IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. C/50098, 50064, 50095, 50096, 50097/2015-CU[SM]

(Arising out of Order-in-Appeal No. NOI/EXCUS/000/APPL/155/2014-15 dated 19/09/2014, O.I.A. No. NOI/EXCUS/000/APPL/153/2014-15 dated 16/09/2014, O.I.A. No. NOI/EXCUS/000/APPL/158/2014-15 dated 19/09/2014, O.I.A. No. NOI/EXCUS/000/APPL/157/2014-15 dated 19/09/2014 & O.I.A. No. NOI/EXCUS/000/APPL/156/2014-15 dated 19/09/2014 all are passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida)

M/s Evershine International Appellants
Vs.
Commissioner of Central Excise & Service Tax, Noida Respondents

Appearance:
Shri Amit Mahajan (Advocate)
for Appellant
Shri Pradeep Kumar Dubey (Supdtd.) AR for Respondent

CORAM:
Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 02/02/2018
Date of Decision : 02/02/2018

FINAL ORDER NOs. – 70566-70570/2018

Per: Anil Choudhary

The issue in these appeals is whether the claim of refund of SAD under Notification No.102/2007–Cus have been rightly rejected.

2. The brief facts of the case are that the appellants are importers of Aluminium Scrap etc. and on import of scrap vide various bills of entry, cleared the same from the customs on payment of appropriate duty of customs including additional duty of SAD (Special Additional Duty of Customs). Further case of the appellants is that they have resold the goods imported through their consignment agent M/s Continental Metal Company, Faridabad, registered dealer under the provisions of Central Excise and State VAT. The consignment agents have sold the goods on their behalf on payment of VAT/CST and deposited the same with the State Exchequer. Further the Invoices issued by the consignment agent specify them as the supplier of goods by way of import giving the various requisite details. Pursuant to such resale of the imported goods upon payment of Sales Tax/VAT the appellant being entitled to apply for refund applied from time to time under Notification No.102/2007–Cus. Vide various Orders-in-Original, the refund claims were rejected for want of sufficient details. It is the case of the appellants that they did not receive the notice of the date fixed for hearing before the Original Authority. They could not make effective appearance and as such their refund claim is rejected by ex parte orders, observing that the appellants failed to reconcile the resale of goods made with the bills of entry and further unable to provide the details of payment of VAT and also not produced the CA's certificate to the effect that they have not passed the burden of additional duty of customs to their buyers. Further

appellants have not provided the certificate from their statutory auditor/accountant who certified the annual accounts, coordinating the payment of Sales Tax/VAT on the imported goods with the sales Invoices. Thus the claims were rejected. Being aggrieved the appellant had preferred appeals before the Learned Commissioner (appeals) who vide the impugned orders have been pleased to agree with the findings of the Original Authority and dismissed the appeals. It was further observed that the appellants have not enclosed the chart of the sale of goods by the consignment agent which correlates the sale of goods with the quantity imported. Accordingly, the appeals are rejected.

3. The Learned counsel Mr. Mahajan in the course of argument before this Tribunal have taken me through some sample invoices of resale through the consignment agent M/s Continental Metal Company. Such invoices I find contain charging of Sales Tax/VAT for the resale and also mention the name of the appellant as the importer of the goods. In this view of the matter, I allow these appeals by way of remand, setting aside the impugned order, to the Adjudicating Authority. The appellants are directed to produce before the Adjudicating Authority proper reconciliation of the goods resold with the import documents and also produce evidence of deposit of Sales Tax/VAT upon the resale and also satisfy that they have not passed on the benefit of credit of SAD to their buyers. The Adjudicating Authority on being satisfied shall pass a reasoned order, in accordance with law on the refund claims. The appellants are also directed to appear before the Adjudicating Authority within a period of 60 days from receipt of a copy of this order along with the requisite details and the concession charts they want to rely upon. Thus these appeals are allowed, by way of remand.

(Dictated & Pronounced in Court)

Sd/-

(Anil Choudhary)
Member (Judicial)Lks