CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 21048 of 2016

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-13/2016-17 dated 18.04.2016 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. Chalissery Kirana Merchant
XII/163-A,
Chalissery (PO)
Palakkad – 679 536.

Appellant(s)

VERSUS

The Commissioner of Customs
Custom House,
Cochin.

Respondent(s)

WITH

Customs Appeal No. 21063 of 2016

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-14/2016-17 dated 18.04.2016 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. Chalissery Kirana Merchant
XII/163-A,
Chalissery (PO)
Palakkad – 679 536.

Appellant(s)

VERSUS

The Commissioner of Customs
Custom House,
Cochin.

Respondent(s)

<u>APPEARANCE:</u>

Mrs. Rukmani Menon, Advocate for the Appellant.
Shri K. Vishwanath, Superintendent, Authorised Representative for the Respondent.

CORAM: HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

<u>Final Order No. 20987 - 20988 / 2024</u>

DATE OF HEARING: 11.09.2024
DATE OF DECISION: 15.10.2024

PER : R. BHAGYA DEVI

These two appeals are filed by the appellant M/s. Chalissery Kirana Merchant against Order-in-Appeal No.13/2016-2017 and No.14/2016-17 both dated 18.04.2016 passed by the Commissioner of Customs (Appeals), Cochin.

2. The Commissioner (Appeals) in the impugned orders has rejected the refund claims filed by the appellant on the amount paid as 4% additional duty under Notification No.102/2007-Cus. dated 14.09.2007. The Commissioner (Appeals) held that the appellant had not satisfied the conditions at Para 2(d)(e)(II)(III) of the above Notification. It is stated that though the import consignment was sold through stockist, the sales invoices did not have the indication that the sale is made by stockist on behalf of the importer. As per the Circular No.16/2008 dated 13.10.2008 and the statement filed by the appellant, it did not contain details about VAT reference number against sales invoice numbers. Thus, non-submissions of mandatory documents to substantiate the eligibility of the refund claims led to the rejection of all the claims. Aggrieved by these orders, the present appeals are being filed.

3. The learned counsel admits that the imported consignment was sold through the consignment agents/stockists and in support of it, a certificate is issued by the company statutory auditor and the sale was affected by the stockist and appropriate VAT was paid by them. It is further stated that a statement containing details of importer, sales and payment of appropriate VAT on the imported goods was also submitted. As per the Circular No.16/2008, the endorsement on the invoices was only a procedural requirement which may be condoned on the strength of other substantive evidences. It is also submitted that the agreement between the importer and the consignment agent and statutory auditor certificate showing the transfer of stock to the

stockist are the sufficient reasons for sanctioning the refund. Relied on the decision of the Tribunal in the case of **M/s. Arushi exports vs. Commissioner of Customs Imports (NCH) Mumbai** in Customs Appeal No.424 of 2012 dated 03.08.2015.

4. The learned Authorised Representative on behalf of the Revenue submitted that the appellant who claims refund under Notification No.102/2007-Cus. dated 14.09.2007 has to satisfy all the conditions specified in the Notification. And in the case of sales through the Stockist, Circular No.16/2008 dated 13.10.2008 clearly mentions that there should be an agreement between the importer and the stockist and there should be an endorsement on the invoices to that effect. Having not satisfied the above conditions, the Commissioner (Appeals) has rightly rejected the refund claims. Moreover, none of the documents claimed to have been placed on record are not available including the invoices.

5. Heard both sides. This is a case of refund claims filed under Notification No.102/2007-Cus. dated 14.09.2007 and the short issue to be decided is whether the appellant is eligible for the refund when the conditions of the Notification are not satisfied. The relevant Bills of Entry in Appeal No. C/21048/16 are 5569351 dated 22.05.2014 and 5724064 dated 06.06.2014 and in respect of Appeal No. C/21063/2016, the relevant Bills of Entry are 5886220 dated 23.06.2014, 5993533 dated 02.07.2014 and 5959350 dated 30.06.2014 and 6493967 dated 20.08.2014 and hence, the period involved is from May 2014 to August 2014. The Notification No.102/2007-Cus. dated 14.09.2007 and the relevant provisions of the Circular No.16/2008 dated 13.10.2008 are reproduced below:

> **"Special CVD — Exemption to all goods when imported for subsequent sale [Notification No. 102/2007-Cus., dated 14-9-2007]**
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> In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central

Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for subsequent sale, from the whole of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act (hereinafter referred to as the said additional duty).

2. The exemption contained in this notification shall be given effect if the following conditions are fulfilled :

(a) the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon, as applicable, at the time of importation of the goods;
(b) 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;
(c) the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer;
(d) the importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be;
(e) the importer shall, *inter alia*, provide copies of the following documents along with the refund claim:
    (i) document evidencing payment of the said additional duty;
    (ii) invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed;
    (iii) documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.

3. The jurisdictional customs officer shall sanction the refund on satisfying himself that the conditions referred to in para 2 above, are fulfilled.

Circular No. 16/2008-Cus., dated 13-10-2008 F.No. 401/104/2007-Cus.III

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Clarification on refund of 4% Additional Duty of Customs (4% CVD) in pursuance of Notification No. 102/2007-Customs dated 14-9-2007 – Regarding

(viii) Consignment Agents :

It is represented by certain importers who operate through consignment agents/stockists, that the imported goods are held by these agents/stockists in the capacity of bailee. The goods are sold by them on behalf of the importer and the payment for the sale is made to the importer. These agents also pay the appropriate ST/VAT on behalf of the importer and get the same reimbursed from the principal i.e. importer. Unlike in other transactions, while the bill of entry for imported goods under consignment sale is filed by the importer and the bill of entry will be in the name of the importer, the sale invoices are issued by the said consignment agents/stockists in their own names. Hence, it has been requested by these importers that refund of 4% CVD in such cases should be allowed to them based on the correlating documents evidencing payment of ST/VAT by their agents/stockists.

It is observed that in 'consignment sale' transaction, goods are dispatched to Consignment agents by importer as Principal; and the imported goods remain the property of the importer. Similarly, the responsibility of Stockist is confined to stocking of goods and forwarding such goods to persons and places as instructed by the importer. Hence Consignment agent/stockist sells goods on behalf of the importer. The said agent collects sales proceeds and remits the same to importer; however he may recover his commission, godown charges, insurance charges etc., from the importer. In terms of the various State ST/VAT laws, 'sale' is defined to mean transfer of property in goods for a valuable consideration. For the purpose of ST/VAT transfer of property involved in the sale of imported goods, through an agent, by whatever name called, whether for cash or for deferred payment or other valuable consideration, shall be deemed to be a sale, by such agent.

Further, consignment agent/stockist who has the authority to sell the goods belonging to the importer/principal on their behalf is also included in the scope of the term 'dealer' under the ST/VAT Act, and

> the said agent/stockist are required to pay appropriate ST/VAT on sale of such goods. In these transactions, normally, an Agreement is entered into between the importer and agent, which provides for the terms and conditions of sale and offers a commission for the work done by the agent/stockist. Payment of ST/VAT on behalf of the importer may also be specified as one of the arrangement as per such agreement. Since such sale is an accepted form of commercial transaction, payment of ST/VAT made by such agents and submission of ST/VAT challan by the agents on behalf of principal (Importer) is permitted by ST/VAT authorities.
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> In view of the above, it is clarified that in case of sale of imported goods by importer through consignment agent/stockist, refund of 4% CVD shall be granted by Customs field formations, subject to the condition that the Consignment agent/stockist has been authorised to sell the imported goods in terms of the agreement entered into between the importer and consignment agent/stockist and that each of the sale invoices issued by the consignment agent/stockist indicates that the sale is made by him on behalf of the importer in the capacity of consignment agent/stockist. These conditions shall be verified by the Customs officers before sanction of 4% CVD refund claims in these cases. Further, in such cases, it is also required that the applicant submits a certificate from a Chartered Accountant appointed by the importer, 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, to the effect that appropriate ST/VAT has been paid by consignment agent/stockist on behalf of importer and that the importer, in turn, has paid or reimbursed the ST/VAT to his consignment agent/stockist along with the correlation of ST/VAT payment with 4% CVD paid on imported goods."

6. From the above Notification read with Circular No. 16/2008 dated 13.08.2008, it is clear that the importer should pay appropriate Sales Tax or value added tax, as the case may and documents evidencing payment of the said additional duty to be produced before the authorities concerned. The Circular in the case of sale by the consignment agents stipulates that there should be an agreement between the importer and the consignment agents to sell the goods in terms of the agreements and each of the sale invoices issued by the consignment agent

should indicate that the sales made by him on behalf of the importer in the capacity of consignment agent.

7. However, from the copy of the Agency Agreement between the appellant i.e., M/s. Chalissery Kirana Merchant, the partnership firm and M/s. MA Traders, which is placed on record, the date of the Agency Agreement is from 1st November 2014 while all the imports are between May 2014 and August 2014. The Agreement is not relevant for the period of imports and there is nothing on record to show that these imports were sold through this Consignment Agent. Admittedly, the invoices have not been placed on record and no evidence has been produced to prove that these invoices have been endorsed as being sold on behalf the importer by the consignment agent which is a pre-requisite as per the above Notification read with the Circular No.16/2008 dated 13.08.2008. Therefore, the Commissioner (Appeals) has rightly rejected the refund claims in the absence of necessary proof to show that the imported goods were cleared by the consignment agent and VAT was paid by them on behalf of the importer. Moreover, though they produced the Chartered Accountant certificate in one of the appeals and there is no such certificate on record for the second appeal.

7. The decision relied upon by the appellant is not relevant because in that case enough evidence was produced by the appellant to prove that the goods were sold by the stockist on behalf of the importer. The order reads as follows '*I find that the entire agreement between the appellant and consignment agent an entire sale made in consignment agent capacity. I observed that sale Patti of the appellant where it was clearly mentioned that the sale is an account of Arushi Exports, this shows that sale made by the consignment agent is not on his own account, but it is consignment sale on account of appellant. It is also observed that from the Ledger copy produced by the learned counsel that all the 4 sale Patti against which the refund was rejected were duly accounted in the books of account of the appellant towards*

consignment sale. On the basis of these undisputed facts discount that the sales under dispute are consignment sales'.

8. In the present cases, no such evidences are produced and having placed only a notarised copy of the Agreement copy, which is not relevant to the period of dispute and also without any other documentary evidences to prove that VAT was paid by them for being eligible for the benefit of the Notification, the refund claims are rightly rejected. In the case of **Union of India Versus VKC Footsteps India Pvt. Ltd.: 2021 (52) G.S.T.L. 513 (S.C.)** dated 13-9-2021, the Hon'ble Supreme Court of India observed as follows:

> "**60.** The jurisprudential basis furnishes a depiction of an ideal State of existence of GST legislation within the purview of a modern economy, as a destination-based tax. But there can be no gain saying the fact that fiscal legislation around the world, India being no exception, makes complex balances founded upon socio-economic complexities and diversities which permeate each society. The form which a GST legislation in a unitary State may take will vary considerably from its avatar in a nation such as India where a dual system of GST law operates within the context of a federal structure. The ideal of a GST framework which Article 279A(6) embodies has to be progressively realized. The doctrines which have been emphasized by Counsel during the course of the arguments furnish the underlying rationale for the enactment of the law but cannot furnish either a valid basis for judicial review of the legislation or make out a ground for invalidating a validly enacted law unless it infringes constitutional parameters. While adopting the constitutional framework of a GST regime, Parliament in the exercise of its constituent power has had to make and draw balances to accommodate the interests of the States. Taxes on alcohol for human consumption and stamp duties provide a significant part of the revenues of the States. Complex balances have had to be drawn so as to accommodate the concerns of the States before bringing them within the umbrella of GST. These aspects must be borne in mind while

> assessing the jurisprudential vision and the economic rationale for GST legislation. But abstract doctrine cannot be a ground for the Court to undertake the task of redrawing the text or context of a statutory provision. This is clearly an area of law where judicial interpretation cannot be ahead of policy making. Fiscal policy ought not be dictated through the judgments of the High Courts or this Court. For it is not the function of the Court in the fiscal arena to compel Parliament to go further and to do more by, for instance, expanding the coverage of the legislation (to liquor, stamp duty and petroleum) or to bring in uniformity of rates. This would constitute an impermissible judicial encroachment on legislative power. Likewise, when the first proviso to Section 54(3) has provided for a restriction on the entitlement to refund it would be impermissible for the Court to redraw the boundaries or to expand the provision for refund beyond what the legislature has provided. **If the legislature has intended that the equivalence between goods and services should be progressively realized and that for the purpose of determining whether refund should be provided, a restriction of the kind which has been imposed in clause (ii) of the proviso should be enacted, it lies within the realm of policy.**
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> (Emphasis supplied)

9. In view of the above, since the conditions of the Notification No. 102/2007-Cus. dated 14.09.2007 read with the Circular No. 16/2008 dated 13.08.2008 are not satisfied, the appellant is not eligible for the refund of special CVD amount. Therefore, the impugned orders are upheld and the appeals are dismissed.

(Order pronounced in Open Court on 15.10.2024.)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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