

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20336 of 2018

(Arising out of Order-in-Appeal No. 692-732/2017 dated 10.10.2017
passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Nokia India Sales Pvt.

Ltd.,

10th Floor Tower C Dlf Building,
No.5 Dlf Cyber City Gurgaon,
Gurgaon – 122 002.

Appellant(s)

VERSUS

**Commissioner of Customs,
Airport & Air Cargo
Commissionerate**

Menzies Bobba,
Cargo Terminal,
Devanahalli,
Bengaluru – 560 300.

Respondent(s)

With

Customs Appeal No. 20337 of 2018

(Arising out of Order-in-Appeal No. 505-583/2017 dated 28.09.2017
passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Nokia India Sales Pvt.

Ltd.,

10th Floor Tower C Dlf Building,
No.5 Dlf Cyber City Gurgaon,
Gurgaon – 122 002.

Appellant(s)

VERSUS

**Commissioner of Customs,
Airport & Air Cargo
Commissionerate**

Menzies Bobba,
Cargo Terminal,
Devanahalli,
Bengaluru – 560 300.

Respondent(s)

And

Customs Appeal No. 20366 of 2018

(Arising out of Order-in-Appeal No. 733-758/2017 dated 10.10.2017 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Nokia India Sales Pvt.

Ltd.,

10th Floor Tower C Dlf Building,
No.5 Dlf Cyber City Gurgaon,
Gurgaon – 122 002.

Appellant(s)

VERSUS

Commissioner of Customs, Airport & Air Cargo Commissionerate

Menzies Bobba,
Cargo Terminal,
Devanahalli,
Bengaluru – 560 300.

Respondent(s)

APPEARANCE:

Mr. Kamal Sawhey with Mr. Deepak Thakur, Advocates for the Appellant

Mr. K.A. Jathin, Deputy Commissioner (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER
(TECHNICAL)**

Final Order No. 20569 - 20571 /2025

DATE OF HEARING: 25.11.2024

DATE OF DECISION: 08.05.2025

PER : DR. D.M. MISRA

These three appeals are filed against respective Orders-in-Appeal passed by Commissioner of Customs (Appeals), Bangalore, since involve common issues, these are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellant are, *inter alia*, engaged in the business of import of mobile

phones falling under CTH 85171290 of the Customs Tariff Act, 1975. During the relevant period, the appellant had paid additional duty of customs (CVD), however, without availing concessional rate of duty under Notification No.12/2012-CE dated 17.03.2012 as they had not satisfied the condition No.16 prescribed under the said notification. Later, the Hon'ble Supreme Court in the case of SRF Limited Vs. CC [2015(318) ELT 603 (SC)] decided the issue in favour of the assessee holding that they would be eligible to the benefit of Notification No.12/2012-CE dated 17.03.2012. consequently, the appellant had filed three refund claims for the period October 2014, January 2015 to February 2015 and May 2015 to June 2015. On adjudication, the refund claims were rejected by the adjudicating authority. Aggrieved, they preferred appeals before the learned Commissioner(Appeals) who though agreed that the refund claims are in order but rejected the same on the ground of unjust enrichment. Hence, the present appeals.

3.1. At the outset, the learned advocate for the appellant has submitted that pursuant to the judgment of the Hon'ble Supreme Court in the case of SRF Limited (supra), the appellant had filed refund claims seeking refund of the differential amount of CVD paid by the appellant on imported goods during the relevant period but the adjudicating authority rejected the refund claims primarily on two grounds viz. (i) the appellant filed the refund claims without challenging the self-assessed Bills of Entry and (ii) they have failed to prove that the burden of CVD paid by them has not been passed on to the customers. Also, in appeal No.C/20337/2018, the refund claim of Rs.12,00,588/- against four Bills of Entry held to be time barred being filed after the statutory limit of one year prescribed under Section 27 of the Customs Act, 1962. The learned Commissioner(Appeals) has set aside the finding of the adjudicating authority on the maintainability of refund claims holding that the appellant had

correctly filed the refund claims against the self-assessed Bills of Entry without having recourse to appeal or resorting to amendment of Bill of Entry under Section 149 of the Customs Act, 1962. He has submitted that the said finding of the learned Commissioner(Appeals) has attained finality since no appeal has been filed by the Revenue before the Tribunal or any higher forum. In support, he has referred the following judgments:-

- a. Birla Corporation Ltd. Vs. Commissioner [2005(186) ELT 266 (SC)]
- b. Steel Authority of India Vs. CC, Bombay [2000(115) ELT 42 (SC)]
- c. MTR Foods Ltd. Vs. CCE, Bangalore [2010(252) ELT 580 (Tri. Bang.)]
- d. Akshar Telecom Pvt. Ltd. Vs. CC [2019-TIOL-2887-CESTAT-DEL]

However, the Commissioner(Appeals) upheld the finding of the adjudicating authority that the appellant had failed to establish that the CVD claimed as refund has not been passed on to the customers; hence the issue of unjust enrichment is not satisfied by the appellant.

3.2. On the issue of unjust enrichment, the learned advocate has submitted that referring to the same Chartered Account's certificate, the Tribunal at Delhi, Hyderabad and Ahmedabad in their own case held that the appellant had not collected the duty from their customers; accordingly refund claims are not hit by the principles of unjust enrichment. In support, he has referred to the judgment in the following cases:-

- i. Nokia India Sales Pvt. Ltd. Vs. CC, ACC Import [judgment dated 15.10.2024 in Customs appeal No.50113/2020 – CESTAT-Delhi]
- ii. Nokia India Sales Pvt. Ltd. Vs. CC, ACC Import [judgment dated 08.11.2023 in Customs appeal No.50113/2020 – CESTAT-Delhi]
- iii. Nokia India Sales Pvt. Ltd. Vs. CC, Hyderabad [judgment dated 24.07.2018 in Customs appeal No.30153 – 30154/2018, CESTAT-Hyderabad]

Also, the Deputy Commissioner, Ahmedabad has passed the order in their favour allowing the refund claims.

3.3. On the issue of limitation in case of four Bills of Entry involving total claim of Rs.12,00,588/-, the learned advocate has submitted that the appellant had paid the customs duty on 07.10.2014 whereas the refund claims were filed on 07.10.2015. It is his contention that in view of the Section 12 of the Limitation Act, 1963, computing the period of limitation, the day from which the application of refund required to be filed shall be excluded. In support, he has referred to the judgment of the CEGAT in the case of Punjab Breweries Ltd. Vs. CCE, Chandigarh [1985(2) TMI 263 – CEGAT, New Delhi] and Sanjay Pandurang Kalate Vs. Vistara ITCL (India) Limited [Civil Appeal No.7467 of 2023]

4. Learned AR for the Revenue has reiterated the findings of the lower authorities.

5. Heard both sides and perused the records.

6. The issues involved in the present appeals for consideration are whether (i) the appellant could claim refund without challenging the self-assessed Bills of Entry; (ii) the appellant had satisfied the criteria of unjust enrichment i.e. the burden of duty claimed was not passed on to the customers and (iii) refund claim against Bills of Entry involving total amount of Rs.12,00,588/- in appeal No.C/20337/2018 is hit by limitation.

7. As far as the first and second issues are concern, the Principal Bench of this Tribunal has decided the issues in their favour observing that since the Department has not challenged the findings of the Commissioner(Appeals), it attained finality;

therefore the same cannot be raised at a higher forum. The Tribunal observed as follows:-

44. It clearly follows from the aforesaid decisions that if the department does not challenge a finding of the adjudicating authority by filing an appeal before the Commissioner (Appeals), than that finding of the adjudicating authority attains finality and the department cannot be permitted to subsequently raise this issue in a higher forum. This is what was observed by the Allahabad High Court in Indian Farmers Fertilizers. In Neelima Srivastava it was also held by the Supreme Court that an order which has attained finality between the parties can only be assailed in a manner known to law and mere over-ruling of the principles followed in the said order by a subsequent judgment cannot dilute the binding effect of the decision. In Global Constructions, the Tribunal examined almost a similar issue. The adjudicating authority sanctioned the refund amount but credited it to the Consumer Welfare Fund. The Tribunal held that though the Supreme Court had subsequently held in ITC that a refund can be claimed only if the assessment order is modified but since the finding of the adjudicating authority sanctioning refund was not assailed by the department before the Commissioner (Appeals), it would not be permissible for the department to raise this issue before the Tribunal.

45. Learned authorized representative appearing for the department has relied upon the decision of the Tribunal in Shiv Naresh Sports to contend that even a respondent can raise a legal issue. It needs to be noted that the legal issue that is now sought to be raised by the department is that the refund applications are not maintainable for the reason that assessment proceedings had not been challenged by the appellant by filing appeals. This issue, as noticed above, had attained finality. Once the department allowed a particular issue to attain finality, it will not be permissible to permit the department in appellate proceedings initiated by an assessee before the Tribunal to raise this issue, even if it be a legal issue. The issue that is sought to be raised is not even the subject matter of these appeals as the sole issue that arises for consideration in these appeals is whether the incidence of duty was passed on to the buyers. In all the decisions that have been referred to by the learned authorized representatives for the department only general principles regarding raising of a legal issue have been examined. In none of these decisions it has been held that even if an issue that is sought to be urged has attained finality, it can still be raised considering it to be a legal issue. The decisions relied upon by the learned authorized representatives appearing for the department, therefore, do not come to the aid of the department. 46. It has, therefore, to be held that as the order dated 23.01.2017 passed by the Deputy Commissioner

sanctioning refund had attained finality as no appeal was filed by the department to assail this order, the department cannot be permitted to raise the issue regarding maintainability of the refund applications.

8. Similarly on the issue of unjust enrichment, after referring to the Chartered Accountant Certificate which has been referred by the Hyderabad Bench and Ahmedabad Bench of this Tribunal and the order of the Deputy Commissioner, this Tribunal observed as follows:-

54. It is seen that the same chartered accountant issued three identical certificates, each dated 29.12.2015, to the appellant in respect of the import of the same goods at about the same time from Delhi, Ahmedabad and Hyderabad. The Hyderabad Bench of the Tribunal accepted this certificate and held that the burden of duty had not passed on to the buyers. This order of the Hyderabad Bench has attained finality. An identical chartered accountant certificate dated 29.12.2015 also came up for consideration before the Ahmedabad Bench of the Tribunal. The Tribunal remanded the matter to the Deputy Commissioner to examine the issue afresh. The Deputy Commissioner, on remand, after carefully examining the said chartered accountant certificate dated 29.12.2015, held that the incidence of duty had not passed on to the buyers. This order passed by the Deputy Commissioner has also attained finality.

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58. It is, therefore, not possible to accept the contention raised by the learned authorized representatives appearing for the department that the certificate of the chartered accountant produced by the appellant to substantiate the incidence of duty had not passed on to the buyers should not be accepted because the appellant did not produce any other corroborative evidence as required under sections 28C and 28D of the Customs Act.

9. In the present case also, similar certificate has been issued by the same Chartered Accountant. Therefore, there is no reason not to accept the same to hold that the burden of duty has not been passed on to the customers in view of the consistent opinion expressed by various Benches of this Tribunal

involving same appellant and similar certificates for different imports (more or less similar periods).

10. As far as the limitation of refund claims relating to four Bills of Entry, we find that the additional duty of customs(CVD) has been paid by the appellant on 14.10.2014 and the refund claims were filed on 14.10.2015 i.e. within one year from the date of application seeking refund of the duty paid. The relevant Section 27 of the Customs Act, 1962 reads as follows:-

SECTION 27. Claim for refund of duty.

(1) Any person claiming refund of any duty or interest, -

(a) paid by him; or

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest:

Provided that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, such application shall be deemed to have been made under sub-section (1), as it stood before the date on which the Finance Bill, 2011 receives the assent of the President and the same shall be dealt with in accordance with the provisions of sub-section (2):

Provided further that the limitation of one year shall not apply where any duty or interest has been paid under protest:

Provided also that where the amount of refund claimed is less than rupees one hundred, the same shall not be refunded.

Explanation. For the purposes of this sub-section, "the date of payment of duty or interest in relation to a person, other than the importer, shall be construed as "the date of purchase of goods by such person.

The relevant Section 12 of the Limitation Act, 1963 reads as follows:-

12. Exclusion of time in legal proceedings.—

(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.

11. Section 9 of the General Clauses Act, 1897 explains the commencement and termination of time as follows:-

9. Commencement and termination of time.—(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

12. In view of the Section 12 of the Limitation Act, 1963 read with Section 9 of the General Clauses Act, 1897, the day from which such period is to be reckoned ought to be excluded. In the present case under Section 27 of the Customs Act, 1962, the refund claim is required to be filed within the period before the expiry of one year from the date of such duty payment; hence

the date of payment of duty is to be excluded from computing the period of one year. Thus, the refund claims are not barred by limitation.

13. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 08.05.2025)

**(D.M. MISRA)
MEMBER (JUDICIAL)**

**(R BHAGYA DEVI)
MEMBER (TECHNICAL)**

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