

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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10312 of 2015- DB

(Arising out of OIA-MUN-CUSTOM-000-011-14-15 dated 25/11/2014 passed by Commissioner of CUSTOMS-MUNDRA)

Arcelormittal Projects India Limited

.....Appellant

Unit 202 A, 2ndDosti pinnacle, Plot No. E 7 Road No. 22
Wagle Industrial Estate, Thane- West,
Mumbai, Maharashtra

VERSUS

C.C.-Mundra

...Respondent

Office Of The Principal Commissionerate Of Customs,
Port User Buld. Custom House Mundra,)
Mundra Kutch, Gujarat - 370421

APPEARANCE:

Shri Manish Jain, Advocate appeared for the Appellant

Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L.MAHAR**

Final Order No. A/ 11307 /2023

DATE OF HEARING: 23.02.2023
DATE OF DECISION: 21.06.2023

RAMESH NAIR

This appeal is directed against the order-in-appeal No. MUN-CUSTOM-000-011-14-15 dated 25.11.2014 passed by the Commissioner (Appeals) whereby refund of the appellant under Notification No.102/2007- Cus dated 14.09.2007 for imported goods i.e. non-alloy HR unpickled (Steel coils), tin plate sheets ,sold during September 2011 to October 2012 was rejected on the ground of time bar. The impugned order contended that in respect of the refund under bill of entry no 4409841 dated 19.08.2011 there is a delay of one day and in respect of refund under bill of entry no 4407720 dated 19 .08.2011, the delay is of 2 days. Being aggrieved by the said Order –In-Appeal the appellant filed the present appeal.

2. Shri Manish Jain, Learned Counsel appearing on behalf of the appellant submits that both the refund claims were filed within 1 year from the relevant date. He submits that in terms of General Clauses Act, 1897 the first day is reduced and the last date falling on weekly holiday i.e. falling Saturday - Sunday then filling the refund on Monday is within one year as per the computation of the period provided under General Clauses Act, 1897 hence, the refund is not time barred. He placed reliance on the following judgments:

- Aarti Technopacks vs. CCE - 2008 (225) ELT 501 (T)
- Shyam Nagpal vs. CCE - 2009 (233) ELT 135 (T)
- Sony India Pvt. Ltd vs. CC - 2014 (304) ELT 660 (Del.)
Affirmed by the Hon'ble Supreme Court of India - 2016 (337)
ELT A 102 (SC)
- Pioneer India Electronics (P) Ltd Vs. UOI 2014 (301) ELT 59 (Del.)
- CC Vs. Puja Steel - 2014 (299) ELT 494 (T)
- CC Vs. Gulati Sales Corporation - 2018 (360) ELT 277 (Del.)
- Prakash Diamond Pvt. Ltd Vs. UOI - 2011 (263) ELT 199 (Guj.)
- Wimco Ltd vs. CC - 2003 (161) ELT 774 (T)
- CCE vs. Sail Rourkela Steel Plant - 1992 (61) ELT 732 (T)
- Vicky Sharma Vs. UOI - 2017 (349) ELT 414 (Bom.)
- Skoda Auto Volkswagen India Pvt. Ltd Vs. CC - 2021 (50) GSTL 67(Bom.)
- CC vs. Puja Steel - 2014 (299) ELT 494 (T)

3. Shri Tara Prakash, Learned Deputy Commissioner (AR) appearing for the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the limited issue to be considered by us is that whether the refund claims filed by the appellant are barred by

limitation of one year from date of payment. The details of the refunds are as under:-

Sr No	Bill of Entry No. & Date	TR-6 Challan/E-Receipt	SAD	Amt of Claim Date	Revised Amt of Claim Date	Due Date	Date of Claim Filed	Delay by Days After excluded the date of payment of duty
1	4409841 19.08.11	2001815019 26/08/11	15600881/-	86,64,971/- 27/08/12	10401206/- 12/04/13	25.08.11	27.08.12	1 day
2	4407720 19.08.11	20018112414 25/08/11	698766/-	6,96,702/-	696702/-	24.08.12	27.08.12	2 days

From the above detail it can be seen that as per the Order-In-Original there is delay of 1 day and 2 days on the ground that against the date of payment i.e. 26.08.2011 and 25.08.2011, the refund claim was filed on 27.08.2011 accordingly. It was construed that there is delay of 1 and 2 days respectively. Learned counsel referred to General Clauses Act, 1897. The relevant provisions are reproduced below:-

"9. Commencement and termination of time.-(1) In any 1 [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to"

(2) This section applies also to all 2 [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

10. Computation of time.-(1) Where, by any 1 [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken

on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the 6 Indian Limitation Act, 1877 (15 of 1877), applies.

(2) This section applies also to all 2 [Central Acts] and Regulations made on or after the fourteenth day of January, 1887,"

4.1 In terms of Section 9, the date of deposit of duty (SAD) being 26.08.2011 and 25.08.2011. The period of one year shall commence on 27.08.2011 and 26.08.2011 respectively. Accordingly, the one year shall be completed on 27.08.2012 and 26.08.2012. In this fact, the first refund claim since filed on 27.08.2012 is well within 1 year and in respect of second refund claim though the one year is completed on 26.08.2012 but being Sunday the filing of refund on Monday I.e. 27.08.2012 is well within the time limit prescribed in terms of Section 10 of General Clauses Act, 1897. As regard the computation of 1 year that from the date of commencement of the year shall complete on the same date in the next year, this has been held by Hon'ble High Court of Bombay in the case of Skoda Auto Volkswagen India Pvt. Ltd (Supra). The relevant para of the order is reproduced below:

"36. Thus having a clear picture of the legal position, we may now address the issue at hand. Petitioner received the order-in-original sent by speed post on 30-8-2019. As per Section 9 of the General Clauses Act, this date would have to be excluded while counting the limitation period of two months which would then commence from 31-8-2019. We have also seen that while construing the word 'month', It would mean a month as reckoned according to the British calendar, number of days in a month being immaterial. Therefore, the two months' limitation period was available to the petitioner up to 31-10-2019. If we add the extended period of limitation of

further one month, it would mean that delay could be condoned till 31-11-2019 because the total period of three months had commenced from 31-8-2019 and would be available till 31-11-2019 but because there is no 31 days in November, the extended period of limitation would spill over to 1-12-2019. This is more so because the word 'to' is not used in Section 85(3A) to cap the limitation period on 30- 11-2019. Therefore, the appeal was required to have been dispatched by 1-12-2019. But it was dispatched on 2-12-2019."

5. In view of above undisputed settled legal position in terms of General Clauses Act, 1897 read with decision of Hon'ble Bombay High Court, the appellant's both refund claims were filed within the stipulated time period of one year hence the same are not time barred.

6. Accordingly, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 21.06.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)