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

Appeal(s) Involved:

C/20970/2014-SM

[Arising out of Order-in-Appeal No. 473 & 474/2013 dated 17/12/2013 passed by Commissioner of CUSTOMS , BANGALORE-I(Appeal)]

Systronics (India) Ltd
No.146/4, Shhanthala Plaza, 2nd Floor, 8th Main, 14th Cross, Malleswaram
BANGALORE - 560068
KARNATAKA

Appellant(s)

Versus

Commissioner of Customs Bangalore-cus
C.R. BUILDING,QUEENS ROAD,
P.B.NO. 5400,
BANGALORE - 560001
KARNATAKA

Respondent(s)

Appearance:

Shri R. Sundarajan, CA — For the Appellant

Dr. J. Harish, Dy. Commissioner(AR) — 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. 21614 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dt. 17/12/2013 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) allowed the Department’s appeal and dismissed the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are engaged in the trading of electronic products of various types. The appellant filed Bill of Entry for the material imported for further trading and the same was ultimately sold to local customer under proper invoice after payment of VAT. The appellant submitted a claim for refund of Special Additional Duty (SAD) 4% under Notification No.102/2007-Cus against the imports made and sold domestically. The amount of refund claim is Rs.7,07,129/-. On submission of all the required documents, the appellant received a query from the Department seeking explanation as to the amount of refund claim has not been shown as receivables in the books of accounts of the appellant. The appellant filed the reply to the query raised by the Department stating that the notification does not require that the refund claim to be shown as receivables in the books of accounts and the allegations were raised on the assumptions and presumptions with no corroborative evidence. The Assistant Commissioner passed the order for the refund but credited the refund to the consumer welfare fund under Section 27(2) of the Customs Act on the pretext that the appellant has not passed the test of unjust enrichment because the amount was not shown in the receivables. The appellant filed appeal before the Commissioner(Appeals) against the finding of crediting the refund amount to the Consumer Welfare Fund.

3. Heard both sides and perused records.

4. The learned consultant appearing for the appellant submitted that the impugned order rejecting the refund claim on the ground of not showing the same in the receivables is not tenable under the law and is liable to be set aside. He further submitted that this finding is contrary to the circular No.18/2010 dt. 08/07/2010 wherein the Board has clarified that the field formations need not insist on the production of audited balance sheet and Profit & Loss Account. The Circular also states that the production of a CA certificate is sufficient to pass the refund claim. He further submitted that as per the Notification and subsequent Circular, it is not provided that the SAD refund should be shown as receivable in the books of accounts and this condition imposed by the impugned order is not sustainable in law. In support of this submission, the appellant relied upon the Adhmedabad Tribunal decision in the case of MIRC Electronics Ltd. Vs. CC, Ahmedabad [2013(287) ELT 225 (Tri. Ahmd.)] wherein the Tribunal has held "in the absence of any other contrary evidence, the exercise embarked upon by the lower authorities in this case is unwarranted and specifically barred by the CBE&C in the circulars as noted hereinabove". He further submitted that there is no requirement in the Notification No.102/2007 for the amount of refund claim to be shown as receivable. In the case of Radico Khaitan Vs. CCE [Final Order No.50311/2014], the Hon'ble Delhi Tribunal has decided that when the assessee is otherwise entitled to refund, the claim cannot be rejected on the technical ground that the claim is not shown as receivables in the balance sheet. As regards the

test of unjust enrichment, the appellant has produced the Purchase Register for relevant year wherein it has been clearly shown that the amount of Rs.7,07,129/- being the SAD amount has not been included in the purchases for the year. He further submitted that Commissioner(Appeals) has randomly picked up the figure of Rs.5.51 lakhs shown as receivables from the balance sheet and noted that such amount has no relevance in the present case.

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perual of the material on record, I find that the only ground on which the SAD refund has been rejected is that the amount of refund has not been shown in the receivables in the accounts of the appellant. Further I find that as per the Notification No.102/2007 and also the subsequent Circular No.18/2010 dt. 08/07/2010, it is not the requirement at all that the said claim should be shown as receivables in the books of accounts. Further I find that Board circular has clarified that field formations need not insist on the production of audited balance sheet and Profit & Loss Account and the certificate of the CA is sufficient to grant the refund claim. In the present case, the CA certificate was produced but the same was not considered. Further I find that in view of the various decisions relied upon by the appellant which clearly states that refund should not be denied merely on technical

violations. In view of the above circumstances, I am of the view that the impugned order rejecting the refund claim is not sustainable in law and therefore I set aside the same by allowing the appeal of the appellant with consequential relief, if any.

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

S.S GARG
JUDICIAL MEMBER

Raja...