

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

REGIONAL BENCH - COURT NO. 2

CUSTOMS Appeal No. 11984 of 2019-SM

[Arising out of Order-in- Appeal No JMN-CUSTOM-000-APP-002-19-20 dated 01.04.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Jacob Chirayildevasia

M/s. Venus Enterprises, B-12, Everest Flats,
Waghawadi Road, Opp. Central Salt
BHAVNAGAR, GUJARAT -364001.

.... Appellant

VERSUS

Commissioner of Customs, Jamnagar (Prev.)

Sharda House, Bedi Bandar Road,
Opp. Panchavati, Jamnagar
Gujarat- 361002

.... Respondent

APPEARANCE :

Shri Sarju Mehta, Chartered Accountant for the Appellant
Shri P. Ganesan, Superintendent (AR) for the Revenue.

CORAM:

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

DATE OF HEARING : 19.08.2025

DATE OF DECISION: 26.11.2025

FINAL ORDER NO. 11364/2025

DR. AJAYA KRISHNA VISHVESHA :

This appeal is directed against impugned order dated 01.04.2019 passed by learned Commissioner (Appeals), Customs, Ahmedabad through which the learned Commissioner partly allowed the appeal and reduced the redemption fine imposed by the Adjudicating Authority in lieu of confiscation of 449 gas cylinders and rest of the appeal was rejected.

2. The facts of the case in brief are that various cylinders of gases viz. Carbon Dioxide, Acetylene etc. are imported in ships brought for breaking. However, such cylinders are restricted for import in terms of Gas Cylinders

Rules, 2004 as amended and therefore, they are required to be scrapped before being sold by the importers i.e. Ship Breakers. Such ship breakers file undertaking with Customs department wherein they *inter alia*, undertook that all such cylinders shall neither be sold as such nor would be used for further refilling by them. That all such empty gas cylinders shall be destroyed by them by following the procedure prescribed by the Department of Explosives vide Rule 52(m) of the Gas Cylinder Rules, Notification No. GMB/Sosiya/73/110/2003/09 dated 26.07.2003 and District Collector, Bhavnagar's order dated 26.04.2003. On the basis of intelligence, the premises of the appellant was searched on 06.01.2017 and 455 various gas cylinders valued at Rs. 13,65,000/- found therein were placed under seizure and were found liable for confiscation for violation of provisions of Customs Act, 1962 read with Foreign Trade Policy and Gas Cylinder Rules.

2.1 The statements of the appellant Shri Jacob Chirayil Devasia, Shri Ramesh Shivilalbai Padhia, Shri Ashwin Bhagwanbhai Gujarati, Shri Nazir Hussainbhai Kaliwala and Shri Rajeev Reniwal were recorded. It appeared that 455 various gas cylinders were imported in the ships brought for breaking by various ship breakers and were sold as such in contravention of the terms of such permission granted by the proper officer for clearance. Therefore, it appeared that 455 various gas cylinders valued at Rs. 13,65,000/- seized from Survey No. 183, Ganganagar, Bhudel, Distt. Bhavnagar were liable to confiscation under Section 111(d) and 111(j) of the Customs Act, 1962. Therefore, Show Cause Notice dated 29.06.2017 was served to the appellant Shri Jacob Chirayil Devasia and his firm M/s. Venus Enterprises calling upon to show cause as to why 455 various gas cylinders valued at Rs. 13,65,000/- should not be confiscated under Section 111(d) and 111(j) of the Customs Act, 1962.

2.2 The Show Cause Notice was adjudicated by the Adjudicating Authority vide Order-in-Original dated 25.04.2018. He ordered for absolute confiscation of six Freon gas cylinders and confiscation of rest 449 Carbon Dioxide gas cylinders with an option to redeem the same on payment of redemption fine of Rs. 3,00,000/- under Section 125(1) of the Customs Act, 1962. Penalty of Rs. 15,000/- was imposed on the appellant under Section 112(b) of the Customs Act, 1962. Aggrieved by the Order-in-Original dated 25.04.2018, the appellant filed appeal before Commissioner (Appeals). The Commissioner (Appeals) reduced the redemption fine imposed in lieu of confiscation of 449 gas cylinders from Rs. 3,00,000/- to Rs. 1,40,000/- and rejected rest of the appeal. Feeling aggrieved by the Order-in-Appeal dated 01.04.2019 passed by learned Commissioner (Appeals), the present appeal has been filed before this Tribunal.

3. In the grounds of appeal, the appellant submitted that impugned order is non-speaking and non-reasoned because learned Commissioner (Appeals) has not dealt with all the pleas made in the grounds of appeal by the appellant before him and has ignored the judgments and orders referred to by the appellant in his favour. The Commissioner (Appeals) had not recorded any finding on the arguments raised before him by the appellant. The Commissioner (Appeals) has failed to abide by the judicial pronouncements relied upon by the appellant in his support. The appellant also submitted that 455 gas cylinders allegedly recovered from the appellant were part of the ship and the same were used for various purposes in the ship and the same were not declared in the Import General Manifest as it they were of no commercial value. Therefore, receipt of these goods were not in contravention of any provision contained in any law. Therefore, confiscation of goods under clause (d) of Section 111 of the Act cannot be

sustained. The appellant further contended that Section 111(j) of the Act deals with removal of dutiable and prohibited goods from a Customs area without permission of the proper officer or contrary to the terms of such permission. In this case, ship breakers had followed all the procedures and provisions of law and they have been granted necessary permission for clearance of the imported goods i.e. they have been granted 'out of charge' by the Customs authorities. Hence the appellant has not contravened the provisions of Section 111(j) of the Act. There is no dispute that the old and used empty cylinders of gas are not prohibited. The cylinders obtained by breaking up of old and used ship after the payment of Customs duty by the importer, do not fall under the definition of dutiable goods. Therefore, there is no charge of short levy or non-levy of the duty. The Bill of Entry filed by the appellant were assessed by the proper officer and duty was paid. Section 111(j) of the Act indicate that it will be applicable in cases where there is deliberate removal of unaccounted goods without written permission under any of the provisions of Act. In this case, due permission was granted to the importer, therefore, confiscation of goods under clause (j) of Section 111 of the Act cannot be sustained.

3.1 The appellant relied upon the order of the Tribunal in the case of M/s. **AG Enterprise & Ors vs. CC (Prev.) Jamnagar** – 2014 (308) ELT 418 (Tri. Ahmd.) in which it was held that the imports under ITC (HS) 89.08 are free without any restrictions, therefore, MGO/HSD contained in the vessel brought in for breaking cannot be held as liable for confiscation under Section 111(d) of the Act and no penalties are imposable under Section 112(a) of the Customs Act, 1962. The Tribunal has also held in the order that no ITC action is taken by the Revenue when an ocean-going vessel is converted into coastal run vessel and only duties are paid on the fuel used

during the coastal run. Similarly, old and rusted gas cylinders contained in the vessel brought in for breaking up cannot be held as liable for confiscation under Section 111(d) of the Act and no penalties are imposable under Section 112(b) of the Act. The importers of the ship are engaged in the business of purchase of old and used ships and thereafter dismantling them and for this purpose they are holding the Import-Export Code (IEC) and they have imported ships from international market and not cylinders and hence, the findings recorded by Jt. Commissioner in Order-in-Original is not sustainable that import of cylinders without valid license are prohibited goods, as condition of having license was not complied with. The importers have not imported any extra or additional goods and as such seized Carbon Dioxide cylinders were not imported by the ship breakers. The Adjudicating Authority and the learned Commissioner (Appeals) failed to appreciate the legal provisions and therefore, the impugned Order-in-Appeal is liable to be set-aside and the appeal may be allowed.

4. Learned AR for the department submitted that the grounds taken by the appellant cannot be accepted that Order-in-Appeal is non-speaking and non-reasoned order and no findings have been recorded on the submissions made by the appellant. He submitted that bare perusal of Order-in-Original and Order-in-Appeal shows that all the judgments and submissions of the appellant have been taken on record and discussed by both the authorities. Therefore, this argument of the appellant has no force. Learned AR also submitted that if any condition has been imposed for import of any goods and if that condition is not fulfilled then the goods become prohibited for import. The import of subject gas cylinders are in violation of Section 111(d) and 111(j) of the Act. Therefore, the cylinders are covered within the definition of 'prohibited goods'. Learned AR submits that the impugned order passed by learned Commissioner is well reasoned and in accordance

with the provisions of Customs Act, 1962 and therefore, it should upheld and the appeal may be rejected.

5. I have carefully gone through the impugned order dated 01.04.2019 passed by learned Commissioner (Appeals). In para 7 of the impugned order he has mentioned that in the Order-in-Original passed by learned Adjudicating Authority it has been observed in para 28 that Shri Jacob Chirayil Devasia, the appellant has stated in his statement dated 06.01.2017 recorded under Section 108 of the Customs Act, 1962 the number of cylinders, the place from where he bought them as well as the price paid for the said cylinders. He also stated that he used to buy such cylinders from Alang for sale to traders dealing in such cylinders. It is also observed in Order-in-Original that the said gas cylinders were not allowed to be imported without valid license. The gas cylinders received alongwith the ship being brought for breaking, were required to be destroyed/disposed of by following the procedure under Gas Cylinder Rules, 2016 and other Rules/Regulations. From the Panchnama made by Shri Jacob Chirayil Devasia, it is evident that the said cylinders seized from his business premises were not destroyed but removed illicitly as such from the Ship Breaking yards by various ship breakers. Therefore, the adjudicating authority has correctly held that the cylinders were liable for confiscation under Section 111(d) and Section 111(j) of the Customs Act, 1962. Once the goods have been held liable for confiscation, penalty may be imposed under Section 112(a) and (b) on the appellant for abetting the commission of an act which renders the goods liable to confiscation under Section 111 of the Customs Act, 1962. Learned Commissioner (Appeals) has also mentioned in the impugned order that an undertaking/ declaration has to be filed by every ship breaker wherein they have to declare the number of cylinders the vessel contains and have to undertake that all such cylinders neither would be sold as such nor would be

used for refilling. That all such empty cylinders shall be destroyed by them by following proper procedure. By not following the said procedure, the goods were rendered liable for confiscation. The learned Commissioner (Appeals) in the impugned order has held that Adjudicating Authority has rightly confiscated the cylinders and rightly imposed the penalty on the appellant.

6. I am of the view that the conclusion arrived at by the learned Adjudicating Authority and the Commissioner (Appeals) is sustainable and no interference is required in the impugned order. However, in view of the fact that appellant is dealing into a very low profile business and operate under very thin margin of profit, the learned Commissioner (Appeals) has reduced the redemption fine from Rs. 3,00,000/- to Rs. 1,40,000/-. I am of the view that the amount of redemption fine must be further reduced from Rs. 1,40,000/- to Rs. 40,000/- (Rupees forty thousand only).

7. In view of the above discussion, the appeal is partly allowed and the redemption fine imposed in lieu of confiscation of 449 gas cylinders is further reduced from Rs. 1,40,000/- to Rs. 40,000/- (Rupees forty thousand only). Rest of the appeal is rejected. The order of learned Commissioner (Appeals) is modified to the above extent.

(Order pronounced in the open court 26.11.2025)

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)