(2023) 10 CESTAT CK 0028

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.40275 Of 2016

Commissioner Of Customs APPELLANT

Vs

M/S.Gamesa Wind Turbines P. Limited RESPONDENT

Date of Decision : 20-10-2023

Acts Referred:

Citation : (2023) 10 CESTAT CK 0028

Hon'ble Judges : Sulekha Beevi C.S., Member (J);Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : R. Rajaraman, M. Kannan

Final Decision : Allowed

Judgement

Sulekha Beevi C.S, Member (J)

1. Brief facts are that the respondent imported parts of Wind Operated Electricity Generators vide various Bills of Entry. As per Notification No.21/2012-Cus. dt. 17.3.2012 as amended by Notification No.21/2014-Cus. dated 11.07.2014, the respondent would be eligible for the benefit of exemption, if they produce a certificate at the time of import from the Ministry of New and Renewable Energy (M.N.R.E) The respondent herein did not produce the requisite certificate at the time of import and later on the basis of an Office Memo issued by the M.N.R.E, they filed a refund claim for the refund of the Special Additional Duty (S.A.D) paid by them. The said refund claim was rejected by the original authority vide order dt. 16.06.2015 stating that the refund claim cannot be allowed as the respondent has not challenged the assessment. Against this order, the respondent filed appeal before the Commissioner (Appeals). After taking note of the submissions made by the respondent, the Commissioner (Appeals) vide order impugned herein held that the respondent is eligible for the benefit of Notification No.21/2012 as they have produced the required certificate from M.N.R.E. The original authority's assessment order was set aside and the matter was remanded to the Assessment Group to recall and reassess the Bill of Entry

extending the benefit of Notification No.21/2012 as amended by Notification No.21/2014-Cus. Aggrieved by such order, the Department is now before the Tribunal.

2. Ld. A.R Sri R. Rajaraman appeared and argued for the Department. It is submitted by the Ld. A.R that the condition in the Notification No.21/2012-Cus. as amended by Notification No.21/2014-Cus., is that the importer has to furnish a certificate at the time of import. In the present case, the respondent has not produced the certificate at all and they have produced only an office memorandum issued by the M.N.R.E. The said document cannot be accepted as a certificate required to be produced as per the notification. The finding of the Commissioner (Appeals) that the respondent is eligible for the benefit of notification is therefore erroneous. It is argued that the Commissioner (Appeals) ought not to have remanded the matter to reassess the bills of entry as the respondent has not produced the certificate at the time of import. It is prayed that the appeal may be allowed.

3. Ld. Counsel Sri M. Kannan appeared for the respondent. It is submitted by the counsel that the respondent could not obtain the certificate as required by the said notification at the time of import. They had obtained an office memorandum in regard to the certificate. Ld. Counsel prayed that the said office memorandum may be treated as in par with the certificate as required under the Notification No.21/2012-cus as amended. It is prayed by the learned counsel that Commissioner (Appeals) having remanded the matter to recall and reassess the bills of entry there is no infirmity in the impugned order.

4. Heard both sides.

5. The facts narrated above show that one of the conditions for availing the benefit of the exemption from S.A.D at the time of import of the impugned goods is that the importer has to produce a certificate from the Ministry of New and Renewable Energy, Govt. of India. The respondent has not furnished the certificate while filing the Bills of Entry. There is nothing stated in the notification that the said condition can be condoned even if the respondent does not have the required certificate and have furnished only an office memorandum issued by the M.N.R.E. We therefore find that the order passed by the Commissioner (Appeals) is not legal and proper. The direction to remand the matter so as to recall and reassess the bills of entry cannot therefore sustain. The impugned order is set aside. The order passed by the original authority is restored. The appeal filed by the Department is allowed.

