
(2023) 11 CESTAT CK 0023

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : ??Customs Appeal No.41019 Of 2014

M/S. Petrotech Products India Pvt. Ltd	APPELLANT
Vs	
Commissioner Of Customs	RESPONDENT

Date of Decision : 21-11-2023

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 9, 9(2)

Citation : (2023) 11 CESTAT CK 0023

Hon'ble Judges : M. Ajit Kumar, Member (T)

Bench : Single Bench

Advocate : S. Venkatachalam, Anandalakshmi Ganeshram

Final Decision : Allowed

Judgement

M. Ajit Kumar, Member (T)

1. The above appeal has been filed by the appellant against Order in Appeal C. Cus. No. 220/2014 dated 11.2.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Brief facts of the case are that the appellant imported 'LDPE Processed Granuules, Calcium Carbonate Powder etc. vide 7 bills of entry by paying 4% CVD and were selling the same through consignment agent / stockist. They had filed refund applications of the CVD duty in terms of Notification No. 102/2007-Cus dated 14.9.2007 as amended. After examining the records, the original authority sanctioned the refund. The department preferred an appeal before Commissioner of Customs (Appeals) who vide the order impugned herein allowed the appeal of the Revenue and set aside the order of the original authority who had sanctioned the refund on the ground that the declaration of endorsement/ stamping made on the invoices are not as per the Circular issued by the Board. The appellate authority further held that the sale invoices do not mention the name of the appellant herein. Hence the appellant is before the Tribunal.

3. The learned counsel Shri S.Venkatachalam appeared for the appellant and the

learned AR Smt. Anandalakshmi Ganeshram appeared for the Revenue.

3.1 The learned counsel Shri S. Venkatachalam submitted they have produced the required Chartered Accountant's certificate and other corroborative evidence to prove payment of sales tax and VAT at the time of sale of goods. They have also made endorsement in the invoices to the effect that the purchasers would not be able to take credit based on the said invoices. The invoices themselves were commercial invoice which did not reflect customs duty based on which CENVAT credit could be taken. The BE no and date are endorsed on the invoice along with the credit declaration. All the basic facts have been admitted by the department. The only contention made in the impugned order rejecting the refund is about the wordings of the endorsement made in the sales invoices which are not strictly as per the Circular issued by the Board and that the sale invoices do not mention the name of the appellant on the invoice. He stated that that the invoice does not contain the name of the importer as the sale invoice was issued by their consignment agent / stockiest and the facts are verifiable. The consignment sale agreement made between the selling agent and the importer has been submitted to the department along with CA certificate. A procedural errors should not be a reason to deny substantial relief. He relied on the decision of the Larger Bench of the Tribunal in Chowgule & Company Pvt. Ltd. Vs. Commissioner of Customs & Central Excise reported in 2014 (306) ELT 326 (Tri. LB). He prayed that the appeal may be allowed and the refund be directed to be sanctioned.

3.2 The learned AR Smt. Anandalakshmi Ganeshram appeared on behalf of the department. She reiterated the findings given in the impugned order.

4. I have carefully gone through the facts of the case and the appeal, I find that the refund claim is sought to be denied on technical grounds that the wordings of the endorsement made in the sales invoice are not strictly as per the Circular issued by the Board and that the sale invoices do not mention the name of the appellant on the invoice. However, I find that there is a clear endorsement on the invoice that the goods have been imported by the consignor vide Bill of Entry No. 618526 date 24.5.2010 and that in respect of the goods no credit of additional duty of customs has been availed. Any doubts regarding the importer could have been ascertained from the details given in the BE. As per Board Circular No. 16/2008-Cus dated 13.10.2008, it has been clarified that in case of sale of imported goods by importer through consignment agent / stockist, the refund of 4% CVD shall be granted by customs field formation subject to the condition that the consignment agent / stockist has been authorized to sell the imported goods in terms of the agreement entered into between the importer and consignment agent / stockist. Further, the applicant should also submit a certificate from the Chartered Accountant to the effect that appropriate Sales Tax / VAT has been paid by the consignment agent / stockist on behalf of the importer and that the importer in-turn has paid or reimbursed the sales tax / VAT to his consignment agent / stockist along with correlation to sales tax / VAT payment with 4% CVD

paid on imported goods. This circular has been issued so as to avoid double benefits of refund and credit being taken simultaneously. This being the case, I find that there has been substantial compliance of the conditions by the appellant as apart from two issues all other conditions have been complied with. The minor non-compliance of procedure pointed out in the impugned order could otherwise have been verified with contemporary documents and on physical enquiry should not have led to the denial of substantial benefit especially in this era of trade facilitation. I find that the Larger Bench of the Tribunal in *Chowgule & Company Pvt. Ltd.* (supra) has examined the similar issue and held that in respect of a commercial invoice, which shows no details of the duty paid, the question of taking of any credit would not arise at all. Therefore, non-declaration of the duty in the invoice issued itself is an affirmation that no credit would be available and would satisfy the conditions prescribed under Notification No. 102/2007-cus. The relevant paras are reproduced below:-

"5.1 It would be useful and appropriate at this juncture to understand the genesis of the levy of Special Additional Duty of Customs (SAD). While moving the proposal for this levy in the Finance Bill, 1998, the Hon'ble Finance Minister of India stated as follows in his Budget Speech :

"I am persuaded about a clear disability that our commodity taxation inflicts on the indigenous goods vis-à-vis the imported goods. While the former are subjected to sales tax and other local taxes and levies, the import sector escapes them by their very nature. In order to provide a level playing-field to the domestic industry, I propose to impose an additional non-modvatable levy of 8% on imports which is approximately equal to the burden of local taxes on domestic producers. This duty should not be viewed as a protectionist measure but only as a response to a legitimate demand for a level playing field. The new levy would not apply to crude oil, newsprint, capital goods sector under a special tariff regime or goods which are subjected to additional duties of excise in lieu of sales tax, gold and silver imported by passengers or other nominated agencies and life saving drugs that are free from customs duties. The levy would also not apply to goods which are currently exempt both from basic and additional duties of customs. Similarly, goods imported for subsequent trading have also been left out of its purview, since they bear the burden of Sales tax at the time of first sale. The new levy will also not apply to inputs imported under export-promotion schemes. In addition, there may be other sectors eligible for exemptions. These would be examined and if considered appropriate notified separately.

The rate of levy was subsequently reduced to 4%. All goods imported for subsequent sale were initially exempted from levy of SAD vide Sl. No. 11 of the Table Annexed to Notification No. 29/1998-Cus., dated 2 -6-1998. The said exemption underwent many changes over the years and the present exemption is contained in Notification 102/2007-Cus. wherein the exemption is operationalised through a refund mechanism. Notwithstanding these changes, the object of the levy was to counterbalance the levy of local taxes on

domestically produced goods on imported goods so that there is a level playing field between the two. However, when the imported goods are subsequently sold in the domestic market bearing the burden of local taxes, exemption is provided from SAD so as to neutralize the impact of double levy. This object and purpose of the levy and the exemption needs to be kept in mind while interpreting Notification No. 102/2007-Cus.

5.2 Rule 9 of the CENVAT Credit Rules prescribes the documents on the strength of which CENVAT credit can be taken. An invoice issued by an importer is also one of the prescribed documents. However, for taking the CENVAT credit, under sub-rule (2) of the said Rule 9, following particulars are required to be indicated, namely, details of the duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service Tax registration number of the person issuing the invoice, name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, etc. For taking the credit, the quantum of duty paid should be shown in the invoices and the same should be shown separately for each type of duties. In respect of a commercial invoice, which shows no details of the duty paid, the question of taking of any credit would not arise at all. Therefore, non-declaration of the duty in the invoice issued itself is an affirmation that no credit would be available. Therefore, non-declaration/non-specification of the duty element as to its nature and quantum in the invoice issued would itself be a satisfaction of the condition prescribed under clause (b) of para 2 of the Notification 102/2007.

5.3 In the Mangalore Chemicals and Fertilizers Ltd.'s case (*supra*), the Hon'ble Apex Court observed that a distinction, between the provisions of a statute which are of a substantive character and were built-in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in nature on the other, must be clearly drawn. It was further held in the said decision that while interpreting an exemption clause, liberal construction should be imparted to the language thereof if the subject falls within the scope of the exemption. It was also held that, the need to resort to any interpretative process would arise only where the meaning is not manifest on the plain words of the statute. As held by the Hon'ble Apex Court in the *New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar* [AIR 1963 S.C. 1207] - "it is a recognized rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the Legislature". Applying the ratio of these decisions to the facts of the case before us, it can be seen that the condition relating to endorsement on the invoice was merely a procedural one and the purpose and object of such an endorsement could be achieved when the duty element itself was not specified in the invoice. Since the object and purpose of the condition is achieved by non-specification of the duty element, the mere non-making of the endorsement could not have undermined the purpose of the exemption. Thus we concur with the view taken by this Tribunal in the cases of *Equinox Solution Ltd.* and *Nova Nordisk India Pvt. Ltd.* (*supra*)."

(emphasis added)

5. Based on the discussions above, I find that the appellant is eligible for refund and it would be improper to deny the same on minor procedural grounds which are otherwise verifiable. I hence set aside the impugned order and allow the appeal with consequential relief, if any, as per law.