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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75230 of 2023

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/AP/ADMN/06/2023 dated 02.02.2023 passed by the Principal Commissioner of Customs (Airport & A.C.C.), Custom House, 15/1, Strand Road, Kolkata – 700 001, West Bengal)

M/s. Sova Solar Limited **: Appellant**
DLF Galleria, Office No. DGK 917,
Block No. BG-88, AA-IB, New Town,
Kolkata – 700 156

VERSUS

Commissioner of Customs, **: Respondent**
Airport & Air Cargo Complex Commissionerate,
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Dr. Samir Chakraborty, Senior Advocate,
Assisted by Shri Abhijit Biswas, Advocate,
For the Appellant

Shri Faiz Ahmed, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NO. 77804 / 2025

DATE OF HEARING / DECISION: 26.11.2025

ORDER: [PER SHRI R. MURALIDHAR]

The facts of the case are that the appellant, in the course of their manufacture, imported "Solar Photovoltaic Cells" From Taiwan. They had initially presented four Bills of Entry, showing the customs duty payable thereon.

2. The system, after analyzing the said Bills of Entry and their country of origin, took the view that the imports were covered by Safeguard Duty, which

was to be paid since Safeguard Duty is exempted only when goods are imported from developing countries, including "China" but not when imported from "Taiwan". The appellant was thus considered ineligible for the exemption of Safeguard Duty. Such a stand was taken since the goods in question had been imported from "Taiwan", which is not listed as a developing country in the Notification No. 19/2016-Customs (N.T.) dated 05.02.2016.

2.1. The appellant represented before the re-assessing authority and produced documentary evidence to canvass that even when goods are imported from Taiwan, they would be eligible for Safeguard Duty exemption.

2.2. This stand of the appellant was accepted. The said Bills of Entry were re-assessed and the exemption claimed by the appellant in respect of all the four Bills of Entry was granted.

2.3. Subsequently, the appellant imported 30 more consignments wherein the Customs electronics system accepted their self-assessment without raising any query about the applicability of Safeguard Duty for such imports, which took place between September, 2018 and March, 2020.

3. Subsequently, a Show Cause Notice was issued by the Directorate of Revenue Intelligence (DRI) on 19.09.2020, taking the ground that the appellant is not eligible for the exemption claimed towards Safeguard Duty since "Taiwan" is a different country and the country's name is not specifically mentioned in the Notification No. 19/2016-Customs (N.T.).

3.1. After due process, the ld. adjudicating authority held that the appellant would not be eligible for the exemption from Safeguard Duty.

3.2. Being aggrieved, the appellant is before the Tribunal.

4. The Ld. Senior Counsel appearing on behalf of the appellant submits that in the first four cases, it is not a case of simple self-assessment by the appellant; the self-assessed Bills of Entry were put up before the Customs authority. The Customs website had flagged the issue and raised the point about non-applicability of the exemption Notification towards Safeguard Duty on account of the imports being made from Taiwan and accordingly, the stand was taken that Safeguard Duty was required to be paid. He submits that the CHA, along with the appellant, represented their case before the re-assessing authorities showing all the documentary details and canvassing for the eligibility of exemption from payment of Safeguard Duty and this was approved by the concerned authorities; only after such approval, the goods were cleared without payment of any Safeguard Duty.

4.1. He further submits that in respect of the other 30 Bills of Entry, the same were imported subsequently; the Customs website did not even raise any query as to the applicability or otherwise of the exemption towards Safeguard Duty.

4.2. The Ld. Senior Counsel submits that the formal approval by way of re-assessment which was granted by the Customs authority in respect of the four Bills of Entry, was never challenged by the Department by way of appeal before the Commissioner (Appeals). Therefore, he states that the issue has reached

finality; this being so, the DRI could not have directly invoked the provisions of Section 28 of the Customs Act, 1962 for issuing the Show Cause Notice to the appellant, without even challenging the earlier re-assessed orders of the Customs officials.

4.3. It is his further submission that even otherwise, Taiwan is considered as part of China only and submits various documentary details to canvass this issue.

4.4. In view of the foregoing, he prays that the appeal be allowed.

5. The Ld. Authorized Representative of the Revenue vehemently opposes the contentions of the appellant. He submits that as per the letter received from the Directorate General of Trade Remedies (DGTR) under F.No. 22/1/2018-DGTR dated 16.07.2018, "Taiwan" cannot be considered as a part of China and hence, that country has to be treated as a separate country; Since its name is not included in the relevant Notification, the appellant is not eligible for Safeguard Duty exemption.

5.1. So far as the ground of non-filing of appeal against the re-assessed Bills of Entry is concerned, he submits that after re-assessments are completed, there are other agencies like the DRI which go deep into the issue and undertake investigations; after proper investigation the present proceedings have been initiated against the appellant herein.

5.2. In view of these submissions, he prays that the appeal be dismissed.

6. Heard both sides, perused the appeal papers and the documents placed before us.

7. We find that, as canvassed by the Ld. Senior Counsel for the appellant, the issue is not that of a simple self-assessment by the appellant. The issue was very much raised by the Customs website wherein the exemption sought towards Safeguard Duty had been denied. The appellant presented their documents and arguments, based on which, subsequently, the four Bills of Entry filed by them were re-assessed and the consignments were allowed to be cleared without payment of any Safeguard Duty.

7.1. We find that in respect of subsequent 30 consignments imported by the appellant, the system itself did not raise any issue about the Safeguard Duty applicability.

8. We find that not only were the re-assessments completed, but the authorities themselves had also removed this particular flag from the system so that after this date, all imports went through without any hindrance and without any issue being raised by the website on account of Safeguard Duty. These two instances make us come to the conclusion that the issue had reached finality. In case, the Revenue had any grievance in respect of the re-assessed Bills of Entry or non-flagging of the issue thereof in the subsequent imports, it was for the Revenue to file an appeal before the Commissioner (Appeals) to overturn the decision of the lower authorities. This was not done by them.

8.1. We find that the issue is squarely covered by the decision of this Bench in the case of *Sun Pharma Laboratories Ltd. v. Commissioner of C.G.S.T. and Central Excise, Siliguri [Final Order No. 77613 of 2025 dated 04.11.2025 – CESTAT, Kolkata]* wherein reliance has been placed on the judgement of the

Hon'ble Madras High Court in the case of *Eveready Industries India Ltd. v. CESTAT, Chennai [2016 (337) E.L.T. 189 (Mad.)].* The relevant extracts of the said order have been reproduced below: -

> *"13. We find that against the Refund sanctioning Orders in Original, the Revenue has not filed any Appeal before the Commissioner (Appeals), as would be required if they are aggrieved by the refund sanctioning order. The Refund order was passed by the Asst / Dy. Commissioner, granting the refund. This was an appealable Order, for which the Commissioner / Pr. Commissioner had the authority to Review the Refund OIO passed, and could have directed the AC / DC to file an appeal in terms of Section 35E of CEA 1944, which was not done in these cases. Therefore, the OIOs passed by the Asst / Dy. Commissioner had reached finality. This being so, the Revenue could not have taken recourse for recovering the refund so granted by issuing the Show Cause Notice under Section 11A. The Hon'ble Madras High Court in the case of Eveready Industries India Ltd. Vs CESTAT [Civil Misc Appeal No.973 of 2008 vide order dated 3.3.2016 - 2016 (337) E.L.T. 189 (Mad.) [03-03-2016], has gone into this issue in a detailed way and has held as under :*
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> > *"21. In support of his contention that Sections 11A and 35E are independent of each other, Mr. Rajnish Pathiyil, learned standingcounsel for the Department cited the following decisions :*
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> > *(i) Union of India v. Jain Shudh Vanaspathi Ltd. [(1996) 86 E.L.T. 460 (S.C.)]*
> >
> > *(ii) Asian Paints (India) Limited v. Collector of Central Excise [(1994) 54 ECR 173 (FB of the Tribunal) = 1994 (73) E.L.T. 433(Tribunal)]*
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> > *(iii) Asian Paints (India) Limited v. Collector of Central Excise [2002 (142) E.L.T. 522 (S.C.)]*
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> > *(iv) Sivananda Pipe Fittings Ltd. v. Superintendent of Central Excise [1998 (97) E.L.T. 52 (Mad.)]*

(v) Commissioner of Central Excise v. Gillooram Gaurishankar [MANU/JH/0088/2002]

(vi) Commissioner of Central Excise v. PRICOL Ltd. [2015 (320) E.L.T. 703 (Mad.) = 2015 (39) S.T.R. 190 (Mad.)], and

(vii) Commissioner of Customs & Central Excise v. Panyam Cements & Minerals Industries Ltd. [2016 (331) E.L.T. 206 (A.P.)].

22. In contrast, Mr. Raghavan Ramabadran, learned counsel for the appellant/assessee placed strong reliance upon the judgment ofthis Court in Madurai Power Corporation v. DCCE [2008 (229) E.L.T. 521].

23. Before we look into the decisions relied upon by the learned counsel

……..

27. In other words, by their failure to bring it to the notice of the Commissioner (Appeals) at the time when Appeal No. 206/98 came up for hearing and decided on 30-11-1998, the Department lulled the assessee into a sense of false security about the refund already made on29-9-1998. This is an aspect, which we should keep in mind before we deal with the rival contentions on the interplay between Sections 11Aand 35E. It is only after the closure of the appeal filed by the appellant against the finalisation of assessment that a show cause notice was issued on 24-3-1999 invoking the provisions of Section 11A. The original authority, the Appellate Authority as well as the Tribunal applied the strict letter of the law and found that since both these provisions can exist independent of each other, the show cause notice was in accordance with the provisions of law and unassailable.

28. But, a careful look at the scheme of Sections 11A, 11B and 35E would show that an application for refund is not to be dealt with merely as a ministerial act or an administrative act. Under Section 11B of the Act, a person, claiming refund of any duty of

excise and interest already paid, should make an application in the prescribed form. Such application is to be made within the period of limitation prescribed under sub-section (1) of Section 11B. The application should be accompanied by such documentary or other evidence, in relation to which, such refund is claimed. Sub-section (2) of Section 11B mandates that upon receipt of any application for refund, the Assistant Commissioner or Deputy Commissioner, if he is satisfied that the duty is refundable, should make an order. The refund order is capable of being given effect to in several methods including adjustment or rebate of duty of excise, all of which are prescribed in Clauses (a) to (f) under the Proviso to sub-section (2) of Section 11B.

29. Sub-section (3) of Section 11B, which contains a non obstante clause, makes it clear that de hors any judgment, decree, order or direction of the Appellate Tribunal or any Court or any other provisions of the Act, no refund shall be made except as provided by sub-section(2).

30. Therefore, the detailed procedure prescribed under Section 11B not only regulates the manner and form, in which, an application for refund is to be made, but also prescribes a period of limitation, method of adjudication as well as the manner, in which, such refund is to be made. In simple terms, Section 11B is a complete code in itself.

31. Therefore, it is clear that what is required of an Assistant Commissioner or Deputy Commissioner under sub-section (2) of Section 11B is to adjudicate upon the claim for refund. The expression 'Adjudicating Authority' is also defined in Section 2(a) to mean any authority competent to pass any order or decision under this Act, but does not include the Central Board, Commissioner of Excise (Appeals) or the Appellate Tribunal. Hence, the power exercised under Section 11B is that of an adjudicating authority and the order passed is certainly one of adjudication.

32. It is only when an order of adjudication is passed under Section 11B that a person, who makes a claim for refund, will get his money back. This assumes significance in the light of the fact that by the proceedings dated 29-9-1998, the appellant/assessee was informed of the sanction granted by the Assistant Commissioner to make a refund of a sum of Rs. 3,31,365/- arising as a consequence of the finalisation of assessment.

33. In simple terms, the refund that the appellant got was and should have been only after an adjudication under Section 11B and not without an adjudication. It must be pointed out that if an authority has done something, it must be presumed that he has done it in accordance with law. Therefore, we would give the benefit of doubt to the Assistant Commissioner and presume that before according sanction in September, 1998 for refund, he had actually followed the procedure under Section 11B and passed an order of adjudication.

34. Once it is seen that an order of adjudication has been validly passed under Section 11B and a refund has also been made on 29-9-1998, then the next question that would fall for consideration is as to whether Section 11A can be invoked thereafter. We have already extracted the provisions of Section 11A. Interestingly, the authority, given under Section 11A(1) for recovery of any refund erroneously paid, is upon the Central Excise Officer. The expression used in Clause (a) in sub-section (1) of Section 11A is 'Central Excise Officer'.

35. The expression 'Central Excise Officer' is defined in Section 2(b) to mean the Chief Commissioner of Central Excise, Commissioner of Central Excise, Commissioner of Central Excise (Appeals), Additional Commissioner of Central Excise, Joint Commissioner of Central Excise, Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise or any other officer of the Central Excise Department, or any person (including an officer of the State Government) invested by

the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) with any of the powers of a Central Excise Officer under this Act.

36. Therefore, an order of recovery can be passed under Section 11A even by an Assistant Commissioner, as he happens to be a Central Excise Officer in terms of Clause (a) in sub-section (1) of Section 11A. In contrast, the processing of an application and the passing of an order on an application for a refund, can be made either by the Assistant Commissioner or by the Deputy Commissioner under sub-section(2) of Section 11B. Hypothetically, it would mean that a Deputy Commissioner can pass an order for refund under Section 11B(2) and an Assistant Commissioner can invoke the proceedings for recovery under Section 11A(1).

37. In other words, by reading the provisions of Section 11A in such a manner as the learned standing counsel would request us to do, we would be recognizing a power in a Subordinate Authority to invoke the power of recovery under Section 11A, despite the fact that a refund application has been adjudicated upon by a Superior Authority under Section 11B. We should keep this fact in mind before dealing with the interplay between Sections 11A and 35E.

38. As we have seen from the language employed in Section 35E, which we have extracted above, a limited revisional jurisdiction is conferred upon the Principal Commissioner and Commissioner of Excise in sub-section (2) of Section 35E. This power is not actually to correct any error directly, on the part of an adjudicating authority. This power is available only for directing the Competent Authority to take the matter to the Commissioner (Appeals).

39. Therefore, it was always open to the Principal Commissioner or the Commissioner of Central Excise to examine the order of the adjudicating authority namely the Assistant

Commissioner in the proceedings under Section 11B and to give a direction to the Competent Authority to file an appeal against the order of refund under Section 11B, to the Commissioner of Appeals under Section 35. This was not done in this case. On the contrary, the authorities allowed the order to be passed in Appeal No. 206/98, dated 30-11-1998 on the basis of the refund already made.

40. Now, coming to the decisions, on which, heavy reliance is placed by the learned standing counsel for the Department, it is seen from the decision of the Supreme Court in Jain Shudh Vanaspathi Ltd., that the whole proceedings were held by the Supreme Court to be vitiated by fraud. The decision of the Supreme Court in Jain Shudh Vanaspathi Ltd., will not go to the rescue of the Department in view of the fact that there was a clear finding that the assessee got the goods cleared for home consumption under Section 47 of the Customs Act by playing a fraud upon the Department. Therefore, when an objection was taken that after clearance under Section 47, the provisions of Section124 cannot be invoked, the Supreme Court pointed out that fraud vitiates all solemn acts. That is not the type of case that we are dealing here.

41. Insofar as the decision of the Full Bench of the Tribunal in Asian Paints (India) Limited is concerned, the difficulty faced by the Tribunal was the different periods of limitation prescribed under Sections 11A and 35E. The case before the Full Bench of the Tribunal in Asian Paints (India) Limited was on the reverse. As seen from Paragraph 1 of the decision of the Full Bench, the only issue referred for the consideration of the Larger Bench revolved around the limitation prescribed in Section 35E(3) and Section 11A. We are not dealing with a case where there is a logjam between two different provisions. Therefore, the said decision, which was also confirmed by the Supreme Court in Asian Paints (India) Limited [2002 (142) E.L.T. 522], cannot be of any application.

42. No one can have a quarrel with the proposition that Sections 35E and 11A

operate in different fields and are invoked for different purposes. We are merely concerned in this case with the interplay between Sections 11A and 35E. We are also concerned with what happened in the form of an adjudication under Section 11B. What happens in a case where an adjudication takes place under Section 11B did not at all fall for consideration in Asian Paints (India) Limited.

43. The decision of this Court in Sivanandha Pipe Fittings Ltd., was also on the point as to whether it is open to the authorities to take recourse to one remedy where several remedies are available. It is not the contention in this case that there are plural remedies available to the Department. The contention in this case is as to whether, after having allowed an adjudication under Section 11B to attain finality, therewas any remedy open to the Department at all under Section 11A. Therefore, the decision in Sivanandha Pipe Fittings Ltd., is also of no assistance to the Department.

44. Insofar as the decision of the Jharkhand High Court in Gillooram Gaurishankar is concerned, the question that was referred to the High Court was whether the statutory remedies under Section 11A(1) will have to be exercised, to the exclusion of the remedies availableunder Section 35E(2) or not. In Paragraph 4 of the decision, the Jharkhand High Court rightly held that there was no necessity to issue a showcause notice under Section 11A, when recourse has already been taken to Section 35E.

45. Insofar as the decision of this Court in PRICOL Ltd., is concerned, one of the two questions of law referred was as to whether the amount erroneously refunded could not be recovered by filing an appeal under Section 35E without issuing a demand notice under Section11A. That is not the situation in this case.

46. In this case, an order of refund was passed on an application under Section 11B. The appeal against the finalisation of the

assessment was closed on the basis of the refund order. There can be no doubt about the fact that the statutory right of appeal is a valuable right conferred upon the assessee. That right was actually altered on the basis of an order of refund. Suppose there had been no order of refund, the appeal could have been pursued against the finalisation of the assessment.

47. In other words, two valuable rights, one in the form of right of appeal and another in the form of order of refund, are now sought to be taken away indirectly by taking recourse to Section 11A. What cannot be done directly cannot be done indirectly also.

48. Insofar as the decision of the Andhra Pradesh High Court is concerned, one observation made in Paragraph 16 of the said decision is of prime importance. In Paragraph 16, the Andhra Pradesh High Court has made it clear, after analysing Sections 11A and 11B that there is an adjudication process involved in the processing of applications made under Sections 11A and 11B. The Andhra Pradesh High Court held that orders passed under Sections 11A and 11B are appealable. Therefore, the decision of the Andhra Pradesh High Court, especially the observations in Paragraph 16, should be made use of by the assessee to contend that since there was no appeal against the order under Section11B, the Department cannot take recourse to Section 11A.

49. In Madurai Power Corporation, this Court had an occasion to consider the interplay of Sections 11A and 35E of the Act. In the said case, show cause notices issued to the Corporation as to why excise duty payable on low sulphur heavy stock and furnace oil should not be demanded, came to be challenged. The show cause notices were issued under Section 11A of the Act. Reliance was placed by the assessee upon the orders passed by the adjudicating authority under the Rules of the year 2001 and it was contended that such an order could be rectified only through an appeal mechanism prescribed under Section 35E(2). As seen

from Paragraph 11 of the decision, the contention of the assessee was that Section 11A does not contain a non obstante clause and that therefore, it cannot be invoked to nullify the appeal remedy available to the Department under Section 35E(2).

50. The very same argument now advanced by the Department to the effect that Sections 11A and 35E operate in two different independent fields was raised by them. After considering the issue elaborately and also after taking note of the decision in Asian Paints (India)Limited approved by the Supreme Court, this Court came to the conclusion in Paragraph 23 as follows :

"In our opinion, there is no nexus between Section 11A and Section 35E. Section 11A does not indicate that the legislature intended to override Section 35E. Both sections have to be read harmoniously. In the present case, Annexure-I certificate has been issued in favour of the petitioners from time-to-time on executing B-8 security bond and on furnishing a bank guarantee. The Department has to follow the procedure under Section 35E for setting aside the Annexure-I certificate. Unless, the Annexure-I certificate is cancelled or rejected by the Competent Authority, by following the procedure under Section 35E, it is not permissible for the respondents to invoke Section 11A of the Act. Therefore, we are of the considered opinion that the issuance of show cause notices is without jurisdiction and is liable to be struck down."

51. We are of the considered view that the paragraph extracted above is a complete answer to the question of law now raised. Unfortunately, in none of the decisions relied upon by the learned standing counsel, the Courts were confronted with an order of adjudication passed under Section 11B on an application. Once an application for refund is allowed under Section 11B, the expression 'erroneous refund' appearing in sub-section (1) of Section 11A cannot be applied. If an order of refund is passed after adjudication, the amount refunded will not fall under the category of erroneous refund so as to enable

> *the order of refund to be revoked under Section 11A(1). One authority cannot be allowed to say in a collateral proceeding that what was done by another authority was an erroneous thing. Therefore, the question of law has to be answered in favour of the appellant/assessee and the appeal deserves to be allowed."*
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> *14. We find that to the factual matrix of the present case, the decision of the Hon'ble Madras High Court cited supra, is squarely applicable. Applying the ratio, we hold that the present proceedings are legally not sustainable in the absence of challenge to the refund granting Orders in Original."*

9. We find that to the factual matrix of the present case, the cited decision is squarely applicable.

10. We find that the Hon'ble Supreme Court, in the case of *ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV [2019 (368) E.L.T. 216 (S.C.)]* has held that even in case of self-assessed Bills of Entry, if any issue is raised by the importer towards value adopted, rate of duty, etc., appeal is required to be filed against the self-assessed Bills of Entry. What is applicable for the assessee is equally applicable for the Revenue also. In the case of 30 self-assessed Bills of Entry, it was for the Revenue to file their Appeals before the Commissioner (Appeals) to overturn the self-assessment done by the appellant. In the present case, this procedure was not followed. Therefore, we hold that even on this ground, the confirmed demand is not legally sustainable.

11. We are not going into the details of as to whether Taiwan is a part of China or not. Based on the fact that the earlier re-assessments / self-assessments have reached finality and the Revenue has failed to file any appeal against such orders, we set aside the impugned order and allow the appeal filed by the appellant. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd