IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. III

Customs Appeal No. 42638 of 2014

(Arising out of Order-in-Appeal No.1336 & 1337/2014 dated 30.7.2014 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Honda Siel Power Products Ltd. **Appellant**
Plot No. 5, Section 41 (Kasna)
Greater Noida Industrial Area
Gautam Budh Nagar District
Uttar Pradesh – 201 310.

Vs.

Commissioner of Customs (Export) **Respondent**
Custom House
60, Rajaji Salai
Chennai – 600 001.

WITH

(i) Customs Appeal No.42639/2014 (M/s. Honda Siel Power Products Ltd.)
(Arising out of Order-in-Appeal No.1336 & 1337/2014 dated 30.7.2014 passed by the Commissioner of Customs (Appeals), Chennai)

(ii) Customs Appeal No.40247/2015 (M/s. Honda Siel Power Products Ltd.)
(Arising out of Order-in-Appeal C. Cus. II No.82/2014 dated 31.10.2014 passed by the Commissioner of Customs (Appeals – II), Chennai)

(iii) Customs Appeal No.40179/2016 (M/s. Honda Siel Power Products Ltd.)
(Arising out of Order-in-Appeal C. Cus. II No.746/2015 dated 30.8.2015 passed by the Commissioner of Customs (Appeals – II), Chennai)

(iv) Customs Appeal No.42469/2016 (M/s. Honda Siel Power Products Ltd.)
(Arising out of Order-in-Appeal C. Cus. II No.1074/2016 dated 7.11.2016passed by the Commissioner of Customs (Appeals – II), Chennai)

(v) Customs Appeal No.40477/2017 (M/s. Honda Siel Power Products Ltd.)
(Arising out of Order-in-Appeal C. Cus. II No.78/2017 dated 19.1.2017 passed by the Commissioner of Customs (Appeals – II), Chennai)

APPEARANCE:-

Ms. K. Nancy, Advocate for the Appellant
Shri B. Balamurugan, AC (AR) for the Respondent

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Hon'ble Shri P. Venkata Subba Rao, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Final Order Nos. *40979-40984 / 2019*

Date of hearing: 31.07.2019
Date of decision: 31.07.2019

Per P. Venkata Subba Rao,

All these five appeals are filed on the same issue and hence they are taken up together for disposal.

2. Brief facts of the case are that the appellant filed refund claims for refund of Special Additional Duty (SAD) in terms of Notification No.102/2007-Cus. dated 14.9.20017. Their applications were rejected on the ground that they have sold the goods without paying any VAT. The goods imported into India are chargeable to customs duty as per Customs Act, 1962 at the rates set forth in the Schedule to the Customs Tariff Act, 1975. This Tariff Act levies various forms of duties such as Basic Customs Duty, Additional Customs Duty, Special Additional Duty, Countervailing Duty etc. In terms of section3 (5) of Customs Tariff Act, 1975, SAD is levied on some products in order to provide a level-playing field for the domestic manufacturers. Goods which are sold by domestic manufacturers suffer VAT levied by the State Governments whereas goods which are imported do not suffer VAT at the time of import because the sale in such cases is in the course of international trade and therefore outside purview of the competence of the States to tax. In order to balance the situation, SAD at the rate of 4% has been imposed on some goods including the goods imported by the appellant. After importing, if the importer uses the goods, he suffers the burden of SAD. On the other hand, if after importation, he sells the goods, he will have to pay VAT to the State Government at the appropriate rate. Thereafter, he can claim refund of the SAD paid by him under Notification No.102/2007-Cus. dated 14.9.20017. For this purpose, he will have to file a refund claim

within one year from the payment of SAD and also demonstrate that he has fulfilled the other conditions of the Notification. In these particular cases, the appellant imported goods and resold them but the appropriate rate of VAT was nil because no VAT was payable on the products in question. Therefore, they filed the refund claim after selling the goods without paying any VAT.

3. Ld. counsel for the appellant outlines the case as above and submits that the case of the Revenue is that they are not entitled to exemption Notification No.102/2007-Cus. dated 14.9.20017 and the refund available therein because no VAT has been paid by them. She asserts that they have indeed paid the appropriate amount of VAT which is nil. She further argues that there, indeed, is a level-playing field between the goods which are sold by the local manufacturers and the goods which have been sold by them because both are sold at nil rate of VAT. A plain reading of the exemption notification also does not say that the VAT has to be paid at any particular rate. It could be higher or lower than the 4% SAD paid by them. In respect of some commodities, it could be higher at say 12% and in other commodities it may be nil. The benefit of exemption notification is only subject to the condition that appropriate amount of VAT has been paid which they paid and which in their case is nil.

4. She further points out that in their own case for a different period, on identical issue, this Bench had decided that they are entitled to refund of SAD when the rate of VAT payable was nil [Honda Siel Products Ltd. Vs. Commissioner of Customs , Chennai – IV – 2018 (2) TMI 1135 –CESTAT CHENNAI]. She also relied on the case of M/s. Kubota Agricultural Machinery India Pvt. Ltd. – 2017 (6) TMI 565-CESTAT CHENNAI and Gazal Overseas Vs. Commissioner of

Customs, New Delhi – 2016 (332) ELT 767 (Tri. Del.). In all these cases, it has been held that refund of SAD is available where the goods are resold on payment of VAT even if the VAT payable is nil.

5. Ld. AR agrees with the facts of the case as narrated by ld. counsel and reiterates the findings in the impugned order.

6. We have considered the arguments of both sides and perused the records. We find that the issue is no longer res integra and has been decided in the appellant's own case that refund of SAD is available under Notification No.102/2007-Cus. dated 14.9.20017 when the goods are resold by paying VAT even if the rate of VAT applicable is nil. In view of the above, we find that the impugned orders need to be set aside and the appeals need to be allowed and we do so.

7. The impugned orders are set aside and the appeals are allowed with consequential relief, if any.

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

(**P. VENKATA SUBBA RAO**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

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