

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, MUMBAI**

Appeal No. C/1104/2012

**Arising out of Order-in-Appeal No. 148/Mumbai-III/2012, Dated:
07.08.2012**

Passed by the Commissioner of Customs (Appeals), Mumbai-III.

Date of Hearing: 31.10.2018

Date of Decision: 26.3.2019

M/s LIPI DATA SYSTEMS LTD

Vs

**COMMISSIONER OF CUSTOMS (ACC & IMPORT)
MUMBAI**

Appellant Rep by: Ms Lakshmi Menon, Adv.

Respondent Rep by: Shri Bhushan Kamble, Assistant Commissioner AR

CORAM: Suvendu Kumar Pati, Member (J)

Cus - Refund of SAD (Special Additional Duty) denied on the ground that it was time barred though filed on time but wrongly before another Customs Commissionerate.

Held: It is settled by a series of decisions that when the assessee had made the claim before the wrong authority, that authority should have guided the assessee immediately to the proper officer and if not so guided, no fault can be attributed to the assessee - therefore, the date of filing application before the Dadri Commissionerate is to be taken for the purpose of computation of refund claim of SAD - on account of inaction of the departmental authorities on the said refund application, five months were un-necessarily wasted and had it been the jurisdictional authority, the Government would have been burdened with payment of interest on late disposal of the refund claim - applicant would suffer financial loss when the fault lies at the end of the departmental authority in not acting upon promptly - appeal is allowed - applicant is entitled to get refund of Rs.12,62,790/- along with applicable interest within three months: CESTAT [para 5, 6]

Appeal allowed

Case laws cited:

Sony India Private Limited Vs. CC - 2014-TIOL-532-HC-DEL-CUS...Para 3

CCE Vs. Aia Engineering Ltd., 2017 (9) 254 - CESTAT...Para 3

Sri Vasavi Gold & Bullion (P) Ltd. and 2017 (9) TMI 201 - CESTAT...Para 3

CMS Info Systems Ltd. Vs. Union of India - 2017-TIOL-79-HC-MUM-CUS...Para 4

Commissioner of Customs, NS-III Vs. DSM Sinochem Pharmaceuticals (I) Pvt. Ltd. - 2017-TIOL-2334-HC-MUM-CUS...Para 4

CCE, Allahabad Vs. Ghosi Sahkari Kray-Vikray Prakriyatmak Samit, Azamgarh and reported in 1997 (19) RLT 479 (H.C.)...Para 5

FINAL ORDER NO. A/85562/2019

Per: Suwendu Kumar Pati:

The narrow compass in which the issue has reached the Tribunal stage is the denial of refund claim on Special Additional Duty (SAD) to the appellant on the ground that it was time barred though filed on time but wrongly before another Customs Commissionerate.

2. Factual backdrop of this case is that refund claims against 57 Bills of Entry for the period between 19.02.2008 and 23.06.2008 were filed by the appellant before the ICD, Dadri on various dates of February, 2009 but those had been forwarded by the Superintendent (Refund), ICD-Dadri to the Assistant Commissioner of Customs, Air Cargo Complex, Mumbai on 07.07.2009 as the Bills of Entry pertains to Air Cargo, Customs Commissionerate. Refund claim was rejected on the ground that the same was received at Air Cargo Commissionerate after one year of payment of SAD. Appellant unsuccessfully challenged the same before the Commissioner of Customs (Appeals), Mumbai-III that resulted in filing of this appeal.

3. In the memo of appeal and during the course of hearing of the appeal, learned Counsel for the appellant Ms. Lakshmi Menon submitted that Section 27 of the Customs Act is inapplicable to refund of SAD claimed under Notification No. 102/2007-Cus. as time limit of one year for filing of refund claim was not prescribed under the said notification and the same position of law has been confirmed by Hon'ble Delhi High Court in *Sony India Private Limited Vs. CC - reported in 2014 (304) ELT (660) (Delhi) = 2014-TIOL-532-HC-DEL-CUS* that attained finality after dismissal of appeal against the said order preferred before the Hon'ble Supreme Court. He further submitted that in view of Section 14 of the Limitation Act 1963, while computing period of limitation, the time spent in the proceedings before a wrong forum should be excluded and since amended Notification dated 01.08.2008, prescribing one year period, came into force before import were made the same would not be applicable to the appellant's case for which the order of the Commissioner (Appeals) is required to be set aside. He placed reliance on the following decisions reported in 2009 (248) ELT 826 (T) in the case of *CCE Vs. Aia Engineering Ltd., 2017 (9) 254 - CESTAT, Chennai* in the case of *Sri Vasavi Gold & Bullion (P) Ltd. and 2017 (9) TMI 201 - CESTAT, Chennai* in the case of *Commissioner of Customs (Airport), Chennai Vs. Nokia India Pvt. Ltd.*

4. In response to such submissions, learned Authorised Representative for the respondent-department, in citing decision of the Hon'ble High Court of

Bombay passed in the case of *CMS Info Systems Ltd. Vs. Union of India* as reported in 2017 (349) ELT 236 (Bom.) = 2017-TIOL-79-HC-MUM-CUS and *Commissioner of Customs, NS-III Vs. DSM Sinochem Pharmaceuticals (I) Pvt. Ltd.* as reported in 2018 (359) ELT 509 (Bom.) = 2017-TIOL-2334-HC-MUM-CUS, submitted that limitation period of one year is strictly applicable even in case of refund of SAD for which order passed by the Commissioner (Appeals) needs no interference by this Tribunal.

5. Heard from both sides and gone through the case records as well as judicial decisions cited by the adversaries. The dispute in the present case revolves round the consideration of the applicability of limitation period to the refund application which was filed in another jurisdiction inadvertently within the stipulated time of one year but forwarded almost after five months to the jurisdictional authority and if that period is to be excluded for the purpose of computation or not. Appellant in the grounds of appeal has cited 2 judgments reported in 1988 (34) ELT 716 (Tri) in the case of *CCE, Allahabad Vs. Ghosi Sahkari Kray-Vikray Prakriyatmak Samit, Azamgarh* and reported in 1997 (19) RLT 479 (H.C.) in the case of *Modi Rubber Ltd. Vs. Union of India & Others*. In the first referred judgment it was held way back in 1988 by the Tribunal that when the assessee had made the claim before wrong authority, the authority should have guided the assessee immediately to the proper officer and if not so guided, no fault can be attributed to the assessee. In the judgment of *Modi Rubber Ltd.*, cited supra, Hon'ble Delhi High Court had categorically held that refund claims filed before the authority not having territorial jurisdiction is not void abinitio and can be treated as refund claimed if otherwise valid. In the decision of *Sri Vasavi Gold & Bullion (P) Ltd. (supra)*, *Commissioner of Customs (Airport), Chennai Vs. Nokia India Pvt. Ltd. (supra)* and *CCE Vs. Aia Engineering Ltd. (supra)* it has been held by CESTAT Chennai and Ahmedabad that such filing before the wrong forum cannot be considered as void or nonest application and filed beyond the period of limitation. In the case of *M.P. Steel Corporation Vs. Commissioner of Central Excise* (dated of judgment 23.04.2015) it has been held by the Hon'ble Supreme Court that principle of Section 14 of the Limitation Act which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued ... Therefore, the date of filing of application before the Dadri Commissionerate is to be taken for the purpose of computation of refund claim on SAD. Another aspect which is required to be placed on record is inaction of the departmental authorities on the said refund application filed in Dadri Commissionerate, for which five months were unnecessarily wasted and had it been the jurisdictional authority, Government of India would have been burdened with payment of interest on late disposal of the refund claim. No finding is available in the order of the Commissioner (Appeals) as to why such application was forwarded after more than 5 months after payment of SAD has been wrongly made to

Dadri authorities and on that count the applicant would suffer the financial loss when the fault lies at the end of the departmental authority in not acting upon properly. Hence the order.

ORDER

6. Appeal is allowed and the order passed by the Commissioner of Customs (Appeals), Mumbai-III. vide Order-in-Appeal No. 148/Mumbai-III/2012 dated 07.08.2012 is hereby set aside. The appellant is entitled to get refund of Rs. 12,62,790/- paid on SAD along with applicable interest and the respondent-department is directed to pay the same within three months from the date of communication of this order.

(Pronounced in court on 26.03.2019)