

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

REGIONAL BENCH – COURT NO. III

**Customs Appeal No. 40034 of 2014**

(Arising out of Order-in-Appeal C.Cus. No. 1377/2013 dated 30.09.2013 passed by the Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai-600 001)

**M/s. HCL Infosystems Limited**

E – 4, 5, 6, Sector 11,

Noida, Uttar Pradesh – 201 301

**: Appellant**

**VERSUS**

**The Commissioner of Customs**

Integrated Cargo Complex, Meenambakkam, Chennai – 600 027

**: Respondent**

**APPEARANCE:**

Shri M. Karthikeyan, Advocate for the Appellant

Shri S. Balakumar, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MRS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)**

**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 40264 / 2022**

DATE OF HEARING: 10.06.2022

DATE OF DECISION: **24.06.2022**

**Order : Per Hon'ble Mrs. Sulekha Beevi C.S.**

The issue involved in this appeal is the denial of refund claim of Special Additional Duty (SAD) on the ground of being time-barred.

2. Shri M. Karthikeyan, Learned Counsel for the appellant, explained the facts of the case, which are narrated in brief as under. The appellant imported "computer and accessories" vide 35 Bills-of-Entry through Air Cargo Complex, Chennai on different dates between November 2007 and April 2008. They had paid the appropriate Customs Duty. Subsequently, the appellant claimed refund of SAD vide refund claim dated

18.10.2008, which was addressed to "The Assistant Commissioner of Customs, Refund (AIR), Air Cargo Unit, Chennai". Though the application for claiming refund was addressed to the Assistant Commissioner of Customs, Air Cargo Unit, Chennai, the same was wrongly filed before "Refund (Sea), Custom House, Chennai"; the appellant had obtained acknowledgement evidencing the proof of receipt of the refund claim by the Refund (Sea), Custom House, Chennai. Thereafter, on realizing the mistake that the refund claim had been filed before the wrong forum and that it ought to have been filed before the Air Cargo Unit, Chennai, the appellant vide letters dated 18.10.2010 and 03.06.2011 requested to transfer the refund application from the Refund (Sea), Custom House, Chennai to the Assistant Commissioner of Customs, Refund (AIR), Air Cargo Unit, Chennai. Through continuous follow-up, the refund application was transferred to the Air Cargo Unit, Chennai on 15.12.2012.

3. However, without issuing a Show Cause Notice, the Assistant Commissioner of Customs rejected the refund claim filed by the appellant observing that the same was hit by time-bar and was filed beyond the time-limit of one year from the date of payment of duty.

4.1 Learned Counsel for the appellant argued that the refund claim has been rejected without issuing a Show Cause Notice or without granting an opportunity of personal hearing. He relied upon the following decisions to argue that such rejection violates the principles of natural justice:

(i) *M/s. BA Continuum India Pvt. Ltd. v. Union of India* [2021 (49) G.S.T.L. 370 (Bom.)];

(ii) *Navneet R. Jhanwar v. State Tax Officer* [2021 (47) G.S.T.L. 337 (J & K)];

(iii) *M/s. PNP Polytex Pvt. Ltd. v. Asst. Commr. of Cus. (Refunds), Chennai* [2018 (360) E.L.T. 964 (Mad.)];

(iv) *M/s. Vasta Bio-Tech Pvt. Ltd. v. Asst. Commr. of Cus., Chennai* [2018 (360) E.L.T. 234 (Mad.)]

4.2 It is submitted by the Learned Counsel that the appellant filed the refund claim well within the statutory time-limit of one year from the date of payment of 4% Additional Duty in terms of Notification No. 102/2007 dated 14.09.2007, as amended vide Notification No. 93/2008 dated 01.08.2008. By mistake, the refund claim was filed before the wrong forum. Since the application for refund was filed within time, the Adjudicating Authority ought to have considered the original date of filing of the refund application by the appellant. In this regard, he placed reliance on the following decisions to argue that when a refund application is filed before a wrong authority / forum within the stipulated statutory time-limit, it should be treated as filed within time:

*(i) M/s. Sun Pharmaceutical Industries Ltd. v. Union of India [2020 (374) E.L.T. 222 (Del.)];*

*(ii) M/s. Indian Farmers Fertilizers Co-op Ltd. v. Commr. of C.Ex., Allahabad [2020 (371) E.L.T. 786 (Tri. – All.)]*

4.3 It is also argued by him that in the appellant's own case, the Commissioner (Appeals) vide Order-in-Appeal Nos. 339 and 341/ 2013 dated 12.03.2013 had sanctioned the refund for different refund applications. Against such order, the Department had preferred an appeal before the Tribunal and as per Final Order No. 40018 to 40041 of 2014 dated 07.01.2014, the Tribunal had dismissed the appeal filed by the Department.

4.4 He prayed that the appeal may be allowed.

5. Shri S. Balakumar, Learned Authorized Representative for the respondent, supported the findings in the impugned order.

6. Heard both sides.

7. On perusal of the impugned Order-in-Original No. 70/2013 – Refunds – Air dated 21.01.2013, it is seen from paragraph 3 of the findings of the said order that the appellant had filed the original claim on 10.11.2008 before the Assistant/Deputy Commissioner of Customs (Refunds), Refunds (Sea), Custom House, Chennai – 1; the file was later transferred to the Assistant/Deputy Commissioner of Customs (Refunds), Refunds (Air), New Custom House, Meenambakkam, Chennai – 27 on 15.12.2012. The Adjudicating Authority observed that the date of receipt of the refund claim is 15.12.2012 and therefore, held that the refund claim was filed beyond the period of one year from the date of payment of duty and is hit by the limitation of time. The Commissioner (Appeals) vide order impugned herein has upheld the order passed by the Adjudicating Authority.

8. It is clear from the findings recorded by the Adjudicating Authority that the appellant has filed the refund claim within the prescribed time limit of one year from the date of payment of duty, however, before a wrong forum. It is the settled position of law that when a refund claim is filed before a wrong forum, within the statutory time-limit, the date on which the claim was originally filed has to be taken as the date of filing of the refund claim. In the case of *M/s. Sun Pharmaceutical Industries Ltd. (supra)* a similar issue was considered. It was held that when a refund application is made within the prescribed time-limit before a wrong forum and subsequently filed before the correct authority/forum, the original date of filing of the claim has to be taken for computing the time-limit of one year.

9. After considering the facts as well as the decisions cited by the Learned Counsel for the appellant, we are of the opinion that the rejection of refund on the ground of time-bar cannot be justified. The impugned order rejecting the refund claim is set aside. However, the

matter requires to be remanded to the Original Authority who shall process the refund claim on merits.

10. The appeal is allowed in above terms.

(Order pronounced in the open court on **24.06.2022**)

Sd/-  
**(SULEKHA BEEVI C.S.)**  
MEMBER (JUDICIAL)

Sd/-  
**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

Sdd