

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

Division Bench – Court No. – I

Customs Appeal No. 30829 of 2017

(Arising out of Order-in-Appeal No. VJD-CUSTM-PRV-APP-054-16-17 30.01.2017 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M /s JSW Energy Ltd

JSW Centre, Bandra-Kurla Complex,
Mumbai, Maharashtra – 400 051

.....Appellant

VERSUS

**Commissioner of Customs
(Preventive) Vijayawada**

D.No.55-17-3, 2nd floor, C-14, Road No.2,
Industrial Estate, Vijayawada, AP – 520 007

.....Respondent

with

Customs Appeal No. 30830 of 2017

(Arising out of Order-in-Appeal No. VJD-CUSTM-PRV-APP-055-16-17 30.01.2017 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M /s JSW Energy Ltd

JSW Centre, Bandra-Kurla Complex,
Mumbai, Maharashtra – 400 051

.....Appellant

VERSUS

**Commissioner of Customs
(Preventive) Vijayawada**

D.No.55-17-3, 2nd floor, C-14, Road No.2,
Industrial Estate, Vijayawada, AP – 520 007

.....Respondent

with

Customs Appeal No. 30831 of 2017

(Arising out of Order-in-Appeal No. VJD-CUSTM-PRV-APP-056-16-17 30.01.2017 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M /s JSW Energy Ltd

JSW Centre, Bandra-Kurla Complex,
Mumbai, Maharashtra – 400 051

.....Appellant

VERSUS

**Commissioner of Customs
(Preventive) Vijayawada**

D.No.55-17-3, 2nd floor, C-14, Road No.2,
Industrial Estate, Vijayawada, AP – 520 007

.....Respondent

with

Customs Appeal No. 30832 of 2017

(Arising out of Order-in-Appeal No. VJD-CUSTM-PRV-APP-057-16-17 30.01.2017 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M/s JSW Energy Ltd

JSW Centre, Bandra-Kurla Complex,
Mumbai, Maharashtra – 400 051

.....Appellant

VERSUS

**Commissioner of Customs
(Preventive) Vijayawada**

D.No.55-17-3, 2nd floor, C-14, Road No.2,
Industrial Estate, Vijayawada, AP – 520 007

.....Respondent

with

Customs Appeal No. 30833 of 2017

(Arising out of Order-in-Appeal No. VJD-CUSTM-PRV-APP-058-16-17 30.01.2017 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M/s JSW Energy Ltd

JSW Centre, Bandra-Kurla Complex,
Mumbai, Maharashtra – 400 051

.....Appellant

VERSUS

**Commissioner of Customs
(Preventive) Vijayawada**

D.No.55-17-3, 2nd floor, C-14, Road No.2,
Industrial Estate, Vijayawada, AP – 520 007

.....Respondent

and

Customs Appeal No. 30834 of 2017

(Arising out of Order-in-Appeal No. VJD-CUSTM-PRV-APP-059-16-17 30.01.2017 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M/s JSW Energy Ltd

JSW Centre, Bandra-Kurla Complex,
Mumbai, Maharashtra – 400 051

.....Appellant

VERSUS

**Commissioner of Customs
(Preventive) Vijayawada**

D.No.55-17-3, 2nd floor, C-14, Road No.2,
Industrial Estate, Vijayawada, AP – 520 007

.....Respondent

Appearance:-

Shri Akhilesh Kangsia, Ms. Madhura Khandekar & Shri Narendra Dave, Advocates
for the Appellants.

Shri M. Anukathir Surya, AR for the Respondent.

Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30285-30290/2025

Date of Hearing: 14.05.2025

Date of Decision: 13.08.2025

[Order per: ANGAD PRASAD]

M/s JSW Energy Ltd (hereinafter referred to as the appellants) have come in appeals against six OIAs (all dated 30.01.2017), passed by the Commissioner (Appeals) in the issue of refund of excess duty paid under protest claiming exemption of CVD vide Notification No.12/2012-Cus dt.17.03.2012, as amended. In the department's appeal before the Commissioner (Appeals), after going through the submissions and documents, he set aside the Re-assessment Order dt.31.03.2015 passed by the Deputy Commissioner of Customs and allowed the department's appeal, against which the appellants are in appeals before this Tribunal.

2. The brief facts of the case are that the appellants imported Steam Coal of Indonesia Origin vide six bills of entry (BoE) under Tariff Item 2701 1920 and discharged the CVD @2% along with applicable cesses. However, the BOEs were provisionally assessed and CVD was required to be discharged @6% on the imported goods instead of 2% in terms of S.No.123 of Notification No.12/2012-Cus. Consequently, the appellants deposited the differential CVD of 4% along with interest under protest. This issue was addressed by Hon'ble Orissa High Court in the case of Visa Steel Ltd Vs CCE & ST, Bhubaneswar-I [2013 (298) ELT 323], wherein it was held that simultaneous availment of BCD exemption under Notification No.46/2011 and concessional CVD @2% under Notification No.12/2012 on steam coal imported from Indonesia is permissible. This judgment was affirmed by Hon'ble Supreme Court reported at [2016 (339) ELT A120]. This position was further reiterated by CBEC vide Circular No.41/2013 dt,21.10.2013. In the light of the same, the appellants filed their first refund application dt.24.03.2014 before the Assistant Commissioner, who finally assessed the bills of entry without considering the benefit under notification 12/2012. Thereafter, the appellants filed requisite application for modification of BOEs to revise CVD in light of circular dt.21.10.2013 and the judgment of Hon'ble

Orissa High Court and also filed a revised refund application dt.29.09.2014. Subsequently, the Deputy Commissioner, vide Order dt.31.03.2015 extended the benefit of BCD exemption and concessional CVD @2% under notification 12/2012 and held that appellants had paid over and above the duty liability. Aggrieved by the said order dt.31.03.2015, the Assistant Commissioner filed an appeal before the Commissioner (Appeals), who set aside the order dt.31.03.2015 on the ground that refund cannot be granted in the absence of a challenge to letter dt.01.07.2014. Aggrieved by the same, the appellants are in appeals before this Tribunal.

3. Learned Counsels for the appellants submitted that it is incorrect to state that appeal under section 128 of the Customs Act is the sole remedy available to an assessee for modification of bill of entry. Reliance has been placed on the following judgments in support of this contention.

- a) ITC Ltd Vs CCE [2019 (368) ELT 216 (SC)]
- b) Sony India Vs UOI [2021 (8) TMI 622 – Telangana HC], which was affirmed by Hon'ble Supreme Court in the case of UOI Vs Sony India [2023 (4) TMI 1086 (SC)]
- c) Brightpoint India Vs CC [2021 (11) TMI 285 (Tri-Mumbai)]
- d) Dimension Data India Vs CC [2021-TIOL-224-HC-Mum-Cus], which was affirmed by Hon'ble Supreme Court reported at [2022 (2) TMI 750 –SC]
- e) Sunil Steels Vs CC [2024 (10) TMI 907 – CESTAT Bangalore]
- f) Calison Fibres Vs CC [2019 (370) ELT 1097 (Tri-Mumbai)]

4. They further submitted that in terms of section 154 of the Customs Act, a clerical or arithmetical mistake or accidental slip or omission may be corrected in an order or decision passed by any officer of customs, at any time, by such an officer of customs or the successor in the office of such officer, as the case may be. Hence, revised re-assessment request and refund application dt.29.09.2014 is itself an application for correction and traceable to section 154 of the Customs Act. They placed reliance on the following judgments in support of this contention.

- a) UOI Vs Aluminium Industries [1996 (83) ELT 41 (Kerala)]
- b) Bennett Coleman Vs CC [2008 (232) ELT 367]
- c) Hero Cycles Vs UOI [2009 (240) ELT 490]

d) Keshari Steels Vs Collector [2000 (115) ELT 320 (Bombay)], which was affirmed by Hon'ble Supreme Court reported at [2000 (121) ELT A139]

5. They further submitted that in terms of section 149 of the Customs Act, a proper officer may allow amendment of any document, after it has been presented in the Customs House. However, no such amendment shall be permitted after imported goods have been cleared for home consumption, unless the amendment is based on documentary evidence which was in existence at the time of clearance of goods. Hence without prejudice, revised re-assessment request and refund application dt.29.09.2014 itself can be considered as an application for amendment traceable to section 149 of the Customs Act. Reliance has been placed on the following judgments in support of this contention.

- a) Stanley Engineered Fastening India Vs Authorized Officer, SEZ [2023 (3) TMI 846 (Mad.)]
- b) Valeo India Vs CC [2024 (4) TMI 484 – CESTAT Chennai]
- c) Neyveli Lignite Corporation India Vs CC [2022 (4) TMI 1374]
- d) JK Steel Ltd Vs UOI [AIR 1970 SC 1173]
- e) Cummins (India) Vs CC [2012 (282) ELT 92 (T)]

6. They further submitted that appellants letter dt.01.07.2014 finalizing the provisional assessment of the BOE cannot be considered as an appealable order in terms of section 128 of the Customs Act and that Customs department cannot take advantage of its own wrong and retain any amount of money collected in excess of duty liability. They have relied on the following decisions in support of this contention.

- a) Devendra Vs State of Uttaranchal [2013 (9) SCC 363]
- b) MD, HSIDC Vs Hari Om Enterprises [2009 (16) SCC 208]
- c) Healthcase Vs LG Household [2007 (5) SCC 510]
- d) Anchor Pressings Vs CIT [1987 (27) ELT 590 (SC)]
- e) Unichem Laboratories Vs Collector [2002 (145) ELT 502 (SC)]

7. On the other hand, learned AR reiterated the findings of the adjudicating authority in the impugned OIAs and submitted that the assessing authority has finalized the assessment of BoEs confirming the

provisionally assessed duties and communicated to the imported but the appellants had not challenged the assessment order which became final but only requested the adjudicating authority to consider the exemption of CVD in the light of judgment of Hon'ble Orissa High Court in the case of Visa Steel Ltd (supra). Hence the refund claim is not maintainable. He further submitted that the provisions quoted by appellants do not provide for reopening/reviewing of a final assessment order already issued and that section 154 of the Customs Act only allows for correction of clerical errors. He further submitted that the order of reopening of assessment by Deputy Commissioner is against his own assessment order and the same is not tenable in view of the following judgments.

- a) CC (AIR) Vs Hindustan Petroleum Corporation Ltd [2018 (11) TMI 1478 – Madras HC]
- b) National Institute of Ocean Technology Vs CC (Appeals), Chennai [2023 (3) TMI 752 – CESTAT Chennai]
- c) CC Vs TTK Prestige Ltd [2021 (1) TMI 1044 – Karnataka HC]
- d) Priya Blue Industries Ltd Vs CC (Prev.) [2004 (9) TMI 105 – SC]
- e) CCE, Kanpur Vs Flock (India) Pvt Ltd [2000 (8) TMI 88 – SC]
- f) Kaziranga Tobacco Products Pvt Ltd Vs UOI [2002 (5) TMI 806 – Gauhati HC]
- g) Escorts Ltd Vs UOI [1994 (2) TMI 74 – SC]
- h) Samsung India Electronics Pvt Ltd Vs CC, New Delhi [2015 (12) TMI 520 – CESTAT New Delhi]

8. Heard both sides and perused the records. The issue involved in all the appeals is common and therefore, these appeals are being taken up together for the purpose of disposal.

9. The issue to be decided in these appeals is whether the adjudicating authority has right to modify their own earlier assessment order or not.

10. Learned adjudicating authority in his Order dt.31.03.2015 mentioned that the final assessment was informed to the importer by letter dt.01.07.2014. The importer, vide letter dt.29.09.2014, requested to consider in light of exemption notification as well as circular issued by CBEC. In this regard the relevant portion of OIO is reproduced as below:

"6.The final assessment was informed to the importer vide this office letter dt.1.7.2014. The exemption of CVD, vide Notification No.12/2011-Cus dt.17.3.2012, as amended by Notification No.12/2013-Cus dt.1.3.2013 i.e., 2% is not allowed at the time of final assessment also.

7.The importer vide letter dt.29.9.2014 requested to consider the exemption of CVD, vide Notification No.12/2012-Cus dt.17.3.2012 as amended by Notification No.12/2013-Cus dt.1.3.2013 and finalize the CVD @2% instead of 6% in the light of CBEC Circular No.41/2013-Cus dt.21.10.2013. The importer also pointed out that they have neither heard in person nor speaking/appealable order issued for the finalization of the said Bill of Entry."

11. Learned Counsel for appellants submitted that there is no any bar to move an application for modification in assessment order if any mistake has occurred due to an error in the implementation of the law. It is also argued that the appeal under section 128 of Customs Act is not the only remedy against assessment order but it can be modified under other relevant provisions of the Customs Act.

12. Learned Counsel for appellant relied on decision of Hon'ble Supreme Court in the case of ITC Ltd (supra), wherein, it was held that "the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act". It was also held that "the revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment."

13. In our considered view, the findings of Hon'ble Supreme Court is not in favor of appellants since Hon'ble Supreme Court also mentioned that it is appealable order. There is nowhere mentioned section 149 or section 154 of the Customs Act, as stated by the learned Counsel for the appellants.

14. Section 128 of the Customs Act provides that any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Commissioner (Appeals) may appeal to the Commissioner

(Appeals) within stipulated period from the date of the communication to him of such decision or order.

15. Learned Counsel also relied on the decision of Hon'ble Supreme Court in the case of UOI Vs Sony India (supra), wherein, it was held that an amendment application is permissible in case of incorrect determination of duty by the assessing authority initially. It is also not applicable in the instant case because it is not a case of amendment but it is a case of replacement by new order. Adjudicating Authority has no power to review his own order.

16. Learned Counsel for the appellants also relied on the decision of Hon'ble High Court of Bombay in the case of Zuari Agro Chemicals Ltd Vs UOI [2014 (307) ELT 874 (Bom)], wherein, it was held that "on facts, finalization of Bill of Entry without disclosing any reasons therefor and without giving any opportunity to petitioner to explain away the view of the authority, held to be in breach of natural justice". Even in this case, order of assessment was quashed by superior court and directed to decide afresh to concerned authority. Hence it is also not applicable in the instant case.

17. The adjudicating authority had re-opened the assessment order basing on a decision of Hon'ble Orissa High Court in the case of Visa Steel Ltd Vs CCE & ST, Bhubaneshwar-I (supra), after citing relevant paras of the judgment, which are as follows:

"15. We have already held that sub-section (2) of Section 18 does not contemplate passing of any final assessment order. Moreover, perusal of the order dated 10-3-2010 as well as the Bill of Entry does not reveal any reason as to why the claim of the appellant, i.e., exemption from paying the Customs duty vide Notification No. 21/2002 dated 1-3-2002 has been rejected. It also does not reveal that any opportunity of hearing has been given to the appellant before rejecting its claim of exemption. As stated above, no other order of assessment passed in terms of Section 17 of the Act has been brought to our notice.

16. Question nos. (v) and (vi) being interlinked, they are also dealt with together. There is no dispute over the legal proposition settled by the Hon'ble Supreme Court in the case of Priya Blue Industries Ltd. (supra). It goes without saying that refund flows from an order. So long as an order of assessment stands, the duty assessed would be payable as per the said order of assessment. If that order is not challenged, no refund can be claimed. The officer empowered to consider different claims for refund cannot review the order of assessment for which right of appeal has been created under the statute. In the instant case, as held above, no order of assessment as contemplated under Section 17(2) read with

Section 17(5) has been passed. Therefore, there is no question of filing any appeal challenging the order of assessment.

17. Section 128 of the Act, 1962 envisages for filing of appeal before the Commissioner (Appeals) by any person aggrieved by any decision or order passed under the Customs Act by any officer of Customs lower in rank than a Commissioner of Customs within 60 days from the date of communication to him of such decision or order. In the present case, no speaking order as contemplated under Section 17(2) read with Section 17(5) of the Act, assessing the appellant finally has been passed and communicated to the appellant. In absence of such order, there is no question of filing any appeal challenging the assessment order in terms of Section 128 of the Act. Consequently, the appellant is deprived of the statutory right of filing appeal as provided in Section 128 against the collection of duty from it without passing final order of assessment as contemplated under Section 17(5) of the Act.

18. Assuming that the petitioner has not filed any appeal challenging the provisional assessment order, he cannot be deprived of his statutory right to challenge a final assessment order.

19. In view of the above, we do not find any infirmity or illegality in the order of the Appellate Tribunal holding that when an assessee is aggrieved by the assessment order, the recourse open to him is to file an appeal before the appellate forum instead of asking for refund directly by short-circuiting the process of appeal prescribed to be followed under the Act, before the appropriate authority.

20. In the peculiar facts and circumstances of the case, we direct the proper officer to pass a speaking order in terms of Section 17(2) read with Section 17(5) of the Act, 1962 after giving an opportunity of hearing to the appellant. We direct the proper officer to complete the entire exercise within a period of three months from today. We make it clear that we have not expressed any opinion on the merit of the appellant's claim that it is exempted from payment of customs duty vide Notification No. 21/2002, dated 1-3-2002. On receipt of the assessment order it is open to the appellant to avail any remedy/benefit permissible under law."

18. The adjudicating authority has failed to understand the findings of Hon'ble High Court in the above judgment as it was held that no order of assessment, as contemplated under section 17(2) read with section 17(5) of the Act, assessing finally, has been passed and communicated to the appellant. Therefore, there is no question of filing any appeal challenging the order of assessment. Hon'ble High Court also held that "we do not find any infirmity or illegality in the order of the Appellate Tribunal holding that when an assessee is aggrieved by the assessment order, the recourse open to him is to file an appeal before the appellate forum instead of asking for refund directly by short-circuiting the process of appeal prescribed to be followed under the Act, before the appropriate authority." Hence Hon'ble High Court has set aside the Order of adjudicating authority due to above reason and directed him to pass a speaking order in terms of section 17(2) read with

section 17(5) of the Act. It was also held that if any assessee is aggrieved by assessment order, the recourse open to him is to file appeal before appellate forum. This conclusion of the Hon'ble High Court affirms the basis taken in the impugned order.

19. Learned adjudicating authority also took another ground to reopen the assessment order i.e., CBEC Circular No.41/2013 dt.21.10.2013 by which it was clarified that an importer while availing BCD exemption on steam coal under FTA Notification No.46/2011-Cus can simultaneously avail concessional CVD @ 2% under Notification No.12/2012-Cus. It is only clarification of earlier circular. The circular has not authorized the learned adjudicating authority to reopen or review his earlier final assessment order.

20. Learned AR has relied on the decision of Hon'ble Supreme Court in the case of CCE, Kanpur Vs Flock (India) Pvt Ltd (supra), wherein it was held that "where an adjudicating authority has passed an order which is appealable under the statute and the party aggrieved did not choose to exercise the statutory right of filing an appeal, it is not open to the party to question the correctness of the order of the adjudicating authority subsequently by filing a claim for refund on the ground that the adjudicating authority had committed an error in passing his order. If this position is accepted then the provisions for adjudication in the Act and the Rules, the provision for appeal in the Act and the Rules will lose their relevance and the entire exercise will be rendered redundant. This position in our view, will run counter to the scheme of the Act and will introduce an element of uncertainty in the entire process of levy and collection of excise duty. Such a position cannot, be countenanced."

21. Learned Counsel for appellants argued that modification of assessment can also be sought under section 149 of the Customs Act. He further submitted that the proper officer at the time of clearance has power to amend errors even after final assessment. Learned AR, on the other hand, argued that section 149 of the Customs Act will not apply for amendment in assessment order as it related only to corrections in document.

22. Section 149 of the Customs Act provides that the proper officer may, in his discretion, authorize any document, after it has been presented in the customs house to be amended in such form and manner, within such time,

subject to such restrictions and conditions, as may be prescribed. Hence section 149 will not authorize the adjudicating authority to make amendments in the assessment order.

23. Learned Counsel for appellants also argued that section 154 of the Customs Act empowers the customs officer to correct clerical or arithmetical mistakes or accidental slip or omission in any order or decision, including assessments, whereas learned AR argued that it does not allow for deciding the matter and pass a different order contrary to what is decided. If the intention is being so, would render the provisions of appeals before higher forum redundant.

24. Section 154 of the Customs Act provides that clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board or such officer of customs or the successor in office of such officer, as the case may be. Hence section 154 empowers Central Government, the Board or any officer of customs for correction of mistake which are clerical or arithmetical in nature in any order. Therefore, under the guise of section 154 of the Act no one can review one's own order or replace something new in the name of correction.

25. Learned AR has relied on the decision in the case of Samsung India Electronics Pvt Ltd Vs CC, New Delhi [2015 (12) TMI 520 – CESTAT New Delhi], wherein, it was held that "what that is envisaged by this section is only to make effort to rectify a clerical errors or arithmetical mistakes in any decision or order passed by Central Government. When the order passed by the authority at the time of clearance remains unchallenged, re-assessment/re-determination making extensive enquiry is not subject of Section 154. Therefore, amendment sought by the appellant taking Shelter of Section 154 neither being clerical error nor arithmetical mistakes, there is no scope for grant any relief under Section 154."

26. Learned Counsel for the appellant also argued that section 17(4) of the Customs Act provides that where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action

which may be taken under the Customs Act, reassess the duty leviable on such goods. On the other hand, learned AR argued that the said provision is only for correction and not for reopening the assessment order.

27. Section 17(4) of the Customs Act provides that “notwithstanding anything contained in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis of the statements made in the entry relating thereto and the documents produced and the information furnished under sub-section (3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty”.

28. Therefore, section 17(4) is not made for reopening or reviewing any issued final assessment order.

29. In view of the above discussions and findings, we find that learned adjudicating authority is not empowered to review his earlier final assessment order. Therefore, in the facts of the case, we find no merits in the appeals filed by the appellants and accordingly, they are liable to be dismissed.

30. Appeals are dismissed.

(Pronounced in the Open Court on 13.08.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)