(2023) 06 CESTAT CK 0036

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.11233, 11234 Of 2014

Shital Ispat Pvt Ltd And Others — APPELLANT

Vs

C.C.-Jamnagar(Prev) — RESPONDENT

Date of Decision : 23-06-2023

Acts Referred:

Citation : (2023) 06 CESTAT CK 0036

Hon'ble Judges : Ramesh Nair, J

Bench : Single Bench

Advocate : Rahul Gajera, G. Kirupanandan

Final Decision : Allowed

Judgement

Ramesh Nair, Member (J)

1. The issue involved in the present case is that for the purpose of refund of Special Additional Duty (SAD) in terms of notification no. 102/2007-Cus ,the time limit of one year for filing the refund is applicable from the date of payment of duty or in the case of provisional assessment from date of final assessment of bill of entry.

2. Shri Rahul Gajera, learned counsel appearing on behalf of the appellant submits that this issue is covered by this tribunal judgment in the case of Bharat Ship Breakers Corporation and others vide final order No. A/10736-10737/2023 dated 27.03.2023 according to which the limit of one year for filing refund is reckoned from the date of final assessment of bill of entry and not from the payment of duty.

3. None appearing on behalf of other appellant M/s Anand Exports.

4. Shri G. Kirupanandan, learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

5. I have carefully considered the submissions made by both the sides and

perused the records. I find that in principle this tribunal has taken a view in the case of Bharat Ship Breakers Corporation and others vide order dated 27.03.2023 wherein, in the identical case it was opined that one year period for filing the refund shall be taken from the date of finalization of bill of entry in a case where initially the assessment was made provisional. However, despite this issue was raised before both the lower authorities, both the lower authorities have not given any finding on this therefore, I am of the view that the matter needs to be re-considered after verifying about the provisional assessment and final assessment of bill of entry and also taking into consideration the above cited tribunal's judgment in the case of Bharat Ship Breakers Corporation and others (supra)

6. Accordingly, I set aside the impugned orders and allow the appeals by way of remand to the adjudicating authority for passing a fresh order.

