सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

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

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20251271MN000000A677

क	फ़ाइलसंख्या FILE NO.	S/49-67,68/CUS/JMN/2025-26
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	JMN-CUSTM-000-APP-409 & 410-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	02.12.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	As per Table A of the order
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	02.12.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. Leela Sustainable Ship Recycling Pvt. Ltd., Plot No. 84D, Ship Recycling Yard, P.O. Manar, Alang, Bhavnagar - 364 081.

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

	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्टफीएक्ट,1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क,मांगागयाब्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ | **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**

	दूसरीमंज़िल,बहुमालीभवन,निकटगिरधरनगरपुल,असारवा,अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पांचहज़ाररुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके 10%अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

Two appeals have been filed by M/s. Leela Sustainable Ship Recycling Pvt. Ltd., Plot No. 84D, Ship Recycling Yard, P.O. Manar, Alang, Bhavnagar - 364 081 (hereinafter referred to as "the appellant") in terms of Section 128 of the Customs Act, 1962 against the Orders-in-Original (Details as per Table-A) (hereinafter referred to as "the impugned orders") passed by the Assistant Commissioner, Customs Division, Bhavnagar (hereinafter referred to as "the adjudicating authority").

Table A

Sr. No	Appeal No	Bill of Entry No. &Date	FAO No. & Date	OIO No. &Date	Amount of Refund (in Rs) credited to the Consumer Welfare Fund
01	S/49-67/CUS/JMN/2025-26	8644750/29.10.2018	41/2437514/SBY/2023-24/24.08.2023	482/CUS-REF/2024-25/17.03.2025	1,63,809
02	S/49-68/CUS/JMN/2025-26	2501397/20.03.2019	268/2479584/SBY/2023-24/30.11.2023	477/CUS-REF/2024-25/17.03.2025	1,75,942

2. Briefly stated, facts of the case are that the appellant, having their Ship Recycling Yard at Plot No. 84D, Ship Recycling Yard, P.O. Manar, Alang, Bhavnagar - 364 081, had imported vessels for breaking up/recycling and filed Bills of Entry as detailed in Table A above under Section 46 of the Customs Act, 1962. They had self-assessed the goods viz. Vessels for breaking under CTH 89.08, Bunkers under CTH 27.10 & Consumables under CTH 98.05 and paid the assessed customs duty.

2.1 There were some dispute with regard to assessment of customs duty on the Fuel and Oil (Fuel Oil, Marine Gas Oil, Lub. Oil) contained in Bunker Tanks inside/outside the engine room of the vessel. The appellant claimed that Fuel and Oil contained in Bunker Tanks inside/outside the engine room of the vessel was to be assessed to duty under CTSH 89.08 of the Customs Tariff Act, 1975 along with the vessel. The Department was of a view that Fuel and Oil contained in Bunker Tanks were to be assessed to duty under respective CTH i.e., Chapter 27. Thereafter, the Bills of Entry were assessed provisionally for want of original documents.

2.2 Further, the Hon'ble CESTAT, Ahmedabad, vide its Order No. A/11792-11851/2022, dated 17.10.2022/01.12.2022 had 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. Further, in view of the aforesaid order of the Hon'ble CESTAT, the Assistant Commissioner, Customs Division, Bhavnagar vide Final Assessment Orders as detailed in Table A above held that Bunker Tanks containing oil are to 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 Bills of Entry was finally assessed vide Final Assessment Orders as detailed in Table A above passed by the Assistant Commissioner, Customs Division, Bhavnagar. Consequently, the appellant had filed refund claims which were decided vide the impugned orders.

2.3 The appellant during adjudication had submitted a copy of Certificate issued by C.A. M/s A. R. PARMAR & CO. wherein it is certified that M/s Leela Greenship Recycling Pvt. Ltd. has paid total customs duty inclusive of IGST. Also that they have checked sales invoices as well as Financial ledger accounts and other records and certified that incidence of customs duty paid on Bunker (Oil and fuels) have not been passed on to any other person. The claimant however has not provided the documentary evidence i.e. copy of balance sheet and ledger etc. The appellant was requested to produce C.A. certificate in the format provided alongwith the documentary evidence i.e. audited balance sheet for the period since filing of Bills of Entry till date and copy of ledger for the said period and as on date to verify that the refund amount claimed were shown as 'amount receivable' in the books of account and that the incidence of duty (claimed as refund) had not been passed on to any other person. The appellant along with refund claim submitted that unjust enrichment is not applicable in their case and they have referred provisions of sub section 2 of Section 27 (g)(ii) of the Customs Act, 1962. They have also relied upon following case laws: -

(i) 2017 (348) E.L.T. 537 (Tri. -Chennai)

(ii) 2015 (327) E.L.T. 13 (Mad)

(iii) 2018 (360) E.L.T. A 204 (Bom)

(iv) 2020 (371) E.L.T. 542 (Chan)

(v) 2022(60) G.S.T.L. 48 (Del).

2.4 The adjudicating authority found that the appellant has filed refund application under Section 27 of Customs Act, 1962 wherein the time limit for filing any Refund claim is prescribed. The adjudicating in respect of appeal listed at Sr No 02 of the Table A above observed that the refund application was filed on 17.01.2025, whereas Final Assessment Order was issued on 30.11.2023. Hence, the claim has not been filed within the limitation period of time under Section 27 of Customs Act, 1962. Therefore, the adjudicating authority rejected the refund claim filed by the appellant in terms of provisions of Section 27 of the Customs Act, 1962, being time barred.

3. Being aggrieved with the impugned Orders, the appellant have filed the present appeals contending as under;

- The refund of differential amount of excess customs duty other than the amount of IGST availed as input tax credit paid at the time of provisional assessment on the said goods (bunker) consequent upon the final assessment as provided under Section 18(2)(a) read with Section 18(4) of the Customs Act, 1962 was required to be paid within 3 months from the date of assessment of duty finally. There is no provision under the Customs Act, 1962 or rules made thereunder to file an application for refund of excess amount at the time of provisional assessment not to speak of Section 27 of the Customs Act, 1962 read with Customs Refund Application (Form) Regulations, 1998. Thus, as per the prevailing practice appellant had filed application for refund of excess duty of Customs paid less the amount of IGST paid on such goods availed as input tax credit under the CGST Act, 2017 on the said goods/bunker at the time provisional assessment of the impugned bills of entry but inadvertently in the refund application instead of Section 18(2)(a) of the Customs Act, 1962 Section 27 of the Customs Act, 1962 was stated. However, appellant respectfully submits that impugned application for refund may please be considered under Section 18(2)(a) of the Customs Act, 1962 only.
- The appellant further submitted that the issue to be decided before your good office is whether the refund claim dated 07.01.2025 filed on 17.01.2025 consequent upon final assessment of provisional assessment of bills of entry vide order dated 30.11.2023 (received by it on 08.01.2024) can be considered as hit by limitation of one year as provided under Section 27 of the Customs Act, 1962?
- Appellant submits that the learned Assistant Commissioner has also erred in considering the refund claim under Section 27 of the Customs Act, 1962 instead of Section 18(2)(a) of the Customs Act, 1962. Section 18 of the Customs Act, 1962 is self-contained provisions for refund subject

to incidence of such duty has not been passed on to any other person with effect from 13.07.2006. Even the said section also provides time limit to refund the amount within 3 months from the date of assessment of duty finally, otherwise interest at the rate fixed under Section 27A of the Customs Act, 1962 till the date of refund of such amount is payable with effect from 13.07.2006. Even for the refund of excess duty paid at the time provisional assessment of duty under Section 18(1) is to be made under Section 27 of the Customs Act, 1962 then there was no need to make such provisions of crediting the amount to the Fund (as defined under Section 2[21A) of the Customs Act, 1962 if incidence of duty is passed on any other person and payment of interest if not refunded within 3 months from the date of assessment of duty finally), as similar provisions are already made under Section 27(2) and Section 27A of the Customs Act, 1962 respectively. Therefore, in applicant's humble submissions at the most while final assessment of duty or thereafter the learned Assistant Commissioner was supposed to ask for the evidence to the effect that whether incidence of such duty has been passed on to any other person or otherwise.

- Appellant submits that "Provisionally Assessed Duty is nowhere defined in the Customs Act, 1962 but "Duty" is defined under Section 2(15) of the Customs Act, 1962. "Duty" means a duty of customs leviable under this Act. It is not matter of dispute that provisionally assessed duty of Customs 5% plus Social Welfare Surcharge (SWS) @ 10% of Basic Customs Duty on the said goods viz. Fuel Oil (27101959), Light Diesel Oil (27101943) and Lubricating Oil (27101978) was not leviable under the Section 12 of the Customs Act, 1962 as per rate specified in the First Schedule to the Customs Tariff Act, 1975 under the said tariff heading 2710 but was leviable under tariff heading 8908 viz. Fuel Oil (8908000), Light Diesel Oil (8908000) and Lubricating Oil (89080000) @ 2.5% plus SWS under the Section 12 of the Customs Act, 1962. Therefore, it cannot be said that it is refund of duty within the meaning of Section 2(15) of the Customs Act, 1962, so same cannot be claimed under Section 27 of the Customs Act, 1962. Therefore, time limit of 1 year as provided under Section 27(1) read with sub-section (1B)(b) of the Customs Act, 1962.
- Appellant further submits that provisions similar to sub-section (2)(a) of Section 18 was provided in Rule 9B(5) of the Central Excise Rules, 1944. However, with effect from 25.06.1999 by Notification No. 45/99-CE dated 25.06.1999 proviso was inserted which reads as under:

"Provided that, if an assessee is entitled to refund, such refund shall not be made to him except in accordance with the procedure established under sub-section (2) of Section 11B of the Act."

There is no similar provision is made in the Section 18 of the Customs Act, 1962. Therefore, provisions of Section 27 cannot be made applicable to refund arise consequent upon final assessment under Section 18(2) of the Customs Act, 1962.

- Appellant submits that anyway though application for refund and order is passed invoking Section 27 of the Customs Act, 1962, it has to be construed under Section 18(2)(a) of the Customs Act, 1962. Therefore, provisions of Section 28C and Section 28D of the Customs Act, 1962 are also not applicable in the facts and circumstances of the case, which were in force since 20.09.1991 prior to amended Section 18 ibid w.c.f. 13.07.2006.
- Appellant in view of the facts of the case submits that since the said goods were sold at the lesser value than the value declared and duty of customs paid in the bills of entry, thereby incidence of duty was not passed on the buyer but incidence of duty has been borne by the appellant. As per Section 18(2)(a) read with Section 18(4) read with Section 18(5)(a) of the Customs Act, 1962 shall, instead of being credited to the fund, be paid to the importer who has borne the incidence of such duty and not passed on to any other person. When the said goods were sold at the price lesser than the value on which customs duty was paid, thereby incidence of Customs Duty was not passed on the buyer of the goods.
- Appellant submits that since the duty of customs so paid on the said goods other than IGST of which Input Tax Credit availed were expensed out by way of debited to the profit and loss account, thereby incidence of duty was borne by the appellant and it cannot be said that incidence of duty was passed on others. By debiting the customs duty of the said goods in the profit and loss account result into decrease in profit of the particular year or increase in the loss of the particular year as the case may be. Merely debiting the duty in the profit and loss account it cannot be said that it automatically passed on others.
- Appellant submits that merely by debiting the duty amount in profit and loss account it cannot become part of the cost of the goods obtained from the breaking of ships. From the breaking of ship in addition to various ferrous metal scrap it obtained other goods list in Bills of Entry and also other goods and all those goods fetch market price and cannot be sold on the cost construction method. These facts are evident from the sale price of the said goods/bunker which are lower than the assessable value stated in the bills of entry. Even many expenses are incurred after sale of the goods during the year and profit or loss arrived at the end of the Financial Year, so by any means same cannot form the part of the value

of goods which may remain constant as per the market or fluctuate as per the market demand and supply or for any other reasons. Even duty of one goods cannot be added as cost of other goods so by expensed out in the profit and loss account such amount of customs duty cannot form part of value of the goods, therefore incidence of tax cannot be passed on any other person. On the contrary incidence of customs duty is borne by the appellant by reducing profit of the particular or increased loss as the case may be. Therefore, at later date such amounts of duty which were expensed out in the profit and loss are reversed by showing income in the profit and loss account in the year of refund due to final assessment. Apart from that whether deficiency or excess amount of the duty of customs under Section 18 of the Customs Act, 1962 is in relation to such goods for which the duty leviable is being assesses finally, therefore, by any means merely by debiting the amount in the profit and loss account in a particular year of expenses it cannot be said that amount of duty become part of cost of the particular goods in this case said goods especially when there are number of other goods are obtained and supplied from the ship.

- Neither Customs Act, 1962 nor any other Act provides to show such amount as receivable from Government of India as asset in the same year of payment cannot be expensed out in particular year. In the same way neither Customs Act nor any other Act provides that even after reversal of the entry later on by showing the same amount of duty of customs as income in the profit and loss account and receivable in the balance sheet as asset incidence of tax has been passed on any other person. It may please be appreciated that nothing can be presumed not to speak of about incidence of customs duty passed on any other merely the same amounts were debited to profit and loss account and thereby it become part of the cost and thereby incidence of duty has been passed on any other person. Especially, when price of the goods at which same were sold at lesser than the price on which duty of customs were paid.
- As submitted in para supra that excess amount paid at the time of provisional assessment of duty is not duty within the meaning of Section 2(15) of the Customs Act, 1962 and also provisions of Section 28(c) of the Customs Act, 1962 is not applicable to the excess amount paid at the time of provisional assessment. Without admitting anything it is submitted that as evident from the copy of the sales invoices of the said goods value of the goods were less than the value on which customs duty were paid and therefore, question of writing in the invoices that the amount of such duty which is the form part of the price at which such goods are sold. As submitted in para supra appellant vide its letter dated

28.01.2025 not only submitted CA Certificate with specific reference about amount of refund claim as Other Current Assets with sub-heading Balance with Revenue Authorities in the Audited Balance Sheet and un-audited Financial Accounts with copy of the same and the ledger accounts were submitted. Therefore, ratio of the said decision of single member bench is not relevant in the facts and circumstances of the case.

- Appellant submits that Section 27(2)(a) of the Customs Act, 1962 read with Section 28D of the Customs Act, 1962 clearly provides that any person claiming refund of duty may make an application for refund of such duty to the Assistant/Deputy Commissioner of Customs accompanied by such documentary or other evidence as the Appellant may furnish to establish that the amount of duty to relation to which such refund is claimed was collected from or paid by him and the incidence of such tax had not been passed on by him on any other person. It is admitted facts in the matter that Customs duty was collected from the appellant and also paid by the appellant only. Even if such presumption or inference is assumed to be correct, then also by debiting the amount of differential excess payment of duty of customs to the profit and loss account, either the profit is reduced or loss is increased as the case may be. Merely by debiting or charging the amount to the profit and loss account incidence of tax cannot be passed on to anyone especially when in the facts of the present case, the disputed stock of bunker was sold at very less price than the price considered at the time of provisional assessment.
- The appellant further submitted that there are many decisions where the burden of passing incidence of duty claimed as refund has been discharged on the basis of Chartered Accountant Certificate to the effect that incidence of duty was not passed on. In this regard the appellant has relied upon the following case laws:
    - ❖ COMMISSIONER OF CENTRAL EXCISE, PUNE-I Versus SANDVIK ASIA LTD. 2015 (323) E.L.T. 431 (Bom.)
    - ❖ ADVANCE STEEL TUBES LTD. Versus COMMISSIONER OF C. EX., GHAZIABAD-2014 (310) E.L.T. 370 (Tri. - Del.)
    - ❖ BIRLA CORPORATION LTD. Versus COMMISSIONER OF CENTRAL EXCISE, PUNE-I-2008 (231) E.L.T. 482 (Tri. Mumbai)
    - ❖ GUJARAT STATE FERTILIZERS & CHEMICALS LTD. Versus C.C.E., VADODARA 2014 (309) E.L.T. 94 (Tri. Ahmd.)
    - ❖ BUSINESS OVERSEAS CORPORATION Versus C.C. (IMPORT & GENERAL), NEW DELHI 2015 (317) E.L.T. 637 (Tri. - Del.)
    - ❖ HERO MOTOCORP LTD. Versus COMMISSIONER OF CUSTOMS (IMPORT & GENERAL)2014 (302) E.L.T. 501 (Del.)

❖ COMMR. OF C. EX. &CUS., GUNTUR Versus CRANE BETEL NUT POWDER WORKS 2011 (274) E.L.T. 113 (Tri. Bang.).

- Appellant therefore, finally respectfully submits that refund claim filed by it is in accordance with the provisions of the Customs Act, 1962 read with settled position of law. Therefore, appellant prays that impugned order passed by the learned Assistant Commissioner may be set aside and refund may be sanctioned and paid to it with interest at an early date.

PERSONAL HEARING

4. Shri P D Rachchh, Advocate, appeared for personal hearing on 08.10.2025 in virtual mode. He reiterated the submissions made at the time of filing appeal and also submitted summary of submissions.

4.1 The appellant further vide letter dated 08.11.2025 submitted that the Hon'ble Bench of Tribunal, Ahmedabad vide Final Order No. 10875-11017/2025 dated 04.11.2025 in Appeal No. C/10511/2025 in the number of matters including lead matter of M/s. Dynamic Ship Recyclers Pvt. Ltd. & others on similar issue decided the matters favour of Appellants. He further submitted that the issue of unjust enrichment in the present cases is squarely covered by the said decisions and also requested to consider the decision.

4.2 The appellant further submitted Certificate dated 13.11.2025 issued by the C A M/s A. R. PARMAR & CO. wherein it is certified thatthe price at which the bunkers were sold by the appellant was significantly lower than the import value of bunker on which customs duty was assessed and paid. Consequently, the appellant has not recovered the purchased price of the bunkers, and therefore, there is no question of recovery of the duty so assessed. Further he also certified that the appellant has not passed on the burden of the duty paid on the bunkers to any buyer or third party. The firm has borne the entire duty liability on its own.

4.3 He also vide letter dated 27.11.2025 submitted that:

- at the material time as per prevailing practice documents for filing Bills of Entry were submitted under forwarding letter enclosing the documents including protest letter for respective vessel imported for breaking and submitted acknowledged copy of such letters with copy of protest letters.
- Appellants further submit that it may please be appreciated that impugned refund applications were filed only after final assessment of bills of entry consequent upon Hon'ble CESTAT, Ahmedabad Final Orders referred in each Order-in-Original. Appellants without

admitting anything and without prejudice to the grounds of appeal and submissions made till date further submits that it had filed the check lists for the Bills of Entry which were provisionally assessed with higher duty and same were paid so as to get the clearance of the goods in time so as to cater the demand of buyers well in time and also to avoid undue delay ete. But at the same time it had preferred appeal against all the Bills of Entry before the Commissioner (Appeals) and thereafter before Hon'ble CESTAT against all Bills of Entry. Thus, filing appeal against such assessment order etc. amounts to payment of differential/excess duty under protest. 2nd Proviso to Section 27(1) of the Customs Act, 1962 clearly provides that one-year limitation shall not apply where any duty has been paid under protest. It may please be appreciated that any of the provisions of the Customs Act, 1962 not to speak of Section 27 of the Customs Act, 1962 defines when and how payment will be considered as payment of duty made under protest. Even now a days duty are being paid online and e-receipt. generated online nowhere allow to add or write anything more in the format, so like manual Challan TR-6/GAR-7 one cannot write protest against such payment. However, one may prefer appeal to get refund of excess payment of duty only and not for any other reasons. Therefore, preferring an appeal against the assessment orders against which excess duty were paid under the Customs Act, 1962 have to be considered as duty paid under protest. In support of the above, it refers and relies upon amongst other following decisions:

(i) MAFATLAL INDUSTRIES LTD. Versus UNION OF INDIA 1997 (89) E.L.T. 247 (S.C.)

(ii) COMMISSIONER OF C. EX., CHENNAI-II Versus ELECTRO STEEL CASTINGS LTD. 2014 (299) E.L.T. 305 (Mad.)

(iii) CISCO SYSTEMS INDIA PVT. LTD. Versus COMMR. OF CUS. (APPEALS), NEW DELHI - 2021 (375) E.L.T. 658 (Tri. Del.)

(iv) PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT AND GENERAL) Versus CISCO SYSTEMS (INDIA) PVT. LTD. - 2023 (384) E.L.T. 165 (Del.)

➢ It is further submitted that in case of M/s. Leela Sustainable Ship Recycling Pvt. Ltd. it was known as Efcee Global Ship Recycling Pvt. Ltd, and prior to that Sarvag Shipping Services Pvt. Ltd. In support of Certificate of Incorporation pursuant to change in name

issued by Registrar of Companies dated 06.03.2023 and 10.12 2018 are enclosed.

➢ Appellants therefore, in view of the above respectfully submit that refund claim filed by them are within all four of the Customs Act, 1962 read with settled position of law. Therefore, their appeals may be allowed with consequential relief.

DISCUSSION AND FINDINGS

5. I have gone through the facts of the case available on record and the submissions made in the grounds of appeal as well as those made during hearing. The issue to be decided in the present appeal is whether the impugned orders passed by the adjudicating authority rejecting the refund claim filed by the appellant in terms of provisions of Section 27 of the Customs Act, 1962, being time barred, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the appellant had imported vessels for breaking up/recycling and filed Bills of Entry as detailed in Table A above 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 Bills of Entry were finally assessed vide Final Assessment Orders as detailed in Table A above passed by the Assistant Commissioner, Customs Division, Bhavnagar in terms of Hon'ble CESTAT, Ahmedabad, Orders dated 17.10.2022/01.12.2022. Consequently, the appellant had filed refund claims along with Certificate issued by C. A. M/s A. R. PARMAR & CO. wherein it is certified that M/s Leela Greenship Recycling Pvt. Ltd. has paid total customs duty inclusive of IGST. Also that they have checked sales invoices as well as Financial ledger accounts and other records and certified that incidence of customs duty paid on Bunker (Oil and fuels) have not been passed on to any other person. It is observed that there is no dispute regarding eligibility of the appellant for refund on merit. The adjudicating authority has rejected the refund claims filed by the appellant in terms of provisions of Section 27 of the Customs Act, 1962, being time barred.

5.2 It is observed that the Bill of Entry listed in Table A was provisionally assessed due to non-availability of original documents. It is

further observed from the impugned order that there existed a dispute regarding the classification and assessment of customs duty on Fuel and Oil (Fuel Oil, Marine Gas Oil, Lubricating Oil) contained in the vessel's bunker tanks located inside as well as outside the engine room. The appellant contended that such Fuel and Oil formed part of the vessel and should be assessed under CTSH 89.08 of the Customs Tariff Act, 1975, whereas the Department maintained that the same were liable to be classified under the respective headings of Chapter 27. This classification dispute was finally resolved by the Hon'ble CESTAT, Ahmedabad, vide Order No. A/11792-11851/2022 dated 17.10.2022/01.12.2022, which was subsequently upheld by the Hon'ble Supreme Court. Pursuant to this, the Bills of Entry were finally assessed vide the Final Assessment Orders detailed in Table A, resulting in excess duty paid at the time of provisional assessment, thereby entitling the appellant to a refund.

5.3 The appellant in the grounds of appeal contended that there is no provision under the Customs Act, 1962 or rules made there under to file an application for refund of excess amount at the time of provisional assessment not to speak of Section 27 of the Customs Act, 1962 read with Customs Refund Application (Form) Regulations, 1998. They further submitted that as per the prevailing practice appellant had filed application for refund of excess duty of Customs paid less the amount of IGST paid on such goods availed as input tax credit under the CGST Act, 2017 on the said goods/bunker at the time provisional assessment of the impugned Bills of Entry but inadvertently in the refund application instead of Section 18(2)(a) of the Customs Act, 1962 was filed under Section 27 of the Customs Act, 1962. The appellant further submitted that the impugned application for refund may please be considered under Section 18(2)(a) of the Customs Act, 1962. The appellant further submitted that Section 18 of the Customs Act, 1962 is self-contained provisions for refund subject to incidence of such duty has not been passed on to any other person with effect from 13.07.2006. Even the said section also provides time limit to refund the amount within 3 months from the date of assessment of duty finally, otherwise interest at the rate fixed under Section 27A of the Customs Act, 1962 till the date of refund of such amount is payable with effect from 13.07.2006.

5.4 I have perused Section 18 of Customs Act, 1962 and specially Section 18(2)(a) and Section 18(4) and the same is reproduced as under:

"(2) When the duty leviable on such goods is assessed finally [or re-assessed by the proper officer] in accordance with the provisions of this Act, then -

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty [finally assessed or re-assessed, as the case may be,] and if the amount so paid falls short of, or is in excess of [the duty [finally assessed or re-assessed, as the case may be,]], the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

.....

(4) Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is ***not refunded under that sub-section*** *within three months from the date of assessment of duty finally, [or re-assessment of duty, as the case may be,] there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount."*

5.5 It is observed that Section 18 of the Customs Act, 1962 governs the scheme of provisional assessment, and after its amendment with effect from 13.07.2006 expressly incorporates provisions for refund, subject to the condition that the incidence of such duty has not been passed on to any other person. A plain reading of Section 18(2)(a) makes it clear that where the duty paid at the time of provisional assessment is found to be in excess of the duty finally assessed, the importer becomes automatically entitled to a refund of the excess amount. Further, Section 18(4) provides that if any amount refundable under Section 18(2)(a) is not refunded under that sub-section within three months from the date of final assessment, the importer is entitled to interest on the delayed refund. These provisions together indicate that the statute creates a self-contained mechanism for refund arising out of finalisation of provisional assessment. In view of this statutory framework, the refund arising from the finalisation of the provisional assessment is required to be processed under Section 18(2)(a) itself and not under Section 27, as contended by the appellant. Consequently, the question of applying the one-year limitation period prescribed under Section 27 does not arise for refunds flowing directly from Section 18. Therefore, the refund claim filed by the appellant pursuant to the final assessment is not barred by limitation

5.6 Further, it is observed from the facts of the case, as recorded in the impugned order, that there existed a dispute regarding the assessment of customs duty on the Fuel and Oil (Fuel Oil, Marine Gas Oil, Lubricating Oil) contained in the bunker tanks located inside and outside the engine room of the vessel. The appellant contended that such Fuel and Oil formed an integral part of the vessel and, therefore, ought to be assessed to duty under CTSH 89.08 of the Customs Tariff Act, 1975, along with the vessel itself. The Department, however, took the position that the Fuel and Oil

contained in the bunker tanks were to be assessed separately under their respective tariff headings, i.e., under Chapter 27. The appellant, in their additional submissions, has also produced a copy of the protest letter, which is reproduced below:

"With reference to above, it is to inform that, inside Engine Room Bunkers is part of vessel & falling under chapter heading 8908 as per Judgement passed by Hon'ble High Court of Gujarat in case of M/S. Priya Holding Pvt Ltd., CIATAITON NO.2013 (288) ELT-347 (GUJ). Hence, we have File Custom Duty on bunkers lying inside engine room tanks under CTH 8908 of CTA 1975. But due to technical problem in EDI System not allowed inside bunkers at ch.8908, hence to overcome the delay we are filing inside bunker duty under chapter heading 2710 Under Protest to keep our right to claim refund for the same in future.

However, we have paid duty on Bunker lying in Out Side engine room falling under Chapter Heading 2710 as per Circular No.37/1996 dtd. 03-07-1996 Paid UNDE PROTEST. We are of the opinion that no Custom duty is separately payable on bunkers as we have not imported the same. This is for your favor of information please."

From the contents of the protest letter, as well as the facts of the case as recorded in the impugned order, it is evident that a substantive dispute existed between the appellant and the Department regarding the correct classification of the Fuel and Oil (Fuel Oil, Marine Gas Oil, Lubricating Oil) contained in the bunker tanks located inside and outside the engine room of the vessel. The appellant maintained that such Fuel and Oil should be classified along with the vessel under CTSH 89.08, whereas the Department asserted that these goods were required to be assessed separately under Chapter Heading 2710. In view of this classification dispute, the appellant discharged the duty liability on the bunker fuel under Chapter Heading 2710 under protest.

5.7 The appellant further submitted that, at the material time, the prevailing practice required submission of documents for filing Bills of Entry under a forwarding letter, enclosing all supporting documents, including the protest letter, for each vessel imported for breaking. They clarified that the checklists relating to the provisionally assessed Bills of Entry were duly filed, and the higher duty so assessed was paid only to ensure timely clearance of the goods, in order to meet delivery commitments to buyers and to avoid operational delays. Simultaneously, however, the appellant pursued the statutory remedy by filing appeals against all such assessment orders before the Commissioner (Appeals),

and thereafter before the Hon'ble CESTAT, in respect of the disputed Bills of Entry. According to the appellant, the act of filing appeals challenging the assessment itself constitutes a continuation of protest and clearly establishes that the duty was paid under protest and relied upon certain case laws as detailed above. The appellant also contended that, in terms of the second proviso to Section 27(1) of the Customs Act, 1962, the statutory limitation period of one year does not apply where duty has been paid under protest. For ease of reference, the second proviso to Section 27(1) is reproduced below:

*"**SECTION [27. Claim for refund of duty.** — [(1) Any person claiming refund of any duty or interest, —*

(a) paid by him; or

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest:

***Provided** that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, such application shall be deemed to have been made under sub-section (1), as it stood before the date on which the Finance Bill, 2011 receives the assent of the President and the same shall be dealt with in accordance with the provisions of sub-section (2):*

***Provided** further that the limitation of one year shall not apply where any duty or interest has been paid under protest:"*

From the factual matrix discussed above, together with the relevant statutory provisions, it becomes evident that the customs duty in the present case was paid under protest. The protest letter placed on record, along with the appellant's consistent challenge to the assessment through appeals before the Commissioner (Appeals) and the Hon'ble CESTAT, clearly demonstrates that the assessment was never accepted as final by the appellant and remained under dispute throughout. In such circumstances, the payment of duty cannot be treated as voluntary or unconditional. The law is well settled that where duty is paid under a valid and subsisting protest, the limitation prescribed under Section 27(1) of the Customs Act, 1962 does not apply. The second proviso to Section 27(1) expressly provides that the one-year time limit for filing a refund claim shall not operate in cases where the duty has been paid under protest.

Accordingly, even assuming that the present refund claims were to be examined under Section 27, the exclusionary clause in the second proviso squarely applies, thereby lifting the bar of limitation. The refund application, therefore, cannot be rejected as time-barred, and the claim must be treated as filed within the permissible time under law.

5.8 Now in respect of merit of the case it is observed that the refund is arising from the finalization of the provisional assessed Bills of Entry. Thus, there is no dispute regarding eligibility of the appellant for refund on merit. The only aspect which is required to be examined is whether the appellant has crossed the bar of unjust enrichment.

5.9 It is undisputed that the goods in question have been sold. Further, it is observed that the appellant had submitted Certificate issued by C A M/s A. R. PARMAR & CO. wherein it is certified that the appellant has paid total customs duty inclusive of IGST on import purchase of the ship/vessel for breaking purpose, Bunker (Oil and Fuels), Stores, etc. It is further certified that we have checked the sales invoices as well as Financial Ledger Accounts and other records and certify that the appellant at the time of import of the vessel has paid the customs duty on import of ship/vessel and on the Bunker (Oil and Fuels) has not been passed on to the buyer of the goods or any other persons. He further certified that the amount refundable from the customs department have been shown in the audited books of accounts for the financial year 2023-24 and un-audited financial accounts for the year 2024-25 under the head OTHER CURRENT ASSETS with Sub-Heading Balance with revenue authorities. That the appellant has not debited the above Customs Duty to the expenses in the Profit and loss account and the same duty on import of ship/vessel and on the Bunker (Oil and Fuels) has not been passed on to the buyer of the goods or any other persons.

5.10 The details of Certificate dated 16.01.2025 issued by M/s A R Parmar & Co., C.A., submitted along with appeal listed at Sr. No. 02 of Table A above, is as under:

"We, A R Parmar & Co, Chartered Accountants, having address at 605, 6th Floor, Victoria Prime, Near Victoria Park, Water Tank, Kaliabid, Bhavnagar-364002 have checked duly audited financial accounts of M/s.LEELA SUSTAINABLE SHIP RECYCLING PVT LTD. having office at 3rd Floor, B-Wing, Leela Efcee, Waghawadi Road, Bhavnagar-364002, Bhavnagar and works at Plot No.84D, Ship Breaking Yard, Alang, Dist. Bhavnagar for Financial Year 2018-19 under the Income Tax Act, 1961. We have checked their Books of Accounts and Records of Vessel "POLO" and Bill of Entry No. 2501397 DT.20/03/2019

That M/s. LEELA SUSTAINABLE SHIP RECYCLING PVT LTD. has paid total customs duty of Rs.3,75,50,008 Inclusive of IGST on import purchase of Rs. 3,25,15,400/- on dated 20/03/2019 vide Challan No.2026362742 on the import of the ship/vessel for breaking purpose, Bunker (Oil and Fuels), Stores, etc.

We have checked the sales invoices as well as Financial Ledger Accounts and other records and certify that M/S. LEELA SUSTAINABLE SHIP RECYCLING PVT LTD at the time of import of the vessel has paid the customs duty on import of ship/vessel and on the Bunker (Oil and Fuels) has not been passed on to the buyer of the goods or any other persons.

This certificate is issued at the request of the party and to the best of our knowledge and belief."

5.11 M/s A R Parmar & Co., C.A., further issued another certificate dated 28.01.2025 which is as under:

"We, A. R. Parmar & Co, Chartered Accountants, having address at 605, 6th Floor, Victoria Prime, Near Victoria Park, Water Tank, Kaliabid, Bhavnagar-364002 have checked duly audited financial accounts for the FY-2023-24 and un-audited financial accounts for the year 2024-25 of M/s. LEELA SUSTAINABLE SHIP RECYCLING PVT LTD. having office at 3rd Floor, B-Wing, Leela Efcee, Waghawadi Road, Bhavnagar-364002, Bhavnagar and works at Plot No.84D, Ship Breaking Yard, Alang. Dist. Bhavnagar.

And as per my certificate/certificates dated 16/01/2025 AND 20/01/2025, I further certify that the amount refundable from the customs department have been shown in the audited books of accounts for the financial year 2023-24 and un-audited financial accounts for the year 2024-25 under the head OTHER CURRENT ASSETS with Sub-Heading Balance with revenue authorities

.....

That M/s. LEELA SUSTAINABLE SHIP RECYCLING PVT LTD has not debited the above Customs Duty to the expenses in the Profit and loss account and the same duty on import of ship/vessel and on the Bunker (Oil and Fuels) has not been passed on to the buyer of the goods or any other persons.

This certificate is issued at the request of the party and to the best of our knowledge and belief."

5.12 It is further observed that earlier on similar issue the appeals filed by the appellants were rejected on the ground of unjust enrichment. It is further observed that the Hon'ble Tribunal, Ahmedabad, on appeal filed by

the appellants against the earlier orders of the Commissioner(Appeal), vide final order No 10875-11017/2025 dated 04.11.2025 has allowed the appeals filed by the shipbreakers/appellants, with consequential relief, on identical issue holding 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. The relevant paras of the order are as under:

10. This Court has considered the rival submissions. It finds that the disputes at this stage is only from the angle of as to whether unjust enrichment will or will not apply to the matter and with its factual matrix?. It finds that from the table produced by the appellant that the price at which the bunkers were sold by the appellant was quite below the import price/value of the Bunkers on which the duty was assessed and paid. Therefore, the appellant have claimed that they have not been even able to recover full import price of the Bunkers on which duty was assessed and therefore there cannot have been any question of recovering the duty assessed on such import price. .....

11. Further, the appellant states that they duly produced the certificate .....

11.1 Further despite it clearly being indicated that the same has not been passed by company to the buyers or any other person and same is shown as the Customs duty receivable account, no cognizance of the same was taken.

12 The Learned Advocate at this stage seeks to place reliance on various case law as has been indicated above to press the point that when the appellant had not been able to recover from the buyers even the full import price of the bunkers on which duty was assessed the question of recovering the duty assessed on such import price did not arise. That the amount was debited to expense in Profit And Loss Account did not mean the incidence thereof was passed on to the buyers when the price at which the bunkers were sold to the buyers, was even less then in the import price on which the duty was assessed.

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) 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.

5.13 In view of the above decision of the Hon'ble Tribunal, Ahmedabad it is observed that in the present case also the C.A M/s A R Parmar & Co., vide certificate, submitted along with refund application, certified that the amount refundable from the customs department have been shown in the audited books of accounts for the financial year 2023-24 and un-audited financial accounts for the year 2024-25 under the head OTHER CURRENT ASSETS with Sub-Heading Balance with revenue authorities. That the appellant has not debited the above Customs Duty to the expenses in the Profit and loss account and the same duty on import of ship/vessel and on the Bunker (Oil and Fuels) has not been passed on to the buyer of the goods or any other persons. Further the appellant has also submitted C.A. Certificate dated 13.11.2025 wherein it is certified that the price at which the bunkers were sold by the said entity was significantly lower than the import value of bunker on which customs duty was assessed and paid. Consequently, the appellant has not recovered the purchased price of the bunkers, and therefore, there is no question of recovery of the duty so assessed. Further, he also certified that the appellant has not passed on the burden of the duty paid on the bunkers to any buyer or third party. The firm has borne the entire duty liability on its own.

5.14 In view of the above, and following the decision of the Hon'ble Tribunal, Ahmedabad, I am of the considered view that the appellant have

produced enough evidence to cross the bar of unjust-enrichment. Accordingly, the appeals filed by the appellant are liable to be allowed.

6. In view of the above, the appeals filed by the appellant are allowed with consequential relief.

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

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

By Registered Post A.D.

F. Nos. S/49-67,68/CUS/JMN/2024-25 Dated –02.12.2025

To,

1. M/s Leela Sustainable Ship Recycling Pvt. Ltd.,
   Plot No. 84D, Ship Recycling Yard, P.O. Manar,
   Alang, Bhavnagar - 364 081,

2. Shri Pankaj D. Rachchh, Advocate, P R Associates,
   901-B, The Imperial Heights, 150 Feet Ring Road Rajkot - 360 001

Copy to:

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