CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 21587 of 2018

(Arising out of Order-in-Appeal No. 250/2018 dated 03.07.2018 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Vikas Telecom Private Limited
(Formerly known as Vikas Telecom Ltd.)
Embassy Point, 150, Infantry Road,
Bengaluru – 560 001. ……….**Appellant(s)**

VERSUS

Commissioner of Customs,
Bengaluru Customs Commissionerate
Central Revenue Building,
Queen's Road,
Bengaluru – 560 001.
………..**Respondent(s)**

Appearance:

Mr. N. Anand, Advocate for the Appellant.
Mr. M. Sreekanth, Asst. Commr. (AR) for the Respondent.

Coram:

Hon'ble Mr. P. A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20846 /2026

Date of Hearing: 15.01.2026
Date of Decision: 14.07.2026

PER : P. A. AUGUSTIAN

The issue in the present appeal is regarding refund of the amount paid by the Appellant under the provision of law which is quashed by the Hon'ble High Court and later upheld by the Hon'ble Supreme Court.

2. The brief facts are, consequent to the order of the Hon'ble Apex Court dated 26.08.2015, the appellant filed a refund claim on 04.03.2016 before the office of the Additional Commissioner of Customs, Air Cargo Complex which was rejected vide Order-in-Original dated 28.11.2016 and

aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) upheld the Order-in-Original dated 28.11.2016 as per the impugned order dated 28.11.2016. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, Learned Counsel for the Appellant submits that appellant is a SEZ developer duly approved under Section 2(g) of the Special Economic Zone Act (SEZ), 2005 and were developing Embassy Tech Village, which is declared as a Special Economic Zone. As per Section 26 of the Special Economic Zone Act, 2005, Appellant is exempted from any duty of customs under Customs Act, 1962 or any other law for time being in force on goods imported into or services provided to a Special Economic Zone Unit which are required to carry out the authorized operations by the developer or entrepreneur. As per Customs Notification No.66/2008-Cus dated 10.04.2008, export duty @ 20% was imposed on Iron/ Ferrous products. As per the amendment, letter dated 23.05.2008, Development Commissionerate were directed to ensure that supply of steel products to SEZ should be on submission of bond and Bank Guarantee against duty which will be finally payable. Subsequently, vide letter dated 30.06.2008, it is modified and directed the Development Commissionerate to permit such supply only on payment of prescribed amount of duty as applicable. Since the said instruction was against statutory provisions, SEZ developers across India had filed Writ Petitions challenging the said provisions including the Appellant by filing Writ Petition (c) No. 10999/ 2008 before Hon'ble High Court of Karnataka and Hon'ble High Court of Karnataka as per judgment dated 13.07.2010 in the case of **Shyamaraju & Co. (India) Pvt. Ltd., Vikas Telecom P. Ltd and Others Vs. Union of India - 2010 (256) E.L.T 193,** held that such notification is unconstitutional as a levy of customs duty on export of goods from India is against the provisions of the SEZ Act. It is therefore, declared that no export duty as would be payable for supply of goods by the parties in the DTA to the petitioners in the SEZs and all proceedings initiated in this regard are therefore liable to be quashed. However, Department filed appeals challenging the said order before the Division Bench of the Hon'ble High Court and it was also

dismissed on 09.02.2011, -[**2011 (267) E.L.T 28 (Kar)].** Similar views were taken by the other Hon'ble High Courts also. Though the Department had filed Civil Appeal No. 5733-5734/2023 in SLP (C) CC No. 15595-15596/2011, Hon'ble Supreme Court as per the judgment dated 26.08.2015 dismissed the batch of all civil appeals including the Civil appeal filed against the judgment of Hon'ble High Court of Karnataka. However, during pendency of the Writ Petition, the Appellant was forced to pay export duty including interest as directed by the Department. Since the provisions were set aside by the High Court/ Supreme Court, Appellant had filed a refund claim. First refund claim was filed before the SEZ authorities and said refund application was returned by CSEZ office and directed the Appellant to approach the Department of Central Excise & Customs, Bangalore. Thereafter on 22.01.2016, Appellant had filed refund claim before the Assistant Commissioner of Customs and the same was returned with a direction to file with Additional Commissioner of Customs, Air Cargo Complex. As per said direction, Appellant filed a refund application on 04.03.2016 before the office of the Additional Commissioner of Customs, Air Cargo Complex and the Additional Commissioner of Customs issued a show cause notice on 25.06.2016 proposing to reject the refund claim. Inspite of giving detailed submissions, refund claim was rejected vide Order dated 28.11.2016 and aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order dated 28.11.2016 rejected the appeal.

4. Learned Counsel submits that the Appellant was forced to pay the said amount on procurement of steel despite they had filed a Writ Petition before the Hon'ble High Court of Karnataka and interim order was issued by the hon'ble High Court. As regards the eligibility of the Appellant to claim the amount paid by M/s. JMC Projects India Ltd, Learned Counsel draws our attention to the certificate issued by M/s. JMC Projects India Ltd., furnishing the details of the cheque and also certified that they have recovered an amount of Rs. 75,40,742/- as mentioned above from M/s. Vikas Telecom Pvt. Ltd., vide invoice No. 31 dated 03.08.2011. Further they have confirmed and certified that they have not filed a claim

seeking refund of the export duty collected from Appellant which was paid by them. They have also furnished the TR-6 challan evidencing payment of the said amount.

5. Learned Counsel also drew our attention to the certificate dated 03.10.2016 and the certificate dated 08.07.2016. As per said communication, appellant furnished the details of payment made by the Appellant and Chartered Accountant of the Appellant also certified that the Appellant have not passed the incidence of export duties paid by their DTA supplier to any other person and the same have been borne by them. The Learned Counsel draws our attention to the certificate issued by State Bank of India regarding encashment of the DD submitted by the Appellant. Learned Counsel further submits that inspite of submitting entire documents required to prove the bonafide of the Appellant to claim the amount, the Adjudication authority rejected the claim and when appeal was filed by the Appellant, First Appellate authority also rejected the claim on the ground that the Appellant failed to furnish any proof regarding payment of impugned export duty by the manufacturer and have also failed in establishing absorption of incidence of such export duty by either the claimant or by the contractor.

6. As regards delay, Learned Counsel submits that the issue was considered by the Hon'ble Supreme Court regarding the provisions of Section 11B of the Central Excise Act in the matter of **Union of India Vs. M/s. ITC Ltd. (1993 (67) E.L.T 3 (SC)** and also considered by the Hon'ble High Court of Gujarat in the matter of **M/s. Comsol Energy Pvt. Ltd. Vs. State of Gujarat (2021 (55) GSTL 390 (Guj).** Considering various judgments in this regard, it is categorically held that tax paid by mistake is to be returned to assessee irrespective of the period covered under the refund application. It was held that refusing to return the amount would go against the mandate of Article 265 of the Constitution of India. The issue was also considered by the Hon'ble High Court of Delhi in the matter of **M/s. Tavrur Oils and Fats Pvt. Ltd. Vs. CGST - 2024 (25) CENTAX-II 311 (Del).**

7. As regards rejection of the claim on unjust enrichment, Learned Counsel submits that there is no buyer to pass the burden of export duty and Chartered Accountant certificate produced by the Appellant as part of the refund claim is sufficient to prove that there is no unjust enrichment by claiming the refund of the entire amount and the rejection of the refund claim is unsustainable.

8. Learned Authorized Representative (AR) for Revenue draws our attention to Section 28DA, procedure regarding claim of such refund and submits that every person who has paid the duty on any goods under this section unless the contrary is proved it is deemed to have passed on the full incidence of such duty to the buyer of such goods. Learned AR draws our attention to the provisions of Section 27(1)(1B)(b), where the duty became refundable as a consequence of any judgment/ decree/ order or direction of the Appellate authority, Appellate Tribunal or any Court, the limitation of one year shall be computed from the date of such judgment/ decree/ order or direction. Claim of such refunds has to be filed before the expiry of one year, from the date of payment of such duty. When such claim for refund is being filed by persons who have borne the incidence of duty, then the relevant date for filing such claim shall be from the date they have actually purchased the goods. Therefore, purchase documents were called for from the appellant which were not furnished. Hence, it is not proved that in the instant refund claim has been filed within the prescribed time limit. Further, Adjudication Authority rightly held that since export duty payment amounting to Rs. 44,39623/- is not paid within the jurisdiction of the Adjudication Authority, it is beyond the sanctioning powers and therefore cannot be considered to this extent, in terms of Regulation 2 of Customs Refund Application (Form) Regulations, 1995. Section 27 of the Customs Act, 1962 envisages that it is the claimants' responsibility to establish that the amount of duty in relation to which such refund is being claimed has not been passed on by him to any other person, which has not been done in case of the instant refund claim. A mere certification from a Chartered Accountant (CA) will not suffice in such cases. Moreover, there is also an intermediary / contractor viz., M/s. JMC Projects (India) Ltd., it becomes imperative to examine if

the tax burden is not passed on to any such intermediaries. Since the appellant have not furnished any evidence to this effect, conditions envisaged under Section 28C of Customs Act 1962 are not fulfilled. Thus, though the Appellant had succeeded in their Writ petition, since refund claim was filed beyond one year of limitation, Adjudication/ Appellate Authority rightly dismissed the refund claim. The Learned AR also draws our attention to the judgment of the Hon'ble Supreme Court in the matter of **Union of India Vs. M/s Solar Pesticide Pvt. Ltd.** – **2000 (116) ELT 401 (SC)** where it is held that principle of unjust enrichment applies to cases of captive consumption also.

9. Heard both sides and perused the records.

10. As regards limitation, we find that as per the judgment of the Hon'ble High Court of Karnataka and other High Courts which were upheld by Hon'ble Supreme Court vide order dated 28.08.2025 the matter attained finality. However, during the pendency of the matter, appellant was forced to pay excise duty both directly and also indirectly as a buyer of goods through contractor. Since the excise duty was illegally collected, the appellant filed refund application before the SEZ Authority on 03.12.2014 and when returned by SEZ office directing the appellant to approach Assistant Commissioner of Customs, C.R. Building, Bangalore, appellant filed refund claim on 22.01.2016. When the said refund claim was returned directing the appellant to file refund application before Additional Commissioner of Customs, Air Cargo Complex, Devanahalli, Bangalore, it was filed on 04.03.2016 and thereafter further proceedings were initiated by issuing the show cause notice on 25.06.2016. From the evidence available on record, filing of refund claim cannot be considered as filed beyond the period of limitation. Further we find that as per the judgment of the Hon'ble Supreme Court in the matter of **M/s. ITC Ltd. (supra)** and judgment of Hon'ble High Court of Gujarat in the matter of **M/s. Comsol Energy Pvt. Ltd (supra),** the appellant is not bound by limitation prescribed under the Central Excise Act for claiming the excise duty paid by appellant since Appellant was forced to pay said amount

even after issuance of stay order by Hon'ble High Court of Karnataka the Writ petition.

11. Further as regards unjust enrichment, as per the evidence on record, we find that the Appellant has paid export duty and has also borne the export duty (which is charged by the contractor M/s. JMC Projects (1) Ltd. on procurement of steel used for the purpose of setting-up SEZ as per Letter of Permission (LoP) granted to it. Furter being a SEZ developer, the Appellant has not passed on duty incidence to any other person since they have used steel for setting-up of SEZ and they have not resold the steel to any other person. It is undisputed fact that steel has been used by the Appellant for its own purposes not for manufacturing any other excisable goods for sale or for re-sale (trading). Further, the Appellant have also furnished evidence in the form of 2(two) Chartered Accountant (CA) certificates dated 03.10.2016 and 18.07.2016 which clearly establishes that the Appellant have not passed on the incidence of the export duty paid to any of its customers. Hence, denial of refund claim on the ground of unjust enrichment is also unsustainable. The Appellant has not passed on duty incidence to any other person. Thus, the presumption that incidence of duty is passed on to the buyer as envisaged in section 28D is inapplicable inasmuch as the appellant is the ultimate buyer. The impugned order is thus bereft of legality.

12. In view of the above discussion and in the facts and circumstances the impugned order is unsustainable and liable to be set aside. Accordingly, impugned order is set aside, and appeal is allowed with consequential relief, if any, in accordance with law.

(Order was pronounced in open court on 14.07.2026)

(P. A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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