

**Customs, Excise & Service Tax Appellate Tribunal,
West Zonal Bench : Ahmedabad**

REGIONAL BENCH - COURT NO. 3

Customs Appeal No. 10654 of 2019

[Arising out of Order-in-Appeal No. OIA-AHD-CUSTOM-000-APP-230-18-19 dated 01.03.2019 passed by Commissioner (Appeal) of Central Excise & ST, Ahmedabad]

Deep Exports

2, Dipali Centre Opp. Old High Court
Ahmedabad, Gujarat-380014.

.... Appellant

VERSUS

Commissioner of Customs, Ahmedabad

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

.... Respondent

APPEARANCE :

Shri S.J. Vyas, Advocate for the Appellant
Shri K.J. Kinariwala, Assistant Commissioner (AR) for the Respondent

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

FINAL ORDER NO. A/11832 / 2019

DATE OF HEARING/ DECISION : 26.09.2019

RAMESH NAIR :

This appeal has been filed against order-in-appeal which upheld the order-in-original whereby refund of Rs. 52Lakh was rejected by the Assistant Commissioner of Customs, Ahmedabad only on the ground that appellant have not produced the challans.

2. Shri SJ Vyas, Ld. Counsel appearing on behalf of the appellants referred to Para 6.2 of the order-in-original. He submits that there is clear admission by the department that amount of Rs. 52Lakh has been deposited by the appellant through banker's cheques before DRI during investigation.

He submits that since the payment was made through banker's cheques to DRI, no challans are available with them and rejecting the refund for want of challans is not correct.

3. Shri K.J. Kinariwala, Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have heard both sides and perused the record. We find that, as regards the payment of amount of Rs. 52Lakhs, the same has been admitted by the department in Para 6.2 of the order-in-original, which is reproduced below:-

"6.2 I find that there was definitive instance of payment of custom duty by the claimant on 31.07.1999 and 13.01.2000 which is verified and confirmed by the Joint Director, (CI), DRT, Delhi, vide the letter dated 07.09.2017 addressed to the Joint Commissioner of Customs, Ahmedabad. The said duty payment has also-been accepted by the Hon'ble CESTAT, New Delhi and subsequently Principal Commissioner, New Delhi on 22.03.2016 and 26.09.2016 (i.e the date on which Principal Commissioner, New Delhi had accepted the said 'order) respectively. After detailed verification of the papers submitted by the applicant mentioned at different paras, the refund was taken for scrutiny and it was observed that the claimant has fulfilled his liability of making payment of Rs. 52,00,000/- as pre deposit by two different Banker's cheques submitted to the investing Agency i.e. DRI during the investigation. The said Banker's Cheques were sent to the Office of the Commissioner of Customs, Ahmedabad by the Joint Director, DRI for depositing the same in the Government Account. As is evident, the cheque amounting to Rs. 20,00,000/- was deposited vide Challan No. 04/2000 dated 19.01.2000. Though, the copy of the another challan of Rs. 32,00,000/- was not available/traceable still there are am1e references listed herein below, which confirm the payment of Rs. 32,00,000/- in the Government account:

(i) Self attested Xerox copies of Banker's Cheques no. 004520 dated 31.07.1999 amounting to Rs. 32,00,000/- and Banker's Cheques no. 006633 dated 13.01.2000 amounting to Rs. 20,00,000/-, submitted by M/s. Deep Exports, Ahmedabad.

(ii) Letter dated 31.07.1999 of M/s. Deep Exports addressed to the Deputy Director, DRI, New Delhi, submitting the Banker's Cheques No. 004520 dated 31.07.1999 amounting to Rs. 32,00,000/-.

(iii) Letter dated 13.01.2000 of M/s. Deep Exports addressed to the Deputy Director, DRI, New Delhi, submitting the Banker's Cheques No. 006633 dated 13.01.2000 amounting to Rs. 20,00,000/-.

- (iv) Letter F.No. DR/HQ-CI/50D/60/99-CI/Pt./5203 dated 07.09.2017 of Joint Director, (CI), DRT, Delhi, received in this office on 26.09.2017 through Assistant Commissioner (Tech), Customs, Ahmedabad vide letter F.No. VIII/48-95/Cus/T/2017 dated 22.09.2017.
- (v) Letter F.No. VIII/48-4/Cus/T/2000/113 dated 25.01.2000 of Joint Commissioner of Customs, Ahmedabad, forwarding the copy of Challan No. 04/2000 dated 19.01.2000 for depositing the amount of Rs. 20,00,000/- in the Bank of Baroda, Navrangpura Branch, Ahmedabad.
- (vi) Letter F.No. 50D/60/99-CI dated 05.08.1999 of Joint Director, (CI), DRT, Delhi, addressed to the Commissioner of Customs, Ahmedabad requesting to submit the pay order no. 004520 dated 31.07.1999 for Rs. 32,00,000/- in the Government account. At the bottom of the letter, Challan No. 38/99 dated 12.08.1999 has been mentioned vide which the pay order No. 004520 dated 31.07.1999 for Rs. 32,00,000/- must have been deposited and the same must have intimated vide letter no. F.No. VIII-48/Cus/T/99 dated 16.08.99, which is also engraved at the bottom of the letter F.No. 50D/60/99-CI dated 05.08.1999 of Joint Director, (CI), DRT, Delhi.
- (vii) The copy of challan No. 04/2000 dated 19.01.2000 for the amount of Rs. 20,00,000/- in the Bank of Baroda, Navrangpura Branch, Ahmedabad.
- (viii) Letter F.No. VIII (HQ)/10/1 &G/Review/147/2016 of the Assistant Commissioner (Review), ACC Import Commissionerate, New Custom House, New Delhi, dated 03.10.2016 informing the Deputy, Commissioner (Refund), ACC Import Commissionerate, New Custom House, New Delhi that the CESTAT Final Order No. C/A/51043/2016-CU(DB) dated 22.03.2016 has been accepted by the Principal Commissioner, on 26.09.2016.

Moreover, there are references of payment of custom duty by M/s. Deep Export in the following documents -

- In the Show Cause Notice bearing DRI F. No 50D/60/99-CI dated 31.07.2002 - at page no 5,33, & 38 in the Annexure-D
- In the OIO No 23/Adj/RSS/04 dated 13.08.2004 of Shri RS Sidhu, Commissioner of Customs, Import, new Custom House, IGA, New Delhi -
 - (1) page 4, para 1 (Highlighted in the order)
 - (ii) page 2 1/22, para 37(A), sub-para (e) and
 - (iii) page 35, Order, para (vii)
- In the OIO No. No.05/MKG/2009 dated 30.3.2009 of Shri M. K. Gupta Commissioner of Customs, New Delhi, passed after remand of the matter by CESTAT earlier -
 - (i) page 6, para 8, last 5 lines (Highlighted in the order)
 - (ii) page 33, para 40(e), and
 - (iii) page 45, para 57 (c)
- In the CESTAT, New Delhi Final Order No. C/A/51043/2016-CU(DB) dated 22.03.2016 (Accepted by the Principal Commissioner, on 26.09.2016 :- Page No. 2"

From the plain reading of the above findings, there is no doubt or dispute that amount of Rs. 52Lakh was deposited by the appellant during investigation and the payment was received by the Revenue.

5. The sole ground for rejection of the refund claim is that the appellants have failed to produce duty paid documents such as challans to the department. In this regard, we find that as per admitted fact, the payment was taken by the DRI through bankers cheques and the same was deposited in the bank and realized the amount. No challan was taken by the appellant therefore, there is no question of producing any challan by the appellant. So far as the payment by the appellant is concerned, there is no dispute and the payment has been made correctly. Therefore, we hold that appellant are entitled for the refund and the same may be processed in accordance with the law. Appeal is allowed in the above terms.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)