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

S.No.	Appeal No.	Appellant	Respondent
1.	C/326/2012	Commissioner of Customs Chennai (Port-Export) Chennai	Whirpool of India Ltd.
2.	C/327/2012	-do-	Daikin Air Conditioning India Pvt. Ltd.
3.	C/328/2012	-do-	Mirc Electronics Ltd.
4.	C/329/2012	-do-	KMI Business Technologies Pvt. Ltd.
5.	C/330/2012	-do-	Fortune Marketing Pvt. Ltd.
6.	C/331/2012	-do-	L.G. Electronics India Pvt. Ltd.
7.	C/332/2012	-do-	L.G. Electronics India Pvt. Ltd.
8.	C/333/2012	-do-	Ingram Micro India Ltd.
9.	C/334/2012	-do-	Lifestyle International Pvt. Ltd.
Arising out of Order-in-Appeal No.491-654/2012 dt. 25.6.2012 passed by Commissioner of Customs (Appeals), Chennai			

Appearance :

Shri K. Veerabhadra Reddy, JC (AR)
For the Appellant

Shri R.Srinivasan, Advocate (for Sl.No.1,2,4,6,7,9)
Ms. Radhika Chandrasekar, Advocate (for Sl.No.3)
Shri G. Derrick Sam, Advocate (for Sl.No.5)
Shri Godwin, Sr. Manager, Representative (for Sl.No. 8)
For the Respondent

CORAM :

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

Date of hearing / decision : 30.07.2018

FINAL ORDER No. 42148-42156 / 2018

Per Bench

All these appeals since relating to the same issue they are taken up together for common disposal.

2. Respondents in all these appeals had filed application for refund of 4% SAD in respect of imported goods under Notification No.102/2007-Cus. dt. 14.09.2007. The original authority in all these cases sanctioned the refund, against which orders appeals were filed with the department. However, on appeal, the Commissioner (Appeals) upheld the orders of the original authority and rejected the appeals filed by department. Aggrieved, the department has filed these appeals.

3. Today when the matter came up for hearing, on behalf of the department, Ld. A.R Shri K. Veerabhadra Reddy reiterated the grounds of appeal. He also submits that the Chartered Accountant's certificates in these cases did not state in an unqualified and emphatic manner that the burden of 4% CVD has not been passed on by the importers to the buyers. There is also mention about the Retail Sale Price (RSP) in the certificates and there is no discussion about methodology of verification of the documents verified. In respect of Appeal C/333/2012 (relating to Ingram Micro India Ltd.), Ld. A.R submits that the Chartered Accountant's certificate has not been submitted.

4. On the other hand, on behalf of respondents, the Ld.counsels / Representative submitted that all necessary documents as per requirement of Notification No.102/2007-Cus. had been submitted. Both the Orders-in-Original

as well as the Orders-in-Appeal specifically refer to the Chartered Accountant certificates; that both these authorities have gone through and accepted the same; with respect to contention that there is no mention of RSP in the Chartered Accountant and no discussion about methodology of verification of documents, it is submitted that concerned Orders-in-Original specifically record that CST / VAT payments have been correlated by the Chartered Accountant with sale invoices. It is also contended that the concerned OIAs make a specific observation that as long as the Chartered Accountant certifies the correctness, the department has no say or the department should otherwise disprove the correctness which is not the case.

5. Heard both sides and have gone through the facts of the matter.

6. The provisions for refund of SAD under Notification No.102/2007-Cus. have clearly laid down the requirements therein to be complied with / satisfied by the claimants. From the findings of both the lower authorities, it is evident that all these requirements have been satisfied. The grounds given by Revenue in their appeals are tantamount to importing new conditions into the notification which are not mandated in the notification. The Chartered Accountants in their certificates had stated that refund claim is shown in the Books of Account in separate ledger account and has not been passed on by the respondents to their buyers. In the case of appeal C/333/2012 (relating to Ingram Micro India Ltd.), contrary to the contentions made in the grounds of appeal and reiterated by the ld. A.R, the Chartered Accountant's certificate has indeed been produced by the respondents before the original authority. In fact, in the OIO, the original authority states that he has perused the Chartered Accountant certificate which, inter alia

also certifies that "*the incidence of Additional Duty of Customs has not been passed on to its buyer and has been accounted for and disclosed under the heading ADC recoverable being a Loans and Advance in the books of accounts of the company*.".

7. In the event, we find no infirmity in the impugned orders. In consequence, no merit is found in the department appeals for which reason, they are dismissed.

(operative part pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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