

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20209 of 2021

[Arising out of Order-in-Appeal No. COC-CUSTOM-000-APP-04/2020-21 dated 26.05.2020 passed by the Commissioner of Customs (Appeals), Cochin]

**M/s. Tata Hitachi Construction
Machinery Pvt. Ltd.**

65:34/126B, NH 47
Edappally Bypass
Cochin - 682 024

Appellant(s)

VERSUS

Commissioner of Customs

Custom House
Cochin - 682 009

Respondent(s)

APPEARANCE:

Mr. Baby M.A., Advocate for the Appellant
Mr. Vikulp Jain, Superintendent (AR) for the Respondent

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

Final Order No. 21998 /2025

DATE OF HEARING: 28.11.2025

DATE OF DECISION: 28.11.2025

PER : D.M. MISRA

This is an appeal filed against the Order-in-Appeal No. COC-CUSTOM-000-APP-04/2020-21 dated 26.05.2020 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated the facts of the case are that the appellant had imported Hydraulic Excavator through Cochin Port against Bill of Entry No. 9155786 dated 04.04.2017 and at the time of clearances they paid customs duty and SAD on 12.04.2017.

Later the goods were sold by the appellant discharging appropriate VAT. Thereafter they filed the refund application on 17.04.2018 which was rejected by the adjudicating authority on the ground of limitation. Aggrieved by the said order, they filed appeal before the learned Commissioner (Appeals) who in turn rejected their appeal. Hence, the present appeal.

3. At the outset, the learned Advocate for the appellant has submitted that the issue involved in the present appeal, arising out of the impugned order, has been referred to the Larger Bench of this Tribunal and as per the decision of the Larger Bench, the present refund claim is not barred by limitation.

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

5. We find that the reference made was answered by the Larger Bench following an earlier judgment in the case of *Ambey Sales Vs. Commissioner of Customs, Ludhiana* vide Interim Order No. 4/2024 dated 04.06.2024, wherein it is observed as follows:

"3. The reference in the present appeal is, therefore, answered in the following manner:

*The time limit imposed upon an importer for filing a refund claim of additional duty of customs paid on the imported goods with the jurisdictional customs officer before the expiry of one year from the date of payment of said additional duty of customs in terms of the notification dated 01.08.2008 would not be applicable in view of the judgment of the Delhi High Court in **Sony India Pvt. Ltd. Vs. Commissioner of Customs, New Delhi** reported in 2014 (304) E.L.T. 660 (Del.)."*

6. Thus, following the aforesaid judgment, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative portion of the order was pronounced in open court on conclusion of hearing)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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