



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 -20251171MN000061136A

क	फ़ाइलसंख्या FILE NO.	S/49-56-62,64,66,70,71,73,75,97/CUS/JMN/2025-26
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	JMN-CUSTM-000-APP-350 to 363-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	14.11.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	As per Table A of the order
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	14.11.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. Leela Ship Recycling Pvt. Ltd., Plot No. 2, Alang Ship Breaking Yard, Alang, Bhavnagar - 364 081.



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, लगायागयादंडकीराशिऔररूपएएकलाखाउससेकमहोतोऐसेफीसकेरूपमेंरु. 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, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलअधिकरण, पश्चिमीक्षेत्रीयपीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench

	दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016	2 nd 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)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-	
	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, जहांकेवलदंडविवादमेंहै, 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

Fourteen appeals have been filed by M/s. Leela Ship Recycling Pvt. Ltd., Plot No. 2, Alang Ship Breaking Yard, Alang, Bhavnagar - 364 081 (hereinafter referred to as "the appellant") in terms of Section 128 of the Customs Act, 1962 against the Orders-in-Original (Details as per Table-A) (hereinafter referred to as "the impugned orders") passed by the Assistant Commissioner, Customs Division, Bhavnagar (hereinafter referred to as "the adjudicating authority").

Table A

Sr. No	Appeal No	Bill of Entry No. & Date	FAO No. & Date	OIO No. & Date	Amount of Refund (in Rs) credited to the Consumer Welfare Fund
01	S/49-56/CUS/JMN/2025-26	6562221/07.12.2021	383/2512384/SBY/2023-24/24.01.2024/31.01.2024	462/CUS-REF/2024-25/17.03.2025	8,45,385
02	S/49-57/CUS/JMN/2025-26	4938633/07.03.2023	381/2512386/SBY/2023-24/24.01.2024/31.01.2024	466/CUS-REF/2024-25/17.03.2025	3,80,281
03	S/49-58/CUS/JMN/2025-26	3293067/14.11.2022	379/2512401/SBY/2023-24/24.01.2024/31.01.2024	461/CUS-REF/2024-25/17.03.2025	1,47,012
04	S/49-59/CUS/JMN/2025-26	3089497/03.05.2019	385/2512379/SBY/2023-24/11.01.2024/31.01.2024	470/CUS-REF/2024-25/17.03.2025	3,52,690
05	S/49-60/CUS/JMN/2025-26	9763491/28.07.2022	378/2512405/SBY/2023-24/24.01.2024/31.01.2024	459/CUS-REF/2024-25/17.03.2025	3,14,932
06	S/49-61/CUS/JMN/2025-26	7183772/11.03.2020	387/2512376/SBY/2023-24/24.01.2024/31.01.2024	455/CUS-REF/2024-25/17.03.2025	11,49,646
07	S/49-62/CUS/JMN/2025-26	7792261/09.03.2022	377/2512408/SBY/2023-24/24.01.2024/31.01.2024	460/CUS-REF/2024-25/17.03.2025	2,03,838



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	5-26		24/24.01.2024/31.01.2024		
08	S/49-64/CUS/JMN/2025-26	7439110/10.02.2022	380/2512393/SBY/2023-24/24.01.2024/31.01.2024	463/CUS-REF/2024-25/17.03.2025	3,97,178
09	S/49-66/CUS/JMN/2025-26	3893774/02.07.2019	384/2512381/SBY/2023-24/11.01.2024/31.01.2024	471/CUS-REF/2024-25/17.03.2025	7,51,771
10	S/49-70/CUS/JMN/2025-26	6958337/20.02.2020	389/2512375/SBY/2023-24/24.01.2024/02.02.2024	456/CUS-REF/2024-25/17.03.2025	1,90,949
11	S/49-71/CUS/JMN/2025-26	5336429/17.10.2019	388/2512377/SBY/2023-24/24.01.2024/31.01.2024	464/CUS-REF/2024-25/17.03.2025	2,70,995
12	S/49-73/CUS/JMN/2025-26	4742525/21.02.2023	382/2512385/SBY/2023-24/24.01.2024/31.01.2024	452/CUS-REF/2024-25/17.03.2025	6,93,173
13	S/49-75/CUS/JMN/2025-26	4249192/09.06.2021	386/2512378/SBY/2023-24/24.01.2024/31.01.2024	465/CUS-REF/2024-25/17.03.2025	1,92,764
14	S/49-97/CUS/JMN/2025-26	6235230/26.12.2019	1077/2631164/SBY/2024-25/11.09.2024/12.09.2024	499/CUS-REF/2024-25/30.03.2025	2,97,816

Briefly stated, facts of the case are that the appellant, having their Ship Recycling Yard at Plot No. 2, Alang Ship Breaking Yard, Alang, Bhavnagar - 364 081, had imported vessels for breaking up/recycling and filed Bills of Entry as detailed in Table A above under Section 46 of the Customs Act, 1962. They had self-assessed the goods viz. Vessels for breaking under CTH 89.08, Bunkers under CTH 27.10 & Consumables under CTH 98.05 and paid the assessed customs duty.

2.1 There were some dispute with regard to assessment of customs duty on the Fuel and Oil (Fuel Oil, Marine Gas Oil, Lub. Oil) contained in Bunker Tanks inside/outside the engine room of the vessel. The appellant claimed that Fuel and Oil contained in Bunker Tanks inside/outside the engine room of the vessel was to be assessed to duty under CTH 89.08 of

the Customs Tariff Act, 1975 along with the vessel. The Department was of a view that Fuel and Oil contained in Bunker Tanks were to be assessed to duty under respective CTH i.e., Chapter 27. Thereafter, the Bills of Entry were assessed provisionally for want of original documents.

2.2 Further, the Hon'ble CESTAT, Ahmedabad, vide its Order No. A/11792-11851/2022, dated 17.10.2022/01.12.2022 had held that the oil contained in the Bunkers Tanks in the engine room of the vessel is to be assessed to duty under CTH 8908, along with the vessel for breaking up. Further, in view of the aforesaid order of the Hon'ble CESTAT, the Assistant Commissioner, Customs Division, Bhavnagar vide Final Assessment Ordersas detailed in Table A above held that Bunker Tanks containing oil are to treated as part of vessel's machinery and the Oils contained in them are to be classified under CTH 8908 along with the vessel, as covered under Para 2(b) of Circular No. 37/96 – Cus, dated 03.07.1996. The Bills of Entry was finally assessed vide Final Assessment Ordersas detailed in Table A above passed by the Assistant Commissioner, Customs Division, Bhavnagar. Consequently, the appellant had filed refund claims which were decided vide the impugned orders.

2.3 The appellant during adjudication had submitted a copy of Certificate issued by C.A. M/s A. R. PARMAR & CO. wherein it is certified that the amount refundable from the customs department have been shown in the un-audited books of accounts for the financial year 2024-25 under the head OTHER CURRENT ASSETS with Sub-Heading Balance with revenue authorities. The receivable amount still appears in the books of accounts as on date. We have checked the sales invoices as well as Financial Ledger Accounts and other records and certify that M/s. LEELA SHIP RECYCLING PVT LTD at the time of import of the vessel has paid the customs duty on import of ship/vessel and on the Bunker (Oil and Fuels) has not been passed on to the buyer of the goods or any other persons. The claimant however has not provided the documentary evidence i.e. copy of balance sheet and ledger etc. The appellant was requested to produce C.A. certificate in the format provided alongwith the documentary evidence i.e. audited balance sheet for the period since filing of Bills of Entry till date and copy of ledger for the said period and as on date to verify that the refund amount claimed were shown as 'amount receivable' in the books of account and that the incidence of duty (claimed as refund) had not been passed on to any other person. The appellant along with refund claim submitted that unjust enrichment is not applicable in their case and they have referred provisions of sub section 2 of Section 27 (g)(ii) of the Customs Act, 1962. They have also relied upon following case laws:



(i) 2017 (348) E.L.T. 537 (Tri. -Chennai)

(ii) 2015 (327) E.L.T. 13 (Mad)

(iii) 2018 (360) E.L.T. A 204 (Bom)

(iv) 2020 (371) E.L.T. 542 (Chan)

(v) 2022(60) G.S.T.L. 48 (Del).

2.4 The adjudicating authority found that the case laws were not relevant in the issue as far as clause of unjust enrichment is concerned. The adjudicating authority also found that that when the element of any duty paid on any goods is debited to Purchase Account which is forming part of the Profit & Loss Account, as a cardinal accounting principles, the said element of duty becomes a part of the cost of the goods. As such, whenever such goods are sold at a later stage to the buyers/ customers, the Sales Price fetched for such goods is considered as inclusive of the element of duty paid thereon such goods. Accordingly, here in the case, it was observed that the incidence of Customs duty paid at the time of import of goods is passed on to the buyers/ customers at the time of its sales in the form of Sales Price. The adjudicating authority also observed that once the amount of Customs Duty paid is debited as cost to purchase under Profit & Loss Account and non-fulfillment of obligatory condition of Section 28C would be sufficient enough to conclude that Sales Price of the goods bear entire Customs Duty paid on such goods. Under such circumstances, the grant of refund of Customs Duty would tantamount to receipt of refund of customs duty from customers as well as from exchequer, which will get the claimant unjustly enriched. Thereafter, the adjudicating authority relying upon the Final Order No. A/30122-30123/2023, dated 01.06.2023 passed by the Hon'ble CESTAT, Hyderabad in the case of Sachdev Overseas Fitness Pvt. Ltd & Nityasach Fitness Pvt. Ltd has sanctioned the refund claims as detailed in the Table A above in terms of Section 27 of the Customs Act, 1962 and credited the same to the Consumer Welfare Fund.

3. Being aggrieved with the impugned Orders, the appellant have filed the present appeals contending as under;

- The issue to be decided is whether the said differential excess amount of customs paid on the said goods other than amount availed as input tax credit at the time of provisional assessment but expensed out in the books of accounts in the financial year of provisional assessment i.e. 2021-22 and again shown as income in the year of 2023-24 in the books of accounts as receivable under the head of "Current Assets Balance with Statutory/Government Authorities" and also in the subsequent year can

be considered as incidence of customs duty has been borne by the appellant and not passed on the buyer of such goods, especially when goods were sold at very lesser value than the value on which provisionally assessed duty of Customs Duty paid.

- Since the said goods were sold at the lesser value than the value declared and duty of customs paid in the bills of entry, thereby incidence of duty was not passed on the buyer but incidence of duty has been borne by the appellant. As per Section 18(2)(a) read with Section 18(4) read with Section 18(5)(a) of the Customs Act, 1962 shall, instead of being credited to the fund, be paid to the importer who has borne the incidence of such duty and not passed on to any other person. When the said goods were sold at the price lesser than the value on which customs duty was paid, thereby incidence of Customs Duty was not passed on the buyer of the goods.
- Since the duty of customs so paid on the said goods other than IGST of which Input Tax Credit availed were expensed out by way of debited to the profit and loss account, thereby incidence of duty was borne by the appellant and it cannot be said that incidence of duty was passed on others. By debiting the customs duty of the said goods in the profit and loss account result into decrease in profit of the particular year or increase in the loss of the particular year as the case may be. Merely debiting the duty in the profit and loss account it cannot be said that it automatically passed on others. The appellant further submits that merely by debiting the duty amount in profit and loss account it cannot become part of the cost of the goods obtained from the breaking of ships. From the breaking of ship in addition to various ferrous metal scrap it obtained other goods list in Bills of Entry and also other goods and all those goods which market price and cannot be sold on the cost construction method. These facts are evident from the sale price of the said goods/bunker which are lower than the assessable value stated in the bills of entry. Even many expenses are incurred after sale of the goods during the year and profit or loss arrived at the end of the Financial Year, so by any means same cannot form the part of the value of goods which may remain constant as per the market or fluctuate as per the market demand and supply or for any other reasons. Even duty of one goods cannot be added as cost of other goods so by expensed out in the profit and loss account such amount of customs duty cannot form part of value of the goods, therefore incidence of tax cannot be passed on any other person. On the contrary incidence of customs duty is borne by the appellant by reducing profit of the particular or increased loss as the case may be. Therefore, at later date such amounts of duty which were expensed out in the profit



and loss are reversed by showing income in the profit and loss account in the year of refund due to final assessment.

- The appellant further submitted that there are many decisions where the burden of passing incidence of duty claimed as refund has been discharged on the basis of Chartered Accountant Certificate to the effect that incidence of duty was not passed on. In this regard the appellant has relied upon the following case laws:

- ❖ COMMISSIONER OF CENTRAL EXCISE, PUNE-I Versus SANDVIK ASIA LTD. 2015 (323) E.L.T. 431 (Bom.)
- ❖ ADVANCE STEEL TUBES LTD. Versus COMMISSIONER OF C. EX., GHAZIABAD-2014 (310) E.L.T. 370 (Tri. - Del.)
- ❖ BIRLA CORPORATION LTD. Versus COMMISSIONER OF CENTRAL EXCISE, PUNE-I-2008 (231) E.L.T. 482 (Tri. Mumbai)
- ❖ GUJARAT STATE FERTILIZERS & CHEMICALS LTD. Versus C.C.E., VADODARA 2014 (309) E.L.T. 94 (Tri. Ahmd.)
- ❖ BUSINESS OVERSEAS CORPORATION Versus C.C. (IMPORT & GENERAL), NEW DELHI 2015 (317) E.L.T. 637 (Tri. - Del.)
- ❖ HERO MOTOCORP LTD. Versus COMMISSIONER OF CUSTOMS (IMPORT & GENERAL) 2014 (302) E.L.T. 501 (Del.)
- ❖ COMMR. OF C. EX. & CUS., GUNTUR Versus CRANE BETEL NUT POWDER WORKS 2011 (274) E.L.T. 113 (Tri. Bang.).

- Appellant further submitted that refund of differential amount of excess customs duty other than the amount of IGST availed as input tax credit paid at the time of provisional assessment on the said goods (bunker) consequent upon the final assessment as provided under Section 18(2)(a) read with Section 18(4) of the Customs Act, 1962 was required to be paid within 3 months from the date of assessment of duty finally. There is no provision under the Customs Act, 1962 or rules made thereunder to file an application for refund of excess amount at the time of provisional assessment not to speak of Section 27 of the Customs Act, 1962 read with Customs Refund Application (Form) Regulations, 1998. Section 18 of the Customs Act, 1962 is self-contained provisions for refund subject to incidence of such duty has not been passed on to any other person with effect from 13.07.2006. Even the said section also provides time limit to refund the amount within 3 months from the date of assessment of duty finally, otherwise interest at the rate fixed under Section 27A of the Customs Act, 1962 till the date of refund of such amount is payable with effect from 13.07.2006.

- The learned adjudicating authority has grossly erred in relying upon only one decision of Hon'ble CESTAT, Hyderabad viz. Final Order No. A/30122-30123/2023 dated 01.06.2023 in the case of Sachdev Overseas

Fitness Pvt. Ltd. & Nityasach Fitness Pvt. Ltd. over the decisions of Hon'ble High Court and other tribunals.

- Appellant therefore, finally respectfully submits that refund claim filed by it is in accordance with the provisions of the Customs Act, 1962 read with settled position of law. Therefore, appellant prays that impugned order passed by the learned Assistant Commissioner may be set aside and refund may be sanctioned and paid to it with interest at an early date.

PERSONAL HEARING

4. Shri P D Rachchh, Advocate, appeared for personal hearing on 08.10.2025 in virtual mode. Hereiterated the submissions made at the time of filing appeal and also submitted summary of submissions.

4.1 The appellant further vide letter dated 08.11.2025 submitted that the Hon'ble Bench of Tribunal, Ahmedabad vide Final Order No. 10875-11017/2025 dated 04.11.2025 in Appeal No. C/10511/2025 in the number of matters including lead matter of M/s. Dynamic Ship Recyclers Pvt. Ltd. & others on similar issue decided the matters favour of Appellants. He further submitted that the issue of unjust enrichment in the present cases is squarely covered by the said decisions and also requested to consider the decision.

4.2 The appellant further submitted Certificate dated 13.11.2025 issued by the C A M/s A. R. PARMAR & CO. wherein it is certified that the price at which the bunkers were sold by the appellant was significantly lower than the import value of bunker on which customs duty was assessed and paid. Consequently, the appellant has not recovered the purchased price of the bunkers, and therefore, there is no question of recovery of the duty so assessed. Further he also certified that the appellant has not passed on the burden of the duty paid on the bunkers to any buyer or third party. The firm has borne the entire duty liability on its



DISCUSSION AND FINDINGS

5. I have gone through the facts of the case available on record and the submissions made in the grounds of appeal as well as those made during hearing. The issue to be decided in the present appeal is whether the impugned orders passed by the adjudicating authority crediting the amount of sanctioned refund to the Consumer Welfare Fund, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the appellant had imported vessels for breaking up/recycling and filed Bills of Entry as detailed in Table A above under

Section 46 of the Customs Act. 1962. There was dispute in respect of classification of Fuel and Oil (Fuel Oil, Marine Gas Oil, Lub Oil), which was settled by the Hon'ble CESTAT, Ahmedabad, vide its Orders A/11792-11851/2022, dated 17.10.2022/01.12.2022 wherein it was held that the oil contained in the Bunkers Tanks in the engine room of the vessel is to be assessed to duty under CTH 8908, along with the vessel for breaking up. The Bills of Entry were assessed provisionally. Subsequently, the Bills of Entry were finally assessed vide Final Assessment Orders as detailed in Table A above passed by the Assistant Commissioner, Customs Division, Bhavnagar in terms of Hon'ble CESTAT, Ahmedabad, Orders dated 17.10.2022/01.12.2022. Consequently, the appellant had filed refund claims along with Certificate issued by C. A. M/s A. R. PARMAR & CO. wherein it is certified that the amount refundable from the customs department have been shown in the un-audited books of accounts for the financial year 2024-25 under the head OTHER CURRENT ASSETS with Sub-Heading Balance with revenue authorities. The receivable amount still appears in the books of accounts as on date. We have checked the sales invoices as well as Financial Ledger Accounts and other records and certify that M/s. LEELA SHIP RECYCLING PVT LTD. at the time of import of the vessel has paid the customs duty on import of ship/vessel and on the Bunker (Oil and Fuels) has not been passed on to the buyer of the goods or any other persons. The claimant however has not provided the documentary evidence i.e. copy of balance sheet and ledger etc. The adjudicating authority also observed that the CA certificate submitted by the appellant neither disclosed the details of the supporting documents on the basis of which such certificate was issued nor financial records viz. copy of Audited Balance Sheet, Sales Invoices etc. had been provided as per the Board Circular No. 07/2008, dated 28.05.2008 wherein it has been stressed upon the need to go through the details of audited Balance Sheet and other related financial records, certificate of CA etc., to verify as to whether the burden of duty and interest as the case may be, has not been passed on to any other person as for the doctrine of unjust enrichment. It is observed that there is no dispute regarding eligibility of the appellant for refund on merit. The only dispute is whether the appellant has crossed the bar of unjust enrichment so as to decide whether the amount of refund is to be given to the appellant or else to be credited to the Consumer Welfare Fund.

5.3 The adjudicating authority has on scrutiny of the refund claims observed that the C.A. Certificate submitted by the appellant neither disclosed the details of supporting documents on the basis of which such certificate was issued nor financial records viz. copy of Audited Balance

Sheet, Sales Invoices etc. were provided. The adjudicating authority has further observed that the Board Circular No. 07/2008, dated 28.05.2008 has stressed upon the need to go through the details of audited Balance Sheet and other related financial records, certificate of CA etc., which are relied upon, to verify as to whether the burden of duty and interest as the case may be, has not been passed on to any other person as for the doctrine of unjust enrichment. The findings of the adjudicating authority in the impugned orders as per appeal listed at Sr. No 14 of Table A is as under:

"I have gone through the case laws cited by the claimant. I find that the case laws are not relevant in the issue as far as clause of unjust enrichment is concerned. I find that when the element of any duty paid on any goods is debited to Purchase Account which is forming part of the Profit & Loss Account, as a cardinal accounting principles, then the said element of duty becomes a part of the cost of the goods. As such, whenever such goods are sold at a later stage to the buyers/customers, the Sales Price fetched for such goods is considered as inclusive of the element of duty paid thereon such goods, accordingly, here in the case it is observed that the incidence of Customs duty paid at the time of import of goods is passed on to the buyers/ customers at the time of its sales in the form of Sales Price. In fact, statutory provision of Section 28C provides for indication of amount of duty paid in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold, which is not done by the claimant in the instant case. Once the amount of Customs duty paid is debited as cost to purchase under Profit & Loss and non-fulfillment of obligatory condition of Section 28C would be sufficient enough to conclude that Sales Price of the goods bear entire Customs duty paid on such goods. Under such circumstances, the grant of refund of Customs Duty would tantamount to receipt of refund of customs duty from customers as well as exchequer, which will get the claimant unjustly enriched. [Reliance placed on the Final Order No. A/30122-30123/2023 dated 1.6.2023 passed by the Hyderabad Bench of CESTAT in Departmental Appeals No. 30010-11/2023 in case of Sachdev Overseas Fitness Pvt Ltd & Nityasach Fitness Pvt Ltd.]

The claimant also failed to produce C.A. certificate in the format provided to them vide this office letter dated 17.02.2025 along with financial records viz. copy of Audited Balance Sheet and ledger for the period from F.Y. 2019-20 to 2023-24, Sales Invoices etc. However, the

CA certificate dated 30.01.2025 certifying that the amount refundable from the customs department have been shown in unaudited financial unaudited financial accounts for the F.Y. 2024-25 implies that the amount claimed as refund has been shown as receivable consequent upon finalization of Bill of Entry and not in the financial year ie. F.Y. 2019-20 to which the Bill of Entry pertains and duty was provisionally paid. This implies that the duty paid was shown as expenditure in the Balance sheet for the F.Y. 2019-20 and formed part of Profit and loss account of the claimant and as a settled position in law that where the claimant has itself treated the refund amount due as expenditure and not as "claims receivable", the claimant cannot be said to have passed the test of unjust enrichment. Thus, the claimant having failed to prove that incidence of customs duty has not been passed on to any other person, the amount of refund instead of being paid to them is liable to be credited to the Consumer Welfare Fund."

Accordingly, the adjudicating authority has sanctioned the refund claims as detailed in the Table A above in terms of Section 27 of the Customs Act, 1962 and credited the same to the consumer welfare fund vide the impugned orders.

5.4 I have perused the relevant Section 27 (1A) and 27 (2) of the Customs Act, 1962 and same is reproduced as under:

(1A) The application under sub-section (1) shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty or interest in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty or interest, has not been passed on by him to any other person.

(2) If, on receipt of any such application, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that the whole or any part of the [duty and interest, if any, paid on such duty] paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of [duty and interest, if any, paid on such duty] as determined by the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

(a) the [duty and interest, if any, paid on such duty] paid by the importer, [or the exporter, as the case may be] if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;



(b) the [duty and interest, if any, paid on such duty] on imports made by an individual for his personal use;

(c) the [duty and interest, if any, paid on such duty] borne by the buyer, if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75;

(f) the [duty and interest, if any, paid on such duty] borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify:

[(g) the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where —

(i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or

(ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment:]

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of [duty and interest, if any, paid on such duty] has not been passed on by the persons concerned to any other person.

5.5 I have also perused Section 28 D of the Customs Act, 1962 and same is reproduced as under:

“SECTION 28D. Presumption that incidence of duty has been passed on to the buyer. — Every person who has paid the duty on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods.”

From plain reading of the above legal provisions, it is clear that the appellant was required to submit documentary evidence to establish that the amount of duty in relation to which the refund is claimed was paid by him and the incidence of the duty has not been passed on by him to any other person. As per Section 28D of the Customs Act, 1962, the burden of proof is on the appellant to establish that they had not passed on the incidence of duty paid. Thus, until and unless the appellant satisfies with the relevant documents, indicating the fact that it has paid the duty and the same has not been passed on to the customers, such a claim cannot be accepted. Therefore, until the contrary is proved, there is a presumption provided under the statute that the duty has been passed on to the buyer.



5.5.1 It is undisputed that the goods in question have been sold. Further, it is observed that the appellant had submitted Certificate issued by C A M/s A. R. PARMAR & CO. wherein it is certified that the amount refundable from the customs department have been shown in the un-audited books of accounts for the financial year 2024-25 under the head OTHER CURRENT ASSETS with Sub-Heading Balance with revenue authorities. The receivable amount still appears in the books of accounts as on date. We have checked the sales invoices as well as Financial Ledger Accounts and other records and certify that M/s. LEELA SHIP RECYCLING PVT LTD. at the time of import of the vessel has paid the customs duty on import of ship/vessel and on the Bunker (Oil and Fuels) has not been passed on to the buyer of the goods or any other persons.

5.6 The details of Certificate dated 30.01.2025 issued by M/s A R Parmar & Co., C.A., submitted along with appeal listed at Sr. No. 14 of Table A above, is as under:

"We, A R Parmar & Co, Chartered Accountants, having address at 605, 6th Floor, Victoria Prime, Near Victoria Park, Water Tank, Kaliabid, Bhavnagar-364002 have checked duly audited financial accounts of M/s. LEELA SHIP RECYCLING PVT LTD. having office at 3rd Floor, B-Wing, Leela Efcee, Waghawadi Road, Bhavnagar-364002, Bhavnagar and works at Plot No.2, Ship Breaking Yard, Alang, Dist. Bhavnagar for Financial Year 2018-19 under the Income Tax Act, 1961. We have checked their Books of Accounts and Records of Vessel "UNITY" and Bill of Entry No. 6235230 DT:-26/12/2019.



That M/S. LEELA SHIP RECYCLING PVT LTD. has paid total customs duty of Rs. 4,28,46,001/- inclusive of IGST on import purchase of Rs.3,70,15,313/- on dated 26/12/2019 & 31/12/2019 vide Challan No.2029740187 & 2029787019 on the import of the ship/vessel for breaking purpose, Bunker (Oil and Fuels), Stores, etc.

Further it is certified that the amount refundable from the customs department of Rs.2,97,816/- have been shown in the un-audited books of accounts for the financial year 2024-25 under the head OTHER CURRENT ASSETS with Sub-Heading Balance with revenue authorities. The receivable amount of Rs.2,97,816/- still appears in the books of accounts as on date.



We have checked the sales invoices as well as Financial Ledger Accounts and other records and certify that M/s. LEELA SHIP RECYCLING PVT LTD. at the time of import of the vessel has paid the customs duty on import of ship/vessel and on the Bunker (Oil and

Fuels) has not been passed on to the buyer of the goods or any other persons.”

5.7 It is further observed that earlier on similar issue the appeals filed by the appellants were rejected on the ground of unjust enrichment. It is further observed that the Hon'ble Tribunal, Ahmedabad, on appeal filed by the appellants against the earlier orders of the Commissioner(Appeal), vide final order No 10875-11017/2025 dated 04.11.2025 has allowed the appeals filed by the shipbreakers/appellants, with consequential relief, on identical issue holding that the bar of unjust-enrichment is not applicable to them and to the contrary department has not brought any tangible evidence to discharge the onus shifted on it. The relevant paras of the order is as under:

10. This Court has considered the rival submissions. It finds that the disputes at this stage is only from the angle of as to whether unjust enrichment will or will not apply to the matter and with its factual matrix?. It finds that from the table produced by the appellant that the price at which the bunkers were sold by the appellant was quite below the import price/value of the Bunkers on which the duty was assessed and paid. Therefore, the appellant have claimed that they have not been even able to recover full import price of the Bunkers on which duty was assessed and therefore there cannot have been any question of recovering the duty assessed on such import price.

11. Further, the appellant states that they duly produced the certificate

11.1 Further despite it clearly being indicated that the same has not been passed by company to the buyers or any other person and same is shown as the Customs duty receivable account, no cognizance of the same was taken.

12. The Learned Advocate at this stage seeks to place reliance on various case law as has been indicated above to press the point that when the appellant had not been able to recover from the buyers even the full import price of the bunkers on which duty was assessed the question of recovering the duty assessed on such import price did not arise. That the amount was debited to expense in Profit And Loss Account did not mean the incidence thereof was passed on to the buyers when the price at which the bunkers were sold to the buyers, was even less than in the import price on which the duty was assessed.

13. Considered. This court finds force in the relevance of case law cited by the appellant. In the peculiar situation of this case when the goods have been eventually sold at price far less than the assessed values of the goods. This Court particularly finds that this matter is covered by 2015 (347) ELT 637 (Tri- Del.) in the matter of Business Overseas Corporation Vs. C.C.E (Import And General) New Delhi wherein by majority view it was held that the goods imported and sold at a loss that is when cost price was more than the sale price during the period in dispute and same fact was certified by Chartered Accountant. The

importer has duly discharged burden of proof by producing Chartered Accountant's Certificate, burden shifted to revenue to prove recovery of extra cost from the Customers by producing more evidence. Revenue has failed to advance any evidence to rebut Chartered Accountant's Certificate.

13.1 This Court finds that the situation is no different in this case. Therefore, the majority view of the case (cited supra) shall apply to the facts and circumstance of this case also. And once the Chartered Accountant Certificate has certified an aspect the onus shift on the department. Similar view also emerges from the decision of 2006 (202) ELT 404 (Mad) in the matter of Commissioner Central Excise Vs. Flow Tech Power as also in the matters in 2017 (357) ELT 1041 (Tri.-Ahd.) of Equinox Solutions Ltd Vs. CCE Ahmedabad, as well as in 2013 (290) ELT 386 (Tri. Ahd.) in the matter of Interplex India Pvt Ltd Vs. CC Ahmedabad. This Bench has taken a view that even production of Chartered Accountant Certificate shifts the onus to the department.

13.2 This Court finds that in instant case not only Chartered Accountant Certificate is on record certifying the fact of not passing on the duty but also additionally factum of selling below cost is also on record which has also been taken into consideration by various judicial rulings cited by the appellants as above, to hold that this fact is enough to rebut the presumption of duty having been passed.

14. In view of the forgoing, it is clear that the appellant have produced enough evidence to indicate that the bar of unjust-enrichment is not applicable to them and to the contrary department has not brought any tangible evidence to discharge the onus shifted on it. In view of the foregoing, appeals are allowable. Same are allowed with consequential relief.

15. Appeals allowed with consequential relief.

In view of the above decision of the Hon'ble Tribunal, Ahmedabad it is observed that in the present case also the C.A M/s A R Parmar & Co., vide certificate, submitted along with refund application, certified that the amount refundable from the customs department have been shown in the un-audited books of accounts for the financial year 2024-25 under the head OTHER CURRENT ASSETS with Sub-Heading Balance with revenue authorities. The receivable amount still appears in the books of accounts as on date. We have checked the sales invoices as well as Financial Ledger Accounts and other records and certify that M/s. LEELA SHIP RECYCLING PVT LTD. at the time of import of the vessel has paid the customs duty on import of ship/vessel and on the Bunker (Oil and Fuels) has not been passed on to the buyer of the goods or any other persons. Further the appellant has also submitted C.A. Certificate dated 13.11.2025 wherein it is certified that the price at which the bunkers were sold by the said entity was significantly lower than the import value of bunker on which customs duty was assessed and paid. Consequently, the appellant has not recovered the purchased price of the bunkers, and therefore, there is no

question of recovery of the duty so assessed. Further, he also certified that the appellant has not passed on the burden of the duty paid on the bunkers to any buyer or third party. The firm has borne the entire duty liability on its own.

5.9 In view of the above, and following the decision of the Hon'ble Tribunal, Ahmedabad, I am of the considered view that the appellant have produced enough evidence to cross the bar of unjust-enrichment. Accordingly, the appeals filed by the appellant are liable to be allowed.

6. In view of the above, the appeals filed by the appellant are allowed with consequential relief.



सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

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1. M/s Leela Ship Recycling Pvt. Ltd.,
Plot No. 2, Alang Ship Breaking Yard,
Alang, Bhavnagar - 364 081,
2. Shri Pankaj D. Rachchh, Advocate, P R Associates,
901-B, The Imperial Heights, 150 Feet Ring Road Rajkot - 360 001

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