सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS),अहमदाबाद AHMEDABAD,

चौथी मंज़िल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20260271MN0000777F70

क	फ़ाइलसंख्या FILE NO.	S/49-509/CUS/JMN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	JMN-CUSTM-000-APP-438-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.02.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Final Assessment Order No SBY/10/2012-13 dated 28.09.2012 issued from F. No. BE/SBY/241/2011-12
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	26.02.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. NAVYUG SHIP BREAKING CO., 03, Steel Center, Lokhand Bazar, Bhavnagar, works at Plot No. 152 & 153, Ship Recycling Yard, Alang/Sosiya, Dist. Bhavnagar

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय,

	(राजस्वविभाग) संसदमार्ग,नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै.
	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.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो.
(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)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	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)	कोर्टफीएक्ट,1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(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)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क,मांगागयाब्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.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.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	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, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ — **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**

	दूसरीमंज़िल,बहुमालीभवन,निकटगिरधरनगरपुल,असारवा,अहमदाबाद-380016	2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-**	
	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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.**	
(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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पांचहज़ाररुपए**	
(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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.**	
(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)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके 10%अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।	
(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.	**उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.**	
	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.	

M/s. NAVYUG SHIP BREAKING CO., 03, Steel Center, Lokhand Bazar, Bhavnagar, works at Plot No. 152 & 153, Ship Recycling Yard, Alang/Sosiya, Dist. Bhavnagar (hereinafter referred to as "the appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the Final Assessment Order No SBY/10/2012-13 dated 28.09.2012 issued from F. No. BE/SBY/241/2011-12 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Customs Division, Bhavnagar (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant had purchased and imported one vessel MV KADMOS (hereinafter referred to as the "said vessel") for breaking from M/s Monteros Maritime Inc, P.O.Box No 556, Charlestown Nevis as per the Memorandum of Agreement dated 21/09/2011. The Light Displacement Tonnage (LDT) / Light Ship of the said Vessel as declared in the MOA dated 21.09.2011 was 10456 MT/10291.3 LT and the total purchase price was U.S.D 5,231,000.00 C.I.F. at safe anchorage Alang, West Coast, India. The said vessel arrived at Alang anchorage on 01.11.2011 and completed customs boarding formalities on 02.11.2011. Entry inward to the vessel was granted on 02.11.2011. During the course of accomplishing vessel's arrival Boarding formalities a Trim and Stability Information Booklet in the name of the vessel "M/V KADMOS was found on board the vessel which has been found approved by the Class Surveyors. In the above Trim and Stability Book, the LDT of the vessel was found mentioned as 10456.30 MT. The said Book has been stamped & signed by the master of the vessel in token of having found on board the vessel and certifying LDT of the same.

2.1 The appellant filed Bill of Entry under protest for clearance of the said vessel u/s 46 of the Customs Act, 1962 on 22/11/2011 along with relevant documents viz. copy of MOA Survey Report dated 02/11/2011 for Lightship, Bunkers etc. The Trim and Stability Book has shown the LDT of the vessel as 10456.30 MT i.e. 10291.63 LT and the said weight of the vessel has been duly certified by the surveyor M/s. Pinnacle Marine Services Pvt. Ltd., D. Mantresh Shopping Point, Ghogha Road, Bhavnagar vide their Survey Report No. BHV/1849-A/11 dated 02.11.2011. Accordingly, the Bill of Entry was assessed provisionally u/s 18(1) of the Customs Act, 1962 for want of production of documents viz, original Bill of Sale and Commercial Invoice & MOA. The import duty of Rs 4,33,73,508/- assessed provisionally thereon was paid by the importer vide Challan No.

IMP-SBY/421/2011-2012 dated 22/11/2011. The out of customs charge of the said vessel was given on 03/12/2011.

2.2 Subsequently, the importer vide their letter dated 22/11/2011 submitted a Building Certificate of Industrias Reunidas Caneco S.A., Rio De Janeiro, Brazil in the ex-name "NATICA showing Light Weight of the vessel noted during weight measurement before its delivery as 9846.60 MT. Further, the importar also submitted Addendum No. 1 dated 19.11.2011 to the said MOA reducing the purchase price to USD 4,826,000.00 and Addendum No. 2 dated 19.11.2011 mentioning the light ship of the vessel 9846 MT/9690.9 LT.

2.3 The provisional assessment was finalized by the impugned order by which it was held that the Transaction value of the vessel has to be taken as USD 5,231,000/- which was mentioned in the MOA dated 21.09.2011. Aggrieved with the impugned order the appellant filed appeal before the Commissioner (Appeals), who vide Order in Appeal No 277/COMMR(A)/JMN/2013 dated 12.09.2013 upheld the impugned order.

2.4 Aggrieved with the Order in Appeal No 277/COMMR(A)/JMN/2013 dated 12.09.2013 the appellant filed appeal before Hon'ble CESTAT, Ahmedabad. The Hon'ble CESTAT, Ahmedabad vide Final Order No. A/10923/2022 dated 15.08.2022 set aside the Order in Appeal No 277/COMMR(A)/JMN/2013 dated 12.09.2013, and remanded the matter to the Commissioner (Appeals) for fresh consideration, particularly in relation to the genuineness of the addendum entered into between the appellant and the supplier and all the issues are kept open.

3. In remand proceedings Shri Rahul Gajera, Advocate appeared for personal hearing on 12.02.2026 in virtual mode on behalf of the appellant. He reiterated the submissions made before Hon'ble CESTAT pursuant to which matter was remanded. He pointed out Para 7 of Hon'ble CESTAT Order dated 5-8-2022, in support of his argument that once the cogency of the reasons for price reduction is established and not in dispute, authenticity of addendum by which price was reduced also cannot be called in question.

4. The appellant has made the following submissions before the Hon'ble CESTAT pursuant to which matter was remanded. The appellant reiterated the submissions made before Hon'ble CESTAT which are as under:

- Since the original price of USD 5,231,000/- mentioned in MOA dated 21-9-2011 was by agreement between the Seller and the Appellants substituted by the reduced price of USD 4,828,000/- by Addendum dated

19-11-2011, prior to the delivery of the vessel on 21-11-2011 and since only the agreed reduced price was actually paid by amendment to letter of credit on 19-11-2011, the said reduced price is the transaction value of the vessel under Section 14 of the Customs Act 1962.

- It is undisputed that the price of US $ 5,231,000/- originally mentioned in The MOA dated 21-9-2011 was by agreement between the Seller and the Appellants substituted by the reduced price of US $ 48,28,000/- by Addendum anted 19-11-2011 executed by the Seller and the Appellants.
- It is also undisputed that the said Addendum was executed by the Seller and the Appellants on 19-11-2011 prior to the delivery of the vessel to the Appellants on 21-11-2011.
- It is also undisputed that it is only the reduced price of US $ 4,828,000/- which has been actually paid by the Appellants to the Seller by amendment made to the Letter of Credit on 19-11-2011 and no amount over and above US S 4,828,000/- has been paid by the Appellants to the Seller.
- In view of the above, it is the said reduced price of US $4,828,000/- which is the transaction value of the vessel in terms of Section 14 of the Customs Act 1962. In support of this submission, reliance is placed on the decision of the Hon'ble Tribunal in the case of CC v Jai Bharat Steel Industries-2005 (192) ELT 792, which has been upheld by the Hon'ble Supreme Court in 2016 (340) ELT A138 (SC) As laid down in the aforesaid decision, where the price of the vessel imported for breaking up, is before the delivery of the vessel to the importer at the anchorage, reduced by mutual agreement between the Seller and the importer by Addendum to the original MOA, and only such reduced price is actually paid by the importer to the Seller, it is such reduced price actually paid, which is the transaction value under Section 14 and the original price mentioned in the MOA which is not paid, cannot be the transaction value under Section 14.
- As held in Paras 13, 13.1, 13.2, 13.3 and 14 of the aforesaid decision in CC v Jai Bharat Steel Industries, where the vessel was to be at the risk of the seller until delivered to the buyer, the property/ title in the vessel continued to vest in the Seller and therefore prior to delivery of the vessel, the parties were free to negotiate the price originally fixed and bring about a variation in the original contract in which event they will not be held bound to the terms of the original contract and the altered terms will now bind them. In such an event it is negotiated reduced price which is payable and is therefore the transaction value of the goods. As held in the said judgment, with reference to the provisions of Sale of Goods Act 1930 and Section 62 of the Contract Act, if the parties to the contract agree to

substitute a new contract or to rescind or alter it, the original contract need not be performed. This means that if the parties have agreed to a different price than the one which was stipulated in the original contract, the buyer cannot be compelled to pay the price originally stipulated after the parties have mutually agreed to substitute a reduced price by altering the original contract. Therefore, as held in the said judgment, the price originally fixed in the MOA is not inflexible and it could be varied by mutual agreement of the parties to the contract and since it is such varied price which is actually paid, it is such varied price which is the transaction value under Section 14 of the Customs Act 1962.

- Similarly, in the case of Chaudhary Ship Breakers v CC-2010 (259) ELT 161 (SC), in which the vessel had been imported for being broken up and the price mentioned in the original MOA dated 19-11-1997 was reduced by Addendum dated 8-12-1997 after the arrival of the vessel on 21-11-1997, the Hon'ble Supreme Court held that in view of Section 14 of the Customs Act 1962, the factum of actual payment of the price in terms of the Addendum cannot be ignored while determining the value of the vessel under Section 14 of the Customs Act 1962.
- In view of the aforesaid decisions, the Assistant Commissioner and Commissioner (Appeals) have clearly erred in holding that since at the time of entry of the vessel in territorial waters of India, the price was US $ 5,231,000/- in terms of the MOA, the same has to be taken as the transaction value for the purpose of Section 14 of the Customs Act 1962 and that the reduced price (actually paid) agreed upon after the goods entered the territorial waters of India cannot be the transaction value. In the aforesaid decisions, the reduction in the price was agreed upon only after the arrival of the vessel in India.
- Genuineness of the Addendum by which the price was reduced before delivery of the vessel and necessity of price reduction are unquestionable. It is undisputed that the said Addendum was executed by the Seller and the Appellants on 19-11-2011 prior to the delivery of the vessel to the Appellants on 21-11-2011. It is also undisputed that it is only the reduced price of US $ 4,828,000/-which has been actually paid by the Appellants to the Seller by amendment made to the Letter of Credit on 19-11-2011 and no amount over and above US $ 4,828.000/- has been paid by the Appellants to the Seller. The genuineness of the Addendum is therefore unquestionable.
- As mentioned herein above, in terms of Clause 13 (F) of the MOA, the Seller was required to certify and confirm the light weight of the vessel to be 10291.3 L Tons based on Trim And Stability Booklet and/or Capacity Plan and/or Deadweight Scale and/or Builder's Certificate.

- During the boarding of the vessel the following documents were found on board the vessel:

  a) Building Certificate dated 12-1-1983 of Industrias Reunidas Caneco S.A. who had built the vessel and as per which the Light Weight of the vessel was 9,846.60 Tons.

  b) Photocopy of pages of Trim and Stability Book as per which the Light Weight of the vessel was 10456.30 M. Tons.

- In view of the Building Certificate of the vessel Builder showing lesser Light Weight of 9,846.60 Tons than that mentioned in the MOA, the Appellants by letter dated 8-11-2011 addressed to the local agents of the Seller, declined to accept delivery of the vessel.

  In response to the Appellants' said letter dated 8-11-2011, the Seller gave legal notice dated 8-11-2011, to the Appellants through their London Lawyers, Stepenhson Harwood, threatening legal proceedings against the Appellants.

  The Appellants responded to the said legal notice by their e-mail of 9-11-2011 whereby the following points were made:

(a) That the original builder certificate duly signed bearing the stamp of the Builder was found on the vessel which shows that the Light weight of the vessel was 9846.60 Tons,

(b) That only photo copy of few pages of Trim and Stability Book had been provided and that the original Trim and Stability Book is not produced,

(c) That as per the MOA, the Vessel was built in 1983 and there is no mention of any Conversion of the vessel till the time of sale which would alter the original Light weight of the vessel.

(d) That in view of the above it was evident that the seller was trying to defraud the Appellants by mentioning Light weight which was higher than that mentioned in the Builder Certificate.

- Upon the Appellants raising the aforesaid points in response to the legal notice given by the Sellers, the Sellers abandoned their threat of legal action against the Appellants and instead agreed to reduction in price and executed the Addendum, thereby vindicating the Appellants' stand as regards the Light Weight of the vessel.

- The Appellants' stand that when there was discrepancy in the Light Weight mentioned in the two documents referred to in Clause 13 (F) viz. Builder Certificate and Trim and Stability Book and the original of the latter in its entirety was not provided and when there is no Conversion Certificate or mention of Conversion of the vessel in the MOA which would alter the original Light Weight mentioned in the Builder's Certificate, the Seller was not entitled to claim the price on the basis of Light Weight

mentioned in the photocopy pages of Trim and Stability Book, stood accepted by the Seller.

- In the above circumstances it was not open to the Assistant Commissioner and the Commissioner (Appeals) to substitute their judgment for that of the Seller and hold that the Trim and Stability Book was more authentic. The very fact that in response to the points raised by the Appellants by their e-mail dated 9-11-2011, the Sellers, who were acting with legal advice, abandoned their threat of legal action against the Appellants and instead agreed to reduction in price and executed the Addendum, vindicated the Appellants' stand. The genuineness of the Addendum and the necessity of price reduction agreed to thereby cannot therefore be questioned.

5. I have gone through the facts of the case available on record, grounds of appeal and submissions made during personal hearing. The issue to be decided in the present appeal is that the final assessment of the subject Bill of Entry done by the adjudicating authority taking transaction value as USD 5,231,000/- as mentioned in the MOA dated 21.09.2011, in the facts and circumstances of the case is legal and proper or otherwise.

5.1 It is observed that the appellant purchased and imported the vessel MV KADMOS (hereinafter referred to as "the said vessel") for ship breaking from M/s Monteros Maritime Inc., Charlestown, Nevis, under a Memorandum of Agreement (MOA) dated 21.09.2011. As per the MOA, the vessel's Light Displacement Tonnage (LDT) was declared as 10,456 MT (10,291.3 LT), and the total purchase price was USD 5,231,000 CIF Alang, India. The vessel arrived at Alang anchorage on 01.11.2011 and completed customs formalities on 02.11.2011. During boarding, a Trim and Stability Information Booklet found on board approved by class surveyors and signed by the Master recorded the LDT as 10,456.30 MT. The appellant filed a Bill of Entry under protest on 22.11.2011 under Section 46 of the Customs Act, 1962, supported by relevant documents, including a survey report dated 02.11.2011 issued by M/s Pinnacle Marine Services Pvt. Ltd., certifying the LDT at 10,456.30 MT. The Bill of Entry was provisionally assessed under Section 18(1) of the Act due to non-submission of the original Bill of Sale, Commercial Invoice, and MOA. Customs duty amounting to Rs. 4,33,73,508/- was paid on 22.11.2011, and out-of-charge was granted on 03.12.2011. Subsequently, the appellant submitted a Building Certificate issued by Industrias Reunidas Caneco S.A., Brazil (in the vessel's former name "NATICA"), indicating a light weight of 9,846.60 MT. Addendum No. 1 dated 19.11.2011 revised the purchase price to USD 4,828,000, and Addendum No. 2 dated 19.11.2011 revised the LDT to

9,846 MT (9,690.9 LT). However, the provisional assessment was finalized by the impugned order, holding that the transaction value remained USD 5,231,000 as per the original MOA dated 21.09.2011. The appellant's appeal was rejected by the Commissioner (Appeals) vide Order-in-Appeal No. 277/COMMR(A)/JMN/2013 dated 12.09.2013, thereby upholding the impugned order.

5.2 Aggrieved with the Order in Appeal No 277/COMMR(A)/JMN/2013 dated 12.09.2013 the appellant filed appeal before Hon'ble CESTAT, Ahmedabad. The Hon'ble CESTAT, Ahmedabad vide Final Order No. A/10923/2022 dated 15.08.2022 set aside the Order in Appeal No 277/COMMR(A)/JMN/2013 dated 12.09.2013, and remanded the matter to the Commissioner (Appeals) for fresh consideration, particularly in relation to the genuineness of the addendum entered into between the appellant and the supplier and all the issues are kept open.

5.3 It is observed that the original agreed price of the subject vessel was USD 5,231,000/- as reflected in the Memorandum of Agreement (MOA) dated 21.09.2011, on the basis of which the subject Bill of Entry was initially assessed by the adjudicating authority. Subsequently, vide Addendum No. 1 dated 19.11.2011 executed between the seller and the appellant, the price of the vessel was revised downward to USD 4,828,000/-, prior to delivery of the vessel on 21.11.2011. On examination of the records, it is seen that during boarding of the vessel, the original Builder's Certificate dated 12.01.1983 issued by Industrias Reunidas Caneco S.A., the builder of the vessel, was found on board. As per the said certificate, the Light Weight of the vessel was recorded as 9,846.00 MT, whereas the MOA dated 21.09.2011 declared the Light Weight as 10,456 MT. In view of this discrepancy, the appellant, vide letter dated 08.11.2011 addressed to the seller's local agent, declined to accept delivery of the vessel. In response, the seller, through their London-based solicitors, Stephenson Harwood, issued a legal notice dated 08.11.2011 to the appellant. The appellant, by e-mail dated 09.11.2011, reiterated that the original Builder's Certificate bearing the builder's signature and stamp clearly indicated the Light Weight as 9,846.00 MT. The appellant further contended that the MOA recorded the vessel as built in 1983 and did not indicate any subsequent conversion or modification that could have altered the original Light Weight. It is further observed that, upon receipt of the appellant's communication dated 09.11.2011, the seller withdrew the proposed legal action and agreed to renegotiate the terms. Consequently, the parties executed Addendum No. 1 (relating to price) and Addendum No. 2 (relating to weight) both dated 19.11.2011, whereby the original price of

USD 5,231,000/- was substituted with USD 4,828,000/-, and the Light Weight was revised to 9,846 MT / 9,690.9 LT in place of the figure originally mentioned in the MOA.

5.4 It is further observed that the price of USD 5,231,000/- originally reflected in the Letter of Credit dated 23.09.2011 was amended on 19.11.2011 to USD 4,828,000/- in line with the revised terms agreed between the parties. The appellant has submitted that only the reduced amount of USD 4,828,000/- was actually remitted to the seller pursuant to the amendment of the Letter of Credit dated 19.11.2011, and that no consideration over and above the said amount was paid. Accordingly, it is contended that USD 4,828,000/- represents the actual transaction value of the vessel within the meaning of Section 14 of the Customs Act, 1962. It is also observed that the reduced price stands corroborated by the Bill of Sale dated 18.11.2011 issued by the seller in favour of the appellant, wherein the purchase price of the vessel is recorded as USD 4,828,000/-.

5.5 Thus, the records reveal a clear and contemporaneous sequence of events commencing with the discovery of the original Builder's Certificate dated 12.01.1983 issued by Industrias Reunidas Caneco S.A., found on board the vessel, which indicated the Light Weight as 9,846.00 MT as against 10,456 MT declared in the MOA dated 21.09.2011. The discrepancy in weight prompted the appellant to formally decline acceptance of delivery and raise objections with the seller. This was followed by exchange of communications, including the legal notice issued by the seller and the appellant's detailed response substantiating its claim on the basis of the original Builder's Certificate. Consequent to such correspondence and negotiations, the parties mutually agreed to revise the contractual terms. The agreed reduction in price was formally recorded through Addendum No. 1 dated 19.11.2011 (pertaining to price) and Addendum No. 2 dated 19.11.2011 (pertaining to weight). The revised consideration of USD 4,828,000/- was further reflected in the Bill of Sale dated 18.11.2011 and duly incorporated in the amendment to the Letter of Credit dated 19.11.2011, whereby the amount stood reduced from USD 5,231,000/- to USD 4,828,000/-. It is also on record that the payment was effected only to the extent of the reduced amount. The above chain of documentary evidence establishes a consistent and credible nexus between the discovery of the discrepancy, renegotiation of contractual terms, amendment of financial instruments, and ultimate payment of the reduced consideration. In these circumstances, the amount of USD 4,828,000/- represents the price actually paid or payable for the vessel and therefore qualifies as the transaction value in terms of Section 14 of the Customs

Act, 1962. Accordingly, in view of the contemporaneous documentary trail and absence of any material to suggest additional consideration, the genuineness and bona fides of the addendum executed between the appellant and the supplier cannot be doubted.

5.6 In this regard I rely upon the decision in the case of Chaudhary Ship Breakers v CC-2010 (259) ELT 161 (SC), wherein the vessel had been imported for being broken up and the price mentioned in the original MOA dated 19.11.1997 was reduced by Addendum dated 08.12.1997 after the arrival of the vessel on 21.11.1997, the Hon'ble Supreme Court on question whether the transaction value of the vessel is to be price mentioned in the original MOA or the reduced price indicated in the addendum, held that in light of the statutory provisions, the factum of actual payment of the price in terms of the addendum cannot be ignored while determining the value of the vessel under Section 14 of the Customs Act 1962.

5.7 Further I also rely upon the decision of the Hon'ble Tribunal in the case of CC v Jai Bharat Steel Industries-2005 (192) ELT 792, which has been upheld by the Hon'ble Supreme Court in 2016 (340) ELT A138 (SC) wherein it was held that the price fixed in the MOA, though ordinarily binding on the parties, is not inflexible and is subject to any change that the parties to contract may mutually agree. It was further held that as provided by Section 3 of the Sale of Goods Act, 1930, the provisions of Indian Contract Act, 1872 would apply to such transactions. Section 62 of the Contract Act provides that if the parties to the contract agree to substitute a new contract or to rescind or alter it, the original contract need not be performed. This means that if the parties have agreed to a different price than the one which was stipulated in the original contract, the buyer cannot be compelled to pay the price originally stipulated after the parties have mutually agreed to substitute a reduced price by altering the original contract. Thus it is thus clear that that the price originally fixed in the MOA was not inflexible and it could be varied by mutual agreement of the parties to the contract and since it is such varied price which is actually paid, it is such varied price which is the transaction value under Section 14 of the Customs Act 1962.

5.8 In view of the foregoing discussion and the contemporaneous documentary evidence placed on record, I am of the considered opinion that the genuineness and validity of the addendum executed between the appellant and the supplier cannot be doubted. The reduction in price was not unilateral or post facto, but arose out of a substantiated discrepancy in the declared Light Weight of the vessel, duly supported by the original Builder's Certificate and followed by negotiations, formal execution of

addenda, issuance of a revised Bill of Sale, and corresponding amendment to the Letter of Credit. It is further evident that the original Letter of Credit dated 23.09.2011, which reflected the price of USD 5,231,000/-, was duly amended on 19.11.2011 to USD 4,828,000/- in consonance with the revised contractual terms. The records also indicate that payment was effected only to the extent of the amended amount. There is no material on record to suggest payment of any additional consideration, whether directly or indirectly. Accordingly, the amount of USD 4,828,000/-, being the price actually paid or payable for the vessel, constitutes the transaction value within the meaning of Section 14 of the Customs Act, 1962. Therefore, the assessable value of the subject vessel is required to be determined on the basis of USD 4,828,000/- and assessed accordingly.

6. In view of above, the appeal filed by the appellant is allowed.

(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

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

By Registered Post A.D.

F.Nos. S/49-509/CUS/JMN/2024-25/5889 Dated –26.02.2026

To,

1. M/s. NAVYUG SHIP BREAKING CO.,
   03, Steel Center, Lokhand Bazar, Bhavnagar,
   works at Plot No. 152 & 153, Ship Recycling Yard,
   Alang/Sosiya, Dist. Bhavnagar,

2. Shri Rahul Gajera, Advocate
   1004 D & C Dynasty, C G Road,
   Opp. S P Stadium, Navrangpura
   Ahmedabad- 380 009

Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Commissioner of Customs, Customs (Prev), Jamnagar.
3. The Deputy/Assistant Commissioner of Customs, Customs Division, Bhavnagar.
4. Guard File