

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

Customs Appeal No: 366 of 2010

[Arising out of Order-in-Appeal No: 09/2010/MCH/AC/VII (Refund)/2010 dated 26th March 2009 passed by the Commissioner of Customs (Appeals), Mumbai – I.]

Mamram Ltd
B-23 KN Marg, Street No. 10,
Anand Parbat Industrial Area, New Delhi 110 005

... Appellant

versus

Commissioner of Customs (Export)
New Custom House, Ballard Estate, Mumbai 400001

...Respondent

APPEARANCE:

None for the appellant

Shri Ramesh Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER NO: A/88593 / 2018

DATE OF HEARING: 27/12/2018
DATE OF DECISION: 27/12/2018

PER: C J MATHEW

The appeal lies against order-in-appeal no. 09/2010/MCH/
AC/VII (Refund)/2010 dated 26th March 2009 of Commissioner of

Customs (Appeals), Mumbai – I which has dismissed the appeal of the appellant herein against order of the original authority rejecting the claim for refund of ₹ 15,52,401/- against the amount of ₹ 19,93,998/- claimed as eligible from the special additional duty paid on imports effected against 15 bills of entry between July and November 2008. The claims were rejected on the ground that the sales invoices did not contain the endorsement prescribed in condition 2(b) of notification no. 107/2007-Cus dated 14th September 2007.

2. None appeared for the appellant. We have heard Learned Authorised Representative appearing for Revenue.

3. It is not seen that the first appellate authority has confirmed the order of the original authority despite his observation that a credit of special additional duty could not have been taken by onward customers as the sale invoice did not carry any reference to discharge of said duty. It is seen that the Larger Bench of the Tribunal in *Chowgule & Company Pvt Ltd v. Commissioner of Customs & Central Excise [2014 (306) ELT 326 (Tri.LB)]* has held

‘5.2 Rule 9 of the CENVAT Credit Rules prescribes the documents on the strength of which CENVAT credit can be taken. An invoice issued by an importer is also one of the prescribed documents. However, for taking the CENVAT credit, under sub-rule (2) of the said Rule 9, following particulars are required to be indicated, namely, details of the duty or service tax payable, description of the goods or taxable

service, assessable value, Central Excise or Service Tax registration number of the person issuing the invoice, name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, etc. For taking the credit, the quantum of duty paid should be shown in the invoices and the same should be shown separately for each type of duties. In respect of a commercial invoice, which shows no details of the duty paid, the question of taking of any credit would not arise at all. Therefore, non-declaration of the duty in the invoice issued itself is an affirmation that no credit would be available. Therefore, non-declaration/non-specification of the duty element as to its nature and quantum in the invoice issued would itself be a satisfaction of the condition prescribed under clause (b) of para 2 of the Notification 102/2007.'

4. In view of the above, we set aside the impugned order and remand the matter back to the original authority for disposal of the claim of the refund in line with the decision of the Larger Bench of the Tribunal.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)