



ALO Law Office- IDT Tax / Arbitration / Litigation

Date: 30.04.2025

CESTAT Kolkata quashing a demand notice for recovery of a SAD refund

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Kolkata Bench, in Final Order No. 76020/2025 dated 24 April 2025, delivered a significant ruling in favour of KEC International Ltd., quashing a demand notice for recovery of a Special Additional Duty (SAD) refund.

Background:

- KEC International Ltd., a major manufacturer of power transmission equipment, had entered into an agreement with Power Grid Corporation of India Ltd. for setting up fibre optic cabling infrastructure.
- In order to fulfil contractual obligations, KEC imported OPGW fibre optic cables and accessories and cleared the same for home consumption on 22 January 2014.
- The company paid all applicable duties including SAD and subsequently sold the goods to Power Grid, discharging VAT/CST, and filed for a SAD refund under Notification No. 102/2007-Cus.
- The refund claim was sanctioned on 26 September 2014 after due verification by Customs.

Dispute:

- More than two years later, on 3 November 2016, the department reopened the case alleging irregularities and issued a Show Cause Notice on 6 June 2018 to recover the refunded amount.
- The adjudicating authority upheld the demand with interest and penalty, prompting KEC to appeal.

Tribunal's Observations:

- The Tribunal held that the Show Cause Notice was clearly barred by limitation.

- No appeal had been filed against the original refund sanction order.
- Invocation of the extended limitation period without any evidence of suppression or fraud was unjustified.

Final Verdict:

- The Tribunal set aside the impugned order confirming demand and penalty.
- The appeal was allowed with consequential relief.

Legal Significance:

This ruling reaffirms the principle that refund recovery actions must adhere to statutory time limits. In absence of fraud or suppression, reopening of settled refund claims after years is impermissible.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Kolkata

Disclaimer

Write to us at office@aadrikaalaw.com

Tel: +91-11-4999 2707 | +91-9999005379

www.aadrikaalaw.com

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76169 of 2019

(Arising out of Order-in-Original No. KOL/CUS/CC/81/ARS/2018 dated 06.12.2018 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. KEC International Limited

Halwasiya Mansion, 6/2, Moira Street,
Kolkata – 700 017

: Appellant

VERSUS

Commissioner of Customs (Port)

Custom House, 15/1, Strand Road,
Kolkata – 700 001

: Respondent

APPEARANCE:

Smt Ekta Jhunjhunwala, Advocate,
Shri Deepro Sen, Advocate,
for the Appellant

Shri Subrata Debnath, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76020 / 2025

DATE OF HEARING / DECISION: 24.04.2025

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal, contesting the issue on the ground of limitation.

2. The facts of the case are that the appellant is engaged in the manufacture and supply of power transmission equipment. The appellant had entered into agreements dated 27.03.2012 with M/s. Power Grid Corporation of India Ltd. for establishing fibre optic cabling packages in the eastern region of the country. As per the said agreements, the appellant was obligated to supply all equipment which were

necessary for establishment of fibre optic cable package including the OPGW fibre optic cables and other accessories cable along with performance of services such as survey, transportation, insurance, delivery, etc., in relation to the fibre optic cabling package.

3. In order to fulfil its obligation under the contract, the appellant imported certain goods like OPGW fibre cables, splice enclosures, pass-through tension assembly, etc., and cleared the same for home consumption through two Bills of Entry dated both dated 22.01.2014. The applicable Customs duties on the said imported goods, including Special Additional Duty (SAD), were discharged by the appellant.

4. After having cleared the goods imported under the above said Bills of Entry, the appellant sold the same to M/s. Power Grid Corporation of India Ltd. and the said imported goods were supplied by the appellant under the cover of 21 numbers of invoices, all dated 23.01.2014 and applicable VAT / CST were duly paid.

5. Subsequently, the appellant filed a claim for refund of Special Additional Duty (SAD) paid on the said importation, under Notification No. 102/2007-Cus. dated 14.09.2007. The said refund claim was sanctioned to the appellant vide Order dated 26.09.2014.

6. Thereafter, after expiry of more than two years, the Department reopened the matter vide a letter dated 03.11.2016 by alleging irregularities in the refund granted to the appellant.

6.1. On that basis, a Show Cause Notice was issued on 06.06.2018 and the matter was adjudicated vide the impugned order wherein demand, along with interest and penalty, was confirmed against the appellant

6.2. Against the said order, the appellant is before us.

7. The Ld. Counsel appearing on behalf of the appellant submits that as the refund claim was sanctioned after due verification, on 26.09.2014, the Show Cause Notice issued on 06.06.2018 without challenging the refund sanction order passed, is barred by limitation. Hence, it is prayed that the impugned order be set aside.

8. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order.

9. Heard the parties and considered their submissions.

10. It is a fact on record that the refund claim of SAD filed by the appellant, under Notification No. 102/2007-Cus. dated 14.09.2007, was sanctioned to them on 26.09.2014. Therefore, the impugned Show Cause Notice, which has been issued on 06.06.2018 for recovery of the said refund granted to the appellant, is highly barred by limitation.

10.1. Admittedly, no appeal has been filed against the said order of sanction of the refund claim. In these circumstances, the Show Cause Notice issued to the appellant by invoking the extended period of limitation, is barred by limitation.

11. In these circumstances, no demand is sustainable against the appellant. Accordingly, the impugned order is set aside.

12. In the result, the appeal is allowed, with consequential relief, if any, as per law.

(Operative part of the order was pronounced in open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd