CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 86427 of 2016

[Arising out of Order-in-Original No. 21/2015-16/RT-13/NS-GEN dated 29.02.2016 passed by the Principal Commissioner of Customs (NS-GEN), Jawaharlal Nehru Custom House (JNCH), Nhava Sheva.]

India Steel Works Limited **.... Appellant**
1101, Tower 2, India Bulls Finance Centre,
Senapati Bapat Marg,
Elphinstone (West), Mumbai – 400 013.

Versus

Commissioner of Customs (NS-General), JNCH **.... Respondent**
Jawaharlal Nehru Custom House (JNCH)
Nhava Sheva, Taluka Uran, District Raigad
Maharashtra – 400 707.

WITH

Customs Appeal No. 86428 of 2016

[Arising out of Order-in-Original No. 21/2015-16/RT-13/NS-GEN dated 29.02.2016 passed by the Principal Commissioner of Customs (NS-GEN), Jawaharlal Nehru Custom House (JNCH), Nhava Sheva.]

Madhav Kanade **.... Appellant**
General Manager-Taxation of M/s India Steel Works Limited
1101, Tower 2, India Bulls Finance Centre,
Senapati Bapat Marg,
Elphinstone (West), Mumbai – 400 013.

Versus

Commissioner of Customs (NS-General), JNCH **.... Respondent**
Jawaharlal Nehru Custom House (JNCH)
Nhava Sheva, Taluka Uran, District Raigad
Maharashtra – 400 707.

APPEARANCE:

Shri Akhilesh Kangsia, Advocate for the Appellant

Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85405-85406/2026

Date of Hearing: 17.11.2025

Date of Decision: 13.03.2026

PER: M.M. PARTHIBAN

These appeals have been filed by M/s India Steel Works Limited, Mumbai and Shri Madhav Kanade, General Manager of the said appellant company (herein after, referred together, as 'the appellants') assailing the Order-in-Original being No. 21/2015-16/RT-13/NS-GEN dated 29.02.2016 (herein after referred to as 'the impugned order') passed by the Principal Commissioner of Customs (NS-GEN), Jawaharlal Nehru Custom House (JNCH), Nhava Sheva.

2.1 The facts of the case, leading to these appeals, are summarized herein below:

2.2 The appellant company herein *inter alia*, is engaged in manufacture of stainless-steel products viz. billets, blooms, Bars & Rods etc., and for that purpose had imported subject goods viz., 'waste and scrap of stainless steel, Stainless Steel billets and Ferro alloys' and used the same for manufacture of stainless-steel products. These imported goods were supplied through Free Trade Warehousing Zone (FTWZ) M/s Arshiya Supply Chain Management Limited, a unit situated within FTWZ. Whenever the imported goods are sold in the Domestic Tariff Area (DTA) and such sale not being exempt from payment of sales tax/VAT, exemption from payment of the whole Special Additional Duty of Customs (SAD) leviable under sub–section (5) of Section 3 of the Customs Tariff Act, 1975 in terms of Notification No. 45/2005-Customs dated 16.05.2005 was available to the importers. Upon receipt of the imported goods at the appellants factory, the said goods undergo further processing for manufacture of stainless steel products and thereafter such final products are sold to dealers/customers in DTA upon payment of applicable VAT/sales tax. On the above basis, the appellants had submitted an undertaking with the Specified Officer of FTWZ declaring that appropriate VAT/CST shall be paid upon sale of final products manufactured by them in the DTA, and on such basis availed the SAD exemption benefit available under the said Notification dated 16.05.2005.

2.3 On the basis of intelligence developed by the Directorate General of Central Excise Intelligence, Mumbai Zonal Unit (DGCEI) that the appellant is availing exemption benefit of SAD on imported goods which are used in the factory, detailed investigations were conducted and on completion of

such investigation Show Cause Notice (SCN) dated 16.06.2015, proposing for demand of SAD of Rs.4,06,30,866/- along with interest under Section 28(4) of the Customs Act, 1962 by invoking the extended period along with proposal for confiscation of the impugned goods under Section 111(o) ibid; imposition of penalty on the appellants under Sections 112 and 114AA ibid. In adjudication of the aforesaid SCN dated 16.06.2015, learned Principal Commissioner of Customs has confirmed all the proposals made in the SCN. Feeling aggrieved with confirmation of the adjudged demands, the appellants have filed these appeals before the Tribunal.

3.1 Learned Advocate appearing for the appellants submitted at the outset that the issue of eligibility to SAD exemption benefit on clearance from FTWZ to DTA, on stock transfer basis, is no longer in dispute as has been conclusively settled in favour of the appellants in a number of decisions held by the Tribunal, both on merits and on account of time bar. Further, he stated that the appellants have correctly availed the exemption benefit under Notification No. 45/2005-Customs dated 16.05.2005 inasmuch as mere stock transfer of goods from FTWZ to DTA cannot be equated with an exemption from sales tax/VAT.

3.2 Furthermore, learned Advocate also stated that the appellants have made a complete disclosure of facts to the Department, and hence there is no ground of any suppression of facts by the appellants, particularly so when the entire clearances have been undertaken by duly following the procedure prescribed by the Department and overseen by the officers of the Department. Further, the appellants had reasonable belief that they are eligible for exemption as the Development Commissioner of SEZ/FTWZ had approved of the same and the FTWZ unit M/s Arshiya Supply Chain Management Limited, had assured them of such exemption benefit being available to them. Further, it was an industry wide issue and there were different interpretation adopted by different wings of government. Thus the entire demand raised in the SCN dated 16.06.2015, demanding duty for the disputed period April, 2012 to March, 2013 is barred by limitation of time; and consequently, confiscation of impugned goods and imposition of final penalty are also liable to be set-aside.

3.3 In support of their stand, learned Advocate had cited the following decisions of the judicial forums”

(i) *CRI Limited Vs. Commissioner of Customs* – Final Order No. 75617 dated 18.11.2020 upheld by Hon'ble Supreme Court – 2024 (387) E.L.T. 514 (S.C.)

(ii) *Commissioner of Central Excise Vs. Serum Institute of India* – 2019 (370) E.L.T. 407 (Tri. – Mum.)

(iii) *Lloyd Electric & Engineering Vs. Commissioner of Central Excise & S. Tax* – 2018 (361) E.L.T. 1043 (Tri. – All.)

(iv) *Peekay Re-Rolling Mills Vs. Asst. Commissioner* – (2007) 4 SCC 30

(v) *Dixon Technologies India Private Limited Vs. Commissioner, Customs & Central Excise, Noida-II* – Final Order No. 70952-70953/2024 dated 11.12.2024.

(vi) *National Products Vs. Commissioner of Customs & CGST, Noida* – Final Order No. 70507/2024 dated 22.07.2024.

(vi) *Northern Plastic Limited Vs. Collector of Customs & Central Excise* – 1998 (101) E.L.T. 549 (S.C.)

(vii) *R.K. Srivastava Vs. Commissioner of Customs, New Delhi* – 2008 (225) E.L.T. 523 (Tri. Del.)

4. Learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order and further submitted that since the matter was clarified by the Tax Research Unit, Ministry of Finance in Customs Circular No. 44/2013 dated 30.12.2013 stating that the benefit of SAD exemption would not be available on goods cleared from SEZ/FTWZ unit to DTA unit on stock transfer basis for self-consumption, there is no ground for interference in the impugned order. He also cited the decision of the Tribunal in the case of *Lloyd Electric & Engineering Limited Vs. Commissioner of Customs, Central Excise & Service Tax, Noida-II* – 2018 (361) E.L.T. 1043 (Tri.-All.) in support of the department's case. Thus, he submitted that the appeal may not be entertained.

5. Heard both sides and perused the case records.

6. The issue for consideration before us is, whether the benefit of Notification No. 45/2005 Customs dated 16.05.2005 as amended, providing exemption from payment of the whole of SAD in respect of goods cleared from the SEZ/FTWZ unit to the DTA unit of appellant, by way of stock transfer is available or not.

7. We find that the issue involved in this case had been examined by various Co-ordinate Benches of the Tribunal in similar set of facts, and have held therein for extending exemption benefit in favour of the appellants in few cases and have also set aside the orders of the lower authority on time bar aspect also.

7.1 In the case of Lloyd Electric & Engineering Ltd. (supra) referred to by the learned AR, the findings of the Tribunal is in the context of the advance ruling given in some other person's case under Section 28J of the Customs Act, 1962, which has been relied upon by the appellants therein. It has been held by the Tribunal that such decision of advance ruling is not applicable to the appellants therein, for deciding the issue against them, in denying the exemption benefit, as advance ruling is applicant specific. Thus, we feel that the ratio of the referred case, cannot be applied in the present case before us.

7.2 In the case of *CRI Ltd. (supra),* the Co-ordinate Bench of the Tribunal had examined the disputed issue both on merits and on time bar aspect. The observations made by the Tribunal are extracted and given as under:-

> *"6. The crux of the issue involved in this case is whether the benefit of Notification No.45/2005 as amended granting exemption from "SAD" is available in respect of "Blanks" cleared from the "SEZ Unit" of the Appellant by way of stock transfers to its "DTA Unit". The scope of the said Notification is reproduced below.*
>
> > *"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all goods cleared from a special economic zone and brought to any other place in India in accordance with the provisions of the Foreign Trade Policy 2004-2009, from the whole of the additional duty of customs leviable thereon under sub section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975). Provided that no such exemption shall be applicable if such goods, when sold in domestic tariff area, are exempted by the State Government from payment of sales tax or value added tax."*
>
> *The Notification exempts all goods "cleared from a SEZ" and "brought to any other place in India". The nature of clearance, whether by way of sale or otherwise, is not qualified in any manner in the body of the Notification. The proviso which embodies the condition/test governing the exemption gets attracted only if the goods which are the subject matter of clearance, when sold in the DTA, are exempted from the payment of Sales Tax/VAT. In the instant case, it is undisputed that the clearance of blanks to the "DTA" is not by way of sale and that the underlying goods are not exempted by the State Government from the levy of VAT. The adjudicating Authority has himself accepted that such blanks attract VAT @ 5% as Ball Pen parts and the same is also evident from a sample Tax Invoice dated 20 April 2014 enclosed as part of the Appeal Paper Book. Therefore, the proviso is not attracted at all. There*

is no exemption from VAT/Sales Tax but just a deferral of the VAT/Sales Tax liability until the sale takes place. We also find that the issue involved herein is squarely covered by the decision of the division bench of the Tribunal in the case of Serum Institute of India (supra) [refer para 5 & 6]. The decision of the AAR in the case of GE India (supra) also supports the case of the Appellant. We are in complete agreement with the contention of the Appellant that the Circular cannot curtail the scope of an exemption notification which deserves to be interpreted strictly and on its own terms as held by the Hon'ble Supreme Court in the Tata Tele Services case (supra).

xxx xxx xxx xxx

8. In the present case, the impugned order itself records at para 12.11 that the subject goods as "ball pen parts" were generally exempted from central excise duty under S. No. 325(ii) of Notification No.12/2012 dated 17 March 2012. Even on the point of limitation the demand has to fail as the BOE's were countersigned by the customs official prior to clearance of goods from the Falta, SEZ. Therefore, the department was aware that the goods were cleared by way of stock transfers not attracting any VAT/Sales Tax. The Notice was issued only after the expiry of the normal period of limitation of 1 year and could not revive the demand, which had got time barred. The decision of the Tribunal in Baccarose Perfumes and Aveco Technologies case fully supports the case of the Appellant.

9. Coming to the issue of limitation, we find that the bills of entry were filed and assessed by customs officers in charge of the SEZ; the issue involves interpretation of a notification; therefore, we find that no suppression and wilful misstatement etc with intent to evade payment of duty can be alleged and extended period cannot be invoked. Coming to the normal period, learned counsel for the appellants submits that although the normal period of limitation was enhanced from 1 year to 2 years with effect from 14 May 2016 the Notice in the instant case, SCN as issued only thereafter on 3 October 2016 covering a period April 2014 to December 2014; the amendment was not a retrospective one; demands which had already become barred by limitation could not get revived by the amendment. We find that Section 28 of the Customs Act, 1962, which provides for recovery of duties not levied or not paid or short paid or erroneously refunded, was amended by Finance Act, 2016 (28 of 2016) w.e.f. 14-5-2016. It provides for demanding duty within 2 years in cases not involving collusion, misstatement etc. we find that the counsel is attempting to equate the issuance of SCN with commission of any offence. In the instance case, the imports being undertaken for the period April-December 2014, normal period, as per the provision of law existing on that day, ends in October, 2015. Therefore, the issue is beyond normal period by the time the amendment came in to force. Therefore, we find that the department cannot issue Show cause notices for the normal period, of two years also, in the instant case."

7.3 In another case of Linc Pen & Plastics Ltd. (supra), the Co-ordinate Bench of the Tribunal had held that the benefit SAD exemption is available for clearances from SEZ to the DTA unit.

> *"10. As an identical issue has already been dealt with by this Tribunal in the case of CRI Ltd. (supra), therefore, following the judicial precedent, we hold that the appellant is entitled to the benefit of Notification No. 45/2005-Cus(Tariff) dated 16.05.2005, as amended, which grants exemption from payment of SAD in respect of Plastic ball pen parts cleared by them from their SEZ unit to the DTA unit."*

7.4 It is an undisputed fact on record that the facts of the present case are identical to the case decided by this Tribunal in the case of *CRI Limited* (supra). The department having been aggrieved by such orders of the Tribunal had preferred appeal before the Hon'ble Supreme Court in Special Leave Appeal (C) No. 16739-16794 of 2023. In the said SLP filed by the department, the Hon'ble Supreme Court vide its judgement dated 12.12.2023, had dismissed the SLPs and allowed the department to avail of appellate remedy, if so advised.

8. On careful perusal of the impugned order of the learned Commissioner, it is seen that it was recorded therein that the appellants in spite of being well aware that the goods imported by them would be consumed by them and no ST/VAT/CST was required to be paid by them, they still gave misleading undertaking along with certificate from Chartered Accountant to the effect that the imported goods which are used in the goods manufactured by them and cleared under subject Bills of Entry are not exempted from ST/VAT/CST, which clearly shows that they had *malafide* intention and had clearly mis-declared as well as suppressed the facts. The question of leviability to duty (SAD) or exemption thereof is a question of fact and calls for no undertaking to be furnished. Therefore, he upheld the duty demands invoking the extended period of time.

9. However, on close examination of the facts of the case and documents placed below, we find that there were correspondences exchanged between the Ministry of Commerce & Industry, SEZ Section and the Ministry of Finance. In one of such communication in the form of an Order dated 11.10.2013, the Development Commissioner, SEEPZ SEZ vide his Order No. SEEPZ SEZ/51/MISC/74/Cus/1013-14 had specifically ordered that the benefit of Notification No.45/2005-Customs dated 16.05.2005 should not be denied and such instructions should be followed strictly and any unjustified deviation would seriously viewed and disciplinary action would be taken against erring officials who do not implement the same. Further, the issue of exemption from levy of SAD under Notification No.45/2005 dated 16.03.2005 was taken up in the

meeting of the Unit Approval Committee held on 16.05.2012 at Noida Special Economic Zone and as recorded in the Minutes of the meeting, it was decided to furnish a certificate from the chartered accountant for compliance with the condition that Sales Tax/VAT is paid against the goods cleared and sold, within three months after clearance of the goods for availing SAD exemption benefit under Notification No.45/2005-Customs dated 16.03.2005. It was also decided that similar practice should be adopted by the customs officer/specified officer posted at all FTWZ. Thus, we are of the view that the practice adopted by the appellants, neither had any malafide intention, nor was there any suppression of fact, in order to avail SAD exemption benefit. Therefore, in our opinion there exist no ground for invoking extended period of limitation with suppression of facts for issuing the SCN dated 16.06.2015 in order to cover the period duty demands arising during April, 2012 to May, 2013, inasmuch as the same is beyond the normal period of one year. Since, we are deciding the issue on limitation, we are not going into the merits of the case.

10. In view of the above discussions and on the basis of the order passed by the Co-ordinate Bench of the Tribunal in the case of *CRI Ltd.* (supra), which was upheld by the Hon'ble Supreme Court by dismissing the SLPs filed by the department, we are of the considered opinion that the present case having similar facts of the case, cannot be decided differently. Accordingly, the impugned order confirming the adjudged demands on the appellant company, along with confiscation of goods and imposition of penalty on the appellants by invoking extended period of limitation is set aside and the appeals are allowed in favour of the appellants.

11. In the result, the impugned order is set aside on limitation of time and the appeals are allowed in favour of the appellants.

(Order pronounced in open court on 13.03.2026)

(S.K. MOHANTY)
Member (Judicial)

(M.M. PARTHIBAN)
Member (Technical)

SM