IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No. 41563 of 2016

(Arising out of Order in Appeal C. Cus. No. 187/2014 dated 14.10.2014 passed by the Commissioner of Customs (Appeals), Chennai)

Nathella Sampath Jewellery Pvt. Ltd. **Appellant**
Nathella Arcade
54, South Usman Road
T. Nagar, Chennai – 600 017.

Vs.

Commissioner of Customs **Respondent**
Customs House, 60, Rajaji Salai
Chennai – 600 001.

APPEARANCE:

Ms. Ieswarya, Advocate for the Appellant
Smt. O.M. Reena, Authorised Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NO. 40560/2026

Date of Hearing: 16.04.2026
Date of Decision: 05.05.2026

This appeal challenges Order in Appeal C. Cus. No. 187/2014 dated 14.10.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Brief facts of the case are that the appellant cleared imported gold jewellery vide Bill of Entry No. 2095857 dated 10.5.2013 classifying under CTH 71131930 and assessed to BCD and SAD at merit rate. The appellant noticed that they are eligible for concessional rate of SAD in terms of Notification No. 12/2012-CE dated 17.3.2012 but had not claimed the same at the time of assessment. The appellant approached the Assistant Commissioner of Customs seeking re-

assessment extending the benefit of the above said Notification. The Assistant Commissioner of Customs responded vide letter dated 6.1.2014 stating that the request for reassessment cannot be considered as the original assessment was not set aside in appeal. Subsequent to this letter, the appellant filed a refund claim dated 03.02.2014 before the Ld. Original Authority. After due process of law, the Ld. Original Authority observed that the appellant did not file duplicate of the Bill of Entry in original, certificate from the Chartered Accountant on the issue of unjust enrichment and the certificate from the Superintendent of Central Excise on CENVAT availment and rejected the refund claim. The appellant filed an appeal before the Ld. Commissioner (Appeals) and the same was rejected on the ground of time-bar. Hence the present appeal.

3. The Ld. Advocate Ms. Ieswarya appeared for the appellant and Ld. Authorized Representative Smt. O.M. Reena appeared for the respondent-revenue.

Submissions on behalf of the Appellant.

3.1 Ms. Ieswarya the Ld. Advocate for the appellant submitted as follows:-

A. The appellant filed Bill of Entry No. 2095857 dated 10.05.2013 for the import of 3,558.60 grams of 18 KT gold jewellery and 618.10 grams of 22 KT gold jewellery, self-assessed the duty and paid the same. The appellant subsequently realised that the goods were eligible for exemption from CVD under Central Excise Notification No. 12/2012. Accordingly, a request for reassessment was filed on 23.09.2013. This request was rejected by the Assistant Commissioner of Customs on 06.01.2014.

B. The rejection was based on the view that the Bill of Entry had been self-assessed and that, in light of the Supreme Court's decision in **Priya Blue Industries** (2004 (172) ELT 145), reassessment could not be undertaken unless the assessment order was reviewed under Section 28 or modified in appeal. It was held that, until such modification, duty was payable strictly in terms of the existing assessment.

C. Thereafter, the appellant filed a refund claim of ₹12,61,379 on 03.02.2014, contending that the exemption under Notification No. 12/2012 (Sl. No. 199(i)) had not been claimed at the time of filing the Bill of Entry due to oversight, resulting in excess payment of duty. The denial of reassessment by the Assistant Commissioner was also challenged. This refund claim culminated in Order-in-Original No. 142/2014 dated 21.02.2014.

D. Aggrieved, the appellant preferred an appeal before the Commissioner (Appeals), Chennai, seeking reassessment of the Bill of Entry and consequential refund. The appeal was dismissed vide Order-in-Appeal No. 1878/2014 dated 14.10.2014, which merely affirmed the Order-in-Original without independent examination.

E. It is submitted that reliance on **Priya Blue** by the lower authorities is misplaced, as the present case involves self-assessment without any speaking or appealable assessment order. In the absence of such an order, the principle in **Priya Blue** cannot be mechanically applied.

F. Under Section 17(4) of the Customs Act, the proper officer is empowered to reassess duty where self-assessment is found to be incorrect, including cases of failure to apply an applicable exemption

notification. The rejection of the reassessment request dated 23.09.2013, without examining the merits of the notification benefit, is therefore unsustainable in law.

G. At the relevant time, Section 27 was not made subject to Section 128, nor did Section 128 override Section 27. The refund provision under Section 27 operates as a remedial mechanism, intended to correct excess collection of duty.

H. It is a settled principle that remedial statutes should be interpreted in a manner that advances their beneficial purpose, and any doubt must be resolved in favour of the assessee.

I. The scope of **Priya Blue** has since been examined in **ITC Ltd. Vs Commissioner of Central Excise, Kolkata IV** [AIRONLINE 2019 SC 1088, (2019) 12 SCALE 543], wherein the Supreme Court recognised that modification of assessment can be achieved not only through appeal under Section 128 but also through other statutory provisions.

J. Recent decisions, including **Velankani Electronics Pvt. Ltd**. [FINAL ORDER Nos. 21468 – 21469 of 2025, Dated: 19.09.2025] and **Dimension Data India Pvt. Ltd**. [2021(371) E.L.T. 192 (Bom.)], clarify that in the self-assessment regime, inadvertent factual errors such as non-claim of an exemption notification can be rectified through statutory mechanisms like Sections 149 and 154. The denial of reassessment and refund solely for want of an appeal disregards these provisions and the mandate to ensure correct levy of duty, particularly where the error is evident from contemporaneous records.

In the light of the legal precedents the Ld. Counsel submitted that the duty paid in excess of that prescribed by law cannot be retained by the

department and hence the impugned order may be set aside with consequential relief.

Submissions on behalf of the respondent Revenue

3.2 Smt. O.M. Reena, Ld. Authorized Representative appeared for the respondent-revenue and stated that:

A. No refund arises unless the Bill of Entry is re-assessed in appeal in favour of the appellants, as held by the Supreme Court in **Priya Blue**. The Refund Officer is not competent to undertake re-assessment.

B. A refund proceeding is not an appeal, and the refund authority cannot sit in appeal over, or review, a valid assessment. Hence if the importer was aggrieved by the denial of re-assessment, the proper remedy was to file an appeal under Section 128 of the Customs Act, 1962.

C. The importer has also not produced the original Duplicate (Importer) copy of the Bill of Entry, nor the requisite certificates from the Chartered Accountant and the Superintendent of Central Excise (unjust enrichment and credit availment).

The Ld. A.R. hence prayed that the appeal may be rejected.

4. Heard the parties and perused the appeal. The issue pertains to the claim for refund of excess paid CVD by the appellant. Revenue is of the view that the excess amount collected as duty is not refundable due to a procedural infraction, which bars the remedy even if it may not extinguish the claim.

4.1 It is seen that the appellant has shown due diligence and good faith in pursuing his grievance, though the department did not find the procedure adopted to be as per law.

5. I find that a similar matter had been examine by me earlier in **M/s. Valeo India Pvt. Ltd. Vs Commissioner of Customs** [2024 (4) TMI 484 - CESTAT CHENNAI / Final Order No. 40393/2023, Dated: 10.04.2024], in the more foundational issue of classification of goods. Brief facts of the case were that the appellant filed various Bills of Entry for clearance of imported goods. Later, claiming the goods were mistakenly misclassified, the appellant sought amendment of the Bills of Entry under Section 149 of the Customs Act, 1962, to change the classification. The department rejected the request, holding inter alia that reassessment is not permissible under Section 149. Reliance was placed on the decisions of the Hon'ble Supreme Court in **Collector of Central Excise, Kanpur Vs Flock (India) (P) Ltd** [(2000) 6 SCC 650 / (2000) 120 ELT 285] and **Priya Blue** (supra). After discussing the issue at length, the Order recorded as under:

> **"9. Judgments**
>
> 9.1 I now examine the host of judgments cited by the Appellant above in taking forward its interpretation of the Apex Court's judgment in **ITC Ltd** (Supra). The Appellant has stated that in **Sony India Pvt. Ltd. v. Union of India** [2021 (8) TMI 622 - TELANGANA HIGH COURT] the Hon'ble Telangana High Court has observed that even "the Supreme Court clearly indicated that the modification of the assessment order can be either under Section 128 or under other relevant provisions of the Act i.e., Section 149". They further stated that the decision of the Hon'ble High Court in Sony (Supra) has been affirmed by the Hon'ble Supreme Court in **Union of India v. Sony India Pvt. Ltd**. [2023 (4) TMI 1086 - SC ORDER]. The facts of the case were that the petitioner in the said case imported mobile phones and paid Countervailing Duty (C.V.D.) under Section 3(1) of the Customs Act at the rate of 6% as per Sl. No. 263A(i) of Notification No. 12/2012-C.E., dated 17-3-2012 (Exemption Notification). The petitioner could not claim exemption under Sl. No. 263A(ii) of the Exemption Notification which allowed a payment of C.V.D. at 1%, as the Department had taken a stand that such exemption is available only when the assessee has not taken credit in respect of the inputs and capitals goods under the Cenvat Credit Rules, 2004 for the manufacture of mobile phones and during the relevant

period, the EDI system did not permit availment of the lower rate of tax as per the Exemption Notification. A Writ of Mandamus was issued by the Hon'ble High Court to the department to amend the subject Bills of Entry under Section 149 of the Customs Act so as to enable the importer / petitioner to seek refund of excess duty paid under Section 27 of CA'62.

9.2 The Hon'ble High Court of Madras which is the jurisdictional High Court examined a similar matter in **Neyveli Lignite Corporation India Limited v. CC** [2022 (4) TMI 1374 - MADRAS HIGH COURT]. The petitioner had imported solar panel modules for the purpose of establishing 15 MW (AC) Grid Inter Active Solar PV Power Project and had filed BE's in which the petitioner is stated to have classified the imports under the heading 8501 of the Customs Tariff Act, 1975 by mistake and thus, calculated the basic customs duty at 7.5%. The correct classification was ostensibly under CTH 8541 of Customs Tariff Act, 1975, in which case the imported goods would have attracted nil rate of duty. After the Bill of Entries were filed, a Circular was issued by the Board dated 06.04.2018 which clarified the position that solar modules equipped with bypass diode merit classification under Heading 8541. **The Hon'ble High Court held that Sections 149 and 154 provide for a machinery for altering the assessment. These are two of the three methods available under the provisions of the Customs Act, 1962, the third being Section 128 ibid. If one of the three methods are available, the importer would be entitled to claim refund under Section 27 of the Customs Act, 1962. The Hon'ble Court directed the department to complete the assessment after amending the BE under Section 149 of the Customs Act, 1962, as had been requested by the importer.** The Appellant has also cited the judgments of the Hon'ble Madras High Court in the case of **Stanley Engineered Fastening India Pvt Ltd v. CC,** [2023 (3) TMI 846- Madras High Court] and **Bharti Airtel v. UOI**, 2022 (2) TMI 154 which are on similar lines.

9.3 I find that the rule of judicial precedence, holds that a decision of the jurisdictional High Court is binding on the subordinate courts, authorities and Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction. Judicial discipline requires that in matter on which the jurisdictional High Court had already expressed its views the same should be taken as binding on the Tribunals. I respectfully abide by the same."

6. Accordingly, in deference to the judgment of the jurisdictional High Court above and in the peculiar circumstances of the matter, the impugned order is set aside and it is ordered that the letter dated

23.09.2013 be treated as a request for amendment of the Bill of Entry as per section 149 of Customs Act 1962, by the Group A.C. and it be processed accordingly on the basis of documentary evidence which was in existence at the time the goods were cleared. [See: **CC, Tuticorin Vs Sakthi Sugars Ltd**. - 2020 (372) ELT 577 (Tri-Chennai)]. Considering the lapse of time, the Authority should avoid taking a hyper technical view of the matter, but act in the mode of a trade facilitator that the department prides itself to be. On being satisfied he should then re-assess the impugned goods to duty, after which the appellant will be eligible to claim consequential refund, if any, as per law. The lower authority shall follow the principles of natural justice and afford a reasonable opportunity to the appellant to state their case both orally and in writing if they so wish, before finalizing the matter. The appellant should also co-operate with the adjudicating authority in completing the whole process expeditiously and in any case within ninety days of receipt of this order. The appeal is disposed of accordingly.

(Order pronounced in open court on 05.05.2026)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

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