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

**Customs Appeal No.42427 of 2014**

(Arising out of Order in Appeal C. Cus. No. 1434/2014 dated 7.8.2014 passed by the Commissioner of Customs (Appeals), Chennai)

**M/s. Precision Infomatic (M) Pvt. Ltd.** **Appellant**
No. 22, Habibullah Road
T. Nagar, Chennai – 600 017.

Vs.

**Commissioner of Customs (Air)** **Respondent**
Air Cargo Complex
New Custom House
Meenambakkam, Chennai – 600 027.

**APPEARANCE:**

Shri M. Karthikeyan, Advocate for the Appellant
Shri N. Satyanarayanan, AC (AR) for the Respondent

**CORAM**

**Hon'ble Shri M. Ajit Kumar, Member (Technical)**

Final Order No.41065/2024

Date of Hearing : 28.06.2024
Date of Decision: 08.08.2024

This appeal is filed by the appellant against Order in Appeal C.Cus. No. 1434/2014 dated 7.8.2014 passed by the Commissioner of Customs (Appeals), Chennai (impugned order).

2. Brief facts of the case are that appellant filed a claim for refund of 4% SAD for their import of "PB100 Finger Print Scanner with USB Cable" covered under Bill of Entry dated 18.1.2013 in terms of Customs Notification No. 102/2007 dated 14.9.2007 as amended vide Notification No. 93/2008 dated 1.8.2008 along with the relevant documents. The appellant submitted the importer's copy of the Bill of Entry in original and e-receipt as proof that the necessary duties

including the 4% Additional Duty of Customs were paid and that the goods were cleared for home consumption. They have also submitted the sales invoices and VAT / CST paid challans / VAT / CST returns as proof that the goods imported under the said Bill of Entry were sold and that necessary VAT / CST were paid on such sale. The appellant also produced a certificate from their Chartered Accountant as required under Circular dated 28.4.2008. The Assistant Commissioner of Customs (Refund-AIR), Chennai rejected the above refund claim filed by the appellant on the ground that the identity of the imported goods that were claimed to have been sold under the respective sales invoices have not been established beyond doubt for two reasons;

* description of the imported goods namely "Finger Print Scanner" mentioned in the Bill of Entry is not found mentioned in the import invoice or the packing list; and
* the main description of the imported goods namely "FDG-100"/"FDG-110" appearing in the Bill of entry is not at all found mentioned in any of the sale invoices.

The appellant preferred an appeal before the Commissioner of Customs (Appeals), who upheld the Original Authority's order. Hence this present appeal.

3. I have heard learned counsel Shri M. Karthikeyan for the appellant and Shri N. Satyanarayanan, learned AR for the respondent.

3.1 The learned counsel for the appellant stated that the impugned order is not legally stainable for the reasons of violation of principles of natural justice, in as much as the OIO rejecting the refund claims has been passed by the lower Adjudicating Authority without issuing any show cause notice proposing to deny the refund claims indicating the grounds for rejection and have also not provided any opportunities of personal hearing for the appellant to present their case. He further submitted that the foreign supplier is supplying the finger print scanner under their product name as "FDG-110" and "FDG-100" but the appellant wished to sell the same in the domestic market under their product name as a part of their business strategy. Accordingly, they have named the product as "PB-100-e" and "PB-100" respectively. The name "PB stands for "Precision Biometric" and hence, the appellant has required the foreign supplier to print the stickers as "PB-100-e" and "PB-100" and the same has also been supplied along with the imported product, which has been taken cognizance of under para 4 of the impugned order in original itself. They have filed necessary Chartered Accountant's Certificate as required under CBEC Circular No.06/2008 dated 28.4.2008. Para 3 of the said certificate clearly certifies for the purpose of Para 2(d) of the notification 102/2007 that the goods imported vide the impugned bill of entry has been sold vide the sales invoices furnished by the appellant and mentioned in the correlation statement furnished along with the Chartered Accountant Certificate. The appellant contends that, since the lower authority in the OIO has neither disputed the said certificate nor its certification, the rejection of refund claim merely on grounds of the mismatch of description is not sustainable. The Ld. Counsel stated that the decision of the Hon'ble Madras High Court in the case of **Johnson Lifts Pvt. Ltd.** [2021 (2) TMI 401 MADRAS HIGH COURT] is squarely applicable to the case in hand and prayed to set aside the impugned order.

4. Shri N. Satyanarayanan, learned Authorized Representative supported the findings in the impugned order.

5. I have heard the rival submissions. I find that the procedure to be adopted for refund of 4% Additional Duty of Customs has been prescribed by Boards Circular No. 6/2008-Customs, issued from F. No. 401/104/2007-Cus.III, dated 28/04/2008. The circular states that the refund applicant should produce a certificate from the statutory auditor/ Chartered Accountant who certifies the importer's annual financial accounts under the Companies Act or any statute, explaining how the burden of 4% CVD has not been passed on by the importer and to fulfill the requirement of unjust enrichment. In addition to the aforesaid the importer shall also make a self-declaration along with the refund claim to the effect that he has not passed on the incidence of 4% CVD to any other person. In the absence of a challenge to the said certificate by revenue it would not be possible to discard the same and reject the refund. Hence the rejection of the refund claim merely on grounds of the mismatch of description of the goods in the Bill of Entry and invoice, without challenging the certificate, is not sustainable, so long as the CA's certificate shows that the goods mentioned in the BE and commercial invoice as per the correlation statement are one and the same thing.

6. The Hon'ble High Court of Madras in the case of **Jhonson Lifts Pvt. Ltd.** (supra) in a similar situation held as follows;

> *"10. The procedure contemplated for seeking exemption/refund of the Additional Duty of Customs is under Notification No. 102/2007, dated 14-9-2007 read with Circular No. 6/2008, dated 28-4-2008. If that be so, the respondent is mandated to strictly adhere to the procedure prescribed under this notification/circular and cannot deviate from the same. However, in the instant case, the respondent seems to have applied their own logic and imagination to differentiate the imported goods with the goods sold locally inside India. If at all,*

> *the respondent was of the view that the descriptions in the imported goods and locally sold goods are different, the only yardstick that requires to be applied is the conditions prescribed in Notification No. 102/2007, dated14-9-2007 and Circular No. 6/2008, dated 28-4-2008. In other words, Circular No. 6/2008, which clarifies the conditions prescribed in Notification No.102/2007, dated 14-9-2007, requires the importer to produce the certificate of the Statutory Auditor along with the correlation statement and if such certificate and correlation statement are produced, the respondent is bound to accept the description of the goods in the import documents as well as the Sales Invoice to be one and the same, on the strength of the certificate/correlation statement."* (emphasis added)

Apart from my own findings, Judicial discipline also requires that the guidelines of the jurisdictional High Court be followed.

7. I accordingly find that the appellant is entitled to the refund claims made. Consequently, the impugned order is set aside. The appeal is allowed with consequential relief, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 08.08.2024)

(**M. AJIT KUMAR**)
Member (Technical)

Rex