



**slma xuLk Aayukt ka kayaRly,**  
**nvln slma xuLk wvn, nya ka.Dla I**  
**OFFICE OF THE COMMISSIONER OF CUSTOMS,**  
**NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)**  
**Phone No: 02836-271468/469, Fax No. : 02836-271467.**

A	File No.	S/10-120/Adjn/2013-14
B	Order-in-Original No.	KDL/COMMR/PVRR/22/2014-15
C	Passed by	SHRI P.V.R. REDDY Commissioner of Customs, Kandla.
D	Date of order	23.03.2015
E	Date of issue	23.03.2015
F	SCN No. & Date	Honourable High Court of Gujarat Order dated 03.10.2013 passed in Tax Appeal No. 782 of 2013
G	Noticee/Party/Exporter	M/s.Milbank Ltd, C/o Grover Consultancy, 285/25, Sucheta Nivas, 3 <sup>rd</sup> Floor, S.B.S. Road, Fort, Mumbai – 400 038

1. This Order - in - Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

**“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,**  
O-20, Meghaninagar, New Mental Hospital Compound, Ahmedabad-380 016.”

3. Appeal shall be filed within three months from the date of communication of this order.

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

**BRIEF FACTS OF THE CAS E :**

1. The Agents for the vessel M.T. GOD PRESTIGE had filed the permission for boarding at inner anchorage with Rummaging & Intelligence Section of Custom House, Kandla on 30.08.1999. The perusal / inspection of the related documents revealed that, the vessel M.T.GOD PRESIGE had arrived in ballast from Dammam to Kandla and that from Kandla she was to sail out after repairs.

2. The fact that vessel arrived only for repairs without any cargo straight away from Dammam to Kandla, created a room for doubt about the bonafide of such visit. In view of aforesaid, it was decided to thoroughly rummage the vessel.

3. On rummaging the vessel M.T. GOD PRESTIGE in presence of Master Cap. M. Ansari, and in presence of Agents, the following items were recovered during the course of Rummaging, which were not declared before the Custom Boarding Officer at the time of boarding the vessel:

<b>Sr. No.</b>	<b>Location of the item, which was un-manifested (undeclared)</b>	<b>Details / Description of the item</b>
1	Room of Master Capt. Musa Ansari	US \$ 4595/- <u>Denomination :</u> 100\$ x 26 = 2600\$ 50\$ x 36 = 1800\$ 20\$ x 4 = 80\$ 10\$ x 10 = 100\$ 5\$ x 3 = 15\$ <u>Total = 4595\$</u> Refrigerator – 1 No. Old & Used
2	Room of Chief Engineer	Refrigerator – 1 No. Old & Used
3	Radio Room	One Binocular – 1 No. - SOLIGOR – Made in Japan Type writer (used) – 1 No. - FACIT – Made in Sweden 8 boxes containing INMARSAT – 1 set Global Marine Distress Signal Station (GMDSS) (unassembled & uninstalled)
4	Boat Decl	Mooring Rope Brand New – 3 Nos
5	Fore Castle	White Coloured Mooring Rope – 1 No.
6	Fore Deck Store	White Coloured Mooring Rope – 1 No.
7	Main Deck	Rubber fender – 2 Nos. 'YOKOHAMA' make

4. The aforesaid items appeared to be of foreign origin & appeared to have been brought into India undeclared / un-manifested in violation of Import Manifest (Vessel) Regulation 1971 and appeared to be liable for confiscation & hence were seized in presence of Panchas & presence of Master of the vessel Capt. M. Ansari on 31.08.1999. The Currency, Typewriter & Binocular were brought to the Custom House for safe keeping while the Refrigerators (2 Nos.), Ropes (5 Nos.), Rubber fenders (2 Nos.), INMARSAT / GMDSS STN 1 Set were handed over to the master of the vessel Capt. M. Ansari for safe keeping under Supratnama dtd.31.08.1999.

5.1 In view of not manifesting major items like GMDS Station / Rubber fender / US\$, it was thought necessary to carry out further enquiry in the matter and hence, statement of Capt. Musa Ansari, Master of the Vessel M.T.GOD PRESTIGE was

recorded on various dates thereafter. In his statement recorded under Section 108 of the Customs Act, 1962 on 31.08.1999 / 01.09.1999, Capt. Musa Ansari stated that he had joined M.T. GOD PRESTIGE as a master at Kandla Port in May; that M/s. Milbank Gibraltar was the owner and M/s. Jaisu Shipping Co. Pvt. Ltd, Kandla was managing the operation of the vessel on behalf of the owner; that after carrying out repair at Kandla, the vessel was destined for Bander Imam Khomeini but during the voyage, destination was diverted to Fujirah and from there, they came to JNPT for loading LAB (Linear Alkyl Benzene) approx.1525 MT and sailed for Dammam on 16<sup>th</sup> August and had discharged the consignment on 23<sup>rd</sup> August at Dammam and sailed off at 24<sup>th</sup> August and arrived at Kandla by 7.30 a.m. on 30<sup>th</sup> August and anchored at 16.20 hrs at inner anchorage; that at 11.30 hrs on 31<sup>st</sup> August Custom Officers with representatives of M/s.Act Shipping Co. had boarded the vessel for Custom Boarding formalities. Capt. Musa Ansari further confessed that he had not declared following items, which were found, on vessel:

- (1) US \$ 4595 (undeclared and found in his room)
- (2) Refrigerator 2 Nos. (1 found in his room and 1 found in room of Chief Engineer)
- (3) Binocular – 1 No., Typewriter used (Facit made in Sweden) – 1 No., INMARSAT C&GCS System, SOLAS LIFELINE 1 Set in 8 boxes but not installed (all in Radio Room)
- (4) 5 Ropes (on Deck, forecastle, fore peak store etc)
- (5) 2 Rubber Fenders 'YOKOHAMA MAKE' on Main Deck

5.2 The Master of the vessel Capt. Musa Ansari, requested for another day to record the statement since he was tired due to working on vessel and on this request his further statement was recorded on 02.09.1999, under Section 108 of the Customs Act, 1962, wherein he was asked to state the reason for non-declarations of these items in the papers submitted to the Custom Boarding Officer, who had boarded the vessel to carry out Custom formalities. Capt. Musa Ansari, in his explanation stated that, the amount of US \$ 4595 was not declared by him to the Customs due to oversight. He also submitted the statement of Account and Xerox receipts of 2 consignments on 7<sup>th</sup> and 19<sup>th</sup> June, 1999. He also apologized for his mistake of non-declarations of Currency and requested to take a lenient view in the matter.

6.1 As regards, Refrigerators found in his room and room of Chief Engineer, he stated that this was declared till last voyage (but not for this voyage) and admitted that these were used by individuals.

6.2 As regards Binocular (Made in Japan) and Typewriter (Made in Sweden), he admitted that through oversight the same remained undeclared.

6.3 As regards the Mooring Ropes, Capt. Musa Ansari clarified that, instead of 5 ropes in Panchnama dtd.31.08.1999, there were actually 4 coils of ropes only; that one rope 220 Mtrs was declared unused lying in Fore Peak Store coiled into single coil; that another single coil was lying at fore castle and the same was used in port of Dammam; that out of 2 coils lying on boat deck, one of the coil was scattered into 2 lots and hence Custom Rummaging staff had counted 2 coils on boat deck as 3 rope

coils. In context of these Ropes Capt. Musa Ansari stated that he had declared only 1 Rope Coil out of 4 Rope Coils since it was unused; that he had not declared other 3 rope coils since they were in use; that all these rope coils were supplied by "Royal Marine Company" (Ship Chandlers) on 12.08.1999. Capt. Musa Ansari also submitted the Shipping Bill along with Challan of M/s.Royal Marine Co.

6.4 As regards 2 Rubber Fenders "YOKOHAMA" Brand, Capt. Musa Ansari stated that earlier also in previous ports they had not declared these fenders and these were used for double Banking and these were Dead Stock item of the vessel. He also admitted that there were no past records of 2 fenders with him.

6.5 As regards INMARSAT C-37 (Under GMDSS under IMO Regulations), Capt. Musa Ansari stated that, he had received 8 boxes at Kandla on 11.06.1999 under Shipping Bill No.2164 dtd.11.06.1999 filed by M/s. Jaisu Shipping Co. Pvt. Ltd and it was in turn purchased by them from M/s. A.T. Manufacturing Co, Mumbai under cover of Invoice dtd.26.05.1999 in the name of owners M/s. MILBANK GIBRALTAR at the cost of US\$ 9000/-. He also furnished the copy of relevant Shipping Bill and Invoice. According to him, it was necessary for him to declare this item. However, when asked to submit the Custom Duty paid documents for 1 set of GMDS Station kept in 8 boxes and which was still not installed, Capt. Musa Ansari could not furnish any document in support and give evidence of payment of duty on GMDS Station. He again apologized for non-declarations of Currency and admitted his mistake and requested for taking lenient view in the matter while imposing the penalty. He also waived his right of a Show Cause or a Personal Hearing and requested that the case may be decided at an early date.

7.1 A further statement of Master of vessel M.T. GOD PRESTIGE, Capt. Musa Ansari was recorded under Section 108 of the Customs Act, 1962 on 07.09.1999, wherein he interalia stated that Mooring Ropes in question were supplied by M/s. Royal Marine Company, Mumbai on 12.08.1999. He further clarified that the said ropes were manufactured by M/s. Krishna Filament Ltd, Mumbai. He also furnished Test and Examination Certificates issued by M/s. Krishna Filament Ltd dtd.12.08.1999.

7.2 As regards INMARSET C-3 (GMDS Station) it was stated that, he was informed by Shri Sujan (Agents) that the same was purchased from Alang Ship Breaking Yard by the supplier M/s. A.T. Manufacturing Co, Mumbai. Capt. Musa Ansari also submitted the photocopies of the Certificate of M/s. A.T. Manufacturing Company, Mumbai dtd.06.09.1999 wherein they had clearly stated that, one GMDS Station of M.T.I. UK origin had been supplied by them to master of M.T. GOD PRESTIGE at Kandla for US\$ 9000 on supply and installation basis on confirmation from M/s. MILBANK Ltd, Gibraltar (Owners of M.T. GOD PRESTIGE) and that they had received the payment from their Bankers U.B.I., Mumbai. The certificate also revealed that they had purchased these goods from Alang Ship Breaking @ Rs.1,95,000/- plus 4% CST, total amount being Rs.2,02,800/-.

8.1 It was gathered by R&I Section of Custom House, Kandla that 2 persons of Croatian Nationality had boarded the vessel without Customs permission along with Shri Vishin Kewalramani, Operations Manager of M/s. Jaisu Shipping Co. (P) Ltd, Kandla. It was gathered that the Croatian nationals were Surveyors by profession. The necessary inquiries were caused in this regard and the master of the vessel was also questioned in this context. The Master, Capt. Musa Ansari revealed that, these 2 were Surveyor belonging to Croatian Registry of Shipping and admitted that they had boarded at 09.30 hrs on 03.09.1999 along with Mr.Vishin Kewalramani. He stated that, they had checked the equipment concerned to cargo ship safety Radio Certificate with type serial Number and details required for their checklist. Capt. Musa Ansari also stated that, they also questioned the knowledge of the crew, Chief Engineer and Master pertaining to International Safety Management and Management System. Capt. Musa Ansari also stated that, the 2 Surveyors did not interfere with the set (which was in 8 units / packages / boxes and was not installed) but asked him 2 questions regarding number of digital selective caller and also 3 numbers of Portable Hand Set Radio which was required by Regulations. He stated that these above items were not received by the vessel.

8.2 At this point, Form-R (i.e. Cargo Ship Safety Radio Certificate) was produced by Capt. Musa Ansari. On detailed scrutiny, it was found that, at Sr.No.14 it had been stated that INMARSAT Ship earth Station "Fitted". Capt. Musa Ansari was questioned regarding this incorrect declarations "Fitted" in view of the fact that 1 Set was still packed in 8 boxes and was not installed or fitted. On questioning about this incorrect entry in cargo ship Radio Certificate, Capt. Musa Ansari, responded by admitting that word "Fitted" used by Surveyors was incorrect and confessed that certificate had been issued without installation of INMARSAT C-3 set and in absence of DSC and GMDSS and 3 hand Set Radio. He added that INMARSAT C-3 Set was lying as it was (in 8 packages and uninstalled on 03.09.1999).

9.1 The statement of Shri P.A. Pillai, Chief Officer of M.T. GOD PRESTIGE was also recorded under section 108 of the Customs Act, 1962 on 06.09.1999, wherein he interalia stated that he had been employed only as a 2<sup>nd</sup> Officer and his employment contract also showed that he was employed as 2<sup>nd</sup> Officer, but he did not know how his name had been enrolled as Chief Officer in the Crew List of M.T. GOD PRESTIGE; that he did not know anything regarding receipt of 2 Nos. Fenders on board M.T. GOD PRESTIGE; that INMARSAT was received on the vessel in the month of June, 1999 at Kandla and was supplied by M/s. Jaisu Shipping Co; that he was not aware whether it was duty paid or otherwise; that on 14.08.1999, 2 technicians had reached on board of M.T. GOD PRESTIGE at Mumbai and had observed the site for installation but job of installation was postponed; that on 03.09.1999, 2 foreign Surveyors along with Mr.Vishin, Operational Manager of M/s. Jaisu Shipping Co. had visited the vessel M.T. GOD PRESTIGE and their entries at 09.30 hrs and exist at 13.40 hrs had been registered in vessel Log Book.

9.2 He further stated that the order for GMDS station was placed by Shri Vishin Kewalramani, Operations Manager of M/s. Jaisu Shipping Co., Kandla and

he had also taken the 2 foreign (Croatian) Surveyor on board the vessel M.T. GOD PRESTIGE without obtaining prior permission from Customs; that in this context, the statement of Shri Vishin Kewalramani, Manager of M/s. Jaisu Shipping Co. (P) Ltd, Kandla was recorded under Section 108 of the Customs Act, 1962 on 10.09.1999, wherein he interalia stated that vessel M.T. GOD PRESTIGE came from Dammam in Ballast as no cargo was available and vessel had come to Kandla for repairs; that GMDS station was yet to be installed and that vessel did have 2 fenders on Deck and he did not have any papers relating to fenders; that he also admitted that it was the mistake of the Master that the ship property was not declared correctly.

9.3 He stated that it was lapse on his part that he had not informed the Customs Department of boarding of 2 Surveyors of Croatian Nationality on board the vessel M.T. GOD PRESTIGE on 03.09.1999; that it is he who had sourced the GMDS Station for M.T. GOD PRESTIGE and it was supplied by M/s. A.T. Manufacturing, Mumbai and Mr. A.T. Shah was the owner; that new GMDSS sets were not available and hence he had placed the order for old and used set with M/s. A.T. Manufacturing Co., Mumbai; that the cost of old and used set was 50% of the cost of new set, however, there was no guarantee or warranty for old set; that he would submit the procurement invoice later.

9.4 He stated that non-declarations of the foreign currency was the lapse on the part of Master of the vessel and since owners of the vessel directly supplied the foreign exchange to Master of the vessel through M/s. Thomas Cook, Ahmedabad, M/s. Jaisu Shipping Co. (P) Ltd did not come into picture and the fine and penalty for non-declarations of foreign currency would be paid by Masters / Owners and not M/s. Jaisu Shipping Co.

10.1 The old and used GMDS Station was said to be supplied by M/s. A.T. Manufacturing Co., Mumbai and hence it was imperative to know from where the old and used GMDS Station was procured by them. Since as per law, such station taken out of old ships coming from ship breaking were to be destroyed under Panchnama in front of the Officer and the Panchas. Various statements of Shri Tushar Ravindra Shah, Partner of M/s. A.T. Manufacturing Co., Mazgaon, Mumbai were recorded. In his statement recorded under Section 108 of the Customs Act, 1962 on 23.09.1999, Shri Tushar Shah interalia deposed that he was partner of M/s. A.T. Manufacturing Co., Mumbai and was engaged in manufacturing of Marine Compass, Search Light, self ignition light and other marine safety equipment; that they were also in the trading business of Radar, Gyro, Navtex, GMDS Station, GLOBAL Positioning System etc; that items which were traded by them were purchased from various ship breaking units of India; that he had negotiated the supply of GMDS Station to vessel M.T. GOD PRESTIGE with Capt. Nirmal of M/s. Milbank Ltd, Gibraltar, who were the owners of the vessel and as per his directions the GMDSS was dispatched to M/s. Jaisu Shipping Co. (P) Ltd, Kandla; that this was dispatched under delivery challan No.3947 dtd.08.06.1999 through Tempo No.MH-17-A-6268. Shri Tushar Shah also submitted the photocopy of Delivery Challan and also Performa Invoice SS/May/30/99 dtd.26.05.1999 raised to M/s. Milbank Gibraltar. He stated that they had received the

payment of US\$ 9000 as the cost of GMDS Station from M/s. Milbank Ltd through International Bunkering Co, 1700-203 Oak Tree Road. He also submitted the photocopy of Telegraphic Transfer dtd.27.05.1999.

10.2 In response to the query about the procurement of GMDS Station and about procurement invoice and purchase price, Shri Tushar Shah further stated that he had negotiated with Mr. Rajesh Vyas of M/s. Ocean Link Marine Services, Bhavnagar; that full form of GMDSS was Global Marine Distress Signal Station and that he had purchased GMDSS from M/s. Ocean Link Marine Services, B-7, Geetanjali Complex, Kalanala, Bhavnagar and whose telephone number was 91-278-430904 and Fax number 91-278-510046 under Invoice number OMS-01 dtd.20.04.1999 mentioning goods therein as Old and Used Ships, Electronic Goods amounting Rs.2,02,800/- which they had remitted by Demand Draft. He also furnished the photocopy of Invoice dtd.20.04.1999 raised by M/s. Ocean Link Marine Services. He also informed that GMDSS Set was transported by M/s. Gujarat Transport Service, Bhavnagar under Bill of Entry No.2860 dtd.26.04.1999 on which their company had made octroi payment 01.05.1999.

10.2 He stated that since they were in the trade of Marine Equipments, many times the ship breakers as well as trader at Alang Ship Breaking Yard routinely informed them about availability of Marine and Navigational Equipment and in the subject case M/s. Ocean Link Marine Services informed them about availability of GMDSS. Shri Tushar Shah also produced the photocopy of Fax Message dtd.12.04.1999 from M/s. Ocean Link Marine Services. However, it was observed that the items listed in the Fax Message at Sr.No.1 to 7 were the items of Radio and Wireless Equipment, whereas Invoice No.OMS-01 dtd.20.04.1999 raised by M/s. Ocean Link Marine Services was for old and used ships electronic goods. Shri Tushar Shah was also questioned as to why he did not object to the declarations of goods in invoice as old and used ships electronic goods if actually he had received Radio / Wireless equipment. Shri Tushar Shah candidly informed that, he had been given to understand that, it was normal practice/pattern of raising invoice in style of -

Old and used Electronic Goods

Old and used Navigational Equipments

Old ad used Radio Room and Bridge Room Equipment

Gyro Navigator equipment etc

Against actual supply.

11.1 In his further statement dtd.24.09.1999 Shri Tushar Shah was asked to reveal the vessel from which the GMDSS was procured and also name of the Ship Breaker and his address. He stated that he did not know the name and address of the Ship Breaker but he could only gather that the said GMDS Station had been imported at Alang Ship Breaking Yard on vessel "OLIV BANK". He further frankly admitted that he was not aware whether duty payment of said GMDS Station was made or not. However, he clarified that name of vessel, owner of M.V. OLIV BANK was K.A. Rod Craig of M/s. Andrew Veir Shipping Ltd and these details were provided to him by M/s. Ocean Link Marine Services for purpose of cancelling the I.D. No. of GMDSS

purchased by him. Shri Tushar Shah further stated that to clarify that invoice description in invoice OMS-01 dtd.20.04.1999 raised by M/s. Ocean Link Marine Services, Bhavnagar was different than the actual goods purchased by him; that he had also filed the Affidavit to the effect that he had received GMDSS of MTI MAKE from M/s. Ocean Link Marine Services, Bhavnagar and that they had purchased above material vide Invoice No.OMS-01 dtd.20.04.1999 and invoice showed the description as Old & Used Ships Electronic Goods while actual equipment was GMDS Station Access. Further, M/s. A.T. Manufacturing had further certified vide their certificate dated 06.09.1999 that the same equipment had been supplied on board of the vessel M.T. GOD PRESTIGE.

12.1 In view of revelations by Shri Tushar Shah in his various statements, necessary enquiries were caused at Alang / Bhavnagar through Deputy Commissioner, Central Excise Division, Bhavnagar. After causing necessary enquiries it was reported by the Deputy Commissioner vide his letter dtd.24.11.1999 from F.No.IV/48-5/P&I/10511 that enquiries by their officers with M/s. Ocean Link Marine Services, B-7, Gitanjali Complex, Kalanala, Bhavnagar that Shri Rajesh Vyas vide his Invoice No.OMS-01 dtd.20.04.1999 had sold only Gyro Compilot and Gyro Compass complete set with accessories to M/s.A.T. Manufacturing Co., Mazgaon, Mumbai and had also confirmed full payment of Rs.2,02,800/- from M/s.A.T. Manufacturing Co. vide a Demand Draft No.024977 dtd.24.04.1999. The report also enclosed a letter from Shri Rajesh Vyas addressed to Supdt, C. Ex. & Customs, Alang dtd.22.11.1999 wherein it was interalia stated that he had not sold any GMDSS and that he was nowhere connected with GMDSS seized by Customs Officers at Kandla and he had sold old and used Electronic Goods worth Rs.1,95,000/- (inclusive of tax Rs.2,02,820/-) to M/s. A.T. Manufacturing, Mumbai vide the Invoice OMS-01 dtd.20.04.1999.

12.2 The report also enclosed a letter from M/s.Ram Steel and Rolling Industries (Unit-2), Bhavnagar dtd.23.11.1999 addressed to Superintendent of Customs, Alang, interalia stating therein that Ship M.V. Oliv Bank was imported by them and was beached at their Plot No.101 on 18.03.1999 after payment of Custom Duty of Rs.1,25,56,286/- and ship was allowed to break at their plot. It was further stated in the aforesaid letter of M/s. Ram Steel & Rolling Ind. (Unit-2) that before starting the breaking activity at Alang, the Customs and Central Excise Officer had examined the vessel and all radio and wireless equipment were destroyed as per procedure prevailing and under proper panchnama dtd.02.04.1999 in presence of Proprietor of M/s. Ram Steel Rolling Ind and 2 independent panchas. It was further stated in the letter that they had not sold any radio / wireless / GMDSS set to any of the party and that they were not concerned with GMDSS seized by Custom Officers at Kandla.

13.1 In view of the above position, it was decided to confront Shri Rajesh Vyas of M/s. Ocean Link Marine Services, Bhavnagar and Shri Tushar Shah of M/s. A.T. Manufacturing Co, Mumbai by the way of taking confrontational statement of both in presence of panchas. In view of this, both were summoned at Custom House Kandla on 7<sup>th</sup> December, 1999 when Shri Tushar Shah, Partner of M/s. A.T. Manufacturing



Co., Mumbai attended Kandla Custom House, but Shri Rajesh Vyas of M/s. Ocean Link Marine Services, Bhavnagar chose to remain absent without any reason. They both were again summoned on 4<sup>th</sup> January, 2000 and again at that time Shri Tushar Shah of M/s. A.T. Manufacturing Co. Ltd, Mumbai attended the Custom House Kandla but at the last moment Shri Rajesh Vyas sent a telegram message asking for adjournment to 6<sup>th</sup> or 11<sup>th</sup> of January. Accordingly, both Shri Tushar Shah of Mumbai and Shri Rajesh Vyas of Bhavnagar were again summoned on 11<sup>th</sup> January, 2000. On that day the flight (via Bhuj) of Shri Tushar Shah was delayed and he could reach Custom House Kandla only at 5.30 p.m. while Shri Rajesh Vyas attended Custom House at given time 3.00 p.m. However, without waiting for giving a confrontational statement, Shri Rajesh Vyas chose to leave Custom along with his consultant before 5.30 p.m. and thus avoided to give the statement under Section 108 of the Customs Act, 1962. However, before leaving the Kandla Custom House, without permission of the Investigating Officer, Shri Rajesh handed over a letter and Affidavit with one sepoy of Custom House who handed over these to the Investigating Officer immediately thereafter. The Affidavit of Shri Rajesh Vyas dtd.05.01.2000 interalia stated that he had given the quotation to M/s. A.T. Manufacturing Company, Mumbai of Electronic goods including Gyro Compass and accessories vide his quotation dtd.15.04.1999 and the item contained in the quotation were dispatched to M/s. A.T. Manufacturing Co, Mumbai vide Invoice OMS-01 dtd.20.04.1999 for Rs.2,02,800/- and that he had not given any goods to M/s. A.T. Manufacturing except the goods described in the quotation. Since Shri Rajesh Vyas left the Custom House, Kandla without the permission of Investigating Officer viz. Superintendent of Customs (R&I), the confrontational statement could not be recorded on that day. However, further statement of Shri Tushar Shah was recorded on 11.01.2000 under Section 108 of the Customs Act, 1962.

13.2 Shri Tushar Shah interalia stated that he had purchased the GMDS station from Shri Rajesh Vyas not on the basis of any telephonic talk but, his quotation and submitted a copy of quotation, which he had earlier given to Customs. On asking him whether the Invoice OMS-01 dtd.20.04.1999 was for Gyro Compass, Shri Tushar Shah stated that he had purchased from Shri Rajesh Vyas 2 Nos. Gyro Compass in September, 1999 and also produced the quotation OMS 162/99 dated 17.09.1999 and also Performa invoice OMS-015 dtd.17.09.1999. He stated that, deal of supply of GMDSS purchase vide Invoice OMS-01 dtd.20.04.1999 was totally different from purchase of Gyro Compass purchase vide Invoice OMS-015 dtd.17.09.1999.

13.3 Shri Tushar Shah admitted that, he knew that when vessel were called for Breaking at Ship Breaking Yard, the Radio Equipment items were to be broken and destroyed. However, he had purchased GMDSS from M/s. Ocean Link Marine Services and he admitted it as his mistake to purchase GMDS Station under incorrect invoice issued by M/s. Ocean Link Marine Services, Bhavnagar, in the name of old and used electronic goods. He also stated that it was his mistake to sell the said GMDS Station to M/s. Jaisu Shipping. He confirmed that he had also given sub-contract to M/s. Means Marine Electronic and Navigation Systems Pvt. Ltd at the rate of

Rs.49,000/- to install the GMDS Station on Board vessel M.T. GOD PRESTIGE, when the vessel was at Mumbai Port on 14.08.1999. He stated that, the GMDS Station could not be installed since vessel was to sail.

13.4 He clarified that since call sign was not available with owner of the vessel M.T.GOD PRESTIGE the 2 parts VHF and DSC (DSC – Distress Signal Calling) was not supplied to the vessel M.T. GOD PRESTIGE and these were still lying with him at Mumbai. The GMDS Station cannot function unless VHF or DSC is kept on Board. He also submitted the copy of sub-contract made by him with M/s. Means Marine Electronic and Navigation Systems (P) Ltd vide Service Report No.10220.

13.5 He admitted that it was his mistake to purchase the GMDS Station and to sell it again to somebody because these goods should have been broken and destroyed at very time of its landing from the vessel Oliv Bank called for berthing at Alang. He stated that he was ready to pay duty and penalty on GMDS Station. Only he requested for lenient view in the matter, as this was his first mistake and assured that it will not happen again.

14.1 The Agents to the vessel M/s. ACT Shipping vide their letter addressed to the Commissioner of Customs, Custom House, Kandla dtd.8<sup>th</sup> September, 1999 requested that since the vessel had got another employment at Mumbai and since she was to reach Mumbai before 10<sup>th</sup>, they requested to detain all the goods that were not declared and were seized by the department after taking appropriate Bank Guarantee or cash deposit. Similar request was again done on 10.09.1999 to Commissioner of Customs to off load the seized goods and to take Bank Guarantee or cash deposit and to allow the vessel to sail to Mumbai.

14.2 Accordingly, Commissioner of Customs had directed to take a bond of Rs.8,00,000/- (Rupees eight lakhs only) from the Agents of the vessel M/s. ACT Shipping Ltd, Gandhidham before permitting the vessel to leave the port. The seized goods were also off loaded as requested by the Agents M/s. ACT Shipping Ltd. In the bond given the Agents to the vessel M/s. ACT Shipping Ltd also stated that any liability to the account of the Master would be made good by M/s. ACT Shipping Ltd as agents of the vessel. The Master Capt. Musa Ansari was also allowed to sign off thereafter.

14.3 The agents M/s. ACT Shipping Ltd, Gandhidham furnished Bond for Rs.8,00,000/- (Rupees eight lacs only) and also cash deposit of Rs.5,00,000/- (Rupees five lacs only). The Bond was signed by AGENT to M.T. GOD PRESTIGE M/s. ACT Shipping Co. Ltd, Capt. Musa Ansari, Master of the vessel M.T. GOD PRESTIGE, also by M/s. Jaisu Shipping Co. Pvt. Ltd (Managing Agent of vessel M.T. GOD PRESTIGE).

15.1 In view of aforesaid facts and circumstances, it appeared that Master of the vessel definitely had not declared the currency amounting to US \$ 4595, GMDS Station Set (in 8 packages), Refrigerator 2 Nos (old and used), Binocular, Typewriter, 2 Nos. Yokohama Fenders etc. all of foreign origin. As per the Import Manifest (Vessel)

Regulation, 1971, all the ship property, Crew Currency, foreign currency including Ship currency etc had to be declared to the Custom Boarding Officer boarding the vessel. The Master had not declared these goods in the relevant papers also in the Manifest and thus these goods appeared to be liable for confiscation under Section 111(f) of the Customs Act, 1962 read with Import Manifest (Vessel) Regulation, 1971. However, the master of the vessel stated that, it was his mistake of non-declarations but he could account for the presence of US \$ 4595 and hence the plea of the Master that non-declarations was due to oversight appeared to be logical.

15.2 The proof in the form of purchase Bill, Certificates of manufacture etc were produced by the Master as a proof regarding the Indian origin of 4 Rope Coils. The relevant purchase invoice had also been furnished. However, as regards the 2 fenders of "Yokohama Brand" the Master and Operational Agents M/s. Jaisu Shipping Co. (P) Ltd could not produce any papers about its import or duty payment etc. If they were ship stores it should have been explicitly mentioned. If they were otherwise, then duty paid documents should have been produced. The plea by the Master that item refrigerator or fenders being Dead Stock and hence not declared cannot be accepted since firstly these items were in use and secondly if they were not in ships use there was no valid reason for these items to be occupying ships precious space.

16.1 In view of above,

- a) US \$ 4595/-
  - b) 2 Refrigerators (old & used) both of foreign origin
  - c) 1 Binocular (of foreign origin)
  - d) one typewriter (of foreign origin)
- e) 8 boxes containing old and used Global Marine Distress Signal Station (GMDSS) also appeared to be liable for confiscation under Section 111(f) of the Customs Act, 1962 read with Import Manifest (Vessel) Regulation, 1971 read with Section 30 of the Customs Act, 1962. The duty also appeared to be liable to be collected on GMDS Station set in 8 boxes (in unassembled condition).

17.1 The Global Marine Distress Signal Station Set (unassembled in 8 boxes kept in bridge room of vessel M.T. GOD PRESTIGE) appeared to have originated from Alang Ship Breaking Yard. The supplier of this set to M.T. GOD PRESTIGE were M/s. A.T. Manufacturing Co. Ltd, Mumbai and they in turn appeared to have purchased the said set from some Trader connected to Alang Ship Breaking Yard and according to Mr. Tushar Shah, Partner of M/s. A.T. Manufacturing Co, Mumbai had purchased the set from Shri Rajesh Vyas of M/s. Ocean Link Marine Services, Bhavnagar vide Invoice No.OMS-01 dtd.12.04.1999. However, the relevant invoice was found to be for old and used electronic goods and not GMDS Station. Shri Tushar Shah was questioned on why he had not objected to wrong declarations of description on the invoice. However, in one of his statement Shri Tushar Shah admitted that it was his mistake to purchase this item from M/s. Ocean Link Marine Services, Bhavnagar under an invoice incorrectly describing the goods covered there under. However, Shri Rajesh Vyas of Ocean Link Marine Services in his letter dtd.22.11.1999 to Superintendent, Central Excise, Alang have stated that he had not sold any GMDS

Station to Shri Tushar Shah of M/s. A.T. Manufacturing Co, Mumbai is supported by the enquiry report of Superintendent, Central Excise, Alang and also contention of proprietor of M/s. Ram Steel & Rolling Mills, Alang dtd.23.11.1999 addressed to Superintendent, Central Excise, Alang.

18.1 From the above, it emerged that GMDS Station had been clandestinely removed from Alang Ship Breaking Yard. However, Shri Tushar Shah in view of accepting the goods under a invoice which described the goods incorrectly from Shri Rajesh Vyas could not legally pass on the burden of clandestine and illicit removal of GMDS Station to Shri Rajesh Vyas. However, Shri Tushar Shah had been unable to produce any valid duty paid custom document for the said GMDS Station set which otherwise was to be destroyed under panchnama after import of vessel. The GMDS Station Set, a radio navigational aid apparatus classifiable under 8526.91 of the Customs Tariff and 85269109 of the ITC (HS) and as such was restricted for import except against a Licence or Public Notice issued in this behalf. The buyers M/s. Milbank, Gibraltar or M/s. A.T. Manufacturing Co, Mumbai had not produced any valid import Licence, for import of GMDS Station Set and there was no Public Notice issued in this regard. As per the instructions of Ministry of Communication, Government of India, the repairing and selling a wireless equipment from broken ship was not permitted. Possession and / or operating a wireless set without valid Licence was an offence under Indian Wireless & Telegraph Act, 1885 and Indian Wireless Permission Rules, 1965. Thus the entry into India and on board the vessel M.T. GOD PRESTIGE of such GMDS Station in sound condition without any valid licence or valid custom duty paid document appeared to make the subject GMDS Station kept in unassembled state on vessel M.T. GOD PRESTIGE liable for confiscation under section 111(d), 111(j) and 111(o) of the Customs Act, 1962.

19. Shri Vishin Kewalramani, Operations Manager had negotiated for old and used GMDS Station with M/s. A.T. Manufacturing Co, Mumbai knowing fully well that such sets were clandestinely removed from Ship Breaking Yard and would be liable for confiscation under the provisions of Customs Law.

19.1 M/s. Jaisu Shipping Co. Ltd also had filed the Shipping Bill No.F-2164 dtd.11.06.1999 for this old and used GMDS Station knowing fully well that this set was clandestinely removed from Ship Breaking Yard and they had not verified or called for any valid documents which would show the legal and bonafide removal of such GMDS Station set from the ship to be broken in the Ship Breaking Yard (Scrap Yard).

19.2 M/s. Milbank, Gibraltar made the payments to M/s. A.T. Manufacturing Co, Mumbai although proforma Invoice No.SS/MAY/30/99 dtd.28.05.1999 clearly mentioned that GMDS Station set was O & U (old & used). In his statement under Section 108 of the Customs Act, 1962, Shri Tushar Shah, Partner of M/s. A.T. Manufacturing Co, Mumbai had clearly mentioned that he had negotiated the supply of GMDS Station to vessel M.T.GOD PRESTIGE with Capt. Nirmal of M/s. Milbank, Gibraltar, who were owners of the vessel M.T. GOD PRESTIGE. Thus, M/s. Milbank, Gibraltar, owner of vessel M.T. GOD PRESTIGE were aware that GMDS Station

supplied was from scrap yard and which was illegal and thus M/s. Milbank, Gibraltar had abetted violation of Customs Law by purchasing such smuggled GMDS Station Set.

20. In view of the above, it was alleged that :

- 1) M/s.Jaisu Shipping Co. (P) Ltd, Kandla
- 2) Shri Vishin Kewalramani, Operation Manager of M/s.Jaisu Shipping Co. (P) Ltd
- 3) M/s.A.T. Manufacturing Co, Mazgaon, Mumbai
- 4) Shri Tushar Shah, Partner of M/s.A.T. Manufacturing Co. Pvt. Ltd
- 5) M/s.Milbank, Gibraltar
- 6) Capt. Musa Ansari, Master of vessel M.T. GOD PRESTIGE

in their individual capacity and collectively appeared to have conspired to clandestinely remove a GMDS Station from Alang Ship Breaking Yard with the help of still unknown persons and appeared to have fabricated certain sale invoices, Transport Challans and documents etc to legitimize their smuggling of GMDS Station into Kandla and then on board of M.T. GOD PRESTIGE. No authorized documents, Bills of Entry etc. had been produced to show the duty payment of legitimate removal of GMDS Station Set from Alang Ship Breaking Yard. In relation of GMDS Station in 8 boxes lying in unassembled condition on M.T. GOD PRESTIGE, it alleged for all aforesaid persons and companies that for their actions and omissions to do action which actions or omissions would render such goods liable for confiscation under Section 111 or had abetted the doing omitting of such an action and had acquired, possessed of or were in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling, purchasing or in any other manner dealing with any goods which they knew or had reason to believe were liable for confiscation under Section 111 of the Customs Act, 1962, they all (persons and companies) appeared to be liable for penalty under Section 112(a) and / or Section 112(b) of the Customs Act, 1962 and Section 117 of the Customs Act, 1962.

21. Master of the vessel M.T. GOD PRESTIGE Capt. Musa Ansari also due to his actions and omissions to do certain actions which acts or omission would render such goods liable for confiscation under Section 111 and had possessed of or was in any way concerned with carrying, removing, depositing, harboring, keeping, concealing, selling, purchasing or in any other manner dealing with subject goods which he knew or had reason to believe were liable for confiscation under Section 111 of the Customs Act, 1962, they and hence appeared to be liable for penalty under Section 112(a) and / or Section 112(b) of the Customs Act, 1962 and Section 117 of the Customs Act, 1962.

22.1 In view of the above, a show cause notice bearing No.S/20-30/99/R&I / S/10-02/2000/R&I dated 23.02.2000 was issued to :

- 1) M/s.A.T. Manufacturing Co, Mazgaon, Mumbai
- 2) Shri Tushar Shah, Partner of M/s. A.T. Manufacturing Co. Pvt. Ltd, Mumbai
- 3) M/s.Jaisu Shipping Co. (P) Ltd, Kandla
- 4) Shri Vishin Kewalramani, Operation Manager of M/s.Jaisu Shipping Co. (P) Ltd
- 5) M/s.Milbank, Gibraltar

6) Capt. Musa Ansari, Master of vessel M.T. GOD PRESTIGE

wherein they were called upon to show cause to the Commissioner of Customs, Custom House, Kandla as to why :

- (a) GMDS Station set covered in 8 boxes by Invoice No.3947 dtd.08.06.1999 of M/s. A.T. Manufacturing Co, Mumbai in the name of M.T. GOD PRESTIGE C/o M/s. Jaisu Shipping Co. Ltd, Kandla and covered by Proforma Invoice No.SS/MAY/3099 dtd.26.05.1999 raised by M/s. A.T. Manufacturing Co, Mumbai in the name of M/s. Milbank, Gibraltar, owner of vessel M.T.GOD PRESTIGE and covered by Shipping Bill No.F-2164/11.06.1999 filed by M/s. Jaisu Shipping Co. Pvt. Ltd, Kandla in the name of the Master of vessel M.T. GOD PRESTIGE, should not be held liable for confiscation under Section 111(d), 111(f), 111(j) and 111(o) of the Customs Act, 1962 read with Import Manifest (Vessel) Regulation, 1971 read with Section 30 of the Customs Act, 1962.
- (b) appropriate duty should not be collected on GMDS Station set, unassembled valued at US\$ 9000/- as it was removed from Alang Ship Breaking Yard without payment of any duty and which was supplied on M.T. GOD PRESTIGE.
- (c) Each and every one of the firms and persons stated above should not be held liable for penalty under Section 112(a) and / or 112(b) and also Section 117 of the Customs Act, 1962.

22.2 Further, the Master of the vessel Capt. Musa Ansari was also called upon to show cause as to why :

- (a) 1. Foreign Currency worth US\$ 4595/-  
2. Old and used Refrigerators (of foreign origin) 2 in Nos  
3. 2 Fenders "YOKOHAMA MAKE" (in use)  
4. 1 Binocular (of Japanese origin)  
5. 1 Typewriter (of Swedish origin), should not be held liable for confiscation under Section 111(f) of the Customs Act, 1962 read with Import Manifest (Vessel) Regulations, 1971, read with Section 30 of the Customs Act, 1962 and

- (b) why Capt. Musa Ansari, Master of vessel M.T. GOD PRESTIGE should not be held liable for penalty under Section 112(a) and / or 112(b) and also Section 117 of the Customs Act, 1962.

23. After hearing the noticees and considering the defence submissions made by them, the then Commissioner of Customs, Kandla adjudicated the aforesaid show cause notice vide his OIO No.KDL/Commr/14/2001 dtd.30.04.2001, ordering:

- (i) recovery of duty at the appropriate rate on GMDSS set from M/s.A.T. Manufacturing Co. Ltd, Mumbai, under section of Customs Act, 1975.

(ii) absolute confiscation of GMDS station. He also ordered for destruction of the same under Panchnama. He also directed M/s.A.T. Manufacturing Co. Ltd, Mumbai to surrender the VHF and DSC, which were integral parts of the subject GMDS station to AC (R&I), CH, Kandla, under section of Customs Act, 1975.

(iii) confiscation of foreign currency worth US\$ 4595/-, 2 old and used Refrigerators, 2 fenders, 1 binocular and 1 typewriter, under section of Customs Act, 1975. However, he allowed the same to be redeemed on payment of redemption of fine, under section of Customs Act, 1975.

(iv) imposition of penalty of Rs.2,00,000/- on Captain Musa Ansari, Master of vessel, under section of Customs Act, 1975.

(v) imposition of penalty of Rs.2,00,000/- on M/s. A.T. Manufacturing Co. Ltd, Mumbai, under section of Customs Act, 1975.

(vi) imposition of penalty of Rs.50,000/- on Shri Tushar Shah, Partner of M/s. A.T. Manufacturing Co. Ltd., under section of Customs Act, 1975.

(vii) imposition of penalty of Rs.1,00,000/- on M/s.Jaisu Shipping Co. Ltd. , under section of Customs Act, 1975.

(viii) imposition of penalty of Rs.1,00,000/- on Shri Vishin Kewalramani, Operations Manager of M/s.Jaisu Shipping Co. Ltd. , under section of Customs Act, 1975.

(ix) imposition of penalty of Rs.2,00,000/- on M/s.Milbank Ltd, Owner of vessel M.T. GOD PRESTIGE, under section of Customs Act, 1975.

(x) penalties on M/s. Milbank Ltd, M/s. Jaisu Shipping Co. Ltd, Shri Vishin Kewalramani, Operation Manager of M/s. Jaisu Shipping Co. Pvt. Ltd and Capt. Musa Ansari be recovered from the cash deposit of Rs. Five lakhs which was deposited with Custom House, Kandla and Bond be enforced to recover the balance amounts, under section of Customs Act, 1975.

24.1 Aggrieved by the aforesaid order, M/s. Jaisu Shipping Co. Pvt. Ltd, M/s. Milbank Ltd, Capt. Musa Ansari and Shri Vishin Kewalramani filed appeal before Hon'ble CESTAT, Ahmedabad. Hon'ble CESTAT, Ahmedabad vide Order No.A/1352 to 1355/WZB/AHD/2007 dtd.15.06.2007, after hearing both the parties, observed in para 5:

*“After hearing Shri M.L. Grover, learned Advocate appearing for the appellant, and Shri D.S. Negi, learned SDR appearing for the Revenue, I find that the Commissioner has accepted the appellant's stand that GMDS Station was originally removed from Alang Ship Breaking Yard without payment of duty under cover of Invoice dtd.8.6.99*

raised by M/s. A.T. Mfg. Co, Mumbai in the name of M.T. GOD PRESTIGE. As per the certificate issued by M/s. A.T. Mfg. Co, the same was to be installed in the ship. However, the same was, according to Commissioner, not installed and was lying in unassembled condition, when the ship came back on 30<sup>th</sup> August. In the back drop of above admitted position, charges of importation of the station, without production of import licence cannot be upheld. As such, the only charge remains about non-declarations of the same by the Captain. It has been pointed out by learned advocate that the vessel arrived at Kandla on 30.8.99 and was put to search from 31.8.99. As per the provisions of law, the period of 24 hours was available to the Captain for making declarations, which period was not expired by the time of the visit of officers. As such, no serious charge can be framed against the Captain for not making the declarations. Accordingly, I do not find any reason for imposition of penalty upon the Captain and other appellants. The penalties upon all the appellants are, accordingly, set aside.”

24.2 The Hon’ble Tribunal further observed in para 6 of the order that as no arguments had been advanced before it, as regards confiscation and destruction of GMDS Station or for confiscation of other goods, no orders are being passed in respect of the same.

25.1 The Hon’ble CESTAT, Ahmedabad has passed an Order No.A/356/WZB/AHD/2011 dtd.18.02.2011 in case of appeal filed by M/s. Milbank Ltd. The relevant portion of para 1 & 2 of said order is reproduced below :

“An application for rectification of mistake was filed by M/s. Milbank Ltd, which was rejected by the Tribunal. Thereafter, the appellant filed a tax appeal No.1641 of 2009 before the Hon’ble High Court of Gujarat at Ahmedabad. The appellants placed on record an affidavit of the Advocate Shri Madanlal Grover, who had appeared before Tribunal, wherein he stated that during the course of hearing, he had argued on the point of confiscation of GMDSS and other goods seized. He also had stated that he had filed written submissions and further he had tendered copies of relevant Acts.”

25.2 After considering the issue, Hon’ble High Court remanded the matter to this Tribunal with following observations :

15. There is one more aspect of the matter. As can be seen from the impugned order of Tribunal dtd.15.6.07 in Paragraph No.5 it has been observed as under :

“5. After hearing Shri M.L. Grover, learned Advocate appearing for the appellant, and Shri D.S. Negi, learned SDR appearing for the Revenue, I find that the Commissioner has accepted the appellant’s stand that GMDS Station was originally removed from Alang Ship Breaking Yard without payment of duty under cover of Invoice dtd.8.6.99 raised by M/s. A.T. Mfg. Co, Mumbai in the name of M.T. GOD PRESTIGE. As per the certificate issued by M/s. A.T. Mfg. Co, the same was to be installed in the ship. However, the same was, according to Commissioner, not installed and was lying in unassembled condition, when the



*ship came back on 30<sup>th</sup> August. In the drop back of above admitted position, charges of importation of the station, without production of import licence cannot be upheld. As such, the only charge remains about non-declarations of the same by the Captain. It has been pointed out by learned advocate that the vessel arrived at Kandla on 30.8.99 and was put to search from 31.8.99. As per the provisions of law, the period of 24 hours was available to the Captain for making declarations, which period was not expired by the time of the visit of officers. As such, no serious charge can be framed against the Captain for not making the declarations. Accordingly, I do not find any reason for imposition of penalty upon the Captain and other appellants. The penalties upon all the appellants are, accordingly, set aside.”*

*While deleting the penalty imposed u/Section 112 and 117 of the Income Tax Act, 1962, the Tribunal has accepted as a matter of fact that charges of importation of the GMDS Station without production of import licence cannot be upheld. It appears that through oversight the Tribunal failed to appreciate that confiscation of goods and levy of penalty are interlinked with improper importation as is clearly evident when one reads Sections 111 and 112 of the Act. Once the Tribunal comes to the conclusion that there was no improper importation and penalty could not be upheld there was no question of confiscation being upheld by way of improper importation. Hence, mistake by the Tribunal in recording that no arguments were advanced appears to be a simple case of oversight and nothing else.*

*In the light of the aforesaid facts, it is apparent that Ld. Advocate for the appellant who had appeared before the Tribunal at the relevant time had made submissions on the issue of confiscation and destruction of the GMDS Station as well as confiscation of other goods. The written submissions which have been placed before the Tribunal on 16.4.07 with the permission of the Tribunal also indicate that the issue had in fact been raised before the Tribunal. In the circumstances, the Tribunal was not justified in recording in its order dtd.15.6.07 that no arguments had been advanced before it as regards confiscation of other goods. The Tribunal was also not justified in not accepting the rectification application made by the appellant pointing out the defect in the earlier order. In the circumstances, the impugned order of the Tribunal suffers from the infirmities pointed out hereinabove, and as such cannot be sustained. The question formulated stands answered accordingly.*

*The impugned order dt.15.6.07 made by the Tribunal in Appeal No.1036 of 2001 is hereby quashed and set aside only to the extent it records that no arguments were advanced before the Tribunal as regards confiscation and destruction of GMDS station or for confiscation of other goods. The impugned order dt.3.3.08 made on Rectification Application No.C/ROM/853/07 is also quashed and set aside. Appeal No.C/1036/01 is restored to the file of the Tribunal to the limited extent of deciding the issue as regards confiscation of GMDS Station as well as*

*confiscation of other goods. The Tribunal shall decide the appeal in accordance with law, after affording the parties reasonable opportunity of hearing.”*

25.3 The Hon'ble Tribunal further observed in paras 3 to 5 of its order dated 18.02.2011 as under :

*“3. In view of the above, I am required to consider only the issue of confiscation of various goods. This Tribunal has already considered the issue in Para 5 and a view has been taken that as per the provisions of law, a period of 24 hours was available to the Captain for making a declarations and this period had not expired at the time of visit of the officers. The whole case has been made out on the ground that the Captain did not declare these goods to the Customs Officers. For this purpose, the Commissioner had relied upon the Import Manifest (Vessel) Regulations, 1971. During the relevant time, import manifest was required to be filed within 24 hours of arrival of the vessel. As per records, there is no indication as to whether the IGM was filed or not. If IGM had been filed, the boarding officers should have compared the IGM with actually found goods and got panchnama prepared. From the records what appears is that the master of the vessel was asked to make declarations of the goods and thereafter verification of the same was taken up. There is no finding anywhere in the records whether these goods were found in the records of the vessel or not and even if they were to be found, where they were to be exactly recorded. In the absence of clear finding in this regard, no conclusion can be drawn as to whether these were unaccounted goods in the ship. This is further complicated by the position with regard to GMDSS which was admittedly purchased by the owner in India and was declared in the shipping bill at the time when the ship set sail from India. If it was declared in the Shipping bill, the question arises why no action taken by the Customs Officers during the relevant time. Learned Commissioner has also observed that as per the instructions of Ministry of Communication, Govt. of India, repairing and selling of wireless equipment is not permitted and possession and operation of wireless set without valid licence is offence under Indian Telegraph Act, 1985 and Indian Wireless Permission Rules, 1965.*

*4. However, learned Counsel during the course of hearing, submitted a copy of Rules framed under Section 4 of Indian Telegraph Act, 1885, wherein a wireless telegraph is permitted to be established in foreign ship within Indian territorial waters without licence. The vessel was a foreign ship and had come to India only for repair. Therefore, possession of wireless set by the appellant in the vessel was not against the relevant Act and Rules. As regards contravention of conditions relating to repair and selling the wireless equipment, it was submitted that the appellant was innocent buyer and only the seller can be found fault with. He also submitted that GMDSS set had been declared in the shipping bill and the same could not be installed because the ship had to proceed on voyage and it was hardly one month since the set had been purchased. Further, the Commissioner has also taken a view that subject GMDS Station which was dutiable was removed from ship which had been broken up clandestinely without*

*payment of duty and without permission of proper officer. However, M/s. Jaisu Shipping Co. Pvt. Ltd and Shri Vishin Kewalramani has sold it under delivery challan and the fact of sale is on record.*

5. *In view of the fact that Commissioner has not considered the fact that the appellant was exempted from the condition of relevant rules and was entitled to keep wireless set without licence, the matter is required to be remanded to the Commissioner. Further, whether IGM has been filed or not and if it was not filed, what was the basis to arrive at the conclusion that these goods have not been accounted for, is also required to be considered. In any case, in view of the fact that there is no specific observation about non-maintenance of records in respect of confiscation goods other than GMDSS set and also taking into account the fact that value of the goods is very low and also taking into consideration the fact that penalty has already been set aside, which is imposable for rendering the goods liable to confiscation, the confiscation of all the goods except GMDSS is set aside. As regards GMDS Station, the Commissioner is required to consider relevant statutory provisions and whether the appellant is entitled to possess it as per law and if so whether the purchase made by them can be held to be legal and whether the goods can be released to them on payment of fine in lieu of confiscation, treating the same as restricted items. Therefore, the issue with regard to the GMDS station is remanded and confiscation of all other items is set aside. Appellants shall be given an opportunity to present their case before a decision is taken.”*

26.1 Taking note of the order of the Hon’ble CESTAT, the then Commissioner resumed the denovo proceedings of the instant case and accordingly after giving due weightage to the judgment of the Hon’ble CESTAT, decided the case vide OIO No. KDL/COMMR/19/De-novo/2011-12 dated 31.01.2012, wherein an order of absolute confiscation of GMDSS under the provisions of section 111(f) and 111(j) of the Customs Act, 1962 read with Import Manifest (Vessel) Regulations, 1971 and also ordered the set to be destroyed under panchnama.

26.2 Being aggrieved by the above OIO No. KDL/COMMR/19/De-novo/2011-12 dated 31.01.2012, passed by Shri Navneet Goel, the then Commissioner of Customs, Kandla, the noticee i.e. M/s Milbank Ltd., again preferred an appeal with the Hon’ble CESTAT.

26.3 The Hon’ble CESTAT decided the appeal C/64 vide an order dated 08.03.2013, wherein the appeal was allowed and set aside the order passed by the Commissioner to decide the matter by giving an option to the appellant to redeem the goods i.e. GMDSS.

26.4 Against the order of the Hon’ble CESTAT, the department filed a Tax Appeal No. 782 of 2013 with the Hon’ble High Court of Gujarat, in regard to question of law. The Hon’ble High Court of Gujarat vide an order 03.10.2013 agreed with the finding of the Hon’ble CESTAT, where it was held that in the facts and circumstances

of the case and considering section 125 of Customs Act, the Commissioner ought to have given an option to the respondent to redeem the goods i.e. GMDSS. The Hon'ble High Court of Gujarat further held that under section 125 of the Customs Act discretion is vested with the authority to give an option to the owner of the goods to redeem the goods liable to be confiscated with suitable redemption fine. It is further held that when CESTAT has exercised the discretion vested under Section 125 of the Customs Act, it cannot be said that any substantial question of law arises in the appeal. The Hon'ble High Court of Gujarat further opined that no error has been committed by the CESTAT in quashing and setting aside the order of absolute confiscation of the goods i.e. GMDSS and remanding the matter to the Commissioner to decide the matter by giving an option to the respondent to redeem the goods in question of payment of suitable redemption fine and dismissed the Tax Appeal.

### **Defence Reply and Personal Hearing**

27.1 Personal hearing in the matter was fixed on 25.02.2015 but no one appeared for the same.

27.2 It is also observed that no further reply has been filed by the noticee / appellant i.e. M/s Milbank Ltd.

### **DISCUSSION & FINDINGS :**

28. I have gone through the facts of the case and earlier submissions made by the noticee i.e. M/s. Milbank Ltd., afresh.

29. I find that the matter has been remanded back to the Commissioner with regard to the confiscation of GMDSS Station, by the Hon'ble High Court of Gujarat and directed to decide the matter by giving an option to the respondent to redeem the goods in question of payment of suitable redemption fine.

30. Briefly stated, the facts of the case are that the vessel M.T. GOD PRESTIGE had arrived at on 30.08.1999 16 16.30 hrs at ballast from Dammam to Kandla for the purpose of repairs and from there she was to sail out after repairs. Necessary declarations, which were part of IGM, were filed by the Master of vessel on 31.08.1999. Thereafter, the Customs Officers boarded the vessel on 31.08.1999 at 11.30 hrs and found that following items were not declared in the declarations:

<b>Sr. No.</b>	<b>Location of the item, which was un-manifested (undeclared)</b>	<b>Details / Description of the item</b>
1	Room of Master Capt. Musa Ansari	US \$ 4595/- <u>Denomination :</u> 100\$ x 26 = 2600\$ 50\$ x 36 = 1800\$ 20\$ x 4 = 80\$ 10\$ x 10 = 100\$ 5\$ x 3 = 15\$ <u>Total = 4595\$</u> Refrigerator – 1 No. Old & Used
2	Room of Chief Engineer	Refrigerator – 1 No. Old & Used

3	Radio Room	One Binocular – 1 No. - SOLIGOR – Made in Japan Type writer (used) – 1 No. - FACIT – Made in Sweden 8 boxes containing INMARSAT – 1 set Global Marine Distress Signal Station (GMDSS) (unassembled & uninstalled)
4	Boat Decl	Mooring Rope - Brand New – 3 Nos
5	Fore Castle	White Coloured Mooring Rope – 1 No.
6	Fore Deck Store	White Coloured Mooring Rope – 1 No.
7	Main Deck	Rubber fender – 2 Nos. - 'YOKOHAMA' make

31. The items at Sr. Nos.4 to 6 were found to be legally obtained and the proofs in the form of purchase bills, certificates of manufacture, purchase invoice etc were produced by the Master as a proof regarding the Indian Origin of Rope Coils. The show cause notice was therefore issued proposing confiscation of items at 1 to 3 & 7 above only. The SCN was adjudicated by the Commissioner of Customs, Kandla vide his OIO No.KDL/Commr/14/2001 dtd.30.04.2001. The goods mentioned at Sr. Nos.1 to 3 & 7 (except GMDSS) were ordered to be confiscated by allowing the same to be redeemed on payment of redemption fine totally of Rs.1,27,000/-. Penalties were also imposed on Captain Musa Ansari Master of the vessel, M/s. A.T. Manufacturing Co. Ltd, Shri Tushar Shah, Partner of M/s.A.T. Manufacturing Co. Ltd, M/s. Jaisu Shipping Co. Ltd, Shri Vishin Kewalramani Operations Manager of M/s. Jaisu Shipping Co Ltd and M/s. Milbank Ltd. As regards GMDSS the same was ordered to be confiscated absolutely and destroyed under panchnama on the ground that :

(i) the communication equipment GMDS Station was required to be broken and destroyed under panchnama along with the ship which had come for breaking. These goods were restricted for import and export except against a licence and none of the noticees had produced any valid import licence for clearance of the subject GMDS Station. As per instructions of Ministry of Communication, Government of India, the repairing and selling of a wireless equipment form broken ships was not permitted and possession and / or operation of a wireless set without a valid licence was an offence under Indian Wireless Telegraph Act, 1885 and Indian Wireless Permission Rules, 1965.

(ii) GMDS Station which was kept in unassembled state on vessel M.T. GOD PRESTIGE appeared to have been imported into India without a cover of valid import licence and was also not declared in IGM and was, therefore, liable for confiscation

(iii) On perusal of photo copy of delivery challan No.3947 dtd.08.06.1999, it was evident that M/s.Jaisu Shipping Co Pvt. Ltd and Shri Vishin Kewalramani were very well aware that GMDSS was old and used and procured from shipyard and was reconditioned. This proved that subject GMDS Station which was dutiable was removed from Alang Custom Area clandestinely without payment of duty and without permission of proper officer. Further, the condition of destruction of Marine Radio Equipment at the time of Ship Breaking also had been violated.

32. Further, Shri Tushar Shah, Partner of M/s. A.T. Manufacturing Co. Ltd. had clarified in his statement that since call sign was not available with owner of the vessel M. T. GOD PRESTIGE the 2 parts VHF & DSC (DSC Distress Signal Calling) was

not supplied to the vessel and was still lying with them at Mumbai. The GMDS Station cannot function unless VHF or DSC is kept on Board. My predecessor, therefore, also directed M/s. A.T. Manufacturing Co. Ltd, Mumbai to surrender the VHF and DSC which were lying with them.

33. Aggrieved by the aforesaid order, Captain Musa Ansari, M/s. Milbank Ltd, M/s. Jaisu Shipping Co. P. Ltd and Shri Vishin Kewalramani went in appeal before the Hon'ble CESTAT, which vide an order No. A/1352 to 1355/WZB/AHD/2007 dated 15.06.2007 observed that the Commissioner had accepted that GMDS Station was originally removed from Alang Ship Breaking Yard without payment of duty under cover of Invoice dtd.8.6.99 raised by M/s. A.T. Mfg. Co, Mumbai in the name of M.T. GOD PRESTIGE; that as per the certificate issued by M/s. A.T. Mfg. Co, the same was to be installed in the ship; that the same was, according to Commissioner, not installed and was lying in unassembled condition, when the ship came back on 30<sup>th</sup> August and that in the backdrop of above admitted position, charges of importation of the station, without production of import licence cannot be upheld. Hon. Tribunal further observed that it had been pointed out by learned advocate that the vessel arrived at Kandla on 30.8.99 and was put to search from 31.8.99; that as per the provisions of law, the period of 24 hours was available to the Captain for making declaration, which period was not expired by the time of the visit of officers; that as such, no serious charge can be framed against the Captain for not making the declaration. The Hon. Tribunal accordingly set aside penalties imposed on all these appellants.

34. The Hon. Tribunal further observed that as no arguments had been advanced before it as regards confiscation and destruction of GMDS Station or for confiscation of other goods, no orders were passed in respect of the same.

35. The matter was thereafter decided by Hon. Tribunal vide its Order No.A/256/WZB/AHD/2011 dtd.18.02.2011 observing that as per the provisions of law a period of 24 hours was available to the Captain for making a declaration and this period had not expired at the time of visit of the officers; that as per records there was no indication as to whether the IGM was filed or not; that when GMDSS was admittedly purchased by the owner in India and was declared in the Shipping Bill, the question arose why no action was taken by the Customs Officers during the relevant time; that as regards GMDS Station, the Commissioner was required to consider relevant statutory provisions and whether the appellant was entitled to possess it as per law and if so whether the purchase made by them can be held to be legal and whether the goods can be released to them on payment of fine in lieu of confiscation, treating the same as restricted items. The Hon. Tribunal remanded the issue with regard to the GMDS station and set aside the confiscation of all other items.

37. It is seen from the record that M/s. A.T. Mfg. Co. Ltd and Shri Tushar Shah Partner of M/s. A.T. Mfg. Co. Ltd do not appear to have filed any appeal before Hon. Tribunal against the Order-in-Original passed by the then Commissioner dated 30.04.2001. Thus, the order passed by the then Commissioner in so far as it related to

M/s. A.T. Mfg. Co. Ltd and Shri Tushar Shah Partner of M/s. A.T. Mfg. Co. Ltd has attained finality. As regards the confiscation of other items, the same stands set aside by the Hon'ble Tribunal vide its order dtd.18.02.2011. The Hon'ble Tribunal has also set aside penalties imposed on Master of the Vessel, M/s. Jaisu Shipping Co. Ltd, Shri Vishin Kewalramani Operations Manager of M/s. Jaisu Shipping Co. Ltd and M/s. Milbank Ltd vide its order dtd.15.06.2007.

39. Further, vide an order the Hon'ble High Court of Gujarat dated 03.10.2013, on the matter of option of redemption fine to the appellant i.e. M/s Milbank Ltd., commented on the judgment of Hon'ble CESTAT dated 08.03.2013, stating that the discretion used by CESTAT vested under section 125 of the Customs Act, 1962, is just by remanding the matter to the Commissioner to decide the matter by giving an option to the respondent to the redeem the goods in question on payment of suitable redemption fine.

40. Therefore, the issue for consideration before me is only with regard to confiscation of GMDSS Station and whether M/s. Milbank is entitled to possess it as per law and if so whether the purchase made by them can be held to be legal and whether the goods can be released to them on payment of fine in lieu of confiscation, treating the same as restricted items.

41. The issue has been examined in light of the observations of Hon'ble Tribunal in their earlier decision. It has been contended before the Hon. Tribunal that a period of 24 hours was available to the Captain for making a declaration and this period had not expired at the time of visit of the officers. I find that in the present case, the vessel came to Kandla on 30.08.1999 at 16.30 hrs. The Import General Manifest (IGM) which is required to be filed under Section 30 of the Customs Act, 1962 was filed on 31.08.1999. Under the Import Manifest (Vessels) Regulations, 1971, the person-in-charge of the vessel shall deliver the IGM which consists of an application for entry inwards, a general declaration, a cargo declaration, a vessel's stores list, a list of private property in the possession of the Master, officers and crew. GMDSS was not declared in the IGM. The time limit of 24 hours given under provisions of Section 30 of Customs Act, 1962 existing at the material time is an outer limit and does not necessarily mean that one can file a wrong IGM and later on correct it when deficiencies are noticed by the Customs Officers at the time of checking. If this is so, then it will defeat the very purpose of filing IGM / declarations before the Customs Officers. Thus, there was clear non-declaration of GMDSS on the part of Master of the Vessel in the IGM.

42. It has been contended by the respondent, in an earlier reply, that Rule 3 of The Indian Wireless Telegraphs (Foreign Ships) Rules, 1973 introduced under Section 4 of the Indian Telegraphic Act, 1885 provided exemption from the requirement of licence under Indian Telegraph Act, if the vessel was foreign going vessel. I have examined this issue. It is an admitted position that the GMDSS was procured from Alang and supplied by M/s. A.T. Manufacturing Co. Ltd, Mumbai. They had purchased the same from a vessel arrived for breaking at Alang Ship Breaking Yard. These facts

were known to Shri Tushar Shah of M/s. A.T. Manufacturing Co. Ltd, Shri Vishin Kewalramani of M/s. Jaisu Shipping Co. (P) Ltd, Master of the Vessel Cap. Musa Ansari, Capt.Nirmal of M/s. Milbank Ltd.

43. As per instructions of Ministry of Communication, Government of India, the repairing and selling wireless equipment is an offence under the Indian Telegraph Act / Rules. When a vessel is taken up for breaking, all radio equipments on the vessel have to be destroyed and cannot be repaired. I reproduce below the communication from Wireless Monitoring Station, Ahmedabad No.L-14011/1/95-AHD dtd.27.07.1995 in this regard.

*“GOVERNMENT OF INDIA  
MINISTRY OF COMMUNICATION  
DEPARTMENT OF TELECOMMUNICATIONS  
(Monitoring Organisation)  
WIRELESS MONITORING STATION  
A H M E D A B A D – 380 061*

No.L-14011/1/95-AHD

*Dated the 27<sup>th</sup> July, 1995*

To,  
The Assistant Collector,  
Customs, Bhavnagar

*Sub : Handling of ship borne wireless equipments :*

*Ref : Your office letter No.VIII/48-12/PI/95 dtd.19.7.95*

Sir,

*With reference to the subject cited above, this is to inform that this office also received some cases requesting for dealership licence to deal on ship borne wireless equipment at Ship Breaking Yard, Alang. They were already warned that repairing / servicing and selling such wireless equipments are not allowed and can be handled only as a metal scrap. The detailed instructions already circulated to quite a number of companies at Alang. For your kind information, following are the further details :-*

- 1. Servicing and selling a wireless equipments from broken ship is not permitted. Possession and / or operating a wireless without a valid licence is an offence under Indian Wireless Telegraph Act, 1885 and India Wireless Possession Rules, 1965.*
- 2. As repairing / selling itself not permitted question of buyer being licenced does not arise. Ship borne equipments are not licenced to any land fixed wireless stations.*
- 3. All the components like transformer, crystals ICS power supply valves switches are to be broken so that it cannot be repaired.*
- 4. As final left over after destroying can be only a metal scrap no licence is issued for dealing in wireless HF panel etc.*



5. *Hand bands are entirely different from the Ship Maritime band and power allowed for Ham is only 100 to 150 Watts. Ship transmitters should not be used by Ham Radio operators.*

*These problems of repairing selling etc does not arise once the equipments are destroyed without giving them a chance to repair it. It is requested that equipments may be destroyed to the maximum possible extent giving no chance to service it.*

*One letter dealing about the above equipments is enclosed for your kind information please.*

*Yours faithfully,*

*Sd/-*

*(S.J.M. NATHAN)*

*WIRELESS MONITORING STATION*

*Near Chandlodia Rly Station,*

*PO Ghatlodiya,*

*Ahmedabad – 380 061*

44. It is an admitted fact that the GMDSS in question has been taken from a ship which was broken down in Alang Ship Yard.

45. The procurement of GMDSS from a broken ship was illegal and not permissible. In spite of this, M/s. A.T. Manufacturing Co, procured this GMDSS from M/s. Ocean Link Marine Services, Bhavnagar and in turn sold it to M/s. Milbank Ltd. The facts also indicate that all the three parties tried to hide the sale and purchase of GMDSS in their documents. The Invoice No. OMS-01 dated 12.04.99 issued by M/s. Ocean Link Marine Services Ltd mentioned that they had sold “old & used electronic goods” to M/s. A.T. Manufacturing Co. and M/s. A. T. Manufacturing Co. mentioned in their challan No. 3947 dated 8.6.1999 that they had sold “old and used marine equipment from scrap yard reconditioned.” Further, at the time of taking GMDSS out of the country, M/s.Jasu Shipping declared on its shipping bill No.F-2164 dtd.11.06.1999 that the shipping bill was filed for “ship stores own use only”. In the description of goods exported, they mentioned “GMDS Station MTI 3400 T 1 set”, but did not mention that it was old and used GMDSS purchased from Alang Ship Yard. Thus, this fact of wrongful possession of GMDSS was tactfully hidden from Customs Authorities. The facts also indicate that this GMDS station was imported back in an unassembled and uninstalled condition when the ship came on 30.8.1999.

46. In view of the above facts, I am of the considered view that possessing old and used GMDS station taken out of a ship which had been broken in Alang Ship Yard was not permissible. Ideally, these goods should have been confiscated at the time of export itself. However, because of mis-declaration in sale / purchase documents and export shipping bill, the same could not be done. At the time of import, again on

30.8.99, there was a mis-declaration in as much as this item was not declared in the IGM. This mis-declaration was serious in my considered view because of the reasoning at para 39 above and also keeping in mind the facts which indicate that there was an attempt to improperly acquire goods which could not be acquired under Indian Telegraph Act / Rules. As regards the plea of the party regarding Rule 3 of the Indian Wireless Telegraphs (Foreign Ships) Rules, 1973 introduced under Section 4 of the Indian Telegraphic Act, 1885 (para 40 above), I find that this Rule would permit only legally acquired GMDSS. One cannot acquire something from India which he is not entitled legally and then take shelter under this Act to say that he cannot be questioned because he is a foreign going vessel. Shri Tushar Shah of M/s. A.T. Manufacturing Co. Ltd, Shri Vishin Kewalramani of M/s. Jaisu Shipping Co. (P) Ltd, Master of the Vessel Cap. Musa Ansari have admitted that GMDSS in question was procured from Alang and supplied by M/s. A.T. Manufacturing Co. Ltd, Mumbai, which they had purchased from a vessel arrived for breaking at Alang Ship Breaking Yard. I, therefore, order confiscation of the GMDSS in question under Section 111(f) and 111(j) of the Customs Act, 1962, which provide for confiscation improperly imported goods. Section 111(f) of the Customs Act specifically allows confiscation of *“any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned”*. Further Section 111(j) permits confiscation of *“any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission”*.

47. Further, I am of the considered view that the GMDSS in question has to be confiscated absolutely and no option of release on redemption fine can be provided in view of Instructions of Ministry of Communication, Government of India.

48. However, in light of the decision of Hon'ble CESTAT in C/64 dated 08.03.2013, allowing M/s Milbank Ltd., to exercise the option of redeeming the offending goods on redemption fine and the decision of the Hon'ble High Court of Gujarat in Tax Appeal No. 782 of 2013 dated 03.10.2013, I held that the appellant M/s Milbank Ltd., should be given an option to redeem the goods i.e. GMDSS.

49. Further, from the records and further investigation it is found that the market price of the said goods i.e. GMDSS is not available, but as per the Show Cause Notice dated 20.03.2000 (Shipping Bill No. F-2164 dated 11.06.1999) and OIO dated 30.01.2012, the value of the goods, at the material time, was UD\$ 9000/- and by referring to the conversion rate of US \$ into Indian Rupees i.e. Rs. 43.40 per US \$, the fair value of the offending goods is calculated to Rs. 3,87,900/-, which can be considered as the value of the goods. Having rendered the goods liable for confiscation M/s Milbank are liable to be penalized under Section 112 (a) of the Customs Act, 1962.

Accordingly, I pass the following order.

**: ORDER :**

1. I order for confiscation of GMDSS lying in unassembled under the provisions of Section 111(f) and 111(j) of the Customs Act, 1962 read with Import Manifest (Vessel) Regulations, 1971 but give an option to M/s Milbank Ltd., C/o M/s Grover Consultancy, 285/25, Sucheta Niwas, 3<sup>rd</sup> Floor, SBS Road, Fort, Mumbai – 400 038, to redeem the same, within 30 days on payment of redemption fine of Rs, 3,87,900/- (Rupees Three Lacs Eight Seven Thousand and Nine Hundred only), under Section 125 of the Customs Act, 1962, in lieu of the confiscation and with applicable duties.
2. I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only), under section 112 (a) of the Customs Act, 1962, on M/s Milbank Ltd., C/o Grover Consultancy, 285/25, Sucheta Nivas, 3<sup>rd</sup> Floor, SBS Road, Fort, Mumbai – 400 038.

**(P.V.R. REDDY)**  
**COMMISSIONER**

**By REGD. POST A.D/Hand Delivery**

F. No. S/10-120/Adjn./2013-14

Dated : 23.03.2015

To,

M/s. Milbank Ltd,  
C/o Grover Consultancy,  
285/25, Sucheta Nivas,  
3<sup>rd</sup> Floor, S.B.S. Road,  
Fort, Mumbai – 400 038

Copy to:

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad.
2. The Assistant Commissioner (R&I), Custom House, Kandla
3. The Assistant Commissioner, (Review), CC Office, Gujarat Zone, Ahmedabad.
4. Guard File.