

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH

Customs Appeal No. 50770 of 2020 [SM]

[Arising out of Order-in-Appeal No.CC(A) CUS/D-II/ ICD PPG / 1408 / 2019-20 dated 26.02.2020 passed by the Commissioner of Customs (Appeals), New Delhi].

M/s. S.K. Enterprises

...Appellant

(Through its Partner – Shri Manav Malik)
H. No.32, VPO Kundli,
Distt. – Sonipat,
Haryana.

VERSUS

**Commissioner of Customs
New Customs House, New Delhi**

...Respondent

WITH

Customs Appeal No. 50771 of 2020 [SM]

[Arising out of Order-in-Appeal No.CC(A) CUS/D-II/ ICD TKD/ IMP/ 1413-1414 / 2019-20 dated 02.03.2020 passed by the Commissioner of Customs(Appeals), New Delhi].

M/s. S.K. Enterprises

...Appellant

(Through its Partner – Shri Manav Malik)
H. No.32, VPO Kundli,
Distt. – Sonipat,
Haryana.

VERSUS

**Commissioner of Customs
New Customs House, New Delhi**

...Respondent

AND

Customs Appeal No. 50772 of 2020 [SM]

[Arising out of Order-in-Appeal No.CC(A) CUS/D-II/ ICD TKD/ IMP/ 1413-1414/ 2019-20 dated 02.03.2020 passed by the Commissioner of Customs (Appeals), New Delhi].

M/s. S.K. Enterprises

...Appellant

(Through its Partner – Shri Manav Malik)
H. No.32, VPO Kundli,
Distt. – Sonipat,
Haryana.

VERSUS

**Commissioner of Customs
New Customs House, New Delhi**

...Respondent

APPEARANCE:

Mr. Priyadarshi Manish & Mr. Uday Pathak, Advocates for the Appellant
Mr. Gopi Raman, Authorised Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: **24/03/2023**

PRONOUNCED ON: **27/04/2023**

FINAL ORDER No. 50560-50562/2023

RACHNA GUPTA

Present order disposes of 3 appeals as have been received pursuant to order of Hon'ble High Court of Delhi in case No. CUSAA-19/2022, CUSAA- 20/2022 dated 27.02.2023 and in case No. CUSAA-122/2022. The appeals have been remanded to this Tribunal with the directions to decide these appeals afresh after affording the appellants a reasonable opportunity to meet the objections regarding alleged discrepancies noticed in the refund claim based whereupon the refund claim was rejected by this Tribunal. Pursuant to the said directions, the fresh notices were served upon the appellant as well as the Department, pursuant to those notices.

2. Mr. Priyadarshi Manish and Mr. Uday Pathak, learned Advocates appeared for the appellant and Mr. Gopi Raman, learned Authorised Representative appeared for the Department, pursuant to those notices.

3. I have heard both the parties.

4. Ld. Counsels for the appellant have reiterated their submissions about applicability of decision of Hon'ble Delhi High court in the case of **Sony India Pvt. Ltd. vs. Commissioner of Customs, New Delhi reported as 2014 (304) ELT 660 (Delhi)** and they re-emphasized upon the Notifications No.102/2007 dated 14.09.2007, Notification No.93/2008 dated 01.08.2008 and Notification No.42/2017 dated 30.06.2017. It is submitted that there has been no discrepancy in their refund claim. The earlier Final Order of this Tribunal bearing No. 51906-51908/2021 dated 28.10.2021 is accordingly prayed to be reviewed / modified in terms of the directions of remand.

5. Per-contra, Id. Departmental Representative has submitted that the refund claim was found to be incomplete in addition of it being barred by time at the time of its initial scrutiny vide Discrepancy Memo dated 09.04.2018. The Original Adjudicating Authority had rejected the said claim confirming the claim to be incomplete and barred by time. This Tribunal vide the aforesaid order modified the said order while relying upon the decision of **Sony India (Supra)** held that the claim is not barred by time. However, it was confirmed to be incomplete. Consequently, vide the aforementioned final order the claim was still rejected. Hence, there is no infirmity in the said Final Order. The same is prayed to be maintained.

6. Having heard the rival contentions and perusing the entire record, it is observed that in three of these appeals the importer-

appellant had filed the refund claim on 09.04.2018 of Special Additional Duty of Customs (SAD), for a total amount of Rs.2,40,562/- in the light of Notification No.102/2007 dated 14.09.2007. This notification exempts the goods falling within First Schedule to the Customs Tariff Act, 1975 when imported into India for subsequent sale from whole of the Additional duty of customs leviable thereon under sub-section(3) of the said Customs Tariff Act. The said refund claim was filed on 19.03.2018 after the appellant sold the goods i.e. Polyester non-textured lining fabric as were imported from China. Three of the claims, however, were rejected by this Tribunal for being incomplete, as the discrepancies pointed out at the stage of initial scrutiny were never got removed by the appellants. Thus, the discrepancies with respect to the refund claim in question as are mentioned in the impugned final order of this Tribunal have not been pointed out for the first time.

7. The Deficiency Memo was issued at the time of scrutiny of said refund claim on 09.04.2018 itself. But the appellants never replied to the said Deficiency Memo despite a subsequent Memo dated 03.07.2018 nor even after the issuance of the Show Cause Notice dated 27.07.2018 which proposed the rejection of refund claim for it to be incomplete and barred by time. Appellant even failed to appear before the respective Original Adjudicating Authorities when opportunities of personal hearings were given to them. The Original Adjudicating Authorities, accordingly, decided the matter ex-parte vide respective Orders-in-Original rejecting the refund claim not only for it to be barred by time but also for it to be incomplete. The said

Orders-in-Original have been upheld by Commissioner (Appeals) vide Order in Appeal No.1408/2019-20 dated 26.02.2020 and O-I-A Nos. 1413-1414/2019-20 dated 02.03.2020.

8. When these Orders-in-Appeal were challenged before this Tribunal that the aforementioned Final Order No.51906-51908/2021 dated 28.10.2021 was passed. While relying upon the decision of Hon'ble High Court, Delhi in the case of **Soni India Pvt. Ltd.** (Supra) the findings of Departmental Authorities for impugned refund to be barred by time were set aside. However, the findings with respect to the refund claim to be incomplete for which the Deficiency Memo as early as on 09.04.2018 was served, were confirmed for want of no requisite documents to ever been furnished by the appellant even before this Tribunal.

9. Though Id. Commissioner (Appeals) has discussed only one aspect of rejecting the claims i.e. time bar aspect. But it is observed that the orders of Original Authorities have been upheld by Commissioner (Appeals) resulting into merger of these orders. The perusal of Orders-in-Original is clear that those were passed ex-parte. The appellants, despite the opportunities given, never responded to Deficiency Memo nor to Show Cause Notice nor even to the notices of personal hearing. Resultantly, the deficiencies already observed at scrutiny level, continued and the refund claims were rejected on both the aspects i.e. for being incomplete and for being barred by time. Hence, the findings for refund claim to be incomplete stand confirmed by the Commissioner (Appeals) also.

10. At this stage of remand also no document has been produced by the appellants to show that the refund claim was complete in all respects or that the Deficiency Memo was wrongly issued. They have just reiterated their submissions as were made before this Tribunal at the first round of litigation. It is also observed that the submission of Mrs. Anjali Jha Manish, Id. Counsel appearing for the appellants before Hon'ble High Court of Delhi as quoted in para 5 of the order dated 27.02.2023 is apparently wrong. The para is quoted here below:-

"5. Mrs. Anjali Jha Manish, learned Counsel appearing for the appellant submits that it is clear from the record that there are no discrepancies and the impugned order is palpably erroneous."

11. As already mentioned above, the discrepancies in the refund claim were noticed by the Deficiency Memo dated 09.04.2018 itself. The said Memo has been mentioned in the Orders-in-Original which got merged with the Orders-in-Appeal as have been challenged before this Tribunal. It is the same Deficiency Memo which has been mentioned in the impugned Final Order dated 21.08.2021. Hence, there was no need of serving another notice to the appellants prior rejecting their appeals for want of removal of those deficiencies. Since at the stage of fresh hearing also nothing new has been brought to this Tribunal, there is no reason to differ from the findings in the aforesaid Final Order. The findings therein are therefore maintained. Three of the appeals against the orders of Commissioner (Appeals) as filed by the importer, S.K. Enterprises stands rejected.

[Order pronounced in the open Court on 27.04.2023]

(RACHNA GUPTA)
MEMBER (JUDICIAL)