

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40514 of 2022

(Arising out of common Orders-in-Appeal Seaport C.Cus. II No. 467-468/2022 dated 17.08.2022 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Komatsu India Private Limited

: Appellant

Plot No. A-1, SIPCOT Industrial Park,
Growth Centre, Oragadam,
Kanchipuram District – 631 604

VERSUS

The Commissioner of Customs

: Respondent

Chennai-II Commissionerate
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

AND

Customs Appeal No. 40515 of 2022

(Arising out of common Orders-in-Appeal Seaport C.Cus. II No. 467-468/2022 dated 17.08.2022 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Komatsu India Private Limited

: Appellant

Plot No. A-1, SIPCOT Industrial Park,
Growth Centre, Oragadam,
Kanchipuram District – 631 604

VERSUS

The Commissioner of Customs

: Respondent

Chennai-II Commissionerate
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

APPEARANCE:

Shri G. Natarajan, Learned Advocate for the Appellant

Smt. K. Komathi, Learned Additional Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOs. 40009-40010 / 2023

DATE OF HEARING: 02.01.2023

DATE OF DECISION: 13.01.2023

Order :

These two appeals arise out of the common Order-in-Appeal Seaport C.Cus. II No. 467-468/2022 dated 17.08.2022 passed by the Commissioner of Customs (Appeals-II), Chennai, whereby the rejection of refund of cash security deposit by the Adjudicating Authority came to be upheld.

2. The only issue therefore that arises for my consideration is: whether the rejection of refund of cash security deposit, as confirmed in the impugned Order-in-Appeal, is correct?

3. Facts are not in dispute: for the sake of convenience, facts as reflected in the impugned Orders-in-Appeal are considered. The appellant had imported goods separately vide 13 Bills-of-Entry (as per "Table-1" at paragraph 2 of the impugned Orders-in-Appeal) and 26 Bills-of-Entry (as per "Table-2" – below Table-1). Vide separate letters dated 27.10.2020, the appellant sought for refund of the cash security deposit and the Deputy Commissioner, after issuing a notice of Rejection Cum Virtual Personal Hearing dated 05.03.2021, issued the Order-in-Original Nos. 83446/2021 and 83449/2021 both dated 08.04.2021, rejecting the refund claimed on the ground that the appellant's claim was barred by limitation in terms of Section 27(1) of the Customs Act, 1962. The appellant preferred appeals before the First Appellate Authority, who, after hearing the appellant, has confirmed the rejection of refund claim on the very ground of the same being barred by limitation in terms of Section 27(1) *ibid*. Being aggrieved by the above rejection vide common impugned Orders-in-Appeal, the taxpayer / appellant has filed the present appeals before this forum.

4. Heard Shri G. Natarajan, Learned Advocate for the appellant, and Smt. K. Komathi, Learned Additional Commissioner for the Revenue.

5.1 Learned Advocate for the appellant would submit at the outset that the refund claim of the appellant was not of any duty or tax paid and hence, the question of limitation prescribed under the provisions relating to refund claim would not apply and consequently, there was no scope for the lower authorities to reject the refund claim by invoking the provisions of Section 27(1) *ibid*.

5.2 He would further contend, without prejudice to the above, *inter alia*, that the cash security deposits were made and thereafter, the appellant imported goods vide 26 and 13 Bills-of-Entry during January 2009 to May 2009 and October 2009 respectively; that those Bills-of-Entry were initially provisionally assessed and later finalized by the Department in 2019; that the Project Import Authority had intimated the completion of finalization of the Bills-of-Entry and cancelled the Bank Guarantee and Bond only on 09.07.2019 and 14.08.2019 and till such dates, the appellant was not informed / intimated about the finalization of assessment of the said 26 and 13 Bills-of-Entry; that unless and until the Department re-assess the entire Bills-of-Entry covered under the project import, the Project Import Authority could never calculate the duty liability, if any, arising out of the imports covered under the project contract and that upon finalization of all the Bills-of-Entry covered under the contract, duty liability, if any, could only be due to short payment of duty. For this reason, the finalization of all the Bills-of-Entry covered under the project import was essential and once the finalization is made, it is equally essential for the authority to communicate the same to the appellant, to reckon the period of limitation and that communication having been made (as to the finalization of Bills-of-Entry and cancellation of Bond) only vide intimations dated 09.07.2019 and 14.08.2019, the refund claim made by the appellant is within the prescribed period of limitation from the date of communication of the same.

5.3 He would also place heavy reliance on these decisions:-

- (i) *Commissioner of Customs (Export), Chennai-1 v. M/s. Cable Corporation of India Ltd. [2008 (229) E.L.T. 212 (Mad.)];*
- (ii) *M/s. Mehta Flex Pvt. Ltd. v. Commissioner of Customs (Import), Mumbai [2014 (310) E.L.T. 900 (Tri. - Mumbai)];*
- (iii) *Commissioner of Customs (Exports), Chennai v. M/s. Pioneer Power Corporation Ltd. [2015 (6) TMI 576 - CESTAT, Chennai]; and*
- (iv) *M/s. GNC Infra LLP v. Assistant Commissioner (Circle) [2021 (11) TMI 973 - Madras High Court]*

and, in particular, took me through the decision of the Hon'ble jurisdictional High Court of Judicature at Madras in the case of *M/s. Cable Corporation of India Ltd. (supra)* wherein, under similar circumstances, the Hon'ble High Court has held that for refund of security deposit, the provisions of Section 27 of the Customs Act would not apply.

6. *Per contra*, Learned Additional Commissioner for the Revenue vehemently contended that the lower authorities have rightly rejected the refund claim since the claim of the appellant pertains to refund. She would thus request for upholding the rejection orders of the lower authorities by supporting the findings therein.

7. I have heard the rival contentions and have also gone through the decisions relied upon during the course of arguments.

8. It is not the case of the Revenue that what the appellant claimed was the refund of the duty paid and there is also no dispute that the appellant claimed only the security deposit made. The Hon'ble jurisdictional High Court in the case of *M/s. Cable Corporation of India Ltd. (supra)* has considered a similar issue and has ruled as under:-

"4. *The issues involved in the present case are squarely covered by the decision in the case of Commissioner of Customs, Chennai v. Aristo Spinners Ltd., 2008 (226) E.L.T. 42 (Mad.) = (2008) 4 TNLJ 517 decided by a Division Bench of this Court in which one of us (KRPJ) is a party, relying on the judgment of the Division Bench in which both of us are parties in the case of Commissioner of Customs (Exports) v. M/s. Jraj Exports (P) Ltd., 2007 (217) E.L.T. 504 (Mad.) = 2007 (3) TNLJ 532, wherein we have held that the bank guarantee cannot be regarded as equivalent to payment of duty and it is only furnished to safeguard the interest of the Revenue in case of non-fulfilment of export obligation. Section 27 which speaks about the refund of the duty cannot be pressed into service to deny refund of the amount covered under the bank guarantee which has been negotiated by the department. In the decision in the case of Jraj Exports (P) Ltd., referred to supra, this Court has taken in aid the judgment of the Apex Court in the case of Oswal Agro Mills Ltd. v. Assistant Collector of Central Excise, 1994 (70) E.L.T. 48 (S.C.) = 1994 (2) SCC 546.*"

9. From the above, it is very much clear that refund claim of the security deposit is not governed by the provisions of Section 27 of the Customs Act and consequently, I am of the view that the lower authorities have clearly erred in rejecting and confirming the rejection of refund claimed of the security deposit by invoking the provisions of Section 27(1) *ibid*.

10. For the above reasons, the impugned order is not sustainable and hence, the same is set aside.

11. The appeals stand allowed, with consequential benefits, if any, as per law.

(Order pronounced in the open court on **13.01.2023**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)