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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 76508 of 2016

(Arising out of Order-In-Appeal No. KOL/CUS (PORT)/SS/113/2016 dated 11.05.2016 passed by Commissioner of Customs (Appeal), Kolkata.)

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Kolkata-700001)

Appellant

VERSUS

M/s. Aditya International Ltd.
(CK, 13-78/79 Pashupatheswar Chowk, Varanasi-221001)

Respondent

With

(1) Customs Appeal No. 76510 of 2016 (Commr. of Customs (Port), Kolkata Vs. Aditya International Ltd.) (2) Customs Appeal No. 76219 of 2017 (Commr. of Customs (Port), Kolkata Vs. Aditya International Ltd.) (3) Customs Appeal No. 76220 of 2017 (Commr. of Customs (Port), Kolkata Vs. Aditya International Ltd.) (4) Customs Appeal No. 76221 of 2017 (Commr. of Customs (Port) Kolkata Vs. Aditya International Ltd.) (5) Customs Appeal No. 75600 of 2018 (Commr. of Customs (Port) Kolkata Vs. Aditya International Ltd.) (6) Customs Appeal No. 75601 of 2018 (Commr. of Customs (Port), Kolkata Vs. Aditya International Ltd.) (7) Customs Appeal No. 75602 of 2018 (Commr. of Customs (Port), Kolkata Vs. Aditya International Ltd.) (8) Customs Appeal No. 75603 of 2018 (Commr. of Customs (Port), Kolkata Vs. Aditya International Ltd.)

(1) (Arising out of Order-In-Appeal No. KOL/CUS (PORT)/SS/113/2016 dated 11.05.2016 passed by Commissioner of Customs (Appeal), Kolkata.)

(2) (Arising out of Order-In-Appeal No. KOL/CUS (PORT)/AA/186-187/2017 dated 21.03.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

(3) Arising out of Order-In-Appeal No. KOL/CUS (PORT)/AA/190/2017 dated 21.03.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

(4) Arising out of Order-In-Appeal No. KOL/CUS (PORT)/AA/192/2017 dated 21.03.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

(5) Arising out of Order-In-Appeal No. KOL/CUS (PORT)/AA/895-898/2017 dated 25.08.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

(6) Arising out of Order-In-Appeal No. KOL/CUS (PORT)/AA/895-898/2017 dated 25.08.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

(7) Arising out of Order-In-Appeal No. KOL/CUS (PORT)/AA/895-898/2017 dated 25.08.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

(8) Arising out of Order-In-Appeal No. KOL/CUS (PORT)/AA/895-898/2017 dated 25.08.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

APPEARANCE :
Shri S. Debnath, Authorized Representative for the Appellant
None for the Respondent

CORAM:
HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.76171-76179/2025

Date of Hearing : 19 March 2025
Date of Decision : 19 March 2025

[ORDER] PER RAJEEV TANDON

The present appeals have been filed by the Revenue assailing the impugned Orders-In-Appeal.

2. The Learned Departmental Representative reiterates the Grounds of Appeal and justifies the impugned Order.

3. None appears on behalf of the Respondent. Since the issue lies in a narrow compass, we take up the appeals in the absence of the Respondents and with the consent of the Appellant. The subject appeals relate to applicability of Notification No. 30/2004-CE dated 09/07/2004 as amended by Notification No. 34/2015-CE dated 17/07/2015 and Notification No. 37/2015-CE dated 21/07/2015, regarding imposition of additional customs duty on import of Silk Fabrics without dyed and without printed. We further find that the issue is no more *res integra* and has been decided by the Tribunal in favour of the respondent and against the Revenue.

4. The subject imports were self assessed by the appellant claiming NIL CVD for the imported goods as the said goods were exempt from payment of excise duty vide Notification 30/04-CE as amended & read with Notification 34/2015-CE and 37/2015-CE dated 21.7.15. The Hon'ble Supreme Court in the case of SRF Ltd. had held that notification conditions that the imported goods/importer were incapable of meeting cannot be thrusted upon thereby implying that the appellant in the

present case had deemed to have satisfied the same and eligible for exemption from levy of said additional duty of Customs.

5. In a catena of decisions this matter has come to be settled in favour of the assessee. In the case of **Commissioner of Customs (Import), Nhava Sheva Vs Ashima Dyecot Ltd. The Tribunal Mumbai Bench reported in 2011 (1) TMI,** the Tribunal had dismissed the appeal of the revenue on the ground that, when inputs contained in the imported commodity are shown to be not chargeable to duty of excise in India, there is no question of levy of countervailing duty on the imported commodity. It is pertinent to note, that Raw Silk, the basic raw material used in manufacture of Silk Fabrics is not chargeable to excise duty in India, hence there is no question of availing CENVAT Credit in India. Therefore, it observed that the benefit of nil rate of CVD is to be extended to the appellant, since there was no way he could have fulfilled the requirement of not availing CENVAT credit on inputs. This would also enable a level playing field with the domestic manufacturers, who have been permitted to either take benefit of nil CVD as per this Notification, or take credit for CENVAT on the CVD paid by them."

6. We have heard the learned Departmental Representative for the Revenue and perused the appeal papers filed.

7. We find that that the Revenue preferred an appeal before the Hon'ble Supreme Court, on the subject issue. The Apex Court after considering all the relevant judgments including that of HLG Trading Vs. Union of India decided on 30.10.2015 by Madras High Court only admitted the appeal and no stay was granted. Order for issue of notice was also not made.

8. We also note that the judgement of Hon'ble Madras High Court in **HLG Trading Co. 2016 (331) ELT 561 (Madras)** was delivered on 30.10.2015 when Review application of SRF was pending before the Supreme Court. It dealt with Notification No. 30/2004-CE and vires of amendments. We are of the view that there is no change to the purport

and the scope of the notification No. 30/2004-CE or the judgment of the apex court rendered in the SRF Ltd. case decided on 26.3.15 **(2015 (318) ELT 607 (SC)** post amendment vide notification No. 34/2015-CE or 37/2015-CE.

9. This judgement of Madras High Court was overruled by the Supreme Court when the Supreme Court dismissed the appeal of the Revenue which arose from the order passed by the Tribunal's, Chennai Bench. Ratio of law laid down in the case of Prashray Overseas and HLG Trading Company are same. In Prashray Overseas benefit of notification no. 30/2004-CE was disallowed on import. Both the judgments stood overruled and set to naught when the Supreme Court dismissed the appeal of the Revenue in the SRF case supra. With this dismissal the issue between the parties became final, leaving no scope for reasserting and bringing about the applicability of res judicata and the principle of stare decisis.

10. The Review Application filed in the case of SRF Ltd. was dismissed by the Supreme Court on 15.07.2016 **(2016 (340) ELT A 202 SC)**. This dismissal also overrules the judgement in HLG Trading Co. HLG was delivered considering admission of the Review Application which was pending at that time. The conclusion in the judgment that importer has to fulfil conditions of non availment of credit is contra SRF Ltd.

11. The amendment made by notification No. 34/2015-CE dated 17/7/15 provides a condition qua payment of duty on inputs and non-availment of Cenvat Credit by the manufacturer. Therefore, the sweep of the judgment of SRF Ltd. is not affected. Notification No. 37/2015-CE dated 21.7.15, further relaxes the condition that the nil payment of duty on input would also qualify as payment of duty. Here again too these amendments do not bring about any change to the implication and the meaning as flows from the apex court's orders.

12. The Commissioner (Appeal) has considered the judgement of SRF Ltd. and the notification No. 34/2015-CE and 37/2015-CE as well as sweep of the judgement of SRF Ltd., vis-a-vis amendments and dealt

with the applicability of the amendments in paragraph 3,4,5,6,7,8 and 9 of the order passed by him.

13. We are informed that the Tribunal had earlier dismissed several appeals of the Revenue on the subject issue. To cite for records herein, we refer to the order of this Tribunal in the case of Commissioner of Customs (Port), West Bengal, Kolkata Vs. M/s. Enterprise International Ltd., which orders have since attained finality.

14. The Honb'le Supreme Court in the case of AIDEK Tourism Services Pvt. Ltd. (2015 (318) ELT 3 (SC), has held that for the purpose of levy of duty under Section 3 of the Customs Tariff Act, actual production or manufacture of a like article in India is not necessary. It is to be imagined that article imported has been manufactured or produced in India and it need to be seen as to what amount of excise duty was leviable thereon. Honb'le Supreme Court held that the importer is to be treated as a manufacturer of the goods and thereafter the amount of Excise duty/Additional Duty that is required to be determined and paid. Honb'le Court held so following the Constitution Bench’s judgment of Honb'le Supreme Court in case of **Thermax Pvt ltd [1999 (6) SCC 375]**.

15. Further the said position has been reiterated by the apex court, in a slew of cases viz.

(i) **Motiram Tolaram Vs Union of India, CCE vs J.K Synthetics, (2000) 10 SCC 393**

(ii) Lohia Sheet products Vs Commr of Customs (2008) 11 SCC 510 and

(iii) Collector of Customs (Preventive) Vs Malwa Industries Ltd (2009) 12 SCC 735.

Considering the above cases, it is now settled that the rate of duty would be only that which an Indian Manufacturer would pay under the Excise Act on a like Article. Therefore, the importer would be entitled to payment of concessional/reduced or NIL rate of Countervailing duty if any notification is issued providing exemption/remission of excise duty for a like article if produced/manufactured in India.

16. The Commr. (Appeals) inter alia has also referred in his order to the aforementioned decisions of the apex court in the SRF Ltd. case as well as that of AIDEK Tourism Pvt. Ltd., in this regard and to hold as under:-

> "I observe that both the amended Notifications being No. 34/2015 C.E. and 37/2015 C.E. In no manner restrict or impede the Judgment of Honb'le Supreme Court in SRF Ltd. It was held by Honb'le Court that the condition which cannot be complied with would not be made applicable to the imported goods. The importer has satisfied all the conditions of the amended notifications. In terms of the views taken by several judicial pronouncements by Honb'le Apex Court. The Tribunal in its recent final Order bearing No. FO/A/75702-75704/2016 dated 02.08.2016 involving identical issue in case of another importer also affirmed that the benefit of CVD exemption is to be extended to importer also."

17. In view of the above discussions, we do not find any reason to interfere with the impugned orders and accordingly, the same are sustained. The appeals filed by the appellant Revenue are dismissed.

(Dictated and pronounced in the open court.)

Sd/-

(P. K. Choudhary)
Member (Judicial)

Sd/-

(Rajeev Tandon)
Member (Technical)

Pooja