
(2021) 10 CESTAT CK 0027

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 40592 Of 2021

M/s. Aditya Chemicals

APPELLANT

Vs

Commissioner Of Customs

RESPONDENT

Date of Decision : 12-10-2021

Acts Referred:

Citation : (2021) 10 CESTAT CK 0027

Hon'ble Judges : Sulekha Beevi C.S., J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Brief facts are that the appellant made an application for refund of SAD on 1.8.2011 in terms of Notification No. 102/2007-Cus. dated 14.8.2017. After due process of law, the original authority rejected the refund claim observing that the appellant has not furnished the Chartered Accountant certificate as well as correlation statement as required under para 5 of Circular No. 6/2008-Cus dated 28.4.2008. The appellant preferred appeal before Commissioner (Appeals) and also produced the Chartered Accountant certificate as also the correlation statement at the first appellate stage. However, vide Order in Appeal dated 7.8.2014, the appeal was rejected observing that Commissioner (Appeals) is not the authority before which such documents have to be furnished. The relevant part of the order of Commissioner (Appeals) is reproduced as under:-

"..... But they did not submit the Customs Act, 1962 certificate in proper format and correlation sheet duly certified by the statutory auditor. The department again issued deficiency memos on 18.10.2012 and 9.11.2012. Opportunity of personal hearing was also given. This shows that the LAA gave three opportunities to the apeplalnt for rectifying the deficiency. But there was no response from the appellants. Therefore, the rejection of the claim by the LAA is correct. The appellant has enclosed a copy of the Customs Act, 1962 certificate and correlation sheet along with the appeal. Appeal is not a forum to rectify the deficiency. In view of the above, the Order in Original is upheld. Appeal rejected."

3. Against the order passed by Commissioner (Appeals), the appellant preferred appeal before Tribunal in Appeal No. C/42329/2014 and the Tribunal vide Final Order No. 41720/2015 dated 18.12.2015 remanded the matter to the Commissioner (Appeals) to examine the documents furnished before him. The relevant part of the order of The Tribunal is as under:-

"3. When that is not done that has resulted in violation of natural justice. Violation of natural justice goes to the root of the matter which is incurable at the appellate stage. Learned Commissioner (Appeals) is directed to afford reasonable opportunity of hearing to the appellant and upon hearing on each document available on record, shall pass appropriate order.

4. The grievance in the Bar regularly is on refund of additional customs duty denied and delayed by the Department abnormally. There should be a proper redressal machinery at the level of Chief Commissioner to bring an end to the issue. Hence learned Chief Commissioner shall do the needful at the earliest.

5. Learned counsel says that there should not be again a remand of the matter by learned Commissioner (Appeals). Law does not expect that. Therefore, learned Commissioner (Appeals) having co-extensive and co-terminus power shall examine the entire matter threadbare and shall pass the order without sending the matter back to the adjudicating authority.

6. Let Registry send copy of this order to the Chief Commissioner / Principal Commissioner, Customs for the needful."

4. In such remand proceedings, the Commissioner (Appeals) vide order impugned herein again rejected the refund claim. Aggrieved, the appellant is now before the Tribunal.

5. The learned counsel Shri A.K. Jayaraj appeared for the appellant. He adverted to para 8 and 9 of the impugned order and submitted that the Commissioner (Appeals) has held that the appellant has produced the Chartered Accountant's certificate as well as correlation statement as required under Circular No. 6/2008. However, it is stated by him that the appellant has not furnished the original ST / VAT challans and therefore rejected the refund.

6. The learned counsel referred to para 6 of Circular No. 16/2008 dated 13.10.2008 to argue that it is not required to produce the original copies of ST / VAT challans as per Board's clarification in the circular. That the Commissioner (Appeals) has erred in rejecting the refund claim. He prayed for setting aside the impugned order.

7. The learned AR Shri Vikas Jhajharia appeared for the department. He supported the findings in the impugned order.

8. Heard both sides.

9. The relevant part of the order has been already reproduced above which reveals that the reason for rejection of the refund claim is that the appellant did

not produce original ST / VAT challans. The Board vide Circular No. 16/2008-Cus has clarified that it is not required to produce the original challans. The relevant part of the Circular reads as under:-

(vi) Submission of original copy of ST/VAT Challan: The difficulties expressed by the importers in submission of original Tax paid challans for evidencing payment of ST/VAT at more than one port was examined. Importers pay the appropriate ST/VAT to the concerned State Government where the sale of imported goods is effected. There is a genuine difficulty in case of importers selling the goods through various States or those importing goods at various ports and subsequently, selling in different States to obtain the original copy of ST/VAT challan evidencing payment of appropriate ST/VAT for the purpose of claiming 4% CVD refund with various Customs Commissionerates at different ports. Further, payment of ST/VAT after adjusting input tax credit is made through different forms such as deposit of cash, cheque, demand draft or other authorised mode of payment through banking channel or payment directly to the ST/VAT Department. In some States, even e-payment is also accepted.

The aforesaid request of the trade has been considered and keeping in view the difficulties faced in submitting original challans, it has been decided that alternatively, the importers may submit copies of ST/VAT challan or copies of ST/VAT payment document in different forms evidencing payment made to the bank or ST/VAT Department towards ST/VAT along with a certificate from the Chartered Accountant, who either certifies the importer's financial records under the Companies Act, 1956 or any ST/VAT Act of the State Government or the Income Tax Act, 1961, confirming the payment against the aforesaid documents. This would be considered sufficient to fulfill the requirement in terms of para 2(e) (iii) of the Notification No.102/2007-Customs dated 14.9.2007. Hence, the Customs field formations shall accept the copies of ST/VAT challans/documents along with the certificate of the said Chartered Accountant, while receiving the 4% CVD refund claim. However, the importers may be required to submit the original ST/VAT payment challans or other similar documents, in doubtful cases for verification by Customs authorities, which shall be returned to the importer after verification."

10. In the present case, there is no doubt with regard to any of the VAT / ST paid by the appellant. It is summarily rejected stating that the appellant has not produced the original challans. As per the above circular, the authority cannot insist for producing the entire original VAT / ST challans unless any deficiency memo is issue informing discrepancy. The appellant having furnished Chartered Accountant certificate and the Commissioner (Appeals) having recorded that it stands correlated the rejection holding that appellant has not furnished the original of VAT / ST challan is unjustified.

11. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Dictated in open court)