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(2015) 10 CESTAT CK 0015

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 46 Of 2010

M/s. Continental Construction Ltd. — APPELLANT

Vs

C.C., New Delhi — RESPONDENT

Date of Decision : 21-10-2015

Acts Referred:

Citation : (2015) 10 CESTAT CK 0015

Hon'ble Judges : Ashok Jindal, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Prem Ranjan Kumar, M.R. Sharma

Final Decision : Dismissed

Judgement

1. Appeal has been filed against Order-in-Appeal dated 30.10.2009 which upheld the Order-in-Original dated 11.08.2009 in terms of which the

appellant's refund claim for Rs.2,88,51,903/- was rejected.

2. The facts of the case are as under:-

The appellant filed a refund claim for refund of the customs duty paid on the construction materials and spare parts used in setting up of Mega Power

Project on the ground that it was eligible for nil rate of duty applicable to the said project. It had imported the said materials at concessional rate of

duty under Project Import (Registration No.06/2003, dated 01.01.2003 and 07/2003, dated 30.10.2003) during the period from 31.01.2002 to

22.01.2004. It claimed and was allowed the benefit of concessional rate of duty under project import as applicable under Notification No.21/2002

[S.No.399 (iv)] and it, accordingly, paid the applicable duties of customs. At the time of filing of Bills of Entry, the appellant did not claim the benefit of

nil rate of duty under Notification No.21/2202 (S.No.400), dated 01.03.2002, nor

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did it produce the requisite documents/certificates required for being

eligible for the said benefit. The Bills of Entry were thus finally assessed allowing the benefit claimed by the appellant under project import in terms of

Notification No.21/2002 [S.No.399 (iv)], dated 01.03.2002. Therefore, the refund claim filed on the ground that as per Notification No.21/2002

(Sr.No.400) it was eligible for nil rate of duty was rejected by the concerned Asst. Commissioner on the ground that the appellant had not sought the

reassessment of the relevant Bills of Entry, citing judgements of Hon'ble Supreme Court in the cases of C.C. Vs. Â M/s. Flock (India) Pvt. Ltd. [2000

(120) EKT 285 (SC)] and Priya Blue Vs. CC (Prev.) [2004 (172) ELT 145 (SC)].

3. The appellant has contended that (i) the Bills of Entry categorically mentioned that the goods were imported for power generation project under

project imports and also mentioned Notification No.21/2002 but it wrongly mentioned serial number is 399 (iv) (instead of 400) of the Notification. (ii)

The Order-in-Original clearly states that the imports were duly registered under project import and therefore the assessing authority should have

assessed the Bills of Entry provisionally. (c) It cited judgements of Bombay High Court in the case ofH ero Cycles Ltd. Vs. Union of India [2009

(240) ELT 490 (Born.)] and Delhi High Court in the case of Aman Medical Products Ltd. Vs. CC, Delhi [2010 (250) ELT 030 (Del.)] in support of its

contention

4. Ld. Departmental Representative, on the other hand stated, that judgements of Bombay High Court and Delhi High Court cited by the appellant are

not applicable because in this case duty was not paid under ignorance of law or by mistake and that at the relevant time the appellant was not entitled

to the benefit of nil duty under serial No.400 of Notification No.21/2002-Gus as it did not satisfy the requisite conditions.

5. We have considered the contentions of both sides. We find that in the present case, the appellant itself claimed benefit of Notification No.21/2002

[serial No.399 (iv)] which was granted. It did not seek the benefit of the said Notification No.21/2002 (serial No.400) because at that time it did not

satisfy the conditions required for extending the benefit of the said Notification No.21/2002 (serial No.400) as has also been noted by Commissioner

(Appeals) in the impugned order that at the time of assessment of Bills of Entry the appellant did not claim benefit of Notification No.21/2002

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(Sr.No.400) nor did it produce the requisite documents/ certificates required for claiming benefit under Notification No.21/2002 (serial No.400). Thus,

it is obvious that contrary to what has been claimed by the appellant, at the time of assessment of Bills of Entry, it was entitled to the benefit of the

said Notification pertaining to serial No.399 (iv) which it claimed and was not entitled to the benefit of serial No.400 of Notification No.21/2002 which

it did not claim (nor could it have claimed) as it did not possess the requisite certificates/ documents. The judgements of Bombay High Court in the

case of Hero Cycles Ltd. Vs. Union of India (supra) and Delhi High Court in the case of Aman Medical Products Ltd. Vs. CC, Delhi (supra) are

clearly not applicable to the present case, because in those cases duty was paid due to ignorance. Indeed, in the circumstances of this case, the

judgements of Supreme Court in the cases of C.C. Vs. M/s. Flock (India) Pvt. Ltd. [2000 (120) EKT 285 (SC)] and Priya Blue Vs. CC (Prev.)

(supra) are squarely applicable and the appellant cannot be granted refund as it did not seek reassessment of Bills of Entry which were finally

assessed at the time of clearance of goods.

6. In the light of the foregoing, we do not find any infirmity in the impugned order. The appeal is therefore dismissed.

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