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

**WEST ZONAL BENCH**

**CUSTOMS APPEAL NO: 879 OF 2012**

[Arising out of Order-in-Appeal No: 337/MCH/DC/CRARS/2012 dated 21st June 2012 passed by the Commissioner of Customs (Appeals), Mumbai Zone – I.]

M P Re-Cycling Co Pvt Ltd
43 Ramwadi, 1st Floor, Kalbadevi Road
Mumbai - 400002 … ***Appellant***

*versus*

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

*APPEARANCE:*

None for the appellant

Ms Trupti Chavan, 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: A/ 86004 /2021**

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| DATE OF HEARING: | 22/03/2021 |
| DATE OF DECISION: | 22/03/2021 |

*PER: C J MATHEW*

Though none appeared for the appellant, M/s M P Re-Cycling Co Pvt Ltd, this appeal is taken up for disposal, on the basis of records and with the assistance of Learned Authorised Representative, as the issue in dispute lies within the narrow compass of rejection of a portion of a claim for refund by the application of a condition that is not immediately apparent in the scheme of eligibility for such claim.

2. We have heard Learned Authorised Representative who contends that the decision of the Hon'ble High Court of Bombay in *CMS Info Systems Ltd v. Union of India [2017 (349) ELT 236 (Bom)],* enjoining that any refund of duties of customs would have to comply with all prescriptions, including that of the bar of limitation therein, in section 27 of Customs Act, 1962, supports the rejection ordered by the lower authorities.

3. The appellant had imported 15097.65 MTs of 'hot rolled non-alloy steel' *vide* bill of entry no. 838005/05.05.08 which, intended for trading, was entitled to exemption from 'special additional duties (SAD)' of customs leviable under section 3 of Customs Tariff Act, 1975 and, in terms of notification no. 102/2007-Cus dated 14th September 2007, was to be allowed as refund after import on evidencing liability to tax on subsequent sale. The claim, preferred on 4th May 2009 for refund of ₹ 1,64,26,045/-, was allowed to the extent of ₹ 92,16,826/- corresponding to 8471.450 MTs of imported goods while disallowing ₹ 72,01,219/- corresponding to the remaining 6626.2 MTs. It was held by the original authority that the tax on the

sale of 6626.2 MTs sold immediately before the filing of refund claim was credited to the consolidated fund of the state concerned only in May and June 2009 whereas the exemption afforded to traded imports is subject to submission of documents evidencing sale on which tax liability had been discharged which, by the additional stipulation of notification no. 93/2008-Cus dated 1st August 2008, required compliance within one year from the date of payment of the duties on import and hence ineligible.

4. These issues were considered by the Commissioner of Customs (Appeals), Mumbai Zone – I, in challenge of the claimant and, *vide* order-in-appeal no. 337/MCH/DC/CRARS/2012 dated 21st June 2012, it was held that the discharge of the sales tax liability after completion of one year from the date of import was in breach of

> *'4.1. ……….. Taking into account various factors, it has been decided to permit importers to file claims under the above exemption upto a period of one year from the date of payment of duty. Necessary change in the notification is being made so as to incorporate a specific provision prescribing maximum time limit of one year from the date of payment of duty, within which the refund could be filed by any person. It is also clarified that the importers would be entitled to refund of duties only in respect of quantities for which the prescribed documents are made available and the claims submitted within the maximum prescribed time of one year. Unsold stocks would not be eligible for refunds.'*

in notification no. 6/2008-Cus dated 28th April 2008 to uphold the ineligibility of balance stock for such exemption.

5. It is seen that the sole ground for denial has been the non-deposit of sales tax on the traded goods within the stipulated period of one year within which refund could be claimed. The appellant contends that the cycle of payments is governed under the tax laws of the state government concerned and that the tax, collected from the buyer of the goods, had been deposited within the prescribed time period. There is no allegation that 6626.2 MTs remained unsold even after a year of import. A perusal of the exemption notification, as well as the circular pertaining to implementation of the refund mechanism, does not mandate that the deposit of tax with the treasury concerned as of relevance for entitlement of refund. Once the goods have been established as sold on an admitted liability of commercial tax, evidenced by inclusion in the sales invoice, the implementation, and enforcement, of that levy lies outside the scope of customs oversight. The critical issue to be addressed in the processing of such refund claims is the completion of sale on admission of liability thereon within a period of one year from the date of import. The authority to sanction refund should have restricted itself only to verification of that fact. While the date of deposit of the sales tax is, admittedly, beyond one year from the date of import, the dates of sale that is claimed to have been effected within one year has not been

subject to ascertainment. In relying upon the first admitted fact to conclude that a breach did occur, the lower authorities failed to place on record the correctness of the claim of goods having been sold also within the prescribed time.

6. Accordingly, the rejection of claim of refund as upheld by the first appellate authority is set aside and the claim for refund of ₹72,09,219/- is restored to the original authority only for determination that such sales had been effected within the period prescribed before sanction of refund to the extent of ascertainment of such evidence.

7. The appeal is, therefore, allowed by way of remand for this limited purpose.

*(Operative Part of the Order Pronounced in Open Court on 22nd March 2021)*

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

**(C J Mathew)**
***Member (Technical)***

**/as*