CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 88208 OF 2013

[Arising out of Order-in-Appeal No: 338/MCH/AC/REFUND(EXP)/ 2013 dated 03rd June 2015 passed by the Commissioner of Customs (Appeals), Mumbai Zone – I.]

SKS Ispat & Power Ltd
501-B Elegant Business Park, JB Nagar
Andheri-Kurla Road, Andheri (E), Mumbai - 400059 … ***Appellant***

versus

Commissioner of Customs (Export)
New Customs House, Ballard Estate, Mumbai - 400001 ***…Respondent***

APPEARANCE:

Shri R G Sheth, Advocate for the appellant

Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85594/2024

DATE OF HEARING: 24/01/2024
DATE OF DECISION: 13/06/2024

PER: C J MATHEW

This appeal of M/s SKS Ispat & Power Ltd challenges rejection of claim for refund of ₹ 1,17,95,157/- levied as 'special additional duty

(SAD)' under section 3(5) of Customs Tariff Act, 1975 on import of 10,594.42 MTs of 'prime alloy steel hot rolled coils' *vide* bill of entry no. 933779/05.02.2010 and preferred in accordance with exemption afforded through notification no. 102/2007-Customs dated 14th September 2007 to the extent that imported goods were sold as such thereafter. The claim filed on 2nd February 2011 was rejected by the original authority for non-compliance with condition (e) in second paragraph of the said notification which was affirmed by Commissioner of Customs (Appeals), Mumbai Zone -I in order[1] now impugned before us.

2. We have heard Learned Counsel for the appellant and Learned Authorized Representative at length.

3. It would appear that the sole ground for rejection was that the description in the sale invoices did not match the descriptions of the imported goods in the bill of entry which comprised several lots of varying dimensions that, principally, had been sorted according to thickness and width. Before the original authority, who found all other requirements to be in order, it was submitted that the software deployed by them had limitation of characters that could be placed in the said field and that this was so had been certified by the supplier of the software which was also produced. The original authority, however,

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[1] [order-in-appeal no. 338/MCH/AC/REFUND(EXP)/ 2013 dated 3rd June 2015]

held that

'8. ……

(v) On scrutiny it is observed that the sale invoices do not bear upon them the complete size of the coil being sold. It is also noticed that certain invoices do denote numerals in the description of goods column of the sale invoices which in-turn can be construed for the thickness of the coil being sold, however total quantity as mentioned on these sale invoices does not tally with the quantity of that particular size which is mentioned on the bill of entry and has been assessed inter-alia as per size. I also observe that the sale invoices do not bear upon them the width of the coil being sold. I further find that certain invoices do not bear upon them any details pertaining to the size of the hot rolled coil being sold.

(vi) .....however on scrutiny of the sale invoices I find that certain entries pertaining to Removal of goods are made in hand and are not printed as per the software. Accordingly I find that the importer could have made the relevant entries pertaining to the size of the coil being sold by hand on the sales invoices.

(vii) Therefore in light of the discussions made in para 8 (v) and 8 (vi) I am inclined to construed that in absence of the details pertaining to the size on the sale invoices submitted by the importer correlation between the imported goods and the goods sold can not be established.

(viii) Benefit of notification 102/2007- Cus (as amended) can be granted when the imported goods are sold in local market and sale invoices are submitted in support of the claim. From the discussions in the preceding pars it can be seen that the sale invoices do not pertain to the imported goods. Therefore

> *xxxxxxxxxxx claims does not satisfy the condition of Para 2 (e)(ii)& 2(e)(iii) of the Notification No. 102/07 dated 14.09.2007. Hence they are not admissible to the benefit of the aforesaid notification on merits'.*

It is, thus, on record that explanation for truncating of descriptions in the sales invoice had been furnished but was not taken cognizance of by the original authority. It is also noticed that the adjudicating authority was convinced that correlation to that level of detail was essential owing to the assessment having been determined by the size. Here, the adjudicating authority is in error as assessment, which is solely for determination of 'basic customs duty (BCD)', is not relevant for the appendant duties, and, more particularly, 'special additional duty (SAD)' with uniform rate of duty, owing to being computed on the base of sum of assessable value and 'basic customs duty (BCD)' just as there is error in inferring dimensions to be important enough to have influenced assessment as the product is bifurcated at the heading level only by width with thickness singularly significant only for 'cold rolled steel' and 'hot rolled steel' not in coils.

4. The findings of the first appellate authority that

> *'6. I have carefully gone through the facts of the case. I observe that the appellant has submitted the requisite documents as prescribed under Notification No.102/2007-Cus. However, it is on record that the Sale invoices produced show only abbreviated or incomplete & short description of the goods sold. This obviously fails to establish the nexus or*

correlation between the goods imported and goods sold in the local market. The adjudicating authority has also found that, there is no uniformity in the sale invoices issued. The appellant has not produced the impugned invoices for scrutiny at the Appellate level. Further, I find that while the subject bills of entry clearly show the description of goods along with the dimensions namely thickness and width, most of the sales invoices do not bear the width of the coil being sold and some of them are totally devoid of these very relevant details. The Appellants plea regarding use of old software does not entitle them to unjustified benefits. Further, the limitation of the software does not absolve them of their responsibility to ensure that the important characters with respect to the description of goods were fed in the sales invoices.

In view of the Circular No. 15/2010-Cus dated 29.06.2010, it is understood that) the possibility exists where one can manipulate the facts by not showing the correct description of goods on the invoices for availing the refund. Hence this is an important aspect which has to be scrutinized before sanctioning of the claim. Since the description of the goods with respect to relevant and identifiable parameters does not match, it cannot be cannot be proven beyond doubt that the identity of the goods sold is the same as that imported. The case law cited by appellant is not applicable squarely in this case.'

has not only disregarded the justification offered for the lack of details in the sale invoices but also conveys the impression that the finding of the original authority was sought to be reinforced with apprehension that facts may be amenable to manipulation besides ignoring the copy of the RG-23D register, with full details of each sale, that was purportedly furnished to the adjudicating authority.

5. The levy of this duty, provisioned for in section 3(5) of Customs Tariff Act, 1975 and intended to create a level playing field to goods imported into the country and transacted domestically, is tentative as, in any domestic transaction thereafter, these goods are subjected to tax leviable on sale requiring it to be refunded for retention of level playing field. Effectively, actual user of imported goods has to live with the burden of 'special additional duty (SAD)' infusing into cost of manufacture with merchant-importers entitled to exemption by refund route. Hence it is that the sole criterion for entitlement to refund is sale and payment of tax on sale. The mechanism, as well as conditions stipulated, in the exemption notification are intended to ensure the integrity of the objective. To the extent that any circular or instruction facilitates the purpose, it may validly be relied upon and not if not. The sentiment of strict interpretation of exemption notification, espoused in the impugned order, works both ways and, to the extent that the lower authorities have felt obliged to follow circular no. 15/2010-Cus dated 29th June 2010 of Central Board of Excise & Customs (CBEC) beyond the stipulations in the notification, especially for discarding the claim of limitation of software as well as supplementary evidence and to insist that correlation is not evident, the finding must be invalidated.

6. There are only two channels for imported goods after clearance – either use by importer for further processing or sale in domestic market – and, except by passing the former as the latter, no

manipulation is conceivable. It is not the case of the lower authorities that the imported goods have been used by the appellant herein for manufacture. That the imported goods had been charged to 'special additional duty (SAD)' is common ground and it is not disputed that the sale invoices pertain to a genuine transaction. There could be no cause for apprehension that the appellant has attempted to use sale of some other imported goods to claim the impugned refund; other imports are similarly entitled to refund. For a person to purchase and sell goods, and, that too, by excluding dimensions in the sale invoices while keeping imported goods safe and secure appears rather far-fetched. That should explain the minimal stipulations prescribed which, in our view, centres only upon

> *'(e) the importer shall, inter alia, provide copies of the following documents alongwith the refund claim:*
>
> *(i) document evidencing payment of the said additional duty;*
>
> *(ii) invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed;*
>
> *(iii) documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.'*

in the impugned notification. Correlation, in the context, is nothing but tabulation to ensure that the claim in the refund application corresponds to the duty paid on goods sold and that of the description in the bill of entry and in the invoices not being incompatible. We are unable to fathom the apprehension entertained by the lower authorities in the present dispute. The exemption notification does not provide for any lack, other than the conditions found in second paragraph thereto, as ground for denial of the refund as is evident from

> *'3. The jurisdictional customs officer shall sanction the refund on satisfying himself that the conditions referred to in para 2 above, are fulfilled'*

in the notification. The strict application of exemption notifications espoused by the lower authorities does not permit insinuation of any condition beyond that stipulated therein.

7. Though the lower authorities have held that condition (e) in the second paragraph of the said notification had not been complied with, in effect, the rest of the order speaks otherwise. The appellant had brought on record that the software deployed by them for generating invoices precluded the entirety of the description from appearing on the sales invoices and, at the same time, had also submitted the RG23D register in which removals had been recorded which would, at least, provide details lacking in the description of the goods corresponding to the respective invoices. If at all, there were any doubts about the genuineness of the invoices, that could have been verified and claimant put to notice of intention to deny refund for that reason. The claimant could have been asked to demonstrate through the documents furnished

that the invoices pertain to the imported goods.

8. No such evidence is forthcoming and no such effort was undertaken. Consequently, we find that the denial of refund is improper. In the scheme of exemption and our observations *supra,* it would be appropriate for the original authority to re-visit the claim for refund to ascertain the correspondence of the invoices with the RG23D furnished at the time of adjudication and to deny refund only to the extent that evidence of the goods having been consumed by the importer is available or it is established that the imported goods had not been sold in the market within one year from the date of import. To enable this we set aside the impugned order and remand the matter back to the original authority for a fresh decision on the basis of submissions by the appellant herein.

9. Appeal is accordingly disposed off by way of remand

(Order pronounced in the open court on 13/06/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*