

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86139 OF 2016

[Arising out of Order-in-Appeal No: MUM-CUSTM-AMP-APP-182/15-16 dated 06th July 2012 passed by the Commissioner of Customs (Appeals), Mumbai- III.]

LG Electronics India Pvt Ltd

Plot No. A5, MIDC Ranjangaon,
Taluka-Shirur, Pune-412220

... Appellant

versus

Commissioner of Customs (Import)

Air Cargo Complex,
Sahar, Andheri (East), Mumbai – 400 099

...Respondent

APPEARANCE:

Shri Akhilesh Kangasia and Ms Apoorva Singh, Advocates for the appellant

Shri A Pathan, Deputy Commissioner (AR) for the respondent

CORAM:

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

HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85838/2024

DATE OF HEARING:	19/02/2024
DATE OF DECISION:	19/08/2024

PER: C J MATHEW

M/s LG Electronics India Pvt Ltd is before us on the limited issue
of rejection of their appeal before the first appellate authority for

alleged failure to furnish documentation, such as bills of entry, duty payment challans, evidence of bar of unjust enrichment having been overcome, certified balance sheet, import invoice and airway bill, and of their plea for deferment owing to pendency of dispute before the Hon'ble Supreme Court on the ground that section 27A of Customs Act, 1962 required claim to be disposed of within three months. The jurisdictional Assistant Commissioner of Customs had noted the absence of these documents and that there was no scope for entertaining refund claims except by of setting aside of assessment orders through appellate mechanism.

2. The appellant sought refund of ₹ 4,03,75,333, discharged as liability to duties of customs on import of 'LCD panels for monitors and LCD televisions' against 290 bills of entry between July 2009 and October 2009, which, by revision of classification against tariff item 8529 9090 of First Schedule to Customs Tariff Act, 1975 as substitute for tariff item 9013 8010 of First Schedule to Customs Tariff Act, 1975, for having burdened them with differential duty to that extent without authority of law by claim filed on 21st May 2010 was denied by the original authority and, in challenge thereof, was affirmed in order¹ of Commissioner of Customs (Appeals), Mumbai Zone-III. There is no dispute that the revised classification adopted for assessment is not valid and that duty beyond that prescribed by law had been collected; it

¹ [order-in-appeal no. MUM-CUSTOM-AMP-APP-182/15-16 dated 06th July 2012]

is non-compliance with the machinery provisions that endures in this appeal. A brief recollection of the facts and circumstances would serve to place the controversy in perspective.

3. The appellant imported the goods and preferred bills of entry for discharge of duty applicable at the rate corresponding to tariff item 9013 8010 of First Schedule to Customs Tariff Act, 1975; the assessment to higher duty over their objection was, according to them, inappropriate without fulfilment of the mandate of section 17(5) of Customs Act, 1962 requiring 'speaking order' as justification of the revision. Furthermore, they had, on the basis of displacement of this classification by the Tribunal in *Videocon Industries v. Commissioner of Central Excise, Aurangabad* [2009-TIOL-653-CESTAT-MUM], sought re-assessment of the bills of entry by letter dated 27th July 2009. Further communications thereafter also indicate that assessments were made provisional and payment effected under protest or, at least, that was the belief entertained by appellant.

4. After filing of refund claim, and correspondence thereupon, the appellant was issued with communication dated 17th September 2011 about documentary deficiencies that was responded to on 4th October 2011 thus

'We would therefore request you to kindly keep our refund application alive so that necessary documentary requirements

called by your good office would be provided once the final judgment is received.'

owing to pendency of determinants of the issue by the Hon'ble Supreme Court which did not appear to have gone down well with the refund sanction authority who, by order dated 17th December 2011, held that failure to make good the deficiencies as well to challenge the assessment justified rejection of refund claim. In the impugned order, note was taken of non-furnishing of required documents and of constant requests for adjournment of proceedings placing the exchequer in jeopardy owing to section 27A of Customs Act, 1962 for upholding the rejection.

5. We have heard Learned Counsel for appellant and Learned Authorised Representative. The dispute over classification is not required to be resolved by the Tribunal or any lower authority for, as on the date of filing of the claim, the decision of the Tribunal in *re Videocon Industries Ltd* had held against the customs authorities even as far back as the date of import. There is no doubt that excess collection of duties of customs had been enforced at the time of import with no regard to the decision. Compounding that lack of judicial discipline, the claim for refund was disposed off on procedural grounds of non-furnishing of documents required to process the claim and upheld for no further reason than that the obligation under section 27A of Customs Act, 1962 devolve interest liability. That a tax administration, bound by

a statute, woke up to the consequences of keeping an application pending beyond three months after corresponding for over a year and half about the incompleteness thereof and deployed such jeopardy as cause for not awaiting compilation of the documentation by the appellant is strange indeed. An incomplete application does not trigger the consequences apprehended by the first appellate authority.

6. The compulsions of the appellant are all too apparent. Fastened with a duty liability contrary to judicial determination by the Tribunal, and deprived of order issued under section 17(5) of Customs Act, 1962, which could have been cause of action to initiate appellate recourse combined with not being a disputant in the appeal pending before the Hon'ble Supreme Court on the very classification, and the possibility of limitation in section 27 of Customs Act, 1962 kicking in, an application for refund within one year of payment of differential duty was the first and last option. That the customs authorities chose to disregard the classification holding sway then was the sole reason for the charge of differential duty on the impugned goods. That such discard was solely for the reason that customs authorities chose to continue the dispute before the Hon'ble Supreme Court should have been cause for pause in taking up the impugned claim for disposal. And yet, the telescoped haste after the long initial dawdle did not occur to the first appellate authority as peremptory. To us, it does.

7. Interests of justice predicate that the erroneous rejection on procedural grounds be invalidated. Accordingly, we set aside the impugned order and restore the application to the original authority for enabling the appellant to make good all deficiencies and for the application to be considered afresh in accordance with settled law relating to classification.

(Order pronounced in the open court on 19/08/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*