IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No.42581 of 2014

(Arising out of Order in Appeal C. Cus. No. 1461/2014 dated 13.8.2014 passed by the Commissioner of Customs (Appeals), Chennai)

Roots Multiclean Ltd. **Appellant**
RKG Industrial Estate
Ganapathy, Coimbatore – 641 006.

Vs.

Commissioner of Customs **Respondent**
(Airport & Cargo)
Integrated Airport Complex
Meenambakkam, Chennai – 600 027.

APPEARANCE:

Shri M.A. Mudimannan, Advocate for the Appellant
Shri N. Satyanarayanan, Authorized Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No.41088/2024

Date of Hearing : 12.08.2024
Date of Decision: 20.08.2024

This appeal is filed by the appellant against Order in Appeal C. Cus. No. 1461/2014 passed by the Commissioner of Customs (Appeals), Chennai (impugned order).

2. Brief facts of the case are that the appellant filed two refund claims for refund of 4% SAD levied under Sec. 3(5) of Customs Tariff Act, 1975 for their import of 'Industrial Vacuum Cleaner and its spares' in terms of Notification No. 102/2007 dated 14.9.,2007 as amended along with relevant documents. The appellant submitted all relevant documents as proof that the necessary duties including 4% SAD was paid and that the goods were cleared for home consumption. They

have also submitted sales invoices and VAT / CST paid challans / VAT / CST returns as proof that the goods imported were sold and that necessary VAT / CST were paid on such sale. The appellant also produced Chartered Accountant's certificate and reconciliation statement in support of their claim. After due process of law, the lower authority rejected the refund claims on the ground that there is mismatch between the description of goods in the bills of entry and sales invoice and that the CST/VAT discharged were less than the SAD paid. In appeal, Commissioner (Appeals) rejected the appeal and upheld the Order in Original. Hence the appellant is before this Tribunal.

3. Shri M.A. Mudimannan, learned counsel appeared for the appellant and Shri N. Satyanarayanan, learned Authorized Representative appeared for the respondent.

3.1 The learned counsel for the appellant submitted that the appellant has filed two refund applications for refund of 4% additional duty amounting to Rs.1,43,440/- paid for the import of cleaning equipment's and its spares vide three Bills of Entry and submitted all the relevant documents. The refunds were rejected on the grounds of mismatch in the description as indicated below:-

Description of the goods As per Bill of Entry	**Description of the goods As per sales invoices**
A. Hakomatic B910 Industrial Cleaning M/C	Hakomatic B910 Scrubber Drier machine
B. Pre sweeping unit	Pre-sweeping unit with Protecting bumper
C. Lifting parts	Lifting parts for pre-sweep

As regards the discrepancy in the amount paid towards VAT / CST and SAD, he stated that the two taxes being administered differently the rates of taxes were also different, and refund could not be rejected due to a mismatch on this score provided the VAT / CST as applicable was paid. He relied on the judgment in **Chowgule & Company Pvt. Ltd. v. Commissioner of Customs & C. Ex.,** [2014-TIOL-1191-CESTAT-MUM-LB] in support of his stand. He prayed that the appeal may be allowed.

3.2 The learned AR has reiterated the points given in the OIO and the impugned order and prayed that the appeal may be rejected.

4. Heard both sides. I find that the issue relating to the rejection of the Special Additional Duty of Customs (SAD) refund claim alleging that there is mismatch with regard to the description of goods etc in the sales invoices when compared to the Bills of Entry is no longer res integra. The fact remains that the appellant has produced a Chartered Accountant's Certificate along with the reconciliation statement as required by Boards Circular No. 6/2008, dated 28-4-2008. In such a case the decision to discard the certificate should be based on certain incriminating and reliable documents and the reasons for disbelieving the certificate should be clearly spelt out. In the absence of such action the claim cannot be rejected.

5. In **Chowgule & Company Pvt.** (supra), a Larger Bench of this Tribunal examined a reference of a related matter as to 'whether to avail the benefit of Notification No. 102/2007, the condition 2(b) of the Notification is mandatory for compliance being a trader who cleared the goods on the strength of commercial invoices.' The judgment went on to examine the genesis and object of the levy and the role of the

exemption notification, which is very useful in understanding the issue.

The relevant portion of the Tribunals judgment is extracted below;

> 5.1 It would be useful and appropriate at this juncture to understand the genesis of the levy of Special Additional Duty of Customs (SAD). While moving the proposal for this levy in the Finance Bill, 1998, the Hon'ble Finance Minister of India stated as follows in his Budget Speech:
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> > "I am persuaded about a clear disability that our commodity taxation inflicts on the indigenous goods vis-à-vis the imported goods. While the former are subjected to sales tax and other local taxes and levies, the import sector escapes them by their very nature. In order to provide a level playing-field to the domestic industry, I propose to impose an additional non-modvatable levy of 8% on imports which is approximately equal to the burden of local taxes on domestic producers. This duty should not be viewed as a protectionist measure but only as a response to a legitimate demand for a level playing field. The new levy would not apply to crude oil, newsprint, capital goods sector under a special tariff regime or goods which are subjected to additional duties of excise in lieu of sales tax, gold and silver imported by passengers or other nominated agencies and life saving drugs that are free from customs duties. The levy would also not apply to goods which are currently exempt both from basic and additional duties of customs. Similarly, goods imported for subsequent trading have also been left out of its purview, since they bear the burden of Sales tax at the time of first sale. The new levy will also not apply to inputs imported under export-promotion schemes. In addition, there may be other sectors eligible for exemptions. These would be examined and if considered appropriate notified separately."
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> The rate of levy was subsequently reduced to 4%. All goods imported for subsequent sale were initially exempted from levy of SAD vide Sl. No. 11 of the Table Annexed to Notification No. 29/1998-Cus., dated 2-6-1998. The said exemption underwent many changes over the years and the present exemption is contained in Notification 102/2007-Cus. wherein the exemption is operationalised through a refund mechanism. Notwithstanding these changes, the object of the levy was to counterbalance the levy of local taxes on domestically produced goods on imported goods so that there is a level playing field between the two. However, when the imported goods are subsequently sold in the domestic market bearing the burden of local taxes, exemption is provided from SAD so as to neutralize the impact of double levy. This object and purpose of the levy and the exemption needs to be kept in mind while interpreting Notification No. 102/2007-Cus.
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> 5.2 Rule 9 of the CENVAT Credit Rules prescribes the documents on the strength of which CENVAT credit can be taken. An invoice issued by an importer is also one of the prescribed documents. However, for taking the CENVAT credit, under sub-rule (2) of the said Rule 9, following particulars are required to be indicated, namely, details of the duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service Tax

> registration number of the person issuing the invoice, name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, etc. For taking the credit, the quantum of duty paid should be shown in the invoices and the same should be shown separately for each type of duties. In respect of a commercial invoice, which shows no details of the duty paid, the question of taking of any credit would not arise at all. Therefore, non-declaration of the duty in the invoice issued itself is an affirmation that no credit would be available. Therefore, non-declaration/ non-specification of the duty element as to its nature and quantum in the invoice issued would itself be a satisfaction of the condition prescribed under clause (b) of para 2 of the Notification 102/2007.

A similar view is also relevant for discrepancies noticed in the description of goods between the sales invoice and the Bill of Entry in the impugned matter as above. As rightly stated by the appellant, such minor discrepancies of description mentioned in the invoice vis-à-vis the Bill of entry do not go to the root of the validity of the refund claim and are curable. Similarly the mismatch in the SAD vs VAT / CST paid caused by different rates at which the tax is paid cannot be held against the refund applicant. There is no allegation that the VAT / CST were not paid at the effective rate. The CA's Certificate along with the reconciliation statement has been prescribed in Boards Circular to provide a ledger/ document-based scrutiny of the claim and should ordinarily be relied upon to sanction the claim. If a serious evasion of duty was suspected physical inquiry could have been conducted by revenue with the buyers or in any other manner and the CA's Certificate along with reconciliation statement discredited, while taking action to deny the claims. There would then be proper ground to reject the claim and take any other action deemed necessary. Regular cash inflows are the lifeline of a business and blocking legitimate claims on half-baked reasons does a great dis-service and should be avoided.

6. The Hon'ble Madras High Court in its judgment in **P.P. Products Ltd. v. Commissioner** — 2019 (367) E.L.T. 707 (Mad.), examined

whether the Tribunal, in the face of documentary evidence produced by the appellant, was correct in setting aside the order of the lower Appellate Authority, holding that there was no correction between the imports and subsequent sales? It held as under;

> "10. We find that there are three documents which the importer has to produce for being entitled for refund of SAD, they being, (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. The adjudicating authority appears to have done a thorough scrutiny of the documents and granted refund for substantial portion of the claim. In respect of the remaining portion, the only reason for rejection is that the appellant has not adopted the same code while describing the product in their sale invoices. The explanation offered by the appellant/importer is that the numbers which followed the letters HDPE/LDPE/LLDPE are relevant only for person who is importing goods from the foreign country on orders being placed by the appellant and is of no consequence on the sale while selling the product in the local market. In our considered view, the adjudicating authority has not come to a conclusion that the product sold was entirely different. In fact, there was nothing on record to disbelieve the Chartered Accountant's certificate which certified that both products are one and the same. If the adjudicating authority had to disbelieve such certification, then there should have been material to do so. However, the larger question would be whether at all such jurisdiction is vested with the adjudicating authority, when there is no allegation of any fraud or misrepresentation against the appellant.
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> 11. In our considered view, the Commissioner (Appeals-II), the first appellate authority was right in its observations/findings which are quoted hereinbelow :-
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> > "……. It is seen from the tabular column of discrepancy given in the Order-in-Original by the lower authority, only the grades of the granules are missing but the description 'HDPE' and 'LDPE' is found in both the documents. It is seen that the appellants have used the generic description of the imported goods in the sales invoices and non-mentioning of grade will not change the imported goods different. Hence, the goods imported and the goods sold are one and the same and are co-relatable. The lower authority has not issued any DM or PH to the appellants for making the deficiencies good or to make any submissions. The department has not proved that the goods sold are different from the goods imported. The lower authority has not disputed the fulfillment of the other substantive conditions of the notification by the appellants. Rejection of partial amount of refund on this flimsy ground is not sustainable."

> 12. The finding of the Tribunal, in our considered view, is not sustainable, considering the facts and circumstances of the case, as the adjudicating authority himself was satisfied that substantial amount of claim for refund was sustainable.
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> 13. Thus, for the above reasons, this appeal, filed by the appellant is allowed, the order passed by the Tribunal is set aside and the order passed by the Commissioner (Appeals-II) is restored and the substantial questions of law are answered in favour of the appellant. No costs. Consequently, connected miscellaneous petition is closed."
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> (emphasis added)

7. In the circumstances and after perusing the documents submitted by the appellant, I find that the impugned order rejecting the refund claims is not proper. The impugned order is hence set aside. The appeal is allowed with consequential relief, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 20.8.2024)

(**M. AJIT KUMAR**)
Member (Technical)

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