CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/903/2012-SM

[Arising out of Order-in-Appeal No. 01/2012 dated 18/01/2012 passed by the Commissioner of Customs (Appeals), Bangalore.]

M/s. BOC INDIA LTD.
OXYGEN HOUSE, P-43, TARTALA ROAD,
KOLKATA 700 088

Appellant(s)

Versus

Commissioner of Customs and Service Tax BANGALORE-CUS
C.R. BUILDING, QUEENS ROAD,
P.B.NO. 5400,
BANGALORE, - 560001
KARNATAKA

Respondent(s)

Appearance:

Mr. Lalitendra Gulani, Advocate
NITYA TAX ASSOCIATES
B-3/58, 3RD FLOOR,
SAFDARJUNG ENCLAVE,
NEW DELHI - 110029
NEW DELHI

For the Appellant

Dr. J. Harish, AR

For the Respondent

Date of Hearing: 04/04/2018

Date of Decision: 04/04/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20525 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 18.1.2012 passed by the Commissioner (A) whereby the Commissioner (A) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants imported one compressor for their air separation plant under warranty clause from Germany. The said goods were re-exported for repair and replacement to their supplier. As their suppliers could not repair all the components, they repaired some and replaced some of the components since the compressor was within the warranty period. The appellants have claimed that their supplier had raised an invoice by mistake, showing therein the value as it all were replacements under warranty clause. The said goods were reimported on 13.5.2010 and due to the said mistake of the supplier, the assessable value taken was higher and hence resulted in excess duty payment ofRs.36,18,465/-. Thereafter, the appellants filed a refund claim on 1.3.2011. The claim was rejected by the lower authority as time barred. Aggrieved by the order of the adjudicating authority, the appellant filed appeal before the Commissioner (A) on the ground that their claim is within the amended period of limitation and they have once again filed a refund claim on 4.5.2011 before the lower authority. After considering the submission of the appellant, the Commissioner (A) has held that claim is time barred and rejected their appeal. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the time period for filing the refund claim under Section 27 of the Customs Act has been extended to one year by the Finance Act, 2011 and thereafter, they filed another refund claim on 4.5.2011 which was within time limit.

5. On the other hand, the learned AR defended the impugned order and submitted that the appellant paid the duty on 13.5.2010 and filed the refund claim on 1.3.2011 i.e., after a lapse of nine months which is beyond the time limit of six months as it existed at the relevant time. He further submitted that the Commissioner (A) has rightly observed that the refund claim has been filed on 1.3.2011 i.e., before the Finance Bill, 2011 received the assent of the President and hence, the benefit of extended period would not be available to the appellant.

6. After considering the submissions of both the parties and perusal of the material on record and the provisions of Section 27 of the Customs Act, 1962, I find that admittedly in the present case, the refund claim was filed on 1.3.2011 whereas the

duty was paid on 13.5.2010 i.e., after a lapse of about nine months. During the relevant time, the time period for filing the refund was six months. So admittedly, the refund was filed beyond the time limit of six months as it existed during the relevant period. Though, the appellant has stated that he has filed a second refund claim on 4.5.2011, which is still pending before the adjudicating authority on which no order has been passed till date. In the present case, we are only concerned whether the present refund claim is filed in time or not. The present claim for refund is admittedly beyond the time limit and therefore, the Commissioner (A) has rightly rejected the same as time barred. I do not find any infirmity in the impugned order which is upheld by dismissing the appeal of the appellant.

(Order was pronounced and dictated
in Open Court on **04/04/2018**)

S.S GARG
JUDICIAL MEMBER

rv...