

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Customs Appeal No. 85031 of 2023

(Arising out of Order-in-Appeal No. 1014(CRC-I)/2022(JNCH)/Appeals dated 29.09.2022 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

Gorakhram Haribux

Office No. 901, Maker Chamber-V,
Nariman Point, Mumbai 400 021.

Appellant

Vs.

**Commissioner of Customs (Import),
Nhava Sheva**

Jawaharlal Nehru Custom House,
Tal: Uran, Nhava Sheva 400 707.

Respondent

Appearance:

Shri Ramnath Prabhu with Ms. Ananya Maitin, Advocates, for the Appellant

Shri L.B. D'Coasta, Deputy Commissioner, Authorised Representative, for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 25.07.2025

Date of Decision: 25.07.2025

FINAL ORDER No. 86154/2025

Brief facts of the case are that in respect of 20 Bills of Entry filed by the appellant during the period from February 2015 to September 2015 after the goods were finally assessed and the goods were cleared for home consumption, on 07.10.2015 Revenue directed the importer who is the appellant to deposit Rs.6,81,839/- as 1% of the assessable value for initiation of investigation by Special Valuation Board (SVB). Investigations were completed on 11.07.2016 and it was informed by Deputy Commissioner of Customs that the value declared for assessment was correct transaction value and no additional customs duty was required to be recovered from the appellant/importer. Therefore, the appellant sought for refund of Rs.6,81,839/- through an application dated 30.09.2019 which was rejected by original authority through original order dated 05.03.2021 stating that the refund had been barred by limitation. Aggrieved by the order of

the original authority, appellant preferred appeal before learned Commissioner (Appeals) who through impugned order-in-appeal dated 29.09.2022 held that there is no provision under Customs Act to refund such amounts deposited.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that this extra duty deposited of 1% collected as per Board circular while undertaking valuation by SVB is held to be security by Central Board of Excise and Customs through circular No. 5/2016-Cus. dated 09.02.2016. Further, Hon'ble Delhi High Court in the case of Sentec India Company Pvt. Ltd. vs. Assistant Commissioner of Customs, Delhi reported at 2025 (3) TMI 75 – Delhi High Court as held that the period of limitation for seeking refund of the amount deposited as extra duty deposit is not applicable.

3. Heard the learned AR who has reiterated the finding of the impugned order.

4. I have carefully gone through the record of the case and submissions made by both sides. I note that the amount sought to be refunded was the amount collected by Revenue in the form of extra duty deposit after the goods were finally cleared on payment of duty. Therefore, by no stretch of imagination the said deposit can be called as customs duty. Further I find that Hon'ble Delhi High Court has dealt with the same issue in their ruling in the case of Sentec India Company Pvt. Ltd. (supra). For the sake of ready reference, I reproduce below para 13, 14, 19, 20 and 21 of the said ruling:-

"13. The only ground on which the refund has been rejected is that the application made under Section 27 of the Customs Act, 1962 is beyond the period of limitation prescribed under the provision i.e., beyond one year.

14. Therefore the short question before us is whether EDD constitutes a payment in the nature of customs duty under the scope of Section 27 of the Customs Act, 1962. This issue is no longer res integra. Firstly, Circular No.5/2016-Customs dated 9th February, 2016, as submitted by the Petitioner, expressly clarifies that payment collected after provisional assessment for

the release of goods shall be in the form of 'security deposit'. The relevant paragraphs of the circular are read as under:

"3.2 The Board has reviewed the practice relating to levy of 'Extra Duty Deposits' (EDD) in cases where SVB investigations are undertaken. It has been taken into consideration that 'Extra Duty Deposit' @ 1% of declared assessable value is being obtained from the importer for a period of 4 months during which time he is required to submit required documents and information to the SVB. In the event of his failing to do so, the EDD can be increased to 5% till such time the importer complies. Upon the importer complying with the requisition for documents and information, Circular 11/2001 — Cus dated 23.2.2001 provides that EDD shall be discontinued, while imports will continue to be assessed provisionally till the completion of investigations. In other words, the imports were continued to be assessed provisionally on the basis of a PD Bond but without any EDD. It has also been noted that many importers have represented on delays in dispensing of EDD, even though they have provided the required information and a period of 4 months has passed without the case having been decided. Therefore, the Board has decided that while reference to SVB requires the assessments to be provisional, for the sake of reducing transaction cost and bringing uniformity across Customs Houses, no security in the form of EDD shall be obtained from the importers. However, if the importer fails to provide documents and information required for SVB inquiries, within 60 days of such requisition, security deposit at a rate of 5% of the declared assessable value shall be imposed by the Commissioner for a period not exceeding the next three months. Simultaneously, the importer shall be granted a further period of 60 days to comply with the requisition for information & documents. If the importer fails to submit documents within this extended period, the Commissioner in charge of SVB may consider the use of other provisions of the Customs Act for obtaining documents / information from an importer for conducting investigations. In no case shall the imposition of Security Deposit exceed the period of three months specified above. Furthermore, the Board has also decided that the

importer would be free to choose whether the Security Deposit to be provided for the purposes of provisional assessment shall be by way of cash deposit or a Bank Guarantee. The form of Bond to be initially furnished by the importer is attached as Annexure D. The form of Bond to be used in a case where taking a Security Deposit becomes necessary is attached as Annexure E."

19. A perusal of Section 27 would show that the same deals with refund of customs duty. It is abundantly clear that EDD is not in the nature of customs duty. The deposit of the EDD was itself to secure any customs duty which may have been later on found to be payable, due to the allegation of underdeclaration. However, when the said allegation has been disproved and the Department has taken a view that there was no under-declaration, the substratum of the deposit of EDD itself no longer exists. The impugned order holding that the refund application is beyond the limitation is, thus, untenable. Moreover, the impugned order itself acknowledges that the said amount is over and above with duty which was determined by the SVB. The Customs Department could not have rejected the prayer for EDD refund.

20. Thus, the period of limitation for seeking refund of customs duty under Section 27 of the Customs Act, 1962, would not apply qua EDD. Under such circumstances, the prayer for relegating the Petitioner to the appellate remedy is also without merit. The petition is, accordingly, allowed.

21. The EDD which is lying deposited with the Customs Department shall be refunded to the Petitioner within two weeks from the date of release of this order. The Petitioner shall also be paid interest in accordance with law."

It is clear from the ruling by Hon'ble Delhi High Court that in respect of amount collected by Revenue in the form of EDD, period of limitation under Section 27 of Customs Act is not applicable. I, therefore, set aside the impugned order and direct Revenue to refund Rs.6,81,839/- within a period of one month from the date of issue of this order, along with applicable interest on the same.

5. In above terms, appeal is allowed.

(Dictated in the court)

(Anil G. Shakkarwar)
Member (Technical)

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