सीमाशुल्क(अपील) आयुक्तकाकार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
चौथीमंज़िल 4th Floor, हडकोबिल्डिंगHUDCO Building, ईश्वरभुवनरोड़IshwarBhuvan Road,
नवरंगपुराNavrangpura, अहमदाबाद Ahmedabad – 380 009.
दूरभाषक्रमांक Tel. No. 079-26589281

DIN-20260971MN0000EBA3CB

क	फ़ाइलसंख्या FILE NO.	S/49-260 to 261/CUS/JMN/OCT/2025-26
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-67 to 68 -2026-27
ग	पारितकर्ता PASSED BY	Shri Vishwajeet Singh Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	17.09.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	12/CUS-REF/2025-26 dated 11.09.2025 19/CUS-REF/2025-26 dated 15.09.2025
च	अपीलआदेशजारीकरनेकीदिनांकORDER- IN-APPEAL ISSUED ON:	17.09.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	1. M/s Ship Trade Corporation, Plot No. 76(24-X), Ship Recycling Yard, Alang/Sosiya, District:Bhavnagar

1	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग,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(	बेगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods imported
(ख(	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग (	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगीऔरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	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)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/-(रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क,मांगागयाब्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफी

	सकेरूपमेंरु.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 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंधमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 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, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ — **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरीमंज़िल,बहुमालीभवन,निकटगिरधरनगरपुल,असारवा,अहमदाबाद-380016 — 2nd Floor, BahumaliBhavan, 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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पांचहज़ाररुपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके %10 अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके %10

	अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) 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

1. Brief facts of the case

1.1 M/s Ship Trade Corporation, Plot No. 76(24-X), Ship Recycling Yard, Alang/Sosiya, District: Bhavnagar (herein after referred to as the "Appellant for the sake of brevity) has filed the present appeals against Orders-In-Original (herein after referred to as the "impugned orders") as tabulated below issued by the Assistant Commissioner, Customs Division, Bhavnagar(herein after referred to as the "Adjudicating Authority).

Sr.No.	OIO No.	Date of OIO	Bill of Entry No.
1	12/CUS-REF/2025-26	11.09.2025	7838896
2	14/CUS-REF/2025-26	15.09.2025	4424347

1.2 The Appellant imported following vessels/ship for breaking purpose and filed bills of entry for home consumption under Section 46 of the Customs Act, 1962. The Bills of Entry were assessed provisionally assessed for want of original documents.

Sl.No.	Name of the Ship /Vessel	Bill of Entry No.	Date of Bill of Entry
1	MV HELSING FORS	7838896	12.03.2022
2	MV PIONER NIKOLAEWA	4424347	31.01.2023

1.3. There was some dispute with regard to assessment of Customs duty of the Fuel and Oil (Fuel Oil, Marine Oil, Lube Oil) contained in the Bunker tanks inside /outside engine room of the vessel /ship. Importer claimed that Fuel and Oil (Fuel Oil, Marine Oil, Lube Oil) contained in the Bunker tanks inside /outside engine room of the vessel /ship was to be assessed to duty under CTH 8908 along with vessel. However, the Department was of the view that Fuel and Oil contained in Bunker Tanks were to be assessed to duty under respective CTH of Chapter 27.

1.4 Hon'ble CESTAT, Ahmedabad vide its orders A/11792-11851/2022 dated 17.10.2022/01.12.2022 has held that the oil contained in the Bunkers Tanks in the engine room of the vessel is to be assessed to duty under CTH 8908, along with the vessel coming for breaking up. Further, in adherence to

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aforesaid order of Hon'ble CESTAT, it has been decided by the Assistant Commissioner, Customs Division, Bhavnagar vide Final Assessment orders as tabulated below that Bunker Tanks containing oil are to be treated as part of vessel's machinery and the Oils contained in them are to be classified under CTH 8908 along with the vessel, as covered under para 2(b) of circular no. 37/96-Cus Dated 03.07.1996. Therefore, in view of the aforementioned judgment of the Hon'ble Tribunal, all the above mentioned Bills of Entry were finally assessed as tabulated below.

Sl.No.	Name of the Ship /Vessel	Bill of Entry No.	Date of Bill of Entry	Final assessment Order	Date of final assessment
1	MV HELSING FORS	7838896	12.03.2022	1040/2602642/SBY/2024-25	11.07.2024/ 15.07.2024
2	MV PIONER NIKOLAEWA	4424347	31.01.2023	28/2835276/SBY/2025-26	26.06.2025

1.5 Consequent to the Final assessment of Bills of Entry the, Appellant filed refund claim as tabulated below.

Sl.No.	Bill of Entry No.	Final assessment Order	Date of final assessment	Amount of refund filed	Date of filing refund
1	7838896	1040/2602642/SBY /2024-25	11.07.2024/ 15.07.2024	3,32,973	19.07.2025
2	4424347	28/2835276/SBY/2025-26	26.06.2025	3,71,806	22.07.2025

The Adjudicating Authority sanctioned the refund claims and credited the same to Consumer Welfare Fund on account of unjust enrichment on part of the Appellant.

1.6 Being aggrieved by the impugned order, the Appellant preferred the present appeals as tabulated below.

Sr.No.	OIO No.	Date of OIO	Appeal No.
1	12/CUS-REF/2025-26	11.09.2025	S/49-260/CUS/JMN/OCT/2025-26
2	19/CUS-REF/2025-26	15.09.2025	S/49-261/CUS/JMN/OCT/2025-26

2. Ground of Appeal submitted by the Appellant

2.1.The Appellant submitted that the impugned order of the Assistant Commissioner by which he has sanctioned the refund of excess duty paid and has ordered the same to be credited to the Consumer Welfare Fund on the ground of unjust enrichment is not tenable in law and is liable to be set aside.

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2.2 The Appellant submitted that at the time of filling refund application they have also submitted that the incidence of Customs duty has not been passed on to any other person. For this contention they have submitted Chartered Accountants Certificate issued by Chartered Accounts M/s B.R. Popat & Co. Chartered Accountants, 2nd Floor Vashundhara Complex Above Axis Bank Bhavnagar, wherein he has verified and certified that amount is receivable from customs department shown as "Customs Duty Refund Receivable" Account treating the same as balance sheet item, in the books of accounts maintained by the firm for F. Y. 2025-26. It has also been verified that this receivable amounts have been carried forward in the books of account till date and therefore it is certified that incidence of customs duty claimed as refund has not been passed on to any other person. The Appellant further submitted that in view of the above Chartered Accountants Certificate, it was clearly proved by the Appellant that the incidence of customs duty has not been passed on to any other person", therefore the provision of unjust enrichment is also not applicable in the present issues.

2.3 The Appellant submitted that the Assistant Commissioner has proceeded on the premise that since the duty paid on the Bunkers was debited to expenses, it must be considered to have been passed on to the buyers by the Appellant. The said premise on which the Order of the Assistant Commissioner is based is untenable in law. It is settled law that debit of the duty amount to expenses, without corresponding addition in the import price to arrive at the local sale price, means that Appellant has absorbed and borne the said amounts and it cannot lead to the conclusion that the Appellant has passed on the incidence thereof. In the present case, not only has the Appellant not added the duty amount to the import price to arrive at the local sale price, but in fact, the local sale price is even below the import price on which the duty is assessed.

2.4 The Appellant relied on the following citations :

(i) Blattas Beck India Ltd v CCE-2016 (339) ELT 325: Para 5

(ii) Birla Corporation Ltd v CCE-2008 (231) ELT 482: Para 5

(iii) 2015 (317) E.L.T. 637 (Tri. Del) in case of Business Overseas Corporation v/s C. C. (Import & General), New Delhi

2.5 The Appellant further submitted that they had sold out the disputed stock of bunkers at very less price prevailing at the time and sale/removal of disputed bunkers after completion of Provisional assessments and giving out of

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Customs charge for the bill of entry under reference. For the submission the Appellant submitted copies of Sales invoices of Bunkers. The Appellant further submitted that it is evident from the Bill of Entry and the Appellant's Sales Invoices, that the price at which the Appellant sold the imported Bunkers is much below the import price/value of the Bunkers on which the duty was assessed. Therefore, the Appellant has not been able to even recover the import price of the Bunkers, much less the duty paid thereon. Therefore, the burden of the said duty has been borne by the Appellant and has not been passed on to any other person.

2.6 To set aside the impugned Orders and pray to order

(i) To pay the sanctioned refund amount in cash.

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

3. PERSONAL HEARING:

Opportunity of personal hearing was granted to the Appellant. The Appellant vide letters all dated 18.08.2026 submitted that they do not desire further personal hearing in the matter and the decide the Appeal / case on the grounds of appeal as well as on above submissions and Pray as mentioned/submitted along with documents on records and on merit of the case.

4. Comments from Customs Division, Bhavnagar

4.1 The Custom Division Office, Bhavnagar was requested for submission of comments of the appeal filed by the Appellant vide letters 11.08.2025 but no comments have been received by this office till date therefore, I am taking up the issue for decision based on the facts of the case and documentary evidence available on record.

5. DISCUSSION AND FINDINGS:

5.1 The dates of the impugned order and the date of filing appeal by the Appellant are tabulated below.

Impugned Order No.	Date of Order	Date of Filing appeal	Remark
12/CUS-REF/2025-26	11.09.2025	21.10.2025	File within 60 days from the date of order
14/CUS-REF/2025-26	15.09.2025	21.10.2025	File within 60 days from the date of order

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Thus, based on the above, I find that the Appellant had the appeal well within the time period of 60 days prescribed under the provisions of Section 128 of the Customs Act, 1962.

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

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

(i) Whether the Appellant is eligible for refund claim amounts as mentioned para supra by directly crediting it to their bank account instead of crediting the same to Consumer Welfare Fund.

5.4 It is observed that the appellant had imported vessels for breaking up/recycling and filed various Bills of Entry as mentioned para supra under Section 46 of the Customs Act. 1962. There was dispute in respect of classification of Fuel and Oil (Fuel Oil, Marine Gas Oil, Lub Oil), which was settled by the Hon'ble CESTAT, Ahmedabad, vide its Orders A/11792-11851/2022, dated 17.10.2022/01.12.2022 wherein it was held that the oil contained in the Bunkers Tanks in the engine room of the vessel is to be assessed to duty under CTH 8908, along with the vessel for breaking up. The Bills of Entry were assessed provisionally. Subsequently, the Bills of Entry were finally assessed vide different Final Assessment Orders mentioned abovepassed by the Assistant Commissioner, Customs Division, Bhavnagar. Consequently, the appellant had filed refund claims which were sanctioned and credited to Consumer Welfare Fund.

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

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

(2) If, on receipt of any such application, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that the whole or any part of the [duty and interest, if any, paid on such duty] paid by

the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.7 It is undisputed that the goods in question have been sold to buyers and the transactions are shown as part of Profit and Loss Account. Further, it is observed that the appellant had submitted Certificate issued M/s. B. R. Popat & Co., Chartered Accountants, wherein they certified that the financial accounts of M/s. Ship Trade Corporation having works at Plot No.76, Alang Ship Recycling Yard, Alang, Distt. Bhavnagar-364001 has been duly verified for the Financial year pertaining to the case. They verified that the Appellant have paid total customs duty for the import of the said vessel. The CA Certificate further verified that out of total duties and taxes paid the Appellant have taken input tax credit of IGST and charged total amount of customs duty of to profit and loss accounts as expenditure [considering Profit & Loss Accounts for F.Y.2021-22 and F.Y.2025-26 (till date)] and an the amount of is shown as receivable from customs department shown as "Custom Duty Refund Receivable" Account treating the same as balance sheet item, in the books of accounts maintained by the firm for F.Y.2025-26. They also verified that this receivable amount has been carried forward in the books of account till date and therefore it is certified that incidence of customs duty claimed as refund has not been passed on to any other person.

5.8 The Chartered Accountant/appellant has not submitted any documents to substantiate that the incidence of duty claimed as refund has not been passed on by him to any other person. Further, I also find that the Bills of Entry was filed during the year 2021-22 and 2022-23 and the certificate has failed to give any reasonable certificate regarding carrying forward of the amount till the year the Appellant filed refund application. The Appellant has also failed to given any evidence indicating the fact that there was no unjust enrichment on the part of the Appellant during the Financial year 2025-26 as the refund was filed on in the same Financial years on dates mentioned para supra. The CA has in the said Certificate made a bald statement that the

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incidence of customs duty claimed as refund has not been passed on to any other person without any supporting documents. Therefore, the CA Certificate produced in this case without supporting documents cannot be considered for discharging the burden of unjust enrichment.

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

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

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

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

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

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

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

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

6. In view of the above, I do not find any infirmity with the impugned orders and the same are upheld. The appeals filed by the appellant are rejected.



Vishwajeet Singh
17.09.2026.

(Vishwajeet Singh)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. File No. S/49-260 to 261/CUS/JMN/OCT/2025-26

By Registered post A.D/Email

M/s Unique Ship Breaking Corporation, Plot No. 107-M, Sosiya Ship Braking Yard, Sosiya Alang, Bhavnagar

Copy to,

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