

	<p>OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467</p>
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DIN-20250771ML000000E587		
A	File No.	GEN/ADJ/COMM/468/2025-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-23-2024-25
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla
D	Date of Order	29.07.2025
E	Date of Issue	29.07.2025
F	SCN No. & Date	Waiver of Show cause notice
G	Noticee / Party / Importer / Exporter	M/s. B G Shirke Construction Technology Pvt. Ltd.

1. This Order - in - Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,
2nd Floor, Bahumali Bhavan Asarwa,
Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004
3. Appeal shall be filed within three months from the date of communication of this order.
4. Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/-in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the 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.
6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.
8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise penalty alone is in dispute.

BRIEF FACTS OF THE CASE-

M/s. B.G. Shirke vide BE No. 9804523 dated 31.07.2022 imported old and used Motorship Drybulk carrier Vessel "Maha Tanaya" falling under CTH 89019000 valued at Rs. 244.52 Crore from M/s White Coral Marine Ltd. as per MOA dated 01.06.2022. They filed BE No. 9804523 dated 31.07.2022 when vessel reached Indian Port Custom House, Kandla for the first time. The BOE was filed for amount USD 29,750,375.78\$ (\$28,500,000.00 for vessel +\$1,250,375.78 for bunker) and paid IGST of 5 % on it.

2. During the Audit, it was observed that the importer has paid short levy of duty in the Bill of Entry involving assessable value of Rs. 244.52 Crore. Later, an LAR was issued for Short Levy of duty on Bunker remaining on Imported Ship as separate Invoice was issued for Bunker which contained Oils and Lubs. But Importer filed BE with item "Old and Used Drybulk Carrier Vessel" and not separating the Oils and Lubricating as separate Item which led to short payment of Duty amounting to Rs. 1,33,55,198/-.

3. This office vide letter dated 08.03.2024 requested the Importer with subject matter of Short Levy of duty on remaining Bunker on Imported Ship. As per above LAR, the issue raised by the Officers was classification of Bunker and Lubricating Oils under CTH 8901 resulting in its clearance at lower rate of Duty of 5% only.

4. As per the terms and conditions of MoA with the seller apart from the purchase price of the vessel (Dry bulk carrier vessel), the importer was required to pay the amount towards remaining bunkers and lubricating oils. Accordingly, separate 'commercial invoice' for remaining bunker and lubricating oils was also issued by the seller (M/s. White Coral Marine). Thus both the items viz. Vessel and bunker and their values were clearly identifiable and were separately classifiable under respective CTHs for application of stipulated duty on Import. However, it was noticed that the importer classified 'Bunker and lubricating oils' under CTH 8901 thus resulting in its clearance at lower rate of duty of 5% only. This resulted in short levy of Customs duty of Rs. 1,33,55,198/- which is required to be recovered alongwith applicable interest.

5. Importer vide Letter dated 26.04.2024 replied to above Letter stating reason that their Ship is foreign going ship as defined in Sec 2(21) of Customs Act, 1962 and also, As per Section 87 of Customs Act, 1962, Stores as defined u/s 2(36) are not required to pay any Import duty.

Section 87 of Customs Act, 1962, Stores as defined u/s 2(36) are not required to pay any Import duty. For ready reference sections are reproduced below:

"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 apply) may, without payment of duty , be consumed thereon as stores during the period such vessel or aircraft is a foreign going vessel or aircraft"

Section 2(21)- definition of Foreign going vessel

"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 2(38)- definition of stores

*“Stores means goods for use in a vessel or aircraft and includes **fuel** and spare parts and other articles of equipment, whether or not for immediate fitting;”*

Also, in support of the above contention, they have relied upon the case of **Phoenix Marine Services vs. Commissioner of Central Excise & ST, Jamnagar – Customs Appeal No. 10099/2022-DB (order dated 09.04.2024 (copy enclosed))**, wherein it was held that fuel consumed during the transshipment cannot be considered as dutiable.

6. Further, Importer also submitted that at the time of filing the above mentioned BOE inadvertently they have included the Bunker cost in ship's value and paid the import duty on the higher amount, while Bunker fuel was sold to M/s SUEK AG, Switzerland for which they have produced Debit Note No. CH-025-2022-23 dated 23.06.2022.

Also, as per MOA It was clearly mentioned that at Point 223,

“The buyer shall also take over and pay extra in cash for all grades remaining/ unbreached/ unused lubricating oils and greases respectively purchased and supplied on board, in sealed drums or reserve tanks and/or designated storage tanks as per last net purchase price as evidence by invoices.

Joint sounding survey of ROBs to take place within 72 hours prior to Vessels expected delivery between Sellers and Buyers representative who shall jointly sign the protocol for remaining quantities of Bunkers and unused lubricants and greases including calculated consumption by Vessel up to date of delivery which shall be the amount of Bunkers and lubricants and greases the Buyers shall takeover and pay under the terms of MOA”

7. As per above point in MOA, a separate Invoice for Bunker is mandatory, as value can only be determined as per quantity and value for it, after joint survey of Vessel after reaching Port, and hence the Invoice was raised. However, the same was further sold vide Debit Note No. CH-025-2022-23 dated 23.06.2022. The Importer has also submitted PC issued from Custom House, Kandla dated 13.08.2022 for “SUEZ CANAL” which also shows that the vessel is in foreign run and thus not required to pay duty on Bunkers. Also, provisional Registration of Vessel was taken abroad on behalf of DG shipping, much before Vessel Importation.

WAIVER OF SHOW CAUSE NOTICE-

7.2. The noticee vide letter dated 23.08.2024 requested for waiver of show cause notice in the matter.

7.3. The Hon'ble Supreme Court (Three Judge Bench) in their Order dated 04.04.2002 in the case of Commissioner of Customs, Mumbai Vs. Virgo Steels reported in 2002 (141) E.L.T. 598 (SC) has held that the Show Cause Notice has to be issued to the party before raising demand and that mandatory requirement of issuing a Show Cause Notice can be waived by the Noticee under Section 28 of the Customs Act. As the right of receiving the Show Cause Notice under Sec 28 is being personal to the person concerned, the same can be waived by that person.

RECORD OF PERSONAL HEARING-

8. Shri Sandip B. Gund, AGM (F&A) appeared for personal hearing on 20.06.2025 and submitted that-

In this connection we would like to state that we have purchased Maha Tanaya Ship from M/s White Coral Marine Ltd. on 20th June, 2022 in England (United Kingdom) for USD 28,500,000/- along with Bunker on ship at that time amounting to USD 1,250,375.78.

Subsequently, we have given the said ship to M/s SUEK AG Switzerland on 'time charter' basis on 22nd June, 2022 and sold the partial bunker to M/s SUEK AG on 23-06-2022 vide our

debit note no- CH-025-2022-23 copy enclosed; M/s SUEK AG took our ship to Murmansk Port in Russia & from Russia brought to Kandla Port in India for consignment delivery.

List of Events are tabulated below sequentially for better understanding

Sr No	Event	Party	Location	Date
1	Purchase Of Ship	White Coral Marine Ltd	England	20-06-2022
2	Purchase Of Bunker on Ship	White Coral Marine Ltd	England	20-06-2022
3	Ship charter agreement	B G Shirke & SUEK AG	England	22-06-2022
4	Sale of Bunker to charterer	B G Shirke to SUEK AG	England	23-06-2022
5	Charterer took ship to Russia	SUEK AG	Russia	02-07-2022
6	Charterer took ship to India	SUEK AG	India	31-07-2022
7	Arrival of Ship to India 1st Time since purchase - Filing of BOE	B G Shirke Const Tech Pvt Ltd	India	31-07-2022

Further, our ship is **foreign-going ship** as defined in Sec. 2(21) of Customs Act, 1962. As per section 87 of Customs Act, 1962, Stores, as defined u/s 2 (36) are not required to pay any import duty. For ready reference said sections are reproduced below:

Section 87

“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.”

Section 2(21)- definition of Foreign going vessel

“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 2(38)- definition of stores

“Stores means goods for use in a vessel or aircraft and includes **fuel** and spare parts and other articles of equipment, whether or not for immediate fitting;”

Considering the above, it is submitted that as per Section 87 of the Customs Act, 1962, the imported stores on board a foreign-going vessel or aircraft may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign going vessel or aircraft. Hence, question of Custom Duty on Bunker will not arise. in support of the same, we rely upon the case of **Phoenix Marine Services vs. Commissioner of Central Excise & ST, Jamnagar – Customs Appeal No. 10099/2022-DB (order dated 09.04.2024)**, wherein it was held that fuel consumed during the transshipment cannot be considered as dutiable.

Accordingly, in the present case it is submitted that at the time of filing the subject BOE **inadvertently** we have included the Bunker cost in ship's value and paid the import duty on the higher amount i.e. on Ship value as well as Bunker value as explained in table below:

Particulars	Amount in USD	Amount in Rupees (Exchange rate 80.95)
Ship value	28,500,000.00	230,70,75,000.00
Bunker value	1,250,375.78	10,12,17,919.39
Total	29,750,375.78	240,82,92,919.39

As explained in above table, we have **already paid excess Import duty** on Bunker cost amounting to Rs. 50,60,895.97 which was not available on Ship at the time of filing the Bill of Entry. Hence, your observation regarding short levy of Custom Duty is incorrect/not tenable as per customs act.

In view of above facts and explanation, we request you to take a note of above and drop the proceedings in the instant matter.

DISCUSSION AND FINDINGS-

- I have carefully gone through all the evidences available on record including submission and record of personal hearing in the matter.
- The issue to be decided is whether they are liable to pay duty on bunkers and lubricating oils.
- I find that M/s. B G Shirke have purchased Maha Tanaya Ship from M/s White Coral Marine Ltd. on 20th June, 2022 in England (United Kingdom) for USD 28,500,000/- along with Bunker on ship at that time amounting to USD 1,250,375.78.
- Subsequently, they had given the said ship to M/s SUEK AG Switzerland on `time charter' basis on 22nd June, 2022 and sold the partial bunker to M/s SUEK AG on 23-06-2022 vide their debit note no- CH-025-2022-23, copy of the same is reproduced below:-

B. G. SHIRKE CONSTRUCTION TECHNOLOGY PVT. LTD. SHIRKE
(SHIPPING DIVISION)

DEBIT NOTE

DEBIT NOTE NO. : CH-025-2022-23 DATE: 23rd June, 2022

To, 1st Hire

SUEK AG
BAARERSTRASSE 37
6300 ZUG
SWITZERLAND

M.V. MAHA TANAYA-CHARTER HIRE FROM 22/06/2022 TO 17/07/2022	VOY. NO	C/P DATE	AMOUNT USD
M.V. Maha Tanaya 1 Towards the Charter Hire from 22nd June-2022 @ 1824 hrs GMT to 17th July, 2022 @ 1824 hrs GMT for 25 days. Hire Charges @ USD 66000 per day (As per CP dt 02/06/2022) Therefore 66000 *25 days 1650000.00 Less: Discount @5%(3.75%+1.25%) -82500.00 ----- 1567500.00	1	02/06/2022	1567500.00
2 Communication, Vict & Ent. etc. @ 1500 Prorata per Month Therefore for 25 days = 1500*12/365*25 1232.88			1232.88
3 Bunker on Delivery VLSFO-1202.40 MT @ USD 900 PMT 1082160.00 LSMGO-241.5275 MT @ USD 1200 PMT 289833.00 ----- Amount due to B.G. SHIRKE CONSTRUCTION TECHNOLOGY PVT. LTD. (USD Two Million Nine Hundred Forty Thousand Seven Hundred Twenty Five & Cent Eight Eight Only) FOR B.G. SHIRKE CONSTRUCTION TECHNOLOGY PVT .LTD.			2940725.88

CAPT. N. V. MUDALIAR
AUTHORISED SIGNATORY

Kindly remit to :			
Intermediary Bank (Swift Code)	56	O	BARBUS33XXX BANK OF BARODA, USA
(NAME & ADDRESS)	57	M	FURTHER TRANSFER TO : BANK OF BARODA, CFS, PUNE 39 AMBEDKAR ROAD, MANTRI COURT, NEAR RTO PUNE, MAHARASHTRA, PINCODE : 411001
Account with Institution/ Beneficiary Bank (Name & SWIF Code)	57D		SWIFT CODE: BARBINBBCRP
Name & Address of the Beneficiary	59	M	B. G. SHIRKE CONSTRUCTION TECHNOLOGY PRIVATE LIMITED
Account Number of the Beneficiary		M	EEFC USD A/C NO: 25340200000229

Registered Office : 72, 76, Mundhwa, Pune - 411036. | CIN : U45201PN1994PTC077340. | Website : www.shirkegroup.com
 Correspondence Address : FIVE STARS SHIPPING CO. PVT. LTD.
 5th, 6th & 7th Floor, Unit No. 3, 1/A/17, Senapati Bapat Marg, Lower Parel, Mumbai 400 013 (India).
 Tel : +91 22 4000 4000 ; Fax : +91 22 6662 5058 | Email : technical@fivestarship.com

Page 1 of 1



Maha Tanaya/ V-01/ DELIVERY NOTICE/ 22.06.2022
 Master-Maha Tanaya to: CONSTANTIN DASHKIN 23/06/2022 02:12 AM
 Cc: "Freight ops suekag", "FISCO OPERATIONS", "Capt.NVM", "Capt.DVJ",
 "Capt.CFK"

Good Day Sir,

Please be informed that M/V Maha Tanaya has been Delivered from her owners " B.G Shirke
 Constructions Technology Limited " to the charterers " MESSRS SUEK " upon departure from
 Southwold OPL at 1924 Hrs LT on 22nd JUN 2022. (1824 Hrs UTC)

Following are the ROBs at the time of Vessel Delivery:

VLSFO : 1202.4 MT
 LSMGO : 224.34 MT

Kindly acknowledge safe receipt of Delivery notice.

Thanks & Best Regards
 Capt.M.Adhavan
 Master, Maha Tanaya
 Tel : +870 773 230 364 (FBB)
 Email: master@mahatanaya.amosconnect.com

 "Vessels e-mail system is not online, e-mail checked thrice
 a day. In case of urgency, pls contact on FBB Tel number which is manned 24 hrs at sea".

13. I find that during the start of voyage VLFSO was 1202.4 MT and LSMGO- 224.34 MT, as seen from the Debit Note.
14. I find that the Charterer took the ship to Russia and from Russia to Kandla (India). This clearly shows that the ship travelled more than 10,000 nautical miles. The noticee in their submission vide email dated 29.07.2025 has submitted that the vessel travelled from England to Russia and then India and it travelled around 12k nautical miles. In this regard, it is observed that for a voyage of 10,000 nautical miles, it generally requires VLFSO around 1200-1500MT and LSMGO around 500-750 MTs. It is clear that they had consumed more bunkers and lubricants that they had purchased in England alongwith the Ship, which were eventually sold to M/s. SUEK AG.
15. I find that the said bunkers and lubricants were consumed as per the charterer agreement entered between them.
16. I find that the instant demand is based on the presumption that the same bunkers and lubricants were available when the ship entered the India territorial waters, however, there is no evidence to suggest the same as the show cause/less charge demand notice is based on the Audit by CRA on the basis of available records.
17. Further, to the findings in Para 16 above, I find that since the Bunkers and Lubricants have been sold beyond the territorial waters of India and the ownership of the said goods changed hands overseas, the demand of duty from M/s. B G Shirke is not sustainable w.r.t the goods already sold at England and presumed to be part of the bunkers when arrived at Kandla. In this regard, the decision of *Phoenix Marine Services vs. Commissioner of Central Excise & ST, Jamnagar – Customs Appeal No. 10099/2022-DB (order dated 09.04.2024)*, wherein it was held that fuel consumed during the transshipment cannot be considered as dutiable, is squarely applicable.
18. It is not disputed that once bunkers enter territorial waters and a bill of entry is filed for the purpose of Import of vessel, then all the bunkers are liable to duty of customs, however, in

the instant case, the quantity of bunkers and lubricants is not ascertainable as the show cause notice has demanded differential duty on the total quantity of bunkers and lubricants which were bought and sold in England before the vessel started its voyage. As discussed above, the quantity of bunkers available on the vessel when the voyage started from England can not be the same as and when the Bill of Entry is filed in India before the custom authorities.

19. Thus it is clear that M/s. B G Shirke is not liable to pay duties (differential) of customs on the bunkers and lubricants sold and consumed beyond the territorial waters of India under the provisions of Section 28 of the Customs Act, 1962.

20. In view of the above discussion and findings, I hereby pass the following order-

I drop the proceedings initiated against M/s. B G Shirke in the instant matter.

(M. Ram Mohan Rao)
Commissioner

F.No. GEN/ADJ/COMM/468/2025-Adjn-O/o Commr-Cus-Kandla
DIN-20250771ML000000E587

To,

M/s. B G Shirke Construction Technology Pvt. Ltd.,
72-76, Industrial Estate, Mundhwa,
Pune, India-411036

Copy To:-

- (i) The Chief Commissioner, Gujarat Customs Zone, Ahmedabad for Review
- (ii) The Superintendent (EDI/TRC), Kandla for necessary action.
- (iii) The AC, Audit, Kandla for information
- (iv) The AC, Group, Kandla for information
- (v) The AC(EDI/TRC) for necessary action