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

REGIONAL BENCH - COURT NO. – III

CUSTOMS APPEAL No. 40397 of 2020
[Arising out of Order-in-Appeal No.Air Port Cus.I. No.100 & 101/2020 dt. 09.03.2020 passed by Commissioner of Customs (Appeals-), Chennai]

M/s.Acer India Pvt.Ltd. **Appellant**
B-7, B-8, A-11 & A-12,
SIPCOT Industrial Park,
Sriperumpudur
Kanchepuram District
Tamil Nadu 602 105.

Vs.

The Principal Commissioner of
Customs (Chennai-VII) **Respondent**
Air Cargo Complex,
Chennai 600 027.

WITH

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APPEARANCE:

Shri Raghavan Ramabhadran, Advocate for the Appellant
Shri S. Balakumar, AC (AR) for the Respondent

CORAM :

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

Date of Hearing: 24.03.2021
Date of Decision:24.03.2021

FINAL ORDER No. 41406-41407 / 2021

The issue involved in both these appeals being same, they are heard together and disposed of by this common order.

2. Brief facts of the case are that appellants imported laptop computers and cleared the goods by paying Special Additional Duty (SAD). Subsequently, the goods were sold to various educational institutions. However, no sales tax was paid on the transactions as this transaction qualify as a sale in the course of import and it was exempted from CST under Section 5 (2) of CST Act. Thereafter, they filed refund claim for the SAD paid during the relevant period. The said refund claim was rejected stating the ground that the appellant has neither paid VAT nor CST on the imported goods. On appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

3. On behalf of the appellant, Ld. Counsel Shri Raghavan Ramabhadran appeared and argued the matter. He submitted that the appellant is exempted from paying Central Sales Tax on the goods as has been exempted under the provisions of the CST Act. It is submitted by him that even if the VAT/CST is Nil rate, the importer-assessee would be eligible for refund of SAD as decided in their own case for an earlier period. He relies upon the decision in appellant's own case reported in 2017-TIOL-3433-CESTAT-MAD.

4. Ld. A.R Shri S.Balakumar supported the findings in the impugned order.

5. Heard both sides. The issue that arises for consideration is whether the appellants would be eligible for SAD refund when they have availed benefit of exemption of CST on the goods imported. The said question was analyzed by the Tribunal in the appellant's own case (supra). Relevant paragraphs are reproduced as under :

> "6.7 We find that the Tribunal's decision relied upon by the learned counsel has answered this question in a very convincing manner in the case of Gazal Overseas (supra). The following relevant portions of the said decision makes for illuminating reading:-
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> > 4. We have considered the contention of ld. DR and also perused the refund papers. Notification No. 102/2007, dated 14-9-2007 as amended allowed refund of SAD subject to the condition that the importer shall pay appropriate sales tax or VAT, as the case may be. In the present case, the appropriate sales tax or VAT being NIL the appellants cannot be said to have violated the said conditions of the said notification inasmuch as it cannot be said that they have not paid appropriate sales tax/VAT. In this regard, it is seen that vide Circular No. 6/2008, dated 28-4-2008 C.B.E. & C. in para 5.3 thereof clarified as under:
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> > > *5.3 The exemption contained in the said notification envisages that the importer shall file a refund claim for 4% CVD (said additional duty of Customs) paid on imported goods and shall pay on sale of the said goods appropriate Sales Tax or VAT as the case may be Hence, it is clear that there is no stipulation in the notification that the exemption is available only if the rate of ST/VAT is equal to or higher than the rate of additional duty of Customs; nor is there a condition that if the rate of ST/VAT happen to be lower than 4%, the refund would be restricted to the lower amount. As such, it is clarified that it will not be appropriate to reduce the refund amount in such a situation and the entire 4% CVD, if otherwise found eligible, shall be refunded.*
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> > > *It is evident from the above clarification of C.B.E. & C. that even if VAT/Sales tax was less than 4%, the appellant was entitled to refund of SAD which was 4% so long as VAT/sales tax was paid. In other words, so long as appropriate VAT/Sales tax was paid, SAD refund was admissible even if the appropriate sales tax/VAT was less than SAD; if the sales tax/VAT was NIL, so be it. In other words what is required in terms of the said notification is payment of appropriate sales tax/VAT regardless of the rate thereof. It logically follows that if the appropriate rate of sales tax/VAT was NIL then the appropriate sales tax/VAT paid will also be NIL.*

6.8 We further find merit in the contention of the learned counsel that the judgment of the Hon'ble Supreme Court in the case of Dhiren Chemical Industries (supra) was on a totally different issue. It is seen that the said judgment pertains to exemption claimed by the respondents therein on the premise that raw materials were also exempt. On the other hand, we find that the Hon'ble Supreme Court, in the case of Vazir Sultan Tobacco Co. Ltd : 1996 (83) ELT 3 (SC) has clearly held that nil rate is also an appropriate duty. The relevant portion of the Apex Court judgment is reproduced herein:-

> *12. In our opinion, the decision in Wallace Flour Mills does not lay down a contrary proposition - neither does it support the contention of Sri Vellapally. That was a case where the goods were excisable goods prior to March 1, 1987, though by virtue of an exemption notification, the rate of duty was nil. This does not mean that they were not excisable goods. They were excisable goods. Nil rate of duty is also a rate of duty. With effect from March 1, 1987, the said goods became excisable to duty at the rate of fifteen per cent ad valorem. It is in the above circumstances that the Court held, on the basis of Section 3 and Rule 9A, that though the goods were produced or manufactured prior to March 1, 1987, still they attracted duty at the rate prevailing on the date of their removal, i.e., fifteen per cent. Para-7 clearly brings out the ratio of the said decision. The relevant portion in Para 7 reads:*
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> *Excise is a duty on manufacture or production. But the realisation of the duty may be postponed for administrative convenience to the date of removal of goods from the factory. Rule 9A of the said rules merely does that. That is the scheme of the Act. It does not, in our opinion, make removal be the taxable event. The taxable event is the manufacture. But the liability to pay the duty is postponed till the time of removal under Rule 9A of the said Rules. In this connection, reference may be made to the decision of the Karnataka High Court in Karnataka Cement Pipe Factory v. Superintendent of Central Excise - [1986 (23) E.L.T. 313] where it was decided that the words 'as being subject to a duty of excise appearing in Section 2(d) of the Act are only descriptive of the goods and not to the actual levy. 'Excisable goods, it was held, do not become non-excisable goods merely by the reason of the exemption given under a notification. This view was also taken by the Madras High Court in Tamil Nadu (Madras State) Handloom Weavers Co-operative Society Ltd. v. Assistant Collector of Central Excise -[1978 (2) E.L.T. (J 57)]. On the basis of Rule 9A of the said rules, the Central Excise authorities were within the competence to apply the rate prevailing on the date of removal. We are of the opinion that even though the taxable event is the manufacture or the production of an excisable article, the duty can be levied and collected at a later date for administrative convenience.*

6.9 The judgment of the Hon’ble Supreme Court in the case of Vazir SultanTobaco Co.Ltd. (supra) has been followed in a number of subsequent decisions , e.g. in re *Commissioner of Central Excise Vs. Prakash Pipes – 1997 (74) ELT 18 (SC)= 2002-TIOL-514-SC-CX*, *Union of India Vs. Nande Printers – 2001 (127) ELT 645 (SC0 and Peekay Rolling Mills Vs. Asst. Commissioner – 2009 (13) STR 305 (SC).”*

6. Following the said decision, I am of the view that rejection of refund claim is unjustified. The impugned order is set aside. Appeals are allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open Court)

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

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