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

Customs Appeal No.42102 of 2014

(Arising out of Order in Appeal C. Cus. No. 1112/2014 dated 30.6.2014 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Osian Electronics **Appellant**
No. 13, Narasinghapuram Street
Rajendra Complex, 2nd Floor
Chennai – 600 002.

Vs.

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

APPEARANCE:

Shri A.K. Jayaraj, Advocate for the Appellant
Shri N. Satyanarayanan, Authorized Representative for the Respondent

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

Final Order No. 41235/2024

Date of Hearing : 19.09.2024
Date of Decision: 24.09.2024

The present appeal filed by M/s. Osian Electronics is against Order in Appeal C. Cus. No. 1112/2014 dated 30.6.2014 passed by the Commissioner of Customs (Appeals), Chennai (Impugned order).

2. The facts of the case are that the appellant filed refund claim of 4% Additional Duty of Customs (SAD) for the import of 'Blan-Dvdr' cleared under four bills of entry totalling to Rs.5,02,904/-. After due process of law, the refund sanctioning authority noticed that the sale invoices were not having buyers' address, correlation statement was not having the required data and in the case of 2 challans only photocopies were submitted. Hence deficiency memos were issued to the appellant for curing the defects and to attend the personal hearing.

Despite reminders, the appellant neither cured the defects nor attended the personal hearing. Hence the claims were rejected without going into the merits of the claim. In appeal, Commissioner (Appeals) rejected the same. Hence the appellant is before this Tribunal.

3. I have heard Shri A.K. Jayaraj, learned counsel for the appellant and Shri N. Satyanarayanan, learned Authorized Representative for the respondent.

3.1 The learned Counsel for the appellant submitted that they had imported "Blank-Dvdr and the said product was imported by the appellant on payment of appropriate duties of Customs including Special Additional Duty of Customs. He submitted that the appropriate Sales Tax was being paid by them at the time of sale from the trading premises. They had filed a refund applications in terms of Customs Notification No.102/2007-Cus, dated 14.09.2007, as amended and had submitted all relevant documents for processing the refund including the TR6 Challans to prove that the necessary duties including the Special Additional Duty of Customs were paid along with Original Chartered Accountant Certificate for the payment of VAT and a Copy of Abstract of Ledger etc. However, in due course an order came to be passed rejecting their refund claim for Rs 5,02,904/-, on the ground that invoice was not having buyers address while co-relation statement was not having required data, and 2 challans were photocopies. The Commissioner Appeals in his order had mechanically accepted the OIO. The Ld. Counsel stated that the OIO and the impugned appellate order are perse erroneous based on technical grounds considering various judgments cited by him and the impugned order deserves to be set aside in its entirety with consequential relied.

3.2 The Ld. AR has taken us through both the orders and reiterated the points stated therein.

4. I have carefully gone through the appeal and have heard the rival parties. It is seen that both the lower authorities have not questioned the CA's statement verifying the claim. This being so they should not have rejected the claim on technical grounds stating that the invoice was not having buyers address while co-relation statement was not having required data and 2 challans were photocopies.

5. The Hon'ble Madras High Court in its judgment in **P.P. Products Ltd. v. Commissioner** — 2019 (367) E.L.T. 707 (Mad.), examined whether the Tribunal, in the face of documentary evidence produced by the appellant, was correct in setting aside the order of the Appellate Authority, holding that there was no correction between the imports and subsequent sales. It held as under;

> "10. . . . . .. <u>In fact, there was nothing on record to disbelieve the Chartered Accountant's certificate which certified that both products are one and the same. If the adjudicating authority had to disbelieve such certification, then there should have been material to do so. However, the larger question would be whether at all such jurisdiction is vested with the adjudicating authority, when there is no allegation of any fraud or misrepresentation against the appellant."</u>
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> (emphasis added)

6. In the circumstances, the impugned order rejecting the refund claims is not proper. The same is hence set aside. The appeal is allowed with consequential relief, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 24.09.2024)

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

Rex