

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

C/41994/2016-SM

[Arising out of Order-in-Appeal No.C.Cus II No.753/2016, dated 03.08.2016
passed by the Commissioner of Customs (Appeals-II), Chennai]

M/s. PAXAL CORORATION

APPELLANT

Versus

COMMISSIONER OF CUSTOMS,

(SEA)

CHENNAI-II

RESPONDENT

Appearance:

For the Appellant

None

For the Respondent

Shri B. Balamurugan, AC (AR)

CORAM:

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

Date of hearing

08-05-2017

Date of pronouncement

16-05-2017

FINAL ORDER NO. 40702/2017

Per Archana Wadhwa:

The short issue involved in the present appeal is refund of SAD paid at the time of import of goods in terms of Notification No.102/2007-Cus. dated 14.09.2007. The said notification allows refund of SAD on subsequent sale of goods on payment of appropriate sales tax/VAT.

2. The original adjudication authority sanctioned the refund amount of Rs.2,07,499.70 in respect of two bill of entries by observing that the goods were subsequently sold by the appellant and even though the sales tax payable was 'nil', the same has to be considered as proper payment of sales tax/VAT. The said order of the original adjudicating authority was appealed against by the Revenue before





Commissioner (Appeals), who reversed the order by observing that 'nil' payment of sales tax cannot be considered to be appropriate payment as has been held by apex court in the case of *Dhiren Chemical Industries* reported in 2002 (139) E.L.T.3 (S.C.). Hence, the present appeal.

3. On going through the impugned orders, I find that the assessee placed reliance on the Tribunal decision in the case of *Ghazal Overseas Vs Commissioner of Customs, New Delhi* reported in 2016 (332) E.L.T.767 (Tri.-Del.). While interpreting the same Notification No.102/2007-Cus. dated 14.09.2007, the Tribunal held that the goods carrying a 'nil' rate of sales tax/VAT has to be treated as having been sold on appropriate payment of sales tax, thus, making the refund of SAD admissible in terms of the said notification.

4. The appellate authority, while dealing with the said notification observed as under:-

"The respondent relied upon the CESTAT order in the case of *M/s. Ghazal Overseas and other Vs Commissioner of Customs, New Delhi*. On perusal of the same, I find that this order has not taken into consideration the order of the Hon'ble Supreme Court in the case of *CCE, Vadodara Vs M/s. Dhiren Chemicals Industries* [2002 (139)E.L.T.3 (S.C.)], wherein the Hon'ble Supreme Court has interrelated the word "**payment of appropriate duty**" in the context of Central Excise exemption notification. The Apex Court has held that where an exemption is extended subject to the condition that the "**appropriate duty has been paid**" on the raw material, then such an exemption shall not be available when the raw material is not liable to excise duty or such duty is 'Nil'. Hence, the CESTAT order is distinguished."

5. As is seen from the above, the appellate authority did not follow the Tribunal's decision in the case of *M/s. Ghazal Overseas* though the said decision dealing with the same notification and the same issue involved on the ground that while deciding the matter,





Tribunal has not considered the Supreme Court judgment in the case of *Dhiren Chemical Industries*.

6. I find that the issue before the Hon'ble Supreme Court in the case of *Dhiren Chemical Industries* was altogether in a different context, whereas, the Tribunal's decision in the case of *M/s. Ghazal Overseas* is directly on the present disputed issue. The Commissioner (Appeals) observations and findings that the said decision is not proper cannot be appreciated and suffice it to say that if the Revenue was aggrieved with the Tribunal's decision in the case of *M/s. Ghazal Overseas*, it was open to them to appeal the same before higher appellate forum.

7. Having said so, I find that in as much as *M/s. Ghazal Overseas* covers the issue fully, the impugned order of Commissioner (Appeals) cannot be upheld. Accordingly, the same is set aside and appeal is allowed by restoring the order of the original adjudication authority.

(Pronounced in open court on 16/5/17)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
15-05-2017



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सहायक पंजीकार / Asst. Registrar
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