M/S Vishal Video And Appliances Pvt. Ltd vs Commissioner Of Customs, Acc(Import) on 24 January, 2025

Author: Prathiba M. Singh

Bench: Prathiba M. Singh, Dharmesh Sharma

$~12 to 18, 20 to 24 & 26 to 44
* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CUSAA 2/2025, C
M/S VISHAL VIDEO AND APPLIANCES PVT. LTD
Through: Mr. Yogendra Ald
Arora, Ms. Purvi
Kumar, Advs. (IN
versus
COMMISSIONER OF CUSTOMS, ACC(IMPORT) ...
Through: Mr. Aditya Singl
Ritwik Saha and
Advs. with Mr. R
(Legal) ACC Impo
MATTERS)
Mr. Harpreet Sin
Counsel along wi
Mathur and Mr. S
Advs. (M: 981125
MATTERS)
WITH
+ CUSAA 3/2025, CM APPL996/2025
+ CUSAA 4/2025, CM APPL1001/2025
+ CUSAA 5/2025, CM APPL1003/2025
+ CUSAA 6/2025, CM APPL1007/2025
+ CUSAA 7/2025, CM APPL1009/2025
+ CUSAA 8/2025, CM APPL1014/2025
+ CUSAA 10/2025, CM APPL1018/2025
+ CUSAA 11/2025, CM APPL1020/2025
+ CUSAA 12/2025, CM APPL.1022/2025
+ CUSAA 13/2025, CM APPL.1024/2025
+ CUSAA 14/2025, CM APPL.1027/2025
+ CUSAA 16/2025, CM APPL.1031/2025
+ CUSAA 17/2025, CM APPL.1033/2025
+ CUSAA 18/2025, CM APPL.1035/2025
+ CUSAA 19/2025, CM APPL.1037/2025
+ CUSAA 20/2025, CM APPL.1040/2025
+ CUSAA 21/2025, CM APPL.1042/2025

CUSAA 2/2025 & connected matters

\+ CUSAA 22/2025, CM APPL.1044/2025
\+ CUSAA 23/2025, CM APPL.1046/2025
\+ CUSAA 24/2025, CM APPL.1048/2025
\+ CUSAA 25/2025, CM APPL.1051/2025
\+ CUSAA 26/2025, CM APPL.1053/2025
\+ CUSAA 27/2025, CM APPL.1056/2025
\+ CUSAA 28/2025, CM APPL.1058/2025
\+ CUSAA 29/2025, CM APPL.1060/2025
\+ CUSAA 30/2025, CM APPL.1062/2025
\+ CUSAA 31/2025, CM APPL.1064/2025
\+ CUSAA 32/2025, CM APPL.1066/2025
\+ CUSAA 33/2025, CM APPL.1069/2025
\+ CUSAA 34/2025, CM APPL.1072/2025

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE DHARMESH SHARMA

ORDER

% 24.01.2025

1. This hearing has been done through hybrid mode.

2. These appeals have been filed by the Appellant under Section 130 of the Customs Act, 1962 challenging the impugned Final Order No. 55859- 55891/2024 dated 4th June, 2024 passed by the Customs Excise & Service Tax Appellate Tribunal (hereinafter 'CESTAT'). In order to appreciate the contentions raised, the background in these appeals deserves to be captured.

3. The Appellant is a Company, incorporated under the Companies Act, 1956, engaged in trading of electronic products such as mobile phones etc,. As part of its business activities, the Appellant had imported mobile handsets/cellular phones for which various bills of entry were filed during the years 2014-15 and 2015-16.

4. The Appellant's case is that it was deprived from claiming the tax benefit in respect of the above said imports in terms of Notification No. This is a digitally signed order.

 12/2012-CE dated 17 March, 2012, due to restrictions imposed by Circular No. 37/2001-Cus. dated 18th June 2001.

5. However, the issue of applicability of a similar notification, being Notification No. 06/2002-CE dated 01 March, 2002, on importers was settled by the Hon'ble Supreme Court in the matter of SRF Ltd. vs. Commissioner of Customs, Chennai [2015 (318) E.L.T. 607 (S.C.)], which allowed the Appellant to claim the benefit under the said Notification dated 17 March, 2012.

6. Accordingly, the Appellant had sought refund of excess custom duty paid with respect to thirty-one bills of entry. The Appellant, for this purpose, had filed two refund applications before the Deputy Commissioner (Refunds) on 25th September, 2015 categorizing the thirty-one bills of entry into two batches consisting of 14 and 17 bills, respectively.

7. The said refund applications were rejected by Deputy Commissioner (Refunds) vide Order dated 30th June, 2016 on the ground that the Appellant has not provided re-assessed bills of entry in respect of said refund claims.

8. The Appellant had preferred an appeal against the said Order dated 30th June, 2016 in W.P.(C) 7851/2016. The Coordinate Bench of this Court had followed the decision in Micromax Informatics Ltd. v. Union of India, [2016 (335) ELT 446 (Del)] and Yu Televentures v. Union of India, [W.P.(C) 6750/82016, decided on 3rd August, 2016] and had, accordingly, allowed the refund on 5th September, 2016 in the following terms.

> "Since the facts are identical, we are of the opinion that the operative portion of the order should be identical to the one in Yu Televentures (supra). It is hereby directed consequently that the petitioner's refund claim is, therefore, allowed. The respondents are directed to pay This is a digitally signed order.
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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 21:53:56 to the petitioner, the claimed amount together with interest due thereof upto the date of refund - which shall be done within three weeks from today."

9. The Department then preferred an appeal to the Supreme Court being SLP(C) No. 2865/2017 assailing the High Court order dated 5th September, 2016, which was then tagged along with a batch of appeals with the lead appeal - C.A.No. 293-294/2009 titled as 'ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV'.

10. The Supreme Court vide its judgment dated 18th September, 2019 in ITC (supra) reversed the decisions in Micromax Informatics Ltd. (supra) and Yu Televentures (supra). It was directed that until and unless the assessment itself was finally modified, the refund could not be allowed. The operative portion of the Supreme Court's decision is set out below:

> "45. Reliance was also placed on a decision of the Rajasthan High Court with respect to service tax in Central Office Mewar Palace Organisation v. Union of India. In view of the aforesaid discussion, we are not inclined to accept the reasoning adopted by the High Court, that too is also not under the provisions of the Customs Act.
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> 46. The decision in Intex Technologies (India) Ltd. v. Union of India has followed Micromax. The reasoning employed by the High Courts of Delhi and Madras does not appear to be sound. The scope of the provisions of refund under Section 27 cannot be

enlarged. It has to be read with the provisions of Sections 17, 18, 28 and 128.

47. When we consider the overall effect of the provisions prior to amendment and post-amendment under the Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the This is a digitally signed order.

 appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self- assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act.

48. Resultantly, we find that the order(s) passed by the Customs, Excise and Service Tax Appellate Tribunal are to be upheld and those passed by the High Courts of Delhi and Madras to the contrary, deserve to be, and are, hereby set aside. We order accordingly. We hold that the applications for refund were not maintainable. The appeals are accordingly disposed of. Parties to bear their own costs as incurred."

11. As per the Supreme Court's decision in ITC (supra) refund applications could not be directly entertained without the order of assessment being modified through an order under Section 128 of the Customs Act, 1962 or under any other relevant provisions of the Act.

12. Pursuant to the above decision passed by the Supreme Court on 18th September, 2019, the Appellant filed thirty-one appeals before the Commissioner (Appeals) under Section 128 of the Customs Act, 1962 seeking re-assessment of thirty-one bills of entry. The said appeals were accompanied by thirty-one applications under Section 14 of Limitation Act, 1963 seeking exclusion of the period of litigation i.e., from 21st October, 2014 (date of the Assessment Order) to 18th September, 2019 (date of pronouncement of ITC (supra)), in computation of the limitation period in filing of appeals.

13. The Commissioner (Appeals), vide the order dated 17th December 2020 rejected the said thirty-one appeals on two grounds namely,

(i) the Appellant was not litigating on proceedings of like nature as mandated by Section 14 of Limitation Act, 1963 i.e., the previous litigation sought for refund and the present appeal seeks re- assessment.

(ii) the Appellant was not prosecuting in good faith in a wrong forum lacking jurisdiction as mandated by Section 14 of Limitation Act, 1963.

14. These orders were again challenged before the CESTAT in Customs Appeal No 50510 - 50540 of 2021. These appeals were tagged along with a different yet related set of appeals preferred by the same Appellant in Customs Appeal No 50091 of 2022 & 50286 of 2022.

15. In Customs Appeal No 50510 - 50540 of 2021, the CESTAT reversed the above two findings of the Commissioner (Appeals) in reference to M.P. Steel Corporation v. Commissioner of Central Excise [2015 (4) TMI 849 - Supreme Court] and P. Sarathi v. State Bank Of India [2000 (5) SCC 355]. However, CESTAT dismissed the said appeals upon observing that the period of limitation prescribed under Section 128 of the Customs Act, 1962 i.e., 90 days had lapsed even after excluding the period of litigation under Section 14 of the Limitation Act. The relevant paragraphs of the impugned CESTAT order dated 4th June, 2024 read as under:

> "85. The decision in ITC(supra) was rendered by the Supreme Court on 18.09.2019 and thereafter the appeals were filed before the Commissioner (Appeals) on 17.12.2019 i.e. after a period of almost three months. The total time taken by the appellant from 18.07.2015 upto 25.09.2015 and then from 18.09.2019 to 17.12.2019 is much more than the maximum period of the 90 days contemplated under section 128 of the Customs Act. Thus, even though the benefit of section 14 of the Limitation Act for exclusion of time period This is a digitally signed order.
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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 21:53:56 from 25.09.2015 upto 18.09.2019 would be available to the appellant, but still the 31 appeals would have to be dismissed as having been filed beyond the time period contemplated under section 128(1) of the Customs Act.
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> 86. The Commissioner (Appeals), therefore, committed □□illegality in dismissing the appeals."

16. The rationale in the order of the CESTAT is that, though, the appeals were filed within 90 days of the passing of the judgment by the Supreme Court in ITC (supra), the time which has elapsed between the bills of entry and the application for refund by the Appellant would not be condonable and hence the appeals were dismissed by CESTAT. The Appellant has preferred these appeals against this order of CESTAT dated 4th June, 2024.

17. This Court, upon perusal of the appeals and documents annexed herewith, has noticed that in Customs Appeal Nos.50510 - 50540 of 2021, the number of days between the decision of Supreme Court in ITC (supra) i.e., 18th September, 2019 and date of filing the appeals before the Commissioner (Appeals) i.e., 17th December, 2019 is exactly 90 days. Therefore, the primary question becomes whether the period elapsed between the date of filing respective bills of entry and

date of filing the application for refund would be condonable beyond the statutorily prescribed period of 90 days or not?

18. These matters have had a long history. The bills of entry date back to 2014 and the applications for refund were filed way back in 2015. After the said applications were filed, in fact, the refund was allowed. These bills of entry were subject matter of adjudication before this Court and the matter has then travelled a long way till the Supreme Court. In the earlier round, the issue This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 21:53:56 of delay between the bill of entry and the application for refund has never been raised and it has, therefore, reached a finality. That period cannot now be calculated for the purpose of holding that the appeals filed before the CESTAT after the judgment in ITC (supra) are delayed. In fact, the appeals are filed within the 90-day period from the date of pronouncement of judgment in ITC (supra). Even the benefit of Section 14 would have to be given to the Appellant in this case in view of the fact that the fundamental basis for the refund has itself been changed after the decision in ITC (supra) by the Supreme Court. The delay in any case is, therefore, condonable. The appeals deserve to be heard on merits.

19. The Appellant cannot be non-suited on the ground that the appeals are barred by limitation.

20. Under these circumstances, the appeals are allowed. The appeals before the Commissioner (Appeals) are held to be within the limitation period. In view thereof, the Commissioner (Appeals) shall adjudicate the appeals on merits and not on the ground of limitation.

21. All the appeals are disposed of. All pending applications (if any) are disposed of.

PRATHIBA M. SINGH, J.

DHARMESH SHARMA, J.

JANUARY 24, 2025 dj/am This is a digitally signed order.

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