CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

CUSTOM Appeal No. 12707 of 2014

[Arising out of OIA-223-229/2014/CUS/COMMR-A-/KDL dated 10/04/2014 passed by Commissioner of CUSTOMS-KANDLA]

C.C.-Kandla **.....Appellant**
Custom House,
Near Balaji Temple,
Kandla,
Gujarat

VERSUS

Posco India Delhi Steel Processing Centre Pvt Ltd **.....Respondent**
Plot No. 193, Sector-4, Phase-Ii,
Growth Centre, Hsiidc, Bawal,
REWARI,
HARYANA

APPEARANCE:
Shri Ajay Kumar Samota, Superintendent (AR) for the Appellant
Shri. Amit Laddha, Advocate for the Respondent

CORAM: **HON'BLE MEMBER (TECHNICAL), RAJU**
HON'BLE MEMBER (JUDICIAL), SOMESH ARORA

FINAL ORDER NO. A/10874 / 2023

DATE OF HEARING:11.04.2023
DATE OF DECISION:11.04.2023

RAJU

This appeal has been filed by Revenue against the order of Commissioner (Appeals).

2. Learned Counsel pointed out that the appellants imported consignments of various grades of steel on payment of applicable rates of duties of customs including Special Additional duty in terms of Notification 102/2007-Cus dated 14.09.2007. The appellant paid SAD at the time of import and became entitled to get refund of SAD on subsequent sale of imported goods on showing poof of fulfilment of condition of Notification No. 102/2007-Cus. The matter has earlier travelled Hon'ble Apex Court which after due consideration directed as follows:

> *"In the meanwhile, the adjudicating authority will verify whether the Respondent sold the imported goods after cutting/slitting. This verification shall be concluded within four weeks from the passing of the present order. If this verification establishes the same, the claims of the respondents for refund, shall be processed and paid to the respondent within four weeks from such verification. Refund to the Respondent shall be subject to the Respondents furnishing bank guarantees for half of the amount to be refunded, to the satisfaction of the adjudicating authority. The guarantees shall be kept alive till disposal of these appeals. The quantum of payment of interest to the successful party shall be considered at the time of final disposal of the appeals."*

2.1 Learned Counsel pointed out that thereafter their refund was fully sanctioned however certain restriction on utilization were imposed in terms of DGFT circular dated: 18th April, 2013 and CBEC Circular dated 30th September, 2013. Aggrieved by this order Revenue has filed this appeal. Learned Counsel pointed out that the aforesaid circular issued by DGFT and CBEC has been quashed by Hon'ble High Court of Gujarat by observing as follows:

> *"15. Considering the relevant provisions of the Act, FTP, notifications and circulars as well as various judgments noted above, additional restriction for grant of refund as per Notification No. 102/2007-Cus by the impugned public notice and circular, is held to be ultra vires the Act and cannot be legally sustained.*
> *16. Consequentially, it is declared that the impugned public notice dated 18.04.2013 and circular dated 29.04.2013 issued by DGFT and CBEC respectively in so fat as they seek to deny the importers and exporters the refund of the SAD paid by using DEPB scrips and/or Reward Scheme scrips beyond 30.09.2013 are invalid."*

2.2 Learned Counsel argued that appeal of revenue, is based solely on the aforesaid circulars which has been quashed by the Hon'ble High court of Gujarat.

3. Learned AR relied on the impugned order.

4. We find that the entire appeal of revenue is based on the circulars of DGFT issued on 18th April, 2013 & CBEC issued on 30th September, 2013. It is noticed that Hon'ble High Court of Gujarat has quashed the said circulars as mentioned in para 2.1 above.

In View of above the appeal does not survive. The appeal is therefore dismissed.

(Dictated & Pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Palak