
(2023) 07 CESTAT CK 0024

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 26113 Of 2013

M/S Tejas Network Ltd

APPELLANT

Vs

Commissioner, Customs (Appeals)

RESPONDENT

Date of Decision : 17-07-2023

Acts Referred:

Customs Tariff Act, 1975 — Section 3(5)

Citation : (2023) 07 CESTAT CK 0024

Hon'ble Judges : P.A. Augustian, Member (J);Pullela Nageswara Rao, Member (T)

Bench : Division Bench

Advocate : P.S. Pruthi, P.Saravana Peruma

Final Decision : Dismissed

Judgement

P.A. Augustian, Member (J)

1. The appellant is engaged in trading of imported goods like communication equipment and on arrival of the goods filed Bill of Entry No.951224 dated 17.01.2009. In addition to the Customs duty payable, appellant paid an amount of Rs.70,64,055/- as Additional duty of Customs (SAD). The appellant sold the goods to M/s Power Grid Corporation of India (PGCIL). The appellant submitted refund application for refund of the said SAD within the time limit in terms of the Notification No.102/2007-Cus dated 14.09.2007 read with Board's Circular No..6/2008-Cus dated 28.04.2008 and No. 16/2008-Cus. Dated 13.10.2008. However, the refund application was rejected on two grounds (i) there was no endorsement as required under Para 2(b) of the Notification No.102/2007-Cus. Dated 14.09.2007 to the effect that "No credit of the additional duty of customs levied under sub-section (5) of Section 3 of the Customs Tariff Act.1975 shall be admissible" on invoices and (ii) that they have not accounted the SAD amount in 2008-09 and the correction was made in the accounting year 2009-10 by showing the SAD due amount as receivable in their books of account.

2. Aggrieved by the said order, the appellant filed an appeal before Commissioner (Appeals) and learned Commissioner (Appeals) has rejected the appeal on the ground of non-compliance of the conditions of the Notification and discharge of the onus of unjust enrichment. Aggrieved by the said order, present appeal is filed.

3. The learned counsel submitted that the appellants have not availed any CENVAT Credit of the CVD or SAD paid on the imported goods. The goods were sold to Government of India undertaking M/s Power Grid Corporation of India Ltd., (PGCIL) for a power project. Since business activity of the appellant is not registered under Central Excise as a manufacturer or a registered dealer, no person can avail CENVAT Credit on the basis of the invoices issued by appellant. The appellant also draws our attention to the Notification No.102/2007-Cus dated 14.09.2007 and submitted that they have fulfilled all the conditions except the condition (b) which provided that the importer before issuing the invoices for sale of said goods, shall specifically indicate on the invoice that on the imported goods covered therein, "no credit of the additional duty of the customs levied under sub-section 5 of the Section 3 of the Customs Tariff Act, 1975 shall be admissible". In this regard, learned counsel submitted that no CENVAT Credit can be availed by the buyer since appellant is not registered for the activity and also submitted that the condition of endorsement on invoice is a procedural one and the purpose could not be achieved when duty element itself was not specified in the invoices.

4. The learned Counsel for the appellant draws our attention to the copy of the Chartered Accountant Certificate, invoice for sale. Learned Counsel also draws our attention to the finding of the Hon'ble Tribunal in the matter of M/s Novo Nordisk India Pvt. Ltd. Versus Commr. of Cus. (ACC & Import), Mumbai reported as 2013 (292) E.L.T. 252 (Tri.-Mumbai) wherein the Hon'ble Tribunal held that :-

"5. We have carefully considered the submissions made by both sides. The purpose of a declaration as stipulated in para 2(b) of Notification No. 102/2007-Cus., dated 14.9.2007 is to deny double benefit i.e. the buyer of the goods takes the credit of the SAD paid, while the seller gets refund of the SAD paid. In order to prevent this, the aforesaid declaration has been prescribed in the Notification. However, in the present case, the appellant is not a registered dealer who is authorized to issue Cenvatable invoices. Secondly, the invoices issued by the appellant, copies of which we have perused, do not indicate the SAD paid. Cenvat credit can be availed only when the invoices are issued by a manufacturer or an importer or a registered dealer. Inasmuch as the appellant is not a registered dealer, the question of taking credit on the strength of invoices issued by him does not arise at all. Further, the invoices do not indicate the amount of SAD paid. In the absence of such a detail, the question of availing Cenvat credit also does not arise. Thus, the object and purpose of the declaration is achieved in the present case. The appellant has paid SAD at the time of importation and they also paid Sales Tax/VAT while selling these goods and therefore, the

appellant is rightly entitled for the benefit of refund under the aforesaid Notification subject to the bar of unjust enrichment. It is a settled position in law that, substantive benefit of an exemption notification should not be denied on the ground of procedure or technical infraction. Further, on an identical matter, this Tribunal in the cases cited supra have held that refund would be admissible even when a declaration envisaged under para 2(b) was not made on the invoices issued. Following these decisions, in the present case also, we hold that the appellant is eligible for the refund of duty as per Notification No. 102/2007-Cus. subject of course to the test of unjust enrichment."

5. Similarly the Hon'ble Tribunal in the matter of M/s Chowgule & Company Pvt. Ltd. Versus Commissioner of Customs & C. Ex. Reported as 2014 (306) E.L.T. 326 (Tri.-LB) held as below:-

"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. vs. 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)."

6. Similarly, this Tribunal in the matter of M/s Systronics (India) Ltd. Versus Commissioner of Customs, Bangalore reported as 2019 (370) E.L.T. 945 (Tri.-Bang.) also considered the issue and held that refund is not deniable on the ground of technical infirmities. Regarding the objections made by the Adjudication Authority and Appellate Authority related to failure on the part of the appellant to show due amount as receivable in the books of account, learned counsel submitted that as per the notification, once the certificate issued by the Chartered Accountant is produced in support of the client, the respondent have no legal right to verify the balance sheet and audit the client. Learned counsel

draws our attention to the findings of this Tribunal in the case of Systronics (India) Ltd. Versus Commissioner of Customs, Bangalore (Supra). The Tribunal held as below:-

"5. On the other hand, the Learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the only ground on which the SAD refund has been rejected is that the amount of refund has not been shown in the receivables in the accounts of the appellant. Further I find that as per the Notification No. 102/2007 and also the subsequent Circular No. 18/2010, dated 8-7-2010, it is not the requirement at all that the said claim should be shown as receivables in the books of account. Further I find that Board circular has clarified that field formations need not insist on the production of audited balance sheet and Profit & Loss Account and the certificate of the CA is sufficient to grant the refund claim. In the present case, the CA certificate was produced but the same was not considered. Further I find that in view of the various decisions relied upon by the appellant which clearly states that refund should not be denied merely on technical violations. In view of the above circumstances, I am of the view that the impugned order rejecting the refund claim is not sustainable in law and therefore I set aside the same by allowing the appeal of the appellant with consequential relief, if any."

7. Learned counsel draws our attention to the findings of the Hon'ble Tribunal in the case of Koradia Exports (India) Pvt. Ltd., Versus CC(Exports)-2018(362) E.L.T. 336 (Tri.-Mum) wherein the Tribunal has held as below:-

"5. We have heard both sides and perused the case records. We find that the lower authorities have rejected the refund claims on the ground that the Balance Sheet for the year ending 31-3-2008 does not show the refund amount as receivables. We find from the Chartered Accountant certificate that they had accounting practice of showing the sad amount in purchase account and afterwards in next year when they received the amount of SAD, the amount was credited to "Refund Received from the Government Account". This practice adopted by the Appellant and certified by the Chartered Accountant clearly shows that the claim is not hit by unjust enrichment. The main requirement is that the importer should not have charged SAD amount to their buyers which has not been disputed by the Appellate Authority. Further in Balance-Sheet for the year 2008-09, the said amount is appearing as "Refund received from Government" which is also not disputed. In view of above facts we do not find any reason to deny refund of 4% SAD to the Appellant as the requirement of the conditions for allowing refund stands complied with. We thus hold that the Appellant is eligible for the refund. We therefore set aside the impugned order and allow the appeal with consequential relief."

8. The learned Counsel also submitted that the price charged in the invoice for the goods cleared indicates only the price agreed between the applicant and the

Power Grid Corporation. Though there is an error on their part in not showing the refund claim as receivable during the period 2008-09, they had rectified the entry much before the filing of the refund claim. He further submits that the guidance note of the accounting policy issued by the Institute of the Chartered Accounting Standard AS4, contingent gains should not be recognized in the financial statement until the realization of the gain is virtually certain. The appellant in the instant case has treated the duty amount as contingent gain during the financial year in which refund claim has been filed. The appellant further submits that the price of the products sold by the appellant was decided way back in the year 2008 and it has been clearly agreed and understood between buyer and the seller that no other taxes other than Octroi and entry tax would only be charged and reimbursed by PGCIL. Learned counsel further submitted that the Assistant commissioner vide OIO No.145/2011 (AC-Refunds) ACC dated 14.06.2011 has sanctioned the refund of SAD of Rs.38,81,529/-. The price of the goods in the case, where the refund has been sanctioned and, in the case, where the refund has been rejected (covered under the impugned order) remain the same. In the said case also the appellant has supplied the goods under the same Letter of Award (LOA) to PGCIL. The appellant has enclosed copy of invoice No.1441 relating to the case, where refund was sanctioned and invoice No. 1449 relating to the impugned order, where refund has been rejected. The order reference in both the invoices is one and the same and the price of items having common description remain same.

9. The learned AR appearing on behalf of the respondent reiterated the findings in the impugned order and submitted that merely, if the goods are sold to M/s Power Grid Corporation of India Ltd, no presumption can be drawn that the appellant has not passed the burden of SAD. Learned AR also submitted that the refund claim was rightly rejected by the Adjudication Authority as well as Appellate Authority, since appellant failed to show the additional duty paid towards SAD in the Bill of Entry No.951224 dated 17.01.2009 as receivables in their book of account/balance sheet for the period 2008-09.

10. We have gone through the facts and circumstances of the case. It is a case where the appellant had imported the goods by paying additional duty and the value of the goods supplied to M/s Power Grid Corporation of India Ltd was fixed way back in 2008. It has been clearly agreed and understood between the buyer and seller that no other tax other than octroi and entry tax would only be charged and reimbursed by the buying entity. In transactions between the parties for the previous period, the price of the goods was the same and the Adjudicating Authority allowed refund of Rs.38,81,529/- vide Order-in-Original dated 14.05.2011 dated 14.06.2011. The goods in both the cases used in transmission of electricity were sold under same LOA. We have gone through the decisions relied by the Adjudicating Authority as well as the Learned counsel for the appellant during the hearing. As far as refund of SAD is concerned, there are catena of decisions by various Tribunals, which have categorically held that refund cannot be denied on technical infirmity. Board's Circular No.18/2010

dated 08.07.2010 clarifies that production of books of account is not be insisted and only certificate from Chartered Accountant is sufficient to allow refund. In the appellant's case at the time of filing of refund claim, the appellant submitted Chartered Accountant certificate showing the amount as receivable in the books of account. Once the assessee has complied for the said requirement, and considering the terms of the contract between the parties, the refund cannot be rejected on the ground of unjust enrichment.

11. In view of the above the impugned order is set aside with consequential relief.