

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

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40275 of 2020

(Arising out of Order-in-Appeal Seaport C.Cus. II No. 226/2020 dated 31.01.2020 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Sree Rajendra Textiles

: Appellant

2nd Floor, Kumar Complex,
No. 33, Pillappa Lane,
Nagarathpet Cross,
Bangalore – 560 002

VERSUS

The Commissioner of Customs

: Respondent

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

APPEARANCE:

Shri M.A. Mudimannan, Advocate for the Appellant

Smt. Anandalakshmi Ganeshram, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 40323 / 2022

DATE OF HEARING: 07.09.2022

DATE OF DECISION: **22.09.2022**

Order :

This appeal is filed by the assessee against the Order-in-Appeal Seaport C.Cus. II No. 226/2020 dated 31.01.2020 passed by the Commissioner of Customs (Appeals-II), Chennai, whereby the rejection of refund of CVD, as made by the Assistant Commissioner came to be upheld.

2. The only issue, therefore, that is to be considered is: whether the rejection of refund of CVD claimed by the taxpayer is correct or not?

3. Heard Shri M.A. Mudimannan, Learned Advocate for the appellant and Smt. Anandalakshmi Ganeshram, Learned Superintendent for the Revenue.

4. The contentions of the Learned Advocate for the appellant are summarized as under:-

- The appellant imported silk fabrics through Chennai Port. Bills-of-Entry with all relevant documents were filed for assessment of the goods imported.
- There was a dispute as to whether silk fabrics imported were liable for CVD or not at that point of time, with multiple litigations pending before various higher judicial fora.
- The appellant, in order to save the demurrages and other charges, sought for adjudication / assessment of the Bills-of-Entry and consequential release of the goods.
- Hence, the CVD was collected after adjudication along with BCD.
- While remitting the CVD plus BCD, the appellant did not mention that the remittance was made 'under protest'.
- The appellant filed refund claim for the above CVD vide application dated 03.08.2017, after the decision of the Hon'ble Apex Court in the case of *Commissioner of Customs (Port-Exports) v. M/s. Enterprises International Ltd. dated 05.08.2016* wherein the Hon'ble Court had declined to interfere with the order impugned therein.
- The above application for refund was filed within one year from the date of receipt of the order of the Hon'ble Apex Court in *M/s. Enterprises International Ltd. (supra)* to claim that their application was within the period of limitation in terms of Section 27(1B)(b) of the Customs Act, 1962.

- Reliance was placed on an order of the Chennai Bench of the CESTAT in the case of *Commissioner of Customs (Seaport-Export), Chennai v. M/s. Enterprises International Ltd.* as reported in 2017 (346) E.L.T. 423 (Tribunal – Chennai), the appeal against which was dismissed by the Hon'ble Apex Court in *M/s. Enterprises International Ltd. (supra)*

5. *Per contra*, Learned Representative for the Revenue would support the findings of the lower authorities. She would also submit that the refund claim of the appellant, who is only a trader and not a manufacturer, was rejected since the Bills-of-Entry stood assessed finally and that there was no protest expressed by the appellant and hence, the decision of the Hon'ble Apex Court in the case of *M/s. Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive)* as reported in 2004 (172) E.L.T. 145 (S.C.) as well as the subsequent decision in the case of *M/s. ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV* as reported in 2019 (368) E.L.T. 216 (S.C.) would squarely apply. She would therefore submit that the claim of the appellant lacks merit.

6. In reply, Learned Advocate for the appellant would submit that both the lower authorities have rejected the claim of the appellant on limitation *per se*, without going into the merits of the appellant's claim and hence, both the orders of the lower authorities are non-speaking orders, for which reason the Learned Advocate would request for remand of the case back to the file of the Adjudicating Authority for *de novo* adjudication.

7. I have considered the rival contentions and have gone through the documents placed on record as well as the judgements/orders cited during the course of arguments.

8. There is no dispute that after adjudication / assessment, the appellant did remit the CVD plus BCD and the same was not under protest and, as could be seen from the pleadings as well as the orders of both the lower authorities, the said adjudication / assessment had reached finality for the same reason. This happened perhaps in the year 2008 and since then, there is nothing available on record to suggest that the appellant had litigated directly or indirectly and that its litigation was pending before any of the authorities including CESTAT. There is also no whisper about intimating the Revenue about the pendency of any litigation before any fora in this regard. It was nearly after ten years that the judgement of the Hon'ble Apex Court in *M/s. Enterprises International Ltd. (supra)* was passed, which the appellant is trying to take advantage of by claiming that its application for refund is within one year from the date of the above judgement. This is clearly an afterthought, which cannot be accepted, since the scope of Section 27 *ibid.* is limited to the claimant who pursues by means of litigation before higher authorities and hence, any third person cannot derive any benefit out of the same. In my view, clearly, the appellant having slept over its right for nearly ten years, cannot take shelter as it has taken, which is not permitted under law. I am of the considered opinion, therefore, that the period of limitation would not start from the date of the judgement of the Hon'ble Apex Court in the case of in *M/s. Enterprises International Ltd. (supra)*, as claimed by the appellant, but from the date of finalization of the Bills-of-Entry / adjudication, as held by the lower authorities.

9. In view of the above, I am of the view that the orders of the lower authorities are correct and hence, the impugned order does not call for any interference.

10. Consequently, the appeal is dismissed.

(Order pronounced in the open court on **22.09.2022**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)