

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. I

Customs Appeal No. 41843 of 2016

(Arising out of Order-in-Appeal C.Cus.I No. 473-548/2015 dated 27.08.2015 passed by Commissioner of Customs (Appeals-I), No.60, Rajaji Salai, Custom House, Chennai – 600 001)

Commissioner of Customs

Chennai VII Commissionerate,
New Custom House,
Meenambakkam,
Chennai – 600 027.

... Appellant

Versus

M/s. Brightpoint India Pvt. Ltd.

1st Floor, Plot No. G-9, Block B-1,
Mohan Co-operative Industrial Estate,
Mathura Road,
New Delhi – 110 044.

... Respondent

APPEARANCE:

For the Appellant : Ms. O.M. Reena, Authorised Representative
For the Respondent : None

CORAM:

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

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40714 / 2026

DATE OF HEARING : 27.03.2026

DATE OF DECISION : 10.06.2026

Per Mr. VASA SESHAGIRI RAO

This appeal has been filed by the Department
(hereinafter referred to as the Appellant) against Order-in-
Appeal No. C.Cus II No. 473–548/2015 dated 27.08.2015
(hereinafter referred to as the Impugned Order) passed by
the Commissioner of Customs (Appeals-I), Chennai.

1.2 The Respondent, M/s. Bright Point India Ltd. New Delhi, imported mobile phones during the period May to July 2015 under multiple Bills of Entry and classified the same under CTH 85171290. At the time of import, the Respondent discharged Countervailing Duty (CVD) at the rate of 12.5% on MRP basis along with applicable National Calamity Contingent Duty. Subsequently, the Respondent claimed benefit of concessional rate of CVD @ 1% in terms of Notification No. 12/2012-CE (Sl. No. 263A), contending that the condition of non-availment of CENVAT credit stood satisfied. The original authority denied the benefit holding that imported goods cannot fulfil the condition relating to non-availment of credit on inputs used in manufacture. On appeal, the Commissioner (Appeals) allowed the benefit relying upon the judgment of the Hon'ble Supreme Court in the case of SRF Ltd. and held that importers are entitled to exemption as long as conditions are not violated.

2. Aggrieved by the said order, the Department has filed the present appeal. From the records available, it is evident that the dispute pertains to 76 appeals arising out of different Bills of Entry, as reflected in the tabulated details forming part of the Order-in-Appeal. The issue relates to differential duty of CVD between 12.5% and concessional rate of 1%, along with applicable interest.

3. The Ld. Authorized Representative Ms. O.M. Reena appeared for the Revenue. None appeared on behalf of the Respondent-importer.

4. The Ld. Authorized Representative for the Appellant submitted that the Impugned Order is contrary to law inasmuch as it grants exemption without satisfaction of the mandatory conditions prescribed in the notification. It was argued that exemption notifications are required to be strictly construed and the burden lies on the claimant to establish eligibility, as held by the Hon'ble Supreme Court in Eagle Flask Industries Ltd., wherein it was emphasized that conditions must be fulfilled in letter and spirit. It was further contended that the Commissioner (Appeals) erred in equating imported goods with domestically manufactured goods without appreciating that the condition of non-availment of CENVAT credit is inherently linked to the manufacturing process and cannot be presumed to be satisfied in the case of imports. The Appellant also submitted that the decision of the Hon'ble Supreme Court in SRF Ltd. cannot be applied mechanically, particularly in view of subsequent clarifications and amendments which, according to them, restrict the applicability of exemption where such conditions cannot be fulfilled.

5. None appeared on behalf of the Respondent, nor were any written submissions filed. However, since the Impugned Order is in their favour, the findings and reasoning contained therein are taken as representing the submissions of the Respondent.

6. Upon consideration of the rival submissions made by the appellants and the Revenue and on perusal of the records of the case, the following questions arise for determination in these appeals: -

- i. Whether the Respondent-importer is entitled to concessional CVD under Notification No. 12/2012-CE and
- ii. Whether the Impugned Order is sustainable.”

7. We now proceed to examine the issues.

Whether the Respondent-importer is entitled to concessional CVD under Notification No. 12/2012-CE and whether the Impugned Order is sustainable.

8.1 The first and foremost aspect that requires consideration is the nature of levy under Section 3(1) of the Customs Tariff Act and the extent to which exemption notifications issued under the Central Excise Act can be applied to imported goods. It is well settled that additional customs duty is levied to counterbalance the excise duty

leviable on like goods manufactured in India, thereby ensuring parity and maintaining a level playing field.

8.2 In the decision in the case of *Commissioner of Customs, ICD, New Delhi vs Dr. Roshan Lal Agarwal & Sons Pvt. Ltd., 2015 (316) E.L.T. 163 (Tri.-Del.)*, the Tribunal elaborately examined the scheme of Section 3(1) and held that the levy of additional duty is a trade remedy measure intended to neutralize the advantage enjoyed by imported goods which enter the country without suffering domestic taxes. The Tribunal observed that goods exported from WTO member countries are generally free from input tax burden due to remission schemes and therefore imposition of additional duty equal to excise duty is necessary to maintain equilibrium. However, the said decision has to be read in the light of the subsequent binding judgment of the Hon'ble Supreme Court in SRF Ltd.

8.3 We note that the Department has come in appeal mainly on the ground that the decision of the Hon'ble Supreme Court in the case of *SRF Ltd. 2015(318)ELT 607(SC)*, relied upon by the Impugned Authority, was not accepted by the Department and that a Special Leave Petition had been filed and admitted before the Hon'ble Supreme Court. In this regard, we find that the legal position as it stands today does not support the contention of the

Department, inasmuch as the issue has attained finality upon dismissal of the review petitions by the Hon'ble Apex Court.

8.4 In this context, the following is reproduced: -

"Exemption from CVD — Condition of non-availment of Cenvat credit in exemption notification interpreted

The Supreme Court Bench comprising Hon'ble Mr. Justice A.K. Sikri and Hon'ble Mr. Justice Rohinton Fali Nariman on 15-7-2016 dismissed the Review Petition (C) No. 2440 of 2015 in Civil Appeal No. 9440 of 2003 with R.P. (C) No. 2441 of 2015 in C.A. No. 1623 of 2009 filed by Commissioner of Customs, Chennai-I against its own Judgment and Order dated 26-3-2015 in Civil Appeal No. 9440 of 2003 with C.A. No. 1623 of 2009 as reported in 2015 (318) E.L.T. 607 (S.C.) (SRF Ltd. v. Commissioner). While dismissing the review petitions, the Supreme Court passed the following order:

"Heard learned counsel for the parties. We find no error, much less apparent error, in the order impugned. The review petitions are, accordingly, dismissed."

The Supreme Court in its impugned order had held that for imposition of CVD under Section 3 of Central Excise Act, 1944 on import, actual manufacture or production of a like article in India was not necessary. For quantification of this duty, imported article has to be imagined to be manufactured or produced in India and then to see what amount of Excise duty was leviable thereon. Since Nylon Filament Yarn is exempt from Excise duty under Notification No. 6/2002-C.E. on condition of non-availment of credit on inputs, such yarn on import shall be exempt from CVD as no credit has been availed.

[Commissioner v. SRF Ltd. - 2016 (340) E.L.T. A202 (S.C.)]"

8.5 In view of the above authoritative pronouncement, the contention of the Department that the judgment has not attained finality is against facts as on the date. However, it has to be noted that the impugned order of the Commissioner (Appeals) was dated 27.08.2015.

8.6 The Ld. Authorized Representative for the Appellant has relied upon the judgment of the Hon'ble Supreme Court in *CCE New Delhi Vs. Hari Chand Shri Gopal*,

2010 (260) ELT (3) to contend that exemption notifications are to be strictly construed. While there is no dispute regarding the said principle, the same is distinguishable in the facts of the present case.

8.7 In the case of Hari Chand Shri Gopal, (*Supra*) the Hon'ble Supreme Court was dealing with a situation where the conditions prescribed in the notification were capable of compliance but were not complied with. In contrast, in the present case, the condition relating to non-availment of CENVAT credit is inherently linked to the manufacturing process, which is not applicable to an importer who was a trader and so could not have availed any CENVAT credit on capital goods or inputs.

8.8 The Hon'ble Supreme Court in SRF Ltd. (*Supra*). has specifically dealt with this situation and has held that for the purpose of levy of additional duty, the imported goods are to be imagined as manufactured in India and the exemption has to be extended accordingly. Therefore, the ratio of SRF Ltd., being directly on the issue, is squarely applicable.

8.9 The reliance placed by the Department on the judgment of the Hon'ble High Court of Madras in W.P. Nos. 24507, 26010 and 26011 of 2015 in the context of Notification No. 34/2015-C.E. and 37/2017-C.E. is also

misplaced. The said judgment deals with a different factual context and does not consider the binding effect of the judgment of the Hon'ble Supreme Court in SRF Ltd., which has attained finality. Further, the said High Court judgment primarily examines the scope and validity of the amending notifications in the context of their application prospectively and does not directly deal with the interpretation of Section 3(1) of the Customs Tariff Act in the manner laid down by the Hon'ble Supreme Court *supra*. It is also seen that the High Court did not have occasion to consider the legal fiction created under Section 3, whereby imported goods are to be treated as if manufactured in India for the purpose of determining duty and exemption. Moreover, the issue before the High Court pertained to the validity and applicability of amended notifications, whereas the present dispute relates to the entitlement of exemption in terms of the law declared in SRF Ltd. prior to and independent of such amendments. It is a settled principle that a judgment rendered in a different factual and statutory context cannot be applied mechanically. Further, in the event of any apparent divergence, the binding precedent of the Hon'ble Supreme Court under Article 141 of the Constitution prevails over the judgment of a High Court. Therefore, the reliance placed by the Department on the said judgment is clearly distinguishable and does not advance its case.

8.10 It is a settled principle that delegated legislation cannot override or nullify the interpretation of a statutory provision as declared by the Hon'ble Supreme Court. Section 3(1) of the Customs Tariff Act mandates parity between imported goods and goods manufactured in India, and the Hon'ble Supreme Court in SRF Ltd. has interpreted such parity to include the benefit of exemption.

8.11 It is also brought on record that the EDI system at the relevant time did not permit assessment at concessional rate and manual filing was not allowed by the Department, though such facility was available and permitted at other Custom Houses. Thus, the Respondent was prevented from availing the benefit at the time of import due to procedural constraints attributable to the Department. It is a well settled principle that substantive benefit cannot be denied on account of procedural or technical limitations, particularly when the assessee is not at fault.

8.12 In view of the above, we find that the Impugned Order has correctly extended the benefit of concessional rate of CVD and does not suffer from any legal infirmity.

9. In the light of the detailed analysis, the rival submissions and the judicial precedents discussed hereinabove, the controversy in the present case stands settled by the authoritative pronouncement of the Hon'ble Supreme Court in SRF Ltd. (*Supra*), as subsequently

affirmed upon dismissal of the review petition. The contention of the Department that the said judgment was not accepted or had not attained finality is found to be factually and legally untenable. The Hon'ble Apex Court has categorically held that for the purpose of levy of Additional Customs Duty under Section 3 of the Customs Tariff Act, imported goods are to be treated as if manufactured in India and the rate of duty, including exemption, has to be determined accordingly. Therefore, once like goods manufactured in India are eligible for concessional rate subject to non-availment of CENVAT credit, the same benefit cannot be denied to the importer merely on the ground that such condition cannot be demonstrated in a literal sense. Being a trader, there is no question or possibility of availment of CENVAT credit. Insisting that the importer to be a manufacturer and should demonstrate non-availment of CENVAT credit to become eligible for concessional CVD is stretching too much in case of an importer being a trader.

10. The reliance placed by the Department on the decision in Dr. Roshan Lal Agarwal & Sons Pvt. Ltd. (*Supra*) does not advance its case, as the said decision, being of the Tribunal, cannot prevail over the binding judgment of the Hon'ble Supreme Court. The condition relating to non-availment of CENVAT credit, when applied to importers, has to be interpreted in a manner consistent with the legal fiction

under Section 3 and cannot be enforced so as to defeat the exemption. In the present case, the Respondent has not availed any CENVAT credit, and the Department has also not produced any evidence to the contrary. Further, the Respondent was prevented from availing the benefit at the time of import due to limitations of the EDI system and not permission for manual filing by the Department. Accordingly, we hold that the Respondent is entitled to the benefit of concessional rate of CVD under Notification No. 12/2012-CE and the Impugned Order extending such benefit is legal and proper.

11. In view of the foregoing findings, the appeal filed by the Department is dismissed and the Impugned Order is upheld. Consequential relief, if any, shall follow in accordance with law.

(Order pronounced in open court on 10.06.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

MK

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)