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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10233 of 2015

(Arising out of OIA-AHM-CUSTM-000-APP-334-14-15 dated 14/11/2014 passed by Commissioner of CUSTOMS-AHMEDABAD)

Ankur Scientific Energy Technologies P Ltd ....**Appellant**
Ankur, Nr, Navrachna School Sama,
Vadodara, Gujarat

VERSUS

C.C.-Ahmedabad ....**Respondent**
Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
None appeared for the Appellant
Shri. Anoop Kumar Mudvel, Superintendent (AR) for the Respondent

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

Final Order No. 11516 / 2024

DATE OF HEARING: 05.07.2024
DATE OF DECISION:05.07.2024

RAJU

This appeal has been filed by Ankur Scientific Energy Technologies P Ltd against rejection of refund of Customs duty.

2. No one appeared for the appellant, however, letter was received seeking decision on merits.

3. Learned AR pointed out that the matter was earlier examined by the Commissioner (Appeals). Commissioner (Appeals) vide Order No. 382/2013/Cus/Commr(A)/AHD dated 06.09.2013. The issue pertain to the application made by the appellant before the original adjudicating authority for amendment under Section 149 and consequential refund of duty.

4. Learned AR relied on the impugned order.

5. I have considered the rival submission. I find that the appellant had filed an application under Section 149 seeking benefit of Notification 8/2005-Cus which they had failed to claim at the time of filling the original documents. The application was earlier rejected, however, Commissioner (Appeals) vide order dated 06.09.2013 observed as follows:

> *11. In view of the above findings, after annulling the impugned order. remit the case to the original authority and order that the said Bill of Entry shall be amended under the provisions of section 149 of the Customs Act. 1962 by Inserting notification 81/2005-Cus, supra, and thereafter the same shall be re- assessed under section 17 of the said Act, allowing the benefit of the said notification. After doing so, the refund of duty shall be quantified and granted under section 27 of the said Act as consequential relief, subject to verification specified above. Any decision prejudicial to the appellant shall be dealt in accordance of the principles of natural justice. The appeal is disposed of in above terms.*

5.1 However, when the matters take up in remand proceedings the original adjudicating authority as well as the Commissioner (Appeals) in impugned order has ignored, the direction given in para 11 of the earlier order of Commissioner (Appeals) dated 06.09.2013. Both the authorities have held that the appellant is not entitled to benefit of Notification No.81/2005-Cus. The ground for denying the benefit of Notification No. 81/2005-Cus., are that the appellant did not claim the said exemption at the time of clearance and that the appellant did not fulfil the condition the said Notification No. 81/2005-Cus., dated 08.09.2005. However, I find that no specific condition of the notification has been identified which has not been followed, in Order-in-Original or in the impugned order. In these circumstances, the claim that the appellant has failed to fulfil the condition of the notification is unsubstantiated.

5.2 In view of the cleared direction of the Commissioner (Appeals) vide Order dated 06.09.2013, the benefit of amendment under Section 149 granting the benefit of Notification No. 81/2005-Cus., dated 08.09.2005 cannot be denied. If the revenue had any objection to the findings of the

Commissioner (Appeals) in this order dated 06.09.2013 then they should have filed appeal. The order of the Commissioner (Appeals) dated 06.09.2013 was not challenged. In this, circumstances, it is not open to the revenue authorities to ignore counters to the observation of the Commissioner (Appeals).

6. Consequently, the appeal is allowed with consequential relief.

(Dictated and Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Prachi