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

Date of Decision: 7th July, 2025

+ **CUSAA 66/2025 & CM APPL. 23910/2025**

PRINCIPAL COMMISSIONER OF CUSTOMS
(ACC IMPORTS)

.....Appellant

Through: Mr. R. Ramachandran & Mr. Prateek
Dhir, Advs. (M: 9868211477)

versus

NOKIA INDIA SALES PVT. LTD.

.....Respondent

Through: Mr. Kamal Sawhney, Mr. Deepak
Thackur, Mr. Rishabh Mishra & Ms.
Aakansha Wadhwani, Advs. (M:
7703054406)

77 AND

+ **CUSAA 79/2025 & CM APPL. 27515/2025**

PRINCIPAL COMMISSIONER OF CUSTOMS
(ACC IMPORTS)

.....Appellant

Through: Mr. R. Ramachandran & Mr. Prateek
Dhir, Advs.

versus

M/S NOKIA INDIA SALES PVT. LTD.

.....Respondent

Through: Mr. Kamal Sawhney, Mr. Deepak
Thackur, Mr. Rishabh Mishra & Ms.
Aakansha Wadhwani, Advs.

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 are two appeals filed on behalf of the Appellant- Principal Commissioner of Customs (ACC Imports) *inter alia* challenging the order



dated 15th October, 2024 passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi (*hereinafter*, 'CESTAT') in ***Customs Appeal Nos. 50113/2020 and 50202/2020.***

3. A brief background of the present case is that, on 17th March, 2012 the Government of India issued ***Notification No. 12/2012-CE*** (*hereinafter*, the '*Notification No. I*'), vide which, exemption from excise duty was granted to certain goods. The said notification was later amended vide ***Notification No. 4/2014-CE*** (*hereinafter*, the '*Notification No. II*') dated 17th February, 2014 and ***Notification No. 12/2015-CE*** (*hereinafter*, the '*Notification No. III*') dated 1st March, 2015.

4. Vide Notification No. III mobile handsets including cellular phones specifying 1% duty with Condition No. 16 were granted exemptions from excise duty. Condition 16 is extracted below for ready reference:

"If no credit under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 has been taken in respect of the inputs or capital goods used in the manufacture of these goods"

5. It is stated that the Respondent company imported mobile phones during the years, 2014-2015 and paid additional duty of customs at the rate of 6% up to February, 2015. Thereafter, the Respondent Company while placing reliance on the judgment, ***SRF Ltd. v. Commissioner of Customs, Chennai [(2015) 14 SCC 596]*** filed for a refund of Rs. 2,33,05,108/- in ***CUSAA No. 66/2025*** and of Rs. 3,43,88,087/- in ***CUSAA No. 79/2025***, on the ground that it is entitled to exemption as provided in Serial No. 263A (ii) of the Notification No.I.

6. According to the Respondent company it had paid excess duty and the



same had not been passed on to its consumers. In support of this plea, it filed the certificate of a chartered accountant along with some documents.

7. It is the allegation of the Appellant that the Respondent company did not provide its ledger accounts and the chartered account certificate is not conclusive. This position is controverted by the company stating that the ledger accounts were, in fact, submitted.

8. On 23rd January, 2017, the Adjudicating Authority, vide Order-in-Original dated 23rd January, 2017 *inter alia* sanctioned the refund claim of Rs. 3,43,88,087/- and directed that the same be credited to the Consumer Welfare Fund in terms of Section 27(2) of the Customs Act, 1962. The relevant portion of the said order as provided in **CUSAA No. 79/2025** is extracted as under:

“I hereby, sanction the refund claim of Rs. 3,43,88,087/- (Rs Three Crores Forty Three Lakhs Eighty Eight Thousand and Eight Seven Only) submitted by M/s Nokia India Sales Private Limited, New Delhi, and order it to be credited to the Consumer Welfare Fund in terms of provisions of Section 27(2) of Customs Act, 1962.”

9. In **CUSAA No. 66/2025**, the Adjudicating Authority, vide Order-in-Original dated 23rd January, 2017 *inter alia* sanctioned the refund claim of Rs. 2,33,05,108/- and directed that the same be credited to the Consumer Welfare Fund in terms of Section 27(2) of the Customs Act, 1962. The relevant portion of the said order is extracted as under:

“

ORDER

(i) I hereby, reject the refund claim of Rs 26,15,842/- (Rs. Twenty Six Lakhs Fifteen Thousand Eight Hundred and Forty Two only in terms of provisions of Section 27(l) of Customs Act, 1962.

(ii) I hereby, sanction the refund claim of



Rs.2,33,05,108/- (Rs Two Crore Thirty Three Lakhs Five Thousand One Hundred and Eight Only) submitted by M/s. Nokia India Sates Private Limited, New Delhi, and order it to be credited to the Consumer Welfare Fund in terms of provisions of Section 27(2) of Customs Act, 1962.”

10. As can be seen, the refund claim which was made by the Respondent company was sanctioned, however, instead of giving it to the Respondent it was directed to be credited to the consumer welfare fund in terms of Section 27(2) of the Customs Act, 1962. The said orders were challenged by the Respondent company and the appeals were dismissed on 5th September, 2019.

11. On 18th December, 2019, the Respondent company filed appeals being, ***Customs Appeal No. 50113/2020*** and ***Custom Appeal 50202/2020*** before the CESTAT, challenging the order dated 5th September, 2019. The CESTAT, vide the impugned order directed as under:

“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.

59. The orders dated 05.09.2019 and 26.09.2019 passed by the Commissioner (Appeals) confirming the order passed by the Deputy Commissioner for deposit of the sanctioned amount in the Consumer Welfare Fund under section 27(2) of the Customs Act, therefore, deserve to be set aside and are set aside. The appellant is held entitled to the payment of amount of Rs. 3,43,88,087/- and Rs. 2,33,05,108/- with consequential



relief(s), The two appeals are, accordingly, allowed.”

12. Mr. R. Ramachandran, Id. Counsel for the Appellant Department submits that the clear question of law that arises is whether the chartered accountant certificate would be sufficient to prove that the incidence of duty has not been passed on by the Respondent Company to the consumers, without submitting the supporting accounting documents and ledger accounts. Further, the burden is on the Respondent company to show that the duty was not passed on to the consumers and that refund is liable to be granted. This burden is not discharged.

13. Mr. Sawhney, Id. Counsel appearing on behalf of the Respondent company submits that the company has discharged its burden by submitting the chartered accountant's certificate along with ledger account and all the relevant documents before the Adjudicating Authority. He further relies upon two decisions of two Division Benches, which are set out below:

i. The Commissioner of Customs [Chennai-II] v. M/s. Adyar Gate Hotel Ltd. (MANU/TN/4520/2019)

ii. Principal Commissioner of Customs v. Telecare Network (India) Pvt. Ltd. in CUSAA 80/2023 dated 1st November, 2023

14. Heard. A perusal of Section 27(2) of the Customs Act, 1962 would show that it is purely within the discretion of the Adjudicating Authority to direct crediting of any refund or interest in part or in whole to the Consumer Welfare Fund.

15. In the present case, the CESTAT has clearly arrived at the conclusion that the chartered account certificate provided by the Respondent company is sufficient. Further, there is no reason why the same should not be accepted,



especially, when the Appellant Department did not produce any evidence to the contrary.

16. In the opinion of this Court, the question whether the chartered accountant's certificate along with the documents were sufficient to prove that the incidence of duty has been passed on by the Respondent Company to the buyers, has now been examined by all the three authorities. The refund claim has been accepted in the Order-in-Original dated 23rd January, 2017. However, while directing the same, the order directed credit of the refund claim to the Consumer Welfare Fund. There is no reasoning given in support of such payment to the Fund. The only reason given by the Adjudicating Authority is that there is no conclusive proof and that the burden of incidence of duty has not been passed to the consumer.

17. In the face of the chartered accountant's certificate and documents that have been submitted by the company, there has to be some evidence to the contrary that would require the Adjudicating Authority to reject the refund. Apart from the documents submitted by the Respondent company along with the chartered accountant's certificate, there may be no other way to prove that the incidence of duty has not been passed on to the consumer, especially, after a lapse of so many years.

18. Under such circumstances, it cannot be said that the initial burden has not been discharged by the company. The CESTAT has rightly taken a view which this Court is not inclined to interfere with. The refund is now liable to be granted to the Respondent company.

19. Mr. Sawhney, Id. Counsel for the Respondent, on a query from the Court, submits that he would have no objection if some amount is still directed to the Consumer Welfare Fund as a voluntary contribution by the Respondent



company.

20. Accordingly, let a sum of Rs.25 lakhs be contributed by the Respondent company to the Consumer Welfare Fund. A sum of Rs.10 lakhs be also contributed to the Delhi High Court Bar Association.

21. The refund of the principal and the interest as per law, be credited to the Respondent company within a period of two months. The contribution as directed above be made within a month thereafter.

22. The petitions are disposed of in these terms. Pending applications, if any, are also disposed of.

23. List for compliance on 10th November, 2025.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

JULY 7, 2025

dj/rks