CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI
REGIONAL BENCH, COURT No. I

Excise Appeal No. 41670 of 2016

(Arising out of Order in Appeal No.181/2016 (CXA II) dated 30.04.2016, passed by the Commissioner of Central Excise (Appeals II), 26/1, Uthamar Gandhi Salai, Nungambakkam, Chennai 600034)

M/s. Celebrity Fashions Limited ... **Appellant**
SDF, C2, 3rd Main Road,
MEPZ SEZ, Tambaram,
Chennai 600045

Versus

Commissioner of GST and Central Excise ... **Respondent**
Newry Towers, No.2054, I Block
II Avenue, 12th Main Road
Anna Nagar, Chennai 600 040

AND

Excise Appeal No. 42481 of 2018

(Arising out of Order in Appeal No.085/2018 (CTA) dated 13.08.2018, passed by the Commissioner of Central Excise (Appeals II), 26/1, Uthamar Gandhi Salai, Nungambakkam, Chennai 600034)

M/s. Celebrity Fashions Limited ... **Appellant**
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Commissioner of GST and Central Excise ... **Respondent**
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APPEARANCE:

For the Appellant : Shri M. Karthikeyan, Advocate
For the Respondent: Shri M. Selvakumar, Authorised Representative

CORAM:

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 41026-41027/2026

DATE OF HEARING: 01.04.2026
DATE OF DECISION: 18.09.2026

Per Ajayan T.V.

These two appeals, preferred by M/s. Celebrity Fashions Limited, the appellant herein, raise a common question and are disposed of by this common order. Excise Appeal No.41670 of 2016 is filed against Order in Appeal No.181/2016 (CXA II) dated 30.04.2016, and Excise Appeal No.42481 of 2018 against Order in Appeal No.85/2018 (CTA) dated 13.08.2018, passed in *denovo* proceedings arising out of the earlier order.

2. The appellant manufactures readymade garments for export. Having availed Cenvat credit on inputs that could not be utilised because the finished goods were fully exported, it claimed refund of Rs.42,25,734/- by letter dated 30.05.2005 for the period 2004 to 2005 under Rule 5 of the Cenvat Credit Rules, 2004 (CCR).

3. The claim was rejected in entirety by Order in Original No.6/2006 dated 29.05.2006, for want of proof of export such as the bill of lading or a customs certified export application, non fulfilment of Notification No.11/2002 CE (NT) dated 01.03.2002, for want of the input output ratio, time bar for the period 01.04.2004 to 15.06.2004, and simultaneous availment of duty drawback under the Customs and Central Excise Duties Drawback Rules, 1995.

4. On an appeal preferred by the appellant, the Appellate Authority, vide Order in Appeal No.72/2007 (M IV) dated 28.06.2007 held Rs.9,03,190/- ineligible as claimed on erroneous input documents, remanded the balance for verification, found the plea of unjust enrichment premature, held the period 01.06.2004 to 15.06.2004 not time barred, and, relying on *Chandrapur Magnet Wires (P) Ltd. v. Collector of Central Excise, Nagpur, 1996 (81) ELT 3 (SC)*, held that full repayment of drawback restored the appellant to the position of one who had never availed it, so that refund remained available, subject to verification of the repayment. The department did not appeal this order.

5. The appellant, who had no quarrel with the remand order, however, challenged the denial of credit of Rs.9,03190/- before this Tribunal and vide Final Order no. 1214/09 dated 08.09.2009, this Tribunal set aside the denial while making it clear that the claim for refund of the entire amount of Rs.42,25,734/- is required to be considered afresh only on the twin issues of fulfilment of the conditions stipulated in Notification No.11/2002-CE (N.T) and as to whether refund can be allowed when the assesees claim drawback or rebate of duty. This order too was not contested further by either side.

6. In the interregnum, the Assistant Commissioner of Central Excise, Chrompet Division took up the denovo proceedings pursuant to the Order-in-Appeal No. 72/2007(M-IV) dated 28.06.2007. In the facts detailed therein it is noted that the Appellant vide their letter dated 10.08.2007 had submitted certain documents and the Range Officer had verified the claim afresh based on the documents submitted which were not produced in the earlier proceedings and submitted the verification report vide O.C. No.330/2007 dated 16.11.2007 and O.C.No.347/2007 dated 07.12.2007 in which the RO has certified the eligibility of the claim for an amount of Rs.28,66,198/-. The Assistant Commissioner, after observing that the Range Officer has verified purchase orders, designs, and input and export documents and had stated that in two instances the appellant had availed excess cenvat credit of Rs.8,289/-, went on to observe that the claimant had repaid the entire amount of drawback received including the drawback that formed part of the refund claim. The Adjudicating Authority, after disallowing Rs.8,289/- for two instances of short shipment, as well as leaving out a sum of Rs.9,03,190/- as the matter was sub-judice, sanctioned an amount of Rs.28,66,198/- vide Order-in-Original No 1/2008 (Denovo) dated 26.02.2008. Department thereafter issued a Show Cause Notice No.24/2008 dated 18.02.2009 proposing recovery of the sanctioned Rs.28,66,198/- as an erroneous refund. The said SCN was placed in the call book pending the department's appeal against Order in Original No.1/2008.

7. The Department’s appeal against the OIO No.1/2008 (Denovo) ibid was allowed by Order in Appeal No.2/2010 (M IV)(D) dated 19.03.2010, which held the refund sanction erroneous for want of a specific finding on the input output ratio, of proof that the exports were manufactured from Cenvat availed rather than CT 2 procured inputs, of fulfilment of

Notification No.11/2002 CE (NT), of a distinction between duty suffered and non duty suffered material, and of a one to one, item wise correlation, and independently for the drawback availment.

8. Aggrieved, the appellant came in appeal before this Tribunal contending that the Range report was not exposed to the appellant for rebuttal. This Tribunal, by Final Order No.40594/2015 dated 29.05.2015, set aside Order in Appeal No.2/2010 on the ground that the Range Officer's report had not been furnished to the appellant for rebuttal, and remanded the matter to the first Appellate Authority for fresh decision after doing so.

9. The report was accordingly furnished and cross objections filed. The impugned Order in Appeal No.181/2016 (CXA II)(D) dated 30.04.2016 read with corrigendum dated 06.09.2016 nevertheless upheld the appeal filed by the Department, reiterating the same deficiencies, and declined to treat the drawback finding in Order in Appeal No.72/2007 as concluded, on the reasoning that a remand order need not be appealed and the point therefore remained open. Aggrieved, the appellant had preferred the subject Appeal E/41670/2016 before this Tribunal.

10. Meanwhile, the Deputy Commissioner of Central Excise, Chrompet Division, Chennai, took up the matter for denovo proceedings pursuant to the OIA No.181/2016 dated 30.04.2016 and Commissioner’s letter dated 21.12.2016 permitting the SCN kept in call book to be adjudicated. The appellant was granted a personal hearing for which the Ld. Advocate for the appellant appeared and submitted a written request dated 22.03.2017 that since the appellant had preferred an appeal before CESTAT, the SCN to be kept in abeyance. After due process of law, the said Adjudicating Authority held that the appellant had not made any written submission in respect of the SCN dated 18.02.2009 or furnished the grounds of appeal made against the decision of the OIA No.181/2016 ibid. He declined the appellant's request to keep the proceeding in abeyance pending Excise Appeal No.41670 of 2016, holding that pendency of an appeal without a stay is no ground for abeyance, and, vide Order in Original No.29/2017-Rf dated 30.03.2017, confirmed recovery of Rs.28,66,198/- under Section 11A(1) with interest under Section 11AB.

11. That order was upheld by the impugned Order in Appeal No.85/2018 (CTA) dated 13.08.2018, which held that mere filing of an appeal is not a stay, relying on *Collector of Customs, Bombay v. Krishna Sales (P) Ltd., 1994 (73) ELT 519 (SC)* and *Pankaj Guljarilal Gupta v. Collector of Customs, Calcutta, 1995 (75) ELT 47 (Cal)*. The said impugned order is the subject matter of the Appeal E/42481/2018 before this Tribunal.

12. Shri M. Karthikeyan, Learned Counsel for the appellant, argued that Rule 5 of the CCR, read with Notification No.11/2002 CE (NT), does not require an assessee to establish a one to one correlation between particular inputs and particular exported goods, relying on *Commissioner of Central Excise, Bangalore III Commissionerate v. Motherson Sumi Electric Wires, 2012 (278) ELT 177 (Kar.)* and *Commissioner of Central Excise, Ludhiana v. Vardhman Spinning and General Mills, 2017 (9) TMI 859, CESTAT Chandigarh*. He pointed out that fifty eight volumes of invoices, shipping bills and bills of lading had been produced even at the stage of Order in Original No.6/2006, a fact recorded in that very order, and that the Range Officer had since verified purchase orders, designs, input documents and export documents and found them in order barring two minor instances of short shipment. He urged that the department's appeal against Order in Original No.1/2008 merely reproduced the findings of the already rejected Order in Original No.6/2006, without regard to this intervening verification.

13. On the drawback objection, Learned Counsel maintained that the question stood concluded by Order in Appeal No.72/2007, which applied *Chandrapur Magnet Wires* to hold that full repayment of drawback restores the assessee to the position of one who never availed it. Since the department never appealed that order, he contended, the Commissioner (Appeals) could not reopen the question merely because Order in Appeal No.72/2007 happened to be a remand order, particularly when the Range Officer had himself verified and accepted the repayment.

14. Ld. Counsel further contended that that adjudicating and confirming recovery while the correctness of treating the refund as erroneous was itself pending before this Tribunal served no purpose beyond multiplying proceedings, the demand having no independent legs once the finding of error was reversed.

15. Learned Counsel finally submitted that the sum of Rs.9,03,190/-, held by Final Order No.1214/2009 to have been unsustainably denied, does not appear to have been separately refunded pursuant to that order, and sought a direction in that regard as well. He prayed that both impugned orders be set aside and the appeals allowed.

16. Shri M. Selvakumar, Learned Authorised Representative for the department, supported the impugned Order in Appeal No.181/2016 and reiterated the deficiencies recorded therein, namely the absence of a specific finding on the input output ratio, of evidence that the exported goods were manufactured only from Cenvat availed inputs and not from CT 2 procured inputs, of a finding on fulfilment of Notification No.11/2002 CE (NT), of a distinction between duty suffered and non duty suffered raw material, and of an item wise, shipping bill wise correlation. He argued that these went to the foundation of eligibility and could not be dismissed as procedural detail. On the drawback objection, he maintained that Order in Appeal No.72/2007, being a remand order rather than a final determination, was not one against which an appeal lay, and that the Commissioner (Appeals) was accordingly entitled, indeed bound, to examine the question afresh once the correctness of the sanction came before him.

17. On Excise Appeal No.42481 of 2018, the Learned Authorised Representative supported Order in Appeal No.85/2018, reiterating that mere filing of an appeal does not by itself operate as a stay and that the department was neither obliged nor entitled to withhold recovery absent one. He prayed that both appeals be dismissed.

18. This Tribunal has heard both sides and perused the material on record. The following are the issues that arise for determination:
    a) Whether the refund of Rs.28,66,198/- sanctioned by Order in Original No.1/2008 (Denovo) could be held erroneous for want of one to one correlation between inputs and exports and the related deficiencies catalogued in Order in Appeal No.181/2016?
    b) Whether the finding in Order in Appeal No.72/2007, that repayment of drawback restores the appellant to a position where refund under Rule 5 is not barred, remained open for reconsideration in the later round notwithstanding that the department never appealed it?

c) Whether consequential effect requires to be given to Final Order No.1214/2009 in respect of Rs.9,03,190/- ?

d) Whether the Deputy Commissioner and, in turn, the Commissioner (Appeals) in Order in Appeal No.85/2018 erred in declining to keep the recovery proceeding in abeyance pending disposal of Excise Appeal No.41670 of 2016?

19. On the first issue, it is noticed that the position is settled against the department. In *Motherson Sumi*, the Karnataka High Court affirmed that an assessee claiming refund of accumulated Cenvat credit under Rule 5, read with Notification No.11/2002 CE (NT), need not establish a direct, one to one correlation between duty paid inputs and the goods actually exported, it being sufficient that the inputs were used in the manufacture of goods that were in fact exported and that the credit had, in consequence, become incapable of utilisation. In *Vardhman Spinning*, the Tribunal reiterated that neither the rule nor the governing circular requires separate records of exclusive use, and that refund cannot be denied on that ground.

20. Tested against this position, the deficiencies on which Order in Appeal No.181/2016 rests are premised on a demand for the kind of item wise correlation that the law does not require. The Range Officer's report is, in any event, not silent on the points alleged. The contents reproduced in the grounds of appeal, which remain uncontroverted, records verification of purchase orders and designs against input and export documents, no discrepancy beyond two isolated instances of short shipment already excluded from the sanctioned amount, and confirmation that all goods manufactured against the 2004-05 purchase orders were in fact exported with the connected documents produced for verification. Order in Original No.1/2008 itself records that the appellant had furnished input output norms, correlated purchase orders with shipping bills, and distinguished duty paid inputs from those procured under CT 2. The finding in Order in Appeal No.181/2016 that the report is silent on these very aspects is opposed to the report as it stands on record as noticed in the OIO No.1/2008.

21. This is reinforced by the approach this Tribunal has taken to verification reports called for from a jurisdictional officer specifically tasked with the exercise. In *Xomox Sanmar Limited v. Commissioner of CGST and Central Excise, Trichy, 2024 (11) TMI 1418 (CESTAT Chennai)*, it was

held that once such an officer submits a report categorically confirming the facts he was asked to verify, it would be farfetched to disbelieve that he verified what he stated as verified, and that an adjudicating authority harbouring doubt on that score ought to seek clarification rather than reject the report outright. The Commissioner (Appeals), in reading the Range Officer's report as silent on matters it in fact addresses, and in doing so notwithstanding the LAA's own contrary reading of the same report while sanctioning the refund, fell into the very error this Tribunal has previously cautioned against. This Tribunal is unable to sustain the denial of refund on the first ground.

22. The second issue concerns the drawback objection, and a distinct principle applies here. The finding in Order in Appeal No.72/2007, that full repayment of drawback removes the bar on refund under Rule 5, rested expressly on *Chandrapur Magnet Wires* and was never appealed by the department. It is well settled that *res judicata* operates as between different stages of the same proceeding no less than between separate proceedings, so that a finding recorded at an earlier stage and not carried further binds the parties at later stages of the same lis, though a superior forum properly seized of the matter remains free to test its correctness. This principle, applied in *Satyadhyan Ghosal v. Deorajin Debi, AIR 1960 SC 941*, was reaffirmed recently in *Kishorilal (Dead) through LRs v. Gopal, 2026 INSC 48*, where it was held that once a court has taken a view at one stage, it is not open to revisit that view at a later stage of the same proceeding.

23. The reasoning in Order in Appeal No.181/2016, that Order in Appeal No.72/2007 being a remand order carried no obligation on the department to appeal and therefore left the drawback question perpetually open, does not, align with the aforesaid Judgement. The appealability of an order as a whole is distinct from the finality of a specific finding within it. Order in Appeal No.72/2007 remanded only the documentary verification of quantum; it did not remand, and was not treated by either side at the time as leaving open, the separate legal question whether repayment of drawback removed the bar under Rule 5. That question was answered in the appellant's favour, and the department, having had the opportunity to test the answer, chose not to. A remand confined to one aspect of a claim cannot be read as a standing licence to reopen every other finding each time the matter returns in a fresh round; that would leave no finding of a quasi judicial

authority ever final, and militates against the discipline such authorities are expected to observe no less than courts. The denial of refund on the drawback ground therefore does not stand.

24. The third issue is answered by the finality already attaching to Final Order No.1214/2009, which held the denial of Rs.9,03,190/- unsustainable and directed the entire claim to be considered afresh, an order neither side carried further. The record before this Tribunal does not show that consequential effect was given to it once passed, the sum having by then already been carved out of the denovo proceedings culminating in Order in Original No.1/2008. This Tribunal does not, by this order, decide the merits of that part of the claim afresh, that question having been finally answered. What remained was its implementation, together with such verification of quantum and of any residual requirement under Section 11B as the original authority may consider necessary consistent with that final order. It hardly needs reiteration that consequential effect requires to be given to Final Order No.1214/2009 dated 08.09.2009 in respect of Rs.9,03,190/- to the extent not already implemented.

25. The fourth issue, on the refusal to keep Show Cause Notice No.24/2008 in abeyance, is examined independently of the outcome above. That mere pendency of an appeal, without an order of stay, does not suspend the order appealed against is well settled, and was correctly applied in Order in Appeal No.85/2018 by reference to *Krishna Sales and Pankaj Guljarilal Gupta*. This Tribunal sees no infirmity of jurisdiction in the Deputy Commissioner having proceeded to adjudicate, or in the Commissioner (Appeals) having declined to fault that course. The demand so confirmed, however, rested entirely on the correctness of treating the refund of Rs.28,66,198 as erroneous, a question that was, at the very time, sub judice before this Tribunal and now stands answered in the appellant's favour. The adjudication and Order in Appeal No.85/2018 accordingly cannot survive, not for want of jurisdiction, but because the demand they upheld has lost its foundation. For these reasons, it follows that the demand of interest under Section 11AB, follows the fate of the principal demand and cannot survive once that demand is set aside.

26. This Tribunal would only observe that greater restraint in proceeding with a call book notice while the very order underlying it remained

under challenge before this Tribunal would have spared the appellant this further round.

27. In sum, for the aforesaid reasons, Order in Appeal No.181/2016 (CXA II)(D) dated 30.04.2016 and Order in Appeal No.85/2018 (CTA) dated 13.08.2018 cannot be sustained. The refund of Rs.28,66,198/- sanctioned by Order in Original No.1/2008 (Denovo) dated 26.02.2008 was correctly allowed, and the demand for its recovery, together with interest under Section 11AB, is liable to be set aside. Consequential effect requires to be given to Final Order No.1214/2009 dated 08.09.2009 in respect of Rs.9,03,190/-, to the extent not already implemented, in accordance with law. Ordered accordingly.

The appeals are allowed in the aforesaid terms, with consequential relief(s), in law, if any.

(Order pronounced in the open court on 18.09.2026)

(AJAYAN T.V.)
Member (Judicial)

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