सीमा शुल्ककार्यालय का आयुक्त निवारक) के) , सीमा शुल्क भवन,
जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास,
जामनगर) गुजरात001 361 – ()

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 – 20260671MM000000B060

1.	फ़ाइल क्रमांक/ File Number	F. No. CUS/1934/2024-Adjn
2.	मूल आदेश क्रमांक/ Order-in-Original No.	3/Additional Commissioner/ 2026-27
3.	द्वारा पारित/ passed by	अमित कुमार सिंह/ Amit Kumar Singh अपर आयुक्त/ Additional Commissioner, सीमा शुल्क, निवारक/Customs (Preventive) जामनगर/ Jamnagar.
4.	Date of Order /आदेश दिनांक	29.06.2026
	Date of issue / आदेश जारी किया	29.06.2026
5.	कारण बताओ नोटिस क्रमांक एवं दिनांक Show Cause Notice Number & Date	Show Cause Notice No. ADC-16/2025-26 dated 16.09.2026.
6.	नोटिसी का नाम/ Name of Noticee	**M/s. Navyug Ship Breaking Co,** Plot No. 153 M, Ship Breaking Yard, Sosiya P.O.Manar-364150, Dist-Bhavnagar.

01.	इस आदेश की मूल प्रति संबन्धित व्यक्ति को निशुल्क प्रदान की जाती है।
	The original copy of this order is provided free of cost to the person concerned.
02.	इस मूल आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम,

	128 धारा की 1962A)(1)a सीमा शुल्क 1982 ,अपील) नियम) के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के भीतर फॉर्म सीए1 - में निम्नलिखित पते पर अपील दायर कर सकता है।फॉर्म सीए1 - 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। से कम से जिनमें) कमएक प्रमाणित प्रति हो	
	आयुक्त (अपील) चौथी मंजिल, हडको भवन , ईश्वर भुवन रोड, नवरंगपुरा अहमदाबाद – 380 009	Commissioner (Appeals), 4th Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad 380 009
	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.	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) 0.50पचास 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।	
	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 paisa only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.	
04.	अपीलीय ज्ञापन 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।
	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.
05.	अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील)) नियम,सभी के 1982 ,प्रोसीजर) नियम) प्रक्रिया सिस्टेट और 1982 है। हुआ पालन पूरा का नियमो
	While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982 , should be adhered to in all respects.
06.	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।
	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.

BRIEF FACTS OF THE CASE:

M/s. Navyug Ship Breaking Co, Plot No. 153 M, Ship Breaking Yard, Sosiya P.O.Manar-364150, Dist-Bhavnagar (hereinafter referred to as the Noticee') on the basis of CESTAT order No. A/11792-11852/2022 dated 01.12.2022 filed a refund claim of Rs.7,46,694/- before the Assistant Commissioner, Customs Division, Bhavnagar. The Assistant Commissioner vide Order-in-Original No. 09/CUS-REF/2023-24 dated 29.09.2023 sanctioned refund of Rs. 7, 46, 694/- to the Noticee. The amount was paid to the Noticee on 03.10.2023.

2. During the course of review of the above OIO under Section 129D(2) of the Customs Act,1962 by the competent authority, it was observed that while sanctioning the refund, the Assistant Commissioner had not examined the aspect of unjust enrichment as per Board's Circular No. 07/2008 dated 28.05.2008. It was also observed that the Assistant Commissioner had sanctioned the refund claim to the Noticee without examining the relevant financial records to determine as to whether burden of duty has been passed on to the ultimate buyer or otherwise, It was further observed that it was necessary for the adjudicating authority to examine the relevant financial records to verify if the customs duty paid on oil at the time of import has been shown as revenue expenditure or receivable from the Government in the books of accounts, so as to ascertain the test of unjust enrichment with regard to refund claim filed by the Noticee.

2.1 In view of above observations, the department filed appeal before the Commissioner of Customs (Appeals), Ahmedabad with a request to set aside the aforesaid OIO and remand the matter back to the adjudicating authority for passing a proper speaking order. The Commissioner of Customs (Appeals), Ahmedabad vide Order-in-Appeal No. JMN-CUSTM-000-APP-187 to 191-24-25 dated 11.09.2024 had allowed the department's appeal by way of remand and remitted the matter back to the Assistant Commissioner, Customs Division, Bhavnagar, so as to ascertain the facts, examine the documents, submissions made by the respondent (the Noticee) and pass speaking order on the aspect of unjust enrichment after following the principle of natural justice as per the legal provisions.

3. In the remand proceedings, as ordered by the Commissioner of Customs (Appeals), Ahmedabad vide above Order-in-Appeal dated 11.09.2024, the Assistant Commissioner, Customs Division, Bhavnagar, after considering the submissions made and documents furnished by the Noticee, has observed that the Noticee had failed to prove that incidence of Customs duty has not been passed on to any other person and hence, the amount of refund paid to them is liable to be recovered and credited to the Consumer Welfare Fund. In view of above observations, the Assistant Commissioner, Customs Division, Bhavnagar vide Order-in-Original No. 405/CUS-REF/2024-25 dated 23.12.2024 has sanctioned refund for Rs.7, 46, 694/- in terms of provisions of Section 27 of Customs Act, 1962 to be

credited to the Consumer Welfare Fund.

3.1 The Noticee filed appeal before the Commissioner (Appeals), Customs, Ahmedabad, which was rejected vide Order-in-Appeal No. JMN-CUSTM-000-177 to 179-25-26 dated 7.8.2025.

4. In view of the above, it appears that refund of Rs.7, 46, 694/- which was erroneously sanctioned to the Noticee vide Order-In-Original No. 09/CUS-REF/2023-24 dated 29.09.2023 by the Assistant Commissioner and paid to them on 03.10.2023, is required to be recovered from them under section 28 of Customs Act, 1962 and to be deposited into the Consumer Welfare Fund.

4.1 In pursuance to the Regulation 3(1) of the Pre-Notice Consultation Regulations, 2018, the pre-consultation notice dated 15.07.2025 intimating the grounds for recovery of the erroneously sanctioned refund of Rs.7, 46, 694/- and interest thereof under Section 28AA ibid were communicated to the Noticee with opportunity for filling submission in writing as stipulated under Regulation 3(2) ibid .

4.2 The Noticee vide their letter dated 24.07.2025 has filed a written submission in the matter; wherein he requested to drop the proceedings on the grounds mentioned therein.

5. Accordingly, a Show Cause Notice No. ADC-16/2025-26 dated 16.09.2026 was issued to the Noticee i.e. M/s. Navyug Ship Breaking Co, Plot No. 153 M, Ship Breaking Yard. Sosiya P.O.Manar-364150, Dist-Bhavnagar asking them, as to why-

i. Refund of customs duty of Rs. 7,46,694/- (Rupees Seven Lakhs Forty Six Thousand Six Hundred Ninety Four only) as erroneously sanctioned and granted should not be recovered from them under Section 28 of the Customs Act, 1962 and credited in-to the Consumer Welfare Fund; and

ii. Interest at appropriate rate, should not be demanded and recovered from them on the amount (i) above from the date of such erroneous refund under Section 28AA of the Customs Act, 1962 and credited in-to the Consumer Welfare Fund.

DEFENCE REPLY:-

6. The Noticee, vide letter dated 03.10.2025, put forth the following submissions:

i. The subject show cause notice has been issued in gross violation of proviso (g) of sub-section (2) of Section 27 of the Customs Act, 1962, which is reproduced as below:

> *"(g) the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where*
> *(i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry ; or*
> *(ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.".*

From the above inserted provision Section 27(2)(g) of the Customs Act, 1962 (inserted w.e.f. 31.03.2017), it is clear that this amended Section is directly effective in or in relation to invoking the concept of unjust enrichment as well as no question remained to be answered for issuance of such unwarranted show cause notice which appears to have been wrongfully invoked.

ii. They have filed an appeal against OIA No. JMN-CUSTM-000-APP-177 TO 179-25-26 dated 07.08.2025 passed by the Commissioner of Customs (Appeals), Ahmedabad before the Tribunal, Ahmedabad wherein they have pleaded that the concept of invoking unjust enrichment does not arise.

6.1 The Noticee, vide letter dated 22.04.2026 submitted that in the similar other maters Hon'ble CESTAT Regional Bench in Customs Appeal No.10511 of 2025 in the matter of Dynamic Ship Recyclers Pvt. Ltd. Vs Customs (P), Jamnagar has held that the bar of unjust enrichment is not applicable in such cases like them. Their appeal under reference No.12304 of 2025 is lying pending for final hearing before the CESTAT.

6.2 Further, vide letter dated 01.05.2026 submitted that they have been issued two different show cause notices for the recovery of Rs.746694/- against the same bill of entry and same ship for credited in to the Consumer Welfare Fund from office of the Additional Commissioner, Customs (Prev.), Jamnagar as well as from the office of the Assistant Commissioner of Customs, Bhavnagar and hence they have been issued duplicate of Show Cause Notices on the same issue and the matter is still pending for final hearing with the Hon'ble CESTAT.

PERSONAL HEARING:

7. The personal hearing in the subject case was granted on 09.06.2026 in virtual mode which was attended by Shri Vishnu Bhagwan Tayal, Partner of the company submitted that they will file additional submission within a week and the case may be decided accordingly on merit.

7.1 Vide additional submission dated 10.06.2026, since the same issue is pending before Hon'ble CESTAT vide Diary No.12304/2025, hence Show Cause Notice No. ADC-16/2025-26 dated 16.09.2025 issued to them may be dropped.

DISCUSSION & FINDINGS:

8. I have carefully gone through the facts of the case, the Show Cause Notice, the written submissions filed by the Noticee, the submissions made during the personal hearing held on 09.06.2026, the additional submission dated 10.06.2026, and the records available on file.

9. The issue for determination in the present proceedings is whether the amount of Rs.7,46,694/-, which had already been paid to the Noticee pursuant to the earlier refund order dated 29.09.2023, is liable to be recovered along with applicable interest under Section 28 & 28AA of the Customs Act, 1962, consequent upon the finding recorded in the remand proceedings that the refund is hit by the doctrine of unjust enrichment.

10. I have carefully considered the submissions made by the Noticee. The principal contention advanced by the Noticee is that, in view of clause (g) of sub-section (2) of Section 27 of the Customs Act, 1962, the doctrine of unjust enrichment is not applicable to the refund under consideration. I find that the said contention is devoid of merit and is not sustainable in

law.

10.1 For ease of reference, clause (g) of sub-section (2) of Section 27 of the Customs Act, 1962 is reproduced below::

> *"(g) the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where*
>
> *(i) such excess payment of duty is evident from the bill of entry in the case of* ***self-assessed bill of entry****; or*
>
> *(ii) the duty actually payable is reflected in the* ***reassessed bill of entry*** *in the case of reassessment.".*

A plain reading of the above provision makes it evident that the exception carved out under Section 27(2)(g) is applicable only in cases where excess customs duty has been paid prior to clearance of goods for home consumption and such excess payment is either apparent from a self-assessed Bill of Entry or arises consequent to reassessment of the Bill of Entry. In other words, the said provision is intended to cover situations arising out of assessment or reassessment under Section 17 of the Customs Act, 1962.

10.2 In the instant case, however, the refund claim does not emanate from any excess payment of duty evident from the Bill of Entry nor from any reassessment carried out under Section 17 of the Customs Act, 1962. The records reveal that the imports were provisionally assessed under Section 18 of the Customs Act, 1962 and the refund claim came to be filed consequent upon the order of the Hon'ble CESTAT. The refund was thereafter processed under Section 27 of the Customs Act, 1962. Therefore, the facts and circumstances of the present case are clearly distinguishable from the situations contemplated under Section 27(2)(g) of the Act.

10.3 In view of the above, I hold that the benefit of the exception provided under Section 27(2)(g) is not available to the Noticee. Consequently, the Noticee was required to satisfy the statutory requirement of establishing that the incidence of the duty in question had not been passed on to any other person, failing which the refund amount would be liable to be credited to the Consumer Welfare Fund in terms of Section 27(2) of the

Customs Act, 1962.

10.4 I further observe that the issue relating to unjust enrichment has already been examined in detail by the Assistant Commissioner, Customs Division, Bhavnagar in the de novo proceedings conducted pursuant to the remand directions issued by the Commissioner (Appeals) vide Order-in-Appeal No. JMN-CUSTM-000-APP-187 to 191-24-25 dated 11.09.2024. Upon examination of the financial records, documentary evidence and submissions furnished by the Noticee, a categorical finding was recorded in Order-in-Original No. 405/CUS-REF/2024-25 dated 23.12.2024 that the Noticee had failed to discharge the burden cast upon it under Section 27 of the Customs Act, 1962 to establish that the incidence of duty had not been passed on to any other person. Consequently, it was ordered that the refund amount of Rs.7,46,694/- be credited to the Consumer Welfare Fund. Further, I find that appeal filed before the Commissioner (Appeals), Customs, Ahmedabad against Order-in-Original dated 23.12.2024 has been rejected vide Order-in-Appeal dated 7.8.2025.

10.5 The Noticee has further submitted that they have filed an appeal before the Hon'ble CESTAT against the appellate order relating to the issue of unjust enrichment. In this regard, I find that the mere filing of an appeal does not render the impugned order inoperative nor does it automatically operate as a stay against implementation of the findings recorded therein. The Noticee has not produced any stay order or any direction issued by the Hon'ble Tribunal restraining the Department from taking consequential action arising out of the said orders. Accordingly, the findings recorded in the de novo adjudication order and the appellate order continue to hold the field and remain binding for the purpose of the present proceedings.

10.6 Once it has been conclusively held by the competent authority that the refund amount was not payable to the Noticee and was instead required to be credited to the Consumer Welfare Fund, the amount already disbursed to the Noticee pursuant to Order-in-Original dated 29.09.2023 assumes the character of an erroneous refund. Such erroneous refund is recoverable under the provisions of Section 28 of the Customs Act, 1962.

11. In light of the foregoing discussion and findings, I hold that the refund amount of Rs.7,46,694/- paid to the Noticee on 03.10.2023 pursuant to Order-in-Original No. 09/CUS-REF/2023-24 dated 29.09.2023 was not admissible to them in cash and ought to have been

credited to the Consumer Welfare Fund. Consequently, the said amount constitutes an erroneous refund and is liable to be recovered from the Noticee under Section 28 of the Customs Act, 1962 for credit to the Consumer Welfare Fund.

11.1 I further hold that the Noticee is liable to pay interest on the said amount in terms of Section 28AA of the Customs Act, 1962 from the date of disbursement of the erroneous refund, i.e. 03.10.2023, till the date of actual recovery/payment, which is to be credited to the Consumer Welfare Fund.

12. In view of the foregoing findings, I pass the following order:

:: ORDER ::

(i) I confirm the demand for recovery of erroneously refunded customs duty amounting to Rs.7,46,694/- (Rupees Seven Lakhs Forty Six Thousand Six Hundred and Ninety Four only) from M/s. Navyug Ship Breaking Co. under Section 28 of the Customs Act, 1962.

(ii) I order that the amount so recovered shall be credited to the Consumer Welfare Fund in accordance with the provisions of Section 27(2) of the Customs Act, 1962.

(iii) I also order recovery of applicable interest from M/s. Navyug Ship Breaking Co. under Section 28AA of the Customs Act, 1962 on the aforesaid amount of Rs.7,46,694/- from the date of disbursement of the erroneous refund, i.e. 03.10.2023, till the date of actual payment/recovery. I order that the interest so recovered shall be credited to the Consumer Welfare Fund.

The Show Cause Notice No. ADC-16/2025-26 dated 16.09.2025 is disposed of as above.

Digitally signed by
Amit Kumar Singh
Date: 29-06-2026
17:06:04

(Amit Kumar Singh)
Additional Commissioner

F.No. CUS/1934/2024-Adjn. Date: 29.06.2026

To,
M/s. Navyug Ship Breaking Co,
Plot No. 153 M, Ship Breaking Yard,
Sosiya P.O.Manar-364150,
Dist-Bhavnagar

Copy to:

1. The Commissioner of Customs, Customs (Prev.), Jamnagar.
2. The Assistant Commissioner (RRA), Customs (Prev.), Jamnagar.
3. The Deputy Commissioner (Recovery), Customs (Prev.), Jamnagar.
4. The Deputy Commissioner (System), Customs (Prev.), Jamnagar.
5. The Assistant Commissioner, Custom Division Bhavnagar.
6. Guard file.