IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

CORAM

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

C.M.A.NO.788 OF 2018

Sushila Parmar International Pvt. Ltd.,
(Formatly Parmer International Pvt. Ltd.)
31, Shree Adinath Shopping Centre,
Satara Road, Pune - 411 017. ... Appellant

Vs.

1. The Commissioner of Customs,
Chennai IV Commissionerate
Custom House, No.60, Rajaji Salai
Chennai - 600 001.

2. The Assistant Commissioner of Customs
(Refunds), Custom House,
60, Rajaji Salai,
Chennai - 600 001. ... Respondents

This Civil Miscellaneous Appeal is filed under Section 130 of the Customs Act, 1962, to set aside the Final Order No.40010 of 2018 dated 02.01.2018, on the file of Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.B.Sathish Kumar
For Respondents : Mr.K.S.Ramasamy

JUDGMENT

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

This Civil Miscellaneous Appeal has been filed under Section 130 of Customs Act, challenging the order of Customs Excise and Service Tax Appellate Tribunal, Chennai, made in Final Order No.40010 of 2018 dated 02.01.2018.

2. The appellant herein, is engaged in the business of import, and trading of various goods, more specifically 'PVC Resin'. He claims that he has filed an application before the

2nd respondent on 19.03.2012, seeking refund of the additional duty @ 4%, paid on the import of PVC Resin, amounting to Rs.3,58,253.10/- covering 3 bills of entry, in terms of Notification No.102/2007 customs dated 14.09.2007, after the imported goods were sold in the domestic market, for which, local tax liability had been paid by the appellant company.

3. The 2nd respondent, by its order dated 29.03.2013, had rejected the claim of refund, on the ground that the description of goods mentioned in the 3 bills of entry, for which, refund of 4% additional duty has been claimed, does not match with the sale of goods imported under the said Bills of Entry, and thereby, the appellant has failed to satisfy the condition as specified in Clause 2(e)(ii) of Notification No.102/2007 customs dated 14.09.2007.

4. Aggrieved by the order of the 2nd respondent, the appellant preferred an appeal before the Commissioner of Customs (Appeals), in Appeal No.C.Cus.No.1639/2014 dated 28.08.2014, but, the Commissioner of Customs, by its order dated 28.08.2014, rejected the same. Hence, the appellant has preferred a further appeal before the Customs Excise and Service Tax Appellate Tribunal, Chennai, along with the application for condoning the delay of 860 days. However, the said appeal also was dismissed by CESTAT, by its Final Order dated 02.01.2018 in Final Order No.40010 of 2018, on the ground of laches, not being properly explained. The said order is under challenge in the present appeal.

5. Heard the learned counsel for the appellant and the learned counsel for the respondents, and perused the materials available on record.

6. Based on 3 Bills of Entry (BOE), the appellant has sought for refund of an amount of Rs.3,58,253.10/- that they have paid 4% additional duty as customs duty leviable under the Customs Tariff Act 1975 for the import of various items of PVC Resin Suspension grade S65D. The same was claimed in terms of Notification No.102/2007-Cus, dated 14.09.2007 and for which, the appellant had submitted relevant documents, including the copies of sales invoices of the imported goods, before the Assistant Commissioner of Customs (Refunds).

7. Upon perusing the documents submitted by the appellant, the Assistant Commissioner of Customs has found that the description of the goods mentioned in the 3 Bills of Entry vary from the invoices of sale of the goods imported items in the

domestic market and also found that the description of goods mentioned as PVC Resin Suspension Grade S65D which reflected under the 3 Bills of Entry, do not match with the goods imported with description as PVC Resin. He has recorded that the grade of Resin is not mentioned in the Invoice. Hence, the Assistant Commissioner of Customs came to the conclusion that the identity of the goods sold at the time of sale, could not be established by the appellant with respect to the imported goods, and therefore, refund claim of 4% paid by the appellant could not be considered and accordingly, dismissed the appeal.

8. It could be seen from the records that the order of the Assistant Commissioner of Customs, was subsequently confirmed by the Commissioner of Customs (Appeals), by Order in Appeal.C.Cus.No.1639 of 2014 dated 28.08.2014, on the ground that as per Notification No.102/2007-Cus, dated 14.09.2007, the sales invoice as well as the Bills of Entry should tally in nomenclature, quantity, grade etc. But, at the time of export, the items mentioned in the 3 Bills of Entry did not tally with the sales invoices with regard to grade, as the grade place an important role to determine the quality and value of goods. This said order of the Commissioner of Customs (Appeals), was made as early as 23.07.2013. However, the appellant has preferred a further appeal before the Customs Excise and Service Tax Appellate Tribunal, for refund claim, along with the application for condonation of delay of 860 days in preferring the said appeal.

9. The Appellate Tribunal, after considering the submissions made on either side, dismissed the condone delay application, on the ground that though it has been submitted by the learned counsel for the appellant that an officer, named Shri Sriranjan Deshpande, who was dealing with the affairs of the appeal, resigned from the services of the appellant company without informing the higher officials, regarding the pendency of the appeal before the first appellate authority and hence, the delay has occurred, the name of the officer viz., Shri Sriranjan Deshpande, has not been mentioned in the condone delay application and further, the director of the company was also not able to affirm that a particular employee was responsible for the delay.

10. Perusal of the order of the Appellate Tribunal, would show that the Appellate Tribunal has not touched the aspect of incoherency in the 3 Bills of Entry, for which, the appellant seeks refund with the invoices of sale made in the domestic market.

11. On perusal of the order passed by the Assistant

Commissioner of Customs, which later on came to be confirmed by the Commissioner of Customs (Appeals), it could be seen that the case of the appellant company had been discussed in detail with the documents submitted by the appellant before them, and the order passed by the Appellate Tribunal, confirming the order of the Commissioner of Customs (Appeals), does not call for interference by this Court, as the Appellate Tribunal had rightly found that there is no proper explanation given by the appellant for condoning the delay of 860 days in preferring the appeal, despite receiving the copy of the order passed by the Customs (Appeals). Even on merits, the documents produced by the appellant before the Assistant Commissioner of Customs (Refund) and the Commissioner of Customs (Appeals) pertaining to 3 bills of entry and the invoices submitted, the appellant has failed to prove his case.

12. In view of the above, the appellant has failed to prove the goods sold under the sale invoices along with the refund claim of the sale of goods, which were imported under the 3 Bills of Entry, for which, refund of 4% additional duty was sought for before the authorities and has not made out a case for this Court to interfere with the order passed by the Appellate authority.

13. Hence, under these circumstances, this Civil Miscellaneous Appeal fails and accordingly, the same is dismissed. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Customs,
Chennai IV Commissionerate
Custom House, No.60, Rajaji Salai
Chennai - 600 001.

2. The Assistant Commissioner of Customs
(Refunds), Custom House,
60, Rajaji Salai,
Chennai - 600 001.

C.M.A.No.788 of 2018

RSV(CO)
CS/17/06/2019