CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Miscellaneous Application No. 20356 of 2024
&
Customs Appeal No. 1847 of 2012

(Arising out of Order-in-Appeal No. 84/2012 dated 30.03.2012 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. NI Systems (India) Pvt. Ltd.,
81/1 & 82/1, Salapuria Softzone,
Wing B, 5th Floor, Block A,
Bellandur, Varthur Hobli,
Bangalore - 560 075.
Appellant(s)

VERSUS

Commissioner of Customs,
Air Cargo Complex,
Bangalore.
Respondent(s)

With

Customs Miscellaneous Application No. 20413 of 2024
&
Customs Appeal No. 28547 of 2013

(Arising out of Order-in-Appeal No. 401/2013 dated 28.10.2013 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. NI Systems (India) Pvt. Ltd.,
81/1 & 82/1, Salapuria Softzone,
Wing B, 5th Floor, Block A,
Bellandur, Varthur Hobli,
Bangalore - 560 075.
Appellant(s)

VERSUS

Commissioner of Customs,
Bangalore
Respondent(s)

APPEARANCE:

Mr. Darshan Bohra with Mr. Satvik Garg, Advocates for the Appellant

Mr. Maneesh Akhoury, Asst. Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 20293 - 20294 /2025

DATE OF HEARING: 18.02.2025
DATE OF DECISION: 18.02.2025

PER : DR. D.M. MISRA

These two appeals are filed against respective Orders-in-Appeal passed by the Commissioner of Customs (Appeals), Bangalore. Since the appeals are linked to each other, these are taken up together for hearing and disposal.

2. From the records, it is seen that Revenue has filed two miscellaneous applications to change of cause of title. After hearing both sides, we allow the miscellaneous applications. The respondent's name and address are changed to "**The Principal Commissioner of Customs, Airport & Air Cargo Commissionerate, Kempegowda International Airport, Devanahalli, Bengaluru – 560 300**". Registry is directed to make necessary amendments to this effect in the records, data base etc.

3.1. Briefly stated the facts in appeal C/1847/2012 are that consequent to finalisation of provisional assessment, the appellant had filed a refund claim on 05.04.2011 for Rs.75,88,831/-. On adjudication, the refund claim was sanctioned by the adjudicating authority and also a cheque was issued to the appellant on 24.08.2011, pursuant to the said adjudication order. Revenue filed appeal before the learned Commissioner(Appeals) assailing sanctioning of refund of Rs.52,49,189/- on the ground that the assessee has failed to justify that the amount claimed as refund has not been passed on to the customers. The learned Commissioner(Appeals) allowed the Revenue's appeal holding the issue of unjust enrichment against the appellant. Hence the appeal C/1847/2012.

3.2. In appeal C/28547/2013, the learned Commissioner(Appeals) has upheld the appropriation of Rs.13,19,110/- sanctioned to the appellant against the erroneous refund of Rs.52,49,189/- as per OIA No.84/2012 dated 30.03.2012.

4. At the outset, the learned advocate for the appellant has submitted that the adjudicating authority has sanctioned the refund claim of Rs.75,88,831/- and necessary cheque has been issued to the appellant against the said refund order. However, the learned Commissioner(Appeals) while disposing the appeal filed by the Revenue against the said refund order, observed that the appellant has failed to discharge the burden of establishing the fact that the amount claimed by the appellant to the extent of Rs.52,49,189/- has not been satisfied. He has submitted that there is no whisper in the appeal memorandum nor in the order as to how the remaining amount Rs.23,45,942/- of refund claim satisfied the principles of unjust enrichment. Further, he has submitted that the learned Commissioner(Appeals) erred in observing that mere creating a provision for the refund amount for the Financial Year 2004-05 and 2005-06 in their P&L Account as doubtful advances along with the entries indicating that the amount is recoverable in cash or kind for value to be received in their balance sheet, it cannot be said that the same had not been received from the customers. He has submitted that the Chartered Accountant’s Certificate placed before the authorities mentioned that the amount of Rs.1,12,30,850/- has been shown as net amount recoverable from the Customs and this has not been booked to their expenses nor recovered from its customers in the books of the company. The said certificate has not been accepted as the

break up shown in the balance sheet is not tallying with the certificate given by the Chartered Accountant. He has further submitted that after the issue was finalised about loading of the value, the provisions in their balance sheet have been discontinued from the Financial Year 2006-07. In support of his contention about the entries in the balance sheet, he has referred to the same and enclosed with the appeal paper book. Further, the learned advocate has submitted that merely because the provision has been created in the balance sheet of the doubtfulness of the amount of refund, due from the Customs Department, it cannot be considered that the amount has been shown as their expenses in the relevant financial years and the burden of duty has been passed on to the customers. In support, he has referred to the judgment of this Tribunal in the case of Sabic Innovative Plastics India Pvt. Ltd. Vs. CC, Jamnagar (Prev.) [2018(362) ELT 535 (Tri. Ahmd.)], Fort City Chits Pvt. Ltd. Vs. CCT&CE, Cochin [2021(52) GSTL 405 (Tri. Bang.)] and Surya Coats Pvt. Ltd. Vs. CCE, Ahmedabad [2010(261) ELT 379 (Tri. Ahmd.)].

5. Learned AR for the Revenue has reiterated the findings of the learned Commissioner(Appeals).

6. Heard both sides and perused the records.

7. The short issue involved in the appeal C/1847/2012 is whether the appellant is able to discharge the burden of unjust enrichment in compliance with the provisions of Section 27(1A) of the Customs Act, 1962. On going through the relevant extract of the balance sheet produced, we find that the refund amount claimed by the appellant has been shown as advances recoverable in cash or kind for the Financial Year 2004-05 and 2005-06 in their balance sheet. Also, a corresponding entry has been created in the P&L Account showing that the same is

provision for doubtful advances. In the next Financial Year 2006-07, after the issue has been settled about the loading of the value, the amount receivable from the Customs has been discontinued to be shown in the balance sheet. We find that merely because the provision has been made in their balance sheet in the previous financial year, it cannot be construed that the appellant has recovered the amount by including the same in their expenses or in any manner collected from the customers claiming as refund. This issue has been addressed by the Tribunal in the case of Sabic Innovative Plastics India Pvt. Ltd. (supra), wherein the Tribunal observed as under:-

> **5.** I find that the limited question involved in the present appeal for determination is : whether the appellant had passed on the burden of refund amount of Rs. 40,36,127/- to others which was deposited with the department at the time of provisional assessment of the imported goods, during the period August, 2010 to November, 2010. It is not in dispute that for the same period, refund of 1% RD made at other Customs houses have been allowed to the appellant without raising the issue of unjust enrichment. The refunds orders issued to the appellant have been enclosed with the appeal paper book. In the present case, however, even though the refund was sanctioned by the adjudicating authority, it is transferred to Consumer Welfare Fund on the ground that the burden of the refund amount has been passed on to the customers. The reasoning advanced by the department is that the appellant have though shown the amount of refund under heading 'Loans and Advances' in the balance-sheet of the year ended 31-3-2011, but simultaneously created a provision under the category 'Other Loans and Advances' against same amount. It is the contention of the Revenue that thus the provision created by the appellant had reduced the profit earned for the financial year 2010-2011 indicating that the refund amount is an expenditure and entered into the cost of the product and automatically the burden of the refund amount has been passed on to the customers. Advancing various other arguments in countering the department's allegation, the Ld. Advocate for the appellant has submitted that the very basis on which the conclusion has been arrived by both the authorities below is unsustainable since the appellant in the subsequent financial year 2011-12, being assured about receipt of the refund amount from the department, reversed the provisions made in their balance-sheet in the financial year 2010-11. In support, she has placed a Chartered Accountant Certificate and also relevant extracts of the balance-sheet for the year ended 31-3-2012. I find force in the contention of the Ld. Advocate for the appellant.

> Instead of going through other aspects of the case i.e. whether the principles of unjust enrichment is applicable to Revenue deposits being not a duty etc., I am of the view that the appellant has not passed on the burden of the amount claimed as refund to others, as the refund amount shown as 'Provision' in balance-sheet of 2010-11, reversed in the subsequent Financial Year 2011-12. Also, based on the same balance-sheet of 2010-11, the 1% RD made at other Customs houses, have been refunded to the appellant without raising the issue of unjust enrichment. In these circumstances, the appellants are eligible to the refund claim paid as RD at the time of provisional assessment of the goods. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

8. In view of the above, the order sanctioning the refund by the adjudicating authority is restored; the impugned order being devoid of merit is set aside. Since the recovery of refund amount of Rs.52,49,189/- as held by the learned Commissioner(Appeals) in the impugned OIA No.84/2012 dated 30.03.2012 has been set aside by us, appropriation of Rs.13,19,110/-, subject matter of appeal C/28547/2012 cannot be sustained. In the result, the impugned order in appeal C/28547/2012 is set aside and the matter is remanded to the adjudicating authority to pass an appropriate order keeping in view the order relating to appeal C/1847/2011.

9. Appeal No.C/1847/2011 is allowed and appeal No.C/28547/2012 is allowed by way of remand to the adjudicating authority.

(Operative part of this order was pronounced in Open Court on conclusion of the hearing)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja….