

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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10609 of 2017 – SMB

(Arising out of OIA-JMN-CUSTM-000-APP-049-16-17 dated 04/01/2017 passed by Commissioner of Customs (Appeals)-AHMEDABAD)

Indian Oil Corporation Limited
Pipelines Division
VADINAR, GUJARAT

.....Appellant

VERSUS

Commissioner of Customs-Jamnagar(prev)
SHARDA HOUSE...BEDI BANDAR ROAD,
OPP. PANCHAVATI,
JAMNAGAR, GUJARAT

.....Respondent

APPEARANCE:

Shri S J Vyas, Advocate Appeared for the Appellant

Shri Prashant Tripathi, Superintendent(AR) Appeared for the Respondent

**CORAM: HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER
(JUDICIAL)**

Final Order No.10147/2025

DATE OF HEARING: 07.02.2025
DATE OF DECISION:28.02.2025

DR. AJAYA KRISHNA VISHVESHA

This appeal is directed against the order-in-appeal dated 4th January, 2017 passed by the learned Commissioner (Appeals) Customs, Ahmedabad through which he rejected the appeal filed by the appellants.

1.1 The appellant imported Crude Petroleum Oil and filed into Bond B/E No. F-14 dated 10th June, 2006 for warehousing under Section 46 of the Act and said B/E was assessed provisionally. Subsequently, they filed Ex-Bond B/E for home consumption under Section 68 of the said Act for clearance of warehoused goods, which was also assessed provisionally. Later on at the time of final assessment, demurrage charges came to be included in the assessable value, which was agitated by the said appellants. Eventually, the appeal was allowed in this regard. Feeling aggrieved from the said decision the department preferred an appeal before Hon'ble Tribunal and the same was rejected by the CESTAT vide order dated 13.10.2015. In these circumstances,

the appellant filed a refund claim for Rs. 6,19,110/- on 1st December, 2015 under Section 27 of the Customs Act, 1962, as a consequence of order No. A/11442/2015 dated 13.10.2015 passed by CESTAT rejecting the appeal against Order-in-Appeal No. 125/JMN/2008 dated 3rd June, 2008.

1.2 The lower adjudicating authority found vide order dated 16.02.2016 that the duty had become refundable as a consequence of the relevant order-in-appeal dated 3rd June, 2008 passed by the first appellate authority. The said Order-in-Original remained in force during that period. The claim has been filed on 1st December, 2015 and it was not filed within the stipulated time limit in terms of Section 27 of the said Act and therefore, it is hit by limitation. The lower adjudicating authority also found that even otherwise the refund amount was to be credited to the Consumer Welfare Fund since the refund amount Rs. 6,19,110/- has been booked on 30.09.2015 in the fiscal year 2015-16 under "claims receivable from Customs" and thus, the said appellants have failed to prove that incidence of duty has not been passed on as they have not booked/ accounted for the refund claim amount in the relevant financial year. Thus, the claim of refund was rejected vide the order-in-original dated 16.02.2016 on two accounts, on limitation as well as on the grounds of unjust enrichment.

1.3 Feeling aggrieved from the above mentioned order the appeal was filed before the Commissioner (Appeals) Customs Ahmedabad.

1.4 The learned Commissioner (Appeals) Customs, Ahmedabad after hearing both the parties rejected the appeal and upheld the order passed by the lower adjudicating authority. Feeling aggrieved from the impugned order dated 04.01.2017 the present appeal has been filed before this Tribunal.

2. The learned counsel for the appellant submitted that the refund claim was rejected under the impugned order-in-appeal as well as in the Order-in-Original on the following two grounds:

- (a) Delay in filing the refund claim
- (b) Unjust Enrichment

2.1 The first ground is delay in filing the refund claim. The department's contention is that the refund arose pursuant to the Commissioner (Appeals)'s order dated 03.06.2008 whereas the claim was filed on 01.12.2015 which was barred by limitation. In this connection, the learned counsel for the appellant cited **Rayban Sun Optics India Pvt Ltd Vs. Commissioner of Central Excise and CGST, Alwar** 2021 (7) TMI 48 - CESTAT New Delhi, in which it was held that the provision of Section 11B of Central Excise Act makes it abundantly clear that it is the date of judgment as consequence whereof the amount became refundable. No doubt, the CESTAT's final order is of 31.03.2012, vide which the amount/duty paid by the appellant was made refundable but the Department opted for continuation of the said litigation by filing an appeal before the High Court. Once that option got exercised, the final judgment about entitlement of appellant to have the refund of said amount/duty paid, is the judgment announced by High Court in the said appeal. Since the said appeal of the Department was dismissed by Hon'ble High Court on 21.04.2017 irrespective of technical ground, the fact remains that entitlement of the appellant to refund of duty paid got finalized only on 21.04.2017 hence the relevant date under Section 11B (ec) is none but 21.04.2017. Refund claim is filed on 19.02.2018 which, therefore, is very much within one year. Therefore, the refund application was wrongly held to be barred by time. Accordingly, Tribunal set aside the findings arrived at by the Commissioner (Appeals) and allowed the appeal.

2.2 The learned Counsel for the appellant in the light of the observations made in the above decision argued that in this case, the Bill of Entry was filed by the appellant which was assessed provisionally and when subsequently, the appellant filed ex-bond Bill of Entry for Home Consumption under Section 68 of the Customs Act for clearance of imported warehoused goods, they were also assessed provisionally. However, the period of limitation shall be counted from the date of final order passed by the CESTAT dated 13.10.2015 and not from the date of the order passed by the Commissioner dated 03.06.2008

because no doubt, the duty paid by the appellant was made refundable by the Commissioner (Appeals) vide order dated 03.06.2008 but the department opted for continuation of the said litigation by filing an appeal before the CESTAT. Once that option got exercised, the final judgment about entitlement of appellant to have the refund of the said duty paid is the judgment pronounced by the CESTAT on 13.10.2015 in the said appeal. Since, the appeal of the department was dismissed by CESTAT on 13.10.2015, the entitlement of the appellant to refund of duty paid got finalized only on 13.10.2015. Hence, the relevant date for counting the period of limitation is 13.10.2015, as the refund application was filed on 30.11.2015, it was within the limitation period and the learned Commissioner (Appeals) and the first Adjudicating Authority have wrongly held that the refund application was barred by limitation. I agree with the argument of the learned Counsel for the appellant.

2.3 The learned Counsel for the appellant also argued that Section 18 of the Customs Act make provision for Provisional Assessment of duty. Section 18 is complete self-contained code and has a overriding effect on Customs Act but without prejudice to Section 46 of the Act. The provision of Section 18 of Customs Act is as follows:-

"18. Provisional assessment of duty

¹ [(1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46 ² [and section 50],--

(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.]

² [(1A) Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment within such time and in such manner, as may be prescribed.]

(2) When the duty leviable on such goods is assessed finally ³ [or re-assessed by the proper officer] in accordance with the provisions of this Act, then--

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty ⁴ [finally assessed or re-assessed, as the case may be,] and if the amount so paid falls short of, or is in excess of ⁵ [the duty ⁴ [finally assessed or re-assessed, as the case may be,]], the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) in the case of warehoused goods, the proper officer may, where the duty ⁴ [finally assessed or re-assessed, as the case may be,] is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

⁶ [(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order ³ [or re-assessment order] under sub-section (2), at the rate fixed by the Central Government under section ⁷ [28AA] from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.]

(4) Subject the sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment, of duty finally ³ [or re-assessment of duty, as the case may be,] there shall be paid an interest on such un-refunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.]

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to--

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75.]”

2.4 The provision of Section 27 of the Customs Act is as follows:-

"SECTION 27. Claim for refund of duty. -(1) Any person claiming refund of any duty or interest, if any, paid on such duty-

(a) paid by him in pursuance of an order of assessment, or

(b) borne by him,

may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Customs or Deputy Commissioner of Customs -

(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, before the expiry of one year,

(b) in any other case, before the expiry of six months,

from the date of payment of duty and interest, if any, paid on such duty, in such form and manner as may be specified in the regulations made in this behalf and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C as the applicant may furnish to establish that the amount of duty and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person:

Provided that where an application for refund has been made before the commencement of the Central Excise and Customs Law (amendment) Act, 1991, such application shall be deemed to have been made under this sub-section and the same shall be dealt in accordance with the provisions of sub-section (2):

Provided further that the limitation of one year or six months, as the case may be, shall not apply where any duty or interest has been paid under protest.

Provided also that in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of one year or six months, as the case may be, shall be computed from the date of issue of such order,

Provided also that where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year or six months, as the case may be, shall be computed from the date of such judgment, decree, order or direction;

Explanation I. - For the purposes of this sub-section, "the date of payment of duty or interest, if any, paid on such duty, in relation to a person, other than

the importer, shall be construed as "the date of purchase of goods" by such person.

Explanation II - Where any duty is paid provisionally under section 18, the limitation of one year or six months, as the case may be, shall be computed from the date of adjustment of duty after the final assessment thereof."

Explanation II to Section 27 of the Act will apply, where even after final assessment and adjustment, the assessee is not satisfied. The meaning of term "final assessment and adjustment" appearing in Explanation II to Section 27 is final assessment and adjustment by allowing the refund suo-motu at the time of final assessment if excess duty was paid at the time of provisional assessment. Explanation II to Section 27 will apply only when the assessee is not satisfied with the "final assessment and the suo-motu refund granted or duty demanded" and is willing to file a refund claim of differential duty still pending. He argued that in the present case refund was allowable under Section 18 (2)(A) suo-motu by the department and Explanation II to Section 27 is not applicable at all. In the present case, there was no need to claim the refund by the appellant instead refund was allowable suo-motu by the department, hence no question of limitation arise here.

3. Per contra, the learned Authorised Representative argued that after going through Section 18(2) of the Customs Act, it is clear that in case of provisional assessment, the party becomes entitled for refund only after final assessment because the provision of this section starts with "when the duty leviable on such goods is assessed finally." It is again reiterated in Section 18 (ab) since, it states that amount paid shall be adjusted against the duty finally assessed.

3.1 The learned Authorized Representative further argued that the principal ground of the appellant is that the refund is allowable under Section 18 (2)(a) suo motu by the department and Explanation II to Section 27 is not applicable since Bill of Entry was provisionally assessed on 10.06.2006 and the provision of unjust enrichment was introduced from 13.07.2006. This argument has no force because after going through Section 18(2) of the Customs Act, it is clear

that in case of provisional assessment, the party becomes entitled for refund only after final assessment, as the provision of this section starts with "When the duty leviable on such goods is assessed finally".

3.2 The learned Authorized Representative further submitted that in the instant case Bill of Entry for warehousing was provisionally assessed on 10.06.2006 Ex-Bond Bill of Entry was filed on 12.06.2006, the Bill of Entry was finalized on 15.03.2007 since some original documents were pending, so final assessment was done for the first time on 15.03.2007 which is certainly after 13.07.2006. The appellant did not become entitle for a refund on their filing of the Bill of Entry for warehousing but rather only after it was finalized, though even the first final assessment did not result into refund for the appellant. After the first assessment order, the appellant filed an appeal before the Commissioner (Appeals) which was allowed vide order dated 03.06.2008. Therefore, the assessee became entitled for refund as a result of this order dated 03.06.2008. Refund arises only after duty is paid. Duty is not paid at the time of filing of warehousing Bill of Entry. The duty is paid after Bill of Entry for Home Consumption is filed and goods are cleared. Bill of Entry for Home Consumption is filed on 15.03.2007 which is after 13.07.2006, i.e. the date after which "**unjust enrichment**" was introduced and will be applicable.

3.3 The learned Authorized Representative relied upon the rulling in **M/s. Indian Oil Corporation Limited vs. Commissioner of Customs** 2024 - TIOL-621 CESTAT Delhi in which decisions **Hindalco Industries Ltd** 2008 (231) ELT 36 (Guj.), **Mafatlal Industries Ltd** 2002-TIOL-54-SC-CX-CB, **Priya Blue Industries vs. Commissioner of Customs** - 2004-TIOL-78-SC-CUS and **ITC Ltd vs. Commissioner of Central Excise** 2019-TIOL-418-SC-CUS-LB have been considered and discussed and it has been upheld that refund arises only after final assessment/ reassessment. If the date of final assessment/ reassessment is after 13.07.2006, the refund has to be processed as per Section 27 of the Customs Act. The Hon'ble Principal Bench further held that the amount paid in excess by the appellant was finally

reassessed and therefore, the refund was allowed in consonance to the amount so assessed by the Adjudicating Authority. There was no error in the order dated 16.09.2013 of the Assistant Commissioner rejecting the refund of Rs.77,36,325/- as it was not part of the final re-assessment order dated 02.04.2013 and the refund sanctioning Authority could not have gone beyond the assessment order. If the appellant had any grievance against the final re-assessment order, then they would have challenged the same and got final reassessed amount modified. When the appellant filed a fresh refund application on 06.04.2018 for the balance amount of Rs.77,36,325/-, it was rejected as being filed beyond the period of one year from the final re-assessment order. No error was found in that order and it was held that if an application under Section 27 of the Customs Act is filed then the provision of the limitation period and the principle of Unjust Enrichment would be applicable and the appellant is not entitled to the refund as claimed and application was rightly rejected by the Authorities below.

4. I have heard learned Counsel for the appellant and learned Authorized Representative for the department and perused the record.

4.1 As far as the first argument of the learned Counsel for the appellant is concerned that the refund claim is not barred by limitation and it was wrongly held by the Commissioner (Appeals) that it is barred by limitation, I am of the view that in case of Provisional Assessment under Section 18 of the Customs Act, the party become entitled for refund only after final assessment, because the provision of Section 18(2) of the Customs Act starts with words "When the duty leviable on such goods is assessed finally". Further in Sub Section 18 (a) and (b), it has been provided that the amount paid shall be adjusted against the duty finally assessed. In the present case, Bill of Entry was finalized on 15.03.2007 and final assessment was done for the first time on 15.03.2007 after the cut-off date 13.07.2006, after which the doctrine of Unjust Enrichment became applicable. I also agree with the learned Authorized Representative that the appellant did not become entitled for a refund on their

filing of the Bill of Entry for warehousing but only after it was finalized. After the first final assessment order, the appellant filed an appeal before Commissioner (Appeals) which was allowed vide order dated 03.06.2008. Therefore, assessee became entitled for refund as a result of the order of Commissioner (Appeals) dated 03.06.2008. Therefore, I am of the view that the appellant was bound to get the refund application processed under Section 27 of the Customs Act.

4.2 Now the question arises, whether the refund application was barred by limitation as it was not filed within the prescribed period mentioned in Section 27 of Customs Act. In this connection, I am of the opinion that the order passed in **Rayban Sun Optics India Pvt. Ltd. vs. Commissioner of Central Excise & CGST, Alwar** (supra) is applicable in this case.

4.3 In my view, the Order-in-Appeal passed by the Commissioner (Appeals) dated 04.01.2017 and the Order-in-Original dated 16.02.2016 passed by the Assistant Commissioner, Customs are erroneous and cannot be sustained. I agree with the learned Counsel for the appellant that the period of limitation shall be counted from the date of final order passed by the CESTAT i.e. 13.10.2015 and not from the date of order passed by the Commissioner (Appeals) dated 03.06.2008. No doubt the duty paid by the appellant was made refundable by the Commissioner (Appeals) vide order dated 03.06.2008 but the department opted for continuation of the said litigation by filing an appeal before the CESTAT. Once that option got exercised, the final judgment about entitlement of appellant to have the refund of the said duty paid, is the judgement pronounced by CESTAT on 13.10.2015 in the said appeal. Since the appeal of the department was dismissed by CESTAT on 13.10.2015, the entitlement of the appellant to refund of duty paid got finalized only on 13.10.2015. Hence, the relevant date for counting the period of limitation is 13.10.2015. Refund application was filed on 30.11.2015 which is within the limitation period. Hence, learned Commissioner (Appeals) and the first Adjudicating Authority have wrongly held that the refund application was

barred by time. Therefore, I hold that the refund application filed by the appellant is not barred by limitation.

4.4 The learned Counsel for the appellant also argued that the second ground of rejection of the refund claim is **Unjust Enrichment**, in this connection, it was submitted that the amount of refund was shown as **receivable** in books of accounts and the certificate of the Chartered Accountant clearly confirmed this fact. Therefore, the question of **Unjust Enrichment** could not apply. In this connection, the learned Counsel for the appellant drew my attention towards Order-in-Original dated 16.02.2016 passed by the Assistant Commissioner, Customs in file No. VIII/20-RD/26/2015-16 at page no.07 of the judgment in para 23 of which it has been mentioned "I further find that the claimant had shown an amount of Rs.1,67,21,345/- as claimable in its books of account as on 31.03.2007. Based on the final assessment of the Bills of Entry, the department allowed a refund of Rs.1,42,44,722/- vide Order-in-Original No.228/AC/R/2008-09 dated 28.04.2008. Therefore, the differential amount seems to have been adjusted in the books of accounts, as an amount of Rs.6,19,110/- has been booked on 30.09.2015 in the Fiscal Year 2015-2016 now under **Claims Receivable from Customs**. This is evident from the relevant extract of the Ledger of **Claims Receivable from Customs** and relevant documents viz. List of Tanker wise Customs claims at Vadinar as on 30.09.2015 submitted along with the independent Chartered Accountant Certificate."

4.5 The learned Authorised Representative has submitted that Clause (a) under Section 27(2) suggests that payment of refund has to be made to the claimant in case where incidence of duty and interest on such duty paid by the importer has not been passed on to any other person. In this regard, as per accounting principle when any amount is shown as **amount receivable** the said amount would not have been considered included in the cost of production. The refund claim amount is required to be booked/ accounted for in the **claims receivable** in the relevant financial year and cannot be

accounted for thereafter, during subsequent financial year. Once the refund claim amount has not been booked in the relevant financial year, the duty incidence is to be treated as passed on. Therefore, claimant failed to prove that the incidence of duty has not been passed on as they have not booked/ accounted for the refund claim amount in the relevant financial year. Therefore, even compliance to the obligation of doctrine of Unjust Enrichment is not fulfilled.

4.6 The learned Authorized Representative also argued that it has been contended by the learned Counsel for the appellant that the price of their finished goods was independent of duty payable, since, refined products manufactured out of imported goods under reference were subject to price control by Government. The argument of the learned Authorized Representative is that the appellants have not given any evidence to demonstrate that all the products manufactured out of crude oil imported by them are sold at price controlled by the Government and therefore, no relief can be given to them based on this argument. Merely, on the basis of bald statement, without any conclusive evidence, it is not proper to accept this argument. The learned Authorized Representative also submitted that even the argument of the appellant is not tenable that principle of Unjust Enrichment is not applicable in the present case, considering the accounting system adopted and relevant extracts of their financial accounts submitted before the lower Adjudicating Authority. The lower Adjudicating Authority has given cogent findings in this regards.

4.7 After hearing the learned Counsel for the appellant as well as Authorised Representative for the department, I am of the view that when the Chartered Accountant has given a certificate after verification of accounts and corroborative evidences that the duty incidence has not been passed on to the customers then this certificate should not be brushed aside without any cogent reason and the lower Adjudicating Authority and the learned Commissioner

(Appeals) has brushed aside the Chartered Accountant certificate without any cogent reason.

4.8 I also agree with the learned Counsel for the appellant that appellant is a public sector undertaking under the control of the Union Ministry of Petroleum and Natural Gas. This Tribunal can take notice of the fact that the prices of the petroleum products were fixed at the relevant time by the Government. During the period of disputes, the prices of major petroleum products like MS, HSD, LPG (Domestic) and SKO (PDS) were controlled by Government due to their sensitive nature. Due to Government control, these products were sold at a uniform price by all Public Sector Undertakings/ marketing companies which were generally lower than the price computed on the basis of import parity/ trade parity. Thus, the cost of raw material or other elements of cost of production did not affect price of final products of the appellant. Therefore, it cannot be said that the appellant had added the excess payment of duty paid provisionally on raw material in the cost of final products and burden of duty has been shifted to the end user of the final products manufactured by the appellant.

4.9 In the light of the above discussion, I am of the view that the learned Commissioner (Appeals) erred in passing the impugned order dated 04.01.2017 through which he rejected the appeal filed by the appellants. I am also of the view that the order passed by Assistant Commissioner, Customs Division, Jamnagar dated 16.02.2016 is also not sustainable and is liable to be set aside and the appeal is liable to be allowed.

5. The appeal is allowed. The Order-in-Appeal dated 04.01.2017 and Order-in-Original dated 16.02.2016 are set aside. The Assistant Commissioner, Customs Division, Jamnagar is directed to assess the claim of refund filed by the appellant in his office and pass appropriate orders on it expeditiously without delay.

(Pronounced in the open court on 28.02.2025)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)