IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No.79746 of 2018

(Arising out of Order-in-Appeal No. KOL/CUS(Port)/AA/1888/2018 dated 22.10.2018 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. A.S. Chattha Exim Private Limited **: Appellant**
28, Dr. Sundari Mohan Avenue,
Kolkata – 700 014

VERSUS

Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri S.Chatterjee, Advocate, for the Appellant

Shri Subrata Debnath, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO. 77151/2025

DATE OF HEARING / DECISION: 30.07.2025

ORDER: [PER SHRI R. MURALIDHAR]

The facts of the case are that the appellant is a regular importer operating from Kolkata. During the period under dispute, the appellant had filed five (05) Bills of Entry and cleared the goods on payment of Customs duty including Special Additional Duty (SAD). After sale of the imported goods, the appellant filed an application for refund of 4% SAD amounting to Rs.4,71,388/- before the Assistant Commissioner of Customs, Appraising Refund Section (Port), Custom House, Kolkata in respect of the said Bills of Entry in terms of Para 2(E) of Notification No. 102/2007-Cus. dated 14.09.2007, as amended by Notification No. 93/2008-Cus. dated 01.08.2008, which was in the light of the Hon'ble Supreme Court judgement in Civil Appeal No. 2709 of 2016 on 26.02.2016.

2. The matter was taken up for adjudication by the Ld. Assistant Commissioner of Customs, ARS (Port), who vide his Order-in-Original No. KOL/CUS/AC/3023/ARS/2018 dated 14.09.2018 rejected the instant refund claim on the ground that the same is not maintainable as per the provisions of Section 27 ibid.

3. The appellant thereafter challenged the above order before the Ld. Commissioner (Appeals), who, vide the impugned order dated 22.10.2018, rejected their appeal.

4. Aggrieved by the rejection of their refund claim as above, the appeal is before this Tribunal.

5. At the outset, the Ld. Counsel appearing on behalf of the appellant submits that the issue involved in this case is no longer *res integra* as the same has already been decided by this Tribunal in the case of *Sanjay Kumar Agarwal v. Commissioner of Customs (Prev.), Kolkata [Final Order No. 77170 of 2024 dated 21.10.2024 in Customs Appeal No. 77004 of 2019 – CESTAT, Kolkata]* wherein, under identical facts and circumstances, the Tribunal has remanded the matter back to the adjudicating authority to ascertain as to whether the appellant had filed the refund claim within one year from the date of sale of goods in the domestic market or not.

6. On the other hand, the Ld. Authorized Representative of the Revenue justifies the rejection of the refund claim filed by the appellant.

7. Heard both sides, perused the appeal papers and the documentary evidence available on record.

8. I find that in this case, the issue to be decided by us is as to whether the rejection of the refund claim of SAD filed by the appellant under Notification No. 102/2007-Cus. dated 14.09.2007 on the ground that the same is filed beyond the period of one year from the date of payment of such duty, is in order or not. We observe that the same issue has already been dealt with by this Tribunal in the case of *Sanjay Kumar Agarwal (supra),* wherein, after examining the facts and circumstances of the case and taking note of the decision of the Larger Bench of this Tribunal in the case of *Ambey Sales v. Commissioner of Cus., GRFL, Ludhiana in*

Customs Appeal No. 60402 of 2020 dated 04.06.2024 (CESTAT, Chandigarh), it was observed as under: -

> *"We find that the issue was referred to the Larger Bench whether the date of sale of goods in domestic market is the date for calculating the time limit for claiming of refund or the date of payment of SAD at the time of importation shall be counted and the same has been settled holding that the date of sale of goods in the domestic market is the date to count the time limit of one year to claim the refund of SAD paid by the appellant.*
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> *7. In that circumstances, we set aside the impugned order and remand matter back to the Adjudicating Authority to ascertain the fact whether the appellant has filed refund claim within one year of the date of sale of goods in the domestic market or not. If it is found that appellant has filed refund claimed within one year from the date of sale of the goods in domestic market then the order of sanctioning of refund claim shall be restored."*

8.1. I find that the facts of the above case are squarely applicable to the case in hand and hence, we do not see any reason to deviate from the said view. Therefore, by following the ratio laid down in the case of *Sanjay Kumar Agarwal (supra)*, we remand the matter back to the adjudicating authority, to ascertain the fact as to whether the appellant in this case has filed the refund claim within a period of one year from the date of sale of goods in the domestic market or not. If the appellant has filed the instant refund claim within the time period of one year from the date of sale of the goods in the domestic market, then the refund claim shall be sanctioned to the appellant.

9. The appeal stands disposed of by way of remand.

(Dictated and pronounced in the open court)

Sd/-

(R. Muralidhar)
Member (Judicial)

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