(2021) 12 CESTAT CK 0023

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 10881, 10882, 10883, 10884 Of 2016

Bhavin Export Pvt. Limited APPELLANT

Vs

Commissioner Of Customs, Mundra RESPONDENT

Date of Decision : 02-12-2021

Acts Referred:

Customs Tariff Act, 1975 — Chapter 74, Section 149

Citation : (2021) 12 CESTAT CK 0023

Hon'ble Judges : Ramesh Nair, J;Raju, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The brief facts of the case are that the appellant M/s. Bhavin Exports Pvt. Limited are engaged in the manufacture and exporting of brass articles

under Chapter 74 of Customs Tariff. The appellant also act as merchant exporters where they procure brass articles from the domestic market and

then export the same without any further manufacturing activity. As a merchant exporter, the appellant procured Brass Artwares from local market

falling under tariff heading 74199930 and exported the same by filing shipping bill Nos. 5194192, 5194516, 5194535 and 5194518 all dated 25.09.2014.

At the time of filing shipping bills, the appellant have mentioned drawback serial No. as 741802B (Brass Sanitary Fittings and parts thereof). As per

the appellantâ??s view, the correct drawback serial No. should be 741901A (Brass Artwares/ Handicrafts) and the right rate of drawback applicable

is 12% as against 2.2% under drawback serial No. 741802B. Accordingly, the appellant wrote to Customs authorities for amendment in shipping bills

and to pass supplementary drawback claims. They also submitted certificate certifying non-availment of Cenvat credit to the jurisdictional Central

Excise authorities however, the Joint Commissioner (Export) rejected the request of the appellant for amendment of drawback serial number from

741802B to 741901A in the shipping bills which was communicated vide letter dated 05.05.2015 by the Superintendent Export Customs House MP

and SEZ, Mundra. The appellant filed appeals before the Commissioner (Appeals). The Commissioner (Appeals) vide impugned order rejected the

appeals accepting the order-in-original therefore, the present appeals filed by the appellant.

2. Shri Manish Jain learned Counsel and Ms. Shruti Agarwal, Advocate appeared for the appellants. Shri Manish Jain submits that though the original

authority has not given any reason for rejecting the amendment in the shipping bills however, the learned Commissioner (Appeals) given the finding in

the impugned order that as per the proviso to Section 149, no amendment in shipping bills is allowed after the goods have been exported except on the

basis of documentary evidence which were in existence at the time the goods were cleared, deposited or exported. The learned Commissioner

(Appeals) has erred in giving the finding that the appellant is not only seeking numeric change but change of entire status and character of the

documents. The Commissioner (Appeals) also erred in holding that even if it is a case of amendment, the proper officer may not in possession of the

documents sought to be amended, particularly when the goods already exported. He submits that this finding is apparently incorrect for the reason that

firstly, the correct serial number of goods exported is under 741901A and the same is appearing in the export invoices. Therefore, the documents are

very much in the possession of proper officer. Accordingly, the amendment sought by the appellant is as per proviso to Section 149. As regards the

category â??Bâ?? to â??Aâ??, the appellant have submitted certificate certifying that the appellant have not taken Cenvat credit which is also

revealed from record only, existed at the time of export. Therefore, it is his submission that the request of the appellant seeking amendment in the

shipping bills is legitimate and as per the statutory provisions of Section 149. He placed reliance on the following judgments and Circulars:-

(a) Circular No. 1312004-Cus Dated 18.11.2014

(b) Messrs Mahalaxmi Rubtech Limited vs. UOI 2021 (3) TMI 240 (Gujarat High Court)

(c) Gokul Overseas vs. UOI, 2020 (373) ELT 4 (Guj.)

(d) Accoladee vs. CC, 2021 (377) ELT 496 (Mad.)

(e) Mohit Overseas Vs CC, 2016 (335) ELT 18 (Del.)

(f) Principal Commissioner vs. Samsung India Electronics P. Ltd

(g) Sterlite Technologies Limited vs. CC, 2019 (365) ELT 622 (Tri)

(h) Kanak Exports Vs CC, 2020 (374) ELT 385 (T)

(i) Pratibha Pipes & Structural (P) Ltd Vs CC 2014 (314) ELT 161 (Tri)

3. Shri R P Parekh, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that the learned Joint Commissioner though

rejected the request for amendment in shipping bills sought by the appellant but no reasoning was given. However, the learned Commissioner

(Appeals) has given detailed findings in the impugned order and mainly the request was rejected by the Commissioner (Appeals) on the ground that

whatever amendment sought by the appellant is not based on the existing documents and the documents is not in possession of the proper officer.

From the facts and documents, we find that these findings are apparently incorrect on the face of documents such as export invoices which clearly

contained the correct HS Code 74199930. However, inadvertently in the shipping bills the incorrect drawback serial number 741802B was mentioned.

In this position, it cannot be said that the amendment sought by the appellant is not on the basis of documents existing at the time of export and not in

the possession of proper officer. The invoices and the packing list is basic documents and these documents are very much in the possession of officer

who is supposed to check at the time filing the shipping bills. Therefore, it is clear that despite the correct HS Code mentioned in the invoices/packing

list, incorrect drawback serial number was mentioned in the shipping bill. Accordingly, the amendment sought by the appellant is strictly as per the

documents existing at the time of export of the goods and such documents are very much in possession of the proper officer.

5. In these facts, the case of the appellant is squarely covered by the statutory provisions of Section 149 and proviso thereto. Accordingly, the

appellant is entitled for amendment in the shipping bills and consequent differential drawback. Accordingly, the impugned orders are set-aside and the appeals are allowed.

(Pronounced in the open court on 02.12.2021)

