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

Customs Appeal No. 53659 of 2015

[Arising out of Order-In-Appeal No. 660 /2015 dated 19.6.2015 passed by Commissioner of Customs (Appeals), New Delhi]

Commissioner of Customs **Appellant**
New Delhi

Vs.

M/s. Indo Rubber & Plastic Works **Respondent**

Appearance:

Shri R K Majhi, AR for the Appellants
Shri Ankur Jain, Advocate for the Respondent

CORAM:

Hon'ble Ms Archana Wadhwa, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing / Decision: 05.04.2017

FINAL ORDER NO . 52900 /2017

Per V Padmanabhan:

The present appeal filed by Revenue is against the order-in - appeal No. 660/2015 dated 19.6.2015 passed by Commissioner (Appeals), New Delhi. The respondents imported sports goods and filed several Bill of Entries. These Bill of Entries were assessed to

CVD @ 12% and the respondents paid such CVD and cleared the goods. Subsequently, they realized that they were eligible for concessional rate of CVD at the rate of 6% as per Notification No. 2/2011 –Cus dated 1.3.2011. Accordingly, they filed refund claim for the CVD which has been paid in excess of the concessional notification. The original authority vide its order dated 23.11.2013 rejected the refund claims on the ground that they will not be entitled to refund since the assessment order has not been challenged. He relied upon the decision of the Hon'ble Supreme Court in the case of ***M/s. Priya Blue Industries vs. Commission***er ***[2004 (172) ELT 145 (SC)]*** as well as ***Flock (India) Pvt. Ltd***. [***2000 (120) ELT 0285 (SC)]*** The order of the original authority was challenged before Commissioner (Appeals) who allowed the refund claim of respondent by following the decisions of the Hon'ble Delhi High Court in the case of ***Aman Medical Products vs. Commissioner [2010 (250) ELT 30 (Del)].*** Aggrieved by the impugned order, Revenue has filed the present appeal.

2. With the above background, we heard Shri R K Manjhi, learned AR appearing for the Revenue and Shri Ankur Jain, learned Advocate appearing for the respondent.

3. Learned DR submitted that the assessment order passed in the case has not been challenged and hence the importer will not be entitled

to claim refund without challenging the assessment. He placed reliance on the decision of the Hon'ble Madras High Court in the case of ***Commissioner of Customs vs. ACE Designers [2015 (329) ELT 109 (Mad)]*** . He also submitted that Tribunal has also taken the above view in the case of ***CEAT Ltd. vs. Commissioner of Customs, Kolkata [2016 (335) ELT 693 (Tri-Mum)].***

4. The Counsel for the respondent however, supported the impugned order. He submitted that view expressed by the Hon'ble Delhi High Court in the case of ***Aman Medical Products Ltd. (supra***) has been reiterated by the same High Court in the case of ***Yu Televentures Pvt. Ltd. vs. Union of India [2016 (340) ELT 88 (Del)]]*** and ***Micromax Informatics Ltd. vs. Union of India [2016 (335) ELT 0446 (Del)***]. Accordingly, he submitted that there is no infirmity in the impugned order granting the refund. Relevant paragraphs of decision of High Court of Delhi in the case of ***Micromax Informatics Ltd.*** is reproduced for ready reference:

> ***"13.*** *As far as the present case is concerned, there was indeed no assessment order as such passed by the customs authorities. Although under Section 2(ii) of the Act, the word 'assessment' includes a self-assessment, the clearance of the goods upon filing of the B/E and payment of duty is not per se an 'assessment order' in the context of Section 27(1)(i) as it stood prior to 8th April, 2011, particularly if such duty has not been paid under protest. In any event, after 8th April, 2011, as noticed*

hereinbefore, as long as customs duty or interest has been paid or borne by a person, a claim for refund made by such person under Section 27(1) of the Act as it now stands, will have to be entertained and an order passed thereon by the authority concerned even where an order of assessment may not have reviewed or modified in appeal.

14. *The Assistant Commissioner (Refund), in the present case, appears to have not noticed the decision of this Court in Aman Medical Products Limited (supra) which was rendered in the context of Section 27 of the Act as it stood prior to 8th April, 2011. Further he failed to notice that the said provision has undergone a significant change with effect from 8th April, 2011. The impugned order of the Assistant Commissioner (Refund) rejecting the refund claim of the petitioner on the ground of maintainability was, for the aforementioned reasons, plainly erroneous."*

5. The respondents filed Bill of Entry for the imported goods in which they did not claim the benefit of exemption and they did not claim the benefit of concessional rate of CVD which was available to them in terms of Customs Notification No. 2/2011 dated 1.3.2011. They also did not challenge the assessment order of the Bill of Entry and cleared the goods on payment of CVD and the rate of 12%. On realizing the concessional rate available for CVD, they subsequently filed the refund claim. It is to be noted that at the time of filing Bill of Entry and its assessment, there was no *lis* between the Revenue and the importer regarding the eligibility of concession as per the notification.

The *lis* has arisen only with the filing of refund claim by the respondent as held in the decision of Hon'ble High Court of Delhi, in the case of ***Aman Medical Products Ltd. (supra)***. The High Court has distinguished the decision of Hon'ble Supreme Court in the case of M/s. Flock India and held that refund will be permissible in such cases when the *lis* was not there at the time of original assessment. Such view has further been upheld by the Hon'ble Delhi High Court in the cases sited by the learned Counsel for the respondent. The learned DR has cited some cases lies in which a different view has been taken. However, we note that the Tribunal in Delhi is required to follow the decision of Jurisdictional High Court of Delhi. Decisions cited by the respondents are also fairly recent. Accordingly, by following the decisions of Hon'ble Delhi High Court, the appeals filed by the Revenue is rejected and the impugned order is upheld.

(dictated and pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(V Padmanabhan)
Member (Technical)

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