# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## MUMBAI

REGIONAL BENCH – COURT NO.405

**Customs Appeal No. 86462 of 2013**

(Arising out of Order-in-Appeal No. 915/NCH/AC/GROUP-VII B/2012 dated 01.11.2012 passed by the Commissioner of Customs (Export), Mumbai)

**M/s Anant B. Timbadia & Co.** ........Appellant

Old address 308 Steel Centre Sant Tukaram Road
Iron Market Mumbai-400009
Residential Address at:
Flat No. 204, Indraprasth, Nilkanth Vally,
Rajwadi, Ghatkopar (East),
Mumbai-400 077

*VERSUS*

**CC(Export) Mumbai** ........Respondent

New Custom House Ballard
Estate Mumbai- 400001

**APPERANCE:**

Shri Chirag Shetty, Advocate for the Appellant
Shri Dharmendra Singh, Superintendent Authorised Representative for the Respondent

CORAM:

**HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)**

**FINAL ORDER NO. A/85160 / 2020**

Date of Hearing: 29.08.2019
Date of Decision: 06.02.2020

**PER: AJAY SHARMA**

This appeal has been filed impugning the order dated 01.11.2012 passed by the Commissioner of Customs (Export), Mumbai in Order-in-Appeal No. 915/NCH/AC/GROUP-VII B/2012 by which the learned Commissioner rejected the Appeal filed by the appellant and upheld the order of the Adjudicating Authority rejecting the refund of Rs.20 lacs paid by the Appellant during the course of investigation.

2. The facts of the matter are as follows. One M/s. Kunal Overseas Ltd. purchased on high sea sales bases large quantities of plastic moulding powders like HDPE, LDPE, PVC etc. from various industries including the Appellant and later on cleared them free of customs duty against advance licenses under DEEC Scheme. The advance licenses were granted under actual user condition. Subsequent investigations by DRI revealed that M/s. Kunal Overseas Ltd. had unauthorisedly sold the goods cleared free of duty in the local market in contravention of the actual user condition under the scheme. DRI investigated the matter and during investigation various names were surfaced including the name of the Appellant. Accordingly a show cause notice was issued to all the persons whose names were came into light during investigation, including the Appellant, proposing confiscation of goods cleared under the 11 Advance Licenses obtained by M/s. Kunal Overseas Ltd. proposing recovery of duty of Rs.9,74,52,797/- jointly and severally from the noticees including the Appellant. The notice was adjudicated by the Commissioner vide Order-in-Original dated 18.4.2001 confirming the demand and dropping of the proceedings against co-noticees including the Appellant. Penalty of Rs.10 crores was also imposed on M/s. Kunal Overseas Ltd. and also on one Prakash Parekh jointly. It was also observed in the said order that as a consequence of the dropping of the proceedings against co-noticees, any amount that has been paid by them *on their own account* will have to be refunded but not that payment which was paid by them on account of importer. Appeal against the aforesaid order was filed by Revenue

alongwith Stay application in which the Revenue sought stay of operation of the order in so far as it relates to directing refund of Rs.2,00,30,000/- paid by Shri V.K. Gandhi and of Rs.20,00,000/- paid by the Appellant. The aforesaid stay applications were dismissed by this Tribunal vide order dated 12.11.2002. The Appellant herein had also filed a Misc. application No.2502/2005 in pending Appeals before the Tribunal for issuance of direction to the Revenue to pay back Rs.20 lacs with interest @24%, but the same was rejected by the Tribunal vide order dated 9.11.2005. The Appeals filed by Revenue were also later on dismissed by this Tribunal vide order dated 10.6.2008 and while dismissing the Appeals this Tribunal observed that the contention of the Revenue that the Commissioner should not have directed *suo motu* refund of money, deposited by co-noticees during investigation is required to be rejected for the reason that refund has been directed only of the amount paid by them *on their own account* and amounts paid by them on account of the importer have been directed to be adjusted towards duty confirmed. The said order of the Tribunal was further challenged by the Revenue before the Hon'ble High Court of Judicature at Bombay and the Hon'ble High Court also vide order dated 5.1.2010 dismissed the Appeals filed by the Revenue in limine. The Appellant filed the refund application for refund of the amount of Rs. 20 lacs deposited by them during investigation alongwith the supporting documents. The Refund claim was rejected by the Adjudicating Authority vide Order-in-Original dated 30.07.2010 mainly by relying upon the letter dated 8.10.2007 of A.M. Timbadia addressed to DRI in which it was stated that *this amount is voluntary paid towards payment of duties for the import made by M/s. Kunal Overseas Ltd. against High Sea purchase made from us.* On Appeal filed by the Appellant, the Commissioner (Appeals) vide Order-in-Appeal dated 1.11.2012 rejected the refund claim and upheld the Order-in-Original dated 30.7.2010.

3. I have heard learned counsel for the Appellant and learned Authorised Representative for the Revenue and perused the Appeal Memo as well as the Written submissions filed by the respective sides. Learned counsel submits that it has been clearly mentioned in the Order dated 18.4.2001 passed by the Commissioner that any amount that has been paid by the co-noticees including the Appellants, *on their own account*, will have to be refunded and since the Appellants have deposited the amount of Rs.20 lacs during the course of investigation under duress from their own account therefore they are entitle for the refund of the aforesaid amount with interest. He further submits that they have produced their account statement also before the authorities below including the Balance sheet which clearly shows the amount of Rs.20 lacs as receivable from Customs and this shows that the amount was paid by the Appellants on his own account and not on behalf of Kunal Overseas Ltd. Per contra learned Authorised Representative reiterated the findings recorded in the impugned order. He also refers to the finding of this Tribunal in the earlier round of Appeal which was filed by Revenue in the year 2002, in which this Tribunal while upholding the Order-in-Original dated 18.4.2001 passed by the Commissioner, held

that *the contention of the Revenue that the Commissioner should not have directed suo motu refund of money deposited by co-noticees during investigation is also required to be rejected for the reason that refund has been directed only of the amounts paid by them on their own account and amounts paid by them on account of the importer have been directed to be adjusted towards duty confirmed.* According to learned Authorised Representative the letter dated 8.10.2007 written by Mr. A.M. Timbadia to DRI stating that *this amount is voluntary paid towards payment of duties for the import made by M/s. Kunal Overseas Ltd. against High Sea purchase made from us,* itself established that the amount has not been paid by the Appellant on their own account.

4. I have gone through the letter dated 8.10.2007 written by A.M. Timbadia to the DRI wherein it has been specifically mentioned that the amount was paid voluntarily towards payment of duties for the import made by M/s. Kunal Overseas Ltd. against High Sea Purchases made from the Appellant. In their balance sheets although this amount of Rs.20 lacs has been shown in the Asset side against the heading *deposited with customs* but from that it can't be established that the aforesaid amount was paid by them on their own account, which was the specific wordings of the Commissioner while ordering for refund of the amount of co-noticees vide Order-in-Original dated 18.4.2001 and the same attained finality also. Although it is the case of the Appellants that the said amount has been paid by them under duress but it has nowhere mentioned in the letter dated 8.10.2007 or in any other communication by the

Appellant to the Department nor any other communication which substantiate the argument of duress has been brought on record. It has been vehemently argued on behalf of the Appellant that the aforesaid amount has been paid by the Appellant *from their own account*, but the wordings of the order dated 18.4.2001 are *on their own account*. There is a big difference between the meaning of the words *from their own account* and *on their own account.* The Appellant has to establish that the amount has been paid by them on their own account which they failed to establish through any of the documentary evidence produced by them. It is true that the revenue, in the Appeal filed by M/s. Kunal Overseas Ltd. before this Tribunal against the Order-in-Original dated 18.4.2001 opposed its request to reduce the pre-deposit amount by the amount of Rs.20 lacs paid by the Appellants herein, but that does not mean that it is the stand of the Revenue or that it has been pleaded by the Revenue that the aforesaid amount of Rs.20 lacs was paid by the Appellant herein on its own account and not on account of the importer. The Appellant has to stand on its own legs and establish that they have paid the aforesaid amount of Rs.20 lacs on their own account, which they failed to establish.

5. In view of the above, I find no merit in the Appeal filed by the Appellant and the same is accordingly dismissed.

(Order pronounced in the open Court on 06.02.2020)

**(Ajay Sharma)**
**Member (Judicial)**

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