CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Customs Appeal No. 40308 of 2017

(Arising out of Order-in-Appeal C.Cus.I No. 320/2016 dated 29.09.2016 passed by the Commissioner of Customs (Appeals-I), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Cape Electric Corporation **...Appellant**
Plot No. A 41 B,
SIPCOT Industrial Growth Centre,
Oragadam, Sriperumbudur Taluk,
Kanchipuram – 603 109.

Versus

Commissioner of Customs **...Respondent**
Chennai VII Commissionerate,
Airport and Aircargo Complex,
New Custom House,
Meenambakkam,
Chennai – 600 026.

APPEARANCE:

For the Appellant : Ms. S. Sridevi, Advocate
For the Respondent : Mr. Vineet Goyal, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40675 / 2026

DATE OF HEARING : 17.04.2026
DATE OF DECISION : 02.06.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal has been filed by M/s. Cape Electric Corporation, Oragadam (hereinafter referred to as "the appellant") assailing Order-in-Appeal No. 320/2016 dated 29.09.2016 passed by the Commissioner of Customs (Appeals-I), Chennai, whereby rejection of SAD refund

claims filed under Notification No.102/2007-Cus. was upheld on the ground that reconstructed copies of certain sales invoices produced during de novo proceedings did not contain the prescribed endorsement regarding non-admissibility of CENVAT credit. The impugned order, however, also records that the original refund files had been misplaced by the department and that the original invoices initially produced by the appellant contained endorsement conveying that CENVAT credit was not allowable.

2. Briefly stated, the appellant filed three SAD refund claims aggregating to Rs.18,82,526/- under Notification No.102/2007-Cus. in respect of imports covered under 27 Bills of Entry. The claims were initially rejected on the ground that the sales invoices did not contain proper endorsement regarding non-admissibility of CENVAT credit. Though the matter was remanded by the Commissioner (Appeals) for verification, the original refund files were admittedly misplaced by the department during de novo proceedings and the appellant was directed to reconstruct the records. The claims were thereafter again rejected on the ground that certain reconstructed copies of invoices did not contain the prescribed endorsement, which rejection came to be upheld in the impugned order.

3. The Ld. Advocate Ms. S. Sridevi appeared on behalf of the Appellant and advanced detailed submissions in support of the Appeal and the Ld. Authorized Representative Shri Vineet Goyal appeared for the Revenue.

4. The Ld. counsel for the appellant submitted that the impugned order is unsustainable both on facts and in law. It was contended that the appellant had originally submitted all documents required under Notification No.102/2007-Cus., including Bills of Entry, TR-6 challans, sales invoices, VAT/ST payment proof and Chartered Accountant certificate, and that the original adjudicating authority itself had recorded verification of the invoices. It was further submitted that after remand by the Commissioner (Appeals), the department admittedly misplaced the original refund files and called upon the appellant to reconstruct the records and therefore could not subsequently reject the claims based on doubts arising from reconstructed copies. The learned counsel submitted that omission of endorsement was noticed only in certain office copies relating to a few invoices and that the appellant itself had voluntarily agreed for proportionate reduction to that extent, thereby establishing bona fides. Reliance was placed on the Larger Bench decision in *Chowgule & Co. Pvt. Ltd. v. Commissioner of Customs* reported in *2014 (306) ELT 326*

(Tri.-LB) and other decisions including *LG Electronics India Pvt. Ltd., Vestal Impex Pvt. Ltd., Nova Nordisk India Pvt. Ltd., Tomlukes India Pvt. Ltd*. and *RKG International Pvt. Ltd.* to contend that the endorsement requirement is procedural in nature and substantive SAD refund cannot be denied once payment of SAD and subsequent VAT-paid sales are established. The Ld. counsel therefore prayed for setting aside the impugned order and allowing the appeal with consequential reliefs.

5. The Ld. Authorized Representative appearing for the Revenue reiterated the findings contained in the impugned order.

6. We have carefully considered the rival submissions, perused the records of the case, refund documents, orders passed by the authorities below, Ombudsman proceedings and the judicial precedents relied upon by both sides.

7. On consideration, we find that the issue involved in the present appeal lies in a narrow compass, namely, whether the SAD refund claims filed by the appellant under Notification No.102/2007-Cus. could be rejected on the ground of absence/improper endorsement in certain invoices,

particularly after the original records were admittedly misplaced by the department and reconstructed copies were furnished by the appellant.

8. We now proceed to examine the aforesaid issue in the light of the rival submissions, statutory provisions, CBEC Circulars and the judicial precedents cited by both sides.

9. Before adverting to the rival contentions, it would be appropriate to briefly note that Notification No.102/2007-Cus. dated 14.09.2007 was issued to neutralize the cascading effect of SAD levied under Section 3(5) of the Customs Tariff Act, 1975 where imported goods are subsequently sold on payment of VAT/Sales Tax. The notification permits refund subject to proof of payment of SAD, subsequent VAT/Sales Tax-paid sale and endorsement in the sales invoices regarding non-admissibility of credit. The CBEC Circulars governing the scheme also emphasized avoidance of double taxation, prevention of double benefit and expeditious processing of refund claims upon verification of VAT payment and co-relation of goods.

10. In the present case, the original adjudicating authority, vide Order-in-Original No.908/2009 dated

03.12.2009, rejected the refund claims substantially on two grounds, namely, that in respect of one Bill of Entry only photocopy of the TR-6 challan had been furnished and therefore the condition relating to proof of payment of duty under para 2(a) and para 2(e)(i) of Notification No.102/2007-Cus. was allegedly not fulfilled, and secondly, that the sales invoices did not contain endorsement to the effect that no credit of additional duty of customs levied under Section 3(5) of the Customs Tariff Act, 1975 was admissible, thereby allegedly violating para 2(b) of the notification. However, the records disclose that the appellant had produced duplicate Bills of Entry, TR-6 challans, VAT/ST payment proof, Chartered Accountant certificate, correlation sheets and sales invoices before the original authority itself. Significantly, the Commissioner (Appeals), vide Order-in-Appeal No.660/2012 dated 28.06.2012, found it necessary to remand the matter for verification of the appellant's claim regarding endorsement in the invoices.

11. However, instead of expeditious implementation of the remand directions, the matter remained pending for almost four years. The records disclose that after remand, the original refund files themselves were misplaced by the department and the appellant was repeatedly called upon to reconstruct the records by furnishing copies of available

documents. Ultimately, the fresh Order-in-Original rejecting the claims again came to be passed only on 28.05.2016, nearly four years after the remand order dated 28.06.2012. We further find that the impugned proceedings proceeded substantially on reconstructed office copies of invoices produced by the appellant after the original departmental files had gone missing.

12. The dispute in the present case essentially revolves around the endorsement requirement prescribed under Notification No.102/2007-Cus. and the extent to which substantive refund benefit can be denied on procedural grounds. Significantly, the original adjudicating authority itself, in Order-in-Original No.908/2009 dated 03.12.2009, recorded that the invoices were verified though the refund claims came to be rejected on the ground that the endorsement regarding non-admissibility of credit was absent or improper. The subsequent proceedings, however, proceeded partly on the premise that the invoices could not be verified after the original records had been misplaced. In our considered view, once the original adjudicating authority itself acknowledged verification of the invoices, it becomes impermissible for the department to subsequently cast adverse doubt regarding existence or production of those

very invoices after admittedly misplacing the original records.

13. The records clearly disclose that after remand by the Commissioner (Appeals), the original refund files could not be traced by the department, and the appellant was repeatedly directed to reconstruct the file by furnishing copies of invoices and other available documents. The appellant accordingly resubmitted office copies of invoices, VAT/ST documents, worksheets, balance sheet extracts, self-declaration and Chartered Accountant certificate pursuant to departmental directions. The records further disclose that the appellant reconstructed the file based upon available office/quadruplicate copies and proportionately foregone refund wherever endorsement was unavailable.

14. We also find considerable merit in the appellant's contention that the entire rejection ultimately rests only upon absence of endorsement in certain office copies relating to a limited number of invoices. Significantly, the appellant itself voluntarily disclosed that omission had occurred in respect of certain office copies and expressly agreed that the refund amount relatable thereto could be proportionately reduced. Such conduct, in our considered view, establishes bona fides and transparency on the part of the appellant. In

such circumstances, adverse inference could not have been drawn merely on the basis of reconstructed office copies furnished after admitted loss of original records by the department.

15. The Ld. counsel for the appellant strongly relied upon the Larger Bench decision of the Tribunal in *Chowgule & Co. Pvt. Ltd. v. Commissioner of Customs* reported in *2014 (306) ELT 326 (Tri.-LB),* which squarely governs the controversy involved in the present appeal. The Larger Bench categorically held that the endorsement requirement prescribed under Notification No.102/2007-Cus. is procedural in nature and substantive benefit cannot be denied where payment of SAD at the time of import and subsequent sale of the goods on payment of VAT/Sales Tax stand established. The Larger Bench emphasized that the notification was issued with the avowed object of avoiding double taxation and therefore procedural infractions incapable of causing revenue prejudice cannot defeat substantive entitlement. The Tribunal further observed that the refund mechanism under Notification No.102/2007-Cus. is a beneficial scheme intended to neutralize the burden of SAD and therefore substantial compliance with the notification conditions is sufficient.

16. The Ld. counsel for the appellant further relied upon the decision of the Tribunal in *LG Electronics India Pvt. Ltd. v. Commissioner of Customs, Chennai* reported in *2023 (11) TMI 488 (Tri.-Chennai),* wherein it was held that refund under Notification No.102/2007-Cus. cannot be denied merely because the invoices did not contain the endorsement contemplated under the notification, relying upon the Larger Bench decision in Chowgule & Co Pvt Ltd Vs CCE (*Supra*). Reliance was also placed upon *Vestal Impex v. Commissioner of Customs* reported in *2024 (3) TMI 808 (Tri.-Bang),* wherein the Tribunal reiterated that non-mentioning or improper mentioning of endorsement in invoices is only a procedural lapse and cannot be a reason to deny refund of SAD where payment of SAD and discharge of VAT liability otherwise stand established.

17. The appellant further relied upon *RKG International Pvt. Ltd. v. Commissioner of Customs reported in 2013 (290) ELT 253 (Tri.-Del),* wherein the Tribunal, in Para 6 of the Order held that

> *"……..we hold that non-fixation of invoices with the stamp showing that no credit would be admissible to the purchaser is a requirement to be fulfilled for non passing of the credit to the said duty mentioned. If the appellants have not even mentioned SAD on the invoices, the purchasers is not in a position to avail the credit of the same, this purpose of notification is fulfilled……."*

Similar views have also been taken in *Nova Nordisk India Pvt. Ltd. v. Commissioner of Customs* reported in *2013 (292)*

ELT 252 (Tri.-Mumbai) and *Tomlukes India Pvt. Ltd. v. Commissioner of Customs* reported in *2016 (335) ELT 624 (Tri.-Bang.).*

We find that there is a wealth of jurisprudence consistently taking the view that procedural defects relating to endorsement in invoices cannot defeat substantive SAD refund entitlement where payment of duty and subsequent VAT-paid sales stand established. We therefore do not wish to burden this order with further multiplication of precedents merely for the sake of prolixity.

18. From the consistent line of decisions discussed above, it is evident that the issue regarding denial of SAD refund on the ground of absence, variation or improper wording of endorsement in invoices under Notification No.102/2007-Cus. is no longer res integra. The judicial position stands consistently settled that procedural defects relating to endorsement cannot defeat substantive refund entitlement where payment of SAD, subsequent sale of imported goods and discharge of VAT/Sales Tax are otherwise established through contemporaneous documentary evidence. The impugned orders, in our considered view, proceed contrary to the settled line of judicial precedent governing SAD refund claims under Notification No.102/2007-Cus.

19. We further find that Notification No.102/2007-Cus. requires endorsement in the sales invoices regarding non-admissibility of credit of SAD paid under Section 3(5) of the Customs Tariff Act, 1975. On perusal of the invoices, we find that the appellant had made endorsement stating "NO CENVAT CREDIT ADMISSABLE IN RESPECT OF 4% CVD". Mere absence of exact verbatim reproduction of the notification language cannot be treated as a fatal defect when the substance and object of the condition stand satisfied. The endorsement requirement is intended only to ensure that the buyer does not avail inadmissible credit and obtain double benefit. We also find force in the appellant's contention that the invoices did not separately reflect the 4% SAD component and therefore there was no practical possibility of availment of CENVAT credit by the buyers, which contention has not been rebutted anywhere in the impugned orders. In such circumstances, denial of refund on hyper-technical interpretation of endorsement requirements, despite substantial compliance and absence of any allegation of actual availment of inadmissible credit, is clearly unsustainable.

20. We find that the department has nowhere disputed payment of SAD at the time of importation or subsequent VAT/ST-paid sale of the goods. The Bills of Entry,

TR-6 challans, VAT/ST documents, correlation sheets and Chartered Accountant certificate substantially establish fulfillment of the substantive conditions of Notification No.102/2007-Cus. We also find merit in the appellant's grievance regarding prolonged delay and repeated proceedings despite the remand order having attained finality, ultimately compelling the appellant to approach the Indirect Tax Ombudsman due to departmental inaction and admitted loss of records.

21. We also cannot overlook the fact that the Ombudsman proceedings themselves recorded serious concern regarding the departmental handling of the refund claims and the admitted misplacement of the original refund files. The records disclose that the Ombudsman directed initiation of appropriate disciplinary proceedings in relation to the loss/misplacement of the refund records. This circumstance assumes considerable significance because the very evidentiary difficulties now sought to be raised against the appellant arose only due to the department's own failure in preserving the original records. In such circumstances, adverse consequences flowing from missing files or reconstructed documents cannot fairly be visited upon the appellant.

22. In view of the above findings, we are unable to sustain the impugned order, which proceed largely on presumptions arising from reconstructed office copies despite admitted loss of original records by the department itself. The appellant had substantially complied with Notification No.102/2007-Cus. and is therefore entitled to the SAD refunds claimed.

23. As regards interest, we note that the appellant had also raised grievance regarding prolonged delay in sanction of refund before the Ombudsman proceedings. We find from the Bills of Entry and TR-6 challans that SAD had been discharged at the time of import during April–May 2008 and the subsequent sales were effected on payment of VAT/Sales Tax . However, despite the refund claims having been filed as early as in the year 2009, the matter has remained pending till date on account of repeated adjudication, remand proceedings and admitted misplacement of records by the department. The Ombudsman vide Order dated 10.06.2016 had also adversely commented upon the abnormal delay and directed initiation of disciplinary proceedings regarding the missing files. The appellant cannot be made to suffer for departmental lapses and unjustified retention of amounts lawfully refundable. Since the refund itself is being allowed,

the appellant shall also be entitled to consequential statutory interest under Section 27A of the Customs Act, 1962, in accordance with the law.

24. In view of the foregoing findings, we hold that the rejection of refund claims under Notification No.102/2007-Cus. is unsustainable in the facts and circumstances of the present case. The impugned Order-in-Appeal No.320/2016 dated 29.09.2016 and the underlying Orders-in-Original are accordingly set aside. The appellant shall be entitled to refunds in accordance with law after allowing proportionate exclusion, if any, relatable to invoices where endorsement omission was admittedly accepted by the appellant along with applicable interest.

25. The appeal is accordingly allowed with consequential reliefs, if any, in accordance with law.

(Order pronounced in open court on 02.06.2026)

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

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

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