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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 21^{s} March, 2025

\+ **CUSAA 57/2025 & CM APPLs. 16542-45/2025**

COMMISSIONER OF CUSTOMS (ICD IMPORT) .....Appellant

Through: Mr. Aditya Singla, SSC CBIC with Mr. Umang Misra and Ms. Arya Suresh Nair, Advocates (Mob. 7558898905).

versus

SUZUKI MOTORCYCLE INDIA PVT LTD. .....Respondent

Through: None.

24 WITH

\+ **CUSAA 58/2025 & CM APPLs.16674-77/2025**

COMMISSIONER OF CUSTOMS (ICD IMPORT) .....Appellant

Through: Mr. Aditya Singla, SSC CBIC with Mr. Umang Misra and Ms. Arya Suresh Nair, Advocates.

versus

SUZUKI MOTORCYCLES INDIA PVT LTD. .....Respondent

Through: None.

25 AND

\+ **CUSAA 59/2025 & CM APPLs.16680-83/2025**

COMMISSIONER OF CUSTOMS (ICD IMPORT) .....Appellant

Through: Mr. Aditya Singla, SSC CBIC with Mr. Umang Misra and Ms. Arya Suresh Nair, Advocates.

versus

SUZUKI MOTORCYCLE INDIA PVT LTD. .....Respondent

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. These three appeals are filed by the Appellant- Commissioner of Customs('ICD IMPORT') arising out of the impugned order passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter, '*CESTAT*') dated 25th April, 2024.

3. The brief background of the case is that the Respondent company - M/s Suzuki Motors Pvt. Ltd. is stated to beengaged in import and sale of motorcycles and motor parts in India.Over different periods, it had paid Special Additional Duty (hereinafter, '*SAD*') *qua* certain bills of entry. The refund of the deposited SAD was sought by the Respondents, which was rejected by the Order-in-Original and the Commissioner (Appeals) in Appeal No. CC (A) CUS/D-II/IMP/ICD/TKD/161-163/2021-22, on the ground that the same were filed beyond limitation and the original documents had not been furnished. The details of the Order-in-Original and the amount of refund claimed are set out below:

S. No.	*Appeal No.*	*OIO No. and Date*	*Amount of refund claim*	*Date of payment of SAD*
1	*105/2018*	*1305/2018 dated 13.07.2018*	*Rs. 10,28,611/-*	*05.12.2015*
2	*106/2018*	*1283/1018 dated 13.07.2018*	*Rs. 11,73,660/-*	*05.03.2015*
3	*104/2018*	*1284/2018 dated 13.07.2018*	*Rs. 6,76,076/-*	*19.04.2014*

"

4. The Respondent then challenged the order in Appeal No. CC (A) CUS/D-II/IMP/ICD/TKD/161-163/2021-22, passed by the Commissioner (Appeals), rejecting the refund, by filing an appeal before CESTAT.

5. *Vide* the impugned order, the refund has been permitted after

following the decision of this Court in ***Sony India Pvt. Ltd. v. The Commissioner of Customs [2014 (304 ELT 660) DEL]***. The CESTAT also discussed the judgment of the Bombay High Court in ***CMS Info Systems Ltd. v. Union of India [2017 (349) ELT 236 (BOM)]***, which had taken a contrary view, but finally observed as under:

> *"23. Now we proceed to reproduce the two Notifications:-*
>
> *{Notification No. 102/2007-Cus. : MANU/CUST/0175/2007, dated 14-9-2007}*
>
> *"Exemption from special CVD to all goods imported for subsequent sale when VAT/Sales Tax Paid by importer.- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) when imported into India for subsequent sale, from the whole of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act (hereinafter referred to as the said additional duty).*
>
> *2. The exemption contained in this notification shall be given effect if the following conditions are fulfilled:*
>
> > *(a) the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon, as applicable, at the time of importation of the goods;*
> >
> > *(b) the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff*

Act, 1975 shall be admissible;

(c) the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer;

(d) the importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be;

(e) the importer shall, inter alia, provide copies of the following documents along with the refund claim:

(i) document evidencing payment of the said additional duty;

(ii) invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed;

(iii) documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.

3. The jurisdictional customs officer shall sanction the refund on satisfying himself that the conditions referred to in para 2 above, are fulfilled. {Notification No. 102/2007-Cus. : MANU/CUST/0175/2007, dated 14-9-2007}"

{Notification No. 102/2007-Cus. : MANU/CUST/0175/2007, dated 14-9-2007 as amended by Notification No. 93/2008-Cus. : MANU/CUST/0156/2008, dated 1-8-2008}

"Exemption from special CVD to all goods imported for subsequent sale when VAT/Sales Tax Paid by importer.- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to

do, hereby exempts the goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) when imported into India for subsequent sale, from the whole of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act (hereinafter referred to as the said additional duty).

2. The exemption contained in this notification shall be given effect if the following conditions are fulfilled:

(a) the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon, as applicable, at the time of importation of the goods;

(b) the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible;

(c) the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer before the expiry of one year from the date of payment of the said additional duty of customs;

(d) the importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be;

(e) the importer shall, inter alia, provide copies of the following documents along with the refund claim:

(i) document evidencing payment of the said additional duty;

(ii) invoices of sale of the imported goods in respect of which refund of the said additional

duty is claimed;

(iii) documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.

3. The jurisdictional customs officer shall sanction the refund on satisfying himself that the conditions referred to in para 2 above, are fulfilled.

{Notification No. 102/2007-Cus. : MANU/CUST/0175/2007, dated 14-9-2007 as amended by Notification No. 93/2008-Cus. : MANU/CUST/0156/2008, dated 1-8-2008}"

24. The first notification grants exemption from Special counter-vailing duty to all goods imported for subsequent sale when VAT/sales tax is paid by the importer and equally the third condition is to be found in sub-clause (c) of Clause 2. There as well the exemption is in public interest and in relation to goods falling within the First Schedule to the CTA when imported into India for subsequent sale. That is providing for exemption from additional duties. Then, the further Notification is in relation to exemption from Special CVD to all goods imported for subsequent sale when Vat/Sales Tax is paid by the importer. That prescribes a period of one year for claiming refund and it is that condition which is really challenged. Therefore, it is not as if no payment has to be made. The importer of the goods shall pay all duties including the said additional duty of customs, as applicable, at the time of importation of goods. Then, while issuing invoice for sale of the goods, the importer shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of Section 3 of the CTA shall be admissible. That the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the

Jurisdictional Custom Officer. The second Notification purports to introduce and by re-wording clause 2(c) that the refund claim has to be filed with the Jurisdictional Customs Officer before the expiry of one year from the date of payment of the said additional duty of customs.

25. Mr. Patil has brought to our notice and fairly Sections 25 and 27 and equally Sections 1, 2 and 3 of the CTA, 1975. The CTA is an Act to consolidate and amend the law relating to customs duties. Section 2 thereof states that the rates at which duties of customs shall be levied under the Customs Act, 1962, are specified in the First and Second Schedules. Section 3 enables levy of additional duty equal to excise duty, sales tax, local taxes and other charges. That Section reads thus:-

"3. Levy of additional duty equal to excise duty.-(1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article:

Explanation.- In this sub-section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs and where such duty is leviable at different rates, the highest duty.

(2) For the purpose of calculating under this section,

the additional duty on any imported article, where such duty is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of-

(i) the value of the imported article determined under sub-section (1) of section 14 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(ii) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but not including the duty referred to in sub-section (1).

(3) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under sub-section (1) or not] such additional duty as would counter-balance the excise duty leviable on any raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of such article, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf.

(4) In making any rules for the purposes of Sub-section (3), the Central Government shall have regard to the average quantum of the excise duty payable on the raw materials, components or ingredients used in the production or manufacture of such like article.

(5) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(6) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act."

26. A perusal of sub-sections (3) and (4) of this Section reveals that if the Central Government is satisfied that it is necessary in the public interest to levy on any imported article an additional duty as would counter-balance the excise duty leviable on any raw materials, components and ingredients of the same nature, then, it should proceed to act in terms of these sub-sections and levy an additional duty. Sub-section (5) enables counter-balancing by the above Act of sales tax, value added tax, local tax or any other charges.

27. By sub-section (6) of Section 3 it is clarified that the provisions of the said Act and the Rules and Regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.

28. Therefore, though this Act enables the levy of the additional duty equal to excise duty, sales tax, etc., eventually it is an Act to consolidate and amend the law relating to customs duty. The duties which are levied have then to be specified and for effective and proper recovery. Even when there is any claim made for draw-back, refund and exemption, it is the substantive law, namely, the Customs Act, 1962 which would govern the field. Else no refund can be claimed.

29. ***The High Court of Delhi considered a claim which was raised by the appellant before it. It was involved in the import, distribution, and sale of electronic and information technology products. The appellant secured the release of imported goods on***

> ***payment of customs duty, including the basic customs duty, additional customs duty. The appellant relied on the same exemption notification. The appellant imported some of the items as set out in para 3 of that Judgment and thereafter filed a refund claim. The refund claim was allowed in part.*** *On appeal against the order passed by the Assistant Commissioner, the Commissioner of Customs (Appeals) rejected the appeal on the ground that the dates of payment of duty provided by the appellant in respect of four bills of entry were incorrect. The CESTAT upheld the findings of the Appellate Authority on the ground that the refund claims were time barred, having been filed beyond the period of one year from the date of payment mandated in the amended notification.*
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> *30. The very argument which was canvassed before us, namely, that the original exemption notification neither stipulated a time period within which the refund was to be claimed, nor it makes Section 27 of the Customs Act applicable to such claims. Secondly, since imports and payments of relevant customs duty were made when the original notification was in force and the amended notification had no retrospective effect,* ***the appellant before the High Court of Delhi was entitled to refund of special additional customs duty."***

6. The Bombay High Court in the said decision of ***CMS Info Systems Ltd. (Supra)***, although taking a contrary view in respect to the refund of SAD and refusing the same, observed that the High Court of Delhi in ***Sony India Pvt Ltd. (Supra)***has allowed the refund of SAD in similar facts and circumstances.

7. The Customs Department is in appeal against the said orders of CESTAT. The Court has heard Mr. Aditya Singla, ld. Senior Standing Counsel for the Appellant. He has submitted that the issue relating to refund of SAD and limitation thereof has not been finally adjudicated by the

Supreme Court, though both the decisions of ***Sony India Pvt. Ltd. v. The Commissioner of Customs [2014 (304 ELT 660) DEL]*** and ***CMS Info Systems Ltd. v. Union of India [2017 (349) ELT 236 (BOM)]*** and other decisions of this Court have all reached the Supreme Court. It is hissubmission that most of the said cases have been rejected on Low Tax Effect. Ld. Senior Standing Counsel has placed before this Court a compilation of the various orders.

8. The Court has considered the matter. A perusal of the table in paragraph 3 of this order, would show that firstly, the appeals would not be liable to be entertained on the ground of Low Tax Effect. In addition, there have been consistent decisions by the Coordinate Benches of this Court in the following cases:

> *1. Commissioner of Customs v. Nanak Electronics (2023) 9 Centax 54 (Del.)*
>
> *2. Commissioner of Customs v. Bhimeshwari Overseas (2023) 8 Centax 175 (Del.)*
>
> *3. Commissioner of Customs v. Om Traders (2023) 12 Centax 254 (Del.)*
>
> *4. Premier Timber Trading v. PR Commissioner Customs Imports CUSAA 54/2021.*

9. The first three judgments have in fact not been interfered by the Supreme Court by the dismissal of the Special Leave Petition except the ***Sony India Pvt Ltd. (Supra)***appeal.

10. In the opinion of this Court, the most important feature would be that there have been consistent decisions of Coordinate Benches and the ld. Single Judges, that in such cases, SAD would be liable to be refunded. The Bombay High Court decision in ***CMS Info Systems Ltd. (Supra)*** has not

been followed by this Court. In view of the fact that the issues raised in these appeals are fully covered by the above decisions as also on the issue of Low Tax Effect, this Court is not inclined to entertain the present appeals.

11. The said appeals are accordingly dismissed. All the pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MARCH 21, 2025/*MR/ck*