CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI
REGIONAL BENCH, COURT NO. 3

CUSTOMS APPEAL NO. 85101 OF 2021
CUSTOMS APPEAL NO. 85102 OF 2021

Arising out of Order-in-Appeal No.1183 1184 (CRC)/2020 (JCH)/Appeals dated 15.10.2020 passed by the Commissioner of Customs (Appeals), Mumbai-II, JNCH, NhavaSheva, TalukaUran, District Raigad, Maharashtra-400 707)

CAMBRO NILKAMAL P LTD
CAMBRO NILKAMAL P LTD **Appellant**

Vs.

THE COMMISSIONER OF CUSTOMS-NHAVA SHEVA-III **Respondent**

CUSTOMS APPEAL NO. 85103 OF 2021
CUSTOMS APPEAL NO. 85104 OF 2021

Arising out of Order-in-Appeal No.11835 & 1186 (CRC)/2020 (JCH)/Appeals dated 15.10.2020 passed by the Commissioner of Customs (Appeals), Mumbai-II, JNCH, NhavaSheva, TalukaUran, District Raigad, Maharashtra-400 707)

NILKAMAL LTD.
NILKAMAL LTD. **Appellant**

Vs.

THE COMMISSIONER OF CUSTOMS-NHAVA SHEVA-III **Respondent**

Appearance:
Present for the Appellant:Shri Prakash Shah, Advocate
Present for the Respondent: ShriRanjan Kumar(AR)

WITH

CUSTOMS APPEAL NO. 85110 OF 2019

Arising out of Order-in-Appeal No.MUM-CUS-RN-IMP-139/2018-19 dated 26.10.2018passed by the Commissioner of Customs (Appeals), Mumbai-I, JNCH,New Custom House, Ballard Estate, Mumbai-400 001)

LA TIM LIFESTYLE & RESORTS LTD. **Appellant**

Vs.

THE COMMISSIONER OF CUSTOMS-MUMBAI IMPORT-I **Respondent**

CUSTOMS APPEAL NO. 87559 OF 2019

(Arising out of Order-in-Appeal No.579(CRC-SAD-VI)/2019 (JCH)/Appeals dated 15.10.2020 passed by the Commissioner of Customs (Appeals), Mumbai-II, JNCH, NhavaSheva, TalukaUran, District Raigad, Maharashtra-400 707)

CITI TRADING CO **Appellant**

Vs.

THE COMMISSIONER OF CUSTOMS-NHAVA SHEVA **Respondent**

Appearance:
Present for the Appellant:Shri Prakash Shah, Advocate&Sh.N.D.George,Advocate
Present for the Respondent: ShriRanjan Kumar(AR)

CORAM:HON'BLE MR.ASHOK JINDAL, MEMBER (JUDCIAL)

FINAL ORDER NO.86190-86195/2024

Date of Hearing/Decision: **11.09.2024**

PER: ASHOK Jindal

As the issue in all these appeals is common, therefore, they are being disposed of by this common order.

2. The facts of the case are that the appellants are traders and importers of various goods which were ultimately sold by the appellant after import of the goods and at the time of selling of the goods either they have paid VAT or ST. Thereafter, the appellants filed refund claim of SAD paid at the time of import. The refund claims were rejected in terms of Notification No.102/2007-Cus dated 14.09.2007 wherein it has been held that the refund claim was filed beyond one year.

3. Ld.Counsel for the appellant submits that the issue has been settled by the Hon'ble Supreme Court in the case of CC, New Delhi vs. Nanak Electronics Pvt.Ltd.-2023 (385) ELT 801 (SC) wherein it has been held that the time limit in terms of Notification No.102/2007-Cus dated 14.09.2007 is not applicable in the case of refund of SAD, statutory limitation period would not be applicable. The same view was taken by this Tribunal in the case of Virgo Suitings Pvt.Ltd. vs. Commissioner

of Customs (Import), NhavaSheva in appeals no.C/89834 & C/90008/2018 vide Final Order No.85857-85858/2024 dated 26.08.2024. It is prayed that the impugned orders to be set aside.

4. On the other hand, Ld.AR for Revenue, relied upon the decision of the Hon'ble Bombay High Court in the case of CMS Info Systems Ltd. vs. UOI-2017-TIOL-79-HC-MUM-CUS.

5. As the issue has already been decided by the Hon'ble Supreme Court in the case of CC, New Delhi vs. Nanak Electronics Pvt.Ltd cited (supra) which affirmed order of the Hon'ble Delhi High Court-2023 (385) ELT 863 (Del.) holding that the time limit is to be counted one year from payment of VAT or GSTor sale of goods.

6. In that circumstance, I hold that the appellants are entitled to refund claim, if the same are filed within one year from payment of VAT/GST for calculating period of limitation.

7. In view of this, the impugned orders are set aside and the matters are remanded back to the adjudicating authority to find out the limitation in accordance the law laid down hereinabove and pass the appropriate orders in terms of law following the judicial disciplines.

8. The appeals are disposed of by way of remand.

(Dictated and pronounced in the court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

mk