

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 2

**Excise Appeal No. 10353 of 2017-DB**

(Arising out of OIA-BHV-EXCUS-000-APP-190-16-17 Dated 24.10.2016 passed by the Commissioner ( Appeals-III ), Central Excise-RAJKOT)

**Madhav Industrial Corporation**

Plot No. 34, Ship Recycling Yard,  
Alang, BHAVNAGAR,  
GUJARAT

**.....Appellant**

*VERSUS*

**Commissioner of C.E. & S.T.-Bhavnagar**

PLOT NO.6776/B-1...SIDDHI SADAN,  
NARAYAN UPADHYAY MARG, BESIDE GANDHI CLINIC,  
NEAR PARIMIAL CHOWK,  
BHAVNAGAR, GUJARAT-364001

**.....Respondent**

**APPEARANCE:**

None appeared for the Appellant

Shri Rajesh R Kurup, Superintendent (AR) appeared for the Respondent

**CORAM:**

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

**HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER ( TECHNICAL )**

**Final Order No. 10825/2025**

DATE OF HEARING: 08.09.2025

DATE OF DECISION: 29.09.2025

**SATENDRA VIKRAM SINGH**

1. M/s. Madhav Industrial Corporation, Plot No.34, Ship Breaking Yard, Alang, Bhavnagar (Appellant) are engaged in ship breaking activities and manufacturing of goods and materials obtained by breaking up of ships, boats and other floating structures etc. They purchase old and used indigenous/imported vessels, ships, boats and other floating structures and after breaking them, obtain goods and various materials. During audit of their records, officers observed that the appellant during the period from January, 2012 to February, 2014 had cleared "Old and used Lead Acid Battery" without paying any excise duty by treating the same as non-excisable goods. After obtaining the details of clearances from them, the department issued a show cause notice dated 16.10.2014 proposing to recover Central Excise duty of Rs.10,810/- under Section 11A (4) of the Central Excise Act,1944 along with

interest under Section 11AA and penalty under Section 11AC(1)(a) of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

1.1 The above show cause notice was decided by the Assistant Commissioner, Bhavnagar vide Order-in-Original dated 26.10.2015, wherein, he confirmed the demand of central excise duty alongwith interest and imposed equal penalty upon the appellant. Aggrieved with this order, the appellant filed appeal before the Commissioner (Appeal) who vide impugned order dated 24.10.2016 upheld the order of the lower Authority and rejected the appeal of the party. Hence, this appeal.

2. The appellant took the following grounds in their appeal:-

- The appellate authority has erred in holding that the disputed goods will fall under Heading No.78020010 of the Central Excise Tariff Act, 1985 and therefore, are covered under Section XV of the CETA. By deciding the above classification, he has applied Note 9 to Section XV and held that the activity amounts to manufacture and hence, goods are leviable to excise duty.
- The Appellate authority himself has admitted at para-15 that the impugned goods had not undergone any process other than removal thereof from the ships. These have not been cleared as lead scrap but removed as such as making out scrap of the impugned goods are under the control of Gujarat Pollution Board. The scrap of the impugned goods could be sold only to a person who is holding valid licence for dismantling the Lead Acid Battery. Therefore, it is not true that the impugned goods were excisable/dutiable. They wish to draw attention to Circular No.345/61/97-CX dated 23.10.1997 issued by the CBEC wherein, it is specifically mentioned that, *"Whether the items emerging during the course of ship breaking falling outside the ambit Section XV of the Schedule to the Central Excise Tariff Act, 1985 would be treated as*

*excisable and chargeable to Central Excise duty" and further mentioned that "Director General of Inspection has conducted a study on this issue and a view has been taken that the goods and materials recovered during the course of ship breaking which are outside the ambit of Section XV of the Schedule to the Central Excise Tariff Act, 1985 are non-excisable goods as there is no entry in the Tariff which describes the act of obtaining these items as an activity of manufacture". This Circular is squarely applicable in the present case as the disputed goods had been "recovered only " and not "emerged during the Corse of ship breaking activity".*

- They have not suppressed any facts with intent to evade payment of central excise duty. Since, 1983, when ship breaking activity had started at Alang, both Central Excise as well as Customs department is well aware with the said business and therefore, penalty under Section 11AC is not imposable on them. In view of the above, they prayed to set aside the impugned order.
- Vide their letter dated 01.07.2025, the appellant had requested to consider their written submissions and decide the appeal.

3. Countering the appeal, learned Authorised Representative relied on Note 9 of Section XV to impress that the goods obtained by breaking of ships, boats and other floating structures shall amount to manufacture and therefore, Lead Acid Batteries which the appellant had obtained by breaking the ships are classifiable under Chapter heading 7802 of the Central Excise Tariff Act, 1985 as Lead scrap and are leviable to Central Excise duty. Lead Acid Batteries are cleared to specific and nominated buyers who are approved under Pollution Control. These rechargeable batteries are used for marine purposes and are meant for scrap for deriving

metal by authorised recyclers. He relied on the following decisions to support his case and prayed for dismissing the appeal filed by the appellant:-

- CCE, Surat-I Vs. Neminath Fabrics Pvt. Ltd. reported in 2010 (256) ELT 369 (Guj.),
- CCE, Rajkot Vs. Saibaba Ship Breaking Corporation reported in 2002 (140) ELT 135 (Tri-Mumbai),
- Triveni Ship Breakers Vs. CCE, 2024 (18) CENTAX 250 (Tri-Ahmedabad)

4. We have considered the rival submissions. The short issue to be decided here is whether "Lead Acid Batteries" obtained from old and used ships, boats etc. are classifiable under Chapter heading 85.07 or Chapter heading 78.02 of the Central Excise Tariff Act, 1985? The department relies on Note 9 of Section XV to allege that old and used "Lead Acid Batteries" are basically meant for extracting Lead/ lead scrap and therefore, these should be classified under Chapter heading 78.02 and should be leviable to central excise duty. For easy reference, Note 9 of Section XV is reproduced below:-

*"9- In relation to the products of this Section, the process of obtaining goods and materials by breaking up of ships, boats and other floating structures shall amount to manufacture."*

4.1 Section XV, applies to products of Chapter 72 to 83 which cover **Iron and Steel (Chapter 72), Articles of Iron & Steel (Chapter 73), Copper and articles thereof (Chapter 74), Nickel & articles thereof (Chapter 75), Aluminium and articles thereof (Chapter 76), Lead and articles thereof (Chapter 78), Zinc and articles thereof (Chapter 79), Tin and articles thereof (Chapter 80), Other base metals, Cermets, articles thereof (Chapter 81) Tools, implements, cutlery, etc (Chapter 82) and Miscellaneous articles of base metal (Chapter 83)**. Under Chapter 78, Lead and Articles thereof are covered which include items such as unwrought

lead, Lead waste & scrap, lead plates, sheets, strip and foil; Lead powder and flakes and other articles of lead such as Sanitary fixtures, Indian lead seals, blanks etc. In Central Excise Tariff Act, 1985, "Lead Acid Batteries" find separate mention in Chapter 85 and are classified under Chapter heading 85.07.

4.2 Learned AR has relied on the decision of Mumbai Tribunal in the case of CCE, Rajkot V/s. Saibaba Ship Breaking Corporation reported at 2002 (140) ELT 135 (Tri-Mumbai) and decision of this Tribunal in the case of Triveni Ship Breakers Vs. CCE, 2024 (18) CENTAX 250 (Tri-Ahmedabad) to support his case. The decision in the case of Triveni Ship Breakers relates to classification of used batteries wherein, classification matter was remanded to the Adjudicating Authority to reconsider the issue afresh by going into all the claims by the appellant as regards the nature of the products. We find that the decision in the case of Saibaba Ship Breaking Corporation is primarily related to availability of Modvat credit on inputs such as fuel oil and food stuff on board. However, we find that para-13 of this order discusses that the items such as bunker, oil, stores, etc. are removed before actual ship breaking starts. This is so because presence of these items will endanger working of the Labour/ staff there. Relevant portion of para-13 of the said order is reproduced below: -

*"13. Section XV covers Chapters 72 to 81. In each of these, there are goods, materials obtained by breaking up of ship. The Directorate General of Inspection has apparently concluded that the goods obtained as a result of ship breaking which are outside the ambit of Section XV are non-excisable goods. These other goods would be parts of the ship such as chain, capstan, etc., which are removed and sold as such before the remainder of the ship is broken as scrap. His conclusion that the goods are non-excisable goods, because there is no entry in the Tariff which described ambit of obtaining these items as manufacture is again confusing. The term "excisable goods" is defined in the Central Excise Act to mean goods specified in the First Schedule and Second Schedule to the Central Excise Tariff Act, 1985 as being subjected to a duty of excise. It would therefore be not correct to say that such parts are not excisable goods. To say that would mean that they are not liable to duty of excise after their manufacture. They are clearly excisable goods. What the Director General of Inspection no doubt, meant to say is that these goods are not the result of the manufacture and therefore not liable to duty. Removal of a part from the ship is not the result of the manufacture. There had been doubts expressed whether reducing the ship to scrap would amount to manufacture. This doubt now settled with the insertion of note 9 to Section XV. It would be not correct to say that this conclusion would apply with equal force to bunker, oil, stores, etc. Their removal is not an act of manufacture and no excise duty is liable to be paid on them. This was in fact the basis of the*

*Tribunal's decision in Priya Blue Industries Ltd. & Others v. CCE (Appeals E/1194/2000 and Others [2001 (132) E.L.T. 381 (Tri. - Mumbai)]"*

4.3 The above decision clearly emphasises that, " *Considering that fuel and other stores necessarily required to be removed for the purpose of safety and efficient operation apart from the legal requirement of the Gujarat Maritime Board, how it could be said that these are the result of breaking up is beyond our capacity to understand. It would not be correct to say that the activity of breaking up of ship commences as soon as it enters the port. It is only when the workmen concerned commence breaking it using the machinery required for the process that the manufacture has begun.*" In the same way, we observe that Lead Acid Batteries too, may be required to be removed before actual ship breaking starts for safety of the workmen.

4.4 From the facts of the case, it is clear that the appellant is clearing "Lead Acid Batteries" to their buyers which by any stretch of imagination, cannot be equated with "Lead waste and Scrap" classifiable under Chapter Heading 78.02. It is also clear from the say of the appellant that they are not registered with Gujarat Pollution Control Board for processing goods like Lead Acid Batteries and therefore, they are clearing these goods to their buyers who have license/ permission from Pollution Control Board for processing old/ used Lead Acid Batteries for extraction of lead scrap. It therefore transpires that what is coming out of old ship are "Lead Acid Batteries" which the appellant are selling to their buyers and so their classification is appropriate under Chapter 8507 and not under 78.02 as lead scrap. Had the appellant been processing such Lead Acid Batteries at their own premises and then clearing Lead waste and scrap to buyers, it would have been appropriately classified under Chapter 78.02. In that case, Note 9 to Section XV would have made the process as amounting to manufacture and duty would have been leviable. In the present facts, this being not the case, we agree with the arguments of the Appellant and hold that old and used Lead Acid Batteries cleared by the appellant are classifiable under Chapter heading 8507. Otherwise also,

whether under Customs or even under Central Excise Law, goods are to be classified in the form in which they get cleared and not according to what will happen to them post clearance. Since the goods of Chapter Heading 8507 are not governed by Note 9 to Section XV of the Central Excise Tariff Act, 1985, these goods do not amount to manufacture and hence, not liable to central excise duty. We, accordingly, allow the appeal filed by the appellant and set aside the impugned order.

5. Appeal allowed.

*(Pronounced in the open court on 29.09.2025)*

**(Dr. AJAYA KRISHNA VISHVESHA)**  
**MEMBER ( JUDICIAL )**

**(SATENDRA VIKRAM SINGH)**  
**MEMBER ( TECHNICAL )**