

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86837 OF 2019

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/560/18-19 dated 20th March 2019 passed by the Commissioner of Customs, Central Excise & GST(Appeals), Nagpur.]

Commissioner of Customs
Telangkhedi Road, Civil Lines, Nagpur - 440001

... Appellant

versus

Vipra Cenosphere India
401 Loknath Tower, Near Ramkrishna Math
Nagpur – 440 012

...Respondent

APPEARANCE:

Shri Manoj Das, Assistant Commissioner (AR) for the appellant
Shri Mayur Shroff, Advocate for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A / 85555 /2022

DATE OF HEARING:	06/05/2022
DATE OF DECISION:	06/05/2022

The short point in this appeal of Commissioner of Customs, Nagpur against order-in-appeal no. NGP/EXCUS/000/APPL/560/18-19 dated 20th March 2019 of Commissioner of Customs, Central Excise & GST (Appeals), Nagpur is the objection to grant of refund of 'integrated tax (IGST)' of ` 10,80,764/- that had been incurred on

goods exported against shipping bill no. 8309653/29.08.2017, 8553154/09.09.2017, 8640540/13.09.2017, 8831463/22.09.2017 and 9005545/29.09.2017. The original authority held the respondent herein ineligible owing to drawback of ` 51,249/- against four of the shipping bills having been claimed, and obtained, at the higher rate as mandated in conditions prescribed for eligibility in circular no. 131/2016-Cus (NT) dated 31st October 2016 of Central Board of Excise and Customs. The first appellate authority reversed the decision on the specific finding that the 'so called' insufficiency was immaterial and that the benefit of such large claim for refund would not have been placed in jeopardy by wrongful availment of drawback.

2. We have heard Learned Authorised Representative and Learned Counsel for the respondent.

3. The original authority had denied the claim for refund on the ground that, of the two rates – higher and lower - corresponding to neutralization of import and domestic taxes and that pertaining only of import tax respectively, the respondent herein had opted for the higher rate of drawback which automatically denies refund of integrated tax. The first appellate authority had observed that both the rates are same and, therefore, presumed to comprise only of the customs component of the duty drawback which would not operate to disqualify refund as the integrated tax component had not been returned as drawback.

4. The claim for refund of 'integrated tax' arises from 'zero rating'

of exports, and consequent eligibility for the benefit therefrom, through the appropriate procedure pertaining to that tax. Neither duties of customs nor duties of central excise are sought as refund in the impugned claim. Though the refund is related to export of goods, the privilege is afforded under rule 96 of Goods & Service Tax Rules, 2017. The present appeal has been filed by the appellant-Commissioner with the plea that the first appellate authority was not entrusted with jurisdiction to decide disputes other than under Customs Act, 1962.

5. It is surprising that the appellant-Commissioner has sought recourse to second appellate authority established under Customs Act, 1962 for discarding the competence of the first appellate authority established under the same law. That very plea excludes the jurisdiction of this Tribunal to ascertain the correctness, or otherwise, of the order of the first appellate authority.

6. Accordingly, this appeal is dismissed as not maintainable for want of jurisdiction.

(Operative part of the order pronounced in the open court on 6th May 2022)

(C J MATHEW)
Member (Technical)