IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No. 42677 of 2014
and
Customs Appeal No. 42280 of 2015

(Arising out of Order in Appeal C. Cus. II No. 172/2014 dated 21.11.2014 and Order in Appeal C. Cus. II No. 687/2015 dated 30.6.2015 passed by the Commissioner of Customs (Appeals – II) Chennai)

M/s. Palfinger Cranes India Pvt. Ltd. **Appellant**
No. 37, Varadarajapuram
Nazarathpet, Poonamellee
Chennai – 602 103.

Vs.

Commissioner of Customs (Exports) **Respondent**
Custom House, 60, Rajaji Salai
Chennai – 600 001.

APPEARANCE:

Shri Ajay Kumar Gupta, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Auth. Representative for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NOS. 41006-41007/2025

Date of Hearing : 12.03.2025
Date of Decision: 11.09.2025

Per M. Ajit Kumar,

These appeals are filed against Order in Appeal C. Cus. II No. 172/2014 dated 21.11.2014 and Order in Appeal C. Cus. II No. 687/2015 dated 30.6.2015 passed by the Commissioner of Customs (Appeals – II) Chennai (impugned order).

2. Brief facts of the case are that the appellant filed refund claims of Rs.1,92,608/- and Rs.2,00,864/- being the amount paid against 4% SAD for the import of crane and crane parts vide Bills of Entry No.

6856351 dated 18.5.2012 and No. 8415934 dated 6.11.2012 in terms of Notification No. 102/2007-Cus dated 14.9.2007. On scrutiny of the documents submitted by the appellant, it was noticed that none of the sales invoices contained the mandatory indication required under condition No. 2(b) of the above notification. After due process of law, the Ld. Adjudicating Authority rejected both the refund claims for non-fulfilment of the conditions contained in Notification No. 102/2007-Cus dated 14.9.2007. The appeals preferred by the appellant before the Ld. Commissioner (Appeals) were also rejected. Hence these appeals.

3. Ld. Counsel Shri Ajay Kumar Gupta appeared for the appellant and Smt. Anandalakshmi Ganeshram, Ld. Authorized Representative appeared for the respondent.

3.1 Shri Ajay Kumar Gupta Ld. Counsel for the appellant stated that as per Notification No. 102/2007-Cus dated 14.9.2007, an endorsement on the invoice will have to be made stating that "no cenvat credit would be admissible in respect of 4% CVD". The intention of the statute is to ensure that the importer shall not avail double benefit of both cenvat credit as well as refund of 4% CVD. He relied upon the following judgments which held that endorsement is not required in the case of non-excise invoice.

i) M/s. Equinox Solution Ltd. Vs. Commissioner of Customs (Import), Mumbai reported in 2011 (272) ELT 310 (Tri. Mumbai)

ii) M/s. Commissioner of Customs, Amritsar Vs. Malwa Industries Ltd. – 2009 (235) ELT 214 (SC)

iii) Prasad Enterprises Dev. International Vs. Commissioner of Customs, Mumbai – 2014-TIOL-908-CESTAT-MUM

The Ld. Counsel further stated that CENVAT Credit cannot be availed if the duty element was itself not mentioned in the invoice and hence endorsement was not required in such invoices. He relied on the following judgments in this regard.

i) M/s. R.K.G. International Pvt. Ltd. Vs. Commissioner of Customs, Noida – 2013 (290) ELT 253 (Tri. Del.)

ii) M/s. Ruchi Acroni Industries Ltd. Vs. Commissioner of Customs, Mumbai – 2011 (272) ELT 287 (Tri. Mum.)

iii) M/s. Maruti Suzuki India Ltd. Vs. Commissioner of Customs, Mumbai – 2013 (296) ELT 100 (Tri. Mum.)

iv) M/s. Novo Nordisk India Pvt. Ltd. Vs. Commissioner of Customs, Mumbai – 2013 (292) ELT 252 (Tri. Mum.)

The Ld. Counsel stated that it is clearly evident from the various decisions relied upon by the appellants that the refund claim filed by the appellants shall not be denied on the simple procedural lapse. As long as the appellants did not avail double benefit, there is no valid reason for rejecting the refund claim other than the simple reason of procedural lapse. The purpose of granting SAD refund is that once the Sales Tax or Value Added Tax has been paid by the importer on the sale of imported item and no Additional Duty of Customs paid under Section 3(5) of the Act was not passed on, there should be no issue in granting the SAD refund. Moreover, in the instant case, the appellants furnished all the necessary documents like evidence of payment of CST / VAT and also the Sales Tax returns to claim the benefit of SAD refund. When everything is in order, the respondent ought not to have rejected the refund claim filed by the appellants. The Ld. Counsel stated that under the above circumstances, the impugned order passed by the respondent was liable to be set aside and prayed for relief.

3.2 Smt. Anandalakshmi Ganeshram, Ld. has reiterated the findings in the impugned order.

4. Heard both sides.

5. We find that the issue involved in this case is the non-fulfillment of condition 2(b) of Notification 102/07 dated 14.09.2007. The very same issue was examined by a Larger Bench of this Tribunal in **Chowgule & Company Pvt. Ltd. v. CCE [2014 (306) E.LT. 326 (Tri.-L.B.)].** on the following reference;

> "Whether to avail the benefit of Notification No. 102/2007, the condition 2(b) of the Notification is mandatory for compliance being a trader who cleared the goods on the strength of commercial invoices."

It went on to state;

> 5.4 In view of the factual and legal analysis as above, we answer the reference made to us as follows. **A trader-importer, who paid SAD on the imported good and who discharged VAT/ST liability on subsequent sale, and who issued commercial invoices without indicating any details of the duty paid, would be entitled to the benefit of exemption under Notification 102/2007-Cus., notwithstanding the fact that he made no endorsement that "credit of duty is not admissible" on the commercial invoices, subject to the satisfaction of the other conditions stipulated therein**. The above decision is rendered only in the facts of the case before us and shall not be interpreted to mean that conditions of an exemption notification are not required to be fulfilled for availing the exemption.
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> (emphasis added)

Judicial discipline requires that a Bench of lesser quorum should comply with a view taken by a Bench of larger quorum.

6. In the circumstances we set aside the impugned orders and allow the appeals. The appellant is eligible for consequential relief, if any, as per law. The appeals are disposed of accordingly.

(Order pronounced in open court on 11.09.2025)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

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