

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

REGIONAL BENCH – COURT NO. 01

**CUSTOM Appeal No. 177 of 2011**

[Arising Out Of OIA-23/COMMR-A-/JMN/2011 Dated-23/03/2011 Passed By Commissioner of CUSTOMS-JAMNAGAR(PREV)]

**Atlantic Shipping Pvt Limited**

Plo No. 12, Panchavati Colony,  
G E Road, Sikka,  
Jamnagar, Gujarat

**.....Appellant**

*VERSUS*

**C.C.-Jamnagar(prev)**

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

**.....Respondent**

**WITH**

**CUSTOM Appeal No. 179 of 2011**

[Arising Out Of OIA-25/COMMR-A-/JMN/2011 Dated-23/03/2011 Passed By Commissioner of CUSTOMS-JAMNAGAR(PREV)]

**Atlantic Shipping Pvt Limited**

Plot No. 11, Matrukrupa,  
Opp. Kpt Colony Gate,  
Vadinar,, Gujarat

**.....Appellant**

*VERSUS*

**C.C.-Jamnagar(prev)**

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

**.....Respondent**

**APPEARANCE:**

Murlidhar M Paniker, Consultant for the Appellant

Shri. A R Kanani, Superintendent (Authorized Representative) for the Respondent

**CORAM:**

**HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA**

**FINAL ORDER NO.A / 10387-10388 /2024**

DATE OF HEARING:08.02.2024

DATE OF DECISION:08.02.2024

**RAJU**

These appeals have been filed by Atlantic Shipping Pvt Limited and ors against crediting of the refund claim filed by them to the Consumer Welfare Fund on the ground of unjust enrichment.

2. Learned Consultant pointed out that while the ships convert from international to costal run, they are required to pay duty at 110% of estimated quantity of fuel likely to be consumed within the costal run on provisional basis. The ships while going back on reconversion from Costal to international run also have some fuel in their bunker. On the quantity of fuel available in the bunkers at the time of conversion from costal run to international run, no duty is chargeable. The provisional assessment is accordingly finalized and refund becomes due. The assessment is finalized at the time of conversation from costal to international run. The refund claim although sanctioned has been credited to the Consumer Welfare Fund on the ground of unjust enrichment. The learned consultant relied on the following decision:-

- Case Law-Commissioner of Customs, Kandla vs Ambica Maritime Ltd- [2007(220) E.L.T. 887 (Tri.-Ahmd.)]
- Case Law-CC, Mangalore Ltd.(2010(249)ELT348(Kar)] VS Agrotech Foods
- Case Law-Paper Products Ltd Vs Commissioner of Central Excise [1999(112) ELT 765(SC)]
- Case Law-Commissioner of Customs, Calcutta Vs Indian Oil Corporation Ltd [2004(165)ELT 257(SC)]

- Case Law-Skoda Auto India Pvt Ltd Vs Union of India (2010(255)ELT 63(Bom.)]

All these decisions support of the claim that there is no unjust enrichment in these circumstances.

3. Learned AR relies on the impugned order

4. We have considered the rival submissions. We find that the issue is clearly covered by the various decisions cited by appellant. In identical situation in the case of Atlantic Shipping Pvt. Ltd. Tribunal has held as follows:-2345

"2. *The Respondents are agents of Shipping Liners. As per the prevailing guidelines regulating conversion of foreign going vessels' for 'coastal run' and subsequent reversion to foreign going, the stocks of bunkers and consumables were assessed to duty provisionally, vide Bill of Entry No.74 & 75 both dated 21.09.2007 and accordingly, the agents paid customs duty of Rs. 1,12,88,432/- on 11.10.2007 along with interest of Rs. 78,868/-. Subsequently, as on reversion of ship from coastal run to foreign run on 19.04.2008, after taking into account the closing inventory of goods, the assessments in respect of the said bills of entry was finalized on 04.07.2011. As a consequence of finalization, It was noticed that there has been an excess payment of duty for amount of Rs. 21,01,534/-.*

3. *The Respondents filed a refund claim of Rs.21,01,534/- and Rs.14,682/- on authorization from the shipping liner M/s Associated Maritime Company Ltd. The Adjudicating Authority while sanctioning the said refund claim, Invoked the provision of Sec 27 (1A) and held that the refund in this case was not payable to the Respondents, and instead was liable for credit to the 'consumer welfare fund' in terms of Sec 12 (C) of Central Excise Act read with Proviso to Sec 27(2) of the Customs Act, 1962.*

4. *Aggrieved by this Order, the Respondents filed an Appeal before the Commissioner (Appeals), who, after going through their submissions in support of their case, that doctrine of unjust enrichment was not applicable, came to the conclusion by agreeing with the submissions of the Respondents and allowed the Appeal.*

5. *Similarly, another Order-in-Original was passed by the Adjudicating Authority vide 38(R)/2012/LVR/KKD-1/CUS dated 28.05.2012, whereby refund of Interest was disallowed on account its being paid towards interest on delayed payment of duty. However, though an amount of Rs.33,12,268/- was sanctioned, it was ordered to be credited to 'Consumer Welfare Fund' in terms of Sec 12(C) of Central Excise Act, 1944 read with Proviso to Sec 27 (2) of Customs Act. The issue is identical except here the refund was filed in relation to Bill of Entry No.13 dated 16.01.2008 and it was filed on authorization from M/s Associated Maritime Company Ltd, Hongkong. The arguments by the Appellants are almost similar and grounds taken by the Original Authority are also similar for crediting the sanctioned amount to the Fund."*

Similar decisions have been made in other cases cited by the appellant. Relying on the aforesaid decision, the appeals are allowed with consequential relief.

(Dictated and Pronounced in the open)

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

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

Prachi