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

COURT NO.1

Appeal(s) Involved:

C/426/2009-DB

[Arising out of Order-in-Appeal No. 47-09 dated 20/03/2009 passed by CC(Appeals), Cochin]

C.C-COCHIN-CUS
CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN
KERALA
682009

Appellant(s)

Versus

NITCO TILES LTD
MADHUSHILA CHAMBERS NO.50/390, B&C,
PALACE ROAD, N.G.EDAPALLY, COCHIN

Respondent(s)

Appearance:

Shri Gopakumar, Jt. Commissioner(AR) — For the Appellant

None — For the Respondent

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21056 / 2019

Date of Hearing: 31/10/2019
Date of Decision: 25/11/2019

Per : P. ANJANI KUMAR

Briefly stated the facts of the case that the appellants had imported "ceramic tiles (polished vitrified and porcelain tiles size 600mmX600mm" and filed a Bill of Entry No.207014 dt. 5/9/2007; the invoice was raised by M/s. Foshan Lungo Ceramics Co. Ltd. through M/s. Enterprise Trading FZE, UAE. The goods were cleared allowing the benefit of Notification No.95/2006-Cus. dt. 08/09/2006, which exempts anti-dumping duty, levied under Notification No.73/2003-Cus. Dt. 1/5/2003vif manufactured by M/s.Heyuan Wanfeng Ceramics Co. Ltd. Peoples Republic China(PRC), exported by M/s. Foshan Lungo Ceramics Co. Ltd. through M/s. Enterprise Trading FZE, UAE. After clearance of the goods it was noticed that Examiner's report made at the time of clearance indicated that the goods were manufactured by M/s.Nanhai Shangyuan Construction Ceramic Co. Ltd., PRC. Therefore a show-cause notice dt. 3/3/2008 was issued demanding differential duty of Rs.40,18,214/-. The same was adjudicated vide order dt. 12/12/2008 and on appeal, Commissioner(Appeals) vide order dt. 20/03/2009 set aside the OIO and held that exemption is available to the appellants as the invoice, packing list and COO indicated as per the Notification. On a review made by Committee of Commissioners, Revenue has filed this appeal.

2. Learned AR for the Department has reiterated the findings in the Order-in-Original and the Review Order. The contention of the learned AR was that examination report clearly indicated M/s.Nanhai Shangyuan Construction Ceramic Co. Ltd. PRC to be the manufacturer and copy of the same was given along with the demand notice; the notification will be applicable only if all the three parties mentioned in the notification are involved and the show-cause notice was issued in time.

3. None for the respondents.

4. Heard the learned AR and perused the records of the case. The whole case of the Department is that during the course of examination of the goods prior to the clearance of the goods indicated the manufacturer to be M/s.Nanhai Shangyuan Construction Ceramic Co. Ltd. PRC in place of M/s. Foshan Lungo Ceramics Co. Ltd. as appearing in the invoice. Commissioner(Appeals) has set aside the OIO for the reason that while the Department had only the

examination report on hand; the appellant submitted copies of commercial invoice, packing list and Certificate of Origin(COO), all of which show M/s.M/s.Heyuan Wanfeng Ceramics Co. Ltd. PRC, as the manufacturer, M/s. Foshan Lungo Ceramics Co. Ltd. as exporter and M/s. Enterprise Trading FZE, UAE as the trader. Learned Commissioner(Appeals) however has not given any findings on the examination report except saying that as per appellants, the examination report was not given at the time of clearance. Further, it is also not forthcoming as to why in the existence of the examination report, clearance was allowed by the Customs authorities; if the country of origin certificate has been challenged through proper verification procedure and if any action has been initiated against the officers who have permitted clearance despite the examination report. Learned Commissioner(Appeals) has not dealt with this issue and simply relied upon on the copies of the documents produced by the respondents. Therefore, in the interest of justice and for a better appreciation of the facts and circumstances of the case, we remit the issue back to the original authority for a proper appreciation on the facts and circumstances of the case.

5. In view of the above, impugned order is set aside and Revenue appeal is allowed by way of remand.

(Order was pronounced on **25/11/2019**)

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

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