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

Appeal No. C/41650/2014

(Arising out of Order-in-Appeal C. Cus. No.1829/2013 dated 16.12.2013 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Sri Durga Metals — Appellant

Vs.

Commissioner of Customs (Export), Chennai — Respondent

Appearance

Dr. S. Krishnanandh, Advocate for the Appellant
Shri R. Subramaniam, AC (AR) for the Respondent

<u>CORAM</u>

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **30.05.2018**

Final Order No. **41672 / 2018**

The appellant is aggrieved by the rejection of SAD refund.

2. On behalf of the appellant, ld. counsel Dr. S.Krishnanandh submitted that the authorities below have rejected the refund on two grounds. Firstly, that the appellant has not produced the original Bills of Entry and secondly that the Chartered Accountant's certificate produced by the appellant is not proper. He submitted that the appellant had produced the duplicate importers' copy of bills of entry and the same was not accepted

by the authorities below. The copies were submitted to the bank and hence the appellant was not able to produce the original copy of the Bills of Entry. The Tribunal in the case of M/s. WIPRO Ltd. vide Final Order No. 41311/2018 dated 24.4.2018 had considered a similar issue placing reliance on Notification 102/2007 had held that there is no requirement for producing the original before the refund sanctioning authority. With regard to the issue of Chartered Accountant certificate, he adverted to para 6 and 7 of the adjudication order and submitted that the appellant had furnished the certificate of Chartered Accountant wherein it was certified that the duty burden had not been passed on. The said certificate was accompanied by ST/VAT documents also. However, the authorities below have not accepted the same stating flimsy reasons. He prayed that the refund may be granted.

3. The ld. AR Shri R. Subramaniam supported the findings in the impugned order. With regard to Chartered Accountant's certificate, he submitted that in para 9 of the adjudication order, the adjudicating authority has stated that the copies of service tax and VAT challans have not been produced to support the certificate from the Chartered Accountant. Further, there was overwriting in VAT / SAT documents and therefore was not acceptable.

4. Heard both sides.

5. The Tribunal in the case of M/s. WIPRO Ltd. considered the issue with regard to non-production of originals of Bills of Entry. Upon verification of records, there is no dispute with regard to the import of goods and payment of CVD. The appellant cannot be insisted to produce the original bills of entry. Taking note of the decision in the case of M/s. WIPRO Ltd. I am of the opinion that matter in this regard requires to be remanded to the original authority who shall verify the documents and decide the issue on the basis of the decision in WIPRO Ltd.

5.1 The second issue is with regard to the rejection of the Chartered Accountant's certificate. The appellant has produced a copy of the Chartered Accountant's certificate as well as various letters issued to the department in regard to the refund claim. In those letters, documents are produced along with details. Further, the Chartered Accountant's certificate issued by SPS & Associates has categorically stated in para 6 that the burden of 4% additional duty has not been passed on by the importer to the buyer or any other person. It is also accompanied by VAT returns / challans as well as details of the VAT paid.

6. Taking note of these facts, I am of the considered opinion that the issue whether the Chartered Accountant certificate can be accepted or not has to be reconsidered by the adjudicating authority. I direct that the said issue also be remanded to the adjudicating authority who shall consider the decisions laid in

WIPRO Ltd. as well as Exim Corp India Pvt. Ltd. vide Final Order No. 41635/2015 dated 24.5.2018. The impugned order is set aside and the appeal is allowed by way of remand to the adjudicating authority.

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

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

Rex