IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH, BANGALORE
COURT NO. I

Appeal No. C/21719/2018-SM

Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-40-2018-19, Dated: 03.08.2018
Passed by Commissioner of CUSTOMS(Appeals), COCHIN

Date of Hearing: 09.05.2019
Date of Decision: 09.05.2019

KOHINOOR FLOOR PVT LTD
N H BY PASS,KANNADIKKADU, NEAR VYTILLA, MARADU P.O.KOCHI, COCHIN-682304 KERALA

Vs

COMMISSIONER OF CUSTOMS COCHIN-CUS
CUSTOM HOUSE COCHIN - 682009, KERALA

Appellant Rep by: Shri T V Ajayan, Adv.
Respondent Rep by: Shri Gopakumar, Jt. Commissioner AR

CORAM: S S Garg, Member (J)

Cus - The assessee have complied with Notfn 102/2007 and filed the refund claim of 4% additional duty of customs levied under Section 3(5) of CTA, 1975 - They have annexed with the refund claim all the documents which are required as per the notification and circulars issued by Board from time to time - Further, the assessee has also attached a certificate issued by statutory Chartered Accountant who has certified the payment of VAT by assessee but the said certificate has also not been believed by both the lower authorities - A CA certificate should be

accepted to extend the benefit of Notfn 102/2007-Cus - In the case of *Gujarat Boron Derivatives Pvt. Ltd.* *2012-TIOL-52-CESTAT-AHM*, it has been held by Tribunal that the circular issued by Board clearly shows that CA certificate is sufficient if it explains how the burden has not been passed on and the exemption is available if the importer shows that he has paid 4% SAD(CVD) and subsequently the goods have been sold in the domestic market and VAT has been paid - In the case of *Shanti Enterprises* *2015-TIOL-2884-CESTAT-DEL*, it has been held that when the condition laid down in the notification and circulars have been complied, the mere change in the description of the goods in the domestic retail invoice which may be due to various reasons cannot be a defensible ground to deny the benefit of refund to which the assessee is legally entitled to - It is also a well settled law that no extraneous condition can be introduced into any notification and insistence upon such conditions cannot be made by Revenue when there is no such condition in the notification - The impugned order is not sustainable in law and therefore, the same is set aside: CESTAT

Appeal allowed

Case laws cited:

CC, Chennai Vs. shri Ram Impex India (P) Ltd - 2014-TIOL-01-CESTAT-MAD... Para 4.1

Suvee Impex Pvt. Ltd. Vs. CC&ST, Cus - 2016-TIOL-510-CESTAT-BANG... Para 4.1

Gujarat Boron Derivatives Pvt. Ltd. Vs. CC, Ahmedabad - 2012-TIOL-52-CESTAT-AHM... Para 4.1

CC, Bangalore Vs. Apple India Pvt. Ltd - 2013-TIOL-1973-CESTAT-BANG... Para 4.1

CC Vs. Appeal India Pvt. Ltd - 2014-TIOL-1544-HC-KAR-CUS... Para 4.1

Commissioner Vs. Appeal India Pvt. Ltd. [2015(320) ELT A 277 (SC)]... Para 4.1

Euinox Solution Ltd. Vs. CC, ahmedabad [2017(357) ELT 1041 (Tri. Ahmd.)]... Para 4.1

Lodha Healthy Construction & Dev P. Ltd. Vs. CCE&ST, Hyderabad-I [2017(358) ELT 471 (Tri. Hyd.)]... Para 4.1

CCE, Guntur Vs. Empee Sugar & chemicals Ltd - 2007-TIOL-576-CESTAT-BANG... Para 4.1

Shanti Enterprises Vs. CC, New Delhi - 2015-TIOL-2884-CESTAT-DEL... Para 4.1

FINAL ORDER NO. 20408/2019

Per: S S Garg:

The present appeal is directed against the impugned order dt. 30/08/2018 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant is engaged in supply of polished marble slabs / tiles, granite tiles, granite, Cera wall, floor tiles, decoration stones etc. Appellant imported polished marble slabs (honed) vide Bill of Entry No.6966096 dt. 04/10/2016 with the description CO/ISFTA/116/8938 dt. 27/09/2016 colour Ivory & Red siz L-155 to 275 and vide Bill of Entry No.7112254 dt. 17/10/2016 with the description siz L 273 to 284 H128 to 186 Thickness 2 CM Colour Brown and Grey on payment of 4% additional duty and customs duty. Thereafter the appellant sold the said goods under various sale invoices and on each sale, appropriate VAT has been paid to the concerned VAT

authorities. On 23/01/2017, the appellant filed a refund application for an amount of Rs.1,46,240/- as 4% additional duty refund as per Notification No.102/2007-Cus dt. 14/09/2007 against the aforesaid Bills of Entry. Along with refund application, appellant filed all the requisite documents as required under Notification No.102/2007. Thereafter the appellant received a show-cause notice, to which they filed reply and after following due process, the original authority vide its order dt. 18/05/2017 rejected refund application. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who rejected the said appeal. Hence the present appeal.

3. Heard both sides and perused records.

4.1. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the said order has been passed without properly considering the facts and the law. He further submitted that the impugned order is contrary to the binding judicial precedent. He further submitted that the appellate authority ought to have appreciated that the findings rendered at para 4 of the Order-inoriginal that the specifications mentioned in the Bill of Entry has not been given in the sales invoices is extraneous to the grant of refund as there is no such requirement as per the Notification No.102/2007. He further submitted that when the Order-in-Original categorically finds at para 5 that the appellant has followed the procedure laid down in the Board's Notification and circulars such as Notification No.102/2007-Cus dt. 14/09/2007 and Board's Circular No.6/2008 dt. 28/04/2008, No.16/2008 dt. 13/10/2008 and have produced the requisite documents as prescribed under Notification No.102/2007 and also admits to the fact that the importer has furnished Chartered Accountant certified VAT challans and further admits that the

importer has furnished a certificate from the Chartered Accountant stating that the goods imported have been sold under tax invoices on payment of appropriate VAT and that the burden of 4% VCD has not been passed on by the importer to the buyer, the refund claim ought to have been sanctioned. It is his further submission that it has been consistently held by the Tribunal that the Chartered Accountant certificate would be suffice to satisfy the condition of unjust enrichment. In support of this submission, he relied upon the following decisions:-

i. ***CC, Chennai Vs. shri Ram Impex India (P) Ltd. [2014(300) ELT 126 (Tri. Chennai)] = 2014-TIOL-01-CESTAT-MAD***

ii. Suvee Impex Pvt. Ltd. Vs. CC&ST, Cus [2016(344) ELT 241 (Tri. Bang.)] = 2016-TIOL-510-CESTAT-BANG

iii. Gujarat Boron Derivatives Pvt. Ltd. Vs. CC, Ahmedabad [2012(280) ELT 107 (Tri. Ahmd.)] = 2012-TIOL-52-CESTAT-AHM

iv. CC, Bangalore Vs. Apple India Pvt. Ltd. [2014(301) ELT 675 (Tri. Bang.)] = 2013-TIOL-1973-CESTAT-BANG upheld in CC Vs. Appeal India Pvt. Ltd. [2014(309) ELT 29 (Kar.)] = 2014-TIOL-1544-HC-KAR-CUS and maintained in Commissioner Vs. Appeal India Pvt. Ltd. [2015(320) ELT A 277 (SC)]

v. Euinox Solution Ltd. Vs. CC, ahmedabad [2017(357) ELT 1041 (Tri. Ahmd.)]

vi. Lodha Healthy Construction & Dev P. Ltd. Vs. CCE&ST, Hyderabad-I [2017(358) ELT 471 (Tri. Hyd.)]

vii. CCE, Guntur Vs. Empee Sugar & chemicals Ltd. [2007(211) ELT 293 (Tri. Bang.)] = 2007-TIOL-576-CESTAT-BANG

viii. Shanti Enterprises Vs. CC, New Delhi [2016(343) ELT 446 (Tri. Del.)] = 2015-TIOL-2884-CESTAT-DEL

4.2. He further submitted that the appellant have satisfied the conditions of various notifications and the same has also been admitted in the Order-in-Original but in spite of that, the refund claim has been rejected on extraneous reasons which is contrary to the notifications and circulars issued by the Board.

5. On the other hand, the learned AR defended the impugned order.

6.1. After considering the submissions of both sides and perusal of material on record, I find that the appellant have complied with the Notification No.102/2007 and filed the refund claim of 4% additional duty of customs levied under Section 3(5) of the Customs Tariff Act, 1975. Appellant has annexed with the refund claim all the documents which are required as per the notification and circulars issued by the Board from time to time. Further the appellant has also attached a certificate issued by the statutory Chartered Accountant who has certified the payment of VAT by the appellant but the said certificate has also not been believed by both the lower authorities. All the decisions relied upon by the appellant cited supra have held that a Chartered Accountant certificate should be accepted to extend the benefit of Notification No.102/2007-Cus. dt. 14/09/2007. In the case of Gujarat Boron Derivatives Pvt. Ltd., it has been held by the Tribunal that the circular issued by the Board clearly shows that Chartered Accountant certificate is sufficient if it explains how the burden has not been passed on and the exemption is available if the importer shows that he has paid 4% SAD(CVD) and subsequently the goods have been sold in the domestic market and VAT has been paid. Further I find that the Board in the Circular No.6/2008-Customs dt. 28/04/2008 has clarified that Chartered

Account can also issue certificate certifying that the burden of 4% CVD has not been passed on to fulfil the requirement of unjust enrichment.

6.2. In the case of Shanti Enterprises cited supra, it has been held that when the condition laid down in the notification and circulars have been complied, the mere change in the description of the goods in the domestic retail invoice which may be due to various reasons cannot be a defensible ground to deny the benefit of refund to which the appellant is legally entitled to. It is also a well settled law that no extraneous condition can be introduced into any notification and insistence upon such conditions cannot be made by the Revenue when there is no such condition in the notification.

7. In view of my discussion above, I am of the considered view that the ratios laid down in the above cited cases are fully applicable in the present case. By following the said ratios, I am of the view that the impugned order is not sustainable in law and therefore, the same is set aside by allowing the appeal of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced in Open Court on 09.05.2019)