CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 51146 of 2016

(Arising out of Order-in-Appeal No. CC(A) CUS/2442/2015 dated 31.12.2015 passed by the Commissioner (Appeals) Central Excise & Customs, New Delhi.)

M/s Max Medical Services Ltd ....**Appellant**
Max House, 1, Dr. Jha Marg,
Okhla, New Delhi

Versus

Commissioner of Customs (Appeals) ...**Respondent**
New Customs House, Near I.G.I. Airport,
New Delhi

APPEARANCE:

Shri Pawan Kumar Pahwa, Advocate for the Appellant
Shri Rajesh Singh, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing/ Decision: February 18, 2025

FINAL ORDER NO. 50329/ 2025

JUSTICE DILIP GUPTA

The order dated 31.12.2015 passed by the Commissioner of Customs (Appeals) dismissing the appeal filed by the appellant and confirming the order dated 16.03.2015 passed by the Additional Commissioner of Customs has been assailed in this appeal.

2. Shri Pawan Kumar Pahwa, learned counsel for the appellant has pointed out that even prior to the issuance of the show cause notice on 17.09.2014, the appellant had on 28.01.2014 deposited the short paid duty amount of Rs. 7,36,940/- and so in terms of section 28 (5) of the

Customs Act, 1962[1], the proceedings should be deemed to be conclusive.

3. It is seen from the appellate order that the Commissioner (Appeals) has noted the following facts:

> " In this background, Varian India being a group Company of the Supplier, udertook the Customs clearance and paid the Customs duties on behalf of the Appellant using their Importer Exporter Code.
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> That has already accepted the duty demand raised by the DRI and has already paid through Varian India, Rs. 7,36,940 vide Demand Drafts No. 021546 dated 24 January 2014 and 025552 dated 28 January 2014, much before the issuance of the SCN. It may be relevant to note that the amount paid is in excess of the duty and Interest demanded by the DRI and is proposed to be appropriated towards the payment of the Customs duties, Interest and any other dues payable by the Appellant in relation to the said imports.
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> The wished to get the proceedings concluded in the terms of the provisions contained in sub-section (5) and (6) of Section 28 of the Act, whereby a person to whom a Notice is served under the Section, may pay by the amount of duty along with interest and penalty equal to twenty five per cent of the duty demanded, within 30 days of the Notice, whereupon the proceedings under the Appellant shall be deemed to be conclusive if the Adjudicating authority is satisfies with regard to full payment of the dues.
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> **In the present case, the amount of the duty and the Interest demanded in the SCN along with the penalty concluded at 25 per cent of the duty demanded (Rs.57, 922), totals to Rs. 3,74,783, has been paid before the issuance of the SCN.**
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> They requested to appropriate an amount of Rs. 3,74,783 towards the duty, interest and penalty (calculated at 25% of the duty demanded) and

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1 the Customs Act

> conclude the proceedings initiated under the SCN in respect of both the Appellant as well as the Co-appellant, in terms of Section 28 (6) of the Act."

4. Despite having noted so, the Commissioner (Appeals) has not recorded any finding on this issue.

5. Learned authorized representative appearing for the department points out that under section 28(5) of the Customs Act, the appellant was required to intimate the proper officer regarding the deposit within 30 days of the issuance of the show cause notice and, therefore, as this was not complied with by the appellant, the appellant cannot be permitted to urge any ground relating to sub section (5) and sub-section (6) of section 28 of the Customs Act.

6. It is not in dispute that the amount required to be deposited under sub-section (5) of section 28 of the Customs Act was deposited by the appellant. It is also not in dispute that the said amount was deposited on 28.01.2014 prior to the issuance of the show cause notice on 17.09.2014. It cannot be urged that since this amount was not deposited within 30 days after the issuance of the show cause notice, the benefit of sub-section (5) of section 28 of the Customs Act cannot be availed by the appellant. The requirement of deposit of the amount stand satisfied and the requirement of intimating the proper officer is a procedural requirement and once it is admitted that the said amount was deposited, the benefit of sub-section (6) of section 28 would become available to the appellant.

7. The Commissioner (Appeals) was required to examine this issue but that has not been done. Once it is held that the requirement of sub-section (5) of section 28 of Customs Act has been satisfied, the benefit of sub-section (6) of section 28 would become available to the appellant.

8. Such being the position, the impugned order dated 31.12.2015 passed by the Commissioner (Appeals) cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order dictated in the Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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