

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

TUESDAY, THE 30TH DAY OF NOVEMBER 2021 / 9TH AGRAHAYANA, 1943

CUS.APPEAL NO. 21 OF 2017

AGAINST THE ORDER NO.20564-20581/2017 OF CUSTOMS,EXCISE & SERVICE TAX

APP.TRIBUNAL,BANGALORE

APPELLANT/S:

COMMISSIONER OF CUSTOMS, COCHIN
CUSTOMS HOUSE, KOCHI 682 009

BY ADV SMT.SINDHUMOL.T.P., CGC

RESPONDENT/S:

VALLABHADAS & COMPANY
42/1966(2) ELAVANGAL HOUSE,1ST FLOOR, FRIENDS LANE, ST.BENEDICT
ROAD, COCHIN 682 018

BY ADV SRI.P.A.AUGUSTINE(AREEKATTEL)

THIS CUSTOMS APPEAL HAVING COME UP FOR ADMISSION ON 30.11.2021, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

S.V.Bhatti, J.

Heard Mr. Sreelal Warriar the learned Senior Standing Counsel for Customs and Central Taxes and Mr.P.A Augustian, the learned counsel for respondent.

2. The instant appeal is filed under Section 130 of the Customs Act, 1962 (for short, 'the Act'). The Commissioner of Customs, Cochin is the appellant in the subject appeal. The appellant being aggrieved by order of Customs, Excise and Service Tax Appellate Tribunal, South Zone Bench, Bangalore (for short, 'CESTAT') dated 27.04.2017 filed the instant appeal. Respondent referring to Annexure-A1 notification No.102/2007-Customs dated 14.09.2007 issued in exercise of powers conferred under Section 25 (1) of the Act, made a claim for refund of additional customs duty paid by the respondent

for import of Rock Phosphate from Egypt. The dates of the bills of entry etc. are not relevant for disposing of the appeal, hence not adverted to. It is not in dispute that the respondent got the clearance of goods imported upon paying Special Additional Duty at the rate of 4% on Rock Phosphate. The respondent claimed refund of Rs.3,00,282/- from the jurisdictional authority.

3. The claim was rejected and the respondent carried the matter in appeal before the Commissioner of Customs (Appeals) and on being unsuccessful, filed appeal before the CESTAT and through the order impugned in the appeal, the Tribunal accepted the claim for refund of Rs.3,00,282/-. Hence the appeal.

4. Mr. P.A Augustian raises preliminary objection to the maintainability and continuation of the appeal by relying on notification No.390/Misc./163/2010-JC dated 17.12.2015,

which reads thus:

Government of India

Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject: Reduction of Government litigation - Providing monetary limits for filing appeals by the Department before CESTAT/High Courts and Supreme Court - Regarding.

In exercise of the powers conferred by Section 35R of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1944 and Section 131BA of the Customs Act, 1962 and in partial modification of earlier instruction issued from F. No. 390/Misc./163/2010-JC dated 17-8-2011 [2011 (270) E.L.T. (T27)], the Central Board of Excise & Customs (hereinafter referred to as the Board) fixes the following monetary limits below which appeal shall not be filed in the Tribunal, High Court and the Supreme Court:

S. No.	Appellate Forum	Monetary Limit
1	CESTAT	RS.10,00,000/-
2.	HIGH COURTS	RS.15,00,000/-
3.	SUPREME COURTS	RS.25,00,000/-

2. In para 3 of the instruction, dated 17-8-11 a sub clause 'c' shall be added which shall read as "classification and Refunds issues which are of legal and/or recurring nature".

3. Except for above, all other terms and condition of instruction dated 17-8-11 stands.

5. It is not in dispute that the claim of refund accepted in favour of the respondent comes within the fiscal limit stipulated in the litigation policy of the Government by notification dated 17.12.2015.

6. The learned Standing Counsel contends that the acceptance of the argument of the respondent or allowing the order of Tribunal to become final would have a cascading effect on other cases where the Department is not fettered by the notification to contest, and the view now taken by this Court could be put against the Department. He insists upon expressing our view on the scope and extent of application of notification dated 14.09.2007.

7. We have taken note of the argument of Mr.Sreelal Warriar. We are of the view that the argument or objection of the Department can also be protected by preserving all the contentions available in this behalf; open and intact to be

considered in a case which would satisfy the requirement of litigation policy. Therefore, we are convinced that the appeal at the instance of the appellant could be disposed of in terms of the notification dated 17.12.2015. However, it is made clear that disposal of the appeal shall not be understood as, in any manner, this Court accepting the view taken by the Tribunal in interpreting the notification dated 14.09.2007 and all the contentions are left open. The Revenue is given liberty to urge all the contentions notwithstanding the disposal of the appeal.

Customs Appeal is disposed of as indicated above

Sd/-

S.V.BHATTI

JUDGE

Sd/-

BASANT BALAJI

JUDGE

APPENDIX

PETITIONERS ANNEXURES

ANNEXURE A1	TRUE COPY OF THE NOTIFICATION NO.102/2007 CUS DATED 14.09.2017 ISSUED BY MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) GOVERNMENT OF INDIA.
ANNEXURE A2	TRUE COPY OF THE ORDER-IN-ORIGINAL NO.958/2015 DATED 10.09.2015 ISSUED BY THE DEPUTY COMM. OF CUSTOMS, COCHIN.
ANNEXURE A3	A TRUE COPY OF THE ORDER-IN-APPEAL NO:356/2015/16 DATED 19.01.2016 ISSUED BY COMM. OF CUSTOMS (APPEALS) COCHIN.
ANNEXURE A4	A TRUE COPY OF THE FINAL ORDER NO.20564-20581/2017 DATED 27.04.2017 CESTAT, BANGALORE.
ANNEXURE A5	A TRUE COPY OF THE ORDER OF REFUNDS DATED 13.09.2017 ISSUED BY THE ASSISTANT COMM. CUSTOMS (REFUNDS).