

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

REGIONAL BENCH – COURT NO. III

CUSTOMS APPEAL No.40074 of 2013

[Arising out of Order-in-Appeal C.Cus. No.1167/2012 dated 09.10.2012 passed by Commissioner of Customs (Appeals), Chennai]

M/s. S.Vaidya and Company

: Appellant

"Arvind",
14/28, Deivasigamani Road,
Royapettah,
Chennai 600 014.

VERSUS

The Commissioner of Customs,

: Respondent

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

APPEARANCE:

Mr. B. Sivaraman, Advocate
For the Appellant

Ms. Anandalakshmi Ganeshram, Superintendent (A.R)
For the Respondent

CORAM:

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

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40117 / 2023

DATE OF HEARING: 03.03.2023

DATE OF PRONOUNCEMENT : 07.03.2023

Per: Ms. SULEKHA BEEVI C.S

Brief facts of the case are that the appellant filed three refund claims for refund of SAD amount of Rs.10,97,996/-. After scrutinizing the documents, the adjudicating authority observed that the sales invoices were not endorsed with the mandatory declaration that "no cenvat credit

can be availed on the invoices". The refund was rejected against which the appellant filed appeal before the Commissioner (Appeals). As per the impugned order, the Commissioner (Appeals) upheld the order passed by the adjudicating authority and also observed that the Chartered Accountant certificate cannot be relied to conclude that the appellant has not passed on the duty by issuing the sales invoices. Hence this appeal.

2. Ld. Counsel Shri B. Sivaraman appeared and argued on behalf of the appellant. He submitted that the appellant is a trader and is not registered with the Central Excise Department. There is no possibility of passing on the credit to the buyer of the goods. The decision dt. 24.06.2014 in the case of *Chowgule & Company Pvt. Ltd. Vs CC & CCE* in appeal No.C/18-20/2010-Mumbai reported in MANU/CM/0064/2014 [2014 (306) ELT 326 Tri.-LB) was relied by the Ld. Counsel to argue that trader / importer who has paid Special Additional Duty (SAD) on the imported goods and who discharged VAT / Sales Tax liability on subsequent sale of the goods without indicating any details of the duty paid would be entitled to benefit of refund Notification No.102/2007-Cus., notwithstanding the fact that he made no endorsement on the invoices that 'credit of duty is not admissible'. The said decision was followed by the Tribunal in the case of *SIBCO Overseas Pvt. Ltd. Vs CC (Export) Chennai* reported in MANU/CC/0320/2019 and in the case of *Infinity Industries Pvt. Ltd.* reported in MANU/CC/0259/2019. He prayed that the appeal may be allowed.

3. Ld. A.R Ms. Anandalakshmi Ganeshram supported the findings in the impugned order.

4. The issue to be decided is whether refund can be granted as per the benefit of Notification No.102/2007-Cus. Dated 14.09.2007, if condition 2(b) of the notification has not been complied by a trader who cleared the goods on the strength of commercial invoices. The said issue has been decided by the Larger Bench in the case of *Chowgule & Company* (supra) wherein it was held 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 goods 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 No.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.”

5. The Tribunal in a similar matter in the case of *Infinity Industries Pvt. Ltd.* wherein the authorities below had rejected the refund claim on the ground that the commercial invoices did not contain the declaration that ‘no credit is admissible on the duty paid’ and also refused to accept the C.A certificate, considered the issue and observed as under :

“4.2 With regard to the third issue alleging that Chartered Accountant is factually incorrect, Ld. counsel adverted to the discussions made by the Commissioner (Appeals) in the last paragraph of the impugned order. He submitted that it alleges that since the Chartered Accountant has stated in the certificate that the sales invoices are endorsed as per the

requirement under 2(b) and when such requirement has not been fulfilled, the certificate given by the Chartered Accountant is factually incorrect and therefore not acceptable. He adverted to the Board circular No.401/104/2007-Cus.III dt. 28.04.2008 and submitted that as per para 2(b) of the notification, a certificate has to be produced by the appellant from the statutory auditor who has certified after looking into the accounts of the appellants that payment of VAT correlates with the imported goods. The department does not have a case that there is no correlation with the VAT paid on sale invoices and SAD paid under Bills of Entry. Since condition of endorsement has not been fulfilled and since the Chartered Accountant has stated in his certificate that the condition of such endorsement has been fulfilled, the certificate issued by the Chartered Accountant is held as not acceptable. He argued that since the certificate issued by the statutory auditor certifies with regard to the correlation of the VAT and SAD paid same has to be accepted and condition 2(e) has to be regarded as having been fulfilled by the appellant.”

6. Similar view was taken in the case of *SIBCO Overseas Pvt. Ltd.* (supra). After appreciating the facts and evidence on record and following the judgements (supra), we are of the considered opinion that the rejection of refund is without legal basis. The impugned order rejecting the refund is set aside. The appeal is allowed with consequential relief, if any, as per law.

(pronounced in open court 07.03.2023)

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

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

