

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Customs Appeal No. 85622 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTOM-APSC-APP-1160/2021-22 dated 06.12.2021 passed by the Commissioner Customs (Appeals), Mumbai-III)

Varian Medical Systems International (India) Pvt. Ltd. Appellant

Unit No.33, Kalpataru Square,
Off. Andheri Kurla Road,
Andheri (E), Mumbai 400 059.

Vs.

Commissioner of Customs, Air Special Cargo Respondent

6th Floor, Awas Corporate Point, Makwana Lane,
Andheri Kurla Road, Behind SM Centre,
Andheri (E), Air Cargo Complex, Sahar,
Mumbai 400 059.

Appearance:

Shri Anil Balani with Ms. Priyasha Pawar, Advocates, for Appellant
Shri L.B. D'Coasta, Deputy Commissioner, Authorised Representative
for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 07.05.2025
Date of Decision: 07.05.2025

FINAL ORDER No. 85771/2025

Brief facts of the case are that the appellant had imported certain goods through three Bills of Entry dated 29.04.2017, 04.05.2017 and 07.06.2017 and subsequently submitted application for refund of SAD i.e. Special Additional Duty of customs amounting to Rs.2,87,801/-. The original authority through order-in-original dated 13.07.2020 rejected the said claim of refund on the grounds that the duty which was sought to be refunded was paid by DHL and there was no evidence that such duty was paid on account of the appellant. Appellant preferred appeal before learned Commissioner (Appeals) who also rejected the appeal through impugned order-in-appeal dated 06.12.2021 on similar grounds. Aggrieved by the said order, appellant is before this Tribunal.

2. Learned counsel for the appellant has submitted that the appellant is entitled for refund of SAD when the goods are sold in the market and the same goods suffered levy of VAT. There is no dispute that the goods were sold in the market and the goods suffered levy of VAT. He has submitted that the goods were cleared by their clearing agent bearing Customs Broker No.11/70 and the courier was DHL. Appellant is having a running account with their Customs Broker who keeps on making payment on behalf of the appellant for clearance of the goods. He has submitted a copy of TR-6 challan bearing No. 171996 dated 08.06.2017 which indicates that the customs duty was paid by the appellant since the said challan states the name and address of the importer as M/s. VMS International Pvt. Ltd. He has submitted that there are many challans which would cover the entire refund of SAD of Rs.2,87,801/- where the name and address of the importer stated in the TR-6 challan is that of the appellant.

3. Heard the learned AR. Learned AR has seen the copy of TR-6 challan and admits that the TR-6 challan is bearing the name of the importer.

4. I have carefully gone through the record of the case and submissions made by both the sides. A sample copy of TR-6 challan was submitted by learned counsel for the appellant where it is stated to have been issued in the name of the present importer. The appeal paper book is having copies of such TR-6 challans at page No.12, 16, 21 and 25 of the appeal paper book which indicate that the customs duty including SAD was paid by the appellant. I note that the only contention on the basis of which refund was rejected is that the appellant has not established that the appellant had borne the incidence of customs duty. With the said copies of TR-6 challans, it is established that the appellant had borne the burden of SAD. I, therefore, set aside the impugned order and direct the original authority to pay the refund of SAD of Rs.2,87,801/-.

5. In above terms, appeal is allowed.

(Pronounced in the court)

(Anil G. Shakkarwar)
Member (Technical)

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