

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

SOUTH ZONAL BENCH

BANGALORE

Appeal (s) involved :

Customs Appeal Nos. C/20948/2015 & C/21591 to 21594/2016

[Arising out of the Order-in-Appeal No. COC-CUSTM-000-APP-421-425-14-15 DT-06.01.2015, passed by the Commissioner of Customs (Appeals), Cochin]

M/s KCM Appliances Pvt. Ltd. - Appellants

19/411Z,

Rajiv Gandhi Bye-pass Jn.

Thurakkal, Manjeri

Malappuram - 676121

Versus

The Commissioner of Customs, - Respondent

C.R. Building, IS Press Road,

Cochin - 682018.

Appearance:

Ms. V. Pramila, Advocate

For the Appellants

Mr. N. Jagdish, A.R. For the Respondent

Date of Hearing: 16/11/2016

Date of Decision: 18/11/2016

CORAM :

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

FINAL ORDER Nos. 21150 TO 21154/2016

PER : S.S. GARG

The appellant, M/s KCM Appliances Pvt. Ltd., has filed five appeals against a common impugned Order-in-Appeal. As the issue in all these appeals are identical and therefore, all the five appeals are being disposed of by this common order.

2. The appeals are against the impugned Order-in-Appeal dated 06/01/2015 vide which the Commissioner of Customs (Appeals) rejected the appeals of the appellants on the ground that the appellants cannot claim the refund directly without challenging the assessment order in view of the Apex Court decision in M/s Priya Blue Industries Ltd. Vs. Commissioner of Customs [2004 (172) E.L.T. 145 (S.C.)].

3. Briefly, the facts of the present case are that the appellants are engaged in the trading of various consumer products. In the course of their business, they filed 09 Bills of Entry for clearances of the goods namely Enamel Wareclassifiable under CETH 73239490 and Aluminium Non-stick cook wares under CTH 76151021 of the Central Excise Tariff. All the goods were cleared on payment of merit rate of duty after the bills were assessed by the officers of the respondent. Subsequent to the clearance, they realized that the imported goods are eligible for benefit of exemption Notification No. 2/2011-CE dated 01.3.2011 as amended by Notification No. 19/2012CE dated 17.3.2012 and that due to oversight, they have failed to avail such benefit, which resulted in excess payment of C.V. duty. The appellant has further stated that as per the above Notification, they are eligible for concessional rate of duty @ 6% ad valorem, whereas due to oversight, they paid the duty at a higher rate of 12%. Consequently as a result of which the appellant paid a total excess duty of Rs. 11,04,926/-. The appellant after realizing the mistake, they made a representation to the respondent vide their letter dated 8.10.2013 requesting the lower authority to amend the Bills of Entry in terms of Section 149 of the Customs Act, 1962. Therefore, the lower authority on the representation of the appellant, issued an administrative letter dated 11.10.2013 vide which the lower authority rejected the claim of the appellant for amendment of the documents under Section 149 of the Customs Act on the ground that the proper course for claiming refund of excess duty would be to file appeal against the assessed Bills of Entry, holding that Section 149

of the Customs Act deals with only amendment of Bills of Entry and not for reassessment of the Bills of Entry. Aggrieved by the said letter, the appellant filed five appeals before the Commissioner (Appeals) challenging the assessment on the ground that excess duty paid by them needs to be refunded as there is no provision to collect the duty which were paid by oversight. Thereafter, the Commissioner (Appeals) vide his order dated 06/01/2015 rejected all the five appeals relying upon the decision of M/s Priya Blue Industries Ltd. on the ground that the appeals are not maintainable as they have to challenge the assessments made in the Bills of Entry. Aggrieved by the said order, the appellant has filed present five appeals before this Tribunal.

4. Heard both the parties and perused the records.

5. The learned counsel for the appellant submitted that the impugned order is not sustainable in law because the respondent has failed to appreciate that the appellant was aggrieved by the administrative order and in terms of Section 28, such orders are covered within the ambit of appealable orders. She further submitted that the respondent should have disposed of all the appeals on merits without going into technical issue. She further submitted that the question of reassessment by way of challenging the assessed Bill of Entry would arise only in case where there is a lis or dispute between the assessee/importer and the Department. The learned counsel further submitted that the Honble High Court of Delhi in the case of Aman Medical Products Ltd. Vs. Commissioner of Customs, Delhi [2010 (250) E.L.T. 30 (Del.)) distinguishing the ratio laid down in Priya Blue Industries Ltd. by categorically holding that in the situation, assessments need not to be challenged. She further submitted that the decision of Aman Medical Products Ltd. (supra) has been subsequently followed by Delhi High Court in the case of Micromax Informatics Ltd. Vs. Union of India [2016 (336) E.L.T. 446 (Del.)].

6. On the other hand, the learned A.R. strongly defended the impugned order and submitted that in the present case, the appellants have not challenged the assessment order and consequently, they are not entitled to the refund. In support of his submission, he relied upon the Apex Court decisions in the case of Priya Blue Industries Ltd. Vs. Commissioner [2004 (172) E.L.T. 145 (S.C.) and Collector Vs. Flock (India) Pvt. Ltd. [2000 (120) E.L.T. 285 (S.C.)]. He also submitted that the decision in the case of Aman Medical Products Ltd. (supra) relied upon by the learned counsel for the appellant has been distinguished by the Division Bench of the Tribunal in the case of CEAT Ltd. Vs. Commissioner of Customs, Kolkata [2016 (335) E.L.T. 693 (Tri.-Mumbai)] wherein in identical facts, the Tribunal has come to the conclusion, relying upon the decision of Honble Supreme Court in the case of Escorts Ltd. Vs. Union of India [1998 (97) E.L.T. 211 (S.C.)] that the judgement of the Honble Delhi High Court is not applicable in view of the judgment of the Honble Supreme Court in the case of Escort Ltd. (supra). He further submitted that in the case of Commissioner of Customs Vs. ACE Designers [2015 (329) E.L.T. 109 (Mad.)], the Honble High Court of Madras has held that refund claim without challenging the order of the assessment cannot be made.

7. After considering the submission made by both the sides and the judgements cited by both the parties, I am of the considered opinion that the judgment relied upon by the learned counsel is not

applicable in the facts and circumstances of the case and there is no infirmity in the impugned order as the appellants are not entitled to claim refund unless they challenge the assessment order which has not been done in the present case.

8. In view of my discussion above, the impugned order is upheld and all the five appeals are dismissed.

(Pronounced in the open court on 18/11/2016)

(S. S. GARG)

JUDICIAL MEMBER

/vc/