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

Customs Appeal No.42265 of 2014

(Arising out of Order in Appeal C. Cus. No.1500/2014 dated 14.8.2014 passed by the Commissioner of Customs (Appeals), Chennai)

Enterprise International Ltd. **Appellant**
'MALAYALAY', Unit No. 2A(S)
2nd Floor, 3, Woodburn Park
Kolkata – 700 020.

Vs.

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

APPEARANCE:

Shri S. Murugappan, Advocate for the Appellant
Shri N. Satyanarayanan, Authorised Representative for the Respondent

CORAM

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

Final Order No. 41242/2024

Date of Hearing : 25.09.2024
Date of Decision: 27.09.2024

This appeal is filed against Order in Appeal C. Cus. No. 1500/2014 dated 14.8.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Brief facts of the case are that the appellant filed refund claims for Rs.11,34,161/- being the differential duty between the duty already paid and the duty that would have been leviable if the benefit of Notification No. 30/2004-CE dated 9.7.2004 had been extended. The refund applications were processed and the refund sanctioning authority held that the appellant has not produced relevant documents like balance sheet, profit of loss accounts, invoices, cost data and other

basic financial records of the relevant periods to rule out unjust enrichment and have produced only the Chartered Accountant certificate to establish incidence of duty has not been passed on to the consumers. Hence for lack of financial records, the refund sanctioning rejected the claim. In appeal, Commissioner (Appeals) upheld the rejection of refund claim. Hence the present appeal.

3. Shri S. Murugappan, learned Counsel appeared for the appellant and Shri N. Satyanarayanan, learned Authorized Representative for the respondent.

3.1 The learned counsel for the appellant submits that in spite of the efforts made to get the relevant documents from the appellant as undertaken during the previous hearing, he was not in a position to get and produce the same before the Bench. He hence prayed that the Bench may pass suitable orders based on available records.

3.2 The learned Authorized Representative submits that since the relevant / original documents required and found missing by the Original Authority have not yet been produced, the appellant’s case fails and the appeal may be dismissed.

4. I have heard both sides. I find that this is a case where the refund claim filed by the appellant had been rejected for not having produced relevant / corroborative documents. Certain documents and statements were filed before us along with the appeal. Those documents were found to be not relating to the facts in issue and pertained to Anti-Dumping Duty as against the basic customs duty paid towards the impugned Bills of Entry claiming the benefit of Notification No. 30/2004-CE dated 9.7.2004. Ordinarily fresh evidence cannot be entertained at the Tribunal. Rule 23 of the **Customs Excise Service**

Tax Appellate Tribunal (Procedure) Rules, 1982 states that the parties to the appeal shall not be entitled to produce any additional evidence, either oral or documentary, before the Tribunal. Thus, the general principle is that the appellate court should not travel outside the record of the Original Authority, unless the Tribunal itself feels the need to do so. The Hon'ble Supreme Court has in its judgment in **Chittoori Subbanna Vs Kudappa Subbanna** (AIR 1965 SC 1325) recognized that it is possible to include additional grounds in the grounds of appeal by moving a separate application for permission before the appropriate forum for its consideration. No such Miscellaneous Application has been filed in this case. Further a Divisional Bench of this Tribunal in **Commissioner of Customs Vs M/s. Vasta Biotech Pvt. Ltd. [**Final Order No. 40930/2024, dated: 23.07.2024] held as under;

> "The power to allow additional evidence at the Tribunal level, whether on fact or law, oral or documentary is discretionary in nature. The parties are not entitled, as of right, to the admission of such evidence. As per judicial pronouncements an application for additional evidence is not allowed when:
>
> 1. no reasonable care or due diligence was shown in presenting the evidence at the Original forum.
> 2. the evidence would introduce a new cause of action which completely alters the appeal and would aid the appellant to establish a new case in an appeal, which seeks to take away a vested right of limitation or any other valuable right accrued to the other party. This could then lead to unending legal disputes.
> 3. no compelling reason or substantial cause has been shown to permit the additional evidence
> 4. the additional evidence seeks to fill in gaps or restore weak areas in the case.
> 5. the rival party has not been given an opportunity to rebut it.
> 6. the additional evidence is not of an unimpeachable character."

5. I find that not only has there been no separate prayer for including fresh documents / evidence, even that submitted is not relevant to the facts of this case and hence the lacunae pointed out by the Original Authority and in the impugned order of the Commissioner (Appeals) continues to survive. This being so the appeal merits to be rejected.

6. For the reasons discussed the lower authority has taken a view which is reasonable, legal and proper and I am in agreement with the same. The appeal hence stands rejected and is disposed of accordingly.

(Order pronounced in open court on 27.9.2024)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

Rex