

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
NEW DELHI**

Principal Bench, COURT NO. IV

Customs Appeal No. 52189 of 2018

[Arising out of the Order-in-Appeal No. CC (A)/CUS/D-II/ICD/TKD/Import/806/2018 dated 18/04/2018 passed by The Commissioner of Customs (Appeals), New Custom House, New Delhi.]

Commissioner of Customs (Import)

Inland Container Depot,,
Tughlakabad,
New Delhi.

Appellant

Versus

M/s R.M. Impex

House No. 35, Block – 2,
Ramesh Nagar,
New Delhi 110 015.

Respondent

Appearance

Shri Rakesh Kumar, Authorized Representative (DR) – for the appellant.

None – for the Respondent.

CORAM: **Hon'ble Shri C.L. Mahar, Member (Technical)**
Hon'ble Mrs. Rachna Gupta, Member (Judicial)

Final Order No. 50609/2019 Dated : 29/04/2019

DATE OF HEARING/DECISION : 29/04/2019.

RACHNA GUPTA :-

None for respondent despite service of notice.

2. The present appeal has been restored to its original number vide the miscellaneous order No. 50070-50071 of 2019 dated 24/01/2019. It is submitted on behalf of the department/appellant that the present case is the case of refund of 4% of Special Additional Duty of Customs (SAD) leviable under Section 3 (5) of Customs Tariff Act, 1975. The said refund claim was filed

under Special Refund Mechanism as is provided under the exemption Notification No. 102/2007-Customs dated 14/09/2007 amended by Notification No. 93/2008-Customs dated 01/08/2008 for an amount of Rs. 7,36,824/-. The same was partly allowed vide the order-in-original dated 7 June 2017. An amount of Rs. 5,58,584/- was sanctioned, however, amount of Rs. 1,78,240/- was denied to be refunded being barred by time. An appeal thereof was filed being aggrieved of the said rejection. The same was allowed by Commissioner (Appeals) vide order-in-appeal No. 806 dated 18/04/2008. Thereafter there has been a review order No. 147 dated 2 May 2018 in furtherance wherein the impugned appeal has been preferred.

3. We have heard learned Departmental Representative for the department who has relied upon the final order No. 53157 of 2018 dated 25/10/2018 in an appeal titled as **Commissioner of Customs, New Delhi, ICD Tughlakabad (Import) versus J.G. Impex Pvt. Ltd.** to impress upon that if the refund has not been filed within one year of SAD payment, the same cannot be sanctioned. Learned Departmental Representative has impressed upon the correctness of the order of original Adjudicating Authority.

4. There is none for the respondent, however, the submissions of respondent are very much the part of the record. After going through and perusing those submissions and after going through the final order, as relied upon by the department and also keeping in view the decision of Hon'ble Apex court in the case of **Balaji Steel Re-Rolling Mills versus Commissioner of Central Excise & Customs** reported in **2014 (310) E.L.T. 209 (S.C.)**, we are of the opinion, as follows :-

"The claim herein is with respect to special additional duty of Customs as leviable under Section 3(5) of Customs Tariff Act, 1975. It is important to look into the said provision which reads as follows:

"Section 3 Levy of additional duty equal to excise duty, sales tax, local taxes and other charges-

(1) -----

(2) -----

(3) -----

(4) -----

(5) *If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not] such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four per cent of the value of the imported article as specified in that notification.*

Explanation – *In this sub-section, the expression "sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India" means the sales tax, value added tax, local tax or other charges for the time being in force, which would be leviable on a like article if sold, purchased or transported in India or, if a like article is not so sold, purchased or transported, which would be leviable on the class or description of articles to which the imported article belongs and where such taxes, or, as the case may be, such charges are leviable at different rates the highest such tax or, as the case may be, such charge."*

It is brought to our notice that the said SAD exemption has been granted vide Notification No. 102/2007 dated 14.09.2007 as issued in accordance of Section 25(1) of the Customs Act which provides power to the Central Government to grant exemption from duty by way of Notification. This Notification exempts the goods falling within the first schedule to the Customs Tariff Act, 1975 when imported into India for subsequent sale, from the whole of the additional duty of Customs leviable thereupon in accordance of the above mentioned Section 3(5) of Customs Tariff Act. However, subject to such conditions as mentioned in the Notification itself in para 2 thereof, the first condition reads as follows:

- (a) The importer of the said goods shall pay all duties including the additional duty of Customs leviable thereon, as applicable at the time of importation of goods.

The other relevant condition is:

- (c) The importer shall file a claim for refund of said additional duty of Customs paid on the imported goods with the jurisdictional Customs officer.

This Notification stands amended vide Notification No. 93/2008 dated 01.08.2008 vide which a time period of one year from the date of payment for filing of refund claims by an importer under the aforesaid Notification was introduced.

Commissioner (Appeals) has held that the amendment since introduced for the first time by a Notification but without a statutory amendment, the same cannot prevail.

6. In view of the above legal provisions, we are of the opinion that the moot question to be adjudicated in the present case is as to whether there is any time limit prescribed by law for filing the refund claim of additional duty of Customs as stands exempted vide the Notification No. 102/2007.

No doubt, the said Notification is silent about any time period for filing the said claim. But the Notification exempts the goods in first schedule of Customs Tariff Act from being leviable to the additional duty of Customs. However, the Notification itself mandates the deposit of the said additional duty at the time of importation of the goods and thereafter to get the refund. From this perusal, one thing becomes abundantly clear that the importer has the knowledge of his entitlement to file the refund of additional duty of Customs at the time of the payment of said duty itself i.e. at the time, the product being in first schedule (under the exempted category) is imported. Resultantly, we are of the opinion that for claiming the refund of additional duty nothing else has to happen or to be done by the assessee after the payment of said additional duty of Customs. To our opinion, this particular fact distinguishes the present case from the case of M/s Sony India Pvt. Ltd. (supra).

7. Also, the amending Notification No. 93/2008 is arising out of the statute, i.e. Section 25(2A) of the Customs Act, 1962 hence, the findings of the Commissioner (Appeals) that the amendment introducing one year from the date of payment of additional duty as a time to claim the refund thereof to be without statutory amendment, is not sustainable rather is opined to be legally erroneous. Otherwise also, the said amendment came into force w.e.f. 01.08.2008 that too in accordance of another statutory provision, i.e. Section 25(4) of the Customs Act. The refund in question was filed on 27.03.2017, i.e. much beyond the amended Notification and also the Customs Act itself contains a provision about claim of refund of duty in Section 27 thereof which reads as follows:-

(i) Any person claiming refund of any duty or interest, paid by him or borne by him may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs before the expiry of one year from the date of payment of such duty or interest.

8. The words used in the provision makes it clear that statute has not distinguished the nature of duty or interest, the refund whereof is claimed. Hence, even if we do not look into the amended Notification No. 93/2008, the period of limitation as applicable for filing the refund claim under Notification 102/2008 will otherwise be a period of one year in accordance of the aforesaid Section 27 of Customs Act. Thus, we cannot rule out that the Notification No. 93/2008 came into existence to align the statutory provision with the Notification which was silent as far as the period of limitation for the purpose as mentioned therein is concerned. Otherwise also, on examination of relevant provision it appears that the provisions of limitation are excluded, it would nonetheless be still open to the court to examine whether and to what extent the nature of those

provisions or the nature of the subject matter and scheme of the special law exclude their operation. This Tribunal in the case of **Uttam Sucrotech International Pvt. Ltd. Vs. Union of India 2011 (264) E.L.T. 502 (Delhi)** has held that the applicability of the provisions of limitation Act therefore is to be judged not from the terms of limitation Act but by the provisions of the concerned act. The Tribunal has gone to the extent of appreciating that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions even of Section 5 of the Limitation Act. The Hon'ble Apex Court in the case **Naseeruddin Vs. Sitaram Aggarwal A.I.R. 2003 (S.C.) 1543** has held that in the absence of statutory provisions, no inherent powers of the court exists to condone the delay. It was also held that a statutory right has to be exercised in the mode, manner and limitation specified in the special statute itself. The Hon'ble Apex Court in an earlier decision in the case of **Titaghur Papermills Company Ltd. Vs. State of Orissa SCC PP 440-41** para 11 has held:

"11. it is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. Vs. Hawkesford in the following passage: (ER p. 495)

..... There are three classes of cases in which a liability may be established founded upon a statute. But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

In still another case titled as **Munshiram Vs. Municipal Committee Chheharta SSC page 88 para 23**, the Hon'ble Apex Court held that when a Revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner and all other forums and modes of seeking said remedy are excluded. Except in the case where the statutory authority has not acted in accordance with the provisions of the enactment in question or in defiance of the fundamental principles of judicial procedure or has resorted to invoke the provisions which are repealed. Apparently and admittedly none is the fact of the present Appeal. It is also not the case that Notification 93/2008 has been repealed. In absence thereof also, as already discussed above, Section 27 of Customs Act prescribes a period during which refund of any type can be claimed. The Hon'ble Apex Court in a recent decision **Commissioner of Customs (Import Mumbai) Vs. M/s Dilip Kumar & Co. 2018 TIOL 302 (S.C.)-Cus-CB** has held that an exemption Notification has to be strictly construed, i.e. if the person claiming exemption does not fall strictly within the letter of Notification, he cannot claim the exemption. The Hon'ble Apex Court while relying upon its previous decision in the case **District Mining Officer Vs. Tata Iron & Steel Company 2001 (7) SCC 358** had noticed as follows:-

"... A statute is an edict of the Legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the Court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises the difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for.

Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed..." It was also held that the well settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In **Kanai Lal Sur v. Paramnidhi Sadhukhan**, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

In view of entire above discussion, we are of the opinion that the refund claim of additional duty due to the exemption flowing out of Notification No. 102/2007 has to be filed within one year in view of the subsequent Notification No. 93/2008-Cus which still holds good and also in view of Section 27 of the Customs Act, 1962. We therefore hold that the Commissioner (Appeals) has committed an

error while giving an expanded interpretation qua limitation to favour assessee. We therefore set aside the said Order and allow the present Appeal rejecting the impugned refund claimed for the amount of Rs. 1,78,240/- being barred by time limit of one year as prescribed for the purpose”.

5. The appeal stands allowed.

(Dictated and pronounced in open court)

(C.L. Mahar)
Member (Technical)

(Rachna Gupta)
Member (Judicial)

PK