(2021) 11 CESTAT CK 0091

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 88697 Of 2013

Maruti Suzuki India Ltd APPELLANT

Vs

Commissioner Of Customs RESPONDENT

Date of Decision : 29-11-2021

Acts Referred:

Citation : ???????

Hon'ble Judges : Ashok Jindal, J;C.J. Mathew, Technical Member

Bench : Division Bench

Advocate : Vishal Agarwal, Manoj Das

Final Decision : Allowed

Judgement

1. The appellant is in appeal against the order of rejection of refund claim filed under Notification No. 102/2007 dated 14th September 2007.

2. The facts of the case are that at the time of importation of goods the bill of entry was provisionally assessed on 29th March 2011 and the appellant

paid duty accordingly. The bill of entry could not be finalized till 27th February 2012 as per the available records. The actual date of final assessment

of bill of entry is not known but the appellant filed refund claim on 4th April 2012 which held as has been filed beyond the time-limit prescribed in the

Notification No. 102/2007 dated 14th September 2007. Therefore, refund claim was rejected. Against the said order the appellant is before us.

3. Learned Counsel for the appellant submits that as per the available records the bill of entry could not be finalized till 27th February 2012 and they

have filed refund application on 4th April 2012. Therefore, in the light of the order of the Honâ??ble High Court of Delhi in Pioneer India Electronics

(P) Ltd v. Union of India [2014 (301) ELT 59 (Del.)] the refund application filed by the appellant is within time and the same cannot be rejected.

4. On the other hand Learned Authorised Representative rely on the CBEC Circular No. 23/2010-Cus dated 29th July 2010 to say that the appellant

required to file refund claim within one year from the date of payment of duty. He also submits that in the case of Commissioner of Customs NS-II v.

Purab Textile Pvt Ltd [2019 (365) ELT 285 (Bom.)] the Honâ??ble High Court of Bombay has held that in terms of Notification No. 102/2007-Cus

ibid the refund claims has to be filed within one year from the date of payment of duty. He also submitted that the issue of time-limit has been referred

by this Tribunal to the Larger Bench in the case of Smartlink Network Systems Ltd v. Commissioner of Central Excise, Goa by Interim Order No.

78/2019 dated 15th July 2019 and the matter is pending.

5. Heard the parties and considered the submissions. The facts which are not in dispute are

a) That the goods were provisionally released on 29th March 2011;

b) Till 27th February 2012 the bill of entry was not finally assessed and refund claim has been filed on 4th April 2012.

6. For better appreciation of fact that the final assessment was pending till 27th February 2012 as the internal correspondence which incorporated

below

7. As regards the case laws relied upon by the Learned Authorised Representative, the same are not identical to the facts of the case. In none of the

case subject of filing of the refund claim after final assessment of provisionally assessed bill of entry was the issue. Admittedly, in this case, bill of

entry was

not finally assessed till on 27th February 2012 and the refund claim was filed on 4th April 3012. Therefore, the judgment in the case of Pioneer India

Electronics (P) Ltd (supra) is squarely applicable to the facts of this case wherein the Honâ??ble High Court of Delhi has observed that

â??30. Notification dated 1st August, 2008 refers to the expression the â??date of paymentâ?? of said additional duty of customs and the

limitation period fixed is one year from the said date. The expression used in Section 27(1) is â??from the date of payment of duty and

interest, if any, paid on such dutyâ?. The connotation of the words â??date of paymentâ?? is identical in the notification dated 1st August, 2008 and in sub-clause (1) to Section 27 of the Act. Explanation I to Section 27 clarifies the position and states that for any duty paid

provisionally under Section 18, the limitation period as applicable shall be computed from the date of adjustment of duty after final

assessment. Thus, the expression â??date of payment of dutyâ?? used in sub-clause (1) to Section 27 has to be read with Explanation II i.e.

the date of adjustment of duty after final assessment and not the date on which duty was paid provisionally under Section 18.

31. Section 18 of the Act, postulates payment of duty which is ad hoc or interim duty which is paid but subject to final assessment.

Ultimately, the duty payable is determined and decided by final assessment and the said determination is mandatory, when provisional

assessment is made. Difference between the final duty payable and provisional duty paid will either result in a demand or a refund. Until

final assessment is done, the duty paid is merely provisional and not fully ascertained or quantified. It can fluctuate.

32. The reason why Explanation II to Section 27 refers to final assessment and not provisional assessment is apparent and logical. Till final

adjudication order is passed and duty is ascertained, quantum of the duty paid or payable is uncertain. The amount of refund will be

determinable upon final assessment and not earlier. Even when there is an exemption and duty is refundable post import, the refund cannot

be ascertained and will be fluctuating till final assessment order is passed. The quantum of refund would depend upon the final

adjudication and not upon provisional assessment. No person can lodge a claim for refund without knowing or quantifying the amount

which is to be refunded. As per the final adjudication, refund may not be payable, or quantum thereof may increase or decrease.â??

8. As per the Honâ??ble High Court of Delhi has held that the question of payment of duty arises only after finalization of assessment of bill of entry.

Admittedly, the refund claim has been filed by the appellant on 4th April 2012 which is well within one year from the date of 27th February 2012 when

the bill of entry was still pending for final assessment. Therefore, we hold that the refund claim cannot be rejected on the ground of limitation.

9. In view of the above, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and Pronounced in open court)

