

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Customs Appeal No.11233 of 2014- SM

(Arising out of OIA-60-61/2014/CUS/COMMR-A-/JMR dated 24/02/2014 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

Shital Ispat Pvt Ltd

.....Appellant

Plot No. 141-M, Ship Breaking Yard Alang,
Office At 1497/B, Theosophical Lodge, Rupani Circle,
Bhavnagar, Gujarat

VERSUS

C.C.-Jamnagar(prev)

.....Respondent

Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar, Gujarat

WITH

Customs Appeal No.11234 of 2014- SM

(Arising out of OIA-60-61/2014/CUS/COMMR-A-/JMR dated 24/02/2014 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

Anand Exports

.....Appellant

Plot No. 84-E, Ship Breking Yard, Alang.
Office At 1497/B, Theosophical Lodge, Rupani Circle,
Bhavnagar, Gujarat.

VERSUS

C.C.-Jamnagar(prev)

.....Respondent

Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar, Gujarat

APPEARANCE:

Shri, Rahul Gajera Advocate for the Appellant

Shri G. Kirupanandan, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/11319-11320/2023

DATE OF HEARING: 25.04.2023
DATE OF DECISION: 23.06.2023

RAMESH NAIR

The issue involved in the present case is that for the purpose of refund of Special Additional Duty (SAD) in terms of notification no. 102/2007-Cus ,the time limit of one year for filing the refund is applicable from the date of payment of duty or in the case of provisional assessment from date of final assessment of bill of entry.

02. Shri Rahul Gajera, learned counsel appearing on behalf of the appellant submits that this issue is covered by this tribunal judgment in the case of Bharat Ship Breakers Corporation and others vide final order No. A/10736-10737/2023 dated 27.03.2023 according to which the limit of one year for filing refund is reckoned from the date of final assessment of bill of entry and not from the payment of duty.

03. None appearing on behalf of other appellant M/s Anand Exports.

04. Shri G. Kirupanandan, learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

05. I have carefully considered the submissions made by both the sides and perused the records. I find that in principle this tribunal has taken a view in the case of Bharat Ship Breakers Corporation and others vide order dated 27.03.2023 wherein, in the identical case it was opined that one year period for filing the refund shall be taken from the date of finalization of bill of entry in a case where initially the assessment was made provisional. However, despite this issue was raised before both the lower authorities, both the lower authorities have not given any finding on this therefore, I am of the view that the matter needs to be re-considered after verifying about the provisional assessment and final assessment of bill of entry and also taking into consideration the above cited tribunal's judgment in the case of Bharat Ship Breakers Corporation and others (supra)

06. Accordingly, I set aside the impugned orders and allow the appeals by way of remand to the adjudicating authority for passing a fresh order.

(Pronounced in the open court on 23.06.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Raksha