

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

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 11031 of 2019

(Arising out of OIA-JMN-CUSTOM-000-APP-004-072-18-19 dated 30.04.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

NAVYUG SHIP BREAKING CO.

PLOT NO 153M SHIP BREAKING YARD
SOSIYA POST MANAR, BHAVNAGAR-GUJARAT

.....Appellant

VERSUS

C.C., JAMNAGAR(prev)

SHARDA HOUSE, BEDI BANDAR ROAD,
OPP. PANCHAVATI, JAMNAGAR-GUJARAT

.....Respondent

WITH

- (i) Customs Appeal No. 11034/2019 (Hariyana Ship Demolition Pvt. Ltd.);
- (ii) Customs Appeal No. 11053/2019 (Hariyana Ship Demolition Pvt. Ltd.);
- (iii) Customs Appeal No. 11062/2019 (Hariyana Ship Demolition Pvt. Ltd.);
- (iv) Customs Appeal No. 11074/2019 (Inducto Steel Ltd.)
- (v) Customs Appeal No. 11075/2019 (Hariyana Ship Demolition Pvt. Ltd.);
- (vi) Customs Appeal No. 11078/2019 (Hariyana Ship Demolition Pvt. Ltd.);
- (vii) Customs Appeal No. 11080/2019 (Hariyana Ship Demolition Pvt. Ltd.);
- (viii) Customs Appeal No. 11081/2019 (Lakshmi Steel Rolling Mills);
- (ix) Customs Appeal No. 11082/2019 (Lakshmi Steel Rolling Mills);
- (x) Customs Appeal No. 11103/2019 (Malwi Ship Breaking Co.);
- (xi) Customs Appeal No. 11130/2019 (Priya Blue Industries Pvt. Ltd.);
- (xii) Customs Appeal No. 11142/2019 (Shital Ispat Pvt. Ltd.);
- (xiii) Customs Appeal No. 11144/2019 (Shital Ispat Pvt. Ltd.);
- (xiv) Customs Appeal No. 11156/2019 (Hatimi Steels);
- (xv) Customs Appeal No. 11171/2019 (Hatimi Steels.);
- (xvi) Customs Appeal No. 11225/2019 (Alang Auto And Gen Engg. Co. Pvt. Ltd.);
- (xvii) Customs Appeal No. 11229/2019 (Rai Metal Works Pvt. Ltd.);
- (xviii) Customs Appeal No. 11318/2019 (K P G Enterprise);
- (xix) Customs Appeal No. 11321/2019 (International Steel Corporation);
- (xx) Customs Appeal No. 11337/2019 (K P G Enterprise);

c/11031,11034,11053,11062,11074,11075,11078,11080,11081,11082,11103,11130,11142,11144,11156,11171,11225,11229,11318,11321,11337,11354,11625,11646,11721,11723,11724,11762,11788,11805,11829,11830,11832,11837,11844,11859,11871,11899,11900,11912,11923,11924,11938,11939,11940,11951,11988,11991,11992,11993,12000,12001,12005-12008,12013,12024,12034,12617/2019

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- (xxi) Customs Appeal No. 11354/2019 (Madhav Industrial Corporation);
- (xxii) Customs Appeal No. 11625/2019 (Shiv Ship Breaking Co);
- (xxiii) Customs Appeal No. 11646/2019 (Jai Jagdish Ship Breakers Pvt. Ltd.);
- (xxiv) Customs Appeal No. 11721/2019 (Marinelines Ship Breakers Pvt. Ltd.);
- (xxv) Customs Appeal No. 11723/2019 (Mahadev Ship Breakers Pvt Ltd.);
- (xxvi) Customs Appeal No. 11724/2019 (Mahadev Ship Breakers Pvt Ltd.);
- (xxvii) Customs Appeal No. 11762/2019 (Jawandamal Dhannamal);
- (xxviii) Customs Appeal No. 11788/2019 (Baijnath Melaram);
- (xxix) Customs Appeal No. 11805/2019 (Shree Ram Green Ship Recycling Industries);
- (xxx) Customs Appeal No. 11829/2019 (Kiran Ship Breaking Co);
- (xxxi) Customs Appeal No. 11830/2019 (Khushboo India Pvt. Ltd.);
- (xxxii) Customs Appeal No. 11832/2019 (Chaudhry Industries);
- (xxxiii) Customs Appeal No. 11837/2019 (Shree Saibaba Ship Breaking Co);
- (xxxiv) Customs Appeal No. 11844/2019 (Hooghly Shipbreakers Limited);
- (xxxv) Customs Appeal No. 11859/2019 (Ashwin Ship Breaking Llp);
- (xxxvi) Customs Appeal No. 11871/2019 (Anupama Steel Ltd.);
- (xxxvii) Customs Appeal No. 11899/2019 (Dalkan Ship Breaking Pvt. Ltd.);
- (xxxviii) Customs Appeal No. 11900/2019 (Paras Steel Corporation);
- (xxxix) Customs Appeal No. 11912/2019 (Akansha Ship Breaking Pvt. Ltd.);
- (xl) Customs Appeal No. 11923/2019 (Kumar Steel);
- (xli) Customs Appeal No. 11924/2019 (Kumar Steel);
- (xlii) Customs Appeal No. 11938/2019 (Leela Ship Recycling Pvt Ltd.);

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- (xlili) **Customs Appeal No. 11939/2019 (Efcee Globe Ship Recycling Private Limited);**
- (xliv) **Customs Appeal No. 11940/2019 (Leela Greenship Recycling Pvt Ltd.);**
- (xlv) **Customs Appeal No. 11951/2019 (Ghasiram Gokalchand Ship Breaking Yard);**
- (xlvi) **Customs Appeal No. 11988/2019 (Nbm Iron & Steel Trading Pvt. Ltd.);**
- (xlvii) **Customs Appeal No. 11991/2019 (Saumil Impex Pvt. Ltd.);**
- (xlviii) **Customs Appeal No. 11992/2019 (Panchvati Ship Breakers);**
- (xlix) **Customs Appeal No. 11993/2019 (Kamdar & Associates);**
- (I) **Customs Appeal No. 12000/2019 (Guru Ashish Ship Breakers);**
- (Ii) **Customs Appeal No. 12001/2019 (Diamond Industries (sbd));**
- (Iii) **Customs Appeal No. 12005/2019 (Shubh Arya Steel Pvt. Ltd.);**
- (Iiii) **Customs Appeal No. 12006/2019 (Alang Ship Breaking Pvt Ltd.);**
- (liv) **Customs Appeal No. 12007/2019 (Alang Ship Breaking Pvt Ltd.);**
- (Iv) **Customs Appeal No. 12008/2019 (Rajesh Ship Breaking Pvt. Ltd.);**
- (Ivi) **Customs Appeal No. 12013/2019 (Y S Investments);**
- (Ivii) **Customs Appeal No. 12024/2019 (Dhan Steels Private Limited);**
- (Iviii) **Customs Appeal No. 12034/2019 (Agrasen Ship Breakers Private Limited);**
- (lix) **Customs Appeal No. 12617/2019 (Mahavir Ship Breakers);**

(Arising out of OIA-JMN-CUSTOM-000-APP-004-072-18-19 dated 30.04.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

APPEARANCE:

Shri J.C. Patel, P.D. Rachchh & Rahul Gajera, Advocates for the Appellant
Shri. G. Kirupanandan, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

c/11031,11034,11053,11062,11074,11075,11078,11080,11081,11082,11103,11130,11142,11144,11156,11171,11225,11229,11318,11321,11337,11354,11625,11646,11721,11723,11724,11762,11788,11805,11829,11830,11832,11837,11844,11859,11871,11899,11900,11912,11923,11924,11938,11939,11940,11951,11988,11991,11992,11993,12000,12001,12005-12008,12013,12024,12034,12617/2019

Final Order No. A/11792-11851/2022

DATE OF HEARING: 17.10.2022

DATE OF DECISION: 01.12.2022

RAMESH NAIR

The Common Issue involved in all these Appeals is whether the Oil contained in the Bunker Tanks in the Engine Room/Outside Engine Room of Vessel imported for breaking up is to be assessed independently of the vessel under CTH 2710 or with the Vessel imported for breaking up under CTH 8908 00 00.

2. The facts involved are mostly common in all these Appeals. For the sake of convenience facts of M/s. Navyug Ship Breaking Co., C/11021/2019 is being considered as the lead matter. The facts, in brief are that during the period 2018-19, the Appellant imported Vessel for breaking up. CTH 8908 00 00 covers "Vessels and other floating structures for breaking up". In the course of assessment of the Bill of Entry, the Appellant contended that the Vessels imported for breaking up along with the Oil contained in Bunker tanks in the Engine room of the said Vessels would be classifiable under CTH 8908 00 00 as held by the Hon'ble High Court in the case of Priya Holdings (P) Ltd v CC – 2013 (288) ELT 347 (Guj) and as regards the oil contained in bunker outside the Engine Room, appellant paid duty under protest as according to appellant all bunkers whether inside or outside the engine room are classifiable along with vessel only. The said bill of entry was assessed provisionally on 29-6-2018 classifying the oil contained in bunker inside and outside the engine room under CTH 2710.

2.1 By Speaking Order of assessment dated 12-7-2018, the Assistant Commissioner of Customs, relying upon CBIC circular no. 09/2018 dated 19.04.2018, held that the oil contained in Bunker tanks in Engine room of

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the said Vessels would not be classifiable under CTH 8908 00 00 along with the vessel, but would be classifiable under CTH 2710. He accordingly reassessed the bunkers inside the engine room tank to CETH 2710. There was, however, no speaking order passed as regards, the Oil contained in Bunker tanks outside Engine room of the said Vessel. The appellant vide its letter dated 16.7.2018, *inter alia* pointed out that the issue of classification of fuel oil, MGO, and lubricating oil inside the engine room and outside the engine room, both are involved, and that all such Oil, according to appellant being incidental to import of vessel, is required to be classified under CTH 8908.

2.2 The Commissioner (Appeals) by Order-In-Appeal (OIA) dated 30-4-2019 upheld the Order of assessment dated 12-07-18. The appellant is in appeal against the said OIA dated 30-4-2019 before this Tribunal on the issue of classification of Oil contained in bunker tanks inside/outside engine room of the vessel.

3. Shri J.C. Patel, P.D. Rachchh & Shri Rahul Gajera, the learned counsels on behalf of appellants assailed the impugned Order and *inter alia* submitted that Hon'ble Gujarat High Court has in the case of Priya Holding (P) Ltd V. CC – **2013 (288) ELT 347 (Guj)** and CC V. J. M. Industries – **2014 (302) ELT 382 (Guj.)** held that Oil contained in the Bunker tanks in Engine Room of vessel imported for breaking up are associated and connected with the machinery and engine of the ship and are regarded as forming integral part of the vessel and therefore classifiable along with the vessel under CTH 89.08 and cannot be assessed to duty independently of the vessel under CTH 27.10. He submitted that the aforesaid judgements have been followed by this Tribunal in the case of Hatimi Steels V. CC – **2015 (9) TMI 1366 -**

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CESTAT – Ahmedabad, Diamond Industries V. CC – 2015 (9) TMI 1365

– **CESTAT – Ahmedabad.** He further submitted that department having not accepted the said judgements and that appeals were not filed by department there against due to monetary limit cannot be the ground for not following the aforesaid judgment of the jurisdictional high court which hold the field. In this behalf he relied upon the decision of Hon’ble Gujarat High Court in the case of Reliance Industries Ltd V. UOI – **2015 (326) ELT 664.**

4. Shri G. Kirupanandan, learned (Superintendent) Authorized Representative appearing on behalf of Revenue, reiterated the findings given in the impugned Order.

5. We have carefully considered the submissions made by both the sides and perused the records. The issue as regards Bunker Tanks in the Engine Room stands decided in the following decisions of the Hon’ble Gujarat High Court, in which it is held that such oil cannot be classified under CTH 2710 and has to be classified along with the vessel imported for breaking up under CTH 8908:

- Priya Holding (P) Ltd v CC – **2013 (288) ELT 347 (Guj)**

- CC v J.M. Industries- **2014 (302) ELT 382 (Guj)**

The Hon’ble Gujarat High Court has in the aforesaid decisions held that Oil contained in the Bunker tanks in Engine Room of Vessel imported for breaking up, are associated and connected with the machinery and engine of the Ship and are regarded as forming integral part of the Vessel and therefore classifiable along with the Vessel under CTH 8900 and cannot be assessed to duty independently of the vessel under CTH 27.10.

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5.1 The said decision of the Hon'ble Gujarat High Court has been followed by this Tribunal in the following decisions:

- Hatimi Steels v CC – **2015 (9) TMI 1366-CESTAT-AHMEDABAD**
- Diamond Industries v CC – **2015 (9) TMI 1365-CESTAT-AHMEDABAD.**
- Diamond Industries v CC – **Final Order No. A/10315-10316/2019, dated 15-2-2019**

5.2 As regards, the observation in the impugned order that decisions of Hon'ble High court were not accepted by department, however, appeals were not filed by department against the said decisions on account of monetary limit, the said contention of revenue is of no consequence. The said decisions of jurisdictional High Court hold the field and will apply. As laid down by the Hon'ble Gujarat High Court in the case of Reliance Industries Ltd v UOI – **2015 (326) ELT 664** decision of jurisdictional High Court has to be followed and the fact that appeal was not filed against the same on ground of monetary limit is of no consequence. Hence, non-filing of appeal against decisions of Hon'ble High Court by department on ground of monetary limit is of no consequence since decisions being of jurisdictional High court, the same will apply.

5.3 As regards, the reliance placed in the impugned order on **the CBIC Circular No. 9/2018-Cus dated 19-4-2018**, the same again does not further the case of revenue. The said circular clarifies that import of remnant fuels has been freed from policy restriction. It states that import of remnant fuels referred to in para 2 (d) of the Board Circular **No. 37/96-Customs** would not be subject to any policy condition under chapter 27 prior to 20th May 2015, and as on 20th May 2015 DGFT has made special dispensation with regard to remnant fuels classifiable under heading 2710 and freed them from policy restriction vide Notification No. 07/2015-2020. In any event, it

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is settled law that circulars issued by the revenue department cannot be given primacy over the decisions of the Courts. Reliance in this behalf is placed on the following judgments of Hon'ble Supreme Court:

- Commissioner of Customs, Bolpur V. Ratan Melting & Wire Industries – **2008 (231) ELT 22 (SC)**
- Commissioner of Central Excise, Nagpur V. Gurukrupa Resins Pvt Ltd – **2011 (270) ELT 3 (SC)**

In the above case of **Gurukrupa Resins Pvt Ltd**, Hon'ble Supreme Court has held as under:

"19. In that view of the matter, when the law on the question at issue before the Tribunal had already been declared by this Court, the Tribunal should not have based its decisions on the clarification issued by the Board, which otherwise stood rescinded, on the specious ground that the said clarification issued by the Board was binding on the Deputy Commissioner as also on the Commissioner (Appeals). It is well settled proposition of law that Circulars and instructions issued by the Central Board of Excise and Customs are no doubt binding in law on the authorities under the respective Statutes but when this Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Courts or the Tribunal, as the case may be, to direct that the Board's Circular should be given effect to and not the view expressed in a decision of this Court or a High Court, [See : Ratan Melting & Wire Industries (supra)]."

5.4 In view of the above, aforesaid decisions of the Hon'ble Gujarat High Court and this Tribunal, the impugned Orders holding that Oil inside the Bunker Tanks in engine rooms are to be assessed to duty under CTH 27.10 are liable to be set aside and Oil contained in Bunker Tanks in Engine Room of Vessel imported for breaking up is classifiable under CTH 8908 along with such vessel.

5.5 As regards, the Oil contained in Bunker Tanks outside the engine room of vessel, despite duty was paid under protest, there is, however, no speaking order passed as regards the same. It can be seen that if the tanks containing Oils are connected with pipeline with the engine or machinery of

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the vessel, there may be no reason why the same cannot be treated as integral part of the engine or machinery of the vessel. However, since there is no speaking order on that part of issue, we direct the adjudicating authority to pass speaking order in respect of duty pertaining to Oil contained in Bunker Tanks outside the engine room of vessel.

5.6 As per our above discussion and finding, the impugned orders are not sustainable, hence the same are set aside. The appeals are allowed in the above terms.

(Pronounced in the open court 01.12.2022_)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha