(2024) 03 CESTAT CK 0037

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.42167 Of 2014

M/s.Jain Brothers International — APPELLANT

Vs

Commissioner Of Customs (Seaport-Export) — RESPONDENT

Date of Decision : 21-03-2024

Acts Referred:

Citation : (2024) 03 CESTAT CK 0037

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

Bench : Division Bench

Advocate : R. Alwan, M. Ambe

Final Decision : Allowed

Judgement

Sulekha Beevi.C.S., Member (J)

1. Brief facts are that the appellant filed refund claim under Notification No.102/2007-Cus. dt. 14.09.2007 for refund of Special Additional Duty in respect of the goods imported by them. The original authority sanctioned the refund in respect of various Bills of Entry after examining the documents produced by the appellant. After sanctioning the refund, the matter was taken up by the Review Cell of the Department and it was noted that the Chartered Accountant certificate produced by the appellant was not proper. The said certificate was for the period 2011-12 whereas the disputed period was 2010-12. The department therefore filed an appeal before the Commissioner (Appeals) who vide order impugned herein set aside the sanction of refund and gave liberty to the department to proceed for recovery of the same. Aggrieved by such order, the appellant is now before the Tribunal.

2. The Ld. Counsel Shri R. Alwan appeared and argued for the appellant. It is submitted that the Special Additional Duty was paid in respect of six Bills of Entry for the periods 2010-11 and 2011-12. The Chartered Accountant has certified that each Bill of Entry correlated with the VAT invoices issued by the appellant.

The certificate regarding the same was produced by the appellant along with correlation statement. However, in the certificate issued by the Chartered Accountant it was erroneously mentioned that the books of accounts for the period 2011-12 was verified instead of mentioning that the accounts for the years 2010-11 and 2011-12 were verified. Subsequently, the Chartered Accountant has issued a certificate clarifying that it was a mistake and that the said C.A. has verified the books of accounts for the years 2010-11 also. This document was also produced before the department, but not considered at all. The Ld. Counsel prayed that the appeal may be allowed.

3. Ld. A.R Sri M. Ambe appeared and argued for the Department. It is submitted that the Chartered Accountant certificate is not in correlation with the Bills of Entry for the period 2010-11 and therefore the Commissioner (Appeals) has correctly set aside the sanction of refund. It is prayed that the appeal may be dismissed.

4. Heard both sides.

5. On perusal of the order passed by the adjudicating authority, it is seen that the entire documents have been examined by the adjudicating authority. The appellant has produced the C.A certificate as well as the correlation statement. All the six Bills of Entry along with sales invoices have been examined by the adjudicating authority. However, in the C.A certificate it has been noted that the books of accounts for the period 2011-12 has been verified. The periods of the Bills of Entry are from 2010-11 and 2011-12. The Chartered Accountant has subsequently issued certificate clarifying that the same was a mistake and he has verified the books of accounts for the period 2010-11 also. The correlation statement appended along with the certificate is very much clear and it is stated by the Chartered Accountant that appellant has issued invoices with endorsement that ?No credit of the Additional duty of Customs shall be admissible?. The error in certificate has been rectified. Taking note of these facts, we find that it is only an inadvertent mistake on the part of the Chartered Accountant while mentioning the year as 2011-12. For these reasons, we find that the rejection of the refund cannot be sustained. We hold that the appellant is eligible for refund. The impugned order is set aside. The appeal is allowed with consequential relief, if any.