

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 10506 of 2014

[Arising Out Of OIA-515-524/2013/CUS/COMMR-A-/JMR Dated- 26/12/2013 Passed by
Commissioner of CUSTOMS(PREVENTIVE)-JAMNAGAR(PREV)]

Shirdi Steel Traders

.....Appellant

Plot No.40, Ship Breking Yard, Along.
Office At 1497/B, Theosophical Lodge, Rupani Circle,
BHAVNAGAR, GUJARAT

VERSUS

C.C.-Jamnagar(prev)

.....Respondent

Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar
Gujarat

WITH

- 1. Customs Appeal No. 10522 of 2014 (Honey Ship Breaking Pvt. Ltd)**
- 2. Customs Appeal No. 10610 of 2014 (Mercury Marine Industries P Ltd)**
- 3. Customs Appeal No. 10611 of 2014 (Mercury Marine Industries P Ltd)**
- 4. Customs Appeal No. 10612 of 2014 (Mahavir Metal Corporation)**
- 5. Customs Appeal No. 10996 of 2014 (Anand Export)**
- 6. Customs Appeal No. 10997 of 2014 (Anand Export)**
- 7. Customs Appeal No. 10998 of 2014 (Anand Export)**
- 8. Customs Appeal No. 10999 of 2014 (Shital Ispat Pvt Ltd)**
- 9. Customs Appeal No. 11000 of 2014 (Shital Ispat Pvt Ltd)**
- 10. Customs Appeal No. 13903 of 2014 (Bharat Ship Breakers Corporation)**

APPEARANCE:

Shri. Rahul Gajera, Advocate for the Appellant

Shri. Prakash Kumar Singh, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO. A / 11365-11375 /2023

DATE OF HEARING:23.06.2023

DATE OF DECISION:23.06.2023

SOMESH ARORA

The learned Advocate submits that in this matter the refund applications were filed against Bill of Entries, which were assessed provisionally for claiming refund of SAD as per Customs Notification No. 102/2007 dated 14 September, 2007. The applications were filed under this notification after the provisional duty was paid earlier and in some cases final assessment having been done and refunds were claimed as per Section 27 of the Customs Act, 1962. The department rejected the refund claims on the ground that a clarification was issued by the Board to interpret the notification to mean that refunds should have been filed within one year of payment of duty even if not finally assessed, but paid provisionally. The appellant have interpreted the provision to state that the one year period will be reckoned from the date when assessments were finalised and duty finally paid and not from the date when the duty is paid on the basis of provisional assessment. The Advocate submitted that if reckoned from the belated final assessments, all claims are within time. Learned AR on the other hand emphasizes that the notification is providing one year period from the date of payment. The same should be reckoned from the date of payment even if the same is paid provisionally. The learned Advocate for the appellant in rejoinder on the other hand again took a position that the same has to be from the date of final assessment, even if certain refund claims were filed earlier just to have early liquidity, the claims cannot be considered as having become time barred. Specially, in view of Section 27(1B)(C) of the Customs Act, 1962, which provides that once duty is paid provisionally, the limitation of one year has to be computed from the date of adjustment of duty, after the final assessment and not from the date of provisionally paid duty. To support its viewpoint the learned Advocate seeks to place reliance on the matter of Suzuki Motorcycle India Pvt. Ltd Vs. C.C. (Import & General), New Delhi., as reported in 2017 (348) E.L.T 708 (Tri.,- Del.) Specially para 7 and date of the decision is reproduced below:-

"7. The fact is not under dispute that the assessment of Bills of Entry in this case was provisional and the same were finalized on 15-9-2010. Thus, there was no scope or occasion for the appellant to file the refund application before the date of such finalization, in terms of Explanation-II appended to Section 27 ibid, providing the time limit of six months for filing refund claim, in case of provisional assessment, from the date of adjustment of duty after the final assessment thereof. However, in view of the Circular dated 29-7-2010 issued by the CBEC, the refund application was filed by the appellant on 9-9-2010 i.e. before finalization of assessment, which was admitted for consideration by the refund sanctioning authority. The refund application was dismissed on the ground that the same was filed after the prescribed time limit of one year from the date of payment of duty."

The appeal was allowed in the matter.

2. Considered, it is found that the Notification No. 102/2007-Cus. Dated 14 September, 2007 which was the relevant notification has made a prescription after amendment vide Notification No. 93/2008-Cus. dated 01 August, 2008 that importer has to file a claim for refund of SAD before the expiry of one year from the date of payment of the said additional duty of Customs. It is undisputed fact that the payments for the appellant were made on the provisional basis, but refund of SAD was filed before the finalization of assessment took place, with few exceptions, where again the refund claim was filed within one year from the date of finalization of assessment.

3. Learned AR seeks to place reliance on 2019 (369) ELT 1773 (Tri.-Chennai) in the matter of HONDA SIEL POWER PRODUCTS LTD. VS. C.C. (PORT-EXPOTS), CHENNAI also 2019 (369) E.L.T 1196 (Tri. Del.) in the matter of C.C. NEW DELHI (ICD TKD) (IMPORT) VS. AGGARWAL TRADING COMPANY and on the matter of TRANASIA BIO-MEDICALS LTD VS. COMMISSIONER OF CUS. (SEA), CHENNAI-2021 (376) E.L.T. 381 (Tri.-Chennai), as well as on Board Circular No. 401/104/2007-Cus.III Section and Board Circular No. 23/2010-Cus. Dated 29.07.2010. This point of emphasis was that any ambiguity in exemption notification has to be interpreted in favour of the department, therefore, if the board's circular mentioned that it is a provisional payment of duty from which limitation has to be reckoned and not final payment of duty then the same needs to be interpreted, in accordance with the Board Circular only.

4. Considered, this Court finds that the Board Circular as well as the Delhi High Court decision as reported in Pioneer India Electronics Pvt Ltd Vs. Union

of India-2014 (301) ELT 59 (Delhi High Court) was duly considered by the Division Bench of Delhi this Tribunal in SUZUKI MOTORCYCLE INDIA P. LTD VS C.C. (IMPORT & GENERAL), NEW DELHI, cited Supra and it was decided in that matter in the similar circumstances, that refund cannot be rejected as time barred and Bench allowed the appeal by remanding the same to adjudicating authority for deciding refund claim if otherwise admissible. This Court is inclined to follow the same decision and particularly emphasizes, there is no ambiguity as such in the notification as the statutory provision as that contained in Section 27 (1B) (C) is very clear as to what is the date of payment to be reckoned when provisional assessment has been resorted to. The relevant notification has no clause providing otherwise, therefore, the same needs to be interpreted harmoniously with the statutory provision and it appears that the Board Circular was correctly ignored in the decision of SUZUKI MOTORCYCLE INDIA P. LTD, under the similar circumstances.

5. In view of the foregoing the appeals are allowed with the direction to original authority to consider the refund claim expeditiously. The Original authority may consider admissibility as per law, but not the reading of new any facts and issues, at this belated stage.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)