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

% Date of decision: 27.10.2026

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\# **CNR No. DLHC010208572024**
\+ CUSAA 34/2024

7
\# **CNR No. DLHC010213652024**
\+ CUSAA 36/2024

8
\# **CNR No. DLHC010221782024**
\+ CUSAA 38/2024

9
\# **CNR No. DLHC010246872024**
\+ CUSAA 41/2024

10
\# **CNR No. DLHC010246882024**
\+ CUSAA 42/2024

PRINCIPAL COMMISSIONER OF CUSTOMS ACC IMPORT NEW DELHI .....Appellant

Through: Mr. Aditya Singla, SSC

versus

MS MICROMAX INFORMATICS LIMITED .....Respondent

Through: Mr. Balbir Singh, Sr. Adv. with Mr. Pranav Sarthi, Mr. Ayush Raj, Ms. Disha, Mr. Vedant Kohli, Mr. Vinayak, Ms. Prachi Dhingra, Mr. Utkarsh Vatsa & Mr Udit Bajpai, Advs.

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CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MS. JUSTICE SHAIL JAIN

AVNEESH JHINGAN, J. (ORAL)

1. The issues involved in all the appeals are similar. For the sake of convenience, the period involved and the relevant dates are tabulated below:

HC Appeal (Against Sanctioned Refund)	**Period**	**Refund and Interest amount**	**OIA dt. 09.03.2022**	**CESTAT Order dt. 26.09.2023(Against Sanctioned Refund)**
CUSAA No. 36/2024	June 2014 to March 2015 Export Commissionerate	Sanctioned Refund Rs. 28,48,22,600/- + Interest Rs. 2,13,57,289/-	Sanctioned refund amounts to be paid to Micromax + Interest for delayed payment of refund to be paid as per law to Micromax.	Upheld OIA dated 09.03.2022
CUSAA No. 34/2024	September 2014 Import Commissionerate	Sanctioned Refund Rs. 22,48,35,292/- + Interest Rs. 1,53,75,038/- + Rejected Claim Rs. 14,08,263/-	Sanctioned refund amounts to be paid to Micromax + Interest not dealt with as already decided in previous OIA	Upheld OIA dated 09.03.2022

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CUSAA No. 41/2024	October 2014 Import Commissionerate	Sanctioned Refund Rs. 33,91,47,955/- + Interest Rs. 2,14,63,884/-	Sanctioned refund amounts to be paid to Micromax + Interest not dealt with as already decided in previous OIA	Upheld OIA dated 09.03.2022
CUSAA No. 38/2024	November 2014 to January 2015 Import Commissionerate	Sanctioned Refund Rs. 68,11,45,947/- + Interest Rs. 4,15,40,572/- + Rejected Claim Rs. 25,46,390/-	Sanctioned refund amounts to be paid to Micromax + Interest not dealt with as already decided in previous OIA	Upheld OIA dated 09.03.2022
CUSAA No. 42/2024	February 2015 and March 2015 Import Commissionerate	Sanctioned Refund Rs. 50,15,32,437/- + Interest Rs. 2,95,14,840/- + Rejected Claim Rs. 10,10,708/-	Sanctioned refund amounts to be paid to Micromax + Interest not dealt with as already decided in previous OIA	Upheld OIA dated 09.03.2022

2. The respondent imported Cellular Phones and mobile parts during the relevant period. Self-assessed Bills of Entry for home consumption were filed classifying the imported goods to be chargeable @ 0% Basic Customs Duty and @ 6% Countervailing Duty (for short 'CVD').

2.1 Notification No. 12/2012-CE dated 17.03.2012 was issued granting exemption from excise duty. The notification was amended

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by Notification No. 4/2014-CE dated 17.02.2014. By Notification No. 12/2015-CE dated 01.03.2015, the exemption granted was made subject to fulfilment of Condition No. 16. The condition is reproduced below:

> "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."

2.2 The issue as to whether CVD was leviable on the goods imported by the respondent was decided by the Supreme Court in ***SRF Ltd. v. Commissioner of Customs, Chennai***, (2015) 14 SCC 596. It was held that CVD was not payable on the goods imported during the period in issue.

2.3 The respondent on basis of the decision in ***SRF Ltd***. (supra) applied for a refund of the CVD. The application was ultimately decided by the Commissioner of Customs (Imports) (hereinafter 'AA'). It was ordered that the refund claimed by the respondent along with interest be credited to the Consumer Welfare Fund (for brevity 'CWF') in terms of Section 27(2) of the Customs Act, 1962 (for short 'the Act').

2.4 Aggrieved by the Order-in-Original (for short O-I-O), the respondent preferred an appeal before the Commissioner of Customs (Appeals)/First Appellate Authority (for short 'FAA') and succeeded. The FAA held that the adjudicating authority had ignored the certificate issued by the independent chartered accountant (for short 'CA'), the certification by the statutory auditor of the balance sheet for

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the financial year 2014-15 and 2015-16 and erred in concluding that the CVD paid was made part of the cost of the mobile phones thereby implying that the burden was passed on to the buyers.

2.5 The appeal filed by the appellant was dismissed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter 'tribunal') on 26.09.2023. Hence, the present appeal.

3. Learned counsel for the appellant contends that the production of the certificate issued by the CA in itself is not evidence that the burden of CVD was not passed on to the consumer. It is submitted that the respondent had not shown the amount of refund due as an amount receivable in the balance sheets as on 31.03.2015 and 31.03.2016, fortifying the case of the department that the burden of CVD paid was passed on. It is canvassed that uniformity in prices before and after the change in the CVD payment scenario does not establish that the burden was not passed on to the customers.

4. Learned senior counsel for the respondent submits that no substantial question of law arises. It is contended that the factual findings recorded by the FAA were upheld by the tribunal holding that the case was not of unjust enrichment. It is submitted that the invoices as directed by the department were produced to substantiate that there was no change in prices during the relevant period and thereafter.

4.1 The submission is that the statutory audit reports, balance sheets as on 31.03.2015 and 31.03.2016 and the notes appended thereto established that the burden of CVD was not passed on and the amount of CVD paid was recorded as an asset. The argument is that the

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certificate issued by the CA supports the claim of the respondent for refund. Reliance is placed on the decision of this Court in ***Principal Commissioner of Customs (ACC Imports) v. Nokia India Sales Pvt. Ltd.,*** 2025:DHC:5400-DB to buttress the submission that in similar circumstances the certificate issued by an independent CA was held to be a valid document for discharging the burden, to claim a refund under Section 27(2) of the Act.

5. The undisputed facts are that no CVD was payable on the goods imported by the respondent during the relevant period, consequently a refund was due. The only issue was whether the burden of CVD paid by the respondent was passed on or not. Another aspect was whether the respondent had successfully rebutted the presumption under Section 28D of the Act that the burden of duty was passed on to the consumers.

6. The respondent before the AA produced invoices, a complete set of balance sheets for the relevant financial years and a certificate issued by the CA certifying that the burden of CVD paid was not passed on to the customers. The tribunal considered the legal position that the onus of rebutting the presumption under Section 28D of the Act was on the respondent. The FAA concluded that the burden of CVD was not passed on to the customers. A factual finding was recorded that the invoices produced showed that CVD was neither recovered from the buyers nor reflected in the invoices. The non-claiming of expenditure vis-à-vis the CVD paid was held not to be fatal to the claim of the respondent for refund of CVD paid, as it was

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not proof of the burden having been passed on.

7. The rejection of the CA certificate by the AA was contrary to Board Circular No. 18/2010 dated 07.08.2010. The reliance placed by the FAA on the CA certificate stating that the incidence of CVD was not passed on, was upheld by the tribunal being in consonance with the circular.

8. The decision in ***Nokia India Sales Pvt. Ltd.*** (supra) relied upon by the respondent supports the contention that the certificate of the CA cannot be ignored more so, when supported by other documents such as the books of account. The conclusion of the tribunal upholding the findings of fact recorded by the FAA suffers from no legal or factual error much less perversity. There is no question of law involved much less a substantial question of law.

9. The appeals are dismissed. Pending applications, if any, are also disposed of.

AVNEESH JHINGAN, J

SHAIL JAIN, J

OCTOBER 27, 2026
'JK'

Reportable:- **Yes**

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