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

**WEST ZONAL BENCH**

**CUSTOMS APPEAL NO: 89834 OF 2018**

[Arising out of Order-in-Appeal No: 803 (CRC-SAD-IV)/2018(JNCH)/Appeal-II dated 29th August 2018 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

**Virgo Suitings Pvt Ltd**
Shop No.2, Hanuman Complex
Kumbha Circle Road, Bhilwara … ***Appellant***

*versus*

**Commissioner of Customs (Import) (NS-III)**
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

**WITH**

**CUSTOMS APPEAL NO: 90008 OF 2018**

[Arising out of Order-in-Appeal No: 1373 (CRC-SAD-IV)/2018(JNCH)/Appeal-II dated 28th September 2018 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

**Virgo Suitings Pvt Ltd**
Shop No.2, Hanuman Complex
Kumbha Circle Road, Bhilwara … ***Appellant***

*versus*

**Commissioner of Customs (Import) (NS-III)**
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

*APPEARANCE:*

Shri Bharat Menon, Advocate for the appellant

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

**CORAM:**

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

**FINAL ORDER NO: 85857-85858/2024**

DATE OF HEARING: 26/08/2024
DATE OF DECISION: 26/08/2024

These appeals concern the rejection of claims for refund of ₹ 17,70,037 and of ₹ 2,45,333, preferred by M/s Virgo Suitings Private Limited, that were upheld in order[1] [2] of Commissioner of Customs (Appeals), Mumbai–II upon challenge by them. These claims had been founded on the discharge of duty liability under section 3(5) of Customs Tariff Act 1975 in several bills of entry for clearance of goods between September 2014 and December 2014. The original authority had rejected the refund claim as not maintainable for being barred by limitation beyond the period of one year from the date of payment, as set out in notification no. 102/2007-Cus dated 14th September 2007, and by applying the statutory limitation in section 27 of Customs Act, 1962. It is not in dispute that the refund claim had been preferred beyond one year from the date on which duty liability has been discharged.

2. Learned Counsel for the appellant submitted that the Larger Bench of the Tribunal in *Ambey Sales v. Commissioner of Customs, GRFL, Sahnewal, Ludhiana* by interim order[3] in appeal[4] arising from

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[1] [order-in-appeal no.: 803 (CRC-SAD-IV)/2018(JNCH)/Appeal-II dated 29th August 2018]
[2] [order-in-appeal no. 1373 (CRC-SAD-IV)/2018(JNCH)/Appeal-II dated 28th September 2018]
[3] [interim order no. 03/2024 dated 4th June 2024]
[4] [customs appeal no. 60402 of 2020]

order[5] of Commissioner of Central Goods and Service Tax (Appeals), Ludhiana had settled the issue.

3. Learned Authorized Representative submitted that the order[6] of the Division Bench of the Tribunal in *Smartlink Network Systems Ltd v. Commissioner of Central Excise, Goa* in appeal[7] against order[8] of Commissioner of Central Excise & Customs (Appeals), Goa, had raised doubts about the correctness of the decision of the Larger Bench and referred to Hon'ble President for constitution of even Larger Bench for the said purpose.

4. Levy of 'special additional duty (SAD)', mirroring levy of taxes by constituent states of the Union on sale of goods within their jurisdiction, is exempted in the event of the said goods being traded in the domestic market and to be absorbed upon usage in manufacture of goods; in the instant dispute, there is no doubt that the goods are intended only for sale in domestic market. Furthermore, the refund stems from exemption notification which, though granted through refund route and solely for enabling post-import verification of sales, must be strictly construed to eliminate conditions not intended therein and should be allowed to the extent that sale in domestic market has been established. For the purpose of uniformity, Government of India in

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[5] [order in appeal no. LUD-EX-CUS-001-APP-47-2020 dated 12th February 2020]
[6] [interim order no. 78 of 2019 dated 15th July 2019]
[7] [customs appeal no. 86344 of 2013]
[8] [order-in-appeal no. GOA/CUS/GSK/166/2012 dated 27th December 2012]

Department of Revenue has set out certain procedures, terms and conditions for effecting the refund, among which is the reference to the statutory limitation in section 27 of Customs Act, 1962, that cannot impinge on eligibility arising from sale of imported goods. The decision of the Larger Bench of the Tribunal has settled the issue thus

> *'44. The inevitable conclusion, therefore, that follows from the aforesaid discussion is that it would not be necessary for an importer to file a claim for refund of the additional duty of customs paid on the imported goods with the jurisdictional customs officer before the expiry of one year from the date of payment of the said additional duty of customs in view of the judgment of the Delhi High Court in Sony India. The limitation of one year for filing a claim for refund of additional duty of customs paid on import of goods from the date of payment of additional duty would, therefore, not be applicable.'*

5. Respectfully following the decision of the Tribunal holding the field, these appeals are allowed.

*(Dictated and Pronounced in Open Court)*

**(C J MATHEW)**
***Member (Technical)***

**/as*