

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

CUSTOMS APPEAL No.42178 OF 2013

(Arising out of Order-in-Appeal C.Cus.No.1010/2013 dated 16.07.2013 passed by Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai 600 001)

Commissioner of Customs,
Export Commissionerate,
Custom House, ,
Chennai 600 001.

... Appellant

Versus

M/s.Redington (India) Limited,
SPL Guindy House,
95, Mount Road,
Chennai 600 032.

...Respondent

APPEARANCE :

Mr. R. Rajaraman, Asst. Commissioner (A.R)
For the Appellant

Mr. C. Manickam, Advocate
For the Respondent

CORAM :

Hon'ble Ms. SULEKHA BEEVI, Member (Judicial)
Hon'ble Mr. M. AJIT KUMAR, Member (Technical)

Date of Hearing : 16.06.2023
Date of Decision : 16.06.2023

FINAL ORDER No.40449/2023

ORDER : Per Ms. Sulekha Beevi, C.S.

Brief facts are that the adjudicating authority sanctioned refund claim filed by the respondent in terms of Notification No.102/2007-Cus. 14.09.2007 as amended by the Notification No.93/2008-Cus. Against this order of sanction of refund, department filed appeal before the Commissioner (Appeals) and vide order impugned herein the Commissioner (Appeals) upheld the order sanctioning the refund. Hence the department is now before the Tribunal.

2. Ld. A.R Shri R. Rajaraman supported the findings in the impugned order. It is submitted by him that the appellant has not established that the duty element (CVD) [paid at the time of import of goods] has not been passed on to the buyer of goods. They have produced the certificate issued by the Chartered Accountant. The said certificate does not mention as to verification of documents like balance sheet, ledger accounts, assets and liabilities expenditure account, profit and loss account etc. to establish that the component of 4% SAD paid vide Bills of Entry is not passed on to the buyer. Thus, the authorities below ought to have rejected refund claim on the ground of unjust enrichment. Ld. A.R prayed that the appeal may be allowed.

3. Ld. Advocate Shri Manickam appeared and argued for the respondent. Ld. Counsel adverted to para-2 of the OIO and submitted that the following documents have been submitted by the respondent along with the refund claim :

a) Original Importer's Copies of the 22 Bills of Entry mentioned above.

- b) TR 6 challans against the 22 Bills of Entry.
- c) Copies of Invoices of sale of the imported goods in CD form along with paper declaration subscribing to the truthfulness of the contents of the CD
- d) VAT/CST returns Form I acknowledgement, challans, e-receipts photocopies, copies of VAT payment cheques
- e) Self declaration from the Claimant.
- f) Statutory Auditor's Certificate
- g) Correlation Certificate attested by Chartered Accountant.

4. It can be seen that the respondent has furnished Correlation Certificate attested by Chartered Accountant as well as the Statutory Auditor's certificate. In para-12, original authority has discussed the issue of unjust enrichment and observed that the respondent has furnished copy of balance sheet for the year ended 31.03.2011 wherein the said amount claimed as refund has been shown as "Receivable from Customs department" under Schedule 7 "Current Assets, Loans & Advances". Appellant had also made self-declaration with the refund claim that incidence of 4% Additional Duty has not been passed to any other person. It is submitted that the authorities below have correctly upheld the sanction of refund. He prayed that the appeal filed by department may be dismissed.

5. Heard both sides.

6. The appeal is filed by the department alleging that the authorities below have not correctly considered the issue of unjust enrichment for sanction of refund claim. As pointed out by the

Ld. Counsel for respondent that in para 12 of the OIO, the issue has been elaborately discussed by the original authority. It is also noted in the said para that the Chartered Accountant certificate produced by the respondent is in accordance with Board circular. It is also recorded that the respondent furnished copies of the balance sheet and all relevant documents. The department alleges that Chartered Accountant certificate does not mention that the documents have been verified. It needs to be stated that when the original authority has noted that the Chartered Accountant certificate is in accordance with Board circular, we do not find any merit in the argument put forward by the department. Impugned order is sustained. In the result, appeal filed by department is dismissed.

(Operative part of the order pronounced in court on 16.06.2023)

sd/-

(M. AJIT KUMAR)
Member (Technical)

sd/-

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

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