bills of Entry was provisionally assessed, which is yet to be finalized. Now the issue before me is whether issuance of show cause notice demanding differential duty and confirmation of the same along with interest and imposition of penalty under Section 117 of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

5.2 In this regard I rely upon the decision in the case of M/s. Roochees Time Pvt. Ltd. & Others Versus. C.C.E. Jaipur-1 [2017 (6) TMI 696 CESTAT NEW DELHI] wherein the Hon'ble Tribunal, Delhi relying upon the judgement of Hon'ble Supreme Court in the case of Commissioner of

Central Excise and Customs, Mumbai Vs. ITC Ltd.- [2006 (203) E.L.T. 532 (S.C.)] has held that since the assessment is provisional and the proper duty liability has not been quantified/ascertained as per the provisions of Section 18 of the Customs Act, 1962, there is no question of short levy or non-levy of duty. Thus proceedings initiated under Section 28, is not sustainable. The Hon'ble Tribunal, Delhi held that the proceedings initiated under Section 28 ibid before finalization of the assessment is not maintainable. The relevant paras of the decision is as under:

"5. Heard both sides and perused the records

6. The short question involved in this appeal for consideration by the Tribunal is, as to whether, before finalization of Bill of Entry, which was provisionally assessed under Section 18 ibid, can the Department proceed against the importer to confirm the differential duty demand and for imposition of penalty.

7. We find from the endorsement in the Bill of Entry that the same was provisionally assessed as per the order dated 21.12.2006. It has also been accepted in the show cause notice as well as in the impugned order that the goods were assessed provisionally on execution of Surety Bond and on payment of Customs Duty on the provisionally assessed value of the imported goods. The authorities below have not confirmed the fact that after finalization of the Bill of Entry, the demands were confirmed against the appellant. Thus, in absence of any documentary evidence to show finalization of Bill of Entry, it has to be construed that the same is still provisional, awaiting finalization.

8. Section 28 of the Act contemplates issuance of show cause notice for recovery of duties which were not levied or snort levied. For issuance of show cause notice under such statutory provision, the duty liability is required to be ascertained by the proper officer. In the present case, since the assessment is provisional and the proper duty liability has not been quantified ascertained as per the provisions of Section 18 ibid there is no question of short levy or non-levy of duty. Thus proceedings initiated under Section 28, which culminated in the impugned order dated 17.12.2013 in our opinion will not sustainable and will not stand for judicial scrutiny, in this context, the Hon'ble Supreme Court in the case of ITC Ltd. (supra) held that proceedings under Section 11 A of the Central Excise Act, 1944 (parimateria with Section 28 bid) cannot be initiated without completing the



assessment proceedings. The relevant paragraph in the said judgment is extracted herein below: -

"17. Section 11A of the Act provides for a penal provision. Before, a penalty can be levied, the procedures laid down therein must be complied with. For construction of a penal provision, it is trite, the golden rule of literal interpretation should be applied. The difficulty which may be faced by the Revenue is of no consequence. The power under Section 11A of the Act can be invoked only when a duty has not been levied or paid or has been short-levied or short-paid. Such a proceeding can be initiated within six months from the relevant date which in terms of sub-section (3)(1)(b) of Section 11A of the Act (which is applicable in the instant case) in a case where duty of excise is provisionally assessed under the Act or the Rules made thereunder, the date of adjustment of duty after the final assessment thereof. A proceeding under Section 11A of the Act cannot, therefore, be initiated without completing the assessment proceedings."

9. Since the present proceedings were initiated under Section 28 *ibid* before finalization of the assessment, the same is not maintainable at this juncture. However, the Department is at liberty to take appropriate measures after finalization of the Bill of Entry in question.

10. In view of the above, we do not find any merits in the Impugned order. Accordingly, after setting aside the same, we allow the appeals in favour of the appellants."

5.3 In the present case it is observed from the endorsement in the Bills of Entry that the same were provisionally assessed. Thus, following the decision of Hon'ble Tribunal in the case of M/s. Roochees Time Pvt. Ltd. & Others Versus. C.C.E. Jaipur-1 [2017 (6) TMI 696 CESTAT NEW DELHI] and the judgement of Hon'ble Supreme Court in the case of Commissioner of Central Excise and Customs, Mumbai Vs. ITC Ltd.- [2006 (203) E.L.T. 532 (S.C.)], I am of the considered view that the present proceeding was initiated under Section 28 *ibid* before finalization of the assessment and the same is not maintainable.

5.4 Further, the Hon'ble Tribunal, Kolkata in the case of Commissioner of Customs (Port), Kolkata Versus Narsingh Ispat Limited [2020 (373) E.L.T. 118 (Tri. - Kolkata)] has held that it is well-established legal principle that an assessment which is provisional is provisional for all purposes.

6. In view of the above, the impugned order is set aside and the appeal is allowed. The adjudicating authority is directed to take appropriate measures after finalization of the subject Bills of Entry.

सत्यापित/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.


(Amit Gupta)

Commissioner (Appeals),
Customs, Ahmedabad

By Registered Post A.D.

F. Nos. S/49-54,172,358,386,502,503/CUS/JMN/24-25
5906

Dated:26.02.2026

To

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Copy to:

- ✓ 1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs(Prev), Jamnagar
3. The Additional Commissioner of Customs, Customs (Prev), Jamnagar.
4. The Assistant Commissioner, Customs Division, Bhavnagar
5. Guard File.