

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10164 of 2019

(Arising out of OIA-AHD-CUSTOM-000-APP-163-18-19 dated 13/11/2018 passed by Commissioner of CUSTOMS-AHMEDABAD)

China Steel Corporation India Pvt Ltd

.....Appellant

D 2/6, Gidc, Dahej-Ii, Near Jolva Village,
BHARUCH, GUJARAT

VERSUS

C.C.-Ahmedabad

.....Respondent

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:

Shri Chirag Shetty, Advocate for the Appellant
Shri J A Patel, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 10817 /2022

DATE OF HEARING: 12.04.2022
DATE OF DECISION: 26.07.2022

RAJU

This appeal has been filed by M/s. China Steel Corporation India Pvt Ltd against denial of refund of Extra Duty Deposit paid by them in terms of CBEC Circular No.11/2001 relating to cases handled by Special Valuation Branch of the customs house.

1.1 The appellant was engaged in import of 'Silicon Electrical Steel of Cold Rolled Full Hard (unannealed)' from M/s. China Steel Corporation India Pvt Ltd. Since the goods were imported from a related entity, the issue of valuation was taken up by Special Valuation Branch (SVB) in terms of Circular No.11/2001-Cus dated 23.02.2001. The aforesaid circular was an amendment to the earlier circular 1/1998 dated 01.01.1998, the said circular was related to procedure regarding cases handled by Special Valuation Branch of the Custom House. The aforesaid circulars provided for assessment of certain type of cases to be examined by Special Valuation Branch of the custom houses. During the pendency of the investigation, the

aforesaid circulars provided for 1% Extra Duty Deposit as a safeguard for revenue.

1.2 In the instant case, the appellant had imported the goods from related entity in Taiwan. The matter was referred to Special Valuation Branch and during pendency of the investigation the appellant deposited 1% Extra Duty Deposit. The assessment was finally approved at the declared assessable value vide F.No.S/9-66/GATT/2014 GVC dated 04.02.2016 and therefore, the Extra Duty Deposit paid by the appellant became refundable to them. The aforesaid circular also prescribes that during pendency of investigation by SVB, assessment would be done on provisional basis. In the instant case, since the decision of the Special Valuation Branch came in favor of the appellant and the price declared by the appellant was accepted by the revenue the amount of Extra Duty Deposit paid by the appellant became refundable to them. Since the order accepting the declared value was passed on 04.02.2016 and refund claim was filed on 24.01.2018, a show cause notice dated 13.03.2018 was issued seeking to reject refund claim on the grounds of limitation. The said show cause notice contained Table-B which indicated the billwise date of final assessment which ranged from 24.09.2016 to 06.01.2016. Since the claim was filed on 24.01.2018 and the assessment was finalized during the pendency 24.09.2016 to 06.01.2016, it was alleged that the claim filed by the appellant is barred by limitation.

02. Learned counsel for the appellant argued that the impugned order is non-speaking and passed without application of mind. He argued that the 1% EDD, paid by the appellant as per Circular No.11/2001-Cus during the provisional assessment of the bills of entries, is only a security deposit and not a payment of duty. He argued that since it is not a payment of duty, provision of Section 27 will not apply to the refund claim filed by the appellant. Learned counsel argued that Section 27 of the Act is not applicable to refund of 1% EDD paid in terms of Circular No.11/2001-Cus. He relied on the following decisions to support his contention:-

- COMMISSIONER OF CUSTOMS, CHENNAI v/S. MADRAS FERTILIZERS LTD.- 2014 (299) ELT 465 (Tri-Chennai)
- COMMISSIONER OF CUSTOMS, BANGALORE v/S. ECOMASTER (INDIA) PVT LTD- 2007 (213) ELT 281 (Tri.-Bang)
- MOTOR INDUSTRIES COMPANY LTD v/S. COMMISSIONER OF CUSTOMS- 2005 (188) ELT 315 (Tri-Bang)

- SKF TECHNOLOGIES (I) PVT LTD v/S. COMMISSIONER OF CUSTOMS-2017 (352) ELT 355.

2.1 Learned counsel argued that the decision of Hon'ble High Court of Bombay in the case of BUSSA OVERSEAS AND PROPERTIES PVT. LTD.- 2003 (158) ELT 135 (Bom.) relied in the impugned order is not applicable to the present case as the facts are totally different from the facts of the present case. He argued that in the said cases, the assessment was provisional and the amount paid was only in nature of duty and therefore, hon'ble High Court held that Section 27 would be applicable for refund of such duty.

2.2 Learned counsel argued that the issue is no longer res-integra and the decisions cited above are binding on the authorities. Learned counsel argued that the impugned order relies only on the decision of High Court of Bombay in the case of BUSSA OVERSEAS AND PROPERTIES PVT. LTD (supra) without going into any other arguments in its appeal memorandum. Learned counsel relied on circular No.5/2016 wherein, CBEC has categorically directed field formations that the importers should not be made to pay the security deposit of 1% EDD if he has provided all the information on time. Learned counsel pointed out that though circular came after the finalization of their case by SVB but this circular makes it clear that the EDD paid is in the nature of security deposit and not provisional duty payment.

2.3 Learned counsel further pointed out that in the appellant's own case in Deputy Commissioner of Customs Jawaharlal Nehru Customs House vide order dated 04th December, 2018 granted refund of EDD by categorically holding that limitation under Section 27 of the Act will not be applicable for refund of EDD as the same is security deposit.

2.4 Learned counsel argued that the decision of Hon'ble High Court of Bombay in the case of BUSSA OVERSEAS AND PROPERTIES PVT. LTD (supra) cannot be relied in the instant case as the facts are totally different. Learned counsel also insisted that the appellants are entitled to interest on delayed payment of refund of EDD.

03. Learned AR relies on the impugned order. He argued that the assessment in the instant case was provisional till the same was finalised after the report of SVB was received. The assessment was finalized on receipt of the report of SVB. He argued that in terms of decision of Hon'ble High Court of Bombay in BUSSA OVERSEAS AND PROPERTIES PVT. LTD

(supra), the provision under Section 27 of the Customs Act, 1962 are attracted.

04. We have carefully considered the rival submissions. We find that the decision of Hon'ble High Court of Bombay in the case of BUSSA OVERSEAS AND PROPERTIES PVT. LTD (supra) was passed in significantly different set of facts. It is noticed that in the case of COMMISSIONER OF CUSTOMS (EXPORT) CHENNAI V/s. SAYONARA EXPORTS-2015 (321) ELT 583 (Mad.) was examining the following substantial questions of law:-

"(i) Whether the Tribunal was right in holding that the 1st respondent is entitled for automatic refund of the Extra Duty Deposit made pending finalisation of the provision assessment without filing an application for refund under Section 27 of the Customs Act, 1962?

(ii) Whether the Tribunal is right in not considering the legal issue that there cannot be an order of refund without application and that the application should be within the time stipulated in the statute?

(iii) Whether the extra duty deposit made by the 1st respondent partakes the character of customs duty so as to attract the provisions of Section 27 of the Customs Act?

(iv) Whether the claim of the respondent for refund would be contrary to the decision of the Supreme Court in the case of Mafatlal Industries v. Union of India [[1997 \(98\) E.L.T. 247 \(S.C.\)](#)]?

After examining these issues, hon'ble High Court of Madras answered the question (i),(ii) & (iv) in favor of the assessee and did not consider it necessary to answer question (iii). In terms of the decision of the Hon'ble High Court of Madras, the appellants would be entitle to automatic refund of EDD without filing of application for refund under Section 27 of the Customs Act, 1962. The Hon'ble High Court held that there is no need to file any refund application and the order for refund can be made suo moto. Hon'ble High Court also held that this issue is in conformity with the decision of Hon'ble Apex Court in the case of MAFATLAL INDUSTRIES- 1997 (98) ELT 247 (S.C.).

4.1 In view of the above, the appellant was not even required to file refund claim and EDD should have been refunded without filing of refund claim. In this circumstances, if and when the refund claim was filed by the

appellant cannot be treated as barred by limitation. Relying on the aforesaid decision of High Court of Madras, the appeal is allowed.

05. Appeal is allowed in the above terms.

(Pronounced in the open court on 26.07.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul