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

Customs Appeal No. 51824 of 2017 SM

[Arising out of Order-In-Appeal No. IND-EXCUS-000-APP-110-17-18 dated 04.09.2017 passed by Commissioner (Appeals), CGST, Central Excise & Customs, Indore]

Paper Trade Link. **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Indore

Appearance:

Ms. Priyanka Goel, Advocate for the Appellants
Shri K Poddar, AR for the Respondent

<u>CORAM</u>:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing /Decision: 22.02.2018

FINAL ORDER NO . 50754/2018-(SM)

<u>Per Ms. Archana Wadhwa :</u>

The issue in the present appeal relates to the refund of SAD in terms of notification No. 102/2007-Cus dated 17.9.2007. Same requires that in the subsequent sale of the imported goods, on payment of VAT there should be a stamp on the invoice indicating that customers would not be entitled to the cenvat credit of SAD paid. The notification further requires sale of the goods on VAT/sales tax.

2. The facts in the present case are not clear in respect of stamping of the invoices indicating non-availability of cenvat credit to the purchasers. At one place Assistant Commissioner has observed in favour of the assessee and subsequently, he has held that invoices were not stamped to that effect.

3. Learned Advocate submits that admittedly, they have produced the Chartered Accountant certificate indicating that no credit was passed on by them to the buyers. Tribunal in number of cases has held that such certificate is sufficient enough inasmuch as the entire purpose to stamp is to prevent mis-use of SAD credit. Reference can be made to Tribunal's decision

1. . CC Bangalore vs. M/s. Apple India P Ltd.
[2013 (8) TMI 165 –CESTAT Bangalore];

2. M/s. Chowgule & Co. Pvt. Ltd. vs. CCE Goa
[2014 (11) TMI 856 –CESTAT Mumbai];

3. Alfa Ventrures P Ltd. vs. CCE Cochin
[2017 (12) TMI 769- Cestat – Bang]

4. Inasmuch as I have already observed that finding of the original adjudicating authority are self-contradictory, I deem it fit to set aside the impugned order and to remand the matter to the original adjudicating authority for examining the factual position and to decide the issue in the light of decisions of the Tribunal in the above referred matters.

5. In view of the above, Appeal is allowed by way of remand.

(dictated and pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

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