Commissioner Of Customs (Air) Vs M/S. Dimension Data India Limited

Court: Customs, Excise And Service Tax Appellate, Chennai

Date of Decision: April 28, 2023

Acts Referred: Customs Tariff Act, 1975 â€" Section 3(5)
Customs Act, 1962 â€" Section 27

Hon'ble Judges: Sulekha Beevi C.S., Member (j); M. Ajit Kumar, Member (T)

Bench: Division Bench

Advocate: Anandalakshmi Ganeshram

Final Decision: Dismissed

Judgement

Sulekha Beevi C.S., Member (J)

1. The above appeal is filed by the department against the order passed by Commissioner (Appeals) who allowed the appeal filed by the importer

(respondent).

2. Brief facts of the case are that M/s.Dimension Data India Ltd., (importer-respondent) filed an application for refund of 4% Special Additional Duty

(SAD) levied under Section 3 (5) of the Customs Tariff Act, 1975 for import of Information Technology Equipment covered under various Bills of

Entries through Air Cargo Complex, Chennai. The refund claim was filed in terms of Notification No.102/2007 dated 14.09.2007. After due process of

law, the original authority sanctioned an amount of Rs.37,98,594/- and rejected an amount of Rs.7,23,072/-.

3. The adjudicating authority had rejected part of the refund claim as above pertaining to Bills of Entry where 4% SAD was paid by the respondent on

the RSP based assessed goods without claiming the benefit of exemption Notification No.29/2010 dated 27.02.2010. Thus, the original authority was

of the view that the respondent being eligible to claim benefit of exemption Notification No.29/2010 for goods, ought to have sought for reassessment

and filed refund claim under Section 27 of Customs Act, 1962 instead of filing claim under notification 102/2007. It was therefore held that as the

respondent had not claimed the benefit of notification, the bills of entry in respect of such goods had to be reassessed as per the decision in Priya Blue

Industries Ltd. Vs CC (Preventive) - 2014 (172) ELT 145 (SC). Secondly, the adjudicating authority had also rejected some amount pertaining to Bill

of Entry No.4240557 dated 01.08.2011 on the ground that the goods imported and sold against the sale invoices were not tallying. Thirdly, refund claim

pertaining to Bill of Entry No.4331330 dated 08.11.2011 was denied on the ground that the goods were sold on the same date of import as per the

sales invoices, while actually the goods were physically removed from Air Cargo Customs only on the next day.

4. Against such order of rejecting part of the claim, the respondent filed appeal before Commissioner (Appeals). After considering the appeal filed by

the respondent, the Commissioner (Appeals) held that the rejection of refund claim of Rs.7,23,072/- on the ground that the Bills of Entries has to be

reassessed cannot sustain and ordered for sanction of refund on this issue. With regard to the other two issues, the Commissioner (Appeals) held in

favour of the Revenue.

5. Against the order passed by the Commissioner (Appeals) who ordered for sanction of refund observing that no reassessment is required as to the

Bill of Entry filed in respect of goods which are also eligible for benefit of Exemption of CVD as per Notification No.29/2010, the department is now

before the Tribunal.

6. Ld. A.R Ms Anandalakshmi Ganeshram appeared and argued for the Department. It is submitted by her that, as seen from para-6 of OIO the

adjudicating authority had rejected an amount of Rs.7,23,072/- on the ground that the respondent had not challenged the assessment. The respondent is

eligible for the benefit of Customs Notification No.29/2010 dt. 27.02.2010 which gives full exemption with regard to the countervailing duty (CVD).

Instead of availing the said exemption, the respondent has paid the CVD and thereafter filed refund claim in terms of Notification No.102/2007-Cus.

for refund of 4% SAD. As the respondent was eligible for benefit of notification, the refund claim cannot be allowed as the assessment with regard to

these goods has not been challenged. To support her argument, she relied upon the decision in Priya Blue Industries (supra) and also the decision of

the Tribunal in the case of M/s.NationaL Institute of Ocean Technology Vs CC Chennai - 2023-TIOL-242-CESTAT-MAD. She prayed that the

appeal may be allowed.

7. None appeared for the respondent. On 29.03.2023 when this appeal had come up for final hearing, as there was no representation for the

respondent, the Bench directed to issue notice to the respondent through registered post. The notice has been returned as Ã¢â‚¬Ëœundelivered Ã¢â‚¬â„¢. The

appeal is therefore taken up for disposal after hearing the A.R and on perusal of the records.

8. From the facts narrated above, it is brought out that an amount of Rs.7,23,072/- was rejected by the original authority on the ground that Bill of

Entry in regard to RSP based assessed goods has to be reassessed and refund claim has to be filed for the CVD paid by respondent under Section 27

of the Customs Act, 1962. Before the Commissioner (Appeals), the respondent had argued that when there are two separate notifications which give

benefit of exemption, the importer has the option to avail benefit of any of these notifications. The department cannot insist that only a particular

notification has to be availed by the importer. The said argument was considered by the Commissioner (Appeals) as noted in paras 6 & 7 of the

impugned order. It is held by the Commissioner (Appeals) that if the refund claims were in order the original authority should have processed and

sanctioned the refund and should not have rejected holding that the bills of entry has to be reassessed.

9. As per Notification No.102/2007 the scheme of exemption is by way of refund. The importer has to pay the duty (CVD) and then file refund claim

when the goods have been sold in domestic market by paying VAT / Sales Tax. The scheme of exemption under notification No.102/2007 being in the

nature of refund after payment of duty, it cannot be insisted that reassessment is required while filing refund. It may be true that respondent is eligible

for benefit of Notification No.29/2010 by which they do not have to pay the CVD at the time of import. But however, the respondent has chosen not

to avail this benefit and paid the duty (CVD). The respondent has then filed refund claim of the duty paid by them (CVD/SAD) in terms of notification

no.102/2007. The Department cannot insist that the importer should avail benefit of a particular notification when they are eligible for different

notifications of the same duty of CVD / SAD.

10. The Ld. AR has adverted to the decision in the case of Priya Blue Industries. The said decision does not apply when the scheme of exemption is

by refund only after paying the duty. There is no question of reassessment when the assessment is in order. Reliance placed by Ld. A.R on the

decision passed by the Tribunal in the case of National Institute of Ocean Technology is also misplaced. In that case, the importer had filed refund

claim of CVD in terms of Notification No.51/96 dated 23.06.96. The notification under consideration was notification no.51/1996 which exempted both

BCD and CVD. The EDI system failed to extend the CVD exemption benefit. The refund claim was filed for such CVD part of the duty paid. Thus

the importer had paid the CVD and thereafter filed the refund claims for refund of excess duty paid by them. While rejecting the refund claim the

original authority had held that as the reassessment was not done the refund claim is premature.

11. The case before us is a refund claim filed in terms of Notification No.102/2007 wherein the scheme is of refund only after payment of duty. In

other words, one of the conditions that has to be fulfilled for claiming refund under Notification No.102/2007 is that the importer has to pay the CVD

at the time of import of the goods. The assessment therefore is in order and does not require reassessment. There is no excess duty paid. For these

reasons, we find that the reliance placed by Ld A.R on the decisions is not applicable to the facts of the case before us.

12. As already stated, though the respondent may be eligible for benefit of CVD in terms of Notification No.29/2010, it is their option to avail or not to

avail the exemption. They have later claimed refund of the CVD paid by them. The original authority has rejected part of the refund claim in regard to

some of the goods for which the benefit of notification 29/2010 would be applicable, and held that without reassessment refund claim cannot be

sanctioned as they are eligible for benefit of notification No.29/2010. This view does not find favour with us.

13. From the discussions made above, we find that the view taken by the Commissioner (Appeals) is legal and proper. There are no grounds to

interfere with the impugned order. Same is sustained. The appeal filed by the department is dismissed.