

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NOS: C/141 & 142/2010

[Arising out of Order-in-Appeal No: 297 & 298/2009/MCH/AC/CRARS/09 dated 17th November 2009 passed by the Commissioner of Customs (Appeals), Mumbai – I.]

Giriraj Steel

... *Appellant*

versus

Commissioner of Customs (Import)
Mumbai

... *Respondent*

Appearance:

Ms Aarti Sehgal, Authorised Representative for appellant

Shri Manoj Kumar, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing:

09/07/2018

Date of decision:

30/07/2018

ORDER NO: A/87003-87004/2018

Per: C J Mathew

The issue in these appeals of M/s Giriraj Steel against order-in-appeal no. 297 & 298/2009/MCH/AC/CRARS/09 dated 17th November 2009 of Commissioner of Customs (Appeals), Mumbai – I,

pertains to the rejection of claim for refund of special additional duty of ₹ 30,98,452 and ₹ 15,31,622/- on goods imported in 2007-08 and on which value added tax liability was discharged upon sale thereafter. It was held by the original authority that the appellant was unable to establish that the incidence of duty had not been passed on to their customers and, in accordance with section 27 of Customs Act, 1962, the claims were rejected. The rejection of the claim was upheld by the first appellate authority leading to the present appeal.

2. Learned Authorised Representative appearing for appellant drew attention to the tax invoices, a sample of which was furnished before us, to indicate that the special additional duty was not a component recovered from their customers. Reliance was placed on the decision of the Tribunal in *Bharat Kumar Indrasen Trading Pvt Ltd v. Commissioner of Customs (General), Mumbai* [2018 (2) TMI 1574 CESTAT-MUMBAI] and *Suvee Impex Pvt Ltd v. Commissioner of Customs & Service Tax, Bangalore* [2016 (344) ELT 241 (Tri.-Bang.)].

3. Learned Authorised Representative for Revenue, while supporting the rejection of the refund claim, pointed out that the certificate issued by the Chartered Accountant makes it amply clear that the duty so levied and paid will be treated as income upon refund being granted.

4. It is seen from the orders of the lower authorities that the Chartered Accountant's certificate was considered unacceptable because of the crediting of the entire sale value as income in the profit and loss account without making a provision for the refund amount as receivables. It is seen from the tax invoice that no portion of the price recovered from the customers was stated to include special additional duty collected as countervailing duty at the time of import. It is also clear that there is a Chartered Accountant's certificate to the effect that the incidence of duty has not been passed on. It is but natural that proceeds of sale would be reflected in the books as receipts earned from sale. It is only in the balance sheet that certain portion of these receipts are recorded as provisions for receivables. Even if such a provision is not made, the reflection of such receipt of refund as income at the time of receiving the amount would make it amply clear that special additional duty collected from them has not been passed on.

5. For the above reason, we find that the impugned order has erred in upholding the rejection of the refund claim without adequate justification. We set aside the impugned order and allow the appeals with consequential relief.

(Pronounced in Court on 30/07/2018)

(Ajay Sharma)
Member (Judicial)
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(C J Mathew)
Member (Technical)