CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 21657 of 2015

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-481-14-15 dated 19.03.2015 passed by the Commissioner of Customs (Appeals), Cochin.)

The Commissioner of Customs
Custom House
Cochin – 682 009.

Appellant(s)

VERSUS

M/s. Tomlukes India
Nediyuzhathi Towers,
TC-20/15(2),
Killipalam, Karamana,
Trivandrum.

Respondent(s)

APPEARANCE:

Shri M.A. Baby, Advocate for the Appellant

Shri K. Vishwanath, Authorised Representative for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20247 /2024

DATE OF HEARING: 04.04.2024
DATE OF DECISION: 04.04.2024

PER : D.M. MISRA

This appeal is filed against Order-in-Appeal No. Order-in-Appeal No. COC-CUSTM-000-APP-481-14-15 dated 19.03.2015 passed by the Commissioner of Customs (Appeals), Cochin

2. Briefly stated the facts of the case are that the respondents are traders and imported furniture and PVC profile frames through Cochin Port and filed necessary Bills of Entry for clearance of the same. At the time of clearance of the said goods, *inter alia* they paid Special Additional Duty (SAD) amounting to Rs.4,40,746/-. Later, they claimed refund of the

SAD amount as per Notification No.102/2007-Cus. dated 14.9.2007, on 24.10.2013. The original authority had rejected their refund claim on the ground that there had been no endorsements in the sales invoices indicating non-availibility of CENVAT credit on the imported goods sold. Aggrieved by the said order, respondents preferred an appeal before the Commissioner (Appeals). The Commissioner (A) has observed that:

> "8. I have carefully considered the facts of the case, grounds of appeal and submissions made at the time of personal hearing. I find that there is factual error in the impugned Order-in-Original. It is perceived that the Adjudicating Authority has lost track of the case and the order has been passed on the basis of irrelevant considerations, without application of mind to the factual aspects available on record. Nevertheless, it may be true that there is deficiency in the claim which needs redress by the appellant; it does not mean that the claim has to be rejected forthwith. The appeal sound fair and I think it is just and proper to annul the order appealed against. In view of the above, I shall be disposed the appeal with the following order:
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> **ORDER**
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> 10. The impugned Order-in-Original is set aside. The Original Authority is directed to grant eligible refund to the appellant.

Aggrieved by the impugned order, Revenue is in appeal before us.

3. At the outset, the learned advocate Mr. Baby M.A., submits that the issue of non-endorsement of availability of CENVAT credit in the respective sales invoices as a ground for rejection of refund claim is no more *res integra* and covered by the judgment of this Tribunal in the case of **R.K.G. International Pvt. Ltd. vs. CCE, Nodia: 2013 (290) ELT 253 (Tri.-Del.)** and **House Full International Ltd. vs. CC (Import), Mumbai: 2015 (318) ELT 460 (Tri.-Mumbai)**. He further submits that recently this Tribunal in the case of **M/s. Vestal Impex vs CC, Cochin** vide **Final Order No.20146-20147/2024 dated 13.03.2024** allowed the SAD refund.

4. Learned Authorised Representative for the Revenue reiterated the findings of the learned Commissioner (A).

5. We find that the short issue involved in the present appeals for determination is admissibility of SAD refund of Rs.4,40,746/-filed by them on 24.10.2013 against Bills of Entry. We find that the conditions on which refund claims have been rejected relates to non-endorsement in the invoices about non-admissibility of the credit of SAD paid at the time of import. We find that the Respondent produced at the time of hearing copies of the invoices which mentions about non-admissibility of credit. Also, it is now settled law that endorsement in the sales invoice regarding non-availability of CENVAT credit cannot be a reason to deny the SAD refund.

6. In the result, the impugned order is upheld and the appeal filed by the Revenue is rejected.

(Dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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