



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,  
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,  
चौथी मंज़िल 4th Floor, हडकोभवन HUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009 दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250871MN0000726265

क	फ़ाइलसंख्या FILE NO.	S/49-267/CUS/JMN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-237-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	07.08.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	04/Additional Commissioner/2024-25 dated 20.06.2024 passed by Additional Commissioner, Customs (Prev), Jamnagar.
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	07.08.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Sagar Shipping Company, Shop No 6, Dayal Bhavan, 104, Keshavji Naik Road, Mumbai - 400009.



1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै. This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं.



	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.	
	निम्नलिखितसम्बन्धितआदेश/Order relating to :	
(क)	बैगेजकेरूपमेंआयातितकोईमाल.	
(a)	any goods imported on baggage.	
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.	
(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)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.	
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.	
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :	
	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)	कोर्टफीएक्ट, 1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां, जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.	
(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)	सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां, यदिहो	
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any	
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां	
(c)	4 copies of the Application for Revision.	
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र) या रु. 1000/- (रूपएएकहजारमात्र), जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी. आर. 6 कीदोप्रतियां. यदिशुल्क, मांगागयाब्याज, लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु. 200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु. 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.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदि कोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी. ए. -3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं	
	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, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण, पश्चिमीक्षेत्रीयपीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench





	दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन, सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1) केअधीन अपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-	
	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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररूपए.	
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो; पाँचहज़ाररूपए	
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो; दसहज़ाररूपए.	
(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)	इसआदेशकेविरुद्धअधिकरणकेसामने, मांगेगएशुल्कके 10% अदाकरनेपर, जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं, यादंडके 10% अदाकरनेपर, जहांकेवलदंडविवादमेंहैं, अपीलरखाजाएगा।	
(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.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएगलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.	
	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

M/s Sagar Shipping Company, Shop No 6, Dayal Bhavan, 104, Keshavji Naik Road, Mumbai – 400009(hereinafter referred to as “the appellant”) has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 04/Additional Commissioner/2024-25 dated 20.06.2024 (hereinafter referred to as “the impugned order”) passed by Additional Commissioner, Customs (Prev), Jamnagar (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, facts of the case are that a country craft vessel/Dhow MSV Sagar Darshan (BDI – 1487) arrived at Salaya Port on 18.05.2022. The appellant (Partners Shri Digant D Joshi and Shri Jagdish N Vyas) are the registered owner of the sailing vessel MSV Sagar Darshan (BDI – 1487) as per the Certificate of Registry of Sailing Vessel. The said Dhow has declared 108 barrels (108 x 200 = 21600 Ltrs) of High Speed Diesel (HSD) available in the diesel tanks of the vessel in the IGM filed by the Tindel/Owner of the said vessel.

2.1 On the basis of intelligence received by the officers of Custom House, Salaya that some quantity of HSD has been clandestinely removed from the vessel MSV Sagar Darshan, the officers of Customs along with Shri Digant D Joshi, Partner of the appellant (owner of MSV Sagar Darshan) and two independent panchas boarded the vessel Sagar Darshan on 01.10.2022 to ascertain the quantity of HSD present in the vessel under regular panchnama dated 01.10.2022. During panchnama it was revealed that 70 barrels (14000 Ltrs) of HSD has been clandestinely removed from the vessel as 108 barrels of HSD was declared in the IGM filed and only 38 barrels of HSD were found in the diesel tank during panchnama dated 01.10.2022. Hence, 70 barrels (14000 Ltrs) of HSD has been clandestinely removed from the vessel.

2.2 During the course of investigation Statement of Shri Digant D. Joshi, partner of the appellant was recorded on 01.10.2022 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that he was residing at Mumbai and has given whole sole responsibility of the vessel to the Tindel/Captain of the vessel Shri Sidik Talab Raja. He further stated that he had no idea about the shortage of HSD noticed in the vessel as the Tindel was managing the affairs of the vessel and he was never informed by the Tindel about the above inconsistency noticed in the quantity of diesel. He was present during panchnama dated 01.10.2022 wherein deficit of 70 barrel of HSD was noticed as the vessel had 108 barrels of HSD present on arrival at Salaya port on 18.05.2022 and put his signature





on the copy of IGM No. F/13 dated 18.05.2022. He admitted that 70 barrels of HSD was clandestinely removed from the vessel and the Tindel/Captain Shri Sidik Talab Raja was responsible for the same. He assured to pay the duty amounting to Rs 3.75 lacs along with interest and penalty.

2.3 During the course of investigation Statement of Shri Sidik Talab Raja, Tindel/Captain of the vessel MSV Sagar Darshan was recorded on 03.10.2022 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that he is responsible for the shortage of HSD found in the vessel as he had supplied some quantity of HSD to other fishing boats. He further stated that after sailing from Mundra Port on 17.05.2022 at around 01.00 am of 18.05.2022, in high seas in proximity to the Salaya Lighthouse, he had transferred diesel to the nearby three fishing boats. He had supplied HSD to the fishing boats for monetary gain as he had charged Rs 10,000/- per barrel from each boat.

2.4 Thus, it appeared that the master of the vessel, Shri Sidik Talab Raja had clandestinely removed 70 barrels (14000 Ltrs) of HSD and sold the same in mid sea to three fishing boats before arriving at Salaya Port and the same has been accepted by him in his statement dated 03.10.2022. Shri Sidik Talab Raja master of the vessel had wrongly shown 108 barrels instead of 38 barrel actually available in the IGM filed by him to hide the illicit removal of 70 barrels of HSD valued at Rs 12,16,278/-.

2.5 The vessel has been used as means for improper and unlawful removal of the offending cargo, the vessel MSV Sagar Darshan (BDI-1487) valued at Rs 1,30,00,000/- as per insurance policy of the vessel, was placed under seizure vide seizure memo dated 01.10.2022 under the provisions of Section 110(1) of the Customs Act, 1962 under the reasonable belief that the same is liable to confiscation under Section 115 of the Customs Act, 1962.

2.6 A Show Cause Notice No ADC-09/2022-23 dated 27.02.2023 was issued to the appellant by the Additional Commissioner, Customs (Prev), Jamnagar proposing for confiscation of vessel MSV Sagar Darshan valued at Rs 1,30,00,000/- under Section 115(2) of the Customs Act, 1962, confiscation of 70 barrels (14000 Ltrs) of HSD valued at Rs 12,16,278/- under Section 111(d), 111(g) & 111(j) of the Customs Act, 1962, demanding Customs duty of Rs 3,75,328/- on removed HSD under Section 28(4) along with interest under Section 28AA of the Customs Act, 1962 and for appropriation of Customs duty amounting to Rs 3,75,328/- and interest of Rs 10,921/- paid vide TR 6 Challan No 06/02/10/20922 dated





03.10.2022 and for imposition of penalty upon the appellant under Section 112 (a) and 114A of the Customs Act, 1962.

2.7 The Adjudicating authority, vide the Order in Original No. 01/Additional Commissioner/2023-24 dated 31.05.2023, has ordered for confiscation of vessel MSV Sagar Darshan valued at Rs 1,30,00,000/- seized under seizure memo dated 01.10.2022 under the provisions of Section 115(2) of the Customs Act, 1962. The adjudicating authority gave an option to the appellant to redeem the seized vessel MSV Sagar Darshan on payment of redemption fine of Rs. 15,00,000/- under Section 125(2) of Customs Act, 1962. The adjudicating authority refrain from imposing redemption fine on 70 barrels (14000 Ltrs) of HSD valued at Rs 12,16,278/- as the same was not available for confiscation. The adjudicating authority confirmed Customs duty of Rs 3,75,328/- under Section 28(4) with interest under Section 28AA and penalty under Section 112(a) and 114A of the Customs Act, 1962. The adjudicating authority also ordered that the proceedings are deemed to be concluded under Section 28(6)(i) of the Customs Act, 1962 as the appellant has paid the Customs duty of Rs 3,75,328/- along with interest of Rs 10,921/- vide TR 6 Challan No. 06/02/10/20922 dated 03.10.2022 and penalty of Rs 56,300/- (15% of tax amount) vide TR 6 Challan No. 07/22-23 dated 15.03.2023 within 30 days from service of Show Cause Notice. The adjudicating authority also imposed penalty of Rs 1,00,000/- on Shri Sidik Talab Raja, Master/ Tindal of the vessel MSV Sagar Darshan under Section 112(a) of the Customs Act, 1962.

2.8 Aggrieved with the Order in Original No. 01/Additional Commissioner/2023-24 dated 31.05.2023, the appellant filed an appeal with the Commissioner (Appeal), Customs, Ahmedabad, who vide Order in Appeal No. JMN-CUSTM-000-APP-62-24-25 dated 12.04.2024 has set aside the Order-in-Original No. 01/Additional Commissioner/ 2023-24 dated 31.05.2023 passed by the Additional Commissioner, Customs (Preventive), Jamnagar and remanded the matter back to the adjudicating authority with direction to pass a fresh order. In de novo adjudication the adjudicating vide the impugned order has ordered for confiscation of vessel MSV Sagar Darshan under the provisions of Section 115(2) of the Customs Act, 1962. The adjudicating authority gave an option to the appellant to redeem the seized vessel MSV Sagar Darshan on payment of redemption fine of Rs. 2,50,000/- under Section 125(2) of Customs Act, 1962.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal and mainly contended that;



- The learned Additional Commissioner failed to appreciate the clear provision of Section 28(6)(i) read with 1<sup>st</sup> proviso to Section 125 read with Section 115(2) of the Customs Act, 1962 or overlooked the same. He also failed to follow the judicial discipline by not following ratio laid down by Hon'ble Tribunal in the case of Orbit Jewelers Vs. Commr. Of Cus., Air Cargo (Exports), New Delhi – 2016 (338) ELT 620 (Tri. – Del.) and Vishnu Thapav Vs. Commissioner of Cus(Preventive), Lucknow – 2017 (358) ELT 1225 (Tri. - All.).
- Appellant submits that it is not only admitted facts in the impugned order that being an owner of the vessel it has paid duty of the customs Rs. 3,75,328/- with interest of Rs. 10,921/- Total Rs. 3,86,249/- and also 15% penalty of duty amount i.e. Rs. 56,300/- on the Diesel sold by the Master of the Vessel/Tindal so as to conclude the matter as provided under Section 28(6) of the Customs Act, 1962 but the learned Additional Commissioner had vide OIO dated 31.05.2023 concluded the matter under Section 28(6)(i) of the Customs Act, 1962 but for demand of duty, interest and penalties only and imposed fine in lieu of the confiscation under Section 125(2) of the Customs Act, 1962. Though, issue of deemed concluded was not before the learned Additional Commissioner in remand but he has for the reasons best known to him has decided once again at para 19.1 for other than confiscation of conveyance.
- Appellant without admitting anything most respectfully submits that since it has already paid duty of Customs Rs. 3,75,328/- with interest of Rs. 10,921/- and 15% penalty Rs. 56,300/- well before 30 days as provided under sub-section (5) of Section 28 of the Customs Act, 1962 and even accepted by the learned Additional Commissioner, there for the proceedings in respect of such person or other persons to whom the notice is served shall be deemed to be conclusive as to the matters stated therein as provided under sub-section (6) of Section 28 of the Customs Act, 1962, which reads as under:

*"Section 28(5) Where any [duty has not been levied or not paid or has been short-levied or short-paid] or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice*





has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to [fifteen per cent.] of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

Section 28 (6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion —

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of [two years] shall be computed from the date of receipt of information under sub-section (5).”  
(Emphasis provided)

- Thus, on plain reading of the above the learned Additional Commissioner was bound to conclude the proceeding in respect of such person or other persons to whom the notice is served i.e. appellant as to the matters stated therein means entire proceedings including confiscation of vessel. Thus, order confiscating the vessel with an option to pay fine in lieu of confiscation that too after concluding the proceedings under Section 28(6)(i) of the Customs Act, 1962 is totally erroneous and liable to be set aside. In other words, even vessel cannot be confiscated nor fine can be imposed in lieu of confiscation.

- The learned Additional Commissioner has grossly erred in holding that appellant has correctly opted for conclusion of proceedings under Section 28(6)(i) of the Customs Act, 1962 in respect of import, unloading and removal of “High Speed Diesel” from vessel Sagar Darshan. The proceedings initiated under Section 28(4) of the Customs Act, 1962 against the appellant vide impugned SCN for recovery of duty and penalty and matter stated therein in respect of improperly imported goods “HSD” should be held to be deemed conclusive as per provisions of Section 28(6)(i) of the Customs Act, 1962.





- The appellant further submitted that as per Section 28(6)(i) of the Customs Act, 1962, the proceedings in respect of such person means to whom the notice is served under sub-section (1) or sub-section (4), shall be deemed to be conclusive as to the matters stated therein. It means all the proceedings against the person in respect of the matters stated in the notice served under sub-section (1) or sub-section (4) shall be deemed to be conclusive. The said section nowhere restrict or discriminate between demand of duty, penalty, confiscation and fine in lieu of confiscation of goods or conveyance nor the only proceedings initiated under sub-section (4) of Section 28 of the Customs Act, 1962. It simply provides proceedings against the person in respect of matters stated in the notice issued under sub-section (1) or sub-section (4). Notice issued under sub-section (4) of Section 28 ibid in the instant case also includes proceedings of confiscation of Vessel MSV Sagar Darshan under Section 115(2) which was used as conveyance in the removal of offending goods. Therefore, it had prayed for conclusion of entire proceedings initiated under the impugned SCN including proposal for confiscation of vessel which was used as conveyance. It is the learned Additional Commissioner has read and held as stated above therefore, order confiscating vessel with an option to pay fine in lieu of confiscation is liable to be set aside only on this ground.



- The appellant relied upon ORBIT JEWELLERS Versus COMMR. OF CUS., AIR CARGO (EXPORTS), NEW DELHI - 2016 (338) E.L.T. 620 (Tri. - Del.).

- The learned Additional Commissioner miserably failed to follow the judicial discipline by misdirecting himself by stating that in the said case deemed conclusion proceedings were under erstwhile Section 28(1A) of the Customs Act, 1962. The decision nowhere provides about the deemed conclusion in respect of only offending goods i.e. HSD and not to conclude the proceedings the confiscation of conveyance of the same Notice. The provisions of erstwhile Section 28(1A) of the Customs Act, 1962 are pari materia with Section 28(6) of the Customs Act, 1962.

- Appellant without admitting anything and without prejudice to above further submits that in any case vessel is not liable to confiscation under sub-section (2) of Section 115 of the Customs Act, 1962 which reads as under:



"Section 115 (2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of \*] : \* \* the conveyance or animal [\*

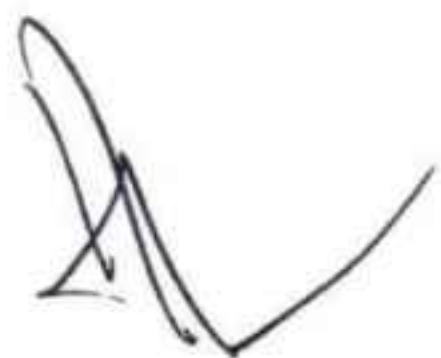
*Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.*

*Explanation.- In this section, "market price" means market price at the date when the goods are seized.*

It is admitted facts in the impugned show cause notice by way of exculpatory statement of one of the partners (the undersigned) and inculpatory statement of master of vessel/tindal under Section 108 of the Customs Act, 1962 that clandestine removal of Diesel from on board of vessel was without knowledge of any of the partner of appellant and same was done by the Tindal for his personal benefit only. Sale of Diesel lying on board of foreign going vessel on way from Mundra Port to Salaya by the Tindal was nothing but theft of Diesel and same came to knowledge of one of the partners (undersigned) only when the Custom Officer had informed and called from Mumbai to remain present in panchnama proceedings dated 01.10.2022.

Therefore, as provided under sub-section (2) of Section 115 of the Customs Act, 1962 vessel cannot be confiscated at all as same was used for alleged clandestine removal of Diesel without knowledge or connivance of the owner of the vessel. Appellant in support of the same places reliance upon the decision in the case of VISHNU THAPA Versus COMMISSIONER OF CUS. (PREVENTIVE), LUCKNOW - 2017 (358) E.L.T. 1225 (Tri. - All.)

- The learned Additional Commissioner has simply not followed the judicial discipline on the ground that in one of the subsequent decisions is contrary to the above decision but above decision was not brought to the notice of Hon'ble CESTAT while giving decision in the case of Minati Saha - 2019(370) ELT 736 (Tri.-Kolkata). Apart from that in the said case none came forward to claim the seized goods and her driver was considered as agent of the owner of the truck. In the instant case, mater of vessel/person in charge of





the vessel is not an agent of the owner. In any case as submitted in para infra, knowledge on the part of owner of the conveyance is important and not the knowledge on the part of the driver/tindal/master.

- The learned Additional Commissioner miserably failed to understand plain language of the above provisions and follow the judicial discipline. He erroneously found that Section 115(2) of the Customs Act, 1962 provides that the owner of the conveyance has not only proved that the conveyance (i.e. vessel in this case) was used for the intended purpose without his or his agent's knowledge but also without the knowledge of the person in charge of the conveyance. It has to be noted that it is not only the owner but his agent's and person in charge of the conveyance (vessel) have also been included in the Section. If the owner is able to show that action committing offence took place without his or his agent's knowledge and also without knowledge of the person in charge of vessel, the vessel cannot be confiscated. The master of the vessel is also included. But, the main person who is required to show this is the owner since the owner has been specifically included in Section 115 and the words used are "owner himself, his agent if any, and a person in charge of vessel". It is not "or" but "and". The owner of the conveyance has not only to prove that the conveyance was used for the intended purpose without the knowledge of his agent and the person in-charge of the conveyance.



- In the above findings the learned Additional Commissioner miserably failed to read the provisions of Section 115(2) of the Customs Act, 1962 properly as while reading the said provisions he has conveniently ignored the word "Connivance", "Or" between the knowledge and Connivance and tried to interpret the word "and" between the owner of the vessel and the person in charge of vessel for the purpose of knowledge instead of connivance.
- As per sub-section (2) of Section 115 of the Customs Act, 1962 any conveyance used as means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance proves that it was so used without the knowledge or Connivance of the owner himself, his agent, if any, and the person in charge of the conveyance.



• It means either use of conveyance as means of transport of goods in the smuggling of any goods or in the carriage of any smuggled goods shall not be liable to confiscation, if the owner of the conveyance proves that it was so used without his knowledge or with his connivance, his agent, if any and the person charge of the conveyance. It is not the case of the department that conveyance was issued with his knowledge or his connivance and the person in charge of the conveyance. Knowledge and Connivance is separated by "OR" and onus lies upon owner of the vessel to prove that such use was without his knowledge and connivance. It cannot be read in the manner read by the learned Additional Commissioner that such use should be without knowledge of the person in charge of the conveyance too. If the vessel is used with the connivance of the owner himself, his agent, if any, and the person charge, then conveyance is liable to confiscation. Therefore, after the word "connivance of the owner" is again used before himself, his agent, if any, and the person in charge of the conveyance though the owner of the conveyance used prior to the word "proves" that it was so used without the knowledge. Use of "and" between of the owner himself, his agent, if any, **and** the person in charge of the conveyance for "Connivance" of 3 or 2 persons i.e. owner himself, agent if any and the person in charge of the conveyance and not for knowledge of owner of the conveyance and the person in charge of the conveyance. The said sub-section nowhere cast onus upon the owner of the vessel to prove that use of the any conveyance as a means of transport in the smuggling goods or in the carriage of any smuggled goods was without knowledge of the person in charge of the conveyance. Therefore, as per admitted facts on record there was no knowledge on the part of the owner of the conveyance of the vessel of selling of on board diesel en route while arriving at Salaya to the fishermen by the tindel/master till the officer had called the one of the partners of appellant (owner of vessel) for panchnama so as to match the quantity of diesel on board as per IGM, such vessel cannot be confiscated and no fine in lieu of the confiscation of vessel can be imposed. Especially when it is admitted fact on record that the person in charge of conveyance i.e. Master/Tindel of the vessel himself committed the offence of illicit removal of HSD without knowledge of the owner of the conveyance.

• Appellant without admitting anything and without prejudice to above most respectfully further submits that even otherwise as per sub-section (1) of Section 125 of the Customs Act, 1962 whenever confiscation of any goods is authorized under the Customs Act, 1962 read with 1<sup>st</sup> proviso to sub-section (1) of Section 125 of the Customs Act, 1962 when



the proceedings are deemed to be concluded under clause (i) to sub-section (6) of Section 28 ibid in respect of goods no fine can be imposed. "Goods" is defined under sub-section (22) of Section 2 of the Customs Act, 1962 includes vessel and conveyance including vessel is liable to confiscation under Section 115(2) of the Customs Act, 1962 subject to condition stated therein. Therefore, since, duty, with interest and penalty on Diesel is paid as provided under sub-section (5) of Section 28 of the Customs Act, 1962, proceedings have to be considered as concluded as provided under sub-section (6) of Section 28 of the Customs Act, 1962, therefore, no fine can be imposed in lieu of confiscation of vessel if any as per 1<sup>st</sup> proviso to Section 125(1) of the Customs Act, 1962.

- For ease of reference provisions of Section 2(22) and Section 125(1) is reproduced hereinunder:

Section 2 (22) "goods" includes -

- vessels, aircrafts and vehicles;
- stores;
- baggage;
- currency and negotiable instruments; and
- any other kind of movable property;

**"SECTION 125. Option to pay fine in lieu of confiscation.**

— (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit :

**[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [no such fine shall be imposed] :**"

Since, proceedings under Section 28(6)(i) ibid is concluded as to the matters stated in the SCN which includes goods viz. diesel and vessel too therefore, no fine is imposable in lieu of confiscation of vessel which is not prohibited under Section 125(1) of the Customs Act, 1962. It is not the case of the department that Diesel is liable to be confiscated as SCN proposes the Diesel to be held liable to confiscation as same is not available for confiscation.

- The learned Additional Commissioner has erroneously tried to find distinction between 'vessel' as goods and 'conveyance' for the purpose of payment of duty while deciding the confiscation of vessel. Once the definition of "goods" includes "vessel" the learned Additional Commissioner cannot hold that same is not goods but only conveyance, especially proviso to Section 125(1) of the





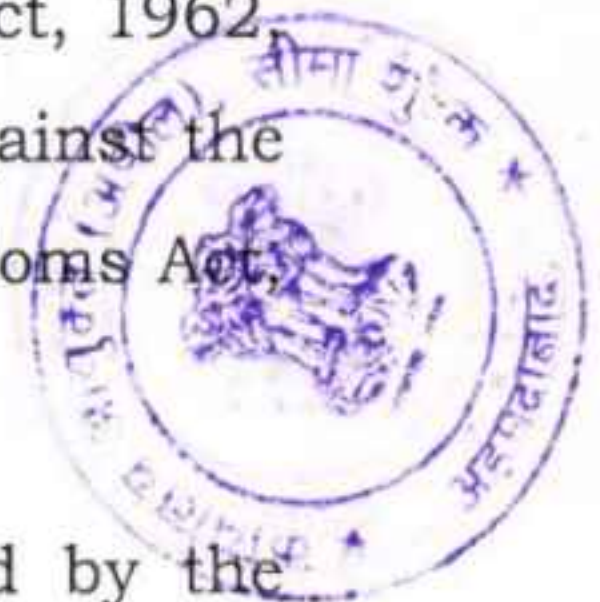
Customs Act, 1962 provides that no fine shall be imposed in lieu of confiscation of goods other than prohibited or restricted. It is not the case of the department that vessel is prohibited or restricted goods for the purpose of import.

- The learned Additional Commissioner has erroneously placed reliance upon CBIC's Circular No. 11/2016-Cus. dated 15.03.2016 as proviso to Section 125(1) of the Customs Act, 1962 is inserted only with effect from 29.03.2018, so clarification issued prior to that cannot be relied upon, when Act itself very specifically provides no fine shall be imposed in respect of goods.
- in view of the above the appellant prays to set aside the impugned order upto the extent of confiscation of vessel with an option to pay fine in lieu of confiscation in the interest of justice

4. Shri P. D. Rachchh, Advocate, appeared for personal hearing on 29.05.2025 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

5. I have gone through the facts of the case available on record, grounds of appeal and submission made by the appellant at the time of personal hearing. It is observed that the issues to be decided in the present appeal is whether Redemption Fine of Rs 2,50,000/- imposed in the impugned order for redeeming confiscated vessel MSV Sagar Darshan valued at Rs.1,30,00,000/- under Section 125(2) of Customs Act, 1962 in the facts and circumstances of the case when proceedings against the appellant has been concluded under Section 28(6)(i) of the Customs Act, 1962, is legal and proper or otherwise;

5.1 It is observed that on the basis of intelligence received by the officers of Custom House, Salaya that some quantity of HSD has been clandestinely removed from the vessel MSV Sagar Darshan, the officers of Customs along with Shri Digant D Joshi, Partner of the appellant (owner of MSV Sagar Darshan) and two independent panchas boarded the vessel Sagar Darshan on 01.10.2022 to ascertain the quantity of HSD present in the vessel under regular panchnama dated 01.10.2022. During panchnama it was revealed that 70 barrels (14000 Ltrs) of HSD has been clandestinely removed from the vessel as 108 barrels of HSD was declared in the IGM filed and only 38 barrels of HSD were found in the diesel tank of vessel during panchnama dated 01.10.2022. Hence, 70 barrels (14000 Ltrs) of HSD has been clandestinely removed from the vessel. Statement of Shri Digant D. Joshi, partner of the appellant was recorded on 01.10.2022





under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that he was residing at Mumbai and has given whole sole responsibility of the vessel to the Tindel/Captain of the vessel Shri Sidik Talab Raja. He further stated that he had no idea about the shortage of HSD noticed in the vessel as the Tindel was managing the affairs of the vessel and he was never informed by the Tindel about the above inconsistency noticed in the quantity of diesel. He was present during panchnama dated 01.10.2022 wherein deficit of 70 barrel of HSD was noticed as the vessel had 108 barrels of HSD present on arrival at Salaya port on 18.05.2022 and put his signature on the copy of IGM No. F/13 dated 18.05.2022. He admitted that 70 barrels of HSD was clandestinely removed from the vessel and the Tindel/Captain Shri Sidik Talab Raja was responsible for the same. He assured to pay the duty amounting to Rs 3.75 lacs along with interest and penalty. Statement of Shri Sidik Talab Raja, Tindel/Captain of the vessel MSV Sagar Darshan was recorded on 03.10.2022 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that he is responsible for the shortage of HSD found in the vessel as he had supplied some quantity of HSD to other fishing boats. He further stated that after sailing from Mundra Port on 17.05.2022 at around 01.00 am of 18.05.2022, in high seas in proximity to the Salaya Lighthouse, he had transferred diesel to the nearby three fishing boats. He had supplied HSD to the fishing boats for monetary gain as he had charged Rs 10,000/- per barrel from each boat. There is no disputing the facts that 70 barrels of HSD was clandestinely removed from the vessel and the Tindel/Captain Shri Sidik Talab Raja was responsible for the same.



5.3 It is observed that the adjudicating authority in the instant case had on the request of the appellant and on payment of duty, interest and penalty @15% of the duty within 30 days from the receipt of Show Cause Notice as specified under Section 28(5) of the Customs Act, 1962, held that the proceedings against the appellant under Section 28(4), 28AA, 112(a)/114A is deemed to be conclusive as per the provisions of Section 28(6)(i) of the Customs Act, 1962.

5.4 It is observed that the main issue involved in the present appeal is confiscation of vessel MSV Sagar Darshan under the provisions of Section 115(2) of the Customs Act, 1962. I have gone through Section 115(2) of the Customs Act, 1962 which is reproduced hereunder:

*"Section 115 (2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used*



*without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of [\*] : \* \* the conveyance or animal [\*]*

*Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the marketprice of the goods which are sought to be smuggled or the smuggled goods, as the case may be.*

*Explanation.- In this section, "market price" means market price at the date when the goods are seized.*

From plain reading of Section 115(2) of the Customs Act, 1962 clearly establishes that a conveyance becomes liable to confiscation only if it is used as a means of transport for smuggling goods or for carrying goods that have already been smuggled. However, such liability does not arise if the owner, his agent, or the person in charge of the conveyance is able to demonstrate that the conveyance was so used without their knowledge or connivance. In the present case, there is nothing on record to suggest that the owner of the vessel had any knowledge of, or was complicit in, the clandestine removal of the goods in question. On the contrary, the available evidence supports the conclusion that the owner had no such knowledge or involvement. Accordingly, the key issue that remains is whether the 70 barrels (14,000 litres) of High Speed Diesel (HSD), which were clandestinely removed from the vessel, can be classified as "smuggled goods" under the provisions of the Act. As per the records, the vessel arrived at Salaya Port on 18.05.2022 and had declared 108 barrels (equivalent to 21,600 litres) of HSD in the Import General Manifest (IGM), the same being intended as stores for use as fuel. However, during a subsequent inspection conducted on 01.10.2022, only 38 barrels were found in the vessel's diesel tanks. This indicates that 70 barrels were clandestinely removed while the vessel was in high seas en route from Mundra to Salaya, prior to its arrival.

5.5 Significantly, the High Speed Diesel (HSD) in question formed part of the vessel's declared stores and was duly reflected in the Import General Manifest (IGM). There is no evidence to suggest that the HSD was illicitly brought into the country, nor has its foreign origin been established. Although the unauthorized removal of the HSD constitutes a violation, it does not render the goods "smuggled" within the meaning of the Customs Act, 1962. The offence pertains solely to the unauthorized disposal of ship stores, for which the applicable duty, interest, and penalty have already been paid, and the related proceedings have been concluded. In view of the above, it is evident that the removed HSD was not smuggled but was part of the ship's declared stores. Therefore, the



essential condition for invoking Section 115(2) namely, that the vessel was used for transporting or carrying smuggled goods is not met. Consequently, the confiscation of the vessel *MSV Sagar Darshan* under Section 115(2) of the Customs Act, 1962 is not legally sustainable and is liable to be set aside.

5.6 Further, I have gone through Section 28(5) and 28(6) of the Customs Act, 1962 which is reproduced hereunder:

*“(5) Where any [duty has not been levied or not paid or has been short-levied or short-paid] or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to [fifteen per cent.] of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.*

*(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion —*



*(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or*

*(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of [two years] shall be computed from the date of receipt of information under sub-section (5).”*

From plain reading of Section 28(6)(i) of the Customs Act, 1962, as reproduced hereinabove, it is clear that on payment of duty with interest and penalty in full the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall be deemed to be conclusive. There is no dispute that the appellant had paid duty, interest and penalty @15% of duty within 30 days from the issuance of SCN as held by the adjudicating authority. Thus, in my considered view, on payment of duty, interest and penalty @ 15% of the



duty as stipulated under Section 28(5) of the Customs Act, 1962 the entire proceedings in respect of the appellant shall be deemed to be conclusive which includes confiscation in terms of Section 28(6)(i) of the Customs Act, 1962. In this regard I rely upon the decision of Hon'ble Tribunal Delhi in the case of Orbit Jewellers Versus Commr. of Cus., Air Cargo (Exports), New Delhi- [2016 (338) E.L.T. 620 (Tri. - Del.)] wherein it is held that when the proceeding is deemed concluded in terms of Section 28(6)(i) of the Customs Act, 1962 the adjudicating authority is not allowed to proceed ahead with the adjudication of the other aspects which may be involved in the proceeding. The relevant Paras are reproduced hereunder:

*"12. On going through the proviso to said Section, we find that the said section is a beneficial piece of legislation with intention to reduce the litigation proceedings where the noticee satisfies the condition of the said section. As has already been observed that the said provision of law provides deeming concept of closure of the proceeding except the proceeding under provision of Sections 135, 135A and 140 on full compliance of the main clause of Section 28(1A). There is no dispute about the fact that the appellants have satisfied the contents of the said section. In such a scenario, the proceedings are required to be deemed as concluded thus not allowing the adjudicating authority to proceed ahead with the adjudication of the other aspects which may be involved in the proceeding. The language of the said section is unequivocal in ordaining that in such scenario the proceeding in respect of such person and all other persons also, shall be deemed to be conclusive as the matters stated therein. The expression "proceeding" stands interpreted by the Hon'ble Supreme Court in the case of P.L. Kantha Rao and others v. State of A.P. and others - (1995) 2 Supreme Court Cases 471 wherein it was observed that the word "proceeding" engrafted in Section 29 of the A.P. Administrative Tribunal must be understood in a broader perspective. The word "proceeding" would depend upon the scope of the enactment wherein the expression is used with reference to a particular context where it occurs. The proviso to Section 28(1A) uses the expression "proceeding" which in our view is required to be understood in broader manner keeping in view the legislative intention.*



Legislative intent is clear from the Circular No. 831/8/2006-CX, dated 26-7-2006 issued by the Board. Relevant paragraph is reproduced below :

2. Section 11A of the Central Excise Act, 1944 has been amended to introduce an optional scheme for enabling voluntary payment of duty by assesseees, in full or in part, in cases involving fraud, misstatement etc. along with interest and 25% of the duty amount as penalty within 30 days of the receipt of the show cause notice thereby dispensing with the rigours of adjudication procedure. This is an additional facility given to the Trade to settle the dispute at an early stage to reduce litigation and also aid in collection of tax dues



more expeditiously. The scheme is optional and not compulsory. The assessee has the further option of using the proposed facility in full or in part. In case of part payment, the remaining amount will be subject to regular proceedings as per the law.

As is clear from the above reproduced portion, the facilities stand extended to the assesseees to deposit the dues within a period of 30 days so to as to settle the dispute at an early stage and to reduce further litigation. Though the said Circular stands issued in the context of the amended provision of Section 11A of the Central Excise Act, 1944, the same would equally apply to the identically amended provision of Section 28. We find that the Tribunal has taken note of the said provision as also the Board's Circular in various decisions and has categorically held that on compliance with the amended provision, as regards the deposit, no further proceeding can continue before the adjudicating authority. Reference can be made to the Tribunal decision in the case of *Sonam Clock Pvt. Ltd. v. C.C.E., Rajkot* - 2012 (278) E.L.T. 263 (Tri.-Ahmd.) as also to another decision of the Tribunal in the case of *C.C.E., Vapi v. Technovynyl Polymers Limited* - 2013 (298) E.L.T. 50 (Tri.-Ahmd.). Further in the case of *C.C.E., Raipur v. Abir Steel Rolling Mills* - 2013 (296) E.L.T. 90 (Tri.-Del.), it was held that facilities provided in terms of the provision of Section 11A were to settle the tax dispute immediately besides aiding in expeditious collection of dues. The proviso to Section 11A(2) of the Central Excise Act, 1944 is to the effect that proceedings in respect of "such person and other persons" to whom the notice is served, deemed to be conclusive on discharge of duty liability along with interest and 25% of penalty. By referring to the provision of Section 13 of General Clauses Act, 1897, it was observed that the words "other persons" used in said Section are to include co-noticees/persons linked with allegation of contravention of Central Excise Rules, 1944. By observing so, the Tribunal rejected the Revenue's stand that the proceeding for imposition of separate penalty under Rule 26 would continue. It was held that adopting Revenue's stand would amount to making words "other persons" redundant. The proceedings against the main noticee having been concluded, there was no sense in continuing proceedings under Rule 26 against other persons. To the same effect is another decision of the Tribunal in the case of *C.C.E., Raipur v. Jay Prakash Agarwal* - 2013 (297) E.L.T. 554 (Tri.-Del.). By taking note of the Board Circular No. 831/8/2006-EX, dated 26-7-2006 it was observed that the same clarifies intention of the legislature so as to give opportunity to manufacturer to settle the duty dispute immediately on receipt of show cause notice thereby avoiding litigation.

**13.** Though we note that the above decisions were mainly in the context of the Central Excise provisions but Section 11A of the said Act is parimateria to Section 28(1A) of the Customs Act. As such, the ratio of the above decisions would squarely apply to the facts of the present cases also.

**14.** We further note that proviso to Section 28(1A) uses the expression "as to the matter stated therein". This will lead to

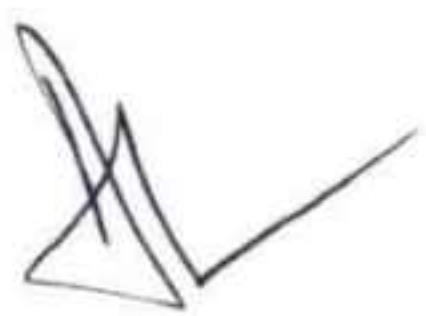




simpliciter reference to all the matters stated in the show cause notice, including the proposal to confiscate the seized goods. The same would not survive once there is compliance with the provision of Section 28(1A). The said section makes exception only to the applicability of the Sections 135, 135A and 140 in which case the proceedings under the said section can only be held as not concluded. To accept Revenue's stand would amount curtailing the sweep of said proviso and by adopting artificial interpretation to defeat the statutory intention. It is well settled law that the legislative intent, extending certain beneficial provision to the assessee, should not be made frivolous by interpreting the provision in a particular manner other than the one which reflects upon such intent.

**15.** We find no justification for appreciating the example given by the Commissioner in the impugned order, referring to a case of import of horse with an infectious or contagious disease including anthrax etc., which requires destruction under Livestock Importation Act, 1898. Observation of the adjudicating authority that merely because the duty and fine is paid within time, the animal cannot be released into the country with devastating effects on the local livestock. We are afraid that the said example given by the adjudicating authority is not appropriate to the present cases. We are only dealing with the provisions under Customs Act, 1962 and the proceedings for the confiscation of the jewellerys were also proposed under Customs Act only. In the case of animal, if the animal requires to be destroyed under the Livestock Importation Act, 1898, the same would be proceeded by the competent authority. The provision of Section 28(1A) cannot be interpreted to the effect that all the proceedings against the importer under all the Acts would be deemed to be concluded. The said provisions are applicable only in respect of proceedings under Customs Act, 1962 and provides for conclusion of the proceedings under Customs Act only. The original authority's presumption that closure of proceedings under Customs Act may conclude all proceedings under other Acts also is fallacious. He is acting under the powers vested under Customs Act, 1962. While may be vested with some powers under the provisions of allied Acts, his role comes from the Customs Act. Nothing prevents respective competent authority under other Act if there is any action warranted to be taken against any person for violation of provisions of specific law.

**16.** In view of our above analyses inasmuch as we agree with the ld. Advocate appearing for the appellants that M/s. Omkar Jewellery and M/s. Orbit Gold having deposited the full amount of duty, interest and 25% of the penalty, no further proceedings were required to be continued in terms of the provisions of Section 28(1A), the first proviso to Section 28(1A), the impugned order has no leg to stand. The same is accordingly set aside. All the appeals are allowed with consequential relief to the appellants.

 **17.** As regards the Revenue's appeals the same are relatable to the non-imposition of penalties on some of the noticees as also by reducing 25% of penalty in respect of the other. Inasmuch as we



have already held that proceedings were not required to be continued and have allowed the assessee's appeals on the said grounds itself, Revenue's appeals have become infructuous. The same are accordingly rejected. Misc. Application also disposed of."

5.7 I also rely on the decision of Hon'ble Tribunal in the case of J. S. Steel Traders Versus Commissioner of Customs, Ludhiana [2022 (380) ELT 483 (Tri Chan)] wherein it has been held that on payment of duty, interest and 15% of duty as penalty the proceeding is deemed to be concluded including redemption fine. The relevant paras are reproduced hereunder:

6. On going through the facts of the case which have not been disputed either of the sides, I find that on detection of the goods on being mis-declared by the appellant, the appellant sought provisional release of the goods which was allowed and at that time, the appellant paid differential duty along with interest and 15% of duty as penalty in terms of Section 28(5) of the Customs Act, 1962. Later on, the show cause notice has been issued to the appellant to adjust the duty paid by the appellant under Section 18(2) of the Customs Act, 1962.

7. The provision of Section 18(2) speaks that "when the duty leviable on such goods is assessed finally (or re-assessed by the proper officer) in accordance with the provisions of this Act, then the amount paid by the assessee at the time of clearance shall be adjusted." On going through the records placed before me, there is no final assessment order has been placed which means the provisional release of the goods has been treated as final and the duty paid by the appellant has been adjusted under Section 18(2) of the Act. It is very strange that without finalization of the assessment, re-assessment of the bill of entry, how the duty paid by the appellant has been adjusted under Section 18(2) of the Act and demanded the interest and imposed the penalty on the appellant. Moreover, when any differential duty is to be demanded from the importer, the provisions of Section 28(1) of the Act are required to be attracted. But smartly, the officers avoided to follow the due process of law to avoid to give benefit of the provisions of Section 28(5) of the Act. The officers are bound to follow the due process of law and only the implementing authority in true spirits. Without demanding duty under Section 28(1) of the Act, how can it be adjusted under Section 18(2) of the Act. Technically speaking the demand of differential duty is also not sustainable in the circumstances till finalization of the assessment; as the appellant has not contested the payment of duty and sought conclusion of the matter under Section 28(5) of the Act. Moreover, when the demand of interest has been made under Section 28AA of the Act, naturally or consequentially the provisions of Section 28(5) of the Customs Act, 1962 have been attracted in the facts and circumstances of the case. Therefore, the duty, interest and penalty paid by the appellant at the time of clearance of the goods shall amounts to be concluded under Section 28(5) of the Customs Act, 1962. Instead of doing so, the officers of the Revenue has gone beyond that, which is not permissible in law.





8. In these circumstances, I hold that the duty, interest and 15% penalty in terms of Section 28(5) of the Customs Act, 1962 paid by the appellant is sufficient. Therefore, the impugned order deserves no merit, hence set aside.

9. In result, the appeal is allowed for dropping redemption fine and penalties.

5.8 I also rely on the decision of Hon'ble Tribunal in the case of Dhanlaxmi Re-Rolling Mills Versus Commissioner of C. Ex., Aurangabad [2016 (332) ELT 183 (Tri-Mumbai)] wherein in respect of amended provision of Section 11A of the Central Excise Act, 1944, and would equally apply to the identically amended provision of Section 28 of the Customs Act, 1962, the Hon'ble Tribunal has set aside redemption fine holding that once the appellant has deposited the entire duty along with 25% of the penalty amount within 30 days of the issuance of show cause notice, the entire proceedings against the appellant stand concluded. The relevant para of the decision is as under:

5.1 It is further submitted by the appellant that in this case, the show cause notice was issued under Section 11A(1) of the Central Excise Act, 1944 only and the duty is also recovered under this provision only. It is also submitted that for imposition of fine and penalty, notice is also issued under Section 11A(1) alone. On going through the above provision, I am of the considered opinion that once the appellant has deposited the entire duty along with 25% of the penalty amount within 30 days of the issuance of show cause notice, the entire proceedings against the appellant stand concluded. In this case there is no dispute with regard to deposit of duty and penalty within the stipulated period. In this view of the matter, the redemption fine imposed on the appellant is totally unwarranted and in contravention of the provisions as contained in Section 11A(2). Therefore, I set aside the redemption fine and allow the appeal with consequential relief, if any.

5.9 I have also perused Section 125 (1) of the Customs Act, 1962 and the same is reproduced as under:

*"SECTION 125. Option to pay fine in lieu of confiscation.  
— (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit :*

*[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of*



*the goods which are not prohibited or restricted, [no such fine shall be imposed].”*

5.10 In view of the provisions of Section 125 of the Customs Act, 1962 and the above decisions of the Hon'ble Tribunal I am of the considered view that once the appellant has paid duty, interest penalty @15% of duty as provided under Section 28(5) of the Customs Act, 1962, the entire proceeding against the appellant is concluded in terms of Section 28(6)(i) of the Customs Act, 1962, including confiscation and redemption fine. The adjudicating authority in such a situation is not allowed to proceed ahead with the adjudication of the other aspects involved in the proceeding. Thus the confiscation and redemption fine imposed in the impugned order is unwarranted and required to be set aside.

6. In view of above, the appeal filed by the appellant is allowed with consequential relief, if any.

  
(AMIT GUPTA)

COMMISSIONER (APPEALS)  
CUSTOMS, AHMEDABAD.

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