CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87108 of 2022

(Arising out of Order-in-Appeal No. MUM-CUS-KV-IMP-76/2022-23 NCH dated 29.06.2022 passed by the Commissioner of Customs (Appeals), Mumbai-I.)

John Miranda **.... Appellant**
Proprietor of M/s Jojojem International
404, B Wing, Gasper Enclave Co-op. Housing Society Ltd.
St. Jophn's Road, Pali Naka
Bandra (West), Mumbai – 400 050.

Versus

Commissioner of Customs, Import-II **.... Respondent**
New Custom House
Ballard Estate
Mumbai – 400 001.

APPEARANCE:

Shri D.H. Nadkarni, Advocate for the Appellant
Shri Krishna Murari Azad, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85922/2026

Date of Hearing: 01.04.2026
Date of Decision: 21.07.2026

Per: M.M. Parthiban

This appeal has been filed by Shri John Miranda, Proprietor of M/s Jojojem International, Mumbai (herein after, for short, referred to as 'the appellant') against the Order-in-Appeal No. MUM-CUS-KV-IMP-76/2022-23 NCH dated 29.06.2022 (referred to, as 'the impugned order', for short) passed by the Commissioner of Customs (Appeals), Mumbai-I.

2.1 Brief facts of the case are that the appellant had filed a refund claim dated 17.01.2019 for refund of Rs.3,00,000/- deposited by him on account of M/s Surya Trading vide Demand Draft No.098597 dated 30.07.2008 along with one another Demand Draft No.098598 dated 30.07.2008 for Rs. 3 lakhs on account of M/s New Star Enterprises, during the course of investigation conducted by the Directorate of Revenue Intelligence, Mumbai/Ahmedabad (DRI) on the alleged gross undervaluation in the import of electronic goods viz., Car audio items, Car Speaker, CD Players, Amplifiers etc. imported by various importers using various IEC codes. On completion of the investigation, DRI, Ahmedabad had issued a Show Cause Notice (SCN) dated

27.02.2012 to M/s Surya Trading, answerable to Commissioner of Customs, Kolkata. The said SCN was adjudicated by the Commissioner of Customs (Port), Kolkata vide Order-in-Original No. Kol/Cus/Port/29/2013 dated 21.11.2013, wherein *inter alia*, he had imposed penalty of Rs. 60,00,000/- on Shri John Miranda. In an appeal preferred by the appellant, the Kolkata Bench of the Tribunal vide order dated 06.05.2015 against their stay application had directed Shri John Miranda to deposit an amount of Rs.5 lakhs within eight weeks from the date of such order, and the same was also complied with by depositing the said amount with the Custom House, Kolkata vide challan No.M-88 dated 13.07.2015. Since no proposal was made by DRI in the said SCN dated 27.02.2012 for appropriation of the pre-deposit of Rs.6 lakhs paid by him as well as in the order dated 21.11.2013, the appellant has filed a refund claim dated 17.01.2019 with the jurisdictional Assistant Commissioner of Customs, CRARS section, for refunding of an amount of Rs.3 lakhs. In the grounds of refund, the appellant has stated that to the extent it relates to deposit made against the duty liability of M/s Surya Trading vide DD No.098597 dated 30.07.2008, they are eligible to refund by submitting supporting documents viz. refund application in prescribed format, letter dated 31.07.2008 addressed to the Assistant Director, DRI in depositing the amount of refund claimed and RUD copy of the SCN dated 27.02.2012.

2.2 On scrutiny of the aforesaid refund claim dated 17.01.2019, the customs authorities had issued a deficiency memo dated 14.02.2019 seeking for additional documents relating to such refund viz., original challans, CESTAT order of stay, Chartered Accountant's certificate and Bank mandate form. The appellant submitted their letter dated 26.04.2019 explaining the said issue of their refund claim along with documents sought for by the department. On examination of the said refund claim and after allowing an opportunity for personal hearing on 23.07.2020, the learned Assistant Commissioner of Customs, CRARS (Import), New Custom House, Mumbai had rejected the refund claim vide Order-in-Original dated 27.08.2020. Being aggrieved against the order of the original authority, the appellant had filed an appeal before the Commissioner of Customs (Appeals), Mumbai. In disposing such appeal, the learned Commissioner of Customs (Appeals) vide the impugned order, by upholding the order of the original authority, had rejected the appeal filed by the appellant. Feeling aggrieved with the said order of the first appellate authority 29.06.2022 (which is impugned herein), the appellant has filed this appeal before the Tribunal.

3. Head both sides and perused the details of the case.

4. On perusal of the case records, it transpires that it is a fact on record that the appellant had filed a refund claim for an amount of Rs.3,00,000/- vide their letter dated 23.02.2018, received in the CRARS section on 23.02.2018, but claiming that the same is not an acknowledgement of refund application, said to have been received by the department on 17.01.2019. On preliminary scrutiny, the department had issued a deficiency memo on 14.02.2019 and after receipt of the appellant's reply letter dated 26.04.2019, and offering personal hearing on 23.07.2020, had rejected the refund application with the following findings:

"22. On the basis of documents submitted by the claimant, I find that the Show Cause Notice dated 27.02.2012 was issued to M/s Surya Trading, Shri John Miranda and Shri Rakesh Maggo by DRI, Ahmedabad. The SCN was answerable to the Commissioner of Customs (Port), Kolkata for imports made under 17 Bills of Entry at Kolkata port and also was answerable to Commissioner of Customs (Import), New Custom House, Mumbai for imports made under 01 Bill of entry at Mumbai port.

23. I find that the said SCN was adjudicated by the Commissioner of Customs (Port), Kolkata, appointed as common adjudicating authority in the matter and demand of differential duty was confirmed to be paid/recovered from M/s Surya Trading, Shri Rakesh Maggo and Shri John Miranda, vide Order-in-Original dated 21.11.2013. Certain penalties u/s 112(a) of the CA, 1962 were also imposed on Shri Rakesh Maggo, Shri John Miranda & others.

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25. I find that instant matter pertains to the refund claim of Rs.3,00,000/-, claimed to be deposited during investigation by Shri John Miranda on behalf of M/s Surya Trading, therefore, I restrict my findings limited to the very aspect of deposition of above amount and eligibility of its refund to Shri John Miranda.

26. I have carefully gone through the SCN dated 27.02.2012 and subsequent O-I-O dated 21.11.2013, the deposit of Rs.3,00,000/- claimed to be made on A/c of M/s Surya Trading during investigation is neither proposed to be appropriated in said SCN dated 27.02.2012 nor appropriated in the subsequent O-I-O. As per the submission incorporated in the O-I-O, this non-appropriation was not found to be represented by the claimant during adjudication proceedings.

27. I find from the CESTAT order dated 06.05.2015 that the fact of deposit of Rs.3,00,000/- on behalf of M/s Surya Trading, during investigation, was not contested by Shri John Miranda. He has just offered to deposit Rs.5,00,000/- as pre-deposit and claimed waiver of the balance pre-deposit.

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29. I find that the as informed by Cash Section, copy of the challan is not available with them and as per the available records in CBR sheet No.44 of cash section, an amount of Rs.6,00,000/- was deposited by DRI Mumbai in the name of M/s Surya Trading vide challan no.11 dated 01.08.2008.

Regarding the payment against M/s New Star Enterprises, there are no separate entries made in the CBR Sheet.
30. I find that the claimant in para 17(ii) has stated that in the case of IEC M/s Surya no SCN has ben issued for any imports at Mumbai Port, which is not correct, as the SCN dated 27.02.2012 was issued demanding differential duty with respect to 18 Bills of Entry (01 B/E-Mumbai Port and 17 Bs/E-Kolkata Port) from M/s Surya Trading, Shri Rakesh Maggo and Shri John Miranda.

31. The claimant in para 17(iii) above has stated that this Kolkata SCN was decided vide OIO dt. 21.11.13, which did not quantify any duty liability on Shri John Mirand is incorrect, as the differential duty was ordered to be paid/recovered from the noticee no.1, 2, & 3, which are M/s Surya Trading, Shri Rakesh Maggo and Shri John Miranda respectively, vide O-I-O dated 21.11.2013.

32. I find that the claimant in para 17(iv) above has stated that the amount is refundable to Shri John Miranda, who has borne this payment from his resources by obtaining a demand draft, but the claimant failed to produce any documentary evidence in support of his claim except a letter dated 31.07.2008 forwarding demand drafts of Rs.3.0 Lakh each in the name of M/s Surya Trading and M/s New Star Enterprise…..

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36. I find that the deposit was said to be made by the claimant in the year 2008 and the SCN was issued in the year 2012 but the refund claim is submitted only in the year 2019 and this aspect of non-appropriation was never contested during above period before the investigating agency, adjudicating authority and appellate tribunal. The appeal in the instant matter is still pending before Hon'ble CESTAT and the claimant still have an opportunity to represent this non-appropriation of the amount deposited during the investigation, but instead of contesting this non-appropriation before proper investigating/adjudicating/appellate authority, the claimant came up with a refund application before me, merely on the grounds that since the amount was deposited in the treasury of this customs house by the DRI, Mumbai, hence the refund application made before me.

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43. In view of the above discussions, the refund claim of Rs. 3,00,000/-, claimed to be paid during investigation vide letter dated 31.07.2008, addressed to Assistant Director, DRI, Mumbai through demand draft no. 98597 dt. 30.07.2008 and claimed to be deposited by DRI, Mumbai on A/c of Ms. Surya Trading vide Challan No. 11 dt. 01.08.2008, is not admissible to the claimant on the basis of the documents submitted by the claimant and under the circumstances, as cause of refund cannot be ascertained on the basis of documents produced and also the claim is beyond jurisdiction of the refund authority. The issue of remaining claim of Rs. 3,00,000/- claimed to be deposited on account of M/s New Start Enterprises through Demand Draft No. 98598 dt. 30.07.2008 under same challan no. 11 dt. 01.08.2008 is being dealt in and decided separately. Accordingly, I pass the following order.

ORDER

(i) I reject the refund claim of Shri John Miranda, Proprietor of M/s. Jojojem International, made vide letter dated 17.07.2019, for an amount of Rs. 3,00,000/-, claimed to be paid during investigation, under letter dated 31.07.2008, addressed to the Assistant Director, DRI, Mumbai vide Demand

draft no. 98597 dt. 30.07.2008 on account of M/s Surya Trading and claimed to be deposited by DRI, Mumbai vide Challan No. 11 dt. 01.08.2008 in the New Custom House treasury.

(ii) Refund application is disposed of accordingly."

5. In the impugned order, the learned Commissioner of Customs (Appeals) had also examined the issue of refund claim filed by the appellant in detail, and rejected the same by upholding the order of the original authority, on the following findings:

"6. I find that in the instant case, the Appellant has submitted that he was impleaded in the SCN No. DRI/AZU/INT-41/2008/Surya dated 27.02.2012 issued by DRI, Ahmedabad along with importer, M/s. Surya Trading. It is also submitted that during the investigation of the said case, he had handed over the DD No. 098597 dt. 30.07.2008 for Rs. 3,00,000/- to the IO of DRI Mumbai on 31.07.2008 towards differential duty, interest etc. He had also submitted the copy of acknowledged covering letter before the Original Authority. It is further claimed by the Appellant that the said DD was deposited in the Treasury of NCH vide common "manual" Challan No. 11/2008 dt. 01.08.2008. However, Original or Photo copy of the said Challan is not submitted by the Appellant. I am of the view that the copy of Challan is an essential document in the cases where the amount is paid through manual challan as it is a vital proof which shows that who has paid the amount under which obligation and the amount has actually reached the Customs Account maintained with RBI. Challan should be submitted before the AC/Refund for its defacement also.

6.1 I find that for non-submission of the Challan copy, it is submitted by the Appellant that the Challan was not given to him by the DRI therefore he should not be held responsible for non-submission. I find that no evidence is placed on record by the Appellant to show that they had asked for the Challan copy from DRI at any point of time to claim refund against it. In my opinion, Original Authority is not obligated to obtain the copy of Challan from DRI or Cash Department to verify that the amount which has been claimed as refund has actually been paid by the claimant only and it has reached Customs Account. Still the efforts were made by the Original Authority to find out the challan on the basis of number and dated provided by the Appellant, but no challan was found in the name of the Appellant at NCH Cash Section. As per CBR Register maintained in Cash Section, Challan No. 11/2008 dt. 01.08.2008 was found to be in the name of M/s. Surya Trading for Rs.6,00,000/- and details of case number and DD number were not available therein. Therefore, it cannot be conclusively said that the said Challan pertains to the DD No. 098597 dt. 30.07.2008. submitted by the Appellant to DRI under the cover of his letter dated 31.07.2008.

6.2 I also find that it is submitted by the Appellant that he has submitted Indemnity Bond in lieu of original Challan. Therefore, rejection of claim by the Original Authority on the ground of non-submission of challan is bad in law. Apropos to this submission, I am of the view that absence of evidence that any Challan in the name of the Appellant along with DD No. 098597 dt. 30.07.2008 had come in Cash Section, NCH, submission of Indemnity Bond is a futile exercise. Therefore, the Original Authority has rightly held *that the Appellant has not submitted necessary documents to process the refund claim.*

7.3 I find that the Section 27 of the Customs Act, 1962 and Regulations made thereunder prescribe the mechanism to refund the duty or interest paid by or borne by any person ***consequent upon the order or decision*** *in favour of that person. I find that Hon'ble High Court of Bombay while deciding the issue of refund of duty paid under mistake of law in the matter of Hero Cycles [2009 (240) ELT 490 (Bom)] had held that :*

> *"9. Once we exercise our extraordinary jurisdiction, we will have to issue directions to the respondents to amend the original order of assessment. In so far as the claim for refund is concerned, that would only arise after the order is amended. The relief of refund claimed is not maintainable before the order of assessment is amended or modified as held by the Supreme Court in Priya Blue Industries (supra)."*

8. In view of discussion in preceding Paras and by applying ratio of judgements passed by higher judicial for an in the above cases, it is observed that seeking refund of Rs. 3,00,000/- from AC/Refund is farfetched and not tenable when the Appellant failed to gather and bring on record any solid evidence to prove that the amount of Rs. 3,00,000/- was paid in his name in Govt. Treasury in the first place. Therefore, I am of the view that the Original Authority has correctly rejected the refund claim filed by the Appellant for absence of cause of action for refund vide impugned order for the reasons mentioned therein. Thus, I do not find any infirmity in the impugned order and it merits no interference."

6. On reading of the above paragraphs of the impugned order, it transpires that the learned Commissioner of Customs (Appeals) had mainly rejected the refund claim of the appellant on the grounds that the challan evidencing payment of the amount of Rs. 3,00,000/- by the appellant was not available, no proof as to whether such amount was actually paid into the Government account was available and that there was no order or decision consequent upon which grant of refund under Section 27 ibid is allowable.

7. It is an undisputed fact on record that an amount of Rs.6,00,000/- (i.e., two Demand Drafts of Rs.3,00,000/- each) on account of M/s Surya Trading Co. and M/s New Star Enterprises was paid vide Demand Drafts No. 98597 and 98598 both dated 30.07.2008, respectively, drawn by Centurion Bank of Punjab/now HDFC Bank to the credit of the account of Commissioner of Customs, and the same was handed over by Shri John Miranda, Proprietor of M/s Jojojem International to the Assistant Director, DRI vide his letter dated 31.07.2008 towards voluntary deposit against differential duty, interest etc., arising out of undervalued/mis-declared import of various electronic goods through Mumbai port. The said amount was deposited by DRI vide Challan No.11/2008 dated 01.08.2008 and the same is also supported in terms of the entry made in the vide Central Board of Revenue (C.B.R.) Sheet No.44 maintained in the New Custom House Treasury,

Mumbai. Since, the original copy of the challan was not available with the appellant inasmuch as the same was deposited by DRI, he had written to the Chief Accounts Officer of New Custom House, Mumbai vide his letter dated 08.01.2019 for obtaining the copy of the challan and the same appear to have been not provided to the appellant. The following screen shot/extract of the documents also prove evidence of the above facts:

Jojojem Internationa

5/B, Gr. Flr., Vithal Niwas, Jacob Circle, Mumbai 400 (
Tel: 23008920 Tel\fax: 23016548.

Branch: 7, Cecelia Lopes, Marry Villa, Manipur, Vasai, New Mumbai 401 2

Mumbai,
Dated : 31.07.2008

To,

The Assistant Director,
Directorate of Revenue Intelligence,
Mumbai Zonal Unit, UTI Building,
13, Vithaldas Thackersay Marg,
New Marine Lines, Mumbai-400 020.

Sir,

Sub:- Voluntary deposit of an amount of Rs.6 lakhs by way of D.D.No.098597 and 098598 both dated 31.07.2008 each for an amount of Rs.3 lakhs towards differential duty, interest etc arising out of undervalued /misdeclared import of various electronic goods through Mumbai port - reg.

I, Shri John Miranda, sole proprietor of M/s.Jojojem International (IEC NO.0304015059) having office at 5B, Gr.floor and 9B, 2nd floor, Vithal Niwas, Jacob Circle, Mumbai-11 having tel.no.23008920 and Telefax - 23016548, residence at 404, B Wing, Gasper Enclave, Saint Johns Road, Bandra(West), Mumbai-400 050 and Res.Tel No.022-26552518 and 022-66780311, hereby enclosed (i) D.D.No. 098597 for an amount of Rs.3 lakhs on a/c of M/s. Surya Trading Co. (IEC No. 0505003902) and (ii) another D.D.No.098598 for an amount of Rs.3 lakhs on a/c of M/s New Star Enterprises (IEC No. 0507051688) both dated 3107.2008 for total amount of Rs.6 lakhs (Rupees Six lakhs only) as part of payment towards liability towards differential duty, interest etc arising out of undervalued /misdeclared import of various type of Electronic goods through Mumbai port in the name of firm M/s. Surya Trading Co. (IEC No. 0505003902) and M/s New Star Enterprises (IEC No. 0507051688), on which I have operated.

I request that the same may please be deposited in the Government Treasury as part of the amount to be appropriated against duty, interest etc. liability arising out of the said undervalued / misdeclared imports.

Yours faithfully,

John Miranda
Proprietor of M/s.Jojojem International, Mum.

Encl: Demand draft No.098597 and 098598 each for an amount of Rs.3 lakhs both dated 31.07.2008.

This is True Xerox Copy

Centurion Bank of Punjab Limited

VALID FOR SIX MONTHS ONLY

No : 98597
Dated : 30-07-2008

On Demand Pay RBI A/C COMMISSIONER OF CUSTOMS A/C SURYA TRADING CO.

or Order

Rupees Three Lakh only

Rs. *********3,00,000.00

OT

****** Not Over INR. 3,00,000.00 ******

FOR VALUE RECEIVED

CENTURION BANK OF PUNJAB LTD
MUMBAI -RSC(8004) A/c : 9501150311001900

For Centurion Bank of Punjab Limited

Centurion Bank of Punjab is now HDFC BANK We understand your world

Authorised Signature(s)
P3236 A6078

(DRAWEE OFFICE)
D

⑈098597⑈ 000233000⑆ 16

Centurion Bank of Punjab Limited

VALID FOR SIX MONTHS ONLY

No : 98598
Dated : 30-07-2008

On Demand Pay RBI A/C COMMISSIONER OF CUSTOMS A/C NEW STAR

or Order

Rupees Three Lakh only

Rs. *********3,00,000.00

OT

****** Not Over INR. 3,00,000.00 ******

FOR VALUE RECEIVED

CENTURION BANK OF PUNJAB LTD
MUMBAI -RSC(8004) A/c : 9501150311001900

For Centurion Bank of Punjab Limited

Centurion Bank of Punjab is now HDFC BANK We understand your world

Authorised Signature(s)
P3236 A6078

(DRAWEE OFFICE)
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07-08-08

तारीख/The

संख्या Number नकदी या रोकड़ Cash	खाता Accts.	अदायगी करने वाले का नाम Name of Payer	आयात शुल्क Import Duty	अन्य विवरण Other Particulars
1	1162	General Motors India	3003	IA
2	39	Bapna Int'l.	175012	JPCC
3	429	Tara Jewels Export	9244	—
4	1367	Gloria Impex	29484	—
5	335	J.K. Jewels	163568	—
6	543	Double Dee Technology	41079	—
7	110	Hammer Plus Jewellery	5955	—
8	—	Inter Carat Jewellery	11026	—
9	Self	Shri Balaji Int'l	1500000	CIU
10	468	Rekha Int'l.	1271064	—
11	Self	Surya Trading Co.	600000	BRI (VB)
12	173	Amarkora Pvt. Ltd.	139352	IIB
13	Self	Jewelex Int. P.L.	639	EOU
14	—	Industrial Jewels P.L	17815	DDPCC
15	1023	Model Mines & Minerals	2377909	EPCG
16	—	Shree Balaji Mining	2801126	—
17	—	Prakash Roadlines Corp.	500000	—

8.1 In terms of the accounting procedure followed in the Central Government for receipt of duty/tax, the government dues tendered in the form of demand draft or other instrument, which if accepted, shall be deemed to have been paid in the Government exchequer. Further, payment of an amount through a demand draft, in terms of Section 85A of the Negotiable Instruments Act, 1881, is an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, and therefore there is no question of the amount not being credited to the government account i.e., account of the Commissioner of Customs.

8.2 Further, it is not the case of the department, that the amount paid by the appellant in the form of Demand Draft, have not been credited or paid back by the Pay & Accounts Officer/Chief Accounts Officer of the department to the appellant. Even the request made by the appellant to the Chief Accounts Officer of New Custom House, Mumbai for providing a copy of the challan for the deposit made with them, was not favoured with. Therefore, I am of the considered opinion that the amount paid by the appellant in the form of submitting the Demand Draft for an amount of Rs.6,00,000/- which have been duly accounted by the department in Central Board of Revenue (C.B.R.) Sheet No.44 maintained in the New Custom House Treasury, Mumbai and thus the said amount has been credited to the government account, and the findings in the impugned order on the basis of non-production of requisite challan and the doubt raised whether such amount was credited to the customs/government account, is contrary to the facts and denial of refund on such ground is not sustainable. Further, action of the original authority stating that "*the refund authority is not supposed to do investigation for ascertaining the cause of refund and assessing their eligibility*", "*only the investigation agency may be made responsible for refund of any amount paid during investigation with them and no crystalized liability made against the notice by the investigation agency*" and the first appellate authority stating that "*the original authority is not obligated to obtain the copy of Challan from DRI or Cash department to verify that the amount which has been claimed as refund has actually been paid by the claimant*", only shows the deplorable situation in which the payment of pre-deposit made in the customs formation is not verifiable by the authorities working within the department to ascertain the facts, and on the other hand, the request for copy of the challan sought by the appellant has also not been responded favorably. On the other hand, it is reported by the Press

Information Bureau in its Press note dated 17.02.2025 on the occasion of International Customs Day function held at Nhava Sheva, Mumbai on that day, that the Hon'ble Finance Minister commended the Customs Department for its exceptional performance during the COVID-19 pandemic and expressed her confidence that such high standards would be maintained moving forward; the Hon'ble Finance Minister also called upon CBIC to take a leading role in the global Customs community within the World Customs Organization (WCO), to align with India's vision of Viksit Bharat 2047. It was also in the public domain that the Hon'ble Prime Minister had recently interacted with all Central Government Secretaries to lay out a collaborative roadmap for the Viksit Bharat @2047 vision, in which he had emphasized a whole-of-government approach, urging officials to break departmental silos and strengthen cross-ministerial cooperation. The present factual matrix of case, clearly point out the picture that the officers of the Customs department cannot even ascertain the payment made by a tax payer/person towards duty liability, by verification in their own Commissionerate office, after a particular period, when such person who paid was claiming it as refund on account of the said amount having not been appropriated and the demands have been set aside finally. Such a situation in customs department, as depicted in the present case, cannot be said to be in tandem with the call of the nation is marching towards Viksit Bharat @2047 vision and when the customs department/CBIC is specifically expected to align its working with such vision, break the silos and interact with various sections/wings of the ministry for achieving the objectives and policy of the government. Therefore, I am of the view that such inacceptable manner of handling the refund claim being contrary to the factual matrix of the case and in refusing to verify the details available with the department, by showing non-availability of challan as a ground for rejection of the refund claim by the authorities below, is not legally sustainable.

9.1 It is on record that as regards confirmation of duty demands on the appellant along with other noticees in respect of SCN No. DRI/AZU/INT-41/2008/Surya dated 27.02.2012 which was adjudicated by the Commissioner of Customs (Port), Kolkata vide Order-in-Original No. Kol/Cus/Port/29/2013 dated 21.11.2013, the appellant had filed an appeal before the Kolkata Bench of the Tribunal. On perusal of the database of CESTAT available for public view in the official website of CESTAT, it transpires that in the appeals filed against such order of the Commissioner in Customs Appeal No. 75242, 75243 and 75244 all of 2014, the Co-ordinate

Division Bench of the Tribunal vide Final Order No. 76170-76174/2023 dated 26.07.2023, have held that demand of customs duty from the appellant Shri John Mirando and Shri Rakesh Maggo cannot be sustained. However, the penalty imposed on them was sustained. The relevant paragraphs of the said order are extracted and given below:

"7. On going through the facts on these cases and the arguments advanced before us, we hold that the duty cannot be demanded from the appellants as it is the fact on record that the appellants, namely, Shri Rakesh Magoo & Shri John Miranda are not the real importers. In fact, the Bills of Entry has been filed in the name of Surya Trading Company & Creative Enterprises and these Bills of Entry were assessed and the goods were cleared to those importers.

7.1 In that circumstances, we hold that the demand of duty from the appellants before us, is not sustainable.

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10. From the above discussion, it is clearly coming out that Shri Rakesh Magoo and Shri John Miranda were using IEC Code of various IEC holders for import of car electronic goods by under-valued the same and the differential amount has also been paid to the overseas suppliers through their office in India by illicit means.

11. In that circumstances, we hold that Shri Rakesh Magoo and Shri John Miranda were actively involved in import of the impugned goods and undervalued the same. Therefore, penalties imposed on the said Shri Rakesh Magoo and Shri John Miranda, are confirmed.

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13. In view of the above, we hold that no duty is payable on Shri Rakesh Magoo and Shri John Miranda, but penalties imposed on Shri Rakesh Magoo and Shri John Miranda and M/s Sai Dutta Clearing Agency Private Limited, are confirmed."

9.2 The legal provision of Section 27 ibid provide for claim of refund of duties of customs paid by a person applying for refund; while the provision of Sections 129E, 129EE ibid provide for deposit of certain percentage of duty demanded before filing of an appeal and interest if any, payable on refund of pre-deposit consequent to the order of the Appellate Authority. In this regard, CBIC vide Circular No. 984/08/2014-Cx dated 16.09.2014 have also instructed the field formation in detail about payment of an amount during investigation and the procedure for its refund. The relevant portion of the said Circular dated 16.09.2014 is extracted herein below: -

> ***"3. Payment made during investigation:***
>
> *3.1 Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10%, subject to the limit of Rs 10 crores, can be considered to be deposit made towards fulfillment of stipulation under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962. Any shortfall from the amount stipulated under these sections shall have to be paid before filing of appeal before the appellate authority. As a corollary, amounts paid over and above the amounts stipulated under Section 35 F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, shall not be treated as deposit under the said sections.*
>
> *3.2 Since the amount paid during investigation/audit takes the colour of deposit under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962 only when the appeal is filed, the date of filing of appeal shall be deemed to be the date of deposit made in terms of the said sections.*
>
> ***7. Procedure for refund:***
>
> *7.1 A simple letter from the person who has made such deposit, requesting for return of the said amount, along with a self attested Xerox copy of the order in appeal or the CESTAT order consequent to which the deposit becomes returnable and attested Xerox copy of the document evidencing payment of such deposit, addressed to Jurisdictional Assistant/Deputy Commissioner of Central Excise and Service Tax or the Assistant/Deputy Commissioner of Customs, as the case may be, would suffice for refund of the amount deposited along with interest at the rate specified.*
>
> *7.2 Record of deposits made under Section 35F of the Central Excise Act, 1944 or section 129E of the Customs Act, 1962 should be maintained by the Commissionerate so as to facilitate seamless verification of the deposits at the time of processing the refund claims made in case of favourable order from the Appellate Authority."*

In the present case, it is an undisputed fact that the pre-deposit of Rs.3,00,000/- made by the appellant was neither proposed for appropriation in the show-cause notice dated 27.02.2012, nor ordered for appropriation in the order passed by the Commissioner of Customs, Kolkata dated 21.11.2013. Further in the Final Order dated 26.07.2023 of the Tribunal (supra), the duty demand confirmed by the Commissioner of Customs, Kolkata against which the pre-deposit was set aside and pre-deposit became refundable. Thus, it clearly transpires from the factual matrix of the case that the amount of Rs.3,00,000/- is liable to be refunded by the Department as per the Customs statute as stated above.

9.3 From the above it transpires that the duty demands confirmed in the order dated 21.11.2013, for which the appellant had deposited an amount of Rs.3,00,000/-, having been neither appropriated in the proceedings right from SCN, order of original authority and nor such confirmation of duty demands having sustained inasmuch as the same has been set aside by the Tribunal vide order dated 26.07.2023, the appellant is rightly eligible to be refunded of the deposit amount of Rs.3,00,000/-.

10. On the basis of above discussions, I set aside the impugned order dated 29.06.2022 and allow the appeal of the appellant enabling refund of Rs.3,00,000/- deposited by the appellant during the time of investigation. It is made clear that the appropriate authorities in the department, without undue delay, may take appropriate action as per law, enabling refund of the amount of Rs.3,00,000/- to the appellant on the basis of this order of the Tribunal.

11. In the result, the impugned order is set aside, and the appeal is allowed in favour of the appellant.

(Order pronounced in the Open Court on 21.07.2026)

(M.M. Parthiban)
Member (Technical)

Sinha