

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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10569 of 2019-SM

[Arising out of Order-in-Original/Appeal No JMN-CUSTM-000-APP-36-18-19 dated 04.01.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Neha Shipping and Allied Services Pvt Limited

.... Appellant

2066-67, C-1C, Gurukurpa
Opp Pandya Mithaiwala, Talaja Road
BHAVNAGAR, GUJARAT -364002

VERSUS

Commissioner Customs, Jamnagar (Prev.)

.... Respondent

Sharda House, Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

APPEARANCE :

Shri Manish Jain, Advocate for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) for the Revenue.

CORAM:

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

DATE OF HEARING : 28.03.2025

DATE OF DECISION : 28.07.2025

FINAL ORDER NO. 10604/2025

DR. AJAYA KRISHNA VISHVESHA :

This appeal is directed against the Order-in-Appeal dated 04.01.2019 passed by learned Commissioner (Appeals), Customs Ahmedabad through which he upheld the Order-in-Original passed by Assistant Commissioner dated 22.01.2018 and rejected the appeal.

2. The facts of the case, in brief, are that the appellant had filed application of refund of Rs. 11,05,908/- in respect of coastal conversion of vessel "MV Endurance". The said vessel was converted from 'foreign run to 'coastal' on 06.03.2014 at Muldwarka Port and the appellant filed Bill of

Entry dated 05.03.2014 which was assessed provisionally to Customs duty amounting to Rs.34,42,294/- and paid on 05.03.2014 by the appellant. Subsequently, at the time of final assessment on 24.09.2014, the duty liability was reduced to Rs.23,36,386/-. The appellant filed refund claim of Rs.11,05,908/- for the excess payment of duty. The Assistant Commissioner, Customs Division, sanctioned this refund. While sanctioning the refund claim, the adjudicating authority observed that doctrine of unjust enrichment was not applicable in respect of excess duty paid to conversion of vessels from 'foreign run' to 'coastal run'. An appeal was filed by the department against this order mainly on the ground that the adjudicating authority has failed to properly examine the provisions of Section 18(5) of the Customs Act, 1962 which came into effect from 13.07.2006. The provisions are very clear and it has to be ensured that the appellant has not passed on the incidence of such duty to any other person. The Commissioner (Appeals) vide order dated 01.02.2017 observed that the aspect of unjust enrichment should have been examined by the adjudicating authority while sanctioning the refund claim and the Commissioner (Appeals) remitted the case to the adjudicating authority for de-novo proceedings by asking the appellant to produce all documentary evidence to establish that they have not passed on the burden of excess duty paid and that the lower adjudicating authority shall follow principles of natural justice before deciding the matter. The Assistant Commissioner, Customs sanctioned the refund claim of Rs.11,05,908/- but ordered to transfer this amount to the Consumer Welfare Fund and ordered to recover this amount along with applicable interest from the appellant as he came to the conclusion that appellant failed to produce any documentary evidence showing that they had not passed on the burden of excess duty paid. Feeling aggrieved from the order mentioned above, the appellant filed appeal before the Commissioner

(Appeals). The Commissioner (Appeals) came to the conclusion that appellant failed to discharge the onus casted upon them under Section 18 clause (5) of the Customs Act, 1962 and hence the refund is not admissible and rejected the appeal. Against this order of Commissioner (Appeals), the appellant is aggrieved and has filed the present appeal before this Tribunal.

2. Learned Counsel for the appellant submitted that the issue to be decided by this Tribunal is whether the doctrine of unjust-enrichment is applicable in case of refund of excess duty paid in respect of 'coastal run' by the vessel. He further submitted that in the decided case of **Commissioner of Customs (Prev.), Vijayawada vs. International Seaport Dredging Limited** – 2023 (11) TMI 318 -CESTAT, Hyderabad, it has been held that the doctrine of unjust-enrichment is not applicable in the refund of excess duty paid in respect of unutilized stores. The learned Counsel for the appellant also cited **Commissioner vs. Ambica Maritime Limited** – 2007 (220) ELT 887 in which it was observed that the duty was deposited on provisional basis in respect of ship's bunkers and stores by working 110% of duty leviable on the quantity estimated to be consumed during the coastal run. The said deposit was made in terms of Board's Circular No. 58/97 dated 06.11.1997. It was a case of estimated duty leviable when ultimately the duty liability was finally assessed at the time of conversion of vessel from 'coastal run' to 'foreign run' and the same was found to be less than the duty deposited. The initial deposit of duty was on estimation basis and as such it has been rightly held by the Commissioner (Appeals) to be a deposit. The same was a notional amount and the quantity, for which the duty was paid, was not consumed entirely in India and as such the Commissioner (Appeals) has rightly held that the doctrine of unjust-enrichment will not be applicable and the Revenue's appeal was rejected.

The learned Counsel for the appellant has also cited the following case laws:-

- (a) **Commissioner of Customs, Pune vs. Atlantic Shipping Pvt. Limited** – 2014 (307) ELT 776
- (b) **Commissioner of Customs, Mangalore vs. Agrotech Food Limited** – 2010 (249) ELT 348 (Kar.)
- (c) **Atlantic Shipping Pvt. Limited vs. Commissioner of Customs, Jamnagar** – 2013 (294) ELT 275

The learned Counsel for the appellant submitted that the Hon'ble High Court of Karnataka in the case of **Commissioner of Customs, vs. Mangalore Agrotech Food Limited** (supra) has held that in case of adjustment of amount paid on provisional assessment, doctrine of unjust-enrichment is not attracted.

2.1 The learned Counsel for the appellant also submitted that the demand is not hit by unjust-enrichment as the incidence of the duty has been borne by the appellant and the same has been certified through Chartered Accountant's certificate. In the books of account of the appellant it has been clearly specified that the excess Customs duties were refunded to M/s. Ambuja Cements. The accounting statement clearly mentions that the burden was borne by the appellant. learned Counsel for the appellant also submits that Chartered Accountant certificate dated 24.02.2018 certifying that the refund claim of excess custom duty paid at the time of provisional assessment of Rs. 11,05,908/- has been recorded in the books of account and the same has been transferred to Ambuja Cement vide challan No. 000254 dated 24.12.2015 and paid the Customs duty at the time of provisional assessment and the same has not been passed on to the buyers on the sale of the goods or to any of the persons.

3. Learned AR for the department reiterates the findings given in the impugned order and submits that the test of unjust-enrichment as per

Section 18(5) of the Customs Act, 1962 is not fulfilled and the impugned order passed by Commissioner (Appeals) is liable to be confirmed. He prays to reject the appeal filed by appellant.

4. After hearing the learned Counsel for the appellant and learned AR for the department and considering the case laws, I have come to the conclusion that it is settled legal position that initial deposit of duty during provisional assessment was on estimation basis and is in the nature of deposit and it is notional duty deposit. Hence, doctrine of unjust-enrichment is not applicable in the refund of excess duty paid in respect of unutilized stores. I have also come to the conclusion that the appellant has successfully explained that the refund claim of excess duty paid at the time of provisional assessment was recorded in the books of accounts and was transferred to Ambuja Cement, who paid Customs duty at the time of provisional assessment and the said amount was not passed on to buyers on the sale of the goods. Therefore, the impugned order for recovery of amount of Rs. 11,05,908/- alongwith applicable interest is not sustainable and liable to be set-aside whereas the appeal is liable to be allowed.

5. Consequently, the impugned order of recovery of an amount of Rs. 11,05,908/- alongwith applicable interest from the appellant is set-aside and the appeal is allowed.

(Order pronounced in the open court on 28.07.2025)

(Dr. Ajaya Krishna Vishvesha)
Member (Technical)