

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

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 41386 of 2013

(Arising out of Order-in-Appeal C.Cus. No. 597/2013 dated 10.04.2013 passed by the Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Adani Krishnapatnam Port Limited : **Appellant**
[Formerly 'M/s. Krishnapatnam Port Company Ltd.']
Krishnapatnam Port, P.O. Bag No.1,
Muthukur Mandal, Nellore District,
Andhra Pradesh – 524 344

VERSUS

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

APPEARANCE:

Dr. C. Manickam, Advocate for the Appellant

Shri R. Rajaraman, Assistant Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40473 / 2023

DATE OF HEARING: 21.06.2023

DATE OF DECISION: 23.06.2023

Order : [Per Hon'ble Mr. P. Dinesha]

Brief facts as could be gathered upon hearing both sides and upon going through the Order-in-Original are that the appellant had filed three Bills-of-Entry by classifying the imported goods under CTH 89051000 thereby claiming 'Nil' rate of duty as provided under Notification No. 21/2002-Cus. dated 01.03.2002.

2. The appellant, vide multiple Bills-of-Entry, imported HDPE Pipes by classifying the same under CTH 89051000, assessed to 'Nil' BCD and 'Nil' rate of CVD. The Revenue

entertained a doubt that the imported items merited classification under CTH 391721 since the HSN General Note to Chapter 89 excluded all separately presented parts and accessories of vessels or floating structures even if they were clearly identifiable as such. Consequently, two demand notices were issued to the appellant, to which it appears the appellant filed its reply justifying its classification.

3.1 Vide Order-in-Original No. 18334/2012 dated 20.02.2012, however, the adjudicating authority chose not to accept the contentions of the appellant insofar as the classification was concerned and thereafter, demanded CVD at 10% plus Educational Cess on CVD at 3%, SAD at 4%, however, allowing exemption to the appellant from payment of BCD in terms of Notification No. 21/2002 (*supra*). It appears that the appellant did not question the reclassification as made by the adjudicating authority and chose to accept the duty demand along with interest, but however, with a request to remit the duty by debiting Served From India Scheme (SFIS) scrip by relying on paragraph 3.17.11 of the Foreign Trade Policy (FTP).

3.2 The adjudicating authority, however, has not accepted the said mode of payment, for which he has referred to Customs Notification No. 91/2009 dated 11.09.2009.

3.3 It is against this denial of accepting the mode of payment of duty by debiting SFIS scrip, it appears, that the appellant preferred an appeal before the first appellate authority and it appears from the impugned Order-in-Appeal of the first appellate authority that the appellant was directed to make a pre-deposit of the entire duty demanded for admission of the appeal. Agitated by the said order, the appellant had filed an appeal before this Bench and this Bench, vide Misc. Order No. 40522 of 2015 dated 01.04.2015 having directed the appellant to deposit Rs.15,00,000/- (Rupees Fifteen lakhs only), the same

appears to have been complied with by the appellant. Now, the matter has come up for final hearing.

4. Dr. C. Manickam, learned Advocate, appeared for the appellant and Shri R. Rajaraman, learned Assistant Commissioner, represented the Revenue.

5.1 Contentions of the learned Advocate are as follows:-

(i) Non-production of SFIS at the time of assessment could not be the reason for denial of the facility given by the DGFT. It is only a procedural lapse, and it is only for the change of classification by the Revenue that the liability had arisen.

(ii) Liability to pay the differential duty was due to the wrong and erroneous assessment by the proper officer and not for any lapse on the part of the importer.

(iii) Without prejudice, he would also urge before us that there is not much of a difference between payment of duty in cash and debiting the duty under SFIS duty scrip.

5.2 He has relied on the following judicial pronouncements: -

(a) *KIMS Health Care Management Ltd. v. Commr. of Cus. & C.Ex., Cochin* [2014 (308) E.L.T. 95 (Tri. – Bang.)]

(b) *Universal Power Transformer Pvt. Ltd. v. Commissioner of Central Excise, Bangalore* [2010 (256) E.L.T. 244 (Tri. – Bang.)]

(c) *Tanfac Industries Ltd. v. Commissioner* [2009 (244) E.L.T. A121 (S.C.)]

5.3 He would also invite our attention to the Foreign Trade Policy, which also recognizes SFIS scrip as a mode of payment for discharging the Customs Duty.

6. *Per contra*, Ld. Assistant Commissioner supported the findings of lower authorities.

7. Having heard both sides, we find that the issue lies on a very narrow compass. The first appellate authority having directed the appellant to make a pre-deposit which was not met by the importer, the Commissioner (Appeals) has simply rejected the appeal *in limine*, without going into the merits of the case. Both the Ld. Advocate and the Ld. Departmental Representative agree that there was no discussion on merits by the first appellate authority in the impugned order.

8. In view of the above therefore, we feel it appropriate to remand the matter back to the file of the Commissioner (Appeals) for disposing of the appeal on merits. Though both the counsel have made respective submissions on merits and reference was also made to judicial pronouncements, we feel it improper for us to discuss anything on the same since, admittedly, the lower appellate authority has not given any findings on the merits of the case. Therefore, any discussion or even reference by us to the contentions of the Ld. counsel may influence or have a bearing on the proceedings before the authority.

9. In view of our above discussions, we set aside the impugned order and allow the appeal by way of remand. We also direct the first appellate authority to comply with the principles of natural justice by hearing the appellant and thereafter, pass a speaking order on merits, in accordance with law. We find that the appeal pertains to the vintage year 2013 and the Bills-of-Entry were filed in the year 2010 and therefore, we direct the first appellate authority to dispose of the matter within a period of six months from the date of receipt of our Order. All the contentions left open.

(Order pronounced in the open court on **23.06.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)
Sdd

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)