IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75726 of 2017

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/AA/50/2017 dated: 10.02.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

Commissioner of Customs (Port), Kolkata

(15/1, Strand Road, Kolkata-700 001.)

...Appellant

VERSUS

M/s. Kco Aluminium LLP

(103/24/1, Foreshore Road, Howrah – 711102.)

...Respondent

<u>Appearance:</u>

Mr. Subrata Debnath, Authorized Representative for the Appellant

None for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON MEMBER (TECHNICAL)

Final Order No. 77597/2023

<u>Date of Hearing: 31.10.2023</u>

<u>Date of Decision: 31.10.2023</u>

<u>PER: R. MURALIDHAR:</u>

The appellant however, has violated the condition laid down in the para 4.2 of the C.B.E & C. Board Circular, which is reproduced below.

> *4.2 It is also clarified that only a single claim against a particular bill of entry should be permitted to be filed within the maximum time period of one year. Filing of refund claim for a part quantity in a bill of entry shall not be allowed except when this is necessary at the end of the one year period. Further, since the Sales Tax (ST)/Value Added Tax (VAT) is being paid on periodical or monthly basis, even in case of bills of entry where the entire quantity of goods are sold within a month, all such cases shall be consolidated in a single refund claim and filed with the Customs authorities on a monthly basis in other words, there would be a single refund claim in respect of one importer in a month irrespective of the number of Bills of Entry (B/Es) processed by the respective Commissionerate.*

7. From the careful reading of the above para, it is clear that though the procedure is prescribed that there would be single consolidated refund claim in respect of one importer in a month irrespective of the number of Bills of Entry.

In the Board Circular also consciously, understanding this situation, clarified that the exception is provided in case if the one year period is going to expire. It very obvious that it is not intention of the Board Circular that even though the period of one year is getting expired, the assessee has not claimed within a month, the same cannot be denied only because of the reason that circular prescribed only one refund claim in a month otherwise statutory time limit of one year provided in the notification will become redundant. In similar situation i.e. in case of Devki (Tri. – Mumbai J. Gupta Vs. Commissioner of Customs (Appeals), Mumbai – II [2015(318) ELT 167 held that the refund under Rule 5 is permissible despite the claim having been second time in a month which is violation of condition of 11/2002-C.E. (N.T.), dated 01.03.2002. In my view this was held keeping in mind that though there is procedure to file one refund in a month or in the quarter as the case may be but since time limit of one year is prescribed for filing refund claim, the said procedure infraction should not come in way of the substantial claim of the assessee.

8. In a recent judgment in the case of Commissioner of Customs. Cochin Vs. KVN Impex Pvt. Ltd. [2016(339) E.L.T. 117 (Tri. – Bang.)], quashed the department's plea and upheld the decision of the Commissioner of Customs (Appeals) setting aside the Order-in-Original that has rejected the refund claims. Para 4-6 of the said order is as under:

> *"4. After considering the submissions made by both sides and perusal of the records, we find that the 1st Appellate Authority while setting aside the order-in-original that has rejected the refund claims filed by the respondents recorded as under :*
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> *"8. I have carefully examined the facts and circumstances of the case the grounds of appeal submissions made at the time of personal hearing and all the evidence on record. I further find that the Adjudicating Authority rejected the refund claim on the premise that the appellant filed more than one claim in a month which is contrary to the terms of the Board's Circular No. 6/2008-Cus., dated 28-4-2008. I find that administrative instruction or circulars are binding on the officers of the Department. The Revenue cannot challenge the circular but it is open for challenge by the assessee. I am of the view that if a circular is beyond the provisions of the Notification, the circular cannot be binding, as there is no estoppels against a statute. So the Departmental circular contrary to statutory provision has no legal existence. I find that when the notification itself does not provide for any such condition, the Revenue cannot impose such a limitation which will have no statutory force. Therefore, I find that the impugned Order-in-Original stands on an infirm ground not backed by the caliber of law. The appellant's claim holds strength and the appeal deserves to be allowed on that count. In view of the above, I pass the following order;*
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> ORDER
>
> 10. *The appeal is maintainable"*

> *5. It can be seen from the above reproduced paragraph that learned 1st Appellate Authority has put the law in its correct perspective. We do not find any reason to interfere in such a speaking and well reasoned order. The reliance placed by the learned AR and as per the grounds of appeal and C.B.E. & C. Circular dated 28-4-2008, there cannot be any restriction on availing of refund claims by an assessee. We also find force in the contentions raised by the learned counsel that there is no challenge that the refund claims as filed by them are ineligible to the respondent. The issue in this case, now, is settled by the Tribunal in the case of Devki Nandan J. Gupta v. Commissioner of Customs (Appeals), Mumbai-II [2015 (318) E.L.T. 167 (Tri.-Mum.)].*
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> *6. In view of the foregoing and the facts and circumstance of this case, we hold that the impugned order is correct and legal and does not suffer from any infirmity. The appeal is devoid of merits and is rejected."*

9. In view of the above decision, we are of the considered view that the appellant is entitled to refund claim. We, therefore, set aside the order of the lower authority and allow refund of SAD @ 4% to the tune of Rs.35,61,688/- against all the nine Bills of Entry.

10. Hence the appeal is allowed with consequential relief to the appellant.

(Dictated and pronounced in the open court)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

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