OD – 21

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Customs]

ORIGINAL SIDE

CUSTA/77/2025
IA NO: GA/1/2025, GA/2/2025
COMMISSIONER OF CUSTOMS PORT KOLKATA
VS
M/S KEC INTERNATIONAL LIMITED

BEFORE :
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
And
THE HON'BLE JUSTICE UDAY KUMAR
Date : 12th March, 2026

Appearance :
Mr. Vipul Kundalia, Adv.
Mr. K.K. Maiti, Adv.
…for appellant.

Mr.Rahul Tangri, Adv.
Ms. Ekta Jhunjhunwala, Adv.
…for respondent.

The Court : There is a delay of 29 days in filing the appeal. We are satisfied with the explanation offered for not preferring the appeal within time. Therefore, the delay is condoned. The application is allowed.

IA No.GA/1/2025 is disposed of.

Learned counsel for the appellant submits that the involvement of duty in the matter is Rs.69,51,349/- which is much below the Instruction dated 2.11.2023. The Instruction dated 2.11.2023 is as under :

"In exercise of the powers conferred by Section 131BA of the Customs Act, 1962 and in partial modification of earlier instruction issued from F. No. 390/Misc./163/2010-JC dated 17.08.2011, the Central Board of Indirect Taxes & Customs (hereinafter referred to as the Board) fixes the following monetary limits below which appeal shall not be filed in the CESTAT, High Court and the Supreme Court:

S. No.	Appellate Forum	Monetary limit
1	SUPREME COURT	Rs. 2 Crore
2	HIGH COURTS	Rs. 1 Crore
3	CESTAT	Rs. 50 Lakh

2. Adverse judgments relating to the following should be contested irrespective of the amount involved:

a) Where the constitutional validity of the provisions of an Act or Rule is under challenge;

b) Where Notification/ Instruction/Order or Circular has been held illegal or ultra vires;

c) Classification and refund issues which are of legal and/or recurring nature."

Learned counsel further submits that as the matter involved in the case falls within Item No.2 of Classification 3 of the Instruction, the appellant is pressing the appeal.

Perused the memoriam of appeal, application for stay and more specifically, the Tribunal's order dated 24.4.2025. The order of the Tribunal is read as under :

"3. In order to fulfill its obligation under the contract, the appellant imported certain goods like OPGW fibre cables, splice enclosures, pass-through tension assembly, etc., and cleared the same for home consumption through two Bills of Entry dated both dated 22.01.2014. The applicable Customs duties on the said imported goods, including Special Additional Duty (SAD), were discharged by the appellant.

4. After having cleared the goods imported under the above said Bills of Entry, the appellant sold the same to M/s. Power Grid Corporation of India Ltd. and the said imported goods were supplied by the appellant under the cover of 21 numbers of invoices, all dated 23.01.2014 and applicable VAT/CST were duly paid.

5. Subsequently, the appellant filed a claim for refund of Special Additional Duty (SAD) paid on the said importation, under Notification No. 102/2007-Cus. dated 14.09.2007. The said refund claim was sanctioned to the appellant vide Order dated 26.09.2014.

6. Thereafter, after expiry of more than two years, the Department reopened the matter vide a letter dated 03.11.2016 by alleging irregularities in the refund granted to the appellant.

6.1. On that basis, a Show Cause Notice was issued on 06.06.2018 and the matter was adjudicated vide the impugned order wherein demand, along with interest and penalty, was confirmed against the appellant

6.2. Against the said order, the appellant is before us.

7. The Ld. Counsel appearing on behalf of the appellant submits that as the refund claim was sanctioned after due verification, on 26.09.2014, the Show Cause Notice issued on 06.06.2018 without challenging the refund sanction order passed, is barred by limitation. Hence, it is prayed that the impugned order be set aside.

8. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order.

9. Heard the parties and considered their submissions.

10. It is a fact on record that the refund claim of SAD filed by the appellant, under Notification No. 102/2007-Cus. dated 14.09.2007, was sanctioned to them on 26.09.2014. Therefore, the impugned Show Cause Notice, which has been issued on 06.06.2018 for recovery of the said refund granted to the appellant, is highly barred by limitation.

10.1. Admittedly, no appeal has been filed against the said order of sanction of the refund claim. In these circumstances, the Show Cause Notice issued to the appellant by invoking the extended period of limitation, is barred by limitation.

11. In these circumstances, no demand is sustainable against the appellant. Accordingly, the impugned order is set aside."

From the facts of the case it is seen that no substantial questions of law arise in this matter and as the involvement of duty is less than Rs.1 crore, as per Instruction dated 2.11.2023, we decline to admit the appeal.

The appeal and the connected application [GA/2/2025] are dismissed.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

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