CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Customs Appeal No.71331 of 2018

(Arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-147 & 148-18-19 dated 28/06/2018 passed by Commissioner (Appeals) Customs & Central Tax, Noida)

Commissioner of Customs, Noida .....**Appellant**

(Noida)

VERSUS

M/s Klaxon Trading Pvt. Ltd. ....**Respondent**

(A-97-B, Khasra No.50/4, Behind Friends

Dharam Kanta, Shahbad Daultapur, Delhi-110042)

APPEARANCE:

Shri Shiv Pratap Singh, Authorised Representative for the Appellant
Absent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO.71839/2019

DATE OF HEARING :13 September, 2019
DATE OF DECISION : 13 September, 2019

PER: ARCHANA WADHWA

Being aggrieved with the order passed by Commissioner (Appeals) vide which he has rejected the Revenue's appeal, Revenue has further filed the present appeal before the Tribunal.

2. On going through the impugned order, we find that the respondents imported goods vide various bills of entry on payment of Customs duty as also additional duty of Customs under Sub-section (5) of Section 3 of the Customs Tariff Act,

1975. In terms of the Notification No.102/2007-CUS dated 14/09/2007, the respondent is entitled to refunds of the additional duty of Customs paid by them in case the goods are further sold on payment of VAT. Accordingly the respondents filed an application for refund of SAD in terms of the said Notification.

3. The said refund claim was taken up for adjudication by the Original Adjudicating Authority, who, after verifying all the documentary evidences etc., sanctioned the refund claim. Being aggrieved with the said order of the Original Adjudicating Authority Revenue filed the appeal before Commissioner (Appeals) on the ground that the unjust enrichment angle had not been verified by the Assistant Commissioner, who had only relied upon the Chartered Accountant certificate. As such it was contended before the Commissioner (Appeals) that inasmuch as the assessee has not been able to satisfy that the additional duty does not stand recovered by him from the customers, the refund claim would be hit by bar of unjust enrichment.

4. The Commissioner (Appeals) considered the said ground of appeal and observed that the assessee is entitled to the refund of the additional duty of customs in terms of the provisions of Notification No.102/2007-CUS dated 14/09/2007. The assessee had admittedly paid the said duty and the Assistant Commissioner, while granting refund of the same has taken into consideration the entire documents and has observed that inasmuch as the buyer of the goods has not availed any

Cenvat credit, the SAD paid by the assessee was liable to be refunded to him. As regards unjust enrichment angle, it was observed that in terms of the Board Circular No.06/2008-CUS dated 28/04/2008 as also the subsequent Circular No.18/2010-CUS dated 08/07/2010, the certificate of the Chartered Accountant was sufficient to deal with aspect of unjust enrichment. The Commissioner (Appeals) also referred to the Tribunal order in the case of Commissioner of Customs vs. Apple India Pvt. Ltd. 2014 (301) E.L.T. 675 (Tri.-Bang.), Suvee Impex Pvt. Ltd. vs. Commissioner of Customs & Service Tax, 2016 (344) E.L.T. 241 (Tri.-Bang.) & Equinox Solution Ltd. vs. CC, Ahmedabad 2017 (357) E.L.T. 1041 (Tri.-Ahmd.), it was held in all these decisions that Chartered Accountant certificate declaring the sale value including additional duty of Customs is sufficient to prove that the duty burden has not been passed on the Customers. As such by referring to the said decision as also the Board's Circular, the Revenue's appeal and upheld the order of the Assistant Commissioner.

5. Not being satisfied with the said order of Commissioner (Appeals) Revenue has further filed the present appeal on the same very ground. Revenue has relied upon the Hon'ble Supreme Court decision in the case of Commissioner of Central Excise, Madras vs. Addison & Company Ltd. 2016 (339) E.L.T. 177 (S.C.) which was also relied upon before Commissioner (Appeals), who has observed that the same is not applicable to the facts of the present case.

6. We note that the refund of SAD in terms of the Notification No.102/2007-CUS is special case of refund available to the assessee in terms of the Notification itself. The same provides for refund of SAD in case of subsequent sale of imported goods on payment of VAT. As regards unjust enrichment Board itself has clarified the issue that Chartered Accountant certificate indicating non passing of duty to the customers is sufficient. Revenue is silent on the applicability of various Tribunal decisions to the facts of the present case, which stands referred to and relied upon by Commissioner (Appeals). Neither have they said anything above Board Circular. It is well settled that Revenue cannot argue against the Board's Circular which are in favour of the assessee.

7. In view of the foregoing, we find no reasons to take a different view than the other taken by the Original Adjudicating Authority and as also Appellate Authority. Accordingly, Revenue's appeal is rejected.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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