

**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-CUSTOM-000-APP-197 to 248-23-24 dated 09.03.2024 passed by
Commissioner of Customs-(Appeals)- Ahmedabad)

M/s Reliance Industries Limited

SEZ, CAB East Wing, Ground Floor, Motikhavdi,
Jamnagar-Gujarat-361280

...Appellant

VERSUS

Commissioner of Customs-(Prev)-Jamnagar

Seema Shulka Bhawan, Jamnagar-Rajkot Highway,
Near Victoria Bridge, Jamnagar, Gujarat-361001

...Respondent

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);
- (I) Customs Appeal No. 10314/2024 (Reliance Industries Limited);
- (II) Customs Appeal No. 10315/2024 (Reliance Industries Limited)

(Arising out of JMN-CUSTOM-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 & Rahul Gajera, Advocates 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. 10732-10783 /2025

DATE OF HEARING: 26.08.2025

DATE OF DECISION: 15.09.2025

SOMESH ARORA:

M/s Reliance Industries Ltd vide Miscellaneous application No. 10429 of 2025 requested for rectification of mistake in the final order No. 10395- 10446/2025 dated 3rd June, 2025 passed by this Tribunal. They had pointed out the following mistakes and requested for rectifying the same: -

- a) Hon'ble Tribunal in para 5 of it's order has placed reliance on final order No. 12380 of 2023 dated 31.10.2023 passed in their case which in fact has been recalled by the Tribunal by its order dated 25.04.2024, on the ground that the said order dated 31.10.2023 suffered from mistakes apparent from the face of the record. They had raised this point in their appeal which was also noted by the Tribunal. Placing reliance on a recalled order is clearly a mistake apparent in the record.
- b) Hon'ble Tribunal has not at all considered and given findings on their submissions that quantity as per Ship Ullage Measurement is irrelevant as it does not represent the actual quantity unloaded in India. They relied on the decision in the case of CC Vs. Hindustan Petroleum Corporation Limited-2000 (121) ELT 109, which was subsequently upheld by Hon'ble Supreme Court as reported at 2002 (142) ELT A280 (SC). The decision in the case of Mangalore Refinery and Petrochemicals Ltd - 2015 (23) ELT 433 (SC), which was relied by the Tribunal in their Order dated 31.10.2023 has been duly considered by the Tribunal in its decision in Asian Solvochem P. Ltd v CC-2023 (7) TMI 217-CESTAT AHMEDABAD. The decision in Mangalore Refinery and Petrochemicals Ltd case (cited supra), nowhere provides for taking Ship Ullage quantity for assessment as this for the first time was provided in CBEC Circular No. 34/2016 dated 26.7.2016 and therefore, cannot be applied retrospectively in view of decision of Hon'ble Supreme Court in the case of Suchitra Components Ltd v CCE-2007 (208) ELT 321 (SC).

- c) It is settled law that non-consideration of an issue and the submissions of the Appellant in respect of the same and not giving any finding thereon, amounts to mistake apparent from the record which requires to be rectified. They rely on the decision of Hon'ble Bombay High Court in the case of CCE Vs N.T.B. International P. Ltd- 2014 (302) ELT 481 (Bom), and CCE Vs Rio Tinto India P. Ltd-2017 (6) GSTL 264 (Bom) and Abhay Industries Vs Union of India-2011 (269) ELT 330 (Bom), decision of Hon'ble Gujarat High Court in the case of RPG Life Sciences Ltd Vs UOI- 2005 (187) ELT 433 (Guj) and the decision of Hon'ble Supreme Court in the case of Honda Siel Power Products Ltd Vs CIT-2008 (221) ELT 11(SC).
- d) Para 5.1 of the present order dated 03.06.2025, mentions their submission in respect of 13 Bills of Entry out of total 52 bills of entry, which were decided earlier. Therefore, re-adjudication of the same Bills of Entry subsequently is barred by Res Judicata. No finding or directions on the said submission has been given by the Bench.

2. Learned AR opposed the plea of rectification of mistake and mentioned that the decision in the case of Mangalore Refinery and Petrochemicals Ltd - 2015 (23) ELT 433 (SC) which talked about assessment on the basis of Ship Ullage Quantity is very much applicable in the facts to the present case. He further submitted that assessment on the basis of Ship Ullage Quantity was existing even earlier also and the CBIC vide circular dated 26.07.2016 has just reiterated. Regarding res judicata in respect of 13 Bills of Entry he mentioned that two separate SCNs were issued for inclusion of demurrage charges in the assessable value. This issue was subsequently dropped by the Assistant Commissioner and the said 13 bills of entry were finally assessed in 2022. Therefore, res judicata is not applicable in respect of these 13 bills of entry.

2.1 Matter was heard on 29.07.2025 and vide Misc. Order No. 10569/2025 dated 20.08.2025, this Bench agreed with the contention of the learned Advocate that reliance on Tribunal's order No. 12380 of 2023 dated 31.10.2023 which was recalled by the Tribunal vide its order dated 25.04.2024, was not correct. Regarding 13 bills of entry, this bench found that the learned Advocate had raised point on res judicata but further discussion was not made on that issue. Agreeing

with the contention of the applicant, ROM application was partly allowed and the final order No. 10395-10446/2025 dated 3rd June, 2025 was recalled to the above extent.

3. The Matter came up for arguments on 26th August, 2025. Learned Advocate stated that the learned Adjudicating Authority in its order relied upon Board's Circular bearing No. 34/2016 dated 26.07.2016 in relation to bulk liquid cargo which at point No. 3 has instructed as follows:

"3. In case of all bulk liquid cargo imports, whether for home consumption or for warehousing, the shore tank receipt quantity i.e., dip measurement in tanks 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]."

He mentions that this was erroneous as the said circular was not in existence at the time of dispute which is from April 2006 to March 2007. The Board's Circular bearing No. 6/2006-Cus dated 12.01.2006 was in vogue at that time which had superseded circular No. 96/2002-Customs dated 27.12.2002. He particularly emphasized upon para 4 of the Circular to state that it is the invoice price which has relevance irrespective of quantity ascertained through shore tank measurement or by in other manner. It clarified as follows in para 7:-

"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. As for liability of the Master/Agent for penal action for shortages u/s 116 of the Customs Act, 1962, the same may continue to be fixed in terms of the guidelines laid down by the Bombay High Court in the case of M/s. Shaw Wallace. The liability should be evaluated by comparing ship's ullage quantity at the port of discharge with the ship's load port ullage quantity or Bill of Lading quantity if the former is not made available by the Master/Agent."

3.1 He referred to the decision in the case of CCE vs Hindustan Petroleum Corporation Limited as reported in 2000 (121) ELT 109 further upheld by Hon'ble Supreme Court in 2002 (142) ELT A280 (SC) to emphasize that the quantity which comes into shore tanks is relevant for demanding duty. Para 11 and 12 are reproduced below:-

"11. We must also note that while the decision of the Chennai Bench of the Tribunal in *Cochin Refineries* - [1999 \(105\) E.L.T. 108](#) takes the view that it is the ullage quantity that is relevant for assessment, its reasoning was based upon the Bombay High Court judgment in *Apar Ltd.* - [1985 \(22\) E.L.T. 644](#). That judgment as we have noted, is no longer good law. The Bench itself has recognised this and referred to the High Court a question of law as to whether it is the ullage survey quantity or the quantity ascertained by dip measurement in the shore tanks. We must note in passing that with respect to that view of the Bench in its order on the appeal of Cochin Refineries that the Bombay High Court judgment in *Shaw Wallace v. UOI* is binding is incorrect for the reason that we have already pointed out. In the light of this reference application made, the decision of the Chennai Tribunal does not have any precedential value.

12. For these reasons, we are of the view that the order of the Commissioner, that it is the quantity that was pumped into the shore tanks at which duty must be demanded is correct and does not call for any interference."

3.2 He also pointed out that there was no evidence of quantity received by the department that was imported and that the applicable Circular at the time of importation as well as the case law was not applied but the adjudicating authority applied later circular as well as later decision of Hon'ble Supreme Court. He also relied upon Asion Solvochem Private Limited as reported in 2023 (7) TMI 2017 CESTAT Ahmedabad and other various case laws as well as Circular to indicate tolerance limit of up to 3% or even 5% has been approved in various case laws and therefore, the lower tolerance in their case deserves to be accepted even though the commodity in case of Asion Solvochem Private Limited (cited supra) was different but was still in the nature of bulk liquid cargo as is in their case. The 13 bills of entry in which stated provisional assessment were directed to be finalized issued in 2018 vide orders which are part of records. Two show cause notices dealing with 13 bills of entry were issued seeking to include demurrage charges in the value. He stated the same are covered by constructive res-judicata distinguished from common law concept of res-judicata and therefore, same debars reopening of provisional assessments which were directed to be finalized albeit on the issue of inclusion of demurrage charges in the value vis a vis the valuation on account of quantity as has been again done in 52 bills of entry. He further pointed out that weight variance of up to 1% was based on Customs Appraising Manual Chapter IV of Volume III and thus, was binding on the department and same has also been followed in Asion Solvochem Private Limited (cited supra). He pointed out with the help Exhibit-E in his support that the variance in their case was .005% to 0.86%. Vide their letter dated

04.09.2025 (post hearing), the advocate for the party submitted as follows:

- While reserving orders, the Honourable Bench had directed our clients 'to submit whether the appellant had asked for provisional assessment and to share copies of communication with the Department seeking finalization of provisional assessment. Since the matter pertains to the period 2006-2007, the documents are not readily traceable still they have been able to trace documents in respect of 4 Bills of Entry viz. Bills of Entry No. F-31 dated 3.05.2006, F-183 dated 05.10.2006, F-184 dated 05.10.2006 and F-08 dated 08.04.2006.
- They are submitting letters in respect of the said 4 Bills of Entry as per which provisional assessment was sought on the ground that the invoice evidencing correct transaction value was not available at the time of import. He also enclosed corresponding letters written to the Department in respect of the said 4 Bills of Entry seeking finalization of the provisional assessment by submitting the required documents.
- In respect of 13 Bills of Entry, Show Cause Notices dated 29.11.2007 & 11.02.2008 (marked exhibit 'A' & B of their written submission) were issued for addition of demurrage charges in the value, which were decided by the Deputy Commissioner in 2018 in favour of appellant. In para 3 of these SCNs it is clearly mentioned that for finalization of the provisionally assessed Bills of Entry, M/s. RIL. vide their different letters submitted the Bank Attested Invoices, Bills of Lading, Freight Certificate, Insurance Certificate, C.A. Certificate confirming the freight charges. This shows that all relevant documents for finalization of assessment had been submitted in the year 2006-2007 and 2007-2008 itself.

3.3 The Hon'ble High Court of Jharkhand in the case of Bihar Foundry & Castings Ltd v UOI and ors-2024-TIOL-543-HC, has held that finalization of provisional assessments after 6 to 9 years is vitiated by unreasonable delay and barred by limitation. It held that it is settled law that where no limitation period is prescribed, a reasonable period of limitation applies. The Hon'ble High Court has 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 accordingly, finalization of provisional assessment after 6 to 9 years is barred by limitation.

4. The learned AR, on the other hand submitted that the decision of Mangalore Refinery & Petrochemicals Ltd. as reported in 2015 (323) ELT 433 (SC) had duly considered the CBEC Circular dated 12.01.2006 in para 7 and 17 of the order and eventually, held that it is the quantity of crude oil received into shore tanks in port in India should be the basis for payment of Customs duty. He also pointed out that there cannot be a res-judicata in Revenue matters as the concept has no sustenance in view of the fact that the Customs Act is by itself a sui generis legislation providing when an assessment becomes final or remains provisional. He also pleaded that the points raised by learned advocate at various stages are meant to only complicate the issues. The matter should be decided considering that the adjudicating authority held that demurrage charge is not includible in the value and had only directed that 13 bills of entries be finalized but as per record, same were not finalized and were only directed to be finalized by the proper officer.

5. We have gone through the rival submissions, various decisions, and other documents on record. The main issues before us at this stage apart from on the point of delay which has already been remanded are: i) whether the law of Mangalore Refinery and Petrochemicals Ltd. Vs CCE 2015 (323) ELT 433 (SC) has been duly applied and considered along with CBEC Circular in the order directed to be rectified and ii) whether 13 out of 52 bills of entry which were ordered to be assessed finally in the value of the goods, after dropping the proposal in the Show Cause Notice to include demurrage charges, result in finalization of these 13 bills of entry so as to attract the civil law concept of res-judicata or debar further finalization on any other issue by the department as per the provision of Customs Act, 1962, which is a sui-generis legislation?

5.1 On the first issue, we find that the department's reliance on the decision of Mangalore Refinery and Petrochemicals Ltd. vs CCE 2015

(323) ELT 433 (SC) is with objective to indicate that it is the actual quantity imported into India and not the bill of lading quantity which shall be the decisive factor for assessment. For ease, the quantity actually received in tanks has been termed as shore tank quantity. We also find that the Circular No. 6/2006 dated 12.01.2006 which was relied upon by the party was held contrary to law. The relevant para 15, 16, 17 and 18 which are reproduced below:

“15. We are afraid that each one of the reasons given by the Tribunal is incorrect in law. The Tribunal has lost sight of the following first principles when it arrived at the aforesaid conclusion. First, it has lost sight of the fact that a levy in the context of import duty can only be on imported goods, that is, on goods brought into India from a place outside of India. Till that is done, there is no charge to tax. This Court in *Garden Silk Mills Ltd. v. Union of India*, 1999 (8) SCC 744 = [1999 \(113\) E.L.T. 358](#) (S.C.), stated that this takes place, as follows :-

“It was further submitted that in the case of *Apar (P) Ltd.* [(1999) 6 SCC 117 = JT (1999) 5 SC 161] this Court was concerned with Sections 14 and 15 but here we have to construe the word “imported” occurring in Section 12 and this can only mean that the moment goods have entered the territorial waters the import is complete. We do not agree with the submission. This Court in its opinion in Bill to Amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944, Re [AIR 1963 SC 1760 = (1964) 3 SCR 787 sub nom Sea Customs Act (1878), S. 20(2), Re] SCR at p. 823 observed as follows :

“Truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfilled before the goods can be brought inside the customs barriers, i.e., before they form part of the mass of goods within the country.”

It would appear to us that the import of goods into India would commence when the same cross into the territorial waters but continues and is completed when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and the bill of entry for home consumption is filed.” [at paras 17 and 18]

16. Secondly, the taxable event in the case of imported goods, as has been stated earlier, is “import”. The taxable event in the case of a purchase tax is the purchase of goods. The quantity of goods stated in a bill of lading would perhaps reflect the quantity of goods in the purchase transaction between the parties, but would not reflect the quantity of goods at the time and place of importation. A bill of lading quantity therefore could only be validly looked at in the case of a purchase tax but not in the case of an import duty. Thirdly, Sections 13 and 23 of the Customs Act have been wholly lost sight of. Where goods which are imported are lost, pilfered or destroyed, no import duty is leviable thereon until they are out of customs and come into the hands of the importer. It is clear therefore, that it is only at this stage that the quantity of the goods imported is to be looked at for the purposes of valuation. Fourthly, the basis of the judgment of the Tribunal is on a complete misreading of Section 14 of the Customs Act. First and foremost, the said Section is a section which affords the measure for the levy of customs duty which is to be found in Section 12 of the said Act. Even when the measure talks of value of imported goods, it does so at the time and place of importation, which again is lost sight of by the

Tribunal. And last but not the least, “transaction value” which occurs in the Customs Valuation Rules has to be read under Rules 4 and 9 as reflecting the aforesaid statutory position, namely, that valuation of imported goods is only at the time and place of importation.

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.”

5.2 As against this, the party has relied on Circular no. 06/2006 dated 12.01.2006 which was rescinded vide Circular No. 34/2016-Cus dated 26.07.2016, after coming into force the decision of Mangalore Refinery and Petrochemicals Ltd. vs CCE 2015 (323) ELT 433 (SC), to plead that it held the field till rescinded. The Circular no. 34/2016 of 2016 is reproduced below:

“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 \(323\) E.L.T. 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) E.L.T. (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 i.e., dip measurement in tanks 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 an early date.

6. Hindi version follows.”

5.3 The party has relied upon Circular No. 06/2006-Cus dated 12.01.2006 which is reproduced below:

"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 is 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."

5.4 They submitted that this was the Circular in force at the time when goods were imported. Simply because assessments were delayed and could be finalized only in 2022 is no reason for the department not to follow the law as was existing on date of importation. They also pointed out that for bulk cargo to be assessed on *ad-valorem* rates, invoice price is the basis and for specific rate assessment, shore tank quantity was relevant. They also relied upon the decision in the case of CC vs Hindustan Petroleum Corporation Limited 2000 (121) ELT 109 which was approved in 2002 by Apex Court reported in 2002 (142) ELT A 280 (SC) by dismissing the department's appeal. Therefore, it becomes the law of land as on the date of import. While dismissing the

departmental appeal it had duly considered Garden Silk Mills Limited vs UOI as reported in 1999 (113) ELT 358 (SC) as well as Kiran Spinning Mills vs CC as reported in 1999 (113) ELT 753 (SC) and had come to the conclusion in para 9, 10, 11 & 12 as reproduced below:

“9.Our attention however has been drawn to the Public Notice No. 131 of 17-9-1997 of the Mumbai Custom House. By this amendment, paragraph 11A has been added to the public notice which reads as follows :

“The oil companies shall take the shore tank dip measurement in the presence of PO and give a copy of the same to the PO, who will pass on this document to the Appraising officer/oil unit for enabling him carry out the assessment and determine the duty liability. The importer shall submit a bank attested invoice or certified copy thereof for purpose of assessment. In order to ascertain the actual freight paid to the shipping company, the importer shall submit the copy of the charter party agreement in addition to the documents which are being submitted at present.”

10.This paragraph in effect negates paragraph 11 of the notice in regard to determination of quantity for the purpose of assessment. In the strict sense this public notice does not replace paragraph 11 but merely adds another paragraph. The net result is that the provisions in the public notice relating to assessment in each of them contradicts the other. Paragraph 11 provides that dip measurement in shore tank is not necessary and it is the ullage quantity that has to be considered. Paragraph 11A takes the contrary view. The position that would remain is that neither paragraph 11 nor paragraph 11A would apply to the assessment. The question of assessment therefore would not be dealt with by the public notice.

11. We must also note that while the decision of the Chennai Bench of the Tribunal in *Cochin Refineries* - [1999 \(105\) E.L.T. 108](#) takes the view that it is the ullage quantity that is relevant for assessment, its reasoning was based upon the Bombay High Court judgment in *Apar Ltd.* - [1985 \(22\) E.L.T. 644](#). That judgment as we have noted, is no longer good law. The Bench itself has recognised this and referred to the High Court a question of law as to whether it is the ullage survey quantity or the quantity ascertained by dip measurement in the shore tanks. We must note in passing that with respect to that view of the Bench in its order on the appeal of Cochin Refineries that the Bombay High Court judgment in *Shaw Wallace v. UOI* is binding is incorrect for the reason that we have already pointed out. In the light of this reference application made, the decision of the Chennai Tribunal does not have any precedential value.

12.For these reasons, we are of the view that the order of the Commissioner, that it is the quantity that was pumped into the shore tanks at which duty must be demanded is correct and does not call for any interference.”

6. The conclusion in the above case is that the quantity that is found pumped in the shore tanks is the quantity which was imported into India on which duty was to be demanded. It was the submission of the appellant that the imported quantity as per the aforesaid decision of

Hindustan Petroleum Corporation Limited case is the quantity pumped in which represents the quantity of goods unloaded/ imported into India. It was thus submitted that the department has erred in taking quantity received in shore tank as the weight for assessment. Since ship ullage quantity is measured at the time when the goods are still on board, the ship and the taxable event has not occurred which will occur only in respect of the quantity discharged from the vessel and in any case, the ship ullage report indicated only a marginal higher quantity than the bill of lading quantity. Therefore, it cannot be said that the higher quantity was imported unless it is shown that the actual quantity received in the shore tank was the same as the ullage quantity. The ship ullage quantity represents the quantity on the ship at the point of discharge from the ship and does not represent the quantity actually received or pumped in the hands of the importer. The reliance placed by the department on Mangalore Refinery and Petrochemicals Ltd. case (Cited supra) was misplaced as the said decision nowhere raised the issue that the duty was to be assessed on the ship ullage quantity. To the contrary, the said decision lays down that duty has to be assessed on the quantity of goods received at the Landmass of India unloaded from the ship and actually received in India. Therefore, it was his submission that out of three quantities i.e. quantity in the bill of lading, ship ullage quantity and the quantity actually received in the shore tanks, the quantity pumped in is relevant and the invoice price as the basis of assessment. He also pointed out that marginal excess was within the tolerance limit as per various decisions quoted by them and also they had not paid any excess amount even if it is presumed that ship ullage quantity was slightly higher than the bill of lading quantity. Taking support on the decision of Suchitra Components Ltd. vs CCE-Guntur as reported in 2007 (208) ELT 321 (SC), he states that Para 4 of the Circular dated 26.07.2016 cannot be applied retrospectively for imports made in 2006-2007 which have to be assessed as per law as it existed at that time and that CBEC Circular No. 06/2006-Cus dated 12.01.2006 was applicable to the facts and circumstances of the case. He also relies upon the decision of this Tribunal in the case of Asion Solvochem Pvt. Ltd. reported in 2023 (7) TMI 217 – CESTAT Ahmedabad which held that for imports prior to 26.07.2016, circular no. 06/2006 was applicable and not the circular No. 34/2016. Advocate has also argued that in any case, ship ullage reported at port of discharged is marginally higher than the bill of lading quantity to the extent of

0.86% and same being less than 1% is within the tolerance limit. In Asion Solvochem (cited supra) it is held that in case of bulk drug cargo, the tolerance limit can be upto 3% to 5% and even higher i.e. 3% or above in case of Welspun Corporation Limited vs CC 2019 (317) ELT 874 and Payal Polyplast Pvt. Ltd. vs CC reported in 2015 (317) ELT 477 (SC).

7. We find substance in the submissions made by the Learned Advocate. We find that the concern is about three kinds of quantities in case of bulk liquid cargo i.e. the quantity as per bill of lading, quantity as per ship ullage report and quantity received in shore tank which may differ. We find that circular No. 06/2006-Cus dated 12.01.2006 refers to shore tank quantity only for the purpose of assessment at the specific rate, while maintaining that for assessment on ad-valorem basis transaction value to be considered and custom duty will be leviable on invoice. The Circular thus clearly relied upon shore tank measurement method only when specific rate of duty was in operation. The decision in the case of CC vs Hindustan Petroleum Corporation Limited 2000 (121) ELT 109 decided that it is the quantity which has come into shore tanks that makes the import as a taxable event. This decision was holding the field till decision of Mangalore Refinery and Petrochemicals Ltd. (cited supra) came and held that irrespective of whether duty is ad-valorem or on specific rate it makes no difference for the instance of importation. It thus clearly rejects bill of lading quantity as the imported quantity and notes that when the goods are destroyed, pilfered or lost enroute, no duty is leviable. We find that in para 17, the Hon'ble court has observed as follows:

“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.”

7.1 Eventually in para 18, Hon'ble Court also holds that it is the quantity in the shore tank which should be the basis for payment of

customs duty. We therefore find that quantity in shore tank is the basis on which the event of importation gets decided and not the bill of lading quantity. Since the shore tank quantity was also to be the basis as per the Circular of 2006 but only for goods assessed at specific rate of duty and also in the decision of Hon'ble Apex Court in Mangalore Refinery and Petrochemicals Ltd. (cited supra), we hold that the quantity imported into India is the quantity received in shore tank. The earlier decision in the case of Hindustan Petroleum Corporation Limited (supra) was concerned about the basis of assessment and not specifically about when import actually takes place on soil of India.

7.2 We find that in case of bulk liquid cargo, some tolerance as has been pointed out by various case law cited by the appellant is required to be considered as to prescription of such a limit for this type of commodity before coming to final conclusion for charging import duty. The claim of the party that it is within the tolerance limits needs to be examined by the learned Adjudicating Authority on the basis of records as made available by the appellant. Since the matter is already remanded to lower authority on the point of delay, we remand this issue as well. We also answer that, it will be the law as emanating from the decision by Hon'ble Apex court and as per existing circulars that will govern the import "lex rei sitae tempore importationis" (latin) law at the time of importation applies being the lex importationis. For this view, we also draw support from the decision of Apex court in Commissioner of CGST, J&K vs Saraswat Agro Chemicals (P) Ltd. as reported in 2023 (386) ELT 193 (SC). The relevant paras 6,7,8 are reproduced below:

"6. With regard to the reference order made on 27-9-2021 on a miscellaneous application filed by the Revenue seeking to undo the judgment in *M/s. SRD Nutrients (P) Limited* which was overruled in the subsequent judgment of this Court in *M/s. Unicorn Industries* (supra), the question is whether there was a need at all to refer the matter to a Larger Bench. This is for two reasons: firstly, such an application could not have been filed after a review petition in *M/s. SRD Nutrients (P) Limited* had been dismissed by this Court. Thus, in substance, by filing the miscellaneous application the revenue was seeking a second review of the said judgment which is impermissible in law (Order XLVII Rule 9 CPC). Secondly, by ignoring the *Explanation* to Order XLVII Rule 1 of the CPC and the principle that emerges from the same, what is sought to be contended by Learned ASG is that if a judgment is overruled by this Court by a subsequent judgment, then the overruled judgment will have to be reopened and on reopening the said judgment will have to be brought in line with the subsequent judgment which had overruled it. This is not permissible in law for two reasons : firstly, there has to be finality in litigation and that is in the interest of State. Secondly, a person cannot be vexed twice. This is epitomized by the following maxims :

- (i) *Nemo debet bis vexari pro una et eadem causa* (No man should be vexed twice for the same cause);

(ii) *Interest reipublicae ut sit finis litium* (It is in the interest of the State that there should be an end to a litigation); and

(iii) *Res judicata pro veritate occipitur* (A judicial decision must be accepted as correct).

7. These maxims would indicate that there must be an end to litigation otherwise the rights of persons would be in an endless confusion and fluid and justice would suffer.

8. That is why the explanation to Order XLVII Rule 1 which is a wholesome provision has been inserted to the Code of Civil Procedure. It states that once there is a subsequent judgment overruling an earlier judgment on a point of law, the earlier judgment cannot be reopened or reviewed on the basis of a subsequent judgment."

8. On the second issue regarding 13 bills of entry which were separately assessed out of 52 bills of entries, initially provisionally assessed as certain documents were required from the party and sample testing was required to be done and final pricing was to be done, we find that the separate show cause notices for including demurrage charges in the assessable value were also issued to the party which were eventually dropped in view of decision in the case of Mangalore Refinery cited supra and ordering that the assessment may be finalized. The department is not in appeal against this order. It is also not ascertainable from the available records as to whether consequent upon the above order(s) these provisional assessments were finally assessed or not as the direction as per the order was to finalize assessment, accordingly. In view of this, the facts as stated above need to be checked only then it can be decided whether these 13 bills of entry were separately assessed finally or not. While remanding the matter, we remand this issue also to the appellate authority to ascertain if 13 bills of entry can be constituted to be separately assessed and therefore, cannot be finally assessed again with 52 bills of entry as pleaded by the advocate. All the provisions relating to provisional assessment and thereafter finalized as contained in Section 17 of the Customs Act, 1962, referred case laws on the point shall be duly considered by the appellate authority. With above observations, we are inclined to remand the matter. To sum up, our directions including in the earlier passed order are as follows:

(i) Plea of delayed finalization as raised by the party to be considered in the backdrop of the fact whether the same is or not considerably attributed to the party, as ordered earlier.

(ii) Relevant laws and Circulars including those applicable to assessments on ad-valorem as on date of import to be applied, considering that in the instant case shore tank quantity is not available and decision of Mangalore Refinery is silent about ship ullage quantity.

(iii) Tolerance limits if applicable to this kind of commodity imported in bulk as per various public notices/ case laws to be applied?

(iv) Alternate plea of benefit of 13 bills of entries to be allowed if on verification, it is found that these 13 bills of entries were separately assessed finally in compliance of orders of Deputy Commissioner issued in 2018,

9. With above directions, the matters are remanded. Appeals allowed by way of remand.

(Order Pronounced in the open court on 15.09.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

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