CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70013 of 2021

(Arising out of Order-in-Appeal No.NOI-EXCUS-000/APP-016-20-21 dated 13/05/2020 passed by Commissioner (Appeals) Central Goods & Service Tax, Noida)

M/s AC Impex INC, **.....Appellant**
(D 206, Sector-61, Noida-201301)

VERSUS

Commissioner of Customs, Noida **....Respondent**

(ICD, Noida Customs, Dadri Port, Noida-201311)

APPEARANCE:

Shri Sunil Kumar, Advocate for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.70576/2024

DATE OF HEARING : 11 July, 2024
DATE OF DECISION : 11 July, 2024

SANJIV SRIVASTAVA:

This appeal is directed against order in appeal No NOI-EXCUS-000-APP-016-20-21 dated 13.05.2020 of the Commissioner (Appeal) Central Goods & Service Tax Noida. By the impugned order following has been held:-

"5. I have carefully gone through the above mentioned impugned order and contents of appeal oral as well written submission of the party along with relevant Act/Rule. I find that the adjudicating authority has rejected the refund claim of the appellant simply on the ground of time limitation and without affording an opportunity of personal hearing and without issuing the Deficiency Memo/Show Cause Notice. Before proceeding further, let me enter into the background of the case. The genesis of delay of refund claim starts from filing the refund claim in respect of 7 Bills

of Entries involving SAD amounting to Rs. 467593/- before the Authority of ICD Loni Port on 25.10.2017. This said claim also included two B/Es involving the SAD of 169082/- pertaining to ICD Dadri which required the filing of refund claim before the authority of ICD Dadri. In short, the refund claim involving these two B/Es was submitted at ICD Loni alongwith B/Es pertaining to ICD Loni, as the claim of these two B/Es should have been submitted at ICD Dadri.

5.1 The Assistant commissioner (Refund), ICD, Loni granted the SAD refund of Rs. 2,98,511/- out of Rs. 4,67,593/- through refund order No. 802/Refund/ICD-Loni/2017-18 Dated 22.03.2018 and rest Amount Rs. 169082/- was not sanctioned by the authority against two BE's 9869672 dtd. 29.05.2017 & 8162268 Dtd. 12.01.2017. The said matter came in their knowledge when they received the aforesaid refund order on dated 27.07.2018. On Dated 03.08.2018, they requested the said authority of ICD Loni to transfer the documents of BE. No. 9869672 Dated 29.05.2017 & 8162268 Dated. 12.01.2017 to the Dadri Port. But the documents were not transferred to the Dadri port by the officers of the Loni Port and no information was passed to the applicant regarding non transfer of documents to the Dadri Port. The appellant was left with no other option except to go in RTI which resulted the receipt of the original documents in respect of said B/Es and filing the refund claim before the ICD Dadri authorities on 03.10.2018 which was rejected on the basis of time limitation vide impugned order dated 11.01.2019 which was received by the appellant on 29.07.2019 and accordingly instant appeal was filed.

5.2 In view of the above, it is very surprising that the appellant submitted the said two B/Es along with their supporting documents for refund claim of SAD at ICD Loni instead of ICD Dadri. It was the prime duty of the appellant to see that the refund claim in respect of B/Es *cleared from ICD Dadri is to be filed before the authorities of ICD Dadri. Further, the appellant claims that Refund order no. 802/Refund/ICD-Loni/2017-18 Dated 22.03.2018 passed by the Assistant Commissioner (Refund), ICD Loni was received by them on 27.07.2018 i.e. after four months of the issuance of order. But, now-a-days the refund amount is transferred directly to claimant's bank account through RTGS When the amount was transferred in their bank account, they might have taken care of that at that time. Again, I am surprised to know that the appellant received the impugned order dated 11.01.2019 on 29.07.2019 i.e. after the lapse of six months against which the present appeal has been filed by them The appellant might have wrongly mentioned the receipt date in order to avoid filing of delay condonation*

5.3 Now, I find that instant appeal has been filed before me against the impugned order which denies the refund claim to the appellant on the basis of time limitation as per requirement under section 27 of Customs Act, 1962, read with Circular No. 06/2008-Cus dated 28.04.2008 and Circular No 16/2008-Cus 13.10.2008. The adjudicating authority has passed the logical order on the basis of available records.

6. In the light of the above discussion, I do not find any infirmity with the impugned order and uphold the same by rejecting the appeal of the appellant."

1.2 Though there is delay of about 24 days in filing this appeal before the Tribunal, however the same being covered by the order dated 08.03.2021 of Hon'ble Supreme Court in Suo Motto Writ Petition No.03/2020, directing as follows, the appeal has been listed for disposal by the registry.

"2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions: -

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

2.1 Have heard Shri Sunil Kumar, Advocate for the appellant and Shri A K Chaudhary, Authorized Representative for the revenue.

3.1 I have considered the impugned order along with submissions made in appeal and during the course of arguments.

4.1 Undisputed facts in the present case are that-

- Appellant filed application seek refund of SAD at ICD Loni seeking refund of Rs 4,67,593/- against seven bill of entries filed by them for clearance of imported goods.

- Out of the seven bill of entries five were filed at ICD Loni and two (namely ***BE. No. 9869672 Dated 29.05.2017 & 8162268 Dated. 12.01.2017)*** were of ICD Loni.
- Refund in respect of five Bill of Entries filed at ICD Loni was allowed and credited to the account of appellant.
- Refund in respect of the two Bill of Entries which were filed at ICD Dadri was rejected by Refund order no. 802/Refund/ICD-Loni/2017-18 Dated 22.03.2018 claimed to be received by the appellant on 27.07.2018.
- Appellant thereafter requested the concerned authorities at ICD Loni to transfer there refund claims in respect of these two B/E's to ICD Dadri on 03.08.2018.
- As nothing was heard from the ICD Loni, they moved an application under RTI and got back their documents relating to these two B/E's and filed the refund claim to authorities at ICD Dadri on 03.10.2018.
- This refund claim has been rejected by the authorities at ICD Dadri vide order dated 11.01.2019 which was received by the appellant on 29.07.2019
- The appeal filed by the appellant has been rejected by the Commissioner (Appeal) vide impugned order. Interestingly without going into the issue of delay in filing the appeal, Commissioner (Appeal) has decided the appeal on merits against the appellant.

4.3 The issue involved in the present appeal is no longer res-integra. The appellant had filed the refund claim in respect of these two bill of entries within the prescribed period of limitation, albeit with the authorities at ICD Loni instead of ICD Dadri. In case the authorities at ICD Loni found themselves having no jurisdiction to handle the refund claims in respect of these two Bill of Entries, they should have immediately returned back the refund claim along with the original documents to the appellant immediately for being filed before appropriate authorities or could have by themselves transferred the same to authorities at ICD Dadri. However authorities did not did either, but proceeded to deny the refund claim in respect of these Bill of Entries vide order dated 22.03.2018 which was received by appellant of 27.07.2018. The documents required for filing the refund claim were only returned back to the appellant only when they moved an application under RTI for the same.

4.4 In the case Apar Industries (Polymer Division) [2016 (333) E.L.T. 246 (Guj.)] Hon'ble Gujarat High Court has observed as follows:

> ***"5.*** *Admitted facts are that the petitioner had made necessary declarations in format of Annexure-19 which is prescribed under Rule 19 of the said Rules. Along with it, the petitioner had also supplied documents of proof of export and for that rebate would be made. We notice that Rule 18 of the said Rules pertains to rebate of duty and provides for rebate claims by following the procedure prescribed by the Government of India under a notification. Rule 19 of the Rules pertains to export without payment of duty. Thus, both these Rules operate in vastly different fields. It is in terms of Rule 18 that the Government of India under Notification No. 19/2004 laid down detailed procedure for making rebate claims. On the other hand, Annexure-19 is prescribed for declaration necessary for export without duty in terms of Rule 19 of the said Rules.*
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> ***6.*** *Thus, making of the declarations by the petitioner in format of Annexure-19 was purely oversight. In any case, neither Rule 18 nor notification of Government of India prescribe any procedure for claiming rebate and provide for any specific format for making such rebate applications. The Department, therefore, should have treated the original applications/declarations of the petitioner as rebate claims. Whatever defect, could have been asked to be cured. When the petitioner represented such rebate applications in correct form, backed by necessary documents, the same should have been seen as a continuous attempt on part of the petitioner to seek rebate. Thus seen, it would relate back to the original filing of the rebate applications, though*

in wrong format. These rebate applications were thus made within period of one year, even applying the limitation envisaged under Section 27 of the Customs Act. Under the circumstances, without going into the question whether such limitation would apply to rebate claims at all or not, the Department is directed to examine the rebate claims of the petitioner on merits. For such purpose, revisional order and all the orders confirmed by the revisional order are set aside. The Department shall process and decide rebate claims in accordance with Rules."

4.5 Accepting the above order of the Hon'ble High Court, Board has vide Circular No 1063/2/2018-CX dated 16.02.2018 clarified as follows:

"Sub: Orders of Supreme Court, High Courts and CESTAT accepted by the Department and on which no review petitions, SLPs have been filed–reg.

4.1 Department has accepted the order of the Hon'ble High Court of Gujarat in the case of Apar Industries (Polymer Division) vs Union of India in Special Civil Application No. 7815 of 2014. The issue examined in the order is as follows, Manufacturer exporter, M/s Apar Industries (Polymer Division) filed Rebate claims in incorrect format under Rule 19 instead of as required under Rule 18. The same was re-filed correctly but department held that the subsequent filing was time barred. ***The Hon'ble Court held that the intention of claiming rebate was clear and first application should have been treated by the department as rebate application. Whatever defect arose from the incorrect filing could have been rectified. In such situations, re-submission should be seen as a continuous attempt and therefore in the matter department was directed to examine the rebate claims of the petitioner on merits."***

4.6 In case of Sri Vasavi Gold & Bullion (P) Ltd [2018 (359) E.L.T. 588 (Tri. - Chennai)] Chennai Bench observed as follows:

*"**5.**No doubt, the appellant had filed the refund claim at Sea Customs instead of at Air Cargo Complex. Nonetheless, instead of issuing deficiency memo pointing out the jurisdictional discrepancy, Sea Customs Commissionerate started processing the claim and in fact issued a memo seeking further documents. In case, had the appellant been informed earlier about wrong filing of the claim, he could have very well withdrawn the claim and filed it with Air Cargo Complex. On the other hand, Sea Customs Commissionerate, in fact, transferred the claim to Air Cargo Complex. This being so, it is to be considered that the claim was all along with the Customs Department and the date of filing the claim will have to be reckoned as that of when the claim was filed in Sea Customs. There is also no dispute that when the claim was filed in Sea Customs it was not filed within time. For these reasons, we find that it is proper to set aside the impugned order and remand the matter back to the concerned original authority (refund sanctioning authority) in Air Cargo Complex to consider the claim of the appellant as if the same had been filed within time.*

4.7 In case of Lipi Data Systems Ltd [2019 (370) E.L.T. 444 (Tri. - Mumbai)] Mumbai Bench observed as follows:

5. Heard from both sides and gone through the case records as well as judicial decisions cited by the adversaries. The dispute in the present case revolves round the consideration of the applicability of limitation period to the refund application which was filed in another jurisdiction inadvertently within the stipulated time of one year but forwarded almost after five months to the jurisdictional authority and if that period is to be excluded for the purpose of computation or not. Appellant in the grounds of appeal has cited 2 judgments reported in 1988 (34) E.L.T. 716 (Tri.) in the case of CCE, Allahabad v. Ghosi Sahkari Kray-Vikray Prakriyatmak Samit, Azamgarh and reported in 1997 (19) RLT 479 (H.C.) in the case of Modi Rubber Ltd. v.

Union of India & Others. In the first referred judgment it was held way back in 1988 by the Tribunal that when the assessee had made the claim before wrong authority, the authority should have guided the assessee immediately to the proper officer and if not so guided, no fault can be attributed to the assessee. In the judgment of Modi Rubber Ltd., cited supra, Hon'ble Delhi High Court had categorically held that refund claims filed before the authority not having territorial jurisdiction is not void ab initio and can be treated as refund claimed if otherwise valid. In the decision of Sri Vasavi Gold & Bullion (P) Ltd. (supra), Commissioner of Customs (Airport), Chennai v. Nokia India Pvt. Ltd. (supra) and CCE v. AIA Engineering Ltd. (supra) it has been held by CESTAT, Chennai and Ahmedabad that such filing before the wrong forum cannot be considered as void or non-est application and filed beyond the period of limitation. In the case of M.P. Steel Corporation v. Commissioner of Central Excise (date of judgment 23-4-2015) [2017 (50) S.T.R. 205 (S.C.)] it has been held by the Hon'ble Supreme Court that principle of Section 14 of the Limitation Act which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued ... Therefore, the date of filing of application before the Dadri Commissionerate is to be taken for the purpose of computation of refund claim on SAD. Another aspect which is required to be placed on record is inaction of the departmental authorities on the said refund application filed in Dadri Commissionerate, for which five months were unn

ecessarily wasted and had it been the jurisdictional authority, Government of India would have been burdened with payment of interest on late disposal of the refund claim. No finding is available in the order of the Commissioner (Appeals) as to why such application was forwarded after more than 5 months after payment of SAD *has been wrongly made to Dadri authorities and on that count the applicant would suffer the financial loss when the fault lies at the end of the departmental authority in not acting upon properly.*

4.8 In case of Ids Denmed Pvt. Ltd [2015 (325) E.L.T. 639 (Mad)] Hon'ble Madras High Court observed as follows:

> ***"5.*** *On considering the submissions made by the learned counsel on either side and upon perusing the materials available on record, this court is of the view that the impugned order dated 6-8-2015 is liable to be set aside and accordingly, the same is set aside. The 2nd respondent is directed to send the original refund application submitted by the petitioner to the Assistant Commissioner of Customs (Airport and Air Cargo). The petitioner is also permitted to submit a copy of the refund application to the Assistant Commissioner of Customs (Airport and Air Cargo) along with the copy of this order, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the Assistant Commissioner of Customs (Airport and Air Cargo) shall consider the same and pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter. It is made clear that if the petitioner fails to avail this opportunity, it is open to the respondents to pass appropriate orders."*

4.9 In view of the above the above decisions and the Circular issued by the Board I do not find any merits in the impugned order.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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