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

REGIONAL BENCH - COURT NO. – III

Customs Appeal No. 41703 of 2019

(Arising out of Order-in-Appeal Cus I No.157 to 159/2019 dated 3.9.2019 passed by the Commissioner of Customs (Appeals – I), Chennai)

M/s. Avantor Performance Materials India Ltd. **Appellant**
17th Floor, Building No. 5
Tower C, DLF Cyber City, Phase – II
Gurgaon – 122 022
Haryana

Vs.

Commissioner of Customs **Respondent**
Chennai VII
New Custom House
Air Cargo Complex, Meenambakkam
Chennai – 600 027.

APPEARANCE:

Shri Nitin Jindal, Consultant for the Appellant
Ms. T.Sridevi, JC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order No. **40441 / 2020**

Date of Hearing: 17.02.2020
Date of Decision: 17.02.2020

Brief facts are that the appellants filed 4 refund claims dated 7.1.2009, 16.1.2009, 2.2.2009 and 9.3.2009 for refund of SAD as per Notification No. 102/2007. After adjudication, the original authority rejected the refunds against which the appellant preferred appeal before Commissioner (Appeals). The Commissioner (Appeals) allowed the refunds and the department preferred appeal before the Tribunal. Vide Final Order No. 41390/2018, the Tribunal dismissed the appeals filed by the department. Thus the issue of refund has attained finality. The original authority sanctioned the refund in all the refund claims, however, did not allow interest for the delayed refund. Against this decision of rejection of interest on delayed refund, the appellant filed three appeals before Commissioner (Appeals). The Commissioner (Appeals) held that the appellants are eligible for interest in respect of Order-in-Original dated 23.2.2019. However, the appeals filed against Order-in-Original dated 20.2.2019 and 22.2.2019 (disallowing the prayer for interest) were rejected by the Commissioner (Appeals) as being time-barred. Against the order passed by the Commissioner (Appeals), that the appeal filed by the appellant is time-barred, the appellant is now before the Tribunal.

2. On behalf of the appellant, ld. consultant Shri Nitin Jindal appeared and argued the matter. He submitted that the details of the orders passed by the refund sanctioning authority as well as the order passed by the Commissioner (Appeals) is noted in the Table given in the impugned order. It is submitted by him that the Commissioner (Appeals) allowed the interest in respect of the appeal filed against Order-in-Original dated 23.2.2019. The prayer for interest in other two appeals emanating from Order-in-Original dated 20.2.2019 and 22.2.2019 were rejected holding that there is a delay of three days and one day respectively in filing the appeals before Commissioner (Appeals). The ld. consultant submitted that the appellant had received all the Orders-in-Original by hand on 28.2.2019. The appeals were thereafter presented before Commissioner (Appeals). The Commissioner (Appeals) rejected the appeals with regard to Order-in-Original dated 20.2.2019 and

22.2.2019 stating that the appellant has not produced sufficient proof to show that they have received the order only on 28.2.2019. The ld. consultant submitted that they have issued repeated communications to the department to inform whether there is any proof that the Orders-in-Original were served on the appellant prior to 28.2.2019. The department vide their reply dated 13.12.2019 informed that in respect of Order-in-Original dated 22.2.2019, the same was received by appellant on 28.2.2019. That the proof in respect of service of Order-in-Original dated 20.2.2019 is not readily traceable. It is thus argued that the appellant has correctly filed appeals within the prescribed time limit and the Commissioner (Appeals) ought not to have rejected the appeals as time-barred. He prayed to allow the appeals.

3. The ld. AR Ms. T. Sridevi appeared and argued for the department. She submitted that the appellant has not been able to establish that the orders dated 20.2.2019 and 22.2.2019 have been received by them only on 28.2.2019. There is a delay of one day in filing appeal in respect of Order-in-Original dated 22.2.2019 and a delay of three days in filing the appeal in respect of Order-in-Original dated 20.2.2019. The appellant did not opt to file a petition for condonation of delay even though it is well within the condonable period.

4. Heard both sides.

5. The Commissioner (Appeals) has allowed the interest on the refund in respect of Order-in-Original dated 23.2.2019. The appeals in respect of Order-in-Original dated 20.2.2019 and 22.2.2019 requesting for grant of interest for delayed refund has been rejected

of the ground of limitation. On perusal of the facts, it is seen that there is a delay of three days and one day in filing the appeals before Commissioner (Appeals). Since the appellant did not file a petition for condonation of delay, the same was not considered. In the letter issued by department dated 13.12.2019, it is seen that the appellants have received the Order-in-Original dated 22.2.2019 only on 28.2.2019. It is also stated that the date on which the appellants have received the Order-in-Original dated 20.2.2019 is not traceable. The appeal in respect of Order-in-Original dated 23.2.2019 was also received on 28.2.2019 which has been allowed by the Commissioner (Appeals) granting interest. Taking note of the fact that the other Order-in-Original relating to 22.2.2019 was also received on 28.2.2019, it can be well inferred that the contention of the appellant that all the three orders were received on 28.2.2019 is true and acceptable. Further, the department has not been able to show any proof to establish that they have received the orders prior to 28.2.2019. When computed from the date of 28.2.2019, the appeal is well within time. The rejection of these appeals as being time-barred is therefore without any legal basis. The impugned order in respect of Order-in-Original dated 20.2.2019 and 22.2.2019 are set aside. The appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

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