CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/20553/2018-SM

[Arising out of Order-in-Appeal No. 77/2017 dated 17/03/2017 passed by Commissioner of CUSTOMS , BANGALORE-I(Appeal)]

Coastal Farms
No 37-12/1 Near Navadurga Bus Garage
Kannur
MANGALORE - 575007
KARNATAKA

Appellant(s)

Versus

Commissioner of Customs
Mangalore-cus
NEW CUSTOMS HOUSE
PANAMBUR
MANGALORE - 575010
KARNATAKA

Respondent(s)

Appearance:

Shri PRADYUMNA G.H. ADVOCATE
NO.371, 8TH MAIN
SADASHIV NAGAR
banglaore - 560080
Karnataka

For the Appellant

Shri Madhupsharan, Asst. Commissioner(AR)

For the Respondent

Date of Hearing: 02/01/2019
Date of Decision: 02/01/2019

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20008 / 2019

Per : S.S GARG

The present appeal is directed against the impugned order dt. 17/03/2017 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the case are that the appellant filed Bill of Entry No.2469283 dt. 03/09/2015 through their Customs Broker M/s. Bhavani Shipping Services (India) Pvt. Ltd., Mangalore for the import of one consignment of an item called L-Methionine 99% Feed Grade falling under the CTH 29304000. The said Bill of Entry was self-assessed and customs duty of Rs.16,40,957/- was paid considering merit rate of custom duty of 25.26%. Later on it was realized by the appellant that the actual duty payable by them was Rs.10,79,763/- at concessional rate of duty of 17.36% as per Customs Notification No.46/2011-Cus dt. 01/06/2011 when goods imported from an ASEAN nation in terms of ASEAN-India Free Trade Area Preferential Tariff Agreement. As per the appellant, they have paid excess duty to the extent of Rs.5,61,194/- and after realizing their mistake, they immediately informed the Department vide letter dt. 16/09/2015 that they had inadvertently failed to claim the benefits under Notification No.46/2011-Cust dt. 01/06/2011 and sought refund of the excess customs duty paid by them. thereafter they filed refund claim on 15/10/2015 seeking refund of excess duty of Rs.5,61,194/- by enclosing all relevant documents including documents to prove that the claim was not barred by unjust enrichment. The Assistant Commissioner rejected the refund claim vide order dt. 13/01/2016 on the ground that the assessment of the Bill of Entry was as per the amended Section 17 of the Customs Act, 1962 and the customs

duty was paid by the appellant on the basis of their own assessment and that assessment has attained finality being not challenged by the appellant and secondly, the claim was rejected on the ground that the same is hit by bar of unjust enrichment. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who vide the impugned order has rejected the appeal.

3. Heard both sides and perused records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the documents produced by the appellant. He further submitted that it is an undisputed fact that the appellants have paid excess duty of Rs.5,61,194/-. It is also not in dispute that the appellants are entitled to concessional rate of duty as per the Notification No.46/2011 as the goods have been imported from Malaysia in terms of ASEAN-India Free Trade Area Preferential Tariff Agreement. The learned counsel further submitted that in the present case, neither classification nor valuation of goods is under challenge. Further there is no dispute about the description and quantity of the imported goods and therefore there was no reason for the appellant to challenge the assessment by filing the appeal. He further submitted that under Section 154 of the Customs Act, 1962, the error

which has crept in Bill of Entry could be corrected by the Department as the appellant was entitled to exemption under Notification No.46/2011-Cus and he further submitted that the appellant failed to claim the benefit of Notification No.46/2011 due to sheer inadvertence and the Department after receiving communication from the appellant should have sanctioned the refund by correcting the Bill of Entry in terms of Section 154 of the Act. In support of this submission, he relied upon the decision rendered in the case of Indian Institute of Science Vs. CC [2015(320) ELT 577 (Tri. Bang.)] wherein it was held that clerical errors in Bills of Entry can be corrected at any point of time as per Section 154 of the Customs Act, 1962 and there is no requirement to challenge the assessments. Revenue challenged the decision of the Tribunal before the High Court of Karnataka and the Hon;ble Karnataka High Court maintained the decision of the Tribunal as reported in 2015(32) ELT A267(Kar.). In addition to this, he also relied upon the following decisions:-

i. INA Bearing (India) Pvt. Ltd. Vs. CC(Import), Nhava Sheva [2014(313) ELT 815 (Tri. Mum.)]
ii. CC(Export Promotion), Mumbai Vs. Steel Authority of India Ltd. [2016(338) ELT 95 (Tri. Mum.)]
iii. India Oil Corporation Ltd. Vs. CCE,C[2016(337) ELT 388 (Tri. Ahm.)]

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both sides and perusal of the material on record and perusal of the Notification No.46/2011, I find that the appellants have inadvertently paid customs duty of Rs.5,61,194/-. Further I find that the appellants were eligible for concessional rate of duty as per Notification No.46/2011-Cus. in view of the fact that the goods were imported from Malaysia in terms of the ASEAN-India Free Trade Area Preferential Tariff Agreement. I also note that in the present case, there was no dispute about classification or valuation or description of the imported goods. Therefore there was no need to challenge the assessment. Further the original authority has also rejected the refund claim on doctrine of unjust enrichment. But the learned Commissioner(Appeals) has not discussed regarding the unjust enrichment. Further I find that the appellant has produced a certificate from the Chartered Accountant who after verification of the records has certified that the amount of duty paid is shown as receivables under the head Customs duty receivables in the books of accounts of the appellant. But the said certificate has been rejected by the Commissioner(Appeals) on the ground which is not sustainable in law. Further I find that on identical issue, the Tribunal in the case of Indian Institute of Science has allowed the appeal of the assessee and remanded the case back to the original authority to decide the issue de novo after affording an opportunity of hearing to the assessee. The

Revenue challenged the same before the Hon'ble High Court of Karnataka and the appeal of the Revenue was dismissed by the High Court cited supra. By following the ratio of the above said decision, I set aside the impugned order and remand the case back to the original authority to pass a fresh order after considering the evidences of the appellant and the observations made hereinabove. The original authority is to decide the case within a period of two months from the date of receipt of this order. Appeal is allowed by way of remand.

(Operative portion of the Order was pronounced in Open Court on **02/01/2019**)

S.S GARG
JUDICIAL MEMBER

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