

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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10317 of 2019-DB

[Arising out of Order-in-Original/Appeal No JMN-CUSTOM-000-APP-019-18-19 dated 11.07.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Reliance Industries Limited

Exim Clearance Cell Central Administration Building
(cab) East-wing B Block, Ground Floor, Meghpar-
Padana, JAMNAGAR, GUJARAT-361280

.... Appellant

VERSUS

Commissioner of Customs, Jamnagar (Prev.)

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

.... Respondent

APPEARANCE :

Shri JC Patel, Shri Rahul Gajera, Advocates and Ms. Shilpa Paloni, CA for the Appellant

Shri Anoop Kumar Mudvel, Superintendent (AR) for the Respondent

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

DATE OF HEARING : 18.09.2023

DATE OF DECISION: 31.10.2023

FINAL ORDER NO. 12380/2023

C.L. MAHAR :

The brief facts of the matter are that during the period May 2011 to June 2011, the appellant had imported consignment of crude petroleum oil at Sikka Port. The appellant have filed 12 bills of entry for clearance of the Crude Petroleum Oil which were initially assessed provisionally and goods were cleared on payment of provisionally assessed customs duty. The proper officer finalized the provisional assessment of the relevant bills of entry in the month of April 2016 on the basis of transaction value of the said goods i.e. price actually paid by the appellant. The price which was indicated on the import invoice of the goods and the quantity of the Crude Petroleum Oil mentioned on the bills of lading. On finalization of the bills of entry, the proper officer found that customs duty payable was less than the duty which was provisionally assessed and deposited by the appellant and as a result the appellant become eligible for refund of customs duty which was paid at the time of provisional clearance of subject goods.

2. The Deputy Commissioner of Customs vide its order-in-original dated 13.05.2016 has sanctioned an amount of Rs. 4,47,90,661/- of the basic customs duty and NCCD amounting to Rs. 33,710/- on the basis of the quantities taken for assessment as mentioned in the original invoices and the bill of lading for the imported goods. The department has gone in appeal against the above order-in-original which sanctioned refund to the appellant. The appellate authority, vide its order order-in-appeal No. JMN-CUSTM-000-APP-001-17-18 dated 03.04.2017 set-aside the impugned order of refund with directions to the Adjudicating Authority to examine all facts, documents, provisions of law and facts including the case laws of Hon'ble Supreme Court in the case of Mangalore Refinery and Petrochemicals Limited and subsequent circular dated 26.07.2017 issued by the Board.

3. In denovo proceedings, the matter has been adjudicated by the Deputy Commissioner of Customs vide its order-in-original No. 04/DC/CHS/REF/2017 dated 14.09.2017 wherein the Deputy Commissioner, after examining the matter in detail has passed the following order:-

"I hereby sanction refund claim of Rs. 4,19,38,972/- (Rupees Four Crore Nineteen Lakh Thirty Eight Thousand Nine Hundred Seventy Two only) to M/s. Reliance Industries Limited in terms of Section 27 of the Customs Act 1962. As M/s. Reliance Industries Ltd have already received Rs. 4,48,24,371/- through Cheque No. A-120824 dated 17.05.2016, therefore, I, hereby order to appropriate the legitimate refund amount to the account of the claimant in terms of Section 27 of the Customs Act, 1962 read with Section 18(3) of Customs Act, 1962.

As regards the differential amount Rs. 28,85,399/- of erroneously refunded & short payment of duty of Rs. 5,16,232/- in respect of bills of entry no. F-38/03.05.2011, SCN No. VIII/10-334/JC/O&A/2016 dated 23.08.2016 has already been issued to the claimant by the Joint Commissioner, CCP, Jamnagar. Therefore, I refrain to pass any order, in this regard.

35. This order has been issued under the Customs Act, 1962 and the Regulation framed there-under without prejudice to any other action that may be taken against the claimant or upon any other person, under the Customs Act, 1962 or, the Rules & Regulations framed there under or under any other law for the time being in force."

4. Aggrieved with the above mentioned order-in-original, the appellant have gone in appeal before Commissioner (Appeals) who vide his order dated 11.07.2018 has held that the impugned order-in-original is as per law and he refrained from interfering in the findings of the order-in-original. The relevant portion of Commissioner (Appeals) order is as follows:-

“11. I have carefully gone through the appeal memorandum, as well as record of the case. In this regard, I find that adjudicating authority came to conclusion that final assessment of Bills of entry was erroneously finalised by taking into consideration bills of lading quantity of the load port for calculating of BCD instead of taking unity in second in the Ship's Ullage Survey Report at the discharge port in India. This resulted in part, short payment of Customs duty of Rs. 5,16,232/- in the bills of entry No. F-38/03.05.2011 and also erroneous refund amounting to Rs. 28,60,198/- in 05 Bills of Entry bearing Nos. F-38/03/05.2011, F-40/04.05.2011, F-79/31.05.2011, F-97/14.06.2011 and F-104/18.06.2011 out of 12 Bills of Entry covered in the refund order. The adjudicating authority came to above mentioned conclusion on the basis of facts that the assessments were finalized in April 2016 by taking into consideration the invoice value and Bill of Lading quantities in pursuance of the erstwhile Circular of the Board dated 12.11.2006, however, at that time Apex Court had decided the matter in MRPL judgment dated 02.09.2015 that the quantities received at the discharge port only was to be considered for levy of duty and not the BL quantity and that the hither-to far relied upon by the department having been held *non-est*, that decision prevailed over the Circular. Hence, the Ullage quantities at discharge port were the quantities received in India and the actual quantity for assessment of imported cargo discharged through pipeline without being stored at Shore Tanks in port area was only the quantity ascertained by the independent surveyors in Ship's Ullage Survey reports. which was signed by the surveyors as well as the Boarding Officer the subsequent Circular No. 34/2016 dated 20.07.2016 of the board had further strengthened this view in line with the decision of the apex Court in the MRPL judgment.

12. Further, the adjudicating authority has held that the correct and legitimate way to assess duty in the present case is to consider quantity of Petroleum Crude oil actually received in India. The quantity of imported goods as mentioned in the Ship's Ullage Survey report of the discharge port should be the basis of assessing duty. In this regard, the adjudicating authority has correctly placed reliance on the decision of the Hon'ble Supreme Court in the case of M/s. Mangalore Refinery and Petrochemicals Limited - 2015 (23) ELT 435 (SC).

13. Further, the Board while clarifying the matter vide Circular No. 14/201 26.07.2017 has instructed that in case of bulk liquid cargo imports, the shore tank quantity should be taken into consideration for levy of Customs duty irrespective of whether Customs duty is leviable at a specific rate or ad-valorem basis. Where bulk liquid cargo is directly cleared without being pumped into shore tank, assessment is to be done as per Ship's Ullage Survey spent at the port of discharge. In view of the above, I do not find any reason to interfere in the impugned order and I agree with the findings of the lower authority. The contentions raised by the appellant are not tenable.”

5. The appellant is before us against the above mentioned impugned order-in-appeal.

6. We have heard both the sides. We find that matter is no longer *res-integra* as the Hon'ble Supreme Court in the case of *M/s. Mangalore Refinery and Petrochemicals Limited - 2015 (23) ELT 435 (SC)* has already decided the matter. The relevant portion of the Hon'ble Apex Court decision is reproduced below:-

“17. The Tribunal's reasoning that somehow when customs duty is *ad valorem* the basis for arriving at the quantity of goods imported changes, is wholly unsustainable. Whether customs duty is at a specific rate or is *ad-valorem* makes not the least difference to the above statutory scheme. Customs duty whether at a specific rate or *ad valorem* is not leviable on goods that are pilfered, lost or destroyed until a bill of entry for home consumption is made or an order to warehouse the goods is made. This, as has been stated above, is for the reason that the import is not complete until what has been stated above has happened. The circular dated 12th January, 2006 on which strong reliance is placed by the revenue is contrary to law. When the Tribunal has held that a demand or duty on transaction value would be leviable in spite of “ocean loss”, it flies in the face of Section 23 of the Customs Act in particular, the general statutory scheme and Rules 4 and 9 of the Customs Valuation Rules.

18. We therefore, set aside the Tribunal's judgment and declare that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty. Consequential action, in accordance with this declaration of law, be carried out by the customs authorities in accordance with law. All the aforesaid appeals are disposed of in accordance with this judgment.”

7. In view of the above decision of the Hon'ble Supreme Court, we find that the impugned order-in-appeal is legally tenable and we hold that the same is correct and legal. Accordingly, we find that the appeal is without merit and deserve to be dismissed.

8. Thus, we dismiss the appeal.

(Pronounced in the open court on 31.10.2023)

(Somesh Arora)
Member (Judicial)

(C L Mahar)
Member (Technical)