

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

REGIONAL BENCH

Customs Appeal No. 85797 of 2022

[Arising out of Order-in-Appeal No. MUM-CUS-KV-IMP-139/2021-22 NCH dated 31.12.2021 passed by the Commissioner of Customs (Appeals), Mumbai Zone-I.]

M/s. Minerva Enterprises

.....Appellant

3rd Floor, Office No. – 313,
Plot No. D 1-2, Shivlok House-II,
Main Najafgarh Road,
New Delhi – 110 015

VERSUS

**Commissioner of Customs (Import),
Mumbai-I**

.....Respondent

New Customs House, Ballard Estate,
Mumbai – 400 001

APPEARANCE:

Shri Ramchandra Mattlyil, Advocate for the Appellant

Shri Ram Kumar, Deputy Commissioner, Authorised Representative for the Respondent

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

FINAL ORDER NO. 86837/2025

Date of Hearing: 10.10.2025

Date of Decision: 26.11.2025

PER: DR. SUVENDU KUMAR PATI

Summery refusal by the Department to reassess 56 Bills of Entry through which imported mobile handsets were cleared between the period June, 2015 and September, 2015 with payment of CVD at a higher rate @12% so as to enable Appellant to get the benefit of Notification No. 12/2012-CE (Sr. No. 263A) duty @1% and consequential refund of payment of excess CVD after the judgment of Hon'ble Supreme Court passed in the case of *SRF Limited Vs. Commissioner of Customs, Chennai [2015 (318) ELT 607 (S.C.)]* that travelled up to the Commissioner (Appeals) once and remanded back

for a speaking order by the Adjudicating Authority that went against the Appellants, whose unsuccessful attempt before the Commissioner (Appeals) to effect such reassessment has brought the dispute to the present forum.

2. During course of hearing of the appeal learned Counsel for the Appellant Mr. Ramchandra Mattlyil submitted that the reason for rejection of the appeal in the impugned Order-in-Appeal is that Appellant had not produced any evidence to the effect that due to technical glitch in the computer system maintained by the Department, online payment @1% duty in conformity to the above noted Notification No. 12/2012-CE could not be made possible for which Appellant had paid duty @12% but two evidence viz. a letter copy of the Principal Commissioner of Customs (Imports), New Customs House, New Delhi dated 20.10.2016 addressed to the ADG, Directorate General of Systems, Customs & Central Excise as well as judgment of Hon'ble Bombay High Court passed in the case of *Micromax Informatics Ltd. Vs. Union of India*, reported in 2019 (369) ELT 543 (Bom.) (date of judgment 30.11.2018), in which such glitch has been noted, as contended by the petitioner, were placed before the Authorities Below who had not considered the same and rejected the reassessment sought by the Appellant. He further submitted that in the case of *ITC Limited Vs. Commissioner of Central Excise, Kolkata-IV*, reported in 2019 (368) ELT 216 (S.C.) Hon'ble Supreme Court on 18.09.2019 had clarified that order of assessment or reassessment can be done "under other relevant provisions of the Act" apart from Section 128 of the Customs Act and Appellant had sought for such reassessment under Section 17 of the Customs Act, 1962 but the same has not yielded the desire result as and that in view of ITC judgment referred above unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings, it would not be within the ken of Section 27 to set aside the order of self-assessment and re-assessment of duty for making refund and therefore without any fault on the part of the Appellant, benefit of Notification No. 12/2012-CE that was supposed to be applied/applicable in Appellant's case even subsequent to the assessment and clearance of goods in terms of final order passed by

the Hon'ble Supreme Court in the case of *SRF Limited Vs. Commissioner of Customs, Chennai*, reported in 2015 (318) ELT 607 (S.C.), it was not extended to the Appellant and it could not get the refund due that was accrued against payment of 12% CVD instead of 1% CVD for want of reassessment. In challenging the legality of the order refusing reassessment that was sought more than 4 years' after clearance of goods for home consumption, he further submitted that Section 17(3)(4)(5) neither provide for time limit for reassessment of self-assessed Bill of Entry nor mentioned that reassessment of self-assessed bill should be carried out before goods are released from Customs control and in support of his submission on these points, he relied upon the decision of *Share Medical Care Vs. Union of India*, reported in 2007 (209) ELT 321 (S.C.), *Unichem Laboratories Ltd. Vs. Collector of Central Excise*, reported in (2002) 7 Supreme Court Cases 145, *Applicomp India Ltd. Vs. Commissioner of Customs, Bangalore*, reported in 2007 (213) ELT 317 (Tri.-Bang.). In placing reliance further on the decision of *LP Rings Limited Vs. Commissioner of Customs (AIR), Chennai*, reported in 2006 (202) ELT 61 (Tri.-Chennai), *Calison Fibres Pvt. Ltd. Vs. Commissioner of Customs (Import), Nhava Sheva*, reported in 2019 (370) ELT 1097 (Tri.-Mumbai), *Kirloskar Ferrous Industries Limited Vs. Commissioner of Customs, Mangalore*, reported in 2021 (377) ELT 878 (Tri. Bang.), he sought for setting aside of the order passed by the Commissioner (Appeals) and directing the Assessing Officer to reassess the Bills of Entry by treating those to have been filed as application under Section 149 of the Customs Act.

3. *Per contra*, learned Authorised Representative Mr. Ram Kumar argued vehemently in support of the reasoning and rationality of the order passed by the Commissioner (Appeals). In submitting a synopsis containing list of relevant dates and points of law as well as fact, he argued that both Section 17 and Section 149 of the Customs Act applies to assessment/ reassessment to be made prior to the out of charge order was given for release of goods but Appellant had filed its application for reassessment nearly after four years of assessment of its Bills of Entry and the plea of a glitch in the system of the Department is taken after thought since the letter of the Principal

Commissioner of Customs (Imports), New Delhi dated 20.10.2016, on which Appellant is placing heavy reliance, establishes that system was required to be modified to reassess the Bills of Entry filed prior to 16.07.2015 and not after that. In distinguishing the decision of *Micromax Informatics Ltd. cited supra*, he further submitted that in the said case, refund had been directly sought without reassessment and Hon'ble Bombay High Court had ordered to process refund without reassessment of Bills of Entry but the same case law is no more applicable in view of Hon'ble Supreme Court judgment passed in the case of *ITC Limited, cited supra* and therefore, without any cogent proof that Appellant had in fact sought to avail benefit of Notification No. 12/2012-CE, its application for reassessment can never be held to be maintainable since otherwise it could have availed the benefit of notification for all subsequent Bills of Entry filed after 16.07.2015 till the end of disputed period that is up to end of September, 2015, which were being accepted by the computer system maintained by the Department.

4. We have gone through the appeal paper book, submissions made by the adversaries and relied upon judgments. At the outset, it is to be brought on record that entire clearance of imported goods were completed by September, 2015 and for the first time Appellant had sought for reassessment of those 56 Bills of Entry *vide* its application dated 23.12.2019 after a lapse of more than four years, so as to avail benefit of the Notification No. 12/2012-CE that provides for concessional rate of duty @1% instead of @12%, which remained disputed initially but subsequently settled by the Hon'ble Apex Court in the case of *SRF Limited, cited supra* and in the mean time there was no movement initiated by Appellant, at the time of filing of Bills of Entry, depositing tax dues, upon clearance of goods or at any time thereafter, apparently for the reason that Appellant was unaware of the benefit available under the said notification, since it was never in the case of the Appellant that indeed it had tried to make payment of CVD @1% but system was not accepting the same, since to that effect not a single piece of evidence is brought on record. More importantly, the relied upon letter sent by the Principal Commissioner of Customs (Imports), New Delhi on 20.10.2016, on which Appellant is harping

upon to establish system was not accepting the lower rate of duty has clearly demonstrated that up to 16.07.2015 amendment was required to be made since from 17.07.2015, suitable amendment was made in the system maintained by the Department. These reasons for such requirement for such modification to be allowed in the system for reassessment of Bills of Entry filed up to 16.07.2015 has been explained in para 3 of the said letter that would go to show that review petition of the Commissioner of Customs, Chennai-I filed in the said *SRF Limited* case was dismissed on 15.07.2015 (not 2016 as wrongly mentioned) after which necessary amendment was made in the system but not for the period prior to 16.07.2015, as the final judgment of the Hon'ble Supreme Court was passed in 2015. Further, Appellant has relied upon the judgment of the Hon'ble High Court of Bombay passed in the case of *Micromax Informatics Ltd., cited supra*, on 30.11.2018 which was meticulously distinguished by the Adjudicating Authority in his Order-in-Original dated 02.07.2021, the relevant para 19.1 is required to be reproduced here for better clarity:

19.1. The importer M/s. Micromax Informatics Limited, had informed the department to make the changes in EDI system, during the assessment. They requested the department for provisional release against Bond/Letter of Undertaking and in case not possible, duty was paid under protest at the time of assessment. They cleared the goods accordingly by paying applicable customs duty without claiming the benefit of Notification. They did not challenge the assessment of the Bills of Entry, to re-assess them by extending the benefit of above said Notification. They filed the Refund Applications Directly in Refund Section which were rejected on the grounds that the Bills of Entry should have been re-assessed or the importer should have challenged the assessment order in Appeal.

4.1 Not a single step, as followed by *Micromax Informatics Ltd. cited supra* as noted above, had been followed by the Appellant in the instant case and apparently after getting the knowledge of dismissal of review petition in the case of *SRF Limited* as well as acknowledgment of the latches in the system of the Respondent-

Department that was placed on record in the case of *Micromax Informatics Ltd.* on dated 30.11.2018 (relating to Bills of Entry prior period of 22.04.2015 concerning which non-acceptance of system was undisputed), Appellant had attempted to take the benefit of exemption notification at a much belated stage, after sleeping over its right for a long time and initiated the proceeding by filing request letter for re-assessment on dated 23.12.2019 under Section 17 of the Customs Act, which it has pleaded at the time of argument, with reference to *Calison Fibres Pvt. Ltd. Vs. Commissioner of Customs (Import), Nhava Sheva*, reported in 2019 (370) ELT 1097 (Tri.-Mumbai), that such application for reassessment should be treated as an application under Section 149 of the Customs Act as Appellant has got no option to seek a reassessment under Section 17 of the Customs Act. Be that as it may, going by Section 17 and its alleged provisions namely sub-Section 2, 3 & 4, that would deal with reassessment requiring examination or test of imported goods as well as the result of its verification/examination/testing of goods and going by proviso to Section 149 of the Customs Act, no reassessment or amendment of Bills of Entry or shipping bill, etc. can be done after the goods are cleared for home consumption or being exported except on the basis of documentary evidence which was in existence at the time of goods were cleared. Both the provisions would go to indicate that after clearance of goods neither reassessment nor amendment of the Bills of Entry could be done in the normal circumstances, unless the exceptions noted above, which is admittedly found absent in the Appellant's case, apart from the fact that the sole purpose for reassessment was to enable the Appellant to get refund as a consequence of judgment passed in another case i.e. in *SRF Limited*, cited *supra*. Such a refund is hit by the principle laid down in the case of *Mafatlal Industries Limited Vs. Union of India*, as reported in *Supreme Court reports [1996 SUPP. 10 SCR]*, the relevant para which reads:

"(iv) *It is not open to any person to make a refund claim on the basis of a decision of a Court or Tribunal rendered in the case of another person. He cannot also claim that the decision of the Court/Tribunal in another person's case has led him to discover the*

mistake of law under which he has paid the tax nor can he claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law. A person, whether a manufacturer or importer, must fight his own battle and must succeed or fail in such proceedings. Once the assessment of levy has become final in his case, he cannot seek to reopen it nor can he claim refund without re-opening such assessment/order on the ground of a decision in another person's case. Any proposition to the contrary not only results in substantial prejudice to public interest but is offensive to several well established principles of law. It also leads to grave public mischief. Section 72 of the Contract Act, or for that matter Section 17(1)(c) of the Limitation Act, 1963, has no application to such a claim for refund."

In view of our observation noted above and in carrying forward the judicial precedent set by Hon'ble Apex Court in the above referred decision, the following order is passed.

THE ORDER

5. The appeal is dismissed and the order passed by the Commissioner of Customs (Appeals), Mumbai Zone-I *vide* Order-in-Appeal No. MUM-CUS-KV-IMP-139/2021-22 NCH dated 31.12.2021 is hereby confirmed.

(Order pronounced in the open court on 26.11.2025)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)