(2024) 04 CESTAT CK 0055

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.40758 Of 2014

M/s. Sri Krishna Alloys — APPELLANT

Vs

Commissioner of Customs (Imports) — RESPONDENT

Date of Decision : 29-04-2024

Acts Referred:

Citation : (2024) 04 CESTAT CK 0055

Hon'ble Judges : P. Dinesha, Member (J);M. Ajit Kumar, Member (T)

Bench : Division Bench

Advocate : M.A. Mudimannan, N. Satyanarayanan

Final Decision : Allowed

Judgement

P. Dinesha, Member (J)

1. Facts as could be gathered from the Order in Appeal are that the appellant filed a Bill of Entry upon import, declaring the goods as heavy melting scrap, classifying the same under CTH 720449000, thereby availing the benefit of Notification No.21/2002 dated 01.03.2002, Sl. No. 300, under which the basic customs duty was 0%. It appears that the above Bill of Entry was sent for first check/verification and thereafter, the said goods were also inspected by the officers of National Metallurgical Laboratory who appears to have given their report. The appellant had declared the value of the goods in question which came to be accepted at US $465 for re-rollable scrap whereas, in the respect of the offending goods, the value was worked out without accepting the declared value. Consequently, differential duty was also worked out which was demanded from the appellant.

2. Feeling aggrieved by the above demand on inter alia grounds that there was neither under-valuation nor mis-declaration of goods, it appears that the appellant filed an appeal before the first appellate authority and the first appellate authority vide impugned Order-in-Appeal C. Cus. No. 346/2014 dated 25.2.2014 has dismissed the appeal without giving them an opportunity to be

heard against which, the present appeal has been filed before this forum.

3. Heard Shri M.A. Mudimanna, learned Advocate for the appellant and Shri N. Satyanarayanan, learned Assistant Commissioner for the respondent-Department, we have also perused the orders of lower authorities.

From a perusal of the impugned Order in Appeal, we find at the threshold that the same is unacceptable since the order has been passed without hearing the appellant. Clearly, the same is in serious violation of the principles of natural justice. The first appellate authority having observed from the recording of the personal hearing by his predecessor, thought it sufficient and proceeded after taking charge, without bothering to afford an opportunity of being heard. The legal principle of 'audi alteram partem' is not an empty formality. They are intended to invest law with fairness and prevent miscarriage of justice. Hence, without going into the merits of the case, we deem it appropriate to set aside the impugned order and remit the case back to the file of the appellate authority, who shall pass a de-novo Order in Appeal after hearing the appellant. It goes without saying that the Commissioner (Appeals) shall pass a speaking order after hearing the appellant or its representative, in accordance with law. All the issues/ contentions are left open.

4. Resultantly, the impugned order is set aside and the appeal is allowed by way of remand to the first appellate authority in the above terms.

