

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

REGIONAL BENCH- COURT NO.1

**Customs Appeal No.10085 of 2021**

(Arising out of JNM-CUSTOM-000-APP-56-57-20-21 dated 18/12/2020 passed by Commissioner of CUSTOMS (PREVENTIVIVE) JAMNAGAR (PREV))

**HARIYANA SHIP DEMOLITION PVT LTD**

.....Appellant

G-1, Atlanta, Plot No. 2717-72/C, Atabhai Road, Bhavnagar,  
Gujarat-364002.

*VERSUS*

**COMMISSIONER OF CUSTOM-JAMNAGAR (PREV)**

.....Respondent

Sharda House, Opp/ Panchwati,  
Bedi Bunder Road, Jamnagar

**WITH**

**Customs Appeal No. 10086 of 2021**

(Arising out of JNM-CUSTOM-000-APP-56-57-20-21 dated 18/12/2020 passed by Commissioner of CUSTOMS (PREVENTIVIVE) JAMNAGAR (PREV))

**HARIYANA SHIP BREAKERS LTD**

.....Appellant

G-1, Atlanta, Plot No. 2717-72/C, Atabhai Road, Bhavnagar,  
Gujarat-364002.

*VERSUS*

**COMMISSIONER OF CUSTOM-JAMNAGAR (PREV)**

.....Respondent

Sharda House, Opp/ Panchwati,  
Bedi Bunder Road, Jamnagar

**APPEARANCE:**

None appeared for the appellant  
Shri A R Kanani, Superintendent (AR) for the Respondent

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

**Final Order No. 11791-11792 /2024**

DATE OF HEARING: 01.08.2024  
DATE OF DECISION:27.08.2024

**SOMESH ARORA**

These are two appeals involving the same issue. Appellant is engaged in the business of importation of Old and used vessels for breaking up at the Ship Breaking Yard Alang /Sosiya at their designated plot which was allotted by the Gujarat Maritime Board Bhavnagar/ Gujarat Your Appellant is a Registered Ship Breaker at Ship Breaking Yard, Alang/Sosiya, Dist, Bhavnagar. Appellant is importing various types of old and used ships for breaking on payment of the due Customs duty leviable thereupon under the provisions of the Customs Act, 1962 read with the Customs Tariff Act, 1975.

2. Appellant contracted to purchase one old and used vessel Viz M.V. CRASSIER on "As is where is basis" under Memorandum of Agreement dated 27.01.2020 with Seller M/s. GAURI SHIPPING PVT LTD, SHENTON WAY, SINGAPORE at the purchase price of US Dollar 8517600.00. At the time of importation of the said vessel at SBY Alang anchorage, the boarding and rummaging of the said vessel has been carried out by the Customs authority of SBY Alang. The authorized Surveyor was also appointed by the owners of the vessel, who boarded the vessel and carried out all types of survey as required and issued Survey report mentioning all the required information. The authorized Shipping Agent filled Import General Manifest after completion of boarding formalities declaring the import cargo as vessel Viz M.V. CRASSIER as provided under the Section 30 of the Customs Act, 1962. After importation of the said vessel Appellant submitted Bill of Entry before the Superintendent of Customs SBY Alang which was allotted Sr. No, 6672982 dated 29.01.2020. The rummaging of the said vessel was carried out by the Customs authority of SBY Alang. The authorized Surveyor was also appointed by the owners of the vessel, who also boarded the vessel and carried out all types of survey as required and issued Survey report mentioning all required information. The authorized Shipping Agent also filled Import General Manifest after completion of boarding formalities

declaring the import cargo as vessel Viz. M.V. CRASSIER wherein also the remaining stock of Bunkers Viz Marine Gas Oil (MGO /HSD). Diesel Oil, Lubricating Oil etc along with other movable items, Store list Bunkers etc, were declared as per the Instructions contained in Circular No. 37/1996-Cus dated 03.07.1996. These goods were not imported exclusively but such importation was as an integral part of the vessel classified under heading No. 8908 of the Customs Tariff Act, 1975 as provided under the Section 30 of the Customs Act, 1962.

2.1 Appellant stated that at the import of Bunker on board of impugned vessel was incidental part of the vessel and without it the vessel could not have reached the shore and all goods including all types of Oils were declared in the impugned bill of entry only as per the Instructions contained in Circular No. 37/1996-Cus dated, 03.07.1996. Their contention was however rejected by lower authorities.

2.2. Aggrieved with the OIA 18/12/2020, appellant has filed present appeal before Tribunal at Ahmedabad. It was submitted by the appellant that in the similar matters other ship breaking units of Sosiya and Alang had also filed Appeals before the Hon'ble Tribunal Ahmedabad involving the similar issue.

3. That the similar issue has been decided by Hon'ble Tribunal West Zonal Bench Ahmedabad, Vide its Final Order No. A/11792-11851/2022 Dtd. 01.12.2022 including Appeal No. C/11053,C/11062, C/11075,C/11078 & C/11080 all of 2019 in favour Ship Breakers of Alang allowing their appeal on the issue and setting aside the assessment of B/Es and OIA NO. OIA-JMN-CUSTOM-000-APP-004-072-18-19 dated 30.04.2019 issued by Commissioner (Appeal) Customs, Ahmedabad and stated that oil contained in bunker tanks in engine room of vessel

imported for breaking up is classifiable under CTH 8908 along with such vessel.

4. Since, both the assessment orders as well as Order-In-Appeal were against the appellant. They have filed the present appeal before this Tribunal. The main emphasises of the appellant is that issue is no more *res Integra* and has been covered by various Judgments

5. Learned AR reiterates the findings in the impugned order.

6. Considered. We find that the similar issue has been decided by Hon'ble Tribunal West Zonal Bench Ahmedabad, Vide its Final Order No. A/11792-11851/2022 Dtd. 01.12.2022 including Appeal No. C/11053,C/11062, C/11075,C/11078 & C/11080 all of 2019 of the Appellant on the similar issue in favour Ship Breakers of Alang allowing their appeal on the issue and set a siding the assessment of B/Es and OIA NO. OIA-JMN-CUSTOM-000-APP-004-072-18-19 dated 30.04.2019 issued by Commissioner (Appeal) Customs, Ahmedabad and with the common finding that oil contained in bunker tanks in engine room of vessel imported for breaking up is classifiable under CTH 8908 along with such vessel.

6.1 We also find that the department in the matter of MAHALAXMI SHIP BREAKING CORP. VS. COMMISSIONER OF CUS., BHAVNAGAR had gone in appeal before the Hon'ble Supreme Court as reported in 2023 (384) ELT 482 (S.C.) in which rejecting the contrary view of CESTAT in KAMDAR ASSOCIATE as reported in 2016 (339) ELT 158 (Tribunal). The Hon'ble Apex Court decided as follows:-

**"4.** *The issue agitated by it is that the Oil in the Bunker Tanks of the Engine Room/outside the Engine Room of the vessels sent for being broken up, are to be assessed separately or as part of the vessels to be scrapped. In the appeals preferred by the Revenue, which are directed against the orders of the CESTAT dated 16-2-2022 and 1-12-2022, the CESTAT ruled that the oil is to be assessed as part of the Ship.*

**5.** *However, in an earlier appeal [Mahalaxmi Ship Breaking Corp. ETC. v. Commissioner of Customs, Bhavnagar, which is the subject matter of Civil Appeal Nos. 5318-5342/2009 before this Court], the CESTAT ruled otherwise vide order dated 29-5-2009, stating that both the articles are to be separately assessed.*

**6.** *Having considered both the orders as well as the submissions of the parties, this Court is of the view that the later view expressed in the orders dated 16-2-2022 and 1-12-2022 [which are the subject matters of Diary No(s). 24220 of 2022, Diary No(s). 8943 of 2023, Diary No(s). 10272 of 2023, Diary No(s). 10034 of 2023, Diary No(s). 11290 of 2023, Diary No(s). 8954 of 2023, Diary No(s). 10267 OF 2023, Diary No(s). 10031 of 2023] is correct. The Revenue's appeals are, accordingly, dismissed."*

In view of the foregoing, and respectfully following the ruling of the Apex Court, the appeals are liable to succeed.

7. Appeals are accordingly allowed.

(Pronounced in the open court on 27.08.2024)

**(RAJU)**  
**MEMBER (TECHNICAL)**

**(SOMESH ARORA)**  
**MEMBER (JUDICIAL)**

Prachi