

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI**

S.No.	Appeal No.	Appellant	Respondent
1.	C/40235/2013	Commissioner of Customs (Port-Export)	Volex Interconnect India Pvt. Ltd.
2.	C/40236/2013 C/CO/41953/2013	Commissioner of Customs (Port-Export)	Associate Lumbers Pvt.Ltd.
3.	C/40237/2013	Commissioner of Customs (Port-Export)	Prince Polymer
4.	C/40238/2013	Commissioner of Customs (Port-Export)	Doosan Infracore India Pvt.Ltd.
5.	C/40239/2013 C/CO/41954/2013	Commissioner of Customs (Port-Export)	Overseas Polymer (P) Ltd.
6.	C/40240/2013 C/CO/41955/2013	Commissioner of Customs (Port-Export)	Overseas Polymer (P) Ltd.
7.	C/40241/2013 C/CO/41956/2013	Commissioner of Customs (Port-Export)	Overseas Polymer (P) Ltd.
Arising out of Order-in-Appeal No.1244 to 1260/2012 dated 29.10.2012 passed by Commissioner of Customs (Appeals), Chennai			

Appearance :

Shri A. Cletus, ADC (AR)
For the Appellant

Shri R.Srinivasan, Consultant (Sl.No.1)
None (Sl.No.2 to 7)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision : 04.12.2018

FINAL ORDER No. 43005-43011 / 2018**Per Shri Madhu Mohan Damodhar**

All these appeals have been filed by Revenue. The facts common to all these appeals are that the respondents had filed refund claim for 4% Additional Duty of Customs the lower adjudicating authority after verification of documents sanctioned refund claim vide speaking orders. However, sanction of the claims did not find favour with the department and appeals had been filed after review of the same to the Commissioner (Appeals) inter alia, on the grounds that the goods imported did not tally with the goods sold with respect to description, dimension, quantity etc. The lower appellate authority vide a common order No.1244 to 1260 /2012 dt. 29.10.2012(impugned orders) rejected the department appeals without going into the merits of the case on the grounds that review orders leading to the appeals before him had not been passed within the stipulated period of three months from the date of communication of the Order-in-Original and further that the appeals under Section 129D of the Customs Act, 1962 had not been made within the stipulated period of one month from the date of communication of the review order.

2. in the grounds of appeal, the Revenue has taken a stand that appeals filed before Commissioner (Appeals) under Section 129D of the Customs Act, 1962 should be treated as appeals filed under the Chapter XV and hence all the provisions including condonation of delay would be applicable in respect of those appeals also. Revenue has also alluded to the judgement of the Hon'ble Supreme Court in the case of *Thakker Shipping P. Ltd. CC (General) - 2012 (285) ELT 321*

(SC) wherein inter alia, it has been held that the Act has given express power to the Tribunal to condone delay under Section 129D (4).

3. Today, when the matter came up for hearing, Ld. A.R Shri A. Cletus reiterated the grounds of appeals.

4. On the other hand, on behalf of the respondent M/s. Volex Interconnect India Pvt. Ltd. (Appeal C/40235/2013), Ld. Consultant Shri R. Srinivasan submits that the Revenue is misconceived in filing the appeals and that the entire issue has been analyzed thoroughly in the impugned order.

Respondents in Sl.No.2 to 7 of the preamble of this order were not represented. However the very same issue is in dispute in all the appeals.

5. After going through the matter, we find that the Revenue has misinterpreted the ratio of Hon'ble Supreme Court judgment in *Thakker Shipping P. Ltd.* (supra). The said judgment relates to powers of condonation of delay of appeals filed before the Tribunal. To extrapolate that ratio of the judgement to condonation of delay or otherwise by Commissioner (Appeals) is not correct in law. In the circumstances, no merit is found in the appeals filed by the Revenue on this score. At the same time, we find that the Commissioner (Appeals) has flagged the number of days of non-condonable delay in each of these cases, which fact has not been disputed by the department.

6. We then do not find any reason to interfere with the impugned orders. In consequence, Revenue appeals fail and are therefore dismissed. The cross objections filed by the respondents which are basically in the nature of submissions of facts are also disposed of accordingly.

(dictated and pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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Appeal Nos.C/40235-40241/2016
C/CO/41953-41956/2013