CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Single Member Bench
Court – I

Appeal No.C/30398/2017
(Arising out of Order-in-Appeal No. HYD-CUS-000-APP-117-16-17, dated 15.12.2016 passed by CCCE (Appeals), HYDERABAD)

PATHANGE AND COMPANY ….. Appellant(s)

Vs.

CC, Hyderabad Customs ….. Respondent(s)

Appearance
Shri Y. Srinivasa Reddy, Advocate for the Appellant.

Shri Dass Thavanam, Superintendent /AR for the Respondent.

Coram:

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 17.05.2018
Date of Decision: 17.05.2018

FINAL ORDER No. A/30592/2018

[Order per: P.VENKATA SUBBA RAO]

1. Appellants are importers of used MFD photocopier machines which they sell in domestic market. While importing the goods, they paid Special Additional Duty (SAD) which is liable to be refunded to the appellants under notification No. 102/2007-Cus, dated 14.09.2007, subject to the conditions mentioned therein. Special Additional Duty was introduced in order to provide level playing field to the domestic manufacturers whose goods are

liable to VAT while imported goods are not. After importing, if the importer, in turn, sells the goods to another customer after paying VAT, the SAD paid by them is refunded as per the aforesaid notification. In this case the appellant have imported goods and sold them and applied for refund of Special Additional Duty which was denied by Ld. Dy. Commissioner. Aggrieved, the appellant filed an appeal before Commissioner of Appeals, who vide Order-in-Appeal HYD-CUS-000-APP-117-16-17, dated 15.12.2016 upheld the order allowing refund of Rs. 12,360/- and denied refund of Rs.3,70,616/- for the reasons mentioned below:

| S.No. | Reasons for rejection of claim of refund | Special Additional duty involved in Rs. |
|---|---|---|
| 1. | Model numbers of imported goods indicated in bills of entry do not match specifically with model numbers indicated in domestic sale invoices | 74,673 |
| 2. | The date of domestic sale invoices do not pertain to the months for which claim was made i.e. from January to July 2014. In other words the dates of domestic sale invoices are prior to the claim period. | 62,592 |
| 3. | No sale was claimed against the goods imported in respect of certain models/quantities | 63,222 |
| 4. | The description of the goods is not legible in domestic sale invoices | 38,916 |
| 5. | The date of domestic sale invoices are after the original claim date | 11,663 |
| 6. | The quantity sold is more than the quantity imported i.e. repetition of the entries against bills of entry | 854 |
| 7. | The model-wise description is not specified/bifurcated in the domestic sale invoice | 1,18,696 |
| | Total | 3,70,616 |

2. Ld. Advocate of the appellant argues that the benefit which they are entitled to in terms of refund of Special Additional Duty should not be denied to them because of small procedural mistakes in the invoice. In particular, he argues that an amount of Rs. 74,673/- was denied on the ground that the

model numbers of the imported goods do not match with the model number of goods in the domestic invoices. There are only small variations in the model numbers between the imported goods and goods mentioned in invoices. He relied upon the case of Orange Overseas Pvt. Ltd. [2016-TIOL-302-CESTAT-DEL] and pleaded that they should be given the benefit of SAD.

3. Ld. DR vehemently contested the appeal and said that if the conditions of the notification No. 102/2007-Cus, dated 14.09.2007 are not met, refund cannot be sanctioned. One of these conditions is that the imported goods should be sold in the domestic market. Unless the linkage is established one can never be sure that the same goods are sold same in the domestic market after paying VAT. Otherwise, the trader can import any goods, sell any other goods after paying VAT and claim SAD refund. They relied upon the judgment of Hon'ble High Court of Gujarat in the case of Proflex Systems [2017(353)ELT 142(Guj.)].

4. I have considered the arguments on both sides and also perused the records. I find that Ld. Commissioner (Appeals) has carefully considered all the invoices on which refund was denied and found that appellants are eligible for refund of Rs. 12,360/- and allowed the same and denied the benefit of SAD refund amounting to Rs.3,70,616/- for the reasons as mentioned in the table above. Refund of SAD paid on the imported goods is indeed a substantive benefit but to claim this, one must show that the imported goods are indeed sold which is the primary condition subject to

which SAD refund can be sanctioned. Co-relation between the imported goods and the goods which are sold cannot be said to be a mere procedural requirement under the notification. Where there is no match, the claim is not admissible as per law settled by Hon'ble High Court of Gujarat in the case of Proflex Systems (supra). In the case of Orange Overseas Pvt. Ltd. (supra), the Principal Bench of the Tribunal has observed that the Commissioner (Appeals) has found that the appellant had fulfilled all the conditions in the notification. Such is not the case is here and the ratio does not apply. In conclusion, I find that the appellant is not entitled to SAD refund for the reasons stated above.

5. The appeal is therefore rejected.

(Dictated and pronounced in open Court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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