CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

CHENNAI

REGIONAL BENCH - COURT No. III

Customs Appeal No. 41252 of 2015

(Arising out of OIA C.Cus.II No. 163/2015 dated 13.02.2015 passed by Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai-600 001)

Customs Appeal No. 41253 of 2015

(Arising out of OIA C.Cus.II No. 300/2015 dated 30.03.2015 passed by Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai-600 001)

Customs Appeal No. 41254 of 2015

(Arising out of OIA C.Cus.II No. 278/2015 dated 25.03.2015 passed by Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai-600 001)

M/s. AGS Transact Technologies Pvt **.... Appellant**
C-9A, Industrial Estate,
Thattanchavadi,
Pondicherry – 605 009.

VERSUS

The Commissioner of Customs **...Respondent**
Chennai (Port – Export),
Custom House,
60, Rajaji Salai, Chennai 600 001.

APPEARANCE :

Ms. V. Pramila Viswanathan, Advocate, for the Appellant
Ms. O.M. Reena, Authorised Representative for the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos.41176-41178/2024

DATE OF HEARING: 04.09.2024
DATE OF DECISION: 04.09.2024

Per Ms. Sulekha Beevi. C.S

The issues involved in all these appeals being the same, they are heard together and disposed of by this common order.

2. The appellant filed Bill of Entry for import of goods and later filed refund claim for refund of Special Additional Duty paid by them at the time of import. The original authority rejected the refund claim for the reason that the description of the goods in the invoices do not match with the description of the goods in the Bill of Entry. So, also it was noted by the original authority that the refund claim of Rs.7,45,176 is barred by limitation as the appellant has to file the refund claim within one year from the date of payment of duty as per condition number 2 (c) of Notification 102/2007. Aggrieved by the rejection of refund claims, the appellant is now before the Tribunal.

3. The Ld. Counsel Ms. V. Pramila appeared and argued for the appellant. It is submitted that in Appeal Nos. C/41252 and C /41253 of 2015, the ground for rejection of refund claim is violation of condition number 2 (e) (ii) of Notification No.102/2007 dated 14.09.2007. It is alleged by the department that there is mismatch between description of the imported goods in the Bill of Entry and sales invoices.

4. The details of the description in the Bill of Entry and the sale invoices is given by the appellant as under: -

Sl.No	Appeal No.	Description in B/E	Description in Sales Invoices	Refund Amount (Rs.)
1.	C/41252/2015	"Probe 12 non 3rd PTY SS ATEX 0.2 GPH W/WA-C/W2 MAG FLOAT KIT FOR DIESEL W/5 CABLE; Probe 9.0 non 3rd PTY SS ATEX 0.2 GPH W/WA-C/W2 MAG FLOAT KIT FOR DIESEL W/5 CABLE	Auto Tank Gauging (ATG) Probe complete with product level, Console for auto tank gauging systems & uninterrupted power supply (UPS) for ATG.	11,92,307/-
2.	C/41253/2015	"Probe 2.6M NON 3rd PTY SS ATEX 0.2 GPH W/WA-C/W2 MAG FLOAT KIT FOR DIESEL W/5 CABLE of various Specifications"	Auto Tank Gauging Probe	8,45223/-

It is pointed out by the Learned Counsel that these goods were sold to Indian Oil Corporation and the goods described in the Bill of Entry and the sales invoices are one and the same. There is no violation of condition in Rule 2 (e) (ii). The appellant has also furnished a chartered accountant certificate which would establish that the goods imported have been sold by the appellant as per the sales invoices. The decision in the case of Johnson Lifts Pvt Ltd. Vs ACC (Refunds), Chennai - 2021 (2) TMI 401 Madras High Court and the decision in the case of Precision Informatics

M Pvt Limited Vs Commissioner of Customs (Air) Chennai 2024 (8) TMI 483 Cestat Chennai was relied.

5. The issue in Appeal No. C/41254/2015 is that the refund claim is rejected for the reason that claim is filed beyond the period of one year from the date of payment of duty. The issue as to whether time limit would be applicable for refund claim filed under the Notification 102/2007 was decided by the Hon'ble High Court in the case Sony India Pvt Ltd., Vs. Commissioner of Customs, New Delhi 2014(304) ELT 660 (D). It was held by the Hon'ble High Court that the period of limitation of one year as per amendment in 2008 is not applicable to refunds arising out of Notification No.102/2007 dated 14.09.2007. The said decision was followed by the Hon'ble Jurisdictional High Court in the case of Johnson Lifts Pvt Limited Vs Assistant Commissioner of Customs (Refunds), Chennai 2021(2) TMI 401 Madras High Court. The Ld. Counsel prayed that the appeal may be allowed.

6. The Ld. AR Ms. O.M. Reena appeared and argued for the department. The findings in the impugned order was reiterated.

7. Heard both sides.

8. In appeal no. C/41252 & C/41253 of 2015 the question is whether the rejection of refund claim alleging that the description of the goods in the bill of entry and description in the sales invoices do not match is legal and proper. The table reproduced above in our opinion would show that the description of goods imported as well as sold by the appellant to the domestic customer (IOCL) is the same. The adjudicating authority as well as Commissioner (Appeals) has

taken the view of mismatch only for the reason that there is slight variation in the description which is not material for denying the refund. The very same issue was considered by the Hon'ble Jurisdiction High Court in the case of Johnson Lifts Pvt Limited (supra). On similar set of facts, the Hon'ble High Court held that the refund claim cannot be denied. Following the said decision and after looking into the records, we are of the view that the rejection of refund claim is not legal and proper. The appellant is eligible for refund. Ordered accordingly.

9. The issue in Appeal No. C/41254/2015 is the rejection of refund on the ground that refund claim is filed after one year when calculated from the date of Payment of Duty. The said issue is settled by the decision in the case of Sony India Pvt Limited, (supra) followed by the Jurisdiction High Court in the case of M/s. Viyasi Manufacturing Company Limited. Following the decisions of the Jurisdictional High Court, we are of the view that the rejection of refund claim is erroneous. The appellant is eligible for refund. Ordered accordingly.

10. In the result, the impugned orders are set aside. The appeals are allowed with consequential reliefs, if any.

(Order dictated and pronounced in the open court)

sd/-	sd/-
(VASA SESHAGIRI RAO)	**(SULEKHA BEEVI. C.S)**
Member (Technical)	Member (Judicial)

psd