

सीमा शुल्क निवारक के आयुक्त का कार्यालय, सीमा शुल्क भवन,  
जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास,  
जामनगर (गुजरात) - 361 001



Office of the Commissioner of Customs (Preventive),  
'Seema Shulk Bhavan', Jamnagar – Rajkot Highway,  
Near Victoria Bridge, Jamnagar (Gujarat) – 361 001  
Email: commr-custjmr@nic.in; adj-custjmr@nic.in

DIN – 20250171MM0000000D91

1.	फाइल क्रमांक/ File Number	F. No. CUS/1031/2024-Adjn
2.	मूल आदेश क्रमांक/ Order-in-Original No.	14/ Additional Commissioner/ 2024-25
3.	द्वारा पारित/ passed by	अमित कुमार सिंह / Amit Kumar Singh अपरआयुक्त/ Additional Commissioner, सीमा शुल्क, निवारक/Customs (Preventive) जामनगर/ Jamnagar.
4.	Date of Order /आदेश दिनांक	29.01.2025
	Date of issue / आदेश जारी किया	29.01.2025
5.	कारण बताओ नोटिस क्रमांक एवं दिनांक Show Cause Notice Number & Date	ADC-24/2023-24 dated 18.03.2024
6.	नोटिसी का नाम/ Name of Noticee	M/s. Trans Tide Shipping Agillency, Shreleji 101, Plot No.8/C, Opp.Bhagini Mandal Hospital, Bhavnagar-364002 (Gujarat)

01.	इस आदेश की मूल प्रति संबन्धित व्यक्ति को निशुल्क प्रदान की जाती है। The original copy of this order is provided free of cost to the person concerned	
02.	इस मूल आदेश से व्यष्टि कोई भी व्यक्ति सीमा शुल्क अधिनियम, 1962 की धारा 128A(1)a(सीमा शुल्क) अपील (नियम, 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए-1 में अपील का प्रपत्र, दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है।) जिनमें से कम से कम एक प्रमाणित प्रति हो।	
	आयुक्त अपील 7वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 009 380 -	Commissioner (Appeals), 7 <sup>th</sup> Floor, Mrudul Tower, Behind Times of India, Ashram Road, Ahmedabad - 380 009
	Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA-1 shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).	
03.	अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये 0.50 पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची - I, मद 6 के तहत निर्धारित किया गया है।	
	The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paisa only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.	
04.	अपीलीय ज्ञापन के साथ शुल्क भुगतान जुर्माना / अर्द दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962 की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।	
	Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.	
05.	अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क (अपील) नियम, 1982 और सिस्टेट प्रक्रिया) प्रोसीजर (नियम, 1982 के सभी नियमों का पूरा पालन हुआ है।	
	While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.	
06.	इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के 7.5% के भुगतान पर होगी, जहाँ शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहाँ जुर्माना है अकेले विवाद में है। An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.	



### **BRIEF FACTS OF THE CASE**

**1.** M/s Trans Tide Shipping Agency, having office at Shreeji 101, Plot No. 8/C, Opp. Bhagini Mandal Hospital, Bhavnagar-364002 (hereinafter referred to as "**the Noticee**"), was appointed as Shipping Agent by the owner of the vessel to discharge customs clearance formalities for vessel M.V. TUG YEVIN (hereinafter referred to as "**the said vessel**") at Alang anchorage for breaking purpose. The TUG YEVIN towed the vessel D.V. Brave (9428580) from Mumbai to Alang Anchorage on 09.02.2022 and the boarding of the said vessel was carried out on 09.02.2022.

**2.** The Master of the said vessel provided the details of the quantity of the bunker & provision / stores consumed during last voyage from **Mumbai to Alang (Bhavnagar)**. On the basis of these details, the Shipping Agent filed the Manual Bill of Entry **No. No. 7417831-A on 12.04.2022** and self-assessed the Value of Bunker & Provision / Store as **Rs.35,06,631/-** and Customs duty payable thereon as **Rs.9,81,256/-** in the said Bill of Entry, as per the details given below :-

Sr. No.	Description of Goods	HSN / Custom Tariff Head	QUANTITY	Assessable Value (In <b>Rs.</b> )	Duty Self-assessed / Paid ( <b>Rs.</b> )
(1)	Fuel Oil (FO)	27101950	Nil	0	0
(2)	Marine Gas Oil (MGO)	27101930	33.730 MT /40155 Ltr.	Rs. 29,95,899.00	Rs.7,63,694/-
(3)	Lubricating Oil (LO)	27101980	893 Ltrs	Rs.3,60,732.00	Rs.88,344
(4)	Provision / Stores	21069099	750 Kgs.	Rs.1,50,000.00	Rs.1,29,218/-
<b>TOTAL</b>				<b>Rs.35,06,631/-</b>	<b>Rs.9,81,256/-</b>

**3.** The Duties of Customs leviable / payable on High Speed Diesel (HSD) Oil classifiable under CTSH 27101930, are as under :-

**(a)** *the duties of customs is levied as per Section 12 of the Customs Act, 1962 read with Notification No. 52/2017-Cus. dated 30.06.2017 (Sr. No. 3) (as amended) @ 2.5% on High Speed Diesel (HSD) Oil;*

**(b)** *Agriculture Infrastructure and Development Cess on Imported goods is levied under the provisions of Section 124 of the Finance Act, 2021 (13 of 2021) read with Schedule-VII at the rate of Rs. 4.00 per Liter on High Speed Diesel (HSD) Oil;*

**(c)** *Additional Duty of Customs on imported goods equivalent to Special Additional Excise Duty (SAED) is levied under the provisions of Section 147 of the Finance Act, 2002 (20 of 2002) read with Schedule-VII and No. 05/2019-CE (as amended vide Notf.no. Notification No.09/2021-Central Excise dtd.03.11.2021) at the rate of Rs. 8.00 per Liter on High Speed Diesel (HSD) Oil;*

(d) *Road and Infrastructure Cess on imported goods equivalent to Additional Duty of Customs is levied under the provisions of Section 111 of the Finance Act, 2018 (13 of 2018) read with Schedule-VI and Notification No. 18/2019-Cus. dated 06.07.2019 (Sr. No. 02) (as amended vide **Notification No.52 /2021-Customs dated 03.11.2021**) at the rate of Rs. 8.00 per Liter on High Speed Diesel (HSD) Oil;*

(e) *the duties of excise is levied as per Section 3 of the Central Excise Act, 1944 read with Notification No. 11/2017-CE dated 30.06.2017 (Sr. No. 3(ii)) dated 30.06.2017 (Sr. No. 3) (as amended vide **Notification No.01/2021-CX. dated 01.02.2021**) @ Rs.4.20 per Liter on High Speed Diesel (HSD) Oil;*

(f) *Social Welfare Surcharge on imported goods is levied under the provisions of **Chapter VI of Finance Act, 2018, of Section 108 (3) at the rate of 10%** on the aggregate of duties, taxes and cess which are levied and collected under section 12 of the Customs Act, 1962 (52 of 1962) on High Speed Diesel (HSD) Oil;*

(g) *the Additional Duty of Customs on imported goods under Sub-section (5) of Section (3) of the Customs Tariff Act, 1975 (51 of 1975) in lieu of the sales tax, value added tax, local tax and other taxes or charges **leviable on sale or purchase or transportation read with No. 53/2017-Cus.dated 30.06.2017** (as amended) at the rate of **4% ad-valorem** on High Speed Diesel (HSD) Oil;*

**3.1** In view of the above, Duties of Customs payable on the Marine Gas Oil (MGO) (CTSH 27101930) worked out to **Rs. 13,06,590/-** for the quantity 40155 Ltrs having assessable value of Rs.29,95,899/- as under :-

Sr. No.	Types of Duties	Rate of Duty	Marine Gas Oil (MGO) / HSD
1	Quantity	---	40155 Ltr.
2	Assessable Value (In Rs. )	---	Rs. 29,95,899/-
3	Basic Customs Duty (BCD) [Notification No. 52/2017-Cus. dated 30.06.2017 (Sr. No. 3)]	2.5%	Rs. 74,897/-
4	Agriculture Infrastructure and Development Cess (AIDC)	Rs. 4/- per Liter.	Rs. 1,60,620/-
5	Addl. Duty of Customs equivalent to Special Additional Excise Duty (SAED). <b>[No. 05/2019-CE dated 06.07.2019 (as amended)]</b>	Rs. 8/- per Liter.	Rs. 3,21240/-
6	Road and Infrastructure Cess equivalent to Additional Duty of Customs [(Sr. No. 02) (as amended)]	Rs. 8/- per Liter.	Rs. 3,21,240/-
7	Basic Excise Duty as per Section 3 of	Rs.4.20 per	Rs. 1,68,651/-

	the Central Excise Act, 1944 <b>[Notification No. 11/2017-CE dated 30.06.2017 (Sr. No. 3(ii)) (as amended)]</b>	Liter.	
8	Social Welfare Surcharge Notification <b>No. 12/2021-Cus. dated 01.02.2021</b> [@ 10% of 3 + 4 + 5 + 6 + 7]	@ 10%	Rs. 1,04,665/-
9	<i>the Additional Duty of Customs on imported goods under Sub-section (5) of Section (3) of the Customs Tariff Act, 1975 (51 of 1975) [No. 53/2017-Cus. dated 30.06.2017 (as amended)]</i> [4%age of 2+3+5+6+7]	@4%	Rs. 1,55,277/-
10	<b>Total duty on MGO/HSD [3 to 9]</b>		Rs. 13,06,590/-

**3.2** It appears that total Import duty payable on goods cleared vide Bills of Entry comes to **Rs. 15,24,152/-** ((Duty payable on Marine Gas Oil (MGO) / High Speed Diesel (HSD) Oil Rs.13,06,590/- + Rs. 88,344 (Lub Oil) + Rs. 1,29,218/- (provisions).

**3.3** The Duties of Customs self-assessed/paid by the shipping agent is Rs.9,81,256/- vide Challan no. IMP-SBY/03/2022-23 dated 20.04.2022. Thus, it appears that the Shipping Agent has short-paid Customs duty amounting to **Rs.5,42,896/-** and thereby contravened the provisions of Section 12 of the Customs Act, 1962. Hence, the duty short-paid of **Rs.5,42,896/-** is required to be demanded and recovered from the said shipping Agent under Section 28 of the Customs Act, 1962 along with interest thereon under Section 28AA of the Customs Act, 1962.

**4.** Since the Noticee shipping agent has contravened the provisions of Section 12 of the Customs Act, 1962, therefore, they have rendered themselves liable for penalty under Section 117 of the Customs Act, 1962.

5.

#### **Legal provision of the Customs Act, 1962 attracted here.**

**Section 12. Dutiable goods.**—(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the 1 [Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.

**Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.**—(1) Where any duty has not been levied or not paid or short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, — (a) the proper officer shall, within [two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [or paid] or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice. Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the the person chargeable with duty or interest in such manner as may be prescribed.] (b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of, — (i) his own



ascertainment of such duty; or (ii) the duty ascertained by the proper officer, the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

**Section 28AA.** Interest on delayed payment of duty—(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

**Section 117.** Penalties for contravention etc., not expressly mentioned.—Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [one lakh rupees].

**6.** The Noticee has contravened the provision of Section 12 of Customs Act, 1962 and therefore is required to pay the differential duty recoverable under Section 28 along with applicable interest under Section 28AA.

**7.** As stipulated under proviso to clause (a) to sub-section (1) of Section 28 of the Customs Act, 1962 and in pursuance of Regulation 3(1) of the Pre-Notice Consultation Regulations, 2018, vide the letter F N. CUS/1031/2024-Adjn dated 27.02.2024, vide the letter F N. CUS/1031/2024-Adjn dated 27.02.2024, the Noticee was accorded an opportunity to file submission in the matter and in case, if he wished to be heard in person by the adjudicating authority. It was further impressed upon in the letter that, if no reply is received, than the proper officer shall proceed to issue Show Cause Notice without any further communication.

**7.1** The Noticee vide their letter Reference No. NIL dated 28.02.2024 filed their submission, wherein, they inter alia stated that, they are not at all liable to pay the so called demand of Coastal duty under the provisions as contemplated under Chapter XII of the Customs Act, 1962 and referred Section 93 of the Customs Act, 1962 to say that No coastal bill has been passed under Section 92 in this case. The Noticee Shipping Agent submitted copy of list of last 10 Ports of call to say that the Last Port Clearance from Mumbai was issued for Dubai in water ballast; that they referred a certificate issued by the Master of the vessel certifying that they were called for by the owner of the ship to move to the next port "Alang" and submitted that the vessel was not a "Coastal going vessel from one Indian port to another Indian port for carrying out commercial business. That therefore no demand could be raised in violation of Section 12 of the Customs Act, 1962. The Noticee referred various case laws and Circular No. 58/97 dated 6.11.1997 and Circular / Letter No. 450/66/2005-Cus IV dated 24.11.2005 to say that the department failed to produce an evidence that the notice as well as the concerned Steamer agents of Port of Cochin had

applied for converting the vessel into "Coastal Trade". They also submitted that the Alang Port has only been declared for import of old and used ship for breaking only and hence question of converting the said vessel into coastal run does not arise.

**7.2** The noticee did not agree with the proposal of paying differential duty stating that there was no duty liability at all on the ground that the vessel was not in Coastal run. Considering the above submissions of the Noticee it is decided to issue the show cause notice.

**8.** Now, therefore, **M/s Trans Tide Shipping Agency, having office at Shreeji 101, Plot No. 8/C, Opp. Bhagini Mandal Hospital, Bhavnagar-364002** is hereby called upon to show cause to the Additional Commissioner of Customs (Preventive), Jamnagar having his office at "Seema Shulk Bhavan", Jamnagar Rajkot Highway, Besides Chamber of Commerce, Jamnagar, within 30 days from the date of receipt of this Show Cause Notice, as to why:-

- (a) the differential Customs duty of Rs.5,42,896/- levied under provisions of Section 12 of the Customs Act, 1962 & other relevant provisions discussed hereinabove should not be demanded and recovered under Section 28 of the Customs Act, 1962;
- (b) interest payable thereon under Section 28AA of the Customs Act, 1962 should not be charged upon and recovered from them for not paying the applicable Customs duty as above; and
- (c) penalty under Section 117 of the Customs Act, 1962 should not be imposed upon them for contravention of the provisions of Section 12 of the Customs Act, 1962.

**DEFENCE SUBMISSION:**

**9.** M/s. Trans Tide Shipping Agency, Bhavnagar in the written submission dtd. 09.04.2024, amongst other things, has submitted that the issue has been raised for levy of so called differential duty of customs i.e. Coastal duty to the tune of Rs.5,42,896/- on the stated stock of Fuel Oil, MGO, Lube Oil etc. reported to have been consumed/used from the port Mumbai under cover of Port Clearance bearing No.F-1261 dtd.03.02.2022 and pray to consider the same at the time of deciding the case. They had fully apprised the department that they were not liable to pay coastal duty on various grounds/submission as stated therein. They have submitted on the basis of true facts and circumstances read with the provisions of Chapter XII of Customs Act, 1962; that the Customs duty can be levied when "Foreign Going Vessel" is converted into carrying out coastal goods which not the case here;

that therefore differential coastal duty amounting to Rs. 5,42,896/- was far away from the statutory provision of Section 12 of the Act; that as per provision of Section 95, the Mater of the vessel had to provide a copy of "An Advice Book" which would have been signed by Master of the vessel, but in the present case no such material evidence have been disclose for levy of such unwarranted Coastal duty but paid with bona fide intention only to avoid delay in completing the import procedure up to the pressing of Import General Manifest before custom officer; that these all facts and circumstances are well known to the department before issuance of such unwarranted demand of such coastal duty; that thus this act of the debarment was in fact not true, correct and legal but appears to have been issued by ignoring the proper interpretation of various provisions as "Set forth" in the Chapter XII of the Customs Act, ; that they have proved on basis of the various document either produce at the time of initiating such action for so called wrong recovery of coastal goods as initiated at the first initial stage by the Assistant Commissioner of Customs has wrongfully raised the issue and to whom we had also categorically reply that they were not liable to pay so called coastal duty on so called coastal goods. Therefore, the subject so cause notice deserves to be dropped.

**10.** The noticee, in above referred Defense Reply dtd.09.04.2024 has further stated that they had also categorically submitted that they are not liable to pay the so called "Coastal duty" as demanded without disclosing the previous history when they have also paid up duty of the so called duty of Customs for Rs. 9,81,256/- paid vide challan No. IMP-SBY/03/2021-22 dtd. 20.04.2022 only and only with an intent to avoid prolong delay in making /completion of the due Customs formalities being "Registered Shipping Agent" who is required to full filled all such obligation before completion of filling of Import documents so far as dealt with to board the vessel under reference "which was known as Ocean going vessel at the material time and only been "Manifested the whole vessel as cargo for unloading of /beaching of "of the subject vessel at the designated ship breaking yard plot ;that these all activities were known to the department at the material time ;that therefore the subject issue raise is not proper, correct, and legal as such irrelevant "grounds" appears to have been taken on record to sustain the so called "illegal activities" so far as the disputed levy of "Coastal duty is concerned" ;

**11.** The noticee has further stated that in the present issue, they have already relied various settled case laws at the time of pre-consultation submission dtd.28.02.2024 to the instant of Show Cause Notice in which they

request to consider these case laws again and pray to extent healthy cooperation in the matter being settled issues within all four corners of Customs Law; that previously so many Ocean going vessel had been anchored at the Alang Port Yard under cover of valid port clearance capacity as Ballast only, issued by other proper custom officer coming under the various Customs ports falling under the jurisdiction of Indian Customs Water.

**12.** The noticee-M/s. Trans Tide Shipping Agency, Bhavnagar, in their further submission dtd.04.01.2025 has that the duty on Fuel Oil, MSO, Lubricating Oil etc. consumed during the voyage of the vessel "MV TUG YEVIN" which towed a Dead vessel viz. D.V.Brave to SBY Alang (Bhavnagar) from Mumbai itself is contrary to section 12 of the Customs Act, 1962 and hence the proposal in the Show Cause Notice for differential duty demand is not sustainable: that the goods in question were not imported at Alang, and therefore, the demand for duty is contrary to Section 12 of the Customs Act, 1962.

**13.** The noticee has further stated that the goods which are consumed by a foreign going vessel during its voyage between two Indian ports is excluded from the levy of customs duty as per section 87 of the Customs Act. They have further submitted that the vessel "MV TUG YEVIN" sailed from Mumbai(India) to Alang(Bhavnagar) was a foreign going vessel. They have further submitted that appellant had not applied for conversion of the vessel into coastal run and further the port clearance certificate clearly mentioned the status of the vessel which is evident from the port clearance number in that the certificate. They further submitted that definition of "goods" as per section 2(22) includes vessel and since "MV TUG YEVIN" carried a vessel which is "goods", the exclusion provided under Section 87 would apply to the said vessel which was a foreign going vessel.

**14.** The noticee has further stated that the ship and bunkers consumed during the vessel's voyage between Indian ports within territorial waters are exempt from customs duty under Section 87 of the Customs Act, 1962. The vessel qualifies as a foreign-going vessel under Section 2(21), as no conversion to a coastal run was made under Section 89. They have further stated that the movement between Indian ports does not alter its status, ensuring the continued applicability of the exemption. Therefore, the imposition of customs duty on such stores and bunkers is inconsistent with statutory provisions, and the exemption under Section 87 must be upheld.



**PERSONAL HEARING**

**15.** Personal hearing in the matter was held on 08.01.2025. Shri Rahul, Gajera, Advocate attended the hearing on behalf of the Noticee, in virtual mode of hearing. He re-iterated his submission dtd. 09.04.2024 and further submission dtd. 04.01.2025. He said that all his submissions are contained in his Written Replies.

**DISCUSSION & FINDINGS:**

**16.** I have carefully gone through the facts of the case, Show Cause Notice and written defence submission dtd. 09.04.2024 as well as further submission dtd. 04.01.2025 and personal hearing held in virtual mode on 08.01.2025.

**17.** The issues to be decided in the instant case are:-

- (a) whether the Noticee is liable to pay Customs duty on actual consumption of ship stores / Fuel Oil (bunkers) consumed between the Mumbai (India) to Alang.
- (b) whether the Noticee has short paid the Customs Duty of Customs as proposed in the Show Cause Notice or not.
- (c) Whether Penalty under Section 117 of the Customs Act, 1962 is imposable upon the Noticee or not.

**19.** I find that the SCN alleges and proposes recovery of short payment of duty of Customs on Marine Gas Oil as the Noticee while filing Bill of Entry self-assessed the Customs duty payable on consumption of Bunkers (including Marine Gas Oil) and Ship Stores between Mumbai and Alang Port. The Noticee self-assessed and paid total duty on Marine Gas Oil (CTH 27101930) Rs. 7,63,694/- as against duty payable worked out to Rs. 13,06,590/-. Hence, the demand of differential duty of Rs. 5,42,896/- in the Show Cause Notice.

**20.** It is noticee's contention that the vessel was not converted to coastal run as it was not carrying coastal cargo from **Mumbai** port and hence the vessel was a foreign going vessel in terms of Section 2 (21) of the Customs act, 1962 exempted from payment of duties of Customs on consumption of bunkers and ship stores in terms of Section 87 of the Customs Act, 1962. The Noticee also discussed procedures related to conversion of foreign going vessel to coastal run vessel and the duty leviable there on. The Noticee referred CBEC Circular No 58/97 dated 6.11.1997 to submit that it is not the case that request for coastal conversion of the M.V. TUG YEVIN was made either at

Mumbai or at Alang. The noticee has challenged the levy of Customs duty itself on consumption of Bunkers and provisions during the voyage of the vessel from Mumbai Port to Alang in terms of Section 12 of the Customs Act, 1962.

**21.** I observe that the Board vide Circular No. 58/97 dated 6.11.1997 prescribed Procedure for collection of duty on ship stores consumed during coastal run upon specific request of the Master of the Vessel and do not deal with legal obligation to pay Customs duties under the Customs Act, 1962.

**22.** Now, the fact remains that Noticee themselves paid the Customs duty vide Challan No. IMP-SBY/03/2022-2023 dated 20.04.2022 by filing Bill of Entry No. 7417831-A dated 12.04.2022. Therefore, levy of Customs duty under Section 12 of the Customs Act, 1962, and duty liability of the Noticee on consumption of the Bunkers and ship stores (provisions) during vessel's voyage from Mumbai Port to Alang was not in dispute at that time and hence not part of the show cause notice. However, the Noticee in their reply solely relied upon their contention that there is no duty liability at all on consumption of the ship stores and bunkers/ fuel oil during the voyage of the vessel from Mumbai to Alang as the vessel was a Foreign Going Vessel. The noticee raised the issue of levy of Customs duty on import under Section 12 of the Customs Act, 1962 upon receipt of the Show Cause Notice only when duties short paid were demanded from them. However, I proceed to take up the matter as the issue of levy of Customs duty under Section 12 is raised by the Noticee. To better appreciate the contention of the Noticee and the issue involved, relevant definition and provisions of Customs Act, 1962 are discussed as under:

**23.** The word "Import" as defined in Section 2(23) of the Customs Act, 1962 and "India" as defined in Section 2(27) of the Customs At, 1962 reads as under:-

Section 12 of the Customs Act, 1962 which provides for levy of Customs duty on goods imported into India reads as under:-

**"SECTION 12. Dutiable goods. — (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of Customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.**

**(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."**

**Section 2. Definitions: In this Act, unless the context otherwise requires:-**

(23) "**import**", with its grammatical variations and cognate expressions, means bringing into India from a place outside India

(27) "**India**" includes the territorial waters of India;"

**23.1** Above three provisions of the Customs Act, 1962 stipulate that duty is chargeable on goods imported into India. Importation takes place once goods enter into territorial waters of India and the event of importation/ import attracts provisions of Customs Act, 1962 including levy of duty under Section 12 of the Act. The word 'import' is defined in Section 2(23) and, unless the context otherwise requires 'import' with its grammatical variations and cognate expressions means bringing into India from a place outside India. The word 'India' is defined in Section 2(27) which is an inclusive definition and it states that 'India' includes the territorial waters of India. Thus, the combined effect of the words 'import' and 'India' in these two sub-sections of Section 2 is that import takes place when goods are brought into the territorial waters of India from a place outside India. The duties of Customs are levied with reference to goods and the taxable event is the import of goods within India i.e. within territorial waters. The above provisions do not provide for levy of duty beyond territorial waters and the definition of "India" as quoted above does not unless otherwise specified, include beyond territorial waters.

**23.2** The definition of term "foreign going vessel or aircraft" as defined in sub-section (21) of Section 2 which reads as under:-

**"(21) "foreign-going vessel or aircraft"** means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes -

- (i) any naval vessel of a foreign Government taking part in any naval exercises;
- (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;
- (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever."

Section 87 of the Customs Act, 1962 reads as under :

**"Imported stores may be consumed on board a foreign-going vessel or aircraft.** - Any imported stores on board a vessel or aircraft (other than stores to which Section 90 applies) may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft."

**23.3** There are two conditions in Section 2(21). The first condition is

that there must be carriage of goods or passengers between a foreign port and an Indian port. The second condition is that the vessel in question must be engaged in the carriage of such goods or passengers. In the case in hand, the voyage of TUG YEVIN from Mumbai Port to Alang port i.e. within territorial waters of India, was performed between two Indian ports in Indian territorial waters only. Therefore, once the vessel sailed from Port of Mumbai (India) for Alang Port of India for its own purpose i.e. for breaking purpose in India (i.e. at Alang), it was not sailing between the port outside India and a port in India and journey between Mumbai and Alang was not necessitated under a foreign run i.e. *carriage of goods between any port in India and any port outside India* as defined in Section 2(21) of the Customs Act, 1962. Therefore, irrespective of its itinerary, the vessel TUG YEVIN was engaged in carrying cargo between two Indian ports during the voyage from Mumbai port to Alang port. Therefore, the ship stores and bunkers consumed during the journey between two Indian port within the territorial waters of India are goods brought into the territorial waters of India from a place outside India and the duties of Customs are levied with reference as the taxable event i.e. the import of goods within India i.e. within territorial waters has been taken place. As regards applicability of Section 87 contended by the Noticee, I find that as long as the vessel or the aircraft holds the status as a foreign-going vessel, exemptions contained in Section 87 applies without any doubt. However, once the stores consumed when the vessel was involved in operations within Indian territorial waters, benefit of Section 87 of the Customs Act, 1962 cannot be extended.

**24.** I find it relevant to mention Instruction No.15/2018 dated 4.10.2018 issued by the CBIC clarifying law point of levy of duties of Customs under Section 12 in case of on board consumption of ship stores within territorial waters of India by the Cruise vessels while in foreign run. The CBIC vide Instruction No.15/2018 dated 4.10.2018 in the matter of duty on consumption of Ship Store by Cruise Vessels touching Indian Ports has clarified and stipulates that duty is payable on liquor and other consumed stores during the transit of a cruise vessel through territorial waters of India. This clarification in Instruction No.15/2018-Cus is in line with the interpretation discussed in foregoing Paras. Clause 2(v) of the Instruction reads as under:-

"(v) The definition of Indian Customs waters has been extended up to EEZ in Finance Act, 2018. 'Indian Customs Water' finds mention in various sections of Customs Act primarily related

to enforcement. Dutiability of an imported product is governed by Section 12 of the Customs Act which is unaffected by the impact of said amendment. A cruise vessel calling on an Indian port would, therefore, **be liable to pay duty on liquor and other consumed stores during its transit through territorial waters or its period of stay at port in India**. Mere passage through Indian Customs water without calling on at any of the Indian ports would not attract Customs duties."

**24.1** The position of law as explained in the Instruction No.15/2018- Customs dated 04.10.2018 is that dutiability of an imported product is governed by Section 12 of the Customs Act and duty is to be paid on consumed stores during vessel's transit through territorial waters or its period of stay at port in India. The fact remains that during the course of its movement between coastal ports in India, the vessel TUG YEVIN has consumed certain stores, and bunkers. The fact not disputed is that the stores are consumed within the territorial waters. Though the Noticee paid the self-assessed Customs duty of Rs.9,81,256/- at the material time on the basis of consumption of ship stores based on inventory declared by the Master of the Vessel without any protest & challenge about its leviable, now, while contesting the issue did not dispute the revised duty calculation of import duties payable on Marine Gas Oil proposed in the SCN.

**25.** I find that the Hon'ble Supreme Court of India's judgment on the issue of collecting duty in such cases and applicability of Section 87 in the case of M/s. Aban Loyd Chiles Offshore Ltd Vs U.O.I reported as 2008 (227) ELT 24 (SC) is applicable in this case. The Hon'ble Supreme Court of India has held as under:-

"79. It may not be correct to contend that the oil rigs installed by the appellants answer the description "foreign going vessel". A vessel may be a foreign going vessel but if the oil rig is situated in the area to which the Customs Act applies or extends, the aid of Section 2(21) of the Customs Act cannot be taken to get the benefit under Sections 86 and 87 of the same Act. The principle underlying under Sections 86 and 87 is that the stores are consumed on board by a foreign going vessel. **If the so-called foreign going vessel is located within a territory over which the coastal State has complete control and has sovereign right to extend its fiscal laws to such an area with or without modifications and the stores were consumed in the area to which the Customs Act has been extended, reference or reliance to the vessel being a foreign going vessel shall be of no consequence and the Customs duty would be leviable as the goods are consumed within the territory to which the Customs Act has been extended** as per the Maritime Zones Act, 1976 and the International Convention UNCLOS, 1982."

**25.1** The Hon'ble CESTAT in the case of M/s. Asian Cablesip Pvt Ltd reported as 2020(374) ELT 597 (Tri-Bang), relying on the Hon'ble Supreme

Court of India's judgment *supra*, in matter of Foreign Going Vessel engaged to carry out repairs of cables located in South East Asia and Indian Ocean Area, has held that Customs Duty on ship stores consumed while the vessel was performing operations within Indian territorial waters requires to be paid. The relevant portion of the order reads as under:-

**"26.** On a plain reading of Section 87 as above, it is evidently clear that as long as the vessel or the aircraft holds the status as a foreign-going vessel, exemptions contained in Section 87 applies without any doubt. Going by the ratio of the judgment of the Hon'ble Supreme Court in the case of *Aban Loyd Chiles Offshore Ltd.*, 2008 (4) TMI 19 (SC) = 2008 (227) E.L.T. 24 (S.C.) held that :

**"79.** It may not be correct to contend that the oil rigs installed by the appellants answer the description "foreign going vessel". A vessel may be a foreign going vessel but if the oil rig is situated in the area to which the Customs Act applies or extends, the aid of Section 2(21) of the Customs Act cannot be taken to get the benefit under Sections 86 and 87 of the same Act. The principle underlying under Sections 86 and 87 is that the stores are consumed on board by a foreign going vessel. If the so-called foreign going vessel is located within a territory over which the coastal State has complete control and has sovereign right to extend its fiscal laws to such an area with or without modifications and the stores were consumed in the area to which the Customs Act has been extended, reference or reliance to the vessel being a foreign going vessel shall be of no consequence and the Customs duty would be leviable as the goods are consumed within the territory to which the Customs Act has been extended as per the Maritime Zones Act, 1976 and the International Convention UNCLOS, 1982."

From the above, we find that though the status of an FGV is not altered by the fact that such vessel or aircraft has run to a domestic Port or Airport during such time, duty on the stores consumed when the vessel was involved in operations within Indian territorial waters, needs to be collected in view of the above judgment. We find that Hon'ble Bombay High Court in the case of *Pride Foramer* has also taken the same view. This Bench has also followed the same in the case of *Focus Energy*, 2019 (11) TMI 22 (CESTAT BANG.) Therefore, we find that the appellants require to pay duty on the ship stores consumed by them while they were operating in the territorial waters of India. The appellants claim that such operations were only once during 4th October 2007 to 6th October 2007 and the applicable duty payable is Rs. 1,63,479. However, this is a matter of fact and the same requires to be ascertained/verified from the records like vessel's log books, correspondence with their masters, telecom authorities, information submitted to Port and Customs etc. For this reason, the matter requires to go back to the adjudicating authority for computation of the duty liability.

**27.** We find that Learned Authorized Representative for the Department has reiterated the findings of the Learned Commissioner. However, as per our discussion above, the contentions of the Department have been countered and held to be not maintainable under law. We also find that the cases relied upon by the Authorized Representative cannot help the cause of the Department. We find that the decision in the case *Aban Loyd Chiles Offshore Ltd.*, *Pride Foramer* (*supra*) concerned about the vessels which were rigs engaged in oil exploration in the designated areas of continental shelf and exclusive economic zone, which were declared by a notification to be a part of India for a limited purpose. However, we find that the cases are relevant only to the extent they decide the applicability of duty-free stores during the period the vessels were in Indian territorial waters.



Moreover, the submissions of the Learned AR are based on stray correspondence and no investigation to that extent appears to have been done in this regard. The crux of the argument of the department was that the vessel was berthed in Cochin for most of the time during the disputed period and thus it ceases to be foreign going vessel. Moreover, we find that the vessel was anchored in Cochin Port and was under the watchful eyes of Customs and Port authorities. Many times, Customs authorities have boarded the vessel as demonstrated by the counsel for the appellants. Customs officers were supervising the bonded stores of the vessel. It was well within the right and mandate of Customs authorities to advise the appellants to ensure that there were no procedural and other infractions. No proof of such efforts and correspondence, if any, has been placed on record before us. It can be seen that the arguments of adjudicating authority were controverted and we are inclined to hold that the impugned vessel is foreign going vessel and as such the exemption in terms of Section 87 of the Customs Act, 1962 is available to the appellants, despite the fact that it was lying berthed at Cochin for most part of the time. However, in view of the Hon'ble Apex Court's decision in *Aban Loyd* case (*supra*), we find that the duty on the ship stores consumed while the vessel was performing operations within Indian territorial waters requires to be paid by the appellants. Learned Counsel for the appellants has fairly conceded the same and expressed willingness to pay the same."

**25.2** The Hon'ble CESTAT in the case of C.C. Vs Shipping Corporation of India reported as 1985 (21) E.L.T. 778 (Tribunal) has in similar matter held as under:-

"**6.** The case of *M.T. Netaji Subhas Bose* and the case of *Nancy Dee* are different. *Nancy Dee* was specially chartered and brought to India for the purpose of lightering work of wheat carrying from super tankers. This is not the case with *M.T. Netaji Bose*. The vessel was itself a foreign cargo carrying ship which arrived from Kharg Island in the Persian Gulf with foreign cargo for Madras and Visakhapatnam. There is no evidence that it was destined to go to Calcutta. When she went to Calcutta she did so only to carry crude oil taken from *M.T. Zakir Hussain* at Visakhapatnam. Nor is there any evidence that *M.T. Zakir Hussain* was destined to discharge foreign crude at Calcutta and that *M.T. Netaji Subhas Bose* merely helped to carry the cargo to its intended destination. *M.T. Netaji Subhas Bose* diverted at Visakhapatnam, an Indian port in order to carry cargo to Haldia another Indian port. It makes no difference that the cargo was a foreign cargo. The fact was that cargo was carried between one Indian port and another by a ship that was not meant to undertake that voyage. Nor was it meant to lift Indian cargo at Calcutta for any foreign port as is proved by the fact that she left that port in ballast, touching Vizag again which she left on 24-1-1978 also in ballast. The run from Vizag to Calcutta between 19 and 22-1-1978 was clearly a coastal run to carry cargo between two Indian ports, and no other. We are, therefore, unable to agree with the Shipping Corporation of India that the demand for duty made by the Vizag Customs was incorrect.

**25.3** In an another case of vessel being sailed in territorial waters of India, the Hon'ble CESAT in the case of M/s. Bharat Petroleum Corporation Ltd, Bombay reported as 1984 (17) ELT 413 (Tribunal) [maintained in 1989 (43) ELT A131 (Supreme Court)] has allowed the benefit of exemption from Excise duty on bunkers supply to a foreign going vessel sailing between two Indian port i.e. Bombay and Kolkata while in Foreign Run and held that status of the Vessel has to be ascertained with regard to facts and circumstances of the case.

**25.4** The above views are supported by the ratio in the above discussed judgments and in view of the matter I am not inclined to consider defense theory and various judgments relied upon by the Noticee. The said judgments relied upon by the noticee are issued in connection with the peculiar facts and circumstances therein which also includes non-acceptance of Departmental Appeals based on litigation policy which do not have precedence value.

**26.** In the light of the above discussion and relying on the above case laws, I hold that the Noticee is required to pay Customs duty on ship stores, bunker, provisions, alcohol etc. consumed on Vessel TUG YEVIN during its transit through territorial waters or its period of stay at port in India. Therefore, Customs duty is rightly paid by the Noticee however remained short paid as it was wrongly self-assessed by them.

**27.** I find that Customs duty payable on Marine Gas Oil (CTH 27101930) which includes basic Customs duties along with other duties and Cess as imposed under various provisions is as under:-

Sr. No.	Types of Duties	Rate of Duty	Marine Gas Oil (MGO) / HSD
1	Quantity	---	40155 Ltr.
2	Assessable Value (In Rs.)	---	Rs. 29,95,899/-
3	Basic Customs Duty (BCD) [Notification No. 52/2017-Cus. dated 30.06.2017 (Sr. No. 3)]	2.5%	Rs. 74,897/-
4	Agriculture Infrastructure and Development Cess (AIDC)	Rs. 4/- per Liter.	Rs. 1,60,620/-
5	Addl. Duty of Customs equivalent to Special Additional Excise Duty (SAED). [No. 05/2019-CE dated 06.07.2019 (as amended)]	Rs. 8/- per Liter.	Rs. 3,21240/-
6	Road and Infrastructure Cess equivalent to Additional Duty of Customs [(Sr. No. 02) (as amended)]	Rs. 8/- per Liter.	Rs. 3,21,240/-
7	Basic Excise Duty as per Section 3 of the Central Excise Act, 1944 [Notification No. 11/2017-CE dated 30.06.2017 (Sr. No. 3(ii)) (as amended)]	Rs. 4.20 per Liter.	Rs. 1,68,651/-
8	Social Welfare Surcharge Notification No. 12/2021-Cus. dated 01.02.2021 [ $\text{@ } 10\% \text{ of } 3 + 4 + 5 + 6 + 7$ ]	@ 10%	Rs. 1,04,665/-
9	<i>The Additional Duty of Customs on imported goods under Sub-section (5) of Section (3) of the Customs Tariff Act,</i>	@4%	Rs. 1,55,277/-

1975 (51 of 1975) /No. 53/2017- Cus. dated 30.06.2017 (as amended) [4%age of 2+3+5+6+7]			
10	<b>Total duty on MGO/HSD [3 to 9]</b>		Rs. 13,06,590/-

**27.1** The noticee in their submissions has challenged the levy of Customs duty itself however not disputed duty calculations amounting to Rs.13,06,590/- payable on MGO as worked out above and proposed in the Show Cause Notice. Thus, actual duty payable and difference arose due to short payment while filing the Bill of Entry is not in dispute. Therefore, I find that the differential duty of Rs.5,42,896/- short paid on MGO (CTH 27101930) is required to be paid by the Noticee. In view of above facts, I confirm the demand of differential duty of Rs. 5,42,896/- to be recovered from the Noticee under Section 28 (1) of the Customs Act,1962 along with interest under Section 28 AA of Customs Act,1962 as proposed in the Show Cause Notice

**28.** The Show Cause Notice also proposes penalty on the Noticee under Section 117 of the Act which reads as under:-

**"Section 117** Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees"

**28.1** I find that Section 17 of the Customs Act, 1962 provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in electronic form, as per Section 46 or 50 respectively and therefore, under self-assessment, it is the responsibility of the importer or exporter to ensure that he declares the correct classification, country of origin, applicable rate of duty, value, benefit or exemption notification claimed, if any in respect of the imported / exported goods while presenting Bill of Entry or Shipping Bill. In the present case, I find that the Noticee has not paid appropriate duty leviable under Section 12 of the Customs Act, 1962 as much as they failed to self-assess correct duty liability under Section 17 of the Act and presenting incorrect Bill of Entry under Section 46 by not declaring all relevant provisions and notifications attracting duty liability. Since the Noticee has violated the provisions of Section 12 read with Section 17 and 46 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, I find that Noticee is liable to penalty under Section 117 of Customs Act, 1962, as proposed in the Show Cause Notice.

29. In view of the above, I pass following order:

**:: O R D E R ::**

- (I) I confirm the demand of differential duty of **Rs.5,42,896/- (Rupees Five Lakhs Forty Two Thousand Eight Hundred Ninety Six only)** under Section 28(1) of the Customs Act, 1962. The same should be paid by / recovered from the Noticee forthwith.
- (II) I order to charge and recover applicable interest leviable on the confirmed amount of differential Customs Duty, as per (I) above, under Section 28AA of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.
- (III) I impose penalty Rs. **60,000/- (Rupees Sixty Thousand Only)** on M/s. Trans Tide Agency, Bhavnagar under Section 117 of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

This order is issued without prejudice to any other action that may be taken against the importer or any other person under the Customs Act, 1962 or any other law for the time being in force.

*AMIT KUMAR SINGH*  
अमित कुमार सिंह  
(Amit Kumar Singh)  
अपरआयुक्त/ Additional Commissioner  
सीमाशुल्क निवारक/Customs (Preventive)  
जामनगर/ Jamnagar

Date: 29.01.2025

फाइल सं: CUS/1031/2024-Adjn.

**BY RPAD/SPPED POST/HAND DELIVERY:**

**M/s Trans Tide Shipping Agency,  
Shreeji 101, Plot No. 8/C,  
Opp. Bhagini Mandal Hospital,  
Bhavnagar-364002**

**Copy to:**

1. The Commissioner, Customs (Preventive), Commissionerate, Jamnagar
2. The Superintendent(TRC), Customs (Preventive), Commissionerate Jamnagar
3. The Assistant Commissioner, Customs Division, Bhavnagar.
4. The Superintendent, Systems, Customs (Prev.), Commissionerate Jamnagar
5. Guard File.



