

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 77378 of 2019

(Arising out of Order-in-Appeal No. 139/Cus/CCP-GST/2019 dated 27.02.2019 passed by the Commissioner (Appeals) GST, Central Excise & Customs Central Revenue Building, Rajaswa Vihar, Bhubaneswar-07)

M/s. J. M. Baxi & Co.,

New Trade Centre-I, Unit IV,
3rd Floor, Paradeep Port-754142

: Appellant

VERSUS

**The Commissioner (Appeals) GST, Central
Excise,**

Central Revenue Building, Rajaswa Vihar,
Bhubaneswar-07

: Respondent

APPEARANCE:

Shri Pratik U. Shah, C. A. for the Appellant

Shri T. Sulaiman, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77846/2025

DATE OF HEARING / DECISION: 28.11.2025

ORDER: [PER SHRI R. MURALIDHAR]

The appellant has filed one Conversion Bill of Entry 0000155 dated 29.06.2017 on behalf of the importer for the items contained in the Bill of Entry for provisional assessment and payment of custom duty, pending submission of reversion documents. As per the impugned order, after provisional assessment of Bill of Entry, the respondent paid the total duty of Rs.26,88,023/-.

2. The subject vessel was reverted from coastal run at Sikka to foreign run as per the reversion certificate given by the customs officer.

3. After this, the provisional assessment was finalized vide Order No. 4525 dated 04.08.2017 wherein it came to light that the appellant had paid excess duty of Rs.80667. As per this order, the appellant has filed a refund claim which was granted vide Order-in-Original No. AC/CUS/PDB/B-CUS/(Prev.)96/2017 (R) dated 31.08.2017 and the refund of Rs.80,667/- was granted to the appellant.

3.1. Being aggrieved, the Department filed an appeal against this Order-in-Original dated 31.08.2017. The Commissioner (Appeals) has allowed the appeal filed by the Revenue and held that the appellant was not eligible for the refund of Rs.80,667/-.

3.2. Being aggrieved, the appellant is before the Tribunal.

4. The Ld. Consultant appearing on behalf of the appellant submits that it is a clear case where excess duty has been paid which has been seen by the authorities at the time of finalizing the assessment and accordingly the assessment was finalized on 04.08.2017; Only after that, the appellant has filed the refund claim and got back the refund of Rs.80,667/-. Therefore, he submits that the Commissioner (Appeals) is in error in holding that the appellant is ineligible for this refund and allowing the appeal filed by the Revenue before him. He prays that the impugned order may be set aside and the appellant's appeal may be allowed.

5. The Ld. Authorized Representative of the Revenue reiterates the findings of the lower authority.

6. Heard both the sides.

7. We find that the issue is in a very short compass. The Department had filed an appeal before the Commissioner (Appeals) against the Order-in-Original dated 31.08.2017 by which the refund of Rs.80,667/- had been granted.

8. We find that the finalization has taken place vide Order No. 4525 dated 04.08.2017 wherein the Assistant Commissioner, Customs Division, Paradeep has held that the issue stands finalized and that an excess amount of Rs. 80667 has been paid by the appellant. Consequent to this finalization of the provisional assessment, the appellant would be eligible for the refund. We find that this provisional assessment finalizing order dated 04.08.2017 has not been challenged by the Revenue before the Commissioner (Appeals). This being so, they cannot take any other stand after the refund was granted vide Order-in-Original dated 31.08.2017 which was basically based on the earlier finalization order dated 04.08.2017. Therefore, filing of the appeal by Revenue against the O-I-O and consequently O-I-A (Impugned order) passed by the Commissioner (Appeals), is legally not sustainable.

9. On this technical ground itself, we find the impugned order to be erroneous. Accordingly, we set aside the same and allow the appeal filed by the appellant. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)