IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 579 of 2026
With
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R/TAX APPEAL NO. 718 of 2026

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THE COMMISSIONER, CUSTOMS (PREVENTIVE)
Versus
M/S. DYNAMIC SHIP RECYCLERS PVT. LTD.

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Appearance:
MR UTKARSH R SHARMA(6157) for the Appellant(s) No. 1
RAHUL L GAJERA(9399) for the Opponent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 04/08/2026

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Standing Counsel Mr. Utkarsh R. Sharma for the appellant and learned advocate Mr. Rahul L. Gajera for the respondent.

2. This group of appeals are filed by the appellant Revenue against common judgment and order dated 04.11.2025 passed by the Customs,

Excise & Service Tax Appellate Tribunal, West Zonal Bench at Ahmedabad (for short “CESTAT) proposing the following substantial questions of law:

> “1. Whether Hon'ble CESTAT is justified in allowing the refund applications by declaring passing the bar of unjust enrichment when the appellants have not submitted relevant documents as required under section 27 of the Customs Act, 1962; but instead duty is shown as an expenditure in the Profit & Loss Account,
>
> 2.In the case where the sale price of goods is less than the purchase price, is C.A. certificate alone a conclusive proof to prove that total cost of finished goods had not included duty element in absence of relevant documents (Sales Bill, Purchase Bills, P&L, Cost Sheet, relevant financial records) etc.”

3. The facts are similar in all the appeals and therefore, Tax Appeal No.579 of 2026 filed by the Revenue in case of M/s. Dynamic Ship Recyclers Pvt. Ltd. is treated as the lead matter.

4. The respondent assessee filed a refund claim for Rs. 82,37,821/- on 16.04.2024 under Section 27 of Customs Act, 1962 (For short "the Act") as the respondent assessee imported a vessel MT FALCON SPRIT for breaking up/recycling and Bill of Entry No. 2810485 dated 10.10.2022 was filed under Section 46 of the Act which was self-assessed under Chapter Heading 89.08 for Vessel for breaking, bunkers under Chapter Heading 27.10 and Consumables under Chapter Heading 98.05 and paid customs duty of Rs. 24,08,52,292/- on 15.10.2022. It was claimed by the respondent assessee that fuel and oil contained in Bunker Tanks inside/outside the engine room of the vessel was to be assessed to duty under CTH 89.08 along with the vessel.

5. However, department initially was of the view that fuel and oil contained in bunker tanks

were to be assessed to duty under respective CTH of Chapter 27 and accordingly, the Bill of Entry was assessed for payment of duty of Rs. 24,08,52,292/- provisionally for want of original documents.

6. It appears that CESTAT vide orders dated 17.10.2022/01.12.2022 held that the oil contained in the bunkers tanks in the engine room of the vessel is to be assessed to duty under CTH 89.08, along with the vessel coming for breaking up.

7. Accordingly, the Assistant Commissioner, Customs Division, Bhavnagar following the order of the CESTAT passed the Final Assessment Order dated 20.03.2024 assessing the bunker tanks containing oil to be treated as part of vessel's machinery and the oil contained in the tanks to be classified under CTH 89.08 along with the vessel, as covered

under Para 2(b) of Circular no. 37/95-Cus. dated 03.07.1996. Accordingly, the Bill of Entry was finally assessed to duty of Rs. 23,98,80,229/-as per the final assessment order.

8. The respondent assessee thereafter submitted certificate issued by the Chartered Accountant dated 03.04.2024 along with refund claim of the excess duty deposited by the assessee stating that incidence of customs duty paid on bunker oil and fuels was not passed on to any buyer of the bunker oil or any other person resulting into unjust enrichment. It was also contended by the respondent assessee that unjust enrichment would not be applicable in the facts of the case in view of the provisions of sub-section (2) of Section 27(g)(ii) of the Act which was inserted by section 92 of the Finance Act, 2017 with effect from

31.03.2017.

9. However, the refund claim filed by the respondent was rejected by the department in all similar cases and all the assessee therefore, preferred appeals before CESTAT contending that though the refund claims made by the assessee otherwise found eligible have been denied by the department by operation of the bar as contained in section 11B of the Central Excise Act,1944 which is also applicable to the Act on the ground of unjust enrichment.

10. It was also pointed out before the CESTAT that the Sales Invoices issued by the assessee for sale of bunker oil as compared to Bill of Entry clearly shows that the bunker oil was sold at a price below the import price value on which import duty was assessed and consequently, it was

demonstrated that the respondents assessee has not been able to recover even the cost of the bunkers, much less the duty paid thereon.

11. Considering such contentions, CESTAT held that question of the duty paid on the bunkers having been passed on and recovered from the buyers does not arise as the assessee having borne the burden of the duty which were never passed on to the buyer. CESTAT thereafter verified the Sales Invoices issued by the assessee which would show that the respondents assessee have only recovered the GST payable on the local sales and not the import duty paid on the bunkers. The respondents assessee also placed on record 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.

12. CESTAT considering such data placed in the Table produced by the respondents-assessee held that the price at which the bunkers were sold was even below the import price/ value of the bunkers on which the duty was assessed and paid and therefore, there was no question of recovering the duty assessed on such import price when the respondents assessee were not able to recover from the buyers even the full import price of the bunkers.

13. The contention raised on behalf of the department that the assessee has debited the duty as expenses in Profit & Loss Account was discarded by the CESTAT observing that it does not follow that amount debited in Profit & Loss Account would result in 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.

14. The CESTAT after considering the settled legal position that debit of the duty amounts to expenses without corresponding addition in the import price to arrive at the local sale price which would mean that the assessee absorbed and had borne the incidence of duty which cannot lead to the conclusion that the same was passed on to the customers.

15. Considering such undisputed fact the CESTAT observed that the respondent has not added the duty amount to the import price to arrive at the local sale price, but in fact, the local sale price was below the import price on which the duty was assessed and merely because the duty was debited to expenses, it cannot be said that the incidence thereof was passed on to the

buyers.

16. The CESTAT also negatived the ground raised by the department regarding the failure on part of the assessee to produce Chartered Accountant certificate in the format provided along with the financial record i.e. copy of Audited Balance Sheet, Sales invoices etc. to come to the conclusion that the duty paid was shown as expenditure and formed part of Profit and Loss account of the assessee and therefore, it was presumed that the assessee themselves had treated the refund amount due as expenditure and not as claim receivable and therefore, the bar of unjust enrichment cannot be sated to be cleared and therefore, it can be stated that the assessee had failed to prove that incidence of customs duty was passed on to any other person. The CESTAT has rightly held

that the assessee has sufficiently proved that incidence of duty was not passed on and hence onus to prove otherwise would shift up on the revenue.

17. Reliance placed by the department 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 on or not, is also rejected by the CESTAT considering the contentions raised by both the sides and allowed the appeals by observing as under:

> “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….

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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."

18. Learned Senior Standing Counsel Mr. Utkarsh Sharma submitted that the CESTAT has committed an error in relying upon the Certificate issued by the Chartered

Accountant certifying the fact of not passing on the duty to buyer or any other person to hold that it was enough evidence to indicate that the bar of unjust enrichment is not applicable to the assessee and it was sufficient that Certificate is enough to rebut the presumption of duty having been passed.

19. Reliance was placed on the decision of Madras High Court in case of **Commissioner of Customs (Exports) v. Bpl Ltd. and another** reported in (2010) 259 ELT 526 to submit that the authorities cannot merely act on certificate issued by the Chartered Accountant as it is merely a piece of evidence acknowledging certain facts and if such an interpretation is given, then there is no need for the authorities to decide the issue of refund and such certificate would prevail over the consideration of the issues

before the authorities which is not contemplated under the provisions of the Act.

20. It was submitted that section 27 of the Act mandates on the importer to produce such documents or other evidence while seeking refund to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person.

21. It was therefore, submitted that CESTAT has committed an error in relying on the certificate issued by the Chartered Accountant to shift the onus to the department.

22. It was submitted that in view of provisions of section 27(2) of the Act, the assessee claimants were required to submit necessary documents in support of the refund

claim that incidence of the duty had not been passed on to any other person and merely submission of the Certificate issued by the Chartered Accountant wherein it was stated that incidence of the customs duty paid on the bunker have not been passed on to any other person neither discloses the details of the supporting documents on the basis of which the certificates were issued nor financial records i.e. copy of audited balance sheet, sales invoices etc. were provided. It was submitted that the Chartered Accountant Certificate even did not mention the amount claimed as refund as “receivable” in the balance sheet of the financial year to which the claim pertained but on the contrary, the said amount of duty which was claimed as refund was shown as expenses in the Profit and Loss account.

23. It was therefore submitted that these

appeals may be admitted for consideration of questions of law.

24. On the other hand, learned advocate Mr. Rahul Gajera appearing on caveat filed on behalf of the respondent assessee in respective appeals submitted that the CESTAT has considered the certificate issued by the Chartered Accountant in addition to the details submitted by the respondent assessee before the adjudicating authority wherein it is demonstrated on comparison of the Bills of Entry with the Sales Invoices that the bunkers were sold at a price below the import price value on which such duty was assessed and therefore, CESTAT has categorically held that when the goods have been eventually sold at price far less than the assessed values of the goods, then there is no question of passing of the duty paid by the respondents assessee to the customers as even full import

price of the bunkers was not recovered. It was submitted that the assessee had placed reliance upon the following decisions before the CESTAT in support of their claims:

1) **Living Media India Ltd.** reported as 1998 (104) E.L.T. 3 (S.C.).

2)**Business Overseas Corporation**-2015(317) ELT 637 (Tri. Del).

3) **CCE v Flow Tech Power**-2006 (202) ELT 404 (Mad).

4) **Elantas Beck India Ltd v CCE**-2016 (339) ELT 325.

5) **Birla Corporation Ltd v CCE**-2008 (231) ELT 482.

6) **Bharat Kumar Indrasen Trading P. Ltd**-2018 (2) TMI 1574.

7) **Shyam Coach Engineers v CCE**-2024 (1) TMI 245.

8) **CCE, Pune-I v. Sandvik Asia Ltd**-2015 (323) ELT 431 (Bom).

9) **Advance Steel Tubes Ltd V. CC. Ex**-2014 (310) ELT 370 (Tri.Del.).

10) **CCE V Advance Steel Tubes Ltd**-2018 (11) G.S.T.L. 341 (ALL).

11) **Equinox Solutions Ltd**-2017 (357) ELT 1041 (Tri. Ahd)

12) **Interplex India Pvt Ltd**-2013 (290) ELT 386 (Tri.- Ahd)

13) **JK Prints V. Commissioner CGST**-2020 (373) E.L.T. 110 (Tri. -Ahd)

14) **ACC Ltd and Ambuja Cement Ltd**-2024 (7) TMI 104- (Tri-Chandigarh).

25. It was therefore, submitted that considering these decisions, the CESTAT has followed similar view to hold that production of Certificate issued by the Chartered Accountant shifts the onus to the department if such certificate is based upon the documents which are placed on record.

26. It was submitted that CESTAT has not only relied upon the certificate issued by the Chartered Accountant but also additional factum of selling bunker oil below the import cost which was also placed on record.

27. Learned advocate Mr. Gajera further referred to and relied upon the following decisions of this Court:

1) **Kuehne Plus Nagel Pvt. Ltd. v. Union of India** (Judgment dated 26.03.2025 passed in Special Civil Application No.13427 of 2024).

2) **Jupiter Comtex Pvt. Ltd. v. Union of India** (Judgment dated 14.02.2024 passed in Special Civil Application No.1280 of 2024).

28. It was submitted that in case of **Kuehne Plus Nagel Pvt. Ltd. v. Union of India**(supra), this Court has referred to the

decision of Hon’ble Apex Court in case of **Union of India v. Mangal Teaxtile Mills (P.) Ltd.** reported in 2011 (269) E.L.T. 3 (SC) and submitted that the Hon’ble Apex Court has held that the certificate issued by the Chartered Accountant based on the documents on record is binding up on the adjudicating authority, hence the issue is squarely covered in favour of the assessee and no interference is called for in the impugned order passed by the CESTAT.

29. Having heard the learned advocates for the parties and on perusal of the impugned common order passed by the CESTAT, it is not in dispute that the assessee in these appeals are entitled to refund of the excess duty paid on provisional assessment which was reduced in the final assessment on bunker oil by treating the same as part of the vessel for breaking under CTH 89.08.

30. The refund claims of the assessee were rejected only on the ground that the assessee did not produce the documents as per the provisions of section 27(2) of the Act and merely produced the certificate issued by the Chartered Accountant in support of the claims.

31. However, the CESTAT after considering the Bills of Entry and the certificate issued by the Chartered Accountant which is reproduced in the impugned order has arrived at finding of fact that on perusal of the Chartered Accountant Certificate that the duty paid by the assessee has not been passed on to the buyers or any other person. The CESTAT has also considered the comparison of the Sales Invoice issued by the assessee with the Bill of Entries to come to the finding of fact that the bunker oil was sold at sale

price below the import price value on which the duty was assessed and it was found that the assessee in the appeals were not able to recover even the cost of the bunkers, much less the duty paid thereon. Therefore, in the facts of the case, there was no occasion to pass on the duty to the buyers or any other person resulting into unjust enrichment.

32. The CESTAT has therefore, rightly arrived at finding that the importer-assessee has duly discharged the burden of proof by producing the Certificate of Chartered Accountant and therefore, burden shifted to Revenue to prove recovery of extra cost from the customers by producing more evidence. However, the Revenue has failed to advance such evidence to rebut the certificate issued by Chartered Accountant coupled with the fact that the Revenue has not been able to bring any evidence contrary to the facts placed on

record before the Tribunal in the 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 which clearly shows that the price at which the bunkers were sold by the assessee was even below the import price/ value of the bunkers on which the duty was assessed and paid. Therefore, the CESTAT considering the certificate of Chartered Accountant as well as the fact of selling the bunkers below the import cost which is evident on record, referred to and relied upon various decisions of the Tribunal to hold that there was no unjust enrichment applicable in the facts of the case and in absence of any tangible evidence brought on record by the department to discharge the onus shifted on it.

33. This Court in case of **Kuehne Plus Nagel**

Pvt. Ltd. v. Union of India (supra), has referred to and relied upon the decision of Hon’ble Apex Court in case of **Union of India v. Mangal Teaxtile Mills (P.) Ltd.** reported in 2011 (269) E.L.T. 3 (SC) wherein the Hon’ble Apex Court has held that the certificate issued by the Chartered Accountant is required to be considered by the authority as an authentic document and the authorities are bound to take into consideration the same.

34. It is pertinent to note that the contention raised on behalf of the department that the assessee has debited the duty as expenditure in the Profit & Loss Account and has not shown as receivable in the balance sheet, the test of unjust enrichment is not fulfilled, is not tenable in law because by debiting duty paid in the Profit & loss Account cannot be considered as incidence of

duty has been passed to any other person resulting into unjust enrichment.

35. In view of the above undisputed facts, rejection of the refund claim by the department relying upon the decision of Hon’ble Apex Court in case of **Mafatlal Industries Versus Union Of India** reported in 1997 (5) SCC 536 would not be justified as held by the CESTAT by recording finding of fact that it is emerging from the record that as the bunker oil has been sold less than the import cost, there was no question of passing of the duty to the buyer or any other person and as such, the decision relied on behalf of the appellant is not applicable in facts of the case so as to give rise to any question of law much-less any substantial question of law from the impugned order of the CESTAT.

36. The appeals therefore, being devoid of

any merit are accordingly dismissed.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

RAGHUNATH R NAIR