CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 80 of 2012-SM

[Arising out of Order-in-Original/Appeal No 43-44-COMMR-A-JMN-2012 dated 21.03.2012 passed by Commissioner of Customs - Jamnagar (Prev)]

Bharat Ship Breakers Corporation .... **Appellant**
Sutarwad, Station Road, BHAVNAGAR,
GUJARAT

VERSUS

Commissioner of Customs, Jamnagar (Prev.) .... **Respondent**
Sharda House, Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

APPEARANCE :

Shri Rahul Gajera, Advocate for the Appellant
Shri G. Kirupanandan, Assistant Commissioner (AR) for the Revenue.

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

DATE OF HEARING/ DECISION : 27.03.2023

FINAL ORDER NO. A/10738 / 2023

RAMESH NAIR :

In this appeal the learned Commissioner (Appeals) rejected the refund by allowing appeal of the Revenue on the ground that since co-relation between the bills of entry and invoices are not established inasmuch as the bills of entry number were not mentioned in the invoices.

2. Shri Rahul Gajera, learned Counsel appearing on behalf of the appellant at the outset submits that this Tribunal in the case of Saumil Impex Pvt. Limited vide order No. A/11853/2022 dated 01.12.2022 remanded the matter to the Adjudicating Authority by giving findings that there are various other documents on the basis of which co-relation can be established therefore, merely because bills of entry numbers are not mentioned in the invoices, it cannot be the reason for denial of refund.

3. Shri G. Kirupanandan, learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of record, I find that the only reason for denial of refund by Commissioner (Appeals) is that co-relation is not established between sales invoice and bills of entry for granting refund under Notification No. 102/2007 in respect of Special Additional Duty of Customs. I find that merely for this reason the refund cannot be rejected as there are many other documents by which co-relation can be established. This identical issue has been considered in the decision vide order dated 01.12.2022 (supra), wherein the matter was remanded. The findings given in the said Tribunal's order is reproduced :-

> "**2.** Shri Rahul Gajera, Learned Counsel appearing on behalf of the appellant submits that now the appellant through their Director Shri Darshit Parikh submitted an affidavit along with various documents such as sale invoices correspondence with Gujarat Pollution Control Board, Gujarat Maritime Board, Chartered Accountant certificate to show that the co relation is clearly established between the imported goods and goods sold. He submits that merely because the bill of entry number is hand written in the sale invoice, the same cannot be the reason for rejecting the refund claim.
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> **3.** Shri R.K Agarwal, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.
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> **4.** I have carefully considered the submission the made by both the sides and perused the records. I find that the Learned Commissioner (Appeals) has reversed the order of the Adjudicating Authorities in Department's appeal only on the ground that since the bill of entry number was mentioned in hand written on the invoices, the co-relation is not established. I find that the appellant have given documents such as correspondence with Gujarat Pollution Control Board, Gujarat Maritime Board, Chartered Accountant certificate and now the appellant have also submitted an affidavit showing all the co-relation. Therefore merely because the bill of entry number was hand written in the invoice, refund on that ground cannot be rejected, Therefore, I am of the view that matter needs to be re-considered.
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> **5.** Accordingly, the impugned order is set aside, matter is remanded to the Adjudicating Authority to reconsider the case a fresh in the light of the various documents referred and submitted by the appellant before this Tribunal. Appeal is allowed by way of remand to the adjudicating authority."

5. From the above decision, it can be seen that the issue being identical, the Adjudicating Authority can reconsider the matter and co-relation can be established on the basis of other documents and refund can be processed accordingly. In view of above, the impugned order is set-aside and the appeal is allowed by way of remand to the Adjudicating Authority.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

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