CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 95 OF 2011

[Arising out of OIA-191-COMMA-A--JMN-2010 dated 08/12/2010 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV)]

THE SHIPPING CORPORATION OF INDIA LTD **Appellant**
245, Mumbai, Maharashtra

Vs.

COMMISSIONER OF CUSTOMS-JAMNAGAR(PREV) **Respondent**
Sharda House...Bedi Bandar Road, Opp. Panchavati,
Jamnagar, Gujarat

Appearance:
Shri Bhagyodaya Mishra, Advocate for the Appellant :
Smt Sunita Menon, Superintendent (AR) for the Respondent

CORAM:
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10320/2026

Date of Hearing: 06.01.2026
Date of Decision: 28.04.2026

Dr. AJAYA KRISHNA VISHVESHA

This appeal is directed against the Order-in-Appeal No. S/49-14/Cus/CA-2/JMN/2010 dated 8th December, 2010 passed by Commissioner of Customs (Appeals) Jamnagar through which the learned Commissioner allowed the appeal for charging and recovery on Education Cess and S & H along with interest on the confirmed demand of Rs. 1,38,930/-. The learned Commissioner also ordered that in addition to the duty already charged in the Order-in-Original on 3.146 MT of HSD, duty and interest at proper rates shall also be charged, assessed and recovered on a quantity of 49.431 MT of diesel oil out of the stock of 59.146 MT of diesel oil declared at the time of conversion of the vessel into coastal run at Vadinar. The appeal for charging duty and interest on the remaining quantity of diesel oil was rejected.

1.1 The facts of the case in brief are that M/s. Shipping Corporation of India through their agent sought conversion of vessel MT Arun Khetar Pal from Foreign run to Coastal run and filed Bill of Entry for Home Consumption No. F-07 dated 28th April, 2008 at CH Vadinar declaring the bunkers / stores and provisions of foreign origin as well as of Indian origin. In respect of Indian origin items the Shipping Corporation claimed benefit of duty exemption on re-imported goods under Notification No. 94/1996-Cus dated 16th December, 1996. The Bill of Entry was earlier provisionally assessed for want of documents to establish the duty paid nature of Indian origin items. As the respondent failed to submit the required documents, Show Cause Notice dated 28th November, 2009 was issued inter alia, demanding duties and interest not paid in terms of Section 18 (2) & (3) of the Customs Act, 1962 which inter alia included the additional duty of Customs at the rate of Rs. 2 per liter amounting to Rs. 1,38,930/- levied in terms of Section 116 of the Finance Act, 1999 read with Section 120 of the Finance Act, 2005 on re-imported quantity of HSD. After considering the documents, evidence and submissions and following due process of law, the Bill of Entry was finalized vide the impugned Order-in-Original wherein the Adjudicating Authority dropped the demand for recovery of Rs. 31,05,835/- while ordering for charging of duties Rs. 3,54,063/- along with interest under Section 18(2)&(3) of the Customs Act, 1962.

1.2 Feeling aggrieved from the Order-in-Original dated 21st April, 2010, the department preferred appeal before the Commissioner (Appeals). The learned Commissioner after giving opportunity of hearing to both the parties arrived at the conclusion that prior to her conversion from coastal trade to foreign trade at Mumbai on 12th March, 2008 at 22.00 hours, the vessel was on coastal trade in India during the period between 14th April, 2007 (arrival at Mangalore) to 12th March, 2008 (reversal to Colombo at Mumbai). Therefore, it is evident that the quantity of 97.950 MT of Diesel Oil received by the vessel MT A. K. Pal vide BDM dated 15th December, 2007 was supplied by M/s. HPCL during

the period when the vessel was on coastal trade. The law does not permit a vessel in coastal trade to receive duty free bunkers. Therefore, unless otherwise proved it is held that the subject quantity of 97.950 MT bunkers received by the vessel on 15th December, 2007 during her coastal run in India between 14th April, 2007 and 12th March, 2008 were duty paid.

1.3 The learned Commissioner also came to the conclusion that as far as the quantity of 49.431 MT of Diesel Oil received by the vessel at Mumbai vide BDM dated 13th March, 2008 as already noted above, the vessel was converted from coastal run to foreign run at Mumbai on 12th March, 2008 at 22.00 hours, whereas, it is evident from the BDM dated 13th March, 2008 that the pumping of diesel oil was commenced at 06.13 hours and completed at 06.42 hours on 13th March, 2008 which clearly establish that the bunkers supplied of 49.431 MTs at Mumbai was effected, subsequent to the conversion of the vessel to foreign run. Once, it is shown that the subject quantity of bunker was taken by the vessel after her conversion to foreign run at Mumbai, the onus is shifted on the respondent to establish with documentary evidence that the same was of duty paid nature. The BDN dated 13th March, 2008 for 49.431 MTs of diesel oil issued by M/s. HPCL at Mumbai nowhere show that the quantity of diesel oil in question supplied to the vessel MT A. K. Pal was duty paid. Although, the respondent has relied on a certificate dated 17th September, 2010 issued after personal hearing in the present proceedings by M/s. HPCL in support of their declaration that diesel oil supplied vide BDN dated 13th March, 2008 was duty paid, I am unable to accept the same as conclusive evidence in the absence of any duty paid documents by which it could be established beyond doubt its duty paid character particularly, when the law provides that a foreign going vessel is eligible to receive duty free bunkers. Accordingly, I hold that the respondent has not been able to establish that the quantity of 49.431 MTs of diesel oil received by the vessel at Mumbai vide BDN dated 13th March, 2008 was duty paid.

1.4 Feeling aggrieved from the impugned Order-in-Appeal dated 8th December, 2010 passed by the learned Commissioner (Appeals) Customs, Jamnagar, the present appeal has been filed before this Tribunal.

2. The learned Counsel for the appellant submitted that the learned Commissioner (Appeals) erred in allowing the appeal filed by the Revenue. He erred in rejecting the contemporaneous documents of evidentiary value in the form of the certificate dated 17th September, 2010 issued by M/s. HPCL certifying that the bunkers supplied to the said vessel vide Bunker Delivery Notes dated 15th December, 2007 (97.950 MT) and 13th March, 2008 (49.431 MT) were duty paid. The rejection of the said certificate dated 17th September, 2010 by the Commissioner (Appeals) is patently erroneous because certificate was issued by M/s. HPCL, who were not only the charterers of the said vessel responsible for fueling the vessel during the period of charter but they were also the bunker suppliers who had effected the supply of the subject bunkers to the said vessel. The learned Commissioner wrongly rejected the said certificate dated 17th September, 2010 issued by HPCL (the charterers and the bunkers suppliers) certifying that the bunkers supplied to the said vessel were duty paid, without assigning any cogent reason.

2.1 The learned Commissioner (Appeals) also erred in holding that the said certificate dated 17.09.2010 could not be accepted as conclusive evidence in the absence of any duty paid documents by which it could be established beyond doubt its duty paid character. The reasoning of the learned Commissioner (Appeals) would tantamount to contending that no document by itself could be treated as conclusive evidence unless supported by other corroborative evidence.

2.2 The learned Counsel for the appellant also relied upon the Notification No. 94/96-Cus. Dated 16.12.1996. This notification exempts the goods falling within any Chapter of the First Schedule to the Customs Tariff Act, 1975 and

specified in column (2) of the Table hereto annexed when re-imported into India, from so much of the duty of Customs leviable thereon which is specified in the said First Schedule, the additional duty leviable thereon under Section 3 of the said Customs Tariff Act, and special duty of Customs leviable under sub-section (1) of Section 68 of the Finance Act (No.2) 1996 as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table. Relying upon the above mentioned notification appellant has claimed the exemption of duty on bunker supplied by the Hindustan Petroleum Corporation Ltd, the charterer of the vessel MT Lieutenant Arun Khetar Pal.

2.3 The appellant has also relied upon the Notification No. 59/99-Cus. Dated 11th May, 1999, which provides for exemption of High Speed Diesel Oil falling under heading no. 27.10 of the First Schedule to the Customs Tariff Act, as is equivalent to the additional duty of excise leviable on high speed diesel oil under Section 133 read with Second Schedule of the Finance Act, 1999. Relying upon the above notification, the appellant had claimed the exemption of duty on bunkers supplied by the Hindustan Petroleum Corporation Ltd., the charterer of the vessel in question. The learned Counsel for the appellant prayed that the appeal of the appellant be allowed and the impugned order passed by the learned Commissioner be set aside.

3. The learned AR has reiterated the impugned order dated 8th December, 2010 passed by the learned Commissioner (Appeals) and submitted that the learned Commissioner has rightly arrived at the conclusion that the Bunker Delivery Note dated 13th March, 2008 for 49.431 MTs of diesel oil issued by M/s. HPCL at Mumbai nowhere shows that the quantity of diesel oil in question supplied to the vessel MT A. K. Pal was duty paid. The learned Commissioner has made no error in not accepting the certificate dated 17.09.2010 issued by M/s. HPCL in support of the declaration made by the appellant that diesel oil supplied vide Bunker Delivery Note dated 13.03.2008 was duty paid. He

prayed that the impugned order passed by the learned Commissioner be upheld and the appeal may be rejected.

4. I have heard the learned Counsel for the appellant and the learned AR for the department and perused the records. I am of the view that the learned Commissioner (Appeals) has made error in not accepting the certificate dated 17.09.2010 issued by M/s. HPCL the Charterers and Bunker suppliers of the ship in support of their declaration that diesel oil supplied vide Bunker Delivery Note dated 13.03.2008 was duty paid. The reasoning given by the learned Commissioner in the impugned order for not accepting the said certificate is not cogent and it is improper. The learned Commissioner has observed that he is unable to accept the said certificate as conclusive evidence in the absence of any duty paid documents by which it could be established beyond doubt its duty paid character particularly, when the law provides that a foreign going vessel is eligible to receive duty free bunkers.

I am of the view that even if a foreign going vessel is eligible to receive duty free bunkers, when HPCL the charterers and bunkers suppliers of the ship has certified that diesel oil supplied vide BDN dated 13.03.2008 was duty paid, then the Commissioner should have relied upon it. I agree with the arguments of the learned Counsel for the appellant that the rejection of the certificate dated 17.09.2010 by the learned Commissioner is erroneous considering that the certificate had been issued by HPCL who were not only the charterers of the said vessel responsible for fueling the vessel during the period of charter but were themselves also the bunker suppliers who had effected the supply of the subject bunkers to the said vessel. Therefore, I have come to the conclusion that the learned Commissioner (Appeals) erred in rejecting the said certificate dated 17.09.2010 issued M/s. HPCL, without assigning any cogent reason, certifying that the bunkers supplied to the said vessel were duty paid.

4.1 As far as other findings of the learned Commissioner in the impugned order are concerned, I agree with those findings and there is no reason to interfere in those findings.

4.2 In view of the above discussion, I have come to the conclusion that appeal is liable to be allowed partly and the impugned order passed by the learned Commissioner dated 08.12.2010 is liable to be modified. In view of the certificate issued by M/s. HPCL that diesel oil supplied vide BDN dated 13.03.2008 was duty paid, BDN dated 13.03.2008 for 49.431 MTs of diesel oil issued by HPCL at Mumbai is accepted and it is held that the above quantity of diesel oil supplied to the vessel MT A. K. Pal was duty paid and therefore, no duty and interest at appropriate rates can be charged assessed and recovered on the quantity of the said 49.431 MTs of diesel oil. Rest of the findings of the learned Commissioner are upheld.

5. Appeal is disposed off in above terms.

(Order pronounced in the open Court on 28.04.2026)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

Dharmi