(2021) 03 CESTAT CK 0082

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 40511 Of 2020

M/s.Sree Krishna Enterprises — APPELLANT

Vs

Commissioner Of Customs (Chennai-II) — RESPONDENT

Date of Decision : 29-03-2021

Acts Referred:

Citation : (2021) 03 CESTAT CK 0082

Hon'ble Judges : Sulekha Beevi C.S, J

Bench : Single Bench

Advocate : Y. Siri Reddy, S. Balakumar

Final Decision : Allowed

Judgement

1. Brief facts of the case are that appellant filed 2 refund claims of 4% SAD as per Notification No.102/2007-Cus. dated 14.9.2007. The refund claims were filed in 2017 and the same was rejected by the adjudicating authority on the ground that condition 2(b) of the notification has not been complied by the appellant. Against such order, the appellant filed appeals before Commissioner (Appeals) who upheld the order of adjudicating authority. Hence the appellant subsequently filed appeals before CESTAT. Vide Final Order No.43348-43349/2017 dt. 21.12.2017, the Tribunal allowed the appeals with consequential relief holding that appellant is eligible for refund. After passing the final order, the refund was sanctioned only on 10.06.2019 vide OIO No.69379/2019. However, no interest was granted to the appellant. Aggrieved by the denial of interest, the appellant filed appeal before the Commissioner (Appeals) who vide order impugned herein observed that appellant has not furnished sufficient documents for processing the refund claim. The necessary documents were filed only on 16.02.2019 and from such date the refund has been granted within 3 months and therefore no interest is liable to be paid to the appellant. Aggrieved by such order, appellant is now before the Tribunal.

2. On behalf of the appellant, Ld. Counsel Ms. Y. Siri Reddy appeared and argued

and matter. She submitted that even thought the Tribunal vide final order dt. 21.12.2017 had allowed the appeal with consequential relief the refund was not sanctioned to the appellant but appellant had sent a reminder letter on 24.01.2019. Later on 16.02.2019, the appellant had given clarification with regard to some typographical errors in the column with respect to quantity of goods sold as mentioned in the related invoices. This clarification is taken by the department as documents further submitted by the appellant to deny the claim. It is stressed by her that refund was not rejected for any reason of non-furnishing of relevant forms. The refund was rejected holding that appellant has not complied with condition No.2 (b) of notification. The department then cannot turnaround to say that appellant has not submitted necessary documents for processing the refund claim. She submitted that as per Section 27A interest has to be granted on the amount of refund, if not granted within 3 months from the date of filing of the refund claim. She relied upon the decision in the case of Shelf Drilling International Inc. Vs Union of India - 2016 (341) ELT 164 (Bom.) to support her argument. She prayed that appeal may be allowed.

3. Ld.A.R Shri S. Balakumar reiterated the findings in the impugned order.

4. On perusal of records and after hearing the submissions made by both sides, it is seen that refund claims were filed by the appellant in March 2014 and April 2014. The same has been sanctioned only on 10.06.2019. The department was always a party to the litigation before Commissioner (Appeals) as well as the Tribunal. When the matter was agitated by the appellant for denial of refund alleging that appellant has not complied with condition 2(b) of the notification, the Department had sufficient knowledge about the proceedings as well as the order passed by the Tribunal. Even after the order passed by the Tribunal, the department has waited for 2 years to sanction the refund. Further, as correctly pointed out by Ld. Counsel that refund has not been rejected for not furnishing necessary documents. After processing the refund, the adjudicating authority has denied refund stating that condition 2(b) has not been complied with. The letter dt. 16.02.2019 issued by the appellant is only a clarification correcting certain typographical errors in the statement column and the same cannot be considered as a document necessary to process the refund claim. When the department was a party to the proceedings before Commissioner (Appeals) as well as the Tribunal, the department ought to have taken steps to refund the amount when the litigation has been finalized at the Tribunal level. Ld. Counsel has also relied upon the decision wherein it is stated that mere corrections of clarification issued later cannot be a ground to contend that refund claim is submitted only on the date of such clarification or corrections. In fact, in the OIO as well as the order impugned herein the date of refund claim is noted as 3/2014 and 4/2014.

5. For these reasons, I am of the view that appellant is eligible for interest on the refund amount after 3 months from the date of filing of refund claim. Ordered accordingly. Appeal is allowed with consequential relief.

(Dictated and pronounced in open Court)

