

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, BANGALORE**

REGIONAL BENCH - COURT NO. 3

Customs Appeal No. 20817 of 2014

[Arising out of Order-in-Appeal No. 429/2013 dated 20.11.2013 passed by
the Commissioner of Customs (Appeals), Bangalore]

M/s Faxtel Systems (India)

Pvt. Ltd.

#570, 5th Main, 17th Cross
Indiranagar 2nd Stage
Bangalore - 560 038

Appellant(s)

VERSUS

Commissioner of Customs

Bangalore

P.B. No. 5400, Queens Road
Central Revenues Building
Bangalore - 560 001

Respondent

APPEARANCE:

Ms Tanmayee Rajkumar, Advocate for the Appellant
Mr. M.A. Jithandra, AR for the Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Final Order No.: 20509 / 2024

Date of Hearing: 07.06.2024

Date of Decision: 25.06.2024

Per: P.A. Augustian

Issue in the present appeal is regarding refund of Special Additional Duty paid on import of goods. The appellant had re-imported goods and it was cleared on payment of customs duty and 4% SAD as per Notification No. 102/207 dated 14.09.2007. Thereafter goods were sold and on payment of VAT, appellant submitted refund claim for refund of 4% SAD. However, the refund application was rejected on the ground that

the CA certificate has not stated as how the unjust enrichment was not applicable. Aggrieved by said order, an appeal was filed before Commissioner (Appeals) and considering the issue, the Commissioner (Appeals) remanded the matter to adjudication authority with a direction to the appellant to submit explanation from their CA as to how they arrive at the conclusion that the duty amount was not passed on to the customers. Thereafter adjudication authority considered the issue and even after submitting detailed explanation by the statutory auditor, the adjudication authority allowed refund partially. An amount of Rs. 3,29,226/- was allow against refund claim of Rs. 5,92,973/- and said amount is also credited to the Consumer Welfare Fund. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and the Commissioner (Appeals) vide impugned order upheld the order of the adjudication authority. Aggrieved by said order, present appeal is filed.

2. When the appeal came up for hearing, learned counsel for the appellant submits that they have submitted the refund application with sufficient documents and also the application was supported by certificate issued by the Chartered Accountant, supported with statement showing the calculation of refund of SAD. Moreover, the initial certificate produced by the appellant clearly indicates that the amount claimed in the refund has not been included in the selling price and have not been collected from the customers. It is also stated that the amount stands receivable in their books of accounts for the financial year 2008-09. The learned counsel also drew my attention to the

certificate produced by the appellant and as per the direction of the Commissioner (Appeals), a detailed statement was given as follows:

“For the purpose of examining the clause of unjust enrichment to the importer in respect of subject refund claim, we have verified the importer’s Books of Accounts and other relevant documents & records/cost sheets/price structure etc., of the goods. Based on such verification, we have satisfied ourselves that the price at which the imported goods have been sold to buyers (including those cases where the goods were subjected to RSP/MRP based assessment at the time of import) vide various invoices does not include the component of the said 4% Additional Duty of Customs levied under Section 3(5) of the Customs Tariff Act, 1975 which was paid at the time of import. As such, we certify that the claimant has not passed on the incidence of the 4% Additional Duty to the buyer or any other person and hence the requirement to rule out unjust enrichment to the importer/claimant is fulfilled in respect of all goods imported and sold as covered by the subject claim (as detailed in the correlation sheet enclosed herewith).”

3. The learned counsel further submits that the issue is no more res integra. The issue regarding defect alleged in such CA certificates were considered by the Tribunal in the matter of **Koradia Exports (India) Private Ltd. Vs. CC, Mumbai – 2018 (362) E.L.T. 336 (Tri.-Mumbai)** and it is held that-

“5. We have heard both sides and perused the case records. We find that the lower authorities have rejected the refund claims on the ground that the Balance Sheet for the year ending 31-3-2008 does not show the refund amount as receivables. We find from the Chartered Accountant certificate that they had accounting practice of showing the sad amount in purchase account and afterwards in next year when they received the amount of SAD, the amount was credited to

“Refund Received from the Government Account”. This practice adopted by the Appellant and certified by the Chartered Accountant clearly shows that the claim is not hit by unjust enrichment. The main requirement is that the importer should not have charged SAD amount to their buyers which has not been disputed by the Appellate Authority. Further in Balance-Sheet for the year 2008-09, the said amount is appearing as “Refund received from Government” which is also not disputed. In view of above facts we do not find any reason to deny refund of 4% SAD to the Appellant as the requirement of the conditions for allowing refund stands complied with. We thus hold that the Appellant is eligible for the refund. We therefore set aside the impugned order and allow the appeal with consequential relief.”

4. The learned counsel also drew my attention to the decision of the Tribunal in the matter of **CC, Bangalore Vs. Apple India Private Limited – 2014 (301) E.L.T. 675 (Tri.-Bang.)**, wherein it is held that –

“10. From the above, it can be seen that the auditors are the regular auditors; they have applied appropriate audit test; they have certified that the burden has not been passed on either directly or indirectly; they have taken into account how the price of traded goods have been arrived at for this purpose. On the other hand, we find that while the appeal memorandum says worksheet clearly shows that the appellants have passed on the ACD and CA’s certificate has not categorically explained how ACD has not been passed on, there are no specific observations as to why the worksheet or the CA’s certificate cannot be accepted and what are the defects in the certificate/worksheet. On the other hand, we find that several orders have been passed by the officers of the department sanctioning refund in respect of the same appellant. In some of these cases, the very same Chartered Accountants have given the certificates and department has not even taken care to

check whether those certificates are different from the present one. When the same appellant is able to get refund on the basis of very same facts, very same certificates and on the very same goods, it is not understandable how this particular case alone has been selected for special treatment. While memorandum as reproduced about sets out what should be the approach, in the very same paragraphs negates its own observation when no defects are pointed out in the worksheet/CA certificate turning observations into empty rhetoric. It is also necessary to consider the Board's circular issued in this regard. Two circulars have been issued by the Board. The first one is No. 6/2008, dated 28-4-2008 and the second one is No. 16/2008-Cus., dated 13-10-2008. Both these circulars have specific paragraphs devoted to unjust enrichment and how the unjust enrichment angle is required to be dealt with by the importers. In the circular issued on 28-4-2008, the Board had said "importers may produce a certificate from the statutory auditor/Chartered Accountant, who certifies the importer's annual financial accounts under the Companies Act or any statute explaining how the burden of 4% CVD has not been passed on by the importer to fulfil the requirement of unjust enrichment in addition to a self-declaration". Subsequently based on the representation made by Trade and Industrial Associations, Board issued further clarifications and also felt the need for relaxation of procedural requirements and therefore, another circular was issued on 13-10-2008. In this circular, the Board observed as under "considering these provisions, it is clarified by the Board that the 'statutory auditor/Chartered Accountant' mentioned in para 6 of the earlier Board's circular refers to 'Chartered Accountant' within the meaning of Section 2(1)(b) of the Chartered Accountants Act, 1949. However, it is clarified that the custom field formations shall accept the certificate given only by such a Chartered Accountant who either certifies the importer's financial records under the Companies Act, 1956 or any ST/VAT Act of the State Government or the Income Tax Act, 1961 in order to fulfill the obligation to show that unjust enrichment is not attracted". The very purpose of requiring a

certificate to be produced by a professional Chartered Accountant and insisting on the fact that the Chartered Accountant should be one who is responsible for auditing the companies accounts either statutorily is to ensure that the Chartered Accountant is familiar with the accounts of the company, their practices and also would be knowing and would be in a position to verify the accounts and such certificates shall be accepted.”

5. The learned counsel for the appellant also draws my decision to the following decisions:

- a. National Steel Agro Industries Limited Vs. CC, Mumbai – 2020 (371) E.L.T. 551 (Tri.-Mum.)*
- b. Systronic (India) Limited Vs. CC, Bangalore – 2019 (370) E.L.T 945 (Tri.-Bang.)*
- c. MIRC Electronics Vs. CC, Ahmedabad – 2013 (287) ELT 225 (Tri.-Ahmd.)*
- d. Equinox Solutions Ltd. Vs. CC, Ahmedabad – 2017 (357) E.L.T. 1041 (Tri.-Ahmd.)*

6. The learned AR reiterated the submissions in the impugned order and submits that the appellant has not fulfilled the requirement of unjust enrichments and they have not shown the due amount as receivable in the financial year 2007-08 and it is shown as receivable only for the financial year 2008-09. For the above reasons, the appellant is not eligible for the refund as claimed by them.

7. Heard both sides. The limited issue in the present appeal is regarding the defect related to refund claim submitted by the appellant. It is the admitted fact that appellant had paid 4% SAD at the time of import and the appellant had also paid VAT as

applicable while selling the goods. The appellant also complied with the condition No. 2(b) in the Notification No. 102/2007 dated 14.09.2007 where it is stated that *"the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of Section 3 of the Customs Tariff Act, 1975 shall be admissible.* Facts being so, it is an admitted fact that the amount paid by the appellant as 4% SAD is not passed on to the buyers and the said aspect was confirmed by the statutory auditor of the appellant while issuing certificate on 05.06.2012. As regarding the objections made by lower authority, issue is squarely covered by the decisions of the Tribunal relied by the appellant, it is settled that once CA certificate is produced and in the absence of any allegation of fraud or collusion, such certificate is sufficient to grant the refund claim. Refund should not be denied merely on technical violations.

8. In view of the above, I am of the view that impugned order rejecting the refund claim is not sustainable. Therefore, impugned order is set aside and the appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 25.06.2024)

(P.A. Augustian)

Member (Judicial)

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