



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: - 20260371MN0000999F5F

क	फ़ाइल संख्या FILE NO.	S/49-501/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-466-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	16/Addl Commr/2024-25 dated 30.01.2025
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Compass Shipping Agency, 308, Prithvi Plaza, Opp. Ghogha Circle, Bhavnagar-364 001



- 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.
- 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)	बैगज 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 रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-	
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench

	दूसरी 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

M/s. Compass Shipping Agency, 308, Prithvi Plaza, Opp. Ghogha Circle, Bhavnagar-364 001 (hereinafter referred to as the 'appellant') filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 16/Addl Commr/2024-25 dated 30.01.2025 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Customs (Preventive), Jamnagar, (hereinafter referred to as "the adjudicating authority").

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 vessel MT BOW FLOWER (IMO No.9047491) (hereinafter referred to as "the said vessel") at Alang Anchorage for breaking purpose. The said vessel arrived at Alang Anchorage for breaking purpose on 18.04.2022 from Kandla Port (India) and the boarding of the said vessel was carried out on 18.04.2022. The Master of the said vessel provided the details of the quantity of the bunker & provision / stores consumed during last voyage from Kandla Port to Alang (Bhavnagar). On the basis of these details, the Shipping Agent filed the Manual Bill of Entry No. 8343665-A on 02.06.2022 and self-assessed the Value of Bunker & Provision / Store and Customs duty payable thereon in the said Bill of Entry. The said bill of entry was provisionally assessed and the provisionally assessed duty was paid vide Challan No. IMP-SBY/11/2022-23 dated 30.06.2022.

2.1 The Department took a view that duty has been short-paid by the shipping agent amounting to Rs. 9,14,587/- and thereafter issued Show Cause Notice Dated 09.04.2024 raising a demand of the Differential Customs Duty of Rs.9,14,587/- on Marine Gas Oil (MGO)/ High Speed Diesel (HSD) 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 order, has confirmed the aforementioned duty demand along with interest and also imposed penalty of Rs 1,00,000/- 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 appellant before making other submissions on facts and legal submits that impugned vessel was foreign going vessel and never converted in to coastal vessel in the matter so not liable to pay any duty of customs not to speak of differential duty of customs as demanded on the Marine Gas Oil/HSD, it would like to submit that it is admitted facts on record that the bills of entry is not self-assessed as provided under Section 17(1) of the Customs Act, 1962 but provisionally assessed by the proper officer as provided under Section 18(1) of the Customs Act, 1962 though none of the clause of sub-section (1) of Section 18 ibid exists in the matter so as to provisionally assess the bills of entry. As per Section 18(2)(a) read with Section 28(1)(a) of the Customs Act, 1962 read with meaning of relevant date as per Explanation 1(b) etc duly supported with the settled position of law discussed in para infra if any notice was required to be issued same was required to issue under Section 18(2) of the Customs Act, 1962 that why Bills of Entry should not be finally assessed with the proposed rate of duties with interest. Therefore, invocation of provisions of Section 28 of the Customs Act, 1962 is totally erroneous and without appreciating the facts available on record that impugned Bills of Entry is provisionally assessed.
- Appellant submits that in view of the provisions of Section 18(2) read with sub-section (3) of the Customs Act, 1962 the proper officer is required to be assessed duty finally or re-assessed in the case of goods cleared for home consumption and the amount paid may be adjusted against the duty finally assessed or re-assessed, as the case may be, and if the amount so paid falls short of, the importer of the goods may pay the deficiency, with interest under section [28AA] from the first day of the month in which the duty is provisionally assessed till the date of payment thereof,
- The appellant further submits that in the same way as per Section 28(1)(a) read with Explanation 1(b) of the Customs Act, 1962 where any duty has not been levied or not paid or has been 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, the proper officer shall, within two years) from the relevant date i.e. the date of adjustment of duty after the final assessment or re-assessment, as the case may



A

be, in a case where duty is provisionally assessed under section 18, 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.

- Thus, it is premature to demand differential duties of Customs under Section 28 of the Customs Act, 1962 as in the instant case the impugned Bills of Entry is yet to be finally assessed as provided under Section 18(2) of the Customs Act, 1962. Therefore, question of short payment of duty under Section 28 *ibid* does not arise at all. Appellant submits that though the said provisions are very clear and simple, in support of the above it refers and relies upon amongst other following decisions of Hon'ble Apex Court, High Courts and Tribunal:
 - (i) COMMISSIONER OF C. EX. & CUSTOMS, MUMBAI Versus I.T.C. LTD. 2006 (203) E.L.T. 532 (S.C.)
 - (ii) PRAMOD KUMAR NATHANI Versus UNION OF INDIA 2016 (340) E.L.T. 642 (Cal.)
 - (iii) JAJU PETRO CHEMICAL PVT. LTD. Versus COMMISSIONER OF CUSTOMS (PORT)-2017 (354) E.L.T. 614 (Cal.)
 - (iv) DEEP JYOTI WAX TRADERS PVT. LTD. Versus COMMISSIONER OF CUSTOMS (PORT) - 2016 (333) E.L.T. 265 (Cal.)
 - (v) ITC LIMITED Versus UOI 2010 (250) E.L.T. 189 (Del.)
 - (vi) SAHARSH DISTRIBUTORS PVT. LTD. Versus COMMISSIONER OF CUS., NEW DELHI-2017 (354) E.L.T. 671 (Tri. Del.)
 - (vii) IOCL Versus COMMISSIONER OF CUSTOMS, MANGALORE 2003 (159) E.L.T. 1152 (Tri. - Chennai)

It may please be appreciated that provisions for provisional assessment and demand of duty short paid not paid etc. of Central Excise Act, 1944 and Customs Act, 1962 are *pari materia*, therefore, ratio laid down by the above referred some of the decisions for Central Excise is squarely applicable in the facts and circumstances of the case. Therefore, it is prayed that impugned order may be quashed and set aside only on this ground alone.

- The learned Additional Commissioner has ignored these vital submissions and grossly erred in determining the differential duty



under Section 28 of the Customs Act, 1962 in sheer disregard to above provisions and settled position of law. He miserably failed to appreciate that bills of entry were provisionally assessed and without final assessment of Bills of Entry no duty can be demanded and confirmed under Section 28 of the Customs Act, 1962. Since, the assessment was provisional and duty of customs were paid at the behest of the officers of the Customs so as to get beaching permission early and handover the vessel to the importer, so it cannot be said that duty paid by appellant is final. The learned Additional Commissioner has totally misplaced the provisions of Section 2(23) "Import", Section 2(27) customs, over Section 2(21) "India" and Section 12 for levy of duty of "Foreign Going Vessel" and Section 87 of the Customs Act, 1962. In the manner the learned Additional Commissioner has interpreted the said provisions of Section 2(23) "Import", Section 2(27) "India" and Section 12 for levy of duty of customs, then all the vessel which touching intermediate port, all foreign going vessel have to pay duty of customs on bunker/fuel, store, provision etc. Therefore, his entire findings for confirmation of demand including the findings that bills of entry was self-assessed and duty paid by the appellant is disputed in demand under Section 28 is totally erroneous.

- Appellant further submits that it is not the case of the department that the said vessel was converted into coastal run, It is admitted facts on record that the said vessel was foreign going vessel within the meaning of Section 2(21) of the Customs Act, 1962 and never converted into coastal run after arriving at any port of India or from the last call of port of India i.e. Kandia or use in coastal run and voyage from Kandla to Albang was for scrapping/ breaking of the vessel at Alang Ship Breaking Yard. This fact is also not in dispute. So vessel remained Foreign Going Vessel till she reaches at Along Ship Breaking Yard for breaking.
- The learned Additional Commissioner either failed to understand the simple language or intentionally tried to twist the same. It is not matter of dispute that vessel was time being engaged in the carriage of goods upto the last call of port i.e. Alang as it had carried the cargo upto the intermediate port i.e. Kandla and there cannot be any need to carry cargo from Kandla to Alang. The learned Additional Commissioner also failed to appreciate that the



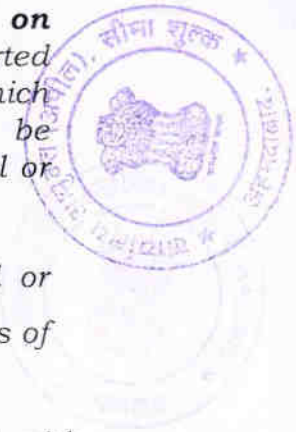
said definition also provides the touching any intermediate port in India and many foreign going vessel's voyages are from one port in India to another port in India may be with carriage of goods or without carriage of goods and for such journey no vessel is required to pay duty of customs on usage of Fuel, Provisions, stores etc. as vessel remain foreign going vessel only. The duty of customs is being collected only on usage of fuel, provisions, stores etc only when the vessel is converted from foreign going vessel to coastal run vessel and not in any other case. The learned Additional Commissioner has contradicted his finding on provisions of Section 87 of the Customs Act, 1962. Similarly, he has erroneously referred the Circular No. 58/97 dated 06.11.1997 as appellant had not placed the reliance on the same. In the same way he has erroneously placed reliance upon Circular No. 15/2018 dated 04.10.2018 which is for passenger cruise carry tourist on one place in India to another place in India and not identical to the present case.

- Appellant submits that as per the provisions of Section 87 of the Customs Act, 1962 any imported stores on board a vessel may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft. "Stores" is defined at Section 2(38) of the Customs Act, 1962, which read as under:

"SECTION 87. 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."

Section 2(38) "stores" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting;

Thus, as per the above provisions of Section 87 read with Section 2(28) no duty was payable on stores including fuel, provisions etc. when same were imported and consumed on board a foreign going vessel. Therefore, even otherwise, confirmation of demand of differential customs duty on Marine Gas Oil (HSD) is without jurisdiction and liable to be quashed.



- The learned Additional Commissioner again miserably failed to read and understand the plain language of the said section. He has not disputed the status of vessel as foreign going vessel and the Customs Act nowhere provides to collect customs duty on fuel, stores, provisions etc. on voyage of foreign going vessel from one port in India to another port of India. Such duty can be collected only when such vessel converted into coastal run and used for carrying cargo one port in India to another port in India. If the interpretation made by the learned Additional Commissioner is considered as correct then all the foreign going vessel when touches intermediate ports, duty of customs is required to be collected on the fuel, stores, provisions etc. but same is not being done at all.
- Appellant submits that Hon'ble Apex Court, Hon'ble High Court and Hon'ble CESTAT amongst other following decisions have held that no customs duty is payable on consumption of fuel for voyage of vessel from one port of India to another port of India when vessel is foreign run vessel.
 - (i) JAIN MARINE SERVICES Versus COMMISSIONER OF CUSTOMS, JAMNAGAR - 2009 (240) E.L.T. 723 (Tri. - Ahmd.)
 - (ii) COLLECTOR OF CUSTOMS & C. EX. Versus SOUTH EAST ASIA SHIPPING CO. LTD - 1989 (43) E.L.T. 479 (Tribunal)
 - (iii) THE GREAT EASTERN SHIPPING CO. LTD. v. UNION OF INDIA AND ANOTHER MISC. PETITION NO. 172/69, DECIDED ON 10-2-1973 - Bombay High Court
 - (iv) COLLECTOR OF CUSTOMS, AHMEDABAD Versus SHIPPING CORPORATION OF INDIA LTD. - 1987 (29) E.L.T. 182 (Tribunal)
 - (v) ASEAN CABLESHIP PVT. LTD. Versus COMMISSIONER OF CUSTOMS, COCHIN - 2020 (374) E.L.T. 597 (Tri. - Bang.)
- The above referred decisions are purely on the subject but the learned Additional Commissioner has summarily rejected all these decisions, in sheer disregard to judicial discipline and placed reliance upon judgements/decisions where in facts and circumstances of each case different and issue in those cases was not similar to present case.



- Appellant further submits that it is failed to understand that if any differential duty is payable by it on the Bunker viz. Marine Gas Oil/High Speed Diesel i.e. calculated in the present SCN less already self assessed as well as provisionally assessed then why the proper officer while making order of provisional assessment has not re-assessed the duty of customs especially when Agriculture Infrastructure and Development Cess (AIDC) (Rs. 4 per liter) and Road and Infrastructure Cess equivalent to Additional duty of Customs (@ Rs. 8 per liter) were not self assessed by Appellant.
- Appellant submits that in fact the said two Cesses were exempted vide Notification No. 11/2021-Cus. dated 01.02.2021 (Sr. No. 17) and 21/2018-Cus. dated 02.02.2018 respectively. Therefore, neither Appellant nor the proper officer while assessing the bills of entry provisionally not assessed the said two cesses. Therefore, no differential duty is payable by it as difference is arrived due to demand of two cesses and thereby calculation of Social Welfare Surcharge and the Additional Duty of Customs under sub-section (5) of Section 3 of the Customs Tariff Act, 1975 on the said two cesses.
- In view of the above, in any case impugned order is liable to be quashed and set aside on this ground alone as bills of entry was never finalized therefore no differential duty can be determined under Section 28 ibid. In any case, difference in duty provisionally assessed and to be finally assessed is demand of said two cesses only, which were exempted under the said two notifications.
- Appellant in view of the above most respectfully submits that since the said vessel was foreign going vessel and no duty was payable on the said 3 goods used while her voyage from Kandla to Alang Ship Breaking Yard so question of payment of differential duty does not arise at all irrespective of the facts that same were exempted. On the contrary it is entitled for refund of Rs. 14,11,291/- as provided under Section 18(2) of the Customs Act, 1962. Therefore, it is prayed that impugned order may be set aside confirming demand under Section 28b ibid and Bills of Entry may be ordered to assess finally with Nil duty on all the said 3 goods viz. Bunker/Provisions etc. with consequential relief.



4. Shri P. D. Rachchh, Advocate, appeared for personal hearing in virtual mode on 15.01.2026. He reiterated the submissions made at the time of filing appeal.

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 appellant has submitted that the subject Bill of Entry was provisionally assessed. On bare perusal of the subject Bill of Entry submitted, I find that the Bill of Entry has not been finalized and is still Provisional.

5.2 It is observed that the Bill 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.

5.3 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.”

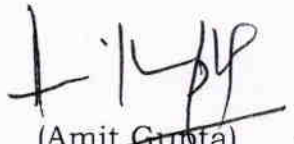
5.4 In the present case it is observed from the endorsement in the Bill of Entry that the same was provisionally assessed. Thus, following the decision of Hon'ble Tribunal in the case of M/s. Roochees Time Pvt. Ltd. & Others Versus. C.C.E. Jaipur-1 [2017 (6) TMI 696 CESTAT NEW DELHI] and the judgement 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.

5.5 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 Bill of Entry.

सत्यापित/ATTESTED

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


 (Amit Gupta)
 Commissioner (Appeals),
 Customs, Ahmedabad

By Registered Post A.D.

F.No. S/49-501/CUS/JMN/24-25

Dated:30.03.2026

To

- (1) M/s. Compass Shipping Agency,
308, Prithvi Plaza, Opp. Ghogha Circle,
Bhavnagar-364 001,
- (2) P. D. Rachchh, Advocate,
PR Associates, 901-B,
The Imperial Heights,
150 Feet Ring Road, Rajkot - 360 001,



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. Guard File.

