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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CUSAA 9/2025 & CM APPL. 1016/2025**

M/S VISHAL VIDEO AND APPLIANCES PVT LTD.....Appellant

Through: Mr. Yogendra Aldak, Mr. Agrim Arora, Ms. Purvi Sinha & Mr. Rishav Kumar, Advs.

versus

COMMISSIONER OF CUSTOMS ACC(IMPORT).....Respondent

Through: Mr. Aditya Singla, SSC and Mr. Ritwik Saha and Mr. Umang Misra, Advs. with Mr. Rajeev Ranjan, DC (Legal) ACC Import.
Mr. Harpreet Singh, Senior Standing Counsel along with Ms. Suhani Mathur and Mr. Shivang Chawla, Advs. (M: 9811253531)

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AND

+ **CUSAA 15/2025 & CM APPL. 1029/2025**

M/S VISHAL VIDEO AND APPLIANCES PVT LTD.....Appellant

Through: Mr. Yogendra Aldak, Mr. Agrim Arora, Ms. Purvi Sinha & Mr. Rishav Kumar, Advs.

versus

COMMISSIONER OF CUSTOMS ACC (IMPORT).....Respondent

Through: Mr. Aditya Singla, SSC and Mr. Ritwik Saha and Mr. Umang Misra, Advs. with Mr. Rajeev Ranjan, DC (Legal) ACC Import.
Mr. Harpreet Singh, Senior Standing Counsel along with Ms. Suhani Mathur and Mr. Shivang Chawla, Advs. (M: 9811253531)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

ORDER

% **24.01.2025**



1. This hearing has been done through hybrid mode.
2. These appeals have been filed by the Appellant under Section 130 of the Customs Act, 1962 challenging the impugned **Final Order No. 55859-55891/2024** dated 4th June, 2024 passed by the Customs Excise & Service Tax Appellate Tribunal (*hereinafter* 'CESTAT' or 'Tribunal'). In order to appreciate the contentions raised, the background in these appeals deserves to be captured.
3. The Appellant is a Company, incorporated under the Companies Act, 1956, engaged in trading of electronic products such as mobile phones *etc.*. As a part of business activities, the Appellant had imported mobile handsets/cellular phones for which various bills of entry were filed during the years 2014-15 and 2015-16.
4. The Appellant's case is that it was deprived from claiming the tax benefit in respect of the above said imports in terms of **Notification No. 12/2012-CE** dated 17 March, 2012, due to restrictions imposed by **Circular No. 37/2001-Cus.** dated 18th June 2001.
5. However, the issue of applicability of the Notification No. 06/2002-CE dated 01 March, 2002 (similar notification) on importers was settled by the Hon'ble Supreme Court in the matter of **SRF Ltd. vs. Commissioner of Customs, Chennai [2015 (318) E.L.T. 607 (S.C.)]**, which allowed the Appellant to claim the benefit under the said Notification dated 17 March, 2012.
6. Accordingly, the Appellant had sought refund of excess custom duty paid with respect to thirty-one bills of entry. The Appellant, for this purpose, had filed two refund applications before the Deputy Commissioner(Refunds)



on 25th September, 2015 categorizing the thirty-one bills of entry into two batches consisting of 14 and 17 bills, respectively.

7. The said refund applications were rejected by Deputy Commissioner (Refunds) *vide* Order dated 30th June, 2016 on the ground that the Appellant has not provided re-assessed bills of entry in respect of said refund claims.

8. The Appellant had preferred an appeal against the said Order dated 30th June, 2016 to the Coordinate Bench of this Court in ***W.P.(C) 7851/2016***. The Division Bench of this Court had followed the decision in ***Micromax Informatics Ltd. v. Union of India, [2016 (335) ELT 446 (Del)]*** and ***Yu Televentures v. Union of India, [W.P.(C) 6750/82016, decided on 3rd August, 2016]*** and had, accordingly, allowed the refund on 5th September, 2016 in the following terms.

“Since the facts are identical, we are of the opinion that the operative portion of the order should be identical to the one in Yu Televentures (supra). It is hereby directed consequently that the petitioner’s refund claim is, therefore, allowed. The respondents are directed to pay to the petitioner, the claimed amount together with interest due thereof upto the date of refund – which shall be done within three weeks from today.”

9. Pursuant to the order of the Delhi High Court dated 5th September, 2016 in ***W.P.(C) 7851/2016***, the Deputy Commissioner (Refund) passed two separate orders to refund the amount and the same was credited to the Appellant’s account on 29th September, 2016.

10. The Department had filed ***SLP(C) No. 2865/2017*** against the said judgment passed by the High Court on 3rd January, 2017. During the pendency of the proceedings before the Supreme Court, the Department issued two protective Demand/Show Cause Notices, both dated 26th



September, 2018, to the Appellant for recovery of erroneously granted refund along with interest under Section 28 and 28AA of the Customs Act, 1962. In the said Show Cause Notices, it was stated that the same were being issued to cover the period of limitation and its adjudication would be subject to the outcome of the decision of the Supreme Court. The Supreme Court disposed of the above said SLP *i.e.*, **SLP(C) No. 2865/2017** *vide* a common judgment in a batch of appeals with lead appeal-**C.A.No. 293-294/2009** titled as '**ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV** on 18th September 2019.

11. The Appellant had participated in the protective Demand/Show Cause Notice proceedings and Respondent-Commissioner Of Customs, ACC (Imports) had passed two orders dated 24th May, 2021 confirming the Demand Notices re-claiming the refund credited to the Appellant.

12. This order was again challenged before the CESTAT in **Customs Appeal No 50091 of 2022 & 50286 of 2022** on the ground that the limitation period of 6 months, mandated under Section 28 of the Customs Act, 1962, for concluding the Show Cause Notice proceeding has lapsed. The CESTAT tagged these two appeals along with another set of appeals *i.e.*, **Customs Appeal No. 50510 - 50540 of 2021**, preferred by the same Appellant against the order of The Commissioner (Appeals) dated 17th December 2020 in the cases which were preferred by the Appellant seeking re-assessment pursuant to the decision in **ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV** dated 18th September, 2019.

13. In these two appeals *i.e.*, **Customs Appeal No 50091 of 2022 & 50286 of 2022**, the CESTAT referred to Section 28, subclause (1), (8), (9) & (9A) of Customs Act, 1962 and observed that as per the legislation, the proper officer



ought to conclude the Show Cause Notice proceeding within 6 months which is extendible only for the reasons mentioned in Section 28(9A) of the Act. The observation in the said order reads as under:

“28. It is seen that after the notice has been issued under sub-section (1) of section 28, the proper officer has to determine the amount of duty under sub-section (8), but this has to be done within six months from the date of notice as contemplated under sub-section (9) of section 28 of the Customs Act. Further, where the proper officer is unable to determine the amount of duty under sub-section (8) for the reason that an appeal in a similar matter of the same person is pending before the Supreme Court, the proper officer shall inform the person concerned the reason for non-determination of the amount of duty and in such case, the time specified in sub-section (9) shall apply not from the date of notice, but from the date when such reason ceases to exist.”

14. Thereafter, the Tribunal had drawn a clear time line to show that the prescribed period of 6 months was not over. The timeline reads are under:

“

Dates	Particulars
26.09.2018	Show cause notices were issued to the appellant seeking recovery of 'erroneously refunded amount under section 28(1). However, adjudication of the show cause notices was kept in abeyance owing to pendency of the Civil Appeal filed by the department against the judgment of the Delhi High Court on the basis of which refund was granted to the appellant. This was in terms of section 28(9A).
25.03.2019	Time limit of six months for adjudication of the show cause notices expired in terms of section 28(9).



<u>18.09.2019</u>	<u>The Supreme Court decided the appeal filed by the department in ITC. Thus, the reason to keep the notice in abeyance ceased under section 28(9A).</u>
<u>17.03.2020</u>	<u>Six months time, for adjudicating the show cause notice from 18.09.2019 expired on 17.03.2020.</u>
29.09.2020	Relaxation Act was promulgated. Under section 6 of the Relaxation Act, if the time limit falls between 20.03.2020 and 29.09.2020 for completion of any proceeding, it would stand extended to 30.09.2020. Subsequently, by Notification dated 30.09.2020, the time limit was extended upto 31.12.2020.
<u>23.03.2020,</u> <u>08.03.2021,</u> <u>27.04.2021</u> <u>and</u> <u>23.09.2021</u>	<u>The Supreme Court in suo-moto proceedings relating to Covid Pandemic ordered that the period from 15.03.2020 till 02.10.2021 shall stand excluded in computing the period prescribed under any law for instituting proceedings, outer limits (within which the Court or Tribunal can condone the delay), and termination of proceedings.</u>
30.06.2021	The Commissioner sought extension for adjudication of show cause notices in terms of the proviso to section 28(9), and the time period was extended by the Chief Commissioner upto 30.06.2021.
24.05.2021	Impugned order was passed confirming recovery of the refund amount.

”

15. Considering the date of judgment in *ITC(Supra)* i.e., 18th September 2019 and the relaxation period between 15 March, 2020 and 2nd October,



2021, the Tribunal observed, the time lapsed between the Show Cause Notice and the Order shall be 2 days less than the required period of 6 months. Accordingly, the Tribunal dismissed these Appeals. The Tribunal had also dismissed **Customs Appeal No. 50510 - 50540 of 2021** on grounds of delay.

16. Thus, the Appellant has preferred 33 present appeals (31+2 Appeals) challenging the final order dated 4th June, 2024. These appeals each stemming from related yet separate events, can be classified into two distinct categories, *i.e.*,

- (i) Appeals from **Customs Appeal No 50091 of 2022 & 50286 of 2022**,
- (ii) Appeals from **Customs Appeal No 50510-50540 of 2021**.

17. The case of the Appellant with respect to the former category is that the show cause notices, both dated 26th September, 2018, which sought to recover the refund credited to the Appellant, are not adjudicated within the time limit prescribed in the Act. These questions deserve consideration. Therefore, these matters are de-tagged from the other batch of 31 appeals and are accordingly listed for hearing separately.

18. No coercive measures shall be taken against the Appellant in the meantime. Mr. Rajeev Ranjan, Deputy Commissioner, (Legal) ACC Imports is present and has given instructions regarding the same to Mr. Singla, the Id. Standing Counsel.

19. This Court *vide* order dated 22nd January, 2025 had raised concerns with regard to the unnecessary delay caused by Customs Department in instructing their Standing Counsels appearing upon the advance copies being served. Insofar as this issue is concerned, Mr. Singla has sought instructions. He submits that as of 30th September, 2024, specific email addresses to which advance copies are to be served have been provided by the Respondent-



Department which was published by the Delhi High Court Registry as well. The same are set out below:

COMMISSIONERATE WISE EMAIL ID		
SL. NO.	COMMISSIONERATE	E MAIL ID
1.	CENTRAL TAX DELHI NORTH COMMISSIONERATE	commr-cexdell@nic.in , delhinorth-legal@gov.in
2.	CENTRAL TAX DELHI SOUTH COMMISSIONERATE	legal.cgatdelhisouth@gov.in
3.	CENTRAL TAX DELHI EAST COMMISSIONERATE	gstdelhieast.legal@gmail.com
4.	CENTRAL TAX DELHI WEST COMMISSIONERATE	cgatdelhiwestlegal@gmail.com
5.	DGGI HEAD QUARTER	invdggihq@gov.in
6.	DGGI DELHI ZONAL UNIT	sio.dgureporting1@gov.in
7.	DGGI MEERUT ZONAL UNIT	gsti.merut@gov.in
8.	DGGI GURUGRAM ZONAL UNIT	dggi.gzu@gov.in
9.	DRI-HEAD QUARTER	drilegal.hq@gov.in
10.	DRI- DELHI ZONAL UNIT	dridr@nic.in
11.	COMMISSIONER OF CUSTOMS ACC (IMPORT)	commraccimp-cusdel@nic.in
12.	COMMISSIONER OF CUSTOMS ACC (EXPORT)	acce.legal2023@gmail.com
13.	COMMISSIONER OF CUSTOMS TKD (IMPORT)	commrtkdimp-cusdel@nic.in
14.	COMMISSIONER OF CUSTOMS TKD (EXPORT)	legalbranchicdtkdexport@gmail.com
15.	COMMISSIONER OF CUSTOMS ICD PATPARGANJ (PPG)	COMMRICDPPG-CUSDEL@GOV.IN
16.	COMMISSIONER OF CUSTOMS (PREVENTIVE)	commrprev-cusdel@nic.in
17.	COMMISSIONER OF CUSTOMS IGI-T3	igilegaldelhi@gmail.com
18.	COMMISSIONER OF CUSTOMS (AIRPORT AND GENERAL)	ccgen-delhi@gov.in

20. In view thereof, the Registry shall ensure that whenever cases relating to Customs and GST are filed before the Court, the advance copies are served at the relevant email addresses as mentioned in the table above.

21. In addition, the Commissioner of Customs shall prepare an SOP as to the manner in which the Department shall ensure that the instructions are given to the nominated Counsels in the matter when advance copies are served.

22. Further, the respective Departments *i.e.*, Directorate of Revenue Intelligence (DRI), Directorate of General GST Intelligence (DGGI), Customs Department and Central GST (CGST); shall prepare a common SOP to ensure that whenever advance copies are served and Counsels are appearing



before the Courts, proper instructions are given for the hearings and matters do not go in default.

23. List on 20th March, 2025.

PRATHIBA M. SINGH, J.

DHARMESH SHARMA, J.

JANUARY 24, 2025

dj/am