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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18-02-2026**Pronounced on: 25.02.2026**

CORAM

THE HON'BLE MR JUSTICE ABDUL QUDDHOSE**WP No. 27739 of 2022**

Virbac Animal Health India Pvt., Ltd.

rep. by its company Secretary and GM-Legal,
Jayesh Udeshi, 604, 6th Floor, Western Edge-1,
Megathane, Western Express Highway,
Borivali(E), Mumbai-400 066.

..Petitioner(s)

Vs

1. The Union of India

Rep. by its Secretary (Revenue) Department of
Revenue, Ministry of Finance, North Block,
New Delhi-110 001.

2. The Assistant Commissioner of Customs
(Refunds-II)

office of the commissioner of Customs,
Chennai-II, Customs House, 60 Rajaji Salai,
Chennai-600 001.

..Respondent(s)

Writ petition is filed under Article 226 of the Constitution of India seeking for issuance of a writ of certiorarified mandamus to call for the records relating to Order-in-Original No.91423/2022 dated 04.07.2022 passed by respondent No.2 and quash the same as unconstitutional, arbitrary and against the settled principles of law and subsequently direct the respondent No.2 to



sanction refund of INR 3,01,01,534/- to the petitioner along with interest at the rate of 18 percent per annum in the light of 1st respondents Notification 25/2019-Customs dated 06.07.2019.

For Petitioner(s): Mr.Prakash Shah, SC
for Mr.A.K.Rajaraman

For Respondent(s): Mr. K.Umesh Rao, SSC

ORDER

This writ petition has been filed challenging the impugned order dated 04.07.2022 passed by the second respondent rejecting the petitioner's request for refund of a sum of Rs.3,01,01,534/- paid by them towards differential customs duty during DRI (Directorate of Revenue Intelligence) investigation conducted pursuant to the reopening of the case by the Customs Department on the ground that the petitioner had misdeclared the imported goods in the Bills of Entry submitted by them.

2. The petitioner had paid the basic customs duty at the rate of 5% Advalorem under Customs Tariff Heading 2309.09 for the import of Shrimp Larvae Feed in pellet form during 2014 to 2017 under 11 Bills of Entry submitted by them. The petitioner had also obtained clearance of the imported goods from the Customs Department based on their declaration in the 11 Bills



of Entry. Subsequently, DRI had investigated the matter on the ground that Shrimp Larvae Feed imported by the petitioner was not in pellet form, and therefore, the benefit of exemption granted to the petitioner from paying higher customs duty at 30% Ad valorem was incorrect, and hence, the petitioner is liable to pay the differential duty for the import of Shrimp Larvae Feed in non-pellet form during 2014-2017 under 11 Bills of Entry.

3. According to the petitioner, based on the advise of DRI, it had deposited a sum of Rs.3,16,91,824/- with the Customs Department, being the differential customs duty payable by them. The petitioner claims that eventhough on the advise of DRI they had deposited a sum of Rs.3,16,91,824/- with the Customs Department, they were under the belief that they should seek clarification in the notification relied upon by DRI for claiming differential customs duty from them. Therefore, the petitioner claims that they had stated in the letter dated 05.03.2019 that they desire to approach the related Ministry. According to the petitioner, Vide Finance Bill, 2019, it was clarified that Prawn Feed and Shrimp Larvae Feed, other than in pellet form, will also attract 5% customs duty, as is the case with other Fish Feed in pellet form.

4. The claim of the petitioner for refund of the amount deposited was rejected on 06.12.2019 on the ground that since the petitioner had admitted wrong availment of concessional rate of duty, the question of refund does not



arise. Aggrieved by the rejection order dated 06.12.2019, the petitioner had earlier approached this Court by filing a writ petition. This Court, by its order dated 24.11.2021 passed in W.P.No.14126 of 2020, remitted the case to the second respondent with a direction to issue proper show cause notice within 60 days and proceed to pass orders on merits and in accordance with law preferably within a period of 30 days after affording personal hearing to the petitioner. According to the petitioner, in the said order, it was made clear that the amount deposited by the petitioner during DRI investigation was treated to be an amount paid by the petitioner under protest.

5. Pursuant to the directions issued by this Court on 24.11.2021 in the earlier writ petition filed by the petitioner, the impugned order dated 04.07.2022 came to be passed by the second respondent rejecting the petitioner's request for refund of a sum of Rs.3,01,01,534/- deposited by them with the Customs Department during DRI investigation. According to the petitioner, any amount deposited by the petitioner during DRI investigation on the advise of DRI has to be treated as a payment made under protest. The petitioner also claims that the order dated 24.11.2021 passed in the earlier writ petition filed by them has also treated the payment of Rs.3,16,91,824/- made by them during DRI investigation as a payment made under protest.



6. According to the petitioner, since it has been clarified vide the Finance Bill, 2019, that Prawn Feed and Shrimp Larvae Feed, other than in pellet form, will also attract 5% customs duty, the sum of Rs.3,16,91,824/- collected from the petitioner during DRI investigation has to be refunded to the petitioner. According to the petitioner, by total non-application of mind, the second respondent, without taking note of the fact that under the Finance Bill, 2019, it has been clarified that Prawn Feed and Shrimp Larvae Feed other than in pellet form will also attract 5% customs duty, has passed the impugned order dated 04.07.2022 rejecting the petitioner's request for refund of Rs.3,16,91,824/-.

7. The second respondent in the counter affidavit has raised the preliminary objection as to the maintainability of the writ petition on the ground of availability of alternative appellate remedy to the petitioner, if aggrieved by the impugned order. According to the respondents, the basic customs duty for import of Prawn Feed, Shrimp Larvae Feed and Fish Feed in non-pellet form is 30%. But, if Prawn Feed, Shrimp Larvae Feed and Fish Feed are imported in pellet form, then the importers are entitled for an exemption under the basic customs duty and the rate of duty to be paid is only 5% instead of 30%.

8. According to the respondents, the petitioner, by letter dated 05.03.2019, admitted to the stand taken by DRI and they paid the entire differential duty along with applicable interest. According to the respondents,



the petitioner, upon payment of basic customs duty, requested the respondents to conclude the investigation. According to the respondents, based on their request, DRI concluded the investigation under Section 28(2) of the Customs Act, and the same was also communicated to the petitioner by a letter dated 03.07.2019. According to the respondents, the petitioner, taking advantage of the fact that the investigation is closed, applied for refund before the same second respondent, which has been rightly rejected under the impugned order. According to the respondents, only based on the directions issued by this Court in the earlier writ petition filed by the petitioner, the second respondent has passed the impugned order by following the due procedure established under law.

9. Heard Mr.Prakash Shah, learned Senior counsel, for Mr.A.K.Rajaraman, learned counsel, appearing for the petitioner; and Mr.K.Umesh Rao, learned Senior Standing counsel, appearing for the respondents.

10. The learned Senior counsel appearing for the petitioner, after relying upon the documents filed along with this writ petition, submitted as follows:-

(a) Since the petitioner had imported Shrimp Larvae Feed in pellet form during 2014 to 2017 under 11 Bills of Entry, the petitioner was liable to pay the basic customs duty only at the rate of 5% Advarloram under Customs Tariff



Heading 2309.09.

(b) Vide the Finance Bill, 2019, it has been clarified that Prawn Feed and Shrimp Larvae Feed other than pellet form will also attract 5% customs duty as is the case with Fish Feed in pellet form.

(c) By total non-application of mind to the aforesaid Finance Bill, 2019, the second respondent has passed the impugned order rejecting the petitioner's request for refund.

(d) Any amount deposited towards the differential customs duty during DRI investigation is deemed to be a payment made by the petitioner under protest.

(e) This Court, in its order dated 24.11.2021 passed in the earlier writ petition filed by the petitioner, had also held that the amount paid by the petitioner during the investigation has to be treated as an amount paid under protest.

(f) Since the impugned order rejecting the petitioner's request for refund has been passed without following the binding precedents of this Court, there is no bar for the petitioner to file this writ petition without exercising the statutory alternative appellate remedy.

(g) Any recovery of the differential customs duty can be made by the Customs Department only after issuing show cause notice as per the provisions of Section 28 of the Customs Act, 1962. Time to issue show cause notice under Section 28 of the Customs Act had also got expired in the case on hand. Since



the sum of Rs.3,16,91,824/- was collected by the Customs Department without issuing show cause notice under Section 28 of the Customs Act, the said sum has to be refunded to the petitioner by the respondents.

11. The learned Senior counsel appearing for the petitioner, in support of his contention that any payment made during DRI investigation is a payment made under protest, has relied upon the following authorities:-

(a) Commissioner of C.Ex., Coimbatore Vs. Pricol Ltd. [2015 (320) ELT 703 (Mad.)]; and

(b) Commissioner of C.Ex., Lucknow Vs. Eveready Industries India Ltd. [2017 (357) ELT 11(All.)].

(c) WPIL Ltd., Ghaziabad Vs. Commissioner of Central Excise, Meerut, UP [MANU/SC/0122/2005]

12. According to the learned Senior counsel appearing for the petitioner, even in the absence of the word ‘protest’ in the letter issued by the petitioner or in the challan, the amount deposited by the petitioner during DRI investigation ought to have been necessarily treated as a deposit made under protest. He would further submit that under Article 265 of the Constitution of India, no amount can be recovered in the guise of tax or duty without following the due procedure established under law.



13. On the other hand, the learned Senior Standing Counsel appearing for the respondents would submit as follows:-

(a) The impugned order in original dated 04.07.2022 is an appealable order under Section 128(1) of the Customs Act, 1962. Hence, this writ petition is not maintainable.

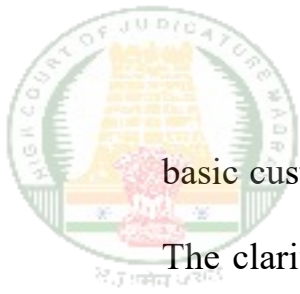
(b) Since the directions issued by this Court dated 24.11.2021 in the earlier writ petition filed by the very same petitioner have been duly followed by the second respondent, the petitioner, if aggrieved by the impugned order, has to necessarily file a statutory appeal, and cannot file a writ petition under Article 226 of the Constitution of India.

(c) Being a speaking order with regard to the contentions raised by the petitioner, the impugned order cannot be challenged through a writ petition.

(d) Since the petitioner through their letter dated 05.03.2019 addressed to DRI had specifically sought for closure of investigation and had also paid the differential customs duty along with interest, the petitioner is not entitled to seek for refund, when the said amount was not made under protest, but, paid voluntarily by the petitioner.

(e) The applicable rate of basic customs duty for import of Shrimp Larvae Feed in non-pellet form is 30% and not 5%, and only due to the said reason, pursuant to DRI investigation, the differential customs duty along with interest was collected from the petitioner, who had also paid the same voluntarily.

(f) The petitioner's claim, that the Finance Bill, 2019, clarified that the



basic customs duty both for pellet form and non-pellet form is 5%, is incorrect.

The clarification relied upon by the petitioner in the Finance Bill, 2019, is not found in the Finance Act, 2019. If the clarification is provided in the Finance Act, 2019, then it would have the force of law. Therefore, the Finance Bill, 2019, cannot be relied upon by the petitioner for the purpose of establishing that the basic customs duty for both the pellet form and non-pellet form is one and the same.

(g) Even the Notification No.25/2019-Customs, dated 06.07.2019, only states that it is an amendment notification, and therefore, it is clear that the 2019 notification is only an amendment and by way of an amendment, the basic customs duty has been reduced to 5%. All amendments are only prospective in nature. Since the subject goods were imported by the petitioner between 2014 and 2017, the amendment Notification, 2019, does not apply to the petitioner's case. When the payment of the differential customs duty was paid by the petitioner voluntarily, and that the petitioner had also requested for closure of DRI investigation, there is no necessity to issue show cause notice as contemplated under Section 28 of the Customs Act, 1962.

(h) The judgments relied upon by the learned Senior counsel for the petitioner are not applicable to the facts of the instant case, since, in all those cases, the importer never asked for closure of investigation, and Notification No.25/2019-Customs relied upon by the petitioner is only an amendment notification, which is prospective in nature and is not a clarificatory notification



as claimed by the petitioner.

DISCUSSION:

14. Based on the contentions of the respective parties, the following issues arise for consideration in this writ petition:-

(a) Whether the differential customs duty collected from the petitioner during DRI investigation was paid by the petitioner under protest or not?

(b) Whether the notification relied upon by the petitioner to establish that the petitioner had paid the correct customs duty at the time of obtaining clearance of the goods is prospective or retrospective?

(c) Whether the notification relied upon by the petitioner to seek for refund of the differential customs duty is an amendment to the earlier notification?

(d) Whether the collection of the differential customs duty from the petitioner during the course of the investigation by DRI is proper without issuance of any show cause notice under Section 28 of the Customs Act, 1962.

(e) Whether the petitioner is entitled to seek for refund of the customs duty paid during the course of DRI investigation when the petitioner through their letter had requested DRI to accept the



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differential customs duty and close the DRI investigation. Whether the question of refund of the differential customs duty can be agitated by the petitioner when the DRI through their letter dated 03.07.2019 to the petitioner has also confirmed the closure of DRI investigation.

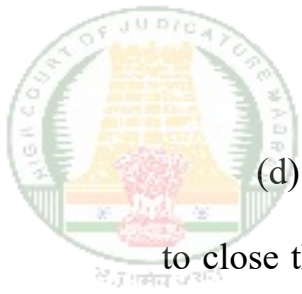
(f) Whether the refund of the customs duty is permissible without the petitioner having not established that there will be no unjust enrichment in their favour if the refund is granted.

15. To decide the above issues, this Court will have to first record the undisputed facts. They are as follows:-

(a) Vide a letter dated 05.03.2019, the petitioner had intimated to DRI that on the advise of DRI, they have paid the differential customs duty of Rs.3,01,01,534/-, and in the same letter, they had requested DRI to conclude the DRI proceedings.

(b) In the aforesaid letter, the petitioner never indicated to DRI that the differential customs duty as demanded by DRI was paid by them under protest.

(c) On receipt of the differential customs duty from the petitioner, the DRI, vide a letter dated 03.07.2019, had accepted the request of the petitioner, and they have concluded the DRI investigation under Section 28(2) of the Customs Act, 1962.



(d) Between 05.03.2019, when the petitioner made a request to DRI to close the investigation, and 03.07.2019, when DRI accepted the request of the petitioner and closed the DRI investigation, the petitioner never raised any dispute with regard to collection of differential customs duty from them by the Customs Department.

(e) Only after the closure of DRI investigation, the petitioner has agitated the issue for refund.

16. By relying upon the Finance Bill, 2019, and Notification No.25/2019-Customs, dated 06.07.2019, issued by the Government of India, Ministry of Finance, Department of Revenue, which stipulates that the customs duty payable for Prawn Feed, Shrimp Larvae Feed and Fish Feed in pellet form and non-pellet form is one and the same, the petitioner had filed an application seeking for refund of the differential customs duty paid by them to the Customs Department under Section 27 of the Customs Act, 1962, on 20.09.2019. The said application was filed seeking to refund a sum of Rs.3,01,01,534/- paid by them by way of differential customs duty and interest during DRI investigation.

17. Under the impugned order, the second respondent has rejected the petitioner's request for refund on the following grounds:-

(a) The petitioner had paid the differential customs duty and interest



voluntarily during the investigation by DRI.

(b) Vide their letter dated 05.03.2019, the petitioner had intimated to DRI about the payment made by them towards the differential customs duty and further requested DRI to conclude the DRI proceedings.

(c) DRI vide a letter dated 03.07.2019 had also intimated to the petitioner that they had concluded the DRI investigation against the petitioner on receipt of the differential customs duty from the petitioner under Section 28(2) of the Customs Act, 1962.

(d) There was no protest made by the petitioner at the time when they had deposited the differential customs duty to the Customs Department during DRI investigation, and therefore, the petitioner had paid the differential customs duty voluntarily.

(e) Refund cannot be sanctioned after the petitioner had paid the differential customs duty together with interest voluntarily.

18. This Court has to now examine as to whether the reasons given by the second respondent for rejecting the petitioner's request for refund are correct or not. At the outset, the principle of 'estoppel by conduct' comes into play. 'Estoppel by conduct' refers to the legal principle preventing a party from acting inconsistently with their previous representations or actions, provided those actions induced the other party to rely on them to their detriment. This doctrine is frequently adopted in



disputes involving valuation, classification and examination under the Customs Act, 1962. In the case on hand, the petitioner having not raised any protest for collection of the differential customs duty and interest from the petitioner between 05.03.2019, when the petitioner had addressed a letter to DRI to close DRI investigation upon payment of the differential customs duty, and 03.07.2019, when DRI addressed a letter to the petitioner accepting the request of the petitioner for closure of DRI investigation, the question of the petitioner raising the issue of refund after DRI accepted their request for closure of DRI investigation, does not arise, as such a request is hit by the doctrine of “estoppel by conduct”.

19. The petitioner in this writ petition or in the earlier writ petition filed by them never raised any issue with regard to the voluntary request made by them through their letter dated 05.03.2019 to DRI for closure of DRI investigation. All along both in the earlier writ petition as well as in this writ petition, the petitioner has been raising the issue only with regard to the payment made by them during DRI investigation, which, according to them, was made only under protest. When the petitioner had not raised any hue and cry in the earlier writ petition as well as in this writ petition, with regard to the request made by them for closure of DRI investigation, the question of considering/entertaining their request for refund of the differential customs duty does not arise. If such a request is entertained, it



will defeat the very purpose of DRI investigation and its sanctity will be lost.

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20. The Customs Act provides for two methods of refund; one is refund of customs duty under Section 27 of the Customs Act, and the other is refund of deposit (Ex. Extra Duty Deposit (EDD)). The refund of the customs duty is governed by Section 27 of the Customs Act, while the deposit refund stem from the provisional assessment under Section 18 of the Customs Act. The limitation period for claiming customs duty refund is one year from the date of payment, whereas EDD refund often has no strict limitation period. For the customs duty refund, the importer must prove that they did not pass the duty cost to buyers, i.e., they must prove that they are not making any unjust enrichment by obtaining refund. This doctrine is not applicable to EDD refund. The customs duty refund requires a formal application, whereas EDD refund is generally processed automatically. The customs duty is a tax, whereas EDD is a security deposit (non-tax).

21. In the case on hand, admittedly, the petitioner had sought refund of the differential customs duty and interest paid by them during DRI investigation by filing an application under Section 27(1)(a) of the Customs Act, on 20.09.2019. The said application was received by the



Customs Department on 01.10.2019. The said application has also been enclosed as a document along with this writ petition. Being an application filed under Section 27 of the Act, necessarily, the petitioner will have to satisfy that they have not made any unjust enrichment by passing the excess customs duty paid by them to their buyers. Section 27 of the Act makes it clear that any claim for refund of duty will have to be made with substantial evidence to prove that the claimant had not made any unjust enrichment. In the instant case, the petitioner has not placed on record any supporting evidence to prove that the petitioner did not make any unjust enrichment by passing on the excess customs duty collected by the Customs Department to their buyers. Therefore, the petitioner has not satisfied the requirement of Section 27 of the Customs Act to enable the petitioner to seek for refund of the differential customs duty and interest paid by them during DRI investigation.

22. Payment of customs duty made under protest allows tax payers to challenge duty demand while avoiding penalties. Conversely, duty paid voluntarily implies acceptance of liability making the future payment difficult subject to strict statutory time limit. Payments under protest are crucial for disputing coerced or incorrect assessment. “Under protest” means that the importer disagrees with the duty assessment and explicitly reserves their right to appeal. “Voluntary” payment signifies that the



importer accepts tax liability and that there is no immediate intention to dispute it. In the case on hand, neither in the letter dated 05.03.2019 sent by the petitioner to DRI nor in the interregnum between 05.03.2019 and 03.07.2019, when the DRI had accepted the petitioner's request for closure of DRI investigation, the petitioner had raised any dispute with regard to the differential duty and interest collected from the petitioner during DRI investigation. Only as an afterthought, after DRI had accepted the request of the petitioner, and had also closed the DRI investigation, which was also communicated to the petitioner through the DRI's letter dated 03.07.2019, the petitioner, for the first time, had made an allegation that the payment collected from the petitioner by DRI was a payment made under protest. The conduct of the petitioner is clearly hit by the doctrine of "estoppel by conduct". Having made to believe that the petitioner will not raise any dispute with regard to collection of the differential duty and interest, and DRI having acted upon the request of the petitioner to close the DRI investigation, the petitioner's conduct in reopening the issue will amount to giving a go-by to the sanctity of the DRI investigation and will also amount to unjust enrichment if the application for refund is now entertained.

23. Notification No.25/2019-Customs, dated 06.07.2019, issued by the Government of India, Ministry of Finance, Revenue Department, relied upon by the learned Senior counsel for the petitioner, also makes it clear



that it is only an amendment to the earlier notification dated 30.06.2017 issued through Notification No.50/2017-Customs. Therefore, since the petitioner imported Shrimp Larvae Feed in pellet form between 2014 and 2017 under 11 Bills of Entry, the Notification dated 06.07.2019, being an amendment, can only operate prospectively and not retrospectively. Hence, the contention of the petitioner, that under the aforesaid Notification dated 06.07.2019, it has been made clear that in both pellet and non-pellet forms, customs duty at 5% is payable, and not 30%, has to be rejected by this Court. Notification No.25/2019-Customs, dated 06.07.2019, is reproduced hereunder:-

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,
PART II, SECTION 3, SUB-SECTION(i)]

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

Notification No. 25/2019- Customs

New Delhi, the 6th July, 2019

G.S.R.—(E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3 of Customs Tariff Act, 1975 (51 of 1975), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments-in-the-notification of the Government of India, Ministry of Finance (Department of Revenue),



No. 50/2017-Customs,-dated-the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. 785(E), dated the 30th June, 2017, namely:-

In the said notification.

(1) in the Table, -

(1) S. No. 23 and the entries relating thereto shall be omitted;

(2) S. No. 24 and the entries relating thereto shall be omitted:

(3) against S.No.57, in column (3), in item I, sub-items (A), (B) and (C) and the entries relating thereto shall be omitted;

(4) S. No. 67 and the entries relating thereto shall be omitted;

(5) against S. No. 119, in column (3), for the words "Prawn feed, shrimp larvae feed and fish feed in pellet form", the following shall be substituted, namely: "The following goods, namely: -

(1) Prawn feed;

(2) shrimp larvae feed;

(3) fish feed in pellet form";

(6) S. No. 125 and the entries relating thereto shall be omitted;

(7)”

24. The Finance Act, 2019, also did not incorporate Sl.No.45 of Finance Bill, 2019, which was relied upon by the learned Senior counsel for the petitioner during the course of his arguments. Sl.No.45 of the Finance Bill, 2019, read as follows:-

“45. 2309.. Clarification is being issued that prawn feed and shrimp larvae feed, other than in pellet form will also attract 5% customs duty applicable on other fish feed in pellet form.”



25. As could be seen from the Finance Act, 2019, which is binding, and not the Finance Bill, the Finance Act, 2019, did not use the terminology 'clarification', and it has used the term 'amendment', which means any changes are only prospective and not retrospective.

26. In the earlier writ petition filed by the petitioner in W.P.No.14126 of 2020, this Court, by its order dated 24.11.2021, while remanding the matter back to the respondent for fresh consideration, observed that the amount paid by the petitioner during DRI investigation has to be treated as an amount paid under protest. The said observation made in the earlier writ petition has no bearing for deciding the present writ petition, in view of the fact that the matter has been remanded back to the respondent for fresh consideration on merits and in accordance with law, and therefore, any observation made by this Court in the earlier writ petition cannot be utilised to the petitioner's advantage. When the earlier impugned order was quashed and remanded back to the very same respondent for fresh consideration, placing reliance of certain observations made by this Court in its order dated 24.11.2021 passed in W.P.No.14126 of 2020 filed by the very same petitioner, is of no avail.



27. The decisions relied upon by the learned Senior counsel for the petitioner have no applicability to the facts of the instant case for the following reasons:-

(a) The decision in *Pricol Ltd (cited supra)* was dealing with a case involving pre-deposit made under protest at the time of investigation, and did not deal with the payment of differential customs duty and interest made during DRI investigation. In the aforesaid decision, the assessee cleared the imported goods without payment of duty. Therefore, the assessee during DRI investigation under protest had deposited certain sums of money for cooperating with the investigation, and on succeeding in the said case, the assessee had sought for refund of the amount deposited. Whereas the case on hand is distinguishable, since the petitioner herein seeks for refund of the differential duty and interest, subsequent to the closure of DRI investigation based on their request. As observed earlier by this Court, there is a difference between refund of Extra Duty Deposit and refund of the customs duty. In the aforesaid decision, this Court was dealing with a case involving refund of Extra Duty Deposit and was not dealing with the refund of the customs duty under Section 27 of the Customs Act, 1962.

(b) The other decision, namely, *Eveready Industries (cited supra)*, relied upon by the learned Senior counsel for the petitioner, was also not dealing with the refund of customs duty, but was dealing with the refund of



pre-deposit amount. Only under those circumstances, it was held in the aforesaid decision that the principle of unjust enrichment would not be applicable. In the case on hand, admittedly, the petitioner had applied for refund of the differential customs duty under Section 27 of the Customs Act, 1962, which makes it clear that the principle of unjust enrichment is applicable for such refund.

(c) The decision of the Hon'ble Supreme Court in *WPIL Ltd., Ghaziabad Vs. Commissioner of Central Excise, Meerut, UP* [MANU/SC/0122/2005] is not applicable to the facts of the instant case. When Notification No.25/2019-Customs, dated 06.07.2019, relied upon by the learned Senior counsel for the petitioner has made it clear that the said notification is only an amendment to the earlier notification, and being an amendment, which has been made in public interest, the said amendment is only prospective and not retrospective as claimed by the learned Senior counsel for the petitioner. Therefore, the aforesaid decisions relied upon by the learned Senior counsel for the petitioner do no enure to the benefit of the petitioner.

28. Having made DRI to close the investigation, the petitioner cannot now reopen the issue of refund, that too, when the petitioner either in this writ petition or in the earlier writ petition had not explained as to why a request was made to DRI to close the investigation. If such a refund



application is entertained, Pandora's box will be opened by permitting unscrupulous claims of similar nature to flood statutory authorities and Courts, resulting in no finality of any investigation.

29. For the foregoing reasons, the issues framed by this Court in the opening of the discussion paragraph are answered as follows:-

(a) The differential customs duty collected from the petitioner during DRI investigation was not paid under protest by the petitioner, but, was paid voluntarily.

(b) The notification relied upon by the petitioner to establish that the petitioner had paid correct customs duty at the time clearance of the goods, is prospective and not retrospective.

(c) Notification No.25/2019-Customs, dated 06.07.2019, relied upon by the petitioner is an amendment to the earlier notification, and it cannot be treated as a substitution of the earlier notification, and hence, the aforesaid Notification is only prospective and not retrospective.

(d) The collection of the differential customs duty from the petitioner was made only based on the voluntary request of the petitioner to pay the differential customs duty and interest, as demanded by DRI, and therefore, there was no necessity for DRI to issue show cause notice under Section 28 of the Customs Act, 1962.

(e) Since the petitioner themselves requested for closure of DRI



investigation upon payment of the differential customs duty, they are not entitled to seek for refund as well as to re-agitate the issue once again.

(f) The petitioner has not placed on record any supporting evidence to substantiate that the petitioner did not make any unjust enrichment by passing on the excess customs duty collected by the Customs Department to their buyers, and therefore, they are not entitled to seek refund.

30. In the result, there is no merit in the writ petition, and accordingly, it is dismissed. No Costs. Connected writ miscellaneous petitions, if any, stand closed.

25-02-2026

Neutral Citation: Yes

RKM

To

1. The Secretary (Revenue),
Department of Revenue, Ministry of Finance,
North Block, New Delhi-110 001.
2. The Assistant Commissioner of Customs
(Refunds-II)
office of the commissioner of Customs,
Chennai-II, Customs House, 60 Rajaji Salai,
Chennai-600 001.



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