CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 170 OF 2011

(Arising out of Notification OIA-10/2011/CUS/COMMR-A-/AHD Dated- 18/01/2011 passed by Commissioner of CUSTOMS-AHMEDABAD)

MESSRS HIYA OVERSEAS PVT LTD **Appellant**
A/3, Vauhav Laxmi Flats, 32, Mahadevnagar Society,
Nr Sardar Patel Stadium, Navrangpura,
Ahmedabad, Gujarat

Vs.

COMMISSIONER OF CUSTOMS-AHMEDABAD **Respondent**
Custom House, Near All India Radio, Navrangpura,
Ahmedabad, Gujarat

Appearance:
Shri Dhaval K Shah, Advocate for the Appellant
Shri Prashant Tripathi, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. 12497/2024

Date of Hearing : 04.10.2024
Date of Decision : 04.10.2024

SOMESH ARORA

The issue in this matter pertains to refund of special Additional Duty (SAD) of Rs. 3,84,867/- sought for the year 2008-2009 by the present appellant. The same was rejected by the lower authorities for lack of enough evidence to show that there was no unjust enrichment. The notification in the instant case i.e. Notification no. 102/2007-CUSTOMS dated 14th September, 2007, inter alia, requires that the invoices should accompany the refund application and also in condition (3) that "documents evidencing payment of appropriate sale tax or value added tax as the case may be by the importer on sale of such imported goods" should be produced. From the facts of the case, it emerges that invoices were on record and which clearly indicated that the Cenvat Credit/SAD for the duty paid has not been allowed to be passed on even on the face of invoice. However, the department has disputed that the evidence of passing of of sale tax or value added tax as the case may be, has not been sufficiently produced. The appellants on their part had relied on certificate of Chartered Accountant which, inter alia, certified that no duty has been passed and there was no unjust enrichment.

2. Department through its AR has relied upon the following case law to justified rejection of refund claim.

- Mahindra Engg. & Chemical Products Ltd. Versus Commr. Of C. Ex., Pune-I [2019 (368) E.L.T. 84 (Tri. Mumbai)]
- Euro Merchandise (I) Ltd. Versus Commissioner of Customs, Kandla [2015 (318) E.L.T. 445 (Tri.-Ahmd.)]

3. Learned advocate on the point of acceptance of certificate has relied upon following decisions:

i. Koradia Exports (India) Pvt. Ltd. Versus Commr. of Cus. (Exports), Mumbai - 2018 (362) ELT 336

ii. M.B. Enterprises Versus Commissioner of Central Excise, Ahmedabad - 2013 (292) ELT 451 (Tri-Ahmd)

iii. Commissioner of Customs, Kandla Versus PMC Project India Pvt. Ltd. 2019 (370) E.L.T. 1429 (Tri. - Ahmd.)

iv. Abhishek Synthetics Pvt. Ltd. Versus Commissioner oF C. EX., Hyderabad-III 2005 (182) E.L.T. 339 (Tri. - Bang.)

v. Plastene India Limited Versus C.C., Kandla 2017 (5) TMI 270 - Cestat Ahmedabad

vi. Commissioner of C. EX., Coimbatore Versus Ennar Spinning Mills 2009 (246) ELT 263 (Tri. Mad)

vii. General Commodities Pvt. Ltd. Versus Commissioner of S.T., Bangalore - 2010 (18) S.T.R. 460 (Tri. - Bang.)

viii. Terna Shetkari Sahakari Sakhar Karkhana Ltd. Versus CCE, Aurangabad - 2001 (138) E.L.T. 1225 (Tri. - Mumbai)

ix. Pasari Spining Mills Ltd Versus Commissioner of C. EX. Bangalore – 2002 (228) E.L.T. 572 (Tri. – Mumbai)

x. Ndian Oil Tanking Ltd. Versus Commer. Of Customs (I). Nhava Sheva – 2008 (228) E.L.T. 572 (Tri. – Mumbai)

4. Considered. This court finds that in the instant case even the invoices were indicating on the face it that no Cenvat credit is allowed to be taken by the receiver. By virtue of which, the appellants were in a position to indicate that no credit is to be taken by the person, who receives invoice and same if taken can easily be disallowed by the Central Excise Authorities on the basis of the mandate contained on the face of invoices. Through such ingenuity of the appellant, the fulfillment of condition (3), could have been easily accepted. The ingenuity of the appellant to use the invoice for the purpose suffices for the purposes of condition (3) as a document evidencing payment of appropriate sale tax or value added tax having been borne by the importer. In view of this, as a specimen the tax invoice which was issued by the appellant during the impugned period is reproduced below:-

TAX INVOICE.

HIYA OVERSEAS PVT. LTD. 602, "Aniket" Nr. Municipal Market, C. G. Road, Navrangpura Ahmedabad 380009 E-mail : vijay@indianexport.in	Invoice No. L-1	Dated 14-Apr-2009
	Delivery Note	Mode/Terms of Payment CASH
	Supplier's Ref. HOPL/09-10	Other Reference(s)
Buyer CLASSIC MICROTECH PVT. LTD. AT & PO. SONASAN SALAL SONASAN HIGHWAY PRANTIJ HIMMATNAGAR	Buyer's Order No.	Dated
	Despatch Document No.	Dated
	Despatched through	Destination SONASAN
	Terms of Delivery	

Description of Goods	Quantity	Rate	per	Amount
ZIRCON SAND	75,000.000 KGS	51.50	KGS	38,62,500.00
OUTPUT VAT 4 %		4	%	1,54,500.00
OUTPUT ADDITIONAL VAT 1%		1	%	38,625.00
Total	75,000.000 KGS			40,55,625.00

Amount Chargeable (in words) E & O. E

Forty Lakh Fifty Five Thousand Six Hundred Twenty Five Only

Remarks :

"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

Company's VAT TIN : 24074203943 DT. 26-12-06

Company's CST No. : 24574203943 DT. 26-12-06

Buyer's VAT TIN/Sales Tax No. : 24050800738

Declaration

We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.

for HIYA OVERSEAS PVT. LTD.

Authorised Signatory

This is a Computer Generated Invoice

In view of this, the CA certificate was only an additional document and was definitely worthy of credit, even though not happily worded, as it appears that the Chartered Accountant has also pronounced on the aspect of unjust enrichment which was strictly not his domain. But, it should not prevent the benefit of refund to be entertained for sanction. Accordingly, in view of the foregoing this court is inclined to accept the appeal of the appellant and direct to department to proceed with the refund with consequential relief.

5. Appeal is allowed.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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