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

Appeal No. C/EH/40246/2017 & C/42612/2014

[Arising out of Order-in-Appeal C.Cus.No.1570/2014 dt. 26.8.2014 passed by the Commissioner of Customs (Appeals), Chennai]

Malvika Enterprises — Appellant

Versus

Commissioner of Customs (Port-Export)
Chennai — Respondent

Appearance:

Shri Janaki Raman, Advocate
For the Appellant

Shri R. Subramaniyan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 18.07.2017

FINAL ORDER No. 41238/2017

Per Bench

The above application has been filed by the appellant for early hearing of the appeal. After hearing both sides for some time, we consider it fit to dispose the appeal itself. Therefore, with the consent of both sides, appeal is heard and disposed by this order.

Customs, Excise & Service Tax Appellate Tribunal

2. Appellant had filed refund application seeking refund of SAD under Notification No.102/2007. On behalf of appellant, Ld. counsel Shri Janaki Raman submitted that appellant was not issued with a deficiency memo or SCN or given a personal hearing before passing the adjudication order partially rejecting the refund claim. The appellant filed refund claim for Rs.7,44,469.20 and adjudicating authority sanctioned only an amount of Rs.2,25,880/- rejecting an amount of Rs.5,18,590/-. In appeal, the rejection of the said amount was upheld. Hence this appeal.

3. Ld. Counsel submitted that appellant would be able to establish his case with regard to eligibility of refund, if the matter is remanded since the appellant would be able to produce necessary documents. As the appellant was not issued a SCN or deficiency memo the appellant was not able to defend the case or furnish necessary documents.

3. The Ld. A.R Shri R. Subramaniyan reiterated the findings in the impugned order. He submitted that as per the Board Circular No.16/2008 dt. 13.10.2008, it is clarified that in case of sale of imported goods by importer through consignment agent/stockist, refund of 4% CVD shall be granted subject to fulfilment of condition that the consignment agent/stockist has been authorized to sell the imported goods and that each sale invoice indicates that sale is made by him on behalf of importer. That appellant has not fulfilled the condition and refund has been rightly rejected.

4. We have considered the submissions made by both sides. Upon scrutiny of records as well as from the submissions made by both sides it is evident that appellant has not been given a chance to defend his

case. It is also to be noted that appellant has not been issued with deficiency memo or SCN as to what are the grounds on which refund is rejected. So also, an opportunity of personal hearing was not given. The Ld. Counsel has submitted that appellant would be able to furnish documents to establish eligibility of refund. We therefore find it fit to remand the matter, so as to give opportunity to the appellant to establish his case. We also make an observation that the ground on which the refund has been rejected is that appellant did not fulfil the condition stated in Board circular. Needless to say Board circular is not binding on assessee. The adjudicating authority shall give sufficient time to appellant to furnish documents as well as for personal hearing. In view thereof, the appeal is remanded to the adjudicating authority for de novo adjudication in the above terms. EH petition is disposed accordingly.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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