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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 11615 of 2017-SM

[Arising out of Order-in-Original/Appeal No AHD-CUSTM-000-APP-028-17-18 dated 01.06.2017 passed by Commissioner of CUSTOMS-AHMEDABAD]

Muskan International **.... Appellant**
Plot No. 87, Tribhuvan Industrial Estate, GIDC
Kathwada Road, Kathwada, AHMEDABAD
GUJARAT

VERSUS

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

APPEARANCE :

Shri Yuvraj Thakore, Chartered Accountant for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) for the Revenue.

CORAM:

HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

DATE OF HEARING : 19.03.2025
DATE OF DECISION : 21.07.2025

FINAL ORDER NO. 10577/2025

DR. AJAYA KRISHNA VISHVESHA :

This appeal is directed against the Order-in-Appeal No. AHD-CUSTM-000-APP-028-17-18 dated 01.06.2017 passed by Commissioner (Appeals) through which he upheld the Order-in-Original dated 10.08.2016 passed by the first Adjudicating Authority and rejected the appeal filed by the appellant.

2. The appellant filed refund application before the Adjudicating Authority Deputy Commissioner for an amount of Rs. 10,91,761/- which was rejected

by the adjudicating authority on the ground that the appellant has not fulfilled all the conditions prescribed vide Notification No. 102/2007-Cus dated 14.09.2007 read with procedure prescribed by CBEC vide Circular No. 6/2008-Cus dated 28.04.2008 and Circular No. 16/2008-Cus dated 13.10.2008.

2.1 The brief facts of the case are that the appellant had imported goods under 20 Bills of Entry as mentioned in para 2 of the Order-in-Original. It was verified and reported that the appellant has paid all the applicable dues including the additional duty of Customs on the imported goods at the time of importation of the said goods. They have submitted the original importer's copy of Bills of Entry and copies of challans evidencing payment of duty. It was found by the adjudicating authority that the appellant has produced copies of sales invoices issued in the name of their consignment agent wherein CST/ VAT was not shown in such invoice and thus the condition number 2(d) of the Notification No. 102/2007-Cus. dated 14.09.2007 is not fulfilled. Further, on scrutiny of the sales invoices issued by the consignment agent of the appellant, it was noticed that the same do not bear the endorsement/ rubber stamp / typed declaration regarding 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, which is required under Circular No. 6/2008-Cus. dated 28.04.2008 and hence the condition of para 2(b) of the Notification No. 102/2007-Cus. dated 14.09.2007 is not fulfilled. Further the adjudicating authority has found that as per Circular No. 16/2008-Cus dated 13.10.2008, it is clarified that in case of sale of imported goods by importer through consignment agent/ stockiest, refund of 4% CVD shall be granted by Customs field formations, subject to the condition that the Consignment agent/ stockiest has been authorised to sell the imported goods and that each of the sale invoices issued by the consignment agent /stockiest indicates that the sale is made by him on behalf of the importer in the capacity of consignment agent/ stockist. The Adjudicating Authority found that the appellant has not complied with the conditions prescribed vide Notification No. 102/2007-Cus dated 14.09.2007 read with procedure prescribed by CBEC Circular No. 6/2008-Cus dated 28.04.2008 and Circular No. 16/2008-Cus dated 13.10.2008 and hence the exemption granted vide above notifications with regard to sale made through his consignment agent, is inadmissible to them.

3. Feeling aggrieved with the Order-in-Original as mentioned above, appeal was filed before Commissioner (Appeals). The Commissioner (Appeals) observed in the impugned Order-in-Appeal that refund of additional duty of Customs leviable thereon under sub-Section of Section 3 of Customs Tariff Act, 1975 is subject to fulfilment of all the conditions prescribed vide Notification No. 102/2007-Cus. dated 14.09.2007 read with procedure prescribed by CBEC Circular No. 6/2008-Cus. dated 28.04.2008 and Circular No. 16/2008-Cus. dated 13.10.2008 and on examination of the documents submitted by the appellant, the adjudicating authority found that the said conditions were not fulfilled by the appellant. The appellant had not given any proper justification for not fulfilling the conditions/ procedures as prescribed by the above mentioned notification in their grounds of appeal. The Adjudicating Authority has given cogent findings in the matter that the conditions required to be fulfilled for sanction of refund claim of additional duty of Customs as prescribed by the statute and the authorities are well justified on the above grounds and rejected the appeal. Aggrieved by this impugned Order-in-Appeal dated 01.06.2017, the present appeal has been filed before this Tribunal.

4. In memorandum of appeal, the learned Chartered Accountant for the appellant has stated that the impugned order is a non-speaking order as the learned Commissioner (Appeals) has not dealt with all the submissions advanced by the appellant in the course of proceedings before him therefore, the impugned order is liable to be set-aside. The learned Counsel for the appellant has also submitted that lower authority has failed to give due consideration to the fact that the appellant had tendered four different certificates issued by Chartered Accountant M/s. B.G. Gokhru & Company, Mumbai, certifying month-wise details of purchase made by the consignment agent M/s. Sonal Non-ferrous Metals Pvt. Limited from the appellant for the months of June, 2015, July, 2015, August, 2015 and September, 2015 as well as payment of VAT made by the said consignment agent during the said months. The appellant had also produced copies of challans evidencing payment of VAT by the consignment agent for all these months. However, the certificates for the months of July, 2015, August, 2015 and September, 2015 have escaped attention of lower authorities leading them to summarily reject the claim on the ground that the appellant had produced certificate for the month of June, 2015 only. Therefore, the impugned order is a non-speaking order inasmuch as it has failed to deal with all the documentary evidence produced by the appellant and hence, the same is liable to be quashed and set aside on this ground alone. The learned Chartered Accountant also submitted that the lower authorities have also failed to give due consideration to the certificate dated 24.11.2015 given by Chartered Accountant Akhilesh Deopura & Company, Ahmedabad in the form of certifying that the appellant had authorized M/s. Sonal Non-Ferrous Metals Pvt. Limited to sell the impugned goods under agreement dated 01.04.2014 and the appellant being the importer had paid or reimbursed the CST/VAT to

the consignment agent M/s. Sonal Non-Ferrous Metals Pvt. Limited. Therefore, on this ground also, the impugned order is liable to be quashed and set aside. Learned Chartered Accountant prays that the appeal filed by the appellant may be allowed.

5. On the other hand, learned AR for the department reiterate the findings of impugned orders. He opposed the contention of the learned Chartered Accountant and prays that the appeal of the appellant be rejected.

6. I have heard the learned Chartered Accountant for the appellant and learned AR for the department. Learned Chartered Accountant for the appellant submits that the learned Commissioner has failed to consider the arguments raised by the appellant before him which had considerable force. The learned Commissioner has also failed to consider the Chartered Accountant's certificates for the months July 2015, August 2015 and September 2015 and observed in the Order-in-Original that the appellant had produced Chartered Accountant certificate only for June 2015 whereas in fact the appellant had filed the certificates for the month of July 2015, August 2015 and September 2015 as well. In the light of above factual position of non-consideration of these certificates, I am of the view that impugned order passed by learned Commissioner is not sustainable and it is liable to be set-aside and the appeal is liable to be allowed by way of remand to the Original Adjudicating Authority for considering all the arguments raised by the appellant and to pass a suitable order considering All the Chartered Accountant's certificates as pointed out by the appellant and in accordance with all the relevant notifications, circulars and orders on the issue.

Accordingly, the impugned order is set-aside and the appeal is allowed by way of remand to the Adjudicating Authority.

(Order pronounced in the open court on 21.07.2025)

(Dr. Ajaya Krishna Vishvesha)
Member (Technical)

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