IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76641 of 2019

(Arising out of Order-in-Appeal No. KOL/CUS(Port)/AA/227/2019 dated 02.04.2019 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Commissioner of Customs (Port) **: Appellant**
15/1, Strand Road, Custom House, 2nd Floor, Kolkata – 700 001

VERSUS

M/s. Hatcom Agro (P) Limited **: Respondent**
419, Fourth Floor, The Summit Business Bay,
Near WEH Metro Station, Mumbai – 400 093

APPEARANCE:

Shri Mihir Ranjan, Special Counsel for the Appellant

Shri Sandeep Chilana, Advocate
Assisted by Shri Priyojeet Chatterejee, Advocate
for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75606 / 2024

DATE OF HEARING / DECISION: 20.03.2024

Order : [Per Shri Ashok Jindal]

The Revenue is in appeal against the impugned order wherein the refund claim filed by the respondent has been sanctioned by the Ld. Commissioner (Appeals).

2. The facts of the case are that the respondent filed one Bill-of-Entry No. 5015280 dated 31.01.2018 in accordance with Notification 84/2017-Cus. Dated 08.11.2017, and paid customs duty at the rate of fifty per cent. The goods were released; later on, the respondent realized that during the impugned period, in terms of Notification No. 93/2017-Cus. dated 21.12.2017 they were not liable to pay duty.

Accordingly, the respondent moved an application under Section 149 of the Customs Act, 1962 for amendment in the Bill-of-Entry dated 31.01.2018. No action was taken on the said application.

2.1 Thereafter, the respondent filed a refund claim which was initially rejected by the adjudicating authority on the ground that as the respondent has not challenged the assessment of the Bill-of-Entry; the refund claim was thus rejected by holding that the respondent has paid the duty correctly in terms of Notification No. 84/2017-Cus. dated 08.11.2017

3. The said order was challenged before the Ld. Commissioner (Appeals), who allowed the benefit of Notification No. 93/2017-Cus. dated 21.12.2017 and allowed the refund claim. Against the said order, the Revenue is before us.

4. The Ld. Special Counsel appearing on behalf of the Revenue appeared and submitted that, in this case, the respondent has not challenged the assessment of the Bill-of-Entry; therefore, their refund claim is not maintainable in terms of the decision of the Hon'ble Apex Court in the case of *M/s. ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV [2019 (368) E.L.T. 216 (S.C.)].*

4.1 On merits, it is his contention that there are two Notifications applicable to the goods imported by the respondent and the Notification which is more beneficial to the Revenue has to be applied to the facts of this case; therefore, the respondent has paid the duty correctly initially and the refund claim filed by them is not maintainable.

4.2 Accordingly, he prayed that the impugned order be set aside.

5. On the other hand, the Ld. Counsel appearing on behalf of the respondent submits that on similar and identical facts, the matter was heard by this Tribunal in the case of *Commissioner of Customs (Port), Kolkata v. M/s. Uma Export Ltd. and ors. vide Final Order No. 77256-77262/2023 dated 12.10.2023 in Customs Appeal No. 76127 of 2019 & ors*. wherein, considering the merits of the case, it was held that the refund claim was rightly sanctioned to the respondents.

5.1 He therefore prayed that the appeal filed by the Revenue be dismissed.

6. Heard the parties and considered their submissions.

7. We find that on identical facts, this Tribunal has taken a matter for consideration in the case of *M/s. Uma Export Ltd. (supra)* wherein it was observed by the Tribunal as under:

> *"43. To summarize our conclusions:*
>
> *a. The Revenue's stand that the appellants have not filed any appeal against the self-assessed Bills of Entry is rejected. The re- assessment requests made in terms of Section 149 has to be considered as their Appeal before the concerned authorities.*
>
> *b. Revenue's stand that the goods in question Peas [Pisum Sativum] was liable to be taxed only under Sl No.20A of the Master Notification No.50/2017 Cus dated 30.6.2017 is rejected. It is held that the goods were specified both under Sl No.20 as well as under Sl No.20A during the period in question.*
>
> *c. The importer is allowed to choose the more beneficial provision and cannot be forced to opt for / follow the non-beneficial provision.*
>
> *d. Since Notification No.50/2017 Cus dated 30.6.2017 specifies the taxability per se (Effective Rate) for Pisum Sativum at SI No.20 and Sl. No.20A and there are no conditions attached to seek assessment under of NIL*

> *rated BCD, the case law of Dilip Kumar relied upon by the Revenue, cannot be applied in case of these importers.*
>
> *e. Therefore, the two appellants are eligible to claim the refund.*
>
> *f. The Commissioner (Appeals) while sanctioning the refunds in case of 5 importers (Respondents herein), has followed the applicable case law during that time. Even otherwise, as held supra, the Apex Court's decision of ITC is not applicable to the present case.*
> *44. Accordingly, we allow the Appeals filed by the importers and dismiss the Appeals filed by the Revenue. Consequential relief, if any, as per law is granted to the appellants/respondents."*

7.1 As the issue has already been dealt by the Tribunal, we hold that when two beneficial Notifications are applicable to an assessee, it is the choice of the assessee to take the benefit of the Notification which is more beneficial to the assessee.

8. On merits, the respondent are entitled to take the benefit of Notification No. 93/2017-Cus. dated 21.12.2017. The decision in the case of *Commissioner of Cus.(Import), Mumbai v. Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)]* is not applicable to the facts of this case as there is no ambiguity in the Notification for availing the benefit of the same.

8.1 Further, in this case, the respondent had initially filed an application under Section 149 of the Customs Act, 1962 for amendment in the Bill-of-Entry which was pending before the ld. adjudicating authority. Thereafter, the respondent filed their refund claim. In these circumstances, it cannot be said that the decision in the case of *M/s. ITC Ltd. (supra)* is applicable to the facts of this case as before filing the refund claim, the respondent had sought amendment in the Bill-of-Entry.

9. In these circumstances, we do not find any infirmity in the impugned order. Accordingly, the same is upheld.

10. In the result, the appeal filed by the Revenue is dismissed.

(Operative part of the order was pronounced in open court)

Sd/-	Sd/-
(K. ANPAZHAKAN)	**(ASHOK JINDAL)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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