IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT No. III

Customs Appeal No. 42254 of 2015

(Arising out of Order-in-Appeal C.Cus. II No. 615/2015 dated 30.06.2015 passed by Commissioner of Customs (Appeals-II), No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

M/s. N.R. Colours Ltd. **...Appellant**
No. 1/178, Sructure B,
Pillayar Koil Street,
Nerkundram,
Chennai – 600 107.

Versus

Commissioner of Customs **...Respondent**
Chennai II Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

<u>APPEARANCE:</u>

For the Appellant : Mr. A.K. Jayaraj, Advocate
For the Respondent : Mr. N. Satyanarayana, Authorized Representative

<u>CORAM:</u>

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

DATE OF HEARING : 08.08.2025
DATE OF DECISION : 15.10.2025

<u>FINAL ORDER No. 41143 / 2025</u>

Order:-

This is an appeal filed by M/s. N.R. Colours Ltd., Chennai (hereinafter referred to as the 'Appellant') to assail the Order in Appeal C.Cus. II No. 615/2015 dated 30.06.2015 passed by the Commissioner of Customs (Appeals-II), Chennai and to pass an order of direction, directing to settle the refund claim amount of Rs.3,10,795/- made by the Appellant.

2.1 The Appellant had filed a refund claim on 26.02.2014 in terms of Notification No. 102/2007-Customs dated 14.09.2007, as amended *vide* Notification No. 93/2008 dated 01.08.2008, for refund of 4% Additional Duty of Customs amounting to Rs.3,10,795/- which was paid by them on import of "Pentacrythritol Mono Grade, MHEC, Re-dispersable emulsion power" *vide* 7 bills of entry No. 2200930 dated 22.05.2013, 2201017 dated 22.05.2013, 2255268 dated 28.05.2013, 2483288 dated 20.06.2013, 9120282 dated 24.01.2013, 9665419 dated 25.03.2013 and 9962012 dated 26.04.2013.

2.2 The Appellant submitted the following documents along with the refund claim: -

i. 07 Original Importer's copies of Bills of Entry [two original and others photocopy]
ii. 06 Original TR6 Challans for 6 Bills of Entry No. 2201017 dated 22.05.2013, 2255268 dated 28.05.2013, 2483288 dated 20.06.2013, 9120282

dated 24.01.2013, 9665419 dated 25.03.2013 and 9962012 dated 26.04.2013. TR6 Challan for bill of entry No.2200930 was not submitted.

iii. Copies of Sales Invoices

iv. Copies of VAT Acknowledgements

v. Statutory Auditor's Certificate ruling out Unjust Enrichment

vi. Indemnity Bond for 5 Bills of Entry misplaced by them

2.3 The Adjudicating Authority randomly verified certain sales invoices at buyers end and found that in three sales invoices, the mandatory endorsement as per para 2(b) of Notification No. 102/2007-Customs dated 14.09.2007 was not imprinted or stamped. The entire refund claim was rejected for non-fulfillment of the condition No. 2(b) of Notification No. 102/2007-Customs.

2.4 The Appellant carried the matter in appeal and the lower appellate authority (hereinafter referred to as LAA) rejected the appeal by holding that: -

(a) though the Appellant stated during the personal hearing that the sales invoices are endorsed but they have not submitted any such invoices;

(b) the circular 16/2008 dated 13.10.2008 mentions about the fulfilment of conditions in para 2(b) of Notification No. 102/2007-Cus and also certificate from Chartered Accountant ruling out unjust enrichment. Therefore, a Chartered Accountant certificate ruling out unjust enrichment cannot be a substitute for compliance of condition in para 2(b) of Notification No. 102/2007-Cus.

3. The Appellant has preferred the present appeals assailing the impugned order passed by the LAA.

4.1 The Ld. Advocate Mr. A.K. Jayaraj appeared and argued for the Appellant and submitted that the refund claims were rejected only on the allegation of non-fulfillment of condition 2(b) of Notification No. 102/2007-Cus. But the LAA failed to note that the Appellant had already furnished invoices of sale of goods specially indicating in the invoice that "In respect of the goods covered, no credit of Additional Duty of Customs levied under Sub-Section (5) of Section 3 of the

Customs Tariff Act 1975 shall be admissible" and got acknowledgement also. Hence the finding of the LAA that the sales invoice does not carry such an endorsement is not correct.

4.2 He further submitted that the LAA had not properly perused the Invoice Copies submitted by the Appellant having endorsement as per condition 2(b) of the Notification No. 102/2007-Cus and passed the impugned order on the wrong assumption that the invoices furnished by the Appellant did not carry the endorsement. Hence the refund claim is to be settled.

4.3 The Ld. Advocate argued that the finding of LAA that Chartered Accountant’s Certificate ruling out unjust enrichment cannot be a substitute for compliance of condition in para 2(b) of Notification No. 102/2007-Cus., dated 14.09.2007 is not correct and totally baseless.

4.4 The Ld. Advocate placed reliance on the following case laws to submit that the rejection of the Appellant's refund claim on the ground that endorsement was not made in sale invoice is per se erroneous and the impugned order deserves to be set aside in its entirety with consequential relief to the Appellant: -

i. *M/s. Venner Mills Vs. The Commissioner of Customs*
ii. *M/s. Faxtel System (India) Vs Commissioner of Customs, Bangalore*
iii. *M/s. Ganesh Impex Vs Commissioner of Customs, Chennai*
iv. *M/s. Johnsons Lifts Pvt. Ltd. Vs Commissioner of Customs, Chennai [2020 (374) ELT 519 (Mad)]*
v. *M/s. P.P. Products Ltd. Vs Commissioner of Customs, Chennai [2019 (367) ELT 707 (Mad)]*

5. *Per contra*, the Ld. Authorized Representative Mr. N. Satyanarayana for the Revenue supported the findings in the impugned order. He submitted that both the adjudicating authority and the LAA have found that the sales invoices submitted by the Appellant and randomly verified at buyers end did not contain the mandatory endorsement as per the condition in para 2(b) of notification No. 102/2007-Cus., dated 14.09.2007. Therefore, they have rightly rejected the refund claim of the Appellant.

6. Heard both sides and perused the appeal records.

7. The issues to be decided in this case are: -

i. Whether the sales invoices submitted by the Appellant contained the endorsement as per para 2(b) of Notification No. 102/2007-Customs or not; and
ii. Whether the Appellant is eligible for refund in case the sales invoices submitted by the Appellant did not contain the endorsement as per para 2(b) of Notification No. 102/2007- Customs dated 14.09.2007.

8. It is an undisputed fact that both the adjudicating authority and the LAA have found that the sales invoices submitted by the Appellant and randomly verified at buyers end did not contain the mandatory endorsement as per the condition in para 2(b) of notification No. 102/2007-Customs dated 14.09.2007. The Appellant contends that they had already furnished invoices of sale of goods specially indicating in the invoice that "In respect of the goods covered, no credit of Additional Duty of Customs levied under Sub-Section (5) of Section 3 of the Customs Tariff Act 1975 shall be admissible" and got acknowledgement also.

9. The appeal papers do not contain either sales invoices or the acknowledgment from the department to the effect that the sales invoices submitted by the Appellant were imprinted or stamped with the endorsement as per the condition in para 2(b) of notification No. 102/2007-Customs dated 14.09.2007. Therefore, the Appellant's contention in this regard is found to be baseless and unsubstantiated.

10. The only issue that needs to be decided is whether the Appellant is eligible for refund in case the sales invoices submitted by the Appellant did not contain the endorsement as per para 2(b) of Notification No. 102/2007-Customs dated 14.09.2007.

11. It is noted that identical issue up for consideration before the Larger Bench of this Tribunal in *Chowgule & Company Pvt. Ltd. Versus Commissioner of Customs & Central Excise [2014 (8) TMI 214 - CESTAT MUMBAI (LB)]* and the Larger Bench held that a trader-importer, who paid SAD on the imported goods 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 No. 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. Relevant portions of the decision of the Larger Bench read as follows: -

> *"The reference made to the Larger Bench reads as follows :*
>
> *"Whether to avail the benefit of Notification No. 102/07, the condition 2(b) of the Notification is mandatory for compliance being a trader who cleared the goods on the strength of commercial invoice."*
>
> *2. The reference has been made in the facts and circumstances detailed below :*
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> *2.1. The appellant, a trade, imported goods on which the discharged special additional duty of customs under Section 3(5) of the Customs Tariff Act, 1975. The said goods were sold on payment of CST/VAT under commercial invoices. In the said commercial invoice, the appellant did not indicate of SAD element separately. The appellant also did not make any endorsement on the invoice to the effect that no cenvat credit of the SAD is admissible in respect of the goods covered therein. The appellant claimed benefit under Notification 102/2007-Cus dated 14.09.2007 which reads as follows :*
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>> *"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for subsequent sale, from the whole of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act (hereinafter referred to as the said additional duty).*
>>
>> *2. The exemption contained in this notification shall be given effect if the following conditions are fulfilled :*
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>> *(a) the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon, as applicable at the time of importation of the goods;*

(b) the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible;

(c) the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer;

(d) the importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be;

(e) the importer shall, inter alia, provide copies of the following documents alongwith the refund claim:

(i) document evidencing payment of the said additional duty;

(ii) invoices of sale of the imported goods in respect if which refund of the said additional duty is claimed

(iii) documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.

3. The jurisdictional customs officer shall sanction the refund on satisfying himself that the conditions referred to in para 2 above, are fulfilled."

It is in the context of condition stipulated under clause (b) of para 2 of the notification, the issue has arisen as to whether refund of SAD can be allowed when no endorsement was made on the commercial invoices as stipulated in paragraph 2 (b) while all other conditions stipulated in the notification stood satisfied.

2.2. The above issue had come up for consideration earlier before this Tribunal in the case of Equinox Solution Ltd. vs. Commissioner of Customs (Import) 2011 (272) ELT 310 and Nova Nordisk India Pvt. Ltd. vs. Commissioner of Customs (ACC & Import), Mumbai 2013 (292) ELT 252. In these two decisions, it was held that in where the trader issues a commercial invoice without making the endorsement as stipulated in paragraph 2(b) of the notification and quantum of SAD paid is not specifically mentioned in the invoices, SAD paid should not be denied merely because the required endorsement was not made as that would constitute only a technical infraction. The purpose of clause (b) of para 2 of the Notification is to prevent availing of double benefit, i.e., the buyer of the goods takes the credit of SAD paid while *the seller gets refund) of the SAD paid. It was noted that in the case of a trader, who is not registered with the department and who is also not authorised to issue CENVATable invoices and who does not indicate in the commercial invoice the details of the SAD paid, the question of taking any credit would not arise inasmuch as commercial invoices issued by a non-registered trader is not a document on the strength of which CENVAT could be availed md in the absence of duty particulars thee question of taking any CEKVAT credit also would not arise. Therefore, it was held that even if (he trader did not make the endorsement las envisaged under clause (b) of paragraph 2, it would not make any material difference and refund of SAD paid could be allowed subject to satisfaction of the other conditions stipulated in the notification.*

2.3. However, another coordinate bench of this Tribunal, in the case of Astra Zeneca Pharma India Ltd. vs. Commissioner of Customs, New Delhi 2013 (294) ELT 574 took a contrary view holding that if the condition specified is not complied with, the benefit of the Notification cannot be availed and, therefore, in the absence of the mandatory endorsement required to be made on the invoices, the question of refund of SAD would not arise at all. In view of the contrary views taken by the two benches of this Tribunal, a reference has been made to the Larger Bench for resolution of the issue.

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5. We have carefully considered the rival submissions.

5.1. It would be useful and appropriate at this juncture to understand the genesis of the levy of Special Additional Duty of Customs (SAD). While moving the proposal for this levy in the Finance Bill, l998, the hon'ble Finance Minister of India stated as follows in his Budget Speech:-

> *"I am persuaded about a clear disability that our commodity taxation inflicts on the indigenous goods vis-a-vis the imported goods. While the former are subjected to sales tax and other local taxes and levies, the import sector escapes them by their very. In order to provide a level playing-field to the domestic industry. I propose to impose an additional non-modvatable levy of 8% on imports which is approximately equal to the burden of local taxes on domestic producers. This duty should not be viewed as a protectionist measure but only as a response to a legitimate demand for a level playing field. The new levy would not apply to crude oil, newsprint, capital goods sector under a special tariff regime or goods*

> *which are subjected so additional duties of excise in lieu of sales tax, gold and silver imported by passengers or other nominated agencies and life saving drugs mat are free from customs duties. The levy would also not apply to goods which are currently exempt both from basic and additional duties of customs. Similarly, goods imported for subsequent trading have also been left out of its purview, since they bear the burden of Sales, tax at the lime of first, sale. The new levy will also not apply to input imported under export-promotion schemes. In addition, there may be other sectors eligible for exemptions. These would be examined and if considered appropriate notified separately."*

The rate of levy was subsequently reduced to 4% All goods imported for subsequent sale were initially exempted from levy of SAD vide Sl. No. 11 of the Table Annexed to notification No. 29/98-Cus dated 2-6-1998. The said exemption underwent many changes over the years and the present exemption is contained in notification 102/2007-Cus wherein the exemption is operationalised through a refund mechanism. Notwithstanding these changes, the object of the levy was to counterbalance the levy of local taxes on domestically produced goods on imported goods so that there is a level playing field between the two. However, when the imported goods are subsequently sold in the domestic market bearing the burden of local taxes, exemption is provided from SAD so as to neutralize the impact of double levy. This object and purpose of the levy and the exemption needs to be kept in mind while interpreting notification No. 102/2007-Cus.

5.2. Rule 9 of the CENVAT Credit Rules prescribes the documents on the strength of which CENVAT credit can be taken. An invoice issued by an importer is also one of the prescribed documents However, for taking the CENVAT credit, under sub-rule (2) of the said Rule 9, following particulars are required to be indicated, namely, details of the duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service Tax registration number of the person issuing the invoice, name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, etc. For taking the credit, the quantum of duty paid should be shown in the invoices and the same should be shown separately for each type of duties. In respect of a commercial invoice, which shows no details of the duty paid, the question of taking of any credit would not arise at all. Therefore, non-declaration of the duty in the invoice issued itself is an affirmation that no credit would be available. Therefore, non-declaration/non-specification of the duty *element as to its nature and quantum in the invoice issued would itself be a satisfaction of the condition prescribed under clause (b) of para 2 of the Notification 102/2007.*

5.3. In the Mangalore Chemicals and Fertilizers Ltd, is case (supra), the hon'ble apex Court observed that a distinction, between the provisions of a statute which are of a substantive character and were built-in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in nature on the other, must be clearly drawn. It was further held in the said decision that while interpreting an exemption clause, liberal construction should be imparted to the language thereof if the subject falls within the scope of the exemption. It was also held that, the need to resort to any interpretative process would arise only where the meaning is not manifest on the plain words of the statute. As held by the hon'ble Apex Court in the New India Sugar Mills Ltd. vs. Commissioner of Sales Tax, Bihar [AIR 1963 SC 1207] - "it is a recognized rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the Legislature". Applying the ratio of these decisions to the facts of the case before us, it can be seen that the condition relating to endorsement on the invoice was merely a procedural one and the purpose and object of such an endorsement could be achieved when the duty element itself was not specified in the invoice. Since the object and purpose of the condition is achieved by non-specification of the duty element the mere non-making of the endorsement could not have undermined the purpose of the exemption. Thus we concur with the view taken by this Tribunal in the cases of Equinox Solution Ltd. and Nova Nordisk India Pvt. Ltd. (supra).

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 goods 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.

6. The reference as answered above is returned to the referring bench for further action as necessary.”

12. Judicial discipline requires that the judgment of the Larger Bench should be followed. Therefore, I hold that the Appellant is eligible for the refund claimed, and the impugned order rejecting the refund claim is not proper.

13. While concluding, it is appropriate to point out that none of the case laws cited by the Appellant addressed the issue of whether the Appellant is eligible for refund in case the sales invoices submitted by the Appellant did not contain the endorsement as per para 2(b) of Notification No. 102/2007-Customs dated 14.09.2007 and therefore, the same are distinguishable on facts. Mis-match with regard to the description of goods etc. in the sales invoices when compared to the Bills of Entry was the issue in the cases of *M/s. Venner Mills Vs. The Commissioner of Customs, M/s. Ganesh Impex Vs Commissioner of Customs, Chennai, M/s. Johnsons Lifts Pvt. Ltd. Vs Commissioner of Customs, Chennai [2020 (374) ELT 519 (Mad))* and *M/s. P.P. Products Ltd. Vs Commissioner of Customs, Chennai [2019 (367) ELT 707 (Mad)]* cited by the Appellant. In M/s. Faxtel System (India) Vs. Commissioner of Customs, Bangalore, the issue was rejection of refund application on the ground that the CA certificate has not stated as how the unjust enrichment was not applicable.

14. In view of the above findings, the impugned Order-in-Appeal C.Cus. II No. 615/2015 dated 30.06.2015 passed by the Commissioner of Customs (Appeals-II) is set aside and the appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 15.10.2025)

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

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