(2023) 12 CESTAT CK 0054

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 42308 Of 2013

M/S. Sanghi Spinners India Limited — APPELLANT

Vs

Commissioner Of Customs — RESPONDENT

Date of Decision : 20-12-2023

Acts Referred:

Citation : (2023) 12 CESTAT CK 0054

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

Bench : Division Bench

Advocate : ?Yogesh Srinivasan, Anoop Singh

Final Decision : Allowed

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that the appellant filed Bill of Entry dated 15.06.2011 declaring the goods as 100% 'Polyester Staple Fibre recycle' and classified the same under CTH 55051090 paying CVD at the rate of 10% in addition to other duties. Later, they filed application for the reassessment on the ground that the goods being 'Recycle PSF' they are eligible for the benefit of the Notification No. 30/2004-CE dated 09.07.2004 by which they are not required to pay the CVD. The appellant requested for re-assessment and also applied for consequent refund of CVD paid by them. After due process of law, the Commissioner (Appeals) vide impugned order dated 08.08.2013 upheld the assessment and rejected the claim of the appellant for benefit of Notification No. 30/2004-CE dated 09.07.2004. The refund also was rejected holding that the goods are classifiable under CTH 55032000 and that the appellant is not eligible for the benefit of Notification. Aggrieved by such order, the appellant is now before the Tribunal.

2. The Ld. counsel Shri Yogesh Srinivasan appeared and argued for the appellant. It is submitted by him that at present the appellant is giving up the contest on the classification as well as the claim of benefit of Notification No. 30/2004-CE

dated 09.07.2004. Later, Notification No. 12/2012-CE dated 17.03.2012 was issued. At Sl.No. 172A all goods falling under CTH 54 or 55 is eligible for the benefit of the Notification. This Notification exempted subject goods from excise duty. Subsequently, Finance (No. 2) Act, 2014 introduced retrospective amendments to Notification the Notification No. 5/2006-CE dated 01.03.2006 vide 5th schedule of the said Finance Act, 2014, wherein it was stated that for the period between 29th June 2010 and 16th March 2012, the subject goods viz., made from plastic waste attracted nil rate of central excise duty. It is submitted that the imports took place during 2011 and since the Notification is retrospectively applicable, the appellant would be eligible for the benefit of this Notification. In the case of M/s. Khodiar Fibrefill Vs. Commissioner of Central Excise and Service Tax, Surat [2015 (329) ELT 534 (Tri. Ahmd.)] and the in the case of M/s. Shiva Texfabs Ltd. Vs. Commissioner of Central Excise, Chandigarh [2015 (315) ELT 83 (Tri. Del)], the exemption applicable retrospectively by above Notification No. 12/2012 was considered by the Tribunal. The Ld. counsel prayed that the appeal may be allowed.

3.1 The Ld. Authorised Representative Shri Anoop Singh appeared and argued for the Department. It is submitted that there are discrepancies with regard to the quantity and value of the goods when compared to the purchase order, the invoice as well as the Bill of Entry. The appellant themselves have classified the goods under CTH 5503 in the Bills of Entry. There appears to be no correlation between the purchase order and invoice in terms of quantity and value. Further, there is no correlation between invoice and the details of the Bills of Entry in terms of invoice raised. The goods have already been addressed, registered and examined in the presence of the CHA and later have been cleared for home consumption. The goods are no longer available for examination as to the nature whether they are manufactured from waste or not. The appellant have not paid the duty under protest and not being a case of provisional assessment appellant is not eligible for refund. Though the importer alleges that the Polyester Staple Fibre imported by them was manufactured by recycling of pet waste and therefore to be classified under CTH 55051090, the manufacturing process by which PET Flakes was used was never informed to the assessment officer or before out-of-charge was granted to the appellant. Thus, the contention that the goods are manufactured out of waste appears to be an afterthought. Any reassessment done can be based only on the documentary evidence available at the time of import and clearance. The Notification No. 30/2004-CE dated 09.07.2004 itself shows that only if the goods fall under CTH 5504 or 5505 these are eligible for the benefit of Notification. The goods are correctly classifiable under CTH 5503.

3.2 In regard to the contentions raised by the appellant on the eligibility of the Notification No. 12/2012, it is submitted by the Ld. Authorised Representative that the same requires to be verified as a new plea has been raised at the appellate stage. It is prayed that the appeal may be dismissed.

4. Heard both sides.

5. The main issue that was considered by the Commissioner (Appeals) was the classification of the imported goods namely PSF recycle and whether it would fall under CTH 55051090 as adopted by the appellant or whether to be classified under CTH 55032000 as contended by the Department. The appellant has however, now given up the contention with regard to the classification. It is submitted by the appellant that even if the goods fall under CTH 5505, they would be eligible for the benefit of concessional rate of CVD as per Notification No. 12/2012 dated 17.03.2012. We also note that the appellant has declared the goods as Polyester Staple Fibre recycled which indicate that the goods are manufactured from waste. However, the plea of the appellant whether they are eligible for Notification No. 12/2012-CE dated 17.03.2012 has to be verified. We therefore are of the considered opinion that the matter can be remanded to the original authority who is directed to verify whether the appellant is eligible for the benefit of Notification No. 12/2012 dated 17.03.2012. The original authority shall also consider the decisions relied upon by the appellant which have considered the very same issue and noted the retrospective application of Notification No. 12/2012.

6. In the result, the impugned order is set aside. The appeal is allowed by way of remand to the adjudicating authority.

