CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 87620 of 2022

[Arising out of Order-in-Appeal No. 989(CRC-I)/2022(JNCH)/Appeals dated 26.09.2022 passed by the Commissioner of Customs (Appeals), Mumbai-II]

Nirvanza Trading Private Limited .... **Appellants**
FC/3, Shiva Market Khureji Khas
Near Masjid
Delhi – 110051.

VERSUS

Commissioner of Customs, Nhava Sheva-III .... **Respondent**
Jawaharlal Nehru Customs House (JNCH)
Taluka Uran, District Raigad
Maharashtra– 400707.

APPEARANCE:

Shri Pratik Karande, Advocate for the Appellant

Shri Deepak Sharma, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85891/2024

Date of Hearing: 09.05.2024
Date of Decision: 09.09.2024

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Nirvanza Trading Private Limited, Delhi (herein referred to as 'the appellants' for short) assailing Order-in-Appeal No. 989(CRC-I)/2022(JNCH)/Appeals dated 26.09.2022 (referred to, as 'the impugned order') passed by the Commissioner of Customs (Appeals), Mumbai-II, Nhava Sheva, Taluka-Uran, District Raigad, Maharashtra.

2.1 Brief facts of the case are that the appellants had filed two Bills of Entry (B/E) No. 7973716 dated 09.09.2018 and 8027706 dated 12.09.2018 for clearance of "Perfumes" of various brands. During investigation conducted by Special Intelligence & Investigation Branch

(SIIB) of Customs, the goods covered under both the B/Es were found mis-declared in terms of quantity, value and most of the goods were not in conformity with the CDSCO certificate. A Show Cause Notice (SCN) was issued by the departmental authorities proposing for enhancement of value, confiscation of goods and imposition of penalty. The said SCN was adjudicated by the Commissioner, NS-I, JNCH vide Order-in-Original No. 32/2019-20/Commr/NS-I/JNCH dated 20.06.2019, in rejecting declared value of imported goods at Rs. 1,08,89,740/- and re-determining it to be as Rs. 1,46,64,039/-; confiscating the impugned goods under Section 111 and Section 119 of the Customs Act, 1962 and allowing these goods for redemption on payment of fine of Rs. 2,50,000/- and imposing penalty of Rs. 35,00,000/- on the appellants under Section 112(a) *ibid*. Besides the appellants were also imposed with a penalty of Rs. 1,00,000/-/- under Section 112(a) *ibid* and penalty of Rs. 10,00,000/- under Section 114AA *ibid* was imposed on Shri Dhananjay Desai, Director of the appellant's company. In the said order the amount of Rs.29,04,736/- paid against challan No. 2024129468 dated 24.09.2018 was also ordered to be appropriated.

2.2 Being aggrieved by the said adjudication Order dated 19.06.2019, the appellants and Shri Dhananjay Desai, Director, had filed appeals before the Tribunal. After hearing both the sides, the appeals were disposed by the Tribunal in passing Final order No. A/87042-87043/2019 dated 04.09.2019. In the said order, while sustaining the confiscation of goods, the Redemption Fine was reduced to Rs.25,000/-; penalty imposed on the appellants was also reduced to Rs.1,00,000/- and rest of the penalties imposed on Shri Dhananjay Desai under Section 112(a) and Section 114AA of the Customs Act, 1962 were set aside.

2.3 Consequently, the appellants had filed claim dated 16.09.2020 before AC/CRC-I, NS-III, JNCH for refund of Rs.29,20,480/- on the ground of excess duty payment, which was received by the customs authorities on 22.09.2020. The said refund claim was rejected vide Order-in-Original No. 634/2020- 21/AM(I) NS-III dated 19.02.2021 by the Original Authority by holding that the refund claim was filed beyond the time limit of one year from the date of favorable order of the Tribunal, as prescribed under Section 27 of the Customs Act, 1962. Feeling aggrieved with the order dated 19.02.2021 of the original authority, the appellants had preferred an appeal before the Commissioner (Appeals). In the appeal proceedings, learned Commissioner (Appeals) had observed as follows:

> *"6.1 On perusal of order of the Hon'ble Tribunal, I find that the date of hearing and date of decision is 04.09.2019. It is also mentioned in the order that the operative part of the order was pronounced in the open court in presence of Shri Ashok Kumar Singh, Advocate for the Appellant and the Authorized Representative of the Department. Per contra, I find that it is a contention of the Appellant that the matter was heard on 04.09.2019 and order was pronounced and issued on 18.11.2019. However, the Appellant has failed to place on record any evidence showing that the judgement was reserved on 04.09.2019 and was again placed on board on 18.11.2019 for pronouncement of judgement. I find that 18.11.2019 is a date of a covering letter issued by the Registrar vide which CESTAT Order No. A/87042-87043/2019 dated 04.09.2019 was dispatched to the parties to dispute and it is in no way date of order. In this context, I am also of the opinion that when the statute has explicitly stipulated that date of judgement, decree, order or direction should be considered while calculating limitation, other dates whatsoever are automatically excluded from the consideration and are irrelevant in computation of time limit.*
>
> *6.2 In view of above discussion, I do not have hesitation in holding 04.09.2019 as date of order. Consequently, the time limit to file refund claim was upto 03.09.2020. I find that the Appellant had admittedly filed refund claim on 22.09.2020. Therefore, the refund claim is hit by time bar prescribed under Section 27(1B) of the Customs Act, 1962 in absence of any statutory provision for condonation of delay in filing refund claim."*

Accordingly, learned Commissioner (Appeals) had upheld the order of the original authority and rejected the appeal filed by the appellants.

3. Heard both sides and perused the case records. The additional submission made in the form written paper book in this case was also perused by me carefully.

4. The short issue for determination before the Tribunal is whether the claim of refund filed for consequential relief arising from the Order of the Tribunal is time barred or not?.

5. In order to appreciate the above issue under dispute, relevant provisions of the Customs Act, 1962 and the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 dealing with the issue of the Order by the Tribunal and how it should be signed and dated, would be of help in arriving at a proper decision on the issue. These are extracted herein and given below for ease of reference:

Customs Act, 1962

Claim for refund of duty.

Section 27. (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 Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest :

Provided that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, such application shall be deemed to have been made under sub-section (1), as it stood before the date on which the Finance Bill, 2011 receives the assent of the President and the same shall be dealt with in accordance with the provisions of sub-section (2) :

Provided further that the limitation of one year shall not apply where any duty or interest has been paid under protest :

Provided also that where the amount of refund claimed is less than rupees one hundred, the same shall not be refunded.]

Explanation.—For the purposes of this sub-section, "the date of payment of duty or interest" in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.

(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.

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely :—

(a) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of one year shall be computed from the date of issue of such order;

*(b) **where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction**;*

(c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.”

Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

Issued in exercise of the powers conferred by sub-section (6) of section 129C of the Customs Act, 1962 (52 of 1962), read with sub-section (1) of section 35D of the Central Excises and Salt Act, 1944 (1 of 1944).

Order to be signed and dated.

***RULE26.** — Every order of the Tribunal shall be in writing and shall be signed and dated by the Members constituting the Bench concerned. Last date of hearing of the matter shall be typed on the first page of the order. If the order is dictated on the Bench, the date of dictation will be the date of the final order. If the order is reserved, the date of final order will be the date on which the order is pronounced. In cases, where gist of the decision is pronounced without the detailed order, the last para of the detailed order shall specify the date on which the gist of the decision was pronounced. In such cases, the date of the final order shall be the date on which all the Members of the Bench sign the order. If they sign on different dates, the last of the dates will be the date of the order.*

On perusal of clause (b) of sub-section (1B) to Section 27 of the Customs Act, 1962 as above, it transpires that in a situation where the duty becomes refundable as a consequence of order or direction of the Appellate Tribunal, then the limitation of one year shall be computed from the ‘date of such order’. Further, by reading the Rule 26 above, under which Final Order is to be issued by the Tribunal, it also transpires that the order of the Tribunal in a case, where the gist of the order is pronounced first without a detailed order and the detailed order is pronounced later on, then the date of the final order shall be the date on which the detailed final order is signed by all the Members, and last of the dates on which it is signed by any Member is being taken as the date of the order.

6.1 In the above context, I had perused the details of the orders issued in the case of the appellants vide Final order No. A/87042-87043/2019. The records of the case and the manner in which the Final order was issued indicate that the gist of the Order indicating that the appeals are partly allowed and the Detailed Order To Follow (DOTF) was issued on 04.09.2019 by the Tribunal. However, the detailed order indicating the manner in which the appeals have been disposed by modifying a portion of the order appealed against and further setting aside part of the order to the extent it had imposed penalties on the appellants under Section 112(a) and Section 114AA of the Customs Act, 1962 was issued, on 18.11.2019 when the order was signed by the Members of the Tribunal and issued by the Assistant/Deputy Registrar of the Tribunal on 18.11.2019. The relevant portion of the aforesaid orders of 04.09.2019 and 18.11.2019 are extracted and given below:

ORDER issued on 04.09.2019

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : MUMBAI

Appeal No. C / 87044 / 2019

Date of Hearing : **04/09/2019**

SHRI DHANANJAY BALCHANDRA DESAI — Appellant

Versus

C.C.,NHAVA SHEVA - I — Respondent

Appeal No. C / 87045 / 2019

Date of Hearing : **04/09/2019**

NIRVANZA TRADING PVT LTD — Appellant

Versus

C.C.,NHAVA SHEVA - I — Respondent

Present for the Appellant : Shri Ashok Kumar Singh, Advocate
Present for the Respondent : Shri Bhudhan Kamble, Authorized Representative

O R D E R

Appeals partly allowed. DOTF.

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

(S. K. MOHANTY)
MEMBER (JUDICIAL)

6.2 It is a fact on record, that the gist of the order indicating that the appeals have been partly allowed, without indicating the extent of relief entitling the refund, was issued on 04.09.2019. If the logic of the learned Commissioner (Appeals) is taken that the gist of the order was pronounced before the Advocate of the appellants, then it is not known how and for what amount the appellants can even file for the refund, when the detailed order is yet to be issued by the Tribunal. It is also equally not feasible for the department to entertain or determine the amount of consequential refund, when the exact nature of relief granted by the Tribunal through its order is not known to anyone.

ORDER issued on 18.11.2019

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 87044 of 2019

(Arising out of Order-in-Original No. 32/2019-20/Commr/NS-I/JNCH dated 19.06.2019 passed by Commissioner of Customs (NS-I), Nhava Sheva)

Shri Dhananjay Balchandra Desai **.....Appellant**
Flat No. 502, D-Wing,
Ashok Vihar CHS,
Marol Military Road,
Marol, Andheri (E),
Mumbai

VERSUS

Commissioner of Customs, Nhava Sheva - I **.....Respondent**
JNCH, Custom House,
Nhava Sheva, Raigad,
Maharashtra-400707

WITH

Customs Appeal No. 87045 of 2019

(Arising out of Order-in-Original No. 32/2019-20/Commr/NS-I/JNCH dated19.06.2019 passed by Commissioner of Customs (NS-I), Nhava Sheva)

M/s Nirvanza Trading Pvt. Ltd. **.....Appellant**
FC/3, Shiv Market Khureji,
Khas Near Masjid,
Delhi-110051

VERSUS

Commissioner of Customs, Nhava Sheva - I **.....Respondent**
JNCH, Custom House,
Nhava Sheva, Raigad,
Maharashtra-400707

Appearance:

Shri Ashok Kumar Singh, Advocate for the Appellant
Shri Bhudhan Kamble, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87042-87043/2019

Date of Hearing: 04.09.2019
Date of Decision: 04.09.2019

Per: S.K. MOHANTY

These appeals are directed against the impugned order dated 19.06.2019 passed by the Commissioner of Customs, Nhava Sheva.

XXX XXX XXX XXX

12. In view of above discussions, the appeal is disposed of in following terms:

(a) The impugned order is sustained as far as goods held liable for absolute confiscation.

(b) The impugned order sustains, so far as it has re-determined the assessable value under Rule 9 ***ibid*** read with Section 14 ***ibid*** and absolutely confiscated the goods under Section 111(d) ibid;

(c) the impugned order is modified, as far as it relates to goods held to be redeemable, quantum of redemption fine is reduced to Rs.25,000/-;

(d) the impugned order is modified, in reducing imposition of penalty under Section 112(a) on the appellant company to Rs.1,00,000/-;

(e) the impugned order, in so far as it has imposed penalties on Shri Dhananjay Balchandra Desai, Director of the appellant company under Section 112(a) ***ibid*** and Section 114AA ***ibid*** are set aside and the appeal to such extent is allowed in favour of the said appellant.

(Operative part of the order pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

HK

From the above, it clearly transpired that it is only on 18.11.2019, when the detailed order was issued by the Tribunal, then the entitlement to a specific amount of relief, by way of reduction in quantum of fine/penalty would e determined.

7. In this regard, I also find that in order to claim the refund of consequential refund, unless the Final Order as issued on 18.11.2019, no one would be able to determine the consequential refund amount. Thus, there is no doubt that in order to claim refund of duty consequential to the issue of the Order by the Tribunal, the effective date of such Order is only on 18.11.2019.

8. In the impugned order, the learned Commissioner (Appeals) had not examined these factual aspects of the case as detailed above, and had simply calculated the date of issue of DOTF Order on 04.09.2019, as the 'date of the Order of the Tribunal' and accordingly rejected the refund claim filed by the appellants on 22.09.2020 being filed beyond the period of one year calculated from 04.09.2019.

9. As seen from the factual matrix of the case, the Final Order in the present case giving the detailed order portion as explained in paragraphs 6.1 & 6.2 above, has been issued on 18.11.2019. Therefore, the filing of the refund claim on 22.09.2020 by the appellants is well within the prescribed one year period ending on 17.11.2020.

10. In view of the foregoing discussions and analysis, I do not find any merits in the impugned order dated 26.09.2022 passed by the learned Commissioner (Appeals). Therefore, the impugned order dated 26.09.2022 is set aside and the appeal preferred by the appellants is allowed.

11. In the result, by setting aside the impugned order dated 26.09.2022, the appeal filed by the appellants is allowed in their favour.

(Order pronounced in the open court on 09.09.2024)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha