

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

REGIONAL BENCH - COURT NO. 2

CUSTOMS Appeal No. 10353 of 2020-SM

[Arising out of Order-in-Appeal No AHD-CUSTM-000-APP-457-19-20 dated 02.12.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Kiri Industries Limited

Plot No. 299/1 A&B, 293/2, Near Water Tank,
Phase-II, G.I.D.C, Vatva, Ahmedabad
Gujarat -382445

.... Appellant

VERSUS

Commissioner of Customs, Ahmedabad

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

.... Respondent

APPEARANCE :

Shri R R Dave, Consultant for the Appellant
Smt. Sunita Menon, Superintendent (AR) for the Revenue.

CORAM:

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

DATE OF HEARING : 16.01.2026

DATE OF DECISION: 12.02.2026

FINAL ORDER NO. 10077/2026

DR. AJAYA KRISHNA VISHVESHA :

This appeal has been preferred by the appellant feeling aggrieved from the impugned Order-in-Appeal No. AHD-CUSTM-000-APP-457-19-20 dated 02.12.2019 passed by learned Commissioner (Appeals) Ahmedabad through which the learned Commissioner has rejected the appeal preferred by the appellant and upheld the Order-in-Original passed by Jt. Commissioner.

2. The facts of the case, in brief, are that the appellant had filed a refund claim of Rs. 24,12,483/- under Section 27 of the Customs Act, 1962 towards CVD/SAD paid on MEIS Scrips under the provisions of Para 3.02 of Foreign

Trade Policy 2015-2020, on excess import quantity of raw materials imported under Advance Authorization Licenses. The appellant had stated that prior to 01.07.2017, CENVAT credit of such duty was available but since 01.07.2017, no credit of such duty was available under the GST regime. They had filed the refund claim for the said amount of Rs. 24,12,483/-. A Show Cause Notice dated 20.12.2018 was issued to the appellant proposing to reject the refund claim on the ground that the non-availability of CENVAT credit cannot be the ground for refund under Section 27 of the Customs Act, 1962 and also on the ground of unjust enrichment. The Show Cause Notice was adjudicated by the Adjudicating Authority/Jt. Commissioner who rejected the appellant's refund claim of Rs. 24,12,483/- on the ground that merely the non-availability of set-off (input tax credit) under GST Act does not become a criteria for claiming refund under Customs Act, 1962. In the Order-in-Original, it has been stated that as the refund claim was not admissible on the said ground, the calculation for determining amount of Customs duty and refund as per SION, verification of original documents etc. and examination for unjust enrichment has not been carried out in the present case. Aggrieved with the Order-in-Original, the appellant filed appeal before the learned Commissioner (Appeals) who vide the impugned order, rejected the appeal and upheld the Order-in-Original. Feeling aggrieved from the impugned Order-in-Appeal the present appeal has been filed before the Tribunal.

3. Learned Consultant for the appellant submitted that appellate authority has rejected the refund claim on the ground that non-availability of set off (input Tax Credit) under GST Act does not become a criteria for claiming refund under Customs ACT, 1962. It does not make the claimant entitled to claim refund under Customs Act, 1962. The argument of the learned Consultant for the appellant is that in Section 142(3) of the CGST

Act, 2017 it has been provided that every claim for refund filed by any person before, on or after the appointed day, for refund of Cenvat credit, duty tax interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-Section (2) of Section 11B of the Central Excise Act, 1944. The learned Consultant for the appellant submitted that the Adjudicating Authority failed to appreciate the provisions of Section 142(3) of the CGST Act, 2017 and rejected the refund application without any justification. He has also submitted that in Section 142(6)(a) of the CGST Act, 2017 it has been provided that Credit found to be admissible to the claimant shall be refunded to him in cash. The learned Consultant for the appellant prayed that the department should have refunded the amount of CVD/SAD paid by the appellant in cash as per the provisions of Section 142(3) and 142(6)(a) of the CGST Act, 2017.

3.1 Learned Consultant for the appellant also submitted that in the present case, the appellant has claimed a refund of Rs. 24,12,483/- being a duty of Customs under the head of CVD/SAD under Section 3(5) of the Customs Tariff Act, 1975 payable under Section 12 of the Customs Act, 1962 on the excess quantity imported without payment of Customs duty under Advance Authorisation which could not be consumed for production of goods and cleared in DTA on payment of excise duty. Since the appellant has paid CVD and SAD after 01.07.2017 under the provisions of Section 142(3), the cash refund is available but the Assistant Commissioner CGST, Division-III, Ahmedabad returned the refund papers on the ground that the refund was rejected by the Jt. Commissioner, Customs. Later the appeal of the appellant was rejected without proper grounds.

3.2 Learned Consultant for the appellant cited the following orders/judgments to support his arguments:

- (a) **JSW Steel Limited vs. Commissioner of Central Tax & Central Excise** – (2024) 24 Centax 70 (Tri. Bang.)
- (b) **Granules India Limited vs. Commissioner of Central Tax, Hyderabad** – (2024) 25 Centax 166 (Tri. Hyd.)
- (c) **Pr. Commissioner of Central Tax, Hyderabad vs. Granules India Limited** – (2024) 25 Centax 167 (Telangana)
- (d) **Atul Limited vs. Union of India** –2025 (101) GSTL 376 (Guj.)

4. Learned AR for the department submitted that against the judgment pronounced in **Pr. Commissioner of Central Tax, Hyderabad vs. Granules India Limited** - (2024) 25 Centax 167 (Telangana), the department has filed appeal before the Hon'ble Supreme Court which is still pending. However, the learned AR conceded that Hon'ble Gujarat High Court has also passed similar judgment as was passed in **Granules India Limited** case. She has further submitted that there is no dispute that appellant had filed refund claim under Section 27 of the Customs Act, 1962 for CVD/SAD paid on MEIS Srips under the provisions of Para 3.02 of Foreign Trade Policy 2015-20, on excess import quantity of raw materials under Advance Authorisation Licenses. After 01.07.2017, in GST regime no credit of such duty was available, therefore, the Appellant filed refund claim of same. She has also submitted that as far as unjust enrichment proposed in para 8 of the Show Cause Notice is concerned, the appellant had put forth certificate of the Chartered Accountant, certifying that the incident of CVD paid on excess quantity of duty-free raw materials imported is not passed on to any other person. He has also submitted that the conditions for duty free import stipulated that the resultant product manufactured out of the duty free imported materials is exported. He submits that the appellant could not utilize the entire quantity of duty-free imports for export of finished products

in terms of SION- Standard input output norms. He submitted that the appellant paid Customs duty including CVD in respect of the raw material procured under Advance Authorization that was not utilized in finished products for export. There is no dispute regarding payment of CVD paid by the appellant. The refund claim has been rejected on the ground that the duties were paid correctly in accordance with the relevant provisions of DGFT and Customs Notification issued from time to time and therefore there was no case of wrong payment of Customs Duty and the refund was not admissible under section 27 of the Customs Act, 1962. The appellant has not raised any new ground in the instant appeal for refund claim other than their inability to avail credit of CVD which they had paid on excess quantity of duty-free imports. He prayed that the appeal may be rejected.

5. I have heard both the sides and perused the record. After hearing arguments from both the sides, it is clear that the appellant filed refund claim under Section 27 of the Customs Act towards CVD paid on MEIS Scrips under the provisions of Para 3.02 of Foreign Trade Policy 2015-20, on excess import quantity of raw materials imported under Advance Authorisation Licenses. After 01.07.2017, in GST regime, no credit of such duty was available, therefore, the Appellant filed refund claim for same. Section 142(3) of CGST Act, 2017 provides as follows:-

Section 142 of the CGST Act, 2017

“(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of CENVAT credit, duty, tax interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944):

PROVIDED that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

PROVIDED FURTHER that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.”

Section 142(6) (a) of CGST Act, 2017 provides as follows:-

“(6) (a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act.”

5.1 Interpretation of the above provisions of CGST Act came before this Tribunal in Appeal No. E/10122/2023-DB in **Commissioner of Central Excise vs. Aculife Healthcare Private Limited** in which in para 5 of the order, this Tribunal has observed as under:-

“5. We find that the department sought to deny the refund of CVD and SAD paid by the appellant only on the ground that at the time of payment of CVD and SAD there was no provision of availing the Cenvat credit, therefore, it was alleged that the appellant was not in position to avail the Cenvat credit, therefore consequently even refund of the amount which is not cenvatable could not have been claimed. We find that the appellant have paid the CVD and SAD for the period prior to 01.07.2017 even though the payment was made subsequent to 01.07.2017. Therefore, since the duty is paid by the appellant for the period when the Cenvat credit Rules was existing, the appellant were entitled for Cenvat credit during period prior to 01.07.2017. In CGST Act, to deal with situation of the present case, special provision was made under Section 142(3) whereby when the assessee is not in a position to avail the Cenvat credit or utilize the same due to effect of GST regime from 01.07.2017, refund provision was enacted which specifically deals with the situation of refund of amount which is cenvatable as per existing law i.e. Central Excise Act, 1944 and Rules made thereunder. In the present case, the refund was made under the existing law i.e. section 11B of Central Excise Act, 1944 accordingly, the refund of SAD/CVD paid by the appellant which was cenvatable at the time when the said duty was payable, It is clearly eligible for refund under Section 11B read with Section 142(3) of CGST Act, 2017. Therefore, in our considered view, the appellant are legally entitled for the refund of CVD/ SAD. We find that the Revenue has

filed the appeal against the order of Commissioner on the sole ground that the adjudicating authority has rejected the claim relying on the Single Member Bench decision in the case of Sarvo Packaging Ltd. There are number of judgments by this Tribunal itself which are contrary to the decision of Sarvo Packaging Limited 2020 (373) ELT 550 (Tri. Chennai). Moreover, even after considering the Sarvo Packaging Limited decision (supra), the Tribunal's Single Member Bench in the case of Sri Chakra Polyplast India Private Limited (supra) after relying upon many other decisions came to the conclusion that the appellant are entitled for the refund under Section 142(3) of CGST Act, therefore, the decision of Sarvo Packaging Limited stand departed. Even if the precedent value of the judgment is considered, it is settled law that the later decision is always better than the earlier one on the principle of 'later is better'. Accordingly, the judgment of Sri Chakra Polyplast India Private Limited prevails over the decision of Sarvo Packaging Limited. We also make it clear that we being a Division Bench have already given an independent finding hereinabove which gets reinforced by the later judgments of this Tribunal. Accordingly, we do not find any infirmity in the impugned order. Hence, the impugned order is upheld. Revenue's appeal is dismissed."

5.2 Further, in **JSW Steel Limited vs. Commissioner of Central Tax & Central Excise, Belgaum** – (2024) 24 Centax 70 (Tri. Bang.), the Tribunal held that CVD and SAD paid in GST regime on finalization of assessment in respect of goods imported in pre-GST regime were eligible for refund in cash in terms of provisions of Section 142(3) of CGST Act, 2017.

5.3 In **Principal Commissioner of Customs vs. Granules India Limited** – (2024) 25 Centax 167 (Telangana) – it has been held that as credit of CVD and SAD available under erstwhile regime of Central Excise prior to 30.06.2017 is no longer available under GST regime, appellant would be entitled to refund under provisions of Section 142(3), (5) and (8A) of CGST Act, 2017. The Revenue filed appeal against the judgment delivered by Hon'ble Telangana High Court which is pending before the Hon'ble Supreme Court.

5.4 In **Epigral Limited vs. UOI** reported at 2025 (97) GSTL 261 (Guj.) the Hon'ble Gujarat High Court has held that in view of the Section 142(3) of CGST Act, 2017 any refund accruing to the petitioners after 01.07.2017 is

required to be refunded in cash. The Hon'ble High Court further held that it is apparent that the respondent authorities could not have referred to and relied upon the provisions of section 142(8)(a) as the same would not be applicable to the facts of the case as the petitioners did not deposit the amount of duties in any recovery proceedings but the petitioners had voluntarily deposited the amount of duties on reconciliation of the imports made by the petitioners with the Advance Authorisation and EPCG license entitlement. Therefore, the case of the petitioners would be squarely covered by provisions of Section 142(3) of the CGST Act which provides for considering the refund claim of the petitioners as per the existing law at the relevant time when import was made in the year 2016.

6. In view of above settled legal position, I am of the view that learned Commissioner has failed to appreciate the provisions of Section 142(3) and (6)(a) in its correct perspective and the learned Commissioner has erred in rejecting the appeal of the appellant. I am of the view that refund application filed by the appellant is in accordance with the provisions of Section 142(3) and (6)(a) of the GST Act and the department was bound to allow the refund application of the appellant and the refund application was rejected without any justification.

6.1 I am also of the view that as regards the objection of the department relating to unjust enrichment is concerned, the appellant had submitted that the provisions of unjust-enrichment are not applicable on the ground that the amount of refund is disclosed as receivable in the balance sheet of 2017-18 and also not claimed as expenditure in Profit and Loss Account of 2017-18. Further, the appellant had put-forth certificate of Chartered Accountant certifying that incidence of CVD paid on excess quantity of duty from raw materials imported, is not passed on to any other person before the

Adjudicating Authority. Therefore, concept of unjust enrichment is not applicable in the present case.

7. In view of the above discussion, I have come to the conclusion that the impugned order passed by learned Commissioner (Appeals) is not sustainable and the appeal is liable to be allowed.

The appeal is allowed along with consequential relief.

*(Order pronounced in the open court **12.02.2026**)*

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)

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