

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

Regional Bench Court No. 3

Customs Appeal No. 3325 of 2012

[Arising out of Order-in-Appeal No. 145/2012 dated 31.08.2012 passed by the
Commissioner of Customs (Appeals), Bangalore]

**M/s Tommy Hilfiger Arvind
Fashion Pvt. Ltd.**

No. 4, Brunton, 1st Cross Road
Bangalore – 560 025

.....Appellant

VERSUS

**Commissioner of Customs
Bangalore**

C.R. Buildings, Queens Road
Bangalore – 560 001

..... Respondent

Appearance:

Mr. N. Anand, Advocate for Appellant

Mr. Rajesh Shastry, Authorized Representatives for Respondent

Coram:

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER NO. 21670 / 2024

Date of Hearing: 26.07.2024

Date of Decision: 26.07.2024

M/s. Tommy Hilfiger Arvind Fashion Pvt. Ltd., the appellant inter alia is engaged in import of readymade garments and resell to the customers through their branches located at various places in the country.

2. The brief facts are the appellant imported readymade garments and discharged customs duties including Special Additional Duty of customs (SAD) levied under Section 3(5) of Customs Tariff Act, 1975. The appellant sold the imported goods through their branches and paid VAT or Central Sales Tax as the case may be. The Readymade

garments due to the peculiarity of the goods do not have any specific part no. or identification number and since they are sold through their various branches, the appellant has an established internal accounting and logistic system through a customized software 'Voyager' to track the movement of the imported goods till the final sale. The imported goods are as per the purchase order placed and supported by vendor invoices packing list, bill of lading etc., and on receipt at the warehouse, the warehouse keeper verifies the goods with import documents and they are segregated on the basis of style/size/colour and a 'Goods Receipt notes'(GRNs) are self-generated and a unique style codes/alpha numeric codes are allotted to each and every imported goods/items/merchandise. Thereafter, the imported goods are transported to various showroom, and they are sold at the showroom to the customers on payment of VAT/CST. The appellant submits that goods are correlated through style code, alpha numeric code and it is software system generated and is reliable and foolproof. The appellant filed refund claim in terms of Notification Nos. 102/2007-Cus. dated 14.09.2007 read with Circular Nos. 6/2008-Cus. dated 26.04.2008, 16/2008-Cus. dated 13.10.2008 and 18/2010-Cus. dated 08.07.2010. During the period of dispute, the appellant filed 8(eight) periodical refund claims claiming refund of SAD paid of Rs. 12,50,439/- along with all the requisite documents prescribed for filing such refund claim. Further they have also submitted the Chartered Accountant certificate to the effect that the alpha-numeric code procedure followed by the appellant enabled tracking the movement of the goods till their final sale, thereby correlation between goods imported and their sale in India is ascertained from the alpha-numeric code.

3. The 8 (eight) refund claims of SAD were adjudicated by a common Order-in-Original No. 72/2012 (AC-Refunds) ACC dated 27.02.2012, wherein the claims were rejected on the grounds that the appellant did not satisfactorily prove that the imported goods and the goods sold are one and the same by way of one to one correlation, since the description of the Bills of entry was not matching with the description of the goods in the sales invoices. Assailing the rejection order, the appellant filed appeal before Commissioner (Appeals), which was also rejected vide the impugned order. Aggrieved by the same, the appellant filed this appeal before this Tribunal.

4. The learned counsel for the appellant during the hearing reiterated the grounds urged in the appeal memorandum and submitted that they have complied with the conditions of Notification No.102/2007-Cus. read with Board Circular 06/2008-Cus.; the objective behind the above Notification is to create level playing field for the domestic manufacturers and the importers; a domestic manufacturer is allowed Cenvat credit of SAD, whereas a trader of imported goods pays both SAD and also pays VAT/CST on sale in India and he is not be unnecessarily burdened; the adjudicating authority and the appellate authority have rejected the appeal on the ground that the description of goods in the bills of entry and sales invoice are not matching; this aspect has been clarified by due certification by the Chartered Accountant of the appellant. The learned counsel further submits that as per Board Circular No. 06/2008-Cus. dated 28.04.2008 at para 5, it is clarified that; "a certificate from the statutory auditor/chartered accountant, who certifies the financial accounts under the Companies Act or any other statute would be required along with the original

tax/duty payment documents as proof of payment of appropriate Sales Tax/VAT for the purposes of para 2 (d) & (e) of the said Notification"; it is undisputed that in all the 8(eight) refund claims the requisite documents as required under Notification No. 102/2007-Cus. read with Circular No. 06/2008-Cus. have been submitted, however, the lower authorities have not considered and rejected the refund claims, which is not tenable.

5. The learned counsel submits that the issue is no *more res integra* and has been settled as per the following judicial decisions:

a. Commissioner of Customs, Bangalore Vs. Apple India Pvt. Ltd. – 2014 (301) E.L.T. 675 (Tri.-Bang.)

b. Commissioner of Customs, Bangalore Vs. Apple India Pvt. Ltd. – 2014 (309) E.L.T. 29 (Kar.)

c. Commissioner V. Apple India Pvt. Ltd. – 2015 (320) E.L.T. A277 (S.C)

d. Commissioner of Customs (Preventive), Noide Vs. Aadya Overseas Ltd. – (2024) 19 Centax 416 (Tri.-All.)

6. The learned Authorized Representative (AR) for the Revenue reiterated the findings in the impugned order.

7. Heard both sides and perused the records.

8. I find in this case the appellant has imported readymade garments and paid customs duties including Special Additional Duty (SAD) and sold the garments through their branches across the country. After the sale of the garments the appellant has filed 8 (eight) refund claims for the refund of SAD paid on import of the goods. The department has rejected the refund claims on the grounds that there is no correlation between the items imported and the items sold to the customers through their branch offices. I find that the appellant has put in place a system of generation of alpha-numeric code for every

Readymade garment on its import and this code is thereafter used in the accountal, movement and sale of the imported goods. I find that the appellant has also submitted a Chartered Accountant (CA) certificate certifying that the goods imported have been sold on payment of VAT/CST. I find that the department has rejected the refund claims on the grounds that there was no proper correlation between the imported goods and the goods sold through their branch offices. I find the department has not disputed that the 'Voyager' software developed and being used by the appellant for the purpose of accounting of the imported goods and their subsequent sale is not reliable/can be manipulated. I find that the goods imported i.e., Readymade garments would not have any identification number akin to machinery/ apparatus/ equipment etc., therefore the methodology adopted by the appellant of generating an alpha-numeric code at the time of receipt into their warehouse on import appears to be proper and needs to be acknowledged as a reliable system for accountal of such goods, unless the contrary is proved. Further I find that the appellant has submitted a chartered accountant certificate certifying that the goods imported have been sold on payment of applicable VAT/CST. I find in these circumstances the rejection of the refund claims is unsubstantiated and not tenable.

9. In view of the above discussion the appeal is allowed with consequential relief, if any, in accordance with law.

(Operative portion of the order was pronounced
in open court on 26.07.2024)

(Pullela Nageswara Rao)
Member (Technical)

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