IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO. 23 OF 2017

The Commissioner of Customs (Export) .. Appellant

v/s.

Top Honest INC ..Respondent

Ms. P.S. Cardozo for the appellant
Mr. Prakash Shah I/b PDS Legal for the respondent

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA, J.J.

DATED : 20th AUGUST, 2018.

P.C.

1. This appeal under Section 130 of the Customs Act,1962 (the Act) challenges the order dated 1st November, 2016 passed by the Customs, Excise and Service Appellate Tribunal (Tribunal). By the impugned order, the respondent assessee's claim for refund of Special Additional Duty (SAD) of customs was allowed.

2. The Revenue in appeal urges the following questions of law for our consideration :-

> *(a) Whether the Tribunal was correct in not considering the express evidence on the sale invoice which showed that the incidence of Special Additional Duty of Customs was passed on to*

the next buyer which was germane in deciding if the respondent was entitled to refund?

(b) Whether the Tribunal was correct in admitting the secondary evidence in the form of CA certificate and the certificate by the Superintendent of Central Excise on their face value without subjecting such certificates to scrutiny as to the correctness of their contents?

3. The impugned order of the Tribunal as rendered a finding of fact that the 4% Special Additional Duty which is imposed under Section 3(5) of the Customs Tariff Act, 1975 has not been passed on by the respondent to its customers. This finding of fact has been rendered on the basis of Chartered Accountant's Certificate as well as the Certificate issued by the Superintendent of Central Excise, in charge of the respondent factory.

4. Ms. Cardozo, learned Counsel appearing on behalf of the Revenue submits that this finding of the Tribunal is perverse. This as the invoice which was issued by the respondent at the time of the sale of the goods indicates that the Special Additional Duty of 4% has been passed on to their customers. In support, she placed reliance on the following endorsement on the invoice :-

> *"No credit of Additional Duty of Customs levied under sub Section (5) of Section 3 of the Customs Tariff Act, 1975 shall be admissible?"*

5. We find that the Tribunal has rendered a finding of fact on the basis of the Chartered Accountant's Certificate submitted along with the refund application as well as the Certificate issued by the Superintendent of Central Excise, certifying that the respondent has not passed on 4% Special Additional Duty to their buyers as evident from the sales invoices. The reliance upon the above endorsement by the Revenue as produced hereinabove, does not even remotely indicate that the Special Additional Duty of 4% has been passed on to its buyers by the respondent assessee. In fact, the plain reading of the endorsement is that the buyer of goods from the respondent would not be entitled to avail of any credit of Special Additional Duty. Therefore, even if the invoice is taken as primary evidence, the endorsement therein is in accord with the certificates issued by the Superintendent of Central Excise and the Chartered Accountant. It does not support the contention on behalf of the Revenue.

6. In the above facts, the findings of the Tribunal cannot be said to

be perverse so as to warrant our interference. In the above view, the questions as proposed do not give rise to any substantial question of law. Thus, not entertained.

7. The appeal is dismissed.

(RIYAZ I. CHAGLA, J.) **(M.S. SANKLECHA, J.)**