ALO Law Office- IDT Tax I Arbitration I Litigation

Date: 04.07.2025

CESTAT Delhi- Refund of ADD Permissible Despite Clerical Self-Assessment Error

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Delhi has ruled that the refund of Anti-Dumping Duty (ADD) paid due to a clerical self-assessment error is admissible, provided substantive conditions are met. The Tribunal held that procedural lapses cannot defeat substantive rights, especially when the excess duty paid is evident from the Bill of Entry and supported by a valid exemption.

Case Background

- **Appellant**: Uflex Limited, Noida
- **Import**: 29 boxes of Aluminium Foil (6.3 microns) from China
- **Bill of Entry**: No. 2535627 dated 21.09.2022
- **Declared Value**: ₹68.29 lakh
- **Duty Paid**: Basic Customs Duty, SWS, IGST, and ADD, despite ADD being exempted for 6.3-micron aluminium foil under Notification No. 51/2021-Cus (ADD) dated 16.09.2021
- **Refund Sought**: ₹7,14,018/- (₹6,05,100 ADD + ₹1,08,918 IGST)

Due to a clerical error, Uflex self-assessed and paid ADD. The company filed:

- A request for reassessment on 12.10.2022

- A refund application on 13.10.2022

Both were rejected, citing:

- Finality of self-assessment under Section 17 of the Customs Act
- Supreme Court decisions in Priya Blue Industries and ITC Ltd.

Tribunal's Key Findings

1. Section 14 of the Limitation Act applies: The Tribunal ruled that Uflex was entitled to the benefit of Section 14 as they had pursued their reassessment request in good faith before a competent authority who refused to act, treating the matter as outside their jurisdiction. Thus, the time spent between the reassessment application and its rejection was to be excluded from limitation.

2. Rejection of Refund on Procedural Grounds Unjustified:

- The Tribunal noted that the ADD paid was exempted, and the excess payment was evident from the BOE.
- Relying on Article 265 of the Constitution, the Tribunal observed that no tax or duty can be retained without authority of law.
- The self-assessment error was clerical, and the refund claim was substantively valid.

3. Apex Court Judgments Distinguishable:

- The CESTAT distinguished the Priya Blue and ITC Ltd. rulings, as Uflex had simultaneously filed for reassessment and refund—unlike those cases where no challenge to assessment had been made.

4. Substantive Rights Prevail Over Procedural Lapses: The Tribunal cited the Supreme Court in Ramnath Exports Pvt. Ltd. v. Vinita Mehta (2022) and other High Court rulings to hold that procedural defects should not defeat substantive rights.

Final Verdict

- Rejection of refund and reassessment was improper
- Appeal allowed
- Refund of ₹7,14,018/- ordered in favor of Uflex Limited

Legal Significance

- Reaffirms that clerical errors in self-assessment are rectifiable
- Encourages substantive justice over rigid procedural formalism
- Sets precedent for treating reassessment and refund applications holistically when filed in tandem
- Reinforces the obligation of Customs to honor valid exemption notifications

Conclusion:

This CESTAT ruling serves as a powerful precedent for importers who inadvertently pay excess duty despite applicable exemptions. The decision emphasizes that legitimate refunds cannot be denied merely due to procedural errors—especially when the excess payment is clearly evident and legally unjustifiable.

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 Delhi

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 51897 of 2024

[Arising out of Order-in-Appeal No. D-II/IC/IMP/TKD/33/2024-25 dated 17.05.2024 passed by the Commissioner of Customs (Appeals), New Delhi]

M/s. Uflex Limited **...Appellant**
A-1, Sector 60,
Noida, Uttar Pradesh - 201301

VERSUS

Commissioner of Customs (Import)-
New Delhi **...Respondent**
ICD, Tughlakabad,
New Delhi - 110020

APPEARANCE:
Shri LalitendraGulani, Advocate for the Appellant
Shri M.K. Chawda, Authorized Representative for the Respondent

CORAM:HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 04.03.2025
DATE OF DECISION: **02.07.2025**

FINAL ORDER No. 50956/2025

DR. RACHNA GUPTA

In the present appeal, the appellant, M/s. Uflex Limited, is an importer. Appellant imported 29 boxes of aluminum foil measuring 6.3 microns (hereinafter referred to as impugned goods) in thickness of varied lengths from Jhangsu Zhongji Lamination Materials Company Limited, China vide Bill of Entry No 2535627 dated 21.09.2022 (hereinafter referred to as BOE) declaring the assessable value as Rs 68,29,336/- on payment of basic customs duty, social welfare surcharge, integrated tax, & Anti-dumping duty (as per the Notification No. 51/2021-Cus (ADD). However due to clerical error (as claimed by appellant), the said Bill of Entry was

self assessed including Anti-Dumping Duty (ADD) as against the aforesaid Notification No. 51/2021 dated 16.09.2021 under which the Anti Dumping Duty on Aluminium Foil of 6.3 Microns is exempted.

2. Accordingly, appellant preferred an application dated 12.10.2022 vide Letter dated 12.10.2022 seeking reassessment of impugned Bill of Entry dated 21.09.2022 and also another application seeking refund of excess duty paid amounting to Rs.7,14,018/- (Anti Dumping Duty of Rs.6,05,100/- + differential IGST of Rs.1,08,918/-). However, the Adjudicating Authority vide Order-in-Original bearing No. 148/2022 dated 19.12.2022 rejected the application for reassessment of BOE for the reasons that in terms of Section 128 of the Customs Act it should be filed before the appellate authority. It also rejected the refund claim citing Hon'ble Supreme Court in the case of **M/s Priya Blue Industries Ltd. vs Commissioner of Customs (Prev.) as reported in [2004(172) ELT 145 (S.C.)].** This order was challenged before Commissioner (Appeals) seeking reassessment of BOE while praying for exclusion of the time spent in pursuing the application seeking reassessment of impugned BOE dated 21.09.2022 before original adjudicating authority. Thus the time from 12.10.2022, the date of application praying reassessment, till the date of receipt of Order-in-Original i.e. 22.12.2022 was prayed to be excluded in view of Section 14 of the Limitation Act, 1963. It was contended that the reassessment proceedings were diligently prosecuted in good faith, however, the original adjudicating authority rejected the

request for want of jurisdiction. But Commissioner (Appeals) rejected the appeal on both the counts vide Order-in-Appeal bearing No. 33/2024-25 dated 17.05.2024. Being aggrieved, the appeal has been filed before this Tribunal.

3. I have heard Shri LalitendraGulani, learned Advocate for the appellant and Shri M.K. Chawda, learned Authorized Representative for the department.

4. Ld. Counsel for the appellant submitted that due to some clerical error the above referred Bill of Entry were assessed inclusive of Anti Dumping Duty(ADD) whereas the ADD is exempted vide customs Notification No. 51/2021 dt. 16.09.2021. It is brought to notice that an amount of Rs.6,05,100/- has been paid as ADD including differential IGST Rs.1,08,918/- against above referred shipments. The appellant vide letter dated 12.10.2022 requested to reassess the impugned BOEs without ADD (as per notification) and to refund excess duty paid of Rs. 6,05,100/- (Anti-dumping duty) and differential IGST of Rs. 1,08,918/-i.e a total of Rs. 7,14,018/-. But both the requests have wrongly been rejected. Ld. Counsel also submitted that the burden of excess duty deposited has not been passed on to buyer or to any other person accordingly stands fulfilled requirement of the principle of unjust enrichment. With these submissions the order under challenge (O-I-A dated 17.05.2024) is prayed to be set aside and the present appeal is prayed to be allowed.

5. While rebutting the submissions made on behalf of the appellants, it is submitted by Ld. Departmental Representative that the concerned Appraising Group, vide letter C. No. VIII/ICD/TKD/6AG/Gr.IV/OOC/143/2022 dated 14.12.2022, informed that the importer's request for reassessment has been examined and the same is denied as the self-assessment has attained finality and the goods have already been out of charge. The refund application was also rejected as per Apex Court's Order dated 18.09.2019 in Civil Appeal No. 293 & 294 in the matter **of M/s ITC Ltd. vs. C.C.E, Kolkata-IV reported as (2019)17 SCC 46,** wherein it has been held that unless the order of assessment is appealed, no refund application against the assessed duty can be entertained.Earlier also Hon'ble Supreme Court in the case of **M/s Priya Blue Industries Ltd. vs Commissioner of Customs (Prev.) as reported in [2004 (172) ELT 145 (S.C.)]**held that a refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The officer while considering the refund claim cannot review an assessment order.Hence there is no infirmity in the impugned order rejecting both the applications i.e. one for seeking reassessment of BOE and another for seeking refund of amount of ADD/IGSP paid. With these submissions Ld. Departmental Representative has requested for the appeal to be dismissed.

6. Having heard the rival contentions, perusing the record and the decisions referred by the adjudicating authorities below and those relied upon by the appellant, I observe that:

6.1 The Commissioner (Appeals) dismissed the first appeal vide the order under challenge on the following grounds:

(i) Section 14 of the Limitation Act applies only where prior proceedings were pursued before a court or authority lacking jurisdiction. In this case, the refund application had been filed before the competent authority and there was no jurisdictional defect. Since the refund application was correctly instituted and not before a "wrong forum", Section 14 could not be invoked to save the reassessment appeal from the bar of limitation.

(ii) The refund application pertained only to recovery of excess ADD/IGST already paid, while the present appeal sought reassessment of the Bill of Entry:The two proceedings were based on materially different causes of action. Since reassessment was not sought in the refund claim, the appellant could not derive any benefit from the time spent pursuing that claim for purposes of limitation.

6.2 In view thereof, the issues to be adjudicated are opined as follows:

(i) Whether the appellant is entitled for the benefit of section 14 of limitation Act?

(ii) Whether the refund claim filed by appellant without getting self assessed BOE is rightly rejected?

6.3 **Issue No. 1**

6.3.1 Foremost I take a note of relevant dates :

- Impugned Bill of Entry - 21.09.2022
- Application for reassessment – 12.10.2022
- Refund Claim - 13.10.2022
- Letter by original adjudicating authority to concerned appraiser asking for Reassessment (O-I-O) of BOE - 17.11.2022
- Response from appraiser about reassessment 14.12.2022
- Order-in-Original - 19.12.2022
- Receipt of the said O-I-O - 22.12.2022
- Limitation Period from the Impugned Bill of entry - 20.11.2022
- Final date for filing of first appeal (after the exclusion of the limitation period-70 days-calculated by the appellant) - 29.01.2023.

From this chronology it becomes clear that the original adjudicating authority rejected both the requests of the appellant i.e. not only the refund claim but the request for reassessment of BOE was rejected on the ground of jurisdiction, as instead of treating the request of reassessment of BOE as an appeal, the original adjudicating authority had forwarded the said request to the appraiser. Appellant has claimed benefit of Section 14 of Limitation Act with respect to the request for reassessment of BOE.

6.3.2 To further adjudicate the request for exclusion of time of proceeding *bona fide* in court without jurisdiction, I have perused Section 14 of Limitation Act. It reads as follows:

> *(i) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*
>
> *(ii) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

From the perusal of the said provision, I observe that following are the requirement to get benefit of Section 14 of the Limitation Act:

(i) The litigant has been prosecuting with due diligence another proceedings;

(ii) The proceeding can be in the court of first instance or appeal or revision;

(iii) The proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of like nature, is unable to entertain it.

In the present appeal the original adjudicating authority should have decided the application seeking reassessment of BOE. But it marked that to the appraiser who rejected the request observing as follows:

"I find that the concerned Appraising Group, vide letter C.No.VIII/ICD/TKD/6AG/Gr.IV/OOC/143/2022 dated 14.12.2022, informed that the importer request has been examined and the same is denied as the self-assessment has attained finality and the goods have already been out of charge and as per Apex Court's Order dated 18.09.2019 in Civil Appeal No. 293 & 294 in the matter of M/s ITC Ltd. vs. C.C.E., Kolkata – IV, wherein it was ordered that the re-assessment is to be done subject to outcome of an appellate order i.e. in other words, the assessment order has to be challenged by the importer in appellant forum and re-assessment be done afterwards in commensurate with the order of the Appellate Authority."

6.3.3 I also have perused the relevant provisions under Customs Act, 1962 which enables the reassessment of BOE i.e the recourses available with the assessee in case of incorrect filing of Bill of Entry:

(i) Section 17 of Customs Act, 1962: Filing an application for reassessment of Bill of Entry: Option only available till the time bill of entry is not cleared for home consumption.

(ii) Section 27 of Customs Act, 1962: Filing an application for refund of customs duty paid in excess.This section has been dealt with by Hon'ble apex court in the case of **Priya Blue(supra) and ITC Ltd.(supra).**

(iii) Section 27 (2)(g): the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where –

(i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or

(ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

6.3.4 I have also perused Section 149 of the Customs Act, 1962 which talks about filing of an application for amendment of bill of entry based on the documents which existed at the time of filing of bill of entry. It is brought to notice that practically the revenue refuses to accept such an application unless the same has been approved by the appellate court.

Perusal of these provisions makes it clear that the assessing officer/appraiser herein could reassess the BOE only prior the good, imported are not cleared for home consumption. Therefore, it is an appeal only which is maintainable in terms of Section 128 of the Customs Act.

It becomes clear that the appellant filed the application before original adjudicating authority in good faith. However, the authority did not consider itself competent. Hence the time taken for getting the order with respect to request for reassessment of BOE is held to be the cause of the like nature of jurisdiction issue.

Therefore, I hold that the benefit under Section 14 of Limitation Act be awarded to the applicant/appellant. The Commissioner (Appeals) has not given any finding with respect to Section 14 of Limitation Act. Issue No. 1 stands accordingly decided in favour of the appellants.

6.4 **Issue No. 2**

6.4.1 Coming to the merits of the case, it is observed that the request seeking refund of excess paid ADD has been rejected based

on the decision of Hon'ble Supreme Court in case of **Priya Blue (supra).**

6.4.2 From the provisions of Customs Act, as already discussed above, it is clear that remedy of seeking refund of excess paid duty is available to the importer. Admittedly, the application seeking reassessment of impugned BOE was filed by the appellant before the original adjudicating authority and that it could not be filed before assessing officer after goods were cleared. The original adjudicating authority has not properly exercised its jurisdiction, as already held above. The request of appellant for reassessment of BOE was rather rejected on the ground of procedural lapses by the appraiser. It is the settled law that substantial benefit shall not be denied based on procedural lapses. I draw my support from the decision of Hon'ble Supreme Court in the case of **Ramnath Exports (P) Ltd. v. Vinita Mehta, (2022) 7 SCC 678 : 2022 SCC OnLine SC 788,** the Apex Court held that substantive rights accrued to a litigant should not be defeated by citing a procedural defect that is capable of being cured. The Court emphasized that procedural defects should not be allowed to defeat substantive rights without affording a reasonable opportunity. The relevant para is :

> *"**10**….Thus, prior to deciding the preliminary objection, the High Court should have decided the said CLMA, either granting leave to file a single appeal or refusing to entertain one appeal against one judgment and two decrees passed in two suits after consolidation. In case, the High Court would have rejected the said CLMA, the appellant could have availed the opportunity to file separate appeal*

against the judgment and decree passed in Civil Suit No.411 of 1989. Without deciding the CLMA and accepting the preliminary objections, dismissing the appeal as barred by resjudicata, primarily appears contrary to the spirit of its own order dated 18.07.2008. In our considered view also, the approach adopted by High Court is not correct, because on dismissal of the CLMA, the appellant might have had the opportunity to rectify the defect by way of filing separate appeal under Section 96 of CPC challenging the same judgment with separate decree passed in Civil Suit No.411 of 1989. Converse to it, if this Court proceeds to consider the merit of the contentions raised in the said CLMA and record the findings in negative, it would effectively render the appellant remediless, therefore, we refrain ourselves from examining the merits of CLMA. It is a trite law that the procedural defect may fall within the purview of irregularity and capable of being cured, but it should not be allowed to defeat the substantive right accrued to the litigant without affording reasonable opportunity. Therefore, in our considered view, no adjudication of the CLMA application, and upholding the preliminary objection of no maintainability of one appeal by High Court has caused serious prejudice to the appellant."

6.4.3 In **Krishna Kumar Kahaar&Anr. v. Dashoda Bai Dhivar&Anr. (WP227 No. 467 of 2023, Chhattisgarh High Court),** the Hon'ble High Court reaffirmed that procedural defects, if curable, should not be allowed to defeat substantive rights or result in injustice. The Hon'ble Court directed the Rent Control Authority to rectify procedural lapses and adjudicate the matter afresh. Even this tribunal in **Maini Precision Products Ltd. v. Commissioner of Central Tax (CE Appeal No. 20099 of 2020,CESTAT Bangalore)** held that procedural lapses, such as non-distribution of credit, are condonable, especially in revenue-neutral situations, and should not affect substantive rights.

Reverting to the facts of this appeal it is observed that the appellant vide letter dated 12.10.2022 while requesting for reassessment of the Bill of Entry had exercised the appropriate remedy. The Notification No. 51/2021 exempts import of Aluminum Foil of 6.3 microns from payment of ADD. But apparently, the appellant had added the amount of ADD while self assessing the customs duty liability. Hence the ADD added to the amount of duty while self assessing the BOE cannot take the character of duty. In terms of Article 265 of Constitution of India, the authority cannot retain the said amount. The excess payment is rather apparent from BOE itself. The amount in question should not have been retained by the department was therefore refundable.

6.4.4 The refund claim has been rejected based on the decision in **ITC Ltd. v. CCE, Kolkata-IV, 2019 (368) ELT 216 (SC).** I have perused the decision as referred and observe that in **ITC Ltd. Vs. CCE (2019) 17 SCC 54,** it is held:

> ***"41.*** *It is apparent from provisions of refund that it is more or less in the nature of execution proceedings. It is not open to the authority which processes the refund to make a fresh assessment on merits and to correct assessment on the basis of mistake or otherwise."*

The above discussion when read with the facts of the case specifically that the appellant filed an application seeking reassessment of BOE simultaneously with the application seeking refund makes it clear that the present case stands materially distinguishable from the said decision. In **ITC (supra),** Hon'ble

Supreme Court held that refund of duty paid pursuant to self-assessment could not be granted unless the assessment order was first challenged in appeal and gets modified. In contrast, the authorities in present case failed to appreciate that the mandate of ITC decision was duly complied with by the appellant. Despite noting that the imported aluminium foil fell within the exemption under Notification No. 51/2021-Cus (ADD) and that an excess amount of Rs.7,14,018/- had indeed been paid, which substantively validated the claim. However, relief was denied on procedural grounds.

7. I hold that the decision in **ITC Ltd. (supra)** as well as in **Priya Blue (supra)** are distinguishable. These decisions have wrongly been relied upon for rejecting the impugned refund claim. The order under challenge is therefore not sustainable. Accordingly, is hereby set aside. Consequently, the appeal filed by the appellant is hereby allowed.

[Order pronounced in the open court on **02.07.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

HK