

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

C/42174/2014

[Arising out of Order-in-Appeal C. Cus No.1646/2014, dated 28.08.2014 passed by the Commissioner of Customs (Appeals), Chennai]

M/s. GANESHA IMPEX

APPELLANT

Versus

COMMISSIONER OF CUSTOMS
(SEA-IMPORT) CHENNAI

RESPONDENT

Appearance:

For the Appellant Shri A.K. Jayaraj, Adv.
For the Respondent Shri L. Nandakumar, AC (AR)

CORAM:

Hon'ble Smt. Sulekha Beevi C.S, Judicial Member

Date of hearing/decision **15-03-2019**

FINAL ORDER NO. **40574 / 2019**

Brief facts are that the appellants had filed refund claim under Notification No.102/2007-Cus., dated 14.09.2007 for refund of SAD. The refund was rejected by adjudicating authority for non-fulfilment of condition 2(e)(ii) of the said notification. In appeal, the Commissioner (Appeals) upheld the rejection on these grounds. Hence this appeal.

2. On behalf of the appellant, the learned counsel Shri A.K. Jayaraj submitted that the authorities below had rejected the refund stating that the description shown in the sales invoices does not match with the description shown in the bill of entries. Further, that Chartered Accountant's Certificate is not proper for the reason that the certificate is issued without the proper verification of the accounts

of the appellant. He submitted that the goods were sold by showing the grade of the goods in sales invoices, whereas, the bill of entry shows description of the goods as per the purpose of classification. He, therefore, submitted that the reason for rejection stating that the specifications of the goods are different is not correct. It is also pointed out by him that the appellants had furnished Chartered Accountant's Certificate showing the details of the VAT paid in respect of imported goods sold by them. The allegation that the Chartered Accountant has not properly verified the accounts of the appellant is incorrect. The said Chartered Accountant is a statutory auditor. He relied upon the decision of the Tribunal in the case of *M/s. Precision Informatic (M) Pvt. Ltd.* vide Final Order dated 21.12.2017 to argue that in same set of facts, the Tribunal has allowed the claim of refund.

3. The learned Authorised Representative for the Revenue Shri L. Nandakumar, AC (AR) supported the findings in the impugned order. He stated that in the bill of entry, the description of goods is shown as "Cold Rolled Stainless Steel Sheets" whereas in the sales invoices, the description of the goods is shown by their grade only. Further, the Chartered Accountant's Certificate cannot be accepted as it is given without verification of the accounts, holding that such allegation cannot sustain.

4. Heard both sides.

5. The two defects pointed out by the department for rejecting the refund claim is that the description of the goods shown in the sales invoices does not tally with the description of the goods in the bill of entry. From the submissions made, it is seen that the description show in the bill of entry is as per the nature or classification of goods

whereas in the sales invoices only grades are shown. The department does not have a case that goods were not imported or sold. The sales invoices, Bill of Entry together with Chartered Accountant Certificate is produced by assessee along with refund claim. All these documents together would definitely show that there are no discrepancies with the goods sold. The Tribunal in the case of *M/s. Precision Informatic (M) Pvt. Ltd.*, (supra) has held that minor discrepancies cannot disentitle the importer from getting benefit of refund.

5.1 The second reason for rejection is that Chartered Accountant's Certificate is not proper for the reason it is issued without verification of the accounts of the appellant. The said notification mandates the furnishing of the certificate issued by a statutory auditor. The department does not have a case that the certificate was not issued by a statutory auditor. There is no evidence to show that the certificate does not correlate with accounts of appellant.

6. After appreciating the facts and following the decision cited supra, I am of the view that the reasons for rejection of refund are unjustified. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S)
JUDICIAL MEMBER

	DRAFT			Remarks
	I	II	III	
Date of dictation	15.03.2019			
Draft Order - Date of typing	18.03.2019	20.03.2019		
Fair Order Typing	21.03.2019			
Date of number and date of dispatch	22.03.2019			

