

2013 (4) ECS (123) (Tri – Del)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO. 2 R. K. PURAM, NEW DELHI - 110066**

Date of Hearing : 26/08/2013

C.C.E. Ghaziabad

Vs.

M/s. P.K. Industries

APPEAL No. C/497/2011 – CU [SM]

[Arising out of Order – in – Appeal No. 39 – Cus/GZB/2011-12, dated 25.04.2011 passed by the C.C.E. & S.T.(Appeals), Ghaziabad]

Appearance

Shri G. Dixit, AR - for the Appellant
Shri A.K. Tiwari., Advocate- for the Respondent

CORAM

Hon'ble Mr. Sahab Singh, Member (Technical)

FINAL Order No. 57471 dated 26.08.2013

“I find that in the case where the tariff value is fixed by the Central Govt. provision of Section 14 (1) are not applicable and therefore, in the present case, duty was not required to be assessed on the basis of transaction value and required to be assessed on the basis of tariff value fixed by the Central Govt.” [Para 3]

Per Sahab Singh, Mr. :

1. This appeal has been filed by the Revenue against the Order in appeal No. 39– Cus/GZB/2011-12, dated 25.04.2011. M/s P.K. Industries (hereinafter referred to as respondents), vide Bill of Entry No. 1899 dated 12.06.2009 paid the duty amounting to Rs. 9,15,655/-. Thereafter, they filed a refund claim on 18.09.2009 on the ground that they wrongly calculated the customs duty in the above Bill of Entry on the basis of transaction value whereas they were supposed to pay the duty as per tariff value fixed by the Central Govt. and in the refund claim, they

sought the refund of differential duty paid by them. The refund claim was examined by the Assistant Commissioner, who rejected the claim vide order dated 10.08.2010. The respondents filed an appeal before the Commissioner (Appeals) who vide the impugned order has held that their claim was submitted in time but the refund of excess payment is subject to fulfillment of conditions for granting of refund. The Revenue has challenged the impugned order on the ground that the respondent has not challenged the assessed Bill of Entry and therefore, the assessment became final and no refund can be granted to the respondent without any challenge of the Bill of Entry. They relied upon the supreme Court order in Priya Blue Industries Ltd. Vs. Commissioner of Customs (Preventive) reported in 2004 (172) E.L.T. 145 (S.C.) and in Collector of Central Excise, Kanpur vs. Flock (India) Pvt. Ltd. reported in 2000 (120) ELT. 285 (S.C.).

2. Heard both the sides.
3. I find that in the present case, the duty has been paid on the basis of transaction value as per Section 14 (1) of the Customs Act, 1962. However, I notice that the duty of customs was payable on the tariff value fixed by the Govt. under Sub – section (2) of Section 14 of the Act which reads as under:-

“2. Notwithstanding anything contained in sub – section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.”

I find that in the case where the tariff value is fixed by the Central Govt. provision of Section 14 (1) are not applicable and therefore, in the present case, duty was not required to be assessed on the basis of transaction value and required to be assessed on the basis of tariff value fixed by the Central Govt. Accordingly, I find that the respondents are entitled to refund provided the conditions of Section 27 are fulfilled. In the present case, the Commissioner (Appeals) has already held that the claim was submitted in time, but neither the original authority nor the Commissioner (Appeals) has examined the refund on the ground of unjust enrichment. Accordingly, the matter is remanded to the original authority for examination of refund on the principles of unjust enrichment as applicable under Section 27 of the Customs Act, 1962.

4. The appeal is disposed of by way of remand.

(Pronounced & Dictated in open Court)