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

REGIONAL BENCH- COURT NO. 1

Customs Appeal No. 10264 of 2024
(Arising out of JMN-CUSTM-000-APP-197 to 248-23-24 dated 09.03.2024 passed by Commissioner of Customs-(Appeals)- Ahmedabad)

M/s Reliance Industries Limited ...**Appellant**
SEZ, CAB East Wing, Ground Floor, Motikhavdi,
Jamnagar-Gujarat-361280

VERSUS

Commissioner of Customs-(Prev)-Jamnagar ...**Respondent**
Seema Shulka Bhawan, Jamnagar-Rajkot Highway,
Near Victoria Bridge, Jamnagar, Gujarat-361001

WITH

(i) Customs Appeal No. 10265/2024 (Reliance Industries Limited);
(ii) Customs Appeal No. 10266/2024 (Reliance Industries Limited);
(iii) Customs Appeal No. 10267/2024 (Reliance Industries Limited);
(iv) Customs Appeal No. 10268/2024 (Reliance Industries Limited);
(v) Customs Appeal No. 10269/2024 (Reliance Industries Limited);
(vi) Customs Appeal No. 10270/2024 (Reliance Industries Limited);
(vii) Customs Appeal No. 10271/2024 (Reliance Industries Limited);
(viii) Customs Appeal No. 10272/2024 (Reliance Industries Limited);
(ix) Customs Appeal No. 10273/2024 (Reliance Industries Limited);
(x) Customs Appeal No. 10274/2024 (Reliance Industries Limited);
(xi) Customs Appeal No. 10275/2024 (Reliance Industries Limited);
(xii) Customs Appeal No. 10276/2024 (Reliance Industries Limited);
(xiii) Customs Appeal No. 10277/2024 (Reliance Industries Limited);
(xiv) Customs Appeal No. 10278/2024 (Reliance Industries Limited);
(xv) Customs Appeal No. 10279/2024 (Reliance Industries Limited);
(xvi) Customs Appeal No. 10280/2024 (Reliance Industries Limited);
(xvii) Customs Appeal No. 10281/2024 (Reliance Industries Limited);
(xviii) Customs Appeal No. 10282/2024 (Reliance Industries Limited);
(xix) Customs Appeal No. 10283/2024 (Reliance Industries Limited);
(xx) Customs Appeal No. 10284/2024 (Reliance Industries Limited);
(xxi) Customs Appeal No. 10285/2024 (Reliance Industries Limited);
(xxii) Customs Appeal No. 10286/2024 (Reliance Industries Limited);

(xxiii) Customs Appeal No. 10287/2024 (Reliance Industries Limited);
(xxiv) Customs Appeal No. 10288/2024 (Reliance Industries Limited);
(xxv) Customs Appeal No. 10289/2024 (Reliance Industries Limited);
(xxvi) Customs Appeal No. 10290/2024 (Reliance Industries Limited);
(xxvii) Customs Appeal No. 10291/2024 (Reliance Industries Limited);
(xxviii) Customs Appeal No. 10292/2024 (Reliance Industries Limited);
(xxix) Customs Appeal No. 10293/2024 (Reliance Industries Limited);
(xxx) Customs Appeal No. 10294/2024 (Reliance Industries Limited);
(xxxi) Customs Appeal No. 10295/2024 (Reliance Industries Limited);
(xxxii) Customs Appeal No. 10296/2024 (Reliance Industries Limited);
(xxxiii) Customs Appeal No. 10297/2024 (Reliance Industries Limited);
(xxxiv) Customs Appeal No. 10298/2024 (Reliance Industries Limited);
(xxxv) Customs Appeal No. 10299/2024 (Reliance Industries Limited);
(xxxvi) Customs Appeal No. 10300/2024 (Reliance Industries Limited);
(xxxvii) Customs Appeal No. 10301/2024 (Reliance Industries Limited);
(xxxviii) Customs Appeal No. 10302/2024 (Reliance Industries Limited);
(xxxix) Customs Appeal No. 10303/2024 (Reliance Industries Limited);
(xl) Customs Appeal No. 10304/2024 (Reliance Industries Limited);
(xli) Customs Appeal No. 10305/2024 (Reliance Industries Limited);
(xlii) Customs Appeal No. 10306/2024 (Reliance Industries Limited);
(xliii) Customs Appeal No. 10307/2024 (Reliance Industries Limited);
(xliv) Customs Appeal No. 10308/2024 (Reliance Industries Limited);
(xlv) Customs Appeal No. 10309/2024 (Reliance Industries Limited)
(xlvi) Customs Appeal No. 10310/2024 (Reliance Industries Limited)
(xlvii) Customs Appeal No. 10311/2024 (Reliance Industries Limited);
(xlviii) Customs Appeal No. 10312/2024 (Reliance Industries Limited);
(xlix) Customs Appeal No. 10313/2024 (Reliance Industries Limited);
(l) Customs Appeal No. 10314/2024 (Reliance Industries Limited);
(li) Customs Appeal No. 10315/2024 (Reliance Industries Limited)

(Arising out of JMN-CUSTM-000-APP-197 to 248-23-24 dated 09.03.2024 passed by Commissioner of Customs-(Appeals)- Ahmedabad)

APPEARANCE:

Shri J.C. Patel, Advocate with Ms. Shilpa Balani, Advocate appeared for the Appellant
Shri Sanjay Kumar, Superintendent (AR) appeared for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

FINAL ORDER NO. 10395-10446 /2025

DATE OF HEARING: 02.04.2025
DATE OF DECISION: 03.06.2025

SOMESH ARORA:

The brief facts of the case are that during the period April 2006 to March 2007, the Appellant imported 52 consignments of Petroleum Crude Oil at the Port of Sikka and sought clearance thereof by filing the following Bills of Entry:

No.	Bills of Entry No.	Date of Bill of Entry
1.	F-03	04.04.2006
2.	F-05	07.04.2006
3.	F-06	07.04.2006
4.	F-07	07.04.2006
5.	F-11	12.04.2006
6.	F-13	15.04.2006
7.	F-18	21.04.2006
8.	F-25	26.04.2006
9.	F-27	29.04.2006
10.	F-31	03.05.2006
11.	F-33	05.05.2006
12.	F-39	12.05.2006
13.	F-48	18.05.2006
14.	F-49	18.05.2006
15.	F-62	09.06.2006
16.	F-63	09.06.2006
17.	F-68	14.06.2006
18.	F-80	01.07.2006
19.	F-89	08.07.2006
20.	F-95	12.07.2006
21.	F-97	13.07.2006
22.	F-103	21.07.2006
23.	F-107	26.07.2006
24.	F-111	28.07.2006
25.	F-113	29.07.2006
26.	F-156	05.09.2006
27.	F-174	21.09.2006
28.	F-177	26.09.2006
29.	F-180	29.09.2006
30.	F-182	03.10.2006
31.	F-184	05.10.2006
32.	F-161	12.09.2006
33.	F-183	05.10.2006
34.	F-194	12.10.2006
35.	F-186	06.10.2006
36.	F-08	08.04.2006
37.	F-064	10.06.2006
38.	F-078	29.06.2006
39.	F-416	01.03.2007
40.	F-019	22.04.2006
41.	F-146	29.08.2006
42.	F-167	15.09.2006
43.	F-218	30.10.2006

44.	F-327	19.12.2006
45.	F-328	20.12.2006
46.	F-347	11.01.2007
47.	F-360	20.01.2007
48.	F-396	14.02.2007
49.	F-459	23.03.2007
50.	F-135	17.08.2006
51.	F-136	18.08.2006
52.	F-152	01.09.2006

The said Bills of Entry were assessed provisionally pending receipt of test report and furnishing of original documents.

1.1 The test reports in respect of the said goods were received in the years 2006 and 2007, which confirmed that the samples had characteristics of Petroleum Crude Oil. As per the appellants, the requisite documents were submitted in the years 2006 and 2007 and they requested for finalization of the provisional assessments.

1.2 In respect of following 13 Bills of Entry, out of the aforesaid 52 Bills of Entry, two Show Cause Notices dated 29-11-2007 and 11-2-2008 were issued to the Appellant proposing addition of ship demurrage charges to the assessable value of the goods:

Show Cause Notice dated 29.11.2007	
F-167	15.09.2006
F-360	20.01.2007
F-146	29.08.2006
F-347	11.01.2007
F-218	30.10.2006
F-327	19.12.2006
F-429	23.03.2007
Show Cause Notice dated 11.02.2008	
F-78	20.06.2006
F-64	10.06.2006
F-396	14.02.2007
F-416	01.03.2007
F-328	20.12.2006
F-8	08.04.2006

The above two show cause notices were adjudicated by two Orders-in-Original dated 5-4-2018, by which the said Bills of Entry were ordered to be finalized without addition of ship demurrage charges.

1.3 As per the appellant, despite receipt of the test reports in the years 2006 & 2007 and submission of original documents by them in 2006 & 2007 itself, the provisional assessments were not finalized till 2022 and the same were finalized only in November-December 2022 and January 2023 by 52 orders passed by the Assistant Commissioner of Customs, Custom House, Sikka. Vide these orders, the Assistant Commissioner finalized assessments by holding that the duty is liable to be assessed on the basis of Ship's Ullage Quantity at the port of discharge as against the bill of Lading quantity. By assessing duty on a value calculated on the basis of Ship's Ullage Quantity instead of the transaction value, the Assistant Commissioner demanded differential duty.

1.4 The Appellant preferred 52 appeals against the said 52 assessment Orders passed by the Assistant Commissioner. By common Order-in-Appeal No. JMN-CUSTM-000-APP-197 to 248-23-24 dated 28.02.2024, the Commissioner (Appeals) rejected all the 52 appeals filed by the Appellant. Aggrieved by the order, appellants have preferred the present appeals.

2. Learned Advocate appearing for the appellant submits that finalization of provisional assessment made in the years 2006 & 2007 after 16 years is vitiated by unreasonable delay and is liable to be set aside on this ground itself.

2.1 In support of aforesaid submission, he cited the decision of Hon'ble High Court in the case of Bihar Foundry & Castings Ltd v UOI and ors- 2024-TIOL-543-HC, in which it has been held that finalization of provisional assessments after 6 to 9 years is vitiated by unreasonable delay and barred by limitation. The Hon'ble High Court has held that it is settled law that where no limitation period is prescribed, a reasonable period of limitation applies. It held that as per Para 3.1 of Chapter 7 of CBIC Manual of Instruction, reasonable period for finalization of provisional assessment is 6 months and that the said CBIC Instruction is binding on the department. The Hon'ble High Court has accordingly held that though no limitation period is specified in Section 18 of the Customs Act 1962 for finalization of the provisional assessment, the finalization of provisional assessment has to be done within a reasonable period of 6 months and that accordingly, finalization of provisional assessment after 6 to 9 years is barred by limitation. In the Appellant's case, delay in finalization of the provisional assessment is 16 years and therefore, in view of the law laid down by the Hon'ble High Court, such finalization after 16 years has to be held to be barred by limitation.

2.2 To the same effect are the following decisions which lay down that where no period of limitation is specified for carrying out any act, the same has to be done within a reasonable period of time:

(i) Raghuvar (India) Ltd. 2000 (118) E.L.T. 311 (S.C.)
(ii) Pratibha Syntex Ltd. 2013 (287) E.L.T. 290 (Guj.).

2.3 Since in the present case, provisional assessments were resorted to for want of test report and requisite documents which were duly received in 2006 and 2007, there is no justification for the assessments being not finalized till 2022-2023. The said delay of 16 years in finalizing the provisional assessments vitiates the final assessments and are liable to be set aside on this ground.

2.4 The decision of Hon'ble Tribunal in the case of Shakti Beverages Ltd vs CC-2003 (153) ELT 445 relied upon by the Commissioner (Appeals) cannot prevail over the decision of the Hon'ble High Court in Bihar Foundry & Castings Ltd v UOl and ors-2024-TIOL-543-IC. Moreover, the said decision of the Hon'ble Tribunal proceeded on the basis that delay in finalization of the provisional assessment had not caused prejudice to the importer in that case. Whereas, in the present case, the Appellant is clearly prejudiced in effectively defending its case since documents pertaining to actual quantity landed from the vessel would not be traceable after so many years and therefore it would be in violation of the principles of natural justice to finalize the assessments after so many years. But for the said delay, the assessments would have been finalized in accordance with Circular No.6/2006-Cus dated 12-1-2006, which was in the Appellant's favour and which was in force at the time of import. The delay has therefore clearly prejudiced the Appellant's defence.

2.5 Without prejudice to the aforesaid submissions, in any event, the said decision of the Hon'ble Tribunal in Shakti Beverages Ltd v CC-2003 (153) ELT 445 was rendered when the Customs (Finalization of Provisional) Assessment Regulations 2018 were not in force, whereas in the present case when the assessments were finalized, the said Regulations were in force. Regulation 5 of the said Regulations stipulates the time limit of 2 months from the date of receipt of Test report and submission of documents. Since the Test Reports were received long back in 2006 and 2007 and the documents were also submitted in 2006 and 2007, in any event, the assessment should have been finalized within 2 months from the coming into force of the said Regulations. Reliance is placed in this behalf on the decision of Hon'ble Punjab and Haryana High Court in the case of Harkaran Dass Vedpal v UOI-2019 (368) ELT 545.

2.6 Without prejudice to the aforesaid submissions, in any event, in respect of 13 Bills of Entry, out of the aforesaid 52 Bills of Entry, two Show Cause Notices dated 29-11-2007 and 11-2-2008 were issued proposing addition of ship demurrage charges to the assessable value of the goods. The said two show cause notices were adjudicated by two Orders-in-Original both dated 5-4-2018, by which the said Show Cause Notices were dropped and the said Bills of Entry were ordered to be finalized without addition of ship demurrage charges. Therefore, fresh proceedings for finalization of assessment in 2022 are barred by constructive res judicata. Reliance is placed on the following decisions which lay down that when a Show Cause Notice is issued, it must cover all grounds and there cannot be multiple proceedings, with new grounds being raised at subsequent stage, as same would be barred by the principle of constructive res judicata:

- **R.M.Bhat v CCE - 2005 (188) E.E.T. 493 (Tri. - Mumbai)**
- **Steel Authority of India Ltd - 1988 (33) E.L.T. 363 (Tribunal)**
- **Orient Arts & Crafts v CC-2003 (155) E.L.T. 168 (Tri. - Mumbai)**
- **Solitaire Machine Tools Ltd v CCE-2008 (222) ELT 404**
- **CCE v Siddharth Tubes Ltd-2004 (170) ELT 331**

2.7 Without prejudice to the aforesaid submissions, even otherwise, the finalization of assessment on value calculated on the basis of Ship's ullage quantity is bad in law.

2.8 In passing the impugned Order-in-Appeal dated 28-2-2024, the Commissioner (Appeals) has followed Final Order No.12380/2023 dated 31-10-2023 of the Hon'ble Tribunal in the Appellant's own case, which itself has now been recalled by the Hon'ble Tribunal by its Order dated 25-4-2024 as suffering from mistakes apparent on the face of the record. Consequently, the impugned Order-in-Appeal dated 28-2-2024 following the said Order dated 31-10-2023 which stands recalled, is liable to set aside.

2.9 Without prejudice to the aforesaid submissions, it is submitted that the contention of the department that assessment was liable to be finalized on the quantity as per Ship Ullage measurement is clearly untenable in law. The quantity as per Ship Ullage Measurement is irrelevant as it does not represent the actual quantity unloaded in India.

2.10 The Hon'ble Tribunal has in the case of CC v Hindustan Petroleum Corporation Limited-2000 (121) ELT 109 held that the ship ullage quantity does not represent the quantity of goods unloaded/imported into India. The quantity pumped in the shore tanks which represents the quantity imported into India, alone can be assessed to duty. The ship ullage quantity is measured at the point of time when the goods are still on board the ship, when the taxable event has not occurred. The taxable event occurs only in respect of the quantity discharged from the vessel. Department's Civil Appeal No 1098 of 2001 against the said decision of the Hon'ble Tribunal has been dismissed by Hon'ble Supreme Court by Order dated 20-2-2002 as reported in 2002 (142) ELT A280 (SC).

2.11 Merely because the Ship’s Ullage report quantity is marginally higher than the Bill of Lading quantity, it cannot be said that this higher quantity was imported unless it is shown that the quantity actually received in the Shore tank was the same as the ullage quantity. The Ship’s ullage quantity represents the quantity on the Ship at the point of time before discharge from the ship and does not represent the quantity actually received in the hands of the importer.

2.12 Reliance placed by the Commissioner (Appeals) on the decision in case of Mangalore Refinery and Petrochemicals Ltd v CCE 2015 (323) ELT 433 (SC) is misplaced as this decision does not in any way advance the department's case. The said decision nowhere lays down that duty is to be assessed on the ship ullage quantity. On the contrary, the said decision lays down that the duty has to be assessed on the quantity of goods unloaded from the ship and actually received in India. The quantity actually received in India cannot be Ship Ullage quantity which represents the quantity on the ship at the point of time prior to discharge and unloading of the goods and not the quantity actually unloaded and received in India.

2.13 The said decision relates to a situation where the quantity of goods actually received in India was less than the Bill of Lading quantity and the Hon'ble Supreme Court held that the differential quantity which was not received in India was not liable to duty since there was no import of the same. The said decision did not deal with a situation where the ullage quantity though marginally was in excess of Bill of Lading quantity, but there was no corresponding increase in the transaction value. The said decision does not lay down that where the ship ullage quantity is marginally in excess of Bill of Lading quantity, duty has to be paid on value higher than the transaction value.

2.14 Even assuming while denying that the Ship ullage quantity can be considered to be the quantity actually received in India, the question is what is the price paid by the importer to the supplier for the quantity so received. Where the price paid to the supplier is not increased proportionate to the marginal excess in Ship ullage quantity and the transaction value remains unchanged, question of paying duty on a higher value proportionate to the marginal excess in Ship ullage quantity does not arise.

2.15 Reliance placed by the Commissioner (Appeals) on para 4 of the Circular No.34/2016-CUS dated 26-7-2016 for holding that duty is to be paid on Ship ullage quantity is misplaced. This Circular provides that where bulk liquid cargo is cleared directly on payment of duty without being pumped in shore tank, assessment may continue to be done as per ship's ullage survey report at the port of discharge. As submitted herein above, the Supreme Court decision in Mangalore Refinery and Petrochemicals Ltd v CCE - 2015 (323) ELT 433 (SC) nowhere lays down that assessment has to be done as per ship's ullage survey report. The stipulation in the said Para 4 of the Circular is therefore not based on the said Supreme Court decision. Further, it cannot be applied retrospectively for the present imports which were made in 2006 and 2007. As laid down by the Hon'ble Supreme Court in the case of Suchitra Components Ltd v CCE 2007 (208) ELT 321 (SC), a Circular which is adverse to the importer cannot apply retrospectively. For the period prior to 26-7-2016, CBEC Circular No.6/2006-Cus dated 12-1-2006 was applicable, as per which 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. They rely on the decision of this Tribunal in the case of Asian Solvochem P. Ltd vs CC-2023 (7) TMI 217-CESTAT AHMEDABAD which held that for imports prior to 26-7-2016, the applicable Circular will be Circular No.6/2006 and not Circular No.34 of 2016.

2.16 Even assuming while denying that the Ship Ullage quantity can be taken as the quantity actually imported, the marginal excess in Ship Ullage quantity cannot result in liability to higher duty when the price paid to the supplier is not increased proportionate to such marginal excess. In the present case, the quantity as per Ship's Ullage Report at port of discharge is marginally higher than the Bill of Lading quantity by 0.005% to 0.86% (less than 1%). This Tribunal has in the following decisions held that in the case of Liquid Bulk Cargo, tolerance limit of up to 3% or 5% is acceptable for marginal difference (excess) between Bill of Lading quantity and quantity actually unloaded in India and no duty is payable on such marginal excess:

a) **Asian Solvochem P. Ltd v CC-2023 (7) TMI 217-CESTAT AHMEDABAD**: In this decision, which pertained to import of Bulk liquid cargo viz. Methyl Iso Butyl Ketone, marginal excess of 1.66% of quantity unloaded in India compared to Bill of Lading quantity was held by this Hon'ble Tribunal to be within tolerance limit for which no duty was liable to be paid.

b) **Welspun Corp Ltd v CC-2019 (370) ELT 874**: In this decision, the Hon'ble Tribunal has held that where despite the marginal excess of quantity, the transaction value remains unchanged and there is no extra payment for the marginal excess to the supplier, there can be no demand for duty over and above that which is payable on the transaction value. The Tribunal accordingly set aside the demand for duty in respect of the marginal excess, which in that case was 3.57%.

c) **Payal Polypast P. Ltd v CC -2015 (317) ELT 477**: In this case the Tribunal held that in Bulk Liquid cargo marginal variation in weight is unavoidable and the Tribunal held as condonable the variation, which in that case was 3%.

3. Appellant had filed Bills of Entry for home consumption for import of Petroleum Crude Oil in bulk and classified under CTH 27090000 of the Customs Tariff Act, 1975, during the period from 04.04.2006 to 01.03.2007. The Bills of Entry were filed considering respective Bills of Lading quantity and provisional price. The imported goods were

provisionally assessed @5% Basic Customs Duty, in terms of Notification No. 11/2005-Cus, dated 01.03.2005 (Sr. No. 487) read with Notification No. 32/2005 Cus, dated 08.04.2005 and National Calamity Contingent Duty (NCCD) @ Rs 50 PMT as per Circular No. 22/2006, dated 21.08.2006 and applicable Cesses on BCD and NCCD) for want of original documents, final price and test result. On receipt of original documents and test report from the importer, the goods were finally assessed as per respective Final Assessment Orders considering the Ship's Ullage Quantity at the Port of Discharge, as reflected in the Surveyor's Report relying upon the decision of Hon'ble Supreme Court in the case of Mangalore Refinery & Petrochemicals Ltd Vs C.C., Mangalore (2015 (323) ELT 433 (SC). The appellant's contention was that the Bills of Entry was required to be finally assessed considering quantity shown in Bills of Lading instead of ship's ullage quantity.

3.1 On receipt of original documents from the importer and test report from the Chemical Examiner, CRCL, Kandla, the Bills of Entry were finally assessed considering the Ship's Ullage Quantity at the Port of Discharge, as reflected in the Surveyor's Report relying upon the decision of Hon'ble Supreme Court in the case of Mangalore Refinery & Petrochemicals Ltd Vs C.C., Mangalore [2015 (323) ELT 433 (SC).

3.2 The present issue has already been decided on merits by Ahmedabad Tribunal in appellant’s own case reported at (2023) 13 Centax 77 (Tri. Ahmd.) wherein the Tribunal relying upon the decision of Hon'ble Supreme Court in the case of Mangalore Refinery & Petrochemicals Lid Vs C.C., Mangalore (2015 (323) ELT 433 (SC)] had upheld the decision of Commissioner (Appeal) that the assessment has to be done as per Ship's Ullage Survey Report at the Port of Discharge and dismissed the appeal filed by the appellant. This Tribunal decided the issue in favour of revenue that the assessment of Petroleum Crude Oil in bulk is to be done on the basis of Ship's Ullage Survey Report at the Discharge Port and not on the basis of Bills of Lading quantity wherein the crude petroleum oil was imported during May, 2011 to June, 2011. The Hon'ble Tribunal followed the decision of Hon'ble Supreme Court in the case of Mangalore Refinery & Petrochemicals Ltd Vs C.C., Mangalore (2015 (323) ELT 433 (SC)) wherein the crude oil were imported during the period 13.01.1996 to 15.03.1998. In both the above cases, where Hon'ble Apex Court and Hon'ble Tribunal, Ahmedabad, had decided that the assessment in respect of liquid bulk cargos to be done as per Ship Ullage Quantity at Port of Discharge, the import has taken place much before 26.07.2016. Therefore, in view of the decisions referred above, the appellant's contention that instruction to adopt the Ship Ullage Quantity was for the first time contained in Circular No 34/2016, dated 26.07.2016 and consequently the assessment on the basis of Ship Ullage Quantity cannot be done for imports prior to 26.07.2016, is erroneous and liable to be rejected.

3.3 CBIC vide Circular No. 96/2002-Cus dated 26.07.2002 clarified the basis of assessment of bulk liquid cargo. Relevant para is reproduced as under:

> 7. In the light of above, I am directed to convey that in case of all bulk liquid cargo imports, whether for home consumption or for warehousing, the shore tank receipt quantity should be taken as the basis for levy of customs duty. Pending provisional assessments may be finalised accordingly. In the case of bulk liquid cargo imports which are not discharged through regular pipelines and cleared directly on payment of duty under a white Bill of Entry, i.e., without the cargo being warehoused in a shore tank, assessment may continue to be done as per ship's ullage survey report.

3.4 Para 4 of the Circular No. 34/2016, dated 26.07.2016 reads as under:

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

From the plain reading of above Para, it is clear that there is direction to continue the assessment as per Ship's Ullage Report at the Port of Discharge. Therefore, contention of the appellant that instruction to adopt ship ullage quantity for assessment of liquid bulk cargo was for the first time contained in Circular No. 34/2016, dated 26.07.2016 is not legally correct and tenable.

3.5 The appellant have also contended that there is unreasonable delay of 16 years in finalizing the provisionally assessed Bills of Entry and the assessment is required to be set aside. The Appellate Authority has gone through the decision of Larger Bench of the Hon'ble Tribunal in the case of Shakti Beverages Ltd Vs Commissioner of Customs, Mumbai (2003 (153) ELT 445 (Tri -LB)), wherein the Larger Bench has considered the issue whether the Tribunal can annul a proceeding for finalizing a provisional assessment on the ground of delay. After considering the decision of Hon'ble Supreme Court in the case of Raghuvar (India) Ltd [2000 (118) ELT 311 (SC) relied upon by the appellant, and other decisions of Hon'ble Apex Court namely Miles India Ltd. v. Astt. Collector [1987 (30) ELT 641 (SC), Collector v. Doaba Co-operative Sugar Mills 1988 (37) ELT 478 (S.C.)] and U.O.I. v. Kirloskar Penumatic Company [1996 (84) ELT 401 (S.C.)], it held that it is not open to the Commissioner (Appeals) or to Tribunal to ignore the fact that there is no period of limitation prescribed under the Statute for finalizing the provisional assessment. The only question that can be considered is whether the appellant has suffered any prejudice and whether there is violation of principles of natural justice due to delay in finalizing the provisional assessment. On the facts and pleadings in this case, as discussed earlier, we do not find any reason to hold that the appellant has suffered a prejudice and there is violation of principles of natural justice on account of delay. We, therefore, hold that neither the Commissioner (Appeals) nor this Tribunal can annul the proceedings by which provisional assessment is being finalized for the reason of delay. The appeal, therefore, fails and it stands dismissed.

3.6 In the present case, appellant has not suffered a prejudice and there is no violation of principles of natural justice on account of the delay.

3.7 Further, vide its letter dated 09.04.20025, the Revenue submitted and clarified that out of 52 Bills of Entry mentioned under letter dated 04.04.2025, for 13 bills of entry, two show cause notices i.e. 1) VII/48-Demand/28/T/2007-08 covering 06 bills of entry and the other 2) VII/48-demand/28/T/2007-08 dated 29.11.2008 covering 7 Bills of entry were issued. The issues in both the SCN's were, inclusion of demurrage charges in the assessable value. Subsequently, relying on the decision dated 01.09.2015 of Hon'ble Supreme Court in case of M/s Torrent Power AEC Ltd., wherein it has been held that demurrage charges are incurred after the goods reached the Indian Port and therefore, being post importation event, the same cannot form part of the transaction value, both the SCN's were dropped under OIO No. 19/AC/CHS/2017-18 and 20/AC/CHS/2017-18 both dated 05.04.2018. Further, it was mentioned that, 13 bills of entry as stated in the letter dated 04.04.2025, were finalized under separate Final Assessment Order as shown in column 4 of the below table:

Sr. No.	B/E/ No.	Date	FAO No. & dt	SCN No. & date/ OIO No. & date
1	2	3	4	5
1.	F-008	08.04.06	408/FAO/CHS/2022-23 Dt.29.12.2022	SCN No. VII/48-Demand/28/T/2007-08 Dtd.11.02.2008 OIO No. 19/AC/CHS/2017-18 Dtd.05.04.2018
2.	F-064	10.06.06	408/FAO/CHS/2022-23 Dt.29.12.2022	
3.	F-078	29.06.06	408/FAO/CHS/2022-23 Dt.29.12.2022	
4.	F-328	20.12.06	408/FAO/CHS/2022-23 Dt.29.12.2022	
5.	F-396	14.02.07	408/FAO/CHS/2022-23 Dt.29.12.2022	
6.	F-416	01.03.07	408/FAO/CHS/2022-23 Dt.29.12.2022	
7.	F-459	23.03.07	320/FAO/CHS/2022-23 Dt.07.12.2022	SCN No. VII/48-Demand/28/T/2007-08 Dtd.29.11.2008 OIO No. 20/AC/CHS/2017-18 Dtd.05.04.2018
8.	F-146	29.08.06	312/FAO/CHS/2022-23 Dt.07.12.2022	
9.	F-167	15.09.06	313/FAO/CHS/2022-23 Dt.07.12.2022	
10.	F-218	30.10.06	314/FAO/CHS/2022-23 Dt.07.12.2022	
11.	F-327	19.12.06	315/FAO/CHS/2022-23 Dt.07.12.2022	
12.	F-347	11.01.07	317/FAO/CHS/2022-23 Dt.07.12.2022	
13.	F-360	20.01.07	318/FAO/CHS/2022-23 Dt.07.12.2022	

It was thus clarified that 13 bills of entry were not finalized under the two OIO’s dated 05.04.2018 which decided the issue of inclusion of demurrage charges in the assessable value of the goods by dropping the proposal made in the SCNs. The 13 bills of entry were finalized under separate Final Assessment Order as indicated above.

4. We have gone through the rival submissions with all the details.

5. We find that on merits the issue involved is whether the quantity to be assessed shall be as per the Ship Ullage Quantity at the port of discharge as referred to in the surveyor report or as per the bill of lading quantity. On this issue, we find that the matter has been covered vide final order No. 12380/2023 dated 21.10.2023 wherein this Tribunal relying upon the decision of Hon’ble Supreme Court in the case of Mangalore Refinery and Petrochemicals Ltd. vs CCE reported in 2015 (323) ELT 433 (SC) had upheld the decision of Commissioner (Appeals). While dismissing appeals of the present appellant, it held that assessment has to be done at ship ullage surveyor report at the port of discharge and had dismissed the appeal filed by the appellants. We find that there is no reason for us to depart from the earlier decision of this

Tribunal which is in favour of Revenue. We accordingly, hold that as per this decision as far as merits is concerned even for the impugned period, the issue will be decided on the basis that it is the ullage quantity at the discharge port and not the bill of lading quantity that will be the decisive factor. We are also fortified in our view by CBIC Circular No. 96/2002 Customs dated 26.07.2002 as well as Circular No. 34/2016 dated 26.07.2016 which provide the contemporaneous exposito view of the Board's understanding on this issue, we find, therefore, no reason to depart from the same. The appellant has also pointed out that variation in quantity found was within the norms. This aspect needs further findings of the department by examining if variation was within any permissible authoritative norms, if fixed by the department or found in any authoritative literature in the light of submissions made by the appellants.

5.1 It has brought us now to the peripheral issue of whether there was delay in finalizing the provisional assessment, as has been stated by the appellant. It has been argued that the bills of entry were finalized after 16 years of unreasonable delay, despite the Chemical analysis report being available for the show cause notices issued in year 2007 and 2008. The department's contention is that there were 13 Bills of Entry which were only relating to inclusion of demurrage charges, which were eventually decided separately in favour of the party by dropping the proceedings vide two orders-in-original both dated 05.04.2018. These were unrelated to the issue in hand which is related to provisional assessment which were on the basis of quantity and chemical analysis of the product. That both the series of show cause notices were on different legal propositions and there was no bar on issuance of either. The advocate for the appellant however is of the view that res-judicata will apply in relation to these 13 Bills of Entry out of 52 which were subjected to provisional assessment like any other. In 2018, adjudication has been done in respect of provisionally assessed 13 Bills of entry which were for the reason of demurrage. The same Bills of Entry cannot now be subjected to re-adjudication for the reason of res-judicata. It is also stated by the appellants that there is an inordinate delay for finalizing the remaining provisional assessments, which have vitiated the proceedings as they were not allowed their right to defend. He sought to rely on the decision of Bihar Foundry & Castings Ltd. vs UOI & Ors. reported at 2024-TIOL-543-HC that reasonable period of limitation has to be read in, when nothing has been pprescribed in the statute for the proposition. The learned Advocate has emphasized this with the support of decisions in the case of i) Raghuvar (India) Ltd. 2000 (118) ELT 311 (SC) and ii) Pratibha Syntex Ltd. 2013 (287)ELT 290 (Guj.). It was also stated by him that the test reports were received in the year 2006 & 2007 and the requisite documents were also submitted in the year 2006 & 2007 and thereafter also, there was a delay of 16 years in finalizing the provisional assessments. He also states that the decision of Hon'ble High Court in Bihar Foundry and Casting Ltd. vs UOI & Ors. as reported in 2024-TIOL-543-HC was now available, therefore, the decision of Shakti Beverages Ltd. vs CC relied upon by the Commissioner (Appeals) and as reported in 2003 (153) ELT 445 (Tribunal) cannot be given precedent and also the decision of Shakti Beverages was rendered when Customs (Finalization of provisional assessment) Regulation 2018 was not in force, whereas on the date when the same were finalized, the said regulation was in force. Regulation 5 of the said Regulation stipulates a time of 2 months from the date of test reports. We find that there is a force in the arguments of delay advanced by the learned advocate. We find that the learned Adjudicating authority has relied upon the decision of Shakti Beverages which is not beyond the High Court's decision in Bihar Foundry (cited supra) and the fact that the Customs (Finalization of Provisional Assessment) Regulations, 2018 have come into existence on the date when assessments were finalized. Also that the decision of the Hon'ble High Court in the matter of Bihar Foundry cited (supra) was not looked into in details by the learned adjudicating authority.

6. Further, we find that the question of delay is always a question of fact and has to be looked into from the prism of as to whether any delay was attributed to the party also or was exclusively on the part of the department. In the later case, the appellants cannot be allowed to take the benefit of delay which is attributed to them. However, while we find prima facie delay has taken place but it is not forth coming whether it was exclusively due to inaction of the department or was contributed to some extent or the other, by the party also. This question of fact needs redetermination. We are therefore, remanding the matter back to the adjudicating authority to look into the matter afresh with all its factual matrix to arrive at the question of delay and to whom it was attributable. The party shall be free to make any submission in this regard on the point of delay with supporting

documents or case laws. In case any delay on the part of the party is also indicated from the records then the adjudicating authority shall provide opportunity to the appellant to rebut the same, even by inspecting at the case records. Matter is therefore, remitted to the original authority to decide this limited question alongwith what quantifiable variation in weight as is permitted as per authoritative norms. Appeals are partly allowed as conditional remand.

(Order Pronounced in the open court on 03.06.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

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