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

Customs Appeal No. 87030 of 2019

(Arising out of Order-in-Appeal No. 412 to 413/CRC-SAD-VI/2019/JNCH/Appeal-II dated 05.01.2018 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

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

Vs.

Ram Ratna Infrastructure Pvt. Ltd. **Respondent**
Ram Ratna House, Oasis Complex,
P.B. Marg, Worli, Mumbai.

WITH

Customs Appeal No. 85645 of 2023

(Arising out of Order-in-Appeal No. 412 to 413/CRC-SAD-VI/2019/JNCH/Appeal-II dated 05.01.2018 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

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

Vs.

Ram Ratna Infrastructure Pvt. Ltd. **Respondent**
Ram Ratna House, Oasis Complex,
P.B. Marg, Worli, Mumbai.

Appearance:

Shri C.S. Vinod, Assistant Commissioner, Authorised Representative for the Appellant
Shri J.C. Patel, Advocate, for the Respondent

CORAM:

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

Date of Hearing: 02.07.2025
Date of Decision: 02.07.2025

FINAL ORDER No. 86045-86046/2025

Above stated two appeals are taken for decision together since both the appeals filed by Revenue are arising out of a common order-in-appeal wherein two different orders-in-original were decided.

2. Brief facts of the case are that the respondent imported goods and paid 4% special additional duty of customs leviable

under Section 3(5) of Customs Tariff Act, 1975, which is popularly known as SAD. In one case the amount of SAD paid on the goods sold by the respondent on payment of VAT was Rs.12,06,790/- and in the other case it was Rs.2,59,343/-. Respondent filed application for refund of SAD in two separate applications for the above stated amounts of SAD paid on the basis of the fact that the goods were sold and VAT was paid on the same. Original authority rejected the refund on the ground of unjust enrichment. Respondent preferred appeal before learned Commissioner (Appeals) who decided both the orders-in-original in one common impugned order-in-appeal wherein he has held that there was no unjust enrichment and the respondent was eligible for refund of the above stated two amounts. Aggrieved by the said order, Revenue has filed these two appeals.

3. Heard the learned AR. Learned AR has submitted that the grounds for filing appeal in both the cases are same and they are (a) that the respondent has consumed the goods and, therefore, the burden of SAD has not been passed on; (b) the C.A.'s certification that burden has not been passed on is contrary to the sales invoice raised by the respondent.

4. Heard the learned counsel for the respondent. Learned counsel for the respondent has submitted that learned Commissioner (Appeals) has elaborately dealt with the issue of unjust enrichment in para 16 & 18 of the impugned order wherein learned Commissioner (Appeals) has held that the C.A. certificate has sufficiently proved that the burden of SAD was not passed on to the buyers of the goods. Further he has submitted that the ground stated by Revenue is with the presumption that since VAT was paid on the goods and the purchaser of the goods was eligible to avail credit of VAT, Revenue has contended that the certification by C.A. that the incidence has not been passed on is contrary to the sales invoice. He has shown a copy of the sales invoice dated 11.01.2017 wherein VAT is charged and endorsement is made in the invoice stating that "no credit of additional duty of customs levied under sub-section (5) of Section 3 of Customs Tariff Act, 1975 shall be admissible." He has also relied on final order of this Tribunal in the case of Commissioner of Customs, Kandla vs. PMC

Project India Pvt. Ltd. reported at 2019 (370) ELT 1429 (Tri.-Ahmd.) and submitted that the Tribunal has held that passing of VAT to the purchaser of goods is not passing on the incidence of SAD.

5. I have carefully gone through the record of the case and submissions. I do not find any strength in the grounds raised by Revenue. On the contrary, the order passed by learned Commissioner (Appeals) is a reasoned order. The passing of VAT does not mean that burden of SAD has been passed on. In view of the clear position of law, I do not find any merit in the appeals filed by Revenue.

6. Therefore, I dismiss both the appeals filed by Revenue and affirm the impugned order-in-appeal.

(Dictated in the court)

(Anil G. Shakkarwar)
Member (Technical)

tvu