(2021) 03 CESTAT CK 0091

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 86669, 86670 Of 2013

Ajay Sharma And Anr. APPELLANT

Vs

Commissioner Of Customs (Imp), Mumbai RESPONDENT

Date of Decision : 08-03-2021

Acts Referred:
Customs Act, 1962 — Section 129E

Citation : (2021) 03 CESTAT CK 0091

Hon'ble Judges : Dr. D.M. Misra, J;C.J. Mathew, Technical Member

Bench : Division Bench

Advocate : Chirag Shetty, Bhushan Kamble

Final Decision : Allowed

Judgement

1. Heard both sides.

2. Both the appeals are filed against Order-in-Appeal No. 48/MCH/ADC/III/BN/2013 dated 18.01.2013 passed by the Commissioner of Customs (Appeals), Mumbai-I.

3. Briefly stated the facts of the case are that the appellant had filed 13 Bills of Entry during the relevant period for import of goods namely, Opal Glassware and Plain Glassware declaring the value of the goods in the respective Bills of Entry. Alleging that the appellant had mis-declared the value, investigation initiated. Later, on completion of investigation, the value was enhanced to Rs.1,13,90,319/- by the adjudicating authority and differential duty of Rs.13,63,402/- was confirmed with equal amount of penalty. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who directed pre-deposit of 50% of the duty confirmed in compliance with Section 129E of the Customs Act, 1962 as was in force during the relevant time. Since, they did not comply with the said direction, the learned Commissioner (Appeals) dismissed their appeal. Hence, the present appeals.

4. At the outset, learned Advocate for the appellant submits that during the

course of investigation they have deposited Rs.3,65,641/- and filed a miscellaneous application after the stay order was passed by the learned Commissioner (Appeals) to consider the deposit made earlier and dispose the appeal on merit. However, the learned Commissioner (Appeals) chose to dismiss their appeal for non-compliance with the provisions of Section 129E of the Customs Act, 1962. He has fairly submitted that the learned Commissioner (Appeals) has not dealt in detail the merit of the case. He requests that the appeal be remanded to the learned Commissioner (Appeals) to decide the issue on merit.

5. Learned AR for the Revenue fairly accepts that the issue has not been decided on merit and the he has no objection in remanding the matter to the learned Commissioner (Appeals).

6. We have considered the submissions advanced by both sides. We find that during the course of investigation, the appellant has already deposited Rs.3,65,641/- against the total demand of Rs.13,63,402/-, which in our view is sufficient to hear the appeal. Since the learned Commissioner (Appeals) has not heard the matter on merit, we remand the matter to the learned Commissioner (Appeals) to decide the issue on merit without insisting any further pre-deposit in the matter. All issues are kept open. A reasonable opportunity of hearing be extended to the appellant before deciding the appeal on merit.

7. At this stage, the learned Advocate requests that since proprietor of the appellant is quite old, the de novo proceeding may be completed in time bound manner. Learned AR has no objection. In the interest of justice, we direct as far as practicable, appeal may be decided within a period of six months from the date of communication of the order.

8. Appeals are allowed by way of remand.

(Dictated and pronounced in open court)

