



सीमा शुल्क निवारक के आयुक्त का कार्यालय, सीमा शुल्क भवन,
जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास,
जामनगर (गुजरात) - 361 001

Office of the Commissioner of Customs (Preventive),
'Seema Shulk Bhavan', Jamnagar – Rajkot Highway,
Near Victoria Bridge, Jamnagar (Gujarat) – 361 001
Email: commr-custjmr@nic.in; adj-custjmr@nic.in

DIN – 20250171MM00008858B3

1.	फाइल क्रमांक/ File Number	F. No. CUS/1033/2024-Adjn
2.	मूल आदेश क्रमांक/ Order-in-Original No.	16/ Additional Commissioner/ 2024-25
3.	द्वारा पारित/ passed by	अमित कुमार सिंह / Amit Kumar Singh अपरआयुक्त/ Additional Commissioner, सीमा शुल्क, निवारक/Customs (Preventive) जामनगर/ Jamnagar.
4.	Date of Order /आदेश दिनांक	30.01.2025
	Date of issue / आदेश जारी किया	30.01.2025
5.	कारण बताओ नोटिस क्रमांक एवं दिनांक Show Cause Notice Number & Date	ADC-01/2023-24 dated 09.04.2024
6.	नोटिसी का नाम/ Name of Noticee	M/s. Compass Shipping Agency, 308, Prithvi Plaza, Opp. Gogha Circle, Bhavnagar-364002 (Gujarat)

01.	इस आदेश की मूल प्रति संबंधित व्यक्ति को निशुल्क प्रदान की जाती है। The original copy of this order is provided free of cost to the person concerned
02.	<p>इस मूल आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम, 1962 की धारा 128A)(1)a(सीमा शुल्क) अपील (नियम, 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए-1 में अपील का प्रपत्र, दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है।) जिनमें से कम से कम एक प्रमाणित प्रति हो।</p> <p>आयुक्त अपील 7वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 009 380 -</p> <p>Commissioner (Appeals), 7th Floor, Mrudul Tower, Behind Times of India, Ashram Road, Ahmedabad - 380 009</p>
	Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).
03.	<p>अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये) 0.50 पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची - I, मद 6 के तहत निर्धारित किया गया है।</p> <p>The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.</p>
04.	<p>अपीलीय श्रापन के साथ शुल्क भुगतान /जुर्माना /अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962 की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।</p> <p>Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.</p>
05.	<p>अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क) अपील) नियम, 1982 और सिस्टेट प्रक्रिया) प्रोसीजर (नियम, 1982 के सभी नियमों का पूरा पालन हुआ है।</p> <p>While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.</p>
06.	<p>इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के %7.5 के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।</p> <p>An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.</p>



BRIEF FACTS OF THE CASE

M/s Compass Shipping Agency 308, Prithvi Plaza, Opp. Ghogha Circle, Bhavnagar 364001 (hereinafter referred to as "**the Noticee**"), was appointed as Shipping Agent by the owner of the vessel to discharge customs clearance formalities for vessel MT "BOW FLOWER (IMO No. 9047491) (hereinafter referred to as "**the said vessel**") at Alang anchorage for breaking purpose. The BOW FLOWER arrived at Alang Anchorage on **18.04.2022 from Kandla Port (India)** and the boarding of the said vessel was carried out on **18.04.2022**.

2. The Master of the said vessel provided the details of the quantity of the bunker & provision / stores consumed during last voyage from **Kandla to Alang (Bhavnagar)**. On the basis of these details, the Shipping Agent filed the the Manual Bill of Entry **No.8343665-A on 02.06.2022** and self-assessed the Value of Bunker & Provision / Store as **Rs. 63,14,883/-** and Customs duty payable thereon as **Rs. 14,11,291/-** in the said Bill of Entry, as per the details given below :-

Sr. No.	Description of Goods	HSN / Custom Tariff Head	QUANTITY	Assessable Value (In Rs.)	Duty Self-assessed / Paid
(1)	Fuel Oil (FO)	27101950	Nil	0	0
(2)	Marine Gas Oil (MGO)	27101930	57.500 MT /67646 Ltr.	Rs. 61,51,832.00	Rs.13,62,235/-
(3)	Lubricating Oil (LO)	27101980	350 Ltrs	Rs.1,48,251.00	Rs.36,307/-
(4)	Provision / Stores	21069099	74 Kgs.	Rs. 14,800.00	Rs. 12,749/-
	TOTAL			Rs.63,14,883/-	Rs.14,11,291 /-

3. The Duties of Customs leviable / payable on High Speed Diesel (HSD) / Marine Gas Oil (MGO) classifiable under CTSN 27101930, are as under :

- the duties of customs is levied as per Section 12 of the Customs Act, 1962 read with Notification No. 52/2017-Cus. dated 30.06.2017 (Sr. No. 3) (as amended) @ 2.5% on High Speed Diesel (HSD) Oil;*
- Agriculture Infrastructure and Development Cess on Imported goods is levied under the provisions of Section 124 of the Finance Act, 2021 (13 of 2021) read with Schedule-VII at the rate of Rs. 4.00 per Liter on High Speed Diesel (HSD) Oil;*
- Additional Duty of Customs on imported goods equivalent to Special Additional Excise Duty (SAED) is levied under the provisions of Section 147 of the Finance Act, 2002 (20 of 2002) read with Schedule-VII and No. 05/2019-CE (as amended) at the rate of Rs 8.00 per Liter on High Speed Diesel (HSD) Oil;*



- (d) Road and Infrastructure Cess on imported goods equivalent to Additional Duty of Customs is levied under the provisions of Section 111 of the Finance Act, 2018 (13 of 2018) read with Schedule-VI and Notification No. 18/2019-Cus. dated 06.07.2019 (Sr. No. 02) (as amended) at the rate of Rs. 8.00 per Liter on High Speed Diesel (HSD) Oil;
- (e) the duties of excise is levied as per Section 3 of the Central Excise Act, 1944 read with Notification No. 11/2017-CE dated 30.06.2017 (Sr. No. 3(ii)) dated 30.06.2017 (Sr. No. 3) (as amended) @ Rs.4.20 per Liter on High Speed Diesel (HSD) Oil;
- (f) Social Welfare Surcharge on imported goods is levied under the provisions of Section 110 of the Finance Act, 2018 (13 of 2018) at the rate of 10% on the aggregate of duties, taxes and cesses which are levied and collected under section 12 of the Customs Act, 1962 (52 of 1962) on High Speed Diesel (HSD) Oil;
- (g) the Additional Duty of Customs on imported goods under Sub-section (5) of Section (3) of the Customs Tariff Act, 1975 (51 of 1975) in lieu of the sales tax, value added tax, local tax and other taxes or charges leviable on sale or purchase or transportation read with No. 53/2017-Cus. dated 30.06.2017 (as amended) at the rate of 4% ad-valorem on High Speed Diesel (HSD) Oil;

3.1 Total Duties of Customs payable on the Marine Gas Oil (MGO) (CTSH 27101930) worked out to be **Rs. 22,76,822/-** for the quantity **67646** Ltrs having assessable value of Rs. 61,51,832 /- as under :-

Sr. No.	Types of Duties	Rate of Duty	Marine Gas Oil (MGO) / HSD
1	Quantity	---	67646 Ltr.
2	Assessable Value (In Rs.)	---	Rs. 61,51,832/-
3	Basic Customs Duty (BCD) [Notification No. 52/2017-Cus. dated 30.06.2017 (Sr. No. 3)]	2.5%	Rs. 1,53,796/-
4	Agriculture Infrastructure and Development Cess (AIDC)	Rs. 4/- per Liter	Rs. 2,70,588/-
5	Addl. Duty of Customs equivalent to Special Additional Excise Duty (SAED). [No. 05/2019-CE dated 06.07.2019 (as amended)]	Rs. 8/- per Liter	Rs. 5,41,176/-
6	Road and Infrastructure Cess equivalent to Additional Duty of Customs [(Sr. No. 02) (as amended)]	Rs. 8/- per Liter	Rs. 5,41,176/-
7	Basic Excise Duty as per Section 3 of the Central Excise Act, 1944 [Notification No. 11/2017-CE dated 30.06.2017 (Sr. No. 3(ii)) (as amended)]	Rs. 4.20 per Liter	Rs. 2,84,117/-
8	Social Welfare Surcharge Notification No. 12/2021-Cus. dated 01.02.2021 [@ 10% of 3 + 4 + 5 + 6 + 7]	@ 10%	Rs. 1,79,085/-
9	the Additional Duty of Customs on imported goods under Sub-section (5) of Section (3) of the Customs Tariff Act, 1975 (51 of 1975) [No. 53/2017-Cus. dated 30.06.2017 (as amended)] [4%age of 2+3+5+6+7]	@4%	Rs. 3,06,884/-
10	Total duty on MGO/HSD [3 to 9]		Rs. 22,76,822/-

3.2 Therefore total Import duty payable on goods cleared vide Bills of Entry comes to **Rs.23,25,878 /-** (Duty payable Marine Gas Oil (MGO) / High Speed Diesel (HSD) Oil Rs. 2276822/-+ Duty Payable on Lub Oil Rs.36,307 + Duty Payable on provisions Rs.12,749 /-).

3.3 Total Duties of Customs self-assessed/paid by the shipping agent is **Rs.14,11,291/-**, vide Challan no. IMP-SBY/11/2022-23 dated 20.07.2022. Thus, it appears that the Shipping Agent has short-paid Customs duty amounting to **Rs.9,14,587/-** and thereby contravened the provisions of Section 12 of the Customs Act, 1962. Hence, the duty short-paid of **Rs.9,14,587/-** is required to be demanded and recovered from the said shipping Agent under Section 28 of the Customs Act, 1962 along with interest thereon under Section 28AA of the Customs Act, 1962.

4. Since the Noticee shipping agent has contravened the provisions of Section 12 of the Customs Act, 1962, therefore, they have rendered themselves liable for penalty under Section 117 of the Customs Act, 1962.

5. Legal provision of the Customs Act, 196 attracted.

Section 12. Dutiable goods.—(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the 1 [Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.

Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—(1) Where any duty has not been levied or not paid or short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, — (a) the proper officer shall, within [two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [or paid] or which has been 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: Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the the person chargeable with duty or interest in such manner as may be prescribed;] (b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of, — (i) his own ascertainment of such duty; or (ii) the duty ascertained by the proper officer, the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

Section 28AA. Interest on delayed payment of duty—(1) Notwithstanding anything contained in any judgment, decree,



order or direction 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.

Section 117. *Penalties for contravention, etc., not expressly mentioned.—Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [one lakh rupees].*

6. Further, the Noticee has contravened the provision of Section 12 of Customs Act, 1962 as duty has been short paid and therefore is required to pay the differential duty recoverable under Section 28 along with applicable interest under Section 28AA.

7. It appears that as stipulated under proviso to clause (a) to sub-section (1) of Section 28 of the Customs Act, 1962 and in pursuance of Regulation 3(1) of the Pre-Notice Consultation Regulations, 2018, vide the letter F N. CUS/1033/2024-Adjn dated 21.03.2024, the Noticee was accorded an opportunity to file submission in the matter and in case, if he wished to be heard in person by the adjudicating authority. It was further impressed upon in the letter that, if no reply is received, than the proper officer shall proceed to issue Show Cause Notice without any further communication.

7.1 The Noticee did not made any submission in response to the above referred communication made to them under Pre-Notice Consultation Regulations, 2018. Therefore, considering no response in the matter from the Noticee it is decided to issue the show cause notice.

8. Therefore, Noticee- **M/s. Compass Shipping Agency, 308, Prithvi Plaza, Opp. Ghogha Circle, Bhavnagar -364002** is called upon to show cause to the Additional Commissioner of Customs (Preventive), Jamnagar having his office at "Seema Shulk Bhavan", Jamnagar Rajkot Highway, Besides Chamber of Commerce, Jamnagar, within 30 days from the date of receipt of this Show Cause Notice, as to why:-



(a) the differential Customs duty of Rs. **9,14,587/-** levied under provisions of Section 12 of the Customs Act, 1962 & other relevant provisions discussed hereinabove should not be demanded and recovered under Section 28 of the Customs Act, 1962;

- (b) interest payable thereon under Section 28AA of the Customs Act, 1962 should not be charged upon and recovered from them for not paying the applicable Customs duty as above; and
- (c) penalty under Section 117 of the Customs Act, 1962 should not be imposed upon them for contravention of the provisions of Section 12 of the Customs Act, 1962.

DEFENCE SUBMISSION:

9. M/s. Compass Shipping Agency, Bhavnagar in the written submission dtd. 05.11.2024, amongst other things, has submitted that the impugned vessel was foreign going vessel and never converted in to coastal vessel in the matter so not liable to pay any duty of customs not to speak of differential duty of customs as demanded on the Marine Gas Oil/HSD, it would like to submit that it is admitted facts on record that the bills of entry is not self assessed as provided under Section 17(1) of the Customs Act, 1962 but provisionally assessed by the proper officer as provided under Section 18(1) of the Customs Act, 1962 though none of the clause of sub-section (1) of Section 18 ibid exists in the matter so as to provisionally assess the bills of entry. As per Section 18(2)(a) read with Section 28(1)(a) of the Customs Act, 1962 read with meaning of relevant date as per Explanation 1(b) etc duly supported with the settled position of law discussed in para infra if any notice was required to be issued same was required to issue under Section 18(2) of the Customs Act, 1962 that why Bills of Entry should not be finally assessed with the proposed rate of duties with interest. Therefore, invocation of provisions of Section 28 of the Customs Act, 1962 is totally erroneous and without appreciating the facts available on record that impugned Bills of Entry is provisionally assessed. Further, they have narrated the portion of Section 18 and Section 28 in reference to above.

10. The noticee has further submitted that in view of the provisions of Section 18(2) read with sub-section (3) of the Customs Act, 1962 the proper officer is required to be assessed duty finally or re-assessed in the case of goods cleared for home consumption and the amount paid may be adjusted against the duty finally assessed or re-assessed, as the case may be, and if the amount so paid falls short of, the importer of the goods may pay the deficiency, with interest under section [28AA] from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.



11. The noticee has further submitted that as per Section 28(1)(a) read with Explanation 1(b) of the Customs Act, 1962 where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, the proper officer shall, within [two years] from the relevant date i.e. the date of adjustment of duty after the final assessment or re-assessment, as the case may be, in a case where duty is provisionally assessed under section 18, serve notice on the person chargeable with the duty or interest which has not been so levied [or paid] or which has been 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. Thus, it is premature to demand differential duties of Customs under Section 28 of the Customs Act, 1962 as in the instant case the impugned Bills of Entry is yet to be finally assessed as provided under Section 18(2) of the Customs Act, 1962. Therefore, question of short payment of duty under Section 28 ibid does not arise at all.

12. The Noticee has further submitted the following decisions of Hon'ble Apex Court, High Courts and Tribunal in support of their claim

- (i) COMMISSIONER OF C. EX. & CUSTOMS, MUMBAI Versus I.T.C. LTD. - 2006 (203) E.L.T. 532 (S.C.)
- (ii) PRAMOD KUMAR NATHANI Versus UNION OF INDIA - 2016 (340) E.L.T. 642 (Cal.)
- (iii) JAJU PETRO CHEMICAL PVT. LTD. Versus COMMISSIONER OF CUSTOMS (PORT) - 2017 (354) E.L.T. 614 (Cal.)
- (iv) DEEP JYOTI WAX TRADERS PVT. LTD. Versus COMMISSIONER OF CUSTOMS (PORT) - 2016 (333) E.L.T. 265 (Cal.)
- (v) ITC LIMITED Versus UOI - 2010 (250) E.L.T. 189 (Del.)
- (vi) SAHARSH DISTRIBUTORS PVT. LTD. Versus COMMISSIONER OF CUS., NEW DELHI - 2017 (354) E.L.T. 671 (Tri. - Del.)
- (vii) IOCL Versus COMMISSIONER OF CUSTOMS, MANGALORE - 2003 (159) E.L.T. 1152 (Tri. - Chennai)

The Noticee has further stated that provisions for provisional assessment and demand of duty short paid not paid etc. of Central Excise Act, 1944 and Customs Act, 1962 are pari materia, therefore, ratio laid down by the above referred some of the decisions for Central Excise is squarely applicable in the facts and circumstances of the case. Therefore, they have prayed that impugned SCN may be quashed and set aside only on this ground alone.



13. The Noticee has further submitted that it is not the case of the department that the said vessel was converted into coastal run. It is admitted facts on record that the said vessel was foreign going vessel within the meaning of Section 2(21) of the Customs Act, 1962 and never converted into coastal run after arriving at any port of India or from the last call of port of India i.e. Kandla or use in coastal run and voyage from Kandla to Alang was for scrapping / breaking of the vessel at Alang Ship Breaking Yard. This fact is also not in dispute. So vessel remained Foreign Going Vessel till she reaches at Along Ship Breaking Yard for breaking.

14. The Noticee has further submitted that as per the provisions of Section 87 of the Customs Act, 1962 any imported stores on board a vessel may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft. They have stated that the "Stores" is defined at Section 2(38) of the Customs Act, 1962. Thus, as per the provisions of Section 87 read with Section 2(28) no duty was payable on stores including fuel, provisions etc. when same were imported and consumed on board a foreign going vessel. Therefore, even otherwise, demand of customs duty on Marine Gas Oil (HSD) is without jurisdiction and liable to be quashed.

15. The Noticee has further submitted that Hon'ble Apex Court, Hon'ble High Court and Hon'ble CESTAT amongst other following decisions have held that no customs duty is payable on consumption of fuel for voyage of vessel from one port of India to another port of India when vessel is foreign run vessel.

- (i) JAIN MARINE SERVICES Versus COMMISSIONER OF CUSTOMS, JAMNAGAR - 2009 (240) E.L.T. 723 (Tri. - Ahmd.)
- (ii) COLLECTOR OF CUSTOMS & C. EX. Versus SOUTH EAST ASIA SHIPPING CO. LTD - 1989 (43) E.L.T. 479 (Tribunal)
- (iii) THE GREAT EASTERN SHIPPING CO. LTD. v. UNION OF INDIA AND ANOTHER MISC. PETITION NO. 172/69, DECIDED ON 10-2-1973 - Bombay High Court
- (iv) Against the above decision of Hon'ble Tribunal Civil Appeal of the department is dismissed by Hon'ble Apex Court - *Collector v. South East Asia Shipping Co. Ltd.* - 1996 (82) E.L.T. A155 (S.C.)
- (v) COLLECTOR OF CUSTOMS, AHMEDABAD Versus SHIPPING CORPORATION OF INDIA LTD. - 1987 (29) E.L.T. 182 (Tribunal)
- (vi) ASEAN CABLESHIP PVT. LTD. Versus COMMISSIONER OF CUSTOMS, COCHIN - 2020 (374) E.L.T. 597 (Tri. - Bang.)

16. The Noticee has further submitted that it is failed to understand that if any differential duty is payable by it on the Bunker viz. Marine Gas

Oil/High Speed Diesel i.e. calculated in the present SCN less already self assessed as well as provisionally assessed then why the proper officer while making order of provisional assessment has not re-assessed the duty of customs especially when Agriculture Infrastructure and Development Cess (AIDC) (Rs. 4 per liter) and Road and Infrastructure Cess equivalent to Additional duty of Customs (@ Rs. 8 per liter) were not self assessed by the Noticee?

17. The Noticee has further submitted that in fact the said two Cesses were exempted vide Notification No. 11/2021-Cus. dated 01.02.2021 (Sr. No. 17) and 21/2018-Cus. dated 02.02.2018 respectively. Therefore, neither M/s. Compass nor the proper officer while assessing the bills of entry provisionally not assessed the said two cesses. Therefore, no differential duty is payable by it as difference is arrived due to demand of two cesses and thereby calculation of Social Welfare Surcharge and the Additional Duty of Customs under sub-section (5) of Section 3 of the Customs Tariff Act, 1975 on the said two cesses.

18. The Noticee has further submitted that since the said vessel was foreign going vessel and no duty was payable on the said 3 goods used while her voyage from Kandla to Alang Ship Breaking Yard so question of payment of differential duty does not arise at all irrespective of the facts that same were exempted. On the contrary it is entitled for refund of Rs. 14,11,291/- as provided under Section 18(2) of the Customs Act, 1962. Therefore, they have prayed that impugned Bills of Entry may be finally assessed with Nil duty on all the said 3 goods viz. Bunker/Provisions etc. and order for refund of duty already paid by it.

19. The Noticee has further submitted that in view of the no differential duty is payable by it on the contrary it is entitled for refund of customs duty already paid, therefore, question of interest and imposition of penalty does not arise.

PERSONAL HEARING

20. Personal hearing in the matter was held on 08.01.2025. Shri P.D. Rachchh, Advocate from M/s. P.R. Associates attended the hearing on behalf of the Noticee, in virtual mode of hearing. He re-iterated his submission dtd. 05.11.2024. He said that all his submissions are contained in his Written Reply dtd.05.11.2024.



DISCUSSION & FINDINGS:

21. I have carefully gone through the facts of the case, Show Cause Notice and written defence submission dtd. 05.11.2024 and personal hearing held in virtual mode on 08.01.2025.

22. The issues to be decided in the instant case are:-

(a) whether the Noticee is liable to pay Customs duty on actual consumption of ship stores / Fuel Oil (bunkers) consumed between the Mumbai (India) to Alang.

(b) whether the Noticee has short paid the Customs Duty of Customs as proposed in the Show Cause Notice or not.

(c) Whether Penalty under Section 117 of the Customs Act, 1962 is imposable upon the Noticee or not.

23. I find that the SCN alleges and proposes recovery of short payment of duty of Customs on Marine Gas Oil as the Noticee while filing Bill of Entry self-assessed the Customs duty payable on consumption of Bunkers (including Marine Gas Oil) and Ship Stores between Mumbai and Alang Port. The Noticee self-assessed and paid total duty on Marine Gas Oil (CTH 27101930) Rs. 13,62,235/- as against duty payable worked out to Rs. 22,76,822/-. Hence, the demand of differential duty of Rs. 9,14,587/- in the Show Cause Notice.

24. It is noticee's contention that the vessel was not converted to coastal run as it was not carrying coastal cargo from **Kandla** port and hence the vessel was a foreign going vessel in terms of Section 2 (21) of the Customs act, 1962 exempted from payment of duties of Customs on consumption of bunkers and ship stores in terms of Section 87 of the Customs Act, 1962. The Noticee also discussed procedures related to conversion of foreign going vessel to coastal run vessel and the duty leviable there on. The Noticee referred CBEC Circular No 58/97 dated 6.11.1997 to submit that it is not the case that request for coastal conversion of the MT BOW FLOWER was made either at Kandla or at Alang. The noticee has challenged the levy of Customs duty itself on consumption of Bunkers and provisions during the voyage of the vessel from Mumbai Port to Alang in terms of Section 12 of the Customs Act, 1962.

25. I observe that the Board vide Circular No. 58/97 dated 6.11.1997 prescribed Procedure for collection of duty on ship stores consumed during



coastal run upon specific request of the Master of the Vessel and do not deal with legal obligation to pay Customs duties under the Customs Act, 1962.

26. Now, the fact remains that Noticee themselves paid the Customs duty to the tune of Rs.14,11,291/- by filing Manual Bill of Entry No. 8343665-A dated 02.06.2022. Therefore, levy of Customs duty under Section 12 of the Customs Act, 1962, and duty liability of the Noticee on consumption of the Bunkers and ship stores (provisions) during vessel's voyage from Kandla Port to Alang was not in dispute at that time and hence not part of the show cause notice. However, the Noticee in their reply solely relied upon their contention that there is no duty liability at all on consumption of the ship stores and bunkers/ fuel oil during the voyage of the vessel from Kandla to Alang as the vessel was a Foreign Going Vessel. The noticee raised the issue of levy of Customs duty on import under Section 12 of the Customs Act, 1962 upon receipt of the Show Cause Notice only when duties short paid were demanded from them. However, I proceed to take up the matter as the issue of levy of Customs duty under Section 12 is raised by the Noticee. To better appreciate the contention of the Noticee and the issue involved, relevant definition and provisions of Customs Act, 1962 are discussed as under:-

27. The word "Import" as defined in Section 2(23) of the Customs Act, 1962 and "India" as defined in Section 2(27) of the Customs At, 1962 reads as under:-

Section 12 of the Customs Act,1962 which provides for levy of Customs duty on goods imported into India reads as under:-

"SECTION 12. *Dutiable goods. — (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of Customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.*

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

***Section 2.** *Definitions: In this Act, unless the context otherwise requires:-*

(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India

*(27) "India" includes the territorial waters of India;**

27.1 Above three provisions of the Customs Act,1962 stipulate that duty is chargeable on goods imported into India. Importation takes place once

goods enter into territorial waters of India and the event of importation/ import attracts provisions of Customs Act, 1962 including levy of duty under Section 12 of the Act. The word 'import' is defined in Section 2(23) and, unless the context otherwise requires 'import' with its grammatical variations and cognate expressions means bringing into India from a place outside India. The word 'India' is defined in Section 2(27) which is an inclusive definition and it states that 'India' includes the territorial waters of India. Thus, the combined effect of the words 'import' and 'India' in these two sub-sections of Section 2 is that import takes place when goods are brought into the territorial waters of India from a place outside India. The duties of Customs are levied with reference to goods and the taxable event is the import of goods within India i.e. within territorial waters. The above provisions do not provide for levy of duty beyond territorial waters and the definition of "India" as quoted above does not unless otherwise specified, include beyond territorial waters.

27.2 The definition of term "foreign going vessel or aircraft" as defined in sub-section (21) of Section 2 which reads as under:-

"(21) "foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes -

- (i) any naval vessel of a foreign Government taking part in any naval exercises;*
- (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;*
- (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever."*

Section 87 of the Customs Act, 1962 reads as under :

"Imported stores may be consumed on board a foreign-going vessel or aircraft. - Any imported stores on board a vessel or aircraft (other than stores to which Section 90 applies) may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft."

27.3 There are two conditions in Section 2(21). The first condition is that there must be carriage of goods or passengers between a foreign port and an Indian port. The second condition is that the vessel in question must be engaged in the carriage of such goods or passengers. In the case in hand, the voyage of MT BOW FLOWER from Kandla Port to Alang port i.e. within territorial waters of India, was performed between two Indian ports in Indian territorial waters only. Therefore, once the vessel sailed



from Port of Kandla (India) for Alang Port of India for its own purpose i.e. for breaking purpose in India (i.e. at Alang), it was not sailing between the port outside India and a port in India and journey between Kandla and Alang was not necessitated under a foreign run i.e. *carriage of goods between any port in India and any port outside India* as defined in Section 2(21) of the Customs Act, 1962. Therefore, irrespective of its itinerary, the vessel MT BOW FLOWER was engaged in journey between two Indian ports during the voyage from Kandla port to Alang port. Therefore, the ship stores and bunkers consumed during the journey between two Indian port within the territorial waters of India are goods brought into the territorial waters of India from a place outside India and the duties of Customs are levied with reference as the taxable event i.e. the import of goods within India i.e. within territorial waters has been taken place. As regards applicability of Section 87 contended by the Noticee, I find that as long as the vessel or the aircraft holds the status as a foreign-going vessel, exemptions contained in Section 87 applies without any doubt. However, once the stores consumed when the vessel was involved in operations within Indian territorial waters, benefit of Section 87 of the Customs Act, 1962 cannot be extended.

28. I find it relevant to mention Instruction No.15/2018 dated 4.10.2018 issued by the CBIC clarifying law point of levy of duties of Customs under Section 12 in case of on board consumption of ship stores within territorial waters of India by the Cruise vessels while in foreign run. The CBIC vide Instruction No.15/2018 dated 4.10.2018 in the matter of duty on consumption of Ship Store by Cruise Vessels touching Indian Ports has clarified and stipulates that duty is payable on liquor and other consumed stores during the transit of a cruise vessel through territorial waters of India. This clarification in Instruction No.15/2018-Cus is in line with the interpretation discussed in foregoing Paras. Clause 2(v) of the Instruction reads as under:-

" (v) The definition of Indian Customs waters has been extended up to EEZ in Finance Act, 2018. 'Indian Customs Water' finds mention in various sections of Customs Act primarily related to enforcement. Dutiability of an imported product is governed by Section 12 of the Customs Act which is unaffected by the impact of said amendment. A cruise vessel calling on an Indian port would, therefore, **be liable to pay duty on liquor and other consumed stores during its transit through territorial waters or its period of stay at port in India**. Mere passage through Indian Customs water without calling on at any of the Indian ports would not attract Customs duties."



28.1 The position of law as explained in the Instruction No.15/2018-Customs dated 04.10.2018 is that dutiability of an imported product is governed by Section 12 of the Customs Act and duty is to be paid on consumed stores during vessel's transit through territorial waters or its period of stay at port in India. The fact remains that during the course of its movement between coastal ports in India, the vessel MT BOW FLOWER has consumed certain stores, and bunkers. The fact not disputed is that the stores are consumed within the territorial waters. Though the Noticee paid the self-assessed Customs duty of Rs 14,11,291/- at the material time on the basis of consumption of ship stores based on inventory declared by the Master of the Vessel without any protest & challenge about its leviability, now, while contesting the issue did not dispute the revised duty calculation of import duties payable on Marine Gas Oil proposed in the SCN.

29. I find that the Hon'ble Supreme Court of India's judgment on the issue of collecting duty in such cases and applicability of Section 87 in the case of M/s. Aban Loyd Chiles Offshore Ltd Vs U.O.I reported as 2008 (227) ELT 24 (SC) is applicable in this case. The Hon'ble Supreme Court of India has held as under:-

***79. It may not be correct to contend that the oil rigs installed by the appellants answer the description "foreign going vessel". A vessel may be a foreign going vessel but if the oil rig is situated in the area to which the Customs Act applies or extends, the aid of Section 2(21) of the Customs Act cannot be taken to get the benefit under Sections 86 and 87 of the same Act. The principle underlying under Sections 86 and 87 is that the stores are consumed on board by a foreign going vessel. **If the so-called foreign going vessel is located within a territory over which the coastal State has complete control and has sovereign right to extend its fiscal laws to such an area with or without modifications and the stores were consumed in the area to which the Customs Act has been extended, reference or reliance to the vessel being a foreign going vessel shall be of no consequence and the Customs duty would be leviable as the goods are consumed within the territory to which the Customs Act has been extended** as per the Maritime Zones Act, 1976 and the International Convention UNCLOS, 1982."*

29.1 The Hon'ble CESTAT in the case of M/s. Asian Cableship Pvt Ltd reported as 2020(374) ELT 597 (Tri-Bang), relying on the Hon'ble Supreme Court of India's judgment *supra*, in matter of Foreign Going Vessel engaged to carry out repairs of cables located in South East Asia and Indian Ocean Area, has held that Customs Duty on ship stores consumed while the vessel was performing operations within Indian territorial waters requires to be paid. The relevant portion of the order reads as under:-

"26. On a plain reading of Section 87 as above, it is evidently clear that as long as the vessel or the aircraft holds the status as a foreign-going



vessel, exemptions contained in Section 87 applies without any doubt. Going by the ratio of the judgment of the Hon'ble Supreme Court in the case of *Aban Loyd Chiles Offshore Ltd.*, 2008 (4) TMI 19 (SC) = 2008 (227) E.L.T. 24 (S.C.) held that :

"79. It may not be correct to contend that the oil rigs installed by the appellants answer the description "foreign going vessel". A vessel may be a foreign going vessel but if the oil rig is situated in the area to which the Customs Act applies or extends, the aid of Section 2(21) of the Customs Act cannot be taken to get the benefit under Sections 86 and 87 of the same Act. The principle underlying under Sections 86 and 87 is that the stores are consumed on board by a foreign going vessel. If the so-called foreign going vessel is located within a territory over which the coastal State has complete control and has sovereign right to extend its fiscal laws to such an area with or without modifications and the stores were consumed in the area to which the Customs Act has been extended, reference or reliance to the vessel being a foreign going vessel shall be of no consequence and the Customs duty would be leviable as the goods are consumed within the territory to which the Customs Act has been extended as per the Maritime Zones Act, 1976 and the International Convention UNCLOS, 1982."

From the above, we find that though the status of an FGV is not altered by the fact that such vessel or aircraft has run to a domestic Port or Airport during such time, duty on the stores consumed when the vessel was involved in operations within Indian territorial waters, needs to be collected in view of the above judgment. We find that Hon'ble Bombay High Court in the case of *Pride Foramer* has also taken the same view. This Bench has also followed the same in the case of *Focus Energy*, 2019 (11) TMI 22 (CESTAT BANG.) Therefore, we find that the appellants require to pay duty on the ship stores consumed by them while they were operating in the territorial waters of India. The appellants claim that such operations were only once during 4th October 2007 to 6th October 2007 and the applicable duty payable is Rs. 1,63,479. However, this is a matter of fact and the same requires to be ascertained/verified from the records like vessel's log books, correspondence with their masters, telecom authorities, information submitted to Port and Customs etc. For this reason, the matter requires to go back to the adjudicating authority for computation of the duty liability.

27. We find that Learned Authorized Representative for the Department has reiterated the findings of the Learned Commissioner. However, as per our discussion above, the contentions of the Department have been countered and held to be not maintainable under law. We also find that the cases relied upon by the Authorized Representative cannot help the cause of the Department. We find that the decision in the case *Aban Loyd Chiles Offshore Ltd.*, *Pride Foramer* (supra) concerned about the vessels which were rigs engaged in oil exploration in the designated areas of continental shelf and exclusive economic zone, which were declared by a notification to be a part of India for a limited purpose. However, we find that the cases are relevant only to the extent they decide the applicability of duty-free stores during the period the vessels were in Indian territorial waters. Moreover, the submissions of the Learned AR are based on stray correspondence and no investigation to that extent appears to have been done in this regard. The crux of the argument of the department was that the vessel was berthed in Cochin for most of the time during the disputed period and thus it ceases to be foreign going vessel. Moreover, we find that the vessel was anchored in Cochin Port and was under the watchful eyes of Customs and Port authorities. Many times, Customs authorities have boarded the vessel as demonstrated by the counsel for the appellants. Customs officers were supervising the bonded stores of the vessel. It was well within the right and mandate of Customs authorities to advise the



appellants to ensure that there were no procedural and other infractions. No proof of such efforts and correspondence, if any, has been placed on record before us. It can be seen that the arguments of adjudicating authority were controverted and we are inclined to hold that the impugned vessel is foreign going vessel and as such the exemption in terms of Section 87 of the Customs Act, 1962 is available to the appellants, despite the fact that it was lying berthed at Cochin for most part of the time. However, in view of the Hon'ble Apex Court's decision in *Aban Loyd case* (supra), we find that the duty on the ship stores consumed while the vessel was performing operations within Indian territorial waters requires to be paid by the appellants. Learned Counsel for the appellants has fairly conceded the same and expressed willingness to pay the same."

29.2 The Hon'ble CESTAT in the case of *C.C. Vs Shipping Corporation of India* reported as 1985 (21) E.L.T. 778 (Tribunal) has in similar matter held as under:-

"6. The case of M.T. Netaji Subhas Bose and the case of Nancy Dee are different. Nancy Dee was specially chartered and brought to India for the purpose of lightering work of wheat carrying from super tankers. This is not the case with M.T. Netaji Bose. The vessel was itself a foreign cargo carrying ship which arrived from Kharg Island in the Persian Gulf with foreign cargo for Madras and Visakhapatnam. There is no evidence that it was destined to go to Calcutta. When she went to Calcutta she did so only to carry crude oil taken from M.T. Zakir Hussain at Visakhapatnam. Nor is there any evidence that M.T. Zakir Hussain was destined to discharge foreign crude at Calcutta and that M.T. Netaji Subhas Bose merely helped to carry the cargo to its intended destination. M.T. Netaji Subhas Bose diverted at Visakhapatnam, an Indian port in order to carry cargo to Haldia another Indian port. It makes no difference that the cargo was a foreign cargo. The fact was that cargo was carried between one Indian port and another by a ship that was not meant to undertake that voyage. Nor was it meant to lift Indian cargo at Calcutta for any foreign port as is proved by the fact that she left that port in ballast, touching Vizag again which she left on 24-1-1978 also in ballast. The run from Vizag to Calcutta between 19 and 22-1-1978 was clearly a coastal run to carry cargo between two Indian ports, and no other. We are, therefore, unable to agree with the Shipping Corporation of India that the demand for duty made by the Vizag Customs was incorrect.

29.3 In an another case of vessel being sailed in territorial waters of India, the Hon'ble CESAT in the case of *M/s. Bharat Petroleum Corporation Ltd, Bombay* reported as 1984 (17) ELT 413 (Tribunal) [maintained in 1989 (43) ELT A131 (Supreme Court)] has allowed the benefit of exemption from Excise duty on bunkers supply to a foreign going vessel sailing between two Indian port i.e. Bombay and Kolkata while in Foreign Run and held that status of the Vessel has to be ascertained with regard to facts and circumstances of the case.

29.4 The above views are supported by the ratio in the above discussed judgments and in view of the matter I am not inclined to consider defense theory and various judgments relied upon by the Noticee. The said judgments relied upon by the noticee are issued in connection with the peculiar facts and



circumstances therein which also includes non-acceptance of Departmental Appeals based on litigation policy which do not have precedence value.

30. In the light of the above discussion and relying on the above case laws, I hold that the Noticee is required to pay Customs duty on ship stores, bunker, provisions, alcohol etc. consumed on Vessel MT BOW FLOWER during its transit through territorial waters or its period of stay at port in India. Therefore, Customs duty is rightly paid by the Noticee however remained short paid as it was wrongly self-assessed by them.

31. I find that Customs duty payable on Marine Gas Oil (CTH 27101930) which includes basic Customs duties along with other duties and Cess as imposed under various provisions is as under:-

Sr. No.	Types of Duties	Rate of Duty	Marine Gas Oil (MGO) / HSD
1	Quantity	---	67646 Ltr.
2	Assessable Value (In Rs.)	---	Rs. 61,51,832/-
3	Basic Customs Duty (BCD) [Notification No. 52/2017-Cus. dated 30.06.2017 (Sr. No. 3)]	2.5%	Rs. 1,53,796/-
4	Agriculture Infrastructure and Development Cess (AIDC)	Rs. 4/- per Liter.	Rs. 2,70,588/-
5	Addl. Duty of Customs equivalent to Special Additional Excise Duty (SAED) [No. 05/2019-CE dated 06.07.2019 (as amended)]	Rs. 8/- per Liter.	Rs. 5,41,176/-
6	Road and Infrastructure Cess equivalent to Additional Duty of Customs [(Sr. No. 02) (as amended)]	Rs. 8/- per Liter.	Rs. 5,41,176/-
7	Basic Excise Duty as per Section 3 of the Central Excise Act, 1944 [Notification No. 11/2017-CE dated 30.06.2017 (Sr. No. 3(ii)) (as amended)]	Rs. 4.20 per Liter.	Rs. 2,84,117/-
8	Social Welfare Surcharge Notification No. 12/2021-Cus. dated 01.02.2021 [@ 10% of 3 + 4 + 5 + 6 + 7]	@ 10%	Rs. 1,79,085/-
9	the Additional Duty of Customs on imported goods under Sub-section (5) of Section (3) of the Customs Tariff Act, 1975 (51 of 1975) [No. 53/2017-Cus.dated 30.06.2017 (as amended)] [4%age of 2+3+5+6+7]	@4%	Rs. 3,06,884/-
10	Total duty on MGO/HSD [3 to 9]		Rs. 22,76,822/-

31.1

The noticee in their submissions has challenged the levy of Customs duty itself however not disputed duty calculations amounting to Rs.22,76,822/- payable on MGO as worked out above and proposed in the Show Cause Notice. Thus, actual duty payable and difference arose due to short payment while filing the Bill of Entry is not in dispute. Therefore, I find

that the differential duty of Rs.9,14,587/- short paid on MGO (CTH 27101930) is required to be paid by the Noticee. In view of above facts, I confirm the demand of differential duty of Rs. 9,14,587/- to be recovered from the Noticee under Section 28 (1) of the Customs Act, 1962 along with interest under Section 28 AA of Customs Act, 1962 as proposed in the Show Cause Notice

32. The Show Cause Notice also proposes penalty on the Noticee under Section 117 of the Act which reads as under: -

***"Section 117** Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees"*

32.1 I find that Section 17 of the Customs Act, 1962 provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in electronic form, as per Section 46 or 50 respectively and therefore, under self-assessment, it is the responsibility of the importer or exporter to ensure that he declares the correct classification, country of origin, applicable rate of duty, value, benefit or exemption notification claimed, if any in respect of the imported / exported goods while presenting Bill of Entry or Shipping Bill. In the present case, I find that the Noticee has not paid appropriate duty leviable under Section 12 of the Customs Act, 1962 as much as they failed to self-assess correct duty liability under Section 17 of the Act and presenting incorrect Bill of Entry under Section 46 by not declaring all relevant provisions and notifications attracting duty liability. Since the Noticee has violated the provisions of Section 12 read with Section 17 and 46 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, I find that Noticee is liable to penalty under Section 117 of Customs Act, 1962, as proposed in the Show Cause Notice.

33. In view of the above, I pass following order:

:: O R D E R ::

- (i) I confirm the demand of differential duty of **Rs.9,14,587/- (Rupees Nine Lakhs Fourteen Thousand Five Hundred and Eighty Seven Only)** under Section 28(1) of the Customs Act, 1962. The same should be paid by / recovered from the Noticee forthwith.



- (II) I order to charge and recover applicable interest leviable on the confirmed amount of differential Customs Duty, as per (I) above, under Section 28AA of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.
- (III) I impose penalty Rs. **1,00,000/- (Rupees One Lakh Only)** on M/s. Compass Shipping Agency, Bhavnagar under Section 117 of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

This order is issued without prejudice to any other action that may be taken against the importer or any other person under the Customs Act, 1962 or any other law for the time being in force.



अमित कुमार सिंह
(Amit Kumar Singh)
अपर आयुक्त/ Additional Commissioner
सीमा शुल्क (निवारक) (Customs (Preventive))
जामनगर/ Jamnagar

Date: 30.01.2025

फाइल सं : CUS/1033/2024-Adjn.

BY RPAD/SPPED POST/HAND DELIVERY:

M/s. Compass Shipping Agency,
308, Prithvi Plaza,
Opp. Gogha Circle,
Bhavnagar-364002
(Gujarat)

Copy to:

1. The Commissioner, Customs (Preventive), Commissionerate, Jamnagar
2. The Superintendent (TRC), Customs (Preventive), Commissionerate Jamnagar
3. The Assistant Commissioner, Customs Division, Bhavnagar.
4. The Superintendent, Systems, Customs (Prev.), Commissionerate Jamnagar
5. Guard File.