

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

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 22382 of 2015

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-69/2015-16 dated
03.07.2015 passed by the Commissioner of Customs (Appeals), Cochin.)

Commissioner of Customs

Custom House,
Cochin – 682 009.

.....**Appellant(s)**

VERSUS

M/s. M.K. International

48/1203 AI, Yuvakalatharang Road
Elamakkara P.O
Ernakulam – 682 026

.....**Respondent(s)**

Appearance:

Mr. Neeraj Kumar, Superintendent (AR) for the Appellant
Mr. Balagopal M., Advocate for the Respondent

Coram:

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

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

Final Order No. 20884 /2024

Date Of Hearing: 20.03.2024.

Date Of Decision: 19.09.2024

Per: P.A. Augustian

The issue in the present case is whether the respondent is eligible for 4% SAD as allowed by the Commissioner (Appeals). The respondent had imported goods against few bills of entry and on subsequent sale of the goods, they had filed refund application on 31.12.2014 claiming 4% SAD. The original authority had rejected the refund application on the ground that the second refund claim filed by the respondent in the

same month of December is unsustainable and it is contradictory to the conditions mentioned in Circular No. 06/2008 dated 28.04.2008 read with Notification No. 102/2007-Cus dated 14.09.2007 as amended. Aggrieved by the said order, an appeal was filed before the Commissioner (Appeals), who as per the impugned order, allowed the appeal. Aggrieved by said order, present appeal is filed the department.

2. When the appeal came for hearing, learned Authorised Representative (AR) for the Revenue submits that as per the above Circular, filing different refund claim in same month is against the conditions and the appellate authority has failed to consider the above said condition.

3. The learned counsel appearing for the respondent submitted that issue is no more *res integra*. The Notification neither expressly nor impliedly prevent an importer from filing more than one refund claim in a month. The legislative intention of the Notification is to ensure that the importer is paying either SAD or VAT/ST. The intention of the Government behind the issuance of exemption notification is clearly stated in Para 6.1 of the Circular No. 6/2008-Cus dated 28.04.2008, where it is specifically mentioned that the purpose of granting this exemption is to ensure that the importer pays either 4% CVD or the appropriate ST/VAT and not both. The consolidated filing of refund application was made as a part of the administrative convenience by managing number of refund claim and for timely disposal of the same. Moreover, such a Circular cannot override the exemption notification. The learned counsel for the respondent further submitted that the issue is covered by the decisions of the Tribunal in the matter of **Mitutoyo South Asia Pvt., Ltd. Vs. Commissioner of Customs (Export),**

New Delhi reported in 2015 (322) E.L.T. 523 (Tri.-Del.) and Devki Nandan J. Gupta Vs. Commissioner of Customs (Appeals), Mumbai-II reported in 2015 (318) E.L.T. 167 (Tri-Mumbai) wherein it is held that:-

"5.....In the Board Circular also consciously, understanding this situation, clarified that the exception is provided in case if the one year period is going to expire. It is very obvious that it is not intention of the Board Circular that even though the period of one year is getting expired, the assessee is not allowed to file more than one refund claim in a month. In my view even if more than one claim in a month is filed the same cannot be denied only because of the reason that circular prescribed only one refund claim in a month otherwise statutory time limit of one year provided in the notification will become redundant. In similar situation this Tribunal in the case of B.S.L. Ltd. v. Commissioner of C. Ex., Jaipur (supra) as held that the refund under Rule 5 is permissible despite the claim having been second time in a month which is violation of condition of 11/2002-C.E. (N.T.), dated 1-3-2002. In my view this was held keeping in mind that though there is procedure to file one refund in a month or in the quarter as case may be but since time limit of one year is prescribed for filing refund claim the said procedure infraction should not come in way of the substantial claim of the assessee. In view of my above discussion, I am of the considered view that the appellant is entitled for refund claim. Hence the appeal is allowed".

4. Heard both sides, the issue is squarely covered by the decisions of the Tribunal. Once there is no such restriction either in Notification or under the Act, procedural restriction imposed cannot be construed as mandatory and more than one refund claim can be filed in a month. Thus, the impugned order is upheld.

5. Consequently, the appeal of the Revenue is dismissed.

(Order pronounced in open court on 19.09.2024)

(P.A Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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