CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, SZB, CHENNAI

REGIONAL BENCH - SM 3 B3

Customs Appeal No. C/42412/2014,

(Arising out of Order-in-Appeal No. 1338/2014 dated 30.07.2014 passed by the Commissioner of Customs (Appeals), Chennai).

M/s. Ayushman Merchant Pvt. Ltd. **Appellant**
Plot No. 35, 1st Floor, D.V. Colony,
Secunderabad-500 003 (A.P)

Vs.

The Commissioner of Customs, **Respondent**
Chennai Sea Port, Customs House,
No. 60, Rajajisalai,
Chennai-600 001.

APPEARANCE:

Shri Ramesh Ananthan, Learned Advocate
Shri Sundarraman K., Learned Advocate
for the appellant.

Shri M. Jagan Babu, AC, Ld. Departmental Representative for the Respondent

CORAM:

HON'BLE MR P.DINESHA, Judicial Member

FINAL ORDER Nos. 40497/2020

Date of Hearing: **27.01.2020**
Date of Pronouncement: 20.02.2020

The only issue involved in this appeal is the denial of refund of 4% Special Additional Duty (SAD for short) under the Customs Notification No. 102/2007-Cus. dated 14.09.2007, as amended. During adjudication, the

Assistant Commissioner of Customs (Refunds) denied the refund on the ground that the refund claim was ineligible. The above view of the adjudicating authority came to be upheld by the first appellate authority vide impugned order-in-Appeal No. 1338/2014 dated 30.07.2014, who also found interalia that there was likelihood of mix up of goods of different grades. The above denial has resulted in this appeal.

2. When the matter was taken up for hearing Shri Ramesh Ananthan, Learned Advocate, along with Shri K. Sundarraman, Learned Advocate, appearing for the appellant submitted that the appellant had imported vide three Bills of Entry of different dates (ie., 9/10/2010, 11/11/2010 & 14/02/11) "Calcium Carbonate Powder" which were sold under the invoice name "Mineral Powder". He would also submit that the only reason for the denial of refund attributed by the adjudicating authority is that "…the description of the imported goods in Bills of Entry is "Calcium Carbonate Powder" but the same mentioned in the sale invoices as "Mineral Powder", which is submitted in CD format. Hence the claim is ineligible." He further submitted that the assessee-appellant has used in the sale invoices a more generic term but however, there is no dispute that the same are falling under the same Chapter Heading, and finally he relied on the decision of this very Bench of the Tribunal in the case of M*/s. Chakrapani Vyapar Private*

Limited Vs. Commissioner of Customs, Chennai vide Final Order No. 40016/2020 dated 20.01.2020 and also a decision of the Hon'ble High Court of Judicature at Madras in the case of *P.P. Products Ltd. Vs. Commissioner of Customs, Chennai,* in Civil Miscellaneous Appeal No. 2030 of 2017 and Civil Miscellaneous Petition No. 10896 of 2017 dated 04.04.2019.

3. Per contra, Shri M. Jagan Babu, AC, Learned Departmental Representative would submit that the refund claim did not contain any specific goods as such and no further documents were furnished before the adjudicating authority to prove that both Calcium Carbonate Powder and Mineral Powder are one and the same. Further, he supported the findings of the lower authorities.

4. Heard both sides, after going through the rival contentions and the discussions in the impugned order, I find that it is not the case of the Revenue that either the goods are different or that they are different categories *per se,* falling under different HSN. No doubt, appellant could have submitted a certificate by an expert in the field in order to facilitate easy appreciation of the issue by the Revenue, but then the adjudicating authority could have questioned the same, invited explanation to his satisfaction, in order to arrive at any conclusion. It is not even his case that the descriptions would bring into existence two

different goods, different in all respects nor has the Revenue proved that the Mineral Powder is not a generic term for the goods in question. Further, the Order-in-Original is not even alleging that "Calcium Carbonate Powder" and "Mineral Powder" are different. Even if they are assumed to be different, then, how they are different cannot be a guess work but based on some analysis, which is lacking. Thus, I am of the considered view that the ratio *decidendi* of the Hon'ble High Court of Judicature at Madras in the case of P.P. Products Ltd. (supra) equally applies wherein, the following observations are made:-

> "**11.** In our considered view, the Commissioner (Appeals-II), the first appellate authority was right in its observations/findings which are quoted herein below :-
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> "………. It is seen from the tabular column of discrepancy given in the Order-in-Original by the lower authority, only the grades of the granules are missing but the description 'HDPE' and 'LDPE' is found in both the documents. It is seen that the appellants have used the generic description of the imported goods in the sales invoices and non-mentioning of grade will not change the imported goods different. Hence, the goods imported and the goods sold are one and the same and are co-relatable. The lower authority has not issued any DM or PH to the appellants for making the deficiencies good or to make any submissions. The department has not proved that the goods sold are different from the goods imported. The lower authority has not disputed the fulfillment of the other substantive conditions of the notification by the appellants. Rejection of partial amount of refund on this flimsy ground is not sustainable."
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> **12.** The finding of the Tribunal, in our considered view, is not sustainable, considering the facts and circumstances of the case, as the adjudicating authority himself was satisfied that substantial amount of claim for refund was sustainable.
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> **13.** Thus, for the above reasons, this appeal, filed by the appellant is allowed, the order passed by the Tribunal is set aside and the order passed by the Commissioner (Appeals-II) is restored and the substantial questions of law are answered in

> favour of the appellant. No costs. Consequently, connected miscellaneous petition is closed."

5. In view of the above, the appellant would succeed and consequently, the impugned order cannot be sustained and accordingly, the same is set aside. Appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the Open Court on 20.02.2020)

(P.DINESHA)
JUDICIAL MEMBER

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