CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 30665 of 2024

(Arising out of Order-in-Appeal No.HYD-CUS-000-APP1-027-24-25 dt.31.07.2024 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

Kalajyothi Process Pvt Ltd .. **APPELLANT**
1-1-60-5, RTC Cross Road, Musheerabad,
Hyderabad, Telangana – 500 020

VERSUS

Commissioner of Customs .. **RESPONDENT**
Hyderabad - Customs
GST Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

APPEARANCE:-

Shri Srinivas Chaturvedula, Advocate for the Appellant.
Shri M. Anukathir Surya, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30045/2025

Date of Hearing:27.01.2025
Date of Decision:06.02.2025

M/s Kalajyothi Process Pvt Ltd (hereinafter referred to as the appellant) are in appeal against the order passed by the Commissioner (Appeals), vide Order-in-Appeal dt.31.07.2024 (impugned order), whereby, the refund claim filed by the appellant is rejected on the ground of limitation by upholding the Order-in-Original dt.05.03.2024.

2. The brief facts of the case are that the appellant filed a refund application dated 09.01.2024 seeking refund of Rs.33,94,385/- on the ground that they have imported 'one unit of fully automatic tigra (9 claims) perfect binder & one unit of tipping collator' vide Bill of Entry Nos. 002316 dt.29.06.2005 & 003171 dt.23.08.2005 respectively, by availing the benefit of EPCG Authorization bearing No. 0930001522 dt.02.06.2005 under Notification No.97/2004-CUS dt.17.09.2004 but failed to produce 'Export Obligation Discharge Certificate (EODC)' issued by DGFT before the expiry of export obligation period i.e., 30.09.2013. The Jt. Director General of Foreign Trade vide letter dt.25.02.2014 directed the appellant to pay the Customs Duty of sum of Rs.33,94,385/- and equal amount of interest in terms of

Public Notice No.22 in view of shortfall of fulfilment of export obligation. Further, it was directed to return the original EPCG Authorization duly endorsed by Customs having paid duty together with interest. The Deputy Commissioner of Customs, ICD, Sanathnagar vide letter dt.20.02.2017 directed the appellant to pay the duty foregone along with interest on the imports made under the said license as they have failed to produce EODC issued by DGFT before the expiry of export obligation. Accordingly, the appellant paid the Customs Duty foregone against the EPCG License No. 0930001522 dated 02.06.2005 vide the following TR-6 challans:-

S.No.	Challan No.	Date	Amount (in Rs.)
1	06452	01.03.2017	8,50,000/-
2	07429	12.10.2017	8,50,000/-
3	07599	15.11.2017	8,50,000/-
4	07723	11.12.2017	8,44,385/-
Total			**33,94,385/-**

3. Learned Advocate for the appellant submits that the impugned order issued by the Commissioner (Appeals) in a highly pre-meditated manner, is against the very spirit and objective behind the export promotion schemes brought into being by the Government of India, thereby displaying a total lack of understanding of the provisions of EPCG Scheme, primarily introduced to encourage exports. He further submits that the Adjudicating Authority ought to have realized that the EPCG scheme under which the subject imports were made, was subject to dual control, with the authorities of DGFT under the Commerce Ministry being the licensing authority and the Customs Department under the Finance Ministry being the monitoring authority. He further submits that no duty liability would ensue on the EPCG holder, unless the appellant fails to discharge the export obligation within the time/extended time allowed by the DGFT, as is the case in the present appeal where the appellant had discharged the export obligation within such extended period. He further submits that the Adjudicating Authority failed to consider that the amount deposited by the appellant, pursuant to the letter issued by the department dt.20.02.2017, can only be considered as pre-deposit, inasmuch as there was no final rejection by the DGFT to extend the export obligation period of the appellant. He further submits that the amount pre-deposited by the appellant can only attain the character of 'duty paid' only when the subject bills of entry under which the imports were made by the appellant were re-assessed in terms of section 17(4) of the Customs Act, 1962 and the only other recourse available to the department

in the facts of the case would be to issue notice in terms of section 28(1) or 28(4) and thereafter, determine the duty payable and order appropriation of any amounts pre-deposited towards said duty liability. He further prays that appeal may be allowed by setting aside the impugned order with consequential relief, in the interest of justice.

4. Learned AR for Revenue submits that after the expiry of obligation period under EPCG, the appellant paid the amount of duty foregone vide challans dt.01.03.2017, 12.10.2017, 15.11.2017 & 11.12.2017 and that the refund claim was filed on 09.01.2024 which is beyond the date of payment of duty. He submits that none of the relaxations given under section 27(1B) of the Customs Act would apply to the present case. He relied on the order of this Tribunal in the case of IFGL Refractories Ltd Vs CCT, Guntur [2024 (11) TMI 807 – CESTAT Hyderabad], wherein the issue was that the original refund sanctioning authority, after going through the facts and submissions made by the appellant, inter alia, held the refund claim as time barred as the same was not filed before the expiry of one year period from payment of duty and interest. In this order, the Tribunal also considered judgment by the larger bench of the Tribunal in the case of Oil & Natural Gas Corporation Ltd [Final Order No.40696 of 2024 dt.20.06.2024], wherein it was inter alia held that all refunds relating to illegal levy have to be pursued under section 11B of Central Excise Act with an exception to the jurisdiction of High Courts under Article 226 and Supreme Court under Article 32 of the Constitution of India.

5. Learned AR has also relied on judgment of Hon'ble Supreme Court in the case of Miles India Ltd Vs Assistant Collector of Customs [1984 (4) TMI 63 – SC], wherein it was held that "After the matter was heard for some time it was indicated that the customs authorities, acting under the Act, were justified in disallowing the claim for refund as they were bound by the period of limitation provided therefor under section 27(1) of the Customs Act, 1962..".

6. Learned AR has also relied on the judgment of Hon'ble Bombay High Court in the case of M/s Cummins Technologies India Pvt Ltd Vs Union of India [2023 (9) TMI 199 – Bombay HC], wherein, it was observed that section 27 of the Customs Act clearly requires that any person claiming refund of any duty is to make an application in the form or manner as may

be prescribed before the expiry of one year from the date of payment of such duty or interest. But in the present case, the appellant has filed refund claim after the expiry of one year. Accordingly, he prays for dismissing the appeal filed by the appellant.

7. Heard learned Counsel for the appellant, Mr. Srinivas Chaturvedula and learned AR for the Department, Mr. M. Anukathir Surya and perused the records.

8. In this regard, relevant provisions of section 27 of the Customs Act, 1962 is as thus:-

> *"**27. Claim for refund of duty***
>
> *(1) Any person claiming refund of any duty or interest, --*
> *(a) paid by him, or*
> *(b) borne by him,*
>
> *may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest:*
>
> *Provided ....*
>
> *Provided further that the limitation of one year shall not apply where any duty or interest has been paid under protest."*

9. Learned Counsel for the appellant relied on the judgment of Hon'ble Supreme Court in the case of Oswal Agro Mills Ltd Vs Assistant Collector of CE, Ludhiana [1993 (11) TMI 66 SC]. In this case, the appellant has deposited at least 50% over and above the claim of the Revenue by way of interim order of Hon'ble Supreme Court and the balance was secured by way of bank guarantees. Keeping the bank guarantees alive or extended, the direction for furnishing bank guarantees was not subject matter of the application for refund pending before the authorities. Treating the bank guarantees as if they were deposited in favour of the Revenue, the Revenue already in view of the orders of the High Court encashed the bank guarantees. In these circumstances, Hon'ble Supreme Court directed the Revenue authorities to refund the money so collected from the bank to the bank concerned forthwith. This case is clearly distinguishable as in the present case, there is no bank guarantee and the appellants had not deposited such amount in compliance of any court order/directions.

10. Learned Counsel for the appellant has also relied on the judgment of Hon'ble High Court of Madras in the case of M/s Nizamabad Agro Pvt Ltd Vs

Assistant Commissioner of Customs [2016 (9) TMI 831 – Madras HC]. In this case also, bank guarantees were involved, which is not the subject matter of the present case and hence distinguishable.

11. Learned Counsel for the appellant has also relied on the judgment of Hon'ble High Court of Madras in the case of CC (Airport) Vs M/s Lucas TVS Ltd [2017 (6) TMI 616 – Madras HC]. This case also relates to bank guarantees, which is clearly distinguishable from the facts of the present case.

12. Learned Counsel for the appellant has also relied on the order of New Delhi Bench of this Tribunal in the case of SS Agro Industries Vs CC, Air Cargo (Export) [2015 (1) TMI – CESTAT New Delhi], wherein, refund claim was filed within a period of one year, whereas, in the present case, the refund claim was not filed within the period of one year and accordingly, the ratio does not apply to the present case.

13. The claim was filed before the customs authority, who is a creature of statute and therefore, he is bound by the provisions of the Act itself while considering the claim for refund unlike the Hon'ble High Courts and Hon'ble Supreme Court, who have wider jurisdiction and power under Article 226 and Article 32 of the Constitution respectively. It is also no longer res integra that the Tribunal is a creature of statute, which has to function within the four walls of statute itself.

14. The reliance placed by the learned AR on the case laws cited above is clearly applicable to the facts of the present case. Therefore, in the facts of the case, no fault can be found with the rejection of the refund claim, which has admittedly been filed beyond the limitation period under the relevant statute i.e., Customs Act, 1962 and therefore, there is no ground for interfering with the impugned order. Accordingly, I find no merit in the appeal filed by the appellant and the appeal is liable to be dismissed.

15. In view of the above, appeal dismissed.

(Pronounced in Open Court on 06.02.2025)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda