CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Customs Appeal No.70121 of 2026

(Arising out of Order-in-Appeal No.NOI-CUSTM-000-APPL/198/2025-26 dated 10/12/2025 passed by Commissioner (Appeals) Customs, Central Goods & Services Tax, Noida)

M/s Global YDK Electric P. Ltd., **.....Appellant**
(3D Udyog Vihar, Ecotech-II,
Greater Noida-201306)

VERSUS

Commissioner of Customs, Central Goods &

Service Tax, Noida **....Respondent**

(4th Floor, C-232A/2 TO 232A/3,

Ircon Building, Sector-48, Noida-201305)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70134/2026

DATE OF HEARING : 11 May, 2026
DATE OF PRONOUNCEMENT : 13 May, 2026

SANJIV SRIVASTAVA:

This appeal is directed against order in original No: NOI-CUSTM-000-APPL/198/2025-26 dated 10/12/2025 of the Commissioner (Appeal) Central Goods and Service Tx, Noida. By the impugned order following has been held:

"ORDER

The appeal bearing number 128/CUS/NOIDA/APPL/NCUS/2025-26 dated 13.10.2025, filed by M/s Global YDK Electric Pvt Ltd, 3D, Udyog Vihar, Ecotech-II, Greater Noida (UP)-201306 against the Order-

in-Original No. 18/AC/REFUND/NOIDA-CUS/2025-26 dated 31.07.2025, passed by the Assistant Commissioner (Refund), Noida Customs, is rejected and the impugned order number 18/AC/REFUND/NOIDA-CUS/2025-26 dated 31.07.2025 is upheld."

2.1 Appellant initially filed claim of refund on 21.02.2024 for Extra Duty Deposit (EDD) amounting to Rs.5,08,628/-, paid against 02 Bills of Entry No. 2774040 dated 15.02.2021 and 7055380 dated 12.01.2022. The said two Bills of Entry which were assessed by the assessing officer on account of related supplier and EDD @5% was collected, at the time of assessment. The said Bills of Entry were finalized with no addition to the declared value. Accordingly, the Appellant filed the Refund Application after finalization of said Bills of Entry on account of excess duty payment as security deposit at the time of provisional assessment.

2.2 The Assistant Commissioner (Refund), Noida Customs vide Order-in-Original No. 19/AC/Refund/ Noida Customs/2024-25 dated 01.07.2024 sanctioned the refund claim to the extent of Rs. 3,26,972/- and rejected the claim of Rs. 1,81,656/- holding that the claimed amount of Rs.1,81,656/- pertains to Bill of Entry No. 7055380 dated 12.01.2022 and the claim is hit by limitation as the assessment was finalized on 12.01.2022, whereas the present refund claim was filled by the party on 21.02.2024 i.e. after one year of prescribed time limit.

2.3 Aggrieved by the Order dated 01.07.2024, the Appellant filed an appeal before the Commissioner (Appeals), Noida, who vide Order-in-Appeal No. NOI-CUS000-APP-398-24-25 dated 27.03.2025 set aside the Order dated 01.07.2024 and remanded the matter to the Adjudicating Authority by observing as under:

"10. Keeping in view the above discussion and findings, I find that the adjudicating authority has failed to analyse the aspect of unjust enrichment with respect to Bill of Entry No. 7055380 dated 12.01.2022 and also failed to analyse the refund claim properly with respect to actual

date of final assessment of the above mentioned Bill of Entry and the issue regarding payment of interest has also not been discussed in the impugned OIO. Accordingly, the present case is liable to be remanded back to the adjudicating authority so that the case may be decided properly by taking into consideration of all the facts."

2.4 The Adjudicating Authority, in the remand proceedings found that the Appellant had paid excess duty of Rs.1,81,656/- in respect of Bill of Entry No. 7055380 dated 12.01.2022, and hence, eligible for the refund of Rs.1,81,656/-

2.5 However, the Adjudicating Authority found that in respect of Bill of Entry No. 7055380 dated 12.01.2022, an X-Bond Bill of Entry, the Journal Voucher No. 801 dt 21.01.2022 shows that the claimed amount of Rs 1,81,656/- is passed on by crediting the same to the ledger of M/S Global Autotech Ltd., and thus held that the Appellant had passed the incidence of duty on other person i.e. M/S Global Autotech Ltd. and hence ordered the amount of Rs. 1,81,656/- to be transferred to Consumer Welfare Fund, vide Memorandum Order No.18/AC/ Refund/Noida Customs/2025-26 dated 01.08.2025.

2.6 Aggrieved appellant filed appeal before Commissioner (Appeal) which has been disposed of by the impugned order.

2.7 Aggrieved appellant has filed this appeal.

3.1 I have heard Shri Atul Gupta, Advocate for the Appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

3.2 Arguing of the appellant learned counsel submits that:

- Due to shortage of funds appellant requested their promoter Company M/S Global Autotech Ltd., to give loan to deposit the Customs Duty amounting to Rs. 181656/-.
- The promoter had given loan amounting to Rs. 181656/- to the appellant as recorded vide journal voucher no. 801 dated 21.01.2022.
- Appellant returned the loan of Rs. 181656/- to the promoter, vide Bank payment Voucher No. 545 dated

07.03.2022 for Rs. 5001275/- vide Cheque No. 000794 dated 07.03.2022. Total amount of journal voucher No. 801 dated 21.01.2022 is Rs. 1198351/-. The Customs Duty amount of Rs. 181656/- is part of the voucher. Payment was made through Bank Voucher 545. The Chartered Accountant certificate was also submitted for reference.

- Credit and Debit vouchers clearly show that the transaction to deposit the Customs duty against BOE No. 7055380 dated 12.01.22 is in the nature of loan by promoter to subsidiary company.
- In the Note 16 of the Balance Sheet for the year 2021-22 the amount claimed as refund has been shown to be recoverable from the Custom Authority. While considering the matter in appeal first appellate authority referred to the Note in balance sheet of 2020-21 to hold that this is not reflected so hence the burden of extra duty claimed as refund has been passed on, and not borne by the appellant.
- The impugned order which has been passed in illegal arbitrary and perverse manner without taking note of above is to be set aside.
- Appellant is also entitled for interest on the claimed refund amount under Section 18 (4) of the Customs Act, 1962.
- Reliance is placed on following decisions:
    - Andhra Organics Ltd. [2018 (362) ELT 275 (T-Hyd)];
    - Jindal Stainless Ltd. [2020 (371) ELT 784 (T-Hyd)];
    - Nokia India Sales Pvt. Ltd. [Order of Delhi High Court Dated 7th July 2025 in CUSAA 66/2025 & 79/2025]

3.3 Authorized representative reiterated the findings recorded in the impugned order.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

"7. I find that the Adjudicating Authority found the amount eligible for refund, however, ordered for transfer of same to Consumer Welfare Fund by stating that as the Appellant had passed the incidence of duty on other person i.e. M/s Global Autotech Ltd. and hence principle of unjust enrichment is not justified in this case. In this regard, the Appellant has submitted that due to shortage of funds they requested their promoter company M/s Global Autotech Ltd., to give loan to deposit the Customs Duty amounting to Rs. 1,81,656/-, which was given to them and recorded in M/s GYD Global Electric Pvt Ltd. vide journal voucher no. 801 dated 21.01.22 and the said loan was returned to M/s Global Autotech Ltd., vide Bank payment Voucher No. 545 dated 07.03.2022 for Rs. 50,01,275/- vide Cheque No. 000794 dated 07.03.2022. Total amount of journal voucher No. 801 dated 21.01.2022 is Rs. 11,98,351/- and the Customs Duty amount of Rs. 1,81,656/- is part of the voucher, which clearly show that there is no undue enrichment in the case.

7.1 In this regard from the perusal of Note No 14 of Balance Sheet, it is seen that as on 31.03.2021, an amount of Rs 7,57,85,012/- has been shown as Balance with Tax Authorities and the breakup of said Balance shows an amount of Rs 3,26,972/- as recoverable from Customs Authority for 2020-21. The same is as under:

BALANCE SHEET NOTE NO 14

BALANCE WITH TAXING AUTHORITY/ AUTHORITIES

1	*CGST INPUT*	*27,39,186*
2	*CGST INPUT (HO)*	*2,76,168*
3	*IGST INPUT*	*6,21,30,627*
4	*IGST INPUT (HO)*	*50,161*
5	*IGST INPUT -RCM*	*25,59,496*
6	*RCM IGST INPUT 5%*	*13,330*
7	*SGST INPUT*	*27,39,186*
8	*SVB Load*	*46,83,718*

9	*SGST INPUT (HO)*	*2,76,168*
10	*Recoverable from custom authority (2020-21)*	*3,26,972*
	TOTAL	*7,57,95,012*

This is the amount pertaining to BOE No. 2774040 dated 15.02.2021, which was refunded to the Appellant. However, the amount of Rs 1,81,656/- has not been shown as recoverable from Customs authority in the Balance Sheet (2020-21), as is evident from above pasted Note of Balance Sheet. Therefore, as the same has not been shown as recoverable in the Balance Sheet, the Appellant's submission that the same was borne by them is not tenable. Accordingly, I hold that the adjudicating authority was justified in stating that incidence of duty was passed to M/s Global Autotech Ltd. Also as per proviso to Section 27(2) of the Customs Act, 1962, the duty and interest, if any, paid on such duty paid by the importer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person; then only the refund amount instead of being credited to the Fund, is to be paid to the applicant.

4.3 Memorandum Order dated 01.08.2025 records the findings as follows:

Discussion and findings:

"13. I have carefully gone through the refund application of the party, documents on record, and facts of the case, Order-in-Appeal passed by the Commissioner (Appeals), CGST. Noida and submissions made during personal hearing. The issue before me to decide

(i) Whether refund application has been filed within prescribed time limit as per Section 27 of the Customs Act, 1962;

(ii) Whether the applicant has passed on the incidence of such duty and interest, if any, paid on such duty to any other person; and

(iii) Whether the party is eligible for refund of Rs. 1,81,656/-.

14. The claim of refund of duty is governed by the provisions of Section 27 of the Customs Act, 1962 which reads as under.-

> *"Any person claiming refund of any duty or interest,-*
>
> *(a) paid by him; or*
> *(b) borne by him,*
>
> *may make an application in such form as manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest:*
>
> *…….*
>
> *…….”*

15 I observe that the Appraising group (PAG-5A), vide their letter C.No. CUS/APR/REF/25/2024 dated 18.04.2024 followed by clarification issued vide F.No. CUS/APR/Ref/25/2024-AG-V/2082348 dated 27.06.2024 informed that Bill of Entry No. 2774040 dated 15.02.2021 was finalized on 01.03.2023 and Bill of Entry No.7055380 dated 12.01.2022, an X-Bond Bill of Entry, was finally assessed on 12.01.2022, however the corresponding warehousing Bill of Entry was forcefully finalized in the system on 29.03.2023.

I find that the refund claim is filed by the party on 21.02.2024. As, in terms of above provision of Section 27 the refund claim was to be filed within one year from the order of final assessment of the said Bills of Entry, I find that Bill of Entry No. 7055380 dated 12.01.2022, an X-Bond Bill of Entry was forcefully finalized in the system on 29.03.2023 in view of Investigation report No. SVB/CUS/91/2019 dated 11.02.2022 (DIN 20220274NC000000B68E) passed by the Appraiser (SVB),

O/o the Commissioner of Customs (Airport & General), Special Valuation Branch, New Customs House, New Delhi-110037, which is well within the period of one year as prescribed under Section 27 of the Customs Act, 1962.

16. I find that party filed Bill of Entry No. 7055380 dated 12.01.2022, which were provisionally assessed by the assessing officer on account of related supplier and EDD @5% was collected. At the time of provisional assessment the party deposited Extra Duty of Rs.1,81,656/-. Further, the said Bill of Entry was finalized without loading of further duty, on the basis of Investigation report No SVB/CUS/91/2019 dated 11.02.2022 (DIN 20220274NC000000B68E) passed by the Appraiser (SVB), O/o the Commissioner of Customs (Airport & General), Special Valuation Branch, New Customs House, New Delhi-110037. Thus, I find that the party has paid duty in excess of Rs.1,81,656/- in respect of Bill of Entry No. 7055380 dated 12.01.2022, hence, eligible for the refund of Rs.1,81,656/-.

17.1 Now, let me examine whether the party have satisfied the clause of unjust enrichment in respect of their Extra Duty Deposit against said Bill of Entry No. 7055380 dated 12.01.2022. I find that the party has produced a certificate dated 06.02.2024 issued by the Chartered Accountant Shri Manish Kejariwal, Partner of M/s MKRK & Associates, Chartered Accountants, having member ship No. 451498, UDIN 24451498BKAEPV9000, wherein it has been certified that -

(i) Duty/tax has not been included in the cost;

(ii) The amount and the ground for which this refund claim has been filed has not been previously claimed and paid and;

(iii) The excess duty claimed as refund has not been passed on to any other person by the importer/buyer;

17.2 Further, the party has also provided certified copy of journal voucher No. 801 dated 21.01.2022, along with relevant Notes of Balance Sheets reflecting Rs.1,81,656/- as Customs Duty receivable, and I find that in respect of Bill of Entry No. 7055380 dated 12.01.2022, an X-Bond Bill of Entry, the Journal Voucher No. 801 dt 21.01.2022 shows that the claimed amount of Rs.1,81,656/ is passed on by crediting the same to the ledger of M/s Global Autotech Ltd. In this regard, the party has submitted clarification that the duty was initially paid by M/s Global Autotech Ltd. on behalf of M/s Global YDK Electric Pvt. Ltd. on 21.01.2022 being their promoter company and the same was later on paid to them. Thus, I find that the party has passed the incidence of duty on other person i.e. M/s Global Autotech Ltd. and hence principle of unjust enrichment is not justified in this case and therefore the amount of Rs.1,81,656/- is liable to be transferred to Consumer Welfare Fund.

Since, the amount of the refund has been sanctioned but credited to the Consumer Welfare Fund, therefore, the question of interest does not arise."

4.4 Appellant had filed two Bills of Entry as detailed in the table below:

(Value in Rs.)

SI No.	BE No. & Date	Port Code	Ass Value	EDD @ 5% of Ass Value	Paid vide Challan No	Payment Date	Date Final Assessment
1	2774040 dt. 15.02.2021	INSTT6	6539443	326972	2033925826	20.02.2021	01.03.2023
2	7055380 dt. 12.01.2022	INCPL6	3633111	181656	2037838576	21.01.2022	12.01.2022

For payment of EDD appellant had taken loan from their principals. After finalization of the Assessments on the declared invoice values, they claimed the refund of EDD deposited by them for which they filed a refund claim on 21.02.2024. The refund of Rs. 3,26,972/- has been allowed in the favour of the Appellant and is not in dispute. However the refund claim for EDD deposited in terms of B/E No 7055380 dated 12.01.2022 though held admissible has been ordered to be credited to Consumer Welfare Fund as authorities below have concluded

that the appellant has passed the burden of EDD and not borne it.

4.5 In respect of the EDD deposited, appellant had made following entries in the Notes to the Balance Sheet for the respective years 2020-21, 2021-22 & 2024-25 are reproduced below:

BALANCE SHEET NOTE NO 14 (Financial Year 2020-21)

BALANCE WITH TAXING AUTHORITY/ AUTHORITIES

1	*CGST INPUT*	*27,39,186*
2	*CGST INPUT (HO)*	*2,76,168*
3	*IGST INPUT*	*6,21,30,627*
4	*IGST INPUT (HO)*	*50,161*
5	*IGST INPUT -RCM*	*25,59,496*
6	*RCM IGST INPUT 5%*	*13,330*
7	*SGST INPUT*	*27,39,186*
8	*SVB Load*	*46,83,718*
9	*SGST INPUT (HO)*	*2,76,168*
10	*Recoverable from custom authority (2020-21)*	*3,26,972*
	TOTAL	*7,57,95,012*

BALANCE SHEET NOTE NO 16 (Financial Year 2021-22)

BALANCE WITH TAXING AUTHORITY/ AUTHORITIES

1	*CGST INPUT*	*60,73,696*
2	*IGST INPUT*	*5,10,57,497*
3	*SGST INPUT*	*60,73,696*
4	*CGST INPUT (HO)*	*2,90,118*
5	*IGST INPUT (HO)*	*50,161*
6	*IGST INPUT -RCM*	*25,59,496*
7	*RCM IGST INPUT 5%*	*17,355*
8	*SGST INPUT (HO)*	*2,90,118*
9	*TCS Interim*	*5,058*
10	*Recoverable from custom authority (2020-21)*	*3,26,972*

11	*Recoverable from custom authority (2021-22)*	*1,81,656*
	TOTAL	*6,69,25,824*

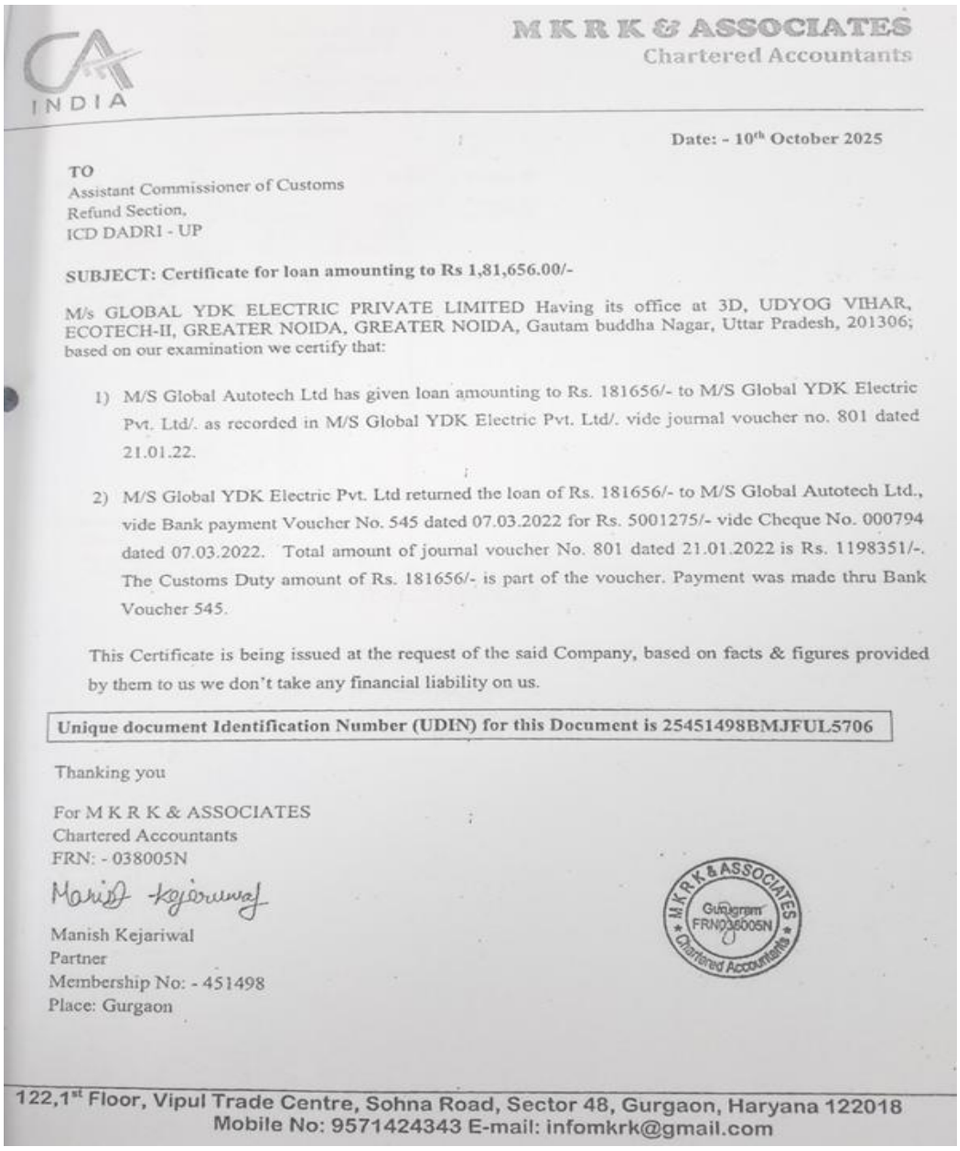
BALANCE SHEET NOTE NO 16 (Financial Year 2024-25)

BALANCE WITH TAXING AUTHORITY	*Amount (Rs)*
CGST INPUT	*3,69,40,390*
CGST INPUT (HO)	*2,90,118*
IGST INPUT (HO)	*50,161*
IGST INPUT -RCM	*5,99,418*
RCM IGST INPUT 18%	*14,95,351*
RCM IGST INPUT 5%	*1,820*
IGST OUTPUT	*21,174*
SGST INPUT (HO)	*2,90,118*
IGST INPUT 18%	*78,278*
Recoverable from custom authority (2021-22)	*1,81,656*
TOTAL	*3,99,48,484*

4.6 I observe that while deciding the issue of unjust enrichment Commissioner (Appeal) ahs erroneously referred to the Note from the Balance Sheet for the year 2020-21 whereas the dispute was in respect of the EDD deposit made during the Financial Year 2021-22 against the Bill of Entry dated 12.02.2022. How can the EDD deposited during the Financial Year 2021-22 be reflected in the Notes in the Balance Sheet for the year 2020-21. The finding of the first appellate authority on this basis cannot be correct and is erroneous. By examination of the Notes to the Balance Sheet for the Financial Year 2021-22, I observe that appellant has indeed shown the amount of EDD deposited (Rs 1,81,656/-) during this Financial Year as recoverable from the Custom Authority. The same position is reflected in the subsequent Balance Sheets also (Financial Year 2024-25). Hence I do not find any merits in the findings recorded by the Commissioner (Appeal) on facts.

4.7 Further I observe that the appellant has taken a loan from their principals for making the deposit of the EDD. The loan

taken was used to deposit the EDD. The EDD so deposited has been claimed as refund after finalization of the assessments as per the Investigation report No SVB/CUS/91/2019 dated 11.02.2022 (DIN 20220274NC000000B68E) passed by the Appraiser (SVB). I do not find any reason to hold that the refund of this amount paid through loan from principal can be said to be hit by the principles of unjust enrichment. Appellant have produced the Chartered Accountant Certificate dated 10th October 2025 which is reproduced below:



M K R K & ASSOCIATES
Chartered Accountants

INDIA

Date: - 10th October 2025

TO
Assistant Commissioner of Customs
Refund Section,
ICD DADRI - UP

SUBJECT: Certificate for loan amounting to Rs 1,81,656.00/-

M/s GLOBAL YDK ELECTRIC PRIVATE LIMITED Having its office at 3D, UDYOG VIHAR, ECOTECH-II, GREATER NOIDA, GREATER NOIDA, Gautam buddha Nagar, Uttar Pradesh, 201306; based on our examination we certify that:

1) M/S Global Autotech Ltd has given loan amounting to Rs. 181656/- to M/S Global YDK Electric Pvt. Ltd/. as recorded in M/S Global YDK Electric Pvt. Ltd/. vide journal voucher no. 801 dated 21.01.22.

2) M/S Global YDK Electric Pvt. Ltd returned the loan of Rs. 181656/- to M/S Global Autotech Ltd., vide Bank payment Voucher No. 545 dated 07.03.2022 for Rs. 5001275/- vide Cheque No. 000794 dated 07.03.2022. Total amount of journal voucher No. 801 dated 21.01.2022 is Rs. 1198351/-. The Customs Duty amount of Rs. 181656/- is part of the voucher. Payment was made thru Bank Voucher 545.

This Certificate is being issued at the request of the said Company, based on facts & figures provided by them to us we don't take any financial liability on us.

Unique document Identification Number (UDIN) for this Document is 25451498BMJFUL5706

Thanking you

For M K R K & ASSOCIATES
Chartered Accountants
FRN: - 038005N

Manish Kejariwal
Partner
Membership No: - 451498
Place: Gurgaon

M K R K & ASSOCIATES Gurugram FRN038005N Chartered Accountants

122,1st Floor, Vipul Trade Centre, Sohna Road, Sector 48, Gurgaon, Haryana 122018
Mobile No: 9571424343 E-mail: infomkrk@gmail.com

I find that the transaction between the appellant and their principal is a separate transaction whereby loan has been advanced by the principals to the appellant. The loan amount received by the appellant from their principal cannot be said to be the part of the transaction of clearance of the imported goods

from Customs for which the burden of duty has been passed on to the recipients of the goods after clearance of the goods. In this case the recipient of the goods after clearance from the customs is the appellant-importer who has used these goods in their process of manufacture. For application of the principles of unjust enrichment, the burden should have been passed on to the party who is part of the same transaction, i.e. if the goods were sold after the importation to the buyer of the goods. As the burden of EDD deposited has been borne by the appellant as evidenced by the Certificate of chartered accountant, I do not find any reason to uphold the impugned order whereby the refund of this amount has been rejected on the ground of unjust enrichment.

4.8 I further observe for the delay in payment of the refund claim appellant shall be entitled to any interest as per the provisions of the Customs Act, 1962 as has been held by the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd [2011 (273) ELT 3 (SC)].

4.9 Hon'ble Delhi High Court has in case of Sentec India Company Private Limited [Order dated 18.02.2025 in W P (C) 868/2025] held as follows:

> *14. Therefore the short question before us is whether EDD constitutes a payment in the nature of customs duty under the scope of Section 27 of the Customs Act, 1962. This issue is no longer res integra. Firstly, Circular No.5/2016-Customs dated 9th February, 2016, as submitted by the Petitioner, expressly clarifies that payment collected after provisional assessment for the release of goods shall be in the form of 'security deposit'. The relevant paragraphs of the circular are read as under:*
>
> > *"3.2 The Board has reviewed the practice relating to levy of 'Extra Duty Deposits' (EDD) in cases where SVB investigations are undertaken. It has been taken into consideration that 'Extra Duty Deposit' @ 1% of declared assessable value is being obtained from the*

importer for a period of 4 months during which time he is required to submit required documents and information to the SVB. In the event of his failing to do so, the EDD can be increased to 5% till such time the importer complies. Upon the importer complying with the requisition for documents and information, Circular 11/2001 -- Cus dated 23.2.2001 provides that EDD shall be discontinued, while imports will continue to be assessed provisionally till the completion of investigations. In other words, the imports were continued to be assessed provisionally on the basis of a PD Bond but without any EDD. It has also been noted that many importers have represented on delays in dispensing of EDD, even though they have provided the required information and a period of 4 months has passed without the case having been decided. Therefore, the Board has decided that while reference to SVB requires the assessments to be provisional, for the sake of reducing transaction cost and bringing uniformity across Customs Houses, no security in the form of EDD shall be obtained from the importers. However, if the importer fails to provide documents and information required for SVB inquiries, within 60 days of such requisition, security deposit at a rate of 5% of the declared assessable value shall be imposed by the Commissioner for a period not exceeding the next three months. Simultaneously, the importer shall be granted a further period of 60 days to comply with the requisition for information & documents. If the importer fails to submit documents within this extended period, the Commissioner in charge of SVB may consider the use of other provisions of the Customs Act for obtaining documents / information from an importer for conducting investigations. In no case shall the

imposition of Security Deposit exceed the period of three months specified above. Furthermore, the Board has also decided that the importer would be free to choose whether the Security Deposit to be provided for the purposes of provisional assessment shall be by way of cash deposit or a Bank Guarantee. The form of Bond to be initially furnished by the importer is attached as Annexure D. The form of Bond to be used in a case where taking a Security Deposit becomes necessary is attached as Annexure E."

15. Despite this Circular, the Petitioner has had to deposit EDD at different points in time, the reasons for which are unclear.

16. The question, therefore, is as to whether EDD constitutes customs duty. This issue has been settled by various High Courts. Madras High Court in Nithin India Tech Ltd v. The Deputy Commissioner of Customs (Refund) (W.P.No.24813 of 2020) has observed as under:

"1. In this writ petition, the petitioner has challenged the impugned Order-in-Original No.84145 of 2021 (JOB No.83144/2021) dated 28.04.2021 passed by the respondent rejecting the Extra Duty Deposit (EDD) of Rs.1,16,71,430/- paid by the petitioner as refund claim.

********* ********* *********

17(A). The amount that was collected by the Assessing Officer in view of the Special Valuation Branch (SVB) proceedings are nothing but deposit and not a customs duty as is contemplated under Section 12 of the Customs Act, 1962, although such deposit were eligible to be appropriated towards the duty liability of the petitioner after final assessment of the Bill of Entry.

17(B). As such, amount that has been calculated over and above the tax duty payable by the petitioner is to be refunded back only after the Bill of Entries filed are finally assessed and assessment is completed.

********* ********* *********"

17. Similarly Karnataka High Court in Commissioner of Customs v. Hitachi Koki India Pvt. Ltd., 2011 SCC OnLine Kar 4335 in a similar writ petition has observed as under

"2. The revenue has preferred this appeal challenging the order passed by the Tribunal which has upheld the order of the appellate authority directing refund of the extra duty deposit by the assessee.

********* ********* *********

5. Against the said order, second appeal was filed before the Appellate Tribunal which set aside both the orders and remanded the matter back to the assessing, authority. After remand, the 'to' here is to be read as 'but' additional value laid was excluded and the provisional transaction value declared was accepted. In the meanwhile, the assessee-had paid additional value. Therefore, he wrote letters demanding refund of the said amount. However, the same came to be rejected by the assessing authority on the ground that it was barred by time. Aggrieved by the same, he preferred an appeal. The appellate authority held that, the refund claim that has been preferred by the assessee is not customs duty, but it is extra duty deposit. Thus, this amount cannot be equated with the duty payable by the assessee against the import of the goods by them. At the moot, it can be treated as a pre-cautionary measure to cover up/make good the difference of duty payable by them after completion of final

assessment. Therefore, the appellate authority held that the time limit stipulated under Section 27 of the Customs Act, 1962 is not applicable in the instant case. The provisions under Section 18(1) and 18(2) could have been followed and refund would have been granted automatically after completion of final assessment and cancellation of PD bonds. In coming to that conclusion, he relied on two judgments of the Tribunal at Bangalore and Chennai and thus the order of the assessing authority was set aside and a direction was issued to refund the money. Aggrieved by the same, the assessee preferred an appeal to the Tribunal. The Tribunal agreed with the said reasoning, dismissed the appeal. Aggrieved of the said order, the revenue is before this court in appeal.

6. From the aforesaid facts it is clear that, the refund is not sought for the excise duty paid in excess of what was payable under law. The refund was sought in respect of the additional value insisted upon by the department being the value of technical knowhow and royalty. It was added to the excise duty payable. When the assessee authority held that the customs duty paid by the assessee was proper and no additional duty need be paid, they were under an obligation to refund this additional amount which was collected, which had no basis. In such circumstances, Section 27 is not attracted. That is the view taken by the appellate authorities relying on the judgment of the Tribunal earlier. Therefore, the impugned order is legal Sind valid and does not suffer from any legal infirmity which calls for interference, No substantial question of law arises for consideration. Accordingly, appeal is dismissed".

18. The Coordinate Bench of this Court in the Petitioner's case itself, reported at Sentec (Supra); (2023 SCC OnLine

Del 701), under similar circumstances, has observed as under:-

> *"10. The petitioner's request for this refund was treated as a fresh application under Section 27 of the Customs Act, 1962 (hereafter 'the Customs Act') and was rejected by the impugned order on the ground that the same was not filed within limitation.*
>
> *11. It is apparent from the facts as noted above that the petitioner's written request dated 22.07.2022, seeking refund of the balance amount was not an application under Section 27 of the Customs Act, but merely a request to the respondents to act in accordance with law and give effect to the appellate order dated 20.06.2019. The concerned authority overlooked the fact that the petitioner's application for refund of EDD was made on*
>
> *19.02.2019.*
>
> *12. Once the order dated 20.06.2019, partly rejecting the said application had been set aside, the natural corollary would be to process the said application and to grant the refund, if otherwise due.*
>
> *13. The respondent has filed a counter affidavit, however, the same is not on record. A copy of the same has been handed over to this Court. The respondent seeks to resist the present petition on, essentially, two grounds. First, it states that the petitioner has a remedy of appeal before the Commissioner of Customs (Appeals) under Section 128 of the Customs Act. And second, that the appellant had not quoted the order passed by the Supreme Court in Suo Motu Writ Petition (Civil) No. 3 of 2020 in Re : Cognizance for Extension of Limitation, whereby the period from 15.03.2020 to 28.02.2022 was directed to be excluded for the*

purpose of computing limitation in respect of any application or any appeal.

14. Both the grounds, as stated in the counter affidavit, are bereft of any merit.

15. Respondent no. 1 has misdirected itself in considering the petitioner's request for refund of the balance amount of Rs. 13,53,326/- made on 22.07.2022 as a fresh application. The said request was in continuation of the proceedings relating to the application for refund dated 19.02.2019. Thus, the question of the petitioner's claim being barred by limitation does not arise.

16. In view of the above, the second ground that the petitioner had not quoted the orders passed by the Supreme Court in Suo Motu Writ Petition (Civil) No. 3 of 2020 (supra), does not arise in the present case.

17. Notwithstanding the above, the petitioner's request for refund could not be disallowed on the aforesaid ground. The authorities are fully aware of the orders passed by the Supreme Court in Suo Motu Writ Petition (Civil) No. 3 of 2020 (supra) and this Court cannot countenance the approach of the respondents to insist that the orders passed by the Supreme Court be necessarily quoted by applicants for availing their benefit. The respondents are bound to consider the orders passed by the Supreme Court notwithstanding that the same are not referred to by the applicants.

18. In view of the above, the impugned order dated 07.11.2022 is set aside. The respondent is directed to forthwith process the petitioner's request for refund within a period of two weeks from today.

19. The respondent shall also consider the petitioner's entitlement to interest in accordance with law."

19. A perusal of Section 27 would show that the same deals with refund of customs duty. It is abundantly clear that EDD is not in the nature of customs duty. The deposit of the EDD was itself to secure any customs duty which may have been later on found to be payable, due to the allegation of under- declaration. However, when the said allegation has been disproved and the Department has taken a view that there was no under-declaration, the substratum of the deposit of EDD itself no longer exists. The impugned order holding that the refund application is beyond the limitation is, thus, untenable. Moreover, the impugned order itself acknowledges that the said amount is over and above with duty which was determined by the SVB. The Customs Department could not have rejected the prayer for EDD refund.

20. Thus, the period of limitation for seeking refund of customs duty under Section 27 of the Customs Act, 1962, would not apply qua EDD. Under such circumstances, the prayer for relegating the Petitioner to the appellate remedy is also without merit. The petition is, accordingly, allowed.

21. The EDD which is lying deposited with the Customs Department shall be refunded to the Petitioner within two weeks from the date of release of this order. The Petitioner shall also be paid interest in accordance with law."

4.10 I do not find any merits in the impugned order which records the finding of facts on the basis of the Balance Sheet for the year 2020-21 in respect of the Bill of Entry filed on 12.01.2022 (Financial Year 2021-22).

5.1 Appeal is allowed.

(Order pronounced in open court on-13 May, 2026)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp