

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 60396 of 2022

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/ICD/PPG/932/2022-23 dated 25.08.2022 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi]

**Commissioner of Customs
ICD Patparganj**
Patparganj,
Delhi 110096

.....Appellant(s)

VERSUS

Sedna Impex India Pvt Ltd
H.No. 105, H-3, Vardhman Plaza Tower,
Netaji Subhash Place,
Pitampura, New Delhi 110034

.....Respondent

APPEARANCE:

Present for the Appellant: Shri Pawan Kumar & Shri Anurag Kumar,
Authorized Representatives

Present for the Respondent: Shri R.K. Hasija & Shri Shivang Puri, Advocates

CORAM:

**HON'BLE Sh. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Sh. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

FINAL ORDER NO. 60358/2024

DATE OF HEARING: 24.04.2024

DATE OF DECISION: 25.06.2024

P. ANJANI KUMAR

The present appeal filed by the Revenue is directed against the impugned order no. CC(A)/CUS/D-II/ICD/PPG/932/2022-23 dated 25.08.2022 passed by the Commissioner of Customs (Appeals) New

Delhi, whereby the learned Commissioner (Appeals) has set aside the assessment made by the department on enhanced value as per acceptance/admission by the importer/assessee /respondent.

2. Briefly stated facts of the present case are that the importer/respondent M/s Sedna Impex India Pvt Ltd had imported different types of "Fabrics" and filed three Bills of Entry at ICD Ballabgarh on self assessment basis. The declared value of the goods in these Bills of Entry was found inadequate by the Assessing Officer as compared to the contemporaneous data of import of similar goods. Accordingly, the declared value of the goods was rejected in terms of Rule 12 of CVR, 2007 and the assessable value was enhanced in view of contemporaneous import data of similar goods. The differential duty in respect of all these three Bills of Entry comes to Rs.18,44,219/-. The importer accepted the enhanced value voluntarily in his reply to the queries raised by the Assessing Officer to justify the declared value. Thereafter, the importer filed appeal against the said assessment of Bills of Entry with enhanced value before the Commissioner (Appeals), who vide the Order-in-Appeal dated 28.08.2019, remanded the matter back directing the Assessing Authority to pass speaking order under Section 17(5) of the Customs Act, 1962. Thereafter, in compliance of the Commissioner (Appeals)'s order, the Deputy Commissioner of Customs passed a speaking order dated 18.10.2021 under Section 17(5) of the Act *ibid* specifying the reasons of rejecting the self declared value under Rule 12 of the CVR, 2007 and re-determined the assessable value on the

basis of contemporary import under Rule 5 of the CVR, 2007 specifying as to why the provisions of Rule 4 of CVR, 2007 was not applicable and why re-determination was done under Rule 5 *ibid*. Aggrieved by the said speaking order, the importer again filed the appeal before the Commissioner (Appeals) who vide the impugned order, set aside the re-assessment of goods at enhanced value and consequently, allowed the appeal filed by the importer/assessee mainly on the following grounds:

(i) The Appellate authority noted that the Assessing Authority was referring to contemporaneous imports of similar goods. However, no Bills of Entry have been cited by the Assessing Authority in this regard which was considered for reference. Despite remand directions of the Appellate Authority to issue a speaking order, the Assessing Authority chose not to disclose details of the relied upon contemporaneous data.

(ii) The Appellate authority noted that the Importer had produced copies of Outward Remittance Transaction Advice by the Importer to the foreign supplier to substantiate the correctness of the declared value. There was no allegation that these documents were not correct. There was no allegation that the Importer and the foreign supplier were related or any amount over and above the declared value was paid.

(iii) The assessing officer is heavily relying upon letters of acceptance, for two bills of entry, in the impugned order. However, once protest has been lodged and the Assessing Officer decided to issue the speaking order, the acceptance loses its relevance and the rejection of declared value and

its re-determination has to be strictly as per CVR, 2007 and section 14 of the Customs Act, 1962.

Being aggrieved by the said order, the Revenue filed the present appeal challenging the impugned order mainly on the ground that the Commissioner (Appeals) did not appreciate that the importer in this case after seeing the contemporaneous import data (prevailing during that period) has agreed to re-determination of value in their reply to query in EDI system and voluntarily forfeited their right of show cause notice and opportunity of personal hearing. As per his acceptance, the value was enhanced by the department and duty was discharged by the importer without showing any protest upto the date of out of charge. The protest, wherever shown by the importer at appeal stage is post clearance from which it cannot be concluded that the payment of duty by the importer was under protest. The department further submits that Section 17(5) of the Customs Act, 1962 precludes passing a speaking order on re-assessment in the case importer confirms his acceptance of re-assessment in writing. The department has also submitted that the various decisions relied upon by the learned Commissioner (Appeals) while setting aside the assessment made by the Deputy/Assistant Commissioner, are not applicable to the facts and circumstances of the present case.

3. Heard both the parties and perused the material on record.

4.1 The learned Counsel for the respondent raises the preliminary objection that this appeal is not maintainable in view of the directions/instructions/circulars issued by the Ministry/Board

prohibiting the filing of appeals below the stipulated monetary threshold limit of Rs.50 lakhs.

4.2 He further submits that in order to reduce litigation and streamline the process of litigation management, the Ministry of Finance, Department of Revenue, CBEC had introduced National Litigation Management Policy, whereunder, if a matter involved disputed tax less than a specified amount, then the officers were not required to challenge such orders before the CESTAT, the High Courts or the Supreme Court and if they have already challenged, then they were required to withdraw those appeals which were lesser than the prescribed monetary limit and pending before various tribunals.

4.3 He further submits that in furtherance of these objectives, the Ministry of Finance introduced the monetary limit instructions on 20.10.2010 which was revised on 17.08.2011 directing its officers fixing a monetary limit below which appeal shall not be filed in any Tribunal, the High Court or the Supreme Court. The monetary limits which were prescribed in the instructions dated 17.08.2011 were as follows:

Sl. No.	Appellate Forum	Monetary Limit
1.	CESTAT	Rs. 5,00,000/-
2.	High Courts	Rs. 10,00,000/-
3.	Supreme Court	Rs. 25,00,000/-

4.4 He further submits that the only exception where the above-mentioned monetary limit would not apply were cases where the constitutional validity of the provisions of an Act or Rule is under

challenge or where the notification/instruction/order/circular has been held illegal or ultra vires. Thereafter, the Ministry of Finance on 02.11.2023, modified the earlier instruction dated 17.08.2011 by way of new instructions dated 02.11.2023 wherein the CBIC has fixed the following monetary limits below which appeal shall not be filed in the CESTAT, the High Courts and the Supreme Court:

Sl. No.	Appellate Forum	Monetary Limit
1.	Supreme Court	Rs. 2 Cr.
2.	High Courts	Rs. 1 Cr.
3.	CESTAT	Rs. 50 Lakh

However, in paragraph 2 of the instructions dated 02.11.2023, certain exceptions to the monetary limit for filing of the appeal have been provided, such as:

- i) Where the constitutional validity of the provisions of an Act or Rule is under challenge.
- ii) Where Notification/Instruction/Order/Circular has been held illegal or ultra vires.
- iii) Classification and refund issues which are of legal and/or recurring nature.

Further, paragraph 3 of the instructions dated 02.11 2023 requires withdrawal of all pending cases, before the CESTAT, the High Courts and the Supreme Court which are below the monetary limit prescribed therein.

4.5 The learned Counsel for the respondent further submits that the CBIC's instructions dated 02.11.2023 are binding on the department because the said instructions have been issued under Section 131BA of the Customs Act, 1962. Section 131BA of the Act empowers the Board to issue instructions fixing monetary limits for the purpose of regulating the filing of appeal. Relevant extract of Section 131BA of the Act is reproduced herein below:

"131BA : Appeal not to be filed in certain cases.

(1) The Board may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Principal Commissioner of Customs or Commissioner of Customs under the provisions of this Chapter.

(5) Every order or instruction or direction issued by the Board on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing appeal. application, revision or reference shall be deemed to have been issued under sub-section (1), and the provisions of sub-sections (2), (3) and (4) shall apply accordingly."

4.6 He further submits that it has been consistently held by the CESTAT, the High Courts and the Supreme Court that the Notification/Instruction/Order/Circular issued by the Board is binding on the department.

4.7 He further submits that it is not open to the department not to follow the instructions dated 02.11.2023. He refers to the decision of

Hon'ble Bombay High Court in the case of **Commr of CGST vs. Dorf Ketal Pvt Ltd – 2019 (366) ELT 66 (Bom.)**, wherein the Hon'ble High Court has held that the Circular is issued in exercise of powers under Section 35R of the Central Excise Act, 1944, which pertains to appeal not to be filed in certain cases, has a statutory force.

4.8 The learned Counsel further submits that the Ministry of Finance clearly stated in its instructions dated 02.11.2023 that it does not want to pursue any litigation before the CESTAT where an appeal involves duty of less than 50 lakhs, the delegatee/agent of the Ministry of Finance cannot seek to file an appeal in defiance of and contrary to the instructions of its master i.e. the Ministry of Finance.

4.9 He further submits that the present appeal does fall within the instructions issued by the Ministry of Finance. He also submits that the department is wrongly justifying the maintainability of the present appeals by relying upon the Miscellaneous Order passed in the case of **CCE & CGST, Jaipur-I vs. Century Metal Recycling Private Limited – 2024 (3) TMI 1245 CESTAT New Delhi** which is *per incuriam* as it fails to follow the decisions of various High Courts and the Supreme Court and also the instructions issued by Ministry of Finance/CBIC prescribing the monetary limit below which the appeals shall not be filed.

4.10 He further submits that the decision in the case of **Century Metal Recycling Private Limited** (supra) is *per incuriam* for the reasons:

(a) Failed to appreciate that the instructions dated 02.11.2023 have been issued under Section 131BA of the Customs Act, 1962 wherein Board has been empowered to issue instructions for the purposes of regulating the filing of appeal. The rulings of the Courts pronounced in respect of the instructions issued under section 151A of the Act for the purpose of uniformity in the classification of goods or with respect to the levy of duty thereon or for the implementation of any other provisions of this Act or any other law, has wrongly been referred to and relied upon in the said decision.

(b) The decision rendered is *prima-facie* per incuriam due to its failure to consider and apply the authoritative ruling of the Hon'ble Jammu & Kashmir High Court in the case of ***CCE & CGST, Jammu vs. M/s Narbada Industries - CEA No. 10 of 2020 (J&K High Court)***.

(c) The Hon'ble Jammu & Kashmir High Court while interpreting the National Litigation Policy and specifically the phrase "monetary limits below which appeal shall not be filed", in its aforementioned pronouncement lucidly elucidated that the said phrase pertains to the monetary threshold of a singular appeal, rather than the aggregate amount of multiple appeals. This interpretation is founded on the fundamental principle that each appeal represents a distinct cause of action, necessitating separate consideration in determining the applicability of monetary thresholds.

4.11 He further relies on the following decisions of the CESTAT, the High Courts and the Supreme Courts, wherein the Courts have dismissed the appeals of the department due to low tax effect and the said decisions have been passed after considering the Board's instructions issued from time to time:

- ***PCC Vs. CMR Nikkei India Pvt Ltd - 2024 (1) TMI 291 SC***
- ***Commr of CGST vs. Dorf Ketal Pvt Ltd – 2019 (366) ELT 66 (Bom.)***
- ***CCE vs Suvarna Sanjivani Sugarcane Transport – 2017 (355) ELT 238 (Bom.)***
- ***CCE Vs. M/s Kanam Latex Industries (P) Ltd - 2023 (11) TMI 1167 SC***
- ***Commissioner of Customs (Import) Vs. M/s Atlas Mercantile Pvt Ltd - 2023 (11) TMI 1178 SC***
- ***CC (Import) Vs. M/s Gems Nuts And Products Exports Co. Pvt Ltd - 2023 (11) TMI 1180 SC***
- ***CC Chennai-II Vs. M/s Mitsubishi Electric India Pvt Ltd - 2024 (D) TMI 202 SC***
- ***CC Vs. FJM Cylinders Pvt Ltd - 2024 (2) TMI 1325 Delhi High Court***
- ***Commissioner of Customs Vs. Disha Tulsiani, Ashok Kumar Tahlani, Disha Tulsiani, Nirmal Tulsiani - 2024 (3) TMI 1058 Allahabad High Court***
- ***Commissioner of CE & CGST, Jammu Vs. M/s Narbada Industries, CEA No. 10 of 2020 (J&K High Court)***
- ***CC Vs. Panacea Biotech Ltd - 2024 (1) TMI 580 CESTAT, New Delhi.***
- ***CC Vs. Kulcip Medicines P Ltd – 2009 (14) STR 608 (P&H)***
- ***Ambuja Cements Ltd vs. UOI – 2009 (236) ELT 431 (P&H)***

- ***CC, Jamnagar (Prev) Vs. J M Baxi And Company - Customs Appeal No. 10581 of 2021-DB, CESTAT Ahmedabad***
- ***CC, Ahmedabad Vs. Killick Nixon Ltd - Customs Appeal No. 12912 Of 2014-DB, CESTAT Ahmedabad***

5. On the other hand, the learned Authorized Representative for the Appellant-Revenue justified the filing of the appeal on the ground that the department has not instructed him to withdraw the appeal; though he agrees that the duty involved in the appeal is less than Rs.50 lakhs. He further submits that it is within the discretion of the Commissioner to withdraw a particular appeal or not. Further, he submits that the appeal falls under exception as mentioned in the Circular dated 02.11.2023. He relies on the interim order passed by the Delhi Bench of this Tribunal in the case of ***Century Metal Recycling Private Limited*** (supra).

6. We have carefully considered the submissions made by both the parties and perused material on record; and also gone through the various decisions relied upon by both the sides. We find that for reduction of litigation, the CBIC has issued circulars/instructions from time to time instructing the department not to file the appeal and in some cases, if it has already filed, not to press the appeal before higher authorities i.e. the CESTAT, the High Courts and the Supreme Court as the case may be, where the duty amount involved is below the minimum threshold limits respectively prescribed in such circulars. In the present cases, we are concerned with the CBIC's latest circular dated 02.11.2023, wherein it has been specifically

prescribed that no appeal shall be filed before the CESTAT below the monetary limit of Rs.50 lakhs and if already filed, will have to be withdrawn. These instructions have been issued in exercise of its power under Section 131BA of the Customs Act, 1962. The perusal of the circular cited supra shows that the same prescribes monetary limit below which the department shall not file appeal before the CESTAT, the High Courts and the Supreme Court. In so far as, the CESTAT is concerned the monetary limit prescribed is Rs.50 lakhs. Para 3 of the said circular prescribes that in respect of the pending cases before the CESTAT, the High Courts and the Supreme Court which are below the monetary limits, process of withdrawal of the appeal would be undertaken by the department.

7. Further, we find that the present appeal falls within the instructions as prescribed in the circular dated 02.11.2023. We also note that the CESTAT, the High Courts and the Supreme Court have been consistently dismissing the appeals of the Revenue if the same are below the monetary limits as prescribed in circulars issued by CBIC from time to time.

8. It is pertinent to mention here that the amount of duty involved in the appeal is below of the threshold limit prescribed in circular dated 02.11.2023 issued by the CBIC wherein it is provided that if the duty amount involved is less than Rs.50 lakhs, then no appeal shall be filed before the CESTAT, and if already filed, the same will be withdrawn by the department.

9. In this regard, we may refer to the decision of the Bombay High Court in the case of **CCE vs Suvarna Sanjivani Sugarcane Transport – 2017 (355) ELT 238 (Bom.)**, wherein the Hon'ble High Court has observed in para 9 as under :

"9. *The Division Bench of this Court at Panaji (Goa) of which one of us (Anoop V. Mohta, J.) was a party, while dealing with Sec. 131BA of the Customs Act, 1962 read with Sec. 35R of the Central Excise Act, 1944 and the aspect of reduction of litigation referring to monetary limits from time to time for filing appeals by the department in a case of Commissioner of Customs and Central Excise v. Sesa Goa Ltd., 2017 (3) Bom.C.R. 470 has reiterated as under:*

4. Apart from the above position of law the Ministry of Finance issued certain resolutions of excise and customs from time to time and has issued instructions/circulars with clear intention to support the Government cases for reduction of litigation referring to the monetary limits from time to time, for filing appeals by the department before CESTAT/High Court and Supreme Court referring to power conferred by Section 35R of the Central Excise Act, 1944 and Section 131BA of the Customs Act, 1962 and related provisions of the Finance Act, 1994.

*5. * * * * **

6. There is no issue that the appeals filed by the department in the year 2012 having monetary limits of below 15/20 lakhs. The above provisions and instructions/circulars therefore covers the case of disposal of these appeals on the same ground. The learned Counsel appearing for the respondents has no objection for such disposal. We are, therefore, inclined to do so.

7. However, it is made clear that in view of the specific provision of Section 131BA(2) as reproduced and emphasized above it is necessary to observe that once the appeals are disposed of in view of the above circumstances, based upon such circulars/instructions "it shall not preclude such Commissioner of Customs from filing any appeal, application, revision or reference in any other case involving the same or similar issues or questions of law."

Further, in the case of **CC Vs. FJM Cylinders Pvt Ltd - 2024 (2) TMI 1325 Delhi High Court**, the Hon'ble Delhi High Court has observed in para 2, 3 & 4 as under:

"2. Subject Appeal is covered by notification dated 2.11.2023 read with notification dated 17.08.2011 issued by the Central Board of Indirect Taxes and Custom on the subject "Reduction of Government litigation- providing monetary limit for filing appeals by departments before CESTAT/High Court/Supreme Court regarding" The monetary limit prescribed for filing an appeal before the High Court has been enhanced to Rs. 1 Crore by notification dated 02.11.2023.

3. The instructions direct not only for not filing an appeal but also withdrawal of pending cases as per the revised limit.

4. Since the subject appeal involves a duty of Rs.40,21,173/- which is the below the monetary limit prescribed and is not covered by the exceptions stipulated in the subject notification this appeal is dismissed on the ground of Low Tax Effect."

Further, in the case of **CC Vs. Panacea Biotech Ltd - 2024 (1) TMI 580 CESTAT, New Delhi**, the Delhi Bench of this Tribunal has held in para 9 & 10 as under:

"9. From the contents of the aforesaid letter also, we do not think that the present appeal by the Department where the revenue involved is less than what has been fixed for filing an appeal to CESTAT would be maintainable and hence the same needs to be dismissed on that ground itself.

10. The learned Counsel for the respondent has pointed out to an order of the Supreme Court in Commissioner of Customs, Rajasthan Versus Sagar Suitings Pvt. Ltd - (2023) 3 Centax 147 (S.C.), where civil appeal filed by the Revenue was dismissed as the tax amount involved was less than the prescribed limit as specified in the notification for the Revenue to appeal and left the question of law open. We feel that the Instructions have been issued with the object to reduce the litigation involving meagre amount of revenue and where no substantial question of law of the nature specified arises for consideration."

Further, in the case of **CC Vs. Kulcip Medicines P Ltd – 2009 (14) STR 608 (P&H)**, the Hon'ble High Court of Punjab & Haryana has observed in para 12 as under:

"12. We are further of the view that the circulars issued by the Board are binding and meant for adoption for the purposes of bringing uniformity. In that regard reliance may be placed on the judgments of Hon'ble the Supreme Court in the cases of Ranadey Micronutrients v. Collector of Central Excise - 1996 (87) E.L.T. 19 (S.C.) and Paper Products Ltd. v. Commissioner of Central Excise - 1999 (112) E.L.T. 765 (S.C.) = (1999) 7 SCC 84. If the aforesaid principle is applied to the facts of the present case there does not remain any doubt that the circular issued by the Board is to be considered as binding and cannot be deviated even by the department. On that account also the expression 'clearing and forwarding agent' have to be interpreted in the light of the circular."

Similarly, the Hon'ble High Court of Punjab & Haryana in the case of **Ambuja Cements Ltd vs. Union of India – 2009 (236) ELT 431 (P&H)** has held in para 9 & 10 as under:

9. It is well settled that the circulars issued by the Board are binding and aims at adoption of uniform products. In that regard reliance has been rightly placed on the judgment of Hon'ble the Supreme Court in the case of Paper Products Ltd. (supra) and such circulars are binding on the department. Placing reliance on earlier judgments of the Supreme Court in the cases of CCE v. Usha Martin Industries, 1997 (94) E.L.T. 460 (S.C.) = (1997) 7 SCC 47; Ranadey Micronutrients v. CCE, 1996 (87) E.L.T. 19 (S.C.) = (1996) 10 SCC 387; CCE v. Jayant Dalal (P) Ltd., 1996 (88) E.L.T. 638 (S.C.) = (1997) 10 SCC 402 and CCE v. Kores (India) Ltd., 1997 (89) E.L.T. 441 (S.C.) = (1997) 10 SCC 338, Hon'ble the Supreme Court concluded in para 5 as under :-

"5. It is clear from the abovesaid pronouncements of this Court that, apart from the fact that the Circulars issued by the Board are binding on the Department, the Department is precluded from challenging the

correctness of the said Circulars even on the ground of the same being inconsistent with the statutory provision. The ratio of the judgment of this Court further precludes the right of the Department to file an appeal against the correctness of the binding nature of the Circulars. Therefore, it is clear that so far as the Department is concerned, whatever action' it has to take, the same will have to be consistent with the Circular which is in force at the relevant point of time."

10. *It is, thus, evident that the revenue is precluded from challenging the correctness of the circular even on the ground of the same being inconsistent with statutory provisions. It goes further to limit the right of the revenue to file an appeal against the correctness of the binding nature of the circular. Therefore, there is no escape from the conclusion that the circular is binding on the revenue."*

10. In view of our discussion and by following the ratios of the various decisions cited supra, we are of the considered opinion that the present appeal filed by the department is not maintainable in view of the instructions dated 02.11.2023 issued by the Board and consequently we dismiss the appeal leaving the question of law, if any, open.

(Order pronounced in the court on 25.06.2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)