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

APPEAL No. C/70523/2017-CU[SM]

(Arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-017-17-18 dated 21/04/2017 passed by Commissioner (Appeals), Customs & Central Excise, Noida)

M/s Navyug Polystock Centre (P) Ltd. **Appellant**

Vs.

Commissioner of Customs, Noida **Respondent**

Appearance:

Absent on Call for Appellant
Shri Pawan Kumar Singh (Supdt.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing : 18/05/2018
Date of Decision & Pronouncement : 10/07/2018

FINAL ORDER NO. - **71370/2018**

Per: Archana Wadhwa

As nobody appeared for the appellant, I have gone through the impugned order and have heard learned A.R. appearing for the Revenue.

2. As per the facts on record, appellant is engaged in the business of trading of various items, which are being cleared by them on payment of 'Special Additional Duty' (SAD). The said 'SAD' is refundable to the importer on subsequent sale of the goods on payment of appropriate

VAT leviable there on, in terms of Notification No.102/2007-Customs dated 14/09/2007.

3. The dispute in the present appeal relates to refund of special amount to the extent of Rs.1 lakh claimed by the appellant in terms of the said Notification. As per facts, the appellant paid duty of Rs.2,24,672/-(Two lakhs twenty four thousands six hundred seventy two) in respect of Bill of Entry dated 15/12/2014. The said amount subsequently claimed by them as refund was wrongly mentioned as Rs.1,24,672/-(One lakh twenty four thousands six hundred seventy two). The same was sanctioned by the Authorities.

4. Relying the above mistake, the appellant filed the claim for the balance of Rs.1 lakh which stands denied by the Authorities on the sole ground that their refund claim in respect of Bills of Entry dated 15/12/2014 has already been settled and as per the Circular No.16/2008-Customs dated 13/10/2008 issued by Board, refund can be filed only once in respect of Bills of Entry. As such, the original as well as Appellate Authority denied the refund claim.

5. It is seen that admittedly the appellant had paid SAD of Rs.2,24,672/-(Two lakhs twenty four thousands six hundred seventy two) at the time of clearance of the goods vide the said Bills of Entry. As the entire goods were sold by them subsequently, he was admittedly entitled to the refund of the entire 'SAD'. As per the appellant, the amount of duty paid was not clear from the Bill of Entry and as such there was a clerical error on their part, reducing the claim of Rs. 1 lakh. In such a scenario denial of the refund was not justified.

6. I fully agree with the appellant. The Board Circular is only to the effect that the refund claim should be filed for the whole quantity covered by Bill of Entry and in case refund are filed, for a part quantity, the same would be sanctioned for that part only. This Circular covers a situation where the importer does not sell the entire quantity covered by one Bill of Entry and only sells a part of the same. It is in that context the Board has clarified that if a part quantity is sold, the refund would be restricted to that part quantity only. The said Circular has no bearing on the dispute in the present case.

7. Admittedly, the appellant had sold the entire quantity covered by the Bill of Entry, thus entitled to the

refund of entire SAD of Rs.2,24,672/-(Two lakhs twenty four thousands six hundred seventy two). The refund to the extent of Rs.1,24,672/-(One lakh twenty four thousands six hundred seventy two) was filed inadvertently. They have also filed C.A. certificate indicating that the said less claiming of refund was on account of clerical mistake. Inasmuch as the same is a clerical error, the rejection of the remaining claim was not justified. The Revenue is not disputing the fact that otherwise the entire goods covered by Bill of Entry were sold and the appellant is entitled to refund of entire 'SAD' so paid by them. In such a scenario, I find no reasons to deny the balance claim of Rs.1 lakh also. Accordingly, impugned is set aside and appeal is allowed with consequential relief to the appellant.

(Pronounced in Court on 10/07/2018)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks