CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 2602 of 2012

(Arising out of Order-in-Appeal No.168/2012 dated 10.07.2012 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. FCI OEN Connectors
Electrogiri,
Mulanthuruty,
Kochi – 682 314.
Appellant(s)

Versus

Commissioner of Customs
Customs House,
Willingdon Island,
Cochin – 682 009.
Respondent(s)

AND

Customs Appeal No. 2603 of 2012

(Arising out of Order-in-Appeal No.169/2012 dated 10.07.2012 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. FCI OEN Connectors
Electrogiri,
Mulanthuruty,
Kochi – 682 314.
Appellant(s)

Versus

Commissioner of Customs
Customs House,
Willingdon Island,
Cochin – 682 009.
Respondent(s)

Appearance:

Shri Kuryan Thomas, Advocate — For the Appellant

Shri Jathin, K.A, AR — For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21485 - 21486 / 2023

Date of Hearing: 15.12.2023
Date of Decision: 15.12.2023

Per : R. BHAGYA DEVI

The appellant, M/s. FCI OEN Connectors, imported Gold Potassium Cyanide claiming the exemption of Countervailing Duty (CVD) from the value of the imported goods vide Bill of Entry No.55766278 dated 18.1.2012 vide Notification No.4/2006-CE (Sl. No.36) dated 1.3.2006 and Bill of Entry No. 7103892 dated 14.6.2012 claiming CVD available as per Notification No.12/2012-CE (Sl. No.90) dated 17.3.2012. The appellant had claimed that the Electronic Data Interchange (EDI) system did not have the facility to select the Notification and accordingly, communicated their eligibility to the assessing officer vide letter dated 27.1.2012 and 14.6.2012. However, the Commissioner (Appeals) rejected their plea stating that while filing the Bills of Entry, they had failed to claim the exemption of the Notification and only on a later date on 27.1.2012 and 14.6.2012 they tried to rectify their claim which is not in accordance with law. Challenging this denial of the above Notifications for the item viz., Gold Potassium Cyanide submits that at the time of filing the Bills of Entry in the EDI system as the drop-down box did not consist these Notifications, they paid duty under protest and thereafter, challenged the assessment for denial of benefit of the above Notifications.

2. The learned counsel on behalf of the appellant submits that Section 149 of the Customs Act, 1962 grants power to the proper officer to amend the Bills of Entry prior to clearance of goods and in the instant cases, they had requested for extending the benefit of the Notifications which was placed before the proper officer prior to the clearance of the goods. Therefore, it was incumbent on the part of the proper officer to permit the amendment of Bills of Entry allowing the benefit of CVD exemption.

3. The learned Authorized Representative for the Revenue reiterated the findings of the lower authorities.

4. Heard both sides. The issue to be decided in these appeals is whether the appellant is eligible to avail CVD on the imported goods by claiming the exemption Notification No.4/2006-CE (Sl. No.36) dated 1.3.2006 and Notification No.12/2012-CE (Sl. No.90) dated 17.3.2012. From the facts of the case, the appellant has very categorically stated that the EDI system did not have the option of claiming the benefit of these Notifications at the time of filing the Bills of Entry in the system; this fact is nowhere disputed by the Revenue. Moreover, Bill of Entry No.55766278 was filed on 18.1.2012 and letter for seeking the benefit of the Notification was issued on 27.1.2012 exactly after 9 days. Similarly in the case of Bill of Entry 7103892 filed on 14.6.2012, on the same day the request for amendment was filed. This clearly shows that the case of the appellant is genuine

and the request which was filed immediately after the assessment and before the clearances of the goods, should have been accepted and reassessed. We find that the Commissioner (A) without considering the above facts wrongly denied the benefit only on the ground that the checklist did not include the request for benefit of the Notifications and if EDI system did not allow claim the Notifications, they should have filed a manual Bill of Entry. Therefore, in the interest of justice, we remand the matter to the original authority to consider the request of the appellant to consider the benefit of the Notifications as claimed, if otherwise eligible.

5. Appeals are allowed by way of remand.

(Operative portion of the Order was pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv