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

Appeal(s) Involved:

C/20308/2019-SM

[Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-96-2018-19 dated 25/02/2019 passed by Commissioner of CUSTOMS , COCHIN(Appeal)]

M/s Spaniso Studio
Door No KP 18/243 A B & C1 Ground Floor &
First Floor Toscana Tower Karanthur PO
KOZHIKODE
KERALA
673571

Appellant(s)

Versus

Commissioner Of Central Tax &
Central Excise, Cochin
C.R. Buildings, I.S Press Road
Cochin
Kerala
682018

Respondent(s)

Appearance:

MR. M BALAGOPAL, ADVOCATE
#A5, HIG AVENUE, GANDHI
NAGAR ROAD, KADAVANTHARA COCHIN
COCHIN
KERALA
682020

For the Appellant

Mr. Gopa Kumar, Joint Commissioner, AR

For the Respondent

Date of Hearing: 02/05/2019
Date of Decision:06/05/2019

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

Final Order No.20398/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 25.02.2019 passed by the Commissioner (Appeals) whereby he has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants filed

Bill of Entry No. 8888688/13.04.2015 for clearance of Polished Porcelain Tiles at a declared value of USD 3.7 per Sq.M. At the time of assessment, the proper officer proposed for an enhancement of assessable value to USD 6 per Sq.M. on the basis of NIDB data. The appellant objected the enhancement and the goods were provisionally assessed and cleared on payment of duty on the declared value, execution of Bond and furnishing security by way of cash deposit for the differential duty. Accordingly, an amount of Rs.14,44,561/- being the declared duty was paid vide Challan No.2011379608 dated 17.04.2015. Even after payment of the declared duty, an amount of Rs.1,22,392/- was figuring in the Icegate as duty to be paid. On enquiring with the Department, the appellant was informed that the amount so figured was a mistake and actually the same is part of the total differential duty of Rs.4,45,825/- to be paid as security deposit for the provisional assessment. The appellant was also advised to pay Rs.1,22,392/- by way of online payment and the balance of Rs.3,23,433/- by way of DD to Customs Treasury against manual challan. As advised by the Officers, Rs.1,22,392/- was paid vide Challan No.2011476340 dated 06.05.2015 and Rs.3,23,433/- by way of DDs vide Challan CM-133 dated 07.05.2015. While making the manual payments, the appellant had also given a letter dated 07.05.2015 explaining the reasons behind such differed and different modes of payment. The letter was received by Customs on 07.05.2015 itself. Thereafter, the assessment in the Bill of Entry was finalized vide Order-in-Original No. 131/2015 dated 15.07.2015 whereby the Original Authority enhanced the assessable value at USD 6 per Sq.M. The adjudication order was challenged before the Commissioner of Customs (Appeals), who in turn allowed the appeal by setting aside the Order-in-Original and directing to assess the goods at the declared value. As the consequential relief, the appellant filed refund application for the amount of Rs.4,45,825/- being the security deposit furnished at the time of provisional assessment. The Original Authority rejected the refund claim of Rs.3,23,433/- remitted vide Challan CM-133 dated 07.05.2015 on the ground that the said amount was not reflected in the Order-in-Original No.131/2015 and the Appraising Section has not apportioned the said amount as security deposit/differential duty against Bill of Entry No.8888688/13.04.2015. Aggrieved by the rejection Order, an appeal was preferred before the Commissioner of Customs (Appeals), who in turn rejected the appeal. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Learned Counsel for the appellants submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts, law and the binding judicial precedents. He further submitted that the finding in the impugned order is contrary to the findings of the Original Authority. The Original Authority in Para 5 of the Order-in-Original dated 30.08.2017 had categorically found that the appellant has submitted their refund applications in proper format along with all mandatory documents, detailed working sheet for the amount claimed, original importer copies of the Bills of Entry, self-attested copies of E-receipts, original Receipt No. CM-133/07.05.2015 and further, in Para 7 of the Original Order, it is further recorded that the application was processed as all the documents are in order or complete. He further submitted that the Appellate Authority has not properly read the Order-in-Original and has passed the impugned order on the ground totally extraneous to the case of the Original Authority. He further submitted that the Lower Authorities have not disputed the payment of Rs.3,23,433/- made by the appellant but their only case is that the said amount is not appropriated by the officer concerned to the differential duty account. The Department is unable to explain the appropriation/allocation of the said amount collected from the appellant. He also submitted that both the orders are silent on the letter dated 07.05.2015 submitted by the appellant explaining the reasons for the different modes of payments. Further, both the authorities below have not rebutted the certificate issued by the Chartered Accountant certifying the payment of the said amount as security deposit in the respective Bill of Entry. Learned Counsel further submitted that this amount has not been appropriated towards the differential duty against the Bill of Entry and the same has been collected and retained by the Department without authority of law and is liable to be refunded to the appellant along with interest from the date of payment of the amount till the actual payment of refund. In support of his submission, he relied upon the following decisions:

- *Smruti Organics v. C.CEX, Pune - 2015 (330) ELT 583 (Tri. Mum.).*

- *Binjrajkl Steel Tubes v. C.CX, Hydb. - 2007 (218) ELT 563 (Tri. Bang.).*
- *Omjai Bhavani Silk Mills v. CCE, Hydb. - 2009 (243) ELT 560 (Tri. Bang.)*
- *Amidhara Texturising v. CCE, Surat - 2012 (278) ELT 257 (Tri. Ahmd.).*
- *HMM Ltd. v. Administrator, Bangalore City Corp. - 1997 (91) ELT 27 (SC).*

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

6. After considering the submissions of both the parties and perusal of the material on record, I find that the impugned order has been passed without properly appreciating the facts recorded in the Order-in-Original. Further, I find that the Commissioner (Appeals) has rejected the appeal on the ground that the amount of Rs.3,23,433/- was not appropriated by the Deputy Commissioner towards differential duty against the respective Bill of Entry and the appellant has not submitted the detailed working of the differential duty nor produced any certified copy of the security deposit receipt and reason for the additional payment in order to rebut this finding the Learned Counsel referred to the original order wherein it has been recorded in Para 7 that the appellants have filed all the mandatory documents which were found in order. Further, I find that it is a undisputed fact that the appellant was asked to pay the amount of Rs.3,23,433/- by the Customs Officer as differential duty and the same was paid vide Challan No. CM 133/07.05.2015 which is also placed on record. Further, I find that after the payment of Rs.3,23,433/- made by the appellant, he has written a letter dated 07.05.2015 to the Department explaining the reason for different modes of payment and the said letter has not been considered by both the authorities while deciding the case of the appellant. Further, the appellant also produced the Chartered Accountant certificate certifying the payment of the said amount as security deposit in respect of the Bill of Entry but the same has also not been considered. Further, both the authorities have not given any valid reason for retaining the said amount. Further, the orders passed by both the authorities are silent with regard to appropriation of the

said amount. The officers of the Department are duty bound to explain as to under which Head, the said amount has been allocated but no reason, whatsoever, has been given in both the orders as to the collection, appropriation, utilization of the amount collected from the appellant. Further, the appellant has relied upon various decisions cited supra wherein it has been consistently held by the Tribunal that duty collected without authority of law cannot be retained by the Government and the assessee is entitled to refund along with interest.

7. In view of my discussion above and following the ratio of the decisions relied upon by the appellant cited supra, I am of the considered view that the impugned order rejecting refund of the amount of Rs.3,23,433/- is not sustainable in law and therefore, I set aside the same by allowing the appeal of the appellant with consequential relief, if any.

(Order was pronounced
in Open Court on **06/05/2019**)

S.S GARG
JUDICIAL MEMBER

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