

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Customs Appeal No.13045 of 2018

(Arising out of OIA-AHD-CUSTM-000-APP-145-18-19 passed by Commissioner (Appeals)
Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

M/s. Dinesh Mills Ltd

Padra Road Vadodara,
Gujarat.

.....Appellant

VERSUS

C.C., Ahmedabad

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

.....Respondent

APPEARANCE:

Shri. M. Pandya, Advocate for the Appellant

Shri. Sanjiv Kinker, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 12555 /2019

DATE OF HEARING: 23.12.2019

DATE OF DECISION: 23.12.2019

RAMESH NAIR

The present appeal was filed against the impugned order by which the Learned Commission (Appeals) upheld the rejection of the refund claim in respect of Special Additional Duty paid at the time of assessment of Bill of Entry. The refund was claimed on the ground that the same was not payable in terms of Notification No. 21/2012-cus dated 17.03.2012. The refund claim was rejected being time bar.

2. Shri. M. Pandya, Learned Counsel appearing on behalf of the appellant submits that the appellant had applied for rectification of Bill of Entry under Section 149 read with Section 154 of the Customs Act, 1962. Since, no response was given by the department they filed the refund application. Since, there application under Section 149 and read with Section 154 has not been disposed of. The refund claim cannot be said to be time bar.

3. Shri. Sanjiv Kinker, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. Heard both the sides and perused the records. I find that the appellants contention is that the refund cannot be said to time barred, for the reason that they have filed an application for rectification of the Bill of Entry under Section 149 read with Section 154 of Customs Act, 1962, and the same has not been disposed of which compelled the appellant to file the refund claim. Therefore, considering the application under Section 149 the refund cannot be held as time barred. We find that the department has not given any response to their application under Section 149 which is directly related to the present refund matter. In this position, I am of the view that the department must first dispose of the application of the appellant filed under Section 149 read with Section 154 and thereafter, should reprocess the refund claim.

5. Accordingly, I set aside the impugned order and remand the matter to the adjudication authority to first decide the application under Section 149, thereafter, reprocess the refund claim. Appeal is allowed by way of remand to the adjudicating authority.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)