xCUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Customs Appeal No. 40755 of 2016
with
C/Cross/41017 of 2016
with
Customs Miscellaneous Application No.40273 of 2026

(Arising out of Order-in-Original No.43508/2015 dated 30.11.2015 passed by Commissioner of Customs, Chennai-II, 60, Rajaji Salai, Custom House, Chennai 600 001.)

Commissioner of Customs .... Appellant
Commissionerate-II,
Custom House,
Chennai 600 001.

VERSUS

M/s. Unitech Wireless (Tamilnadu) Pvt. Ltd. ... Respondent
No.1-10-39, to 44, 3rd Floor,
Gumidelli Commercial,
Begumpet,
Hyderabad 500 016.

Shri Sanjay Kakkar, Authorized Representative for the Appellant

Shri Rohan Muralidharan, Advocate
Ms. Anagha Ramdass, Advocate for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.41163/2026

DATE OF HEARING : 07.10.2026
DATE OF DECISION :03.11.2026

Per: Shri P. Dinesha

By this Appeal Revenue is challenging the Order-in Original No.43508/2015 dated 30.11.2015 passed by Commissioner of Customs, Chennai-II whereby the Commissioner felt it proper and accordingly dropped the proceedings initiated against M/s.Unitech Wireless (Tamilnadu) Pvt. Ltd., who is the Respondent in this Appeal. The impugned order was passed pursuant to a Show Cause Notice dated 30.09.2011 issued by the Department proposing *inter alia* to demand Anti-dumping duty (ADD, for short). The reason for issuance of SCN under Section 28 (1) of the Customs Act, 1962 was on the allegation that the importer i.e. Respondent had misdeclared the goods which prompted the Revenue to believe that the same was liable to ADD in terms of Notification No. 132/2009 dt. 08.12.2009 and subsequent Notification No.125/2010-Cus. dated 16.12.2010.

2. Brief relevant facts are that in the course of its business the Respondent had imported Synchronous Digital Hierarchy (SDH) Telecom Equipment from M/s.Huawei International Pte Ltd., Singapore which was manufactured by M/s.Huawei Technologies Co. Limited, China. Entertaining a doubt that the description of the goods was misdeclared by giving only the technical name and not the trade name in order to evade payment of ADD, an investigation was taken up during the course of which statements of some of the personnel of the Respondent's company were recorded. The above resulted in the issuance of SCN dt.30.09.2011 by the D.R.I under proviso to Section 28 (1) of the Customs Act, 1962, apart from confiscation and penal action. It appears that the Respondent made a detailed written submissions which were considered by the Adjudicating Authority during adjudication and a perusal of the impugned Order-in-Original reveals that the Authority was satisfied that in terms of Note 2 to Notification No.125 *ibid* Equipment transmitting the data through the optical fibre alone could be subject to levy of ADD, the importer took a consistent stand both during investigation as well as in their written submissions that equipment imported by them were not to

be used with optical fibre since they were equipments with microwave antenna and that the D.R.I did not bring any evidence on record discrediting the Respondent's above stand and hence, the Respondent's goods fell within the purview of exclusion clause as per Note 2 of Notification No.125 *ibid*.

3. During the course of hearing Shri Sanjay Kakkar, Ld. Departmental Representative seriously contended that the impugned order of the Commissioner deserves to be set aside as he has dropped further proceedings in respect of a SCN when the imports made by the Appellant called for imposition of ADD. He would submit that the Commissioner seriously erred in not interpreting Note 2 of Notification No.125 *ibid* in the proper perspective since the word 'essentially' does not mean 'exclusively', the same does not exempt equipments having facility to transmit signal both through electrical copper medium or microwave radio medium. He would thus pray for setting aside the impugned order and allowing the Appeal.

4. *Per contra,* Shri Rohan Muralidharan, Ld. Advocate assisted by Ms. Anagha Ramdass, Ld. Advocate submitted at the outset that the very foundation in the SCN is on a faulty ground since particular Bill of Entry for which the SCN was issued was filed on 08.12.2009, the SCN having been issued on 30.09.2011 is clearly beyond the normal period. Elaborating further, Ld. Advocate submitted that the Authority has also invoked proviso to Section 28 (1) as, according to him, proviso to Section 28 (1) could be invoked only for the reasons of either collusion or willful misstatement or suppression of facts etc. but the Respondent has correctly declared the value of goods and the description of the goods also in its Bill of Entry on which no fault was found. Rather, the SCN only alleges that no correct technical details are made available and thus has proceeded to conclude that there was misdeclaration. In this connection, Ld. Advocate would rely on the following decisions :

(i) **Pushpam Pharmaceuticals Company Vs CCE Bombay** [1995 (78) ELT 401 (SC)]

(ii) **Uniworth Textiles Ltd. VS CCE Raipur** [2013 (288) ELT 161 (SC)]

(iii) **CCE Vs Reliance Industries Ltd.** [2023 (385) ELT 481 (SC)]

(iv) **Taeyang Metals India Pvt. Ltd.** [2026 (5) TMI 654-CESTAT Chennai]

(v) **Johnson Lifts Pvt. Ltd. Vs CC Chennai-II** [2026 (1) TMI 535-CESTAT Chennai]

(vi) **SPI Technologies India Pvt. Ltd. Vs CGST & CE, Chennai** [2026 (7) TMI 766-CESTAT Chennai]

5. Without prejudice to the above, Shri Rohan Muralidharan also submitted that as early as in 2010 (13.02.2010) the officials at D.R.I., Hyderabad had visited the godown premises of the Respondent and collected all relevant documents/details in respect of the import of the goods in question, which was never acted upon within the time limit prescribed under the statute and only after a lapse of more than one year, the SCN in question came to be issued. He would thus contend that when the Department was aware of the factual matrices, invoking the extended period of limitation was not justified, the same was done just to cover up the inaction by the authorities which cannot be a reason to invoke the extended period of limitation. He would also take us through the various submissions made on merits as well and would thus pray dismissing the Revenue's Appeal.

6. We have carefully considered the rival contentions and perused the documents placed on record carefully. Upon hearing both sides, we find that the following issues are to be decided by us :

(i) whether the Revenue was justified in issuing the SCN by invoking the extended period of limitation ? and

(ii) whether the dropping of proceedings initiated against the Respondent by the Commissioner is justified ?

7. Facts are not in dispute, Revenue also does not dispute the visiting of the officials at D.R.I., Hyderabad on 13.02.2010. In their reply to the SCN the Respondent has clearly brought out this fact, apart from explaining their case even on merits. The Respondent all along maintained that it had given the correct description of the goods imported by it and a perusal of the impugned order also reveals that as early as in 2009 (24.12.2009) which is much before issuance of SCN dt. 30.09.2011 Respondent had explained the nature and description of goods imported by them and these facts clearly establish that the Revenue was in the know of the factual matrices

but however, chose not to act in time, which has only resulted in the issuance of SCN under Section 28 (1) *ibid* after invoking the extended period of limitation. For these very reasons, the Respondent cannot be alleged to have colluded or made any wilful misstatement or suppression of any facts justifying the invocation of extended period of limitation.

7.1 When a SCN is submitted to be wholly time-barred, it challenges the jurisdiction of the Adjudicating Authority to decide the matter and must be examined at the threshold. An order passed without jurisdiction is a nullity and cannot be cured in appellate proceedings.

7.2 We find that the decisions of the Hon'ble Apex Court relied upon by the Respondent which decisions have been followed by various Benches of the Tribunal referred to *supra* clearly supports this view and hence, we are of the view that the Revenue's Appeal is required to be dismissed on limitation itself.

8. Resultantly, the Appeal is dismissed. MAs filed by Respondent for taking additional evidence on record and

the cross-objections in Revenue's Appeal stand disposed of.

(Order pronounced in open court on 03.11.2026)

sd/-	sd/-
(VASA SESHAGIRI RAO)	**(P. DINESHA)**
Member (Technical)	Member (Judicial)

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