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

REGIONAL BENCH – COURT NO. 02

CUSTOMS Appeal No. 11453 of 2018-DB

CROSS Application No.:-C/CROSS/10909/2018

[Arising out of Order-in-Original/Appeal No KDL-CUSTM-000-APP-046-17-18 dated 07.03.2018 passed by Commissioner of CUSTOMS-AHMEDABAD]

Posco India Processing Center Private Limited **...Appellant**

(Earlier Known As Posco India Delhi Steel Processing Centre Private Limited.),
Rewari, Haryana

VERSUS

C.C.-KANDLA **...Respondent**

Custom House,
Near Balaji Temple,
Kandla
Gujarat

APPEARANCE:
Shri Manish Jain, Advocate appeared for the Appellant
Shri A R Kanani, Superintendent (AR) for the Respondent

CORAM: **HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA**
HON'BLE MEMBER (TECHNICAL), C.L MAHAR

FINAL ORDER NO. A/12062/2023

DATE OF HEARING:14.09.2023
DATE OF DECISION: 14.09.2023

SOMESH ARORA

Present appeal in which a cross objection has also been filed by the department, involves issue of whether refund of anti dumping duty wrongly paid by the assessee and upheld as such by this Tribunal in Appeal No. A/10443-10447/2014 vide order date 12.02.2014, in their own case, could be denied by the department on the ground that the refund sought under Section 27 cannot be given to the party as Customs Act And Customs Tariff Act, 1962, and Customs Tariff Act, 1975 are different legislations and anti dumping law and provisional and final impositions are dealt with under Customs Tariff Act, and therefore only refund as envisaged under Section 9A(8), of anti-dumping duty in enumerated cases can be granted.

2. The Learned Advocate draws our attention to Section 9A & Section 9AA Sub Clause 8 of Customs Tariff Act, 1975 brought on the statute book in the year 1995, and which as reproduced as below:

> *"Section 9A(8) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.*
>
> *[**SECTION 9AA- Refund of Anti-Dumping duty in certain cases.** (1) Where upon determination by an officer authorised in this behalf by the Central Government under clause (1) of sub-section (2), an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty imposed under sub-section (1) of section 9A on any article, in excess of the actual margin of dumping in relation to such article, the Central Government shall, as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or duty]: such importer, and such importer shall be entitled to refund such excess*
>
> *Provided that such importer shall not be entitled to refund of so much of such excess duty under this sub- section which is refundable under sub-section (2) of section 9A Explanation. For the purposes of this sub-section, the expressions, "margin of dumping", "export price" and "normal value" shall have the same meaning respectively assigned to them in the Explanation to sub-section (1) of section 9A. (2) The Central Government may, by notification in the Official Gazette, make rules to-*
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> *(i) provide for the manner in which and the time within which the importer may make application for the purposes of sub-section (1),*
>
> *(ii) authorise the officer of the Central Government who shall dispose of such application on behalf of the Central Government within the time specified in such rules; and*
> *(iii) provide the manner in which the excess duty referred to in sub-section (1) shall be -*
>
> *(A) determined by the officer referred to in clause (ii); and*
> *(B) refunded by the Deputy Commissioner of Customs*

or Assistant Commissioner of Customs, as the case may be, after such determination."

2.1 It is his submission, that Section 9A(8) of Customs Tariff Act, 1975 which is a borrowing provision allows refund as per provisions of Customs Act, 1962 in cases other than those enumerated in Section 9AA. It specifically provides for refunds to be regulated and governed by the Customs Act, 1962. Therefore, their refund application was not only maintainable, but also grantable as per provisions and within limitation of Section 27, as in their case duty was pronounced by the Court to be wrongly paid.

3. Learned AR draws our attention to Notification No. 05/2012-Cus (N.T) dated 19.01.2012, which while dealing with time limit for filing refund under Section 9AA specifically provides for 3 months time period.

4. Considered, we find that the notification relied upon by the AR remains confined to enlisted refund cases as are mentioned in Section 9AA, which are typically in the nature of refund cases, which arise due to differential duty being imposed at preliminary and final stages. In fact the title of the Notification itself says this goods may be called the refund of anti dumping duty (paid in excess of actual margin of dumping).

4.1 We therefore find that the Section 9AA Customs Tariff Act deals only with those specified cases of refund where done the limitation is governed by the aforesaid Notification No. 05/2012-Customs (Non-Tariff). However there is no bar on the refund arising otherwise in distinct situations to be allowed. In view of the fact that refund in this particular case arose due to pronouncement by court of law that anti dumping duty whatsoever was not payable by the party. We, in the instant case find that the situation is very much governed by Section 27 of the Customs Act, due to same having been borrowed in the Customs Tariff Act by Section 9A(8), which clearly indicates that even Custom Tariff Act envisages situations, where refund could arise even in anti dumping otherwise in listed situations. As legislature is not known to waste any words like “refund’ as mentioned in Section 9A Customs Tariff Act, 1975, we find appropriateness in our interpretation.

5. In view of the foregoing discussion, we have no difficulty in holding the order of the lower authority is not sustainable. Appeal is accordingly allowed. Cross objection is also disposed of by rejecting the same.

(Dictated & Pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(C.L MAHAR)
MEMBER (TECHNICAL)

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