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

C/40100 to 40102/2017

[Arising out of Orders-in-Appeal C. Cus II No.905 to 907/2016, dated 04.10.2016, passed by the Commissioner of Customs (Appeals-II), Chenai]

M/s. MALHOTRA IMPORTS AND EXPORTS CORPORATION — APPELLANT

Versus

COMMISSIONER OF CUSTOMS, CHENNAI-IV — RESPONDENT

Appearance:

For the Appellant — Shri P. Kulasekaran, Adv.
For the Respondent — Shri B. Balamurugan, AC (AR)

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of hearing/decision **03-07-2017**

FINAL ORDER NOs. 41117-41119/2017

Per Archana Wadhwa:

All the three appeals are being disposed of together as the issue involved in all these appeals involves a common issue of refund of SAD in terms of Notification No.102/07-Cus., dated 14.09.2007, which allows such refund claim when the imported goods are sold on payment of Sales Tax/VAT. The lower authorities have rejected the refund claim on the sole ground that VAT payable was 'nil' and as such, it cannot be said that VAT has been paid on the imported goods on their subsequent sales.

2. It is seen from the impugned order of Commissioner (Appeals) that appellants relied upon the Tribunal's decision in the case of *Ghazal Overseas Vs Commissioner of Customs, New Delhi* reported in *2016 (332) E.L.T. 767 (Tri.-Del.)* which deals with an identical issue. The appellate authority has observed that the said decision rendered by the Tribunal was without considering the Hon'ble Supreme Court decision in the case of *Commissioner of Central Excise, Vadodara Vs Dhiren Chemical Industries* reported in *2002 (139) E.L.T.3 (S.C.)* and as such, cannot be followed.

3. The reasoning adopted by Commissioner (Appeals) cannot be appreciated inasmuch as the Tribunal's decision in the case of *Ghazal Overseas* (supra) deals with the same issue, in which case, the Commissioner (Appeals) was duty bound to follow the Appellate Tribunal's order.

4. However, it is seen that the Tribunal in the case of *Kubota Agricultural India Pvt. Ltd. Vs Commissioner of Customs, Chennai* reported in *2017 (6) TMI 565-CESTAT, Chennai* has passed a detailed order considering the said stand of the Revenue that the *Ghazal Overseas* did not consider the Supreme Court's decision in *Dhiren Chemicals* (supra) and has concluded that the said decision in the case of *Dhiren Chemicals* (supra) is not applicable to the issue involved. As such, the Tribunal by taking note of the earlier decision of the Hon'ble Supreme Court in the case of *Collector of Central Excise, Hyderabad Vs Vazir Sultan Tobacco Co. Ltd.* reported in *1993(83) E.L.T.3 (S.C.)* has held that even 'nil' rate is also an appropriate payment of duty, in

which case, the refund of SAD paid at the time of import of the goods is required to be refunded to the assessee on subsequent sales of such imported goods.

5. Inasmuch as, the issue stands decided by the above referred decision, I set aside the impugned order and allow all the three appeals with consequential relief.

(Operative part of the order pronounced
in open court on **03-07-2017**)

3/7/17

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
03-07-2017

प्रमाणित प्रति / Certified True Copy
3/7/17
सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (CESTAT)
चेन्नै / Chennai

Customs, Excise & Service Tax Appellate Tribunal