IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No.42425 of 2014

(Arising out of Order in Appeal C. Cus. No. 1347/2014 dated 30.7.2014 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Jumar Trade Links **Appellant**
No. 2, 1st Cross Street
Indira Nagar, Adyar
Chennai – 600 020.

Vs.

Commissioner of Customs (Exports) **Respondent**
Custom House
60, Rajaji Salai
Chennai – 600 001.

APPEARANCE:

Ms. J. Mercy, Advocate for the Appellant
Shri Harendra Singh Pal, AC (AR) for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 41025/2024

Date of Hearing : 28.06.2024
Date of Decision: 02.08.2024

The present appeal is filed by the appellant against Order in Appeal C. Cus. No. 1347/2014 dated 30.7.2014 passed by the Commissioner of Customs (Appeals), Chennai (impugned order).

2. Brief facts of the case are that the appellant herein filed a refund claim of Rs.2,28,822/- being the amount paid against 4% Additional Duty of Customs (**ADC**) for the import of Galvanized Steel Coils/Strips vide 5 Bills of Entry. The appellant claimed refund in terms of Notification No. 102/2007-Cus dated 14.9.2007 as amended and submitted the relevant documents for proof of the same. The proper officer finding certain discrepancies in the claim including the lack of

endorsement regarding the ADC not being made on the sales invoices, rejected the refund claim. On appeal the Appellate Authority rejected the refund claim stating that;

(a) None of the sales invoices contains the declaration to the effect inadmissibility of CENVAT credit on 4% SAD paid by them against the imported goods.

(b) None of the sales invoices indicates the grade of imported goods and their coating particular of imported goods available in the import invoices/documents.

(c) Some invoices do not have the sizes of imported goods as shown in imported documents.

(d) That the certificate obtained from Chartered Accountant does not have the period particulars to determine whether certificate pertains to the Bills of Entry under this refund claim.

Hence this appeal.

3. Ms. J. Mercy, learned counsel appeared for the appellant and Shri Harendra Singh Pal, learned AR appeared for the respondent.

3.1 The Ld. Counsel for the appellant stated that the period of dispute was during 2013-2014 and the amount of refund involved was Rs 2,28,882/-. All the relevant documents were submitted to the lower authority along with the said refund claim. Later, Deficiency Memo dated 19.04.2013 was issued to the appellant calling for documents. Subsequently, order - in - original (**OIO**) was passed by the Adjudicating authority rejecting the claim. The Ld. Counsel submitted that they are only traders who import goods and are not registered with Central Excise Authorities under the provision of Central Excise Rules. Therefore, they cannot issue any Cenvatable invoice's on the basis of which credit can be taken. In the absence of such a invoice's duly approved by the Excise Authorities carrying Registration Number, no CENVAT credit can be taken. The purpose of the exemption

Notification is that imported goods should not suffer the special additional duty as well as VAT/sales Tax on their sale. For the exemption from SAD under the Notification what is relevant is as to whether the VAT or GST has been paid. She relied upon the following judgments in their favour.

a. Equinox Solution Ltd., Vs Commissioner of Customs (Import), Mumbai reported in 2011(272) 310 (Tri. -Mumbai)

b. Novo Nordisk India Pvt. Ltd. Vs. Commissioner Of Customs (ACC & Import), Mumbai reported in 2013 (292) E.L.T. 252 (Tri.-Mumbai).

c. Maruti Suzuki India Ltd. Vs. Commissioner of Customs (Imports), Mumbai, reported in 2013 (296) E.L.T. 100 (Tri. Mumbai)

d. R.K.G. International Pvt. Ltd. Vs. Commissioner of Customs, Noida reported in 2013 (290) E.L.T.253 (Tri. - Del)

e. Ruchi Acroni Industries Ltd Vs. Commissioner of Customs (Import), Mumbai reported in 2011 (272) E.L.T. 287 (Tri. Mumbai.

She stated that the appellants presently have imported G.P. Pipes and Galvanized steel coils and the same have been mentioned in the Bill of Entry, Sales Invoices and imported invoices. The goods imported and the goods sold are one and the same. The identity of the same can be established by comparing the documents produced. For filing a Bill of Entry, the importer has to give each particular regarding the product whereas in the case of sales invoices details as per customs requirement are mentioned. In trade parlance the product name is enough to recognize the goods and the item code, grade and other particulars are not strictly mentioned. In the view of the above, she prayed that the Tribunal may be pleased to set aside the impugned order with consequential relief and thus render justice.

3.2 The Ld. AR has taken us through the impugned order and reiterated the points given therein.

4. The issue involved in this case is a question of strict compliance (revenue) Vs substantial compliance (appellant) of refund procedures. The Hon'ble Supreme Court in **Commissioner of C. Ex., New Delhi Vs Hari Chand Shri Gopal** [2010 (260) E.L.T. 3 (S.C.)], held that a plea of substantial compliance cannot be taken if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. However, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance.

5. The refund claim in this case is the result of an import duty exemption given by way of a conditional refund, post the import of goods. The post import procedure framed is more suited to the needs of a manufacturer importer. Some procedural relaxation can be provided to an importer trader provided that a verification is made about the claim. It is perhaps for this reason that the revenue has prescribed the submission of a Chartered Accountants (CA) Certificate. When the matter has been verified by a CA a rebuttable presumption is that the certification satisfies the compliance of the claim with the requirements of law. The certificate can be challenged, and the refund applicant confronted if discrepancies are found on a test check or otherwise, which shows that the certificate is not truly reflective of its contents and that the object and the purpose of the notification has not been met.

6. The exemption is available to importers with the object that the 4% Additional Duty of Customs being refunded is not also availed as credit by the buyer of the goods, thereby causing a loss to the exchequer by way of a double benefit. This issue was examined by a Division Bench of this Tribunal in **Novo Nordisk India Pvt. Ltd.** (supra) and the relevant portion is reproduced here under;

> "5. We have carefully considered the submissions made by both sides. The purpose of a declaration as stipulated in para 2(b) of Notification No. 102/2007-Cus, dated 14-9-2007 is to deny double benefit i.e. the buyer of the goods takes the credit of the SAD paid, while the seller gets refund of the SAD paid. In order to prevent this, the aforesaid declaration has been prescribed in the Notification. However, in the present case, the appellant is not a registered dealer who is authorized to issue Cenvatable invoices invoices Secondly, the invoices issued by the appellant, copies of which we have perused, do not indicate the SAD paid. Cenvat credit can be availed only when the invoices are issued by a manufacturer or an importer or a registered dealer. Inasmuch as the appellant is not a registered dealer, the question of taking credit on the strength of invoices issued by him does not arise at all. Further the invoices do not indicate the amount of SAD paid. in the absence of such a detail, the question of availing Cenvat credit also does not arise. Thus, the object and purpose of the declaration is achieved in the present case. The appellant has paid SAD at the time of importation and they also paid Sales Tax/VAT while selling these goods and therefore, the appellant is rightly entitled for the benefit of refund under the aforesaid Notification subject to the bar of enrichment. It is a settled position in law that, substantive benefit of an exemption notification should not be denied on the ground of procedure or technical infraction. Further, on an identical matter, this Tribunal in the cases cited supra have held that refund would be admissible even when a declaration envisaged under para 2(b) was not made on the invoices issued. Following these decisions, in the present case also, we hold that the appellant is eligible for the refund of duty as per Notification No. 102/2007-Cus. subject of course to the test of unjust enrichment."

7. In this case the major discrepancy pointed out was that in the CA's certificate there is a non-mention of the period particulars to determine whether certificate pertains to the Bills of Entry under this refund claim. This doubt was easily verifiable by the department by writing to the CA or by physical verification. Rejecting a claim on this basis and due to certain procedural discrepancies, would be harsh.

Further it is a well-accepted norm of judicial discipline that a Bench of lesser strength must follow the decision of the Bench of larger strength.

8. In the circumstances I set aside the impugned order and allow the appeal. The appellant is eligible for consequential relief. The appeal is disposed of accordingly.

(Order pronounced in open court on 02.08.2024)

(**M. AJIT KUMAR**)
Member (Technical)

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