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

C/ 40781 & 40810/2016

(Arising out of Order-in-Appeal No. 4/2016-TTN (Cus.) dated 06.01.2016 and 17/2016-TTN (Cus.) dated 27.01.2016 passed by the Commissioner of Central Excise (Appeals-II), Trichy).

1. M/s. Vishaal Bricks : Appellants
2. M/s. Naga Ltd.

Vs.

CC, Tuticorin : Respondent

Appearance

Shri M.N. Bharathi, Advocate
for the appellant

Shri S. Govindarajan, AC (AR)
for the Respondent.

CORAM :

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

Date of Hearing/Decision: **19.03.2018**

FINAL ORDER No. **41733-41734/2018**

Per Bench

Since the dispute involved in both the appeals is same, both are taken up together for common disposal.

2. The common facts of the case are that the appellants had imported cement bags on high seas sales basis. The department took the view that the appellants are not eligible for duty

exemption since they have not purchased the goods directly from the actual manufacturer and not governed by the exemption Notification No. 4/2006-CE dated 01.03.2006 , which has been upheld by the authorities below.

3. None for the first appellant M/s. Vishaal Bricks, however, in respect of the other appellant M/s. Naga Ltd., the Ld. Counsel submitted that the very same issue has been addressed by the Tribunal in its Final Order No.40271-40292/2018 dated 31.01.2018.

4. Ld. AR fairly agreed that this was indeed the case.

5. On going through the said decision, we find that the Ld. Counsel is correct in his assertion. The CESTAT, Chennai in the said decision has interalia addressed the very same issue. The relevant part of the said decision is reproduced as under:-

> "7. Regarding the second issue of actual user condition for the imported cement, we note that the appellants all along claimed fulfilment of such condition. Though same is post-importation, actual use based condition, the assessments were finalized accepting the claim of the appellant for such concessional duty. It would appear that officers had opportunity to satisfy themselves about the actual user condition. In case of possible doubt on such fulfilment, the requirement is to resort to provisional assessment and call for post-importation actual user confirmation. This was not done in the present case which will show that the assessing officer is satisfied with the claim made by the appellants. The Revenue can initiate demand proceedings of differential duty by denying the exemption later, only upon unearthing the evidences of misuse of such end-use condition. Such evidences have not been brought before us. The impugned orders observe that the appellants failed to

> establish actual user. No such condition regarding manner establishing such fact was put at the time of assessment and clearances. The claim in the Bills of Entry at the time of import as well as in the written submissions made before the lower authorities by the appellant-importer categorically states about not selling the imported product to any other person. No evidence to that effect has also been brought by the Revenue. In such situation, the eligibility to the CV duty concession as claimed by the appellant during the material time cannot be questioned much later without any evidence.
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> 8. In view of above discussion and analysis, we find that there is no merit in the impugned orders denying CV duty concession wherever available to the importer-appellants of such conditions. Accordingly, the impugned orders are set aside and all the appeals are allowed with consequential reliefs, if any, as per law."

6. We find no reason to deviate from the ratio of the above decision. Hence, following the same the impugned orders are set aside and the appeals are allowed with consequential benefits, if any, as per law.

(Order dictated and pronounced in the open Court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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