

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 77445 of 2019

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/111/2019 dated 27.09.2019 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s Raza International,

(28, Rabindra Sasrani, 3rd Floor, Kolkata-700073)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata,

(Customs House, 15/1, Strand Road, Kolkata-700001.)

...Respondent

..

APPEARANCE :

Shri B. N. Pal, Advocate for the Appellant

Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON MEMBER (TECHNICAL)

Final Order No. 75787/2025

DATE OF HEARING: 11.03.2025

DATE OF PRONOUNCEMENT: 26.03.2025

PER R. Muralidhar:

The appellant had imported some goods under Bills of Entry on 13th April, 2011 and 28th April 2011. The appellant had claimed SAD exemption under Notification No. 20/2006-CUS dated 1.3.2006 applicable for Sl. No. 50 of the Notification. The Bills of Entry were presented on self-assessment basis.

2. On 25.05.2015, a Show Cause Notice was issued stating that in respect of these two Bills of Entry, the exemption under SAD is not applicable. It was stated that the Notification No. 20/2006-CUS dated 1.3.2006 extending the SAD exemption is no more available from 8.4.2011. The Show Cause Notice proposed to demand Rs.2,83,145/-

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as Customs Duty, which was payable as SAD at the time of imports, along with interest and penalty.

3. After due process, the adjudicating authority confirmed the demand and held that the appellant is liable to pay Rs.2,83,145/- along with interest and also he imposed a penalty of equivalent amount. Being aggrieved, the appellants filed their appeal before the Commissioner (Appeals) on 22.04.2016.

4. The Commissioner (Appeals), vide OIA dated 27.09.2019 has dismissed the appeal filed by the appellant on the ground that the appellant has not appeared when the hearing was fixed on 22.09.18.03-2019 and 21.05.2019 and 27.08.2019. He held "*law helps those who are vigilant and not those who go to sleep*". Accordingly, without going into the merits, he has dismissed the appeal. Being aggrieved, the appellant is before the Tribunal.

5. The Learned Advocate appearing on behalf of the appellant submits that the goods were cleared under proper Bills of Entry by claiming the exemption under Notification No. 20/2006-CUS towards the exemption for SAD. The goods were cleared after the exemption was granted by the customs authorities and no query was raised. Only after about 5 years, Show Cause Notice dated 25.05.2015 was issued on the grounds that under the Finance Act 2011, there was an amendment in the 13th Schedule provided under Section 78 because of

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which, with effect from 8.04.2011, the SAD exemption is not available to the goods imported by the appellant. The appellant, both before the adjudicating authority as well as before the Commissioner (Appeals), has taken a specific pleading that there was no suppression on the part of the appellant and they had duly declared this Notification number while clearing the goods for claiming the SAD exemption. Therefore, in the absence of suppression, the Show Cause Notice could not have been issued after more than 4 years of the import of the goods, by invoking the extended period provisions.

6. Therefore, the main pleading of the appellant is on the ground that there was no suppression on their part and accordingly, the SAD amount could not have been demanded after more than 4 years from the date of clearance of the goods after the appellant has clearly indicated in the Bill of Entry that they are claiming the exemption under Notification No. 20/2006. On a specific query from the Bench as to whether this pleading was taken up before the Commissioner (Appeals), the Learned Advocate takes us through to Para 4 (A) of the Appeal filed by them before Commissioner (Appeals) wherein they have taken the stand that Show Cause Notice is barred by limitation.

7. He also takes us through to Para 5 about the allegation of the Revenue about the amendment taken up under 13th Schedule with effect from 8.4.2011 and the appellant's pleading that on the date of their clearance they were not aware of this amendment and that is why

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they had claimed the SAD exemption. As the department was aware of this amendment with effect from 8.4.2011, there was no necessity for them to wait for the next more than 4 years to issue the Show Cause Notice. Accordingly, even before the Commissioner (Appeals) they had taken the plea that the demand was time barred. In view of these submissions, the Learned Advocate prays that their appeal may be allowed.

8. The Learned A.R. appearing on behalf of the appellant submits that the amendment was carried on with effect from 8.4.2011 and the imported goods have been cleared on 13.4.2011 and 28.4.2011 by which time the amendment was already in place. Therefore, the A.R. submits that the Department was justified in issuing the Show Cause Notice by invoking the suppression provisions.

9. Heard both sides perused the appeal papers and submissions made before us.

10. We find that the Commissioner (Appeals) has dismissed the appeal only on the ground that the appellant has not appeared before him whenever the hearings were granted to him. When the appeal has been filed alongwith the Statement of Facts and Grounds of Appeal taken by the appellant, it is incumbent on the Commissioner (Appeals) to go through these details and pass a detailed order on an *ex-parte* basis even if the appellant does not come for the Hearing. The appellant has

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demonstrated before us that in the CA-1 filed on 22.04.2016, in the Grounds of Appeal and in the Statement of Facts, they have clearly taken stand about the Show cause being barred by limitation.

11. The Commissioner (Appeals) was bound to consider this and give a finding as to why it is not acceptable to him in case the OIA is decided against the appellant. This has not been done. We find that the Department has issued the Show Cause Notice on the ground that by way of amendment carried out in Finance Act 2011, effective from 8.04.2011, under the 13th Schedule because of which the exemption granted to SAD is no more available to the appellant. On factual basis, we find that the imports have taken place on 13.04.2011 and 28.04.2011 that is immediately after a few days after this amendment was carried out. While the party can be pardoned for not going through this amendment and still claiming the SAD, it was also for the officers of the customs to check the Bills of Entry and immediately point out as to why this SAD exemption was being claimed when this amendment has already taken place with effect from 8.04.2011. This was not done.

12. The mistake of the party can be taken as a normal mistake committed by any importer when an amendment is carried out just a few days before the actual import. On the other hand, even after coming to know that this amendment has taken place on 8.04.2011, the Department has not come out with any explanation as to what made them wait for more than four years to issue the Show cause notice on

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25.05.2015 by invoking the extended provisions of the Appellant to demand the differential Customs Duty. We do not find that the Department has made out any case of suppression on the part of the Appellant.

13. In view of the forgoing, we set aside the impugned order and allow the appeal filed by the Appellant.

14. The Appellant would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on.....26.03.2025.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Tushar Kr.