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

Appeal No.: C/40390/2018

(Arising out of Order-in-Appeal Sea. C.Cus. II. No. 7/2018 dated 08.01.2018 passed by the Commissioner of Customs (Appeals-II), Custom House, Chennai)

M/s. Freight Link Logistics, : Appellant
19, 1st Floor, Linghi Chetty Street,
Mannady,
Chennai – 600 001

Versus

The Commissioner of Customs (Chennai-IV), : Respondent
Custom House,
No. 60, Rajaji Salai,
Chennai – 600 001

Appearance:-
Shri. S. Manivannan, Proprietor
for the Appellant
Shri. R. Subramaniyan, AC (AR)
for the Respondent

CORAM:

Hon'ble Shri P Dinesha, Member (Judicial)

Date of Hearing: 04.10.2018

Date of Pronouncement: 29.10.2018

Final Order No. 42707 / 2018

This appeal challenges the denial of refund of pre-deposit of Rs. 22,500/-.

2. The adjudicating authority vide Order-in-Original No. 57033/2017 dated 21.07.2017 was convinced that there was double

payment towards pre-deposit, for filing of the appeal apparently before the CESTAT which was required to be refunded as the same was covered under Section 27(1B)(a) and (b) of the Customs Act, 1962 and accordingly sanctioned the refund. On an appeal by the Revenue, the reviewing authority/Commissioner of Customs (Appeals-II), Chennai, set aside the Order-in-Original and the refund therein, against which, the present appeal has been filed.

3. Today when the matter came up for hearing, Shri. S. Manivannan, Proprietor, appeared for the assessee and Shri. R. Subramaniyan, Ld. AC (AR), appeared for the Revenue. I have heard the rival contentions and perused the documents placed on record.

4. It is the case of the assessee that the appellant had remitted as a pre-condition an amount of Rs. 22,500/- while preferring appeal against the Order-in-Original No. 53658/2017 dated 27.02.2017 passed by the Commissioner of Customs against the importer namely M/s. Sree Sai Inc., Chennai. On a perusal of the Orders, I find that the appellant had all along claimed that it had remitted the above pre-deposit amount in the name of the importer by mistake and after realizing the same, they made another remittance of the same amount in their name as pre-deposit vide Challan No.

MCM/0060827 dated 12.06.2017 which was also accepted and thereafter, they claimed refund of the first pre-deposit and these facts remain undisputed. The Commissioner (Appeals) in his Order while rejecting, has maintained that the first pre-deposit was made 'in the name of M/s. Sree Sai Inc.' and it is not the case of the Revenue that the above pre-deposit was made **by** M/s. Sree Sai Inc.

5. I also find that the Commissioner (Appeals) has entertained assumptions in denying the benefit by observing that "pre-deposit amount paid by one cannot be reversed by somebody else… " which is without any documentary evidence and it is not even the case of the Commissioner (Appeals) that the first pre-deposit was made by M/s. Sree Sai Inc. against which a refund is claimed by the appellant herein. The Revenue has nowhere denied the fact that both pre-deposits were made by the appellant alone.

6. The importer's NOC placed before the lower appellate authority also clearly supports the fact that the pre-deposit was only made by the appellant in the name of the importer which only implies that the same was not made by the importer itself. This being the case, there is no scope for double claim i.e., dual claim with regard to a single pre-deposit/refund.

7. A perusal of the TR challan for making the first pre-deposit indicates that the amount tendered was certainly not in cash, but by DD/BPO and if the reviewing authority was serious, the same could have been looked into, so as to ascertain who has drawn the DD/BPO, i.e., whether appellant or the importer.

8. For the above reasons, I am of the considered view that the denial of refund is unjust and unsustainable and therefore, I set aside the impugned Order and restore the Order of the adjudicating authority.

*(Pronounced in open court on **29.10.2018**)*

(P Dinesha)
Member (Judicial)

Sdd