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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 13792 of 2013-DB

[Misc. Application No. E/ROA/10543/2024]

[Arising out of Order-in-Original/Appeal No 173-2013-AHD-II-CE-AK-COMMR-A--AHD dated 16.09.2013 passed by Commissioner of Central Excise-AHMEDABAD-II]

M S N Intermediates Pvt Limited .... Appellant
Plot No. 205-206/4, Phase-ii,
GIDC Estate, Naroda,AHMEDABAD, GUJARAT

VERSUS

Commissioner of Central Excise & ST,Ahmedabad-ii .... Respondent
Custom House, First Floor,
Old High Court Road, Navrangpura,
Ahmedabad,Gujarat -380009

APPEARANCE :

Shri HD Dave, Advocate for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

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

DATE OF HEARING:01.08.2024
DATE OF DECISION: 14.08.2024

FINAL ORDER NO. 11768/2024

RAMESH NAIR:

With reference to the application for restoration of appeal, Shri HD Dave appearing on behalf of the applicant submits that due to change of management and since new management has taken over the working of the Company there was communication gap and due to which the appeal could be represented. Considering the submission made by learned Counsel and also considering that this Tribunal has given liberty to the appellant to approach this Tribunal for restoration of appeal, the application for restoration of appeal is allowed and the appeal is restored to its original number.

2. On the last occasion, this Tribunal has directed to list the appeal itself for disposal. As regards the appeal, Shri HD Dave learned counsel submits that in the instant appeal, demand of differential duty of Rs. 12,28,150/- on DTA sales made by the 100% EOU was confirmed under Section 11A(1) of the Central Excise Act, 1944 read with Section 28 of the Customs Act, 1962.

3. Learned Counsel submits that the appellants had sold goods in DTA as per permission letter dated 03.10.2008, in terms of Para 1-g of appendix of HBP to the FTP 2004-09 and not as per Para 1-k, as being enforced by the authorities. Further the export obligation for achieving the positive NFE is already done by the appellants in this case, as already reported by the Revenue. That even as per Sr. No. 3 of the Notification No. 23/2023-CE dated 31.03.2023, appellant is entitled to exemption, if he fulfills condition No. 3 of the said notification. In this case the appellant had only used goods and raw materials manufactured and produced in India only and not any imported goods or raw material used at all. Therefore also they are clearly entitled to exemption under this notification. Also the raw material procured from domestic market on which duty was forgone, the clearance of finished goods made there from sold in DTA were duty paid already at concessional rate as per the FTP and the permission letter. Since the appellant is not entitled to pay any differential duty, being eligible to concessional duty in DTA sales as per FTP and notification, by already exporting more than required (Rs. 4,25,05,017/-) there is clear positive NFE achievement. Learned Counsel further submits that since the entire issue is based on legal interpretation and consideration of provisions of policy and not of any guilty intention, there is no question of imposition of any penalty etc.

4. Shri Sanjay Kumar, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

5. We have carefully considered the submissions made by both the sides and perused the record. We find that concessional rate of duty was denied on the ground that appellant have not complied with the condition of 50% of the export of the goods allowed to be cleared on concessional rate of duty. As per the submissions made by appellant, they have cleared the goods against advance authorization and also to other 100% EOUs. It is a settled law that clearances made against advance authorization and to EOUs is considered as deemed export. Therefore, for the purpose of calculating 50% of the export for DTA sale, the deemed export should also be considered. Therefore, the Adjudicating Authority if finds that the total 50% of the DTA sale is against not only the physical export but also deemed export i.e. clearance made against advance authorization and to 100EOUs then

concessional rate of duty for DTA sale is eligible to the appellant. The matter needs to be remanded only for this limited purpose and passing a fresh order. Accordingly, the impugned order is set-aside and the appeal is allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 14.08.2024*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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