IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

C/95/2009

(Arising out of Order-in-Appeal C.Cus No.50/2009 dated 29.1.2009 passed by the Commissioner of Customs (Appeals), Chennai.

M/s.Enterprise International Ltd — Appellant

Vs.

Commissioner of Customs, Chennai — Respondent

Appearance

Shri S. Murugappan, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **07.08.2017**

Final Order No. 41654/2017

Per Bench

The issue involved is the rejection of refund claim of the Antidumping duty (ADD).

2. Brief facts are that appellants, imported consignment of Mulberry Silk Fabric from China in May 2006 through Chennai Port. They filed Bill of Entry No.228652 dt.31.05.2006. In accordance with ADD which was provisionally fixed by Notification No.52/2006-Cus dt.31.5.2006, they paid ADD of

Rs.7,41,775/-. Later as per final Notification No.121/2006 dt.26.12.2006, the Government finalized the ADD which was reduced. As per the final notification, appellants had to pay ADD of Rs.93,690.48 only. They filed refund claim for the excess amount of Rs.6,48,084.52 and the same was rejected by original authority stating that the appellant had not requested for re-assessment of bill of entry. The refund claim is premature and that the claim can be considered only after bill of entry is reassessed by an order of appropriate appellate authority. Against this, the appellant approached the Commissioner (Appeals) who upheld the rejection of refund stating that the refund claim is time barred. Thus appellant is now before the Tribunal.

3. On behalf of appellant, the learned counsel Shri S. Murugappan submitted that both the authorities below have rejected the refund claim on wrong appreciation of law. He adverted to sub section (2) of Section 9A of Customs Tariff Act, 1975 and submitted that the law provides for refund of ADD and no time limit is prescribed. He relied upon the decision in the case of Caprihans India Ltd Vs CC, Bombay 2001 (129) ELT 162 (Tri – LB).

4. Against this, the learned AR Shri A.Cletus strongly supported the impugned order. He submitted that the bill of

entry was provisionally assessed and therefore the refund claim is premature without final assessment of the same.

5. Heard both sides. For better appreciation, the relevant portion of Rule 9A (2) is reproduced as under:-

> *"The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined,-*
>
> *a. the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and*
>
> *b. refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti-dumping duty as so reduced."*

It is very much clear from the law laid in the above sub section that in case by final notification, the ADD is reduced, the excess paid is to be refunded. The Larger Bench decision (supra) squarely covers the issue. The relevant portion is reproduced as under:-

> "9. It is common case that the final fixation of anti-dumping duty on PVC Resin imported from South Korea was covered by Notification 4/94 dated 18-1-1994. The moment that notification was issued it was the bounden duty of the Central Government to refund so much of the anti-dumping duty which had been collected as was in excess of the anti- dumping duty finally fixed therein. It means that the Government of India should have returned the

excess amount collected by way of anti-dumping duty without any delay. In the instant case, the difference between Rs.1700 PMT and Rs.1253 PMT, should have been returned within a reasonable time from 18-1-1994. This having not been done, learned Representative appearing on behalf of the importer prayed for payment of interest on the money illegally retained by the Government for more than 7 years. This claim put forth by the importer appears to be quite reasonable. As per provisions contained in Section 9A of Customs Tariff Act, Central Government had no right to retain the excess amount collected by way of anti dumping duty on the basis of the provisional notification. In terms of the final notification, the excess amount collected earlier should have been returned. After the issue of the final notification dated 18-1-1994, the Government had no semblance of right to retain the money belonging to the importer. Government was retaining the importer's money without any legal sanction. When money of the importer was wrongly retained by the Government and was utilising it for its own purpose, the principle underlying quasi contract or restitution must apply. Compensation to the importer is allowable in terms of Section 70 of the Contract Act as well. On account of delayed payment of duty, Government are also realising interest from party liable to pay the same. Likewise, Government having retained money belonging to the importer illegally for more than 7 years, should pay interest to compensate the importer in terms of the principle known as quasi contract. Taking into consideration the entire facts and circumstances of the case, we hold that the importer is entitled to get all his claims of refund which are in consonance with the statutory provisions contained in Section 9A(2) of the Customs Tariff Act together with interest as fixed herein after. He is entitled to interest at the rate of 12% per annum for the period starting from the date of expiry of three months from the date of final notification, namely, 18-1-1994 till the date of payment."

6. From the above discussions and following the ratio laid by Larger Bench, we hold that the rejection of refund is unjustified. The impugned order rejecting refund is set aside. The appeal is allowed with consequential reliefs, if any.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi C.S.

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

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