सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको बिल्डिंगHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281

DIN: - 20260171MN000000E99E

क	फ़ाइल संख्या FILE NO.	S/49-367,421,464,465,506/CUS/JMN/24-25 & S/49-08,48,142,146,181/CUS/JMN/25-26
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-415 to 424-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	22.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	BEs as detailed in table 1 of the Order
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	22.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Nayara Energy Ltd., P. O. Box No. 24, Khambhalia P.O., Dist – Dev Bhumi Dwarka, Gujarat - 361305

1.	**यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.**
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	**सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन**

	संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported 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 दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :

	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा** **(ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

Ten appeals, as per details given in Table - 1 below, have been filed by M/s Nayara Energy Ltd., P. O. Box No. 24, Khambhalia P.O., Dist – Dev Bhumi Dwarka, Gujarat - 361305 (hereinafter referred to as the 'appellant') in terms of Section 128 of the Customs Act, 1962 against the provisional assessment made in following Bills of Entry as per Table-1.

Table-1

Sr No	Appeal No	Appeal filed on	Bill of Entry No.	Bill of Entry Date
01	S/49-367/CUS/JMN/2024-25	22.11.2024	6733386	18.11.2024
02	S/49-421/CUS/JMN/2024-25	18.12.2024	7149080	10.12.2024
03	S/49-464/CUS/JMN/2024-25	03.02.2025	7830609	17.01.2025
04	S/49-465/CUS/JMN/2024-25	03.02.2025	7808742	16.01.2025
05	S/49-506/CUS/JMN/2024-25	18.03.2025	8715436	05.03.2025
06	S/49-08/CUS/JMN/2025-26	09.04.2025	9176618	29.03.2025
07	S/49-48/CUS/JMN/2025-26	08.05.2025	9721465	26.04.2025
08	S/49-142/CUS/JMN/2025-26	12.06.2025	2241621	23.05.2025
09	S/49-146/CUS/JMN/2025-26	20.06.2025	2640017	13.06.2025
10	S/49-181/CUS/JMN/2025-26	24.07.2025	3213346	12.07.2025

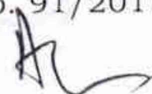
2. Facts of the case, in brief, as stated in the appeal memorandum are that the appellant had imported steam coal in bulk of Indonesian origin and filed Bills of Entry as detailed in Table - 1 for clearance of such coal which arrived by vessel at Salaya port, Salaya. However, due to insufficient draft at Salaya port, the vessel was not in a position to reach the jetty, the landing place for unloading of the coal. The vessel had to be made lighter and only after this lighterage, it could enter the waters of Salaya port and reach the landing place at the jetty. For the purpose of this lighterage, floating crane was used to transfer the coal into barges, and thereafter, the vessel and the barges reached the jetty, the landing place of coal where the entire quantity of coal imported by the vessel was discharged. The floating crane and barge charges, as part of lighterage, had to be paid additionally by the appellant to the entity that organized this lighterage, and in addition to that, GST was also paid, which was attracted on availing the services of the floating crane and the barges. Addition of these charges in the CIF value of the goods resulted in extra

payment of customs duty. The Bills of Entry as detailed in the Table – 1 were assessed provisionally under Section 18 of the Customs Act, 1962 and the appellant also executed the bond as required under this section.

2.1 Since payment of the duty on lighterage was made by the appellant under protest, the appellant, vide its letter submitted on the same date when the Bills of Entry were filed, requesting the department to finalize the matter and issue a speaking order containing the grounds and cogent reasons as to why these charges were required to be added to the assessable value for charging customs duty. The appellant was of the view that these charges were not required to be added to the value for calculation of duty. The appellant further submitted that despite specific request for issuance of a speaking order on this issue, the department has not yet given any speaking order on this issue. Accordingly, the appellant was compelled to file this appeal against the provisionally assessed Bills of Entry, with respect to addition of these charges in the assessable value, in the absence of any speaking order.

3. Accordingly, the appellant aggrieved by the provisionally assessed Bills of Entry has filed the present appeals and mainly contended that:

- The present appeals being filed is only against the provisionally assessed Bills of Entry, is maintainable even in the absence of a formal speaking order passed by the department. This legal position is no more res integra, particularly in view of the Apex Court judgement in the case of ITC Ltd. vs. Commissioner of CE Kolkata [2019 (368) ELT 216 (SC)]. The Hon'ble Court, in para 43 of this judgement, has observed that Section 128 of the Customs Act, 1962 does not provide for filing of an appeal only against a speaking order but that it provides for filing of an appeal against any assessment order, including self-assessment, provisional assessment and that it is of wide amplitude. In light of this observation of the Apex Court, the Appellant submits that the present appeal before Your Honour is maintainable.
- The Appellant submits that in its protest letters, it has succinctly explained as to why these floating crane and barge charges are not required to be added to the assessable value for the purpose of levy of customs duty after amendment was made in sub-rule (2) of rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, (hereinafter referred to as 'the Valuation Rules' in short), by Notification No. 91/2017-Cus (N.T.)



dated 26.09.2017. A comparison of Rule 10(2), as it was before amendment before 26.09.2017 and after the amendment, will show that a substantial change has been introduced in rule 10(2) of the Valuation Rules so far as the "place of importation" of goods, for customs purposes, is concerned.

- Section 14 of the Customs Act, 1962 provides that for the purpose of charging customs duty, the value of the imported goods shall be the transaction value namely the price actually paid or payable for the goods, subject to such other conditions as may be specified in the Valuation Rules. The proviso to sub-section (1) of section 14 provides that the transaction value in case of imported goods shall include certain amounts and in particular relevant for the present proceedings, the cost of transport of the goods to the place of importation to the extent as provided for in the Valuation Rules.

  Sub-rule (2) of rule 10 before its amendment provided as follows:

"(2) --- For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 and these rules, the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include ----

(a) the cost of transport of the imported goods to the place of importation;

(b) loading, unloading and handling charges associated with the delivery of the imported goods ***at the place of importation****; and*

(c) the cost of Insurance"

After its amendment on 26.09.2017, sub-rule (2) of rule 10 of the Valuation Rules read as follows:

"(2) --- For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 and these rules, the value of the imported goods shall be the value of such goods and shall include ----

(a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods ***to the place of importation****;*

(b) the cost of Insurance to the place of importation."

- A perusal of the sub-rule (2) of rule 10 before and after its amendment will reveal the crucial change that was made. The expression "at the place of importation" has been replaced by the expression "to the place of importation". Sub-rule (2) of rule 10 before its amendment provided inclusion of:

  (a) the cost of transport of the imported goods to the place of importation;

  (b) loading, unloading & handling charges associated with the delivery of the imported goods at the place of importation; and

  (c) the cost of Insurance.

  After amendment, the earlier clauses (a) & (b) have been merged into clause (a) only and both the cost of transport, loading, unloading & handling charges associated with the delivery of the imported goods are now included together in clause (a). Now in respect of the cost of transport as well as loading, unloading and handling charges, the relevant point is "to the place of importation" and no longer "at the place of importation".

- To appreciate the significance of the amendment, the definition of "place of importation" has to be seen. While earlier, the expression "place of importation" was not defined anywhere, it has since been defined in the same amending Notification No.91/2017 by adding clause (da) in rule (2) of the Valuation Rules. Clause (da) of rule (2) of the Valuation Rules provides that "place of importation" under this clause means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse. Since clause (da) refers to the customs station, one has to see the definition of customs station also. "Customs station" is defined in sub-section (13) of section (2) of the Customs Act, 1962 and means any customs port, customs airport or land customs station.

- The place of importation read with sub-rule (da) of rule (2) of the Customs Valuation Rules and sub-section (13) of section (2) of the Customs Act, 1962 in the present context will mean the Salaya port and its water with specified boundary. Reference to the cost of

transport, loading, unloading, handling charges and the cost of Insurance, after amendment to sub-rule (2) of rule (10) of the Valuation Rules will now mean the cost of transport, the cost of loading & unloading etc. as also Insurance upto the waters of Salaya port as that will be the place which is relevant for these charges as "to the place of importation" meaning thereby as "to the port of Salaya".

- As against this, the expression 'at the place of importation' signifies the place of delivery of the imported goods which in other words will mean the jetty or the customs area for unloading the goods from where clearance is effected after compliance with the customs procedure. The place of delivery of the goods is the landing place for unloading of the goods whose limits are specified by the competent authority under section 8 of the Customs Act, 1962. As against this, the limits of a port are specified when the port is appointed by the Board under section (7) of the Customs Act, 1962.
- Bringing the imported goods to the port will mean bringing them to the limits specified of the concerned port under section (7) of the Customs Act, 1962 while giving delivery in the customs area, which is a landing place, the limits of which are specified under section 8 ibid. Before amendment, therefore, the cost of transport, loading & unloading & insurance was in the context of the landing area and with the amendment, these costs are only upto the point within the limits of the port.
- The circular No.39/2017-Cus dated 26.09.2017_was issued by the Central Board of Indirect Taxes ('the Board' in short) to clarify the effect of amendment made in sub-rule (2) of rule 10 of the Valuation Rules vide Notification No. 91/2017-Cus(NT) dated 26.09.2017. The Board has clarified that in the light of Apex Court judgement in the case of Wipro Ltd. [2015 (319) ELT 177 (SC)], the Central Government has carried out an amendment in sub-rule (2) of rule 10 of the Valuation Rules replacing the expression 'at the place of importation' with 'to the place of importation'. The place of importation which hitherto had not been defined, though used in the Valuation Rules, was now defined under clause (da) of rule (2) of the Valuation Rules and that it was done having regard to the context of Article 8(2) of the WTO Agreement which reads as "the

cost of transport of the imported goods to the port or place of importation".

- As the amendment was done to bring the cost of transport, insurance and others only upto the place of importation, namely the port, in line with the international practice, the Board has clarified that addition of loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation, which by way of a long standing practice of the customs department, were required to be added to the CIF value of the imported goods for arriving at the assessable value, were no longer required to be so added. The Board has clarified that even though there is still reference to the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation even in the amended clause (a) of sub-rule (2) of rule (2) of the Valuation Rules, it will no longer refer to such charges at the place of importation and will henceforth mean such charges incurred only at the port of loading.
- In para 3.1 of this circular, the Board has also clarified that in view of the definition of the term, "place of importation" as now given under clause (da) of rule 2 of the Valuation Rules, the transaction value of the imported goods in terms of section 14 of the Customs Act, 1962 would include the costs incurred upto the place of importation, as defined now in clause (da) of rule 2. In simple terms, it will mean that if any cost is incurred to bring the goods to the landing place namely where these will be unloaded and kept for delivery as also any cost incurred at the place of unloading in the context of delivery of the imported goods to the importer, both of these shall not be added in the assessable value for the purpose of calculating the customs duty leviable as was the case hitherto.

- As clarified by the Board in the circular and having regard to the amendment made to sub-rule (2) of rule 10 of the Valuation Rules, the cost of transport, loading unloading and handling charges associated with the delivery of the imported goods will have to be only such charges upto the place of importation and in the present case upto the limits of Salaya port, namely the waters in the specified boundary of the Salaya port.
- The vessels brought the coal in question upto the Salaya port, based on the CIF value agreement of the appellant with its foreign

suppliers. It included the cost of the goods, the freight paid by the foreign supplier to the shipping line and insurance and all these were upto the place of importation namely upto Salaya port. That Salaya port did not have enough draft for the fully loaded vessel to take the coal to the unloading jetty is a different matter and there was no agreement that the shipping line will ensure taking the entire quantity of coal to the jetty on its own even when the vessel needed lighterage by unloading certain quantity of coal by the floating crane on to the barges and then only it could go to the unloading place. The responsibility for arranging the floating crane and the barges to do the lighterage for the vessel so that it could reach the unloading place was of the importer only and it had nothing to do with the cost of transport for which the CIF contract had been entered into by the appellant with the foreign supplier.

- That being the position, the floating crane and the barges for the purpose of lighterage of the vessel had to be organized by the appellant only in India and to procure the service by the service provider, appellant had to bear the cost of the provision of the services by the service provider along with the GST which was required to be paid thereon. Since this was not a part of the cost of transport of the imported goods to the place of importation namely the Salaya port, addition of these charges, pertaining to lighterage of the ship or barge charges, to the assessable value for the purpose of charging customs duty, as has been done by the respondent in the present case, was not only uncalled for but was totally contrary to the amended provisions of sub-rule (2) of rule 10 of the Valuation Rules.
- The Board in para 4.2 of its Circular dated 26.09.2017 has stated that the amended rule 10(2)(a) is to be understood in the context of Article 8(2) of the WTO agreement which reads as "the cost of transport of the imported goods to the port or place of importation" and further that the expression 'charges incurred for delivery of goods "to" the place of importation (such as the loading, unloading and handling charges incurred at the load port)' shall now mean only such charges incurred at the load port only.
- In view of the above, the cost of transport in this case will mean only the amount of freight covered in its CIF contract with the foreign supplier. This contract does not cover charges towards any lighterage which was necessitated because of the insufficient draft

at Salaya port. That being the position, such lighterage arrangement as done in the present case was the responsibility of the Appellant only and it discharged that responsibility by organizing, the floating crane for lighterage and the barges for taking the extra coal to the jetty on its own, by entities in India who recovered not only the cost of such charges from the appellant but also the GST which these entities paid to the Government.

- Therefore, addition of the floating crane and barge charges as done in the present case by the respondent was totally contrary to the legal provisions of the sub-rule (2) of rule 10 of the Valuation Rules and that being so, order of the respondent in this behalf (i.e. the provisionally assessed Bill of Entry) is unsustainable. Since the respondent has not given any speaking order on this issue, appellant prays to deal with this issue on merits at your level and hold that inclusion of such charges in the assessable value was not justified and that as a consequence, appellant would be entitled to refund of the customs duty paid on these charges.

4. Shri Kartik Dedhia, Advocate, and Shri Nishant Chauhan, Head Customs & Exim 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 It is observed that the appellant imported bulk steam coal of Indonesian origin and filed Bills of Entry, as detailed in Table-1, for clearance at Salaya Port. Due to insufficient draft at the port, the vessel was unable to reach the jetty, the designated unloading point. Consequently, lighterage operations were undertaken, wherein a floating crane was used to transfer the coal into barges. Only after this process could the vessel and barges access the jetty for complete discharge of the cargo. The appellant incurred additional charges for the use of the floating crane and barges, along with applicable GST on these services. These lighterage charges were added to the CIF value of the goods, resulting in additional customs duty payment. The Bills of Entry were initially assessed provisionally under Section 18 of the Customs Act, 1962. The

appellant paid the differential duty under protest and requested that the assessment be finalized with a speaking order, clearly stating the reasons for including lighterage charges in the assessable value. The appellant contended that such charges are not includible in the assessable value for customs duty purposes.

5.2 It is observed that in a recent decision of the Hon'ble Tribunal, Final Order No. 10233-10234/2025 dated 08.04.2025, passed in the appellant's own case [Customs Appeal No. 10984 of 2016-DB read with Customs Appeal No. 11039 of 2016-DB], involving a similar issue, the matter was remanded to the adjudicating authority for examination of certain factual aspects. I have perused the said Final Order and observe that the Hon'ble Member (Judicial), in Paragraph 19 (a) to (f), made specific observations warranting further verification, and accordingly, the matter was remanded to the original adjudicating authority, as directed in Paragraphs 20 and 21 of the order. The relevant paras are reproduced as under:

"19. Guided by the above decision, we find that shifting charges in the anchorage cannot be strictly considered as unloading/ loading charges at the port in view of statutory provisions and case law discussed The question as to whether any further addition to CIF value for transportation charges is warranted or not, needs elaborate discussions and findings on various aspects and some of these, inter alla, are as follows: -

a) Whether the goods at any stage prior to their landing at the final port destination were cleared for home consumption or not?

b) Whether a permission by the proper officer had been given under Section 33 and 34 for moving the Cargo to the barge and whether the goods were accompanied by a boat note under Section 35 of the Customs Act, 1962?

c) Whether the mother vessel by which goods arrived could or could not anchor at the main port?

d) Whether the Jetty at which goods were eventually discharged was included or not included in the bill of lading as port of discharge.

e) Whether who paid the consideration (even if buyer) is relevant consideration or not or any emergent situation relating to draft of the

ship as mentioned in para 60 and 61 (cited supra) of the Ispat Industries case of apex court.

f) Whether the duty demand was raised consequent upon finalization of provision assessments, if same were involved?

20. We find that elaborate discussions, on all these points is not coming forth in the impugned order, as well as in the order of adjudicating authority. We, therefore, remand the matter and direct adjudicating authority to consider all these aspects including others on point of rate/transportation cost that may be raised by the litigant parties, to arrive at its decision, affording full opportunity to the appellants.

21. Matter is, therefore, remanded to the original authority to give findings accordingly, in the light of decision cited (supra) of Ispat Industries by Hon'ble Apex Court. Order is therefore set aside and Appeal is allowed by way of remand."

5.3 It is further observed that the Hon'ble Member (Technical) was of the view that the loading/unloading charges incurred during the transfer of cargo from the mother vessel to barges, for onward movement to the jetty, are includible as part of the cost of transportation. Accordingly, the Hon'ble Member opined that the appeals merit dismissal. The relevant paras are reproduced as under:

"32 All the case laws relied by the appellant are for period prior to 2007 and therefore not applicable in view of changes in Section 14 of the Customs Act. In view of above the Loading/ Unloading charges incurred during movement of Cargo from mother ship to barges for further movement of cargo to jetty is includable as cost of transportation.

33. The appeals therefore deserves to be dismissed."

5.4 In view of the above difference of opinion, the matter was placed before the Hon'ble President for nomination of a third member to resolve the issue. The third member held that:

"8. Therefore, I am in agreement with Hon'ble Member (Judicial) and hold that the matter is required to be remanded to the adjudicating authority to undertake necessary verification of the points highlighted

by him at Para 19 (a) to (f) and as per the directions given by him at Para 20 and Para 21 of the Interim Order."

In view of the majority order, appeal was allowed by way of remand for conducting, inter-alia, verification on points (a) to (f) of Para 19 and as per the directions given at Para 20 and Para 21 of the Order.

5.5 In view of the above, and following the Final Order No. 10233-10234/2025 dated 08.04.2025 of the Hon'ble CESTAT, Ahmedabad, in the appellant's own case, the present appeals are also remanded for verification on points (a) to (f) of Para 19 as detailed in Para 20 and Para 21 of the said order.

6. The appeals filed by the appellant are allowed by way of remand.

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

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

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Dated:22.01.2026

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2. The Principal Commissioner of Customs, Customs (Prev), Jamnagar
3. The Deputy Commissioner of Customs, Customs Division, Jamnagar.
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