

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, MUMBAI

Appeal No.C/128/2010

Arising out of Order-in-Appeal No. 292/2009/MCH/AC/Gr.VII/2009 Dated:
16.11.2009

Passed by the Commissioner of Customs (Appeals) Mummbai-I

Date of Hearing: 8.5.2018

Date of Decision: 25.5.2018

KORADIA EXPORTS INDIA PVT LTD

Vs

COMMISSIONER OF CUSTOMS (EXPORTS), MUMBAI

Appellant Rep by: Shri Mukund Chouhan, Adv.

Respondent Rep by: Shri Manoj Kumar, Asstt. Commr. (A.R)

CORAM: Ramesh Nair, Member (J)

Raju, Member (T)

Cus - Refund of SAD - Lower authorities rejected the refund claims on the ground that the Balance sheet for the year ending 31.03.2008 does not show the refund amount as receivables - From the certificate given by the Chartered Accountant, it is evident that the appellant had the accounting practice of showing the SAD amount in purchase account and afterwards in next year when they received the amount of SAD, the same was credited to 'Refund received from the government account' - this practice shows that the claim is not hit by unjust enrichment - main requirement is that the importer should not have charged their buyers the SAD amount and which aspect has not been disputed by the appellate authority - further, in the balance sheet for the year 2008-09 the said amount is appearing as 'Refund received from Government' which is also not disputed - no reason to deny refund of 4% SAD as the conditions stand complied with - impugned order set aside and appeal allowed with consequential relief: CESTAT [para 5]

Appeal allowed

Case laws cited:

IPCA Laboratories Ltd. (2007(219) E.L.T. 505) (Tri.- Mum)...Para 3

Paper Products Ltd. (2009 (233) E.L.T. 227) (Tri.-Mumbai)...Para 3

Indian Oil Tanking Ltd. (2008(228) E.L.T. 572) (Tri.- Mum)...Para 3

BPL Ltd. - 2007-TIOL-1577-CESTAT-BANG...Para 3

Equinox Solutions Ltd. - 2017-TIOL-2565-CESTAT-AHM ...Para 3

Apple India Pvt. Ltd. - 2013-TIOL-1973-CESTAT-BANG...Para 3

FINAL ORDER NO. A/86579/2018

Per: Ramesh Nair:

This appeal has been filed against OIA dt. 16.11.2009 passed by the Commissioner (Appeals), Customs, Mumbai-I the brief facts of the case are that appellant have filed refund claim of 4% SAD in terms of Notification No. 102/2007-Cus dt. 14.09.2007 for the goods imported during the period 2007-08. The said refund claim was rejected by the refund sanctioning authority on the ground that in the Balance Sheet for the year ending 31.03.2008 the importer have not made any provision for the refund of 4% additional duty of customs as receivable. The importer has shown the same in purchase account that the importer / Appellant has failed to submit the certificate from the statutory Auditor/C.A. who certifies the annual account of importer stating that 4% SAD has not been passed from the importer to the buyer. The Appellant filed appeal before Commissioner (Appeals) who reject the appeal holding that "As regards the sale of the subject imported goods effected in F.Y. 2007-08, it was given to understand during hearing, under the signature of the appellant, that the entry of shifting the relevant SAD amount to receivable account was made only after the sales of the subject goods were effected. In other words, till then the subject refund amount continued to be part of purchase cost. Therefore the complete cost of the subject goods, including the SAD, stood recovered by way of sales, before the entry of shifting the SAD amount in receivable account was passed. If this was so, the refund of the SAD in respect of the subject goods sold in FY 2007-08 was rightly rejected by the AC". Hence the present appeal by the appellants.

2. The Ld. Counsel Shri Mukund Chouhan appearing for the appellant submits that the Balance Sheet for the year 2007-08 did not show the amount of refund as "amount receivable from government" because upto 31.03.2008 it was not clear that whether the refund claim is available to them or not.

3. In these circumstances the cost of SAD was debited in purchase account after the issue of CBEC's Circular No. 06/2008-Cus dt. 28.04.2008, It was confirmed that the refund will be given to the claimant as per Notification No. 10/2007-Cus. Therefore they passed general entry in the book and crediting the purchase account, debited the "refund receipt from government account". The said entry was made in April'2008 hence not reflected in their Balance Sheet of year ending on 31.03.2008. He submits that the amount receiveable from the government is appearing in Balance Sheet for the year ending 31.03.2009 as appended to the appeal. He has also drawn attention to the certificate issued by statutory Chartered Accountant M/s. R.S. Patel & Co. to the above effect. He submits that the certificate by the statutory auditor cannot be quashed. He relies upon the judgment in the case of *IPCA Laboratories Ltd. (2007(219) E.L.T. 505) (Tri.- Mum)*, *Paper Products Ltd. (2009(233) E.L.T. 227)(Tri.-Mumbai)*, *Indian Oil Tanking Ltd. (2008 (228) E.L.T. 572) (Tri.- Mum)*, *BPL Ltd. (2008(221) E.L.T. 127)*

(Tri.- Bang.) = 2007-TIOL-1577-CESTAT-BANG, Equinox Solutions Ltd. (2017 (357) ELT 1041) (Tri.) = 2017-TIOL-2565-CESTAT-AHM and Apple India Pvt. Ltd. (2014 (301) ELT 675) (Tri.) = 2013-TIOL-1973-CESTAT-BANG

4. Shri Manoj Kumar, Assistant Commissioner (A.R.) appearing on behalf of the revenue reiterates the findings of the impugned order.

5. We have heard both sides and perused the case records. We find that the lower authorities have rejected the refund claims on the ground that the Balance Sheet for the year ending 31.0.3.2008 does not show the refund amount as receivables. We find from the Chartered Accountant certificate that they had accounting practice of showing the sad amount in purchase account and afterwards in next year when they received the amount of SAD, the amount was credited to "Refund Received from the Government Account". This practice adopted by the Appellant and certified by the Chartered Accountant clearly shows that the claim is not hit by unjust enrichment. The main requirement is that the importer should not have charged SAD amount to their buyers which has not been disputed by the Appellate Authority. Further in Balance sheet for the year 2008 - 09, the said amount is appearing as "Refund received from Government" which is also not disputed. In view of above facts we do not find any reason to deny refund of 4% SAD to the Appellant as the requirement of the conditions for allowing refund stands complied with. We thus hold that the Appellant is eligible for the refund. We therefore set aside the impugned order and allow the appeal with consequential relief.

(Pronounced in court on 25.5.2018)