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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10881 of 2016

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-326-329-15-16 dated 15.02.2016 passed by Commissioner of CUSTOMS-MUNDRA]

Bhavin Export Pvt. Limited .... **Appellant**
Plot No. 457, GIDC Phase-iii, Dared,
JAMNAGAR, GUJARAT-361004

VERSUS

Commissioner of Customs, Mundra .... **Respondent**
Office of the Principal Commissionerate of Customs, Port
User Buld. Custom House Mundra, Mundra, Kutch
Gujarat-370421

WITH

(i) Customs Appeal No. 10882 of 2016 M/s. Bhavin Export Pvt. Limited
(ii) Customs Appeal No. 10883 of 2016 M/s. Bhavin Export Pvt. Limited
(iii) Customs Appeal No. 10884 of 2016 M/s. Bhavin Export Pvt. Limited

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-326-329-15-16 dated 15.02.2016 passed by Commissioner of CUSTOMS-MUNDRA]

APPEARANCE :

Shri Manish Jain and Ms. Shruti Agarwal for the Appellant
Shri R P Parekh, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. A/12566-12569 / 2021

DATE OF HEARING : 30.11.2021
DATE OF DECISION :02.12.2021

RAMESH NAIR :

The brief facts of the case are that the appellant M/s. Bhavin Exports Pvt. Limited are engaged in the manufacture and exporting of brass articles under Chapter 74 of Customs Tariff. The appellant also act as merchant exporters where they procure brass articles from the domestic market and then export the same without any further manufacturing activity. As a merchant exporter, the appellant procured Brass Artwares from local market falling under tariff heading 74199930 and exported the same by filing shipping bill Nos. 5194192, 5194516, 5194535 and 5194518 all dated 25.09.2014. At the time of filing shipping bills, the appellant have mentioned drawback serial No. as 741802B (Brass Sanitary Fittings and parts thereof). As per the appellant's view, the correct drawback serial No. should be 741901A (Brass Artwares/ Handicrafts) and the right rate of drawback applicable is 12% as against 2.2% under drawback serial No. 741802B. Accordingly, the appellant wrote to Customs authorities for amendment in shipping bills and to pass supplementary drawback claims. They also submitted certificate certifying non-availment of Cenvat credit to the jurisdictional Central Excise authorities however, the Joint Commissioner (Export) rejected the request of the appellant for amendment of drawback serial number from 741802B to 741901A in the shipping bills which was communicated vide letter dated 05.05.2015 by the Superintendent Export Customs House MP and SEZ, Mundra. The appellant filed appeals before the Commissioner (Appeals). The Commissioner (Appeals) vide impugned order rejected the appeals accepting the order-in-original therefore, the present appeals filed by the appellant.

2. Shri Manish Jain learned Counsel and Ms. Shruti Agarwal, Advocate appeared for the appellants. Shri Manish Jain submits that though the original authority has not given any reason for rejecting the amendment in the shipping bills however, the learned Commissioner (Appeals) given the finding in the impugned order that as per the proviso to Section 149, no amendment in shipping bills is allowed after the goods have been exported except on the basis of documentary evidence which were in existence at the time the goods were cleared, deposited or exported. The learned Commissioner (Appeals) has erred in giving the finding that the appellant is not only seeking numeric change but change of entire status and character of the documents. The Commissioner (Appeals) also erred in holding that even if it is a case of amendment, the proper officer may not in possession of the documents sought to be amended, particularly when the goods already exported. He submits that this finding is apparently incorrect for the reason that firstly, the correct serial number of goods exported is under 741901A and the same is appearing in the export invoices. Therefore, the documents are

very much in the possession of proper officer. Accordingly, the amendment sought by the appellant is as per proviso to Section 149. As regards the category 'B' to 'A', the appellant have submitted certificate certifying that the appellant have not taken Cenvat credit which is also revealed from record only, existed at the time of export. Therefore, it is his submission that the request of the appellant seeking amendment in the shipping bills is legitimate and as per the statutory provisions of Section 149. He placed reliance on the following judgments and Circulars:-

(a) Circular No. 1312004-Cus Dated 18.11.2014

(b) Messrs Mahalaxmi Rubtech Limited vs. UOI 2021 (3) TMI 240 (Gujarat High Court)

(c) Gokul Overseas vs. UOI, 2020 (373) ELT 4 (Guj.)

(d) Accoladee vs. CC, 2021 (377) ELT 496 (Mad.)

(e) Mohit Overseas Vs CC, 2016 (335) ELT 18 (Del.)

(f) Principal Commissioner vs. Samsung India Electronics P. Ltd 2018 (361) ELT 505 (All.)

(g) Sterlite Technologies Limited vs. CC, 2019 (365) ELT 622 (Tri)

(h) Kanak Exports Vs CC, 2020 (374) ELT 385 (T)

(i) Pratibha Pipes & Structural (P) Ltd Vs CC 2014 (314) ELT 161 (Tri)

3. Shri R P Parekh, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that the learned Joint Commissioner though rejected the request for amendment in shipping bills sought by the appellant but no reasoning was given. However, the learned Commissioner (Appeals) has given detailed findings in the impugned order and mainly the request was rejected by the Commissioner (Appeals) on the ground that whatever amendment sought by the appellant is not based on the existing documents and the documents is not in possession of the proper officer. From the facts and documents, we find that these findings are apparently incorrect on the face of documents such as export invoices which clearly contained the correct HS Code 74199930. However, inadvertently in

the shipping bills the incorrect drawback serial number 741802B was mentioned. In this position, it cannot be said that the amendment sought by the appellant is not on the basis of documents existing at the time of export and not in the possession of proper officer. The invoices and the packing list is basic documents and these documents are very much in the possession of officer who is supposed to check at the time filing the shipping bills. Therefore, it is clear that despite the correct HS Code mentioned in the invoices/packing list, incorrect drawback serial number was mentioned in the shipping bill. Accordingly, the amendment sought by the appellant is strictly as per the documents existing at the time of export of the goods and such documents are very much in possession of the proper officer.

5. In these facts, the case of the appellant is squarely covered by the statutory provisions of Section 149 and proviso thereto. Accordingly, the appellant is entitled for amendment in the shipping bills and consequent differential drawback. Accordingly, the impugned orders are set-aside and the appeals are allowed.

(Pronounced in the open court on 02.12.2021*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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