CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 52786 OF 2019

[Arising out of the Order-in-Appeal No. IND-EXCUS-000-APP-142-19-20 dated 26/09/2019 passed by Commissioner (Appeals), Customs, CGST & Central Excise, Indore (M.P.).]

M/s Bridgestone India Pvt. Ltd. **...Appellant**
Plot No. 12, Kheda Growth Centre, Pithampur,
Post – Sagore,
District Dhar (M.P.) – 454 74.

Versus

Commissioner of Customs & CGST, **...Respondent**
Manik Bagh Palace,
Indore.

APPEARANCE:

Shri R.S. Sharma, Advocate for the appellant.
Shri Sunil Kumar, Authorized Representative for the Department

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 52079/2021

DATE OF HEARING : 06.12.2021
DATE OF DECISION: 17.12.2021

P.V. SUBBA RAO

This appeal is filed by M/s Bridgestone India Pvt. Ltd.[1] assailing order-in-appeal dated 26.09.2019 passed by the Commissioner (Appeals), CGST & Central Excise, Indore,

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[1] **appellant**

whereby he upheld the order-in-original dated 30.04.2019 of the Deputy Commissioner and rejected the appellant's appeal.

2. The facts of the case, in brief, are that the appellant imported Radial Tyres, Tubes and Flaps in 32 consignments between the period April 2011 and March 2012 and paid Anti-Dumping duty at the time of import based on its self-assessment. Realizing that Anti-Dumping duty was not payable, it filed a refund claim under Section 27 of the Customs Act, which was rejected by the Assistant Commissioner by order dated 19.06.2013. On appeal, the Commissioner (Appeals), by order dated 04.08.2014 remanded the matter to the Assistant Commissioner who, again rejected the refund claim by order dated 17.10.2014 on the ground that the assessment was final and re-assessment of the bills of entry is not possible since the goods have already been cleared and unless the assessment is set aside refund was not permissible. On appeal, the Commissioner (Appeals), by his order dated 10.02.2016, upheld the order of the Assistant Commissioner rejecting the refund claim on the ground that refund claim was not maintainable in view of the judgment of the Supreme Court in **Priya Blue Industries Ltd. versus Commissioner**[2] and CBEC Circular No. 24/2004-CUS dated 18.03.2004.

3. Aggrieved, the appellant filed Customs Appeal No. 51169/2016 before this Tribunal, which was disposed of by final

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[2] **2004 (172) E.L.T. 145 (S.C.)**

order No. 55225/2016 dated 16.11.2016. The relevant paragraphs of this order are as follows :-

> "The dispute in the present appeal relates to refund of Anti-Dumping duty paid by the appellant at the time of import of flaps and radial tyres which according to them was not payable. Revenue by not going into the legal issues of pay-ability of Anti-Dumping duty has rejected the refund claims on the short ground that assessees' Bills of Entry were not challenged before the higher appellate forum and as such, as per the law declared by the Hon'ble Supreme Court in the case of **Priya Blue Industries [2004 (172) ELT 145 (SC)]**, the refund route cannot be adopted directly.
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> ….
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> 4. However, the contention of the appellant is that in some cases, they deposited the Anti-Dumping Duty, without raising the issue before the assessing officer as they were not aware of non-leviability of such duty. In such a case, no '*lis*' was pending between the appellant and the Revenue and no such '*lis*' was decided. In such a scenario, the refund could be directly made as held by the Hon'ble Delhi High Court in the case of **Aman Medical Products Ltd. versus Commissioner – 2010 (250) ELT 30 (Del.)**
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> 5. To such proposition, learned DR appearing for the Revenue agrees.
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> 6. As such, we note that the legal issues are clear. However, the factual position are required to be ascertained, that is, as to whether the '*lis*' was involved at the time of assessment or not, in respect of each and every Bill of Entry. With these observations, we set aside the impugned order and remand the matter to the original adjudicating authority for verification of the above factual position and to decide the matter afresh in the light of law declared by the Hon'ble Supreme Court in the above referred decision. Needless to say that the appellant would be afforded an opportunity to present their case".

4. Thus, the matter was remanded to the Assistant Commissioner who, by the order dated 30.04.2019, rejected the refund claim and this rejection was upheld by the Commissioner (Appeals) in the impugned order. The appellant filed this appeal on the following grounds :-

(i) The impugned order has been passed in contravention of CESTAT's final order dated 16.11.2016 and has gone beyond the scope of the remand. CESTAT's order in the case required the Adjudicating Authority to only verify in each case and every bill of entry whether any '*lis*' existed between the appellant and the Department or not. The impugned order has gone beyond the scope of this and has upheld the rejection of the refund claims relying upon the judgment of the Supreme Court in the case of **ITC Limited[3] versus Commissioner of Central Excise, Kolkata – IV** ;

(ii) CESTAT's order has attained finality as there was no Departmental appeal in the matter and, therefore, the issue is decided by the Tribunal cannot be re-agitated by the Revenue;

(iii) The impugned order is liable to be set aside as there was no '*lis*' with regard to 25 bills of entry, which was the subject matter of the refund claim;

(iv) The Anti-Dumping duty was wrongly levied and the impugned order is, therefore, unsustainable.

5. Learned Departmental Representative counters the above grounds. He submits that unless the bill of entry is modified no refund claim can be entertained as has been held by the Supreme Court in the case of **Priya Blue Industries**. This order was distinguished by the High Court of Delhi in the case of **Aman Medical Products Limited[4]**. The Tribunal had, in the first round of litigation in its final order relied on **Aman Medical Products Ltd.** and remanded the matter to the Original Authority to decide matter examining that there was a '*lis*' between the importer and the Revenue in respect of each of the bills of entry. Learned Departmental Representative submits that the issue of sanction of refunds in the absence of revision of an assessment was finally decided by the Larger Bench of the Supreme Court in the case of **ITC Limited**. It has been held that any assessment order including self-assessment needs to be appealed against and in

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[3] **2019 (368) E.L.T. 216 (S.C.)**
[4] **2010 (250) E.L.T. 30 (Del.)**

the absence of such an appeal and modification of the assessment no refund can be sanctioned. In this judgment the Supreme Court has also considered and set aside the judgment of the Delhi High Court in the case of **Aman Medical Products**. Therefore, when the matter was before the Commissioner (Appeals), he could not have relied upon the judgment of **Aman Medical Products** as directed in the final order as the same has by then been set aside by the Supreme Court in **ITC Limited**. Therefore, the impugned order is correct and needs to be upheld.

6. On the question of whether the Adjudicating Authority and the First Appellate Authority have travelled beyond the scope of the remand, learned Departmental Representative submits that the Tribunal was correct in passing the order as per the legal precedents available at the relevant time. The judgment of Delhi High Court in **Aman Medical Products** was binding on the Tribunal. For this reason, Revenue has not appealed against the order of the Tribunal. However, subsequently the **Aman Medical Products** has been set aside by the Supreme Court in the case of **ITC Limited**. Once the **Aman Medical Products** judgment has been set aside by the Supreme Court, the appellant cannot take rely on it to claim the refund. Therefore, the impugned order was squarely within the scope of the remand. On the argument that the Tribunal's final order had attained finality as there was no appeal by the Department, he submits that the order of the Tribunal is subject to subsequent legal pronouncement of

Supreme Court in the case of **ITC Limited**. He, therefore, prays that the appeal may be rejected.

7. We have considered the arguments of both sides and perused the records.

8. The facts of the case are not in dispute. The appellant filed bills of entry and assessed duty including Anti-Dumping duty and paid the same. Thereafter, without challenging the assessment of the bills of entry, it filed refund claims. Relying on the judgment of the Delhi High Court in **Aman Medical Products,** the matter was remanded to the Original Authority by this Tribunal in the first round of litigation directing the matter to be decided based on whether or not there was a '*lis*' between the appellant and the Revenue in these matters. Thereafter, **Aman Medical Products** has been set aside by the Larger Bench of the Supreme Court in the case of **ITC Limited**. It has been categorically held that any assessment including self-assessment needs to be appealed against and in the absence of such an appeal and consequential re-assessment no refund can be sanctioned. This judgment of the Supreme Court is binding on all judicial and quasi-judicial authorities and we find that the Commissioner (Appeals) has, in the impugned order, correctly relied upon this judgment and upheld the rejection of refunds.

9. We do not find any force in the arguments of the appellants that although the **Aman Medical Products** was set aside by the

Supreme Court, the lower authority should have still relied on it and should have sanctioned refund. Once **Aman Medical Products** has been set aside by the Supreme Court its ratio no longer applies.

10. In view of the above, we find that the impugned order is correct and needs to be upheld and we do so.

11. The impugned order is upheld and appeal is rejected.

(Order pronounced in open court on 17/12/2021.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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