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

Customs Appeal No. 86842 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-348 & 349/2022-23 dated 26.05.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

Siemens Ltd. **Appellant**
Birla Aurora,
Level 21, Plot No.1080,
Dr. Annie Besant Road,
Worli, Mumbai 400 030

Vs.

Commissioner of Customs (Import), Mumbai (Air Cargo Import) **Respondent**
Air Cargo Complex, Navpada, Sahar Village,
Andheri (E), Mumbai 400 099.

WITH

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Vs.

Commissioner of Customs (Import), Mumbai (Air Cargo Import) **Respondent**
Air Cargo Complex, Navpada, Sahar Village,
Andheri (E), Mumbai 400 099.

Appearance:

Shri Anil Balani, 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: 08.08.2025
Date of Decision: 08.08.2025

FINAL ORDER No. 86236-86237/2025

Above stated two appeals are taken together for decision since they are involving the same issue and the appellant is also the same.

2. Brief facts of the case are that the appellant filed two Bills of Entry bearing No.5097499 and 5098359 on 28.09.2019. Both the Bills of Entry were assessed under RMS. The duty assessed was paid on 30.09.2019. Appellant on 07.11.2019 applied for reassessment of the goods in respect of both the Bills of Entry under Section 149 of Customs Act, 1962. On 28.11.2019 both the Bills of Entry were reassessed by the competent authority and Advance Authorisation dated 09.09.2019 was debited for discharge of customs duty. Subsequently on 29.11.2019 out of charge orders were passed for clearance of goods for home consumption out of the Customs control. Initially the appellant had paid duty assessed, but since subsequently on reassessment and debit through Advance Authorisation, appellant filed applications for refund of customs duty which was paid initially on 30.09.2019 through application for refund filed on 09.12.2019. Both the said applications were rejected through two orders-in-original dated 18.08.2021 by original authority. On filing appeal before learned Commissioner (Appeals), learned Commissioner (Appeals) through impugned common order-in-appeal dated 26.05.2022 rejected the appellant's appeal relying on the ruling by Hon'ble Supreme Court in the case of ITC Ltd. & Ors reported in 2019-TIOL-418-SC-CUS-LB. Learned Commissioner (Appeals) has referred to para 47 of the ruling by Hon'ble Supreme Court in the case of ITC Ltd. (supra) and held that self assessment could only be modified under Section 128 of Customs Act, 1962 and that the assessing group has no jurisdiction to reopen and reassess the said self assessment and, therefore, reassessment done by assessing group on 28.11.2019 was ab-initio void. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that under sub-section (4) of Section 17 of Customs Act, the proper officer is entitled to pass order of reassessment if the proper officer is not satisfied with the

self assessment done by the importer. He has also submitted that para 47 of the said ruling by Hon'ble Supreme Court in the case of ITC Ltd. (supra) was further relied on by Hon'ble Bombay High Court in the case of Dimension Data India Pvt. Ltd. vs. Commissioner of Customs reported at 2021 (376) ELT 192 (Bom.). He has submitted that the issue is clarified through para 22.1 and 22.2 by Hon'ble Bombay High Court in the case of Dimension Data India Pvt. Ltd. He has further submitted that Hon'ble Bombay High Court in the said case in para 22.2 has held that Hon'ble Supreme Court has clarified that such modification can be done in the Bill of Entry under other relevant provisions of Customs Act and also include Section 149 and Section 154 of Customs Act in addition to modification of order under Section 128 of Customs Act, 1962.

4. Heard the learned AR who has reiterated the findings of the Commissioner (Appeals).

5. I have carefully gone through the record of the case and submissions made. If it is to be accepted that, as understood by learned Commissioner (Appeals), self assessment could only be modified by Section 128 of Customs Act, 1962, then in the present case the appellant is not entitled for refund applied for. It is to be examined whether self assessment could only be modified under Section 128 of Customs Act or there are other provisions for such modification. For the clarity on the issue, I reproduce below para 47 of the ruling by Hon'ble Supreme Court in the case of ITC Ltd. vs. Commissioner of Central Excise, Kolkata reported at 2019 (9) TMI 802 – Supreme Court (LB) and also reported at 2019 (368) ELT 216 (SC):-

"47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order

which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."

Further I also reproduce para 22.1 and 22.2 of the ruling by Hon'ble Bombay High Court in the case of Dimension Data India Pvt. Ltd. vs. Commissioner of Customs reported at 2021 (376) ELT 192 (Bom.), as follows:-

"22.1 From the question itself, it is clear that the issue before the Supreme Court was not invocation of the power of reassessment under Section 17(4) or amendment of documents under Section 149 or correction of clerical mistakes or errors in the order of self-assessment made under Section 17(4) by exercising power under Section 154 vis-a-vis challenging an order of assessment in appeal. The issue considered by the Supreme Court was whether in the absence of any challenge to an order of assessment in appeal, any refund application against the assessed duty could be entertained. In that context Supreme Court observed in paragraph 43 as extracted above that an order of self-assessment is nonetheless an assessment order which is appealable by "any person" aggrieved thereby. It was held that the expression "any person" is an expression of wider amplitude. Not only the revenue but also an assessee could prefer an appeal under Section 128. Having so held, Supreme Court opined in response to the question framed that the claim for refund cannot be entertained unless order of assessment or self-assessment is modified in accordance with law by taking recourse to appropriate proceedings. It was in that context that Supreme Court held that in case any person is aggrieved by any order which would include an order of self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Customs Act (emphasis ours).

22.2 Therefore, in the judgment itself Supreme Court has clarified that in case any person is aggrieved by an order which would include an order of self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Customs Act before he makes a claim for refund. This is *because as long as the order is not modified the order remains on record holding the field and on that basis no refund can be claimed but the moot point is Supreme Court has not confined modification of the order through the mechanism of Section 128 only. Supreme Court has clarified that such modification can be done under other relevant provisions of the Customs Act also which would include Section 149 and Section 154 of the Customs Act."*

By going through the above stated rulings, it is clear that the claim of refund can be entertained in the order of self assessment being modified in accordance with law by taking recourse to appropriate proceedings. It is also clear that Hon'ble Supreme Court has held that the assessment order needs to be modified under Section 128 of Customs Act or under other relevant provisions of Customs Act. Therefore, the finding of original authority that assessment order could only be modified under Section 128 of Customs Act is not in accordance with law.

6. Following the above stated two rulings, I hold that the appellant was entitled for the above stated amounts of refund. Therefore, I set aside the impugned order and allow both the appeals.

(Dictated in the court)

(Anil G. Shakkarwar)
Member (Technical)

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