CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Customs Appeal No. 50869 of 2019

(Arising out of order-in-original No. CC(A) CUS/D-II/ICD/PPG-BBG/2771/2018 dated 22.11.2018/26.11.2018 passed by the Commissioner of Customs (Appeals), IGI Airport, New Delhi).

M/s Artex Textile Pvt. Limited **Appellant**
Khasra No. 282, Gali No. 04
Shalimar Village Ind. Area
New Delhi-110088.

VERSUS

Commissioner of Customs **Respondent**
ICD Patparganj, East Delhi
Delhi-110096.

APPEARANCE:

Shri Prem Ranjan Kumar, Advocate for the appellant
Shri Sunil Kumar, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 51850/2019

DATE OF HEARING/DECISION: 21.10.2019

ANIL CHOUDHARY:

The appellant is importer of fabrics for trade. The appellant has filed Bills of Entry on import of non Textured Polyester Lining Cloth and Polyester Knitted Fabric from China. The appellant has filed the following bills of entry:-

Sl. No.	Bill of Entry No.	Date
1	9601268	08.05.2017
2	9599422	08.05.2017
3	9687517	15.05.2017

4	9687520	15.05.2017
5	9502118	29.04.2017
6	9296518	13.04.2017
7	9687468	15.05.2017
8	9599497	08.05.2017
9	9917211	01.06.2017
10	9797546	02.05.2017
11	2013462	08.06.2017
12	9916512	01.06.2017
13	9961687	05.06.2017
14	9797547	23.05.2017

2. On examination, the goods were found as per bill of entry. Since the importer had filed the bills of entry under the self assessment scheme and at the time of assessment neither sought benefit of Notification No. 30/2004-CE, therefore, the bills of entry were assessed finally without extending the benefit of the said Notification which grants exemption from CVD.

3. Subsequently, upon remand by the learned Commissioner (Appeals), order-in-original dated 23.11.2017 was passed rejecting the claim on the ground that firstly, the appellant had not claimed the benefit under self assessment scheme, secondly, the benefit under Notification No. 30/2004-CE is conditional subject to fulfilment of condition envisaged under the said notification, which is that the appellant must not have taken cenvat credit on inputs and capital goods under the provisions of Cenvat Credit Rules, 2004. Further, it

was found that the appellant had not submitted documents in support of fulfilment of the conditions.

4. Being aggrieved, the appellant filed appeal before the Commissioner (Appeals) who vide the impugned order was pleased to reject the appeal observing that the ruling of Hon'ble Supreme court in the case of SRF Limited vs. Commissioner of Customs, Chennai – 2015 (318) ELT 607 (SC) was in respect to import made prior to amendment in the said notification, vide amending Notification No. 34/2015 dated 17.07.2015 whereby the earlier proviso to Notification No. 30/2004-CE was substituted as follows:-

> "Provided that the said excisable goods are manufactured from inputs on which appropriate duty of excise leviable under the First Schedule to the Central Excise Tariff Act or additional duty of customs under Section 3 of the Customs Tariff Act, 1975 (51 of 1975) has been paid and no credit of such excise duty or additional duty of customs on inputs has been taken by the manufacturer of such goods (and not the buyer of such goods), under the provisions of the Cenvat Credit Rules, 2004".

Further, vide amendment under Notification No. 37/2015 dated 21.07.2015 an Explanation was inserted under the above proviso. This Explanation reads as follows:-

> "Explanation:- For the purposes of this Notification, appropriate duty or appropriate additional duty includes nil duty or concessional duty, whether or not read with any relevant exemption Notification for the time being in force."

5. It was further observed that appropriate duty or appropriate additional duty in the said notifications includes Nil duty. Further observed that the notification clarifies that domestically manufactured goods covered under the notification continue to be exempted from excise duty or subject to concessional rate of duty as the case may be, as they were prior to 17.02.2015. As the Bills of Entry have been

filed after 17.07.2015, that is after the issue of amendment Notification No. 34/2015 which has restricted the benefit in the Notification No. 30/2004-CE, to the manufacturers of the goods and the buyers of the goods have been excluded. Being aggrieved, the appellant is before this Tribunal.

6. Learned Counsel Shri Prem Ranjan Kumar appearing for the appellant submits that the issue is no longer *res integra,* as in the case of this very appellant for import of same goods vide Bills of Entry prior to 17.07.2015, have held as follows vide Final Order No. C/A/50953-59954-CU(DB) dated 24.07.2019:-

> "9. We find that the amendment made by notification No. 34 of 2015 provides a condition qua payment of duty on inputs and non-availment of credit in manufacturing. Therefore, the sweep of the judgment of SRF Ltd. is not affected. The Notification No. 37 of 2015 further relaxes the condition that the nil payment of duty on input would also qualify as payment of duty.
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> 10. We find that the Commissioner (Appeals) has considered the judgement of SRF Ltd. and the notification No. 34 of 2015 and 37 of 2015 as well as sweep of the judgement of SRF Ltd. visa-vis amendments and dealt with the applicability of the amendments in the impugned orders.
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> 11. We find that Tribunal dismissed several appeals of the Revenue on 27.11.2017 and 21.03.2018 against the respondent by following the previous orders of the Tribunal.
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> No appeal has been preferred against the above two orders and limitation period has expired. The orders have attained finality.
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> 12. We also find that the Commissioner (Appeals) has followed the order passed by this Tribunal in the case of the respondent in which the benefit of notification No. 30 of 2004, as amended by notification 34 of 2007 and 37 of 2015 were extended to the respondent. The Commissioner (Appeals) held in paragraph 8 and 9 as follows.
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>> "8. Following the judgment of AIDEK Tourism Pvt. Ltd. Hon'ble Supreme Court delivered another judgment on the same grounds in case of SRF Ltd. Reported in 2015 (318) ELT 607 (S.C.). In the case of SRF Ltd. Hon'ble Apex Court further observed that the conditions which are not applicable to the importer and which the importer cannot fulfil would not be applied in case of the imported goods".

9. Therefore, I observe that both the amended Notifications being No. 34/2015 C.E. and 37/2015 C.E. in no manner restrict or impede the judgment 6 C/50492 & 50493/2019-[DB] of Hon'ble Supreme Court in SRF Ltd. It was held by Hon'ble Court that the condition which cannot be complied with would not be made applicable to the imported goods. The importer has satisfied all the conditions of the amended notifications in terms of the view taken by several judicial pronouncements by Hon'ble Apex Court. Hon'ble CESTAT in its recent final orders bearing No. FO/A/75702-75704/2016 dated 02.08.2016 involving identical issue in appellant's own case also affirmed that the benefit of CVD exemption is to be extended to importer also in this case CESTAT has held as under:

> "1. These Stay applications and Appeal have been filed by the Revenue against OIA dated 29.10.2015 and 14.01.2016.
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> 2. Sri S. K. Naskar, A.C. (AR) argued that First Appellate Authority has allowed the appeals by relying upon order of Hon'ble Apex Court in SRF Ltd. Vs. Commissioner of Customs, Chennai (2015 (318) ELT. 607 (S.C.)]. That department has filed a review application in Hon'ble Supreme Court against the said order, which is pending.
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> 3. Sri S. K. Mehta (Advocate) appearing on behalf of the respondents argued that Hon'ble Apex Court by an order dated 15.07.2016 has dismissed the Review Petition No. 3441/ 2015 in Civil Appeal No. 1623/2009 filed by Revenue. In the case of M/s SRF Ltd. (Supra) Advocate also relied upon the case law of M/s Chemsilk Commerce Pvt. Ltd. Shri Aditya Sarda Vs. CC (Port), Kolkata (2015) (12) TMI 1000-CESTAT, Kolkata] under which similar benefit has been extended to the appellant.
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> 4. After hearing both sides and perusing the case records, it is observed that only ground under which Revenue filed this appeal is that department has filed a review petition in the Apex Court in the case of M/s ARF Ltd. (Supra) which is pending in the Apex Court. In view of dismissal of the review petition of the department by Apex Court by order dated 15.07.2016, appeals filed by the department are not sustainable. The issue has also been decided by this bench in the case of M/s Chemsilk Commerce Pvt. Ltd., Shri Aditya Sarda- Vs. CC (Port), Kolkata (Supra). Accordingly, appeals filed by the Revenue are dismissed and stay applications also stand disposed of."

7. The Tribunal in the aforementioned final order relied on its earlier judgement by the Kolkata Bench vide FO/A/75172-75176/2019 dated 17.01.2019. Thus, prays for allowing the appeal.

8. Learned Authorised Representative for the Revenue relies on the impugned order and have also placed reliance on the following rulings:

1. Commissioner of C. Ex. Pondicherry vs. Honda SIEL Power Products Ltd. -2015 (323) ELT 644 (S.C.).

2. Eagle Flask Industries Limited vs. Commissioner of C. Ex. Pune – 2004 (171) ELT 296 (S.C.)

3. Gammon India Ltd. vs. Commissioner of Customs, Mumbai – 2011 (269) ELT 289 (S.C.)

8.1 He further urges that the impugned goods have been imported after above referred two amendments to the Notification No. 30/2004-C.Ex. dated 09.07.2004 and the impugned order rejected the claim of exemption benefit on the ground that condition incorporated in the original notification by two amending notifications cannot be complied with, in case of the imported goods. However, appellants have claimed exemption benefit in light of decision in the case of **SRF Ltd.,** (supra).

8.2 In view of the above said two amendments in the Notification No. 30/2004-C.Ex. dated 09.07.2004, the goods imported under Bills of Entry filed after amendments have to comply conditions to the amended notification and in respect of such goods, ratio of judgment in the case of **SRF Ltd.,** (supra) would not be applicable. As the impugned Bills of Entry have been filed after the two amendments, Commissioner (Appeals) vide impugned orders has rightly rejected the appeals holding that the ratio of **SRF Ltd.,** (supra) is inapplicable in the case and upheld the orders-in-original rejecting benefit of the notification.

8.3 Appellants have placed reliance on the Coordinate Bench judgement in the case of Enterprises International Ltd. (Final Order No. FO/A/75172-75176/2019 dated 17.01.2019), wherein Departmental appeal has been dismissed. In the said order, the Tribunal has dismissed the appeal filed by Revenue following the previous orders of this Tribunal after observing that no appeal against these previous orders were filed by Revenue. Further, it appears Revenue didn't make reference in the case about compliance of the conditions of the amended notification in respect of goods imported under Bills of Entry filed after amendment in the notification. It would be relevant to mention that it is settled law that exemption notifications are to be construed strictly and in case of any doubt, benefit goes to the department. It is also trite law that conditions of exemption notifications have to be strictly complied with for availing its benefit.

9. Having considered the rival contentions and on perusal of record after going through the previous order of Co-ordinate Bench of this Tribunal, we find that the issue stands settled in favour of the appellant. Accordingly, we set aside the impugned and allow this appeal with consequential benefits.

(Operative part of the order pronounced in open Court)

(Anil Choudhary)
Member (Judicial)

(C. L. Mahar)
Member (Technical)

Pant