

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL,  
SOUTH ZONAL BENCH, CHENNAI  
COURT HALL No. III**

**(1) CUSTOMS APPEAL No.41578 of 2014**

(Arising out of Order-in-Appeal No.741-744/2014 dated 01.05.2014 passed by Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai 600 001)

**M/s. LG Electronics India Pvt. Ltd.**

**.... Appellant**

Plot No.51,Udyog Vihar,  
Surajpur Kasna Road,  
Grater Noida – 201 306.

Versus

**The Commissioner of Customs(Exports)**

**... Respondent**

Refund Section  
Custom House, No.60, Rajaji Salai,  
Chennai 600 001.

**(2) CUSTOMS APPEAL No.41580 of 2014**

(Arising out of Order-in-Appeal No.741-744/2014 dated 01.05.2014 passed by Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai 600 001)

**M/s. LG Electronics India Pvt. Ltd.**

**.... Appellant**

Plot No.51,Udyog Vihar,  
Surajpur Kasna Road,  
Grater Noida – 201 306.

Versus

**The Commissioner of Customs(Exports)**

**... Respondent**

Refund Section  
Custom House, No.60, Rajaji Salai,  
Chennai 600 001.

**(3) CUSTOMS APPEAL No.41581 of 2014**

(Arising out of Order-in-Appeal No.741-744/2014 dated 01.05.2014 passed by Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai 600 001)

**M/s. LG Electronics India Pvt. Ltd.**

**.... Appellant**

Plot No.51,Udyog Vihar,  
 Surajpur Kasna Road,  
 Grater Noida – 201 306.

Versus

**The Commissioner of Customs(Exports)**

**... Respondent**

Refund Section  
 Custom House, No.60, Rajaji Salai,  
 Chennai 600 001.

**(4) CUSTOMS APPEAL No.41582 of 2014**

(Arising out of Order-in-Appeal No.741-744/2014 dated 01.05.2014 passed by Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai 600 001)

**M/s. LG Electronics India Pvt. Ltd.**

**.... Appellant**

Plot No.51,Udyog Vihar,  
 Surajpur Kasna Road,  
 Grater Noida – 201 306.

Versus

**The Commissioner of Customs(Exports)**

**... Respondent**

Refund Section  
 Custom House, No.60, Rajaji Salai,  
 Chennai 600 001.

**APPEARANCE :**

Mr. Rohan Muralidharan, Advocate  
 For the Appellant

Mr. M. Ambe, Deputy Commissioner (A.R)  
 For the Respondent

**CORAM :****HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)  
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

Date of Hearing : 08.11.2023

Date of Decision : 08.11.2023

**FINAL ORDER No.41020-41023/2023****ORDER : Per Ms. SULEKHA BEEVI C.S.**

Brief facts are that the appellant filed refund claim under Notification No.102/2007-Cus. dt. 14.09.2007 for refund of SAD paid by them at the time of import of goods. The claim was rejected by the original authority for the reason that the invoice did not contain the endorsement "*no credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible*". On appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. The learned Counsel Sri Rohan Muralidharan appeared and argued for the appellant. It is submitted by the learned counsel that the appellant is a trader and had furnished all documents along with the refund claims. The original authority has rejected the claim only

on the ground that para-2(b) of the notification is not complied. The appellant being a trader it is not possible to pass on the credit to any person. So there is no requirement to fulfil the condition as per the decision in the case of *Chowgule & Company Pvt. Ltd. Vs CC & CCE* - 2014 (306) ELT 326 (Tri.-LB). It is prayed that the appeal may be allowed.

3. The Ld. A.R Sri M. Ambe appeared for the Department and supported the findings in the impugned order.

4. Heard both sides.

5. The issue is whether the appellant is eligible for the refund even though there is no endorsement in the invoices as per para 2(b) of the Notification No.102/2007-Cus. dt. 14.09.2007. The issue is settled by the decision of the Tribunal's Larger Bench in the case of *Chowgule & Company Pvt. Ltd. Vs CC & CCE* (supra). Relevant para of the order reads as under :

**5.3** In the *Mangalore Chemicals and Fertilizers Ltd.'s* case (supra), the Hon'ble Apex Court observed that a distinction, between the provisions of a statute which are of a substantive character and were built-in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in nature on the other, must be clearly drawn. It was further held in the said decision that while interpreting an exemption clause, liberal construction should be imparted to the language thereof if the subject falls within the scope of the exemption. It was also held that, the need to resort to any interpretative process would arise only where the meaning is not manifest on the plain words of the statute. As held by the Hon'ble Apex Court in the *New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar* [AIR 1963 S.C. 1207] - "it is a recognized rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the Legislature".

Applying the *ratio* of these decisions to the facts of the case before us, it can be seen that the condition relating to endorsement on the invoice was merely a procedural one and the purpose and object of such an endorsement could be achieved when the duty element itself was not specified in the invoice. Since the object and purpose of the condition is achieved by non-specification of the duty element, the mere non-making of the endorsement could not have undermined the purpose of the exemption. Thus we concur with the view taken by this Tribunal in the cases of *Equinox Solution Ltd.* and *Nova Nordisk India Pvt. Ltd.* (supra).

**5.4** In view of the factual and legal analysis as above, we answer the reference made to us as follows. A trader-importer, who paid SAD on the imported good and who discharged VAT/ST liability on subsequent sale, and who issued commercial invoices without indicating any details of the duty paid, would be entitled to the benefit of exemption under Notification 102/2007-Cus., notwithstanding the fact that he made no endorsement that “credit of duty is not admissible” on the commercial invoices, subject to the satisfaction of the other conditions stipulated therein. The above decision is rendered only in the facts of the case before us and shall not be interpreted to mean that conditions of an exemption notification are not required to be fulfilled for availing the exemption.

**6.** The reference as answered above is returned to the referring Bench for further action as necessary.”

6. Following the cited decision, we are of the opinion that the rejection of refund claim is not justified. Impugned order is set aside. Appeals are allowed with consequential relief, if any.

(Dictated and pronounced in court)

sd/-

**(VASA SESHAGIRI RAO)**  
Member (Technical)

sd/-

**(SULEKHA BEEVI C.S.)**  
Member (Judicial)

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