CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 87012 of 2021

(Arising out of Order-in-Appeal No. MUM-CUSTM-APSC-APP-716/2020-21 dated 27.09.2021 passed by the Commissioner of Customs (Appeals), Mumbai Customs Zone-III, Mumbai)

Varian Medical Systems International (India) P Ltd. .... Appellants
Unit No.33, Kalpataru Square
Off. Andheri Kurla Road
Andheri (East), Mumbai – 400059.

VERSUS

Commissioner of Customs .... Respondent
Nhava Sheva-V Commissionerate
Jawaharlal Nehru Customs House (JNCH)
Nhava Sheva, Taluk Uran
Raigad District – 400707.

APPEARANCE:

Shri Anil Balani, Advocate for the Appellants

Shri Krishna Azad, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85186/2025

Date of Hearing: 17.10.2024
Date of Decision: 17.02.2025

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Varian Medical Systems International (India) Private Limited, Mumbai (herein after, for short, referred to as 'the appellants') assailing the Order-in-Appeal No. MUM-CUSTM-APSC-APP-716/2020-21 dated 27.09.2021 (referred to, as 'the impugned order') passed by the Commissioner of Customs (Appeals), Mumbai Customs Zone-III, Mumbai.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellant had imported certain life-saving equipment and its parts through courier mode by filing Regular Bill of Entry as prescribed in Form CBE-XIV under Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 before the customs authorities in Airport Special Cargo Customs Commissionerate, Mumbai.

2.3 In respect of imports undertaken through Courier Bill of Entry No. CBEXIV_BOM_2017-2018_ 1903_10710 dated 19.03.2018, the goods were cleared through FEDEX Express as authorised courier, and the said B/E was filed by the customs broker M/s Pacific Customs Broker Services Pvt. Ltd. The appellants while processing the subject B/E had to pay the customs duty twice as there was technical error in customs software system, once vide challan No. 123111 21032018122**69** dated 21.03.2018 and again on the same day vide challan No.12311121032018122**72** dated 21.03.2018. Therefore, the appellants had filed refund claim before the jurisdictional customs authorities on 12.06.2018, and after rectifying deficiencies pointed out, were submitted with all requisite details on 20.08.2019. The said refund claim was scrutinised by the proper officer for verification of facts regarding double payment of duty with all concerned sections of the Customs Commissionerate and with State Bank of India, International Air Cargo Complex, Sahar Branch for confirming the receipt of duty twice, chartered accountant’s certificate for verification of unjust enrichment, and thereafter sanctioned refund of Rs. 10,25,253/- as payment of duty for same Bill of Entry for second time due to inadvertent error in the payment system. The Order-in-Original Order dated 04.09.2019 was reviewed and an appeal was filed by the department before the Commissioner of Customs (Appeals), who had set aside the original order and denied refund benefit to the appellants. Feeling aggrieved with the impugned Order dated 27.09.2021, the appellants have filed this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellant had submitted that they paid the customs duty twice, inadvertently due to technical glitch in the EDI system. Since the customs broker has been employed by them in clearance of goods including payment of duty, the department cannot retain or withhold refund of duty, which is actually paid twice, on the ground that the broker, who acted as agent/intermediary to the importer, has only paid and that there are no documentary evidences with the appellant importer.

3.2 Learned Advocate further submitted that "import duty" means customs duty leviable on the import of goods under the provisions of the Customs Act, 1962; and therefore he claimed that the appellants cannot be levied with customs duty twice, on the same import transaction, in denial of refund of such duty.

3.3 In support of their case, the Learned Counsel had relied upon the judgements in the following cases:

(i) Swastik Sanitarywares Ltd. Vs Union of India - Gujarat High Court Special Civil Application No.4676-of-2004-29-08-2012[2012 (37) STT 508 (27)Taxman.com.12(Gujarat)

(ii) Star Textile Engg. Works Ltd. Vs. Collector of Customs - 1984 (22) ELT 552 Tri Mumbai

4. Learned Authorized Representative (AR) appearing for Revenue, reiterated the findings made by the Commissioner (Appeals) in the impugned order and submitted that in the absence of documents evidencing payment of duty twice by the importer, allowing refund to the importer under Section 27ibid, is not permissible, as the customs duty was show to have been paid by the customs broker M/s Pacific Broker Services Pvt. Ltd. Accordingly, he submitted that impugned order is sustainable and prayed for rejection of the appeal filed by the appellant.

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

6. The short issue for determination before the Tribunal is whether the amount of Rs. 10,25,253/- paid by the appellants through their customs broker towards import duty liability for the imports under a specific Bill of Entry, twice vide Challan No.123111 21032018122**69** dated 21.03.2018 and again on the same day vide challan No.123111 21032018122**72** dated 21.03.2018, is eligible for refund or not?

7. Section 12 of the Customs Act, 1962 governs matters of levy of customs duty and Section 27 ibid relates to refund of duty. In order to appreciate the issues under dispute, the specific legal provisions of such Sectionsare extracted given below for ease of reference:

LEVY OF, AND EXEMPTION FROM, CUSTOMS DUTIES

Dutiable goods.

"Section 12. *(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975) or any* *other law for the time being in force, on goods imported into, or exported from, India.*

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

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 :……"

Plain reading of the above legal provisions, make the position very clear that the scope of Section 27 ibid, deals with refund of duty and duty refers to the customs duty leviable as per the provisions of the Section 12 ibid.If such customs duty on import of goods provided is determined on the basis of Bill of Entry and ascertained as "X" and when the same has been paid firstly as per law, and secondly by mistake inadvertently, it is obvious that the amount paid in the context of customs duty for the second time has no legal basis, either for levy or for payment as duty, inasmuch as there is no taxable event for which the levy and payment duty would apply.

8.1 Further, I find that the original authority while adjudicating the case had made the following findings in the order-in-original dated 04.09.2019 to arrive at a conclusion for grant of refund of duty, paid twice. The extract of the same are as below:

7.0 I have carefully gone through the records of the case documents submitted, letter from Branch Manager, SBI, International Air Cargo Complex Sahar, Mumbai Branch certifying the twice duty debited against the said Courier Bill of Entry and transfer of the said amount to CBEC-e-FPB Centaury HO, Copy of the Wipro E-mail attached to the letter of DC/ Courier Cell, confirming the generation of two challans against the same bill of entry No from Cash Section of APSC Commissionerate and submissions made by the importer.

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11. The importer submitted Chartered Accountant Certificate no. V8128 dated 23rd August, 2019 of Soman Uday & Co. having membership no. 38870, towards no unjust enrichment which certified that an amount claimed as refund has been shown as Duty Receivable under the heading Current, Assets in the Balance Sheet for the financial Year 2018-19 and the same has not been passed on directly or indirectly to any other person. Importer has also submitted self declaration that double duty payment has not been passed on further to their clients. So with this refund, the importer will not be unjustly enriched. Accordingly, importer appears to qualify the doctrine of no unjust enrichment.

13.0 I find that importer has claimed Double Duty Amount against Bill of Entry / Challans as per following details : -

Sr. No.	B/E No.	B/E Date	TR 6 Challan No. / Date	Amount paid as duty (Rs.)	Refund amount claimed
1	CBEX-IV_BOM_2017_2018_1903_10710	1231112103201812269 dt. 21.03.2018	19.03.2018	1025253/-	1025253/-
2	CBEX-IV_BOM_2017_2018_1903_10710	1231112103201812272 dt. 212.03.2018	19.03.2018	1025253/-	

14.0 In view of the above findings, I pass the following orders: -

ORDER

14.1 I sanction refund of Rs. 10,25,253/- (Rs. Ten Lakhs Twenty Rive Thousand Two Hundred Fifty Three only) to M/s Varian Medical Systems International (India) Pvt. Ltd., having office at DHL Logistics Pvt. Ltd. K Square The Integrated Park, NH3 Mumbai Nashik Highway, Bhiwandi, Maharashtra, India for double payment of duty against the same Bill of Entry No. CBEX-IV_BOM_2017_2018_1903_10710 dated 19.03.2018 as detailed in Para 13 above."

8.2 I find from the above, that all the relevant issues relating to grant of refund has been examined by the original authority, to ascertain the fact whether the import duty has been twice on the very same consignment of imported goods. However, I find that the learned Commissioner (Appeals) had held that the appellant importer have neither paid impugned duty not they submitted any documentary evidence that the said duty, for which they are claiming refund has been borne by them.

8.3 Further, on careful perusal of the records of the case, it is amply clear that in respect of imports through courier mode, the importer has to file the Bill of Entry through authorised customs broker. Such customs broker besides providing assistance for clearance of goods from customs control, may also provide services such as logistics, payment of duty on behalf of the importer as their agent, which charges are reimbursed by the importer on actual basis. In fact, the purpose for which an importer employs a customs broker is to facilitate clearance of goods from customs control expeditiously with least interference/interaction with the importer. The documents such as Bill of Entry for which the import duty has been assessed under the Customs statute and the challans in which the customs duty have been paid twice for the same amount and for the very same Bill of Entry are sufficiently evidence that the customs duty has been paid twice for one import under the single impugned B/E No. No. CBEXIV_BOM_2017-2018_ 1903_10710 dated 19.03.2018. Further, the chartered accountant certificate dated 23.08.2019 produced by the importer -appellants also demonstrates that the burden of duty have been borne by them on being had to pay the customs duty twice, and they had not passed on such burden to any other person. On the above basis, a clear case has been made out by the appellants and the original authority had verified the facts, before grant of refund to the importer-appellants in this case. Therefore, I am of the considered view that the impugned order is contrary to the factual position of the case as discussed herein and on this ground alone it is liable to be set aside.

9. The issue of refund arising on account of payment of duty/tax twice has been dealt with in detail by the by the Hon'ble High Court of Gujarat in the case of *Swastik Sanitary wares Limited* (Supra), upon taking into account the judgement of the Hon'ble Supreme Court in Mafatlal Industries and it was held the assessee is eligible for refund of the amount paid for the second time. The relevant paragraphs of the said judgement delivered on 29.08.2012 is extracted and given below:

> ***"14.*** *If, for any reason, the petitioners were seeking refund of a duty paid, such claim had to be examined under Section 11B of the Act and in such a case, the period of limitation would apply in all its rigour. Neither the departmental authority nor this court in a writ jurisdiction ignore such statutory period of limitation. This position is abundantly clear flowing from the decision in the case of Mafatlal Industries (supra) wherein in the concluding portion of the majority judgment it was held and observed as under :-*
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> > *108. The discussion in the judgment yields the following propositions. We may forewarn that these propositions are set out merely for the sake of convenient reference and are not supposed to be exhaustive. In case of any doubt or ambiguity in these propositions, reference must be had to the discussion and propositions in the body of the judgment.*
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> > *(i) Where a refund of tax/duty is claimed on the ground that it has been collected from the petitioner/plaintiff - whether before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991 or thereafter - by misinterpreting or misapplying the provisions of the Central Excises and Salt Act, 1944 read with Central Excise Tariff Act, 1985 or Customs Act, 1962 read with Customs Tariff Act or by misinterpreting or misapplying any of the rules, regulations or notifications issued under the said enactments, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactments before the authorities specified there under and within the period of limitation prescribed therein. No suit is maintainable in that behalf. While the jurisdiction of the High Courts under Article 226 - and of this Court under Article 32 - cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and disposed of in the light of and in accordance with the provisions of Section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it.*

15. *In the present case, however, we find that the second deposit of the same amount on clearance of the same goods did not amount to deposit of excise duty and was a pure mistaken deposit of an amount with the Government which the revenue cannot retain or withhold. Such claim, therefore, would not fall within Section 11B of the Act. It is true that insofar as the Act is concerned, for refund of duty, the provision is contained in Section 11B. However, merely because there is no specific statutory provision pertaining to return of amount deposited under a mistake, per se, in our opinion, should not deter us from directing the respondents to return such amount. Admittedly, there is no prohibition under the Act from returning such an amount. Allowing the respondents to retain such amount would be, in our opinion, highly inequitable. We may not be seen to suggest that such a claim can be raised at any point of time without any explanation. In a given case, if the petitioner is found to be sleeping over his right, or raises such a claim after unduly long period of time, it may be open for the Government to refuse to return the same and this court in exercise of discretionary writ jurisdiction, may also not compel the Government to do so.*

16. *In the present case, however, no such inordinate delay is pointed out. The petitioners have contended that the error was noticed by them some time in October, 2003 whereupon immediately on 1-11-2003, such refund claim was filed.*

17. *In a recent judgment in case of C.C. Patel & Associates Pvt. Ltd. (supra), this court had occasion to deal with somewhat similar situation where the petitioner had deposited service tax twice which was not being refunded by the Department. In that context, it was observed as under :-*

> *(12) We fail to see how the department can withhold such refund. We say so for several reasons. Firstly, we notice that under sub-section(3) of section 68, the time available to a service provider such as the petitioner for depositing with the Government service tax though not collected from the service recipient was 75 days from the end of the month when such service was provided. This is in contrast to the duty to be deposited by a service provider upon actual collection by the 15th of the month following the end of the month when such duty is collected. Sub-section (3) of section 68 thus provided for an outer limit of 75 days, but never provided that the same cannot be paid by the 15th of the month following the end of the month when such service was provided. Thus, if the petitioner deposited such duty with the Government during a particular quarter on the basis of billing without actual collection, he had discharged his liability under sub-section (3) of section 68. Thereafter, on an artificial basis, the Assessing Officer could not have held that he ought to have deposited same amount once all over again in the following quarter. This is fundamentally flawed logic on the part of the Assessing Officer.*
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> *(13) Further, to accept such formula adopted by the Assessing Officer would amount to collecting the tax from the petitioner twice. The petitioner having already paid up the service tax even before collection in a particular quarter, cannot be asked to pay such tax all over again in the following quarter on the same service on the ground that such tax had to be deposited in the later quarter but was deposited earlier. Any such action would be without authority of law. Further, before raising demand of Rs. 1,19,465/- under the head of duty short paid, the Assessing Officer should have granted adjustment of the duty already paid by the petitioner towards the same liability.*

> *(14) Under the circumstances, we are of the opinion that the department cannot withhold such amount which the petitioner rightfully claimed. Under the circumstances, question of applying limitation under section 11B of the Act would not arise since we hold that retention of such service tax would be without any authority of law.*

> ***18.*** *Before closing, we may record that with some of the observations made by this court in the case of Indo-Nippon Chemicals Co. Ltd. (supra), with respect, we have serious doubts. However, since such questions do not directly arise in this petition, we refrain from making any further observations in this regard.*

> ***19.*** *Under the circumstances, the amount of Rs. 91,128/- is payable to the petitioners by the respondents. However, since the petitioners filed such a claim only on 1-11-2003, they cannot claim interest on any period prior thereto.*

> ***20.*** *It is, therefore, directed that the respondents shall pay to the petitioners a sum of Rs. 91,128/- with simple interest at the rate of 9% per annum after a period of three months from the date of the application dated 1-11-2003 till actual payment. The petition is disposed of accordingly. Rule made absolute."*

10. In view of the foregoing discussion and on the basis of the judgements of the higher judicial forum delivered on the disputed issue, I hold that the impugned order is liable to be set aside, as it had denied refund of an amount of Rs.Rs.10,25,253/-to the appellants, which has been paid twice towards one single import activity on which customs duty applicable has already been paid at the first time, as per law.

11. In the result, the impugned order dated 27.09.2021 is set aside. I allow refund of an amount of Rs.10,25,253/-to the appellants, by allowing the appeal in favour of the appellants.

(Order pronounced in open court on 17.02.2025)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha