
(2015) 09 CESTAT CK 0003

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal Nos. 567, 568, 570, 657, 658 Of 2009

M/s Gazal Overseas And Ors

APPELLANT

Vs

CC, New Delhi

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Citation : (2015) 09 CESTAT CK 0003

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Amresh Jain

Final Decision : Allowed

Judgement

1. Appeals have been filed against order-in-appeal dated 28.05.2009 in terms of which the appellants were denied the refund of 4% of additional duty of customs (SAD) on the ground that the appellants did not pay any sales tax/ VAT on the goods, namely, footwear. The appellants have contended that they imported footwear and paid sales tax/ VAT at the appropriate rate which was Nil in the case of the said goods and therefore they were entitled for refund of SAD.
2. Although nobody appeared for the appellants is the absence of any request for adjournment, we proceed to decide the appeals on merit.
3. Id. DR pleaded that as no sales tax/ VAT was paid on the goods, they were not entitled to the impugned refund.
4. We have considered the contention of Id. DR and also perused the refund papers. Notification No. 102/2007 dated 14.09.2007 as amended allowed refund of SAD subject to the condition that "the importer shall pay appropriate sales tax or VAT, as the case may be." In the present case, the

appropriate sales tax or VAT being NIL the appellants cannot be said to have violated the said conditions of the said notification inasmuch as it cannot

be said that they have not paid appropriate sales tax/VAT. In this regard, it is seen that vide Circular No. 06/2008 dated 28.04.2008 CBEC in para 5.3

thereof clarified as under:

5.3. The exemption contained in the said notification envisages that the importer shall file a refund claim for 4% CVD ("said additional

duty of Customs'; paid on imported goods and shall pay on sale of the said goods "appropriate Sales Tax or VAT as the case may be".

Hence, it is clear that there is no stipulation in the notification that the exemption is available only if the rate of ST NAT is equal to or higher

than the rate of additional duty of Customs; nor is there a condition that if the rate of STN AT happen to be lower than 4%, the refund

would be restricted to the lower amount. As such, it is clarified that it will not be appropriate to reduce the refund amount in such a situation

and the entire 4% CVD, if otherwise found eligible, shall be refunded".

It is evident from the above clarification of CBEC that even if VAT / Sales tax was less than 4%, the appellant was entitled to refund of SAD which

was 4% so long as VAT/sales tax was paid. In other words, so long as appropriate VAT/ Sales tax was paid, SAD refund was admissible even if the

appropriate sales tax/ VAT was less than SAD; if the sales tax / VAT was NIL, so be it. In other words what is required in terms of the said

notification is payment of appropriate sales tax/ VAT regardless of the rate thereof. It logically follows that if the appropriate rate of sales tax VAT

was NIL then the appropriate sales tax VAT paid will also be NIL

5. In the light of the foregoing discussions, we find that the impugned order is not sustainable. Accordingly we set aside the same and allow the

appeals with consequential relief, if any.