CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Customs Appeal No. 41779 of 2015

(Arising out of Order-in-Appeal C.Cus. II No.546/2015 dated 29.05.2015 passed by Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai 600 001.)

M/s.Enterprise International Ltd. **.... Appellant**
"MALAYALAY", Unit No.2A (S),
2nd Floor, 3, Woodburn Park,
Kolkata 700 020.

VERSUS

The Commissioner of Customs
(Chennai-IV) **... Respondent**
Custom House,
60, Rajaji Salai,
Chennai 600 001.

APPEARANCE :

Shri S. Murugappan, Advocate for the Appellant
Shri Vineet Goyal, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40534/2015

DATE OF HEARING : 12.02.2026
DATE OF DECISION :24.04.2026

Per: Shri P. Dinesha

This Appeal is filed against Order-in-Appeal No. 546/2015 dated 29.05.2015 passed by Commissioner of Customs (Appeals-II), Chennai and the short issue in this Appeal is the demand of 4% Special Additional Duty of Customs (SAD) on the Silk fabrics imported by the Appellant.

2. Heard Shri S. Murugappan, ld. Advocate for the Appellant and Shri Vineet Goyal, ld. Departmental Representative for the Respondent; perused the documents placed on record including the orders of lower authorities carefully and we have also gone through the decisions relied upon during the course of arguments.

3. A perusal of the Order-in-Original No.36231/2015 dated 27.03.2015 reveals that the Appellant filed a Bill of Entry on 21.01.2012 upon import of Silk fabrics, which was assessed to duty by classifying the goods under CTH 5007 and the Appellant also claimed the benefit of SAD *vide* Sl.No.50 of Customs Notification No.20/2006-Cus. A Show Cause Notice dated 09.11.2012 came to be issued proposing to recover the non-payment of SAD since, according to the Revenue, as per Finance Act, 2011 effective from

08.04.2011 all goods specified in the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 stood deleted and hence, the Bill of Entry which was filed on 21.01.2012 which was after the enactment of Finance Act, 2011, the benefit of exemption of SAD was stood withdrawn. The Appellant appears to have filed its explanation justifying its claim of exemption which was considered in adjudication and the Adjudicating Authority *vide* Order-in-Original dated 27.03.2015 confirmed the proposal made in the SCN. Aggrieved by the above, the Appellant appears to have filed an Appeal before the First Appellate Authority and the First Appellate Authority also having dismissed their Appeal *vide* impugned Order-in-Appeal No.546/2015 dated 29.05.2015, the present Appeal has been filed before this forum.

3.1 Under the Customs Act, 1962, Additional Customs Duty i.e. CVD is imposed to counteract the impact of subsidies awarded by exporting countries of their products and the same is levied on the assessed value of imported goods, the intention is to ensure a level playing field for domestic producers.

3.2 Special Additional Duty i.e. SAD is applicable to imported goods under the Central Excise Act, is applied at a specific percentage of value of the imported goods including BCD & CVD. SAD is imposed and collected in lieu of VAT/Sales tax. The goal therefore is to provide protection to domestic industries from the impact of cheaper imports.

4. The contention of the Ld. Advocate as could be seen from the Grounds of Appeal as well as the submission / synopsis filed during the course of arguments by the Appellant, is that primarily there was an exemption for payment of VAT under U.P. VAT Act and, therefore, SAD would not be leviable. Moreover, the assessment was only provisional on account of the dispute relating to levy of countervailing duty and, therefore, the demand raised, confirmed and upheld in the Order-in-Appeal under Section 28 *ibid* cannot sustain. It is the further case of the Appellant that when assessment is provisional, it remains provisional for all purposes and hence, no demand under Section 28 could be made. Reliance in this regard has been placed on the following judgements / orders :

(i) **International Computers Indian Manufacturers Ltd. Vs Union of India** [1981 (8) ELT 632 (Del.)]

(ii) **Commissioner of Customs Vs Aanchal Cements Ltd.** [2020 (2) TMI 612]

(iii) **Commissioner of Customs Vs Katyal Metal Agencies** [2023 (10) TMI 900-CESTAT Kol.]

5. *Per contra*, it is the case of the Revenue that the Appellant never paid SAD upon import, the importer should apply for refund only when they had paid SAD. Further, SAD is levied to counter VAT, only when is paid; when VAT itself is claimed to be exempted i.e. not-paid, there is no need to pay SAD is an illogical argument since SAD is a central levy which cannot be made inapplicable to a particular State, also since State of Utter Pradesh does not exempt payment of SAD and, there is also no bar on the importer for selling the goods imported in other states where VAT is payable. With regard to the demand under Section 28 when assessment was only provisional, it is contended that the dispute was relating to levy of CVD and hence, the same is not applicable to SAD.

6. Having heard the rival contentions, we find that the only issue to be decided is, 'whether the demand of SAD as upheld in the impugned order is correct ?'.

7. It is an admitted fact that at the time of import, the Appellant did not pay 4% SAD since the Appellant claimed benefit of Notification No.20/2006, there is also no dispute that when the Bill of Entry was filed for the goods in question, change in law (w.e.f. 08.04.2011) was already in place, which changed the scenario by removing the exemption. This means that even as on the date of import, the exemption of 4% SAD stood deleted thereby making the Appellant liable; it is a different matter that the Appellant continued to claim exemption for the reasons best known to them. Going by the statute, there was a liability on the part of the importer i.e. Appellant and hence, *prima facie* it appears that the demand of short-levy is justified.

8. Statute also provides for claiming refund of SAD provided the claimant makes the payment of SAD only then they will be eligible to claim refund, which is not the case here. When there is no specific exclusion from exemption, the payment of duty is imperative. Just because it is claimed that there was exemption from VAT in U.P. does not mean the same is valid throughout India as long as the goods imported are sold anywhere in India. In this regard, we find merit in the contention of the Revenue that refund of SAD which is governed by Notification No.102/2007 makes it

mandatory to pay the duty first and claim the refund of the same later. Further, with regard to the claim of provisional assessment and the demand under Section 28, we find that the dispute is only with the regard to applicability or otherwise of CVD in terms of Notification No.30/2004, which has nothing to do with SAD and hence, the said contention is also without any merit.

9. In view of the above, we do not find any infirmity in the impugned order and, therefore, the Appeal is liable to be dismissed as devoid of any merit. Same is accordingly dismissed.

(Order pronounced in open court on 24.04.2026)

sd/-	sd/-
(VASA SESHAGIRI RAO)	**(P. DINESHA)**
Member (Technical)	Member (Judicial)

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