

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 50283 of 2022

[Arising out of Order-in-Appeal No. 69(SM)/CUS/JPR/2021 dated 26.05.2021 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Lord Image

B-96, Sethi Colony,
Jaipur - 302004

...Appellant

VERSUS

Commissioner of Customs – Jaipur I

NCR Building, Statue Circle,
C- Scheme, Jaipur,
Rajasthan - 302005

...Respondent

APPEARANCE:

Shri Jatin Mahajan, Advocate for the Appellant

Shri V.J. Saharan, Authorized Representative for the Respondent

CORAM:

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

DATE OF HEARING: 09.10.2025

DATE OF DECISION: **06.01.2026**

FINAL ORDER NO. 50004/2026

DR. RACHNA GUPTA

The present appeal is filed to assail Order-in-Appeal No. 69/2021 dated 26.05.2021. The facts in brief which culminated into the said order are that M/s. Lord Image, the appellant herein, imported gold jewellery from Thailand vide Bill of Entry No. 3444 dated 20.10.2011 and Bill of Entry No. 3534 dated 17.11.2012 totally valued at Rs.40,20,932/-. The goods/gold jewellery was classified under sub-heading 711319 of the Customs Tariff Act, 1975. The appellant claimed duty exemption under Notification No. 82/2004-Cus. dated 31.08.2004 read with Notification No. 101/2004-Cus. dated 31.08.2004. However, department denied appellant being eligible for the benefit under FTA scheme.

Accordingly, show cause notice dated 07.09.2013 was served upon the appellants proposing the recovery of short paid customs duty amounting to Rs.4,18,297/-. The amount was deposited vide two challans both dated 29.12.2012.

2. The said show cause notice was adjudicated vide Order-in-Original No. 40/2018-19 dated 29.11.2018 vide which the proposed demand was dropped. The said order was accepted by the department. Subsequent thereto the appellant filed the refund claim dated 27.11.2019 along with requisite documents including Chartered Accountant Certificate dated 04.01.2020. The said refund claim was sanctioned vide Order-in-Original No. 26/2019-20 dated 30.01.2020 holding that the refund for amount of Rs.4,18,297/- is admissible to the appellant being filed within the period of limitation (one year). However, the said Order-in-Original got reviewed vide Review Order No. 01/2020 dated 20.03.2020 holding that the refund gets hit by the principle of unjust enrichment. Pursuant to the review order, the department filed an appeal against Order-in-Original dated 30.01.2020. The said appeal has been decided in favour of the department vide the impugned order holding that the incidence of duty paid has been passed on by the importer-appellant. Being aggrieved of the said order, present appeal has been filed.

2. I have heard Shri Jatin Mahajan, learned Advocate for the appellant and Shri V.J. Saharan, learned Authorized Representative for the department.

3. Learned counsel for the appellant submitted that the Order-in-Original dated 30.01.2020 has discussed both the criteria for

sanctioning the refund claim i.e. period of limitation as well as the principle of unjust enrichment. The Chartered Accountant Certificate has duly been appreciated while holding that the burden of the impugned short paid customs duty (Rs.4,38,933) has been born by the appellant itself as the said amount has not been added in the sale value of the goods sold after import but prior to the deposit of differential amount of duty.

3.1 Learned counsel submitted that the department has simply relied upon the fact of the said amount of customs duty to have been reflected in the profit and loss account. This particular observation is highly insufficient to hold that present is the case of unjust enrichment. Book entries of the appellant have wrongly been given more weightage than the Rules and Regulations of the Customs Act, 1962. It is impressed upon that present is not the case of unjust enrichment as has been elaborated by the original adjudicating authority. Commissioner (Appeals) has ignored those finding and even the documentary evidence on record. The invoices of selling gold are not mentioning any amount of customs duty. The findings of the impugned order are accordingly prayed to be set aside and appeal is prayed to be allowed.

4. Learned Departmental Representative has reiterated the findings arrived at by the Commissioner (Appeals) in the impugned order. The emphasis has also been laid on the Review Order bearing No. 01/2020 dated 20.03.2020. It is submitted that the appellant admittedly has charged the customs duty of Rs.4,38,933/- in their P&L Account under the head of "Direct and manufacturing expenses" and as such, the same has been passed

on to their customers as part of cost. The refund claim is, therefore, rightly held to have been hit by the clause of unjust enrichment. With these submissions, the appeal is prayed to be dismissed.

5. Having heard both the parties and perusing the entire evidence on record. It is observed and held as follows:

5.1 The show cause notice dated 07.09.2013 has alleged short payment of customs duty by the appellant while importing the gold jewelry weighing 1198.50 grams totally valued at Rs.40,20,932/- imported from Thailand vide aforementioned two Bills of Entry. While claiming duty exemption under the notification, as mentioned above, the departmental adjudicating authority vide Order-in-Original No. 40/2018-19 dated 29.11.2018 held that the appellant is eligible for the duty exemption benefit as such the demand of short paid customs duty was dropped. Since the proposed amount of customs duty (Rs.4,18,927/-) was deposited by the appellant after the issuance of show cause notice at the stage of investigation, the amount deposited was the amount paid under protest and the same was as good as amount of revenue deposit. I draw my support from the decision of Hon'ble Apex Court in the case of **Sooraj mull Baijnath Industries (P) Ltd. v. Commrissioner reported as 2021 SCC OnLine CESTAT 2545, decided on 27-08-2021.** Also Hon'ble Allahabad High Court in the case of **EBIZ Com Pvt Ltd reported as 2017 (49) STR 389 (All.) observed as follows:**

"23. It has been consistent view of various Courts that any amount, deposited during pendency of adjudication proceedings or investigation is in the nature of deposit made under protest or pre-deposit and, therefore, principles of unjust enrichment would not be attracted.

The consensus of the authorities of various High Courts as well as Supreme Court is that any amount received by Revenue, as deposit or pre-deposit i.e. unauthorizedly or under mistaken notion, etc., cannot be retained by Revenue since it has no authority in law to retain such amount and it must be refunded with interest."

5.2 The Chartered Accountant Certificate dated 04.01.20.20 was also placed on record by the appellant. The same was duly considered in the Order-in-Original dated 29.11.2018. It has been certified as follows:

- The burden of the said amount has been born by the importer
- The said amount has not been added in their sale value of the goods sold on the date of import and subsequent to the said deposit.
- The said amount has been booked under the accounting head "Import duty paid" from its profit and loss account for the Financial Year 2012-13 and the same has not been charged to any person leading to profit reduction of the claimant, hence not passed on to any other person.
- That no refund on the said amount has been claimed/received by the importer earlier.
- That the said amount for which the refund has been claimed has not been charged/realized from any other person.

5.3 There is no reason to doubt the aforesaid contents especially when department has not produced any documentary evidence to falsify the same. The said documents are well

admissible in evidence. I draw my support from the decision of Hon'ble Delhi High Court in the case of **Vishal Video & Appliances Pvt. Ltd. Vs. Union of India reported in 2016 (341) ELT 39 (Del.)**. The Hon'ble Supreme Court also in the case of **Commissioner of Customs, New Delhi Vs. Organon (India) Ltd. reported as 2008 (231) ELT 201 (SC)** held that if there is no change in the price post levy of duty and the Auditor's certifies that the incidence of duty has not been passed to the customers, it can safely be presumed that the duty burden has not been passed on to the customers as such the question of unjust enrichment does not arise.

5.4 Commissioner (Appeals) while invoking the clause of unjust enrichment has merely relied upon the fact that the customs duty was booked as expenditure in profit and loss account. However, the same is not the appropriate test. What has to be ascertained is as to whether the price of final product has been enhanced due to duty burden and has been charged from the customer. Invoices are the best evidence to show the same as has been held by this Tribunal in the case of **Indian Metals & Ferro Alloys Vs. CCE, Bhubaneswar reported as 2001 (125) ELT 943 (Tri.)**. Few copies of invoices are on record. Perusal reveals that the sale amount mentioned in the invoice included cost of gold, labour charges and one per cent VAT. Nothing is mentioned in the invoice vis-à-vis the amount of customs duty. This observation is sufficient to hold that the gold was sold at the price without including the proportionate customs duty as was paid by the appellant at the stage of

investigation, that too under protest. It becomes clear that once, the invoices do not show any element of duty having been recovered from the customers, it stands proved that no burden of duty has been passed on to the customers by the importer. Commissioner (Appeals) is therefore held to have wrongly held that too in the absence of any evidence that the duty burden has been passed on by the appellant. The findings of Commissioner (Appeals) are therefore not in consonance with the law. I draw my support from the decision of Hon'ble High Court of Punjab & Haryana High Court in the case of **Modi Oil & General Mills reported as 2007 (210) ELT 342 (P&H)**, wherein, it was specifically held that the doctrine of unjust enrichment will not apply to a situation, wherein the assessee is directed to pay the amount and pay the same on being pointed out by the authorities and he claims the refund of the same after succeeding in the proceedings.

6. In totality of the entire above discussion, the order under challenge is hereby set aside. Consequent thereto, appeal is hereby allowed.

[Order pronounced in the open court on **06.01.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)