IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

CUSTOMS APPEAL No.40708 of 2013

[Arising out of Order-in-Appeal C.Cus. No.1587 to 1588/2012 dated 31.12.2012 passed by Commissioner of Customs (Appeals), Chennai]

M/s. Becton Dickinson India Pvt. Ltd. **: Appellant**
5th Floor, Signature Tower B,
South City I,
Gurgaon 122 001.

VERSUS

The Commissioner of Customs, **: Respondent**
No.60, Rajaji Salai,
Custom House,
Chennai 600 001.

WITH

CUSTOMS APPEAL No.40709 of 2013

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VERSUS

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Chennai 600 001.

APPEARANCE:

Shri K. Sivarajan, Consultant
For the Appellant

Ms. Anandalakshmi Ganeshram, Superintendent (A.R)
For the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40210-40211 / 2023

DATE OF HEARING: 27.03.2023
DATE OF PRONOUNCEMENT: 29.03.2023

Per: Ms. SULEKHA BEEVI C.S.

The issue involved in both these appeals being same they are heard together and disposed of by this common order.

2. Brief facts of the case are that the appellant had filed refund claim for refund of Special Additional Duty (SAD) in terms of Notification No.102/2007-Cus. dated 14.09.2007. After due process of law, the original authority rejected the refund claim observing that condition stipulated in para 2(b) of Notification has not been correctly fulfilled by the appellant. The said order was upheld by the Commissioner (Appeals). Hence these appeals.

3. Ld. Consultant K. Sivarajan appeared and argued for the appellant. He adverted to the findings of the adjudicating authority which reads as under :

> "The importer has produced the sales invoices in hard copies for the sales of goods imported vide the said Bills of entry. It has been verified from the sales invoices furnished and found that the importer/claimant has indicated (*by way of stamping*) "**NON AVAILMENT OF CENVAT CREDIT AGAINST 4% ADC**". Para 2(b) of the Customs Notification No.102/07 Dt. 14th September,2007 reads as follows :
>
> > "the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that *in respect of the goods covered herein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible".*

> It is seen that the above wordings of importer in the sales invoices is not the same as mandated under the notification. Also, it is seen that the words read together doesn't constitute any statement / declaration. More importantly, they don't convey the purport or intent of the statutory declaration, which is the mandatory insertion to avoid possible further irregular availment of CENVAT credit by the buyer/s. As such, the condition stipulated under para 2 (b) of the said Notification is not fulfilled in substantial terms in respect of *all sales invoices* pertaining to the claims."

4. It is submitted by the Ld. Consultant for the appellant that appellant had affixed the stamp on the invoices indicating that "NON AVAILMENT OF CENVA CREDIT AGAINST 4% ADC". Even though such stamp was affixed on the invoices, the authorities below have rejected the refund claim observing that the words read together does not constitute the declaration as required under para 2(b) of the notification. Ld. Consultant submitted that the impugned order is erroneous as the appellant being a trader, there is no occasion for transmitting the credit to other person.

5. The decision in the case of *Chowgule & Company Pvt. Ltd. Vs CC & CCE* - 2014 (306) ELT 326 (Tri-LB) was relied by the Ld. Consultant. So also, the decision in the case of *S. Vaidya & Company Vs CC Chennai* vide Final Order No.40117/2023 dt. 07.03.2023 reported in 2023 (3) TMI 453-CESTAT CHENNAI and *Infinity Industries Pvt. Ltd. Vs CC (Import)*, Chennai-IV - 2019 (12) TMI 655 CESTAT Chennai were relied. He prayed that the appeals may be allowed.

6. Ld. A.R Ms. G. Anandalakshmi appeared for the Department. She supported the findings in the impugned order.

7. Heard both sides.

8. The moot point that arises for consideration is whether the rejection of refund on the ground that para 2(b) of the notification has not been complied is legal and proper. For better appreciation, para 2(b) of the notification is reproduced as under :

Notification No.102/2007-Customs

New Delhi, the 14th September 2007

G.S.R. (E). In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for subsequent sale, from the whole of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act (hereinafter referred to as the said additional duty).

"2. The exemption contained in this notification shall be given effect if the following conditions are fulfilled :

… … …

(b) the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible;"

9. From the facts, it is seen that the appellant has affixed the stamp that "NON-AVAILMENT OF CENVAT CREDIT AGAINST 4% ADC" at the time of import of goods. The Department is of the view that the said stamp is not sufficient for compliance of para

2(b) of the notification. The Larger Bench of the Tribunal in the case of *Chowgule & Company Pvt. Ltd.* (supra) has held that in cases when the importer is a trader there is no requirement to fulfil para 2(b) of the notification. Following the said decision, we are of the considered opinion that the rejection of refund cannot be justified. We hold that appellant is eligible for refund.

10. In the result, the impugned orders are set aside. Appeals are allowed with consequential relief, if any.

(pronounced in court on 29.03.2023)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

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