CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

Customs Appeal No.40299 of 2015
(Arising out of Order-in-Appeal C.Cus.II No.29 to 34/2014 dated 30.10.2014 passed by Commissioner of Customs (Appeals), Chennai]

M/s.Infinity Industries Pvt.Ltd. **Appellant**
Haroon House, 1st Floor,
No.294, Perin Nariman Street
Mumbai – 400 001.

VERSUS

Commissioner of Customs (Import),
Chennai-IV, **Respondent**
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

WITH

(i) Customs Appeal No.40303 of 2015 (ii) Customs Appeal No.40304 of 2015 (iii) Customs Appeal No.40305 of 2015 (iv) Customs Appeal No.40306 of 2015 (v) Customs Appeal No.40307 of 2015 (M/s.Infinity Industries Pvt.Ltd.)
(Arising out of Order-in-Appeal C.Cus.II No.29 to 34/2014 dated 30.10.2014 passed by Commissioner of Customs (Appeals), Chennai]

(vi) Customs Appeal No.40725 of 2015 (vii) Customs Appeal No.40726 of 2015 (viii) Customs Appeal No.40727 of 2015 (ix) Customs Appeal No.40728 of 2015 (x) Customs Appeal No.40729 of 2015 (xi) Customs Appeal No.40730 of 2015 (xii) Customs Appeal No.40731 of 2015 (xiii) Customs Appeal No.40732 of 2015 (xiv) Customs Appeal No.40733 of 2015 (M/s.Infinity Industries Pvt.Ltd.)
(Arising out of Order-in-Appeal C.Cus.II No.392 to 400 dt. 24.12.2014 passed by Commissioner of Customs (Appeals-II), Chennai]

(xv) Customs Appeal No.40882 of 2015 (xvi) Customs Appeal No.40883 of 2015 (xvii) Customs Appeal No.40884 of 2015(M/s.Infinity Industries Pvt.Ltd.)
(Arising out of Order-in-Appeal C.Cus.II No.28 to 30/2015 dt. 30.01.2015 passed by Commissioner of Customs (Appeals-II), Chennai]

(xviii) Customs Appeal No.41797 of 2015 (xix) Customs Appeal No.41798 of 2015. (M/s.Infinity Industries Pvt.Ltd.)
(Arising out of Order-in-Appeal No.499 to 502 dated 29.05.2015 passed by Commissioner of Customs (Appeals-II), Chennai)

<u>APPEARANCE</u>:
For the Appellant : MR. B. Baskar, Advocate

For the Respondent : Ms. T. Usha Devi, DC (AR)

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

DATE OF HEARING :15.11.2019
DATE OF DECISION :15.11.2019

FINAL ORDER No. 41422-41441 / 2019

The issue for consideration in these appeals being similar they are taken up together and disposed by this common order.

2. Appellants had filed refund claim under Notification No.102/2007-Cus. dt. 14.09.2007 for refund of the SAD paid on the goods imported by them. After due process of law, the original authority rejected the claim on various grounds which was also upheld by the commissioner (Appeals) in some of the appeals. Aggrieved by the rejection of refund claims, the appellants are now before the Tribunal.

3. Ld. counsel Shri M. Baskar appeared and argued for the appellant. He submitted that the reasons for rejection of refund claim in these appeals by the authorities below are under four grounds :

(i) that invoices do not bear endorsement as required under condition 2(b) of notification No.102/2007.

(ii) that the wordings used in the endorsement by the appellant does not correlate with the wordings of the endorsement as required under condition 2(b) of the notification.

(iii) the Chartered Accountant certificate was not accepted by the authorities below alleging that it is factually incorrect.

(iv) that the description of the goods in the Bills of Entry and the sale invoices do not match.

4.1 With regard to the first and second issue as stated above, Ld.counsel submitted that the appellant is an importer and trader and therefore has issued commercial invoices for sale of the goods imported. Not being a manufacturer, he has not issued any Central Excise invoice. He relies upon the decision of the Larger Bench in the case of *Chowgule & Company Pvt. Ltd.* – 2014 (306) ELT 326 (Tri.-LB) to argue that when the commercial invoices are issued by the trader-importer, the requirement under para 2(b) of the notification need not be fulfilled.

4.2 With regard to the third issue alleging that Chartered Accountant is factually incorrect, Ld. counsel adverted to the discussions made by the Commissioner (Appeals) in the last paragraph of the impugned order. He submitted that it alleges that since the Chartered Accountant has stated in the certificate that the sales invoices are endorsed as per the requirement under 2(b) and when such requirement has not been fulfilled, the certificate given by the Chartered Accountant is factually incorrect and therefore not acceptable. He adverted to the Board circular No.401/104/2007-Cus.III dt. 28.04.2008 and submitted that as per para 2(b) of the notification, a certificate has to be produced by the appellant from the statutory auditor who has certified after looking into the accounts of the appellants that payment of VAT correlates with the imported goods. The department does not have a case that there is no correlation with the VAT paid on sale invoices and SAD paid under Bills of Entry. Since condition of endorsement has not been fulfilled and since the Chartered Accountant has stated in his certificate that the condition of such endorsement has been fulfilled, the certificate issued by the Chartered Accountant is held as not acceptable. He argued that since the certificate issued by the statutory auditor certifies with regard to the correlation of the VAT and SAD paid same has to be accepted and condition 2(e) has to be regarded as having been fulfilled by the appellant.

4.3 The fourth ground of rejection is mismatch with regard to description of the gods in the sales invoices and the Bills of Entry. Ld. counsel submitted that while the exact description of the goods was mentioned in the Bills of Entry the appellant has only mentioned ordinary trade name used in the local market while issuing the sales invoice. The product imported by the appellant is paper and the character of the paper is clear from the invoices as well as the Bills of Entry. It is argued by him that since the variations in the description are only minor the refund cannot be rejected. To support his argument he placed reliance on the decision of the Hon'ble High Court in the case of *PP Products Ltd. Vs CC Chennai* in C.M.A. 2030 of 2017 dt.4.4.2019. The decision of the Tribunal in the case of *M/s.Orange Overseas Pvt. Ltd. Vs CCE New Delhi* - 2016-TIOL-302-CESTAT-DEL was also relied upon by the Ld. counsel on this issue. He prayed that the refund may be allowed.

5.1 Ld. A.R Ms. T. Usha Devi appeared and argued for the department.

5.2 With regard to the first and second issue that the sale invoices do not bear any endorsement or that wordings are not the same as given in para 2(b) of the notification, Ld. A.R submitted that the sales invoices should show that VAT was paid. In the discussions made by the authorities below, it is not clear whether any duty element was there in the sales invoices. Therefore, it cannot be concluded that para 2(b) of the notification has been complied. Thus, with the available facts, it cannot be decided whether the ratio of the Tribunal's Larger Bench decision in *Chowgule & Company Pvt. Ltd.* (supra) is applicable to the facts of this case.

5.3 With regard to the ground of rejection that the Chartered Accountant Certificate is not acceptable, Ld.A.R submitted that the Commissioner (Appeals) has stated in the certificate that the appellant has complied that para-2(b) of the notification regarding the endorsement whereas this condition has not been fulfilled and therefore it cannot be concluded that certificate issued by the Chartered Accountant is not acceptable.

5.4 With regard to the last issue regarding difference in description of goods in the Bills of Entry and the sale invoices, Ld. A.R submitted that the difference / mismatch is also major and therefore cannot be ignored. In the case relied upon by the Ld. counsel for appellant, the mismatch was minor and therefore the High Court as well as Tribunal has allowed the refund. She pointed out that in the discussions made in para-6 of the OIO dt. 4.7.2014 as well as OIO dt. 6.8.2014 and argued that the description of the goods mentioned in the sales invoices does not seem to show that he goods sold are that which have been imported. Thus the mismatch being major, the efund claim has been rightly rejected. She relied upon the decision in the case of *Hanuman Timber Co. Vs CC (Port-Export) Chennai* - 2017 (358) ELT 771 (Tri.-Chennai)

6. Heard both sides.

7. The grounds for rejection have been narrated in the previous paragraph. The first and the second ground is that sales invoices do not bear the endorsement as required under para 2(b) or that the wordings of the endorsement are not entirely in accordance with the words as stated in para 2(h) of the notification. The appellant has submitted that he is importer-trader and not a manufacturer. Thus the appellant has issued commercial invoices for sale of the goods. In *Chowgule & Company* (supra) the very same issue was analysed by the Larger Bench of the Tribunal which held as under :

> "**5.4** In view of the factual and legal analysis as above, we answer the reference made to us as follows. A trader-importer, who paid SAD on the imported .good and who discharged VAT/ST liability on subsequent sale, and who issued commercial invoices without indicating any details of the duty paid, would be entitled to the benefit of exemption under Notification 102/2007-Cus., notwithstanding the fact that he made no endorsement that "credit of duty is not admissible" on the commercial invoices, subject to the satisfaction of the other conditions stipulated therein. The above decision is rendered only in the facts of the case before us and shall not be interpreted to mean that conditions of an exemption notification are not required to be fulfilled for availing the exemption."

8. Following the above decision, I am of the view that non-fulfilment of condition 2(b) cannot be a ground for rejecting the refund. Rejection of refund on this ground is set aside.

9. The third ground for rejection of refund is that the Chartered Accountant certificate is flawed or incorrect and therefore not acceptable in evidence. In the last para of the OIA dt. 30.10.2014, the Commissioner (Appeals) has stated that since the Chartered Accountant has certified that the sale invoices are endorsed as per the condition 2(B) and since the sale invoices do not bear endorsement, the Chartered Accountant certificate is factually incorrect and therefore it cannot sustain. Moreover, as per the Board's circular, statutory auditor is required to issue certificate after correlating VAT and SAD paid by the assessee. There is no allegation raised by the department that these figures do not correlate. The only allegation with respect to Chartered Accountant certificate is that since he has stated that the sale invoices bear endorsement the same cannot be accepted. From the above discussions, I hold that since condition 2 (e) to produce Chartered Accountant certificate so as to correlate VAT and SAD paid has been furnished by the appellant, the rejection of refund claim on this count against the assessee requires to be set aside, which I hereby do.

10. The last issue is with regard to mismatch of the description of the goods in sales invoices and the Bills of Entry. The refund has been rejected on this ground in Appeals C/40305/2015, C/40306/2015 and C/40733/2015. In para-6 of OIO dt. 4.7.2014, the discussion with regard to mismatch has been made by the original authority. It is seen that description of goods in the Bill of Entry is "LASU GLOSS ART PAPER AND BOARD C2S 58.5*91 GSM 118", the description of the goods

mentioned in the sales invoices as "118LU 23 x 36 C2S GLS". Similarly, the mismatch of the description of the goods under OIO 6.8.2014 is as under :

Sl.No.	Claim/File No	B/E No.	B/E Date	Description in the Bill of Entry	Description in the Sales invoices
1	SR No.2124/2013	7238576	28.06.12	i. C2S Art paper and Board 350 GSM 635 x 910 MM LG GLOSS ii. C2S Art Paper and Board 300 GSM 625 x 910 MM LG GLOSS iii C2S Art Paper and Board 300 GSM 585 x 910 MM LG GLOSS	300 NEO 23 x 36 C2S-GLS 350 NEO 23x 36C2S-GLS Bindal Brightwhite 60 GSM COPIER COLOUR 75 GSM Bindal Fine Print Copier 75 A4
2	SR No.2277/2013	7416281	17.07.12	HP Business 70 GSM A4 210 x 297 MM (CIE 161)	HP Business copy 70 A4 (without mention about any Sl.Nos.)

11. Ld.A.R has submitted that the mismatch or difference in the description of the goods is major one and therefore cannot be ignored. In the case of *PP Products Ltd.* (supra) as well as *Orange Overseas Pvt. Ltd. (supra),* the Hon'ble High Court and the Tribunal have granted refund to the assessee even though there was mismatch of the goods observing that in the Bill of Entry the goods were given in the new description whereas in the sales the goods were described as per the common trade use. On perusal of description of the goods mentioned above, I find that character of the goods (paper) has been shown in the sales invoices. So also, the goods sold are paper of different grades.

The appellant has pointed out that he has used description of the goods as known in the trade in India. Department does not have a case that the description shown in the invoices are not the goods known in the local market in India. Thus I do not find any major discrepancy in the description of the goods in the Bill of Entry and the sale invoices. The Tribunal in the case of *Hanuman Timber Co. Vs CC (Port-Export) Chennai* - 2017 (358) ELT 771 (Tri-Chennai) relied upon by Ld.A.R had rejected the refund holding that there is no major mismatch of the goods. In the said case, the import was of timber logs and whereas in the sale invoices the goods were described as "face veneer". The goods are entirely different and therefore it is not the case of minor mismatch for which reason the Tribunal has rejected the refund. The said decision is therefore distinguished on facts. On appreciating the facts of the present case, as well as following the decision of the Hon'ble High Court in the case of *PP Products* (supra) as well as *Orange Overseas Pvt. Ltd.* (supra), I am of the view that the rejection of refund claim on the ground of mismatch in description of the goods cannot be sustained and requires to be set aside, which I hereby do.

12. From the foregoing discussions, the impugned order rejecting the refund claim is set aside. The appeals are allowed with consequential benefits, if any, as per law.

(dictated and pronounced in court)

(Sulekha Beevi C.S)
Member (Judicial)

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