CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 86961 of 2022

[Arising out of Order-in-Appeal No. 545 & 546 (CRC-SAD-VI)/2022(JNCH)/Appeals dated 10.06.2022 passed by the Commissioner of Customs (Appeals), Mumbai-II.]

M/s Johnson & Johnson P Ltd. ....Appellant
Arena Space, Off. Jogeshwari Vikhroli
Link Road, Behind Majas Depot,
Jogeshwari East, Mumbai – 400 060

VERSUS

Commissioner of Customs, Nhava Sheva-III ....Respondent
JNPT, Customs House, Nhava Sheva,
Raigad, Maharashtra – 400 707

WITH

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Raigad, Maharashtra – 400 707

APPERANCE:

Shri Bharath Menon, Advocate for the Appellant
Shri C.S. Vinod, Asst. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 86105-86106/2026

Date of Hearing: 29.07.2026
Date of Decision: 11.09.2026

Adjustment of SAD refund against recovery of duty drawback under Section 142 of the Customs Act, 1962, by the Refund Sanctioning Authority that received approval of the Commissioner (Appeals) in an appeal preferred before him unsuccessfully by the Appellant is assailed in this appeal.

2. Fact of the case would go to reveal that Appellant sought for refund of ₹14,28,537/- and ₹3,67,588/- against imports effected through 5 Bills of Entries between the period November, 2016 and March, 2017 and 8 Bills of Entries during the period from October, 2016 to November, 2016 respectively. Assistant Commissioner of Customs, JNCH, Nhava Sheva-III *vide* Order-in-Original No. 238 & 239/2020-21/AM (I) NS-III sanctioned the refund but appropriated the amount towards duty drawback demand confirmed *vide* Order No. AC/JD/2850/2017-18/DBK(XOS)/ACC dated 27.03.2018. Appellant preferred an appeal unsuccessfully before the Commissioner (Appeals) and aggrieved by the Order-in-Appeal confirming the Order-in-Original, Appellant has filed these two appeals before the present forum.

2. During course of hearing of the appeal and learned Counsel for the Appellant Mr. Bharath Menon submitted that such recovery of drawback order was passed in the absence of Appellant in violation of principle of natural justice, that was being confirmed by the Commissioner (Appeals) but the said order was challenged by Appellant before the Revisional Authority of the Government of India, who allowed the appeal and remanded the matter back to the Original Adjudicating Authority for redetermination within 8 weeks of receipt of the order and in compliance with such Revisional Authorities remand direction, after hearing the parties, a fresh Order-in-Original was duly passed by the Assistant Commissioner on dated 16.08.2024 dropping the demand-cum-show-cause notice issued for such recovery of drawback. Learned Counsel for the Appellant further submitted that such fact was brought to the knowledge of the Commissioner (Appeals) in the parallel proceedings and precedent decisions on the issue has been cited before him including the final order passed by this Tribunal in the case of *Voltas Ltd. Vs. Commissioner of Central Excise,*

Hyderabad-II, reported in *2006 (201) ELT 615 (Tri.- Bang.)* and of the Hon'ble Karnataka High Court in the case of *Commissioner of Central Excise, Bangalore-III Vs. Stella Rubber Works,* reported in *2011 (267) ELT 495 (Kar.),* wherein it has been clearly held that such adjustment can be done when the demand has reached finality and should never be invoked at the initial stage since it was in the nature of a mere claim that got confirmed through an appealable order. His further submission on the issue is that no such adjustment can be done without hearing the Appellant on the said issue by the Adjudicating Authority and therefore, Appellant is also entitled for interest on delayed refund of tax.

3. *Per contra,* learned Authorised Representative Mr. C.S. Vinod argued in favour of the reasoning and rationality of the order passed by the Commissioner (Appeals) and took this Bench through para 8 of his order to justify that no favourable order was passed by the Revisional Authority till hearing of the appeal before him that would substantiate that the order confirming demand of duty drawback refund by the Appellant was in force, for which no interference of the Tribunal is required in the order passed by the Commissioner (Appeals).

4. I have gone through the appeal paper book, submissions made by the adversaries and the relied upon case laws. At the outset, it would be imperative to go through the status report dated 30.03.2026 submitted by the concerned Commissioner to the Authorised Representative office for production of the same before this Bench. Its para 8 is in clear terms noted that the underlined drawback demand – against which this office had appropriated the SAD refund amount of ₹14,28,537/- and ₹3,67,588/- under Section 142(a) of the Customs Act, 1962 – stands completely dropped pursuant to fresh Order-in-Original No. AC/KVV/895/2024-25/DBK(XOS)ACC dated 16.08.2024. This being admission of the Respondent-Department they should have released the amount adjusted against such drawback demand *suo moto* in favour of the Appellant but this has not been done. *Voltas Ltd.* decision of this Tribunal that was passed way back in 2006, by

following large number of decisions, the relevant portion of which as contained in paragraph 9, reads as follows: -

> *"… <u>The important thing to be noted is that these amounts decided by the Orders-in-originals were not final. Every Order-in-Original can be appealed. Therefore, at the first stage of confirmation of a demand, no finality has been reached. To put in other words, those demands cannot be called as arrears. There is a possibility that these demands could be set aside by the Commissioner (A) or the Tribunal or any other judicial forum. That is why large number of decisions hold that refund cannot be adjusted against the demands which are sub-judice.</u> In the present case, the action of the authorities in adjusting the refund is against the legal provisions. Section 11 should be invoked only when the demands have reached finality and should not be invoked even at the initial stage. Section 11BB provides interest for delayed refunds. This is squarely applicable to the present case. The Commissioner (A) has not at all given any reason as to why the said section is not applicable. In view of the above findings, we allow the appeal with consequential relief."*

5. Hence going by the precedent decision on the issue and to ensure certainty and predictability to the order passed by this Tribunal, the following order is passed.

<u>THE ORDER</u>

6. The appeals are allowed with consequential relief and the order passed by the Commissioner of Customs (Appeals), Mumbai-II *vide* Order-in-Appeal No. 545 & 546 (CRC-SAD-VI)/2022(JNCH)/Appeals dated 10.06.2022 is hereby set aside. Respondent-Commissioner is directed to refund the amount adjudged against Appellant's refund applications filed for refund of SAD within two months of receipt of this order with applicable interest as per law.

(Order pronounced in the open court on 11.09.2026)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad