



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,  
चौथी मंजिल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009  
दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20251271MN000000E109

क	फ़ाइलसंख्या FILE NO.	S/49-03 & 180/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-413 & 414-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	05.12.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांकARISING OUT OF Final Assessment Order No.	01/SBY/2024-25 dated 17.02.2025
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	05.12.2025
छ	अपीलकर्ताकानामवप्ता NAME AND ADDRESS OF THE APPELLANT:	M/s Gupta Steel (Ship Breakers), Plot No. 39, Ship Breaking Yard, Alang, Dist. Bhavnagar.
1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेदीजातीहैजिनकेनामयहजारीकियागया है।	
	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) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसुसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय,	

(राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै।	
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) भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउत्तरारेनगएमालयाउसगन्तव्य स्थानपरउत्तरारेजानेकेलिएअपेक्षितमालउत्तरारेनजानेपरयाउसगन्तव्यस्थानपरउत्तरारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो।	
(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 ) कोटफीएक्ट, 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,टण्ड,जब्तीऔरविविधमदांकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/- (रूपएएकहजारमात्र) ,जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां। यदिशुल्क,मांगागयाव्याज,लगायागयादेंदकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.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 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी 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, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण,पश्चिमीक्षेत्रीयपीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench

	दूसरीमंजिल, 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)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 )	अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउसेकमहोतोएकहजाररुपए.	
(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 )	अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पाँचहजाररुपए	
(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)	अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहजाररुपए.	
(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,जहांशुल्कयाशुल्कएवंदंडविवादमेहै,यादंडके 10%अदाकरनेपर,जहांकेवलदंडविवादमेहै,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) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - 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

Two appeals have been filed by M/s Gupta Steel (Ship Breakers), Plot No. 39, Ship Breaking Yard, Alang, Dist. Bhavnagar (hereinafter referred to as "the appellant") in terms of Section 128 of the Customs Act, 1962 against the Final Assessment Order No. 01/SBY/2024-25 dated 17.02.2025 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Customs Division, Bhavnagar (hereinafter referred to as "the adjudicating authority"). The details are as under in Table A:

Table A

Sr No	Appeal No	FAO No. & Date	Date of Filing Appeal
01	S/49-03/CUS/JMN/2025-26	01/SBY/2024-25 dated 17.02.2025	04.04.2025
02	S/49-180/CUS/JMN/2025-26	01/SBY/2024-25 dated 17.02.2025	21.07.2025

2. Briefly stated, facts of the case are that the appellant had purchased a vessel MV E TRADER for breaking up recycling. They filed Bill of Entry No. SBY/238/2012-13 dated 12.11.2012 for clearance of the said vessel for home consumption under Section 46 of the Customs Act, 1962 along with relevant documents. Since the appellant did not have the original copies of MOA, Commercial Invoice and Bill of Sale, and therefore the Bill of Entry was provisionally assessed and the appellant paid the duty provisionally assessed.

2.1 The Additional CVD had been levied @ Rs. 1.46 per Ltr vide Notification No. 12/2012-CE (as amended vide Notification No. 35/2012-CE dated 15.09.2012). Accordingly, differential duty of Rs. 38,196/- was required to be paid. However, the same was not paid at the time of provisional assessment but the said differential duty along with interest of Rs. 10285/- (total Rs. 48481/-) was paid paid vide Challan No. IMP-SBY/08/14-15 dated 15.04.2014.

2.2 The appellant vide letter dated 20.02.2013 submitted Original/Notarized copy of Memorandum of Agreement, Commercial Invoice and Bill of Sale and the Bill of Entry had been assessed finally by the then Deputy Commissioner, Customs Division, Bhavnagar on 20.10.2022. After final assessment the appellant was informed vide letter F. No. BE/SBY/238/2012-13 on 20.10.2022 that the subject Bill of Entry had been assessed finally on 20.10.2022 for the Customs duty to the tune of Rs.3,26,80,474/- and the said finally assessed duty was adjusted

towards the duty of Rs.3,26,42,278/- already paid at the time of provisional assessment and differential duty of Rs.38,196/- paid subsequently.

2.3 Being aggrieved with the letter dated 20.10.2022 of the Deputy Commissioner, Customs Division, Bhavnagar, the appellant filed an appeal before the Commissioner (Appeals), Customs, Ahmedabad on 17.05.2023. The Commissioner (Appeals), Customs, Ahmedabad vide OIA No. JMN-CUSTM-000-APP-65-24-25 dated 09.05.2024 allowed the appeal by way of remand to the adjudication authority for examine the available facts, documents submissions and issue speaking order following principles of natural justice and legal provisions.

2.4 On scrutiny of Bill of Entry and related records, the adjudicating authority found that there was no protest by the appellant with regard to (i) transaction value (ii) Light Displacement Tonnage (LDT), (iii) classification of fuel & oil (bunker) lying inside/outside engine room tanks. Further, sample of fuel & oil (bunker) was not drawn for Chemical Test in respect of the subject Bill of Entry. Hence, there was no requirement to grant personal hearing in the matter. Further, duty assessed provisionally was paid by the importer at the material time. The adjudicating authority after considering the case of M/s Navyug Ship Breaking Co. & others in Order No. A/11792-11851/2022 dated 01.12.2022, as submitted by the appellant vide letter dated 27.01.2025, found that the Final Assessment Order was issued on 20.10.2022 whereas the Order in respect of Navyug Ship Breaking Co. Vs C. C. Jamnagar in Customs Appeal No. 11031 of 2019 was issued on 01.12.2022 by Hon'ble CESTAT, Ahmedabad. He further found that in the said Order dated 01.12.2022, 57 importers had filed appeal. But the name of M/s Gupta Steel (Ship Breakers) i.e. the appellant was not mentioned in that list. Hence, he found that the above said Order dated 01.12.2022 is not applicable in this case. Accordingly, the adjudicating authority held that the Final Assessment Order, which was issued on 20.10.2022 (prior to issuance of Order dated 01.12.2022 of Hon'ble CESTAT), was legal and proper and doesn't require any interference in the said Final Assessment Order.

3. Being aggrieved with the impugned Order, the appellant has filed the present appeal contending mainly that:

- The Adjudicating Authority appears to have been grossly erred in arriving the conclusion that "I order that Bill of Entry No. SBY/238/2012-13 dated 12.11.2012 which was finally assessed on 20.10.2022, is legal, proper and correctly assessed but the final



assessment order dated 20.10.2022 appears to had been passed "Ex-part". Therefore, the impugned order is not correct and legal.

- The appellant referring to the para 11 of the impugned order submitted that this finding is not at all acceptable so far as the appellant's case is concerned. The appellant further submitted that while deciding an Appeal filed by Navyug Ship Breakers & Others v/s Commissioner of Customs, Jamnagar (Prev), the Hon'ble Tribunal Ahmedabad has please to order that the remaining stock bunker either lying inside the engine room of lying outside the engine room of the vessel was classifiable under Chapter Heading No. 8908.00 Further while passing this order dated 01.12.2022 passed by Hon'ble Tribunal has also referred various settled case laws as discussed in para 5.5.1,5.2,5.3,5.4. The period of such importation of the old and used ship was pertaining to the period prior to the subject final assessment order dated 20.10.2022. Therefore, it appears that the Adjudicating Authority had grossly erred in arriving the conclusion that the Order dated 01.12.2022 is not applicable in this case. Accordingly, I find that the Final Assessment Order, which was issued on 20.10.2022 (prior to issuance of Order dated 01.12.2022 of Hon'ble CESTAT) was legal and proper and doesn't require any interference in the said Final Assessment Order. Therefore, it has clearly been established that the impugned order appears to have been passed by grossly violating the various settled case laws which have been finally decided before the subject final assessment order. As well at the time of making final assessment the Appellant appears not to have been granted an opportunity to be heard in person.
- In addition to above, at para 10 of the impugned order the Adjudicating Authority has himself has passed final assessment order without awarding/granting an opportunity to be heard in person before passing Order dated 20.10.2022. For this contention your Appellant draw kind attention para 2 of the order dated 20.10.2022, as referred above before passing this Order on 20.10.2022, no such opportunity to be heard in person appears to had been granted. Therefore also it appears that the impugned order appears to had been passed as "ex party". There are so many settled case laws are there if a quasi-judicial order is passed as "ex-part" that case/issue deserves to be remanded back to the proper Adjudicating Authority to pass a Fresh Order after observing the principle of natural justice.
- The appellant finally prayed to remand the case back so as the Appellant may enjoy the benefit of the various judicial

pronouncement pertaining to the importation of the "Imported Goods" classifiable under Chapter Heading No. 8908.00 of the Customs Tariff Act, 1975.

4. Shri Rahul Gajera, Advocate, appeared for personal hearing on 07.08.2025 on behalf of the appellant. He reiterated the written submission made at the time of filing appeal.

5. It is observed that both the appeals are filed against the same Final Assessment Order No. 01/SBY/2024-25 dated 17.02.2025 and therefore both the appeal are taken up together for disposal in the present order. It is also observed that the appeal listed at Sr No 02 of the Table A above is filed for the second time against the same Final Assessment Order No 01/SBY/2024-25 dated 17.02.2025 and also filed beyond the time limit provided under Section 128 of the Customs Act, 1962. Hence the appeal listed at Sr No 02 of the Table A above is dismissed as infructuous and also on the grounds of limitation without going into the merits of the case.

6. In respect of the appeal listed at Sr No 01 of Table A above, I have carefully gone through the appeal memorandum, the grounds of appeals, records of the case and submissions made during personal hearing. I find that the matter has arisen in *de novo* proceedings ordered by the Commissioner of Customs (Appeal) vide OIA No JMN-CUSTM-000-APP-65-24-25 dated 09.05.2024 wherein the matter was remanded to the adjudicating authority for passing speaking order afresh by following the principles of natural justice. I find that the matter was remanded, with specific observation and direction mentioned at Para 6 and 7 of the OIA, to the adjudicating authority. Para 6 and 7 of the said OIA is reproduced here under:

*"6. I have carefully gone through the appeal memorandum as well as records of the case, submissions made by the appellant during course of hearing as well as the documents and evidences available on record. I find that the appeal has been filed challenging the impugned letter vide which the decision of finalization of the subject Bill of Entry was conveyed to the appellant. However, I find that no speaking order is available on record. Since the appellant has raised various grounds in the appeal memorandum which have been raised for the first time before the appellate authority, the adjudicating authority had no occasion to consider the same. Moreover, the appeal was sent to the adjudicating authority for his comments on the grounds raised in appeal, but there has been no response. Since, entire facts are not available on record to verify the claims made by the appellant, I find remitting the cases, for considering the submission of the appellant and*



passing speaking order, becomes *sine qua non* to meet the ends of justice. Accordingly, the case is required to be remanded back to the adjudicating authority, in terms of sub-section of (3) of Section 128A of the Customs Act, 1962, for passing speaking order afresh by following the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of *Medico Labs* - 2004 (173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of *Ganesh Benzoplast Ltd.* [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of *Prem Steels Pvt. Ltd.* [2012-TIOL-1317-CESTAT-DEL] and *Hawkins Cookers Ltd.* [2012 (284) E.L.T. 677 (Tri-Del)] holding that Commissioner (Appeals) has power to remand the case under Section - 35A (3) of the Central Excise Act, 1944 and Section - 128A (3) of the Customs Act, 1962.

7. In view of above, I allow the appeal by way of remand to the adjudicating authority, who shall examine the available facts, documents, submissions and issue speaking order following principles of natural justice and legal provisions. While passing this order, no opinion or views have been expressed on the merits of the case or the submissions made by the appellant in this regard, which shall be independently examined by the adjudicating authority."

6.1. I have also gone through Para 9 of the impugned order which is reproduced hereunder:

"9. I have carefully gone through the facts of the case and reply to the personal hearing. I find that the Importer had filed a Bill of Entry No. SBY/238/2012-13 dated 12.11.2012. The aforesaid bill of entry was assessed provisionally for want of original documents viz. Bill of Sale & Commercial Invoice. On scrutiny of Bill of Entry and related records, it was found that there was no protest by the importer with regard to (i) transaction value (ii) Light Displacement Tonnage (LDT), (iii) classification of fuel & oil (bunker) lying inside/outside engine room tanks. Further, sample of fuel & oil (bunker) was not drawn for Chemical Test in respect of the subject Bill of Entry. Hence, there was no requirement to grant personal hearing in the matter. Further, duty assessed provisionally was paid by the importer at the material time."

6.2 It is observed that the Commissioner of Customs (Appeals), in the remand order, has clearly directed the proper officer to issue speaking order afresh by following the principles of natural justice. In view of specific remand direction, I am of the considered view that it was not open for the

adjudicating authority to conclude that there is no requirement to grant personal hearing in the matter. The impugned order is contrary to the remand direction given by the Commissioner of Customs (Appeal). I find that no appeal has been filed against OIA No JMN-CUSTM-000-APP-65-24-25 dated 09.05.2024 by the department and therefore, it has attained finality. Thus, following the principals of judicial discipline, the adjudicating authority had no option but to follow the remand direction and issue speaking order afresh by following the principles of natural justice. I find that the matter relating to judicial discipline in quasi-judicial proceedings is no longer *res-intigra* and in this regard I rely on the following decisions:

- (i) Union of India vs Kamlakshi Finance Corporation Ltd 1991 (55) ELT 433 (SC)
- (ii) Ganesh Benzoplast Ltd vs Union of India 2020 (374) ELT 552 (Bom)
- (iii) Raj Kumar Mundravs Commissioner of Customs, Mundra 2014 (314) ELT 236 (Tri-Ahm).

6.3. The Hon'ble Apex Court in the case of Union of India vs Kamlakshi Finance Corporation Ltd 1991 (55) ELT 433 (SC) has held as under:

**“6.** Sri Reddy is perhaps right in saying that the officers were not actuated by any *mala fides* in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual *mala fides* but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate



authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessee and chaos in administration of tax laws.

7. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35E confers adequate powers on the department in this regard. Under sub-section (1), where the Central Board of Excise and Customs [Direct Taxes] comes across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under sub-section (2) the Collector of Central Excise, when he comes across any order passed by an authority subordinate to him, if not satisfied with its legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise in his order and there is a further right of appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under S. 35E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail."

6.4. In view of the above, I am of the considered view that the finding of the Adjudicating Authority is incorrect leading to incorrect order. The order

passed by the adjudicating authority is clear case of judicial indiscipline against the order of Appellate Authority to pass speaking order afresh by following the principles of natural justice. This act of Judicial indiscipline must be taken cognizance otherwise the whole purpose of getting justice is vitiated.

6.5. Further the adjudicating authority in respect of the decision in the case of M/s Navyug Ship Breaking Co. & others in Order No. A/11792-11851/2022 dated 01.12.2022, as submitted by the appellant has held that the final Assessment Order was issued on 20.10.2022 whereas the Order in respect of Navyug Ship Breaking Co. Vs C.C. Jamnagar in Customs Appeal No. 11031 of 2019 was issued on 01.12.2022 by Hon'ble CESTAT, Ahmedabad. He further held that in the said Order dated 01.12.2022, 57 importers had filed appeal. But the name of M/s Gupta Steel (Ship Breakers) was not mentioned in that list. Hence, he found that the above said Order dated 01.12.2022 is not applicable in this case. In this regard it is observed that the Hon'ble Tribunal vide Order No. A/11792-11851/2022 dated 01.12.2022 in the case of M/s Navyug Ship Breaking Co. & others has decided the issue of classification of remaining stock of bunkers lying inside/outside engine room of the vessel, which was upheld by the Hon'ble Supreme Court in the case of Mahalaxmi Ship Breaking Corp Versus Commissioner of Customs, Bhavnagar [(2023) 5 Centax 193 (S.C.)]. The adjudicating authority is directed to consider the decision of Hon'ble Tribunal, Ahmedabad and the decision of Hon'ble Supreme Court submitted by the appellant and issue speaking order afresh by following the principles of natural justice.

6.6. In view of the above finding as detailed in Paras above, I am of the considered view that the finding of the adjudicating authority that there is no requirement to grant personal hearing in the matter and not considering the Hon'ble Tribunal decision in the case of M/s Navyug Ship Breaking Co. & others vide Order No. A/11792-11851/2022 dated 01.12.2022 upheld by the Hon'ble Supreme Court in the case of Mahalaxmi Ship Breaking Corp Versus Commissioner of Customs, Bhavnagar [(2023) 5 Centax 193 (S.C.)] is not legally sustainable as the same is passed in violation of principles of judicial discipline.

6.7. In view of the above, I am constrained to once again remit the matter pertaining to the subject appeal to the adjudicating authority, who shall examine available facts, documents, submissions and accordingly take necessary action and issue speaking order following the principles of natural justice and adhering to the legal provisions. While passing this order, no opinion or views have been expressed on the merits of the dispute

or the submissions made by the appellant, which shall be independently examined by the adjudicating authority.

7. In view of above, the appeals filed by the appellant is disposed of in above terms.

सत्यापित/ATTESTED

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

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

By Registered Post A.D.

F.Nos. S/49-03,180/CUS/JMN/2025-26  
To,

Dated -05.12.2025

4722

1. M/s Gupta Steel (Ship Breakers),  
Plot No. 39, Ship Breaking Yard,  
Alang, Dist. Bhavnagar,



Copy to:

1.  The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Commissioner of Customs, Customs, Jamnagar.
3. The Assistant/Deputy Commissioner of Customs, Customs Division, Bhavnagar.
4. Guard File