

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

CUSTOMS APPEAL No.40787 of 2013

[Arising out of Order-in-Appeal C.Cus.No.468/2012 dated 17.12.2012 passed by Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai 600 001]

M/s.ABB Limited,

Plot No.1, Kasturi Industrial Estate,
Ponnamman Nagar,
Aiyambakkam
Chennai 600 102.

: Appellant

VERSUS

The Commissioner of Customs

Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

: Respondent

APPEARANCE:

Mr. Rohan Muralidharan, Advocate
For the Appellant

Mr. S. Balakumar, Assistant Commissioner (A.R)
For the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40156 / 2023

DATE OF HEARING: 15.03.2023

DATE OF DECISION: 15.03.2023

Per: Ms. SULEKHA BEEVI C.S

Brief facts of the case are that the appellant filed refund claim in terms of Notification No.102/2007-Cus. dated 14.09.2007 as amended. The refund claim was for refund of 4% of Special Additional Duty (SAD) paid by them at the time of import of the goods. The refund

sanctioning authority sanctioned part of the refund but however, rejected some amount observing that appellant has not satisfied the requirement as stipulated in para 2 (b) of the notification. Aggrieved by the rejection of part of the refund claim the appellant is now before the Tribunal.

2. Ld. Counsel Mr. Rohan Muralidharan appeared and argued the matter. He submitted that the appellant is a trader and has paid VAT while selling the imported goods. By inadvertent omission, they had not made the endorsement as required under para 2(b) of the notification. The said condition reads as under :

“2. The exemption contained in this notification shall be given effect if the following conditions are fulfilled :

... ..

(b) the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible.

... ..”

3. In some of the commercial invoices the appellant had handwritten that ‘credit is not admissible on SAD’ so as to comply with the requirement under para 2(b). The department has denied the refund on all the invoices which were handwritten as well as which did not bear the endorsement. It is argued by the Ld. Counsel that the issue stands covered by the decision of the Larger Bench of the Tribunal in the case of *Chowgule & Company Pvt. Ltd. Vs CCE –*

2014 (306) ELT 326 (Tri.-LB). The said decision has been followed by the Tribunal in various other cases as below :

- (i) *Mennekes Electric India P. Ltd. Vs CC*
2017 (348) elt 537 (Tri.-Chennai)
- (ii) *Nagarjuna Fertilizers & Chemicals Ltd. Vs CC*
2017 (12) TMI 1606 – CESTAT CHENNAI
- (iii) *STP Ltd. Vs CC* - 2019 (370) ELT 672 (Tri.-Chennai)

Ld. Counsel prayed that appeal may be allowed.

4. Ld. A.R Shri S. Balakumar supported the findings in the impugned order.

5. Heard both sides.

6. The issue to be analysed is whether the appellant is eligible for refund even though the requirement under condition 2(b) of the Notification No.102/2007-Cus. dated 14.09.2007 has not been complied. It is not disputed that the appellant-importer is a trader. In *Chowgule & Company Pvt. Ltd. Vs CCE* (supra), the Larger Bench has decided the issue as under :

“5.4 In view of the factual and legal analysis as above, we answer the reference made to us as follows. A trader-importer, who paid SAD on the imported .good and who discharged VAT/ST liability on subsequent sale, and who issued commercial invoices without indicating any details of the duty paid, would be entitled to the benefit of exemption under Notification 102/2007-Cus., notwithstanding the fact that he made no endorsement that “credit of duty is not admissible” on the commercial invoices, subject to the satisfaction of the other conditions stipulated therein. The above decision is rendered only in the facts of the case before us and shall not be interpreted to mean that conditions of an exemption notification are not required to be fulfilled for availing the exemption.”

7. In the other decisions relied by the Ld. Counsel for appellant the Tribunal has held that the trader-importer would be

eligible for refund even though the requirement under para 2(b) of the Notification No.102/2007-Cus. is not satisfied.

8. After appreciating the facts, evidence and following the decisions of the Tribunal, we find that the rejection of refund cannot be justified. We hold that the appellant is eligible for refund. The impugned order is set aside. Appeal is allowed with consequential relief, if any.

(dictated and pronounced in the open court)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)