



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 - 20250671MN0000111DFO

क	फाइलसंख्या FILE NO.	S/49-30/CUS/MUN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	JMN-CUSTM-000-APP-027-25-26
पा	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	17.06.2025
ड	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Speaking Order No. 13/2023-24 dated 13.07.2023 issued from F. No. VIII/6(a)- 24/2023-24
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	17.06.2024
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Shirdi Steel Traders, Plot No. 1497/B, Opposite Theosophical Lodge, Rupani Circle, Bhavnagar. Works :- Plot No - 40, Ship Recycling Yard Sosiya, Bhavnagar.

1.	यहप्रतिउत्सव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया 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) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआ

	देशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संपुक्तसचिव (आवेदनरांशोधन),वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकते हैं।
	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)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे 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)	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
(ब)	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, जब्तीऔरविविधमदोंकेशीषकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/- (रूपएएकहजारमात्र) ,जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां। यदिशुल्क,मांगागयाव्याज,लगायागयादंडकीराशि औररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.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, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकते 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, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण, पश्चिमीक्षेत्रीयपीठ Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench

	दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016	2 nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1) केअधीन 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 कि सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड कीरक मपाँचलाख रुपए या उससे कम होतो एक हजार 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 कि सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड कीरक मपाँचलाख रुपए से अधिक होले कि न रुपये पचास लाख से अधिक न होतो, पाँच हजार 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 कि सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड कीरक मपचास लाख रुपए से अधिक होतो, दस हजार 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% अदाकरने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, यादें के 10% अदाकरने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र - (क) रोक आदेश के लिए यागलतियों को सुधारने के लिए याकि सी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ काशुल्क भी संलग्न होने चाहिए।	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.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-	
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

M/s. Shirdi Steel Traders, Plot No. 1497/B, Opposite Theosophical Lodge, Rupani Circle, Bhavnagar, Works : - Plot No – 40, Ship Recycling Yard Sosiya, Bhavnagar (hereinafter referred to as “the appellant”) have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the Speaking Order No. 13/2023-24 dated 13.07.2023 issued from F. No. VIII/6(a)-24/2023-24 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Customs Division, Bhavnagar (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, facts of the case are that the appellant had imported vessel MV MSC NICOLE for breaking up as per Memorandum of Agreement dated 10.06.2023 and filed Bill of Entry No. 6624607, dated 28.06.2023 under Section 46 of the Customs Act, 1962. The Bill of Entry was provisionally assessed by classifying the goods viz. Vessels for breaking under CTH 89.08, Bunkers (inside/outside Engine Room Tank) under CTH 89.08, Provisions under CTH 98.05 and Paints, Thinner, Chemicals, Acid and Grease under CTH 3814. On production of Original Memorandum of Agreement with all other relevant documents, the Bill of Entry was finally assessed vide the impugned order by classifying fuel and oil (bunkers) inside and outside Engine Room Tanks under CTH 2710.

3. Being aggrieved with the impugned Order, the appellant has filed the present appeal contending as under;

- All such litigation appears to had been finally decided vide settled case law passed by the Hon'ble Tribunal Ahmedabad vide Order dated 01.12.2022 bearing No. A/11792-11851/2022., read with Order dated 05.04.2023 passed in Civil Appeal No. (S) 5318-5342/2009 by the Hon'ble Supreme Court of India. Therefore, the impugned Speaking Order is not proper correct legal as before issuance of the Speaking Order dated 13.07.2023 your Appellant had not been heard. If your Appellant would be heard before issuance of this Speaking Order dated 13.07.2023 your Appellant would have been explain all the fact and circumstances.
- It is to say and submit that the grounds mentioned at para 5 of the impugned order appears to have been consider without verifying the latest judgment dated 01.12.2022 passed by the Hon'ble Tribunal Ahmedabad. During course of deciding the issue whether such remaining stock of bunker either Lying inside the engine room of the vessel or outside the engine room of the vessel had correctly and leally classified under Chapter Heading No. 2710 instead of under Chapter Heading Chapter Heading No. 8908 of the Customs Tariff Act, 1975 had lastly been decided

by the Hon'ble Tribunal Ahmedabad vide their Order dated 01.12.2022, a copy of this order has already been annexed in the Appeal itself. In the impugned order dated 13.07.2023 The Adjudicating Authority has somewhat accepted the vies / submissions/ fact and circumstances of the case at para 3. From this document it is clearly establish that the impugned order appears to have been pass by violating "Settled case law" as discussed in the Appeal itself.

- The old and used ship under reference had been imported in the month of June, 2023 and presented the bill of entry on dated 28.06.2023 through EDI system, Order/Speaking Order wherein at para 3 of the impugned order the Adjudicating Authority/Assessing Officer himself has disclose that your Appellant had categorically classified the disputed goods under Chapter sub Heading No 8908 of the Customs Tariff Act, 1975 during the course of presetting the subject bill of entry under section 46 of the Customs Act, 1962. But the Assessing Officer had without authority of law has assessed to duty of customs duty of the disputed bunkers in the nature and style and classify as, mentioned at para 6 of the impugned Order, which reads as "In view of the above provisional assessment of Fuel and oil (bunkers) Inside & outside Engine Room Tanks, resorted to by the importer under CTH 8908 in the Bill of Entry has been re assessed to CETH 2710" by violating gross of principle of natural justice. This Speaking Order appears had been passed without observing the proper assessment proceedings either provisionally or finally of the imported goods. Therefore, the impugned Order dated 13.07.2023 appears to not to have been passed on the basis of such Judgments passed by the Hon'ble High Court as discussed at para 4.2, & para 4.3 wherein taken the base of case law decided by the Hon'ble High Court viz, in case of M/s Priya Blue Ind. (2006) (200 ELT 506 (Tri. Mum), M/s Priya Holding Pvt. Ltd (2003) (153) E.L.T 104 (Tri. Del) & case No. (2013) (288) E.L.T, 347 Guj respectively.
- 5. Further it is to submit that now the Hon'ble Tribunal Ahmedabad vide their Order No. A/11792-11851/2022 dtd. 01.12.2022, as well as b the Hon'ble Supreme Court of India vide their Order/judgment in Civi Appeal No (S) 5318-5342/2009 dtd. 05.04.2023 has decided the issu finally wherein it has been clearly held that the disputed bunkers et either lying as stock inside the engine room of the vessel or lying outside the engine room of the vessel have categorically classify unde Chapter Heading No. 8908 of Customs Tariff Act, 1975. The wrongfu classification made on the disputed bunkers under Chapter Headin No. 2710 though these disputed bunkers were nothing but finally termed as "Integral part of the old and used imported ship, imported only for breaking purpose. Therefore, your



Appellant had correctly self assessed the disputed goods under Chapter Heading No. 8908 of the Customs Tariff Act, 1975, in the nature as "part and partial of the old and used vessel under reference".

- The submission made at para 5 of the speaking Order/impugned Order appears not to have been fully complied with to achieve at the ends of "principle of natural justice" In para 5 of the adjudicating Authority has referred the Circular No. 37/1996-cus dtd. 03.07.1996. This circular appears to have been issued only when the C & AG had objected that such stock of moveable gears stores, bunkers would not be form of the LDT of the vessel when the duty of custom was levied at the specific rate of duty as per the "LDT of Ship Therefore in the present case, the concept of Circular no. 37/1996 is not applicable in the present case. The present case is pertaining to the importation of old and used ship MV MSC Nicole imported in the month of June 2023. Therefore, the impugned Order appears not to have been passed in accordance with the case laws as referred in the foregoing para. As well as no such settled quasi-judicial appears not to have been followed.

4. Shri Rahul Gajera, Advocate appeared for personal hearing on 12.06.2025 on behalf of the appellant. He reiterated the written submission made at the time of filing appeal. He relied upon the decision of Hon'ble Supreme court in the case of M/s Mahalaxmi Ship Breakers.

5. I have gone through the facts of the case available on record and grounds of appeal. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority classifying fuel and oil (bunkers) inside and outside Engine Room Tanks under CTH 2710 of the Customs Tariff Act, 1975, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the appellant had imported vessel MV MSC NICOLE for breaking up as per Memorandum of Agreement dated 10.06.2023 and filed Bill of Entry No. 6624607, dated 28.06.2023 under Section 46 of the Customs Act, 1962. The Bill of Entry was provisionally assessed by classifying the goods viz. Vessels for breaking under CTH 89.08, Bunkers (inside/outside Engine Room Tank) under CTH 89.08, Provisions under CTH 98.05 and Paints, Thinner, Chemicals, Acid and Grease under CTH 3814. On production of Original Memorandum of Agreement with all other relevant documents, the Bill of Entry was finally assessed vide the impugned order by classifying fuel and oil (bunkers) inside and outside Engine Room Tanks under CTH 2710.

5.2 It is observed that the Hon'ble Tribunal, Ahmedabad in Final Order No. A/11792-11851/2022, dated 01.12.2022 had settled the issue of

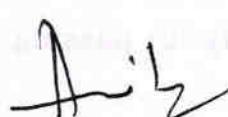
classification of oil contained in the bunkers tank inside engine room of vessel imported for breaking and held that Oil contained in Bunker Tanks in Engine Room of Vessel imported for breaking up is classifiable under CTH 8908 along with such vessel. The relevant para 5.4 of the decision is reproduced hereunder:

"5.4 In view of the above, aforesaid decisions of the Hon'ble Gujarat High Court and this Tribunal, the impugned Orders holding that Oil inside the Bunker Tanks in engine rooms are to be assessed to duty under CTH 27.10 are liable to be set aside and Oil contained in Bunker Tanks in Engine Room of Vessel imported for breaking up is classifiable under CTH 8908 along with such vessel."

Thus, the classification of Oil contained in Bunker Tanks in Engine Room of Vessel imported for breaking is settled by the order of Hon'ble Tribunal dated 01.12.2022.

5.3 As regards the Oil contained in Bunker Tanks outside the engine room of vessel, since no speaking order was passed by the adjudicating authority in the aforesaid case, the Hon'ble Tribunal had remanded the matter to the adjudicating authority to pass speaking order in respect of duty pertaining to Oil contained in Bunker Tanks outside the engine room of vessel. However, it is observed that the Hon'ble Tribunal while remanding the issue of classification of Oil contained in Bunker Tanks outside the engine room of vessel had held that if the tanks containing Oils are connected with pipeline with the engine or machinery of the vessel, then the same be treated as integral part of the engine or machinery of the vessel. Thus, in my considered view only factual verification was required to be done whether the tanks containing Oils outside engine room are connected with pipeline with the engine or machinery of the vessel. The relevant Para 5.5 of the said order of the Tribunal is reproduced as under:

"5.5 As regards, the Oil contained in Bunker Tanks outside the engine room of vessel, despite duty was paid under protest, there is, however, no speaking order passed as regards the same. It can be seen that if the tanks containing Oils are connected with pipeline with the engine or machinery of the vessel, there may be no reason why the same cannot be treated as integral part of the engine or machinery of the vessel. However, since there is no speaking order on that part of issue, we direct the adjudicating authority to pass speaking order in respect of duty pertaining to Oil contained in Bunker Tanks outside the engine room of vessel."



Thus, for the classification of oil contained in the Bunker Tanks outside Engine Room of the vessel imported for breaking, it was held that if the tanks containing Oils are connected with pipeline with the engine or machinery of the vessel, then the same is to be treated as integral part of the engine or machinery of the vessel and classifiable under CTH 8908 along with such vessel.

5.4 It is further observed that the Hon'ble Supreme Court in the case of Mahalaxmi Ship Breakers Corp. Versus Commissioner of Customs, Bhavnagar [(2023) 5 Centax 193 (S.C.)] had upheld the order of the Hon'ble Tribunal dated 01.12.2022. The relevant para of the order is reproduced as under:

“6. Having considered both the orders as well as the submissions of the parties, this Court is of the view that the later view expressed in the orders dated 16-2-2022 and 1-12-2022 [which are the subject matters of Diary No(s). 24220 OF 2022, Diary No(s). 8943 OF 2023, Diary No(s). 10272 OF 2023, Diary No(s). 10034 OF 2023, Diary No(s). 11290 OF 2023, Diary No(s). 8954 OF 2023, Diary No(s). 10267 OF 2023, Diary No(s). 10031 OF 2023] is correct. The Revenue's appeals are, accordingly, dismissed.”

5.5 It is observed that the Hon'ble Tribunal vide Order dated 01.12.2022 has categorically decided the issue of classification of oil contained in the Bunker Tanks and the same has been upheld by the Hon'ble Supreme Court vide order dated 05.04.2023 reported at [(2023) 5 Centax 193 (S.C.)]. Thus, in view of categorical decision of Hon'ble Tribunal which was upheld by the Hon'ble Supreme Court, there is no scope left for further interpretation in the issue. Therefore, the impugned order passed by the adjudicating authority classifying fuel and oil (bunkers) inside and outside Engine Room Tanks under CTH 2710 is erroneous and not sustainable. The impugned order being devoid of merit is accordingly set aside.

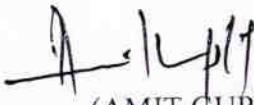
5.6 By respectfully following the decision of Hon'ble Tribunal, Ahmedabad dated 01.12.2022 and the decision of the Hon'ble Supreme Court, it is held that the Oil contained in Bunker Tanks in Engine Room of Vessel imported for breaking up is classifiable under CTH 8908 of the Customs Tariff Act, 1975 along with the vessel. The Bill of Entry may be assessed accordingly.

5.6.1 Further, as regards the classification of oil contained in Bunker Tanks outside the engine room of vessel, the matter is remanded to the adjudicating authority for passing speaking order after factual verification

whether the tanks containing Oils outside engine room are connected with pipeline with the engine or machinery of the vessel.

6. The appeal filed by the appellant is disposed off in above terms.




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

By Registered Post A.D.

F.Nos. S/49-30/CUS/MUN/2024-25
14/6/25

Dated -17.06.2025

To,

1. M/s Shirdi Steel Traders,
Plot No. 1497/B,
Opposite Theosophical Lodge,
Rupani Circle, Bhavnagar,
Works : - Plot No - 40,
Ship Recycling Yard Sosiya, Bhavnagar,


सत्याग्रह/ATTESTED


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

Copy to:

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