CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 590 of 2012

(Arising out of Order-in-Appeal No. 33/Mumbai-III/2012 dated 09.04.2012 passed by Commissioner of Customs (Appeals), Mumbai-III)

M/s Smart I Security and Automation Private Limited .....Appellant
501, Silver Metropolis,
Western Express Highway,
Goregaon (E), Mumbai-400063

VERSUS

Commissioner of Customs (ACC & Import), Mumbai .....Respondent
Air Cargo Complex, Sahar,
Andheri (East), Mumbai-4000099

Appearance:

Smt. Chandani Tanna, Advocate for the Appellant
Smt. Trupti Chavan, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/88552 / 2018

Date of Hearing: 20.12.2018
Date of Decision: 20.12.2018

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant is engaged in the business of sale and installation of security systems viz. doorbells, known as video door phone. During the disputed period, the appellant had imported the said goods from china and filed the Bills of Entry, classifying the same under CTH 85176990. On the basis of declaration made by the appellant, the Bills of Entry were assessed and goods were cleared upon payment of appropriate duty including RSP based CVD (duty) in

terms of Notification No. 14/2008-C.E. dated 01.03.2008. However, after clearance of the goods, the appellant had filed the refund application on the ground that the video door phone are not liable for payment of CVD in terms of the said notification. The original authority vide order dated 21.04.2010 had rejected the refund application on the ground that the appellant neither had paid duty under protest nor filed any appeal against the assessment order. The original authority had relied upon the judgment of Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs. Flock India Ltd. - 2000 (120) E.L.T 285 (S.C.) and Priya Blue Industries – 2004 (172) E.L.T. 145 (S.C.) to hold that final assessment order is required to be challenged and in its absence, filing of refund claim cannot be maintainable. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 09.04.2012 has upheld the original order and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. Heard both sides and perused the records.

3. It is an admitted fact on record that the assessed duty was paid by the appellant without any protest and that no request was made for reassessing the duty liability as per the terms of Notification dated 01.03.2008 (supra). Further, the appellant had also not filed any appeal against the Bills of Entry finally assessed by the department. The law with regard to filing of refund application under such circumstances is well settled as per the judgment of Hon'ble Apex Court in the case of Flock India Ltd. (supra) and Priya Blue Industries (supra) that refund claim cannot be maintained, when the order of assessment has not been challenged and modified in appeal.

4. In view of above, we do not find any infirmity in the impugned order passed by the learned Commissioner (Appeals) in upholding rejection of refund application by the original

authority. Accordingly, appeal filed by the appellant is dismissed.

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

(S.K.Mohanty)
Member (Judicial)

HK

(Sanjiv Srivastava)
Member (Technical)