(2022) 01 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 50823 Of 2021

Omni Decoratives Pvt Ltd APPELLANT

Vs

Commissioner Of Customs (ICD TKD), New Delhi RESPONDENT

Date of Decision : 04-01-2022

Acts Referred:

Citation : (2022) 01 CESTAT CK 0006

Hon'ble Judges : Rachna Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The appellant herein had imported teak sliced veneer vide Bill of Entry No. 3106130 dated 4.09.2017, No. 4523681 dated 22.12.2017, 4401245 dated 14.12.2017, 4641863 dated 01.01.2018 and 4312330 dated 07.12.2017.

2. Since the goods were imported from Myanmar, same were exempted from whole customs duty as per Notification No. 46/2011-Cus dated 01.06.2011, as per the entry at S.No. 545 thereof. The appellant however, had not submitted the certificate of origin along with the aforesaid Bill of Entry .

3. The said certificate was not filed till 26.2.2019. The appellant rather failed to appear despite three opportunities given to him for the purpose. Accordingly the Assistant Commissioner of Customs vide Order-in-Original No. 2075/18-19 dated 28.2.2019 had rejected the refund claim of the appellant as was filed by the appellant on 12.09.2018. The appellant filed an appeal against the said order of rejection of refund claim. However, the Commissioner (Appeals) vide Order No. 1017/2020-21 dated 15.10.2020 rejected the appeal. The appellant still aggrieved is before this Tribunal.

4. I have heard Shri B L Yadav, learned Counsel for the Appellant and Shri Mahesh Bhardwaj, learned Departmental Representative for the department.

5. It is submitted by the learned Counsel for the appellant that there has been

inadvertent mistake on the part of the appellant while not filing the certificate of origin at the initial stage of submitting Bill of Entry. However, the same was supplied with and prior to that there has been request for reassessment by the appellant vide his letter dated 24.9.2018 as was given to the Deputy Commissioner of Customs, ICD TKD, New Delhi. It is submitted that original adjudicating authority without considering the said request of reassessment and without taking into consideration the certificate of origin despite acknowledging the same, has rejected the refund claim of such duty of customs which otherwise was not to be deposited by the appellant due to Notification giving benefit of 'Nil' rate of duty for the goods imported from the country at Myanmar. Learned Counsel further submitted that at the time of his application, the situation was not clear as far as the refund in such cases are concerned. However, Hon'ble Apex Court in the case of ITC Ltd. Vs CCE, Kolkata reported in [2019 (9) TMI 802 (SC)] has made the reassessment as a mandatory pre requisite for considering the request of the refund of duty paid which was not otherwise liable to be paid. Learned Counsel has, therefore, requested for remanding the matter to the Original Adjudicating Authority with the request for him to consider the re-assessment first and then the refund claim of the appellant afresh.

6 Learned Departmental Representative has endorsed no objection to the said aspect.

7. I have perused the record of the file. It is observed that important condition of the Notification No. 46/2011 dated 1.6.2011 of in case the certificate of origin along with Bill of Entry was not fulfilled by the appellant at the relevant time. It is observed that the said certificate was produced by the appellant before the Original Adjudicating Authority itself i.e., on 26.2.2019. The Original Authority, despite acknowledging the receipt has failed to give the benefit of said certificate in its order dated 22.8.2019. The request of appellant for re-assessment of duty was pending before the department since 2018. The findings of the Original Adjudicating Authority who were aware of order upheld by the Commissioner (Appeals) vide his order under challenge have failed to appreciate the pendency of said request of re- assessment. The refund claim of the appellant has been rejected on two counts:

1. Certificate of origin

2. The request for re-assessment

8. In view of the above observation and the facts both the grounds are observed as wrong. Finally, keeping in view the mandate directed by the Apex Court in the case of ITC Ltd.(supra) and the No Objection endorsed by the department, the original adjudicating authority is directed to first consider the request of re-assessment of the appellant as was made on 6.9.2018 and then to decide the refund claim afresh.

9. In view of entire above discussion, the present appeal stand allowed by way of remand.

