(2014) 01 CESTAT CK 0002

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 182, 200 Of 2009

?M/s. Shiva Alloys Pvt. Ltd. APPELLANT

Vs

CC (ICD) New Delhi RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Citation : (2014) 01 CESTAT CK 0002

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

Bench : Division Bench

Advocate : R. Puri

Final Decision : Allowed

Judgement

1. Nobody appeared for the appellant we have accordingly heard learned DR and have gone through the impugned orders.

2. The appellants imported three consignments of Electrolytic Manganese Metal and filed three bills of entries. The declared value was enhanced by the custom authorities and the appellant cleared the goods on payment of duty at the enchanced value.

3. Subsequently enchanced value was challenged before the Commissioner (Appeals), who set aside the same vide his order dated 25.03.2008 and allow the appeal. As a consequence the appellant became entitled to refund of duty paid in excess to the time of Rs.69,717/- and Rs.87,882/-.

4. It is seen that the said refund claim stands rejected on the ground of non-submission of original documents as also on the ground of unjust enrichment. While rejecting the appeal, Commissioner (Appeals) has observed that the imported goods have been used by the appellant in the further manufacture of ingots. In terms of the decision of the Hon'ble Supreme Court in the case of M/s. Solar Pesticide Pvt. Ltd., the provisions of unjust enrichment get attracted and it is for the assessee to prove that the excess duty paid at the time of import of the

goods, was not recovered by them from their customers.

6. We find that legal issue stand settled by the declaration of law by the Hon'ble Supreme Court in the case of Solar Pesticides. However, the assessee is within his rights to establish that the excess duty was not recovered by him from the customers of the final product i.e. ingots, in the manufacture of which such imported goods were used. As such, we deem it fit to set aside the impugned order and remand the matter to original adjudicating authority for examining the unjust enrichment angle, after affording a reasonable opportunity to the assessee. The issue of non filing of original documents in support of refund claim, would also be looked into by the original adjudicating authority. Both the appeals are disposed of in above terms.

(Pronounce in the open Court)

