CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

S.No.	Appeal No.	Appellant	Respondent	Impugned Order-in-Appeal passed by CC(A) Chennai
1.	C/193/2009	Commissioner of Customs (Airport) Chennai	Nokia India Pvt. Ltd.	Order-in-Appeal C.Cus.No.222/2009 dated 24.04.2009
2.	C/279/2009	-do-	-do-	Order-in-Appeal C.Cus.No.480/2009 dated 08.06.2009
3.	C/280/2009	-do-	-do-	Order-in-Appeal C.Cus.No.481/2009 dated 08.06.2009
4.	C/281/2009	-do-	-do-	Order-in-Appeal C.Cus.No.482/2009 dated 08.06.2009
5.	C/282/2009	-do-	-do-	Order-in-Appeal C.Cus.No.483/2009 dated 08.06.2009
6.	C/40035/2014	-do-	-do-	Order-in-Appeal C.Cus.No.1367/2013 dated 30.09.2013
7.	C/40036/2014	-do-	-do-	Order-in-Appeal C.Cus.No.1368/2013 dated 30.09.2013
8.	C/40037/2014	-do-	-do-	Order-in-Appeal C.Cus.No.1369/2013 dated 30.09.2013
9.	C/40038/2014	-do-	-do-	Order-in-Appeal C.Cus.No.1370/2013 dated 30.09.2013
10.	C/40039/2014	-do-	-do-	Order-in-Appeal C.Cus.No.1371/2013 dated 30.09.2013
11.	C/40040/2014	-do-	-do-	Order-in-Appeal C.Cus.No.1372/2013 dated 30.09.2013
12.	C/40041/2014	-do-	-do-	Order-in-Appeal C.Cus.No.1373/2013 dated 30.09.2013
13.	C/40042/2014	-do-	-do-	Order-in-Appeal C.Cus.No.1374/2013 dated 30.09.2013
14.	C/40043/2014	-do-	-do-	Order-in-Appeal C.Cus.No.1375/2013 dated 30.09.2013
15.	C/41064/2013	-do-	-do-	Order-in-Appeal C.Cus.No.120/2013 dated 29.01.2013

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Appeal Nos.C/193,279-282/2009
C/41064/2013
C/40035-40043/2014

Commissioner of Customs, (Airport)
Chennai — Appellant

Versus

Nokia India Private Ltd. — Respondent

Appearance:

Shri B. Balamurugan, AC (AR)
For the Appellant

Shri C. Saravanan, Advocate
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 26.07.2017

FINAL ORDER No. 41888-41902/2017

Per Bench

These 15 appeals filed by the department since relating to the same issue were taken up together for disposal.

2. The facts of the matter are that respondent, Nokia India Pvt. Ltd. (hereinafter referred to as Nokia or respondent) had filed refund applications for refund of 4% additional duty of customs related to

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import of mobile phones. The refund claims were filed in terms of Notification No.102/2007-Cus. dt. 14.09.2007. The refund claims related to Appeal Nos.C/193/2009, C/279/2009, C/280/2009, C/281, 282/2009 were filed by Nokia before Asst. Commissioner, Seaport Commissionerate instead of Asst. Commissioner, Airport. It transpires that the Asst. Commissioner (Seaport) even sanctioned refund covered by Appeal No. C/193/2009. Subsequently, on realizing that the applications had not been filed with jurisdictional officer, demand notice was issued to Nokia to pay up amount of Rs.2,56,61,889/- along with interest. ~~Further.~~ It further appears that respondent paid up the amount demanded along with interest and requested the Asst. Commissioner (Seaport) to transfer the refund claims covered in the above appeals to the Asst. Commissioner, Airport. The claims were thus transferred from Sea Customs to Air Customs. Subsequently, the Asst. Commissioner, Airport Commissionerate rejected the refund claims on the ground that the applications had been filed after a lapse of one year from the date of payment of duty. Aggrieved by the said orders, Nokia filed 5 appeals before Commissioner of Customs (Appeals), Chennai who allowed the appeals by way of remand with direction to lower authority to verify all the documents to be produced by Nokia and pass fresh orders. Aggrieved by the said order, department has filed five different appeals in C/193/2009 to C/282/2009.

3. In *de novo* proceedings, refund claims covered by appeals listed at Sl.No. 1-5 as above were again taken up for processing and were rejected by original authority. Aggrieved by those orders, Nokia filed five separate appeals before Commissioner (Appeals) which culminated in impugned Orders-in-Appeal Nos. 1370-1375/2013 dt. 30.09.2013, which have now been appealed before this forum by Revenue as at Sl.Nos.9, 11, 12, 13, 14. Other appeals at Sl.Nos.6,7,8,10 &15 given in the table relate to refund applications filed before jurisdictional proper officer which was rejected by the said authority. On appeal, Commissioner (Appeals) set aside the said orders and remanded the matter back to the adjudicating authority. Department have filed appeals against these orders of the Commissioner (Appeals).

4. On 26,07.2017, when the matter came up for hearing, on behalf of the department, Shri B. Balamurugan reiterated the grounds of appeal. He further submits that refund in these cases involve exemption notification under Section 25 (1) of Customs Act. The fundamental premise in granting any exemption notification is that to claim this benefit all the accompanying conditions must be satisfied. Neither ignorance nor wrong interpretation can be grounds for any conditions in the implementation of the notification. The filing of the refund claims in the Sea Customs Commissionerate by the importer

is deliberate since even after the discrepancy was brought out Nokia still continued to file claims in same wrong jurisdiction. Ld.A.R further submits that the Commissioner (Appeals) has gone beyond his brief in directing the lower authority to decide the case on merits within 15 days from the date of receipt of the order. The refund applications will definitely have to be considered having been filed before the jurisdictional competent authority beyond the period prescribed of such filing and as such, the orders of the Commissioner (Appeals) are foul of the law and hence they require to be set aside.

5. On the other hand, on behalf of respondent, ld. Advocate Shri C. Saravanan submits that the filing of the refund claims in the Sea Customs Commissionerate instead of Air Customs Commissionerate was not deliberate or intentional but was only inadvertence; that in any case, the claims have been filed to the customs authorities in the same city and Sea Customs have also transferred the files to the Asst. Commissioner (Airport Customs) for considering the claims. The ld. Advocate further submits that the Commissioner (Appeals) is just and fair in holding that actual filing of refund claims should be the criteria for computation of time limit notwithstanding the fact that they were not filed in the correct jurisdiction. Ld. Advocate submits that date of filing refund claims before Sea Customs should therefore to be taken as the date of

actual filing of the claims and hence the claims are not hit by limitation. Ld. Advocate further submits that in view of OIA in respect of Appeal No.C/40338/2014, C/40040/2014 to C/40443/2014 and Appeal Nos.C/193/2009 and C/279/2009 to C/282/2009 have become infructuous and therefore liable to be dismissed.

6. Heard both sides and have gone through the facts of the matter. The higher appellate forums have been consistently taking the view that filing of refund claims before a wrong jurisdiction will not vitiate the claims on the grounds of limitation, if otherwise filed within the prescribed time limit. We find ourselves in agreement with the reliance of the lower appellate authority in the ratio laid down by CESTAT in *Poulose & Matthen Vs CCE* - 1989 (43) ELT 424 (Tribunal) where the Tribunal has laid down that if an application is filed before an officer who does not have territorial jurisdiction, the application would not be *ab initio* either void or non est. The said decision has also been upheld by the Hon'ble Apex Court as reported in 2000 (120) ELT A64 (SC). This very Bench, in Final Order No.41274/2017 dt. 25.07.2017, in the case of *Sri Vasavi Gold & Bullion (P) Ltd.* in Appeal No.C/41869/2014 has reiterated the same view. Relevant portion of that decision concerning the issue at hand is reproduced herein below for ready reference :

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> "5. No doubt, the appellant had filed the refund claim at Sea Customs instead of at Air Cargo Complex. Nonetheless, instead of issuing deficiency memo pointing out the jurisdictional discrepancy, Sea Customs Commissionerate started processing the claim and in fact issued a memo seeking further documents. In case, had the appellant been informed earlier about wrong filing of the claim, he could have very well withdrawn the claim and filed it with Air Cargo Complex. On the other hand, Sea Customs Commissionerate, in fact, transferred the claim to Air Cargo Complex. This being so, it is to be considered that the claim was all along with the Customs Department and the date of filing the claim will have to be reckoned as that of when the claim was filed in Sea Customs. There is also no dispute that when the claim was filed in Sea Customs it was not filed within time. For these reasons, we find that it is proper to set aside the impugned order and remand the matter back to the concerned original authority (refund sanctioning authority) in Air Cargo Complex to consider the claim of the appellant as if the same had been filed within time. Needless to say, the appellant will be given sufficient opportunity of supporting their claim. Appeal is allowed by remand."

7. Viewed in this light, we are unable to find any infirmity in the orders of the lower appellate authority remanding the matter back to the original authority for de novo consideration as if the claims have been filed within time limit before the jurisdictional Sea Customs. In any case, the lower appellate authority has only held that the impugned claims are not hit by limitation, however he has remanded the cases to the lower authority for consideration of the claim on merit. Department is also aggrieved by the limited period of 15 days time given to the original authority by the Commissioner (Appeals) to

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dispose of the matter. We are inclined to agree with the department on this score since 15 days would surely be too short a period for effectively initiating and completing such de-novo proceedings. We therefore direct that the original authority should dispose of the remanded matters within a reasonable period of two months from the date of this order.

8. We are not able to find any other merit in the appeals filed by the department for which reason, the same are dismissed, with the observations on the de-novo proceedings supra.

(Operative part of the order pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

Sulekha Beevi
(Sulekha Beevi C.S)
Member (Judicial)

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सहायक पंजीकार / Asst. Registrar
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चेन्नै / Chennai