

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

WEST ZONAL BENCH, MUMBAI

Custom Appeal No. 876 of 2012

(Arising out of Order-in-Appeal No. 338/MCH/AC/CRARS/2012 dated 22.03.2012 passed by the Commissioner of Customs (Appeals) Mumbai Zone-I.)

M/s Sim Enterprises
201/205, Mussa Building,
Maulana Azad Road,
Mumbai – 400 008.

.....Appellant

VERSUS

Commissioner of Customs (Export), Mumbai
New Customs House,
Ballard Estate,
Mumbai – 400 001.

.....Respondent

APPEARANCE:

Shri Vinay Ansurkar, Advocate for the Appellant
Shri Manoj Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85333 / 2022

Date of Hearing: 28.01.2022

Date of Decision: 19.04.2022

Mismatch of description of goods in the import document and subsequent sale invoices that form the sole ground of rejection of refund claim of 4% SAD by the refund sanctioning authority that was confirmed by the Commissioner of Customs (Appeals) is assailed in this appeal.

2. I have heard submissions from both the sides and perused the case record. The Assistant Commissioner of Customs, Refund Section (E.P.), Mumbai had noted his findings in the Order-in-Original, the relevant portion of which reads:

"The importer has submitted original Sales Invoices and the Copies of ST/VAT payment duly certified by the Chartered Accountant in support of their claim. Here I find that the invoices are indicating the charging of Sales Tax/VAT as applicable, however, description of imported goods and goods sold in the local market does not tally. Importer imported the goods declaring the same as "Electrolytic Tinplate Defective Waste/Waste Coils", "Electrolytic Tinplate Defective Waste/Waste Cobble having various coating and not pin hole free" or "Tin Mill Black Plate Secondary Defective coils Soft Temper/ Double Reduced" however in the Sales / Tax invoice produced by the importer description is declared as "Tinplate", "T.M.B.P". C.B.E.C. vide Circular No. 15/2010-Cus. Dated 29.06.2010 also brought out such types of fraudulent practices are carried out by the trade to claim refund."

3. In its Order-in-Appeal confirming the said finding learned Commissioner of Customs (Appeals) Mumbai-1, had stated as follows:

"7. It is a fact that the Appellant produced the Sales Invoices showing only abbreviated or incomplete or short description of the goods sold which failed to establish the nexus or correlation between the goods imported and goods sold in the local market. The adjudicating authority rejected the refund claim in the light of the Circular No. 15/2010-Cus dated 29.06.2010 stating that the Appellant manipulated the facts by not showing the correct description of goods on the invoices for availing the refund. The Circular clearly mentioned that the unscrupulous importer are defrauding the government revenue by resorting the modus operandi by submitting

forged documents for claiming refund fraudulently which envisaged in the Notification No. 102/2007-Cus dated 14.09.2007."

(underlined to emphasise)

4. From the above two quoted paras, it can very well be ascertained that Appellant had used abbreviated / short description or incomplete description of goods in its sale invoices. A closed scrutiny of the observations of both the Authorities below would also reveal that "Electrolytic Tinplate Defective Waste" is mentioned as "Tinplate", "Tin Mill Black Plate Secondary" is mentioned as "T.M.B.P" and so on so forth. It is a common knowledge that staff at the sales counter normally use short descriptions of goods, may be to save time or else for want of their adequate knowledge etc. but when the refund sanctioning authority i.e. Assistant Commissioner of Customs had referred Board Circular No. 06/2008-Cus dated 28.04.2008 that clarified Notification No. 102/2007-Cus dated 14.09.2007, it cannot be denied that he had full knowledge about the direction contained in para 5.1 of the said circular the relevant portion of which reads:

"However, a certificate from the statutory auditor / Chartered Accountant, who certifies the importer's annual financial accounts under the Companies Act or any statute, correlating the payment of ST/VAT on the imported goods (in respect of which refund is claimed) with the invoices of sale, would be required along with the original tax / duty payment documents as proof of payment of appropriate ST/VAT for the purpose of para 2(d) & (e) of the said notification."

(underlined to emphasise)

5. In the instant case Statutory Auditor namely Chartered Accountant had issued certificates in respect of all five refund claims, which are also annexed to the appeal memo at page 51, 61, 86 ,126, 169 and noted in the Order-in-Original as well as Order-in-Appeal, which were also produced along with original sale invoices. Therefore, erroneously applying CBEC Circular No. 15/2010-Cus dated 29.06.2010 concerning filing of fraudulent documents like duplicates invoices to seek refund against stock not sold out, is not at all applicable to the Appellant case. Further, there is a clear findings of the Hon'ble Madras High Court reported in *2020 (374) ELT 519 (Mad.)* in the case of *Johnson Lifts Pvt. Ltd. Vs. Assistant Commissioner of Customs (Refunds), Chennai* concerning the admissibility of CA certificate along with original sale invoice wherein it was clearly stipulated that the respondent-department is bound to accept the description of goods in the import documents as well as sale invoice to be one and the same, on the strength of the certificate/correlation statement issued by the Statutory Auditor (Chartered Accountant) (Para 10 of the last line of order).

6. In obedience to the judicial precedent set by the Hon'ble High Court of Madras, the following order is passed.

ORDER

7. The appeal is allowed and the order passed by the Commissioner of Customs (Appeals), Mumbai Zone-I vide Order-in-Appeal No. 338/MCH/AC/CRARS/2012 dated 22.03.2012 to the

extent of denial of refund of SAD is hereby set aside. The appellant is entitled to get a refund of Rs.12,73,120/- with applicable interest and the respondent-department is directed to pay the same within a period of 3 months from the date of receipt of this order.

(Order pronounced in the open court on 19.04.2022)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad