Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 1

CUSTOMS Appeal No. 11525 of 2016-DB
(Arising out of OIA-KDL-CUSTOM-000-APP-093-15-16 Dated-29.03.2016 passed by Commissioner of CUSTOMS-KANDLA)

AGARWALLA TEAK INTERNATIONAL P LTD ....Appellant
MANEK PLOT, SURVEY NO. 487/1, MITHI ROHAR,
NATIONAL HIGHWAY, GANDHIDHAM, GUJARAT

VERSUS

COMMISSIONER OF CUSTOMS-KANDLA ....Respondent
CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDLA, GUJARAT

APPEARANCE:
None appeared for the Appellant
Shri Anand Kumar, Superintendent (Authorized Representative) for the Respondent

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

Final Order No. A/ 11678 /2023

DATE OF HEARING:09.08.2023
DATE OF DECISION:09.08.2023

SOMESH ARORA

None appeared for the appellant when the matter was called. From the examination of file, it transpires that the appellant had vide letter dated 13.09.2012, sought a refund of Rs. 25,57,560/- towards 4% Special Additional Duty paid by them at the time of importation of Timber Wood Logs. The refund claim was filed on the basis of Exemption as granted vide Notification No. 102/2007-Cus dated 14.09.2007. It had also furnished a bank guarantee as was required under the Notification. The refund file appeared to have been lost by the department and a look out notice was issued on 18.03.2015 however in vain and therefore file was recast and was taken up for processing. Initially the issue considered was that some sawing on the log having been done and therefore the form has been changed and SAD refund was not permissible. This issue was decided in favour of the parties vide order of the Hon'ble High Court of Gujarat dated 07.07.2011 in which department's appeal were rejected in appeal No.s 10258-10296 of 2011. Same issue was before the Hon'ble Apex Court which vide order dated 24.11.2011 allowed interim relief to all the parties of granting refund during the pendency of the SLP before it. The status of SLP before the Hon'ble Supreme Court is not available to the A.R. However, even on the issue of limitation of refund of SAD and after consideration of CBEC Circular No. 6/2008-Cus dated 24.08.2008 as amended vide Circular No. 10/2012, same was also set aside by the Hon'ble High Court of Delhi vide Order reported in 2016 (334) ELT 624 Delhi in the matter of Allen Diesels India Pvt. Ltd. vs UOI in which after observing that the relevant Notification did not have any such prescription as was imposed by the CBEC by the aforesaid Circular, the Hon'ble Court set aside the condition in Circulars as seeking to impose additional restriction on grant of refund of SAD under Notification No. 102/2007-Cus (as amended), as ultra virus. The condition declared ultravirus pertained to only cash payment entitling to cash refund and not the payment through scrip.

2. In view of the foregoing, we find the refund is permissible to the party in accordance with above case law, in principle. Accordingly, the matter is remitted back to the original authority to consider the same as per decision of the aforesaid case either in cash or otherwise, subject to unjust enrichment, if applicable and to the extent it has not been allowed out of Rs. 25,57,560/- Matter is remanded accordingly. Appeal allowed by way of remand.

(Dictated and Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Neha