CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86892 OF 2022

[Arising out of Order-in-Appeal No: 538(CRC-I)/2022(JNCH)/Appeals dated 7th June 2022 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Gabriel India Ltd
29th Milestone, Pune – Nashik Highway
Village Karuli, Tal: Khed, Pune - 410501 … ***Appellant***

versus

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

APPEARANCE:

Shri Anil Balani, Advocate for the appellant

Shri Dinesh Nanal, Deputy Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86680/2025

DATE OF HEARING: 13/10/2025
DATE OF DECISION: 13/10/2025

Peculiarity of this dispute, brought before the Tribunal by M/s Gabriel India Ltd, lies in being the sole exception to the 'standard operating procedure (SOP)' adopted by the appellant herein and the 'proper officer' from among the 88 bills of entry filed between 29th May 2017 to April 2019, in which, over and above discharge of liability to 'integrated tax', the disputed claim for exemption under notification[1] was immediately satisfied by deposit of charge to duty as deposit subject to subsequent finalization of provisional assessment under section 18 of Customs Act, 1962.

2. It would appear that the appellant had been imported 'aluminium ingots' but claim of entitlement to benefit of free trade agreement being a dispute, they were permitted to be cleared 'provisionally' to enable ascertainment of eligibility thereof, towards which deposits of ₹ 2,17,70,110 by separate challan corresponding to each bill of entry were made 'under protest' and, upon finalization on 28th August 2019, were entitled to be refunded to the importer. In like manner, the import of 'aluminium ingots', against bill of entry no. 4387273/13.12.2017, was processed for deposit of ₹ 3,21,650 *vide* challan no. HC-188 dated 19th December 2017 but, unlike the others, was shown as finalized on 27th December 2017.

3. While sanctioning refund, the original authority, holding that, with the finalization on 27th December 2017, the claim for refund filed on 10th June 2019 was time-barred, rejected only this amount of ₹ 3,21,650.

[1] [no. 85/2004-Cus (at serial no. 41) dated 31st August 2004]

4. Before the first appellate authority, the appellant preferred claim that finalization, if at all, had not been brought to their attention for enabling refund claim within the period specified in section 27 of Customs Act, 1962 and, further, that finalization was erroneously shown as having been effected on the 27th December 2017 though pursuant to conclusion of internal report dated 10th June 2019. The first appellate authority held that the plea of not having been placed on notice of finalization of provisional assessment was not tenable as the 'ICEGATE system' would have alerted the appellant about the finalization.

5. We have Learned Counsel for the appellant and Learned Authorized Representative.

6. On perusal of the records, we find that this one particular bill of entry did not appear to have been provisionally assessed in terms of section 18 of Customs Act, 1962 and that purported date of finalization is, in reality, the date of assessment as laid down in section 17 of Customs Act, 1962. It is a common ground that the appellant had paid the disputed amount *vide* challan *supra* but the application seeking refund thereof, against a bill of entry assessed under section 17 of Customs Act, 1962, does not fall within the commencement of 'relevant date' specified in section 27 of Customs Act, 1962 read with section 18 of Customs Act, 1962. By no stretch of provisions of law would the

period of pendency for finalization for provisional assessment be applicable for exclusion from limitation period insofar as this bill of entry is concerned.

7. It would also appear that the manner in which the payment was made in consequence of assessment of this particular bill of entry under section 17 of Customs Act, 1962 had not determined the manner in which the claim for refund was preferred. That course of action has no bearing on the finding of the first appellate authority determining that the assessment was not provisional at the 'relevant date' did commence from date of payment of duty.

8. Accordingly, there is no reason for interference with the order of the first appellate authority and consequently the appeal is dismissed.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*