# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 1

**Customs Appeal No. 20715 of 2024**

[Arising out of Order-in-Appeal No. 299/2024 dated 12.07.2024 passed by the Commissioner of Customs (Appeals), Bangalore]

**Manyata Promoters Private Limited**
Embassy One Pinnacle Tower
12 Bellary Road, Ganga Nagar
Bangalore – 560 032 **.........Appellant(s)**

**VERSUS**

**Commissioner of Customs**
**Bangalore**
P.B. No. 5400, C.R. Building
Queens Road
Bangalore – 560 001 **.......Respondent(s)**

**APPEARANCE:**

Mr. N. Anand, Advocate for the Appellant
Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the Respondent

**CORAM:**

**Hon'ble Mr. P.A. Augustian, Member (Judicial)**
**Hon’ble Mr. Pullela Nageswara Rao, Member (Technical)**

**FINAL ORDER NO. 20930 / 2026**

Date of Hearing: 02.02.2026
Date of Decision: 30.07.2026

**PER: P.A. AUGUSTIAN**

The issue in the present appeal is regarding refund of duty collected.

2. The brief facts are the Appellant imported “Pillow and Duvet” from China and filed bill of entry no. 5454759 dated 15.09.2012 under RMS and paid Customs Duty with interest towards delayed payment of duty.

In the meantime, objections were made regarding compliance of Animal Quarantine & Certification Services (AQCS) since the goods are made from duck feathers. Thereafter, Regional Office, AQCS issued a communication stating that the goods imported by the appellant did not comply with quarantine clearance and directed for destruction /deportation of the goods. Accordingly, appellant requested the Customs Department to destroy the goods and refund the entire amount. Thereafter, Adjudication Authority as per the Order-in-Original dated 22.06.2022 held that the goods are liable for confiscation, imposed penalty allowed to redeem the goods for reexport or destruction on payment of fine of Rs. 1,00,000/-. and penalty of Rs. 1,00,000/- and there was no demand of duty. Accordingly, appellant paid penalty and fine and goods were destroyed as per the Destruction Certificate dated 12.08.2022. Since there is no appropriation of the amount paid by the appellant at the time of import, appellant filed a refund claim and Adjudication Authority as per the Order-in-Original dated 13.03.2023 allowed refund of the same. Aggrieved by said order, Revenue filed an appeal on the ground that as per Section 26A(1), no refund is eligible where the offence appears to be committed and the First Appellate Authority allowed the appeal vide impugned order dated 12.07.2024. Aggrieved by the said order, present appeal is filed.

3. When the matter came up for hearing, learned Counsel for the appellant draws our attention to the Order-in-Original dated 13.03.2023 initially issued by the Adjudicating Authority where goods are held liable for confiscation and also imposed redemption fine and penalty. However, there is no order demanding duty and appropriation of the amount paid by the appellant. Further, learned Counsel draws our attention to refund claim submitted by the appellant and the refund order issued by the Adjudication Authority. In this regard, learned Counsel submits that the appellant had filed the refund application under Section 27 of the Customs Act, 1962 and the Adjudication Authority considered the application as filed under section 26A of Customs Act, 1962. In appellant’s case the refund application under Section 26A of the Customs Act, 1962 is not applicable. The entire refund was against the

duty which was paid prior to clearance of the goods and it is considered only in the nature of deposit and it did not partake the character of "duty" as per law. Hence, the impugned order is untenable in rejecting the refund.

4. From the above fact-narrative, it is clear that admittedly "no order for clearance for home consumption” as envisaged in section 47(1) of the Customs Act, 1962 was passed. In other words, "no out-of-charge" order was passed under section 47(1). Therefore, the "taxable event” of import as envisaged in section 12(1) of the Act did not take place at all. It is well settled that the act of importation is complete only when goods are in the hands of the importer after they have been cleared either for home consumption or for deposit in a warehouse. Further, as per Section 47 of the Customs Act, the importer has to pay import duty only on goods that are entered for home consumption. Thus, when the taxable event of import has not occurred, then no customs duty is leviable or payable as per law. Reliance is placed on the judgment of the **Hon'ble Supreme Court in Mangalore Refinery and Petrochemicals Ltd. Vs. CC,-[2015 (323) E.L.T. 433 (S.C)].** In fact, there is no adjudication order passed by the Revenue demanding duty of customs against the Appellant. Hence, the amount of Rs.34,53,406/- paid by the Appellant on 22.09.2021 was only a deposit and since no duty is leviable for the reasons afore-stated, the department was duty bound to refund the same. Hence, the impugned order is devoid of merit.

5. Learned Counsel submits that admittedly, the Appellant had paid duty of Rs.34,43,500/- along with interest of Rs. 9,906/- towards interest, but the goods were found to be prohibited goods in the absence of NOC from AQCS. Thus, no order for clearance of goods for home consumption is passed in respect of the goods covered by bill of entry dated 15.09.2021. In the absence of any order passed under section 47(1), no assessment of duty has taken place. When there is no assessment of duty, no demand of duty can arise in law. In the absence of any demand of duty or assessment of duty, the amount paid by the

Appellant on 22.09.2021 remains only a deposit /payment of amount and the revenue is duty bound to refund this amount. The impugned order is therefore contrary to section 12(1) read with section 47(1) and is also violative of Article 265 of the Constitution. The impugned order is therefore bereft of legality. Learned Counsel further submits that in the light of the above facts and circumstances, the Revenue should have refunded the entire amount deposited by the Appellant suo moto and there was no need for filing refund claim under section 26A or section 27 of the Customs Act, 1962 inasmuch as said refund provisions is applicable only if any duty was paid /payable as per law.

6. Learned counsel further submits that in the adjudication order vide Order-in-Original No.509/2022 dated 22.06.2022 the Revenue has only passed order confiscating goods under section 111(d) and imposed penalty of Rs. 1,00,000/- and allowed redemption of goods for destruction or re-export on payment of fine of Rs.1,00,000/-. There was no order for demand of customs duty and as submitted in the foregoing paragraphs, no duty was either leviable or payable on the goods. Be that as it may, it is now well settled that when there was no order for demand of duty was passed, then no duty is payable as held in the cases of **Fortis Hospital Ltd. Vs. CC, -[2015 (318) E.L.T. 551 (SC)], K. Jayanthi Mohan Vs. UOI, -[2023 (384) E.L.T. 43 (Bom.)] and CC Vs. R.K. International, -[2018 (362) E.L.T. 770 (Del.)].** Hence, the amount paid by the Appellant is refundable in any case. The impugned order is thus sans merit.

7. Without prejudice to the above pleas, the learned Counsel for the Appellant further submits that even as per section 23(1) of the Customs Act, 1962, the Appellant was entitled for remission of duty inasmuch as the goods imported are destroyed, at any time before clearance for home consumption. In the Appellant's case, due to non-clearance of permission by AQCS, the goods imported were destroyed with the permission of the Revenue and the goods so destroyed was before clearance for home consumption. Hence, no duty of customs was demandable and duty shall be remitted. Even on this ground as well, no

duty was payable on the destroyed goods. The impugned order has not appreciated this aspect as well.

8. Learned Counsel submits that the impugned order has allowed Revenue's appeal by invoking 3rd Proviso below section 26A(1) and set aside the refund order. It is the case of the Appellant they have not filed refund application under section 26A at all. The Appellant's refund claim was specifically under section 27(1)(b). Hence, though the amount paid by the Appellant was only a "deposit" and is not a "duty" and the said amount paid was refundable in any case to the Appellant, for the pleas urged in the foregoing paragraphs, both the lower authorities have wrongly invoked section 26A to the detriment of the Appellant. It is the case of the Appellant that section 26A is inapplicable in any case to the facts of the Appellant inasmuch as "there was no importation of goods" at the first place. Hence, section 26A had no application to the facts of the Appellant.

9. Learned Authorized Representative (AR) for the Revenue reiterated the findings in the impugned order.

10. Heard both sides and perused the records.

11. It is an admitted fact that the appellant had filed a Bill of Entry under RMS and before finalization of the assessment, due to dispute regarding non-production of NOC from Animal Quarantine & Certification Services (AQCS), Bill of Entry was not finalized and subsequently when it is confirmed that goods do not comply with the statutory requirement, they were ordered for destruction on payment of fine and penalty. In the absence of appropriation of the duty paid, at the time of initial adjudication, we find that the amount deposited by the appellant cannot be considered as payment of duty and it is only to be considered as deposit and appellant is eligible for refund of the same. Further, we find that for the alleged illegality, Adjudication Authority has imposed redemption fine and penalty which was paid by the appellant, facts being so, the appellant is eligible for refund of duty amount paid before the goods were issued 'Out of Charge' (OOC) for

clearance for home consumption. Hence, the impugned order is unsustainable and liable to be set aside.

12. Accordingly, impugned order is set aside and appeal is allowed with consequential relief, if any, in accordance with law.

*(Order pronounced in open court on 30.07.2026)*

**(P.A. AUGUSTIAN)**
**MEMBER (JUDICIAL)**

**(PULLELA NAGESWARA RAO)**
**MEMBER (TECHNICAL)**

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