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

Customs Appeal No. 86792 of 2022

(Arising out of Order-in-Appeal No. 314 (CRC)/2022 (JNCH) APPEALS dated 28.04.2022 passed by the Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva)

Elin Electronics Ltd. **Appellant**
Elin House,
4771, Bharat Ram Road,
23, Daryaganj,
New Delhi 110 002.

Vs.

Commissioner of Customs, Nhava Sheva-III **Respondent**
JNPT, Custom House, Nhava Sheva, Raigad 400 707.

Appearance:

Shri Parth Mullick, Advocate, for the Appellant
Shri C.S. Vinod, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

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

Date of Hearing: 13.06.2025
Date of Decision: 13.06.2025

FINAL ORDER No. 85899/2025

Brief facts of the case are that the appellant has filed application for refund of additional duty of customs of Rs.1,78,086/- on 08.06.2017. The copy of the application is available at page 18 of appeal paper book and the same is acknowledged by Customs authorities on 12.08.2017. As per the said acknowledgment, Customs authorities had received sales invoice. In spite of receiving original sales invoice, repeatedly they have issued deficiency memo to the appellant stating that such invoice is not available having endorsement of non-availability of customs duty paid under sub-section (5) of Section 3 of Customs Tariff Act, 1975 as cenvat credit which is a requirement for allowing the said type of refund. Original authority through order dated 19.03.2020 rejected the refund only on the basis that mandatory cenvat credit declaration was not available in sales invoice. The said order was affirmed by learned Commissioner (Appeals). Aggrieved by the said order, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that initially on 12.08.2017 all the documents required for allowing the said refund were submitted along with copies of original sales invoice having the endorsement that additional duty of customs paid under sub-section (5) of Section 3 of Customs Tariff Act, 1975 was not admissible towards cenvat credit. However, repeatedly deficiency memos were issued in spite of required endorsement having been available on record and refund was rejected.

3. Heard the learned AR. Learned AR has submitted that the appellant did not appear for hearing before the original authority.

4. I have carefully gone through the record of the case and submissions made. I am satisfied that on 12.08.2017 as per the acknowledgment available at page 18 of appeal paper book, Customs authorities received original sales invoices. As per page 16 of appeal paper book, required endorsement that cenvat credit was not available was also available on the invoices. Therefore, I find both order-in-original and order-in-appeal impugned to be erroneous.

5. I set aside the impugned order-in-appeal and direct the original authority to allow subject refund within a period of four weeks from the date of production of this order to the refund sanctioning authority in accordance with law.

(Pronounced in the court)

(Anil G. Shakkarwar)
Member (Technical)

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