(2023) 06 CESTAT CK 0039

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 88349 Of 2019

Synergic Trailer & Auto Solutions Pvt. Ltd. D-182 Sarita Vihar New Delhi	APPELLANT
Vs	
Commissioner Of Customs, Nhava Sheva III JNPT, Custom House, Nhava Sheva, Raigad	RESPONDENT

Date of Decision : 19-06-2023

Acts Referred:
Customs Tariff Act, 1975 — Section 3(5), 128, 129(D)(4)

Citation : (2023) 06 CESTAT CK 0039

Hon'ble Judges : Ajay Sharma, Member (J)

Bench : Single Bench

Advocate : Nazir R. Shaikh, Ram Kumar

Final Decision : Allowed

Judgement

Ajay Sharma, Member (J)

1. This appeal has been filed from the impugned Order dated dated 22.03.2018 passed by the Commissioner of Customs, Nhava Sheva III by which the appeal filed by the appellant was rejected.

2. The appellant herein have paid 4% Special Additional Duty (SAD) levied under section 3(5) of Customs Tariff Act, 1975 on import of Tractor-Trailer Axle by using DEPB scrips against 10 Bills of Entry in the year 2012 and filed refund claim on 13.9.2013 before the adjudicating authority total amounting to Rs.7,90,177/- in terms of Notification No. 102/2007-Cus dated 14.9.2007 as amended vide Notification No. 93/2008-Cus. dated 1.8.2008. Refund of Rs.7,87,729/- was requested by way of re-credit and the remaining amount in cash. The Adjudicating Authority vide Order-in-Original dated 23.2.2016 after recording a specific finding about filing of refund claim within prescribed time, rejected the re-credit of refund claim of Rs.7,87,229/- paid via DEPB scripts.

3. Aggrieved, the appellant filed appeal before the 1st Appellate Authority i.e.

Commissioner (Appeals). No appeal was filed by the Revenue against the adjudication order. The learned Commissioner vide impugned order dated 22.3.2018 on a totally new ground rejected refund claim on the ground of limitation pertaining to 9 Bills of Entry i.e. even those refund claim which were allowed by the adjudicating authority and remanded the refund claim pertaining to the balance 1 Bill of Entry to the Adjudicating Authority for deciding afresh.

4. I have heard learned counsel for the appellant and learned authorised representative for the revenue and perused the case record including the synopsis/written submission and case laws placed on record. I am surprised to see how the learned Commissioner can give any finding on any issue which was not before him as the statute does not permit him to do so. In my view the rejection of the refund claim on the ground of limitation is totally perverse as the Adjudicating Authority has already decided the issue by holding the same within time prescribed and the Revenue is not aggrieved with the said finding as no appeal has been filed by them. The appellant by merely filing an appeal against the order of the Adjudicating Authority cannot be worse off than what he was. 1st Appeal against any order passed by any officer below the rank of Commissioner of Customs lies with the Commissioner of Customs (Appeals) in terms of Section 128 (if the appeal has been preferred by assessee) or Section 129(D)(4) (Department’s appeal on review of order] as the case may be. Legislature has very carefully worded the provision regarding filing of appeal by the Revenue as the said appeal lies only upon after the review of the order by the Commissioner of Customs. Firstly, the Commissioner of Customs has to apply his mind to the adjudication order by way of review and if upon review by him the adjudication order is not found to be legal and proper, only then he can direct to file an appeal before the Commissioner (Appeal). Therefore when without review by proper authority the department can’t file any appeal before the Commissioner (Appeals) then where is the question of the Commissioner (Appeal) suo motu taking up any issue from the adjudication order which has been decided in favour of the assessee, to decide the same against the assessee that too in the appeal filed by the assessee. The Adjudication Order i.e. Order-in-Original has been passed on 23.2.2016 and the limitation of filing appeal against that order has expired 7-8 years back, therefore now the department can’t file any appeal before the 1st Appellate Authority and in that scenario the findings recorded by the adjudicating authority in favour of the appellant have attained finality. Therefore I have left with no other option but to set aside the impugned order and remand the matter back to the Commissioner (Appeals) with a direction to decide the appeal filed by the appellant afresh confining to the issue raised by the appellant before the said appellate authority. It is needless to mention that the said authority must give reasonable opportunity of hearing and of placing on record the relevant document to both the sides.

5. This appeal is accordingly allowed by way of remand.

