सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.
दूरभाष क्रमांक Tel. No. 079-26589281

DIN-20260971MN0000A7B1DB

क	फ़ाइल संख्या FILE NO.	S/49-507/CUS/JMN/2024-25
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-58-2026-27
ग	पारितकर्ता PASSED BY	Shri Vishwajeet Singh Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	17.09.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	1262/2725265/SBY/2024-25 dated 01.1.2025
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	17.09.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1. M/s United Ship Breaking Co., Plot No 124, Ship Breaking Yard, Sosiya, P.O.Manar, Bhavnagar-364150

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

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

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

ORDER-IN-APPEAL

1. Brief facts of the case

1.1 M/s United Ship Breaking Co., Plot No 124, Ship Breaking Yard, Sosiya, P.O.Manar, Bhavnagar-364150 (herein after referred to as the "Appellant for the sake of brevity) has filed the present appeals against Orders-In-Original/Final Assessment Order No.1262/2725265/SBY/2024-25 dated 01.01.2025 (herein after referred to as the "impugned orders") issued by the Assistant Commissioner, Customs Division, Bhavnagar (herein after referred to as the "Adjudicating Authority).

1.2 The Appellant had purchased a vessel MV NEVEY for breaking up / recycling. They filed Bill of Entry No. 8382913 dated 19.10.2023 for clearance of the said vessel for home consumption under Section 46 of the Customs Act, 1962 along with relevant documents. Since the importer did not have the original copies of MoA, Commercial Invoice and Bill of Sale, they requested to assess the Bill of Entry provisionally and submitted PD bond for the same. They had paid customs duty amounting to Rs.2,99,43,358/-. The Bill of Entry was assessed provisionally for want of original documents. Further, the Appellant submitted original/notarized copies of Commercial Invoice, Bill of Sale and MOA vide their letter dated 24.12.2024 for Final Assessment is found in order.

1.3. Vessels coming for breaking up are being classified under CTH 8908. The Importer has classified the vessel in CTH 8908. However, the Fuel and Oil contained inside/ outside the Engine Room Tanks have been classified under Chapter Heads of Chapter 27 and they have paid customs duty accordingly. The dispute regarding classification of Fuel and Oil lying in Bunker Tanks inside/ outside Engine Room i.e. whether under CTH 2710 or under CTH 8908 along with vessels for breaking up had been resolved by Hon'ble Supreme Court in its Order dated 05.04.2023 passed in Civil Appeal No. 5318-5342/2009, Hon'ble Supreme Court has upheld the common Order No. A/11792-11851/2022 dated 17.10.2022/01.12.2022 passed by CESTAT and also validated the views expressed by the CESTAT therein.

1.5. Accordingly, in compliance of the common Order No. A/11792-11851/2022 dated 17.10.2022/01.12.2022 passed by CESTAT, the issue of classification of fuel & oil lying in Bunker Tanks inside/ outside Engine Room has been decided by the Assistant Commissioner, Customs, Bhavnagar vide FAO No. 2430352/SBY/2023-24 dated 24.07.2023, excerpt of the findings are as under:

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6.3 In this connection, on going through the inspection Report dated 14.7.2023, It is observed that Bunker Tanks are mostly located outside the engine room area in a vessel. There are only the Settling Tanks and Service Tanks of the fuel oil in the engine room area of a vessel. Fuel Oil from the Bunker Tanks are pumped to Settling Tanks and the Service Tanks through a fixed pipeline for use in engine/generators of the vessel. Transmission of Fuel Oil from Bunker Tanks to Service Tanks in the engine room of the vessel is being managed and controlled from Engine Room Control Panels as well as manually from the Engine Room of the vessel. It is observed that the Bunker Tanks, Settling Tanks, Service Tanks are all inter-connected with fixed pipelines and pumps for injection of fuel to engine and the same is managed and controlled from engine room control panels as well as manually from the engine room of vessel. Thus, I find that the Bunker Tanks outside the engine room portion of the vessel is an integral part of the engine system of vessel and it must contain sufficient Oil for sailing and seaworthiness of vessel.

6.4 Hon'ble Gujarat High Court in its Order dated 05.07.2012 In case of Priya Holding (P) Ltd. Vs, Commissioner of Customs (Preventive), Jamnagar [2013 (288) ELT 347 (Guj.)] has observed that fuel contained in engine tanks are associated and connected with the machinery and engine of the ship, and such oil is called fuel and oil contained in the vessel's machinery and engines and is regarded as forming integral part of the engine. Thus, it is held that the bunkers containing oil were to be treated as part of the vessel's machinery and were classifiable under Heading No. 89.08 of the Schedule to the Customs Tariff Act, 1975.

6.5 Following the direction of Hon'ble CESTAT in its Order dated 01.12.2022 and going by the judgement of Hon'ble Gujarat High Court in case of Priya Holding (P) Ltd. Vs, Commissioner of Customs-(Preventive), Jamnagar [2013 (288) ELT 347 (Guj.)) and after considering the facts observed in the Inspection Report dated 14.07.2023, I am inclined to hold that the Bunker Tanks containing oil are to be treated as part of vessel's machinery and the Oils contained in them are to be classified under CTH 8908 along with the vessel brought for breaking up, as covered under para 2(b) of circular no. 37/96-Cus. Dated 03.07.1996."

1.6 Thus, based on the above, the Adjudicating Authority held that the Bunker Tanks inside/outside Engine Room are liable to be classified under CTH 8908 along with vessel, as covered under para 2(b) of Circular No. 37-96-Cus. Dated

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03.07.1996. The remaining fuel and oil i.e. fuel and oil not contained in Bunker Tanks or Engine Room Tanks are liable to be classified under is respective heading in Chapter 2710.

1.7 Being aggrieved with the impugned order the Appellant preferred the present appeal.

2. Grounds of appeal

2.1 The Appellant submitted that on verification of the brief fact of the case as narrated in foregoing para, it is admitted fact that your Appellant had imported the subject old and used ship only for breaking purpose. A specific tariff entry has been statutorily specified under the provisions of Chapter sub Heading No 8908.00 of the Customs Tariff Act, 1975. This tariff entry reads as;

"8908.00.00 vessels and other floating structures for breaking "

2.2 The Appellant further submitted that as on the date of importation of subject vessel for breaking purpose, the levy of Customs duties have been specified as under;,
(a) Basic customs; duty-------- Zero rate of duty.

2.3 The Appellant further submitted that CVD-Zero-/00, Now on perusing of the above referred bill of entry it appears that the assessing officer has grossly erred in wrongful determination of duty of Customs totally to the tune of Rs. Rs. 27,166/ plus 10% of SWS Rs. 2942/-at the time of making provisional assessment of subject bill of entry. Whereas, also the final assessment of customs duty under disputed stock of bunker has also been finally assessed to duty totally to the tune of Rs. 27,166/ plus 10% of SWS Rs. 2942/. Thus, it has been clearly found that there is no any difference on so called duty of customs as assessed to duty at the time of making provisional assessment as well.

2.4 The Appellant further submitted that at the time of making final assessment of duty/ of the subject bill of entry. These disputed duties has wrongfully assessed to duty. For this contention /submissions, the customs tariff act in force clearly states that if the basic customs duty is Nil, the subsequent wrongful assessed collected duty on disputed "Goods" as mentioned at Sr. No. from 2 to 13. These all disputed goods" where nothing but to be termed as "Integral part of the vessel which has now been lastly held as "Integral part of the vessel" and accordingly now clearly held that these disputed goods have

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correctly and legally classifiable under Chapter sub Heading No. 8908.00.00 of Customs Tariff Act, 1975.

2.5 The Appellant further submitted that Now it is admitted fact that the levy of basic customs duty has statutorily been specified at "Nil rate of duty" than allopathically /legally subsequent levy of unwarranted basic customs duty on the above referred goods would have been assessed to duty "Nil rate of duty" being lastly considered as "Integral part of the vessel by the Hon'ble Tribunal Ahmedabad vide their Order No A/11792-11851/2022 dated 01.12.2022. Therefore if these all steps of levy of duty of customs as involved in the present case, than the assessing officer appears to have wrongly been assessed to duty on disputed stock of bunker at the time of "final assessment" of the subject bill of entry" In view of all these submissions, it is clearly seen that the impugned order (Final Assessment Order appears not to have been passed in proper and correct manner read with the Steps by Steps of the rate of duty of customs, which has now lastly been specified as "Zero/00 rate of duty Therefore the impugned order is not proper, correct and legal.

2.6 The Appellant further submitted that the assessing officer appears also grossly erred in not disclosing the specific Provisions of Section 18 of Customs Act, 1962 i.e. in other word whether the impugned order has been passed under the proviso of section (1) read with its provision, sub section 2, sub section 3 etc of Section 18 of Customs Act, 1962. Therefore, it also appears that the impugned order appears not to have been passed in accordance with the Mechanism prescribed by making of final assessment of bill of entry. Therefore, the impugned order has been passed as Ex-parte.

2.7 The Appellant further submitted that in addition to the above, the specified mechanism of final assessment adopted by the assessing officers seems not to be true correct, in as much as the assessing officer has grossly erred in not considering the "Zero rate of customs duty and also assessed to duty other duties ie. CVD levied under sub section 3 of the Customs Tariff Act, 1975. For this contention your Appellant enclosing here with self attested copy of Notification 50/2017 cus dated 30.06.2017 as read with lastly amended this Notification vide Notification No. 13/2023-cus dated 23.02.2023, Copy enclosed. This amended Notification, clearly laid down that the rate of basic customs duty etc is Nil so far as the Imported Goods classifiable under Chapter sub Heading No. 8908 of Customs Tariff Act, 1975.

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2.8 The Appellant further submitted that Since the impugned order appears to had been passed without giving any opportunity to be heard personally before making the final assessment vide the impugned Order. Therefore, it appears that the impugned order appears to have been passed by gross violating principle of natural justice.

2.9 In view of the above, the Appellant In view of the above your Appellant pray to remand back the impugned order as it appears that the impugned Order appears to have been passed by gross violating the principle of natural justice as well as erred in not making proper interpretation of relevant provision of customs tariff Act, i.e. relevant entry of Chapter sub Heading No. 8908 of Customs Tariff Act, 1975 read with the amended Notification No. 13/2023-cus dated 23.02.2023. United Ship Breaking Co.

3. PERSONAL HEARING:

Opportunity of personal hearing was granted to the Appellant. Shri N.K. maru, authorized representative of Appellant for personal hearing in virtual mode on 03.08.2026 wherein he re-iterated written submission filed during the appeal. He also requested to condone the delay in filing the appeal.

4. DISCUSSION AND FINDINGS:

4.1 The date of the impugned order is 01.01.2025 and the date of filing appeal by the Appellant is 21.03.2025. Thus, the appeal has not been filed within the period of sixty days prescribed under Section 128 of the Customs Act, 1962. There has been a delay of 21 days. The Appellant requested to condone the delay. The Commissioner(Appeals) has been empowered under Section 128 of the Customs Act, 1962 to condone the delay upto 30 days from the date ending 60 days from the date of receipt of OIO. The present appeal has been filed after a delay of 21 days and taking a lenient view in the matter, I condone the delay in filing the appeal by the Appellant.

4.2. I find that the matter pertains to the classification and the Appellant has already paid the full duty, therefore, conditions specified under Section 129 E of the Customs Act, 1962 stands fulfilled.

4.3 The Customs House, Pipavav was requested for submission of comments of the appeal filed by the Appellant vide letter dated 10.06.2025 but no comments have been received by this office till date therefore, I am taking up the issue for

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decision based on the facts of the case and documentary evidence available on record.

4.4 I have carefully gone through the case records, show cause notice and corresponding order passed by the adjudicating authority and the defense put forth by the Appellants in their appeal. The limited issue to be decided is as under :

(i) Whether the cases are fit for remand back to Adjudicating Authority.

4.5 The Appellant has mainly contested that they were not given opportunity of personal hearing following the principal of natural justice. On perusal of the impugned order I find that the impugned order does not contain any details of personal hearing granted in the matter during the course of rejection of refund claim and issuance of impugned order. I am of the considered view that the Adjudicating Authority is law bound to follow the principal of natural justice and give opportunity of personal hearing to the Appellant as they same have not been granted to the Appellant.

4.6 Accordingly, in the interest of justice and in order to ensure compliance with the principles of natural justice, I deem it appropriate to remand the matters to the adjudicating authority under Section 128A (3) of the Customs Act, 1962. In this regard, reliance is placed upon the judgment of the Hon'ble Gujarat High Court in Medico Labs [2004 (173) E.L.T. 117 (Guj.)], the judgment of the Hon'ble Bombay High Court in Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)], and the decisions of the Hon'ble Tribunal in Prem Steels Pvt. Ltd. [2012-TIOL-1317-CESTAT-DEL] and Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri.-Del.)], wherein the appellate authority's power to remand under Section 128A(3) of the Customs Act, 1962 has been recognized.

5. In view of the foregoing discussion, the appeal is allowed by way of remand. The impugned order is set aside and the case is remanded to the Adjudicating Authority for de-novo adjudication in accordance with law after giving opportunity of personal hearing to the Appellant following the principle of natural justice. It is expressly clarified that no opinion or views have been expressed on the merits of the case.

VishwajeetSingh
17.09.2026

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

F. No. S/49-507/CUS/JMN/ 2024-25

By Registered post A.D/Email

M/s United Ship Breaking Co., Plot No 124, Ship Breaking Yard, Sosiya, P.O.Manar, Bhavnagar-364150

Copy to,

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in).
2. The Commissioner, Customs (Prev), Jamnagar.
3. The Deputy/Assistant Commissioner, Custom House, Pipavav
4. Guard File

