(2021) 03 CESTAT CK 0116

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 10399 Of 2020

C.C.E.-Kutch (Gandhidham) APPELLANT

Vs

Ball Aerosol Packaging India Pvt Ltd RESPONDENT

Date of Decision : 18-03-2021

Acts Referred:
Central Excise Act, 1944 — Section 35(A)

Citation : (2021) 03 CESTAT CK 0116

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

Bench : Division Bench

Advocate : Sharad Airan, Shruti Agarwal

Final Decision : Dismissed

Judgement

1. This appeal has been directed against the O-I-A whereby the Learned Commissioner (Appeals) remanded the matter to the adjudicating authority

on the ground that the principles of natural justice has not been followed while rejecting the request of the respondent for allowing the benefit of MEIS

Scheme .

2. Shri. Sharad Airan, Learned Assistant Commissioner (Authorized Representative) appearing on behalf of the Revenue appellant submits that all the

documents were available before the Commissioner (Appeals) therefore, he should have decided the matter on merit and should not remand the

matter therefore the commissioner (Appeals) order is not proper.

3. On the other hand, Ms. Shruti Agarwal, Learned Counsel appearing on behalf of the respondent submits that the Learned Commissioner (Appeals)

has made an open remand for deciding the matter on merit and since no principles of natural justice was followed. The order is correct which does not require any interference. She also submits on merit that in identical issue by the order of Honâ??ble Gujarat High Court it allowed benefit of MEIS

Scheme by amendment in shipping bill in case of M/s. Gokul Overseas Vs. UOI-2020 (3) TMI 167- Gujarat High Court and M/s Bombardier

Transportation India Pvt. Ltd Vs. DGFT-2021 (3) TMI (9) - Gujarat High Court.

4. We considered the submission made by both the sides and perused the records. We find that the adjudicating authority Vide Letter dated

12.06.2019 informed that amendment in shipping bill in respect of MEIS Scheme is not being allowed. We agree with Commissioner (Appeals) and

even in the administrative capacity if any decision is taken which is adverse to the assessee the principles of natural justice needs to be followed. The

relevant portion of the Learned Commissioner (Appeals) order is placed below:-

â??5. I have carefully gone through the appeal memorandums, submissions made by the appellant as well as the records of the case in

respect of the appeal.

6 I find that the appellant vide Letter dated 24.05.2019 to deputy Commissioner of Customs, Mundra submitted that they had shown in

invoice MEIS declaration but by mistake in shipping bill did not declare the intent to claim the reward under MEIS, requested for relevant

amendment so as to facilitate claim for the rewards under MEIS. The superintendent of Customs (Exports), Custom House, Mundra Vide

impugned letter rejected the amendment request of the appellant.

7 I find that it settled law in terms of the orders of the supreme Court in the case of M/s Automotive Tyre Manufacturers Association

reported at 2011 (263) ELT 481 (S.C) and M/s. ITC Limited reported at 1994 (71) ELT 324 (s.C) and jurisdictional Gujarat High Court in

case of M/s. Essars Steel Limted reported at 2004 (176) ELT 64 (GUJ.) and Baboon Ram Harichand reported at 2004 (304) ELT 371

(GUJ.) that whenever any order, administrative or quasi â?" judicial, is required to be passed which has adverse consequences for the

appellant, the principles of natural justice must be followed.

8. In the instant case, I find that the principles of the natural justice were not observed and remitting of the case for passing speaking order

sine qua non to meet the ends of justice. Thus, it would be appropriate to remand the matter to the proper officer, who will pass suitable order after following the due procedure of law mentioned supra. I rely upon the case of Prem Steels P. Ltd. - 2012-TIOL-1317-CESTAT-

DEL. And the case of Hawkins Cookers Ltd.-2012 (284) ELT 677 (Tri.- Del.), which have also relied upon the case of Medico labs-2004

(173) ELT 117 (Guj.), wherein it has been held that Commissioner (Appeals) continue to have power of remand even after the amendment

of Section 35(A) of the Central Excise Act, 1944 by Finance Act, 2001 w.e.f 11.05.2001.

9 In view of above, i remit the matter to the proper officer, who shall ascertain the facts, examine the documents, submission by the

appellant and then pass a speaking order in the case after following principles of natural justice. While passing this order, no opinion or

views have been expressed on the merits of the dispute or the submissions made by the appellant in this regards, which shall be

independently examined by the proper officer.â??

4.1 From the above order of the Commissioner (Appeals) which is based on the various judgment that if any order is passed against the assessee the

principles of natural justice has to be observed therefore we do not see any infirmity in the order of the Commissioner (Appeals). The Commissioner

(Appeals) has remanded the matter as an open remand and all the issue are open before the adjudicating authority to decide therefore, there cannot be

any grievances by the revenue against such order.

5. Accordingly, the impugned order is upheld, revenueâ??s appeal is dismissed.

Â (Dictated and pronounced in the open court)