IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

C/40251/2015

[Arising out of Order-in-Appeal No.C.Cus II No.350/2014, dated 24.12.2014 passed by the Commissioner of Customs (Appeals-II), Chennai]

M/s.SGM ENTERPRISES APPELLANT

Versus

COMMISSIONER OF CUSTOMS [SEAPORT-EXPORTS] RESPONDENT

Appearance:

For the Appellant Shri A.K. Jayaraj, Adv.
For the Respondent Shri Jagan Babu, AC (AR)

CORAM:

Hon'ble Smt. Sulekha Beevi C.S, Judicial Member

Date of hearing/decision **07-01-2019**

FINAL ORDER NO.40041/2019

The brief facts are that the appellant/importer filed bill of entry for import of "Tetracycline Hydrochloride". The same was assessed with a Basic Customs Duty @ 7.50% and Countervailing Duty @ 10% with applicable other duties. Later, they realized that they failed to claim the notification benefit and, therefore, had paid excess duty of Rs.59,957/-. They filed refund claim for refund of excess duty. The same was rejected by the adjudicating authority observing that the appellant has not challenged the assessment of duty. In Appeal, the Commissioner (Appeals) also upheld the rejection. Hence this appeal.

2. The learned counsel Shri A.K. Jayaraj submitted that the appellant need not challenge the assessment before claiming the refund of excess duty. He relied upon the decision of the Hon'ble Delhi

High Court in the case of *M/s. Aman Medical Products Ltd., Vs Commissioner of Customs, Delhi* reported in *2010 (250) E.L.T.30 (Del.)* and decision of Tribunal in the case of *M/s. Suryalaxmi Cotton Mills Ltd., Vs Commissioner of Central Excise, Nagpur* reported in *2016 (327) E.L.T.718 (Tri.-Mumbai)*.

3. The learned Authorised Representative for the Revenue Shri Jagan Babu supported the findings in the impugned order.

4. Heard both sides.

5. The issue is whether the appellant is eligible for refund of the excess duty paid without challenging the assessment. The said issue stands settled by the decisions relied by the learned counsel for the appellant. Following the same, I am of the view that the adjudicating authority ought to have considered the refund claim on merits. The impugned order is, therefore, set aside. Appeal is remanded to the adjudicating authority, who is directed to process the refund claim on merits. The appeal is allowed by way of remand with consequential reliefs, if any.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S)
JUDICIAL MEMBER

ksr
08-01-2019