(2021) 12 CESTAT CK 0019

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 10519 Of 2019

Apollo Tyres Ltd APPELLANT

Vs

C.C.-Ahmedabad RESPONDENT

Date of Decision : 02-12-2021

Acts Referred:
Customs Tariff Act, 1975 — Chapter 39, Section 9A

Citation : (2021) 12 CESTAT CK 0019

Hon'ble Judges : Ramesh Nair, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The brief facts of the case are that the appellant filed bills of entry and paid Anti-Dumping Duty on the goods namely, â??Rubber Chemical

Antioxidant (Kumanox 13)â? falling under Chapter 39 of the Customs Tariff Act, 1975 imported by them. The Anti-Dumping Duty @ 10.35 per kg

was paid by them in terms of Notification No. 133/2008-Cus (ADD) dated 12.12.2008 at material time. However, this Notification was amended vide

Notification No. 4 of 2016-Cus (ADD) dated 29.01.2016 and the rate of ADD was reduced to Rs. 5.90 per kg retrospectively for the period from

05.05.2008 to 19.09.2008. Thus, the appellant claimed the refund of differential excess Anti-Dumping duty paid by them. The adjudicating authority

has rejected the claim on the ground that the appellant have not challenged the assessment of bills of entry. The appellant being aggrieved by the order

of the original authority approached the Learned Commissioner (Appeals) by filing the appeal. The Learned Commissioner (Appeals) held that the

refund is time bar however, no proper finding was given on the ground of challenging the assessment of bill of entry. Therefore, the appellant is before me.

2. Shri Saurabh Dixit, Learned Counsel appearing on behalf of the appellant submits that the appellant have filed the refund claim immediately after

the Notification No. 04/2016-CUS was issued whereby the ADD rate was reduced, therefore, there is no question of time bar. As regard, the

assessment of bill of entry, he submits that since the refund is provided in the provision of ADD i.e. Section 9A sub-section (2) clause (b) of the

Customs Tariff Act, therefore, there is no need to challenge the assessment of bill of entry. He submits that on the identical issue, that whether the

assessment of bill of entry need to be challenged for claiming the refund of ADD when the same is reduced by Notification, has been considered in

various judgements. He placed reliance on the following judgements:

â?¢ Abad Insulation P. Ltd. 2015 (324) ELT 199 (Tri. Ahmd.)

â?¢ Enterprise International Ltd. 2013 (295) ELT 659 (Mad.)

2.1 He further submits that both the grounds of rejection given by original authority as well as the Commissioner (Appeals) are not arising out of the

SCN, therefore, both the orders have travelled beyond the charges made in the Show Cause Notice. On this ground itself the orders are not

sustainable. He further submits that the on identical issue, the refund has been granted to this very appellant in respect of the goods imported and

ADD paid thereon at Chennai and Cochin Port. He submitted the order in original No. 70883/19 dated 23.08.2019 (Chennai) and order in original No.

366/17 dated 04.04.2017 (Cochin).

3. Shri R. Parekh, Learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the findings of the impugned

order.

4. I have careful considered the submissions made by both the sides and perused the records. Firstly, I find that the adjudicating authority rejected the

claim on the ground that the appellant have not challenged the assessment of bill of entry. This is not the charge made in the Show Cause Notice,

therefore, the order of the adjudicating authority has travelled beyond the scope of the Show Cause Notice, for this reason itself the order is not

sustainable. Similarly, the Learned Commissioner (Appeals) held the refund claim as time bar, again there is no charge of refund being time bar in the show cause notice, therefore, the learned Commissioner (Appeals) also travelled beyond the scope of the show cause notice which is the foundation

of the case. Despite giving the above finding, on examination of the merit and facts of the case, I find that the issue that whether the assessment of bill

of entry needs to be challenged in order to claim the refund of differential ADD arising due to the reduction of rate of ADD by Notification. In my

view, there is no need to challenge the assessment as the Section 9A sub section (2) clause (b) itself has provision for refund in case of ADD.

Therefore, the refund is arising as per the provision referred above, therefore, there is no further requirement of challenging the assessment of bill of

entry. As regard the ground of rejection made by learned Commissioner (Appeals) of time bar, I am of the view that refund was filed by the appellant

on 27.10.2016 and Notification reducing the rate of ADD was issued on 29.01.2016. Firstly, there is no time limit provided in the section 9A sub

section (2) clause (b) for claiming refund, therefore, the appellant have filed the refund claim within reasonable time i.e. one year. It cannot be

expected from the appellant to claim the refund before issuance of Notification No. 04/2016-Cus, therefore, the refund claim is well within the time,

the same was wrongly held time bar by the learned Commissioner (Appeals). It is also to be noted that at other Customs Port i.e. Chennai and Cochin,

the very same department has sanctioned the refund without alleging all these points raised in the present case. Accordingly, the appellant are entitled

for the refund. Since the lower authority have not examined the factual aspect of the refund, the refund needs to be processed by verifying the

documents. Accordingly, the appeal is allowed by way of remand to the adjudicating authority to process the refund in accordance with law and

keeping in mind the observation made by me herein above. Appeal is allowed by way of remand.

(Dictated and Pronounced in the open court)