IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Customs Appeal No.76810 of 2019

(Arising out of Order-in-Appeal No.KOL/CUS(PORT)/AA/325-331/2019 dated 08.05.2019 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s. Garg Impex
(No.105, H-3, Vardhman Plaza Tower, Netaji Subhash Place, Pitampura, Delhi-110034.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

WITH

(i) Customs Appeal No.76811 of 2019 (M/s. Garg Impex vs. Commissioner of Customs (Port), Kolkata); (ii) Customs Appeal No.76812 of 2019 (M/s. Garg Impex vs. Commissioner of Customs (Port), Kolkata); (iii) Customs Appeal No.76813 of 2019 (M/s. Garg Impex vs. Commissioner of Customs (Port), Kolkata); (iv) Customs Appeal No.76815 of 2019 (M/s. Garg Impex vs. Commissioner of Customs (Port), Kolkata); (v) Customs Appeal No.76816 of 2019 (M/s. Garg Impex vs. Commissioner of Customs (Port), Kolkata); (vi) Customs Appeal No.76817 of 2019 (M/s. Garg Impex vs. Commissioner of Customs (Port), Kolkata); (vii) Customs Appeal No.76820 of 2019 (M/s. Elvance Overseas LLP vs. Commissioner of Customs (Port), Kolkata); (viii) Customs Appeal No.76821 of 2019 (M/s. Elvance Overseas LLP vs. Commissioner of Customs (Port), Kolkata); (ix) Customs Appeal No.76822 of 2019 (M/s. Elvance Overseas LLP vs. Commissioner of Customs (Port), Kolkata); (x) Customs Appeal No.76823 of 2019 (M/s. Elvance Overseas LLP vs. Commissioner of Customs (Port), Kolkata); (xi) Customs Appeal No.76824 of 2019 (M/s. Elvance Overseas LLP vs. Commissioner of Customs (Port), Kolkata); (xii) Customs Appeal No.76839 of 2019 (M/s. Elvance Overseas LLP vs.

Commissioner of Customs (Port), Kolkata); (xiii) Customs Appeal No.76840 of 2019 (M/s. Elvance Overseas LLP vs. Commissioner of Customs (Port), Kolkata); (xiv) Customs Appeal No.76841 of 2019 (M/s. Elvance Overseas LLP vs. Commissioner of Customs (Port), Kolkata); (xv) Customs Appeal No.76843 of 2019 (M/s. Elvance Overseas LLP vs. Commissioner of Customs (Port), Kolkata); (xvi) Customs Appeal No.76844 of 2019 (M/s. Elvance Overseas LLP vs. Commissioner of Customs (Port), Kolkata); (xvii) Customs Appeal No.76845 of 2019 (M/s. Elvance Overseas LLP vs. Commissioner of Customs (Port), Kolkata);

[(i) to (vi)] (Arising out of Order-in-Appeal No.KOL/CUS(PORT)/AA/325-331/2019 dated 08.05.2019 passed by Commissioner of Customs (Appeals), Kolkata.)

[(vii) to (xvii)] (Arising out of Order-in-Appeal No.KOL/CUS(PORT)/AA/332-342/2019 dated 08.05.2019 passed by Commissioner of Customs (Appeals), Kolkata.)

APPEARANCE

Shri Prem Ranjan Kumar, Advocate for the Appellant (s)

Shri Tariq Sulaiman, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 75600-75617/2025

DATE OF HEARING : 24.02.2025
DATE OF DECISION : 06.03.2025

Per : ASHOK JINDAL :

The appeals are having common issue, therefore, all are disposed of by a common order.

2. The facts of the case are that the appellants field bills of entry for clearance of Mixed Lot of Polyester Knitted Fabric valuing the same as USD 1.30/Kg. On examination the goods were found as per the declaration. However, the adjudicating authority assessed the goods at

the value of USD 1.75/Kg.. No order under section 17(5) was passed by the adjudicating authority which was required to be passed within 15 days if the declared value is not accepted under section 17(4) of the act. As no order was passed by the adjudicating authority under section 17(5) of the act, the appellant pursued to the adjudicating authority for passing an order under section 17(5) of the act by way of various letters. Later on by action taken on their application on 20.08.2019, it was intimated that Bills of Entry itself is an appealable order and order under section 17(5) of the Customs Act, 1962 is not possible at this stage. Against that, the appellants filed appeals before the Ld.Commissioner(Appeals). The details of the appeals are as under :-

M/s. Garg Impex

Sr. No.	Appeal File No. S5-"..."/Cus (Appg)/ Kol (Port)/2019	B/E No. and Date	Date of assessment	Date of filling appeal	Time taken to file the appeal
1.	204	9659311 dt. 12-05-2017	12-05-2017	26.3.19	More than 90 days
2.	205	9378695 dt. 20-04-2017	20-04-2017	26.3.19	More than 90 days
3.	206	9378649 dt. 20-04-2017	20-04-2017	26.3.19	More than 90 days
4.	207	9659309 dt. 12-05-2017	12-05-2017	26.3.19	More than 90 days
5.	208	9659306 dt. 12-05-2017	12-05-2017	26.3.19	More than 90 days
6.	209	9659308 dt. 12-05-2017	12-05-2017	26.3.19	More than 90 days
7.	210	9659310 dt. 12-05-2017	12-05-2017	26.3.19	More than 90 days

M/s. Elvance Overseas LLP

Sr. No.	Appeal File No. S5-"…"/Cus (Appg)/ Kol (Port)/2019	B/E No. and Date	Date of assessment	Date of filing appeal	Time taken to file the appeal
1.	211	9728441 dt. 17-05-2017	17-05-2017	26.3.19	More than 90 days
2.	212	9642969 dt. 11-05-2017	11-05-2017	26.3.19	More than 90 days
3.	213	9199497 dt. 06-04-2017	06-04-2017	26.3.19	More than 90 days
4.	214	9199506 dt. 06-04-2017	06-04-2017	26.3.19	More than 90 days
5.	215	9199463 dt. 06-04-2017	06-04-2017	26.3.19	More than 90 days
6.	216	9659299 dt. 12-05-2017	12-05-2017	26.3.19	More than 90 days
7.	217	8979945 dt. 21-03-2017	21-03-2017	26.3.19	More than 90 days
8.	218	8979913 dt. 21-03-2017	21-03-2017	26.3.19	More than 90 days
9.	219	9728417 dt. 17-05-2017	17-05-2017	26.3.19	More than 90 days
10.	220	9728442 dt. 17-05-2017	17-05-2017	26.3.19	More than 90 days
11.	221	9728415 dt. 17-05-2017	17-05-2017	26.3.19	More than 90 days

3. The Ld.Commissioner(Appeals) held that the appeals are filed beyond the statutory period prescribed under section 128(1) of the Customs Act, 1962, therefore, the appeals are dismissed as barred by limitation. Aggrieved from the said orders, the appellants are before us.

4. The Ld.Counsel for the appellants submits that as no order under section 17(5) was passed by the adjudicating authority for enhancing the declared value under section 17(5) of the Customs Act, 1962 and the appellants pursued with the adjudicating authority for issuance of the speaking order under section 17(5) of the act by letter dated 11.05.2017, 03.03.2018, but no response was received from the adjudicating authority with regard to issuance of the speaking order under section 17(5) of the Customs Act, 1962 which is mandatory in case assessment is done under section 17(4) of the act and again on 07.01.2019, the appellant was intimated with remarks "the Bill of

Entry assessed is itself appealable order, issuance of speaking order under section 17(5) of the Customs Act at this belated stage is not possible. The importer should have approached immediately after Bill of Entry was assessed if any grievance was there after the assessment. The said intimation was given to the appellant on 20.08.2019 and against that intimation the appellant filed appeal before the Ld.Commissioner(Appeals) on 26.03.2019 which is well within the time limit prescribed under section 128(1) of the Customs Act, 1962, therefore, the Ld.Commissioner(Appeals) was required to decide the issue whether assessment under section 17(4) of the Customs Act, 1962 is acceptable, in case, no speaking order has been passed under section 17(5) of the Customs Act, 1962. But the Ld.Commissioner(Appeals) dismissed the appeals as time barred.

5. In that circumstances, the appeals cannot be held as barred by limitation by the Ld.Commissioner(Appeals).

6. To support his contention, he relied on the following judgements:

(a) Woodstruck Furnitures Pvt.Ltd. v. UOI
[2011 (269) ELT 327 (Ker.)]
(b) Kothari Metals Ltd. v. UOI
[2011 (274) ELT 488 (Cal.)]
(c) Sigma Power Products Pvt.Ltd. v. CC(Port)
[2017 (350) ELT 510 (Cal.)]
(d) Falgun Export Pvt.Ltd. v. UOI
[2016 (332) ELT 90 (Cal.)]
(e) CC, ICD, New Delhi v. VSM Impex Pvt.Ltd.
[Final Order No.63455-63456/2018 dated 25.10.18]
(f) Kranti Associates Pvt.Ltd. v. Masood Ahmed Khan
[2011 (273) ELT 345 (SC)]

7. On the other hand the Ld.AR for the Revenue submitted that as the Bills of Entry were assessed and out of charge was given, the said order is an appealable order, therefore, the appellants were required to be filed against those orders within 60 days which appellants failed to do so, therefore, the Ld.Commissioner(Appeals) has rightly dismissed their appeals as time barred.

8. Heard the parties, considered the submissions.

9. It is admitted fact that the Bills of Entry were assessed as per the details given in paragraph No.2 and admittedly no order under section 17(5) was passed by the adjudicating authority.

10. We hold that time consumed by the appellants in communication with the proper officer who has adjudicated the matter under section 17(4) of the act and no speaking order has been passed under section 17(5) of the act is required to be reduced from the time limit prescribed to file an appeal before the Ld.Commissioner(Appeals).

11. In that circumstances, we hold that the appeals cannot be dismissed as barred by limitation. Accordingly, if there is any delay at the stage of filing of appeal before the Ld.Commissioner(Appeals) is condoned and the matter is remanded back to the Ld.Commissioner(Appeals) to decide the issue on merits.

In these terms, by setting aside the impugned orders, the appeals are remanded back to Ld.Commissioner(Appeals) to decide the issue i.e. whether the assessment made under section 17(4) of the Customs Act, 1962 is correct in the absence of speaking order under section 17(5) of the Customs Act, 1962 or not?

(Order pronounced in the open court on 06.03.2025.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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