(2021) 03 CESTAT CK 0101

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 60012 Of 2019

M/s.OM Udyog APPELLANT

Vs

CC, Ludhiana RESPONDENT

Date of Decision : 03-03-2021

Acts Referred:

Citation : (2021) 03 CESTAT CK 0101

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Advocate : Saurabh Kapoor, M.S. Dhindsa

Final Decision : Allowed

Judgement

1. The appellant is in appeal against the impugned order wherein the refund claim of Rs.1,89,222/- filed under Notification No.102/2007-Cus dated 14.9.2007 by the appellant has been rejected on the ground that the imported goods were sold prior to issuance of out of charge order by the Customs.

2. Ld. Counsel for the appellant submits that the issue is squarely covered by the decision of this Tribunal in the case of Ashwin Corporation Vs. Commissioner of Customs, Ahmedabad -2017 (8) TMI 980 CESTAT-Ahmedabad wherein it has been held that the refund cannot be rejected merely on the ground that the imported goods were sold prior to issuance of out of charge order by the Customs.

3. On the other hand, Ld. AR reiterated the findings of the authorities below.

4. Heard the parties and considered the submissions.

5. The short issue involved in this case is whether the refund can be entertained under Notification No.102/2007-Cus dated 14.9.2007 in case where the imported goods were sold prior to issuance of out of charge order by the Customs or not?

6. The said issue has been settled in the case of Ashwin Corporation (supra)

wherein this Tribunal has held as under:-

"5. I find that the issue is covered by the decision of Tribunal in the case of Radius Infotech's case (supra). In similar circumstances, the Tribunal observed as follows:-

"5. On hearing both the sides and on perusal of the appeal records, it is clear that the refund of Rs.90,106/- was rejected only on the ground that the invoice dated 21.4.2013 is prior to the date of Bill of Entry. The Original Authority recorded that it is doubtful as to whether the same goods were sold, which were imported. On such doubt, the refund was rejected. On the other hand, the appellant submitted delivery challan and the other evidence along with the terms of agreement to establish that the issue of invoice 5 days before the release of the goods by the Customs by itself does not prove that the goods have been sold and delivered to the buyers, it is also seen that the appellant has filed reconciliation certificate with calculation sheet certified by Chartered Accountant containing details of Bills of Entry and sale invoices and payment of VAT/CST. Considering the factual position as explained above, I find that the rejection of refund for the reasons cited by the lower authority is not sustainable. Accordingly, the appeal is allowed."

7. As the issue has already been settled by this Tribunal in the Ashwin Corporation (supra), therefore, I hold that merely the goods were sold prior to issuance of out of charge order by the Customs, the refund cannot be rejected. Therefore, the impugned order deserves no merits quo rejection of refund claim of Rs.1,89,222/-, hence modified accordingly. In result, the appeal is allowed with consequential relief.

(dictated & pronounced in the open Court)

