IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO. 68 OF 2026

Commissioner of Customs,
JNCH, Nhava Sheva, Uran, Raigad … **Appellant**

V/s.

Polynova Industries Ltd.
92-101, Kundain Industrial Estate,
Panaji Ponda Road, Goa - 403 110 … **Respondent**

Mr. Vijay Kantharia with Ms. Niyati Mankad & Ms. Priyanka Singh for the Appellant.
Mr. Shanmuga Dev with Mr. Nitesh Shukla, i/b Mr. Sriram Sridharan for the Respondent.

CORAM : B. P. COLABAWALLA AND
FARHAN P. DUBASH, JJ.

RESERVED ON : 19th NOVEMBER 2026
PRONOUNCED ON : 25th NOVEMBER 2026

JUDGMENT *(Per Farhan P. Dubash, J)*

1. The present Appeal challenges the final order dated 18th April 2024 passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai (**"CESTAT"**) in Customs Appeal No. 86080 of 2014 ("**impugned order**").

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By the impugned order, CESTAT allowed the appeal filed by the Respondent and set aside the order dated 19th December 2013 passed by the Commissioner of Customs (Appeal) and also restored the order dated 5th October 2012 passed by the Assistant Commissioner, CRC-I, JNCH Nava Sheva granting refund of Anti-Dumping Duty of Rs. 5,41,375/- to the Respondent. Being aggrieved thereby, the Appellant has approached this Court and filed the present Customs Appeal.

2. In the Memo of Appeal, the Appellant - Commissioner of Customs has raised the following substantial questions of law:

> *"1. Whether it is mandatory for the Respondent to file Appeal against the original assessment order and compliance with Section 9A(8) of the Customs Tariff Act, 1975 before filing refund claim?*
>
> *2. Whether in the fact and circumstances of the case and in law, the Hon'ble Tribunal was correct in allowing refund claim without filing an Appeal against the assessment itself?"*

3. Our attention has been invited to Notification No. 77/2010-Customs dated 26th July 2010 ***("First Notification")*** which has been issued under sub-section (2) of Section 9A of the Customs Tariff Act, 1975. Under the First Notification, the Central Government has imposed Anti-Dumping Duty on the basis of a provisional estimate inter alia on PVC resin exported by M/s. Formosa Plastics Corporation, Taiwan.

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4. It is not in dispute that pursuant to the First Notification, the Respondent has paid Anti-Dumping Duty aggregating Rs. 5,41,375/- on the two Bills of Entry dated 26th September 2010 and 17th August 2010 under which it imported PVC resin from M/s. Formosa Plastics Corporation, Taiwan.

5. However, subsequently, the Central Government issued another Notification No. 66/2011-Customs dated 26th July 2011 ***("Second Notification")*** under sub-section (1) of Section 9A of the Customs Tariff Act, 1975. Under this Notification, the Central Government notified the final Anti-Dumping Duty on PVC resin exported from M/s. Formosa Plastics Corporation, Taiwan as "Nil" and made it applicable from the date of imposition of provisional duty under the First Notification.

6. Pursuant thereto, the Respondent made an application for refund of the Anti-Dumping Duty of Rs. 5,41,375/- that it had paid pursuant to the First Notification. It is to be noted that though this refund was applied for by the Respondent, under Section 27(1)(b) of the Customs Act, 1962, the same came to be sanctioned by the Assistant Commissioner under Section 9A(2) and Section 9AA of the Customs Tariff Act, 1975, which as mentioned earlier, was sustained by the CESTAT.

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7. In this backdrop, Mr. Vijay Kantharia, learned Counsel who appears on behalf of the Appellant, vehemently submitted that the Commissioner of Customs (Appeals) *viz.*, the First Appellate Authority had correctly set aside the order of refund on the ground that the Respondent had not challenged the assessment of the Bills of Entry and in the absence thereof, it could not have filed a claim for refund of the Anti-Dumping Duty. For this purpose Mr. Kantharia relied upon the provisions of Section 9A(8) of the Customs Tariff Act, 1975.

8. On the other hand, Mr. Dev Shanmuga, learned Counsel who appears on behalf of the Respondent, has supported the impugned order which, according to him, has correctly set aside the First Appellate Authority's order by relying upon the provision of Section 9A of the Customs Tariff Act, 1975 read with Section 27 of the Customs Act, 1962 and upon the decision of the Madras High Court in ***Enterprise International Ltd Vs. Commissioner of Customs and Ors. [2013 SCC OnLine Mad 249]***

9. The short point, therefore, that arises for our consideration is whether the CESTAT has correctly set aside the order of the First Appellate Authority and restored the refund of Anti-Dumping Duty that was previously granted

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to the Respondent.

10. The relevant provisions of Section 9A of the Customs Tariff Act, 1975 read as under:

> ***"9A. Anti-dumping duty on dumped articles.—***
>
> (1) *Where [any article is exported by an exporter or producer] from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India,* ***the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article****.*
>
> ***Explanation****—For the purposes of this section,—*
>
> *(a) "margin of dumping", in relation to an article, means the difference between its export price and its normal value;*
>
> *(b) "export price", in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);*
>
> *(c) "normal value", in relation to an article, means—*
>
> *(i) the comparable price, in the ordinary course of trade, for the like article when [destined for consumption] in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*
>
> *(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either—*

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(a) comparable representative price of the like article when exported from the exporting country or [territory to] an appropriate third country as determined in accordance with the rules made under subsection (6); or

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

[(1A) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be [from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify].

[(1B) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that absorption of anti-dumping duty imposed under sub-section (1) has taken place whereby the anti-dumping duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

Explanation.—For the purposes of this sub-section, "absorption of anti-dumping duty" is said to have taken place,—

(a) if there is a decrease in the export price of an article without any commensurate change in the cost of production of such article or export price of such article to countries other than India or resale price in India of such article imported from the exporting country or territory; or

(b) under such other circumstances as may be provided by rules.]

(2) *The Central Government may, **pending the determination in accordance with the provisions of this section** and the rules made thereunder of the*

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normal value and the margin of dumping in relation to any article, impose on the importation of such article into ***India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined****:—*

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and

(b) ***refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti-dumping duty as so reduced.***

…
…

(8) *The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall,* ***as far as may be****, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be."*

(***Emphasis supplied***)

11. A reading of the aforesaid provisions of the Customs Tariff Act, 1975 would reveal that under sub-section (2), pending the determination of the normal value and the margin of dumping in relation to any article, the Central Government is empowered to impose Anti-Dumping Duty on the importation of such article into India as it may deem fit on the basis of a *'provisional'* estimate of such value and margin. Under sub-section (1), the Central Government is empowered to impose Anti-Dumping Duty not exceeding the margin of dumping in relation to such article. Sub-clause (b) of sub-section (2) provides that if such Anti-Dumping Duty exceeds the

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margin as so determined, the Central Government shall refund so much of the Anti-Dumping Duty which has been collected and is in excess. Therefore, in terms of Section 9A(8) of the Customs Tariff Act, 1975 all that an importer is required to do, is to file an application for such refund.

12. In the present case, the Respondent appears to have done exactly that. In such circumstances, there is no question of reassessment of the two Bills of Entry which were originally assessed on the basis of the provisional Anti-Dumping Duty prior to making such a refund application. Under the First Notification, what was imposed on the Respondent is a provisional Anti-Dumping Duty in terms of Section 9A(2) of the Customs Tariff Act, 1975 when the said Bills of Entry were assessed. The refund becomes automatic after the Second Notification is issued under Section 9A(1) of the Customs Tariff Act, 1975, and the same was required to be processed since the Anti-Dumping Duty was finally determined as "Nil". There is no necessity for the Respondent to thereafter file an appeal against the assessment or reassessment. This is precisely what has been done by the Assistant Commissioner on 5th October 2012 when he allowed the application and sanctioned the refund to the Respondent under Section 9A(2) of the Customs Tariff Act, 1975.

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13. We are not in agreement with the Appellant who contends that the Respondent was necessarily required to challenge the assessment of the two Bills of Entry, prior to making such application for refund. In fact, no such challenge is required to be made at all. Mr. Kantharia has not been in a position to show us any specific provision of the Customs Tariff Act, 1975 under which such procedure is required to be followed.

14. A similar view has also been taken by the Madras High Court in ***Enterprise Ltd*** *(supra).* The relevant paragraphs are reproduced hereunder:-

> *"9. Section 9A(1)* [sic Section 9A(2)] *of the Customs Tariff Act, 1975 provides for imposition of provisional anti-dumping duty and section 9A(2)* [sic Section 9A(1)] *of the Customs Tariff Act, 1975 provides for determining the final anti-dumping duty on the articles imported. Clause (b) of section 9A(2) of the Customs Tariff Act, 1975 provides for refund of the anti-dumping duty which has been collected in excess shall be made. Therefore, in terms of section 9A(8) of the Customs Tariff Act, 1975 all that the petitioner has to do is to file an application for refund. There is no question of reassessing the bill of entry which has been assessed on the basis of provisional anti-dumping duty. What has been imposed is a provisional anti-dumping duty in terms of section 9A(1)* [sic Section 9A(2)] *of the Customs Tariff Act, 1975 and the bill of entry has been finally assessed. The refund becomes automatic after the final order is passed in terms of section 9A(2)* [sic Section 9A(1)] *of the Customs Tariff Act, 1975 and, therefore, the refund as contemplated under the provisions of the Customs Tariff Act, 1975 will have to be processed as such, as the duty becomes refundable if it stands reduced in the final notification as in the present case. There is no necessity for filing an appeal against the assessment or reassessment, as the importer becomes entitled to refund consequent to the final notification issued in terms of section 9A(2)* [sic Section 9A(1)] *of the Customs Tariff Act, 1975. All that is required to be done is claim refund of excess anti-dumping duty and it shall be made as per the mandate of section 9A(2) of the Customs*

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> *Tariff Act, 1975 if and when an application for refund is made as per the procedure set out under the Customs Act, 1962.*
>
> *10. The provisions of the Customs Tariff Act, 1975 provide for imposition of provisional anti-dumping duty; and for finalisation of provisional anti-dumping duty; and for consequent refund, if there is a reduction in the anti-dumping duty. The benefit, if any, will have to flow automatically. The respondent/Department cannot insist on filing an appeal to the appellate authority or direct the petitioner/importer to approach the appropriate authority for reassessment of the order. No specific provision has been shown in the impugned proceedings as to how such a procedure is required and on what basis such a direction can be issued. The second respondent has failed to refer to any of the provisions of the Customs Act, 1962 or the Customs Tariff Act, 1975 which requires reassessment of the bill of entry or filing of the appeal before even refund is claimed consequent upon finalisation of provisional anti-dumping duty. Therefore, the impugned proceedings is contrary to the provisions of the Customs Tariff Act, 1975 and the Customs Act, 1962. A condition not authorised by law cannot be imposed for a claim for refund."*
>
> (emphasis supplied)

15. We hasten to add that Section 9A (8) of the Customs Tariff Act, 1975 also does not alter this position. It makes the provisions of the Customs Act, 1962, including those relating to refunds in Section 27 thereof, applicable to Anti-Dumping Duty, as far as may be. In the present case, however, the entitlement to refund of Anti-Dumping Duty flows from Section 9A(2)(b) of the Customs Tariff Act, 1975, which specifically provides for its refund when the Anti-Dumping Duty is collected in excess of the duty, as finally determined under Section 9A(1) of the Customs Tariff Act, 1975. The provisions of Section 27 of the Customs Act, 1962 would therefore not govern the processing of the refund claim, in the present case. As a result, the Assistant Commissioner has also, correctly, processed the Respondent's

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claim under Section 9A(2) of the Customs Tariff Act, 1975.

16. In the aforesaid circumstances, the present Appeal does not raise any substantial question of law and accordingly, the same is dismissed with no order as to costs.

17. This order shall be digitally signed by the Personal Assistant / Private Secretary of this Court. All persons / parties shall act on the digitally signed copy of this order, downloaded from the official website of the Bombay High Court.

(FARHAN P. DUBASH, J.) (B. P. COLABAWALLA, J.)

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