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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.12199 of 2019

(Arising out of OIA-JMN-CUSTM-000-APP-73-19-20 dated 28/05/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Triveni Shipbreakers **......Appellant**
F/28, Ruvapari Road
Bhavnagar, Gujarat

VERSUS

C.C.-Jamnagar(prev) **.........Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

APPEARANCE:
Shri Sarju Mehta, Chartered Accountant for the Appellant
Shri J.A Patel, Superintendent (Authorized Representative) for the Respondent

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

Final OrderNo. A/ 10380 /2022

DATE OF HEARING: 22.04.2022
DATE OF DECISION: 22.04.2022

RAMESH NAIR

This appeal is directed against the order of the Commissioner (Appeal) whereby the department's appeal was allowed. The issue involved in this case is whether the appellant is entitled for the refund of late fees charges paid by them in the fact that initially when they presented the Bill of Entry due to Indian Custom EDI System error, the same could not be uploaded electronically with GST provisions. Subsequently, the Gujarat High Court has ordered the arrest of the said vessel subsequently they filed bill of entry and department has contended that there is a delay in filing bill of entry hence, the appellant is liable for payment of late fee. Accordingly they paid the late fee. Subsequently the appellant approached the competent authority i.e. Joint Commissioner for waiver of late fee in the circumstance narrated above. The Joint Commissioner granted the waiver from payment of the late fee. Subsequently, the appellant filed the refund claim before the Assistant Commissioner. The Assistant Commissioner has sanctioned the refund complying the order of the Joint Commissioner whereby the late fee was waived. The department has filed appeal before the Commissioner (Appeals). The Learned Commissioner (Appeals) has allowed the appeal. Therefore, the present appeal.

2. Shri Sarju Mehta, Learned Chartered Accountant appearing on behalf of the appellant submits that firstly it was beyond the control of the assessee to file the bill of entry for the reason that there was a system error in Indian Customs EDI System Subsequently the vessel was arrested by the order of the Hon'ble High Court of Gujarat and bill of entry was filed after the release of the vessel by the High Court. Therefore there is no fault on the part of the appellant for filing late bill of entry. He further submits that the Joint Commissioner has waived the late fee for this reason also the refund was rightly sanctioned by the lower authority.

3. Shri J.A Patel, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both sides and perused the records. There is no dispute in the fact that the appellant has presented the Bill of entry but due to Indian Customs EDI system error it could not be uploaded. Secondly the vessel was arrested by the order of the Hon'ble High Court and on release of the vessel by the High Court the appellant filed bill of entry. In these circumstances I am of the view that the period from initial presenting of bill of entry up to the subsequent filing of bill of entry should be reduced from the period prescribed for filing bill of entry, if this be so there is no delay in filing the bill of entry. Moreover if at all there is delay the learned joint commissioner has waived the late fee charges and consequential to the said order the Assistant Commissioner has sanctioned the refund of late fee. I also note that the revenue has not disputed the waiver of the late fee ordered by the Joint Commissioner. In these circumstances I do not find any error in sanctioning refund by the Assistant Commissioner.

5. Accordingly the order of the Learned Commissioner(Appeals) is not sustainable and the same is set aside. Appeal is allowed.

(Dictated & Pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

Geeta