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

REGIONAL BENCH- COURT NO. 1

CUSTOMS Appeal No. 11344 of 2014-DB
(Arising out of OIO-KDL-COMMR-38-2013-14 Dated-29.11.2013 passed by Commissioner of CUSTOMS-Kandla)

SANTOSH TIMBER TRADING CO LTD ....**Appellant**
A1, WHS, TIMBER BLOCK, KIRTNI NAGAR,
NEW DELHI,

VERSUS

C.C., KANDLA ....**Respondent**
CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDLA-GUJARAT

WITH

CUSTOMS Appeal No. 11345 of 2014-DB
(Arising out of OIO-KDL-COMMR-38-2013-14 Dated-29.11.2013 passed by Commissioner of CUSTOMS-Kandla)

NARESH AGGARWAL ....**Appellant**
DIRECTOR OF M/S, SANTOSH TIMBER TRADING CO LIMITED,
A1, WHS, TIMBER BLOCK, KIRTNI NAGAR,
NEW DELHI,

VERSUS

C.C., KANDLA ....**Respondent**
CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDLA-GUJARAT

APPEARANCE:
Shri M. Jain, Advocate appeared for the Appellant
Shri H. P. Shrimali, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA (JUDICIAL)

Final Order No. A/ 10385-10386 /2024

DATE OF HEARING:06.02.2024
DATE OF DECISION:06.02.2024

RAJU

This appeal has been filed by Santosh Timber Trading Co. Limited against order seeking to recover the refund already sanctioned to the appellant. The appeal has also been filed by Shri Naresh Aggarwal, Director of the appellant company against imposition of penalty.

2. The undisputed facts are that the appellant had imported timber log and paid SAD on the same. The appellant had cut and sawed the

timber logs and thereafter sold the same. In terms of Notification 102/2007, the appellants were granted the refund of SAD. Subsequently revenue raised a Show Cause Notice seeking to recover the refund already sanctioned as erroneous refund on the ground that the item imported was timber logs whereas the item sold by the appellant was saw logs. There was also some allegations of mismatch of description and procedural violations of Notification 102/2007-Cus.

3. Learned counsel has relied on the decision of Hon'ble Apex Court in the case of Variety Lumbers reported at 2018 (360) ELT 790 (SC), wherein identical matter has been considered. In the said decisions it has been held that the refund cannot be denied even if the imported logs were cut and sawn before sale.

3.1 Learned counsel pointed out that next objection raised by the Revenue is that in terms of para 2(b) of Notification 102/2007-Cus the importer is required to issue invoice for sale of said goods specifically indicating that no credit of duty of customs levied under sub section (5) of Section 3 of Customs Tariff Act 175 shall be admissible. Learned counsel pointed out that the appellant is not a registered dealer or manufacturer or service provider and in those circumstances credit of any duty paid on their invoices is not admissible even otherwise. He pointed that they have paid SAD at the time of importation and they also paid sales tax/ VAT while selling these goods. He relied on the decision of Larger Bench of Tribunal in case of Chowgule & Com Pvt Ltd. 2014 (306) ELT 326 (Tri. L.B.), RKG International Pvt. Ltd. 2013 (290) ELT 253 (Tri. Del.) and Equinox Solutions 2011 (272) ELT 310 (Tri.).

3.2 He further relied on the following decision to hold that small discrepancies in the description of goods would not disentitle the appellant from refund. He relied on the following decisions:

- CC vs Shri Ram Impex India P. Ltd. 2014 (300) ELT 126 (Tri. Chennai)
- Orange Overseas P Ltd. 2016 (2) TMI 206 (Tri. Del.)
- Overseas Polymers Pvt Ltd. 2021 (378) ELT 231 (Tri. Chennai)
- PP Products Ltd 2019 (367) ELT 707 (Mad)
- Shanti Enterprises 2016 (343) ELT 446 (Tri. Del.)

3.3 He further raised the issue of limitation by pointing out that the show cause notice has been issued on 02.07.2012 while the refunds were sanctioned during the period 17.06.2008 to 10.06.2009. He pointed out that the demand is clearly barred by limitation.

4. Learned Authorized Representative relies on the impugned order.

5. We have considered rival submission. We find that the primary objection raised in the instant case is that the appellant have sold timber after cutting and sawing. This issue is specifically covered by the decision of Hon'ble Apex Court in the case of Variety Lumbers reported at 2018 (360) ELT 790 wherein following has been observed:

> "We have heard the Learned Counsels for appellant-Revenue. The issue turns on an interpretation of the Notification dated 14-9-2007 which contemplates refund of additional duty of Customs paid by the importer of goods under Section 3(5) of the Customs Tariff Act, 1975. The notification in the main part contemplates that the import must be for the purpose of subsequent sale and is *inter alia* subject to the condition that in the invoice issued in respect of the goods sold (said goods) it is mentioned that credit of the additional duty of Customs levied under sub-section (5) of Section 3 of the Customs Tariff Act, 1975 is not admissible.
>
> **2.** The Learned Counsel for the appellant-Revenue has sought to dislodge the view taken by the Customs, Excise and Service Tax Appellate Tribunal and the High Court by contending that the subsequent sale must be in the same form in which the goods were received on import. The contention advanced on behalf of the appellant-Revenue is not supported by a plain reading of the exemption notification which even if construed in the strictest terms does not permit such a view to be taken. That apart, the materials on record clearly shows that for purpose of transit of logs, the same necessarily had be reduced in size due to conditions imposed by the State for transport/movement of timber. The said fact itself would belie the stand of the Revenue. We, therefore, take the view that a mere conversion of imported logs in the Sawn Timber without loss of identity of the original product would not deprive the importer of the benefit of the exemption notification.
>
> **3.** The appeals of the Revenue, therefore, are dismissed. The orders of the Tribunal and the High Court are affirmed."

Hon'ble Supreme Court upheld that decision of Hon'ble High Court of Gujarat reported in 2014 (302) ELT 519 (Guj.) wherein following was observed:

> **"34.** It is an undisputed position that the respondents imported the goods after paying SCVD. At the time of its sale in the local market, they also paid local taxes such as sales tax or the Value Added Tax as may be applicable. Before transportation of timber, they were required to reduce its size since the RTO rules did not permit transportation of logs longer than 40 feet. If only for cutting length of the logs, which were in excess of 40 feet, sawing operations were carried out and after some cleaning and scaring was done, timber logs of smaller pieces were sold, we do not see how respondents can be stated to have breached any of the conditions of the Exemption Notification dated 14-9-2007."

He also relied on the decisions in the following cases:

- Hanuman Timber Co. 2016 (12) TMI 1367-CESTAT HYD
- CC vs Posco India Delhi Steel Processing Centre Pvt. Ltd. 2014 (299) ELT 263 (Guj.)

We find that identical issue has also been decided in the case of Hanuman Timber Co. 2016 (12) TMI 1367-CESTAT HYD and Posco India Delhi Steel Processing Centre Pvt. Ltd. 2014 (299) ELT 263 (Guj.) therefore the ground that refund is not admissible if the imported logs are sold as cut and sawn wood is rejected.

6. The next ground raised by Revenue relates to non-endorsement of the declaration in terms of para 2(b) of Notification 102/2007-Cus dated 14.09.2007. The said para 2(b) requires the importer to mention on the invoices that no credit of additional duty of customs levied under sub section (5) of Section 3 of the Customs Tariff Act 1975 shall be admissible. Learned counsel has pointed out that they are not registered dealer or manufacturer and therefore, the question of taking credit on any invoices issued by them does not arise. Moreover, he has also relied on the decision in the case of Equinox Solution Ltd. 2011 (273) ELT 310 (Tribunal) wherein following has been observed.

> **"6.** To deal the first issue, I find that as per the condition 2(b) of the Notification no. 102/07, the appellants are required to make endorsement on the invoice that the SAD has not been passed on to the buyer. The ld. advocate has contended that the assessee is to avail the credit on the strength of invoice issued under the provisions of Central Excise Law/Customs Law/Service Tax laws, as per the provisions of Rule 9 of the CENVAT Credit Rules, 2004. When there is no mention of passing on duty in the invoice, the buyer cannot take credit of the said duty (SAD) which is not mentioned in the invoice. I do agree with this contention of the ld. advocate when there is no duty mentioned in the invoice, buyer cannot take credit of the same. Although there is a condition in the

> Notification to claim refund i.e. to make endorsement on the invoice, it may be relevant for the invoices which are issued under the Central Excise Law/Customs Law/Service Tax law showing specifically the duty suffered by the supplier on the goods shown in the invoice and the buyer is entitled to take the credit of the same. As pointed out by the Hon'ble Apex Court in *Malwa Industries* (supra) the exemption Notification should be read liberally. In this case, compliance of condition 2(b) of the said Notification is not required of the clearance on commercial invoice. Following the ratio laid down by the Apex Court, I find the purpose of issuing the Notification is that the importer should not suffer SAD on the goods imported by them which have been imported for the purpose of resale and the proper ST/CSTA/VAT has been paid. SAD is to be paid by the importers as precaution measure to ascertain whether ST/CST/VAT has been discharge by the assessee or not. In this case, it has been clarified in the invoice which have been supported by the Chartered accountant certificate that the appellants have discharged the liability of Central Service tax. Hence as per Notification No. 102/07, the appellants are entitled for the refund claim."

We find that since the appellant is not a registered dealer, therefore the question of taking credit on the invoices issued by them does not arise.

7. Next issue raised by revenue relates to non-mention of Bills of Entry number on the invoice and mismatch of description and number of pieces on the invoices and bills of entry. In grounds of appeal it has been clearly indicated that stock requests duty certified by Chartered Accountant was produced at the time of filing refund. In the case of Overseas Polymers 2021 (378) ELT 231, in a case involving minor variations has been observed:

> "**5.**The issue is the rejection of the refund claim alleging that there is mismatch with regard to the description of goods in the sales invoices when compared to the Bills of Entry. On perusal of the documents placed before us, we find that in page-20 the sales invoice describes the goods as "ENABLE 3505HH (LDPE)", whereas in the Bills of Entry the product is described as "ENABLE 3505HH (LLDPE)". In pages 50-74, the appellant has produced the Chartered Accountant's Certificate along with the reconciliation statement. The Chartered Accountant has verified the accounts and stated that the appellants are eligible for the refund in respect of SAD paid by them. The correlation sheet is also enclosed along with the Chartered Accountant's Certificate to show the description of the goods in the Bills of Entry and the VAT paid for the goods as evidenced by the sales invoices. The appellant has sufficiently proved and fulfilled the requirements as per the Notification No. 102/2007-Cus., dated 14-11-2007. In the decision relied by the Learned Counsel for the appellant, the Hon'ble High Court has held in favour of the appellant/importer. After perusal of the documents submitted by the appellant, we are of the considered opinion that the rejection of refund claim is without any legal or factual basis. The impugned order to the extent of rejecting the refund claim in respect of 4 Bills of Entry is set aside. The appeal is allowed with consequential reliefs, if any."

Thus minor discrepancies cannot be the reason for recovery of refund when the appellant had submitted Chartered Accountant certified stock report.

8. In view of above, we do not filed any merit in the order, the same is set aside and appeals are allowed. The appeal of the Naresh Aggarwal, Director is also consequently allowed.

(Dictated and Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Neha