

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. I

**Customs Appeal No. 42424 of 2013**

(Arising out of Order-in-Appeal C.Cus. No. 1455/2013 dated 01.10.2013 passed by the Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

**M/s. Nitco Limited**

[Formerly 'M/s. Nitco Tiles Ltd.']  
Nitco House, Station Road,  
Kanjur Marg (E), Mumbai – 400 042

**: Appellant**

**VERSUS**

**Commissioner of Customs**

No. 60, Rajaji Salai, Custom House, Chennai – 600 001

**: Respondent**

**APPEARANCE:**

Ms. Shobana Krishnan, Advocate for the Appellant

Shri R. Rajaraman, Assistant Commissioner for the Respondent

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 40523 / 2023**

DATE OF HEARING: 12.06.2023

DATE OF DECISION: 28.06.2023

**Order : [Per Hon'ble Mr. P. Dinesha]**

This appeal is filed against the Order-in-Appeal C.Cus. No. 1455/2013 dated 01.10.2013 passed by the Commissioner of Customs (Appeals), Chennai, by the assessee since the first appellate authority had dismissed their appeal on limitation, and without going into the merits of the case.

2.1 Brief facts, as could be gathered from the Order-in-Original, are that the assessee filed refund claim of SAD in respect of various Bills-of-Entry, as reflected in the table

given in the Order-in-Original, which fact is not disputed by either of the parties before this court. It is seen from the table that the total refund claimed of SAD was Rs.32,92,829/- in terms of Notification No. 102/2007-Cus. dated 14.09.2007, as amended.

2.2 It is also observed by the original authority that the appellant had submitted supporting documents, including certificates issued by their Chartered Accountant.

2.3 During adjudication, it emanates from the Order-in-Original dated 09.07.2010 that the adjudicating authority, after going through the refund applications as well as attached documents, however, appears to have sanctioned only a partial refund of Rs.22,05,614/- thereby rejecting the balance amount of Rs.10,87,215/-.

3. It appears from the documents placed on record before us that having not received the Order-in-Original dated 09.07.2010, the assessee, by its letter dated 18.08.2010, appears to have requested the Commissioner of Customs (Import), Chennai for refund of the balance SAD. It also appears from the very same letter that the assessee has categorically acknowledged the receipt of refund of Rs.22,05,614/- sanctioned on 11.03.2010. The said sanction order dated 11.03.2010, has also been placed on record before us at Annexure-2 to the appeal memorandum.

4. Aggrieved by the non-receipt of the balance refund, it appears that the assessee filed an appeal before the first appellate authority, *inter alia* contending that they did not receive the Order-in-Original at all, but however, they came to know of the said order much later. Hence, to establish that they did not receive the order in original, it appears that they had filed various letters requesting for refund which are also placed on record. But the first appellate authority, as per impugned Order-in-Appeal, did not entertain their appeal. The first appellate authority records in his order that the appellant had received partial

refund on 21.07.2010 itself, the address mentioned for communication is identical and therefore, the allegation as to non-receipt of the Order-in-Original was not acceptable. On this ground alone, the first appellate authority has rejected the appeal.

5. It is against this order that the present appeal has been filed before this court.

6.1 The Ld. Advocate submitted before us that it was only on 06.01.2011 when the assessee met the Commissioner of Customs (Export) that the assessee were informed about the Order-in-Original dated 21.07.2010, apparently dispatched on 09.07.2010. It is their claim that the above fact was not accepted by the first appellate authority.

6.2 The Ld. Advocate would thus submit that it was a clear case of non-receipt of the order. Otherwise, the appellant would have immediately filed an appeal for the sanction of balance amount. In any case, according to her, the refund was sanctioned as early as 11.03.2010, which was also received by the assessee and therefore, the alleged sanction of refund per the Order-in-Original is an incorrect proposition, entertained by the first appellate authority.

7. *Per contra*, Ld. Assistant Commissioner defended the findings of the lower authorities.

8. We have considered the rival contentions and we have perused the orders of both the lower authorities.

9. After hearing both sides, we find that the only issue to be decided by us is: whether the appellant is served with Order-in-Original in time as held in the impugned Order-in-Appeal?

10.1 We find from the documents placed on record that the sanction was granted as early as 11.03.2010, and the receipt of the refund has also been acknowledged by the

assessee in its various letters addressed to the Revenue authorities, including the Commissioner of Customs. Hence, to say that the sanction was ordered as per the order in original is not correct.

10.2 Moreover, the printed Order-in-Original placed in the appeal memorandum does not even have a number nor does it have the date on which the said order was passed and the date on which the same was dispatched. We have found that this is the usual practice by the original authority wherein the Order-in-Original itself contains the printed number of the order as well as the date. There is some insertion by hand, but unfortunately, we do not find any initial for carrying out the correction or insertion which is essential; hence, the said insertions do not impress us. But in any case, as we have observed that the date of sanction was much earlier, we have to accept the contentions of the assessee that it did not receive the Order-in-Original until 06.01.2011, when it had an occasion to meet the Commissioner of Customs (Export). These facts are not disputed by the Revenue.

11. In view of the above, we are satisfied that the impugned order, insofar as it relates to the issue on limitation, deserves to be set aside as unsustainable.

12. Further, we find that the first appellate authority has not given any findings on the merits of the case, though he has discussed about the same in the impugned order. In view of the above, it is appropriate that we remit the matter back to the file of the first appellate authority for disposal of the appeal on merit alone, since we are satisfied that there is no delay in filing the appeal before the first appellate authority.

13. Resultantly, impugned order is set aside and the appeal of the appellant stands allowed by way of remand. We also note that the matter pertains to the vintage 2007, when the refund application was filed and hence, we deem it proper to direct the first appellate authority to dispose of

the appeal as early as possible, preferably within a period of six months from the date of receipt of this order by the Office of the jurisdictional Commissioner. It goes without saying that the first appellate authority shall adhere to the principles of natural justice by giving sufficient opportunities to the appellant of being heard before passing a speaking order on merits. All the contentions on merits of the case are left open.

(Order pronounced in the open court on **28.06.2023**)

Sd/-  
**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)

Sdd