

(In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.C/54513/2015(DB)

(Arising out of Order-in-Appeal No.CC(A) Cus/D-II/ICD/1009 to 1016/2015 dated 11.09.2015 passed by Commissioner of Customs (Appeals) New Customs House, New Delhi)

CC Patparganj

...Appellant

Vs

Hymatic Agro Equipments Pvt Ltd

...Respondent

Appearance:

Present for the Appellant	:	Shri Govind Dixit, DR
Present for the Respondent	:	None

Coram: HON'BLE JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR V. PADMANABHAN, MEMBER (TECHNICAL)

Date of hearing: 07.08.2017

Date of decision : 14.08.2017

Final Order No.55838/2017

Per V. Padmanabhan,

The present appeal has been filed by Revenue against Order-in-Appeal No. CC(A) Cus/D-II/ICD/1009 to 1016/2015 dated 11.09.2015. The brief facts of the case are that the respondent filed 8 refund claims pertaining to bills of entry filed for agricultural sprayers falling under CTH 84249000. At the time of filing original bill of entry, they failed to claim the benefit of notification No.12/2012 CE (SN 242) dated 17.03.2012 in which nil rate of duty was available. Realizing their

mistake, the respondent filed refund claim for the duty already paid. These preferred claims were rejected by the original authority. However, Commissioner (Appeals), vide the impugned order allowed such refunds. Aggrieved by decision, Revenue is in appeal.

2. With the above background, we heard Mr Govind Dixit, DR on behalf of the Revenue. None appeared on behalf of the respondent.

3. The Id DR submitted that the refund has been wrongly allowed in the impugned order. Since the order of assessment of the bills of entry was not challenged, it has become final and hence, the same cannot be challenged by filing refund claims as has been held by the Hon'ble SC in the case of Collector Vs M/s Flock India, reported at 2000(120) ELT 285 (SC) and M/s Priya Blue Industries Ltd Vs Commissioner, reported at 2004(172) ELT 145 (SC).

4. We have perused the record of the case. We have also gone through the Apex Court decisions cited by the Id DR. The refund was allowed by the Commissioner (Appeals) on the basis of the Hon'ble High Court of Delhi judgment in the case of M/s Aman Medical Products (P) Ltd Vs Commissioner of Customs, Delhi [2010(250) ELT 30(Del.) dated 16.04.2014.

5. On going through the Hon'ble Delhi High Court's decision, we find that the Hon'ble High Court has discussed the decisions of the Apex Court in the case of M/s Flock India as well as M/s Priya Blue. The Hon'ble High Court has observed as under:

“6. We, therefore, answer the question framed by holding that the refund claim of the appellant was maintainable under Section 27 of the Customs Act and the non-filing of the appeal against the assessed bill of entry does not deprive the appellant to file its claim for refund under Section 27 of the Customs Act, 1962 and which claim will fall under clause (ii) of sub-section (1) of Section 27.”

6. In the present case, we note that the bill of entry was assessed without the respondent claiming the benefit of the notification. Accordingly, there was no *lis* at the time of the original bill of entry. Under said circumstances, we are of the view that it will be appropriate to follow the decision of the Hon’ble High Court as has been done by the Commissioner (Appeals).

7. In view of the above, we find no reason to interfere with the impugned order. It is sustained and the Revenue appeal is dismissed.

(Pronounced in the Court on 14.08.2017).

(Justice (Dr) Satish Chandra)
President

(V.Padmanabhan)
Member (Technical)

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