

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

REGIONAL BENCH – COURT NO. III

CUSTOMS APPEAL No.40071 of 2015

(Arising out of Order-in-Appeal No.1739/2014 dated 25.09.2014 passed by Commissioner of Customs (Appeals), Chennai]

M/s.Ingram Micro India Limited

MF-7, CIPET Hostel Road,
TVK Industrial Estate,
Ekkatuthangal, Guindy,
Chennai 600 032.

Appellant

VERSUS

The Commissioner of Customs (Exports)

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

Respondent

APPEARANCE :

Shri S. Murugappan, Advocate
For the Appellant

Shri R. Rajaraman, AC (AR)
For the Respondent

CORAM: HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

DATE OF HEARING : 11.03.2022

DATE OF PRONOUNCEMENT:14.03.2022

FINAL ORDER No. 40119 / 2022

The appellant is aggrieved by the rejection of refund claim submitted for refund of SAD in terms of Notification No.102/2007-Cus. dated 14.09.2007 as amended by Notification No.93/2008 dated 01.08.2008 read with Board's Circular No.6/2008-Cus. dated 28.04.2008 and 16/2008-Cus. dated 13.10.2008.

2. On behalf of the appellant Ld. Counsel Shri S. Murugappan appeared and argued the matter. He submitted that the appellant had filed refund claim on 16.06.2009 for refund of Rs.22,57,529/- in terms of Notification No.102/2007-cus. dated 14.09.2007. The claim was subsequently revised to Rs.18,84,710/- and the appellant had submitted all supporting documents to the original authority. The documents were submitted along with a letter dated 14.05.2010. This letter was acknowledged by the original authority on 18.05.2010. However, after two years, on 21.06.2012 the original authority has rejected the refund claim stating that the appellant did not produce the Chartered Accountant certificate to prove that burden of 4% Additional Duty has not been passed on to the buyer. It was thus held by the original authority that the claimant has not produced the Chartered Accountant certificate to rule out unjust enrichment. He adverted to page 21 of the appeal paper book and argued that vide letter dated 14.05.2010 the appellant has submitted the Chartered Accountant certificate as well as all other documents. This letter bears the endorsement of the department evidencing that the letter along with the documents have been received by the department on 18.05.2010. In spite of this, the adjudicating authority has rejected the refund claim stating that the appellant has not submitted necessary documents. The adjudicating authority did not provide an opportunity of personal hearing, in case, if the authority was of the opinion that the appellant has to produce further documents. On appeal, the Commissioner (Appeals) has not considered these submissions and passed a very short order stating that if the documents had been produced the same would have been available with the original

authority and that appellant has not produced proof of submission of documents. He prayed that the appeal may be allowed.

3. Ld. A.R Shri R. Rajaraman supported the findings in the impugned order.

4. Heard both sides.

5. From the narration of the facts above, it can be seen that the refund claim is rejected on the ground that the appellant has not produced the Chartered Accountant certificate to establish that the burden of 4% Additional Duty has not been passed on to another. In page 21 of the appeal paper book, the appellant has produced a letter dated 14.05.2010 in which it is stated that in continuation of their refund claim submitted they are producing further documents. On perusal of the order passed by both the authorities, I find that they have not cared to peruse the documents submitted by the appellant. The refund claim has been rejected in a cryptic manner. It is to be borne by the authorities below that interest on such delayed refund is paid out of public money and therefore the refund claims have to be processed in proper manner after perusing the documents produced by the claimants. In the present case, though the refund claim is received on 16.06.2009, the adjudicating authority has passed the order only on 21.06.2012. The adjudicating authority ought to have conducted one more personal hearing so as to make sure whether the appellants have furnished necessary documents before rejecting the appeal on such technical grounds. Besides the liability to pay interest, both sides incur litigation expenses also, of which the

expense of the department is borne from the public exchequer. These type of unnecessary litigations have to be avoided.

6. In the result, the matter is remanded to the adjudicating authority who is directed to process the refund claim on the basis of documents produced by the appellant. The appellant shall be given an opportunity of personal hearing and also for furnishing any documents, if necessary. The impugned order is set aside. The appeal is allowed by way of remand to the original authority in the above terms.

(Pronounced in court on 14.03.2022)

**(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)**