

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

Customs Appeal No.40314 of 2020

(Arising out of Order-in-Appeal Airport Cus. I No. 102/2020 dated 10.3.2020 passed by the Commissioner of Customs (Appeals – I), Chennai)

M/s. AGFA Healthcare Pvt. Ltd.

No. 403, 4th Floor, NITCO Biz Park
Plot No. C/19, Road No. 16,
Wagle Industrial Estate, Thane (West)
Maharashtra – 400604.

Appellant

Vs.

Commissioner of Customs

Custom House, No. 60, Rajaji Salai
Chennai – 600 001.

Respondent

APPEARANCE:

Dr. S. Krishnanandh, Advocate for the Appellant
Shri L. Nandakumar, AC (AR) for the Respondent

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

Final Order No. **41398 / 2021**

Date of Hearing: 22.03.2021
Date of Decision: 22.03.2021

Brief facts are that the appellant filed 5 Bills of Entry for the import of "Digitizer" under CTH 90221490 without availing the benefit of Notification No. 12/2012-CE (Sl. No. 312). They filed a letter dated 29.6.2016 requesting the Assistant Commissioner to reassess the bills of entry after extending the benefit of the above Notification. The said request was rejected by the Assistant Commissioner against which they approached the Commissioner (Appeals). Vide Order in Appeal dated 27.9.2016, the Commissioner (Appeals) allowed the appeal directing the lower authority to consider the benefit of Notification and to reassess the bills of entry if found eligible. Accordingly, 5 bills of

entry were reassessed extending the benefit of Notification. The appellant had already paid duty without availing the benefit of notification and therefore requested to refund the excess duty paid by them which worked out to Rs.29,57,931/-. The refund claim was filed on 13.5.2019. The authorities below rejected the refund claim observing that it is beyond one year when computed from the date of reassessment of the bills of entry. Aggrieved by such order of the authorities below, the appellant is now before the Tribunal.

2. On behalf of the appellant, Id. Counsel Dr.S. Krishnanandh appeared and argued the matter. He submitted that the appellant had requested for reassessment of the bills of entry and had also filed an appeal since such requested was rejected. It can be sufficiently noted that the duty was paid under protest. Therefore, the limitation prescribed under section 27(2) of the Customs Act would not apply. To support his argument, he relied upon the decision in the case of Bayshore Glass Trading Pvt. Ltd. Vs. Commissioner, Kolkata – 2002 (148) ELT 1243 (Tri. Kol.). It is argued by him that under Article 265 of the Constitution, it mandates that tax can be collected only with the authority of law and if collected in contravention, has to be refunded to the assessee. He prayed that the appeal may be allowed.

3. The Id. AR Shri L. Nandakumar supported the findings in the impugned order.

4. On perusal of the documents, it is seen that there is no dispute that the appellant has paid excess duty of Rs.29,57,931/- after reassessment of the bills of entry by extending the benefit of Notification No. 12/2012-CE. The refund has been rejected on the ground that it is barred by limitation. When the appellant has

approached the higher forum aggrieved by the rejection of the notification benefit, it is sufficiently implied that the duty has been paid under protest. The Tribunal in the case of Bayshore Glass Trading Pvt. Ltd. (supra) has held that when appeal is filed against the assessment of the bill of entry, the same has to be considered as a protest in paying the duty.

5. Following the said decision and after appreciating the facts, I am of the view that the rejection of refund on the ground of time-bar is unsustainable. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Dictated in open court)

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