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

Customs Appeal No.41793 of 2014

(Arising out of Order in Appeal C. Cus. No. 646/2014 dated 9.4.2014 passed by the Commissioner of Customs (Appeals), Chennai)

Roots Multiclean Ltd. **Appellant**
RKG Industrial Estate
Ganapathy, Coimbatore – 641 006.

Vs.

Commissioner of Customs **Respondent**
Customs House
60, Rajaji Salai
Chennai – 600 001.

APPEARANCE:

Shri M.A. Mudimannan, Advocate for the Appellant
Shri Harendra Singh Pal, Authorized Representative for the Respondent

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

Final Order No. 41277/2024

Date of Hearing : 08.10.2024
Date of Decision: 09.10.2024

This appeal is filed by M/s. Roots Multiclean Ltd. against Order in Appeal C. Cus. No. 646/2014 dated 9.4.2014 passed by the Commissioner of Customs (Appeals), Chennai (impugned order).

2. Brief facts of the case are that the appellant filed refund application for refund of 4% SAD levied under Sec. 3(5) of Customs Tariff Act, 1975 for their import of 'Industrial Vacuum Cleaner and its spares' in terms of Notification No. 102/2007 dated 14.9.,2007 as amended along with relevant documents. The appellant submitted all relevant documents as proof that the necessary duties including 4% SAD was paid and that the goods were cleared for home consumption.

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. The appellant also produced Chartered Accountant's certificate and reconciliation statement in support of their claim. After due process of law, the lower authority rejected the refund claim on the ground that the description and specifications of the goods in the sales invoices are different from that in the Bill of Entry. In appeal, Commissioner (Appeals) rejected the appeal and upheld the Order in Original. Hence the appellant is before this Tribunal.

3. Shri M.A. Mudimannan, learned counsel appeared for the appellant and Shri Harendra Singh Pal, learned Authorized Representative appeared for the respondent.

3.1 The learned counsel for the appellant submitted that the refund was rejected on the ground of mis-match of the description of goods and non-replying to the deficiency memo. Aggrieved the appellant preferred an appeal before the Commissioner of Customs (Appeals), Chennai who has gone through the documentary evidences submitted before hm and held that these discrepancies cannot be construed as fatal and therefore cannot be basis for rejection of refund. He however felt that the non-replying to the deficiency memo cannot be cured at the appellate stage and rejected the appeal without proper appreciation of law. The Ld. Counsel stated that the mis-match of the description of goods were as under:-

	Description of the goods As per Bill of Entry	**Description of the goods As per sales invoices**
A.	Minuteman Power boss 9XRDSLES Armadillo 9 XRDSL Orange Industrial Leaning machine	Minuteman Power Boss SW 9XRE RIDE-O-RSDCLES

B.	Broom - 48 Proex & Wire 3305663 Parts of Industrial cleaning machine	Broom - 48 Proex & Wire 3305663
C.	Industrial cleaning machine - HAKOMATIC B 910 WITH ACC	HAKO JONES 900 E with battery Electric

As regards the discrepancy in the amount paid towards VAT / CST and SAD, he stated that the two taxes being administered differently the rates of taxes were also different, and refund could not be rejected due to a mismatch on this score provided the VAT / CST as applicable was paid. He relied on the judgment in **Chowgule & Company Pvt. Ltd. v. Commissioner of Customs & C. Ex.,** [2014-TIOL-1191-CESTAT-MUM-LB] in support of his stand. He prayed that the appeal may be allowed.

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. The discrepancy as pointed out in the OIO is as extracted below:-

> "FINDINGS
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> I have carefully gone through the refund application and the relevant documents filed along with the application and the evidence on record. The claim was examined on the conditions as stipulated in the Notification No. 102/2007-Cus dated 14.9.2007 read with said Board's Circular Nos. 6/2008 dated 28.4.2008 and 16/2008-Cus dated 13.10.2008 which are applicable for this refund claim.
>
> Circular No. 6/2008 states that the condition as prescribed in the said notification only will apply. It permits filing of refund claim upto a period of one year from the date of payment of duty, by any person. The claimant would be entitled to refund when the prescribed documents are made available.
>
> On scrutiny of the sales invoices, it is noticed that the description and specifications of the goods in the sale invoices are different from that in the Bill of Entry. The description as mentioned in import documents reads as, Industrial cleaning machine (Armadillo 9XR-DSL, Armadillo 10X-DSL, Hakomatic B750R and Hako Jonas 900E" whereas in the sale invoices the description of the goods as industrial cleaning machine is nowhere mentioned.
>
> In this regard, a Deficiency Memo (DM) was issued to the claimant on 22.8.2012 for making good the following deficiencies.
>
> (i) The description not tallied with import documents and sale invoices.

> The claimant neither submitted the documents making good for the deficiency in DM. Therefore, the refund claim is liable to be rejected for non-fulfilment of the condition of the Notification No. 102/2007-Cus dated 14.9.2007 which is incurable deficiency in nature."

The issue relating to the discrepancies in the description of the product have been held by the First Appellate Authority as not fatal which according to him cannot be basis for rejection of refund. With the DM having been issued only with respect to the description in the invoice not having tallied with import documents, the appeal should then have been allowed by him. Although the appellant has stated that revenue had pointed to a discrepancy in the amount paid towards VAT / CST and SAD, I do not find it reflected in the orders of either the learned Original Authority or the learned Commissioner (Appeals). There is no allegation that the VAT / CST were not paid or that the CA's Certificate along with the reconciliation statement as prescribed in Boards Circular has not been submitted or is deficient in any manner etc.

5. In the circumstances, the impugned order rejecting the refund is not proper and 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 09.10.2024)

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

Rex