

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

Customs Appeal No.42201 of 2013

(Arising out of Order-in-Appeal C. Cus. No. 1058/2013 dated 30.7.2013 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Shree Mahaveer Impex

10, Ramakrishna Nagar Main Road
Porur, Chennai – 600 116.

Appellant

Vs.

Commissioner of Customs

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

Respondent

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant

Shri S. Balakumar, AC (AR) for the Respondent

CORAM

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

Final Order No. **40348 / 2022**

Date of Hearing : 26.10.2022

Date of Decision: 26.10.2022

Brief facts are that the appellant filed refund claim for refund of 4% additional duty paid by them on goods imported. The original authority sanctioned the refund vide order dated 27.7.2010. Thereafter, department filed appeal against the sanction of refund alleging that in two sales invoices, the stamp required as per Para 2(b) of Notification No. 102/2007 is not endorsed. The appeal filed by the department was allowed by way

of remand with a direction to the adjudicating authority to verify and reprocess the refund claim. Aggrieved by such order, the appellant is now before the Tribunal.

2. The learned counsel Shri M.N. Bharathi appeared and argued for the appellant. He submitted that the appellant had made endorsements in all the invoices issued to the buyer which mentioned that the buyer is not eligible to take CENVAT credit of the Special Additional Duty (SAD) charged upon them. The allegation of the department that there is no endorsement in two invoices cannot be accepted as there is no proof that the invoices issued to the buyer did not contain the required endorsement. The learned counsel also argued that even in the absence of such endorsement, the refund claim cannot be rejected as decided by the Larger Bench of the Tribunal in the case of Chowgule & Company Vs. Commissioner reported in 2014 (306) ELT 326 (Tri. LB). The said decision was followed in the case of STP Ltd. Vs. Commissioner of Customs, Chennai reported in 2019 (370) ELT 672 (Tri. Chen.). He prayed that the order of Commissioner (Appeals) may be set aside and the order passed by the adjudicating authority may be restored.

3. The learned AR Shri S. Balakumar supported the findings in the impugned order. He submitted that the review cell had called for two sample invoices from the jurisdictional Central Excise office and it was found that in those two invoices there were no endorsement as required under para 2(b) of the Notification. It

was then necessary to verify the other invoices and therefore the matter has been remanded which is legal and proper.

4. Heard both sides.

5. The issue is whether the direction for remand by the Commissioner (Appeals) to verify and reprocess the refund claim is legal and proper. It is the case of the department that when two invoices were called for by the review cell, such invoices did not bear the endorsement as required under para 2(b) of Notification. It is pointed out by the learned counsel for the appellant that the original authority after examining the invoices has made a finding that there are endorsements on the sales invoices which indicated 'not eligible for CENVAT credit'. It is also noted by the original authority that the condition in para 2(b) has been fulfilled. The Larger Bench of the Tribunal in the case of Chowgule and Company has held that failure of the importer to endorse on the sales invoices that no credit of such additional customs duty would be admissible to buyers as stipulated under condition 2(b) of Notification cannot be a ground to deny the refund. Even though it is alleged by the department that two sales invoices did not bear the required endorsement, it is not established whether these invoices verified by Review Cell are the original invoices issued to the buyer by the appellant. So also there is no evidence to establish that the buyer had availed credit on these alleged invoices. I do not find any merits in the grounds alleged for remand of the matter.

6. From the discussions above as well as following the decision of the Larger Bench of the Tribunal, I am of the view that the order passed by Commissioner (Appeals) requires to be set aside which I hereby do. The order passed by the original authority sanctioning the refund is restored. The appeal is allowed with consequential relief, if any.

(Dictated in open court)

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

Rex