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-20260771MN000000CF40

क	फ़ाइल संख्या FILE NO.	S/49-473/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-27-2026-27
ग	पारितकर्ता PASSED BY	Shri Vishwajeet Singh Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	14.07.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	394/CUS-REF/24-25 dated 13.12.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	14.07.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1. M/s Agrasen Ship Breakers Pvt. Ltd. Plot No. 113, Sosiya Ship Breaking Yard, Sosiya, P.O. Manar, Bhavnagar

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

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 Agrasen Ship Breakers Pvt. Ltd. Plot No. 113, Sosiya Ship Breaking Yard, Sosiya, P.O. Manar, Bhavnagar (herein after referred to as the "Appellant for the sake of brevity) has filed the present appeal against Order-In-Original No. 394/CUS-REF/2024-25 dated 1312.2024 (herein after referred to as the "impugned order") issued by the Assistant Commissioner, Customs Division, Bhavnagar (herein after referred to as the "Adjudicating Authority).

1.2 The Appellant had imported a vessel M.V. CAVALLY for breaking up/ recycling at Plot No. 113, Ship Recycling Yard Sosiya, P.O. Manar, Bhavnagar and had filed self-assessed Bill of Entry No. 9585608 dated 10.01.2019 under section 46 of the Customs Act, 1962.

1.3 There were some dispute with regard to assessment of customs duty of the Fuel and Oil (Fuel Oil, Marine Gas Oil, Lub. Oil) contained in Bunker Tanks inside/ outside the engine room of the vessel. Importer claimed that Fuel and Oil contained in Bunker Tanks inside/ outside the engine room of the vessel was to be assessed to duty under CTH 8908 along with the vessel. However, the Department, was of the view that Fuel and Oil contained in Bunker Tanks were to be assessed to duty under respective CTH of Chapter 27 and accordingly the bill of entry was assessed to duty of Rs. 1,76,63,264/-. The Bill of Entry was assessed provisionally for want of original documents.

1.4. Hon'ble CESTAT, Ahmedabad vide its orders A/11792-11851/2022 dated 17.10.2022/01.12.2022 has held that the oil contained in the Bunkers Tanks in the engine room of the vessel is to be assessed to duty under CTH 8908, along with the vessel coming for breaking up. Further, in adherence to aforesaid order of Hon'ble CESTAT, it has been decided by the Assistant Commissioner, Customs Division, Bhavnagar in Final Assessment Order No. 2420555/SBY/202-23 dated 16.06.2023 that 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, as covered under para 2(b) of circular no. 37/96-Cus Dated 03.07.1996. The bill of entry was finally assessed to duty of Rs. 1,73,80,059/- vide Final Assessment Order No. 2420555/SBY/2022-23 dated 16.06.2023 passed by the Assistant Commissioner Customs Division, Bhavnagar.

1.5 Consequent to Final Assessment Order No. 2420555/SBY/2022-23 dated 16.06.2023 passed by the Assistant Commissioner, Customs Division,

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Bhavnagar, the Appellant filed a refund claim of Rs. 2,83,205/- under Section 25 of the Customs Act, 1962.

1.6 The Adjudicating Authority observed that the Appellant had failed to prove the incidence of customs duty has not been passed on to any other person and this the Adjudicating Authority vide the impugned order sanctioned the refund of Rs. 2,40,004/- in terms of Section 27 of the Customs Act, and credited the same to Consumer Welfare Fund.

1.7 Being aggrieved by the impugned order, the Appellant preferred the present appeal.

2. **Ground of Appeal submitted by the Appellant**

2.1. The Appellant submitted that the impugned order of the Assistant Commissioner by which he has sanctioned the refund of the excess duty paid and has ordered the same to be credited to the Consumer Welfare Fund on the ground of unjust enrichment is not tenable in law and is liable to be set aside. He should have ordered the refund to the credit of appellant instead.

2.2. The Appellant also submitted Certificate from Chartered Accountant Confirming that the Custom Duty was not passed onto any buyer or third party. Certificate dated 28.01.2025 and 12.02.2025 issued by Chartered Accountant M/s. D. L. Vora & Associates, certified that the oil and fuels found in the ship at the time of import, on which duty was paid, were not passed on to any buyer or third party. Moreover, the certificate confirms that no Custom Duty was charged at the time of sale, indicating that the duty was not passed on to the customers and/or third parties. The copies of the above two CA Certificates are hereto annexed as Exhibit E, collectively.

2.3. The Appellant further submitted that comparison of the Bill of Entry with the Sales Invoices of the Appellant would show that the Bunkers were sold at a price below the import price/value on which such duty was assessed and consequently the Appellants have not been able to recover even the cost of the Bunkers, much less the duty paid thereon: It is evident from the Bill of Entry and the Appellant's Sales Invoices, that the price at which the Appellant sold the imported Bunkers is much below the import price/value of the Bunkers on which the duty was assessed. Therefore, the Appellant has not been able to even recover the import price of the Bunkers, much less the duty paid thereon. Consequently, the question of the Appellant having passed on and recovered from the buyers, the duty paid on the Bunkers does not arise. Clearly, therefore the burden of the said duty has been borne by the Appellant and has not been passed on to the

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buyers. A perusal of the Appellant's Sales Invoices would show that the Appellant has only recovered the GST payable on the local sales and not the import duty paid on the Bunkers.

2.4 The Appellant further submitted that merely because the duty amount was debited to expenses in Profit & Loss Account, it does not follow that incidence thereof was passed on to the buyers, when the price at which the Bunkers were sold to the buyers, was even less than the import price on which the duty was assessed. The Assistant Commissioner has proceeded on the premise that since the duty paid on the Bunkers was debited to expenses, it must be considered to have been passed on to the buyers by the Appellant. The said premise on which the Order of the Assistant Commissioner is based is untenable in law.

2.5. The Appellant further submitted that it is settled law that debit of the duty amount to expenses, without corresponding addition in the import price to arrive at the local sale price, means that Appellant has absorbed and borne the said amounts and it cannot lead to the conclusion that the Appellant has passed on the incidence thereof. In the present case, not only has the Appellant not added the duty amount to the import price to arrive at the local sale price, but in fact, the local sale price is even below the import price on which the duty is assessed.

2.6. The Appellant further submitted that in this case, the issue of unjust enrichment does not apply, reliance is placed upon the following well settled case laws:

(i) 2015 (327) ELT 13 (Mad): Commissioner of C. Ex., Chennai - 1,

(ii) 2017 (348) ELT 537 (Tri. Chennai): Mennekes Electric India P. Ltd. v/s Commissioner of Cus., Chennai - II,

(ii) 2018 (360) ELT A204 (Bom.): Commissioner v/s Tata Motors Ltd.,

(iv) 2020 (371) ELT 542 (Chan.) Gaurav Enterprises v/s Commissioner of Customs, Amritsar,

(v) 2022 (60) G.S.T.L. 48 (Del.): Rambagh Palace Hotel Pvt. Ltd. v/s Commissioner of C. Ex. & GST, Jaipur - 1.

2.7. The Appellant crave leave to add, amend, alter and vary the aforesaid ground of appeal and submit documents, case laws when required.

2.8. In view of the above submissions, the Appellant humbly prayed that the impugned Order be set aside with consequential relief of refund of differential duty to the appellant.

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3. PERSONAL HEARING:

Opportunity of personal hearing was granted to the Appellant. Shri Rahul Gajera appeared for personal hearing in virtual mode on 02.07.2026 wherein he re-iterated written submission filed during the appeal. He also submitted that the issue is no longer res-integra and is covered by the decision of Hon'ble Tribunal in the case of M/s. Dynamic Ship Breakers Pvt Ltd – Customs Appeal No. 10511 of 2025.

4. DISCUSSION AND FINDINGS:

4.1 I find that the date of the impugned order is 13.12.2024 and the Appellant in its memorandum submitted that they have received the OIO on 15.12.2024 and they filed appeal on 21.02.2025 therefore, the appeal is not filed within the time period of 60 days prescribed under the provisions of Section 128 of the Customs Act, 1962. There is a delay of 08 in filing appeal by the Appellant. The Appellant has submitted application for condonation of delay. I observe that the appeal is filed within the 30 days after the expiry of 60 days as prescribed under Section 128 of the Customs Act, 1962 and the same is condonable as stipulated under Section 128 of the Customs Act, 1962. Therefore, in the interest of justice, I take a lenient view and allow the appeal as filed by the appellant as admitted by condoning the delay in filing the appeal beyond the normal period of 60 days under the proviso to Section 128(1) of the Custom Act, 1962

4.2. I find that the matter pertains to the issue of refund thus there is no question of pre-deposit of 7.5% of duty demanded as prescribed under Section 129E of the Customs Act, 1962.

4.3 The Customs Division Office, Bhavnagar was requested for submission of comments of the appeal filed by the Appellant vide letter 05.06.2025 but no comments have been received by this office till date therefore, I am taking up the issue for 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 following issues arise for determination:

i) Whether the Appellant is eligible for refund of Rs. 2,40,004/- by directly crediting it to their bank account instead of crediting the same to Consumer Welfare Fund.

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4.5 It is observed that the appellant had imported vessel for breaking up/recycling and filed Bill of Entry No. 9585608 dated 10.01.2019 under Section 46 of the Customs Act. 1962. There was dispute in respect of classification of Fuel and Oil (Fuel Oil, Marine Gas Oil, Lub Oil), which was settled by the Hon'ble CESTAT, Ahmedabad, vide its Orders A/11792-11851/2022, dated 17.10.2022/01.12.2022 wherein it was held that the oil contained in the Bunkers Tanks in the engine room of the vessel is to be assessed to duty under CTH 8908, along with the vessel for breaking up. The Bills of Entry were assessed provisionally. Subsequently, the Bill of Entry was finally assessed vide Final Assessment Order No. 2420555/SBY/2022-23 dated 16.06.2023 passed by the Assistant Commissioner, Customs Division, Bhavnagar. Consequently, the appellant had filed refund claims along with Certificate dated 28.01.2025 issued by C. A. D.L. Vora & Associates wherein it is stated that the Appellant had paid total Customs duty of Rs.1,76,63,264/- (including IGST) vide challan no. 2029472284202554079 on 10.01.2019 for the import of said vessel. The C.A. certificate further certified that on verification of sales invoices as well as financial ledger accounts and other records, the incidence of Customs Duty paid on the bunker (oil and fuels) M/s Agrasen Ship Brakers Pvt, Ltd. has not been passed on to the buyer of the goods or any other person.

4.6 The adjudicating authority has on scrutiny of the refund claims observed that the Appellant has submitted CA Certificate which neither disclosed the details of supporting documents on the basis of which such certificate was issued not financial records viz. copy of Audited Balance Sheet etc. had been provided. In this connection it is observed that the Board in its Circular No. 07/2008 dated 28.05.2008 has stressed upon the need to go through the details of audited Balance Sheet and other related financial records, certificate of CA etc., which are relied upon, to verify as to whether the burden of duty and interest as the case may be, has not been passed on to any other person as for the doctrine of unjust enrichment. The findings of the adjudicating authority in the impugned order is as under:

> *"I have gone through the case law and Circular cited by the claimant. I find that the case law and Circular are not relevant in the issue as far as clause of unjust enrichment is concerned I find that when the element of any duty paid on any goods is debited to Purchase Account which is forming part of the Profit & Loss Account, as a cardinal accounting principles, then the said element of duty becomes a part of the cost of the goods. As such, whenever such goods are sold at a later stage to the buyers/customers, the Sales Price fetched for such goods is considered as inclusive of the element of duty paid thereon such goods, accordingly, here in the case it is observed that the incidence of Customs duty paid*

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at the time of import of goods is passed on to the buyers/ customers at the time of its sales in the form of Sales Price. In fact, statutory provision of Section 28C provides for indication of amount of duty paid in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold, which is not done by the claimant in the instant case. Once the amount of Customs duty paid is debited as cost to purchase under Profit & Loss and non-fulfillment of obligatory condition of Section 28C would be sufficient enough to conclude that Sales Price of the goods bear entire Customs duty paid on such goods. Under such circumstances, the grant of refund of Customs Duty would tantamount to receipt of refund of customs duty from customers as well as exchequer, which will get the claimant unjustly enriched. [Reliance placed on the Final Order No. A/30122-30123/2023 dated 1.6.2023 passed by the Hyderabad Bench of CESTAT in Departmental Appeals No. 30010-11/2023 in case of Sachdev Overseas Fitness Pvt Ltd & Nityasach Fitness Pvt Ltd.]

7.2 The claimant also failed to produce C.A. certificate in the format provided to them vide this office letter dated 11.11.2024, 19.11.2024 & 26.11.2024 along with financial records viz. copy of Audit Balance Sheet, Sales Invoices etc. This implied that the duty paid was shown as expenditure and formed part of Profit and loss account of the claimant. Therefore, as a settled position in law that where the claimant has itself treated the refund amount due as expenditure and not as "claims receivable", the claimant cannot be said to have passed the test of unjust enrichment. Thus the claimant having failed to prove that incidence of customs duty has not been passed on to any other person, the amount of refund instead of being paid to them is liable to be credited to the Consumer Welfare Fund."

4.7 Accordingly, the adjudicating authority has sanctioned the refund claim of Rs 2,40,004/- in terms of Section 27 of the Customs Act, 1962 and credited the same to the consumer welfare fund vide the impugned order.

4.8 I have perused the relevant Section 27 (1A) and 27 (2) of the Customs Act, 1962 and same is reproduced as under:

> *(1A) The application under sub-section (1) shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty or interest in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty or interest, has not been passed on by him to any other person.*
>
> *(2) If, on receipt of any such application, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that the whole or any part of the [duty and interest, if any, paid on such duty] paid by the*

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applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

***Provided** that the amount of [duty and interest, if any, paid on such duty] as determined by the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -*

(a) the [duty and interest, if any, paid on such duty] paid by the importer, [or the exporter, as the case may be] if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;

(b) the [duty and interest, if any, paid on such duty] on imports made by an individual for his personal use;

(c) the [duty and interest, if any, paid on such duty] borne by the buyer, if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75;

(f) the [duty and interest, if any, paid on such duty] borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify:

[(g) the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where —

(i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or

(ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment:]

***Provided** further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of [duty and interest, if any, paid on such duty] has not been passed on by the persons concerned to any other person.*

4.9 I have also perused Section 28 D of the Customs Act, 1962 and same is reproduced as under:

"SECTION 28D. Presumption that incidence of duty has been passed on to the buyer. — Every person who has paid the duty on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods."

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From plain reading of the above legal provisions, it is clear that the appellant was required to submit documentary evidence to establish that the amount of duty in relation to which the refund is claimed was paid by him and the incidence of the duty has not been passed on by him to any other person. As per Section 28D of the Customs Act, 1962, the burden of proof is on the appellant to establish that they had not passed on the incidence of duty paid. Thus, until and unless the appellant satisfies with the relevant documents, indicating the fact that it has paid the duty and the same has not been passed on to the customers, such a claim cannot be accepted. Therefore, until the contrary is proved, there is a presumption provided under the statute that the duty has been passed on to the buyer.

4.10 It is undisputed that the goods in question have been sold to buyers and the transactions are shown as part of Profit and Loss Account. Further, it is observed that the appellant had submitted Certificate issued by C.A. M/s D.L. Vora & Associates. wherein it is stated that the incidence of Custom Duty paid on bunker (oil and fuels) has not been passed on to the buyer of the goods or any other person. The CA certificate submitted by the appellant neither disclosed the details of the supporting documents on the basis of which such certificate was issued nor financial records viz. copy of Audited Balance Sheet, Sales Invoices etc. As per the Board Circular No. 07/2008 dated 28.05.2008 wherein it has been stressed upon the need to go through the details of audited Balance Sheet and other related financial records, certificate of CA etc., to verify as to whether the burden of duty and interest as the case may be, has not been passed on to any other person as for the doctrine of unjust enrichment. I also find that the certificate submitted by the Appellant has not certified the amount of Customs Duty receivable from the Department and this lacking a basis requirement for claiming refund.

4.11 The details of Certificate dated 28.01.2025 issued by C.A. M/s D.L. Vora & Associates submitted along with appeal is as under:

"I, DEVCHAND L. VORA. (Chartered Accountant) have duly audited the financial accounts of, M/s. AGRASEN SHIP BREAKERS PVT LTD. having office at BHAVNAGAR. and works at PLOT NO. 113, SOSIYA SHIP BREAKING, SOSIYA, DIST. BHAVNAGAR for the financial year 2018-19 under the Income Tax Act 1961, I have checked their books of accounts and records of Vessel M V CAVALLY IMO No. 2213870 Bill of entry No. 9585608 dated 10-01-2019.

That M/s. AGRASEN SHIP BREAKERS PVT LTD, having office at 103 ASHISH JOYT COMPLEX SANSKAR MANDAL, BHAVNAGAR-364002 has paid total customs duty (including IGST) of Rs. 1,76,63,264/- (Rupees One Crore Seventy six

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Lakhs Sixty three thousand two Hundred sixty four only) on 10-01-2019 vide Challan No. 2025540079 for the import of ship/vessel for breaking purposes, bunker (oil and fuels), stores etc.

On verification of sales invoices as well as financial ledger accounts and other records I certify that, incidence of Customs Duty paid on the bunker (oil and fuels) M/s. AGRASEN SHIP BREAKERS PVT LTD, has not been passed on to the buyer of the goods or any other person.

This certificate is issued on request of Directors of M/s. AGRASEN SHIP BREAKERS PRIVATE LIMITED for Refund of Custom Duty paid."

The C.A. M/s D.L. Vora & Associates vide certificate dated 12.02.2025 have also given following certification.

"I, CA Devchand L. Vora, have duly verified the financial accounts of M/s. Agrasen Ship Breakers Pvt.Ltd., having office at office no. 103, Ashish Jyot Complex, Sanskar Mandal Chowk, Bhavnagar-364001 and works at Plot No. 113, Ship Breaking Yard, Sosiya alang, Taluka Talaja, Dist.: Bhavnagar for the financial year ended on 31-03-2019. I have checked their books of accounts Including Sales Invoices of OILs/MGO and records of vessel M.V. CAVALLY, IGM NO. 2213870 dated 04-01-2019 imported for breaking/recycling vide Bill Of Entry No.9585608 dated 10-01-2019. And as per the Sales invoice of OILS/MGO with reference to said Bill Of Entry, no custom Duty has been charged and/or collected from the buyers of fuel OIL/MGO AND/or any other person in respect of Custom Duty paid on such OIL/MGO and hence incidence of duty on Fuel Oil/MGO Is borne by the importer.

The Customs Department had taken the following Assessable Value and had charged Custom Duty on Fuel Oil and MGO in the Bill OF Entry no. 9585608 dated 10-01-2019 and the total value of the sale of such has resulted into loss incurred by of M/s. Agrasen Ship Breakers Pvt. Ltd. As under:

Description of goods	Quantity imported Ltrs.	Assessable Value Rs.	Customs Duty Paid Rs.	Cess	Total Column 3+4+5	Sales value Rs.	Profit (Loss)
1	2	3	4	5	6	7	8
LUB OIL	1400	435907.50	21795.40	2179.50	459882.40	230850.00	(3366563.97)
LUB OIL	3730	1161382.36	58069.12	5806.91	1225258.39		
SUMP OIL	6100	1899311.01	9496.59	9496.59	2003773.18	91500.00	
FUEL OIL	92500	3440306.25	172015.50	17201.50	3629529.05	2686055.34	(943467.71)

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Mgo	*42000*	*2226420.00*	*111321.10*	*11132.10*	*2348873.10*	*1470000.00*	*(878873.10)*
Total	*145730*	*9163327.12*	*458166.40*	*45816.60*	*9667310.12*	*4478405.34*	*(5188904.78*

4.12 The Chartered Accountant/appellant has not submitted any documents to substantiate that the incidence of duty claimed as refund has not been passed on by him to any other person. Further, I also find that the Bill of Entry was filed during the year 2018-19 and the certificate has failed to give any reasonable certificate regarding carrying forward of the amount till the year the Appellant filed refund application. The Appellant has also failed to given any evidence indicating the fact that there was no unjust enrichment on the part of the Appellant during the Financial year 2024-25 as the refund was filed on 2024-25. The CA has in the said Certificate made a bald statement that the incidence of customs duty claimed as refund has not been passed on to any other person without any supporting documents. Therefore, the CA Certificate produced in this case without supporting documents cannot be considered for discharging the burden of unjust enrichment. Further, I also find that the certificate clearly does not mention how much amount is receivable from the Customs Department as refund therefore there is total lack of clarity with regards to the certificate issued by the Chartered Accountant.

4.13 It is further observed that the Chartered Accountant's Certificate alone is not the conclusive proof of having not passed on the incidence of duty to the customers. A certificate of Chartered Accountant is just a corroborative evidence only as held by the Hon'ble High Court in the case of Commr. of C. EX., Aurangabad Versus Toyota Kirloskar Motors Ltd [2010 (256) E.L.T. 216 (Kar.)]. The Hon'ble High Court's view was not disturbed by the Hon'ble Supreme Court vide [2011 (274) E.L.T. 321 (S.C.)]. Further, in a number of decisions, it has been held that Chartered Accountant's certificates alone is not a sufficient evidence to discharge the burden cast upon the appellant to prove that incidence of duty has not been passed on to the customers. Further, it is the 'incidence of duty" and not the duty as such which is required to be shown to have not been passed on from the sale record, balance sheets and other related documents. In this regard, I rely upon the following case laws:

(i) Shoppers Stop Ltd. - 2018 (8) G.S.T.L. 47(Mad.)
(ii) BPL Ltd. - 2010 (259) E.L.T. 526 (Mad.)
(iii) Crompton Greaves Ltd. - 2011 (22) S.T.R. 380(Tri. - Mum.)
(iv) UOI v. Solar Pesticides Pvt. Ltd. reported in [2000 (116) E.L.T. 401(S.C.)]

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(v) M/s Ispat Industries Ltd Vs Commissioner of Customs (Mumbai) – [2015- TIOL-614-CESTAT-MUM].

4.14 Further the Hon'ble Supreme Court in the case of Sahakari Khand Udyog Mandali Ltd Vs Commissioner of C. Ex. & Cus [2005 (181) ELT 328 (SC)] has held that before claiming a relief of refund, it is necessary for the appellant to show that he has paid the amount for which relief is sought and he has not passed on the burden on consumers. Further, the Hon'ble Supreme Court in the case of Union of India Vs Solar Pesticides Pvt. Ltd. [2000 (116) ELT 401 (SC)] has held that *"the expression "incidence of such duty" in relation to its being passed on to another person would take it within its ambit not only the passing of the duty directly to another person but also cases where it is passed on indirectly"*. The burden of proof is on the appellant to establish that they had not passed on the incidence of duty paid. Therefore, until the contrary is proved, there is a presumption provided under the statute that the duty has been passed on to the buyer. Therefore, the appellant in the present case has failed to cross the bar of unjust enrichment.

4.15. The Appellant in the present appeal has cited the judgment of Hon'ble CESTAT in the case of M/s Dynamic Ship Recyclers Pvt. Ltd. The Tribunal in its order No. 10875-11017/2025 dated 04.11.2025 has held as under:-

"13. Considered. This court finds force in the relevance of case law cited by the appellant. In the peculiar situation of this case when the goods have been eventually sold at price far less than the assessed values of the goods. This Court particularly finds that this matter is covered by 2015 (347) ELT 637 (Tri-Del.) in the matter of Business Overseas Corporation Vs. C.C.E (Import and General) New Delhi wherein by majority view it was held that the goods imported and sold at a loss that is when cost price was more than the sale price during the period in dispute and same fact was certified by Chartered Accountant. The importer has duly discharged burden of proof by producing Chartered Accountant's Certificate, burden shifted to revenue to prove recovery of extra cost from the Customers by producing more evidence. Revenue has failed to advance any evidence to rebut Chartered Accountant's Certificate.

13.1 This Court finds that the situation is no different in this case. Therefore, the majority view of the case (cited supra) shall apply to the facts and circumstance of this case also. And once the Chartered Accountant Certificate has certified an aspect the onus shift on the department. Similar view also emerges from the decision of 2006 (202) ELT 404 (Mad) in the matter of Commissioner Central Excise Vs. Flow Tech Power as also in the matters in 2017 (357) ELT 1041 (Tri.-Ahd.) of Equinox Solutions Ltd Vs. CCE Ahmedabad, as well as in 2013 (290)

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ELT 386 (Tri. Ahd.) in the matter of Interplex India Pvt Ltd Vs. CC Ahmedabad. This Bench has taken a view that even production of Chartered Accountant Certificate shifts the onus to the department.

13.2 This Court finds that in instant case not only Chartered Accountant Certificate is on record certifying the fact of not passing on the duty but also additionally factum of selling below cost is also on record which has also been taken into consideration by various judicial rulings cited by the appellants as above, to hold that this fact is enough to rebut the presumption of duty having been passed.

14. In view of the forgoing, it is clear that the appellant have produced enough evidence to indicate that the bar of unjust-enrichment is not applicable to them and to the contrary department has not brought any tangible evidence to discharge the onus shifted on it. In view of the foregoing, appeals are allowable. Same are allowed with consequential relief.

15. Appeals allowed with consequential relief."

4.16 On perusal of the above judgment it can be deduced that the Tribunal has categorically mentioned that the appellant has produced enough evidence to indicate that the bar of unjust-enrichment is not applicable to them. Further, the appellant also produced evidence indicating the fact that they have sold the goods below the cost of the goods before the Tribunal. Thus, I find that the judgment of the Tribunal is not universally applicable in all similar cases.

4.17 I also find that in the present case the submission made by the Appellant do not fulfill the criteria set by the Tribunal in deciding the issue of unjust enrichment in favour of the Appellant. The issue of selling the goods lesser than the cost price is also not well established by the Appellant and the C.A. certificate submitted by the Appellant is devoid of proper findings in view of Board Circular dated 07/2008 dated 28.05.2008.

4.18 From the above, I am of the considered view that the burden of proof lies on the appellant to demonstrate that the incidence of duty has not been passed on to the buyer or end customer. In this regard, the Chartered Accountant's certificate, is not sufficient by itself to discharge this burden. Such a certificate is merely corroborative in nature and must be supported documents and records which are duly prescribed by the ICAI. These documents must be diligently and duly enlisted so the same may be referred to. In view of the failure to provide sufficient evidence to overcome the bar of unjust enrichment,

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I am of the considered opinion that the appellant has not made out a case for refund. Accordingly, the appeal filed by the appellant is liable to be rejected.

5. In view of the above, I do not find any infirmity with the impugned order and the same is upheld. The appeal filed by the appellant is disallowed.

Vishwajeet Singh
14.07.2026.

(Vishwajeet Singh)
Commissioner (Appeals),
Customs, Ahmedabad
Date: 07.2026

F.No. S/49-473/CUS/JMN/2024-25

By Registered post A.D/Email

M/s Agrasen Ship Breakers Pvt. Ltd. Plot No. 113, Sosiya Ship Breaking Yard, Sosiya, P.O. Manar, Bhavnagar.

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 Division, Alang, Bhavnagar.
4. Guard File