CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85611 OF 2014

[Arising out of Order-in-Original No: Commr./Adj./Cus/12/2013-14 dated 25th November 2013 passed by the Commissioner of Customs, Central Excise & Service Tax, Goa.]

MSPL Limited
Baldota Enclave, Abheraj Baldota Road
Hospet – 583 203 … ***Appellant***

versus

Commissioner of Customs, Central Excise & Service Tax
ICE House, EDC Complex, Patto Plaza, Panji
Goa – 403001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 86055 OF 2014

[Arising out of Order-in-Original No: Commr./Adj./Cus/12/2013-14 dated 25th November 2013 passed by the Commissioner of Customs, Central Excise & Service Tax, Goa.]

Commissioner of Customs, Central Excise & Service Tax
ICE House, EDC Complex, Patto Plaza, Panji
Goa – 403001 … ***Appellant***

versus

MSPL Limited
Baldota Enclave, Abheraj Baldota Road
Hospet – 583 203 ***…Respondent***

APPEARANCE:

Shri M S Nagaraja and Ms Kiran Chavan, Advocates for the assessee-appellant

Shri Priyesh Bheda, Joint Commissioner (AR) for Revenue

CORAM:

HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85981-85982/2025

DATE OF HEARING:	18/11/2024
DATE OF DECISION:	13/05/2025

PER: C J MATHEW

Before us are appeals of M/s MSPL Ltd and Commissioner of Customs, Central Excise & Service Tax, Goa impugning order[1] of Commissioner of Customs, Central Excise & Service Tax, Goa in which original authority has dropped proposal under section 28(4) of Customs Act, 1962 for recovery of ₹ 18,98,585, as differential duty on export of 'iron ore fines' against shipping bill no. 45/22.07.2008 and no. 63/22.09.2008, while directing finalization of provisional assessment of 13 shipping bills that had been assessed provisionally under section 18(1) of Customs Act, 1962 with the following directions

> *'24.1.7. On examining the allegation in the Notice and the counter tendered by the exporter, I find that for the purpose of arriving at the transaction value of export goods, the Statute has laid out clear cut provisions stipulating that the transaction value of any export goods will be the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation. Thus, in order to arrive at the correct transaction value, the time and place of exportation is very crucial and the said incident occurs on the date of assessment of goods by the*

[1] [order-in-original no. Commr./Adj./Cus/12/2013-14 dated 25th November 2013]

proper officer for the purpose of calculation of customs duty at the place of export i.e. Mormugoa Port, Goa. The value so arrived for the purpose of assessment is the transaction value declared by the exporter in the Shipping Bill supported by the Commercial Invoice.

24.1.8 The Final Invoice which has been prepared by the exporter on the basis of post test analysis report at the discharge port in China for checking the impurities, Fe Content, Moisture content are extraneous for the purpose of arriving at the transaction value of export goods. The test analysis carried out in the country of import has no bearing for the purpose of arriving at the value of goods.

24.1.9 Accordingly, I hold that the value of the goods will be the price declared in India at the time and place of exportation and for the purpose of finalisation the test report analysis carried out by the CRCL, Goa read with the actual quantity of goods delivered at the discharge port should be the criterion for arriving at the total value of the goods and based on which the rate of customs duty charged accordingly. When the delivered quantity is more and accepted by the importer at the discharge port, it cannot be ignored. There might be an error in computing the weight at the load port or the moisture content has not been properly determined at the load port. In one the statements it has been admitted also that they declared maximum moisture of 8% at the time of export but at disport the moisture was found to be only 4-4.5% resulting into higher quantity at discharge port. Therefore, the quantity found at discharge port and delivered to importer/buyer there can be validly adopted for calculating the duty involved.'

2. Even as the proposals in the show cause notice for confiscation

under section 113 of Customs Act, 1962 and for imposition of penalty under section 114, section 114A and section 114AA of Customs Act, 1962 was dropped. The appeal of Commissioner of Customs, Central Excise and Service Tax disputes the refund order no. 86/2009 dated 18th November 2009 and 94/2009 dated 26th November 2009 pertaining to the two shipping bills in which assessment had been finalized and the duty thereof assessed having been affirmed by the adjudicating authority.

3. M/s MSPL Ltd, a producer of 'iron ore fines', had effected the shipments from Mormugoa Port between 2008 and July 2010 and, even as the two bills were finalized on 18th November 2009 and 26th November 2009, proceedings were initiated for recovery of differential duty and for finalization of provisional assessment in the manner set out in the show cause notice dated 22nd February 2013.

4. Learned Counsel for appellant contends that adjudication in disputes arising from exports, provisionally assessed, did not lie with Commissioner of Customs as only 'proper officer', referred to in section 18(1) of Customs Act, 1962, could take up finalization. It was further contended that section 18 of Customs Act, 1962 does not provide a mode for finalization of provisional assessment which, as set out in

> '*18. Provisional assessment of duty.*

xxxxx

(2) When the duty leviable on such goods is assessed finally in accordance with the provisions of this Act, then-

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of the duty finally assessed, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) in the case of warehoused goods, the proper officer may, where the duty finally assessed is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.'

of Customs Act, 1962 it abundantly clear that such finalization should be in accordance with 17(4) of Customs Act, 1962. It was further contended that the assessment which had been finalized in November 2009 could not be the subject of proceedings under section 28(4) of Customs Act, 1962 inasmuch as the assessment was undertaken carried by 'proper officer' with determination thereof; consequently, the invoking of the extended period was, according to him, improper.

5. The issue of show cause notice except for finalization of provisional assessment in separate proceedings was, according to Learned Counsel, settled by the decision of a Larger Bench of the Tribunal in *ITC Ltd v. Commissioner of Central Excise, Mumbai*

[2004 (170) ELT 33 (Tri.-LB] which was affirmed by the Hon'ble Supreme Court in *Commissioner of Central Excise & Customs, Mumbai v. ITC Ltd [2006 (203) ELT 532 (SC)]*, by the Tribunal in *Commissioner of Customs, Mumbai v. Exotic Fashions [2010 (262) ELT 651 (Tri.-Mumbai)]* which was affirmed by the Hon'ble High Court of Bombay in *Commissioner of Customs (EP) v. Exotic Fashions [2010 (257) ELT 486 (Bom)]* as well as in *Commissioner of Customs (Import), Mumbai v. Orkay Silk Mills [2001 (133) ELT 698 (Tri.-Mumbai)]*.

6. According to Learned Authorized Representative, the refund claims pertaining to the two finalized assessments were not in accordance with prescribed procedure inasmuch as the finding that the documents had been submitted during the finalization was patently incorrect. It was further submitted that the order[2] of the Tribunal in *Commissioner of Customs, Goa v. Dream Logistics Co (I) Pvt Ltd*, disposing off appeal[3] against order[4] of Commissioner of Customs (Appeals), Goa, had settled the issue of the value to be adopted for the purpose of assessment of export of iron ore. It was also submitted that the adjudicating authority had properly determined that the acceptance of the quantity as delivered to the consignee was the final test of quantity of goods exported, The assessments were kept provisional

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[2] [final order no. 86856 of 2017 dated 4th April 2017]
[3] [C/86923/2013]
[4] [order-in-appeal no. GOA/CUS/GSK/12/2013 dated 18th February 2013]

inasmuch as the final value, to be paid in accordance with the contract, was to be determined in terms of ‘the moisture content’ in the ‘iron ore’ fines at the time of delivery of the consignment; it was, therefore, normal practice for assessments to be kept pending till delivery of such information from the overseas customer.

7. It is on record that the 13 of the 15 shipping bills impugned in the proceedings had been pending finalization when the show cause notice was issued. In fact, these 13 shipping bills continue to remain provisionally assessed and the adjudicating authority took it upon itself to determine the manner in which finalization was to be done. A plain reading of section 18 of Customs Act, 1962 makes it abundantly clear that the assessment was to be finalized in terms of section 17(4) of Customs Act, 1962 and by the ‘proper officer’ thereon. Commissioner of Customs is not the ‘proper officer’ and where the adjudicating authority exercised the powers vested in a subordinate authority, the finalization itself should have been undertaken. The determination by the Commissioner of Customs placed the ‘proper officer’ in a quandary inasmuch as it left no scope for application of mind on the part of the ‘proper officer’ and the final outcome a foregone conclusion. The exporter, on the other hand, is also faced with the difficulty that the Commissioner of Customs (Appeals) would have faced in challenging such order of finalization of provisional assessment in which the terms had already been

determined by the Commissioner of Customs. Furthermore, as the assessment is yet to be finalized cause of grievance would arise only at that stage and recourse thereafter could be had only through section 128 of Customs Act, 1962. While the 'proper officer' is at liberty to consider the evidence garnered by the investigation in finalization of the assessment, issue of notice by the investigating agency and determination thereof on the basis of placement of decision in the hands of the Commissioner of Customs is not envisaged under Customs Act, 1962. Consequently, the directions set out *supra* are without authority of law and, to that extent, the impugned order is set aside.

8. That the assessments were finalized in 2009 is common ground, that the determination by adjudicating authority lacked ingredients permitting invoking of the extended period owing to empowerment of the 'proper officer' to call for all documents required for finalization with any deficiency thereof not amounting to suppression, wilfull misstatement or collusion rendered the invoking of the extended period to have been contrary to law. There is, therefore, no scope for entertaining the appeal of Commissioner of Customs, Central Excise and Service Tax, Goa against dropping of proceedings insofar as the two shipping bills are concerned. For the above reasons, the impugned order is set aside to the extent of 13 shipping bills and the 'proper officer' is at liberty to proceed with the assessments as and

when deemed fit in accordance with section 18 of Customs Act, 1962.

9. The appeal of Revenue is dismissed.

(Order pronounced in the open court on 13/05/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*