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

REGIONAL BENCH- COURT NO. 02

Customs Appeal No. 10511 of 2025

[Arising Out Of OIA-JMN-CUSTM-000-APP-226-238-24-25 Dated- 25/10/2024 passed by Commissioner of Customs (Appeals), Ahmedabad)

DYNAMIC SHIP RECYCLERS PVT LTD **.....Appellant**
Plot No. 85, Ship Breaking Yard, Alang, P.O. Manar
443 - 364150

VERSUS

Customs (P) Jamnagar **.....Respondent**
Seema Shulka Bhawan, Jamnagar-Rajkot Highway,
Near Victoria Bridge, Jamnagar, Gujarat- 361001

WITH

- **Customs Appeal No. 10012 of 2025 (R L Kalthia Ship Breaking Pvt Ltd)**
- **Customs Appeal No. 10034 of 2025 (SAGAR LAXMI SHIP BEAKERS)**
- **Customs Appeal No. 10039 of 2025 (SAGAR LAXMI SHIP BEAKERS)**
- **Customs Appeal No. 10040 of 2025 (SAGAR LAXMI SHIP BEAKERS)**
- **Customs Appeal No. 10044 of 2025 (SOMNATH SHIP RECYCLING)**
- **Customs Appeal No. 10045 of 2025 (SOMNATH SHIP RECYCLING)**
- **Customs Appeal No. 10046 of 2025 (SOMNATH SHIP RECYCLING)**
- **Customs Appeal No. 10047 of 2025 (SOMNATH SHIP RECYCLING)**
- **Customs Appeal No. 10048 of 2025 (SOMNATH SHIP RECYCLING)**
- **Customs Appeal No. 10094 of 2025 (VIJAY SHIP BREAKING CORPORATION)**
- **Customs Appeal No. 10095 of 2025 (VIJAY SHIP BREAKING CORPORATION)**
- **Customs Appeal No. 10096 of 2025 (VIJAY SHIP BREAKING CORPORATION)**
- **Customs Appeal No. 10097 of 2025 (VIJAY SHIP BREAKING CORPORATION)**
- **Customs Appeal No. 10098 of 2025 (VIJAY SHIP BREAKING CORPORATION)**
- **Customs Appeal No. 10099 of 2025 (VIJAY SHIP BREAKING CORPORATION)**
- **Customs Appeal No. 10161 of 2025 (ATAM MANOHAR SHIP BREAKERS PVT LTD)**
- **Customs Appeal No. 10162 of 2025 (ATAM MANOHAR SHIP BREAKERS PVT LTD)**
- **Customs Appeal No. 10163 of 2025 (ATAM MANOHAR SHIP BREAKERS PVT LTD)**

- **Customs Appeal No. 10164 of 2025 (ATAM MANOHAR SHIP BREAKERS PVT LTD)**
- **Customs Appeal No. 10165 of 2025 (YSI RECYCLERS LLP)**
- **Customs Appeal No. 10166 of 2025 (YSI RECYCLERS LLP)**
- **Customs Appeal No. 10167 of 2025 (YSI RECYCLERS LLP)**
- **Customs Appeal No. 10168 of 2025 (YSI RECYCLERS LLP)**
- **Customs Appeal No. 10174 of 2025 (BHARAT GREEN SHIP RECYCLERS LLP)**
- **Customs Appeal No. 10175 of 2025 (BHARAT GREEN SHIP RECYCLERS LLP)**
- **Customs Appeal No. 10176 of 2025 (BHARAT GREEN SHIP RECYCLERS LLP)**
- **Customs Appeal No. 10177 of 2025 (BHARAT GREEN SHIP RECYCLERS LLP)**
- **Customs Appeal No. 10178 of 2025 (BHARAT GREEN SHIP RECYCLERS LLP)**
- **Customs Appeal No. 10188 of 2025 (J RD INDUSTRIES)**
- **Customs Appeal No. 10189 of 2025 (J RD INDUSTRIES)**
- **Customs Appeal No. 10190 of 2025 (J RD INDUSTRIES)**
- **Customs Appeal No. 10191 of 2025 (J RD INDUSTRIES)**
- **Customs Appeal No. 10192 of 2025 (J RD INDUSTRIES)**
- **Customs Appeal No. 10193 of 2025 (J RD INDUSTRIES)**
- **Customs Appeal No. 10194 of 2025 (BAIJNATH MELARAM PVT LTD)**
- **Customs Appeal No. 10195 of 2025 (BAIJNATH MELARAM PVT LTD)**
- **Customs Appeal No. 10196 of 2025 (BAIJNATH MELARAM PVT LTD)**
- **Customs Appeal No. 10197 of 2025 (BAIJNATH MELARAM PVT LTD)**
- **Customs Appeal No. 10198 of 2025 (BAIJNATH MELARAM PVT LTD)**
- **Customs Appeal No. 10199 of 2025 (BAIJNATH MELARAM PVT LTD)**
- **Customs Appeal No. 10200 of 2025 (BAIJNATH MELARAM PVT LTD)**
- **Customs Appeal No. 10201 of 2025 (BAIJNATH MELARAM PVT LTD)**
- **Customs Appeal No. 10202 of 2025 (BAIJNATH MELARAM PVT LTD)**
- **Customs Appeal No. 10203 of 2025 (BAIJNATH MELARAM PVT LTD)**
- **Customs Appeal No. 10208 of 2025 (LAKSHMI GREEN SHIP RECYCLERS LLP)**
- **Customs Appeal No. 10209 of 2025 (LAKSHMI GREEN SHIP RECYCLERS LLP)**
- **Customs Appeal No. 10210 of 2025 (LAKSHMI GREEN SHIP RECYCLERS LLP)**
- **Customs Appeal No. 10211 of 2025 (LAKSHMI GREEN SHIP RECYCLERS LLP)**
- **Customs Appeal No. 10212 of 2025 (R L KALTHIA SHIP BREAKING PVT LTD)**
- **Customs Appeal No. 10213 of 2025 (R L KALTHIA SHIP BREAKING PVT LTD)**

- **Customs Appeal No. 10214 of 2025 (R L KALTHIA SHIP BREAKING PVT LTD)**
- **Customs Appeal No. 10215 of 2025 (R L KALTHIA SHIP BREAKING PVT LTD)**
- **Customs Appeal No. 10234 of 2025 (GHAZIABAD SHIP BREAKERS PVT LTD)**
- **Customs Appeal No. 10235 of 2025 (GHAZIABAD SHIP BREAKERS PVT LTD)**
- **Customs Appeal No. 10236 of 2025 (GHAZIABAD SHIP BREAKERS PVT LTD)**
- **Customs Appeal No. 10237 of 2025 (GHAZIABAD SHIP BREAKERS PVT LTD)**
- **Customs Appeal No. 10238 of 2025 (GHAZIABAD SHIP BREAKERS PVT LTD)**
- **Customs Appeal No. 10239 of 2025 (GHAZIABAD SHIP BREAKERS PVT LTD)**
- **Customs Appeal No. 10255 of 2025 (PRIYA BLUE RECYLING LLP)**
- **Customs Appeal No. 10256 of 2025 (PRIYA BLUE RECYLING LLP)**
- **Customs Appeal No. 10257 of 2025 (PRIYA BLUE RECYLING LLP)**
- **Customs Appeal No. 10258 of 2025 (PRIYA BLUE RECYLING LLP)**
- **Customs Appeal No. 10259 of 2025 (PRIYA BLUE RECYLING LLP)**
- **Customs Appeal No. 10260 of 2025 (PRIYA BLUE RECYLING LLP)**
- **Customs Appeal No. 10261 of 2025 (KHUSHBOO INDIA PVT LTD)**
- **Customs Appeal No. 10265 of 2025 (KHUSHBOO INDIA PVT LTD)**
- **Customs Appeal No. 10281 of 2025 (GGSBY INDUSTRIES PVT LTD)**
- **Customs Appeal No. 10282 of 2025 (GGSBY INDUSTRIES PVT LTD)**
- **Customs Appeal No. 10284 of 2025 (KIRAN SHIP BREAKING CO)**
- **Customs Appeal No. 10291 of 2025 (KIRAN SHIP BREAKING CO)**
- **Customs Appeal No. 10294 of 2025 (KHUSHBOO INDIA PVT LTD)**
- **Customs Appeal No. 10298 of 2025 (KHUSHBOO INDIA PVT LTD)**
- **Customs Appeal No. 10299 of 2025 (KIRAN SHIP BREAKING CO)**
- **Customs Appeal No. 10300 of 2025 (ASHWIN CORPORATION)**
- **Customs Appeal No. 10301 of 2025 (ASHWIN CORPORATION)**
- **Customs Appeal No. 10302 of 2025 (ASHWIN CORPORATION)**
- **Customs Appeal No. 10303 of 2025 (ASHWIN CORPORATION)**
- **Customs Appeal No. 10304 of 2025 (ASHWIN CORPORATION)**
- **Customs Appeal No. 10305 of 2025 (GGSBY INDUSTRIES PVT LTD)**
- **Customs Appeal No. 10306 of 2025 (GGSBY INDUSTRIES PVT LTD)**
- **Customs Appeal No. 10307 of 2025 (GGSBY INDUSTRIES PVT LTD)**
- **Customs Appeal No. 10308 of 2025 (GGSBY INDUSTRIES PVT LTD)**
- **Customs Appeal No. 10309 of 2025 (GGSBY INDUSTRIES PVT LTD)**
- **Customs Appeal No. 10334 of 2025 (KREYANSH SHIP RECYCLING LLP)**

- **Customs Appeal No. 10335 of 2025 (KREYANSH SHIP RECYCLING LLP)**
- **Customs Appeal No. 10336 of 2025 (KREYANSH SHIP RECYCLING LLP)**
- **Customs Appeal No. 10337 of 2025 (KREYANSH SHIP RECYCLING LLP)**
- **Customs Appeal No. 10338 of 2025 (KIRAN SHIP BREAKING CO)**
- **Customs Appeal No. 10339 of 2025 (KIRAN SHIP BREAKING CO)**
- **Customs Appeal No. 10351 of 2025 (VMS INDUSTRIES LIMITED)**
- **Customs Appeal No. 10352 of 2025 (VMS INDUSTRIES LIMITED)**
- **Customs Appeal No. 10353 of 2025 (VMS INDUSTRIES LIMITED)**
- **Customs Appeal No. 10354 of 2025 (VMS INDUSTRIES LIMITED)**
- **Customs Appeal No. 10361 of 2025 (ALANG AUTO AND GEN ENGG CO PVT LTD)**
- **Customs Appeal No. 10362 of 2025 (ALANG AUTO AND GEN ENGG CO PVT LTD)**
- **Customs Appeal No. 10363 of 2025 (ALANG AUTO AND GEN ENGG CO PVT LTD)**
- **Customs Appeal No. 10364 of 2025 (ALANG AUTO AND GEN ENGG CO PVT LTD)**
- **Customs Appeal No. 10365 of 2025 (ALANG AUTO AND GEN ENGG CO PVT LTD)**
- **Customs Appeal No. 10366 of 2025 (ALANG AUTO AND GEN ENGG CO PVT LTD)**
- **Customs Appeal No. 10367 of 2025 (ALANG AUTO AND GEN ENGG CO PVT LTD)**
- **Customs Appeal No. 10381 of 2025 (BANSAL SHIP RECYCLERS LLP)**
- **Customs Appeal No. 10382 of 2025 (BANSAL SHIP RECYCLERS LLP)**
- **Customs Appeal No. 10383 of 2025 (BANSAL SHIP RECYCLERS LLP)**
- **Customs Appeal No. 10384 of 2025 (BANSAL SHIP RECYCLERS LLP)**
- **Customs Appeal No. 10385 of 2025 (BANSAL SHIP RECYCLERS LLP)**
- **Customs Appeal No. 10389 of 2025 (KIRAN SHIP BREAKING CO)**
- **Customs Appeal No. 10420 of 2025 (YSI RECYCLERS LLP)**
- **Customs Appeal No. 10421 of 2025 (YSI RECYCLERS LLP)**
- **Customs Appeal No. 10422 of 2025 (YSI RECYCLERS LLP)**
- **Customs Appeal No. 10437 of 2025 (SHIV CORPORATION)**
- **Customs Appeal No. 10438 of 2025 (SHIV CORPORATION)**
- **Customs Appeal No. 10439 of 2025 (SHIV CORPORATION)**
- **Customs Appeal No. 10440 of 2025 (SHIV CORPORATION)**
- **Customs Appeal No. 10443 of 2025 (RUDRA GREEN SHIP RECYCLING PVT LTD)**

- **Customs Appeal No. 10444 of 2025 (RUDRA GREEN SHIP RECYCLING PVT LTD)**
- **Customs Appeal No. 10445 of 2025 (RUDRA GREEN SHIP RECYCLING PVT LTD)**
- **Customs Appeal No. 10446 of 2025 (RUDRA GREEN SHIP RECYCLING PVT LTD)**
- **Customs Appeal No. 10447 of 2025 (ALANG AUTO AND GEN ENGG CO PVT LTD)**
- **Customs Appeal No. 10499 of 2025 (DIAMOND INDUSTRIES SHIP BREAKING PVT LTD)**
- **Customs Appeal No. 10500 of 2025 (DIAMOND INDUSTRIES SHIP BREAKING PVT LTD)**
- **Customs Appeal No. 10501 of 2025 (DIAMOND INDUSTRIES SHIP BREAKING PVT LTD)**
- **Customs Appeal No. 10502 of 2025(DIAMOND INDUSTRIES SHIP BREAKING PVT LTD)**
- **Customs Appeal No. 10512 of 2025 (DYNAMIC SHIP RECYCLERS PVT LTD)**
- **Customs Appeal No. 10513 of 2025 (DYNAMIC SHIP RECYCLERS PVT LTD)**
- **Customs Appeal No. 10514 of 2025 (DYNAMIC SHIP RECYCLERS PVT LTD)**
- **Customs Appeal No. 10515 of 2025(DYNAMIC SHIP RECYCLERS PVT LTD)**
- **Customs Appeal No. 10516 of 2025 (DYNAMIC SHIP RECYCLERS PVT LTD)**
- **Customs Appeal No. 10517 of 2025 (DYNAMIC SHIP RECYCLERS PVT LTD)**
- **Customs Appeal No. 10518 of 2025 (DYNAMIC SHIP RECYCLERS PVT LTD)**
- **Customs Appeal No. 10519 of 2025 (DYNAMIC SHIP RECYCLERS PVT LTD)**
- **Customs Appeal No. 10520 of 2025 (DYNAMIC SHIP RECYCLERS PVT LTD)**
- **Customs Appeal No. 10521 of 2025 (DYNAMIC SHIP RECYCLERS PVT LTD)**
- **Customs Appeal No. 10522 of 2025(DYNAMIC SHIP RECYCLERS PVT LTD)**
- **Customs Appeal No. 10523 of 2025(DYNAMIC SHIP RECYCLERS PVT LTD)**
- **Customs Appeal No. 10878 of 2025 (BANSAL SHIP BREAKERS PVT LTD)**
- **Customs Appeal No. 10879 of 2025 (BANSAL SHIP BREAKERS PVT LTD)**

- **Customs Appeal No. 10880 of 2025 (BANSAL SHIP BREAKERS PVT LTD)**
- **Customs Appeal No. 11203 of 2025 (ATAM MANOHAR SHIP BREAKERS PVT LTD)**
- **Customs Appeal No. 11204 of 2025 (ATAM MANOHAR SHIP BREAKERS PVT LTD)**
- **Customs Appeal No. 11205 of 2025 (ATAM MANOHAR SHIP BREAKERS PVT LTD)**
- **Customs Appeal No. 11206 of 2025 (ATAM MANOHAR SHIP BREAKERS PVT LTD)**
- **Customs Appeal No. 11207 of 2025 (ATAM MANOHAR SHIP BREAKERS PVT LTD)**

APPEARANCE:
Shri. J C Patel & Shri. Rahul Gajera, Advocates for the Appellant
Shri. Himanshu Nachane, Superintendent, (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Final Order No. 10875-11017/2025

DATE OF HEARING:25.09.2025
DATE OF DECISION:04.11.2025

SOMESH ARORA

1. Present is a bunch of appeals filed by the appellants having similar issue of refund arising consequent to Final Assessment Order No. 752/2537219/SBY/2023-24 dated 20.03.2024 passed by the Assistant Commissioner, Customs Division, Bhavnagar M/s Dynamic Ship Recyclers Pvt. Ltd., ("the lead appellant") had filed a refund claim for Rs. 8,23,7821 16.04.2024 under Section 27 of Customs Act, 962.

2. The lead appellant had imported a vessel MT FALCON SPRIT for breaking up/recycling and Bill of Entry No. 2810485 dated 10.10.2022 under Section 46 of the Customs Act, 1962. They had self-assessed the goods viz. Vessel for breaking (under CTH 89.08), Bunkers (under CTH 27.10) & Consumables (under CTH 98.05) and paid customs duty of Rs. 24,08,52,292/- vide challan number 2041306203 dtd. 15.10.2022. The lead appellant claimed that Fuel and Oil contained in Bunker Tanks inside/outside

the engine room of the vessel was to be assessed to duty under CTSH 89.08 along with the vessel. Department, however initially was of a view that Fuel and Oil contained in Bunker Tanks were to be assessed to duty under respective CTSH of Chapter 27 and accordingly the bill of entry was assessed to duty of Rs. 24,08,52,292/- The Bill of Entry was provisionally for want of original documents.

3. This Bench of CESTAT vide its orders A/11792-11851/2022 dated 17.10.2022/01.12.2022 had 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 aforesaid order of the CESTAT, it was decided by the Assistant Commissioner, Customs Division, Bhavnagar in Final Assessment Order No. 752/2537219/SBY/2023-24 dated 20.03.2024 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. 37/95-Cus. Dtd. 03.07.1996. The bill of entry was finally assessed to duty of Rs. 23,98,80,229/-vide Final Assessment order No.752/2537219/SBY/2023-24 dtd. 20.03.2024 passed by the Assistant Commissioner Bhavnagar. The appellant submitted a copy of certificate issued by C.A. M/s GSPS & ASSOCIATES dated 03.04.2024 along with refund claim, wherein it was stated that incidence of customs duty paid on Bunker (Oil and fuels) has not been passed on to any other person. The appellant also submitted that unjust enrichment was not applicable in their case and referred to the provisions of sub section 2 of Section 27(g)(ii) which was inserted (w.e.f. 31.03.2017) by S.92 of the Finance Act, 2017 (7 of 2017).

4. However, the department passed the impugned order rejecting the claims and aggrieved by the same, the present appeals have been filed by the lead appellant and others. The advocate for the appellant has made the following submissions seeking refund of the duty as they are otherwise found

eligible but which has been denied by the department by operation of the bar as contained in Section 11B of unjust enrichment.

5. Comparison of the Bill of Entry with the Sales Invoices of the Appellant shows that the Bunkers were sold at a price below the import price value on which such duty was assessed and consequently the Appellants have not been able to recover even the cost of the Bunkers, much less the duty paid thereon.

5.1 Appellants submit 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. Consequently, the question of the Appellant having passed on and recovered from the buyers, the duty paid on the Bunkers does not arise. Clearly, therefore the burden of the said duty has been borne by the Appellant and has not been passed on to the buyers. A perusal of the Appellant's Sales Invoices would show that the Appellant has only recovered the GST payable on the local sales and not the import duty paid on the Bunkers. A Table showing the import price/ value of the Bunkers on which the duty was assessed, the amount of duty assessed and paid on the Bunkers and the Price at which the Bunkers were sold has also been produced. It is evident from the said Table that the Price at which the Bunkers were sold by the Appellant was even below the import price/ value of the Bunkers on which the duty was assessed and paid. When the Appellant has been unable to recover from the Buyers, even the full import price of the Bunkers on which the duty was assessed, the question of recovering the duty assessed on such import price does not arise at all. Merely because the duty amount was debited to expenses in Profit & Loss Account, it does not follow that incidence thereof was passed on to the buyers, when the price at which the Bunkers were sold to the buyers, was even less than the import price on which the duty was assessed:

6. 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 as laid down in the following judgments 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:

- Living Media India Ltd. reported as 1998 (104) E.L.T. 3 (S.C.)
- Business Overseas Corporation-2015(317) ELT 637 (Tri. Del)
- CCE v Flow Tech Power-2006 (202) ELT 404 (Mad): Para 3
- Elantas Beck India Ltd v CCE-2016 (339) ELT 325: Para 5
- Birla Corporation Ltd v CCE-2008 (231) ELT 482: Para 5
- Bharat Kumar Indrasen Trading P. Ltd-2018 (2) TMI 1574: Para 7 and 8.
- Shyam Coach Engineers v CCE-2024 (1) TMI 245: Paras 5.7, 5.8 and 6.
- CCE, Pune-I v. Sandvik Asia Ltd-2015 (323) ELT 431 (Bom.)
- Advance Steel Tubes Ltd V. CC. Ex-2014 (310) ELT 370 (Tri. Del.)
- CCE V Advance Steel Tubes Ltd-2018 (11) G.S.T.L. 341 (ALL)
- Equinox Solutions Ltd-2017 (357) ELT 1041 (Tri. Ahd)
- Interplex India Pvt Ltd-2013 (290) ELT 386 (Tri. - Ahd)
- JK Prints V. Commissinoer CGST-2020 (373) E.L.T. 110 (Tri. -Ahd)
- ACC Ltd and Ambuja Cement Ltd-2024 (7) TMI 104- (Tri-Chandigarh)
- Circular No. 18/2010/CUS dated 8th July 2010

7. 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. Consequently, as laid down in the aforesaid judgments, merely because the duty was debited to expenses, it cannot be said that the incidence thereof was passed on to the buyers.

8. The department on the other hand reiterates the findings of the lower authority through the AR and indicates that the appellant had failed to produce the Chartered Accountant Certificate in the format provided to them along with financial records i.e. copy of Audited Balance Sheet, Sales invoices etc. and therefore by implication, it is clear that the duty paid was shown as expenditure and formed part of Profit and loss account of the Appellants. Therefore, it appears that where the claimant has itself treated the refund amount due as expenditure and not as "claim receivable", the bar of unjust-enrichment cannot be stated to have been cleared and it cannot be stated that the appellant had failed to prove that incidence of customs duty had not been passed to any other person.

9. Learned AR also relies on Circular No. 7/2008-Cus. dated 28.05.2008 which requires that AC/DC seeking to allow refund should go through audited balance sheet and other related financial records, certificate of the Chartered Accountant etc. to decide whether incidence of the duty and interest has been passed or not?

10. This Court has considered the rival submissions. It finds that the disputes at this stage is only from the angle of as to whether unjust-enrichment will or will not apply to the matter and with its factual matrix?. It finds that from the table produced by the appellant that the price at which the bunkers were sold by the appellant was quite below the import price/value of the Bunkers on which the duty was assessed and paid. Therefore, the appellant have claimed that they have not been even able to

recover full import price of the Bunkers on which duty was assessed and therefore there cannot have been any question of recovering the duty assessed on such import price. The table is reproduced at annexure 48 of appeal by way of example of the present appellant.

M/s. Dynamic Ship Recyclers Pvt. Ltd, SBY Alang
OIO No 100/Cus-Ref/2023-24 Dated 30.03.2021
BILL OF ENTRY NO-7329188 Dated 23.07.2018

Description Of Goods	Quantity Imported (Ltrs.)	Assessable Value (Rs.)	Customs Duty Paid (Rs.)	Total Of Col 3+4	Sale Value (Rs.)	Loss
1	2	3	4	5	6	7
MGO	66630	32,74,038/-	8,01,809/-	40,75,847/-	23,32,050/-	
Fuel Oil	68400	22,42,261/-	5,49,129/-	27,91,390/-	21,20,400/-	
TOTAL		55,16,299	13,50,938	68,67,237	44,52,450	24,14,787

11. Further, the appellant states that they duly produced the certificate as has been reproduced below:

B.R.Popat & Co.
Chartered Accountants

S-1, "Swastik", Dawn,
Bhavnagar-364 001
Telefax (0278) 2212099/2211009

Email: brpopat.bhavnagar@gmail.com

CERTIFICATE
TO WHOMSOEVER IT MAY CONCERN

We, M/s. B. R. Popat & Co., Chartered Accountants, have audited the financial accounts of **M/s. DYNAMIC SHIP RECYCLERS PVT. LTD (PAN:AABCD6441J)** (herein after referred as "the company") having office at T-1, Krishna Complex, Waghawadi Road, Bhavnagar and works at Plot No.85, Alang Ship Breaking Yard, Alang, Dist: Bhavnagar for F.Y.2018-19 under the Companies Act, 2013. We have checked their books of account and other relevant documents and records including Bill of Entry No.7329188 dated 23.07.2018 for import of Vessel Santa Clara B for its breaking up and certify that:

- **M/s. DYNAMIC SHIP RECYCLERS PVT. LTD (PAN:AABCD6441J)**, has paid total customs duty (including IGST) of Rs.3,58,79,148/- on 23.07.2018 vide Challan No.2023489169 dated 23.07.2018 on the import of vessel Santa Clara B for breaking purposes including bunker oil and fuels, stores etc.
- Total customs duty (including IGST) of Rs.3,58,79,148/- on 23.07.2018 vide Challan No.2023489169 dated 23.07.2018 on the import of vessel Santa Clara B includes Custom Duty of Rs.2,10,522/- for which refund is being claimed by the company.
- The burden of Custom Duty of Rs.2,10,522/- for which refund is being claimed, has not been passed on by the company to the buyer/any other firm/company/persons and the same is shown as "Custom Duty Receivable A/c" treating the same as balance sheet item, in the books of account maintained by the company for F.Y.2023-24.

This certificate is issued without prejudice.

Date: 29.01.2024

For B. R. Popat & Co.
Chartered Accountants

CA. Vishal S. Parekh
Partner
M. No. 136624
FRN: 107972W

Place: Bhavnagar
UDIN: 24136624BKBFFN4263

11.1 Further despite it clearly being indicated that the same has not been passed by company to the buyers or any other person and same is shown as the Customs duty receivable account, no cognizance of the same was taken.

12 The Learned Advocate at this stage seeks to place reliance on various case law as has been indicated above to press the point that when the appellant had not been able to recover from the buyers even the full import price of the bunkers on which duty was assessed the question of recovering the duty assessed on such import price did not arise. That the amount was debited to expense in Profit And Loss Account did not mean the incidence thereof was passed on to the buyers when the price at which the bunkers were sold to the buyers, was even less then in the import price on which the duty was assessed.

13. Considered. This court finds force in the relevance of case law cited by the appellant. In the peculiar situation of this case when the goods have been eventually sold at price far less than the assessed values of the goods. This Court particularly finds that this matter is covered by 2015 (347) ELT 637 (Tri- Del.) in the matter of Business Overseas Corporation Vs. C.C.E (Import And General) New Delhi wherein by majority view it was held that the goods imported and sold at a loss that is when cost price was more than the sale price during the period in dispute and same fact was certified by Chartered Accountant. The importer has duly discharged burden of proof by producing Chartered Accountant's Certificate, burden shifted to revenue to prove recovery of extra cost from the Customers by producing more evidence. Revenue has failed to advance any evidence to rebut Chartered Accountant's Certificate.

13.1 This Court finds that the situation is no different in this case. Therefore, the majority view of the case (cited supra) shall apply to the facts and circumstance of this case also. And once the Chartered Accountant Certificate has certified an aspect the onus shift on the department. Similar view also emerges from the decision of 2006 (202) ELT 404 (Mad) in the matter of Commissioner Central Excise Vs. Flow Tech Power as also in the matters in 2017 (357) ELT 1041 (Tri.-Ahd.) of Equinox Solutions Ltd Vs. CCE Ahmedabad, as well as in 2013 (290) ELT 386 (Tri. Ahd.) in the matter of Interplex India Pvt Ltd Vs. CC Ahmedabad. This Bench has taken a view that even production of Chartered Accountant Certificate shifts the onus to the department.

13.2 This Court finds that in instant case not only Chartered Accountant Certificate is on record certifying the fact of not passing on the duty but also additionally factum of selling below cost is also on record which has also been taken into consideration by various judicial rulings cited by the appellants as above, to hold that this fact is enough to rebut the presumption of duty having been passed.

14. In view of the forgoing, it is clear that the appellant have produced enough evidence to indicate that the bar of unjust-enrichment is not applicable to them and to the contrary department has not brought any tangible evidence to discharge the onus shifted on it. In view of the foregoing, appeals are allowable. Same are allowed with consequential relief.

15. Appeals allowed with consequential relief.

(Pronounced in the open court on 04.11.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi