CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Customs ROM Application No.70427 of 2019
IN
Customs Appeal No.71329 of 2018-[SM]

(Arising out of Order-in-Appeal No.NOI-CUSTM-000-APP-157-18-19 dated 02/07/2018 passed by Commissioner (Appeals) Customs & Central Excise, Noida)

Commissioner of Customs, **.....Appellant**

(Noida Customs Commissionerate)

VERSUS

M/s Capri International, **....Respondent**

(W-16, Mayapuri Phase-II, New Delhi-110064)

APPEARANCE:

Shri Anupam Kumar Tiwari, Authorised Representative, for the Appellant
Absent on call, for the Respondent

CORAM: HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

MISC ORDER NO-70092 / 2020
&

FINAL ORDER NO-70242 / 2020

DATE OF HEARING : 28 February, 2020
DATE OF DECISION : 28 February, 2020

PER: ANIL G. SHAKKARWAR

Heard on Rectification of Mistake Application. Learned Authorised Representative appearing for revenue has submitted that the issue involved was in relation to refund of SAD under Notification No.102/2007-Cus dated 14.09.2007. He has submitted that the litigation policy did not cover refund for the period prior to 04.04.2018 and period after 25.05.2018 and therefore, the ROM may be allowed. After noting that the respondent is absent and after going through the record of the case, I note that the appeal was filed on 31 October, 2018 and therefore, I recall the Final Order No.70650 of 2019 dated 19 March, 2019 to examine the appeal on merit.

2. Revenue has preferred this appeal against the impugned Order-in-Appeal dated 02.07.2018, I note that the argument raised by revenue in their ground is that the refund case is hit by bar of unjust-enrichment. The issue of unjust-enrichment has been dealt with by the order of learned Commissioner (Appeals), in the impugned Order-in-Appeal. He has relied on Circular No.6/2008-Cus dated 28.04.2008 and Circular No.18/2010-Cus dated 08.07.2010 both issued by CBEC. As per the Circular dated 28.04.2008, a certificate issued by the statutory auditor who certifies the annual accounts of the importer, that the burden of 4% SED has not been passed on by the importer to the buyer was sufficient for satisfying the principals of unjust-enrichment. Such requirement was fulfilled by the appellant and therefore the present ground are in violation of circular No.6/2008-Cus. It is repeatedly held by the Hon'ble Supreme Court and other Judicial Authorities that CBEC circulars are binding on the departmental offices, I note that inspite of clear instructions revenue has preferred this appeal in violation of said instruction in circular dated 28.04.2008 and by doing so revenue has wasted time of this court.

3. After making such observations, the appeal filed by revenue is dismissed after allowing the ROM Application.

(Dictated and pronounced in open court)

(Anil G. Shakkarwar)
Member (Technical)

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