CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO. IV

SINGLE MEMBER

Customs Miscellaneous Application No. 50018 of 2020
(on behalf of the appellant)
In
Custom Appeal No. 51548 of 2019

(Arising out of Order-in-Appeal No. 56(SM)CUS/JPR/2019 dated 18.3.2019 passed by the Commissioner (Appeals-), Central Excise & Central Goods & Service Tax, Jaipur)

M/s K.K. International **Appellant**
Shop No. 2,
144 Bagh Bhatiyari,
Kirana Mandi,
Ghaziabad, U.P – 201001.

Versus

Commissioner of Central Goods & Service Tax, **Respondent**
Custom & Central Excise, Jaipur-I
NCR Building,
Statue Circle, C-Scheme,
Jaipur, Rajathan.

Appearance

Ms. Reena Rawat, Advocate - for the appellant

Shri Y. Singh, DR - for the respondent

CORAM:HON'BLE MS. ARCHANA WADHWA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 12.02.2020

Final Order No. 50426/2020

Archana Wadhwa :

After hearing both the sides duly represented Ms. Reena Rawat, learned Advocate for the appellant and Shri Y. Singh, learned Authorised Representative for the Revenue, I find that the issue in the present appeal relates to refund of SAD in terms of Notification No. 102/2007-Cus. dated 14 September, 2007. In terms of the said notification SAD paid at the time of import of goods is refundable to the importer subject to fulfillment of certain conditions annexed to the notification.

2. The appellant's refund claims stands denied on two grounds. First, that the invoices showing sale of the goods do not bear 'no credit of additional duty of Customs leviable under sub-section 5 of Section 3 of Customs Act shall be admissible'. In this regard, the contention of the learned Advocate is that no SAD stands mentioned separately in the invoices so as to enable the customer to avail the Cenvat credit. She further submits that such stamping was done on the customer invoices, though admits that the same was not put in their own invoices. However, she submits this is a procedural lapse and non-stamping of the invoices would not result in denial of the substantial benefit of notification as has been held by various decisions of the Tribunal. Reliance stand placed upon the Tribunal's decision in the case of **R.K.G. International Pvt. Ltd. Vs. Commissioner of C. Ex. & Cus. Noida – 2013 (290) ELT 253 (Tri.-Del.)** and in the case of **Novo Nordisk India Pvt. Ltd. Vs. Commr. of Cus. (ACC & Import), Mumbai – 2013 (292) ELT 252 (Tri.-Mumbai).**

3. I find that it stands held in the said decisions that non-declaration in the invoices as per para 2(b) of the notification indicating that no credit of additional duty is admissible to the customer is only a procedure required to be adopted. The purpose of the said declaration is that the buyer does not have undue

Cenvat credit in case SAD has not been shown separately in the invoices. In this scenario, the Tribunal has allowed the refund of SAD, by following said decision, I hold in favour of the assesee on the said ground.

4. As regards second reason for denial of SAD refund, it is seen that the Commissioner (Appeals) has referred to Chartered Accountant's certificate produced on record by the appellant and has observed that the said certificate is not supported by any documentary evidence to show that the duty incidence has not been passed on to the customers. Learned Advocate has brought to my notice a Circular No. 18/2010 dated 8 July, 2010 issued by the Board indicating that such certificate has to be adopted along with self declaration made by the assessee himself. My attention also stand brought to Tribunal's decision in the case of **Gujarat Boron Derivatives Pvt. Ltd. Vs. CCE, Daman – 2012 (280) ELT 94 (Tri.-Ahmd.)** laying down that the Chartered Accountant's certificate without the support of relied upon documents cannot be considered as insufficient evidence for denial of the Cenvat credit on the ground of unjust enrichment. She also submits that neither in the show cause notice nor in the order in original the ground of unjust enrichment was adopted as a reason for rejection of refund.

5. Having considered the submissions made by both the sides, I find that the impugned order stands passed beyond the scope of the show cause notice. Once there is no proposal in the notice to deny refund claim on a particular ground which also does not stand considered by the original adjudicating authority, the consideration of the same by Commissioner (Appeals) amounts to travelling

beyond the show cause notice. Inasmuch as the appellant has produced the Chartered Accountant's certificate, the same has to be allowed on this ground alone, I hold in favour of the assessee.

6. In view of the foregoing, the impugned order is set aside and appeal is allowed with consequential relief.

7. Misc. application for additional evidence also stands disposed of.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)