सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
चौथी मंज़िल **4th Floor**, हडको बिल्डिंग **HUDCO Building**, ईश्वर भुवन रोड़ **Ishwar Bhuvan Road**,
नवरंगपुरा **Navrangpura**, अहमदाबाद **Ahmedabad – 380 009.**
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN-20261071MN0000E3A896

क	फ़ाइल संख्या FILE NO.	S/49-05/CUS/JMN/MAY/2026-27
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-87-2026-27
ग	पारितकर्ता PASSED BY	Shri Vishwajeet Singh Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	22.10.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	25/Additional Commissioner/2025-26 dated 09.03.2026
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	22.10.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1. M/s Priya Blue Industries Pvt. Ltd., Plot No. V-1, Sosiya Alang, Bhavnagar

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क(	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported
(ख(	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग (	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.

(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ — **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016 — 2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.

(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के %10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा **129** (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.

ORDER-IN-APPEAL

1. Brief facts of the case

1.1 M/s Priya Blue Industries Pvt. Ltd., Plot No. V-1, Sosiya Alang, Bhavnagar (herein after referred to as the "Appellant for the sake of brevity) has filed the present appeals against Order-In-Original 25/Additional Commissioner/2025-26 dated 09.03.2026 (herein after referred to as the "impugned order") issued by the Additional Commissioner, Customs(Preventive), Jamnagar (herein after referred to as the "Adjudicating Authority).

1.2 The Appellant 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 Appellant 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 Appellant without payment of custom duty.

1.3 The Officers of Customs Division Bhavnagar and the Officers of Customs and Central Excise, Alang while visiting the ship breaking plot of the Appellant found that the Appellant 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.

1.4 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 Appellant 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. 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 Appellant vide Supratnama dated 16.01.1997 for safe custody.

1.5. On application being made by the Appellant, 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. On furnishing the required documents by the Appellant 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 Appellant vide Challan dated 21.01.1997. 8. Statements of Shri Sanjay P. Mehta, Managing Director of the Apellant 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 equipment without payment of Customs duty.

1.6 The inspection and the survey of the vessel including the cargo tanks were carried out in presence of the representatives of the Appellant from 14.01.1997 to 16.01.1997 through independent Marine Surveyors, M/s. Metcalfe and Hodkinson (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 -0.9301gm/ml

(iii) (iii) Smoke Point - less than 10mm."

1.7 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. of 12. Further, it was also noticed that, the Appellant 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 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 Appellant proposing confiscation of the vessel, demand of customs duty and penal actions. Shri Sanjay Mehta, MD in the Appellant 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 Appellant as well as on Shri Sanjay P. Mehta, Managing Director in the Appellant Firm/Company.

1.8 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 CH (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. Therefore, de-novo proceedings were initiated by the Commissioner of Customs, Jamnagar and the matter was adjudicated vide O10 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

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Appellant 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 Appellant 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.

1.9 Being aggrieved, the Appellant and the Managing Director in the Appellant 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 Appellant vide letter dated 08.08.2014.

1.10 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 Appellant, 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."

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1.11. Aggrieved by the aforesaid Order, the Appellant 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-CUSTM-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.

1.12 Being aggrieved by the aforesaid OIA No. OIA-JMN-CUSTM-000-APP001-16-17 dated 06.04.2016 of the Commissioner of Customs (Appeals), Ahmedabad; the Appellant 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-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.

1.13 Accordingly, the Adjudicating Authority re-adjudicated the case vide the impugned order wherein following order was passed

(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.

1.14 Being aggrieved by the impugned order, the Appellant preferred the present appeal.

2. Ground of Appeal submitted by the Appellant

2.1. Duty demand on sludge/sediment of oil fails even to the extent of reduced duty when duty on entire vessel discharged.: The Appellant submitted that the Learned Additional Commissioner erred in not appreciating that once duty has been discharged in respect of the entire vessel, in view of Hon'ble Supreme Court Judgement in the case of M/s. Mahalaxmi Ship Breaking Corp. V. CC. Bhavnagar - (2023) 5 Centax 193 (SC) duty on sludge/sediments of oil cannot be confirmed separately. Hon'ble Supreme Court has upheld in the said

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judgement that incidental oil, whether inside or outside the tanks of vessel brought for breaking purpose, that are connected with the vessel engine are integral to vessel and are required to be classified under the heading of vessel viz. CTH 8908 and not under its independent chapter heading of fuel oil viz. CTH 2710. Ifthat is so, sludge/sediments found in the tank no 8 is not part of cargo as per the surveyor's report and is thus integral to the vessel itself and hence question of separate assessment of duty on such material does not arise when appellant has undisputedly discharged duty on the value of vessel. Appellant had raised this issue specifically in its reply dated 6.19.2025 at para 5, however, the same has not been dealt with by learned Additional Commissioner in his Order. On this ground alone, duty demand to the extent confirmed is untenable and liable to be set aside.

2.2 Demand barred by limitation: The Appellant further submitted that the Show cause notice (SCN) is dated 11.7.1997 and was sent by registered AD and hence received on a date later than its issuance date whereas Bill of Entry was filed on 9.1.1997 which is prior to six months of issuance of SCN. During the relevant period, limitation for issuance of Show Cause Notice under section 28 was six months, the notice is therefore barred by limitation. In this behalf following submissions are made which go on to show that extended period is not available to department for sustaining the duty demand and interest thereon: Absence of mens rea or suppression - levy of duty and interest barred by limitation The impugned order itself records: no admission by the Managing Director; no conclusive test evidence; no corroborative material in the SCN. The impugned order itself records that the earlier valuation at USD 420 PMT (as lubricating oil) was not sustainable, the correct valuation is USD 120 PMT based on contemporaneous imports. This clearly demonstrates that the earlier demand was based on incorrect assumptions and without evidentiary basis the valuation remained unsettled and under dispute over the entire period entirely due to department's incorrect approach in the respect of the matter. Further, even in earlier adjudication, the value of sludge was available at USD 120 PMT, which was not properly adopted. Accordingly, the entire demand underwent substantial and fundamental alteration, destroying the very basis of the demand so raised in the Show Cause Notice. This establishes complete absence of fraud, wilful misstatement, or suppression of facts and hence demand which is beyond limitation of 6 months as it existed under section 28 during the relevant period does not survive on the ground of time barred demand of duty. In such facts, levy of duty itself is barred by limitation, recovery of interest will be barred on limitation too.

2.3 Delay in adjudication-Proceedings vitiated : The Appellant submitted that the impugned order is liable to be set aside as the proceedings suffer from gross and unexplained delay. The SCN dated 11.07.1997 has culminated in the impugned order only on 09.03.2026, after nearly three decades. Not only the first adjudication order passed beyond I year but also the impugned order was passed after one year of the remand order of tribunal. There is no recorded justification explaining why adjudication could not be completed within a reasonable time. Reliance on his behalf placed the decision; The Hon'ble CESTAT in Kopertek Metals Pvt. Ltd. v. Commissioner of CGST, 2024 (12) TMI 269 (CESTAT New Delhi) has held that adjudications rendered beyond the prescribed/ reasonable period, without justification, are unsustainable and liable to be set aside. In the present case, the delay is entirely attributable to the Department and has prejudiced the Appellant due to lack of contemporaneous evidence. Hence, the proceedings have become stale and unsustainable. Accordingly, the impugned order deserves to be quashed on this ground alone.

2.4 No provision during relevant period for demand of interest on provisional assessment of duty and no proposal in the SCN for demand of interest.: The Appellant submitted that ut is available on records, that duty as demanded in the Show Cause Notice was not assessed in the bill of entry and therefore assessment itself was sought by way of issuance of Show Cause Notice. The assessment of the subject duty was thus provisional and has not attained finality. In that view, there is no authority to levy interest under section 28AA which itself did not exist during the period of filing bill of entry and issuance of show cause notice. Significantly, the show cause notice has not proposal to recover interest in absence of which demand of interest by the impugned order is exterior to the Show Cause Notice and without authority of law.

Without prejudice to the aforesaid, following submissions are being urged on unsustainability of demand of interest:

2.5 No "duty short paid" in terms of Section 28- essential condition fails: The Appellant further submitted that there is no short payment of duty and Interest under Section 28AA is consequential to a valid determination under Section 28 for non-payment or short payment of duty. In the present case the Appellant paid duty as assessed on 21.01.1997 without delay; the alleged "short levy" arose solely due to erroneous classification as lubricating oil; and inflated valuation @ USD 420 PMT, which now stands rejected. Further, the duty demand has been drastically reduced from Rs.13,83,543/- to Rs.3,95,298/- demonstrating that the earlier demand was neither proper nor ascertainable. Accordingly, no legally sustainable short payment existed under section 28 and hence such short

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payment would not trigger interest under Section 28AA too.

2.6. The Appellant further submitted that entire differential demand arose due to departmental error. The Hon'ble CESTAT has already held that the Department failed to establish that the goods were lubricating oil; valuation adopted earlier was based on presumption without evidence. The Adjudicating Authority in the impugned order has also accepted that: the test report was inconclusive; survey reports supported the Appellant; there is no evidence for classification as lubricating oil; correct valuation is USD 120 PMT. Thus, the entire dispute and consequent differential demand arose solely due to erroneous assumptions and misclassification by the Department, and not due to any act or omission of the Appellant. It is well settled that interest cannot be demanded where differential duty arises due to incorrect assessment or interpretation by the Department itself.

2.7 The Appellant further submitted that interest not payable where proceedings inordinately delayed unsettled / unfinalized assessment attributable to departmental incorrect action The present case is akin to a situation where duty was paid as per assessment; and final liability arose only upon adjudication of classification and valuation dispute. Such circumstances are comparable to delayed finalization of assessment, where it is consistently held that interest is not automatic and can arise only if delay is attributable to the assessee. In the present case, no such delay is attributable to the Appellant; hence interest is not leviable. In any event, when pre-deposit of duty totally amounting to Rs. 23,83,543/- is available on record, learned Additional Commissioner could have appropriated the said duty amount confirmed by him acknowledging the pre-deposit made by the appellant during the pendency of litigation. The impugned order is therefore apart from unsustainable on merits and limitation is not complete and proper.

2.8 The appellant crave leave to add, alter, delete, vary the aforesaid grounds of appeal and to make further submissions, cite and rely upon case laws etc when required.

PRAYER

2.9 In light of the facts and circumstances of the case, and the submissions made hereinabove, the Appellant most respectfully prayed that the Hon'ble Commissioner (Appeals) may be pleased to:

1. Set aside the impugned Order-in-Original No. 25/Additional Commissioner/2025-26 dated 09.03.2026 to the extent it confirms duty under

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section 28 and interest under Section 28AB (now Section 28AA) of the Customs Act, 1962;

2. Grant consequential reliefs, including deletion of interest liability in full;

3. Grant such other and further reliefs as may be deemed fit and proper in the facts and circumstances of the case.

3. PERSONAL HEARING:

Opportunity of personal hearing was granted to the Appellant. Shri Rahul Gazera, Advocate for Appellant appeared for personal hearing on 18.08.2026 wherein he re-iterated written submission filed during the appeal.

4. DISCUSSION AND FINDINGS:

4.1 The date of the impugned order is 09.03.2026 and the date of receipt of the impugned order is 17.03.2026. The filing appeal by the Appellant is 14.05.2026. Thus, the appeal has been filed within the period of sixty days prescribed under Section 128 of the Customs Act, 1962 and is accordingly taken up for decision on merits.

4.2. With respect to pre-deposit under Section as required Section 129 E of the Customs Act, 1962, the Appellant submitted that they have deposited a total amount of Rs. 23,83,543/- at various stages in respect of present matter therefore, the same is not applicable. I find that the Appellant has already deposited an amount of Rs. 23,83,543/- which also includes the amount of Rs. Pre-deposit of 7.5% of Rs. 103766/- deposited by the Appellant which was required to file appeal against the Order-In-Original No, 23/Additional Commissioner/2015-/AS dated 13.07.2015 wherein the Additional Commissioner assessed he sludge/sediment (oil) @ USD 420/M.T, and accordingly, confirmed the demand of Rs. 13,83,543/-. Further, 7.5% of Rs. 3,95,298/- as confirmed in the impugned order is Rs. 29,647/- which is less the amount of Rs. 103766/- already deposited by the Appellant, thus, based on the above, the condition of pre-deposit under Section 129 of the Customs, Act, 1962 stands fulfilled.

4.3 The Customs(Preventive), Jamnagar was requested for submission of comments of the appeal filed by the Appellant vide letter dated 03.08.2026 but no comments have been received by this office till date therefore, I am taking up the issue for decision based on the facts of the case and documentary evidence available on record.

4.4 I have carefully examined the records of the case, the oral and written submissions made by the Appellant, the provisions of the Customs Act, 1962. The crux of the present dispute is confined to the confirmation of the demand of Customs duty amounting to Rs. 3,95,298/- on 174.900 MT of sludge/sediment oil found in Tank No. 8 of the vessel 'T.T. Theo Strous', valued at USD 120/MT, along with the applicable interest under Section 28AB (now 28AA) of the Customs Act, 1962.

4.5 The Appellant's reliance on the Hon'ble Supreme Court judgment in *M/s Mahalaxmi Ship Breaking Corp. vs. CC, Bhavnagar (2023)* requires a precise reading of Customs Tariff Chapter 89. Ships imported for breaking up are classified under CTH 8908.00.00. The *Mahalaxmi* judgment correctly established that oils and fuels contained in the vessel's machinery, engine rooms, and standard operational pipelines which are strictly necessary for the vessel's voyage and operations are integral to the ship itself. Therefore, they are not assessable separately from the vessel. However, the 174.900 MT of sludge/sediment in this case was not found in the engine's operational ecosystem. It was located in Cargo Tank No. 8. A quantity of 174.900 MT roughly equates to over 1,200 barrels of oil. This is not "incidental" voyage fuel; it is commercial cargo remnant. Under Customs law, goods carried as cargo, even as residual sludge or sediment, do not form part of the vessel's structural or operational integrity. Therefore, they must be classified under their respective headings in this case, CTH 2710 (Petroleum oils and oils obtained from bituminous minerals).

4.6 I find that the Hon'ble CESTAT, in its earlier round of litigation (Order No. A/10501 to 10504/WZB/AHD/2013), conclusively ruled that this specific sludge is marketable and dutiable under Chapter 27. The CESTAT's 2024 remand order was restricted exclusively to determining the correct valuation of these goods, not re-adjudicating their dutiability. The Adjudicating Authority's adoption of USD 120/MT, based on contemporaneous data, fulfills this mandate perfectly.

4.7 Willful Suppression and the Extended Period of Limitation: The Appellant has argued that the Show Cause Notice dated 11.07.1997 is time-barred as it was issued beyond the normal six-month limitation period (as Section 28 stood in 1997) from the Bill of Entry dated 09.01.1997. This argument ignores the physical realities of the import and the legal threshold for suppression. The proviso to Section 28(1) of the Customs Act, 1962 (now Section 28(4)) permits the invocation of a five-year extended period in cases of collusion, willful

misstatement, or suppression of facts. The chronological evidence establishes clear *mens rea*:

- **Non-Declaration:** The Appellant filed the Bill of Entry on 09.01.1997 but completely omitted the 174.900 MT of sludge in Tank No. 8.
- **Premature Breaking:** Customs officers visited the plot on 14.01.1997 and found the ship was already undergoing active breaking (pipelines dismantled, bridge room equipment removed).
- **Lack of Statutory Clearance:** This breaking commenced prior to the proper officer granting an "Out of Charge" order for home consumption under Section 47(1).

4.8 I find that the Appellant has clearly attempted to dismantle and clear unassessed goods before Customs authorities can physically verify the vessel constitutes deliberate concealment. The fact that the valuation was later revised downward from USD 420 to USD 120 does not retroactively cure the initial fraudulent act of hiding the goods from the Customs declaration. The records unequivocally show that the Appellant commenced breaking the vessel prior to obtaining the mandatory Out of Charge order under Section 47(1) of the Customs Act, 1962. Crucially, the 174.900 MT of sludge/sediment was never declared in the Bill of Entry. It was only discovered during the joint survey and Panchnama proceedings. Non-declaration of such a massive quantity of goods in the statutory documents constitutes deliberate suppression of facts and willful misstatement with the intent to evade payment of duty. Under Section 28 of the Customs Act, 1962 (as it stood at the relevant time), the extended period of 5 years is squarely applicable when there is suppression. A subsequent reduction in the assessed value (from USD 420 to USD 120) does not erase the initial fraudulent act of non-declaration.

4.9 The Distinction Between Administrative Delay and Statutory Process: The Appellant's reliance on *Kopertek Metals Pvt. Ltd. (2024)* to argue that the proceedings are vitiated by delay is misplaced. I find that in the case of *Kopertek*, the department kept the adjudication pending for years without any judicial stay or movement. In the present case, the timeline spanning nearly three decades is the direct result of due process and statutory appeals. The timeline moved from the original adjudication in 1999, to a Revenue appeal before CEGAT (remanded in 2006), to a High Court challenge by Revenue (dismissed in 2007), a de-novo order in 2008, subsequent appeals to CESTAT by the Appellant (decided in 2013), and further remands culminating in the 2024 CESTAT order.

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4.10 Therefore, I find that a matter traversing the appellate hierarchy where both the Revenue and the Appellant exercised their statutory rights under Sections 128, 129A, and 130 of the Customs Act, 1962 cannot be classified as "unjustified departmental delay." The liability to pay customs duty crystallizes at the time of import (Section 12 read with Section 15) is not extinguished simply because the quantum was subject to prolonged judicial scrutiny. Therefore, I find that the contention submitted by the Appellant is misplaced and lacks legal backing and therefore, I do not find any force in the argument put forward by the Appellant and the same is liable to be rejected.

4.11 Mandatory Nature of Interest under Section 28AB / 28AA of the Customs Act, 1962: The Appellant submitted that because the final duty amount was drastically reduced and resulted from an initial misclassification by the department, interest should not be levied. The levy of interest under the Customs Act is strictly compensatory, not penal. Section 28AB (which was inserted in 1996 and governed the relevant period, now succeeded by Section 28AA) mandates that interest is payable in addition to the duty determined under Section 28(2). The Supreme Court has repeatedly clarified that interest is the cost of holding funds that rightfully belonged to the State at the time of import.

4.12 I find that the 174.900 MT of sludge was undeclared, the exchequer was deprived of the correct duty on the date of clearance in January 1997. The Adjudicating Authority has now finalized that principal liability at Rs. 3,95,298/. Interest automatically attaches to this finalized principal amount from the first day of the month succeeding the month in which the duty ought to have been paid. It is a well-settled legal proposition, affirmed by the Hon'ble Supreme Court in multiple landmark judgments that the levy of interest is mandatory and compensatory in nature. It compensates the exchequer for the deprivation of funds that ought to have been paid at the time of clearance. Any pre-deposits made by the Appellant under Section 129E during the course of the appeals will arrest the accrual of interest on that specific quantum from the date the deposit was credited to the Government exchequer, but it does not erase the interest liability accrued prior to that date. Therefore, I opine that Customs Law explicitly mandates the payment of interest on delayed payment of duty and the Appellant is liable to pay the mandatory interest under Customs Act, 1962.

::ORDER::

5. In light of the elaborate findings above, I pass the following order:

I uphold the impugned Order-in-Original No. 25/Additional Commissioner/2025-26 dated 09.03.2026 passed by the Additional

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22.10.2026.

Commissioner, Customs (Preventive), Jamnagar. The Appeal filed by M/s Priya Blue Industries Pvt. Ltd. is accordingly rejected.



Vishwajeet Singh
22.10.2026.

(Vishwajeet Singh)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-05/CUS/JMN/MAY/2026-27

By Registered post A.D/Email

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

Copy to,

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in).
2. The Commissioner, Customs (Prev), Jamnagar.
3. The Deputy/Assistant Commissioner, Custom Division, Bhavnagar
4. Guard File