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CESTAT Delhi- Refund of SAD Cannot Be Denied on Limitation Grounds



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

In a significant ruling, the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Principal Bench, New Delhi, has delivered a judgment that brings clarity to the contentious issue of the time limit for claiming refunds of Special Additional Duty (SAD) under Notification No. 102/2007-Cus. This decision, pronounced on October 9, 2025, in the case of *M/s Arjun Enterprises Pvt. Ltd. vs. Commissioner of Customs (Appeals), New Delhi*, is a landmark for importers seeking refunds of SAD.

Background of the Case

The appellant, M/s Arjun Enterprises Pvt. Ltd., had filed a refund claim of Rs. 1,91,363/- on July 26, 2018, for the SAD paid on imported goods under a Bill of Entry dated July 2, 2016. However, the claim was rejected by the adjudicating authority on the grounds of limitation, as the refund was filed beyond one year from the date of payment of the duty. This rejection was upheld by the Commissioner (Appeals), prompting the appellant to approach the Tribunal.

The crux of the dispute revolved around whether the one-year limitation period for filing a refund claim should be calculated from the date of payment of SAD or from the date of sale of the imported goods.

Key Arguments

- 1. Appellant's Argument:** The appellant, represented by Shri Jitin Singhal, argued that the one-year limitation should commence from the date of sale of the goods, as the right to claim a refund accrues only after the sale is completed and VAT/sales tax is paid. The appellant relied on the Delhi High Court's judgment in *Sony India Pvt. Ltd. vs. Commissioner of Customs, New Delhi*, which held that the limitation period under the notification should not apply in such cases.
- 2. Revenue's Argument:** The Revenue contended that the limitation period should begin from the date of payment of SAD, citing contrary decisions by other benches of the Tribunal.

Tribunal's Observations and Decision

The Tribunal extensively analyzed the conflicting judgments on this issue and referred to the Delhi High Court's decision in *Sony India Pvt. Ltd.*, which categorically held that the limitation period of one year under the notification dated August 1, 2008, is not applicable. The High Court reasoned that the right to claim a refund arises only after the sale of goods and payment of VAT/sales tax, and imposing a limitation period from the date of payment of SAD would be illogical.

The Tribunal also noted that the Larger Bench of the Tribunal in *Ambey Sales vs. Commissioner of Customs* had resolved the conflict by affirming that the one-year limitation period does not apply to SAD refund claims.

Final Verdict

The Tribunal set aside the order rejecting the refund claim on the grounds of limitation and allowed the appeal filed by M/s Arjun Enterprises Pvt. Ltd. This decision reinforces the principle that the limitation period for claiming a refund of SAD should not commence from the date of payment of the duty but from the date of sale of the goods.

Implications of the Judgment

This ruling is a significant win for importers, as it provides clarity and consistency in the interpretation of the limitation period for SAD refunds. Key takeaways include:

- 1. Relief for Importers:** Importers can now claim refunds of SAD without being constrained by the one-year limitation period from the date of payment of duty, provided they fulfill the conditions of the notification.
- 2. Judicial Precedent:** The judgment aligns with the Delhi High Court's decision in *Sony India Pvt. Ltd.* and the Larger Bench ruling in *Ambey Sales*, ensuring uniformity in the application of the law.
- 3. Encouragement for Compliance:** The decision underscores the importance of adhering to procedural requirements, such as maintaining proper documentation of sales and VAT/sales tax payments, to substantiate refund claims.

Conclusion

The Tribunal's decision in the *M/s Arjun Enterprises Pvt. Ltd.* case is a landmark ruling that upholds the rights of importers and ensures that procedural technicalities do not hinder the legitimate claims of taxpayers. By reaffirming the principles laid down in *Sony India Pvt. Ltd.*, the judgment provides much-needed clarity and relief to the trade community. Importers are advised to stay updated on such rulings and

ensure compliance with the conditions stipulated under the relevant notifications to safeguard their refund claims.

Source: CESTAT Delhi

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Write to us at office@aadrikaalaw.com

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

www.aadrikaalaw.com

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. 4

Customs Appeal No. 50095 of 2025

(Arising out of Order-in-Appeal No. CC(A)CUS/D-II/IMP/ICD/TKD/716/2022-23 dated 13.06.2022 passed by the Commissioner of Customs (Appeals), New Delhi)

M/s Arjun Enterprises Pvt. Ltd.

60 Village Siraspur,
New Delhi-110042.

Appellant

Versus

**Commissioner of Customs (Appeals),
New Delhi**

New Customs House, Near IGI Airport,
New Delhi

Respondent

Appearance:

Present for the Appellant: Shri Jitin Singhal, Advocate

Present for the Respondent: Shri Rohit Issar, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)

Date of Hearing : 26/08/2025

Date of Decision : 09/10/2025

Final Order No. 51529/2025

Dr. Rachna Gupta:

The appellant filed a refund claim of Rs. 1,91,363/- on 26.07.2018 under Notification No. 102/2007-Cus dated 14.09.2007 in respect of Special Additional Duty of Customs¹ paid on the goods imported by them under Bill of Entry No. 5853134 dated

1 SAD

02.07.2016. During examination of said refund claim, it was noticed that duty against the impugned Bill of Entry was paid on 11.07.2016 and refund was filed on 26.07.2018, thus the refund was opined to be hit by limitation period as prescribed under Notification No. 102/2007-Cus. dated 14.09.2007. This opinion was communicated to the appellant vide DM dated 06.09.2018 and 20.11.2018. Seeking no response, the adjudicating authority vide Order-in-Original bearing No. 2046 dated 19.02.2019 rejected the said refund claim on ground of limitation. The order got upheld by Commissioner (Appeals) vide Order-in-Appeal bearing No. 716/2022-23 dated 13.06.2022. Being aggrieved, the appellant has filed this appeal.

2. I have heard Shri Jitin Singhal, learned counsel for the appellant and Shri Rohit Issar, learned Authorized Representative for Revenue

3. Shri Jitin Singhal, learned counsel appearing on behalf of the appellant, submits that the issue involved in the present appeal is about the refund of SAD. He submits that the time limit of one year prescribed for filing the refund application should start from the date of sale of the goods. In support of his arguments, he cited the decision of this Tribunal in the case of **Dow Chemical International Pvt. Ltd. vs. Commissioner of Customs, Kandla**²

4. The learned Authorized Representative appearing for the Revenue submits that this Bench has decided this matter in the case of **M/s Abhishek Marketing Vs. Commissioner of**

² 2024 (387) ELT 621 (Tr.-Ahmd.)

Customs (Port), Kolkata³ wherein the Tribunal has held that the one year period for filing the refund claim should start from the date of payment of additional customs duty. Accordingly, he prayed or rejecting the appeal filed by the appellant.

5. Heard both the sides and it is observed that two Division Benches of the Tribunal in **Commissioner of Customs (Import) Inland Container Depot, Tughlakabad, New Delih Vs. M/s Siya Paper Mart Pvt. Ltd.**⁴ and **M/s Indochem & Polychems Vs. Commissioner, Customs (Import), New Delhi (ICD TKD)**⁵ have followed the judgment of the Delhi High Court in **Sony India** and held that the limitation of one year would not be applicable.

6. The Delhi High Court, on the other hand, in **Sony India Pvt. Ltd.**⁶ examined the provisions of the notification dated 14.09.2007 as also the notification dated 01.08.2008 that amended paragraph 2(c) of the notification dated 14.09.2007 and introduced a time limit of one year. It is on a perusal of the said notification dated 14.09.2007 that the Delhi High Court observed that the importer is required to produce invoices of sale and documents evidencing payment of sales tax/VAT, which would clearly mean that the benefit of the notification can be availed only when the sale of the imported goods is complete; that the intention of the exemption notification is to allow refund of the additional duty of customs because the importer has suffered incidence of additional duty meant to counter-balance sales tax/VAT and has also paid sales tax/VAT on sale of these imported goods. Due to this reason no

3 Final Order No. 75572/2024 dated 20.3.2024 in C/79748/2018
4 2023 (3) TMI 1083-CESTAT-New Delhi
5 2023 (5) TMI 399-CESTAT-New Delhi
6 2014 (304) ELT 660 (Del.)

limitation period can possibly be imposed for advancing a refund claim because the right to claim the refund can accrue only when the sale is completed; that to uphold the limitation period under the notification date 01.08.2008 from the date of payment of additional duty would amount to allowing the commencement of the limitation period even before the right to claim refund accrues; and that Section 27 of the Customs Act would not apply to claim of refund of this additional duty. The Delhi High Court, therefore, categorically held that the amending notification dated 01.08.2008 has to be read down to the extent it imposes a limitation period.

7. Two Division Benches of the Tribunal in **Commissioner of Customs (Import) Inland Container Depot, Tughlakabad, New Delhi Vs. M/s Siya Paper Mart Pvt. Ltd.** (supra) and **M/s Indochem & Polychem Vs. Commissioner (Import), New Delhi (ID TKD)** (supra) have followed the judgement of the Delhi High Court in **Sony India** and held that the limitation of one year would not be applicable. However, contrary views have been expressed by the Tribunal in following decisions:

- (i) **CC, Hyderabad, Customs Vs. Khazana⁷;**
- (ii) **Haryana International Pvt. Ltd. Vs. Commissioner of Customs (Import), Mumbai⁸;**
- (iii) **CC, New Delhi (ICD TKD) (Import) Vs. Nav Bharat Trading Corporation⁹;**
- (iv) **CC, Hyderabad, Vs. Surya Telecom Pvt. Ltd.¹⁰**

7 2019 (4) TMI 492-CESTAT

8 2019 (4) TMI 142

9 2018 (12) TMI 1487-CESTAT New Delhi

10 2018 (7) TMI 192-CESTAT Hyderabad

8. Concededly, the decision of this Court in *Sony India Pvt. Ltd.* (supra) covers the controversy whether the time limit prescribed under Section 27 of the Customs Act, 1962 is applicable in case of refund of the SAD. It has been held that the expression "so far as may be" occurring in Section 3(5) of the Customs Tariff Act cannot ipso facto bring in or refer to the period of limitation prescribed in Section 27 of the Customs Act. It was held that the nature of the duty is unlike the regular incident of customs duty, which is definite, special additional duty is to be compensated the moment condition for refund are fulfilled. The prevailing view of the Revenue based upon which it issued Circulars and Notifications in 2008 that the period of limitation of one year was to be calculated based upon the date of payment of the SAD and not based upon the date of further sale or payment of VAT, was held to be erroneous.

9. In ***Pee Gee International Vs. Commissioner of Customs, ICD Tughlakabad***¹¹, the Delhi High Court followed its earlier judgment in ***Sony India*** and held that the limitation of one year provided for in the Notification dated 01.08.2018, would not be applicable.

10. Though the Customs authorities had filed a Special Leave Petition seeking leave to defend against the decision of this Court in ***Sony India*** (supra). However, the said petition was dismissed by the Supreme Court by an order dated 26.02.2016 on the ground of delay, but the question of law was left open. This court has, in a number of matters, dismissed the appeals filed by the Customs authorities in view of the decision in ***Sony India*** (supra). In

11 2016 (343) ELT 72 (Del.)

Commissioner of Customs Vs. S.R. Traders¹², decided on 18.04.2022, a Coordinate Bench of this Court has observed that decision in **Sony India** (supra) would be binding on other benches of this Court. In CUSAA 69/2019 captioned as **Commissioner of Customs Vs. Tanvir Trading Import**, this Court observed that it found no reasons to differ with the aforesaid view and, accordingly, dismissed the appeal.

11. But since there had been contradictory decisions also as mentioned above, the matter was referred to the Larger Bench of this Tribunal in the case of **Ambey Sales Vs. Commissioner of Customs, GRFL, Sahnewal, Ludhiana**¹³. The Hon'ble Larger Bench held that the limitation of one year for filing a claim for refund of additional duty of customs paid on import of goods from the date of payment of additional duty would, therefore, not be applicable.

12. The reference has been answered by the Larger Bench in the following terms:

"The time limit imposed upon an importer for filing a refund claim of additional duty of customs paid on the imported goods with the jurisdictional customs officer before the expiry of one year from the date of payment of said additional duty of customs in terms of the notification dated 01.08.2008 would not be applicable in view of the judgment of the Delhi High Court in **Sony India Pvt. Ltd, vs. Commissioner of Customs, New Delhi reported in 2014 (304) E.L.T. 660 (Del.)**."

12 CUSAA 36 of 2021

13 2024 (6) TMI 257-CESTAT-Chandigarh-LB

13. This discussion establishes that issue involved in present appeal is no more *res integra*. Hence the order rejecting the refund of SAD on ground of limitation is liable to be set aside. Consequent thereto, the appeal is allowed.

(Pronounced in open Court on 09.10.2025)

(Dr. Rachna Gupta)
Member (Judicial)

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