WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2026

CORAM:

THE HON'BLE MR JUSTICE N.ANAND VENKATESH
AND
THE HON'BLE MR JUSTICE P.DHANABAL

C.M.A(MD)No.256 of 2021
and CMP (MD) No.2177 of 2021

The Commissioner of Customs
Custom House,
New Harbour Estate,
Turicorin – 628 004. ... Appellant/Respondent

Vs.

M/s.Pepsico India Holdings Pvt Ltd.,
Level 3-6, Pioneer Square,
Sector-62, Near Golf Course Extension Road,
Gurgaon-122 101. ... Respondent/Appellant

PRAYER:- Civil Miscellaneous Appeal is filed under Section 130 of the Customs Act 1962, to to consider the above appeal and set aside the impugned order of the CESTAT, South Zone, Chennai, in Final Order No.40831 of 2020 dated 29.10.2020.

https://www.mhc.tn.gov.in/judis

WEB COPY

For Appellant : Mr. Gowri Shankar
for Mr.B.Vijay Karthikeyan

For Respondent : Mr.Raghavan Ramabadran
for M/s.Lakshmikumaran
and Sridharan Attorneys

J U D G M E N T

**(Judgment of the Court was delivered by
N.ANAND VENKATESH, J.)**

This appeal has been filed by the Commissioner of Customs under Section 130 of "the Customs Act, 1962" (for brevity hereinafter referred to as "the Act"), against the order passed by "the Customs, Excise and Service Tax Appellate Tribunal" (in short "CESTAT").

2. The respondent filed 34 numbers of refund claims from September 2013 to February 2017 in respect of 209 Bills of Entry for the refund of 4% Special Additional Duty (SAD) under Notification No. 102/2007-Customs dated 14.09.2007. On scrutiny, it was found that the

https://www.mhc.tn.gov.in/judis

WEB COPY

goods sold were different from the goods imported and hence, further investigation was done by the Special Intelligence and Investigation Branch. As per the investigation conducted, it was found that the importer had sent the imported oats to the job workers, who had undertaken three types of job work on the imported oats and thereby, the goods sold assumed a different character and therefore, the respondent did not fulfil the conditions specified in paragraph 2 of the Notification No.102/2007. Since the imported goods were not sold as such without being subjected to any further process, an Order-in-Original dated 09.05.2017 came to be passed by the Assistant Commissioner of Customs to the following effect:

> "1. I hold that M/s Pepsico India Holding (P) Ltd. is not eligible to claim the refund of Rs.5,42,34,576/- being the SAD claimed by them vide their refund claims listed in the annexure to the Show Cause Notice C.No.VIII/20/112/2017-RF dated 07.02.2017 in as much as they have diverted the imported Oats for further manufacture of excisable Oats and exempted Oats products by a other manufacturers and therefore I reject the claim of refund Rs.5,42,34,576/.

https://www.mhc.tn.gov.in/judis

WEB COPY

2. I hold that refund claim in respect of Bills of Entry No. 3709692/04.11.2013; 3716441/05.11.2013; 4255649/03.01.2014; 2119891/03.08.2015; 2754567/29.09.2015; 2754618/29.09.2015 and 7235623/31.10.2014 are hit by period of limitation and the same are rejected in view of the discussion above.

3. I hold M/s Pepsico India Holding (P) Ltd. to be liable for imposition of penalty under section 114AA of Customs Act, 1962 and accordingly, I impose a penalty of Rs. 25,00,000/- (Rupees Twenty five lakhs only) on M/s Pepsico India Holding (P) Ltd., Gurgoan."

3. Aggrieved by the above order, the respondent filed an appeal before the Commissioner (Appeals) and the original order was confirmed in the appeal by order dated 27.12.2017. Aggrieved by the same, the respondent filed an appeal before the CESTAT, Chennai, in Customs Appeal No.40891 of 2018. The CESTAT, on considering the grounds raised on either side, came to the conclusion that the respondent is

https://www.mhc.tn.gov.in/judis

WEB COPY

entitled for refund and the order passed by the Assistant Commissioner and which was confirmed in appeal by the Commissioner (Appeals), came to be set aside. Aggrieved by the same, the present appeal has been filed before this Court under Section 130 of the Act.

4. When this appeal was admitted, this Court framed the following questions of law :

> "i) Whether the exemption as provided under Notification No.102/2007-Cus dated 14.09.2007 can be allowed when the conditions specified therein are not fulfilled?
>
> ii) Whether the Board's Circular No.34/2010-Customs dated 15.09.2010 is having a bearing on the conditions specified in the Notification No.102/2007-Cus dated 14.09.2007?
>
> iii) Whether the limitation period for filing refund provided under Notification No.102/2007-Cus dated

https://www.mhc.tn.gov.in/judis

WEB COPY

14.09.2007 as amended vide Notification No.93/2008-Customs dated 01.08.2008 has to be interpreted strictly in view of the Constitutional Bench Judgment in Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company, reported in 2018 (361) ELT 577 (SC)?

iv) Whether penalty can be imposed under Section 114 AA of the Customs Act, 1962 when there is suppression and misdeclaration in the refund application?"

5. When the matter was taken up for hearing today, a preliminary objection was raised by the learned counsel for the respondent to the effect that the present appeal filed before this Court under Section 130 is not maintainable since the effect of refund based on the exemption notification has a relation to the rate of duty of customs or the value of the goods for the purposes of assessment. Therefore, it was contended that the appeal will only lie before the Apex Court under Section 130E of the Act.

https://www.mhc.tn.gov.in/judis

WEB COPY

6. Considering the preliminary objection raised on the side of the respondent, this Court wanted to deal with that issue at the outset since it touches upon the jurisdiction of this Court.

7. The exemption notification that is involved in the present case is Notification No.102/2007-CUS dated 14.09.2007. This notification exempts the goods from the whole of additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act, when imported into India for subsequent sale, if the conditions stipulated in paragraph 2 of the notification are fulfilled.

8. The CESTAT, while setting aside the Order-in-Original passed by the Assistant Commissioner and the order in appeal passed by the Commissioner (Appeals), came to the conclusion that the respondent is entitled for exemption.

https://www.mhc.tn.gov.in/judis

WEB COPY

9. The learned counsel for the respondent, by placing reliance upon the judgment of the Apex Court in ***Navin Chemicals Mfg. and Trading Co. Ltd. v. Collector of Customs***, reported in ***1993 (68) ELT 3***, submitted that the appeal will lie only before the Hon'ble Supreme Court under Section 130E. The portions in the judgment relied upon by the learned counsel for the respondent are extracted hereunder:

> "8. Before we consider whether the case of the appellant fails within the said expression, we must note that Section 130, Sub-section (l) and Section 130-E, Clause (b) of the said Act also use the said expression and they refer respectively to the Statement of Case to the High Court on a reference by CEGAT and an appeal to the Supreme Court directly. Section 130(1) states that the Collector of Customs or the other party may require CEGAT to refer to the High Court any question of law arising out of an order under appeal before it provided it is not an order relating among other things to the 'determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment'. Clause (b) of Section

https://www.mhc.tn.gov.in/judis

WEB COPY

130E provides that an appeal shall lie to the Supreme Court from 'any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate, of duty of customs or to the value of goods for purposes of assessment'.

9. The importance of the present appeal lies not so much in deciding which appeals can be heard by a member of CEGAT sitting singly and which by a Special Bench thereof as in determining where a reference can be made by CEGAT to the High Court and in which cases an appeal against an order of CEGAT can be filed directly before the Supreme Court. Where an appeal lies to the Supreme Court, the necessity of the reference on a question of law to the High Court is obviated. An appeal to this Court is provided where, as aforementioned, the questions in issue, relating to the rates of duty or the value of goods for the purposes of assessment, have relevance not only for the parties there c6ncerned but for other importers as well.

https://www.mhc.tn.gov.in/judis

WEB COPY

10. Section 129D deals with the powers of the Central Board of Excise and Customs and the Collector of Customs to call for and examine the record of any proceedings before authorities subordinate thereto and examine the legality or propriety thereof and also to direct such authorities to file appeals. Sub-section 5 was added to Section 129-D by the Customs & Central Excise Laws Amendment Act, 1988 and it reads thus:

"(5) The provisions of this section shall not apply to any decision or order in which the determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment of any duty is in issue or is one of the points in issue.

Explanation - For the purposes of this sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods or valuation of any goods for the purposes of assessment of duty includes the determination of a question.-

https://www.mhc.tn.gov.in/judis

WEB COPY

(a) relating to the rate of duty for the time being in force, whether under the Customs Tariff Act, 1975 (51 of 1975), or under any other Central Act providing for the levy and collection of any duty of customs, in relation to any goods on or after the 28th day of February, 1986; or

(b) relating to the value of goods for the purposes of assessment of any duty in cases where the assessment is made on or after the 28th day of February, 1986; or

(c) whether any goods fall under a particular heading or sub-heading of the First Schedule or the Second Schedule to the Customs Tariff Act, 1975 (51 of 1975), or that any goods are or not covered by a particular notification or order issued by the Central Government granting total or partial exemption from duty; or

(d) whether the value of any goods for the purposes of assessment of duty shall be enhanced or reduced by the addition or reduction of the amounts in respect of such matters as are specifically provided in this Act.

https://www.mhc.tn.gov.in/judis

WEB COPY

11. It will be seen that Sub-section (5) uses the said expression 'determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment' and the Explanation thereto provides a definition of it 'for the purposes of this sub-section'. The Explanation says that the expression includes the determination of a question relating to the rate of duty; to the valuation of goods for purposes of assessment; to the classification of goods under the Tariff and whether or not they are covered by an exemption notification; and whether the value of goods for purposes/of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for. Although this Explanation expressly confines the definition of the said expression to Sub-section 5 of Section 129-D, it is proper that the said expression used in the other parts of the said Act should be interpreted similarly. The statutory definition accords with the meaning we have, given to the said expression above.

https://www.mhc.tn.gov.in/judis

WEB COPY

Questions relating to the rate of duty and to the value of goods for purposes of assessment are questions that squarely fall within the meaning of the said expression. A dispute as to the classification of goods and as to whether or not they are covered by an exemption notification relates directly and proximately to the rate of duty applicable thereto for purposes of assessment. Whether the value of goods for purposes of assessment is required to be increased or decreased is a question that relates directly and proximately to the value of goods for purposes of assessment. The statutory definition of the said expression indicates that it has to be read to limit its application to cases where, for the purposes of assessment, questions arise directly and proximately as to the rate of duty or the value of the goods.

12. This, then, is the test for the purposes of determining whether or not an appeal should be heard by a Special Bench of CEGAT, whether or not a reference by CEGAT lies to the High Court and whether or not an appeal lies directly to the Supreme Court from a decision of CEGAT :

https://www.mhc.tn.gov.in/judis

WEB COPY

does the question that requires determination have a direct and proximate relation, for the purposes of assessment, to the rate of duty applicable to the goods or to the value of the goods."

10. The above judgment of the Apex Court brings out the distinction between Section 130 and Section 130E of the Act which provides for appeal to the High Court and to the Supreme Court from the order passed by the CESTAT. In a case which involves determination of any question having relation to the rate of duty of customs or to the value of goods for the purposes of assessment, such appeal can be filed only before the Supreme Court. The above judgment also gives a clarity where the subject matter of challenge touches upon an exemption notification and if that exemption notification relates directly or proximately to the rate of duty applicable for the purposes of assessment, that will also fall within the ambit of Section 130E of the Act and consequently, the appeal would lie only before the Supreme Court.

https://www.mhc.tn.gov.in/judis

WEB COPY

11. The above judgment of the Apex Court has been subsequently followed in various judgments and it will suffice to take note of those judgments hereunder:

1. Steel Authority of India Ltd. v. Designated Authority, Directorate General of Anti- Dumping & Allied Duties [2017 (349) E.L.T. 193 (S.C.)
2. Commissioner of Customs, Bangalore - 1 v. Motorola India Ltd. [2019 (368) E.L.T. 3 (S.C.)]
3. Maruti Udyog Ltd. v. Commr. Of Cus., Chennai [2019 (369) E.L.T. 354 (Mad.)]
4. Commissioner of C. Ex., Chennai Vadapalani Press [2015 (320) E.L.T. 238 (Mad.)]
5. Coimbatore Polytex Ltd. v. CESTAT, Chennai [2015 (319) E.L.T. 293 (Mad.)]
6. Commissioner of Customs (Exports), Chennai v. D. S. Metal (P) Ltd. [2015 (323) E.L.T. 328 (Mad.)]
7. Commr. of Cus., C. Ex. & Service Tax v. Jubilant Life Sciences Ltd. [2014 (306) E.L.T. 212 (All.)]

https://www.mhc.tn.gov.in/judis

WEB COPY

12. In the case in hand, the respondent is seeking for exemption from payment of Special Additional Duty of Customs by relying upon Notification No.102/2007-Cus dated 14.09.2007. The applicability of this notification relates directly and proximately to the rate of duty applicable thereto for the purposes of assessment. Therefore, as per the above judgment, the combined reading of sub-section (1) of Section 130 and clause (b) of Section 130E of the Act makes it clear that the order passed by the CESTAT can be put to challenge only before the Supreme Court.

13. In the light of the above discussion, this appeal is closed and it is left open to the department to file an appeal before the Supreme Court, if so advised and proceed further in accordance with law. Consequently, connected miscellaneous petition is closed.

14. The Registry is directed to return the original order passed by the CESTAT, Chennai, to the learned Standing Counsel for the

https://www.mhc.tn.gov.in/judis

WEB COPY

department, to enable the department to file an appeal before the Apex Court.

[N.A.V., J.] [P.D.B., J.]
12.03.2026

NCC :Yes/No
Index :Yes/No
PKN

To

1.The Customs, Excise and Service Tax Appellate Tribunal,
South Zone, Chennai.

2.The Record Keeper (Vernacular Records),
Madurai Bench of Madras High Court,
Madurai.

https://www.mhc.tn.gov.in/judis

WEB COPY

N. ANAND VENKATESH,J.
AND
P.DHANABAL,J.

PKN

C.M.A(MD)No.256 of 2021

12.03.2026

https://www.mhc.tn.gov.in/judis