

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

REGIONAL BENCH – COURT NO.2

**Customs Miscellaneous Application (CROSS)No. 85349 of
2018**

(on behalf of Respondent)

in

Customs Appeal No. 87104 of 2017

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-0045 to 51-16-17 dated.
31.05.2016 passed by the Commissioner of Central Excise (Appeals-I), Pune)

Commissioner of Customs, Pune

41-A, ICE House, Sasoon Road,
Pune-411001.

.....Appellant

VERSUS

M/s. Ashapura Minechem Limited

278, 3rd Floor, Jeevan Udyog Building,
DN Road, Fort, Mumbai 400-001.

.....Respondent

WITH

**(i) Customs Miscellaneous Application (CROSS)No. 85352 of
2018 in Customs Appeal No. 87105 of 2017 (Commissioner of
Customs Pune); (ii) Customs Miscellaneous Application
(CROSS)No. 85351 of 2018 in Customs Appeal No. 87107 of
2017 (Commissioner of Customs Pune); (iii) Customs
Miscellaneous Application (CROSS)No. 85353 of 2018 in
Customs Appeal No. 87109 of 2017 (Commissioner of
Customs Pune); (iv) Customs Miscellaneous Application
(CROSS)No. 85350 of 2018 in Customs Appeal No. 87108 of
2017 (Commissioner of Customs Pune)**

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-0045 to 51-16-17 dated.
31.05.2016 passed by the Commissioner of Central Excise (Appeals-I), Pune)

Appearance:

Shri Bhushan Kamble, Authorized Representative for the Appellant
Shri Bharat Raichandani, Advocate for the Respondent

CORAM:

HON'BLE S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/88547-88551/2018

Date of Hearing: 14.12.2018
Date of Decision: 14.12.2018

PER: S.K. Mohanty

Revenue has filed these appeals against the impugned order dt.31.05.2016 passed by the Ld. Commissioner (Appeals-I), Pune.

2. Briefly stated, the facts of the case are that the respondent herein had exported Metallurgical Gibbsite Bauxite from Kelshi Port to China, as per the contract dt. 21.10.2014 entered into between the respondent and the overseas buyer. The shipping bills were provisionally assessed and the respondent had paid the duty on the FOB value. The assessments were made provisional for submission of the information and documents namely, final quantity report, Weight, final invoice value and freight etc. Upon submission of the desired documents, the original authority had finalized the assessment in respect of the shipping bills filed by the respondent, holding that under Section 14 (1) of the Customs Act, 1962, transaction value has to be determined based on the third party test reports and the test result of the load port in India. Considering the moisture content at the load port, the original authority had arrived at the final value of the exported goods and finalized the shipping bills, by calculating the differential duty/ refund payable and refundable to/by the respondent. Filling aggrieved with the original orders, the respondent herein had preferred appeals before the Ld. Commissioner (Appeals), which were disposed of vide the impugned order dt. 31.05.2016, in allowing the appeals in favour of the respondent. In the impugned order, the Ld. Commissioner (Appeals) has held that in terms of Section 14(1) *ibid* read with Rule 3 of the Customs Valuation Rules, the transaction value has to be considered as the actual amount received by the respondent. Being dissatisfied with the impugned order dt. 31.05.2016, Revenue has preferred the present appeal *inter alia*, on the ground that assessment done by the original authority based on the price actually payable as per the formula prescribed under the contract is the correct transaction value for the purpose of determination of the

duty liability. Pursuant to the appeals filed by the Revenue, the respondent also filed the Cross-objection in terms of Section 129 A(4) *ibid*.

3. The Ld. AR appearing for the Revenue reiterated the grounds urged in the appeal memorandum.

4. On the other hand, the Ld. Advocate appearing for the respondent, at the outset, submitted that the impugned order passed by the Ld. Commissioner (Appeals) was reviewed by the Committee of Commissioners and vide Review Order dt. 8.9.2016, the Committee has held that no appeal needs to be filed against such order. Thus, he submitted that the present Review Order dt. 8.8.2017 passed by the newly constituted Committee of Commissioners cannot be sustained for filing of appeals before the Tribunal against the impugned order dt. 31.5.2016 passed by the Ld. Commissioner (Appeals). Hence, Ld. Advocate prayed that the present appeals are liable to be rejected on the ground of maintainability. To support such stand, the Ld. Advocate has relied upon the judgement of Hon'ble Karnataka High Court in the case of C.C.E, & S.T. (LTU), Bangalore Vs,. Dell Intl. Services India P. Ltd.- 2014 (33) STR 362 (Kar.) and the orders of this Tribunal passed in the case of Commr. of C. Ex. Tirupati Vs. Sagar Sugars and Allied Products Ltd. 2009 (243) ELT 548 (Tri.-Bang.), Commissioner of Cus. (Port), Kolkata Vs. Payodhi Foods Pvt. Ltd. 2014 (307) ELT 740 (Tri.- Kolkata). Further, the Ld. Advocate also submitted that there is delay of almost 13 months in filing of the appeals before the Tribunal and that such delay cannot be condoned in terms of Section 129D (3) *ibid*.

5. Heard both sides and examined the case records.

6. We find that the impugned order was reviewed by the Committee of Commissioners and vide order dt. 8.9.2016, the said Committee had taken the view that no appeal shall be filed against the impugned order dt. 31.05.2016. Subsequently, the matter was referred by a newly constituted Committee of Commissioners, who

vide Review Order dt. 8.8.2017 have held that the impugned order passed by the Ld. Commissioner (Appeals) is not legal and proper and accordingly, directed the concerned officer for filing of appeal before the Tribunal. In the impugned Review Order, no such statutory provisions were mentioned, which empowers the authorities to again review the order, which was already reviewed earlier by the competent authorities. Once, a review committee has taken a decision not to file the appeal before the Tribunal, then in such circumstances, they become *functus officio* inasmuch as such Committee of Commissioners has no power to review its decision and such a review on re-examination of facts or position of law cannot be allowed. The ratio of judgments relied upon by the Ld. Advocate for the respondent squarely applies to the facts and circumstances of the case inasmuch as the position of law is well settled that review once done cannot be reopened or revised. Thus, we are of the considered view that the appeals filed by Revenue are not maintainable before the Tribunal on this preliminary issue of maintainability. Further, it is an admitted fact on record that the review order in the present case, was passed on 8.8.2017 in respect of the impugned order dt. 31.05.2016 passed by the Ld. Commissioner (Appeals). It is evident that the said review order has been passed after 13 months from the date of passing of the impugned order. Insofar as reviewing the order of the appellate Commissioner is concerned, sub-section (3) of Section 129D *ibid* mandates that the review order shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority. Proviso clause appended to the said sub-section provides that the Board may, on sufficient cause being shown, extend the said period by another thirty days. On careful reading of the said statutory provisions, it reveals that beyond the period of four months from the date of receipt of the impugned order, the appeal cannot be preferred by Revenue before the Tribunal. Further, no powers have been vested on the Tribunal to condone the delay in passing of the Review order beyond the prescribed time frame. Since Tribunal is a creature under the statute, it has to strictly follow the statutory provisions in

entertaining the appeal filed before it. Hence, on the ground of limitation also, the appeals filed by Revenue are not maintainable.

7. In view of the above discussions, we do not find any merits in the appeals filed by Revenue on the ground of maintainability as well as limitation. Accordingly, the same are dismissed. Cross-objections are disposed of.

(Operative part of the order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

sm