CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 21762 of 2018
(Virtual Hearing)

(Arising out of Order-in-Appeal No. 299/2018 dated 09.08.2018 passed by the Commissioner of Customs (Appeals), Bangalore.)

The Commissioner of Customs
New Customs House,
Panambur,
Mangaluru – 575 010.

Appellant(s)

VERSUS

M/s. Gajanan Worldtrade India Pvt. Ltd.
D. No.14-4-511/43,
Crystal Arc Building,
Balmata Road,
Mangaluru – 575 001.

Respondent(s)

APPEARANCE:

Shri Vikalp Jain, Superintendent (AR) for the Appellant.
Shri Avinash Shanbhogue, Advocate for the Respondent.

CORAM: HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21296 /2026

DATE OF HEARING: 17.09.2026
DATE OF DECISION: 06.11.2026

PER : R. BHAGYA DEVI

The respondent M/s. Gajanan Worldtrade India Pvt Ltd filed a refund claim on 01.01.2018 for an amount of Rs.19,11,229/- for the refund of 4% additional duty of customs paid by them on imported almonds in shells vide three Bills of Entry. The original authority rejected the refund claim stating that claim was beyond the period of one year from the date of payment of additional duty of customs and the same is barred by limitation as specified under Notification No.93/2008-Cus. dated

01/08/2008 read with Circular No.16/2008-Cus. dated 13th October 2008. On appeal against this order, the Commission (Appeals) allowed the appeal filed by the respondent and held that they were eligible for refund of SAD under Notification No.102/2007-Cus. dated 14.09.2007. Aggrieved by this order, the Revenue is an appeal before this Bench.

2. The Revenue in their grounds of appeal submitted that the circular relied upon by the Commissioner (Appeals) has stated as follows:

> "4.1 In the Notification No.102/2007-Cus. dated 14.09.2007, no specific time limit has been prescribed for filing a refund application. Under the circumstances, a doubt has been expressed that whether the normal time limit of six months prescribed in Section 27 of the Customs Act, would apply. In the absence of specific provision of Section 27 being made applicable in the said Notification, the time limit prescribed in this Section would not be automatically applicable to refunds under the Notification. Further, it was also represented that the goods imported may have to be dispatched for sale to different parts of the country and that the importer may find it difficult to dispose of the imported goods and complete the requisite documentation within the normal period of six months. Taking into account various factors, it has been decided to permit importers to file claims under payment of duty. Necessary change in the Notification is being made so as to incorporate a specific provision prescribing maximum time limit of one year from the date of payment of duty, within which the refund could be filed by any person. It is also clarified that the importers would be entitled to refund of duties only in respect of quantities for which the prescribed documents are made available and the claims submitted within the maximum prescribed time of one year. Unsold stocks would not be eligible for refunds."

2.1 Further, it is submitted that, in the instant case, refund claim amount accrued before the due date of filing of refund claim and sales were also completed within one year from the date of payment of additional duty but the claimant had filed these details before the refund sanctioning authority. From the dates specified therein, the claimant was required to be file

refund claims on or before 22.11.2017; instead, the claim was filed on 01.01.2018; accordingly, the original authority had rightly rejected the refund claim on account of time bar.

2.2 Relying on the decision of the Hon'ble High Court of Bombay in the case of **CMS Info Systems Ltd. vs. Union of India: 2017 (349) ELT 236 (Bom.)** wherein it was held that the power to consider refund claim and grant it, if permissible, is traceable to Section 27 of the Customs Act, 1962. Therefore, it was impossible to ignore the statutory bar and contained in subsection one of section 27 at any time. This judgement being upheld by the Supreme Court, it is further submitted that Notification No.93/2008-Cus. dated 01.08.2008 has amended the Notification No.102/2007-Cus. dated 14.09.2007 by prescribing the time limit of one year for filing the refund claim of SAD; therefore, the Commissioner (Appeals) was not right in sanctioning the refund claim which was time barred.

3. Countering the above arguments, the respondent, submitted that they had filed the refund claim on 01.01.2008 within five months of the last domestic sale on 08.08.2017; hence, the claim is within the time limit prescribed in the Notification and all other conditions of the Notifications are met relying on the following decisions:

- **Sony India Pvt. Ltd. vs. Commissioner of Customs, New Delhi: 2014 (304) ELT 660 (Delhi High Court)**
- **Commissioner of Customs (Import) vs. Gulati Sales Corporation: 2018 (360) ELT 277 Delhi High Court**
- **Commissioner of Customs (Import), ICD vs. Bhimshwari Overseas: 2023 (385) ELT 807 (SC)**
- **Commissioner of Customs, New Delhi (Import) vs. Nanak Electronics: 2023 (385) ELT 801 (SC)**

4. Heard both sides. The undisputed facts are that the appellant had filed refund claim on 01.01.2018 in terms of Notification No. 102/2007 dated 14.09.2007 read with Notification No. 93/2008-Cus dated 01.08.2008 claiming the refund of Special Additional Duty (SAD) paid by them. The

refund in terms of the above said Notification was to be allowed only on production of evidence of payment of appropriate sales tax. The Commissioner (Appeals) in the impugned order notes as follows:

> "15. In the instant case, it is seen from the impugned order that the appellant has submitted all the relevant documents as required under notification No.102/2007-Cus. dated 14.09.2007 and the lower adjudicating authority in para 9 has also mentioned that the claimant has sufficiently proved that the duty incidence has not been passed on by them to any other person. Therefore, rejecting the claim on the sole ground on delay of refund application is bad in law.
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> 16. Further in view of the various judicial pronouncement (supra), it is seen that the issue of time limit for filing refund of SAD under Notification No. 102/ 2007-Cus dated 14.09.2007 is no longer *res integra* and I agree that the period of limitation cannot start prior to the date of crystallization to the right of refund and the right to refund is prescribed by the said notification. Therefore, the rejection of the claim of refund on the sole ground of limitation is bad and not tenable."

5. The Revenue relying on the Circular No.6/2008-Cus. dated 28.04.2008 submits that the Circular had stated that *'it has been decided to permit importers to file claims under the above exemption upto a period of one year from the date of payment of duty. Necessary change in the notification is being made so as to incorporate a specific provision prescribing maximum time limit of one year from the date of payment of duty, within which the refund could be filed by any person.'* But the actual amendment happened vide Notification No. 93/2008-Cus. dated 01.08.2008 where it amended the Notification No.102/2007 to incorporate the above time limit of one year from date of payment of SAD. The relevant Notifications during the disputed period are reproduced below:

> **Notification No. 102/2007-Cus., dated 14.09.2007**
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> Special CVD — Exemption to all goods when imported for subsequent sale
> In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby

exempts the goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for subsequent sale, from the whole of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act (hereinafter referred to as the said additional duty).

2. The exemption contained in this notification shall be given effect if the following conditions are fulfilled:

(a) the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon, as applicable, at the time of importation of the goods;

(b) the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible;

(c) the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer;

(d) the importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be;

(e) the importer shall, *inter alia*, provide copies of the following documents alongwith the refund claim :

(i) document evidencing payment of the said additional duty;

(ii) invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed;

(iii) documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.

3. The jurisdictional customs officer shall sanction the refund on satisfying himself that the conditions referred to in para 2 above, are fulfilled.

[Notification No. 93/2008-Cus., dated 1-8-2008]

Spl. CVD refund claim to be filed within one year — Amendment to Notification No. 102/2007-Cus.

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 102/2007-Customs, dated the 14th September, 2007 which was published in the Gazette of India, Extraordinary, vide number G.S.R. 598 (E), dated the 14th September, 2007, namely :-

In the said notification, in paragraph 2, for sub-paragraph (c), the following shall be substituted, namely, -

"(c) the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer before the expiry of one year from the date of payment of the said additional duty of customs;".

6. Thus, from the above Notifications, it is clear that w.e.f. from 01.08.2008, time limit of one year was introduced from the date of payment of additional duty of customs for filing the refund claim of SAD under Notification No. 102/2007-Cus. dated 14.09.2007 read with Notification No. 93/2008 dated 01.08.2008.

7. All the judgments relied upon by the Commissioner (Appeals) and the appellant are based on the decision of the Hon'ble High Court in the case of **Sony India Pvt. Ltd. vs. Commissioner of Customs, New Delhi: 2014 (304) ELT 660 (Del.) dated 16.04.2014**. The Hon'ble High Court of Delhi in the above case was dealing with refund claim filed prior to introduction of the time limit vide Notification No.93/2008 dated 01.08.2008. The facts as enumerated in the above order is reproduced below:

"3. The appellant imported some items in between 1-12-2007 and 5-12-2007 under 9 Bills of Entry, paid the applicable customs duties by demand drafts dated. 4-12-2007 and 6-12-2007 and received stamped TR-6 challans on 14-12-2007, 18-12-2007 and 19-12-2007. Notification

93/2008-Cus., dated 1-8-2008 ("amending notification") was then issued amending Notification No. 102/2007 to prescribe a time period of 1 year from date of payment for the filing of refund claims by an importer under the Notification. On 11-12-2008, the appellant filed a refund claim amounting to Rs. 66,67,480/- before the Assistant Commissioner of Customs ("the respondent") for the refund of SADC on the imports in December 2007 under the Notification No. 102/2007. After hearing the appellant, the respondent passed an order dated 12-10-2009 allowing the claim of Rs. 33,49,015/-, on the ground that the refund in respect of 4 Bills of Entry had been filed beyond the period of 1 year stipulated in the amending notification.

……This is an appeal under Section 130 of the Customs Act, 1962, against the order dated 19-6-2013 [2013 (297) E.L.T. 297 (Tribunal)] of the Customs, Excise and Service Tax Appellate Tribunal ("CESTAT") dismissing the appellant company's appeal challenging the denial of refund claim under Notification No. 102/2007-Cus., read with Section 27 of Customs Act. **The question of law that arises for determination in this appeal is Can period of limitation for preferring refund claims, specified in the amending Notification No. 93/2008-Cus., be made applicable with retrospective effect, in absence of a limitation period in the original Notification No. 102/2007-Cus., in respect of goods imported prior to the issue of the amending notification."**

(Emphasis supplied)

From the above facts, it is seen that the refund rejected related to the period prior to 01.08.2008 as seen from the facts reproduced below as set-out in the above order and the question before the Hon'ble High Court was whether the amended Notification can be held to be retrospective.

7.1 Accordingly, the Hon'ble High Court observed as follows:

"17. Plainly, therefore. Section 27 was understood as not applying to SAD cases, even though it was in the statute book for many years. Yet, with the introduction of the circular and then the notification (No. 93), the Customs authorities started insisting that such limitation period which was prescribed with effect from 1-8-2008 (by notification) became applicable. There is a body of law that essential legislative policy aspects

(period of limitation being one such aspect) cannot be formulated or prescribed by subordinate legislation. *Khemka and Co. (Agencies) Private Ltd.* v. *State of Maharashtra*, (1975) 35 STC 571 and other decisions are authority on the question that in matters which deal with substantive rights, such as imposition of penalties and other provisions that adversely affect statutory rights, the parent enactment must clearly impose such obligations; subordinate legislation or rules cannot prevail or be made, in such cases. The imposition of a period of limitation for the first time, without statutory amendment, through a notification, therefore could not prevail.

18. For these reasons, this Court holds that the amending notification must be read down to the extent that it imposes a limitation period. The question of law framed is therefore, answered in favour of the assessee and against the Revenue."

7.2 Thus, the Hon'ble High Court was dealing with the question whether "**can the period of limitation for preferring refund claims, specified in the amending Notification No. 93/2008-Cus., be made applicable with retrospective effect, in absence of a limitation period in the original Notification No. 102/2007-Cus., in respect of goods imported prior to the issue of the amending notification",** which was answered in favour of the assessee.

8. Therefore, the refund claims filed for the period after 01.08.2008 are strictly to be complied with the limitation period of one year. In the instant case, admittedly, the Bills of Entry were filed on 25.10.2016, 26.10.2016 and 21.11.2016 after the introduction of time limit of one year for filing a refund claim. Admittedly, the 4% of additional duty of customs was paid on 27.10.2016 and 23.11.2016 and the refund claim was submitted on 01.01.2018 which is clearly beyond the time limit prescribed under the above Notification. Therefore, I find that the original authority has rightly rejected the refund claim on the ground that they have not satisfied the time limit condition laid down in the Notification. The reliance placed on various decisions by the Commissioner (Appeals) to allow the refund claim are irrelevant since they were based on the decision of the Hon'ble High Court

of Delhi for the period prior to 01.08.2008. It is also pertinent to note that Writ Petition filed by **CMS Info Systems Ltd.** to quash the time limit introduced vide Notification No. 93/2008 dated 01.08.2008 was decided by the Hon'ble High Court of Bombay in the case of **CMS INFO SYSTEMS LTD.** *Versus* **UNION OF INDIA 2017 (349) E.L.T. 236 (Bom.)** Writ Petition No. 388 of 2016, decided on 19-12-2016. The Hon'ble High Court held as follows:

> "16. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact, majority of judgments emphasize that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal Statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgments at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances.
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> **39.** Mr. Patil, appearing before us, draws support from all the judgments cited and essentially on the reasoning that refund in the present case could be claimed only after the subsequent sale of the imported goods. If they had not been sold, the refund could not have been claimed at all. If the exemption notification grants an exemption in the manner noted by us, then, it could have been granted only in that mode and not another. In the present case, the exemption Notification states that the importer shall file a claim for refund on the additional duty of customs paid on the imported goods before the expiry of one year from the date of payment of additional duty of customs. The exemption is granted from the payment of additional duty. That can be availed of provided the goods are imported into India for subsequent sale. However, all the conditions envisage first payment, second a stipulation

that when such goods are sold, invoice must indicate that no credit for additional duty of customs shall be admissible. Thirdly, if at all a refund claim is to be laid, it must be filed within one year from the date of payment. Only in these circumstances and if the goods are sold, the payment of tax as required has to be evidenced as also to its proof produced would not mean that we can override other conditions. Pertinently, it is not regarding all the conditions but only with regard to the limitation that this argument of Mr. Patil is canvassed. Even when the notification was first issued on 14-9-2007 there may not have been a stipulation with regard to the period for refund, but the clause was that the refund claim shall be filed within the Jurisdictional Customs Officer. The power to consider that refund claim and grant it, if permissible, is traceable to Section 27 of the Customs Act, 1962. Therefore, it was impossible to ignore the statutory bar and contained in sub-section (1) of Section 27 at any time".

Based on the above observations, the Writ Petition was dismissed. Therefore, from 01.08.2008 onwards when the time limit was introduced, the appellant had to necessarily to comply with the conditions laid down in the Notification and had to file the refund claims within one year from the payment of additional duty of customs.

9. Further, the Tribunal in the case of **M/s. Ingram Micro India Ltd/ Vs. Commissioner of Customs (Import)-Air** (supra) while dealing with refund claims filed after 01.08.2008 held as follows:

"7.……We find that it is not disputed that the appellants have filed the refund claim after one year of payment of duty. The order-in-original notes the date of filing the refund claim to be 22/01/2009 for 178 Bills of Entry cleared during the period from 01/10/2007 to 31/10/2007. It is also noted that the amending Notification No. 93/2008 is dated and came into effect from 01/08/2008. Hence this is case where the claim has been filed not only one year after the payment of additional duty but also after the amendment came into force bringing in a time limit of one year. We have gone through the judgment of the Coordinate Bench of the Hon'ble Tribunal at Chennai, in the case of Honda Siel Power Products Ltd. (supra), to examine the facts of the said case and come to a conclusion

whether the facts of the impugned order are the same as in the said judgment, for it to be applicable here. The relevant portion of the judgment is reproduced below;

"2. The appellants herein had imported goods and paid Special Additional Duty @ 4% as applicable to the goods. In terms of Notification No. 102/2007-Cus., dated 14-9-2007 read with Notification No. 93/2008, dated 1-8-2008, the assessees are entitled to refund of Special Additional Duty (SAD) paid if the imported goods are thereafter sold by them on payment of VAT subject to the conditions mentioned in the notification. One of the conditions mentioned in the notification as applicable during the relevant time was that the refund claim must be filed within one year. Undisputedly, the appellants have filed all these refund claims after the period of one year. Therefore, all the refund claims were rejected by the original authorities and such rejections were upheld by the first appellate authority vide the impugned orders. Hence these appeals.

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16. We have considered the arguments on both sides and perused the records. The provisions for refund of Customs duty available under the Customs Act is under Section 27. The Hon'ble High Court of Delhi in the case of Sony India Pvt. Ltd. (supra) held that this section should not apply to refund of SAD because the refund is as per the notification. The Hon'ble High Court of Delhi was dealing with a situation where there was no limitation in the exemption notifications for filing the refund claim at the time of import but which was introduced by the time refund claim was filed. The Hon'ble High Court of Bombay, on the other hand, was dealing with a case such as the present one, where the imports have taken place after the amending notification. The Hon'ble High Court of Bombay also held that the limitation under Section 27 also applies. We find that the Hon'ble High Court of Delhi framed the question of law only with respect to retrospective application of the amendment but also held that the amending notification must be read down to the extent it imposes a time limit for filing the refund claim. Evidently, if an importer resells the goods and files the refund claim within the period, they will be put to loss as he will be bearing both the burden of SAD and the VAT which he would pay while selling the goods. The Hon'ble High

Court of Bombay on the other hand held that it is not open for the importer to pick and choose parts of the exemption notification that suits while ignoring those that don't. The Hon'ble High Court of Bombay also held that Special Additional Duty of Customs is also in the nature of Customs duty and it is not a duty on sale of goods. It further held that the importer does not have any vested, let alone absolute right, for refund of the SAD. We also note that the Hon'ble High Court of Bombay has considered the judgment of the Hon'ble Delhi High Court in the case of Sony India Pvt. Ltd. (supra) and differed from it. Further, in the case of Gulati Sales Corporation [2018 (360) E.L.T. 277 (Del.)] decided by the Hon'ble High Court of Delhi on 7-11-2017, the ratio of Sony India (supra) was followed even when the imports were made after amendment to the notification. Nevertheless the undisputed position is that this is a case of a refund arising out of a conditional notification.

17. To sum up, we find that the Hon'ble High Court of Delhi has taken a liberal view on interpreting the exemption notification and held that since the purpose of availing the SAD is to provide level playing field between the imported goods and the domestic goods, when the imported goods are resold on payment of VAT to the State Government, the exemption notification provides for refund of SAD. It may or may not be always possible for the importer to resell the goods and file the refund claim within time depending on his market conditions. Taking a liberal view, the Hon'ble High Court held that refund is available without the limitation of one year indicated in the exemption Notification 102/97 after amendment. On the other hand, the Hon'ble Bombay High Court has constructed the exemption notification strictly and held that all conditions including the time limit within which the refund claim has to be filed must be fulfilled. We also find that there is no order of the jurisdictional High Court of Madras. However, the question of strict versus liberal interpretations of the exemption notifications has now finally been settled by the judgment of the Constitutional Bench of the Hon'ble Apex Court on 30th July, 2018 in the case of Dilip Kumar & Company (supra), any exemption notification must be strictly interpreted and any benefit of doubt must go in favour of the Revenue and against the assessee. Contrary decisions such as those in the case of Sun Export Corporation v. Collector [1997 (93) E.L.T. 641 (S.C.)] have

been overruled by the aforesaid Five-Judge Constitutional Bench. Judicial discipline requires us to follow the judgment of the Apex Court and interpret the exemption notification strictly as it has been drafted including the time limit within which refund applications have to be filed. We find that the judgment of the Hon'ble High Court of Bombay in the case of CMS Info System (supra) is consistent and appropriate, syncs well with the ratio of Dilip Kumar's case (supra), which is required to be followed. 18. Consequently, the refund applications of the importer beyond the time limit have been correctly rejected by the lower authorities. The impugned orders rejecting such refund claims are correct in law and call for no interference. The appeals are rejected and impugned orders are upheld.

We find that the above judgment pertains to the period after the amendment of Notification No.102/2007-Cus. dated 14.09.2007 by notification 93/2008 dated 01/08/2008. The time limit in sub para (c) of para 2 of the amended notification will apply to all refund claims filed under the notification from the date of amendment. The refund claim in the present case was also filed after the amendment to Notification No.102/2007-Cus came into force. Moreover, the importers including the appellant were made aware of the changes going to brought about in Notification 102/2007-Cus. by introducing a time limit for filing a refund claim, vide Boards Circular No.6 /2008-Customs dated 28.4.2008 and the appellants cannot state to have been taken by surprise by the amending Notification No. 93/2008 dated 01/08/2008. It has been consistently held by superior courts of law that there cannot be a blanket right to claim an exemption and that there is neither a constitutional guarantee nor a statutory entitlement to refund. 8. The Hon'ble Tribunal in its judgment in Honda Siel Power Products Ltd. has examined both the judgements of the Hon'ble High Courts of Delhi and Mumbai in Sony India Pvt Ltd Vs Commissioner of Customs, New Delhi (supra) and in CMS Info Systems Ltd Vs UOI (supra), in detail and found that the judgment in CMS Info Systems Ltd needs to be followed. The relevant paras of the Hon'ble Chennai Tribunals judgment have been extracted above. In the circumstances we do not repeat the discussions and find that the judgment of the co-ordinate Bench of this Tribunal in Honda Siel Power Products Ltd. (supra), will squarely apply to the impugned order. We concur with the same by upholding the impugned order and answering the query at para 5(a) above accordingly.

> 11. To sum up, we find that in the absence of specific provision of section 27 being made applicable in Notification No.102/2007-Customs dated 14.9.2007 as amended, the time limit prescribed in this section would not be automatically applicable to refunds under the said notification. Further the refund claim in the present case has been filed after the amendment to Notification No.102/2007-Cus. came into force. Conditions of a notification should be strictly construed. This being so, as per sub para (c) of para 2 of the amended notification, which was effective on the date of the appellant filing the claim, the importer should have filed his claim before the expiry of one year from the date of payment of the said additional duty of customs. This has not been complied with and hence the claim has been correctly rejected by the impugned order."

10. In view of the above discussions and decisions, the refund claims, in the instant case, have been rightly rejected by the original authority. Accordingly, I set aside the impugned order and allow the appeal filed by the Revenue.

Revenue's appeal is allowed.

(Order pronounced in Open Court on 06.11.2026.)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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