

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

**SINGLE MEMBER BENCH  
COURT NO. I**

Sr. No	Case No	Impugned Order Detail's	Date of Impugned Order	Passed By	Appellant	Respondent
1	C/61391/2018-SMC	OIA-LUD-CUS-001-APP-1224-1228-18	01/06/2018	Commissioner of Central Excise and Service Tax-LUDHIANA	Ms Auto Dynamic Corporation	-C.c. Ludhiana
2	C/61403/2018-SMC	OIA-LUD-CUS-001-APP-1224-1228-18	01/06/2018	Commissioner of CUSTOMS-LUDHIANA	Ms Okaya Power Pvt Ltd	-C.c. Ludhiana
3	C/61424/2018-SMC	OIA-LUD-CUS-001-APP-1224-1228-18	01/06/2018	Commissioner of CUSTOMS-LUDHIANA	Ms S G International	-C.c. Ludhiana
4	C/61425/2018-SMC	OIA-LUD-CUS-001-APP-1224-1228-18	01/06/2018	Commissioner of CUSTOMS-LUDHIANA	Ms Sunnox International	-C.c. Ludhiana

**Date of hearing/decision: 30.11.2018**

For approval and signature:

**Hon'ble Mr. Ashok Jindal, Member (Judicial)**

Appearance:

Present for the Appellant(s): Shri Tarun Kumar Sharma (CA), Shri Naveen Mallick (Advocate)

Present for the Respondent(s): Shri G.M. Sharma (AR)

**CORAM:**

**Hon'ble Mr. Ashok Jindal, Member (Judicial)**

**FINAL ORDER NO.**

63496-63498, 63510 /2018

**Per : Ashok Jindal**

The appellants are in appeal against the impugned orders wherein the refund claim filed under Notification No. 102/2007-Cus. Dated 14.09.2007 has been denied as time barred.

2. As facts and circumstances, all the appeals is common, therefore, all are disposed of by a common order.

3. The fact of the matter are that the appellant imported certain goods on payment of duty. They have also paid SAD at the time of import of goods. The SAD is refundable in terms of Notification No.

102/2007-Customs dated 14.09.2007, if the goods are sold in the open market on payment of Sales Tax/VAT/CST, the appellant sold the goods imported in the open market and filed refund claim within one year from the date of sale of the goods. As per the terms of Notification No.102/2007-Cus. Dated 14.09.2007, the refund claim was required to be filed by the assessee within one year from the date of payment of SAD, the said condition was introduced by Notification No. 93/2008-Cus. Dated 01.08.2008, thus the refund claims were rejected as they were not filed within one year from the date of payment of SAD by the appellants. Therefore, the appellants are in appeal before me.

4. The Ld. Consultant/counsel appearing on behalf of the appellants submit that the issue is squarely covered by the decision of this Tribunal in the case of ***M/s Vainik Spining Mills Ltd. Vs. Commissioner of Customs, Amritsar-2017 (6) TMI 33-CESTAT, Chandigarh, M/s Gaio Mall and Sons Vs. C.C. Ludhiana-2018 (10) TMI 941-CESTAT, Chandigarh, M/s Goyal Impex & Industries Ltd. Vs. Commissioner of Customs – 2018 (9) TMI 95 – CESTAT, Chennai, and the decisions of the Hon’ble High Court of Delhi in the case of Sony India Pvt. Ltd. Vs. CC, New Delhi-2014 (304) E.L.T. 660 (Del.) and Gulati Sales Corporation – 2018 (360) E.L.T. 277 (Del.)***.

5. On the other hand, Ld. AR submitted that the Hon’ble High Court of Bombay has examined the issued details in the case of ***CMS Info Systems Ltd. Vs. Union of India- 2017 (349) E.L.T***

**236 (Bom.)** and held that the refund claim is required to be filed within of one year from the date of payment of SAD, therefore, the refund claims are rejected.

6. Heard both the sides, considered submissions.

7. On going through the arguments advanced by both the sides, I find that both sides have placed contradictory decisions of two High courts one in the case of **CMS Info Systems (Supra)** by the Hon'ble Bombay High Court and two decisions of the Hon'ble High Court of Delhi in the case of **Sony India Pvt. Ltd. (Supra) and Gulati Sales Corporation (Supra)**, the latest decision is of the Hon'ble Delhi High Court in the case of **Gulati Sales Corporation (Supra)**, before me. Moreover, when there are contrary views of the Hon'ble High Courts, in that case this Tribunal is at the liberty to decide the issue ignoring the decisions of the Hon'ble High Courts on merits of the case itself as held by this Tribunal in the case of **M/s Maheshwari Solvent Extraction Ltd. Vs. Commissioner of C.EX., Nagpur-2014 (299) E.L.T. 116 (Tri. Mumbai)**, therefore, I have to examine the issue on the basis of the facts placed before me and the provisions of law. The SAD is payable by an assessee for setting off of VAT/ST/CST is payable by the appellant being a trader. Unless and until VAT/ST/CST is paid by the assessee, they cannot file refund claim, therefore, it is required to be seen on which date cause of action arose of filing the claim of refund. Admittedly, the relevant date in such a case as per Section 11B of the Central Excise Act, 1944,

when is the cause of action arose i.e. the date of payment of VAT/ST/CST. From that date, within one year, the assessee required to file the refund claim. Therefore, the relevant date (in these matters) is the date of payment of VAT/ST/CST. Admittedly, in all the matters placed before me the refund claims have been filed by the appellants within one year from the date of payment of VAT/ST/CST.

8. In that circumstances, I hold that the refund claims cannot be rejected on ground of limitation, therefore, I hold that the refund claims filed by the appellants are within time. The same view has been taken by this Tribunal, in the case of **Ghaio Mall and Sons (Supra)** and in the case of **Goyal Impex & industries Ltd. (Supra)**. Therefore, relying on the decision of this Tribunal in the matters cited above, I hold that the refund claims filed by the appellants are within time and they are entitled to refund claim.

In view of the above, I set aside the impugned orders and allow the appeals with consequential relief.

*(Order dictated and pronounced in the court)*

**Ashok Jindal**  
**Member (Judicial)**

*Kailash*