(2014) 01 CESTAT CK 0009

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal Nos. 3134 Of 2012

?M/s. Cheema Spintex Ltd APPELLANT

Vs

Commissioner (Customs), New Delhi RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:
Customs Act, 1962 — Section 149

Citation : (2014) 01 CESTAT CK 0009

Hon'ble Judges : Archana Wadhwa, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Vickrant Kackaria, B.B. Sharma

Final Decision : Allowed

Judgement

1. The appellant is an exporter and filed 91 Shipping Bills for export of combed hosiery yarn on cone on a total f.o.b. value of Rs.19.61 crores approximately. The said shipping bills were filed under Duty Drawback scheme.

2. However, before filing such shipping bills under duty drawback scheme, the appellant had addressed a letter dated 25.11.2008 to the Revenue officer indicating that the DEPB rate on the yarn stands raised from 3.67% to 7.67% vide public Notice No.102(RE-2008)/2004-09, dated 05.11.2008. However, as the EDI system at the time of export was not accepting the higher rate of duty, the appellants were filing shipping bills under duty drawback scheme at the rate of 4% "under protest" and they would make a request for conversion of the duty drawback shipping bills to DEPB shipping bills at the relevant time. Accordingly, after the completion of exports on 08.04.2009, the appellant vide their letter dated 08.02.2010 submitted an application seeking such conversion from duty drawback scheme to DEPB Scheme with a claim of export incentive at the rate of 7.67%. The said request of the appellant stands denied by the Commissioner and hence the present appeal.

3. After hearing both the sides and on going through the impugned order, we find

that there is not much dispute on facts. Admittedly, before undertaking the exports, the appellant had intimated the Revenue the reasons for filing the shipping bills under duty drawbore Scheme and reserving their right to claim for conversion at the relevant subsequent period. The Commissioner has observed in the said order that the appellant's request falls under the purview of Section 149 of the Customs Act, 1962. However, he has referred to Circular No.4/2004- Cus, dated 16.01.2004 issued by the Board and has observed that such conversion should not be ordinarily allowed from one scheme to another. He has also referred to a public Notice No.102/RE-2008 (2004-09), dated 05.11.2008, vide which the rates were enhanced from 3.67% to 7.67% and has observed that there was no delay in the EDI System as the amendments to the rates of DEPB was done by DGFT only on 29.05.2009.

4. However, we do not find any force in the above contention of the Revenue. There cannot be any dispute on the law that conversion of shipping bills from one export promotion to another export promotion should not be ordinarily allowed. As such, the question required to be decided in the present appeal is to whether such conversion request made by the appellant is justified or not.

5. It is seen that prior to the export itself, the appellant had intimated the Revenue about their interest in export under DEPB scheme and non-acceptance of the request of higher rate by the EDI system. The Commissioner has observed that the appellant could have done the manual amendments for claiming the benefit of DEPB higher rate. However, it is not understood as to when the appellant has clearly intimated the Revenue about their intention to avail DEPB benefit and the fact of non-acceptance by EDI system, why the Revenue did not guide the appellant to do the changes by a manual process. The observations of the Commissioner that the exporter on their own had opted for the duty drawback scheme at the rate of 4% incentive, cannot be appreciated in as much as the exporter had, prior to the exports intimated the Revenue about filing of shipping bills under protest and to subsequently claim their conversion under DEPB scheme.

6. In view of the above, we set aside the impugned order and hold that the appellant's request for conversion from duty drawback to DEPB scheme shipping bills is proper and fair and the same is accordingly allowed with the consequential relief to the appellant.