



Date 15-04-2026

SCN No.- 07/2026-27/COMM/N.S./Adjn/MCH

DIN- 20260471MO0000018556

SHOW CAUSE NOTICE
(ISSUED UNDER SECTION 28(4) OF CUSTOMS ACT, 1962)

M/s. The Great Eastern Shipping Co. Ltd., Ocean House, 134A, Dr. Annie Besant Road, Worli, Mumbai, Maharashtra-400018 (hereinafter referred to as "the importer" for the sake of brevity) filed Bill of Entry No. 3550955 dated 13.04.2021 at Mundra Customs for import of Old & Used Vessel / Bulk Carrier falling under CTH 8901 90 00. The assessable value involved in the said import was Rs. 2,00,49,72,590/-.

2. The matter was examined in audit under Para-3, LAR-11/2022-23 pointed out short levy of duty on bunker remaining on the imported ship in the above Bill of Entry, and in this regard consultative letter F. No. CUS/APR/MISC/2679/2024-Gr 5-6 dated 06.06.2024 was issued by the Office of the Principal Commissioner of Customs, Mundra to the importer.

3. Section 12 of the Customs Act, 1962 provides, inter alia, that duties of customs shall be levied at specified rates on goods imported into India. For imports of goods "Old and used Vessel/Ship" falling under CTH 8901 made during April-21 to September-21, Audit pointed out short levied duty on Bunker on the imported ship in 01 Bill of Entry (01 items-wise), involving Assessable value **Rs. 2,00,49,72,590/-**. M/s The Great Eastern Shipping Co. Ltd. had filed bill of entry No. 3550955 dated 13.04.2021 for 'Old & Used Vessel/ Bulk Carrier' falling under CTH 8901 90 00 ("Vessels for transport of goods"). As per terms and conditions of the 'Memorandum of Agreement (MoA)' with the seller (M/s Defender 1 Ltd.), the importer (or Buyer) would take over remaining unused lubricating and hydraulic oils and greases in designated storage tanks and unopened drums and pay the actual net price as evidenced by invoices or vouchers. Thus, apart from the purchase price of the vessel, the importer was required to pay the amount towards

these stock of remaining items viz., lubricating oils etc. Thus, both the items (viz., 'Vessel' and 'the bunker') and their values were clearly identifiable and were separately classifiable under respective Tariff headings (CTHs) for application of stipulated duty on import. However, the importer failed to declare the bunker and lubricating oils separately under their appropriate tariff headings of Chapter 27, and the same were not assessed to duty under their correct classification, resulting in their clearance at the lower rate of duty of 5% IGST only. The value of Rs. 4,27,63,966/- attributable to the lubricating and hydraulic oils (viz., VLSFO or Fuel Oil, LSMGO or Marine Gas Oil, etc.) remaining on board has been considered for calculation of short levy of duty. This value is already accepted by the importer at the time of assessment on 17.04.2021. Thus, lubricating and hydraulic oils (viz., VLSFO or Fuel Oil, LSMGO or Marine Gas Oil, etc.) of value Rs. 4,27,63,966/-, which attracted duty rate of 24.49% (including 5% BCD, 10% SWS and 18% IGST) under their respective CTH, were assessed to duty at the rate of 5% only, resulting in short levy of differential customs duty.

Enter BE No :	3550955	Date :	13/04/2021	CC :	N	Type :	H
Importer :	THE GREAT EASTERN SHIPPING CO LTD	AG :	5B	First Chk :	N		

Departmental Comments

Editor

Reappraisal approval.
FOR BG AND BUNKER
by 10029232 on 17/04/2021 12:21COC
By 10029232 Dated 17-04-21 12:23
IN THE MATTER, THE IMPORTER VIDE LETTER-DATED 16.04.2021 HAS AGREED TO ADD THE VALUE OF THE TAKEOVER BUNKERS AND OTHER STORES TO THE TRANSACTION VAUE AND PAY THE DIFFERENTIAL DUTY ON THE SAME. ACCORDING THE B/E HAS BEEN RECALLED FOR DELETING THE BG AND ENHANCING THE VALUE. ACCORDINGLY, AS PERTHE APPROVAL OF COMMISSIONER SIR, VIDE E OFFICE FILE NO. 1720 DATED 16.04.2021, THE B/E HAS BEEN RECALLED FOR DELETING THE BG AND ENHANCING THE VALUE AND ACCORDINGLY BEING ASSESSED.
By 10026695 on 17/04/2021 at 12:36P.M.

4. It is stated that the vessel (ship) entered Indian territory in normal course of its business (i.e., import or export of goods boarded on it), bunker could have been treated as duty exempted or payable for the purpose of Customs as per its next scheduled journey viz., 'Foreign-bound' or for 'Coastal Run' respectively. However, in this case, the ship alongwith its bunker was imported and entered the Indian territory with change of ownership. Accordingly, the remaining bunker which was to be separately invoiced by the seller, as evident from the Memorandum of Agreement, was required to be charged to customs duties under their respective tariff classification. This resulted in short levy of customs duty of **Rs. 83,34,697/-** (calculated interrimly @ differential duty rate of 19.49%), which is recoverable alongwith applicable interest.

5. DUTY CALCULATION

Particulars	Amount
Additional value of bunker / lubricating oils	Rs. 4,27,63,966/-
Duty (actually paid IGST only)	5%
Duty rate applicable (5% BCD, 10% SWS and 18% IGST)	24.49%
Differential duty rate	19.49%
Short levy of customs duty	Rs. 83,34,697/-

6 . Relevant Legal Provisions, in so far related to the facts of the case are as under:

Section 17. Assessment of duty. -

1. *An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods*

(4) *Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods*

Section 28. Recovery of duties not levied or not paid or shortlevied or short- paid or erroneously refunded. -

(4) *Where any duty has not been ¹⁰[levied or not paid or has been shortlevied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*

- a. *collusion; or*
- b. *any wilful mis-statement; or*
- c. *suppression of facts,*
by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been ¹¹[so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

Section 28AA. Interest on delayed payment of duty. -

1. *Notwithstanding anything contained in any judgment, decree, order ordirection of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*
2. *Interest at such rate not below ten per cent. and not exceeding thirty-sixper cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the*

duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

Section 46. Entry of goods on importation. -

(4) The importer while presenting a bill of entry shall ^{1 2} [* *] make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, ^{1 3} [and such other documents relating to the imported goods as may be prescribed].*

(4A) The importer who presents a bill of entry shall ensure the following, namely: -

- a. *the accuracy and completeness of the information given therein;*
- b. *the authenticity and validity of any document supporting it; and*
- c. *compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]*

Section 111. Confiscation of improperly imported goods, etc. -

(m) ² [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 ³ [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];

SECTION 112. Penalty for improper importation of goods, etc.-

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b).....

shall be liable, -

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher.

Section 114A. Penalty for short-levy or non-levy of duty in certain cases.

-

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under ³ [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

7. With the introduction of self-assessment under Section 17 of the Customs Act, 1962, the importer was under a legal obligation to correctly declare the nature,

classification and value of the imported goods and to correctly discharge the applicable customs duty. The importer was also required under Section 46(4) and 46(4A) of the Customs Act, 1962 to ensure the truthfulness, accuracy and completeness of the contents of the Bill of Entry and authenticity of the supporting documents.

8. At the outset, it is observed that under Section 46 of the Customs Act, 1962, the importer is required to file a Bill of Entry making a true, correct and complete declaration of the goods imported, including their description, quantity, value, and classification. Further, as per Section 17(1) of the Customs Act, 1962, the importer is required to self-assess the duty leviable on the imported goods in accordance with the provisions of the Act and the Customs Tariff. Thus, the statutory scheme places a clear obligation upon the importer to exercise due diligence and ensure that all material particulars, including any additional consideration payable and the correct classification of goods, are fully and correctly declared at the time of import. In the present case, it appears that the importer, while filing the Bill of Entry for the subject old and used vessel, had declared the vessel but not declared bunker goods i.e. lubricating/hydraulic/bunker oils, and also failed to disclose that an additional consideration was payable separately towards such oils to the seller, as is evident from the Memorandum of Agreement (MoA) entered into between the buyer and the seller. The said agreement clearly establishes that the oils were not included in the declared transaction value of the vessel, but were subject to separate monetary consideration, thereby making them independent goods having distinct commercial value. However, the importer neither declared this fact before Customs nor included the value of such oils in the assessable value, nor classified them separately under the appropriate tariff headings of Chapter 27.

9. On perusal of Bill of Entry No. 3550955 dated 13.04.2021, it has been revealed that the importer declared only one item, namely the vessel under CTH 89019000, and made no declaration whatsoever in respect of the bunker/lubricating oils remaining on board, despite the fact that a separate monetary consideration was payable therefor under the MoA. Further, the importer made a statutory declaration under Rule 10 of the Customs Valuation Rules, 2007 (Part-VI of the Bill of Entry) to the effect that there were no payments paid or payable other than those declared in the invoice. This declaration was factually incorrect and contrary to the terms of the MoA, which expressly provided for separate payment towards lubricating and hydraulic oils. The importer, having signed the MoA and being fully aware of the separate consideration payable towards the bunker/lubricating oils, appears to have consciously abstained from

declaring the same in the Bill of Entry, thereby appearing to have suppressed material facts with intent to evade applicable customs duty and cause loss to the exchequer. The said non-declaration further establishes the wilful suppression of material facts by the importer with intent to evade customs duty.

10. The existence of a separate agreement for payment towards bunker/lubricating oils is a material fact directly affecting both valuation and classification, which was within the exclusive knowledge of the importer. The deliberate non-declaration of such additional consideration and the true nature of the goods amounts to suppression of facts and wilful misstatement, resulting in short-levy of duty. The importer was in possession of the MoA clearly stipulating separate payment for the oils at the time of import, and therefore had full knowledge of the true nature, value and classification of the goods. Despite such knowledge, the importer chose not to disclose this material fact in the Bill of Entry. The non-declaration is not a mere procedural lapse or interpretational issue, but a conscious omission of a vital fact having direct bearing on duty liability. The conduct of the importer appears that there was a wilful suppression of facts and misstatement with intent to evade payment of customs duty. The element of intent is evident from the existence of a written agreement which was deliberately withheld from disclosure before Customs at the time of assessment. Further, by misdeclaring the classification and value of the said oils and by not declaring the separate consideration payable, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, as the goods have been misdeclared in terms of value and description in the Bill of Entry. In view of the above facts and circumstances, this is a fit case for invocation of the extended period under the proviso to Section 28(4) of the Customs Act, 1962, as the ingredients of suppression of facts, wilful misstatement and intent to evade payment of duty are clearly satisfied, resulting in short-levy of duty.

11. In the present case, it appears that the value attributable to bunker / lubricating oils remaining on board the imported ship, though separately identifiable and separately chargeable to duty under their own tariff headings, was not correctly subjected to applicable customs duties and was instead assessed at the concessional rate applicable to the vessel. As a result, differential customs duty amounting to Rs. 83,34,697/- appears to have been short-levied.

12. The importer appears to have failed to make a correct declaration for proper assessment of the bunker and lubricating oils and thereby appears to have rendered the goods liable to confiscation under Section 111(m) of the Customs Act, 1962. Therefore, the above amount of short-levied duty appears recoverable under

Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962, and the importer also appears liable to penalty under Section 112 and / or Section 114A of the Customs Act, 1962. It is further clarified that the duty calculation above is based on the value of Rs. 4,27,63,966/- attributable to the bunker/lubricating oils, and the actual duty demand shall remain subject to verification of the exact quantity and value of bunker remaining on board at the time of import.

13. Now, therefore, M/s. The Great Eastern Shipping Co. Ltd., Ocean House, 134A, Dr. Annie Besant Road, Worli, Mumbai, Maharashtra-400018 are hereby called upon to show cause to the Commissioner of Customs, Mundra, within 30 days of receipt of this Notice, as to why:

(i) The bunker / lubricating oils remaining on board the imported vessel, valued at **Rs. 4,27,63,966/-**, should not be rejected from classification under CTH 8901 90 00 and should not be re-classified and assessed to customs duty under the appropriate tariff entries of the Customs Tariff Act, 1975, with applicable duty rates thereon;

(ii) The goods, namely the bunker / lubricating oils valued at **Rs. 4,27,63,966/-** remaining on board the imported ship, should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962;

(iii) The differential customs duty amounting to **Rs. 83,34,697/-** should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;

(iv) Penalty should not be imposed upon them under Section 112 and/or Section 114A of the Customs Act, 1962.

14 . This Show Cause Notice is being issued as per the scrutiny of records conducted so far. Hence, the department reserves its rights under the provisions of Customs Act, 1962 to conduct further Audit/Scrutiny of the records and issue subsequent or separate show cause notice(s), if any.

15. The department reserves the right to add, amend, modify or delete any part or portion of this notice any such addition, amendment, modification or deletion if made shall be deemed to be part and parcel of this notice.

16. The importer is further required to produce at the time of show cause, all the evidences upon which they intend to rely in support of their defense. They are further called upon to inform in writing to the Deputy Commissioner of Customs, Custom House, Mundra as to whether they desire to be heard in person before the case is adjudicated. If no cause is shown within 30 days from the date of receipt of this notice or if they fail to appear for personal hearing when the case is posted for hearing the case will be decided ex-parte on the basis of evidences available on

record.

17. The importer is further informed that they have the right to opt for closure of these proceedings under Section 28(6) of Customs Act, 1962. If they so decide, then in terms of Section 28(5) of the Customs Act, 1962, they may pay the duty demanded in this Show Cause Notice in full or in part, as may be accepted by them, and the interest payable thereon under Section 28AA and penalty equal to fifteen percent of the duty specified in this notice or the duty so accepted by them, within 30 days of the receipt of the notice and inform the concerned Adjudicating and/or of such payment in writing.

Digitally signed by

Nitin Saini

Date: 15-04-2026

17:44:09

NITIN SAINI
COMMISSIONER
Commissioner of Customs
Custom House, Mundra

To,

M/s. The Great Eastern Shipping Co. Ltd.
Ocean House, 134A, Dr. Annie Besant Road,
Worli, Mumbai, Maharashtra-400018

Copy to:

1. The Deputy Commissioner, Audit, Custom House, Mundra
2. The Deputy Commissioner, EDI, Custom House, Mundra
3. Office copy
4. Notice board

**THE GREAT EASTERN
SHIPPING COMPANY LIMITED**
CIN: L35110MH1948PLC006472



OCEAN HOUSE, 134/A, Dr. Annie Besant Road, Worli, Mumbai - 400 018, INDIA. Tel.: +91(22) 6661 3000 / 2492 2100 Fax: +91(22) 2492 5900



To,
The Asst. Commissioner of Customs (Gr. V)
Customs House,
Mundra.

26.10.2024

Dear Sir,

Sub: Regarding Short levy of duty on Bunker remaining on the imported ship (by M/s The Great Eastern Shipping) Para-3, LAR-11/2022-23)- regarding
Ref: Your notice dated 6.6.2024 (F. no. CUS/APR/MISC/2679/2024-Gr 5-6/2145)
and our in-person meeting held on 9.10.2024.

We thank you for meeting us in person and understanding our views on the alleged notice under reference issued to us. The notice pertains to our vessel Jag Alia, which had called Indian shores for the first time, at the port of Mundra on 13.4.2021. In your letter, your goodself has mentioned that the audit has pointed out that the takeover bunkers at the time of the purchase of vessel Jag Alia, should have been added as a separate line item in the importation bill of entry and duty be discharged according to the appropriate CTH instead of adding to the value of the vessel. Consequently, the Consultative letter directs us to make the payment of the differential duty along with applicable interest. At the outset, we do not agree with the observations of the Audit for the reasons mentioned in the following paragraphs:

- 1) Our vessel Jag Alia called the Indian shores for the first time at the Mundra Port on 13/04/2021. In compliance with customs Circular No. 450/79/2010-Cus-IV dated 23/09/2010, we filed the Bill of Entry for our said vessel being Bill of Entry no.3550955



Handwritten text, possibly a signature or date, located in the upper left quadrant of the page.





dtd: 13/04/2021 (the said BOE). The BOE was duly assessed and duty as applicable was discharged by us. It is pertinent to note that no customs duty is required to be paid on importation of a vessel, however, an integrated tax at the rate of 5% is levied on the first entry of a vessel at an Indian port. This levy of integrated tax was introduced in the GST Law w.e.f. 01.07.2017 under the Customs Tariff Act, 1975. However, during the assessment, there was a difference of opinion between us and the custom house over the Takeover Bunker (residual bunkers when vessel is taken over). The custom house was of the opinion that the value of the takeover bunker should be added to the assessable value of the vessel, while, we were of the opinion that the takeover bunker is not a condition to sale as per Customs Valuation Rules 2007 and hence should not be added. However, due to paucity of time and business exigencies, we agreed to the contention of the customs and added the takeover bunker value in the assessable value of the BOE and discharged the duty accordingly. For your ease of reference, the Letter to the Commissioner of Customs dated 16.04.2021 is attached and marked as **Annexure 'A'**.

- 2) Takeover bunker invoice is a reimbursement of the residual bunkers lying on board a vessel and is not part of the sale transaction. Like any sale and purchase transaction of any movable goods such as vessel, car or truck, etc., the value of the goods is separate from the value of the consumables lying on board since the same cannot be ascertained till the takeover. It is a global practice that the cost of the residual bunkers is reimbursed at the time of purchase along with the value of the vessel. The ROB's are not predetermined but are based on real time actual quantities given by the sellers and verified by the buyer during the takeover of the vessel. They have nothing to do with the value of the vessel. It would be pertinent to mention that most second-hand movable goods like Cars or Trucks have residual items like petrol or diesel and the buyer reimburses the cost on actual basis during takeover. Being pure reimbursement, these have no impact on the purchase value of the vehicle. Further, in our case the consumables have neither been imported nor have they landed on the Indian shores as assumed in the notice. Hence the insistence that duty is required to be paid on the





takeover bunkers and that the same should be specified as a separate line item is totally devoid of any merit.

- 3) As mentioned, aforesaid and pursuant to Section 14 of the Customs Act, 1962, the transaction value of the imported goods includes the amount paid or payable for the costs and services to the extent and in the manner specified in the Rules made in this behalf. However, since the amount paid for the value of takeover bunkers do not form part of the condition of sale, Rule 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Amendment Rules, 2007 would not be applicable to the same. Further, in accordance with Section 87 of the Customs Act, 1962, as long as a vessel is a foreign going vessel, the imported bunkers and stores consumed by the vessel will not be liable to payment of any duty. Therefore, takeover bunkers cannot be made part of assessable value of a vessel and no duty can be made applicable on such bunkers lying on board a vessel which is on a foreign voyage.

The Indian National Shipowners Association (INSA) has also made a representation to the CBIC on issues relating to importation of vessels including the matter of takeover bunkers. The CBIC had directed INSA to meet with the DG Valuation, Mumbai to discuss the issues, pursuant to which, the DG Valuation, also agreed and concurred with the view of the ship-owners. Copy of the letter sent by Indian National Ship Owners Association to Shri Vimal Kumar Srivastava, Commissioner (Customs & EP), CBIC dated 27.10.2022 is annexed herewith and marked as **Annexure 'B'**.

- 4) It would be pertinent to mention that in most cases the takeover bunkers are already consumed before the vessel calls Indian shores and hence the question of considering it as being imported is irrational and unreasonable. Further, the vessel is usually on

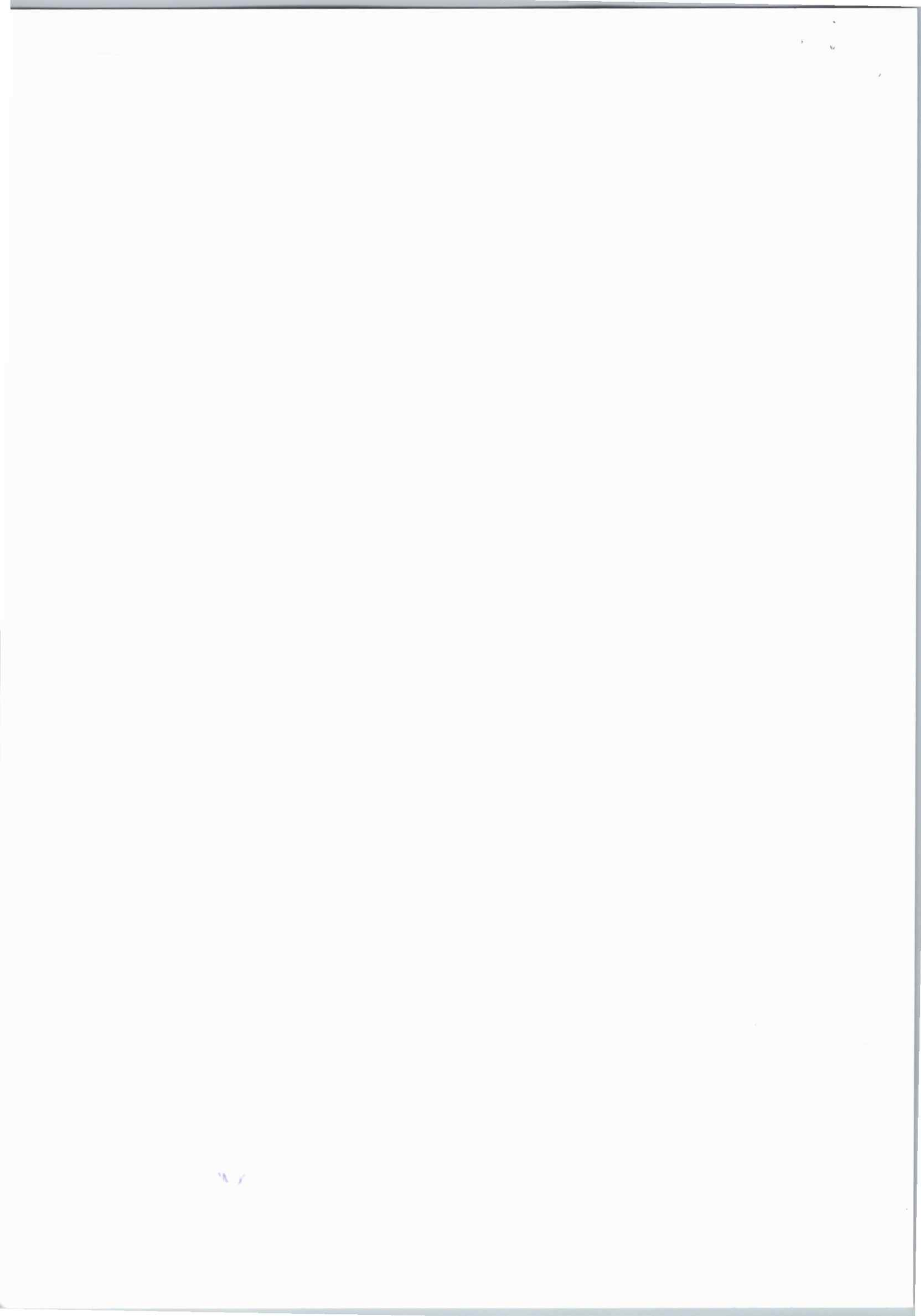




foreign status, as was the case with our vessel Jag Alaia, and hence Section 87 read with Sec 2(38) of the Customs Act, 1962 permits consumption of stores without payment of duty during the period such a vessel is a 'foreign going' vessel. In case of a 'foreign going' vessel the bunkers are neither discharged nor consumed in India and therefore, the customs duty is not required to be paid on the bunkers remaining on board the vessel at the time of importation. Insistence on filing the takeover bunker as a separate line item would be erroneous and flawed thereby rendering the process and procedures as prescribed under the Customs Act, 1962 as void.

- 5) Further, if a foreign going vessel intends to convert to Coastal status for a voyage on the Indian coast, the importer/vessel owner complies with the requirements of conversion (as is being presently done in compliance with Circular 58/97 dated: 6.11.97) by filing a separate bill of entry and paying duty only on bunkers that would be consumed during the coastal run. In the given case, our vessel Jag Alaia, never converted to coastal status and remained on foreign run. Hence, the insistence of filing takeover bunkers as separate line item without the vessel converting to coastal status, is clearly in violation of the Customs Act and thereby, illegal.
- 6) Assuming however, without admitting, that if the takeover bunker is considered as part of the purchase value of the vessel or the same transaction as is the contention of Mundra Customs and the Audit), then as per the Customs Valuation Rule, 2007, the value is required to be added to the assessable value of the vessel (as was done by us) and cannot be specified as a separate line item. Being a part of the same transaction, the law itself does not provide for it to be mentioned as separate line item. The same contention was raised by the Mundra customs during the importation of our vessel and as already specified above, we added the value of the takeover bunkers to the assessable value of the vessel and discharged the appropriate duty.



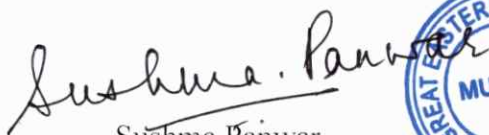




7) During the discussions, we were given to understand that the circular for breaking-up of vessels has been extrapolated to importation of vessel, which clearly lacks any reference or understanding. When a vessel is imported in India, the owner in compliance of condition 84 of serial number 551 in Customs notification 50/2017, files an Undertaking Bond that incase the vessel is brought into India for breaking up, then the importer shall file a separate BOE for goods under relevant CTH's. It would be pertinent to mention that in the given case the takeover bunkers neither land in the customs port nor cross the customs barrier, hence the insistence on paying duty on the takeover bunkers is unwarranted. Further, it is a necessary procedure to provide a bond by the importer which that the vessel is not being imported for breaking up and incase the importer decides to break the vessel at any time in the future, then a separate BOE as prescribed under the Customs Act, would be filed. This clearly reflects that the circular is only for vessels imported for breaking up and the procedure to be adopted. In our case, the bunker remains on the vessel to be consumed during operation and in most cases, already consumed before it arrives at the Indian port. Hence, this extrapolation of a circular for breaking up of vessel to importation of vessel is beyond any rational and lacks any legal sanctity.

In view of the submissions made above, we request you to withdraw the notice and close the observation. We would be glad to meet you in person and discuss the issue, if required.

Thank you,



Sushma Panwar
General Counsel.





ATTN: BAURE - 'A'

**THE GREAT EASTERN
SHIPPING COMPANY LIMITED**
CIN: L35110MH1948PLC006472



OCEANHOUSE, 134/A, Dr. Annie Besant Road, Worli, Mumbai - 400 018, INDIA. Tel.: +91(22) 6661 3000 / 2492 2100 Fax : +91(22) 2492 5900

To,
The Commissioner of Customs,
Mundra.

16.04.2021

Dear Sir,

Sub: Regarding your query on inclusion of bunkers lying on board at the time of acquisition to the assessable value of the vessel – 'MV. Jag Alaia'

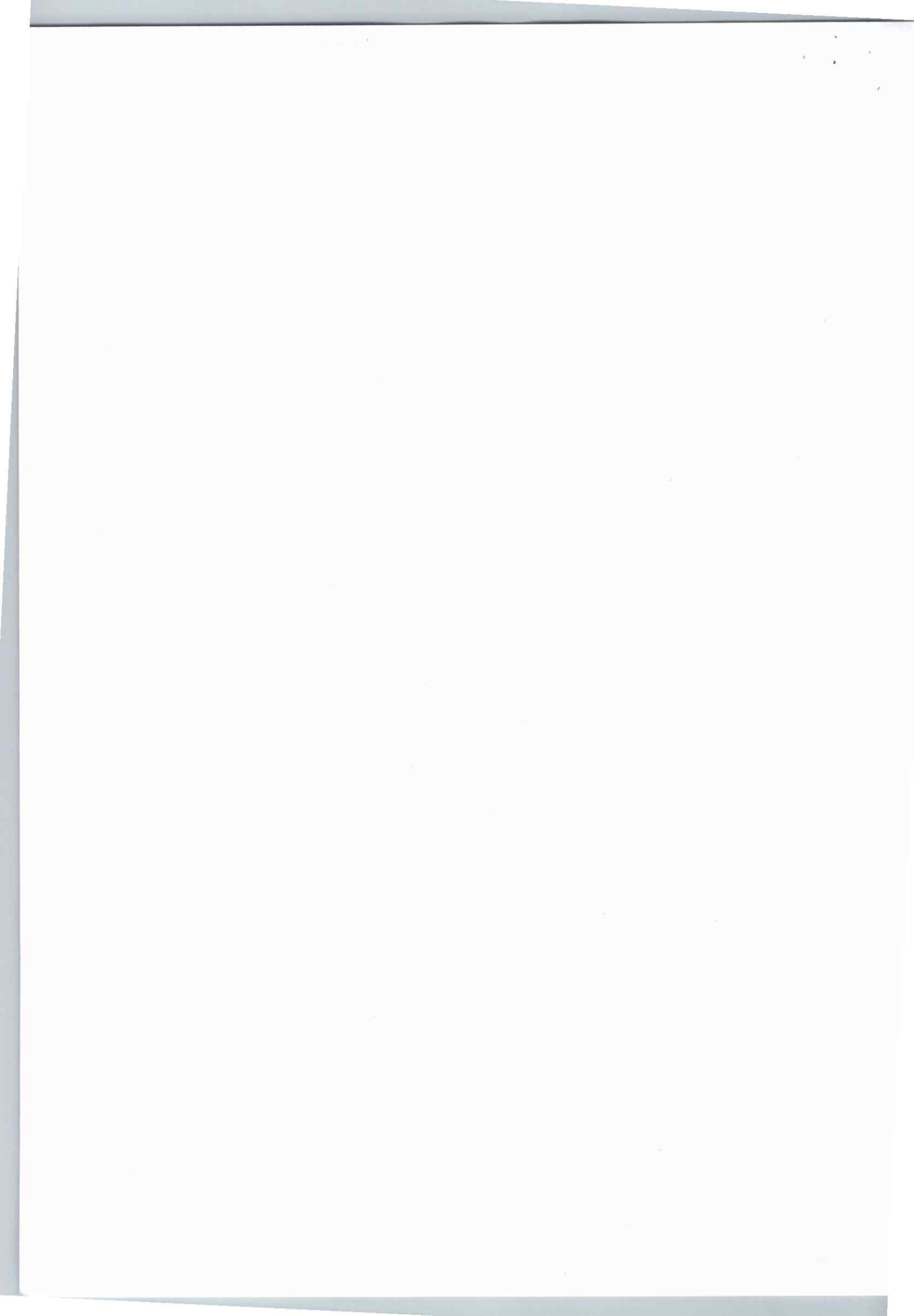
In continuation of our previous letter dated 14.4.2021, whereby we had requested you to remove the Bank Guarantee requirement, so that the BOE is in order. However, we have been now given to understand, that a query had been raised on why takeover bunkers lying on board during the acquisition of the vessel should not be added to value of the vessel and be assessed for IGST payment.

However, as communicated that takeover bunkers should form part of the transaction value and should be added to value of the vessel, in this context, we submit that we shall add the value of takeover bunkers to the value of the vessel and pay the differential IGST duty. We believe that this should address your query and revenue concern.

We request your goodself to kindly assist us in reassessing our BOE and grant clearance of our vessel without any delay, which is on a time charter with a foreign principal.

For The Great Eastern Shipping Co., Ltd

Jayesh Trivedi
President (Secl & Legal) & Company Secretary





ESTD. 1929

INDIAN NATIONAL SHIPOWNERS' ASSOCIATION

A non profit industry association incorporated u/s 8 of the Companies Act to promote Indian Shipping

27th October 2022

To,
 Shri Vimal Kumar Srivastava.
 Commissioner (Customs & EP)
 Central Board of Indirect Taxes & Customs
 New Delhi.

Subject: Hurdles being faced by Indian shipowners in respect of "First entry" processes at various Custom Houses - wrongful collection of duty without show cause notice and detention of vessels - regarding.

Dear Sir,

This has reference to the letter dated 13.01.2022, that was addressed by the Indian National Shipowners Association (INSA), to Shri. Rajiv Talwar, Member Customs, CBIC regarding hurdles faced by the Indian shipowners, in respect of "first entry" processes of their vessels in various customs houses across India. We, had specifically highlighted the divergence in practices, being followed by various customs houses, in assessing our vessels when they call at an Indian port for the first time. A copy of the said letter dated 13.01.2022 is enclosed as Annexure I for your ease of reference.

Subsequent to the aforesaid representation, INSA received a letter from the Additional Commissioner, Directorate General of Valuation, Mumbai, stating that the issues mentioned in the said representation needed to be analysed threadbare, especially points 2 and 3, and requested for a meeting with stakeholders to discuss the issue.

In compliance with the aforesaid, few members of INSA, met with the Directorate General of Valuation (DG) and put forth their concerns and issues before the DG with respect to what all should be included in the assessable value, while filing the Bill of Entry of a vessel, at the time of importation into India. In the meeting the matter was discussed and deliberate the issues and the following was agreed between INSA and the DG Valuation representatives:

1. Bunkers remaining on board of the vessel at the time of importation

Reference was made to Section 87 read with Sec 2(38) of the Customs Act, 1962 which permits consumption of stores without payment of duty during the period such a vessel is a 'foreign going' vessel. It was further discussed that in case of a 'foreign going' vessel the bunkers were not discharged/consumed in India and therefore it does not



ESTD 1929

INDIAN NATIONAL SHIPOWNERS' ASSOCIATION

A non profit industry association incorporated u/s 8 of the Companies Act to promote Indian Shipping

become part of land mass (home consumption). It was agreed that the customs duty is not required to be paid on the bunkers remaining on board the vessel at the time of importation. It was further agreed, that, if the vessel intendeds to convert to a 'coastal' status, the importer/vessel owner shall comply with the requirements of conversion (as is being presently done in compliance of circular 58/97 dated: 6.11.97) by paying duty on bunkers that would be consumed in the Indian waters during the coastal run.

Hence it was concluded that **ROB Bunkers** shall not form part of the assessable value of the Vessel.

2. **Takeover Bunkers (Bunkers which are remaining on board at the time of purchase of the vessel)**

It was discussed that pursuant to section 14 of the Customs Act, 1962, the transaction value of the imported goods shall include the amount paid or payable for the costs and services to the extent and in the manner specified in the rules made in this behalf. However, since the amount paid for the value of takeover bunkers do not form part of the condition of sale, Rule 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Amendment Rules, 2007 would not be applicable to the same.

Hence it was concluded that **Takeover Bunkers** will not form part of the assessable value of the vessel.

3. **Freight**

It was explained that unlike other goods which were being imported into India, a vessel is not brought by some other transporter. The vessel sails on its own steam and there is therefore no concept of 'freight' in respect of a vessel.

Hence it was concluded that **Freight** will not form part of the assessable value of the vessel since the vessel sails on its own steam.

4. **Insurance**

It was agreed by all that the cost of Insurance is clearly included in the valuation of a vessel as per the Customs Valuation Rules, 2007. This cost of insurance of the vessel should be ascertained from the amount of time taken by the vessel from entering into the Indian water i.e 12 nautical miles to the port of first entry. Therefore, it was agreed by all that the premium paid for the annual insurance policy valid as on the date of importation to be proportionately (dividing the annual



ESTD. 1929

INDIAN NATIONAL SHIPOWNERS' ASSOCIATION

A non profit industry association incorporated u/s 8 of the Companies Act to promote Indian Shipping

premium by 365days) considered as cost of Insurance for the purpose of assessment of Customs duty.

Hence it was concluded that **Insurance** can be included in the assessable value and calculated from the time the vessel enters the Indian waters upto the customs port in India.

The aforesaid issues were discussed and agreed between the members of INSA and the DG Valuation team. We understand that a report has been sent to the board for their consideration. However, we are yet to hear from the CBIC on the aforesaid issues. Hence, we request your kind consideration to our issues and shall appreciate if a Circular/clarification is issued which will tremendously benefit the Indian shipping industry in standardising the process of importation of vessels across customs ports in India.

Thanking you,

Yours faithfully,

For **INDIAN NATIONAL SHIPOWNERS ASSOCIATION**

Anil Devli
Chief Executive Officer.

Attached: Copy of letter dated 13.01.2022, addressed by the Indian National Shipowners Association (INSA), to Shri. Rajiv Talwar, Member Customs, CBIC regarding hurdles faced by the Indian shipowners, in respect of "first entry" processes of their vessels in various customs houses across India.



ESTD. 1929 INDIAN NATIONAL SHIPOWNERS' ASSOCIATION
A non-profit industry association incorporated u/s 8 of the Companies Act to promote Indian Shipping

Dated, the 13th of January, 2022

To,

Shri Rajiv Talwar, IRS,
Member (Customs),
Central Board of Indirect Taxes & Customs,
Department of Revenue/Ministry of Finance/Government of India
North Block, New Delhi – 110 001.

Subject: Hurdles being faced by Indian shipowners in respect of “First entry” processes at various Custom Houses - wrongful collection of duty without show cause notice and detention of vessels - regarding.

Dear Sir,

Warm New Year greetings from INSA!

We, the Indian National Shipowners Association (INSA), are the representative association of the Indian shipping industry. The members of our Association own and operate ships under Indian Flag i.e. vessels registered in India.

2. We would like to bring to your notice that our members are facing various hurdles at the time of “First entry” i.e. while making first call of our Indian flag vessel at an Indian port, subsequent, to its purchase abroad. The hurdles arise from the divergence in practices being followed by the assessing officers in the manner of assessment of customs duty on the vessel.



3. It may kindly be recalled that prior to June 2017, when a foreign going Indian flag vessel, made their first call at an Indian port, we were required to file a Bill of Entry for the vessel (Nil rate of duty was applicable on such imported vessels). However, post-June 2017, we are required to pay IGST @5% on the assessable value of the imported vessel (based on its actual purchase invoice).

3.1. Further, if the vessel is converting to coastal status, then a separate Bill of Entry is required to be filed for payment of duty on consumption of bunkers (diesel, furnace oil etc.) and consumables in compliance of Circular 58/97-Customs dated November 6, 1997.

4. However, as pointed out above, our members are reporting various hurdles at ports like Mundra, Mumbai, Mangalore, amongst others. The issues faced are specified in detail in the following points, namely:-

ISSUE 1: Customs authorities at Mundra, and Mangalore insist that while

Mundra,
Mumbai,
Mangalore

Insistence on payment of Customs duty on bunkers and consumables in case of foreign run of an imported vessel, and then claiming drawback

ascertaining the assessable value at the time of "First Entry" of Indian flag foreign-going vessels (which are not on coastal voyage), a separate line item should be entered for bunkers/consumables lying on board and duties on the same should be paid appropriately. The authorities also insist, that post-payment of customs duty, we need to file an export shipping bill for the bunkers/consumables and claim drawback.

Given the fact that the Bunkers/consumables lying on board the vessel are for consumption by the vessel during its 'foreign' run and not 'coastal' run (and thus are not being imported into India), the insistence by the Customs authorities to pay duties



on bunkers/consumables and then claim drawback, not only adds to additional cumbersome formalities but also makes our operations costlier due to blockage of funds and time involved in exportation formalities. It also goes against the spirit of the aforesaid Circular which was issued to ease out the vessel entry procedures.

ISSUE 2: When the vessel is handed over to an Indian shipowner abroad, residual bunkers and consumables are usually lying on board for allowing the vessel to sail, cost of which is reimbursed by the shipowner to the seller of the vessel - called 'takeover bunkers'. In most cases, the takeover bunkers are consumed way before the vessel calls the Indian port for the first time. Usually, there are separate invoices for the vessel as well as for takeover bunkers but the value of the takeover bunkers is remitted along with the purchase value of the vessel.

Despite this fact that usually the takeover bunkers are consumed well before "First Entry" into the Indian port, customs authorities at few custom houses such as Mundra insist that value of takeover bunkers be added to the assessable value of the vessel. This is illogical given that these are two separate transactions with two separate invoices even though they appear to be happening simultaneously. Furthermore, the value of the 'takeover bunkers' is added to the value of the vessel when computing IGST payable on import!

Insistence on adding value of takeover bunkers to that of the imported vessel despite these two being two separate transactions



Insistence on adding value of freight and insurance to the assessable value of the imported vessel despite the fact that in ship parlance these have different connotations

ISSUE 3: When a vessel enters an Indian port during its "First Call", it does so on its own steam. It is not brought by some other agency unlike goods which are brought onboard the sailing vessel to the Indian ports. Thus, the concept of freight, as applicable in case of assessment of customs duty on other brought-in goods, is not applicable while assessing duty of the Indian flag vessel entering Indian port for the first time. Further, the concept of insurance as applicable to imported goods and that applicable to the vessel is different. A trading vessel must at all times carry valid insurance (irrespective of the number of voyages it makes to a port unlike other imported goods) without which it is unable to trade.

Despite this fact, the Customs authorities at some Custom houses such as Mundra insist that Freight and Insurance be added to the assessable value of the vessel. Just because the vessel is declared as a 'good' in IGM during its first call, does not imply that freight and insurance should necessarily be applicable. Thus, this insistence of applying freight on the vessel is devoid of any merit.

Mumbai

Insistence on fresh valuation each time a Bill of Entry is filed for conversion of the foreign going vessel to coastal run and for each Shipping Bill filed to revert back to 'foreign going' status

ISSUE 4: As per the provisions of Circular No. 16/2012-Customs dated June 13, 2012, once an Indian flag vessel has made its "First Call" at an Indian port and paid applicable duty, it becomes a part and parcel of the country and gets converted into "conveyance" for the future calls on any ports in India. As a conveyance it is not subjected to any additional import or export customs procedural formalities.



Despite this, there is a unique practice only in Mumbai Custom House only which mandates that every time a vessel converts to 'coastal' run from 'foreign' run, it should file a Bill of Entry for importation of the vessel with a fresh value of the vessel in order to determine its assessable value. Further for reversion to 'foreign' run status, we are required to file a Shipping Bill with fresh valuation. Such process leads to major delay in conversion and reconversion, not to mention the escalation in costs.

Mundra

Insistence on fresh valuation each time a Bill of Entry is filed for conversion of the foreign going vessel to coastal run and for each Shipping Bill filed to revert back to 'foreign going' status

ISSUE 5: In another unique case, an Indian flagged vessel, which had already completed the importation formalities with the Mundra Custom House, in its previous voyage was several months later, on its subsequent call at Mundra told by the Customs authorities to pay duties on the value of bunkers lying on board the vessel, when the vessel had first arrived (imported) in India (Mundra). The vessel was detained at the port without issuing any show cause notice to the ship. The owners were "forced" to pay duty on bunkers & consumables and penalty and interest was also levied.

Currently, the Custom House has refused to process the refund of duty levied and no personal hearing is also being granted. The agents of the owners have been orally communicated that as "investigation is going on", hence application would not be processed.

Mumbai

Insistence on GTL prior to importation of vessels

ISSUE 6: Customs authorities at Mumbai Custom House insist on the vessel having a General Trading License (GTL)



ESTD. 1929 **INDIAN NATIONAL SHIPOWNERS' ASSOCIATION**
A non-profit industry association incorporated u/s 8 of the Companies Act to promote Indian Shipping

from the Director General of Shipping before beginning importation formalities despite the fact that GTL has no relevance to the procedure of importation of the vessel.

4.1. These issues have time and again been brought to the attention of the Principal Commissioner of Customs, Mundra; Principal Chief Commissioner of Customs, Ahmedabad and Principal Chief Commissioner of Customs, Bangalore. However, we have not received any response till date.

5. Despite issuing instructions and circulars from time to time, there is a lack of uniformity in practices and procedures that are followed during importation of Vessel amongst various customs field formations. All the Customs houses follow their own process and interpretation.

6. We had raised these issues during a recent meeting called by the CBIC to discuss Budget related issues. The meeting was held on December 3, 2021 and chaired by Shri G. D. Lohani, Joint Secretary (TRU-I), Department of Revenue. We are now approaching you to kindly look into this.

7. The Government has done a lot since 2014 in the field of "Ease of Doing Business" including redressing the concerns of the Indian shipowners with a view to encourage the growth of Indian tonnage and make the Indian shipping industry a vibrant and dynamic one. There is 100% FDI in the sector. However, hiccups such as the ones highlighted above, especially the arbitrary treatment by the Custom authorities at Indian ports, has scared some incoming foreign investors and has slowed



ESTD. 1929 INDIAN NATIONAL SHIPOWNERS' ASSOCIATION
A non-profit industry association incorporated u/s 8 of the Companies Act to promote Indian Shipping

down investment in the Indian flag. This needs to be handled on priority please.

8. In view of the submissions made above, we are of the opinion that these anomalies can be only removed, if the Board issues a detailed procedure to be adopted and adhered by ALL Custom Houses relating to importation of Indian flag Vessels and also in respect of conversion and reconversion from 'foreign going' to 'coastal' and vice versa.

We sincerely hope that CBIC shall take steps to alleviate our suffering and address our concerns by issuing a single detailed circular guiding us as well as ALL the Custom Houses and covering all the guidelines issued till date on the subject, in order to bring uniformity and prevent confusion at the field level.

We are happy to provide any further information that you may need on this subject.

Thanking you,

Yours faithfully,

For INDIAN NATIONAL SHIPOWNERS' ASSOCIATION

(Anil Devli)

Chief Executive Officer.

Copy to:

Page 7 of 8



ESTD. 1929

INDIAN NATIONAL SHIPOWNERS' ASSOCIATION
A non-profit industry association incorporated u/s 8 of the Companies Act to promote Indian Shipping

- (a). Shri Vimal Srivastava, Principal Commissioner (Customs & EP).
 - (b). Shri Gaurav Masaldan, Joint Secretary (Customs), CBIC.
 - (c). Shri R. Ananth, Director (Customs), CBIC.
 - (d). Ms. Komila Punia, Deputy Secretary (ICD), CBIC.
-





OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MP & SEZ
MUNDRA, KUTCH-GUJARAT -370421
PHONE: 02838-271426/271428
FAX : 02838-271425



F. No. CUS/APR/MISC/2679/2024-Gr 5-6 / 245

Dated: -06.06.2024

DIN-20240671MO000000AIC8.

To,

M/s The Great Eastern Shipping
Ocean House, 134A, Dr. Annie Besant Road,
Worli, Mumbai,
Maharashtra-400018

Gentlemen,

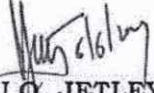
Subject- Short levy of duty on Bunker remaining on the imported ship (by M/s Great Eastern Shipping) (Para-3, LAR-11/2022-23)- regarding.

Please find herewith the observations of the Department on subject matter mentioned above

2. In this regard it is informed that Section 12 of the Customs Act, 1962 inter alia provides that duties of customs shall be levied at specified rates on goods imported into India. For imports of goods "Old and used Vessel/Ship" falling under CTH 8901 made during April-21 to September-21, Audit pointed out short levied duty on Bunker on the imported ship in 01 Bill of Entry (01 items-wise), involving Assessable value Rs. 2,00,49,72,590/-. M/s The Great Eastern Shipping Co. Ltd. had filed (department assessed) bill of entry No. **3550955 dated 13.04.2021** for 'Old & Used Vessel/ Bulk Carrier' falling under CTH 8901 90 00 ("Vessels for transport of goods"). As per terms and conditions of the 'Memorandum of Agreement (MoA)' with the seller (M/s Defender 1 Ltd.), the importer (or Buyer) would take over remaining unused lubricating and hydraulic oils and greases in designated storage tanks and unopened drums and pay the actual net price as evidenced by invoices or vouchers. Thus, apart from the purchase price of the vessel, the importer was required to pay the amount towards these stock of remaining items viz., lubricating oils etc. Thus, both the items (viz., 'Vessel' and 'the bunker') and their values were clearly identifiable and were separately classifiable under respective Tariff headings (CTHs) for application of stipulated duty on import. However, it was noticed that the department incorrectly allowed classification of 'Bunker and lubricating oils' under CTH 8901, thus resulting in its clearance at lower rate of duty of 5% only. 'Unused Quantity and value wise details of lubricating and hydraulic oils (viz., VLSFO or Fuel Oil, LSMGO or Marine Gas Oil, etc.) remaining on-boarded the landed ship and 'commercial invoice' issued by the Seller for remaining 'Bunker and lubricating oils' was not available in the EDI (ICES) system of the department. Hence, additional value of Rs.4,27,63,966/- added by the department to ship has been considered by audit for notional calculation of short levy of duty. Thus, lubricating and hydraulic oils (viz., VLSFO or Fuel Oil, LSMGO or Marine Gas Oil, etc.) of value Rs. 4,27,63,966/-, which attracted duty minimum duty rate of 24.49% (including 5% BCD, 10% SWS and 18% IGST) under their respective CTH, were incorrectly assessed to duty at the rate of 5% by department.

It need not be reminded that the vessel (ship) entered Indian territory in normal course of its business (i.e., import or export of goods boarded on it), bunker could have been treated as duty exempted or payable for the purpose of Customs as per its next scheduled journey viz., 'Foreign-bound' or for 'Coastal Run' respectively. However, in this case, the ship alongwith its bunker was imported and entered the Indian territory with change of ownership. Accordingly, the remaining bunker which was separately invoiced by the seller, were required to be charged to customs duties under their respective tariff classification. This resulted in short levy of customs duty of Rs. 83,34,697/- (calculated interimly @ differential duty rate of 19.49%), which is recoverable alongwith applicable interest.

3. In this connection, you are requested to kindly go through the details mentioned above and pay up the applicable Customs Duty along with the applicable interest and submit the payment particulars thereof, to this office **within 15 days** of receipt of this letter. Notwithstanding the Consultative Letter, the Department reserves the right to issue a formal Show Cause Notice under Section 28 of the Customs Act, 1962. While issuing such Notice, the Department reserves the right to add, modify, amend and change in any manner whatsoever, the contents of the letter.


(RAJU O. JETLEY),
ASSTT. COMMISSIONER (IMPORT GROUP-V),
CUSTOM HOUSE MUNDRA

Copy to: -

1. The Deputy Commissioner (Audit), Customs House, Mundra
2. Guard File

Type/Designation	Reducer Rating (in- lb)	Structure Capacity (lb)	Max Stroke Length (in.)
320-256-120	320,000	25,600	120
228-213-120	228,000	21,300	120
456-256-144	456,000	25,600	144

As apparent from above, various models of these pumping units involved different specifications. Thus, items imported under benefit of IGST notification were in violation of the Essentiality Certificate issued by the DGHC. No corrected/ Revised copy of Essentiality Certificate issued by DGHC was also found available in EDI system. Since, these goods were imported different than those permitted under essentiality Certificate, concession of IGST availed by the importer under IGST Notification *ibid* was irregular. This resulted in short levy of duty of ₹1,46,39,027 (Statement C), which was recoverable along with applicable interest.

On this being pointed out, department stated that reply would be submitted to Audit in due course.

Further status is awaited.

Reference Number: OBS-437047

Para 3: Short levy of duty on Bunker remaining on the imported ship (by M/s Great Eastern Shipping)

Section 12 of the Customs Act, 1962 *inter alia* provides that duties of customs shall be levied at specified rates on goods imported into India.

For imports of goods “Old and used Vessel/Ship” falling under CTH 8901 valued at Rs. 2,76,53,07,571/- made during April-21 to September-21 through DC, Mundra under 02 Bills of Entry (02 items-wise), Audit checked 02 Bills of Entries (02 item-wise) valued at Rs. 2,76,53,07,571/- and pointed out short levied duty on Bunker remaining on the imported ship in 01 Bills of Entry (01 items-wise), involving Assessable value ₹ 2,00,49,72,590/-.

M/s The Great Eastern Shipping Co. Ltd. had filed (*department assessed*) bill of entry (No. 3550955 dated 13/04/2021) for ‘Old & Used Vessel/ Bulk Carrier’ falling under CTH 8901 90 00 (“Vessels for transport of goods”). As per terms and conditions of the ‘Memorandum of Agreement (MoA)’ with the seller (M/s Defender 1 Ltd.), the importer (or Buyer) would take over remaining unused lubricating and hydraulic oils and greases in designated storage tanks and unopened drums and pay the actual net price as evidenced by invoices or vouchers. Thus, apart from the purchase price of the vessel, the importer was required to pay the amount towards these stock of remaining items viz., lubricating oils etc. Thus, both the items (viz., ‘Vessel’ and ‘the bunker’) and their values were clearly identifiable and were separately classifiable under respective Tariff headings (CTHs) for application of stipulated duty on import. However, it was noticed that the department incorrectly allowed classification of ‘Bunker and lubricating oils’ under CTH 8901, thus resulting in its clearance

at lower rate of duty of 5% only. '*Unused Quantity and value wise details of lubricating and hydraulic oils (viz., VLSFO or Fuel Oil, LSMGO or Marine Gas Oil, etc.)*' remaining on-boarded the landed ship and '*commercial invoice*' issued by the Seller for remaining '*Bunker and lubricating oils*' was not available in the EDI (ICES) system of the department. Hence, additional value of Rs.4,27,63,966 added by the department to ship has been considered by audit for notional calculation of short levy of duty. Thus, lubricating and hydraulic oils (viz., VLSFO or Fuel Oil, LSMGO or Marine Gas Oil, etc.) of value Rs. 4,27,63,966/-, which attracted duty minimum duty rate of 24.49% (including 5% BCD, 10% SWS on BCD and 18% IGST) under their respective CTH, were incorrectly assessed to duty at the rate of 5% by department.

It need not be reminded that the vessel (ship) entered Indian territory in normal course of its business (i.e., import or export of goods boarded on it), bunker could have been treated as *duty exempted or payable* for the purpose of Customs as per its next scheduled journey viz., 'Foreign-bound' or for 'Coastal Run' respectively. However, in this case, the ship alongwith its bunker was imported and entered the Indian territory with change of ownership. Accordingly, the remaining bunker which was separately invoiced by the seller, were required to be charged to customs duties under their respective tariff classification.

This resulted in short levy of customs duty of Rs. 83,34,697/- (calculated interimly @ differential duty rate of 19.49%), which is recoverable alongwith applicable interest.

Department is required to ascertain the exact classification of the imported goods (especially Marine Gas Oil – LSMGO) and apply duty accordingly. It is also requested that documents certifying *remaining bunker quantity on board the vessel and invoice issued by the seller for such remaining bunker quantity* may be provided to Audit.

On this being pointed out, department stated that reply would be submitted to Audit in due course.

Further status is awaited.

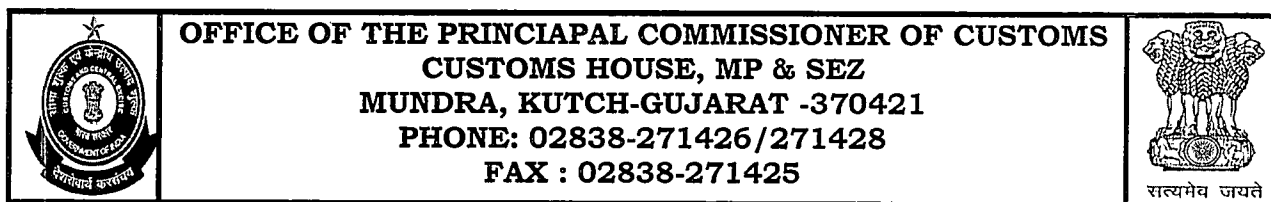
Reference Number: OBS-477998

Para 4: Short levy of duty due to misclassification (Motor Assembly) and incorrect availing of benefit

“Other DC motors and DC generators, of an output not exceeding 750W” merit classification under Customs Tariff Heading (CTH) 8501 31 while *“Other AC motors, multi-phase, of an output exceeding 75KW”* are classifiable under CTH 8501 53. Imported items falling under any of these CTH attract effective custom duty rate of 30.98% (including 10% BCD, 10% SWS on BCD and 18% IGST).

However, serial number 1294 of Notification No. 46/2011-cus (Import under PTA between India and ASEAN) grants full exemption from Basic Customs Duty (BCD) to CTH850153 while no such exemption has been stipulated for CTH 8501 31, under this PTA notification.

For imports of goods “Motor Assembly” falling under CTH 8501 imported by Toyota Tsusho valued at Rs. 9,92,78,335/- made during April-21 to September-21 through DC, Mundra under 16 Bills of Entry (45 items-wise), Audit checked 16 Bills of Entries (45 item-wise)



F. No. CUS/APR/MISC/2679/2024-Gr 5-6

Dated: -06.06.2024

To,

DIN-20240671MO000000A1C8

M/s The Great Eastern Shipping
Ocean House, 134A, Dr. Annie Besant Road,
Worli, Mumbai,
Maharashtra-400018

Gentlemen,


Subject- Short levy of duty on Bunker remaining on the imported ship (by M/s Great Eastern Shipping) (Para-3, LAR-11/2022-23)- regarding.

Please find herewith the observations of the Department on subject matter mentioned above

2. In this regard it is informed that Section 12 of the Customs Act, 1962 inter alia provides that duties of customs shall be levied at specified rates on goods imported into India. For imports of goods "Old and used Vessel/Ship" falling under CTH 8901 made during April-21 to September-21, Audit pointed out short levied duty on Bunker on the imported ship in 01 Bill of Entry (01 items-wise), involving Assessable value Rs. 2,00,49,72,590/-. M/s The Great Eastern Shipping Co. Ltd. had filed (department assessed) bill of entry No. **3550955 dated 13.04.2021** for 'Old & Used Vessel/ Bulk Carrier' falling under CTH 8901 90 00 ("Vessels for transport of goods"). As per terms and conditions of the 'Memorandum of Agreement (MoA)' with the seller (M/s Defender 1 Ltd.), the importer (or Buyer) would take over remaining unused lubricating and hydraulic oils and greases in designated storage tanks and unopened drums and pay the actual net price as evidenced by invoices or vouchers. Thus, apart from the purchase price of the vessel, the importer was required to pay the amount towards these stock of remaining items viz., lubricating oils etc. Thus, both the items (viz., 'Vessel' and 'the bunker') and their values were clearly identifiable and were separately classifiable under respective Tariff headings (CTHs) for application of stipulated duty on import. However, it was noticed that the department incorrectly allowed classification of 'Bunker and lubricating oils' under CTH 8901, thus resulting in its clearance at lower rate of duty of 5% only. 'Unused Quantity and value wise details of lubricating and hydraulic oils (viz., VLSFO or Fuel Oil, LSMGO or Marine Gas Oil, etc.)' remaining on-boarded the landed ship and 'commercial invoice' issued by the Seller for remaining 'Bunker and lubricating oils' was not available in the EDI (ICES) system of the department. Hence, additional value of Rs.4,27,63,966/- added by the department to ship has been considered by audit for notional calculation of short levy of duty. Thus, lubricating and hydraulic oils (viz., VLSFO or Fuel Oil, LSMGO or Marine Gas Oil, etc.) of value Rs. 4,27,63,966/-, which attracted duty minimum duty rate of 24.49% (including 5% BCD, 10% SWS and 18% IGST) under their respective CTH, were incorrectly assessed to duty at the rate of 5% by department.

It need not be reminded that the vessel (ship) entered Indian territory in normal course of its business (i.e., import or export of goods boarded on it), bunker could have been treated as duty exempted or payable for the purpose of Customs as per its next scheduled journey viz., 'Foreign-bound' or for 'Coastal Run' respectively. However, in this case, the ship alongwith its bunker was imported and entered the Indian territory with change of ownership. Accordingly, the remaining bunker which was separately invoiced by the seller, were required to be charged to customs duties under their respective tariff classification. This resulted in short levy of customs duty of Rs. 83,34,697/- (calculated interimly @ differential duty rate of 19.49%), which is recoverable alongwith applicable interest.

3. In this connection, you are requested to kindly go through the details mentioned above and pay up the applicable Customs Duty along with the applicable interest and submit the payment particulars thereof, to this office **within 15 days** of receipt of this letter. Notwithstanding the Consultative Letter, the Department reserves the right to issue a formal Show Cause Notice under Section 28 of the Customs Act, 1962. While issuing such Notice, the Department reserves the right to add, modify, amend and change in any manner whatsoever, the contents of the letter.


(RAJU O. JETLEY),
ASSTT. COMMISSIONER (IMPORT GROUP-V),
CUSTOM HOUSE MUNDRA

Copy to: -

1. The Deputy Commissioner (Audit), Customs House, Mundra
2. Guard File