**Customs, Excise & Service Tax Appellate Tribunal**
**West Zonal Bench At Ahmedabad**
REGIONAL BENCH- COURT NO.3

**Customs Appeal No. 12261 of 2019**

(Arising out of OIA-JMN-CUSTM-000-APP-83-89-19-20 dated 12/06/2019 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

**Megamet Steels Private Limited** **......Appellant**
Plot No & Surver No 221/231/234/ Naghedi Village Near Lakhabaval
Jamnagar, Gujarat

*VERSUS*

**C.C.-Jamnagar(prev)** **......Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

**WITH**

**Customs Appeal No. 12262 of 2019 - Megamet Steels Private Limited**
**Customs Appeal No. 12263 of 2019 - Megamet Steels Private Limited**
**Customs Appeal No. 12264 of 2019 - Megamet Steels Private Limited**
**Customs Appeal No. 12265 of 2019 - Megamet Steels Private Limited**
**Customs Appeal No. 12266 of 2019 - Megamet Steels Private Limited**
**Customs Appeal No. 12267 of 2019 - Megamet Steels Private Limited**

**APPEARANCE:**
Shri Anshul Jain, Advocate for the Appellant
Shri Dharmendra Kanjani, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**

**Final Order No. A/ 11060 - 11066 /2022**

DATE OF HEARING: 04.08.2022
DATE OF DECISION: 04.08.2022

**RAMESH NAIR**

The brief facts of the case are that the appellant have filed the bills of entry for import of various scraps from Reliance Industries Ltd., the unit of Reliance Jamnagar SEZ, Jamnagar. Due to certain circumstances, the appellant were unable to lift the full quantity of goods as mentioned in the bills of entry therefore, there was difference between the actual lifting of the goods and the quantity mentioned in the bills of entry. Consequently, there was an excess payment of duty as the lifted quantity is lesser than the quantity mentioned in the bills of entry. The appellant approached the department for amendment of quantity and corresponding duty in the bills of entry under Section 149 of the Customs Act, 1962. Thereafter, the appellant filed the refund claim but the refund claim was rejected by the adjudicating authority on the ground that the refund was not filed within time limit of one year as prescribed under Section 27 of the Customs Act, 1962. The appellant being aggrieved by the said order of the original authority filed an appeal before the Commissioner (Appeals), the learned Commissioner (Appeals) upheld the Order-In-Original on the ground that there is no reassessment of bills of entry but it is only an amendment under Section 149 according to the refund claim filed after one year from the date of payment of duty.

Shri Anshul Jain, learned counsel appearing on behalf of the appellant submits that period for refund of duty should be taken from the date of amendment of bills of entry and not from the date of payment as the refund arises only after the amendment of bills of entry. He placed reliance on the following judgments :-

- Keshari Steels Vs. Collector of Customs, Bombay- 2000 (115) ELT 320 (Bom.) Affirmed by Hon'ble Supreme Court reported at 2000 (121) ELT A139 (SC)
- Calison Fibres Pvt Ltd Vs. Commr. Of Cus. (Import) , Nhava Sheva – 2019 (370) ELT 1097 (Tri. Mumbai)
- Dinesh Milles Ltd Vs. Commr. Of Cutoms, Ahmedabad – 2020 (372) ELT 866 (Tri. Ahmd)
- DHL Express India Pvt Ltd Vs. Commr. Of Service tax, Bengaluru- 1 – 2021 (377) ELT 594 (kar.)
- Vimal Alloys Pvt. Ltd Vs. Commissioner of Customs, Amritsar – 2011 (264) ELT 524 (Tri. Del)
- CC. Vs. Galaxy Footwear Pvt Ltd – 2014 (314) ELT 806 (Tri. Del)

Shri Dharmendra Kanjani, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that only in case of reassessment, the period starts from the date of reassessment order otherwise in other case the limitation of one year is taken from the date of payment of duty. In the present case, since there is no reassessment, the relevant date should be taken from the date of payment of duty and since the refund claim was filed after one year, the same is within time.

I have carefully considered the submissions made by both the sides and perused the records. I find that there is no dispute on the fact that the appellant have paid the excess duty on the excess quantity of goods not lifted from SEZ and subsequently, the department has amended the bills of entry in respect of actual quantities lifted by the appellant. The amendment was made under Section 149 of the Customs Act. It is the undisputed fact that the refund arises only after the amendment of bills of entry therefore, the relevant period of one year should be reckoned from the date of amendment and not from the date of actual payment of duty. The similar issue has been considered by this tribunal in the case of Keshari Steels – 2000 (115) ELT 320 (Bom.) wherein, it was held that if the refund is arising out of correction of clerical or arithmetical error under Section 154 of the Customs Act, the period of one year provided under Section 27 is not applicable to such case. The said judgment has been upheld by the Hon'ble Supreme Court reported at Keshari Steels – 2000 (121) ELT A139 (SC).

In view of the above settled legal position, I am of the considered view that the period of limitation in the facts of the present case should be reckoned from the date of amendment in the bills of entry. Since the appellant have filed the refund claim within one year from the date of amendment which is well within time accordingly, the refund cannot be rejected on the ground of limitation.

As per my above discussions and findings, the impugned order is set aside. Appeals are allowed.

(Dictated & pronounced in the open court)

**RAMESH NAIR**
**MEMBER (JUDICIAL)**

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