CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court - I

Appeal No. C/1348/2011

(Arising out of Order-in-Appeal No. 19/2011-VCH dt.06.04.2011 passed by CCCE & ST (Appeals), Visakhapatnam)

CC, Visakhapatnam - CUS ….. Appellant(s)

Vs.

Vedanta Aluminium Ltd ….. Respondent(s)

Appearance

Smt Rukmani Menon, Advocate for the Appellant.

Shri B. Guna Ranjan, Superintendent/AR for the Respondent.

Coram:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 22.02.2019
Date of Decision: 22.02.2019

FINAL ORDER No. A/30272/2019

[Order per: M.V.Ravindran.]

1. This appeal is filed by the revenue against Order-in-Appeal No. 19/2011-VCH dated 06.04.2011.

2. Heard both sides and perused the records.

3. The issue involved is regarding refund of the amount claimed as excess paid by the respondent herein. Respondent herein filed bill of entry for Calcide Petroleum Coke and claimed benefit of notification 21/2010 in one bill of entry and did not claim any benefit for reduced rate of customs duty in another bill of entry. Both the bills of entry were assessed for 10% CVD and respondent discharged the customs duty. Subsequently, noticing that they are eligible for benefit of reduced rate of customs duty, they filed an application of refund with the assessing officer. The said refund application was rejected by the authorities. Aggrieved by such an order of refund claim, an appeal was preferred before the first appellate authority. By the impugned order, the first

appellate authority set aside the Order-in-Original and allowed appeal and allowed the refund holding that non-claiming of benefit of notification can be rectified under Sec.154 of Customs Act, 1962.

4. Learned Principal Commissioner (AR) submits that the first appellate authority has erred in coming to such a conclusion mainly on three points. Firstly, the importer has not challenged the assessment as required. Secondly, that the decision of the Hon'ble Supreme Court in the case of M/s Priya Blue Industries is not considered and thirdly, reliance placed by the first appellate authority in the case of Aman Medical Products Pvt Ltd is also erroneous because revenue is in appeal against the said order. It is her submission that having not challenged the assessment and claiming the benefit of notification while clearing goods subsequently, the said refund application cannot be filed.

5. Learned counsel submits that identical issue of the very same appellant was considered by this Bench in appeal C/1151/2011 and by Final Order No. A/30140/2019 dated 29.01.2019 upheld the Order-in-Appeal. She produces a copy of the same.

6. After hearing both sides at length, we find that there is no dispute as to the fact as has been indicated by the learned Principal Commissioner (AR). We find that on an identical set of facts, this bench in the respondent's own case in final order dated 29.01.2019 has held in their favour and we do not find any reason to deviate from such a view already taken. All the arguments put forth by the learned Commissioner (AR) were considered by the bench in final order dated 29.01.2019. In view of the foregoing, we find that the impugned order is correct and legal and does not require any interference.

7. The impugned order is upheld and the appeal is rejected.

(Dictated and pronounced in the open Court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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