



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
चौथी मंजिल 4th Floor, हड्डो बिलिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.

दूरभाष क्रमांक Tel. No. 079-26589281
DIN-20250671MN000000F997

| क | फ़ाइल संख्या FILE NO. | S/49-70/CUS/AHD/2024-25 |
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| ख | अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962): | AHD-CUSTM-000-APP-73-25-26 |
| ग | पारितकर्ता PASSED BY | SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD |
| द | दिनांक DATE | 11.06.2025 |
| इ | उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO. | O.I.O. No. 06/AC/DAP/HERO/REFUND/2023-24 dated 11.12.2023 passed by Assistant Commissioner of Customs, ICD Dashrath, Vadodara. |
| च | अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON: | 11.06.2025 |
| छ | अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT: | M/s Hero MotoCorp Ltd. The Grand Plaza, Plot No. 2, Nelson Mandela Road, Vasant Kunj Phase-II, New Delhi – 110070. |
| 1 | यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है . | |
| | This copy is granted free of cost for the private use of the person to whom it is issued. | |
| 2. | सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं. | |
| | Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order. | |

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| | निम्नलिखित सम्बन्धित आदेश/Order relating to : | | | | |
| (क) | बैगेज के रूप में आयातित कोई माल. | | | | |
| (a) | any goods imported on baggage. | | | | |
| (ख) | भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो. | | | | |
| (b) | any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination. | | | | |
| (ग) | सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी. | | | | |
| (c) | Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder. | | | | |
| .3 | पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए : | | | | |
| | The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by : | | | | |
| (क) | कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए. | | | | |
| (a) | 4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870. | | | | |
| (ख) | सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो | | | | |
| (b) | 4 copies of the Order - In - Original, in addition to relevant documents, if any | | | | |
| (ग) | पुनरीक्षण के लिए आवेदन की 4 प्रतियां | | | | |
| (c) | 4 copies of the Application for Revision. | | | | |
| (घ) | पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां, यदि शुल्क, मांगा गया व्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/- | | | | |
| (d) | The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs. 200/- and if it is more than one lakh rupees, the fee is Rs. 1000/-. | | | | |
| 4. | मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं | | | | |
| | In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address : | | | | |
| | <table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table> | सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ | Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench | दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016 | 2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016 |
| सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ | Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench | | | | |
| दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016 | 2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016 | | | | |
| 5. | सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए- | | | | |

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| | Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of - |
|)क(| अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रुपए. |
| (a) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees; |
|)ख(| अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो: पाँच हजार रुपए |
| (b) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ; |
|)ग(| अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो: दस हजार रुपए. |
| (c) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees |
|)घ(| इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के % 10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के % 10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा। |
| (d) | An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. |
| 6. | <p>उक्त अधिनियम की धारा) 129 ए (के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र -</p> <ul style="list-style-type: none"> ★ क (रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील - : अथवा)ख (अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए. <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <ul style="list-style-type: none"> (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees. |



ORDER-IN-APPEAL

M/s Hero MotoCorp Ltd., the Grand Plaza, Plot No. 2, Nelson Mandela Road, Vasant Kunj Phase-II, New Delhi – 110070 (hereinafter referred to as 'the appellant') has filed the present appeal against the Order-in-Original No. 06/AC/DAP/HERO/REFUND/2023-24 dated 11.12.2023 (hereinafter referred to as 'the impugned order') passed by Assistant Commissioner of Customs, ICD Dashrath, Vadodara (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant had imported 'Gears', which are to be used as integral parts of two wheelers. The appellant was of the view that such gears are classifiable under CTH 8483 attracting Basic Customs Duty @7.5%, whereas, Customs Department was of the view that the same were classifiable under CTH 8714 attracting BCD @15%. In order to get the imported consignments cleared expeditiously, the appellant had classified the gears under CTH 8714 in the 14 Bills of Entry filed during the period of February, 2019 to January, 2020 and paid duty at higher rate under protest.

3. In respect of classification of similar goods imported by the same appellant company through JNCH, Nhava Sheva port during the year 2015, Hon'ble CESTAT, Mumbai, has passed a Final Order No. A/87281/2021 dated 09.12.2021 in Customs Appeal No. 86785 of 2019. Vide the said Final Order, the CESTAT has set aside the classification under CTH 8714 and upheld the classification under CTH 8483 as declared by the appellant company.

4. By relying upon the aforesaid Final Order dated 09.12.2021 passed by the CESTAT, Mumbai, the appellant had filed a claim for refund of duty of Rs.31,91,953/- on 19.05.2023 with the office of the adjudicating authority situated at ICD-Dashrath, Vadodara. A Show Cause Notice was issued to the appellant for rejection of refund claim on the ground of limitation. The said SCN has been adjudicated vide the impugned order.

5. The adjudicating authority has inter alia observed that as per Section 27(1B)(b) of the Customs Act, 1962, the applicant should submit the refund application within one year from the date of judgment, decree, order or direction from the appellate authority, tribunal or any court. He further observed that an assessee can pay duty under protest, but when the matter comes up for a decision before the appropriate forum and an order is passed, the protest vacates automatically. Further, if the order is in favour of the assessee, he can file a refund claim within the statutory time period as per Section 27(1B)(b). In this regard, the adjudicating authority relied upon the following decisions:

5.1 Dena Snuff (P) Ltd. Vs. CCE [2003 (157) E.L.T. 500 (S.C.)]

"5. As far as the first submission is concerned, we are of the view that the Tribunal's appreciation of the relevant paragraph in Mafatlal Industries (supra) was correct. The "cause of action" of the appellant would arise only after the final dispute regarding the classification list had been settled by this Court. That was done as recently as on 28-8-2003. The application



for refund by the appellant was therefore premature. We have noted the proviso to sub-section (1) of Section 11(B) which says that the period of limitation of one year prescribed under sub-section (1) will not apply in case duties are paid under protest. The question then is from which date will the period of limitation start to run? It appears on the basis of the paragraph of Mafatlal Industries decision which has been relied upon by the Tribunal it would have to be from the final decision in the assessee's own case."

5.2 Redington India Ltd. Vs. CC, Chennai [2011 (269) E.L.T. 233 (Tri. - Chennai)]

"7. In this case, the protest was lodged by the appellants challenging the assessment made by the Department and claiming nil rate of duty. The dispute in assessment came to a finality once the matter was decided in favour of the appellants by the lower appellate authority and the department chose not to file any further appeal against the same. Once the very cause of the protest came to an end by the resolution of the assessment dispute at the hands of the lower appellate authority, it cannot be held that the protest would survive beyond the date of the order passed by the lower appellate authority in favour of the appellants. Thereafter, it was the duty of the appellants to take steps to file necessary refund claims within the time limit prescribed. As noted above, the fourth proviso prescribing limitation of six months from the date of a judgment order of the appellate authority was introduced in the law on 11-5-2007 and the order of the lower appellate authority finalizing the assessment dispute was passed on 24-5-2007. Clearly after the fourth proviso came into operation, the appellants had only six months time from 24-5-2007 to file a refund claim. Having not done so, the refund claim has become time-barred and therefore in terms of the legal provision, the same cannot be held to be admissible. As such, the orders passed by the authorities below rejecting the refund claim do not require any interference. The appeal of the appellants is dismissed."



In light of the above judgments, the adjudicating authority has observed that in the present case, the date of CESTAT Order is 09.12.2021 and the claimant has filed the refund claim on 19.05.2023, which is beyond one year and hence hit by limitations as per Section 27(1B)(b) of the Customs Act, 1962. Thus, the refund claim filed by the appellant has been rejected by the adjudicating authority.

6. Being aggrieved, the appellant has filed the present appeal. As the appeal is against rejection of refund claim, pre-deposit under Section 129E of the Customs Act, 1962, is not required. The appeal has been filed on 04.06.2024. In the Form C.A.-1, the date of communication of the Order-In-Original dated 11.12.2023 has been shown as 09.04.2024. The appellant has submitted a printout of Tracking Report for the consignment No. EG358648534IN, which shows the delivery of the consignment on 09.04.2024. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. As the appeal has been filed within the prescribed time-limit, it has been taken up for disposal on merits.

7. The appellant has, *inter-alia*, raised following contentions in the Grounds of Appeal. Gist of the same is given below:

7.1 On a bare perusal of provisions of Section 27, it is quite clear that by virtue of second *proviso* to Section 27 (1) of the Act, the period of limitation of one year does not apply to cases wherein the duty or interest stood paid under protest. In other words, the Adjudicating Authority has failed to appreciate that the Parliament, for the cases wherein duty or interest has been paid under protest, has essentially carved out an exception from the general substantive provision, which prescribes the limitation period for refund of duty or interest to be one year, in order to make the period of one year completely inapplicable to such cases.

7.2 That the Adjudicating Authority has confounded the substantive provision of Section 27 (1) of the Act prescribing the period of limitation with that of the provision of Section 27 (1B) which merely lays down the computational mechanism to determine such period of one year. More so, the opening words of Section 27 (1B) of the Act protects the second *proviso* to Section 27 (1) wherein the one year period of limitation is completely inapplicable.

7.3 The appellant relied upon the Ruling made by the Hon'ble Punjab & Haryana High Court in a case of *Malwa Industries Ltd. vs Union of India & Ors.* [MANU/PH/0083/2018], wherein the department rejected the refund claim of the concerned claimant, who petitioned such adverse order before such Hon'ble Court, on the ground that though the claimant ought to have filed the refund claim within the period of one year from the date of concerned judgement or order irrespective of the duty or interest having been paid under protest as such under protests become irrelevant once such judgement or order is pronounced in favor of the said claimant. However, the Hon'ble Court did not yield and seconded to the interpretation and stand taken by the department, and while ruling in favor of the concerned claimant, the Hon'ble Court propounded, by having rightly accentuated the linguistic texture of opening phrase of Section 27 (1B) to the effect "*Save as otherwise provided in this section*", that the provision of Section 27 (1B) (b) is inapplicable to the cases wherein duty or interest stood paid under protest, hence, and it does not prevail and override the second *proviso* to Section 27 (1) of the Act, which ousts duty or interest paid under protest from the gamut of one year period limitation. Moreover, the Hon'ble High Court of Punjab and Haryana rightly distinguished the judgement of *Dena Snuff (P) Ltd. v. Commissioner of Central Excise, Chandigarh* MANU/SC/0875/2003 = 2003(157) ELT 500 (SC), upon which the Adjudicating Authority happens to have scaffolded its reasoning in the impugned order. More so, the said judgment was delivered under the erstwhile Central Excise Act, 1944 and its applicability cannot be stretched mechanically and blindly to the provisions of the Act and the corresponding rules made thereunder.

7.4 The appellant placed further reliance upon the case of *M/s Sai Exports vs The Commissioner of Customs* [MANU/ CC/ 0141/2022], wherein the Hon'ble CESTAT, while dealing with the issue of applicability of the provisions of Section 27 (1B) of the Act to cases wherein the duty or interest stood paid under protest, has unequivocally and categorically held that the operation of the said provision

does not come into picture in cases where the duty or interest is paid under protest as such under protest is governed by second *proviso* to Section 27 (1) of the Act.

7.5 In view of the above grounds, the appellant has prayed to quash and impugned order and allow the appeal with consequential reliefs, including directions to allow refund.

8. Personal hearing in the matter was held on 29.05.2025, which was attended by Shri. Sumit Wadhva, Advocate and Shri. Mukesh Mishra, DGM Finance of the appellant company. They reiterated the written submissions. During the hearing, they have also submitted Synopsis cum Additional Submissions. They have also submitted copies of following Orders-In-Original in respect of their own company:

- O.I.O. No. R-05/2024-25 dated 18.10.2024 passed by the Deputy Commissioner of Customs, ICD-Patali, Gurugram
- O.I.O. No. R-34/VS/DC/ICD GH/24-25 dated 07.03.2025 passed by the Deputy Commissioner of Customs, ICD-Garhi Harsaru, Gurugram

Findings

9. I have carefully gone through the impugned order, appeal memorandum, written and oral submissions made by or on behalf of the appellant. The issue to be decided in this case is under:



In case of refund of duty paid under protest, whether the claimant is required to file refund claim within one year from the date when the dispute is settled in their favour, or refund claim can be filed even after one year from settlement of dispute.

10. Before starting discussion, extracts of the relevant provisions of Section 27 are reproduced below:

"Claim for refund of duty.

27. (1) Any person claiming refund of any duty or interest—

- (a) paid by him; or*
- (b) borne by him,*

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest :

Provided that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, :

Provided further that the limitation of one year shall not apply where any duty or interest has been paid under protest:

A.I.

[Provided also that where the amount of refund claimed is less than rupees one hundred, the same shall not be refunded.]

[Explanation 1.] — For the purposes of this sub-section, "the date of payment of duty or interest" in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.

(1A)

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely :—

- (a) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of one year shall be computed from the date of issue of such order;
- (b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;
- (c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment."

11. At the outset, I find that it is undisputed that the appellant has paid the duty under protest. Therefore, as per Second Proviso to Section 27(1), the limitation of one year shall not apply in the present case. Sub-Section (1B) of Section 27 starts with the words, "Save as otherwise provided in this section" and therefore, the Second Proviso to Section 27(1) will have overriding effect over Section 27(1B).

12. Another aspect of the present case in my view is that this is not a case of consequential refund, because the appellant has not filed any appeal against the assessment of 14 Bills of Entry filed during the period of February, 2019 to January, 2020 with ICD-Dashrath, for which they have claimed refund. The appellant has claimed refund on the basis of the Final Order dated 09.12.2021 passed by the CESTAT, Mumbai, which was in respect of the 3 Bills of Entry filed in the year 2015 at JNCH, Nhava Sheva. Therefore, in my view, the limitation prescribed in Section 27(1B)(b) is not applicable in the present case. However, as the duty has been paid under protest, the limitation of one year from date of payment of duty for filing of refund claim is not applicable as per Second Proviso to Section 27(1).

13. The case law of Dena Snuff (P) Ltd. Vs. CCE [2003 (157) E.L.T. 500 (S.C.)], as relied upon by the adjudicating authority, has been discussed in the Order dated 30.01.2018 passed by Hon'ble Punjab & Haryana High Court the case of

Malwa Industries Ltd. vs Union of India & Ors. [MANU/PH/0083/2018 = 2018 (361) E.L.T. 81 (P & H)]. Relevant portion of the said Order is as under:

"Under Section 11B, the application for refund of duty of excise must be made "before the expiry of one year from the relevant date." "Relevant date" is defined in Explanation (B)(ec). Thus, the application for refund must be made before the expiry of one year from the date of the judgment, decree, order or direction of the authority, Tribunal or Court. What is important and what is different in Section 11B of the Central Excise Act from Section 27 of the Customs Act is that Section 11B does not contain a provision similar to sub-section (1B) of Section 27 of the Customs Act, 1962 which opens with the words "Save as otherwise provided in this section". Thus, Explanation (B) including clause (ec) thereof is not subject to the proviso. Under Section 27 of the Customs Act, sub-section (1B) is subject to the second proviso to sub-section (1)."

In view of the above Order in the case of *Malwa Industries Ltd. (supra)*, it is clear that Sub-Section (1B) of Section 27 is subject to the Second Proviso to Sub-Section (1) of Section 27 and therefore, limitation of one year shall not be applicable where any duty or interest has been paid under protest.

14. The adjudicating authority has also relied upon the Order of Hon'ble CESTAT, Chennai, in the case of Redington India Ltd. Vs. CC, Chennai [2011 (269) E.L.T. 233 (Tri. - Chennai)]. In the said case, the disputed assessment was decided by lower appellate authority and by virtue of it, M/s. Redington India Ltd. became eligible for refund. In the said case, the protest was lodged by the appellants by challenging the assessment made by the Department. Whereas, in the case on hand, it appears that the appellant has not challenged the assessments of 14 Bills of Entry for which they have filed refund. The appellant has neither filed any appeal against those 14 Bills of Entry filed during February-2019 to January-2020 nor they have got amended the same. In view of this position, the self-assessment made by the appellant in those 14 Bills of Entry, including classification and rate of duty mentioned therein, appears to become final. In this regard, I rely upon the Judgment of Hon'ble Supreme Court in the case of *ITC Ltd. Vs. CCE, Kolkata-IV, reported as 2019 (368) E.L.T. 216 (S.C.) [18-09-2019]*, wherein it has been inter alia held that self-assessment of Bill of Entry is appealable order and the claim towards refund of duty does not arise until the assessment has been modified by competent authority.

15. I have seen copies of the two Orders-In-Originals dated 18.10.2024 and 07.03.2025 submitted by the appellant, as mentioned in the above Para 8. As mentioned in the said Orders, in pursuant to the orders of higher officers, the Bills of Entry had been re-assessed and the refund amount was re-calculated by the Department as per the re-assessed Bills of Entry [Para 18 of the O.I.O. dated 18.10.2024 and Para 19 of the O.I.O. dated 07.03.2025 refers]. Whereas, in the present case, it is nowhere mentioned that the subject 14 Bills of Entry, for which refund claim has been filed, has been re-assessed or not. In the impugned order, this issue regarding modification of self-assessment, either by way of re-assessment or through amendment, has not been discussed, but the refund claim

has been rejected merely on account of limitation / time-bar. In this situation, I am not inclined to pass any direction towards grant refund or consequential relief to the appellant. However, I agree with the contention of the appellant that the refund claim filed by them is not deniable on account of limitation / time-bar, as the duty was paid under protest.

Order:

16. In view of the above discussion and findings, I pass the following Order:

I hold that refund claim filed by the appellant is not deniable as time-barred, as the duty was paid under protest. I set aside the impugned order and directs to the adjudicating authority to pass a speaking order on merits. The appeal is allowed to this extent.


(AMIT GUPTA)
 Commissioner (Appeals)
 Customs, Ahmedabad

F.No. S/49-70/CUS/AHD/2024-25

Date: 11.06.2025

By e-mail [As per Section 153(1)(c) of the Customs Act, 1962]

To

M/s Hero MotoCorp Ltd.
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 Vasant Kunj Phase-II, New Delhi – 110070.
 (email: mukesh.mishra@heromotocorp.com , dhiraj.kapoor@heromotocorp.com)



Copy to:

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 (email: ccohm-guj@nic.in)
2. The Pr. Commissioner of Customs, Ahmedabad.
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3. The Deputy/Assistant Commissioner of Customs, ICD-Dashrath, Vadodara.
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4. Shri. Sumit Wadhva, Advocate, Abbott Law Office, NOIDA.
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5. Guard File.
