CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Custom Appeal No. 85154 of 2018

(Arising out of Order-in-Appeal No. MUM-CUSTM-SXP-143-2017-18 dated 26.09.2017 passed by the Commissioner of Customs (Appeals-I), Mumbai)

M/s. Shyam Jee Prepaid Services **.....Appellant**
Block BIC Flat no. 51A,
Janak Puri, New Delhi

VERSUS

Commissioner of Central Excise, Mumbai I **.....Respondent**
115, Central Excise Bldg., Maharshi Karve Rd.
Churchgate, Mumbai

APPEARANCE:

Shri V.M. Doiphode, Advocate for the appellant
Shri Manoj Kumar, AC(AR) for the respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

FINAL ORDER No: A/86771 / 2019

DATE OF HEARING : 01.10.2019
DATE OF DECISION : 01.10.2019

After hearing both sides, I find that the appellant imported hot rolled wire rods and paid 4% SAD leviable on the same by debiting Focus Product Scheme scrips. In terms of notification 102/2007-Cus dated 14.09.2007, if the imported products are subsequently sold on payment of VAT and the producer of the goods does not avail the CENVAT credit of the same, the importer is entitled to refund of the SAD so paid at the time of import of goods. In terms of the said scheme, the appellant applied for refund of ₹7,91,408/-. The same was sought to be denied by the Revenue on the ground that SAD has not been paid in cash but through scrips and as such the amount cannot be refunded. Accordingly, proceedings were initiated against them proposing denial of the refund, culminating into impugned order passed by the original adjudicating authority. The said order was challenged by the appellant before Commissioner (Appeals) and strong reliance has been placed on the Hon'ble Bombay High Court judgement in *Allen Diesels India Pvt. Ltd. v. Union of India* [2016 (2) TMI 247- DELHI HIGH COURT] as also on various other decision passed by the Tribunal as also passed by the Commissioner (Appeals).

2. In the said decision of *Allen Diesels,* the Hon'ble High Court had held that for refund of SAD it is not necessary that the same should have been paid in cash and it is sufficient if the payment is through using various scrips.

3. While dealing with the said contention of the appellant, the Commissioner (Appeals) observed as under:-

> "11. During the course of hearing, the appellant referred to case law of Allen Diesels India Pvt. Ltd. v. UOI and others (W.P. (C) 4665/2014 and CM No. 9309/2014 (Delhi HC) 2016 (334) ELT 0624 (Delhi) and CC Goa v. Birla Furukawa Fiber Optics Ltd. 92016-VIL-43-CESTAT-MUM-CU (tribunal-Mumbai).

> In the Allen Diesels India Pvt. Ltd. the Hon'ble High Court had quashed the Board's circular nos. 06/2008, 10/2010 and 18/2013 and allowed refund under Notification no. 102/2007-Cus. The aspect of Public Notice no. 06/2013 issued by the DGFT under Foreign Trade Policy and its effect on treatment of payment of Customs duty was not argued before the Hon'ble High Court and the Hon'ble High Court has not quashed the said Public Notice no. 6 RE/2013 of the DGFT in the said order. It is also not clear whether the SAD in Allen Diesels India Pvt. Ltd. case was paid by utilising re-credit of 4% SAD in the duty credit scrips. In the circumstances, the ratio of the Hon'ble High Court judgment may not apply to the present case. ….."

4. As is seen from the above the appellate authority has not followed the Hon'ble Delhi High Court decision by observing that the circular no. 06/0/, 10/2010 and 18/2013 stands stuck down by the Hon'ble High Court but the Hon'ble High Court has not considered the DGFT public notice no. 6 RE/2013 inasmuch the same was not brought to the notice of the Hon'ble High Court. In a sense, Commissioner (Appeals) is finding fault with the judgment of the Hon'ble Delhi High Court that since the said circular was not brought to the notice, the Judgement is not correct. The said action on the part of the Commissioner (Appeals) amounts to contempt of the Hon'ble High Court inasmuch as non-following of a judgment of the superior courts by finding faults in the same, is admittedly not in accordance with the legal adjudication proceedings. Commissioner (Appeals) being a senior officer of the Revenue should have been

aware of the legal precedent of following the higher courts decision irrespective of his personal views of the judgment being correct or otherwise.

5. Having observed so, I set aside the impugned order and allow the appeal with consequential relief.

(Dictated and pronounced in open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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