IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. C/344/2012

(Arising out of Order-in-Appeal C. Cus. No.753/2012 dated 27.7.2012 passed by the Commissioner of Customs (Appeals), Chennai)

Commissioner of Customs, (Airport), Chennai   Appellant

Vs.

M/s. RFCL Limited   Respondent

Appearance

Shri A. Cletus, Addl. Commissioner (AR) for the Appellant
Ms. M. Swarupa, Advocate for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **26.04.2018**

Final Order No. **41390 / 2018**

Per Bench

Brief facts are that the respondents filed refund claim for refund of SAD in terms of Notification No.102/2007 dated 14.9.2007 as amended. The original authority rejected the refund claim observing that the respondent has not passed the test of unjust enrichment. In appeal, Commissioner (Appeals) allowed the appeal directing the lower authority to sanction the refund as per law. Aggrieved, the department has filed the present appeal.

2. The ld. AR Shri A. Cletus appearing for the department submitted that the respondent had produced only the Chartered Accountant's certificate which is not sufficient to establish whether the duty incidence has not been passed on to another. The Chartered Accountant has certified vide his certificates dated 31.12.2008, 14.1.2009, 28.1.2009 and 4.3.2009 that the burden of 4% SAD has not been passed on to the buyer and that the same is shown as recoverable in the books of accounts of the respondent. He argued that all the 18 Bills of Entry pertain to the financial year 2007 – 08. The said amount have been shown as receivables only in December 2008 for the claim No. 14/2009, 1/2009 for the claim No.21/2009 and 45/2009 and 2/009 for claim No. 87/2009. That appellants have not shown the amount as receivables in the relevant financial year and therefore they have failed the test of unjust enrichment. He argued that the Commissioner (Appeals) has erred in ordering for sanction of refund.

3. On behalf of the respondent, ld. counsel Ms. Swarupa submitted that the only ground on which the refund claims were rejected was that the test of unjust enrichment as prescribed under Circular No. 7/2008-Cus. was not satisfied. The said circular is applicable to refund of duty and interest

under section 27 of the Customs Act, 1962. It is submitted that the instructions given in this circular are applicable to normal refund of customs duty and interest under section 27 and not for SAD refund which has been covered by the conditions prescribed in Notification No. 102/2007. To establish that CVD has not been passed on to the applicant for refund of SAD is required to submit a certificate from the statutory auditors / Chartered Accountants to the effect that burden of 4% CVD has not been passed on to the buyer and also required to submit a self-declaration to this effect. The respondent had complied with both these requirements. The only objection taken by the department is that the amounts are not shown as receivables for the year 2007 – 08. She submitted that the imports were made during the fag end of 2007 – 08 and goods were partly sold in 2008 – 09. The respondent is eligible to claim refund only after VAT is paid. The amounts have been shown as receivables in the year 2008 – 09. There is no condition that the amount should be shown as outstanding in the books of accounts immediately on import of goods. It is sufficient that it is shown as outstanding in the balance sheet after sale of the goods in India and Chartered Accountant's certificate was produced. The Chartered Accountant's certificate produced cannot be brushed aside on flimsy grounds. She places reliance on the decision of Equinox Solutions Ltd. Vs. CC, Mumbai – 2011 (272) ELT 310.

4. Heard both sides.

5. The only ground raised by the ld. AR is that the amount was not shown as receivables in the balance sheet for the financial year 2007 – 2008 when the goods were imported. The refund claim is filed under Notification No. 102/2007 which allows the importer to file refund claim of SAD on producing evidence that VAT has been discharged on sale of the imported goods. This being so, it cannot be insisted that the respondents have to show the CVD as receivables immediately after the import of the goods. When the circular prescribes for production of a certificate issued by a Chartered accountant as well as self-declaration by the respondent, the Commissioner (Appeals) has rightly considered these documents and ordered for sanction of refund. We therefore do not find any merit in the contentions raised by the ld. AR. The impugned order does not call for any interference. The appeal filed by the department is dismissed.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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