IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. IV

Customs Appeal No. 40038 of 2015

(Arising out of Order-in-Appeal C.Cus. No. 1856/2014 dated 26.09.2014 passed by the Commissioner of Cus. (Appeals), 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Greaves Cotton Limited, **: Appellant**
Lakshmi Chambers, No. 30,
Anna Salai, Little Mount,
Saidapet, Chennai – 600 015

VERSUS

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

WITH

Customs Appeal No. 40635 of 2015

(Arising out of Order-in-Appeal C.Cus. II No. 288/2014 dated 24.12.2014 passed by the Commissioner of Cus. (Appeals), 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Greaves Cotton Limited, **: Appellant**
Lakshmi Chambers, No. 30,
Anna Salai, Little Mount,
Saidapet, Chennai – 600 015

VERSUS

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

APPEARANCE:

Shri. G. Derrick Sam, Advocate for the Appellant

Ms. K. Komathi, Authorized Representative (A.R.) for the Respondent

CORAM:

HON'BLE MR. C. J. MATHEW, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOs. 41683-41684 / 2019

DATE OF HEARING: 11.12.2019

DATE OF DECISION: 11.12.2019

Order Per : Hon'ble Mr. P. Dinesha

The sole issue in these appeals is the denial of 4% Special Additional Duty (SAD) claimed by the appellant. For the sake of convenience, the details of the present appeals are tabulated as under :

Sl. No	**Order-in-Original No./Date**	**Impugned Order-in-Appeal C.Cus. No./Date**	**Appeal No.**	**Refund claimed (in Rs.)**
1.	24788/2014 dated 23.04.2014	1856/2014 dated 26.09.2014	C/40038/2015	59,67,790/-
2.	27822/2014 dated 14.07.2014	288/2014 dated 24.12.2014	C/40635/2015	12,72,579/-
			TOTAL	72,40,369/-

2. Today, when the matter was taken up for hearing, Shri. G. Derrick Sam, Learned Advocate appeared for the assessee-appellant and Ms. K. Komathi, Learned Joint Commissioner (Authorized Representative) appeared for the Revenue.

3. Facts are not in dispute.

4.1 On going through the Orders-in-Original, we notice that the reason for denial of refund claims is that there was no endorsement by the importer to the effect that no credit of additional duty of Customs under Section 3 (5) of the Customs Tariff Act, 1975 was admissible, which according to the Adjudicating Authority was contrary to condition 2 (b) of Notification No. 102/2007-Cus. dated 14.09.2007, as amended. Further, the Adjudicating Authority refers to a subsequent Board Circular No. 16/2008-Cus. dated 13.10.2008, to an order of First Appellate Authority in the case of M/s. Emerald Sales Corporation, Chennai in Order-in-Appeal C.Cus. No.

1494/2012 dated 19.12.2012 and also to the decision of the Hon'ble Apex Court in the case of *M/s. Eagle Flask Industries Ltd. v. Commissioner of Central Excise, Pune [2004 (171) E.L.T. 296 (S.C.)]* in the Orders-in-Original to reject the refund claims, which rejections were upheld by the First Appellate Authority.

4.2 We also find that both the authorities have failed to consider a later Board Circular No. 18/2010-Cus. dated 08.07.2010 which was very much available as on the date of passing the Orders-in-Original in the case on hand, wherein the Board has granted due recognition to a certificate issued by a Chartered Accountant with a clear instruction that "….it has been decided that the field formations shall accept a certificate from Chartered Accountant for the purpose of satisfying the condition that the burden of 4% CVD has not been passed on by the importer to any other person …."

5. The facts of the case *vis-à-vis* the above subsequent Board Circular would lead us to an irrefutable situation that the requirement of condition 2 (b) of Notification No. 102/2007 *(supra)* has been misinterpreted by the lower authorities. Apparently, the dictum of the Hon'ble Apex Court in the case of *M/s. Eagle Flask Industries Ltd. (supra)* is based on a different Notification.

6. Further, we also have the benefit of the decision of Hon'ble Larger Bench of the Tribunal in the case of *M/s. Chowgule & Company Pvt. Ltd. v. Commissioner of Customs & Central Excise* reported in *2014 (306) E.L.T. 326 (Tri. – LB),* wherein it has been categorically held that non-declaration of duty in the invoice issued would itself amount to affirmation that no CENVAT Credit was available and therefore, that itself would amount to satisfaction of condition 2 (b) of the Notification *(supra).*

7. In the light of the above, we do not approve the reasons given in the impugned orders for denying the refund claims and accordingly, we set aside the same and allow the appeals with consequential benefits, if any, as per law.

(Operative part of the order pronounced in the open court)

Sd/-

(C.J. MATHEW)
MEMBER (TECHNICAL)

Sd/-

(P. DINESHA)
MEMBER (JUDICIAL)

Sdd