

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 31236 of 2018

(Arising out of Order-in-Appeal No. VJD-CUSTOM-PRV-APP-025-18-19 dated 29.06.2018 passed by the Commissioner of Central Tax And Customs Appeals, Kannavarithota, Guntur)

**Commissioner of Customs, Custom
Preventive Commissionerate, Vijaywada**

Appellant

Versus

M/s Adani Wilmar Limited

Respondent

Fortune House Near Navrangpura railway Station,
Navrangpura, Ahmedabad-380009.

**With
Customs Appeal No. 31237 of 2018**

(Arising out of Order-in-Appeal No. VJD-CUSTOM-PRV-APP-028-18-19 dated 29.06.2018 passed by the Commissioner of Central Tax And Customs Appeals, Kannavarithota, Guntur)

**Commissioner of Customs, Custom
Preventive Commissionerate, Vijaywada**

Appellant

Versus

M/s Adani Wilmar Limited

Respondent

Fortune House Near Navrangpura railway Station,
Navrangpura, Ahmedabad-380009.

**With
Customs Appeal No. 31238 of 2018**

(Arising out of Order-in-Appeal No. VJD-CUSTOM-PRV-APP-029-18-19 dated 29.06.2018 passed by the Commissioner of Central Tax And Customs Appeals, Kannavarithota, Guntur)

**Commissioner of Customs, Custom
Preventive Commissionerate, Vijaywada**

Appellant

Versus

M/s Adani Wilmar Limited

Respondent

Fortune House Near Navrangpura railway Station,

Navrangpura, Ahmedabad-380009.

**And
Customs Appeal No. 31239 of 2018**

(Arising out of Order-in-Appeal No. VJD-CUSTIM-PRV-APP-030-18-19 dated 29.06.2018 passed by the Commissioner of Central Tax And Customs Appeals, Kannavarithota, Guntur)

**Commissioner of Customs, Custom
Preventive Commissionerate, Vijaywada**

Appellant

Versus

M/s Adani Wilmar Limited

Respondent

Fortune House Near Navrangpura railway Station,
Navrangpura, Ahmedabad-380009.

Appearance:

Shri Mir Anwar Mohhiuddin, Authorized Representative for the
Department

Shri Jitneder Motwani, Advocate for the Respondent

CORAM:

**HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

**Date of Hearing: 10.03.2022
Date of Decision: 12.04.2022**

Final Order Nos. A/30048-30051/2022

P.V. Subba Rao:

These four appeals have been filed by the Revenue assailing the orders of the Commissioner (Appeals) on the same issue regarding the crude palmolein oil imported by the respondent. Hence all these appeals are being disposed of together.

2. Briefly stated, when goods are imported in ships they can be in the form of container cargo, break bulk cargo, bulk cargo, etc.

Further, the bulk cargo could be liquid cargo or solid cargo. When the imported good is liquid bulk cargo the liquid is filled directly into the vessel and it is pumped out at the destination. When the vessel is filled with the liquid cargo, it sinks a little into the sea because of the weight. The extent to which the vessel sinks into the sea is used to determine of the quantity of cargo loaded into the vessel. This report is called the "ullage report". When the cargo reaches the destination the liquid is pumped into tanks on the shore. The quantity of the liquid pumped into shore tanks is also measured. The radius of the shore tanks is known, the height to which the liquid has been filled is measured by dipping a scale or tape in the tank.

Volume of the liquid $V = \pi r^2 h$

Where V is the volume, $\pi = 22/7$, r is the internal radius of the tank and h is the height to which the liquid is filled. The specific gravity of each liquid at various temperatures is known. Multiplying the volume by the specific gravity of the liquid at the temperature when the dip measurement is taken gives the weight of the cargo. For instance, if the specific gravity of the liquid is 0.85 and 1000 cubic metres is the volume of the liquid, the weight of the liquid will be 1000×0.85 or 850 kg. The weight calculated in this manner or any other similar method is called the shore tank report. Sometimes there is a small difference between the ullage report and the shore tank report. If the ambient temperature increases, the volume increases but the specific gravity reduces correspondingly and vice versa. Thus, so long as the radius of the

tank, the dip measurement and the temperature are known, the quantity of the liquid can be calculated.

3. One more uncertainty remains when the liquid is pumped into the tanks at high pressure. The liquid continuously swirls and exhibits turbulence. Often, bubbles or foam are also formed at the top. Both the turbulence and foam may affect the dip measurements. Therefore, the measurements must be taken after the liquid settles in the tank.

4. The question which arises is whether ullage report or the shore tank report should be reckoned for determining the customs duty. It has been decided by the Hon'ble Supreme Court in the case of **Commissioner of Customs Vs. National Organic Chemical Indus. Ltd**¹ that the shore tank report must be considered for determining the duty and not the ullage report. After this order of the Supreme Court, the CBEC has issued Circular No. 96/2002-Cus dated 27 December 2002 directing as follows:

"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 finalized 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".

1 2002 (142) ELT A280(SC)

5. Thus, it is a settled legal position that the shore tank receipt must be considered for assessing the duty and not the ullage report and this position has also been accepted by the CBEC and field formations have been directed to follow the same.

6. The respondent herein imported crude palmolein oil of edible grade for use in manufacture of edible oils and claimed the benefit of Notification No. 21/2002-Cus.dated 1.03.2002 (as amended) under Serial No. 30 II(A) and Notification No. 12/2012-Cus dated 17.03.2012 under Serial No. 51 II(A). It is undisputed that the exemption under these notifications is dependent on the use of imported goods for manufacture of excisable commodities and that the respondent had filed the required undertaking for the purpose as per the Customs (Import of Goods at Concessional rate of Duty for Manufacture of Excisable Goods) Rules, 1996. In terms of Rule 8 of these Rules if the imported goods are not used for the intended purpose, action can be taken against the importer to recover the differential duty at the rate applicable but for the concession. Crude palm oil being a liquid bulk commodity, was imported by the appellant in bulk and pumped into shore tanks which are part of the custom bonded premises. When pumping oil from the vessel into the shore tanks, the appellant filed into-bond bills of entry. Thereafter, the appellant filed Ex-Bond bills of entry from time to time and cleared the imported palm oil stored in the tanks to its refineries. The case of the Revenue is that the shore tank quantity of the oil which is cleared through Ex-bond bills of entry is lower than the quantity indicated in the into bond bills of entry filed as

per the ullage report and, therefore, duty has to be paid of the short fall.

7. It is undisputed that on the same issue, in respect of the same party, this Tribunal had, by Final Order Nos. 31476-31478/2017 dated 4.9.2017, decided that the duty has to be paid only on the shore tank receipt. It was further held by this Tribunal that the quantity in the shore tank must be reckoned taking dip measurement and temperature after the cargo is settled. Following the order of this Tribunal, the Commissioner (Appeals) has held in favour of the respondent. Revenue has aggrieved by these orders on the following grounds:

- (i) The CESTAT's Final Order dated 4.9.2017 is being contested by the Department by filing an appeal before the High Court of Andhra Pradesh;
- (ii) In the Final Order dated 4.9.2017, the Tribunal has relied upon CESTAT's previous Final Order dated 23.6.2017 on the same issue. However, no appeal has been filed by the Revenue against this order dated 23.6.2017 only on monetary limits;
- (iii) Although the Board's Circular dated 27 December, 2002 has advised that assessment of bulk cargo should be done on the basis of shore tank receipts, but it did not advise that dip measurement and temperature of cargo in shore tanks should be taken after cargo is settled. Further, no time limit has been specified in the circular for taking dip measurements and shore tanks for arriving that the quantity;

- (iv) The Commissioner of Central Excise, Vishakapatnam had issued a Public Notice para 8 of which had directed that the measurement should be taken after the cargo is settled. However, no time limit has been fixed for settling of the cargo in the tank.

8. In view of the above the impugned orders in appeal are not legal and proper and requires to be set aside for the aforesaid reasons. Learned Departmental Representative reiterated these submissions.

9. Learned Counsel for respondent submits that the issue has already been settled by this Tribunal in respect of the same appellant and Revenue has not even appealed against the orders. Merely because Revenue now chooses to appeal against one of the previous orders of this Tribunal, it does not remove the precedential value of such order. He relies on the following case laws to assert that assessment of imported oil is to be done based on shore tanks quantity and not based on ullage report:

- (i) **General Foods Vs. Commissioner of Customs, Jamnagar²**
- (ii) **Commissioner Vs, Adani Wilmar Ltd.³**
- (iii) **Commissioner Vs. Ruchi Infrastructure Ltd.⁴**
- (iv) **Acalmar Oils and Fats Ltd. Vs. Commissioner⁵**

10. He relies on the following case laws to assert that dip measurement must be taken only after liquid cargo is settled:

- (i) **Assistant Commissioner of Customs & Central Excise Vs. Acalmar Oils & Fats Ltd.⁶**

2 2008 (232) ELT 750
 3 2008 (227) ELT 154
 4 2008 (224) ELT 477
 5 2007 (215) ELT 110

(ii) Acalmar Oils & Fats Ltd. (Now Adani Wilmar Ltd.) Vs. CC, Vijayawada and CCE Visakhapatnam⁷

(iii) Acalmar Oils & Fats Limited Vs. Commissioner of Central Excise, Visakhapatnam⁸.

He also asserted that the difference in quantity is negligible and there is no evidence or allegation that the respondent has diverted any quantity of the imported palm oil. He, therefore, prays that the appeals may be dismissed.

11. We have considered the arguments on both sides and perused the records.

12. It is now well settled by the Supreme Court and also accepted by the Board that when liquid cargo is imported, shore tank quantity should be considered for assessment of duty and not ullage report. The previous orders of this Tribunal followed the same. In some cases the orders of this Tribunal were also not challenged by the Revenue. The learned Commissioner (Appeals) has followed the order of this Tribunal as he is bound to as per judicial discipline. The argument of the Revenue is that the Commissionerate has now decided to challenge one of the previous orders of this Tribunal. Hence these appeals. To put the appeals in perspective, Revenue's case is that since they decided to file an appeal against one of the orders of the Tribunal:

- a. Commissioner (Appeals) should have defied the orders of this Tribunal

6 2017 (357) ELT 1084 (Tri.-Hyd.)

7 2017 (10) TMI 221

8 2017 (9) TMI 1730

- b. He should not have followed the law laid down by the Supreme Court in the case of **National Organic Chemical Indus. Ltd.**
- c. He should have defied the Board's circular No. 96/2002-Cus dated 27 December 2002 issued based on the judgment of the Supreme Court in **National Organic Chemical Indus. Ltd.**
- d. He should have upheld the demand of duty on the basis of the ullage report.

13. While Revenue is free to file an appeal on any grounds, we do not understand how they could file these appeals on the ground that the Commissioner (Appeals) has erred in following the judicial orders as well as the circular of the Board on an issue which is well settled.

14. The second issue raised by the Revenue is regarding the measurement in the shore tank being taken after cargo is settled. This Tribunal had held that the measurement should be taken after the cargo is settled. Revenue's contention is that there was no such stipulation in the Board's circular. If a liquid is poured into a container, say water is filled in a bucket under a tap with high pressure, there will be some turbulence when filling and bubbles will come up. The quantity of the water in the bucket can only be measured after bubbles settle and the turbulence stops. Similarly, when oil is pumped using heavy duty pumps from the ship to the tanks, some turbulence ensues and some froth will also develop. Needless to say that the quantity of the liquid can only be measured accurately only after the liquid settles. Accurate dip measurement in the tanks and the temperature at the time of such

measurement which form the basis for calculating the quantity of the liquid are possible only after the liquid settles. We fail to understand how the Revenue can find fault on any direction that the measurements be taken before the turbulence ends and liquid settles. Evidently, any measurement before the liquid settles is likely to be erroneous resulting in wrong quantities being recorded than what is present in the tanks. Revenue cannot seek to collect duty based on such quantities. The commissioner has correctly mentioned in the public notice that the dip measurement must be taken after liquid is settled.

15. In conclusion, we find that all these four appeals filed by the Revenue are liable to be rejected. All these appeals are rejected.

(Pronounced in Court on 12.04.2022)

(P.K. Choudhary)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

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