CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Customs Appeal No.41383 of 2016

(Arising out of Order-in-Appeal No.91/16 dated 05.04.2016 passed by Commissioner of Customs & Central Excise (Appeals-2), Trichy)

Commissioner of Customs (Preventive) .... **Appellant**
No.1, Williams Road
Cantonment, Trichy 620 001

VERSUS

Tamilnadu Newsprint and Papers Ltd. ... **Respondent**
Kagithapuram, Karur District,
Pin-639 136.

APPEARANCE :

Ms. Annadalakshmi Ganeshram, Authorized Representative for the Appellant
Shri R.R. Padmanabhan, Consultant for the Respondent

CORAM :

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No.41019/2026

DATE OF HEARING: 27.03.2026
DATE OF DECISION: 11.09.2026

Per: Shri Ajayan T.V.

Revenue is in appeal against the Order-in-Appeal No. 91/16-TRY(CUS) dated 05.04.2016 passed by the Commissioner of Appeals (Appeals-II), Tiruchirappalli, whereby, the Appellate Authority has set aside the Order-in-Original No.37/2015, dated 02.09.2015 of the Adjudicating Authority dismissing the refund claim filed by the Respondent as time barred. By the impugned order the Appellate Authority allowed the appeal and directed the lower authority to consider the refund claims filed by the appellant.

2. Brief facts are that the Respondent had imported non-coking coal, under Bill of Entry No.3551653 dated 17.10.2013 which was assessed provisionally for want of original documents and test report. On

production of the relevant documents by the Respondent, the Assistant Commissioner of Customs, Nagapattinam, finalised the Bill of Entry by passing the Order-in-Original No. 35/2014, dated 30.04.2014 ordering a refund of Rs.75,50,539/- being the excess amount of duty paid by the Respondent at the time of provisional assessment. Accordingly, the Respondent filed a refund claim dated 13.05.2015 received by the Department on 15.05.2015 claiming refund of said amount as per Section 27 of the Customs Act, 1962. The claim was returned under a deficiency memo and was resubmitted vide letter dated 04.06.2015, received by the department on 09.06.2015.

3. The Department, being of the view that the refund claim has been filed on 09.06.2015 whereas the Order in Original No.35/2014 finalising the provisional assessement was issued on 30.04.2014 and hence the refund claim was filed beyond the limitation period of one year; issued a Show Cause Notice dated 06.07.2015 to the Respondent. The Respondent, in its reply dated 16.07.2015, inter-alia contended that the Order-in-Original No.34/2014 dated 30.04.2014 issued for finalization of provisional assessment was received by them only on 10.06.2015 and enclosed the postal cover in evidence. It was contended that therefore, the date of filing of the refund claim complete in all respects, even when taken as 09.06.2015, was within 1 year in accordance with sub section (1B) (c) of Section 27 of Custom Act, 1962. After due process of law, the Adjudicating Authority passed an Order No.37/2015, dated 02.09.2015, rejecting the claim as barred by limitation. The Adjudicating Authority held that the eligibility of the refund was decided during the finalisation, of the provisional assessment of the said Bill of Entry, by Order-in-Original No.35/2014 dated 30.04.2014. As per the sub section (1B)(c) of section 27, when any duty is paid provisionally under Section 18 the limitation of 1 year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of reassessment from the date of such reassessment. The Adjudicating Authority held that accordingly, the refund claim even if the date of filing is taken as 13.05.2015/15.05.2015 is time barred as the same is beyond the period of one year from the date of finalization of the order. The Adjudicating Authority rejected the refund claim as time barred.

4. Aggrieved, the appellant preferred an appeal before the Appellate Authority. The Appellate Authority held that in terms of Section 153 of the Customs Act, 1962 orders have to be sent by registered post and the date on which the order is communicated to the party is the relevant date. It was held that the department has not sent the order by RPAD and reliance was placed on the decision of this Tribunal in ***M/s.Indian oil corporation limited vs CC 2014 (308) ELT 169 (Tri.-Del)*** where by it was held that date on which public order is served on the person to whom it is meant is counted for remedial measures. It was held that the appellant had produced the copy of the postal cover bearing seal and stamp of the postal authority as proof with respect to the Respondent's claim that the OIO was received on 10.06.2014. It was further held that the department had not provided any evidence with respect to their stand that the date of reckoning for the purpose of limitation is 30.04.2014. In the absence of any such evidence the claim of the Respondent was accepted that the OIO dated 30.04.2014 was received on 10.06.2014. Credence was given to the Respondent's claim as the Respondent was a government undertaking. The Appellate Authority has therefore set aside the order and directed the refund claim to be considered. Aggrieved, the Revenue is in appeal before this Tribunal.

5. Ms. Anandalakshmi Ganeshram, Ld. Authorized Representative appearing for the Appellant department contended that in the instant case the order of finalization of provisional assessment by the Original Authority *vide* the OIO No.35/2014 dated 30.04.2014 led to determination of the fact that excess duty has been paid by the Respondent on the goods at the time of provisional assessment. Section 27 (1B)(c) has specified that where any duty is paid provisionally under Section 18 the period of limitation of 1 year shall be computed from the date of adjustment of duty after the final assessment thereof. It was argued that the date of adjustment is the date of order since by the original order itself the Proper Officer has appropriated the duty due. It was therefore argued that the period of limitation to file refund started to run with effect from the said date of adjustment, *viz* 30.04.2014. It was therefore contended that there is no legal necessity to examine the law of limitation set out under Section

27 of the Customs Act with reference to the date of communication of the order by the authority to the applicant. It was also argued that the Appellate Authority has concluded without any basis that the department could not provide proof of date of dispatch to the appellant of the original order and that the order was received on 10.06.2014 only. Ld. Authorised Representative drew attention to the ground that there is no evidence to state that the said cover produced by the Respondent in fact contained the subject Order-in-Original as claimed by the Respondent as it could have been some other correspondence made by the Assistant Commissioner to the importer and that therefore the decision is based on unverified facts. It was thus argued that the Appellate Authority erred in allowing the appeal of the Respondent.

6. Shri R.R. Padmanabhan, Ld. Consultant appearing on behalf of the Respondent supported the impugned order stating that the appellant had not adduced any evidence to show that the Order-in-Original finalising the provisional assessment was delivered earlier to 10.06.2015 as has been contended by the Department. He prayed that the order be upheld.

7. We have heard both sides and perused the materials available on the record.

8. The core dispute is confined to the question whether the refund claim of the Respondent, admittedly relatable to duty paid provisionally under Section 18 of the Customs Act, 1962 and finalised vide Order-in-Original No.35/2014 dated 30.04.2014, was filed within the limitation of one year prescribed under clause (c) of sub-section (1B) of Section 27 of the Act. That clause provides that where duty is paid provisionally under Section 18, the limitation of one year "shall be computed from the date of adjustment of duty after the final assessment thereof or in case of reassessment, from the date of such re-assessment". The Adjudicating Authority read this clause literally and reckoned the year from 30.04.2014, the date the order was passed. The first appellate authority, relying on the decision of this Tribunal in ***Indian Oil Corporation Ltd. v. Commissioner of Customs (Export), New Delhi, 2014 (308) E.L.T. 169 (Tri.-Del.)***, held that the year could

run only from the date the order was actually communicated to the Respondent, found on facts to be 10.06.2014, and not from the date the order was signed.

9. It is true that clause (c) does not, in as many terms, employ the word "communicated". The submission, at first blush, on a bare reading of the text, is of some force, but it cannot be accepted once the provision is examined in the light of the settled principle governing limitation running against a party seeking a remedy.

10. In ***Collector of Central Excise, Madras v. M.M. Rubber & Co., 1991(55)ELT 289 (SC)***, the Hon'ble Supreme Court drew a clear distinction between a limitation prescribed for a statutory authority to exercise a power of its own motion, where the period runs from the date the order is made because the authority cannot plead ignorance of its own act, and a limitation prescribed for a person aggrieved to invoke a remedy against an order, where actual or constructive knowledge of the order is an essential element without which the order cannot be said to have become binding on him and the limitation cannot be said to have commenced. A refund claim under Section 27 is unmistakably of the latter kind. The Respondent is not the author of the order finalising the provisional assessment but the party aggrieved by the excess duty locked up in it, and it would be incongruous to hold that a period within which it must act begins to run before such an order is communicated to it.

11. This is the very view this Tribunal took in ***Indian Oil Corporation Ltd. v. Commissioner of Customs (Export), New Delhi, 2014 (308) E.L.T. 169 (Tri.-Del.)***, holding that the date on which a public order is served on the person to whom that is meant, such date of service is counted for remedial measure if the person on whom the order served is aggrieved. That decision also addressed a distinct question, whether refund arising from finalisation of provisional assessment prior to 13.07.2006 was at all governed by Section 27; that part of the ratio has no bearing on the present facts, the provisional assessment here having been finalised long after that date and Section 27 being admittedly

attracted. It is only the first proposition, on the relevant date for limitation, that is sought to be applied here.

12. The question was revisited on facts strikingly similar to those before us in ***GAIL (India) Ltd. v. Commissioner of Customs, Ahmedabad, (2024) 20 Centax 515 (Tri.-Ahmd.)***, where this Tribunal was dealing with a case of refund of duty paid provisionally on import of LNG, computed by the Department from the date of finalisation, and by the assessee from the date the finalisation order was served. Following *Indian Oil Corporation Ltd*., as well as other decisions, namely, ***Hindustan Times Ltd v. CC, 1991 (56) ELT 856 (Tri)*** and ***M/s. Hind Offshore Pvt Ltd v. CC, Mumbai Import-I, 2022 (6) TMI 1090-CESTAT MUMBAI***, it was held that the date of service of finalization of provisional assessment is relevant date for filing refund claim under Section 27(1B)(c). Revenue carried the matter to the Hon'ble Gujarat High Court, which framed the very question that addressed the essence of the dispute before us, "*Whether the CESTAT is right in holding that "date of service" of finalization of provisional assessment is the relevant date for computation of period of limitation for filing refund claim when section 27(1B)(c) of the Customs Act,1962 provide the date of adjustment of duty after the final assessment or date of re-assessment, as the relevant date for computation of period of limitation*?. In the said matter, reported as ***Principal Commissioner of Customs, Ahmedabad v. GAIL (India) Ltd., (2024) 20 Centax 516 (Guj.)***, the High Court answered it against Revenue, holding that communication of the order of finalisation to the assessee "is a condition sine qua non to file the refund claim within one year as per Section 27(1B)(c) from the date of finalization", and that mere uploading of the assessment order on the Department's portal, without more, does not satisfy that requirement. The appeal of Revenue was dismissed. Thus, the issue whether this Tribunal was right in reading "date of service" into a clause that speaks only of the "date of adjustment of duty", is therefore no more res-integra.

13. No decision of the Hon'ble jurisdictional High Court, or of this Tribunal, taking a contrary view of clause (c) has been placed before us, nor has any been found. In the absence of one, we see no warrant for departing

from the ratio of *GAIL (India) Ltd. (Guj.)*, which materially is also in consonance with the general principle laid down *in M.M. Rubber & Co*, that has already been noticed by us above. We accordingly, have no hesitation in holding that the limitation of one year under Section 27(1B)(c), for a refund of duty paid provisionally under Section 18, runs from the date the order finalising the assessment is communicated to the person entitled to the refund and not from the bare date on which it is passed.

14. That the order must in fact be shown to have been communicated, and not merely dispatched, is also equally settled. Section 153 of the Act, both as it stood at the relevant time, and after it was substituted by Finance Act 2018, requires an order to be tendered directly or sent by registered or speed post or by courier with acknowledgement due, and permits recourse to affixation on the notice board only where service in that manner is not possible. The Larger Bench of this Tribunal, construing Section 153 as it then stood alongside the pari materia Section 37C of the Central Excise Act, 1944, held in ***Margra Industries Ltd. v. Commissioner of Customs, New Delhi, 2006 (202) E.L.T. 244 (Tri.-LB)***, that despatch of an order by post without proof of its delivery is not sufficient compliance, that no presumption of service under Section 27 of the General Clauses Act, 1897 is available where the special Act itself prescribes the mode of service, and that an assessee's right to agitate a matter cannot be defeated by such a presumption. The Hon'ble Madras High Court, in ***Schiller Healthcare India Pvt. Ltd. v. Assistant Commissioner of Customs, 2021-TIOL-1357-HC-MAD-CUS***, likewise held that the indirect modes of service in Section 153(1)(d) and (e) can be resorted to only after service by the direct modes in clauses (a) to (c) has been attempted and has failed, and set aside an order where the Department could not produce an acknowledgement of the registered dispatch it relied upon.

15. This very Bench had occasion to apply the same principle, in the pari materia setting of Section 37C of the Central Excise Act, 1944, in ***M/s. Rane (Madras) Ltd. v. Commissioner of GST and Central Excise, Chennai South Commissionerate, 2025(5) TMI 1908-CESTAT CHENNAI***. Following the Hon'ble Chhattisgarh High Court *in Vijay*

Pratap v. CCE & ST, 2025 (3) TMI 963-Chhattisgarh High Court, and the Hon'ble Supreme Court in *Saral Wire Craft Pvt. Ltd. v. Commissioner, Customs, Central Excise & Service Tax*, it was held that reliance on the bare fact of despatch, without proof of delivery to the person concerned, cannot sustain a finding that an order stood communicated, and that the manner of service prescribed in a statute must be strictly complied with. What was said there of an order sought to be enforced against an assessee applies with equal, if not greater, force where, as in the instant case, it is the assessee who stands denied a remedy for want of proof that an order was ever brought to its notice. Thus, the burden to prove that an order that adversely affects an assessee has been served on him as per the prescribed method, is always on the Revenue.

16. It makes no difference for this purpose that Order-in-Original No.35/2014 was one finalising a provisional assessment rather than an order of adjudication in the strict sense. Section 153 speaks of an order or decision without qualification, and an order of provisional assessment is itself expressly brought within the definition of "assessment" in Section 2(2) of the Act. As this Tribunal observed in ***Commissioner of Customs (Export), Mumbai v. Goodwill Sales Pvt. Ltd., 2016 (343) E.L.T. 1193 (Tri.-Mumbai)***, assessment and adjudication, though conceptually distinct, are alike orders or decisions for the purposes of the Act. Nothing in Section 153 confines its protection to orders of adjudication to the exclusion of orders of assessment.

17. Turning to the facts, it is not disputed, and Ld. Authorized Representative was unable to point to anything on record to the contrary, that Revenue has produced no evidence of having dispatched Order-in-Original No.35/2014 to the Respondent by registered post, speed post or any other mode contemplated under Section 153, let alone evidence of its delivery that it was delivered on a date other than 10.06.2014. The Respondent, on the other hand, produced before the first appellate authority the postal cover bearing the seal and stamp of the postal department, establishing receipt on 10.06.2014. The burden of proving communication lying squarely on the Department, and

Revenue not having discharged it even at the threshold of showing despatch, the finding of the first appellate authority that the order came to the Respondent's knowledge only on 10.06.2014 cannot be faulted. The submission that the cover produced may have contained some other correspondence remains a bare surmise, unsupported by any evidence of what else, if anything, the Department sent to the Respondent around that date, and it cannot be permitted to unsettle a finding of fact resting on unrebutted documentary proof.

18. Reckoned from 10.06.2014, the period of one year under Section 27(1B)(c) expired on 10.06.2015. The refund claim, dated 13.05.2015 and received in the department on 15.05.2015, was thus filed well within time. Even the resubmission made on 04.06.2015 to cure the deficiency pointed out by the Department, received on 09.06.2015, falls within the same period. It follows that the refund claim cannot be treated as barred by limitation on any view of the date of its filing, once the relevant date is correctly taken as the date of communication of the order finalising the provisional assessment.

19. For the foregoing reasons, we find no error in the view taken by the learned Commissioner (Appeals) that the refund claim was not time-barred. The impugned order calls for no interference.

20. In view of our aforesaid discussions and reasons given, the appeal filed by Revenue is dismissed and the Order-in-Appeal No.91/16-TRY(CUS) dated 05.04.2016 is upheld.

The appellant is entitled to consequential reliefs in law, if any.

(Order pronounced in the open court on 11.09.2026)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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