

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

REGIONAL BENCH – COURT No. III

Customs Appeal No. 42318 of 2015

(Arising out of Order-in-Appeal C.Cus.II No. 787/2015 dated 30.08.2015 passed by the Commissioner of Customs (Appeals-II), No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

M/s. WR Grace & Co. India Pvt. Ltd.

...Appellant

SY 90/2, Meppur Thangal Road,
Madavillgam Village,
Thirumazhisai – 602 103.

Versus

Commissioner of Customs

...Respondent

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

APPEARANCE:

For the Appellant : Ms. M. Pooja, Advocate

For the Respondent : Mr. Vineet Goyal, Authorized Representative

CORAM:

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

DATE OF HEARING : 07.11.2025

DATE OF DECISION : 12.12.2025

FINAL ORDER No. 41466 / 2025

Order:-

This appeal is directed against Order-in-Appeal C.Cus.II No. 787/2015 dated 30.08.2015 passed by the Commissioner of Customs (Appeals-II), Chennai.

2.1 The Appellant had filed a refund claim on 28.09.2012 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. 11,80,888/- which was paid by them on import of "CONSTRUCTION MATERIALS" vide 11 bills of entry filed during the period between 12.08.2011 and 27.12.2011.

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

- i. 11 nos. Original Importer's Copy of the relevant Bills of Entry.
- ii. 11 nos. TR6 Challans evidencing payment of duty against the relevant Bills of Entry.
- iii. Copies of Invoices of sale of the imported goods.

2.3 But, the Appellant failed to submit copies of VAT challans and abstract of VAT/CST paid on sale of imported goods. Further, the appellant failed to furnish Chartered Accountant certificate as per PN 39/2011 dated 14.06.2011 to rule out unjust enrichment. Therefore, a Deficiency Memo was issued to the Appellant on 02.07.2014. The Appellant failed to respond to the same. Consequently, without going into other merits of the claim, the entire refund claim filed by the

Appellant was rejected by the adjudicating authority for non-fulfillment of the condition in para 2(e)(iii) of the Notification No. 102/2007-Customs dated 14.09.2007 read with Para 2(v), (vi) and (vii) of Circular No. 16/2008 dated 13.10.2008. Further, the adjudicating authority found that in respect of 2 Bills of Entry No. 4304505 / 09.08.2011 and 4441958 / 24.08.2011, the refund claim was filed beyond the period stipulated in the Notification No. 102/2007 dated 14.09.2007, i.e., one year from the date of payment of duty.

3.1 The Appellant carried the matter in appeal before the lower appellate authority (hereinafter referred to as LAA) where the Appellant enclosed copies of documents evidencing the payment of VAT / CST (as effective discharge of VAT / CST payment on imported goods), duly certified by the Chartered Accountant based on verification of the Bills of Entry and corresponding TR6 Challans, receipts, invoices of sale and supporting documents, viz. VAT / CST challans / returns & details of Cheques / DD's, sales registers etc. Further, the Appellant also produced Chartered Accountant Certificate to the effect that the burden of 4% Additional Duty being claimed as refund was not passed on to the buyer or any other person.

3.2 The LAA, while observing that the adjudicating authority has rejected the claim on the grounds that the claimant has not submitted VAT challans and Abstract of VAT/CST paid on the sale of the imported goods and also they have not submitted the CA certificate in proper format as per PN 39/2011 dated 14.06.2011, rejected the appeal by holding that the Appellant failed to make good the deficiency pointed out by the lower adjudicating authority in the Deficiency Memo dated 02.07.2014 issued to the Appellant for submission of the said VAT challans, Abstract of VAT/CST paid on the sale of the imported goods and the CA certificate in proper format as per PN 39/2011 dated 14.06.2011.

3.3 Further, in the impugned order, the LAA noted that the Lower Adjudicating Authority has also observed that two refunds in respect of two Bills of Entry are time barred.

4. The Appellant has preferred the present appeal assailing the impugned order passed by the LAA before this forum.

5.1 The Ld. Advocate Ms. M. Pooja appeared and argued for the Appellant firm and submitted that they have enclosed a Certificate from the Chartered Accountant to the effect that they have verified the Bills of Entry and corresponding TR6 Challans, receipts, invoices of sale and supporting documents as proof of payment of appropriate VAT / CST on sale of goods vide said invoices, viz. VAT / CST Challans / returns & details of Cheques / DD's sales registers etc. Based on said verification, the Chartered Accountant have certified that the goods imported under the Bill of Entry (as detailed in the correlation sheet) have been sold under various sales invoices (as detailed in the correlation sheet), and on each such sale, appropriate VAT / CST had been paid to the concerned VAT / Sales Tax authorities.

5.2 Regarding unjust enrichment, she submitted that the Chartered Accountant had certified that the 4% Additional Duty being claimed as refund has been shown in the Books of Accounts / Balance Sheet / Trail Balance for the period from November 2011 to December 2011 as 'Amount due as additional duty of customs' under the sub-heading 'Balances with Government authorities' under the head, 'Other loans and advances. Further, it was also certified that the 4% Additional Duty claimed as refund has not been charged to

expenses in the Profit and Loss Account of the company and therefore the same is not forming part of the cost of the goods and hence the burden of 4% AD is not being passed on to the buyer or any other person.

5.3 The Ld. Advocate averred that copies of documents evidencing the payment of VAT / CST (as effective discharge of VAT / CST payment on imported goods), duly certified by the Chartered Accountant were also submitted to the original authority as well as the LAA.

5.4 Referring to the Deficiency Memo issued by the original authority, the Learned Advocate contended that the Appellant approached the original authority in person and submitted the Chartered Accountant Certificate in the old format, upon which the Appellant was asked to submit the same in the prescribed format as per paragraph 2(e)(iii) of Notification No. 102/2007. However, before the Appellant could produce the Chartered Accountant Certificate in the prescribed format, the original authority passed the order rejecting the refund claim.

5.5 The Ld. Advocate argued that the only finding of the LAA against the Appellant is that the Chartered Accountant Certificate has not been submitted in the revised format, which is merely a technical lapse and the same cannot form the basis for denial of a substantive benefit.

5.6 She placed reliance on *Commissioner v. Apple India Pvt. Ltd. [2014 (309) E.L.T. 29 (Kar.)]* to submit that the presumption that the incidence of duty has been passed on to the customers is a rebuttable presumption. There, it was held that the assessee had rebutted the same by producing auditor report which unequivocally stated non-passing of duty burden directly or indirectly to the customers.

5.7 The Ld. Advocate referred to the decision in *Nova Nordisk India Pvt. Ltd. Vs. Commissioner of Customs (ACC & Import), Mumbai* reported in *2013 (292) E.L.T. 252 (Tri.-Mumbai)* and submitted that substantive benefit of an exemption notification should not be denied on the ground of procedure or technical infraction.

5.8 The Ld. Advocate also referred to and relied on the following judgments: -

- i. *The Commissioner of Customs, Bangalore Versus M/s. Apple India Pvt. Ltd. [2014 (301) E.L.T. 675 (Tri. - Bang.)]* where it is held as under: -

"The very purpose of requiring a certificate to be produced by a professional Chartered Accountant and insisting on the fact that the Chartered Accountant should be one who is responsible for auditing the companies accounts either statutorily is to ensure that the Chartered Accountant is familiar with the accounts of the company, their practices and also would be knowing and would be in a position to verify the accounts and such certificates shall be accepted.

12. In our opinion, the CA's certificate produced by the appellant fulfills the requirements and is sufficient to come to the conclusion that appellants are eligible for the refund."

- ii. *M.B. Enterprises Versus Commissioner of Central Excise, Ahmedabad [2013 (292) E.L.T. 451 (Tri. - Ahmd.)]*

where it is held as follows: -

"6. Further, as regards the principles of unjust enrichment is concerned, I find that the Board has clarified vide Circular No. 6/2008-Customs dated 28-4-2008 that a certificate issued by the statutory auditor/Chartered Accountant who certifies the annual account of the importer certifying that the incidence of duty has not been passed on by the importer to the buyer would suffice for the purpose of refund of such duty."

- iii. *Commissioner of Customs (Air), Chennai Versus RFCL Ltd. [2013 (291) E.L.T. 383 (Tri. - Chennai)]* where it is

held that: -

"The Circular further laid down, having regard to the enormous/voluminous records involved in the sale of imported goods, that Chartered Accountant's Certificate

could be produced to prove payment of appropriate Sales Tax/VAT/CST on the imported goods which suffered SAD.

4. After careful consideration of all the materials placed before us, we are of the view that the learned Commissioner (Appeals), by passing the impugned order, was implementing the purport of Notification No. 102/2007-Cus., as clarified in the aforesaid circular of the Board. In this view of the matter, there can be no stay of operation of his order."

iv. In *RE: Kavi Commercial Company Ltd. [2012 (277)*

E.L.T. 418 (G. O. I.)] where it is held as under: -

"8. Government observes that the main contention of the applicant is that the Respondent failed to produce relevant sales bills showing that the duty incidence has not been passed on by the respondent and mere submission of C.A. Certificate is not sufficient to prove that duty burden has not been passed on to the consumer. Government further notes that the Respondent had submitted audited books of account, profit and loss account and Balance Sheet for relevant periods and also for the period from 1-4-2007 to 31-3-2008, where in the claimed refund amount is shown as "Customs Duty Receivables". Further, the respondent have submitted C.A. Certificate dated 4-4-2002, which certifies that no Modvat/proforma credit is taken by the Respondent against the short landed quantity and no realization is received to them against the same. Government also notes that the C.A. Certificate dated 14-2-2009 certifies that the burden of Custom duty paid on short landed goods for Rs. 1,32,672/- has not been passed on by the Respondent. Further the Balance Sheet submitted by the respondents shown the claimed amount as outstanding towards customs Government notes that the respondent has stated that they were never specifically asked to produce documents like sales bills/sales invoices w.r.t. unjust enrichment.

9. Government also observes that the judgements relied upon by the applicants do not compulsory ask for sales bills/sales invoices alone as a proof that duty incidence has not been passed on. Moresoever the same was not specifically asked to produce by the applicant. Non-availment of Modvat credit, C.A. certificate to the effect that the duty incidence has not been passed on by the respondent are sufficient supporting documentary evidences for Balance Sheet as main documentary

evidence. All such documentary evidences are sufficient to prove that duty incidence has not been passed on by the respondent.

10. In the light of the aforesaid discussion, Government upholds the impugned order-in-appeal and rejects the Revision Application being devoid of merit."

v. *Commissioner of Customs (Sea-Export), Chennai Versus Shri Ram Impex India (P) Ltd. 2014 (300) E.L.T. 126 (Tri. - Chennai)* where it is held as follows: -

"9. In the grounds of appeal, the Revenue contests the authenticity and bonafide of CA certificate. It is seen from the adjudication order that Board Circular No.16/2008-Cus. clarifies that a Chartered Accountant is, one who either certifies the claimants financial records under the Companies Act, 1956 or any ST/VAT Act of the State Government or the Income Tax Act, 1961, in order to fulfill the condition that the incident of duty burden has not been passed on to any other person. We find that Chartered Accountants certificate was accepted by the adjudicating authority in terms of Board Circular, cannot be discarded without any material and/or basis. Revenue has not placed any material and therefore, there is no force in such grounds of appeal."

5.9 The Ld. Advocate submitted that in the light of the case laws relied upon, the Appellant is eligible for refund claim based on the Chartered Accountant Certificate and other documents required in terms of Notification No. 102/2007-Cus. dated 14.09.2007 furnished by the Appellant. The Customs Notification No. 102/2007 dated 14.09.2007 in paragraph 2(e)(iii) provides *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.*

5.10 She argued that the Appellant has enclosed the relevant sales tax / VAT documents evidencing payment of appropriate tax as prescribed under the Notification No. 102/2007-Cus. dated 14.09.2007 and based on which the Appellant has furnished the Chartered Accountant Certificate, making the Appellant eligible for the refund claimed.

6.1 *Per contra*, Mr. Vineet Goyal the Ld. Authorized Representative for the Revenue supported the findings in the impugned order. He submitted that both the adjudicating authority and the LAA have found that the Appellant has failed to make good the deficiencies in the refund claim that were pointed out in the Deficiency Memo. The LAA has found that the Appellant has not submitted the VAT payment challans which are mandatory documents for claiming refund in this case. Therefore, the LAA has rightly rejected the refund claim of the Appellant.

6.2 The Ld. AR further submitted that in respect of four Bills of Entry No. 4304505 / 09.08.2011, 4441958 / 24.08.2011, 4727568 / 23.09.2011 and 4460717/25.08.2011, the date of filing the refund claim is beyond the stipulated period of one year from the date of payment of duty.

7. Heard both sides and perused the appeal records and the case laws relied upon.

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

- i. Whether in the light of the fact that the Appellant submitted copies of documents evidencing payment of VAT / CST (as effective discharge of VAT / CST payment on imported goods), duly certified by the Chartered Accountant based on verification of supporting documents, the Appellant should be considered to have fulfilled the condition in para 2(e)(iii) of the Notification No. 102/2007-Customs dated 14.09.2007 read with Circular No. 16/2008 dated 13.10.2008.
- ii. Whether rejection of the Chartered Accountant Certificate by the adjudicating authority as well as the LAA on the ground that the same is not in proper format as per PN 39/2011 dated 14.06.2011 is correct or not.
- iii. Whether the refund claim of Appellant in respect of four Bills of Entry Nos. 4304505 / 09.08.2011, 4441958 / 24.08.2011, 4727568 / 23.09.2011 and 4460717 / 25.08.2011 is time-barred.

9. It is observed that the Appellant's refund claim has been rejected by the original adjudicating authority for non-fulfillment of the condition in para 2(e)(iii) of the Notification No. 102/2007-Customs dated 14.09.2007 read with Para 2(v), (vi) and (vii) of Circular No. 16/2008 dated 13.10.2008. Para 2(e)(iii) of notification No. 102/2007-Cus dated 14.09.2007 reads as under: -

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

(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.

Para 2(vi) of circular No. 16/2008-Customs dated 13.10.2008 reads as under: -

(vi) Submission of original copy of ST/VAT Challan: The difficulties expressed by the importers in submission of original Tax paid challans for evidencing payment of ST/VAT at more than one port was examined. Importers pay the appropriate ST/VAT to the concerned State Government where the sale of imported goods is effected. There is a genuine difficulty in case of importers selling the goods through various States or those importing goods at various ports and subsequently, selling in different States to obtain the original copy of ST/VAT challan evidencing payment of appropriate ST/VAT for the purpose of claiming 4% CVD refund with various Customs Commissionerates at different ports Further, payment of ST/VAT after adjusting input tax credit is made through different forms such as deposit of cash, cheque, demand draft or other authorised mode of payment through banking channel or payment directly to the ST/VAT Department. In some States, even e-payment is also accepted.

The aforesaid request of the trade has been considered and keeping in view the difficulties faced in submitting original challans, it has been decided that alternatively, the importers may submit copies of ST/VAT challan or copies of ST/VAT payment document in different forms evidencing payment made to the bank or ST/VAT Department towards ST/VAT along with a certificate from the Chartered Accountant, who either certifies the importer's financial records under the Companies Act, 1956 or any ST/VAT Act of the State Government or the Income Tax Act, 1961, confirming the payment against the aforesaid documents. This would be considered sufficient to fulfill the requirement in terms of para 2(e)(iii) of the Notification No.102/2007-Customs dated 14.9.2007. Hence, the Customs field formations shall accept the copies of ST/VAT challans/documents along with the certificate of the said Chartered Accountant, while receiving the 4% CVD refund claim. However, the importers may be required to submit the original ST/VAT payment challans or other similar documents, in doubtful cases for verification by Customs authorities, which shall be returned to the importer after verification.

A plain reading of para 2(e)(iii) of the Notification No. 102/2007-Customs dated 14.09.2007 with para 2(vi) of Circular No. 16/2008 dated 13.10.2008 shows that once the Appellant produced copies of documents evidencing payment of VAT / CST (as effective discharge of VAT / CST payment on imported goods), the Chartered Accountant Certificate should have been considered as a document evidencing payment of appropriate sales tax / value added tax. The LAA has not rejected the submission of the Appellant that they have produced copies of documents evidencing payment of VAT / CST (as effective discharge of VAT / CST payment on imported goods). Therefore, the Appellant should be considered to have fulfilled the condition in para 2(e)(iii) of

the Notification No. 102/2007-Customs dated 14.09.2007 read with Circular No. 16/2008 dated 13.10.2008.

10. In the impugned order, the LAA has rejected the appeal of the Appellant on the ground that the Chartered Account Certificate submitted by the Appellant is not in proper format as per PN 39/2011 dated 14.06.2011. It is observed that the "Enclosures" part of Public Notice No. 39/2011 dated 14.06.2011 issued by Commissioner of Customs (Sea Port – Exports) reads as under:

"Enclosures: (Suggested / Indicative formats for CA certification / Self-declaration) Annexure I-V"

Therefore, the format of Chartered Accountant Certificate as per Public Notice No. 39/2011 dated 14.06.2011 is only suggested / indicative format and not a mandatory format prescribed for claiming refund under notification No. 102/2007-Customs. Even the notification No. 102/2007-Cus dated 14.09.2007 does not prescribe any format for Chartered Accountant Certificate. Hence, rejection of the Chartered Accountant Certificate by the adjudicating authority as well as the LAA on the ground that the same is not in proper format as per PN 39/2011 dated 14.06.2011 is not correct.

11. In terms of the amendment made to notification No. 102/2007-Cus *vide* notification No. Notification No. 93/2008 dated 01.08.2008, the Appellant is required to file the claim for refund of 4% additional duty of customs before the expiry of one year from the date of payment of the said additional duty of customs. Therefore, the refund claim of Appellant in respect of four bills of entry No. 4304505 / 09.08.2011, 4441958 / 24.08.2011, 4727568 / 23.09.2011 and 4460717 / 25.08.2011 is time-barred as the refund claim in these cases has been filed beyond the period of one year from the date of payment of additional duty of customs, as tabulated below:

S.No.	Bill of Entry No./Date	TR6 Challan No. / Date	Claim Date
1.	4304505/08.08.2011	2001746887/12.08.2011	28.09.2012
2.	4441958/24.08.2011	2001844937/27.08.2011	28.09.2012
3.	4727568/23.09.2011	2002061157/28.09.2011	28.09.2012
4.	4460717/25.08.2011	2001850331/06.09.2011	28.09.2012

12. In view of the above findings, the appeal is partly allowed by setting aside the impugned order in respect of seven bills of entry No. 5040849 /29.10.2011, 5314855 / 28.11.2011, 5405439 / 08.12.2011, 5498362 / 19.12.2011, 5499063 / 19.12.2011, 5487263 / 16.12.2011 and 5545047 /

23.12.2011 with consequential relief. The impugned order is upheld in respect of the remaining four bills of entry No. 4304505 / 09.08.2011, 4441958 / 24.08.2011, 4727568 / 23.09.2011 and 4460717 / 25.08.2011.

(Order pronounced in open court on 12.12.2025)

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

MK