(2015) 12 CESTAT CK 0021

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 553 Of 2010

M/s. Teletube Electronics Ltd. APPELLANT

Vs

Commissioner Of Customs New Delhi RESPONDENT

Date of Decision : 30-12-2015

Acts Referred:

Citation : (2015) 12 CESTAT CK 0021

Hon'ble Judges : G. Raghuram, J;B. Ravichandran, Technical Member

Bench : Division Bench

Advocate : Priyadarshi Manish, Anjali Manish, Ranjan Khanna

Final Decision : Allowed

Judgement

1. This appeal is against order dated 30.6.2010 of Commissioner of Customs, ICD, TKD, New Delhi. The appellant is an EOU and exported about

8000 pieces of monochrome monitor tubes. 250 of such pieces exported were rejected by the foreign buyers due to technical defects. The appellant

re-imported the said rejected tubes for repair. The said goods were cleared under Bill of Entry No.455414 dated 2.12.2006. The appellant claimed

exemption from Customs duty in terms of notification No.158/95Cus dated 14.11.1995. One of the conditions of the notification is that the goods

should be re-exported within six months of date re-importation. Proceedings were initiated against the appellant for failure to fulfill this condition in

respect of 178 pieces of picture tubes. The learned Commissioner vide the impugned order confirmed the demand of Customs duty of Rs.24,20,800/-

and ordered appropriation said amount from the Bank guarantee provided by the appellant at the time of re-import of defective items.

2. Learned Counsel for the appellant submitted that all the re-imported goods

have been re-exported out of country. The appellant being an EOU, is

governed by the exemption under notification No.52/2003 Cus dated 31.3.2003. He specifically submitted that the said notification is squarely

applicable to the facts of the present case. The only reason for denial of benefit by the Commissioner under the said notification is that they have not

opted for the same, instead claimed exemption under notification No.158/95 Cus. Dated 14.11.1995. The learned Counsel pleaded that they have

executed a B-17 Bond, all the goods imported by them are duly entered in their records and duty liability are debited in Bond account. All the

conditions stipulated in the said notification No.52/2003 have been fulfilled by them. He further submitted that the Hon'ble Supreme Court inS hare

Medical care vs. Union of India [(2007) 4 SCC 573] held that if an applicant does not claim benefit under a particular notification at the initial stage, he

is not debarred, prohibited or astopped from claiming such benefit at a later stage.

3. Learned AR reiterated the findings of the original authority. He submitted that at the time of re-import of defective items, the appellant having opted

for a particular exemption notification, has to abide by the conditions stipulated therein. The Bond with bank guarantee has also been furnished by the

appellant to fulfill such conditions. Having failed to re-export the goods within 6 months the appellant has to discharge the duty liability. The learned

AR further submitted that it is not open to the appellant to opt for another exemption notification after a gap of many years as this deprives the

department to stipulate and monitor the conditionalities of such exemption at the time of re-import.

4. We have heard both the sides and examined appeal records. The admitted facts of the case are that the appellant is operating as EOU; executed

necessary general bond and following required procedures under the scheme. While re-importing 200 pieces of tubes they have filed the Bill of entry

and undertaken to follow the conditions for claiming exemption under notification No.158/95. Out of these goods 178 pieces could not be re-exported

within 6 months, though they were later exported. The duty liability arose on such delay in re-export. We find that as EOU the appellant is eligible for

duty free import which includes goods re-imported within three years from the date of exportation for repair or reconditioning. They have a general

B17 Bond for binding themselves for due exportations of goods. While it is necessary for appellant to claim a particular exemption notification and to

follow the conditionalities, in the present case, we find that the impugned re-import will fall even in the general duty-free import allowed for EOU

under notification No.52/2003. Admittedly, all the conditions for such exemption have been satisfied by the appellant. Considering the facts of the

present case, we find that appellant cannot be denied such exemption only on the ground that they claimed and followed another exemption

notification. The Hon'ble Supreme Court's decision in Share Medical Care (supra) is applicable to this case also. The re-imported goods have been re-

exported out of country. The eligibility of the appellant for exemption under notification No.52/2003 has not been contested on any ground other than

that they have not opted for the same.

5. Considering the above factual position, we find the demand of customs duty in the present case is not sustainable. Accordingly, we allow the appeal

with consequential benefit, if any.

(operative part of the order pronounced in the open court)

