

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

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10329 of 2022 - DB

(Arising out of OIA-AHD-CUSTM-000-APP-1591-21-22 dated 17/03/2022 passed by Commissioner of CUSTOMS-AHMEDABAD)

HAMILTON HOUSEWARES PVT LTD

.....Appellant

CTS NO 55/1/1

OPP WELSPUN FACTORY RAKHOLI SAYALI ROAD SAYALI

SILVASSA, UT D AND N H

VERSUS

C.C. AHMEDABAD

.....Respondent

OFFICE OF THE PR. COMMISSIONER OF CUSTOMS,
1ST FLOOR, CUSTOMS HOUSE,
OPPOSITE OLD HIGH COURT NAVRANGPURA,
AHMEDABAD-380009

APPEARANCE:

Shri Viany Sejpal, Advocate for the Appellant

Shri A R Kanani, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 10489/2024

DATE OF HEARING: 25.10.2023

DATE OF DECISION: 26.02.2024

RAMESH NAIR

Brief facts of the case are that the Appellant M/s Hamilton Houseware Pvt. Ltd is engaged in the activity of importing goods on payment of appropriate Countervailing Duties (CVD) and 4% Special Additional Duty (SAD). The said imported goods are then sold by the Appellants in the domestic market where upon payment of appropriate sales tax/ VAT. The amount of 4% SAD so paid on the goods at the time of import, qualifies for refund under conditions as specified under Notification No.102/2007 – Cus dated 14.09.2007. In the present case the Appellants have paid the import duties through DEPB Script to the tune of Rs. 58,779/-and Rs. 3,25,932/- in cash. The appeal in the present case revolves around the claim of refund of 4% SAD paid in cash as the same being denied by Department on the grounds that such claim is erroneous in so far as two refund applications have been filed in the financial year for the same Bill of Entries under Notification No.102/2007 – Customs.

2. Shri Vinay Sejpal, Learned Advocate appearing on behalf of the Appellant submits that there is no dispute on the fact that the Appellant has paid 4% SAD on the import of goods under four Bills of Entries; that the said goods have been sold in the domestic market on payment of appropriate sales tax/VAT; that the Appellants have fulfilled all requirements and conditions as enlisted under Notification No.102/2007 – Customs; and that the Appellant have filed for two separate refund applications. First being filed on 28/04/2012 for Rs. 58,779 which was granted post detailed verification and second claim filed on 04/01/2013 for Rs. 3,25,932/- which was granted vide Order in Original bearing No. 45/14 - 15 dated 14.06.2014. He further submits that the Department issued a fresh Show Cause Notice dated 11.06.2015 giving rise to the current impugned Order in Appeal No. AHD/CUSTOM/000/APP/1591-21-22) dated 17/03/2022 on the same issue which had been resolved by the above stated Order in Original. The basis of re – starting the dispute was on the grounds that the Appellant’s application for refund was in contravention of certain procedural part attributing to Para 4.2 of Customs Circular No. 06.2008 – Cus dated 28.04.2008 and that the refund sanctioned in the OIO No. 45/14 - 15 dated 14.06.2014 was therefore erroneous.

2.1 Without prejudice to above he submits that the adjudicating authority has failed to appreciate that the OIO dated 06.06.2014 was implementation of the directives of the OIA dated 11.04.2014 read with corrigendum dated 25.04.2014 and without challenging any of the above orders the refund so granted should not be considered as erroneous. He has referred the following cases in support of his claim.

- Paro Food Products v Commissioner of Central Excise, Hyderabad 2005 (184) ELT 50 (Tri. – Bangalore)
- Topland Engg. (P) Ltd. v Union of India 2006 (199) ELT 209 (Guj.)
- Union of India v Kamalakshi Finance Corporation Ltd. 1991 (55) ELT 433 (SC)

3. Shri A.R. Kanani, Learned Superintendent (AR) appearing on behalf of the Department has reiterated the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the lower authorities have raised their

contention based on the violation of condition as laid down in para 4.2 of the CBEC Board Circular No. 06/2008 – Cus dated 28.04.2008 by the Appellant. The same has been reproduced below for ease of reference:-

“4.2. It is also clarified that only a single claim against a particular Bill of Entry should be permitted to be filed within the maximum time period of one year. Filing of refund claim for a part quantity in a bill of entry shall not be allowed except when this is necessary at the end of the one-year period. Further, since the Sales Tax (ST) / Value Added Tax (VAT) is being paid on periodical or monthly basis, even in case of bills of entry where the entire quantity of goods are sold within a month, all such cases shall be consolidated in a single refund claim and filed with the Customs authorities on a monthly basis. In other words, there would be a single refund claim in respect of one importer in a month irrespective of the number of Bills of Entry (B/Es) processed by the respective Commissionerate.”

4.1 We observe that the Department has applied the said condition stating that the Appellant has filed two separate claims on the same Bills of Entry. It has to be noted here that under the given circumstances the application of this procedural requirement seems trivial to the purposes of the said issue as in the present case the payment of 4% SAD was done through two mediums by DEPB Script and Cash which was the sole reason behind the Appellant filing two claims. The conditions under the said circular act as a procedural safeguard that can be differentiated based on the facts and circumstances of a case. It would be contrary to the essence of the circular to deny the substantial benefit of refund only on a procedural requirement when it is silent towards such issues like that in case of the Appellant. The scope of benefit entailed under a Notification cannot be curtailed solely based on the claims as made in the present case. It would render the effectiveness of a Notification redundant when all other essential conditions required for the said purposes have been adhered with which in the present case has been complied with by the Appellant. The intent of the Notification has been given priority over the executive application of a Circular. Inference can be drawn from the view held by the Appellate Authority in various cases as produced below:-

a) In the case of Mitutoyo South Asia Pvt. Ltd. v Commissioner of Customs(Export), New Delhi 2015 (322) ELT 523 view taken by the Tribunal was as follows:-

“3. After carefully examining the above ground adopted by the lower authorities for denial of the refund claim, it is seen that there is no such restriction either in the

Notification or under the Act. The said restriction stands imposed by the Board vide its circular issued in exercise of executive powers. It is well settled law that the procedural restrictions imposed by way of executive instructions should not ordinarily be construed as mandatory and the same would always remain subservient to and are in aid to justice. It is well settled that interpretation which eludes or frustrates recipient of justice is not to be followed. It seems that the said procedural relevance stand issued by the Board for the purpose of convenience and easy administration of justice for deciding the refund claims.”

b) A similar stance was taken in the case of *M/s Ambey Sales v Commissioner of Customs, Ludhiana* 2021 – VIL – 199 – CESTAT - DEL

14. After going through the above provisions and the decision of Hon'ble Apex Court in the case of CC (Preventative) vs. M. Ambalal & Co. reported in 2011 (2) SCC 74 - 2010-VIL-31-SC-CU. The Hon'ble Supreme Court has examined the issue and observed asunder: -

The relevant paras of the said judgement are extracted below for the purpose to decide the issue in hand:-

"10. The Customs Act, 1962 is an Act to consolidate and amend the law relating to Customs. The object of the Act is to regulate the import and export of goods, into and from the shores of India, or otherwise, and determine the customs duty payable. It also attempts to fill the lacunae of the previous customs legislations viz. the Sea Customs Act and the Land Customs Act. It also aims to counter the difficulties that have emerged over the years due to the changing economic and financial conditions; amongst them it proposes to tackle the increasing problems of smuggling both in and out of the country. The Act aims to sternly and expeditiously deal with smuggled goods, and curb the dents on the revenue thus caused. In order to deal with the menace of smuggling, the authorities are enabled to detect, conduct search and seizure, and if necessary, confiscate such smuggled goods, within the territory of India.

16. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact, majority of judgments emphasize that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal Statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgments at all. The synthesis of the views is quite clearly that the general rule

is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances.

17. The notification issued by the Central Government in exercise of the powers conferred by Section 25(1) of the Act exempts the articles enumerated in the Table annexed when imported into India from payment of duty under the Act. The language used in the notification is plain and unambiguous. Therefore, we are required to consider the same in their ordinary sense. A construction which permits one to take advantage of one's own wrong or to impair one's own objections under a Statute should be disregarded. The interpretation should as far as possible be beneficial in the sense that it should suppress the mischief and advance the remedy without doing violence to the language. From the wording of the above exemption notification, it is clear that the benefit of the exemption envisaged is for those goods that are imported."

15. As per the said observations made by the Hon'ble Apex Court, the exemption notifications in question are to be interpreted liberally. Notification No.93/2008-Cus prescribes that exemption from special CVD in specific is not available without VAT/Sales tax is paid by the importer. Further mandates notification is that SAD which has been levied on the importer is to safeguard the VATA/Sales tax is to be paid by the importer/trader at the time of sale of the goods. Therefore, if the importer sells the goods and make payment of VAT/Sales tax then the importer is entitled to claim refund of SAD paid by them at the time of import of the goods. If the goods are not sold by the importer, the importer is not entitled for refund of SAD paid by him. The importer shall claim refund of such additional duty of customs paid on the imported goods with the jurisdictional Customs officer before expiry of one year from the date of payment of additional duty. Further, the importer shall pay proper Sales tax at the time of sale of imported goods. 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. 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 one year from the date of payment of the said additional duty of customs. The importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be. The importer shall, inter alia, provide copies of the following documents along with the refund claim:

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

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

(e) 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.

16. Clauses (c), (d) and (e) of the said notification are contrary to each other as if within one year the importer does not sell the goods imported by him within one year of the payment of SAD and then his claim barred by limitation. Therefore, if the refund claim is to be filed within one year, how the importer be compelled to sell the imported goods within one year, as the importer is required to comply the condition (e) of the Notification. If in case the importer sell the goods after one year of payment of SAD and documents as required under clauses (e) of the notification, the refund claim shall be barred by limitation.

17. When the said notification is beneficial to the assessee by exercising of power under section 25(1) of Customs Act, 1962, the whole purpose of the exemption granted under Sec. 25 (1) of the Act shall be defeated. In case, the imported goods could not be sold by the importer within one year of the payment of SAD on payment of VAT/service tax, the importer is deprived to claim of the refund of SAD. The cause of action to claim refund of SAD does not arise as per Notification No.102/07-Cus dated 14.9.2007 and Notification No.93/08-Cus dated 1.8.2008. If the SAD and VAT/Sales tax paid on the imported goods, it will amount to double taxation on the said imported goods as condition 2(c) of the said notification bars the importer to file refund after clearance of goods after one year of the SAD. Once the intent of the Legislature is to refund the SAD on payment of VAT/Sales-Tax, the condition 2(c) of the Notification is against the intent of the Legislature. A sit is not the intent of legislature to tax double on the imported goods, the importer shall not compete Indian market. For example, if importer imported goods in March, 2020, after lockdown due to the Pandemic Covid 19 in all over country, second wave of Pandemic and various parts of India is under locked down, if the importer failed to sell the imported goods, the importer shall be put on another burden of SAD which is otherwise entitled of refund on payment of VAT/Sales tax.

c) Similar view has been adopted in the case of *M/s Devki Nandan J Gupta v Commissioner of Customs 2015 (318) ELT 167*

"5. The original authority as well as the Commissioner (Appeals) have contended that the appellant has violated the condition laid down in the para 4.2 of the CBEC Board Circular which is reproduced below:

" 4.2. It is also clarified that only a single claim against a particular Bill of Entry should be permitted to be filed within the maximum time period of one year. Filing of refund claim for a part quantity in a bill of entry shall not be allowed except when this is necessary at the end of the one year period. Further, since the Sales Tax (ST) / Value Added Tax (VAT) is being paid on periodical or monthly basis, even in case of bills of entry where the entire quantity of goods are sold within a month, all such cases shall be consolidated in a single refund claim and filed with the Customs authorities on a monthly basis. In other words, there would be a single refund claim in respect of one importer in a month irrespective of the number of Bills of Entry (B/Es) processed by the respective Commissionerate."

From the careful reading of the above para, it is clear that though the procedure is prescribed that there would be a single refund claim in respect of one importer in a month irrespective of the number of Bills of Entry. However, in the present case that the first claim was filed on 6/5/2013 for the quantity of goods sold. However the quantity covered under the present refund claim were unsold therefore these two bills of entry could not have been included in the first claim which was made on 6/5/2013. As regard the quantity of the present claim it was sold during the period 12/05/2013-20/05/2013. If the contention of the Id. lower authority is accepted and if the appellant is barred in filing the present refund claim in the month of May 2013 then option is that they should have filed this claim in the month of Jun 2013. It is observed from the date of challan towards payment of duty, both the payments were made on 26/05/2012 and 01/6/2012. If the appellant would have filed both the refund claim in the month of Jun 2013 then statutory time limit of one would have expired and they become ineligible for this claim. In the Board Circular also consciously, understanding this situation, clarified that the exception is provided in case if the one year period is going to expire. It is very obvious that it is not intention of the Board Circular that even though the period of one year is getting expired, the assessee is not allowed to file more than one refund claim in a month. In my view even if more than one claim in a month is filed the same can not be denied only because of the reason that circular prescribed only one refund claim in a month otherwise statutory time limit of one year provided in the notification will become redundant. In similar situation this Tribunal in the case of B.S.L. Ltd. Versus Commissioner of C.Ex., Jaipur (supra) has held that the refund under Rule 5 is permissible despite the claim having been second time in a month which is violation of condition of 11/2002-C.E. (N.T.) dated 1/3/2002. In my view this was held keeping in mind that though there is procedure to file one refund in a month or in the quarter as case may be but since time limit of one year is prescribed for filing refund claim the said procedure infraction should not come in way of the substantial claim of the assessee. In view of my above discussion, I am of the considered view that the appellant is entitled for refund claim. Hence the appeal is allowed."

In view of the foregoing findings and discussions we are of the considered view that the benefits under Notification No.102/2007 – Customs should not be denied to the Appellant thereby the Appellant is entitled for refund claim.

5. Hence, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 26.02.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)