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

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 10521 of 2014-SM

[Arising out of Order-in-Original/Appeal No 10-12-2014-CUS-COMMR-A--JMR dated 16.01.2014 passed by Commissioner of CUSTOMS(PREVENTIVE)-JAMNAGAR(PREV)]

Honey Ship Breking Pvt Ltd **...Appellant**

Plot No.103, Ship Breking Yard,
Alang Office At 1497/B, Theosophical Lodge, Rupani Circle
Bhavnagar,
Gujarat-364001

VERSUS

C.C.-Jamnagar(prev) **...Respondent**

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

WITH

CUSTOMS Appeal No. 10539 of 2014-SM

[Arising out of Order-in-Original/Appeal No 10-12-2014-CUS-COMMR-A--JMR dated 16.01.2014 passed by Commissioner of CUSTOMS(PREVENTIVE)-JAMNAGAR(PREV)]

Rajendra Ship Breakers Pvt Ltd **...Appellant**

Plot No.114, Ship Breking Yard,
Alang Office At Dm-79, Near Obc Bank, Kalvibid
Bhavnagar,
Gujarat-364001

VERSUS

C.C.-Jamnagar(prev) **...Respondent**

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

AND

CUSTOMS Appeal No. 10546 of 2014-SM

[Arising out of Order-in-Original/Appeal No 10-12-2014-CUS-COMMR-A--JMR dated 16.01.2014 passed by Commissioner of CUSTOMS(PREVENTIVE)-JAMNAGAR(PREV)]

Lakshmi Steel Rolling Mill **...Appellant**

Plot No.57, Ship Breking Yard,
Alang Office At 241, Madhav Darshan, Waghawadi Road

Bhavnagar,
Gujarat-364001

VERSUS

C.C.-Jamnagar(prev) **...Respondent**

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

APPEARANCE:

Shri Rahul Gajera, Advocate for the Appellant
Shri. Sanjay Kumar, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO. A / 12683-12685 /2023

DATE OF HEARING: 24.11.2023
DATE OF DECISION: 24.11.2023

RAJU

These appeals relate to rejection of refund claim filed under Notification No. 102/2007- Cus dated 14.09.2007, in respect of lubricating oil imported by the appellant. The refund claim has rejected on the grounds of limitation.

2. Learned Counsel argued that the appellants are otherwise entitled to the refund claim, but the said refund claim has been rejected solely on the ground of limitation. He pointed out that while the refund claim has been filed after 1 year of date of payment of duty, but it is within 1 year from the date of finalization of provisional assessment. He pointed out that identical matter has been decided in the case of M/s. Suzuki Motorcycle India P. Ltd reported at 2017 (348) ELT 708 (Tri.-Del.), as well as in the case of M/s. Bharat Ship Breakers Corporation vide order No. A/10736-10737/2023 dated 27.03.2022. He argued that in the light of above decisions relief may be granted.

3. Learned AR relied on the impugned order.

4. I have carefully considered the rival submissions. I find that the matter has been decided earlier in the case of M/s. Bharat Ship Breaker Corporation, wherein following has been observed:

> *"4. I have carefully considered the submissions made by both the sides and perused the record. I do agree with the learned Authorized Representative that as per the Notification No. 102/2007-Cus as amended by Notification No. 93/2008-Cus dated 01.08.2008, the refund claim of SAD has to be filed within one year from the date of payment. However, in the present case the assessment was provisional and thereafter it was finalized which was undisputed and accepted by the Commissioner (Appeals) in his order. The refund was filed within one year from the date of finalization of assessment. In these facts, I find that when the assessment is provisional, it cannot be said that the duty which was paid during the provisional assessment was a final payment of duty. Final payment of duty is confirmed as and when the assessment of Bills of Entry is finalized. Therefore, the date of finalization of bills of entry should be reckoned as the actual date of payment and refund filed within one year from finalization of assessment to be treated as refund claim filed within one year. This issue has been considered in the case of Suzuki Motorcycle India P. Limited (supra) wherein the Tribunal has passed the following order: -*
>
> > *"6. Notification No. 102/07-Cus., dated 14-9-2007 exempts goods by way of refund of SAD paid thereon, subject to fulfillment of certain conditions by the importer. The said notification mandates that at the time of importation of goods, the importer shall pay all duties, including SAD leviable thereon; and that on sale of such imported goods in the domestic market, the importer shall pay appropriate Sales Tax/VAT and thereafter to file the refund application before the jurisdictional Customs Officers. No time limit for filing the refund application has been specified in the said notification. However, the said notification was amended vide Notification No. 93/2008-Cus., dated 1-8-2008, providing for filing of refund application before expiry of one year from the date of payment of SAD. To clarify the position regarding applicability of time limit in case of provisional assessment, the CBEC has issued the Circular No. 23/2010-Cus., dated 29-7- 2010, clarifying that refund claim has to be lodged within one year, irrespective whether the assessment is provisional or final.*
> >
> > *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.

8. The applicability of Section 27 ibid to determine time period in the case of provisional assessment has been clarified and upheld by the Hon'ble Delhi High Court in the case of Pioneer India Electronics (P) Ltd. (supra). However, we note that the appellant filed the refund claim even before finalization of assessment, guided by CBEC Circular dated 29-7-2010 as a precautionary measure. We also note that the said circular was partly held to be not sustainable by the Hon'ble Delhi High Court in the said case, insofar as it stipulates that the provisions of Section 27 ibid do not apply to this Notification. Considering the above factual position and noting that appellant did file the refund application, though before finalization of assessment, we are of the view that the claim cannot be rejected as time-barred.

9. Reliance placed by the ld. AR for Revenue on the order dated 28-7-2016 of this Tribunal is factually different inasmuch as the refund application was not filed within the period of limitation from the final assessment decided by the Hon'ble jurisdictional High Court.

10. In view of the foregoing, we set aside the impugned order, holding that rejection of refund claim on time bar issue is not legally sustainable. The original authority is directed to examine the appellant's refund claim on merits and sanction the refund, if found eligible in terms of the Notification No. 102/2007-Cus., dated 14-9-2007. Needless to say that opportunity of personal hearing shall be granted to the appellant before deciding the matter."

11. The appeal is disposed of in above terms."

From the above decision it can be seen that identical issue involved in the present case and the ratio of the above decision is clearly applicable to the present case.

5. As regards the submission of learned Authorized Representative and his reliance on the judgment of Bombay High Court in the case of CMS Info Systems Limited (supra) and Chennai bench decision in the case of Tranasia Bio-Medicals Limited (supra), I find that in both the cases there was no assessment provisional and thereafter final assessment, therefore, ratio of decisions is not applicable. Accordingly, in my considered view the refund filed is well within the time as prescribed under Notification No. 102/2007-Cus and refund is not time-barred. Accordingly, the impugned orders are set-aside and the appeals are allowed.

Relying on the aforesaid decision, in the case of M/s. Bharat Ship Breaker Corporation, the appeals are allowed.

(Dictated & pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

PALAK