	सीमा शुल्ककार्यालय का आयुक्त के (निवारक), 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 – 20260371MM0000000F79

- | | |
|---|---|
| 1. फ़ाइल क्रमांक/ File Number | F. No. CUS/6465/2024-Adjn |
| 2. मूल आदेश क्रमांक/
Order-in-Original No. | 25/Additional Commissioner/ 2025-26
अमित कुमार सिंह/ Amit Kumar Singh
अपर आयुक्त/ Additional Commissioner,
सीमा शुल्क, निवारक/Customs (Preventive)
जामनगर/ Jamnagar. |
| 3. द्वारा पारित/ passed by | |
| Date of Order /आदेश दिनांक | 09.03.2026 |
| 4. Date of issue / आदेश जारी
किया | 09.03.2026 |
| कारण बताओ नोटिस क्रमांक
एवं दिनांक | De-novo adjudication of OIO No.
23/Additional Commissioner/2015/AS
dated 13.07.2015, SCN No., ordered by
CESTAT, Ahmedabad vide Order No
10398/2024 dated 13.02.2024. |
| 5. Show Cause Notice Number
& Date | |
| नोटिसी का नाम/
Name of Noticee | M/s. Priya Blue Industries Pvt Ltd.
Plot No. V-1,
Sosiyo Alang,
Dist.: Bhavnagar. |
| 6. | |

- | | |
|-----|--|
| 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. | इस मूल आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम, की धारा 1962 128A)(1)a सीमा शुल्क नियम (अपील), 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>आयुक्त (अपील) चौथी मंजिल, हडको भवन, ईश्वर भुवन रोड, नवरंगपुरा अहमदाबाद - 380 009</p>	<p>Commissioner (Appeals), 4th Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad 380 009</p>
	<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).</p>
<p>03.</p>	<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>
<p>04.</p>	<p>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।</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>
<p>05.</p>	<p>अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील)) नियम, 1982 नियम (प्रोसीजर) और सिस्टेट प्रक्रिया,के सभी नियमों का पूरा पालन हुआ है। 1982</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>
<p>06.</p>	<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:

The present de-novo proceedings is initiated in pursuance to the Order No.10398/2024 dated 13.02.2024 passed by Hon'ble CESTAT, West Zonal Bench, Ahmedabad in the Appeal No. 10249 of 2017- DB filed by M/s. Priya Blue Industries Pvt. Ltd. against the Commissioner of Customs (Prev.), Jamnagar, wherein Hon'ble Tribunal has set aside OIA-JMN-CUSTM-000-APP-001-16-17 dated 06.04.2016, passed by Commissioner (Appeal) Commissioner of Central Excise, Custom and Service tax Ahmedabad and has directed the Adjudicating Authority to reconsider the entire case and bring any evidence, if available, to establish that the goods found in the vessel is Lubricating Oil and not sludge/sediment and thereafter decide the matter afresh.

2. M/s. Priya Blue Industries Pvt. Ltd., Ship Breaking Firm had imported a vessel named 'T.T. Theo Strous' for breaking and filed Bill of Entry bearing no. SBY-III/101/96-97 dated 09.01.1997. Based on the specific intelligence, the officers of Customs Division, Bhavnagar along with the Officers of Customs and Central Excise, Alang visited the ship breaking plot of the aforesaid Noticee on 14.01.1997 and found that breaking of the said vessel 'T.T. Theo Strous' was in progress and that the pipelines on the deck side had been dismantled and the equipment's of the Bridge Room as well as Radio Room were also removed. A Panchnama dated 14.01.1997 was drawn on the spot inter alia indicating that the substantial breaking activities of the vessel had been carried out by the Noticee without payment of custom duty.

3. The Officers of Customs Division Bhavnagar and the Officers of Customs and Central Excise, Alang while visiting the ship breaking plot of the Noticee found that the Noticee had started breaking the vessel without paying Custom duty leviable thereon in terms of Section 12 read with Section 14 and 15 of the Customs Act 1962, and that too without obtaining an order permitting clearance of vessel for home consumption from proper officer under sub-section (1) of Section 47 of Customs Act, 1962.



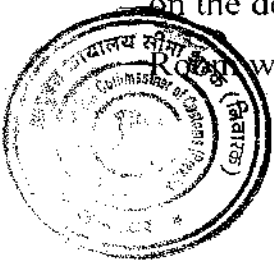
4. Again, a joint survey was conducted by the Officers of Central Excise Division, Bhavnagar at Plot no V-1 Sosia Shipbreaking Yard on 15.01.1997 and it was confirmed that the Noticee started breaking activities of the vessel without payment of Customs duty and without obtaining Out of Customs Charge order as mandated under sub-section (1) of Section 47 of the Act. Thereafter ship was seized under Panchnama dated 16.01.1997.

5. As the breaking/cutting of the vessel was already initiated and certain parts were dismantled, the same were seized on 16.01.1997 under Panchnama dated 16.01.1997 with reasonable belief that the same was liable for confiscation under the provisions of the Customs Act, 1962 and was handed over to the Noticee vide Supratnama dated 16.01.1997 for safe custody.

6. On application being made by the Noticee, the Commissioner, Customs and Central Excise, Rajkot permitted provisional release of the said vessel subject to furnishing a bond of Rs.1 crore (Rupees One Crore Only) and a bank guarantee of Rs. 10 lakhs (Rupees Ten Lakh Only) duly accounting for the parts of the material obtained by breaking of the said vessel in the prescribed records. Accordingly on furnishing the required bond of Rupees one crore and bank Guarantee of Rupees ten lakhs on 30.01.1997, the said vessel was provisionally released.

7. On furnishing the required documents by the Noticee on 09.01.1997, the Superintendent, Customs and Central Excise, Alang assessed the Bill of Entry on 16.01.1997 and the customs duty so assessed was paid by the Noticee vide Challan dated 21.01.1997.

8. Statements of Shri Sanjay P. Mehta, Managing Director of the Noticee Firm/Company were recorded on 17.01.1997, 27.01.1997 and 23.06.1997 wherein, he, inter alia, confirmed the facts stated in the Panchnama dated 16.01.1997 regarding breaking of the vessel by cutting, dismantling of pipelines on the deck side and dismantling of the equipment of the Bridge Room and Radio without payment of customs duty.



9. The inspection and the survey of the vessel including the cargo tanks were carried out in presence of the representatives of the Noticee from 14.01.1997 to 16.01.1997 through independent Marine Surveyors, M/s. Metcalfe and Hodgkinson (P) Ltd, Bhavnagar. The said Surveyor in his report bearing No. MH2/793/97 dated 17.01.1997 reported that, Tank No.8 (port side) contained MHO with sludge/sediments, which was later found and quantified as 174.900 MTs as certified by one of the surveyors, M/s. J. B. Boda, Surveyors, which was more than normal in quantity w.r.t. a ship arriving for breaking generally hold/keeps.

10. A sample of the aforesaid sludge/ sediments (MHO Oil) was drawn on 16.01.1997 and the same was sent for analysis to the Chemical Examiner, Kandla on 27.01.1997. In response, the Chemical Examiner vide his Test Report No.169 dated 03.02.1997 communicated the test result as under:

“The sample is in the form of black colored thick free flowing liquid. It is composed of mainly mineral hydrocarbons together with small amount of sediment and water (approx. 4%). It has the following constants:

- (i) Flash Point 65 °C
- (ii) Density at 15 °C – 0.9301 gm/ml
- (iii) Smoke Point – less than 10mm.”

11. From the investigation, surveys, and test report, it was classified under a heading of 2710 of the Customs Tariff Act, 1975 and accordingly, was chargeable to duty of customs to the tune of Rs.13,83,543/- as envisaged under Section 12 of the Customs Act, 1962.

12. Further, it was also noticed that, the Noticee had not declared the tank oil i.e. so-called sludge/sediments (oil) in the bill of entry filed by them and the same was cleared for home consumption without payment of duty and in absence of permission and out of charge order from the Proper Officer in contravention to the provisions of Section 32, Section 46(2) and Section 47(1) of the Act.

13. Therefore, an SCN dated 11.07.1997 was issued to the Noticee proposing confiscation of the vessel, demand of customs duty and penal actions. Shri Sanjay Mehta, MD in the Noticee firm was also called upon to the show cause as to why



penalty should not be imposed upon him. The said SCN was adjudicated vide OIO No.02/COMM/1999 dated 12.05.1999 by the Commissioner of Customs & Central Excise, Rajkot, who ordered confiscation of the vessel and imposed penalties on the Noticee as well as on Shri Sanjay P. Mehta, Managing Director in the Noticee Firm/Company.

14. The said Order-in-Original was reviewed and the Revenue filed an appeal before the CEGAT, Mumbai on the ground that the Commissioner has not confirmed the demand of duty of customs to the tune of Rs.13,83,543/- in respect of goods quantified as 174.900 MTs. At that juncture, Hon'ble Tribunal by the Order No. A/270-271/WZB/06 CII (CSTB) dated 08.03.2006 disposed of the appeal filed by the department by remanding the matter back to the original Adjudicating Authority. Being aggrieved by the order of Hon'ble Tribunal, the department preferred appeal before Hon'ble High Court of Gujarat. Hon'ble High Court of Gujarat vide Oral Order dated 25.07.2007 dismissed the Tax Appeal filed by the department concluding that, no substantial question of law arises in remanding the matter to the Commissioner.

15. Therefore, de-novo proceedings were initiated by the Commissioner of Customs, Jamnagar and the matter was adjudicated vide OIO No.04/Commissioner/2008 dated 31.03.2008, wherein; the Adjudicating Authority passed the following order:

- (i) I order the classification of 174.900 MT of sludge/sediments under Chapter sub-heading No. 2710.00 of Customs Tariff Act, 1975 and confirm the demand of customs duty amounting to Rs.13,83,543/- as payable on the said goods valued at Rs.26,70,933/- in terms of the provisions of sub-section (2) of the Customs Act, 1962;
- (ii) I order for confiscation of the vessel MV TT Theo Strous valued at Rs.27,39,60,352/- under Section 115(2) of the Customs Act, 1962. Since, the said vessel was provisionally released and the same is not available for confiscation, I, therefore, impose redemption fine in lieu of confiscation amounting to Rs. 1,00,00,000/- (Rupees One Crore only) under the above section which will realized in terms of the bond/undertaking executed by



the Noticee No.1 at the time of provisional release of the Vessel. The bank guarantee for Rs.10,00,000/- (Rupees ten lakh only) executed by the Noticee No.1 at the time of provisional release of the vessel stands appropriated against the aforesaid fine;

- (iii) I impose penalty of Rs.50, 00,000/- upon M/s. Priya Blue Industries Pvt. Ltd., Sosiya – Alang, Dist. Bhavnagar under Section 112 (a)(ii) and 112 (b)(ii) of the Customs Act, 1962;
- (iv) I also impose penalty of Rs.20, 00,000/- upon Shri Sanjay P. Mehta, Managing Director, M/s. Priya Blue Industries Pvt. Ltd., Sosiya – Alang, Dist. Bhavnagar under Section 112 (a)(ii) and 112 (b)(ii) of the Customs Act, 1962.

16. Being aggrieved, the Noticee and the Managing Director in the Noticee Company/Firm filed appeals before Hon'ble CESTAT, Ahmedabad, who decided the matter vide Order No. A/10501 to 10504/WZB/AHD/2013 dated 17.12.2008/14.03.2013; wherein the sludge/sediments were held as marketable and hence, classifiable under Chapter 27 and consequently dutiable and therefore, the impugned order has been upheld as regard to classification and dutiability. The Penalty imposed on the appellant-company was reduced to Rs.50,000/- and penalty on the Managing Director, Shri Sanjay P. Mehta was also reduced to Rs.20,000/-. While, the matter pertaining to the valuation of sludge and sediments for the purpose of levy of duty of customs were remanded to the original Adjudication Authority.

17. Subsequently, as envisaged under the Circular No.23/2009 dated 01.09.2009, the Commissioner of Customs (Preventive), Jamnagar allocated the subject case for adjudication to the Additional Commissioner, Customs, Jamnagar and the same was informed to the Noticee vide letter dated 08.08.2014.

18. In pursuance thereof, the then Additional Commissioner of Customs (Prev.), Jamnagar vide OIO No.23/Addl. Commissioner/2015/AS dated 13.07.2015 re-adjudicated the case afresh only w.r.t. valuation of the item declared as sludge/sediment by the Noticee, which according to the test report of Government Laboratory, Kandla contained only 4% of water and sediment and passed the following order:



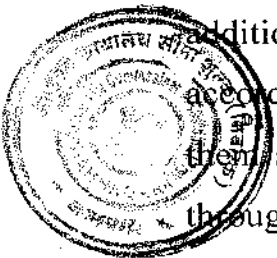
"I assess the so-called sludge/sediment (oil) @ USD 420/MT and accordingly hold that the customs duty confirmed at Rs.13,83,543/- need not any revision. The same is ordered to be recovered under Section 28 of the Customs Act, 1962 along with interest as due and payable under Section 28 AB (now 28AA) of the Customs Act, 1962."

19. Aggrieved by the aforesaid Order, the Noticee as envisaged under Section 128 of the Customs Act, 1962 filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad, who in turn decided the matter vide OIA No. OIA-JMN-CUSTOM-000-APP-001-16-17 dated 06.04.2016 in the favour of the department and upheld the OIO No.23/Addl. Commissioner/2015/AS dated 13.07.2015 passed by the then Additional Commissioner of Customs (Prev.), Jamnagar.

20. Being aggrieved by the aforesaid OIA No. OIA-JMN-CUSTOM-000-APP-001-16-17 dated 06.04.2016 of the Commissioner of Customs (Appeals), Ahmedabad; the Noticee filed a Customs Appeal bearing No. 10249 of 2017- DB before Hon'ble CESTAT, West Zonal Bench, Ahmedabad. Hon'ble Tribunal vide Order No.10398/2024 dated 13.02.2024 has set aside OIA-JMN-CUSTOM-000-APP-001-16-17 dated 06.04.2016, passed by Commissioner (Appeal) Commissioner of Central Excise, Custom and Service tax Ahmedabad and has directed the Adjudicating Authority to reconsider the entire case and bring any evidence, if available, to establish that the goods found in the vessel is Lubricating Oil and not sludge/sediment and thereafter decide the matter afresh.

Records of Personal Hearing:

21. The Noticee was given PH on 17.09.2025 and 06.10.2025 respectively. The Noticee attended the PH on 06.10.2025 through virtual mode and reiterated the written submission made by them on 06.10.2025. Further, the Noticee, vide their letter dated 04.11.2025, requested for time to file additional submission in the matter and keep the adjudication in abeyance till the filing of additional submission. Subsequently, the Noticee, vide letter dated 21.01.2026 filed their additional submission and requested for another PH again in the matter and accordingly, PH was fixed and held on 12.02.2026 wherein they requested to give them some time for filing a fresh submission, which they filed on 24.02.2026, through mail.



Details of Defense Submission:

22. The Noticee vide letter dated 06.10.2025, 21.01.2026 and 24.02.2026 has made following written submissions:

- I. The Noticee submitted that, the issue under consideration pertains to the Financial Year 2015-16 and relates to the determination of the assessable value for customs purposes in respect of the remaining stock of Sludge Oil, classifiable under Chapter Heading 27 of the Customs Tariff Act, 1975. The Noticee further added that the dispute centers around, whether the assessable value of goods had been correctly, fairly, and lawfully arrived at USD 420 per metric ton by the Department, or whether the value should be USD 120 per metric ton, as sought for by them in accordance with the provisions Of Section 14 of the Customs Act, 1962 read with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- II. The Noticee stated that at the time of provisional assessment of duty, they had already discharged the applicable customs duty in full on the disputed stock of so-called Sludge Oil, which had been erroneously described as Lubricating Oil. The entire customs duty payable on such disputed stock was duly paid by them, without any short-payment or evasion, pending finalization of the provisional assessment.
- III. The Noticee submitted that, the customs duty is determined on inflated value Of USD 420 per metric ton instead of the actual transaction value of USD 120 per metric ton, which is contrary to law and without authority under the Customs Act. 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- IV. The Noticee also stated that, Very Large Crude Carriers (VLCCS) are vessels specifically designed and constructed for the exclusive purpose of transporting crude Oil as cargo. They are not designed or intended to carry lubricating oil or Other refined petroleum products as cargo. A VLCC typically transports approximately 2 million barrels of crude Oil per voyage. The vessel is equipped with around 15 to 17 large cargo tanks, all of which are exclusively designed for the carriage of crude Oil. These cargo tanks are not suitable for the transportation of refined



petroleum products, including lubricating Oil. While VLCCs do not carry lubricating oil as cargo, they necessarily carry lubricating Oil for their own operational requirements. Such lubricating Oil is used for the main propulsion engine (crankcase oil) and auxiliary engines and generators for smooth running of machines without much noise. Thus, lubricating Oil is stored in dedicated lube Oil storage tanks located within the engine room, which are entirely separate and distinct from the cargo tanks.

- V. The Noticee also distinguishes between VLCCs and Product Tankers that, VLCCs are designed solely for the carriage of crude oil. Not capable of carrying lubricating Oil, gasoline, diesel, or other refined petroleum products as cargo. While Product Tankers are specifically designed to transport refined petroleum products. Capable of carrying lubricating oil, gasoline, diesel, and similar products. Thus, a VLCC carries crude Oil as cargo and not lubricating oil. Any lubricating oil found on board a VLCC is strictly meant for the vessel's own machinery and operational use and is stored in Separate lube Oil tanks in the engine room, not in the cargo tanks.
- VI. The Noticee also enclosed, a copy of the Survey Report dated 27.01.1997 issued by the Registered Surveyor, J. B. Boda Surveyors Pvt. Ltd., in support of their submissions in the matter remanded for fresh adjudication and reproduced the relevant extract of the said Survey Report for ready reference:
- Gross Innage: 5.40 Mtrs
Water Innage: 4.85 Mtrs
Layer Of Sludge / Sediment/ Water: 0.55 Mtrs
- VII. The Noticee stated that from the above cited survey findings, it stands clearly certified that the disputed oil was, in fact, in the nature and character of sludge Oil only. Despite this categorical technical certification by an independent and registered surveyor, the Department had erroneously and without authority of law classified and treated the disputed stock as Lubricating Oil, without producing any corroborative evidence, whatsoever to substantiate such classification.



- VIII. In this regard, the Noticee also placed reliance upon Para No 4.2 Of the Order dated 13.02.2024 passed by the Hon'ble Tribunal. Ahmedabad, wherein it has been specifically observed that, "*the Department could not establish conclusively that the goods in question were lubricating Oil.*"
- IX. With this submission, the Noticee submitted that, the said finding squarely supports their contention and warrants acceptance of the declared nature of the goods as sludge oil for the purpose of classification and valuation in the present re-adjudication proceedings.
- X. The Noticee vide Submission dated 24.02.2026 further added that, as per the settled position of law and the facts of the present case, such waste material generated during the breaking of the vessel does not attract duty as "Lubricating Oil". The Noticee further added that, the Hon'ble CESTAT has already categorically held that no evidence exists to treat the sludge/sediment as lubricating oil. In the absence of any such evidence, the department's previous classification is void. Therefore, they contended that the assessment should be finalized at NIL duty, and the entire deposited amount of INR 23,83,543/- should be refunded to them. The Noticee's alternatively contended that as noted by the Hon'ble CESTAT, the value of sludge oil may be taken at USD 120/MT and duty liability be revised to INR 7,56,000/- and remaining amount be refunded to them.
- XI. Thus, Noticee in his written submission dated 24.02.2026 reiterated his earlier submission dated 6-10-2025 & 21.01.2026 and stated that in compliance of Final Order dated 13.02.2024 of Hon'ble Tribunal, the only issue for adjudication to ascertain with evidence, as to whether the item incidentally imported with the vessel brought for breaking purposes was sludge/sediments of oil or lubricating oil for ascertaining its value.

Discussion & Findings:

23. I have carefully gone through the entire case records, SCN issued, OIOs issued, Appellate orders, PH records along with all the submissions made by the Noticee in the subject matter.



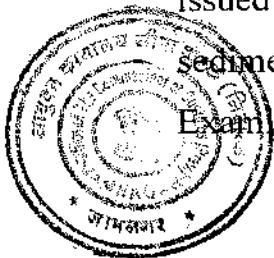
24. I observe that, Hon'ble Tribunal vide Para 4.1 and 4.2 of its Order dated 13.02.2024 has recorded that,

"4.1 The Commissioner (Appeals) concurring with the above finding of the original order, upheld the valuation of goods at USD 420 per MT. We find that from the above finding, no material evidence was adduced by the department to come to conclusion beyond doubt that the goods found in the vessel was lubricating oil and not the sludge/sediments. Therefore, without any evidence, applying the value of USD 420 per MT which is of lubricating oil is on assumption and presumption basis. In the finding itself, it was admitted that the value of the sludge oil is USD 120 per MT.

4.2 It is also fact that the department could not establish conclusively that the goods claimed by the appellant as sludge/sediments is lubricating oil. Therefore, applying the price of the lubricating oil i.e. USD 420 per MT, is without any basis. Hence, the same cannot be sustained. Accordingly, we are of the view that the adjudicating authority must reconsider the entire case and bring any evidence, if available, to establish that the goods found in the vessel is Lubricating Oil and not sludge/sediment and thereafter matter may be decided a fresh."

25. In view of the aforesaid Order of Hon'ble Tribunal, I find that, matter has been remanded only for the limited purpose of determining the assessable value to levy the duty of customs on goods imported along with the vessel named 'T.T. Theo Strous' imported for breaking. Therefore, I proceed with de-novo adjudication process only on the basis of merits of the case and materials facts available on record. CESTAT vide order dated 13.02.2024 has already established that impugned goods having quantity 177.900MT is marketable.

26. I find that the main basis to determine the assessable value of the goods imported along with the vessel named 'T.T. Theo Strous' imported for breaking to levy the duty of customs is Test Report bearing No. 169 dated 03.02.1997 issued by the CRCL, Kandla w.r.t. the sample of the goods, so called sludge/sediments (MHO Oil) drawn on 16.01.1997 and sent for analysis to the Chemical Examiner, Kandla on 27.01.1997. It is therefore essential to revisit the said Test



Report, so as to arrive at its assessable value for the levy of duty of customs. For the sake of clarity, I hereby re-produce below the test report in verbatim:

"The sample is in the form of black colored thick free flowing liquid. It is composed of mainly mineral hydrocarbons together with small amount of sediment and water (approx. 4%). It has the following constants:

- (iv) Flash Point 65 °C
- (v) Density at 15 °C – 0.9301gm/ml
- (vi) Smoke Point – less than 10mm."

27. On revisiting the aforesaid test report, I find that, the said test report has not concluded the exact classification of the commodity being imported by the Noticee and has analyzed the samples only in respect of its few parameters viz. Flash Point, Density at 15 °C, and Smoke Point.

28. I further find that, the Noticee in its defense reply dated 21.01.2026 contended that, their vessel imported for breaking was not suitable to carry lubricating oil as cargo. The Noticee also contended that any lubricating oil found on board a VLCC is strictly meant for the vessel's own machinery and operational use and is stored in Separate lube Oil tanks in the engine room, not in the cargo tanks. Further, the Noticee referring to the Survey Report dated 27.01.1997 issued by the Registered Surveyor, J. B. Boda Surveyors Pvt. Ltd. has argued that the disputed oil was, in fact, in the nature and character of sludge Oil only.

29. I find that in absence of any counter evidence in the SCN the above contention of the Noticee is required to be considered. As rightly pointed out by the Noticee, the Surveyor had also reported the goods as sludge/sediments and not as lubricating oil. I further find that the Managing Director of the Noticee in his statement has never admitted that the impugned goods were lubricating oil. I also find that, in the Show Cause Notice, it is proposed to classify the impugned goods as lubricating oil under the then CTH 271090, without any specific evidence. I also find that though the test report mentions certain parameters in respect of impugned goods, but in the SCN it has not been analyzed as to how on the basis of such parameters the impugned goods can be considered as lubricating oil.



29.1 Further, as mentioned in Para *supra*, the Hon'ble Tribunal has also observed that the department could not establish conclusively that the impugned goods are lubricating oil. Accordingly, I find that the department has failed to establish with conclusive evidence that the impugned goods was lubricating oil. I also agree with the findings of CESTAT that no material evidence is available to prove the impugned goods are lubricating oil.

29.2 I also rely upon the judgment of Hon'ble Supreme Court in the case of GASTRADE INTERNATIONAL VERSUS COMMISSIONER OF CUSTOMS, KANDLA wherein the Hon'ble Supreme Court while deciding the whether the goods under dispute was base oil or HSD (High Speed Diesel) has analyzed the degree of evidence required for classification of the goods. The *relevant observations of the Hon'ble Supreme Court are extracted below:-*

77. The expression "preponderance of probability" has been explained by this Court in M. Siddiq (Ram Janmabhumi Temple-5 J) v. Suresh Das, (2020) 1 SCC 1. In the aforesaid case, this Court applied the test of a prudent man who upon weighing the various probabilities finds that the preponderance is in favour of the existence of the particular fact. It was observed that even in the case of proof by preponderance of probability, there may be degrees of probability within that standard and "the degree depends on the subject-matter."

78. What the aforesaid decisions postulate is that there may be varying range in the degree of probabilities. Certainly, where the proceedings involve requirement of fulfilment of technical/scientific parameters with confiscatory and penal consequences, the degree of probability would be of a higher order and not mere probability."

The Hon'ble Supreme Court after observing that the test reports were inclusive, has decided the matter in favor of the assessee. In the present case also the test report of CRCL, Kandla is inconclusive, hence, cannot be considered for classifying the impugned goods as lubricating oil. In this peculiar situation, it will be legally incorrect to take the Unit Price/Value of Lubricating Oil as assessable value per Unit for the assessment of impugned goods. Therefore, in view of stated facts above for the purpose of levy of duty of customs under Section 12 of the Customs Act, 1962, it may be considered that so called sludge/sediments were mere sludge/sediments as claimed by the Noticee.

30. I further find that, the matter is around 30 years old and as no material evidence is available on record for valuation to levy the duty of customs on impugned goods I have no alternative but to rely upon Section 14 of the Customs

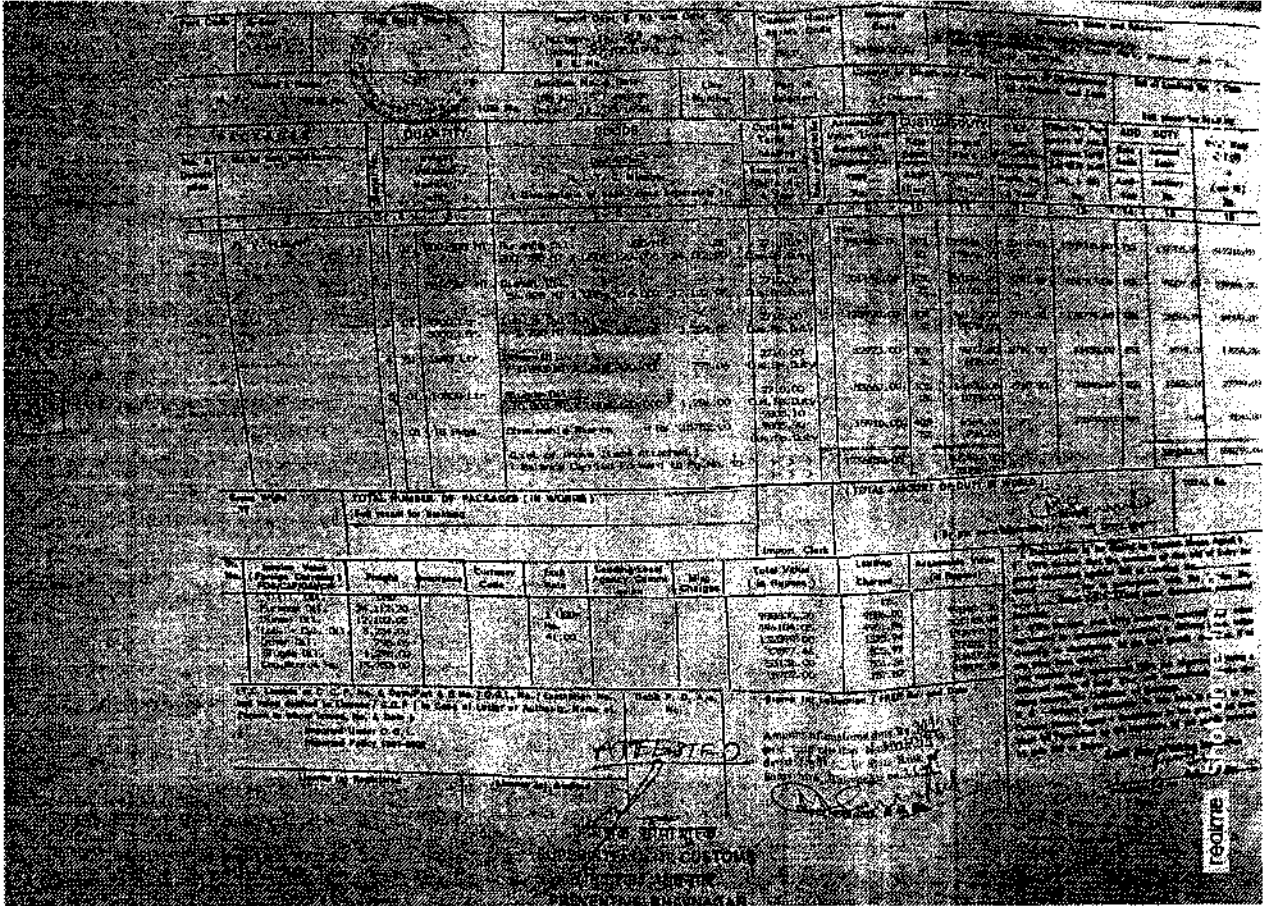


Act, 1962 read with Customs Valuation (Determination of Price of Imported Goods) Rules, as were prevailing at that material point of time along with the documentary evidences available on records.

31. I find that, Rule 5 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 as amended from time to time provides that value of imported goods shall be the transaction value of identical goods sold for export out of India and imported in to India or at the same time the goods being valued. Rule 6 of the Valuation Rules provides that the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. Therefore, for valuation of the goods in question, one has to ascertain the transaction value of identical or similar goods imported at or about the same time as the goods being valued so is not the case here as it has not been established as lubricating oil.

32. Accordingly, I find that I have no other option but to rely upon the two Bills of entry filed by M/s B N Ship breakers & M/s. Kothi Ship Breaking Industries during the contemporary period; wherein the assessable value of sludge/sediments was declared as USD 120 per MT. The screen shot of the same are placed below:





33. In view of discussion supra, I find that the customs duty w.r.t. quantity of 174.900 MTs of impugned goods earlier confirmed to tune of Rs.13,83,543/- does not hold ground and it may be assessed at value similar to sludge/sediments for embedded impurities by way of affirming the value of that liquid as sludge /sediments, @120USD/ MT. Hence, considering price of sludge/sediments @ 120USD/MT, the total Customs Duty arrives to the tune of Rs.3,95,298/- as under:

Qty. (In MT)	Price per MT in USD	Exchange Rate	Amount (INR)	1% Lading Charges (INR)	Assessable Value (INR)	30% BCD (INR)	2% Special duty on Assessable Value (INR)	15% Addl. Customs Duty on (AV+BCD +Spl. Customs Duty) (INR)	Total Duty (INR)
174.9	120	36	7,55,568	7,556	7,63,124	2,28,937	15,262	1,51,098	3,95,298



Accordingly, I pass the following order:

ORDER

- (i) I assess the sludge/sediment Oil @ USD 120/MT and accordingly confirm and order to recover customs duty amounting to Rs.3,95,298/- (Rupees Three Lakh, Ninety Five Thousand, Two Hundred and Ninety Eight only) under section 28 of the Customs Act, 1962 from the Noticee.
- (ii) I impose and order to recover interest as due and payable under section 28 AB (now 28AA) of the Customs Act, 1962.

(Signature)
(Amit Kumar Singh)
Additional Commissioner
Date: 09.03.2026

F.No. CUS/6465/2024-Adjn.

To,

M/s. Priya Blue Industries Pvt Ltd.,
Plot No. V-1, Sosiyo-Alang,
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.

