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

Appeal(s) Involved:

C/20099/2014-SM

[Arising out of Order-in-Appeal No. TVM-EXCUS-000-APP-008-13-14 dated 05/09/2013 passed by the Commissioner of Customs, Cochin (Appeals)]

Commissioner of Central Excise,
Customs and Service Tax
Trivandrum
T.C. No.26/334 (1&2),
I.C.E Bhavan, Press Club Road,
Trivandrum – 695 001
Kerala

Appellant(s)

Versus

Systronics (India) Ltd.
TC 9/1387, "Lekshmi" Temple Road,
Sasthamangalam,
Thiruvananthapuram – 695 010
Kerala

Respondent(s)

Appearance:

Dr. J. Harish, Deputy Commissioner (AR)	For the Appellant
Mr. R. Sundararajan, CA 261/44, 5th Main Road, 4th Block, Jayanagar, Bangalore – 560 011	For the Respondent

Date of Hearing: 12/10/2018
Date of Decision: 12/10/2018

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

Final Order No. 21615 / 2018

Per : S.S GARG

The present appeal is filed by the Revenue against the impugned order dated 05.09.2013 passed by the Commissioner (Appeals) whereby the

Commissioner (Appeals) has allowed the appeal of the assessee. Briefly the facts of the present case are that the respondent had filed a refund claim of Additional Duty of Customs (4% SAD) amounting to Rs. 9,34,642/- (Rupees Nine Lakhs Thirty Four Thousand Six Hundred and Forty Two only) paid on the imported goods in terms of the exemption Notification No. 102/2007-Cus. dated 14.09.2007. They were issued a show-cause notice dated 01.10.2012 directing to show-cause why the said refund should not be rejected on the ground that the party has not submitted the required documents as stipulated under Notification 102/2007 Cus. dated 14.09.2007. The adjudicating authority rejected the refund claim vide Order-in-Original dated 16.03.2013 on the ground that the appellant had not made the required endorsement as per Para 2(b) of Notification No. 102/2007 in the sales invoices and secondly they had produced only the monthly challans for payment of sales tax on consolidated sales where their sales and payment of sales tax cannot be derived. Aggrieved by the same assessee filed appeal before the Commissioner who allowed the appeal and rejected the objections raised by the Department for not granting the refund. Aggrieved by the same Revenue has filed the present appeal.

2. Heard both the parties and perused the records.

3. Learned AR for the Revenue submitted that impugned order granting the refund is not sustainable in law as the impugned order is not legal and proper on the ground that the conditions of the Notification 102/2007 have not been complied with by the respondent. He further submitted that the importer while issuing the invoice for sale is required to specifically indicate

in the invoice that in respect of the goods covered therein, no credit of additional duty of Customs levied under Sub-Section (5) of Section 3 of the Customs Tariff Act, 1975 shall be admissible and further the importer shall pay on sale of such goods appropriate sales tax and value added tax as the case may be. He further submitted that in the Order-in-Original it is mentioned that the importer had submitted a declaration on 08.01.2013 whereby they have declared that they were registered with the Central Excise Department which is totally against their earlier declaration.

4. On the other hand the learned consultant appearing for the respondent justified the impugned order and submitted that the impugned order has been passed after considering all the facts and the evidence available on the record and further the Commissioner (Appeals) has also considered the judicial pronouncements of various Benches of the Tribunal. He further submitted that the learned Commissioner has rightly observed that the respondent is not registered trader with the Central Excise Department and therefore he is not authorized to issue excisable invoices on which cenvat credit can be claimed. He further submitted that the respondent had issued only commercial invoices because their products are not chargeable to Central Excise duty and cannot be termed as manufactured as per Section 2(f) of the Central Excise Act, 1944. He further submitted that once the respondent is not issuing the Central Excise invoices therefore there is no statutory requirement to show duty element on the tax invoices and therefore there cannot be an endorsement that "no credit of Additional Duty is admissible". He further submitted that the Commissioner (Appeals) has

rightly considered the certificate issued by the CA who has certified that the respondents have suffered the SAD and not passed on to their customers.

5. After considering the submissions of both the parties and perusal of the material on record, I find that the respondent is not registered with the Central Excise Department and therefore he is not issuing any excisable invoices on the basis of which the buyer can claim cenvat credit. Further I find that the invoices issued by them are only commercial invoices because the products are not chargeable to excise duty. Further the CA has issued a certificate certifying that the respondents had suffered the duty and not passed on to their customer. This certificate satisfies the objective of the notification issued by the Government. Further I find that the appellant has in fact complied with the conditions of the Notification 102/2007 dated 14.09.2007. In view of my discussion above, I find no infirmity in the impugned order which needs no interference and therefore I uphold the impugned order by dismissing the appeal of the Revenue.

(Operative portion of the Order was pronounced
in Open Court on **12/10/2018**)

(S.S GARG)
JUDICIAL MEMBER

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