



ALO Law Office- IDT Tax / Arbitration / Litigation

Date: 07.07.2025

CESTAT Mumbai Rejected Revenue Appeals and Upholds SAD Refund

Background of the Case

Ram Ratna Infrastructure Pvt. Ltd. imported goods on which they paid 4% Special Additional Duty (SAD) under Section 3(5) of the Customs Tariff Act, 1975. These goods were subsequently sold on payment of Value Added Tax (VAT). The company filed two refund applications:

- ₹12,06,790/- and
- ₹2,59,343/-

claiming refund of SAD paid, supported by CA certificates confirming that the burden of duty had not been passed on to the buyer.

The original adjudicating authority rejected the refund claims on the ground of unjust enrichment. However, the Commissioner (Appeals) allowed the refund, holding that the company was entitled to it and no unjust enrichment had occurred.

Revenue's Arguments

The Revenue challenged the Commissioner (Appeals)'s order by arguing:

1. The buyer might have availed VAT credit, which implies the incidence of SAD was indirectly passed on.
2. The CA certificate contradicted the sales invoice, which mentioned VAT had been charged.

Tribunal's Observations

The Tribunal dismissed both appeals, making the following key findings:

- Charging VAT and passing it to buyers does not amount to passing on SAD.
- The endorsement on sales invoices clearly stated: “*No credit of additional duty of customs levied under sub-section (5) of Section 3 of Customs Tariff Act, 1975 shall be admissible.*”
- The Commissioner (Appeals) had correctly interpreted the law and facts.
- The Revenue's argument was based on a flawed assumption and lacked legal merit.

The Tribunal cited the precedent in *Commissioner of Customs, Kandla vs. PMC Project India Pvt. Ltd.* [2019 (370) ELT 1429 (Tri.-Ahmd.)], reiterating that VAT input credit by buyer does not impact SAD refund eligibility.

Final Verdict

The CESTAT dismissed both Revenue appeals and affirmed the Commissioner (Appeals)'s order allowing refund of SAD to Ram Ratna Infrastructure Pvt. Ltd.

Legal Takeaway

This ruling reiterates that:

- SAD refunds are not barred merely due to VAT being charged on resale,
- Unjust enrichment must be clearly proven, not presumed.
- A properly certified CA certificate and invoice declaration hold significant evidentiary value.

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 Mumbai

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

Customs Appeal No. 87030 of 2019

(Arising out of Order-in-Appeal No. 412 to 413/CRC-SAD-VI/2019/JNCH/Appeal-II dated 05.01.2018 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

Commissioner of Customs, Nhava Sheva-III **Appellant**
JNPT, Custom House, Nhava Sheva, Raigad 400 707.

Vs.

Ram Ratna Infrastructure Pvt. Ltd. **Respondent**
Ram Ratna House, Oasis Complex,
P.B. Marg, Worli, Mumbai.

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Customs Appeal No. 85645 of 2023

(Arising out of Order-in-Appeal No. 412 to 413/CRC-SAD-VI/2019/JNCH/Appeal-II dated 05.01.2018 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

Commissioner of Customs, Nhava Sheva-III **Appellant**
JNPT, Custom House, Nhava Sheva, Raigad 400 707.

Vs.

Ram Ratna Infrastructure Pvt. Ltd. **Respondent**
Ram Ratna House, Oasis Complex,
P.B. Marg, Worli, Mumbai.

Appearance:

Shri C.S. Vinod, Assistant Commissioner, Authorised Representative for the Appellant
Shri J.C. Patel, Advocate, for the Respondent

CORAM:

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

Date of Hearing: 02.07.2025

Date of Decision: 02.07.2025

FINAL ORDER No. 86045-86046/2025

Above stated two appeals are taken for decision together since both the appeals filed by Revenue are arising out of a common order-in-appeal wherein two different orders-in-original were decided.

2. Brief facts of the case are that the respondent imported goods and paid 4% special additional duty of customs leviable

under Section 3(5) of Customs Tariff Act, 1975, which is popularly known as SAD. In one case the amount of SAD paid on the goods sold by the respondent on payment of VAT was Rs.12,06,790/- and in the other case it was Rs.2,59,343/-. Respondent filed application for refund of SAD in two separate applications for the above stated amounts of SAD paid on the basis of the fact that the goods were sold and VAT was paid on the same. Original authority rejected the refund on the ground of unjust enrichment. Respondent preferred appeal before learned Commissioner (Appeals) who decided both the orders-in-original in one common impugned order-in-appeal wherein he has held that there was no unjust enrichment and the respondent was eligible for refund of the above stated two amounts. Aggrieved by the said order, Revenue has filed these two appeals.

3. Heard the learned AR. Learned AR has submitted that the grounds for filing appeal in both the cases are same and they are (a) that the respondent has consumed the goods and, therefore, the burden of SAD has not been passed on; (b) the C.A.'s certification that burden has not been passed on is contrary to the sales invoice raised by the respondent.

4. Heard the learned counsel for the respondent. Learned counsel for the respondent has submitted that learned Commissioner (Appeals) has elaborately dealt with the issue of unjust enrichment in para 16 & 18 of the impugned order wherein learned Commissioner (Appeals) has held that the C.A. certificate has sufficiently proved that the burden of SAD was not passed on to the buyers of the goods. Further he has submitted that the ground stated by Revenue is with the presumption that since VAT was paid on the goods and the purchaser of the goods was eligible to avail credit of VAT, Revenue has contended that the certification by C.A. that the incidence has not been passed on is contrary to the sales invoice. He has shown a copy of the sales invoice dated 11.01.2017 wherein VAT is charged and endorsement is made in the invoice stating that "no credit of additional duty of customs levied under sub-section (5) of Section 3 of Customs Tariff Act, 1975 shall be admissible." He has also relied on final order of this Tribunal in the case of Commissioner of Customs, Kandla vs. PMC

Project India Pvt. Ltd. reported at 2019 (370) ELT 1429 (Tri.-Ahmd.) and submitted that the Tribunal has held that passing of VAT to the purchaser of goods is not passing on the incidence of SAD.

5. I have carefully gone through the record of the case and submissions. I do not find any strength in the grounds raised by Revenue. On the contrary, the order passed by learned Commissioner (Appeals) is a reasoned order. The passing of VAT does not mean that burden of SAD has been passed on. In view of the clear position of law, I do not find any merit in the appeals filed by Revenue.

6. Therefore, I dismiss both the appeals filed by Revenue and affirm the impugned order-in-appeal.

(Dictated in the court)

(Anil G. Shakkwar)
Member (Technical)

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