IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Appeal No. C/51172/2015-CU[DB]

[Arising out of Order-in-Appeal No. CC(A) CUS/07/2015 dated08.01.2015, passed by the Commissioner of Customs, New Delhi]

Rockwell Automation India Pvt Ltd ....Appellants

Vs.

C.C., Delhi-I ....Respondent

Appearance:

Shri Kanu Priya, Advocate for the Applicants
Shri Govind Dixit, DR for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 09.01.2017
Date of Pronouncement: 24.01.2017

FINAL ORDER NO. 50468 /2017-CU[DB]

Per V. Padmanabhan

The present appeal is directed against the Order-in-Appeal No. 7/2015 dated 12.01.2015 passed by the Commissioner of Customs (Appeals) IGI Airport, New Delhi. The dispute pertains to refund claims filed by the appellant under Notification No. 102/2007-Cus dated 14.09.2007 in respect of additional duty of Customs paid under Section 3(5) of the Customs Tariff Act, 1975. The refund claims stand rejected by both the authorities below, on the ground that these claims have been filed in contravention of the restrictive condition laid down by the CBEC vide Circular No.

6/2008-Cus dated 28.04.2008. The said condition of the Circular specified that only one refund claim is permitted to be filed within the maximum time period of 1 year against a particular Bill of Entry. Aggrieved by the impugned order the present appeal has been filed.

2. With the above background, we have heard Ms. Kanu priya, ld. Advocate for the appellant as well as Shri Govind Dixit, ld. DR for the respondent.

3. The Ld. Advocate submitted that there is no restriction in the Notification No. 102/2007-Cus, dated 14.09.2007 in filling two refund claims in the same month. She further submitted that the restrictive conditions in the CBEC circular cannot take away the substantive benefit granted by the said notification.

4. Ld. DR reiterated the findings of the authorities below.

5. Notification No. 102/2007- Cus, dated 14.9.2007 provides for refund of Additional duty of Customs in lieu of VAT, which is commonly referred to as SAD paid on the goods at the time of import, which are subsequently sold in the domestic market, subject to payment of VAT/CST and subject to the satisfaction of the conditions specified in the notification. Under the said notification, the appellant has filed the two refund claims before the jurisdictional authorities. From a perusal of both the orders by the

authorities below, we find that there is no murmur of any non-compliance of the conditions specified in the said notification. However, both the authorities have rejected the refund claims for non-conformity with the both Circular No. 6/2008-Cus dated 28.04.2008 in which it has been prescribed in para 4.2 that only a single claim against a particular Bill of Entry should be permitted to be filed within the maximum time period of 1 year. From the wordings of the Circular, it is clear that the same has been issued for the convenience of processing of the refund claims on regular periodicity. The Circular, however, does not specify any condition to say that a second refund claim filed in a month would be barred. In any case, it is well settled that the substantial benefit granted by law cannot be taken away by a circular.

6. We also find that under similar circumstances, the Tribunal has allowed the refund claim under the same exemption Notification after over-looking a similar objection by Revenue in the case of **Devki Nandan (J) Gupta v. Commissioner of Customs (Appeals) Mumbai, 2015 –TIOL-330-CESTAT-Mumbai.** Further, it is seen that the Tribunal in a recent case in **Commissioner of Customs, Cochin Vs. KVN Impex Pvt. Ltd. reported as 2016(339) E.L.T. 117 (Tri.- Bang.)** has also allowed benefit under similar circumstances. The relevant portion of the decision reproduced below:-

> *"In my view even if more than one claim in a month is filed the same can not be denied only because of the reason that circular*

> *prescribed only one refund claim in a month otherwise statutory time limit of one year provided in the notification will become redundant…. In my view this was held keeping in mind that though there is procedure to file one refund in a month or in the quarter as case may be but since time limit of one year is prescribed for filing refund claim the said procedure infraction should not come in way of the substantial claim of the assessee. In view of my above discussion, I am of the considered view that the appellant is entitled for refund claim. Hence, the appeal is allowed".*

7. In view of the above, the impugned order cannot be sustained and the same is set aside and the appeal is allowed with consequential relief.

[Pronounced in the Open Court on 24.01.2017]

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member(Technical)

RS