

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

Customs Appeal No.40843 of 2015

(Arising out of Order in Appeal C. Cus. I No. 87/2014 dated 20.11.2014 passed by the Commissioner of Customs (Appeals – I), Chennai)

Noritsu India Pvt. Ltd.

F-12, Akshaya Plaza, 1st Floor
55 & 56, Adhitanar Salai
Opp. Egmore Court
Pudupet, Chennai – 600 002.

Appellant

Vs.

Principal Commissioner of Customs

Chennai VII Commissionerate
Airport & Air Cargo Complex
New Custom House
Meenambakkam, Chennai – 600 027.

Respondent

APPEARANCE:

Ms. J. Mercy, 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. 41264/2024

Date of Hearing : 26.09.2024

Date of Decision: 08.10.2024

This appeal is filed against Order in Appeal C. Cus. I No. 87/2014 dated 20.11.2014 passed by the Commissioner of Customs (Appeals – I), Chennai (impugned order).

2. Brief facts of the case are that the appellant filed refund claim of Rs.5,03,829/- for BE's filed during the period 21.06.2013 to 01.07.2013, being refund of 4% SAD levied under Sec. 3(5) of Customs Tariff Act, 1975 for their import of 'Photofinishing equipments' in terms of Notification No. 102/2007 dated 14.9.,2007 as amended along with relevant documents. They have also submitted sales

invoices and VAT / CST paid challans / VAT / CST returns as proof that the goods imported were sold and that necessary VAT / CST were paid on such sale along with Chartered Accountant's certificate. After due process of law, the lower authority rejected the refund claim on the ground that there is discrepancy in description of the goods imported and the tax invoice and the endorsement as per condition in para 2(b) of Notification 102/2007-Cus dated 14.9.2007 is not correct. In appeal, Commissioner (Appeals) rejected the appeal and upheld the Order in Original. Hence the appellant is before this Tribunal.

3. Ms. J. Mercy, learned Counsel appeared for the appellant and Shri N. Satyanarayanan, learned Authorized Representative appeared for the respondent.

3.1 The learned Counsel for the appellant stated that they had submitted the Chartered Accountant Certificate along with the correlation sheet that indicated the "Commercial invoice" numbers which form a part of the "Tax Invoice" also, making correlation easy. She stated that non-endorsement of invoice is only a procedural requirement and the refund cannot be rejected on this ground. She relied on the following cases laws in this regard.

- a. HBD Packaging Pvt Ltd., Vs Commissioner of Central Excise, Delhi [2009 (234) E.L.T. 147 (Tri. - Del.),
- b. Commissioner of Central Excise, Chennai II Vs. Malavika Metals (P) Ltd. [2008 (230) E.L.T. 469 (Tri. Chennai)];
- c. Commissioner of Central Excise & Cus., Nasik Vs. Sipra Engineers Pvt. Ltd., [2007 (217) E.L.T. 239 (Tri.- Mumbai)].
- d. Kamadhenu Polymers [(2024) 22 Centax 142 (Tri-Mad) [22-08-2024]

The learned Counsel further stated that they have a branch office in Bengaluru where to they have transferred the goods under stock transfer from Chennai to Bengaluru. Therefore, raising of invoices from Bangalore was correct. No where in the notification issued for refund of SAD, there is a restriction on goods sold through branch transfer. The appellants accordingly paid appropriate CST @ 2% and cleared the goods. For the exemption from SAD under Notification No. 102/2007 what is relevant is as to whether the VAT or CST has been paid, which they have done. The Ld. Counsel in her written submissions submitted during the hearing relied on the following notification/ circular/ public notices issued by the government/ customs in respect of the 4% Additional duty of customs refund, mentioned below.

- a. Board Circular No. 354/129/2007-TRU dated 14.09.2007.
- b. Board Circular No. 6/2008 dated 28.04.2008.
- c. Board Circular No. 16/2008 Cus dated 12.10.2008.
- d. Policy Circular No. 22/2009-2014 dated 03.02.2010.
- e. Public Notice No. 44/2009.

However, copies of Circular/ PN at Sl. no. 4 and 5 were not enclosed and hence could not be examined. The Ld. Counsel prayed that the impugned order may be set aside with consequential relief.

3.2 The learned AR has reiterated the points given in the OIO and the impugned order and prayed that the appeal may be rejected.

4. Heard both sides.

5. It is seen that the refund claim was rejected on the ground that along with the Chartered Accountant's statement, the appellant submitted copies of invoices issued by them for movement of the said imported goods to the respective buyers against the said invoices but the Chartered Accountant did not certify such sales invoices in the correlation sheet. Further, the goods sold on stock transfer basis

discharged duty CST @ 2% and on the sales invoices the appellant made an endorsement that 'No CENVAT credit is admissible in respect of 4% SAD' which is not as per the wordings required under para 2(b) of Notification 102/2007-Cus dated 14/09/2007.

6. I find that it is not disputed that the appellant had submitted sales invoices and VAT / CST paid challans / VAT / CST returns as proof that the goods imported were sold and that necessary VAT / CST were paid on such sale along with Chartered Accountant's certificate and correlation sheet. The rate of duty CST was paid is not relevant so long as it has been paid correctly at the effective rate. In this context the CA not certifying the invoices issued by the appellant for movement of the said imported goods to the respective buyers was a curable defect. With the Original Authority expressing his satisfaction with the description of the goods being made the claim could very well have been verified and the rejection of refund on this ground was not warranted. As regards the endorsement in the invoice not being worded properly the matter was examined by the Larger Bench of the Tribunal in **Chowgule & Company Pvt. Ltd. Vs. Commissioner of Customs & Central Excise** reported in 2014 (306) ELT 326 (Tri. LB) and it was held that in respect of a commercial invoice, which shows no details of the duty paid, the question of taking of any credit would not arise at all. Therefore, non-mention of the duty in the invoice issued itself is an affirmation that no credit would be available. This being so, the condition prescribed under clause (b) of para 2 of the Notification 102/2007 stood satisfied. Further there is no allegation of any fraud or misrepresentation against the appellant.

7. 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 08.10.2024)

(M. AJIT KUMAR)
Member (Technical)

Rex