IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 42241 of 2014

(Arising out of Order-in-Appeal No. 1136/2014 dated 30.06.2014 passed by the Commissioner of Cus. (Appeals), 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Chakrapani Vyapar Private Limited, **: Appellant**
No. 15, K.S. Garden,
4th Cross, Lalbagh Road,
Bangalore – 560 027

VERSUS

The Commissioner of Customs, **: Respondent**
Chennai Sea Port,
Custom House,
No. 60, Rajaji Salai,
Chennai – 600 001

APPEARANCE:

Shri. Ramesh Ananthan, Advocate for the Appellant

Shri. S. Balakumar, Authorized Representative (A.R.) for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 40016 / 2020

DATE OF HEARING: 18.12.2019

DATE OF DECISION: **20.01.2020**

The very short issue involved in this appeal is the refund of 4% of Special Additional Duty (SAD) under the Customs Notification No. 102/2007-Cus. dated 14.09.2007, as amended. The Adjudicating Authority namely, the Assistant Commissioner of Customs (Refunds) vide Order-in-Original No. 18784/2012 dated 08.05.2012 had sanctioned the refund of 4% SAD after going through the relevant documents and after applying the unjust enrichment test. However, the Commissioner of Customs (Appeals), Chennai, vide impugned order has set aside the refund granted *inter alia* alleging that it was difficult for correlating the imported goods with that of the sold goods; that the respondent being a trader, there was possibility of one grade of the imported material moving faster than the other grade; that it was not possible from the description mentioned in the sales invoice to find out which grade of the imported material was exhausted or left unsold; etc.

2. When the matter was taken up for hearing, Shri. Ramesh Ananthan, Ld. Advocate appeared for the assessee and Shri. S. Balakumar, Ld. Authorized Representative (Assistant Commissioner) appeared for the Revenue.

3. Ld. Advocate for the assessee submitted at the outset that the appeal relates to the period July 2010 to September 2010, an identical issue has already been decided by this very Bench of the Tribunal in the case of ***M/s. Tarajyot Polymers Ltd. v. Commissioner of Customs, Chennai & ors. in Customs Appeal No. 42373 of 2014*** and other connected appeals, wherein even the assessee herein was also one of the appellants and that this Bench vide Final Order Nos. 40995-41001/2018 dated 26.03.2018 has *inter alia* held that the rejection of refund was bad. *Per contra*, Ld. Authorized Representative for the Revenue supported the findings of the lower authorities.

4. I have considered the rival contentions and gone through the orders of lower authorities as also the documents placed on record.

5. Strangely, the First Appellate Authority having observed that a personal hearing was offered on 14.03.2013 before his predecessor, still proceeded to decide the case on merit, based on the available records, without providing an opportunity to the assessee on account of change, in violation of the principles of natural justice.

6. Be that as it may, after going through the decision in the case of *M/s. Tarajyot Polymers Ltd. (supra)*, I note that this Bench has *inter alia* held that the rejection of refund was unjustified, in the following words :

> *"7. …*
>
> *b. The second reason for rejection of refund claim is that description of the goods in the Bill of Entry does not match with the description of goods in the sales invoice. In the invoice only the generic description as 'plastic granules' is mentioned . A detailed description of the goods with grades of imported granules is given in the bills of entry. The mere mention of grades of plastic granules in the sales invoice cannot be a ground to deny the substantive benefit of refund, when there is no dispute that appellant has sold the very same goods that have been imported. The issue stands covered by the decision in the case of CC, Chennai vs Shri Ram Impex India (P) Ltd. 2014 (300) E.L.T. 126 (Tri. - Chennai). Following the same, we hold that the rejection of refund on this ground is not correct and requires to be set aside which we hereby do."*

7. Further, the Adjudicating Authority has given a categorical finding on the payment of Sales Tax/VAT as also the correlation of VAT/Sales Tax with goods sold in the Order-in-Original which is duly supported by the certificate of a qualified Chartered Accountant, which fact has not at all been disputed by the Revenue which in effect proves that the Adjudicating Authority had no such difficulties insofar as correlations, etc., are concerned. The above findings in the Order-in-Original is based on the verification of relevant documents like the invoices, Chartered Accountant's certificate, etc. Therefore, I do not see any strength in the First Appellate Authority's rejection of the refund for want of correlation, which exercise apparently has already been carried out to the satisfaction of the Adjudicating Authority. Hence, the impugned order has to be set aside and is hereby set aside.

8. The assessee's appeal is therefore allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **20.01.2020**)

Sd/-

(P. DINESHA)
MEMBER (JUDICIAL)

Sdd