IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Customs Appeal No. 77004 of 2019

(Arising out of Order-in-Appeal No.KOL/CUS/CC(P)/43/2019 dated 22.05.2019 passed by Commissioner of Customs(Preventive), Kolkata)

Shri Sanjay Kumar Agarwal, **: Appellant**
2A, Bangur Avenue, Block-C,
Kolkata-700 055.

VERSUS

Commissioner of Customs(Prev), Kolkata **: Respondent**
Custom House, 15/1, Strand Road, Kolkata-700001.

APPEARANCE:

Mr. Arijeet Chakroborty, Advocate for the Appellant

Shri Subrata Debnath, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. 77170/ 2024

DATE OF HEARING :21.10.2024

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Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order wherein the refund claimed has been rejected alleging the refund claimed has been barred by limitation in terms of Notification No. 102/2007 dated 14.09.2007.

2. The facts of the case are that the appellant being a trader, imported goods in question and cleared them on payment of SAD. Later on, the goods were sold in the market and appropriate VAT/CST was paid, thereafter, the appellant filed refund claim of SAD paid by them in terms of Notification No. 102/2007 dated 14.09.2007.

3. Initially, the refund claimed was sanctioned to the appellant. Later on, a Show Cause Notice was issued to the appellant proposing that as they have filed refund claimed beyond the period of 1 year after making the payment of SAD, in that circumstances, why not refund claimed be rejected.

4. The matter was adjudicated and the refund claimed was rejected holding that same is filed beyond one year for the payment of SAD. Consequently, they are required to pay back the refund already sanctioned to them.

5. Against the said order, the appellant is before us.

6. Today, when the matter was called the Ld. Counsel for the appellant submits that the issue has already been settled by the Larger Bench in Chandigarh in the case of Ambey Sales versus Commissioner of Customs, GRFL, Sahnewal, Ludhiana vide order dated 04.06.2024 wherein the time limit prescribed for filing refund of SAD claimed by the appellant under notification no. 102/2007 dated 14.09.2007 would be one year from the date of sale of goods, when the cause of action arose. Therefore, he prayed that impugned order to be set aside.

7. Heard the Ld. Authorized Representative also.

8. We find that the issue was referred to the Larger Bench whether the date of sale of goods in domestic market is the date for calculating the time limit for claiming of refund or the date of payment of SAD at the time of importation shall be counted and the same has been settled holding that the date of sale of goods in the domestic market is the date to

count the time limit of one year to claim the refund of SAD paid by the appellant.

7. In that circumstances, we set aside the impugned order and remand matter back to the Adjudicating Authority to ascertain the fact whether the appellant has filed refund claim within one year of the date of sale of goods in the domestic market or not. If it is found that appellant has filed refund claimed within one year from the date of sale of the goods in domestic market then the order of sanctioning of refund claim shall be restored.

8. The appeal is disposed off in the above manner.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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