Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 30 of 2012-DB

Customs Miscellaneous (ORS) Application No. 10401 of 2022

(Arising out of OIA-253/2011/CUS/COMMR-A-/KDL dated 30/12/2012 passed by Commissioner of CUSTOMS-KANDLA)

Defiance Knitting Industries Pvt Ltd ....**Appellant**
Plot No. K-6, Additional Midc, Ambernath Industrial Area,
Anand Nagar,
Ambernath, East,
Thane, Maharashtra

VERSUS

C.C.-Kandla ....**Respondent**
Custom House,
Near Balaji Temple,
Kandla,
Gujarat

APPEARANCE:
Shri M.S Murthy, Advocate appeared for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11127 /2023

DATE OF HEARING: 11.01.2023
DATE OF DECISION: 01.05.2023

RAMESH NAIR

The brief facts of the case are that the appellant is an 100% EOU engaged in the manufacture of readymade garments for export. They have imported raw material and capital goods under notification No 133/94 dated 22.06.1994 read with Notification No. 126/94 dated 02.09.1994. During the stock taking by the department it was noticed that the capital goods, raw material, finished goods were found short in the factory of the appellant. Accordingly show cause notice was issued demanding duty on such shortage. This is the third round of appeal before this Tribunal the issue related to raw material was settled. Now in the present appeal the issue relates to the duty on capital goods only.

2. Shri M.S Murthy, Learned counsel appearing on behalf of the appellant submits that they have filed the Miscellaneous Application bringing on record the cost accountant certificate dated 08.12.2022. He submits that as per Cost Accountant certificate after considering the amount of depreciation the demand of custom duty was reduced substantially. He submitted that the appellant is not contesting the demand in principal but they are contesting only quantification of demand. He requests the matter may be remanded to adjudicating authority to verify cost accounting certificate and then decide the matter accordingly. As regard penalty he submits that there is no suppression of fact. The capital goods removed from the factory on the permission of development officer. The only lapse is that the capital goods were not returned within the permitted time limit. He also submits that the capital goods removed from appellants 100% EOU to other 100 % EOU. For this reason also penalty should not be imposed.

3. Shri Rajesh K Agarwal, Learned Superintendent (AR) appearing for the revenue reiterates the finding the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the limited issue to be considered is whether the custom duty on capital goods can be recomputed as per the submission made by the appellant in their miscellaneous application. We find that the appellant has obtained cost accountant certificate according to which custom duty is recomputed on the basis of period of use of the capital goods in the appellants factory and also on depreciated value. This cost accountant certificate produced first time before us. Therefore, the same needs verification. Accordingly, we allow the appeal by way of remand to the adjudicating authority for passing a fresh order after considering the cost accounting certificate and submission, if any, to be made by the appellant.

Needless to say that the appellant shall be granted the opportunity of personal hearing. MA also stands disposed of.

(Pronounced in the open court on 01.05.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

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