

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.**

**COURT NO. II
Customs Stay Application No.50212 of 2020 with
Customs Appeal No.50903 of 2020 (SM)**

[Arising out of Order-in-Appeal No.CC(A)/CUS/D-II/ICD/TKD/Exp/14/2020-21 dated 21.05.2020 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi.]

Commissioner of Customs,
ICD, Export,
Tughlakabad,
New Delhi-110 020.

Appellant

VERSUS

M/s. S.S. Automotive Pvt.Ltd.,
Gali No.3 (GF),
Shivaji Enclave,
New Delhi-110 027.

Respondent

APPEARANCE:

Shri Gopi Raman, Departmental Representative for the appellant.
Ms. Kanika Malhotra, Advocate for the respondent.

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.50276/2022

DATE OF HEARING/DECISION:14.03.2022

ANIL CHOUDHARY:

Heard both the sides

2. The issue involved is whether the Commissioner (Appeals) vide impugned order-in-appeal dated 21.05.2020 has rightly directed to grant refund of Rs.18,68,000/-.

3. The brief facts are that M/s. S.S. Automotive Pvt. Ltd. (hereinafter called as Respondent) had filed six Shipping Bills No.4791153, 4791155, 4791165, 4791175, 4791194 and 4791217, all dated 3.4.2013 for export of

Horticulture & Agriculture Machinery parts under claim of drawback. Suspecting over-valuation, an investigation was initiated and goods were allowed to be exported provisionally on execution of bond and bank guarantee of Rs.1 crore. A show cause notice dated 06.11.2013 was issued to the respondent, which was adjudicated vide order-in-original no.101/2015/RR/JC/Exp/ICD/TKD dated 18.11.2015 by the Joint Commissioner of Customs, ICD Export, Tughlakabad, New Delhi, in which the declared value was rejected and the same was re-determined, the goods were confiscated and redemption fine and penalties were imposed on the appellant. Further, the Adjudication order dated 18.11.2015 also stated that Rs.18,68,000 of draw back had been deposited by the appellant.

4. Further, being aggrieved with the above aforesaid order-in-original, the respondent preferred appeal before the Commissioner (Appeals), New Delhi, who vide order-in-appeal dated 28.04.2016 allowed their appeal. Accordingly, the respondent filed a refund claim of Rs.18,68,000/- on 19.09.2017, which was rejected by the Adjudicating Authority vide the Adjudication Order dated 5.6.2018 on the following grounds:-

- i) The respondent had not submitted any correspondence, wherein they were directed by the department to deposit the impugned amount or they communicated to the department about deposit of impugned amount. The respondent had also not sought any relief from a competent authority regarding the impugned amount.
- ii) The case laws cited by the appellant did not apply in the case, as the respondent had failed to establish that this amount was deposited and no order was made by a competent authority for refund of the same.

iii) The respondent had cited Circular No.984/08/2014-CX, dated 16.09.2014 in support of their refund claim and stated that such amount be treated as pre-deposit and not duty amount. The said circular stipulates that any payment made during the course of investigation to the extent of 7.5% or 10% can be considered to be deposit made towards fulfillment of stipulation under Section 129 E of the Customs Act, 1962 and any amount paid over and above the stipulated amount shall not be treated as deposit under the said section. Even if the impugned amount was to be treated as payment made during the course of investigation, it could have been treated as pre-deposit only upto the extent of 7.5% of the total deposit made. The respondent was not entitled to refund of even 7.5% of impugned amount as it has failed to establish that the impugned amount was deposited in relation to the investigation and any competent authority has made any favourable order with respect to the impugned amount.

iv) The Respondent had submitted that they were claiming refund under Section 27(1)(b) of the Customs Act, 1962 and on the other hand, they were claiming that their refund claim did not fall under Section 27 and therefore, the refund claim was not time barred. Thus, the respondent's contradictory submission prove that the refund claim had been filed on frivolous ground and without any basis of law, hence their claim was liable to be rejected.

5. Thereafter, the assessee had filed appeal before the Commissioner (Appeals), who vide impugned order-in-appeal observed that the Adjudicating Officer have erred in observing that there is no basis to claim refund of Rs.18,68,000/-, which was deposited by the appellant-exporter pursuant to directions of the Department vide letter dated 24.06.2013 and it was only thereafter that the appellant/assessee had deposited the amount of Rs.18,41,469/- plus Rs.26,531/- (interest) totaling Rs.18,68,000/- vide

TR-6 challan dated 6.7.2013. Further, held that the amount deposited is in the nature of pre-deposit and the appellant is entitled to consequential refund and accordingly, granted to refund to be disbursed within a period of 4 weeks from the date of receipt of this order.

6. Being aggrieved, the Revenue is in appeal before this Tribunal on the ground that the claim is barred by limitation, as the appellant had become entitled to refund pursuant to order-in-appeal dated 21.05.2016, wherein the directions were issued for finalization of the provisional assessment, accepting the declared value with consequential relief. It is further contented that exporter filed refund claim only on 9.9.2017, which is more than one year and 4 months from 21.05.2016. Further, it appears that the said amount was not paid by way of pre-deposit, as per provisions of Section 129 E of the Customs Act.

7. The respondent-assessee supports the impugned order.

8. Having considered the rival contentions, I find that there was an existing dispute with regard to valuation of the exported goods, which is relevant for the purpose of calculation of draw back. The export was allowed under provisional 'Let Export Order'. Hence, there was an existing dispute (subjudice) between the parties, when the amount of Rs.18,68,000 was deposited in July, 2013. Accordingly, such deposit *ipso facto* is in the nature of pre-deposit, which is subject to outcome of the Adjudication Order. Such amount of pre-deposit never becomes time barred, under the provisions of the Act and the same has to be refunded. Accordingly, I uphold the impugned order-in-appeal and direct the Revenue to disburse the said amount of Rs.18,68,000/- forthwith within a period of 4 weeks, with interest @ 12% p.a. from the date of deposit till the date of refund (in view

of the ruling of the Hon'ble Supreme Court in the case of **Sandvik Asia Ltd.** read with Division Bench ruling of this Tribunal in **Parle Agro Ltd.)**

9. This appeal by the Revenue is dismissed. The stay application also stands disposed of.

[Order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.