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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 173 of 2011-DB

(Arising out of OIA-38/2011/CUS/COMMR-A-/KDL Dated- 08/02/2011 passed Commissioner of CUSTOMS-KANDLA))

Shree Rajasthan Syntex Ltd **........Appellant**
Srsl House, Pulia Bhuwana Road,
Nh 8, Udaipur, Rajasthan

VERSUS

C.C.-Kandla **........Respondent**
CUSTOM HOUSE, NEAR BALAJI TEMPLE,
KANDLA, GUJARAT

WITH
Customs Appeal No. 13081 of 2013

(Arising out of OIA-479/2013/CUS/COMMR-A-/KDL Dated-19/07/2013 passed Commissioner of CUSTOMS-KANDLA))

Shree Rajasthan Syntex Ltd **........Appellant**
(Division Of Shree Shyam Filaments) Srsl House,
Pulia Bhuwana Road, Nh 8,
Udaipur, Rajasthan

VERSUS

C.C.-Kandla **........Respondent**
Custom House,
Near Balaji Temple, Kandla
Gujarat

APPEARANCE:
Shri. Manish Jain, Advocate appeared for the Appellant
Shri. G. Kirupanandan, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 10475-10476 /2023

DATE OF HEARING: 06.03.2023
DATE OF DECISION:06.03.2023

Raju

These appeals have been filed by Shree Rajasthan Syntex Ltd against order of the Commissioner (Appeals).

(a) Rejecting the appeal made against the letter of the Superintendent.

(b) Rejecting the claim of refund filed by the appellant.

2. Learned Counsel for the appellant pointed out they had cleared goods under advance license, however, they could not produce export obligation fulfillment certificate for the certain quantity. The appellant approached revenue for the payment of differential duty on account of non fulfillment of expert obligation. The revenue directed the appellant to pay duty at the rate of 7.5% whereas the appellant held the belief that the duty is payable at the rate of 5%. They filed an appeal against this order directing them to pay the duty at the rate of 7.5% before Commissioner (Appeals). The Commissioner (Appeals) rejected the appeal on the ground that they have already paid duty at the rate of 7.5% and the revenue has already assessed bill of entries. It held that the said Letter directing to pay 7.5% is not an appealable order. The appellant also filed an appeal against denial of refund claim which was also rejected by the Commissioner (Appeals) on the ground that the appeal of the appellant against the letter of Superintendent was pending before Tribunal at the material time.

3. Learned Counsel pointed out that the appellant had clearly held that the duty payable at the rate of 5%. The Learned Counsel pointed out to communication between the appellant and the revenue. The revenue vide letter dated 18.01.2010 directed the appellant to pay duty at the rate of 7.5%. The appellant vide letter dated 18 January, 2010 contesting the rate of duty and sought assessment at 5%, however, the appellant paid the differential duty at the rate of 7.5% under protest. Learned Counsel argued that this letter directing that the pay at the rate of 7.5% is an appealable order and therefore, the Commissioner (Appeals) has wrongly rejected the appeal filed by the appellant. The appellant seeks reassessment of documents as per their claim of duty at the rate of 5% and a seeking remand to the original authority for fresh adjudication.

4. Learned AR relies on the impugned order.

5. We have considered the rival submission. We find that the fact that the appellant were not agreeing with the rate of duty suggested by the revenue vide letter dated 18.01.2010 not in dispute.. The letter of the appellant dated 18.01.2010 and 19.01.2010 clearly show that the

appellant was contesting the imposition of duty at 7.5% and had paid under protest. In these circumstances, we are not in agreement with the learned Commissioner (Appeals) that the order directing the appellant to pay duty at 7.5% is not an appealable order. The clearances in the instance case were under the advance license and therefore conditional clearances. In the above background, we set aside the impugned order in appeal No. 173 of 2011 and remand the matter back to the original for adjudicating authority passing an order on the claim made by appellant regarding rate of duty. The appellant will be free to present their defense before the original adjudicating authority.

6. Consequently the order of Commissioner (Appeals) on the refund arising out on account of the dispute on rate of duty is also set aside being consequential. Appeals in both the cases are allowed with remand to the original adjudicating authority for fresh assessment and consequential relief if any.

(Dictated and Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI