

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

REGIONAL BENCH – COURT NO. 03

**CUSTOMS Appeal No. 10811 of 2017-DB**

[Arising out of Order-in-Original/Appeal No KDL-CUSTOM-000-APP-033-16-17 dated 02.12.2016 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

**Asion Solvochem Pvt Ltd**

**...Appellant**

404, Faiz E Qutbi, 375, Narsinatha Street,  
Masjid Bunder,  
Mumbai  
Gujarat-400009

*VERSUS*

**C.C.-Kandla**

**...Respondent**

Custom House,  
Near Balaji Temple,  
Kandla,  
Gujarat

**APPEARANCE:**

Shri J C Patel, Shri Rahul Gajera, Advocates for the Appellant  
Shri. Anand Kumar, Superintendent (Authorized Representative) for the Respondent

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

**FINAL ORDER NO.A / 11441 /2023**

DATE OF HEARING:19.06.2023

DATE OF DECISION: 04.07.2023

**SOMESH ARORA**

The brief facts of the case are that on 18th June 2014, the Appellant entered into a Contract with Nantong Chemical & Light Industry Co. Ltd of China (hereinafter "the foreign supplier") for the purchase and import of 500 M. Tons (+/- 5%) of Methyl Iso Butyl Ketone at the price of US \$ 1760/ M.Ton. One of the terms of the said contract was that the Quantity of the product at the Port of Loading shall be as determined by the Surveyor based

on shore tank measurement and would be final and binding on both the parties.

1.1 The quantity ascertained at Load Port, for which the Bill of Lading and Invoice were issued, was 499.826 M.Ts and the foreign supplier raised Invoice for the price of US \$ 879,693.76.

1.2 The said price of US\$ 879,693.76, being the price payable and actually paid for the goods supplied, was accordingly, the transaction value of the goods under Section 14 of the Customs Act 1962.

1.3 Upon discharge of the goods in the Shore Tank after their arrival at the Port of Kandla, it was ascertained that the quantity actually received in the Shore Tank was in excess of the Invoice and Bill of Lading quantity by 8.320 i.e by 1.66%.

1.4 Though there was marginal excess of 1.66% in the quantity unloaded as compared to the Invoice and Bill of Lading quantity, the price charged by the foreign supplier for the goods imported and the price actually paid by the Appellant for the goods imported was US \$ 879,693.76 only and no amount over and above the said price of US \$ 879,693.76 was paid by the Appellant for the goods imported. There was accordingly no change in the transaction value.

1.5 However, by Order-in-Original dated 29-2-2016 (Page 35 of Appeal) as upheld by Order-in-Appeal dated 2-12-2016 (Page 39 of Appeal), extra duty of Rs.2,33,311/- was charged on the said marginal excess quantity and the same was held liable to confiscation under Section 111(m) of the Customs Act 1962 and fine of Rs.1,00,000/- and penalty of Rs.75,000/- were imposed. The Order-in- Original, in Para 9.5 clearly holds that there was

absence of mala fides on the part of the Appellant. The Order-in-Original and Order-in- Appeal have proceeded on the basis that since the excess of 1.66% is beyond 1% condonable limit provided in Kandla Custom House Public Notice No. 17/2010, dated 29-6-2010, duty is payable on the said excess of 1.66% and the said excess is liable to confiscation. Aggrieved by the orders of Lower Authorities appellants have filed the present appeal.

2. The learned Advocate for the appellant places reliance on the decision of M/s. Welspun Corporation Ltd Vs. C.C - 2019 (370) ELT 874 (Tri.- Ahmd.), and also on the decision of M/s. Payal Polypast Pvt Ltd Vs. C.C as reported in 2015 (317) ELT 477 (Tri- Ahmd.), to make a submission that for Bulk Liquid Cargo condonation of weight upto 3% has been permitted ignoring the public notice providing for 1%. He drew our attention to the public notice F. No. S/20-022/2010 appraising (G) dated 29.06.2010. The same is reproduced below:

**"OFFICE OF THE COMMISSIONER OF CUSTOMS CUSTOM HOUSE, KANDLA, KUCHCHH COMMISSIONERATE**

**F. No. S/20-02/2010 Appg(G)**

**PUBLIC NOTICE NO. 17/2010 DATED 29.06.2010**

*Sub: Guidelines for Assessment and Examination of goods on weightment basis Under the provisions of the Customs Act, 1962 regarding.*

*Attention of all the assessing and examining officers/staff working at Kuchchh Commissionerate, is invited towards assessment and examination of all goods whose standard unit of measurement i.e. Unit Quantity Code (UQC) is mentioned in terms of weight as per the Customs Tariff Act, 1975 as amended from time to time. For assessment of such goods, examination order shall necessarily contain verification of total gross/net weight of the goods during examination and the same shall invariably be endorsed by examining staff in the examination report of the subject goods on Bill of Entry.*

*2. The issue was examined on the basis of the provisions made in the Customs Appraising Manual,*

*Chapter IV of Volume III deals with weighment for assessment purpose. As per Point 6(E) of the Manual, if the deviation in declared weight is not more than 1% or if the amount of duty involved on excess weight doesn't exceed Rs. 25/-, the declared weight may be accepted. As per Point No 10, when excess weight over the prescribed allowance is noticed, the weight and value of the consignment should be proportionately increased on the B/E and the license debited with the full rate or value, so re-determined.*

*3. In view of the guidelines of the Appraising Manual, following practice will be followed in this Commissionerate.*

*(i) In all kind of cargos, including scrap, no adjudication will be done up to 1% deviation in the actual weight than the declared weight, but the value of the Excess goods will be loaded in the total assessable value and appropriate duties will be recovered.*

*(ii) If the variation is above +/-1%, value shall be loaded with adjudication with appropriate redemption fine and penalty.*

*4. In case of Marble Slab/Blocks (polished and rough) following practice will be followed.*

*(i) In case of variation upto +/- 5% in terms of weight or surface area, value shall be loaded without adjudication and proper duty will be recovered.*

*(ii) If the variation is above +/-5%, value shall be loaded redemption fine and penalty. and cases adjudicated with appropriate*

*(iii) Actual quantity of the cargo will be debited against the license issued to the Importer.*

*Encl: As above"*

2.1 Concurrently, he also drew our attention on to the Board Circular No. 6/2006-Cus., dated 12.01.2006, as well as Circular No. 34/2016-Cus dated 26.07.2016, amending the earlier circular in view of decision of Hon'ble Supreme Court in the case of M/s. Manglore Refinery and Petrochemicals Ltd as reported in 2015 (323) ELT 433 (S.C). The Board Circular No. 6/2006-

Cus., dated 12.01.2006, as well as Circular No. 34/2016-Cus dated 26.07.2016, both are reproduced below:

**"Cargo Liquid bulk cargo - - Quantity determination relevant only when Customs duty paid at specific rate"**

**Circular No. 6/2006-Cus., Dated 12-1-2006  
F. No. 467/79/2005-Cus.V**

Government of India  
Ministry of Finance (Department of Revenue)  
Central Board of Excise & Customs, New Delhi

**Subject: Assessment of Bulk Liquid Cargo Ship Ullage Report v. Shore Tank receipt - Ref. Circular No. 96/2002-Customs, dated 27-12-2002.**

Attention is invited to the Board's Circular No. 96/2002-Customs, dated 27-12-2002 [2003 (151) E.L.T. T21] on the above mentioned subject, wherein, it was conveyed that, in the case of bulk liquid cargo imports/whether for home consumption or warehousing, the shore tank receipt quantity should be taken as the basis for levy of customs duty.

2. A doubt has arisen in cases where customs duty is chargeable on ad valorem basis, whether there would be any requirement for determination of the quantity of the goods as the basis for levy of customs duty would be the transaction value, i.e., invoice price and not the quantity.

3. The above issue has been under consideration for a long time and a number of assessments are pending at field level because of divergent views. The above issue was discussed in the Conference on "Customs Valuation and Customs Procedures" held on 21st and 22nd August 2003 and also in the Chief Commissioner's conference on Customs Valuation held on 1st October 2005 at Mumbai. The conference was of the view that the assessment of bulk liquid cargo should be based on invoice price, which is the price paid or payable for the imported goods, i.e., transaction value, irrespective of quantity ascertained through shore tank measurement or any other manner. Wherever the duty is leviable at specific rate, quantity determined during the shore tank measurement should be accepted.

4. The matter has been considered by the Board and it has been decided that, in all cases where customs duty is leviable on ad valorem basis, the assessment of bulk liquid cargo should be based on invoice price, which is the price paid or payable for the imported goods, i.e., transaction

value, irrespective of quantity ascertained through shore tank measurement or any other manner. Further, in respect of delivery at more than one port, the value should be apportioned based on the quantity intended to be discharged at the relevant ports. However, wherever the customs duty leviable at specific rate, the determination of quantity would be relevant for levy of customs duty. In this regard, the contents of Para 7 of the Circular No. 96/2002, dated 27th December 2002 may be referred to only in respect of cases where the Customs duty is leviable at specific rate. All pending provisional assessment should be finalized accordingly.

5. Circular No. 96/2002-Customs, dated 27th December 2002 stands amended to the extent as above

6. Receipt of the Circular may please be acknowledged.”

**"Cargo-Bulk Liquid Cargo-Assessment to be done on the basis of Supreme Court judgment**

Government of India

Ministry of Finance (Department of Revenue)  
Central Board of Excise & Customs, New Delhi

**Subject: Assessment of Bulk Liquid Cargo Regarding.**

Kindly refer to the judgment of Hon'ble Supreme Court in the case of Mangalore Refinery and Petrochemicals Limited v. Commissioner of Customs, Mangalore dated 2-9-2015 (2015 (323) ELT 433 (S.C.)).

2. In the light of the above judgement, the Board has reviewed the Circular No. 96/2002-Customs dated 27-12-2002 [2002 (151) [E.L.T.](#) (T21)] & Circular No 06/2006 dated 12-1-2006 [2006 (193) ELT. (T40)] and it has been decided to rescind both these Circulars.

3. In case of all bulk liquid cargo imports, whether for home consumption or for warehousing, the shore tank receipt quantity Le., dip measurement in on shore into which such cargo is pumped from the tanker, should be taken as the basis for levy of Customs Duty irrespective of whether Customs Duty is leviable at a specific rate or ad valorem basis (including cases where tariff value is fixed under Section 14(2) of the Customs Act, 1962]

4. Further, where bulk liquid cargo is cleared directly on payment of duty without being pumped in a shore tank, assessment may continue to be done as per ship's ullage survey report at the port of discharge.

5. Difficulties, if any, faced in the implementation of above instructions may be brought to the notice of the Board at

6. Hindi version follows.”

2.2 His point of emphasis was that in case of Bulk Liquid Cargo imports, the basis of levy of customs duty when duty is *ad valorem* is transaction value till the time invoice price has been paid by the importer in India. He submitted that the above Board Circulars were totally ignored by the Lower Authorities in preference to public notice prescribing tolerance of 1% for all cargo, other than marble slab and the same was done without any basis being indicated in the public notice, which was position clearly contrary to the decisions as above cited by him.

3. Learned AR justified the order on the basis of public notice and reiterated the findings of the Lower Authorities.

4. Considered. We have gone through various submissions made by both the sides. We find that both the decisions cited by the Learned Advocate are applicable to the facts of the case. The Lower Authorities have relied upon the public notice, which does not indicate the basis on which percentage has been fixed in such general terms for all commodities. The decisions have been correctly relied upon by the Learned Advocate and are applicable in the present case. The tolerance limit of upto 3 or even 5 % has been approved in the above decisions and therefore percentage of 1.66 is within the limit of indicated tolerance limit of case law. Again the public notice does not bring out commodity wise tolerance limits citing any technical literature for the same and therefore the same cannot be preferred over the criteria indicated by the CBEC in circulars cited above. It, therefore, follows that for Bulk Cargo at the relevant time, not the weight but value paid was the criteria of duty and the transaction value or invoice price and not the quantity, in any case, was to be the basis of assessment.

5. We find the order of Lower Authority is not in consonance with board's circulars as well as the cited case laws. The appeal is therefore allowed with consequential relief.

*(Pronounced in the open Court on 04.07.2023)*

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

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

PALAK