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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10312 of 2020-SM

(Arising out of OIA-AHD-CUSTM-000-APP-468-19-20 dated 06/12/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

NETAFIM IRRIGATION INDIA PVT LTD ....**Appellant**

Plot No. 268-270, 271-B, Gidc, Manjusar, Savli
Vadodara, Gujarat

VERSUS

C.C.-AHMEDABAD ....**Respondent**

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:

Shri. Manish Jain, Advocates for the Appellant
Shri. Vijay G Iyengar, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10156 /2023

DATE OF HEARING: 19.01.2023
DATE OF DECISION: 19.01.2023

Raju

This appeal has been filed by Shri. NETAFIM IRRIGATION INDIA PVT LTD against rejection of refund claim.

2. Shri. learned Counsel pointed out that they had filed a refund claim under Notification No. 102/2007-Cus dated 14.09.2007. A show cause notice was issued to them relying on the CBEC Circular No. 06/2008-Customs dated 28.04.2008. The appellant had filed two refund claims in the month of March-2015 while as per this Circular the appellant could have filed only one claim in a month. A show cause notice was issued to the appellant seeking to reject the claim relying on the aforesaid Circular of the CBEC which prescribes that only one claim filed in a month. The appellant relied on the certain decisions which held that more than one refund claim can be filed in a month. Relying on those decisions the matter was remanded by the

Commissioner (Appeals) to the original adjudicating authority. In remand proceedings the original authority relied on a new ground for rejection of refund claim. Learned counsel pointed out that no new ground could have been raised as the said ground was not raised in the original adjudication order and no appeal against said order was filed by the revenue.

2.1 He relied on the following decision in support of his argument that more than one refund claim could have been filed under Notification No. 102/2007-Cus dated 14.09.2007.

- Commissioner vs Reliance Ports and Terminal Ltd-2016 (334) ELT 630(Guj.)
- Gazal Overseas Vs CC-2016 (332) ELT 77 (T)
- CCE Vs Apex Chromatography -2017 (353) ELT 236 (T)
- CC Vs Shaji and Company-2018 (2) TMI 953-CESTAT, Bangalore
- LS Cable India P. Ltd VS CCE-2016 (338) ELT 431 (T)
- Principal Commissioner V LS Cable India P. Ltd-2016 (338) ETL A-143 (Del.)

3. Learned AR relies on the impugned order. Learned AR argued that while the said issue was not raised in the show cause notice issued by the revenue, however opportunity to defend on the said issue was provided. He argue that the matter can be remanded back to the original adjudicating authority.

4. I have considered the rival submissions. I find that in the first adjudication order only the issue of filing two refund claims in the single month was raised to reject the refund claim. The appellant's filed an appeal before the Commissioner (Appeals) against the said order and Commissioner (Appeals) gave his findings only in respect of the said issue while remanding the matter. No appeal was filed by the revenue against the said order of Commissioner (Appeals). In this background I find that the revenue has travelled beyond the issues raised in the original proceedings. I am of the view that this new ground cannot be raised by the revenue as additional ground as the same was not raised in the original proceeding.

5. I find that the issue regarding filing of one or more refund claims is covered by the decisions in the case of APEX CHROMATOGRAPHY-2017

(353) E.L.T. 236 (Tri.-Hyd.). Following has been observed in similar circumstances:-

> *"4. I have heard the submission made before me. The refund has been rejected by the original authority by relying upon Board Circular No. 6/2008-Cus. dated 28-04-2008 and stating that only one refund claim can be filed in a month. The commissioner (Appeals) has rightly considered the Board Circular only prescribes procedure and time lime for expeditious settlement of claims, and does not lay down any condition for rejection of refund claims. It it also observed in Para 3 of the impugned order that respondents have fulfilled all the conditions of the Notification No. 201/2007 in terms of which refund claim is to be allowed. Further, the Board Circular is binding on the Department and cannot be the sole basis for rejection of claim. In view thereof, I do not find any ground to interfere with the impugned order. The appeal is dismissed".*

6. Relying on the aforesaid decision, the appeal is allowed with consequential relief in the above terms.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Prachi