(2024) 04 CESTAT CK 0001

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.42176, 42177 Of 2014

M/s. Monotech Systems Ltd — APPELLANT

Vs

Commissioner Of Customs (Airport & Cargo) — RESPONDENT

Date of Decision : 01-04-2024

Acts Referred:

Citation : (2024) 04 CESTAT CK 0001

Hon'ble Judges : Sulekha Beevi.C.S., Member (J)

Bench : Single Bench

Advocate : Rithika. A, N. Sathyanarayanan

Final Decision : Allowed

Judgement

Sulekha Beevi.C.S., Member (J)

1. Brief facts are that the appellants filed refund claims under Customs Notification No.102/2007-Cus. as amended vide Notification No.93/2008 for refund of Special Additional Duty of Customs paid by them at the time of import of goods. The original authority sanctioned a part of the refund claim. The claim of the appellant for refund of amounts with respect to two Bills of Entry dt. 29.03.2013 was rejected observing that though the appellant has produced invoices and Chartered Accountant certificate stating that the goods described in the invoices correlate with the goods imported, on perusal of the date of invoices as well as the date of Bill of Entry, it was noted that it is not possible that goods were sold on the same date. Aggrieved by the rejection of refund, the appellant filed appeals before the Commissioner (Appeals) who upheld the orders. Hence these appeals.

2. The Learned Counsel, Ms. Rithika appeared and argued for the appellant. It is submitted by the Ld. Counsel that the department has rejected the refund claims on assumptions and presumptions. The Hyderabad Branch of the appellant had placed order for import of the goods through Chennai Airport. The appellant has branch at Chennai also and the goods were assigned to be transported from

Chennai to the Customer at Sivakasi, Tamil Nadu. The Department has presumed that the goods having been imported by their Hyderabad Branch has to travel upto Hyderabad and then come to Sivakasi for delivery. The appellant had furnished consignment notes for carriage of the goods by lorry. This would show that the goods have been transported from Chennai to Sivakasi. Merely because their branch at Hyderabad had placed the order for the import of goods, it cannot be said that the goods have to first travel upto to Hyderabad and then be delivered to the customer in Sivakasi, Tamil Nadu. The appellant has furnished the Chartered Accountant certificate which would establish the correlation of the goods imported as well as the goods sold by the invoices. It is therefore prayed that the appeals may be allowed.

3. The Ld. A.R Shri N. Sathyanarayanan appeared for the Department. The findings in the impugned order were reiterated.

4. Heard both sides.

5. The issue to be considered is whether the rejection of the refund claims alleging that the goods described in the Bills of Entry are not the goods which have been sold as per invoices produced by the appellant is legal and proper.

6. The finding by the original authority vide OIO No.188/2014 dt 10.3.2014 to reject the refund claim is that the goods have been imported by Bill of Entry dt. 29.03.2013 and out of charge has been given on 30.03.2013. The invoices are also dated 30.03.2013. It is the case of the Department that the importer being at Hyderabad, it is impossible for the goods to travel to Hyderabad and then be delivered to the customer at Sivakasi on the same date itself. Thus, it is presumed by the department that the goods sold vide impugned invoice Nos.157 & 158/2013 are not the goods which have been imported by the appellant and it has suffered 4% Special Additional Duty. On perusal of the consignment notes placed in the appeal paper book, it is seen that the appellant has a branch at Chennai. The consignor's name is mentioned as Appellant's Chennai address and the consignee name is the buyer at Sivakasi. The goods have been imported by appellant's Hyderabad Branch. Merely because the goods have been imported by the Hyderabad Branch, it cannot be said that the goods have to travel upto Hyderabad before being delivered to the customer at Sivakasi. The discussion by the original authority in para-4 in Order-in-Original No.188/2014 dt. 10.03.2014 is erroneous and without any logic. The relevant para is reproduced as under :

"4……..However, on scrutiny of such sales invoices, it is noticed in case of Invoice No.0158 dated 30.03.2013 covering inter alia, the sales of 1 No. Basys Print UV Setter 860X configuration 861X imported under the Bill of Entry No.9710406 dated 29.03.2013 to M/s.Sri Poornakala Cine Printers, Sivakasi on 30.03.2013 that out of charge was given on 3003.2013 and hence the goods were cleared only on 30.03.2013 and the importers' address, as is seen from the Bill of Entry is at Hyderabad. Therefore, it is highly unlikely that the goods imported under the said Bill of Entry could have reached Hyderabad on the same day and the again sold to the said buyer at Sivakasi on the same day."

7. From the above, it is seen that the original authority has misconceived that since the goods have been imported by appellant's Branch at Hyderabad, the goods have to travel upto Hyderabad and then be delivered to the customer at Sivakasi. A person who is in Mumbai, Hyderabad or any other place in India can import goods at Chennai port. It is not necessary that the goods have to come back to the said customer at Mumbai or Hyderabad and then be delivered to the customer to whom the goods are to be sold. The importer can make arrangements to deliver the goods to the customer from the port itself. This being so, the assumption made by the original authority that it is impossible for the goods to travel upto Hyderabad and then be delivered to the buyer at Sivakasi, is highly erroneous. The invoices are raised by the importer appellant which is the Hyderabad Branch. I find that the rejection of refund claims is without any factual basis. The impugned order to the extent of rejecting the refund claims in respect of two Bills of Entry and the invoice Nos.157 & 158/2013 requires to be set aside.

8. In the result, the impugned order is set aside. Appeals are allowed with consequential reliefs, if any.

