IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2018

CORAM

THE HON'BLE MR.JUSTICE S.MANI KUMAR
&
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.814 of 2018
and C.M.P.No.6761 of 2018

The Commissioner of Customs (Sea),
Chennai II Commissionerate,
Customs House,
Chennai - 600 001. ... Appellant

Vs.

M/s.HLG Trading,
Space E, 3rd Floor, Surya Kiran
Complex 92, The Mall
Ludhiana 141 001, Punjab. ... Respondent

Civil Miscellaneous Appeal is filed under Section 130 of Customs Act, 1962, to set aside the Final Order No.40674 of 2017 dated 08.05.2017 passed by the Tribunal, Chennai and dismiss the claim of refund of the respondent.

For Appellant : Mr.T.Pramod Kumar Chopda

For Respondent : Mr.B.Sathish Kumar

Judgment
(Judgment of the Court was delivered by V.BHAVANI SUBBAROYAN,J.,)

The Civil Miscellaneous Appeal has been filed to set aside the Final Order No.40674 of 2017 dated 08.05.2017 passed by the Tribunal, Chennai and to dismiss the claim of refund of the respondent.

2. The Appellant herein is the Customs department, who claims that the importer/respondent herein has filed a Claim Application for refund of Additional Duty of Customs, which was paid on the imported goods, but, it was rejected by the adjudicating authority, by its Order in Original No.36028 of 2015 dated 20.03.2015, for non fulfillment of the condition 2(c) of Notification No.102 of 2007-Customs dated 14.09.2007 issued by the Revenue Department.

3. The brief facts of the present case are that the Government of India, Ministry of Finance, issued a Notification No.102 of 2007-Customs dated 14.09.2007, thereby, the Central Government, on being satisfied that it is necessary in the interest of public to do so, exempted certain goods falling within the first schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for subsequent sale, from the whole of the Additional Duty of Customs leviable thereon under Sub-Section (5) of Section 3 of the said Customs Tariff Act.

4. The exemptions contained in the said notification shall be given to the importers only if the following conditions are fulfilled:

(a) the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon, as applicable, at the time of importation of the goods;

(b) the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, 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;

(c) the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer;

(d) the importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be;

(e) the importer shall, inter alia, provide copies of the following documents along with the refund claim:

(i) document evidencing payment of the said additional duty;

(ii) invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed;

(iii) documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.

5. Subsequent to the above notification, on 01.08.2008, the Revenue Department issued another notification in Notification No.93/2008-Customs, dated 01.08.2008, thereby, made the following amendments, substituting paragraph 2 clause (c) of the earlier notification dated 14.09.2007 :-

> "2(c) the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer before the expiry of the one year from the date of payment of the said additional duty of customs;".

6. The respondent herein, has filed a Claim Application before the Lower Adjudicating Authority, for refund of additional duty of customs, invoking the notification dated 14.09.2007 as amended on 01.08.2008. The said authority, after going though the refund application and perusing the material available on record, has rejected the said application by an Order in Original No.36028 of 2015 dated 20.03.2015, on the grounds that the respondent has sought for refund after the expiry of one year from the date of paying the additional duty of customs, which is contrary to the amendment Notification dated 01.08.2008.

7. Challenging the said order dated 20.03.2015, the respondent filed an appeal in Order-in-Appeal C.Cus II No.624 of 2015 dated 30.06.2015, before the Commissioner of Customs (Appeals-II). Subsequently, the Commissioner of Customs (Appeals-II), reversed the findings of the Lower adjudicating authority and allowed the appeal. Further, placing reliance on various Judgments, the Commissioner of Customs (Appeals-II), directed the Lower adjudicating authority to process the respondent's claim as per law.

8. Aggrieved by the said order, the appellant herein has filed an Appeal in Appeal No.C/42317/2015-SM (Final Order No.40674 of 2017), before the Customs, Excise & Service Tax Appellate Tribunal. After going through the findings of the Commissioner (Appeals) and perusing the materials available on record, the Appellate Tribunal, rejected the appeal on 08.05.2017. As against the same, the Customs Department, the appellant herein, has filed this Civil Miscellaneous Appeal before this Court.

9. Assailing the order of the Revenue Department with regard to period of limitation, as prescribed under the Notification No.93/2008-Customs dated 01.08.2008, the learned counsel appearing for the appellant department would submit that the amendment period of one year from the date of payment of

additional duty of customs may be extended till the date of imported goods are released. Learned counsel for the appellant would also try to substantiate the grounds of appeal by stating that the Appellate Tribunal had miserably failed to appreciate the period of limitation to any such claim for refund of the additional duty of customs paid on certain conditions which came to be exempted under the Notification No.102 of 2007-Customs dated 14.09.2007.

10. The respondent herein, has produced two typed set of papers relied by them in support of their contention in the appeal, wherein, Volume I typed set, consists of the Bill of Entry for the import, the order of this Court in the Writ Petition and the Contempt Petition and the Communications of the Commissionerate of Customs, Chennai, pertaining to the provisional release of the imported goods. Volume II typed set, consists of the circulars of the CBEC, Judgments and citations relied on and the order of the Honourable Supreme Court, in the case of CMS Info Systems Ltd., Vs. Union of India. The respondent would further submit that only after perusing the above materials, the Appellate Tribunal has correctly passed a reasonable order, as against the appellant.

11. Heard the learned counsel for the appellant and the learned counsel for the respondent, and perused the materials available on record.

12. Upon perusing the materials on record, it is clear that the Government of India, by its Notification No.102 of 2007-Customs dated 14.09.2007 and subsequent Notification No.93/2008-Customs dated 01.08.2008, exempted certain goods falling within the first schedule to the Customs Tariff Act, 1975 (51 of 1975) and thereby, permitted an importer to seek for refund of additional duty of customs paid to the customs department on certain conditions. It could be seen that the period of limitation was not prescribed under the first notification of the Revenue Department dated 14.09.2007 and it was fixed only by way of an amendment notification dated 01.08.2008, enabling an importer to file a claim of refund of the additional duty of customs paid on the imported goods. But, it should have been made before the expiry of one year from the date of payment of additional duty of customs.

13. In the present case, it could be seen that the respondent had filed a Claim Petition on 09.09.2014 for refund of additional duty of customs which was paid on 15.05.2013. In fact, it could be seen from the Order-in-Original dated 20.03.2015, the lower adjudicating authority has observed that 90% of the goods were released on 15.05.2013, whereas, the remaining 10% of the goods were released only on 04.06.2014. The

refund application was filed only on 09.09.2014 i.e. after the expiry of one year from the date of payment of additional duty of customs. Thus, the Lower adjudicating authority has rejected the application for refund on the grounds that the claim made by the respondent, was time barred, is not as per condition 2(c) of the notification dated 01.08.2008. Subsequently, the Commissioner of Customs (Appeal-II), by an Order-in-Original C.Cus II No.624/2015 dated 30.06.2015, allowed the appeal in favour of the claimant, on the grounds that 10% of the imported goods were released by the claimant only on 04.06.2014, and by that time, the time limit for filing the refund claim was already over and hence, there was no possibility for the respondent/claimant, to file a claim, within the prescribed time limit.

14. Aggrieved by the said order, the Commissioner of Customs, the petitioner herein, filed an appeal before the Customs, Excise & Service Tax Appellate Tribunal. But, the Appellate Authority, dismissed the appeal filed by the Commissioner of Customs, confirming the order of the adjudicating authority, by following the decision of the Honourable Supreme Court of India, reported in the case of Commissioner Vs. Sony India Pvt. Ltd - 2016 (337) ELT A102 (S.C).

15. Even though, an appeal filed by the Revenue Department is stated to be pending before the Honourable Supreme Court of India, the contention of the Revenue Department, that they do not accept the decision relied on by the Appellate authority, is not correct. The order of the Appellate authority in dismissing the appeal, is not erroneous and contrary to law.

15(a). It is not in dispute that though the duty was paid on 15.05.2013, on which day, only 90% of the goods were released and however, the remaining 10% of the goods were released only on 04.06.2014. If the Notification No.102 of 2007-Customs dated 14.09.2007 as amended by Notification No.93/2008-Customs, dated 01.08.2008 is to be strictly applied, then the date on which the remaining 10% of goods released could only be taken as the date commencing for claim of refund and not on the date on which, the duty was paid i.e on 15.05.2013 as the respondent has no possibility to file the claim unless 100% of goods were released.

16. In view of the above discussions, we are unable to accept the arguments put forth by the learned counsel for the appellant department and hence, the order passed by the Commissioner of Customs dated 30.06.2015 and the order of the Customs, Excise & Service Tax Appellate Tribunal, are in order, and cannot be set aside and not interfered with.

17. In view of the above facts and circumstances of the case, this Court finds no merit in the appeal filed by the Revenue Department and it deserves to be dismissed, accordingly, the Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

raja

To

1.The Customs, Excise & Service Tax Appellate Tribunal
No.26,Sashtri Bhavan Annexe Building,
Haddows Road, Chennai - 600 006.

2.The Commissioner of Customs (sea),
Chennai Ii Commissionerate,
Customs House,
Chennai 600 001.

+1cc to Mr.T.Pramod Kumar Chopda, Advocate, S.R.No. 75429
+1cc to Mr.B.Sathish Sundar, Advocate, S.R.No. 74791

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NRL(CO)
GN(21/05/2019)