CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 12105 of 2018--SM

[Arising out of Order-in-Appeal No JMN-CUSTM-000-APP-05-18-19 dated 04.05.2018 passed by Commissioner of CUSTOMS-AHMEDABAD]

Bhavnagar Shipping Agency .... **Appellant**
101, Sarthik, Atanhai Road,
BHAVNAGAR, GUJARAT

VERSUS

Commissioner of Customs, Ahmedabad .... **Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE :

Shri Rahul Gajera, advocate for the Appellant
Shri P. Ganesan, Superintendent (AR) for the Revenue.

CORAM:
HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

DATE OF HEARING : 05.05.2025
DATE OF DECISION : 16.07.2025

FINAL ORDER NO. 10562/2025

DR. AJAYA KRISHNA VISHVESHA :

This appeal is directed against order-in-appeal dated 05.04.2018 passed by Learned Commissioner of Customs (Appeal), Ahmedabad through which the learned Commissioner rejected the appeal of the appellant and upheld the Order-in-Original dated 31.03.2017 passed by Assistant Commissioner, Customs, Bhavnagar.

2. The facts of the case, in brief, are that the appellant acting on behalf of the owner of the vessel had filed Bill of Entry No. SBY/84-A/2013-14 dated 02.07.2013 in respect of the vessel MV TABA for consumption of fuel

and oil (bunker) and provisions (consumable stores) during the coastal run from Cochin to Alang (Bhavnagar). The subject vessel arrived from Cochin in ballast. At the time of departure from Cochin, the Master of the Vessel had obtained the port clearance for Mumbai port, but on voyage, he received instruction from owner for proceeding to Alang, Bhavnagar. Therefore, the shipping agent filed the above mentioned bill of entry dated 02.07.2013, in accordance to Circular No. 58/97-Cus dated 06.11.1997 and circular No. 16/Customs dated 13.06.2012, for the coastal goods consumed during voyage from Cochin to Alang with respect to Fuel Oil 45.063 MT having Assessable value of Rs. 18,86,085/-, Diesel Oil (MGO) 11.41 MT, having assessable value of Rs. 6,82,227/- and lube Oil 300 liters having Assessable value of Rs. 61,885/- and consumable stores 27 packages for Rs. 30,215/-, with applicable customs duties of the said coastal consumed goods. However, due to want of circulating copy, as it was not onboard, the subject bill of entry was assessed provisionally. The shipping agent paid the customs duty of Rs. 5,05,070/- vide TR-6 challan No. IMP-SBY/252/2013-14 dated 03.7.2013. Subsequently, the lower authority requested to the Customs authorities at Cochin to provide the arrival/departure bunker provision figures/circulating copy Cochin Customs vide their letter dated 10.11.2014 furnished the documents related to ship particulars submitted at the time of arrival/departure at Cochin Customs House. However, they submitted the details as on 10.6.2013 which reveals quantity on board Fuel Oil as 248.052 MT. Diesel Oil (MGO) as 11.248 MT which is very much before the port clearance date. On verification of the documents, it was observed by the lower authority that the subject vessel arrived at Alang anchorage for breaking up on 28.6.2013 and the copies of Log Book dated 23.6.2013 and 29.6.2013 produced by the Master of the subject vessel during the boarding formalities on 23.6.2013 revealed quantity on board

Fuel Oil as 311.05 MT. Diesel Oil (MGO) as 62.819 MT. The Boarding of the said vessel was carried out on 29.6.2013. The port clearance to the subject vessel was issued on 24.06.2013 for Mumbai but as per the instructions from the owner of the vessel, the vessel arrived at Alang for breaking purpose. Therefore, considering the quantity as per log book dated 23.06.2013 provided by the Master of the vessel and the quantity as per survey report dated 29.06.2013, the coastal consumed quantity was arrived at as Fuel Oil (311.05 MT minus 259.23 MT = 51.82 MT and for Diesel Oil (MGO)(62.819 minus 46.897MT-15.922 MT). Accordingly, a final assessment of the Bill of Entry was done on 18.12.2014 and the Shipping Agent was asked to pay the differential duty, which they failed to do so. Therefore, a Show Cause Notice dated 03.08.2016 issued to appellant demanding differential Customs Duty amounting to Rs. 96,136/- along with interest and penal action under Section 114A of the Customs Act, 1962. The Adjudicating Authority Assistant Commissioner Customs, Bhavnagar adjudicated the show cause notice vide order-in-original dated 31.03.2017 by which the Adjudicating Authority confirmed the demand of differential Customs Duty amounting to Rs. 96,136/- along with interest and imposed penalty of Rs. 96,136/- under Section 114A of Customs Act, 1962, on the appellant.

2.1 Feeling aggrieved from the order-in-original passed by learned Adjudicating Authority, the appellant filed appeal before Commissioner (Appeals). The learned Commissioner (Appeals), after hearing appellant came to the conclusion that the appellant had filed the Bill of Entry SBY/84-A/2013-14 dated 02.07.2013 in respect of MV TABA for consumption of fuel oil (Bunker) and provisions (Consumable Stores) during its costal run from Cochin to Alang and paid custom duty of Rs. 5,05,070/- vide TR-6 Challan dated 03.07.2013. However, the appellant failed to pay the differential duty and interest therein which has arisen at the time of final assessment of the Bill of Entry No. SBY/84-A/2013-14 dated 02.07.2013. Since the appellant have themselves filed the bill of entry for consumption of fuel and oil (bunker) and provisions (consumable stores) during the coastal run from Cochin to Alang, therefore, they are liable to pay differential duty alongwith applicable interest. The Commissioner (Appeals) has also come to the conclusion that since the Adjudicating Authority has held that appellant had suppressed/ mis-declared the quantity of bunkers consumed during the coastal run from Cochin to Alang with an intention to evade payment of Customs duty, therefore, the penalty imposed under section 114A of the Customs Act, 1962 is correct and the Adjudicating Authority has committed no error. Commissioner (Appeals) upheld the order-in-original passed by Adjudicating Authority and rejected the appeal.

2.2 Feeling aggrieved from impugned order dated 04.05.2018 passed by learned Commissioner of Customs (Appeals), the present appeal has been filed before this Tribunal.

3. Learned Counsel for the appellant argued that the order-in-appeal dated 04.05.2018 passed by the learned Commissioner of Customs (Appeals) is bad in law and cannot be sustained. He argued that the customs at Alang port have no jurisdiction to demand the duty. Learned Commissioner of Customs (Appeals) clearly erred in not appreciating that the Assistant Commissioner, Customs, Alang lacked jurisdiction to demand the said duty on goods which were never imported at the port of Alang. The order demanding duty is, therefore, contrary to section 12 of the Customs Act, 1962. Learned Counsel argued that the vessel falls under the specific entry under the Custom Tariff Act, 1975, under the chapter sub heading 8908 i.e. vessels and other floating structures for breaking up. Customs

Authority at Alang port failed to consider the nature of the said vessel which had only been imported for breaking up at the port of SBY Alang and hence question of payment of duty on bunker and consumable stores does not arise. Therefore, it is clear that the Customs have not only assessed the Bill of Entry under incorrect heading, sub-heading of Customs Tariff Act, 1975 but have forced the appellant to present Bill of Entry (BE) and was made to pay the Customs duty without any authority of law. The learned Counsel further argued that the nature of the voyage, whether it was foreign run or it was reverted to coastal run, should not depend upon the filing of BE as it was presented on direction of the Customs officers. The appellant went ahead with the process of filing of BE and payment of customs duty in order to speed up the process of import of vessel which was legally not payable in the first place. Learned Commissioner (Appeals) erred in holding that the appellant is liable to pay the differential duty along with applicable interest since the vessel was on coastal run from Cochin to Alang by just relying on the fact that the appellants have filed the 'Bill of Entry' and paid the customs duty.

3.1. Learned Counsel for the appellant also argued 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, 1962. Hence question of payment of customs duty does not arise. Learned Counsel also argued that the vessel was provisionally assessed and appellant paid customs duty of Rs. 5,05,070/- though the appellant did not contest it previously, it is illegal and without proper jurisdiction, as the vessel was a 'foreign-going vessel' and the goods consumed during the voyage from Cochin to Alang should have been exempted from duty. Therefore, the payment of duty was not warranted in the first place. In such a scenario, there is no question of demanding differential duty, as the entire payment of customs duty was void in itself. The demand of differential duty is, therefore, without merit and should be set aside.

3.2. Learned Counsel for the appellant has relied upon the decision of this Tribunal in the case of **Lotus Danship Private Limited** vs. **Commissioner of Customs -JAMNAGAR (Prev.)** - 2024 (6) TMI 1015 -CESTAT AHMEDABAD. The question involved in this case was whether during the period from 26.09.1975 to 17.01.1976 the vessel M.V. Anupama was a 'foreign going vessel' or a 'coastal vessel'. During this period, the vessel functioned as a daughter vessel to lighten the mother vessels (super-tankers) which had brought cargo from abroad and which, because of their big size, were unable to come alongside of Indian ports. The Tribunal held that even if, the cargo lightened off Salaya was unloaded at Marmagoa and Calicut and not at Salaya itself, and that lightened off Paradip was unloaded at Calcutta and not at Paradip itself, the material fact remains that M.V. Anupama functioned only to continue and complete the task of the mother vessels, that of bringing cargo from abroad and unloading them at Indian Ports. There is no evidence that during this period M.V. Anupama picked up any Indian cargo from one Indian port to unload it at another Indian port.

3.3 Learned Counsel for the appellant also relied upon the decision in the case of **Phoenix Marine Services** vs. **Commissioner of Central Excise & ST, Jamnagar** – 2024 (4) TMI 384 – CESTAT AHMEDABAD in which it has been held that Section 87, inter alia provides that imported stores may, without payment of duty be consumed on the vessel as stores during the period such vessel is a 'foreign going vessel'. In order to appreciate the contention raised in the disputed matter, it is necessary to notice a basic premise that under Customs Act goods entering into India becomes imported goods and chargeable to duty under Section 12, unless they are exempt from payment of duty by virtue of specific provisions. It is significant to note that ship stores or spares thereof are not exempted from the operation of Section 12, but by virtue of Section 53 of the Act are allowed to be transited without payment of duty. Similar provision is found in Section 54 in respect of the goods imported into a customs port or customs airport but is intended for transhipment of goods. Section 86(2) of the Act inter alia provides that any Imported stores may be transferred to any vessel as stores for consumption therein as provided in Section 87. Section 87 inter alia provides that imported stores imported without payment of duty be consumed on the vessel as stores during the period such vessel is a 'foreign going vessel'. In the present matter, the tug had originally arrived at Bedi ports from overseas port laden on mother vessel. Mother vessel was unable to complete the delivery of the said tug at Alang owing to requirement of deeper draught which was not available at the ship breaking yard at Alang. The said tug had arrived from foreign port, it was treated as a 'foreign-going vessel'. There is no dispute over the fact that the said tug had not performed any costal voyage or undertaken any coastal operation. Therefore, the fuel consumed during their trans-shipment from Bedi port to Alang cannot be considered as dutiable.

3.4 Learned Counsel for the appellant also cited the decision of this Tribunal in the case of **C.C. Ahmedabad** vs. **Nandan Exim Limited** Final Order No. A/11597/2023 dated 24.07.2023 in which it has been held that benefit of exemption, which is available has to be allowed in spite of the fact that whether it was claimed at the time of import or not. The benefit of a notification cannot go away on the findings as observed/ recorded in this Revenue's appeal or order-in-original. The Adjudicating Authority on the one hand observes that ignorance of law is no excuse but on the other hand he has not correctly appreciated that it applies to both sides. Government also cannot retain such excess payment of CVD amount which is not required to be paid by importer in the law. In support, the advocate for appellant places reliance on the decision reported in 2007 (209) ELT 321 (SC) in the matter of **Share Medical Care** vs. **UOI** to drive home their point that exemption can be claimed even at a later stage.

3.4 Learned Counsel while summing up his arguments prayed that demand of differential duty amounting to Rs. 96,136/- is not tenable. In any event, the issue being one of interpretation of law and further covered by aforesaid decisions of Tribunal, it cannot be said that there was any intention on the part of the appellant to evade the payment of Customs duty. He also pleaded that the show cause notice is barred by limitation and therefore, penalty imposed on the appellant under Section 114(A) of the Customs Act, 1962 is not sustainable. He prays that the impugned order be set-aside and the appeal be allowed.

4. Learned AR for the department argued that the Order-in-Original and the impugned order-in-appeal have been passed in accordance with law and relying upon relevant Rules and Circulars. Learned AR argued that the vessel M.V. Taba was imported by M/s. Star Ship Breaking Corporation, Sosiya for breaking purposes. The said importer had filed Bill of Entry and paid the applicable customs duty. The moment the bill of entry is filed in respect of the vessel and import duty is paid, the vessel ceases to be 'foreign going vessel'. Therefore, the diesel and other provisions on-board the vessel cease to enjoy the benefit of exemption available to such items in stores in foreign going vessel since after filing Bill of Entry and on payment of duty, the vessel ceases to be a 'foreign going vessel' and becomes an 'Indian vessel' and therefore the liability of import duty on the provisions/stores in

the vessel arises. I further find that the vessel M.V. Taba was imported as goods in this case and if they were imported as goods, a bill of entry has to be filed for the vessel as well as stores separately and therefore the shipping agent is liable to pay the customs duty on the bunkers and stores consumed during 'coastal run' from Cochin to Alang. Therefore, the contention of the shipping agent that they were not liable to pay duty on the bunkers and stores consumed during 'coastal run' is not correct and the shipping agent is liable to pay the customs duty on the bunkers and stores consumed by the vessel M.V. Taba during its 'coastal run' from Cochin to Alang in terms of Circular No. 58/97 dated 06.11.1997 and Circular No. 16/2012-Customs dated 13.06.2012. He prays that the appeal be rejected.

5. I have heard Shri Rahul Gajera, learned Counsel for the appellant and Shri P. Ganesan, learned Superintendent (AR) for the department and perused the record.

6. I agree with the contention of the learned Counsel for the appellant that the nature of the voyage whether it was 'foreign run' or it was reverted to coastal run, should not depend upon the filing of Bill of Entry as it was allegedly presented on direction of the Customs officers. The appellant claims that they went ahead with the process of Bill of Entry and payment of Customs duty in order to speed up the process of import of vessel which was legally not payable. I am of the view that the goods which are consumed by the vessel in question, MV TABA, was a 'foreign going vessel' and it was not on 'coastal run' during its voyage between two Indian ports i.e. Cochin to Alang and therefore, the goods consumed by it are excluded from the levy of Customs duty as per Section 87 of the Customs Act, 1962. The learned Commissioner erred in holding that the appellant is liable to pay differential duty alongwith applicable interest since the nature of the vessel is the

'coastal run' from Cochin to Alang. It appears that the Commissioner (Appeals) has only relied on the fact that the appellant filed Bill of Entry and paid the Customs duty and the Commissioner failed to take into consideration other relevant facts.

6.1 I find sufficient force in the arguments of the learned Counsel for the appellant that the vessel in question MV TABA, was a foreign 'going vessel' and goods consumed during its voyage from Cochin to Alang should have been exempted from Customs duty. Therefore, there is no question of demanding differential Customs duty as the entire payment of Customs duty was not legally necessary. Therefore, the demand of differential duty cannot be sustained and should be set-aside.

6.2 I agree with the law laid down in the judgment in the case of **Lotus Danship Pvt. Limited** vs. **C.C. Jamnaga (Prev.)** – 2024 (6) TMI 1015 – CESTAT Ahmedabad that the vessel in question M.V. Anupama functioned as a daughter vessel to lighten the mother vessels (super-tankers) which had brought cargo from abroad and which, because of their big size, were unable to come alongside of Indian ports. The vessel functioned only to continue and complete the task of the mother vessels that of bringing cargo from abroad and unloading them at Indian Ports. There is no evidence that during this period, the vessel picked up any Indian cargo from one Indian port to unload it at another Indian port.

I also agree with decision in the case of **Phoenix Marine Services** vs. **Commissioner of Central Excise & Service Tax, Jamnagar** – 2024 (4) TMI 384 – CESTAT Ahmedabad in which it has been held that in the present case the tug had originally arrived at Bedi ports from overseas port laden on mother vessel. Mother vessel was unable to complete the delivery of the said tug at Alang owing to requirement of deeper draught which was not available at the ship breaking yard at Alang. The said tug had arrived from foreign port and it was treated as a 'foreign going vessel'. There is no dispute over the fact that the said tug had not performed any coastal voyage or undertaken any coastal operation. Therefore, the fuel consumed during their trans-shipment from Bedi port to Alang cannot be considered as dutiable.

I also agree with the law laid down by this Tribunal in the case of **C.C. Ahmedabad** vs. **Nandan Exim Limited** – Final Order No. A/11597/2023 dated 24.07.2023 that benefit of exemption which is otherwise available, has to be allowed in spite of the fact whether it was claimed at the time of import or not. The government cannot retain such excess payment of CVD amount with them which is not required to be paid by importer in law and the maxim 'ignorance of law is no excuse', applies to both sides.

7. In view of above observations, I have come to the conclusion that the demand of differential duty of Customs amounting to Rs. 96,136/- is not tenable. The learned Commissioner erred in holding that appellant is liable to pay differential duty alongwith applicable interest since the nature of voyage is 'coastal run' from Cochin to Alang and the learned Commissioner has ignored other facts and just relied on the appellant's submission of Bill of Entry and payment of Customs duty and wrongly came to the conclusion that it ceased to be in the nature of 'foreign going vessel' and can be considered in the nature of 'coastal run'. I also find that there seems to be no intention of the appellant to evade payment of Customs duty. Therefore, penalty imposed on the appellant under Section 114A of the Customs Act, 1962 is not sustainable and is liable to be set-aside and the appeal is liable to be allowed.

8. Consequently, the appeal is allowed. The demand of differential Customs duty amounting to Rs. 96,136/- alongwith interest is set-aside. Penalty of Rs. 96,136/-imposed under Section 114A of the Customs Act, 1962 is also set-aside.

(Order pronounced in the open court on 16.07.2025*)*

(Dr. Ajaya Krishna Vishvesha)
Member (Technical)

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