

Refund cannot be considered as time-barred if filed within prescribed time even before a wrong forum—
Chennai CESTAT

20 July 2022



Summary

The appellant had filed the refund claim within the statutory time limit before the wrong forum, which was rejected by the correct forum as the application was hit by limitation of time. The Chennai Customs, Excise and Service Tax Appellate Tribunal (CESTAT) opined that it is the settled legal position that when a refund claim is filed before a wrong forum within the statutory time limit, the original date of filing refund claim shall be considered as the date of filing the refund claim. Hence, the CESTAT opined that the rejection of refund on the ground of time-bar cannot be justified.

Facts of the case

- The appellant¹ imported computer and accessories through the air cargo complex during the period November 2007 to April 2008 and paid appropriate custom duty.
- The appellant filed application to claim refund of special additional duty (SAD) in October 2008 which was to be submitted before the Assistant Commissioner of Customs, Refund (AIR) air cargo unit. However, it was wrongly filed before Refund (Sea) Custom House, from where the appellant obtained acknowledgment evidencing the proof of receipt of the refund claim.
- The appellant realised its mistake and requested through letters to transfer the refund application to the AIR Chennai, which was transferred in December 2012. The air cargo unit rejected the refund claim on the ground of being time-barred without issuing a show cause notice (SCN).
- The appellant contended that the refund claim has been rejected without issuing

SCN or without granting an opportunity of being heard, which violates the principle of natural justice. Further, the refund application was filed within a statutory time limit of one year from the payment date of duty².

Chennai CESTAT observations and ruling³:

- **Original date of filing refund shall be considered if an application filed before wrong forum is within time:** The CESTAT stated that it is the settled position of law that when a refund claim is filed before a wrong forum, within the statutory time limit, the original date of filing claim has to be taken as the date of filing of the refund claim. Therefore, the refund claim cannot be rejected on the ground of time-barred even if it has been filed before the wrong forum.
- **Rejection of refund not justified:** Basis the facts and the decisions⁴ cited by the appellant, the CESTAT opined that the rejection of refund cannot be justified on the ground of time-bar.

¹ M/s HCL Infosystems Ltd

² Notification No. 102/2007-Customs dated 14. September 2007 as amended vide Notification No. 93/2008 dated 01 August 2008

³ Customs Appeal No. 40034 of 2014, decision dated 24 June 2022

⁴ M/s. Sun Pharmaceutical Industries Ltd. (2016-TIOL-3273-HC-DEL-CUS), M/s. Indian Farmers Fertilizers Co-op Ltd. (2019-TIOL-3314-CESTAT-ALL)

Hence, the impugned order rejecting the refund claim is set aside.

Our comments

Earlier, the Delhi High Court in case of M/s Sun Pharmaceutical Industries Limited⁵ had held that any refund application made within prescribed time before the wrong authority and subsequently filed before the correct authority, cannot be considered as time-barred.

Recently, the Chennai CESTAT, in case of Hivelm Industries⁶, has held that immediate filing of refund before a wrong forum, itself proves the bona fides of the appellant. Hence, it establishes the fact that the refund application was within the prescribed limitation period, though before a wrong forum.

The present ruling is likely to set precedence in similar matters.

An analogy can be drawn under Goods and Services Tax (GST) regime as well for the refund claims.

⁵ WP (C) 7120/2001 dated 22 August 2016

⁶ Final Order No. 40173 / 2022 dated 9 May 2022

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