(2014) 09 CESTAT CK 0009

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 56297 Of 2013

M/s Talbro Forgings APPELLANT

Vs

CC, New Delhi RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Citation : (2014) 09 CESTAT CK 0009

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

Bench : Division Bench

Advocate : Sudhir Malhotra, Amresh Jain

Final Decision : Allowed

Judgement

1. The facts leading to filing of this appeal are, in brief, as under.

1.1 The appellant had exported a consignment of alloy steel spanners. Some of the alloy steel spanners exported were returned by the foreign buyers

for the purpose of repairs. The goods were re-imported in 4th week of November 2011 and bill of entry 5459642 dated 14/12/11 was filed at ICD,

Patparganj for their clearance. Duty free import of the goods for repair and re-export was claimed under Notification Ne. 158/95-CUS in terms of

which duty free re-import of the goods earlier exported for repair/re-conditioning and re-export is permitted subject to conditions that -

(a) such re-importation take place within three years from the date of export ;

(b) the goods are re-exported within six months of the date of re-import or within such extended period not exceeding further period of six months

allowed by the Commissioner ;

(c) The Assistant Commissioner is satisfied as regards the identity of the goods; and

(d) The importer at the time of importation executes a bond undertaking to re-export of the goods after repair/re-conditioning and pay on demand in

the event of failure to re-export, an amount equal to the difference between the duty levied at the time of re-import and the duty leviable on such

goods at the time of re-importation but for exemption.

1.2 The appellant in respect of the goods re-imported for repairs furnished the required bond backed by the bank guarantee and also there is no

dispute about the identity. But still, the goods were finally cleared by the customs on 07/04/12. Since the appellant could not complete repair/re-

conditioning within period of six months from the date of re-import, they on 4th October 2012 submitted an application to the customs for extending the

period of re-export by another six months, but it appears that no decision was taken on their application for extension of period for re-export.

1.3 The goods were presented for re-export on 27/11/12 in terms of the Notification No. 158/95-CUS and at this stage, the Department objected that

the goods have not been re-exported within the stipulated period of six months and further extension of six months has not been granted by the

Commissioner. Accordingly, on this basis, the Assistant Commissioner vide order-in-original dated 18/1/13 denied the exemption under Notification

No. 158/95-CUS and ordered for assessment of duty on the re-imported goods. He in this order observed that the appellant for the first time vide their

letter dated 04/10/12 and thereafter on 27 /12/ 12 had requested for extension of six months for re-export, that both the request, were made after the

expiry of six months from the date of import and the further period of six months has also expired on 23/11/12 and that in view of this, their request;

for extension of period for further six months have no relevance, as the Competent Authority i.e. Commissioner of Customs did not consider it.

1.4 On appeal being filed to Commissioner (Appeals) against this order, the Commissioner (Appeals) vide order-in-appeal dated 24/01/13 while

ordering the re-export of the goods decided not to interfere with the Assistant Commissioner's order regarding levy of duty at the time of re-import, on

the ground that the goods were not re-exported within the period stipulated in the notification. Against this order of the Commissioner (Appeals), this

appeal has been filed.

2. Heard both the sides.

3. Shri Sudhir Malhotra, Advocate, the learned Counsel for the appellant, pleaded that the goods had been re-imported sometime towards end of

November 2011 and the bill of entry for the clearance of the goods was filed on 14/12/11, that though the appellant had submitted the re-export bond

for an amount of Rs.6,17,448/- backed by a bank guarantee for the same amount and there was no dispute about the identity of the goods, still the

goods were cleared out of custom charge on 07 /04/12, that though the appellant had furnished the bond and bank guarantee on 21/1/12 it is the

Customs which delayed the clearance of the) goods, that though the appellant under their letter dated 04/10/12 had requested for extension of the

period by another six months for re-export of the goods, absolutely no decision was taken by the Commissioner and therefore it is the Customs

Department which is to be blamed, that the appellant had presented the goods for re-export on 27/11/12, that is, within a period of one year from their

importand it is the Customs Department which did not permit the re-export on the ground that the six months period for re-export has not been

extended by the Commissioner, that though the Commissioner (Appeals) has permitted the re-exported, in the circumstances of the case, the benefit

of exemption Notification No. 158/95-CUS dated 14/11/95 cannot be denied, as the goods had been presented for re-export on 27 /11/12 and if the

extension had been granted by the Commissioner in time, the re-export would have been completed within a period of one years. He, therefore,

pleaded that the impugned order upholding the denial of exemption Notification No. 158/95-CUS dated 14/11/95 is not correct.

4. Shri Amresh Jain, the learned Departmental Representative, defending the impugned order by reiterating the findings of the Commissioner

(Appeals) pleaded that since the date of IGM is 24/11/11, it is this date which is to be treated as the date of importation of the goods and since the

goods were presented for re-export on 27 /11/12, in any case the re-export) has been made after the expiry of one year and, therefore, the appellant

would not be eligible for the exemption Notification No. 158/95-CUS. He also pleaded that since the Commissioner had not granted extension, the

appellant were required to re-export by 23/05/12, while the goods were presented for export on 27/11/12. He, therefore, pleaded that there is no

infirmity in the impugned order.

5. We have considered the submissions from both the sides and perused the records.

6. In this case a consignment of alloy steel spanners had been exported out of India and some of these spanners were returned back by foreign buyer

for repair/re-conditioning and return. It is on this basis that the goods were re-imported and for their clearance the bill of entry No. 5459642 dated

14/12/11 claiming duty free clearance under exemption Notification No. 158/95-CUS dated 14/11/95 was filed. From the records it is also seen that as

per the conditions of the notification, the necessary bond for re- export for an amount of Rs.6,17,448/-, backed by the bank guarantee for the same

amount, has been furnished on 21/1/12 and there is also no dispute about the identity of the goods. Still for some inexplicable reasons, the goods were

cleared out of customs charge only on 07/04/12. Thus, the goods which should have been cleared for repair and re-export by the end of January 2012

were cleared in first week of April, 2012. Though the appellant on 04/10/12 had applied for extension of the period by another six months, it is seen

that absolutely no decision was taken by the Customs. Since, the bill of entry has been filed on 14/12/11 and the goods had been presented to the

customs for re-export on 27/11/12, in our view the goods should be treated as having been exported within a period of one year and the benefit of

notification should be extended, as the notification stipulates the re-export within a period of six months period which can be further extended by the

Commissioner by another six months and just because the Commissioner in this case has chosen just to sit over the appellant's request for extension

and not take any decision, the benefit of the exemption cannot be denied to the appellant on the ground that they failed to re-export within the

extended period in terms of the notification. The another plea of the Department is that it is the date of IGM - dated 24/11/11 which has to be treated

as the date of import. In our view their plea is not acceptable, as the IGMs can be filed under prior entry system even before the arrival of the vessel

and, therefore, the date of !GM cannot be treated as the date of import. It is the date on which the entry inward is granted which has to be treated as

date of import which in this case is not I known.

7. In view of the above discussion, the impugned order denying the exemption is not sustainable. The same is set aside. The appeal is allowed.

(Operative part of the order pronounced in the open court.)