(2023) 12 CESTAT CK 0013

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 20270 Of 2022

Commissioner Of Customs APPELLANT

Vs

M/S. Rajhans Enterprises RESPONDENT

Date of Decision : 06-12-2023

Acts Referred:
Custom Act, 1962 — Section 2(2)

Citation : (2023) 12 CESTAT CK 0013

Hon'ble Judges : P. A. Augustian, Member (J);R. Bhagya Devi, Member (T)

Bench : Division Bench

Advocate : K. Viswanath, G. B. Eswarappa

Final Decision : Dismissed

Judgement

P. A. Augustian, Member (J)

1. M/s. Rajhans Enterprises Respondent hearing had imported polymers of ethlin and cleared the same by paying appropriate duty. Thereafter Respondent submitted an application dated 02/12/2015 for refund of excess amount on the ground that due to an inadvertent mistake, they have failed to claim the benefit of notification No. 01/05 dated 01/05/2018 and as per said notification, Respondent is eligible for the benefit of concessional rate of basic custom duty since the goods are imported from Republic of Singapore.

2. The refund claim was rejected by the adjudication authority vide Order-in-Original dated 30/05/2016 on the ground that importer has not challenged the assessed bill of entry. Further held that the Respondent is not eligible since duty was not paid under protest. Aggrieved by said order, Respondent filed appeal before Commissioner (Appeals) and Commissioner (Appeals) vide Order-in-Appeal dated 31/01/2017 rejected the appeal on the ground that onus to avail the exemption notification is always on the importer and such exemption is subject to fulfilment of certain laid down conditions. Aggrieved by the said order, an appeal was filed before this Tribunal and this Tribunal vide the Final Order No.

22462 of 2017 dated 17/10/2017 has remanded the case back to original authority with following observation:

'In view of these facts, I am of the opinion that the impugned order rejecting the appeal of the appellant is not sustainable in law and thereafter the same is set aside by remanding the case back to the original authority with a direction to first decide the application of the appellant for reassessment of the BOE and thereafter decide the refund application after following the principles of natural justice and the law on the point by passing a reasoned order. The appellant would be at liberty to produce all documentary evidence before the authority who will pass a de nova order regarding the application for reassessment as well as refund claim of the appellant.

3. As directed by this Tribunal, matter was taken for de novo adjudication and the Adjudicating Authority rejected the refund application on the ground that self-assessed bill of entry is as order of assessment as per Section 2(2) of Custom Act, 1962.

Thus it is an appealable order and in the absence of any appeal challenging the said assessment order, request for re-assessment of bill of entry to avail the benefit of Notification No. 01/2015 dated 05/01/2015 is unsustainable. Aggrieved by the said order, appeal was filed before the Ld. Commissioner Appeals on the ground that the original authority has not rightly followed the direction of this Tribunal for re-assessment. Considering the same, Ld. Commissioner Appeals allowed the appeal with an observation that the adjudicating authority has in defiance of the final order of this Tribunal rejected the request for re-assessment. Aggrieved by the said order present appeal is filed by the revenue.

4. When the matter taken up for hearing, the Learned Authorized Representative (AR) reiterated the grounds of appeal and submitted that for claiming the benefit of notification dated 05/01/2015, importer has to prove to the satisfaction of Additional Deputy Commissioner that the goods have origin of Republic of Singapore. Learned AR further submits that self-assessment bill of entry is an appealable order and modification to the self-assessed Bill of Entry has to be done by filing appeal. However importer approached refund authority for re-assessment and refund. The learned AR relied upon following the judgement to support their above contention.

i. ITC Vs Commissioner of Central Excuse, Kolkata-IV [2019 (368) ELT 216 (SC)]

ii. Priya Blue Industries Ltd. Vs Commissioner of Customs (Prev) [2004 (172) ELT (SC)]

iii. Commissioner of Customs, Bangalore Vs TTK prestige Ltd [2021 (376) ELT 441(kar.)]

iv. M/s Coromandel International Ltd. Vs Commissioner of Customs [2020(1) TMI 717-CESTAT Hyderabad]

v. The Commissioner of Customs, New Delhi vs. M/s OPPO Mobiles India Pvt. Ltd.

5. Learned counsel for the respondent submits that as per the National Litigation Policy, any dispute of above Rs.50,00,000/-can only be challenged before this Tribunal. In the present appeal, amount involved is only Rs.11,07,185/-. Learned counsel also submits that once the Tribunal remanded the matter with a specific direction to re-assess the bill of entry and when the Final Order was not challenged before any high forum, the Adjudication Authority is bound to consider and pass appropriate order on merit and only thereafter dispose the Refund application rather than reviewing the findings of the final order issued by this Tribunal. Learned Counsel further submits that the order issued by the Adjudicating authority is in defiance of the final order passed by this Tribunal as observed by the Learned Commissioner appeals.

6. Heard both sides. We have considered the ground of appeal, submission made by Learned DR and counsel for the respondent. It is an admitted fact that this Tribunal has issued a specific direction to the adjudication authority to first decide the request for re-assessment of Bill of Entry on merit and thereafter decide the refund application. However by rejecting the claim of the respondent on the same ground that there is an omission on the part of respondent to challenge the initial assessment amounts to reviewing the order of this Tribunal and it is perse illegal and unsustainable. Moreover if appellant was aggrieved by above final order of this Tribunal, Appellant ought to have challenged it before any high forum. In the absence of any appeal challenging the ibid final order, Appellant is bound to follow the direction of this Tribunal and consider the request for re-assessment on merit.

7. Considering the above, We find there is no merit in the appeal challenging the findings of the Appellant Authority. Hence Appeal is Rejected.

