FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 15/09/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71033/2017-SM[BR] dated 11/09/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the **Customs Act, 1962.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/52634/2015	**Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C-56/42,..SECTOR 62, NOIDA, UTTAR PRADESH 201307
		Name and Address of Respondent
2		Lark Non Ferrous Metals Ltd H.no. 6885, Bas Sitab Rai,, REWARI ,HARYANA123401

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3 Bar Association, CESTAT, Allahabad

4 Director Publications, Customs, Excise. I.P. Estate, Delhi

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

6 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

7 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

8 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

9 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

11 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

12 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

DATE OF HEARING : 11/09/2017.
DATE OF DECISION : 11/09/2017.

Customs Appeal No. 52634 of 2015 (SM)

[Arising out of the Order-in-Appeal No. NOI/CUSTM/000/APPL/ 350/2014-15 Dated 30/01/2015 passed by The Commissioner, Customs, Central Excise & Service Tax, Meerut (Appeals – II), Noida.]

CCE, Noida — Appellant

Versus

M/s Lark Non Ferrous Metals Ltd. — Respondent

Appearance

Shri P.K. Dubey, Authorized Representative (DR) – for the Appellant.

None – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

71033

Final Order No. /2017 Dated : 11/09/2017

Per. Ashok Jindal :-

Revenue is in appeal against the impugned order.

2. The brief facts of the case are that the respondent imported copper wire rod of 8 mm being a trader and the same has been cleared after payment of VAT/CST. The respondent filed refund claim of SAD of 4% paid under Notification No. 102/2007-CUS

dated 14/09/2007. The refund claim was rejected by the Adjudicating Authority relying on the CBEC Circular No. 18/2013-CUS. Dated 29/04/2013 on the ground that the DEPB strips/reward scheme strips cannot be reused for refund of 4% of SAD. The refund claim was rejected on the ground that in the invoices issued by the respondent, they have not mentioned bill of entry number, therefore, there is no co-relation. The said order was challenged by the respondent before the learned Commissioner (Appeals) who after examining the issue, allowed the refund claim. Aggrieved from the said order, Revenue is before me reiterating the grounds of rejection of refund claim by the Adjudicating Authority.

3. Heard the learned AR and perused the records.

4. I find that the learned Commissioner (Appeals) has examined the issue in detail, which is relevant as under :-

> "I have noticed in the impugned order that the appellant was provided only one hearing date i.e. 24/25.02.2014. Further the appellant has contested the adjudicating authorities claim regarding issuance of deficiency note. Therefore, I am of the view that the principles of natural justices were not upheld and the appellant were not given sufficient opportunity to plead their case. The CBEC vide its Circular No. 21/90-CX-8 dated 04.04.1990 and Circular No. 65/2000- Cus., dated 27.07.2000, has stated that hearing has to be provided in processing of refund claims. The intentions of the CBEC was to provide sufficient opportunity, before deciding the refund claim.

The Circular No. 18/2013 dated 29.04.2013 was issued to extend the time limit, set by the earlier Circular No. 27/2010-Customs dated 13.08.2010, for using the re-credited DEPB Scrips/Reward Scheme Scrips, in case of 4% SAD credit, up to 30.09.2013. The Circular No. 27/2010-Customs dated 13.08.2010 was issued subsequent to the Circular No. 18/2010-Customs dated 08.07.2010. Circular No. 18/2010-Customs 08.07.2010 was in respect of special drive for clearance of 4% SAD refund claims. The subsequent Circular No. 27/2010-Customs dated 13.08.2010, dealt with issue of re-credit of 4% SAD, as the EDI system then was not allowing the re-credit, and a lot of claims were pending.. Therefore manual re-crediting of the duty scrip was allowed on the basis of the consolidated certificate issued by the Customs and the manual filing of the Bill of Entry, utilizing the re-credit amount of SAD refund, was allowed up to 30.12.2010. Further, the importers were advised not to reuse of such re-credited SAD amount for payment of 4% SAD. The subsequent Circular No. 18/2013-Customs dated 29.04.2013, extended such date to 30.09.2013 as by the earlier prescribed date of 31.12.2010, the importers could not utilize the re-credited amount of SAD. Therefore, the restriction imposed earlier was for reuse of re-credited 4% SAD for payment of SAD, but I have noticed that the adjudicating authority has stated that 4% SAD was paid utilizing the Focus Product Scheme and therefore have disallowed re-credit on the basis of Circular No. 18/2013-Customs. I am of the opinion that the said Circular No. 18/2013-Customs dated 29.04.2013 did not restrict the re-credit of SAD refund as has been stated by the adjudicating authority in the impugned order. In fact the CBEC Circular No. 06/2008-Customs dated 28.04.2008, 16/2008-Cus dated 13.10.2008 and 06/2009-Cus dated 09.02.09 clearly provide for refund by way of re-credit of the FPS scrip.

Therefore, law cannot be interpretated, where clear instructions have been provided. Hence, I am of the opinion that the refund cannot be denied on this ground.

I have noticed that the appellant have not mentioned details of Bill of Entry in their sale invoices. This is a rectifiable mistake and the appellant should be given an opportunity to correlate the sale invoices with the related Bill of Entry. Further, as per the procedures set out by the notification and the circular issued in this regard, the statutory CA provides a certificate regarding sale of goods and also correlation chart is provided with such refund claim, but the impugned order has not raised any objection about such documents. Therefore, I have to assume that such chart and certificate must have been provided, therefore co relation can be made on the basis of such charts, certificate, Bill of Entry and the invoice. The appellant should have been provided sufficient opportunity to produce all the relevant documents. Similarly non submission of self declaration in Annexure-I can also be rectified by giving the appellant an opportunity and cannot be made ground for rejection. My opinion is based on the apex court's judgement in the case of Mangalore Chemical & Fertilizers vs Deputy Commissioner 1991 (55) E L T (437) S C), wherein the Hon'ble Court had stated that

> *Interpretation of statute – Exemption and refund – Condition precedent – Distinction to be made*

between a procedural condition of a technical nature and a substantive condition – Non-observance of the former condonable while that of the latter not condonable as likely to facilitate commission of fraud and introduce administrative inconveniences.-

I therefore order as under

-ORDER-

I hereby allow the appeal with consequent relief, subject to the verification of all the relevant documents, observance of procedures and compliance of the conditions as laid down in the law during the relevant time".

5. I have gone through the observations made by the learned Commissioner (Appeals) and found the same are justified. Therefore, I do not find any infirmity with the impugned order. The same is upheld. The appeal filed by the Revenue is dismissed.

(Dictated and pronounced in open court.)

Sd/-

(Ashok Jindal)

PK

प्रमाणित प्रति/Certified True Copy
22/09/17
सहायक पंजीकार/Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001

Member(Judicial)