# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# BANGALORE

REGIONAL BENCH - COURT NO. 1

**Customs Appeal No. 20335 of 2018**

(Arising out of Order-in-Appeal No. 676-691/2017 dated 09.10.2017 passed by the Commissioner of Customs (Appeals), Bangalore.)

**M/s. Microsoft Corporation (India) Pvt. Ltd.,**
10th Floor, Tower C, DLF Building
No. 5, DLF Cyber City,
Gurgaon – 122 002.

Appellant(s)

*VERSUS*

**Commissioner of Customs,**
Airport and Air Cargo Commissionerate,
Menzies Bobba Cargo Terminal,
Devanahalli,
Bengaluru – 560 300.

Respondent(s)

**With**

**Customs Appeal No. 20365 of 2018**

(Arising out of Order-in-Appeal No. 586-675/2017 dated 09.10.2017 passed by the Commissioner of Customs (Appeals), Bangalore.)

**M/s. Nokia India Sales Pvt. Ltd.,**
10th Floor, Tower C, DLF Building
No. 5, DLF Cyber City,
Gurgaon – 122 002.

Appellant(s)

*VERSUS*

**Commissioner of Customs,**
Airport and Air Cargo Commissionerate,
Menzies Bobba Cargo Terminal,
Devanahalli,
Bengaluru – 560 300.

Respondent(s)

**APPEARANCE:**

Mr. Deepak Thakur, Advocate for the Appellant

Mr. Maneesh Akhoury, Assistant 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. 21176 - 21177 /2025**

DATE OF HEARING: 10.07.2025
DATE OF DECISION: 10.07.2025

**DR. D.M. MISRA**

These two appeals are filed against respective Orders-in-Appeal passed by Commissioner of Customs (Appeals), Bangalore, since involve common issues, these are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellants are, *inter alia*, engaged in the business of import of mobile phones falling under CTH 85171290 of the Customs Tariff Act, 1975. During the relevant period, the appellants had paid additional duty of customs (CVD), however, without availing concessional rate of duty under Notification No.12/2012-CE dated 17.03.2012 as they had not satisfied the condition No.16 prescribed under the said notification. Later, the Hon'ble Supreme Court in the case of SRF Limited Vs. CC [2015(318) ELT 603 (SC)] decided the issue in favour of the assessee holding that they would be eligible to the benefit of Notification No.12/2012-CE dated 17.03.2012. Consequently, the appellants had filed two refund claims for the period July, 2015 and from November 2014 to December 2014. On adjudication, the refund claims were rejected by the adjudicating authority. Aggrieved, they preferred appeals before the learned Commissioner(Appeals) who though agreed that the refund claims are in order but rejected the same on the ground of unjust enrichment. Hence, the present appeals.

3.1. At the outset, the learned advocate for the appellant has submitted that pursuant to the judgment of the Hon'ble Supreme Court in the case of SRF Limited (supra), the appellant had filed refund claims seeking refund of the differential amount of CVD paid by the appellant on imported goods during the relevant period but the adjudicating authority rejected the refund claims primarily on two grounds viz. (i) the appellant filed the refund claims without challenging the self-assessed Bills of Entry and (ii) they have failed to prove that the burden of CVD paid by them has not been passed on to the customers. The learned Commissioner(Appeals) has set aside the finding of the adjudicating authority on the maintainability of refund claims holding that the appellant had correctly filed the refund claims against the self-assessed Bills of Entry without having recourse to appeal or resorting to amendment of Bill of Entry under Section 149 of the Customs Act, 1962. He has submitted that the said finding of the learned Commissioner(Appeals) has attained finality since no appeal has been filed by the Revenue before the Tribunal or any higher forum. In support, he has referred the following judgments:-

a. Birla Corporation Ltd. Vs. Commissioner [2005(186) ELT 266 (SC)]
b. Steel Authority of India Vs. CC, Bombay [2000(115) ELT 42 (SC)]
c. MTR Foods Ltd. Vs. CCE, Bangalore [2010(252) ELT 580 (Tri. Bang.)]
d. Akshar Telecom Pvt. Ltd. Vs. CC [2019-TIOL-2887-CESTAT-DEL]

However, the Commissioner(Appeals) upheld the finding of the adjudicating authority that the appellant had failed to establish that the CVD claimed as refund has not been passed on to the customers; hence the issue of unjust enrichment is not satisfied by the appellant.

3.2. On the issue of unjust enrichment, the learned advocate has submitted that referring to the same Chartered Account's certificate, the Tribunal at Delhi, Hyderabad and Ahmedabad in their own case held that the appellant had not collected the duty from their customers; accordingly refund claims are not hit by the principles of unjust enrichment. In support, he has referred to the judgment in the following cases:-

i. Nokia India Sales Pvt. Ltd. Vs. CC, ACC Import [judgment dated 15.10.2024 in Customs appeal No.50113/2020 – CESTAT-Delhi]
ii. Nokia India Sales Pvt. Ltd. Vs. CC, ACC Import [judgment dated 08.11.2023 in Customs appeal No.50113/2020 – CESTAT-Delhi]
iii. Nokia India Sales Pvt. Ltd. Vs. CC, Hyderabad [judgment dated 24.07.2018 in Customs appeal No.30153 – 30154/2018, CESTAT-Hyderabad]

Also, the Deputy Commissioner, Ahmedabad has passed the order in their favour allowing the refund claims.

4. Learned AR for the Revenue has reiterated the findings of the lower authorities.

5. Heard both sides and perused the records.

6. The issues involved in the present appeals for consideration are whether (i) the appellant could claim refund without challenging the self-assessed Bills of Entry; (ii) the appellant had satisfied the criteria of unjust enrichment i.e. the burden of duty claimed was not passed on to the customers and

7. As far as the first and second issues are concern, the Principal Bench of this Tribunal has decided the issues in their favour observing that since the Department has not challenged the findings of the Commissioner(Appeals), it attained finality;

therefore, the same cannot be raised at a higher forum. The Tribunal observed as follows:-

> 44. It clearly follows from the aforesaid decisions that if the department does not challenge a finding of the adjudicating authority by filing an appeal before the Commissioner (Appeals), than that finding of the adjudicating authority attains finality and the department cannot be permitted to subsequently raise this issue in a higher forum. This is what was observed by the Allahabad High Court in Indian Farmers Fertilizers. In Neelima Srivastava it was also held by the Supreme Court that an order which has attained finality between the parties can only be assailed in a manner known to law and mere over-ruling of the principles followed in the said order by a subsequent judgment cannot dilute the binding effect of the decision. In Global Constructions, the Tribunal examined almost a similar issue. The adjudicating authority sanctioned the refund amount but credited it to the Consumer Welfare Fund. The Tribunal held that though the Supreme Court had subsequently held in ITC that a refund can be claimed only if the assessment order is modified but since the finding of the adjudicating authority sanctioning refund was not assailed by the department before the Commissioner (Appeals), it would not be permissible for the department to raise this issue before the Tribunal.
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> 45. Learned authorized representative appearing for the department has relied upon the decision of the Tribunal in Shiv Naresh Sports to contend that even a respondent can raise a legal issue. It needs to be noted that the legal issue that is now sought to be raised by the department is that the refund applications are not maintainable for the reason that assessment proceedings had not been challenged by the appellant by filing appeals. This issue, as noticed above, had attained finality. Once the department allowed a particular issue to attain finality, it will not be permissible to permit the department in appellate proceedings initiated by an assessee before the Tribunal to raise this issue, even if it be a legal issue. The issue that is sought to be raised is not even the subject matter of these appeals as the sole issue that arises for consideration in these appeals is whether the incidence of duty was passed on to the buyers. In all the decisions that have been referred to by the learned authorized representatives for the department only general principles regarding raising of a legal issue have been examined. In none of these decisions it has been held that even if an issue that is sought to be urged has attained finality, it can still be raised considering it to be a legal issue. The decisions relied upon by the learned authorized representatives appearing for the department, therefore, do not come to the aid of the department.

> 46. It has, therefore, to be held that as the order dated 23.01.2017 passed by the Deputy Commissioner sanctioning refund had attained finality as no appeal was filed by the department to assail this order, the department cannot be permitted to raise the issue regarding maintainability of the refund applications.

8. Similarly on the issue of unjust enrichment, after referring to the Chartered Accountant's Certificate which has been referred by the Hyderabad Bench and Ahmedabad Bench of this Tribunal and the order of the Deputy Commissioner, this Tribunal observed as follows:-

> 54. It is seen that the same chartered accountant issued three identical certificates, each dated 29.12.2015, to the appellant in respect of the import of the same goods at about the same time from Delhi, Ahmedabad and Hyderabad. The Hyderabad Bench of the Tribunal accepted this certificate and held that the burden of duty had not passed on to the buyers. This order of the Hyderabad Bench has attained finality. An identical chartered accountant certificate dated 29.12.2015 also came up for consideration before the Ahmedabad Bench of the Tribunal. The Tribunal remanded the matter to the Deputy Commissioner to examine the issue afresh. The Deputy Commissioner, on remand, after carefully examining the said chartered accountant certificate dated 29.12.2015, held that the incidence of duty had not passed on to the buyers. This order passed by the Deputy Commissioner has also attained finality.
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> 55. ….. ….
> 56. ….. ….
> 57. ….. ….
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> 58. It is, therefore, not possible to accept the contention raised by the learned authorized representatives appearing for the department that the certificate of the chartered accountant produced by the appellant to substantiate the incidence of duty had not passed on to the buyers should not be accepted because the appellant did not produce any other corroborative evidence as required under sections 28C and 28D of the Customs Act.

9. In the present case also, similar certificate has been issued by the same Chartered Accountant. Therefore, there is no reason not to accept the same to hold that the burden of duty has not been passed on to the customers in view of the

consistent opinion expressed by various Benches of this Tribunal involving same appellant and similar certificates for different imports (more or less similar periods).

10. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law.

*(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)**

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