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

DIN-20260771MN00004A712C

क	फ़ाइल संख्या FILE NO.	S/49-133/CUS/JMN/JUN/2025-26
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-33-2026-27
ग	पारितकर्ता PASSED BY	Shri Vishwajeet Singh Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	22.07.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	564/CUS-REF/24-25 dated 16.05.2025
च	अपील आदेश जारी करने की दिनांक ORDER-IN-APPEAL ISSUED ON:	22.07.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1. M/s R.L. Kalthia Ship Breaking Pvt. Ltd., Plot No. 19, Ship Breaking yard, Alang, Bhavnagar

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

(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :

	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016

5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.

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

ORDER-IN-APPEAL

1. Brief facts of the case

1.1 M/s R.L. Kalthia Ship Breaking Pvt. Ltd., Plot No. 19, Ship Breaking yard, Alang, Bhavnagar (herein after referred to as the "Appellant for the sake of brevity) has filed the present appeal against Order-In-Original No. 564/CUS-REF/2024-25 dated 16.05.2025 (herein after referred to as the "impugned order") issued by the Assistant Commissioner, Customs Division, Bhavnagar (herein after referred to as the "Adjudicating Authority).

1.2 The Appellant had imported a vessel MV GLORISILVER for breaking up/ recycling at Plot No. 46, Ship Recycling Yard Alang, Bhavnagar and had filed self-assessed Bill of Entry No. 7046921 dated 12.01.2022 under section 46 of the Customs Act, 1962.

1.3 There were some dispute with regard to assessment of customs duty of the Fuel and Oil (Fuel Oil, Marine Gas Oil, Lub. Oil) contained in Bunker Tanks inside/ outside the engine room of the vessel. Importer 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 8908 along with the vessel. However, the Department, was of the view that Fuel and Oil contained in Bunker Tanks were to be assessed to duty under respective CTH of Chapter 27 and accordingly the bill of entry was assessed to duty of Rs. 2,88,97,127/-.The Bill of Entry was assessed provisionally for want of original documents.

1.4. Hon'ble CESTAT, Ahmedabad vide its orders A/11792-11851/2022 dated 17.10.2022/01.12.2022 has 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 coming for breaking up. Further, in adherence to aforesaid order of Hon'ble CESTAT, it has been decided by the Assistant Commissioner, Customs Division, Bhavnagar in Final Assessment Order No. 1079/2631159/SBY/2024-25 dated 11.09.2024 that Bunker Tanks containing oil are to be 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 bill of entry was finally assessed to duty of Rs. 2,88,37,013/- vide Final Assessment Order No. 1179/2698153/SBY/2024-25 dated 13.11.2024 passed by the Assistant Commissioner Customs Division, Bhavnagar.

1.5 Consequent to Final Assessment Order No. 1179/2698153/SBY/2024-25 dated 13.11.2024 passed by the Assistant Commissioner, Customs Division,

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Bhavnagar, the Appellant filed a refund claim of Rs. 60,115/-/- under Section 25 of the Customs Act, 1962.

1.6 The Adjudicating Authority observed that the Appellant had failed to prove the incidence of customs duty has not been passed on to any other person and this the Adjudicating Authority vide the impugned order sanctioned the refund of Rs. 17,651/- in terms of Section 27 of the Customs Act, and credited the same to Consumer Welfare Fund.

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

2. **Ground of Appeal submitted by the Appellant**

2.1 The Appellant submitted that it is admitted fact that the above referred Final Assessment had been made in pursuance of above referred order passed by Hon'ble Tribunal, Ahmedabad in the case of M/s. Navyug Ship Breaking Co. v/s Commissioner of Customs, Jamnagar (Prev.). The Hon'ble Tribunal in their above referred ordered has clearly held that the above referred disputed stock of bunkers was/is classifiable under provisions of Chapter Heading No. 8908 instead of under Chapter Sub Heading No. 2710 of the Customs Tariff Act, 1975.

2.2 The Appellant further submitted that in pursuance of the above referred settled case law as referred in the refund application, the Appellant had presented a refund claim under reference in respect of the paid up more basic customs duty under the provision of Section 27 of the Customs Act, 1962. The act of crediting the sanctioned refund amount in to the so called Consumer Welfare Fund of the department is not genuine and correct. Infact the Appellant had sold out the disputed stock of bunkers at very less price prevailing at the time and sale/removal of disputed bunkers and too, before stating of hot breaking activities upon the vessel under reference. The Appellant had sold out the disputed stock of bunker under cover of various Sales Invoices which had been issued at the very less price than considered the same at the time of provisional assessment of the bill of entry. This fact is true and correct on the very ground that in the present case the question of importing the concept of as to why the sanctioned refund amount should not credited in to the Consumer Welfare Fund. Is not coming in to picture read with Section 27 read with the amended Sec. with effect from 31.03.2017.

2.3 The Appellant further submitted that the whole purchase price of the ship under reference had never been increase decrease at any stage i.e. either at the time of Provisional Assessment or making the Final Assessment on the very

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ground that the purchase price/transaction value as considered by the department had not either decrease or increase so far as the transaction of the vessel under reference has been made in US Dollar as agreed upon in the above referred MOA. But, wrongfully and without proper interpretation of law, the sanctioned refund claim has been wrongfully credited in to the so called Welfare Fund. The Adjudicating Authority has also erred in not disclosing the Accounting Head of crediting such sanctioned refund amount in so called Welfare Fund.

2.4 The Appellant further submitted that the ground consider for crediting in to the Welfare Fund appears to have been consider/taken in pursuance of the respective assessed to Income Tax Return. This Income Tax Rerun is not directly nexus with the crediting such sanctioned refund amount in to the so called Welfare Fund. The Appellant had sold out the disputed stock of bunker at very low price and "this price" is the direct nexus with the crediting such sanctioned refund amount in the above Welfare Fund. This Welfare Fund has a special character in understating of concept of crediting in to so called Welfare Fund and having no nexus with the present refund claim for this contention your Appellant fully apprised that in the present case, the concept of crediting such sanctioned refund amount appears not to have been true, correct and genuine but imported without any authority of law. This gross Income Tax value is nothing but pertaining to "Commercial Business" carried out by the Appellant in or in relation to the ends of sales of such goods in the open market.

2.6 The Appellant further submitted that the department had also erred in making Provisional Assessment by wrongfully converting such irrelevant value of the bunker in US Dollar at the time of making Provisional Assessment and accordingly "not nexus with the calculation of such refund amount" and this calculation of in Rupees was also inclusive of the purchased price of the ship. This irrelevant price in US Dollar appears to have been wrongfully considered in making credit of the sanction refund amount to the Welfare Fund read with such concept of transaction value. From these submissions, it is clearly establish your Appellant had not collected the incidence of duty from such purchaser of the disputed stock of bunkers which had been started to sale in to the local market after fulfilling the provisions of Section 46 of the Customs Act, 1962. Therefore, the act of Adjudicating Authority in crediting the sanctioned refund amount in to the so called Welfare Fund is not true correct and proper but to be set aside. On the contrary, the Adjudicating Authority has failed to disclose the material direct corroborative evidences to sustain the genuineness of the making of Final Assessment so far as the issue of wrongful making such sanctioned refund amount in to the so called Welfare Fund/Account.

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2.7 The Appellant further submitted that the appointed Chartered Accountant has clearly certified vide his Certificate dated 17.03.2025 (hereinafter referred as Annexure - H) that not no such incidence of duty covered under the refund claim under reference not have recovered from the Costumers read with provisions of Section 27(2) of the Customs Act, 1962. Further, on perusal of the sales invoices, it is clearly been found that your appellant had sold out disputed stock of bunker at very less price than the so called "transaction value" considered/ascertained by the Assessing Officer without disclosing such material evidences. Before passing the impugned order, the Adjudicating Authority has not given any opportunity to be heard in person to the Appellant and passed the impugned order as "ex-parte". The copies of such sales invoice are enclosed herewith to as Annexure I, collectively.

2.8 The Appellant relied on the following citations :-

(i) 2015 (327) ELT 13 (Mad); Commissioner of C. Ex., Chennai-I,

(ii) 2017 (348) ELT 537 (Tri.-Chennai); Mennekes Electric India P. Ltd. v/s Commissioner of Cus., Chennai-II.

This settled case law may kindly be considered while interpreting the question of unjust enrichment in as much as question of supplying copy of sales invoice in respect of disputed stock of bunker does not arise. This submission is being submitted without prejudice to the provision of Section 27(2)(g) of customs Act, 1962.

(iii) 2018 (360) ELT A204 (Bom.); Commissioner v/s Tata Motors Ltd.

(iv) 2020 (371) ELT 542 (Chan); Gaurav Enterprises v/s Commissioner of Customs Amritsar,

(v) 2022 (60) G.S.T.L. 48 (Del); Rambagh Palace Hotel Pvt. Ltd. v/s Commissioner of C. Ex. & GST, Jaipur.

2.9 In addition to these above settled case laws, the Appellant also relied upon further following case laws which are squarely applicable in the present case:-

(i) 2013 (294) E. L. T. 320 (Tri- Bang.) in case of VXL Instruments Ltd. v/s Commissioner of Customs, Banglore, where it has held that;

"Refund -Notification No. 6/2006-C.E. Unjust enrichment Appellant had agreement with DTA for cum-duty price Appellant forced to pay duty on higher rate Burden of Excise duty not passed on Customers Appellant maintained same contract price before and after dispute Payment of higher duty was under protest - Refund not barred by unjust enrichment Refund claim allowed Section 27 of Customs Act, 1962."

(ii) 2015 (317) E.L.T. 637 (Tri. Del) in case of Business Overseas Corporation v/s C. C. (Import & General), New Delhi wherein it has been held that;

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"Refund Unjust enrichment Bar of Goods sold at loss, i.e., cost price was more than sale price during period in dispute -Retail sale price decreased during the period in dispute Higher cost of goods imported when taken into consideration, manufacturing cost of final product increased whereas retail sale price decreased Chartered Accountant certified that differential duty not recovered from customers Importer discharged burden of proof by producing Chartered Accountant's certificate, burden shifted to Revenue to prove recovery of extra duty paid from customers by producing positive evidence Revenue failed to advance any evidence to rebut Chartered Accountant's certificate Department not disputed cost data about manufacturing cost of goods and average selling price during period in dispute Department's contention that no businessman would sale their goods at loss, not supported by any evidence Incidence of duty not passed on to customers However, appellants already availed Cenvat credit of Rs. 25,28,755, not entitled to cash refund of remaining Rs. 10,63,065 -Section 27 of Customs Act, 1962."

(iii) 2017 (48) S. T. R. 298 (Del) in case of Munch Food Products Ltd. v/s Commissioner wherein it has been held that;

"Writ jurisdiction Alternative remedy Refund Old matter with several rounds of litigation CESTAT dismissed appeal against rejection of refund on ground that order was passed by Deputy Commissioner of Central Excise, and there was no willful disobedience of its order allowing refund Department did not adjudicate matter till 2007 in spite assessee having filed refund application in 2003, and there was no explanation for delay of five years Commissioner (Appeals) found to have incorrectly rejected refund on ground that prices were inclusive of duty when gate passes had shown element of duty 'nil', payable on ad valorem basis on invoice prices -Assessee unable to produce gate passes and photocopy thereof as matter was very old, pertaining to years 1992-94-In that view, Department's plea that assessee should have taken alternative remedy of filing appeal against order of Deputy Commissioner of Central Excise, rejected Refund allowed Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994 - Article 226 of Constitution of India.

Refund Grant of Gate passes showing element of duty 'nil', payable on ad valorem basis on invoice prices However, refund rejected on ground that prices were inclusive of duty HELD: Rejection of refund was incorrect Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994."

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2.10 The Appellant finally submitted that in view of the above stated grounds of Appeal it is clearly establish that in the present case, the question of invoking the concept of unjust enrichment does not arise. Therefore, the sanctioned refund amount has wrongfully credited in to the so called Consumer Welfare Fund/Account.

2.11 Thus, based on the above, the Appellant prayed for :-

(1) To set aside the impugned Order and pray to order to pay us the sanctioned refund amount in cash.

(ii) To grant consequential relief, as deemed fit.

3. PERSONAL HEARING:

Opportunity of personal hearing was granted to the Appellant. Shri N. K. Maru, Consultant appeared on15.07.2026 through virtual mode on video call on behalf of the Appellant and re-iterated written submission made at the time of filing appeal. He also submitted additional submission wherein it is stated that the adjudicating authority has, at the first instant, has correctly and legally sanctioned the refund claim which was required to be paid in cash to your Appellant in as much as your Appellant had produced the required CA's Certificate dated 17.03.2025 issued by the Chartered Accountant viz; M/s. GSP S & Associates, Chartered Accountants, Bhavnagar. On perusing of this certificate, it has clearly been determined/examined of the accounts that the concept of basis customs duty pertaining to the disputed stock of bunker had not been passed on to the consumers, if any. Therefore, the impugned order is not proper, correct and legal, but deserves to be set aside. He further submitted that on perusing of the subject FAO dated 13.11.2024, it appears that the adjudicating authority had himself had accepted that the Appellant had paid more basic customs duty (i.e. as referred in the FAO itself). Therefore, it appears that the impugned order appears to had been passed in accordance with the settled case laws as disclosed in the impugned order by the adjudicating authority. But, wrongfully ordered to credit to the consumer welfare fund. On verification of the books and accounts cum issued sales invoices of the disputed stock of bunker, the Appellant had proved on record that your Appellant had not recovered the incidence of duty "under claim of present refund claim. For this contention, kindly perused Annexure I of the Appeal itself. Therefore, it appears that the impugned order is not proper correct and legal. He finally submitted that in view of the above further submissions read with grounds of appeal, etc. the Appellant prayed to set aside the impugned order and grant consequential relief as sought for.

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4. DISCUSSION AND FINDINGS:

4.1 I find that the date of the impugned order is 16.05.2025 and the Appellant filed appeal on 09.06.2025 therefore, the appeal is filed well within the time period of 60 days prescribed under the provisions of Section 128 of the Customs Act, 1962.

4.2. I find that the matter pertains to the issue of refund thus there is no question of pre-deposit of 7.5% of duty demanded as prescribed under Section 129E of the Customs Act, 1962.

4.3 The Customs Division Office, Bhavnagar was requested for submission of comments of the appeal filed by the Appellant vide letter 08.07.2025 but no comments have been received by this office till date therefore, I am taking up the issue for decision based on the facts of the case and documentary evidence available on record.

4.4 I have carefully gone through the case records, show cause notice and corresponding order passed by the adjudicating authority and the defense put forth by the Appellants in their appeal. The following issues arise for determination:

i) Whether the Appellant is eligible for refund of Rs. 17,651/- by directly crediting it to their bank account instead of crediting the same to Consumer Welfare Fund.

4.5 It is observed that the appellant had imported vessel for breaking up/recycling and filed Bill of Entry No. 7046921 dated 12.01.2022 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 Bill of Entry was finally assessed vide Final Assessment Order No. 1179/2698153/SBY/2024-25 dated 13.11.2024 passed by the Assistant Commissioner, Customs Division, Bhavnagar. Consequently, the appellant had filed refund claims along with Certificate dated 17.03.2025 issued by C. A. GSPS & Associates. wherein it is stated that the Appellant had paid total Customs duty of Rs.3,29,40,751 vide challan No. 2037868859 dated 12.01.2022 amounting to Rs. 2,89,12,127 & vide duty scrip of Rs. 40,28,624 for the import of said vessel. The CA certificate further certified that out of total

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Customs Duty of Rs. 3,29,40,751/-, the Appellant has taken Input tax Credit of Rs. 2,84,84,884/-, GST cess Rs. 7,511/-. Late payment charges ad levies of customs duty of Rs. 15,000/- and charged total amount of customs duty of Rs. 44,31,656/- and AIDC duty payment of Rs. 1700/- to profit and loss account as expenditure, and therefore, it is certified that incidence of custom duty of Rs. 44,31,656/- claimed as refund has not been passed on to any other person including the buyer of the goods or any third party involved in the transaction.

4.6 The adjudicating authority has on scrutiny of the refund claims observed that the Appellant has submitted CA Certificate which neither disclosed the details of supporting documents on the basis of which such certificate was issued not financial records viz. copy of Audited Balance Sheet etc. had been provided. In this connection it is observed that the Board in its 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 order is as under:

"7.1 I have gone through the case law and Circular cited by the claimant. I find that the case law and Circular 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-

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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.]

7.2 The claimant also failed to produce C.A. Certificate in the format provided to them vide this office letter dated 19.03.205 along with financial records viz. copy of Audited Balance Sheet and ledger for the period from F.Y. 2021-22 & 203-24. This implied that the duty paid was shown as expenditure and formed part of Profit and loss account of the claimant. Therefore, 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."

4.7 Accordingly, the adjudicating authority has sanctioned the refund claim of Rs 17,651/- in terms of Section 27 of the Customs Act, 1962 and credited the same to the consumer welfare fund vide the impugned order.

4.8 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;*

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(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.*

4.9 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.

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4.10 It is undisputed that the goods in question have been sold to buyers and the transactions are shown as part of Profit and Loss Account. Further, it is observed that the appellant had submitted Certificate issued by C A GSPS & Associates wherein it is not specifically stated that the incidence of Custom Duty paid on bunker (oil and fuels) has not been passed on to the buyer of the goods or any other person. 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. 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. Therefore, I find that the findings given by the Adjudicating regarding Nil receivables that the Appellant has itself treated it as expenditure is correct and legally tenable.

4.11 The details of Certificate dated 30.09.2024 issued by C.A. GSPS & Associates submitted along with appeal is as under:

"I, CA BinalSalot having address at "HARSH JYOT", 50, Nalanda Society, Near SBI training center, Hill drive, Bhavnagar, have duly verified the financial account of M/s R L Kalthia Ship Breaking Pvt. Ltd. having office at 201, sarthik complex, atabhai chowk, Bhavnagar, 364002, Gujarat and work at Plot no.19, Ship Recycling Yard Alang, Dist. Bhavnagar for the financial year 2021-22. I have checked their books of accounts and records of vessel GLORISILVER IGM No. 2300550 imported for breaking / recycling vide Bill of Entry No. 7046921 dated 12/01/2022.It is verified that M/s RL Kalthia Ship Breaking Pvt. Ltd have paid and customs duty of Rs.. 3,29,40,751 /- 1.) vide Challan No. 2037868859, dated 12/01/2022 amounting Rs. 2,89,12,127 & 2) vide Duty scrip of Rs. 40,28,624 for import of the said vessel.

It is further verified that out of total customs duty of Rs. 3,29,40,751/- M/S RL Kalthia Ship Breaking Pvt. Ltd have taken input tax credit of IGST amount of Rs. 2,84,84,884/-, GST cess Rs. 7,511/-. Late payment government charges and levies of custom duty RS. 15,000 /- and charged total amount of customs duty of Rs. 44,31,656/- and AIDC duty payment of Rs. 1700 to profit and loss account as expenditure, and therefore it is certified that incidence of customs duty of Rs. 44,31,656/- claimed as refund has not been passed on to any other person including the buyer of the goods or any third party involved in the transaction."

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4.12 The Chartered Accountant/appellant has not submitted any documents to substantiate that the incidence of duty claimed as refund has not been passed on by him to any other person. Further, I also find that the Bill of Entry was filed during the year 2019-20 and the certificate has failed to give any reasonable certificate regarding carrying forward of the amount till the year the Appellant filed refund application. The Appellant has also failed to given any evidence indicating the fact that there was no unjust enrichment on the part of the Appellant during the Financial year 2024-25 as the refund was filed on 18.03.2025. The CA has in the said Certificate made a bald statement that the incidence of customs duty claimed as refund has not been passed on to any other person without any supporting documents. Therefore, the CA Certificate produced in this case without supporting documents cannot be considered for discharging the burden of unjust enrichment. Further, I also find that the certificate clearly mentions that the Appellant has not shown any amount as receivable from the Customs Department and no amount has been carried forward in the subsequent years therefor, there the question of refund does not arise and it is a settled legal position that when the Appellant has shown the amount as expenditure, the same is not refundable.

4.13 It is further observed that the Chartered Accountant's Certificate alone is not the conclusive proof of having not passed on the incidence of duty to the customers. A certificate of Chartered Accountant is just a corroborative evidence only as held by the Hon'ble High Court in the case of Commr. of C. EX., Aurangabad Versus Toyota Kirloskar Motors Ltd [2010 (256) E.L.T. 216 (Kar.)]. The Hon'ble High Court's view was not disturbed by the Hon'ble Supreme Court vide [2011 (274) E.L.T. 321 (S.C.)]. Further, in a number of decisions, it has been held that Chartered Accountant's certificates alone is not a sufficient evidence to discharge the burden cast upon the appellant to prove that incidence of duty has not been passed on to the customers. Further, it is the 'incidence of duty' and not the duty as such which is required to be shown to have not been passed on from the sale record, balance sheets and other related documents. In this regard, I rely upon the following case laws:

(i) Shoppers Stop Ltd. - 2018 (8) G.S.T.L. 47(Mad.)

(ii) BPL Ltd. - 2010 (259) E.L.T. 526 (Mad.)

(iii) Crompton Greaves Ltd. - 2011 (22) S.T.R. 380(Tri. - Mum.)

(iv) UOI v. Solar Pesticides Pvt. Ltd. reported in [2000 (116) E.L.T. 401(S.C.)]

(v) M/s Ispat Industries Ltd Vs Commissioner of Customs (Mumbai) - [2015- TIOL-614-CESTAT-MUM].

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4.14 Further the Hon'ble Supreme Court in the case of Sahakari Khand Udyog Mandali Ltd Vs Commissioner of C. Ex. & Cus [2005 (181) ELT 328 (SC)] has held that before claiming a relief of refund, it is necessary for the appellant to show that he has paid the amount for which relief is sought and he has not passed on the burden on consumers. Further, the Hon'ble Supreme Court in the case of Union of India Vs Solar Pesticides Pvt. Ltd. [2000 (116) ELT 401 (SC)] has held that *"the expression "incidence of such duty" in relation to its being passed on to another person would take it within its ambit not only the passing of the duty directly to another person but also cases where it is passed on indirectly"*. The burden of proof is on the appellant to establish that they had not passed on the incidence of duty paid. Therefore, until the contrary is proved, there is a presumption provided under the statute that the duty has been passed on to the buyer. Therefore, the appellant in the present case has failed to cross the bar of unjust enrichment.

4.15 From the above, I am of the considered view that the burden of proof lies on the appellant to demonstrate that the incidence of duty has not been passed on to the buyer or end customer. In this regard, the Chartered Accountant's certificate, is not sufficient by itself to discharge this burden. Such a certificate is merely corroborative in nature and must be supported by documents and records which are duly prescribed by the ICAI. These documents must be diligently and duly enlisted so the same may be referred to. In view of the failure to provide sufficient evidence to overcome the bar of unjust enrichment, I am of the considered opinion that the appellant has not made out a case for refund. Accordingly, the appeal filed by the appellant is liable to be rejected.

5. In view of the above, I do not find any infirmity with the impugned order and the same is upheld. The appeal filed by the appellant is disallowed.

आयुक्त (अपील) सीमा शुल्क अहमदाबाद

सत्यापित/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

Vishwajeet Singh
22.07.2026.

(Vishwajeet Singh)
Commissioner (Appeals),
Customs, Ahmedabad
Date: 07.2026

F. No. S/49-133/CUS/JMN/JUN/2025-26

By Registered Post A.D/Email

M/s R.L. Kalthia Ship Breaking , Plot No. 19, Ship Breaking yard, Alang, Bhavnagar

Copy to,

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