Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No.11299 of 2019

(Arising out of OIA-AHD-CUSTM-000-APP-006-007-19-20 dated 02/04/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Sagar Rubber Products Pvt Ltd **........Appellant**
Plot No 143 Gidc-Ii Modhera Road Dediyasan Mehsana
MEHSANA, GUJARAT

VERSUS

C.C.-Ahmedabad **.......Respondent**
CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD, GUJARAT

WITH

Customs Appeal No.10214 of 2022

(Arising out of OIA-AHD-CUSTM-000-APP-006-007-19-20 dated 02/04/2019 passed by Commissioner of CUSTOMS-AHMEDABAD)

Sagar Rubber Products Pvt Ltd **........Appellant**
Plot No 143 Gidc-Ii Modhera Road Dediyasan Mehsana
MEHSANA, GUJARAT

VERSUS

C.C.-Ahmedabad **.......Respondent**
CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD, GUJARAT

APPEARANCE:
Shri Naimesh Oza, Advocate for the Appellant
Shri Dinesh Prithiani, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 11177-11178 /2022

DATE OF HEARING: 29.09.2022
DATE OF DECISION: 29.09.2022

RAJU

These appeals have been filed by M/s. Sagar Rubber Products Pvt Ltd against rejection of refund under Notification No.102/2007-Cus dated 14.09.2007.

02. Learned counsel appearing on behalf of the appellant pointed out that all the conditions of the notification has been met. He pointed out that they are importing Aluminum foils and on payment of SAD and selling the same domestically. He pointed out that they had sold various sizes of aluminum foil. The adjudicating authority has denied refund of SAD in respect of sizes of aluminum foil which were not appearing in the import bills of entry on which SAD was paid. Learned counsel argued that since the goods sold by them domestically are aluminum foil and they have produced sufficient evidence to show that the sizes of the aluminum foil matches with the bills of entry and even if there is slight mismatch, it does not affect their admissibility of refund.

2.1 On being asked, learned counsel confirmed that they are not only dealing with the imported aluminum foils but also procuring the same domestically.

03. Learned AR relies on the impugned order. He vehemently argued that in respect of sizes for which it is matching import in the bills of entry, refund has been granted. He pointed out that only in case where there is no matching of the import on payment of SAD that the refund of SAD has been rejected.

04. I have considered the rival submissions. I find that Para 7, 8 & 9 of the Order-In-Original of Appeal No. C/11299/2019 gives the reason for rejection of partial refund claim. The said paras are as follows:

> *7. I find that that vide the said BOE, the claimant have imported the goods viz. "Alu Alu (Aluminum Foil) of various sizes of 146MM, 149MM, 158MM, 171 MM, 189MM, 210MM, 233MM, 247MM, 256MM, 750MM, however from the copies of the sales invoices no. 32, 34, 71, 89, 97, 916, 917, 923 issued by their depot/branch at Vill: Dhela, PO: Gurumajra, The : Baddi, Distt: Solan (HP) and as well as quantity sold to buyers directly, it is found that they have sold the goods having measurement of 155MM, 190MM, 210MM, 229MM, 247MM, 263MM and also sold scrap of Aluminum Foil and claimed refund in respect of such sold goods. Form the same, I find that the sizes of Aluminum Foil in the sales invoices is mentioned different to that of the same imported under the said BOE except size of 210MM, 247MM and 750MM Hence, the co-relation between between imported goods and sold goods is not established except in relation to size 210MM, 247MM and 750MM. As such, amount of Rs. 1,12,381/- in respect of respective sizes is inadmissible.*
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> *8. I further find that the claimant in their written submission dated 8.5.2018 received on 11.5.2018 submitted that they had imported the Aluminum Foil in bulk size and after cutting the same in the required size of customers they had sold the same. They further*

> *stated that no process was carried out by them on the Aluminum foils and it does not amount to manufacture as per Excise Law and therefore, no new product comes into existence. They have also invited reference of judgment reported in 2014(299)ELT/263 (Gul), 2014(302) ELT 519 (Guj.), A/13303-13305/2017 dated 27.10.2017, 2016(336)ELT173(Tri Hyd.), 2012 (285) ELT 410(Tri.-Ahmd.). I find that judgment cited by the claimant is not related to the goods viz. Alu Alu (Aluminum Foil) but in respect of other goods which are different in description, nature and usage. Moreover, I find that para 2(d) of Not. No. 102/2007-cus dated 14.9.2017 clearly specifies " the importer shall pay on sale of the sald goods, appropriate sales tax or value added tax, as the case may be". Here, the said goods means the goods which have been imported into India. As such, it is clear that there should be co-relation between imported and sold goods. In the instant case, no such co-relation between imported and sold goods is established from the sales invoices. Further, as per para 2(e) (lil) of the said Notification, the claimant are required to submit the invoices of sale of the imported goods in respect of which refund of said additional duty is claimed. I find that the claimant have not submitted the sales invoices for various import sizes of Aluminum Foil i.e. of 146MM, 149MM, '158MM, 171 MM,, 189MM, 233MM and 256MM. Hence, the condition stipulated under para 2 (e)(il) is not complied with. I therefore hold that the essential condition of the Not. No. 102/2007-cus dated 14.9.2017 i.e. establishment of co-relation between imported goods and sold goods, has not been complied with. Hence, the subject refund of Rs. 1,12,381/- is liable for rejection for this reason alone. Consequently, I do not go into verification of compliance of other conditions of the said Notification No. 102/2007-cus dated 14.9.2017 as amended and as well as Circular No. 6/2008-cus dated 28.4.2008 and also Circular No. 16/2008-cus dated 13.10.2008 and also do not examine the applicability of doctrine of "Unjust enrichment" in respect of sales in respect of the goods of sizes of 146MM, 149MM, 158MM, 171 MM,, 189MM, 233MM and 256MM imported under the above BOE.*
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> *9. As regards fulfillment and compliance to the conditions of the Notification No. 102/2007-Cus dated 14.09.2007 which is amended by Not. No. 93/2008-cus dated 1.8.2008, various provisions made under CBEC's Circular No. 6/2008-Customs dated 28.4.2008 and in the light of clarification issued under Circular No. 16/2008-Customs dated 13.10.2008 in respect of remaining amount of refund of Rs.31,645/-in respect of imported goods of size of 210MM and 247MM and 750MM, I find as under:-*

Similar observations have been given in the Order-In-Original in respect of Appeal No. C/10124/2022.

05. The appellant has not been able to satisfy why the size of aluminum foil mentioned in domestic sale in respect of which refund of SAD has been

claimed did not figure in their import details. In absence of any evidence to that effect. I find that the appellant has failed to establish that goods on which SAD refund has been claimed are the same goods on which SAD was paid. Therefore, I do not find any merit in the appeal. The same is dismissed.

(Dictated & Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Mehul