

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86162 OF 2019

[Arising out of Order-in-Appeal No: 1892 (CRC-SAD-V) 2018(JNCH)/Appeal-II dated 5th December 2018 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Fibre Bond Industries

312 Navratan Building, P D'Mello Road
Carnac Bunder, Mumbai - 400009

... Appellant

versus

Commissioner of Customs (NS-III)

Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707

...Respondent

APPEARANCE:

Ms Shamita Patel, Advocate for the appellant

Shri Ram Kumar, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: 86686/2025

DATE OF HEARING: 15/10/2025
DATE OF DECISION: 15/10/2025

In this appeal, against the order¹ of Commissioner of Customs (Appeals), Mumbai – II affirming the rejection of claim for refund of ₹ 2,60,793 by Deputy Commissioner on the ground that limitation came into

¹ [order-in-appeal no. 1892 (CRC-SAD-V) 2018(JNCH)/Appeal-II dated 5th December 2018]

play on ‘special additional duty of customs (SAD)’ discharged in terms of section 3(5) of Customs Tariff Act, 1975 on import of ‘PVC coated fabric’ *vide* bill of entry no. 5439037/12.12.2011, 5627267/31.12.2011 and 5827285/31.12.2011, M/s Fibre Bond Industries raised the plea that it was only consequent upon sale of the imported goods that refund, as provided for in notification², could be claimed and was sought within one year thereon.

2. Learned Counsel for the appellant submitted that the issue of applicable ‘relevant date’ stands resolved by the decision of Larger Bench of the Tribunal in *Ambey Sales v. Commissioner of Customs, Ludhiana [2024 (6) TMI 257 – CESTAT – CHANDIGARH-LB]* and that the said decision, after considering several disputes decided by several High Courts and some affirmed by Hon'ble Supreme Court, concluded that no particular time-limit would have effect of denying eligibility to claim refund.

3. We have heard Learned Authorized Representative.

4. Strictly speaking, the appellant, as trader in imported goods, is exempted from ‘special additional duty (SAD)’ and it is merely the machinery provision that give effect through refund route, post-clearance, on ascertainment of discharge of corresponding levies of state governments. Consequently, the fastening of any limitation, not contemplated by the statute to such levy in section 3(5) of Customs Tariff

² [no. 102/2007-Cus dated 14th September 2007]

Act, 1975, is *ultra vires* as held by Hon'ble High Court of Delhi in *Sony India Pvt Ltd v. Commissioner of Custom, New Delhi* [2014 (304) ELT 660 (Del.)].

5. The Larger Bench of the Tribunal have, *re Ambey Sales*, held that

'45. The reference is, accordingly, answered 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.)."

6. The facts are conclusive is that the goods were imported and sold thereafter. Duty liability, under section 3(5) Customs Tariff Act, 1975, is fastened on the goods only to the extent that the importer consumes the goods. With sale having been effected and due discharge of appropriate tax, the eligibility to refund cannot be denied by recourse to an unrelated 'relevant date' in section 27 of Customs Act, 1962.

7. Accordingly, the impugned order is set aside to allow the appeal.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)