CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20446 of 2018

(Arising out of Order-in-Appeal No. 1027/2017 dated 20.12.2017 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. ABB India Ltd.
Plot No. 4A, 5 & 6, 2nd Phase,
Peenya, Bangalore – 560 058.

Appellant(s)

VERSUS

Commissioner of Customs,
BMTC Bus Stand, Old Airport Road,
Domlur,
Bangalore – 560 071.

Respondent(s)

APPEARANCE:

Ms. Purvi Asati and Ms. Shradha Pandey, Advocates for the appellant.
Mr. Maneesh Akhoury, Asst. Commissioner (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20623 /2026

DATE OF HEARING: **28.04.2026**

DATE OF DECISION: **06.05.2026**

PER: R. BHAGYA DEVI

This appeal if filed by the appellant M/s. ABB Bengaluru against Order-in-Appeal No. 1027/2017 passed by the Commissioner of Customs (Appeals), Bengaluru.

2. Briefly the facts are that the appellant had filed two refund claims seeking refund of special additional duty of customs (SAD) under the provisions of Notification No. 102/2007 dated 14.09.2007. The same was rejected on the ground that the appellant had not fulfilled the condition of Notification No. 102/2007-Cus dated 14.09.2007. Aggrieved by this, rejection order the appellant is in appeal before us.

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3. The Learned Counsel appearing for the appellant submitted that the appellant had paid the applicable SAD as prescribed vide Section 3 (5) of the Customs Tariff Act, 1975, for import of goods to execute the contract awarded to them on 14.12.2009 by M/s. Bangalore Metro Rail Corporation Ltd. (BMRCL). the Appellant has entered into a contract with BMRCL for undertaking the works related to the Bangalore Metro project along with supply of requisite goods. The Appellant accordingly, imported goods from foreign suppliers specifically for BMRCL, as evidenced by purchase orders and supplier invoices. Upon arrival in India, the Appellant filed Bills of Entry to clear the said goods on payment of applicable duties of customs and thereafter, sold the same to BMRCL.

3.1 The appellant submits that 'sale in the course of import' is outside the levy of sales tax under the Section 5(2) of the Central Sales Tax Act, 1956, read with Article 286 of the Indian Constitution. Relevant portion of the said Article and Section is reproduced below for ready reference.

Article 286 of the Constitution of India

"286. Restrictions as to imposition of tax on the sale or purchase of goods.

(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place.-

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

..."

Section 5(2) of the Central Sales Tax Act, 1956

"S.5. When is a sale or purchase of goods said to take place in the course of import or export.

(1) ...

*(2) **A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import** or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India."*

3.2 Referring to the decisions of the Hon'ble Supreme Court and Hon'ble High Court of Delhi it is submitted that the activity of the appellant is outside the purview of sales tax and sales tax is not leviable. Therefore, it is their claim that the appellant is entitled for the refund of SAD as no sales tax is leviable on like goods. Reliance is placed on the decision of the Tribunal in the case of CC (Preventive), Patna Vs. Katyal Metal Agencies 2014 (306) ELT 335 (Kol.) and M/s. Acer India Pvt. Ltd. Vs. CC Chennai 2017 (6) TMI 565-CESTAT Chennai.

3.3 The learned counsel further submits that the refund has been rejected by the Commissioner (Appeals) on the grounds which were never raised in show-cause notice or in the order, hence the impugned order cannot be sustained as it travels beyond the scope of the show-cause notice and Order-in-Original as is held by the Hon'ble Supreme Court in the case of Commissioner of Customs, Mumbai Vs. Toyo Engineering India Ltd. 2006 (201) ELT 513 (S.C.). Further, it is also argued that the conditions of the Notification No. 102/2007-Cus stand satisfied as the sale invoices do not indicate the SAD amount and hence the buyers will not be in a position to avail cenvat credit of this amount, thus complying with the condition 2(b) of the Notification No.102/2007. Relies of the decision of the Larger Bench in the case of Chowgule & Company Pvt. Ltd. Vs. CCE 2014 (306) ELT 326 (Tri.-LB).

4. The Authorised Representative submitted that the refund of SAD is governed by conditions enumerated in the Notification No. 102/2007 dated 20.12.2017, as amended. Relying on the judgment of Hon'ble Apex Court in the case of **Dilip Kumar & Company 2018 (361) E.L.T. 577 (S.C.)** submits that the exemption notification should be interpreted strictly; the burden of proving applicability would be on the appellant to show that his case comes within the parameters of the exemption clause or exemption notification. The impugned Notification of refund of SAD is applicable only, when both the sales tax / VAT and SAD are paid at the appropriate prescribed rates. Whereas, for the case at hand, **when levy** of sales tax / VAT **itself is not there**,

question of payment of the same at appropriate prescribed rate, does not arise hence the exemption notification is not applicable to them.

4.1 Further he submits that the non-fulfillment of conditions of the Notification No. 102/2007 dated 20.12.2017 as discussed and deliberated in the impugned orders makes the appeal liable for dismissal. With regard to the appellant's contention that **conditions are deemed fulfilled owing to impossibility of performance,** it is submitted that the case laws relied upon by the appellant are not relevant. in as much as the Hon'ble Supreme Court in the judgment of M/s. SRF LTD has nowhere mentioned, discussed or considered the concept of the maxim *"Lex non cogit ad impossibilia"*. The revenue relies on the decision of this Hon'ble Tribunal in the case of M/s. Yojaka (India) Pvt. Ltd. vide CFO. No. 20346-20347/2025 dated 20.03.2025, against the appellants, have held as follows:

> ***(iii) In cases where the exemption Notification stipulates only one condition namely that no Cenvat credit ought to have been availed on the inputs, the benefit of the Notification will be available only to those, who satisfy two conditions namely that the inputs used by them suffered a duty and that they did not seek Cenvat credit. Since an importer can never satisfy the first condition, the second condition becomes inapplicable to him and he cannot be heard to contend that the inapplicability of the condition by itself would make him eligible for the grant of the benefit.***

4.2 The Revenue further submits that the question in the case at hand is payment of VAT/Tax in lieu of SAD, which is a tangible material action and any tangible material action cannot be fulfilled by any legal fiction and over and above in the absence of levy itself (as claimed by the appellants), such a proposition would amount to absurdity. Further it is submitted that regarding the non-levy of sales tax / VAT, both the OIO dated 25.06.2015 and OIA dated 20.12.2017 have held that the B.L. & B.E. are in the name of the appellants and the imports are in the name of the appellants and the ownership of imported goods was transferred / sold to their customers, post the goods crossing the customs border/frontiers, on execution of the contract. The findings of the OIO & OIA are self-explanatory.

Hence, the impugned imported goods were subject to levy of sales tax / VAT. Thus, this is a case of non-payment of sales tax / VAT and not about non levy of sales tax / VAT, as being projected. Most importantly, this is not a case where the maxim *"Lex non cogit ad impossibilia"* is applicable. Thus, in absence of payment sales tax / VAT, the appeal merits rejection.

4.3 It is submitted that the very reliance on SRF judgement by appellants in claiming this Refund of SAD is not legally tenable. It is to submit that the SRF Judgement is applicable only to SRF, others cannot claim such benefit. Reference is invited to the Hon'ble Supreme Court judgement in the case of Mafatlal Industries Ltd. Versus Union of India. The para 99(iv) of the judgement is reproduced:

> ***……A person, whether a manufacturer or importer, must fight his own battle and must succeed or fail in such proceedings. Once the assessment of levy has become final in his case, he cannot seek to reopen it nor can he claim refund without re-opening such assessment/order on the ground of a decision in another person's case. Any proposition to the contrary not only results in substantial prejudice to public interest but is offensive to several well established principles of law.*** *It also leads to grave public mischief. Section 72 of the Contract Act, or for that matter Section 17(1)(c) of the Limitation Act, 1963, has no application to such a claim for refund." 33.1.*

5. Heard both sides. The show-cause notice dated 16.04.2014 issued to the appellant denying the refund of SAD alleged as follows: 'As per Notification No. 102/2007-Cus dated 14.09.2007, the importer shall pay on sale of imported goods appropriate sales tax or value added tax as the case may be and provide along with the refund claim documents evidencing payment of appropriate sales tax or value added tax on sale of such imported goods. In the instant case, the importer M/s. ABB have not furnished any documents evidencing payment of appropriate sales tax or value added tax.'

6. The original authority vide Order-in-Original dated 25.06.2015 held as follows:

"15. The refund of 4% Additional duty of Customs are governed by Notification of 102/2007 dt 14.09.2007, wherein it grants exemption to Additional duty of Customs by way of refund, if the imported goods are subsequently sold on payment of appropriate sales tax/VAT. This mechanism of refund is put in place to avoid double taxation. However, the exemption contained in this Notification is conditional. Para 2 of the said Notification prescribes mandatory condition to be fulfilled to be eligible for refund which are reproduced below:

2. The exemption contained in this notification shall be given effect if the following conditions are fulfilled:
(a) the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon, as applicable, at the time of importation of the goods;
(b) the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible;
(c) the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional-customs officer;
(d) the importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be;
(e) the importer shall, inter alia, provide copies of the following documents along with the refund claim:

i. document evidencing payment of the said additional duty;"
ii. invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed;
iii. documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods:"

16. Therefore, the primary and foremost condition is that the importer has to pay appropriate Sales tax/VAT on the sale of the imported goods and submit documents evidencing such payments. Here, the importer has not paid Sales tax/VAT wrongly claiming that their sale is in the course of import and are exempted under Sec 5(2) of CST Act. From the usage of word "shall" in the condition (b) referred above; it is apparent that the said condition is mandatory in nature and, hence, has to be followed strictly. As such, there is no discretion in the matter and refund in a case

where the importer has not fulfilled the mandatory conditions cannot be sanctioned.

17. It is held by Hon'ble Supreme Court in the cases M/s. Rajasthan Spg.& Wvg.Mills u/s Collector of C.Ex., 1995 (77) ELT 474 (SC) and M/s. Mihir Textiles Ltd., v/s Collector of Customs (1997 (92) ELT 9(SC)/ that the exemption notifications have to be construed strictly and the Exemption/Benefit dependent upon satisfaction of certain conditions cannot be granted unless such conditions are complied with, even if such conditions are only directory. In the present case, the condition (b) of the aforesaid notification is mandatory in nature.

18. ------Since the importer was aware that they have exemption from sales tax, they could have availed the duty exemption at the time of clearance. But they opted to pay the 4% additional duty of customs as they were fully aware that their case is exempted from payment of the said duty. Having paid the 4% SAD, refund is only available under the provisions of Notification 102/2007 dt 14.09.2007. The importer necessarily has to fulfill the prescribed conditions under the said notification for becoming eligible for the refund. In the instant case the importer failed to produce documentary evidence for payment of Sales Tax/VAT. Therefore, I find that the importer is not eligible for the refund as he has not fulfilled the conditions stipulated in the Notification No. 102/2007 and the claims filed in this office are liable to be rejected.

7. On appeal the Commissioner (Appeals) in the impugned order referring to the conditions of the Notification No. 102/2007-Cus dated 14.09.2007 observed as follows:

"10. xxxxxx

In the instant case it is seen that the appellant have paid all the applicable duties. On perusal of the invoices raised by the appellant on BMRCL it is seen that there is no mention of "no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible". Further, there is no mention of Sale Tax/VAT in the invoices. Hence, it is seen that the appellant have fulfilled only conditions (a), (c) and (e)(i) of the said notification in as much as they have paid all the duties, filed the refund claim and enclosed documents evidencing payment of the said additional duty. They have not fulfilled the remaining conditions. The primary and foremost condition is that the appellant should have paid appropriate Sales Tax/VAT and should have submitted the documents evidencing such payments.

11. Further, I find that the appellant have all along stated that the said transaction is 'High Sea Sale', if that was the case they are very much aware that 'High Sea Sale' never attracts Sales Tax/VAT as the transaction is effected beyond the territorial frontiers of India, they should not have paid the said Special additional Duty (SAD) and should have claimed exemption from payment of the same. However, having paid the same on their own volition, they are entitled for refund only under the provisions of Notification No.102/2007-Cus dated: 14.09.2007. Hence, they should have ensured that they adhere to the conditions mentioned in the said Notification which are mandatory. As they have not adhered to the conditions they are not entitled for the refund claim as held by the LAA.

12. I find that it is well settled principle of interpretation of statute that a statute has to be construed without adding any words to it or subtracting any words from it. In this connection, reliance is placed on the decision of the Hon'ble Supreme Court in the case of Shabina Abraham Vs Commr C Ex & Cus, [2015 (322) ELT. 372 (S.C.)) wherein it was held that - 'Taxing statute must be interpreted in light of what is clearly expressed - Court cannot imply anything which is not expressed, and it cannot import provisions in statute so as to supply any assumed deficiency Accordingly, on plain reading of the said Notification I find that certain conditions are to be complied in order to avail the benefit of the Notification and if they are not complied with, the benefit is not available. In the instant case as the appellant have not complied with the conditions laid down in the Notification, they are not entitled for refund of Special additional Duty claimed by them. Further, the appellant having filed the refund claim under the provisions of the said notification cannot claim the same refund under section 27 of Customs Act, 1962, consequent on the claim being rejected."

8. We find that the entire issue revolves on whether the appellant has satisfied the conditions of the above notification in order to claim the refund of SAD. According to the revenue the only condition that the appellant has not fulfilled is that he has not produced any document evidencing payment of said additional duty which is a pre-requisite for claiming the refund. It is an admitted fact that the appellant had paid 4% SAD on the goods imported by them and it is also admitted that the appellant had not discharged VAT as the goods were exempted from payment of sales tax. As per the Notification No. 102/2007-

Cus dated 14.09.2007 one of the conditions is that the importer should pay appropriate sales tax or value added tax, on sale of the said goods. In the instant case this condition according to the revenue is not satisfied since sales tax was not discharged as is held by the Commissioner in the impugned order. This Tribunal in the case of M/s. Honda India Power Products Ltd. Vs. Commissioner of Customs, Customs House, Cochin vide Final Order No.20769/2024 dated 29.08.2024 in identical set of facts has held as follows:

> " 5. We find that the second issue, as to whether refund of SAD is admissible under Notification No.102-/2007-Cus. dated 14.9.2007 when VAT was exempted on imported goods, is squarely covered by the decision rendered in appellant's own case on similar set of facts by the Chennai Bench of this Tribunal vide Final Order No.43119 – 43120/2017 dt. 12.12.2017 [reported at 2018 (2) TMI 1135 – CESTAT Chennai] referring to their earlier cases [M/s. Kubota Agricultural Machinery India Pvt. Ltd. vs. CC, Chennai: 2017-TIOL-3433-CESTATMAD.] and Gazal Overseas vs. CC, New Delhi: 2016 (332) ELT 767 (Tri.-Del.) observed as follows:
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> *"5. We find that the issue whether the appellants are eligible for refund when the goods are exempted from levy of sales tax/VAT is settled by the decision of the Tribunal in the case of M/s. Kubota Agricultural Machinery India Pvt. Ltd. (supra). The Tribunal in Gaxal Overseas (supra) observed as under:*
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> *4. We have considered the contention of ld. DR and also perused the refund papers. Notification No. 102/2007, dated 14-9-2007 as amended allowed refund of SAD subject to the condition that "the importer shall pay appropriate sales tax or VAT, as the case may be." In the present case, the appropriate sales tax or VAT being NIL the appellants cannot be said to have violated the said conditions of the said notification inasmuch as it cannot be said that they have not paid appropriate sales tax/VAT. In this regard, it is seen that vide Circular No. 6/2008, dated 28-4-2008 C.B.E. & C. in para 5.3 thereof clarified as under :*
>
> *"5.3 The exemption contained in the said notification envisages that the importer shall file a refund claim for 4% CVD ("said additional duty of Customs") paid on imported goods and shall pay on sale of the said goods "appropriate Sales Tax or VAT as the case may be". Hence, it is clear that there is no stipulation in the notification that the exemption is*

available only if the rate of ST/VAT is equal to or higher than the rate of additional duty of Customs; nor is there a condition that if the rate of ST/VAT happen to be lower than 4%, the refund would be restricted to the lower amount. As such, it is clarified that it will not be appropriate to reduce the refund amount in such a situation and the entire 4% CVD, if otherwise found eligible, shall be refunded".

It is evident from the above clarification of C.B.E. & C. that even if VAT/Sales tax was less than 4%, the appellant was entitled to refund of SAD which was 4% so long as VAT/sales tax was paid. In other words, so long as appropriate VAT/Sales tax was paid, SAD refund was admissible even if the appropriate sales tax/VAT was less than SAD; if the sales tax/VAT was NIL, so be it. In other words what is required in terms of the said notification is payment of appropriate sales tax/VAT regardless of the rate thereof. It logically follows that if the appropriate rate of sales tax/VAT was NIL then the appropriate sales tax/VAT paid will also be NIL."

6. Following the same, we hold that the rejection of refund is unjustified. The appeal is allowed with consequential benefits to the appellants."

9. In view of the above, we do not find any reason to deviate from the decision of our own order in the case of M/s. Honda India Power Products Ltd. Vs. Commissioner of Customs, Customs House, Cochin.

Accordingly, Appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 06.05.2026.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv

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