

Reportable

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 01

Customs Appeal No. 12328 of 2018

(Arising out of OIA-JMN-CUSTOM-000-APP-15-18-19 Dated- 01/06/2018 passed by Commissioner of CUSTOMS-AHMEDABAD)

Jil Pack

Godown No. 3, Sarkhej-bavla Highway,
Nr. Harsha Engineering, Opp. Pwd Rest House, Changodar,
AHMEDABAD, GUJARAT

.....Appellant

VERSUS

C.C.-Jamnagar(prev)

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

.....Respondent

APPEARANCE:

Shri. Devashish K Trivedi, Advocate for the Appellant
Shri. N.G. Makwana, Superintendent (AR) for the Respondent

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

Final Order No. 10098 /2025

DATE OF HEARING:05.02.2025
DATE OF DECISION:10.02.2025

The appellant is having its factory situated at Ahmedabad. The appellant had imported aluminium foils from China. The goods belonging to the appellant as well as goods belonging to another importer based in Thane were loaded in the same vessel by the Chinese supplier. Bill of lading for the goods belonging to the appellant herein as well as the goods belonging to the importer based in Thane were filed by the Chinese supplier on 10/02/2016. Advance Bill of Entry dtd. 23/02/2016 was filed by the appellant as well as the importer situated at Thane. A copy of Bill of Entry filed by appellant is part of the Appeal Memorandum. A copy of bill of entry filed is also annexed by the importer as enclosure to the Appeal Memorandum. The vessel containing the

goods arrived at Bombay Port on 27/02/2016 where IGM dtd. 27/02/2016 was filed and the goods belonging to the importer based in Thane were offloaded from the vessel at the Bombay Port. A copy of web shot pertaining to the IGM containing details such as Inward Date etc. of the vessel at Mumbai Port is annexed to the Appeal Memorandum. It shows that the vessel containing all the goods was in-warded at Bombay Port on 28/02/2016. The very same vessel then went to Pipavav Port. The goods belonging to the appellant were offloaded from the vessel at Pipavav Port on 01/03/2016.

2. As per the appellant as the vessel had arrived at Bombay Port i.e. an Indian Port for which IGM dtd. 27/02/2016 was filed in Bombay and the vessel inward date was shown as 28/02/2016, the date of arrival was 27/02/2016. By virtue of Union Budget 2016, the rate of duty was enhanced from 5% to 7.5% w.e.f. 01/03/2016. However, as the vessel arrived at Indian Port on 27/02/2016, according to the appellant, duty @ 5% was applicable. Therefore, appellant had paid duty @5%. Whereas the officers of the customs department were of a view that duty @ 7.5% would be applicable because the vessel arrived at Pipavav Port on 01/03/2016. According to the officers of customs the date when the vessel arrived at Bombay Port was not to be considered. At the instance of the officers of customs department, differential duty aggregating to Rs.4,01,286/- was paid by the appellant. The appellant had then submitted Refund Application dtd. 23/06/2016 for Rs.3,44,229/- only out of Rs.4,01,286/- because Rs.57,057/- out of Rs.4,01,286/- was passed on to the buyer.

3. A Show-cause Notice dtd. 07/10/2016 was issued to the appellant proposing rejection of the refund. Said Show-cause Notice was confirmed vide Order-in-Original dtd. 05/05/2017. The refund application was rejected. Appeal of the appellant herein against said refund rejection order was also dismissed vide Order-in-Appeal dtd. 01/06/2018 (impugned order). Hence, the present appeal is preferred before this Tribunal.

4. As per the appellants Section 2(27) defines India' in terms in which 'India' includes the territorial waters of India. Section 2(23) defines Import' as per which Import', with its grammatical variations and cognate expressions, means brining into India from a place outside India. This means the moment any vessel arrives into territorial waters of India it shall mean that goods are imported Into India. It should mean that the vessel has arrived in India. Therefore, as per Section 15 of the Customs Act, 1962 in case where advance bill of entry is filed, the date on which the vessel containing the goods arrives in Indian territorial waters, then the rate prevailing on that date must be applied. In this case, the IGM was filed in Bombay on 27/02/2016 and the vessel inward date in Bombay is shown as 28/02/2016. This means undoubtedly the vessel containing the goods belonging to the importer situated at Thane as well as goods belonging to the appellant herein situated in Ahmedabad arrived into Indian territorial waters on 27/02/2016 i.e. prior to 01/03/2016 (date of Union Budget 2016). Thus, the rate prevailing on 27/02/2016 must apply. The date on which the same vessel again arrived at Pipavav Port i.e. 01/03/2016 was not relevant.

5. Appellant places reliance on following judgements:

- **Pride Foramer V/s. Union of India 2002 (148) ELT 19 (Bom.)**

In this case, the assessee was claiming exemption on some goods Imported and transshipped to an oil rig (vessel) which was lying in the Indian territorial waters. The goods were meant for being used and consumed on board the rig which operates on the high seas. One of the issues was that whether rig (vessel) was lying in Indian territorial waters or outside the same?

After concluding that the rig (vessel) was lying in the Indian territorial waters, it was held that the imported spares used and consumed on board were to be considered as Imported into India and were liable to Customs Duty because anything imported and thereafter consumed in Indian territorial waters is to be held as imported and consumed in India. Therefore, no transshipping of

imported goods being sent to the rig (vessel) for the purpose of repairs/consumptions on board was allowed.

Thus, it is clear that in case where advance bill of entry is filed, when an imported vessel arrives into Indian territorial waters, the cargo imported therein is chargeable to duty, irrespective whether the vessel offloads the cargo or otherwise. Thus, the rate prevailing on the date the vessel arrives into Indian territorial water is relevant and not the date when the same vessel carries some goods to another port.

- **Aban Loyd Chiles Offshore Ltd V/s. UoI 2008 (227) ELT 24 (SC).**

While examining the dutiability in regard to the mineral oil extracted from continental shelf and exclusive economic zone and subsequently brought to the landmass of India, it was held that the territorial Jurisdiction of India would extend to these areas. It being so it cannot be said that the mineral oil extracted from these zones and brought to the main land are imported.

Thus, Indian territorial waters is as good as Indian landmass for the purpose of Customs Act, 1962. Therefore, in the present case, moment the vessel containing goods arrived into Indian territorial waters i.e. In-warded at Bombay Port, all the goods contained in the said vessel would have to be considered as imported goods for the purpose of applying rate of duty. There is no question of waiting for the vessel to offload some part of goods at another port and apply rate prevailing on the date the vessel offloads some goods at another port subsequently.

- **M.S. Shawhney Asstt. Collector of Customs and Another Versus Sylvania and Laxman Limited-1987 (30) ELT 126 (Bom.)**

This case squarely covers the case of the Appellant. It is held that the date when the vessel containing the goods entered the Indian Territorial waters is the relevant date when advance bill of entry is filed. The rate of duty prevailing on that day will apply and not the duty prevailing on the day when the IGM was filed (vehicle inward date).

6. Having regard to the aforesaid, it was submitted that the Tribunal may appreciate that since in the present case bill of entry was filed in advance, i.e. before the date on which the vessel arrived into India, as provided in Section 15 the date on which the vessel arrived in the territorial waters of India, i.e. 27/02/2016 (IGM date pertaining to Bombay Port) shall be the relevant date and that the rate of duty prevailing on the said date shall apply. The date on which same vessel again went to Pipavav Port from Bombay Port has no

relevance. Therefore, the rate of duty enhanced from 5% to 7.5% vide Union Budget 2016 w.e.f. 01/03/2016 has no consequence.

7. On the other hand, the authorized representative for the department submits as follows:-

7.1 In addition to findings recorded in OIO No. 32/DC/GPPL/REF/2017-18 dated 05.05.2017 passed by the Deputy Commissioner, Customs, Customs House-Pipavav and OIA No. JMN-CUSTOM-000-APP-15-18-19 dated 01.06.2018 passed by the Commissioner (Appeals), Customs, Ahmedabad in respect of M/s Jill Pack (hereinafter referred to as the Appellant), it is submitted that the Appellant's contention about date of "entry inward" is not tenable. Proviso to sub-section (1) of Section 15 of Customs Act, 1962 is crystal clear and does not leave any scope for ambiguity as it provides that if a bill of entry has been presented before the date of entry inward of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards. In the present case, the Appellant had filed Bill of Entry in advance i.e. on 25.02.2016 for goods to be unloaded at Pipavav Port. The vessel file IGM on 27.02.2016 but entry inwards was granted by the Customs at Pipavav on 01.03.2016. Thus, Bill of Entry in the present case was filed on 01.03.2016 when duty rate was hiked which the Appellant paid at the relevant time but sought refund of the amount so paid which is not legal, just and proper has been rightly rejected by the competent authority. Attention is invited to Section 30 and Section 31 of the Customs Act, 1962 as per which the master of vessel shall file IGM and the goods are allowed to be unloaded only when the Entry Inwards is granted by the proper officer. In the present case, entry inward was granted by the proper officer on 01.03.2016 which is an undisputed fact. Rate of Customs Duty shall be the rate when entry inward was granted as per provision of Section 15 of the Customs Act, 1962. The Appellant thus is not eligible for refund.

7.2 The Appellant's contention is that vessel had come to Nhava Shave before Union Budget 2016 and was granted entry inward at Nhava Sheva Port on 28.02.2016 is highly preposterous and lacks any legal standing. The present case pertains to dispute about entry inward at Pipavav Port and not at Nhava Sheva Port. Though at both ports, the Appellant as a commercial entity was importer but when question of entry inward is raised then as per legal provisions, entry inward at Nhava Sheva port cannot be taken as effective date for entry inward at Pipavav Port. The goods meant to be unloaded at Pipavav port were covered under invoice no. 301671 dated 2.2.2016 and Bill of Lading No. KMTCSHA7572299 wherein address of importer was Jill Pack, Godown No.3, Sarkhej -Bavla Highway, Near Harsha Engineering, Opp. PWD Rest House

7.3 On the other hand goods meant to be unloaded at Nhava Sheva port were covered under invoice no. 301667 dated 3.2.2016 and Bill of Lading No. KMTCSHA7578303 wherein address of importer was Jill Pack, A/3/20, Harihar Corp, Mankoli, Mouje Dapode, Bhiwandi, Thane 0276281, India. Thus, the Appellant's claim about entry inward date at Nhava Sheva Port can be taken as entry inward date at Pipavav port is unjustified and illegal and needs to be rejected.

7.4 The issue is no more res integra as in the following cases, the issue was decided to the effect that rate of duty shall be the rate applicable on the date entry inward was granted when Bill of Entry is filed in advance.

- Sha Poosaji Mangilal vs Collector of Customs-1991(51) ELT 76 (Tri.)
- Kusum Trading Company vs Union of India-1999(108) ELT 535 (Bom)
- Amber Woollen Mills vs Collector of Customs-1991(54) ELT 133 (Tri.)
- PD Sarawagi & Co. vs Collector of Customs-1993(65) ELT 89 (Tri.)
- Metro Exporters (P) Ltd. vs Collector of Customs, Bombay-1997(94)ELT 427(Tri.)

8. Further, Hon'ble High Court of Karnataka in the case of Commissioner of Customs vs TTK Prestige Ltd. -2021 (1) TMI 1044-Karnataka High Court placing reliance on Hon'ble Apex court's decision in the case of Priya Blue Industries Ltd. vs Commissioner of Customs (Prev.)- 2004(9) TMI 105-SupremC ourt has categorically laid down the law that unless the order of assessment has been challenged, the question of claim of refund does not arise. It has further been held that refund claim in not an appeal proceeding. In the present case, the Appellant had not challenged the assessment order charging higher rate of duty which in other words mean that assessment had attained finality. In such scenario refund claim without challenging assessment order is not entertainable and does not survive.

Findings:-

9. This Court has considered contrarian submissions, it finds that Section 15 of the Customs Act 1962 reproduced below during the impugned period read as:-

"15. Date of determination of rate of duty and tariff valuation of imported goods:

"(1)The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,--

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which ³ [a bill of entry for home consumption in respect of such goods is presented under that section];

(c) in the case of any other goods, on the date of payment of duty:

[Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft ⁵ [or the vehicle] by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.]

(2) The provisions of this section shall not apply to baggage and goods imported by post."

10. In the present matter, at the relevant time proviso 'C' was as amended vide Act 33 of 1996 w.e.f 28.09.1996 and as amended by Act, 25 of 2014 Section 80 w.e.f 01.10.2014. Learned Advocate for the appellant seeking to rely on the decision of M.S. Shawhney Asstt. Collector of Customs and Another Versus Sylvania and Laxman Limited (cited supra) which was in relation to un-amended Section 15. The decision of Hon'ble Bombay High Court provided that the relevant date is the date of entry into territorial waters of the ship when advance Bill of Entry is filed. The cited case of *Pride Foramer V/s. Union of India* reported in 2002 (148) ELT 19 (Bom.) pertained to oil rig which was located in the territorial water in India. It was decided that in case advance Bill of Entry of goods is filed when imported into territorial waters same become chargeable to duty, and goods brought into territorial waters same into India are to be held imported and consumed in India even if same are consumed in the territorial waters of India. As against this, it is found that in 1999 (108) ELT 535 (Bom.) in the of *Kusum Trading Company vs Union of India* relied upon by the appellant, it has been held by the same Hon'ble High Court of Bombay relying on various judgments including *Bharat Surfactant pvt ltd vs. Union of India* as reported in 1989 (43) ELT 189 (SC.), that in case prior Bill of Entry is filed, it is the date of entry inwards of the vessel which is to be considered as the relevant date. It is thus clear that Section 15 of the Customs Act, 1962 provide the machinery provision which indicates what will be the relevant date for the purposes of determination of rate of duty, rate of exchange and tariff valuation etc. that should be applicable to any imported goods. There is no doubt that the goods assume, the nature of imported goods, the moment they enter into territorial waters of India and thus become leviable to duty on such import but the machinery provision as contained in Section 15 indicates, as to how assessment is to be done and duty shall be calculated when goods are

required to be subjected to duty. Reading of Section 15 along with the proviso makes it clear that in case filing of Bill of Entry precedes the date of entry inwards of the vessel, the Bill of Entry shall be deemed to have been presented on the date of such entry inwards. Entry inwards as has been correctly pointed out by the Departmental Representative is required to be as per process dictated in Section 30 and Section 31 of the Customs Act, 1962 which are reproduced below:

"30. Delivery of import manifest or import report.

- [(1) The person-in-charge of-(i)a vessel; or(ii)an aircraft; or(iii)a vehicle, carrying imported goods [or export goods] or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf shall, in the case of a vessel or an aircraft, deliver to the proper officer an import manifest prior to the arrival of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in [such form and manner as may be prescribed] [Substituted 'the prescribed form' by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.] and if the import manifest or the import report or any part thereof, is not delivered to the proper officer within the time specified in this sub-section and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or any other person referred to in this sub-section, who caused such delay, shall be liable to a penalty not exceeding fifty thousand rupees.](2)The person delivering the import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.(3)If the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented."

31. Imported goods not to be unloaded from vessel until entry inwards granted.

(1)The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.(2)No order under sub-section (1) shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.(3)Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods."

10.1 From plain reading of Section 31, it is clear that grant of entry inwards for any vessel is a port specific documentation and is required to be done at each port by the proper officer. Expression "the proper" connotes proper officer as "authorised specific officer" at each port. The goods cannot be unloaded at any port unless such proper officer has granted entry inwards at the specific port.

10.2 Even in general, "Entry Inwards" is considered as a legal and commercial term used in Customs law and maritime law. It refers to the formal declaration made by the master of the vessel to the Customs Authorities indicating the ship arrival at a port with intention to unload the cargo after completion of the necessary Customs procedures. The entry inwards, once granted becomes a legal permission for the unloading of cargo at the port on such entry inward being accorded. The procedure helps customs officials to regulate imports, enforcement of imports and therefore, collection of duty where applicable. Section 31 reflects embodiment of this principle only in the statute. Therefore, there is no room for doubt that "Entry Inwards" is always port specific.

11. This Court has also examined the matter in the light of the decision cited by both sides as well as the relevant statutory provisions, the judgments cited by the appellants do not deal with situation where entry inwards are granted at two different ports at two different points of time. As is emanating from the facts of this case, this Court finds that the submission made by the appellants, proceed on the wrongful basis that entry into territorial waters and the first entry inwards granted, at the first touched port will dictate rate of duty and shall be considered as date of entry inwards for all subsequent ports, it touches. This Court finds that there is no statutory basis to support such an argument and rather the plain reading of the statutory provision specifically Section 31, supports the argument of the department that entry inwards at the respective port and not the first port shall determine the rate

of duty applicable. This Court, therefore, finds that the impugned order is well reasoned and deserves to be maintained. Other arguments attempted to be advanced by the Authorized Representative of the department regarding whether assessment could be challenged by the party or not is not being addressed. Since, the appellants has not advanced any argument on this aspect and department itself is not in appeal on this issue. Therefore, this Court finds no reason to pronounce on the same.

12. Order of Commissioner (Appeals) is upheld and appeal of the party is rejected.

(Pronounced in the open court on 10.02.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi