

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench**

Customs Appeal No. 85024 of 2020

(Arising out of Order-in-Appeal No. MUM-CUSTM-PREV-APP-572-19-20 dated 27.09.2012 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s. Raj Traders
M1, Mezzanine Floor,
Pearl Plaza, Tata Road No.2,
Opera House, Girgaum,
Mumbai 400 004.

Appellant

Vs.

Commissioner of Customs (Prev.), Mumbai
2nd Floor, Everest House,
Marine Lines, Mumbai 400 020.

Respondent

Appearance:

Shri Ganesh K.S. Iyer, Advocate, for the Appellant
Shri S.K. Hatangadi, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 04.01.2023
Date of Decision: 04.01.2023

FINAL ORDER NO. A/85003/2023

This appeal is directed against Order-in-Appeal No. MUM-CUSTM-PREV-APP-572-19-20 dated 27.09.2012 passed by the Commissioner of Customs (Appeals), Mumbai-III, by which the Commissioner (Appeals) has upheld the Order-in-Original No. 1/ICD-Tarapur/2018-19 dated 16.05.2018 of the Assistant Commissioner of Customs (Prev.), ICD Tarapur. By this order, Assistant Commissioner has rejected the refund claims filed by the appellant seeking refund of SAD paid by them vide their applications dated 22.02.2018.

2.1 Appellant filed refund claims in respect of SAD paid against the Bills of Entry as detailed in the table below:-

S. No.	Bill of Entry no. & dt	TR6 Challan No. & Date	last date of sale	SAD Paid @4%	Date of filing	SAD Refund Claimed Rs.
1	7057836 dt 13.10.16	2016292474 Dt. 15.10.2016	26.11.16	282030.10	22.02.2018	282030.10
2	7202544dt. 24.10.16	2016412396 Dt. 26.10.2016	05.12.16	149744.30	22.02.2018	149744.30

3	7202547 dt 24.10.16	2016412391 Dt. 26.10.2016	08.12.16	195097.70	22.02.2018	195097.70
4	7202549 dt 24.10.16	2016412394 Dt. 26.10.2016	08.12.16	192631.50	22.02.2018	192631.50
5	7832597 dt 15.12.16	2016892118 Dt. 16.12.2016	27.12.16	496514.60	22.02.2018	496514.60
6	8123757 dt 09.01.17	2017112137 Dt. 11.10.2017	17.01.17	688131.20	22.02.2018	688131.20
7	8191118 dt 16.01.17	2017160035 Dt. 16.01.2017	18.03.17	839226.10	22.02.2018	839226.10
TOTAL				2843375.50		28,43,375.50

2.2 Subsequently the documents of the appellant on 10.03.2017 and were returned to them on 11.01.2018. After the receipt of the seized documents appellant had filed these refund claims on 22.02.2018. These refund claims were adjudicated by the original authority as per the order referred to in para 1 above. Appeal filed by the appellant against this order has been rejected by the impugned order.

3.1 I have heard Shri Ganesh K.S. Iyer, Advocate for the appellant and Shri S.K. Hatangadi, Assistant Commissioner, Authorised Representative for the Revenue.

3.2 Arguing for the appellant, learned counsel submits as follows:-

- The refund claim could not be filed as the original files/documents/Bills of Entries were seized by Superintendent(Preventive) on 10.3.17 as per Panchnama dated 10.3.17.
- The order of Assistant Commissioner dated 16.5.2018 is not disputing the fact that the documents pertaining to the subject refund claim were seized by the department during the course of investigation pertaining to imports covered in two other Bills of Entry No.8740810 dated 2.3.17 and 8738425 dated 2.3.17.
- Appellant had requested the department to return the original files/documents/Bills of Entries pertaining to the refund application vide letters dated 16.3.17, 21.3.17, 3.4.17, 26.4.17, 4.9.17, 8.9.17, 28.9.17 and 31.10.17. The files were returned only on 11.1.18 and Appellants had filed their application on 21.2.18.

- Appellant relies upon the following decisions in support of their contention that the refund claim filed was not hit by limitation considering the fact that the documents were in the custody of the department from 10.3.17 till 11.1.18
 - Stargold International [2017(358) E.L.T. 652 (Tri.-All.)]
 - Gravita India Ltd. [2016(334) E.L.T. 321(Raj.)]
 - Kaamdaa Impex [2021 (377) E.L.T. 21 (Mad.)]
- The delay in filing of refund claim with all the required documents was not on account of any delay on the part of the appellant but only on account of the fact that the records were seized by the department and made available to the appellant after several correspondences made by the appellant.
- The refund claim was filed within the stipulated time as prescribed under section 27 after excluding the period when the documents were seized by the Preventive department till the time it was returned back as laid down by the Hon'ble High Court in the case referred herein above.

3.3 Arguing for the Revenue, learned AR submits that the refund claims have been rightly rejected by the lower authorities as the same were filed beyond the statutory time limit of one year prescribed by Section 27 of the Customs Act, 1962. Accordingly the impugned order cannot be faulted with.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 For rejecting the appeal, Commissioner (Appeals) has in his order observed as follows:-

"9. I find that in the instant case, the refund claim has been filed after a lapse of more than one year. I find that condition 2(c) freezes the entitlement of refund and no refund application can be filed after the period of 1 year. It is a settled law that once a pre-condition is set out in a notification, it has to be observed in full of its validity. Further, the time limit for filing a refund /rebate claim is prescribed under Sec 27 of the Customs Act, 1962 which read as under:

"Section 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 Asstt. Commissioner of Customs or Dy. Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest."

10. From the above, it is very much clear that the power to refund is found in Sec 27 of the Customs Act, 1962. The said Notfn No. 102/2007-Cus dtd. 14.9.2007 and amending notification 93/2008-Cus dtd. 1.8.2008 grants exemption which is conditional derives its power to grant in the substantive law which has already set outer time limit.

11. I find that the appellant has not filed the refund claim within stipulated period of one year from the date of payment of Additional Customs duty as prescribed under Notfn No 102/2007- Cus dtd. 14.9.2007 as amended by Notfn No. 93/2008 dtd. 1.8.2008. I find that the appellant has submitted Chartered Accountant's Certificate certifying that the Sales Tax / VAT has been charged and paid on all the imported goods by the Sales Tax Authorities. Also that the Additional Customs Duty has been paid by the importer and the burden of the Additional Custom Duty has not been passed on to the buyers of the goods by the Importer. I find that this has been certified by the Chartered Accountant Certificate under the Companies act, 1956 and this proof should have been brought to the jurisdictional officer before the stipulated period of one year for filing the SAD refund.

12. Further, on careful examination of the Tax invoice issued by the claimant on their buyers, it is seen that an endorsement to that "No credit of the additional duty of customs levied under Sub-section(5) of Sec 3 of the Customs Tariff act. 1975 shall be admissible" are not stamped thereon as no such stamping are visible on the copies of the invoices submitted for verification. This in itself is non-compliance to the pre-condition of the said the validating Notf No. 102/2007 as amended. find that the Chartered Accountant Certificate is in place. The Sub- section 5(3) of the Customs Tariff Act is reproduced below:

"If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such

article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not] such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, may by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four percent of the value of the imported article as specified in that notification."

13. In the view of the above, I find that the appellant could have filed claim for refund within one year. The reason stated by appellant that the officers of M&P Wing, Customs 1 (Prev.) had seized the Bs/E actually defeats the reason for delay. The appellant had imported the impugned goods vide seven Bs/E where 4 Bs/e pertain to the period October 2016, one of December 2016 and two of January 2017. The final sale of these goods were made in 2016 itself, barring two Bs/E of which the sale was effected in January 2017 and March 2017.. The Bs/e were seized by the officers on 06/07.3.2017. Thus, the appellant had more than one opportunity to file refund of SAD effected much before the date of seizure. Further, I find that the appellant could also have filed the claim based on the book of accounts well within the prescribed time limit. However, the claimant neither approached the jurisdictional Customs officer and stated the fact nor made an application in writing. I find the refund claim was deliberately filed late after a considerable time lapse, not just from the date of import but from the date of actual sale too."

4.3 Counsel for the appellant submitted a date chart which is reproduced below:-

Bill of Entry no.	Date of Payment	date of sale	Date of seizure of documents	Last date of filing refund claims as per date of payment	Last date of filing refund claims as per date of sale	Date of receipt of seized documents
A	B	C	D	E	F	G
7057836	15.10.16	26.11.16	10.3.17	14.10.17	25.11.17	11.1.18
7202544	26.10.16	05.12.16	10.3.17	23.10.17	4.12.17	11.1.18
7202547	26.10.16	08.12.16	10.3.17	23.10.17	7.12.17	11.1.18

7202549	26.10.16	08.12.16	10.3.17	23.10.17	7.12.17	11.1.18
7832597	16.12.16	27.12.16	10.3.17	14.12.17	26.12.17	11.1.18
8123757	9.1.17	17.01.17	10.3.17	8.1.18	16.1.18	11.1.18
8191118	16.1.17	18.03.17	10.3.17	16.1.18	17.3.18	11.1.18

He has also filed a detailed chart showing correspondences made in regard to seizure of the documents and return of the same, as reproduced below:-

S.No.	Description	Date
1	Date of seizure of documents	10.3.17
2.	Correspondences made with Department for return of documents	
a.	DC Customs (Prev.) Mumbai	16.3.17
b.	Member CBEC, Commissioner of Customs, (Preventive) Mumbai, Chief Commissioner of Customs, Mumbai, Chairman, CBEC	21.3.17
c.	Principal Commissioner of Customs, Preventive, Mumbai	3.4.17
d.	Principal Commissioner of Customs, Preventive, Mumbai	26.4.17
e.	Additional Commissioner of Customs (M&P) Wing, Preventive Mumbai	4.9.17
f.	Additional Commissioner of Customs (M&P) Wing, Preventive Mumbai	8.9.17
g.	Additional Commissioner of Customs (M&P) Wing, Preventive Mumbai, Principal Commissioner of Customs, Mumbai	28.9.17
h.	Additional Commissioner of Customs (M&P) Wing, Preventive Mumbai, Principal Commissioner of Customs, Mumbai	31.10.17
3.	Date of receipt of documents from department	11.1.18
4.	Date of filing of refund claim	22.2.18
5.	Date of deficiency memo	9.3.18
6.	Date of reply to deficiency memo	20.3.18

4.4 Section 27 of the Customs Act, 1962 reads as follows:-
"Section 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 Asstt. Commissioner of Customs or Dy. Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest.

Provided that :

Provided further :

Provided also

Explanation. —

(1A) The application under sub-section (1) shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty or interest in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty or interest, has not been passed on by him to any other person."

4.5 In the present case there is no denial of the fact that the appellant was not in position to file the refund claims within the prescribed period of limitation for the reason that the documents on the basis of which these refund claims were to be filed were under seizure and were seized prior to the expiry of the period of limitation. Both the lower authorities have observed that the refund claims could have been filed without these documents on the basis of the book of accounts maintained by the appellant. I do not find any merits in this observation in view of the specific provisions of Section 27 (1A) reproduced above as per which refund claims are to be filed along with the required documents. Custom Manual ,2018 issued by Central Board of Indirect Taxes Chapter 14 – Refund at para 4 reads as follows:

4. Processing of refund claim:

4.1 The application for refund is required to be filed with documentary or other evidence including documents relating to assessment, sales invoice and other like documents to support the claim that the duty and interest was paid in excess, incidence of duty or interest has not been passed Custom Manual, 2018 113 on by him to any other person, and the refund has not been obtained already.

4.2 Where on scrutiny, the application is found to be complete in all respects the Customs issues an acknowledgement in the prescribed Form. However, in case the application is found to be

incomplete, the Customs will return the same to the applicant, pointing out the deficiency. The applicant has to then re-submit the application after making good the deficiency.

4.6 Regulation 2 of the Customs Refund Application (Form) Regulation, 1995-

Regulation 2. Form and manner of filing application for refund. -

(1) An application for refund shall be made in the prescribed Form appended to these regulations in duplicate to the ¹[Assistant Commissioner of Customs or Deputy Commissioner of Customs], having jurisdiction over the Customs port, Customs airport, land customs station or the warehouse where the duty of customs was paid.

(2) The application shall be scrutinised for its completeness by the Proper Officer and if the application is found to be complete in all respects, the applicant shall be issued an acknowledgement by the Proper Officer in the prescribed Form appended to these regulations within ten working days of the receipt of the application.

(3) Where on scrutiny, however, the application is found to be incomplete, the Proper Officer shall, within ten working days of its receipt, return the application to the applicant, pointing out the deficiencies. The applicant may resubmit the application after making good the deficiencies, for scrutiny.

Explanation . - *For the purposes of payment of interest under section 27A of the Act, the application shall be deemed to have been received on the date on which a complete application, as acknowledged by the Proper Officer, has been made.*

Custom Manual, 2018 issued by Central Board of Indirect Taxes
Chapter 14 – Refund at para 7 reads as follows:

"7. Expeditious disposal of refund applications:

7.1 The procedure to ensure expeditious disposal of Customs duty refund applications and to enhance transparency in refund disbursement is as follows:

(a) Receipt and acknowledgement of all refund applications: All refund applications made under Section 27 of the Customs Act, 1962 whether by post or courier or personal delivery, shall be

received by the department and a simple receipt of having received the "refund application" shall be issued immediately. The receipt should make it clear that the application has not been scrutinized for its completeness. These applications are required to be scrutinized for their completeness within 10 working days of their receipt, for giving acknowledgement by the Proper Officer as per the Customs Refund Application (Form) Regulations, 1995. Hence, if any deficiency is found in the application or any document is required by the department, the same shall be informed at this stage of initial scrutiny itself within 10 working days of the initial receipt. This will avoid any chance for raising repeated queries to the applicant, in a piecemeal manner and bring certainty in dealing with refund applications."

Even if the refund claims would have been filed without these documents, the same could again have been rejected for the absence of these documents or returned along with the deficiency memo for being re-submitted. In any case the refund application would not have been acknowledged by the department till it was filed along with all the documents. Undisputedly the necessary documents which were required for filing this refund application were under seizure, and the refund application would not have been acknowledged by the revenue authorities without these documents. The condition which is stated to be the reason for rejection of the refund claims is something which could not have been complied with.

4.6 Hon'ble Rajasthan High Court in the case of Gravita India Ltd. [2016 (334) ELT 321 (Raj.)] has observed as follows:-

"12. *A Division Bench of Gujarat High Court in Cosmonaut Chemicals, supra, while interpreting Section 11B of the Act of 1944, observed that a claim has to be accompanied by requisite documents in case of an assessee, who has exported duty paid goods, being copy of shipping bill duly endorsed by the Customs Authorities. It was held that if the Customs Authorities delay parting with a copy of shipping bill bearing necessary endorsement, an assessee cannot be put to disadvantage on the ground of limitation when the assessee is not in a position to make a claim without accompanying documents. The court*

further clarified that mitigating circumstance as flowing from the legislative scheme is one and one only viz., an assessee cannot be penalized, where the lapse as to non-availability of requisite document is on account of Central Excise Department or Customs Department. The legislative scheme does not provide for any other exception or mitigating factor and there can be no other circumstance under which a claimant would be entitled to prefer a claim beyond the statutorily prescribed period of limitation. Then, this would be delay occasioned owing to such reason and circumstance, which is beyond control of the claimant. Paras 20, 21 and 22 of the judgment read as under :-

"20. Thus, considering the matter from any angle it becomes apparent that the interpretation placed by Revenue on provisions of section 11B of the Act read with paragraph No. 2.4 of the CBEC Manual cannot be accepted the same being contrary to the object and purpose of the scheme. It cannot be held that the petitioner was at fault in making the claim belatedly, because in fact the period of limitation has to be considered in light of availability of the requisite documents, i.e., from the said point of time.

21. The view adopted by the Revisional Authority that a departmental authority is bound by the prescribed period of limitation and cannot condone any delay also does not merit acceptance in light of what is stated hereinbefore. The Adjudicating Authority and the Revisional Authority have read the period of limitation divorced from sub-paragraph No. 2.4 of the CBEC Manual which has provided for a circumstance to mitigate the unwarranted hardship resulting from reading the provision of limitation in absolute terms. In other words, howsoever limited, an exception has been carved out in cases where the delay has occurred due to circumstances beyond control of the claimant assessee. In other words, in a case where the so called delay is on account of the lapse on part of the Central Excise Department or the Customs Department.

22. It is necessary to state and clarify here that mitigating circumstance as flowing from the aforesaid legislative scheme is one and one only viz. where the lapse as to non-availability of

requisite document is on account of Central Excise Department or Customs Department. The legislative scheme does not provide for any other exception or mitigating factor and in the circumstances on a conjoint reading of the provision and the instructions in the CBEC Manual there can be no other circumstance under which a claimant would be entitled to prefer a claim beyond the statutorily prescribed period of limitation.”

13. *The Madras High Court in Dorcas Market Makers Pvt. Ltd. v. Commissioner of Central Excise, supra, in which claim petition was dismissed as barred by limitation, having been filed beyond one year and the dismissal was sought to be supported by Section 11B of the Act of 1944, held that while earlier Notification No. 41/94-C.E., dated 12-9-1994 in Clause (iv) provided that the claim for rebate of duty has to be made within time limit as specified under Section 11B of the Central Excises and Salt Act, 1944, no such condition has been prescribed in the Notification No. 19/2004, dated 6-9-2004. The Madras High Court, relying on judgment of the Supreme Court in Collector of Central Excise, Jaipur v. Raghuvar (India) Ltd. - (2000) 5 SCC 299 = 2000 (118) E.L.T. 311 (S.C.), observed that provisions of Section 11A of the Central Excises and Salt Act, 1944, would have no application to any action taken under Rule 57-I of the Central Excises and Salt Rules, 1944, prior to its amendment on 6-10-88, and Rule 57-I of the Rules is not in any manner subject to Section 11A of the Act. It was therefore held that the Rule will act independently. Since notification issued under Rule 18 did not prescribe time limit, it was held that Section 11A of the Act, which provides six months time for claiming rebate, would not be applicable to deny rebate claim of the petitioner.*

14. *The Madras High Court in Dy. Commissioner of C. Ex., Chennai v. Dorcas Market Makers Pvt. Ltd., supra, has also taken a similar view with regard to Notification No. 19/2004-C.E., dated 6-9-2004, which superseded the previous Notification No. 41/94-C.E. that it did not contain the prescription regarding limitation, and held that a conscious decision taken by Central Government dismissing application for refund as time barred is unjustified. In Exclusive steels Pvt. Ltd. v. Union of India, supra, also, a Division Bench of Gujarat High Court held that the only*

circumstance under which a claimant would be entitled to prefer a claim beyond the statutorily prescribed period of limitation would be where the lapse as to non-availability of requisite document is on account of Central Excise Department or Customs Department.

15. *The judgment of the Supreme Court in Miles India Limited, supra, relied on by the Revenue, is not an effective and well discussed judgment on merits. It is merely an order allowing the appellant to withdraw the appeal. Therefore, this judgment cannot be of any help to the Revenue. Another judgment of the Supreme Court in Collector of C.E., Chandigarh v. Doaba Co-operative Sugar Mills - 1988 (37) E.L.T. 478 (S.C.), cited on behalf of the Revenue, rather helps the petitioner because in Para 6 of the judgment, the Supreme Court observed that where the duty has been levied without authority of law or without reference to any statutory authority or the specific provisions of the Act and the Rules framed thereunder having no application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light.*

16. *The Division Bench judgment of Bombay High Court in Everest Flavours Ltd. v. Union of India, supra, cited by the revenue, relating to Section 11B of the Central Excise Act, 1944, observed that Rule 18 of the Central Excise Rules, 2002, cannot be read independent of requirement of limitation prescribed in Section 11B. What was held was that mere presentation of an ARE-1 Form does not constitute the filing of a valid application for rebate. The judgment of Gujarat High Court in Indian Oil Corporation Ltd. v. Union of India, supra, is distinguishable on facts.*

17. *There is no quarrel with proposition that if Statute provided for limitation, it has to be adhered to. What however is being claimed by the petitioner is different. The question which arises in the present case is as to what should be the starting point for computation of this period of one year. We are persuaded to follow the view taken by the Gujarat High Court in Cosmonaut Chemicals, supra, that any procedure prescribed by a subsidiary*

legislation has to be in aid of justice and procedural requirements cannot be read so as to defeat the cause of justice. The claimant cannot be asked to tender deficient claim within limitation period and claim cannot be simultaneously treated as not filed till documents furnished, if the manual of supplementary instruction indicating that refund or rebate claim deficient in any manner to be admitted when delay in providing document is attributable to the Department. Where the lapse as to non-availability of requisite document is on account of Central Excise Department or Customs Department, this would be mitigating circumstance flowing from the aforesaid legislative scheme. Limitation is to be considered in the light of availability of requisite documents and should be taken to begin when documents necessary for substantiating the claim of refund are furnished by the department, which, in our considered view, should be the starting point for computation of limitation."

In the case of Kaamdaa Impex [2021 (377) ELT 21 (Mad.)], Hon'ble Madras High Court has held as follows:-

"15. *The petitioners plead "Lex non-cogit ad impossibilia" in filing of refund claims in time. According to the petitioners, they had to liaison with the Directorate of Revenue Intelligence to get copies of the Bills of Entries and since the Bills of Entries were not given to the petitioners in time, there was a delay in filing the refund claims. It is therefore submitted that seizure of documents by the Directorate of Revenue Intelligence cannot be against the petitioners.*

16. *On the other hand, it is the contention of the respondents that nothing prevented the petitioners from filing the refund claims in time.*

17. *The Directorate of Revenue Intelligence (DRI) therefore entertained a reasonable belief that there was large scale evasion of anti-dumping duty and therefore carried search on 2-7-2013 and seized records of the petitioner in W.P. Nos. 22385, 22386 & 34269 of 2016.*

18. *These included copies of the Bills of Entries, under which, the imported goods were cleared on payment of applicable duty.*

These seizures were purportedly in the exercise of powers vested under Section 110 of the Customs Act, 1962 by the officers of Directorate of Revenue Intelligence. Under sub-section 3 of the Section 110 of the Customs Act, 1962, a proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under the Act. Both the petitioners have also been issued with show cause notice dated 6-1-2014.

19. *Sub-section (4) of the Section 110 of the Customs Act, 1962, enjoins the officer of Customs seizing the documents to furnish copies of such documents or to allow the person to take copies of the extract from the seized documents in his presence. Therefore, to the extent, there was a delay in filing of refund claim on account of the seizure of the documents and until furnishing of the documents are to be excluded.*

20. *To avail the benefit of refund under the Notification No. 102/2007-Cus., dated 14-9-2007, an importer is required to file the refund claims along with the following documents :-*

- (a) document evidencing payment of the said additional duty;*
- (b) invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed;*
- (c) documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.*

21. *Therefore, denial of benefit of Notification No. 102/2007-Cus., dated 14-9-2007 as amended by Notification No. 93/2008-Cus., dated 1-8-2008 to the petitioners on the ground of limitation is not justified if the above documents enumerated above were seized by the officers of Directorate of Revenue Intelligence.*

22. *Copy of Mahazer dated 2-7-2013 of M/s. Kaamdaa Impex which has been filed indicates that documents were seized. It is not clear whether copies of other writ petitioner M/s. M.M. Enterprises were also seized on 2-7-2013 by the officers of*

Directorate of Revenue Intelligence. Copy of Mahazer of the said writ petitioner has not been filed.

23. *In my view, denial of refund claims based on the limitation prescribed under the Notification cannot be justified and imposed against the petitioner M/s. Kaamdaa Impex as all the documents of the said petitioner were admittedly seized as per the Mahazer dated 2-7-2013. The said writ petitioner could not have filed the refund claims in absence of the vital documents.*

24. *Therefore, the impugned orders impugned in W.P. Nos. 22385 and 22386 of 2016 and W.P. No. 24269 of 2016 denying the benefit of refund of Special Additional Duty paid under Section 5(3) of the Customs Tariff Act, 1975 are quashed and cases are remitted back to the second respondent to pass a fresh order of refund of the amounts paid by the petitioner at the time of import, if the said writ petitioner has otherwise satisfied the other requirements of Notification No. 102/2007-Cus., dated 14-9-2007 as amended by Notification No. 93/2008-Cus., dated 1-8-2008. Respondents shall pass orders on the balance refund claims within a period of three months from date of receipt of a copy of this order.*

25. *Insofar as the other petitioner in W.P. Nos. 22387 & 22388 of 2016 namely M/s. M.M. Enterprises is concerned, it is not clear whether the documents of the said petitioner were also seized by the officers of the Directorate of Revenue Intelligence on 2-7-2013, though letter dated 14-5-2015 of the Directorate of Revenue Intelligence addressed to the second respondent indicates the involvement of the said petitioner also in the alleged evasion of anti-dumping duty and that documents were seized from the premises of the said petitioner also.*

26. *However, in absence of specific documents to conclude that the import documents and other documents of the said petitioner were also seized or not by the officers of the Directorate of Revenue Intelligence, this Court is unable to form any positive opinion straight away.*

27. *Therefore, with a view to do substantial justice in the light of letter dated 14-5-2015 of the Directorate of Revenue*

Intelligence addressed to the second respondent, the impugned orders passed by the first respondent upholding the orders of the second respondent insofar as they deny the refund of customs duty under Notification No. 102/2007-Cus., dated 14-9-2007 as amended by Notification No. 93/2008-Cus., dated 1-8-2008 are also quashed and the cases are also remitted back to the second respondent to examine whether the documents of the petitioner in W.P. Nos. 22387 and 22388 of 2016, namely M/s. M.M. Enterprises, were also seized by the Directorate of Revenue Intelligence.

28. *If the documents of the said writ petitioner, namely M/s. M.M. Enterprises, were also seized by the officers of the Directorate of Revenue Intelligence, the period up to the time of furnishing of the documents by the officer of the Directorate of Revenue Divisions required for filing and processing the refund claims under Notification No. 102/2007-Cus., dated 14-9-2007 as amended by Notification No. 93/2008-Cus., dated 1-8-2008 before the second respondent shall stand excluded.*

29. *The second respondent is therefore directed to pass appropriate orders on merits keeping the above observation in mind. If the refund claims were filed in time after such period is excluded, the claims may be examined and allowed on merits if the petitioners otherwise satisfy the requirement of Notification No. 102/2007-Cus., dated 14-9-2007 as amended by Notification No. 93/2008-Cus., dated 1-8-2008."*

5.1 In view of the above decisions of Hon'ble Rajasthan High Court and Hon'ble Madras High Court, I do not find any merits in the impugned order.

5.2 Appeal is allowed and the impugned order set aside.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)