

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.**

Date of Hearing/Decision: 25.09.2017

Appeal No. C/52057/2016-CU[SM]

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-248-15-16
DATED 01-03-2016 passed by the Commissioner (Appeals), Customs,
Central Excise & Service Tax, Bhopal)

Jajoo Surgical Pvt. Ltd.

Appellant

Vs.

CC-CCE & ST-Indore

Respondent

Appearance

Rohit Chodhary & Preeti Khiwani, Advocate - for the appellant

Shri Ubhav Sengraj, A.R. - for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**

Final Order No. 56927/2017

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein refund claim filed by them of excess CVD paid by them has been rejected on the ground that the appellant has not challenged the assessment of the bill of entry.

2. Heard the parties.

3. Considering the fact that the issue has been settled by the Hon'ble High Court of Delhi in the case of Aman Medical Products Ltd. v/s Commissioner of Customs, Delhi 2010 (250) ELT 30 (Del.) wherein

the Hon'ble High Court has held that it is admitted fact that the appellant has borne the duty in question.

4. Considering the fact in appellant's own case vide Final Order No. 50547 dated 31/01/2017 the identical issue came up before this Tribunal. This Tribunal has observed as under:

3.2 The Revenue's contention against sanctioning refund claim is that the assessee appellant has to first file an appeal against the assessment order made for the importation of such goods, where basic customs duty was paid in cash. The appellant's submission is that there is no dispute between the importer and the Revenue that the rate of duty is 2.5% and not 5% which had been paid by the importer appellant. The appellant pleads that in the present matter there is no assessment order made, which could be challenged in appeal; therefore, no-filing of appeal against such Bill of Entry cannot deprive the importer of their due refund claim. The appellant relies on Hon'ble Delhi High Court's decision in the case of *Aman Medical Products Ltd. Vs. Commissioner of Customs, Delhi 2010 (250) ELT 30 (Del.)*. Hon'ble High Court in the said decision holds that where there is no contest or lies between the importer and the customs regarding the rate of duty and where there is no assessment order issued by the Customs there could be no challenge or appeal to such order; in such a situation the importer will not be deprived of his right to file refund claim. The Hon'ble High Court in this case inter alia observes as under:

2. We have, therefore, admitted the appeal and framed the following questions of law:
"Whether non-filing of appeal against the assessed Bill of Entry in which there was
No lis between the importer and the Revenue at the time of payment of duty will deprive the importer of his right to file refund claim under section 27 of the Customs Act, 1962?"
3. Before we proceed to decide the issue, it would be necessary to reproduce the relevant part of the relevant provision, namely, Section 27 of the Customs Act, 1962 which is as under:

"27. Claim for refund of duty.- (1) Any person claiming refund of any duty-

- (i) Paid by him in pursuance of an order of assessment; or
- (ii) Borne by him,

May make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Customs or Deputy Commissioner of Customs-

(a) In the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, before the expiry of one year.

(b) In any other case, before the expiry of six months, from the date of payment of duty and interest, if any, paid on such duty in such form and manner as may be specified in the regulations made in this behalf and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person:

Provided that where an application for refund has been made before the commencement of the Central Excise Customs Laws (Amendment) Act, 1991, such application shall be deemed with in accordance with the provisions of sub-section (2)."

5. The Tribunal has referred to the cases of *CCE, Kanpur v. Flock (India) Pvt. Ltd.* [2000(120) ELT 285] and *Priya Blue Industries Ltd. vs. Commissioner of Customs (Preventive)*, 2004 (172) ELT 145 (S.C.). In both these cases, referred to by the Tribunal there was an assessment order which was passed and consequently it was held that where an adjudicating authority passed an order which is applicable and the party did not chose to exercise the statutory right of appeal, it is not open to the party to question the correctness of the order of the adjudicating authority subsequently by filing a claim for refund on the ground that adjudicating authority had committed an error in passing his order. These judgments will, therefore, not apply when there is no assessment order on dispute/contest, like as is in the facts of the present case.

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.

and allowed the claim filed by the appellant.

5. Therefore, relying on the decision on the appellant's own case, I hold that appellant is entitled for the refund claim. Therefore, the impugned order is set aside.

6. In result, appeal is allowed with consequential relief.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

Rekha