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

REGIONAL BENCH- COURT NO. 3

CUSTOM APPEAL NO. 10593 of 2015-SMB

(Arising out of OIA-AHM-CUSTM-000-APP-343-14-15 Dated 24/11/2014 passed by Commissioner of CUSTOMS-AHMEDABAD)

Anand Tradelink P Ltd **........Appellant**
401, Span Trade Centre,
Opp Kochrab Ashram, Paldi,
AHMEDABAD,
GUJARAT

VERSUS

Commissioner of C.-Ahmedabad **........Respondent**
CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD,
GUJARAT

APPEARANCE:
Shri K J Kinariwala, Consultant appeared for the Appellant
Shri N P Makwana, Superintendent (AR) appeared for the Respondent

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

FINAL ORDER NO. 13121/2024

DATE OF HEARING:28.10.2024
DATE OF DECISION: 10.12.2024

RAMESH NAIR

The brief facts of the case are that the appellant had filed refund claim in respect of 4% SAD paid on the import of the goods which was subsequently sold in the domestic market. During the scrutiny of the claim, the department had raised objection in respect of some invoices which involved the claim of Rs.1,57,818/- on the ground that the description in the sale invoice is not matching with the imported goods on which the appellant have waived/ withdrawn the claim in respect of Rs.1,57,818/- . Accordingly, the refund except Rs.1,57,818/- was sanctioned. The appellant being aggrieved by the sanctioned order filed an appeal before the Commissioner (Appeals) who has rejected the appeal. Therefore, the present appeal was filed which is limited for claim of Rs.1,57,818/-.

2. Shri K J Kinariwala, Ld. Consultant appearing on behalf of the appellant at the outset submits that though, the appellant have waived and withdrawn the claim of Rs.1,57,818/- however, subsequently on the basis of documents, they found that they are eligible for the refund of this amount of Rs.1,57,818/- also. He submits that both the lower authorities have rejected the claim only on the ground that the appellant had waived of the claim. It is his submission that since the order was passed on this waived amount also the order is appealable and appeal was rightly filed before the Commissioner (Appeals) and thereafter, before this Tribunal. He submits that since now, the appellant is in position to satisfy that the claim of Rs.1,57,818/- is also legally eligible to the appellant, the same may be considered on merits and facts. He placed reliance on the Supreme Court decision in the case of Dunlop India Ltd vs. Union of India 1983 (13) E.L.T. 1566 (SC).

3. Shri N P Makwana, Ld. Superintendent (AR) appearing on behalf of the revenue, reiterated the findings of the impugned order. He submits that once the appellant have waived of a particular amount of refund claim and withdrawn the same, the same was not existing before the sanctioning authority, therefore, there is no question of any proceeding on the said amount.

4. I have carefully considered the submissions made by both the sides and perused the records. I find that though, the appellant had waived and withdrawn the claim of Rs.1,57,818/- at the time of processing the claim however, later on they have gathered the documents whereby, they claimed that they can establish that the goods sold for which the refund was claimed are out of imported goods only. In this position though, the appellant had waived the claim but subsequently when they are in position to satisfy the department the correctness of their claim as per the principles of natural justice the appellant should get one opportunity to justify their claim.

Accordingly, as regard the claim amount of Rs.1,57,818/- the matter is remanded to the adjudicating authority to consider a fresh refund claim only for an amount of Rs.1,57,818/-, in view of the documents produced/ to be produced before the sanctioning authority.

5. The appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 10.12.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Bharvi