CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH – COURT NO. 3

Customs Appeal No. 20603 of 2019

[Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-90/2018-19 dated 05.02.2019 passed by the Commissioner of Customs (Appeals) Cochin]

Elite Green Pvt. Ltd.
Building No. 9/433, 9/434 **..........Appellant**
Kuttanellur P.O, Ollur
Trissur-680 014

VERSUS

Commissioner of Customs **...........Respondant**
Cochin
Custom House,
Willingdon Island
Cochin-682 009

APPEARANCE:

None for the Appellant
Mr. Rajesh Shastry, Authorized Representative for the Respondent

CORAM:

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

<u>Final Order No. 20971/ 2023</u>

Date of Hearing: 08/09/2023
Date of Decision:08/09/2023

Per: Pullela Nageswara Rao

M/s Elite Green Pvt. Ltd., the appellant filed this appeal aggrieved by the impugned order of Commissioner (Appeals).

2. The facts in brief are that the appellant has imported high quality oats and cleared the goods against 25(twenty five) Bills of Entry, on payment *inter alia* of 4% Special Additional Duty (SAD) and filed 5(five) refund claims as per Notification No. 102/2007-Cus. dated 14.09.2007. The adjudicating authority sanctioned refund in respect of those bills of entry, where the 4% SAD was paid in cash and rejected the refund claims in case of other Bills of Entry, where the 4% SAD was paid through DEPB/Reward Scheme Scrips. The rejection of refund claim was based on the Circular 18/2013-Cus. dated 29.04.2013, wherein CBEC has extended the time limit for using the re-credited DEPB/Reward Scheme Scrips in case of 4% SAD up to 30.09.2013. The rejected refund claims in the said case are pertaining to the period after 30.09.2013.

3. The appellant in the grounds of appeal have submitted that they have filed a representation to the Ministry of Finance and Directorate General of Foreign Trade (DGFT) and since there was no response, they have filed a Writ Petition No. 7262/2016 before the Hon'ble High Court of Kerala with a prayer to stay the proceedings. They further submitted that Department ought to have awaited the outcome of the Writ proceedings before issuing the impugned order. They further submitted that the adjudicating authority and the appellate authority failed to appreciate that as per Notification No. 102/2007-Cus. dated 14.09.2007, 4% duty is collected as additional duty on import of goods and such amount collected from the importers has to be returned to the importer subject to production of evidence regarding payment of sales tax to the Customs authorities and

there is no reason or justification to deny the benefit even after showing evidence regarding payment of sales tax. Further they have submitted that the adjudicating authority and the appellate authority have failed to appreciate the facts and that the office of the Commissioner of Customs is bound to issue public notice and standing order for the guidance of trade and the Department and also to inform the importers that they are not eligible to claim refund of duty paid through scrips. Further they have submitted that the original Bills of Entry, TR-6 challan, certificate from Chartered Accountant and sufficient documents to prove payment of sales tax and endorsement on each invoice to the effect that Special Additional Duty liability has not been passed to the ultimate buyer. In view of the above, the rejection of 4% SAD is unsustainable.

4. None appeared for the appellant despite the case having been adjourned on the last three occasions. Heard Shri Rajesh Sastry, Authorised Representative (AR) for the Revenue and he has submitted the copy of the judgement of the Hon'ble High Court of Kerela dated 25th July 2023 in Writ Petition(C) No.7262 of 2016, filed by the appellant.

5. I have considered the submissions of the appellant and the submissions of the learned AR and perused the records. In this case, I find that the adjudicating authority has rejected the refund claim of 4% SAD paid by the appellants on import of goods for the reason that the payment of 4% SAD was made through debit in the DEPB/Reward Scheme scrips. Board vide

Circular No. 18/2013-Cus. dated 29.04.2013 have extended the time limit for using the re-credited DEPB scrips/Reward Scheme Scrips in case of payment of 4% SAD only up to 30.09.2013. The Circular is a third Circular in the series of Circulars issued by CBEC on the same subject and Circular No. 18/2013-Cus. dated 29.04.2013 has clearly stated that the extension given for using the re-credited scrips is applicable only upto 30.09.2013. Further the Circular was uploaded on the website of Ministry of Finance and DGFT. Hence the contention of the appellant that they are not aware of the Circular is untenable. In this case the Writ Petition No. 7262/2016, filed by the appellant before the Hon'ble High Court of Kerala was dismissed vide judgement dated 25th July 2023, which held as under:

> *"7. I find substance in the submissions of the learned Counsel for the respondents. Admittedly, when the petitioner has not paid the 4% SAD in cash but in scrips despite Circular No. 18/2013-Cus. dated 29/04/2013, he was not entitled to refund of 4% of SAD. I do not find substance in the submission of the learned Counsel for the petitioner that the public notice was not issued regarding Circular No. 18/2013-Cus. dated 29/04/2013. If the said Circular was published on the official website of the DGFT, it*

amounts that the public notice was given about the Circular.

8. In view thereof, I find no merit and substance in the present writ petition, which is hereby dismissed. Interim order, if any, stands vacated."

6. In view of the above, the appeal is not maintainable and hence, dismissed.

(Operative portion of the order was pronounced
in open court on 08.09.2023)

(Pullela Nageswara Rao)
Member (Technical)

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