(2021) 03 CESTAT CK 0021

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Custom Appeal No. 60331 Of 2020

C.C Ludhiana @Hash Ms Manavi Exim Pvt ltd

Date of Decision : 18-03-2021

Acts Referred:
Customs Act, 1962 — Section 17(5)

Citation : (2021) 03 CESTAT CK 0021

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Advocate : M.S.Dhindsa, R.K. Hasija

Final Decision : Dismissed

Judgement

1. The Revenue is in appeal against the impugned order wherein the Ld. Commissioner (Appeal) has allowed the refund claim to the respondent holding that bar of unjust enrichment has been passed by the respondent.

2. The brief facts of the case are that the respondent imported Mini Booster Pumps of 50/75GPD from UK. During the course of examination, the goods were found as per declaration but the proper officer had doubt about the truth of the value of declared by the respondent as the value declared by them was found to be substantial lower than the contemporaneous value of the Mini Booster Pump 50/75GPD imported by others from Korea, therefore, the declared value was rejected and re-determined by increasing the declared value, the respondent paid duty on enhanced value and cleared the goods. The speaking order under Section 17(5) of the Customs Act, 1962 was not issued in three consignments. However a speaking order has been passed in case of Bill of Entry No. 8172595 dated 12.01.2017 against which the respondent filed appeal before the Ld. Commissioner (Appeals). The said assessment was challenged before the Ld. Commissioner (Appeals) who pass the order in favour of the respondent, therefore respondent filed refund claim along with CA certificate and general ledger duly certified by the CA. On merit refund claim was found admissible but it was held that respondent has failed to pass the bar of unjust enrichment therefore, the refund was transfer to consumer welfare fund. The said order was

challenged before the Ld. Commissioner (Appeals) but after examination the records i.e CA certificate and balance-sheet, ledger account allowed the refund claim holding that bar of unjust enrichment has been passed by the respondent. Against the said order, the Revenue is in appeal on the ground that the respondent has not filed balance-sheet for the period 2017-2018, 2018-2019 and 2019-2020, therefore, it was prayed by the Revenue that the impugned order be set aside.

3. Heard the parties and perused the records.

4. On perusal of the record, I find that before Ld. Commissioner (Appeals) held that the respondent has filed copy of balance-sheet for the period ending March, 2019 and a certificate issued by the chartered accountant dated 25.06.2019 and the Ld. Commissioner (Appeals) has passed the order on 11.05.2020 after examining all the records showing that amount receivable from the Government, these facts have not been controverted by the Revenue with tangible evidence. As the record relevant for sanctioning the refund claim has been examined by the Ld. Commissioner (Appeals) in detail in the impugned order, hence, I do not find any infirmity in the impugned order, the same is upheld. In these terms, the appeal filed by the Revenue is dismissed.

(Order pronounced in the Court on 18.03.2021)