



\$~63

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 18th February, 2025

+

W.P.(C) 868/2025

SENTEC INDIA COMPANY PRIVATE LIMITEDPetitioner

Through: Mr. Abhishek Garg, Mr. Yash Gaiha,
Mr. Ranesh Singh Mankotia & Mr.
Naman Mehta, Advs.

versus

ASSISTANT COMMISSIONER OF CUSTOMS, DELHI
& ORS.Respondents

Through: Mr. Atul Tripathi, SSC with Mr.
Shubham Mishra, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH
JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner- Sentec India Company Private Limited has filed the present petition under Article 226 of the Constitution of India seeking the refund of ₹10,72,986/- which was deposited with the Customs Department as Extra Duty Deposit (hereinafter 'EDD').
3. The brief background is that the Petitioner had imported certain goods from Taiwan between 2014 and 2017. The Respondent/Department had suspected undervaluation of said goods and referred the same to the Special Valuation Branch, Delhi (hereinafter 'SVB').
4. While those proceedings were pending, the goods in question were cleared on a provisional assessment basis on payment of EDD of 1% or 5% in terms of *Circular 05/2016-Customs* dated 9th February, 2016 read with



Circular No. 11/2001-Customs dated 23rd February, 2001 and **Circular No. 1/1998-Customs** dated 01st January, 1998. According to the Petitioner, it had deposited ₹10,72,986/- in the form of EDD at that stage to facilitate the release of the goods.

5. SVB had commenced an investigation in respect of the said imports based on the allegation that the exporter (‘*Sentec E & E Co. Ltd, Taiwan*) and Importer (*Petitioner*) were related, and the said relationship could have resulted in the undervaluation of the goods imported. Therefore SVB had to investigate with respect to the following aspects:

(i) Whether the above parties are ‘related’ under Rule 2(g)(2)(iv) & (v) of the Customs Valuation (Determination of Value of Imported Goods), Rules, 2007?

(ii) Whether the said relationship has led to undervaluation of the imported goods?

6. *Vide* Investigation Report No. CUS/SVB-DEL/78/2017-18 dated 30th November, 2017 and SVB order dated 6th December, 2017, the SVB concluded that though the parties were related, the said relationship had not led to the undervaluation of the imported goods. Based on these findings, the Respondent-Department conducted the final assessment of the bills of entry on 15th November 2019, accepting the valuation submitted by the Petitioner. This, according to the Petitioner, had entitled them to claim the refund of EDD deposited post the provisional assessment.

7. In this regard, the Petitioner repeatedly sought a refund of the EDD that was deposited *vide* letters dated 23rd July, 2020 (received on 18th August 2020) and 5th January, 2021 (received on 12th January, 2021). However, the Respondent-Department refused the claim *vide* impugned Order-in-Original



No.13/DS/PPG/2024 (hereinafter ‘OIO’) on the ground that the first claim for refund was received by the Department only on 18th August, 2020, and the same was beyond the one-year limitation period prescribed under Section 27 of the Customs Act, 1962. Hence, this petition has been filed seeking a refund of the said EDD.

8. Ld. Counsel for the Petitioner submits that ***Circular 05/2016-Customs*** dated 9th February, 2016 expressly clarifies that EDD is not a form of customs duty and the same is paid to the Customs Authority in the form of a security deposit. Once the final assessment is done, the amount cannot be withheld by the Customs Department.

9. Ld. Counsel for the Respondents was requested to seek instructions on the last date. Today, it is submitted by him that the same Petitioner had availed the appellate remedy before Commissioner (Appeals) in a similar circumstance with respect to different bills of entry and in fact, the refund was directed by the Commissioner (Appeals) as recorded in ***Sentec India Company Private Limited v. Assistant Commissioner of Customs and Another (2023 SCC OnLine Del 701)***. According to Ld. Counsel, the Petitioner ought to be, therefore, relegated to avail of the appellate remedy.

10. In this regard, Ld. Counsel for the Petitioner clarified that the present claim shall not fall into the scope of Section 27 of the Customs Act, 1962 as the EDD is not considered a ‘customs duty’. Reliance is placed on the following decisions in this regard:

- (i) ***Nithin India Tech Ltd v. The Deputy Commissioner of Customs (Refund) (W.P.No.24813 of 2020, Madras High Court)***



(ii) *The Assistant Commissioner of Customs (Refunds) and Anr. v. M/s.Dalmia Cement (Bharat) Limited* (W.A.No.1084 of 2021, Madras High Court)

(iii) *China Steel Corporation India Pvt Ltd v. C.C.-Ahmedabad* (2022 SCC OnLine CESTAT 2745, CESTAT Ahmedabad)

11. Heard the Ld. Counsels for the parties. A perusal of the impugned OIO shows that there are four dates mentioned across the order *i.e.*, (empty space).11.2024, (empty space).12.24, 30.11.2024 and 04.12.2024. However, it is taken to have been passed on 30th November 2024, when it was signed by the officer concerned.

12. Further, the said order acknowledges that the amount of EDD has been deposited over and above the customs duty. The extract of the said order is set out below: -

“5. *I have carefully gone through the refund claim along with records/ documents submitted by the claimant. I find that the Goods imported against above said 17 Bill of Entry submitted by the claimant were assessed provisionally by accepting extra duty deposit of 1 % or 5% during the period pending finalization of assessment. The party had deposited 1 % or 5% extra duty deposit (EDD) through manual TR-6 Challan in respect of 03 Bill of Entry, and through e-challan for 14 BOE 1as mentioned in Table A above.*

8. **The Sum of Rs. 10,72,986/- has been paid by Sentec India co. Pvt.Ltd. as EDD against Bill of Entry in excess/over and above the duty actually payable as per the value assessed by the customs department for the shipment received through following ports. The detailed information containing, ports, Bill of Entry, Challan & Bank details are attached here with and ports wise summary is below.**



Port	SVB Duty Amount	EDD (in INR)	Received	Balance
Delhi Air	55,52,076 / -	14,30, 102	43,21,974 / -	-14,30,102 /-
Patparganj Delhi	10,72,986	10,72,986	NIL	10,72,986 /-
Tughalakbad Delhi	34,04,556/-	NIL	34,04,556/-	NIL
Total	102,29,618/ -	25,03,088	77,26,530 /-	25,03,088 /-

13. The only ground on which the refund has been rejected is that the application made under Section 27 of the Customs Act, 1962 is beyond the period of limitation prescribed under the provision *i.e.*, beyond one year.

14. Therefore the short question before us is whether EDD constitutes a payment in the nature of customs duty under the scope of Section 27 of the Customs Act, 1962. This issue is no longer *res integra*. Firstly, **Circular No.5/2016-Customs** dated 9th February, 2016, as submitted by the Petitioner, expressly clarifies that payment collected after provisional assessment for the release of goods shall be in the form of 'security deposit'. The relevant paragraphs of the circular are read as under:

“3.2 The Board has reviewed the practice relating to levy of ‘Extra Duty Deposits’ (EDD) in cases where SVB investigations are undertaken. It has been taken into consideration that ‘Extra Duty Deposit’ @ 1% of declared assessable value is being obtained from the importer for a period of 4 months during which time he is required to submit required documents and information to the SVB. In the event of his failing to do so, the EDD can be increased to 5% till such time the importer complies. Upon the importer complying with the requisition for documents and information, Circular 11/2001 — Cus dated 23.2.2001 provides that EDD shall be discontinued, while imports will continue to be assessed provisionally till the completion of



*investigations. In other words, the imports were continued to be assessed provisionally on the basis of a PD Bond but without any EDD. It has also been noted that many importers have represented on delays in dispensing of EDD, even though they have provided the required information and a period of 4 months has passed without the case having been decided. **Therefore, the Board has decided that while reference to SVB requires the assessments to be provisional, for the sake of reducing transaction cost and bringing uniformity across Customs Houses, no security in the form of EDD shall be obtained from the importers. However, if the importer fails to provide documents and information required for SVB inquiries, within 60 days of such requisition, security deposit at a rate of 5% of the declared assessable value shall be imposed by the Commissioner for a period not exceeding the next three months. Simultaneously, the importer shall be granted a further period of 60 days to comply with the requisition for information & documents.** If the importer fails to submit documents within this extended period, the Commissioner in charge of SVB may consider the use of other provisions of the Customs Act for obtaining documents / information from an importer for conducting investigations. In no case shall the imposition of Security Deposit exceed the period of three months specified above. Furthermore, the Board has also decided that the importer would be free to choose whether the Security Deposit to be provided for the purposes of provisional assessment shall be by way of cash deposit or a Bank Guarantee. The form of Bond to be initially furnished by the importer is attached as Annexure D. The form of Bond to be used in a case where taking a Security Deposit becomes necessary is attached as Annexure E.”*

15. Despite this Circular, the Petitioner has had to deposit EDD at different points in time, the reasons for which are unclear.
16. The question, therefore, is as to whether EDD constitutes customs duty. This issue has been settled by various High Courts. Madras High Court in



Nithin India Tech Ltd v. The Deputy Commissioner of Customs (Refund)

(W.P.No.24813 of 2020) has observed as under:

“1. In this writ petition, the petitioner has challenged the impugned Order-in-Original No.84145 of 2021 (JOB No.83144/2021) dated 28.04.2021 passed by the respondent rejecting the Extra Duty Deposit (EDD) of Rs.1,16,71,430/- paid by the petitioner as refund claim.

17(A). The amount that was collected by the Assessing Officer in view of the Special Valuation Branch (SVB) proceedings are nothing to ¹ deposit and not a customs duty as is contemplated under Section 12 of the Customs Act, 1962, although such deposit were eligible to be appropriated towards the duty liability of the petitioner after final assessment of the Bill of Entry.

17(B). As such, amount that has been calculated over and above the tax duty payable by the petitioner is to be refunded back only after the Bill of Entries filed are finally assessed and assessment is completed.

*****”

17. Similarly Karnataka High Court in ***Commissioner of Customs v. Hitachi Koki India Pvt. Ltd., 2011 SCC OnLine Kar 4335*** in a similar writ petition has observed as under

“2. The revenue has preferred this appeal challenging the order passed by the Tribunal which has upheld the order of the appellate authority directing refund of the extra duty deposit by the assessee.

5. Against the said order, second appeal was filed before the Appellate Tribunal which set aside both the orders and remanded the matter back to the assessing, authority. After remand, the

¹ ‘to’ here is to be read as ‘but’



additional value laid was excluded and the provisional transaction value declared was accepted. In the meanwhile, the assessee had paid additional value. Therefore, he wrote letters demanding refund of the said amount. However, the same came to be rejected by the assessing authority on the ground that it was barred by time. Aggrieved by the same, he preferred an appeal. **The appellate authority held that, the refund claim that has been preferred by the assessee is not customs duty, but it is extra duty deposit. Thus, this amount cannot be equated with the duty payable by the assessee against the import of the goods by them. At the moot, it can be treated as a pre-cautionary measure to cover up/make good the difference of duty payable by them after completion of final assessment. Therefore, the appellate authority held that the time limit stipulated under Section 27 of the Customs Act, 1962 is not applicable in the instant case.** The provisions under Section 18(1) and 18(2) could have been followed and refund would have been granted automatically after completion of final assessment and cancellation of PD bonds. In coming to that conclusion, he relied on two judgments of the Tribunal at Bangalore and Chennai and thus the order of the assessing authority was set aside and a direction was issued to refund the money. Aggrieved by the same, the assessee preferred an appeal to the Tribunal. The Tribunal agreed with the said reasoning, dismissed the appeal. Aggrieved of the said order, the revenue is before this court in appeal.

6. From the aforesaid facts it is clear that, the refund is not sought for the excise duty paid in excess of what was payable under law. The refund was sought in respect of the additional value insisted upon by the department being the value of technical knowhow and royalty. It was added to the excise duty payable. When the assessee authority held that the customs duty paid by the assessee was proper and no additional duty need be paid, they were under an obligation to refund this additional amount which was collected, which had no basis. In such circumstances, Section 27 is not attracted. That is the view taken by the appellate authorities relying on the judgment of the Tribunal earlier. Therefore, the impugned order is legal Sind



valid and does not suffer from any legal infirmity which calls for interference, No substantial question of law arises for considerationr Agcordingly, appeal is dismissed”.

18. The Coordinate Bench of this Court in the Petitioner’s case itself, reported at *Sentec (Supra); (2023 SCC OnLine Del 701)*, under similar circumstances, has observed as under:-

“10. The petitioner's request for this refund was treated as a fresh application under Section 27 of the Customs Act, 1962 (hereafter ‘the Customs Act’) and was rejected by the impugned order on the ground that the same was not filed within limitation.

11. It is apparent from the facts as noted above that the petitioner's written request dated 22.07.2022, seeking refund of the balance amount was not an application under Section 27 of the Customs Act, but merely a request to the respondents to act in accordance with law and give effect to the appellate order dated 20.06.2019. The concerned authority overlooked the fact that the petitioner's application for refund of EDD was made on 19.02.2019.

12. Once the order dated 20.06.2019, partly rejecting the said application had been set aside, the natural corollary would be to process the said application and to grant the refund, if otherwise due.

*13. The respondent has filed a counter affidavit, however, the same is not on record. A copy of the same has been handed over to this Court. The respondent seeks to resist the present petition on, essentially, two grounds. First, it states that the petitioner has a remedy of appeal before the Commissioner of Customs (Appeals) under Section 128 of the Customs Act. And second, that the appellant had not quoted the order passed by the Supreme Court in **Suo Motu Writ Petition (Civil) No. 3 of 2020 in Re : Cognizance for Extension of Limitation**, whereby the period from 15.03.2020 to 28.02.2022 was directed to be*



excluded for the purpose of computing limitation in respect of any application or any appeal.

14. Both the grounds, as stated in the counter affidavit, are bereft of any merit.

15. Respondent no. 1 has misdirected itself in considering the petitioner's request for refund of the balance amount of Rs. 13,53,326/- made on 22.07.2022 as a fresh application. The said request was in continuation of the proceedings relating to the application for refund dated 19.02.2019. Thus, the question of the petitioner's claim being barred by limitation does not arise.

16. In view of the above, the second ground that the petitioner had not quoted the orders passed by the Supreme Court in **Suo Motu Writ Petition (Civil) No. 3 of 2020** (supra), does not arise in the present case.

17. Notwithstanding the above, the petitioner's request for refund could not be disallowed on the aforesaid ground. The authorities are fully aware of the orders passed by the Supreme Court in **Suo Motu Writ Petition (Civil) No. 3 of 2020** (supra) and this Court cannot countenance the approach of the respondents to insist that the orders passed by the Supreme Court be necessarily quoted by applicants for availing their benefit. The respondents are bound to consider the orders passed by the Supreme Court notwithstanding that the same are not referred to by the applicants.

18. In view of the above, the impugned order dated 07.11.2022 is set aside. The respondent is directed to forthwith process the petitioner's request for refund within a period of two weeks from today.

19. The respondent shall also consider the petitioner's entitlement to interest in accordance with law.”



19. A perusal of Section 27 would show that the same deals with refund of customs duty. It is abundantly clear that EDD is not in the nature of customs duty. The deposit of the EDD was itself to secure any customs duty which may have been later on found to be payable, due to the allegation of under-declaration. However, when the said allegation has been disproved and the Department has taken a view that there was no under-declaration, the substratum of the deposit of EDD itself no longer exists. The impugned order holding that the refund application is beyond the limitation is, thus, untenable. Moreover, the impugned order itself acknowledges that the said amount is over and above with duty which was determined by the SVB. The Customs Department could not have rejected the prayer for EDD refund.

20. Thus, the period of limitation for seeking refund of customs duty under Section 27 of the Customs Act, 1962, would not apply *qua* EDD. Under such circumstances, the prayer for relegating the Petitioner to the appellate remedy is also without merit. The petition is, accordingly, allowed.

21. The EDD which is lying deposited with the Customs Department shall be refunded to the Petitioner within two weeks from the date of release of this order. The Petitioner shall also be paid interest in accordance with law.

22. If the amount is not refunded within the time as directed above, the Petitioner is free to move an application in the present case.

PRATHIBA M. SINGH

DHARMESH SHARMA, J

FEBRUARY 18, 2025*Ch/am*
(corrected & released on 24th February, 2025)