CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85555 OF 2019

[Arising out of Order-in-Appeal No: 1885(CRC-SAD-VI) 2018(JNCH)/Appeal-II dated 5th December 2018 passed by the Commissioner of Customs (Appeals), Mumbai– II.]

Divyesh Industries Ltd
407 Silver Square, Opp: Dipak School,
Nikol, Ahmedabad - 382350 … ***Appellant***

versus

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

APPEARANCE:

Ms Surabhi Prabhu Desai, Advocate for the appellant

Shri DS Maan, Joint Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85861/2025

DATE OF HEARING: 04/02/2025
DATE OF DECISION: 03/06/2025

The limited issue in this appeal of M/s Divyesh Industries Ltd, assailing dismissal of their challenge to rejection of their claim for refund of ₹ 24,23,825 in accordance with notification[1] by order[2] of Commissioner of Customs (Appeals), Mumbai– II, is applicability of bar of limitation of one year, incorporated in the said notification by amending notification[3], to the facts in their case.

2. The appellant herein had imported 'embroidery machines', against 57 bills of entry between 27th January 2011 and 9th April 2012, on which 'special additional duty (SAD)' of customs had been discharged under section 3(5) of Customs Tariff Act, 1975 and thereafter claim for refund, purportedly eligible in all respects, was preferred *vide* application dated 23rd April 2018 along with the documents evincing discharge of liability on sale under the relevant taxing statue of Government of Gujarat which was essential qualification for erasing liability to the said duty on import. However, owing to disputes with the tax authorities, the liability had been finally settled by payment of applicable taxes following which, and on the basis of letter dated 27th March 2018 from the sales tax authorities, the claim had been preferred and it was on this deficiency that the original authority rejected the claim by placing reliance on the decision of the Hon'ble High Court of Bombay in *CMS Info Systems Limited v. Union of India & Others [2017 (1) TMI 786 – BOMBAY HIGH COURT].* Before the first appellate authority, the appellant had contended that bar

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[1] [notification no. 102/2007-Cus dated 14th September 2027]
[2] [order-in-appeal no. 1885(CRC-SAD-VI) 2018(JNCH)/Appeal-II dated 5th December 2018]
[3] [notification no.93/2008-Cus 1st August 2008]

of limitation did not apply owing to the decision of the Hon'ble High Court of Delhi in *Sony India Pvt Ltd v. Commissioner of Customs [2014 (304) ELT 660 (Del.)]*.

3. Learned Counsel for the appellant submitted that the issue stands settled since by a Larger Bench of the Tribunal, in *M/s Ambey Sales v. Commissioner of Customs, GRFL, Ludhiana,* by interim order[4] disposing off reference of division bench hearing appeal[5] against order[6] of Commissioner of Central Goods & Service Tax (Appeals), Ludhiana.

4. Learned Authorized Representative reiterated the contents of the impugned order.

5. In *re Ambey Sales*, the reference of

> *'Whether the time limit prescribed for filing refund claim of SAD paid by the importer is one year in terms of Notification No. 93/2008(Cus) dated 01.08.2008 which has been issued in terms of section 25(1) of the Customs Act, 1962 without selling the imported goods by the importer within one year of payment of SAD shall be applicable or not ?'*

was answered thus

> *'The time limit imposed upon an importer for filing a refund claim of additional duty of customs paid on the imported goods with the jurisdictional customs officer before the expiry of one*

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[4] [interim order no. 03/2024 dated 4th June 2024]
[5] [customs appeal no. 60402 of 2020]
[6] [order-in-appeal no. LUD-EX-CUS-001-APP-47-2020 dated 12th February 2020]

> *year from the date of payment of said additional duty of customs in terms of the notification dated 01.08.2008 would not be applicable in view of the judgment of the Delhi High Court in Sony India Pvt. Ltd. vs. Commissioner of Customs, New Delhi reported in 2014 (304) E.L.T. 660 (Del.).'*

6. As the lower authorities have placed reliance on the decision in *re CMS Info Systems Limited,* it is pertinent to note that all of these was considered by the Larger Bench of the Tribunal and it was held that

> *'37. A Division Bench of the Tribunal in C.C. – New Delhi (ICD TKD) (Import) vs. JG Impex Pvt. Ltd [2018 (10) TMI 1483 – CESTAT NEW DELHI], however, attempted to distinguish the judgment of the Delhi High Court in Sony India. After referring to section 27 of the Customs Act, the Division Bench observed:*
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> > *"8. The words used in the provision makes it clear that statute has not distinguished the nature of duty or interest, the refund where of is claimed. Hence, even if we do not look into the amended Notification No.93/2008, the period of limitation as applicable for filing the refund claim under Notification 102/2008 will otherwise be a period of one year in accordance of the aforesaid Section 27 of the Customs Act."*
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> *38. The Division Bench of the Tribunal in JG Impex relied upon section 27 of the Customs Act, which was held to be not applicable in case of refund of additional duty by the Delhi High Court in Sony India. The decision of the Delhi High Court in Sony India was binding on the Tribunal.*
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> *39. It would be pertinent to note that two Division Benches of the Tribunal in Commissioner of Customs (Import) Inland Container Depot, Tughlakabad, New Delhi vs. M/s Siya Paper Mart Pvt Ltd.[2023 (3) TMI 1083- CESTAT NEW DELHI] and M/s Indochem & Polychems vs. Commissioner, Customs (Import), New Delhi (ICD TKD)[2023(5) TMI 399-CESTAT*

NEW DELHI] have followed the judgment of the Delhi High Court in Sony India and held that the limitation of one year would not be applicable.

40. However, contrary views have been expressed by the Tribunal in the following decisions:

(i) CC, Hyderabad-Customs vs. Khazana20; 17. 18. 19. 20. 2019 (4)TMI 492-CESTAT HYDERABAD decided on 13.02.2019

(ii) Hariyana International Pvt. Ltd vs. Commissioner of Customs (Import) Mumbai [2019 (4) TMI 142- CESTAT MUMBAI decided on 19.12.2018];

(iii) C.C.-New Delhi (ICD TKD) (Import) vs. Nav Bharat Trading Corporation [2018 (12) TMI 1487 CESTAT NEW DELHI decided on 25.10.2018]; and

(iv) C.C. Hyderabad- Customs vs. Surya Telecom Pvt. Ltd [2018 (7) TMI 192-CESTAT HYDERABAD].

41. In Khazana, a learned member of the Tribunal did not follow the decision of the Delhi High Court in Sony India only for the reason that it dealt with a situation that existed prior to the issue of the notification dated 01.08.2008 that introduced the limit of one year. In Hariyana International, the Division Bench of the Tribunal did not consider the judgment of the Delhi High Court in Sony India. In Nav Bharat Trading Corporation, the Division Bench of the Tribunal relied upon section 27 of the Customs Act, which section was held to be inapplicable by the jurisdictional Delhi High Court in Sony India. In Surya Telecom, the decision of the Bombay High Court in CMS Infosys System was relied upon.

42. These four decisions of the Tribunal have distinguished the judgment of the Delhi High Court in Sony India for reasons *which are not tenable. The decision of the Delhi High Court in Sony India had also taken into consideration the amended notification dated 01.08.2008.*

43. The decisions of the Tribunal in JG Impex, Khazana, Hariyana International, Nav Bharat Trading Corporation and Surya Telecom, for the reasons stated above, do not lay down the correct law.'

7. It is seen from the records that the rejection by the original authority, as also the dismissal of the challenge thereof by the first appellate authority, was at the threshold itself on the bar of limitation. Eligibility for refund and the extent of entitlement thereof had not been considered on merit and on the documents furnished in accordance with the notification[7]. In view of these circumstances, it would be appropriate to set aside the impugned order and remand the matter back to the original authority for disposal of the refund application on merit as the controversy on bar of limitation has since been decided by the Larger Bench of the Tribunal.

8. The appeal is accordingly allowed by way of remand.

(Order pronounced in the open court on 03/06/2025)

(C J MATHEW)
Member (Technical)

**/as*

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[7] [no. 102/2007-Cus dated 14th September 2027]