**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**CHENNAI**

REGIONAL BENCH – COURT No. III

# Customs Appeal Nos. 40368 to 40370 of 2021

(Arising out of Order-in-Appeal C.Cus. II No. 90-92/2021 dated 24.02.2021 passed by Commissioner of Customs (Appeals-II), No. 60 Rajaji Salai, Custom House, Chennai – 600 001)

**M/s. Kalmar India Private Limited** **...Appellant**
Plot No. 87&88(P),
Dabaspet II Phase, Sompura Hobli,
Thimmamnayakanahalli,
Nelamanala Taluk,
Bangalore – 562 111.

***Versus***

**Commissioner of Customs** **...Respondent**
Chennai Import Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

**APPEARANCE:**

For the Appellant : Mr. Bharat Raichandani, Advocate
For the Respondent : Ms. O.M. Reena, Authorized Representative

**CORAM:**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING : 15.10.2025**
**DATE OF DECISION : 02.12.2025**

**FINAL ORDER Nos. 41413-41415 / 2025**

**Order:-**

These Appeals have been filed by M/s. Cargotec India Private Ltd., (presently known as Kalmar India Pvt Ltd ) (hereinafter Known as 'Appellant' for short) seeking to assail the Order-in-Appeal Nos. 90-92/2021 dated 24.02.2021 passed by Commissioner of Customs (Appeals II), Chennai

('Impugned Order' for Short) whereby their Appeals for Re-assessment of the Bills of Entry for extending the exemption in terms of Notification No.53/2011-Customs dated 01.07.2011 consequent to Certificate of Origin being made available after clearance of the imported goods was rejected.

2.1 The facts briefly stated are that the appellants are regularly importing "Spreaders RSX40" from Malaysia classifiable under CTH 84289090. The said goods are exempted from the payment of basic Customs duty under S. No. 696 of Notification No.53/2011-Customs dated 01.07.2011. As the appellants were not in possession of Certificate of Origin (COO) at the time of filing the bills of entry, they cleared the goods by paying merit rate of duty. Subsequently, on receipt of the said COO, the appellants requested the Dy. Commissioner of Customs (Refunds) vide their letter dated 02.05.2018 to grant refund. The Dy. Commissioner of Customs, Group-5 *vide* letter in F.No.S.Misc.189/2016-Gr.5 dated 06.02.2020 informed the appellants in response to the CP Grams sent by them stating that "no re-assessment shall be allowed unless the order of assessment including self-assessment is duly modified by way of appeal.

2.2 Aggrieved, the Appellants filed Appeals before the Commissioner of Customs (Appeals II), Chennai who after due process of Law, rejected the Appeals.

2.3 Aggrieved once again, the Appellant is before this Tribunal by filing three Appeals as detailed below: -

| Sl. Nos. | Appeal No. | OIA No. & Date | Bill of Entry No. | Amount of Duty |
|---|---|---|---|---|
| 1 | C/40368/2021 | SEAPORT C.Cus II No 90-92/2021 dated 26.02.2021 | 5778283 dated 29.03.2018 | Rs.9,26,247.52 |
| | C/40369/2021 | | 5429292 dt 03.03.2018 | Rs.4,70,297.08 |
| 2 | C/40370/2021 | | 5478787 dt 07.03.2018 | Rs.10,54,296.32 |

3. I have heard the Ld. Advocate Mr. Bharat Raichandani, appearing for the appellant, and the Ld. Authorized Departmental Representative Ms. O.M. Reena for the Revenue, who advanced their respective submissions which are summarized hereinbelow.

4. The Ld. Advocate Mr. Bharat Raichandani, appearing for the appellant submitted as follows: -

4.1 Rejection of refund claim by the Original Authority after nearly two years citing ITC Decision is arbitrary.

4.2 The impugned order is vague and cryptic.

4.3 Period of limitation for filing Appeal excludes the time spent before the wrong forum. The Appeal is filed within the limit.

4.4 No basic Customs Duty is payable on the imported goods as the Appellant is eligible for exemption under Notification No. 53/2011-Cus dated 01.07.2011.

4.5 It is well settled law that benefit under FTA can be claimed subsequently, and,

4.6 An exemption Notification can be claimed subsequently.

5. *Per contra*, the Ld. Authorized Representative Ms. O.M. Reena, refuted the appellant's contentions and supported the findings of the impugned Order. She submitted that the Appellant has not paid the duty under protest to clear the goods to reserve their right or to challenge the assessment later. Further the Appeal has been filed beyond the statutory time limit prescribed under Section 128 of Customs Act 1962 and therefore the decision taken by the

Respondent is legal and proper. It was submitted that there is no merit in the Appeal filed and prayed for dismissing the Appeal.

6. I have carefully perused the appeal records and judicial precedents cited.

7. After considering the rival submissions, the following issues arise for my consideration as to: -

i. Whether the time spent by the appellant pursuing a refund claim before the Refund-Sanctioning Officer can be excluded for the purpose of limitation for filing the statutory appeal before the Commissioner (Appeals)?

ii. Re-assessment is possible in the absence of any protest lodged by the Appellant/Importer in view of the provisions of Section 17(5) of Customs Act?

8. I now take up the issues in seriatim.

8.1 The Appellate Authority in Para 5 & 6 of the Order-in-Appeal C.Cus. II No. 90-92/2021 dated 24.02.2021 has held that: -

> *"5. I have gone through the facts of the case, grounds of appeals, case laws and points put forth by the appellant during the personal hearing. I find that the bills of entry in all the three cases were filed on 07.03.2018, 29.03.2018*

*and 04.03.2018 respectively whereas the appeals were filed on 13.03.2020 i.e. around two years later.*

*Section 17(5) of the Customs Act, 1962 reads as follows: -*

*(5) Where any re-assessment done under sub-section (4) is contrary to self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued thereof under this Act and in cases other than those where the importer or exporter, as the case may be, confirmed his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.*

*In the instant cases, I find that the duty was not paid under protest and the goods were cleared on merit rate of duty, thus accepting the assessment before clearance of goods. Therefore, their subsequent claim for reassessment by granting them notification benefit lacks merits. Moreover, Section 128(1) of the Customs Act, 1962 stipulates a time limit of 60 days for filing of an appeal before the Commissioner of Customs (Appeals) against any decision or order passed under the Customs Act by an officer lower in rank than a Commissioner, with a condonable period of further 30 days only.*

*6. Therefore, for the above discussions, I reject the appeals as time barred."*

8.2 The Appellant submitted that the inaction by the Refund Sanctioning Authority is arbitrary and the Appellant was in no position to file an appeal challenging the assessment made in the Bill of Entry after two years. Further, the said Apex Court decision in the case of ITC and the Public Notice cited, were not in existence at the time of filing the refund claim by the Appellant.

8.3 The Appellant submitted that the Hon'ble Madras High Court, in an identical set of facts, in the case of *Nipman Fastener Industries Pvt. Ltd. Vs Dy.CC, 2019 TIOL-2507-HC-MAD-CUS,* granted liberty to the petitioner therein to challenge the assessment made in the Bill of Entry before the concerned Appellate Authority. without any reference to the period of limitation.

8.4 After nearly two years, the Appellant was informed by way of a Letter dated 06.02.2020 that the assessment has to be modified by way of filing an appeal before the Commissioner (Appeals). The said letter also cited the decision dated 18.09.2019 of the Hon'ble Apex Court of India in the case of ITC Limited vs. Union of India and the consequent Public Notice No. 88/2019 dated 18.10.2019 issued by the Commissioner of Customs, Chennai-Import which were not at all in existence at the time when the Appellant preferred a refund claim before the said authority. Further, this letter also came to be issued nearly two years after the submission of refund claim by the Appellant.

8.5 Appellant has cited the provisions of Section 14(1), of the Limitation Act, 1963 to drive home the point that

the time spent by the Appellant in prosecuting with due diligence another civil proceeding before authority which, from defect of jurisdiction or for a like cause, is unable to entertain it, is excluded in computing the period of limitation.

8.6 They have also submitted that it is a settled principle that the time spent before the wrong forum should not be taken into consideration while calculating the limitation placing reliance on the following cases: -

i. *K. Natarajan v. Commissioner of Customs, Chennai 2006 (201) E.LT 107 (Tri-Chennai)*
ii. *Otis Elevator Co. (1) Ltd. v. Commissioner of C. Ex., Mumbai 2007 (220) E.L.T 304 (Tri-Mumbai)*
iii. *Maruti Udyog Ltd. v. Commissioner of Customs, Kandla 2009 (244) E.L.T 66 (Tri-Ahmed)*

8.7 Finally, the Ld. Counsel averred that this appeal is not barred by limitation of time and the appeal ought to have been disposed by the Commissioner of Customs (Appeals) on merits and the impugned order deserves to be set aside.

8.8 I find that the Bills of Entry covered in the Impugned order are dated 07.03.2018, 29.03.2018 and 03.03.2018. The goods imported from Malaysia are exempted from payment of basic customs duty under Sl. No. 696 of

Notification No. 53/2011-Customs dated 01.07.2011 if accompanied by relevant COO Certificates. As the appellants were not in possession of Certificates of Origin (COO) at the time of filing the Bills of Entry supra, they cleared the goods by paying merit rate of duty. Subsequently, on receipt of the said COOs, the appellants requested the Dy. Commissioner of Customs (Refunds)[RSA] *vide* their letter dated 02.05.2018 to grant them the refund of Duty paid by them as they were eligible for Preferential Duty rate in view of the COO certificates now available with the Appellant.

8.9 I note that the RSA took an abnormally long period of time of around 2 years to dispose of the Appellant's letter for refund after protracted correspondence. The assessing officer in charge of the group has informed the Appellant only on 06.02.2020 citing Public Notice No. 88/2019 dated 18.10.2019 issued by Commissioner (Import) Chennai consequent to the decision rendered by. Hon'ble Supreme Court in case of M/s. ITC Ltd. vs Commissioner of Central Excise (Kolkata- IV), that no reassessment shall be allowed unless the order of assessment including self-assessment is duly modified by way of appeal. I also note that the Appellant had to resort to CPGRAMS to get this belated reply from the Department. The delay in processing the Appellant's request

in time is highly contrary to the service delivery obligations under the Citizen Charter / SEVOTTAM. Such unexplained administrative inaction has led to a consequence where the Appellant has been placed in a disadvantageous position without any fault on its part, warranting exclusion of such time for the purpose of computing limitation. It is well settled Law that a litigant should not suffer for administrative delays beyond his control.

8.10 I also find that, had the RSA disposed of their letter or advised the Appellant to approach the Commissioner (Appeals) within a reasonable period, say 15 days, they could have filed the Appeal within the prescribed time limit.

8.11 The appellant placed on record the refund Letter dated 02.05.2018, and subsequent reminders and correspondence showing active prosecution of the administrative remedy before the Refund-Sanctioning Officer. The records further show total inaction on the part of the refund authority and delayed communication in answer to CP Gram complaint by two long years before the appellant approached the Appellate forum. It is important to note here that the practical incapacity of the Refund-Sanctioning Officer

to render an effective, reasoned decision within a reasonable time rendered that remedy ineffectual for timely redress. The prolonged inaction on the part of the Department constitutes a “sufficient cause” for excluding the period under Section 14 of the Limitation Act, 1963 as pleaded by the Appellant.

8.12 The Appellant had relied upon the decision of the Hon'ble Madras High Court, in an identical set of facts, in the case of *Nipman Fastener Industries Pvt. Ltd. Vs Dy.CC, 2019 TIOL-2507-HC-MAD-CUS*, which granted liberty to the petitioner therein to challenge the assessment made in the Bill of Entry before the concerned Appellate Authority. without any reference to the period of limitation.

8.13 I also find that it is a settled principle under Section 14(1) of the Limitation Act 1963 that the period spent honestly and diligently by a litigant prosecuting a proceeding before a wrong forum is to be excluded while computing limitation, provided the prior proceeding was bona fide and prosecuted with due diligence and the prior forum was unable to entertain the matter. In this regard I refer to the decision of this Tribunal on a similar issue though delivered in the context of Service Tax, the principles are the same here as it

discusses the exclusion of the time spent in prosecuting before the wrong forum out of inadvertence.

8.14 In Para 13, 14, 15 and 16 of the decision of CESTAT Chennai Final Order dated 08.10.2025 in the case of Broekman Logistics India Pvt. Ltd. vs. CST Chennai - II, it was held that: -

> *"13. In view of the above principles enunciated by the Supreme Court that Section 14 has to be interpreted liberally in as much as it is a provision which furthers the cause of justice, we find that the appellant bonafide prosecuted the appeal before the Assistant/Deputy Commissioner, within the period of two month by filing the appeal on 24.08.2012, however it is only after a period of over one year, that the appellant became aware that the appeal was filed before the wrong authority located in the very same building, therefore, the said period needs to be excluded. The appellant diligently prosecuted the appeal. Therefore, the test laid down under the provisions of Section 14 of the Limitation Act, is fully satisfied.*
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> *14. Without going into too many details, if the limitation is computed from the date of the receipt of the order, i.e., 02.07.2012, till the date of filing of the appeal before the Deputy/Assistant Commissioner on 24.08.2012, the total period comes to 53 days as against 60 days provided. The Appeal being filed before the Commissioner (Appeals) on 28.11.2013 (i.e., the correct forum), the period from 24.08.2012 to 28.11.2013 (during which time the appeal was pending before the wrong forum) is liable to be excluded by virtue of the provisions of Section 14 of the Limitation Act, and so the appeal filed by the appellant was ST/42363/2015 within time. Keeping in view of the above noted facts of the present case, the appellant is entitled to the benefit of the exclusion of time in pursuing the appeal before Assistant/Deputy Commissioner and, therefore, the appeal finally filed before the Commissioner (Appeals) is not barred by limitation.*
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> *15. We therefore set aside the impugned Order-in- Appeal No. 232/2015(STA-II) dated 26.08.2015 passed by Commissioner of Service Tax (Appeals-II), Chennai and remand the matter back to the Commissioner (Appeals) to*

*decide the appeal on merits without going into the question of limitation in relation to filing of appeal.*

*16. Thus, the appeal is allowed by way of remand. Considering the period of dispute pertains to 2010, the Commissioner (Appeals) is directed to dispose the Appeal within a period of three (3) months from date of receipt of this order after affording an opportunity of being heard to the Appellant by strictly observing the principles of natural justice."*

8.15 In pursuance to the ratio of the aforesaid decisions, I have to follow the same, in keeping with the principle of judicial discipline, as the facts of the present matter are materially identical.

8.16 Consequent upon the exclusion of the said two-year period, the appeal filed by the appellant before the Commissioner (Appeals) is to be treated as within time and the impugned order holding the appeals to be time-barred is hereby set aside to the extent it relates to delayed/time barred Appeals.

8.17 Next, I observe that the Appellate Authority in Para 5 of the Impugned Order has held that: -

*"5. ……. I find that the duty was not paid under protest and the goods were cleared on merit rate of duty, thus accepting the assessment before clearance of goods. Therefore, their subsequent claim for reassessment by granting them notification benefit lacks merits"*

8.18 On this aspect, I note that no specific submission or rebuttal has been made by the Appellant.

8.19 I also observe that in the early hearing petitions filed there is a mention of Customs Duty being paid under protest. But there is no copy of the Endorsed duty payment challan / BoE with "paid under protest". Also there is no copy of the protest letter to the Department giving reasons and grounds in the documents placed before the Tribunal.

8.20 In the absence of any documentary evidence placed before me in the Appeal Paper Book or in the hearing before me, I am unable to accept this contention of the appellant.

8.21 So, even otherwise, the case has to be remanded to the LAA for examining the issues involved.

9.1 I also find that the Appellant has submitted that the impugned order is vague and cryptic and that the Order passed is ex-facie arbitrary, perverse and unsustainable in

Law and that the Order has been passed without application of mind and without appreciating the facts.

9.2 It was submitted by the Appellant that the impugned order passed by the Ld. Commissioner is a non-speaking order inasmuch as the Ld. Commissioner (Appeals) has not given any detailed reasoning with regard to the submissions made by the Appellant that the time spent before the wrong forum has to be excluded as per the provisions of Section 14 of the Limitation Act, 1963.

9.3 The Appellant has urged that the LAA has failed to advert to, consider or answer the specific submissions made on facts and law and has thereby passed a non-speaking order which is vitiated. Reliance was placed on a catena of decisions in support of that proposition. In the interests of brevity and to avoid burdening this order with an exhaustive list, I reproduce only a few of the leading decisions relied upon by the Appellant as detailed below: -

i. *Sant Lal Gupta Vs Modern Co-Operative Group Housing Society Ltd 2010 (262) E.L.T. 6 (S.C.)*
ii. *Cyril Lasrado (Dead) Vs Juliana Maria Lasarado 2004 (7) SCC 431*
iii. *Lucas TVS Ltd. Vs. CCE, Chennai 2002 (147) ELT 618*
iv. *Anil Products Limited Vs Commissioner of C. Ex., Ahmedabad- 2011 (21) S.T.R. 329 (Guj)*

v. *Premier Plastics Vs Commissioner of Central Excise (Kanpur), 2010 (253) E.L.T. 117 (Tri. - Del.)*

9.4 Finally it was submitted by the Appellant that the order passed by the Commissioner suffers from vice of non-speaking order, being one without assigning any reasons and hence is not sustainable. The LAA has clearly ignored the submissions made by the Appellant and has mechanically rejected the appeal filed by the Appellant. The impugned order does not deal with crucial submissions made by the Appellant.

9.5 The appellant has argued that the order has been passed in gross violation of principles of equity, fair play and natural justice and so, liable to be set aside on this ground alone.

9.6 I have carefully considered the submissions of the Appellant and examined the impugned order in light of the jurisprudence governing reasoned Appeal (case Laws cited by the Appellant). On a plain reading of the impugned order, I find that the LAA has not dealt with, discussed, or even adverted to the core submissions and legal pleas raised by the Appellant. It thus squarely falls within the category of a non-

speaking and cryptic order, which has consistently been held to be legally unsustainable.

9.7 The case law relied upon is applicable to these appeals. Applying these binding principles of the case Laws relied upon, I have no hesitation in holding that the impugned order suffers from serious legal infirmity and renders the entire order invalid for violation of principles of natural justice.

9.8 Accordingly, the impugned order is set aside and the appeals are remanded to the Commissioner (Appeals) for fresh consideration, with a direction to pass a reasoned, speaking order after granting an opportunity to the Appellant and the appellant to submit his defense with the following directions: -

i. To treat the appeals as filed within time by excluding the period of approximately two years spent by the appellant pursuing the refund application before the Refund-Sanctioning Authority, as directed above.
ii. The Lower Appellate Authority shall grant the Appellant a reasonable opportunity of personal hearing and permit filing of additional submissions and documents, if any.

iii. To verify the Certificates of Origin, Compare the CoO particulars (HS code, quantity, invoice, shipment date, consignment details) with the Bills of Entry, invoice and record the verification steps and the result thereof.

iv. Examine the submission of the Appellant that no basic Customs Duty is payable on the imported goods as the Appellant claims to be eligible and that the benefit of FTA can be claimed subsequently. All issues are open including the doctrine of unjust enrichment.

10. Thus, the Appeals are allowed by way remand on the above terms.

(Order pronounced in open court on 02.12.2025)

Sd/-
**(VASA SESHAGIRI RAO)**
MEMBER (TECHNICAL)

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