

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. II**

Customs Appeal No. 53224 of 2018(SM)

(Arising out of Order-in-Appeal No. 193 (SM) CUS/JPR/2018 dated 16.07.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur.)

M/s Tradewell

C-6, Indrapurri Colony, Lal Kothi
Jaipur, Rajasthan-302015

Appellant

Vs.

**Commissioner of Central Excise
Customs & Central Goods & Service Tax,
Jaipur I**

N.C.R. Building, Statue Circle,
C-Scheme, Jaipur-302005

Respondent

APPEARANCE:

Ms. Priyanka Goel, Advocate for the Appellant

Ms. Tamanna Alam, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50466/2023

Date of Hearing: 21.12.2022

Date of Decision: 12.04.2023

ANIL CHOUDHARY:

The issue involved in this appeal is rejection of refund of "SAD" (Special Additional Duty) in part.

2. The appellant is an importer and imports mainly paper cup machines for trading. In the normal course of business, the appellant imported paper cup machines vide eight bills of entry during the period 27.04.2015 to 03.10.2015, totalling 127 machines. At the time of import, the appellant admittedly deposited SAD alongwith

customs duty with other duty/taxes etc. The amount of SAD is refundable under Notification No. 102/2007-Cus, upon resale of the goods and payment of sales tax. Accordingly, the appellant filed refund claim on 31.03.2016 for 127 paper cup machines, totalling Rs. 14,35,763.80. In the refund claim, appellant stated that they have paid SAD Rs. 14,35,760.80 which was levied under Section 3(5) of Customs Tariff Act and also annexed the challan for payment, copy of sales invoices, copies of VAT/CST challan, copy of VAT return evidencing payment of VAT/CST on sale of the goods, a certificate issued by the Chartered Accountant M/s V. Sanghi and Company, certifying that the appellant have not passed of the burden of 4% SAD to their customers.

3. It appeared to revenue that appellant have not sold the total quantity of imported goods in respect of the bill of entry No. 9553280 dated 12.06.2015 and bill of entry no. 2002700 dated 23.07.2015, as the regional unit of DRI, Jaipur, vide its letter dated 22.03.2016 received by the assessing officer, have informed that they have seized eight paper cup machines on 23.12.2015, which were imported vide (i) bill of entry No. 9553280 and involving SAD Rs. 2,17,128/- and five paper cup machines were seized relating to (ii) bill of entry no. 2002700 dated 23.07.2015, involving SAD of Rs. 1,78,277.60/- Thus, it appeared that a part of the imported goods vide aforementioned two bills of entry, could not have been sold till 23.12.2015.

4. The appellant had claimed that they had sold the imported machines vide bill of entry no. 9553280 between 17.06.2015 to

27.08.2015 and goods imported vide bill of entry no. 2002770 between 27.08.2015 to 25.09.2015, as per the sale invoices and calculation sheet. Thus, it appeared that the proportionate amount of SAD Rs. 1,45,754.45 could not be entertained. Accordingly, SCN dated 28.06.2016 was issued proposing to disallow the refund claim of 1,45,754.45. The appellant contested the SCN by filing reply dated 29.07.2016 inter alia stating that they sell goods on FIFO (first in first out) basis, as the machine is corrosive in nature, made of caste iron. Appellant also submitted copy of stock register for the period April 2015 to December 2015. Further reference was made to the report to the Chartered Accountant, who had verified the records and have certified that the goods have been sold and unjust enrichment is not attracted.

5. The Adjudicating Authority adjudicated the claim vide O-I-O dated 04.10.2016 allowing the refund of Rs. 12,90,009/- and rejecting the claim for the balance amount of Rs. 1,45,754.45 with respect to 13 paper cup machines, as aforementioned, recording the following findings:-

- i) Appellant have fulfilled all the conditions for grant of refund under Notification No. 102/2007-Cus
- ii) He relied on the communication of the DRI, Jaipur Unit dated 22.03.2016 and disallowed the amount of Rs. 1,45,754,45.

6. Being aggrieved the appellant preferred appeal before the Commissioner (Appeals) who vide impugned OIA dated 13.07.2018 upheld the rejection of the part of the refund.

7. Being aggrieved the appellant is before this Tribunal.

8. Learned Counsel Ms. Priyanka Goel appearing for the appellant inter alia urges that the court below have erred in relying on a communication of the DRI, Jaipur Unit dated 22.03.2016, which have not been made RUD in the show cause notice. It is further urged that appellant had produced cogent evidences like sales vouchers, sales tax returns, extract of the stock register for the relevant period, and the Chartered Accountant Certificate and evidence of payment of VAT, which have not been found to be untrue. Further urges that it makes little sense to deposit the amount by way of VAT/Sales tax and thereafter claim refund, without having actually sold the goods. It is also urged that the seizure of DRI on 31.12.2015 does not relate to the two bills of entry, and such allegation on presumption and have no legs to stand. It is further urged that there is no scope of assumption and presumption, when the appellant have produced their records which have not been found to be incorrect. The appellant had also submitted an affidavit in support of their contentions before the Adjudicating Authority, which have been overlooked. Accordingly, she prays for allowing the appeal.

9. Learned AR for revenue Ms. Tamanna Alam relies on the impugned order.

10. Having considered the rival contentions, I find that the part of the refund claim of Rs. 1,45,754.45 have been rejected on surmises relying on the communication dated 22.03.2016 of the DRI, Jaipur. I find that this document is not made RUD in the show cause notice. Thus, the said communication has got no evidentiary value. Further I

find that the appellant have led sufficient evidence that they have sold the machines imported under the eight bills of entry, in respect of which, the present refund claim was filed, totalling Rs. 14,35,763.80. I further find that none of the evidence led by the appellant before the court below, have been found to be incorrect. Accordingly, I allow the appeal and set aside the rejection of the part refund claim of Rs. 1,45,754.45. I further direct the Adjudicating Authority to grant the refund of this amount within a period of 45 days alongwith interest as per rules. Appeal allowed.

(order pronounced in the open Court on 12.04.2023)

Anil Choudhary
Member(Judicial)

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