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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 11614 of 2013 -DB

(Arising out of OIO-56/DEM/2012 dated 20/02/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-SURAT-I)

C.C.E. & S.T.-Surat-I **........Appellant**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat - 395001

VERSUS

Shivam Exports **...Respondent**
Plot No. 722,
Gidc, Sachin,
Surat, Gujarat

APPEARANCE:
Shri Tara Prakash, Deputy Commissioner (AR) for the Appellant
None appeared for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L.MAHAR

Final Order No. A/ 12167 /2023

DATE OF HEARING: 07.06.2023
DATE OF DECISION: 27.09.2023

RAMESH NAIR

This appeal is directed by the Revenue against the Order-In-Original No. 56/DEM/2012 dated 20.02.2013 on the ground that this is the duplication of adjudication whereas on the same issue for the same period and for the same amount earlier show cause notice No. V (Ch.54)3-66/DEM/2003 dated 20.11.2003 was issued for the duty demand of Rs. 4, 88, 01,165/-. The said show because notice was adjudicated vide Order-In-Original No. 17/DEM/2004 dated 29.03.2004 wherein entire demand was confirmed along with interest, penalty, confiscation and fine. The grievance of the revenue is that in the present case the show cause notice was wrongly issued and subsequently, the adjudicating authority affirmed the Order-In-Original No. 17/DEM/2004 dated 29.03.2004. As per the Revenue, since for the same case show cause notice dated 20.11.2003 was issued and the same was adjudicated on 29.03.2004, the show cause notice in the present case is illegal and same ought to have been withdrawn by the adjudicating authority. Accordingly, the affirmation of earlier order-in-original No. 17/DEM/2004 dated 29.03.2004 was incorrect and illegal.

2. Shri Tara Prakash, Learned Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the grounds of the appeal.

3. On the behalf of the respondent none appeared despite various dates given on 13.02.2023, 07.03.2023 and 10.04.2023. This shows that the respondent is not interested in this revenue's appeal, therefore, the appeal is taken up for disposal.

4. On careful consideration of the submission made by learned AR and perusal of records, we find that there is no dispute on the fact that for the same case the department has issued two Show cause notices dated 20.11.2003 and the show cause notice in the present case was issued on 8.10.2004. However, the first show cause notice was adjudicated vide Order-In-Original No. 17/DEM/2004 dated 29.03.2004. In this circumstances the show cause notice dated 08.10.2004 for the same case appears to ab- initio illegal. Since the act of issuance of show cause notice itself is illegal and incorrect, there is no need to either adjudicate the same or affirm the earlier Order-In-Original dated 29.03.2004. Therefore, there is force in the Revenue's ground of appeal.

4.1 In the appeal papers we have carefully perused the show cause notice dated 20.11.2003 and its adjudication order dated 29.03.2004 and found that those proceeding and present proceeding are in the same case, therefore, the proceeding in the present case i.e. issuance of show cause notice and adjudication order is illegal and incorrect. We do agree with the Revenue's contention that the Adjudicating Authority in the present case related to show cause notice dated 08.10.2004 should have withdrawn the show cause notice instead of passing a detailed order by affirming the earlier OIO dated 29.03.2004. Therefore, we hold that the show cause notice dated 08.10.2004 in the present case stands withdrawn and the impugned order is set aside.

5. Consequently, the revenue's appeal is allowed in the above terms.

(Pronounced in the open court on 27.09.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)